

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

R. Markley Dennis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM HOLMES,

APPELLANT.

APPELLATE CASE NO. 2018-001642

RECORD ON APPEAL – Volume 2

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1 choice again, has to be unanimous. And again you
2 would complete it the same. Just check that choice
3 and fill in it. Again, you can only choose between
4 possession with intent to distribute or
5 manufacturing, not both of them.

6 So if you do, whichever one you do,
7 just simply attach the one that you don't use to
8 the verdict form. When we publish the verdict I
9 will make sure and I will confirm that's what the
10 jury wants to do.

11 I know you're anxious to get started
12 and you're almost there. I told you the last thing
13 I will tell is you when you may commence your
14 deliberations. First I need to ask if any of the
15 12 persons feel they will be unable to continue.
16 If you do feel that you cannot, just raise your
17 hand. Thank you. Mr. Robinson, at this point it
18 appears that the jurors would be able to proceed
19 and in just a moment I'm going to excuse you and
20 the other jurors. I need to discuss my charge with
21 the attorneys and it might be necessary to return
22 you to give some additional instruction or
23 correction and if so I will certainly do that.

24 If there aren't any exceptions or
25 additions that need to be given then we will

1 deliver the exhibits and return them, we will send
2 them to you and when you receive those exhibits
3 then you may commence your deliberations. But not
4 before.

5 Once the deliberations have commenced
6 the only restriction on the deliberations is this.
7 If any juror has to leave for any reason you must
8 stop deliberating until all 12 of you are together.
9 Other than that you proceed as you see fit and
10 proper. Thank you very much for your attention.
11 Mr. Robinson, when we leave I am going to ask you
12 not rejoin the jury in the jury room. I will be in
13 there momentarily to discuss with you how much
14 longer you need to remain with us. Obviously if
15 the jury comes back we will return you as well to
16 the courtroom.

17 Thank you very much, ladies and
18 gentlemen. Retire to the jury room, but await your
19 exhibits before deliberating.

20 (Thereupon, the jury exited the
21 courtroom at 4:38 p.m.)

22 THE COURT: Exceptions or additions
23 from the State?

24 MS. SAVAS: No, Your Honor.

25 THE COURT: Exceptions or additions

1 from Mr. Boston?

2 MS. SEMAN: No, Your Honor.

3 THE COURT: Exceptions or additions
4 from Mr. Holmes?

5 MR. LEWIS: No, Your Honor.

6 THE COURT: Thank you all very much.
7 And you all, you don't go very far. But if you
8 leave give me a number where we can reach you.

9 (Thereupon, the jury began deliberating
10 at 4:47 p.m.)

11 (COURT'S EXH. 2 marked for
12 identification.)

13 (The following proceedings were had at
14 5:03 p.m.)

15 THE COURT: The note is the jurors want
16 to stop and come back tomorrow. They had some
17 jurors who have child care issues. Any objections?

18 MR. LEWIS: No.

19 MS. SEMAN: No.

20 THE COURT: I will allow Mr. Holmes to
21 remain where is he unless they get him.

22 MR. LEWIS: Mr. Boston? He is probably
23 remaining where he is though.

24 THE COURT: Well, maybe I am hopeful we
25 will have him. I would like that opportunity. But

1 I have discussed with Mr. Boston, I'm going to
2 allow Mr. Boston, he has assured me he is going to
3 be here tomorrow. I trust him. Let's bring in our
4 jury. And the State said it is left to my
5 discretion.

6 (Whereupon the jury entered the
7 courtroom at 5:05 p.m.)

8 THE COURT: Thank you, ladies and
9 gentlemen. Ms. Reed, I have what is now Court's
10 Exhibit No. 2. Thank you for that. I would only
11 ask that if you have any other submissions that you
12 sign them as presiding juror. That's not a
13 problem. I am confirming that right now.

14 You have indicated that there are
15 several jurors who have child care issues and need
16 to leave by 5:30. And it would be yours and the
17 other jurors desire to return at 9:00 and resume
18 the deliberations; is that correct?

19 THE FOREPERSON: Yes, sir.

20 THE COURT: Very well. I will tell
21 you, ladies and gentlemen, that one of the things
22 we have and we see it in other states, they do from
23 time to time and it's not uncommon in a civil trial
24 for that to be done. For whatever reason there's
25 -- there is some civil rules of evidence or the

1 Civil Rules of Procedure allow a judge -- gives a
2 judge discretion of keeping the jurors basically
3 overnight. We don't have any similar criminal
4 rules so we sort of create them as we go and we are
5 trying to make this process user friendly for my
6 word for you recognizing that each of you have
7 something to do.

8 When I first started practicing, first
9 doing this job I can tell you what most of the old
10 judges would answer to you and I answered early on
11 too. Sorry. You deliberate until you reach a
12 decision. I have been in courtrooms as late as
13 2:30 in the morning waiting on a jury. That's -- I
14 understand the reason for that and the reason is
15 this: This is very critical now because you have
16 the case. And the concern that anyone would have
17 is you can have conversation with people or people
18 can have conversation with you. You can do
19 independent research. And while you are in that
20 jury room we can control that to some extent. But
21 I know I am looking at responsible adults who each
22 one has already, I don't know you I don't think
23 from before this week, but I can tell you this and
24 say without any hesitation. You have spoken
25 volumes about yourselves. You know why I say that?

1 You saw me excuse some persons that said I served
2 last year. I served sometime else or I have this
3 meeting. I didn't ask for any more. Why? They
4 took an oath like you did and I relied on the
5 truthfulness of that.

6 What stopped you from saying I have
7 small children or taking care of a person over 65?
8 It wasn't true. You could have gotten out of this
9 if you wanted to, if you wanted to maybe twist a
10 little, but you didn't. That speaks volumes. So I
11 appreciate that and respect that.

12 I have shared this story with you and
13 just to reiterate how critical it is. In a civil
14 case sometimes, there's no fixed rule for this. We
15 have a rule that says 12 jurors. If you are in
16 federal court I think it's six or eight. I haven't
17 been there in a long time. If you're in magistrate
18 court it's still six. Why 12? Because that's what
19 we have chosen to do. I have had civil cases where
20 persons elected to go with 11. I have never had a
21 criminal case, nor do I expect to have a criminal
22 case, where the parties elected to go with 11.
23 Why? Because the rule says 12. And 12 persons are
24 very important.

25 I had a case in Beaufort years ago and

1 it was a civil case. The juror -- it was a medical
2 malpractice. And the jury asked to do what you are
3 doing and they went home. The presiding juror was
4 very perceptive. They came back about 9:00. I got
5 a note Judge, we have a problem. One of the jurors
6 talked with her husband. And so we inquired. It
7 was very innocent. She said what you are doing.
8 Well, it's this person has this condition. And the
9 response was you remember our cousin had that in
10 Tennessee. I had to excuse her. Violated the
11 discussion.

12 Well, it was 11 to one, it was a civil
13 case, but the parties elected to 12. Absolutely
14 their right. We tried that case for four
15 and-a-half days. It had to be retried again.
16 That's how critical it is that you not talk with
17 anyone, that you not permit anyone to talk. It
18 would be devastating. Means we have to do it all
19 over again. And I am looking at I believe the best
20 jury Charleston County can provide. And each one
21 of you represents that. There is no reason for me
22 to believe there is anybody in this county better
23 suited than you. I look forward to hearing that
24 result tomorrow.

25 I am going to let you go home. Be back

1 in the jury room at 9:00. Thank you so much. Have
2 a good evening.

3 (Thereupon, the jury exited the
4 courtroom at 5:11 p.m.)

5 THE COURT: Exceptions or additions
6 from the State?

7 MS. SAVAS: No, Your Honor.

8 THE COURT: Exceptions or additions
9 from Mr. Boston?

10 MS. SEMAN: No, Your Honor.

11 THE COURT: Exceptions or additions
12 from Mr. Holmes?

13 MR. LEWIS: No, Your Honor.

14 THE COURT: Thank you all. I
15 appreciate it. Have a good evening. I will see
16 you at 9:00 in the morning.

17 (These proceedings were adjourned at
18 5:12 p.m., February 6, 2018, Charleston County,
19 South Carolina.)

20 (The following proceedings were held
21 February 7, 2018, Charleston County, South
22 Carolina, @ 9:05 a.m.)

23 (Whereupon the jury entered the
24 courtroom at 9:05 a.m.)

25 THE COURT: Good morning, ladies and

1 gentlemen. I hope you had a good evening and we
2 are ready to continue and I thank you for your note
3 and I thank you for your attention to this matter
4 and the professionalism that you have all
5 demonstrated in honoring the oath that you have
6 done and honoring the commitment that you made when
7 you accepted that invitation to be on a jury.

8 As I told you when I qualified you, it
9 is not something I'm sure didn't make your top ten
10 list. But I hope when you finish this you will
11 have a feeling of making a contribution to the
12 state or for the betterment of your community in
13 doing what you do because this is an incredible
14 service and I thank you again in advance for that.

15 I need to ask if each of you again
16 solemnly swear or affirm that you have honored the
17 Court's instruction in every respect by not talking
18 with anyone, not allowing anyone to talk with you
19 about this case or talking about it in your
20 presence. And also following throughout the
21 instructions the Court has given you concerning
22 this, you are not to commence your deliberations in
23 any fashion. If you can make that commitment,
24 please raise your hand.

25 Let the record reflect that each juror

1 raised his or her hand in response to the Court's
2 question.

3 We are going to be sending back the
4 evidence, but some of the evidence we are not going
5 to send back. But that doesn't mean you can't view
6 it. I just need for you to send me a note that you
7 want to see certain things such as the bags
8 containing what's been identified as the drugs.
9 And as you know, some like the Pyrex containers had
10 residue. You will decide all of that in just a few
11 moments. If you need to view those you are welcome
12 to do that. But I would feel more comfortable if
13 you viewed it here and we can pass the bags because
14 I don't want you removing anything from the bag
15 obviously without proper gloves and whatnot to
16 avoid any contamination by you or the evidence
17 itself.

18 But please know that you are free to
19 look at anything. If you just let me know what you
20 want to see we will certainly accommodate you in
21 that respect. Any of the other evidence that are
22 not of that nature will be sent back to you, okay?
23 When you receive all that evidence you may commence
24 your deliberations. And let me know if there is
25 anything else you need. Thank you.

1 THE FOREPERSON: Quick question. Can
2 you explain again with the charges as far as the
3 manufacturing and the PWID when you said yesterday
4 we had to choose one or the other?

5 THE COURT: Yes, ma'am. I can do this.
6 Why don't y'all talk among yourselves. I will talk
7 with them. There are two ways of accomplishing
8 that. One would be to send you a copy of that
9 portion of my instruction that gave you the
10 elements of both of those crimes. And then you
11 would have it.

12 The other is to recharge or give you an
13 instruction, but if you will go back, start your
14 deliberations. If there is anything else you need
15 just let me know and we will discuss that. Okay?
16 Thank you. That's a very legitimate and very fair
17 request.

18 (Thereupon, the jury exited the
19 courtroom at 9:10 a.m.)

20 THE COURT: Any exceptions or additions
21 from the State to the judge's comments to the jury
22 thus far?

23 MS. SAVAS: No, Your Honor.

24 THE COURT: Any exceptions from Mr.
25 Boston?

1 MS. SEMAN: No, Your Honor.

2 THE COURT: Any exceptions from Mr.
3 Holmes?

4 MR. LEWIS: Briefly. After talking
5 with my co-counsel, it may seem I am being selfish,
6 it almost sounds as if they don't know that they
7 can also choose neither.

8 THE COURT: I understand that.

9 MR. LEWIS: I just want to make sure
10 that's clear to them as well.

11 THE COURT: But that's not what they
12 asked me.

13 MR. LEWIS: Right.

14 THE COURT: They asked me between the
15 two if they chose. Not guilty is on the verdict
16 form and I explained that to them. Again, now,
17 let's talk about that, what they requested. I'm
18 getting closer and closer to doing what Judge
19 Newman does now all the time. And that's send his
20 entire charge back.

21 My feeling about that, and I have done
22 it on numerous occasions, Judge Connors was the
23 author of the decision that recognized that we
24 could do that. I have a real -- I respect her
25 view, but I have a different view of when someone

1 requests. She says if someone requests a portion
2 of the charge you may send that back, but you have
3 to send the entire charge. That doesn't make any
4 sense to me because they asked for a portion of the
5 charge. I don't give them the whole charge when
6 they come back in. I charge merely that portion
7 they are wanting. That's what I have typically
8 done for 24 years. Because my feeling is to tell
9 them if there is anything else they need let me
10 know. And bring them and sometimes tell them
11 please remember you have to consider this with all
12 other aspects of the charge.

13 But I will do whatever -- being a
14 criminal case, and no disrespect to the State, but
15 this is one if you want the whole charge to go back
16 just tell me that.

17 MR. LEWIS: I would prefer that.

18 THE COURT: I understand. Go ahead.
19 You can object to whatever you want. What's your
20 objection?

21 MS. SAVAS: I was just going to agree
22 with Your Honor.

23 THE COURT: Well, I appreciate that.
24 You and I agree, but if this was a civil case I
25 would say thank you, Mr. Lewis, but I'm going to do

1 what I choose to do. But in this case because of
2 what we have and because of the issues that we
3 have, the last thing I want is them to say oh,
4 Judge, you should have sent the whole thing back
5 and send it back for that reason alone and then we
6 haven't addressed a thing. I will put it in a form
7 and I will give each of you a copy.

8 Anything else before we recess?

9 MS. SEMAN: Briefly, Your Honor. I
10 believe my client will be showing up in just a
11 minute. Is it okay if he remains out in the
12 courtroom assuming that he does show up in a few
13 minutes?

14 THE COURT: I want to talk to him
15 first.

16 MS. SEMAN: As soon as he shows up I
17 will be happy to alert Your Honor.

18 THE COURT: Thank you.

19 MS. SEMAN: Thank you.

20 (Thereupon, the jury began deliberating
21 at 9:13 a.m.)

22 (Whereupon the jury entered the
23 courtroom at 10:00 a.m.)

24 THE COURT: Ladies and gentlemen, I
25 have now what's Court's Exhibit No. 3. Ms. Reed,

1 and the first question is may we see a copy of the
2 police report. And that's not -- I understand that
3 question. And my fault, sometimes when we do mark
4 them for identification I give an explanation. I
5 didn't do it so I take the blame for that.

6 But when you have testimony you heard
7 sometimes, in fact, you heard -- that was when you
8 heard some objections made and to distinguish them.
9 As I used to coach mock trial kids -- young people
10 in high school for about 23 years and I told them
11 when you have a docket exhibit it has to have a
12 name. And the name is Exhibit A, 1, 2, 3. When
13 you name it it is for identification purposes only.
14 Meaning for the record for your purposes. Because
15 that's a reference point for anyone, a witness then
16 testified about that document.

17 Sometimes that document as we had here
18 is admitted into evidence. That means that the
19 witness is going to testify about the document. In
20 those cases you saw them because they were shown to
21 you. Why? Because they were admitted. You can't
22 see them until they are admitted. That's part of
23 the rules of evidence. Because some documents
24 that's -- again, those are the parts where we have
25 that separation. Some documents our rules permit

1 to be seen by you. So you don't need to worry
2 about the why. But the police reports that are
3 there are in for identification only. They were
4 not admitted. So you do not get those physical
5 reports, but you certainly consider the testimony
6 about -- by the witness concerning those particular
7 documents. That is evidence for your
8 consideration. But the document itself is not --
9 does not go to you. So that's the explanation of
10 why you don't have them and why you can't see them.

11 Insofar as can we get a full
12 explanation of what the charges are? I am in the
13 process of printing that now. And I would
14 reemphasize, please, I have addressed -- I have
15 listed the charges. There are basically three
16 and-a-half, 3 and 3A. There's a charge of
17 manufacturing that I have explained to you and
18 given you the definition of manufacturing. That
19 applies to both Mr. Holmes and Mr. Boston.

20 There's another charge of possession
21 with intent to distribute. Those deal with and you
22 will see cocaine base/crack cocaine. It is
23 referenced from time to time. Sometimes in my
24 charge I don't put both, but please know that
25 whenever you see that we are talking about that

1 substance. Both Mr. Holmes and Mr. Boston are
2 charged as it pertains to that particular
3 substance, possession of the crack cocaine/cocaine
4 base.

