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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

Honorable William H. Seals, Circuit Court Judge

ROBERT JACKSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2019-001497

APPENDIX

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State of South Carolina	)	Court of General Sessions
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2017-GS-21-01033
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
Robert Jackson,	)	
	)	
Defendant.	)	

September 14-15, 2017
 Florence, South Carolina

B E F O R E:

The Honorable Thomas A. Russo, Judge; and a jury

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

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 Attorney for the Plaintiff

B. Scott Suggs, Esquire
 Attorney for the Defendant

Krystal J. Smith
 Circuit Court Reporter

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COURT REPORTER LEGEND

dashes --	intentional or purposeful interruption
	or change in thought
ellipses . . .	trailing off
[ph]	phonetically written
[sic]	written as said

1 SEPTEMBER 14, 2017

2 (WHEREUPON, the proceedings began at 9:55 a.m. The
3 defendant was present, along with his counsel of
4 record.)

5 THE COURT: All right. Solicitor, if you'd like to call
6 the next case for trial, sir, please.

7 MR. WHITE: Thank you, Your Honor. May it please the
8 Court.

9 At this time, the State would call the following case to
10 trial: The State v. Robert Jackson, Indictment Number 2017-
11 GS-21-01033. Mr. Jackson has been indicted for trafficking
12 in heroin and possession of a controlled substance, Your
13 Honor.

14 THE COURT: All right. Thank you, sir.

15 Ladies and gentlemen, you've heard the solicitor call
16 the case of the State of South Carolina versus Mr. Robert
17 Jackson. Mr. Jackson has been charged under Indictment
18 2017-GS-21-1033 with these charges that the solicitor
19 mentioned. To these charges or to this indictment, Mr.
20 Jackson has pled not guilty, and that plea of not guilty
21 places upon the State the burden of proving the elements of
22 these charges beyond a reasonable doubt.

23 Folks, the indictment -- as I've told you this week as
24 we've pulled juries on other cases, an indictment is simply a
25 charging document. It just brings the case into court. It

1 is not in any sense evidence of the allegations that -- that
2 are contained in this indictment. However, I am going to
3 read to you the allegations that have been made against Mr.
4 Jackson to which he has pled not guilty.

5 Count I of this indictment charges Mr. Jackson with
6 trafficking in heroin. That charge or the allegations
7 relating to that charge are as follows.

8 That Robert Jackson did in Florence County, on or about
9 June the 2nd of 2015, sell, deliver, purchase or bring into
10 this state or did aid, abet, attempt or conspire to sell,
11 deliver, purchase or bring into this state or was knowingly
12 in actual or constructive possession of a quantity of heroin
13 in an amount of 4 grams or more, but less than 14 grams, the
14 same being a controlled substance all within the meaning of
15 Section 44-53-110 of the South Carolina Law -- South Carolina
16 Code of Laws, 1976, as amended, and in violation of Section
17 44-53-370(e) of the South Carolina Code of Laws, as amended.

18 Count II of the indictment charges Mr. Jackson with the
19 offense of possession of a controlled substance, and that
20 allegation alleges that Mr. Jackson did in Florence County,
21 on or about June the 2nd of 2015, knowingly and intentionally
22 possess a quantity of alprazolam, commonly referred to as
23 Xanax, a Schedule IV narcotic under provisions of Section
24 44-53-370, et seq., of the South Carolina Code of Laws, as
25 amended, such possession not having been authorized by law

1 and in violation of Section 44-53-370 (d) (2) .

2 Now, as I said, to these charges or to these allegations
3 Mr. Jackson has pled not guilty.

4 Is there any member of the jury panel who knows anything
5 about this case based on what I've shared with you thus far?
6 If so, please stand.

7 (WHEREUPON, there was no response.)

8 THE COURT: Thank you. There are none.

9 I'm going to ask the attorneys to stand and to identify
10 themselves or introduce themselves. If you'd please listen
11 carefully, I'll have additional questions for you.

12 Mr. White?

13 MR. WHITE: Good morning, ladies and gentlemen. My name
14 is Ryan White. I'm an assistant solicitor with the Twelfth
15 Circuit. Seated with me during this trial will be Deputy
16 Solicitor John Jepertinger.

17 THE COURT: All right. Ladies and gentlemen, is there
18 any member of the jury panel who is related by blood,
19 connected by marriage or who has any close business or
20 personal relationship with or who has ever either been
21 prosecuted by or represented by either Mr. White or Mr.
22 Jepertinger? If so, please stand.

23 (WHEREUPON, there was no response.)

24 THE COURT: Thank you. There are none.

25 Mr. Suggs?

1 MR. SUGGS: Oh, thank you, Your Honor. May it please
2 the Court.

3 THE COURT: Yes, sir.

4 MR. SUGGS: Good morning, ladies and gentlemen. My name
5 is Scott Suggs. I'm an attorney here in Florence, and my
6 office is right down the street on West Evans Street. And I
7 will be -- it has a sign out front that says Best Lawyer in
8 the Pee Dee, 2016. I still haven't taken it down. I'll be
9 representing Robert Jackson this morning. Thank you.

10 THE COURT: Thank you, Mr. Suggs.

11 MR. WHITE: Permission to approach?

12 THE COURT: Yes, sir.

13 Ladies and gentlemen, is there any member of the jury
14 panel related by blood, connected by marriage, or who has any
15 close business or personal relationship with or who has ever
16 been represented by Mr. Suggs or any member of his firm? If
17 so, please stand.

18 (WHEREUPON, one person stood.)

19 THE COURT: All right. And, ma'am, if I could get your
20 name, please

21 JUROR NUMBER 34: Pamela Evans.

22 THE COURT: All right, Ms. Evans. This is Juror Number
23 34.

24 Ms. Evans, Mr. Suggs has represented you currently or in
25 the past?

1 JUROR NUMBER 34: He represented my husband in the past.

2 THE COURT: All right. Is that -- is that relationship
3 completed? He no longer represents him?

4 JUROR NUMBER 34: Yes.

5 THE COURT: Okay. Well, let me ask you -- the fact that
6 Mr. Suggs has represented your husband in the past, would
7 that in any way affect your ability to give both the State
8 and the defense a fair and impartial trial?

9 JUROR NUMBER 34: No, sir.

10 THE COURT: Thank you, ma'am. You may have a seat.

11 Anyone else?

12 (WHEREUPON, there was no response.)

13 THE COURT: Ladies and gentlemen, you've met Mr.
14 Jackson, Robert Jackson. Is there any member of the jury
15 panel who is related by blood, connected by marriage, or who
16 has any close business or personal relationship with Mr.
17 Robert Jackson? If so, please stand.

18 (WHEREUPON, there was no response.)

19 THE COURT: Thank you. There are none.

20 That question that I just asked you as it related to Mr.
21 Jackson -- that -- that will be the question that I'll be
22 asking as it relates to these names that I'm about to call
23 out. These are folks that are possible or potential
24 witnesses that may appear during the course of this trial.

25 If that question applies to any of these names, I would

1 ask that you please stand and if you -- if you do stand, if
2 you do know one of these folks, continue to stand and listen
3 because it may be that you know more one individual.

4 If any of these folks are in the courtroom, when I call
5 your name, if you could just please stand and face the jury
6 for just a moment or two and then you can have a seat.

7 Inv. J. Chamberlain.

8 Inv. Jason Pate.

9 Inv. Brad McDowell.

10 Inv. Angel Clark.

11 Lieut. Mitchell Hansen.

12 Deputy TJ Christmas.

13 Thank you, folks. You may have a seat.

14 Is there any member of the jury panel related by blood,
15 connected by marriage, or who has any close business or
16 personal relationship with any of these individuals who have
17 stood? If so, please stand.

18 (WHEREUPON, there was no response.)

19 THE COURT: Thank you. There are none.

20 Ladies and gentlemen, is there any member of the jury
21 panel who has been a contributor, either by way of
22 volunteering of your time or by way of financial means, with
23 any organization who has as its purpose to represent or
24 support victims' rights?

25 Some organizations that do that are, like, for example,

1 MADD, Mothers Against Drunk Drivers; SADD, Students Against
2 Drunk Drivers; CAV, Citizens Against Violence, any
3 organization such as that. If so, please stand.

4 (WHEREUPON, there was no response.)

5 THE COURT: Thank you. There are none.

6 Is there any member of the jury panel who is a
7 contributor -- either by way of financial means or by way of
8 volunteering of your time, a contributor to any organization
9 who has as its primary function the support or the
10 advancement of law enforcement or the judiciary?

11 In other words, some examples would be the Fraternal
12 Order of Police, the South Carolina Troopers Association, the
13 South Carolina Sheriffs' Association, any types of those
14 organizations, a contributor by either finances or by way of
15 volunteering of your time. If so, please stand.

16 (WHEREUPON, several people stood.)

17 THE COURT: All right. And I'll start at the front
18 here.

19 Ma'am, your name, please.

20 JUROR NUMBER 132: Juror 132, Barbara Stinney.

21 THE COURT: All right. All right. And, Ms. Stinney,
22 the fact that you've been a contributor to those types of
23 organizations -- would that in any way affect your ability to
24 give both the State and the defense a fair and impartial
25 trial?

1 JUROR NUMBER 132: No, sir.

2 THE COURT: Thank you very much, ma'am. You may have a
3 seat.

4 Ma'am, your name, please?

5 JUROR NUMBER 43: Angela Godbold, 43.

6 THE COURT: All right. Ms. Godbold, the fact that
7 you've been a contributor to those organizations -- would
8 that in any way affect your ability to give both the State
9 and the defense a fair trial?

10 JUROR NUMBER 43: No, sir.

11 THE COURT: Thank you, ma'am. You may have a seat.

12 Sir, your name, please?

13 JUROR NUMBER 45: Charles Goodale, 45.

14 THE COURT: All right. Mr. Goodale, would that in any
15 way affect your ability -- the fact that you've been a
16 contributor?

17 JUROR NUMBER 45: No, sir.

18 THE COURT: Thank you, sir. You may have a seat.

19 You know, folks, as I told you the other day that --
20 that the fact continues throughout this week of trials that
21 our goal and our purpose anytime we select a jury is to try
22 to find a panel that can set aside anything that has occurred
23 outside of this courtroom or any experiences you've had
24 outside this courtroom and view the evidence in this case and
25 try -- and try this case and decide this case based solely

1 upon the evidence presented during this course of this trial
2 and on nothing else, nothing outside the evidence in this
3 case, and give both the State and the defendant a fair and
4 impartial hearing.

5 Maybe -- maybe the best question is simply to ask that
6 outright. Is there any member of the jury panel who knows of
7 any reason -- whether I've asked the question or not, who
8 knows of any reason why you would not be able to give both
9 the State of South Carolina and the defendant at the bar a
10 fair and impartial hearing? If so, please stand.

11 (WHEREUPON, there was no response.)

12 THE COURT: Thank you. There are none.

13 Are there any additional questions or voir dire from the
14 State?

15 MR. WHITE: No, sir, Your Honor.

16 THE COURT: Anything additional from the defense?

17 MR. SUGGS: Not from the defense, Your Honor.

18 THE COURT: All right.

19 MR. SUGGS: Thank you, Judge.

20 THE COURT: If y'all would, prepare a strike sheet.

21 Ladies and gentlemen, we're going to go through the same
22 procedure that we went through when we struck the jury
23 earlier this week. Madam Clerk is preparing that strike
24 sheet and we'll -- when that's completed, they'll print it
25 out. She'll start with the first name on that new list.

1 That new list is taking your names, which are in
2 alphabetical order, and has completely and randomly just
3 reordered them. And so she'll take that list and call the
4 first name that appears on that list.

5 We're going to -- we're going to do something a little
6 bit different today, unless there's some objection to it.
7 And feel free to object. I've got no problems with
8 objections. I think it'll make things go a little bit
9 quicker. We did this in Kingstree when I was down there, and
10 I really like the way it went.

11 If your name is called -- if you recall earlier in the
12 week, we had you come down and stand up here and then Madam
13 Clerk asked the questions of the two attorneys. What I'm
14 going to ask you to do today is when your name is called, if
15 you would, just stand where you are and just remain there and
16 then she'll ask of the State what say you for the State and
17 the State can either excuse you -- if they excuse you, you'll
18 have a seat or they'll present you and, if they do that,
19 you'll just remain standing.

20 Then she'll ask of the defendant what say you for the
21 defense. The defense has two options. They can excuse you
22 and, if they do, you'll have a seat or they can seat you and,
23 if they do, you will come down at that point and have a seat
24 in the jury box. Okay?

25 So we're going to change it just a little bit, but I

1 think it makes it go a little bit quicker than you having to
2 make your way -- especially those of you sitting near the
3 wall, make your way through everybody, come down here. We're
4 just -- I'm just trying to simplify things.

5 MR. SUGGS: Well, Judge, I decide my jurors on what kind
6 of shoes they're wearing.

7 THE COURT: Well, I'll allow you to certainly ask them
8 to raise their heels. No, no. We'll give that a shot and
9 see how that works.

10 (WHEREUPON, there was a pause in the proceedings, after
11 which the proceedings resumed as follows.)

12 THE COURT: And then, of course, I guess it goes without
13 saying if you end up being selected, please bring with you
14 any personal items that you brought to the courtroom and
15 bring that with you when you come up.

16 (WHEREUPON, there was a pause in the proceedings, after
17 which the proceedings resumed as follows.)

18 THE COURT: All right. Is the State ready to proceed to
19 jury selection?

20 MR. WHITE: Yes, sir,

21 THE COURT: Is the defense ready?

22 MR. SUGGS: Yes, sir.

23 THE COURT: All right. Madam Clerk, if you would,
24 please. You can just start with the first name. They know.

25 THE CLERK: Number 13, Suzanne Browder.

1 (WHEREUPON, a white female stood.)
2 THE CLERK: What say the State?
3 MR. WHITE: Please present Ms. Browder.
4 THE CLERK: What say the defendant?
5 MR. SUGGS: Please swear Mrs. Browder.
6 THE COURT: All right. Ma'am, if you'd please come
7 around.
8 THE CLERK: Number 5, Lemuel Benjamin.
9 (WHEREUPON, a white male stood.)
10 THE CLERK: What say the State?
11 MR. WHITE: Please present Mr. Benjamin.
12 THE CLERK: What say the defendant?
13 MR. SUGGS: Please swear Mr. Benjamin.
14 THE CLERK: Please have a seat in the jury box.
15 Number 34, Pamela Evans.
16 (WHEREUPON, a white female stood.)
17 THE CLERK: What say the State?
18 MR. WHITE: Please excuse Ms. Evans.
19 THE CLERK: You're excused from this trial only.
20 Number 113, Christopher Robinson.
21 (WHEREUPON, a white male stood.)
22 THE CLERK: What say the State?
23 MR. WHITE: Please present Mr. Robinson.
24 THE CLERK: What say the defendant?
25 MR. SUGGS: Please excuse the juror for purposes of this

1 trial only.

2 THE CLERK: You're excused from this trial only.

3 Number 43, Angela Godbold.

4 (WHEREUPON, a white female stood.)

5 THE CLERK: What say the State?

6 MR. WHITE: Please present Ms. Godbold.

7 THE CLERK: What say the defendant?

8 MR. SUGGS: Please excuse the juror for the purpose of
9 this trial only.

10 THE CLERK: You're excused from this trial only.

11 Number 68, Jimmie Hughes.

12 (WHEREUPON, a black male stood.)

13 THE CLERK: What say the State?

14 MR. WHITE: Please excuse Mr. Hughes.

15 THE CLERK: You're excused from this trial only.

16 Number 132, Barbara Stinney.

17 (WHEREUPON, a black female stood.)

18 THE CLERK: What say the State?

19 MR. SUGGS: Please present Ms. Stinney.

20 THE COURT: What say the defendant?

21 MR. SUGGS: Please excuse the juror for the purpose of
22 this trial only.

23 THE CLERK: You're excused from this trial only.

24 Number 56, Robin Harrell.

25 (WHEREUPON, a white female stood.)

1 THE CLERK: What say the State?
2 MR. SUGGS: Number again, Madam Clerk?
3 THE CLERK: 56.
4 MR. SUGGS: Thank you.
5 MR. WHITE: Please present Ms. Harrell.
6 THE CLERK: What say the defendant?
7 MR. SUGGS: Please swear Ms. Harrell.
8 THE CLERK: If you will, be seated in the jury box.
9 Number 23, Nicole Cooper.
10 (WHEREUPON, a white female stood.)
11 THE CLERK: What say the State?
12 MR. WHITE: Please excuse Ms. Cooper.
13 THE CLERK: You're excused from this trial only.
14 Number 66, Shao-fang Huang.
15 (WHEREUPON, an Asian female stood.)
16 THE CLERK: What say the State?
17 MR. WHITE: Please present Ms. Huang.
18 THE CLERK: What say the defendant?
19 MR. SUGGS: Please swear Mrs. Huang.
20 THE CLERK: Please take a seat in the jury box.
21 Number 109, Darwin Pryor.
22 (WHEREUPON, a white male stood.)
23 THE CLERK: What say the State?
24 MR. WHITE: Please present Mr. Pryor.
25 THE CLERK: What say the defendant?

1 MR. SUGGS: Please swear Mr. Pryor.
2 THE CLERK: Please take a seat in the jury box.
3 Number 72, Monique James.
4 (WHEREUPON, a black female stood.)
5 THE CLERK: What say the State?
6 MR. WHITE: Please excuse Ms. James.
7 THE CLERK: You're excused from this trial only.
8 Number 156, Ruth Williamson.
9 (WHEREUPON, a white female stood.)
10 THE CLERK: What say the State?
11 MR. WHITE: Please present Ms. Williamson.
12 THE CLERK: What say the defendant?
13 MR. SUGGS: Please swear Ms. Williamson.
14 THE CLERK: Please take a seat in the jury box.
15 Number 123, Kimberly Skipper.
16 (WHEREUPON, a white female stood.)
17 THE CLERK: What say the State?
18 MR. WHITE: Please present Ms. Skipper.
19 THE CLERK: What say the defendant?
20 MR. SUGGS: Please swear Ms. Skipper.
21 THE CLERK: Please take a seat in the jury box.
22 Number 133, Cathy Strawn.
23 (WHEREUPON, a white female stood.)
24 MR. WHITE: Please present Ms. Strawn.
25 THE CLERK: What say the defendant?

1 MR. SUGGS: Please swear Mrs. Strawn.
2 THE CLERK: Please take a seat in the jury box.
3 Number 110, Penny Randall.
4 (WHEREUPON, a white female stood.)
5 THE CLERK: What say the State?
6 MR. WHITE: Please present Ms. Randall.
7 THE CLERK: What say the defendant?
8 MR. SUGGS: Your Honor, I was -- I was not present
9 during the jury qualifications and I'm using one of my
10 associate's notes.
11 THE COURT: Okay.
12 MR. SUGGS: And I didn't have any information for this
13 juror. Could I --
14 THE COURT: Yeah.
15 MR. SUGGS: Could I inquire?
16 THE COURT: Yeah. Ms. Randall, the information that --
17 what do you all need?
18 Where do you work, ma'am?
19 JUROR NUMBER 110: I work for Driwood Moulding Company.
20 THE COURT: Okay. And are you married or single?
21 JUROR NUMBER 110: I am married.
22 THE COURT: Does your spouse work outside the home?
23 JUROR NUMBER 110: He does. He's in mortgage lending.
24 THE COURT: Okay. You don't need to know how many miles
25 or whatever?

1 MR. SUGGS: No. Of course, not.
2 THE COURT: Okay.
3 MR. SUGGS: Thank you, Your Honor.
4 THE COURT: Yes, sir. Thank you, ma'am.
5 MR. SUGGS: Please -- please swear Mrs. Randall.
6 THE CLERK: Please take a seat in the jury box.
7 Number 52, Sondra Gripper.
8 (WHEREUPON, a black female stood.)
9 THE CLERK: What say the State?
10 MR. WHITE: Please present Ms. Gripper.
11 THE CLERK: What say the defendant?
12 MR. SUGGS: Please swear Ms. Gripper.
13 THE CLERK: Please take a seat in the jury box.
14 Number 49, Stephen Greenwood.
15 (WHEREUPON, a white male stood.)
16 THE CLERK: What say the State?
17 MR. WHITE: Please present Mr. Greenwood.
18 THE CLERK: What say the defendant?
19 MR. SUGGS: Please swear Mr. Greenwood.
20 THE CLERK: Please take a seat in the jury box.
21 Number 148, Shannon Watt.
22 (WHEREUPON, a white female stood.)
23 THE CLERK: What say the State?
24 MR. WHITE: Please present Ms. Watt.
25 THE CLERK: What say the defendant?

1 MR. SUGGS: Please excuse Ms. Watt for purposes of this
2 trial only.

3 THE CLERK: You're excused from this trial only.
4 Number 78, Ronald Justice.

5 (WHEREUPON, a white male stood.)

6 THE CLERK: What say the State?

7 MR. WHITE: Please present Mr. Justice.

8 THE CLERK: What say the defendant?

9 MR. SUGGS: Please excuse the juror for the purpose of
10 this trial only.

11 THE COURT: I'm sorry.

12 MR. SUGGS: Please excuse --

13 THE COURT: He'd have to strike for cause I believe. I
14 believe he used --

15 MR. SUGGS: Is that --

16 THE COURT: No, I'm sorry.

17 MR. SUGGS: I'm at four. That's fine.

18 THE COURT: No, you're good. I'm sorry. That's my
19 fault.

20 MR. SUGGS: I was counting them, Judge. I promise you.

21 THE COURT: You're good. I can't count to five. That's
22 my problem.

23 THE CLERK: Number 144, Chasidy Ward.

24 (WHEREUPON, a white female stood.)

25 THE CLERK: What say the State?

1 MR. WHITE: Please present Ms. Ward.
2 THE CLERK: Does the defendant wish to challenge this
3 juror for cause?
4 MR. SUGGS: No, ma'am.
5 THE CLERK: You may be seated in the jury box.
6 Number 59, Sarah Hennings.
7 (WHEREUPON, a white female stood.)
8 MR. JEPERTINGER: One and two, Judge?
9 THE COURT: Yes. I'm sorry. One and two.
10 THE CLERK: What say the State?
11 MR. WHITE: Please excuse Ms. Hennings.
12 THE CLERK: You're excused from this trial only.
13 Number 45, Charles Goodale.
14 (WHEREUPON, a white male stood.)
15 THE CLERK: What say the State?
16 MR. WHITE: Please present Mr. Goodale.
17 THE COURT: What say the defendant?
18 MR. SUGGS: Please excuse this juror for purposes of
19 this trial only.
20 THE CLERK: You're excused from this trial only.
21 Number 153, Deborah White.
22 (WHEREUPON, a black female stood.)
23 THE COURT: What say the State?
24 MR. WHITE: Please present Ms. White.
25 THE COURT: What say the defendant?

1 MR. SUGGS: Please swear Ms. White.

2 THE CLERK: You may be seated in the jury box.

3 THE COURT: All right. Are there any motions regarding
4 jury selection from the State?

5 MR. WHITE: No, sir, Your Honor.

6 THE COURT: Any motions regarding jury selection from
7 the defendant?

8 MR. SUGGS: No, Your Honor. Thank you.

9 THE COURT: All right.

10 Ladies and gentlemen, your service has been concluded.
11 Thank you for your service this week. I appreciate so much
12 your patience during -- during this time.

13 I do want you to know that your service -- when I say we
14 appreciate your service, I don't take that lightly. I
15 sincerely mean that. I absolutely understand that jury
16 service is not convenient for anyone and so when you give --
17 when you give up your time and yourself to be here, it's a
18 sacrifice and I get that, but I appreciate it very much.

19 It's a high honor and a service that you give to your
20 community. Our court system is not the best court system --
21 or -- excuse me. Let me back up.

22 It's not a perfect court system, but it is the best
23 court system on the planet. Nobody in this world does it
24 better than the United States, and the reason for that is --
25 is because of good citizens such as yourselves that make

1 yourselves available to allow us to have the system we have
2 where our differences can be resolved by a jury of our peers.
3 And so I really, really want to thank you for that service.

4 If anyone needs a work excuse, you can get that down in
5 the Clerk's Office or they will send you one when they send
6 you your checks. Do not be offended when you get those
7 checks. It's not going to be a whole lot of money, but your
8 -- we couldn't possibly pay you for your time. Your time is
9 invaluable and, as I said earlier, it is a service that you
10 give to your community.

11 The check is just -- I don't even know -- it's just
12 something. It's different from different counties. I think
13 here we pay 10 or \$15 a day plus mileage. Other places will
14 just pay a flat fee and no mileage. It's -- it's just
15 random, but if you need a work excuse before you get your
16 check, you can get that in the Clerk's Office. But if you
17 can wait, then it will be in your check when you receive that
18 as well. Okay?

19 So I would ask everyone else to remain seated while the
20 members of the jury -- you're excused. You don't have to
21 call back. You're done.

22 (WHEREUPON, the jury panel was released and exited the
23 courtroom at 10:28 a.m.)

24 THE COURT: And for the members of this jury, you know,
25 when we start a case at the beginning of the week, because we

1 know it's the first case on the roster, many times we take up
2 pretrial matters before the term of court starts, but once
3 you get into the -- into the week and you don't know what
4 order the cases are going to be called, you can't -- you
5 can't necessarily take up those matters beforehand.

6 We have some pretrial matters that we're going to take
7 up, and these are matters that will help -- help things go
8 smoother and will accelerate the trial and make it go a
9 little bit smoother. But those are matters that we need to
10 take up that don't involve your -- your attention.

11 So rather than have you go back and sit back in the jury
12 room while I take up pretrial matters, because I don't know
13 how long that will actually take, what I thought we would do
14 -- I've talked with the attorneys and they're in agreement.

15 It's 10:30 now. I'm going to cut you loose early, like
16 -- like a super early lunch. We'll call this like a brunch
17 or something. You don't have to eat, but I am going to
18 excuse you until one o'clock. Okay? So that's about what?
19 Two and half hours or so, maybe three and a half.

20 But if you would, I need you to be back here at one
21 o'clock in the jury room ready to go and, once all of you
22 have reconvened, we'll get started with the trial and we will
23 have resolved all the pretrial matters.

24 Now, those of you who have been on jury service this
25 week, you've heard this instruction I've given numerous

1 times. Those of you who haven't, you are not to have any
2 conversation about any -- with anybody about this case. Do
3 not allow anyone to discuss this case with you.

4 It's very important that you do everything within your
5 power to protect your ability to remain fair and impartial.
6 And when I say you're not to have any conversation with
7 anybody about the case, that includes even amongst
8 yourselves.

9 There will come a time when you're going to discuss the
10 case and you're going to deliberate, but that time won't come
11 until after all of the evidence has been presented, the
12 attorneys have had a -- excuse me -- a chance to address you
13 with their closing remarks, and I have given you the law.
14 Only then is it appropriate for you to begin having
15 conversation.

16 So until that time, please have no conversation with
17 anybody, even amongst yourselves. Just -- right now, just
18 forget this matter, go enjoy your time between now and one
19 o'clock and, when you get back at one o'clock, we'll start
20 working. Okay?

21 So if everyone else -- is the hall clear, Emmanuel?

22 THE DEPUTY: Yes, sir.

23 THE COURT: Okay.

24 THE DEPUTY: Yes, sir.

25 THE COURT: Folks, we'll see you back here at one

1 o'clock.

2 Yes, ma'am?

3 JUROR NUMBER 66: Just wondering is this going to go
4 into tomorrow? Do we need to tell our workplace that we are
5 not going to be there tomorrow?

6 THE COURT: I think we will go into tomorrow. I don't
7 anticipate going beyond tomorrow, but we will go into
8 tomorrow.

9 JUROR NUMBER 66: So we can go ahead and tell our
10 workplace that we're not going to be there tomorrow?

11 THE COURT: Yes, ma'am. Yes, ma'am.

12 JUROR NUMBER 66: Thank you.

13 THE COURT: Thank you.

14 Okay, folks. So when you -- when you return from the
15 break, if you would, come up to the 11th floor here. There
16 will be a bailiff out there and they'll direct you back into
17 the jury room. Okay?

18 (WHEREUPON, the jury exited the courtroom at 10:32 a.m.)

