

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Abbeville County

Honorable Thomas A. Russo, Circuit Court Judge

ALFONZO ALEXANDER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000013

APPENDIX

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1 TRIAL DAY 1 - 05/28/13

2 (Whereupon, the proceedings were commenced at 3:18 p.m.)

3 THE COURT: Okay. If we -- if we may, let's go ahead
4 and go back on the record. I know that the state was
5 intending to call a case today and is going to be calling a
6 case today in which apparently the defendant is not
7 present. Ms. Bolen has told me that she has had, up until
8 today, good contact with him. And, of course, the record
9 should reflect that the courtroom is empty at this point in
10 time, so no jurors are present.

11 Mr. Brown, what case is it that the state intends to
12 call, please?

13 MR. BROWN: Your Honor, the state intends to call the
14 *State v. Alfonso Alexander* on Indictment 13-GS-01-14, which
15 is possession of cocaine base, which is crack cocaine with
16 intent to distribute within proximity; and also, Indictment
17 13-GS-01-15, the *State v. Alfonso Alexander*, possession of
18 crack cocaine with intent to distribute.

19 THE COURT: All right. The -- the record should
20 reflect that Ms. Bolen and Ms. Nelson are present. At this
21 point, Ms. Bolen, your motion?

22 MS. BOLEN: Thank you, Your Honor. We're -- we're
23 asking for a continuance. And in the alternative, we're
24 asking that a bench warrant be issued, rather than Alfonso

1 being tried in his absence.

2 Your Honor, a couple issued I'd like to bring to the
3 -- the Court attention: As Your Honor as already mentioned
4 but something I'd like to just flesh out a little bit more,
5 I've had very, very contact with Alfonzo, my client. I've
6 met with him three or four times in the office. He has
7 come to every office appointment that he's had. He has
8 actually called me on a number of occasions to discuss the
9 case. Anytime I've called him, he's gotten back to me.

10 I met with him last on Thursday of last week, Your
11 Honor. And he -- there was no indication that -- that he
12 wouldn't be here. And so my concern is that something has
13 -- has actually happened to him. This is very out of
14 character for him to not show. He's shown to every other
15 thing that he was supposed to be present for.

16 Also, Your Honor, just -- just to give some reasons
17 why this case should be continued rather than tried in his
18 absence: It is a -- a very serious offense. Mr. Alexander
19 is facing a -- a good bit of -- of prison time if he's
20 convicted. In terms of judicial economy, Your Honor, all
21 along and without -- I don't want to say anything that's
22 going to jeopardize my client's case.

23 But this -- this case has never been one that we
24 expected to go to trial on. This was one where I believed
25 my client was -- was going to plead to it. And I believe

1 that if a bench warrant was issued and he was picked up,
2 the case would be resolved in a matter of 20 minutes in a
3 plea in front of Your Honor, rather than taking up several
4 days of court time, state resources, transporting witnesses
5 from Columbia, taking SLED agents away from their work in
6 Columbia for a day. It is a case that would be resolved
7 very, very expeditiously.

8 And so -- and -- and also the area of judicial
9 economy, Your Honor, I've -- I've been put on notice by Mr.
10 Brown for I want to say maybe 25 roll-call clients. Those
11 are all cases that now will not be worked out this week
12 that are not ones that -- that could be resolved while I'm
13 -- if -- if I end up in trial on this. So I think a bench
14 warrant -- a -- a continuance to allow me to find my client
15 or a bench warrant where law enforcement could -- could
16 maybe find him would both serve the interests of judicial
17 economy quite a bit more.

18 Your Honor, some other issues that -- that I'd like to
19 raise in -- in your consideration, I mentioned this very
20 briefly in chambers. But my client was represented by you.
21 I believe he got -- I -- I think I told you in chambers it
22 was a one-year sentence. I think it was actually a five-
23 year sentence.

24 I think that that is a potential conflict that, if my
25 client were not able to address that, could be something

1 that would be a conflict down the road, either on appeal or
2 in -- in PCR that -- that -- that's not something I feel
3 like I can waive for him.

4 Also, we've got some discovery issues. I received the
5 SLED report in this case on Thursday of last week. And
6 again, that was a day before trial that I've just gotten
7 discovery.

8 Additionally, there's reference in the incident report
9 to a 911 call. And I've never received either the call or
10 the CAD report. And in looking at this case again --
11 looking at it now as a trial, rather than what I thought
12 might be a plea, that 911 call is going to be extremely
13 important to the defense of this case.

14 And then, finally, Your Honor, I'd -- I don't believe
15 that there's -- that there's been adequate notice to my
16 client of the trial date. And I may have to have Ms.
17 Nelson step in here and -- and -- and help me out with this
18 one, as she's pulled all the case law.

19 MS. NELSON: Do you want me to just go?

20 MS. BOLEN: Yeah. If I -- if I can just let Ms.
21 Nelson argue that point, Your Honor.

22 THE COURT: Sure. Before -- let me ask you: I mean,
23 the -- you said you met with him on Thursday. I assume you
24 told him he was on the trial docket and that he was up for
25 trial. And, of course, what's been related to me in

1 chambers was that there's a 12-year, negotiated plea on the
2 -- plea offer on the table that you were of -- of the
3 impression that your client was going to take when he
4 showed up here today. Is that correct?

5 MS. BOLEN: That is correct.

6 THE COURT: Okay. So he -- he -- you did tell him on
7 Thursday that he needed to be here today?

8 MS. BOLEN: Yes, sir.

9 THE COURT: Okay. Let me hear from you ---

10 MS. NELSON: I'd ---

11 THE COURT: --- Ms. Nelson.

12 MS. NELSON: Our argument would be, Your Honor, that
13 the notice has to actually come from the state. I think --
14 I think *State v. Green* stands for the proposition that
15 constructive notice by the attorney is not enough. That's
16 at 269 S.C. 657, 239 S.E.2d 485.

17 In addition to the notice of the right to be present
18 that is required, there's also a notice that is necessary
19 to the defendant that the trial would proceed if he was not
20 here. There's also nothing in the record to indicate that
21 he got either of those notices.

22 I think essentially with his conversations with Ms.
23 Bolen, what -- what she put him on notice of was to be here
24 this morning to plead.

25 THE COURT: May I see his bond paperwork, madam clerk?

1 I'm sorry to interrupt. Go ahead, please.

2 MS. NELSON: No. That's okay, Your Honor.

3 But those -- those are the two things that have to be
4 found. We don't believe that either of those are -- are
5 present in this case. He hasn't gotten any -- any
6 generalized or actual notice from the Court or the state
7 that the trial was set for two o'clock this afternoon or
8 that if he did not appear, the trial would proceed in his
9 absence. So based on the record, there is not any
10 voluntary waiver of his right to be present at the trial.

11 THE COURT: All right. Well, I'm looking at his bond
12 paperwork that apparently he signed on August the 12th of
13 last year. And under the heading "Acknowledgment by
14 Defendant," the second sentence reads: "I understand that
15 I've been informed that I have a right and obligation --
16 and obligation to be present at trial. And should I fail
17 to attend the Court, the trial will proceed in my absence."

18 The next paragraph explains that if he fails to
19 appear, a warrant will be issued for his arrest.

20 MS. NELSON: And that's -- that's exactly ---

21 MS. BOLEN: That's what ---

22 MS. NELSON: --- what we're ---

23 MS. BOLEN: --- were asking ---

24 MS. NELSON: --- asking ---

25 MS. BOLEN: --- for.

1 MS. NELSON: --- you to do.

2 MS. BOLEN: And ---

3 THE COURT: I -- I understand. Solicitor, I'd asked
4 earlier that you run a quick NCIC check to see if perhaps
5 he -- there's any record of him being picked up by law
6 enforcement in some other ---

7 MR. BROWN: Yes, Your ---

8 THE COURT: --- area.

9 MR. BROWN: --- Honor. I called the Abbeville
10 Sheriff's Department. Natalie Talbert, who is now working
11 with Abbeville Sheriff's Department, did run an NCI -- IC
12 check and came back with nothing showing he's been arrested
13 or picked up, in this state or anywhere else, for that
14 matter.

15 And, Judge, just to respond to notice of Mr. Alfonzo
16 Alexander being on the trial docket, Ms. Bolen and I have
17 talked numerous times about this case; that this was my
18 main one for trial. I did post a -- I had Jeff Miller,
19 who's in our office, post a trial docket, dated for the
20 Abbeville trial docket of May 27th through 31st, 2013.
21 This was posted on our Internet for the world to see on May
22 7th, 2013, at 3:59 in the afternoon. And the first one up
23 alphabetically would be Alfonzo Alexander, represented by
24 Ms. Bolen.

25 Also, I have -- is an e-mail sent from last Thursday

1 from Ms. Bolen. It says -- addressing all three of us that
2 are here, the solicitors who handle cases here in Abbeville
3 for a tentative schedule. And Tuesday morning Alfonzo
4 Alexander -- it says "Trial Docket Plea." So that just
5 shows you she knows and he knew that he was on the trial
6 docket. Plus, with the bond paperwork, he has signed his
7 name, saying that once the case is called for trial, that
8 he would -- he knows his rights: that it can be done in
9 his absence.

10 And so it's the state's position to move forward with
11 this case as called.

12 MS. BOLEN: Your Honor, if I can ---

13 THE COURT: Certainly.

14 MS. BOLEN: --- respond to that. And I know Ms.
15 Nelson was not in the meetings with -- that I had with
16 Alfonzo. I am certainly not arguing that I was not on
17 notice that this was a -- a trial-docket case. But based
18 on my conversations with him, it was -- again, not to
19 betray anything about the conversations I had with him, but
20 it was so clearly not going to be a trial; that with my
21 conversations with him, it was "You'll be there Tuesday to
22 plead."

23 I cannot now say for sure that I said -- I -- I know I
24 did not say, "You can be tried in your absence." That was
25 just not a conversation we had because I was not expecting

1 -- I was certainly not expecting to be here in this
2 position today. But I -- I -- I had told him to be up here
3 this morning to plead. Did -- I did not anticipate that we
4 would be in a trial position. So I -- I don't think there
5 has been notice.

6 And -- and just finally, Your Honor -- and I -- I
7 believe I know Your Honor's position concerning the
8 *Langford* case but -- which deemed that the solicitor
9 controlled the docket was unconstitutional. This is a --
10 compared to other cases on the docket, this is a brand-new
11 case. This case happened in August of 2012, so not even a
12 year old.

13 It's, again, a case where I'm being given discovery
14 the day before trial. I haven't even gotten complete
15 discovery. It's a fairly strong case for the state.
16 There's plenty -- probably hundreds of other cases that are
17 older than this that are not being put on the trial docket,
18 not being tried. And I think the -- the solicitor's office
19 is pushing this because it's strong, instead of dealing
20 with the backlog they have.

21 I think a bench warrant would be more than adequate to
22 address this problem. Again, I think if a bench warrant
23 were issued and my client were picked up, we would resolve
24 this case very, very quickly with minimal use of judicial
25 resources and other state resources for the trial. We're

1 asking, you know, first, for a continuance; in the
2 alternative, a bench warrant be issued for him.

3 THE COURT: Okay. I -- I appreciate your position.
4 As far as *Langford* is concerned, I've said it before; I'll
5 say it again. The Chief Justice has advised the trial
6 bench that until such time as a mechanism is in place for
7 the Court to overtake or to assume responsibility for the
8 calling of cases, until such time as that happens, we're
9 going to operate under the system -- or we're to operate
10 under the system that we've previously operated under.

11 To the extent that *Langford* would apply and the
12 solicitor does not have authority to call the case for
13 trial, I'm calling the case for trial at this point, then.
14 So I'm the one, if *Langford* does apply, that's saying that
15 we're going to try the case.

16 I'm a little concerned about the fact that the -- you
17 know, the -- the defendant cannot have it both ways. They
18 cannot say, "Well, the state has to give me notice." I
19 mean, if we're going to -- if we're going to actually -- if
20 that's an arguable point, we're going to have to go back to
21 the point where everybody shows up on the first day of
22 court so that the solicitor can formally notify them of the
23 next term -- or their possibility of trial for the next
24 term.

25 So I -- I -- I don't see where the solicitor has an

1 obligation to notify the client. And more importantly,
2 notification -- such notification would have to go through
3 the lawyer in order to for the solicitor to be ethically
4 communicating with the client. And by giving the trial
5 docket and informing the defense bar and the defense
6 attorney that the matter was set for trial, that notice is
7 clearly imputed to the client.

8 And in this case, it was clearly communicated to the
9 client because the client met with you on Thursday of last
10 week. So he's gotten notice, both from the magistrate at
11 the time he signed his bond paperwork and, of course, from
12 Ms. Bolen and the conversation that y'all had.

13 It's been represented also to me by Ms. Bolen that
14 he's been very good at attending; he's been very good about
15 showing up. He's been very good about calling in and
16 discussing the case. He's clearly not in custody somewhere
17 else. Otherwise, we'd have some record of that on NCIC of
18 him being picked up.

19 It stands to reason that the only reason he's not here
20 is he doesn't want to take that 12-year offer and he's
21 decided that he's not going to show up. And I cannot
22 reward somebody -- or I -- I -- I think this entire system
23 would grind to a halt if the way to automatically get a
24 continuance would be to simply not show up, bench warrant
25 or not. Then, of course, if a bench warrant's issued,

1 somebody very often will come in whining and complaining
2 about the reason that they weren't here and ask for it to
3 be lifted.

4 So I'm inclined to go forward with at least the
5 selection of the jury and the call of the case. We're at
6 3:30 right now. So I think the appropriate thing to do
7 would be to certainly just pick a jury. We won't swear the
8 jury, but we'll reconvene tomorrow morning. And that'll
9 give you some additional time to locate your client.

10 I know, Ms. Bolen, that you've been in communication
11 with your client's mother. And hopefully, she will be able
12 to -- to find him or to locate him. And that way he can be
13 here tomorrow to either tender his plea or to proceed to
14 trial.

15 But I can't reward somebody for failing to show up. I
16 do find, under Rule 16, that he did receive notice of these
17 proceedings. He did receive notice that the case was on
18 the trial docket. He received that notice both from his
19 attorney and from the magistrate. He has failed to show.

20 There's no explanation that has been given. There's
21 no indication from anyone who is close to him, such as his
22 mother, that he's been involved in some wreck, that he's in
23 a hospital, that he's been arrested. It's clear to me that
24 it appears his failing to show, at least at this juncture,
25 is quite intention and knowing.

1 So I'll authorize the clerk to issue a bench warrant
2 for his arrest. We won't call the name at this point in
3 time on the courthouse steps because obviously there are a
4 number of jurors present right now. But, madam clerk, if
5 you'll go ahead and prepare a bench warrant, we'll take care
6 of the name being called at a later point after we pick the
7 jury and everybody's left. So I'm denying the defense
8 motion for a continuance ---

9 MS. BOLEN: Thank you, Your Honor.

10 THE COURT: --- for the reasons I've stated.

11 MR. BROWN: Judge, at this time I also have one other
12 housekeeping matter.

13 THE COURT: Sure.

14 MR. BROWN: On the indictment with 13-GS-01-15,
15 possession of cocaine with intent to distribute, it's got
16 his name spelled correctly as Alfonzo with a "z." On the
17 proximity charge, there's a scrivener's error that has his
18 name with an "s." And I would move to amend that to
19 reflect his accurate spelling of his name with a "z."

20 THE COURT: All right. I assume you object?

21 MS. BOLEN: Yes.

22 THE COURT: All right.

23 MS. BOLEN: We would just -- yep.

24 THE COURT: It would appear to be a scrivener's error.
25 Solicitor, you may correct the indictment, please.

1 MR. BROWN: Thank you, Your Honor.

2 THE COURT: All right. Anything else before we bring
3 the jury in and begin with selection from the state?

4 MS. BOLEN: Just -- just as a matter of kind of
5 knowing what the next couple days are going to look like,
6 we will have a suppression motion. And I will need the 911
7 tape for that ---

8 THE COURT: Sure.

9 MS. BOLEN: --- and the CAD report ---

10 THE COURT: What's ---

11 MS. BOLEN: --- and the ---

12 THE COURT: --- the nature ---

13 MS. BOLEN: --- person who ---

14 THE COURT: --- of the ---

15 MS. BOLEN: --- called in.

16 THE COURT: --- suppression motion, just so I can be
17 checking into that?

18 MS. BOLEN: It's going to be based on reasonable
19 suspicion.

20 THE COURT: Okay. All right. How long do you think
21 that motion would take? Do you have any idea at this
22 point?

23 MS. BOLEN: I have a few cases in mind that will help.
24 But I'll need to do some more research. I -- I --
25 honestly, I'm not prepared to argue it today. And I would

1 ask ---

2 THE COURT: All right.

3 MS. BOLEN: --- that we be able to argue it tomorrow.

4 THE COURT: Certainly. All right. Solicitor, can you
5 hand up a witness list?

6 MR. BROWN: Yes, Your Honor.

7 THE COURT: Thanks.

8 (Whereupon, Ms. Bolen and Ms. Nelson conferred.)

9 MS. BOLEN: I'll hand one up in a minute, Your Honor.

10 THE COURT: Sure.

11 (Off the record briefly.)

12 THE COURT: All right. Ms. Bolen or Nelson, let me
13 suggest that y'all maybe put in a call to his bondsman.
14 The clerk -- it -- the bondsman is Matt Horne. And the
15 clerk tells me that usually, they're pretty much on top of
16 their stuff and on top of their people.

17 MS. BOLEN: Okay.

18 THE COURT: Let them know where we stand and see what
19 ---

20 MS. NELSON: Matt Horne?

21 THE COURT: Matt Horne. The paperwork here has the
22 contact telephone number. Looks like that he's out of Rock
23 Hill.

24 MS. NELSON: Okay.

25 THE COURT: But it's 378-0633. I don't know if that's

1 803 or 864 but ---

2 MS. NELSON: Matt Horne?

3 MS. BOLEN: It'd be ---

4 THE COURT: Right.

5 MS. BOLEN: --- 864, I think.

6 THE COURT: It has a Rock Hill address.

7 MS. NELSON: Is it all right for me to step out and do
8 that?

9 THE COURT: Please.

10 MS. NELSON: All right.

11 THE COURT: Yes.

12 (Off the record from 3:38 p.m. until 3:42 p.m.)

13 (Whereupon, the jury panel entered the courtroom at
14 3:42 p.m.)

15 THE COURT: All right. Solicitor, if you'll call your
16 first case, please, sir.

17 MR. BROWN: Thank you, Your Honor. This is the *State*
18 *v. Alfonzo Alexander*, Indictment 13-GS-01-15 and -GS-01-14;
19 charged with possession of crack cocaine with intent to
20 distribute and possession of cocaine with intent to
21 distribute within proximity.

22 THE COURT: All right. If you'll pass up the
23 indictments, please.

24 MR. BROWN: (Complied.)

25 THE COURT: Thank you. All right. Ladies and

1 gentlemen of the jury panel, we're about to begin the trial
2 of the *State of South Carolina v. Alfonzo Alexander*. And
3 I've been presented with two indictments: Indictments 12-
4 GS-01-14 and -15 (verbatim). These indictments charge Mr.
5 Alexander with the offense of possession of crack cocaine
6 with intent to distribute and possession of crack cocaine
7 within -- with intent to distribute within proximity to a
8 school, park, or playground.

9 Now, ladies and gentlemen, the defendant in this case
10 has pled not guilty to these indictments. And that plea
11 places the burden of proof on the State of South Carolina
12 to prove his guilt beyond a reasonable doubt.

13 I'll instruct you that the fact that an individual is
14 indicted or charged with an offense, of -- of course, is
15 not proof of any of the allegations contained in an
16 indictment. And indictment is nothing more than a piece of
17 paper. It's the method by which a case is brought into
18 this Court for trial. And, of course, it's not proof in
19 any way, shape, or form of any of the allegations contained
20 in the indictment.

21 Now, the defendant in this case is being represented
22 by Ms. Patricia Bolen and Ms. Nelson. Ms. Bolen, if you
23 would care to stand, introduce yourself to your -- to the
24 jury panel, as well as Ms. Nelson or have her do it, go
25 ahead.

1 MS. BOLEN: I'm Patricia Bolen. I'm an assistant
2 public defender with the Eight Circuit Public Defender's
3 Office. And I represent Alfonzo Alexander.

4 MS. NELSON: And I'm Janna Nelson; work with Patricia
5 at the -- at the public defender's office.

6 THE COURT: All right. Thank you very much. The
7 State of South Carolina is going to be represented by Yates
8 Brown. Mr. Brown, if you would care to stand and introduce
9 yourself ---

10 MR. BROWN: Thank you, Your Honor.

11 THE COURT: --- to the members of the jury panel, sir.

12 MR. BROWN: Name is Yates Brown. I'm assistant
13 solicitor with the Eighth Circuit Solicitor's Office.
14 Somebody who's going to be trying this case with me is Cam
15 Morrow. He is also an assistant solicitor in our office,
16 but he's not here today. Thank you.

17 THE COURT: All right. Now, ladies and gentlemen, I
18 now have certain questions that I need to ask you in order
19 to determine whether you should serve on this particular
20 case. First of all, is there any member of the jury panel
21 who is related by blood or marriage or has any close
22 business, personal, or social relationships with any of the
23 attorneys involved in this particular case? If so, please
24 stand.

25 (Whereupon, no potential jurors stood.)

1 THE COURT: All right. No one's standing.

2 Is there any member of the jury panel who is related
3 by blood or marriage or has any close business, social, or
4 personal relationships with the defendant in this case,
5 Alfonzo Alexander? If so, please stand.

6 (Whereupon, no potential jurors stood.)

7 THE COURT: All right. No one is standing.

8 Solicitor, what does the state allege -- what -- when
9 did the -- when did this offense allegedly occur, and where
10 did it allegedly occur, sir?

11 MR. BROWN: Your Honor, this offense took place on or
12 about August 12th, 2012, at 401 Oakland Apartments, which
13 is in the city limits of Abbeville -- Abbeville, South
14 Carolina.

15 THE COURT: All right. Now, ladies and gentlemen, the
16 state alleges that this incident took place on or about
17 August the 12th of last year at 401 Oakland Apartments. Do
18 you have an approximate time, Solicitor?

19 MR. BROWN: Approximate time was 1:33.

20 THE COURT: In the morning or in the afternoon?

21 MR. BROWN: I believe it was in the morning.

22 THE COURT: All right. The state alleges again that
23 this took place at 1:33 -- approximately at 1:33 a.m. on
24 August the 12th of last year at 401 Oakland Apartments. Is
25 there any member of the jury panel who -- who has any prior

1 knowledge of or has formed or expressed any opinion
2 concerning this matter or thinks that they know anything
3 about this particular incident? If so, please stand.

4 (Whereupon, no potential jurors stood.)

5 THE COURT: All right. No one's standing.

6 In a moment, ladies and gentlemen, I'm going to read
7 you a -- a list of the possible witnesses in this case.
8 When I'm done reading this list, I'm going to ask you
9 whether or not you're related by blood or marriage to any
10 of those witnesses or whether or not you have any close
11 business, personal, or social relationships with any of
12 those witnesses. So I need you to listen carefully,
13 please, while I read these names to you.

14 Possible witnesses in this case -- and there's no
15 guarantee that all these folks are going to be called. But
16 possible witnesses in this case include the following: Lt.
17 John Gray with the Abbeville Police Department; corporal --
18 is that corporal or captain ---

19 MR. BROWN: Corporal.

20 THE COURT: --- Larry Ashley? Corporal? All right.
21 Cpl. Larry Ashley with the Abbeville Police Department;
22 Ella Brown; Angie Burns with the Abbeville Police
23 Department; Willie C. Smith, III with SLED; Chris Wilkie
24 with the Abbeville Police Department; Courtney Smith with
25 SLED; Pat Crooks, C-r-o-o-k-s, with SLED; Lori Walters;

1 Quintavious Paul; Archie McDaniel; Travis Lee; Shannon
2 Chappell, Lyesha Mulligan -- that's spelled L-y-e-s-h-a --
3 Mulligan; and Titus Hadden, H-a-d-d-e-n.

4 Is there any member of the jury panel who is related
5 by blood or marriage or has any close business, personal,
6 or social relationships with any of those possible
7 witnesses? If so, please stand.

8 (Whereupon, two potential jurors stood.)

9 THE COURT: All right. Ladies?

10 POTENTIAL JUROR: I'm married to Lt. John Gray.

11 THE COURT: Okay. You must be Mrs. Gray, then?

12 POTENTIAL JUROR: I am. Mrs. Gray, I'm going to let
13 you sit this one out, then. That's Juror Number ---

14 POTENTIAL JUROR: --- 64.

15 THE COURT: --- 63? Okay.

16 POTENTIAL JUROR: 64.

17 CLERK OF COURT: 64.

18 THE COURT: All right. 64?

19 MS. NELSON: Sheila instead of Rose, Judge.

20 THE COURT: Sorry?

21 MS. NELSON: That's Sheila instead of Rose.

22 POTENTIAL JUROR: I'm No. 64.

23 THE COURT: 64. Okay. Yes. Juror No. 64 won't serve
24 on this case.

25 And yes, ma'am. What's your name, please?

1 POTENTIAL JUROR: Angie Bourne. Cpl. Larry Ashley is
2 my son.

3 THE COURT: Okay. Bourne -- that's Juror Number ---

4 POTENTIAL JUROR: --- 10.

5 THE COURT: --- 10, Angela Bourne? All right. Ms.
6 Bourne, you won't serve on this case, then, okay?

7 POTENTIAL JUROR: Yes, sir.

8 THE COURT: Anyone else related by blood or marriage
9 to any of those witnesses? Does anyone need me to read
10 that list again? If so, just raise your hand and I'll read
11 it again.

12 (Whereupon, no potential jurors stood.)

13 THE COURT: All right. No one is standing.

14 Is there any member of the jury panel who is a member
15 of organizations such as MADD, Mothers Against Drunk
16 Driving; SADD, Students Against Drunk Driving; or any
17 organization that take a particular position on victims'
18 rights? If so, please stand.

19 (Whereupon, no potential jurors stood.)

20 THE COURT: No one is standing.

21 Is there any member of the jury panel who has any
22 deeply held moral or religious beliefs that would prevent
23 you from serving on a jury or otherwise sitting in judgment
24 of another citizen or another person? If so, please stand.

25 (Whereupon, a potential juror stood.)

1 THE COURT: And yes, sir. What's your name, please?

2 POTENTIAL JUROR: Gingerich -- Mike Gingerich.

3 THE COURT: Mr. Gingerich, Juror Number ---

4 CLERK OF COURT: --- 60.

5 THE COURT: --- 60?

6 POTENTIAL JUROR: --- 60.

7 THE COURT: And yes, sir. How -- how does that
8 question apply to you, sir?

9 POTENTIAL JUROR: I would feel that the Lord would not
10 have me stand in judgment to -- to a person like that.

11 THE COURT: Very good, Mr. Gingerich. I appreciate
12 that fact. You -- you won't serve on this jury. But I'll
13 ask that you just stay with us, okay ---

14 POTENTIAL JUROR: Sure.

15 THE COURT: --- Mr. Gingerich? Thank you very much
16 for that information, sir.

17 Anyone else?

18 (Whereupon, no potential jurors stood.)

19 THE COURT: No one is standing. Is there any member
20 of the jury panel who knows of any reason whatsoever why
21 you cannot give both the State of South Carolina and the
22 defendant in this case, Mr. Alexander, a fair and impartial
23 trial? If so, please stand.

24 (Whereupon, no potential jurors stood.)

25 THE COURT: All right. No one is standing.

1 Additional voir dire from the state?

2 MR. BROWN: Not from the state, Your Honor.

3 THE COURT: From the defense?

4 (Whereupon, Ms. Bolen and Ms. Nelson conferred.)

5 MS. BOLEN: Nothing from the defense ---

6 THE COURT: All right.

7 MS. BOLEN: --- Your Honor.

8 THE COURT: Very good. All right. Ladies and
9 gentlemen, we're going to select a jury on this case. And
10 the way that we do this is a little bit different from how
11 we select juries in civil cases. In civil cases usually
12 the lawyers will strike from a -- a -- a strike list. We
13 do it a little bit different in criminal court.

14 If your name is called, what I need you to do is bring
15 with you any purse, pocketbook, books, anything that you
16 brought to court today, and just come down. And between
17 these two microphones, if you would, just stand and turn
18 around, facing towards the back of the courtroom where the
19 clock is. At that point in time, the state will have an
20 opportunity to either allow you to serve or to seat you.
21 And the defense will have an opportunity to either seat you
22 or to excuse you.

23 I'll tell you what I tell every jury: If you're
24 excused for some particular reason by -- by one of the
25 lawyers, don't take it personally. Everybody has a

1 different way of picking a jury, okay? And so don't feel
2 offended if, for some reason, one of the lawyers asks you
3 not to serve on this particular jury. All right?

4 Strikes will be five and five, madam clerk.

5 CLERK OF COURT: You want an alternate?

6 THE COURT: Give me one alternate. We'll -- we'll
7 have five and five. We'll be one and two on the alternates
8 -- or on the ---

9 MS. BOLEN: Do we ---

10 THE COURT: --- alternate.

11 MS. BOLEN: Do we not get ten?

12 THE COURT: You -- I don't believe so. No.

13 (Off the record briefly.)

14 THE COURT: Okay. According to Section 14-7-1110, it
15 looks like five and five.

16 MS. BOLEN: Okay.

17 MS. NELSON: Thanks for looking that up ---

18 MS. BOLEN: Yes ---

19 MS. NELSON: --- for us ---

20 MS. BOLEN: --- Your Honor.

21 THE COURT: Certainly.

22 MS. NELSON: --- Your Honor.

23 MS. BOLEN: Thank you.

24 (Off the record briefly.)

25 THE COURT: This will take just a moment, ladies and

1 gentlemen. What we're doing -- and I'll tell you
2 something: You -- you know, you hear a lot of bad press
3 sometimes about the State of South Carolina. One of the
4 things that we do right, though, is what our Chief Justice
5 has done in -- in terms of courtroom technology. She's
6 done an excellent job of integrating technology into the
7 courtroom.

8 And now, instead of selecting with those old tumblers,
9 instead of randomly selecting a jury that way, we now use a
10 random program on the computer. That's just one way that
11 we've integrated technology into the courtrooms of this
12 state. She has done such a good job -- our Chief Justice
13 has done such a good job with that that places like
14 Massachusetts and New York, where I was actually this
15 weekend on a school trip with my -- with my son, they're
16 now coming down to good old South Carolina -- little old
17 South Carolina that has no money and no wealth compared to
18 those big states up north. And they're trying to find out
19 how we do it down here and how we have integrated
20 technology into our courtroom.

21 And we've done such a good job of it that our Chief
22 Justice actually won an award a couple of years back for
23 her efforts at putting technology in the courtroom. So
24 don't believe everything bad that you hear about our state.
25 We do a lot of stuff right.

1 All right. We ready to proceed?

2 CLERK OF COURT: Uh-huh.

3 THE COURT: Madam clerk, if you'll give me a jury,
4 please.

5 CLERK OF COURT: 116, Christopher Pitts.

6 (Whereupon, the potential juror came forward.)

7 CLERK OF COURT: What say you for the state?

8 MR. BROWN: Please present Mr. Pitts.

9 CLERK OF COURT: What say you for the defense?

10 MS. BOLEN: Please seat Mr. Pitts.

11 CLERK OF COURT: You may take a seat in the jury box.

12 POTENTIAL JUROR: (Complied.)

13 CLERK OF COURT: 54, Ricky Ferguson.

14 (Whereupon, the potential juror came forward.)

15 CLERK OF COURT: What say you for the state?

16 MR. BROWN: Please seat Mr. Ferguson.

17 CLERK OF COURT: What say you for the defense?

18 MS. BOLEN: Please seat Mr. Ferguson.

19 CLERK OF COURT: You may take a seat in the jury box.

20 POTENTIAL JUROR: (Complied.)

21 CLERK OF COURT: 118, Hakeem Power.

22 (Whereupon, the potential juror came forward.)

23 CLERK OF COURT: What say you for the state?

24 MR. BROWN: Please excuse Mr. Power from the trial of
25 this case.

1 CLERK OF COURT: You may take a seat back in the
2 audience.

3 POTENTIAL JUROR: (Complied.)

4 CLERK OF COURT: 59, April Giles-Knox.

5 (Whereupon, the potential juror came forward.)

6 MR. BROWN: Can you tell me that number one more time,
7 madam clerk?

8 CLERK OF COURT: 59.

9 MR. BROWN: Please present Ms. Giles-Knox.

10 CLERK OF COURT: What say you for the defense?

11 MS. BOLEN: Please seat Ms. Giles-Knox.

12 CLERK OF COURT: You may take a seat in the jury box.

13 POTENTIAL JUROR: (Complied.)

14 CLERK OF COURT: 151, George Whiten.

15 (Whereupon, the potential juror came forward.)

16 CLERK OF COURT: What say you for the state?

17 MR. BROWN: Please present Mr. Whiten.

18 CLERK OF COURT: What say you for the defense?

19 MS. BOLEN: Please seat Mr. Whiten.

20 CLERK OF COURT: You may take a seat in the jury box.

21 POTENTIAL JUROR: (Complied.)

22 CLERK OF COURT: 62, William Grant.

23 (Whereupon, the potential juror came forward.)

24 CLERK OF COURT: What say you for the state?

25 MR. BROWN: Please present Mr. Grant.

1 CLERK OF COURT: What say you for the defense?

2 MS. BOLEN: Please seat Mr. Grant.

3 CLERK OF COURT: You may take a seat in the jury box.

4 POTENTIAL JUROR: My lucky day.

5 CLERK OF COURT: 129, Sara Sherard.

6 (Whereupon, the potential juror came forward.)

7 CLERK OF COURT: What say you for the state?

8 MR. BROWN: Please present Ms. Sherard.

9 CLERK OF COURT: What say you for the defense?

10 MS. BOLEN: Please excuse Ms. Sherard.

11 CLERK OF COURT: You may take a seat back in the
12 audience.

13 POTENTIAL JUROR: (Complied.)

14 CLERK OF COURT: 24, Bobby Burdette.

15 (Whereupon, the potential juror came forward.)

16 CLERK OF COURT: What say you for the

17 MR. BROWN: Please present Mr. Burdette.

18 CLERK OF COURT: What say you for the defense?

19 MS. BOLEN: Please excuse Mr. Burdette.

20 CLERK OF COURT: You may take a seat back in the
21 audience.

22 POTENTIAL JUROR: (Complied.)

23 CLERK OF COURT: 157, Jordan Wilson.

24 (Whereupon, the potential juror came forward.)

25 CLERK OF COURT: What say you for the state?

1 MR. BROWN: Please present Mr. Wilson.

2 CLERK OF COURT: What say you for the defense?

3 MS. BOLEN: Please seat Mr. Wilson.

4 CLERK OF COURT: You may take a seat in the jury box.

5 POTENTIAL JUROR: (Complied.)

6 CLERK OF COURT: 22, Tom Bryant.

7 (Whereupon, the potential juror came forward.)

8 CLERK OF COURT: What say you for the state?

9 MR. BROWN: Please excuse Mr. Bryant from the trial of
10 this case.

11 POTENTIAL JUROR: (Returned to audience.)

12 THE COURT: 25, Benjamin Burnett.

13 (Whereupon, the potential juror came forward.)

14 CLERK OF COURT: What say you for the state?

15 MR. BROWN: Please present Mr. Burnett.

16 CLERK OF COURT: What say you for the defense?

17 MS. BOLEN: Please seat Mr. Burnett.

18 CLERK OF COURT: You may take a seat in the jury box.

19 POTENTIAL JUROR: (Complied.)

20 CLERK OF COURT: 96, Emma McClinton.

21 (Whereupon, the potential juror came forward.)

22 CLERK OF COURT: What say you for the state?

23 MR. BROWN: Please present Mr. -- Mrs. McClinton.

24 CLERK OF COURT: What say you for the defense?

25 MS. BOLEN: And please seat Ms. McClinton.

1 CLERK OF COURT: You may take a seat in the jury box.

2 POTENTIAL JUROR: (Complied.)

3 CLERK OF COURT: 41, James Davis.

4 (Whereupon, the potential juror came forward.)

5 CLERK OF COURT: What say you for the state?

6 MR. BROWN: Please present Mr. Davis.

7 CLERK OF COURT: What say you for the defense?

8 MS. BOLEN: Please seat Mr. Davis.

9 CLERK OF COURT: You may take a seat in the jury box.

10 POTENTIAL JUROR: (Complied.)

11 CLERK OF COURT: 97, Marvin McCouller.

12 (Whereupon, the potential juror came forward.)

13 CLERK OF COURT: What say you for the state?

14 MR. BROWN: Please excuse Mr. McCouller from the trial
15 of this case.

16 CLERK OF COURT: You may take a seat back in the
17 audience.

18 POTENTIAL JUROR: (Complied.)

19 CLERK OF COURT: 33, Derrick Clary.

20 (Whereupon, the potential juror came forward.)

21 CLERK OF COURT: What say you for the state?

22 MR. BROWN: Please present Mr. Clary.

23 CLERK OF COURT: What say you for the defense?

24 MS. BOLEN: Please seat Mr. Clary.

25 CLERK OF COURT: You may take a seat in the jury box.

1 POTENTIAL JUROR: (Complied.)

2 CLERK OF COURT: 83, Philip Keown.

3 (Whereupon, the potential juror came forward.)

4 CLERK OF COURT: What say you for the state?

5 MR. BROWN: Please excuse Mr. Keown from the trial of
6 this case.

7 CLERK OF COURT: You may take a seat back in the
8 audience.

9 POTENTIAL JUROR: (Complied.)

10 CLERK OF COURT: 61, Charles Goodwin, Jr.

11 (Whereupon, the potential juror came forward.)

12 CLERK OF COURT: What say you for the state?

13 MR. BROWN: Please present Mr. Goodwin.

14 CLERK OF COURT: What say you for the defense?

15 MS. BOLEN: Please seat Mr. Goodwin.

16 CLERK OF COURT: You may take a seat in the jury box.

17 POTENTIAL JUROR: (Complied.)

18 CLERK OF COURT: 156, Stacy Williams.

19 (Whereupon, the potential juror came forward.)

20 CLERK OF COURT: What say you for the state?

21 MR. BROWN: Please excuse Ms. Williams from the trial
22 of this case.

23 CLERK OF COURT: You may take a seat back the
24 audience.

25 POTENTIAL JUROR: (Complied.)

1 CLERK OF COURT: 50, Charles Stephen Ellis.

2 (Whereupon, the potential juror came forward.)

3 CLERK OF COURT: What say you for the state?

4 MR. BROWN: Please present Mr. Ellis.

5 CLERK OF COURT: What say you for the defense?

6 MS. BOLEN: Please seat Mr. Ellis.

7 CLERK OF COURT: You may take a seat in the jury box.

8 POTENTIAL JUROR: (Complied.)

9 THE COURT: All right. We'll pick one alternate.

10 Strikes are one and two.

11 CLERK OF COURT: 35, George Collins.

12 MS. NELSON: I'm sorry, Your Honor. Did you say two?

13 THE COURT: You get two.

14 (Whereupon, the potential juror came forward.)

15 CLERK OF COURT: What say you for the state?

16 MR. BROWN: Please present Mr. Collins.

17 CLERK OF COURT: What say you for the defense?

18 MS. BOLEN: Please excuse Mr. Collins.

19 CLERK OF COURT: You may take a seat back in the
20 audience.

21 POTENTIAL JUROR: (Complied.)

22 CLERK OF COURT: 124, Bosie Roundtree.

23 (Whereupon, the potential juror came forward.)

24 CLERK OF COURT: What say you for the state?

25 MR. BROWN: Please present Mr. Roundtree.

1 CLERK OF COURT: What say you for the defense?

2 MS. BOLEN: Please seat Mr. Roundtree.

3 CLERK OF COURT: You may take a seat in the jury box.

4 POTENTIAL JUROR: (Complied.)

5 THE COURT: All right. Counsel, is there any
6 exceptions or issues concerning the selection or
7 composition of the jury from the state?

8 MR. BROWN: No, Your Honor.

9 THE COURT: From the defense?

10 MS. NELSON: Yes, Your Honor.

11 THE COURT: All right. Ladies and gentlemen of the
12 jury panel who was selected, I'm going to need y'all to go
13 back into the jury room. The bailiff will show you where
14 that is. Just stay back there for a few moments.

15 Obviously, don't talk about the case yet. This should
16 be amazingly simple because you know nothing about the
17 case. But those of you who were selected, if you would,
18 adjourn to the back for just a few moments while I take up
19 a matter of law with the attorneys, okay? All 13 of y'all
20 follow him.

21 (Whereupon, the selected jury panel exited the
22 courtroom at 4:07 p.m.)

23 THE COURT: All right. While they're leaving, the
24 other members of the jury venire, what I need y'all to do
25 is if you could, just step outside. I'm probably going to

1 need about ten minutes. If -- feel free to walk around the
2 square, but stay real close to the courthouse because I'm
3 going to need you back here probably by about 4:15, okay?

4 And don't forget to come back. But I need you back at
5 4:15. But I need everyone who was summoned for jury duty
6 to leave the courtroom at this point in time, please.
7 Thank you.

8 (Whereupon, the remaining jury panel exited the
9 courtroom at 4:08 p.m.)

10 THE COURT: All right. Ms. Bolen, Ms. Nelson, I
11 assume that y'all are making a *Batson* challenge; is that
12 correct?

13 MS. BOLEN: Yes, sir, Your Honor. We are making a
14 *Batson* challenge on the basis of race. Out of the five
15 strikes that Mr. Brown used, four of them were used for
16 African-Americans. He struck three black males, one black
17 female, one white male.

18 Your Honor, of the -- the first 11 people drawn, the
19 only two he struck were black males. And then he -- he
20 struck another black male and used his last strike on a
21 black female.

22 Our client is -- well, doesn't really matter what --
23 what race our client is. He is a black male. But we -- we
24 believe that this violates *Batson*; that it was -- his
25 strikes were racially -- racially oriented; and that,

1 therefore, there should -- we should pick a -- a new jury.

2 THE COURT: All right. Mr. Brown, I'm happy to hear
3 from you concerning your reasons for striking. From my
4 notes, it would be Juror -- Juror 118, Mr. Power; Juror 22,
5 Mr. Bryant; Jury -- Juror 97, Mr. -- or -- yes -- Mr.
6 McCouller; and Juror No. 156, Ms. Williams.

7 MR. BROWN: Yes, Your Honor. With regard to Juror No.
8 118, I have written on my notes that there is a pending
9 armed robbery or there's no disposition on the criminal
10 history that I saw. Therefore, I didn't want to have
11 somebody with a pending charge like that on a serious case
12 -- or on this case that I'm calling, just basically because
13 he's got a -- it shows he's got a pending armed robbery.

14 With Juror No. 22, Tom Bryant, I have written in my
15 notes the he does have a simple A&B in '93, '95, 2000,
16 2002, with a CDV also in 2003. So he does have a criminal
17 history, although they are misdemeanors. That is the
18 reason for my strike is that he does have a criminal
19 history. Therefore, he may or may not know some of these
20 officers involved. And I don't know what his feelings are
21 towards law enforcement or to this courthouse or this
22 courtroom.

23 THE COURT: All right. You said it -- a '95 assault
24 and battery, a CDV in '03, and what else, sir?

25 MR. BROWN: It was a simple assault and battery in

1 1993, '95, 2000, 2002, and a CDV in '03.

2 THE COURT: Okay. I stand corrected, then. Four --
3 four simple assaults and battery and one CDV.

4 MR. BROWN: That's correct, Your Honor.

5 THE COURT: All right. And concerning Juror No. 97?

6 MR. BROWN: Juror No. 97, Mr. Marvin McCouller, I do
7 have in my notes that he has a resisting arrest in 1994 and
8 an assault and battery in 1994. Again, I use my discretion
9 using my strikes since he does have convictions in those
10 years. I know they are kind of removed from this time
11 period. But again, the resisting arrest kind of caught my
12 eye. It is at one point that he was charged and pled
13 guilty or convicted of that. And just that criminal
14 history was what I based my strike on.

15 With regard to No. 83, he was a white male, Mr. ---

16 THE COURT: --- Keown.

17 MR. BROWN: --- Keown, he did say that his profession
18 was a minister. As we heard from one of the other jurors
19 who stood up and said that he could not -- he didn't feel
20 like he could pass judgment on another person, that -- that
21 just causes for concern for me, is I don't know the
22 minister's feelings on that. And so that's the reason why
23 I struck Mr. Keown on that. It's just kind of a -- a
24 practice that I go forward on.

25 And on 156, Ms. Stacy Williams, while we were doing

1 qualifications, I did have the -- or a criminal history was
2 printed out by the sheriff's department. It did say that
3 Stacy Williams did have a number of prostitution
4 convictions; also, controlled substances. I know at that
5 point she didn't say that. But I'd -- I -- I don't want to
6 -- I didn't know if calling her up front and questioning
7 her about that would make her have I'll -- you know, ill
8 feelings towards me and the state, knowing that I had the
9 criminal histories. And I just didn't know if there would
10 be any kind of prejudice there, and that's why I struck
11 that last juror.

12 And I know she said has never been to New York. But I
13 -- those are my reasons why I struck that juror. I didn't
14 know what her feelings towards me were after we called her
15 up ---

16 THE COURT: Okay.

17 MR. BROWN: --- to the front.

18 THE COURT: Juror No. 156, though, from her rap sheet,
19 it indicated a -- the reason she was initially called up
20 during qualification, I think it had indicated what offense
21 out of New York?

22 MR. BROWN: That was a possession of a controlled
23 substance. There's also a number of prostitution
24 convictions. Although they are misdemeanors, that is the
25 reason why that was not brought to the attention. But she

1 does have -- or the records suggest that a Stacy Williams
2 did have a number of convictions for prostitution in New
3 York.

4 THE COURT: I thought your SLED report, though,
5 indicated a male. And -- that was a different one? My
6 clerk tells me that was a different one.

7 (Off the record briefly.)

8 THE COURT: My clerk tells me there was a female named
9 Willie that maybe we ---

10 CLERK OF COURT: Uh-huh.

11 THE COURT: And the clerk of court is nodding in
12 agreement that there was a female named Willie who also
13 had, apparently, a New York conviction for something. And
14 the person here was a female. But upon your check of the
15 records, that person was ---

16 MR. BROWN: That is correct.

17 THE COURT: --- person with the rap sheet had a -- was
18 a male.

19 MS. BOLEN: That -- that was a Willie someone. I
20 forget her last name. But her first name is Willie. This
21 is the one who said she'd never been to New York before.

22 THE COURT: Okay. This is the one who said she's
23 never been ---

24 MS. BOLEN: Yeah.

25 THE COURT: --- to New York before?

1 MS. BOLEN: Yes.

2 THE COURT: 156?

3 MS. BOLEN: Yes.

4 MS. NELSON: Shirley Williams.

5 MS. BOLEN: Stacy, I think.

6 MS. NELSON: Stacy.

7 MS. BOLEN: Yeah.

8 MR. BROWN: Stacy ---

9 MS. NELSON: I'm ---

10 MR. BROWN: --- Williams.

11 MS. NELSON: --- sorry.

12 MR. BROWN: Judge, I -- again, I didn't know --

13 calling her up there and I don't know what her take is, if

14 us confronting her on this -- on these -- on this record.

15 But I do have 156 and it's a Stacy Williams. And these are

16 -- again, are a lot of -- in the '80s. There were several

17 prostitution charges and also possession of a controlled

18 substance. And that's the reason why I struck her.

19 THE COURT: All right. But did we call Stacy Williams

20 up here during initial qualifications?

21 MR. BROWN: We did.

22 MS. BOLEN: Yes, sir.

23 MR. BROWN: She said she'd ---

24 MS. BOLEN: We did.

25 MR. BROWN: --- never been to New York. But that was

1 about as far as we went on questioning. And ---

2 MS. BOLEN: She -- she was the one who joked and said
3 she would take it to get out of jury duty. When you said,
4 "Oh, we're showing some convictions," she said, "Oh, I'll
5 take them."

6 THE COURT: Okay.

7 MS. BOLEN: That was her.

8 THE COURT: Is that ---

9 MR. BROWN: And also ---

10 THE COURT: --- the large -- the larger, African-
11 American ---

12 MS. BOLEN: No.

13 THE COURT: --- lady with the -- wearing the brown?

14 MS. BOLEN: No. She's ---

15 MR. BROWN: No, Your Honor.

16 THE COURT: That was ---

17 MS. BOLEN: --- kind of the ---

18 THE COURT: --- the other ---

19 MS. NELSON: Thinner ---

20 MS. BOLEN: --- thinner ---

21 THE COURT: --- one.

22 MS. NELSON: --- and brown.

23 MS. BOLEN: Thinner and wearing brown.

24 THE COURT: Okay.

25 MR. BROWN: As she -- as she walked by, when we

1 struck, she said, "Thank you." So ---

2 THE COURT: Okay.

3 MR. BROWN: --- that was one of the . . .

4 THE COURT: But she did have convictions out of ---

5 MS. BOLEN: I don't ---

6 MR. BROWN: Out of ---

7 MS. BOLEN: --- believe she did.

8 THE COURT: May I see -- let me see the rap sheet,
9 then.

10 MR. BROWN: (Complied.)

11 THE COURT: All right. And as a housekeeping matter,
12 Solicitor, did you strike -- or did you seat any of the
13 other jurors -- are all the other jurors -- rather, all the
14 other jurors, at least until you ran out of strikes, did
15 any of those have prior criminal histories?

16 MR. BROWN: There was one that had a DUI.

17 THE COURT: Which one was that?

18 MR. BROWN: That was -- let's see here -- No. 50,
19 Charles Ellis: DUI in 2006.

20 THE COURT: And that juror apparently was sat -- Juror
21 No. 50, Mr. Ellis, was sat after you had exhausted all your
22 strikes; is that correct?

23 MR. BROWN: That's correct.

24 THE COURT: All right. You bear the burden of proof
25 on this. What's your position, Ms. Bolen?

1 MS. BOLEN: Your Honor, in addition to No. 50, which I
2 understand was after he ran out of strikes, No. 151
3 indicated to us that has a juvenile record. He is a white
4 male. Mr. Brown sat -- sat him anyways. Not -- he -- Mr.
5 Brown indicated that -- well, he acknowledged that a lot of
6 the records of the people he was excusing were remote, very
7 old records. This is certainly also an old record. So
8 again, he was seated, even though he indicated he had a
9 prior record. But he was a white male.

10 Also, Your Honor, regarding Ms. Williams, the -- you
11 know, the nature of his discussion about confronting her,
12 my recollection of that conversation is that was between
13 Your Honor and Ms. Williams. You -- you said that part of
14 the sheriff's job is to run criminal histories on people.
15 You did not implicate the solicitor's office in any way.
16 So I don't think that there is really any -- any evidence
17 that Mr. Brown confronted her.

18 And Mr. Whiten was similarly, quote, confronted. And
19 again, he was seated. So we would argue that Mr. Brown's
20 strikes were racially motivated in that he did let on
21 someone with a -- with a criminal history who was not black
22 and excluded other people on the basis of race.

23 MR. BROWN: Judge, may I approach? I do have Juror
24 No. 151's criminal history; it's printed out.

25 THE COURT: Sure, please.

1 (Whereupon, Mr. Brown, Ms. Bolen, and Ms. Nelson
2 conferred.)

3 MR. BROWN: Judge, on that record I do not see any
4 convictions.

5 MS. BOLEN: And, Your Honor, the -- the -- if I may
6 just expand on that, with Mr. Whiten, he's the gentleman
7 who came up and said that he had a juvenile conviction for
8 burglary; that he had served before but wanted to make sure
9 it was okay for him to serve again. I understand it's not
10 showing on his record. But again, he indicated that he had
11 a prior conviction for a serious charge that was remote in
12 time. Other people with similar situations were struck.
13 The only difference I see is that they were African-
14 American and he was white.

15 THE COURT: Okay. Mr. ---

16 MS. BOLEN: And they were struck for less-serious
17 charges.

18 THE COURT: All right. Mr. Whiten, according to my
19 notes on my strike sheet -- or not on my strike sheet, but
20 on my attorney list of jurors -- it was B&E auto conviction
21 is what he indicated to me; that it was a juvenile with
22 adjudication for; is that right?

23 MS. NELSON: I may have heard him wrong. I thought I
24 heard burglary, but I may have been hearing B&E.

25 THE COURT: Okay.

1 MS. NELSON: I'm just not -- I . . .

2 THE COURT: My clerk also notes auto-breaking, as
3 opposed to ---

4 MS. NELSON: Okay.

5 MS. BOLEN: Okay.

6 THE COURT: --- burglary.

7 MS. BOLEN: That ---

8 MS. NELSON: That was ---

9 THE COURT: So ---

10 MS. BOLEN: Yeah. We heard ---

11 MS. NELSON: --- my mistake.

12 MS. BOLEN: --- we heard B&E and thought --

13 THE COURT: I understand that your position that this
14 would be part and parcel. Solicitor, how -- how do you --
15 I understand that Mr. Whiten -- Whiten, Juror No. 151, does
16 not have an adult criminal history. How do you distinguish
17 the failure to exercise a strike in that situation versus
18 the other ones?

19 MR. BROWN: I -- I failed to write it on my notes up
20 there. I didn't see it. All my notes were based off of
21 prior -- looking through the criminal histories and making
22 notes of that. And did not write it down on the Whiten on
23 a juvenile record. Based it off of what I saw on his
24 criminal history run.

25 THE COURT: Okay. Well, are you telling me that you

1 would have struck him had you noted that ---

2 MR. BROWN: Had I ---

3 THE COURT: --- at the time ---

4 MR. BROWN: --- noted that and I had an -- and I
5 would've -- I would've struck him if I had knowed that. I
6 try to -- if I can, I try not to have anybody with a
7 criminal history on my record, even though ---

8 THE COURT: Or on ---

9 MR. BROWN: --- they're so ---

10 THE COURT: --- the jury, you mean.

11 MR. BROWN: --- on -- on my jury, even however so
12 slight, if -- if I can -- if I can do that. Say, at No. 50
13 -- Juror No. 50, had I had any more strikes left, he
14 would've been struck as well.

15 THE COURT: All right. Well, Mr. Whiten is just
16 younger than I am, about two years younger than I. And at
17 the time my understanding is during that time frame, DJJ
18 may not have necessarily entered those records into NCIC.
19 I think it varied from county to county on how those were
20 treated. Some, I think, were entered into NCIC and some
21 were not. So that might explain why it didn't show up on
22 -- on the ---

23 MS. NELSON: I think ---

24 THE COURT: --- rap sheet.

25 MS. NELSON: --- still today we see plenty of people

1 who have juvenile records but it's not showing up ---

2 THE COURT: Right.

3 MS. NELSON: --- on their printout.

4 THE COURT: All right. All right. Anything else from
5 the defense on this particular issue?

6 MS. NELSON: We -- it depends on your ruling, Your
7 Honor.

8 THE COURT: Prior to issuing a ruling, is there
9 anything further from the defense on -- on this question?

10 MS. NELSON: No, sir.

11 THE COURT: All right. From a review of the strikes
12 that were exercised, it -- it would appear -- it would
13 appear that in this case, Mr. Brown, prior to exhausting
14 his strikes with Juror 156, did, in fact, seat Juror No.
15 61, Mr. Goodwin; Juror No. 41, Mr. Davis; and Juror No. 96,
16 Ms. McClinton. All of those individuals are African-
17 American.

18 And interestingly, I think Juror No. 61 is the son of
19 the sheriff who recently found himself in a little bit of
20 trouble over here in Abbeville County. I really can't
21 speak to that. But clearly, the state did not exercise a
22 strike against him. And perhaps that family would have a
23 beef with law enforcement.

24 I mention that because that indicates to me that the
25 state had, as its primary method of selecting jurors,

1 concerns with whether or not the individuals had prior
2 criminal histories. I've had an opportunity to consider
3 the credibility and the demeanor of Mr. Brown. And to put
4 it plainly, the Court believes him when he explains the
5 reasons for the strikes.

6 I do not find and I cannot find, based upon my review
7 of what has been said and my review of the case law, that
8 the strikes were executed in a manner implicating race by
9 the state. And for those reasons, based upon the
10 consistency with which the strikes were exercised -- with
11 the exception being Juror 151, Mr. Whiten -- apparently,
12 Mr. Brown just neglected to write it down. Otherwise, he
13 would have struck that person too. And I find that
14 explanation credible.

15 For those reasons I'll permit the jury panel -- or the
16 jury that we have now to serve. Ms. Nelson?

17 MS. NELSON: We'd just make one proposal, Your Honor.

18 THE COURT: Certainly.

19 MS. NELSON: Since you've accepted the explanations,
20 and Mr. Brown has said his explanation was striking for
21 prior criminal histories; and since he has also said that
22 if he had remembered Mr. Whiten's juvenile conviction, he
23 would've struck him, we'd propose that Mr. Whiten be
24 removed from the jury and -- and that Ms. Williams be
25 substituted in his place, since she was the fifth strike

1 that Mr. Brown used.

2 THE COURT: Okay. Well, that's the one -- and I'm
3 going to make this a -- I'm going to make this a part of
4 the record. I mean, I think we are where we are. In all
5 candor, I'm looking at her criminal history. And it is
6 really, really, really long. I don't know what a lot of
7 these charges carry up in New York.

8 But this criminal history is . . .

9 (Whereupon, Mr. Brown and Ms. Bolen conferred.)

10 THE COURT: This criminal history is 27 pages in
11 length.

12 MS. BOLEN: Your Honor, if I can just ask: I think
13 she indicated that it wasn't her history; that there's
14 another Stacy Williams. Is there a -- a date -- a -- a ---

15 MS. NELSON: Birth date?

16 MS. BOLEN: --- birth date or anything like that?

17 THE COURT: Let me ---

18 MS. BOLEN: Because ---

19 THE COURT: --- see.

20 MS. BOLEN: --- some of these convictions would've
21 happened when she was 15 years old.

22 MS. NELSON: If we accept ---

23 MS. BOLEN: If ---

24 MS. NELSON: --- that they're ---

25 MS. BOLEN: Yeah.

1 MS. NELSON: --- the same ---

2 MS. BOLEN: If we ---

3 MS. NELSON: --- person.

4 MS. BOLEN: --- accept it as the same ---

5 THE COURT: Sure.

6 MS. BOLEN: --- person. And I think she said her
7 middle initial was "G" and that -- or that the middle
8 initial on that was "G" and her middle initial is "C."

9 THE COURT: All right. Well, Solicitor, the -- she
10 kind of raises a valid point, because the rap sheet that
11 I've got has an number of birthdays listed. Ms. Stacy
12 Williams lists her birth date as 12/11/71, making her 41
13 years of age. And all the dates of birth on -- yeah. All
14 the dates of birth on the rap sheet for juror -- that you
15 had marked as for Juror 156 shows July 9th of '65; July 9th
16 of '64; December 11th of '65; August 9th of '64; July 9th
17 of '68; September 9th of '65, with a weight of 260 pounds
18 and a height of five-foot-nine. This doesn't sound like
19 the lady ---

20 MR. BROWN: That ---

21 THE COURT: --- who was here.

22 MR. BROWN: That is not -- looking at her date of
23 birth here, that would not be the -- the same lady.

24 THE COURT: So you're -- you're okay with what they're
25 suggesting?

1 MR. BROWN: I -- I would be okay with that.

2 THE COURT: All right. Y'all okay with that?

3 MS. NELSON: Yes, sir, Your Honor.

4 MS. BOLEN: Yes, sir.

5 MS. NELSON: Thank you.

6 THE COURT: We'll do that, then. I'm sure Ms.

7 Williams will be thrilled.

8 MS. NELSON: I'm sure.

9 THE COURT: Okay. All right. Let's do this: Go
10 ahead and ask the jury panel to step back in here. And
11 we're putting Mr. Whiten off.

12 MS. BOLEN: Yes, sir.

13 THE COURT: And we're putting on Ms. Williams; is that
14 right?

15 MS. BOLEN: Yes, sir.

16 THE COURT: All right. Okay. Very good. By consent.

17 So I'll make the rap sheets for 151 and 156 as Court's
18 1 and 2, however the court reporter chooses to mark those.
19 We'll be at ease for a few moments. Go ahead and bring the
20 jury panel back in here. Then we'll bring the jury in.
21 We'll let Mr. Whiten off, put Ms. Williams on, and I'll
22 simply explain it was a mistake or something

23 MS. BOLEN: Okay. Thank you, Your Honor.

24 THE COURT: Thank you.

25 (Whereupon, Court's Exhibits 1 and 2 were marked for

1 identification.)

2 (Off the record from 4:32 p.m. until 4:38 p.m.)

3 (Whereupon, the remaining jury panel entered the
4 courtroom at 4:34 p.m.)

5 THE COURT: (To the bailiff) If we could, let's have
6 the jury that's been selected. Let's have them out,
7 please.

8 (Whereupon, the selected jury panel entered the
9 courtroom at 4:38 p.m.)

10 THE COURT: Okay. The record should reflect that the
11 jury is back. Ladies and gentlemen of the jury panel and
12 ladies and gentlemen of the jury, there was a small error
13 in the selection of the jurors. On -- on the jury that's
14 been selected, who is Mr. Whiten?

15 POTENTIAL JUROR: (Raised hand.)

16 THE COURT: All right. Sir, I'm excusing you from
17 service, okay? So rejoin them out there.

18 POTENTIAL JUROR: (Complied.)

19 THE COURT: And Juror No. 156, Stacy Williams, where
20 are you?

21 POTENTIAL JUROR: (Raised hand.)

22 THE COURT: All right. Ma'am, I'm putting -- you're
23 on the jury now. So you come on down and sit up there
24 where Mr. Whiten was, please, okay?

25 POTENTIAL JUROR: (Complied.)

1 THE COURT: All right. All right. Now, ladies and
2 gentlemen of the jury, those of you who have been selected
3 on the jury, I'm going to go ahead and excuse you for the
4 evening. Tomorrow morning when you come in here, I'm going
5 to appoint a foreperson and we'll proceed with the trial of
6 the case.

7 The solicitor tells me that there's a number of issues
8 that I need -- or a number of cases -- a number of matters
9 that don't concern this case that I need to take up before
10 we start the trial of this case, guilty pleas and things of
11 that nature. So I anticipate that we won't be able to
12 start this case until around 11, maybe 11:15/11:30.

13 I'm going to ask that y'all be back, if you would --
14 be back here at eleven o'clock tomorrow morning. I hope
15 that I won't be in a position to keep you waiting very
16 long. But just come back here and be back here at eleven
17 o'clock tomorrow morning, okay?

18 I know that they don't have air conditioning in the
19 grand jury room. If I'm keeping it -- if it looks like I'm
20 not done with the other stuff, what I'm going to do is let
21 you mill about the square, do a little bit of light
22 shopping, and give you another time to come back. But I'm
23 not going to keep you locked in the room without air
24 conditioning, so don't worry about that. Don't sweat that.

25 Ladies and gentlemen, I know that your husband, your

1 wife, significant other, whoever it is you share a room
2 with, I know that they know that you have jury duty this
3 week, okay? I will tell you what I tell other juries:
4 It's perfectly fine to let your significant
5 other/husband/wife/whoever know that you've been picked for
6 a jury. But don't talk about this case with them, okay?

7 And the reason for that is the oath that you're going
8 to take tomorrow will be that you will well and truly try
9 the issues in this case and a true deliverance make. That
10 will essentially be your oath. And it would be improper
11 and it would be a violation of your oath to allow your
12 opinion in this case to be influenced in any way, shape, or
13 form by something that somebody else says to you.

14 So feel free to tell them, "Yeah. I got picked on a
15 jury today." But when they ask you what kind of case it
16 is, blame it on me. Just tell them, "Look, the judge has
17 told me I can't talk about the case."

