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S.C. SUPREME COURT

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

V.

DARELL ONEIL BOSTON,

APPELLANT.

Appellate Case No.: 2018-000504

RECORD ON APPEAL

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PAGES 501-776

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SC Court of Appeals

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1 All right. I am happy to hear from you
2 on Mr. Holmes. I will place that in a sealed
3 envelope.

4 MR. LEWIS: Yes, Your Honor. Did you
5 want to hear his record first?

6 THE COURT: Yes, I want to hear from
7 the State first, Mr. Lewis. Then I will hear from
8 you, sir.

9 MS. SAVAS: May it please the Court, in
10 regards to Mr. Holmes, in 199 --

11 (Thereupon, a spectator fainted.)

12 THE COURT: Hold on a second.

13 (Brief recess.)

14 THE COURT: Ms. Savas, I will be happy
15 to hear from you.

16 MS. SAVAS: Thank you, Your Honor. Mr.
17 Holmes's record began in 1999 with a distribution
18 of cocaine proximity, distribution of crack
19 proximity, trafficking crack and a PWID cocaine
20 first offense where he was sentenced with a YOA.
21 In 2002 he was convicted of PWID cocaine first and
22 the PWID cocaine proximity and a public disorderly
23 for another five years. 2005 he had a parole
24 revocation and a strong armed robbery. And in 2006
25 strong armed robbery where he was sentenced to four

1 years. In 2009 he had a failure to stop for blue
2 light where he was sentenced to two years and a
3 DUS. In 2012 he was convicted of possession of a
4 firearm by convicted felon, possession of a weapon
5 by a certain person. In 2013 again he was
6 convicted of possession of crack where he was
7 sentenced to four years suspended upon 18 months
8 probation. In 2013 possession of cocaine,
9 possession of marijuana, and in 2014 a false
10 information.

11 Similarly as Mr. Boston there is that
12 LWOP eligibility. The State did make two offers
13 again with this Defendant for under the ten-year
14 minimum and they chose to exercise their right to
15 trial.

16 Again, Your Honor, this is a very
17 lengthy record, additionally a violent record,
18 including those offenses and one with weapons.
19 It's a repetitive behavior. It's a blatant
20 disregard for the law. And again the concerns with
21 the community and what they were doing in those
22 neighborhoods. And so for those reasons, Your
23 Honor, the State would respectfully request a
24 sentence again in the middle to the upper range as
25 he has received multiple sentences and terms below

1 these matters and the severity of these crimes and
2 his very violent criminal history.

3 THE COURT: Is this a third offense for
4 the possession of cocaine?

5 MR. LEWIS: Third across the board.

6 THE COURT: Thank you, Mr. Lewis. Be
7 delighted to hear from you, sir.

8 MR. LEWIS: Thank you, Judge. William
9 is 36. He's lived his entire life in the
10 Charleston area along with his immediate family.
11 Was working for Snyder Rentals at the time that he
12 was arrested. At that point at least trying to
13 provide legally for his family. He attended the
14 suppression hearing. He was present for that. At
15 that hearing I met his newborn.

16 As a father myself, I certainly know it
17 would have been incredibly difficult to come here
18 facing that today. I know that his presence or
19 lack thereof certainly weighs on the Court. That
20 said, having to leave your family knowing that this
21 was a pretty likely result would have been very
22 tough. I empathize with him for that. He served
23 two days before he was able to post bond. I do
24 acknowledge that he does have a criminal history.
25 I would certainly differentiate between a lot of my

1 more violent criminals and Mr. Holmes. I have
2 represented certainly a lot worse than he is.

3 But I want to discuss very briefly, I
4 understand the legislature has spoken about 10 to
5 30. I know how this Court feels about armed
6 robbery cases. That's a 10 to 30. These are not
7 equal conducts. Sticking a weapon in someone's
8 face and taking property is not the same thing as
9 the jury said cooking up a Pyrex with five grams of
10 crack cocaine.

11 I like Ms. Seman will ask for the
12 minimum. I understand that puts me in a slightly
13 different position having already seen what the
14 similar co-defendant got. But I would ask you
15 consider ten years sufficient. Eight and-a-half
16 years in prison for \$500 worth of cocaine is still
17 an incredibly powerful punishment. I would ask
18 that you consider that.

19 THE COURT: All right. I have imposed
20 a sentence, signed the sheeting sheet and I have
21 placed them in an envelope. When he is arrested we
22 will open the envelope. Thank you.

23 MR. LEWIS: Yes, Your Honor.

24 (These proceedings were concluded at
25 12:09 p.m., February 7, 2018, Charleston County,

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) Court of General Sessions
3 _____) Case No. 2015-GS-10-06087
4 STATE OF SOUTH CAROLINA)
5 vs.) Transcript of Record
6 DARELL O'NEIL BOSTON,)
7 Defendant.)
8 _____) DATE: March 15, 2018

9
10 B E F O R E:

11 The Honorable R. Markley Dennis

12
13 A P P E A R A N C E:

14 Nina L. Savas
 Attorney for the State

15 Taylor Joy Seman
16 Attorney for the Defendant

17
18 Karen V. Andersen, RMR, CRR
19 Circuit Court Reporter
20
21
22
23
24
25

1 THE COURT: I have the briefs filed by everybody.
2 I reviewed them. They are incorporated fully. So you don't
3 need to state anything that is already stated in them.

4 Good afternoon, Mr. Boston.

5 THE DEFENDANT: Good afternoon, sir.

6 THE COURT: Mr. Boston, I just mentioned as you
7 were coming in, your lawyer has filed a very extensive brief
8 with exhibits attached. And it's a part of the record of
9 this proceeding. I've incorporated it fully in the record
10 in this case. And much of it was basically things that were
11 argued on the record, created during the trial and before
12 the trial. And, certainly, that stands and is part of the
13 record as well.

14 The solicitor just filed opposition to that. And I
15 certainly understand that as well.

16 Ms. Newman, having said that, happy to hear from
17 you, anything else you want to argue at this point?

18 DEFENSE ATTORNEY: Other than what's filed in the
19 brief, Your Honor, nothing else. As you know, it's three
20 issues that are kind of concerning the same evidence, the
21 prior knowledge of interactions with both defendants in this
22 case. We believe based on the reasoning in the brief that
23 those rendered his trial fundamentally unfair. If you would
24 like me to go into them, I'm happy to.

25 THE COURT: I'm very familiar with them. I think

1 I'm quoted several times about that. It's an issue that I
2 think it's framed properly for review. There's no question
3 that if the court concludes that you are right that I
4 shouldn't have allowed the evidence to come in because it
5 was an improper knock and talk, then you are right, entitled
6 to a new trial. I will stand by my ruling and stand by the
7 rulings I've made on all the issues that you've raised. And
8 I think the sentence was appropriate. So I respectfully
9 deny your motion. Thank you.

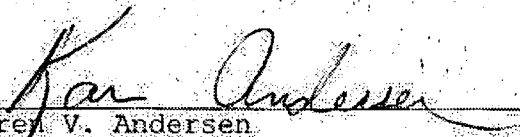
10 DEFENSE ATTORNEY: Thank you.

11 (Whereupon, proceedings are adjourned.)
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

NLS/0302503
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2015-007705

ARREST WARRANT NUMBER

2015A1010201119

DATE OF ARREST

03/07/2015

ACTION OF GRAND JURY

TRUE BILL

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

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015-GS-10-06087

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2015

THE STATE

VS.

DARELL ONEIL BOSTON
B/M DOB [REDACTED] 1976

Indictment for

MANUFACTURE CRACK COCAINE

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

FILED

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

STATE OF SOUTH CAROLINA

INDICTMENT

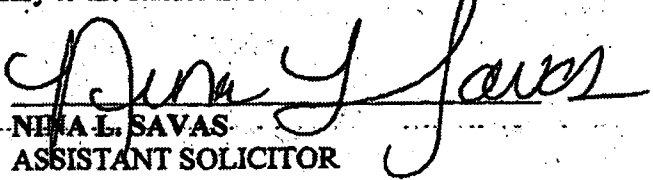
COUNTY OF CHARLESTON

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

Manufacture Crack Cocaine

The defendant, Darell Oneil Boston, did on or about March 7, 2015, in Charleston County, South Carolina, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase Crack Cocaine, a cocaine base, in violation of the provisions of Section 44-53-370. All in violation of 44-53-0375(B)(1) of the South Carolina Code of Laws (1976) as amended.

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


NINA L. SAVAS
ASSISTANT SOLICITOR

NLS/0302503
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2015-007705

ARREST WARRANT NUMBER

2015A1010201116

DATE OF ARREST

03/07/2015

ACTION OF GRAND JURY

TRUE BILL

[Signature] NOV 24 2015
Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015-GS-10-06086

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2015

THE STATE

VS.

DARELL ONEIL BOSTON

B/M DOB [REDACTED] 1976

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE A CONTROLLED
SUBSTANCE WITHIN PROXIMITY OF A
SCHOOL

SC Code: § 44-53-0445(A)
CDR Code: 0107

FILED

11/17/2015 9:27:55 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA

INDICTMENT

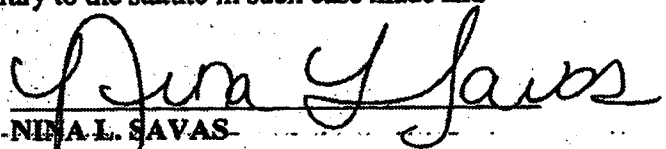
COUNTY OF CHARLESTON

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

Possession with Intent to Distribute a Controlled Substance within Proximity of a School

The defendant, Darell Oneil Boston, did on or about March 7, 2015, in Charleston County, South Carolina, with knowledge that he was within a one half mile radius of the grounds of Military Magnet High School, a public or private elementary, middle or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university, distribute, sell, manufacture, or unlawfully possess with intent to distribute Crack Cocaine, a controlled substance under provisions of Section 44-53-110, et seq., South Carolina Code of Laws (1976, as amended). All in violation of 44-53-0445(A), South Carolina Code of Laws (1976) as amended.

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


NINA L. SAVAS
ASSISTANT SOLICITOR

NLS/0302503
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER
2015-007705

ARREST WARRANT NUMBER

2015A1010201114

DATE OF ARREST

03/07/2015

ACTION OF GRAND JURY

TRUE BILL

[Signature] NOV - 3 - 2015
Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-10-06082

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2015

THE STATE

VS.

DARELL ONEIL BOSTON
B/M DOB [REDACTED] 1976

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE CRACK COCAINE

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

FILED

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

STATE OF SOUTH CAROLINA

INDICTMENT

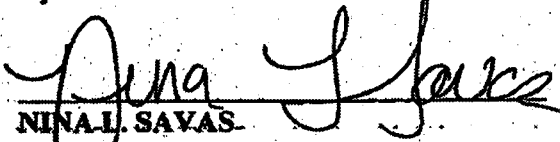
COUNTY OF CHARLESTON

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

Possession with Intent to Distribute Crack Cocaine

The defendant, Darell Oneil Boston, did on or about March 6, 2015, in Charleston County, South Carolina, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase Crack Cocaine, a cocaine base, in violation of the provisions of Section 44-53-370. All in violation of 44-53-0375(B)(1) of the South Carolina Code of Laws (1976) as amended.

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


NINA L. SAVAS
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
STATE VS.DARELL ONEIL BOSTONAKA: Darrell O Boston, Darrell Oneil BostonRace: Black/African American Sex: MDOB: 1/1976 SS#: Address: AvenueCity, State, Zip: North Charleston, SC 29405DL# SID# *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Dist PWID/Manuf Cocaine Base or MethIn violation of § 44-53-0375(B)(3) of the S.C. Code of Laws, bearing CDR Code # 3039☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☒ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,The plea is: ☒ Without Negotiations or Recommendation,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST

Nina L. Savas, Assistant Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 17 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 62 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives HearingTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient: *Fine: \$ §14-1-206 (Assessments 107.5%) \$ §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100-§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ §56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ Proviso 61.6 (Public Def/Prob) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25-§14-1-213 (Drug Court Surcharge) \$150 \$ 150-§50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ TOTAL \$ 293.25Clerk of Court/Deputy Clerk: Court Reporter:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015-GS-10-06087A/W: 2015A1010201119Date of Offense: 03/06/2015S.C. Code §: 44-53-0375(B)(2)CDR Code #: 3015

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS☐ Ordered PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.Presiding Judge: Judge Code: 2060Sentence Date: 2/7/18

NLS/0302503
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2015-007705

ARREST WARRANT NUMBER

2015A1010201119

DATE OF ARREST

03/07/2015

ACTION OF GRAND JURY

TRUE BILL

ll deee NOV 13 2015
Foreperson of Grand Jury
Date:

VERDICT

Guilty
Ray R. P. 2/7/18

Foreperson of Petit Jury
Date:

DOCKET NO. 2015-GS-10-06087

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2015

THE STATE

VS.

DARELL ONEIL BOSTON
B/M DOB [REDACTED] 1976

Indictment for

MANUFACTURE CRACK COCAINE

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

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

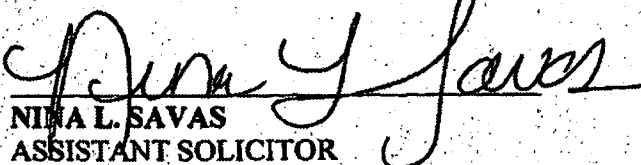
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At a Court of General Sessions, convened on November 2, 2015, the Grand Jurors of Charleston County present upon their oath:

Manufacture Crack Cocaine

The defendant, Darell Oneil Boston, did on or about March 7, 2015, in Charleston County, South Carolina, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase Crack Cocaine, a cocaine base, in violation of the provisions of Section 44-53-370. All in violation of 44-53-0375(B)(1) of the South Carolina Code of Laws (1976) as amended.

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


NINA L. SAVAS
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

STATE OF SOUTH CAROLINA)

vs.)

DARELL ONEIL BOSTON,)

Defendant.)
_____)IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2015-GS-10-06087**VERDICT FORM**

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

☒ **GUILTY**

☐ **NOT GUILTY**


PRESIDING JUROR

FEBRUARY 7, 2018

NLS/0302503
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2015-007705

ARREST WARRANT NUMBER

2015A1010201114

DATE OF ARREST

03/07/2015

ACTION OF GRAND JURY

TRUE BILL

L. L. L. L. NOV - 3 2015
Foreperson of Grand Jury
Date:

VERDICT

*Dismissed due to
warrant over 2015 GS 10*

6087

R. M. L. L.
Foreperson of Both Jury

Date: *2/2/16*

DOCKET NO. 2015-GS-10-06082

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2015

THE STATE

VS.

DARELL ONEIL BOSTON

B/M DOB [REDACTED] 1976

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE CRACK COCAINE

SC Code: § 44-53-0375(B)(1)

CDR Code: 3014

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

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

Possession with Intent to Distribute Crack Cocaine

The defendant, Darell Oneil Boston, did on or about March 6, 2015, in Charleston County, South Carolina, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase Crack Cocaine, a cocaine base, in violation of the provisions of Section 44-53-370. All in violation of 44-53-0375(B)(1) of the South Carolina Code of Laws (1976) as amended.

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


NINA L. SAVAS
ASSISTANT SOLICITOR

**OFFICE OF THE SOLICITOR
NINTH JUDICIAL CIRCUIT**

**INDICTMENT/WARRANT STATUS CHANGE FORM
(One Defendant and One Warrant/Indictment per Form)**

Name: Darell Onell BostonIndictment #: 2015-GS-10-06086Race: BSex: MWarrant Number: 2015A1010201116Year of Birth: 1976Case Number: 0302503

Disposition (Check One)

☐ Dismissed (4A)☒ Nolle Prosequi (4B)

*REASON (4A OR 4B):

Insufficient evidence to convict. Found guilty at trial on 2/7/18 of manufacturing cocaine base in this case
and sentenced to 17 years active.

☐ Remanded (7)

Charge: _____

Municipal Court: _____

Magistrate Court: _____

Judge: _____

☐ Failure to Appear (9)

Date Bench Warrant Issued: _____

Trial/Plea Docket Week: _____

PROSECUTOR: _____

Nina L. Savas, Assistant Solicitor

Date: 2/8/18

CODE: DPIE

CLERK OF COURT'S DATE/TIME STAMP: _____

RECEIVED BY: _____

DATE: _____

* Questions regarding the reason for disposition should be directed to the Solicitor's Office.

Defense Attorney: Taylor Joy Seman

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

DARELL ONEIL BOSTON,

Defendant.

IN THE COURT OF GENERAL SESSIONS

FOR THE NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2015-GS-10-06082

VERDICT FORM

We, the Jury, by unanimous consent, find the Defendant, DARELL ONEIL BOSTON, on the charge of POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE:

GUILTY

**GUILTY OF THE LESSER INCLUDED OFFENSE OF
SIMPLE POSSESSION OF CRACK COCAINE**

NOT GUILTY

PRESIDING JUROR

FEBRUARY 2018

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

v.

DARELL ONEIL BOSTON,

Defendant.

IN THE COURT OF GENERAL SESSIONS

FOR THE NINTH JUDICIAL CIRCUIT

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

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

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

MOTION TO SUPPRESS EVIDENCE

523

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

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Taylor J. Serman

Taylor J. Serman, Assistant Public Defender
 Charleston County Public Defender's Office
 101 Meeting Street
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 (843) 958-2007

ATTORNEY FOR DEFENDANT DARELL
 BOSTON

November 20, 2017
 Charleston, South Carolina

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 BY *[Signature]*

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)

IN THE COURT OF GENERAL SESSIONS
 MOTION COVERSHEET

STATE OF SOUTH CAROLINA)

WARRANT/TICKET/)

INDICTMENT #'s)

2015A1010201114

2015A1010201116

2015A1010201119

-vs-)

Darell Oncil Boston)

DEFENDANT)

Solicitor:

Nina Savas

Bar No.

Address:

Phone:

E-mail:

Defendant's Attorney:

Taylor Sernan

Bar No. 101924

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101 Meeting Street, 5th Floor

Phone: 843-958-1850

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☒ MOTION HEARING REQUESTED

☐ FORM MOTION, NO HEARING REQUESTED

☐ PROPOSED ORDER/CONSENT ORDER

SECTION I: Hearing Information

Nature of Motion: Motion To Suppress Evidence

Estimated Time Needed: 20min

Court Reporter Needed: ☒ YES ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

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

Taylor Sernan

Signature of ☐ Solicitor ☒ Attorney for Defendant

11/20/2017

Date submitted

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

v.

DARELL ONEIL BOSTON,

Defendant.

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

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

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

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

**MEMORANDUM IN SUPPORT OF
MOTION TO SUPPRESS EVIDENCE**

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

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

FACTS

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

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

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

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

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

LEGAL STANDARD AND BURDEN OF PROOF

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

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

U.S. CONST. amend. IV. In general, the Fourth Amendment prevents the government from searching a person, his home, or his property, without a warrant, unless certain exceptions apply. *Katz v. United States*, 389 U.S. 347 (1967). If the government does not comply with the Fourth Amendment during a search, the government may not use any evidence it recovers. *Mapp v. Ohio*, 367 U.S. 643 (1961). The purpose of this exclusionary rule is to deter bad-faith violations of the Fourth Amendment. *Rakas v. Illinois*, 439 U.S. 128, 168 (1978) (White, J., dissenting).

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

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

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

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

ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

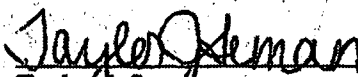
Here, officers' protective sweep occurred before anyone was arrested and before anyone was even detained. *See* Exhibit 2. That officers noticed the supposedly incriminating plastic bags did not yet give officers probable cause to arrest anyone, including Boston. Further, Holman's apartment was quite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

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

CONCLUSION

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

Respectfully submitted,



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

ATTORNEY FOR DEFENDANT
DARELL BOSTON

November 22, 2017
Charleston, South Carolina

2017 NOV 22 PM 4:42
FILED
CLERK OF COURT

EXHIBIT 1

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

State of South Carolina

v.

Darell Boston

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

Incident Detail Report

Data Source: Data Warehouse
 Incident Status: Closed
 Incident number: 201600176027
 Incident Date: 3/8/2015 17:09:03
 Last Updated: 1/24/2017 15:35:01

Incident Information

Incident Type: Priority: Determinant: Base Response: Confirmations: Taken By: Response Area: Disposition: Cancel Reason: Incident Status: Certification: Longitude:	TS_Traffic Stop Officer Initiated Grant, April S NCPD 101 LW_Written Warning Closed 79966062	Alarm Level: Problem: Agency: Jurisdiction: Division: Battalion: Response Plan: Command Ch: Primary TAC: Secondary TAC: Delay Reason (if any): Latitude:	Traffic Stop Law North Charleston PD-NCPD NC21 NC21 32946451
--	---	---	---

Incident Location

Location Name: Address: Apartment: Building: City, State, Zip:	Corner Av / Clements Av NORTH CHARLESTON SC 29408	County: Location Type: Cross Street: Map Reference:	Charleston
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Supplemental Information - Vehicle

VEHICLE 1
License: XXXXXXXXXX **PC: Passenger Car**

Call Receipt

Caller Name: Method Received: Caller Type:	Call Back Phone: Caller Location:
---	--

Time Stamps

Description	Date	Time	User	Elapsed Times	Description	Time
Phone Pickup	3/8/2015	17:09:03				
1st Key Stroke	3/8/2015	17:09:03			Received to In Queue	00:00:00
In Waiting Queue	3/8/2015	17:09:03			Call Taking	00:00:00
Call Taking Complete	3/8/2015	17:09:03	Grant, April S		In Queue to 1st Assign	00:00:00
1st Unit Assigned	3/8/2015	17:09:03			Call Received to 1st Assign	00:00:00
1st Unit Enroute	3/8/2015	17:09:03			Assigned to 1st Enroute	00:00:00
1st Unit Arrived	3/8/2015	17:09:03			Enroute to 1st Arrived	00:00:00
Closed	3/8/2015	17:25:25	Dearborn, Alicia K	Incident Duration		00:16:22

Resources Assigned

Unit	Assigned	Disposition	Enroute	Staged	Arrived	At	Delay	Complete	Enroute	Arrived	Cancel Reason
NC232	17:09:03	LW_Written Warning	17:09:03		17:09:03	Patent	Avail	17:25:25			
NC227	17:14:37		17:14:37					17:15:00			
NC349	17:14:58	LW_Written Warning	17:14:58		17:15:33			17:25:25			
NC061	17:15:50	LW_Written Warning	17:15:50		17:19:50			17:25:25			

Personnel Assigned

No Personnel Assigned

Pre-Scheduled Information

No Pre-Scheduled Information

Transports

No Transports Information

Transport Legs

No Transports Information

Comments

Date	Time	User	Type	Conf.	Comments
------	------	------	------	-------	----------

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

Address Changes
No Address Changes

Priority Changes
No Priority Changes

Alarm Level Changes
No Alarm Level Changes

Activity Log

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

Edit Log
No Edits

Custom Time Stamps
No Custom Time Stamps

Custom Data Fields
No Custom Data Fields

Attachments
No Attachment

EXHIBIT 2**MEMORANDUM IN SUPPORT OF DEFENDANT BOSTON'S
MOTION TO SUPPRESS EVIDENCE****State of South Carolina****v.****Darell Boston****Case Nos. 2015-GS-10-06082; 2015-GS-10-06086; 2015-GS-10-06087**

Ben C. Lewis

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

Luke & Ben,

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

Sherwood-

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

Etminan-

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

Smoak-

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

Rough-

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

Nina L. Savas
 Assistant Solicitor

EXHIBIT 3**MEMORANDUM IN SUPPORT OF DEFENDANT BOSTON'S
MOTION TO SUPPRESS EVIDENCE**

State of South Carolina

v.