19 THE COURT: All right. Do y'all want to take a short
20 break before we get started or are you ready to get started?

21 MR. SUGGS: A break would be okay, Judge. I may have to
22 run back to my office quickly.

23 THE COURT: Okay.

24 MR. SUGGS: I think I'm missing some file material. I
25 brought some material from another case of Mr. Jackson's.

1 THE COURT: Okay.

2 MR. SUGGS: It's mixed up. So I need to scoot back. It
3 won't take but a second.

4 THE COURT: Well, that's -- oh, I know. You're right
5 down the road.

6 MR. SUGGS: Yes, sir.

7 THE COURT: We'll just take a recess. Scott, you just
8 let me know when you get back and you're ready. Okay?

9 MR. SUGGS: Yes, sir. Will do.

10 THE COURT: All right, guys.

11 MR. SUGGS: Thank you, Judge.

12 THE COURT: Thank you.

13 MR. WHITE: Thank you, Judge.

14 THE COURT: All right.

15 (WHEREUPON, there was a break in the proceedings from
16 10:33 a.m. until 11:00 a.m., after which the proceedings
17 resumed as follows)

18 THE COURT: Thank you, folks. Please have a seat.

19 MR. SUGGS: Thank you for allowing me that little break,
20 Your Honor.

21 THE COURT: You're welcome, sir.

22 All right. Y'all can let me know what matters we have
23 that we need to resolve pretrial, and we'll take them in
24 whatever order y'all see fit.

25 MR. WHITE: Thank you, Your Honor. I believe that Mr.

1 Suggs would like to go through the defendant's criminal
2 history first.

3 THE COURT: All right.

4 MR. WHITE: Other than that, the Jackson v. Denno, and
5 the State would have nothing -- nothing else.

6 THE COURT: All right. Let's -- let's discuss Mr.
7 Jackson's prior record.

8 MR. JEPERTINGER: He's got a petty larceny in '72 I
9 don't think we can use.

10 THE COURT: Correct.

11 MR. JEPERTINGER: Okay.

12 MR. SUGGS: Where are you, John?

13 MR. JEPERTINGER: Just starting with his record.

14 MR. SUGGS: Okay. Give me just a second.

15 THE COURT: Why don't we do this? Which would I think
16 make it easier. Why don't you let me know what matters that
17 you think you would be able to address if he were to take the
18 stand and then, if there are anything you have an issue with,
19 Mr. Suggs, we can take it up.

20 MR. SUGGS: Well, we can sit down together and put our
21 heads together and our sheets, Judge.

22 THE COURT: Okay.

23 MR. SUGGS: If you'd like us to do that.

24 MR. JEPERTINGER: It would be a whole lot quicker,
25 Judge. I mean I --

1 THE COURT: Just give me the ones that you believe --
2 MR. JEPERTINGER: Okay.
3 THE COURT: -- would apply.
4 MR. SUGGS: And tell me what page you're on, please.
5 MR. JEPERTINGER: Page 204. He had a trafficking in
6 cocaine and a parole violation, and he got a 25-year
7 sentence. And I think you start calculating from when he was
8 released.
9 THE COURT: When --
10 MR. JEPERTINGER: I don't know how long -- when he got
11 released. That's --
12 MR. SUGGS: I think it's when -- I think it's when
13 you're released or whenever the obligations run out, like, if
14 you're on --
15 THE COURT: If he's on parole --
16 MR. SUGGS: -- parole --
17 THE COURT: -- it's a continuing matter.
18 MR. SUGGS: Whenever that ends --
19 THE COURT: Correct.
20 MR. SUGGS: -- I think is your ending date.
21 THE COURT: Correct.
22 MR. SUGGS: He was released and all. So I think --
23 MR. JEPERTINGER: Yeah. He had a parole violation,
24 convicted and serving time, and that -- he was received in
25 the Department of Corrections in 2000. I don't know how much

1 time he did after 2000.

2 THE COURT: Or if he was on parole when he got out.

3 MR. SUGGS: He did tell me and it's okay for me to
4 mention. It's not -- it's not privileged, but that he thinks
5 that -- that it was in 2012 that he was finally -- 2010, '11
6 or '12 when he was finally done with everything, but I don't
7 know what charges that stemmed from ahead of that.

8 MR. JEPERTINGER: Well, he was received for trafficking
9 in cocaine. The other stuff that I had up until that time is
10 a possession of marijuana and some other stuff.

11 THE COURT: Okay.

12 MR. JEPERTINGER: That was -- that -- that being said,
13 that would fall within the 10-year --

14 THE COURT: Correct.

15 MR. JEPERTINGER: -- timeframe. Now, the question is
16 obviously because it was trafficking in cocaine and he's
17 charged with trafficking in heroin, I don't know if the Court
18 would allow that because it's kind of the same type of
19 arrest.

20 THE COURT: I think it's too similar. I think it would
21 run afoul of the precedent that's been set, but you certainly
22 can -- you know how you ask the question about isn't it true
23 that you've been convicted of a felony --

24 MR. JEPERTINGER: That carries more than --

25 THE COURT: -- that carries more than -- what? A year?

1 MR. JEPERTINGER: More than a year.
2 MR. SUGGS: But that's an '86 conviction.
3 MR. JEPERTINGER: Yeah.
4 MR. SUGGS: This is 2017. I mean that's 32 years ago.
5 MR. JEPERTINGER: Yeah. But I --
6 THE COURT: But if you go back to --
7 MR. JEPERTINGER: Yeah. He said he got off parole in
8 2012.
9 MR. SUGGS: Yeah. But for what though?
10 MR. JEPERTINGER: It would -- it would be for that
11 because he was received into the Department for parole
12 violations.
13 MR. SUGGS: Well, it might've been probation. He wasn't
14 sure if it was parole or probation. I see some probation
15 case after that.
16 I have a problem with that being admitted from '86,
17 Judge. Even if it does carry over, it's going to be -- it's
18 going to be close, and I think Rule 609 governs that.
19 Of course, I think in addition to the time limit,
20 there's got to be a finding by the Court that it's -- that
21 the probative value outweighs prejudicial or at least that
22 it's the Court thinks it's fair to admit it. But 1986 --
23 THE COURT: Well --
24 MR. SUGGS: Different offense.
25 THE COURT: I don't -- I don't care whether it's '86 or

1 1926, it -- it depends on when he was released from that
2 sentence.

3 MR. JEPERTINGER: Since we're going to have a little
4 time between now and then --

5 THE COURT: We'll look at it.

6 MR. JEPERTINGER: Could I -- could I check with
7 Probation and Parole to find out?

8 THE COURT: Yes.

9 MR. JEPERTINGER: Because they're going to have it --

10 THE COURT: Yeah.

11 MR. JEPERTINGER: -- exactly.

12 THE COURT: And we'll -- and then we can discuss it.
13 But in any case, let me just say worst-case scenario, if it's
14 within the timeframe, I still would not allow it to be
15 brought out as a trafficking in cocaine because I think that
16 would be too prejudicial, but we would be able to ask about
17 whether it's a felony.

18 MR. SUGGS: Yes, sir.

19 THE COURT: Okay.

20 MR. SUGGS: Yes, sir. And I have no problem with Mr.
21 Jepertinger going back if he wants to go back and call, if
22 that's okay before it starts.

23 THE COURT: Yeah. We'll just verify and see what it is
24 and then we'll -- then we'll address it. All right.

25 MR. SUGGS: And I trust whatever Mr. Jepertinger tells

1 me.

2 THE COURT: Okay.

3 MR. SUGGS: I trust him.

4 THE COURT: All right.

5 MR. JEPERTINGER: He had a possession of other
6 controlled substance -- it looks like he's on trial for that
7 same thing -- back in 2007. This offense happened in 2015.
8 That carried six months. So I don't think I could use that
9 in any --

10 THE COURT: Right.

11 MR. JEPERTINGER: In any event. And he does have a use
12 of vehicle without owner's permission back in 2017. That
13 does carry more than a year, Judge, and he was sentenced to
14 one year, suspended to court costs and probation for a year.
15 I think that's fair game.

16 THE COURT: I think it is.

17 MR. SUGGS: I would concur, Your Honor.

18 MR. JEPERTINGER: He has a conviction in 2008 for
19 manufacture and distribution and possession with the intent
20 to distribute cocaine. I -- I think that -- that would fall
21 within the timeframe, and I think it's the same thing having
22 been convicted of another felony that carries more than year
23 in 2008.

24 THE COURT: Right. I think that would be appropriate.

25 MR. JEPERTINGER: He's got some foreign record here too,

1 and I'm kind of seeing if -- he got convicted for heroin in
2 1997. He got 48 months' jail time, possession with the
3 intent to distribute heroin, and that looks like it's under
4 the United States government. Correct?

5 THE COURT: That would be outside the timeframe though.

6 MR. JEPERTINGER: Forty-eight months?

7 THE COURT: Even worst-case scenario, that's only four
8 years.

9 MR. JEPERTINGER: Yes. Four years and 36 months; so
10 that would've been what? Three -- seven years. So that
11 would have been 2004.

12 THE COURT: Seven years. And that was 2004.

13 MR. JEPERTINGER: Yeah.

14 THE COURT: Yeah.

15 MR. JEPERTINGER: I think that's it, Judge.

16 THE COURT: All right. So just to recap, what I've got
17 is we're going to check on the trafficking case out of the
18 '80s. So that'll -- we don't know yet regarding that.

19 The other matters that appear to me that would fall
20 within the timeframe and be susceptible to questioning would
21 be the use of vehicle from earlier this year. And then the
22 --

23 MR. JEPERTINGER: It was 2007, Judge.

24 THE COURT: Oh, it was 2007. Okay.

25 MR. JEPERTINGER: This crime happened in 2015.

1 THE COURT: Gotcha. The use of vehicle and then the
2 distribution of crack, but understanding that that would be
3 class -- I mean that would be addressed as it being simply a
4 felony that carries more than a year. So I've got three
5 matters that would be subject of impeachment if -- if Mr.
6 Jackson were to take the stand.

7 MR. SUGGS: Your Honor, the use of vehicle without
8 consent, am I mistaken? Is that a misdemeanor? A three-year
9 misdemeanor? I think it might be. I know the one year is
10 the cutoff, but you were mentioning felonies and whatnot, and
11 I --

12 THE COURT: Well --

13 MR. SUGGS: I think that's a misdemeanor, isn't it?

14 THE COURT: Yeah, it is. And I think they could ask him
15 just about that charge. Isn't it -- isn't it true that you
16 were --

17 MR. JEPERTINGER: He was convicted of use of vehicle
18 without owner's permission.

19 THE COURT: That you were convicted of use of vehicle
20 without owner's consent.

21 MR. SUGGS: Yes, sir. Yes, sir. Thank you.

22 THE COURT: Yeah. And not discuss the timeframe on
23 that.

24 MR. SUGGS: So absent the '86 --

25 THE COURT: There's two matters.

1 MR. SUGGS: Right. Should he take the stand --

2 THE COURT: Right.

3 MR. SUGGS: -- he's subject to impeachment on -- you've
4 been convicted of use of vehicle without owner's consent and
5 you've been convicted of a previous felony.

6 THE COURT: Correct.

7 MR. SUGGS: Yes, sir.

8 THE COURT: Okay?

9 MR. SUGGS: Yes, sir, Judge.

10 THE COURT: All right. And we'll -- we'll make a final
11 call on that other matter after you have a chance to check on
12 that.

13 MR. JEPERTINGER: Yes, sir.

14 THE COURT: All right. What's next?

15 MR. SUGGS: Judge, there were -- we had filed some
16 motions, and I'm certain that -- I mean Mr. White has been
17 very good about updating me with -- not only with scheduling
18 information about this case, but also with providing me with
19 certain disclosures that I believe he's required or obligated
20 to provide. And he's continued to do that, and I would hope
21 that he would continue to do that throughout the trial,
22 should something else come up.

23 THE COURT: Okay. And, Mr. White, I believe you've
24 provided everything to this point. If anything were to come
25 up or to be made brought to your attention during the course

1 of this matter, obviously, if it applies, to get it to Mr.
2 Suggs as soon as you can.

3 MR. WHITE: Absolutely, Your Honor.

4 THE COURT: I think you got him the disc.

5 MR. WHITE: Yes, sir.

6 THE COURT: The redacted disc.

7 MR. WHITE: Yes, sir, I have. And the only thing that's
8 changed since that time is that the log sheet, the evidence
9 log sheet, has just been changed to reflect that it has been
10 signed over to the -- to the Court.

11 THE COURT: Right.

12 MR. WHITE: I'd be happy to turn that over --

13 THE COURT: Okay.

14 MR. WHITE: -- to Mr. Suggs.

15 MR. SUGGS: I did see a chain of custody document that
16 Mr. White provided me a few weeks ago, but it didn't seem to
17 be complete. That might be what he's talking about. So if I
18 could see that?

19 THE COURT: I think -- I think he's just talking about
20 where they brought the drugs here today.

21 MR. WHITE: That's right, Your Honor.

22 MR. SUGGS: Well, there were some -- there was some
23 information left out of what I received before as far as what
24 was the disposition of the evidence after it was seized and
25 where it went from there up until a certain point. I didn't

1 have that.

2 THE COURT: I don't really know.

3 MR. WHITE: I thought I provided that, Your Honor. If
4 not, then my mistake. That's -- that's the full chain of
5 custody there, Mr. Suggs.

6 MR. SUGGS: Is this a copy? Is this your original?

7 MR. WHITE: That's the original. I'd be happy to make a
8 copy.

9 MR. SUGGS: We'll make a copy --

10 MR. WHITE: Okay.

11 MR. SUGGS: -- and go from there, Judge.

12 THE COURT: Okay.

13 MR. SUGGS: Judge --

14 THE COURT: Melissa, would y'all make a copy of that for
15 Scott?

16 MR. SUGGS: I mentioned to Mr. Jepertinger and Mr. White
17 at the break that -- just out of fairness, Judge, that the
18 Court did not question the venire prior to the selection
19 about any witnesses that the defendant would introduce,
20 although we're all aware of the fact that he's not required
21 to put up any evidence.

22 THE COURT: Right.

23 MR. SUGGS: But in most cases, jurists do ask that
24 question of potential jurors to determine if they have any
25 relationship of business or professional or personal with any

1 -- any of my witnesses, and I didn't know if the Court wanted
2 to take that up when the jury gets back.

3 THE COURT: Well, what I -- what I thought we would do
4 is wait until we get to that -- to that stage. I didn't know
5 you had any witnesses other than possibly Mr. Jackson. I
6 should've asked you for those before we got started.

7 MR. SUGGS: It's my fault, Judge. I should have -- I
8 should have piped in and said something --

9 THE COURT: But I can --

10 MR. SUGGS: -- but it just didn't occur to me at the
11 time.

12 THE COURT: I mean I can ask them when they return from
13 the lunch break so that if we have issues or problems with
14 that -- there's no sense in trying three-fourths of this case
15 and then have that be an issue.

16 MR. SUGGS: I can -- I can give you the names now,
17 Judge.

18 THE COURT: Yeah. Go ahead.

19 MR. SUGGS: And, of course, these are not -- these are
20 just potential to be called.

21 THE COURT: I understand.

22 MR. SUGGS: Hazel Jackson.

23 THE COURT: Okay.

24 MR. SUGGS: Daryl Jackson.

25 THE COURT: Okay.

1 MR. SUGGS: Herbert McDaniel.

2 THE COURT: Okay.

3 MR. SUGGS: And the State was -- is probably going to
4 want dates of birth and socials and I don't have those now,
5 but I'll try to get those.

6 THE COURT: All right. If you'd do that.

7 MR. SUGGS: Yes, sir.

8 THE COURT: And I -- I will address that with the jury
9 before we get started.

10 MR. SUGGS: Yes, sir, Judge.

11 Your Honor, the -- I believe it would be a good idea to
12 have a short hearing on a Jackson v. Denno hearing to address
13 the issues of any statements that my client may have made --

14 THE COURT: All right.

15 MR. SUGGS: -- prior to or after being arrested and also
16 the issue of the probable cause search and seizure and that
17 sort of thing.

18 THE COURT: Okay.

19 MR. WHITE: Thank you, Your Honor. At this time, the
20 State would call Inv. Jason Pate.

21 THE COURT: All right. Inv. Pate, if you'd come around
22 to be sworn, sir.

23 THE CLERK: Please place your left hand on the Bible and
24 raise your right hand. Do you swear to tell the truth, the
25 whole truth, and nothing but the truth, so help you God?

INV. JASON PATE - DIRECT BY MR. WHITE

1 THE WITNESS: I do.

2 THE CLERK: You may be seated in the witness box and
3 state your name for the record.

4 THE WITNESS: Jason Pate.

5 MR. WHITE: Thank you, Inv. Pate.

6 INV. JASON PATE, being first
7 duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. WHITE:

10 Q: Could you tell us where are you employed?

11 A: Florence County Sheriff's Office.

12 Q: How long have you been employed there?

13 A: Sixteen years.

14 Q: And on June 2nd, 2015, in what capacity were you
15 employed?

16 A: I was on the PACE team.

17 Q: And at that time, did you have occasion to respond to
18 the Cruizers convenience store located on 1017 W. Darlington
19 Street?

20 A: I did.

21 Q: Is that location in Florence County?

22 A: It is.

23 Q: Why did you respond to the Cruizers?

24 A: We had reports of drug activity going on in a burgundy
25 Nissan Altima.

INV. JASON PATE - DIRECT BY MR. WHITE

1 Q: Did you find that burgundy Nissan Altima?
2 A: I did.
3 Q: Did you -- was the vehicle occupied?
4 A: It was.
5 Q: How could you tell?
6 A: When I arrived, the driver's side door was open and the
7 occupant had his legs out.
8 Q: Did you make contact with the occupant?
9 A: I did.
10 Q: And what, if anything, did you notice upon making
11 contact?
12 A: Upon making contact, I noticed a pill bottle in the
13 driver's side door and it appeared the label was torn and I
14 asked him for his ID and, when he leaned over, I noticed a
15 plastic bag in his shirt pocket that contained what looked
16 like bindles consistent with heroin.
17 Q: Okay. And was the individual -- was he detained at that
18 time?
19 A: He was asked to step out of the car at that time.
20 Q: Now, did you -- were you able to identify the
21 individual?
22 A: Yes.
23 Q: And what was his name?
24 A: Robert Jackson.
25 Q: Did you subsequently read Mr. Jackson his Miranda

INV. JASON PATE - DIRECT BY MR. WHITE

1 warnings?

2 A: I did.

3 Q: How do you usually do that?

4 A: I have a card with the Miranda warnings and I read it.

5 Q: Do you have that card on you now?

6 A: I do.

7 Q: Could you -- if you could, could you pull that out?

8 (WHEREUPON, the witness complied.)

9 Q: Inv. Pate, if you don't mind, could you recite the
10 Miranda warnings as they appear on that card?

11 A: You are under custody of the Florence County Sheriff's
12 Office. It is my duty to advise you the following rights.

13 You have the right to remain silent. Anything you say
14 may be used against you in court. You have a right to have a
15 lawyer and consult with him before and while answering any
16 questions and, if you cannot afford a lawyer, one will be
17 provided for you without cost.

18 Do you understand your rights as I have explained to you
19 and are you willing to talk with us without a lawyer present?

20 Q: Now, is that the same way you recited the rights on June
21 2nd, 2015?

22 A: Yes.

23 Q: Did Mr. Jackson give any verbal response to those
24 Miranda warnings?

25 A: He nodded, yes, that he understood.

INV. JASON PATE - CROSS BY MR. SUGGS

1 MR. WHITE: Okay. Thank you, Inv. Pate. I have nothing
2 further. Please answer any questions that defense counsel
3 may have.

4 CROSS-EXAMINATION

5 BY MR. SUGGS:

6 Q: It's Jason Pate; is that right?

7 A: Yes, sir.

8 Q: Do you know my wife, Mandy?

9 A: I do.

10 Q: I mentioned the other day that you were going to testify
11 in this trial. Just a few questions, Jason.

12 You were the one who approached Mr. Jackson in the -- in
13 the vehicle at the Cruizers or at the convenience store
14 parking lot?

15 A: Yes, sir.

16 Q: All right. Who received the information that there was
17 drug activity going on there?

18 A: Investigators with the narcotics division.

19 Q: Specifically, who?

20 A: Inv. Chamberlain.

21 Q: Anyone else?

22 A: Not that I'm aware of.

23 Q: And so you didn't receive any information from any
24 reliable confidential informant or anyone else other than
25 Inv. Chamberlain concerning any drug activity there?

INV. JASON PATE - CROSS BY MR. SUGGS

1 A: That's correct.

2 Q: All right. So you were following up on information that
3 that officer provided to you?

4 A: Yes, sir.

5 Q: Okay. And did that officer tell you that -- well, why
6 don't you tell me specifically what he told you?

7 A: That they had had complaints.

8 Q: Who had had complaints?

9 A: The -- Inv. Chamberlain, about drug activity going on at
10 the Cruizers in a burgundy Nissan Altima.

11 Q: All right. So Inv. Chamberlain passed this information
12 along to you that he had received information from a reliable
13 confidential informant with the Sheriff's Department that
14 drug activity was going on at the -- at the convenience store
15 and a burgundy Nissan Altima was involved?

16 A: He just passed on the information. He didn't tell me
17 where he got it from.

18 Q: Okay. But that information was passed along, but you
19 didn't know from what source?

20 A: Yes, sir.

21 Q: Whether it was a confidential informant or another
22 officer, whoever?

23 A: Correct.

24 Q: All right. And then, at that time, did he ask you to
25 investigate?

INV. JASON PATE - CROSS BY MR. SUGGS

- 1 A: He did.
- 2 Q: All right. And you followed his directions immediately?
- 3 A: Yes, sir.
- 4 Q: Okay. Were you in the area when you received that call?
- 5 A: I was.
- 6 Q: Okay. Did you receive it by radio?
- 7 A: By phone, I think.
- 8 Q: By phone? Okay. And how soon after did you respond?
- 9 A: Shortly thereafter.
- 10 Q: Were you with another officer at the time?
- 11 A: I was.
- 12 Q: With who?
- 13 A: Inv. Clark.
- 14 Q: Were y'all in a marked vehicle?
- 15 A: Unmarked.
- 16 Q: Did Officer Chamberlain specifically tell you the
- 17 identity of the person who was possibly dealing drugs?
- 18 A: I think so. Yes, sir.
- 19 Q: Okay. So he told you Robert Jackson, Cruizers
- 20 convenience store or whatever it's called, burgundy Nissan
- 21 Altima?
- 22 A: Yes, sir.
- 23 Q: Dealing drugs then and there?
- 24 A: Yes, sir.
- 25 Q: Okay. Now, when you approached Mr. Jackson, was he by

INV. JASON PATE - CROSS BY MR. SUGGS

1 himself?

2 A: He was.

3 Q: Okay. Anybody in the immediate area of him?

4 A: Not that I recall.

5 Q: Okay. Did both of y'all officers approach him?

6 A: Yes, sir.

7 Q: And you talked to -- you engaged Mr. Jackson while

8 Officer Clark secured the area, so to speak?

9 A: Yes, sir.

10 Q: All right. And so was Officer Clark anywhere near where

11 you were when you were talking to Mr. Jackson?

12 A: Yes, sir.

13 Q: Okay. Was he on the same side of the car?

14 A: As far as I recall, yes, sir.

15 Q: Okay. Now, how did you manage to notice the bottles in

16 the car door? Was the car door open?

17 A: It was open.

18 Q: Passenger or driver's side?

19 A: Driver's side.

20 Q: All right. Nobody else in the car?

21 A: No, sir.

22 Q: Okay. And where were the pills specifically?

23 A: In the side pocket of the driver's side door.

24 Q: In the pocket part at the bottom of the door?

25 A: Yes, sir. The -- the pocket that runs down the length

INV. JASON PATE - CROSS BY MR. SUGGS

1 of the door.

2 Q: Okay. Do you have the evidence here?

3 A: As far as I know, yes, sir.

4 Q: Okay. Was it two bottles?

5 A: One bottle.

6 Q: One bottle? And it had two separate substances in it?

7 A: Yes, sir.

8 Q: Any name on the bottle?

9 A: No name.

10 Q: Okay. Had it been removed?

11 A: Yes, sir.

12 Q: Okay. All right. When -- when you approached Mr.

13 Jackson, did you identify yourself?

14 A: Yes, sir.

15 Q: What did you say?

16 A: I think I asked him how he was doing pretty much.

17 Q: Yes, sir.

18 A: I'd have to look at the video, but I'm sure I identified

19 myself because I was in a uniform with vest, sheriff, and all

20 that.

21 Q: So you wear a uniform?

22 A: Yes, sir.

23 Q: All right. And you asked him how he was doing and then

24 did you -- what did you do then? Did you start asking

25 questions of him?

INV. JASON PATE - CROSS BY MR. SUGGS

- 1 A: I asked him for his ID.
- 2 Q: Okay. And he produced it?
- 3 A: He did.
- 4 Q: Okay. What else?
- 5 A: And that's when he leaned over while he was getting his
- 6 stuff and I noticed a plastic bag in his shirt pocket.
- 7 Q: Where was his ID that he had to bend over?
- 8 A: I don't recall where his ID was.
- 9 Q: Is it on the video?
- 10 A: Possibly. Yes, sir.
- 11 Q: And he gave you the ID and is that when you noticed the
- 12 pills or did you notice the bag in his pocket first?
- 13 A: I noticed the pill bottle while I was approaching him.
- 14 Q: Okay.
- 15 A: Once I was standing there talking with him and I asked
- 16 for his ID, I noticed the label was torn.
- 17 Q: Okay.
- 18 A: When I asked for the ID, I think he had his legs out the
- 19 car. When he leaned over, I saw a plastic bag in his shirt
- 20 pocket.
- 21 Q: Okay.
- 22 A: And inside of that looked like bindles that's consistent
- 23 with heroin.
- 24 Q: All right. Is that evidence here in the courtroom too?
- 25 A: Yes, sir.

INV. JASON PATE - CROSS BY MR. SUGGS

1 Q: All right. And did you -- did you tell him, Mr.
2 Jackson, I think these are drugs, hand them to me or I think
3 there are pills, unlawful pills, in this bottle, hand them to
4 me, anything like that?

5 A: At that time, I asked him what he had in his pocket. He
6 pulled out some items and I said, no, what is that. That's
7 when he pulled out the bag with the bindles and he had -- I
8 said let me see that and he handed them to me.

9 Q: Okay. Then what did you do after he handed those items
10 to you?

11 A: I think I put them on the hood of the truck and I asked
12 him to step out of the car.

13 Q: Okay. Was Officer Clark there as well to see that?

14 A: Yes, sir.

15 Q: Okay. Did you place him under arrest at that time?

16 A: No, not at that time.

17 Q: Did you read him his Miranda warnings?

18 A: As soon as he got out the car and we were at the hood of
19 the Tahoe, that's when I read him his Miranda rights.

20 Q: All right. So y'all walked from the Altima to the --

21 A: The hood, the front of my patrol vehicle at that time.
22 Yes, sir.

23 Q: And what about -- what about the pill bottles? Did you
24 ask him anything about those or did you just reach down there
25 and pull those out?

INV. JASON PATE - CROSS BY MR. SUGGS

1 A: I don't recall if I asked him or not or if we just took
2 them out after I spoke with him.

3 Q: Okay. So you're saying that the -- you -- did you take
4 the heroin from Mr. Jackson first before the pill bottles --
5 pill bottle was retrieved?

6 A: Yes, sir.

7 Q: All right. And did you ask him any questions after you
8 took the heroin from him?

9 A: I asked him had he ever been arrested before.

10 Q: Okay.

11 A: He nodded, yes.

12 Q: Okay.

13 A: I asked him what for and I said drugs and he nodded,
14 yes.

15 Q: All right.

16 A: And by that time, Inv. Chamberlain was there.

17 Q: All right. He came up how long after -- after you
18 arrived for the first time?

19 A: 15 minutes, maybe 20 minutes.

20 Q: Had he told you before that he was on the way?

21 A: He had.

22 Q: So he instructed you -- he advised you the information
23 that he received from a source that you don't know because he
24 didn't tell you and he asked you to -- to check the area for
25 this individual?

INV. JASON PATE - CROSS BY MR. SUGGS

1 A: Yes, sir.

2 Q: And for his car?

3 A: Yes, sir.

4 Q: And he said I'll be along in a --

5 A: Yes, sir.

6 Q: -- while longer, 15 minutes later or --

7 A: I called him once I got there and I actually found

8 something.

9 Q: Okay.

10 A: Then he arrived.

11 Q: So you did follow up and call him?

12 A: Yeah, I called him.

13 Q: All right. And told him that you had made an arrest?

14 A: Yeah, I told him that.

15 Q: Did you tell him you recovered some heroin?

16 A: I did.

17 Q: And did you know what the pills were by that time?

18 A: Not at that time. No, sir.

19 Q: Was he placed under arrest for the pills as well or just

20 for the heroin initially?

21 A: Initially, both of them, I'm sure.

22 Q: Did you transport him to the Sheriff's Department?

23 MR. WHITE: Your Honor, we're getting a little off base

24 --

25 MR. SUGGS: Well, I just --

INV. JASON PATE - CROSS BY MR. SUGGS

1 MR. WHITE: -- here, I believe.

2 MR. SUGGS: I wanted to find out if there were any more
3 conversations that went on between the time he was arrested
4 and the time he was booked in is all that I was going to --

5 THE COURT: Okay. Well, you can ask him that.

6 MR. SUGGS: Yes, sir. I'll just ask him, Judge.

7 BY MR. SUGGS:

8 Q: Other than the question that you asked Mr. Jackson about
9 have you ever been in trouble before and he responded, what
10 other conversations did you have with him?