5 Mr. Holmes, though, has an additional
6 charge of possession, simple possession. And you
7 will see the distinction there. It's titled simple
8 possession of cocaine and that's one of the
9 exhibits that you have. That's one of the -- Mr.
10 Boston is not charged with simple possession of
11 cocaine. But as a part of the possession with
12 intent to distribute charge, there is what I
13 explained to you was a lesser included offense of
14 simple possession. Why? Because the State has to
15 prove that they possessed it with the intent to
16 distribute and that's explained to you in the
17 charge.

18 Now, all of that is there. Your
19 verdict forms you remember, but remember also that
20 distinction between the manufacturing and
21 possession with intent to distribute cocaine. You
22 can't find them guilty, them being both, either or
23 both Defendants of both charges. If you find them
24 guilty of manufacturing you don't even need to
25 consider possession with intent to distribute. If

1 you choose to. Use that as finding them guilty of
2 that. If you choose to find them guilty of not
3 manufacturing but possession of with intent to
4 distribute, then you have to go through the process
5 we just talked about. Was it possession with
6 intent to distribute or was it simple possession.
7 You have to make that distinction.

8 If you find that they possessed it with
9 intent to distribute then obviously you will return
10 a verdict consistent with that decision. If you
11 find that State failed to prove intended -- they
12 possessed it with intent to distribute it, but
13 possessed it, then you may consider the lesser
14 included offense. Of course to find them guilty
15 you have to find the State has met its burden of
16 proof and established the elements of each of the
17 crimes that you choose. Okay?

18 Hopefully when you get the charge and
19 you can read that through that will be fine. If
20 you need further instruction please remember, but
21 please remember also that there are -- in all but
22 the possession with intent to distribute there are
23 two options, guilty or not guilty. You understand
24 that. There are options in any of those crimes.
25 So please keep that in mind. Thank you very much.

1 Please, when you get it consider the charge as a
2 whole. You may retire and resume your
3 deliberations.

4 (Thereupon, the jury exited the
5 courtroom at 10:05 a.m.)

6 THE COURT: Any exceptions or additions
7 from the State?

8 MS. SAVAS: No, Your Honor.

9 THE COURT: Exceptions or additions
10 from Mr. Boston?

11 MS. SEMAN: No, Your Honor.

12 THE COURT: Exceptions or additions
13 from Mr. Holmes?

14 MR. LEWIS: No, Your Honor.

15 THE COURT: Mr. Boston, good morning,
16 sir. I understand you have had a delay. That's
17 all right. Thank you very much. I will allow Mr.
18 Boston to remain out with his lawyers. Please stay
19 in touch. Do not leave the building. Thank you.
20 We will be at ease.

21 (COURT'S EXH. 3 was marked for
22 identification.)

23 (Whereupon the jury continued
24 deliberating and reached a verdict at 11:25 a.m.)

25 THE COURT: I have been advised the

1 jury has reached a verdict. Is the State ready to
2 receive the verdict?

3 MS. SAVAS: Yes, Your Honor.

4 THE COURT: Mr. Boston ready?

5 MS. SEMAN: Yes, Your Honor.

6 THE COURT: Mr. Holmes is ready?

7 MR. LEWIS: Yes, Your Honor.

8 THE COURT: Okay. Let's bring in our
9 jury. Mr. Boston, when we publish the jury I will
10 ask you to rise, please.

11 (Whereupon the jury entered the
12 courtroom at 11:37 a.m.)

13 THE COURT: I understand the jury has
14 reached a verdict; is that correct?

15 THE FOREPERSON: Yes.

16 THE COURT: If you would pass the
17 verdict form, please.

18 (Handing.)

19 THE COURT: The verdict forms have been
20 properly completed. If you will publish the
21 verdict. I would ask Mr. Boston to please rise.

22 THE CLERK: State of South Carolina
23 versus William Holmes, case number
24 2015-GS-10-06090. We the jury by unanimous consent
25 find the Defendant William Holmes on the charge of

1 possession of cocaine guilty. State of South
2 Carolina versus William Holmes. Case number
3 2015-GS-10-06091. We the jury by unanimous consent
4 find the Defendant -- case 2015-GS-10-06087. We
5 the jury by unanimous consent find the Defendant
6 Darell Boston on the charge of manufacturing crack
7 cocaine guilty.

8 State of South Carolina versus William
9 Holmes, case number 2015-GS-10-06088. We the jury
10 by unanimous consent find the Defendant Williams
11 Holmes on the charge of manufacturing crack cocaine
12 guilty. All signed by the presiding juror dated
13 February 7th, 2018.

14 THE COURT: Thank you. Ladies and
15 gentlemen, if the clerk has published your verdict
16 to each Defendant correctly please raise your right
17 hand. Let the record reflect that each juror
18 raised his or her right hand in response to the
19 Court's questions. And, furthermore, consistent
20 with my instruction the verdict forms dealing with
21 possession with intent to distribute have not been
22 executed because the jury decided to find the guilt
23 as to the manufacturing. If that is correct please
24 raise your right hand. Let the record reflect that
25 each juror raised their right hand in compliance

1 with the Court's instructions. Anything further
2 from the State from the jury?

3 MS. SAVAS: No, Your Honor.

4 THE COURT: Anything further from Mr.
5 Boston?

6 MS. SEMAN: No, Your Honor.

7 THE COURT: Anything further from Mr.
8 Holmes?

9 MR. LEWIS: Ask they be polled.

10 THE COURT: Ladies and gentlemen, the
11 request for polling is merely the clerk will ask
12 you a question and -- two questions. Was that your
13 verdict and we will be polling only as to Mr.
14 Holmes. We do not have to poll as to the -- you
15 don't request a verdict --

16 MS. SEMAN: Your Honor, I would ask
17 that we poll as well.

18 THE COURT: We will poll as to each of
19 the Defendants. Then you will ask -- we will ask
20 it -- since we have two verdicts, do we need to
21 separate them? Can we just say that they are
22 collective verdicts? Because they are not
23 inconsistent.

24 MS. SEMAN: I would ask they be
25 separately, Your Honor.

1 THE COURT: Fine. All right. So we
2 are going to have three pollings?

3 MR. LEWIS: Definitely don't need to
4 poll in regards to my --

5 THE COURT: First of all, folks, they
6 have already been polled. You all witnessed that.
7 I polled. That's what holding your hand up is.
8 I'm going to -- not withstanding your request, for
9 convenience of the jury, we are going to ask them
10 if that's their verdict as to the Defendant Holmes,
11 the verdict as to Defendant Holmes and their
12 verdict as to Defendant Boston. Thank you. Okay.
13 Let's do Mr. Holmes first since he requested it
14 first.

15 THE CLERK: I will call you out by your
16 juror number. I need you to stand at that time and
17 then I will ask you two questions. Is this your
18 verdict, you need to answer yes or no. The second
19 will be is this still your verdict, yes or no. We
20 will start with Mr. Holmes. Defendant Holmes.

21 Juror No. 260, please stand. Is this
22 your verdict?

23 JUROR NO. 260: Yes.

24 THE CLERK: Is this still your verdict?

25 JUROR NO. 260: Yes.

1 THE CLERK: Thank you, ma'am. Juror
2 No. 212, please stand. Is this your verdict?

3 JUROR NO. 212: Yes.

4 THE CLERK: Is this still your verdict?

5 JUROR NO. 212: Yes.

6 THE CLERK: Thank you, ma'am. Juror
7 No. 86, please stand. Is this your verdict?

8 JUROR NO. 86: Yes.

9 THE CLERK: Is this still your verdict?

10 JUROR NO. 86: Yes.

11 THE CLERK: Thank you. Juror No. 278,
12 please stand. Is this your verdict?

13 JUROR NO. 278: Yes.

14 THE CLERK: Is this still your verdict?

15 JUROR NO. 278: Yes.

16 THE CLERK: Thank you, ma'am. Juror
17 No. 131, please stand. Is this your verdict?

18 JUROR NO. 131: Yes.

19 THE CLERK: Is this still your verdict?

20 JUROR NO. 131: Yes.

21 THE CLERK: Thank you. Juror No. 60,
22 please stand. Is this your verdict?

23 JUROR NO. 60: Yes.

24 THE CLERK: Is this still your verdict?

25 JUROR NO. 60: Yes.

1 THE CLERK: Juror No. 81, please stand.
2 Is this your verdict?

3 JUROR NO. 81: Yes.

4 THE CLERK: Is this still your verdict?

5 JUROR NO. 81: Yes.

6 THE CLERK: Thank you. Juror No. 54,
7 please stand. Is this your verdict?

8 JUROR NO. 54: Yes.

9 THE CLERK: Is this still your verdict?

10 JUROR NO. 54: Yes.

11 THE CLERK: Thank you. Juror No. 310,
12 please stand. Is this your verdict?

13 JUROR NO. 310: Yes.

14 THE CLERK: Is this still your verdict?

15 JUROR NO. 310: Yes.

16 THE CLERK: Thank you. Juror No. 47,
17 please stand. Is this your verdict?

18 JUROR NO. 47: Yes.

19 THE CLERK: Is this still your verdict?

20 JUROR NO. 47: Yes.

21 THE CLERK: Juror No. 117, please
22 stand. Is this your verdict?

23 JUROR NO. 117: Yes.

24 THE CLERK: Is this still your verdict?

25 JUROR NO. 117: Yes.

1 THE CLERK: Thank you. Juror No. 280,
2 please stand. Is this your verdict?

3 JUROR NO. 280: Yes.

4 THE CLERK: Is this still your verdict?

5 JUROR NO. 280: Yes.

6 THE CLERK: Thank you.

7 THE COURT: We will not -- since they
8 have stood once, they don't need to stand again.
9 We can just call them out, just ask them the
10 questions. You can remain seated. Thank you. Now
11 you're polling as to Mr. Boston.

12 THE CLERK: Yes, sir. Juror No. 260,
13 is this your verdict?

14 JUROR NO. 260: Yes.

15 THE CLERK: Is this still your verdict?

16 JUROR NO. 260: Yes.

17 THE CLERK: Thank you, ma'am. Juror
18 No. 212, is this your verdict?

19 JUROR NO. 212: Yes.

20 THE CLERK: Is this still your verdict?

21 JUROR NO. 212: Yes.

22 THE CLERK: Thank you, ma'am. Juror
23 No. 86, is this your verdict?

24 JUROR NO. 86: Yes.

25 THE CLERK: Is this still your verdict?

1 JUROR NO. 86: Yes.

2 THE CLERK: Thank you. Juror No. 278,
3 is this your verdict?

4 JUROR NO. 278: Yes.

5 THE CLERK: Is this still your verdict?

6 JUROR NO. 278: Yes.

7 THE CLERK: Thank you, ma'am. Juror
8 No. 131, is this your verdict?

9 JUROR NO. 131: Yes.

10 THE CLERK: Is this still your verdict?

11 JUROR NO. 131: Yes.

12 THE COURT: Thank you. Juror No. 60,
13 is this your verdict?

14 JUROR NO. 60: Yes.

15 THE CLERK: Is this still your verdict?

16 JUROR NO. 60: Yes.

17 THE CLERK: Juror No. 81, is this your
18 verdict?

19 JUROR NO. 81: Yes.

20 THE CLERK: Is this still your verdict?

21 JUROR NO. 81: Yes.

22 THE CLERK: Thank you. Juror No. 54,
23 is this your verdict?

24 JUROR NO. 54: Yes.

25 THE CLERK: Is this still your verdict?

1 JUROR NO. 54: Yes.

2 THE CLERK: Thank you. Juror No. 310,
3 is this your verdict?

4 JUROR NO. 310: Yes.

5 THE CLERK: Is this still your verdict?

6 JUROR NO. 310: Yes.

7 THE CLERK: Thank you. Juror No. 47,
8 is this your verdict?

9 JUROR NO. 47: Yes.

10 THE CLERK: Is this still your verdict?

11 JUROR NO. 47: Yes.

12 THE CLERK: Juror No. 117, is this your
13 verdict?

14 JUROR NO. 117: Yes.

15 THE CLERK: Is this still your verdict?

16 JUROR NO. 117: Yes.

17 THE CLERK: Thank you. Juror No. 280,
18 is this your verdict?

19 JUROR NO. 280: Yes.

20 THE CLERK: Is this still your verdict?

21 JUROR NO. 280: Yes.

22 THE CLERK: Thank you. The jury has
23 been polled.

24 THE COURT: Thank you very much. The
25 jury has been polled and the verdict stands.

1 Anything else from the jury from Mr. Boston?

2 MS. SEMAN: No, Your Honor.

3 THE COURT: Anything else from Mr.

4 Holmes?

5 MR. LEWIS: No, Your Honor.

6 THE COURT: Ladies and gentlemen, thank
7 you very much. I appreciate it very much as I have
8 indicated throughout the service you have rendered
9 to your state and county. You have performed your
10 duties very adequately and I'm not commenting on
11 the verdict. You had a job and you responded and
12 you were the judge with me. I commented about the
13 manner in which you approached your duty and the
14 method that you employed. Very, very complimentary
15 to the system and I thank you. I am pleased to
16 inform you this will conclude your services this
17 week. You have earned your exemption for the next
18 three years.

19 If any of you have any questions or
20 concerns that you wish to express I'm going to
21 excuse you now and let you retire to the jury room.
22 If you will wait a moment I will be happy to step
23 back and try to address those. If you have none
24 you are free to leave and have a great day. Thank
25 you so much.

1 And also now let me say this. You now
2 are free to talk about this case if you wish. And
3 sometimes I know I did this when I was practicing
4 law, I would contact jurors to find out, get some
5 pointers, see what maybe I could have done,
6 anything I did wrong or that sort of thing. And
7 that's -- I don't know whether it is going to
8 happen, but if it does you are free to talk to them
9 or not talk to them. And if the person persists in
10 asking you a question and you choose not to talk to
11 them, let Ms. Armstrong know and she can make me
12 aware of that and we will take care of it for you.
13 Thank you. You are free to leave.

14 (Thereupon, the jury exited the
15 courtroom at 11:45 a.m.)

16 THE COURT: Anything from the State at
17 this point?

18 MS. SAVAS: No, Your Honor.

19 THE COURT: Anything from Defendant?
20 Any motions at this point?

21 MS. SEMAN: Your Honor, we just want to
22 renew all of our earlier motions and objections.
23 Thank you.

24 THE COURT: Very well. The rulings
25 previously given will stand and that would be the

1 pretrial motions that were heard, the reasons for
2 that. Your memorandums are of course incorporated.
3 Your arguments are incorporated fully. And those
4 made during the trial, all of those are
5 incorporated and I will stand by my previous
6 rulings with respect to Mr. Boston.

7 MR. LEWIS: Same motions, Judge.

8 THE COURT: And I would again
9 incorporate any memorandum, all of your arguments
10 made previously pretrial and during the trial fully
11 and my rulings stand as previously articulated.
12 Thank you so much. You want to prepare the
13 sentencing sheets?

14 MS. SAVAS: I do have them here, Your
15 Honor.

16 THE COURT: Okay.

17 THE COURT: Are you ready?

18 MS. SEMAN: Yes, Your Honor.

19 THE COURT: All right.

20 MS. SAVAS: Just beg the Court's
21 indulgence.

22 (Brief pause.)

23 THE COURT: All right. Let's do Mr.
24 Boston first. What's the State's position?
25 Anything you wish to add on Mr. Boston, Ms. Savas?

1 MS. SAVAS: Yes, Your Honor. Briefly.
2 Your Honor, I would like to read the Defendant's
3 prior record.

4 THE COURT: Sure.

5 MS. SAVAS: Your Honor, in 1998 he was
6 convicted of possession of marijuana first offense.
7 In 2003 possession cocaine first, in 2009 two
8 counts of a PWID cocaine first where he was
9 sentenced to 15 years suspended upon two years
10 probation by Judge Young. And in 2009 DUS charge.
11 In 2010, Your Honor, the Defendant was convicted of
12 trafficking crack 8 to 28 grams first offense,
13 trafficking cocaine, 10 to 28 grams first offense,
14 and the PWID cocaine first. He was sentenced to
15 ten years on the trafficking charges and 15 years
16 concurrent on the PWID charges. Your Honor, in
17 the --

18 THE COURT: That was what year?

19 MS. SAVAS: 2010, Your Honor, and he
20 was released from prison I think in 2014. And
21 these actions occurred in March of 2015. There's a
22 clear and consistency that Mr. Boston not only
23 manufactures the drug and crack, but also is
24 trafficking.