Darell Boston

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

NORTH CHARLESTON POLICE		INCIDENT REPORT		INFORMATION ONLY		CASE NUMBER		NCIC	
SC0100000						2015007705		INC. YES INTD. YES	
INCIDENT TYPE		COMPLETED		FORCED ENTRY		PREMISE TYPE		UNIT ENDED	
1. PWID COCAINE BASE (44-53-375)		☒ YES ☐ NO		☒ YES ☐ NO		APARTMENT/CONDO			
2.		☐ YES ☐ NO		☐ YES ☐ NO					
3.		☐ YES ☐ NO		☐ YES ☐ NO					
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)						ZIP CODE		WEAPON TYPE	
[REDACTED] AVE, NORTH CHARLESTON, SC						29405			
INCIDENT DATE		24 HR. CLOCK		DATE		24 HR. CLOCK		LOCATION NO.	
03/08/2015		17:25		03/08/2015		19:24			
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT		RACE/SEX		AGE	
SHERWOOD, JOSEPH									
ADDRESS		CITY		STATE		ZIP CODE		LOCATION NO.	
[REDACTED]		NORTH CHARLESTON		SC		29405			
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT		RACE/SEX		AGE	
SOCIETY									
HEIGHT		WEIGHT		HAIR		EYES		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.	
ADDRESS		CITY		STATE		ZIP CODE		LOCATION NO.	
[REDACTED]		[REDACTED]		SC		29405			
VIOLENCE/INJURY		YES		NO		EXPLAIN		COMPLAINANT/ANYONE VIOLENCE/INJURY	
☐ YES ☐ NO		☐ YES ☐ NO		☐ YES ☐ NO		☐ YES ☐ NO		☐ YES ☐ NO	
VICTIM(S) USING ALCOHOL		YES		NO		TYPE			
☐ YES ☐ NO		☐ YES ☐ NO		☐ YES ☐ NO		☐ YES ☐ NO		☐ YES ☐ NO	
TWO-WHEEL		ONE-WHEEL		DETECTING FLASK		OTHER		ALONE	
☐ SUSPECT		NAME (LAST, FIRST, MIDDLE)		RACE		SEX		AGE	
☐ RUNAWAY		HOLMES, WILLIAM		B		M		33	
☐ WANTED		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		ETH		DATE OF BIRTH		HEIGHT	
☐ WARRANT				N				600	
☐ ARREST		ADDRESS		CITY		STATE		ZIP CODE	
☐ JAIL		[REDACTED]		[REDACTED]		SC		29405	
☐ SUBMERSION		SUBJECT(S) USING ALCOHOL		YES		NO		TYPE	
☐ YES ☐ NO		☐ YES ☐ NO		☐ YES ☐ NO		☐ YES ☐ NO		☐ YES ☐ NO	
DAY OF THE WEEK		HOW REPORTED		A- OFFICER DISPATCHED ON CALL		D- COMPLAINT WRITTEN IN		OFF. FACTOR	
S M T W T F S UNK		[REDACTED]		B- REPORT TAKEN BY PHONE		E- OFFICER INITIATED		A- RESISTANCE/STOLTY	
				C- COMPLAINT WALKED IN		F- OTHER		B- WEAPONS	
								C- UNFOUNDED CALLS	
								D- MENTAL SUBJECT	
								E- COMPLAINT FRS	
								F- CURRENTLY INTOXICATED	
								G- DOMESTIC	
								H- NORMAL	
J. SHERWOOD									
ON March 8, 2015 OFFICERS WENT TO [REDACTED] AVE APARTMENT 2 IN REFERENCE TO DRUG COMPLAINTS UNDER CASE NUMBER 201500889. OFFICERS ARRIVED ON SCENE AND KNOCKED ON THE DOOR. THE RENTER OF THE APARTMENT, DENISE HOLMAN, ANSWERED THE DOOR. OFFICERS ASKED IF THEY COULD ENTER HER HOME TO TALK, WHICH SHE GRANTED PERMISSION. AS OFFICERS ENTERED INTO THIS TWO ROOM APARTMENT TWO MALE SUBJECTS CAME QUICKLY OUT OF THE BATHROOM AND KITCHEN AREA. THEY WERE EXTREMELY NERVOUS TO THE POINT OF THERE HANDS SHAKING AND LABORED BREATHING. I, OFFICER SHERWOOD, COULD SEE ON THE COUNTER OF THE KITCHEN FROM THE LIVING ROOM TWO PLASTIC BAGS WITH A WITH POWDER RESIDUE. AS I APPROACHED THE KITCHEN I COULD ALSO SEE THAT THE MICROWAVE WAS OPEN									
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY					JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY				
TYPE(GROUP)		DRUGS/NARCOTICS		TOTAL VALUE					
BROKEN		\$0.00		\$0.00					
DAMAGED		\$0.00		\$0.00					
BURNED		\$0.00		\$0.00					
RECOVERED		\$0.00		\$0.00					
SERVED		\$0.00		\$0.00					
SUBJECT IDENTIFIED		SUBJECT LOCATED		S.F.		ACTIVE		ADM. CLOSED	
☒ YES ☐ NO		☒ YES ☐ NO				☐ UNFOUNDED		☐ ARRESTED UNDER 18	
								☐ ARRESTED 18 AND OVER	
REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE	
SHERWOOD, JOSEPH		3/8/2015 5:25:49 PM		167		HOOSE, FREDERICK REED			
ETHEMAN, PAUL		3/8/2015 5:30:00 PM		245		FOLLOWUP INVESTIGATION		☐ YES ☐ NO	

ADDITIONAL NARRATIVE

Agency Name: NORTH CHARLESTON POLICE DEPARTMENT	ORG #: SC0100800	Report Date/Time: 03/08/2015 17:25	OCA #: 2018007705
--	---------------------	---------------------------------------	----------------------

J. SHERWOOD

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

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

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

DURING THE SEARCH OFFICERS TESTED THE MICROWAVE AND FOUND THAT IT FIELD-TESTED PRESUMPTIVE FOR COCAINE. THE PYREX MEASURING CUP FROM THE BATHROOM WAS ALSO HOT TO THE TOUCH. THIS IS CONSISTENT WITH THE MANUFACTURING OF 'CRACK' COCAINE. BOTH SUBJECTS, WHICH WERE IDENTIFIED AS WILLIAM HOLMES AND DARRELL BOSTON, WERE READ THEIR MIRANDA WARNING BY OFFICER ETMINAN AND UNDERSTOOD. NONE OF THE SUSPECTS WOULD CLAIM OWNERSHIP OF ANY OF THE ABOVE MENTIONED SUBSTANCES. OFFICER SMOKE LATER ASKED IF THEY KNEW OF ANY SCHOOLS IN THE AREA AND MR. HOLMES STATED HE HAD CHILD THAT WENT TO MILITARY MAGNET HIGH SCHOOL (2850 CARNER AVE). MR. BOSTON ALSO ACKNOWLEDGED HE KNEW OF THE SAME SCHOOL. THIS INCIDENT TOOK PLACE WITHIN 1/4 MILE OF 2850 CARNER AVE. BOTH SUSPECTS WERE CHARGED WITH POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE, MANUFACTURING COCAINE BASE, AND POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE WITH IN 1/4 MILE OF A SCHOOL. MR. HOLMES WAS ALSO CHARGED WITH POSSESSION OF COCAINE. ALL OF THE ABOVE MENTIONED SUBSTANCES FIELD-TESTED PRESUMPTIVE FOR COCAINE. OFFICERS TRANSPORTED BOTH SUBJECTS TO CHARLESTON COUNTY DETENTION CENTER. CHARLESTON COUNTY DETENTION OFFICERS CONDUCTED A STRIP SEARCH OF MR. HOLMES PER THERE POLICY. OFFICERS LOCATED 2 GRAMS OF WHITE POWDER LIKE SUBSTANCE AND 3 GRAMS OF GREEN PLANT LIKE MATERIAL FROM HIS BUTTOCKS. BOTH SUBSTANCES FIELD-TESTED PRESUMPTIVE. ALL OF THE WHITE POWDER LIKE SUBSTANCE WAS PLACED INTO BEST KIT NUMBER B247361 AND THE OFF WHITE ROCK LIKE SUBSTANCE WAS PLACED INTO BEST KIT NUMBER B247360 FOR SLED ANALYSIS. AFTER SPEAKING WITH MRS. HOLMAN OFFICERS FOUND THAT SHE MENTALLY HANDICAP UNABLE TO COMPREHEND THE SITUATION AT HAND. SHE RELEASED DUE TO THIS. THERE IS NOTHING FURTHER TO REPORT AT THIS TIME.

AGENCY: NORTH CHARLESTON
ORI #: SC0106600
Report Date/Time: 03/05/2015 12:25
INCIDENT #: 201500705

INCIDENT REPORT

ADDITIONAL OTHERS

PERSON TYPE SUSPECT	NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH	
	BOSTON, DARRELL, ONEIL				1	2	3	J	B	M	30		N	
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
ADDRESS				CITY		STATE		ZIP CODE		LOCATION NO.		DAYTIME PHONE		EVENING PHONE
				NORTH CHARLESTON		SC		29405-				F		F
VIOLENTRY ☐ YES ☐ NO ☐				EXPLAIN:				COMPLAINANT NON-VIOLENTRY ☐ YES ☐ NO ☐						
USING ALCOHOL ☐ YES ☐ NO ☐ UNK ☐				DRUGS ☐ YES ☐ NO ☐ UNK ☐				TYPE: COCAINE BASE "CRACK"						

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

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

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

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

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

AGENCY:
ORI#:

NORTH CHARLESTON POLICE
SC0100800

ARRESTING OFFICER:

03/08/2014 17:25

Incident #:

2015007705

INCIDENT REPORT ADDITIONAL OFFENSES

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

INCIDENT REPORT DRUGS

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

AGENCY-ID
SC0100800

CASE NUMBER
2015007705

AGENCY: NORTH CHARLESTON POLICE
 ORI #: SCB106800

Incident #: 2019007705

ADDITIONAL PROPERTY

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

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

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

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

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

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

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

AGENCY:

NORTH CHARLESTON POLICE

ORI #:

SC0100300

Incident #:

2015007705

ADDITIONAL PROPERTY ESTIMATE SHEET

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

EXHIBIT 4

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

State of South Carolina

v.

Darell Boston

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

NORTH CHARLESTON POLICE SC0100800		INCIDENT REPORT		INFORMATION ONLY ☐		CASE NUMBER 2015006889		NCIC INQ. INTD.	
INCIDENT TYPE INFORMATION				COMPLETED ☐ YES ☒ NO	FORCED ENTRY ☐ YES ☒ NO	PREMISE TYPE HIGHWAY/ROAD/ALLEY	UNITS ENTERED	TYPE VICTIM ☒ Individual ☐ Business ☐ Financial Inst ☐ Government ☐ Relig. Org. ☐ Soc. Public ☐ Other ☐ Unknown ☐ Police Off.	
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) [REDACTED] AVE, NORTH CHARLESTON, SC				ZIP CODE 29405		WEAPON TYPE			
INCIDENT DATE 02/27/2015		24 HR. CLOCK 16:30		TO DATE 02/27/2015		24 HR. CLOCK 16:52		LOCATION NO.	
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE/SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE
ADDRESS		CITY		STATE	ZIP CODE		LOCATION NO.		
VICTIM'S NAME (LAST, FIRST, MIDDLE) FRANKLIN, KYLE DEAN		RELATIONSHIP TO SUBJECT		RESIDENT	RACE/SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE
HEIGHT WEIGHT HAIR EYES		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
ADDRESS		CITY		STATE	ZIP CODE		LOCATION NO.		
VIOLENCE (MURDER) ☐ YES ☐ NO ☐ EXPLAIN				COMPLAINANT OF ANY NON-RESIDENTS ☐ YES ☐ NO					
VICTIM (NO) USING ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ TYPE				DRUGS ☐ YES ☐ NO ☐ UNK ☐ TYPE					
TWO MAN/WH ☐ ONE MAN/WH ☐ DETECTIVE/PLASMI ☐ OTHER ☐ ALONE ☐ ASSISTED ☐				J-This Jurisdiction S-State O-Out of State U-Unknown					
☒ SUSPECT		NAME (LAST, FIRST, MIDDLE) Unknown		RACE/SEX	AGE	ETH	DATE OF BIRTH	HEIGHT	WEIGHT
☐ RUNAWAY		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		RELATED OFFENSE(S) 902		DAYTIME PHONE		EVENING PHONE	
☐ WANTED		ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.	
☐ WARRANT		SUBJECT (NO) USING ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ TYPE		ARRESTED (NEAR OFFENSE SCENE) ☐ YES ☐ NO ☐		DATE/TIME OF OFFENSE 2/27/2015 4:30:33 PM		DATE/TIME OF ARREST	
☐ ARREST		DRUGS ☐ YES ☐ NO ☐ UNK ☐ TYPE		TOTAL # ARRESTED		DAY OF THE WEEK		HOW REPORTED	
☐ JAIL		A- OFFICER DISPATCHED ON CALL D- COMPLAINT WRITTEN BY		DIFF. FACTOR		A- RESISTANCE/HOSTILITY		B- COMPLAINT FREQUENTLY INTOXICATED	
☐ SUMMONS		B- REPORT TAKEN BY PHONE E- OFFICER INITIATED		C- UNFOUNDED CALLS		D- MENTAL SUBJECT		F- DOMESTIC	
DAY OF THE WEEK S M T W T F S UNK		A- OFFICER DISPATCHED ON CALL D- COMPLAINT WRITTEN BY		DIFF. FACTOR		A- RESISTANCE/HOSTILITY		B- COMPLAINT FREQUENTLY INTOXICATED	
ON THE LISTED DATE AND TIME I RESPONDED TO THE LISTED LOCATION AND MET WITH MR. KYLE FRANKLIN WHO STATED THAT HE WAS THE PROPERTY OWNER OF [REDACTED]. HE FURTHER STATED THAT HE OBSERVED A MALE COME OUT OF APT 13 THAT DID NOT RESIDE AT THE PROPERTY. FRANKLIN STATED THAT WHEN HE ASKED THE INDIVIDUAL HIS BUSINESS ON THE PROPERTY THE SUBJECT, WHOM HE DESCRIBED AS A BLACK MALE WEARING BLACK CLOTHING WITH FACIAL HAIR, BECAME BELLIGERENT AND INFORMED FRANKLIN THAT HE "RAN THE PROPERTY" AND PLACED HIS HAND UNDER HIS SHIRT INSINUATING THAT HE WAS POSSIBLY ARMED, AND THE HE (SUSPECT) WOULD TAKE CARE OF HIM (FRANKLIN). FRANKLIN STATED THAT HE FELT AS IF THIS INDIVIDUAL WAS THREATENING HIS LIFE. FRANKLIN STATED THAT HE INFORMED THE INDIVIDUAL THAT HE WAS CONTACTING LAW ENFORCEMENT AND THE		JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY		TOTAL VALUE			
TYPE (GROUP)		STOLEN		DAMAGED		BURNED		RECOVERED	
SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		S.F.		☒ ACTIVE ☐ ADM. CLOSED ☐ ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18		☐ UNFOUNDED ☐ ARRESTED 18 AND OVER ☐ EX-CLEAR 18 AND OVER	
REASON FOR DETENTIONAL CLEARANCE		1. ☐ OFFENDER DEATH 2. ☐ NOT PROSECUTED PROSECUTION		3. ☐ EXTRADITION DENIED		4. ☐ VICTIM DECLINES COOPERATION		5. ☐ JUVENILE DELINQUENCY	
REPORTING OFFICER(S) BURNEM, JONATHAN LYNN		DATE 2/27/2015 4:30:33 PM		UNIT NUMBER 328		APPROVING OFFICER		DATE	
FOLLOWUP INVESTIGATION ☐ YES ☒ NO		OFFICER		DATE		UNIT NUMBER			

ADDITIONAL NARRATIVE

Agency Name: NORTH CHARLESTON POLICE DEPARTMENT	ORI #: SC0100800	Report Date/Time: 02/27/2015 18:30	OCA #: 2015006889
--	---------------------	---------------------------------------	----------------------

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

EXHIBIT 5**MEMORANDUM IN SUPPORT OF DEFENDANT BOSTON'S
MOTION TO SUPPRESS EVIDENCE****State of South Carolina****v.****Darell Boston****Case Nos. 2015-GS-10-06082; 2015-GS-10-06086; 2015-GS-10-06087**

Taylor J. Seman

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

Ben & Taylor,

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

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

Nina L. Savas

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

EXHIBIT 6**MEMORANDUM IN SUPPORT OF DEFENDANT BOSTON'S
MOTION TO SUPPRESS EVIDENCE**

State of South Carolina

v.

Darell Boston

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



EXHIBIT 7**MEMORANDUM IN SUPPORT OF DEFENDANT BOSTON'S
MOTION TO SUPPRESS EVIDENCE****State of South Carolina****v.****Darell Boston****Case Nos. 2015-GS-10-06082; 2015-GS-10-06086; 2015-GS-10-06087**

STATE OF SOUTH CAROLINA**County of Charleston****City of North Charleston****SEARCH WARRANT****OCA: 2015007705****Location: [REDACTED] Ave Apt 2
North Charleston SC, 29405****Date: March 6, 2015
Officer: J. Sherwood**

STATE OF SOUTH CAROLINA

QCAT 2015007705

AFFIDAVIT

COUNTY OF CHARLESTON

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

DESCRIPTION OF PROPERTY SOUGHT

See Attachment #1

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

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

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

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

Sworn to and Subscribed before me

This 6th day of March 2015.

Signature of Judge

(L.S.)

6:49 PM

Affiant

Address: [REDACTED]
 North Charleston, SC 29418
 Phone: 554-5700

OCA# 2015007705

STATE OF SOUTH CAROLINA

SEARCH WARRANT

COUNTY OF CHARLESTON

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

MUNICIPALITY OF NORTH CHARLESTON.

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

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

-See Attached Affidavit-

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

DESCRIPTION OF PROPERTY

-See Attached Affidavit-

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

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

A copy of this Search Warrant shall be delivered to the person in charge of premises searched at the time of such search if practicable, and if not, to such person as soon thereafter as is practicable; in the event the 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 prominent place on such premises.

North Charleston
MAR 6

S. C.

2015

(L.S.)

Signature of Judge

RULE 5 NLS 108

OCA# 2015007705

RETURN

I received the attached Search Warrant
Have executed it as follows:

March 6

2015 and

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

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

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

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

Closed

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

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

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

(Signature of Officer Executing Warrant)

(L.S.)

Form Approved by

RULE 5 NLS 109

U.S. Attorney General

2004年12月15日

1954年11月1日

OCA# 2015007705

RETURN
(Page 2)

Property

Recovered by

Location Recovered

AND This inventory was made in the presence of

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

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

day of

(L.S.)

(Signature of Officer Executing Warrant)

RULE 5. NLS 110

OCT 2015 0770

ATTACHMENT "1"

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

Signature of Judge

Date

OCA# 2015007705

RETURN

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

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

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

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

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

Closed

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

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

SWORN to before me this 25th day of March, 2015.

Notary Approved by

(L.S.)

(Signature of Officer Executing Warrant)

EXHIBIT 8**MEMORANDUM IN SUPPORT OF DEFENDANT BOSTON'S
MOTION TO SUPPRESS EVIDENCE**

State of South Carolina

v.

Darell Boston

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

Ben C. Lewis

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

Ben & Michael,

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

Officer Sherwood:

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

Officer Etminan:

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

Officer Danielle Smoak:

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

Nina L. Savas

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

EXHIBIT 9**MEMORANDUM IN SUPPORT OF DEFENDANT BOSTON'S
MOTION TO SUPPRESS EVIDENCE****State of South Carolina****v.****Darell Boston****Case Nos. 2015-GS-10-06082; 2015-GS-10-06086; 2015-GS-10-06087**

North Charleston Police Department Policy and Procedure Manual

POLICY # O - 04



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



I. Purpose

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

II. Policy

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

III. Definitions

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

IV. Procedure

A. Administrative

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

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

B. Searches Requiring a Warrant

1. Legal requirements

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

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

2. Body cavity searches

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

C. Exceptions to the Warrant Requirement.

1. Stop and frisk

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

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

2. Consent searches

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

3. Search incident to an arrest

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

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

7. Inventory of impounded, seized, or towed vehicles

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

8. Hot pursuit

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

9. Protective sweep

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

10. Abandoned property

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

11. Open fields

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

12. Plain view

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

13. Criminal Domestic Violence exceptions

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

14. Strip searches

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

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

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

DARELL ONEIL BOSTON,

DEFENDANT,

STATE OF SOUTH CAROLINA

vs.

WILLIAM HOLMES,

DEFENDANT.

IN THE COURT OF GENERAL SESSIONS

NINTH JUDICIAL CIRCUIT

STATE'S TRIAL BRIEF

Arrest Warrant #2015A1010201114

Arrest Warrant #2015A1010201116

Arrest Warrant #2015A1010201119

Indictment #2015-GS-10-06082

Indictment #2015-GS-10-06086

Indictment #2015-GS-10-06087

Arrest Warrant #2015A1010201122

Arrest Warrant #2015A1010201123

Arrest Warrant #2015A1010201124

Arrest Warrant #2015A1010201125

Indictment #2015-GS-10-06088

Indictment #2015-GS-10-06089

Indictment #2015-GS-10-06090

Indictment #2015-GS-10-06091

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

Appearances:

For the State:

Nina L. Savas, Assistant Solicitor

For the Defendants:

Taylor Seman, Attorney for Darell Boston
Ben Lewis, Attorney for William Holmes

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NINTH JUDICIAL CIRCUIT

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I. STATEMENT OF THE CASE

A. Procedural History

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

B. Factual Summary

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

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

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

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

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

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

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

C. Sentencing Enhancement

1. Evidence of Defendant's prior convictions:

a. *Defendant Darell Boston*

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

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

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

b. Defendant William Holmes

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

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

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

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

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

1. Defendants' Lack of Standing

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

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

U.S. Const. Amend. IV

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

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

S.C. Const. Art. I Section 10

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

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

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

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

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

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

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

2. Knock-and-Talk

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

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

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

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

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

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

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

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

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

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

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

3. Consent

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

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

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

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

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

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

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

4. Protective Sweep

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

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

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

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

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

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

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

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

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

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

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

5. Search Warrant

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. STATE'S PROPOSED WITNESS LIST*(Attached)***III. STATE'S PROPOSED VOIR DIRE***(Attached)*

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BY 

RESPECTFULLY SUBMITTEDBy: 

For:

NINA L. SAVAS
Assistant Solicitor
Ninth Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

DARELL ONEIL BOSTON,
DEFENDANT,

STATE OF SOUTH CAROLINA

vs.

WILLIAM HOLMES,
DEFENDANT.

IN THE COURT OF GENERAL SESSIONS

NINTH JUDICIAL CIRCUIT

**SUPPRESSION HEARING
ORDER**

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

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

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

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

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

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

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

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

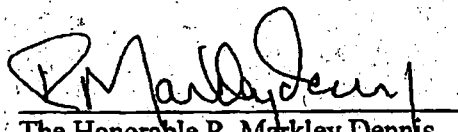
2018 JUN 10 AM 11:48

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

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

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

IT IS SO ORDERED!



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

January 10, 2018
Charleston, SC

Aug 3

2018 JAN 10 AM 11:43

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

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

Warrant No(s): 2015A1010201119

STATE OF SOUTH CAROLINA

Charge(s): Manufacturing cocaine base

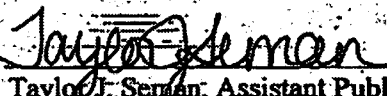
v.

DARELL ONEIL BOSTON,

Defendant.

MOTION FOR NEW TRIAL

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



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

ATTORNEY FOR DEFENDANT DARELL
BOSTON

February 14, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

-vs-

Darcu Boston
DEFENDANT

IN THE COURT OF GENERAL SESSIONS
MOTION COVERSHEET

WARRANT/TICKET/

INDICTMENT #'s

2015A1010201119

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

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 CLERK OF COURT
 CHARLESTON

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
2015 MAR 13 PM 12:54) Case No(s): 2015-GS-10-06082; 2015-GS-10-
JULIE J. ARMSTRONG) 06086; 2015-GS-10-06087
CLERK OF COURT) Warrant No(s): 2015A1010201114,
2015A1010201116, 2015A1010201119
STATE OF SOUTH CAROLINA) Charge(s): Manufacturing cocaine base,
v.) possession with intent to distribute cocaine base,
DARELL ONEIL BOSTON,) possession with intent to distribute cocaine base
Defendant.) within a half-mile proximity of a school
) **MEMORANDUM IN SUPPORT OF**
) **MOTION FOR A NEW TRIAL**

Defendant Darell Boston respectfully submits this Memorandum in Support of his Motion for a New Trial and requests that this Court grant his motion. In the alternative, Boston respectfully asks this Court to reconsider his sentence.

Without waiving any of Boston's rights to challenge rulings on other motions and objections, Boston is entitled to a new trial for three reasons. First, this Court improperly denied Boston's motion to suppress. Second, this Court improperly denied Boston's motion for a mistrial during Assistant Solicitor Savas's re-direct examination of Sergeant Sherwood. Finally, this Court improperly permitted Assistant Solicitor Savas to use the inadmissible evidence she attempted to elicit during Sergeant Sherwood's re-direct examination to bolster Sergeant Sherwood's testimony in her closing argument. This Court should issue an order requiring that Boston be retried.

FACTS AND PROCEDURAL HISTORY

On March 6, 2015, North Charleston police officers Sherwood and Etminan noticed Boston and William Holmes leave a taxi and go into Denise Holman's apartment at [REDACTED] Avenue Apartment 2. Sergeant Sherwood recognized Holman's apartment because he had spoken with her the week before; during an area check, Holman had turned over a crack pipe to him.

Boston and Holmes were inside Holman's apartment for approximately 15 minutes when officers approached the apartment and knocked on the door. Holman answered the door and allowed the officers to step inside the threshold. From there, things escalated quickly. First, officers noticed that Boston and Holmes were very nervous. Then officers, standing in the living room, noticed plastic bags with powder residue on Holman's kitchen counter. Officers say they performed a protective sweep.

In a matter of minutes, officers detained Boston and Holmes. Boston and Holmes sat in a police car while the officers sought a search warrant. Once a magistrate signed the warrant, officers recovered several items of contraband, including a Pyrex glass measuring cup containing what appeared to be cocaine base. Officers arrested Boston and Holmes for manufacturing cocaine base, possession of cocaine base with intent to distribute, and possession of cocaine base with intent to distribute within a half-mile proximity of a school. Officers released Holman without further inquiry because they believed she was mentally handicapped and unable to understand what was happening.

Before trial, both Boston and Holmes asked this Court to suppress the evidence that officers seized during their search of Holman's apartment. Boston argued that officers performed an illegal search and seizure. Specifically, Boston argued that officers performed an unconstitutional knock-and-talk and that the officers' other actions violated Boston's constitutional right to be free from warrantless searches, and that no exception to the warrant requirement applied. After a hearing, this Court denied Boston's motion. This Court's order focused on whether the knock-and-talk was proper. This Court decided that Boston had standing to challenge the officers' search and that officers had reasonable suspicion to approach Holman's apartment.

At trial, the State introduced testimony from several witnesses, including the officers involved in the search of Holman's apartment. Notably, Sergeant Sherwood testified that he saw Boston and Holmes actively engaging in manufacturing cocaine base when he walked into Holman's apartment. Sergeant Sherwood was the State's only witness that purportedly linked Boston and Holmes using eyewitness testimony to the cocaine base that officers seized after their search. Boston and Holmes questioned Sergeant Sherwood about the incident report that he drafted, calling attention to the fact that Sergeant Sherwood had not included his supposed eyewitness account in his report.

During re-direct examination of Sergeant Sherwood, Assistant Solicitor Savas attempted to introduce inadmissible character evidence: Sergeant Sherwood's prior knowledge of and interactions with Boston and Holmes. Specifically, Assistant Solicitor Savas tried to elicit that Sergeant Sherwood had prior knowledge of Boston and Holmes from drug-related activity. Boston and Holmes vehemently objected to the introduction of this testimony on the grounds that it was inadmissible evidence of prior bad acts not permitted by Rule 404(b) of the South Carolina Rules of Evidence. This Court sustained their objections and excused the jury, and Boston and Holmes requested a mistrial. This Court instead chose to give a limiting instruction to the jury that it was not to consider Assistant Solicitor Savas's question or Sergeant Sherwood's reply. Boston and Holmes objected to the limiting instruction.