11 A: I'm pretty sure that was it.

12 Q: All right.

13 A: And I can't remember honestly if I transported him or
14 Inv. Chamberlain transported him.

15 Q: Okay. All right. But you don't remember any more
16 conversations with him other than that brief colloquy?

17 A: Yes, sir.

18 Q: Or exchange. Okay. All right.

19 MR. SUGGS: Judge, that's all I have of this witness
20 right this minute.

21 THE COURT: All right. Anything further?

22 MR. WHITE: Nothing further, Your Honor.

23 THE COURT: Thank you, sir. You may --

24 THE WITNESS: Thank you.

25 THE COURT: -- step down.

26

INV. JAKE CHAMBERLAIN - DIRECT BY MR. WHITE

1 MR. JEPERTINGER: Your Honor, while -- before we call
2 the second witness, just I will say this. We've got
3 something in terms of the record. We will not be able to use
4 that conviction.

5 THE COURT: Okay.

6 MR. JEPERTINGER: Okay.

7 THE COURT: All right. So we've got the two.

8 MR. JEPERTINGER: Just the two.

9 THE COURT: All right. You got that, Scott?

10 MR. SUGGS: Yes, sir. Just the felony -- one felony and
11 the unlawful use.

12 THE COURT: Unlawful use.

13 MR. SUGGS: Yes, sir. Thank you, Judge.

14 THE COURT: Yes, sir.

15 MR. SUGGS: Thank you, Mr. Jepertinger.

16 THE COURT: Thank you, Mr. Jepertinger.

17 MR. WHITE: At this time, the State calls Inv. Jake
18 Chamberlain.

19 THE COURT: Inv. Chamberlain, if you'd please come
20 around to be sworn, sir.

21 THE CLERK: Place your left hand on the Bible and raise
22 your right hand. Do you swear to tell the truth, the whole
23 truth, and nothing but the truth, so help you God?

24 THE WITNESS: Yes, ma'am, I do.

25 THE CLERK: Please be seated in the witness box and

INV. JAKE CHAMBERLAIN - DIRECT BY MR. WHITE

1 please state your name for the record.

2 THE WITNESS: Jake Chamberlain.

3 INV. JAKE CHAMBERLAIN, being
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WHITE:

7 Q: Inv. Chamberlain, where are you employed?

8 A: Florence County Sheriff's Office.

9 Q: How long have you been employed there?

10 A: Approximately nine and a half years.

11 Q: On June 2nd, 2015, in what capacity were you employed at
12 that time?

13 A: As a narcotics investigator.

14 Q: And at that time, did you arrive on scene at the
15 Cruizers convenience store here in Florence County in Darl --
16 on Darlington Street?

17 A: Yes, sir. I did.

18 Q: At that time, did you make contact with an individual by
19 the name of Robert Jackson, who was at one point seated in a
20 burgundy Nissan Altima?

21 A: Yes, sir, I did.

22 Q: And when you arrived on scene, had Mr. Jackson been
23 mirandized at that time?

24 A: I was informed by Inv. Pate that he had already
25 mirandized Mr. Jackson.

INV. JAKE CHAMBERLAIN - DIRECT BY MR. WHITE

1 Q: Did you speak with Mr. Jackson when you arrived on
2 scene?

3 A: Yes, sir, I did.

4 Q: What, if anything, did he tell you?

5 A: I asked Mr. Jackson what he was doing at the location.
6 He said he was selling heroin. I asked him if he had been
7 there earlier that day selling heroin to corroborate the
8 information I received, and he stated he had.

9 MR. WHITE: Thank you, Investigator. I have nothing
10 further.

11 THE COURT: All right. Mr. Suggs?

12 MR. SUGGS: Yes, sir, Judge.

13 CROSS-EXAMINATION

14 BY MR. SUGGS:

15 Q: Inv. Chamberlain -- Jake, you heard the testimony from
16 Jason Pate?

17 A: Yes, sir, I did.

18 Q: So you were present?

19 A: Yes, sir.

20 Q: All right. And did -- is it -- it is correct then that
21 you instructed him to -- that you had received -- well, you
22 instructed him to go out to the Cruizers and look for Robert
23 Jackson driving a burgundy Altima, that you had information
24 that he was selling drugs in that area?

25 A: Yes, sir, it is.

INV. JAKE CHAMBERLAIN - CROSS BY MR. SUGGS

- 1 Q: You passed that information along to him?
- 2 A: I did.
- 3 Q: Did you -- do you remember whether or not you told him
- 4 -- told him it was from a reliable confidential informant?
- 5 A: I don't believe I did exactly. I don't believe I told
- 6 him specifically.
- 7 Q: Okay. Well, did he ask, you know, how do you know this
- 8 or did he just accept what you said?
- 9 A: I told him the area that the vehicle and the defendant
- 10 was supposed to be in, and he said he'd checked the area for
- 11 me.
- 12 Q: Okay. And you specifically identified the car, the
- 13 location, and the individual?
- 14 A: I told him around the Cruizers on West Darlington Street
- 15 should be a Robert Jackson driving a burgundy Nissan.
- 16 Q: Okay. So anything that you testified to today would be
- 17 consistent with your written report?
- 18 A: Sir?
- 19 Q: Anything that you testified to today about this would be
- 20 consistent with your written report?
- 21 A: With my written report? Yes, sir.
- 22 Q: Okay. All right. And did you, in fact, receive this
- 23 information from a reliable confidential informant?
- 24 A: I did receive information. Yes, sir.
- 25 Q: Okay. How did you receive that information?

INV. JAKE CHAMBERLAIN - CROSS BY MR. SUGGS

1 A: From a reliable confidential informant.

2 Q: Telephone call? Letter? Fax? Email? Text?

3 A: Telephone and also in person.

4 Q: Okay. How -- how soon or how long after you were able

5 to get this information did you contact Officer Pate?

6 A: I don't remember an exact timeframe, to be honest with

7 you. I mean it was --

8 Q: The same day? The day before?

9 A: Yeah. Yeah. I mean same day. Yes, sir.

10 Q: The same day?

11 A: Yes, sir.

12 Q: But not sure whether it was five minutes before or five

13 hours before?

14 A: It was fairly soon after I received the information that

15 he was in that area that I informed Inv. Pate.

16 Q: How do you know that this informant is reliable?

17 A: Because we located two bricks of heroin on the defendant

18 and that's what he -- I was informed that he would have.

19 Q: Help me out. Two bricks?

20 A: Two bricks of heroin, which would be -- if you'd like me

21 to break it down for you, I'd be happy to.

22 A bundle of heroin, which we would describe as the wax

23 paper bag, is considered one bundle and there were -- are 50

24 bundles in a brick what street terms -- they call it a brick

25 of heroin -- consists of 50 bundles. The information I

INV. JAKE CHAMBERLAIN - CROSS BY MR. SUGGS

1 received was that Mr. Jackson would have two bricks of
2 heroin.

3 Q: All right. So you not only got the information
4 identifying him, his car, and the location, but also the type
5 of drugs and how it would be packaged?

6 A: No. I just got -- I received information that Mr.
7 Jackson would have at least two bricks of heroin.

8 Q: Okay?

9 A: And I followed up on that information. Yes, sir.

10 Q: All right. And you answered my question about
11 reliability by saying that you did, in fact, find what the CI
12 said that you would find. My question was how do you know
13 that that information that you received was reliable before
14 you confirmed it?

15 A: Okay. You didn't ask before I confirmed, but this --
16 this reliable confidential informant has provided information
17 in the past that's led to the seizure of illegal narcotics
18 and the arrest of narcotics distributors.

19 Q: How many times?

20 A: Multiple.

21 Q: Okay. And you know this of your own personal knowledge?

22 A: That's correct.

23 Q: Okay. All right. Now, did you transport Mr. Jackson to
24 the detention center?

25 A: Yes, sir, I did.

INV. JAKE CHAMBERLAIN - CROSS BY MR. SUGGS

1 Q: All right. And did you have a conversation with him on
2 the way to the jail?

3 A: We did speak on the way.

4 Q: Okay. Did -- did you ask him questions on the way to
5 the jail?

6 A: I talked to Mr. Jackson regarding -- I didn't
7 specifically ask him questions. I was -- I informed Mr.
8 Jackson that, you know, the currency -- he asked me about the
9 money that was in his pockets, and I informed him that that
10 currency was going to -- would be seized by the Florence
11 County Sheriff's Office.

12 Q: Did he tell you where it came from?

13 A: I explained to him -- I'm sorry?

14 Q: Did he tell you where the money -- I didn't mean to
15 interrupt, but did he tell you where the money came from?

16 A: I think he told me he borrowed \$1,500 from his sister.

17 Q: Okay. You can continue. Thank you.

18 A: Okay. I explained to him that -- you know, that the
19 currency would be seized by the Sheriff's Office. It was in
20 close proximity of -- of illegal narcotics. The -- some of
21 the money was in small, small dimensions, which is indicative
22 of drug transactions, which is common, and that there was
23 documented money.

24 Q: All right. Conversation-wise questions? Did -- were
25 you present when Officer Pate advised Mr. Jackson of his

INV. JAKE CHAMBERLAIN - CROSS BY MR. SUGGS

1 Miranda warnings or did that take place before you arrived?

2 A: When I arrived on scene, I asked Inv. Pate if he had
3 mirandized Jackson and he stated yes.

4 Q: All right. And did you further mirandize him or did you
5 not think that was necessary?

6 A: If he was already mirandized, I didn't know we had to do
7 it twice.

8 Q: Okay. But you -- so the answer is, no, you did not
9 further mirandize him?

10 A: I did not mirandize him, no.

11 Q: Okay. And you weren't present when Officer Pate said he
12 did that?

13 A: No, sir, but I trust Officer Pate's --

14 Q: I'm certain you do.

15 A: -- advice.

16 Q: I'm certain. All right. So what -- you mentioned on
17 direct examination that Mr. Jackson responded to some of your
18 questions concerning prior sales of heroin. Could you
19 explain that a little bit better?

20 A: I'm not sure any better way to explain it besides that
21 --

22 Q: How did that come up?

23 A: I asked Mr. Jackson, you know, what he -- what he was
24 doing here. You know, what are you doing here? What are you
25 doing here with these amounts of heroin? And he said that he

INV. JAKE CHAMBERLAIN - CROSS BY MR. SUGGS

1 was selling the heroin.

2 Q: What was the amount ultimately?

3 A: The amount of --

4 Q: Heroin?

5 A: 110 wax paper bags, 110 bindles of heroin.

6 Q: Gram wise?

7 A: I'm not the chemist. He tested it and weighed it out,

8 but after the unpackaged, the actual amount of the heroin.

9 Q: Yes, sir. Okay. And so you asked him what was he doing

10 at Cruizers or what was he doing in Florence specifically or

11 what?

12 A: I asked him -- I said what are you doing here?

13 Q: Are you selling heroin?

14 A: I said what are you doing here, why do you have this

15 much heroin. He said I was here to sell it.

16 Q: Okay. All right. What about the pills?

17 A: I don't think I inquired specifically about the pills.

18 Q: All right. Any other questions that you asked, any

19 other responses that he made?

20 A: I did ask him if he had been at the location earlier

21 that day --

22 Q: All right.

23 A: -- to sell heroin, and he said he did.

24 Q: Okay. Anything else?

25 A: Not that I recall, sir.

INV. JAKE CHAMBERLAIN - CROSS BY MR. SUGGS

1 Q: All right. And you were not present when the -- when
2 any of the drugs were seized; is that right?
3 A: If I recall right, the search of the vehicle continued
4 after I got there.
5 Q: Okay.
6 A: I believe there was additional heroin found in the
7 vehicle.
8 Q: In the vehicle?
9 A: Yes, sir.
10 Q: All right. In what part of the vehicle? Do you know?
11 A: I -- I can't say specifically. I don't -- it was two
12 years ago.
13 Q: Okay.
14 A: I can't --
15 Q: All right.
16 A: -- remember exactly. I just know there was. I think --
17 I think the additional heroin was found after I got there. I
18 can't say for certain. The video should show if it was
19 additional after or before. I'm not positive.
20 Q: Any -- anything else found in the car? Any other drugs
21 or any other money, any weapons, anything like that?
22 A: Besides what?
23 Q: Other than what we've talked about?
24 A: Nothing that's not listed in my incident report was
25 found in the vehicle. No, sir.

1 MR. SUGGS: All right. That's all I have, Your Honor.

2 Thank you.

3 THE COURT: All right. Anything further of this
4 witness?

5 MR. WHITE: No, sir, Your Honor.

6 THE COURT: Thank you, sir.

7 THE WITNESS: Thank you, Judge.

8 THE COURT: You may step down. Anything further from
9 the State?

10 MR. WHITE: No, sir, Your Honor.

11 MR. SUGGS: We'd call Mr. Jackson on the Miranda issue.

12 THE COURT: Yes, sir. You can. Mr. Jackson -- I'm
13 going to get him to come around and he can just stop right
14 here in front of the witness stand and, Scott, for purposes
15 of -- yeah, for right now, face him toward Krystal so she can
16 make sure she gets all his testimony.

17 MR. SUGGS: Yes, sir.

18 THE COURT: And then if y'all don't mind, you can come
19 around and question him.

20 MR. SUGGS: Yes, sir.

21 THE COURT: Okay?

22 MR. SUGGS: Yes, sir, Judge.

23 THE COURT: And if you would, hold -- Mr. Jackson, if
24 you'd give Madam Clerk your attention and she's going to put
25 you under oath. Okay?

ROBERT JACKSON - DIRECT BY MR. SUGGS

1 MR. SUGGS: Just put your left hand there.

2 THE CLERK: Place your left hand on the Bible and raise
3 your right hand. Do you swear to tell the truth, the whole
4 truth, and nothing but the truth, so help you God?

5 THE DEFENDANT: Yes, ma'am.

6 THE CLERK: Okay.

7 THE COURT: All right. Thank you, sir.

8 MR. SUGGS: Thank you, Your Honor.

9 THE COURT: You can remain there. Mr. Suggs can
10 question you from there.

11 MR. SUGGS: Thank you, Judge. I only have a few
12 questions, Your Honor.

13 ROBERT JACKSON, being first
14 duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SUGGS:

17 Q: Mr. Jackson, you've been sitting here listening to the
18 testimony from the officers?

19 A: Yes.

20 Q: All right. And were you able to hear from where you
21 were?

22 A: Yeah. I hear them.

23 Q: Okay. Did you hear the testimony from Officer Pate that
24 he gave you or explained to you what your Miranda warnings
25 were, your constitutional rights were? Do you remember that?

ROBERT JACKSON - DIRECT BY MR. SUGGS

1 A: I don't remember him explaining them to me, no.

2 Q: Well, do you remember the question that -- do you

3 remember what we were talking about just now?

4 A: I remember. I remember what he said just now.

5 Q: Okay. But at the scene that night when Officer Pate

6 approached you and started talking to you, did he ask you for

7 your identification?

8 A: Yeah. He asked me for my driver's license.

9 Q: Okay. Was that the first thing he asked you?

10 A: Yeah. That was the first thing he asked me.

11 Q: Okay. And did you provide the driver's license?

12 A: I gave him my driver's license.

13 Q: All right. And did he ask you any other questions after

14 that? What happened after you gave him your driver's

15 license?

16 A: He tell me to get out the car and come back there to the

17 front of his car.

18 Q: To his Tahoe?

19 A: Yeah, a black truck.

20 Q: Okay. And did you do that?

21 A: Yeah.

22 Q: All right. Were you able to do that without help?

23 A: Yeah, I did it without help.

24 Q: Okay. Then what happened?

25 A: I just sit there, and they just went through the car and

ROBERT JACKSON - DIRECT BY MR. SUGGS

1 stuff, opened the hood and stuff on it.

2 Q: All right. They -- they went through your car?

3 A: Yeah.

4 Q: Did they ask permission to search your car?

5 A: No. They didn't say nothing about no permission. They

6 just went through the car.

7 Q: Okay. Were there some pills in your car?

8 A: Yeah. In the side of the door.

9 Q: All right. So that information was correct? Pills were

10 inside the door?

11 A: Yeah.

12 Q: All right. Was the door open when the officer

13 approached you?

14 A: I think I was getting out the car.

15 Q: You think you were getting out? So you believe the door

16 was open?

17 A: Yeah, I think it was open.

18 Q: All right. And did -- did you have any heroin in your

19 top pocket?

20 A: Yeah, I had some heroin in my top pocket.

21 Q: Okay. Was it visible to the officer?

22 A: Not really.

23 Q: Huh?

24 A: Not really. It was in my shirt pocket.

25 Q: Well, did -- I see you're wearing a shirt today with two

ROBERT JACKSON - DIRECT BY MR. SUGGS

1 pockets on the front chest, one on each side, and they're
2 flap pockets.
3 A: It wasn't no -- I don't think it was no -- it wasn't no
4 flap pockets.
5 Q: There wasn't no flap on the ones you were wearing that
6 night?
7 A: No. It was in the evening time.
8 Q: Okay. Was the -- was the item in your pocket -- the
9 heroin -- was it visible? Was it in plain view?
10 A: No.
11 Q: Okay. How did it come out that he got that from you?
12 A: He asked me what you got in your pocket.
13 Q: All right. And what did you do?
14 A: I told him I got some heroin in my pocket.
15 Q: Okay. And before he asked you that question, did he
16 identify himself?
17 A: No. He just come up there and asked me what I'm doing
18 there.
19 Q: But you knew it was a police officer?
20 A: Yeah.
21 Q: He was dressed as a police officer?
22 A: Yeah.
23 Q: All right. And when he asked you what you were doing
24 there, did he -- did he read you your Miranda warnings? Did
25 he tell you why he was there or did he read you your

ROBERT JACKSON - DIRECT BY MR. SUGGS

1 constitutional rights?

2 A: No. He ain't said nothing about no constitutional
3 rights. He was telling me to step out the car and go in
4 front of his truck.

5 Q: Okay. And when he asked you about what was in your
6 pocket, was that after you were out of the car over near the
7 Tahoe?

8 A: That was -- that was before I got out the car.

9 Q: Before you got out of the car? Okay. All right. And
10 did -- at any time, did he read you your constitutional
11 rights?

12 A: No.

13 Q: Okay. But he asked you some questions?

14 A: Yeah. No. He was telling me to stand there by the car.

15 Q: Okay.

16 A: And the lady and stuff -- they searched --

17 Q: Okay.

18 A: -- the car.

19 Q: The officer that took you to the jail, Officer
20 Chamberlain, did he ask you questions?

21 A: That wasn't the same officer, not the one that's setting
22 up there. No, he didn't take me to jail.

23 Q: Who took you to jail?

24 A: He was driving a gray truck. I don't know his name.
25 Sort of a heavyset guy.

ROBERT JACKSON - DIRECT BY MR. SUGGS

1 Q: Okay. It wasn't either one of these officers?

2 A: No.

3 Q: Okay. Did any one of those read you your Miranda
4 warnings?

5 A: No.

6 Q: Okay. Did you tell the officer that you were selling
7 heroin?

8 A: No.

9 MR. SUGGS: Okay. All right. Answer any questions that
10 Mr. White has for you or the Court.

11 THE DEFENDANT: Okay.

12 THE COURT: All right. Mr. White?

13 CROSS-EXAMINATION

14 BY MR. WHITE:

15 Q: Good morning, Mr. Jackson.

16 A: Good morning.

17 Q: Now, when Inv. Pate approached you, he asked you how you
18 were doing?

19 A: No.

20 Q: He didn't ask you how you were doing?

21 A: No.

22 Q: Did he ask you where you were from?

23 A: No.

24 Q: He didn't ask you where you were from?

25 A: No.

ROBERT JACKSON - CROSS BY MR. WHITE

- 1 Q: Did he ask you for your license or any identification?
- 2 A: Yeah, he asked me. Later on, he asked me for my
- 3 license.
- 4 Q: And where was your body when he was asking you? How was
- 5 your body positioned in your vehicle whenever he was asking
- 6 you for your identification?
- 7 A: I was sitting turned around in the door sitting in the
- 8 front seat.
- 9 Q: Your legs outside the vehicle?
- 10 A: Yeah.
- 11 Q: Now, were you leaning forward?
- 12 A: No.
- 13 Q: You were leaning back?
- 14 A: I was leaning back.
- 15 Q: Did you say just a minute ago that you were getting out
- 16 of the vehicle?
- 17 A: I was fixing to get out.
- 18 Q: But you --
- 19 A: Oh, I don't even know.
- 20 Q: But you were leaning back?
- 21 A: Yeah.
- 22 Q: All right. When you were having to get your ID out, did
- 23 you continue to lay back in the vehicle or did you begin to
- 24 lean out of the vehicle?
- 25 A: I think I might have had my driver's license over the

ROBERT JACKSON - CROSS BY MR. WHITE

1 sun visor.

2 Q: Now, can you see in my pocket, Mr. Jackson?

3 A: Yeah, I see it.

4 Q: Your pocket on that day -- was it tight and flush to
5 your chest like this or was it sagging? Was it baggy?

6 A: I don't know.

7 Q: You don't recall?

8 A: (No verbal response.)

9 Q: Now, whenever Inv. Pate -- let me put it like this. Did
10 he ask you what was in your shirt pocket?

11 A: Yeah.

12 Q: Now, did he retrieve that item for -- out of your shirt
13 pocket?

14 A: He pulled it out. He pulled it out.

15 Q: So you're saying you didn't take it out your pocket and
16 give it over to him?

17 A: No. Huh-uh.

18 Q: Would you be surprised if there was a video showing that
19 very same scenario?

20 A: I want to see it.

21 Q: Okay. We will.

22 MR. WHITE: All right. Thank you. Nothing further.

23 THE WITNESS: Okay.

24 MR. SUGGS: That's all the questions I have, Judge, of
25 the witness.

1 THE COURT: All right.

2 MR. SUGGS: Your Honor, a couple of things. The first
3 though is on the video. I had trouble accessing it. When I
4 went back to pick up my material at the break, my -- one of
5 my paralegals that she was able to open it up and she viewed
6 it. She took some notes, but I haven't seen it yet.

7 Maybe we can take time to look at it real quickly, but
8 the -- aside from that, the only motion that I have related
9 to the -- to the in-camera hearing was I have to express my
10 concern about the -- how the officers happened to arrive at
11 the Cruizers to question Mr. Jackson and then make a
12 subsequent seizure and arrest.

13 There's -- there's a lot of case law out there about
14 reliable confidential informants giving information to law
15 enforcement. I understand that.

16 But what concerns me about this particular case which
17 makes it, I think, somewhat different than most of those
18 other cases involving confidential reliable CIs is that this
19 individual actually not only identified the place and the
20 time and the car and the product, but also identified Mr.
21 Jackson by name. And most of the other cases that I have
22 read concerning confidential reliable CIs don't mention so
23 much in detail about -- about an alleged offender that
24 prompts law enforcement to investigate.

25 So I really have some concerns about that informant not

1 being present and not being identified, not being present to
2 testify in court.

3 So that would really be my concern, Judge. Now -- and I
4 would ask that that CI be produced now because of all the --
5 the exact information which was given.

6 Now, if the Court denies that motion, then I would -- I
7 would ask that the testimony concerning the reason why the
8 officers were there be somewhat limited to the basic facts
9 which would support the reason for their investigation,
10 rather than all this exact-nature descriptive information to
11 the jury.

12 So it's really a twofold argument. I would like that
13 the CI be produced for questioning to keep in reserve any
14 possible motion to suppress the evidence or, in the
15 alternative, if the Court denies that, that the information
16 that the officers reveal or disclose to the jury be somewhat
17 limited, less -- less descriptive.

18 MR. WHITE: Thank you, Your Honor.

19 Certainly, there's plenty of case law out there
20 regarding mere tipster, and I think that's what we have here.
21 The law is clear that if it is just a mere tip, that CI
22 information does not have to be turned over. Now, Mr. Suggs
23 mentioned the -- kind of just went into a little bit further
24 description as to the location, time, and name.

25 Now, I did hear from the witness stand that they did

1 know a name. However, I believe that Inv. Chamberlain
2 testified that he was given a general location. I also
3 believe that he was given a general time. Furthermore, Your
4 Honor, I think it's unreasonable to require law enforcement
5 to set up some sort of funneling mechanism to try to kind of
6 weed out any details that might be provided when the case
7 does involve a mere tipster.

8 And to respond to the second motion, Your Honor, we
9 don't plan to go there. We -- we plan to limit it to
10 allegations of drug activity and nothing further.

11 THE COURT: Okay.

12 MR. WHITE: Now, obviously, if the door is opened, we'd
13 ask to be able to step right in.

14 THE COURT: Yeah. I believe, if I'm not mistaken,
15 pursuant to the questioning during this hearing, I think you
16 elicited all those details from the officer. I don't think
17 Mr. White did on his direct, and I assume your direct is
18 going to be generalized, as you had it earlier.

19 MR. WHITE: That's correct, Your Honor.

20 MR. SUGGS: All that information was in the report,
21 Judge, and that's why --

22 THE COURT: Sure.

23 MR. SUGGS: -- Mr. -- I mean I just thought it was just
24 over detailed for --

25 THE COURT: Okay.

1 MR. SUGGS: -- a CI or a mere tipster, Judge.

2 THE COURT: Well, I think Mr. White indicated that they
3 intend to just have it brought out that there is drug
4 activity -- alleged or complaint of drug activity coming from
5 the Cruizers store around -- around the Cruizers store from
6 an individual in a burgundy vehicle.

7 MR. WHITE: That's absolutely correct, Your Honor.

8 MR. SUGGS: All right, Judge.

9 THE COURT: Okay.

10 MR. SUGGS: Well, yes, sir, and I appreciate that, Your
11 Honor. I may -- I may continue to object to it --

12 THE COURT: I understand.

13 MR. SUGGS: -- if it's okay, Judge, to protect the
14 record if the Court --

15 THE COURT: Sure.

16 MR. SUGGS: -- would have patience with me on that. *

17 THE COURT: Absolutely.

18 MR. SUGGS: But, Judge, in terms of the statements given
19 by my client to law enforcement, obviously, there's some
20 dispute on whether he was properly mirandized. Now, Officer
21 Pate indicated that he did read him his Miranda warnings.
22 That may very well be on video. I don't know.

23 THE COURT: And that's -- that's -- I was going to ask.
24 Since the officer testified that he gave him his Miranda, Mr.
25 Jackson says he doesn't -- he didn't --

1 MR. WHITE: It's clearly on video, Judge.

2 THE COURT: I think the video may --

3 MR. SUGGS: Okay.

4 THE COURT: -- speak for itself.

5 MR. SUGGS: Well, we -- we could look at that. Now,
6 Judge, I don't -- there may be some other issues that come up
7 during the trial that we'll need to take up.

8 THE COURT: And we will.

9 MR. SUGGS: But not right this minute, Judge. So I
10 think we might, aside from that, look at the video real quick
11 and then break for a minute.

12 THE COURT: Well -- go ahead.

13 MR. WHITE: Just one more thing, Your Honor. The
14 admission here -- obviously, we would go forward, you know,
15 wholly on the possession issue, if Your Honor deems it
16 appropriate, but the admission goes to another element of
17 that crime, trafficking, which is knowingly sold, and that's
18 what we have here through the admission, Judge.

19 THE COURT: Yeah. I mean I -- I think the question
20 right now is -- is Miranda. The video probably speaks for
21 itself on that Miranda, which y'all tell me -- I haven't seen
22 it, obviously, but that it's clearly on there, then at least
23 for purposes of this argument, Mr. Suggs, why don't we go
24 ahead and assume Miranda was given. At that point, what's
25 your position regarding the statements? I mean I know you

1 don't want them in, obviously.

2 MR. SUGGS: Well, Judge, obviously, the tape, if it does
3 have the officer clearly giving Mr. Jackson his Miranda
4 warnings, I think the next question that might be asked is
5 did he understand the warnings, and that -- I think that has
6 to be determined before we get to question number three, does
7 that make his statements, the colloquy, admissible?

8 THE COURT: Okay. Well, I can view the videotape during
9 the lunch break.

10 MR. JEPERTINGER: I think that would be -- that would be
11 fine.

12 THE COURT: If you can let me have a copy.

13 MR. WHITE: Yes, sir.

14 THE COURT: Mr. Suggs, I think you've got one. We can
15 view it during -- during the lunch. I don't want to
16 interfere. I mean if you want to go back to your office and
17 do lunch and see it there, that's fine. I'll watch it back
18 here. I've got lunch here.