18 Because obviously, ladies and gentlemen of the jury,
19 this is your decision to make. It's not that of your
20 husband; it's not that of your wife or your significant
21 other -- mother, kid, whoever it is you live with. So just
22 don't talk about the case. And that'll be a running rule
23 throughout the trial. All right?

24 With that, you are excused. And I will see you back
25 here hopefully around eleven o'clock tomorrow morning.

1 We'll be in a position to proceed. I'll have the other
2 stuff taken care of.

3 With that, y'all are free to go. Everyone else,
4 please stay seated while the jury is excused.

5 (Whereupon, the jury exited the courtroom at 4:42
6 p.m.)

7 THE COURT: All right. Solicitor, do you anticipate
8 needing the jury for the rest of the week at this point?
9 How do you want to handle it?

10 MR. BROWN: Not if there's trial, Your Honor.

11 THE COURT: All right. Ladies and gentlemen, I've got
12 great news for you. Guess what? You are free to go about
13 your business for the rest of the week.

14 Please do not forget what I told you earlier. All
15 right? You get a "get out of jury service free" card for
16 the next three years. So if you're summoned for jury duty
17 again like those two individuals were, if you're summoned
18 again this year or in 2014 or in 2015, you can simply call
19 up; tell the clerk of court that you served -- or that you
20 got called -- summoned for jury duty in May of 2013; and
21 she'll automatically pull your name from the list if you
22 don't want to serve. Okay?

23 If you want to serve, that's great. Because I've
24 heard serving on a jury is really very often a fun and a
25 very educational type of experience. I have never had that

1 pleasure. I doubt I ever will because, obviously, I'm
2 employed within the walls of a courthouse. So I'm
3 probably, under South Carolina law, not qualified to serve
4 as a -- on a jury. Go figure. I can preside over a case,
5 but I can't be a juror.

6 But you get that three-year, "get out of jury service
7 free" card. Additionally, you will get paid something for
8 your service here today or for coming in here today. It
9 will not be a lot of money. It'll be --- (To the clerk of
10 court) How much?

11 CLERK OF COURT: Fifteen, I think.

12 THE COURT: --- a whopping \$15. Be sure you spend it
13 all in one place when you get the check. And as they say,
14 the check is in the mail.

15 Before we break, I would be remiss if I did not
16 acknowledge someone amongst you who is probably the most
17 modest man on the planet. And he actually received
18 recently the Order of the Palmetto from our governor. And
19 you may know him better as Representative Paul Agnew.

20 But just to go -- just -- it just goes to prove that
21 being a lawyer and being a -- an influential individual and
22 a former legislator and a fine representative of Abbeville
23 County ain't good enough to get you out of jury duty. So
24 you have one among you who you all should be very proud of.
25 You've got a good political legacy here in Abbeville

1 County. Be very happy about that. Be very proud of that.

2 And I know that a number of you out there may have
3 also perhaps received the Purple Heart or served our
4 country in some other way or some other capacity along the
5 -- those lines. I want to thank you for that service. And
6 it -- more importantly, thank you for your service and your
7 willingness to come in here. Because otherwise, we
8 couldn't resolve these cases that we need jurors for.

9 With that, you are free to go. And I hope to see you
10 all at some other time, some other place. Y'all take care.
11 Thank you.

12 (Whereupon, the remaining jury panel exited the
13 courtroom at 4:45 p.m.)

14 (Off the record from 4:45 p.m. until 4:48 p.m.)

15 THE COURT: Okay. Let -- we are back on the record.
16 Let the record reflect that Ms. Bolen and Ms. Nelson are
17 here on Mr. Alexander's behalf. Mr. Brown, you said you
18 needed to bring the Court's attention to something?

19 MR. BROWN: Yes, Your Honor. This is just a
20 housekeeping matter dealing with the logistics on getting
21 witnesses here. Under *Hatcher* -- just basically under
22 *Hatcher* about the chain of custody, the main officer in
23 this case, he's the one that collected the evidence and
24 then took it down to SLED. I was mainly bringing this to
25 your attention to see if I actually needed to bring a

1 couple of the SLED ladies that took items off a shelf and
2 took it to Mr. Smith or -- basically, a -- a *Hatcher* motion
3 to determine whether or not the Court required to have all
4 of the just chain witnesses that do not have a big -- or a
5 substantial part, other than hand-to-hand transfer of the
6 items at SLED.

7 THE COURT: All right. Are there any indications,
8 from a review of the chain form from SLED, that there are
9 any missed -- links missing in the chain?

10 MR. BROWN: No, sir. It -- the -- the evidence was
11 collected by John Gray of the Abbeville P.D. That evidence
12 was packaged, sealed, and it was put it in drop box at the
13 Abbeville P.D., at the police department. Lt. Wilkie
14 opened the -- the evidence box up where it is sealed and
15 kept packaged. John Gray then took the items to SLED.

16 Forensic technician Courtney Smith was the intake; put
17 in the evidence -- drug-evidence-intake storage. Pat
18 Crooks removed it from there and took it to the forensic
19 scientist, Willie Smith. So it was very limited chain.
20 There's nothing indicated in the SLED report from the drug
21 testing where Willie Smith, forensic scientist, noted any
22 kind of tampering or anything like that.

23 Just based on logistics on getting Ms. Crooks and Ms.
24 Smith here, I was -- try to make this as easy on them as
25 possible.

1 THE COURT: Okay. So it's Courtney Smith and -- it's
2 Crooks and Smith that you are maintaining were ---

3 MR. BROWN: Mere ---

4 THE COURT: --- minimal ---

5 MR. BROWN: That's correct. Just minimal moving:
6 intake, putting it on the drug shelf, and then taking it
7 off the drug shelf and giving it to the forensic scientist.

8 THE COURT: All right. What's the defense's position
9 on that?

10 MS. BOLEN: Your Honor, we would ask that all the
11 witnesses be here, particularly considering that it is
12 likely that our client will not be here. We think a -- a
13 -- the state's going to need to prove their -- their case.
14 We're not going to agree to have any witnesses not here.

15 I understand Mr. Brown's desire to make this as easy
16 as possible. When I asked earlier today for him to consent
17 to a bench warrant and he didn't, that would've certainly
18 made it easier to have a bench warrant issued and not be
19 having these witnesses come up. So we're not -- we're not
20 willing to consent to any -- any -- any chain witnesses not
21 being present.

22 THE COURT: Okay.

23 MS. BOLEN: And I -- I can do the case-law research on
24 it, Your Honor. We're -- I was unaware that this issue was
25 -- was being brought up right now. But we can certainly

1 find case law and have it in the morning.

2 THE COURT: All right. Well, it -- I'll reserve
3 judgment. You know, Solicitor, I can't say which -- I've
4 obviously not had a chance to review the chain form from
5 SLED yet. I can't say which witnesses are substantial,
6 which are not substantial.

7 MR. BROWN: Yes, sir.

8 THE COURT: Obviously, it'll be your intention for the
9 SLED person who analyzed the drugs -- I guess that's Willie
10 Smith?

11 MR. BROWN: That's correct.

12 THE COURT: Obviously, he or she will need to testify.
13 I assume you'll have Gray and Wilkie testifying.

14 I'm familiar with *Hatcher*. I know what it stands for.
15 I can't rule at this point in time because I just don't
16 know ---

17 MR. BROWN: Yes, sir.

18 THE COURT: --- what the testimony is going to be,
19 obviously.

20 MR. BROWN: I'll have them ---

21 THE COURT: If there's ---

22 MR. BROWN: --- here.

23 THE COURT: --- some indication -- if there's some
24 indication or tampering or what have you, you better have
25 them here.

1 MR. BROWN: Yes, sir.

2 THE COURT: If not, *Hatcher* does stand for the
3 proposition that you don't need to prove every --
4 absolutely every single link in the chain, so long as the
5 Court is satisfied that the drugs have not otherwise been
6 tampered with or that the evidence has not otherwise been
7 tampered with -- with due to its fungible nature. That's
8 what the law is.

9 MR. BROWN: Yes, sir.

10 THE COURT: You know where we are.

11 Okay. Anything further while we're ---

12 MR. BROWN: Not from ---

13 THE COURT: --- the record?

14 MR. BROWN: --- the state.

15 THE COURT: Very good. Hopefully, the bondsman will
16 located Mr. Alexander and we'll be in a position to resolve
17 this if he truly wants to plead. If not, if he doesn't, we
18 at least have a jury and we can move forward.

19 MS. BOLEN: And ---

20 THE COURT: What time would you propose -- you -- you
21 need -- you need some additional stuff, don't you, Ms.
22 Bolen?

23 MS. BOLEN: Yes.

24 THE COURT: Okay. You need to get her, her additional
25 stuff ---

1 MS. BOLEN: He -- he got me ---

2 THE COURT: --- Mr. Brown.

3 MS. BOLEN: --- the CAD report. And I ---

4 THE COURT: Okay.

5 MS. BOLEN: My understanding is that they're getting
6 the 911 call. But we -- I guess, just as a matter of
7 housekeeping, we had a number of things scheduled for
8 tomorrow, some clients coming from out of town. I'm
9 assuming I should cancel all of those.

10 THE COURT: What time are they supposed to be here? I
11 hate ---

12 MS. BOLEN: One was ---

13 THE COURT: --- putting you ---

14 MS. BOLEN: --- at ten.

15 THE COURT: --- I hate -- at ten they're ---

16 MS. BOLEN: Yes.

17 THE COURT: --- supposed to be here? I hate making
18 her deal with pleas in the middle of a trial. How many
19 clients do you have coming in ---

20 MS. BOLEN: A number ---

21 THE COURT: --- ballpark?

22 MS. BOLEN: --- one of them, the offer expires this
23 term if I don't get him in. It's a very good offer that
24 he's planning on taking. And I don't want to run the risk
25 of that offer expiring. On the other hand, I -- I don't

1 feel like I can adequately plead him straight-up to
2 something that carries a significant amount of time an hour
3 before I'm starting a trial.

4 THE COURT: Sure.

5 MS. BOLEN: I just don't feel ---

6 THE COURT: Have him ---

7 MS. BOLEN: --- like that ---

8 THE COURT: --- come on -- -- I mean, something like
9 that, have them come in. We'll work them in. We can
10 figure out a time to fix that.

11 MS. BOLEN: Okay. So have him come in tomorrow as
12 scheduled or ---

13 THE COURT: Sure. And -- and we'll just deal -- get
14 with it sometime during the course of the day.

15 MS. BOLEN: Okay.

16 THE COURT: The others, as far as I'm concerned, I
17 don't know that you necessarily need to worry about them or
18 push them back later sometime in the week maybe and we can
19 perhaps resolve them later.

20 MS. BOLEN: I guess if I could know from Mr. Brown
21 what offers are expiring this week, that would be helpful
22 ---

23 THE COURT: Sure. I -- I would ---

24 MS. BOLEN: --- so that ---

25 THE COURT: --- assume ---

1 MS. BOLEN: --- I know ---

2 THE COURT: --- that that ---

3 MS. BOLEN: --- what position ---

4 THE COURT: --- would be ---

5 MS. BOLEN: --- I'm in.

6 THE COURT: --- the only one. Now, you've got some
7 other pleas that are supposed to be done tomorrow morning
8 too?

9 MR. BROWN: Yes, sir.

10 THE COURT: I'm going to be here at 9:30. Have the
11 other lawyers here at 9:30. She's going to be busy. But
12 we're going to take those other pleas at 9:30. We'll move
13 into whatever motions y'all need to around ten o'clock and
14 see where we stand. Good enough.

15 MR. BROWN: Thank you, Your Honor.

16 THE COURT: Thank you.

17 MS. BOLEN: Thank you, Your Honor.

18 (Whereupon, the proceedings were adjourned at 4:55 p.m.)
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20
21
22
23
24
25

1 TRIAL DAY 2 - 05/29/13

2 (Whereupon, the proceedings were resumed at 11:24 a.m.)

3 THE COURT: All right. If we may, we're going to go
4 back on the record on Cases 13-GS-01-14 and -15, the *State*
5 *v. Alfonzo Alexander*. The record should reflect that the
6 state is present, represented by Mr. Brown. The defense is
7 present as well, with the exception of Mr. Alexander.

8 I assume, Ms. Bolen, y'all have not had any success in
9 contacting him?

10 MS. BOLEN: I have not, Your Honor. My last contact
11 with the bondsman was earlier this morning. And I -- I
12 don't believe he's had any contact with him either.

13 THE COURT: All right. No leads as far as his mother
14 or anything like that?

15 MS. BOLEN: I've spoken with his sister; and through
16 her, his mother. His mother's very hard of hearing, so
17 it's sort of a tag conversation over the phone. And
18 neither of them know where he is.

19 THE COURT: All right. I've released the jury; asked
20 them to come back at twelve o'clock. I sent the clerk in
21 there to do that. It's, of course, about 11:25 at this
22 point in time. I know that we're going to take up motions.
23 At this point, Ms. Bolen, I'm happy to hear from you on any
24 motions that you have.

25 MS. BOLEN: Thank you, Your Honor. I'd make a motion

1 that the drugs in this case be suppressed on the basis of a
2 Fourth Amendment violation. I believe we can do this by
3 way of testimony, or I can make my argument based on what's
4 in the incident report. But our -- our position is that
5 the -- the drugs were unlawfully seized and, as a result,
6 should be suppressed under the exclusionary rule.

7 THE COURT: All right. I'm unfamiliar with the facts
8 of this case, so maybe a little bit of a background would
9 help me understand the -- the basis for your motion a
10 little bit better, Ms. Bolen.

11 MS. BOLEN: Just to sort of sum up the incident
12 report, Your Honor?

13 THE COURT: (Nodded head up and down.)

14 MS. BOLEN: Okay.

15 THE COURT: Please.

16 MS. BOLEN: And just -- just to go off of what has
17 been provided to me by the state, which is a three-page
18 incident report, the text is really only two pages; and the
19 CAD report from a 911 call, which I was given yesterday;
20 and the 911 call, which I was also given yesterday: At
21 about 1:30 a.m. -- 1:15 a.m. an anonymous caller called 911
22 to report that a lot of people -- quote, a lot of people
23 were doing drugs and gambling in Apartment 401. The
24 anonymous caller said that half the people were on
25 trespass. He does not know whose apartment it was; did not

1 see any drugs or money exchanged; answered no to that
2 question; did not give his name; and, in fact, when asked
3 for his name, he said his name was anonymous and would not
4 give a phone number.

5 In response to this call, Your Honor, according to the
6 incident report, two officers went out to -- it's the
7 Oakland Apartments on Virginia Street. And they went to
8 the apartment. And -- and it says that they found the
9 owner, Ms. Ella Brown, outside; told her about the
10 complaint. Officers asked her if they could look inside
11 the apartment. She opened the door.

12 There was apparently some smell of marijuana and a
13 crowd of people in the apartment. They list off one, two,
14 three, four, five people, none of whom are my client,
15 sitting that they first notice at the -- at the table with
16 money and cards. Under the table was some marijuana.

17 Then, they list off four more people, one of whom is
18 my client. They then state that my client was sitting on
19 the couch with some money in his hand. And they say that
20 there was a small bag of marijuana at his -- on the floor.

21 Then, it says for officer safety, he was patted down
22 for weapons. At that point they say that they could feel
23 plastic bags in his pocket. They -- they say that they
24 asked him if they could remove the bags; he says yes; and
25 that there's some off-white, rocklike substance that they

1 believe is crack. They also find scales and some plastic
2 baggies and some money.

3 No one else was arrested, with the exception of one of
4 the individuals -- one of the original six individuals who
5 was arrested for trespass. But no one else in the -- in
6 the home of the -- I think there's at least ten people in
7 there. No one else was arrested.

8 Your Honor, the basis of our motion is actually a -- a
9 twofold -- twofold argument. Number one, this is clearly
10 an -- an anonymous call. And both our state courts and the
11 Supreme Court have held that anonymous calls are held to a
12 higher standard in terms of reliability; that there needs
13 to be sufficient indicia of reliability before police have
14 reasonable suspicion to conduct an investigative stop.

15 And, Your Honor, this is found in -- from our state
16 Supreme Court, *State v. Taylor*. From the United States
17 Supreme Court, it's *in re: J.L.* I believe it's a juvenile
18 case involving a report of a black man with a gun and
19 officers see three black boys standing at a bus stop and
20 they *Terry*-frisk them. And that was found to be
21 unconstitutional.

22 So our first argument is that the anonymous tip alone
23 -- and -- and there needs to be some sort of corroboration
24 by the officers before they can do an investigatory stop.
25 Here, there was no -- no corroboration of this anonymous

1 tip prior to them questioning Ms. Brown. Officers didn't
2 see any drugs; didn't see any gambling.

3 The caller -- we'd argue that his tip is -- is not
4 reliable. Some of the things that he says in it, that half
5 the people are on trespass, that's -- can't be true,
6 because only one person was arrested for trespass. He
7 doesn't even know whose apartment it is. He doesn't see
8 any drugs or money exchanged. So where he's getting the
9 information that they're selling is -- is unclear.

10 But there's certainly indications of unreliability in
11 this tip. And without the officer corroboration, we'd
12 argue that that's not enough for the investigative stop.
13 And although the investigative stop was of Ms. Brown, we'd
14 argue that under the "fruit of the poisonous tree"
15 doctrine, that everything resulting from that unlawful stop
16 should be suppressed.

17 Additionally, Your Honor, our -- our second grounds
18 for suppression is the *Terry* frisk. Our -- again, our
19 Supreme Court, as well as our state courts, have
20 consistently held that officers don't need just reasonable
21 suspicion of criminal activity to do a *Terry* frisk. They
22 need reasonable suspicion based on specific and articulable
23 facts that the person they're about to *Terry*-frisk is armed
24 and dangerous. There has to be actual officer fear.

25 And to quote some cases, Your Honor, the -- the United

1 States Supreme Court that is probably the most on point is
2 *Minnesota v. Dickerson* in which the Court says that the
3 purpose of a *Terry* pat-down is not to discover evidence but
4 to allow officers to pursue their investigation without
5 fear of violence. And the Court has some pretty strong
6 language against there being a fishing expedition, for lack
7 of a better term, using a *Terry* frisk to find evidence,
8 rather than simply to maintain officer safety.

9 *State v. Butler* is a state case, Your Honor, 353 S.C.
10 383, in which our -- our Court said that there must be
11 actual fear shown on behalf of the officer, reasonable
12 suspicion that the person is armed and dangerous.

13 And to -- to go back to the anonymous tip, Your Honor,
14 the -- the state case on that is *State v. Green*, 341 S.C.
15 214; as well as *State v. Taylor*. There are a -- a -- a few
16 cases where the -- the Court says there is reasonable
17 suspicion to believe that someone is armed and dangerous,
18 but there's more to those cases than there is here.

19 For example, in *State v. Robinson*, officers smelled
20 marijuana. And the Court says that's not enough. But
21 then, they see a pistol sticking out of the defendant's
22 pocket. And the Court says that becomes enough to have a
23 reasonable fear that the person is armed and dangerous.

24 There's also case law, Your Honor that -- that
25 officers need to have some reason to think the person is

1 armed and dangerous. It can't be just speculation. I can
2 just pull up the case again, Your Honor.

3 For example, *State v. Fowler*, 322 S.C. 263, our state
4 courts say that there must be reasonable, articulable
5 suspicion that the purpose -- that the person is armed and
6 dangerous. Officers' testimony the defendant had a history
7 of possessing weapons was not enough to create reasonable
8 suspicion that a frisk was necessary to -- to protect
9 themselves. There were no -- in that case the person had
10 no prior weapons charges and they did not find any -- find
11 any weapons.

12 And the *Fowler* court quotes the United State Supreme
13 Court in *Ybarra v. Illinois*: The officer must believe the
14 -- the frisk was necessary to preserve the officer's
15 safety. An officer must be able to specify the particular
16 facts on which he or she based his or her belief that the
17 suspect was armed and dangerous. And again, there is the
18 sort of fishing-expedition language that officers are not
19 entitled just to search anyone looking for evidence.

20 There's also a state's -- a -- another South Carolina
21 case, *State v. Woodruff*, 344 S.C. 537, in which our state
22 Court says that *Terry* frisks are strictly circumscribed --
23 circumscribed; they have strong limits and cannot be used
24 as a fishing expedition.

25 Your Honor, with respect to this case, there is simply

1 nothing in the incident report which has all been given to
2 indicate that they had any reasonable fear, any reasonable
3 officer safety. My client has no weapons convictions on
4 his record. There has been nothing provided to say that he
5 is known for carrying a weapon.

6 The anonymous tip mentions nothing about weapons.
7 There's no weapons seen. There's no mention of weapons.
8 They don't -- they don't mention anything about him being
9 squirrely or darting around or reaching in his pocket or
10 trying to evade them or any of the sort of behavioral cues
11 that we sometimes see as reasons for thinking someone might
12 have a gun. None of that is in here.

13 And our position is they simply did not meet the
14 constitutional burden to conduct a *Terry* frisk on him in
15 that they -- there's no -- no articulable facts upon which
16 they can put a reasonable, objective fear of officer
17 safety.

18 And, Your Honor, I -- I anticipate that the state will
19 say it's fruit of the -- that it's a inevitable discovery
20 problem. And argument against that, Your Honor, is that,
21 you know, if they try say, "Well, he was going to be
22 arrested anyways and they would've had the right to search
23 him," it's true that if someone is lawfully arrested,
24 there's the right to search.

25 But our position is he would not have been arrested

1 but for the fact that they conducted this unlawful *Terry*
2 frisk and found these drugs. He was not arrested for the
3 marijuana. He was not arrested for the gambling.
4 Furthermore, no one in that apartment, of the ten people
5 there with marijuana all over the place, marijuana smoke,
6 clear gambling ring going on -- none of them are arrested.
7 So why would we think that they would arrest him?

8 So I don't think that the inevitable discovery
9 doctrine would apply. Because I don't think that without
10 -- without the crack, he would've been arrested. No one
11 else, under the same circumstances, was arrested.

12 And furthermore, Your Honor, the basis of the arrest
13 is -- is the crack, which is what they found on him. They
14 were not -- he -- I think it's very important to note he
15 was not arrested for marijuana. He was not arrested for
16 gambling. They're using what they found in the search to
17 support the arrest, which then they're going to try to say
18 supports the search. It's a circular argument.

19 And I -- I think, under the circumstances, given the
20 case law we have and the facts of this case, the *Terry*
21 frisk was unconstitutional under the Fourth Amendment and
22 the drugs should be suppressed. And I'm happy to flesh out
23 more of the legal argument and provide more cases, Your
24 Honor.

25 THE COURT: All right. Solicitor, what's your

1 response?

2 MR. BROWN: Your Honor, going back to the fact pattern
3 again, there was a call to 911 -- Abbeville 911. It was an
4 anonymous tip, saying that drugs and illegal gambling --
5 gambling were going on at 401 Oakland Apartments. That
6 came over dispatch.

7 Lt. Gray with Abbeville P.D. and other police officers
8 did go to that location. They did meet the tenant, or the
9 renter of that apartment, outside; informed her of why they
10 were there: that they had gotten a call. She said she
11 voluntarily opened the door; said you can check inside when
12 asked by Lt. Gray.

13 And once he did see inside, he did see the gambling
14 going on; the drugs -- marijuana on the table; also,
15 Alfonzo Alexander seated on the couch. The sum of cash
16 actually was a large amount of bills; it was \$837. He did
17 have a baggie of marijuana at his feet.

18 At that point Mr. Gray did go over to him. And he did
19 pat him down for weapons. At that point he says he could
20 feel and see plastic bags coming out of his pocket. At
21 that point he did find the other items on Mr. Alexander.

22 It'd be our position that, for one thing, Ella Brown,
23 who is a tenant of that apartment, she voluntarily let --
24 let law enforcement in. That was her apartment. Mr.
25 Alfonzo Alexander has no expectation of privacy there. He

1 was a mere guest; did not -- does not have any -- did not
2 stay there. I don't think he had any kind of expectation
3 of privacy.

4 Also, as stated in *Alabama v. White*, which is also
5 cited by *State v. Taylor*, a South Carolina case, it says:
6 However, when an officer observes a defendant engaged in
7 criminal activity while verifying the reliability of an
8 anonymous tip, the officer has reasonable suspicions to
9 stop the suspect.

10 This seems like it would -- he was going there to
11 verify the anonymous tip. The tenant, or the renter of
12 that apartment, who does have an expectation of privacy and
13 who does have a right to turn away the officers, did open
14 up her door at that point. The officer could see that
15 criminal activity was going on in the apartment, based on
16 the marijuana smoke, based on what he saw, as Mr. Alexander
17 was sitting on there on the couch. He did see baggies
18 coming out of his pocket.

19 And at that time he did pat him -- as it does say, for
20 officer safety, he was patted down for weapons. And at
21 that point he could feel and see the baggies of -- that was
22 -- the crack cocaine was enclosed in at that time.

23 So our argument would be that Ella Brown was not --
24 there was not an unlawful stop on Ella Brown, except to go
25 corroborate or to determine the reliability of the

1 anonymous tip. Ms. Brown opened her door to her apartment.
2 And that is when he did see criminal activity taking place.
3 And at that time for his safety, he did pat down Alfonzo
4 Alexander, along with the other folks that were in the
5 apartment complex at that time.

6 THE COURT: Okay. Solicitor, I tend to agree with you
7 on the question of standing. It would appear that Ms.
8 Brown would be the one who would have standing to challenge
9 the general scope of the search of her apartment. And
10 clearly, she -- from what has been represented by both the
11 state and the defendant, it appears that everyone agrees
12 that she had given consent for the officers to search the
13 apartment.

14 So the central -- or the initial question is: Were
15 the police in an area where they had a right to be? The
16 answer to that question appears to be yes. And that's
17 despite the nature of the anonymous tip.

18 I understand the defense position concerning the
19 anonymous tip. I would agree that that tip would be
20 insufficient to support a search warrant or an affidavit
21 for a search warrant of the residence because of its
22 anonymous nature and the lack of corroboration by the
23 officers. But again, we're dealing with a consent search
24 by Ms. Brown, the tenant of that apartment, whereas Mr.
25 Anderson [sic], it appears everyone agrees, was not a

1 tenant and did not have a reasonable expectation of privacy
2 in that apartment.

3 Let's turn to the question of the *Terry* frisk, though,
4 Solicitor. What's the state's -- would you expand on that?
5 I realize that it's your position this is not an unlawful
6 stop. There's \$837 in the possession of Mr. Anderson -- or
7 -- sorry -- Mr. Alexander that the officers see. They see
8 some marijuana on the floor.

9 And perhaps this is something we'll have to take
10 testimony on from the officer, as far as what he was
11 thinking or what his concerns were. I understand you have
12 a room with about nine -- eight to ten people in the room,
13 marijuana smoke that the officers could smell coming from
14 the apartment, gambling clearly going on, baggie of
15 marijuana located close to Mr. Alexander. Talk to me about
16 the frisk again.

17 MR. BROWN: Your Honor, after the officer does come
18 into the apartment, he -- he sees the whole scene. He sees
19 folks at the table. He sees marijuana next to Alfonzo
20 Alexander. Alexander is sitting on the couch. He sees Mr.
21 Alexander with a large sum of money in his hand.

22 At that point he -- he does go to Mr. Alexander, based
23 on the report. And for his safety he does -- it'd be our
24 position that he did have some objective manifestation that
25 Mr. Alexander is or was about to engage in some type of

1 criminal activity, based on the totality of the
2 circumstances of him entering that apartment and seeing Mr.
3 Alexander there.

4 He did -- as stated in his report, he did check for
5 weapons on Mr. Alexander, as he did for the other
6 individuals in the apartment, to make sure that they were
7 not armed while he was doing his investigation. At that
8 time he did see the -- the baggie -- part of the baggie
9 coming out of Mr. Alexander's pocket. Plus, when he did
10 retrieve those items out of his pocket, he did find the
11 scale, which is a -- which was a bulge in, I believe, his
12 left-front pocket.

13 THE COURT: And apparently, based on the facts recited
14 by the defense, he gave consent -- Mr. Alexander gave ---

15 MR. BROWN: He did.

16 THE COURT: --- consent ---

17 MR. BROWN: He ---

18 THE COURT: -- for it to be removed?

19 MR. BROWN: Officer asked, "Could I remove them?" And
20 he stated, "Yes." Along with the bags, there was a bag of
21 off-white, rocklike substance. And also, in his front
22 pocket there was a small set of scales.

23 So when asked, he did tell them, "Yes, you can remove
24 it."

25

1 THE COURT: All right. Is it your desire to call
2 Officer Gray, since he seems to be the one that actually
3 ---

4 MR. BROWN: I can, Your Honor.

5 THE COURT: Well ---

6 MR. BROWN: He's right here in the courtroom.

7 THE COURT: Try the case however you choose to. I --
8 I -- I don't know that -- I -- I think it may be -- we need
9 to make a record of it at this point in time, unless y'all
10 just wanted to go straight into trial. You -- you can
11 renew the motions at a later point in time in front of the
12 jury. I don't know how you would care to address that or
13 deal with that.

14 But we have 15 minutes before the jury is back. Do
15 y'all have any other motions, Ms. Bolen?

16 MS. BOLEN: If I can just have a moment, Your Honor.

17 THE COURT: Certainly.

18 (Whereupon, Ms. Bolen and Ms. Nelson conferred.)

19 MS. BOLEN: Your Honor, I think we -- we probably need
20 testimony at this point.

21 THE COURT: All right. Mr. Brown?

22 MR. BROWN: Yes, Your Honor.

23 THE COURT: Do you -- do you intend to call Mr. Gray
24 at this point?

25 MR. BROWN: I -- I can call Mr. Gray. The state calls

1 Lt. John Gray.

2 (Whereupon, the witness came forward.)

3 JOHN GRAY, having been first duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BROWN:

7 Q Lt. Gray, do you work with Abbeville Police
8 Department?

9 A Yes, sir, I do.

10 Q Okay. Were you working -- just to -- for the purpose
11 of this hearing, were you working -- what's your position
12 there with the Abbeville Police Department?

13 A Now?

14 Q Now and at the time of this ---

15 A At the time ---

16 Q --- arrest.

17 A --- I was a lieutenant shift supervisor.

18 Q And were you the lieutenant shift supervisor back on
19 October -- or in August 12th, 2012?

20 A Yes, sir.

21 Q And did you regularly investigate any kind of
22 narcotics investigations?

23 A Yes, sir.

24 Q And on that night, August 12th, 2012, did you receive
25 a call through dispatch?

1 A Yes, sir.

2 Q And when you did receive that call, what was the
3 nature of that call?

4 A The nature of the call was from an anonymous tipster;
5 that in Apartment 401 in Oakland Apartments in Abbeville
6 City, that inside that apartment there was people gambling,
7 using drugs, and selling drugs inside that apartment -- was
8 the complaint.

9 Q After you got that call over dispatch, what did you
10 do?

11 A Me and my shift, we went to that apartment and went to
12 knock on the door. Ms. Brown was outside the door.

13 Q And Ms. Brown, is that Ms. Ella ---

14 A Ms. Ella ---

15 Q --- Brown?

16 A --- Brown. Yes, sir.

17 Q And who is Ms. Ella Brown?

18 A Ms. Ella Brown at that time told us that that was her
19 apartment and she was the renter of the apartment.

20 Q Did you speak with Ms. Brown?

21 A Yes, sir, I did.

22 Q What was that conversation like?

23 A I advised Ms. Brown of the complaint that we had got
24 through the 911 dispatch from the anonymous tipster. And I
25 asked her could we look inside of her apartment.

1 Q What did Ms. Brown do?

2 A She said we could, and she opened the door.

3 Q So she -- did she voluntarily open the door for you?

4 A Yes, sir, she did.

5 Q And once she opened the door, what did you observe?

6 A When I opened up the door -- when she opened the door
7 to let us in, I noticed that there was a crowd of people in
8 there. It was probably ten or so people. But you could
9 smell a strong smell of marijuana through the living room
10 area. You could see back at the kitchen. There -- I
11 believe there was four or five people sitting there. It
12 appeared to be that some of them was engaged in some type
13 of game -- card game, gambling. And the rest of the people
14 was in the living room area.

15 Q Did -- did you notice any type of drugs in the
16 apartment?

17 A Yes. Once we stepped inside the doorway there through
18 the threshold, I could see a small bag of marijuana that
19 was on the floor beside where Mr. Alexander was sitting.

20 Q And where was Mr. Alexander sitting in that apartment?

21 A When you go through the front door of the apartment,
22 there was a couch there immediately to the left. It looked
23 like a two-seater couch. He was sitting in the left-far
24 side of the couch.

25 Q What else did you observe of Mr. Alexander?

1 A Mr. Alexander was -- was sitting there on the couch.
2 He had a large sum of money in his hand. I didn't know the
3 amount at that time, but he had a large sum of money in his
4 hand. And you could see plastic baggies coming out of his
5 left pocket ---

6 Q So you could ---

7 A --- his right pocket.

8 Q You could clearly see plastic baggies coming out of
9 his pocket?

10 A Yes.

11 Q What did you do after you saw Mr. Alexander there on
12 the couch?

13 A Mr. Alexander was patted down for officer safety.

14 Q All right. And for officer safety, why would you do
15 that?

16 A A lot of times, there's -- guns and drugs go together.

17 Q So you patted him down to make sure he was not armed
18 with a weapon?

19 A That's correct.

20 Q And when you did pat him down, you already said that
21 you saw plastic baggies in his -- in his pants pocket,
22 which -- what else did you find when you patted him down?

23 A When the frisk was done, I could feel in his pocket
24 that there was additional bulge under the baggie that you
25 could see through his pocket that felt to be more baggies.

1 And in his other pocket, you could just feel a -- a hard
2 square. Wasn't sure what it was at that time.

3 Q Did you remove those baggies, or did you ---

4 A I ---

5 Q --- ask him ---

6 A I did remove the baggies and stuff from his pocket
7 with the consent of Mr. Alexander.

8 Q So Mr. Alexander gave you consent to remove those
9 items?

10 A Yes, sir. Once I had felt the object in his pocket, I
11 asked him could I remove it from his pocket. And he stated
12 yes.

13 Q And at that time what did you do?

14 A I removed the plastic baggies from his pocket.

15 Q Was Mr. Alexander ever placed under arrest?

16 A Not at that time. No, sir. When we removed the
17 baggies from his pocket -- and along with them baggies was
18 a -- a quantity of an off-white, rocklike substance that we
19 believed to be crack cocaine -- he was arrested then.

20 Q Okay. And what else was in his pocket? You said that
21 there was a bulge in his left pocket. What was that bulge?

22 A Yes, sir. That turned out to be a small set of
23 digital scales.

24 Q Okay. And also, you did mention there was cash. You
25 said it was large sum of cash. Did you ever figure out how

1 much that was?

2 A Yes, sir. After everything was cleared and everything
3 was done, it was counted. And I believe it was 830-
4 something dollars -- 839.

5 Q And kind of what was the makeup of that money in -- in
6 bill form?

7 A It was mostly twenties.

8 Q Okay. And during your investigation of that
9 apartment, what else did you find? Was there anybody else
10 arrested?

11 A There was one other person arrested there, John
12 Decarlos Gray. He's known to -- I've known him for many
13 years and know him to be on trespass at that apartment
14 complex.

15 Q And he -- what was he arrested for?

16 A Trespassing.

17 Q Was there anybody else arrested for any drugs in that
18 apartment?

19 A No, sir.

20 Q And why not?

21 A The drugs that was found in the floor, I -- I could
22 not pin them to one person. You know, there was -- it was
23 one small bag of marijuana in the floor at his feet. I --
24 I couldn't -- I couldn't pin it to one person.

25 Q But he -- what was he charged with?

1 A He was charged with possession with intent to
2 distribute crack cocaine and within proximity of a school
3 or playground.

4 Q All right.

5 MR. BROWN: Judge, I think that covers his search and
6 entering the ---

7 THE COURT: All right.

8 MR. BROWN: --- the apartment.

9 THE COURT: Cross-examination, Ms. Bolen?

10 MS. BOLEN: Thank you, Your Honor. Lt. Gray, I just
11 got a couple questions for you.

12 CROSS-EXAMINATION

13 BY MS. BOLEN:

14 Q Where was Ms. Brown? Was she outside the apartment?

15 A When we approached the apartments, there was several
16 people sitting outside the apartment. And Ms. Brown was
17 one of the people sitting outside the front door of her
18 apartment.

19 Q Okay. And she told you she lived there, right?

20 A That's correct.

21 Q Okay. And Alfonzo, you said, was sitting on the
22 couch, right?

23 A That's correct.

24 Q And he didn't get up at all, right?

25 A That's correct.

1 Q He was just sitting there?

2 A That's right.

3 Q Let me just grab your report. This report -- the --
4 is this report -- you -- you wrote this ---

5 A I ---

6 Q --- as the lead officer?

7 A Can I ---

8 Q If I ---

9 A --- see it?

10 Q --- can hand it up -- yeah. Sorry. It's a little bit
11 scribbled on.

12 A That's all right.

13 Q Okay.

14 A Yes, ma'am. That appears to be the report from that
15 incident.

16 Q Okay. And so you wrote this report, right?

17 A Yes, ma'am.

18 Q Okay. And you wrote this soon after the incident?

19 A Yes, ma'am.

20 Q So it's fair to say that this is probably the best --
21 the best recollection since you did it right after the
22 incident ---

23 A Yes, ma'am.

24 Q --- right?

25 Okay. And this was a good couple months ago?

1 A Yes.

2 Q Okay. And you don't mention in your report and you
3 didn't testify at all that Alfonzo was fidgety or making
4 any kind of movements, right?

5 A That's correct.

6 Q Okay. So he was just sitting on the couch?

7 A That's correct.

8 Q And you didn't put anything about him threatening you
9 in any way?

10 A That's correct.

11 Q He didn't reach for his pocket?

12 A No, ma'am.

13 Q He didn't make any sharp movements?

14 A No, ma'am.

15 Q He didn't look nervous?

16 A No, ma'am.

17 Q He didn't look sweaty -- anything indicating he wanted
18 to get out of there or anything like that that you
19 mentioned?

20 A No, ma'am.

21 Q Okay. And in the 911 call, there was no mention of
22 guns, right?

23 A That's correct.

24 Q Okay. And in your report -- let's go back to the --
25 where you -- the baggies that -- that you found. In your

1 report you say that you -- you don't see the baggies until
2 you're patting him down, right?

3 A I'd need to read the report. But I could -- I could
4 see the baggies while he was sitting on the couch. I could
5 see them in his right pocket -- one of them protruding from
6 his pocket.

7 Q Okay. But that's not in your report, right?

8 A I will need to ---

9 Q Okay.

10 A --- read the report, but I don't ---

11 MS. BOLEN: If I can ---

12 A --- remember.

13 MS. BOLEN: --- approach, Your Honor?

14 THE COURT: Please.

15 A The report does not state I seen them before.

16 Q Okay. If I can just grab -- that's my only copy,
17 unfortunately.

18 A That's okay.

19 Q If I could just grab it back, thank you.

20 Okay. And you don't mention in the report or in
21 testimony today that you had any prior knowledge of Alfonzo
22 carrying a gun, right?

23 A I did not know Mr. Alexander before this ---

24 Q So you ---

25 A --- incident.

1 Q --- didn't know him before?

2 A No.

3 Q Okay. So you wouldn't know if he had any kind of
4 propensity to carry a gun or any ---

5 A No, ma'am.

6 Q Okay. And so it's fair to say, since you didn't know
7 him, that you wouldn't have heard people saying he carried
8 a gun, right?

9 A No, ma'am.

10 Q Okay. It's also fair to say that the baggies you felt
11 did not feel like a gun?

12 A That's correct.

13 Q Okay. And the other item you felt also didn't feel
14 like a gun?

15 A That's correct.

16 Q Okay. Did you know it was a scale before you pulled
17 it out? Could you tell ---

18 A No, ma'am.

19 Q Okay. So when you pulled it out, you knew it was a
20 scale?

21 A (No audible response.)

22 Q And I think you say it was a -- I think you said on
23 testimony it was a sort of square object, so not -- not a
24 gun or weapon?

25 A That's correct.

1 Q Okay. And, in fact, you didn't find a gun on Alfonzo,
2 right?

3 A No, ma'am.

4 (Whereupon, Ms. Bolen and Ms. Nelson conferred.)

5 Q And you didn't -- you didn't actually find a gun on
6 anyone in that apartment ---

7 A No, ma'am.

8 Q --- right?

9 A There was no weapons found in the apartment.

10 Q Okay. And again, there's no mention in the report of
11 any of these other named individuals being known for
12 carrying guns or having guns? There's no mention of that
13 in your report ---

14 A That's correct.

15 Q --- right?

16 And in terms of the -- what you pulled out of his
17 pocket, you didn't know that it was crack until you pulled
18 it out of his pocket, right?

19 A That's correct.

20 Q Okay.

21 MS. BOLEN: I don't have anything further. Thank you,
22 Your Honor.

23 THE COURT: All right. Redirect?

24 MR. BROWN: Judge, just a few more questions.

25

1 REDIRECT EXAMINATION

2 BY MR. BROWN:

3 Q Lt. Gray, you stated once Ms. Brown opened the door
4 for you, you saw -- how many people were in the apartment?

5 A I -- it was probably a good ten people.

6 Q And how many officers were there?

7 A It was just three.

8 Q Three officers and ten people?

9 A Yes, sir.

10 Q And when you entered this apartment, you said that it
11 had the smell of marijuana and folks gambling. Why'd you
12 say you patted down Alfonzo Alexander?

13 A For officer safety.

14 Q So at that point did you know they had weapons -- they
15 didn't have weapons on them?

16 A No, sir. We did not know if any of them had weapons
17 on them or not.

18 Q And also, Ms. Bolen asked did you know him -- know Mr.
19 Alexander prior to this occurrence.

20 A Did I know Mr. -- no, sir. I didn't know Mr. Alfonzo
21 before this.

22 Q So there would be no reason for you treat him in any
23 other manner, other than just to make sure of your safety?

24 You weren't ---

25 A I -- I ---

1 Q --- targeting ---

2 A --- wanted ---

3 Q --- this fella?

4 A I wanted to protect me and the other two officers that
5 was there in that apartment.

6 Q So there was no ---

7 A There ---

8 Q --- reason to ---

9 A --- we was ---

10 Q --- target him?

11 A --- outnumbered 10 to 3.

12 Q And Ms. Bolen asked, when you did pat him down --
13 after you saw the baggies and patted him down, did you just
14 pull the baggies out yourself?

15 A No, sir. I didn't remove nothing from his pocket. I
16 asked Mr. Alexander could I remove it from his pocket after
17 I felt it, and he said yes.

18 Q So it ---

19 A And it ---

20 Q --- was ---

21 A --- was removed.

22 Q --- it was consensual?

23 A Yes, sir.

24 MR. BROWN: No further questions.

25 MS. BOLEN: Can I have one very brief follow-up?

1 THE COURT: (Nodded head up and down.)

2 MS. BOLEN: Thank you, Your Honor.

3 RE CROSS-EXAMINATION

4 BY MS. BOLEN:

5 Q Lt. Gray, the consent by my client was only after you
6 Terry-frisked him, right? You didn't -- you -- there's no
7 mention of him giving consent to be Terry-frisked ---

8 A That's correct.

9 Q --- right? Okay.

10 THE COURT: All right. Just a couple of questions for
11 clarification. You -- you had mentioned that there were
12 about ten people in the apartment. Did you frisk any other
13 individuals for weapons there?

14 THE WITNESS: Yes, sir. Everybody in the apartment
15 was -- was frisked for weapons.

16 THE COURT: Okay. And the -- again, the justification
17 for doing this was what?

18 THE WITNESS: Officer safety.

19 THE COURT: All right. And expand upon that. What
20 were your concerns?

21 THE WITNESS: Concerns is -- is usually, a lot of
22 times, that drugs and weapons go hand in hand. A lot of
23 times, I've -- through my experience, I've noticed that we
24 made a lot of drug cases where there were guns. And for my
25 safety and my other fellow officers, we patted down the --

1 the people in the apartment.

2 THE COURT: All right. So it's not a -- well, were
3 you drawn immediately to Mr. Alexander when you came in or
4 did -- was it ---

5 THE WITNESS: Seeing -- seeing Mr. Alexander in the
6 apartment, sitting on the couch with the large sum of money
7 in his hand and the baggies coming out of his pocket, that
8 kind of lead me to believe that he was the one that was
9 possibly actually selling the drugs. Because large money
10 and plastic baggies -- usually, marijuana and other drugs
11 are sold in the plastic bags.

12 THE COURT: All right. And I think this has been
13 said, but you did not find weapons on anyone else in the
14 apartment?

15 THE WITNESS: There -- there was no weapons in the
16 apartment on anybody there. That's correct.

17 THE COURT: All right. Additional questions I'm sure
18 the defense has based upon what I have asked, Ms. Bolen?

19 (Whereupon, Ms. Bolen and Ms. Nelson conferred.)

20 MS. BOLEN: I think we're all set. Thank you, Your
21 Honor.

22 THE COURT: All right. Anything?

23 MR. BROWN: No, sir.

24 THE COURT: Thank you. You can step down.

25 THE WITNESS: Thank you, sir.

1 (Whereupon, the witness exited the witness stand.)

2 (Off the record briefly.)

3 THE COURT: y'all want to speak to your positions on
4 the case now that the officer has testified, Ms. Bolen?

5 MS. BOLEN: Thank you, Your Honor. Our position is
6 the same: that I think with the officer testimony, coupled
7 with the report, there has still been no actual fear or
8 suspicion or any specific articulable facts distinctive to
9 this situation that gave the officer reasonable fear of --
10 of his own safety. Again, the -- the cases say that there
11 has to be reasonable suspicion that someone is armed and
12 dangerous.

13 Cases where that -- that standard is found have much
14 more than this case. They have, you know, a visible gun in
15 someone's pocket, that sort of thing. That -- that's what
16 our courts have been found to justify a -- a *Terry* frisk.

17 THE COURT: I -- I do understand. The Fourth Circuit,
18 however, has ruled that -- that, for lack of a better word,
19 that, you know, guns are tools of the drug trade. And so
20 you're going into a house at night; marijuana, you're
21 smelling that. You've got a number of people who outnumber
22 the officers. You want to speak to that?

23 And -- and I'm trying not to -- to mix the issues
24 here. This obviously is not a plain-feel case. You have a
25 pat-down. You have the officer observing baggies sticking

1 out of the pockets. And then, you have consent by the
2 defendant, supposedly given, to remove the bags from his
3 pockets. It's clearly not a plain-feel situation in that
4 the officer testified he did not know it was scales; he did
5 not know it was crack until such time as he obtained
6 consent to search the defendant.

7 I'm not -- I'm wanting to try to avoid mixing ---

8 MS. BOLEN: Right. And we -- we were going to raise
9 plain-feel, Your Honor ---

10 THE COURT: Go ahead.

11 MS. BOLEN: --- as well.

12 THE COURT: Yeah.

13 MS. BOLEN: But ---

14 THE COURT: I -- I agree ---

15 MS. BOLEN: --- under ---

16 THE COURT: --- with you on plain-feel, then, because
17 it's not plain-feel.

18 MS. BOLEN: It is not -- right -- that there's not
19 been any testimony to that.

20 Some of the -- the facts elicited during Lt. Gray's
21 testimony is that there was no prior knowledge of my client
22 having guns, no prior knowledge of anyone there having
23 guns; no mention in the 911 report that there were any kind
24 of weapons involved. I think very notably, Your Honor, my
25 client is just sitting on the couch. Sure, he's got money

1 in his hand. But there's ample testimony that there was
2 gambling going on.

3 I think there's some dispute about when the plastic
4 bags were seen, as it's in the report. That does not
5 happen until after the *Terry* frisk. But there's definitely
6 not a gun seen. There's been no mention of a gun by
7 anyone.

8 My client doesn't make any of the sort of
9 stereotypical, you know, furtive movements -- what our
10 courts would call the "furtive movements" to say that he
11 was trying to cover something up. He doesn't reach for his
12 pocket. He doesn't make any kind of threats. He doesn't
13 make any sharp moves. He's literally just sitting on the
14 couch.

15 And I -- I just think that that does not, in and of
16 itself, give rise to a reasonable suspicion, based on
17 suspicious articulable facts, that the *Terry* frisk was
18 necessary to protect the officer. Again, no prior weapons
19 that they knew about; no reputation for weapons. I think
20 the language in *State v. Fowler* is -- is very important in
21 this case, Your Honor.

22 Before police may frisk a defendant, they must have a
23 reasonable belief that the defendant is armed and
24 dangerous. That's *Fowler* quoting *Ybarra v. Illinois*. And
25 I -- I -- I think that the -- the testimony and the

1 incident report simply do not support that there's a
2 reasonable belief that Alfonzo, who is completely unknown
3 to this officer, is armed and dangerous. There has been
4 nothing to indicate that to him. And in fact, Alfonzo was
5 not armed.

6 There's been nothing to -- to say that the frisk was
7 necessary to preserve his safety. And -- and our position,
8 Your Honor, is that the frisk itself was unconstitutional.
9 I think -- well, if my client were here, we'd be in a
10 different situation altogether. But the consent -- I -- I
11 understand that although we may dispute that, the testimony
12 will be that he consented.

13 But again, I think the -- the "fruit of the poisonous
14 tree" doctrine applies and that the unlawful,
15 unconstitutional *Terry* frisk -- any evidence seized as a
16 result of that should be suppressed.

17 THE COURT: All right, Mr. Brown.

18 MR. BROWN: Your Honor, I know we've already kind of
19 hashed this out a lot. Our position, again, is -- I know
20 we've already gotten to the whole thing about being allowed
21 into the apartment. The whole thing on *Terry* frisk now.

22 Your Honor, with the totality of circumstances with
23 Lt. Gray, along with only two other officers, when they
24 enter this apartment building, they -- approximately ten
25 other individuals there, marijuana smoke; see a baggie on

1 the floor next to Mr. Alexander, he did say that he did --
2 he patted him down for weapons. And I think it's all --
3 right now everything's turned on that it has to be a gun in
4 Mr. Alexander's pocket. And I think it's just -- that he's
5 armed. And I think we need to look at is also -- and cited
6 in -- let's see here -- *State v. Blassingame*, which is a
7 South Carolina case, 1999, that the officer need not be
8 absolutely certain that the individual was armed. The
9 issue is whether a reasonable, prudent man in the
10 circumstances would be warranted in the belief that his
11 safety or that the others was in danger.

12 And I think, as we already said, gathering on Lt.
13 Gray's experience -- past experience, that he drew from
14 that that a lot of times when you have drugs, that guns or
15 other weapons are usually associated, being outmanned 10 to
16 3, he clearly stated in his incident report and has also --
17 as he's testified that he was patting him down for officer
18 safety to make sure there was no weapons. And I think,
19 with the totality of circumstances and not knowing what Mr.
20 Alexander had on him, it's not like he was targeting him.
21 But he did, you know, see a bulge in his pocket. It may
22 not have been a gun, but it could've been another weapon.
23 It could be brass knuckles or anything like that that can
24 be used as a -- as a deadly weapon. But under those --
25 under the totality of circumstances, believe that a -- that

1 frisk was -- was a valid frisk.

2 THE COURT: All right. Solicitor, let's assume for a
3 moment that I agree with you and we follow *Blassingame* and
4 that the -- which for benefit of the court reporter is
5 spelled B-l-a-s-s-i-n-g-a-m-e; it's at 338 S.C. 240. Let's
6 assume for a moment we follow that line. I agree that the
7 officer had a reason to conduct a pat-down to make sure
8 that no one in the home or the apartment was armed.

9 We have the pat-down taking place. He feels the lump.
10 It's clearly not a plain-feel case in that the officer did
11 not immediately recognize that it was crack. Where does
12 that leave us?

13 So we have a -- we have a pat-down. We have a baggie.
14 Is it the state's position that the consent takes care of
15 that?

16 MR. BROWN: That's correct, Your Honor: that he
17 consented. He asked; he did not ultimately take it upon
18 himself to pull the baggie and the -- the scales out of his
19 pocket, but that he asked and Mr. Alexander consented and
20 removed those himself.

21 But before that it is all based on officer safety and
22 making sure there were no weapons involved. Not only did
23 he pat down Alfonzo Alexander, but everyone in the
24 apartment was checked for weapons to make sure there was no
25 weapons in the apartment.

1 THE COURT: All right. Anything further from anyone?

2 MS. BOLEN: Your Honor, I -- our position would just
3 be that once -- I mean, he testified that none of these
4 things felt like weapons; that once he determines that
5 they're not weapons, he didn't have the right to ask to
6 pull anything out.

7 THE COURT: I understand. I think that the officer
8 may not have known or apparently was not entirely sure what
9 the two items were. And again, we're dealing with a crack
10 -- the crack on one hand and the scales on the other. If
11 he had asked the individual, "May I search you?" and the
12 individual said, "No," and then the search took place
13 nonetheless, you know, absent an arrest -- and again, we're
14 not dealing with a search incident to arrest at this point,
15 because the testimony appears to be that he was not under
16 arrest and wasn't going to be arrested for the marijuana.
17 So we're dealing with a consent situation. The only
18 evidence that we have in the record in the case is that the
19 defendant did give consent to search. And because of that
20 consent, the officer then discovered the crack on the
21 defendant.

22 Again, I do rule that this is not a plain-feel
23 situation. But the *Terry* frisk was legitimate. When the
24 officer did not realize what it was he was feeling, he
25 asked for consent. The defendant gave consent. And

1 accordingly, I will permit the drugs to come into evidence,
2 subject, of course, to the exceptions by the defense.

3 MS. BOLEN: Thank you, Your Honor.

4 THE COURT: Any other motions?

5 MS. BOLEN: Very, very, very briefly, Your Honor. We
6 -- we would make a motion to sequester witnesses.

7 THE COURT: I typically grant those. You can have Mr.
8 Gray. I know we have some SLED agents. I'm really ---

9 MR. BROWN: Judge, I don't think -- I mean, I think
10 just as long as we have Mr. Gray here as our lead
11 investigator, SLED officers, I think, are fine ---

12 THE COURT: All right.

13 MR. BROWN: --- staying out of the courtroom.

14 THE COURT: Okay. That's fine.

15 MS. BOLEN: And just as a matter of housekeeping, I'm
16 -- I'm really doing this since my client's not here to make
17 sure we've got everything in the record. We brought up
18 yesterday that my client had been represented by you. And
19 I -- I think we need some sort of, I guess, adjudication on
20 that issue.

21 He -- he tells me that he was represented by you for,
22 I believe, his first drug offense. And it looks, from his
23 record, like he -- he got some time on that. And -- and
24 just so you -- you're aware of the nature of our
25 conversation, he was the one to bring this up; I did not

1 ask him who -- who his attorneys on the other charges were.

2 THE COURT: All right. I appreciate your position.
3 In anticipation of that motion, I asked my clerk to do some
4 quick research. And the research that he's provided me
5 with would indicate that I do not have a conflict.

6 I -- I don't know -- it -- it had to have been
7 sometime, I guess, in '97 or '98 ---

8 MS. BOLEN: I believe ---

9 THE COURT: --- that I ---

10 MS. BOLEN: --- it was '98. Yes, sir.

11 THE COURT: --- '98. Are you sure it was me and not
12 Richard Gustafson?

13 MS. BOLEN: He said Frank Addy.

14 THE COURT: Okay.

15 MS. BOLEN: Yeah.

16 THE COURT: It may have been me.

17 MS. BOLEN: I -- I don't ---

18 THE COURT: I -- I know ---

19 MS. BOLEN: --- think he ---

20 THE COURT: --- that ---

21 MS. BOLEN: --- was aware that you were a judge. I
22 think he was kind of telling me to figure out who was still
23 in our office.

24 THE COURT: I -- good enough. I don't -- I -- I will
25 tell you, I have no specific recollection of Mr. Alexander.

1 And obviously, I did not retain his file. I don't know him
2 from Adam's house cat.

3 MS. BOLEN: Right.

4 THE COURT: And I don't remember anything ---

5 MS. BOLEN: Right.

6 THE COURT: --- that he said to me 15 years ---

7 MS. BOLEN: Right.

8 THE COURT: --- ago. It's possible, if I saw him,
9 maybe I would remember his face. Sometimes I'm much better
10 with faces than I am with names. But I will tell you, I
11 remember absolutely nothing about the underlying
12 representation that I engaged in for Mr. Alexander.

13 And the reason that I asked that question about "Are
14 you sure it was me?" is that the individual that I hired on
15 while I was public defender, he -- his primary
16 responsibility were -- were drug cases and CSC cases.
17 Those were the ones he wanted. And that's the reason I --
18 I -- I may very well have represented him and we did sort
19 of switch back and forth between the two of us when I had
20 your job. But I don't recall Mr. Alexander in any way,
21 shape, or form.

22 I've looked at, so far -- and clearly, under South
23 Carolina law, Section 14-1-130 would not apply because I'm
24 not, of course, related to Mr. Alexander. Canon 3 of Rule
25 501: "A judge shall perform judicial duties without bias

1 or prejudice. A judge shall not, in the performance of
2 judicial duties, by words or conduct manifest any bias or
3 prejudice, etc."

4 I don't know him. I -- I cannot honestly say I don't
5 like him. I don't dislike him. So I think I'm about as
6 neutral as I can be with regard to Mr. Alexander.

7 You know, Rule 407 of the professional-conduct rules
8 relates to -- Rule 1.9 of that rules relates to duties to
9 former clients. This is not a substantially related
10 matter, as I can see it, nor is it -- nor is the crime he's
11 on trial for today the same one I represented him on or the
12 same -- it does not arise out of the same factual
13 background of the one I represented him on.

14 There's the *Krause* case -- it's K-r-a-u-s-e -- at 381
15 S.C. 55, stating the proposition, essentially, that the
16 fact that a trial judge had a previous relationship with a
17 party is insufficient evidence standing alone of bias or
18 prejudice. And then, there's a case that's actually on
19 point out of Texas: *Cantu* -- C-a-n-t-u -- v. *State*,
20 represented at 802 S.W.2d 349 from the Texas Appellate
21 Courts of 1990, dated 1990, basically dead-on. And the
22 Court of Appeals in Texas concluded that the -- the trial
23 court could hear the case, despite the previous
24 representation.

25 For those reasons I'll deny your motion, to the extent

1 that you're making a motion, for me to recuse myself.
2 Certainly, it's -- it's a strange kind of a situation
3 because, obviously, the state would probably be more
4 prejudiced. And to the extent the state would permit -- or
5 to the -- to the extent I've got a previous relationship
6 with the defendant, it would seem that the state perhaps
7 would be the one bringing the motion. But it is what it
8 is.

9 And so that is my ruling. And I assume, Mr. Brown,
10 you're okay with me hearing the case?

11 MR. BROWN: Yes, Your Honor. We're ready to roll.

12 THE COURT: All right. Very good.

13 MS. BOLEN: Your ---

14 THE COURT: We'll take a few moments for ---

15 MS. BOLEN: Oh.

16 THE COURT: --- ourselves. You have ---

17 MS. BOLEN: I was ---

18 THE COURT: --- something else?

19 MS. BOLEN: --- was -- yeah. We -- we have one
20 motion, just to be done after the jury is sworn.

21 THE COURT: Okay. Relating to the indictment or -- if
22 it relates to the indictment, it needs to be made ---

23 MS. BOLEN: It's not ---

24 THE COURT: --- prior to the ---

25 MS. BOLEN: --- an indictment ---

1 THE COURT: Okay.

2 MS. BOLEN: --- motion.

3 THE COURT: All right. Let's take five minutes for
4 ourselves. We'll bring the jury in. We may not get any
5 further than openings. So if you want to tell the SLED
6 folks to go ahead and grab a bite for lunch, we can resume
7 around 2/2:15. Ask them to be back here. I assume you
8 wouldn't have an objection to taking the witnesses out of
9 order?

10 MS. BOLEN: No. And I -- actually, now that we're
11 kind of talking about scheduling, is -- I was not
12 anticipating being in trial this week. And I -- if -- if
13 there's any way that we can break at 5 or close to, I've --
14 I've got kids I've got to pick up. This is my one day a
15 week to pick them up. And I ---

16 THE COURT: I have an ---

17 MS. BOLEN: --- I understand ---

18 THE COURT: --- obligation ---

19 MS. BOLEN: --- if that ---

20 THE COURT: We will -- we will break at 5. I have ---

21 MS. BOLEN: Okay.

22 THE COURT: --- as well. I've got to be in Ninety-Six
23 at 6 so ---

24 MS. BOLEN: Okay.

25 MS. NELSON: Thank you.

1 MS. BOLEN: Thank you, Your Honor. I appreciate that.
2 That didn't come up until yesterday.

3 THE COURT: Certainly.

4 (Off the record from 12:19 p.m. until 12:31 p.m.)

5 THE COURT: All right. If we may, we'll go ahead and
6 go back on the record. The state is present, represented
7 by Mr. Brown. The defense attorneys are here. I assume
8 that the jury is present. We'll go ahead and bring them in
9 at this point in time.

10 I'll have the clerk swear them. I'll give them the
11 opening instructions. That'll give us enough time,
12 probably, for a brief opening argument. I'll release them
13 for lunch. And then, if it's okay, I'll take up your
14 motion that you wanted to make after the jury is sworn.

15 MS. BOLEN: I -- yeah. That's fine, Your Honor.

16 THE COURT: Good enough.

17 MS. BOLEN: That's fine. Thank you.

18 THE COURT: (To the bailiff) Let's have the jury in,
19 please.

20 (Whereupon, the jury entered the courtroom at 12:32
21 p.m.)

22 THE COURT: All right. Let the record reflect that
23 the jury is here and seated. Ladies and gentlemen of the
24 jury, first of all, thank you for your patience this
25 morning. I apologize for keeping you waiting. I know that

1 you all were here at 11 and I promptly dismissed you. I
2 hope you had an opportunity to tour the square on this
3 beautiful day and maybe do a little bit of light shopping.

4 I had some pleas that I had to take up this morning
5 that, in all candor, took a lot longer. They were matters
6 unrelated to this particular case. And because attorneys
7 and people from SCDC had been here, I needed to get those
8 out of the way, just for the convenience of all concerned.
9 So I apologize for conveniencing them and inconveniencing
10 you.

11 We're about to start the trial of the *State v. Alfonzo*
12 *Alexander*. And at this point in time -- who is Juror No.
13 33, Mr. Clary? If you'd raise your ---

14 JUROR: (Raised hand.)

15 THE COURT: I'm going to make you the foreperson of
16 the jury, Mr. Clary, if that's okay with you. When we
17 resume the case -- you don't have to switch seats now. But
18 when we resume, the spot that you're in, ma'am -- you're
19 wearing the -- the flower -- floral-print shirt -- that'll
20 be his seat. The rest of you, feel free to move about as
21 you choose to.

22 The seats down front are usually a little bit better
23 in terms of hearing. So if it comes to your attention, Mr.
24 Clary, that any of the jurors are having trouble hearing,
25 you might ask that they be afforded the -- the front seats.

1 Mr. Roundtree, you're the alternate. If you'll just
2 stay in that seat throughout the trial too, but again, the
3 rest of y'all, feel free to move around if you choose to do
4 so or need to do so.

5 If you have any trouble hearing the testimony while
6 the case is going on or you have difficulty hearing me or
7 the attorneys, simply raise your hand. And that'll be my
8 cue or my clerk's cue to ask them to speak up or talk a
9 little bit louder for you. I want to make sure that y'all
10 can hear anything that's said. So again, you can't hear;
11 hand goes up; I'll ask them to speak up.

12 At this point in time, I'm going to ask that you stand
13 where you are, if you could, and just raise your right hand
14 while the clerk -- clerk administers her oath to you.