At closing, Assistant Solicitor Savas argued to the jury that Sergeant Sherwood had reasons to approach Holman's apartment after Boston and Holmes had gone inside. Assistant Solicitor Savas told the jury that she was not permitted to explain to the jury the reasons that Sergeant Sherwood approached Boston and Holmes. However, Assistant Solicitor Savas emphasized that Sergeant Sherwood had reasons to approach them. Boston and Holmes objected to this argument

on the grounds that it violated the Court's earlier ruling and that it constituted improper bolstering of Sergeant Sherwood's testimony. This Court sustained their objections.

After deliberations, the jury convicted Boston of manufacturing cocaine base. This Court imposed a sentence of 17 years.

LEGAL STANDARD AND BURDEN OF PROOF

The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to a fair trial and an impartial jury. Indeed,

[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. CONST. amend. VI. This protection applies to state prosecutions through the due process clause of the Fourteenth Amendment. U.S. CONST. amend. XIV.

ARGUMENT

This Court should order that Boston should be retried because Boston did not have a fair trial. A defendant has the burden to prove that he did not receive a fair trial. *State v. Durden*, 264 S.C. 86, 93, 212 S.E.2d 587, 591 (S.C. 1975).

I. This Court should have granted Boston's motion to suppress evidence because North Charleston Police Department officers did not have reasonable suspicion to approach Holman's apartment and therefore conducted an improper knock-and-talk.

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

A knock-and-talk is not a search. *State v. Bash*, 419 S.C. 263, 273, 797 S.E.2d 721, 728 (S.C. 2017). Still, many courts and scholars have recognized the potential for officers to abuse this tactic. *See, e.g., State v. Counts*, 413 S.C. at 164, 776 S.E.2d at 65 (citing the scholarly proposition that “[t]he potential for abuse arises when police attempt to gain access for consensual searches and instead provoke exigencies that normally validate a warrantless search”). Because of this potential for abuse, the South Carolina Supreme Court has found that knock-and-talks without reasonable suspicion violate the higher level of privacy that the South Carolina Constitution affords. *Id.* at 172, 776 S.E.2d at 69. In other words, knock-and-talks in South Carolina require reasonable suspicion of illegal activity. *Id.* at 172, 776 S.E.2d at 70.

Here, reasonable suspicion does not exist. Reasonable suspicion is a “reasonable and articulable suspicion that the person seized is engaged in criminal activity.” *United States v. Foster*, 634 F.3d 243, 246 (4th Cir. 2011). “Just as an officer’s knowledge of a suspect’s past arrests or convictions is inadequate to furnish reasonable suspicion; so too is knowledge that a suspect is merely under investigation, which is an even more tentative, potentially innocuous step towards determining criminal activity.” *Id.* at 247.

Sergeant Sherwood did not believe that Boston and Holmes were engaged in criminal activity, so he did not have license to approach Holman’s apartment. During Holmes’s cross-examination of Sergeant Sherwood at the suppression hearing, Holmes asked Sergeant Sherwood about why he approached Holman’s apartment:

Q. So the gentlemen, these two guys that you have identified have already gone into the house and had been inside for 15 minutes or so.

A. Approximately.

Q. Did you hear any screams?

A. No, sir.

Q. Did you see them carrying any firearms or any contraband as they approached the residence?

A. Not that I observed, no.

Q. Okay. So at the time you approached to conduct the knock and talk you saw nothing that suggested someone was committing a crime.

A. No, sir.

Q. Nothing?

A. No, sir.

Exhibit 1, a true and correct copy of Def.'s Mot. to Supp. Evidence Tr. (Nov. 30, 2017), at 69:2–

16. Even Sergeant Sherwood did not have any reason to believe that criminal activity was occurring in Holman's apartment. Without reasonable suspicion of criminal activity, Sergeant Sherwood's knock-and-talk was improper and unconstitutional. For these reasons, this Court should have granted Boston's motion to suppress.

II. Assistant Solicitor Savas's attempts to elicit inadmissible testimony and to argue the existence of that testimony in closing arguments deprived Boston of a fair trial.

Assistant Solicitor's questioning of Sergeant Sherwood during re-direct examination and her comments during closing argument were improperly prejudicial and deprived Boston of his right to a fair trial as guaranteed by the Sixth and Fourteenth Amendments.

A. Assistant Solicitor Savas deprived Boston of his right to a fair trial when she tried to elicit testimony about Boston's prior bad acts during her re-direct examination of Sergeant Sherwood.

Boston was entitled to a mistrial after Assistant Solicitor Savas's improper re-direct examination of Sergeant Sherwood. "[T]he decision to grant or deny a mistrial is within the sound discretion of the trial judge." *State v. Crosby*, 348 S.C. 387, 399, 449 S.E.2d 352, 359 (Ct. App. 2001). Here, Assistant Solicitor Savas questioned Sergeant Sherwood about his prior interactions with Boston and Holmes, attempting to elicit testimony of prior bad acts prohibited by Rule 404(b) of the South Carolina Rules of Evidence. Even the suggestion that Boston had previous contact with law enforcement was prejudicial because it suggested that Boston had been involved in other criminal activity. To add insult to injury, this line of questioning suggested that Assistant Solicitor Savas knew facts outside the record—the inadmissible 404(b) evidence—that supported the State's

case. This improper, unconstitutional exchange between Assistant Solicitor Savas and Sergeant Sherwood strengthened Sergeant Sherwood's testimony and deprived Boston of his right to a fair trial.

B. Assistant Solicitor Savas deprived Boston of his right to a fair trial when she argued excluded, outside-the-record evidence during her closing argument.

Likewise, Assistant Solicitor Savas's comments to the jury during closing argument were improper and unconstitutional, and Boston deserves a new trial. A solicitor's argument warrants a new trial when a defendant "was prejudiced to the extent that he was denied a fair trial." *State v. Durden*, 264 S.C. 86, 93, 212 S.E.2d 587, 590-91 (S.C. 1975). "An appellate court will review the alleged impropriety of the [s]olicitor's argument in the context of the entire record." *State v. Hamilton*, 344 S.C. 344, 363, 543 S.E.2d 586, 596 (Ct. App. 2001).

Solicitors have wide latitude in what they are permitted to argue to juries.

So long as he stays within the record and its reasonable inferences, the prosecuting attorney may legitimately appeal to the jury to do their full duty in enforcing the law, or to return the verdict which he conceives it to be their duty to return under the evidence, and may employ any legitimate means of impressing on them their true responsibility in this respect, as by stating that a failure to enforce the law begets lawlessness. . . . He may argue with reference to any matter which the jurors may properly consider in arriving at their verdict, and my point out as well the matters which they should not consider.

State v. Durden, 264 S.C. 86, 92, 212 S.E.2d 587, 590 (S.C. 1975). However, solicitors may not use their arguments to bolster the credibility of their witnesses. *United States v. Sanchez*, 118 F.3d 192, 198 (4th Cir. 1997). "[B]olstering is an implication by the government that the testimony of a witness is corroborated by evidence known to the government but not known to the jury." *Id.* (citation omitted). Prosecutorial bolstering raises two serious concerns:

such comments can convey the impression that evidence not presented to the jury, but known to the prosecutor, supports the charges against the defendant and can thus jeopardize the defendant's right to be tried solely on the basis of the evidence presented to the jury; and the prosecutor's opinion carries with it the imprimatur of the

Government and may induce the jury to trust the Government's judgment rather than its own view of the evidence.

United States v. Young, 470 U.S. 1, 18-19 (1985).

Assistant Solicitor Savas's statements to the jury during closing were prosecutorial bolstering. Specifically, Assistant Solicitor Savas told the jury that Sergeant Sherwood had reasons to approach Boston and Holmes, even though she was not permitted to tell the jury the reasons. Assistant Solicitor Savas suggested the existence of facts outside the record that support the State's theory of the case and Sergeant Sherwood's testimony. These statements were quintessential bolstering. Given that the State's case against Boston and Holmes depended on Sergeant Sherwood's testimony and credibility, prejudice to Boston is clear. In light of this Court's ruling excluding exactly this same evidence (and, Boston argues, any mention that such evidence exists), Assistant Solicitor Savas's comments deprived Boston of his right to a fair trial.

CONCLUSION

For the reasons and authority set forth in this Memorandum, this Court should grant Boston's motion and order a new trial. In the alternative, Boston asks this Court to reconsider his sentence. Boston believes that his sentence is unnecessarily severe under the circumstances. Boston respectfully requests that this Court impose a more lenient sentence.

Respectfully submitted,

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ATTORNEY FOR DEFENDANT
DARELL BOSTON

March 13, 2018
Charleston, South Carolina

FILED

2018 MAR 13 PM 12:54

CLERK OF COURT

[Signature]

EXHIBIT 1

MEMORANDUM IN SUPPORT OF DEFENDANT BOSTON'S MOTION FOR A NEW TRIAL

State of South Carolina

v.

Darell Boston

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

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

WILLIAM HOLMES

Defendant

COURT OF GENERAL SESSIONS

DOCKET NO. 2015A1010201122

TRANSCRIPT OF RECORD

November 30, 2017
Charleston, South Carolina

B E F O R E:

THE HONORABLE R. MARKLEY DENNIS, JR., JUDGE

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

NINA SAVAS, ESQ.

TRUC TRAN, ESQ.

Attorneys for the State

BENJAMIN LEWIS, ESQ.

NICHOLAS SMIT, ESQ.

Attorneys for Defendant Holmes

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS

DOCKET NO. 2015A1010201114

STATE OF SOUTH CAROLINA

vs.

DARELL O. BOSTON

Defendant

TRANSCRIPT OF RECORD

November 30, 2017

Charleston, South Carolina

B E F O R E:

THE HONORABLE R. MARKLEY DENNIS, JR., JUDGE

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

NINA SAVAS, ESQ.

TRUC TRAN, ESQ.

Attorneys for the State

TAYLOR SEMAN, ESQ.

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Circuit Court Reporter

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DEFENDANT

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State v Darell Boston, William Holmes
Proceedings
November 30, 2017

PROCEEDINGS.

THE COURT: Thank you. I know there are several motions. Y'all tell me how you want to proceed; it doesn't matter to me because I know there is a motion to suppress and there is a motion to recuse. Probably I guess we need to have that heard my thought is first. Is that to recuse the Solicitor now?

MR. LEWIS: No, Judge. It would be at the time; as we discussed in chambers ---

THE COURT: --- so it's not a question of that being a problem at this point because it would be as we talked. She's free to stay in up until the time she has to testify should that become necessary.

MR. LEWIS: Absolutely.

THE COURT: That's fine. I just wanted to confirm that on the record to be sure because our conversation I don't think was on the record.

MR. LEWIS: It was not.

THE COURT: Thank you very much.

MS. SEMAN: Thank you.

MS. WILSON: Judge, if I could just for the record?

THE COURT: Yes, ma'am.

MS. WILSON: That was why I was here and it's my understanding in talking with Ms. Savas that we don't anticipate that becoming an issue based on the witness's

State v Darell Boston, William Holmes
Proceedings
November 30, 2017

1 testimony. If it does we'll cross that bridge when we
2 get to it but it doesn't seem like we will.

3 THE COURT: As I -- and I don't know whether I was
4 right or wrong because it didn't get tested but at least
5 that was the conclusion. I had the occasion to deal with
6 that in a case involving the Catholic Diocese when they
7 were sued and they moved to recuse Gregg Meyers because
8 he was going to have to be a witness.

9 And I first ruled and said yes, he had to be
10 recused. Then after the research it really becomes clear
11 that the rule says when that person has to testify that
12 they have the right to serve. That was my determination
13 then and I really think that's the way it proceeds. So
14 I'm comfortable with that if y'all are.

15 MR. LEWIS: Yes, Your Honor.

16 THE COURT: You don't have to agree with my
17 assessment of whether they need to be recused or not but
18 I don't think it affects anything that takes place with
19 her involvement up until the time she testifies.

20 MR. LEWIS: That's correct.

21 THE COURT: Okay.

22 MS. WILSON: Thank you, Judge.

23 THE COURT: Thank you.
24
25

State v Darell Boston, William Holmes
Motion to Suppress
November 30, 2017

1 THE COURT: All right. I thank you for your briefs
2 and I've had a chance to review them. I'll be happy to
3 hear from you. If y'all want to have any opening
4 statements, I guess we're going to have to take testimony
5 obviously concerning the issues involved so. Do y'all --
6 any opening statements? I've read and I understand some
7 of the issues involved.

8 MS. SEMAN: Your Honor, if you've read the brief I
9 don't think I have an opening statement. I think we can
10 start with testimony.

11 THE COURT: Thank you, Ms. Seman.

12 MR. LEWIS: The same.

13 THE COURT: Thank you. Okay. Ms. Savas, call
14 your first witness.

15 MS. SAVAS: Would you like just for logistics to
16 when we do arguments to break it in pieces or would you
17 like to hear full testimony from there are four
18 witnesses?

19 THE COURT: I think the better thing here because
20 it seems to me there is a flow of continuation of all of
21 this so probably the better thing is to hear all of it
22 and then we'll argue unless y'all want to proceed -- like
23 to separate it.

24 MR. LEWIS: I think hearing it all straight through
25 would be better.

State v Darell Boston, William Holmes
Motion to Suppress
November 30, 2017

1 THE COURT: I think it would be better for me at
2 least.

3 MS. SAVAS: Yes, Your Honor. Thank you.

4 THE COURT: Thank you. And thank you for asking.

5 MS. SAVAS: Your Honor, the State calls Sergeant
6 Joseph Sherwood to the stand.

7 THE COURT: Okay.

8 [Whereupon, Sergeant Sherwood comes forward]

9 [Whereupon, the witness is duly sworn by the Clerk
10 of Court]

11 CLERK OF COURT: Please state your full name and
12 spell your last name for the record.

13 THE WITNESS: Joseph Payton [phonetic] Sherwood,
14 last name S-H-E-R-W-O-O-D.

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State v Darell Boston, William Holmes
Joseph Sherwood-Direct Examination by Ms. Savas
November 30, 2017

1 JOSEPH SHERWOOD,

2 Having been first duly sworn,

3 Was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. SAVAS:

6 Q. Sergeant Sherwood, where are you currently employed?

7 A. At the North Charleston City Police Department.

8 Q. And what is your current title?

9 A. Sergeant.

10 Q. And what are you sergeant over?

11 A. South evenings team one and the Swat team.

12 Q. And what are some other previous positions you've
13 held?

14 A. I did six years in a vice narcotics unit called the
15 sweet [phonetic] team, a year in narcotics, I did vice,
16 SRO school resource officer, patrol and that's about it.

17 Q. And how long have you been with the North Charleston
18 Police Department?

19 A. It will be eleven years in February.

20 Q. And do you have any additional training
21 certifications?

22 A. Yes. I have drug interdiction; several classes in
23 that, patrol interdictions, drug identification, gang
24 intervention; quite a bit, I'd have to look at all the
25 stuff.

State v Darell Boston, William Holmes
Joseph Sherwood-Direct Examination by Ms. Savas
November 30, 2017

- 1 Q. So you have served both on the drug narcotic unit
2 and have certifications and training in narcotics?
- 3 A. Correct. Yes, ma'am.
- 4 Q. And in your career how many drug cases would you say
5 you've dealt with over the eleven years?
- 6 A. A thousand.
- 7 Q. And how many cases specifically involving
8 manufacturing cocaine base or crack?
- 9 A. Easily a couple hundred.
- 10 Q. And have you been involved with search warrant cases
11 before?
- 12 A. Yes, several.
- 13 Q. And that's both narcotics search warrants and SWAT
14 search warrants?
- 15 A. Correct. And I've done personnel search warrants
16 and DNA search warrants.
- 17 Q. Okay. And back on March 6, 2015 at the time of this
18 incident what was your current title then?
- 19 A. Patrolman.
- 20 Q. And what area were you patrol over?
- 21 A. I was actually zone one officer which entitles our
22 Chicora Cherokee community.
- 23 Q. And what were some of your duties as a patrol
24 officer in that area?
- 25 A. To curb crime, to take calls for service, to try to

State v Darell Boston, William Holmes
Joseph Sherwood-Direct Examination by Ms. Savas
November 30, 2017

1 prevent the crime from happening, and to be there for
2 anybody that needs our assistance.

3 Q. And do you recall the address of this current
4 incident location?

5 A. Yes ma'am, [REDACTED].

6 Q. Okay. You said 1815. Do you believe that may have
7 been [REDACTED]?

8 A. It is. I'm sorry; [REDACTED]. I haven't been over there
9 in a while.

10 Q. And do you remember the apartment number?

11 A. Not off hand.

12 Q. Okay. If I show you the incident report will that
13 refresh your memory?

14 A. Yes, ma'am. I'm sorry.

15 Q. That's okay.

16 MS. SAVAS: May I approach, Your Honor?

17 THE COURT: You may.

18 Q. [Ms. Savas] Sergeant Sherwood, this is your incident
19 report. Feel free to refresh your memory.

20 [Whereupon, the witness reviews document]

21 A. Apartment 2.

22 Q. And in which city is that in?

23 A. North Charleston.

24 Q. Okay. And do you know which county?

25 A. Charleston County.

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1 Q. Okay. And was part of your duties to patrol that
2 area?

3 A. Yes.

4 Q. And what did you know about that area?

5 A. Since I've been working here in 2007 it's always
6 been a hot spot for narcotics activity. More
7 specifically recently before this incident we've had
8 several complaints about the drug activity, illegal
9 trespassing in the area quite often.

10 Q. And was there something significant about the
11 housing in those apartment complexes?

12 A. Yes. I spoke with the owner of the housing. He
13 said the people that live there, single occupants that
14 live in there and that they have well, not mentally
15 handicapped I'd say but they need to be assisted and
16 easily taken advantage of I guess is a better way of
17 saying it.

18 Q. And were there specific complaints about those
19 apartments themselves?

20 A. Yes, specifically those.

21 Q. And did North Charleston do anything in regards to
22 those complaints?

23 A. We tried to just step up patrols in the area and
24 swing throughs and try to stop out people -- and find out
25 who lives there. That's how I come to make contact with

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1 people in the area who lives there.

2 Q. And on this day you were with other officers. Who
3 were those officers?

4 A. Officer -- and Hoose [phonetic].

5 THE COURT REPORTER: Give those names again please?

6 MS. SAVAS: Etninan, E-T-N-I-N-A-N.

7 Q. [Ms. Savas] Who was Officer Etninan at that time to
8 you?

9 A. I was training him. I'm also a field training
10 officer. That's just a sub duty of what I have and I was
11 training him.

12 Q. And in regards to this incident how did this sort of
13 come about? What were you doing there at that time?

14 A. I don't remember the call for service but we had a
15 dispatch call for service on Cody Street right there at
16 Clements.

17 And we were down there myself and both the other
18 officers and Sergeant Hoose [phonetic] and I were talking
19 and we were in the area kind of just keeping a presence
20 in there especially for the police.

21 Q. And Sergeant when you were in that area what did you
22 observe about this case? How did this case come about?

23 A. I saw a taxicab pull up. Actually prior to that I
24 knew -- like I said we help out people in the area. I
25 knew several people in there but I saw a taxicab pull up.

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1 And I saw the defendants exit the vehicle and walk up to
2 apartment 2, which I know Ms. Denise she lives there from
3 prior knowledge of talking with her. And they entered
4 into the apartment and I found that odd just because of
5 where I knew them from. I knew they did not live there
6 and I knew Ms. Denise and her mental status.

7 Q. And have you had issues with narcotics with Ms.
8 Denise at that apartment before?

9 A. Yes. Not necessarily -- well, yes I have. In the
10 area I've stopped her and she had a couple of little run-
11 ins but nothing too serious.

12 Q. Okay. And did you recognize or know these
13 defendants prior to this incident?

14 A. Yes, I did.

15 Q. And how did you recognize them?

16 A. They used to live in a house on Osceola. I've had
17 several run-ins with them.

18 Q. What did you do next after you recognized them and
19 saw them approach the door?

20 A. Me and Sergeant Hoose [phonetic] continued our
21 conversation and I brought it up to him and said that's
22 kind of weird to see those two gentlemen go inside the
23 apartment. I explained to him about Ms. Denise and I
24 think they were in there about 15 minutes.

25 Q. And when you said you recognized them from that

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1 other house on Osceola and around some run-ins what were
2 those?

3 A. I don't know if they lived there. I've seen them
4 there a lot.

5 Q. Okay. And what did you know about them in those
6 prior situations?

7 A. We've done several search warrants there and a lot
8 of run-ins with drug activity at that address.

9 Q. You've know them to have prior drug and narcotics
10 issues?

11 A. Yes, ma'am.

12 Q. And as you discussed this with Sergeant Hoose
13 [phonetic] what did you do next?

14 A. We decided to because of Ms. Denise there we decided
15 we were going to go knock on the door to check on her and
16 see if everything is okay.

17 Q. And what did you do when you knocked on the door?

18 A. We just knocked on the door and Ms. Denise answered.
19 I spoke with her and I asked her if it was okay if I
20 stepped inside and talked with her.

21 Q. And what did she say?

22 A. She said absolutely and she kind of seemed relieved.

23 Q. And when she opened the door was it a broad opening
24 or just peeked her head through?

25 A. No, no, she swung the door all the way open.

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- 1 Q. So she had opened the door all the way open ---
2 A. --- correct ---
3 Q. --- and you were standing at the front?
4 A. Yes, ma'am.
5 Q. And then you essentially performed a knock and talk?
6 A. Yes.
7 Q. Why do you perform those in law enforcement?
8 A. When he have the complaints that we were having and
9 the elements that we had at this residence we will knock
10 on the door to make sure that one, she is okay and two,
11 see if there is any possibly any crime or if she had any
12 information for us.
13 And maybe they were just friends and I would have
14 been fine with that and said okay Ms. Denise see you
15 later and just been on my way but there was a little more
16 to than that.
17 Q. So is it common practice for officers in that area
18 to perform knock and talks?
19 A. Absolutely.
20 Q. And when Ms. Denise had opened the door did she
21 resist in any way?
22 A. No, she actually opened up the door in an inviting
23 way. She opened the door all the way up and stepped
24 back. That's when I asked her and she almost made a
25 motion of come on in kind of thing. She moved out of the

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1 way of the doorway itself as if to let somebody in.

2 Q. And was she in a friendly manner would you describe
3 that?

4 A. Oh, yes, absolutely.

5 Q. Did you address yourself as a law enforcement
6 officer?

7 A. Yes.

8 Q. And did she ever tell you not to come in at any
9 time?

10 A. No, not at all.

11 Q. Did you make any threats to her?

12 A. No.

13 Q. Did you force your way into the house?

14 A. No.

15 Q. Did you intimidate her into giving consent?

16 A. No, ma'am.

17 Q. At any time during the interaction with the tenant
18 did she ever appear to be uncooperative with you?

19 A. Not at all.

20 Q. Did she ever ask you to leave?

21 A. No.

22 Q. Did you consider her consent to be valid?

23 A. Yes.

24 MR. LEWIS: I'm sorry. I think we made a motion
25 previously that all these witnesses should have been

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1 sequestered before this hearing. Unfortunately, it's a
2 little bit late now.

3 THE COURT: Yes, a day late and a dollar short.
4 Thank you.

5 MR. LEWIS: Yes, Your Honor.

6 MS. SAVAS: We can have them removed, Your Honor if
7 that is -- that's not an issue with the State. We would
8 just ask that our case agent Sergeant Sherwood and our
9 investigator Meyer [phonetic] remain. We're not sure who
10 the defense has on their witness list.

11 THE COURT: Do you have any witnesses other than
12 the defendants?

13 MR. LEWIS: The only person for this hearing would
14 be if the court requires it Mr. Shahid was present with
15 me when I visited the scene so that when I took the
16 pictures he could authenticate those. If we can
17 circumvent that rule of evidence I don't need anybody.
18 And I don't think the rule of evidence actually applies
19 for this hearing.

20 THE COURT: I was going to say I think if you're
21 going to have pictures I think I'm the person who is
22 going to make that call. He doesn't have to be here.

23 MR. LEWIS: All right. May I release him?

24 THE COURT: Yes.

25 MR. LEWIS: Thank you, Judge. Pictures and a

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1 video walkthrough but nothing other than that.

2 THE COURT: Do you have an objection to the
3 authentication of the pictures and the video?

4 MS. SAVAS: Not to the authentication, Your Honor.
5 I would object to it -- well there is no jury present.
6 At the time of the trial I would object to them being
7 entered into evidence but not in this matter.

8 THE COURT: Okay. He can be excused.

9 MR. LEWIS: Thank you, Your Honor.

10 THE COURT: I'd like all the other witnesses other
11 than the case agent then by consent to leave. Thank you.

12 MS. SAVAS: I'm sorry, you want the others...

13 THE COURT: Yes, all the other witnesses need to
14 depart.

15 [Whereupon, individuals exit the courtroom]

16 MS. SAVAS: Court's indulgence.

17 THE COURT: Certainly. Take your time.

18 [Whereupon, Ms. Savas and Ms. Tran confer]

19 MS. SAVAS: Your Honor, at this time the State
20 would seek to admit just for ---

21 THE COURT: --- for purposes of this hearing?

22 MS. SAVAS: Yes, sir exhibits 1 through 9.

23 [Whereupon, Ms. Savas and Mr. Lewis confer]

24 MS. SAVAS: Okay. I will do...

25 THE COURT: You already have 1 through 9?

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1 MR. LEWIS: I have 1 through 9 so just for the
2 court reporter's convenience I didn't want to double up.