19 MR. SUGGS: Okay. I can -- I'll go back and watch it
20 and grab a sandwich and we'll meet back here.

21 THE COURT: Why don't we reconvene at, like --

22 MR. SUGGS: A few minutes to one?

23 THE COURT: -- quarter 'til? Ten 'til?

24 MR. WHITE: Your Honor, one last issue --

25 THE COURT: Yeah.

1 MR. WHITE: -- is the arraignment issue, and I'm sure if
2 Mr. Suggs would just like to waive arraignment, but there is
3 a new indictment in this case and that's the one the State is
4 going forward on.

5 THE COURT: All right. Well, why don't we --

6 MR. WHITE: We'll leave that to your discretion.

7 THE COURT: Let's just do that right now.

8 MR. SUGGS: Okay, Judge.

9 THE COURT: All right. So --

10 MR. SUGGS: We can do that right now.

11 THE COURT: We're going to arraign Mr. Jackson on the
12 new indictment that the State is proceeding on. So,
13 solicitor, I'll let you --

14 MR. WHITE: Thank you, Your Honor, and at this time, Mr.
15 Jackson would need to be arraigned on Indictment 2017-GS-21-
16 01033 for a count of trafficking in the --

17 MR. SUGGS: Sure.

18 MR. WHITE: -- second or subsequent offense, as well as
19 possession of a controlled substance, second or subsequent
20 offense.

21 He was originally indicted, Your Honor, for trafficking
22 in heroin, first offense, but the amount was between 14 and
23 28. The yield from the chemical analysis actually produced a
24 smaller amount; so the State felt it necessary to re-indict
25 for the lower amount, but then enhance to keep it within that

1 sentencing range.

2 MR. SUGGS: 4 to 14?

3 MR. WHITE: Yes, sir. That's correct.

4 MR. SUGGS: Second?

5 MR. WHITE: That's correct.

6 THE COURT: All right. And, Mr. Jackson, you understand
7 that under the charge that you're facing here today that the
8 State has charged you with trafficking in heroin in an amount
9 more than 4 grams but less than 14 grams, that being a second
10 offense. That charge -- that offense carries a penalty of up
11 to -- is it --

12 MR. WHITE: 25 years, Judge.

13 THE COURT: Is it a 25-year sentence?

14 MR. WHITE: That's correct, Your Honor.

15 THE COURT: If you were to be convicted, it would be a
16 25-year sentence.

17 Also, you have been charged with possession of a
18 controlled substance, that being Xanax, also that being a
19 second offense. That carries up to one year. Do you
20 understand that, sir?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. You understand that these are
23 the charges that you are facing for purposes of this trial?
24 Do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: All right, sir. And it's my understanding
2 that you have pled not guilty to those charges; is that
3 correct?

4 THE DEFENDANT: Yes.

5 THE COURT: And it is my -- it is also my understanding
6 that you wish to be tried by -- by a jury; is that correct?

7 THE DEFENDANT: Yes.

8 THE COURT: All right, sir. Anything further?

9 MR. WHITE: No, sir, Your Honor.

10 MR. SUGGS: Yes, sir, Judge. Since -- if it please the
11 Court, since this is an arraignment, one of the purposes is
12 to notify the accused of what he or she is charged with, and
13 you've already told him the penalties that he is facing. Can
14 I also add for the record so that he is clear that this 25
15 years is a mandatory minimum sentence?

16 THE COURT: Correct.

17 MR. SUGGS: And that it cannot be suspended, and no
18 probation is granted.

19 THE COURT: Correct. You understand, Mr. Jackson, that,
20 obviously, if you were to be acquitted, then there would be
21 no sentence because you would be found not guilty, but if you
22 were to be found guilty, you understand this Court has no
23 discretion, that I would have to sentence you to 25 years and
24 that's non-parolable? In other words, you are not eligible
25 for parole and you're not eligible for probation. Do you

1 understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Understanding that, do you still wish to go
4 forward with your jury trial?

5 THE DEFENDANT: Yes.

6 THE COURT: All right, sir.

7 MR. SUGGS: Would it be appropriate to put on the record
8 what any plea offer has been made or not?

9 THE COURT: I don't think that has any bearing --

10 MR. SUGGS: Yes, sir.

11 THE COURT: -- on arraignment.

12 MR. SUGGS: Yes, sir. All right, Judge.

13 MR. WHITE: I'd be happy to put that on the record, Your
14 Honor.

15 THE COURT: Well, I mean you can. I don't know that has
16 any -- that's an issue, but you can put it on there.

17 MR. WHITE: A verbal offer in this case has been made of
18 a 12-year negotiated sentence, Your Honor.

19 THE COURT: And is that 12-year non-parolable?

20 MR. WHITE: That's correct, Your Honor.

21 THE COURT: Okay.

22 MR. WHITE: Eighty-five percent. The offer was also to
23 run the possession of a controlled substance, as well as
24 another indictment that's pending in our office -- to run all
25 those cases concurrent.

1 THE COURT: All right.

2 MR. SUGGS: Yes, sir.

3 THE COURT: So, Mr. Jackson, you understand that the
4 State had made an offer to you that if you were to accept
5 that offer that the Court would sentence you to 12 years on
6 this trafficking charge, which would also be non-parolable
7 and no probation, and the possession of the Xanax charge
8 would run concurrent or together with that, and that they
9 would nolle pross the other charge?

10 MR. WHITE: That's correct, Your Honor.

11 THE COURT: Nolle pross the other charge or dismiss the
12 other charge they have against you. That was the offer that
13 was extended to you. Is that your understanding?

14 THE DEFENDANT: Yes.

15 THE COURT: All right, sir. And you wish to go forward
16 with your jury trial; is that correct?

17 THE DEFENDANT: Yes.

18 THE COURT: All right, sir. All right. Anything
19 further?

20 MR. WHITE: No, sir, Your Honor.

21 THE COURT: Well, let's -- let's view that video during
22 the lunch break.

23 MR. SUGGS: Yes, sir.

24 THE COURT: And then we'll come back a little bit early
25 and address any issues that we may need to address at that

1 time.

2 MR. SUGGS: Yes, sir. I'm going to leave my stuff here,

3 Judge.

4 THE COURT: Yeah, that's fine. We're -- we're good

5 here.

6 MR. SUGGS: I don't think Mr. White will go plunder

7 through it.

8 THE COURT: I don't think so. Anything else before --

9 we'll deal with the issue here, but anything else?

10 Is that a -- is that on a disk?

11 MR. WHITE: Yes, sir.

12 THE COURT: So I can play it on my computer?

13 MR. WHITE: Yes, sir.

14 THE COURT: Okay. All right.

15 MR. WHITE: It's been marked for ID. If you want to

16 take that copy, that's okay.

17 THE COURT: Well, I'll do that, if that's okay. That's

18 the redacted version?

19 MR. WHITE: Yes, sir.

20 THE COURT: All right. That sounds good.

21 MR. WHITE: Thank you, Judge.

22 THE COURT: All right. We'll be back at 10 'til.

23 MR. SUGGS: Judge, he'll be tried by God and his

24 country. Is that part of the arraignment?

25 THE COURT: Well --

1 MR. JEPERTINGER: Being tried by God and his country.
2 THE COURT: He's being tried by God and his country.
3 That's correct.
4 MR. SUGGS: May we also request the three days?
5 THE COURT: The what?
6 MR. SUGGS: We also request the three days.
7 THE COURT: The what?
8 MR. JEPERTINGER: He's asking for three days.
9 THE COURT: Three days?
10 MR. SUGGS: That's part of the old arraignment process.
11 THE COURT: Oh. Yeah.
12 MR. SUGGS: That's long forgotten, I think.
13 THE COURT: It got past me.
14 MR. SUGGS: They ask how will you be tried. By God and
15 my country. And then respond how much time do you need.
16 Three days.
17 THE COURT: Okay. Well, you -- you had that.
18 MR. SUGGS: I do? Come back next week?
19 THE COURT: No.
20 MR. SUGGS: We're going to come back about a few minutes
21 to one. Thank you, Your Honor.
22 THE COURT: Thank you, folks.
23 (WHEREUPON, there was a break in the proceedings from
24 12:03 p.m. until 1:09 p.m., after which the proceedings
25 resumed as follows.)

1 THE COURT: Thank you, folks. Please have a seat. All
2 right. All right. I've watched the video.

3 MR. SUGGS: I assume you've had an opportunity to as
4 well?

5 MR. SUGGS: Yes, sir, Judge. I had three videos or
6 three -- three DVDs, and one is the arrest outside of the
7 Cruizers, but I was telling Mr. White and Mr. Jepertinger I
8 didn't have audio on that for whatever reason. They said it
9 had audio. I just had the video.

10 THE COURT: You mean right outside the --

11 MR. SUGGS: Yes, sir.

12 THE COURT: Where we had the police officer first came
13 up?

14 MR. SUGGS: Yes, sir. The police came on the video.

15 THE COURT: Yeah. I had no audio while they were
16 driving, but as soon as they pulled into the parking lot, it
17 came on.

18 MR. WHITE: That's correct, Your Honor.

19 MR. SUGGS: Okay. I didn't have any audio at all
20 throughout. It's, like, a 20-minute video and it had no
21 audio.

22 The other two -- I couldn't -- those are the -- I guess
23 in the car, maybe statements on the way to the jail, I
24 assume. I couldn't open those.

25 MR. WHITE: The only videos that we have are the in-car

1 that I gave to Your honor. I dropped two videos off Monday
2 morning, just two copies just for Mr. Suggs.

3 THE COURT: So you still have not heard the video?

4 MR. SUGGS: No, sir. I can't -- I couldn't hear it.

5 THE COURT: Well, here. Get the thing and we'll fast-
6 forward it.

7 MR. SUGGS: Okay.

8 THE COURT: And --

9 MR. WHITE: That sounds good.

10 THE COURT: Come on.

11 MR. WHITE: I'll have to get Keith up here real quick.

12 THE COURT: Oh, we don't need Keith. We've got Emily.

13 Don't you just have to put it in there and turn it on?

14 MR. WHITE: Yes, sir.

15 MR. SUGGS: If that's all, let's do it. I mean we can
16 do that.

17 THE COURT: We don't need to do it up here. I just -- I
18 want him to watch it. As a matter of fact, if you want to go
19 back in chambers and do it, you can.

20 MR. SUGGS: Well, it's convenient here, Judge. I'll do
21 it here.

22 THE COURT: Keith, I don't need to show it on the big
23 screen. I just need Scott to be able to look at this --

24 MR. GODBOLD: He can just sit over here.

25 THE COURT: -- video. Just if you'll get it. By the

1 way, this video is not great. Is it the same on all of them?

2 MR. WHITE: Say again, Judge?

3 THE COURT: This video is not terribly good. Is it that
4 -- well, I mean it's good when it plays -- when it's playing,
5 but then it has these spots that come in and just blur
6 everything up and then it --

7 MR. WHITE: You know, I'm not a hundred percent sure,
8 Judge. That might be as a result of the splice.

9 THE COURT: No, no. This happened throughout. This
10 went on throughout this tape.

11 MR. WHITE: When I see it -- obviously, I've seen it.

12 MR. JEPERTINGER: Why don't we play it?

13 THE COURT: Just play it now and let's see what it looks
14 like. It could be the machine that we played it on, you
15 know.

16 It's right here, Keith.

17 MR. GODBOLD: You probably want to do it -- do you want
18 to do it on the TV or what?

19 THE COURT: No, no. You can just do it right over
20 there, but I was just going to say the video is right there.

21 MR. GODBOLD: Oh, I've got it pulled up.

22 THE COURT: Oh, you've got it queued up. Okay.

23 THE BAILIFF: Your Honor, they're knocking. Can I
24 answer?

25 THE COURT: Check and see. Let's hold off while they

1 check -- Ann checks to see what's going on.

2 (WHEREUPON, there was a pause in the proceedings, after
3 which the proceedings resumed as follows.)

4 MR. WHITE: Are we good?

5 THE BAILIFF: Yeah.

6 THE COURT: And don't turn it up terribly loud, but loud
7 enough so you can hear it.

8 (WHEREUPON, State's Exhibit Number 1 for ID, in-car
9 police video on DVD, was played for defense counsel.
10 Not transcribed herein.)

11 THE COURT: Scott, I think we're past --

12 MR. SUGGS: Yes, sir.

13 THE COURT: -- any relevant --

14 MR. SUGGS: I can't really hear it anyway.

15 THE COURT: -- information on there. I don't think
16 anything else occurs other than them kind of wrapping up the
17 -- the -- I think they just finished their search of the car
18 and they just wrap things up and end it.

19 MR. SUGGS: Yes, sir.

20 THE COURT: There's really no other interaction I don't
21 think with Mr. Jackson.

22 MR. SUGGS: Not that I can really hear, Judge.

23 THE COURT: Yeah.

24 MR. SUGGS: I didn't know how much of that video the
25 State was going to try to --

1 THE COURT: I just asked Ryan about that and I think he
2 indicates probably about seven or eight minutes of it.

3 MR. WHITE: Yes, sir. That's correct.

4 THE COURT: Until it gets past that portion that
5 involves any interaction with Mr. Jackson. The rest of it is
6 just sitting around waiting for them to finish --

7 MR. WHITE: That's correct, Your Honor.

8 THE COURT: -- closing up the scene, I guess.

9 MR. WHITE: That's right.

10 MR. SUGGS: Well, I think in trying to determine at what
11 point Mr. Jackson was under arrest -- because I think that's
12 one of the keys in determining admissibility of statements
13 and when Miranda actually applies or kicks in.

14 I think probably it's clear that he was going to be
15 arrested once the officer says it was in plain view in his
16 shirt pocket and recognized what it was. I think it would be
17 at that point.

18 Now, up until then, until any Miranda warnings are
19 given, whatever statements or colloquy takes place between
20 that point of seizing the evidence in his pocket until
21 Miranda is read, I think that it would be important to look
22 at that period of time to determine admissibility.

23 Now, after -- after the Miranda warnings were read, he
24 was asked the question is there anything else he wants to
25 say. He said no. Now, whether that actually is a request

1 for an attorney at that point or simply saying I don't want
2 to talk to you anymore, I think anything said after that
3 point, if it's initiated by law enforcement in questions,
4 that would have to be looked at as well to determine whether
5 that's admissible.

6 THE COURT: Well, I'm going to tell you my thought on
7 that when I watched it. Mr. White, Officer Pate -- I believe
8 it was -- yeah, Officer Pate read him his Miranda rights and
9 then he asked him is there anything you'd like to say or
10 words to that effect, and he shook his head no. I think that
11 causes a serious issue with any questioning then that Inv.
12 Chamberlain -- because, at that point, I think he's exercised
13 his right to remain silent and so I think any comments or any
14 statements made to Officer Chamberlain would have required an
15 additional Miranda warning to be given, and I don't believe
16 it was.

17 MR. SUGGS: Okay.

18 THE COURT: Of course, we didn't have audio with that,
19 but I believe Officer Chamberlain testified to that.

20 MR. WHITE: And we concede that point, Your Honor.

21 THE COURT: Okay. All right. So I would -- I would
22 sustain your -- your objection to any statements that came in
23 after the Miranda was read.

24 MR. SUGGS: Thank you, Your Honor. I think that would
25 take care of the issue.

1 THE COURT: And so at that point, you know, again I
2 think any time after that -- well, there's no audio; so
3 you're not hearing anything. So I think the video can be
4 terminated sometime after that. Would you agree?

5 MR. WHITE: Your Honor, what --

6 THE COURT: I think you were going to do that anyway.

7 MR. WHITE: Yes, sir. We plan on just terminating
8 sometime after Chamberlain arrives on scene.

9 THE COURT: Okay.

10 MR. WHITE: Which I believe is around the seven-minute
11 mark.

12 THE COURT: Yeah. Okay. All right. So anything else
13 that we need to take up?

14 MR. SUGGS: No.

15 MR. WHITE: Just the matter of the potential witnesses
16 with the three.

17 THE COURT: I'll take that up when I bring the jury out.

18 MR. WHITE: Yes, sir.

19 THE COURT: Yeah. Okay.

20 MR. SUGGS: Your Honor, quick bathroom? Just two
21 seconds, Judge?

22 THE COURT: Yeah.

23 MR. SUGGS: Thank you.

24 (WHEREUPON, there was a pause in the proceedings, after
25 which the proceedings resumed as follows.)

1 MR. SUGGS: Thank you, Judge.

2 THE COURT: I'm sorry.

3 MR. SUGGS: Yes, sir.

4 THE COURT: All right. Let's -- let's bring the jury
5 in, please.

6 (WHEREUPON, the jury entered the courtroom at 1:31 p.m.)

7 THE COURT: Mr. Benjamin? Mr. Benjamin, let me get you
8 to take that seat right there. Okay? Yes, sir.

9 THE FOREMAN: Okay.

10 THE COURT: You're the lucky/unlucky guy who got
11 selected to be the foreman. All right.

12 Ladies and gentlemen, I've asked Mr. Benjamin to serve
13 as the foreman of the jury. For those of you that were not
14 on the previous juror -- jury, you haven't heard this. So
15 those of you that were, bear with me as I explain it to the
16 members of the jury.

17 Whenever we have a group of folks, we have found over
18 time that it's easier or it's better, more efficient, to deal
19 with one person on behalf of the group. And so we -- we
20 appoint a foreperson to serve as that -- basically the
21 communicator between the jury panel and the Court. The
22 foreperson is the liaison between the jury panel and the
23 Court.

24 If anyone at any time has any questions about anything
25 that you need to ask the Court, if you'll just let Mr.

1 Benjamin know, he'll write out the question and pass it out.
2 I will either respond by writing my answer and return it to
3 you or I'll bring you out as a panel and respond to your
4 question. But that's the role of the foreperson, the main
5 role, is to be the fore -- to be the communicator between the
6 jury panel and the Court.

7 Your verdict in this case and in all cases tried in this
8 court must be unanimous. You must all agree on the decision,
9 whatever it may be. And I tell you that to say that the
10 foreperson's -- because the vote must be unanimous, the
11 foreperson's vote, the foreperson's thoughts or opinions,
12 carry no more weight or any less weight than any other member
13 of the jury.

14 You're all equal members of the jury and so when you
15 deliberate, you're encouraged to be open-minded and listen to
16 everyone's thoughts and opinions in arriving at a -- at a
17 verdict. So thank you for your willingness to serve in that
18 capacity.

19 Mr. Greenwood, I thought I'd give you a break.

20 JUROR NUMBER 49: Thank you, sir.

21 THE COURT: You did a great job.

22 JUROR NUMBER 49: Thank you.

23 THE COURT: Folks, we're ready to begin the trial.

24 We've taken up all the matters that we need to take up prior
25 to the start of the trial. So before I address you with some

1 preliminary remarks, I'm going to ask you to give Madam Clerk
2 your attention and she's going to place you under your oath
3 for your role as jurors in this --

4 MR. WHITE: Judge --

5 THE COURT: Oh. Thank you.

6 THE CLERK: Members of the jury, will you please --

7 THE COURT: Hold on a minute. I messed up. I didn't
8 mess up, but I need to do something.

9 Folks, earlier when we went through the jury
10 qualifications, remember when we -- I called out a list of
11 names of folks that were potential or possible witnesses that
12 may testify during the trial and I asked you to keep in mind
13 the question are you related by blood, connected by marriage
14 or have any close business or personal relationship with any
15 of those individuals.

16 I have a couple of other individuals. I have some names
17 that I forgot or did not read out to you. I'm going to do
18 that now.

19 If that question applies to any of these folks, please
20 let me know if you are related by blood, connected by
21 marriage or have any close business or personal relationship
22 with any of these people and, again, these are possible
23 witnesses. They may or may not testify, but out of an
24 abundance of caution, I want to read these names to you.

25 Hazel Jackson.

1 Daryl Jackson.

2 Herbert McDaniel.

3 Is there any member of the panel related by blood,
4 connected by marriage or who has any close business or
5 personal relationship with any of those folks? Please stand.

6 (WHEREUPON, there was no response.)

7 THE COURT: All right. No one has responded. Thank
8 you, and I apologize for not doing that earlier.

9 All right. So now, if you would, stand and give Madam
10 Clerk your attention, she will place you under your oath for
11 your role as jurors in this case.

12 THE CLERK: Will you please raise your right hand?

13 You shall well and truly try and a true deliverance make
14 between the State of South Carolina and the defendant at bar,
15 whom you shall have in your charge, and a true verdict render
16 according to the law and evidence, so help you God.

17 (WHEREUPON, the jurors responded.)

18 THE COURT: All right. Those of you who were with us in
19 the last case, again, I'm going to ask you just to bear with
20 me. You've heard this, these preliminary instructions, and
21 so I'll ask you to bear with me as I address those folks who
22 were not with us.

23 Folks, the State has called the case of the State of
24 South Carolina versus Mr. Robert Jackson and, as I told the
25 folks earlier, most people don't have an opportunity to sit

1 in on an actual jury trial. Most folks' experience as it
2 relates to jury trials is what they've seen on television,
3 read in books or seen in the movies. And as we all know,
4 those trials are always full of high drama and intense
5 action.

6 Now, while either one of those things could occur during
7 the course of this trial, the important thing for you to
8 understand is that this trial is not for your entertainment.
9 This isn't like Hollywood. This trial is a fundamental part
10 of our democracy and, unlike trials that you've seen on
11 television, read in books or seen in the movies, this trial
12 may be slow. It may be quick. It may be very deliberate.
13 It could be repetitive. In other words, it's not the same
14 and it's not the fictional stuff that we see on television
15 and read in books and see in movies.

16 This courtroom is a place of honor that is dedicated to
17 the protection and to the preservation of citizens' rights
18 through what many people have called the greatest justice
19 system ever created. The lawyers that appear before you are
20 advocates for the parties that they represent, but first and
21 foremost, they are officers of the court sworn to uphold the
22 integrity and the fairness of our judicial system. You
23 should expect them to be professional, competent, and ethical
24 in the performance of their duties.

25 Now, you have just taken an oath to try this case and to

1 reach a fair and a just verdict and so you are also expected
2 to be professional, reasonable, and ethical in the
3 performance of your duties. I have absolutely no doubt you
4 will do that, and I want to thank you for your contribution
5 to our system of justice here in Florence County.

6 Now, I'm going to share some introductory items with you
7 or some things with you. This is not a charge on the law. I
8 will give you the charge on the law at the close of the
9 evidence, but this is just -- I'm going to go over some
10 procedural things so that you can better follow along with
11 the trial as we progress.

12 First and foremost, let me -- let me state this. I
13 didn't -- I didn't state this earlier. If any one of you
14 have any difficulty hearing any witness or any of the
15 attorneys or the Court, please let me know. We will stop and
16 have them repeat it and we'll make them speak up. Okay?
17 It's very important that you hear everything.

18 Also, if you need a break, if you need a break to get a
19 snack, if you need a break for the restroom, whatever reason,
20 if you need a break, please let the Court know. We can take
21 a break anytime, if you need one. I would rather you let me
22 know and we stop, even if it's in the middle of someone's
23 testimony, rather than you sitting there concerned about when
24 can we take a break. Okay?

25 You drive this train as far as breaks go. If you need a

1 break, you let me know. We'll take one and we'll just pick
2 up where we left off. Okay?

3 Now, Mr. Jackson is charged by the indictment, which I
4 read out to you earlier, with the offenses of trafficking in
5 heroin and possession of a controlled substance, unlawful
6 possession of a controlled substance. The elements of those
7 charges I will explain to you at the close of the case.

8 The indictment, as I told you earlier, is simply the
9 charge which -- by which brings this case into this court.
10 It is not in any sense evidence of the allegations that it
11 contains. Mr. Jackson has pled not guilty to these charges
12 and that plea of not guilty places upon the State the burden
13 of proving each element of these charges beyond a reasonable
14 doubt.

15 It will be your duty, ladies and gentlemen, to determine
16 or to decide whether or not the State has met that burden.
17 Your purpose as jurors is to find and to determine the facts.
18 You are the sole judges of the facts in this case. If at any
19 time I make any comment about any of the facts, you must
20 disregard those comments because only you, the jury, are
21 allowed to determine the facts of this case.

22 You are to determine the facts from the testimony that
23 you hear from witnesses who take the witness stand and any
24 exhibits that may come in during the course of the trial. It
25 is up to you to determine what inferences that you feel may

1 be properly drawn from that evidence. It is especially
2 important that you perform your duty of determining the facts
3 diligently and conscientiously because ordinarily there's no
4 way that I can correct an erroneous determination of facts by
5 a jury.

6 Now, on the other hand but with equal emphasis, the same
7 law that makes you the judges of the facts makes me the judge
8 of the law. The law as given you by the Court is the only
9 law that you may consider. You must accept it and you must
10 follow it, even though you may disagree with it.

11 Now, I'm not allowed to tell you what I think about the
12 facts or make any comments about the facts in this case, and
13 you're not allowed to disagree with me about what the law is
14 or what you think the law should be. Your job is to take the
15 law as I give it to you and apply it to the facts as you find
16 the facts to be from the evidence presented in arriving at
17 your verdict.

18 Now, until I advise you that it's appropriate to begin
19 your deliberations, you must not have any conversation about
20 this case at all. You are not to decide any issue in this
21 case until all of the evidence is in and you've been given
22 the charge on the law.

23 It is important that throughout this trial that you keep
24 an open mind and that you do not decide any issue in this
25 case until all of that information is in. It is your solemn

1 responsibility to determine the guilt or innocence of the
2 defendant, and your verdict must be based solely upon the
3 evidence as it is presented during the course of this trial
4 and on the law as I instruct it to you at the close of this
5 trial.

6 Now, in just a moment, I'm going to recognize Mr. White
7 on behalf of the State, the solicitor, and he's going to make
8 what we call an opening statement. I have no idea what he's
9 going to share with you, but typically what you hear in
10 opening statements is what he intends to prove, what he
11 intends to present. Once he's concluded his opening remarks,
12 then Mr. Suggs will have an opportunity to address you, if he
13 chooses to, although he's not required to.

14 The important thing to understand about the attorneys'
15 remarks or opening statements is this. It is not evidence.
16 It is merely their contention as to what they believe the
17 evidence will show. They are not under oath. They are not
18 testifying. The evidence in this case will be presented to
19 you through witnesses who testify from this witness stand
20 after being placed under oath and any exhibits that may come
21 in during the course of the trial.

22 Now, during the course of the trial, from time to time,
23 you may hear one of the attorneys say something along these
24 lines. Judge, we need to take up a matter of law with the
25 Court or may we approach the bench. If I can resolve a

1 matter of law up here at the bench, I'll do that, but I may
2 need to ask you to step back into the jury room while I take
3 up a matter of law.

4 The only reason I would do that would simply -- is
5 simply this. As I told you earlier, I'm not to have any
6 influence over you about the facts in this case.

7 Well, sometimes when I'm dealing with a matter of law,
8 it requires me to make some comment about the testimony or
9 the evidence that was presented in connection with a ruling
10 that I'm required to make. So to not influence you or to
11 protect you from those comments, I may ask you to step back
12 into the jury room, let me resolve that issue of law, and
13 then once that's done, bring you back out and we'll pick up
14 where we left off.

15 It is -- as I said earlier, your soul purpose, your soul
16 duty, is to determine the facts in this case. In determining
17 what the facts are in this case, you're going to have to
18 decide whether or not the testimony of a witness is
19 believable. It's going to be my job to -- to determine as a
20 matter of law whether certain testimony is allowed into this
21 record, but once testimony is allowed into this record,
22 whether or not you believe it is solely up for you to decide.

23 In deciding whether to believe a witness, you have a
24 right to consider the interest of any witness, the bias of
25 any witness, the opportunity for the witnesses to see the

1 things and the matters about which they testified, the way a
2 witness acts on the witness stand. Ladies and gentlemen, you
3 have the right to consider anything that is in this record
4 that will help you in evaluating the testimony of the
5 witnesses.

6 That means it's very important that you pay close
7 attention to the witnesses. Listen carefully to their
8 responses. Observe the witnesses. Listen very carefully to
9 the attorneys, as well as to the Court. Try not to let your
10 thoughts wander, but pay strict attention to all of the
11 evidence and the testimony in this case so that once it's all
12 done, once all the evidence is in, the lawyers have had an
13 opportunity to address you with their closing remarks, and
14 I've given you the charge on the law, you will then be in a
15 position to step back into your jury room and for the first
16 time begin discussing and talking about the case. Okay?

17 Now, before I turn it over to the attorneys, let me
18 first inquire from the State are there any objections or
19 exceptions to the Court's opening remarks?

20 MR. WHITE: No, sir, Your Honor.

21 THE COURT: Anything from the defense?

22 MR. SUGGS: No, sir, Your Honor.

23 THE COURT: Thank you, gentlemen.

24 Now, ladies and gentlemen, if you would, please give the
25 lawyers your undivided attention as they address you with

1 their opening statements.