15 JURORS: (Complied.)

16 (Whereupon, the jury was duly sworn at 12:34 p.m.)

17 THE COURT: All right. Now, ladies and gentlemen,
18 again, we're about to try the case of the *State of South*
19 *Carolina v. Alfonzo Alexander*. And before we begin the
20 trial, I want to let you know that this case is probably
21 going to be a little bit different from what you've come to
22 expect from reading about cases in books or trials in books
23 or seeing them depicted in the movies or on TV. From what
24 you see on TV or in the -- the movies, you -- you might get
25 the impression that trials are filled with riveting drama

1 and intense action and that everything is neatly resolved
2 inside of an hour or two hours.

3 And sometimes we have cases of that duration. But
4 more often than not, cases last a lot longer than that.
5 And that's because, based upon the procedure that we
6 operate under, ladies and gentlemen, the rules of evidence
7 often require us to take much more than just an hour or two
8 hours to get all the information to you. And again, the
9 rules of evidence are designed in such a way as to try and
10 provide you with the best possible evidence. And so that's
11 the reason that -- that sometimes cases take a lot longer
12 from -- than what you may have come to expect from reading
13 about them in books or seeing them on TV.

14 Your role as jurors is very, very important. And our
15 criminal justice system could not function without people
16 willing to come in and do their civic duty and serve as
17 jurors. And so I want to begin by thanking you for your
18 service here today on this particular case.

19 Now, ladies and gentlemen, what I now say to you is
20 intended to serve as an introduction to the trial of this
21 case. And these remarks should not be construed as a
22 charge on the law that applies. I'll instruct you on the
23 law that applies at the conclusion of the trial before you
24 retire to deliberate your verdict. Again, these remarks
25 are merely an explanation on the procedure that we'll

1 follow so that you can better understand what's going on as
2 the trial progresses.

3 Now, the defendant in this case, Mr. Alexander, is
4 charged by indictments filed in this Court with the
5 offenses of possession of crack cocaine with intent to
6 distribute; and possession of crack cocaine with intent to
7 distribute within the proximity to a school, park, or
8 playground. I'll explain the elements of these offenses to
9 you later before you have to deliberate your verdict.

10 I instruct you, ladies and gentlemen, that these
11 indictments are simply the charges by which the cases are
12 brought into this Court. And these indictments, of course,
13 are not evidence in any sense of the word of any of the
14 allegations contained in the indictments. The defendant,
15 Mr. Alexander, has pled not guilty to these indictments.
16 The state, therefore, has the burden of proving each and
17 every element of the indictments beyond a reasonable doubt.
18 It'll be your duty, ladies and gentlemen, to -- to
19 determine whether the -- the state has met that burden.

20 Now, ladies and gentlemen, your purpose as jurors is
21 to find and determine the facts in this case. You're the
22 sole judges of the facts. So if at any time, I make any
23 comment concerning the facts, you must disregard my
24 comment. You will -- you're to determine the facts from
25 the testimony that you hear and the other evidence which is

1 introduced during the course of the trial. It will be up
2 to you to determine the inferences which you feel may
3 properly be drawn from the evidence presented. It's
4 especially important that you perform your duty of
5 determining the facts diligently and conscientiously.
6 Because ordinarily, there is no way to correct an erroneous
7 determination of facts by the trial jury.

8 Now, on the other hand and with equal emphasis, the
9 same law that makes you the judge of the facts of this case
10 makes me the judge of the law. The law as given by the
11 Court is the only law that you can consider. You have to
12 accept it and apply it even though you may disagree with
13 it.

14 Again, I'm not permitted to tell you what the facts
15 are or to express to you any opinion as to what the facts
16 are. And you're not allowed to disagree with me about what
17 the law is or what the law should be. Your job will be to
18 take the law as I give it to you, apply it to the facts as
19 you find them to be, and render a true and just verdict
20 under the oath that you have just taken.

21 Now, ladies and gentlemen, until I advise you to begin
22 your deliberations, please don't discuss this case with
23 anyone: not friends, family members, not even your fellow
24 jurors. Once the case is submitted to you, you should
25 discuss it only in the jury room in the presence of all 12

1 jurors.

2 Now, the parties in this case have been advised that
3 they're not to have any contact with you. So if you happen
4 to see one of them -- one of the lawyers coming or going
5 from the courthouse or one of the witnesses coming or going
6 from the courthouse and they don't even say hello to you,
7 please understand they're not being rude; they're simply
8 following my instruction not to have anything to do with
9 you while the case is going on.

10 The reason for this is very simple. Often, innocent
11 conversations -- an innocent hello or "how are you doing"
12 or something like that -- can be misinterpreted by the
13 other side as an effort at jury tampering. So the easiest
14 way to prevent that question from even coming up is just to
15 say jurors are off limits while the trial is going on. So
16 again, if you -- if you see them and they're not saying
17 hello to you, please understand, again, they're not being
18 rude.

19 (Off the record briefly.)

20 THE COURT: Now, ladies and gentlemen, it'll be very
21 important that you keep an open mind throughout the trial
22 of this case and not decide any issue until all the
23 evidence has been presented, the parties have made their
24 closing arguments, and I've instructed you on the law that
25 applies. It'll be your solemn responsibility to determine

1 the guilt or the innocence of the defendant. And your
2 verdict must be based solely on the evidence as it is
3 presented to you in this trial and on the law that I
4 instruct you at the close of the trial.

5 And in a moment, ladies and gentlemen, the solicitor
6 will make what's known as his "opening statement" or
7 "opening argument," in which he will explain to you what he
8 believes the issues are in this case. Ms. Bolen, the
9 attorney for the defendant, will also be able to make an
10 opening statement, although she is not required to do so.

11 I instruct you that what the lawyers say during their
12 opening statements and during their closing statements is
13 not evidence in this case. Again, you'll judge the
14 evidence based upon the testimony of sworn witnesses.
15 Their openings and their closings are merely their
16 contention as to what will be proven or what has been
17 proven.

18 Now, the evidence, again, in this case will be
19 presented by the testimony of sworn witnesses. And I will
20 tell you that in determining the facts of this case, you
21 have to determine whether or not the testimony of these
22 witnesses is believable or not. It'll be my responsibility
23 to rule as a matter of law on whether certain testimony is
24 admissible. But whether or not you believe that testimony,
25 once it's admitted, is solely for you to determine.

1 In deciding whether to believe a witness, you have the
2 right to consider the interest of any witness, the bias of
3 any witness, the prejudice of any witness, the opportunity
4 for the witness to have seen the matters and things about
5 which the witness testifies, as well as the way the witness
6 acts on the witness stand. You have the right to consider
7 anything that's in the record in this case that will help
8 you evaluate the credibility and the -- of the testimony.

9 That means it's your duty to pay close attention to
10 the witnesses, listen to them, observe them, and pay close
11 attention to the attorneys in the court. Try and keep your
12 thoughts from wandering, but give strict attention to the
13 testimony so at the close of the case, after you've heard
14 the argument of counsel and you've received my instruction
15 on the law, you'll be in a position to render a true and
16 just verdict under the oath that you have just taken.

17 Now, Mr. Foreman, I will instruct you as your -- as
18 your -- your primary responsibility, sir, is to preside
19 over the deliberations in the jury room. Obviously, your
20 vote counts no more/no less than any other jurors -- than
21 any other jurors. You're -- you're -- you're basically
22 first among equals, is how it is. Additionally, your
23 responsibility includes giving the jury's verdict once it
24 is received; being the jury spokesperson here in court; and
25 making sure that everybody has a fair say or a fair

1 opportunity to have their say once the deliberations begin.

2 Now, in order to preserve everyone's rights, I'll give
3 the attorneys an opportunity to object to anything that
4 I've said to you during these opening remarks. And then
5 we'll proceed with the trial.

6 Any objections from the state?

7 MR. BROWN: Not from the state, Your Honor.

8 THE COURT: From the defense?

9 MS. BOLEN: No, sir, Your Honor.

10 THE COURT: All right. Very good. We'll now begin.

11 Mr. Brown, you're recognized for your opening, sir.

12 MR. BROWN: Thank you, Your Honor.

13 OPENING STATEMENT BY MR. BROWN

14 MR. BROWN: Good afternoon. Ladies and gentlemen,
15 we're here today because of what took place last August.
16 It was August 12th, 2012, to be exact. About 1:33 in the
17 morning, an anonymous phone call came in to Abbeville 911.

18 That came over dispatch to Abbeville P.D.; more
19 specifically, Lt. John Gray, who works at Abbeville P.D.
20 He responded. The call said there was illegal gambling and
21 drugs going on at 401 Oakland Apartments, which is in the
22 city limits of Abbeville -- Abbeville, South Carolina.

23 Officer Gray and two other officers went to that
24 location to investigate, just to double-check to see what's
25 going on. When they got there, they approached the front

1 door and they met the homeowner -- or the renter, the
2 tenant of that -- of that apartment, Ms. Ella Brown. Met
3 her outside, and asked Ms. Brown if anything was going on,
4 Ms. Brown; open up the door for you; take a look inside.

5 When she opened up the door, a wave of marijuana smoke
6 hit him. He could see people inside, gambling; had cards
7 on the table. Looked over to the couch, as you come in the
8 front door, and there was Alfonzo Alexander, sitting there
9 on the couch, a wad of cash in his hand, marijuana on the
10 ground next to him.

11 Three officers went in; approximately ten people in
12 the building -- or in the apartment. So officers patted
13 down the -- patted down Mr. Alexander, along with other
14 people in the apartment, for their safety. And once they
15 did that, they did not, along with the wad of cash in Mr.
16 Alexander's hand, baggies coming out of his pocket. They
17 could see baggies.

18 He then got the baggies out of the pockets with Mr.
19 Alexander's consent, and it was crack cocaine. Another
20 pocket was a scale, along with those other baggies. At
21 that point Mr. Alexander was arrested and the investigation
22 continued there in the apartment.

23 Later on -- that's basically the -- the summation of
24 the facts. That crack was later on sent down to SLED; was
25 tested. And you'll hear later on from a forensic scientist

1 on that.

2 Now, the state has the burden of proof to prove to all
3 of y'all the burden of proof, which is prove beyond a
4 reasonable doubt. And what is that? That's the proof that
5 leaves you firmly convinced of the defendant's guilt. It's
6 not all doubt; it's not every doubt; it's not any doubt.
7 But it's firmly convinced of the defendant's guilt.

8 And the elements that we have to prove -- and if I
9 ever say anything that's different from what the judge --
10 the judge is going give you the instruction later on at the
11 end of the trial on the law. Now, if I contradict anything
12 he says, disregard what I say and go with what the judge
13 says.

14 But he's been charged possession with intent to
15 distribute. But what he has -- what we have to prove is
16 that the defendant knowingly possessed -- that he knowingly
17 possessed a controlled substance -- crack cocaine in this
18 case -- with the intent to transfer the crack to another
19 person.

20 I ask you to look in this case -- look and listen to
21 the evidence presented and to the witnesses. They are very
22 important in this case, each one of them. And you can
23 judge for yourself the credibility of them. But I want you
24 to look at the weight of the evidence. Items that was also
25 collected as evidence, take a look at that.

1 The other charge we have is possession with intent to
2 distribute in proximity of a park, playground, school. And
3 the elements have to prove -- part of it is the -- the
4 elements I just read to you: possession with intent to
5 distribute. But I also have to show that, within half a
6 mile of Mr. Alexander being in possession of these drugs,
7 he was within a park or playground or school; in this case,
8 park -- public park.

9 So that's what I -- I intend to show you today -- or
10 during this trial. I ask you to just listen carefully,
11 take in all the evidence. At the end of the case, I will
12 come back before you again to ask that you find Mr.
13 Alexander guilty as charged. Thank you.

14 THE COURT: Thank you, Mr. Brown. All right. Ms.
15 Bolen, you're recognized, ma'am.

16 MS. BOLEN: Thank you, Your Honor. May it please the
17 Court?

18 THE COURT: Yes, ma'am.

19 MS. BOLEN: Mr. Brown.

20 OPENING STATEMENT BY MS. BOLEN

21 MS. BOLEN: Last year's presidential election was
22 exciting for a lot of reasons. And I'm not here to talk
23 about politics. But I want to talk about one incident that
24 happened during the presidential election. It was
25 particularly exciting; got a lot news.

1 It was when actor Clint Eastwood engaged in what he
2 called "the debate with President Obama." I don't know if
3 any of you remember that; saw it; saw any of the late-night
4 shows that parodied it. But if you remember, President
5 Obama wasn't there for that debate. Clint Eastwood talked
6 to an empty chair.

7 And similarly, we have an empty chair here today.
8 Alfonzo, who I represent, is not present today. But I want
9 you to remember that just like President Obama was a real
10 person, Alfonzo -- in this case is a real person. So
11 please don't forget, during the course of this, that even
12 though there's an empty chair, that doesn't mean that
13 there's not a real person involved in this and a real
14 person who is very affected by this proceeding.

15 I mentioned yesterday when I introduced myself that
16 I'm a public defender and that Ms. Nelson, who's sitting
17 with me, is also a public defenders. What public defenders
18 are: We're lawyers who represent people who are charged
19 with crimes who can't afford to hire a private attorney.
20 To put it simply, we're lawyers who represent poor people.

21 And what goes along with being poor? A lot of times,
22 people who are poor don't have stable housing. They don't
23 have reliable transportation. They don't have reliable
24 phones. They often, you know, have to use a relative's
25 phone.

1 Now, what's happened is we've lost track of Alfonzo.
2 The case is proceeding anyways, but we've lost track of
3 Alfonzo, and we've got an empty chair here. I just wanted
4 to explain that.

5 Going on to the -- the actual case, the way Mr. Brown
6 explained it, it seems like it -- it should be an open-and-
7 shut case. But I want you to remember, just as he asked
8 you to look at all the evidence, I want you to look at all
9 the evidence; be critical of the state's presentation.

10 Mr. Brown alluded to the fact that there was gambling
11 and -- and marijuana and a lot of people in an apartment.
12 And one thing I want you to look at during the course of
13 this trial and while you're hearing the state's testimony
14 through the officers, is look at the investigation -- or
15 really, the lack of investigation -- that was done in this
16 particular case. Look at who the police arrested and who
17 they didn't arrest. Look at the things that they did and
18 the things that they didn't follow through with. I think
19 you'll find that there's some -- some pretty big holes in
20 this investigation.

21 And those holes lead to reasonable doubt. That is the
22 standard that the state is held to, as Mr. Brown said.
23 They have to prove Alfonzo guilty beyond a reasonable
24 doubt.

25 And I think, when you look at the investigation, the

1 things that are missing and some of the things that were
2 done to Alfonzo that were not done to other people, you'll
3 find that there is reasonable doubt. I think you'll also
4 find with some of the evidence that there's a lot of
5 difference between what the police are saying and what some
6 of the other witnesses are going to say, particularly the
7 SLED witnesses. And that also points to the fact that
8 there -- there's something going on here. There's some
9 kind of problem with this investigation.

10 And that problem, we believe, will show that there is
11 more than reasonable doubt that -- that Alfonzo is not
12 guilty of these charges. We're asking you to listen to all
13 the evidence, listen carefully, listen critically. Listen
14 again to the investigation: who was arrested, who was not;
15 what was done, what wasn't done; what the police say, what
16 was said. And at the end of the trial, I'm going to come
17 back and ask you to find all of those holes in the
18 investigation and the holes in the state's evidence means
19 that Alfonzo is not guilty. Thank you.

20 THE COURT: Thank you, Ms. Bolen. All right. Ladies
21 and gentlemen, we typically break for lunch around one
22 o'clock. Because I anticipate the first witness being
23 called going much longer than ten minutes, I'm going to go
24 ahead and release y'all for lunch. If you could, be back
25 in the jury room at 2:15 at the latest, please. At that

1 point in time, we'll receive the first testimony and begin
2 the trial in earnest.

3 If you happen to go to lunch with a friend, family
4 member, or even a fellow juror, understand what I -- or
5 remember what I said a moment ago. It's fine if you do
6 that, fine if y'all have lunch together or break up into
7 groups, or what have you; just don't talk about the case
8 with anyone. It should be amazingly simple. You haven't
9 heard the first witness; you don't know anything about this
10 case yet.

11 With that have a great lunch. I'll see you back here
12 at 2:15. Thank you very much, and you are excused.

13 (Whereupon, the jury exited the courtroom at 12:52
14 p.m.)

15 (Off the record briefly.)

16 THE COURT: All right. The record should reflect that
17 the jury is out. Ms. Bolen, you had a motion to be made
18 after the jury was sworn?

19 MS. BOLEN: Yes, Your Honor. Thank you. We've got a
20 motion to exclude some evidence on the basis of a Rule 5
21 *Brady* violation. Just as a matter of housekeeping, Your
22 Honor, we filed our Rule 5 on December 4th, 2012. It was
23 accepted by the solicitor's office. We have a signed
24 receipt.

25 The particular pieces of evidence that have not been

1 turned over that we are seeking to exclude are: (1) the
2 chain of custody; and (2) some pictures that are apparent
3 on the solicitor's desk that we have not gotten copies of,
4 which we're assuming they're intending to use.

5 Regarding the chain, Your Honor, not only did we file
6 a Rule 5, but I sent Mr. Brown an e-mail on March 14th of
7 2013, specifically asking for the chain. I know he
8 received the e-mail because he responded that same day.

9 I received the -- in -- in that e-mail I requested the
10 SLED analysis, as well as the chain. And in his response
11 -- so it -- it became -- he said that it -- the drugs
12 hadn't been analyzed yet and he would get it to me when
13 they'd been analyzed. As I've previously said, I think in
14 motions yesterday, I received the SLED analysis on
15 Thursday. But I did not get the chain with it.

16 Yesterday I -- I -- I said, I think, at least twice in
17 court that I hadn't gotten the chain. And I still don't
18 have the chain. And this is a important piece of evidence.
19 It is something that they're going to use in their -- their
20 case-in-chief. It is important to us, Your Honor, because
21 we -- there is a big discrepancy in the amount of drugs
22 seized and the amount of drugs analyzed that I think at --
23 at least allows us to explore that something happened to
24 these drugs.

25 I've not been given the chain. I can't talk to any

1 chain witnesses and find out, you know, anything about how
2 these drugs were handled.

3 And Your Honor said yesterday, when we were asking for
4 a bench warrant -- one of the things you said -- and I -- I
5 completely understand this position. But one thing you
6 said was that it wouldn't be fair to allow people charged
7 with crimes to simply get out of trial and get out of
8 punishment by not showing up; that that wouldn't set a good
9 example and it wouldn't be fair to everyone else.

10 And likewise, Your Honor, I'd like to make an analogy
11 that it wouldn't be fair to allow the state to not hand
12 over discovery after it's been repeatedly asked for and
13 then be allowed to introduce that discovery at trial. And,
14 Your Honor, to -- to expand on that, this is a -- a problem
15 we've had for quite a while. And -- and we've just come up
16 with a short list of the cases called since December. And
17 at least in all the ones Ms. Nelson and I were involved in
18 and -- and one more in Laurens, there's been discovery
19 issues in all of them.

20 Last week Ms. Nelson and I were about to try an
21 attempted murder in Greenwood and were handed a witness
22 statement as the jury was walking in. Last term I tried a
23 armed robbery case and was given the victim statement two
24 days before trial. And that was not any fault of Mr.
25 Brown; I think he just got it then too.

1 But again, Ms. Nelson and I were about to try an arson
2 case in December and were given very material photographs
3 after the jury was selected. Tried a CSC a couple months
4 ago; we were given discovery -- very important discovery on
5 a CSC first-degree, you know, right before trial. Another
6 CSC that ended up pleading, we -- we received discovery and
7 were not informed of -- of a important witness until two
8 weeks for trial.

9 And -- and we're asking that this -- this chain be
10 excluded because it hasn't been provided. And I've asked
11 for it. I've asked specifically for it. And again, I -- I
12 don't think it -- it sets a good example to allow the state
13 to not comply with the rules and then still introduce
14 evidence.

15 The other piece of evidence, Your Honor, is the -- the
16 pictures. And again, I've not specifically asked for
17 those. But they are in our Rule 5. Section 4 specifically
18 asked for photographs that were intended for use by the
19 prosecution as evidence in chief.

20 Right before -- let me see. But right before opening
21 Ms. Nelson and I asked to see the -- one of the pictures.
22 But we've not been given copies. And we -- we went over
23 and initiated, asking to see. And so we'd ask that the
24 photographs also be excluded as not having been turned
25 over.

1 THE COURT: All right. Solicitor, care to speak to
2 those?

3 MR. BROWN: Yes, Your Honor, I would. On May 7th I
4 sent a letter to Sharon Hunt, who is over getting the
5 certified chain of custody from SLED. And, you know, I --
6 I -- it was probably my fault on this that I didn't write
7 down that I took it down to the public defender's office.
8 But my recollection, I took down the -- the actual results
9 from the testing and the chain. Right when I got it, I
10 remember making a copy; taking it down to her office.

11 You know, I think now I should document when -- when
12 it's come to my attention it's going to be used to throw
13 back in my face on -- that I didn't give discovery out.
14 But I -- I remember clearly that I took it down the hallway
15 to the public defender's office, along with the actual
16 results of the test by Willie Smith.

17 I do have that chain of custody right here. We have
18 put the names of those witnesses that we intend to call --
19 Courtney Smith and Pat Crooks -- as chain witnesses. Lt.
20 Wilkie is also a witness. He's with the Abbeville Plea --
21 Police Department. He is -- he was just a mere -- he
22 opened up the -- the safe where the drugs were and gave it
23 back to John Gray.

24 I actually do not have a chain, per se, on him. But
25 just speaking with the officer, that is where he received

1 those items.

2 With regard to these pictures, this is a map -- a GIS
3 print-off that we printed off from our local database here
4 in Abbeville that anybody can access. I actually just got
5 that today -- this morning. Jeff Miller, our investigator
6 in our office, went by the apartment complex and took a
7 picture of this. And when we did get those, I showed -- I
8 actually had a black-and-white copy of Mr. Alexander that I
9 generated this morning -- a picture. Since he's not here,
10 I need a way to identify him, so I printed off a picture.

11 And I did show that to the public defender desk's
12 here.

13 MS. NELSON: She did ---

14 MR. BROWN: And they ---

15 MS. NELSON: --- he did ---

16 MR. BROWN: --- have seen ---

17 MS. NELSON: --- show that ---

18 MR. BROWN: --- that.

19 MS. NELSON: --- to me ---

20 MR. BROWN: And if they ---

21 MS. NELSON: --- Your Honor.

22 MR. BROWN: --- want a copy ---

23 MS. BOLEN: Uh-huh.

24 MR. BROWN: --- I'll be glad to make a copy of it for
25 them. But it is here, and we just got them today. It was

1 not part of the law enforcement file. But it is going to
2 be used to identify Mr. Alexander since he is not here.
3 And this was printed off of the local GIS Web site.

4 But with -- again, with the chain of custody, I have
5 my e-mail from Sharon Hunt that I got it on the 7th. I
6 remember having the discrepancy that she actually sent the
7 wrong one. I sent a e-mail back. She sent me the correct
8 -- I made a copy. I make it a practice, every time I get
9 something from SLED, I make a copy. Since the public
10 defender's office is so closely situated to our office,
11 I'll run it down there and hand it off.

12 And I'm not sure if it was just misplaced. But as
13 officer of the Court, I can't say I did deliver that. And
14 I should've documented in my PCMS notes that I did. But I
15 do feel confident that I did deliver that to their office.

16 THE COURT: May I see the photos?

17 MR. BROWN: Yes, Your Honor.

18 THE COURT: And just so that I'm clear: You -- you're
19 telling me that independent of the chain-of-custody form,
20 you intend to offer testimony that links the links in the
21 chain?

22 MR. BROWN: I am ---

23 THE COURT: All right.

24 MR. BROWN: --- Your Honor. I have all the witnesses
25 here in the chain.

1 THE COURT: All right. The photos -- one of the
2 photos is an aerial view taken from, apparently, directly
3 over the apartment complex. It shows four units, four
4 separate buildings, with the parking lot in the middle.
5 The second photo shows -- or -- it shows a playground that
6 I guess is close by to these apartment buildings. There's
7 two yellow slides that are connected by what I would call a
8 "gerbil tube" where kids can crawl through it to access
9 either slide.

10 I assume that you're seeking to introduce these based
11 -- to prove the proximity charge ---

12 MR. BROWN: That's correct ---

13 THE COURT: --- is that right?

14 MR. BROWN: --- Your Honor.

15 THE COURT: All right. Well, you'll need to prove the
16 prox independent of these photos. In the -- in the future
17 if you're going to offer anything along these lines, you'll
18 -- you'll need to provide those to the defense ahead of
19 time. So you'll ---

20 MR. BROWN: Yes, Your Honor.

21 THE COURT: --- have to prove one of those indictments
22 without the benefit of those photographs.

23 As far as the photograph of the defendant, everybody
24 expected him to show up. That's fair game. The state's
25 allowed to identify him in some way, shape, or form.

1 Whether or not that comes into evidence, I'll be happy to
2 hear those objections. But I'd be inclined to allow it to
3 come in, just to -- I mean, I don't know if you intend to
4 introduce it or just use it for purposes of establishing
5 the in-court ID. I don't know that you need to introduce
6 it necessarily.

7 But clearly, the defendant's not here. That's
8 something that no one anticipated, including the state.
9 That would be fair game.

10 MR. BROWN: Yes, Your Honor.

11 MS. BOLEN: And the ---

12 THE COURT: So that's my ruling.

13 MS. BOLEN: Okay. Well, the chain ---

14 THE COURT: The chain form -- I -- I -- if he's going
15 to introduce testimony, then the form is immaterial.

16 MS. BOLEN: Okay. And just to cover -- I -- I do -- I
17 absolutely got this -- the analysis from Mr. Brown in
18 person last week. I don't have anything in my file or in
19 my online file to indicate I got it any earlier. But I --
20 I do not dispute that he walked down to the office last
21 week to give me the analysis.

22 THE COURT: I understand. Everybody's got a scanner.
23 In the future scan it, e-mail it; and that way if there's
24 any question or any issue about what has been received or
25 has not been received, there's a digital -- there's digital

1 proof that it, in fact, was delivered ---

2 MS. BOLEN: Yes, sir.

3 THE COURT: --- as well as a -- a ---

4 MS. BOLEN: It is handy.

5 THE COURT: --- a date. That, of course, creates its
6 own problems if you use the incorrect e-mail address and it
7 goes somewhere it shouldn't go.

8 I don't know what the solution is, people. I'd
9 suggest document, document, document. Or as my wife says
10 in the ER, if -- if you don't document it, it didn't happen
11 ---

12 MS. NELSON: Didn't happen.

13 MS. BOLEN: Yes, sir.

14 THE COURT: --- even if you're sure you did it.

15 We'll be at ease for a little bit. Grab some lunch,
16 and I'll see y'all back around 2:15.

17 MS. BOLEN: Thank you, Your Honor.

18 MR. BROWN: Yes, sir.

19 (Whereupon, the Court was in recess from 1:04 p.m.
20 until 2:23 p.m.)

21 THE COURT: All right. (To the bailiff) If we could,
22 let's go ahead and have the jury out, please.

23 (Whereupon, the jury entered the courtroom at 2:24
24 p.m.)

25 THE COURT: All right. Let the record reflect that

DIRECT EXAMINATION BY MR. BROWN - JOHN GRAY

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1 the jury is present and seated. Ladies and gentlemen,
2 we're going back on the record in the *State v. Alfonzo*
3 *Alexander*.

4 At this point, Solicitor, if you'll call your first
5 witness, sir.

6 MR. BROWN: Thank you, Your Honor. The state calls
7 Lt. John Gray from the Abbeville P.D.

8 (Whereupon, the witness came forward.)

9 JOHN GRAY, having been first duly sworn,
10 testified as follows:

11 THE COURT: All right.

12 DIRECT EXAMINATION

13 BY MR. BROWN:

14 Q Lt. Gray, you're with the Abbeville Police Department,
15 correct?

16 A Yes, sir.

17 Q How long have you been with the police department?

18 A I been with Abbeville City about five years now.

19 Q And how long have you been in law enforcement?

20 A Since 1995.

21 Q What other agencies have you worked for?

22 A I started off my law enforcement with Abbeville City
23 as a reserve officer; did about a year there; went to Due
24 West. And from Due West I worked with Abbeville County for
25 about a ten-year stint. And from -- since then I been with

1 the city.

2 Q Okay. And now that you're with Abbeville Police
3 Department, what division are you in?

4 A I'm in narcotics now.

5 Q Now, how long have you been in narcotics
6 investigations?

7 A Ever since my start of law enforcement. I started off
8 with the reserves. I assisted the detective there some
9 with some cases. And I've been in it just a little bit
10 through my whole career. But in -- with Abbeville County
11 my last -- about my last five years there, I was in
12 narcotics.

13 And then when I come to the city, I assisted their
14 narcotics officer a lot. And then eventually, they put me
15 in the slot several months ago.

16 Q Now, Lt. Gray, have you ever had any special training
17 in the field of narcotics?

18 A Yes, sir, I have.

19 Q And what training have you had?

20 A I -- I have been certified through DEA for meth-lab
21 cleanup. That was about a 40-hour class that the DEA put
22 on. I've been through D -- Homeland Security, FLETC. I'm
23 a certified drug instructor through FLETC. I've been to
24 numerous drug classes in -- several in Charleston and
25 Myrtle Beach. And -- I've had numerous classes.

1 Q And what did that training consist of?

2 A The DEA school was a lot of the methamphetamine-type
3 stuff. And the other classes were just drug investigations
4 and stuff.

5 Q Were the drug investigations access to all types of
6 narcotics, plus anything that might be associated with
7 narcotics investigation?

8 A Yes, sir.

9 Q Paraphernalia?

10 A Yes, sir.

11 Q Now, how long has it been since you attended a course?

12 A It's been a few years since I've attended a course.

13 Q Okay. And through those courses how many hours do you
14 think you've attended training?

15 A I -- I couldn't tell you. It's -- it's a bunch. I --
16 the DEA school was 40 hours. It was actually more than 40,
17 is what -- it's 40-hour credit. The Homeland Security-
18 FLETC class was a 40-something-hour class. And the other
19 classes, you know, were day and two-day/three-day classes.

20 Q Now, have you ever participated in investigation of
21 drugs or illegal narcotics used?

22 A Yes, sir.

23 Q And roughly, do you know how many times?

24 A I -- I do not know an exact number. But it's -- it's
25 a good bit.

1 Q A good bit, like ---

2 A Yes, sir.

3 Q --- ten? twenty?

4 A I'd -- I'd say it's more than 20.

5 Q Have you ever arrested anybody for illegal narcotics
6 use?

7 A Yes, sir.

8 Q Okay. And have you ever been called upon by members
9 of law enforcement to get your opinion on -- as to whether
10 certain articles are, in fact, narcotics paraphernalia or
11 drugs?

12 A Yes, sir.

13 Q Now, you ever had the occasion to be qualified as a --
14 in the field of narcotics paraphernalia as an expert -- as
15 an expert?

16 A No, sir.

17 Q No?

18 A (No audible response.)

19 MR. BROWN: Your Honor, at this time, I'd like to move
20 Lt. John Gray to be declared as an expert in the field of
21 narcotics and paraphernalia investigations.

22 THE COURT: All right. Any objection or any questions
23 of ---

24 MS. BOLEN: I think I have some -- some questions,
25 Your Honor.

1 THE COURT: Certainly. Go ahead, please.

2 CROSS-EXAMINATION

3 BY MS. BOLEN:

4 Q Lt. Gray, you've been in narcotics with Abbeville
5 Police for the past couple of months?

6 A And I've worked narcotics -- assisting the narcotics
7 officer that was there since I started. He just recently
8 went back to the road, and they put me in the full-time
9 slot. But I assisted him ever since.

10 Q Okay. When -- when did you go into his full-time
11 spot?

12 A I'll say it's probably around the end of February or
13 so.

14 Q Okay. And until then you were working on the road?

15 A Yes. For my time at the city from then. Yes, ma'am.

16 Q Okay. And the -- the classes that you talked about
17 with DEA, those were -- you said were general with
18 narcotics?

19 A The DEA school was primarily -- was methamphetamine
20 clandestine labs.

21 Q Okay.

22 (Whereupon, Ms. Bolen and Ms. Nelson conferred.)

23 MS. BOLEN: Your Honor, I think -- I hate to this
24 early in the trial, but I think we have a matter of law to
25 be taken up.

1 THE COURT: All right. Apologize for doing this to
2 you, ladies and gentlemen. If you would excuse us for a
3 few moments -- don't discuss the case -- I need to take up
4 an issue of law with the attorneys. I hope to have you
5 back here in five or ten minutes. Go to the jury room;
6 I'll have you back here shortly. Thank you.

7 (Whereupon, the jury exited the courtroom at 2:30
8 p.m.)

9 THE COURT: All right. The record should reflect that
10 the jury is out. We'll take up this issue on expert
11 qualification; then we'll do Mr. Shealy's plea. Go ahead.

12 MS. BOLEN: Okay, Your Honor. Thank you, Your Honor.
13 We're -- we're -- at this point we're asking for a proffer
14 of Lt. Graves' -- Gray's proposed expert testimony. I'm --
15 I'm a little unclear about what he would be offering an
16 expert opinion as to in this case. It -- without knowing
17 what the proposed testimony is, it -- I -- I don't know
18 exactly how to phrase our objection, other than that he has
19 not testified that he's gotten any sort of special
20 training. It sounds like his training was mostly in the
21 field of methamphetamines, which was a 48-hour training;
22 that he's been in the -- as the lead narcotics, for just a
23 couple months. And I -- I don't see what, in the discovery
24 I've given, would elicit any sort of opinion from this
25 particular witness.

1 THE COURT: All right. Mr. Brown, do you want to
2 speak to that?

3 MR. BROWN: Yes, Your Honor. The state -- during
4 questioning, once it gets to the facts of the case, based
5 on his opinion as a -- as a narcotics officer, the -- the
6 number of baggies that were found, along with the scales,
7 it would -- it'd basically be an inference -- getting to
8 the inference of possession with intent to distribute.

9 THE COURT: What weight are we dealing with on this?

10 MR. BROWN: The weight is 6.8 grams.

11 THE COURT: All right. And how were they packaged?

12 MR. BROWN: The drugs -- the crack was one bag. But
13 they were all connected to these baggies. The baggies were
14 all right there together with the crack cocaine.

15 (Off the record briefly.)

16 THE COURT: Ms. Bolen?

17 MS. BOLEN: And, Your Honor, our -- our response would
18 be that that -- that's not something that the jury needs
19 any sort of specialized testimony -- specialized scientific
20 or -- or other testimony about. I think he can testify,
21 obviously, to what he found on our -- our client. But the
22 purpose of expert witnesses is to explain something that's
23 outside the purview of the -- the average juror. And I --
24 I just don't think that this rises to that level and
25 requires any sort of specialized knowledge as would be

1 required from an expert.

2 THE COURT: All right.

3 MS. BOLEN: And ---

4 THE COURT: Well ---

5 MS. BOLEN: --- then, I ---

6 THE COURT: --- the case ---

7 MS. BOLEN: --- I ---

8 THE COURT: --- on -- the case on point is *State v.*
9 *Robinson*. Let me look at that real quick, please.

10 (Off the record briefly.)

11 THE COURT: All right. Mr. Brown, speak to the
12 officer's credentials again. Refresh my memory as to his
13 testimony on his experience and his training.

14 MR. BROWN: Your Honor, he's -- he said he worked ten
15 years with Abbeville County. He's -- from there he worked
16 mainly narcotics and helped -- if -- I think the majority
17 of time, at Abbeville County. And since he's been with
18 Abbeville P.D., I believe he -- he stated that he's worked
19 a number of narcotics and now is the narcotics investigator
20 -- even though he just was put in that title in February,
21 he has worked and investigated narcotics cases through that
22 time.

23 He's also -- throughout the years he's gone to
24 training with DEA; I think he said Homeland Security;
25 trained down in Myrtle Beach/Charleston for many hours of

1 training in narcotics. And of the DEA, he did say it was a
2 methamphetamine . . .

3 THE COURT: All right. Lieutenant, approximately how
4 many narcotics cases have you investigated over the course
5 of your career, would you estimate?

6 THE WITNESS: Your Honor, it'd -- it would be really
7 hard for me to put a number on it. It's -- it's been --
8 assisting and making, it -- it's been a lot. It's -- you
9 know, like in '02, we arrested 50-something people with
10 100-and-something warrants. When we did a big drug
11 roundup, I assisted in all them.

12 I -- since I worked with the county narcotics, it was
13 -- I was -- it's -- it's been a lot. And then, since I
14 been with the -- with the city, since I was hired on, I've
15 assisted them in -- I would probably say it's probably 20
16 cases or so with the city since I've started with them.

17 THE COURT: Okay. All total throughout your career,
18 would you say more than 500? more than 1,000? more than
19 250?

20 THE WITNESS: I'd probably say it'd probably be closer
21 -- charges, I would say, would be good over 100. And
22 actually, people charged would probably be right at a --
23 less than 100.

24 THE COURT: Okay. And this would involve all types of
25 narcotics offenses, from simple possession to PWID to

1 trafficking, I assume?

2 THE WITNESS: Yes, sir. I've -- I've made cases, as
3 far as simple possession to -- one case, it was over 50
4 pounds of marijuana and 500 ecstasy pill.

5 THE COURT: All right. Additional voir dire based
6 upon my questioning of the lieutenant from the state or the
7 defense?

8 MR. BROWN: No, sir.

9 Q And your total career you -- it's been about 18 years,
10 right, since 1995?

11 A Some of that was done as a reserve.

12 Q Okay.

13 A It's been about 16 years full-time. I've been here
14 since '95; started as a reserve.

15 Q Okay.

16 THE COURT: All right.

17 MS. BOLEN: Thank you.

18 THE COURT: And the state is moving to qualify him as
19 an expert in the field of narcotics investigation, correct?

20 MR. BROWN: Narcotics investigation and paraphernalia.

21 THE COURT: All right. All right. I've reviewed the
22 requirements of 702. I've also reviewed *State v. Robinson*,
23 reported at 396 S.C. 577. I do conclude that Officer Gray
24 has obtained, both by experience and education, the
25 requisite knowledge so that he could assist the trier of

1 fact in an area that an average person would not have
2 general knowledge of. So I will qualify him as an expert
3 in the field of narcotics investigation.

4 I do believe that his testimony would be helpful to
5 the jury in their understanding of the nature of how drugs
6 are packaged, etc.

7 And this clearly relates to a relevant area of
8 inquiry. Namely, whether the amount of the drugs and the
9 manner in which they were packaged indicated an intent to
10 distribute goes to the very heart of the state's case. So
11 clearly, it is relevant. And the jury will be instructed
12 accordingly, subject, of course, to the reservation or
13 exceptions ---

14 MS. BOLEN: Well ---

15 THE COURT: --- from the defense.

16 MS. BOLEN: And, Your Honor, I was just going to say,
17 just for the record, that I -- when I stood up before, I --
18 I had not made a formal -- I don't believe I ever made a
19 formal objection as -- as to, you know, what exactly we're
20 objecting to. But just for the record, I'd like to make an
21 objection, both on relevancy, that this is outside of what
22 a jury would need; as well as the qualifications, not
23 meeting the -- the -- 702.

24 THE COURT: I understand. The issue of qualification
25 goes to -- or the extent of his knowledge or experience

1 doesn't necessarily relate to whether or not he's qualified
2 as an expert. I think it would go -- relate more to the --
3 to the weight of his testimony, as opposed to his
4 qualifications. So I -- I imagine that there are people
5 out there with more extensive experience in narcotics;
6 there are probably people out there with less -- with less
7 experience in narcotics. But each group, under the right
8 circumstances, could certainly be qualified as an expert.

9 Based on his training and experience, I think he has
10 met that threshold. And I would qualify him as an expert
11 in the field of narcotics investigation and paraphernalia.

12 Very good. You can stay there or you can step down.

13 (Off the record from 2:41 p.m. until 2:46 p.m.)

14 THE COURT: All right. (To the bailiff) Let's have
15 the jury back out, please.

16 (Whereupon, the jury entered the courtroom at 2:46
17 p.m.)

18 THE COURT: All right. All right. I saw one of the
19 jurors stumble. I should've warned y'all. Be careful. I
20 love the Robert Mills-courthouse style, but it was built in
21 an age before safety was a paramount concern. So if you're
22 sitting on the back row, watch your step as you're getting
23 back to your seat. I -- every time I come here and we do a
24 jury trial, it seems like somebody ends up stumbling over
25 that -- over that step, so be very careful.

1 Solicitor, you moved to qualify Lt. Gray as an expert
2 in the field of narcotics investigation and paraphernalia;
3 is that ---

4 MR. BROWN: That's correct ---

5 THE COURT: --- correct?

6 MR. BROWN: --- Your Honor.

7 THE COURT: All right. Ladies and gentlemen of the
8 jury, the -- the Court has qualified -- or the Court has
9 found that Lt. Gray is an expert in the field of narcotics
10 investigation and paraphernalia. And I will explain to you
11 that normally, when a witness testifies, they have to
12 testify as to something that they have observed with one of
13 their five senses: something they saw, heard, smelled,
14 touched, etc. An exception to this rule exists for a
15 person who is qualified as an expert in a particular field
16 or area.

17 In such cases we call these witnesses "expert
18 witnesses." And they are allowed to give opinion testimony
19 if it relates to that particular field. Of course, ladies
20 and gentlemen, it does not mean that you have to accept
21 their opinion. But it is evidence for you to use in any
22 way that you deem appropriate.

23 Mr. Brown, please continue.

24 MR. BROWN: Thank you, Your Honor.

25

1 DIRECT EXAMINATION

2 BY MR. BROWN:

3 Q Now, Lt. Gray, you were working with Abbeville Police
4 Department back on -- back in August of 2012, right?

5 A Yes, sir.

6 Q Now, on August 12th, to be more particular, did you
7 receive a call to -- that something was going on at 401
8 Oakland Apartments?

9 A Yes, sir. We received a call from our dispatch, the
10 911 center, that at Apartment 401 in Oakland Apartments in
11 Abbeville City, that there was some gambling, drug use, and
12 sales going on inside that apartment.

13 Q Now, what is the -- what county and -- and state is
14 that in?

15 A It's in the state of South Carolina in Abbeville
16 County.

17 Q Okay. So ---

18 A In the city ---

19 Q --- 401 ---

20 A --- of Abbeville.

21 Q --- Oakland Apartments is in the state?

22 Now, once you got to -- again, what did dispatch radio
23 over the -- over dispatch?

24 A They ---

25 MS. BOLEN: Your Honor ---

1 A --- radioed ---

2 MS. BOLEN: --- objection as to hearsay.

3 THE COURT: All right. Repeat the question, please.

4 MR. BROWN: I was asking what the exact call nature of
5 the dispatch was.

6 THE COURT: All right. Do you claim an exception to
7 the hearsay rule, Mr. Brown?

8 MR. BROWN: I do. I say it's not -- not offered for
9 the truth of the matter asserted.

10 THE COURT: All right. Just to explain his actions
11 and why he went to the apartment?

12 MR. BROWN: Exactly.

13 THE COURT: Objection's noted but overruled. You may
14 proceed.

15 A The reasons we went to the apartment was because we
16 was dispatched there from our 911 dispatchers that there
17 was a group of people in there that was partaking in
18 gambling, the selling of drugs, and use of drugs.

19 Q Now, Lt. Gray, did you respond to 401 Oakland
20 Apartments?

21 A Yes, sir, I did.

22 Q When you got there, what did you do?

23 A We approached the front door. When we approached the
24 front door, the owner -- or the renter of the apartment,
25 Ms. Ella Brown, was out front. And we advised Ms. Ella

1 Brown the reason that we was there and the complaint that
2 we had and asked her would she mind if she let us in to
3 take a look.

4 Q And you say she was outside. Was the door shut on her
5 apartment?

6 A The door was shut on her apartment. And her and a
7 couple other people was sitting out front in some chairs.

8 Q All right. Now, after you -- what happened when you
9 talked to Ms. Brown?

10 A I explained to Ms. Brown why we was there, the call
11 that we had got, and asked could we look inside of her
12 apartment.

13 Q What was her response?

14 A Her response was that we could.

15 Q What happened after -- after she said you could?

16 A She retrieved the key from her pocket, unlocked the
17 door, and proceeded to let us into the apartment.

18 Q And once you were let into the apartment, what did you
19 observe?

20 A There was a strong odor of marijuana in the apartment.
21 There was some people -- about five people sitting across a
22 little, short living room area that was sitting at a table;
23 look like they was playing some kind of cards. And there
24 was three or four other people sitting and standing in the
25 living room area.

1 Q How many people total were inside the apartment?

2 A I -- I believe it was nine adults and two kids.

3 Q Okay. Now, once you got in the apartment, what did
4 you do?

5 A Well, when we went into the apartment, I observed Mr.
6 Alexander was sitting on a -- on a couch on direct to the
7 left of the door. He had a large wad of money in his hand,
8 sitting on the couch with plastic baggies coming out of his
9 pocket. There was also a small bag of marijuana there at
10 his feet. And the people at the table and all that were
11 gambling were playing -- whatever cards they was playing
12 was there.

13 Q Once you noticed Mr. Alexander there and the other
14 people, what'd you do after that?

15 A I patted down the people in the apartment for officer
16 safety.

17 Q You mean "officer safety." Why would you pat somebody
18 down?

19 A We was in a small, confined room with three officers,
20 nine to ten people. We was outmanned, you know,
21 outnumbered. Usually, when there's drugs, activity go
22 along -- drugs and guns usually go hand in hand.

23 Q When you patted down, did you have an occasion to
24 check Mr. Alfonzo Alexander?

25 A Yes, sir.

1 Q And how did that go?

2 A During the pat down of Mr. Alfonzo Alexander, I could
3 feel in his right pocket where there was, like, additional
4 baggies what it felt like to me, other than the one that
5 was poking out of his pocket. In the other pocket, he had
6 something that was small and square and hard in the other
7 pocket.

8 Q After you patted down Mr. Alexander, what'd you do
9 next?

10 A I asked Mr. Alexander was it okay for me to retrieve
11 the items from his pocket, and he said yes.

12 Q Mr. Alexander consented to you ---

13 A Mr. Alexander ---

14 Q --- checking his ---

15 A --- consented to me -- consented to me entering his
16 pocket, removing the items from his pocket.

17 Q Once you removed items out of his pocket, what did you
18 find?

19 A In his pocket, along with the baggies, was another
20 single baggie, along with additional baggies that contained
21 a quantity of crack cocaine.

22 Q Was there anything else that you found?

23 A In his other pocket, there was a small set of digital
24 scales.

25 (Whereupon, Mr. Brown and Ms. Bolen conferred.)

1 MR. BROWN: Beg the Court's indulgence, Your Honor.

2 (Whereupon, State's Exhibits 1 and 2 were marked for
3 identification.)

4 MR. BROWN: Judge, may I approach the witness?

5 THE COURT: Yes.

6 Q Lt. Gray, I want to show you what's been marked for ID
7 purposes only as State's Exhibit No. 1 and State's Exhibit
8 No. 2, just for ID purposes. I'm going to get you to take
9 a look at that and tell me what those are.

10 A The one marked Exhibit No. 1 appears to be the crack
11 cocaine and the baggie that the crack was found in and the
12 SLED BEST pack that it was sealed in and sent to SLED for
13 analysis.

14 Q All right.

15 A Item No. 2 would be the digital scales and the baggies
16 that was removed from Mr. Alexander. There's also in this
17 bag a set of playing cards that was on the table that they
18 was gambling with and nobody would claim it.

19 Q Again, I -- I kind of lost my train of concentration.
20 What'd you say is in that bag?

21 A The baggies that was also in Mr. Alexander's pocket
22 and the digital scales.

23 Q All right. Now, Lt. Gray, did you have a chance to
24 count how many baggies you recovered?

1 A Yes, sir, I did.

2 Q Do you remember how many baggies there were?

3 A I -- 16 to 18 baggies, I believe it was.

4 Q And once you collected or retrieved these items from
5 Mr. Alexander, what form -- what was the white, rocklike
6 substance -- what was it contained in when you retrieved it
7 from ---

8 A It ---

9 Q --- Mr. Alexander?

10 A It was contained in the baggie that was -- it appears
11 to be in that BEST -- that pack there also, sealed up.

12 Those ---

13 Q It was not ---

14 A --- also ---

15 Q --- in this -- this big bag, though?

16 A Not the big bag. There was a -- there was a smaller
17 bag -- the cocaine's in a bag that SLED put it in, and the
18 other baggie is what it was in. I guess they -- SLED put
19 in that bag after they had did the analysis of it.

20 Q Now, after you found the white, rocklike substance to
21 be -- believe to be crack cocaine and the baggies and
22 playing cards and the digital -- black digital scale, what
23 did you do with these items?

24 A They were seized.

25 Q Seized?

1 And when you seize items as part of your narcotics
2 investigations, what do you do with these items?

3 A The drugs are sealed into what we call a -- the "SLED
4 BEST pack," where they're submitted to SLED for analysis.
5 We fill out the BEST pack and the information on it and
6 drop it into a -- a drop box of evidence that we have there
7 at the police department.

8 Q And the other evidence, the scale, the bags, and cards
9 ---

10 A It's -- it's dropped in the box also for keeping.

11 Q Okay. Is this the same bag as what you sealed it in?

12 A Yes, sir.

13 Q Has this bag been tampered with or anything?

14 A Does not appear to be. No, sir.

15 Q From the time you put it in evidence?

16 A That's correct.

17 MR. BROWN: Your Honor, the state moves that State's
18 Exhibit No. 2 be moved into evidence -- evidence at this
19 time.

20 THE COURT: All right.

21 MS. BOLEN: Your Honor ---

22 THE COURT: That would be the scales?

23 MR. BROWN: That'd be the scales and the baggie ---

24 THE COURT: All right.

25 MR. BROWN: --- and the playing cards?

1 THE COURT: Any objection ---

2 MS. BOLEN: We ---

3 THE COURT: --- to 2?

4 MS. BOLEN: --- renew our prior objection, Your Honor.

5 THE COURT: Subject to the earlier objection, State's
6 2 will be in evidence at this point in time. State's 1 is
7 still marked for identification only.

8 (Whereupon, State's Exhibit No. 2 was entered into
9 evidence.)

10 MR. BROWN: Thank you, Your Honor.

11 Q Now, Lt. Gray, during your investigation in that
12 apartment, did you -- you and your other officers -- did
13 you also check the other individuals in the apartment?

14 A Every -- every individual in that apartment was patted
15 down for weapons. Yes, sir.

16 Q Were anybody -- was anybody else in the apartment
17 charged with any type of charge?

18 A The only other person that was charged in the
19 apartments was another guy charged with trespassing.

20 Q Was there any other drugs in the apartment?

21 A Yes, sir, there was.

22 Q And you did mention there was marijuana by the foot of
23 -- by the foot of Mr. Alexander. What happened with that
24 marijuana?

25 A It was also seized. It's in the evidence locker at

1 the P.D.

2 Q Was anybody charged with that charge?

3 A No, sir, neighbor was charged with that.

4 Q Now, Lt. Gray, before you sent the white, rocklike
5 substance believed to be crack cocaine down to SLED, did
6 you do any therapy of investigation yourself on these -- on
7 the -- on the rocks, the weight?

8 A Yes, sir. We weighed it.

9 Q And when you weighed the -- the white, rocklike
10 substance, how did you weigh it?

11 A There's a set of scales at the police department that
12 we use to get an approximate weight of what we send down.

13 Q Now, do you take it out of the bags or anything like
14 that or ---

15 A No, sir.

16 Q So in your weight, the weight of the crack cocaine
17 also has the weight of the baggies that it was contained
18 in?

19 A That's correct.

20 Q So it's not a true, accurate weight?

21 A No, sir.

22 Q Why would you -- as part of your investigation, why do
23 you send things down to SLED?

24 A We send it to SLED to get it ananalyzed [sic] to tell
25 us what the substance is and to also get a true and

1 accurate weight on it.

2 Q And did the crack seized as far as State's Exhibit No.
3 1 for ID purposes, was that sent down to SLED?

4 A Yes, sir.

5 Q Now, when you seized from the night on August 12th,
6 2012, you already mentioned that you dropped it in an
7 evidence drop box. Who has access to that drop box?

8 A Lieutenant -- Investigator Chris Wilkie.

9 Q And who -- to your knowledge, did anybody else get
10 into the evidence locker to tamper with this in any way?

11 A The person I know that has access to that locker is --
12 is Investigator Wilkie.

13 Q Now, you already said that the items were sent down to
14 SLED for testing. Who took those items down to SLED for
15 testing?

16 A Officer Wilkie removed them from the box, and I took
17 them to SLED for testing.

18 Q So I want -- people -- part of the chain, from the
19 time you secured the -- these items off of Alfonzo
20 Alexander and took them to SLED, you put them in the
21 lockbox; and then Chris Wilkie took them out to give to
22 you?

23 A That's correct.

24 Q And when did you take these items to SLED?

25 A It's been several weeks ago. I'm not sure on the

1 exact date.

2 Q Do you remember who you -- when you took them down to
3 SLED, who you gave the drugs to?

4 A I -- when you go to SLED -- when we go to SLED to
5 submit evidence, we go to the lab with SLED. You go in
6 there, and they have two or three girls in there, usually,
7 and you submit that evidence to SLED. And then they log it
8 in.

9 Q Okay. And so you gave it to one of the lab
10 technicians there?

11 A Yes, sir.

12 Q Do you remember her name?

13 A No, sir.

14 Q But you did, in fact, give it to the lab technician?

15 A Yes, sir.

16 Q What did they do with the evidence or the alleged
17 crack at the time?

18 A The girls there ---

19 MS. BOLEN: Your Honor, I have an objection as to
20 speculation.

21 THE COURT: All right.

22 MS. BOLEN: He can't know what ---

23 THE COURT: I tend ---

24 MS. BOLEN: --- they did.

25 THE COURT: -- to speculate that that -- it -- if he

1 can testify as to what he -- you know ---

2 MR. BROWN: Yes, Your Honor.

3 THE COURT: --- what he understands they do, that's
4 fine. But he can't speculate as to what he ---

5 MR. BROWN: Yes.

6 THE COURT: --- thinks -- he -- he can -- he can
7 testify as to what his objective was in transporting the
8 items to SLED. But that's the ---

9 MR. BROWN: Yes, sir.

10 THE COURT: --- scope of -- of his knowledge.

11 Q Lt. Gray, now, once you collected the evidence and --
12 again, what did -- going back to the actual night -- August
13 12th, 2012 -- what other -- did you seize anything else
14 from Alfonzo Alexander that night?

15 A Yes, sir. Some cash that he had on his person in his
16 hand.

17 Q Do you know how much cash it was?

18 A It was \$839 -- 830 -- it was 830-something dollars.

19 Q Okay. And where is that -- where was that placed in
20 evidence?

21 A When we seize monies that's related to drug crimes
22 like that, we seize it; document the paperwork for seizure.
23 We put in an envelope; drop it into a safe there at the
24 police department. And then the next day, our clerk gets
25 the -- opens the safe and gets the monies out, and they

1 submit it to our finances lady to deposit into an account.

2 Q So the -- the cash is no -- it's in the bank right
3 now?

4 A Yes, sir. The cash is in the bank. It was ---

5 Q What ---

6 A No. It was -- it was signed to seize. And I don't
7 know the status of the case, whether it was seized or not.
8 I don't ---

9 Q All right.

10 A It was submitted for seizure.

11 Q Now, Lt. Gray ---

12 (Whereupon, Mr. Brown and Ms. Bolen conferred.)

13 MR. BROWN: (To the court reporter) Mark that for ID
14 purposes.

15 (Whereupon, State's Exhibit 3 was marked for
16 identification.)

17 Q Now, Lt. Gray, when you did make that call to 401
18 Oakland Apartments, did you get a good look at Mr.
19 Alexander?

20 A Yes, sir.

21 MR. BROWN: May I approach, Your Honor?

22 THE COURT: Please.

23 Q I'm showing you what's been marked as State's -- for
24 State's ID purposes, No. 3. Take a look at that and tell
25 me who -- or if you know that person.

1 A It's -- this is a picture of Mr. Alfonzo Alexander.

2 Q Okay. And that's the person that you arrested that
3 night?

4 A Yes, sir.

5 MR. BROWN: Your Honor, at this time we'd like to move
6 into evidence picture -- it's been marked as State's
7 Exhibit ID No. 3 -- into evidence.

8 THE COURT: All right. No ---

9 MS. BOLEN: Renew our ---

10 THE COURT: --- objection?

11 MS. BOLEN: --- our previous objection, Your Honor.

12 THE COURT: Under Rule 5?

13 MS. BOLEN: Yes, sir.

14 THE COURT: Okay. Objection is noted; overruled.
15 State's 3 will be in evidence.

16 (Whereupon, State's Exhibit No. 3 was entered into
17 evidence.)

18 Q Now, Lt. Gray, based on your experience in -- in the
19 -- your experience with narcotics investigation, with the
20 crack cocaine you seized off of Mr. Alexander, joining all
21 of the -- the items you seized from him, what is your
22 opinion of the items Mr. Alfonzo had on him?

23 MS. BOLEN: And again, Your Honor, just renewing our
24 prior objection on this matter.

25 THE COURT: Noted; overruled.

1 A In my opinion, the -- the amount -- the grams of crack
2 that he had with the scales and the baggies, that it was
3 for sale ---

4 Q That it ---

5 A --- for ---

6 Q --- was for ---

7 A --- distribution ---

8 Q --- sale?

9 A --- purposes. Yes, sir.

10 Q And now, with -- Mr. Gray, when you -- this is getting
11 -- question more towards the area of the apartments. When
12 you approached the apartment or when you look at the
13 apartment complex, what is kind of the diagram of the
14 layout of the apartment complex there?

15 A Oakland Apartments is adjoining to another set of
16 apartments, Hickory Heights. They just separated by a
17 fence with a walkthrough. And it's also connected on the
18 backside by Adams Drive. It is a circular drive --
19 horseshoe-shaped off of Meadow.

20 Q How many -- how many apartments are there, do you
21 think?

22 A In the -- Oakland? There's ---

23 Q Yes.

24 A --- four apartments -- four buildings, each apartment
25 having -- I think it is eight apartments.

1 Q Now, what else is there, along with the apartment
2 complex, that's -- that makes up the apartment complex?

3 A In the apartment complex, you have the -- the
4 apartments, the parking lots, and a small piece of -- right
5 there behind the 200 building, there's a small playground.

6 Q Now, you said this took place at Apartment 401,
7 Oakland Apartments.

8 A Yes, sir.

9 Q Now, if you came out of Apartment 401, what would be
10 your view?

11 A If you turn -- come out of Apartment No. 401, it's --
12 it's a breezeway with all the doors facing in the
13 breezeway. You come right out the door. If you look to
14 your immediate left, you would see a small, grassy area
15 across the parking lot where the playground's located.

16 Q And the playground -- what is -- what makes that a
17 playground?

18 A It's got the little slide there with, like, a little
19 tube kids playing in and a swing, I believe it is.

20 Q How far away do you think that playground is ---

21 A It's ---

22 Q --- from that ---

23 A --- it's ---

24 Q --- apartment ---

25 A --- less than a hundred yards ---

1 Q And based on ---

2 A --- from the ---

3 Q --- your testimony ---

4 A --- front door of ---

5 Q --- do you ---

6 A --- that apartment.

7 Q Based on your testimony, as you walked out the door,
8 you could see that -- that playground there?

9 A Yes, sir.

10 MR. BROWN: Beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 (Whereupon, Mr. Brown and Mr. Morrow conferred.)

13 MR. BROWN: No further questions, Your Honor.

14 THE COURT: All right. Ms. Bolen, cross?

15 MS. BOLEN: Thank you, Your Honor. May it please the
16 Court.

17 THE COURT: Yes, ma'am.

18 CROSS-EXAMINATION

19 BY MS. BOLEN:

20 Q Lt. Gray, I've got a couple questions for you. Let's
21 start with the layout of these apartments. So it's called
22 "Oakland Apartments," right?

23 A Yes, ma'am.

24 Q And it's at the end of Meadow Street?

25 A It's at the end of Virginia Drive.

1 Q Virginia Drive?

2 Okay. And it's four apartment buildings, right?

3 A That's correct.

4 Q And there's a big parking lot in the middle?

5 A There's a parking place in front of the 100 building
6 when you pull in.

7 Q Okay.

8 A And the 100 building's on the right. And then,
9 there's one directly across. And then, the 3- and 400
10 building, there's a larger parking area over there on the
11 left-hand side as you enter.

12 Q And the -- the 400 building is actually the first
13 building on your left as you enter the complex ---

14 A If you come ---

15 Q --- right?

16 A --- up Virginia Drive and enter into the complex, it
17 is the first building on your left.

18 Q And in addition to the four buildings, there's a
19 leasing office as well, right?

20 A That's correct.

21 Q Okay. And there's actually a fence that separates the
22 Oakland Apartments from the apartments behind it, the
23 Hickory Heights, right? There's a large ---

24 A There ---

25 Q --- black fence ---

1 A --- there's ---

2 Q --- there?

3 A --- a big -- like, a iron -- wrought-iron fence there.

4 Q Okay.

5 A But there is a walkway with a concrete sidewalk that
6 connects the two. And it is open in between them.

7 Q Okay. And that's -- that's at the opposite end of
8 where this playground is, right, the little walkway?

9 A If you enter to the apartments and turn slightly to
10 the left in the parking lot and go straight up, it's a ---

11 Q Okay. So that's on the left, right?

12 A Yes, sir -- yes ---

13 Q And ---

14 A --- ma'am.

15 Q --- the playground is at the right-back-hand side,
16 right?

17 A It's kind of behind the 200 building, the second
18 building you come to ---

19 Q Okay. So it's behind ---

20 A --- on the right.

21 Q --- the 200 building, and there's a good bit of woods
22 and trees and overgrowth over the playground, right?

23 A It's -- it's actually back behind the playground. It
24 -- the playground itself is not overgrown. No, ma'am.

25 Q Okay. And there's a fence immediately behind the

1 playground, right?

2 A There's -- there's a short distance between the grassy
3 area and the playground. But yes, ma'am. There's a
4 wrought-iron fence back there.

5 Q And the only way to access this complex by car is on
6 Virginia Drive into the very front of the -- the apartment
7 complex, correct?

8 A There's a -- also a walkway from the Hickory Heights
9 Apartments that comes right next -- close to it that they
10 -- the other people can walk from apartment complex to
11 apartment complex.

12 Q But not by car that way, right?

13 A They can pull a car right up next to the fence. It's
14 -- it's probably 20/30 foot of grass there that there's a
15 parking spots there that they can park to. And the
16 entrance is right -- located right there from the other
17 side of the apartments.

18 Q That's on the Hickory Heights side?

19 A Yes, ma'am.

20 Q Okay. But there's no -- there's no road that goes by
21 this playground, right? There's no road in front of,
22 behind, or on either ---

23 A Like a ---

24 Q --- side of ---

25 A --- state or ---

1 Q --- of the ---

2 A --- city road? No, ma'am.

3 Q Okay. And the incident we're talking about, what time
4 were you called out? Wasn't it about 1:30 in the morning?

5 A Yes, ma'am.

6 Q Okay. And there's not very good lighting out at this
7 -- this apartment complex, is there?

8 A I -- it's lit up. It's -- it's not great lighting.
9 But yes, ma'am. It's lit up.

10 Q And you said that if you left the apartment and looked
11 immediately to your left, you might be able to see the
12 playground; but if you look to your right or straight
13 ahead, you wouldn't, right?