3 MS. SAVAS: 10 through 17?

4 THE COURT: 10 through 17 without any objection for
5 purposes of this hearing. Obviously it doesn't carry
6 over.

7 MS. SAVAS: Thank you, Your Honor.

8 [Whereupon, State's exhibit numbers 10 through 17
9 are marked by the court reporter]

10 [Whereupon, State's exhibit numbers 10 through 17
11 are entered into evidence for purposes of this hearing
12 only by the court]

13 Q. [Ms. Savas] Sergeant Sherwood, I'm going to show you
14 what has been marked as State's exhibit number 10.

15 [Whereupon, the photograph is shown]

16 Q. And Sergeant Sherwood do you recognize this area?

17 A. Yes.

18 Q. Okay. And where would you say when you saw that
19 taxicab pull up where would you say that was?

20 A. Just past that palm tree.

21 Q. And I think over there you can write on that. You
22 can touch the screen.

23 A. Right around here [indicates].

24 Q. Okay. And where were y'all standing when you
25 observed the taxicab pull up?

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1 A. Right here [indicates].

2 Q. Okay. And I'm going to show you State's exhibit
3 number 11.

4 [Whereupon, the photograph is shown]

5 THE COURT: Did I understand him to say he was
6 standing there?

7 MS. SAVAS: Yes, sir.

8 A. Outside my vehicle.

9 THE COURT: And your vehicle was parked near you?

10 A. Yes, sir. I'm sorry. My vehicle was parked right
11 there [indicates] and I was standing right next to the
12 vehicle.

13 THE COURT: Thank you.

14 Q. [Ms. Savas] And Sergeant Sherwood on this picture
15 which apartment did you go into?

16 A. This one [indicates].

17 Q. The green one?

18 A. Yes.

19 Q. Okay. And State's exhibit number 11. And on this
20 one could you please point to which unit it was?

21 A. [Indicates].

22 Q. That green one?

23 A. Yes.

24 Q. Okay. And Sergeant Sherwood you said that she had
25 given you consent to enter and y'all went inside the

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1 house. Did you observe anything upon entering the home?

2 A. I did.

3 Q. And what was that?

4 A. When she stepped out of the way and said that I
5 could come in I observed the defendants in the kitchen.
6 To the left of the kitchen there is kind of an open
7 doorway there and you could see them in the kitchen kind
8 of huddled around the microwave area.

9 Q. And did you notice any objects?

10 A. Yes. There were two plastic bags with white residue
11 on them.

12 Q. And what did you recognize that white residue to be?

13 A. Consistent with packaging of -- actually would be
14 the unpackaging of cocaine.

15 A. Of cocaine?

16 A. Yes, ma'am.

17 Q. And how big would you say this apartment is? Is it
18 large or is it small?

19 A. Maybe 400 square foot if not smaller.

20 Q. So if you're at the front door upon entering where
21 would I be if you're talking about the kitchen?

22 A. Right there [indicates].

23 Q. So this close is where you -- it's a very small
24 place.

25 A. Yes.

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- 1 Q. Was it a studio or a one bedroom?
2 A. It's a one bedroom studio I guess you would call it.
3 But through the doorway is a kitchen and a bathroom.
4 Q. Okay. Those are the only rooms. When you enter a
5 living room, a kitchen and then a bathroom?
6 A. Yes, ma'am.
7 Q. Okay. And Sergeant Sherwood I'm going to show you
8 what has been marked as State's exhibit number 12.
9 [Whereupon, the photograph is shown]
10 Q. Do you recognize this photo?
11 A. Yes ma'am, I do.
12 Q. And what is significant about this photo?
13 A. That was the packaging I observed.
14 Q. These two packages [indicates]?
15 A. Yes.
16 Q. So they were on the kitchen sink?
17 A. Yes, ma'am.
18 Q. Okay. And Sergeant Sherwood I'll show you what has
19 been marked as State's exhibit 17.
20 [Whereupon, the photograph is shown]
21 Q. Do you recognize this photo?
22 A. Yes, that is the microwave. That's what I saw after
23 they left from that so I could see.
24 Q. Okay. So if the microwave was on this side of the
25 sink which is the left in photo 12 where the baggies were

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1 where would that be in relation to the sink? The right?

2 A. To the right.

3 Q. Okay. And was that a clear view straight shot from
4 the front door to that counter?

5 A. Yes, as I walked in when she told me to that's when
6 I could see that.

7 Q. Okay. And you said that you noted the two
8 individuals in there?

9 A. Yes, ma'am.

10 Q. And are they present in the courtroom today?

11 A. Yes ma'am, they are.

12 Q. And would you be able to point them out?

13 A. Yes there [indicates] and there [indicates].

14 Q. The plaid shirt and the green shirt?

15 A. Yes.

16 MS. SAVAS: Please let the record reflect the
17 officer had identified the two defendants, Mr. Holmes and
18 Mr. Boston in this case.

19 THE COURT: So noted.

20 MS. SAVAS: Thank you, sir.

21 Q. [Ms. Savas] And so you said that you saw them at the
22 microwave in the kitchen. What happened next?

23 A. After she let me in I probably made a step or two in
24 there and that's when I started taking the scene in. At--
25 that point they saw me. They turned around and they

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1 observed me standing there. The microwave was running
2 and they popped it open and I would say both of them and
3 they turned around and Mr. Holmes in kind of a football
4 handoff kind of motion ran into the bathroom along with
5 Mr. Boston.

6 Q. Okay.

7 A. And they slammed the microwave door shut and that's
8 when I kind of looked over there and I saw okay, there is
9 a scale laying over there.

10 Q. So how would you explain their demeanor upon you
11 entering the house?

12 A. Scared to the point where they actually scared me
13 some. I thought there might have been a weapon involved.
14 That's when I kind of got worried at that point due to me
15 being there and also Ms. Denise and scared for her safety
16 also at that point.

17 Q. Why would you assume there were weapons in the home?

18 A. Drug activity. Usually with drug activity there is
19 definitely weapons involved most of the time.

20 Q. Okay. And you said though that the microwave they
21 shut it closed. Did you open this microwave in this
22 photograph?

23 A. Yes, I did.

24 Q. Okay. And can you see what that [indicates] says?

25 A. A minute 54 I believe.

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1 Q. So that you would assume was in the middle of
2 cooking?

3 A. Yes, ma'am.

4 Q. Okay. And you had mentioned also a digital scale.
5 Is that in this photo?

6 A. Yes, you want me to circle it?

7 Q. Sure.

8 [Whereupon, the witness complies]

9 A. And then this [indicates] is the top to the digital
10 scale. That's actually what I saw first and then this
11 digital scale.

12 Q. Okay. And what is in this cabinet here [indicates]?

13 A. Baking soda is up top of that.

14 Q. Okay.

15 A. And then there is packaging.

16 Q. Okay.

17 A. And then I think that's where one of the whisks were
18 but it wasn't a used one.

19 Q. Before we jump into all the items that were found I
20 want to go back to when you had observed them running.
21 Was anything unusual about that?

22 A. It was. Usually when I go into a house or any
23 normal person goes in a house you kind of turn around and
24 say hi or what are you doing. It wasn't that. It was a
25 quick motion straight to the bathroom around the corner

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1 concealed themselves where I could not see them anymore.

2 Q. And when you said that someone was holding something
3 in their hand actually can you point to him in the
4 courtroom?

5 A. Yes ma'am, [indicates] the green shirt.

6 Q. The green shirt?

7 A. Yes, ma'am.

8 Q. But they had both ran into the bathroom together?

9 A. Yes, ma'am. They were both right there close
10 together. Just from the motion that they were both
11 making I could not see their hands but the way they kind
12 of ran off that's what concerned me.

13 The way they ran off they belayed their body
14 completely away from me to the point where like I said I
15 was getting worried at that point.

16 Q. And what happened after they had went into the
17 bathroom?

18 A. That's when I saw them run into the bathroom like I
19 said I got worried about weapons at that point because I
20 saw the -- there is obviously drug activity going on.

21 As I started to approach I told them to come out of
22 the bathroom which they both complied. They came right
23 out of the bathroom and came right into the main room
24 where Ms. Denise, Sergeant Hoose [phonetic] and I were.

25 Q. And what happened after that?

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1 A. That's when we brought them in there. We cleared
2 the couch so they could have a seat. Sergeant Hoose
3 [phonetic] conducted a search of Mr. Holmes. That's when
4 they found the scale and some other cocaine.

5 And that's when I entered into the kitchen and I
6 walked into the bathroom where they ran to to make sure
7 there weren't any weapons or anything in there just to do
8 a protective sweep of it.

9 I went into the bathroom and on the tub, the edge of
10 the tub there was a Pyrex cup there, a measuring cup with
11 crack cocaine in it with steam still coming off it as if
12 they just got done cooking it or still cooking it.

13 Q. I'll show you what has been marked as State's
14 exhibit 13.

15 [Whereupon, the photograph is shown]

16 Q. Is that what you're talking about?

17 A. Yes, ma'am.

18 Q. And so where did you believe those items came from;
19 the kitchen?

20 A. Yes, they did. And especially with the heat coming
21 off it the way it was it was just removed from that
22 microwave.

23 Q. And what is the purpose of law enforcement
24 conducting a protective sweep?

25 A. To make sure there is no one else armed in there and

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1 we can kind of let out guard down and start actually
2 interviewing and also make sure there are no weapons so
3 anybody that we were in there talking to wouldn't be able
4 to get one. So it's for our safety and theirs so we
5 don't have to...

6 Q. And so you felt a safety concern to conduct that at
7 that time?

8 A. Absolutely, with the narcotics activity there.

9 Q. Okay. And Sergeant Sherwood what were they doing
10 when you had walked in?

11 A. Manufacturing crack cocaine.

12 Q. So given your training and experience can you just
13 briefly explain how one makes crack?

14 A. Yes. So the Pyrex cup they will fill it with water
15 and cut which would be the baking soda they'll half and
16 half it with the cocaine, put it in the microwave until
17 it boils or most of the water or all of the water is
18 gone. And the whisk is used to whip it so it actually
19 turns into or it gets rid of all the bubbles and makes it
20 a hard substance once it dries.

21 So like now right there in this state it's more of a
22 pasty -- it's more of a paste. But once it dries out it
23 turns into a rock which that right there on the street
24 would be called a cookie due to its shape and they
25 actually take a razor blade and cut it down into

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1 increments for distribution.

2 Q. Okay. And looking at State's exhibit 17 these were
3 the other items found. Are these all consistent with
4 manufacturing crack?

5 A. Yes.

6 Q. So they were literally caught in the act making
7 crack.

8 A. Correct. I've never seen that before.

9 Q. And about how long does it take to make crack?

10 A. As long as it takes to boil water.

11 Q. And once you performed the protective sweep and the
12 defendants were detained what did you do next?

13 A. After I saw what I saw I went and secured a search
14 warrant. We placed both the defendants in handcuffs just
15 pending our search warrant.

16 Q. And did you do anything to the microwave prior to
17 leaving for that warrant?

18 A. I did. I swabbed it.

19 Q. Let me show you State's exhibit number 14. It's a
20 photo of the microwave.

21 [Whereupon, the photograph is shown]

22 A. Yes, ma'am.

23 Q. And why did you swab the microwave?

24 A. Well, in the manufacturing of crack cocaine when it
25 steam boils it will actually boil over so it will leave a

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1 cocaine residue inside of it. So I took a cocaine swab
2 and I swabbed inside the microwave.

3 Q. And what does that cocaine swab show?

4 A. It shows it touched it for the presence of cocaine
5 in the microwave.

6 Q. And how do you know that?

7 A. It turns blue. It's a pink swab that will turn
8 blue.

9 Q. I'm showing you State's exhibit 16. Is this a photo
10 of that swab?

11 [Whereupon, the photograph is shown]

12 A. That's correct.

13 Q. It's a little bit of a glare but is that what you're
14 talking about, the blue?

15 A. Yes, ma'am.

16 Q. Okay. And State's exhibit 15, this is just a close
17 up of that swab?

18 [Whereupon, the photograph is shown]

19 A. Yes, ma'am.

20 Q. Okay. And so that microwave tested presumptive for
21 cocaine?

22 A. Correct.

23 Q. So then you went to write and execute a search
24 warrant?

25 A. Yes, ma'am.

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1 Q. Okay. Why did you get a search warrant when you had
2 already seen the manufacturing items and found drugs in
3 the house?

4 A. Through my experience I've found it's easier to keep
5 everything aligned. Once you have your probable cause
6 from something -- from a scene like this we would rather
7 go just and secure a search warrant and let the judge
8 make the ruling at that point if we had the probable
9 cause to actually search or not.

10 MS. SAVAS: Court's indulgence.

11 THE COURT: Yes, ma'am.

12 [Whereupon, Ms. Savas and Ms. Tran confer]

13 Q. And you do eventually get that search warrant signed
14 correct?

15 A. Yes, ma'am.

16 Q. And then what did you do once it was signed?

17 A. We executed it.

18 Q. Okay. And what does that entail?

19 A. A search of the residence.

20 Q. And then you had gathered the items of evidence?

21 A. Correct.

22 Q. Okay. And to the best of your knowledge all of
23 those items were properly sealed and taken into evidence?

24 A. Yes, ma'am.

25 Q. Okay.

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1 MS. SAVAS: Court's indulgence.

2 THE COURT: Okay.

3 [Whereupon, Ms. Savas and Ms. Tran confer]

4 Q. [Ms. Savas] Sergeant Sherwood, do you recall meeting
5 with me over the past couple of years in this case?

6 A. Yes, ma'am.

7 Q. Okay. Do you recall mentioning that you had said
8 that defendant Boston was the one concealing something in
9 his hand?

10 A. Yes, with that -- like I said they were both
11 standing around the microwave. And yes, both appeared to
12 be concealing something the way they like I said they
13 kind of scurried off pretty quickly.

14 Q. Was it a little -- you had mentioned they belayed
15 their bodies to you. Will you please tell the court what
16 that means?

17 A. So like kind of like how a magician would do; they
18 would hide their -- they don't want me to see their
19 hands. And in our training if you don't see somebody's
20 hands that's what we look at; that's the things that hurt
21 you or anybody else around you.

22 I could not see either one of their hands but the
23 way they were motioning over there it was not to hide
24 their face it was to hide what they had somewhere with
25 their hands. They were hiding their hands from me versus

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1 actually being able to -- usually people want to conceal
2 their face if they are going to run from me they would
3 probably do that but in that apartment there really no
4 where for them to run.

5 Q. And at that time that's when you believed they had
6 taken the crack out of the microwave and put it in the
7 bathroom?

8 A. Oh yes, absolutely.

9 Q. And was Ms. Holman interacting in any way with this?
10 Was she making the crack with them when you saw?

11 A. No, not at all.

12 Q. Okay. So she did not have -- she was not
13 participating in making this crack.

14 A. No, ma'am.

15 Q. Okay. About Ms. Holman and using her apartment in
16 your training and experience in that area is that common?

17 A. Absolutely.

18 Q. What would people typically do?

19 A. A lot of times they will either pay somebody that
20 has the house to use their house to manufacture it
21 whether it's in money or product. It's a take of either
22 or; usually that's what happens. Or sometimes they're
23 just nice and let them borrow a microwave and don't know
24 what's going on.

25 Q. Why do they not use it in their own home?

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1 A. So they don't get in trouble for it at their house.
2 That's where the distribution part of it is taking place.

3 Q. Okay. And you think that was occurring at this
4 time?

5 A. Yes, ma'am.

6 Q. Okay.

7 MS. SAVAS: Court's indulgence.

8 [Whereupon, Ms. Savas and Ms. Tran confer]

9 MS. SAVAS: Nothing further from the State, Your
10 Honor.

11 THE COURT: Cross-examine, Ms. Seman?

12 MS. SEMAN: Thank you, Your Honor.
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1 CROSS-EXAMINATION

2 BY MS. SEMAN:

3 Q. Good morning, Sergeant Sherwood.

4 A. How you doing?

5 Q. You said today that you approached Ms. Holman's
6 apartment when you saw the defendants get out of the
7 taxi, is that right?

8 A. Uh Huh.

9 THE COURT REPORTER: Is that yes?

10 A. Yes; I'm sorry.

11 Q. [Ms. Seman] But in your incident report you said
12 that you approached the apartment because of drug
13 complaints?

14 A. That's kind of all in one --

15 Q. I'm sorry?

16 A. There are a lot of reasons why. I don't just do
17 something for one reason; especially something like that,
18 I'm going to do it for multiple reasons.

19 Q. Okay. But there wasn't actually a drug complaint
20 made out of that apartment.

21 A. The whole apartment complex.

22 Q. There was a drug complaint made out the apartment
23 complex?

24 A. Yes, ma'am.

25 Q. Okay. And you're familiar with the prior complaints

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- 1 at that apartment complex.
- 2 A. Correct.
- 3 Q. And that's why you say you were monitoring the area,
- 4 right?
- 5 A. Monitoring -- actually at the time at that moment we
- 6 were just sitting there talking until they pulled up.
- 7 Q. Right. But you testified with the Solicitor that you
- 8 had increased patrols in that area.
- 9 A. Our whole department has, yes ma'am.
- 10 Q. Yes, I didn't mean you specifically; I mean your
- 11 department.
- 12 A. Yes, ma'am.
- 13 Q. So your department increased patrols of the area.
- 14 A. Yes, ma'am.
- 15 Q. And there was a prior complaint made in February of
- 16 2015, right?
- 17 A. Yes, ma'am.
- 18 Q. And you were familiar with that complaint.
- 19 A. Yes, ma'am.
- 20 Q. And in fact you listed that complaint number in your
- 21 incident report for this case.
- 22 A. Correct.
- 23 Q. And the complaint in question was made by the
- 24 landlord.
- 25 A. Yes, ma'am.

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1 Q. And we know that because again the number matches
2 the complaint that you put in your incident report.

3 A. I didn't do the incident report. That wasn't my
4 report.

5 Q. You didn't write the incident report for this case?

6 A. I'm talking about the other cases you were referring
7 to.

8 Q. But you were familiar with the incident report,
9 right?

10 A. Yes, ma'am.

11 Q. And that was about a week earlier. That was
12 February 27th, 2015, right?

13 A. I'm assuming so. I don't have it in front of me.

14 Q. Would it help you to look at a copy of that report?

15 A. If you have it, absolutely.

16 Q. I do.

17 A. I just know it was written by an officer I work
18 with.

19 MS. SEMAN: May I approach?

20 THE COURT: You may.

21 [Whereupon, the witness is shown document]

22 Q. [Ms. Seman] So that is a copy of the report that
23 matches the number that you listed in your incident
24 report for this case, right?

25 A. Yes, ma'am.

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- 1 Q. And so that was on February 27th, 2015.
- 2 A. Yes, ma'am.
- 3 Q. And that complaint was made by the landlord.
- 4 A. Correct.
- 5 Q. Mr. Franklin.
- 6 A. Yes, ma'am.
- 7 Q. And in that complaint Mr. Franklin complained that
- 8 he had felt threatened by an individual that didn't live
- 9 there.
- 10 A. Yes, ma'am.
- 11 Q. By a non-resident that came out of apartment 13.
- 12 A. Yes, ma'am.
- 13 Q. Which is a different apartment than was at issue in
- 14 this case.
- 15 A. Yes, ma'am.
- 16 Q. Denise Holman lived in apartment 2.
- 17 A. Yes, ma'am.
- 18 Q. And in the complaint no one was identified by name
- 19 or nickname, right?
- 20 A. Not that I'm reading, no ma'am.
- 21 Q. Indeed it was a bare minimum description; a black
- 22 male with facial hair.
- 23 A. Yes, ma'am.
- 24 Q. That could fit a lot of people.
- 25 A. Correct.

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1 Q. When the Solicitor asked you questions you said that
2 when you came into Ms. Holman's apartment one or both
3 people had some items in their hands, right?

4 A. Like I said their bodies were belayed from me. It
5 appeared to me that they would have something in your
6 hands in the way that they were standing and the way they
7 ran off.

8 Q. Okay. So you didn't actually see their hands?

9 A. No, ma'am. That's why I was so worried at that
10 point about weapons.

11 Q. And you didn't mention anything about seeing
12 anything in their hands or believing that they had things
13 in their hands in your incident report for this case.

14 A. No.

15 Q. In fact you said that two men came out of the back
16 of the house, the kitchen area, right?

17 A. Yes, ma'am.

18 Q. And you also said that their hands were shaking?

19 A. Yes, ma'am.

20 Q. And their breathing was labored.

21 A. Yes, ma'am.

22 Q. But you said nothing about anything you thought was
23 in their hands, right?

24 A. Right --

25 Q. I'm sorry?

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- 1 A. It's not in the report, no ma'am; I didn't put it.
- 2 Q. And when the Solicitor asked you questions you said
- 3 that both people Mr. Holmes and Mr. Boston were standing
- 4 by the microwave.
- 5 A. Correct.
- 6 Q. And the microwave is really important because you
- 7 think that's what they were using to manufacture crack.
- 8 A. Correct.
- 9 Q. And you said the microwave was running in fact when
- 10 you walked in.
- 11 A. Yes, ma'am.
- 12 Q. So the microwave is a really important piece of
- 13 evidence.
- 14 A. Yes, ma'am.
- 15 Q. And the defendant standing next to it is an
- 16 important detail about that piece of evidence.
- 17 A. Yes, ma'am.
- 18 Q. In fact it's the most important detail because as
- 19 the Solicitor said you're literally thinking you caught
- 20 them in the act, right?
- 21 A. Yes, ma'am.
- 22 Q. But in your report though you didn't mention
- 23 anything about the defendant standing next to the
- 24 microwave.
- 25 A. Okay, yes.

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1 Q. Would you like to review a copy of your report?

2 A. Is it a question?

3 Q. Yes? It is correct that in your report you didn't
4 mention the defendant standing next to the microwave.

5 A. If I didn't put it in there, no ma'am I didn't
6 mention it in the report.

7 Q. Well, I'm happy to show you a copy if you'd like to
8 look at it?

9 A. I have it right here. I'll look at it.

10 Q. Okay.

11 THE COURT: Sergeant, put it on the side so when
12 you look and turn and when you speak so you can speak
13 towards the court reporter.

14 A. Oh, sorry.

15 [Whereupon, the witness reviews document]

16 A. No, I didn't put that in there.

17 Q. [Ms. Seman] And you're an experienced law
18 enforcement officer aren't you?

19 A. I'd like to think so, yes ma'am.

20 Q. You're a sergeant.

21 A. Yes, ma'am.

22 Q. And you've been at NCPD you say for 11 years?

23 A. Yes, ma'am.

24 Q. And you know the difference between actual
25 possession and constructive possession.

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1 MS. SAVAS: Objection, Your Honor. It requires a
2 statement of the law.

3 THE COURT: I overrule. For purposes of this
4 proceeding, come on.

5 MS. SAVAS: Yes, Your Honor.

6 THE COURT: I'll consider it for what it's worth.
7 Thank you. I don't know what -- you can ask the question
8 but they're both in the room so whatever it is. I don't
9 know what the deal is but go ahead.

10 MS. SEMAN: Thank you, Your Honor.

11 Q. [Ms. Seman] Actual possession is when an item is on
12 a defendant's person, right?

13 THE COURT: We don't need to spend a lot of time on
14 that Ms. Seman, really and truly do you?

15 MS. SEMAN: I believe I do, Your Honor. There is
16 an issue with the incident report in this case that I
17 think speaks to this exact issue.

18 THE COURT: I appreciate that. That's an incident
19 report and that's fine and you can use this for
20 deposition and I'm going to allow you to do that
21 obviously. But for the purposes of this proceeding today
22 of a suppression this report has some bearing but it is
23 not going to be compelling I can tell you that, okay.
24 Just keep on going.

25 MS. SEMAN: Yes, Your Honor. May I proceed or

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1 would you like me to move on?

2 THE COURT: You do what you -- I'm not going to try
3 your case. You do what you want. I'm just telling you.
4 Just don't spend a lot of time on this.

5 MS. SEMAN: Yes, sir. It will just be a few more
6 questions.

7 THE COURT: That will be fine.

8 Q. [Ms. Seman] Actual possession is when an item is on
9 a defendant's person, isn't it?

10 A. There's lots of different possessions. I mean you're
11 talking definitions here.

12 Q. Yes. But what I'm saying is I'm sure you've found
13 drugs on people in a lot of different places.

14 A. Oh, yes.

15 Q. I'm sure in their shoe, in their pocket, in their
16 socks, in a lot of unmentionable places I'm sure.

17 A. Uh Huh.

18 Q. And when you find someone in actual possession you
19 don't have to ask who it belongs to, right, who the
20 contraband belongs to, who the drugs belong to, who a
21 weapon belongs to.

22 A. There is a lot of different scenarios that grow into
23 this so there is not a definitive answer for that.

24 Q. Okay. But if you found something in someone's
25 pocket for example you wouldn't have to ask ---

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1 A. --- most of the time yes, it would be a 99 percent
2 chance that it would probably be theirs so I would most
3 assume that yes, absolutely.

4 Q. And that's different than constructive possession.

5 A. Yes.

6 Q. And that's when people have control over an area,
7 right?

8 A. Yes.

9 MS. SAVAS: Objection, Your Honor. The detective
10 is not a lawyer to comment on the law.

11 THE COURT: I appreciate it. I've overruled it.
12 Move on please.

13 MS. SEMAN: Yes, Your Honor.

14 THE COURT: Thank you.

15 Q. [Ms. Seman] And Sergeant Sherwood you wrote the
16 search warrant in this case, didn't you?

17 A. Yes.

18 Q. And you had to write up an affidavit, right?

19 A. Yes.

20 MS. SAVAS: Objection, Your Honor. Respectfully
21 this is not a Franks hearing. I did not go into those or
22 admit that into evidence.

23 THE COURT: Well, you'll have a chance to ask
24 follow-up questions, Solicitor. Overruled. We're going
25 to have a hearing. Thank you, ma'am.

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1 MS. SAVAS: Yes, ma'am.