25 And, Your Honor, in regards to his

1 sentence the State had made multiple reasonable
2 offers.

3 THE COURT: I am aware of that.

4 MS. SAVAS: Which they are entitled to
5 reject and exercise their right to trial. And
6 those offers were under this ten-year frame for
7 him. And he still does have another pending
8 distribution charge with the solicitor's office for
9 crack as well. And, Your Honor, given the
10 repetitive nature and his knowing of the system and
11 already serving prison, it had no effect on his
12 lifestyle or his desire to change his criminal
13 activity and his actions. And also the impact
14 that's left on Ms. Denise, our witness in this
15 case, and the severity of that and that she had
16 testified that this was repetitive nature and this
17 is what did they continually, come in there and
18 take advantage of these vulnerable addicts and feed
19 that addiction for them which causes a grand
20 problem for the community beyond just the selfish
21 act of the making and the dealing of the crack
22 themselves.

23 Therefore, Your Honor, the State would
24 respectfully request a sentence in the mid to upper
25 range of this third offense, Judge. These are

1 strike offenses. And, Your Honor, there was a
2 possibility of with these strikes potentially even
3 being an LWOP sentence. And given the nature of
4 these crimes, Your Honor, the Court or the State
5 would respectfully request something in that area
6 as he has already been previously sentenced to 10
7 and 15 years on prior charges.

8 THE COURT: Thank you. Be happy to
9 hear from you, Ms. Seman.

10 MS. SEMAN: Thank you, Your Honor. Mr.
11 Boston has served 62 days in jail from March 6,
12 2015 to May 6, 2015. I want to briefly address a
13 few of the things that the solicitor said.

14 The ten-year sentence he did receive on
15 the trafficking back in 2010, that was a 65 percent
16 offense. He did serve four years which I do think
17 tells you a little bit about his conduct when he
18 was in prison on those charges. He was working.
19 He was obviously not getting into any trouble or he
20 would have served more time than that.

21 As far as the earlier trafficking, that
22 was based on weight, not conduct. Obviously we
23 don't have anything close to a trafficking weight
24 here. As far as the verdict being on the
25 manufacturing, Your Honor, I don't believe there's

1 anything about that verdict that suggests that the
2 jury believed that he intended to distribute the
3 items that were involved in this case.

4 And as far as pending distribution
5 charge, that was from before this case and I do
6 think it says something that the solicitor decided
7 to try this case first. Mr. Boston, Your Honor,
8 has been represented by several attorneys in our
9 office. We were kind of put in a difficult
10 position of being acquainted as this case was being
11 called for trial as I know Your Honor is familiar.
12 I am honored to have represented him through the
13 process. Though it doesn't matter of course for
14 purpose of sentencing, for purposes of the record
15 Mr. Boston has always maintained his innocence. He
16 has been here. He has shown up every day for this
17 trial knowing what he's facing. He has been very
18 motivated to defend himself and we understand that
19 the jury has spoken.

20 Sentencing after trial of course puts
21 defense attorneys in a weird position because we
22 don't want to say anything that might prejudice the
23 appeal. However, Your Honor, if he was culpable at
24 all he was absolutely less culpable. No contraband
25 was found on him. No drugs found on him. No

1 scales. And he has been here. Compared to his
2 co-defendant, Your Honor, I do believe that he
3 deserves a lesser sentence. As you have discussed
4 with us throughout this case I do think that this
5 case will be an opportunity for us to make some
6 law. That's great. But right now we are here
7 about Mr. Boston.

8 Mr. Boston is 41. He's from San Diego,
9 California originally. He's been in the Charleston
10 area for about 20 years. Apparently I misquoted
11 that. He did live in San Diego for a while. He is
12 the father of four children ranging from 23 to 12,
13 three of whom live here. His oldest son just had
14 his first grandchild. He's seven months old. He
15 is still here to support his children. He is
16 employed at Toast of Charleston. He's been working
17 there for almost a year. He's a line cook. He
18 loves cooking. He's an animal lover and he served
19 three months in the Persian Gulf in the Navy. It's
20 been three years since this charge. My
21 understanding is no charges since then, certainly
22 nothing significant. He does have family support
23 in the community. Most of his family is here. His
24 mother Janet and his Aunt Sadie are both here in
25 the courtroom today. They wanted to be present for

1 the entire trial. Mr. Boston told them not to
2 come. He thought it would be too difficult for
3 them. It's been very stressful for their family to
4 go through this.

5 Your Honor, based on the conduct that
6 is at issue in this case, we have to request the
7 minimum ten-year sentence. We ask you to allow him
8 to be part of his grandchild's childhood once he is
9 released and we believe that a ten-year sentence is
10 appropriate especially considering that it's an
11 85 percent offense. Thank you.

12 THE COURT: Thank you so much. Mr.
13 Boston, anything you wish to add, sir?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Happy to hear from you,
16 sir.

17 THE DEFENDANT: First of all, thank you
18 for hearing my statement. Like my lawyer said,
19 I've pled guilty to everything I have been guilty
20 of. I wouldn't have taken it this far if I figured
21 I would be found guilty. I only had one offer from
22 the solicitor's office. That was an eight-year
23 sentence. That's like eight years to me. I am not
24 trying to make my momma cry. She cried for four
25 years straight while I was in prison just because.

1 This time around they know I'm not guilty but the
2 jury found me guilty. I understand that. I
3 understand the prison system. I understand the
4 streets. I understand the court system. My past
5 has anything to do with what makes me now. The
6 things I have done in the past, that makes me who I
7 am right now, but it doesn't dictate what I am
8 going through, what I am doing because she never
9 asked me if I still sell drugs. I don't. I would
10 be a fool to say I never sold drugs. My record
11 isn't all that bad. But on paper it looks bad,
12 looks really, really, really bad.

13 Other than that, I mean I don't
14 understand why I am being found guilty because I
15 didn't do anything. Wrong place, wrong time, wrong
16 person. I didn't do anything, anything at all and
17 I am about to get time again for nothing. I can
18 have a hundred thousand character, a whole
19 neighborhood of character witnesses in here right
20 now. They wasn't there, but they know because the
21 streets talk. Everybody talks. I don't
22 understand. I love my parents. I love my kids. I
23 don't want to see -- if I would have known this I
24 would have taken a plea. Nothing I can do or say
25 now it is over with.

1 THE COURT: Thank you so much, sir.
2 Mr. Boston, I appreciate what you said. And I
3 think the fact that you haven't had any further
4 charges speaks volumes about you. I wish you had
5 made some decisions -- better decisions earlier
6 when you were released than you did on that
7 particular day. The solicitor asked for hand of
8 one hand of all. The reason I didn't charge that
9 is if you read what constructive possession is, if
10 you read that in conjunction with the mere presence
11 charge which talks about you have to be an active
12 participant. That incorporates hand of one and
13 hand of all. The principle is there. So I
14 understand that. What you should have done given
15 the facts and I understand you have every right to
16 say I didn't do any of that. The jury believed
17 that there was crack cocaine manufactured there.

18 And that's an unusual one. It's the
19 first one I have had in 24 years charging
20 manufacturing. I never had to create a charge for
21 manufacturing. Possession with intent to
22 distribute sure, but not manufacturing. Frankly
23 with the evidence they had and the jury believed it
24 that was a slam dunk.

25 That's what I said what I said in

1 ruling on it. That was all the State had to prove.
2 Testify to what he found, testify to the drugs in
3 the Pyrex container, it is done. That's over with.
4 That matched in every way the description.

5 And the problem is you had some risk
6 involved. And listen, I understand about
7 risk/reward. Well, you had your chance. I think
8 your lawyer did a good job in representing you. It
9 was a tough case all the way around, but now I am
10 faced with it.

11 I understand you paid your debt to
12 society, but obviously I can't ignore the fact for
13 this conduct occurring very shortly after you were
14 released from prison. And I have to take that into
15 consideration in fashioning a sentence. Sentence
16 of the Court is that you be committed to the
17 Department of Corrections. You understand that you
18 will serve 85 percent of this sentence and there's
19 a two-year community supervision. Do you
20 understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Sentence of the Court is
23 you be committed to the Department of Corrections
24 for a term of 17 years. Give you credit for
25 62 days. Good luck, sir.

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

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

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

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

11 (Thereupon, a spectator fainted.)

12 THE COURT: Hold on a second.

13 (Brief recess.)

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

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

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

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

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

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

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

5 MR. LEWIS: Third across the board.

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

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

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

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

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

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

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

23 MR. LEWIS: Yes, Your Honor.

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

South Carolina.)

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CERTIFICATE OF REPORTER

I, Ruth C. Weese, Registered Diplomat
Reporter for the State of South Carolina at Large,
do hereby certify that the foregoing transcript is
a true, accurate, and complete record.

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

Witness my hand, I have hereunto affixed my
official seal this 16th day of October, 2018 at
Charleston, Charleston County, South Carolina.

Ruth C. Weese

Ruth C. Weese
Registered Diplomat
Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2015-GS-10-6088
	)	2015-GS-10-6090
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
WILLIAM HOLMES	)	
	)	
Defendant	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

August 29, 2018
Charleston, South Carolina

B E F O R E:

THE HONORABLE R. MARKLEY DENNIS, JR., JUDGE

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

NINA SAVAS, ESQ.
Attorney for the State

BENJAMIN LEWIS, ESQ.
Attorney for the Defendant

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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INDEX TO EXHIBITS

No exhibits were introduced

State v William Holmes
Sentencing Hearing
August 29, 2018

PROCEEDINGS

THE COURT: All right. You're William Holmes?

MR. HOLMES: Yes, sir.

THE COURT: Mr. Holmes, you're here and we've had a trial that concluded on February the 7th, 2018. I was the trial judge and you were absent and the jury found you guilty. I'm now opening the envelope containing the sentence that I imposed that I signed on that date.

[Whereupon, the court unseals the envelope]

THE COURT: And the jury found you guilty. Was it a third offense cocaine?

MR. LEWIS: Yes, Your Honor.

THE COURT: Okay. That's what I thought -- I was trying to -- on indictment 2015-6090, which is the possession of cocaine third offense, the sentence of the Court imposed by me was 8 years; you're given credit for 2 days of jail time. Signed by me dated February 6, 2018. Why did I do the 6th? One was the 7th; I think they were both the 7th?

MS. SAVAS: Yes, sir. I have the 7th. Yes, sir.

MR. LEWIS: Yes, sir.

THE COURT: That's a Scribner's error and I'm going to change that and make it conform. It was the 7th. And I'll initial that as well and date it. Today's date is 8/29. You were also convicted of possession with intent

State v William Holmes
Sentencing Hearing
August 29, 2018

1 to distribute crack cocaine and that was a third offense
2 as well?

3 MS. SAVAS: Yes Judge, for the manufacturing.

4 THE COURT: Manufacture. Excuse me. That's right.
5 It was manufacturing; you were cooking it.

6 MS. SAVAS: Yes, Judge.

7 THE COURT: The sentence of the Court was 20 years,
8 given credit for 2 days of jail time and credit for --
9 and they are concurrent. I haven't checked -- I didn't
10 check that one but I'll check it concurrent on both; 20
11 years.

12 MR. LEWIS: Thank you, Judge.

13 THE COURT: Thank you very much. Good luck, sir.

14 *****END OF TRANSCRIPT OF RECORD*****
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State v William Holmes
Certificate of the Court Reporter
August 29, 2018

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Charleston County,
South Carolina on the 29th day of August, 2018.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

November 9, 2018.



Joyce C. Rueger, CVR-M

Court Reporter

1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 COUNTY OF CHARLESTON) CASE NO. 2015-GS-10-06088
3) 2015-GS-10-06090
4 STATE OF SOUTH)
CAROLINA,)
5 Plaintiff,) Transcript of Record
6 vs.)
7 WILLIAM HOLMES,) Date: October 1, 2018
8 Defendants.)

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11 B E F O R E:

12 The Honorable R. Markley Dennis

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22 Denise J. Lauder, RPR

23 Ninth Judicial Circuit

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1 A P P E A R A N C E S

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3 REPRESENTING THE STATE OF SOUTH CAROLINA:

4

5 NINA SAVAS, ESQUIRE

6 Ninth Circuit Solicitor's Office

7 101 Meeting Street

8 Charleston, SC 29401

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11 REPRESENTING THE DEFENDANT:

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13 BEN LEWIS, ESQUIRE

14 Charleston County Public Defender's Office

15 101 Meeting Street

16 Charleston, SC 29401

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Proceedings.....	4
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INDEX OF EXHIBITS

(No exhibits were offered or
marked for identification.)

1 (The following proceedings were had
2 10/1/2018 @2:06 p.m., Charleston County, SC.)

3 THE COURT: All right. Afternoon,
4 Mr. Holmes.

5 Let the record reflect that Mr. Holmes
6 is present.

7 This is your motion. Be happy to hear
8 from you.

9 MR. LEWIS: Thank you, Judge.

10 THE COURT: You bet.

11 MR. LEWIS: Because of the interesting
12 factual development of our case, I didn't get to
13 make these motion at the same time that I normally
14 would have after the guilty verdict was rendered.
15 At this point, I just simply need to renew all of
16 my prior objections.

17 In addition, she wasn't my co-counsel,
18 but Ms. Semen is very, very bright and did some
19 great research and has filed -- she filed her
20 version. I will simply memorialize the same
21 arguments orally today to accompany Mr. Holmes as
22 we go forward; specifically, the three arguments
23 that she made -- and I'll try to be brief --

24 THE COURT: That's fine. I think
25 they're on file and they are incorporated fully,

1 and they will be for you for the purpose of review
2 should that be necessary, but please feel free to
3 state whatever you think is necessary, Mr. Lewis.

4 MR. LEWIS: Thank you, Judge.

5 THE COURT: You bet.

6 MR. LEWIS: Very briefly. For the same
7 argument that has given me pause for a long time,
8 especially in regards to this case, I believe she
9 cited to Foster, 634 F.3d 243, which talks about a
10 person's criminal history; their being known to law
11 enforcement not being enough in and of itself to
12 give law enforcement reasonable suspicion to
13 approach.

14 I understand the Court's ruling on that
15 point, but that in light of what took place during
16 the trial itself, the two instances where we
17 started to get into some 404(b) stuff, which is
18 where I was also joining her in the argument for a
19 new trial, where we started to elicit that prior
20 bad act and we started to talk about, yeah, he had
21 a reasonable approach, we want to tell you, we just
22 can't.

23 And that was also problematic in that
24 it came up twice, both during redirect and also
25 during closing. Again, I understand the Court's

1 rulings on those, but because of the combination of
2 those three things was the reason for the argument
3 to ask this Court to give Mr. Holmes a new trial.

4 THE COURT: Okay. That's fine.

5 MR. LEWIS: I will await for your very
6 quick ruling on that.

7 THE COURT: As I believe I've indicated
8 throughout, I think it's an interesting question.
9 I think the court could give us a little more
10 specific guidance for purposes for not only
11 defendants but also prosecutors on how to approach
12 this and -- more importantly, for law enforcement,
13 as to how they carry out these knock and talk that
14 focus around that searches.

15 One, oddly enough, came up, it wasn't
16 quite a knock and talk, but it was close. And I
17 thought, this is just dangerous territory where it
18 is, but I've looked at those cases, and I think the
19 best way to frame this and the best way to create
20 something where they have to address it is to have
21 a case that has some real close issues.

22 And I have already acknowledged this
23 one, I think, on the record in this proceeding, but
24 I'm -- I'm more -- I'm very comfortable with what
25 my decision was in allowing it and look forward to

1 reading the decision when it comes down to that
2 issue should that be necessary. I deny your motion
3 for a new trial on that basis.

4 MR. LEWIS: Thank you, Judge.

5 And I appreciate the Court expressing
6 for my own client's protection that if Ms. Semen
7 had come up with a more clever legal argument that
8 we sort of -- because of how we tried it, that it
9 would incorporate it into mine as well.