2 Mr. White?

3 MR. WHITE: Thank you, Your Honor. May it please the
4 Court.

5 THE COURT: Yes, sir.

6 MR. WHITE: Mr. Suggs.

7 OPENING STATEMENT ON BEHALF OF THE STATE

8 MR. WHITE: Ladies and gentlemen, age is just a number,
9 and we've all heard that old adage age is just a number.

10 I suppose whether or not that's true depends on who you
11 ask, but let's take a man by the name of Charles Eugster, for
12 example. Now, Eugster was a retired dental surgeon, but at
13 the age of 67, he rekindled a love for competitive rowing.
14 He took up bodybuilding at the age of 87 and, at 95, he took
15 up sprinting to become a world champion in the 200-meter
16 indoor and the 200-meter outdoor. Charles Eugster's age was
17 just a number.

18 And then there's Mary Ann Arnold. Mary Ann lives down
19 in Marked Tree, Arkansas. That's 40 miles outside of
20 Memphis. On any given day, you can head down to the Marked
21 Tree City Hall and you'll find Mary Ann Arnold where she's
22 been for the last four years, and that is seated comfortably
23 behind the mayor's desk. See, Mary Ann Arnold is the mayor
24 of Marked Tree, Arkansas. She's 90 years old, and her age is
25 just a number.

1 When I first started thinking about that old adage, age
2 is just a number, I started thinking about it back in July.
3 I read an article about a man by the name of Roy Angin. See,
4 two months prior to that article, Mr. Angin, on this Saturday
5 back in August, got in the plane, climbed to roughly 13,000
6 feet, and with a parachute strapped to his back, he leapt
7 out.

8 Now, that jump was only slightly different than
9 countless jumps that he had had prior to that as a member of
10 the United States Army Airborne Division. And on that
11 Saturday, he relived his Airborne days. He's a World War II
12 veteran. He's 95 years old. His age is just a number.

13 But now I want to tell you a little different story and
14 that story takes place on June 2nd, 2015, and it's the story
15 that brings us here today. Now, on that date, the facts will
16 show, ladies and gentlemen, that law enforcement responds to
17 the Cruizers convenience store. That's right over here on
18 Darlington Street.

19 They do so in allegations -- in response to allegations
20 of suspected drug activity. The facts will show that they
21 are looking for a burgundy Nissan Altima, and they arrive on
22 scene and the facts will show that they find that burgundy
23 Nissan Altima. An individual is seated in the driver's seat,
24 the driver's door open and his legs outside of the vehicle.

25 And the facts will show that they approach this

1 individual and they find him to be in possession of 30 Xanax
2 pills and 110 bags of heroin.

3 The facts will show that they identify that man. They
4 identify him as Robert Jackson. They identify that he is 73
5 years old. He's seated right over here with his attorney,
6 and his age is just a number.

7 You see, I've come to realize it's not how old you are
8 when you do something, it's about what you do with the years
9 you've got. Charles Eugster realized that. When he became
10 world champion, he didn't consider his age and you shouldn't
11 either. Roy Angin realized that. When he leapt out of that
12 airplane, he didn't consider his age and you shouldn't
13 either. Mary Ann Arnold. When she became mayor of a little
14 town in Arkansas, she didn't consider her age and you
15 shouldn't either.

16 And the defendant, who is on trial today, when he was
17 found in possession of 110 bags of heroin, he didn't consider
18 his age and you shouldn't either because age is just a
19 number.

20 It's just a number. Thank you.

21 THE COURT: Thank you, Mr. White.

22 Mr. Suggs?

23 MR. SUGGS: Yes, sir. Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 MR. SUGGS: Your Honor, may I move the lectern?

1 THE COURT: Yes. Absolutely.

2 MR. SUGGS: Thank you, Your Honor.

3 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

4 MR. SUGGS: Good afternoon, ladies and gentlemen.

5 I had the deputy move the lectern. I've tried a lot of
6 cases up here in this very courtroom, and I've had trouble
7 with this lectern before and actually pushed it over prior to
8 one of my opening arguments some years ago and it made an
9 incredibly loud noise and scared everybody in the jury box,
10 scared me most of all. So I ordinarily let the deputies move
11 it. They know how it's configured and how the wheels play
12 tricks on you.

13 But anyway, I want to thank each and every one of you
14 for volunteering to serve on this jury towards the end of the
15 week. Your service is extremely important to our system of
16 government, and I know that this takes a lot of your time,
17 especially when y'all are looking forward to the weekends --
18 this weekend. So thank you again for serving.

19 And I apologize earlier for that plug about the best
20 lawyer in the Pee Dee for 2016. I doubt very seriously I
21 would get that nomination again, and I feel quite certain
22 that the ballot box must've been stuffed in my favor, but it
23 was a grace to me; so I'm not going to argue. I accept it,
24 but I feel like I should take the sign down sooner or later
25 since it was 2016 and we're very nearly out of 2017. So I

1 may keep it up a few more months.

2 This is -- this is a drug case, ladies and gentlemen, so
3 there are some things that you need to know about drug cases.
4 They're a little bit different than some other cases that you
5 might hear in General Sessions Court.

6 There are basically two kinds of possession -- two kinds
7 of possession and both of them are present in this case. One
8 is actual possession and the other is constructive
9 possession. The distinction is not that difficult to
10 understand.

11 Actual possession is -- I'm in actual possession of this
12 fountain pen and -- because it's on my person. Now, if I lay
13 this pen down somewhere, I'm no longer in actual possession
14 of the pen. I'm in constructive possession of the pen, as
15 are you, because it is in an area where all of us exercise
16 some dominion and control. Me more than you probably since
17 it's right here, but say it were a little closer to you, then
18 I think all of us would equally share constructive possession
19 of that pen. So if you think of it in terms of an illegal
20 item, like drugs, all of us are in constructive possession of
21 the drugs.

22 Now, in terms of actual possession, the State has the
23 burden of proving, first of all, that you were in actual
24 possession of the pen or the drugs or whatever it is and, of
25 course, that you knew that you were in actual possession of

1 the drugs.

2 In constructive possession, the burden is the same. The
3 State has to prove that, first of all, that you did, in fact,
4 exercise dominion and control over the item that's in
5 constructive -- in your constructive possession and that you
6 knew that -- that it was there. Lots of different cases come
7 up with constructive possession that go to trial more than so
8 actual possession, but those go to trial as well.

9 But you can clearly see maybe a scenario of constructive
10 possession where you grab a coat off a coat rack and run
11 outside to run an errand to the store and for whatever reason
12 you get stopped and the police search you and they find drugs
13 on the coat or inside the coat. Of course, you know, the
14 coat -- well, you know, that's not my coat. That was the
15 neighbor's coat, who left it at my house the night before.

16 Well, you know, you are in constructive possession of
17 those drugs because they were in -- actually, you're in
18 actual possession because you were wearing the coat, but you
19 did not know that those drugs were in that coat pocket. So
20 the State would have to prove beyond a reasonable doubt to
21 the jury that you knew that you were in possession, actual
22 possession, of the drugs.

23 A constructive possession example might be if you hitch
24 a ride to work with a friend or an acquaintance and the car
25 runs into a roadblock and the car is searched and drugs are

1 found in the car. Maybe they're even under the seat where
2 you're sitting, and you're charged with -- with being in
3 possession of those drugs, not actual but constructive
4 because you exercise dominion and control over the car, just
5 as the driver does.

6 It might not even be your car, but you're going to be --
7 you're going to have to have some explaining to do and, if
8 law enforcement doesn't believe you, then you hope that a
9 jury would that you didn't have any knowledge or that your
10 friend would come forward and say, you know, yeah, those are
11 mine. My friend knew nothing about it. But those are the
12 types of cases that you deal with when you talk about
13 different possessions.

14 Now, I've beat that dog -- horse to death; so we'll move
15 on to four types of, I guess, crimes or charges that a person
16 might face when you're dealing with drugs. And as I said,
17 drugs is sort of a fact-specific case.

18 So the four types of crimes that a person might be
19 charged with when you deal with drugs are, first of all,
20 possession. We've already talked about that. And sometimes
21 you hear that called simple possession. Well, it's simple
22 possession in most cases because it generally will be a small
23 amount of a drug.

24 If you're talking about marijuana, for example,
25 marijuana -- simple possession of marijuana under our

1 statutes would be an amount less than 28 grams and, if we all
2 know our metric system, 28 grams is an ounce. So if you're
3 in possession, actual or constructive, of marijuana, 28 grams
4 or less, it's considered simple possession.

5 The next type of crime that a person might face dealing
6 with drugs is called distribution. Now, in distribution, the
7 amount makes no difference. It does not matter if it's a
8 small amount or a large amount.

9 If you're dealing with marijuana, for example, I'm not
10 sure what the cutoff is on that, but anything from an ounce
11 up to something -- and I can't remember what it is right off
12 the top of my head, but even a small -- what you call a joint
13 or a blunt, something really small that you know is less than
14 an ounce, if you sell it to someone or give it to someone --
15 because the statute doesn't say that you have to sell it.
16 The statute says distribution. So giving it to someone --
17 you give a joint to someone, that's distribution of
18 marijuana. Again, the amount makes no difference.

19 If you -- a lot of us might be breaking the law all the
20 time with regard -- not to marijuana but with regard perhaps
21 to a pain pill or maybe even some sort of prescription drug.
22 If you have a prescription for, say, Percocets, which is --
23 which is a pain killer, and your friend calls you on the
24 phone and says, you know, I've got a splitting headache and I
25 don't know what to do about it, do you have any aspirin or

1 Tylenol or anything like that, and then they say, well, you
2 know, that's not really working. Have you got anything
3 stronger? And you may say, well, yeah, I've got Percocet and
4 I'll give you a couple of those and, you know, it will make
5 you feel better.

6 Well, you know, you've just broken the law. You have
7 distributed a controlled substance which -- and I know you
8 might think that that's harmless and it may very well be and
9 maybe no one will ever find out about it, but if you want to
10 get technical, that's distribution of an unlawful or lawful
11 product, a narcotic, but it's just not allowed. So that's
12 your distribution.

13 Now, with -- the next thing I think would be what they
14 call possession with intent to distribute. It's a little
15 different. It doesn't mean that you distributed anything.
16 It just means that you were in possession of a specific
17 amount of some kind of drug where the amount -- the
18 legislature has said to us that the amount is high enough
19 where it's too much for one person. It's an amount that --
20 that no one person should have for simple possession,
21 personal use. So because you have this amount, you intended
22 -- you had the intention of selling it or distributing it.

23 Now, when we talk about cocaine, for example, because
24 again I can't remember what the -- what the marijuana is. I
25 think about 10 pounds, but I can't remember.

1 But on cocaine, if you have one gram or less, that's
2 simple possession of cocaine and that goes for base too.
3 When I say base, I mean crack. So one gram or less is simple
4 possession, but if you have more than a gram of crack or
5 powder, but less than 10 grams, that's considered to be
6 possession with intent to distribute.

7 That means that -- that you very well -- may very well
8 have had that 9 ½ grams for your personal use and, you know,
9 I'm just using this example. You realize that, but the
10 legislature has said, well, you intended to sell or
11 distribute it because it's way more than a gram and, you
12 know, that's just an inference though. It's an inference.
13 You know, it doesn't mean that you were. It just means that
14 the jury or other folks are allowed to infer that you
15 intended to sell or distribute it.

16 Now, with heroin, it's a little bit different. Heroin
17 doesn't require that much to be possession with intent to
18 distribute, and I really don't know what that is either off
19 the top of my head, but I do know what trafficking is and
20 that's what we're dealing with in this particular case, which
21 is number four, possession, distribution, PWID, and then
22 trafficking which is the last.

23 Trafficking basically means -- and I looked that up in
24 the dictionary the other night because I wasn't sure exactly
25 what the legislature meant when they say trafficking. And

1 when I Googled it, of course, what came up is what you might
2 expect, cars and motor vehicles, traffic on the highways, but
3 it doesn't mean that. It -- down at the end of the day, it
4 means transporting. Trafficking, transporting.

5 Now, I think when the legislature decided to create
6 these trafficking statutes -- again, that involves a specific
7 amount. It's more than the amount for possession with intent
8 to distribute. When you go to trafficking, that means more
9 than me having nine grams of cocaine and I plan on using it
10 for myself and I might share it with a friend.

11 Trafficking gets to the point where you think it's a
12 major type operation. It's moving great quantities of drugs
13 through our country, through our system from Laredo, Texas,
14 down in Texas from Mexico to the United States or the -- what
15 do they call that? The Golden Triangle or whatever in Asia
16 where all the heroin and everything comes from. When I think
17 trafficking, that's what I think of, but in South Carolina
18 our legislature said --

19 MR. WHITE: Judge, I'm going to have to object here. I
20 don't think that Mr. Suggs -- respectfully, I mean he's
21 quoting Webster's Dictionary. He's not really quoting the
22 law in this case.

23 THE COURT: I'm going to overrule it. I mean it's
24 opening statement.

25 You can continue.

1 MR. SUGGS: Thank you, Judge. I'm not normally used to
2 being interrupted during opening statements, but Mr. White is
3 fairly new at trying cases. So --

4 MR. JEPERTINGER: That we object to, Your Honor.

5 THE COURT: Sustained.

6 MR. SUGGS: Thank you, Judge.

7 Anyway, trafficking in terms of heroin, the legislature
8 has said that 4 grams up to I think 14, so it doesn't really
9 require a whole lot of heroin to fall into the trafficking
10 law, to run afoul of that.

11 Now, in terms of visualizing what is 4 grams, how much
12 is that, well, when I think about it, I usually think about
13 the sugar packs that you see on the table in restaurants, the
14 Equal sugar packs. I think -- and I may be wrong -- those
15 sugar packs usually contain one gram of sugar or sugar
16 substitute or whatever. So if you take four of those, it's 4
17 grams, of course. So it's not a whole lot.

18 Now, again, this case involves constructive possession
19 and it involves actual possession and, also, it involves some
20 of the different crimes we've talked about before, types of
21 crimes associated with drugs. So that -- the reason I go
22 there is because that's what this case is about.

23 Now, in terms of what opening statements are, the Court
24 said already that opening statements aren't evidence, and the
25 Court is right. They're not evidence. Just like the

1 indictment is not evidence. It's a charging paper. It
2 simply tells and informs the person who is charged what are
3 they charged with, what sort of charges do they have to face
4 at trial. So it's not evidence. It's just a charging paper.

5 Now, Mr. White talked about these -- age is not a number
6 and that kind of thing. Well, you know, I guess it depends
7 on who you ask, just like he said, but, you know, if you've
8 got a 76-year-old man like -- like Mr. Jackson is a 76-year-
9 old man, a 90-year-old woman being a mayor or a 90-year-old
10 man being a bodybuilder and jumping out of airplanes, that's
11 fine and dandy, if you're in good health. If you're in good
12 health, then yeah, age is just a number. Jumping out of
13 airplanes and bodybuilding is -- you know, more power to you
14 if you're in good health, but if you're in poor health, I
15 can't see Mr. Jackson jumping out of airplanes and doing
16 bodybuilding.

17 I hope that -- that this trial will show -- and what I
18 say in opening statement is true that I hope this trial will
19 show that Mr. Jackson is not in good health. He's in poor
20 health. He's had one leg amputated below the knee. His left
21 leg has been amputated below the knee because he's diabetic
22 and he has poor circulation. And I hope the evidence will
23 also show that he's about to have his right leg amputated for
24 the same reason. He has gangrene and poor circulation.

25 MR. WHITE: Your Honor.

1 MR. SUGGS: And I hope the evidence will show that his

2 --

3 THE COURT: Hold on. Hold on.

4 MR. WHITE: Objection. We're talking about the
5 defendant's health and whether his leg is going to be cut
6 off. I think that's going a little far.

7 THE COURT: I'm going to sustain as to that.

8 MR. SUGGS: He was talking about age being a number and
9 that's what I'm talking about, Judge.

10 THE COURT: I understand.

11 MR. SUGGS: So is that not allowed to --

12 THE COURT: Well, we're not going to argue facts that
13 aren't in evidence and may not be coming into evidence.

14 MR. SUGGS: Yes, sir, Judge.

15 Anyway, that's -- that's what I hope to show, ladies and
16 gentlemen. That's what I hope to show and that's what
17 opening arguments are about.

18 Now, oftentimes, I've said things in opening arguments I
19 wish I hadn't said, you know, because a trial is a very fluid
20 type of thing. It's not static. It's not something that you
21 make up your mind that this is your strategy and you're going
22 to keep it. It's not true with trials. Things change all of
23 the time depending on what witnesses say, what evidence is
24 put in, things that you didn't expect, things that you did
25 expect but expected to be interpreted a different way.

1 So in openings, I try not to pin myself down because I
2 don't want to have to say something and not be able to prove
3 it later on. By the same token, sometimes, you know, after
4 the trial is underway and a lot has already been said and
5 introduced, I say to myself, well, dog, I wish I had said
6 that at the beginning, but I didn't because I was afraid it
7 wouldn't happen the way that it did happen.

8 So in any event, we hope that we can back up what we say
9 here in opening argument and by that I mean what I feel this
10 case is about. That this case is about the different types
11 of possession and the different types of crimes and how these
12 possessions and these crimes, although they tend to be very
13 stable and certain, they apply differently for different
14 people depending on their own backgrounds and ages and
15 conditions and health and things like that.

16 And that's really what I was trying to express. I
17 probably should've done that at the beginning so Mr. White
18 would know what I was talking about, but that's -- that's my
19 fault.

20 But in any event, thank you for listening to me ramble
21 on about what I hope to show, and please give all the
22 witnesses your very urgent attention. Thank you.

23 THE COURT: Thank you, Mr. Suggs.

24 MR. SUGGS: Thank you, Your Honor.

25 THE COURT: All right.

INV. JASON PATE - DIRECT BY MR. WHITE

1 MR. WHITE: Your Honor --

2 THE COURT: You may call your first witness.

3 MR. WHITE: Thank you, Judge. I'm sorry. The State
4 would call Inv. Jason Pate to the stand.

5 THE COURT: All right. Inv. Pate, if you would, please
6 come around to be sworn, sir.

7 THE CLERK: Place you left hand on the Bible and raise
8 your right hand, please. Do you swear to tell the truth, the
9 whole truth, and nothing but the truth, so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Be seated in the witness box and please
12 state your name for the record.

13 THE WITNESS: Jason Pate.

14 INV. JASON PATE, being first
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. WHITE:

18 Q: Thank you, Inv. Pate. If you could, tell us where are
19 you employed?

20 A: Florence County Sheriff's Office.

21 Q: And how long have you been employed there?

22 A: 16 years.

23 Q: And where are you -- how are you currently employed?

24 A: I'm an investigator in the narcotics division.

25 Q: How long have you been in that role?

INV. JASON PATE - DIRECT BY MR. WHITE

1 A: A year and a half.

2 Q: Okay. Now, prior to that, have you had any other
3 experience in drug cases?

4 A: I was previously on the PACE team.

5 Q: If you could, could you tell us what's the PACE team?

6 A: That's Proactive Community Enforcement.

7 Q: And what does the PACE team do exactly?

8 A: Go to neighborhoods and areas that's having trouble,
9 such as drugs, break-ins, larcenies, that types of stuff.

10 Q: Well, let me ask you have you received any specialized
11 or advanced training in the field of narcotics?

12 A: I have.

13 Q: And could you list any training that you may have
14 underwent?

15 A: I've attended the National Interdiction Conference
16 several times, and that's such as roadside interview
17 techniques, traps and concealment on commercial vehicles,
18 non-commercial vehicles, body language, and nonverbal cues.

19 Q: Now, on June 2nd, 2015, were you employed with the PACE
20 team at that time or with narcotics?

21 A: I was with the PACE team.

22 Q: And on that date, did you have occasion to respond to
23 the Cruizers convenience store located at 1017 W. Darlington
24 Street?

25 A: I did.

INV. JASON PATE - DIRECT BY MR. WHITE

1 Q: Let me ask you is that location in Florence County?

2 A: It is.

3 Q: Now, why were you responding to the Cruizers convenience
4 store?

5 A: We had received a call about -- let me see -- drug
6 activity at that location.

7 Q: And did you receive any other information when you got
8 that call?

9 A: I just received it was a suspect probably in a burgundy
10 Nissan Altima.

11 Q: Now, did you -- when you arrived on scene, did you
12 locate a burgundy Nissan Altima?

13 A: I did.

14 Q: And was the vehicle occupied at that time?

15 A: It was.

16 Q: And how -- how could you tell?

17 A: The driver's side door was open and the occupant had his
18 legs hanging out of the car.

19 Q: Now, did you make contact with that individual?

20 A: I did.

21 Q: And what, if anything, did you notice when you made
22 contact with that individual?

23 A: Upon my approach to the vehicle, I noticed a pill bottle
24 that was in the side compartment of the door. I noticed
25 that. Once I got closer, I noticed the label was torn, and I

INV. JASON PATE - DIRECT BY MR. WHITE

1 began speaking with him and I asked him how he was doing,
2 asked him for his driver's license, and while he was fumbling
3 around, I noticed a plastic bag in his shirt pocket.

4 Q: Did you ask him what was -- what was the plastic bag?

5 A: I did.

6 Q: Did he tell you?

7 A: He stated it was heroin.

8 Q: He told you it was?

9 A: I'm pretty sure. Yes, sir.

10 Q: Now, based on --

11 MR. WHITE: Well, I guess at this time, Your Honor, may
12 I approach the witness?

13 THE COURT: Yes, sir.

14 BY MR. WHITE:

15 Q: Inv. Pate, I'm going to show you what's been marked for
16 identifications purposes only as State's Exhibit 1. If you
17 could, examine that and can you tell us what that is?

18 A: A DVD.

19 Q: And have you ever seen that before?

20 A: I have.

21 Q: Have you had a chance to review it?

22 A: I have.

23 Q: Is it in the same or substantially the same condition as
24 the last time that you saw it?

25 A: It is.

INV. JASON PATE - DIRECT BY MR. WHITE

1 Q: Now, what's on that DVD? Is it a fair and accurate
2 reproduction of the in-car camera from your patrol car on
3 June 2nd, 2015?

4 A: It is.

5 MR. WHITE: Your Honor, at this time, the State would
6 move State's Exhibit 1 into evidence.

7 THE COURT: Any objection to the video?

8 MR. SUGGS: Only to the extent that we made some
9 decisions earlier.

10 THE COURT: Okay. All right. And pursuant to those
11 earlier --

12 MR. SUGGS: Yes, sir.

13 THE COURT: -- pretrial matters, I'll allow it in.

14 MR. SUGGS: Yes, sir, Judge.

15 (WHEREUPON, State's Exhibit Number 1, in-car video on
16 DVD, was admitted into evidence.)

17 MR. WHITE: Thank you, Your Honor. At this time, I'd
18 like to publish that DVD to the jury.

19 THE COURT: All right, sir. That would be fine. Thank
20 you.

21 MR. WHITE: And, Your Honor, may I ask the witness --

22 THE COURT: Officer, if you'd like to --

23 MR. WHITE: -- to step down with me?

24 THE COURT: Yeah. I was going to say if you want to get
25 in a position where you can view it --

INV. JASON PATE - DIRECT BY MR. WHITE

1 MR. WHITE: Inv. Pate, if you'll just come and stand
2 about right here so we can watch the video together.

3 THE COURT: Just make sure you don't block any of the
4 juror's view.

5 MR. WHITE: Inv. Pate, let's switch sides here.

6 THE WITNESS: Okay.

7 MR. SUGGS: Is it okay for me to move, Judge?

8 THE COURT: Yes, sir. Absolutely.

9 MR. WHITE: And once this thing gets queued up, if it's
10 all right with you, I'm going to ask you a few questions
11 about the video we're watching.

12 MR. JEPERTINGER: Keep your voice up.

13 (WHEREUPON, State's Exhibit Number 1, in-car video on
14 DVD, was played in open court.. Not transcribed herein.

15 The following questioning occurred during the playing of
16 the video.)

17 BY MR. WHITE:

18 Q: Now, is this your patrol car here?

19 A: It is.

20 Q: And at this point, have you already received the call
21 that you referred to earlier?

22 A: I had. Yes, sir.

23 Q: Okay. So here, are you looking for a burgundy Nissan
24 Altima?

25 A: I am.

INV. JASON PATE - DIRECT BY MR. WHITE

1 Q: And if you could, just point it out whenever you see it?

2 A: It was parked right here. It'll come into view in just
3 a second.

4 Q: At what point do you notice the pill bottle you referred
5 to?

6 A: I've already noticed it. That's the cap sticking up
7 right there behind my leg.

8 MR. WHITE: Can y'all see all right?

9 BY MR. WHITE:

10 Q: At that time, what did you believe that package to
11 contain?

12 A: Inside that bag were bindles that's consistent with
13 heroin.

14 Q: Now, what's a bindle?

15 A: I call it a glassine package. Some people calls it a
16 wax paper package.

17 Q: At this point, have you already called this particular
18 incident in?

19 A: I have.

20 Q: Who is this individual here?

21 A: That's Cpl. Jason Bazen. He was also on the PACE team
22 with me.

23 Q: And who is that individual there?

24 A: That's Inv. Clark.

25 Q: At this point, has this individual already turned over

INV. JASON PATE - DIRECT BY MR. WHITE

1 his identification to you?

2 A: Yeah. I'm pretty sure he had at that point.

3 Q: I notice you're taking some items and placing them into
4 a bag.

5 A: Yeah.

6 Q: What was the purpose of that?

7 A: It was actually a little windy that day. I didn't want
8 anything to blow away.

9 Q: I noticed you grab another -- is there a reason for
10 laying stuff on the hood there?

11 A: Put it in view of the camera.

12 Q: And I see once it's laid on the hood, you take it
13 offscreen. What are you doing with it?

14 A: Putting it in a Ziploc bag.

15 Q: This individual -- did he stand in that location for the
16 duration of the search?

17 A: He did.

18 Q: Now, this individual who is approaching the scene here
19 -- when he gets into view good, tell -- tell us who that is?

20 A: That's Inv. Chamberlain, narcotics division.

21 Q: Now, I noticed we can hear you on camera fine, but we
22 can't hear other officers. Why is that?

23 A: I had the body mic on. It's attached to my vest.

24 MR. WHITE: All right. Keith, you can stop it right
25 there.

INV. JASON PATE - DIRECT BY MR. WHITE

1 All right. Thank you, Inv. Pate. You can have a seat.

2 (WHEREUPON, the video ended, the witness returned to the
3 witness stand, and the proceedings resumed as follows.)

4 BY MR. WHITE:

5 Q: Inv. Pate, what, if anything, was seized from this
6 individual's person on his body?

7 A: A plastic bag containing 50 bindles consistent with
8 heroin.

9 Q: Now, were you able to identify that individual?

10 A: I can.

11 Q: What was his name?

12 A: Robert Jackson.

13 Q: Is he seated in the courtroom with us today?

14 A: He is.

15 Q: If you could, just point him out to us?

16 A: He's right there.

17 MR. WHITE: Your Honor, let the record reflect Inv. Pate
18 has just identified the defendant in this case.

19 THE COURT: All right. It reflects that.

20 MR. WHITE: And at this point, Your Honor, I have
21 nothing further. Inv. Pate, please --

22 THE COURT: Yeah.

23 MR. WHITE: My apologies, Your Honor.

24 THE COURT: That's okay.

25 MR. WHITE: May I approach the witness?

INV. JASON PATE - DIRECT BY MR. WHITE

1 THE COURT: Yes, sir. Absolutely.

2 BY MR. WHITE:

3 Q: Inv. Pate, at this time, I'm going to show you what's
4 been marked as State's Exhibit 2. Could you tell me what
5 that is?

6 A: That's bindles. It's consistent with heroin.

7 Q: Are the bindles that you pulled off of Mr. Jackson
8 located in that -- that plastic bag right there?

9 A: Yes, sir.

10 MR. WHITE: Thank you, Your Honor. I have nothing
11 further. Please answer any questions defense counsel might
12 have.

13 THE COURT: All right. Mr. Suggs?

14 MR. SUGGS: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. SUGGS:

17 Q: Just a few questions, Jason. Is that all right?

18 A: Yes, sir.

19 Q: All right. You've been with the Sheriff's Department
20 how long?

21 A: Sixteen years.

22 Q: Sixteen? Was it always with the Florence Sheriff's
23 Department?

24 A: Yes, sir.

25 Q: All right. From the very beginning?

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1 A: From the beginning.

2 Q: Okay. Did you do the -- did you do usual other duties
3 that deputies do before they rise to the ranks of
4 investigator?