2 THE COURT: Okay. Let's let this thing flow,
3 please. Thank you.

4 MS. SEMAN: Yes, Your Honor.

5 Q. [Ms. Seman] So you wrote up the affidavit, right?

6 A. Yes.

7 Q. And you took it to a Magistrate, right?

8 A. Yes.

9 Q. And you had to get the judge's signature, right?

10 A. Yes.

11 Q. And then you went back to the apartment, right?

12 A. Yes.

13 Q. And then you went back inside.

14 A. Yes.

15 Q. And you executed the search warrant.

16 A. Yes.

17 Q. And that took awhile.

18 A. Yes, ma'am.

19 Q. Because you arrived at that apartment at 5:25,
20 right?

21 A. Yes, ma'am.

22 Q. And the search warrant was signed at 6:49.

23 A. Yes, ma'am.

24 Q. And you still had to get back to Ms. Holman's
25 apartment after that.

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- 1 A. Yes, ma'am.
- 2 Q. So probably around 7 o'clock is when you returned.
- 3 A. It was -- I mean probably ---
- 4 Q. --- approximately.
- 5 A. I guess. We were really close to where the judge
- 6 was.
- 7 Q. Okay. So it was maybe even a little earlier than
- 8 that. That was about an hour and a half after you
- 9 arrived at the apartment that day.
- 10 A. Yes, ma'am.
- 11 Q. And then you executed that search warrant and you
- 12 found that Pyrex, right?
- 13 A. Yes, ma'am.
- 14 Q. And you felt it at that point.
- 15 A. Yes, ma'am.
- 16 Q. And you say at that point it was still hot to the
- 17 touch.
- 18 A. Yes, ma'am.
- 19 Q. And you also say that you didn't arrest Denise
- 20 Holman because she was too mentally handicapped, right?
- 21 A. Right. I use that word somewhat loosely when I say
- 22 mentally handicapped but yes ma'am somewhat.
- 23 Q. Ad you even said that she didn't know what was going
- 24 on.
- 25 A. I don't believe she did. I believe she knew what

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1 was going on but she didn't have the capacity to say no
2 to the defendants due to their stature that they had when
3 they went in.

4 Q. But you specifically say in your report that she was
5 unable to comprehend the situation at hand, right?

6 A. Yes. The way she came off to me was not that she
7 was -- I'm not a doctor so I don't know 100 percent how
8 to describe it but she didn't come off to me as when you
9 say mentally handicapped as -- to the point she knew what
10 was going on.

11 But like I said whether -- she knew what was going
12 on for the most part yes, but there were parts that she
13 probably didn't quite understand that was that right or
14 wrong or whatnot.

15 Q. Okay. So are you saying she did or she didn't know
16 what was going on?

17 A. I believe she did, yes.

18 Q. Okay. So -- but that's different though that what
19 your incident report says.

20 A. Okay.

21 Q. Isn't it?

22 A. Yes, if that's what it is.

23 Q. Would you like to take a look at it? I'm happy to
24 point you to the section ---

25 A. --- if you don't mind; it's a long report.

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1 THE COURT: Ms. Seman, I assume you're quoting from
2 it.

3 MS. SEMAN: Yes, Your Honor.

4 THE COURT: Come on. We don't have a jury here.

5 MS. SEMAN: Yes, Your Honor.

6 THE COURT: Okay.

7 Q. [Ms. Seman] But you did say that in your incident
8 report right that she didn't understand what was going
9 on.

10 A. Yes ma'am, fully -- I probably should have put
11 fully.

12 Q. But you didn't put that in your report.

13 A. I didn't; I'm sorry.

14 Q. But you are aware that NCPD has arrested her over 30
15 other times.

16 THE COURT: I didn't understand that. What?

17 Q. [Ms. Seman] I said you're aware that North
18 Charleston police department has arrested her over 30
19 other times.

20 A. There are 460 officers. I don't know who all
21 arrested her. I've had one run-in with her.

22 Q. But you didn't arrest her that day.

23 A. No, I did not.

24 Q. And as we said before no one had complained about
25 Ms. Holman's apartment specifically, right?

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- 1 A. Correct.
- 2 Q. There were no drug complaints out of her apartment,
3 right?
- 4 A. Not specifically out of hers; it's the whole
5 complex. It's not a very big complex. It's like -- I
6 don't know how many off hand but it's not very many.
- 7 Q. There was no weapons complaint out of her apartment.
- 8 A. Not specifically out of hers, no.
- 9 Q. There was no complaint of a wanted person being at
10 her apartment.
- 11 A. No, ma'am.
- 12 Q. There was no complaint of someone armed and
13 dangerous being at her apartment.
- 14 A. No, ma'am.
- 15 Q. You saw Mr. Boston and Mr. Holmes go in, right?
- 16 A. Yes.
- 17 Q. But you didn't have any information that they were
18 committing a burglary or an armed robbery.
- 19 A. Not at all.
- 20 Q. And you were in the area for a traffic stop that day
21 weren't you?
- 22 A. I can't recall what reason I was on -- it could have
23 been a traffic stop or a call for service -- I can't
24 remember what that was.
- 25 Q. But you at least know it was for something

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1 unrelated.

2 A. Correct. It was completely unrelated. But
3 everything is related to a policeman when you're on the
4 job.

5 Q. And you saw Mr. Boston and Mr. Holmes get out of a
6 taxi together and that's when you decided to approach.

7 A. Not at first. I kind of let it sink in and
8 remembered who they were and where they were from and
9 remembered about Ms. Denise. It took a while before I
10 decided to actually act on it.

11 Q. So at that point you approached Ms. Holman's
12 apartment door, right?

13 A. Yes, ma'am.

14 Q. And you knocked on the door, right?

15 A. Yes, ma'am.

16 Q. And she opened the door?

17 A. Yes.

18 Q. You said she didn't resist.

19 A. No, not at all.

20 Q. And you did not tell her she could say no to you
21 coming into her apartment, right.

22 A. She could say no anytime she wanted.

23 Q. But you didn't make that clear to her is all I'm
24 saying. You didn't mention that fact.

25 A. It would be like anybody asked her if it was okay to

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1 come in and talk to her and she said that's fine.

2 Q. But she didn't give you permission to go into the
3 kitchen did she?

4 A. Excuse me?

5 Q. She did not give you permission to go into the
6 kitchen.

7 A. She said come inside.

8 Q. But she did not give you permission to go into the
9 kitchen.

10 A. She didn't specifically say kitchen, no.

11 Q. And she didn't sign any consent to search form or
12 anything like that.

13 A. No, ma'am.

14 Q. And you said on direct with the Solicitor that you
15 had met Ms. Holman once -- or you had met her before,
16 right?

17 A. Yes.

18 Q. More than once?

19 A. Yes -- no, I'm sorry; yes ma'am, I've met a couple
20 of times but specifically one time.

21 Q. One time that you remember at this point?

22 A. Yes. Like I said I'm out working and I see so many
23 people -- it's so hard to keep track of everybody.

24 Q. Sure. You had even searched her apartment before
25 though hadn't you?

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1 A. Not that I remember.
2 MS. SEMAN: May I approach, Your Honor?
3 THE COURT: Yes.
4 MS. SAVAS: Ms. Seman, may I see that?
5 MS. SEMAN: Oh, I'm sorry.
6 [Whereupon, Ms. Seman and Ms. Savas review document]
7 MS. SAVAS: Your Honor, the State would object to
8 this line of questioning. This is about a different
9 resident at a different location not relevant to this
10 case.
11 THE COURT: I appreciate that, Solicitor. You
12 don't get to make that determination. You can object all
13 you want. The objection is noted. Go ahead and
14 continue your examination. Thank you, sir.
15 MS. SEMAN: May I approach, Your Honor?
16 THE COURT: Thank you..
17 Q. [Ms. Seman] Do you recognize this?
18 [Whereupon, the witness is shown document]
19 A. It's an incident report.
20 Q. And your name is at the bottom of that incident
21 report isn't it?
22 A. Yes, ma'am.
23 Q. I'll give you a chance to look over it so you can
24 refresh your memory.
25 [Whereupon, the witness reviews document]

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1 A. I forgot all about this.

2 Q. I'm sorry?

3 A. I forgot all about this.

4 Q. Okay.

5 A. Like I said it's hard to keep track of everything

6 I've done. It's like asking you do you remember that

7 guy.

8 Q. Absolutely. I totally understand.

9 THE COURT: Would somebody tell me what this

10 document is that you just handed him so I can make a

11 determination as to whether it is relevant or not.

12 MS. SEMAN: Yes, Your Honor.

13 THE COURT: I mean y'all -- please do have some

14 modicum of movement in this. Y'all are having a

15 conversation. I can't -- that doesn't help me.

16 MS. SEMAN: Yes, Your Honor. I have shown Sergeant

17 Sherwood an incident report from ---

18 THE COURT: --- from when and what?

19 MS. SEMAN: March of 2014.

20 THE COURT: All right.

21 MS. SEMAN: In that incident report he searched Ms.

22 Holman's apartment.

23 THE COURT: I just need to know what it is. It's

24 about this apartment.

25 MS. SEMAN: It's a different apartment but it's the

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1 same person.

2 THE COURT: Okay, then what's the relevance of that?

3 MS. SEMAN: The relevance is that in that case he
4 asked her to sign a consent to search form.

5 THE COURT: So what? I appreciate that.

6 MS. SEMAN: Your Honor, I'm happy to move on.

7 THE COURT: Just move on. You've already made --
8 he didn't ask in this case, okay.

9 MS. SEMAN: Okay. Thank you.

10 THE COURT: Thank you.

11 Q. [Ms. Seman] When you first came into Ms. Holman's
12 apartment you were standing in the living room, right?

13 A. Yes.

14 Q. And the kitchen was next to the living room.

15 A. Directly in front of it.

16 Q. And the kitchen counter was in the back of the
17 kitchen from your vantage point.

18 A. Yes. It's the way I explained it.

19 Q. Okay. How would you explain it?

20 A. It was directly in front of me.

21 Q. Okay. And that's where you say you can see the
22 plastic bags on the counter.

23 A. Yes, ma'am.

24 Q. And more than that you say you can see the powder
25 residue in those plastic bags.

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- 1 A. Yes, ma'am.
- 2 Q. From where you were standing in the living room?
- 3 A. Yes, ma'am.
- 4 Q. And then you performed a protective sweep, right?
- 5 A. Yes, ma'am. You're missing things in it but yes
- 6 ma'am that's in the timeline.
- 7 Q. Okay. What am I missing?
- 8 A. When they exited out of the bathroom and ---
- 9 THE COURT: --- you need to move closer to the
- 10 microphone.
- 11 THE WITNESS: I'm sorry, sir.
- 12 A. When they exited out of the bathroom.
- 13 Q. [Ms. Seman] And when you performed the protective
- 14 sweep you hadn't found anything illegal yet, had you?
- 15 A. I mean as in the bags for narcotics packaging?
- 16 Q. But you hadn't tested anything at that point.
- 17 A. I don't have a test kit that I can use that quickly.
- 18 Q. But you said it was obviously drug activity, right?
- 19 A. Yes, ma'am. From my training and experience that's
- 20 definitely consistent with drug activity.
- 21 Q. And you suspected it but you weren't sure at that
- 22 point.
- 23 A. I was sure.
- 24 Q. And you didn't see any weapons?
- 25 A. No, ma'am.

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- 1 Q. And you didn't see any paraphernalia.
2 A. Scales, yes ma'am.
3 Q. And because of that no one was under arrest yet.
4 A. No, ma'am.
5 Q. Mr. Holmes wasn't under arrest.
6 A. No, ma'am.
7 Q. Mr. Boston wasn't under arrest.
8 A. No, ma'am.
9 Q. And Ms. Holman wasn't under arrest.
10 A. No, ma'am.
11 Q. They were all detained, right?
12 A. At that point, yes ma'am.
13 Q. And then you performed the protective sweep.
14 A. No.
15 Q. Okay. You didn't perform a protective sweep?
16 A. I did perform a protective sweep. After they
17 removed themselves from the bathroom and came out they
18 sat down on the couch after I believe it was Sergeant
19 Hoose [phonetic] who checked the cushions to make sure
20 there was no weapon there either and they sat down.
21 That's when I did a protective sweep. It's a very
22 small room, very quickly done. It's not very much room
23 for other people or weapons to be stored. That's where
24 the Pyrex --
25 THE COURT REPORTER: That's where what?

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- 1 A. The Pyrex cup, it's a brand of measuring cup.
- 2 Q. [Ms. Seman] And again Sergeant Sherwood you wrote
- 3 the affidavit for the search warrant, right?
- 4 A. Yes, ma'am.
- 5 Q. You went before the Magistrate.
- 6 A. Yes, ma'am.
- 7 Q. In person.
- 8 A. Yes, ma'am.
- 9 Q. You swore an oath.
- 10 A. Yes, ma'am.
- 11 Q. Just like the oath you swore today.
- 12 A. Yes, ma'am.
- 13 Q. And in that affidavit you wrote that you approached
- 14 that apartment because of drug deals didn't you?
- 15 A. Yes, ma'am.
- 16 Q. And as you mentioned before the reason that you
- 17 approached the apartment was because of that landlord's
- 18 complaint, right?
- 19 A. That and other complaints, yes.
- 20 Q. But you didn't mention any other complaints in your
- 21 incident report.
- 22 A. No, ma'am.
- 23 Q. And the landlord's complaint didn't involve any
- 24 drugs.
- 25 A. Not in that incident report no ma'am. He's

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1 complained before.

2 MS. SEMAN: Court's indulgence.

3 THE COURT: Certainly.

4 [Whereupon, Ms. Seman and Ms. Norris confer]

5 MS. SEMAN: No further questions, Your Honor.

6 THE COURT: Okay. Mr. Lewis.

7 MR. LEWIS: Thank you, Judge. And given the
8 court's ruling about Mr. Shahid I assume I have a little
9 bit of latitude as to photos here.

10 THE COURT: Yes, you do.

11 [Whereupon, Mr. Lewis and Ms. Savas confer]

12 MR. LEWIS: Judge, I want to clarify for you for
13 the Solicitor's benefit that these were not taken the day
14 of the incident because I took them myself.

15 THE COURT: Okay. That's fine. I don't know what
16 that has to do with anything. If it resembles the
17 apartment that's a cross-examination question, but again,
18 that doesn't have anything to do with the questions.

19 MR. LEWIS: Thank you, Judge. Permission to
20 approach the witness?

21 THE COURT: Yes.

22

23

24

25

26

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CROSS-EXAMINATION

BY MR. LEWIS:

Q. Sergeant Sherwood I'm showing you something I've marked as exhibit number 2.

[Whereupon, the photograph is shown]

Q. Can you take a look at that and tell me if -- it's not going to be the same day but do you recognize that?

A. Yes. That's the same layout.

Q. Okay. And you should be able to see it on your screen as well. So having looked at this, this is actually from within the door frame, right?

A. Yes, sir.

Q. And you said that you were able to identify those baggies as definitely drug packaging material from right there.

A. Yes, sir.

Q. From here?

A. I mean that's a camera; that's not my eyes. That's a picture.

Q. I know. I get it. I'm sure you could see significantly better. But that's where you were.

A. Approximately, yes.

Q. Okay. And we're using the same -- we're talking about the same baggies that have previously been provided to the court, right?

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- 1 A. Yes, sir.
- 2 Q. That you were shown. Is there anything at all in
- 3 those?
- 4 A. There's a residue in them.
- 5 Q. Okay. So a white residue in a kitchen.
- 6 A. Yes, sir.
- 7 Q. And you immediately knew that to be cocaine. No
- 8 question in your mind, no other possible substance.
- 9 A. It was packing narcotics doing a cut or for cooking.
- 10 Q. Well, is cut illegal?
- 11 A. An action of cooking, yes.
- 12 Q. If it's not packaged with cocaine is that illegal?
- 13 A. It depends on what it is. Cooking is a lot of
- 14 things.
- 15 Q. Is baking soda illegal?
- 16 A. If baking soda is used then, no sir.
- 17 Q. Okay. Is flour illegal?
- 18 A. No.
- 19 Q. Is salt illegal?
- 20 A. No.
- 21 Q. Is sugar illegal?
- 22 A. No.
- 23 Q. Is cream of tartar illegal?
- 24 A. No.
- 25 Q. Or any other number of white powders in a kitchen

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- 1 illegal?
- 2 A. No, sir.
- 3 Q. But from this distance you were able to immediately
- 4 see that and using your eyes determine the chemical
- 5 makeup of that substance at some point?
- 6 A. I mean no. I'm not a scientist so I can't ---
- 7 Q. --- exactly. But based on that you felt you had the
- 8 ability then to conduct a protective sweep. Drug
- 9 activity, right?
- 10 A. It was actually when they ran away from the
- 11 microwave so it -- so to me at that point about weapons.
- 12 Q. Let's get back to that.
- 13 MR. LEWIS: And I'll try to be faster, Judge. I
- 14 apologize.
- 15 THE COURT: Take your time. There's no problem.
- 16 MR. LEWIS: Ms. Seman was much more thorough than I
- 17 normally am.
- 18 Q. [Mr. Lewis] In this you did a two page report in
- 19 this case, right?
- 20 A. Yes.
- 21 Q. You did not mention that you saw someone slamming
- 22 the door while manufacturing crack cocaine, did you?
- 23 A. No, it's not ---
- 24 Q. --- that would be a pretty big fact wouldn't it?
- 25 A. I mean maybe -- yes.

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1 Q. Maybe?

2 A. Yes.

3 Q. Okay. But you didn't meet with them. You met with
4 Ms. Savas at least three times.

5 A. Yes.

6 Q. Did you ever tell her that they slammed the door?

7 A. Yes.

8 Q. You did? When did you tell her that?

9 A. I don't know because you've asked me dates three
10 different times. This is from 2015; I'm not 100 percent
11 on what time and when.

12 Q. Sure. You met with her at least three times.

13 A. Okay.

14 Q. Was it the first time you met with her?

15 A. I have no idea.

16 Q. Okay. But you did definitely tell her that?

17 A. Yes.

18 Q. That they slammed the microwave?

19 A. Slammed, closed.

20 Q. Closed the microwave door.

21 A. That's fine.

22 Q. You told her that.

23 A. Yes.

24 Q. Okay. Do you acknowledge that in your incident
25 report you did not say that anyone had anything in their

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- 1 hands?
- 2 A. I think I said something -- no I did not put it.
- 3 Q. Right. But you did comment on their hands and how
- 4 they appeared.
- 5 A. Yes.
- 6 Q. That they were visibly shaking.
- 7 A. Yes.
- 8 Q. You didn't put that when they came out you said as
- 9 soon as you saw them their hands were visibly shaking.
- 10 You can read your report.
- 11 A. Yes.
- 12 Q. And then after meeting with Ms. Savas you said that
- 13 both parties had something in their hands. Not maybe,
- 14 not their bodies were belayed; they did have something in
- 15 their hands both of them, right? You told her that.
- 16 A. Are you telling me that's what I told her or asking
- 17 me ---
- 18 Q. --- I'm asking you if you told her that. Yes, sure;
- 19 did you tell her that?
- 20 A. I believed they had something in their hands they
- 21 way they belayed their bodies.
- 22 Q. No, not believed. You definitely told her that they
- 23 had things, each of them, in their hands.
- 24 A. I'm telling you what I said. I don't know what
- 25 you're...

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1 THE COURT: He's asking you did tell them that they
2 both had something in their hands; that's the question.

3 A. I believe -- I'm telling you what I said. I
4 believed they had something in their hands.

5 THE COURT: You can answer yes or no and you can
6 explain it. Or you can explain it if you want to.

7 A. Yes, sir.

8 THE COURT: Thank you.

9 Q. [Mr. Lewis] So yes?

10 A. Yes.

11 Q. So you did tell her that they both definitely had
12 something in their hands?

13 A. Not definitely. I mean...

14 Q. So if she sent us that information that they did
15 that was a misrepresentation of what you told her?

16 A. I'm sorry, say it again.

17 Q. If she sent us an email saying that they both had
18 something in their hands ---

19 MS. SAVAS: --- objection, Your Honor. The
20 sergeant has no foundational knowledge of what emails I
21 sent to defense. It's not relevant to this ---

22 THE COURT: --- he didn't ask -- he asked him a
23 hypothetical, Solicitor. He said if she said it then
24 would that be an incorrect statement. He's not saying
25 that you sent something. He said if you did. Overruled.

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1 Thank you.

2 MS. SAVAS: Thank you.

3 Q. [Mr. Lewis] If she sent a statement that said
4 definitely they each had something in their hands is that
5 accurately what you told her that they did; not maybe,
6 not belayed, they did.

7 A. Possibly.

8 THE COURT: He's answered your question.

9 MR. LEWIS: Thank you, Judge.

10 Q. [Mr. Lewis] Did you at a later meeting then say
11 specifically only Mr. Boston had something in his hands.

12 A. I could have.

13 Q. Did you or did you not?

14 A. I don't remember. You're asking me a specific time.

15 Q. No, no. I'm asking in a later meeting after the one
16 we just talked about you said no, actually they both
17 didn't it was just this guy [indicates].

18 A. Like I said I could not see their hands. It
19 appeared they had something in their hands.

20 Q. So hypothetically speaking if there is an email that
21 says that only this person [indicates] had something in
22 this hands that's not what you told her?

23 A. I'm sorry; say that one more time.

24 Q. Hypothetically speaking if there was a conversation
25 with Ms. Savas that says only he [indicates] had

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1 something in his hands, not both of them, but only Mr.
2 Boston you're denying that that ever took place? No, you
3 never would have said that.

4 MS. SAVAS: Objection, Your Honor. He said just
5 hypothetical, now he's asking ---

6 THE COURT: --- overruled. You will have a chance
7 to ask him any questions, Ms. Savas, you want to ask him.
8 You'll have redirect. Thank you.

9 MS. SAVAS: Yes, sir.

10 A. So?

11 Q. [Mr. Lewis] In a meeting with Ms. Savas would you
12 have ever said only Mr. Boston had something in this
13 hands?

14 A. Possibly.

15 Q. Okay. And you would agree with me that those three
16 different versions are inconsistent with each other?

17 There can't be nothing in their hands, both of them had
18 stuff in their hands but I don't know what it is, and he
19 [indicates] had something in this hands only? Those are
20 not consistent with one another are they?

21 A. No, those are not consistent with one another.

22 Q. Thank you. I want to talk to you about your initial
23 approach to the residence. What you testified to was
24 that you sat by your car for about 15 minutes thinking
25 about it, right?

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1 A. Well, we were talking so.

2 Q. So the gentlemen, these two guys that you have
3 identified had already gone into the house and had been
4 inside for 15 minutes or so.

5 A. Approximately.

6 Q. Did you hear any screams?

7 A. No, sir.

8 Q. Did you see them carrying any firearms or any
9 contraband as they approached the residence?

10 A. Not that I observed, no.

11 Q. Okay. So at the time you approached to conduct the
12 knock and talk you saw nothing that suggested someone was
13 committing a crime.

14 A. No, sir.

15 Q. Nothing?

16 A. No, sir.

17 MR. LEWIS: Judge, procedurally I know this is sort
18 of awkward can I publish the video at this point and ask
19 if it fairly and accurately represents what he saw, the
20 layout of the apartment?

21 THE COURT: You can.

22 MR. LEWIS: Okay.

23 THE COURT: It's not admitted ---

24 MR. LEWIS: It's not admitted for anything ---

25 THE COURT: --- if that reflects it. Again, it was

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1 not taken on the day of the...

2 MR. LEWIS: That's correct.

3 [Whereupon, the video plays]

4 Q. [Mr. Lewis] Can you see that on your screen?

5 A. Yes, sir.

6 [Whereupon, the video ends]

7 Q. Is the layout still the same as it was back when you
8 saw it?

9 A. Yes.

10 Q. Obviously, this is taken after that and a different
11 tenant and things like that.

12 A. Yes.

13 Q. But that would fairly and accurately from your
14 experience represent the layout of apartment 2?

15 A. That is apartment 2.

16 Q. I had asked it in the lawyer way but I appreciate
17 it. And that is the same distance that you would have
18 travelled into the kitchen to have seen this as
19 contraband.

20 A. Yes.

21 Q. I want to talk to you briefly -- you mentioned that
22 it was hot to the touch. Today after getting the search
23 warrant in your incident report you said it was hot to
24 the touch when you were doing the protective sweep? Do--
25 you remember what the ---

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1 A. --- I saw steam coming -- you mean from the touch or
2 from?

3 Q. Touch.

4 A. Initially when I saw it I used the back of my hand
5 to see if it was at all warm but I could see that it was
6 warm either way with the steam coming off of it.

7 Q. Okay.

8 A. So it was more of -- at that point that would be
9 more of a figure of speech. It's obviously hot to the
10 touch because of steam coming off of it.

11 Q. Okay. You also asked all three parties or at least
12 Mr. Holmes and Mr. Boston if they would claim ownership
13 of the drugs?

14 A. Yes.

15 Q. And no one claimed ownership of it?

16 A. No, sir.

17 Q. But what you testified to today is that you actively
18 saw them basically whisking it up and then ran to the
19 bathroom.

20 A. Yes, sir.

21 Q. But you asked them anyway?

22 A. Sir?

23 Q. You asked them anyway if that's what they were
24 doing.

25 A. I'm going to just as out of an interview stance if

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1 someone is going to admit to it.

2 Q. Okay.

3 A. It's kind of common practice for us.

4 Q. Today --

5 MR. LEWIS: If I already asked this Judge I
6 apologize.

7 Q. [Mr. Lewis] Today you said Mr. Holmes; you said
8 green shirt is how you described him was the one that had
9 the object in his hands, is that correct?

10 A. Like I said I don't know about an object. The body
11 was belayed as if they had something and they were
12 concealing something.

13 Q. So hypothetically speaking you would have never said
14 Boston was concealing something in his hands as they ran
15 into the bathroom? You never said that?

16 A. Oh absolutely, I had said that.

17 Q. You did not say that?

18 A. Yes, I would have.

19 Q. Sorry; yes or no you did or did not ---

20 A. --- they're concealing something in their hands. I
21 don't know what they're concealing. I'm believing that
22 they are concealing something the way his motions and his
23 body language was. That's what I saw through all my
24 training and experience.

25 Q. Was that a yes or a no?

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1 THE COURT: He answered the question very clearly.
2 They are consistent given his answer.

3 MR. LEWIS: But Mr. Boston ---

4 THE COURT: --- you can argue the other way but
5 that answer was responsive to your question in my
6 opinion. Thank you.