14 A If you look to the right, you would side the backside
15 of the apartment complex. There's actually a house and a
16 fence that encloses that side of it.

17 Q Okay. So you wouldn't see a playground?

18 A No, ma'am. Not ---

19 Q Okay.

20 A --- to the right or straight in front of the door.

21 Q And actually, the 400 building is the furthest
22 building from the playground that there is in the complex,
23 right?

24 A Yes, ma'am. I'd probably have to say so.

25 Q And you don't have any knowledge of -- of Alfonzo

1 living at this complex, right?

2 A No, ma'am.

3 Q Okay. And no reason to think he lives there?

4 A No, ma'am.

5 Q Okay. I want to go back to some other stuff you
6 talked about. You say when you walked into the apartment,
7 there's an overwhelming smell of marijuana, right?

8 A Yes, ma'am.

9 Q And you say that you walked in and there was a table
10 with, I think you said, five people around it?

11 A When you walk into the -- the door of the apartment,
12 you enter into, like, a living room area.

13 Q Okay.

14 A And then, there's a -- like, a kitchen area with a
15 open, like, dining room. And the -- they was -- like, one
16 big room; there's, like, a dining room/living room combo.

17 Q Okay. And there were about five people sitting around
18 a table, right?

19 A Yes, ma'am.

20 Q And you said they were gambling, right?

21 A It appeared they was playing some type of cards. Yes
22 ---

23 Q And there ---

24 A --- ma'am.

25 Q --- was money on the table?

1 A Yes, ma'am.

2 Q Okay. And there was also a bag of marijuana under
3 that table, right?

4 A That's correct.

5 Q So it had a -- I think you said about 4 1/2 grams of
6 marijuana ---

7 A Yes, ma'am. I believe that's correct.

8 Q --- under that table?

9 How big is the kitchen table?

10 A I ---

11 Q Typical?

12 A Typical size. It ---

13 Q Okay.

14 A --- it was big enough to seat all five people that was
15 there.

16 Q Okay. And could any of those people reach down and
17 grab that bag of marijuana?

18 A Yes, ma'am.

19 Q Okay. So they could have, right?

20 A (Nodded head up and down.)

21 Q Okay. And you also say that when you walked in, you
22 saw -- and I think you said three or four people on the
23 couch?

24 A Yes, ma'am.

25 Q Okay. What was the order of the people on the couch?

1 A I -- I'm not real familiar with -- because the -- by
2 names.

3 Q Okay.

4 A But when you meet -- when you immediately walk into
5 the door, there to the left, was, like, a small love seat
6 that only Mr. Alexander was sitting in. And then, across
7 the room there was, like, a coffee table in the middle.
8 And then, on the other room, there was another couch that
9 had a couple people sitting on it.

10 Q Okay. And you said it looks like they were gambling
11 as well, right?

12 A No. Not the people in the living room.

13 Q Okay. So just the people ---

14 A Just the ---

15 Q --- around ---

16 A --- people ---

17 Q --- the table where ---

18 A --- the table.

19 Q --- the marijuana is under?

20 A That's correct.

21 Q Okay. And you didn't arrest my client for marijuana,
22 right?

23 A No.

24 Q Or for gambling?

25 A No.

1 Q Okay. You've been qualified by the state as an expert
2 in narcotics, right?

3 A Yes, ma'am.

4 Q I believe the investigation paraphernalia. And you've
5 been working in law enforcement for a total of 18 years, 16
6 of those ---

7 A Close to ---

8 Q --- have been ---

9 A --- it. Yes, ma'am.

10 Q --- full-time?

11 Okay. And you are the narcotics investigator, I
12 guess, for Abbeville -- for Abbeville City?

13 A City. Yes, ma'am.

14 Q Okay. So as -- as someone who's an expert in
15 narcotics and have had this much experience, you're
16 familiar with constructive possession?

17 A Yes, ma'am.

18 Q Okay. Did you arrest anyone else for that marijuana?

19 A No, ma'am.

20 Q Okay. But it's true that you could've arrested all
21 five of those people around that table for that marijuana,
22 isn't it?

23 A At the time it would've been hard for me to prove
24 constructive possession. Because when we walked in, any
25 number of them people could've dropped the marijuana

1 without the other ones knowing it. That's ---

2 Q But you just testified that any one of them could've
3 grabbed it. And you've testified that you know ---

4 A If they would've ---

5 Q --- constructive ---

6 A --- leaned down ---

7 Q --- possession ---

8 A --- under the table, they could've grabbed it. Yes,
9 ma'am.

10 Q But isn't it true that you can arrest someone for
11 drugs even if they don't have them directly in their
12 possession ---

13 A If I ---

14 Q --- under the ---

15 A --- can ---

16 Q --- doctrine of ---

17 A --- say that ---

18 Q --- constructive ---

19 A -- they knew that they constructively knew that they
20 was there. Yes, ma'am.

21 Q And it's fair to say that with these drugs under the
22 table that you say any one of these five could've reached,
23 they knew those drugs were there?

24 A I can ---

25 Q They knew ---

1 A --- that if they would've leaned down under the table
2 to grab it, yes. They would've known it was there. But I
3 -- I didn't ---

4 Q Okay.

5 A --- know who dropped it. And ---

6 Q Okay.

7 A --- if they didn't ---

8 Q And ---

9 A --- look, they wouldn't see it.

10 Q And you smelled, you said, overwhelming marijuana,
11 right?

12 A Yes, ma'am.

13 Q Okay. But yet you didn't arrest anyone for marijuana?

14 A That's correct.

15 Q And you didn't arrest anyone for gambling?

16 A That's correct.

17 Q Despite that you -- you could have?

18 A I -- it would've been hard for me to prove who
19 actually owned it and who constructively possessed it. You
20 know, I -- I couldn't say that everybody there knew the --
21 who dropped it or if they dropped it or knew it was there.
22 As far as the gambling, I believe there was five people
23 sitting at the table. And there was only three to four
24 hands -- card hands sitting there at the table when I
25 walked up.

1 Q Okay. But again, no arrests on those too?

2 A No arrests.

3 Q Okay.

4 A No.

5 Q And you didn't find any crack pipes in the apartment,
6 correct?

7 A That's correct.

8 Q And when you patted down the other individuals, you
9 did not find any -- any crack on them, correct?

10 A That's correct.

11 Q Okay. And you've testified that there was a good
12 amount of gambling going on, right?

13 A A good amount?

14 Q Well, there was gambling ---

15 A I ---

16 Q --- going on.

17 A The -- the -- it appeared that there was some type of
18 gambling going on. But I don't know what kind of cards
19 they was playing or ---

20 Q Okay.

21 A --- exactly who was participating in the gambling at
22 the ---

23 Q But you ---

24 A --- table.

25 Q --- saw money in addition -- money being used for the

1 ---

2 A There's ---

3 Q --- gambling?

4 A --- money on the table, along with cards. Yes, ma'am.
5 And some of the cards were dealt out, like, into hands. It
6 was three to four card hands there.

7 Q Okay. And if I can count them correctly and read off
8 from the people you say were there, there was another
9 gentleman named John Gray -- not yourself ---

10 A It's ---

11 Q --- obviously, right?

12 A --- John Decarlos Gray.

13 Q Okay.

14 A That's correct.

15 Q And he's the only one who was arrested -- you arrested
16 for trespass?

17 A Trespassing. That's correct.

18 Q Okay. Quintavious Paul? He was not arrested, right?

19 A That's correct.

20 Q Okay. Archie McDuffie was there. Not arrested?

21 A That's correct.

22 Q Travis Lee was there. Not arrested?

23 A Correct.

24 Q Okay. Shannon Chappells -- or Chappell? Okay. Not
25 arrested?

1 Lyesha Mulligan was also there?

2 A That's correct.

3 Q Titus Hadden -- or Hadden was also there, right?

4 A (Nodded head up and down.)

5 Q So in this room with all this overwhelming marijuana
6 and gambling, all those people were there and Alfonzo's the
7 only one arrested, right?

8 A That's correct. Well, not the only one arrested. Mr.
9 John Decarlos Gray was arrested for trespassing.

10 Q For trespass? Okay.

11 And you've actually never -- never had seen Alfonzo
12 before that night, right?

13 A No, ma'am. I never knew him before ---

14 Q Did not know him at all?

15 A That's correct.

16 Q And you didn't take this picture, right?

17 A No, ma'am, I did not ---

18 Q Do you ---

19 A --- take that ---

20 Q Do you ---

21 A --- picture.

22 Q --- even know who took it?

23 A No, ma'am.

24 Q Okay. And again, it was about 1:30 at night?

25 A Yes, ma'am.

1 Q Okay. Let's talk a little bit about the -- these
2 baggies. Now, these are just ordinary sandwich bags,
3 right?

4 A Yes, ma'am. That's what they appear to be. Yes,
5 ma'am.

6 Q Okay. You can buy these at Ingles or BI-LO?

7 A Sure.

8 Q Fair to say that most people ---

9 A Yes.

10 Q --- have these in their house?

11 Just the little sandwich bags with no zip-lock; they
12 just kind of fold over a sandwich?

13 A (Nodded head up and down.)

14 Q Right?

15 A Yes, ma'am.

16 Q Okay. And you -- you testified that you found -- you
17 saw a baggie sticking out of Alfonzo's pockets when you
18 walked in; isn't that right? That's what you said on
19 direct?

20 A Yes, ma'am. When I walked ---

21 Q Okay.

22 A --- in the door, he was sitting on the couch just to
23 the left of me, sitting in the far seat of a two-seater
24 couch.

25 Q Okay. Do you remember writing an incident report

1 about this case?

2 A Yes, ma'am.

3 Q Okay. And that's standard protocol, what you do for
4 -- when you ---

5 A Yes, ma'am.

6 Q --- have investigations?

7 Okay. And you wrote this incident report very soon
8 after the incident, correct?

9 A Yes, ma'am.

10 Q So it's safe to say your memory back then is probably
11 better than now?

12 A I would -- probably. Yes, ma'am.

13 Q Okay. And do you remember putting in your incident
14 report that you didn't see the bags until after you patted
15 down my client?

16 A I'd -- in my report I believe it says before I patted
17 him down, you could see the baggies from his pocket.

18 Q Okay. Can I -- would it refresh ---

19 A Sure.

20 Q --- your recollection if I handed up your report? I'm
21 sorry. It's got some scribbles on it. It's my only copy.

22 A It says when he was patted down, I could feel and see
23 plastic baggies in his right-front pocket.

24 Q Okay. So that's when he's being patted down, not
25 before ---

1 A Yes, ma'am.

2 Q --- correct?

3 So you don't mention in your report that you saw
4 baggies until after you pat him down?

5 A No mention in the report. No, ma'am.

6 Q Okay.

7 MS. BOLEN: May I approach, Your Honor?

8 THE COURT: Please.

9 MS. BOLEN: Thank you.

10 Q Going to talk a little bit about what you say you took
11 out of my client's pocket. If I can just get this kind of
12 clear ---

13 MS. BOLEN: May I approach the witness, Your Honor?

14 THE COURT: Please.

15 MS. BOLEN: Okay.

16 Q All right. So this is the SLED bag, right, this big
17 outer bag, correct?

18 A This outer bag -- yes, ma'am. That's -- that's the
19 way we retrieved it from SLED.

20 Q And which of these two bags was this in?

21 A It would've been in this upper bag. This had to be
22 put in there by the -- the chemist at SLED that actually
23 tested it, that ---

24 Q Okay.

25 A --- other bag.

1 Q And the bag that you pointed at is the one that you
2 say you found on my client. This is the kind of bag you
3 get at the grocery store for vegetables, right? It's not a
4 grocery bag, but it's a very, very thin plastic ---

5 A Sandwich bag. Yes, ma'am. Sandwich-type bag.

6 Q Sandwich bag?

7 Okay. Yeah. Actually, hard to tell; it's all
8 crinkled up. But it's a very lightweight plastic, correct?

9 A That's correct.

10 Q And there's no zippers on it, no zip-locks, nothing
11 like that?

12 A That's correct.

13 Q Just very thin plastic?

14 A (Nodded head up and down.)

15 Q Okay. Again, going back to you having been qualified
16 as -- as an expert in narcotics, you told -- you testified
17 that you -- you weighed this back at the station, right?

18 A That's correct.

19 Q Okay. And when you weighed it at the station, it
20 weighed 11.1 grams, right?

21 A I believe that is correct. Yes, ma'am.

22 Q Okay. And you sent it down to SLED, right?

23 A That is correct.

24 Q Okay. And the SLED weight on it was 6.8 grams, right?

25 A I believe that is correct. Yes, ma'am.

1 Q That's a pretty big discrepancy, isn't it?

2 A Our -- our scales at the police department are not a
3 true, certified scales. It's just an approximate weight.
4 It don't ---

5 Q Okay.

6 A --- it's not a certified weight.

7 Q It's an approximate weight that you got out to a
8 tenth, right? It was 11.1.

9 A The scales read out to a tenths. Yes, ma'am.

10 Q Okay. But that's a difference of 4.3 grams, right?

11 A Yes, ma'am.

12 Q Okay. Just doing the math in my head.

13 And that -- you'd agree that that's -- I mean, that's
14 1 1/2 times the real weight, right?

15 A I'd -- I'm not sure how SLED weighs it. I -- I've --
16 they probably weighed it without the baggie included. But
17 I don't know.

18 Q Okay. And you testified that you just took the drugs
19 down to SLED just a couple weeks ago, right?

20 A That's correct.

21 Q So they've been sitting at the Abbeville Police
22 Department for quite a number of months?

23 A Yes, ma'am. They was in the evidence locker. Yes,
24 ma'am.

25 Q Okay. And you don't have the cash that was supposedly

1 taken from Alfonzo, right? That's not something you have
2 anymore?

3 A No, ma'am. We don't leave cash around the police
4 department. It's submitted and deposited into an account
5 by the finance -- lady at the finance office.

6 Q And when you patted down these other -- I think it's
7 nine folks that are in this apartment where there's all
8 this marijuana and all this gambling, you don't find any --
9 any crack on them, right?

10 A No, ma'am.

11 Q And you patted down my client, you said, for officer
12 safety, correct?

13 A (Nodded head up and down.)

14 Q And I think you said guns and drugs go together?

15 A Yes, ma'am.

16 Q But he didn't have a gun, right?

17 A No, ma'am.

18 Q So guns and drugs don't always go together, right?

19 A Not all the time. But sometimes. Yes, ma'am.

20 Q Okay. And no one else had a gun, correct?

21 A That's correct.

22 Q Okay.

23 MS. BOLEN: If I may just have a moment, Your Honor.

24 THE COURT: Certainly.

25 (Whereupon, Ms. Bolen and Ms. Nelson conferred.)

REDIRECT EXAMINATION BY MR. BROWN - JOHN GRAY 189

1 MS. BOLEN: Nothing further. Thank you, Lt. Gray.

2 MR. BROWN: Yes, Your Honor. Just a few more
3 questions.

4 REDIRECT EXAMINATION

5 BY MR. BROWN:

6 Q Lt. Gray, she was asking about the weight of the crack
7 that -- I think it was 11.1 grams weighed at the police
8 department here in Abbeville, right?

9 A That's an approximate weight. Yes, sir.

10 Q Approximately?

11 A (Nodded head up and down.)

12 Q Now, what's the purpose of sending the drugs down to
13 SLED?

14 A The purpose of sending drugs to SLED is to get
15 analysis of what the substance is and a true and accurate
16 weight of how much the substance weighs.

17 Q So you initially wrote in your report 11.1 grams was
18 an estimation?

19 A Yes, sir. That's -- that was not a ---

20 Q And to be true and accurate, you sent it to SLED to
21 verify ---

22 A That is correct. Yes, sir.

23 Q Okay. Now, Ms. Bolen was asking about a playground
24 and said there was fence behind it and the lighting. Now,
25 going in this apartment complex, is there a -- a gate

1 that's it -- is it a gated apartment complex?

2 A No, sir.

3 Q So anybody could walk off the street and go play in
4 that park -- in that playground?

5 A Yes, sir.

6 Q Now, you said there was a trail from the other
7 apartment complex.

8 A It's a -- from Oakland to Hickory Heights, there's a
9 cement sidewalk that goes up through that gate -- that
10 fenced area that goes up through them and comes out on the
11 backside of the apartments. Yes, sir.

12 Q And what's on the backside of those apartments?

13 A The -- Hickory Heights. It's -- it's the fence in
14 between ---

15 Q Okay.

16 A --- the two complexes.

17 Q All right. Do they have access to that playground as
18 well?

19 A Yes, sir. There's also a playground that they -- that
20 the Oakland has access to that would be in Hickory Heights
21 also.

22 Q All right. Is that within a half-mile radius to 401
23 Oakland ---

24 A Yes, sir.

25 Q --- Apartments?

1 A It's -- it's just a little bit further distance than
2 the one there in Oakland.

3 Q Okay. Now, Ms. Bolen was asking about the marijuana
4 and the table where the cards were and the gambling. None
5 of those people were charged with marijuana and ---

6 A That's correct.

7 Q And that was just out in the middle of the table?

8 A There was a table where five people were sitting. I
9 believe there was three hands of cards, and it might've
10 been four. But it was five people.

11 Q Okay.

12 A And I could not tell which ones was actually doing the
13 gambling and the card-playing. And none of them would fess
14 up to ---

15 Q So it ---

16 A --- not to ---

17 Q --- was not ---

18 A --- doing it.

19 Q It was not in anybody's immediate possession?

20 A No, sir.

21 Q However, where was that crack cocaine ---

22 A That was ---

23 Q --- found?

24 A --- in Mr. Alexander's pocket.

25 Q So it was an actual possession of crack cocaine?

1 A Yes, sir. It was in Mr. Alexander's pocket.

2 Q And also, in his actual possession is the scales and
3 the ---

4 A --- baggies. Yes, sir.

5 Q --- baggies?

6 MR. BROWN: No further questions, Your Honor.

7 MS. BOLEN: Brief redirect [sic], Your Honor?

8 THE COURT: Sure.

9 RE CROSS-EXAMINATION

10 BY MS. BOLEN:

11 Q Lt. Gray, you've been qualified an expert, but your
12 testimony is you can't analyze drugs, right?

13 A No, ma'am. I do not analyze drugs.

14 Q And you don't apparently have the ability to
15 accurately weigh drugs, right?

16 A That's correct.

17 Q Okay. Going back to the playground, this playground
18 is tucked behind Oakland Apartments, right?

19 A It's behind the 200 building in the ---

20 Q Right.

21 A --- apartments. Yes, ma'am.

22 Q Okay. And you -- you enter the apartment complex by
23 Virginia Drive, right?

24 A You can enter the apartment complex from Virginia
25 Drive. You ---

1 Q Or that ---

2 A --- enter ---

3 Q --- little walkway ---

4 A --- or the ---

5 Q --- for ---

6 A --- walkway. And there's ---

7 Q Right.

8 A --- also a path between that comes out on the backside
9 of the 300 building of Oakland that goes to Adams Drive
10 that is traveled by all the kids and people between the
11 apartments and Adams Drive.

12 Q But the ---

13 A It's a ---

14 Q --- people in ---

15 A --- wore-down ---

16 Q --- the apartment ---

17 A --- dirt path. Yes, ma'am.

18 Q Okay. So traveled by the people who live in Hickory
19 Heights and Oakland, right?

20 A And Adams Drive and the surrounding area. People just
21 walk through and ---

22 Q And Oakland Apartments is a private apartment complex,
23 correct?

24 A It's owned by a private company. Yes, ma'am.

25 Q And it's where people live; it's a residence, right,

1 for people ---

2 A That's correct.

3 Q --- living in those apartments?

4 And this is essentially in the backyard of the
5 apartment complex?

6 A That's correct.

7 Q Okay. So it's safe to say that this playground is
8 intended not for the general public, but for the kids who
9 live in that apartment complex and maybe Hickory Heights?

10 A I'd probably say yes, it was intended for -- just the
11 -- not just for the people there, but the kids there. And
12 there's also kids that come from the Adams Drive area and
13 also plays on them playgrounds and ---

14 Q All right. But it's not a city-owned playground,
15 right?

16 A That's correct. It's not city owned. It's ---

17 Q Okay.

18 A --- privately owned.

19 Q It's owned by ---

20 A I do ---

21 Q --- by the ---

22 A --- not ---

23 Q --- private company that owns the apartment ---

24 A Yes, ma'am.

25 Q --- complex ---

DIRECT EXAMINATION BY MR. BROWN - ELLA BROWN

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1 A I'm not ---

2 Q --- right?

3 A --- sure who owns the apartment complexes now.

4 Q But you know it's not publicly ---

5 A It's privately ---

6 Q --- owned?

7 A --- owned.

8 Q Okay. Thank you.

9 THE COURT: All right. Thank you, sir. You can step
10 down.

11 (Whereupon, the witness exited the witness stand.)

12 THE COURT: Go ahead, Mr. Brown. Call your next
13 witness, please.

14 MR. BROWN: The state calls Ella Brown.

15 THE BAILIFF: Ella Brown?

16 CLERK OF COURT: Uh-huh.

17 (Off the record briefly.)

18 (Whereupon, the witness came forward.)

19 ELLA BROWN, having been first duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. BROWN:

23 Q Good afternoon, Ms. Brown. Could you tell me -- is --
24 your name is Ella Brown, correct?

25 A (Nodded head up and down.)

1 Q Ms. Brown, where do you live now?

2 A I live at 802 Greenville Street.

3 Q Is that here in Abbeville.

4 A No. Twenty-eight.

5 Q Twenty-eight?

6 Now, Ms. Brown, do you remember where you were living
7 last August?

8 A Yes.

9 Q Where were you living last August?

10 A 401 Oakland Apartments.

11 Q Is that here in Abbeville City?

12 A Uh-huh.

13 Q Ms. Brown ---

14 THE COURT: If -- if you could, Ms. Brown, please
15 answer "yes" or "no" because she has to take down
16 everything that's written, okay?

17 THE WITNESS: Okay.

18 THE COURT: Thank you.

19 Q Ms. Brown, do you remember on August 12th late at
20 night, when the Abbeville Police Department came to your
21 apartment?

22 A Yes. I remember some of it.

23 Q Do you remember Lt. John Gray?

24 A I remember him.

25 Q And what did he -- when he came, what happened? What

1 did he say to you?

2 A When he came, I was sitting on my -- on the outside of
3 my house at the door. And he asked me could he go in there
4 because he was looking for somebody -- the boy, what was in
5 my house.

6 Q The -- the people in your house?

7 A Yeah. I had a few peoples in my house, now.

8 Q Now ---

9 A But he was just looking for one of them.

10 Q Did -- did he -- did you open up the door, or what
11 happened after he asked if he could look in your house?

12 A I opened the door.

13 Q You consented to open up the door?

14 A I opened it for him.

15 Q Okay. And did Mr. Gray go in, along with other police
16 officers?

17 A (Nodded head up and down.)

18 Q Is that a "yes"?

19 A Yes.

20 Q Okay. Now, do you -- I want to show you what's --
21 this is State's Exhibit No. 3. Take a look at that. Do
22 you recognize that picture?

23 A I recognize it.

24 Q Who is that?

25 A I just -- you know, I just call him "A," you know. I

1 just can't remember his real name. I just can't remember
2 that. You know, a lot of things, I can't remember.

3 Q And why -- why -- why can't you remember some of these
4 things?

5 A Because I had a -- a brain strategy ---

6 Q Did it ---

7 A --- and I stayed in a coma for two months and two
8 weeks.

9 Q Since this occurrence?

10 A Before it happened.

11 Q Before?

12 But you do remember the officer coming there and --
13 and you opened up the door for him?

14 A Yeah. I opened it up for him.

15 Q But you do know this person?

16 A I know him.

17 Q Was he in your apartment that night?

18 A He was in there.

19 Q Okay. Well, how do you know him?

20 A I know him by his mama. I knew him when he was a
21 little boy. I know him by his mama.

22 Q But right off the top of your head, you can't remember
23 his name?

24 A No. I can't remember that.

25 Q So is -- do you know if -- is that Alfonzo Alexander?

1 MS. NELSON: Object ---

2 MS. BOLEN: Your Honor, objection. She's -- he's
3 asked her multiple times. She does not know his name.
4 That is clearly leading the witness.

5 THE COURT: All right. Sustained.

6 Q But you do know -- know the fella there?

7 A Yeah. I know him.

8 Q And he was in your apartment that night?

9 A Yes, he were.

10 Q Okay. Now, Ms. Brown, I know you don't live there
11 anymore. If you came out of your apartment, what would you
12 see from your front door?

13 A The playground. If I didn't look at the apartment
14 right in front of me. You know, it was -- it's -- my door
15 and the -- and the one that stay right cross from me, her
16 door, you know. But I -- but time I walk out my door, I
17 can see the playground.

18 Q Do you know who all played on that playground?

19 A You say who all played on it?

20 Q Yes, ma'am.

21 A All childrens plays on it.

22 Q Were -- did they -- just children from your apartment
23 complex, or were they children from all over the area?

24 A Childrens be from the other apartment, you know,
25 Oakland and Village.

1 Q And the Village?

2 A (Nodded head up and down.)

3 Q So it wasn't just for the -- the kids in that
4 apartment complex? It's was ---

5 A It was ---

6 Q --- more of an open playground?

7 A (Nodded head up and down.)

8 THE COURT: The witness nodded ---

9 Q Is that ---

10 THE COURT: --- indicating ---

11 Q --- a "yes"?

12 A Yes.

13 MR. BROWN: No further questions for Ms. Brown.

14 THE COURT: All right. Ms. Bolen?

15 MS. BOLEN: Thank you, Your Honor. Just a few
16 questions, Ms. Brown.

17 CROSS-EXAMINATION

18 BY MS. BOLEN:

19 Q You said that Lt. Gray told you he was looking for
20 just one person?

21 A No. I -- you know, I ---

22 Q You don't remember?

23 A I can't remember it. I ---

24 Q Okay.

25 A --- I -- I just can't ---

1 Q That's fine.

2 A --- remember.

3 Q That's fine. That's fine.

4 And back when this incident happened, it was really
5 late at night, right?

6 A Yeah.

7 Q About 1:30 in the morning?

8 A It was late at night.

9 Q So it was dark out, right?

10 A Yeah, it ---

11 Q And it ---

12 A --- was dark.

13 Q --- was in the summer?

14 A It was -- it was in August.

15 Q Okay. So there were a lot of leaves on the trees as
16 such?

17 A This was in August.

18 Q Okay.

19 MS. BOLEN: I don't have anything further. Thank you.

20 THE COURT: All right. Ms. Brown, thank you very much
21 for coming. You're free to go. Be careful as you step
22 down, okay?

23 THE WITNESS: I can't step, now.

24 THE COURT: Yeah. Well, let's ---

25 THE BAILIFF: I'll help you down.

1 THE WITNESS: Okay.

2 (Whereupon, the witness exited the witness stand.)

3 (Off the record briefly.)

4 THE COURT: All right. We're going to take a brief
5 afternoon break, ladies and gentlemen. I could use one;
6 maybe y'all could too.

7 If you happen to smoke, just let the bailiff know.
8 We'll let -- we'll take y'all downstairs for -- for a brief
9 break.

10 Don't discuss the case yet. I'll let y'all know when
11 we can, okay? Adjourn to the jury room, please. Feel free
12 to get some refreshments. And we'll be having -- we'll
13 have you back in five or ten minutes.

14 (Whereupon, the jury exited the courtroom at 3:37
15 p.m.)

16 (Off the record from 3:37 p.m. until 3:58 p.m.)

17 (Whereupon, the jury entered the courtroom at 3:59
18 p.m.)

19 THE COURT: Very good. We're back on the record in
20 the *State v. Mr. Alexander*. At this point, Mr. Morrow,
21 call your next witness, please, sir.

22 MR. MORROW: Yes, Your Honor. The state calls Chris
23 Wilkie.

24 THE COURT: All right.

25 (Whereupon, the witness came forward.)

1 CHRIS WILKIE, having been first duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MORROW:

5 Q Would you state your name for the record, please?

6 A Chris Wilkie.

7 Q All right. And where do you work, Mr. Wilkie?

8 A Abbeville Police Department.

9 Q And what is your title with the Abbeville Police
10 Department?

11 A I'm a lieutenant over criminal investigations.

12 Q So what are -- as the lieutenant over criminal
13 investigations, what are your duties and responsibilities?

14 A Respond to and process crime scenes; oversee all
15 evidence brought into the police department.

16 Q Did you become involved in -- in the *State v. Alfonzo*
17 *Alexander*?

18 A Yes.

19 Q And how were you involved in that case?

20 A The items that were taken -- the drug evidence was
21 submitted into an evidence locker that we have at the
22 police department. I'm the only person that has access to
23 that locker. It's a locked box, and I'm the only person
24 with a key. So I removed those items from the evidence

1 locker; I placed them into -- prelogged them into iLab,
2 which is a Web site for SLED to log in evidence. And then
3 I handed the -- or the drugs and -- back over to Lt. John
4 Gray to transport to SLED for analysis.

5 Q What was the condition of the -- of the evidence when
6 you received it?

7 A The items were in a -- what's called a "BEST pack."
8 The items were sealed in a plastic envelope.

9 Q I'm about to show you what's been marked as State's --
10 for identification purposes as State's ID Exhibit No. 1.

11 MR. MORROW: May I approach?

12 THE COURT: Please.

13 Q Do you -- do you recognize that?

14 A The bag on the inside is part of the BEST pack, the
15 evidence-collection kit that the drugs are submitted in.
16 This bag here on the inside is what the -- the drugs are
17 placed into and then sealed off by the officer submitting
18 the evidence.

19 MR. MORROW: Beg the Court's indulgence.

20 THE COURT: Yes, sir.

21 (Whereupon, Mr. Morrow and Mr. Brown conferred.)

22 Q Now, when evidence came into your possession inside
23 the sealed bag, was there any tampering to that bag?

24 A No, sir.

25 Q All right. Thank you.

1 MR. MORROW: No further questions for this witness.

2 MS. BOLEN: Thank you, Your Honor. Thank you, Lt.

3 Wilkie. I just got a couple questions for you.

4 CROSS-EXAMINATION

5 BY MS. BOLEN:

6 Q So you're in charge of the evidence at Abbeville
7 Police Department?

8 A Yes, ma'am.

9 Q Okay. And this -- this evidence box, you said you're
10 the only person with a key to it?

11 A Yes, ma'am.

12 Q Then, how does another officer get evidence into it?

13 A It's a -- it's an old mailbox, like the post-office-
14 style mailboxes, like the blue mailbox.

15 Q Okay.

16 A It has the drop door into it. You can put in evidence
17 in, but you can -- or you can put items inside of it, but
18 you can't retrieve anything out of it because it goes down
19 into the bottom.

20 Q Okay. But there's a -- there's a fairly wide opening
21 that you could put evidence through you could maybe ---

22 A Yes.

23 Q --- get your arm in?

24 A No.

25 Q Get your hand in the opening?

1 A The way the mailbox is designed, once you open the
2 latch -- or the lever on it, the door, it slants upward.
3 And you place the evidence in there and then close it. And
4 the evidence falls down behind. The -- the length of the
5 metal that's inside that mailbox is too -- too long to get
6 your hand into.

7 Q But anyone can open the latch door, right?

8 A Yes.

9 Q Okay. And is it -- is it actually a mailbox or is it
10 ---

11 A Yes.

12 Q It is?

13 A (Nodded head up and down.)

14 Q Okay. When you -- so you -- your involvement in this
15 case was you picked up this, correct, from the lockbox?

16 A Yes.

17 Q And you remember what day you did that?

18 A I don't remember right offhand. I'd have to see the
19 paperwork.

20 Q Okay.

21 A It was . . .

22 Q So you don't have any documentation showing that this
23 bag that you picked up is the same one that would be
24 submitted by Lt. Gray, right?

25 A The -- there's a number on top of that bag that's

1 inside of that, which coincides with the BEST pack that was
2 submitted to -- or put into the evidence locker.

3 Q And you would only take that out ---

4 A --- to prelog the evidence ---

5 Q To prelog it ---

6 A --- to be ---

7 Q --- and you ---

8 A --- submitted to SLED.

9 Q Okay. And you would hold it at the police department,
10 in this case, for a number of months?

11 A Yes.

12 Q Okay. So it doesn't stay in this mailbox? You put it
13 somewhere else?

14 A Yeah. It stays in that mailbox until I remove it out
15 to prelog it. And then right after I -- it's prelogged,
16 it's taken to SLED.

17 Q Okay. So it's fair to say that this was in that --
18 that mailbox for a number of months?

19 A Yes.

20 Q With other evidence?

21 A Yes.

22 Q Okay. Anything else that was dropped in during that
23 period of time?

24 A Yes.

25 Q Okay.

1 (Whereupon, Ms. Bolen and Ms. Nelson conferred.)

2 Q And again, you don't have any independent reports or
3 any independent documentation with this BEST pack number on
4 it, right? You just got the number on the BEST pack?

5 A Right.

6 Q So no tracking forms, nothing like that?

7 A It should be attached with the case file.

8 Q But nothing else independently, other than the number

9 ---

10 A There's a tear ---

11 Q --- that's written ---

12 A --- tab that ---

13 Q --- on it?

14 A --- comes off of the BEST pack that's generally
15 attached with the incident report.

16 Q But that comes off of the bag, right?

17 A Yes.

18 Q Okay.

19 MS. BOLEN: Nothing further. Thank you, Your Honor.

20 MR. MORROW: Nothing further, Your Honor.

21 THE COURT: All right. Thank you, Mr. Wilkie. You
22 can step down.

23 (Whereupon, the witness exited the witness stand.)

24 THE COURT: All right, Mr. Brown. Call your next
25 witness. Mr. Morrow?

DIRECT EXAMINATION BY MR. MORROW - COURTNEY SMITH 209

1 MR. MORROW: Your Honor, the state calls Courtney
2 Smith.

3 (Whereupon, the witness came forward.)

4 COURTNEY SMITH, having been first duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MORROW:

8 Q Could you state your name for the court reporter.

9 A Courtney Smith.

10 Q And, Ms. Smith, where do you work?

11 A I'm employed at the South Carolina Law Enforcement
12 Division, commonly known as "SLED."

13 Q And what exactly is your title ---

14 A I ---

15 Q --- at SLED?

16 A I'm a forensic technician in the evidence-control
17 department.

18 Q So as a forensic technician in the evidence-control
19 department, what are your duties and responsibilities?

20 A My duties are to log in, package, and transfer the
21 evidence for forensic analysis.

22 Q Okay. Did you become involved in the *State v. Alfonzo*
23 -- or *Alfonzo Alexander*?

24 A Yes. According to my chain of custody, I did.

1 Q And how were you involved?

2 A I accepted the evidence from John Gray of the
3 Abbeville Police Department on March 26th, 2013, at 11:31
4 a.m.

5 Q And I'm about to show you what's been marked for
6 identification purposes as State's Exhibit 1. Do you
7 recognize that?

8 A Yes. According to my chain of custody, this -- I do
9 recognize this evidence.

10 Q And how did you obtain that evidence again?

11 A John Gray presented this evidence to me in a BEST kit.
12 And it was sealed; it was signed and dated on the front of
13 this bag.

14 Q Okay. And once you received it from him, what did you
15 do with it?

16 A Once I assured that the evidence was sealed, signed,
17 and dated, I made sure that the control number on the bag
18 matched the paperwork that he presented to me. I then
19 logged in the information into our computer system, which
20 generates a unique lab number. And then I transferred the
21 evidence to our secure intake location.

22 Q And is that all routine procedure?

23 A Yes.

24 Q Okay.

25 MR. MORROW: Beg the Court's indulgence.

CROSS-EXAMINATION BY MS. BOLEN - COURTNEY SMITH 211

1 (Whereupon, Mr. Morrow and Mr. Brown conferred.)

2 Q Once you had the evidence and you -- what -- where did
3 you put it?

4 A I placed it on our drug-intake location, which is a
5 separate locked and secure area within our secure evidence
6 room.

7 Q Okay. Was there a -- a -- a bin number that's
8 associated with that?

9 A It's just a drug-intake location.

10 (Whereupon, Mr. Morrow and Mr. Brown conferred.)

11 Q All right. Was there any damage or tearing or
12 tampering with the package when you received it?

13 A No.

14 Q Okay. And ---

15 MR. MORROW: Beg the Court's indulgence.

16 THE COURT: Yes, sir.

17 (Whereupon, Mr. Morrow and Mr. Brown conferred.)

18 MR. MORROW: Thank you, Your Honor. No further
19 questions for this witness.

20 THE COURT: All right. Ms. Bolen?

21 MS. BOLEN: Thank you, Your Honor. Ms. Smith, I've
22 got a few questions for you.

23 CROSS-EXAMINATION

24 BY MS. BOLEN:

25 Q What date did you receive that from Lt. Gray?

1 A March 26th, 2013.

2 Q Okay. So about two months ago?

3 A Yes.

4 Q Okay. And all you know is what happens to that once
5 you receive it at SLED, right?

6 A Correct.

7 Q You don't anything about what happened to it prior to
8 it being delivered to you?

9 A No.

10 Q Okay. And I heard you say on direct that -- that the
11 package, when you received it, didn't have any tampering,
12 right?

13 A Correct.

14 Q But you can't speak to whether anything inside the
15 package, the actual evidence, was tampered with, right?

16 A Right.

17 MS. BOLEN: Nothing further. Thank you.

18 THE COURT: All right. Thank you, ma'am. You can
19 step down.

20 THE WITNESS: Okay.

21 THE COURT: No objection to excusing this witness, I
22 assume?

23 (Whereupon, the witness exited the witness stand.)

24 MR. BROWN: Not from the state, Your Honor.

25 THE COURT: All right. Ma'am, you're free to go.

DIRECT EXAMINATION BY MR. MORROW - PAT CROOKS

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1 Thank you for coming. Call your next witness, please,
2 solicitor.

3 MR. MORROW: Yes. The state calls Pat Crooks.

4 (Whereupon, the witness came forward.)

5 PAT CROOKS, having been first duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MORROW:

9 Q Could you state your name for the court reporter,
10 please.

11 A Patricia Crooks, C-r-o-o-k-s.

12 Q And where do you work, Ms. Crooks?

13 A I work at the South Carolina Law Enforcement Division,
14 also known as "SLED."

15 Q And how long have you worked there?

16 A Almost 30 years.

17 Q What is your title?

18 A I'm a forensic technician in the evidence-control
19 department.

20 Q And as a forensic technician in the evidence-control
21 department, what are your duties and responsibilities?

22 A My responsibilities in the evidence room are to pull
23 evidence that is to be examined by the criminalist or
24 scientist. Generally, they'll send down a person from
25 their area to pick it up. Sometimes they come in person.

1 And I'll transfer evidence to them. In return, once
2 the evidence has been processed, it's returned back to the
3 evidence-control department, where it is restocked until
4 someone from the submitting agency comes to SLED. And then
5 it is transferred to them to take back to the agency.

6 Q Thank you. Did you become involved in the *State v.*
7 *Alfonzo Alexander*?

8 A Yes, I did.

9 Q And how ere you involved?

10 A May I refer to my chain of custody?

11 Q Yes, you may.

12 A On March the 26th of 2013, I removed the evidence
13 where it was stored in the evidence room; took custody of
14 that evidence. We all have these bar codes that are
15 specific to -- this one is specific to me. So when I
16 remove that evidence, I scan this bar code. And in turn, I
17 scanned the bar code on the evidence and took custody of
18 it. In turn, I transferred custody of that evidence the
19 same day, same time, to Willie Smith, who is a forensic
20 scientist in -- in the drug-identification department.

21 Q I'm about to show what's been marked State's ID
22 Exhibit 1 for identification purposes.

23 MR. MORROW: May I approach?

24 THE COURT: Please.

25 Q Do you recognize that?

1 A I recognize this by the laboratory number for the
2 case. It's L1304013, and this is Item No. 1.

3 Q And once you received that, where did you take it?

4 A I transferred it to Willie Smith.

5 Q And when -- when did you do that?

6 A On March the 26th of 2013. And that would've been at
7 1624 hours.

8 Q Could you describe the condition of the -- the
9 evidence pack when you got it?

10 A It would've been in a heat-sealed pouch. This is
11 where the heat seal is. And this is the date and initials.

12 Q And thank you. Was -- was there any evidence of any
13 kind of tampering or opening or anything on the pack ---

14 A No.

15 Q --- when you ---

16 A There ---

17 Q --- received ---

18 A --- was not.

19 MR. MORROW: Beg the Court's indulgence.

20 THE COURT: Yes, sir.

21 (Whereupon, Mr. Morrow and Mr. Brown conferred.)

22 Q Do you -- do you know who put the evidence on the
23 drug-intake shelf?

24 A That would've been Courtney Smith. She placed it on
25 the intake shelf on 3/26/2013 at 11:31 in the morning.

1 Q Thank you. No -- I'll take that.

2 MR. MORROW: No further questions for this witness.

3 THE COURT: All right. Ms. Bolen?

4 MS. BOLEN: Thank you, Your Honor. Ms. Crooks, I've
5 just got a handful of questions.

6 CROSS-EXAMINATION

7 BY MS. BOLEN:

8 Q You only know what happens to this bag after it comes
9 to SLED, right?

10 A Correct.

11 Q So you don't know anything ---

12 A What ---

13 Q --- about what may have happened to it prior to it
14 coming to SLED?

15 A I only know when I remove it from where it is stored.
16 And that would've been in the drug-intake storage.

17 Q Okay. And you said there wasn't any evidence of
18 tampering with the bag, right?

19 A Correct.

20 Q But you can't speak to whether there would've been any
21 tampering with what was inside of the bag, the actual
22 evidence, correct?

23 A It would've been in a heat-seal pouch like that.

24 Q And it sounds like at SLED you've got all sorts of
25 procedures that you follow when you get evidence, right?

1 A We do.

2 Q Okay. You have a lot of documentation, and you log
3 things into a computer system ---

4 A I do ---

5 Q --- correct?

6 A --- not log into the computer. Courtney Smith
7 would've logged this in. I work strictly in the evidence
8 room.

9 Q Okay. But you notate everything that you do when you
10 touch a piece of evidence, and the other ---

11 A Yes. As I ---

12 Q --- SLED employees would as well ---

13 A Yeah.

14 Q --- right?

15 A As I explained, everything is tracked by bar code and
16 it goes into -- makes an electronic chain of custody. You
17 can't move evidence from -- if I wanted to move the
18 evidence from one shelf, say, maybe to the next shelf
19 because I needed some room, I couldn't transfer evidence
20 from one location to another. I would have to take custody
21 of that information -- I mean, that evidence using the bar
22 code and save that in the computer. And then I would have
23 to rescan that evidence to the place that I needed to move
24 it.

25 Q Okay. So it's fair to say you've got a pretty

1 sophisticated system of tracking and documenting ---

2 A We have a ---

3 Q --- the evidence ---

4 A --- excellent ---

5 Q --- right?

6 A --- system.

7 Q Okay. And so you would know anytime someone handled
8 it or ---

9 A Correct.

10 Q --- moved the evidence?

11 A Uh-huh.

12 MS. BOLEN: Nothing further. Thank you, Your Honor.

13 THE COURT: All right. Thank you, ma'am. You can
14 step down.

15 (Whereupon, the witness exited the witness stand.)

16 THE COURT: No objection, Ms. Bolen, to this witness
17 being excused?

18 MS. NELSON: None, Your Honor.

19 THE COURT: Very good. Thank you, Ms. Bolen, for
20 coming. Y'all are free to go. Call your next witness.

21 MR. BROWN: The state calls Willie C. Smith.

22 (Whereupon, the witness came forward.)

23 WILLIE SMITH, having been first duly sworn,
24 testified as follows:

25 DIRECT EXAMINATION

1 BY MR. BROWN:

2 Q Good afternoon.

3 A Good afternoon.

4 Q Mr. Smith, you work for South Carolina Law Enforcement
5 Division, commonly known as "SLED," right?

6 A That is correct.

7 Q And, Mr. Smith, how long have you been employed by
8 SLED?

9 A Twelve years and eleven months.

10 Q And what are your job -- what do you do at SLED?

11 A I'm a chemical analyst, criminalist, assigned to the
12 drug-analysis department.

13 Q And long -- how long have you been in that position?

14 A Twelve years and eleven months.

15 Q And as being as forensic and chemical -- chemical
16 analyst, what do you do?

17 A Basically, we receive evidence from across the state
18 and identify what it is and report it out as to what is in
19 it.

20 Q And becoming a chemical analyst or forensic scientist,
21 what type of training do you have to do to achieve that
22 title?

23 A I have bachelor-of-science degrees in biology and
24 chemistry from the University of South Carolina. I've
25 taken additional graduate course work for the purposes of

1 drug analysis. I've attended the criminal justice academy
2 to become a sworn law enforcement officer in this state.

3 I went through a year of training for the analysis of
4 drugs. And I also became certified in that field.

5 Q And, Mr. Smith, have you had on occasion to chemically
6 analyze substances to determine if that substance is a --
7 contains a narcotic or narcotic-type drug?

8 A Yes. I have done -- analyzed over 10,000 cases.

9 Q How many cases?

10 A Over 10,000 cases.

11 Q Ten thousand?

12 Okay. Have you had occasion to chemically analyze
13 substance to determine whether the substance contains crack
14 cocaine?

15 A Yes, I have.

16 Q How many times, roughly?

17 A I mean, thousands and thousands of times.

18 Q All right. Now, how many -- how many times you think
19 you analyze crack cocaine a week?

20 A Lately, it hasn't been as much. But generally, I
21 would say I test crack cocaine maybe 10 to 15 cases a week.

22 Q And -- and so being a forensic chemist, analyzing is a
23 regular part of your duties?

24 A Yes. For any type of substance, I'm trained to
25 analyze all type of drugs.

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1 Q Now, have you ever been qualified as an expert in the
2 area of forensic chemist or scientist in general sessions
3 court in South Carolina?

4 A Yes, I have.

5 Q How many times?

6 A Sixty-five times.

7 Q Sixty-five times?

8 And did you testify?

9 A Yes, I have -- did in all those cases.

10 MR. BROWN: Your Honor, at this time the state moves
11 Willie Smith be declared as expert in field of chemistry
12 and analysis of narcotics -- forensic scientist-chemist in
13 the field of narcotics.

14 THE COURT: Any objection or voir dire?

15 MS. BOLEN: No objection, Your Honor.

16 THE COURT: All right. Again, ladies and gentlemen,
17 normally, a witness can only testify as to something that
18 they observed with their senses. An exception to this rule
19 exists for witnesses qualified as experts in particular
20 areas of expertise.

21 In this case the parties agree that Willie Smith, this
22 witness, is an expert in the field of forensic chemistry.
23 That means he can give opinion testimony in that area. Of
24 course, it doesn't mean you have to accept his opinion.
25 But it's evidence for you to use as you deem appropriate.

1 Go ahead, Mr. Brown.

2 MR. BROWN: Thank you, Your Honor.

3 Q Now, Mr. Smith, I want to show you what's been
4 previously marked State's Exhibit No. 1 for ID purposes and
5 see if you recognize that.

6 A Yes, I do recognize this piece of evidence.

7 Q All right. How do you recognize it?

8 A Well, what we do with all agencies across the state,
9 we supply them with BEST bags. And each time I receive a
10 BEST bag, the first thing I do is examine the BEST bag to
11 make sure that it's sealed. And once I examine it and it's
12 sealed, I write the words "sealed intact." I put my
13 initials and the date that I did my analysis on it. And it
14 has my initials and date from when I did my testing on this
15 item back on March 27th, 2013.

16 Q Now, when you did receive that package in the BEST kit
17 -- BEST evidence kit, was the package damaged? tampered
18 with? altered in any way?

19 A No, it was not. If this evidence would have been
20 tampered with or damaged in any type of way, I would not
21 have wrote the words "sealed intact" and dated and initial
22 or did any analysis to the evidence. I would have returned
23 it to the agency.

24 Q But in this case you went on and tested it?

25 A In this case the seal was intact and the evidence was

1 secured, and I did my analysis for this case.

2 Q Now, when did you receive that package? Again, you --
3 I think you said -- I -- I don't know if I've asked you
4 that question. And when did you receive that evidence?

5 A Well, I picked it up from the logging department on
6 March 26th, 2013.

7 Q Okay. And who had that -- that evidence before -- or
8 who'd you get it from?

9 A Evidence technician Patricia Crooks.

10 Q And she gave that to you?

11 A Yes. She gave me the actual evidence.

12 Q And what is the -- the lab number for that?

13 A The lab number for this evidence, which I include on
14 this package, is L13-04013.

15 Q Now, once it came in your possession, what did you do
16 ---

17 A What ---

18 Q --- with the -- the white, rocklike substance that was
19 contained in that package?

20 A First thing, I examine the BEST bag; make sure that
21 it's sealed and intact. I write the words "sealed" and
22 "intact" and put my initials on it. Next, I open the
23 evidence; take an initial weight of the evidence. I take a
24 sample of the evidence and I test it on a molecular level
25 so that I can identify exactly what the evidence is.

1 Q And -- and did you do that on this occasion for this
2 ---

3 A Yes, I did.

4 Q Based on your analysis and your experience, what is
5 contained in that bag?

6 A This bag, which is Item 1.1, I tested on a molecular
7 level; identified it as a rock substance. It was found to
8 be cocaine-base crack. And it had a weight of 6.8 grams.

9 Q 6.8 grams?

10 Now, if -- what type of -- or how did you weigh that?

11 A I used a -- one of our balances to weigh it. And
12 after I did it, I did a chemical test and I did an
13 instruments test to determine on a molecular level exactly
14 what it was.

15 Q Do you -- when you weigh crack cocaine, do you weigh
16 it in its bag?

17 A No. The only weight that I report is the actual
18 substance of the item. I do not weigh it with any
19 packaging material.

20 Q So if you weighed it with packaging material, would
21 that make the weight higher?

22 A That is correct.

23 Q So if you take it out of the bag and you weigh it just
24 as it is in that rocklike form, you came -- you got 6.8
25 grams, correct?

1 A That is -- that is correct.

2 Q And after you got done with testing that item, what
3 did you do?

4 A Once I finish -- complete all of my testing, I repack
5 it into another zip-lock bag so that it can weigh the same
6 thing from when I did my testing. And I also seal it in
7 another heat-sealed pack with my date and initials so that
8 when I get to court, I can say that this evidence is in the
9 same condition from when I tested this evidence on March
10 27th, 2013, and this heat-sealed pack that I sealed it in
11 from my testing on that date has not been tampered with.

12 Q And after you say that, with your exam of that heat-
13 sealed pouch, is -- has it been tampered with in any way?

14 A This pouch has not been tampered with.

15 Q So nothing in that pouch has been changed since the
16 last time you looked at it?

17 A That is correct.

18 MR. BROWN: Your Honor, at this time I'd like to move
19 what's been marked State's Exhibit for ID purposes No. 1
20 into evidence as State's Evidence No. 1.

21 MS. BOLEN: And we're just renewing our prior
22 objections, based on both Rule 5 and the Fourth Amendment.

23 THE COURT: All right. Subject to the earlier
24 objections under Rule 5 and the Fourth Amendment, the chain
25 has been established, it appears. There's no argument in

1 that. It's in evidence as State's 1.

2 MR. BROWN: Thank you, Your Honor.

3 (Whereupon, State's Exhibit No. 1 was entered into
4 evidence.)

5 Q And again, just to clarify, your opinion on what was
6 in that bag is what?

7 A After testing it on a molecular level, I'm 100 percent
8 sure that it's cocaine base, known as "crack."

9 Q And the weight was?

10 A 6.8 grams.

11 MR. BROWN: No further questions.

12 THE COURT: Ms. Bolen?

13 MS. BOLEN: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. BOLEN:

16 Q Mr. Smith, I just want to talk to you a little bit
17 about these -- these drugs you've analyzed. You weigh it
18 before you test it, correct?

19 A I take an initial weight of the item.

20 Q And that weighed 6.8 grams, right?

21 A That is correct.

22 Q Okay. And when you get evidence from law enforcement
23 in these BEST packs, they're -- the evidence is usually in
24 some sort of little bag, right?

25 A That is correct. In this case it was in a plastic

1 bag.

2 Q Otherwise known as a "little sandwich baggie"?

3 A Yes. You could call it -- some people call it a
4 "little sandwich bag."

5 Q Okay. So it's a fairly thin plastic, right?

6 A It was a plastic bag, just an ordinary plastic bag.

7 Q And it didn't have any -- a zip-lock on it or anything
8 like that, right?

9 A No, it did not.

10 Q Okay. Would you find that a discrepancy of 4.3 grams
11 between a -- between weight would be a fairly significant
12 difference in weight?

13 A The only thing that I know is the weight that I
14 weighed, and it was 6.8.

15 Q Okay.

16 A But did -- that's the actual weight of the actual
17 substance.

18 Q And that -- there's a pretty big difference between
19 6.8 and 11.1, right?

20 A Yes.

21 Q Okay. And it's fair to say that a little sandwich bag
22 couldn't account for that big of a difference, right?

23 A I could not say that without weighing the plastic bag.

24 Q Okay. But the difference between the two, between 6.8
25 and 1 -- 11.1, you agree that that's a big discrepancy,

1 correct?

2 A It's a discrepancy. But I could not say if the --
3 that discrepancy wasn't due to the plastic bag or not.

4 Q Okay. You didn't weigh the bag independently?

5 A No, I did not.

6 Q Okay.

7 (Whereupon, Ms. Bolen and Ms. Nelson conferred.)

8 MS. BOLEN: Nothing further, Your Honor.

9 THE COURT: Nothing -- no -- no objection, then, to
10 excusing Mr. Smith?

11 MS. BOLEN: None, Your Honor.

12 THE COURT: All right. Sir, you are free to go.
13 Thank you very much for coming.

14 THE WITNESS: All right. Thank you.

15 (Whereupon, the witness exited the witness stand.)

16 THE COURT: All right. Call your next witness.

17 MR. BROWN: Judge, the state calls Lori Walters.

18 (Whereupon, the witness came forward.)

19 LORI WALTERS, having been first duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. BROWN:

23 Q Good afternoon.

24 A Hey.

25 Q Ms. Walters, where do you work?

1 A I am the property manager at Oakland Apartments.

2 Q At Oakland Apartments?

3 A Uh-huh.

4 Q And as property manager, what are -- what are your
5 duties?

6 A I move people in; move people out; take ---

7 Q And ---

8 A --- care of the ---

9 Q --- were you property manager at Oakland Apartments
10 last year in August?

11 A Yes.

12 Q More specifically, August 12th, 2012?

13 A Yes.

14 Q Can you -- do you remember who was living in apartment
15 -- or who had the lease or who was a renter of Apartment
16 401?

17 A Ella Mae Brown.

18 Q Was there anybody else on the lease?

19 A No. Not at that time.

20 Q Not at that time?

21 Was there anybody by the name of Alfonzo Alexander on
22 that lease?

23 A No.

24 Q Now, Ms. Walters, how long have you worked there at
25 Oakland Apartments?

1 A Since November 2009 -- November 6th, 2009.

2 Q And in that same capacity?

3 A Yes.

4 Q And working there, you would probably be -- I guess
5 you would be familiar with the -- the area, right?

6 A Uh-huh.

7 Q What is that apartment complex comprised of? What's
8 the layout of that apartment complex?

9 A You mean how many buildings or ---

10 Q Building, landscape ---

11 A It has 32 units.

12 Q All right. What's the landscape around that -- that
13 apartment complex?

14 A I don't -- I'm not sure what you're asking me.

15 Q Are there any social areas?

16 A Oh, yeah. They have breezeways in -- in each
17 building. There's a breezeway that connects the buildings.

18 Q Are there any common areas there in the apartment
19 complex?

20 A Yeah. There's a big parking lot in the car -- the
21 common area.

22 Q Are there many children that -- that live in that
23 apartment complex?

24 A Yes.

25 Q And do you see those children regularly around?

1 A Yes.

2 Q Where do you usually see those children?

3 A On the playground, in the parking lots, in the
4 breezeways. They play pretty much everywhere.

5 Q You said a playground?

6 A Uh-huh.

7 Q Where is that playground?

8 A It is between the 300 and the 200 building.

9 Q Now, you said you're -- you been working there since
10 2009. From Apartment 401 in Oakland Apartments, if you
11 were standing in that doorway, where would that -- where
12 would that playground be?

13 A If you were standing in the doorway, it would be --
14 you could look straight out that doorway and see the
15 playground. It ---

16 Q Even ---

17 A --- would be ---

18 Q --- at night?

19 A Yes.

20 Q What's the lighting like around that apartment complex
21 at night?

22 A There is a light on the playground.

23 Q Could you see the playground at night?

24 A Yes.

25 Q Now, with regard -- the housing area, is that a

1 private-owned ---

2 A Uh-huh.

3 Q --- apartment area?

4 A Yes.

5 Q Now, do only kids from that apartment complex play on
6 that playground or ---

7 A They're -- it's only supposed to be. But, I mean,
8 unless the residents have guests or whatever, then yeah.

9 It's a ---

10 Q What's ---

11 A --- strictly that.

12 Q What's the access to -- what's the access to the
13 apartment complex or is -- is it a gated community?

14 A Yeah. It does have a fence around that area that ---

15 Q But coming into the main apartment complex, is there a
16 gate ---

17 A No.

18 Q --- to keep people out from ---

19 A No.

20 Q --- driving in?

21 A (Shook head from side to side.)

22 (Whereupon, Mr. Brown and Mr. Morrow conferred.)

23 MR. BROWN: Beg the Court's indulgence.

24 THE COURT: Yes, sir.

25 Q Ms. Walters, say -- and what's the entrance into that

1 apartment complex? If someone were to drive into the
2 apartment complex, what would their sight of vision be --
3 their line of vision?

4 A There's only one entrance. So when you come in,
5 you're going to just directly come in and see all the four
6 buildings.

7 Q What -- would you see anything else, besides the four
8 buildings?

9 A You could see the playground. You could ---

10 Q Entering the apartment ---

11 A Uh-huh.

12 Q --- complex?

13 A (Nodded head up and down.)

14 MR. BROWN: No further questions, Your Honor.

15 THE COURT: Ms. Bolen?

16 MS. BOLEN: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. BOLEN:

19 Q Ms. Walters, talking about Apartment 401, that enters
20 into a breezeway, right?

21 A Yes, ma'am.

22 Q So if you look to the -- the right, you wouldn't see a
23 playground, right?

24 A Uh-huh.

25 Q Okay. And you would actually walk out into the

1 breezeway, right?

2 A Yes.

3 Q Okay. Your apartment complex also has a laundry
4 facility, right?

5 A Yes. It has a laundry ---

6 Q That's something ---

7 A --- room.

8 Q --- anyone off the street could walk in and use?

9 A They're not supposed to. No.

10 Q Okay. You also have a -- some sort of common area,
11 right? A -- I think you testified there was a sort of
12 common area -- social-gathering place in your apartment ---

13 A They gather in the breezeways ---

14 Q Breezeway.

15 A --- and in ---

16 Q Okay.

17 A --- the parking lot. It's not really a designated
18 area for that.

19 Q But it is a private apartment complex ---

20 A Yes.

21 Q --- right?

22 And you said that the playground was only for
23 residents and maybe if they had guests, right?

24 A Yes.

25 Q So the intent for the playground is not for it to be

1 used by just anyone, right?

2 A Yes.

3 Q It's not a public playground; it's a private
4 playground?

5 A It's private.

6 Q Okay. And there's no public road that gives direct
7 access to this playground, right?

8 A No, there is not.

9 (Whereupon, Ms. Bolen and Ms. Nelson conferred.)

10 Q And the -- the playground is kind of tucked behind the
11 200 building, right?

12 A Yes.

13 Q And in the summer when there's a lot of leaves on the
14 trees, a lot of the trees kind of grow almost over part of
15 the playground, right?

16 A They hang over it.

17 Q They hang ---

18 A Yes.

19 Q --- over it?

20 A (Nodded head up and down.)

21 Q And there's a fence directly behind it, and then some
22 kind of wooded area on one side?

23 A Yes.

24 Q Okay. I don't think I have anything further. Thank
25 you.

1 A Uh-huh.

2 (Whereupon, Mr. Brown and Mr. Morrow conferred.)

3 REDIRECT EXAMINATION

4 BY MR. BROWN:

5 Q Ms. Walters, you did say that -- that playground is
6 there in the apartment complex. Are you familiar with any
7 other playgrounds right around that apartment complex?

8 A Yes. There's one at the other complex I manage, which
9 is right behind Oakland.

10 Q Is that the same kind of situated -- that is, for the
11 use of the apartment?

12 A Yes.

13 Q But a lot of times, other folks come on there too?

14 A Yes.

15 Q So you would say it's a -- were -- would it be, like,
16 a semi-private -- that still people from off the street
17 come in and use it?

18 A Generally, it's mostly the resident children that use
19 it. Like I said, unless they have guests -- I mean, I
20 don't have people that come from every -- you know, other
21 places to use it ---

22 Q Yes, ma'am.

23 A --- for the most part.

24 MR. BROWN: No further questions.

25 MS. BOLEN: Nothing further, Your Honor.

1 THE COURT: All right. Thank you, ma'am. You can
2 step down. No objection to excusing this witness?

3 MS. BOLEN: No, sir.

4 THE COURT: You're free to go, ma'am. Thank you for
5 coming.

6 (Whereupon, the witness exited the witness stand.)

7 THE COURT: Call your next witness.

8 MR. BROWN: Judge, I'd like to take a brief break at
9 this time.

10 THE COURT: Okay. Very good. Y'all approach. Come
11 over here to this side, please.

12 (Whereupon, a bench conference was held off the record
13 in the presence of the jury, but out of the hearing of
14 the jury.)

15 THE COURT: All right. Ladies and gentlemen, we've
16 actually reached a good point where we're going to take a
17 break in the trial. I'll tell you that we're going to
18 resume, if we could, tomorrow morning at ten o'clock. Just
19 be in the jury room at ten o'clock tomorrow morning.

20 I have a conference call that I need to address first
21 thing in the morning. I don't think it's going to take too
22 long. But it -- it's concerning court for next week. I
23 need to get that lined up and squared away. We're holding
24 civil court in Laurens, and some issues had arisen that I
25 need to address.

1 When you go home tonight, again, please don't talk
2 about the case with anyone: your spouse, significant
3 other, whoever. I anticipate that you'll have this case
4 sometime tomorrow morning and be able to start your
5 deliberations, hopefully, shortly after -- sometime
6 tomorrow morning. So with that I hope you have a pleasant
7 evening. Stay safe, and I will see you back in the jury
8 room at ten o'clock tomorrow.

9 Thank you very much. Y'all are excused.

10 (Whereupon, the jury exited the courtroom at 4:42
11 p.m.)

12 (Off the record briefly.)

13 THE COURT: All right. The jury is out. We will be
14 at ease on this case until tomorrow morning.

15 MS. BOLEN: Thank you, Your Honor.

16 (Whereupon, the proceedings were adjourned at 4:42 p.m.)

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1 TRIAL DAY 3 - 05/30/13

2 (Whereupon, the proceedings were resumed at 10:12 a.m.)

3 THE COURT: Okay. We're back on the record on the
4 *State v. Alfonzo Alexander*. And the defendant is not
5 present, but his counsel is; the state is present. At this
6 point in time, based upon a discussion in chambers, it's my
7 understanding that the state's going to rest. Is that
8 right, Mr. Brown?

9 MR. BROWN: That's correct, Your Honor.

10 THE COURT: All right. Just so that we don't
11 inconvenience the jury, let's go ahead and address -- since
12 the state has rested, let's go ahead and address motions;
13 then when the jury comes out, you can rest in front of them
14 and we'll move forward. I understand the state does not
15 intend to present a case, so -- or the defense does not
16 intend to present a case at this point. Ms. Bolen, you
17 have some motions?