5 A: I did.

6 Q: Okay. Like, for example, what?

7 A: I started off as a correctional officer in the jail.

8 Q: Okay. Here at the Florence Detention Center?

9 A: Yes, sir.

10 Q: How long did you do that?

11 A: Six months or either eight months, somewhere in that
12 timeframe.

13 Q: How was that?

14 A: That wasn't what I would make a career out of.

15 Q: You thought you'd made a mistake getting in law
16 enforcement at that point, didn't you?

17 A: That's true.

18 Q: And six months later, you were doing what?

19 A: I was hired to go to the road as a patrol deputy and
20 that's when I attended the Academy.

21 Q: Okay. It's a little bit more exciting work than being
22 at the -- babysitting at the jail; right?

23 A: Yes, sir.

24 Q: Okay. And so you have -- you were a patrol officer for
25 a period of time before you got to the PACE team or is that

INV. JASON PATE - DIRECT BY MR. WHITE

1 something that you do in conjunction with the patrolling?

2 A: I was on patrol and then I actually went to West
3 Florence as a school resource officer for a short time. I
4 went back to patrol and then I moved up to the PACE team.

5 Q: Okay. When was that PACE team created?

6 A: I'm not sure when it was created.

7 Q: All right. It was in existence when you joined?

8 A: It was.

9 Q: All right. And there's several members of the
10 department, all investigators like you?

11 A: We were actually deputies when I first started. Then we
12 were promoted to corporal.

13 Q: Okay.

14 A: But we had a sergeant and a lieutenant.

15 Q: Is that a full-time position for you to be part of that
16 PACE team?

17 A: Yes, sir. At that time, it was.

18 Q: All right. Is that -- is that -- you already told me
19 what it stood for, but is it -- is it for, like, specific for
20 drug interdiction or does it have some other purpose?

21 A: It's mostly street crimes, drug interdiction.

22 Q: Okay?

23 A: Break-ins, larcenies.

24 Q: Okay.

25 A: I have been to some areas for school zones for speeding

INV. JASON PATE - DIRECT BY MR. WHITE

1 and worked.

2 Q: Okay. So it doesn't really have any specific role as a
3 program or a team?

4 A: We go through --

5 Q: Like, law enforcement?

6 A: The problem areas.

7 Q: Okay. All right.

8 A: I guess is the best way to word it.

9 Q: Okay. And I know you. In fact, you know my wife; is
10 that right?

11 A: That's true.

12 Q: Mandy? And you've got a good reputation in this area as
13 law enforcement. I don't know if you knew that or not. Did
14 you?

15 A: I would hope so.

16 Q: Good. And you always try to do a good job, I know.

17 A: I do.

18 Q: And a thorough job?

19 A: Yes, sir.

20 Q: And you've testified in court on numerous occasions,
21 haven't you?

22 A: Several times. Yes, sir.

23 Q: Okay. And when you testify, you always try to be as
24 forthcoming as you can and, if you can't remember something,
25 you'll tell us you can't remember; right?

INV. JASON PATE - DIRECT BY MR. WHITE

1 A: That's true.

2 Q: Okay. All right. I want to switch over to the chain of
3 custody for a moment. After -- was it your responsibility to
4 collect the -- the evidence that was introduced? Was it your
5 responsibility to collect it and package it up and store it
6 somewhere or was it somebody else's responsibility to
7 initially secure it?

8 A: I collected it and put it in the bags and I turned it
9 over to Inv. Chamberlain.

10 Q: All right. And was that the extent of your involvement
11 with that until today?

12 A: Yes, sir.

13 Q: All right. So after -- after you turned it -- after you
14 bagged it up, did you write your initials on it and the date
15 just to confirm when you did that?

16 A: I did not.

17 Q: All right. But you packaged them up in separate
18 packages, the heroin in one package and the pills in the
19 other, or all together?

20 A: I don't recall, to be honest.

21 Q: Okay. That's fine. But then you turned it over to
22 Officer -- Inv. Chamberlain?

23 A: Yes, sir. That's correct.

24 Q: And then that was it and you went on to something else?

25 A: Yes, sir.

INV. JASON PATE - DIRECT BY MR. WHITE

1 Q: Okay. Thank you. Was that on the same day, Jason?

2 A: Yes, sir.

3 Q: Okay. And did that occur at the scene where you turned

4 it over to him or somewhere -- like, some other place later?

5 A: At the scene.

6 Q: At the scene? Okay. Now, on direct a while ago, we all

7 saw the video where you drove up to the Cruizers and you got

8 out and you approached Mr. Jackson, who was sitting in his --

9 in the burgundy car; right?

10 A: Yes, sir.

11 Q: And who was the young lady with you?

12 A: Inv. Clark.

13 Q: Okay. And she's in the courtroom?

14 A: She is.

15 Q: All right. Was she riding around with you or was she

16 there before you?

17 A: She was with me that day.

18 Q: She was with you? Okay. When -- when you approached

19 Mr. Jackson, you asked him how he was doing and that sort of

20 thing?

21 A: Yes, sir.

22 Q: Okay. And you recognized something in his front shirt

23 pocket?

24 A: I noticed the pill bottle.

25 Q: The pill bottle first?

INV. JASON PATE - DIRECT BY MR. WHITE

1 A: And once I got up closer, I noticed something in his
2 shirt pocket.

3 Q: All right. Did the pill bottle have anybody's name on
4 it?

5 A: It didn't.

6 Q: All right. And it was one container? One pill bottle
7 container?

8 A: Yes, sir.

9 Q: And that had all the pills in it?

10 A: Yes.

11 Q: Did it have any heroin in it?

12 A: Not that that I recall. No, sir.

13 Q: And that -- that was not on his person? It was in the
14 door of the car?

15 A: Yes, sir.

16 Q: All right.

17 A: Side panel of the door.

18 Q: Okay. And you noticed those, but you didn't think
19 automatically, well, that's going to be illegal? You just
20 thought probably -- what? It's probably got pills in it? Is
21 that what was going through your head?

22 A: Yes, sir.

23 Q: All right. And when you saw the -- the item in Mr.
24 Jackson's front pocket, did -- based on your training and
25 experience, did you immediately recognize that to be heroin

INV. JASON PATE - DIRECT BY MR. WHITE

1 or some other unlawful drug?

2 A: Once he leaned -- once I saw the plastic with the
3 bindle, I believed that that was packaging consistent with
4 heroin.

5 Q: Okay. And you asked him what he had in his pocket?

6 A: I did.

7 Q: All right. Now, you testified I believe that he said --
8 he responded by saying heroin. I didn't hear that on the
9 video. Did you?

10 A: I did not.

11 Q: Okay. But we did -- I think we did see that he handed
12 it to you; is that right?

13 A: He did hand it to me.

14 Q: And he did that voluntarily?

15 A: Yes, sir.

16 Q: He did not fight you or resist you in any way?

17 A: Not at all.

18 Q: And he cooperated?

19 A: Yes, sir.

20 Q: All right. And you said that he told you it was heroin,
21 but it's not on the video. Is it possible that -- that
22 you're mistaken? That you don't remember or you didn't say
23 it?

24 A: It's a possibility. It was two years ago. I mean --

25 Q: I understand. I understand. Just do the best you can.

INV. JASON PATE - DIRECT BY MR. WHITE

1 A: Okay.

2 Q: That's all we can ask for. So is it possible he didn't

3 say that?

4 A: It's possible. Yes, sir.

5 Q: Okay. Thank you. You didn't find any needles?

6 A: I didn't see any needles.

7 Q: I remember you asked him or somebody said where are the

8 needles. I don't know if it was you or someone else. Did

9 you hear that on the video?

10 A: I recall -- I think he had needles, maybe diabetic

11 needles he said, or something to that effect.

12 Q: Okay. All right. But do you remember if they were in

13 the -- in the car or not?

14 A: I don't remember.

15 Q: Okay. That's fine. That's fine. Did -- were the --

16 were the pills inventoried there on the scene or counted,

17 identified and counted, or not?

18 A: I'm not sure.

19 Q: Okay. What about the heroin? Was it tested at the

20 scene or was it weighed at the scene or, if it were examined

21 at the scene, what type of examination?

22 A: I mean it was not. It was turned over to Inv.

23 Chamberlain.

24 Q: Okay. So it was not weighed at the scene or anything

25 like that?

INV. JASON PATE - DIRECT BY MR. WHITE

1 A: Not -- not to my knowledge.
2 Q: Not by you?
3 A: Not by me.
4 Q: It would've blown away probably. You said it was a
5 windy day?
6 A: It was windy.
7 Q: Okay. All right. And you found some money too; is that
8 right? I remember reading in the report that there was an
9 amount of money found.
10 A: Yes, sir. I think Cpl. Bazen pulled it out of his
11 pocket.
12 Q: Okay. All right. You didn't handle the money or
13 anything?
14 A: No.
15 Q: Okay.
16 A: It was put on the hood of the vehicle.
17 Q: All right, sir. Thank you. Who weighs the -- when the
18 heroin is weighed, who weighs it? Is that done at SLED?
19 A: It's actually done at the Sheriff's Office by our
20 chemist.
21 Q: Okay. And is -- when it's -- do you have any
22 involvement in that or not?
23 A: I didn't with that. That wasn't my case.
24 Q: That's not -- that's not something you do anyway, is it?
25 A: No. I just get the report back.

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1 Q: All right. Okay. Do you know whether or not it was
2 weighed at the Sheriff's Department in this case?

3 A: I'm not sure.

4 Q: All right. Okay. All right. Is this the evidence here
5 in front of you?

6 A: Yes, sir.

7 MR. SUGGS: Has it been marked for identification or
8 anything?

9 THE COURT: Marked for identification.

10 MR. SUGGS: Oh, it is. Okay.

11 BY MR. SUGGS:

12 Q: Is this what they call a BEST -- a BEST pack?

13 A: Yes, sir.

14 Q: Is it all sealed?

15 A: It is.

16 Q: So the only way to get into it is to break the seal;
17 right?

18 A: Yes, sir.

19 Q: All right. And this is identified or it's marked as
20 State's Exhibit Number 2; is that right?

21 A: Yes, sir.

22 Q: Okay.

23 A: I see it.

24 Q: And in the bag, there appear to be -- I don't -- they
25 look like Goody Powder bags to me, would you say?

INV. JASON PATE - DIRECT BY MR. WHITE

1 A: They do. Yes, sir.

2 Q: All right. And they all have individual numbers on

3 them, don't they?

4 A: Sometimes they're stamped.

5 Q: Well, these have -- do you agree these have written

6 numbers on them?

7 A: Oh, yes, sir.

8 Q: Did you write those numbers?

9 A: No, sir.

10 Q: Okay. Were those numbers on there when you --

11 A: No, sir.

12 Q: -- confiscated it? Okay. How about the pills? Are

13 they present today?

14 A: I'm sure they are. Yes, sir.

15 Q: He didn't -- Mr. White didn't question you about the

16 pills, did he? Wait a minute. Okay. All right. State's

17 Exhibit 4. Is that the pill bottle that was in the vehicle?

18 A: Yes, sir.

19 Q: Okay. And it looks like it had a label or has a partial

20 label on it. Would you agree?

21 A: I would.

22 Q: And it has some identification on the label, like maybe

23 the doctor and the date it was filled and some other

24 information. Would you agree?

25 A: I don't see the doctor, but it's got some information on

INV. JASON PATE - DIRECT BY MR. WHITE

1 it.

2 Q: Okay. It looks like the date -- it says the date filled
3 is June the 2nd, 2015?

4 A: Let me see it. Yes, sir.

5 Q: Is that the same day of the arrest?

6 A: Yes, sir.

7 Q: Is there any way that you could have gone back or
8 someone else -- and maybe they did and you don't know about
9 it -- could have gone back and taken what information we do
10 have on this bottle and maybe track it down as to who it was
11 prescribed for or anything like that?

12 A: I'm not sure, to be honest with you.

13 Q: Okay. You didn't do any of that?

14 A: I didn't do any of that.

15 Q: Okay. All right. But I guess that's possible, isn't
16 it?

17 A: I would imagine it would be possible.

18 Q: If somebody wanted to play detective, they could --
19 they've probably got enough information on this bottle to
20 find out a little bit more information about it, couldn't
21 they?

22 A: It's possible. Yes, sir.

23 Q: Okay. All right. And then State's Exhibit Number 3.
24 Is this the -- this is not from SLED. This is from the
25 county chemist from the jail, isn't it?

INV. JASON PATE - DIRECT BY MR. WHITE

1 A: Yes, sir.

2 Q: Do you need to look at it again?

3 A: Yes, sir. That's from the county chemist.

4 Q: Okay. All right. And it says on here that on 6/4/2015,
5 which is two days later, items were received from TJ
6 Christmas at the Florence County Sheriff's Department; is
7 that right?

8 A: If that's what it says. I turned it over to Inv.
9 Chamberlain.

10 Q: So it's possible he could have turned it over to Officer
11 Christmas?

12 A: Yes, sir.

13 Q: All right. And you didn't -- you didn't ask Mr. Jackson
14 where the pills came from, did you?

15 A: Not that I recall. No, sir.

16 Q: And you didn't ask him where the heroin came from?

17 A: No, sir.

18 Q: Okay. So you don't know that he didn't just buy it?
19 Either one?

20 MR. WHITE: Objection.

21 Q: If they were his? Is that right?

22 MR. WHITE: Objection, Your Honor. I would object on
23 relevance.

24 THE COURT: Overruled.

25 MR. SUGGS: I think it's relevant.

INV. JASON PATE - DIRECT BY MR. WHITE

1 THE COURT: I'll allow you to ask it.

2 MR. SUGGS: Thank you. I'll ask it a different way.

3 THE COURT: Okay.

4 MR. SUGGS: Okay.

5 BY MR. SUGGS:

6 Q: Assuming the -- the heroin and pills were Mr. Jackson's,

7 is there any way of knowing where -- did you ask him where he

8 got them from or how they were packaged when he bought them?

9 A: No, I didn't ask that.

10 Q: Okay.

11 A: No, sir.

12 Q: All right. Thank you.

13 MR. SUGGS: Thank you, Judge.

14 THE COURT: Yes, sir.

15 MR. SUGGS: Thank you, Jason.

16 THE WITNESS: Thank you.

17 MR. SUGGS: I appreciate that. Answer any questions

18 that -- he might have some more questions or the Court might

19 have some.

20 THE COURT: Anything on redirect?

21 MR. WHITE: Nothing further. Thank you, Investigator.

22 THE COURT: All right. Thank you very much, sir.

23 THE WITNESS: All right.

24 THE COURT: You may step down.

25 THE WITNESS: Thank you, Judge.

1 THE COURT: Do y'all need a break? We're going to take
2 a short break. Please have no conversation about the case
3 and, if you need any snacks or anything, just let Ann know.
4 Okay?

5 (WHEREUPON, the jury exited the courtroom at 2:43 p.m.)

6 MR. WHITE: This might be a good time, Your Honor, to
7 take up the matter of --

8 MR. JEPERTINGER: You're going to have to wait until the
9 defendant gets back.

10 MR. WHITE: Okay.

11 (WHEREUPON, there was a break in the proceedings from
12 2:44 p.m. until 2:49 p.m., after which the proceedings
13 resumed as follows.)

14 MR. WHITE: One issue, Judge.

15 THE COURT: Hey, Scott?

16 MR. WHITE: Scott, you want to --

17 MR. SUGGS: Okay.

18 MR. WHITE: The only thing I -- did we rule on the mere
19 tipster? Did we put that to bed? I can't --

20 MR. SUGGS: I don't know if we did.

21 MR. WHITE: What were the specifics of that? Just so I
22 --

23 MR. SUGGS: I'm almost too late now. This is --

24 THE COURT: Didn't I rule on it?

25 MR. JEPERTINGER: I don't think he did.

1 MR. SUGGS: I thought you said that -- that only -- not
2 all those details could come in.

3 THE COURT: I just -- I agree with Scott that anything
4 that -- everything prior to Mr. Jackson saying -- when --
5 when Officer Pate read him his Miranda and he said do you
6 have anything you want to say and he went, no, I ruled that
7 everything prior to that was admissible. Everything after
8 that -- any statements after that would be inadmissible.

9 MR. JEPERTINGER: But as to the identity of the
10 informant, the CI.

11 MR. WHITE: The reliable CI.

12 MR. JEPERTINGER: Yeah. We said it was a mere tipster
13 and we don't have to -- we don't think we have to provide his
14 identity because he --

15 THE COURT: No, I thought I agreed with that.

16 MR. JEPERTINGER: Okay.

17 MR. SUGGS: I thought so too.

18 MR. WHITE: I thought so too.

19 MR. JEPERTINGER: Okay. We just wanted to be clear.

20 THE COURT: Yeah.

21 MR. WHITE: Okay. All right.

22 MR. JEPERTINGER: Because that -- you know, we're not
23 Russian. We don't just stop people and say, you know --

24 THE COURT: Right.

25 MR. JEPERTINGER: So there had to be some sort of reason

1 for stopping him.

2 THE COURT: Okay.

3 MR. SUGGS: I thought you said that they couldn't put in
4 that we got a call, which by the way he said that on video
5 that it came from the clerk of the store, but that we
6 couldn't put in his name and all this other stuff.

7 THE COURT: His name and all those details --

8 MR. SUGGS: Yeah.

9 THE COURT: -- that were associated with that. Right.

10 MR. JEPERTINGER: Right. But he can say that we got a
11 -- we got a tip?

12 THE COURT: Yeah. We got a -- they got a tip.

13 MR. JEPERTINGER: We got a tip that there was drug
14 activity.

15 THE COURT: Correct. We got a tip that there was a
16 complaint of drug activity involving the Cruizers area in a
17 burgundy --

18 MR. JEPERTINGER: Altima.

19 THE COURT: Burgundy Altima.

20 (WHEREUPON, there was a break in the proceedings from
21 2:51 p.m. until 2:56 p.m., after which the proceedings
22 resumed as follows.)

23 THE COURT: All right. Are we ready to bring the jury
24 back out?

25 MR. WHITE: Yes, sir, Your Honor.

INV. ANGEL CLARK - DIRECT BY MR. WHITE

1 THE COURT: Okay. Let's bring them out.

2 (WHEREUPON, the jury entered the courtroom at 2:57 p.m.)

3 THE COURT: All right, everybody. We're ready to pick
4 up where we left off.

5 Mr. White?

6 MR. WHITE: Thank you, Your Honor. At this time, the
7 State calls Inv. Angel Clark.

8 THE COURT: All right. Inv. Clark, if you'd please come
9 be sworn.

10 THE CLERK: Place your left hand on the Bible and please
11 raise your right. Do you swear to tell the truth, the whole
12 truth, and nothing but the truth, so help you God?

13 THE WITNESS: I do.

14 THE CLERK: You may be seated in the witness box.
15 Please state your name for the record.

16 THE WITNESS: Angel Clark.

17 MR. WHITE: Thank you, Inv. Clark.

18 INV. ANGEL CLARK, being first
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. WHITE:

22 Q: If you could, tell us where are you employed?

23 A: Florence County Sheriff's Office.

24 Q: And how long have you been employed there?

25 A: For seven years.

INV. ANGEL CLARK - DIRECT BY MR. WHITE

1 Q: In what capacity are you currently employed?

2 A: I work in the narcotics division as a narcotics

3 investigator.

4 Q: How long have you been in that role?

5 A: For a year.

6 Q: Prior to that, did you have any other previous

7 experience in drug cases?

8 A: I was also on the PACE team, along with Inv. Pate.

9 Q: Now, on the date of the incident, June 2nd, 2015, were

10 you then working with the PACE team?

11 A: Yes, I was.

12 Q: Did you have an occasion to respond to the Cruizers

13 convenience store located at 1017 W. Darlington Street?

14 A: Yes, I did.

15 Q: Did you accompany Inv. Pate, who just testified?

16 A: Yes, I did.

17 Q: And when you arrived on scene, was the individual in

18 question here -- was he subsequently detained?

19 A: Yes, he was.

20 Q: Now, after you detained this individual, was a search of

21 the vehicle conducted?

22 A: Yes, sir, it was.

23 Q: And who was the officer who conducted that search?

24 A: I was.

25 Q: Now, if you could, please walk us through how you

INV. ANGEL CLARK - DIRECT BY MR. WHITE

1 conducted that search and what, if anything, you found during
2 your search?

3 A: During the search of the vehicle, I started on the
4 driver -- front driver's side. In the center console, I
5 located the bindles of which Inv. Pate described earlier that
6 was the -- had a substance inside that was consistent with
7 heroin. It was a tan substance.

8 Also, on the passenger side of the car, front passenger
9 side floorboard in between the door and the seat, there was
10 another bundle of that same substance packaged in the same
11 way. It was wrapped with a rubber band.

12 Q: How many bindles total did you recover from the vehicle?

13 A: It was multiple. I believe 50 in the console and 10 on
14 the passenger side.

15 Q: And what, if anything, did you do with those bindles
16 after you seized them?

17 A: They were taken to the hood of the vehicle, like the
18 rest of them, and placed in a Ziploc bag.

19 Q: Who took possession of the bindles that you recovered at
20 the scene?

21 A: Inv. Pate did, and I believe after that Inv. Chamberlain
22 did.

23 Q: To the best your knowledge, did Inv. Chamberlain take
24 possession of all the bindles, as well as the pills that were
25 recovered from the individual's person, as well as the

INV. ANGEL CLARK - DIRECT BY MR. WHITE

1 vehicle?

2 A: Yes.

3 MR. WHITE: Permission to approach, Your Honor?

4 THE COURT: Yes, sir.

5 BY MR. WHITE:

6 Q: Inv. Clark, I'm going to hand you what's been pre-marked
7 as -- for identification purposes only as State's Exhibit 2.
8 Please take a look at that for me.

9 A: Okay.

10 Q: Can you tell me what that is?

11 A: These are some of the bindles of the -- that were
12 located in the center console and in the passenger side of
13 the vehicle.

14 Q: Are the 60 bindles that you personally recovered from
15 the vehicle on the scene at the Cruizers store located in
16 that package?

17 A: Yes.

18 MR. WHITE: Thank you, Your Honor. I have nothing
19 further. Please answer any questions Mr. Suggs has.

20 THE WITNESS: Okay.

21 THE COURT: Mr. Suggs.

22 CROSS-EXAMINATION

23 BY MR. SUGGS:

24 Q: Officer? Investigator?

25 A: That's correct.

INV. ANGEL CLARK - CROSS BY MR. SUGGS

- 1 Q: Corporal?
- 2 A: Investigator.
- 3 Q: Investigator? Thank you. Inv. Clark?
- 4 A: Uh-huh.
- 5 Q: Have we met before?
- 6 A: I don't remember. I've met so many people, I'm -- yeah.
- 7 Q: Yeah. And you've been with the Sheriff's Department for
- 8 seven years?
- 9 A: That's correct.
- 10 Q: All right. Did you start out with Florence County?
- 11 A: Yes, I did.
- 12 Q: Straight from the Academy?
- 13 A: Yes. Straight from the Academy.
- 14 Q: Is that in Columbia?
- 15 A: Yes.
- 16 Q: Okay. How long do y'all have to train there before you
- 17 can be out on the street?
- 18 A: Whenever I went through the Academy, it was nine weeks.
- 19 I believe it was maybe twelve now.
- 20 Q: Proficient with a firearm?
- 21 A: Pretty good.
- 22 Q: Good. (Coughs.) Excuse me. We were talking a moment
- 23 about the chain of custody on the items which were seized.
- 24 A: Uh-huh.
- 25 Q: You collected some items, in addition to Jason

INV. ANGEL CLARK - CROSS BY MR. SUGGS

1 collecting some items?

2 A: That's correct.

3 Q: All right. And is it fair to say that Jason collected
4 the items in Mr. Jackson's pocket and you collected the items
5 which were in the vehicle?

6 A: That's fair to say.

7 Q: All right. And the pill bottle -- who collected that?
8 And that may have already been told to me and I've forgotten.

9 A: I don't recall.

10 Q: It wasn't you?

11 A: I can't say if it was or not. I don't recall.

12 Q: Okay. It's been two years?

13 A: Right.

14 Q: All right. And back to -- going back to the Academy and
15 experience, seven years is a long time.

16 A: Uh-huh.

17 Q: How long with the PACE team?

18 A: I did five years with the PACE team.

19 Q: All right. You said one year on something and I missed
20 that.

21 A: I did a year on patrol.

22 Q: Okay.

23 A: After patrol -- I believe I started patrol in 2010 --
24 the end of 2010. In February 2012, I went to the PACE team,
25 and last year was when I went the narcotics.

INV. ANGEL CLARK - CROSS BY MR. SUGGS

- 1 Q: Okay. Narcotics is where you are now?
- 2 A: Right.
- 3 Q: Gotcha.
- 4 A: For a year.
- 5 Q: All right. When you -- did anybody else search the
- 6 vehicle other than you?
- 7 A: No.
- 8 Q: All right.
- 9 A: Not that I recall.
- 10 Q: And I believe I saw you on the video searching and
- 11 pulling some things out of the vehicle?
- 12 A: Uh-huh.
- 13 Q: Was that a gas can that I saw you collect?
- 14 A: I believe there was a red gas can.
- 15 Q: All right. And I saw I think a box being pulled out
- 16 too?
- 17 A: Uh-huh.
- 18 Q: A small box?
- 19 A: I believe so, from the backseat.
- 20 Q: About the same size as the gas can?
- 21 A: I can't say.
- 22 Q: Other -- and you said that you found 50 bindles in the
- 23 console and 10 others somewhere else?
- 24 A: Yes.
- 25 Q: Where was that other place?

INV. ANGEL CLARK - CROSS BY MR. SUGGS

1 A: It was on the passenger side -- front passenger side of
2 the car in between the door and the seat in the floorboard.
3 Q: Okay. On the floorboard?
4 A: Right.
5 Q: Not under the seat?
6 A: No.
7 Q: But between the doorjamb and the seat on the passenger
8 side?
9 A: It was in the floorboard of it.
10 Q: Floorboard?
11 A: Yeah. In between the door and the seat.
12 Q: All right. Not where it would fall out when the door
13 was opened?
14 A: No.
15 Q: But on the floorboard?
16 A: Correct.
17 Q: Was that -- was that in a -- you said bindles. Is it
18 ten bindles?
19 A: Correct.
20 Q: Like the little BC looking --
21 A: Yeah. The --
22 Q: Cellophane or something?
23 A: The wax paper --
24 Q: Wax?
25 A: -- slips. Yeah. Just as this right here.

INV. ANGEL CLARK - CROSS BY MR. SUGGS

1 Q: Okay. Now -- all right. So the items that were taken
2 out of the console were more than what was taken from the
3 floorboard on the passenger side?

4 A: Yeah.

5 Q: All right. And so that would be about 60?

6 A: Yes.

7 Q: Okay. And when that evidence was collected, did that
8 get co-mingled in with the evidence that Jason collected?

9 A: They are all kept separate.

10 Q: Okay.

11 A: To the best of my knowledge, whenever we handle them,
12 they are all kept separate.

13 Q: All right. On this -- is this the heroin in State's
14 Number 2?

15 A: That's correct.

16 Q: All right. And it's hard to see through this BEST pack,
17 but it looks like there are multiple individual zip-top
18 plastic baggies in the BEST pack?

19 A: Uh-huh.

20 Q: Is that right? Is that a yes? You have --

21 A: Yes.

22 Q: -- to answer one.

23 A: Yes.

24 Q: Okay. Okay. And -- and there's some individual writing
25 on the Goody powder packs that was discussed by Officer Pate

INV. ANGEL CLARK - CROSS BY MR. SUGGS

1 and I; correct?

2 A: I guess so.

3 Q: You didn't hear that?

4 A: Yeah.

5 Q: Did you hear that testimony?

6 A: Yes, I did.

7 Q: Okay. And so you agree with that?

8 A: That there's individual writing on the packs?

9 Q: Like, numbers written on the wax paper?

10 A: Uh-huh.

11 Q: Is that a yes?

12 A: Yes.

13 Q: You have to answer orally.

14 A: Yes.

15 Q: Okay. I'm not trying to trick you. I just --

16 A: Oh, I'm not worried about that.

17 Q: Okay. All right. I couldn't anyway, could I?

18 A: You could try.

19 Q: Okay. Is there other writing on the outside of the

20 individual Ziploc bags?

21 A: I don't recall. I mean at the time -- I don't recall.

22 Q: Did you --

23 A: I mean I can look at that and tell you.

24 Q: Okay. Well, did you do any of the writing?

25 A: No, I didn't.

INV. ANGEL CLARK - CROSS BY MR. SUGGS

1 Q: Okay. Can you see how many Ziploc bags are in this BEST
2 pack? Can you tell?

3 A: It's multiple. I can't really tell. They're kind of
4 piled on top of each other.

5 Q: So more than -- more than three it looks like. Are they
6 -- why are they packaged like that?

7 A: I couldn't tell you.

8 Q: Would it -- could it be that the items taken from the
9 shirt pocket and the items taken from the console and the
10 items taken from the floorboard would be in separate Ziploc
11 bags to -- to make sure you identify where these items came
12 from?