7 Q. [Mr. Lewis] But specific to Mr. Boston, which one of
8 these guys is Mr. Boston?

9 A. The gentleman on the left.

10 Q. Okay. So not the guy in the green shirt like you
11 said in court today?

12 A. His last name is Holmes.

13 Q. Yes, I know that. You said today in court that the
14 guy with the green shirt was the one who acted like a
15 football player and ran into the other room with the
16 stuff in his hands.

17 A. Correct. The reason I described it like was because
18 when the quarterback hands off the football he conceals
19 the football so he doesn't necessarily know if he has it
20 or if it's a fake or not. That's what I mean by that.

21 Q. Okay. So your testimony for today would be you
22 never actually saw any object in anyone's hands but if
23 you were going to speculate it's the guy in the green
24 shirt, not the guy in the black shirt?

25 A. They both belayed from me and they both did the

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1 exact same thing.

2 MR. LEWIS: One moment, Judge.

3 THE COURT: Certainly.

4 [Whereupon, Mr. Lewis and Mr. Smit confer]

5 Q. [Mr. Lewis] Real briefly, there was no forensic
6 processing of anything in this case?

7 A. You mean like DNA or fingerprints?

8 Q. Yes?

9 A. No.

10 Q. And when you touched you said you used the back of
11 your hand?

12 A. Yes, those things get hot.

13 Q. No gloves on for you?

14 A. I could have but I don't remember.

15 Q. You never describe either of these gentlemen wearing
16 gloves when you claim they're carrying this boiling pot
17 of crack?

18 A. No, sir.

19 Q. But their hands were visibly shaking?

20 A. When they came out, yes sir.

21 Q. Didn't find any gloves?

22 A. No, sir.

23 Q. Okay. Thank you.

24 THE COURT: Now Solicitor you may redirect.

25 MS. SAVAS: Thank you, Your Honor.

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REDIRECT EXAMINATION

BY MS. SAVAS:

Q. Sergeant Sherwood, just to touch to clarify one quick time when you wrote that complaint in your incident report about the landlord had made that initial about armed and dangerous suspects you weren't saying that those were these defendants are you?

A. No.

Q. Okay. That was just a reference about crime in that area?

A. Yes. And I talked to the officer that took the report I guess -- I didn't write that. I just talked to the officer that was there and he described it to me.

Q. Is it common practice when you are in a specific area like an apartment complex to sort of keep everything together for references for crime statistics or information?

A. Yes, absolutely.

Q. Sergeant Sherwood, you don't put everything you know in every single incident report do you?

A. No, ma'am. I'd write a novel if I did that.

Q. Okay.

A. It's the best recollection of that time is what I can put in it.

Q. About the search warrant Sergeant just briefly one

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1 quick line.

2 MS. SAVAS: May I approach, Your Honor?

3 THE COURT: You may.

4 Q. [Ms. Savas] Sergeant Sherwood, could you read that
5 first line under your probable cause.

6 [Whereupon, the witness is shown document]

7 A. That on March 6th, 2015 at approximately 5:25 p.m.
8 members of the North Charleston Police Department went
9 the [REDACTED] ---

10 THE COURT: --- slow down please, sir.

11 Q. [Ms. Savas] She has to take everything down that
12 you're saying.

13 A. Oh, sorry.

14 Q. I'm usually the one talking fast; so slow down.

15 A. You want me to do it again?

16 Q. Yes, please.

17 A. That on March 6, 2015 at approximately 5:25 p.m.
18 members of the North Charleston Police Department went to
19 [REDACTED] Avenue, apartment 2.

20 Q. Okay. And can you just finish in reference to what?

21 A. Apartment 2 in reference to a complaint about drug
22 deals using the apartments for drug sales --

23 Q. So apartments, correct?

24 A. Yes.

25 Q. And you meant the apartment complex?

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1 A. Yes, ma'am.

2 Q. Which were your reasons for the area patrols and the
3 crime that you say there were numerous complaints in that
4 area?

5 A. Yes, ma'am.

6 Q. Okay. Also, just one more line, in your affidavit
7 regarding the premises to be searched can you please what
8 you wrote about that location specifically?

9 A. The location has been identified as the place where
10 illegal narcotics are used, sold, or stored.

11 Q. Okay. And you're talking about that apartment
12 complex, correct?

13 A. Yes, ma'am.

14 Q. Okay. Just to clarify Sergeant just briefly about
15 Ms. Denise's capacity you're not a doctor?

16 A. No, I'm not.

17 Q. When you meant -- when Ms. Seman had asked you
18 regarding her competency you told her that you do not
19 think she had the capacity to say no to those defendants
20 about entering her apartment.

21 Do you mean that they were threatening and
22 intimidating her like to stand up to her or she doesn't
23 understand how to say yes or no?

24 A. No, she possibly is intimidated by them.

25 Q. Okay. So you believe this is a case of

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1 intimidation?

2 A. Yes.

3 Q. And at that time you believe she understood giving
4 you consent to enter?

5 A. Oh yes, absolutely.

6 Q. Sergeant Sherwood, in common practice of knock and
7 talks when you approached you don't need to know that a
8 crime is actually occurring; it's an investigative
9 technique, correct?

10 A. Yes, ma'am.

11 Q. Okay. And you felt you had enough information to
12 approach the door?

13 A. Yes, ma'am.

14 Q. Okay. Sergeant Sherwood, Mr. Lewis alluded to
15 baking flour cook ingredients. Did you see any other
16 food items in that home?

17 A. No, I don't think there was anything food wise
18 inside that home.

19 Q. There weren't bags of flour lying around?

20 A. No, there was nothing like that.

21 Q. They weren't baking a cake?

22 A. No. No cake baking.

23 Q. And why then did you think and believe that what you
24 saw in residue was cocaine residue instead of like flour?

25 A. The way the bags were torn and sitting out on the

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- 1 counter like that that is completely consistent with
2 narcotics packaging or unpackaging I mean.
- 3 Q. So in your training and experience you're saying ---
4 A. --- I've seen that several times, yes.
- 5 Q. The same type of baggies.
6 A. Yes.
- 7 Q. The top open, residue?
8 A. Yes.
- 9 Q. Okay. So that's very common to cocaine preparing to
10 make crack?
11 A. Yes, ma'am.
- 12 Q. Okay. Sergeant Sherwood, you had discussed with me
13 on direct talking about when you came in the home you
14 said in your report and today that you noticed the
15 baggies upon entering the apartment, correct?
16 A. Yes, ma'am.
- 17 Q. So you weren't standing outside the door.
18 A. No, ma'am.
- 19 Q. Those photos that Mr. Lewis showed seem to be
20 someone standing in the doorframe?
21 A. Yes, ma'am. When she opened the door and I asked if
22 I could come in and speak with her she stepped --
23 according to the picture of the door open she stepped
24 there [indicates] and so I came in of course and stepped
25 to the left slightly.

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- 1 Q. Okay. Just briefly, just real quick.
2 [Whereupon, the photograph is shown]
3 Q. So in this photo that they had shown you this
4 [indicates] seems to be the doorframe, correct?
5 A. Yes, ma'am.
6 Q. This [indicates] is the bottom of the door.
7 A. Yes, ma'am.
8 Q. So you were already in here [indicates].
9 A. Yes. That bed [indicates] wasn't there.
10 Q. Okay. But you were already in this room looking at
11 that counter [indicates].
12 A. Yes, ma'am.
13 Q. Okay. And so just to kind of get me straight where
14 you were standing when you entered the home how far is
15 that kitchen because this picture looks kind of strange.
16 A. Oh, it's really close.
17 Q. So to me ---
18 A. --- if you look at that bed there [indicates] they
19 probably can't even open that closet.
20 Q. If I'm the kitchen counter where would you want to
21 put me, here [indicates], here [indicates]?
22 A. A little bit further. Yes, right about there
23 [indicates].
24 Q. So you can see that microphone right there
25 [indicates]?

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1 A. Yes, ma'am.

2 Q. Okay. Officer Sherwood, quickly, we met probably
3 several times the past couple of years, correct?

4 A. Yes, ma'am.

5 Q. Okay. And with each conversation did I ask you
6 different questions sort of to get a picture of this ---

7 A. --- yes, yes.

8 Q. Okay. And Sergeant Sherwood, are you giving more
9 details even today on the stand with the questions from
10 both defense and the State than what was in your initial
11 incident report?

12 A. Yes, ma'am.

13 Q. Okay.

14 MS. SAVAS: Court's indulgence.

15 [Whereupon, Ms. Savas and Ms. Tran confer]

16 MS. SAVAS: Nothing further.

17 THE COURT: Recross, Ms. Seman?

18 MS. SEMAN: Very briefly, Your Honor.

19 THE COURT: Take as much time as you need.

20 MS. SEMAN: Thank you.

21

22

23

24

25

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1 RECROSS-EXAMINATION

2 BY MS. SEMAN:

3 Q. Sergeant Sherwood, when Ms. Savas was questioning
4 you, you said the incident report wouldn't contain
5 everything you know, right?

6 A. I mean not everything. Yes ma'am, I said that.

7 Q. You said it would contain your best recollection at
8 the time.

9 A. Yes, ma'am.

10 Q. But it should contain the important stuff, right?

11 A. Yes, ma'am.

12 Q. You also said that in your search warrant that the
13 reason that you put down was about the apartment complex
14 as a whole, right?

15 A. Yes, ma'am.

16 Q. Not the individual apartment.

17 A. Yes, ma'am.

18 Q. You also said that you believed that this woman had
19 no capacity to say no to the defendants, is that true?

20 A. Yes, ma'am.

21 Q. Because she was intimidated, right?

22 A. Yes, ma'am.

23 Q. But you do believe that she had the capacity to say
24 no to y'all, to the officers?

25 A. Yes, ma'am. I'm not --

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November 30, 2017.

1 THE COURT REPORTER: I'm sorry?
2 A. I wasn't intimidating her.
3 Q. [Ms. Seman] And you also said in response to Ms.
4 Savas' question that you were giving more information
5 today than you had previous, right?
6 A. Yes, ma'am.
7 Q. But you would agree with me that your memory would
8 be better immediately after this happened than it would
9 be today in court.
10 A. Yes.
11 MS. SEMAN: Court's indulgence.
12 THE COURT: Certainly.
13 [Whereupon, Ms. Seman and Ms. Norris confer]
14 MS. SEMAN: Nothing further, Your Honor.
15 THE COURT: Okay. Mr. Lewis, recross?
16 MR. LEWIS: Very briefly, Judge.
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State v Darell Boston, William Holmes
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RECROSS-EXAMINATION

BY MR. LEWIS:

Q. You mentioned today that because of Ms. Holman's presence in front of you, you had to enter the house and step to the left?

A. Yes.

Q. Okay. So using our picture that we have I'm sure it's different than how you saw it.

[Whereupon, the photograph is shown]

Q. So you would have had to step to the left meaning the objects in front of you would have moved so you wouldn't be able to see that same angle that we see right here.

A. No, actually I could see when I stepped in there. I'm moving around. You can move your head and see a lot more. We call it tactically wise cutting pie.

You can actually when you walked in you could actually see the front of the microwave where both of them were standing and I could see the stove where you can't see in the picture.

And then I'm also standing in the doorway, because I've gone back and looked at it too also, I could actually see further towards to the right of the counter just in the doorway.

Q. When we actually took a video so that walks in and

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1 you can see that on the video right there if you're
2 coming through you cannot see that because there are two
3 walls there are there not on either side of the
4 doorframe?

5 A. There are two walls there.

6 Q. Okay. And you can't see through walls?

7 A. No.

8 MR. LEWIS: Nothing further.

9 THE COURT: Well, for the purpose of my edification
10 I'm looking at the picture. There are red -- when you
11 say right or left where the red object is are you moving
12 in the direction of the red object or opposite the red
13 object.

14 THE WITNESS: From the bed.

15 THE COURT: I understand. So the bed was there?

16 THE WITNESS: The bed was not there.

17 THE COURT: That's what I'm asking.

18 THE WITNESS: There was just a couch to the left
19 over here [indicates].

20 THE COURT: You stepped what would be to my right
21 looking at that picture?

22 THE WITNESS: Yes, sir. I'm sorry; no I stepped to
23 the left.

24 THE COURT: So you stepped to the left side of that
25 picture?

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1 THE WITNESS: Yes, sir.

2 THE COURT: All right. Thank you.

3 Q. [Mr. Lewis] And so the microwave if it is in the
4 back left corner would then be obstructed by the wall?

5 THE COURT: He doesn't have to agree with that.

6 Q. [Mr. Lewis] Don't agree with it.

7 MR. LEWIS: Sorry, Judge.

8 THE COURT: I can see it myself.

9 MR. LEWIS: Sorry, Judge.

10 THE COURT: Thank you. He can say what he wants.
11 That's why I asked the question. Thank you. You may
12 come down.

13 [Whereupon, the witness is excused and exits the
14 witness stand]

15 THE COURT: Let me take a break so we can -- you
16 have what three more witnesses?

17 MS. SAVAS: Your Honor, I believe he did a thorough
18 job so probably one.

19 THE COURT: That's great. We'll be at ease for
20 about ten minutes.

21 MS. SAVAS: Thank you, Judge.

22 [Whereupon, court is in recess from 11:50 until
23 11:57]

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1 THE COURT: Are you ready to call your next
2 witness?

3 MS. SAVAS: Yes, sir. The State would call Ms.
4 Denise Holman.

5 [Whereupon, Ms. Holman comes forward]

6 [Whereupon, the witness is duly sworn by the Clerk
7 of Court]

8 CLERK OF COURT: Speak into the microphone and say
9 your full name and then spell your last name.

10 THE WITNESS: Denise Cassandra [phonetic] Holman,
11 H-O-L-M-A-N.

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State v Darell Boston, William Holmes
Denise Holman-Direct Examination by Ms. Savas
November 30, 2017

1 DENISE HOLMAN,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MS. SAVAS:
6 Q. Good morning, Ms. Denise.
7 A. Good morning.
8 Q. Ms. Denise, how old are you?
9 A. 52.
10 Q. And how far did you go in school?
11 A. I went all the way to the 12th grade and got my GED.
12 Q. You have your GED?
13 A. Uh Huh.
14 Q. Ms. Denise, we're going to talk about some things
15 that happened a few years ago. Do you remember living at
16 that apartment [REDACTED] Avenue, number 2?
17 A. Yes.
18 Q. Ms. Denise, I'm going to show you a picture. This
19 is State's exhibit number 11.
20 [Whereupon, the photograph is shown]
21 Q. Ms. Denise, is this your apartment that you used to
22 live in?
23 A. Yes, ma'am.
24 Q. Ms. Denise, you don't live there anymore, do you?
25 A. No, ma'am.

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- 1 Q. Okay. And were you living alone at that time?
- 2 A. Yes.
- 3 Q. And how long did you live in that apartment?
- 4 A. Just -- years.
- 5 Q. Okay.
- 6 THE COURT REPORTER: How many years?
- 7 A. I don't remember.
- 8 THE COURT: A few years I think she said.
- 9 Q. [Ms. Savas] Some years?
- 10 A. Yes.
- 11 Q. And how long did you used to live in North
- 12 Charleston?
- 13 A. Since I moved here. I had my kids here; about 30
- 14 something years.
- 15 Q. Okay. And how many kids do you have?
- 16 A. I have two, a boy and a girl.
- 17 Q. And are they grown children.
- 18 A. Yes, they grown.
- 19 Q. Okay. Where are you originally from?
- 20 A. New York.
- 21 Q. So Ms. Denise, I'm going to be frank. And I don't
- 22 mean to embarrass you. Back then did you used to do
- 23 drugs?
- 24 A. Yes.
- 25 Q. What kind of drugs did you used to use?

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- 1 A. I used crack cocaine.
- 2 Q. Okay. That the one you used the most?
- 3 A. Yes.
- 4 Q. Are you using today?
- 5 A. No. Now I'm clean and sober.
- 6 Q. How long have you been clean?
- 7 A. About four months now.
- 8 Q. And were you part of a program to get clean?
- 9 A. Yes, I was.
- 10 Q. And did you just have something big happen
- 11 yesterday?
- 12 A. Yes, I graduated --
- 13 Q. You graduated?
- 14 A. Yes, ma'am.
- 15 Q. I'm proud of you, Ms. Denise. So back then though
- 16 you said you used to use crack.
- 17 A. Yes.
- 18 Q. And do you remember them [indicates] coming in your
- 19 apartment to make crack?
- 20 A. Yes.
- 21 Q. And when they would come in and make the crack what
- 22 would happen? Why did you let them in?
- 23 A. I've been knowing them from a while because I used
- 24 to buy from them.
- 25 Q. You used to buy from them?

State v Darell Boston, William Holmes
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- 1 A. Yes.
- 2 Q. What would you used to buy from them?
- 3 A. Crack.
- 4 Q. Crack? So they would sell you drugs?
- 5 A. Yes.
- 6 Q. Did that happen a lot?
- 7 A. As much as I had money I guess.
- 8 Q. They were kind of your dealers?
- 9 A. If that's what you call them, yes.
- 10 Q. Okay. And when they came in to use your apartment
- 11 what did they do in there?
- 12 A. Basically I guess they would cook it up.
- 13 Q. They would cook up the crack?
- 14 A. Yes.
- 15 Q. Would they give you any after?
- 16 A. What?
- 17 Q. Would they give you any after?
- 18 A. I was hoping for it.
- 19 Q. And that's why you let them in.
- 20 A. Yes.
- 21 Q. So it was kind of an agreement y'all had that they
- 22 could come in and cook the crack and they would leave you
- 23 a piece.
- 24 A. Uh Huh.
- 25 THE COURT: Is that a yes, ma'am?

State v Darell Boston, William Holmes
Denise Holman-Direct Examination by Ms. Savas
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- 1 A. Yes, ma'am. Sorry.
- 2 Q. She is writing down everything you say so you need
3 to say yes or no; that's why he asked.
- 4 A. Okay.
- 5 Q. You're doing good. Ms. Denise, on this day did you
6 invite them over or would they kind of show up whenever?
- 7 A. It was a show up.
- 8 Q. So sort of a routine that they would show up?
- 9 A. Yes.
- 10 Q. Okay. And you let them in your door?
- 11 A. Yes.
- 12 Q. And what were you doing while they are cooking all
13 the crack?
- 14 A. I was playing on my game. I play videos on my
15 phone.
- 16 Q. Okay.
- 17 A. So I was sitting in the living room playing my
18 videos.
- 19 Q. So you were in your living room and they were in the
20 kitchen?
- 21 A. Huh?
- 22 Q. They were in the kitchen?
- 23 A. Yes, ma'am.
- 24 Q. And did they usually bring the drugs to make in
25 there or did you have it in your apartment already?

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- 1 A. No, they usually bring it.
- 2 Q. They bring it, okay. So you would let them use your
3 microwave?
- 4 A. Yes, ma'am.
- 5 Q. And you had -- I'm going to show you some pictures,
6 Ms. Denise. I'm going to show you State's exhibit 17.
7 [Whereupon, the photograph is shown]
- 8 Q. Ms. Denise, is this your kitchen back then?
- 9 A. Yes, it is.
- 10 Q. And that was your microwave?
- 11 A. Yes.
- 12 Q. And that was all that baking soda up there
13 [indicates]?
- 14 A. Yes.
- 15 Q. And that's where they were cooking it?
- 16 A. Yes, ma'am.
- 17 Q. You didn't have any food or anything up there.
- 18 A. No.
- 19 Q. You couldn't afford food?
- 20 A. No, not really.
- 21 Q. So when you were sitting on your couch playing games
22 the police came and knocked on your door. Did you let
23 them inside?
- 24 A. Yes, I did.
- 25 Q. And they asked to come inside?

State v Darell Boston, William Holmes
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- 1 A. Yes, they did.
- 2 Q. And on your own you said yes, they can come in.
- 3 A. Yes.
- 4 Q. You didn't tell them no?
- 5 A. No, I didn't.
- 6 Q. Did they threaten you?
- 7 A. No.
- 8 Q. Did they push you aside to walk in there?
- 9 A. No, they didn't do that.
- 10 Q. Did they yell at you?
- 11 A. No.
- 12 Q. And you remember they had their police uniform on?
- 13 A. Yes, ma'am.
- 14 Q. And did they say that they were the police?
- 15 A. Yes.
- 16 Q. And they asked for permission?
- 17 A. Yes, they did.
- 18 Q. And you said okay?
- 19 A. Yes, because I wasn't expecting nothing to go on.
- 20 Q. Right.
- 21 THE COURT: I'm sorry, what did you say?
- 22 A. I wasn't expecting nothing to be going on.
- 23 THE COURT: I see. Okay.
- 24 Q. [Ms. Savas] And do you remember where the police
- 25 found the drugs?

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Denise Holman-Direct Examination by Ms. Savas
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1 A. No, I was in the living room part.

2 Q. Okay. So you stayed in the living room this whole
3 time?

4 A. Yes.

5 Q. Okay.

6 MS. SAVAS: Court's indulgence.

7 THE COURT: Okay.

8 [Whereupon, Ms. Savas and Ms. Tran confer]

9 Q. [Ms. Savas] So Ms. Denise, just to clarify you
10 recall this from March 6th, 2015, the day that they came
11 in that house?

12 A. Okay.

13 Q. Okay.

14 MS. SAVAS: Nothing further from the State, Your
15 Honor.

16 THE COURT: Cross-examine, Ms. Seman?

17 MS. SEMAN: Thank you, Your Honor.

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State v Darell Boston, William Holmes
Denise Holman-Cross-Examination by Ms. Seman
November 30, 2017

1 CROSS-EXAMINATION

2 BY MS. SEMAN:

3 Q. Hi, Ms. Holman.

4 A. Hello.

5 Q. Ms. Holman, you've had some health problems since
6 this happened, haven't you?

7 A. Yes.

8 Q. You had a brain aneurysm, didn't you?

9 A. Yes, ma'am.

10 Q. And a stroke?

11 A. Yes.

12 Q. Those are pretty serious aren't they?

13 A. Yes.

14 Q. And recovery from that was a long process.

15 A. Yes, it is.

16 Q. And you were in a facility for a while, right?

17 A. Yes.

18 Q. But you're doing better now.

19 A. Much better.

20 Q. And since then though you've had some trouble
21 remembering things haven't you?

22 A. Slightly, not much.

23 Q. For example you don't remember the name of that guy
24 in the black shirt, do you?

25 A. All I know is by his street name.

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Denise Holman-Cross-Examination by Ms. Seman
November 30, 2017

- 1 Q. Okay. But you don't -- you do know his street name?
- 2 A. Yes, Bubba --
- 3 THE COURT REPORTER: --- what's his name again?
- 4 A. Bubba [phonetic].
- 5 Q. [Ms. Seman] And what about the guy in the green
- 6 shirt over there [indicates].
- 7 A. Street name.
- 8 Q. Okay. And what's that?
- 9 A. D.
- 10 Q. In fact you even had trouble remembering when
- 11 exactly this happened though haven't you?
- 12 A. The date?
- 13 Q. Sure or even just the general timeframe?
- 14 A. Yes.
- 15 Q. On March 6th, 2015 the day we're talking about today
- 16 you were at home.
- 17 A. Yes.
- 18 Q. And you knew the guy in the black shirt and the guy
- 19 in the green shirt.
- 20 A. Yes.
- 21 Q. And they came over to your house.
- 22 A. Not together.
- 23 Q. Okay. They came over separately?
- 24 A. Yes.
- 25 Q. But when they came over you didn't ask them to

State v Darell Boston, William Holmes
Denise Holman-Cross-Examination by Ms. Seman
November 30, 2017

- 1 leave?
- 2 A. No.
- 3 Q. You let them into your house.
- 4 A. Yes.
- 5 Q. They had permission from you to be there.
- 6 A. Yes.
- 7 Q. When the officers knocked on your door you opened
- 8 the door.
- 9 A. Yes.
- 10 Q. And they asked you if they could come inside.
- 11 A. Uh Huh.
- 12 Q. And they didn't tell you that you could say no,
- 13 though.
- 14 A. No.
- 15 Q. They didn't say anything about the fact that you
- 16 could say no; that you could tell them no they can't come
- 17 in.
- 18 A. I didn't say nothing like that, no.
- 19 Q. So you let them in.
- 20 A. Yes.
- 21 Q. And in your house on Clements Avenue when you walk
- 22 in the front door you're in your living room, right?
- 23 A. Yes.
- 24 Q. And the kitchen was next to the living room.
- 25 A. Yes.

State v Darell Boston, William Holmes
Denise Holman-Cross-Examination by Ms. Seman
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1 Q. It was separated by a door. There was a doorway
2 there.

3 A. Yes.

4 Q. And there was a curtain in that doorway wasn't
5 there?

6 A. Yes.

7 Q. The curtain separating the living room and the
8 kitchen.

9 A. Yes.

10 MS. SEMAN: Court's indulgence.

11 THE COURT: Certainly.

12 [Whereupon, Ms. Seman and Ms. Norris confer]

13 MS. SEMAN: Nothing further, Your Honor.

14 THE COURT: Okay. Mr. Lewis, cross-examine?

15 MR. LEWIS: Very briefly.

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State v Darell Boston, William Holmes
Denise Holman-Cross-Examination by Mr. Lewis
November 30, 2017

1 CROSS-EXAMINATION
2 BY MR. LEWIS:
3 Q. Good morning.
4 A. Good morning.
5 Q. When you let them inside did they ask if they could
6 look through your stuff?
7 A. Something like that. Well, when you say look
8 through your stuff.
9 Q. Yes. Like look around and go through your property.
10 A. They asked if they could look around, yes.
11 Q. Did they ask you if they could do that?
12 A. I think so. I don't remember.
13 Q. Did you sign anything saying they had permission to
14 search your house?
15 A. After the fact I did.
16 Q. You did? Tell me about that curtain. How did you
17 have it set up?
18 A. I had it tacked up like with a nail hanging down.
19 Q. Okay. And when you talking about the curtain --
20 [Whereupon, the photograph is shown]
21 Q. And ma'am I know this is going to look different
22 than when you saw it. Can you tell me -- this is court's
23 exhibit 2. Do you recognize that, ma'am?
24 A. Yes, sir.
25 Q. This is a pretty neat screen. Show me where that

State v Darell Boston, William Holmes
Denise Holman-Cross-Examination by Mr. Lewis
November 30, 2017

1 curtain would have been.