10 THE COURT: This case, there was no way
11 to separate the -- they went in together, they are
12 there together. They either rise or they fall
13 together, I think, from the standpoint of what was
14 going on.

15 I mean, this case had a lot of
16 interesting issues, and I hope that the Court will
17 address each of them. Obviously, the two came
18 together. They obviously knew one other and had
19 dealings with one other. To the extent that was
20 known by law enforcement, that is not clear, at
21 least to me.

22 I know there was some familiarity
23 expressed, but then the other issue is the lady
24 whose house they visited. The interesting aspects
25 of that is that it appeared to be nothing but a

1 sham in the sense of somebody really living there.
2 There was no real indication that it was really
3 anything other than a place people could go to do
4 what was being done, and that is a reasonable
5 conclusion.

6 Now, to the extent that law enforcement
7 was familiar, they said they didn't have any priors
8 as to that -- if I recall, it was in that area, but
9 not that particular group of houses is my
10 recollection. Of course, I have to -- sometimes I
11 have a problem remembering yesterday, but that's my
12 recollection.

13 But it's an interesting case. In that
14 regard, the findings certainly are consistent and
15 the jury did believe that. And if the Court says,
16 okay, that's sufficient, it still all comes about
17 by opening that door. And the door with a person
18 that was in charge of that, there is an issue
19 there, and it was raised and I think has been
20 argued and briefed in this situation.

21 So I don't -- I really -- there's
22 nothing you have failed to do that Ms. Semen did or
23 didn't do. And so, I mean, it's an issue that's
24 really there, and I look forward -- it's going to
25 be an interesting case. Hopefully, they will give

1 it some time and write about it I hope.

2 MR. LEWIS: Lastly, Judge, would be the
3 motion to reconsider the sentence. I know you've
4 heard from me for years when I talk about drug
5 sentences especially. I think I tend to -- not off
6 the record -- can't go off the record here, but off
7 the record believe that violent offenses are sort
8 of in a different category when you have a specific
9 victim. This person experienced this. This person
10 had a gun in our face. It changes the dynamics for
11 everybody.

12 I understand what the legislature has
13 done. Here, though, we are dealing with a man who
14 did not have a violent history. I understand that
15 there is, and should be, and I appreciate it was
16 only three years difference between the two
17 gentlemen, one who did show up for court and my
18 client who did not.

19 That said, two decades in prison for
20 eight grams is a powerful -- incredibly powerful
21 punishment given. I would ask the Court to
22 consider that it was drugs without violence, drugs
23 without a weapon, and reconsider that sentence.

24 THE COURT: Okay. Thank you.

25 Would you refresh me as to the records

1 for each of them please, Ms. Savas?

2 MS. SAVAS: Yes, Your Honor. It will
3 take me a moment to get the record for the other
4 defendant, I don't have that in the paper with me,
5 but I have this defendant's record.

6 Judge, in 1999, he had a distribution
7 of cocaine proximity where he received a YOA and a
8 distrubution of crack proximity where he received a
9 YOA.

10 In 1999, he also a trafficking crack,
11 another PWID cocaine there; in 2002, a PWID
12 cocaine, first, PWID cocaine proximity, and a
13 public disorderly; in '05, he had a parole
14 revocation, he had a count of a strong-armed
15 robbery; in '06, another strong-armed robbery; in
16 2009, a failure to stop for blue lights, a DUS; in
17 2012, possession of a firearm by a convicted felon
18 and a possession of a weapon by a certain person;
19 in 2013, possession of cocaine base, a PWID
20 cocaine, possession of marijuana second; in 2014, a
21 false information.

22 And, Your Honor, so -- that's where the
23 record came for Mr. William Holmes. I can give you
24 Mr. Boston's if I could have just one moment to
25 pull it up.

1 THE COURT: This would have been -- the
2 distribution would have been 10 to 30; is that what
3 we're even talking about?

4 MR. LEWIS: Yes, Your Honor.

5 THE COURT: I just wanted to be sure
6 that it was a conviction for the third offense.

7 MR. LEWIS: It was.

8 THE COURT: And the same was true for
9 the co-defendant as I recall.

10 MR. LEWIS: It was.

11 THE COURT: Okay.

12 MS. SAVAS: Yes, Your Honor, these were
13 third offenses.

14 MR. LEWIS: I apologize, Judge. My
15 bigger file would have had that for you.

16 THE COURT: That is not a problem.

17 MS. SAVAS: Mine as well.

18 THE COURT: It's not a problem. I just
19 -- in so far as -- I really and truly want to hear
20 what the record is because if it was basically the
21 same, then -- then I'm not -- I don't believe
22 people should be punished because they chose not to
23 come. That's their right.

24 As I told the jury, they shouldn't
25 consider that at all. It has nothing to do with

1 this process. And I will continue to tell them
2 that because I don't believe that's part of our
3 system. I think our system is to the contrary.

4 That's up to the State. The only
5 person that has to be here is the State, and their
6 witnesses of course. Of course, the person who has
7 an attorney has the right to challenge, as you did,
8 and I would say very effectively.

9 MR. LEWIS: Judge, I requested it also
10 from Ms. Semen, if she's able to get it to me.

11 THE COURT: Sure. Thank you.

12 I want the record to note it was called
13 to my attention. I just don't remember -- now I
14 see why. This was February when we tried this?

15 MS. SAVAS: Yes, Judge.

16 MR. LEWIS: We had the suppression and
17 then the trial.

18 THE COURT: I understand, but I had
19 written 25, and I reduced it five years when I
20 decided the sentencing time. So there was
21 something that I obviously had already considered
22 back in the -- back down someplace.

23 MS. SAVAS: Judge, Mr. Holmes' prior
24 record is significantly more than Mr. Boston's. It
25 looks like in 1998, he had a possession of

1 marijuana; in 2003, a possession of cocaine; in
2 2009, two counts of PWID cocaine and a DUS; in
3 2010, a trafficking crack and a trafficking
4 cocaine.

5 Okay. So that was -- like I said,
6 Mr. Holmes' was significantly more and --

7 THE COURT: His involvement --
8 Mr. Holmes had the strong-armed robbery, as I
9 recall, which I consider that to be -- obviously,
10 that would have been a factor I would have taken
11 into consideration.

12 MS. SAVAS: And it looks like he was
13 LWOP eligible.

14 THE COURT: And Mr. Boston didn't have
15 any weapons issues, did he?

16 MS. SAVAS: No, Judge. Just the drug
17 charges.

18 THE COURT: That really -- those are
19 some of the factors that I would have considered in
20 deciding to give additional time on that. And
21 Mr. Holmes I gave 17 years to; is that right?

22 MS. SAVAS: Mr. Boston, 17.

23 THE COURT: Yeah. That would have been
24 -- I think what I did was put 25; and I thought,
25 no, that's really not fair because they both had

1 trafficking and they both had some PWIDs, but
2 Mr. Holmes had the other crimes that gave me pause.

3 MR. LEWIS: Yes, Your Honor.

4 THE COURT: So I would respectfully
5 deny your client a new trial.

6 MR. LEWIS: Thank you for the time.

7 THE COURT: You are very welcome.

8 Thank you for your thoroughness, Mr. Lewis. Always
9 I appreciate it. Good luck to you.

10 (These proceedings were concluded at
11 2:19 p.m.)

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1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

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

11 Witness my hand, I have hereunto affixed my
12 official seal this 10th day of December, 2018 at
13 Charleston, Charleston County, South Carolina.

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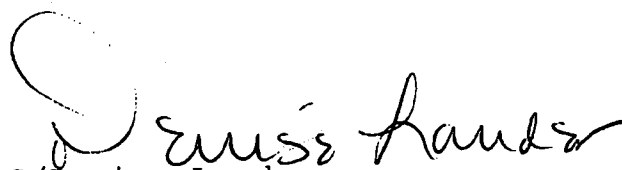
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S/Denise Lauder
Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
February 27, 2028

NLS/0302693
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2015-007705

ARREST WARRANT NUMBER

2015A1010201124

DATE OF ARREST

03/06/2015

ACTION OF GRAND JURY

TRUE BILL

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

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015-GS-10-06090

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2015

THE STATE

VS.

WILLIAM HOLMES
B/M DOB 02/12/1982

Indictment for

POSSESSION OF COCAINE

SC Code: § 44-53-0370(d)(3)

CDR Code: 3011

FILED

11/17/2015 11:22:46 AM

JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

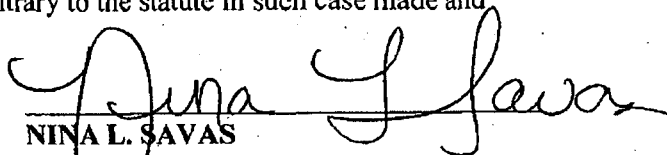
INDICTMENT

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

Possession of Cocaine

The defendant, William Holmes, did on or about March 7, 2015, in Charleston County, South Carolina, knowingly or intentionally possess Cocaine, a schedule II controlled substance narcotic. All in violation of 44-53-0370(d)(3) of the South Carolina Code of Laws (1976) as amended.

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


NINA L. SAVAS
ASSISTANT SOLICITOR

NLS/0302693
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER
2015-007705

ARREST WARRANT NUMBER
2015A1010201122

DATE OF ARREST
03/06/2015

ACTION OF GRAND JURY

TRUE BILL

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

VERDICT

Guilty

Gay R. P. 2/7/18

Foreperson of Petit Jury
Date:

T.I.A.

DOCKET NO. 2015-GS-10-06088

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
NOVEMBER TERM 2015

THE STATE

VS.

WILLIAM HOLMES
B/M DOB 02/12/1982

Indictment for

MANUFACTURE CRACK COCAINE

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

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

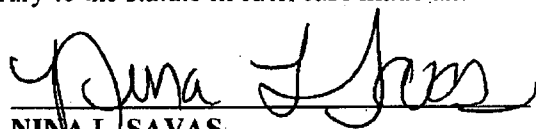
INDICTMENT

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

Manufacture Crack Cocaine

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

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


NINA L. SAVAS
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

STATE VS.

WILLIAM HOLMES

AKA:

Race: Black/African AmericanSex: MDOB: 01/01/1988SSN: 000-00-0000Address: 000-00-0000City, State, Zip: North Charleston, SC 29405-7868DL# 00000000SID# SC01131106*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☒ CONVICTED OF or☐ PLEADSTO: Possession of CocaineIn violation of § 44-53-0370(d)(3) of the S.C. Code of Laws, bearing CDR Code # 3013☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense.☐ Defendant Waives Presentation to Grand Jury.

(def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation.☐ Negotiated Sentence.☐ Recommendation by the State.

ATTEST:

Nina L. Savas 100888
Nina L. Savas, Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

76922
SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation; which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 2 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCIDPPPS _____

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

Other: _____

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 61.6 (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) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/cu \$ _____

3% to County (if paid in installments) \$ \$ 8.25TOTAL \$ 283.25Clerk of Court/Deputy Clerk: [Signature]Court Reporter: [Signature]Presiding Judge: [Signature]Judge Code: 2048Sentence Date: 2/28/18RECEIVED
SEP 10 2018
SC Court of Appeals☐ Appointed PID or appointed other counsel.

§47.12 requires \$500 be paid to Clerk during probation.

[Signature]
6/29/18

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

WILLIAM HOLMES

AKA:

Race: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: North Charleston, SC 29405-7868DL#: [REDACTED] SID# SC01131106*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☒ CONVICTED OF or☐ PLEADSTO: Dist/PWID/Manuf Cocaine Base or MethIn violation of § 44-53-0375(B)(3) of the S.C. Code of Laws, hearing CDR Code # 3039☒ NON-VIOLENT☐ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☒ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense.☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation.☐ Negotiated Sentence.☐ Recommendation by the State.

ATTEST:

Nina L. Savas 100888
Nina L. Savas, Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

76922
SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment

of \$ _____ plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 2 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

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: _____

RECEIVED

SEP 10 2018

SC Court of Appeals

☐ Appointed PD or appointed other counsel.

§47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge: [Signature]Judge Code: 2009Sentence Date: 2/7/16

8/29/18

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 61.6 (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) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ \$ 8.25TOTAL \$ 283.25Clerk of Court/Deputy Clerk: [Signature]Court Reporter: [Signature]

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

-vs-

WILLIAM HOLMES

DEFENDANT

IN THE COURT OF GENERAL SESSIONS
MOTION COVERSHEET

WARRANT/TICKET/

INDICTMENT #'s

2015A1010201122

2015A1010201123

2015A1010201124

2015A1010201125

Solicitor:
NINA SAVAS, Bar No. 100888

Address:
101 MEETING STREET, 4TH FLOOR

Phone: (843)958-1900

E-mail: SAVASN@SCSOLICITOR9.ORG

Defendant's Attorney:
BENJAMIN C. LEWIS, Bar No. 76922

Address:
101 MEETING STREET, 6TH FLOOR

Phone: (843)958-5122

E-mail: BLEWIS@CHARLESTONCOUNTY.ORG

☒ MOTION HEARING REQUESTED

☐ FORM MOTION, NO HEARING REQUESTED

SECTION I: Hearing Information

Nature of Motion: MOTION TO SUPPRESS EVIDENCE

Estimated Time Needed: 2 + HOURS

Court Reporter Needed: ☒ YES/ ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

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

Signature of ☐ Solicitor ☒ Attorney for Defendant

11-22-17

Date submitted

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

WILLIAM HOLMES,

Defendant

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

) Warrant No(s): 2015A1010201122;
) 2015A1010201123; 2015A1010201124;
) 2015A1010201125
) Charge(s): Drugs / manufacture, distribution, etc.
) of cocaine base, 1st (2 Counts); Drugs /
) Distribute, sell, manuf. or pwid, of cont. sub.,
) near school; Drugs / possession of cocaine, 1st
) offense

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

This matter is before the Court upon the motion of Defendant, William Holmes, to suppress the evidence discovered during the seizure, search, and arrest of his person on March 6, 2015. Specifically, the officers involved lacked reasonable suspicion to approach the residence and lacked probable cause to search the residence and seize any items.

I. Factual Background

On March 6, 2015, Officer Sherwood, Officer Etminan, and Sergeant Hoose of the North Charleston Police Department were outside the apartments located at [REDACTED] North Charleston, responding to a traffic stop. (Ex. A) Officer Sherwood indicates that on the day of the incident, a taxi cab pulled up to the complex, the defendants, William Holmes and Darrell Boston, stepped out of the vehicle, and they proceeded to enter into Apartment 2. (Ex. B) William Holmes has been a longtime acquaintance of Ms. Holman and was there for social reasons.¹ Officer

¹ Mr. Holmes would testify to this fact at a hearing.

Sherwood asserts that he recognized Defendant Boston from a known drug house on Osceola Street in North Charleston. *Id.* Additionally, Officer Sherwood knew the renter of Apartment 2, Denise Holman, because a week or so prior to the incident, Ms. Holman approached him regarding personal drug paraphernalia. (Ex. C) The apartment complex is comprised of single-tenant residences with a private landlord. The units themselves are very small with one main living space, a kitchen, and bathroom.