13 A: It's a possibility.

14 Q: Okay. So rather than dumping a whole thing in one bag
15 and kind of co-mingling it together --

16 A: Uh-huh.

17 Q: In this way, you would know what came from what source;
18 right?

19 A: That's correct.

20 Q: Okay. Do you know whether or not it was done like that
21 or that's just a guess that we're making?

22 A: I don't know if it was done like that. I didn't package
23 it.

24 Q: Okay.

25 A: I retrieved it from the car.

INV. ANGEL CLARK - CROSS BY MR. SUGGS

1 Q: Okay. And your involvement with handling that went from
2 the scene to -- directly to Officer Chamberlain?

3 A: Officer -- Inv. Pate at the time and I believe Inv. Pate
4 gave it to Inv. Chamberlain.

5 Q: All right. So going up, I guess, the chain -- the chain
6 of command so to speak. I don't know. Do you outrank him or
7 does he outrank you?

8 A: No. We're all the same rank.

9 Q: The same? Okay.

10 A: During that time, Inv. Pate and I -- we were corporals
11 on the PACE team and Inv. Chamberlain was still as
12 investigator, as he is now.

13 Q: Is an investigator higher than a corporal?

14 A: Yes.

15 Q: All right. I don't know. So you would've turned over
16 any evidence that you found in the car to Officer Pate and
17 then he would presumably turn it on over to Officer
18 Chamberlain?

19 A: That's correct.

20 Q: All right. You would not skip over Officer Pate and go
21 straight to Chamberlain? Not in this case?

22 A: It wasn't that I had to follow a chain of command there.
23 I was searching the vehicle. I placed the substance on the
24 hood. From there, Inv. Pate took it and packaged it.

25 Q: Okay. And you saw him do that?

INV. ANGEL CLARK - CROSS BY MR. SUGGS

1 A: Yes.

2 Q: Okay. Well, it's important, isn't it, to be able to

3 trace the origin --

4 A: That's correct.

5 Q: -- of specific items?

6 A: That's correct.

7 Q: All right. And you agree with me?

8 A: Uh-huh.

9 Q: Yes?

10 A: Yes.

11 Q: When you searched the vehicle, did you ask Mr. Jackson

12 for permission to search?

13 A: No, I did not.

14 Q: Okay. And did you have any involvement in -- in

15 weighing any of the heroin recovered?

16 A: No, I did not.

17 Q: And did you have any involvement in counting the number

18 of tablets which were recovered?

19 A: No, I did not.

20 Q: And all the evidence that was recovered that day is

21 either in one of these two packs?

22 A: To the best of my knowledge, yes.

23 Q: All right. And that would be consistent with State's

24 Exhibit Number 3, which is a written typed report?

25 A: That's correct.

INV. ANGEL CLARK - REDIRECT BY MR. WHITE

1 MR. SUGGS: Okay. Thank you.

2 Nothing further, Your Honor. Thank you, Your Honor.

3 Answer any questions that --

4 THE COURT: Any redirect?

5 MR. WHITE: Just one question, Your Honor.

6 THE COURT: Yes, sir.

7 REDIRECT EXAMINATION

8 BY MR. WHITE:

9 Q: Inv. Clark, why didn't you ask for permission to search
10 Robert Jackson's car?

11 A: We had probable cause to search the vehicle from the
12 substance that was in plain view located in Mr. Jackson's
13 shirt pocket.

14 Q: Did Mr. Jackson turn that particular item over to you?

15 A: Yes, he did.

16 MR. WHITE: Thank you, Your Honor. Nothing further.

17 THE COURT: All right. Thank you, ma'am. You may step
18 down.

19 You may call your next witness.

20 MR. WHITE: Thank you, Your Honor. At this time, the
21 State would call Inv. Jake Chamberlain.

22 THE COURT: Inv. Chamberlain, if you'd please come
23 around to be sworn, sir.

24 THE CLERK: Place your left hand on the Bible and please
25 raise your right. Do you swear to tell the truth, the whole

INV. JAKE CHAMBERLAIN - DIRECT BY MR. WHITE

1 truth, and nothing but the truth, so help you God?

2 THE WITNESS: Yes, ma'am.

3 THE CLERK: You may be seated in the witness box and
4 please state your name for the record.

5 THE WITNESS: Jake Chamberlain.

6 MR. WHITE: Thank you, Inv Chamberlain.

7 INV. JAKE CHAMBERLAIN, being
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. WHITE:

11 Q: If you could, tell us where you're employed?

12 A: The Florence County Sheriff's Office.

13 Q: And how long have you been employed there?

14 A: About nine and a half years.

15 Q: In what capacity are you currently employed?

16 A: I'm currently a narcotics investigator.

17 Q: And how long have you been in that role?

18 A: Approximately three years.

19 Q: Have you had any education, training or specialized
20 seminars or anything like that of that nature?

21 A: Yes, sir.

22 Q: The Academy?

23 A: I was on the PACE team before, as were Pate and Clark.

24 I was on the PACE team for five years, and I've been to
25 countless training classes, undercover drug investigation to

INV. JAKE CHAMBERLAIN - DIRECT BY MR. WHITE

1 drug interdiction to anything you can imagine as far as
2 drugs.

3 Q: Very good. And on June 2nd, 2015, in what role were you
4 employed at that time?

5 A: As a narcotics investigator.

6 Q: And at that time, did you have occasion to respond to
7 the Cruizers convenience store on Darlington Street?

8 A: Yes, sir, I did.

9 Q: And if you could, tell us, as an investigator, what's
10 your role -- or a narcotics investigator to be specific,
11 what's your role when you arrive on scene?

12 A: When I would arrive on scene, it would be to more or
13 less assess the situation, see what the situation is, what --
14 what do we have as far as if -- if another officer stopped
15 the car. Basically, it would be to continue an investigation
16 in the long run.

17 Q: And what did you have in this particular case?

18 A: As far as?

19 Q: When you assessed the scene, what was your assessment?

20 A: The defendant, Mr. Jackson, had obviously 110 wax paper
21 bags of heroin and 30 -- 30 pills of one type, of Xanax I
22 believe, and four pills of Endocet, which is -- which is also
23 a narcotic. Obviously, in my assessment, it would be that
24 Mr. Jackson was distributing narcotics.

25 Q: Now, if you could, you named all the narcotics that you

INV. JAKE CHAMBERLAIN - DIRECT BY MR. WHITE

1 -- were on scene. Did you recover all those items? Did you
2 yourself take possession of those items?

3 A: Yes, sir. And that's -- that's commonly what we do. As
4 a narcotics investigator, I would take possession of the --
5 of any narcotics, any currency, any -- anything to
6 involvement with the case as far as charging the defendant.

7 Q: Did you take possession of any currency in this case?

8 A: Yes, sir, I did.

9 Q: And how much currency?

10 A: It was -- let me look back to give you an exact amount.
11 It was a total of \$1,485, according to my report.

12 Q: Now, all the items that were seized from the defendant,
13 both his person and his vehicle -- did you take possession of
14 all those items?

15 A: Yes, sir, I did.

16 Q: What did you do with them at that time?

17 A: After we cleared the scene, I transported Mr. Jackson to
18 the Florence County Detention Center. The items were secured
19 in my vehicle. He was transported to the detention center
20 and I transferred the items to a -- to our narcotics hold ,
21 bin.

22 Q: And what exactly is a narcotics hold bin?

23 A: Everybody knows what you drop your mail in at the post
24 office when you don't want to go in. You drive through. We
25 actually have two of those in a secured office which is

INV. JAKE CHAMBERLAIN - DIRECT BY MR. WHITE

1 located inside the Sheriff's Office. It's alarmed. It's key
2 cards to get in. Video cameras inside the office. And we
3 actually have two of them. One is our narcotics hold bin and
4 the other would be the evidence bin in which after it's
5 prepared to go to the evidence room or to -- say, to the
6 chemist for testing.

7 Q: Now, when you dropped these items, did you drop them as
8 they were? Or did you do anything with them before you
9 dropped them in the narcotics hold bin?

10 A: Yeah. They were -- I mean, obviously, they were placed
11 in what we call Zip-Loc evidence baggies. Similar to this is
12 what we would place them in and then it was all together put
13 inside the hold bin.

14 Q: Very good.

15 MR. WHITE: Your Honor, permission to approach the
16 witness?

17 THE COURT: Yes, sir.

18 MR. WHITE: Thank you, Judge.

19 BY MR. WHITE:

20 Q: At this time, I'm going to show you what's been marked
21 as State's Exhibit -- for identification purposes only as
22 State's Exhibit 2, as well as State's Exhibit 4. Do you
23 recognize those items?

24 A: Yes, sir, I do.

25 Q: How do you recognize them?

INV. JAKE CHAMBERLAIN - DIRECT BY MR. WHITE

1 A: The -- this is the BEST pack and the contents of which I
2 filled out and submitted and logged into evidence and
3 submitted for testing.

4 Q: Both State's Exhibit 2 there and 4 -- are those items
5 that you recovered from the scene and transported to a
6 narcotics holding bin?

7 A: Yes, sir.

8 Q: Okay. Now, how long did those items remain in the
9 narcotics holding bin?

10 A: Like I said, we -- I logged them in that afternoon when
11 he was taken, and they were logged into the BEST pack the
12 next day.

13 Q: So the next day, you logged them into the BEST pack?

14 A: Yes, sir.

15 Q: And I think -- I believe Inv. Pate may have testified to
16 this earlier. If you could, explain to us what is a BEST
17 pack?

18 A: As you can see here -- if y'all can see the -- this, I
19 guess, green line here and this is -- this will actually
20 fold. This -- this plastic with the writing on it actually
21 folds out to about this big, basically the size of a sheet of
22 paper, and what it is -- it's a -- it's basically a chemical
23 testing request. We log any narcotics into this bag and, as
24 you see here, it would have the date sealed where I -- I
25 signed my name and printed my name and placed the case number

INV. JAKE CHAMBERLAIN - DIRECT BY MR. WHITE

1 on it. And basically, it's -- the actual paper from the
2 inside would have Mr. Jackson's information, the incident
3 location where it occurred, the date it occurred, and the
4 charges that were placed against him. This --
5 Q: How --
6 A: I'm sorry. Go ahead.
7 Q: I'm sorry. Go ahead.
8 A: Okay. I was about to say it's -- it's a tamper-proof
9 BEST pack is what it's considered. It's -- it's sealed.
10 This -- this actually stands up and you pull a piece of paper
11 off and it folds down to where it's sealed and then, of
12 course, the chemist would -- would unseal it.
13 Q: Now, those items -- you said you placed them in the
14 general evidence bin?
15 A: Yes, sir.
16 Q: At what point did you do that?
17 A: That would have been the following day.
18 Q: And is that the last time until today that you've made
19 contact with these items?
20 A: Yes, sir.
21 MR. WHITE: I beg the Court's indulgence, Your Honor.
22 THE COURT: Yes, sir.
23 MR. WHITE: Inv. Chamberlain, thank you. Please answer
24 any questions defense counsel may have.
25 THE WITNESS: Yes, sir.

INV. JAKE CHAMBERLAIN - CROSS BY MR. SUGGS

1 THE COURT: Cross?

2 MR. SUGGS: Yes, sir, Judge.

3 CROSS-EXAMINATION

4 BY MR. SUGGS:

5 Q: What's the J stand for again?

6 A: Jake.

7 Q: Jake. Jake. I'm sorry. I knew that, and I've known
8 that for a long time. I just couldn't remember. I
9 apologize, Jake.

10 A: Yes, sir.

11 Q: On the chain of custody, looking at -- I don't think
12 it's been introduced into evidence, but you know the form I'm
13 talking about; correct?

14 A: Yes, sir. The evidence log sheet?

15 Q: Yes, sir.

16 A: Yes, sir.

17 Q: That's it. And are you referring to the same thing I
18 am? May I see?

19 A: I would assume.

20 Q: Yep. Okay. On that document -- it's not been marked,
21 but we won't spend a lot of time on it. I see where -- I see
22 your name on the sheet several times; is that right?

23 A: Yes, sir.

24 Q: All right. From subject to you on 6/2 and then from
25 you, you took it after you had it and deposited it in the

INV. JAKE CHAMBERLAIN - CROSS BY MR. SUGGS

1 narcotics hold bin on the same day?

2 A: Yes, sir.

3 Q: All right. And the very next day, you retrieved it from
4 the narcotics bin and placed it in the -- another bin?

5 A: I retrieved it from our hold bin and --

6 Q: Right.

7 A: -- then put it in the bin beside it, which is the
8 evidence bin, which would be our evidence personnel have
9 access to remove it and send it for testing.

10 Q: Why would -- why would you -- is that why you would do
11 that so it would be made available for the expert?

12 A: No, sir. And it's -- it's a -- I'd be glad to explain
13 it to you, if that's fine.

14 Q: Sure.

15 A: It's a common practice for us. Our evidence hold bin is
16 just as secured as the evidence narcotics bin. They sit
17 side-by-side. And as I say, it's a common practice. The --
18 I put the items there and, say, in instance in this case,
19 you've got numerous narcotics that you're going to --
20 obviously, you've tallied, but you're going to want to
21 retally. You're going to retally the currency that would
22 actually have to be logged in or taken to the bank for to
23 deposit the money the next day.

24 Therefore, to easier access the items that were -- that
25 were seized, we place -- I place in the hold bin. And by

INV. JAKE CHAMBERLAIN - CROSS BY MR. SUGGS

1 easier access, I mean that the techs -- the tech or evidence
2 personnel would not retrieve the items from the hold bin.
3 They would retrieve them from the evidence bin.

4 Q: All right. How long have -- how many times have you
5 testified in court?

6 A: Numerous.

7 Q: Okay. And I noticed that when I ask you a question, you
8 tend to turn to the jury and respond with an answer; is that
9 right?

10 A: That's correct.

11 Q: Is that something that you were taught to do?

12 A: I -- I feel like they are the ones hearing what I have
13 to say; so I feel like it's proper for me to address them.

14 Q: Well, I appreciate that, but would you mind responding
15 to me because a lot of times I have to look at your face in
16 order to determine whether or not to -- not that I don't
17 believe you, but it helps me to determine what my next
18 question might be.

19 A: Well, I would prefer --

20 Q: I don't tell --

21 A: -- to address the jury.

22 MR. WHITE: Your Honor, with all due respect, I'd ask
23 that the witness be able to address the jury.

24 THE COURT: The witness -- you may address the jury.

25 THE WITNESS: Thank you, Your Honor.

INV. JAKE CHAMBERLAIN - CROSS BY MR. SUGGS

1 THE COURT: I think that's appropriate for him to
2 address the jury.

3 MR. WHITE: Thank you, Your Honor.

4 MR. SUGGS: All right.

5 BY MR. SUGGS:

6 Q: So after you placed it in the narcotics bin on June the
7 3rd, someone else -- it looks like Christmas -- went to the
8 evidence bin and retrieved it; is that correct?

9 A: Yes, sir. That would be correct.

10 Q: All right. And then on the next line, it shows that --
11 that he took it to or gave it to someone else, whose
12 signature I cannot read, on that same day. Do you recognize
13 that signature right under his?

14 A: You would have to -- we'd have to ask Mr. Christmas
15 that. I wasn't --

16 Q: Okay.

17 A: -- involved in that part.

18 Q: Okay. And after that, I don't -- I don't see your
19 involvement anymore on this -- on this chain; is that right?

20 A: That would be correct, sir.

21 Q: Okay. Now, the -- what's been marked as State's --
22 State's 3, that's got several references to items like 2.1,
23 2.2, things like that; is that right?

24 A: I don't understand what -- what do you mean?

25 Q: On the, I guess, reference markers or numbers that make

INV. JAKE CHAMBERLAIN - CROSS BY MR. SUGGS

1 reference to a specific item?

2 A: As far as that goes, you would have to ask our chemist

3 --

4 Q: Okay.

5 A: -- Mr. Hansen. I can't -- I can't explain the way he's
6 listed them.

7 Q: But you see that though, don't you?

8 A: Yes, sir, I do.

9 Q: Okay. May I look at yours again? I just want to double
10 check and make sure. All right. Where it says Item 2, do
11 you see that?

12 A: Yes, I do.

13 Q: And that says just simply Ziploc bag or something very
14 similar to that?

15 A: It says Ziploc bag containing -- dot, dot, dot.

16 Q: Okay. And then -- you don't mind sharing this with me,
17 do you?

18 MR. WHITE: I'd object on the grounds of hearsay. Inv.
19 Chamberlain did not produce this document. The chemist, who
20 we plan to call later --

21 MR. SUGGS: Is this not in evidence or not?

22 THE COURT: It's -- I was going to ask that question.
23 That's a document that's not in evidence and it's being
24 published to the jury.

25 MR. WHITE: That's right. It's just identification

INV. JAKE CHAMBERLAIN - CROSS BY MR. SUGGS

1 purposes only.

2 MR. SUGGS: Oh, I thought it was in evidence.

3 THE COURT: Well, no. What we've done is everything has
4 been pre-marked --

5 MR. SUGGS: Just been pre-marked. Okay.

6 THE COURT: -- for identification purposes at this
7 point.

8 MR. SUGGS: Gotcha, Judge.

9 THE COURT: You haven't moved anything in yet, have you?

10 MR. WHITE: There was one item.

11 THE COURT: Other than the video.

12 MR. WHITE: The video is the one that we did publish to
13 the jury, Judge.

14 THE COURT: Correct.

15 MR. WHITE: Yes, sir.

16 THE COURT: All right.

17 MR. SUGGS: Okay.

18 THE COURT: Yeah.

19 MR. SUGGS: All right. Well, I can wait on the chemist

20 --

21 THE COURT: All right.

22 MR. SUGGS: -- for those questions, Judge.

23 BY MR. SUGGS:

24 Q: He mentioned -- you took some -- did you -- you didn't

25 -- you were not involved in any part of the -- the arrest,

INV. JAKE CHAMBERLAIN - CROSS BY MR. SUGGS

1 were you? Did you come up later in this matter?

2 A: I would -- I would actually be the arresting officer.

3 Q: Okay. All right. At what point did you come up on the

4 scene at Cruizers?

5 A: I'd -- we can look back at the video. I can't say an

6 exact time.

7 Q: Did you have a beard then?

8 A: I think they were still -- sir?

9 Q: I'm sorry. Did you have a beard then on the video in

10 2015?

11 A: I had a shorter beard.

12 Q: Okay.

13 A: That's me in the orange Clemson hat that y'all seen

14 earlier.

15 Q: Ah. I just didn't recognize you. I'm sorry. Okay.

16 Do you know about the money that was taken from Mr.

17 Jackson as well?

18 A: Yes, sir, I do.

19 Q: All right. And did -- did he tell you --

20 MR. WHITE: Your Honor, may we approach?

21 THE COURT: Yes, sir.

22 (WHEREUPON, a bench conference was held in the presence

23 of the jury but out of the hearing of the jury as

24 follows.)

25 MR. WHITE: I don't know. I don't know where this is

INV. JAKE CHAMBERLAIN - CROSS BY MR. SUGGS

1 going, but I don't really like where he's headed. Fifty
2 dollars of the money -- maybe we need to take this up outside
3 the presence of the jury.

4 MR. JEPERTINGER: Also, all this thing about the money
5 would have come in post Miranda, which we can't get in --

6 MR. WHITE: That's correct.

7 MR. JEPERTINGER: -- since he said no.

8 MR. WHITE: And then 50 of it is co-mingled funds, which
9 we ruled out under the mere tipster holding. So really any
10 asking where this money came from --

11 MR. SUGGS: Well, I wasn't sure of the timing. I
12 thought there was a mention of that before of the money.

13 MR. JEPERTINGER: Did Bazen pull it out of his pocket?

14 MR. SUGGS: Okay. I can move on. I just --

15 THE COURT: Yeah.

16 MR. SUGGS: I won't ask anymore questions on that. Was
17 that after? Okay. Well, then I will -- okay. We'll stay
18 away from that. That's fine.

19 MR. WHITE: Thank you, Judge.

20 THE COURT: Okay. Thank you.

21 (WHEREUPON, the bench conference ended and the
22 proceedings resumed as follows.)

23 BY MR. SUGGS:

24 Q: Did you weigh any of these items at the scene?

25 A: I -- I weighed the items prior to logging them into

INV. JAKE CHAMBERLAIN - CROSS BY MR. SUGGS

1 evidence.

2 Q: That wasn't at the scene though, was it?

3 A: Not at the scene. No, sir.

4 Q: Was that later on at the Sheriff's Department?

5 A: That's correct.

6 Q: All right. And did you weigh these items individually

7 depending upon where they were -- from where they were

8 retrieved?

9 A: I'd like to explain that.

10 Q: Well, I mean yes or no?

11 A: Yes, but can --

12 THE WITNESS: May I explain?

13 THE COURT: You can say --

14 MR. SUGGS: Yes.

15 THE COURT: You can answer the question and then explain

16 your answer.

17 THE WITNESS: Okay.

18 BY MR. SUGGS:

19 A: What we would normally do is pack all of the heroin that

20 was located, packaged. The -- I can't weigh the individual

21 amount of actual narcotic inside the bag. That would require

22 me to open the individual bags, which would expose me to all

23 types of things, such as, you know, you hear about Fentanyl

24 on TV, and even officers get sick or dying from -- from

25 coming in contact with these narcotics.

INV. JAKE CHAMBERLAIN - CROSS BY MR. SUGGS

1 So what I would do would be to take a field weight,
2 which is commonly what we would do, and I would -- and as far
3 as these would go, the heroin was entered in. The packages
4 were not weighed individually by me. Again, that would be
5 reference to our chemist, but the -- but the -- I logged them
6 in as 110 wax paper bags, which were separate. There's no
7 way for me to actually weigh the product without exposing
8 myself to the chemicals contained inside of it.

9 Q: Thank you. Thank you, Jake, and I'm sorry. I may have
10 not artfully expressed my question --

11 A: Yes, sir.

12 Q: -- the way I should have. I wasn't really asking if you
13 had opened any of these individual wax paper samples or
14 whatever. What I was asking was -- and I might break it
15 down. You say you have 110 wax paper items?

16 A: Containing a powder substance.

17 Q: Right.

18 A: Yes, sir.

19 Q: Okay. So we've got 70 here and we have 30 here and we
20 have 10 here?

21 A: We got 50 here, 50 here, and 10 here, if that's the way
22 you're referring to it. I believe it was.

23 Q: Okay. Well, either way. Did --

24 A: Fifty in his pocket, 50 in the console, and 10 on the
25 floorboard.

INV. JAKE CHAMBERLAIN - CROSS BY MR. SUGGS

1 Q: Okay. Well, that's a little better. Okay. So did --
2 did you weigh -- say if I were to give you the 50 from the
3 pocket, would -- did you ever take the 50 bindles without
4 opening them, put it on a scale and then weigh it with the
5 weight of the paper just to get an idea -- a general idea of
6 what it weighed? Was that ever done?
7 A: There's no way I could get a general idea. If you
8 reference my report, I put a total weight --
9 Q: Okay.
10 A: -- that I logged in, and that was from everything
11 collected from the scene.
12 Q: Okay.
13 A: But the only weight I can go off of is the complete
14 packaging weight, which is not particularly accurate.
15 Q: Okay. All right. But in any event, when -- it's
16 generally going to be assigned individual weights depending
17 on which package it's coming from?
18 A: I can't answer that question.
19 Q: That's fine.
20 A: Our chemist unpackages them --
21 Q: We have --
22 A: -- and weighs them like that.
23 Q: We have the chemist here, don't we? We'll --
24 A: That would be -- I understand. I can't answer it.
25 Q: That's okay. All right.

INV. JAKE CHAMBERLAIN - REDIRECT BY MR. WHITE

1 A: Thank you, sir.

2 MR. SUGGS: Thank you, Jake.

3 THE WITNESS: Yes, sir.

4 MR. SUGGS: Answer any questions that Mr. White has for
5 you.

6 THE COURT: Anything on redirect?

7 MR. WHITE: Briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. WHITE:

10 Q: Inv. Chamberlain, how many separate packages were
11 recovered?

12 A: As regards to heroin?

13 Q: Yes, sir.

14 A: 110.

15 Q: How -- and based on your experience, your knowledge, and
16 your training, how is heroin usually sold?

17 A: The heroin is usually distributed as in what we're
18 calling a bindle, which is one wax paper bag, as they refer
19 to like a Goody Powder would be in. That's a bindle. On the
20 street, you would hear it called a bag. I need a bag. One
21 bag is usually sold for approximately \$20.

22 MR. WHITE: Thank you, Your Honor. I have nothing
23 further.

24 THE COURT: All right. Thank you very much, sir.

25 THE WITNESS: Yes, sir.

DEPUTY TJ CHRISTMAS - DIRECT BY MR. WHITE

1 THE COURT: You may step down.

2 All right. You may call your next witness.

3 MR. WHITE: Thank you, Your Honor. At this time, the

4 State would call Deputy TJ Christmas.

5 THE COURT: All right. Deputy Christmas, if you'd

6 please come around to be sworn, sir.

7 THE CLERK: Place your left hand on the Bible and raise

8 your right hand. Do you swear to tell the truth, the whole

9 truth, and nothing but the truth, so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Please be seated in the witness box and

12 state your name for the record.

13 THE WITNESS: TJ Christmas.

14 DEPUTY TJ CHRISTMAS, being

15 first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. WHITE:

18 Q: Deputy Christmas, where are you employed?

19 A: Florence County Sheriff's Office.

20 Q: And how long have you been employed there?

21 A: About two and a half years.

22 Q: And what is your current position with the Florence

23 County Sheriff's Office?

24 A: Currently, I work with the Attorney General's Office

25 Internet Crimes against Children Task Force and I'm an

DEPUTY TJ CHRISTMAS - DIRECT BY MR. WHITE

1 electronic forensics technician.

2 Q: Now, I want to rewind, let's say from July 2015 to 2016.

3 Where were you employed at that time?

4 A: Florence County Sheriff's Office.

5 Q: And what was your role at that time?

6 A: I was the evidence technician.

7 Q: Are you able to speak generally about how evidence is
8 logged and stored --

9 A: Yes, sir.

10 Q: -- at the Sheriff's Office? If you could, could you do
11 that for us?

12 A: Okay. Are we -- are we talking about pertaining to
13 drugs or just general evidence?

14 Q: Let's -- let's keep it specific to drugs, if you don't
15 mind.

16 Q: Okay. According to what kind of drugs are coming into
17 the evidence room at the Sheriff's Office, if it's going to
18 be cocaine, crack cocaine, heroin in this case or narcotics,
19 pills of any kind, they would come in in a BEST pack, which
20 is this item that you're seeing here. It comes in in this
21 secured envelope and it also comes inside a manila envelope,
22 kind of like a filing envelope, that is also secured with a
23 metal clasp. Okay?

24 Once the deputy, investigator, whoever it is that seizes
25 the drugs from the suspect or defendant in this case -- once

DEPUTY TJ CHRISTMAS - DIRECT BY MR. WHITE

1 they get it, they would put it in that BEST pack. It would
2 be sealed up and, as Inv. Chamberlain expressed to y'all a
3 few minutes ago, he writes the date that he sealed it and
4 puts his initial or his name on it. Okay?

5 Once he drops it into -- in this case, since it was a
6 narcotics case, it goes into the narcotics mailbox. Once it
7 goes into that mailbox, we know that it's ready to come to
8 evidence. So we would pick it up and we would log it into
9 the system at the Florence County Sheriff's Office as
10 evidence, in this case a BEST pack, and we would put the
11 number on there and we would describe out what is in it,
12 whether it be pills and heroin or crack cocaine or whatever,
13 and then we would -- the evidence personnel would not open
14 that because it is sealed.

15 So as far as getting a weight or anything like that, we
16 don't have anything to do with that. We just get it, enter
17 it into evidence, and get it ready to go to wherever it needs
18 to go. In this case, it would've been to the lab for our
19 chemist to do his chemical analysis on it.

20 Q: And that's a procedure that's followed in each and every
21 case?

22 A: It is.

23 Q: As it pertains to drugs?

24 A: It is.

25 MR. WHITE: If I could, Your Honor, permission to

DEPUTY TJ CHRISTMAS - DIRECT BY MR. WHITE

1 approach the witness?

2 THE COURT: Yes, sir.

3 BY MR. WHITE:

4 Q: At this time, Deputy Christmas, I want to show you
5 what's been pre-marked for State's identification purpose
6 only as State's Exhibit 5. If you could -- let me move some
7 things out your way.

8 A: Okay.

9 Q: Take a look at that for me?

10 A: Okay.

11 Q: And what is that?

12 A: This would be the Florence County Sheriff's Office
13 official evidence log sheet. This would be detailed out item
14 by item what is being logged into evidence by the
15 investigator, in this case Inv. Chamberlain.