18 MS. BOLEN: Yes. I just want to make sure I was
19 following what was going on in the courtroom. So we're
20 doing our -- our directed-verdict motions now?

21 THE COURT: Yes ---

22 MS. BOLEN: Okay.

23 THE COURT: --- please.

24 MS. BOLEN: Your Honor, we're making a motion for
25 directed verdict on both charges. I'm going to take them

1 separately, Your Honor.

2 With respect to the proximity charge: This is a
3 charge where the -- the language in the statute is very
4 clear: that it needs to be a public playground. In fact,
5 the statute lists it can be a school, playground, or park
6 or a college or university. And the way the statute it
7 written, it says: . . . "public or private school; public
8 playground or park"; and then, "public or private college
9 or university."

10 So we'd argue that by the -- the clear language of the
11 statute, it is required to be a public playground.
12 Furthermore, the legislative intent is also very clear
13 because they knew to put "private" in front of "school";
14 and then, they knew to put it again in front of "college or
15 university."

16 And I think it's significant to note that the
17 legislature only put "public" in front of "playground or
18 park," where it -- which is the -- the first one is
19 "school"; the second one is "playground or park"; the third
20 one is -- is "college or university." And they say
21 "private" for the first; "public" only for the second; and
22 then, they -- they reiterate that it can be a public or
23 private college or university. And I think that shows
24 clear intent on behalf of our legislature that it must be a
25 public playground.

1 The evidence, Your Honor -- there -- there is simply
2 no evidence to show that this is a public playground. The
3 state's own witnesses -- Lt. Gray, as well as Ms. Walker --
4 testified that it was private. Lt. Gray said that it's --
5 it's not a city-owned or -- or state-owned playground; that
6 it -- it was a private apartment complex, and the
7 playground was part of that complex and was a private
8 playground. And then, we had the manager from the
9 apartment complex, who said -- stated very clearly when I
10 asked her, "It is a private playground."

11 She went on to explain, both in direct and cross, that
12 it is intended for tenants and their guests. That's it.
13 It is not intended for any other children.

14 It is -- I think we can make an analogy to a swing set
15 that someone might have in their backyard. This is an
16 apartment complex that's purely residential. People live
17 there. And in the backyard of the apartment complex is a
18 playground. That's for the kids who live in the apartment
19 complex, just like a playground that someone has in their
20 backyard or someone in the country and has it their front
21 yard is for the children.

22 Your Honor, I'd like to draw the Court's attention to
23 one case, *Brown v. State*, 343 S.C. 342. This is a 2001
24 case. And this concerned a -- a charge -- a proximity
25 charge brought where the proximity was to a day care. And

1 our appellate court said that that did not fit the statute;
2 that a day care was not a -- a public or private school;
3 was not a public playground; and was not a -- clearly not a
4 college or university.

5 And the reason that this is important is that there's
6 been some testimony that, you know, kids play there. You
7 know, Ms. Brown said that other kids in the neighborhood
8 played there. But that's not enough. Just having the
9 presence of kids does not make it public.

10 And I think that's clear from the decision in *Brown v.*
11 *State* that, certainly, there's kids at a day care. But
12 it's -- the statute is clear that it's not just somewhere
13 where kids are and kids congregate and kids play. It has
14 to fit within these very narrow -- narrow definitions of
15 "public."

16 More evidence from the state that it was not public is
17 that there's no public access. There's no road that goes
18 through it. And again, both -- both of the state's
19 witnesses who said it was private, most notably Ms. Walker,
20 who said it is absolutely private; it is not intended for
21 anyone other than the tenants and guests.

22 Secondly, on the proximity charge, Your Honor, the
23 state is required under the new statute, which was
24 rewritten, I think, in 2010, to show actual knowledge:
25 that the person knew that the school playground or college

1 was there. That was a -- rewritten in 2010 to include that
2 actual-knowledge element.

3 And there's simply not been any testimony that Alfonzo
4 knew that there's a playground there. No one has said,
5 "Oh, yeah. We talked, and he said, 'Oh, yeah. My kids
6 play on that playground,' or, 'Oh, look. I should bring my
7 kids there someday.'" There's been no evidence to that.

8 There's been some conflicting testimony about what you
9 would see if you walked out of the apartment door. Ms.
10 Brown, I think, said if you look to your right, you would
11 see the playground. Lt. Gray said if you look to your
12 left, and Ms. Walker said if you look straight ahead.

13 But something that I think is notable with that:
14 There's been no evidence presented that Alfonzo had ever
15 been to this complex before. There's been no evidence
16 presented that he ever exited the apartment prior to being
17 arrested.

18 And if Your Honor recalls, all of the witnesses who
19 talked about what you would see -- no evidence -- all --
20 all the witnesses who talked about what you would see
21 testified to what you would see when you walked out of the
22 apartment. And the reason that's important is you have a
23 different view when you walk in than when you walk out.

24 For example, if I'm going to walk into that door right
25 there and I open it up, I'm going to see the door to the

1 solicitor's office. If I come out of this door and walk
2 across and go there, I still see what's right in front of
3 me there and I see the solicitor's office when I open
4 there. But if I exit that door, the first thing I'm going
5 to see is that wall.

6 So we don't know that he ever left that apartment
7 prior to being arrested. So we don't know if he ever saw
8 what would've been right -- either right in front or on the
9 left or right.

10 THE COURT: Okay. Mr. Brown, on the question of the
11 character of the playground, private versus public, what's
12 the state's position?

13 MR. BROWN: Your Honor, based on the state's position,
14 Ella Brown did testify that she was a tenant there for a
15 long while and she could see the playground. She would see
16 children playing on it. I asked her a specific question:
17 "Is this a playground that only children in the apartment
18 complex play on?"

19 And she testified, saying, "No. All the children play
20 on this playground." What I understood from that is that
21 children around that community -- even though Lt. Gray and
22 Ms. Walters said that it is a private apartment complex, it
23 does seem like, in nature, it -- it is public that the
24 community children around that area do come to play on it.
25 They did say there's a pathway from another housing area,

1 that they had access to that playground.

2 THE COURT: I certainly agree with you on that
3 particular point. I'll take judicial notice of the fact
4 that if you build a playground, they will come. Children
5 will come, and they will come from all around. And
6 probably, this clearly was not a gated community. It's not
7 a situation where you needed a key card or a key in order
8 to access the playground. You didn't have a security guard
9 there, monitoring who was using it, making sure that only
10 residents used it.

11 At the same time, the playground, based upon the only
12 evidence which has been presented, is located on private
13 property. It's not a public playground. I look at the
14 statute, as I did last night in anticipation of this
15 argument, and it's clear that with regard to school or
16 schools under the proximity statute, this -- the
17 legislature was extremely specific.

18 It said "public or private elementary, secondary, or"
19 -- whatever -- "school." It used the adjective "public or
20 private" when modifying those different schools. In this
21 case my understanding is -- or my -- my recollection is
22 that the statute uses "public" to modify "park or
23 playground," as opposed to a private park or playground.

24 This is a fee-simple interest owned by some
25 corporation or some business. And my clerk tells me that

1 there is a Pennsylvania case somewhat on point. One
2 moment, please.

3 (Off the record briefly.)

4 THE COURT: All right. The case that I'm looking at
5 is *Commonwealth v. Campbell*, reported at 2000 Pa. Super.
6 251 and 758 A.2d 1231, 2000 case, holding (as read): The
7 legislature intended for the term "playground" to encompass
8 those play areas found not only at schools or public
9 municipal areas, but also outside such areas. Thus the
10 trial -- thus the Court held that the trial court erred
11 when it held the statute inapplicable to a sale within 200
12 feet of play areas in semi-private housing complexes and
13 apartment-building complexes.

14 (Off the record briefly.)

15 THE COURT: And they specifically in Pennsylvania
16 define what a playground is. Can you point me to anything,
17 Mr. Brown, that would be case law supporting the
18 proposition that ---

19 MR. BROWN: Judge, I just -- I would point to the
20 statute where it does not specifically lay out public as
21 being -- you know, I -- what I would argue is that the
22 children came from around the community. It was open; it
23 was not gated; and they did have access to it. That would
24 be my argument making that a public playground at that
25 point.

1 And we do have testimony saying that children from
2 outside the area did play there. It would be my
3 proposition to let the jury decide on the facts of that
4 case on the testimony.

5 THE COURT: All right. I appreciate your position,
6 Solicitor -- appreciate your position, Solicitor. I think
7 that the motion by Ms. Bolen is appropriate. I'll grant a
8 directed verdict with regard to the proximity charge.

9 You had another motion, Ms. Bolen?

10 MS. BOLEN: Yes. Thank you, Your Honor, for that --
11 that result. And we're also making directed-verdict motion
12 on the possession with intent to distribute; specifically,
13 with the -- that there's not been evidence of any intent to
14 distribute. There's not been any testimony that -- that he
15 tried to sell or that anyone bought from him; not been any
16 testimony that -- that there's any paraphernalia found on
17 him that would be consistent with dealing; not been any
18 testimony about the -- the drugs being broken up in such a
19 way as would be made more consistent with dealing. And so
20 the -- the drugs are clearly in one bag. And so we'd --
21 we'd make a directed-verdict motion that there's not been
22 evidence of the intent-to-distribute prong of the
23 possession with intent to distribute.

24 THE COURT: All right. The state is relying upon the
25 evidentiary inference of more than a gram?

1 MR. BROWN: Correct, Your Honor. Plus, the inference
2 that can be taken from having -- actually, there was --
3 it's been admitted into evidence that he did have 16
4 baggies, scale, and also the large amount of cash, which, I
5 believe, is the inference that he is dealing. Also, Lt.
6 John Gray did testify, in his opinion, that with somebody
7 having this amount of crack cocaine, baggies, plus the
8 scale, large sum of cash, that it's his opinion that it --
9 that would be consistent with somebody dealing drugs ---

10 THE COURT: All right.

11 MR. BROWN: --- crack cocaine.

12 THE COURT: All right. In the light most favorable to
13 the state, clearly, there's evidence from which the jury
14 could conclude that a PWID charge would be appropriate or
15 the jury could conclude that the defendant is guilty of
16 PWID. So I'll deny your directed-verdict motion on that
17 charge.

18 MS. BOLEN: Thank you, Your Honor.

19 THE COURT: Of course, I did mean to mention a moment
20 ago that part of my reasoning in granting the directed
21 verdict on the -- on the prox charge, under South Carolina
22 law and under laws of most states, any criminal statute has
23 to be strictly construed against the state. And certainly,
24 the absence of the word "private" in that portion of the
25 statute dealing with parks or playgrounds, that would

1 indicate to me an intention to -- well, that would indicate
2 to me that -- that it would be proper to grant a directed
3 verdict for the reasons I put on the record a minute ago.

4 I prepared the proposed jury instructions; they're
5 pretty standard. I have included the absent-defendant
6 language. Aside from that it's what you would expect of --
7 and y'all have tried cases with me before. But what I'll
8 do is give you an opportunity -- is there anything specific
9 that y'all were wanting?

10 MS. BOLEN: Your Honor, I -- I had copied the absent-
11 defendant language as well. And I'm assuming I probably
12 have the same language as you do. We're also asking for a
13 lesser-included of possession to be charged.

14 THE COURT: All right. I think there's a case on
15 point, Solicitor.

16 MR. BROWN: I -- I believe there is a case on point
17 that lesser-included can be charged.

18 THE COURT: That -- say again, Mr. Brown?

19 MR. BROWN: (No audible response.)

20 THE COURT: Maybe I misheard you, Mr. Brown. Are you
21 agreeing with Ms. Bolen that she's entitled to a lesser-
22 included, or are you saying ---

23 MR. BROWN: I ---

24 THE COURT: --- that ---

25 MR. BROWN: I -- based on past research, I do believe

1 -- I -- but I'm not positive on that.

2 THE COURT: All right. So the state does agree that
3 she's ---

4 MR. BROWN: I ---

5 THE COURT: --- entitled to a lesser-included ---

6 MR. BROWN: I believe ---

7 THE COURT: --- on possession?

8 MR. BROWN: --- I think if it includes possession,
9 that -- that the lesser can be charged ---

10 THE COURT: All right.

11 MR. BROWN: --- on that.

12 THE COURT: All right. I'll need to modify this
13 slightly, then, because I did not include a lesser-included
14 offense of possession. So I will do that. I'll let you
15 look at this. We'll be at ease for a few moments. You can
16 check the language about absent defendant, Ms. Bolen, and
17 ---

18 MS. BOLEN: Yes, sir. Thank you.

19 THE COURT: --- I'll modify this slightly.

20 MS. NELSON: Thank you, Your Honor.

21 (Off the record from 10:31 a.m. until 10:45 a.m.)

22 THE COURT: Okay. If we may, we'll go ahead and go
23 back on the record. Of course, the jury is here. I'll --
24 I've reworked the jury charge. We'll bring the jury out;
25 the state will rest; the defense will rest. And we'll

1 proceed with argument. Of course, the defense gets last
2 argument. (To the bailiff) Let's have the jury, please.

3 (Whereupon, the jury entered the courtroom at 10:45
4 a.m.)

5 THE COURT: All right. Let the record reflect that
6 the jury is back. Ladies and gentlemen of the jury, I
7 trust you had a pleasant evening. I hope that -- hope you
8 weren't too impatient this morning to get going with the
9 case. Again, I apologize for keeping you waiting, of
10 course.

11 At this point in time, Solicitor, call your next
12 witness, please.

13 MR. BROWN: State rests, Your Honor.

14 THE COURT: All right. Any case from the defense?

15 MS. BOLEN: Defense rests, Your Honor.

16 THE COURT: All right. Ladies and gentlemen of the
17 jury, we've reached that point in the trial where you're
18 going to hear the closing arguments of the attorneys. And
19 the way that we'll proceed is that the state will go first,
20 to be followed by the defense.

21 I'll tell you, of course, the same thing that I told
22 you yesterday: What the lawyers say during their closing
23 argument to you is not evidence. It's simply their
24 contention to what has or has not been proven. And it's
25 normal for a lawyer to reference or to make reference to

1 the facts that have been presented.

2 I will tell you that if your recollection of the facts
3 differs from what they tell you the facts are, of course,
4 you should go with what you recall the facts as being,
5 because you are the judges of the facts in this case. For
6 example, if one of the lawyers say that yesterday it was
7 bright and sunny and your recollection was that yesterday
8 it was rainy and miserable, you should go with your
9 recollection of it being rainy and miserable, as opposed to
10 them telling you it's bright and sunny.

11 And as I mentioned a moment ago, the way that we'll
12 proceed is that Mr. Brown will go first on behalf of the
13 state, to be followed by Ms. Bolen on behalf of the
14 defense. At this point, Mr. Brown, you are recognized for
15 your closing sir.

16 MR. BROWN: Thank you, Your Honor.

17 CLOSING ARGUMENT BY MR. BROWN

18 MR. BROWN: Good morning, ladies and gentlemen. First
19 of all, I just want to thank you for your attention, your
20 time, and your consideration in this case. Again, I told
21 you the other day it wouldn't be that long of a case, but
22 it's an important case. Not too many witnesses, but you
23 did hear important witnesses and testimony; saw evidence.

24 And let's go back to see who -- who testified in this
25 case. First person that testified was Lt. John Gray. What

1 did he tell you? He got a call from 911 dispatch that
2 there was an -- there was an anonymous tip to go to 401
3 Oakland Apartments -- which is in Abbeville City, Abbeville
4 County, South Carolina -- for illegal gambling and drugs.

5 He goes there, and he meets Ms. Ella Brown, who is the
6 renter or the tenant of that apartment. He asks if -- tell
7 her why he's there and asks if he can take a look. She
8 voluntarily opens up the door and lets him in. At that
9 point he tells us that he smells marijuana -- the odor of
10 marijuana; sees people in the back kitchen, playing cards.
11 There's cards on the table. There's a little marijuana in
12 the middle of the table.

13 He looks directly to his left, and he sees Alfonzo
14 Alexander. Alfonzo's got a wad of cash in his hand. And
15 as she testified, there were three officers and
16 approximately ten people in the house. For officer safety
17 he said, based on his experience, a lot of times where
18 there's drugs, there's weapons. So he patted down Mr.
19 Alexander, along with everybody else in the apartment.

20 What he does say is when he did pat him down, he could
21 see baggies coming out of his pants pocket. Patted him
22 down; felt another bulge in his pocket. He asked Mr.
23 Alexander, "Do you mind if I see what's in your pocket?"

24 Mr. Alexander said, "Yes." So he takes it out. What
25 do we find?

1 Mr. Gray testified that 16 baggies, 16 individual
2 baggies, were in his pocket -- his right pocket. Along
3 with that right pocket -- and it's in evidence as State's
4 Exhibit No. 1 -- it's crack cocaine, 6.8 grams of crack
5 cocaine, contained in that plastic baggie in his pocket,
6 along with those 16 baggies. Left pocket is a digital
7 scale, in his left pocket. Also, in his possession he's
8 got \$837 cash.

9 Now, what does Lt. Gray do at that point? Takes this
10 into evidence; Mr. Alexander is arrested. There's another
11 person arrested in the apartment for trespassing.

12 Now, defense, I know, through the trial was: Why
13 weren't these people arrested? Well, Mr. Gray explained
14 that in the middle of the kitchen table where they were
15 gambling, there's a bag of marijuana. Couldn't tell who it
16 was -- who it belonged to; didn't know who possessed --
17 possessed that marijuana.

18 Also, sitting next to Alfonzo was a bag of marijuana.
19 Alfonzo wasn't charged with marijuana. But he did charge
20 him with possession of crack cocaine with intent to
21 distribute. Why? Because it was in his pocket.

22 Well, ladies and gentlemen, after he left 401 Oakland
23 Apartments, he goes back -- he testified he goes back to
24 the police department and he makes an initial weight of the
25 crack cocaine. He takes the weight on his scales, and the

1 crack is still in the baggie, still in the package that it
2 came in, that he retrieved it off of Mr. Alexander with.
3 He weighed it: 11.1 grams.

4 He then seals it in a BEST evidence kit to send down
5 to SLED; packages it in that. Nobody can tamper with it.
6 Drops it in -- the mailbox they have there has a -- has a
7 lock on there. The only person that has a -- has a key to
8 that evidence locker is Lt. Chris Wilkie. You heard from
9 Mr. Wilkie. Mr. Wilkie retrieved that bag when Mr. -- when
10 Lt. Gray transported this down to SLED.

11 Now, Lt. Wilkie also testified that the -- pretty much
12 the security of that drop box. Because once you drop it
13 in, you can't reach back down there. Crack was secured in
14 this drug-evidence bag. Lt. Wilkie testified, saying that
15 when he looked at it, when he was prelogging it into SLED,
16 that there was no evidence of tampering, no evidence of
17 anybody trying to get in that to tamper with the drugs.

18 Now, ladies and gentlemen, you also heard from Ms.
19 Ella Brown. Ms. Ella Brown was the resident of that
20 apartment complex. Lt. Gray approached that apartment; he
21 met Ms. Brown there. Ms. Brown said that she voluntarily
22 opened up the door, let Lt. Gray in, and that she knew this
23 fella.

24 He was in her apartment that night. He knew him since
25 he was little; he knew -- she knew his mama. She couldn't

1 remember his name off the top of his head, but she was
2 confident he was there. But that -- along with Lt. Gray,
3 this is the man, Alfonzo Alexander, that he arrested that
4 night and had crack in his pocket, along with the scales,
5 the baggies, and the cash.

6 Now, moving onto the chain evidence, after Lt. Wilkie
7 retrieved crack cocaine out of the evidence locker, he gave
8 it back to Lt. Gray. Lt. Gray then took it the same day
9 down to SLED. He checked it in with the SLED intake. That
10 lady's name was Courtney Smith. She testified here
11 yesterday.

12 She said once she got it, that Lt. Gray handed over to
13 her, she logs it in. She make sure it's all logged in;
14 gives it a particular number so they can track it down.
15 That's what that L13041 -- or -013 is. It's to make sure
16 they can track it; make sure the integrity of the evidence
17 is still intact. Nobody can tamper with that.

18 She then places it on the evidence shelf there at
19 SLED. Next person that comes in contact with it is Pat
20 Crooks. Pat Crooks testified that when she got it, the
21 evidence was still safely secured: no tampering, no
22 evidence of anybody getting into that bag with the crack.
23 She then gave it to Willie Smith, who was our forensic
24 scientist who testified yesterday.

25 What did Mr. Smith say? He received this baggie of

1 crack cocaine. What he does first is he checks to make
2 sure that everything in that pouch -- that it's not been
3 tampered with; that nobody has damaged it. He wants to
4 make sure the integrity of what's inside is what it is and
5 nobody's messed with it; make a true and accurate reading
6 of it.

7 So the first thing he does is he checks that. And if
8 he -- it had been tampered with, he said he would send it
9 back. He didn't send it back.

10 What he does is he takes it out; takes the crack out
11 of the plastic bag that it's still in that came off of
12 Alfonzo Alexander. He weighs just the contents of crack
13 cocaine. And he came with 6.8 grams of crack cocaine.

14 Now, there's a difference there. And the defense
15 wants you to get hung up on the difference between 11.1 and
16 6.8. Mr. Smith was asked, "Now, if it was weighed in the
17 plastic bag, would that make the weight of the crack
18 cocaine more?" Obviously, yes, it would make it more.

19 But he didn't weigh the plastic bag, so we don't know
20 how much -- if the difference from 11.1 to 6.8, if that's
21 the plastic bag. But that would infer that it would.

22 Now, ladies and gentlemen, Willie Smith testified that
23 it was 6.8 grams of crack cocaine. He was 100 percent
24 certain, through his chemical testing, that's crack
25 cocaine.

1 Now, ladies and gentlemen, the -- what the state has
2 to prove here -- and we have the burden of proof. As I
3 said that in opening statement, we have the burden of proof
4 to prove to you beyond a reasonable doubt that the state --
5 that the state can prove that Alfonzo Alexander was in
6 possession with intent to distribute crack cocaine.

7 Now, what is proof beyond a reasonable doubt? It's a
8 proof that leaves you firmly convinced. It's not all
9 doubt; it's not every doubt; it's not any doubt. But it's
10 firmly convinced in his guilt.

11 Now, what do I have to prove? What does the state
12 have to prove? We have to show that Mr. Alexander
13 knowingly possessed -- that he knowingly possessed a
14 controlled substance, crack cocaine, with intent to
15 distribute.

16 Now, where does the intent come from? The state --
17 there is circumstantial evidence that there's a permissible
18 inference. And the judge will instruct you on this later
19 on. There's a permissible inference that if somebody
20 possesses 1 gram or more of crack cocaine, that he intends
21 to distribute; that you can infer that there's an intent
22 there to distribute the crack cocaine.

23 In this case we have 6.8 grams of crack cocaine,
24 nearly seven times the inference weight. Along with that
25 we have 16 individual baggies. If it was just for himself,

1 no need for baggies. Just for himself, no need for scales.
2 Yet his left pocket's a scale; right pocket was 16
3 individual baggies, along with crack cocaine.

4 Also, you can infer by the -- the amount of cash he
5 has in his hand. He has \$837 cash in his hand, big sum of
6 money. Also, remember back to what Lt. Gray said. Based
7 on his experience as a narcotics officer, when you have all
8 this evidence together -- the baggies, the scale, the
9 weight of crack cocaine of 6.8 grams -- what does that
10 usually tell you? He's intending to distribute this crack.
11 He's going to hand it out -- for money, of course. Now --
12 and that's where the \$837 comes in.

13 Now, ladies and gentlemen, you've heard the evidence;
14 you've seen the facts. You'll have -- be able to look at
15 these individually; these are in evidence. At the end of
16 the day, Mr. Alfonzo Alexander had the crack in his pocket,
17 his actual possession; it was in his pocket. He had scales
18 in his left pocket; he had the baggies there in his pocket.
19 And you can infer by the weight of the crack and by the
20 other paraphernalia that he had with him that he was
21 intending to distribute this.

22 So the elements, again, to have to check to prove
23 beyond a reasonable doubt the defendant knowingly possessed
24 -- check, it was in his pocket -- a controlled substance --
25 crack cocaine, check; taken down to SLED, 6.8 grams; 100

1 percent certainty from Willie Smith that it is crack
2 cocaine -- with the intent to transfer the controlled
3 substance to another party -- have an inference; over 1
4 gram of crack cocaine -- we have 6.8 -- he intended to
5 distribute that drug. That, coupled with the
6 paraphernalia, would accomplish those elements.

7 Ladies and gentlemen, I ask that you -- after hearing
8 all the arguments, that you return to the jury room and
9 find Mr. Alexander guilty as charged. Thank you.

10 THE COURT: Thank you, Mr. Brown. Ms. Bolen, you are
11 recognized, ma'am, for your closing.

12 MS. BOLEN: Thank you, Your Honor. May it please the
13 Court?

14 THE COURT: Yes, ma'am.

15 (Whereupon, Ms. Bolen and Ms. Nelson conferred.)

16 MS. BOLEN: Sorry for the delay. Just trying to make
17 sure this is -- this is working right.

18 THE COURT: That's all right. Take your time.

19 (Whereupon, Ms. Bolen and Ms. Nelson conferred.)

20 CLOSING ARGUMENT BY MS. BOLEN

21 MS. BOLEN: You'll notice that when Mr. Brown just
22 addressed you, he only talked to you about one charge. He
23 talked to you about possession with intent to distribute.
24 And if you recall way back to Monday when this case was
25 called, there were two charges. There was a possession

1 with intent to distribute, and there's what we call a
2 "proximity charge."

3 The proximity charge has been dismissed by the judge.
4 So that's not -- that's not before you anymore. Basically,
5 they didn't have the evidence for that. And that -- that
6 requires you to ask yourself: If they got that one wrong,
7 doesn't that call into question this entire case? If they
8 got one charge wrong, how can you trust any of this case
9 that's been presented to you by the state?

10 I'm going to go through what I see as the problems
11 that the state has in proving this case to you beyond a
12 reasonable doubt. And remember, they need to prove it
13 beyond a reasonable doubt. And I'm going to take you
14 through the evidence you've heard, the evidence you've
15 seen, and show you where you find reasonable doubt in this
16 case, where you find reasonable doubt that Alfonzo
17 Alexander had the intent to distribute crack cocaine.

18 Okay. And what I've -- what I found in my summary of
19 the evidence is that we see this in -- in a couple places:
20 (1) Faulty investigation: Certain things weren't done
21 during the investigation; (2) inconsistent treatment of
22 Alfonzo, compared to other people; (3) you've got some --
23 some pretty serious conflicting evidence, okay, and some
24 pretty serious conflicting results of that evidence.

25 There's other reasonable explanations that the state

1 has not presented to you to a lot of these problems. And
2 those other reasonable explanations mean that the state
3 hasn't met its burden of proof of beyond a reasonable
4 doubt.

5 The state also has a problem proving identity, proving
6 that it was, in fact, Alfonzo Alexander. They have not
7 proved that. And remember that the state has to prove
8 every element of each charge beyond a reasonable doubt,
9 every element.

10 When I prepared this slide show, I -- I didn't know at
11 that point that the proximity charge would be dismissed.
12 So I'm going to go through -- just not -- not go over these
13 slides that relate to that. Okay.

14 Let's talk about some of the evidence that is missing
15 to prove that Alfonzo Alexander, if that was indeed him,
16 had the intent to distribute any crack cocaine. What he's
17 charged with is possession with intent to distribute. And
18 you'll hear from the judge that on your jury-verdict form,
19 you're also going to have the option of finding him guilty
20 of possession of crack cocaine.

21 What the state is trying to prove is possession with
22 intent to distribute. There's also a lesser-included of
23 possession of crack cocaine. So the state has to prove --
24 in order to get that conviction on intent to distribute,
25 they have to prove he had the intent to distribute, and

1 they simply haven't done that.

2 There's not been any testimony -- any testimony, even
3 from the state's own qualified expert in narcotics
4 investigations, about how much crack might be for personal
5 use. There's been nothing to say that 6.8 grams would not
6 be personal use.

7 There's no evidence that anyone bought any crack from
8 Alfonzo Alexander that night or that he even tried to sell
9 any crack. How do we know that? Lt. Gray said there were
10 no crack pipes found there. You've got all these people in
11 this apartment; no crack pipes found.

12 He testified -- Lt. Gray testified that he patted down
13 all the -- all the other individuals. There was no crack
14 found on them. And why is that important? Well, if
15 Alfonzo -- who they say is Alfonzo was selling, wouldn't
16 some of those people have something like that on them?

17 There's no paraphernalia found. There's no -- the
18 crack itself that was allegedly taken is all in one bag.
19 It's in this one bag. It's not divided up into little
20 sections, as you might expect it would be for resale. It's
21 not put into -- into anything smaller. It's all in one
22 bag.

23 And again, there's absolutely been no evidence
24 presented that he even tried to sell anything to anyone in
25 that house. How do we know that? Well, Lt. Gray testified

1 that there were about ten people in the house, so that
2 leaves eight or nine other people. We named them off when
3 I -- when I questioned him, we named off every other
4 person.

5 Don't you think that if Alfonzo had tried to sell any
6 crack or had sold any crack, that those people would be
7 here for the state's case, testifying that he had done
8 that? The state knew who they were. The state had their
9 names.

10 Yet not a single of those people came up to tell you,
11 "Yeah. Alfonzo tried to sell me crack that night," or,
12 "Yeah. Alfonzo was just talking about selling." Not a
13 single one of these eight or nine people that are named in
14 the state's own report were up here to say anything about
15 Alfonzo selling any crack.

16 There's some other reasonable explanations of this --
17 this evidence that the -- the state has. The sandwich
18 baggies, you can see by looking, these are just regular
19 sandwich baggies. You can buy them at Ingles, BI-LO; pack
20 your kid's sandwiches in them; pack carrots, chips,
21 whatever. I think it's reasonable to say that most of us,
22 if not all of us, have these in our house right now. These
23 are not indicative of drug use. They're sandwich bags.

24 The scales? Another reasonable explanation of the
25 scales is that maybe a user might want to measure how much

1 they might be buying. They're not just used by dealers.

2 Again, we've got no testimony about any paraphernalia
3 found on or around Alfonzo. There's no pipes, no buy
4 books, no beepers, no pagers, no cell phone, no weapons;
5 notably, no gun. Remember, Lt. Gray said guns and drugs,
6 they go together.

7 He's an expert in narcotics investigation; he's an
8 expert in people dealing drugs. And he says they have
9 guns. He didn't have a gun. Alfonzo didn't have a gun.
10 No one in that apartment had a gun.

11 As Mr. Brown said and -- and as the judge will
12 instruct you, there's an -- you'll be told that you can
13 infer intent to distribute based on weight. However,
14 that's merely an inference. You can also infer the other
15 direction, which would be possession, not possession with
16 intent to distribute. You can make an inference that this
17 amount was personal use, which, again, would be possession,
18 not possession with intent to distribute.

19 And a reason that it's pretty easy to make that
20 inference in this case is, again, it's all in one bag --
21 all in one bag. It's not divided up for resale. I'm sure
22 all of you can think of times when you buy stuff in bulk.
23 Maybe you go to Sam's Club or Costco, or maybe you just go
24 to Ingles and get a 24-pack of Coke instead of one single
25 Coke can. The inference alone is not enough to prove that

1 he had any intent to distribute.

2 There's another reasonable explanation for the money
3 in his hand. Pretty clear from the testimony of Lt. Gray
4 that there was gambling going on. When there's gambling,
5 there's money. And when there's gambling, there's a
6 winner. That money can just as easily be explained from
7 him winning than from any sort of drug transactions.

8 Let's look a little bit about the investigation: what
9 the police did, what they didn't do. We heard ample
10 testimony from Lt. Gray that he walks in this apartment and
11 there's overwhelming -- overwhelming marijuana smells --
12 and clouds. He says he can see the marijuana smoke. And
13 there's gambling in plain sight. And there's these people
14 that he names off by name and counts, and they're all in
15 there.

16 Okay? There's five at a kitchen table, I think he
17 says, and four or five at some couches and love seats along
18 in here. There's marijuana at the kitchen table within
19 arm's reach of the five people at the table. He testified
20 to that. Any one of them could've grabbed it.

21 He also testified that yes, under -- under
22 constructive possession, he could have charged all of them.
23 Okay? Could've charged them all for the marijuana. He's a
24 narcotics investigator. He knows constructive possession
25 means you don't have to have it in your hand. He could

1 have arrested them. He chose not to, but he could have.

2 He also could have arrested them all for gambling --
3 clear evidence of gambling going on. Yet you have an
4 officer who walks into an apartment where he sees all this
5 evidence of criminal activity, and he doesn't arrest any of
6 them for it. He arrests who he says is Alfonzo Alexander.
7 And then, he says he arrests another gentleman for
8 trespass, but no one else for all this marijuana that's
9 lying around the apartment and all this gambling that's
10 here.

11 The 911 call that he received that caused him to go to
12 the apartment was about gambling. So again, that leaves
13 you to ask: Why doesn't he arrest anyone for this
14 gambling? If it's important enough to respond to, isn't it
15 important enough to make an arrest?

16 He said that they didn't know who was involved. They
17 were just responding to a call. Yet Ms. Ella Brown who
18 testified yesterday said twice from the stand -- twice --
19 "What the police officer said to me was they were looking
20 for one specific guy."

21 Okay. What does that sound like? That sounds like
22 targeting. Okay? They may not want to admit it, but
23 they're looking for someone in specific.

24 More importantly than that, Ms. Brown's testimony
25 doesn't go with what we've heard from Lt. Gray. Okay?

1 Those are -- those are two different accounts of why
2 officers were there. You know, and she says, "The officers
3 told me they were looking for one person in particular."

4 Officer didn't say that from the stand. He said, "Oh,
5 we don't know why we were there." But that's what Ms.
6 Brown said.

7 So we know that there's lots of marijuana. We know
8 that there's lots of gambling. We know that there's an
9 inconsistent story about who police are looking for, what
10 they're looking for.

11 We've also got inconsistent testimony from Lt. Gray
12 about when he sees or alleges he sees these -- these
13 baggies. First he testified that he saw them as soon as he
14 walked in and saw who he says is Alfonzo sitting on the
15 couch. He said he saw it right away.

16 But then, when I question him a little further and --
17 and he reviewed his report, he -- he -- he said, "Oh, yeah.
18 Yeah. You're right. It -- it was later. It was after I
19 had already patted him down." Pretty big difference.

20 Okay. Let's look at -- at the drugs, the actual
21 investigation in the drugs. These drugs were weighed by
22 Lt. Gray and weighed, he says, 11.1 grams. And he said
23 that was an approximate weight. But I want you to look at
24 the fact that it's not 11 or 12. It's 11.1. That's a
25 pretty specific weight. That's not approximate; goes out

1 to a tenth of a gram.

2 Lt. Gray, who's been certified by the state as an
3 expert in narcotics investigations, testified that he can't
4 accurately weigh drugs. Again, that calls into question
5 the investigation. If the state's own narcotics expert
6 can't give you an accurate weight, how do we trust the
7 state's investigation?

8 The logical question from that is: How do we trust
9 any weight? He says this is 11.1. SLED says -- SLED says
10 it's 6.8. That's a difference of 4.3 grams.

11 So does that mean, if Abbeville narcotics weighs
12 something and says you have 4 grams of crack, that it could
13 actually be that you have zero grams of crack? That's a
14 big difference. It's a very big difference. The weight is
15 a big problem for the state and a big problem in the
16 state's case.

17 Even the SLED agent, he didn't -- he didn't want to
18 admit this, but he did. Okay? He -- remember, he's a
19 state's witness; SLED is a law enforcement agency. He
20 admitted that 4.3 grams is a big difference.

21 And it is. There's no -- no dispute that 4.3 grams,
22 when you're talking about this small amount of evidence,
23 there's no dispute that that's a big difference.

24 The state wants you to believe that this little
25 sandwich baggie, this very thin plastic with no zip lock,

1 nothing on it, they want you to think that this accounts
2 for the 4.3-gram difference. That's what they want you to
3 -- to say.

4 One of the things that the judge has told you and will
5 tell you again is that you can use your common sense in
6 evaluating the evidence you've heard and seen. And I'm
7 asking you to use your common sense when looking at that
8 explanation. There's simply no way that this little baggie
9 weighs 4.3 grams. Okay?

10 One way to -- to sort of test this -- and you'll have
11 this back in the jury room with you, so you can all do
12 this. 4.3 grams is about two-thirds of 6.8, right? I'm
13 not a mathematician, but that's approximate. So if it's
14 about two-thirds of the weight, then these two sides should
15 feel roughly the same.

16 But look what happens. If I hold on this side, it
17 balances okay. This side, I have to hold onto it to keep
18 it from falling. You can -- you can hold this and -- and
19 feel the difference in the weight between something that's
20 6.8 and something that they're trying to tell you is just a
21 little bit less. It's a lot less.

22 You can use your common sense to tell you this does
23 not account for that huge difference. It simply doesn't.
24 And that's a big problem for the state, because they've got
25 a big difference in the evidence that they say they seized

1 and the evidence that they then have analyzed.

2 Let's look at how the evidence was handled. Lt.
3 Wilkie testified that he couldn't remember when he picked
4 up the evidence; he didn't know when he had handled it. He
5 testified that it's put into this drop box and he's the
6 only one with the key for one side but that any officer can
7 open the other side; testified that it's basically a
8 mailbox; that any evidence put in it is just left there to
9 sit. And again, any officer can put evidence in there.

10 And also, remember the testimony that came from the
11 SLED witnesses about when they actually received this from
12 law enforcement. It wasn't until March 26th. Why was it
13 just sitting there for that many months? Why wouldn't they
14 have just taken it down to SLED to have it analyzed?

15 Contrast the Abbeville's handling of the evidence,
16 which is, "We put in a box; I don't know when I touched it;
17 I don't know when I -- I don't know when I moved it," to
18 SLED's. SLED had a very sophisticated system. They
19 tracked the evidence -- any evidence that they receive.

20 Identity: In addition to the other problems that --
21 that's in the state's case, how can you be sure that the
22 state even has the right person? Okay? Lt. Gray testified
23 he had never met Alfonzo Alexander before. He did not know
24 him; had never met him.

25 There was no testimony presented by the state about

1 how they identified that they was Alexander Alfonzo [sic].
2 They didn't say that he gave them a license or another ID
3 card -- nothing -- nothing to say "This is how we knew it
4 was Alexander -- Alfonzo Alexander."

5 There was no name. They didn't say, "Well, he told us
6 this was his name." There was no testimony about "Other
7 people told us this was him." There were eight or nine
8 other people. Again, if it was him, couldn't they have had
9 one of those eight or nine other people come up here and
10 tell you, "Yeah. That was Alexander -- that was Alfonzo
11 Alexander"? That's a big problem.

12 We don't know who took the picture. Lt. Gray doesn't
13 know who took that picture. He doesn't know Alfonzo
14 Alexander. He doesn't say how he -- how he figured out or
15 how he determined that this was supposedly Alfonzo
16 Alexander.

17 Ms. Ella Brown could not testify that -- by name that
18 Alfonzo Alexander was in her house. The state really tried
19 hard to get her to say that, and she couldn't. She
20 couldn't say that; couldn't say that that's Alfonzo
21 Alexander.

22 It's just as reasonable for you to believe that
23 someone who was arrested gave a name that wasn't their own.
24 That's another reasonable explanation.

25 So taking this altogether -- and again, I'll skip

1 that, because that is on the proximity charge. All the
2 things in -- in sum that give you reasonable doubt --
3 inconsistent treatment; nine other people that could've
4 been arrested and were not; inconsistent testimony -- were
5 they specifically looking for one person? Ms. Ella Brown
6 seems to say that yeah, they were.

7 Inconsistent testimony about when these baggies are
8 seen; problems with the evidence -- why this huge weight
9 discrepancy? That's a big, big problem. And again, I
10 encourage you to -- to weigh that to see if there's really
11 a way that this weighs two-third of what this does, if that
12 could really account for such a big difference. I think
13 you find that it can't.

14 No accounting for the evidence while at the police
15 department -- all of these things -- the fact that there
16 was no one else arrested, despite clear evidence by Lt.
17 Gray's testimony that there's illegal activity going on
18 with marijuana and gambling; testimony that they were
19 looking for one specific person; inconsistent testimony
20 about the reasons for the investigation and when the
21 officer supposedly sees these bags; the weight disparity;
22 the lack of evidence that Alfonzo, if it was him, had any
23 intent to distribute the drugs; undocumented handling of
24 evidence; and the lack of -- lack of identification -- all
25 of these things give you reasonable doubt.

1 And in closing, I'd just like you to consider, if you
2 think that it was Alfonzo Alexander and if you think that
3 this is the crack that was taken from his pocket, then he's
4 guilty of possession, not possession with intent to
5 distribute. We'd ask you to consider all the evidence, to
6 look at all the problems and holes in the state's case, and
7 to find him not guilty of possession with intent to
8 distribute. Thank you.

9 THE COURT: Thank you, Ms. Bolen.

10 CHARGE OF THE COURT

11 THE COURT: All right. Now, ladies and gentlemen of
12 the jury, it now becomes my responsibility to instruct you
13 on the law that applies in this case. And I will tell you
14 that I'll give you copies of -- or -- or a -- a copy of
15 these instructions that you can refer to if you need to
16 during your deliberations. Of course, you have to consider
17 these instructions as a whole and please don't simply
18 follow some portion of the instructions, ignoring the other
19 part. When you're done with your deliberations and you've
20 returned your verdict, I'll need these instructions back,
21 if you would, please.

22 Now, ladies and gentlemen, I instruct you that under
23 the laws of this state, a defendant can be tried even if
24 the defendant does not attend the trial or is present for
25 the trial. But the fact that the defendant is not present

1 may not be considered against him in any manner whatsoever.

2 Furthermore, I emphasize to you the fact that the
3 defendant did not testify is not a factor to be considered
4 by you in any way during your deliberations and your -- and
5 in your consideration of the question of guilt or the
6 innocence of the defendant. It cannot be considered by you
7 in any manner whatsoever. A defendant has the
8 constitutional right to remain silent, and the assertion of
9 this right must not be considered by you in your
10 deliberations. Because under your oath, you're to draw no
11 conclusion whatsoever from the fact that the defendant in
12 this case did not testify. The fact that he did not
13 testify shouldn't even be discussed by you in the jury
14 room.

15 The burden of proof, as I have stated to you, is on
16 the state. And the defendant is not required to prove his
17 innocence. The burden of proof remains on the state to
18 prove guilt beyond a reasonable doubt.

19 Now, ladies and gentlemen, in this case the indictment
20 that you'll have for your consideration charges the
21 defendant with the offense of possession of crack cocaine
22 with the intent to distribute. As has been mentioned to
23 you, the charge relating to the possession with intent
24 distribute crack within proximity to a public park or
25 playground, that charge has been dismissed by the Court.

1 So that will not be submitted to you for your
2 consideration.

3 I remind you the fact that Mr. Alexander was arrested,
4 charged, and indicted in this case is not evidence and
5 cannot be considered by you as evidence of guilt in this
6 case, nor does it create any presumption or inference of
7 guilt. The indictment is simply the formal written
8 instrument which contains the charge made against the
9 defendant. It's the formal document by which a case is
10 brought into this court.

11 Now, again, ladies and gentlemen, Mr. Alexander has
12 pled not guilty to this indictment. That plea puts the
13 burden on the state to prove him guilty. A person charged
14 with committing a criminal crime in South -- or -- sorry --
15 with committing a criminal offense in South Carolina is
16 never required to prove himself innocent.

17 I instruct you that it's an important rule of law that
18 the defendant in a criminal trial, no matter what the
19 seriousness of the charge may be, will always be presumed
20 to be innocent of the crime for which the indictment was
21 issued unless guilt has been proven by evidence satisfying
22 you of that guilt beyond a reasonable doubt. This
23 presumption of innocent does not end when you begin your
24 deliberations, but it accompanies the defendant throughout
25 the trial until you reach a verdict of guilt based on

1 evidence satisfying you of his guilt beyond a reasonable
2 doubt.

3 The presumption of innocence, ladies and gentlemen, is
4 like a robe of righteousness places about the shoulders of
5 the defendant. It remains with him until it's been
6 stripped from him by evidence satisfying you of his guilt
7 beyond a reasonable doubt.

8 Ladies and gentlemen, the presumption of innocence is
9 not merely a legal theory. It's not just a legal phrase.
10 It's a substantial right to which every citizen is entitled
11 unless you, the jury, are satisfied, from the evidence, of
12 the defendant's guilt beyond a reasonable doubt.

13 Well, what is a reasonable doubt in the eyes of the
14 law? A reasonable doubt is the kind of doubt that would
15 cause a reasonable person to hesitate to act.

16 The state has the burden of proving the defendant
17 guilty beyond a reasonable doubt. And some of you may have
18 served as jurors in civil cases where you were told that
19 it's only necessary to prove that a fact is more likely
20 true than not true, such as by the greater weight, or the
21 preponderance of the evidence. In criminal cases, the
22 state's proof must be more powerful than that. It must be
23 proof beyond a reasonable doubt.

24 Proof beyond a reasonable doubt is proof that leaves
25 you firmly convinced of the -- of the defendant's guilt.

1 Now, there are very few things in this world that we know
2 with absolute certainty. And in criminal cases the law
3 does not require proof that overcomes every possible doubt.

4 If, based on your consideration of the evidence,
5 you're firmly convinced that the defendant is guilty of the
6 crime charged, you must find the defendant guilty. If, on
7 the other hand, you think there's a real possibility that
8 the defendant is not guilty, you must give the defendant
9 the benefit of the doubt and find him not guilty.

10 Now, ladies and gentlemen, I remind you that during
11 this trial, you and I have certain duties to perform. And
12 as the trial judge, it's my responsibility to preside over
13 the trial, and I also have the duty to rule on the
14 admissibility of evidence offered during the trial. You
15 have to consider only the competent evidence before you.
16 So if there was any testimony ordered stricken from the
17 record, you must disregard that testimony because you're to
18 consider only the testimony which has been presented from
19 the witness stand, any exhibits -- and any exhibits which
20 have been a -- made a part of the record in this case.

21 I have the additional duty to charge you the law
22 applicable to this case. And as the presiding judge, I'm
23 the sole judge of the law. It's your duty as jurors to
24 accept and apply the law as I now state it to you. If you
25 already have any idea as to what the law is or what the law

1 ought to be and it disagrees with what I now tell you the
2 law is, you must abandon this idea because you're sworn to
3 accept and apply the law as I now state it to you.

4 In every case tried in this Court before a jury, the
5 jury becomes the sole and exclusive judge of the facts in a
6 case. A trial judge cannot intimate, state, comment on, or
7 make any statement to a trial jury about the facts in a
8 case. Since you, the jury, are the sole judges of the
9 facts in this case, you're not to infer, from what I have
10 said during the progress of this trial in ruling upon the
11 admissibility of evidence or otherwise or anything that I
12 say to you now, that I have any opinion about the facts in
13 this case.

14 The law does not allow me to have an opinion about the
15 facts in this case. This is a matter solely for you, the
16 jury, to determine. As jurors it's your duty to determine
17 the effect, value, weight, and truth of the evidence
18 presented during this trial.

19 Now, ladies and gentlemen, there are typically two
20 types of evidence which are presented during a trial:
21 direct evidence and circumstantial evidence. Direct
22 evidence is the testimony of a person who claims to have
23 actual knowledge of a fact or event, such as an eyewitness.
24 It's evidence which immediately establishes the main fact
25 to be proven.

1 Circumstantial evidence is a proof of chain -- a --
2 excuse me. Circumstantial evidence is a proof of a chain
3 of facts and circumstances indicating the existence of a
4 fact. It's a -- it's evidence which immediately
5 establishes collateral facts from which the main fact may
6 be inferred. Circumstantial evidence is based upon
7 inference and not on personal knowledge or observation.

8 Now, the law makes absolutely no distinction between
9 the weight or value to be given to either direct or
10 circumstantial evidence, nor is a greater degree of
11 certainty required of circumstantial evidence than of
12 direct evidence. You should weigh all the evidence in this
13 case. And after weighing all the evidence, if you're not
14 convinced of the defendant's guilt beyond a reasonable
15 doubt, you should find him not guilty.

16 Now, necessarily, you must determine the credibility
17 of witnesses who have testified during the trial.
18 "Credibility" simply means believability. It becomes your
19 -- your duty as jurors to analyze and to evaluate the
20 evidence and determine which evidence convinces you of its
21 truth.

22 In determining the believability of witnesses who have
23 testified, you may believe one witness over several
24 witnesses or several witnesses over one witness. You may
25 believe a part of the testimony of a witness and reject the

1 remaining part of the testimony of that same witness. You
2 may believe the testimony of a witness in its entirety or
3 reject the testimony of a witness in its entirety. You may
4 consider whether any witness has exhibited to you any
5 interest, bias, prejudice, or other motive in this case.
6 And you can also consider the appearance and manner of a
7 witness while on the witness stand.

8 Now, ladies and gentlemen, in this case I believe we
9 had two individuals qualified as expert witnesses. And I
10 remind you that the rules of evidence usually don't permit
11 witnesses to testify as to opinions or conclusions, but
12 that an exception to this rule exists for witnesses known
13 as "expert witnesses." A witness who, by education and
14 experience has become expert in some art, science,
15 profession, or calling, can state an opinion as to relevant
16 and material matter in which the witness claims to be an
17 expert and may also state the reasons for the opinion.

18 Since -- you should consider any expert opinion
19 received in evidence in this case and, like any other
20 evidence, give it the weight you think it deserves. If you
21 decide that an opinion of an expert is not based on
22 sufficient education or experience or if you conclude that
23 the reasons given in support of the opinion are not sound
24 or that the opinion is outweighed by other evidence, you
25 may disregard the opinion entirely.

1 Now, in this case, ladies and gentlemen, the defendant
2 is charged with the offense of possession of crack cocaine
3 with intent to distribute. Therefore, the state must prove
4 beyond a reasonable doubt that the defendant possessed
5 crack cocaine with the intent to distribute it. To prove
6 possession, the state must prove beyond a reasonable doubt
7 that the defendant had both the power and intent to control
8 the disposition or use of the crack cocaine.

9 Possession may be actual or constructive. "Actual
10 possession" means that the crack cocaine was in the actual
11 physical custody of the defendant. "Constructive
12 possession" means that the defendant had dominion and
13 control or the right to exercise dominion and control over
14 either the crack cocaine itself or the property on which
15 the crack cocaine was found.

16 I instruct you that mere presence at the scene where
17 the drugs were found is not enough to prove possession.
18 The defendant's knowledge and possession may be inferred
19 when a substance is found on the property under the
20 defendant's control. However, this inference is simply an
21 evidentiary fact to be taken into consideration by you,
22 along with the other evidence, and to be given the weight
23 you decide it should have.

24 The state must also prove beyond a reasonable doubt
25 that the defendant intended to distribute the crack

1 cocaine. "Distribution" means to deliver, other than by
2 administering or dispensing, a drug. Intent may be shown
3 by acts and conduct of the defendant and other
4 circumstances from which you may naturally and reasonably
5 infer intent.

6 In determining whether the defendant had the intent to
7 distribute the crack cocaine, you may consider the
8 circumstances surrounding the defendant's alleged
9 possession. You may consider the amount of the substance
10 alleged to have been possessed; the manner in which it was
11 allegedly possessed; the place where it was possessed,
12 allegedly; and other factors which you consider to be
13 important. You must find that the defendant did not intend
14 to have the crack cocaine solely for his own use.

15 Finally, I instruct you that possession of more than 1
16 -- finally, instruct you that possession of 1 or more grams
17 of crack cocaine creates an inference that the defendant
18 possessed the crack cocaine with the intent to distribute
19 it. This inference does not relieve the state from -- from
20 proving beyond a reasonable doubt that the defendant had
21 the intent to distribute. It -- it's simply an evidentiary
22 fact to be taken into consideration by you, along with the
23 other evidence in this case, and to be given the weight you
24 decide it should have.

25 Now, ladies and gentlemen, if you find that the state

1 has failed to prove beyond a reasonable doubt that the
2 defendant is guilty of possession with intent to distribute
3 crack cocaine, you may consider whether the state has
4 proven beyond a reasonable doubt that the defendant is
5 guilty of simple possession of crack cocaine. Simple
6 possession does not require an intent to distribute the
7 crack cocaine.

8 Now, ladies and gentlemen, there are two possible
9 verdicts that you can reach in this particular case. And
10 I've prepared this verdict form to help guide your
11 deliberations, Mr. Clary. The first question basically
12 states -- it makes -- well, it's not really question; it's
13 a statement. It says: "We, the jury in the above-
14 captioned case, on the charge of possession with intent to
15 distribute crack cocaine, unanimously find Alfonzo
16 Alexander" -- and then, there are two blanks where you can
17 initial it, either "not guilty" or "guilty."

18 If, based upon the evidence presented, the jury
19 unanimously finds that the state has met its burden of
20 proving the defendant guilty beyond a reasonable doubt, you
21 would initial there and simply go and sign your name as
22 bailiff -- or as foreperson; knock on the door; let the
23 bailiff know you've reached your decision; and we'll
24 receive you back in the courtroom.

25 If, however, you find that the state has failed to

1 meet its burden of proving the defendant's guilt beyond a
2 reasonable doubt, you would initial "not guilty" and then
3 proceed to consider Question No. 2 -- or Statement No. 2.

4 The second statement basically says: "We, the jury in
5 the above-captioned case, on the charge of possession of
6 crack cocaine, unanimously find Alfonzo Alexander" -- and
7 then, again, you've got the options of "not guilty" or
8 "guilty," based upon what the jury unanimously decides.

9 Whenever you're done with your deliberations, simply
10 knock on the door; let the bailiff know; and we'll get you
11 back in here into the courtroom.

12 Now, ladies and gentlemen, I remind you that you have
13 no enemies to punish in this case; you have no friends to
14 reward. Your verdict must be based upon the evidence
15 presented and the law as I have instructed it to you. Your
16 verdict cannot be the result of passion, caprice,
17 prejudice, or based upon any consideration which is not in
18 the record in this case.

19 I'm going to ask you that you go ahead and return to
20 the jury room for just a moment because there's a couple of
21 things I want to take up with the lawyers. I want to make
22 sure I've told you everything I need to tell you concerning
23 the law. I anticipate you having this case in the next
24 couple of minutes, however, but I do need to review with
25 the lawyers to make sure I've covered all the bases.

1 Your cue to begin your deliberations, Mr. Clary, will
2 be receipt of these jury instructions, the verdict form, as
3 well as the evidence involved in this particular case.
4 Now, obviously, ladies and gentlemen, the -- the drugs that
5 are involved in this case, they've been sealed in a bag. I
6 would ask that you please don't remove that from the bag;
7 simply don't do that. But you're -- if -- if you -- you're
8 free to inspect it or look at it as necessary. But if you
9 could, just leave it in that bag for purposes of your
10 deliberations.

11 Now, if you would, return to the jury room. Again,
12 your cue to begin your deliberations will be receipt of
13 this, the evidence, and my asking the -- the alternate to
14 step out. So y'all go back there; don't talk about it yet;
15 I'll let you know when you can.

16 (Whereupon, the jury exited the courtroom at 11:37
17 a.m.)

18 THE COURT: All right. The jury is out.
19 Exceptions/additions from the state?

20 MR. BROWN: No, Your Honor.

21 THE COURT: None from the defense?

22 MS. BOLEN: No, sir, Your Honor.

23 THE COURT: Very good. I think there are only three
24 exhibits? Very good. If y'all want to look at the verdict
25 form, that's fine.

1 (Off the record briefly.)

2 THE COURT: All right. We're off the record.

3 (Off the record from 11:37 until 11:40 a.m.)

4 (Whereupon, the jury began deliberating at 11:40 a.m.)

5 (Off the record from 11:40 a.m. until 11:57 a.m.)

6 THE COURT: All right. If we may, let's go ahead and
7 go back on the record in the *State v. Mr. Alexander*. I'm
8 informed that the jury has reached a verdict. Anything
9 before we bring them back in from the state?

10 MR. BROWN: Not from the state, Your Honor.

11 THE COURT: Defense?

12 MS. BOLEN: No, sir.

13 (Whereupon, the jury entered the courtroom at 11:58
14 a.m.)

15 THE COURT: All right. Let the record reflect that
16 the jury is back and seated. Mr. Foreman, I'm told that
17 the jury has reached a verdict; is that right?

18 FOREPERSON: Yes, sir.

19 THE COURT: All right. And all 12 of you agree on the
20 verdict?

21 FOREPERSON: Yes, sir.

22 THE COURT: All right. If you would, hand the verdict
23 form, please, to the bailiff. Thank you, sir.

24 FOREPERSON: (Complied.)

25 THE COURT: All right. Madam clerk, if you'll

1 publish, please.

2 VERDICT OF THE JURY

3 CLERK OF COURT: (As read): Case No. 13-GS-01-15,
4 *State of South Carolina v. Alfonzo Alexander*: We, the jury
5 in the above-captioned case, on the charge of possession
6 with intent to distribute crack cocaine, unanimously find
7 Alfonzo Alexander guilty. Derrick B. Clary; May the 30th,
8 2013.

9 Mr. Foreman, ladies and gentlemen of the jury, if this
10 is your verdict so say you all, please signify by raising
11 your right hand.

12 (Whereupon, all jurors raised right hand.)

13 THE COURT: All right. Let the record reflect that
14 all 12 jurors did, in fact, raise their right hand.
15 Anything prior to discharge of the jury from the state?

16 MR. BROWN: No, Your Honor.

17 THE COURT: Nothing from the defense?

18 MS. NELSON: We'd ask that the jury be polled, Your
19 Honor.

20 THE COURT: All right. Ladies and gentlemen, the
21 clerk is going to ask you in a moment basically a question:
22 if -- if the verdict of guilty is your verdict and if it's
23 still your verdict. And she'll go by -- go through one by
24 one, asking each of you if that is your question, and
25 simply respond appropriately. Again, do you have the list

1 or you need me to give you a -- you got it?

2 CLERK OF COURT: I got it.

3 THE COURT: Yeah. All right. All right.

4 CLERK OF COURT: Christopher Pitts, is this your
5 verdict, and is it still your verdict?

6 JUROR: Yes.

7 CLERK OF COURT: Ricky Ferguson, is this your verdict,
8 and is it still your verdict?

9 JUROR: Yes.

10 CLERK OF COURT: April Giles-Knox, is this your
11 verdict, and is it still your verdict?

12 JUROR: Yes.

13 CLERK OF COURT: William Grant, is this your verdict,
14 and is it still your verdict?

15 JUROR: Yes, ma'am, it is.

16 CLERK OF COURT: Jordan Wilson, is this your verdict,
17 and that -- is this still your verdict?

18 JUROR: Yes, ma'am.

19 CLERK OF COURT: Benjamin Burnett, is this your
20 verdict, and is it still your verdict?

21 JUROR: Yes, ma'am.

22 CLERK OF COURT: Emma McClinton, is this your verdict,
23 and is it still your verdict?

24 JUROR: Yes, it is.

25 CLERK OF COURT: James Davis, is this your verdict,

1 and is it still your verdict?

2 JUROR: Yes, it is.

3 CLERK OF COURT: Derrick Clary, is this your verdict,
4 and is it still your verdict?

5 FOREPERSON: Yes, it is.

6 CLERK OF COURT: Charles Goodwin, Jr., is this your
7 verdict, and is it still your verdict?

8 JUROR: Yes, it is.

9 CLERK OF COURT: Stacy Williams, is this your verdict,
10 and is it still your verdict?

11 JUROR: Yes, ma'am.

12 CLERK OF COURT: Charles Ellis, is this your verdict,
13 and is it still your verdict?

14 JUROR: Yes, it is.

15 THE COURT: All right.

16 CLERK OF COURT: Your Honor, the jury has been polled
17 and the verdict has been affirmed.

18 THE COURT: All right. The verdict shall stand.
19 Anything further before discharge of the jury from the
20 defense?

21 MS. BOLEN: No, sir, Your Honor.

22 THE COURT: Very good. Ladies and gentlemen of the
23 jury, I want to thank you for your patience this week. I
24 will tell you, at this point in time, because the defendant
25 is not present, what will happen is, essentially, I will

1 sentence him but it will be a sealed sentence. I'm -- I'm
2 the only one who will know what I ultimately give him as
3 far as a sentence is concerned. And until such time as
4 he's apprehended on the bench warrant that's been issued
5 for his arrest, it'll remain sealed. So I can't tell you
6 what I'm going to do. I have to listen to the attorneys at
7 this point in time in terms of mitigation and, certainly,
8 receive any motions.

9 I -- I do again want to thank you for your work and
10 for your service here this week. I hope it has maybe shed
11 a light on a little bit of what we do in the third branch
12 of government here in this courtroom.

13 I'm here every day. This is pretty much what I do at
14 least 48 weeks out of the year. And it's a great job, and
15 I enjoy the job. And I hope that you all enjoyed, at least
16 for a couple of days, being judges. Because as I mentioned
17 a moment ago, you were judges of the facts. So if you want
18 to go home and insist that your spouse or kids or whoever
19 call you "Your Honor" for the rest of the day, feel free to
20 do that. Tell them I gave you permission.

21 I'm not going to keep you any longer, except I will
22 tell you that you do get paid for your jury service. It's
23 \$15 a day, so you'll get a check for 45 bucks. I suggest
24 you immediately cash it and go take somebody out to dinner,
25 have a nice evening, something like that. You know, it's

1 found money; treat it as such.

2 Again, thank you. You will get a letter from me,
3 thanking you again for your service. The -- the primary
4 purpose of the letter is, of course, to thank you. But it
5 also has my contact information.

6 So if there's anything that you liked or if there's
7 anything that you did not like -- particularly, if there's
8 anything that you did not like about jury service -- I want
9 you to let me know. Let me know by e-mail, phone, fax,
10 carrier pigeon, snail mail, whatever you want to do,
11 because I -- I firmly believe that the courts of this state
12 belong to the people of this state.

13 This isn't my court; it's not the solicitor's court;
14 it's not the court that belongs to the lawyers. It belongs
15 to the people. So if there's something that didn't go well
16 or you didn't like, even if it's something as common as the
17 kind of snacks that you had in the back or the -- the
18 quality of the coffee, which I typically find to be good
19 here in Abbeville, but if you didn't like it, let me know
20 so I can do something about it. Okay?

21 I'm not going to keep you any more. Y'all have a
22 great week. You get the three-year "get out of jury
23 service free" card. We don't have your checks yet.

24 Y'all take care. If you do need a work excuse, let us
25 know. The clerk can give you a work excuse right now. And

1 with that y'all take care. Thank you very much, and a
2 pleasure to meet y'all.

3 (Whereupon, the Court and the clerk of court
4 conferred.)

5 THE COURT: Oh, I need you to sign -- yeah. I always
6 forget to do that. Mr. -- the rest of y'all can go. I
7 need the foreperson for five seconds to sign the verdict on
8 the verdict form.

9 (Whereupon, the jury was discharged at 12:05 p.m.)

10 THE COURT: All right. If you would, just sign right
11 there.

12 FOREPERSON: All right.

13 THE COURT: All right. Good to meet you, Mr. Clary.

14 FOREPERSON: Good to meet you.

15 THE COURT: Take care of yourself. All right?

16 FOREPERSON: All right.

17 (Off the record from 12:05 p.m. until 12:27 p.m.)

18 THE COURT: All right. If we may, let's go ahead and
19 go back on the record in the *State v. Alfonzo Alexander*.
20 At this point, Ms. Bolen, you move for a new trial?

21 MS. BOLEN: Yes, sir, Your Honor. We move for a new
22 trial and renew our -- all of our prior motions.

23 THE COURT: All right. Motion for a new trial is
24 denied. Same ruling on all prior motions, as far as the
25 Court is concerned.