However, according to Officer Sherwood's incident report, he only initially noted that officers went to [REDACTED] Apartment 2, in reference to drug complaints on March 6, 2015, and that they knocked on the door. (Ex. D) It is of note that the location referenced in the original complaint is an apartment at the other end of the complex, Apartment 13, not Ms. Holman's residence of Apartment 2 (Ex. H and I) Ms. Holman answered the door and officers then asked if they could enter her home to talk. According to Officer Sherwood she granted permission. *Id.*² Officer Sherwood and Sergeant Hoose entered Ms. Holman's living room, (*Id.*), while Officer Etminan remained standing in front of the door. (Ex. C) Officer Sherwood then indicates that at this point, two male subjects came quickly out of the bathroom and kitchen area. (Ex. D) According to Officer Sherwood's initial report, "they were extremely nervous to the point of their hands shaking and labored breathing." *Id.* Officer Sherwood does not mention either of the defendants holding anything in their hands in this initial report from March 6, 2015. *See Id.* Officer Sherwood's report states he can see from the living room onto the counter in the kitchen two plastic bags with a powder residue. *Id.* Officer Sherwood approached the kitchen and saw the microwave open with additional white powder residue and a digital scale on top of the microwave that also

² There was never a request to search, just to enter, as provided in the discovery in this case. Likewise, no consent to search forms from NCPD were signed by Ms. Holman or any other occupant.

contained a white residue. *Id.* Photographs taken at the time of the incident show plastic bags on the kitchen counter surrounded by various pots, pans, dishes, kitchen utensils, black trash bags, and paper. (Ex. E). Additionally, a photograph was taken of the microwave and a towel covering the kitchen window. (Ex. F)

Officer Sherwood conducted field tests of both the microwave and the scale, both of which tested presumptive for cocaine.³ (Ex. D) Officers then entered the bathroom and found a Pyrex measuring cup with steam coming from it and a whisk on the side of the tub. *Id.* Sergeant Hoose asked for and was granted consent to search the person of William Holmes and located .2 grams of powder and a black digital scale. *Id.* Officers then secured all of the subjects pending a search warrant. *Id.* The powder found on Defendant Holmes' person tested presumptive for cocaine. *Id.*

During an interview with Assistant Solicitor Nina Savas on January 23, 2017, Officer Sherwood gave conflicting statements indicating that upon entering Ms. Holman's home, he saw the drugs in plain view on the kitchen counter and the defendants were holding things in their hands at the microwave in the kitchen. He stated that they ran to the bathroom, then came out to the living room. From there, he did a protective sweep of the apartment and detained the defendants. (Ex. C) Officer Sherwood believes Defendant Boston was attempting to conceal the Pyrex and whisk in his hands. (Ex. G)

II. Discussion

I. Mr. Holmes had a reasonable expectation of privacy and no exigent circumstances existed. Therefore, the warrantless entry into Apartment 2 and the seizure of items was unconstitutional.

³ There is some discrepancy in Officer Sherwood's report as to whether the microwave was field tested before the execution of the search warrant or after.

The Fourth Amendment to the United States Constitution protects a person's right to be free from unreasonable searches and seizures. U.S. Const. Amend. IV. Additionally, the South Carolina Constitution provides a safeguard against unlawful searches and seizures. S.C. Const. Art I § 10. The relationship between the two constitutions is significant because "[s]tate courts may afford more expansive rights under state constitutional provisions than the rights which are conferred by the Federal Constitution." *State v. Forrester*, 343 S.C. 637, 541 S.E.2d 837 (2009) (citing *State v. Easler*, 327 S.C. 121, 131, n. 13, 489 S.E.2d 617, 625 n.13 (1997)).

"Generally, the Fourth Amendment requires the police to have a warrant in order to conduct a search." *Robinson v. State*, 407 S.C. 169, 185 (2014), *cert. denied*, 134 S. Ct. 2888 (2014). However, a warrantless search will be upheld when the search falls within one of the few specifically established exceptions to the Fourth Amendment exclusionary rule. *State v. Abdullah*, 357 S.C. 344, 350, 592 S.E.2d 344, 348 (Ct. App. 2004). Exceptions to the search warrant requirement include: (1) search incident to a lawful arrest; (2) hot pursuit; (3) stop and frisk; (4) automobile exception; (5) the plain view doctrine; (6) consent; and (7) abandonment. *State v. Brown*, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012). "Evidence seized in violation of the warrant requirement must be excluded from trial." *Id.* It is the proponent of a motion to suppress who has the burden of establishing that his own Fourth Amendment rights were violated by a challenged search or seizure by demonstrating he had an expectation of privacy in the area illegally searched. *Rakas v. Illinois*, 439 U.S. 128, 130 n.1 (1978).

First, Mr. Holmes contends he has a reasonable expectation of privacy while at Ms. Holman's apartment located at [REDACTED]. Additionally, Defendant argues the State employed a knock-and-talk as a basis for reasonable suspicion to conduct a warrantless entry into the apartment despite multiple inconsistencies found in both the officers' statements. Ignoring

these inconsistencies, there was also no reasonable articulable suspicion that a crime had been or was being committed at the time that the officers decided to approach Apartment 2. Defendant also contends that once officers gained access into the apartment, a groundless protective sweep was conducted to further identify items under the plain view doctrine to justify the unlawful seizure of contraband found inside the home.

A. Mr. Holmes had a reasonable expectation of privacy at Ms. Holman's residence because he was an invited social guest.

The extent to which the Fourth Amendment protects people may depend upon where those people are located. *Minnesota v. Carter*, 525 U.S. 83, 88 (1998). The Supreme Court has held that the "capacity to claim the protection of the Fourth Amendment depends . . . upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place." *Id.* (citing *Rakas v. Illinois*, 439 U.S. 128, 143 (1978)). A legitimate expectation of privacy is both subjective and objective in nature. *State v. Missouri*, 36 S.C. 107, 112 (2004) (citing *Oliver v. United States*, 466 U.S. 170, 177 (1984) (internal citations omitted)). The defendant must show: (1) he had a subjective expectation of not being discovered and; (2) the expectation is one that society recognizes as reasonable. *Id.*

In addition, the South Carolina Constitution contains an express protection of the right to privacy. See S.C. Const. art. I, § 10. See also *State v. Forrester*, 343 S.C. 637, 541 S.E.2d 837 (2009). By articulating a specific prohibition against "unreasonable 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. Forrester*, 343 S.C. 637, 541 S.E.2d 837 (2009). Therefore, the South Carolina Constitution favors an interpretation offering a *higher level of privacy protection* than the Fourth Amendment. *Id.* See also *State v. Weaver*, 374 S.C. 313, 321, 649 S.E.2d 479 (2007) (emphasis added).

In recent years, the Supreme Court has analyzed reasonable privacy expectations for guests visiting homes. In *Minnesota v. Olson*, 495 U.S. 91, 109 L. Ed. 2d 85 (1990), the Court held that an overnight guest in a house has an expectation of privacy. The Court reasoned that this holding “merely recognizes the everyday expectations of privacy that we all share. Staying overnight in another’s home is a long standing social custom that serves functions recognized as valuable by society.” *Id.* at 98. However, it’s important to note the *Olson* Court did not define “overnight guest.” Instead, the majority led by Justice White indicated that “[w]e will all be hosts and we will all be guests many times in our lives. From either perspective, we think that society recognizes that a houseguest has a legitimate expectation of privacy in his host’s home.” *Id.* The Court even detailed the various roles these overnight guests can assume, including traveling out of town, visiting family members, and house-sitting for a friend. *Id.* at 98.

Less than a decade later, the Court compared the respective rights of overnight guests and similar persons who have a reasonable expectation of privacy previously found in *Olson* with persons merely on the premises lawfully but who do not have a reasonable expectation of privacy. *Minnesota v. Carter*, 525 U.S. 83, 119 S. Ct. 469 (1998). In *Carter*, the defendants were arrested after a police officer—acting on a tip from a confidential informant—peered through a gap of closed blinds of an apartment window and observed defendants bagging cocaine. *Id.* at 85, S. Ct. at 471. The defendants moved to suppress all evidence obtained from the apartment and subsequent incriminating statements made post-arrest, arguing the officer’s initial observation of the drug packaging activities was an unreasonable search and therefore all discovered items would be inadmissible. *Id.* at 86, S. Ct. at 472.

Writing for the majority, Chief Justice Rehnquist held that because of the purely commercial nature of the transaction, the relatively short period of time the defendants were on

the premises, and the lack of any previous connection between them and the householder, the defendants had no reasonable expectation of privacy. *Id.* at 90-91, S. Ct. at 473-74. However, the majority did not suggest that the amount of time the defendants were on the premises during one particular occasion would be dispositive. *Id.* Instead, the Court placed much more emphasis on the commercial transaction and the obvious lack of any social relationship between the defendants, the premises searched, and the residents of the premises. *See Id.*

Additionally, though a majority led by Chief Justice Rehnquist emerged in *Carter*, several of the Justices concurred and dissented. Typically, "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.'" *Mark v. United States*, 430 U.S. 188, 193 (1977) (citing *Gregg v. Georgia*, 428 U.S. 153, 169 n.15 (1976)). Though a majority existed in *Carter*, other majorities in cases decided by the Supreme Court have been tailored according to the opinions of the concurrences and dissents. For example, in *County of Allegheny v. ACLU*, 492 U.S. 573 (1989), Justice Blackmun analyzed a First Amendment issue and by tailoring the opinions of both the concurrence and the dissent, he crafted a new precedential majority. *Id.* at 597 ("[D]espite divergence at the bottom line, the five justices in concurrence and dissent in *Lynch* agreed upon the relevant constitutional principles . . . These general principles are sound, and have been adopted by the Court in subsequent cases.").

The Justices who concurred and dissented in *Carter* could be called a hidden majority. This hidden majority in *Carter* has been recognized by the South Carolina Supreme Court as best articulated by Chief Justice Toal:

Although the majority in *Carter* held that the defendants were not entitled to Fourth Amendment protection, a “different majority” recognized that social guests present for less than an overnight stay may enjoy a reasonable expectation of privacy in their host’s home. In a concurring opinion, Justice Breyer explicitly stated that he agreed with the dissent— which concluded that all invited guests are entitled to Fourth Amendment protection, whether present for a business purpose or not. *Id.* at 104, 119 S. Ct. at 480 (Breyer, J. concurring). In another concurrence, Justice Kennedy stated that, in his view, “almost all social guests have a legitimate expectation of privacy. . . in their host’s home.” *Id.* at 99, 119 S. Ct. at 478 (Kennedy, J., concurring) (emphasis added). . . [I]t is apparent that at least five members of the Court—the three who dissented and the two who concurred—would be willing to extend protection to guests present for social reasons and present for some time less than an overnight stay.

State v. Missouri, 361 S.C. 107, 114 (2004); See also Edwin J. Butterfoss & Mary Sue B. Snyder, Be My Guest: The Hidden Holding of *Minnesota v. Carter*, 22 Hamline L. Rev. 501 (1999). As visiting the home of friends and relatives “serves functions recognized that as valuable by society,” *Carter*, 525 U.S. at 89 (citing *Olson*, 495 U.S. at 98), these social guests should enjoy an expectation of privacy. As best stated by Justice Ginsburg, “when a home-owner chooses to share the privacy of her home and her company with a short-term guest . . . both the host and guest have exhibited an actual (subjective) expectation of privacy that society is prepared to recognize as reasonable.” *Carter*, 525 U.S. at 109 (internal citations omitted) (Ginsburg, J., dissenting). Therefore, this hidden majority in *Carter* would grant Fourth Amendment protections to social guests, regardless of the amount of time that they were present on scene.

In the case at hand, Defendant should enjoy a reasonable expectation of privacy while in Ms. Holman’s home. Defendant was a guest of Ms. Holman’s home and visits her apartment often to listen to music with her and to socialize. Defendant estimates that he visits Ms. Holman’s apartment 3 to 4 times per week and has been doing so for over a year. Defendant also helps Ms. Holman around the house. As articulated by Chief Justice Toal, the hidden majority in *Carter*

would grant reasonable privacy expectations to those social guests who are present at a residence for a period less than an overnight stay. *See Missouri*, 361 S.C. at 114. Further, similar to the majority in *Carter*, the mere fact the Defendant was at the apartment for only a short period of time on this particular occasion is not enough to find he was not a social guest or that he did not have a reasonable expectation of privacy in Ms. Holman's residence. The amount of time that the Defendant was present on the property was specifically controlled by law enforcement approaching the residence and he likely would have continued to socially interact with Ms. Holman but for the knock and talk. Defendant also had a subjective expectation of privacy because photographs taken of Ms. Holman's residence reveal the windows in the kitchen were covered. Additionally, the front door was closed because officers had to knock on the door in order to request entry, further showing a subjective expectation of privacy. Therefore, because the defendant would regularly visit Ms. Holman and was an invited social guest, he should enjoy a reasonable expectation of privacy while at her residence for social rather than commercial reasons.

B. The 'knock and talk' employed by Officer Sherwood, Officer Etminan, and Sergeant Hoose lacked reasonable suspicion.

A knock and talk "occurs when a law enforcement officer . . . approaches a residence by a route available to the general public, knocks on the front door of the residence, and speaks with an occupant of the residence who responds to the knocking." *State v. Bash*, 419 S.C. 263, 273, 797 S.E.2d 726 (2017). 'Knock and talks' appear harmless because courts consider these an investigative tactic rather than a true search and seizure. *Id.* at 164, 776 S.E.2d at 65 (internal citations omitted). However, potential for abuse arises when "police attempt to gain access for consensual searches and instead provoke exigencies that normally validate a warrantless search." *Id.*, 776 S.E.2d at 65. Additionally, unlike a routine sales call or visit from a neighbor, the 'knock

and talk' technique can be "inherently coercive as it is conducted by law enforcement and not a private citizen." *Id.* at 172, 776 S.E.2d at 70.

The South Carolina Supreme Court recognized the potential for abuse by law enforcement targeting a particular neighborhood, indiscriminately knocking on the door, and discovering contraband without a search warrant. *Id.* at 172, 776 S.E.2d at 69. Therefore, in order to protect against these possible abuses, the Court articulated that "law enforcement *must* have a reasonable suspicion of illegal activity at a targeted residence *prior to* approaching the residence." *Id.* at 172, 776 S.E.2d at 70 (emphasis added). The test to determine whether reasonable suspicion exists is an objective assessment of the circumstances; the officer's subjective motivations are irrelevant. *State v. Provet*, 405 S.C.101, 108, 747 S.E.2d 453, 457 (2013).

Officer Sherwood, Officer Etminan, and Sergeant Hoose did not have reasonable suspicion prior to knocking on Ms. Holman's residence. Officer Sherwood stated he knew the defendant from a "known drug house" and Ms. Holman lived alone. None of the officers indicated that Defendant Holmes was behaving suspiciously or threateningly. There was no description that he was carrying any items that would suggest an intent to commit a crime. There was no unprovoked flight upon seeing police outside of the residence and the parties continued inside to Ms. Holman's home. There was no description of unidentified bulges in their clothing, attempts to conceal objects, or furtive movements. The defendants simply exited a taxi cab and walked into a residence. Given the totality of the circumstances, this does not rise to the level of reasonable suspicion enough for Officer Sherwood, Officer Etminan, and Sergeant Hoose to knock on Ms. Holman's residence. Instead, Officer Sherwood, Officer Etminan, and Sergeant Hoose targeted Ms. Holman's residence, indiscriminately knocked on the front door and seized contraband without a search warrant. Therefore, the "knock and talk" conducted by Officer Sherwood, Officer

Etminan, and Sergeant Hoose was improper and the fruits of its use should be suppressed. It is of note that in later conversations, Officer Sherwood attempts to couch his approach not as a knock and talk but rather as a welfare check on Ms. Holman. (Ex C) Again, there are no articulated facts to suggest that Ms. Holman was in danger. Furthermore, a party allowing two African American males into her home does not give rise to suggest that someone is automatically in danger and in need of a welfare check.

C. The 'protective sweep' initiated by Officer Sherwood was unjustified.

"A warrantless search is justified under the exigent circumstances doctrine to prevent a suspect from fleeing or where there is a risk of danger to police or others inside or outside a dwelling." *State v. Herring*, 387 S.C. 201, 210, 692 S.E.2d 490, 495 (2009). In such circumstances a protective sweep of the premises may be permitted. *Id.* (citing *Maryland v. Buie*, 494 U.S. 325, 337, 110 S. Ct. 1093, 1099-1100 (1990) (allowing a protective sweep of a house during an arrest where the officers have a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene)). See also *Mincey v. Arizona*, 437 U.S. 385, 392 (1978) (allowing officers to make warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid); *State v. Brown*, 289 S.C. 581, 587, 347 S.E.2d 882, 886 (1986) (agreeing that police may be justified in conducting a protective sweep of a crime scene where the potential for danger exists). Therefore, incident to an arrest, a quick and limited 'protective sweep' of the premises is permitted to protect the safety of police officers and others. *Maryland v. Buie*, 494 U.S. 325, 327 (1990).