2 A. Right here [indicates].

3 Q. Go ahead and mark it.

4 A. Right there [indicates].

5 Q. So what would the curtain have covered?

6 A. The doorway.

7 Q. Can you see through it?

8 A. No.

9 Q. Okay.

10 MR. LEWIS: Nothing further, Your Honor.

11 THE COURT: That will be defendant's exhibit 2 for
12 purposes of this proceeding.

13 [Whereupon, defendant's exhibit number 2 is marked
14 by the court reporter]

15 [Whereupon, defendant's exhibit number 2 is entered
16 into evidence by the court]

17 MR. LEWIS: Yes, Your Honor.

18 THE COURT: Recross [sic]

19 MS. SAVAS: Thank you, Your Honor.
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State v Darell Boston, William Holmes
Denise Holman-Redirect Examination by Ms. Savas
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REDIRECT EXAMINATION

BY MS. SAVAS:

Q. Ms. Denise, just one question about that curtain.

On the day they came in do you remember if it was down or pulled aside or not there at all?

[Whereupon, the photograph is shown]

Q. Now, this picture is not from that day. So in your head do you remember exactly how that curtain was?

A. Not exactly.

Q. Okay. That's okay.

MS. SAVAS: Nothing further from the State.

THE COURT: Recross?

MS. SEMAN: None, Your Honor.

THE COURT: Recross?

MR. LEWIS: No, Your Honor.

THE COURT: Thank you. You may step down, Ms. Holman.

MS. SAVAS: Your Honor, may I ask if this witness be excused?

THE COURT: Any objection?

MS. SEMAN: No, Your Honor.

THE COURT: She's free to leave. Thank you.

[Whereupon, the witness is excused and exits the witness stand]

THE COURT: Is that the State's presentation by way

State v Darell Boston, William Holmes
Denise Holman-Redirect Examination by Ms. Savas
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1 of testimony?

2 MS. SAVAS: Your Honor, no further witnesses.

3 THE COURT: Okay. Do you wish to call any
4 witnesses in either of your cases?

5 MS. SEMAN: We do, Your Honor.

6 THE COURT: Very well. You may proceed.
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State v Darell Boston, William Holmes
Darell Boston-Direct Examination by Ms. Seman
November 30, 2017

1 MS. SEMAN: The defense calls Darell Boston.
2 [Whereupon, Mr. Boston comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Please speak into the microphone
6 and state your full name and spell your last name.

7 THE WITNESS: Darell Oneil Boston, B-O-S-T-O-N.

8

9 DARELL BOSTON,

10 Having been first duly sworn,

11 Was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. SEMAN:

14 Q. Mr. Boston, how long have you know Denise Holman?

15 A. About 15 years.

16 Q. Where did you meet here?

17 A. In the neighborhood.

18 Q. And how did you meet her?

19 A. In the neighborhood.

20 Q. Do you have a nickname for her?

21 A. D.C.

22 Q. Have you been to her home before?

23 A. Yes. Not -- that was the first time I actually went
24 to her Clements Avenue address but I've been to her other
25 houses -- other apartments like the one on Calvert

State v Darell Boston, William Holmes
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1 [phonetic]. My home boy used to live downstairs. But
2 she always got -- yes.

3 Q. About how many times do you think you've been to her
4 home before?

5 A. In the past 15 years or so maybe 10.

6 Q. And what kind of reasons would you go over to her
7 house for?

8 A. I mean people coming over. She got a lot of
9 electronics and stuff over there too like laptops and
10 stuff so I usually go over there and mess around with her
11 electronics.

12 Q. Okay. What do you mean by mess around with her
13 electronics? What kind of things would you do?

14 A. Like the last time I was there I was plugging up my
15 phone actually uploading music.

16 Q. Did you ever spend the night at her house?

17 A. No.

18 Q. When you went to her house about how long would you
19 spend there?

20 A. Long enough to do whatever I got to do. We used to
21 get high at her house. We can smoke weed over there in
22 peace.

23 Q. And you were an invited guest on March 6, 2015?

24 A. Yes. I actually called her and told her I was
25 coming.

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1 Q. And you had permission to be there.

2 A. Yes.

3 Q. And your reason for going to her house that day was
4 what?

5 A. Uploading music on my cell phone. I just got out of
6 prison and didn't know what was going on with what and I
7 wanted some music on my phone.

8 Q. And where were you in the apartment when the police
9 arrived?

10 A. Right there in the doorframe.

11 Q. And Mr. Boston I have to ask you this. Were you
12 there to manufacture crack cocaine?

13 A. No.

14 MS. SEMAN: Court's indulgence.

15 THE COURT: Okay.

16 [Whereupon, Ms. Seman and Ms. Norris confer]

17 MS. SEMAN: Nothing further, Your Honor.

18 THE COURT: Do you wish to ask any questions, Mr.
19 Lewis?

20 MR. LEWIS: No, Your Honor.

21 THE COURT: Ms. Savas?

22 MS. SAVAS: Thank you, Your Honor.
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State v Darell Boston, William Holmes
Darell Boston-Cross-Examination by Ms. Savas
November 30, 2017

CROSS-EXAMINATION

BY MS. SAVAS:

Q. Good morning, Mr. Boston.

A. Good morning.

Q. So you said that you knew Ms. Denise for about 15 years, right?

A. Yes, ma'am.

Q. And you would always go over there and y'all would go to her other homes but this was the first time at that Clements Avenue apartment?

A. Yes.

Q. So that was the first time in that apartment but you've been to her other homes?

A. Yes, Calvert [phonetic] Street. And she used to live in front of my cousin on Dorchester Road before that.

Q. Okay. And you knew she uses right?

A. Yes.

Q. And you knew like you said you can go smoke weed and do drugs and it's kind of peaceful because it's only her, right?

A. Right. Not only her; she has company and stuff over but she at her Calvert [phonetic] address she had a back room. We used to just sit in her back room and get high in peace.

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- 1 Q. Right.
- 2 A. Without being out in public.
- 3 Q. Right. Without being afraid you're going to get in
4 trouble.
- 5 A. Right, Right.
- 6 Q. Okay. And you just said you went over there this
7 time because you just got out of prison?
- 8 A. No, not just got out of prison. But I didn't know
9 anything about these phones and stuff, these smart phones
10 but they did.
- 11 Q. And you were in prison for trafficking crack,
12 weren't you?
- 13 A. Crack and cocaine.
- 14 Q. And cocaine. How many years did you serve?
- 15 A. Four.
- 16 Q. And you had ten over your head but you got out on
17 four?
- 18 A. Yes.
- 19 Q. You got a history too, right? You got a history of
20 cocaine charges?
- 21 A. No, one, two; two charges, two prior charges.
- 22 Q. So 2003, twice in 2009, and this was 2010 you were
23 serving a trafficking charges so four years. That was
24 '14 and this happened in March of '15. So just got done?
- 25 A. Correct.

State v Darell Boston, William Holmes
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- 1 Q. Okay. So you're pretty knowledgeable about crack
2 and coke; that's kind of your thing?
- 3 A. No.
- 4 Q. What's your thing?
- 5 A. What's my thing like how?
- 6 Q. Like what's the one you most frequently use? Your
7 charges are consistently cocaine and crack.
- 8 A. Which one I frequently use?
- 9 Q. Right.
- 10 A. None of those. I'm a weed smoker.
- 11 Q. Okay, you smoke weed. You just deal the cocaine and
12 crack?
- 13 A. No, used to.
- 14 Q. Used too. I mean not right now. I'm saying back
15 then you used to.
- 16 A. Yes.
- 17 Q. That's why you got those convictions.
- 18 A. Yes. That's why I pled guilty to those convictions.
- 19 Q. I understand. So in dealing that did you make it
20 yourself or did you get it from other people?
- 21 A. No.
- 22 Q. So you got it from other people and then you would
23 sell it.
- 24 A. Yes.
- 25 Q. And you would sell it to Denise.

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- 1 A. I have sold her some.
- 2 Q. Okay. And you sold her crack before or just
3 cocaine?
- 4 A. Crack.
- 5 Q. That's what she likes?
- 6 A. Well, actually I didn't even sell it to her. I gave
7 it to her.
- 8 Q. Oh, that's nice. And you would give it to her how
9 many times do you think?
- 10 A. Not very often. You can't make money if you give
11 away your product.
- 12 Q. True. Good point. So when you would give it to
13 her you would come over and use it together or you would
14 just have her come pick it up from you?
- 15 A. I don't smoke crack.
- 16 Q. So would you come to her and give it to her or would
17 she come to you?
- 18 A. If she needed something she -- we had each other's
19 phone number.
- 20 Q. Right.
- 21 A. If she needed something if I had it she could get
22 it. But I'm not even going to make excuses for being a
23 drug dealer.
- 24 Q. -- You don't have to.
- 25 A. So that was past ---

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1 Q. --- right.

2 A. This is present and we ain't even going to go
3 through it. But if you want to we could but that's all
4 irrelevant.

5 Q. Go through what?

6 A. My history.

7 Q. Well, we just talked about it a little bit.

8 A. I know. That's all irrelevant though.

9 THE COURT: Mr. Boston, you're here to testify so
10 not to have a conversation. You're here to answer
11 questions.

12 THE WITNESS: Yes, sir.

13 THE COURT: Thank you, sir.

14 Q. [Ms. Savas] So on this day on March 6th you went to
15 Ms. Denise's home, correct?

16 A. Correct.

17 Q. And you said that you called her up?

18 A. Prior to that, yes.

19 Q. Okay. And you knew that she lived at that new
20 place?

21 A. On Cody [phonetic], yes.

22 Q. So y'all got in a taxi and you came over to that
23 Clements Avenue place?

24 A. Yes.

25 Q. And when you got that taxi did you have them come

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- 1 back or how were you getting home after that? Did you
2 have your car there?
- 3 A. Call the cab back.
- 4 Q. You were going to call the cab back?
- 5 A. Yes.
- 6 Q. And how long were you about to stay over there for?
- 7 A. As long as it took me to smoke my blunt and upload
8 that music.
- 9 Q. I hear you. So not too long, just enough to get
10 that done?
- 11 A. Yes.
- 12 Q. Did you call the cab ahead of time to let them know
13 to come back or did you have his number? Do you have
14 like you favorite cabbie?
- 15 A. A local cab driver?
- 16 Q. Yes?
- 17 A. He lives in the neighborhood.
- 18 Q. Okay. And did you tell him when you got into the
19 apartment to come back to pick you up or were you going
20 to call him when you were done?
- 21 A. I was going to call him to come back and pick me up.
- 22 Q. Okay. And on this day y'all were using Ms. Denise's
23 kitchen, right?
- 24 A. No. I was using Ms. Denise's laptop.
- 25 Q. Okay. Were you ever in the kitchen?

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- 1 A. No.
- 2 Q. So you never stepped inside her kitchen the whole
3 time you were in there?
- 4 A. No. I stepped in the living room. The edge of the
5 couch is right there at the doorframe to the kitchen.
- 6 Q. Sure, okay. You remember the police coming in,
7 right?
- 8 A. I looked right at them.
- 9 Q. It's a small place and you can see them pretty
10 clear, huh? Were you sort of surprised that Ms. Denise
11 let them in?
- 12 A. No.
- 13 Q. Why weren't you surprised?
- 14 A. Because I watched her open the door.
- 15 Q. And she didn't fight them or anything?
- 16 A. No.
- 17 Q. She just straight opened the door.
- 18 A. Yes.
- 19 Q. They didn't push her down or yell at her?
- 20 A. No.
- 21 Q. None of that? So when the officers walked in were
22 you standing in the kitchen, right?
- 23 A. Sitting on the couch at the edge of the couch.
- 24 Q. On the couch, okay.
- 25 A. I stood up and my phone fell off my lap.

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1 Q. Okay.

2 MS. SAVAS: Court's indulgence.

3 THE COURT: Okay.

4 [Whereupon, Ms. Savas and Ms. Tran confer]

5 MS. SAVAS: Nothing further, Your Honor.

6 THE COURT: Okay. Redirect?

7 MS. SEMAN: Thank you, Your Honor.

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State v Darell Boston, William Holmes
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REDIRECT EXAMINATION

BY MS. SEMAN:

Q. Mr. Boston, when you were talking to the Solicitor
you were talking about a history of dealing.

A. Yes.

Q. And you were talking about when you picked up those
trafficking charges, right?

A. Yes.

Q. You're not talking about when this happened.

A. No.

Q. You're talking about those trafficking charges that
you pled guilty to.

A. Yes.

Q. Right?

A. Yes.

Q. But even when you were dealing you said you didn't
manufacture anything.

A. No.

MS. SEMAN: Court's indulgence.

THE COURT: Yes, ma'am.

[Whereupon, Ms. Seman and Ms. Norris confer]

MS. SEMAN: Nothing further, Your Honor.

THE COURT: You didn't vote in the primary I'll let
you have an opportunity to ask any questions at this
time.

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1 MR. LEWIS: I'm still good.

2 THE COURT: Any follow-up, recross?

3 MS. SAVAS: Nothing from the State, Your Honor.

4 THE COURT: Thank you. You may come down Mr.
5 Boston.

6 [Whereupon, the witness is excused and exits the
7 witness stand]

8 THE COURT: Do you have any additional witnesses,
9 Ms. Seman?

10 MS. SEMAN: Your Honor, I believe we have one
11 potential impeachment witness but we may want to call...

12 [Whereupon, Ms. Seman and Mr. Lewis confer]

13 MS. SEMAN: Is that all right with you?

14 THE COURT: Whatever y'all want is fine. Out of
15 your order is good.

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State v Darell Boston, William Holmes
William Holmes-Direct Examination by Mr. Lewis
November 30, 2017

1 MR. LEWIS: There is no jury so I think we got a
2 little wiggle room. We call William Holmes.

3 [Whereupon, Mr. Holmes comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: State your full name speaking into
7 the mic and spell your last name.

8 THE WITNESS: William Holmes, H-O-L-M-E-S.

9

10 WILLIAM HOLMES,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. LEWIS:

15 Q. All right William, keep your voice man up so she can
16 hear you and the Judge can hear you.

17 THE COURT: Pull up closer to the mic too.

18 Q. [Mr. Lewis] Sometimes when we talk on the phone I
19 have a hard time hearing you. Did you see Denise Holman
20 in court today?

21 A. Yes, sir.

22 Q. How do you know her?

23 A. From out the neighborhood.

24 Q. How long would you say you have known her?

25 A. Like 13 or 14 years. Since I was a little boy she

State v Darell Boston, William Holmes
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- 1 was in the neighborhood as long as I can remember.
- 2 Q. Is she -- what is the nature of your relationship
3 with her?
- 4 A. I'm just friends with her from out the neighborhood.
- 5 Q. Is she just a customer of yours?
- 6 A. I'm a dealer.
- 7 Q. Have you ever been to her home?
- 8 A. Yes, sir.
- 9 Q. You know why we're here. You know the case we're
10 talking about. Were you at her home that day?
- 11 A. Yes, sir.
- 12 Q. What was your purpose of being at her home that day?
- 13 A. I was chilling and cooling out with Boston. We was
14 going to get some music and get high.
- 15 Q. Okay. So for people who aren't as cool as you are
16 excluding me what does chilling out cooling mean?
- 17 A. We just hanging.
- 18 Q. Socializing?
- 19 A. Socializing.
- 20 Q. Were you there for commercial purposes?
- 21 A. No, sir. Just to get high and party.
- 22 Q. Were you there to cook up crack?
- 23 A. No, sir.
- 24 Q. You got to be honest about something though did you
25 have drugs on you?

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William Holmes-Direct Examination by Mr. Lewis
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- 1 A. Yes, sir. I had cocaine and marijuana.
- 2 Q. What was that for?
- 3 A. That's what we was getting high off.
- 4 Q. Okay. And did you posses that?
- 5 A. In my pocket, yes sir.
- 6 Q. Okay. And when the police came in and did what they
- 7 did, did they ask you if they could search you?
- 8 A. Yes, sir.
- 9 Q. And what did you say?
- 10 A. Yes, sir.
- 11 Q. And you let them know you had it on you.
- 12 A. It was in my pocket.
- 13 Q. Okay. When you were in her home did you feel safe?
- 14 A. Yes, sir.
- 15 Q. Did you think that someone was staring at you?
- 16 A. No, sir.
- 17 Q. Or listening to you?
- 18 A. No, sir.
- 19 Q. Were you there to be in a private place?
- 20 A. What do you mean?
- 21 Q. Were you out in public?
- 22 A. No.
- 23 Q. Or were you in private?
- 24 A. Private.
- 25 Q. Okay. Did you think that someone would harass you

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William Holmes-Direct Examination by Mr. Lewis
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1 while you were visiting with Denise?

2 A. No, sir.

3 Q. Did you feel comfortable there?

4 A. Yes. I knew her for a good bit of years.

5 Q. Have you ever done anything around her house or done
6 anything with her?

7 A. Probably helped her clean house after we eat --

8 Q. Did you ever see her kids?

9 A. I can't recall.

10 Q. But she did have kids that you knew about?

11 A. [Indicates]

12 THE COURT REPORTER: Is that yes?

13 Q. [Mr. Lewis] You got to answer verbally so that she
14 can write it down.

15 A. Yes, sir.

16 Q. Again, just to sum it up did you view her as a
17 friend or as a customer of yours?

18 A. Friend.

19 MR. LEWIS: Thank you, Judge.

20 THE COURT: Cross-examine, Ms. Seman?

21 MS. SEMAN: No, Your Honor.

22 THE COURT: Ms. Savas?

23 MS. SAVAS: Briefly, Your Honor.

24

25

State v Darell Boston, William Holmes
William Holmes-Cross-Examination by Ms. Savas
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CROSS-EXAMINATION

BY MS: SAVAS:

Q. Mr. Holmes?

A. Yes, ma'am.

Q. You had said that you knew Ms. Denise from the neighborhood, right?

A. Yes, ma'am.

Q. You knew her to be a user, right?

A. Yes, ma'am.

Q. And you even said just now that you were her dealer.

A. I said I'm a dealer?

Q. I must have misheard you. I thought you just told Mr. Lewis that you're her dealer.

A. I said I don't deal.

Q. Oh, you don't deal, okay. But on this day you did have cocaine in a plastic baggie in your pocket?

A. Yes, ma'am.

Q. And you had a plastic baggie of weed in your pocket?

A. Yes, ma'am.

Q. Okay. And it was one of them clear plastic baggies, right?

A. Yes, ma'am.

Q. And that's usually how you keep the cocaine in your pocket, not just loose; you've got it in a little baggie?

A. Yes, ma'am.

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- 1 Q. Okay.
- 2 A. That's how it come --
- 3 Q. I'm sorry?
- 4 A. It came in a little baggie.
- 5 Q. It came in a little baggie when you got it?
- 6 A. The same way they find it in my pocket.
- 7 Q. So you bought it with a little baggie?
- 8 A. Yes.
- 9 Q. So that's how it was dealt to you?
- 10 A. Yes, ma'am.
- 11 Q. I hear you. And you used to do drugs with Ms.
- 12 Denise at her house?
- 13 A. I just get high. I never get high with her.
- 14 Q. Okay. And you brought that cocaine over for her or
- 15 for you?
- 16 A. For me.
- 17 Q. For your own personal use?
- 18 A. Yes, ma'am.
- 19 Q. Okay. And because you use too, right?
- 20 A. Yes, ma'am.
- 21 Q. But you even got some convictions for trafficking
- 22 and some distributions in your past, right?
- 23 A. When I was -- yes, ma'am.
- 24 Q. Of crack?
- 25 A. Yes, ma'am.

State v Darell Boston, William Holmes
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- 1 Q. Okay. So you've been around it and you know it,
2 right?
- 3 A. Yes, ma'am. That was when I was younger --
- 4 Q. Okay.
- 5 THE COURT REPORTER: What was the last thing you
6 said when you were younger?
- 7 A. When I was younger 17 or 18.
- 8 Q. [Ms. Savas] And at this time you just had in -- this
9 is 2015, in 2013 you had possession charges for crack and
10 cocaine, right?
- 11 A. [Nods affirmatively]
- 12 THE COURT: Was that yes?
- 13 A. Yes ma'am; sorry.
- 14 Q. [Ms. Savas] And in the early 2000 late 90's that's
15 when you had your trafficking crack charges and your
16 distributions?
- 17 A. Yes, ma'am.
- 18 Q. And do you -- were you on the lease with Ms. Holman?
- 19 A. No, ma'am. Lease?
- 20 Q. Right. She was the renter on the apartment. You
21 didn't pay any of her bills for her?
- 22 A. No, ma'am.
- 23 Q. Did you bring over any food or anything like that?
24 Her cabinets were pretty empty.
- 25 Q. No, she asked if I could give her something to eat

State v Darell Boston, William Holmes
William Holmes-Cross-Examination by Ms. Savas
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- 1 like that but I don't bring no groceries.
- 2 Q. Okay. Y'all don't really hang out outside her
3 place?
- 4 A. If I see in the street we'll sit and talk.
- 5 Q. Because you recognize her.
- 6 A. Yes.
- 7 Q. Okay. And you consented to the officers searching
8 your person, right?
- 9 A. Yes, ma'am.
- 10 Q. And you saw Ms. Denise open the door for the
11 officer, right?
- 12 A. Yes, ma'am. I was right there.
- 13 Q. You were right there. And you were standing in the
14 kitchen, right?
- 15 A. No, ma'am. I was by -- like when you came in I was
16 as soon as they walk in I was like right here
17 [indicates]. I been the first one he grabbed.
- 18 Q. Okay. But you know that she had opened that door
19 for the officers.
- 20 A. Yes.
- 21 Q. And they asked to come in ---
- 22 A. --- you can hear when --
- 23 Q. I'm sorry?
- 24 A. I hear when they say it was North Charleston.
- 25 Q. Oh you heard ---

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1 A. --- I hear it when they knocked.
2 Q. Okay. And you've seen Sergeant Sherwood before
3 right?
4 A. Yes, ma'am.
5 Q. And y'all actually saw him last night when they did
6 a search warrant on your house.
7 A. Yes, ma'am.
8 Q. Which they found drugs there too last night, right?
9 A. Yes, ma'am.
10 Q. Some more cocaine?
11 A. They find -- I going to get high.
12 Q. Right.
13 A. It ain't been nothing major.
14 Q. And that's at your new place over on Craft
15 [phonetic] right?
16 A. Yes, ma'am.
17 Q. Where they found all those drugs over there, okay.
18 MS. SAVAS: Nothing further, Your Honor.
19 THE COURT: Okay. Redirect?
20 MR. LEWIS: I always like to find out new
21 information when we're in here.
22
23
24
25

State v Darell Boston, William Holmes
William Holmes-Redirect Examination by Mr. Lewis
November 30, 2017

1 REDIRECT EXAMINATION
2 BY MR. LEWIS:
3 Q. I assume you didn't get arrested?
4 A. No.
5 Q. All right.
6 A. No sir, I didn't.
7 MR. LEWIS: That's all.
8 THE COURT: Any questions?
9 MS. SEMAN: No, Your Honor.
10 THE COURT: Anything further?
11 MS. SAVAS: No, Your Honor.
12 THE COURT: Thank you. You may step down.
13 [Whereupon, the witness is excused and exits the
14 witness stand]
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1 THE COURT: Any additional witnesses?

2 MR. LEWIS: Judge, ultimately it will be up to you
3 about through Officer Sherwood's testimony and the issues
4 we talked about before with those emails. I think he was
5 certainly inconsistent with the accounts that were
6 provided to us and were provided to you in our motion to
7 suppress.

8 THE COURT: Well bottom line I appreciate that. I
9 don't think it's necessary for her to testify at this
10 time to any of that. As I said I don't find it
11 inconsistent with what he said. I find it to be fairly
12 consistent. The real crux of this case is really not so
13 much that part of it; it's what took place the day and
14 I'm sorry that's the essence of it. And to me the issue
15 that I want to re-read with specificity your briefs but I
16 want to hear your arguments now. But I don't think it's
17 necessary to have Ms. Savas testify.

18 MR. LEWIS: Yes, Your Honor.

19 THE COURT: It's not going to change anything
20 because I don't think there is any inconsistency there.
21 Thank you. At least that's my finding right now for
22 purposes of this proceeding. I'll be happy to hear from
23 y'all and then Ms. Savas you can respond to it.

24 MS. SAVAS: Thank you, Your Honor.
25

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1 THE COURT: Ms. Seman, you've thoroughly briefed it
2 but please feel free to state whatever you feel
3 necessary.

4 MS. SEMAN: I'll only hit the highlights, Your
5 Honor. I understand you've reviewed it. I don't want to
6 waste the court's time but I do want to go over just a
7 couple of things. Your Honor, the crux of the first
8 issue is of course whether the defendants had a
9 reasonable expectation of privacy in Ms. Holman's home.
10 That's very important.

11 THE COURT: Let me ask you something because I
12 haven't pulled all your cases. I haven't read them
13 thoroughly. You have a case that says a visitor has a
14 right to say -- they have to get the visitor's consent
15 before they can search a home?

16 MS. SEMAN: I'm sorry?

17 THE COURT: Before they can enter a home that they
18 have to get the people that everybody there has to
19 consent to it?

20 MS. SEMAN: The officer's need the consent of a
21 visitor before they can search is that what you're
22 asking?

23 THE COURT: Yes.

24 MS. SEMAN: No Your Honor, I don't.

25 THE COURT: I hadn't seen one. Okay. So the

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Closing Arguments-Remarks by Ms. Seman
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1 reasonable expectation of privacy doesn't have anything
2 to do with in this particular case I don't quarrel the
3 fact that they went there and they had a reasonable
4 expectation of privacy as well. The threshold question
5 to me here is knock and talk we all know what that means
6 and the question of whether she consented to enter the
7 house. Once you enter the house there is some testimony
8 that I'll agree is in conflict.