1 Solicitor, I know that -- I've been told that this is
2 not Mr. Alexander's first narcotics offense. Which
3 offenses, in the state's opinion, do you believe would
4 enhance this?

5 MR. BROWN: Yes, Your Honor. Just going through his
6 entire criminal history: 1996 he did have a resisting
7 arrest or resisting officer; disorderly conduct then. In
8 1997 he had possession of less than 1 gram of ice or crack
9 cocaine, first; 1998, trespassing charge; second
10 trespassing charge in 1998. In 1998 he also had a
11 manufacture and distribution of crack cocaine, which was
12 his second offense. Actually, there were two charges of
13 manufacture and distribution of cocaine in 1998.

14 Later on that year -- well, there's a custody status
15 on a violation of probation on the crack. 2002, Mr.
16 Alfonzo Alexander did a -- has a conviction for
17 distribution of crack cocaine, third offense or more;
18 received a sentence of ten years in 2002. 2002, he also
19 pled guilty to a criminal-domestic-violence, first, charge.

20 And he did have a custody status in 2003, which looks
21 like he had a distribution or sale-proximity charge there
22 in 2003. But -- so this would be a third or subsequent
23 conviction for the possession with intent to distribute
24 crack cocaine.

25 THE COURT: Okay. So it's the state's position that

1 the distributions in '02 and '03 are the ones that enhance?

2 MR. BROWN: That's correct, Your Honor.

3 THE COURT: All right. And what's the conviction date
4 for the '02 offenses?

5 MR. BROWN: The '02 offense conviction date appears to
6 be May 8th, 2002. And the 2003 looks like January 8th,
7 2003. And then, he did receive that ten-year sentence.

8 THE COURT: Okay. My understanding of the law is that
9 they would enhance so long as they're within the last ten
10 years. And obviously, he was incarcerated. Am I thinking
11 of the correct provision of the law?

12 MR. BROWN: He was incarcerated well within the last
13 ten years.

14 THE COURT: Right. Okay. So the '02 and '03, based
15 upon my understanding, would enhance, then, since he
16 received a ten-year sentence on the '02 charge.

17 All right. Ms. Bolen, happy to hear from you, ma'am.

18 MS. BOLEN: Thank you, Your Honor. May it please the
19 Court.

20 THE COURT: Yes, ma'am.

21 MS. BOLEN: I think Your Honor's heard much of what --
22 what I'm going to say. But just to -- to have it all on
23 the record: Obviously, I'm standing without my client.
24 And I think that -- that's definitely the most notable
25 thing about this whole proceeding.

1 Alfonzo's absence at this trial has surprised me just
2 as -- as it has everyone else. Up until Tuesday I -- he
3 was what I would describe and what I actually did describe
4 to my boss, Ms. Nelson, as a model client. I think a week
5 or two before this, I was telling her about him and said,
6 you know, "I wish all clients could be like this. He shows
7 up to every office meeting. He calls me practically about
8 his case."

9 We'd even texted before about some stuff that came up
10 that I was in court; he was at work; we couldn't talk. And
11 it was something on his case. He's -- he's shown up for
12 everything that I've asked him to be there for. So it --
13 it really was shocking that he was -- was not here.

14 He and I met last on Thursday in my office -- Thursday
15 of last week. And since then I've -- I've not had any
16 communication with him. I've talked to various family
17 members, but I -- I've not talked to him. And I think it
18 -- it's worth noting for the record that since Thursday
19 I've not communicated anything directly to him about the
20 proceedings this week.

21 I think it's also worth noting that Mr. Alexander has
22 never been put on roll call or a trial docket before. We
23 have -- certainly, people are put on roll call who -- who
24 don't show. He's -- this is a case that moved to the trial
25 docket very, very suddenly. He made his two mandated court

1 appearance, the initial and the docket. He didn't have a
2 chance to make any roll call because he wasn't given a
3 roll-call date.

4 But he -- he has made every meeting. Anytime I've
5 asked him to be in the office, he has been there.

6 I think it's also worth noting that there's -- there's
7 nothing violent about this offense itself. There's nothing
8 violent about what -- what happened.

9 And there's also nothing violent on his record. He's
10 not a violent person. There's no history of violence.
11 There's nothing -- nothing from this case -- I mean, the
12 testimony was clear that he didn't -- didn't have a gun on
13 him.

14 And I think the -- the sentencing -- for crack in
15 particular, but maybe all drugs -- but is -- can be sort of
16 disparate to what -- what the offense actually is. This --
17 this carries up to 30 years; 30 years is the same as what
18 you could get for murdering someone. And clearly, there's
19 a very different effect on society between having 6.8 grams
20 of crack and murdering someone.

21 So I'd ask Your Honor to take into consideration this
22 -- this was a completely nonviolent event and there's
23 absolutely no violence in his history, and to -- that
24 although the legislature has allowed up to 30 years, that,
25 you know, 30 years is also something you get for raping a

1 young child or killing someone and to take that into
2 consideration when looking at the facts of -- of this case
3 and the relatively minor damage to society from this.

4 He has one son, another on the way. He was working.
5 I -- I don't know at this point -- I -- I -- my -- I
6 suspect that he is no longer working or else we would have
7 found him at his place of employment. But up until last
8 Thursday, he was working at Carolina Pride. He supported
9 his child, and he was supporting the -- the mother of his
10 soon-to-be-born child.

11 The offer in this case had been 12 years. And there
12 was a second offer, mainly -- mainly -- mainly offered at
13 -- at my request, of a range of 10 to 15. As I believe has
14 already been presented, it -- it seemed to be my client's
15 intent -- and certainly, I understood it to be his intent
16 -- to take the 12-year offer. Again, up until Tuesday --
17 really, up until Tuesday, late afternoon, I fully expected
18 him to walk in here and -- and plead.

19 When I say that -- that I told Ms. Nelson he was a
20 model client, it was when he -- when he would say things to
21 me like, "I know this is no one's fault but my own"; that
22 he -- he accepted responsibility in a way that not all
23 clients do.

24 And -- and I know, obviously, he was not here for his
25 trial. But that -- that is 2 1/2 days/3 days. And I'm --

1 I'm just asking Your Honor to not let three days turn into
2 a number of years in terms of sentence. I know it will
3 factor in, but I'm asking not -- not to have three days
4 turn into 5 or 10 extra years and to consider that the
5 offer was 12; to consider that -- that he's not violent; to
6 consider the relative lack of harm in this particular case
7 in imposing your sentence.

8 THE COURT: All right. Anything else from the state?

9 MR. BROWN: Judge, just the fact that it was my
10 understanding that he was to be here on Tuesday; did not
11 show. The offer was 12 years. But at the time when he did
12 not show, that offer was taken off the table at that point.
13 And once he did not meet -- make it to that roll call on
14 Tuesday with his scheduled appointment, that offer was off
15 the table at that point. So that was no longer an option.

16 MS. BOLEN: And I -- I don't dispute that. Mr. Brown
17 told me that offer would be off the table if we picked a
18 jury, but just -- that that's what our -- our offer had
19 been.

20 THE COURT: I understand. Did your client do any time
21 in jail before he made bond, to your knowledge, Ms. Bolen?

22 MS. BOLEN: Off the top of my head, I -- I actually
23 don't recall, Your Honor. I don't -- I don't want to
24 speculate and guess. And I just -- I just don't know.

25 THE COURT: Can you tell me, madam clerk?

1 DEPUTY CLERK OF COURT: August the 12th to September
2 the 19th, five weeks.

3 THE COURT: 19th?

4 DEPUTY CLERK OF COURT: 19th.

5 THE COURT: Thanks. I have 38 days.

6 DEPUTY CLERK OF COURT: Thirty-eight.

7 THE COURT: All right. Here's how we're going to
8 leave this, Ms. Bolen: I have sentenced Mr. Alexander. I
9 have sealed the sentence in an envelope from my stationery.
10 It'll be filed with the indictment until such time as Mr.
11 Alexander is located and brought before the Court for
12 sentencing.

13 We have one last day in this term of court.

14 MS. BOLEN: Yes, sir.

15 THE COURT: I know that you have been communicating
16 with Mr. Alexander's family. I suspect -- and perhaps you
17 harbor the same suspicions -- that they may be in
18 communication with him or may have some avenue of
19 communicating with him. There is one last day in this term
20 of court. If Mr. Alexander were to appear tomorrow and
21 abide by his obligation to show up, you may assure him that
22 I will reconsider the sentence that I have imposed that has
23 been sealed.

24 MS. BOLEN: Yes, sir.

25 THE COURT: After tomorrow, however, it is impossible

1 for that to be done. And I imagine that you will be
2 discussing that with him. And should he appear, you can
3 assure him that he will not receive the sentence that had
4 been negotiated -- namely, the 12-year sentence -- but I
5 will be more than happy to reconsider the sentence that I
6 have imposed.

7 MS. BOLEN: Yes, sir.

8 THE COURT: So if he does not appear tomorrow and he's
9 later picked up and this sentence is unsealed, he only has
10 himself to blame.

11 MS. BOLEN: Yes, sir.

12 THE COURT: That's where we'll leave it.

13 MS. BOLEN: I appreciate your consideration, Your
14 Honor. I'll try to get him.

15 THE COURT: I understand.

16 MS. BOLEN: If I could, I certainly will.

17 (Whereupon, the proceedings were concluded at 12:41 p.m.)

18 --- END OF TRANSCRIPT OF RECORD ---

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CERTIFICATE

I, the undersigned Maryann S. Nevers, CVR-M-CM, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Newberry County, South Carolina, on the 28th, 29th, and 30th days of May, 2013.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.



Maryann S. Nevers, CVR-M-CM
Official Court Reporter

Columbia, South Carolina
March 30, 2014

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA ,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 ALFONZO ALEXANDER,)
)
 DEFENDANT.)
 _____)

2013-GS-01-14

2013-GS-01-15

TRANSCRIPT OF RECORD

SEPTEMBER 18, 2013
GREENWOOD, SOUTH CAROLINA

B E F O R E:

THE HONORABLE FRANK R. ADDY, JR.

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

ATTORNEY FOR PLAINTIFF:

YATES BROWN, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

PATRICIA BOLEN, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

INDEXWITNESSPAGE NO.

SENTENCE OF THE COURT

3

CERTIFICATE OF REPORTER

7

EXHIBITSNODESCRIPTIONIDEVIDENCE

(No exhibits were presented during this hearing)

1 THE COURT: The record should reflect that we're going
2 back on the record on an Abbeville case, case 13-GS-01-14
3 and -15. These are cases which were tried, I believe. A
4 verdict was rendered according to indictment 15 on May 30th
5 of this year. It's The State v. Alfonzo Alexander. The
6 record should reflect that Mr. Brown is present on behalf of
7 the State. Ms. Bolen is here on behalf of Mr. Alexander.
8 Mr. Brown, happy to hear from you at this point.

9 MR. BROWN: Judge, this trial was done in May, as you've
10 already stated. He was called to roll call that week. He
11 did not show at the beginning of the week. We called as he
12 was on the trial docket. We did call his case to trial.
13 And after the two-day trial a jury did find him guilty on
14 the possession with intent to distribute third offense.
15 During the trial, though, the proximity was dismissed by
16 directed verdict.

17 Just to go over his -- would you like to hear his
18 criminal history again, or does that make any -- because
19 you've already sentenced him.

20 THE COURT: I don't believe that -- Right. The sentence
21 has already been delivered and sealed. At this point time,
22 I'm in possession of an envelope that I will unseal in a
23 moment.

24 MR. BROWN: Yes, sir.

25 THE COURT: And I think that you did back in May apprise

1 me of Mr. Alexander's criminal history.

2 MR. BROWN: Yes, Your Honor. This would definitely be a
3 third or subsequent offense. Mr. Alexander was located and
4 was -- been told to be in Melbourne, Florida. He was
5 arrested there last week. A member of the Abbeville Police
6 Department and the Abbeville Sheriff's Department did travel
7 down to Melbourne, Florida where it's my understanding that
8 Mr. Alexander waived his extradition rights and did -- now
9 he's back here in Abbeville County and has been brought over
10 to Greenwood County for his sentencing.

11 THE COURT: Ms. Bolen, I'm happy to hear from you at
12 this point in time, ma'am.

13 MS. BOLEN: Thank you, Your Honor. May it please the
14 court?

15 THE COURT: Yes, ma'am.

16 MS. BOLEN: I believe I placed the majority of the
17 mitigation I had for Alfonzo at the trial, at the sentencing
18 we had then. Just in the -- obviously he was just picked
19 up. And I've met with him this morning. And he is --
20 realizes he made a very bad decision, is very remorseful and
21 he wishes he could go back and take the twelve years that
22 had been offered. I think I said at the time that I thought
23 of him not being present might have something to do with a
24 -- wanting to see his child born. And in talking with him
25 this morning, it does seem that that was the main motivator,

1 that his child is scheduled to be delivered on the 30th of
2 this month. And I think he just made a panicked and
3 desperate attempt to try to see that child born before
4 serving his prison sentence.

5 THE COURT: All right. I understand. Mr. Alexander,
6 I'm happy to hear anything that you might want to say, sir,
7 before I pronounce sentence.

8 MR. ALEXANDER: Yes, sir, Your Honor. Before the actual
9 trial, you know, like Ms. Bolen just said, just with my
10 child been born, I tried to, you know what I'm saying, just
11 like everything, even work with police department, some
12 other things to try to buy some time, but seem like all the
13 doors just shut and, like she said, I panicked, Your Honor.
14 So know there's nothing I can say or do to make it seem less
15 I just ask, I guess, for the mercy of the court. Thank you.

16 THE COURT: Thank you, Mr. Alexander. All right. Mr.
17 Alexander, I will tell you that you have a -- you had legal
18 obligation to appear at the time of your trial. I believe
19 that you know that. And, in all candor, certainly your
20 failure to appear put your lawyer, I think, at a
21 disadvantage in many, many respects while the trial was
22 going on. And you only have yourself to blame for this
23 sentence for your failure to show up. The sentence of the
24 court is that you're committed to the Department of
25 Corrections for 29 years. You receive credit for 38 days in

1 jail, as well as the time that you have served in jail since
2 you were extradited from Florida. And I wish you luck, sir.

3 MR. BROWN: Thank you, Your Honor.

4 THE COURT: Mr. Alexander, you have ten days to appeal
5 this sentence and post conviction relief would have to be
6 filed within one year of any remand from the Court of
7 Appeals. Good luck, sir.

8 MS. BOLEN: Thank you, Your Honor.

9 MR. BROWN: Thank you, Your Honor.

10 (END OF REQUESTED TRANSCRIPT)

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Certificate of Reporter

I, the undersigned, Tara T. Scott, CVR, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenwood County, South Carolina, on the 18th day of September, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 1, 2014



Tara T. Scott, CVR

Circuit Court Reporter



ORIGINAL

WITNESSES

Neil Henderson
Abbeville Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

January Term, 2013

Indictment # *13GS01-15*

WARRANT NUMBER

2012A0120100041

THE STATE

vs.

Alfonzo Alexander

B/w [REDACTED]

Smith

Swain's duty 5/30/13

Foreman of the Grand Jury

Date: **JAN 07 2013**

TRUE BILL

VERDICT

William D. Porter

Foreman

INDICTMENT FOR

POSSESSION OF COCAINE BASE

(CRACK COCAINE)

WITH INTENT TO DISTRIBUTE

44-53-0375

THE STATE OF SOUTH CAROLINA

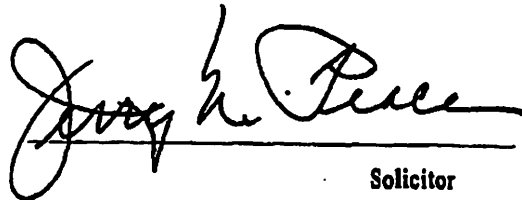
COUNTY OF ABBEVILLE

**INDICTMENT FOR
POSSESSION OF COCAINE BASE
(CRACK COCAINE)
WITH INTENT TO DISTRIBUTE
44-53-0375**

At a Court of General Sessions, convened on the 7th day of January, 2013 the Grand Jurors of Abbeville County present upon their oath:

That Alfonzo Alexander, did in Abbeville County, state aforesaid, on or about the 12th day of August, 2012 willfully, unlawfully, and knowingly possess with intent to distribute, dispense, deliver, or did otherwise aid, abet, or conspire to possess with intent to distribute, dispense, or deliver cocaine base (crack cocaine), in violation of the provisions of Section 44-53-375 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 cases made and provided.

A handwritten signature in black ink, appearing to read "Joseph H. Pence", written over a horizontal line.

Solicitor

WITNESSES

Neil Henderson
Abbeville Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

January Term, 2013

Indictment # *13GS01-14*

WARRANT NUMBER

2012A0120100042

THE STATE

vs.

Alfonso Alexander

B/W 06/28/2013

Foreman of the Grand Jury

Date: **JAN 07 2013**

TRUE BILL**VERDICT**

Verdict granted.

Filed 5-30-13

William S. Hunter

Foreman

INDICTMENT FOR

**POSSESSION OF COCAINE BASE
(CRACK COCAINE) WITH INTENT TO
DISTRIBUTE WITHIN PROXIMITY
44-53-0445**

THE STATE OF SOUTH CAROLINA

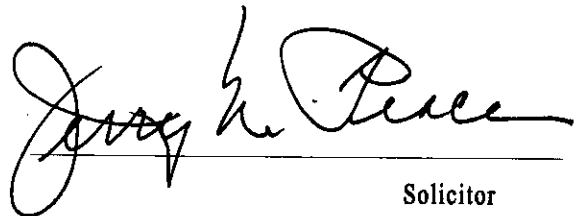
COUNTY OF ABBEVILLE

INDICTMENT FOR**POSSESSION OF COCAINE BASE
(CRACK COCAINE) WITH INTENT TO
DISTRIBUTE WITHIN PROXIMITY
44-53-0445**

At a Court of General Sessions, convened on the 7th day of January, 2013 the Grand Jurors of Abbeville County present upon their oath:

That Alfonso Alexander, did in Abbeville County, state aforesaid, on or about the 12th day of August, 2012 did willfully, unlawfully and knowingly distribute, sell, purchase, manufacture, or possess with intent to distribute crack cocaine while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public vocational or trade school or technical education center; or a public or private college or university in violation of Section 44-53-445 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 cases made and provided.

A handwritten signature in black ink, appearing to read "Jerry L. Peace", is written over a horizontal line.

Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Abbeville
 STATE VS.
Alfonzo Alexander

AKA:

Race: AA Sex: M Age: 34DOB: [REDACTED] SS#: [REDACTED]Address: 613-B Green StreetCity, State, Zip: Greenwood, SCDL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Drugs / Manufacture, distribution, etc. of cocaine base, 3rd or sub. Offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 13GS01-0015A/W#: 2012A0120100041Date of Offense: 8/12/2012S.C. Code § : 44-53-0375 (CDR Code #: 3039

SENTENCE SHEET

Trial in Absence☒ CONVICTED OF or ☒ PLEADSin violation of § 44-53-0375 (of the S.C. Code of Laws, bearing CDR Code # 3039☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS/CSC ☐ §17-25-45 w/minor 1st or Lowd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

Brown, C. Yates78607

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 29 (Twenty-nine) days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. *Credit 38 days : paid.*☐ The Defendant is to be placed on the 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 16-25-63 (Carrying Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114(BUI Breath Test Fee)	\$30	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 8.40
TOTAL		\$ 288.40

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Emily Y. McEmananMaryann Newers

Presiding Judge

Judge Code:

Sentence Date:

2159May 30, 2013TRUE COPY
[Signature]
CLERK OF COURTObtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other:

Note: Sentence assessed and pronounced on September 18, 2013☐ Appointed PD or appointed other counsel, 47.12 requires \$500 be paid to Clerk during probation.*[Signature]*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF ABBEVILLE	)	
	)	
THE STATE	)	Warrant Number: 2012A0120100041
	)	Indictment: 13GS01-0015
v.	)	
	)	Motion to Reconsider Sentence
	)	
Alfonzo Alexander,	)	
Defendant	)	

Alfonzo Alexander appeared in front of the Honorable Judge Frank Addy on September 28, 2013 for a sentencing hearing. Alexander was tried in absentia on May 29 and May 30, 2013 in Abbeville County, with Judge Addy presiding. Alexander was found guilty of one count of possession with intent to distribute crack cocaine, third offense. At the close of the State's case, Judge Addy directed a verdict of not guilty on one count of possession with intent to distribute within proximity of a school or playground. On September 18, 2013, Judge Addy's sentence of 29 years was unsealed and pronounced.

Alexander puts forth the following facts and arguments for the Judge to reconsider:

- 1) Several issues of law were raised during the trial, including that the defendant was unlawfully searched by law enforcement, as law enforcement did not specify any facts upon which to base its belief that Alexander posed a risk to officer safety.
- 2) The sentence is disproportionate to the crime. Alexander was found guilty of only one offense. The crime of which he was found guilty was not violent and did not involve any harm to any other person.
- 3) The longest sentence Alexander had ever received prior to this sentence was a ten-year sentence on possession with intent to distribute, second offense, to which Alexander pled guilty on or about January 7, 2003.
- 4) Alexander's prior history is as follows: possession of crack, 1997, YOA; trespassing, 1998, community service; possession with intent to distribute, 1998, 5 years; simple assault and battery, 2001, fine; possession with intent to distribute, 2003, 10 years; criminal domestic violence, first offense, 2003, time served.

- 5) Had Alexander pled guilty to this offense, he would have received a twelve year negotiated sentence, as the Solicitor's office had offered twelve years on a plea.
- 6) The sentence of 29 years is more than twice the sentence that Alexander would have received had he pled guilty, and is more than twice the sentence that the Solicitor's office offered as appropriate punishment.
- 7) Under Rule 16 of the South Carolina Rules of Criminal Procedure, a defendant may waive his right to be present at trial.
- 8) Alexander's service of a twenty-nine year sentence does not serve the interests of the state because it is costly for the State to house Alexander for twenty-nine years in order to punish a person for a crime which resulted in neither physical harm nor loss of property.
- 9) A person has a right to a trial by jury, a right to cross-examine and confront all the witnesses and evidence in the case, the right to present defenses, a right to testify, a right to remain silent, a right to the presumption of innocence, and the right to have the state attempt to prove each element of each offense beyond a reasonable doubt. Having such a right means that a person can exercise these rights without fear of punishment for their exercise thereof.
- 10) Mr. Alexander expressed remorse for his actions at the sentencing hearing, and explained to the Court that he waived his right to be present at trial in an attempt to see his child born.
- 11) The state legislature has provided that a Court may sentence a person who has been convicted possession with intent to distribute, third or subsequent offense, anywhere between ten and thirty years. Alexander's sentence is just one year shy of the maximum allowable sentence.
- 12) The maximum sentence should be reserved for the worst drug crime offenders who have more than two prior drug offenses. Mr. Alexander had two convictions for possession with intent to distribute, making this a true third offense rather than a fourth or fifth offense.
- 13) Similar sentences for this charge have not been imposed on other defendants in this circuit. Although there have not been any recent trials on this charge in the 8th circuit, there has been a recent trial in the circuit on a charge of manufacturing methamphetamine, third offense, for which the defendant was sentenced to twenty-five years. Possession is less egregious than manufacturing. Counsel for Alexander cannot recall a sentence this high for other drug cases in this circuit.

Alexander had both a right to a trial and a right to waive his own presence at trial. He also has no violent offenses in his history, and the crime of which he was convicted was not violent in nature and did not harm any person or any property. The sentence that the State considered appropriate was twelve years, as evidenced by its offer of twelve years for a plea. Alexander was found not guilty of one offense. His sentence is disproportionate to sentences in other drug crimes in this circuit. Punishment for the underlying crime, not for Alexander's decision to waive his own presence or his decision to exercise his constitutional right to a trial, should be the basis of the sentence. Alexander respectfully requests that the court reconsider the sentence and lower it.

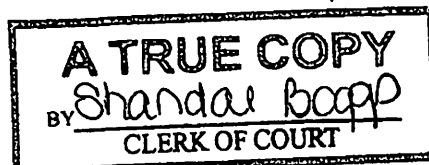
IT IS SO MOVED.

Respectfully submitted,

By: 

Patricia Bolen
 Assistant Public Defender
 8th Judicial Circuit
 600 Monument Street, Suite 208
 Greenwood, South Carolina 29646
 (864) 229-9505

September 26, 2013
 Abbeville, South Carolina
 Greenwood



FILED
 STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE
 2013 SEP 26 PM 2 58
 EMILY Y MCMAHAN
 CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

THE COURT OF GENERAL SESSIONS

CASE NO. 13-GS-01-15

STATE OF SOUTH CAROLINA,

vs.

ALFONZO ALEXANDER,
Defendant.

RECEIVED

DEC 16 2013

SC Court of Appeals

ORDER DENYING MOTION FOR
RECONSIDERATION OF SENTENCE
IMPOSED

THIS MATTER ORIGINALLY CAME BEFORE THE COURT on May 30, 2013 for trial *in absentia*. The State was represented by Yates Brown, and Alfonzo Alexander was represented by Patricia Bolen. The court directed a verdict on the proximity charge, and the jury returned a verdict of guilty on the charge of possession with intent to distribute crack cocaine, third offense. The sentence of the court was sealed, and Mr. Alexander was subsequently apprehended and appeared for sentencing on September 18, 2013, at which time the court imposed the sentence of twenty-nine (29) years. Having considered the argument of counsel in Mr. Alexander's motion for reconsideration, I deny Defendant's motion for a reduction in sentence for the following reasons:

1. Although this court is understanding of Mr. Alexander's explanation for not appearing, the most basic obligation of an individual who is facing charges and out on bond is to show up on the date of his trial. Had Mr. Alexander appeared and accepted the State's offer of twelve (12) years, this court or previous judges may have entertained allowing delayed reporting so that he could attend his child's birth. However, Mr. Alexander elected to reject the state's offer, flee the jurisdiction of the court, and was subsequently taken into custody in Florida. To the extent the court took Mr. Alexander's refusal to appear for trial into account in sentencing, this consideration was proper.

2. Additionally, when comparing Mr. Alexander's previous sentences to the current sentence, the court finds that the current sentence is appropriate notwithstanding any

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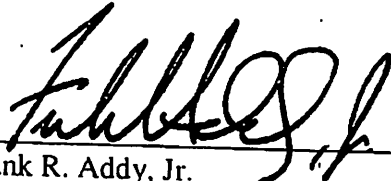
considerations given to the question of flight. Mr. Alexander's prior drug convictions resulted in a youthful offender act sentence, a five (5) year sentence, and a ten (10) year sentence. On a daily basis this court is confronted with the detrimental societal effects of illicit drug use. Clearly, a more substantial sentence is warranted for an individual who repeatedly dealt drugs, repeatedly received leniency, yet repeatedly resumed the identical illegal activity.

3. To the extent that paragraph 9 of Mr. Alexander motion implies that, by sentencing Mr. Alexander to twenty-nine (29) years, the court may have been punishing Mr. Alexander for exercising his rights under the Constitution, such is not the case.

4. In short, the state demonstrated that Mr. Alexander was a repeat drug dealer who had previously been sent to prison for substantial periods of time, yet continued to deal drugs upon his release. Had Mr. Alexander desired to accept the state's offer of twelve (12) years, he should have done so. Finally, although the court is sympathetic with Mr. Alexander's stated reason for fleeing the jurisdiction of the court and although the court is aware of the substantial expense associated with incarcerating Mr. Alexander, the court cannot turn a blind eye to his failure to abide by the most basic condition of bond.

For the foregoing reasons, Defendant's motion for reconsideration of the sentence imposed is denied.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Circuit Court Judge
Eighth Judicial Circuit

November 26, 2013
Greenwood, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Abbeville County

Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALFONZO ALEXANDER,

APPELLANT

APPELLATE CASE NO. 2013-002636

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in denying Appellant Alexander's motion to suppress the crack cocaine based on a violation of his Fourth Amendment rights because there was not sufficient reliability of the anonymous call to conduct an investigative stop; the police did not have reasonable suspicion based on specific and articulable facts that Alexander was armed and dangerous before conducting a Terry¹ frisk; and the police did not have cause to pull any objects from Appellant Alexander's pocket after the officer said nothing felt like a gun during the pat-down?
2. Did the trial court err in qualifying Lieutenant John Gray of the Abbeville Police Department as an expert in the field of narcotics investigation which was not specialized knowledge outside the purview of the average juror and which did not meet the requirements of Rule 702, SCRE?

¹ Terry v. Ohio, 392 U.S. 1 (1968).

STATEMENT OF THE CASE

On January 7, 2013, the Abbeville County Grand Jury indicted Alfonzo Alexander on the charge of possession with intent to distribute crack cocaine (PWID) and PWID crack within the proximity of a school or park. On May 28-30, 2013, a trial was held before the Honorable Frank R. Addy and a jury in the absence of Appellant Alexander. Alexander was represented by Janna Nelson and Patricia A. Bolen. The state was represented by C. Yates Brown and Christopher Andrew Morrow. R. 1. Judge Addy did grant the defense motion for a directed verdict on the proximity charge. R. 133, ll. 5 – 8. The jury returned a verdict of guilty on the PWID crack. At the close of the trial, Judge Addy sealed the sentence. R. 181, ll. 7 – 25.

On September 18, 2013, Alexander appeared before Judge Frank R. Addy for the purposes of sentencing. Alexander was again represented by Patricia Bolen, and the state was represented by Yates Brown. Judge Addy unsealed the sentence and sentenced Alexander to twenty-nine years in prison. R. 186, ll. 16 – R. 187, ll. 9.

Alexander's attorney filed a motion to reconsider the sentence which Judge Addy denied on November 26, 2013. Alexander's attorney filed a notice of appeal. This appeal follows.

STATEMENT OF FACTS

During pretrial motions, Lieutenant John Gray with the Abbeville Police Department testified that on August 12, 2012, he received a call through dispatch that an anonymous tipster had called complaining there were people in a neighboring apartment using drugs, gambling, and selling drugs. Lt. Gray and his shift went to the apartment and met the renter of the apartment, Ella Brown, sitting outside. Lt Gray told her o12 84, ll. 1 – R. 13, ll. 4.

When he entered the apartment, Lt. Gray saw a crowd of people-about ten- inside the apartment. There was a strong smell of marijuana. Four or five people were sitting in the kitchen area playing cards. R. 14, ll. 5 – 14. There was a bag of marijuana under the table where the card players were located which contained about four and one/half grams of marijuana. Any of them could reach that marijuana. R. 102, ll. 5 – R. 103, ll. 19; R. 80, ll. 1 – R. 83, ll. 2.

Lt. Gray saw Alexander sitting on a couch in the living room just to the left when he entered the front door. There was a small bag of marijuana on the floor beside Alexander, and he had a large sum of money in his hand. The officer saw plastic baggies coming out of Alexander's left pocket. Lt. Gray then patted Alexander down for officer safety because guns and drugs go together. However, no weapon was found on Alexander. R. 14, ll. 17 – R. 15, ll. 19; R. 83, ll. 1 – 25.

When Lt. Gray patted Alexander down, he could feel an additional bulge under the baggie that he could see through his pocket that felt to be more baggies. In his other pocket, he could feel a hard square. Alexander gave consent for Lt Gray to remove the baggies and other things from his pocket. When he removed the baggies, Lt. Gray found a quantity of an off-white, rocklike substance that he believed to be crack and a set of small scales. The cash

that Alexander was about \$839. Alexander was arrested and charged with PWID crack and PWID crack in the proximity of a school or playground. The only other person arrested was one man for trespassing. R. 15, ll. 20 – R. 18, ll. 3; R. 84, ll. 1 – R. 89, ll. 3.

On cross examination, Lt. Gray admitted that Alexander did not stand up but continued sitting on the sofa. In his report, Lt. Gray did not report anything about Alexander being fidgety. Alexander did not threaten him in any way. Nor did he reach for his pocket. He did not make any sharp movements, and did not look nervous. There was no mention of guns in the 911 call. In his report, Lt. Gray did not write that he saw baggies protruding from Alexander's pocket, but saw the baggies when he patted Alexander down. He had no prior knowledge of Alexander; he did not know him. Lt. Gray admitted that the baggies he felt did not feel like a gun. The scales did not feel like a gun either. R. 18, ll. 12 – R. 23, ll. 22.

At the beginning of the trial, defense counsel made a pretrial motion to suppress the drugs; the judge held the suppression hearing and Lt. Gray's pretrial testimony. Defense counsel argued that the drugs should be suppressed on the basis of a Fourth Amendment violation because the drugs were unlawfully seized and should be suppressed under the exclusionary rule. R. 5, ll. 25 – R. 6, ll. 6.

Counsel cited from the 911 report and the police officers' incident report R. 6, ll. 16 – R. 7, ll. 7. Counsel argued that the basis of her motion was twofold. The first basis was that the police acted on an anonymous tip without any corroboration by the officers which was not sufficient reliability for an investigatory stop. She argued that anonymous calls were held to a higher standard for reliability. She cited State v. Taylor, 401 S.C. 104, 736 S.E.2d 663 (2013) for this constitutional issue because there were no other suspicious circumstances. The anonymous caller in Alexander's case did not know who the apartment

belonged to, and did not see any drugs or money exchanged. Although the investigative stop was of Ms. Brown, the drugs should be suppressed as part of the “fruit of the poisonous tree” doctrine because it resulted from the unlawful stop. R. 7, ll. 8 – R. 8, ll. 18.

The second basis for the suppression of the drugs was the unlawful Terry frisk. The police needed reasonable suspicion based on specific and articulable facts that the person to be frisked is armed and dangerous. R.8, ll. 17 – 25. Counsel cited the case of Minnesota v. Dickerson, 508 U.S. 366 (1993) which held that officers needed to be able to investigate without fear of violence.

There was nothing in the officers’ incident report to indicate they had any reasonable fear for their safety. The state did not meet the constitutional burden to conduct a Terry frisk. R. 8, ll. 17 – R. 11, ll. 17.

At the close of the suppression hearing, defense counsel argued the same issues and position. R. 28, ll. 3 – R. 31, ll. 16. The state argued that under the totality of the circumstances the frisk was constitutional, and that Alexander consented. Defense counsel responded in argument that the police officer had no right to pull anything from Alexander’s pocket because the officer testified that nothing during the pat-down felt like a gun. Therefore, the Terry frisk was unconstitutional. The judge denied the suppression motion, and allowed the drugs to come into evidence. R. 31, ll. 1 – R. 35, ll. 2.

Willie Smith, the forensic chemist from SLED, testified that the drugs found on Alexander weighed 6.8 grams. R. 122, ll. 1 – R. 123, ll. 1.

Defense counsel objected when the baggies and scales were admitted into evidence and when the drugs were admitted into evidence. R. 87, ll. 1 – R. 88, ll. 10; R. 122, ll. 1 – R. 124, ll. 2. Defense counsel renewed all objections at the close of the trial. R. 174, ll. 18 – 25.

During the testimony of Lt. Gray before the jury, the solicitor moved to have Lt. Gray qualified as an expert in the field of narcotics and paraphernalia investigations. After a few questions, defense counsel had a matter of law, and the jury was excused. R. 70, ll. 19 – R. 72, ll. 8.

The state provided a proffer of Lt. Gray's testimony which was that the state would have Lt. Gray give his opinion as an expert that based on the number of baggies and weight of the drugs that created an inference that Alexander possessed the drugs with an intent to distribute. R. 73, ll. 1 – 14. Defense counsel argued:

Our response would be that that's not something that the jury needs any sort of specialized testimony ---specialized scientific or other testimony about. I think he can testify, obviously, to what he found on our client. But the purpose of expert witnesses is to explain something that's outside the purview of the average juror. And I—I just don't think that this case rises to that level and requires any sort of specialized knowledge as would be required by an expert.

R.73, ll. 17 – R. 74, ll. 1.

Following argument by the state, defense counsel said she wanted to make an objection for the record both on relevancy and that this was outside what a jury would need; as well as the qualifications that did not meet the requirements of Rule 702, SCRE. R. 74, ll. 11 – R. 77, ll. 23.

The judge qualified Lt. Gray as an expert in the field of narcotics investigation and paraphernalia. R. 77, ll. 24, R. 78, ll. 12. When Lt. Gray testified that in his expert opinion, based on the grams and baggies found on Alexander, the drugs were for sale and distribution, defense counsel renewed her prior objection on that matter. R. 94, ll.18 – R. 95, ll. 9.

ARGUMENT

The trial court erred in denying Appellant Alexander's motion to suppress the crack cocaine based on a violation of his Fourth Amendment rights because there was not sufficient reliability of the anonymous call to conduct an investigative stop; the police did not have reasonable suspicion based on specific and articulable facts that Alexander was armed and dangerous before conducting a Terry frisk; and the police did not have cause to pull any objects from Appellant Alexander's pocket after the officer said nothing felt like a gun during the pat-down?

The Fourth Amendment protects the right of the people to be secure in their persons, house, papers, and effects, against unreasonable searches and seizures. U.S. Const. amend. IV. This guarantee protects against unreasonable searches and seizures, including seizures that only involve a brief detention. Robinson v. State, 407 S.C. 169, 754 S.E.2d 862 (2014) citing State v. Pichardo, 367 S.C. 84, 97, 623 S.E.2d 840, 847 (Ct. App. 2005) (citing United States v. Mendenhall, 446 U.S. 544 (1980). Reasonable suspicion is something more than an inchoate and unparticularized suspicion or hunch. Terry v. Ohio, 392 U.S. 1, 27 (1968). The police officer may make reasonable inferences regarding the criminality of a situation in light of his experience, but he must be able to point to articulable facts that , in conjunction with his inferences, "reasonably warrant" the intrusion. Id. at 21, 27. Robinson v. State, 407 S.C. 169, 754 S.E.2d 862(2014).

The South Carolina Supreme Court wrote in State v. Taylor, *supra*, citing United States v. Perrin, 45 F.3d 869, 871 (4th Cir. 2008) that the required reasonable suspicion can arise from an anonymous tip provided that the totality of the surrounding circumstances justifies acting on the tip. The Fourth Circuit held in United States v. Branch, 537 F.3d 328, 337 (4th Cir. 2008) that courts

must look at the cumulative information available to the officer...and not find a stop unjustified based merely on a piecemeal refutation of each individual fact and inference.

In State v. Green, 341 S.C. 214, 532 S.E.2d 896 (Ct. App. 2000), the Court of Appeals held that the uncorroborated anonymous tip did not provide officer with reasonable suspicion to stop the defendant's automobile. In Green's case, the police received a dispatch call that a black male by the name of Alonzo Green was leaving Bayside Manor with a large sum of money and narcotics driving a gray four door Maxima. The officer saw a gray Maxima drive by and stopped it based solely on the anonymous tip. The Court of Appeals said that was not enough.

In Terry v. Ohio, *supra*, the U.S. Supreme Court held that when a police officer reasonably concludes that that criminal activity is occurring and the person with whom he is dealing may be armed and dangerous, and there is fear for his own or others' safety, he is entitled for the protection of himself and others to conduct a **carefully limited search** of the outer clothing of such person in an attempt to discover weapons which might be used to assault him. [Emphasis added].

In State v. Fowler, 322 S.C. 263, 471 S.E.2d 706 (1996), Fowler was seen coming from the front yard of a suspected drug house in a high drug area. The officers stopped him thinking he might have a weapon. The officers found a large lockblade knife and \$504.87 on Fowler's person. The officer said Fowler walked in a suspicious manner and acted "kind of scared." The officers also knew Fowler had a prior conviction for drugs and was known to carry weapons and the officer had known him for two and one-half years. The Court of Appeals ruled that the officer did not have reasonable suspicion to frisk Fowler as Fowler had no prior weapons charges; police did not find weapons on defendant during previous searches; and another officer testified that Fowler did not do anything to make the officers think he was armed.

In Minnesota v. Dickerson, 508 U.S. 366 (1993), the police officer stopped Dickerson as he was leaving a known crack house. When he saw the police, Dickerson abruptly started walking in the opposite direction. When the officer did a pat-down search, he found no weapons but found a lump in Dickerson's jacket that he suspected to be crack. The officer reached into Dickerson's pocket and pilled out the small plastic bag that contained crack. The U.S. Supreme Court held that this search was "not authorized by Terry or any other exception to the warrant requirement." The Court held that this further search was constitutionally invalid and therefore, the seizure of the cocaine was unconstitutional.

Alexander's case is similar to Minnesota v. Dickerson, Id., but the police in Dickerson's case had more facts of suspicion than in Appellant's case. All the officers in Alexander's case had was the uncorroborated anonymous tip. The officer did not know Alexander and had not heard of Alexander carrying weapons. The officer admitted that Alexander did not act nervous or fidgety; did not make any strange movements; did not look nervous; and there was no mention of names or weapons in the 911 call.

The officer exceeded the scope of a Terry frisk when he reached into Alexander's pocket and pulled out the baggies although Alexander allegedly consented. His consent came after the unlawful Terry frisk. Although the officer said he saw the baggie before the pat down, he did not include this significant piece of information in his report. He also said he saw the baggie when he looked into Alexander's pocket.

The investigative stop, the Terry frisk, and the search of Alexander's pocket were unconstitutional and the drugs should have been suppressed.

ARGUMENT II

The trial court erred in qualifying Lieutenant John Gray of the Abbeville Police Department as an expert in the filed of narcotics investigation which was not specialized knowledge outside the purview of the average juror and which did not meet the requirements of Rule 702, SCRE.

Rule 702, SCRE, provides ``that if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise.

In State v. Robinson, 396 S.C. 577, 722 S.E.2d 820 (Ct. App. 2012), the Court of Appeals held that Commander Marvin Brown of the Drug Enforcement Unit was qualified as an expert in “how crack is packaged, sold, the going price, the typical intoxicating dose, and the different habits between the typical addict, and the typical drug dealer.” Commander Brown had thirty years of experience in narcotics enforcement, and had published an article in a national magazine for the United States Attorney’s Office. He taught classes as he was the narcotics supervisor.

Alexander’s case is distinguished from Robinson in that Lieutenant Gray was an officer with the Abbeville Police Department in narcotics investigations. He had been in law enforcement since 1995 and had participated in only twenty or more narcotics investigations with the city but maybe one hundred in his career. He had taken classes several years before and was a certified drug instructor. R. 67, ll. 6 – R. 77, ll. 6.

In State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), the Supreme Court wrote in Footnote 5 that they could envision no circumstances where it was appropriate for a forensic interviewer of children to be qualified as an expert because their work was not appropriate for the courtroom. The Court cited State v. Douglas, 380 S.C. 499, 671 S.E.2d 606, 607 (2009) which held

that it was unnecessary for the forensic interviewer to be qualified as an expert because no specialized knowledge was required there.

It was not necessary for Lt. Gray to be qualified as an expert to give his opinion that Alexander's possession of 6.8 grams of crack was an inference that he intended to sell or distribute it. This was clear from the statute so all he had to do was cite the statute. South Carolina Code Section 44-53-375 (B) provided that "possession of one or more grams of methamphetamine or cocaine base is prima facie evidence of a violation of this subsection." Subsection (B) provided that a person who manufactures or distributes or possesses with intent to distribute is guilty of a felony and must be sentenced to prison.

It was not harmless error for Lt. Gray to give his expert opinion that Alexander intended to distribute or sell the crack cocaine. The Supreme Court wrote in Kromah that "although an expert's testimony theoretically is to be given no more weight by a jury than any other witness, it is an inescapable fact that jurors can have a tendency to attach more significance to the testimony of experts."

The prejudice suffered by Alexander was that Lt. Gray's opinion related to the inference of distributing crack rather than just possession as there were no witnesses who said he sold or distributed crack. The officer did not witness any drug transaction. This offense carried a much longer prison sentence than just possession.

CONCLUSION

Based on the above, the conviction and sentence should be reversed, and the case remanded for a new trial.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of March, 2015.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and 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."

March 11th, 2015



LaNelle Cantey DuRant
Appellate Defender

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Columbia, S. C. 29211-1589
(803) 734-1330

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Abbeville County
Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALFONZO ALEXANDER,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mary W. Leddon, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11th day of March, 2015.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 11th day of March, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Alfonzo Alexander, Appellant.

Appellate Case No. 2013-002636

Appeal From Abbeville County
Frank R. Addy, Jr., Circuit Court Judge

Unpublished Opinion No. 2015-UP-485
Submitted September 1, 2015 – Filed October 14, 2015

AFFIRMED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mary Williams Leddon, both of
Columbia; and Solicitor David M. Stumbo, of
Greenwood, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities:

1. As to whether the trial court erred in admitting the crack cocaine into evidence: *State v. Taylor*, 401 S.C. 104, 108, 736 S.E.2d 663, 665 (2013) ("A trial court's Fourth Amendment suppression ruling must be affirmed if supported by any evidence."); *State v. Bailey*, 276 S.C. 32, 36, 274 S.E.2d 913, 915 (1981) (holding a person's status as a resident gave him the authority to consent to a search of the premises); *Terry v. Ohio*, 392 U.S. 1, 30 (1968) ("Where a police officer observes unusual conduct which leads him to reasonably conclude in light of his experience that criminal activity may be afoot and that persons with whom he is dealing may be armed and dangerous . . . he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons."); *State v. Provet*, 405 S.C. 101, 113, 747 S.E.2d 453, 460 (2013) ("A warrantless search is reasonable within the meaning of the Fourth Amendment when voluntary consent is given for the search.").

2. As to whether the trial court erred in qualifying Lieutenant John Gray as an expert witness: *State v. Chavis*, 412 S.C. 101, 106, 771 S.E.2d 336, 338 (2015) ("The qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's sound discretion. A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion. An abuse of discretion occurs when the *conclusions* of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions." (citations omitted)); *State v. Robinson*, 396 S.C. 577, 586, 722 S.E.2d 820, 825 (Ct. App. 2012) ("To be competent to testify as an expert, a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.").

AFFIRMED.¹

SHORT, GEATHERS, and MCDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA)

County of Abbeville SC)ALFONZO ALEXANDER 250547)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2016-CP-01-355

APPLICATION FOR

POST-CONVICTION RELIEF

TRUE COPY
 BY [Signature]
 ABBEVILLE COUNTY CLERK OF COURT

FILED
 STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE
 EMILY J. MCANULTY
 CLERK OF COURT

2016 DEC 28 AM 9:43

FILED
 STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention PERRY CORRECTIONAL Institute, South CAROLINA
DEPARTMENT OF CORRECTION.
2. Name and location of Court which imposed sentence Abbeville County Court
OF GENERAL Sessions 8th Judicial Circuit in Abbeville SC.
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Indictment # 2013 G50100015,
 - (b) OFFENSE # 44-53-0375 (B) (3) / Poss. with intent to Dist. crack cocaine.

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) RECEIVED SEALED SENTENCE ON May 30, 2013, OF 29 yrs.(b) SENTENCED UNSEALED AND PRONOUNCED on Sept. 18 2013.

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appealsii. South Carolina Court of Appeals

iii. _____

(b) the result in each such Court to which you appealed:

i. Affirm the convictionii. denied

iii. _____

(c) the date of each such result:

i. Submitted September 1, 2015, Filed October 14, 2015ii. Submitted October 27, 2015, Filed

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unpublished opinion NO: 2015-UP-485ii. Appellate Case number 2013-002636

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance of Trial Counsel violation 6th, 14th USCA Rights
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attachment
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? Yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Petition for a Writ of Habeas
- ii. Motion to Reconsider Sentence
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. South Carolina Supreme Court
- ii. Court of General Sessions 8th Judicial Circuit County of Abbeville
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Denied
- ii. Denied
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. September 8, 2013
- ii. November 26, 2013
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. 2015-002570
- ii. CASE No 13-ES-01-15
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. N/A
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. N/A
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Patricia Bolen

 ii. Lanette Contey Durant

 iii. _____

(b) the proceedings at which each such attorney represented you:

i. trial

 ii. Direct Appeal

 iii. _____

19. State clearly the relief you seek in filing this application:

Reversal of Conviction and Sentence and Remand
to new trial

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Abbeville SC)

VERIFICATION

I, ALFONZO ALEXANDER, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Alfonzo Alexander ✓

SWORN to and subscribed before me this 20th
 day of December, 2016.

Nancy C. Merchant (L.S.)
 Notary Public

My Commission Expires: 1-23-2017

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, ALFONZO ALEXANDER, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
20th day of December, 2016.


Notary Public

My Commission Expires: 1-23-2022

Issue #1

11. State concisely on in the same order the facts which support each of the grounds set out in (10):

(a) Applicant Alfonso Alexander claims that based on the following Preponderance of the evidence, pursuant to Fraiser v State, 351 S.E.2d at 389, 570 S.E.2d at 174 that pursuant to the first prong test set forth in Strickland v Washington 466 U.S. 668, 687-88 (1984) his trial Counsel Patricia A. Bolen performance fell below an objective standard of reasonable in failing to object to trial Judge Frank R. Addy Jr. impermissible mandatory presumption charge to the jury that shifted the prosecutor's Burden of proof. Id at Trial Transcript page 282 line 18-23 and page 283 lines 15-24.

in which the trial Judge instructed the jury that

The defendant's Knowledge and Possession may be inferred when a substance is found on the property under the defendant's control. However, this inference is simply an evidentiary fact to be taken into consideration by you, along with the other evidence and to be given the weight you decide it should have. see Id at Tr page 282 lines 18-23.

and he further charged the jury that Possession of 1 or more grams of crack Cocaine creates an inference that the defendant possessed the crack Cocaine with the intent to

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BY *[Signature]*
BREVILLE COUNTY CLERK OF COURT

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STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
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EMILY Y. MCCOY
CLERK OF COURT

distribute it. This inference does not relieve the state from proving beyond a reasonable doubt that the defendant had the intent to distribute. It's simply an evidentiary fact to be taken into consideration by you, along with the other evidence and to be given the weight you decide it should have. see Trial at Tr page 283 lines 15-24

Applicant states Supreme Court has long held that burden shifting presumption are unconstitutional. see State v Peterson, 287 S.C. 244, 335 S.E. 2d 800 (1985)

Specifically a charge that a prima facie case may be rebuttal by other evidence is impermissible.

State v Key, 282 S.C. 413, 319 S.E. 2d 338 (1984)

Evidentiary presumption must charge as permissive inference with specific instructions that the jury may accept or reject them. State v Adams, 291 S.C.

132, 352 S.E. 2d 483 (1987). State v Peterson Supra.

Applicant claims that his trial counsel were ineffective assistance of counsel in violation of his 6th, 14th Amendment of the United States Constitution and The S.C. Constitution article I section 14 to effective assistance of counsel in failing to object to trial judges his burden shifting charge to the jury trial at Tr page 282 lines 18-23 and page 283 lines 15-24, and for failing to request

inference to both charges, that he specifically charge the jury that reference to the evidentiary presumption charge they may accept or reject them. As stated in State v Adams 291 S.C. 132, 352 S.E.2d 483 (1987); State v Peterson 287 S.C. 244, 335 S.E.2d 800 (1985).

Applicant claims that pursuant to the second prong test set forth in Strickland v Washington 466 U.S. 668 687-88 (1984), that had it not been for his trial Counsel Patricia A. Bolen deficient performance in failing to object to Trial Judges Burden shifting charge to the jury. Id at Tr. page 282 lines 18-23 and page 283 lines 15-24, and in failing to request the trial judge to charge the jury that they may accept or reject the evidentiary presumption as stated pursuant to State v Adams 291 S.C. 132, 352 S.E.2d 483 (1987) and State v Peterson 287 S.C. 244, 335 S.E.2d 800 (1985), that there is a reasonable probability that the outcome of the trial would have been different.

Applicant further claims that based on the preponderance

of the evidence set forth, based upon the record before this court, he has met his burden of proof, to support the two prong test set forth in Strickland v. Washington 466 US 668, 682, 88-1984

that his counsel's performance fell below an objective standard of reasonable in-failing to object to trial judge's Burden shifting evidentiary presumption changes to the jury. Id at To page 282 lines 18-23 and page 283 lines 15-24; and that he was prejudiced by counsel deficient performance, because the change shifted the Burden of proof, invasion of 5th 14th Amendment Rights of the Due Process Clause. . . Therefore Applicant Based in the preponderance of this evidence a fore mented and showed and proved, request that his conviction and Sentence under indictment 2013-GS-01-0015. Id in Exhibit # (2) attached Be vacated, and Remand for a new trial.

All Tr. Pages listed in Applicant's argument to support his legal claim are Id in Exhibit #1, attached and enclosed that is a copy of the Transcript of Record of his criminal case 2013-GS-01-0015, 0014 Jury Trial, conviction. Before Judge, Frank R. Addy Jr. on May 28-30 2013

Id as Exhibit # (1), 302 pages.

Under the acts of perjury, I Alfonso Alexander
hereby, state under Oath that the facts and evidence
in # 10(a) and the attachment of # 11(a) is true
to the best of my knowledge, Respectfully submitted by
As well as All other Attachments. Alfonso Alexander 250547
Q2A 210 Perry Correctional
Institution, 430 Oaklawn Rd
Pelzer SC 29669

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STATE OF SOUTH CAROLINA
COUNTY OF ADELVILLE

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EMILY V. MONTAGNA
CLERK OF COURT

Issue # 2 to 10(a) 11(a)

Applicant Alfonzo Alexander claims that pursuant to the first prong test set forth in Strickland v Washington, 466 U.S. 668, 687-88 (1984), that his trial counsel Patricia A. Bolen performance fell below an objective standard of reasonableness in failing to object to trial judge's denial of his motion for a directed verdict of acquittal in order to preserve the issue for Appellate Court review. see Id at Tr. page 247 line 10-page 248 line 18 NO objection made by Applicant Counsel.

Applicant claims that pursuant to the second prong test set forth in Strickland v Washington 466 U.S. 668, 687-88 (1984) his counsel deficient performance prejudiced him of his directed verdict issue being preserved for review on direct appeal by the S.C. Court of Appeals, and that there is a reasonable probability had it not been for counsel deficient performance the outcome of the proceeding would have been different.

Law is support it: TO properly preserve an issue for review there must be a contemporaneous

objection that is ruled upon by the trial Court
State v Johnson 363 S.C. 53, 58, 609 S.E.2d
 520, 523 (2005)

Issue Preservation

in criminal cases under Rule 20(a) SCRCrimP all requests for legal instructions to the jury must be submitted at the close of the evidence or at such earlier time as the trial judge reasonably direct. All requests must include accurate citation to authority relied upon Rule 20(a) SCRCrimP. Further notwithstanding any request for legal instruction, the parties must be given the opportunity to object to the giving or failure to give an instruction before the jury retires, but out of the hearing of the jury any objection must state distinctly the matter objected to and the grounds for objection. Failure to object in accordance with SCRCrimP Rule 20(a) will constitute a waiver of objections Rule 20(a) SCRCrimP.

SCRC Rule 103 (a) (1) for an objection to be preserved for appellate review the objection must be made at the time the evidence is presented.
State v Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996) and with sufficient specificity to inform the circuit court judge of the point being urged by the objection. *Wilder Corp v Wilke*, 330 S.C. 71

76, 497 S.E.2d 731, 733 (1998).

Applicant further states that the record before this Court is as Exhibit #1, Trial transcript page 248 lines 12-18 when the trial court judge denied Trial Counsel Motion for a directed verdict, he did not state the facts and grounds in which to support his reasons for denying counsel directed verdict Motion. That trial Counsel was ineffective assistance of Counsel in violation of his 6th 14th Amendment Right of the U.S Constitution and S.C Const article 1 section 14 to effective assistance of Counsel, where the Record also shows that the state failed to prove pursuant to in re Winship, 397 U.S. 358. 364 (1970) the elements of possession with the intent to distribute beyond a reasonable doubt.

see counsel argument in support of his directed verdict Motion for an acquittal. Td at Tr page 247 lines 10-13. Further more the states argument that Applicant was dealing drugs is based on an officers opinion, which is insufficient Td at Tr page 248 line 1-9 to prove beyond a reasonable doubt the element of possession with the intent to distribute crack cocaine.

In conclusion Applicant claims that based on

The preponderance of the evidence set forth is his argument of ~~Issue~~ # 2 10(a) (1)(a). That he has met the requirements of the two prong test of Strickland v Washington 466 US 668 687-88 (1984) and that his conviction and sentence under Indictment 2013-GS-01-0015 should be vacated and the case remanded for a new trial.

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 BY *Emily Y. McDaniel*
 ABBEVILLE COUNTY CLERK OF COURT

EMILY Y. McDANIEL
 CLERK OF COURT

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 STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE

Applicant ALFONZO ALEXANDER Also claims that TR Counsel MRS. PATRICIA A. BOLEN PERFORMANCE Fell Below an objective standard of REASONABLENESS. And was therefore INEFFECTIVE, due to the FACT that MRS. BOLEN KNEW FROM the Arrest Report Numerous WITNESSES that were present At the PLACE of Arrest during the Encounter between MR. ALEXANDER and Arresting OFFICER Lt. Gray, whom could HAVE given Key testimony That would have challenged Lt. Gray's testimony that MR. ALEXANDER Allegedly gave him consent to remove the contents from his pockets. Applicant ALFONZO ALEXANDER Further claims that Counsel MRS. Patricia BOLEN was INEFFECTIVE due to the FACT that she Failed object to Judge Addy Using his opinion of OFFICER Lt. Gray's testimony over the Facts of Lt. Gray's testimony in the motion to Suppress part of trial in which Judge Addy states on (pg 106 in Trans) in Response to Counsel's statement that OFFICER Lt. Gray testified that NONE OF the things he Felt, Felt Like weapons, that Lt. Gray didn't have the Right to Ask to pull Anything out. Judge Addy said I understand. He continues to say I think the OFFICER may NOT have Known or Apparently was NOT Entirely sure what the 2 Items were.

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STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

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EMILY J. [unclear]
CLERK OF COURT

Applicant ALFONZO ALEXANDER claims that preceding Judge MR. FRANK ADDY was bias and prejudicial Against the DEFENSE OF MR. ALFONZO ALEXANDER And WAS A CONFLICT OF Interest. Applicant ALFONZO ALEXANDER BASES this on the FACT that not only did MR. ADDY Represent him on a CASE in 1998, During his time As A public DEFENDER, MR. ALEXANDER Filed A Post Convictional Relief claiming MR. ADDY's Handling OF the CASE WAS INEFFECTIVE in which the court Ruled in FAVOR OF MR. ALEXANDER. MR. ALEXANDER BELIEVES this could HAVE BEEN REASON For Judgement NOT in the DEFENSE FAVOR during critical and crucial stages of trial especially when motions and objections WERE put BEFORE the court.

STATE OF SOUTH CAROLINA,)
) IN THE COURT OF COMMON PLEAS.
 COUNTY OF ABBEVILLE.)

Alfonzo Alexander, #250547,)

Applicant,)

v.)

State of South Carolina,)

CERTIFICATE OF SERVICE BY MAIL

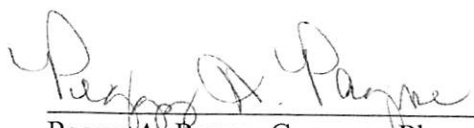
16-CP-01-355

The undersigned, an employee of the Abbeville County Clerk of Court's Office, does hereby certify that copy of Corrected Application for Post-Conviction Relief in the above-referenced matter was made upon the following persons by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 28th day of December, 2016, addressed as follows:

Justin J. Hunter, Esq.
 Office of the Attorney General
 Post-Conviction Relief Section
 Post Office Box 11549
 Columbia, SC 29211-1549

Solicitor's Office
 ATTN: Yates Brown/Micah Black
 P. O. Box 516
 Greenwood, SC 29648

Alfonzo Alexander, #250547
 Perry Correctional Inst.
 Q2A 210
 430 Oaklawn Rd.
 Pelzer, SC 29669


 Peggy A. Payne, Common Pleas Clerk

COUNTY OF ABBEVILLEALFONZO ALEXANDER #250547

Plaintiff(s)

vs.

STATE OF SC

Defendant(s)

Submitted By: _____

Address: _____

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016 -CP- 01 - 355

SC Bar #: _____

Telephone #: _____

Fax #: _____

Other: _____

E-mail: _____

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/ Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199) _____	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 _____ -NI- _____ ☐ Notice/ File Med Mal (230) ☐ Other (299) _____	Torts - Personal Injury ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Label (380) ☐ Other (399) _____	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499) _____
☒ Inmate Petitions ☒ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599) _____	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899) _____	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799) _____	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999) _____
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699) _____ ☐ Sexual Predator (510) ☐ Permanent Restraining Order (680)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Pre-Suit Discovery (670)		

Submitting Party Signature: _____

Date: 12-28-16

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF ABBEVILLE	)	
Alfonzo Alexander, #353719,	)	Case No.: 2016-CP-01-0355
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on December 28, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Abbeville County Clerk of Court. In January 2013, the Abbeville County Grand Jury indicted Applicant for possession of crack cocaine with intent to distribute within the proximity of a school or park (2013-GS-01-0014) and possession of crack cocaine with intent to distribute (2013-GS-01-0015). Janna Nelson and Patricia Bolen, Esquires, represented Applicant. Assistant Solicitors Yates Brown and Cam Morrow, Esquires, prosecuted the case.

On May 28-30, 2013, the defense proceeded to trial before the Honorable Frank R. Addy, Jr., in Applicant's absence. The jury found Applicant guilty as indicted for possession of crack cocaine with intent to distribute. Applicant's charge of possession with intent to distribute within proximity of a school or park was dismissed pursuant to directed verdict. Judge Addy sentenced Applicant and sealed the sentence until Applicant returned to the Court's jurisdiction. On September 18, 2013, Applicant appeared with Ms. Bolen before Judge Addy in Greenwood County. Judge Addy unsealed

and published the sentence, sentencing Applicant to imprisonment for twenty-nine years for possession of crack cocaine with intent to distribute.

Applicant filed a timely notice of appeal. LaNelle Cantey Durant, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on October 14, 2015. State v. Alfonzo Alexander, Op. No. 2015-UP-485 (S.C. Ct. App. filed October 14, 2015). Applicant subsequently filed a petition for a writ of certiorari to the South Carolina Supreme Court. The Supreme Court denied the petition by an order dated September 8, 2016. The Remittitur was returned on September 14, 2016.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel

- a. Failed to object to trial judge Frank R. Addy, Jr.'s impermissible mandatory presumption charge to the jury that shifted the prosecutor's burden of proof
- b. Failed to object to trial judge's denial of his motion for a directed verdict of acquittal in order to preserve the issue for Appellate Court review.
- c. "Ms Bolen knew from the arrest report numerous witnesses that were present at the place of arrest during the encounter between Mr. Alexander and arresting officer Lt. Gray whom could have given key testimony that would have challenged Lt Gray's testimony that Mr. Alexander allegedly gave him consent to remove the contents from his pocket"
- d. "Failed to object to Judge Addy using his opinion of Officer Lt. Gray's testimony over the facts of Lt. Gray's testimony in the motion to suppress part of the trial in which Judge Addy states on pg. 106 in Trans. in response to Counsel's statement that Officer Lt. Gray testified that none of the things he felt, felt like weapons, that Lt. Gray didn't have the right to ask to pull anything out. Judge Addy said I understand. He continues to say I think the officer may not have known or apparently was not entirely sure what the 2 items were."

2. Conflict of Interest

- a. "Judge Frank Addy was bias and prejudice against the defense of Mr. Alfonzo Alexander and was a conflict of interest"

Attached to this Return and incorporated by reference are the records of the Abbeville County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial and sentencing transcripts, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466

U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

V.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

iv May 18, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS

2016-CP-01-0355

ALFONZO ALEXANDER, # 353719)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent,)
_____)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Carson McCurry Henderson, Esquire
The Henderson Law Firm, PC
109-B Oak Ave.
Greenwood, SC 29646

DATED this the 18th day of May, 2017.