Here, the 'protective sweep' conducted by Officer Sherwood was unjustified and unwarranted. First, Defendant Holmes, nor anyone else present on scene, was arrested prior to the protective sweep. Instead, the Defendants were detained in the living room. Additionally,

Defendant Holmes posed no danger to either the officers or anyone inside or outside of the residence which would typically warrant a protective sweep. In fact, the actual incident report by Officer Sherwood makes no mention of any protective sweep being conducted. The incident report merely states that two male subjects came quickly out of the bathroom and kitchen area and were "extremely nervous to the point of their hands shaking." Officer Sherwood does not comment that he felt threatened by Holmes or fears for the safety of himself or others. Officer Sherwood also does not state that he believed any party at that point had an arrest warrant, which may have justified searching the residence for officer safety. Not until the meeting with Assistant Solicitor Nina Savas on January 23, 2017, does Officer Sherwood indicate that upon entering the residence he saw the defendants "holding things in their hands in the kitchen, then run to the bathroom, then come out to the living room." According to the interview, Officer Sherwood then initiated a protective sweep of the apartment and detained the defendants in the living room.

Because the protective sweep was not conducted incident to the arrest of Holmes, or anyone else on scene, nor did the defendant pose a danger or risk to others inside or outside of the home, the protective sweep initiated by Officer Sherwood was unjustified.

C. Because the incriminating nature of the evidence was not immediately apparent, the items searched and seized were not proper under the plain view doctrine.

The plain view doctrine permits a warrantless seizure where: (1) the initial intrusion which afforded the authorities the plain view was lawful and (2) the incriminating nature of the evidence was immediately apparent to the seizing authorities. *State v. Cardwell*, 414 S.C. 416, 430-31, 778 S.E.2d 483, 491 (2015). *See also Horton v. California*, 496 U.S. 128, 134-137 (1990); *State v. Wright*, 391 S.C. 436, 706 S.E.2d 324, 327 (2011). Plain view provides grounds for seizure of an item when an officer's access to an object has some prior justification under the Fourth

Amendment. *Texas v. Brown*, 460 U.S. 730, 738, 75 L. Ed. 2d 502, 103 S. Ct. 1535 (1983). Therefore, “[i]t is . . . an essential predicate to any valid warrantless seizure of incriminating evidence that the officer did not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed.” *Horton*, 496 U.S. at 136-140. As argued above, the officers should not have been present, where they were, based on the improper knock and talk. That said, even if this Court finds that the officers were in the area lawfully, the defense contends that the incriminating nature of the contraband was not immediately apparent.

In order to seize under plain view, the seizing officer must have probable cause to believe that the object is contraband or some other instrumentality of a crime. *Arizona v. Hicks*, 480 U.S. 321, 324-328 (1987). See also *Coolidge v. New Hampshire*, 403 U.S. 443, 29 L.Ed. 2d 564, 91 S. Ct. 2022 (1971). If the police lack probable cause to believe that an object in plain view is contraband, *without conducting some further investigation into the object*, then its incriminating nature is not immediately apparent and the plain view doctrine cannot justify its seizure. *Minnesota v. Dickerson*, 508 U.S. 366, 175, 113 S. Ct. 210, 2137 (1993) (emphasis added). “The extension of the original justification is legitimate only where it is immediately apparent to the police that they have evidence before them; the “plain view” doctrine may not be used to extend a general exploratory search from object to another until something incriminating at last emerges.” *Coolidge*, 403 U.S. 443 at 446. Probable cause exists when “facts available to the officer would warrant a man of reasonable caution in the belief that certain items may be contraband or stolen property or useful as evidence of a crime.” *Brown*, 460 U.S. at 742. See also *State v. Geer*, 391 S.C. 179, 196-97 (S.C. Ct. App. 2010).

In *Arizona v. Hicks*, while acting under the direction of a search warrant, a police officer noticed two sets of stereo components in plain view, which appeared “out of place in the squalid

and otherwise ill-appointed four-room apartment.” *Id.* 323, at 1152. The officer proceeded to move some of the components in order to read and record their serial numbers to verify whether they were stolen. *Id.* 323, 1152. The Court found that an officer’s actions in moving stereo equipment to locate serial numbers and determine if the equipment was stolen had to be supported by probable cause, even though the officer was lawfully present in the apartment and the equipment was located in plain view.

Courts throughout South Carolina have reviewed the “immediately apparent” requirement. *See State v. Cardwell*, 414 S.C. 416, 778 S.E.2d 483 (2015) (affirming denial of defendant’s motion to suppress evidence when a police chief saw an image of a nude child holding up a ladies’ bra up across his chest on defendant’s computer); *Robinson v. State*, 407, S.C. 169, 754 S.E.2d 862 (2014) (holding the incriminating nature of the gun was immediately apparent upon the gun coming into view because the officers each immediately noticed that the serial number had been removed); *State v. Wright*, 391 S.C. 436, 445-46, 706 S.E.2d 324, 328 (2011) (finding the incriminating nature of the dogfighting pit, dog muzzles, drugs, syringes, and several injured dogs in plain view was immediately apparent); *State v. Johnson*, 410 S.C. 10, 763 S.E.2d 36 (SC Ct. App. 2014) (holding the incriminating nature of the computers was immediately apparent based on the inordinate number of computers and many in states of disassembly). In those cases, the evidence overwhelmingly pointed towards the incriminating nature of the items to be searched and seized. These cases also included other details that lead to the reasonable conclusion that the challenging defendant was involved in criminal activity.

Additionally, in *State v. Beaver*, 37 N.C. App. 513, 246 S.E.2d 535 (1978), the North Carolina appeals court held that a shot glass containing a film of white substance appearing to be some type of white powder, with nothing else appearing, did not give rise to a reasonable belief

that it was contraband or evidence of a crime. *Id.* at 517-518, 246 S.E.2d at 539. Following a lawful stop of defendants' car for a defective taillight, the officer noticed a glass containing a film of white powdery substance between defendant's legs. *Id.* at 516, 246 S.E.2d at 538. Defendants were subsequently arrested following a field test on the glass, which tested positive for a type of amphetamine. *Id.*, 246 S.E.2d at 538.

Following their conviction, the defendants argued on appeal that the drug evidence should have been suppressed because it was seized unlawfully. *Id.*, 246 S.E.2d at 538. The officer testified that he realized it *could* have been a controlled substance and at the time he seized the glass, he thought it *might* contain a controlled substance. *Id.*, 246 S.E.2d at 539. The officer did *not* testify that he formed a belief, reasonable or otherwise, that the white powder residue in the shot glass was contraband or evidence of a crime, until a field test was performed. *Id.* at 518, 246 S.E.2d at 539 (emphasis added). The appellate court agreed that the trial court erred in admitting the shot glass and its contents into evidence because the officer did not have a good faith belief that the white powder residue was contraband or have reasonable grounds to form such a belief and therefore, did not have probable cause to seize the shot glass even though it was in plain view. *Id.* at 518, 246 S.E.2d at 539.

In the present case, a film of white powder in a kitchen area spotted from several feet away in another room is not immediately apparent as contraband. Unlike the several other cases examined by South Carolina courts, nothing is inherently incriminating or suspect about white powder in a kitchen where several other white substances are kept including sugar, salt, baking soda, baking powder, spices, and flour. As the court in *Beaver* found, a white powder substance not usually found in a shot glass did not form the probable cause belief required for the officer to lawfully seize the item. *See Id.* at 518, 246 S.E.2d at 539. Here, the officer's statement indicates

that he was in the living room when they viewed a white powdery substance in the kitchen- several feet away. As previously indicated, white powder substances are commonly found throughout homes especially in the kitchen, while powders are usually not found in shot glasses as in *Beaver*.

The potential incriminating contents of the plastic bag with a white powder film and white powder on the microwave and black scale were not discovered until after they were improperly seized, searched, and tested, thereby proving that the "immediately apparent" requirement for the plain view exception was not satisfied. Additionally, the surrounding circumstances were not sufficient to indicate the presence of contraband. Therefore, because the incriminating nature of the white powder film and white powder on the microwave and the black scale were not immediately apparent, Officer Sherwood did not have probable cause to seize it under the plain view doctrine. His behavior was exploratory in nature and could not have reasonably been said to have been immediately recognized as contraband, at distance, in this context. Exhibit E is included specifically to allow the court to use its judgement in viewing the supposedly immediately apparent contraband nature of the plastic bag.

D. Because the Search Warrant employed in this case relied on false statements as well as 4th Amendment violations, the warrant itself should not cure the previous defects in this case, and the evidence should be suppressed.

As discussed above, the Fourth Amendment prohibits "unreasonable searches and seizures" and mandates that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation." U.S. Const. Amend. IV. "There is . . . a presumption of validity with respect to the affidavit supporting the search warrant." *Franks v. Delaware*, 438 U.S. 154, 171, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978). In *Franks*, the Supreme Court ruled that a defendant may challenge the validity of a search warrant on the basis that the supporting affidavit contained deliberately or recklessly false or misleading information, or material omissions, and that the remainder of the

affidavit is insufficient to establish probable cause. *Id.* at 155-56. Additionally, the Court has determined that a defendant who specifically alleges that a search warrant is based on an affidavit containing material misrepresentations or omissions is entitled to a hearing to present evidence in support of those allegations. *Id.* at 171-72. A party attempting to demonstrate information was originally or recklessly omitted from an affidavit bears a heavy burden of proof. *State v. Lynch*, 412 S.C. 156 (S.C. Ct. App. 2015).

If the challenge is based on the use of deliberately false statements, a reviewing court must set the affiant's false statements to one side and then determine whether the affidavit's remaining content is sufficient to establish probable cause. *Franks*, 438 U.S. at 156. If the affidavit is not sufficient, the warrant must be voided and the evidence suppressed. *Id.* As stated by the Supreme Court in *Franks*, the affidavit must be "truthful" in the sense that the information put forth is believed or appropriately accepted by the affiant as true." *Franks*, 438 U.S. at 164.

Defendant Holmes has raised a challenge to the search warrant's veracity of material information concerning the times coupled with the events alleged. Additionally, Defendant believes the validity of the search warrant is placed into question by inconsistencies in the discovery provided by the State. Those inconsistencies as outlined above include Officer Sherwood's incident report, the later interviews between Assistant Solicitor Nina Savas and Officer Sherwood, Officer Sherwood's police cruiser dash camera footage, and Officer Sherwood's affidavit accompanying the search warrant.

Of note, Officer Sherwood's affidavit accompanying the search warrant application specifically says that they went to Apartment 2 "in reference to a complaint about drug deals (sic) using the apartments for drug sales." The record is devoid of any such claims and the only previous complaint referenced relates to another apartment, a week prior, which does not reference drugs.

(Ex. I). Also of note is the fact that Officer Sherwood elected to leave out the claim that the drugs were still steaming at the time that he discovered them. This would be inconsistent with a person having waited from 5:30 pm at the time of initial response (Ex. D) until some point after 6:49 pm when the search warrant would have been signed. (Ex. I.)

Based on the above referenced improper procedures which were incorporated into the search warrant by the initial unconstitutional entry, *see Murray v. United States*, 487 U.S. 533 (1988), the search warrant does not serve to rehabilitate the prior improper and unconstitutional tactics employed by the North Charleston Police in this case.

III Conclusion

In conclusion, the State has gone out of its way to expand beyond the initial facts laid out in Officer Sherwood's incident report. This is improper. "[T]he Government cannot rely upon post hoc rationalizations to validate those seizures that happen to turn up contraband." *United States v. Foster*, 634 F.3d 243, 249 (4th Cir. 2011). From the moment that the North Charleston Police department elected to approach Apartment 2 without reasonable suspicion, they were acting in violation of both the South Carolina and United States' Constitutions. Law enforcement then elected to extend beyond the consent to enter, granted by Holman, to claim that contraband was in plain view. This is also improper. They then elected to conduct a protective sweep where no party had been arrested and there was no other exigency. This is also improper. They then elected to seek a search warrant that would have been unnecessary had their conduct been appropriate, but they still made false representations in that warrant application. As a result of these improper actions the items seized inside of Apartment 2 should be suppressed.

Respectfully Submitted,

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Charleston, South Carolina
Dated: November 22, 2017

EXHIBIT**LABEL**

CAD Report, R5 pg. 157-158
Email from Solicitor - 11/16/16
Email from Solicitor - 1/23/17
Incident Report, R5 pg. 83-84
Photo of Baggies Rule 5 138
Photo of Microwave R5 144
Email from Solicitor - 2/8/17.
Overview of Apartments
Original Complaint
Search Warrant

A
B
C
D
E
F
G
H
I
J

EXHIBIT A

Incident Detail Report

Data Source: Data Warehouse
 Incident Status: Closed
 Incident number: 201500178027
 Incident Date: 3/8/2015 17:09:03
 Last Updated: 1/24/2017 16:38:01

Incident Information

Incident Type:	TS_Traffic Stop	Alarm Level:	
Priority:	Officer Initiated	Problem:	Traffic Stop
Determinant:		Agency:	Law
Base Response#:		Jurisdiction:	North Charleston PD-NCPD
Confirmation#:		Division:	NCZ1
Taken By:	Grant, April S	Battalion:	NCZ1
Response Area:	NCPD 101	Response Plan:	
Disposition:	LW_Written Warning	Command Ch:	
Cancel Reason:		Primary TAC:	
Incident Status:	Closed	Secondary TAC:	
Certification:		Delay Reason (if any):	
Longitude:	79986062	Latitude:	32846451

Incident Location

Location Name:	County:
Address:	Charleston
Apartment:	Location Type:
Building:	Cross Street:
City, State, Zip:	Map Reference:
NORTH CHARLESTON SC 29406	

Supplemental Information - Vehicle

VEHICLE 1
 License: [REDACTED] SC - PC:Passenger Car

Call Receipt

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

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

Resources Assigned

Unit	Assigned	Disposition	Enroute	Staged	Arrived	At Patient	Delay Avail	Complete	Odm. Enroute	Odm. Arrived	Cancel Reason
NC232	17:09:03	LW_Written Warning	17:09:03		17:09:03			17:25:25			
NC227	17:14:37		17:14:37					17:15:00			
NC349	17:14:58	LW_Written Warning	17:14:58		17:15:33			17:26:25			
NC081	17:15:50	LW_Written Warning	17:15:50		17:15:50			17:26:25			

Personnel Assigned

No Personnel Assigned

Pre-Scheduled Information

No Pre-Scheduled Information

Transports

No Transports Information

Transport Legs

No Transports Information

Comments

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

3/8/2015	17:09:04	ASG	Response	[1] GRN VOLVO
3/8/2015	17:09:05	ASG	Response	[2] [Query] NC232, Vehicle: 1,SC,KU8276,SC,2013,PC
3/8/2015	17:14:37	ASG	Response	[3] Backed up NC232 with NC227
3/8/2015	17:14:47	ASG	Response	[4] NC232 FINAL BURTON/CLEMENTS
3/8/2015	17:14:58	ASG	Response	[5] Backed up NC232 with NC349
3/8/2015	17:15:50	ASG	Response	[6] Backed up NC232 with NC081

Address Changes
No Address Changes

Priority Changes
No Priority Changes

Alarm Level Changes
No Alarm Level Changes

Activity Log

Date	Time	Radio	Activity	Location	Log Entry	User
3/8/2015	17:09:03	NC232	At Scene			ASG
3/8/2015	17:09:04		Supplemental Information		Supplemental Vehicle record 287880 was added for license plate [REDACTED]	ASG
3/8/2015	17:09:05	NC232	[Query]		[Query] Vehicle: [REDACTED]	ASG
3/8/2015	17:12:04		Incident Late		Active Incident marked as late	
3/8/2015	17:14:08	NC232	Reset System Timer		[Reset Reason] Status/ Safety Check [Next Late Check Time] 03/08/2015 17:18:08	ASG
3/8/2015	17:14:37	NC227	Dispatched			ASG
3/8/2015	17:14:37	NC227	Responding			ASG
3/8/2015	17:14:37	NC232	Unit Backed up		Backed up with NC227	ASG
3/8/2015	17:14:58	NC349	Dispatched			ASG
3/8/2015	17:14:58	NC349	Responding			ASG
3/8/2015	17:14:58	NC232	Unit Backed up		Backed up with NC349	ASG
3/8/2015	17:15:00	NC227	Available			ASG
3/8/2015	17:15:33	NC349	At Scene			ASG
3/8/2015	17:15:50	NC081	Dispatched			ASG
3/8/2015	17:15:50	NC081	Responding			ASG
3/8/2015	17:15:50	NC081	At Scene			ASG
3/8/2015	17:15:50	NC232	Unit Backed up		Backed up with NC081	ASG
3/8/2015	17:18:33		Incident Late		Active Incident marked as late	
3/8/2015	17:20:27	NC349	Reset System Timer		[Reset Reason] Status/ Safety Check [Next Late Check Time] 03/08/2015 17:26:27	ASG
3/8/2015	17:20:39	NC232	Reset System Timer		[Reset Reason] Status/ Safety Check [Next Late Check Time] 03/08/2015 17:26:39	ASG
3/8/2015	17:25:25	NC232	Available			AKD
3/8/2015	17:25:25	NC349	Available			AKD
3/8/2015	17:25:25	NC081	Available			AKD
3/8/2015	17:25:25		Response Closed		Response Disposition: LW_Written Warning	AKD