9 It really doesn't go so much -- I was sitting here
10 thinking oddly enough my first case that I ever had a
11 trial in trafficking because there was a motion to
12 suppress in that case too. That's when I first realized
13 holy cow; this is a very serious offense and all you've
14 got to prove is possession of the drug and the amount.

15 You don't have to prove they were making money. You
16 don't have to prove any of these things. And it was a
17 stop and the guy had it on his person, it wasn't in his
18 car. They stopped him for a violation; no other issue
19 and no other indication of anything at all. And he ran
20 and when he ran they arrested him and searched him
21 incident to the arrest. Bingo.

22 Here we've got some conduct that I want to look at
23 specifically and read the cases but was an activity
24 described not so much whether he had anything in his hand
25 or who had what because obviously if this case goes to

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1 trial is going to be a possession case; who had it,
2 constructive possession. And it also reminds me of the
3 case I tried out of Sumter with all the people that were
4 accused of Mr. Kline's [phonetic] involvement when he
5 embezzled about six million dollars from the school
6 district.

7 But one of the persons that was never charged was
8 his right-hand man. And the questions were asked to him
9 by cross-examination of a very competent lawyer you did
10 everything my client did, why weren't you charged. He
11 said I don't know. But it finally dawned on me it's like
12 when you get stopped speeding and when you say I was
13 going as fast as everybody else was going. Then the
14 officer says that's fine but I didn't stop them; I
15 stopped you. And therein lies the issue.

16 So whether or not he should have arrested her,
17 whether it was her cooking the crack that's going to be
18 obviously an issue from what I've heard right now it
19 seems. But from the standpoint of the officer being
20 present and observing what he observed it was probably
21 there. Now I have some real concern about and no
22 disrespect to the officer, about whether you can pick out
23 that that's cocaine in a cellophane bag in a kitchen. If
24 that was all I was dealing with I think I need to study
25 really hard. But I've got activity of a person he's

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1 described running into a bathroom coming out of a
2 bathroom hands shaking. Now we're getting closer to that
3 case of the guy that ran and that's my concern. So if
4 you want to focus -- I've shared with you my thoughts and
5 where I am. I haven't decided a thing but that's my --
6 and maybe I'm -- I share that also to say but Judge
7 you're missing a major point here. So please feel free
8 to continue.

9 MS. SEMAN: I understand, Your Honor. Thank you.
10 I won't argue to you the reasonable expectation of
11 privacy based on what ---

12 THE COURT: --- no, you briefed that.

13 MS. SEMAN: It's in the memo. And I would argue
14 too that Your Honor even if Your Honor did not find that
15 there was a reasonable expectation of privacy that South
16 Carolina provides more protection than the 4th Amendment.
17 And that the reason that South Carolina provides that and
18 the reason we can tell that is that in the statute
19 preventing unreasonable searches and seizures just like
20 the language for the 4th Amendment it also prevents
21 unreasonable expectations of privacy; that language is
22 added.

23 So again I would argue that even if they don't have
24 a reasonable expectation of privacy there is heightened
25 protection under the South Carolina Constitution. That

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1 brings us to the knock and talk. I'm glad Your Honor
2 brought that up. In South Carolina knock and talks
3 require reasonable suspicion. Reasonable suspicion is
4 particularized. It's individualized. It's not a general
5 reasonable suspicion. And Your Honor respectfully in
6 this case I believe if we are considering that reasonable
7 suspicion then he would have had reasonable suspicion to
8 enter every apartment in the entire complex.

9 THE COURT: I'm with you on that. I understand.
10 That's why I said the knock and talk is a threshold issue
11 to start with.

12 MS. SEMAN: Yes, Your Honor. I don't think there
13 was any reasonable suspicion here. There was no drug
14 complaint as mentioned in the incident report. And the
15 fact that he might have known our clients were involved
16 in some illegal activity before or might be even then at
17 that time is not enough to prove reasonable suspicion.
18 So Your Honor again I would say that's an improper and
19 unconstitutional knock and talk as I briefed.

20 As far as consent, Your Honor, I don't believe that
21 the scope of consent was broad enough. I don't believe
22 that the officer considered that that consent was free
23 and voluntary. And I think that's the reason he felt the
24 need to follow up with a search warrant because he had
25 gotten a search warrant before. He had asked her to sign

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1 a consent to search form before in another case and not
2 gotten a search warrant. As far as plain view I agree
3 with Your Honor. I'm not sure that he could really see
4 or immediately tell the incriminating nature of a plastic
5 bag in a kitchen. I'm not sure he could see residue from
6 where he was standing either. And maybe my eyes are just
7 worst than his; I'm not sure. Your Honor saw the
8 pictures of the layout of the apartment and where exactly
9 the bags were. And I don't believe those bags were in
10 plain view.

11 As far as the protective sweep Your Honor, typically
12 protective sweeps occur incident to an arrest. I agree
13 with Ms. Savas, they are not limited to that reason. But
14 there was no indication of any weapon being used. And in
15 fact I'm especially troubled by the fact that the knock
16 and talk without reasonable suspicion then led to an
17 intrusion into every room in the house because if that
18 were true, and I think the reason for limitation of
19 protective sweeps ---

20 THE COURT: --- let me ask you a question ---

21 MS. SEMAN: --- yes, Your Honor ---

22 THE COURT: --- about the protective search. Maybe
23 I just missed it but I didn't know that drugs were found
24 on him.

25 MS. SEMAN: After.

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1 THE COURT: After.

2 MS. SEMAN: That's my understanding at least, Your
3 Honor, that is was after all this happened.

4 THE COURT: That's fine.

5 MS. SEMAN: But again as far as the protective
6 sweep I think the reason that in general it is incident
7 to an arrest is because at that point the State has
8 already established probable cause. And at that point
9 there is already reason to believe that a criminal
10 activity has happened.

11 THE COURT: But again, I'm going to ask you this
12 because again as I understand your client's testimony
13 contradict everything the officer described. But we're
14 not talking about snapshots; we're talking about things
15 in motion.

16 He comes in and then there is activity in the
17 kitchen, which he clearly no question about opening the
18 door once he walked in the door there is no question from
19 what I have seen there is no way that those two
20 individuals if there is any activity, scurrying activity
21 back there, there is a major concern if I'm a law
22 enforcement officer what's going on back here. I've come
23 into a place and somebody is moving around I'm now
24 concerned especially in today's world. So I don't have
25 any problem with his protective sweep. Again, we go back

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1 to the threshold question to me and then there is clearly
2 evidence that somebody -- now I agree with you the
3 incident report is not consistent with what the testimony
4 was but clearly the incident report has them coming out
5 of the bathroom as I recall and then observing hands
6 shake.

7 Then we've got going into the bathroom and then
8 coming back out. So that's a matter for a jury to
9 believe if believing that the drugs were not theirs and
10 they were not even there because that's what they will
11 have to believe and that probably I don't know if that
12 will affect creditability of their position or not; that
13 will be up to a 12 person jury.

14 But clearly, clearly there is enough for my concern
15 to justify all of the things that follow once he enters
16 that house. The activity and what he is describing.
17 They denied that and that's fine. But I don't find that
18 to be -- I find that to be credible frankly and so that
19 part of it gives me enough concern that I would -- and
20 I'm one that it wasn't similar but it was a terry frisk
21 and I ruled you have to articulate it. And they said
22 basically for officer safety and I heard the testimony
23 for it. And I respect officers and God knows I wouldn't
24 trade places with them and I thank them for what they do
25 and the risks they take every day of their lives and I

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1 mean that sincerely. But I suppressed that one because I
2 didn't think it was proper. This one in that small area
3 that we're talking about? Uh Uh. And I understand there
4 was no -- your argument and I want to read specifically
5 for this about activity in that house but there is no
6 question that he's right. He better be remembering
7 everything if you're going to protect yourself when
8 you're out there. You better understand where I am.

9 And maybe that's a broad generalization of that and
10 really a labeling of an area. It is what it is. But if
11 they ignore that then they've made a mistake that could
12 be deadly; it could cost them their lives. And so I
13 don't have any problem with a heightened awareness and
14 being attuned to anything that is just -- you know if
15 it's as your clients have said they're sitting there,
16 standing there and the lady is standing there all three
17 of them then no, there is no reason for that. But I
18 think...

19 MS. SEMAN: And Your Honor will be able to read the
20 incident report and ---

21 THE COURT: --- I did ---

22 MS. SEMAN: --- and compare that with the officer's
23 testimony ---

24 THE COURT: --- I do. But the incident report the
25 difference is -- I agree with you there is some

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1 significant difference insofar as sequencing as whether
2 or not he saw hands, what he saw in the hands. He
3 clearly said he saw the hands because I think you pointed
4 that out; he saw them shaking but he doesn't describe it.
5 But again, he's talking about his recollection and that
6 will be up to the jury as to whether -- but excuse me for
7 interrupting you.

8 MS. SEMAN: Oh, no Your Honor. One other thing I
9 would like to mention is the fact that Ms. Holman
10 testified while she was here today that there was a
11 curtain inbetween ---

12 THE COURT: --- but she didn't remember if it was
13 up or down ---

14 MS. SEMAN: --- the living room and the kitchen.

15 THE COURT: And I agree with you. And I don't
16 disagree with that at all.

17 MS. SEMAN: So just responding to Your Honor about
18 the furtive movements that supposedly happened if that
19 were true those would have been hidden by the curtain.

20 THE COURT: If the curtain was down.

21 MS. SEMAN: Correct. Correct, Your Honor. At the
22 end of the day, Your Honor, I think I briefed ---

23 THE COURT: --- you have thoroughly and very
24 effectively too I might add.

25 MS. SEMAN: Thank you. Your Honor, we believe the

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1 search was an illegal search; an unconstitutional search
2 in violation of the 4th Amendment, a violation of South
3 Carolina's heightened right to privacy. For those
4 reasons we believe that all this evidence should be
5 suppressed. Thank you.

6 THE COURT: Thank you so much.

7 THE COURT: Mr. Lewis?

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1 MR. LEWIS: Thank you, Judge. I just had a phrase
2 I needed to use that is fun that you don't ever get to
3 argue to a jury but reasonable articulable suspicion is
4 more than a reason.

5 THE COURT: Oh, I agree with that.

6 MR. LEWIS: Not just a reason. So when you're
7 sitting there for 15 minutes and you don't hear anything
8 and you don't see anything and just because you're in a
9 high crime area doesn't give you carte blanche to go into
10 anyone's home.

11 THE COURT: You and I -- I don't disagree with you.
12 I don't disagree with anything you've just -- as I said
13 to me the first question is what was the right to walk up
14 and knock on the door. What was the necessity?

15 MR. LEWIS: And Counts says there is none. And I
16 appreciate the State's efforts at saying to his training
17 and experience and heightened sense of beliefs as a law
18 enforcement officer. There will be none in either brief
19 or anyone's brief or anything that has been provided to
20 the court specific complaints to that residence, specific
21 complaints regarding these parties; I'll defend them both
22 while I'm here, nothing. And because of that if this
23 happened in Kentucky where I'm from you're screwed
24 because you don't have -- there is no reasonable
25 suspicion required for a knock and talk. It is just an

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1 investigative technique. But thankfully South Carolina
2 cares about our privacy and has given us a nice case that
3 gives us extra protection. The example that I try to use
4 that frustrated me and I do have to comment on it briefly
5 in regards to the reasonable expectation of privacy if
6 Ms. Ford or Ms. Seman or anyone else comes over to my
7 house for dinner and the cops kick in my door without a
8 search warrant and arrest me they should be allowed to
9 challenge that too.

10 THE COURT: Oh, I agree.

11 MR. LEWIS: And thankfully I believe the court has
12 given us that.

13 THE COURT: We're all on the same -- I think that's
14 the real crux of this particular case as far as I'm
15 concerned.

16 MR. LEWIS: So you've got my brief. I'm not going
17 to talk about any of the other stuff. But again I beg
18 you to focus in addition especially today on 15 minutes
19 of time that was testified to, I don't know whether it's
20 true or not but that's what we were testified to, which
21 means you're sitting there and you have nothing happening
22 for 15 minutes. But let's go; let's go knock on this
23 door. That's the problem and Counts says it's not okay.
24 And for those reasons Judge I'd ask that you read that
25 part of my memo and suppress. Thank you, Judge.

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1 THE COURT: Ms. Savas?

2 MS. SAVAS: Thank you, Your Honor. May it please
3 the court?

4 THE COURT: Sure. And Your Honor I appreciate you
5 taking the time to read the briefs that were submitted so
6 as well make it efficient to the points in question here.

7 THE COURT: Thank you.

8 MS. SAVAS: The State does contend that the
9 defendants do not have standing in this case. And I will
10 say this specifically there actually is a South Carolina
11 case -- I'm sorry a Supreme Court case and that is again
12 in Minnesota v Carter. That case is actually nearly
13 identical to this case. There it was a drug transaction
14 so the court determined that to be a commercial
15 transaction. They did not have a reasonable expectation
16 of privacy of that third person. In that case the
17 officers had seen through a window the two defendants
18 bagging cocaine.

19 THE COURT: And therein lies -- that's an important
20 distinction for me because I don't have that right now.

21 MS. SAVAS: Right, well ---

22 THE COURT: --- not until the door is open.

23 MS. SAVAS: Correct, Your Honor. However the
24 standing argument can be made that there was not a
25 violation of rights because they do not have a reasonable

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1 expectation of privacy. Therefore, once the court
2 determined that there is no need to further analyze the
3 knock and talk consent and sweep and search warrant
4 because at that point in time they were not social
5 guests. The defense is setting it up to say that these
6 defendants were social guests. That's the exception.

7 The Supreme Court has determined when you are there
8 for drug purpose only you do not have a reasonable
9 expectation of privacy in the other person's home. Both
10 defendants testified on the stand that they were there to
11 use drugs. Now whether they were going to admit to the
12 statement it was going to be crack or smoke weed it was
13 there. Mr. Holmes had brought that cocaine into the home
14 and weed; he admitted he brought it in there.

15 Ms. Denise had testified that she said that they did
16 bring the cocaine. This is a common thing for them. It
17 was not contested by the defense that they commonly go
18 there to smoke weed and use drugs there. And Mr. Boston
19 even testified to being her drug dealer. Ms. Denise said
20 they got the drugs. They're from the same streets.
21 She's a user, they fed that addiction. There is no
22 relationship here outside of that. They testified when
23 I asked they didn't take her out to dinner, they didn't
24 fill her house with groceries; they weren't making dinner
25 or nothing like that, Your Honor. All they were there to

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1 do is simply make crack as the evidence and photo
2 evidence proves that in this case. Whether they are
3 going to testify on the stand as what they did or not as
4 Your Honor had mentioned is a question for the jury.
5 However, at this point in time there is no evidence to
6 the contrary that they were there; whether they were
7 playing music in the background, that's fine. Defendant
8 Boston had testified he was only there for a short enough
9 period of time to smoke some weed ---

10 THE COURT: --- smoke a blunt.

11 MS. SAVAS: Exactly, Your Honor. Which could take
12 minutes, Your Honor just as it could be to make that
13 crack. They testified they called the cabbie and they
14 would come pick them up as soon as they were done. In
15 that Supreme Court case the timeframe was an important
16 distinction like it is here. They were only there for
17 two -- they were there for two and a half hours in that
18 case. In this case these defendants were here just
19 enough to smoke that blunt or make that crack which
20 Sergeant Sherwood testified can take as long as to boil
21 water; ten minutes.

22 Your Honor, that is the distinction in this case.
23 They were not there as social guests. They are not
24 friends of hers. They were her drug dealers and she is
25 an addict; that is uncontested. They used her apartment

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1 to give her drugs; they left a piece. Sergeant Sherwood
2 said that is typical for these sorts of situations. Ms.
3 Denise said that's what they did and they said they
4 brought her drugs to that home. Because of that, Your
5 Honor and following the Supreme Court ruling although
6 there is a heightened expectation of privacy in South
7 Carolina and in the United States we have carved out
8 these exceptions.

9 The Supreme Court specifically dealt with this isn't
10 a vehicle pursuit, this is not their home. They are a
11 third party. They do not have standing to contest these
12 issues. They do not have a violation -- or an
13 expectation of privacy therefore their rights cannot be
14 claimed to have been violated. The exclusionary rule
15 does not apply, Your Honor.

16 If the court does claim or rule that they do have
17 standing; the knock and talk. Your Honor, the knock and
18 talks as you had mentioned is for officer safety. That
19 is the most important -- I'm sorry, the protective sweep.
20 The knock and talks, Your Honor ---

21 THE COURT: Knock and talk first of all means I
22 talk to you. Doesn't mean I go in the door ---

23 MS. SAVAS: --- sorry, that's in my head and I'm
24 jumping around. The knock and talk, Your Honor the South
25 Carolina Supreme Court in State v Counts actually

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1 specifically said that this is an exigent circumstance
2 and a compelling need for an official action and no time
3 to secure a warrant. The United States Supreme Court
4 ruled that they are permissible constitutionally. And in
5 the 4th Circuit case nearly every circuit as I mentioned
6 in my brief had determined that the voluntary response to
7 officer's knock and talk at the front door does not
8 generally implicate the 4th Amendment. And officers
9 generally do not need probable cause or reasonable
10 suspicion to just plain knock on the door. However,
11 South Carolina did go ahead and say they need that
12 articulable reasonable suspicion.

13 THE COURT: Precisely.

14 MS. SAVAS: Yes, sir in State v Counts. And they
15 did say though that this is permissible to not hamper law
16 enforcement investigative techniques. Sergeant Sherwood
17 testified this is an investigative technique commonly
18 used at the North Charleston Police Department and in law
19 enforcement. You do not need to prove you are committing
20 a crime. They don't need to be running free with guns
21 and weapons flying through the air; just that there is
22 reasonable suspicion. In this case, Your Honor ---

23 THE COURT: --- you're not Roy Moore are you?

24 MS. SAVAS: No. ---

25 THE COURT: Okay, thank you.

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1 MS. SAVAS: In this case, Your Honor, Sergeant
2 Sherwood testified there were several drug complaints in
3 this apartment complex. He recognized these defendants
4 as known drug dealers, which they even testified they had
5 prior drug convictions for trafficking, distribution,
6 possession charges. They are on proactive patrol in this
7 area. They were on area checks. Sergeant Sherwood knew
8 Ms. Denise was a user, had incidents with her
9 specifically near that apartment and he ---

10 THE COURT: --- let me just ask you something.

11 MS. SAVAS: Yes, sir.

12 THE COURT: This is curious to me. Is it your
13 opinion then because I know I see them and I know the
14 Sergeant sees them too, repeat offenders, does that mean
15 every time he sees someone that he has arrested he can
16 just walk up to that person's door and say I'd like to
17 come talk to you?

18 MS. SAVAS: Absolutely not, Your Honor.

19 THE COURT: Okay. I wanted to sure that we were --
20 I wanted to read that case otherwise.

21 MS. SAVAS: Yes, sir. But in the South Carolina
22 case they do specify that there were anonymous tips that
23 were there. There was other points that had led them to
24 that house. They knew that drugs were previously used at
25 that location. They had cars, things of that nature.

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1 Here there was sufficient ---

2 THE COURT: --- that location meaning the apartment
3 complex?

4 MS. SAVAS: Yes, sir.

5 THE COURT: Okay.

6 MS. SAVAS: That was in the State v Counts case.

7 In this case they had known that there were drug issues.

8 There were numerous complaints. So Your Honor as written

9 in the brief and supplemented with his testimony today

10 the State respectfully requests that you deny this motion

11 as there was a lawful knock and talk performed as the

12 investigative strategy technique at that point in time.

13 That then leads to the consent, Your Honor. I don't ---

14 THE COURT: --- I really -- y'all have briefed
15 that. You really don't need -- you can rely on your
16 briefs there because I think I've articulated if I can
17 get in my mind a legitimate constitutional right to get
18 inside that door then I'm comfortable with everything
19 else. No problem.

20 MS. SAVAS: Yes, sir. And one more issue on that
21 knock and talk Mr. Lewis had brought up that I cited
22 Sergeant Sherwood said his training and experience in
23 State v Burden a Supreme Court -- or appellate case here,
24 South Carolina appellate case they had said that an
25 officer may rely on a law enforcement experience to infer

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1 a specific reasonable suspicion, which is what Sergeant
2 Sherwood had done here. As for the protective sweep,
3 Your Honor, I think Your Honor had made clear points on
4 that. That was for the safety and the State as well
5 finds that to be lawful. I do not believe the search
6 warrant is currently at issue. The State contends that
7 is lawful as well.

8 THE COURT: Okay. Thank you. Response Ms. Seman
9 first and then Mr. Lewis.

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1 MS. SEMAN: Yes, Your Honor, very briefly. As far
2 -- of course I disagree with some of the
3 characterizations of some of the facts ---

4 THE COURT: --- of course ---

5 MS. SEMAN: --- but you yourself have heard them so
6 I'm sure you understand that. As far as the Minnesota v
7 Carter case I also disagree that it is about whether
8 there is illegal activity happening. In Minnesota v
9 Carter the court focused on the fact that it was a
10 commercial enterprise. Of course that's what we are
11 denying here and that's kind of the crux of the case.
12 And whether something illegal was going on of course
13 would be a question for the jury and not for Your Honor
14 at this point in time.

15 However, that is the focus of that case and I don't
16 think they are able to prove that at this point. I think
17 you heard testimony from Mr. Boston and Mr. Holmes that
18 there was social purpose. So again we would agree -- we
19 believe that they have standing.

20 However, one thing that the Solicitor mentioned does
21 I think bear on that. And she said in general knock and
22 talks don't implicate the 4th Amendment, which means I'm
23 not even sure they need to have standing to challenge the
24 constitutionality of the knock and talk according to the
25 4th Amendment. I haven't been able to find a good answer

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1 to that question, Your Honor.

2 THE COURT: My thought was and this isn't an
3 indication of what my ruling is going to be, but maybe
4 just so that we can get the law clarified in South
5 Carolina this is the perfect case for it. There is no
6 question about that. So we'll frame it up there and see.

7 MS. SEMAN: Yes, Your Honor.

8 THE COURT: And I think reading the recent case you
9 can't do it until a conviction but the State might can do
10 it if I keep it out right now. They can take it up given
11 what the most recent decision I read from last week or
12 week before.

13 MS. SEMAN: Your Honor, as far as the Counts case
14 the case that we're citing for the proposition that
15 reasonable suspicion is necessary for a knock and talk in
16 that case officers performed a knock and talk. And the
17 reason that they did that is because there had been a
18 specific complaint at that residence. And so that's
19 where the distinction is because in Counts the court did
20 find that it was a proper knock and talk. They said it
21 needed to have reasonable suspicion but they said it met
22 that standard.

23 THE COURT: It did.

24 MS. SEMAN: So what we're saying here is there is
25 nothing pointing to that apartment or to these people

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1 that says that there is criminal activity happening. So
2 we don't believe that they had the right to approach that
3 door in the first place. Thank you.

4 THE COURT: Thank you. Mr. Lewis?

5 MR. LEWIS: I join.

6 THE COURT: And the other part of that there is no
7 question the cases have said the officers may rely on
8 with his or her experience and I understand that. And I
9 certainly have an abundance of testimony concerning that
10 officer's experience and what he has been doing with it.
11 So I'm going to look at it, read it, and if need be I'll
12 assemble the group to reargue but if not I'll just let
13 you know. Thank you. I appreciate it so much.

14 MS. SEMAN: Thank you, Your Honor.

15 MR. LEWIS: Thank you, Your Honor.

16 MS. SAVAS: Thank you, Your Honor.

17 THE COURT: Thank you for your patience with me
18 too. And Sergeant, I meant every word I said to you.
19 Thank you so much.

20 SERGEANT SHERWOOD: I appreciate it, Your Honor.

21 *****END OF TRANSCRIPT OF RECORD*****
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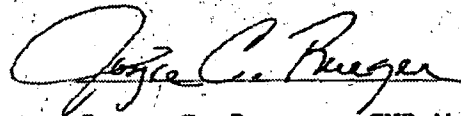
State v Darell Boston, William Holmes
Certificate of the Court Reporter
November 30, 2017

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Charleston County,
South Carolina on the 30th day of November, 2017.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

December 8, 2017



Joyce C. Rueger, CVR-M

Court Reporter

Certified Transcript provided to Benjamin Lewis, Esq.

Certification reference # 120817 (Original)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

DARELL ONEIL BOSTON,

DEFENDANT.

IN THE COURT OF GENERAL SESSIONS

NINTH JUDICIAL CIRCUIT

STATE'S RESPONSE TO DEFENDANT'S
MOTION FOR NEW TRIAL

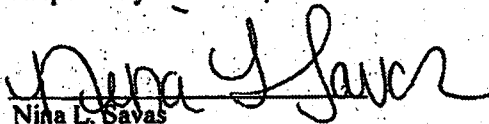
Arrest Warrant #2015A1010201119

Indictment #2015-GS-10-06087

The Defendant in the above captioned case has filed a post-trial Motion for New Trial. Pursuant to Rule 29, SCCrimP., the State respectfully requests this Court summarily deny the Defendant's motion without a hearing. The matters addressed in the defendant's motion are of issue for appeal and the Defendant cannot raise any new matters as objections that were not made on the record at the time of trial. There is sufficient evidence to support the jury's guilty verdict of Manufacturing Cocaine Base. If this Court does not summarily deny the Defendant's Motion, the State respectfully requests a hearing.

March 15, 2018
Charleston, SC

Respectfully submitted,



Nina L. Savas
Assistant Solicitor
Ninth Judicial Circuit

FILED
2018 MAR 15 AM 8:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of 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."

Respectfully Submitted,

By: R M L

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Robert M. Dudek
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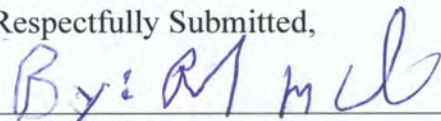
ATTORNEYS FOR APPELLANT

This 29th day of March, 2019.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of 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."

Respectfully Submitted,


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ATTORNEYS FOR APPELLANT

This 29th day of March, 2019.

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