 Jennifer Jennison, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ABBEVILLE	)	EIGHTH JUDICIAL CIRCUIT
	)	
ALFONZO ALEXANDER	)	
(#250547),	)	
	)	
Petitioner,	)	FIRST AMENDED APPLICATION FOR
	)	POST-CONVICTION RELIEF
v.	)	
	)	C/A No. 2016-CP-01-355
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

FILED
 STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE
 2019 MAY -8 AM 11:45
 EMILY T. HARRIS
 CLERK OF COURT

The Petitioner, while reserving motions filed and to be filed, and while reserving his right to further amend his Application for Post-Conviction Relief, would respectfully allege and show unto the Court as follows:

INCORPORATION OF PETITIONER'S PRIOR PLEADINGS

1. The Petitioner hereby incorporates into this his First Amended Application for Post-Conviction Relief all allegations contained in his pro se Application for Post-Conviction Relief dated December 20, 2016, and filed with the Court on December 28, 2016.

FOR A FIRST ALLEGATION

2. The Petitioner hereby incorporates Paragraph 1 into this his First Allegation as if fully set forth herein verbatim.

3. The Petitioner is informed and believes that his trial attorney was ineffective because she failed to file a motion to quash the indictments against him. The sole witness for the State listed on the two (2) indictments was Neil Henderson, Abbeville Police Department. Upon information and belief, Mr. Henderson didn't appear and/or testify before the Abbeville County

Grand Jury on May 30, 2013. Upon information and belief, Mr. Henderson had no first-hand knowledge of the events surrounding the Petitioner's arrest on or about August 12, 2012.

FOR A SECOND ALLEGATION

4. The Petitioner hereby incorporates Paragraphs 1-3 into this his Second Allegation as if fully set forth herein verbatim.

5. The Petitioner is informed and believes that his trial attorney was ineffective because she failed to raise an objection to the arresting officers' actions pursuant to the Petitioner's State constitutional right against unreasonable invasions of privacy. See S.C. Const. Art. I, § 10. Upon information and belief, the arresting officers didn't have reasonable suspicion of illegal activity at the targeted residence prior to approaching the residence and asking the tenant to open the door so they could look inside.

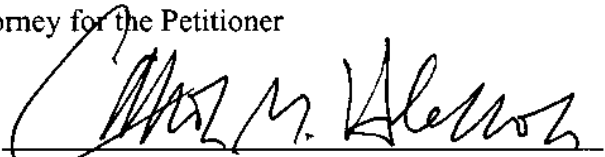
PRAYER

WHEREFORE, the Petitioner prays:

1. That this Court grant judgment to the Petitioner, vacate the Petitioner's conviction, and grant the Petitioner a new trial.
2. For such other and further relief as this Court deems just, proper, and equitable.

THE HENDERSON LAW FIRM, P.C.

Attorney for the Petitioner

By: 

Carson M. Henderson
109-B Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 229-8000
Fax: (864) 229-8001

Greenwood, South Carolina
May 6, 2019

1 STATE OF SOUTH CAROLINA
2 IN GENERAL SESSIONS
3 COUNTY OF LAURENS

4 Alfonzo Alexander,
5 Plaintiff,

6 vs. Transcript of Record
7 2016-CP-01-00355

8 State of South Carolina,
9 Defendant.

10
11 June 6 2019
12 Laurens, South Carolina

13 B E F O R E:

14 The HONORABLE THOMAS A. RUSSO

15
16 A P P E A R A N C E S:

17 Carson M. Henderson, Representing the Plaintiff

18 Janell Gregory, Representing the State of South
19 Carolina

20
21
22 SHARON G. HARDOON, CSR
23 Official Circuit Court Reporter, III
24
25

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22

23

24

25

1 THE COURT DEPUTY: Court come to order.

2 THE COURT: Thank you, Ladies and
3 Gentlemen. Please have a seat.

4 THE COURT: Yes, ma'am.

5 MS. GREGORY: Good morning, Your Honor.
6 May it please the Court? Before you is Alfonzo
7 Alexander. In January of 2013, applicant ws
8 indicted by the Abbeville grand jury for position
9 of crack cocaine with intent to distribute and
10 possession of crack cocaine in the proximity of
11 school or park.

12 On May 28th, 2018 applicant State's case
13 proceeded to a jury trial in his absence before
14 Judge Addy. At the close of State's case,
15 applicant successfully moved for a directed
16 verdict on proximity charge. The jury found the
17 applicant guilty of the PWID crack cocaine as
18 indicated. Applicant's sentence was sealed until
19 he was brought before Judge Addy on September 18,
20 2013. Applicant's sentence was then unsealed and
21 he was sentenced to 29 years.

22 Applicant filed a timely appeal, and
23 appellant defendant, Lanel Durant of the Office of
24 Appellant Defense, accepted the appeal. The
25 South Carolina Court of Appeals confirmed

1 applicant's conviction on October 14, 2015.

2 Applicant subsequently filed a petition
3 of writ of certiori with the South Carolina
4 Supreme Court which was denied, remitted, or was
5 issued September 14, 2016. He then filed a timely
6 application for post-conviction relief on
7 December 26, 2016, and an amended application
8 May 8, 2018.

9 Mr. Alexander is here and represented by
10 Mr. Henderson, and I believe they are going forward
11 solely on the amended application at this time.

12 THE COURT: All right. Is that correct?

13 MR. HENDERSON: That is correct, Your
14 Honor.

15 THE COURT: I'll be happy to hear for
16 you.

17 MR. HENDERSON: And I've also premarked
18 14 exhibits, Your Honor. I got them laying here
19 on the table. And I've given Your Honor copies of
20 them, your clerk copies of them, and Miss Gregory
21 copies of them, Your Honor.

22 THE COURT: All right.

23 MR. HENDERSON: That's right. We are
24 proceeding on two allegations in the amended
25 complaint. One, that trial counsel did not raise

1 issues related to the search and the seizure and
2 the arrest as it relates to our State's
3 constitutional privacy provision.

4 THE COURT: Okay.

5 MR. HENDERSON: And also the second
6 ground would be the trial counsel did not raise
7 any defects in the indictment, Your Honor.

8 THE COURT: All right, sir. You may
9 proceed.

10 MR. HENDERSON: Your Honor, I would call
11 Officer John Gray, please.

12 THE COURT: Officer Gray, if you come
13 around to be sworn, please, sir.

14 THE CLERK: Do you solemnly swear or
15 affirm that the testimony you're about to give in
16 this case will be the truth, the whole truth, and
17 nothing but the truth, so help you God?

18 THE WITNESS: Yes, I do.

19 WHEREUPON:

20 JOHN GRAY,
21 after having been sworn to tell the truth, testified
22 as follows:

23 DIRECT EXAMINATION

24 BY MR. HENDERSON:

25 Q Officer, good morning. How are you, sir?

1 A Good morning, sir. I'm doing well.

2 Q Thank you for being here. It looks like you got
3 something in your hands. What have you got?

4 A This is just an incident report.

5 Q Okay. I'm also going to hand you up --

6 THE COURT: Excuse me. Could I get you
7 to spell your last name for the court reporter?

8 THE WITNESS: G-r-a-y. John.

9 THE COURT: All right.

10 MR. HENDERSON:

11 Q Officer Gray, I'm going to hand you up two
12 documents that have been marked as Plaintiff's Number
13 3, which is an Abbeville 911 CAD incident detail, and
14 also Exhibit Number 4 which is an accident report
15 which is probably the same thing that you already
16 have.

17 A That's correct, sir.

18 Q On the night in question, I believe this is August
19 the 12th of 2012, where were you employed at?

20 A Abbeville City Police Department.

21 Q And what was your position?

22 A I was a lieutenant.

23 Q Okay. I believe you, subsequently that evening,
24 arrived at Oakland Apartments; is that correct?

25 A That's correct.

1 Q I want you to look take a look at this Exhibit
2 Number 3, the CAD detail, I want to take a look at the
3 second page. Over on the left hand side, do you see
4 the word "unit?"

5 A On the second page?

6 Q Yes, sir. On the CAD detail?

7 A Yes, sir. I see where it says "unit," yes.

8 Q And there's a variety of numbers below that
9 correct?

10 A Yes.

11 Q What does 209 mean? Is that the officer?

12 A I believe that's correct. That was my
13 number.

14 Q Okay. So you were number --

15 A This is a 911 CAD report, and I do not get
16 these. But that was my call number.

17 Q Okay. Looking underneath at 213, whose call
18 number was that?

19 A I don't know if that was Miss Burns or Larry
20 Ashley.

21 Q Now, who was Miss Burns now?

22 A Angie Burns, she was a police officer at the
23 Abbeville City Police Department. I don't know
24 where she is.

25 Q And then I see another number down below it,

1 214?

2 A I believe that was Larry's number.

3 Q Okay.

4 A Officer Larry Ashley.

5 Q Mr. Ashley is here today, correct?

6 A That's correct.

7 Q So 213 would be Angela Burns?

8 A I'm pretty sure, but not hundred percent. I
9 believe that was her number.

10 Q Okay. Now you all were the only three officers
11 there, correct?

12 A For the City, yes, sir. I don't think there
13 was any other officers on the scene.

14 Q Okay. So if you know your number, you know
15 Mr. Ashley's number, we know Miss Burns has got to be
16 the third number. You would agree with that, wouldn't
17 you?

18 A I would say that that could possibly correct,
19 yes, sir.

20 Q Okay. Going back to the first page of this CAD
21 detail, it looks like the call -- and I'm saying
22 created this, but you're familiar with CAD details.

23 A I didn't ever work for 911, so I'm not that
24 familiar with it. I do look at CAD reports.

25 Q All right. If you look, I'm going to point you to

1 a couple things.

2 A All right.

3 Q Do you see the term there, in incoming call?

4 A Yes, sir.

5 Q Would you agree that incoming call looks like it
6 came in at 01:15:26?

7 A That's what it appears to be, yes.

8 Q That would be 1:15 in the morning?

9 A Yes, sir.

10 Q Looking down below it a couple lines, you see
11 where it says "call dispatch time?"

12 A Yes.

13 Q You got beside it 01:17:37?

14 A Yes, sir.

15 Q And you would -- that would be, I guess, when you
16 were dispatched, or law enforcement was dispatched?

17 A I believe that would be correct, yes, sir.

18 Q Look down a couple lines where it says "call or
19 arrival time." It says 01:33:10, and you agree that
20 would be 1:33 in the morning?

21 A Yes, sir.

22 Q And that looks like the time that law enforcement
23 arrived on the scene, correct?

24 A I believe that would be correct, yes, sir.

25 Q Now, when you arrived on scene you call in to

1 dispatch to let him know you're there?

2 A Yes, sir.

3 Q So the only way they would have number, that time,
4 is from you?

5 A Yes, sir.

6 Q Okay. It looks like between the dispatch time at
7 1:17 a.m. and the arrival time the 1:33 a.m., it looks
8 like 16 minutes. You would agree with that, wouldn't
9 you?

10 A Yes, sir.

11 Q Okay. What did you do during that 16 minutes to
12 verify this anonymous complaint that you received?

13 A What did I do to verify it?

14 Q Right. Did you do anything?

15 A Other than just the complaint that 911
16 received, that would be it.

17 Q Okay. You didn't do any independent research to
18 do any investigation to confirm any of this --

19 A When we receive a call from 911, there is a
20 problem with something going on. We usually don't
21 do an investigation before we respond to a call.

22 We usually get to a call and discover the problem
23 or there's a problem there and we go from there.

24 Q And this would be at Oakland Apartments, correct?

25 A Yes, sir.

1 Q Are you familiar with Oakland Apartments?

2 A Yes.

3 (PLF. EXH. 1, Picture, was marked for
4 identification.)

5 (PLF. EXH. 2, Picture, was marked for
6 identification.)

7 BY MR. HENDERSON:

8 Q I'm going to show you what has been marked as
9 Plaintiff's Number 1 and Plaintiff's Number 2. Can
10 you identify these pictures?

11 A It appears to be Oakland Apartments.

12 Q Okay. Both of them?

13 A Yes, sir.

14 Q And I will represent to you that -- you see my
15 finger on the door, correct?

16 A Yes, sir.

17 Q I will represent to you that's the apartment you
18 went in that night. Do you disagree with that?

19 A You pointed to an apartment on the left. My
20 understanding is it was on the right-hand side
21 probably.

22 Q You think it was over here to the right across
23 from it?

24 A Yes, sir.

25 Q But no doubt this would be where you approached?

1 A All the buildings are built the same.

2 Q Okay.

3 A To look the same in that apartment complex.

4 This appears to be building in the apartments.

5 Q Okay.

6 A But I've seen the numbers of buildings. I

7 can't swear this is the say the building.

8 Q I'll represent to you that's the same building?

9 A I'll take it. That's fine.

10 Q I assume you -- let me ask you: I assume you
11 drove there in a patrol car?

12 A Yes, sir.

13 Q Was anybody riding with you?

14 A I believe Mr. Ashley was in the car with me
15 at that time.

16 Q Was Miss Officer Burns in a separate vehicle, I
17 would assume?

18 A That would be correct.

19 Q Did you all arrive at the same time?

20 A To the best of my knowledge, yes, sir. We
21 did arrive pretty much all at the same time. It
22 might have been just a few seconds or minutes
23 different.

24 Q Did you all approach the front door together?

25 A Yes, sir.

1 (PLF. EXH. 3, CAD report, was marked for
2 identification.)

3 BY MR. HENDERSON:

4 Q Okay. I'm looking here on this CAD report number
5 1, Exhibit Number 1, on the first page, and I'm going
6 to point you to some language on it. Exhibit Number
7 3. I'm sorry. You see where I'm pointing to
8 "original dispatch remarks?"

9 A Yes, sir.

10 Q And it looks like the 911 complaint -- well,
11 listen, I'll read it verbatim. "Caller wanted to
12 report a lot of people doing drugs and gambling in
13 Apartment 401. Caller stated half of the people on
14 trespass," and he does not know whose apartment it is.
15 Did I read that correctly?

16 A Yes, sir.

17 Q As I recollect, reading this, it looks like it was
18 an anonymous call, correct?

19 A I believe that's correct, yes, sir.

20 Q And on the second page, I will read to you
21 verbatim from 911, "Caller did not give any names and
22 disconnected upon questioning." So you didn't know
23 who had called when you approached?

24 A That's correct, sir. We did not know who
25 called. Still don't know who called.

1 Q And I assume you parked in the parking lot?

2 A Yes, sir.

3 Q Upon exiting your car and approaching this
4 apartment, apartment 401, did you see anybody doing
5 drugs?

6 A No, sir.

7 Q Okay. Upon approaching the apartment, did you see
8 any gambling?

9 A No, sir.

10 Q Okay. Upon approaching the apartment, did you see
11 anybody who was on trespass?

12 A No, sir. The complaint was, they was in the
13 apartment, though.

14 Q All I'm saying is, you didn't see any criminal
15 activity walking from your car up the sidewalk to the
16 apartment; is that correct?

17 A Yes, sir.

18 Q I assume it was your intention to knock on the
19 door?

20 A That's correct.

21 Q Okay. And actually the owner of the apartment was
22 outside, correct?

23 A That's correct.

24 Q And she let you in the apartment?

25 A That's correct.

1 (PLF. EXH. 4, Incident report, was marked
2 for identification.)

3 BY MR. HENDERSON:

4 Q I'm looking at what's marked as Exhibit 4, your
5 incident report. Did you create this incident report
6 or did Officer Ashley, or both of you?

7 A It was probably a combination of both of
8 us.

9 Q Now, I'm looking at the incident report, when you
10 were approaching the apartment, did you smell any
11 marijuana?

12 A Not from the outside, no, sir.

13 Q Okay. So, again, no signs of any criminal
14 activity as you were approaching the apartment?

15 A No, sir.

16 Q Okay. Since you were served with the subpoena by
17 Miss Lumbley here, did you talk to anybody else about
18 this case?

19 A I spoke to Mr. Ashley just briefly about
20 it.

21 Q Have you talked to Officer Vandiver about it?

22 A No, sir.

23 Q I suppose you talked to Miss Gregory here?

24 A No. Well, outside. Not prior to today.

25 Q Okay.

1 A I spoke to Mr. Vandiver outside also.

2 Q "How you doing" type?

3 A Yeah.

4 Q Now, are you retired?

5 A Yes, sir.

6 Q And I think Officer Vandiver is retired as well.

7 A I believe that's correct.

8 Q Okay. Were you involved at all in going in front
9 of the grand jury on this case?

10 A No, sir.

11 Q So you know it wasn't you that went in front of
12 the grand jury?

13 A No, sir. I did not go in front of the grand
14 jury.

15 Q On this case?

16 A On this case, I did not go in front of the
17 grand jury.

18 Q Okay.

19 MR. HENDERSON: Let me have one minute,
20 Your Honor.

21 BY MR. HENDERSON:

22 Q Approaching the apartment, did you hear any loud
23 music?

24 A No, sir.

25 Q Okay.

1 MR. HENDERSON: No further questions,
2 Your Honor.

3 THE COURT: Cross-examination?

4 MS. GREGORY: Yes.

5 CROSS-EXAMINATION

6 BY MS. GREGORY:

7 Q Good morning, Lieutenant Gray. The criminal
8 activity that you responded to was reported to be
9 inside of an apartment; is that correct?

10 A That's correct. According to the report, it
11 was inside apartment 401.

12 Q And the resident that lived in that residence,
13 that apartment, was outside so you never had to knock
14 on the door?

15 A That's correct. When we approached the
16 apartment --

17 Q Go ahead.

18 A When we approached the apartment, I believe
19 her last name is Brown. Miss Brown, she was
20 located outside the door and I informed her of
21 what was going on and asked her if we could look
22 inside the apartment and she said yes and opened
23 the door.

24 Q So you never had to knock on the door. When you
25 got inside the residence, what did you observe?

1 A The first thing we observed was a strong odor
2 of marijuana.

3 Q Okay.

4 A We observed several other people in the
5 house.

6 MR. HENDERSON: And, Your Honor, I'm
7 objecting, but I'm not having any complaints about
8 what happened inside. That's already been
9 litigated on appeal.

10 MS. GREGORY: That's fine.

11 MR. HENDERSON: Just for what it's
12 worth.

13 MS. GREGORY: We can move on.

14 BY MS. GREGORY:

15 Q Did Mr. Alexander live in that apartment?

16 A No.

17 Q Do you know Lieutenant Raymond Vandiver.

18 A Yes, ma'am.

19 Q Did you discuss this case with him?

20 A The morning, on the shift change. We was on
21 third shift. Mr. Vandiver was the supervisor on
22 the first shift, and we briefed Mr. Vandiver and
23 also gave him a copy of the report of the
24 incident.

25 Q Did you obtain any arrests warrants in this case?

1 A I did not. Mr. Vandiver did.

2 MS. GREGORY: Thank you. No further
3 questions, Your Honor.

4 THE COURT: Redirect?

5 MR. HENDERSON: Very briefly.

6 REDIRECT EXAMINATION

7 BY MR. HENDERSON:

8 Q So it's pretty clear that Mr. Vandiver wasn't
9 there that night with you, Officer Ashley and Officer
10 Burns?

11 A Me, Officer Burns and Officer Ashley was on
12 the scene. Shift change, Officer Vandiver and
13 Officer Davis came in, I believe it was the mid
14 shift, and we briefed Mr. Vandiver and the
15 incident and gave him the report and he obtained
16 warrants.

17 Q Okay. But Officer Vandiver wasn't at the incident
18 site.

19 A No, sir.

20 Q Okay.

21 A He was at shift change that morning. I was
22 coming off third. He was on first.

23 MR. HENDERSON: I don't have anything
24 further, Your Honor.

25 MS. GREGORY: Nothing further, Your

1 Honor.

2 THE COURT: Thank you very much. You may
3 step down.

4 THE WITNESS: Would you like for me to leave
5 these exhibits up here?

6 MR. HENDERSON: I'll take them back from
7 you.

8 THE COURT: That's fine. Thank you.

9 MR. HENDERSON: Your Honor, Officer Gray
10 can be released from his subpoena, unless he wants
11 to stay.

12 MS. GREGORY: Absolutely.

13 THE COURT: You're free to stay or go,
14 sir.

15 THE WITNESS: Mr. Ashley rode with me, so
16 I'll wait for him to get through.

17 THE COURT: I do appreciate that.

18 MR. HENDERSON: That's my next witness,
19 Your Honor, Mr. Ashley?

20 THE COURT: Sir, please come around to be
21 sworn.

22 THE CLERK: Do you solemnly swear or
23 affirm that the testimony you're about to give in
24 this case will be the tell the truth, the whole
25 truth, and nothing but the truth, so help you God?

1 THE WITNESS: Yes, I do.

2 WHEREUPON:

3 LARRY ASHLEY

4 after having been sworn to tell the truth,
5 testified as follows:

6 DIRECT EXAMINATION

7 MR. HENDERSON:

8 Q And Officer Ashley, for the record, give your full
9 name and spell all of your names as well for Madame
10 Court Reporter.

11 A Larry Raymond Ashley. L-a-r-r-y,
12 R-a-y-m-o-n-d, A-s-h-l-e-y.

13 Q Officer Ashley, thank you for being here. Now,
14 are you the Officer Ashley that Officer Gray was
15 referring to?

16 A Yes, sir.

17 Q So you were here this night?

18 A Yes, sir.

19 Q Again, I want to show what's been marked as
20 Plaintiff's Exhibit Number 1 and Number 2. Do you
21 recognize that apartment complex?

22 A Yes, sir.

23 Q And could you tell the Court what that is, or what
24 apartment complex?

25 A It appears to be Oakland Apartments.

1 Q And I will represent to you that my client was
2 arrested at apartment 401. I don't know if you
3 remember that, but I will represent that to you.

4 A Okay.

5 Q And I will represent to you that these photographs
6 are pictures outside of apartment 401.

7 A Right. Without walking in and seeing the
8 numbers on the doors, I couldn't tell you which it
9 is.

10 Q I will represent --

11 A All of them look the same.

12 Q I will represent to you it's complex 4.

13 A Okay.

14 Q Did you and Officer Gray ride together that
15 night?

16 A We did.

17 Q Okay. Did you -- how did you get the 911 call,
18 did it come over your radio, did it come by phone, or
19 do you recollect?

20 A Dispatch dispatched us. It was a call to us
21 over the radio.

22 Q Did it come over your radio, Officer Gray's radio,
23 or both radios?

24 A If we was in the vehicle, it would come over
25 to one radio in the vehicle.

1 Q Oh, it was a radio vehicle.

2 Okay. Between -- and, again, I'll represent
3 these times to you that the call was dispatched at
4 1:17 in the morning, and it looks like you and
5 Officer Gray and Officer Burns arrived at 1:33 in the
6 morning, which is a sixteen-minute spread.

7 A Okay.

8 Q Did you do anything during those 16 minutes to try
9 to get some more information about this anonymous call
10 that came in?

11 A No, sir. We're dispatched. They tell us
12 it's an anonymous call or they may not. If they
13 dispatch us to a call, we just respond to the
14 caller. Once on scene, we go from there if it
15 needs any further investigation.

16 Q Because I'm looking at what's been marked as
17 Exhibit Number 3, and I'll pass it up to you. This is
18 the CAD detail. The 911 call log. If you look up at
19 the top left-hand number, left hand of the page where
20 it says phone, do you see that?

21 A Yes, sir.

22 Q It's got a number 911, 301-9045. During that
23 16 minutes, did you call that number by chance?

24 A I didn't have that number.

25 Q So did you ask dispatch what number it was that

1 called?

2 A No, sir.

3 Q Okay. So it's fair to say that you did not
4 investigate during that 16 minutes prior to arriving
5 at the apartment complex?

6 A We don't investigate something unless we know
7 there's something to investigate to begin with.

8 Q Yes.

9 A It's not common practice to investigate a
10 call before you get to the call, you know what I
11 mean?

12 Q So all you had was an allegation of something
13 going on in an apartment; is that correct?

14 A Yes, sir.

15 Q And I assume that you all -- you and Officer Gray,
16 you said, rode together.

17 A Yes, sir.

18 Q Was Officer Burns, I assume, in a separate car?

19 A Yes, sir.

20 Q Did you all arrive around the same time?

21 A As far as I can recall, yes, sir. We was
22 together within very close time.

23 Q And did the three of you walk together toward the
24 apartment complex?

25 A Yes, sir.

1 Q And, again, on the walk from your patrol car, up
2 to the door, did you hear any loud music?

3 A No, sir.

4 Q Did you smell any marijuana?

5 A No, sir.

6 Q Did you see any other signs of drug activity?

7 A No, sir.

8 Q Did you see anybody gambling on your walk up to
9 it?

10 A No, sir.

11 Q So, again, is it fair to say that you saw no signs
12 of criminal activity on your walk from your patrol car
13 up to the door 401?

14 A That's correct.

15 Q Okay. Let me ask you, did you appear in front of
16 the grand jury in this case?

17 A No, sir.

18 Q You're absolutely sure about that?

19 A Absolutely.

20 Q Okay. And, again, you heard Officer Gray say he
21 didn't go before the grand jury. You heard that,
22 didn't you?

23 A Yes, sir.

24 Q And, obviously, Officer Burns isn't here, but do
25 you know if she went in front of the jury?

1 A I don't know.

2 MS. GREGORY: Objection, Your Honor,
3 There's no way he could know that.

4 THE COURT: I'm sorry?

5 MS. GREGORY: There's no way he could
6 know who was -- whether she appeared before the
7 grand jury or not. That's a question he should
8 ask her.

9 MR. HENDERSON: I think he answered.

10 THE COURT: He can answer whether he knows or
11 doesn't.

12 MR. HENDERSON: I think his answer was he
13 just has no idea.

14 THE COURT: Okay, that's fine.

15 MR. HENDERSON: I don't have any further
16 questions, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. GREGORY:

19 Q Was the owner sitting outside the residence when
20 you approached, the owner of the apartment?

21 A Yes, ma'am.

22 Q Did you hear Lieutenant Gray explain to her why
23 you guys were there?

24 A I did.

25 Q Did she then consent to you going into the

1 residence?

2 A Yes, she opened the door for us.

3 Q Were you present when Lieutenant Gray communicated
4 with Lieutenant Vandiver that morning at the shift
5 change?

6 A I don't recall. Normally, supervisors speak
7 with each other, and if it was something pertinent
8 for me to pass on to another officer or something,
9 as far as me being present, I can't recall.

10 MS. GREGORY: No further questions,
11 Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. HENDERSON:

14 Q But you're absolutely sure that Officer Vandiver
15 was not on the scene that night?

16 A Yes, sir.

17 Q You're sure about that.

18 A Yes, sir.

19 Q And it looks like -- was it you and Officer Gray
20 that took my client to jail that night in you-all's
21 squad car?

22 A Yes, sir.

23 MR. HENDERSON: I don't have anything
24 further, Your Honor.

25 THE COURT: All right. Thank you very

1 much, sir. You may step down. If there's no
2 objection, I believe you're free to go.

3 MR. HENDERSON: We release him from the
4 subpoena, Your Honor.

5 THE COURT: All right.

6 MR. HENDERSON: Just make sure you leave
7 the exhibits, please.

8 Your Honor, I call Neil Henderson, please.

9 THE COURT: All right. Mr. Henderson,
10 would you please come around to be sworn?

11 THE CLERK: Do you solemnly swear or
12 affirm that the testimony you're about to give in
13 this case will be the truth, the whole truth, and
14 nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 WHEREUPON:

17 PATRICK NEIL HENDERSON,
18 after having been sworn to tell the truth, testified
19 as follows:

20 DIRECT EXAMINATION

21 MR. HENDERSON:

22 Q And, Chief, just to keep the record straight, if
23 you could let the court reporter know your full name
24 and spell each of your names, please.

25 A Patrick Neil Henderson, P-a-t-r-i-c-k,

1 N-e-i-l, H-e-n-d-e-r-s-o-n.

2 Q Now, Chief, at this point in time, back on
3 August the 12th, 2012, you were employed by the
4 Abbeville City Police Department, weren't you?

5 A Yes, sir.

6 Q And you were the chief of police?

7 A Yes, sir.

8 Q Are you aware of this incident?

9 A No, sir.

10 Q You talked to my investigator?

11 A I did.

12 Q Okay. She served you a subpoena?

13 A She did.

14 Q Were you there that night?

15 A No, sir.

16 Q Okay. You're sure about that?

17 A Positive.

18 Q You heard the other officers, and I think Officer
19 Gray and Officer Ashley, at that time, would have
20 worked for you?

21 A Yes.

22 Q You were their superior?

23 A Yes.

24 (PLF. EXH. 11, Indictments, was marked for
25 identification.)

1 BY MR. HENDERSON:

2 Q I want to show you what's been marked as
3 Plaintiff's Exhibit Number 11. I'm going to let you
4 take a look at those documents?

5 A Okay.

6 Q And you would agree with me, these are the
7 indictments?

8 A Yes, sir.

9 Q And the person being indicted in these documents
10 is Alfonzo Alexander.

11 A Yes, sir.

12 Q Do you know Mr. Alexander?

13 A No, sir.

14 Q Never seen him before?

15 A No, sir.

16 Q Okay. And I'm looking here, there's two
17 indictments. The first one is for possession of
18 cocaine base with intent to distribute, and I'll
19 represent to you that's indictment number 13 at 15.

20 A Yes, sir.

21 Q And there's a second indictment for possession of
22 cocaine base, crack cocaine with intent to distribute
23 within proximity, and that indictment number is 13 at
24 14?

25 A Yes, sir.

1 Q On the top left of each one of those documents
2 under witnesses as the person that appeared in front
3 of the grand jury it's got you listed from the
4 Abbeville Police Department.

5 A It does.

6 Q To the best of your recollection, did you appear
7 in front of the grand jury on Mr. Alexander's case?

8 A No.

9 Q Okay. So you never -- was it practice never to
10 appear?

11 A I never did in 22 years.

12 Q You never appeared in front of the grand jury,
13 okay. And I believe you discussed that Miss Lumbley.

14 A I did.

15 Q And you actually gave her the name of somebody
16 that you think may have testified?

17 A I gave her several names.

18 Q Okay. Did you give her the name Chris Wilke?

19 A I did.

20 Q And who was Mr. Wilke at that point in time?
21 Obviously he worked for you.

22 A He was my investigator.

23 Q Okay. Was he the one that normally appeared in
24 front of the grand jury?

25 A He had. Generally the court officer would

1 have done that.

2 Q And who was the court officer at that time?

3 A That's a good question. I can't recall. I
4 remember Lieutenant Vandiver was one for years and
5 years, but I don't know if he was at that time or
6 not.

7 Q And you were out here the night that Mr. Alexander
8 got arrested, were you?

9 A No, sir.

10 Q So you had no firsthand knowledge of the arrest
11 incident?

12 A No.

13 Q And you're telling the court that you didn't
14 appear in front of the grand jury?

15 A I did not.

16 Q And you would agree that your is the only name
17 listed as a witness?

18 A Agreed.

19 Q Okay.

20 MR. HENDERSON: I don't have anything
21 further, Your Honor.

22 THE COURT: Yes, ma'am.

23 CROSS-EXAMINATION

24 BY MS. GREGORY:

25 Q What is the court officer? You said that

1 Lieutenant Vandiver was a court officer?

2 A He was.

3 Q What does a court officer do?

4 A He was a liaison between our department and
5 the solicitor's office. Anything to do with
6 general sessions fell under him. He handled
7 everything.

8 Q Would that include testifying before the grand
9 jury?

10 A It would.

11 Q And how many sworn officers did you have in
12 Abbeville?

13 A At the time I left, it was 20.

14 Q Twenty, all right.

15 MS. GREGORY: No further questions,
16 Your Honor.

17 MR. HENDERSON: No redirect, and the
18 Chief may be released from his subpoena unless he
19 wants to stay.

20 THE COURT: All right. You're free to
21 go, sir. Thank you.

22 MR. HENDERSON: Your Honor, I call
23 Chris Wilkie, please.

24 THE COURT: All right, Mr. Wilkie.

25 THE CLERK: Do you solemnly swear or

1 affirm that the testimony you're about to give in
2 this case be the truth, the whole truth, and
3 nothing but the truth, so help you God?

4 THE WITNESS: Yes, ma'am.

5 WHEREUPON:

6 CHRISTOPHER WILKIE,
7 after having been sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. HENDERSON:

10 Q And Mr. Wilke, just like every other witness,
11 please state your full name to the court reporter and
12 spell each of your names?

13 A I'm Investigator Christopher Wilkie.
14 Christopher, W-i-l-k-i-e.

15 DIRECT EXAMINATION

16 MR. HENDERSON:

17 Q Investigator Wilkie talked to my investigator
18 about this matter?

19 A Yes, sir.

20 Q Have you talked to anybody else about that
21 matter?

22 A I talked to Lieutenant Vandiver.

23 Q When did you talk to him?

24 A I tried to get in touch with him for the
25 Attorney General's Office.

1 Q Okay. Did you talk to him about this case?

2 A I asked him if he recalled presenting the
3 indictment on the case.

4 Q And what was his answer to that?

5 A He couldn't remember.

6 Q Okay. You've heard a little bit about this
7 incident. Were you there the night that Mr. Alexander
8 was arrested?

9 A Yes, sir.

10 Q You're sure about that?

11 A Yes, sir.

12 Q And were you the one that presented this case to
13 the grand jury?

14 A Sir, I couldn't tell you if I was or wasn't.
15 I don't recall. I did present to the grand jury
16 on probably two occasions, but which actual cases
17 I presented, I can't remember.

18 Q But it's clear that you didn't have any firsthand
19 knowledge of this. You weren't there that night?

20 A Right. Correct.

21 MR. HENDERSON: Nothing further from
22 Investigator Wilkie, Your Honor.

23 MS. GREGORY: No questions, Your Honor.

24 THE COURT: Thank you very much, sir.
25 You may step down. No objection to him being

1 excused?

2 MR. HENDERSON: The investigator can be
3 released from his subpoena unless he wants to
4 stay.

5 Your Honor, I call my client. I call
6 Alfonzo Alexander.

7 THE COURT: Mr. Alexander, sir, if you
8 please come around to be sworn.

9 THE CLERK: Do you solemnly swear or
10 affirm that the testimony you're about to give in
11 this case will be the truth, the whole truth, and
12 nothing but the truth, so help you God?

13 THE WITNESS: Yes, ma'am.

14 WHEREUPON:

15 ALFONZO ALEXANDER,
16 after having been sworn to tell the truth, testified
17 as follows:

18 DIRECT EXAMINATION

19 MR. HENDERSON:

20 Q Now, Alfonzo, I know you're soft spoken, but
21 you're going to need to talk into the microphone.
22 First thing I need for you to do is tell Madame Court
23 Reporter your full name and then spell each of your
24 names.

25 A Alfonzo Alexander, A-l-f-o-n-z-o,

1 A-l-e-x-a-n-d-e-r.

2 Q Mr. Alexander, you're here asking to the court
3 grant you PCR relief; is that correct?

4 A Yes, sir.

5 Q And you understand that the only thing that His
6 Honor could do would be to grant you a new trial?

7 A Yes, sir.

8 Q He can't reduce your sentence.

9 A Yes, sir.

10 Q You understand that?

11 A Yes, sir.

12 Q He can't make a violent offense nonviolent?

13 A Yes, sir.

14 Q He can't order you move to different prison?

15 A Yes, sir.

16 Q You understand that all His Honor could do is
17 grant you a new trial?

18 A Yes, sir.

19 Q Again, you're still asking His Honor to grant you
20 a new trial?

21 A Yes, sir.

22 Q Okay. Now, Alfonzo, you were in the apartment
23 that night, correct?

24 A Yes, sir.

25 Q And those issues have already been litigated on

1 appeal, you understand that?

2 A Yes, sir.

3 Q We're not here to litigate what happened inside
4 the apartment?

5 A Yes, sir.

6 Q But let me ask you: From your knowledge of after
7 you walked in the apartment, was there any gambling
8 outside?

9 A No, sir.

10 Q Was anybody doing drugs outside the apartment?

11 A No, sir.

12 Q Was there loud music coming outside the
13 apartment?

14 A No, sir.

15 Q Any other criminal activity going on outside this
16 apartment going into the parking lot?

17 A No.

18 Q Okay. Now, you were arrested that night, of
19 course?

20 A Yes, sir.

21 Q Who transported you to the Abbeville Detention
22 Center?

23 A John Gray and Larry Ashley.

24 Q And how many total officers were there that
25 evening?

1 A Three.

2 Q Okay. And Mr. Ashley?

3 A Yes, sir.

4 Q Mr. Gray?

5 A Yes, sir.

6 Q You've seen both of them testify?

7 A Yes, sir.

8 Q And you've heard the name Angela Burns. Do you
9 know Miss Burns?

10 A Yes, sir, I recall her.

11 Q That there was a female there?

12 A Yes, sir.

13 Q Were they the only three officers there?

14 A Yes, sir.

15 Q Was Officer Vandiver there that night?

16 A No, si.

17 Q Okay.

18 MR. HENDERSON: I don't have --

19 Q Let me ask you this: Do you think your trial
20 counsel was ineffective in failing to raise these
21 issues at trial?

22 A Yes, sir.

23 Q Okay. Do you think that prejudiced your case?

24 A Yes, sir. Absolutely.

25 Q Do you think things may have turned out

1 differently had she raised this particular privacy
2 issue and this particular indictment issue prior to
3 trial?

4 A Yes, sir.

5 MR. HENDERSON: Thank you, Your Honor. I
6 don't have anything further for my client.

7 THE COURT: All right.

8 CROSS-EXAMINATION

9 BY MS. GREGORY:

10 Q Were you present at your trial?

11 A No, ma'am.

12 Q Did you live in the apartment where you were
13 arrested?

14 A No, ma'am.

15 MS. GREGORY: No further questions,
16 Your Honor.

17 THE COURT: All right.

18 MR. HENDERSON: Nothing in redirect,
19 Your Honor.

20 THE COURT: Thank you very much, sir.
21 You may step down.

22 MR. HENDERSON: Your Honor, that's the
23 plaintiff's case.

24 THE COURT: All right. Yes, ma'am.

25 MS. GREGORY: I would like a moment to

1 call Patricia Bolin and get this set up for just a
2 minute.

3 MR. HENDERSON: If we can take a break.

4 THE COURT: Sure. If someone needs to
5 use the restroom or whatever, get something to
6 drink, we'll be at ease.

7 (A break was taken 11:05 a.m. to 11:18 a.m.)

8 MS. GREGORY: The State would call
9 Patricia Bolin. Patricia, are you still there?

10 MS. BOLIN: I'm still here, yes.

11 MS. GREGORY: Everybody can hear her
12 okay?

13 THE CLERK: Do I need to swear her in?

14 THE COURT: Yeah, Miss Bolin, I'm going
15 to have Madame Clerk just place you under oath for
16 purposes of your testimony, okay?

17 MS. GREGORY: Patricia, can you hear
18 that?

19 MS. BOLIN: I heard something that was
20 very muffled. Was that my oath to be sworn in as
21 a witness?

22 MS. GREGORY: Is there, like, a delay,
23 you can't really hear?

24 MS. BOLIN: I can hear you. I heard
25 someone else speaking, but I'm not sure what they

1 were saying.

2 THE COURT: Miss Bolin, can you hear you
3 me now?

4 MS. BOLIN: I can, yes.

5 THE COURT: All right. I'm going to
6 have Madame Clerk just place you under oath for
7 the purpose of your testimony here this morning,
8 okay?

9 MS. BOLIN: Yes.

10 THE COURT: All right. Madame Clerk.

11 THE CLERK: Do you solemnly swear or
12 affirm that the testimony you're about to give in
13 this case be the truth, the whole truth, and
14 nothing but the truth, so help you God?

15 THE WITNESS: I do, yes.

16 WHEREUPON:

17 PATRICIA BOLEN,
18 after having been sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. GREGORY:

21 Q Patricia, how long have you been practicing law?

22 A I'm sorry?

23 Q How long have you been practicing law?

24 A I was licensed in South Carolina in 2006. I
25 practiced November 2006. I practiced in

1 South Carolina from 2006 until July of 2017 when I
2 moved to Virginia. I took a job in administration
3 at the Virginia Public Defender's Office in August
4 of 2019. I became licensed in Virginia in January
5 of this year. I'm still at the Public Defender's
6 and I'm transitioning to a regular public
7 defender, attorney role on June 26th.

8 So I practiced for about 11 and a half years
9 in South Carolina and I have been actively licensed
10 helping out on cases since January of this year in
11 Virginia.

12 Q Has your whole career been in criminal law?

13 A The majority has been in criminal. I spent a
14 few months working with a solo practitioner named
15 Paul Agnew in Abbeville when I first moved to
16 South Carolina. I then moved to the prosecutor's
17 office for about four years. I then did one more
18 year in a small practice in Newberry, and then I
19 moved to the Public Defender's Office. I worked
20 as a public defender from 2012 until I moved in
21 2017.

22 Q Okay.

23 A The vast majority has been criminal.

24 Q Were you appointed in Mr. Alexander's case?

25 A I was, yes, ma'am.

1 Q How many times did you meet with him?

2 A So I pulled my notes from my old office
3 because this was quite a few years ago. I do
4 remember meeting with Mr. Alexander in my office.
5 I met with him for -- the first time I met with
6 him was January 16th of 2013. It looks, from my
7 notes, that we had a meeting scheduled for
8 December 27th of 2012, but due to some
9 miscommunication he went to our Abbeville office
10 and I was in our Greenwood office, so that meeting
11 didn't happen. But I met with him January 16th of
12 2013, March 27th of 2013, May 23rd of 2013. Those
13 were three in-office, face-to-face meetings. And
14 then I had other contact with him by letter, phone
15 calls, and text messages.

16 Q And he was out on bond at the time?

17 A That would have been what?

18 Q He was out on bond at the time?

19 A Yes, ma'am. Yes. By the time we were
20 appointed, he had already bonded out, to my
21 knowledge. He was not in jail during any of the
22 time I represented him.

23 Q Did you review his charges with him?

24 A Yes, ma'am. We went over -- in January, we
25 went over the charges. I got some background

1 information. I always want to get background
2 information about my client about their family and
3 where they work. I note from the January meeting
4 indicates we talked his criminal history, his
5 prior offenses. You know, there's some case law
6 about whether, you know, priors can be used to
7 enhance, and we were trying to flesh that out.

8 We talked about the allegations themselves.
9 I have notes from January 13 in which we discuss the
10 factual allegations being made by the State.

11 Then again in March, March we discussed
12 primarily what he wanted me to do, you know, regarding
13 his case, what resolution he was looking for. We
14 talked about -- at that point, I didn't have the SLED
15 results so there was this dispute about whether the
16 weight was trafficking weight or PWID weight, so we
17 discussed that.

18 And then in May, May 23rd of 2013, this is
19 just a few days before his plea, slash, trial, we
20 discussed the allegations that the State was making.
21 We discussed any potential defenses he had. We
22 discussed fourth amendment issues. We went over
23 basically everything about the case.

24 So all three times we talked about what the
25 allegations were and what he was being charged with

1 and what the penalties were.

2 Q Did you review his indictments?

3 A I did, yes, ma'am.

4 Q Did you see any issues?

5 A No. You know, at the time of trial, the
6 trial was late May of 2013. I did look at the
7 indictments. There were two of them going into
8 trial. One for regular PWID and one for proximity
9 charge. I did not see any facial irregularities
10 on the indictment.

11 The indictment is just the document that
12 gives notice to the client what they're being charged.
13 I read the language, and it comported with the statute
14 that he's being charged with. There is nothing new in
15 terms of the allegations. I checked the dates. The
16 dates were correct, which would have August -- I think
17 August of 12th of 2012. The location was correct. I
18 didn't see anything facially on the indictment that
19 give me any concern.

20 So, yes, I would have reviewed the
21 indictments, but I didn't notice anything that was
22 something that made me think they were facially
23 invalid.

24 Q So they true billed and signed by the foreman?

25 A They were, yes. I think he had been indicted

1 in January of 2013, so about four months prior to
2 when we actually went to trial.

3 Q If you had moved to quash them, do you believe he
4 would have been re-indicted?

5 A So, if we had -- if I had a motion to quash
6 on -- the statute is clear that any motion
7 concerning the indictment has to be made prior to
8 the jury being formed. In fact, I was reading the
9 transcript with Jack. He actually reminded me of
10 that. Because at one point I had a jury form
11 motion, and he said, basically, it better not be
12 about the indictment. That has to be made prior
13 to.

14 So I'm well aware that any motion I would
15 have made would have been prior to the jury being
16 sworn.

17 What that means, and what we would see happen
18 if we did make a motion to quash the indictment, at
19 that time, and I don't know -- I haven't practiced in
20 South Carolina in almost two years. I don't know what
21 the status is now, but at the time, despite the fact
22 that the Langford case had been handed down, the
23 solicitor still controls the trial docket.

24 So, if I made a motion to quash and the Court
25 granted my motion to quash, it's my belief that the

1 solicitor, who I believe was Yates Brown, would have
2 simply pulled the case off of the trial docket,
3 corrected whatever default was in the indictment, and
4 then put Mr. Alexander back on the trial docket.

5 You know, in Abbeville, we had court every
6 30 days, approximately. So, you know, maybe as soon
7 as the next court term 30 days later. It could have
8 been later than that.

9 But had I made a motion to quash, it wouldn't
10 have gotten rid of the case. It simply would have
11 allowed the solicitor to get a correct indictment and
12 the trial would have been later.

13 Q Do you know a Lieutenant Vandiver?

14 A I do, yes. I know Vandiver from my days as a
15 prosecutor, as well as my days as a public
16 defender. And we actually lived two miles away
17 from each other. I ran by his house on my morning
18 run-throughs and would sometimes waive at him. I
19 know him. I haven't kept in touch with him, but I
20 do know him.

21 Q How was he involved in this case?

22 A He was on -- he was the officer who sought
23 out the warrants. And, other than that, I'm not
24 aware of any involvement. I don't believe he
25 testified. He retired sometime in 2013, and I

1 don't remember if he was retired at the time of
2 the trial.

3 Q Okay.

4 A But he was on the warrant.

5 Q Okay. What were the facts of Mr. Alexander's
6 case?

7 A The general facts, so it was in city of
8 Abbeville. Mr. Alexander lived in Greenwood. He
9 was at the -- they call it the Oakland Apartments.
10 It's kind of off of Virginia Drive. It's right at
11 the city limits. And it's one set of apartment
12 buildings, and then there's a fence, and then
13 there's another set of apartment buildings -- I
14 think it's called Hickory Heights. Everyone in
15 Abbeville called it the Village.

16 I'm very familiar with Hickory Heights
17 because we did have a lot of cases from there, and
18 Oakland Apartments was just right next to it with
19 fence separating it.

20 And so the allegations of the State were that
21 they had -- at 1:00 or 1:30 in the morning, they had
22 gotten a call from an anonymous person saying that
23 there was some kind of gambling and/or drug use,
24 and/or drug selling going on at one of the Oakland
25 apartments. Law enforcement responded. This is very

1 close to town, so within -- you know, it's all very
2 close.

3 Law enforcement responded. The owner -- or
4 I'm sorry. The renter of the apartment was a woman
5 named Ella. Ella -- she as an older woman. If memory
6 serves correctly, she was sitting by the apartment in
7 some plastic chairs, or whatever, with maybe another
8 person. Law enforcement told her about the phone call
9 and asked her if they could like in her apartment, and
10 she got up and opened the door for them.

11 It was a pretty small apartment. When you
12 open the door, you're right in like a living space.
13 And if memory serves correctly, the allegation was
14 that there was a number of people sitting around like
15 a kitchen table with cards in their hand. There was a
16 lot of marijuana smoke.

17 There was some other people also in the
18 apartment, and Mr. Alexander was on a sofa kind of
19 near the door, but also very close to the table.

20 There was one bag of marijuana under the
21 kitchen table and another bag of marijuana, like, at
22 Mr. Alexander's feet.

23 At that time, law enforcement, I believe,
24 they frisk-searched everyone because of the heavy
25 amount of marijuana smoke. And when they searched

1 Mr. Alexander, they found in his pocket some plastic
2 Baggies, the really thin kind. Some what they
3 believed to be crack cocaine and a digital scale. I
4 believe they arrested him on scene at that point, and
5 they arrested one other person for trespass. But no
6 one else was arrested for marijuana or the gambling.

7 Q Did you discuss Mr. Alexander's version of the
8 facts?

9 A I did. Yes, ma'am. We talked about his
10 version of the facts for the first time on
11 January 16th of 2013. We discussed it again a
12 little bit in March, March 27th, and then we
13 discussed it again quite excessively on May 23rd,
14 so three times. Well, three times in person we
15 discussed his version, and then we did have some
16 phone calls where he discussed aspects of the
17 case, yes.

18 Q What was his version of the facts?

19 A Again, I would just like to put on the record
20 that obviously this is going to attorney/client
21 privilege, that I've spoken with that victim.
22 They said that the rules allowed for that because
23 of the nature of the allegation.

24 But understanding that confidentiality is
25 waived, back in January, he told me about Ella Brown,

1 so he must have known her last name. He said that she
2 was the one that answered the door. She gave them
3 consent to go inside. He said when the cops came in,
4 four or five people were playing poker. I apparently
5 had asked him about the premises being searched and he
6 said he was searched first and then cuffed. He said
7 the cops smelled marijuana when they came in. There
8 were no arrests for gambling. Gerald Collins Gray was
9 arrested for trespass.

10 Then, in May, we over -- in May we talked
11 about fourth amendment issues and he told me it was
12 not his house, and he did not think he had a right to
13 privacy. He told me Ella Brown gave consent.

14 We, again, just talked about how they were
15 sent there to investigate gambling, but no one was
16 arrested for gambling.

17 We discussed going to trial versus pleading.

18 And then in March -- I'm sorry. My notes are
19 not in order, so that's why I'm, sort of, skipping
20 around.

21 In March, we talked about the weight of the
22 drugs. We talked again about some other -- just some
23 other concerns he had. And I think it was in May we
24 discussed, you know, there were a lot of other people
25 in the room. I remember asking him, you know, would

1 any of these people come to court and, you know, be
2 able to testify in your favor and he told me no.

3 Q So he did not provide any leads or witnesses for
4 the case?

5 A No. I mean, I physically asked, like -- I
6 have the names of a number of people because I
7 specifically asked, you know, are any of these
8 people going to come and testify favorably for
9 you, and I remember him kind of hanging his head
10 and he said no.

11 Just to be clear, in all of my conversations
12 with Mr. Alexander starting back in March, he would
13 only tell me that he was interested in a plea. He was
14 never interested in a trial. Which, you know, I feel
15 prepared for a trial, but we were sort of working on
16 this as a, he wanted me to focus my interests on
17 getting him the very best deal possible and
18 negotiating with the solicitor. He was not interested
19 in a trial.

20 Q Did you get a plea offer from the State?

21 A I did. So Yates Brown was the solicitor with
22 whom I negotiated. And we had a number of
23 negotiations back and forth.

24 Mr. Alexander had wanted me to get him
25 somewhere in like the 8 to 10 range, which would have

1 required a reduction in charge.

2 When I first talked to Yates back in
3 February, February 21st of 2013. And that's when I
4 first brought up an offer. At that point, the weight
5 was not back yet. Law enforcement had weighed it and
6 it was like 11-something, but we don't know the SLED
7 weight. So we, kind of, put investigations on hold
8 because it was going to depend on whether it was it
9 was trafficking for the PWID.

10 So then we got the weight back. Let's see.
11 There was some discussion of him working for law
12 enforcement, which law enforcement was okay with, but
13 Yates was not, and that would obviously affect the
14 negotiations. It made the negotiations go on a little
15 longer. But the prosecutor was not interested in any
16 work.

17 So we then talked about negotiations. I
18 talked to Yates in April, April 16th. April 25th is
19 when I got a firm offer, or that's when I got a firm
20 offer something of 10 to 12 years. I asked for a
21 range of 10 to 12 years. Yates said no, and said that
22 he could basically give me a range of 10 to 15
23 instead.

24 Mr. Brown and I had basically had
25 negotiations back and forth between February 21st and

1 the day of trial, which would have been late May. I
2 have some notes that Yates rejected my offer.
3 Apparently, at one point, I asked him for a cap of 12
4 years, and I also asked him to reduce it to a PWID
5 second and allow my client to plea straight up and he
6 rejected both of those offers. Even Mr. Brown
7 rejected both of those offers.

8 Q So what plea offer did you end up with?

9 A The final plea offer I got was sort of an
10 option. He could either take 12 years, or he
11 could a 10 to 15 range. And he -- you know,
12 Mr. Alexander told me he wanted the 12 years.

13 Q Okay.

14 A There was also an understanding that I would
15 conference the judge with Mr. Brown to see if the
16 judge would come in lower than 12. I did
17 conference the judge, but not until the morning
18 that trial started, and that conference was not
19 favorable. He was going to give lower than 12.

20 Q So knowing that it was going to be about 12 years,
21 did Mr. Alexander ever indicate he wanted to go to
22 trial?

23 A No. Actually the opposite. So when I meet
24 with clients, as any defense attorney does, we
25 always go constitutional rights and I like to go

1 over them pretty much every time that I meet with
2 someone so that they understand what their rights
3 are.

4 And -- let's see. It looks like in March,
5 when we met in March, he was discussing his
6 constitutional rights with me, and he told me that he
7 didn't want a trial. He wanted to plea. He said I
8 didn't need to keep go over his rights with him. I
9 said, well, it's important. So I finish explaining
10 what the rights were.

11 But in the three times I met with him and
12 then we communicated by phone and text messaged a few
13 times, he never indicated he wanted a trial. He
14 always wanted a plea.

15 On May 23rd of 2013, which would have been
16 the last time I met with him prior to sentencing, I --
17 we were coming up on a weekend and I said, look, if
18 this is a trial, that totally fine. I'll be working
19 on it over the long weekend, and that's absolutely
20 fine. I work on trials all the time on the weekend.
21 He told me, no, there's nothing for you to do to work
22 on for trial. This is a plea. He had never indicated
23 to me that he wanted a trial.

24 Q Was he aware of his court date?

25 A I believe he was, yes. I had send him a

1 letter on, I think, April 29th of 2013. I sent
2 him a letter with a trial notice telling him it's
3 scheduled for trial the week of May -- it would
4 have been May 27th. And I also put in the letter
5 that his offer was the 12 years. And then we met
6 on the 23rd, we discussed that his was on the
7 first day of the trial docket and it would
8 probably be starting on Tuesday because Monday was
9 a holiday. So if he was going to plea, he would
10 need to be prepared to come in on Tuesday morning
11 at 9:00 and plea. I believe I even told him, you
12 know, have a weekend. It's your last weekend out,
13 or could be your last weekend out before you
14 complete the 12 years.

15 I informed in writing and verbally that he
16 had court that week, and it was on the trial docket.

17 Q All right. How did you end up going to trial?

18 A So, when we got to court on that Tuesday, he
19 was not there, which was honestly a surprise to me
20 because he had been extremely diligent about
21 coming to his meetings. At the public defender,
22 I'm used to people not showing up when they were
23 supposed to, and he was never like that. He came
24 to everything.

25 So I didn't worry about it too much at nine

1 o'clock, because, you know, it's nine o'clock. And
2 then as the morning got later, I started to become
3 concerned, especially because we had a jury pool
4 waiting.

5 So, at that time, let's see, I think I had --
6 we had an intern -- we had PWID intern and we had a
7 law clerk intern. I was in court, so I had one of
8 them call him, it looks like, '9:41 in the morning and
9 the number was disconnected.

10 At that point, we started, sort of, an all
11 hands on deck for my office of trying to find
12 Mr. Alexander because I was concerned that something
13 had happened to him. Maybe he had been in a car
14 accident or something like that. You want me to go
15 through the steps we took to find him that day?

16 Q Not at this time. Did you ask for a continuance
17 based on his absence?

18 A Yes, I did. I asked Yates. I had asked
19 Yates unofficially, hey, just give me some time.
20 It was first on the trial docket, so that was --so
21 Yates could redo. I then asked the Judge for a
22 continuance and for a bench warrant. My
23 continuance motion was denied. However, this was
24 a Tuesday and the judge did grant me the remainder
25 of the day to try to find Mr. Alexander. The

1 trial didn't start that very first day.

2 Q Did he also grant you your request for a bench
3 warrant? Yes? Can you hear me?

4 A I'm sorry. I missed you somehow.

5 Q That's fine. Did he grant your request for a
6 bench warrant?

7 A I believe he did, but he also simultaneously
8 allowed the trial to go forward. So, basically, a
9 bench warrant so that law enforcement could be
10 looking for him but the trial was starting also.

11 Q Did you attempt -- go ahead.

12 A So, yes, I had asked that the bench warrant
13 be granted, but he also granted the State's
14 ability to go forward with the trial.

15 Q Did you attempt to contact him during the trial as
16 it was going on?

17 A Some of my notes, I believe -- you know, we
18 sent spent a long time trying to contact him,
19 going to various apartments in Abbeville. Calling
20 all the numbers we had. His number no longer
21 worked.

22 I don't have notes that I was trying to
23 contact him during the trial itself. And, most
24 likely, I wasn't because I would have been in trial.

25 The last that I made attempts to contact him

1 through his family was the evening of that Tuesday,
2 probably eight o'clock at night. That was his mom and
3 his sister that I spoke with.

4 Trial started on Wednesday and finished on
5 Thursday. And I did make further attempts to find him
6 after the trial was over and I was not successful.

7 Q Did you file a suppression motion during the trial
8 or prior to trial?

9 A Not prior to, but I make -- you know,
10 South Carolina allows for oral motions for
11 suppression, so I did make a fourth amendment
12 suppression motion prior to our trial, yes.

13 Q What was the basis of that motion?

14 A It was a two-fold motion. I was -- the whole
15 reason was that law enforcement went in. It was
16 based on a phone call that was anonymous, and then
17 they searched him. So I made an objection under
18 fourth amendment both to the response to the phone
19 call and to him patting him down and finding the
20 drugs.

21 The nature of the first objection was that
22 the phone call did not have enough corroboration for
23 reasonable suspicion. And the basis for the second --
24 based on patting him down, was, again, they did not --
25 I want to make sure I have it right. I believe I made

1 a motion that they didn't reasonable suspicion to pat
2 him down. Later, there was a dispute about whether it
3 was plain view or not. Basically when with they Terry
4 frisked him, which is for weapons, they didn't --
5 there was no testimony that anything else could have
6 been a weapon. So my argument was that that did not
7 allow them to then go into pockets because it couldn't
8 have been a weapon.

9 Q Do you recall what the Court's decision was on
10 your motion?

11 A The judge denied my fourth amendment motion
12 on both grounds. Yeah, and I did on both.

13 Q Okay. The applicant has alleged that you failed
14 to argue the suppression motion based on privacy
15 provisions in the South Carolina constitution.

16 Are you familiar with that provision on the
17 South Carolina constitution?

18 A I am, yes.

19 Q Why didn't you argue your motion under that
20 provision?

21 A Well, the South Carolina constitution does
22 have a heightened privacy provision that applies
23 to people in their own home which does give
24 heightened protection compared to the United
25 States constitution. This was not his own home.

1 I had no evidence that it was. He was in
2 nonbelief, and he told me it was not his house.
3 So I didn't feel that I had the grounds to raise
4 that particular provision because it was not his
5 house.

6 Q Would your argument have changed at all had you
7 included the South Carolina constitution during your
8 suppression motion?

9 A Right. I didn't raise it because it -- the
10 South Carolina constitution, the heightened
11 provision only applies if it's your house, and
12 this was not his house.

13 Q Did you ever discuss the privacy issue with
14 Mr. Alexander?

15 A Right. I didn't feel that I had any merit in
16 raising that particular privacy issue because it
17 wasn't his house and he had told me it wasn't his
18 house.

19 Q Okay.

20 A I did feel like I had grounds to raise the
21 fourth amendment, the two issues that I did
22 raise.

23 Q Are you familiar with the appellate records in
24 this case?

25 A I'm sorry. Can you repeat that?

1 Q Are you familiar with the appellate records in
2 this case?

3 A I am. Yes, ma'am.

4 Q Was the denial of your suppression motion
5 appealed?

6 A It was, yes. That was one of, I believe, two
7 things that were appealed, and the trial court's
8 ruling was affirmed by the appellate court.

9 Q Did you move for a directed verdict on both of the
10 charges for applicant?

11 A I did. Yes, ma'am. Yes. I moved for
12 directed verdict on both charges, and a directed
13 verdict was granted with respect to the proximity
14 charge because the testimony in trial showed that
15 the playground at the Oakland Apartments was not a
16 public playground. It was a private playground.
17 So the charge was dismissed, but the PWID charge
18 went to the jury.

19 Q At the close of the trial, did Judge Addy seal the
20 sentence?

21 A He did. Yes, ma'am.

22 Q And, at that time that he was sealing the
23 sentence, did he say anything to you about the
24 locating Mr. Alexander?

25 A He did. We put mitigation on the record for

1 sentencing. And, at the end of that, so when I,
2 you know, the solicitor had a chance to talk and I
3 had a chance to talk, at the end of that, the
4 judge told me, basically, we have 24 hours more of
5 court this week, and if you can find him and he
6 comes to court by tomorrow morning, then basically
7 I would have the ability to argue for a lesser
8 sentence. Judge Addy made it clear that, you
9 know, he was not going to get the 12, even if he
10 showed up to court, but that I would, at least,
11 have the opportunity to asked for less.

12 And of course, with the appeal sentences, I
13 didn't know what he was getting. But, basically, I
14 have 24 hours to try to find him to try to get him
15 less time.

16 Q Did you attempt to contact Mr. Alexander during
17 that time?

18 A I did make attempts, yes, ma'am. So, after
19 court that day, after court -- and, of course, I
20 had, you know, other court cases to do, so I
21 couldn't go until after court. But I went to the
22 apartment. Let me look. Coleman Street
23 Apartments, so I went there to look for him. I
24 think it was his girlfriend, Kendra, I tried to
25 reach her. I left a note under the door. I spoke

1 with another tenant in the apartment building,
2 and, by chance, she happened to know my client,
3 and asked her if she happened to see him please
4 pass on the this message. I also called him at
5 one phone number, and at that number I spoke with
6 his sister, and I explained, hey, you know, he
7 needs to come to court. I have another number for
8 him. I texted him twice at that number to tell
9 him to please be in court by Friday morning.

10 I did not get any response to those text
11 messages, and although my notes say I spoke with his
12 sister, I never actually spoke with him. And I
13 didn't -- I didn't get any response to my efforts.

14 Q Okay.

15 MS. GREGORY: At this time, I don't have
16 any further questions. I'm going to pass my phone
17 to Carson for his examination.

18 THE WITNESS: Okay.

19 CROSS-EXAMINATION

20 BY MR. HENDERSON:

21 Q Hey, Patricia, how are you?

22 A Good Carson, how are you?

23 Q Good. Good to hear your voice.

24 Did I hear you correctly that your testimony
25 was that you never discussed the South Carolina

1 privacy provision with my client?

2 A No. South Carolina constitutional provision?

3 Q Correct. The privacy provision. Kind of the
4 State's version of the fourth amendment.

5 A Right. So my notes indicate, of course -- I
6 don't write down every single thing because it's
7 very difficult when you're having a conversation
8 with a person to write it down verbatim.

9 My notes indicate, no fourth -- we went over
10 fourth amendment issues, and then I have a note that
11 says, he says, no right to privacy, not his house.
12 Because of the way that's phrased, I think we may well
13 have specifically discussed the South Carolina
14 provision because that's where that -- you know, you
15 have that heightened protection. If it's not your
16 house, you don't. However, I do not specifically have
17 in my notes, South Carolina provision. He said, no
18 right to privacy, not his house.