Edit Log
No Edit

Custom Time Stamps
No Custom Time Stamps

Custom Data Fields
No Custom Data Fields

Attachments
No Attachment

EXHIBIT B

Ben C. Lewis

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

Ben & Michael,

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

Officer Sherwood:

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

Officer Etminan:

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

Officer Danielle Smoak:

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

Nina L. Savas

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Fax: 843.958.1905

EXHIBIT C

Ben C. Lewis

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

Luke & Ben,

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

Sherwood-

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

Etminan-

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

Smoak-

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

Rough-

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

Nina L. Savas

Assistant Solicitor

EXHIBIT D

NORTH CHARLESTON POLICE		INCIDENT REPORT		INFORMATION ONLY		CASE NUMBER		NOIC	
SC0100800						2015007705		INC. ☐ ENT. ☐ Yes Yes	
INCIDENT TYPE		COMPLETED		FORCED ENTRY		PREMISE TYPE		UNITS	
1. PWD COCAINE BASE (44-53-375)		☒ YES ☐ NO		☐ YES ☒ NO		APARTMENT/CONDO		☐ BUREAU	
2.		☐ YES ☐ NO		☐ YES ☐ NO				☐ TYPE VICTIM	
3.		☐ YES ☐ NO		☐ YES ☐ NO				☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relg. Org. ☐ Soc. Public ☐ Other ☐ Unknown ☐ Police Off.	
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)						ZIP CODE		WEAPON TYPE	
1819 Clements AVE, NORTH CHARLESTON, SC						29405			
INCIDENT DATE		24 HR. CLOCK		DATE		24 HR. CLOCK		LOCATION NO.	
03/08/2015		17:25		03/08/2015		19:24			
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT		RACE SEX		AGE	
SHERWOOD, OFFICER				☐ YES ☐ NO		W M		28	
ADDRESS		CITY		STATE		ZIP CODE		LOCATION NO.	
		NORTH CHARLESTON		SC		29406			
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT		RACE SEX		AGE	
SOCIETY				☐ YES ☐ NO		W M		1	
HEIGHT		WEIGHT		HAIR		EYES		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.	
ADDRESS		CITY		STATE		ZIP CODE		LOCATION NO.	
				SC		29406			
VIOLENCE/INJURY (VCTI) ☐ YES ☐ NO		EXPLAIN		COMPLAINANT OF ANY NON-VIOLENCE ☐ YES ☐ NO					
VCTI (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK ☐		DRUGS: ☐ YES ☐ NO ☐ UNK ☐		TYPE:					
TWO MAN/VER ☐		ONE MAN/VER ☐		DETECTIVE/PLASMI ☐		OTHER ☐		ALONE ☐	
ASSIGNED ☐		J-This Jurisdiction		S-State		O-Out of State		U-Unknown	
☒ SUSPECT		NAME (LAST, FIRST, MIDDLE)		RACE SEX		AGE		ETH.	
		HOLMES, WILLIAM		B M		33		N	
☐ RUNAWAY		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		DATE OF BIRTH		HEIGHT		WEIGHT	
				02/12/1982		600		240	
☐ WANTED		DAYTIME PHONE		EVENING PHONE					
		843-619-8887							
☐ WARRANT		ADDRESS		CITY		STATE		ZIP CODE	
						SC			
☐ ARREST		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST					
		3/8/2015 5:25:49 PM		3/8/2015 5:59:00 PM					
☐ JAIL		SUBJECT NO. 1 USING: ALCOHOL ☐ YES ☐ NO ☐ UNK ☐		ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO ☐		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST	
		DRUGS ☒ YES ☐ NO ☐ UNK ☐		TOTAL # ARRESTED		3/8/2015 5:25:49 PM		3/8/2015 5:59:00 PM	
☐ SUMMONS		TYPE COCAINE BASE		2					
DAY OF THE WEEK		HOW REPORTED		A- OFFICER DISPATCHED ON CALL		D- COMPLAINT WRITTEN IN		DIFF. FACTOR	
S M T W T F S UNK				B- REPORT TAKEN BY PHONE		E- OFFICER INITIATED		A- RESISTANCE/HOSTILITY	
				C- COMPLAINT WALKED IN		F- OTHER		B- WEAPONS	
								C- UNFOUNDED CALLS	
								D- MENTAL SUBJECT	
								E- COMPLAINT FRE- QUENTLY INTOXICATED	
								F- DOMESTIC	
								H- NORMAL	
J. SHERWOOD									
ON March 8, 2015 OFFICERS WENT TO [REDACTED] APARTMENT 2 IN REFERENCE TO DRUG COMPLAINTS UNDER CASE NUMBER 2015008889. OFFICERS ARRIVED ON SCENE AND KNOCKED ON THE DOOR. THE RENTER OF THE APARTMENT, DENISE HOLMAN, ANSWERED THE DOOR. OFFICERS ASKED IF THEY COULD ENTER HER HOME TO TALK, WHICH SHE GRANTED PERMISSION. AS OFFICERS ENTERED INTO THIS TWO ROOM APARTMENT TWO MALE SUBJECTS CAME QUICKLY OUT OF THE BATHROOM AND KITCHEN AREA. THEY WERE EXTREMELY NERVOUS TO THE POINT OF THERE HANDS SHAKING AND LABORED BREATHING. I, OFFICER SHERWOOD, COULD SEE ON THE COUNTER OF THE KITCHEN FROM THE LIVING ROOM TWO PLASTIC BAGS WITH A WITH POWDER RESIDUE. AS I APPROACHED THE KITCHEN I COULD ALSO SEE THAT THE MICROWAVE WAS OPEN									
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY					
TYPE (GROUP)		DRUGS/INARCOTICS		TOTAL VALUE					
STOLEN		\$0.00		\$0.00					
DAMAGED		\$0.00		\$0.00					
BURNED		\$0.00		\$0.00					
RECOVERED		\$0.00		\$0.00					
SEIZED		\$0.00		\$0.00					
SUBJECT IDENTIFIED ☐ YES ☐ NO		SUBJECT LOCATED ☐ YES ☐ NO		S. F.		☐ ACTIVE ☐ ADM. CLOSED		☐ ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18	
						☐ UNFOUNDED		☐ ARRESTED 18 AND OVER ☐ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE		1. OFFENDER DEATH		2. NO PROSECUTION		3. EXTRACTION ORDER		4. VICTIM DECLINES COOPERATION	
REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE	
SHERWOOD, JOSEPH PEYTON		3/8/2015 5:25:49 PM		157		HOOSE, FREDERICK REED			
ETMINAN, PAIAM		3/8/2015 6:30:00 PM		349		FOLLOWUP INVESTIGATION ☐ YES ☐ NO ☐			

RULE 5 NLS 83

ADDITIONAL NARRATIVE

Agency Name: NORTH CHARLESTON POLICE DEPARTMENT ORI #: SC0100800 Report Date/Time: 03/08/2015 17:25 OCA #: 2015007705

J. SHERWOOD

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

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

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

DURING THE SEARCH OFFICERS TESTED THE MICROWAVE AND FOUND THAT IT FIELD-TESTED PRESUMPTIVE FOR COCAINE. THE PYREX MEASURING CUP FROM THE BATHROOM WAS ALSO HOT TO THE TOUCH. THIS IS CONSISTENT WITH THE MANUFACTURING OF "CRACK" COCAINE. BOTH SUBJECTS, WHICH WERE IDENTIFIED AS WILLIAM HOLMES AND DARRELL BOSTON, WERE READ THEIR MIRANDA WARNING BY OFFICER ETMINAN AND UNDERSTOOD. NONE OF THE SUSPECTS WOULD CLAIM OWNERSHIP OF ANY OF THE ABOVE MENTIONED SUBSTANCES. OFFICER SMOKE LATER ASKED IF THEY KNEW OF ANY SCHOOLS IN THE AREA AND MR. HOLMES STATED HE HAD CHILD THAT WENT TO [REDACTED]

[REDACTED] MR. BOSTON ALSO ACKNOWLEDGED HE KNEW OF THE SAME SCHOOL. THIS INCIDENT TOOK PLACE WITHIN 1/4 MILE OF [REDACTED] BOTH SUSPECTS WERE CHARGED WITH POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE, MANUFACTURING COCAINE BASE, AND POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE WITHIN 1/4 MILE OF A SCHOOL. MR. HOLMES WAS ALSO CHARGED WITH POSSESSION OF COCAINE. ALL OF THE ABOVE MENTIONED SUBSTANCES FIELD-TESTED PRESUMPTIVE FOR COCAINE. OFFICERS TRANSPORTED BOTH SUBJECTS TO CHARLESTON COUNTY DETENTION CENTER. CHARLESTON COUNTY DETENTION OFFICERS CONDUCTED A STRIP SEARCH OF MR. HOLMES PER THEIR POLICY. OFFICERS LOCATED 2 GRAMS OF WHITE POWDER LIKE SUBSTANCE AND 3 GRAMS OF GREEN PLANT LIKE MATERIAL FROM HIS BUTTOCKS. BOTH SUBSTANCES FIELD-TESTED PRESUMPTIVE. ALL OF THE WHITE POWDER LIKE SUBSTANCE WAS PLACED INTO BEST KIT NUMBER B247361 AND THE OFF WHITE ROCK LIKE SUBSTANCE WAS PLACED INTO BEST KIT NUMBER B247360 FOR SLED ANALYSIS. AFTER SPEAKING WITH MRS. HOLMAN OFFICERS FOUND THAT SHE MENTALLY HANDICAP UNABLE TO COMPREHEND THE SITUATION AT HAND. SHE RELEASED DUE TO THIS. THERE IS NOTHING FURTHER TO REPORT AT THIS TIME.

RULE 5 NLS 84

EXHIBIT E



EXHIBIT F

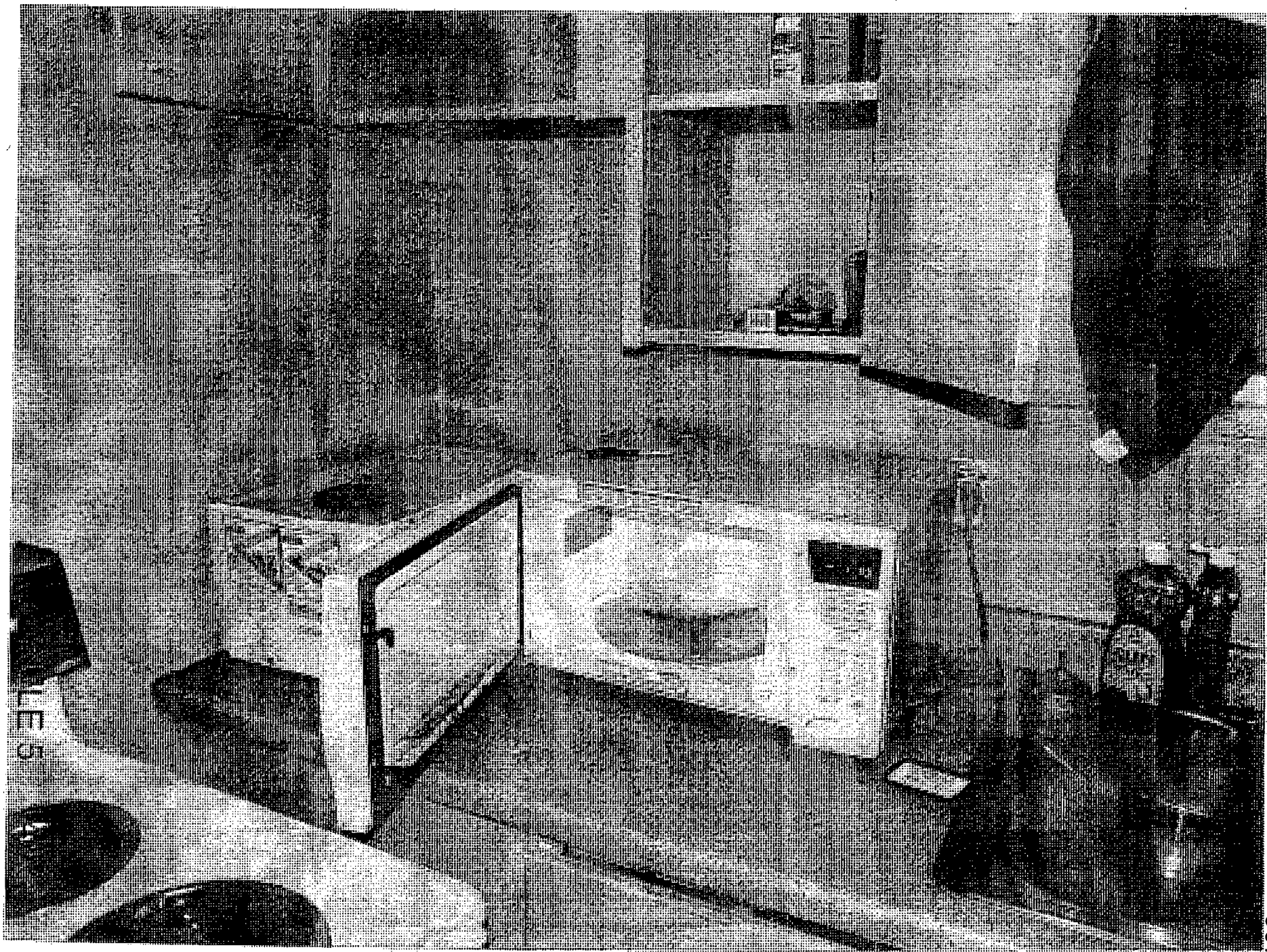


EXHIBIT G

Luke J. Malloy

From: Nina L. Savas
Sent: Wednesday, February 08, 2017 9:26 AM
To: Ben C. Lewis; Luke J. Malloy
Cc: Matthew D. McClellan
Subject: RE: State v. Boston & Holmes

There has not been inconsistency in his statements. I asked him more detailed questions, which is why I sent this email to y'all now.

Nina L. Savas

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

From: Ben C. Lewis
Sent: Wednesday, February 08, 2017 9:25 AM
To: Nina L. Savas; Luke J. Malloy
Cc: Matthew D. McClellan
Subject: Re: State v. Boston & Holmes

So is he now NOT saying that Holmes had something in his hands too? Per previous time you interviewed him...

Sent from my iPhone.

On Wed, Feb 8, 2017 at 9:23 AM -0500, "Nina L. Savas" <SavasN@scsolicitor9.org> wrote:

He said Boston was concealing something in his hands then they ran into the bathroom. When Sherwood went into the bathroom the pyrex and whisk were there so that's why he thinks that's what he was holding.

Nina L. Savas

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

From: Ben C. Lewis
Sent: Wednesday, February 08, 2017 9:20 AM
To: Nina L. Savas; Luke J. Malloy
Cc: Matthew D. McClellan
Subject: Re: State v. Boston & Holmes

Any explanation provided as to why he believed those were the items. Is he saying that he SAW those items? I requested to speak with him and have not heard back. You obviously have had no issues getting him in for interviews.

Sent from my iPhone.

From: Nina L. Savas <savasn@scsolicitor9.org>
Sent: Wednesday, February 8, 2017 9:02 AM
Subject: RE: State v. Boston & Holmes
To: Luke J. Malloy <lmalloy@charlestoncounty.org>, Ben C. Lewis <blewis@charlestoncounty.org>
Cc: Matthew D. McClellan <mcclellanm@scsolicitor9.org>

After further conversation, Officer Sherwood recalls that he saw them both at the microwave upon entering the apartment. Boston was attempting to conceal what Sherwood believes is the pyrex and whisk in his hands and then ran into the bathroom, with Holmes following.

Nina L. Savas

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

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

Luke & Ben,

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

Sherwood-

Clarification on the complaint and call-out. The complaint dated 2/27/15 by Kyle Franklin was made prior to this incident. As a result of that complaint, the NCPD LT had officers do area checks of the apartment complex area. This is part of DMH housing and it is supposed to be single tenant residents. On the day of the incident, Sherwood, Hoose, and Etminan (Sherwood's trainee) were in that area on an unrelated matter. They do not recall what the specifics were of that unrelated call. However, while they were there, a taxi cab pulled up and the defendant's got out of the cab and went to the apartment. Sherwood recognized Boston from a known drug house on [REDACTED]. Sherwood knew that Denise Hollman lived in Apt. 2 because a week or so prior to this incident, during an area check, he approached Denise to ask her if she had any concerns and she had told him that she had a crackpipe and gave it to Sherwood. At this incident because it was supposed to be solo residents and he knew that only Denise lived in that apartment he decides to check

EXHIBIT H



EXHIBIT I

NORTH CHARLESTON POLICE
SC0100800

INCIDENT REPORT

INFORMATION
ONLY

CASE NUMBER
201500689

NCIC
INQ. ENTD.

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. INFORMATION		☐ YES ☒ NO	☐ YES ☒ NO	HIGHWAY/ROAD/DIAL		☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.
2.		☐ YES ☐ NO	☐ YES ☐ NO			
3.		☐ YES ☐ NO	☐ YES ☐ NO			
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) 1819 Clements AVE, NORTH CHARLESTON, SC				ZIP CODE 29405	WEAPON TYPE	
INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	LOCATION NO.	
02/27/2015	16:30		02/27/2015	16:52		
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE/SEX/AGE	ETH
		#1 #2 #3				
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE/SEX/AGE	ETH
FRANKLIN, KYLE, DEAN		#1 #2 #3		S		N
HEIGHT WEIGHT HAIR EYES		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
VICTIM'S NATURE (VCT.1) ☐ YES ☐ NO ☐ EXPLAIN		COMPLAINANT OF A FAW/NON-AVAILABLE INJURES ☐ YES ☐ NO				
VICTIM'S NATURE (VCT.2) ☐ YES ☐ NO ☐ UNK ☐ TYPE		DRUGS: ☐ YES ☐ NO ☐ UNK ☐ TYPE				
TWO MAN/ONE ☐ ONE MAN/ONE ☐ DETECTIVE/PLAINT ☐ OTHER ☐ ALONE ☐ ASSISTED ☐		J-This Jurisdiction S-State O-Out of State U-Unknown				
☒ SUSPECT	NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH
	Unknown					
☐ RUNAWAY	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		RELATED OFFENSE(S)		DAYTIME PHONE	EVENING PHONE
			80Z			
☐ WARRANT	ADDRESS		CITY		STATE	ZIP CODE
					SC	
☐ ARREST	SUBJECT'S NATURE (VCT.3) ☐ YES ☐ NO ☐ UNK ☐ TYPE		ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO		DATE/TIME OF OFFENSE	DATE/TIME OF ARREST
					2/27/2015 4:30:33 PM	
☐ JAIL	DAY OF THE WEEK		HOW REPORTED	A= OFFICER DISPATCHED ON CALL	D= COMPLAINT WRITTEN IN	DIFF. FACTOR
	S M T W T F S UNK			B= REPORT TAKEN BY PHONE	E= OFFICER INITIATED	
☐ SUMMONS				C= COMPLAINT WALKED IN	F= OTHER	
ON THE LISTED DATE AND TIME I RESPONDED TO THE LISTED LOCATION AND MET WITH MR. KYLE FRANKLIN WHO STATED THAT HE WAS THE PROPERTY OWNER OF [REDACTED]. HE FURTHER STATED THAT HE OBSERVED A MALE COME OUT OF APT 13 THAT DID NOT RESIDE AT THE PROPERTY. FRANKLIN STATED THAT WHEN HE ASKED THE INDIVIDUAL HIS BUSINESS ON THE PROPERTY THE SUBJECT, WHOM HE DESCRIBED AS A BLACK MALE WEARING BLACK CLOTHING WITH FACIAL HAIR, BECAME BELLIGERENT AND INFORMED FRANKLIN THAT HE "RAN THE PROPERTY" AND PLACED HIS HAND UNDER HIS SHIRT INSINUATING THAT HE WAS POSSIBLY ARMED, AND THE HE (SUSPECT) WOULD TAKE CARE OF HIM (FRANKLIN). FRANKLIN STATED THAT HE FELT AS IF THIS INDIVIDUAL WAS THREATENING HIS LIFE. FRANKLIN STATED THAT HE INFORMED THE INDIVIDUAL THAT HE WAS CONTACTING LAW ENFORCEMENT AND THE						
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY		
TYPE (GROUP)		TOTAL VALUE				
STOLEN						
DAMAGED						
BURNED						
RECOVERED						
SEIZED						
SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		S.F.	☒ ACTIVE ☐ ADM. CLOSED	☐ ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18
					☐ UNFOUNDED	☐ ARRESTED 18 AND OVER ☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE		1. ☐ OFF-DEATH 2. ☐ NO PROSECUTION PROSECUTION		3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DEQUES COOPERATION		
REPORTING OFFICER(S)		DATE		APPROVING OFFICER		DATE
BURNEM, JONATHAN LYNN		2/27/2015 4:30:33 PM				
		UNY NUMBER		FOLLOWUP INVESTIGATION ☐ YES ☒ NO		OFFICER

RULE 5 130

ADDITIONAL NARRATIVE

Agency Name: NORTH CHARLESTON POLICE DEPARTMENT	ORI #: SC0100800	Report Date/Time: 02/27/2015 16:30	OCA #: 2015006889
--	---------------------	---------------------------------------	----------------------

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

EXHIBIT J

STATE OF SOUTH CAROLINA

County of Charleston**City of North Charleston**

SEARCH WARRANT

OCA: 2015007705**Location:** [REDACTED] **Apt 2**
North Charleston SC, 29405**Date: March 6, 2015**
Officer: J. Sherwood

OCA# 2015007705

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF CHARLESTON

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

DESCRIPTION OF PROPERTY SOUGHT

See Attachment #1

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

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

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

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

Sworn to and Subscribed before me

This 6th day of March 2015.

Signature of Judge

(U.S.)

6:49 PM

Affiant

Address: 2500 City Hall Lane,
 North Charleston, SC 29418
 Phone: 554-5700

RULE 5 NLS 107

OCA# 2015007705

STATE OF SOUTH CAROLINA

SEARCH WARRANT

COUNTY OF CHARLESTON

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

MUNICIPALITY OF NORTH CHARLESTON.

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

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

-See Attached Affidavit-

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

DESCRIPTION OF PROPERTY

-See Attached Affidavit-

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

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

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

North Charleston
MAY 26

S. C.

2015.

[Signature]

(L.S.)

Signature of Judge

RULE 5 NLS 108

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

DARELL ONEIL BOSTON,

DEFENDANT,

STATE OF SOUTH CAROLINA

vs.

WILLIAM HOLMES,

DEFENDANT.

IN THE COURT OF GENERAL SESSIONS

NINTH JUDICIAL CIRCUIT

STATE'S TRIAL BRIEF

Arrest Warrant #2015A1010201114

Arrest Warrant #2015A1010201116

Arrest Warrant #2015A1010201119

Indictment #2015-GS-10-06082

Indictment #2015-GS-10-06086

Indictment #2015-GS-10-06087

Arrest Warrant #2015A1010201122

Arrest Warrant #2015A1010201123

Arrest Warrant #2015A1010201124

Arrest Warrant #2015A1010201125

Indictment #2015-GS-10-06088

Indictment #2015-GS-10-06089

Indictment #2015-GS-10-06090

Indictment #2015-GS-10-06091

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

Appearances:

For the State:

Nina L. Savas, Assistant Solicitor

For the Defendants:

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

FILED
2017 NOV 27 AM 9:36
CLERK OF COURT
BY [Signature]

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I. STATEMENT OF THE CASE

A. Procedural History

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

B. Factual Summary

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

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

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

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

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

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

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

C. Sentencing Enhancement

1. Evidence of Defendant's prior convictions:

a. Defendant Darell Boston

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

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

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

b. Defendant William Holmes

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

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

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

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

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

1. Defendants' Lack of Standing

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

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

U.S. Const. Amend. IV

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

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

S.C. Const. Art. I Section 10

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

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

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

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

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

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

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

2. Knock-and-Talk

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

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

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

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

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

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

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

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

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

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

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

3. Consent

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

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

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

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

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

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

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

4. Protective Sweep

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

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

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

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

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

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

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

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

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

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

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

5. Search Warrant

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

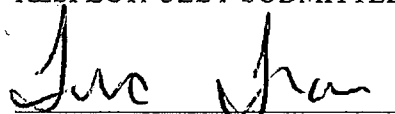
In this case, once the defendants were arrested and placed in the rear of Officer Smoak's patrol car, Officer Etminan read both defendants their Miranda warnings from his Miranda card. The defendants are in their 30s, there was no indication they had any mental deficiencies or were intoxicated, they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

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

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2011 NOV 27 AM 9:36
CLERK OF COURT
BY 

RESPECTFULLY SUBMITTED

By:



For

NINA L. SAVAS
Assistant Solicitor
Ninth Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

) Warrant No(s): 2015A1010201122,
) 2015A1010201124
) Charge(s): Manufacture, distribution, etc. of
) cocaine base, 1st , Possession of Cocaine 1st
) Offense

STATE OF SOUTH CAROLINA

vs.

WILLIAM HOLMES,

Defendant

MOTION FOR A NEW TRIAL

FILED
2018 SEP - 7 AM 10:29
CLERK OF COURT
JAMES H. STRONG

PLEASE TAKE NOTICE that the above captioned defendant, by and through the undersigned attorney, moves this Honorable Court for a motion for a new trial , pursuant to the above mentioned charges.

The within motion is being made in the interest of justice.

Respectfully Submitted,

Benjamin C. Lewis
Assistant Public Defender
Attorney for Defendant

C0harleston, South Carolina

Dated: 9-7 2018:

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

) Warrant No(s): 2015A1010201122,
) 2015A1010201124
) Charge(s): Manufacture, distribution, etc. of
) cocaine base, 1st, Possession of Cocaine 1st
) Offense

STATE OF SOUTH CAROLINA

vs.

WILLIAM HOLMES;

Defendant

MOTION TO RECONSIDER SENTENCE

FILED
2018 SEP - 7 AM 10:28
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ER SENTENCE
BY

PLEASE TAKE NOTICE that the above captioned defendant, by and through the undersigned attorney, moves this Honorable Court for a reconsideration of the sentences imposed upon the defendant on August 29, 2018 by the Honorable R. Markley Dennis, Jr., pursuant to the above mentioned charges.

The within motion is being made in the interest of justice requesting a more lenient sentence.

Respectfully Submitted,

Benjamin C. Lewis
Assistant Public Defender
Attorney for Defendant

Charleston, South Carolina

Dated: 9-7 2018.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

WILLIAM HOLMES,

DEFENDANT.

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

**STATE'S RESPONSE TO DEFENDANT'S
MOTION TO RECONSIDER SENTENCE**

Arrest Warrant #2015A1010201122

Arrest Warrant #2015A1010201124

Indictment #2015-GS-10-06088

Indictment #2015-GS-10-06090

The defendant in the above-captioned matter has filed a post-trial Motion to Reconsider Sentence. On February 7, 2018, a Charleston County jury convicted the defendant William Holmes of Manufacturing Cocaine Base third or subsequent offense and Possession of Cocaine third or subsequent offense. The Honorable R. Markley Dennis presided over trial and on August 29, 2018 imposed a 20-year active prison sentence for the charge of Manufacturing Cocaine Base 3rd or subsequent offense and an 8-year active prison sentence for the charge of Possession of Cocaine 3rd or subsequent offense.

Under S.C. Code 44-53-0375(B)(3) for manufacturing cocaine base third or subsequent offense, "the offender must be imprisoned for not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both," and in cases where the prior convictions were not all possession, "the sentence must not be suspended nor probation granted." S.C. Code 44-53-0370(d)(3) outlines for possession of cocaine third or subsequent offense, "the offender is guilty of a felony, and upon conviction, must be imprisoned not more than ten years or fined not more than twelve thousand five hundred dollars, or both."

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JULIE J. ARMSTRONG
CLERK OF COURT
BY

The defendant's prior record includes the following convictions:

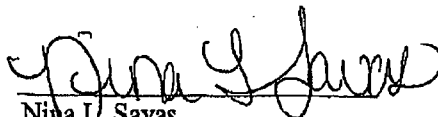
- 1999 PWID Cocaine Proximity
- 1999 PWID Cocaine Base Proximity
- 1999 Trafficking Cocaine Base 10-28g 1st offense
- 1999 PWID Cocaine 1st offense
- 2002 PWID Cocaine Proximity
- 2013 Possession of Cocaine Base
- 2013 PWID Cocaine 1st offense

Therefore, the sentence imposed is well within the statutory guidelines and had the possibility of being punishable up to 40 years.

A trial judge is allowed broad discretion in sentencing, and a sentence is not excessive if it is within statutory limitations and there are no facts supporting an allegation of prejudice against a defendant. *Brooks v. State*, 325 S.C. 269, 481 S.E.2d 712 (1997); *Garrett v. State*, 320 S.C. 353, 465 S.E.2d 349 (1995). In this case, the imposed sentence is within the statutory limitations and the defense has not presented any facts supporting prejudice against the Defendant. Furthermore, this Court presided over trial, reviewed the defendant's prior record, and heard statements at the sentencing hearing. This Court had a complete understanding of the case and made a thoughtful decision regarding sentencing.

The Defendant has outlined no sound reason for this Court to change the sentence imposed upon the Defendant. Pursuant to Rule 29, SCRCrimP., the State respectfully requests that this Court summarily deny the Defendant's Motion for Reconsideration without a hearing. If this Court does not summarily deny the Defendant's Motion, the State respectfully requests a hearing.

Respectfully submitted,



Nina L. Savas
Assistant Solicitor
Ninth Judicial Circuit

September 27, 2018
Charleston, SC

FILED

2018 SEP 28 AM 9:56

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

WILLIAM HOLMES,

DEFENDANT.

IN THE COURT OF GENERAL SESSIONS

NINTH JUDICIAL CIRCUIT

**STATE'S RESPONSE TO DEFENDANT'S
MOTION FOR NEW TRIAL**

Arrest Warrant #2015A1010201122

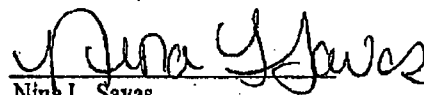
Arrest Warrant #2015A1010201124

Indictment #2015-GS-10-06088

Indictment #2015-GS-10-06090

The Defendant in the above captioned case has filed a post-trial Motion for New Trial. Pursuant to Rule 29, SCCrimP., the State respectfully requests this Court summarily deny the Defendant's motion without a hearing. There is sufficient evidence to support the jury's guilty verdict of Manufacturing Cocaine Base Third or Subsequent Offense and Possession of Cocaine Third or Subsequent Offense. If this Court does not summarily deny the Defendant's Motion, the State respectfully requests a hearing.

Respectfully submitted,



Nina L. Savas
Assistant Solicitor
Ninth Judicial Circuit

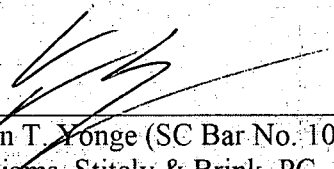
September 27, 2018
Charleston, SC

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JULIE J. ARMSTRONG
CLERK OF COURT

FILED

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.



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Attorney for Appellant

October 21, 2019

RECEIVED

OCT 23 2019

SC Court of Appeals