19 Q And you would agree that you didn't raise the
20 South Carolina privacy provision in your motion to
21 suppress?

22 A Correct.

23 Q So Judge Addy never ruled on that issue?

24 A I don't believe he did, because I didn't
25 raise it. And, again, I didn't raise it because

1 it was not his house, and I didn't have any
2 evidence that it was his house.

3 Q Right. So the Court of Appeals dealt with the
4 fourth amendment ruling, correct?

5 A I believe so, yes. I skimmed that opinion
6 over the week, and I believe it was just on the
7 fourth amendment.

8 Q Now, you've reviewed the trial transcript, haven't
9 you?

10 A I have the transcript, yes.

11 Q And you agree, you never raised anything to Judge
12 Addy about the privacy provision?

13 A I know we argued it. It's around pages 90 --

14 Q I'm talking about South Carolina privacy
15 provision, not the right to privacy under the fourth
16 amendment. I'm talking about right to privacy --

17 A Right. I don't -- I don't -- I did not bring
18 it up during the trial, that's correct.

19 Q Okay. Let me ask you: Have you seen the
20 indictments? Did Madame Attorney General send you the
21 indictments?

22 A She did not. I got this from my old
23 office.

24 Q Okay. Have you got the indictments in front of
25 you?

1 A I have them right here. Let me just grab
2 them. Hold on just a second. I got a lot of
3 paper in my office right now. One second, if you
4 will.

5 Q Take your time.

6 A I'm sorry. I got a lot. Here they are. I
7 got them right now.

8 Q And you would agree with me that the only witness
9 listed on both of those indictments is Neil Henderson
10 with the Abbeville Police Department?

11 A That is correct. He was Chief of Police in
12 January 2013. I believe he had resigned by the
13 time of trial, but I don't think he resigned until
14 May or April of 2013. I don't know that exact
15 date. Yes, he is the only one listed. It says
16 Neil Henderson and then under that it says
17 Abbeville Police Department.

18 Q Right. He was the Chief Of police, do you
19 recollect?

20 A Yeah. Yes, he was the Chief of Police. At
21 the time of the indictment, he was Chief of
22 Police. I believe he was no longer there at the
23 time of trial, he was the chief at the time of
24 indictment.

25 Q Did you ever call up Chief Henderson to discuss

1 his testimony before the grand jury?

2 A I did not.

3 Q Okay. Did you ever try to as ascertain at all who
4 testified about this case in front of the grand
5 jury?

6 A No.

7 MR. HENDERSON: If I may have one moment,
8 Your Honor?

9 THE COURT: Yes, sir.

10 MR. HENDERSON: Your Honor, I don't have
11 any further questions for Miss Bolin.

12 MS. GREGORY: Just briefly.

13 REDIRECT EXAMINATION

14 BY MS. GREGORY:

15 Q Miss Bolin, why didn't you look into the
16 indictments?

17 A That's a very good question. The indictment
18 is a notice. It serves to tell the defendant what
19 they're charged with. And on the face of the
20 indictment, the part with the actual allegation,
21 the fact sheets were correct, the dates, the
22 times, all of that was correct.

23 Honestly, it wasn't really on my radar that
24 Tuesday morning about who had testified. But further,
25 at least the time, the grand jury proceedings were

1 secret, so I would not have been -- that information
2 about who testified would not have been available to
3 me. They're secret proceedings.

4 You know, I, at the time, trying to figure
5 out who testified in front of the grand jury is just
6 not something they were doing and our practice at the
7 Public Defender's Office. So it hadn't occurred to
8 mow at the time.

9 I also -- obviously, the way the indictment
10 is written with his name, and then under that
11 Abbeville Police Department, to me, it looks like
12 Abbeville Police Department could have been a witness,
13 that anyone from there could have been a witness.

14 I mean, short answer, I didn't see anything
15 wrong facially with the substance of the indictment,
16 and I would have had no knowledge of who testified.
17 And I'm not sure that I would have been able to get
18 that information because the proceedings were secret.

19 Also, it wasn't a situation where he was
20 indicted and the name of the indictment was also
21 wrong. I mean, I knew Chief Henderson was the chief
22 at the time of the indictment, so it didn't seem off
23 or strange to me.

24 MS. GREGORY: Okay. No further
25 questions.

1 have learned the same information, wouldn't you?

2 A Yes, I probably would have learned who did
3 testify. And, I guess, where you're going is, you
4 know, would that have given me grounds to quash,
5 and I would come back to the answer I gave before,
6 which is a motion to quash would have had to have
7 made prior to the jury being sworn and it would
8 maybe put this case off 30 days.

9 I also wonder, given how small Abbeville is,
10 if I made this motion, Mr. Brown probably could have
11 had the testifying witness at the motion to quash and
12 it could have been seen as maybe a scribner's error.
13 I don't know. That's all speculation.

14 But the motion to quash would have been made
15 prior to the jury being sworn, so the State could have
16 recalled the case a month later.

17 Q I agree with you. That's the proper analysis
18 under State vs. Gentry. I full-well agree with you.

19 But knowing that you were having difficulty
20 finding Mr. Alexander, perhaps if you moved to have
21 this quashed, that would have probably given you at
22 least another 30 days to have found him. Would you
23 agree with that?

24 A I agree that certainly it would have given me
25 time to find him. What -- I guess, what I still

1 don't agree is that I would have been able to find
2 him, because we went through pretty extensive
3 efforts. I have basically four people from my
4 office driving roads, going to the apartment
5 buildings, trying to find him. I was knocking on
6 doors.

7 You know, at one point, we drove by the
8 apartments on Kaggle Ave., and there was these guys
9 just hanging out, and I stopped and asked them if they
10 saw Alfonzo. We were making strong efforts to find
11 him. His number was disconnected. I talked to his
12 mother and sister. And at a certain point, it became
13 clear that they knew where he was. So I developed the
14 suspicion that he did not want to be found.

15 So, yes, it would have given me more time.
16 Whether he would have shown up or not, would be
17 complete speculation.

18 Q No, I understand.

19 A He was in September in Florida.

20 Q I understand we never know what's going to happen
21 tomorrow. I understand that. But you agree, it would
22 have given you more time.

23 A Sure. It would have given me, maybe, 30
24 days.

25 Q Okay.

1 MR. HENDERSON: If I may have one minute,
2 Your Honor.

3 THE COURT: Yes, sir.

4 MR. HENDERSON: Nothing further from this
5 witness, Your Honor.

6 THE COURT: All right.

7 MS. GREGORY: Patricia could you spell
8 your full name for the record.

9 THE WITNESS: P-a-t-r-i-c-i-a. And my
10 last name is Bolen, B-o-l-e-n.

11 MS. GREGORY: Thank you, Patricia. I'm
12 going to let you go.

13 THE WITNESS: Am I okay to hang up?

14 MS. GREGORY: Yes. You can hang up.

15 THE WITNESS: Thank you.

16 MS. GREGORY: Thanks.

17 At this time, the State would call
18 CAM Morrow.

19 THE COURT: Sir, if you please step
20 around to be sworn.

21 THE CLERK: Do you solemnly swear or
22 affirm the testimony you're about to give in this
23 case will be the truth, the whole truth, and
24 nothing but the truth, so help you God?

25 THE WITNESS: Yes, I do.

1 WHEREUPON:

2 CHRISTOPHER MORROW,

3 after having been sworn to tell the truth, testified

4 as follows:

5 DIRECT EXAMINATION

6 BY MS. GREGORY:

7 Q Good morning, Mr. Morrow.

8 A Good morning.

9 Q Could you spell your name for the record?

10 A Yes. My full name is Christopher Andrew
11 Morrow. C-h-r-i-s-t-o-p-h-e-r. And then Andrew,
12 A-n-d-r-e-w. Morrow, M-o-r-r-o-w. I go by CAM.
13 Everybody calls me that. It's my initials, C-A-M.

14 Q Where do you currently work?

15 A I currently work at the 8th Circuit
16 Solicitor's Office.

17 Q Were you involved in Mr. Alexander's case?

18 A I was.

19 Q How were you involved.

20 A Yates Brown and I tried this case together.
21 I was new to the office at the time and was
22 working primarily in Greenwood but would go over
23 to Abbeville to get more trial experience.

24 Q Can you describe the State's case against
25 Mr. Alexander?

1 A Sure. We had -- at that time, we had -- I'll
2 just go -- we had an incident report that
3 indicated an anonymous caller called 911 at around
4 1:15 or around 1:30 in the morning. Officers with
5 the Abbeville Police Department responded to that
6 to Apartment 401, Oakland Apartments.

7 They, once there, received consent to go in
8 the apartment by Miss Ella Brown, and were the door of
9 the apartment was open by Miss Ella Brown. As soon as
10 they opened the door they detected a scent and odor of
11 marijuana. They also observed several people inside
12 gambling or playing cards. And they observed a bag of
13 marijuana at the feet of Mr. Alexander.

14 And, at that time, they then decided to pat
15 him down for officer's safety. They did so. And, as
16 they were patting him down, they felt something that
17 they believed to be a Baggie, but didn't know exactly
18 what it was on Mr. Alexander and asked him if they
19 could remove it from his pockets. They did. They
20 also, at that time, removed a scale from his other
21 pocket and some other evidence.

22 So we had -- you know, got the crack cocaine
23 evidence that was found in his pocket, as well as 16
24 Baggies and scales.

25 And then -- so we had -- so we had to

1 subpoena to testify at trial Lieutenant John Grave
2 with the Abbeville Police Department, Ella Brown, who
3 was the tenant and resident at 401 Oakland apartment,
4 Willy C. Smith, III who was with SLED, which I believe
5 was the actual analysis, Chris Wilkie with the
6 Abbeville Police Department who testified about chain
7 of custody. Courtney Smith with SLED, who was a chain
8 witness, Pat Crooks with SLED, who was a chain
9 witness, and I believe Lori Walters also testified who
10 was the property manager at the Oakland Apartments
11 about who lived at the apartment.

12 Q Do you recall seeing the indictments that were
13 issued in this case?

14 A I did.

15 Q Do you recall any issues with the indictments?

16 A I do not recall any issues with the
17 indictments.

18 Q Do you recall if they were true billed and signed
19 by the foreman?

20 A They were true billed and signed by the
21 foreman.

22 Q Did it correctly state his charge and provide
23 sufficient notice to Mr. Alexander?

24 A It did.

25 Q If Miss Bolen, trial counsel for Mr. Alexander,

1 had challenged the indictments and successfully
2 quashed the indictments, what would have happened at
3 that time?

4 A We would have sought another indictment
5 against Mr. Alexander and sought to prosecute the
6 case.

7 Q Do you see any reason while you would not have
8 been able to obtain another indictment in this case?

9 A No.

10 Q Would Mr. Alexander still have proceeded either to
11 trial or enter a plea in this case?

12 A Yeah, that would have been the outcome.
13 Either he would have eventually pled guilty or we
14 would have had a trial.

15 Q Is there reason to believe the outcome of the
16 trial would have been different based on the witness
17 provided on the front of that indictment?

18 A No.

19 MS. GREGORY: No further questions, Your
20 Honor.

21 CROSS-EXAMINATION

22 BY MR. HENDERSON:

23 Q Solicitor, how are you?

24 A Good. How are you?

25 Q Now, you understand the law in this state is very

1 clear that somebody with firsthand information has to
2 go before the grand jury to testify about the
3 allegations and be sworn. You understand that?

4 A Yes.

5 Q But you, kind of, acting like you're kind of
6 hesitant. I'm representing to you that's what the law
7 is. Maybe you disagree with me.

8 A I do not disagree with it.

9 Q Okay. So did you happen -- well, you're familiar
10 with the indictments. When you looked and saw
11 Chief Neil Henderson's name, and say, I hang around
12 the courthouse all the time, I ain't never seen him up
13 here testifying? I mean, did that light bulb ever
14 flash in your mind?

15 A I honestly never looked at the indictment.
16 If he signed the indictment or testified before a
17 grand jury. The grand jury proceedings are
18 secret, so I wouldn't never even thought about
19 that.

20 Q But you understand the indictment is not secret?

21 A Correct.

22 Q That's a very public indictment.

23 A Yes.

24 Q Your office produced this document, I would
25 suppose?

1 A Yes.

2 Q And you testified to Madame Attorney General that
3 you're familiar with this document?

4 A I've seen the document, yes.

5 Q Okay. You it didn't strike you as kind of funny
6 that the boss is out here testifying before the grand
7 jury?

8 A I never even thought about that.

9 Q Okay. But you understand that would be improper
10 if, in fact, Chief Henderson did not have any
11 firsthand knowledge about this case, you understand
12 that?

13 A I understand it, yes.

14 MR. HENDERSON: May I have one minute,
15 Your Honor?

16 THE COURT: Yes, sir.

17 MR. HENDERSON: I don't have anything
18 further, Your Honor.

19 MS. GREGORY: No redirect, Your Honor.

20 THE COURT: Thank you very much, sir.
21 You may step down.

22 MS. GREGORY: At this time, we would call
23 retired lieutenant Raymond Vandiver.

24 THE COURT: Lieutenant Vandiver.

25 THE CLERK: Do you solemnly swear or

1 affirm that the testimony you're about to give in
2 this case be the truth, the whole truth, and
3 nothing but the truth, so help you God?

4 THE WITNESS: I do.

5 THE COURT: Okay.

6 WHEREUPON:

7 RAYMOND VANDIVER,
8 after having been sworn to tell the truth, testified
9 as follows:

10 DIRECT EXAMINATION

11 BY MS. GREGORY:

12 Q Good morning, Mr. Vandiver. Should I call
13 Mr. Vandiver, or Lieutenant Vandiver? What would you
14 prefer?

15 A At the time of this incident, I was
16 Lieutenant Vandiver.

17 Q Would you spell your name for the court reporter,
18 please?

19 A It's V-a-n-d-i-e-r. It's Vandiver, but it's
20 Vandiver.

21 Q And your first name?

22 A Raymond, R-a-y-m-o-n-d.

23 Q What is your current occupation?

24 A What is what?

25 Q Your current occupation.

1 A Retired.

2 Q What was your occupation? Were you employed with
3 Abbeville in January 2013?

4 A I was lieutenant with the Abbeville Police
5 Department.

6 Q What was your role?

7 A I was the shift supervisor, and I was also
8 court officer for the municipal court and general
9 session court.

10 Q What is a court officer?

11 A You get all the cases together, get a folder,
12 get all the information to the officers, get the
13 statements filed, make a folder up. If it's bound
14 for trial, the office bound it over to general
15 sessions for a preliminary hearing. It goes to
16 general sessions if they don't ask for a
17 preliminary hearing. If it's a general session
18 case, it automatically goes to the solicitor's
19 office.

20 Q Was part of that also testifying before the grand
21 jury?

22 A Right.

23 Q How were you informed to show up for a grand jury
24 term?

25 A The solicitor's office sends a list down of

1 what indictments they have, and that way I know
2 which cases to pull out to take to the grand jury.

3 Q And what did you do to prepare for testifying
4 before the grand jury?

5 A I go back through. Review any statements,
6 the incident reports, anything that's not -- some
7 of if, I catch something that's in there that's
8 not ready to go, I let the deputy solicitor know,
9 I'm not going to present this case because this is
10 missing. I know it's there, but I don't have it
11 in the folder.

12 Q The information that you presented during your
13 grand jury testimony, was it based on personal
14 knowledge or based on what an officer with personal
15 knowledge told you?

16 A It's personal knowledge from the officer
17 himself, and a lot of officers will write
18 statements and I'll go through the statement, and
19 I'll ask him if he left anything out of the
20 statement. I make them read their own statement,
21 because a lot of times something will jog their
22 memory and they need to do another statement.

23 Q Did you testify before the grand jury in cases
24 that you were directly involved in?

25 A I have, yes. Directly involved, and some

1 that I knew about the case before. Sometimes you
2 make the case and it's like three months before it
3 will come up before the grand jury. So you got
4 time to go back and review everything and talk to
5 the officers. So you're very familiar with the
6 content. The grand jury will ask me all kinds of
7 questions.

8 Q What was your involvement in Alfonso Alexander's
9 case?

10 A Presented the case to the grand jury.

11 Q Did you do anything else?

12 A I might have been present for the preliminary
13 hearing, but I know I was there for the bond
14 hearing because we did that hearing same day as
15 the warrant.

16 Q Did you also obtain the warrant in this case?

17 A I did what?

18 Q Did you obtain the arrest warrants in this case?

19 A I did.

20 Q And what was that based on? What did you base the
21 arrest warrant on?

22 A It was based on information from Officer Gray
23 and from Larry Ashley. And then I asked them,
24 where, if they had dropped, the money that ceased
25 and the drugs that was ceased in our -- we call it

1 the drop box. It's actually a safe. You drop it
2 and it won't come out.

3 Q Did you possess the case file for Mr. Alexander's
4 case when you testified before the grand jury?

5 A I did.

6 Q Okay. And you talked to Lieutenant Gray prior to
7 testifying before the grand jury?

8 A Uh-huh.

9 Q Did you also talk to Officer Ashley?

10 A I might not talked to Ashley because I knew
11 John Gray was the primary officer.

12 Q Do you recall if you were sworn in prior to
13 testifying before the grand jury?

14 A I was. Before they give you the
15 indictment -- they give you like, say, 15
16 indictments. They give the 15 but before you get
17 it. The Solicitor's Officer will swear you in
18 prior to going in. And every time I went in the
19 grand jury, you were sworn in, so, I mean...

20 Q So you were sworn in prior to testifying?

21 A Correct.

22 MS. GREGORY: No further questions at
23 this time, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. HENDERSON:

1 Q Hey, Lieutenant. How you doing?

2 A All right.

3 Q Long time, no see.

4 A I know.

5 Q I'm glad you're enjoying retirement.

6 So I think it's pretty clear, you weren't
7 there at all night Alfonso was arrested.

8 A No, sir.

9 Q So is it fair to say you had no firsthand
10 knowledge of what happened that night?

11 A No firsthand by being there, no.

12 Q You understand that's the only way you could have
13 firsthand knowledge?

14 A Right.

15 Q Everything else would be secondhand, third-hand
16 fourth-hand, you understand that.

17 A Correct.

18 Q So it's fair to say you had no firsthand
19 knowledge.

20 A No, no.

21 Q Now, are you absolutely sure that you were the one
22 that presented this case to the grand jury?

23 A Yes, sir.

24 Q No doubt in your mind about that at all?

25 A No.

1 Q And you said one of the solicitors swore you in?

2 A Correct.

3 Q Now, when one of the solicitors swore you in, I
4 assume they were looking at the indictment, did one of
5 them refer to you as Neil Henderson and you said, no,
6 no, no, I'm Raymond Vandiver?

7 A I explained that to him when I got there. I
8 said there's three of these that got Neil
9 Henderson's name on it. There was another one,
10 but there was two charges that was against
11 Mr. Alexander that was indicted too that came in
12 and had Neil Henderson's name on those too.

13 Q Let me make sure I get this clear. You actually
14 pointed out to the solicitor that this indictment was
15 not right when he swore you in?

16 A Correct.

17 Q Okay. What did the solicitor do?

18 A He said it was -- the intent of it coming
19 through, if I had knowledge of the case, which I
20 did have knowledge of the case, to go ahead and
21 testify.

22 Q Did you tell the solicitor, whoa -- I know you
23 pointed out that you're not Neil Henderson, and did
24 you also tell the solicitor, hey, I've got no
25 firsthand knowledge about this case?

1 A No, I didn't tell him that.

2 Q You didn't tell him that?

3 A No. I just told him this has got Neil
4 Henderson. He said, that's okay, so I went with
5 it.

6 Q What solicitor told you that? Do you recollect?
7 Was it that young man that just testified?

8 A No.

9 Q Do you know if it was Mr. Yates Brown? Do you
10 know Mr. Brown?

11 A No, it wasn't him.

12 Q Was it a male?

13 A I think it was Demetrius Andrews.

14 Q And Mr. Andrews is still with the solicitor's
15 office?

16 A He's a deputy solicitor now.

17 Q So you think he told you it just doesn't matter
18 whose name is on the indictment, in so many words?

19 A He said it would be all right.

20 Q He said it would be all right?

21 A This was at the time the Jerry Peace was
22 coming out, Strombo was coming in and I don't know
23 if they swapped secretaries or what, because the
24 county had something the same. They had the
25 Sheriff on that, which they knew it wasn't.

1 Q So it sounds like it was your regular practice, at
2 least at the Abbeville Police Department where you
3 said you went and did all the grand jury proceedings?

4 A That's correct.

5 Q Even though you had no firsthand knowledge on some
6 of those cases?

7 A Not being on the scene, but having knowledge
8 of the scene, what did happen.

9 Q Understand, I'm not disputing the stuff happened.
10 You understand I'm talking about firsthand that you
11 actually saw, you actually took a defendant into
12 custody, that you scooped up the drugs, that you
13 picked up the gun, that's firsthand knowledge.

14 A Yeah.

15 Q But it sounds like you're telling His Honor that
16 on a regular basis you were testifying before the
17 grand jury on cases that you did not have firsthand
18 knowledge of.

19 A By being present on the scene, you're
20 correct.

21 Q I assume some cases, you made the custodial
22 arrest?

23 A Yes. Some of them, I was on.

24 Q And found the gun, of course you went there and
25 testified?

1 A Yeah.

2 Q But you said that the Solicitor's Office was
3 putting Neil Henderson's name on indictments more than
4 one when he was not someone with firsthand knowledge
5 of the case?

6 A Yes. This was for this court.

7 Q Right.

8 A This case here.

9 Q And you pointed that out to the solicitor, this is
10 wrong. And solicitor said, don't worry about that?

11 A I told him that it was Neil Henderson. I'm
12 the presenting it. And he said it's fine, so I
13 went ahead with the grand jury.

14 Q Okay. Did the grand jury have the indictment back
15 there with him, or do you recollect?

16 A After I got sworn in, they handed me all the
17 indictments. So I would stick them in these
18 folders, because we do a lot of them all at once.

19 Q Right.

20 A Like the City's, the County's.

21 Q When you went there to testify on Mr. Alexander's
22 case and you handed -- I guess you were reading from
23 the from the indictment?

24 A When you go in -- before you start the case,
25 you pull out the indictment, hand it to the -- the

1 folder to the grand jury, the foreman of the grand
2 jury. And then he'll read it back to you to make
3 sure you got the right name.

4 Q Did he read back to you, say, hey, Mr. Neil
5 Henderson?

6 A Yeah, he read back Neil Henderson to me on
7 that, and I was Raymond Randiver. I informed the
8 solicitor of it. He said, go ahead and go with
9 it, so we went with it.

10 Q So you told grand jury foreperson that you're not
11 the person listed on the indictment?

12 A They knew I wasn't. I mean, I met -- I think
13 they got a four-year term, some of them on their
14 four years, and I've been doing it for four years,
15 so I knew they knew who I was when I came in that
16 time.

17 Q Right.

18 A They knew I wasn't Neil Henderson.

19 Q Right. Did you explain to them that you didn't
20 have any firsthand knowledge of this case?

21 A No.

22 MR. HENDERSON: One minute, Your Honor.

23 THE COURT: Yes, sir.

24 MR. HENDERSON: Nothing further, Your
25 Honor.

1 MS. GREGORY: Nothing further, Your
2 Honor.

3 THE COURT: Thank you, sir. You may step
4 down.

5 THE WITNESS: Do I get to go, too?

6 THE COURT: Yes, sir.

7 MS. GREGORY: Your Honor, that's the
8 State's case.

9 THE COURT: All right. Now, yesterday
10 you mentioned something about submitting proposed
11 orders.

12 MR. HENDERSON: Your Honor, one thing I
13 suggest too, and I talked to Miss Gregory about
14 that, I mentioned to the court reporter about
15 getting a rough draft of the transcript, and I
16 think she says she could probably do it in the two
17 weeks. Again, nothing fancy, fancy, fancy.

18 THE COURT: Just rough that they can
19 refer to, that's fine.

20 All right. And then so why don't we do this.
21 It's June 6th, would you say maybe you all could get
22 me something by the end of July.

23 MS. GREGORY: Yes, sir.

24 MR. HENDERSON: Yes, sir.

25 MS. GREGORY: Thank you for that. I

1 mean, I guess I can do the same thing. I've done
2 post trial briefs and proposed orders. They were
3 kind of different. Would you prefer one over the
4 other?

5 MR. HENDERSON: I was just thinking a
6 proposed order because I would cite the law, I
7 would cite -- kind of, like a brief inside the
8 order.

9 THE COURT: Right.

10 MS. GREGORY: That's fine.

11 THE COURT: All right, that's fine.

12 MS. GREGORY: That's it for today.

13 THE COURT: That take care of everything
14 today. All right.

15 I'm going to hold on to these exhibits
16 that you gave me. I'll have those so when I
17 receive the order, I'll be able to refer to those
18 matters.

19 (The hearing was concluded.)
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in General Sessions for Laurens County, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

January 17, 2021

A handwritten signature in cursive script, reading "Sharon G. Hardoon". The signature is written in dark ink and is positioned above a horizontal line.

Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ABBEVILLE	)	FOR THE EIGHTH JUDICIAL CIRCUIT
	)	
Alfonzo Alexander, #250547,	)	
	)	
Applicant,	)	
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

ORDER OF DISMISSAL
2016-CP-01-355

TRUE COPY
BY *M. Kennedy*
ABBEVILLE COUNTY CLERK OF COURT

FILED
STATE OF SOUTH CAROLINA
2020 MAR 30 AM 8:39
EMILY MCMAHON
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed on December 28, 2016, by Alfonzo Alexander (Applicant) and later amended through his post-conviction relief counsel on May 8, 2019. The State (Respondent) filed a Return on May 22, 2017, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on June 6, 2019, at the Laurens County Courthouse. Applicant was present at the hearing and represented by Carson Henderson, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General's Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Patricia Bolen, Esquire (Counsel), Neil Henderson, Chris Wilkie, Raymond Vandiver, Larry Ashley, John Gray, and Assistant Solicitor Christopher "Cam" Morrow of the Sixteenth Circuit Solicitor's Office also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined to the South Carolina Department of Corrections pursuant to orders of commitment of the Abbeville County Clerk of Court. In January 2013, the Abbeville County Grand Jury indicted Applicant for

possession of crack cocaine with intent to distribute within the proximity of a school or park (2013-GS-01-0014) and possession of crack cocaine with intent to distribute (2013-GS-01-0015). Public Defender Janna Nelson and Assistant Public Defender Patricia Bolen of the Eighth Circuit Public Defender's Office represented Applicant. Assistant Solicitors Yates Brown and Christopher "Cam" Morrow of the Eighth Circuit Solicitor's Office prosecuted the case.

On May 28-30, 2013, the State called Applicant's case to a jury trial before the Honorable Frank R. Addy, Jr. Applicant was not present for trial and was tried in his absence. The jury found Applicant guilty as indicted for possession of crack cocaine with intent to distribute. Applicant's charge of possession with intent to distribute within proximity of a school or park was dismissed on Counsel's directed verdict motion at the close of the State's case. As Applicant was not present for his sentencing, Judge Addy sealed Applicant's sentence until he returned to the court's jurisdiction. On September 18, 2013, Applicant appeared with Counsel before Judge Addy in Greenwood County. Judge Addy unsealed and published Applicant's sentence, which imposed a twenty-nine year sentence on Applicant.

Applicant filed a timely notice of appeal. Appellate Defender LaNelle Cantey Durant of the Office of Appellate Defense perfected the appeal. In his brief to the South Carolina Court of Appeals, Applicant raised the following issues:

- I. Did the trial court err in denying Appellant Alexander's motion to suppress the crack cocaine based on a violation of his Fourth Amendment rights because there was no sufficient reliability of the anonymous call to conduct an investigative stop; the police did not have reasonable suspicion based on specific and articulable facts that Alexander was armed and dangerous before conducting a Terry frisk; and the police did not have cause to pull any objects from Appellant Alexander's pocket after the officer said nothing felt like a gun during the pat down?
- II. Did the trial court err in qualifying Lieutenant John Gray of the Abbeville Police Department as an expert in the field of narcotics investigation which was not specialized knowledge outside the purview of the average juror and which did not meet the requirements of Rule 702, SCRE?

Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction on October 14, 2015. State v. Alfonzo Alexander, Op. No. 2015-UP-485 (S.C. Ct. App. filed October 14, 2015). Applicant subsequently filed a petition for a writ of certiorari to the South Carolina Supreme Court. The Supreme Court denied the petition by order dated September 8, 2016. The Remittitur was returned on September 14, 2016.

SUMMARY OF FACTS

On August 12, 2012, at 1:16AM an anonymous call came in to 911 reporting gambling and drug distribution was taking place in apartment 401 at the Oakland Apartments on Virginia Street in Abbeville. Lt. John Gray and Officer Larry Ashley with the Abbeville Police Department responded to the apartment complex. Upon arrival, officers observed subjects sitting outside of the apartment and made contact. One of the subjects, Ella Brown (Brown), stated she lived in the apartment officers were responding to and officers explained the complaint they received through 911. At that time, Brown testified she "opened the door for him." (Trial Tr. 197.) Once inside, officers could smell marijuana, and observed nine adults and two children inside the residence, including Applicant. (Trial Tr. 155.) Officers noted there was a baggie of marijuana at Applicant's feet, and they observed baggies coming out of Applicant's pockets and a large wad of money in his hand. The officers conducted pat downs of the occupants for officer safety purposes. During the pat down of Applicant, officers felt a small square in one of his pockets and asked if they could remove the contents of his pocket. (Trial Tr. 156.) Applicant consented and the officer removed a small square digital scale, baggies, and a single baggie that contained suspected crack cocaine from his pocket. (Trial Tr. 156.) Lt. Gray collected the suspected crack cocaine, packaged it, and sent it to SLED for testing. (Trial Tr. 158-159.) SLED results showed the substance collected from Applicant's pocket was 6.8 grams of crack cocaine. (Trial Tr. 224.)

ALLEGATIONS RAISED

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel
 - a. Failed to object to trial judge Frank R. Addy, Jr.'s impermissible mandatory presumption charge to the jury that shifted the prosecutor's burden of proof
 - b. Failed to object to trial judge's denial of his motion for a directed verdict of acquittal in order to preserve the issue for Appellate Court review.
 - c. "Ms Bolen knew from the arrest report numerous witnesses that were present at the place of arrest during the encounter between Mr. Alexander and arresting officer Lt. Gray whom could have given key testimony that would have challenged Lt Gray's testimony that Mr. Alexander allegedly gave him consent to remove the contents from his pocket"
 - d. "Failed to object to Judge Addy using his opinion of Officer Lt. Gray's testimony over the facts of Lt. Gray's testimony in the motion to suppress part of the trial in which Judge Addy states on pg. 106 in Trans. in response to Counsel's statement that Officer Lt. Gray testified that none of the things he felt, felt like weapons, that Lt. Gray didn't have the right to ask to pull anything out. Judge Addy said I understand. He continues to say I think the officer may not have known or apparently was not entirely sure what the 2 items were."
2. Conflict of Interest
 - a. "Judge Frank Addy was bias and prejudice against the defense of Mr. Alfonzo Alexander and was a conflict of interest"

On May 8, 2019, Applicant, through counsel, amended his application to allege the following:

1. Counsel was ineffective for failing to file a motion to quash the indictments against him. The sole witness for the State listed on the two indictments was Neil Henderson, Abbeville Police Department. Applicant believes Mr. Henderson did not appear or testify before the Abbeville County Grand Jury on May 30, 2013. Upon information and belief, Mr. Henderson had no first-hand knowledge of the events surrounding Applicant's arrest on or about August 12, 2012.
2. Counsel was ineffective for failing to raise an objection to the arresting officers' actions pursuant to the Applicant's South Carolina constitutional right against unreasonable invasions of privacy under Article I, §10. The arresting officers did not have reasonable suspicion of illegal activity at the targeted residence prior to approaching the residence and asking the tenant to open the door so they could look inside.

On June 6, 2019, an evidentiary hearing was convened. Applicant proceeded with the hearing only on the allegations set forth in his amended application. Accordingly, these are the only allegations that will be addressed in this order.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Testimony of John Gray

During the evidentiary hearing, John Gray (Gray) testified. Gray testified he was a lieutenant with the Abbeville Police Department in August of 2012. Applicant introduced a Computer-Aided Dispatch (CAD) report of the 911 call that came in to dispatch on the night of the incident. (Plaintiff's Exhibit 3.) Applicant introduced the incident report of Applicant's arrest. (Plaintiff's Exhibit 4.) Gray testified the CAD report shows a 911 call coming in at 1:33AM and sixteen minutes later Gray and two other officers arrived on scene. Gray testified during that sixteen minutes, he did not do any investigation before he responded to the call. Gray testified he was familiar with Oakland apartments. Gray testified he had Officer Larry Ashley (Ashley) in the car with him and a female officer arrived on scene in her own patrol car. Gray testified he and Ashley approached the door together. Gray testified he did not know who made the 911 call. Gray testified he did not see anyone doing drugs, gambling, or trespassing when they approached the door. Gray testified he did not smell marijuana when he approached the door and did not hear any loud music. Gray testified he did not go before the grand jury to testify when Applicant's indictments were obtained.

On cross-examination, Gray testified the 911 call reported criminal activity was occurring inside the residence, not outside. Gray testified Ella Mae Brown (Brown) was the leaseholder of the residence and was sitting outside of the apartment when he and Ashley approached. Gray testified he did not have to knock on Brown's door as she was sitting outside of her residence and she opened the door to her residence and let him and Ashely inside. Gray testified Applicant did

not live at the apartment. Gray testified he did not obtain the arrest warrant for Applicant. Gray testified he briefed Lt. Vandiver (Vandiver) about the case at their shift change and he obtained the arrest warrant for Applicant. On re-direct, Gray testified Vandiver was not on scene the night Applicant was arrested.

Testimony of Larry Ashley

Ashley testified he was on scene at the Oakland Apartments the night of the Applicant's arrest. Ashley testified he rode with Gray that night and they responded to Oakland Apartments. Ashley testified they were dispatched to the apartment complex. Ashley testified he did not do any investigation before responding to the 911 call because he did not know if there was something to investigate. Ashley testified he did not call the number that called 911 because he did not have the phone number. Ashley testified he and Gray walked together toward the complex and did not see any criminal activity. Ashley testified he was sure Vandiver was not present at the scene. Ashley testified he did not appear before the grand jury in this case.

On cross-examination, Ashely testified the renter of the apartment was sitting outside of the residence. Ashely testified they explained why they were there and she consented to them going into her residence.

Testimony of Neil Henderson

Neil Henderson (Henderson) testified that he was employed as the Chief of Police for the Abbeville Police Department at the time of Applicant's arrest. Henderson testified he was not aware of the incident involving Applicant's arrest. Henderson testified he was not at the scene the night of Applicant's arrest. Henderson testified he has never seen Applicant before and was not familiar with the indictments. Henderson testified he did not appear before the grand jury in Applicant's case. Henderson testified he gave PCR Counsel names of people who may have

testified before the grand jury in Applicant's case. Henderson testified he told PCR Counsel Chris Wilkie (Wilkie) may have testified before the grand jury.

On cross-examination, Henderson testified Vandiver was a court officer with the Abbeville Police Department. Henderson testified a court officer is a liaison between the police department and the solicitor's office. Henderson testified at that time there were about twenty sworn officers with the Abbeville Police Department.

Testimony of Chris Wilkie

Wilkie testified he talked to Vandiver about this case and Vandiver told him he did not remember testifying before the grand jury in this case. Wilkie testified he was not present at the incident location where Applicant was arrested. Wilkie testified he does not recall whether or not he presented to the grand jury in this case, but that he has testified before the grand jury on two occasions, but does not recall if it was for Applicant's case.

Testimony of Applicant

Applicant testified he understands post-conviction relief can only grant him a new trial and that he cannot get a new sentence or moved to a new facility. Applicant testified wants to go forward with his application. Applicant testified he was at Brown's apartment that night and there was no illegal activity occurring outside of the apartment. Applicant testified Gray, Ashley, and a female officer were there that night. Applicant testified Vandiver was not there that night. Applicant testified he believes trial counsel was ineffective.

On cross-examination, Applicant testified he did not show up to his trial. Applicant testified he did not live at the apartment where he was arrested.

Testimony of Patricia Bolen

Patricia Bolen (Bolen) testified by phone during the post-conviction relief hearing. Bolen testified she has been practicing law since 2006, but moved to Virginia in 2017 and has since

become licensed to practice law in Virginia. Bolen testified she was a prosecutor in South Carolina for about four and a half years and then worked in the public defender's office. Bolen testified she was appointed to Applicant's case. Bolen testified, according to her notes, she met with Applicant in her office, talked to him over the phone, texted with him, and sent him letters during her representation. Bolen testified Applicant was out on bond while his case was pending. Bolen testified they reviewed his charges, SLED results, talked about the allegations being made against him by the State, discussed 4th Amendment issues, and discussed a resolution to his case. Bolen testified she discussed potential defenses in his case and reviewed everything about the case with Applicant. Bolen testified Applicant never wanted a trial.

Bolen testified she did review Applicant's indictments and did not see any facial irregularities. Bolen testified the indictment comported with the statutes Applicant had been charged with, and provided Applicant sufficient notice. Bolen testified the indictments were signed by the jury foreman and true billed. Bolen testified any motion to squash the indictment would have had to have been made prior to the jury being sworn in Applicant's case. Bolen testified if she had made a motion to quash the indictment, the State would have simply re-indicted Applicant after fixing the indictment. Bolen testified she does know Vandiver. Bolen testified Vandiver was the officer who got the arrest warrants in Applicant's case. Bolen testified Vandiver retired at some point in 2013 from the Abbeville Police Department.

Bolen testified the facts of Applicant's case was that he was at the Oakland Apartments at 1:00 a.m. or 1:30 a.m. and officers received a call that there was gambling and drug use going on at that apartment. Bolen testified officers responded and the older woman who rented the apartment was sitting outside when officers arrived. Bolen testified the woman let the officers into her apartment. Bolen testified officers went in and observed one bag of marijuana under the kitchen table and one bag by Applicant's feet. Bolen testified officers searched everyone and

found a plastic bag of crack cocaine on Applicant and arrested him. Bolen testified Applicant's version of the facts were that the woman gave cops permission to come inside and he was searched first and then handcuffed. Bolen testified no one was arrested for the marijuana. Bolen testified Applicant did not believe he had a right to privacy because he did not live at that apartment. Bolen testified she talked with Applicant about the weight of the drugs. Bolen testified Applicant wanted her to focus her efforts on getting him the best deal she could. Bolen testified there were a number of negotiations and Applicant was looking for something in the eight to ten year range. Bolen testified she received a final offer of a twelve year plea or ten to fifteen range. Bolen testified she conferenced with the judge and he told Bolen that he would not go lower than twelve. Bolen testified she always goes over with her clients their constitutional rights. Bolen testified Applicant told her she did not need to keep going over his constitutional rights with him but she told him it was important. Bolen testified Applicant was never interested in a trial and wanted a guilty plea.

Bolen testified she believes Applicant was aware of his court date and sent him a trial notice letter in late April. Bolen testified she met with Applicant on May 23, 2013, and told him he needed to come to court Tuesday, May 28, 2013, to take the plea. Bolen testified Applicant was notified in writing and verbally of his court date. Bolen testified she asked for a continuance when Applicant did not show up for his court date. Bolen testified the trial judge gave her the remainder of that day to find Applicant and issued a bench warrant for him. Bolen testified the trial judge told her the trial would start the next day. Bolen testified she spent a long time looking for him, trying to contact him, and visited apartments looking for him.

Bolen testified she filed a suppression motion prior to trial that was twofold. Bolen testified her motion challenged the response by officers to the anonymous 911 call because they did not have reasonable suspicion to approach the apartment and for patting down Applicant. Bolen testified she is familiar with Article I §10 of the South Carolina Constitution. Bolen testified she

did not argue her suppression motion under the privacy provision because it was not Applicant's home. Bolen testified Applicant told her it was not his house and she did not feel that argument had any merit.

Bolen testified she is familiar with the appellate records in this case. Bolen testified the denial of the suppression motion was appealed and it was affirmed by the higher court. Bolen testified she moved for a directed verdict on the proximity charge and that was granted.

On cross-examination, Bolen testified she went over the 4th Amendment issue with Applicant but Applicant told her he had no right to privacy because it was not his house. Bolen testified the trial judge did not rule on the South Carolina constitution issue because she did not raise it. Bolen testified she agrees that the indictment lists Henderson as the witness. Bolen testified she did not discuss Henderson's grand jury testimony with him.

On re-direct, Bolen testified she did not look into an indictment issue because the purpose of the indictment is to inform the defendant about what they are charged with and nothing on the face of the indictment looked invalid. Bolen testified she did not know who testified and does not believe she could have obtained that information.

On re-cross, Bolen testified she does not know whether or not Henderson testified. Bolen testified she agrees if she had called Henderson she could have found out that he did not testify, but all that would have happened is the State would have recalled the case thirty days later. Bolen testified that delay would not have helped Applicant because they made great efforts to find him, investigators were going around looking for Applicant, and she believes he did not want to be found.

Testimony of Christopher "Cam" Morrow

Christopher "Cam" Morrow (Morrow) testified at the post-conviction relief hearing. Morrow testified that he was one of the two prosecutors on Applicant's case. Morrow testified he

does not recall any issues with Applicant's indictments. Morrow testified the indictments were true billed and signed by the foreman. Morrow testified if the defense had successfully quashed Applicant's indictment, he would have obtained new indictments on Applicant. Morrow testified he cannot think of anything that would have prevented the State from being able to obtain indictments against Applicant in this case.

On cross-examination, Morrow testified the grand jury is secret so he wouldn't have thought to check witness's name. Morrow testified he is aware that the witness is supposed to have first-hand knowledge.

Testimony of Raymond Vandiver

Vandiver testified that he is a former lieutenant with the Abbeville Police Department. Vandiver testified in 2013 he was a shift supervisor and court officer. Vandiver testified that a court officer got all the cases together and statements. Vandiver testified part of the court officer's job is to testify before the grand jury. Vandiver testified the solicitor's office sends him a notification about when the grand jury is meeting. Vandiver testified he prepared for the grand jury by talking to officers who had personal knowledge about the cases he would be presenting and in some cases he testified for cases with which he was directly involved.

Vandiver testified in Applicant's case he obtained the arrest warrant and the indictments. Vandiver testified he talked to Gray about Applicant's case before testifying before the grand jury. Vandiver testified he was sworn in before he testified before the grand jury.

On cross-examination, Vandiver testified he is absolutely sure he testified before the grand jury in Applicant's case. Vandiver testified he was not present at the scene so he had no first-hand knowledge of the incident. Vandiver testified the solicitor swore him in before he testified for the grand jury. Vandiver testified he told the solicitor the indictment did not list his name, but the solicitor told him it would be alright. Vandiver testified he did all grand jury proceedings in

Abbeville, but he did not have first-hand knowledge in some cases. Vandiver testified he told the grand jury that he was not the person listed on the indictment, so the jurors in the grand jury knew he wasn't Neil Henderson. Vandiver testified the indictments went into each folder before he went to the grand jury and he gave that folder to the grand jury.

APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel’s performance was deficient. Id. Under this prong, courts measure an attorney’s performance by its “reasonableness under prevailing professional norms.” Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 300 S.C. 115.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, and Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, Applicant's appellate records, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on any of his allegations of ineffective assistance of counsel. Applicant has failed to prove both deficiency on the part of Counsel and any prejudice therefrom. Each of Applicant's specific allegations are addressed below:

Counsel constitutionally ineffective for failing to make a motion to quash Applicant's indictments

Applicant alleges Counsel was ineffective for failing to make a motion to quash Applicant's indictments based on the belief that the witness listed on the indictment did not testify before the Abbeville County Grand Jury.

An indictment is valid under South Carolina law if it "contains the necessary elements of the offense intended to be charged and sufficiently apprised the defendant of what he must be prepared to meet." State v. Guthrie, 352 S.C. 103, 572 S.E.2d 309 (2002) (citations omitted). Here, Counsel testified Applicant's indictments appeared to be facially valid, true billed, and signed by the foreman. As Counsel testified, the indictments provided Applicant with sufficient notice of the crimes for which he was charged.

“South Carolina courts have held the sufficiency of an indictment must be viewed with a practical eye. All the surrounding circumstances must be weighed before an accurate determination of whether a defendant was or was not prejudiced can be reached.” State v. Guthrie, 352 S.C. 103, 572 S.E.2d 309 (2002) (citations omitted). Here, it is undisputed that Applicant’s indictments were presented to the Abbeville County Grand Jury and, although the name of the witness listed on the indictment was not the witness who testified before the grand jury, Vandiver testified at the post-conviction relief hearing that he was the officer who testified before the grand jury in Applicant’s case. Vandiver testified he was a court officer and shift lieutenant with the Abbeville Police Department at that time and, as the court officer, it was his job to present cases to the grand jury. Vandiver testified he would be notified by the solicitor’s office of the upcoming grand jury terms and he would prepare the cases that were to be presented to the grand jury. Vandiver testified, for cases he presented that he was not directly involved in, he would talk with officers who had first-hand knowledge of the case prior to presenting that case to the grand jury.

Vandiver testified he did not respond to the scene in Applicant’s case, but was briefed by Gray at shift change regarding Applicant’s case. Vandiver testified he obtained the arrest warrants for Applicant. Vandiver testified when he presented Applicant’s case to the grand jury he informed the grand jury that he was Lt. Raymond Vandiver and not the listed witness, Neil Henderson, on the indictment prior to testifying.

The S.C. Code Ann. §14-7-1550 states:

The foreman of the grand jury or acting foreman in the circuit courts of any county of the State may swear the witnesses whose names shall appear on the bill of indictment in the grand jury room. No witnesses shall be sworn except those who have been bound over or subpoenaed in the manner provided by law. In order to obtain attendance of any witness, the grand jury may proceed as provided by the South Carolina Rules of Civil Procedure and Sections 19-9-10 through 19-9-130.

As Vandiver testified, as the court officer for Abbeville Police Department, part of his duties was to present cases to the Abbeville County Grand Jury. Vandiver testified he was notified by the solicitor's office of when to appear for the grand jury proceedings and what cases to present. Although Vandiver's name did not appear on Applicant's indictments, the grand jury was aware of who Vandiver was because, as Vandiver testified, he told the grand jury his name and that he was not Neil Henderson prior to testifying. Vandiver also testified he was sworn in prior to providing testimony. Although Vandiver was not subpoenaed by the solicitor's office, it is evident from his relationship with that office, their communication regarding grand jury sessions and cases, and his job duties within the Abbeville Police Department that he would be considered bound over to appear before the grand jury.

Applicant's belief that a proper witness would have to have first-hand knowledge of the case in order to be properly before the grand jury is meritless. First-hand knowledge is not a requirement of S.C. Code Ann. §14-7-1550. "An indictment based upon hearsay testimony violates no right of appellant under Article 1, Section 17 (now Section 11) of the South Carolina Constitution. In fact, our decisions preclude inquiry into the factual basis for an indictment by the grand jury." State v. Williams, 263 S.C. 290, 210 S.E.2d. 298 (1974) (citing Margolis v. Telech, 239 S.C. 232, 122 S.E.2d 417 (1961)). "An indictment returned by a legally constituted and unbiased grand jury, . . . , if valid on its face, is enough to call for trial of the charge on the merits." Id. at 296, 210 S.E.2d. at 301, (quoting Pittsburg Plate Glass Company v. United States, 360 U.S. 395 (1959)).

Applicant's allegation that Counsel was deficient for failing to make a motion to quash his indictments is also meritless. Applicant has failed to show this Court any actual abuse occurred during the grand jury proceeding, which Counsel could have used to justify quashing either of Applicant's indictments. "When a defendant timely moves to quash an indictment . . . , the [trial]

court must determine whether the defendant[']s constitutional right to have the criminal allegations against him weighed by a properly constituted grand jury has been violated.” State v. Shands, 424 S.C. 106, 119, 817 S.E.2d 524, 531 (2018) (quoting Evans v. State, 363 S.C. 495, 510, 611 S.E.2d 510, 518 (2005)). “Proceedings before the grand jury are presumed to be regular unless there is clear evidence to the contrary.” Shands, 424 S.C. at 120-121, 817 S.E.2d at 532 (quoting State v. Thompson, 305 S.C. 496, 501, 409 S.E.2d 420, 424 (Ct. App. 1991)). “Speculation about ‘potential’ abuse of grand jury proceedings cannot substitute for evidence of actual abuse as grounds for quashing an otherwise lawful indictment.” Id. at 502, 409 S.E.2d at 424.

Here, Vandiver was briefed by Gray – the arresting officer - regarding Applicant’s case, obtained the arrest warrants against Applicant, was in possession of the case file during the grand jury proceeding, was sworn in prior to testifying before the grand jury, and informed the grand jury who he was prior to providing the testimony that secured Applicant’s indictments. Vandiver was clearly a proper witness to present Applicant’s case to the grand jury and Applicant has failed to show any actual abuse of the grand jury proceeding occurred in this case.

Additionally, this Court finds Applicant has failed to meet his burden to prove prejudice under the Strickland analysis as he also failed to show this Court that the State would not have been able to re-indict Applicant had Counsel successfully quashed his initial indictments. At the post-conviction relief hearing, Morrow testified the State would have re-indicted Applicant had Counsel successfully quashed Applicant’s original indictments. Counsel also testified the State would have re-indicted Applicant and he would have been called to trial at the next term of court in thirty days. Although Applicant argues that would have given Counsel additional time to locate Applicant, Counsel testified there was a considerable effort dedicated to locating Applicant for his trial and it was her belief that he did not want to be found, so the thirty days would not have changed Applicant being tried in his absence.

Further, had Counsel moved to quash the indictments, it is reasonable to believe the State could have located Vandiver to testify as to the regularity of the grand jury proceeding since the State was able to locate him for the post-conviction relief hearing nearly six years later. Henderson even testified there were only twenty sworn officers with the Abbeville Police Department at that time, so locating the officer who testified would have been a rather simple task, especially since they had an officer dedicated to presenting grand jury cases in their agency. Had Counsel moved to quash the indictments, the State could have presented Vandiver's testimony, and the trial court could have amended the indictment to reflect Vandiver's name and moved on with Applicant's case. Importantly, Applicant is not challenging the information contained in the indictment that substantiated Applicant's charges, only the name of the witness listed on the indictment. "An indictment may be amended provided such amendment does not change the nature of the offense charged." State v. Guthrie, 352 S.C. 103, 109, 572 S.E.2d 309, 313 (2002) (citing State v. Lynch, 344 S.C. 635, 545 S.E.2d 511 (2001), Granger v. State, 333 S.C. 2, 507 S.E.2d 322 (1998) (finding that, under § 17-19-100, an indictment may be amended at trial only if amendment does not change nature of offense charged.)) Since such an amendment would not have changed the nature of Applicant's indictments, it is likely the trial court would have put Vandiver's name on the indictment at that time, especially since the grand jury was already aware that he was the witness before them at the time Applicant's indictments were issued.

Although Henderson's testimony shows an irregularity in Applicant's indictment, Applicant has failed to show how that irregularity impacted the grand jury's decision to issue the indictment in Applicant's case; especially since the grand jury knew the witness before them was not Henderson when they issued the indictment. Applicant has also failed to establish that the presentation of the evidence against Applicant during the grand jury process was not fairly or properly presented. See Commonwealth v. Silva, 455 Mass. 503, 512, 918 N.E.2d 65, 77 (2009)

(“The Commonwealth’s presentation was sloppy in parts, but that sloppiness does not appear to have been designed to secure indictments, and the presentation to the grand jury appears to have been generally fair and balanced. In addition, the subjects of the defendant’s claim of impairment probably had no impact or would have had no impact, on the decision to indict.”)

In State v. Smith, 200 S.C. 188, 20 S.E.2d 726 (1942), the South Carolina Supreme Court addressed whether a jury panel should be quashed based upon Smith’s contention that the venire was illegally drawn. In their holding the Court stated, “The defendant has not shown, or attempted to show, that he was prejudiced. . . . The drawing apparently was a public one, held at the proper time and place, and regularly conducted by the proper officers. Any irregularity has not affected the right of the defendant to a trial by a fair and impartial jury, nor prejudiced him in any way.” Id. at 196-197, 20 S.E.2d 730. In Applicant’s case, as Counsel testified, the indictment provided Applicant with sufficient notice of his charges, was true billed, and signed by the jury foreman. Applicant proceeded to a jury trial, which he has not alleged was unfair, on the same information that would have been presented to any subsequent grand jury by the *same witness that actually did testify* had Counsel been successful in quashing either of Applicant’s indictments. Applicant has not shown how the irregularity would have impacted the grand jury’s decision, or the State’s ability to re-indict Applicant as he has not established that improper information was presented or Vandiver was not a proper witness to testify before the grand jury.

This Court finds the testimony of Counsel, Morrow, Vandiver, Henderson, and Gray with respect to this allegation very credible. This Court finds Applicant has failed to establish how Counsel was deficient for failing make a motion to quash his indictments. As Counsel credibly testified, she did not see a reason to challenge the indictments that appeared facially valid and provided Applicant with sufficient notice. Additionally, Applicant has failed to meet his burden to show how he was prejudiced by Counsel’s alleged deficiency as Morrow testified the State

would have re-indicted Applicant for the charges had they been successfully quashed. Further, Vandiver's credible testimony shows the grand jury proceedings were regular and, although his name did not appear on the indictment, the grand jury knew who was testifying before them at the time they true billed Applicant's indictments. Therefore, Applicant has failed to meet his burden set forth in Strickland and this allegations must be denied and dismissed with prejudice.

Counsel was constitutionally ineffective for failing to raise an objection to the arresting officers' actions under S.C. Const. Art. I §10

Applicant alleges Counsel was ineffective for failing to use the privacy protections afforded to Applicant through the S.C. Const. Art. I §10 as grounds for suppression in her motion. However, Applicant's own testimony shows he was not a resident of the apartment where he was arrested and, therefore, had no reasonable expectation of privacy.

Beyond the protections afforded by the United States Constitution, the South Carolina Constitution provides its own protections to the state's citizens against unreasonable searches and seizures. State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001); see S.C. Const. art. I, § 10 ("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[.]"); see also U.S. Const. amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]"). Primarily in order to guard against invasive technological advancements, the South Carolina Constitution also expressly protects our citizens from "unreasonable invasions of privacy." S.C. Const. art. I, § 10; see Forrester, 343 S.C. at 647, 541 S.E.2d at 842 ("[T]he drafters of our state constitution's right to privacy provision were principally concerned with the emergence of new electronic technologies that increased the government's ability to conduct searches.").

Through the additional provision regarding invasions of privacy, “the people of South Carolina have indicated that searches and seizures that do not offend the federal Constitution may still offend the South Carolina Constitution.” State v. Weaver, 374 S.C. 313, 322, 649 S.E.2d 479, 483 (2007). Thus, “the South Carolina Constitution favors an interpretation offering a higher level of privacy protection than the Fourth Amendment.” Id. However, the South Carolina Constitution by its express language only forbids searches, seizures, and invasions of privacy that are *unreasonable*. S.C. Const. art. I, § 10; see State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977) (“It is only unreasonable searches and seizures that are prohibited.”); see also Maryland v. Buie, 494 U.S. 325, 331 (1990) (“It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]”). Accordingly, just like the search and seizure protections offered by the federal constitution, the touchstone of our state constitution’s search and seizure protections is reasonableness. See Florida v. Jimeno, 500 U.S. 248, 250 (1991) (“The touchstone of the Fourth Amendment is reasonableness.”); see also Heien v. North Carolina, __ U.S. __, 135 S. Ct. 530, 536 (2014) (“To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them ‘fair leeway for enforcing the law in the community’s protection.’ ” (citation omitted)).

Important in Applicant’s case is his testimony that he did not live at the residence where the search occurred. Applicant was merely a temporary guest inside Brown’s residence at the time she consented to law enforcement’s search of her home. Under those circumstances, Applicant had *no* expectation of privacy—legitimate or otherwise—in the residence and, therefore, could not possibly meet his burden of establishing he had a reasonable expectation of privacy that was unlawfully violated. See State v. McKnight, 291 S.C. 110, 114, 352 S.E.2d 471, 473 (1987) (instructing a defendant seeking to challenge the propriety of a search or seizure must establish his own personal constitutional rights were violated by that search or seizure in order to be entitled to

the benefits of the exclusionary rule.) Accordingly, the trial judge's ruling refusing to suppress evidence discovered as the result of an allegedly unreasonable invasion of someone *other than* Applicant's state constitutional right to privacy was proper due to Applicant's lack of a reasonable expectation of privacy in Brown's residence. Cf. State v. Weaver, 374 S.C. 313, 326, 649 S.E.2d 479, 485 (2007) (Pleicones, J., concurring) ("Analysis of the facts of this case with our privacy provision in mind reveals no state constitutional violation. Although one's expectation of privacy in his automobile increases when that automobile is parked in the backyard of his private residence, [Weaver] in this case was not the owner of the Jeep that was seized. More importantly, the vehicle was not parked at [Weaver]'s residence. Our state constitution's provision protecting unreasonable invasions of privacy necessarily requires some analysis of the privacy interests involved when a warrantless seizure is made on private property. However, [Weaver] cannot show he had a reasonable expectation of privacy in the seized Jeep." (footnote omitted)).

Counsel further challenged the search by arguing the anonymous tip that sent officers to Brown's residence was not enough on its own for officers to approach the residence. (Trial Tr. 72-73.) Counsel argued law enforcement needed to corroborate the anonymous tip prior to questioning Brown because officers did not see any gambling or drugs upon arrival at her residence. (Trial Tr. 72-73.) However, this Court finds the trial court properly denied Counsel's suppression motion as law enforcement's actions were based on a consensual search of a residence where Applicant had no expectation of privacy. (Trial Tr. 80-81.)

The citizens of the United States—including the citizens of South Carolina—have extended an implicit license through deeply-ingrained customs and practices to their fellow citizens to approach their homes, knock on their doors, wait to be received, attempt to speak with them, and then depart absent some invitation to stay longer. Florida v. Jardines, 569 U.S. 1, 8 (2013). Historically, that implicit license has been extended to all manner of visitors and has granted door-

to-door salesmen, service providers, evangelicals, neighbors, *law enforcement officers*, and anyone else who might wish to do so an equal opportunity by which they can attempt to make contact with the residents of a home regardless of their particular motives for doing so. See id. at 9, n. 4 (recognizing “*all are invited*” to approach a home to speak with an occupant pursuant to the implicit license). Thus, even though every homeowner might not need—or even have the remotest desire—to buy a new vacuum cleaner or box of cookies, obtain assistance with yard maintenance, speak to a stranger who wants to discuss religion or some other topic, lend a cup of sugar, or chat with an officer of the law, a citizen of our state and country can permissibly approach a home and knock on the door in an effort to talk to someone inside solely by virtue of the implicit license derived from long-standing customs and practices. Id. at 8.

Traditionally, law enforcement officers—including those in South Carolina—have been fully entitled to avail themselves of that implicit license and, just like everyone else, have been permitted to approach a home to speak with someone residing inside regardless of their purpose for doing so, including if that purpose was to conduct a “knock-and-talk.” See Kentucky v. King, 563 U.S. 452, 469-470 (2011) (recognizing law enforcement officers not armed with a warrant ordinarily do not violate an individual’s constitutional rights by approaching a home and knocking on a door). Demonstrating that fact, the South Carolina Supreme Court expressly recognized law enforcement officers were *obviously* entitled to go to a person’s home and door to interview that person through its decision in State v. Wright, 391 S.C. 436, 444, 706 S.E.2d 324, 328 (2011), which was decided a year before officers approached Brown’s residence in Applicant’s case. Specifically, in Wright, law enforcement officers received an anonymous tip dogfighting was taking place at a mobile home, drove past the residence identified in the tip on a public road to investigate, and observed a large number of vehicles and shining spotlights at the residence. Id. at 440, 706 S.E.2d at 325. Based on their observations, the officers stealthily approached the home

in multiple vehicles by driving down a private dirt road and activated their headlights just as they neared the home. Id. at 440, 706 S.E.2d at 326. When they did so, the officers saw people and dogs running away along with a portable dogfighting pit that was being dismantled. Id. In response, the officers detained the people who attempted to flee, arrested Wright and his co-defendants, captured as many dogs as they could, and seized numerous items of evidence related to dogfighting that were found in plain view. Id. at 440-441, 706 S.E.2d at 326. Following their arrests, Wright and the others moved prior to trial to suppress the evidence due to the fact the officers seized it after making a warrantless entry onto private property, and the circuit court judge granted their suppression motions. Id. at 441, 706 S.E.2d at 326. Subsequently, the State appealed the circuit court judge's ruling, and the Supreme Court reversed. Id. at 446, 706 S.E.2d at 329. In reversing, the Supreme Court specifically found the officers' entry onto the private road and approach of the mobile home were constitutionally proper because the officers had investigative authority to enter the property *even if* the officers had not developed a reasonable basis for proceeding forward at the time they did so. Id. at 444-445, 706 S.E.2d at 328.

Notably, just three years *after* the officers approached Brown's residence, the South Carolina Supreme Court articulated a new rule in State v. Counts, 413 S.C. 153, 167, 776 S.E.2d 59, 67 (2015). In Counts, the Supreme Court held that law enforcement officers in South Carolina must possess reasonable suspicion in order to approach a residence for the purposes of conducting an investigative "knock-and-talk." Id. at 172, 776 S.E.2d at 70. Counts is distinguishable from Applicant's case because the appellant in Counts challenged whether the officers had reasonable suspicion to approach *his residence*, whereas Applicant was admittedly not in his own residence at the time officers approached Brown.

Additionally, because the Supreme Court's decision in Counts had not yet been issued at the time of the officers' actions in Applicant's case, it was not available to guide their actions. At

that time, the officers' actions did, in fact, comply with the relevant and applicable precedent on both "knock-and-talks" and the implicit license that has been extended to everyone, including the officers, by our state's citizenry through long-standing customs and practices. The officers in Applicant's case acted within the then-controlling precedent set by the South Carolina Supreme Court, the United States Supreme Court, and the Fourth Circuit Court of Appeals and it was, therefore, objectively reasonable for the officers in Applicant's case to believe they had the investigative authority to approach Brown's residence. Further, Couns was not available to Counsel to argue during her suppression motion either, although, because Applicant was not in his own home, it would not have provided much merit. Counsel is not required to be clairvoyant or anticipate changes in the law that were not in existence at the time of trial. Gilmore v. State, 314 S.C. 453, 445 S.E.2d 454 (1994) (overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999)).

This Court finds Counsel's testimony with respect to this allegation very credible. This Court finds Applicant has failed to establish how Counsel was deficient for failing to argue S.C. Const. Art. I, §10 in her suppression motion as Applicant did not have a right to privacy in Brown's residence and officers' actions were proper under the controlling precedent at the time of Applicant's arrest. Further this Court finds, Applicant has failed to show any resulting prejudice from the alleged deficiency. Based on the forgoing, Applicant has failed to meet his burden set forth in Strickland and these allegations must be denied and dismissed with prejudice.

CONCLUSION

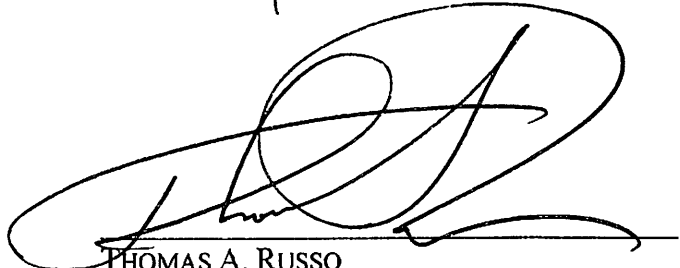
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 11TH day of March, 2020



THOMAS A. RUSSO
Presiding Judge
Eighth Judicial Circuit

Florence, South Carolina