16 In this case right here, it says BEST pack containing 30
17 blue oval pills, four white oblong pills, and 110 wax paper
18 bags containing a powdery substance. The second item would
19 be a medicine bottle, and the third item would have been a
20 red cell phone.

21 Q: And I think you addressed it, but what identifying
22 markers appear on that document?

23 A: The date that the investigator logged it in. It would
24 have his name, the agency case number, which would be the
25 Florence County Sheriff's Office case number, a reason. In

DEPUTY TJ CHRISTMAS - DIRECT BY MR. WHITE

1 this case, it was his individual caseload number. It would
2 have the suspect's name on it.

3 It also has the location that the evidence was seized
4 from. It has the description, which is what I read a minute
5 ago, and then it's got the chain of custody, which is -- from
6 start to finish in this case, it was from the defendant or
7 subject to Inv. Chamberlain. Inv. Chamberlain put that line
8 in there, puts his date of when he took it, and then he puts
9 it into the narcotics hold bin, which is another line, and
10 then from the hold bin to the evidence bin. I mean it's
11 broken down step-by-step every time a piece of evidence is
12 handled from the time that the investigator actually takes
13 possession of it.

14 Q: Now, the evidence log sheet and what's been marked as
15 State's Exhibit 2, which is the BEST pack, do they -- are
16 they mutually exclusive? I mean do they go hand-in-hand is
17 what I guess I'm saying? Does the evidence log sheet
18 accompany the BEST pack?

19 A: There -- there would be -- there would be a log sheet
20 with every BEST pack.

21 Q: Okay.

22 A: Anything that is logged into the Florence County
23 Sheriff's Office evidence is going to have a log sheet with
24 it.

25 Q: Very good. I'm going to show you again what has been

DEPUTY TJ CHRISTMAS - DIRECT BY MR. WHITE

1 marked as State's Exhibit 2 for identification purposes only.

2 The -- the identifying markers that we just discussed -- do

3 they match? Does the log sheet match the BEST cat --

4 BEST kit? Excuse me. Does the BEST kit match the log sheet?

5 A: This says -- the log sheet says BEST kit F-C-0-0-0-8-4-2

6 and the number that is actually on the envelope right here

7 says F-C-0-0-0-8-4-2. So yes, I would say that these match.

8 Q: Thank you.

9 MR. WHITE: Your Honor, at this time, the State would
10 move State's Exhibit 5 to be admitted into evidence.

11 THE COURT: Any objection?

12 MR. SUGGS: Which one is 5?

13 MR. WHITE: That's the evidence log.

14 THE COURT: It's the evidence log sheet.

15 MR. SUGGS: Oh. No objection.

16 THE COURT: All right. Without objection, State's 5 is
17 in evidence.

18 (WHEREUPON, State's Exhibit Number 5, evidence log
19 sheet, was admitted into evidence.)

20 MR. WHITE: Thank you, Your Honor.

21 BY MR. WHITE:

22 Q: Now, Deputy Christmas, I think we've got to the point
23 where we get to the -- right before the BEST pack is
24 submitted to the lab for chemical analysis.

25 A: Uh-huh.

DEPUTY TJ CHRISTMAS - DIRECT BY MR. WHITE

1 Q: How is that BEST pack submitted and then transported to
2 the lab for chemical analysis?

3 A: When -- the lab is actually contained inside the
4 Sheriff's Office. So it's on-site. It doesn't have to leave
5 the Sheriff's Office. It actually leaves out of the secured
6 evidence room and goes straight into the Florence County
7 Sheriff's Office lab.

8 Lieut. Hansen, who I'm sure y'all will see later on, is
9 our county chemist. He does all of our drug analysis for us,
10 and he actually comes down to the evidence room when he's
11 ready to get something and says, TJ, I'm ready to pick up all
12 your BEST kits. We fill out what is now in evidence as a log
13 sheet to include his name. It would go from either evidence
14 with my initial to him or from, in this case, Christmas to
15 Hansen.

16 Q: In this case specifically, at what point -- what date
17 was that BEST kit returned from the lab back to the evidence
18 hold bin?

19 A: The -- after it was analyzed --

20 Q: That's right.

21 A: -- you mean?

22 Q: Yes, sir.

23 A: Okay. It was returned from Lieut. Hansen back to
24 evidence, myself, on July 31st of 2015.

25 Q: And since July 31st, has it remained in evidence until

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1 today?

2 A: It has. It has remained in the secure locked evidence
3 room since that time.

4 Q: Deputy Christmas, how did that evidence make its way
5 from that location to be right in front of you here today?

6 A: I went into the office early this morning, pulled it out
7 of the location -- the shelf location that it was in, signed
8 it out to myself, personally brought it up here, and logged
9 it in for court purposes. So the --

10 Q: Now, it -- I'm sorry. I didn't mean to cut you off.

11 A: This morning there's a -- there's a line item there that
12 says from evidence to me and from me to court.

13 Q: Thank you. Now, at any time that this item or these
14 items were in your possession, were they tampered in --
15 tampered with in any way?

16 A: No. That's the good thing about the way that we package
17 our -- our drugs after they're analyzed is they're always
18 sealed and -- and it's got sealed, it's got the date that it
19 was sealed by the chemist, and it also has his initials. So
20 in order to get into this package, you would have to cut into
21 it inside of this seal and there's no way to seal it back up
22 without showing some form of tampering.

23 Q: And I think you just answered my last question for me.
24 Has that item remained under seal since it was returned from
25 the chemical lab?

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1 A: Yes, sir.

2 MR. WHITE: I beg the Court's indulgence.

3 THE COURT: Yes, sir.

4 MR. WHITE: A general question. Permission to approach,
5 Your Honor?

6 THE COURT: Yes, sir.

7 BY MR. WHITE:

8 Q: A general question for you, Deputy Christmas. Who all
9 has access to the -- the evidence bin?

10 A: The evidence bin in the narcotics office?

11 Q: Well, the one that -- the evidence locker, I should say?

12 A: The -- are you talking about the evidence room or where
13 Inv. Chamberlain would've dropped his BEST pack?

14 Q: The evidence room where you --

15 A: The evidence room -- there's only -- at this particular
16 time, it would have been myself and my lieutenant. It's a --
17 like I said, it's a locked and secured area. When you walk
18 in, you have to have a key card that allows you access.

19 Once you get inside of that locked steel door, there's
20 another locked steel door where you have to have what looks
21 like an old prison key. You know, the big skeleton keys.
22 You have to unlock that door and go in and then once you get
23 inside that door, there's another -- there's a fence as high
24 as this -- this room is, a chain-link fence that you have to
25 unlock a Master lock and then go into the actual evidence

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1 storage area.

2 Q: All right. Very good. Last thing. Deputy Christmas, I
3 want to show you what's been pre-marked as State's -- or
4 identification only as State's Exhibit 4. Do you recognize
5 that item?

6 A: This is a prescription bottle with the label torn off
7 with the name of the person that it was prescribed to and the
8 drug that should have contained inside.

9 Q: Now, when was that item logged into evidence?

10 A: This item was logged into evidence on -- I'm guessing
11 June 2nd with the rest of it. I don't have the log sheet in
12 front of me.

13 Q: I'm sorry, Deputy Christmas.

14 A: Yes. This was contained as a medicine bottle that was
15 logged in by Inv. Chamberlain.

16 Q: Now, did that medicine bottle make its way to the
17 chemical lab or did it remain in evidence?

18 A: I'm sorry. I misspoke.

19 Q: Okay. Go right ahead.

20 A: It says that Inv. Chamberlain put it in the narc hold
21 bin on the 2nd and then it went into the evidence narc bin on
22 the 3rd and I checked that box on the 4th, which is the same
23 day that the BEST kit would've went to the lab.

24 Q: So the pill bottle remained in evidence when the actual
25 narcotics went to the lab?

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1 A: Yes.

2 Q: Okay.

3 MR. WHITE: Your Honor, at this time, we would move
4 State's Exhibit 4 into evidence.

5 THE COURT: State's 4 is the pill bottle?

6 MR. WHITE: Yes, sir, Your Honor.

7 MR. SUGGS: No objection.

8 THE COURT: All right. Without objection, State's 4 is
9 in evidence.

10 (WHEREUPON, State's Exhibit Number 4, empty prescription
11 bottle, was admitted into evidence.)

12 MR. WHITE: Thank you, Your Honor. Thank you, Deputy
13 Christmas. I have nothing further.

14 THE COURT: All right.

15 MR. WHITE: Please answer any questions defense counsel
16 may have for you.

17 THE COURT: Cross?

18 MR. SUGGS: Yes, sir, Judge. Thank you.

19 CROSS-EXAMINATION

20 BY MR. SUGGS:

21 Q: TJ --

22 A: Yes, sir.

23 Q: Just a few questions. On the chain of custody form that
24 -- that you have that's been moved into evidence -- I don't
25 remember the number. Is it 5?

DEPUTY TJ CHRISTMAS - CROSS BY MR. SUGGS

1 A: Yes, sir.

2 Q: All right. At the bottom where it says chain of
3 custody, do you see where it says from, to, and then date?

4 A: Yes, sir.

5 Q: Okay. Can you hold that up? One -- two -- three --
6 four -- five -- sixth line on "from" and fifth line on "to",
7 is that the chemist's signature? That scribbly line?

8 A: It is. That's Lieut. Hansen's signature.

9 Q: All right. All right. And he's the county chemist?

10 A: Yes, sir.

11 Q: Okay. And according to this form, you kept custody of
12 this evidence -- and we're speaking only of the heroin and
13 not the pill bottle -- I believe you said from the -- June of
14 -- June 4th, 2015, until actually -- excuse me -- from July
15 31st, 2015, until 9/14/2017; is that right? Was that in your
16 possession for that long?

17 A: Well, it was in the evidence room possession and I am a
18 -- I was at that time an evidence room technician. So --

19 Q: Okay.

20 A: Yes. Every day from 8 to 5, it would've been in my
21 possession.

22 Q: All right. So on 7/31/2015, Christmas to Christmas and
23 then into the evidence room; is that right? It just looks to
24 me like the way that this form is written is that you were in
25 possession of these items for two years, one month, and two

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1 weeks?

2 A: I am still currently -- my office is in the evidence
3 room.

4 Q: Okay.

5 A: So I am still in -- well, up until I gave it to
6 Solicitor White, I was in possession of it.

7 Q: All right. So --

8 A: I was in charge of it. Yes, sir.

9 Q: So two years, one month, and two weeks, 31st July 2015,
10 to 14th day of September of this year is 825 days?

11 A: I'm not very good at math on the fly, but --

12 Q: If I was better at math, then I wouldn't practice law,
13 I'll tell you. All right. So the evidence room is your
14 office. So that's where it was kept, not taken home and put
15 under your mattress --

16 A: Of course, not.

17 Q: -- and kept there for two years? Okay. I know some
18 officers that keep blood samples at their homes, you know,
19 troopers and whatnot, but this is not the case here?

20 A: Not in Florence County they don't.

21 Q: All right.

22 MR. SUGGS: Thank you. Nothing further. Thank you,
23 Judge.

24 THE COURT: Anything further?

25 MR. WHITE: Nothing, Your Honor.

1 THE COURT: Thank you very much, sir.

2 THE WITNESS: All right.

3 THE COURT: You may step down.

4 THE WITNESS: Thank you, Your Honor.

5 MR. WHITE: Your Honor, may we approach?

6 THE COURT: Yes.

7 (WHEREUPON, a bench conference was held in the presence
8 of the jury but out of the hearing of the jury as
9 follows.)

10 MR. JEPERTINGER: I called Mitch while Jake was on the
11 stand and told him to come on because he went back to
12 Effingham for a little bit, but he's on his way.

13 THE COURT: Is that the chemist?

14 MR. JEPERTINGER: Yes, sir.

15 THE COURT: Okay. He's on his way though?

16 MR. JEPERTINGER: He's on his way.

17 THE COURT: All right. We'll just take a short recess
18 then.

19 MR. JEPERTINGER: Okay.

20 MR. SUGGS: On this -- on this form that's in evidence,
21 it has some mention about a cell phone. Is that anything
22 that needs to be redacted or anything? I don't know.

23 MR. JEPERTINGER: I don't think it has any significant
24 criminality. They seized it.

25 MR. SUGGS: I don't think it does, but you never know

1 what they might think. I don't know.

2 THE COURT: Is that on the chain?

3 MR. WHITE: Yes, sir.

4 MR. SUGGS: Yeah. That's on the chain.

5 MR. JEPERTINGER: They just put down everything they
6 seized.

7 THE COURT: Well, I know they put down everything they
8 seized, but do they put down --

9 MR. JEPERTINGER: They put down cell phones.

10 THE COURT: That should be what they submit.

11 MR. JEPERTINGER: Huh?

12 THE COURT: That should be what they submitted; right?

13 MR. WHITE: They submitted it into evidence.

14 MR. SUGGS: It's got a barcode by it, but I don't know.

15 MR. JEPERTINGER: Yeah. You know --

16 THE COURT: We'll talk about it.

17 MR. WHITE: Okay.

18 MR. SUGGS: Okay.

19 (WHEREUPON, the bench conference ended and the
20 proceedings resumed as follows.)

21 THE COURT: All right.

22 (WHEREUPON, there was a pause in the proceedings for a
23 bench conference between the Court and Solicitor
24 Clements off the record and off topic, after which the
25 proceedings resumed as follows.)

1 THE COURT: All right. Ladies and gentlemen, we've got
2 -- the next witness that the State intends to call is on
3 their way here. They're not here yet, but they're on the way
4 and they're not that far away. So we're going to just take a
5 short break while that witness makes his way to the
6 courthouse.

7 So please if you'd retire to the jury room and have no
8 conversation about the case, and we'll start back as soon as
9 he arrives.

10 (WHEREUPON, the jury exited the courtroom at 3:52 p.m.)

11 (WHEREUPON, there was a break in the proceedings from
12 3:52 p.m. until 4:04 p.m., after which the proceedings
13 resumed as follows.)

14 THE COURT: All right. Are we ready to proceed? Is the
15 State ready to proceed?

16 MR. WHITE: Yes, sir, Your Honor. My apologies.

17 THE COURT: All right. Let's bring --

18 THE BAILIFF: Judge, they all wanted coffee. So we're
19 still making coffee.

20 THE COURT: Twelve individual cups?

21 THE BAILIFF: Ten of them.

22 MR. JEPERTINGER: It's a Keurig, Judge. You get the
23 familiar buzzing sound with the Keurig.

24 THE COURT: While you're making them, one for everybody.
25 Okay. All right. Well, let them have their coffee.

1 THE BAILIFF: Okay.

2 (WHEREUPON, there was a pause in the proceedings, after
3 which the proceedings resumed as follows.)

4 MR. JEPERTINGER: Do you mind if we release Inv. Pate?

5 THE COURT: Scott, do you have any objection?

6 MR. SUGGS: No, sir.

7 THE COURT: No. That would be fine. Thank you, sir.

8 MR. WHITE: And honestly, Judge, if we could, we could
9 release Inv. Clark and Deputy Christmas as well.

10 THE COURT: Unless there's a need for them to stay,
11 anybody who would like to be excused is certainly welcome to
12 go.

13 MR. JEPERTINGER: Okay.

14 MR. SUGGS: All right.

15 THE COURT: It's about to get exciting though, guys.

16 MR. SUGGS: Judge, do you think after the State
17 concludes we could break for the evening?

18 THE COURT: I think we probably will.

19 MR. SUGGS: Okay.

20 THE COURT: Give you and Mr. Jackson time to talk about
21 the defense's case, and we'll pick up in the morning. I
22 assume -- I don't know. Well, I assume they'll get done
23 today. So we'll do that.

24 MR. SUGGS: Okay. I have two witnesses instead of one
25 and maybe before we leave today that you could go over the

1 test -- I mean the -- whether to take the stand to Mr.
2 Jackson.

3 THE COURT: I will.

4 MR. SUGGS: And that way, that saves more time in the
5 morning.

6 THE COURT: Sure. I'd be happy to do that.

7 MR. SUGGS: Thanks, Judge.

8 THE COURT: Okay.

9 (WHEREUPON, there was a pause in the proceedings, after
10 which the proceedings resumed as follows.)

11 THE BAILIFF: They're ready.

12 THE COURT: Okay. Sounds good.

13 (WHEREUPON, the jury entered the courtroom at 4:10 p.m.)

14 THE COURT: All right. Ladies and gentlemen, we're --
15 we have our witness here. I think we're ready to go; so we'd
16 recognize the State for your next witness.

17 MR. WHITE: Thank you, Your Honor. At this time, the
18 State would call Lieut. Mitchell Hansen.

19 THE COURT: All right. Lieut. Hansen, if you'd please
20 come around to be sworn, sir.

21 THE CLERK: Place your left hand on the Bible and raise
22 your right hand. Do you swear to tell the truth, the whole
23 truth, and nothing but the truth, so help you God?

24 THE WITNESS: I do.

25 THE CLERK: Okay. Be seated in the witness box and

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1 state your name for the record.

2 THE WITNESS: Mitchell Hansen.

3 LIEUT. MITCHELL HANSEN, being

4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WHITE:

7 Q: Thank you, Lieut. Hansen. If you could, tell us where
8 are you employed?

9 A: Florence County Sheriff's Office.

10 Q: And how long have you been employed there?

11 A: A little over six and a half years.

12 Q: And what is your current position at the Florence County
13 Sheriff's Office?

14 A: I'm a forensic chemist, drug analysis.

15 Q: If you could, do you have to have specialized training
16 and knowledge to be a chemist in the Florence County
17 Sheriff's Office?

18 A: Yes, you do. I have an Associates of Science,
19 Associates in Arts, a Bachelor's in Chemistry, forensic drug
20 analysis training from SLED, and basic law enforcement.

21 Q: Do you have to have continuing education?

22 A: We do. We have classes every so often we take.

23 Q: And have you ever testified in court before?

24 A: Yes, I have.

25 Q: About how many times do you think?

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1 A: 47.

2 Q: In the state court?

3 A: Yes.

4 Q: In federal court as well?

5 A: As well.

6 Q: Have you ever been qualified as an expert when you

7 testified?

8 A: Yes, I have.

9 Q: In what field?

10 A: In forensic drug analysis.

11 MR. WHITE: Thank you. Your Honor, at this time, we

12 would move that Lieut. Hansen be admitted as an expert in the

13 field of forensic science and chemical analysis.

14 THE COURT: Any objection?

15 MR. SUGGS: No, sir. We stipulate.

16 THE COURT: All right.

17 MR. SUGGS: Thank you.

18 MR. WHITE: Thank you, Your Honor. Permission to

19 approach?

20 THE COURT: Yes, sir.

21 BY MR. WHITE:

22 Q: Lieut. Hansen, I'm going to show you what's been marked

23 for identification purposes as State's Exhibit 2. If you

24 could, examine that for me. Could you tell me what that is?

25 A: This is a -- the evidence that was tested and sealed. I

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1 know this by the lab numbers. Also, the case numbers and
2 BEST kit numbers.

3 Q: And when did that item first come into your possession?
4 A: 6/4/2015.

5 Q: Very good. Now, let's backtrack just a little bit. In
6 your regular duties, week to week, do you have occasion to
7 test narcotics -- narcotics for chemical analysis?
8 A: Yes.

9 Q: Have you ever tested heroin before?
10 A: Oh, yes.

11 Q: Have you ever tested Xanax before?
12 A: Yes, I have.

13 Q: How often would you say you test either of those
14 chemicals?
15 A: Pretty frequently we test. We see all kinds of pills.
16 We see heroin on a regular basis.

17 Q: Now, did you personally test the items that are located
18 in that BEST kit?
19 A: Yes, I did.

20 Q: And on what date did you test it?
21 A: They were tested -- they actually were opened up and
22 tested on 7/16/2015.

23 Q: And at that time, were you able to perform -- well,
24 actually, what kind of test do you do on substances like
25 that?

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1 A: We do a -- on the pills, we do a literature match first.
2 We do have two of those. We also do GC mass spec on the
3 pills. On the heroin, we do a chemical and instrumental,
4 which would be GC mass spec.

5 Q: And based on all those tests, were you able to form an
6 opinion as to what substances those were that you did indeed
7 test?

8 A: Yes, I did.

9 Q: Did you document your results?

10 A: Yes, I did.

11 Q: I'm going to show you --

12 MR. WHITE: Permission to approach, Your Honor? My
13 apologies.

14 THE COURT: Yes, sir.

15 BY MR. WHITE:

16 Q: I'm going to show you what's been marked for
17 identification purposes only as State's Exhibit 3. If you
18 could, take a look at that and tell us what that is?

19 A: This is a report that was gen -- that I generated on
20 July 23rd, 2015.

21 Q: How do you know that? How do you recognize that as your
22 report?

23 A: It has my case numbers, lab numbers, my signature, and
24 also, I'm the only one that has access to produce these kind
25 of reports.

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1 MR. WHITE: At this time, Your Honor, the State would
2 move that State's Exhibit 3 be admitted into evidence.

3 THE COURT: Any objection? State's 3 is the drug
4 report?

5 MR. WHITE: Yes, sir, Your Honor.

6 MR. SUGGS: No objection.

7 THE COURT: All right. Without objection.

8 (WHEREUPON, State's Exhibit Number 3, drug report, was
9 admitted into evidence.)

10 MR. WHITE: Thank you, Judge.

11 BY MR. WHITE:

12 Q: If you could, Lieut. Hansen, would you walk us through
13 that report? Tell us what you tested and what, if anything,
14 your results concluded?

15 A: What was tested? Item 1 was a Ziploc bag containing --
16 and we sub-categorized out for that. 1.1 was four oblong
17 tablets. The 1.2 was 30 oval tablets.

18 Then we went to Item 2, which was a Ziploc bag and sub-
19 itemed off that was 10 blue wax paper bags containing a tan
20 powder substance. Item 2.2 was 30 wax paper bags containing
21 a tan powder substance. And 2.3 was 70 wax paper bags
22 containing a tan powder substance.

23 Q: And what was your opinion as to what those -- the pills
24 were that you tested?

25 A: The pills -- Item 1.1 was oxycodone found, four tablets,

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1 listed at 10 milligrams each. It's a Schedule II.

2 Item 1.2 was alprazolam found, 30 tablets, at -- listed

3 at one milligram. Schedule IV.

4 And Item 2.1 was heroin found, with a combined weight of

5 0.84 grams, 12.96 grains, Schedule I.

6 Item 2.2 was heroin found with a combined weight of 0.92

7 grams, 14.19 grains, Schedule I.

8 And Item 2.3 was heroin found with a combined weight of

9 2.92 grams, 45.06 grains, Schedule I.

10 Q: Lieut. Hansen, how certain are you of those results?

11 A: After comparing the GC mass spec data to a known

12 standard that we run, a hundred -- it was a hundred percent

13 match.

14 Q: Thank you, Lieut. Hansen. I hate to put you on the

15 spot. You named three different separate baggies of tan

16 powder substance that you tested?

17 A: Well, they -- they were all in a Ziploc bag. They were

18 all in there. They were separated because of the packaging

19 was -- was different. It could have been -- it was the

20 printing was different. One had purple print, one had no

21 print, one of them had red print.

22 Q: Very good. Now, do you have the total amount of heroin

23 that you tested?

24 A: I can -- I can add up the total amount.

25 Q: That would be great if you could do that for us and,

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1 again, I hate to put you on the spot.

2 A: Just in my head, it would be 4.68 grams.

3 Q: Very good. Thank you. Now, you weren't in here
4 earlier, but there has been some testimony about the
5 signatures and the writing that are placed on each one of
6 those bags. There's also what appears to be stamps. Can you
7 tell us please what identifying markers were on the packages
8 when they arrived at the lab and which ones you actually
9 placed on the packages yourself?

10 A: All the numbered -- I number every packaging and -- and
11 initial it. My initials are not as clear sometimes because
12 the Sharpies -- the tips get wore out sometimes and they tend
13 to run on these wax paper bags, but the -- these -- all the
14 numbering is mine.

15 The lab numbers starting with an F-15 are my lab
16 numbers. We will put lab numbers on everything. We initial
17 everything, just like on the outside of the bag here. I
18 wrote on the outside of the BEST kit bag, which is a tamper-
19 evident bag that the seal was intact and the date in which I
20 checked it and opened it.

21 Also, I put the lab number on the outside of the tamper-
22 evidence BEST kit bag. And also, the seal where I seal it
23 back up, I sign it on the inside of the bag and heat seal
24 across it so, therefore, if it's ever opened, I know that
25 someone else has opened it and it wasn't me.

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1 Q: Since you placed that seal on there, has it been opened?

2 A: No, it has not.

3 Q: And what did you do with that package once you sealed
4 it?

5 A: That package goes back into my safe until it's returned
6 to evidence.

7 MR. WHITE: Thank you, Your Honor. At this time, the
8 State would move to admit State's Exhibit 2 into evidence.

9 THE COURT: Any objection?

10 MR. SUGGS: No, sir.

11 THE COURT: All right. Without objection, State's 2 is
12 in evidence.

13 (WHEREUPON, State's Exhibit Number 2, heroin and pills
14 in BEST kit, was admitted into evidence.)

15 MR. WHITE: Thank you, Your Honor. And, Lieut. Hansen,
16 thank you very much. I have nothing further. Please answer
17 any questions that defense counsel may have for you.

18 THE COURT: Yes, sir.

19 MR. SUGGS: Just a few questions.

20 CROSS-EXAMINATION

21 BY MR. SUGGS:

22 Q: Is it -- it's Mitchell Hansen?

23 A: Yes.

24 Q: Is it Dr. Hansen?

25 A: No.

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1 Q: It's not? You don't have a PhD?

2 A: No.

3 Q: Oh, okay. So Officer? Trooper? Chemist? Title? Mr.

4 Hansen?

5 A: I'm a lieutenant.

6 Q: Lieutenant. Okay. Sorry. I didn't hear that. Lieut.

7 Hansen, thank you.

8 Where were these items -- all these items, the pills and

9 the heroin? Were they tested at the -- at the jail or

10 somewhere else in Florence?

11 A: They're tested in the Florence County Sheriff's Office

12 drug lab.

13 Q: Okay. So there is a drug lab in the Sheriff's Office?

14 A: Yes.

15 Q: Okay. Is that where your office is?

16 A: Yes.

17 Q: And one of the witnesses stated -- I don't know if you

18 were here or not -- that when we were talking about the

19 testing, he says he didn't want to open the individual wax

20 packets because he was concerned about maybe catching

21 something. Is that something that you do as a chemist in the

22 lab? Do you open up the individual packets?

23 A: Yes, I do.

24 Q: Okay. And when you open up the individual packets, do

25 you weigh each amount from that specific packet or do you

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1 just dump it in a big pile and then weigh it like that? How
2 is that weighed?

3 A: Well, we'll actually open each one and spot test each
4 individual and from that point we'll do a random test for the
5 mass spec, pulling different ones. From that point, we'll do
6 a combined weight.

7 Q: Okay. So when you -- do you ever return -- after you do
8 a combined weight, is that adding up the numbers or is that
9 dumping them in a pile?

10 A: They would all go into a pile and then weighed.

11 Q: All right. Well, I was looking at the evidence and it
12 looked like they were -- were they all put back in the
13 individual wax packages?

14 A: No, they were not.

15 Q: They're not? Okay. But the packets are there, but they
16 weren't all put back in the 110 wax paper packets?

17 A: No.

18 Q: Okay. Good. And I want to ask you how is it weighed,
19 but you'll probably tell me by a scale and it'll make me look
20 stupid. So is there some sort of machine that you use to
21 make it -- to weigh the total amount?

22 A: Yes. We have an electronic balance that we use, and it
23 is calibrated and checked monthly.

24 Q: Okay. All right. And I know that sometimes -- and I've
25 -- I've been in this courtroom quite a few times in dealing

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1 with issues with trying cases concerning drugs and I know
2 that sometimes drugs are tested at SLED in Columbia or, if
3 that lab is crowded, they might be tested in Charleston or
4 another lab. Is there some reason why these drugs were
5 tested here and not at SLED?

6 A: Because we have our own drug lab here. We can do
7 everything that SLED can do as far as drug analysis.

8 Q: Okay. If it's a -- so if it's a case that's made by the
9 county, the Sheriff's Department, would it always use the lab
10 at the Sheriff's Office?

11 A: Yes.

12 Q: Okay. It would never send those items to SLED for
13 testing?

14 A: The only way that it would get sent to SLED is if for
15 some reason I might be on scene or if it's someone I know, I
16 won't -- I won't test it.

17 Q: Okay. So if it's someone who is charged with something
18 and you happen to just know them, you would not involve
19 yourself with testing?

20 A: Right.

21 Q: Okay. Is there some difference or is there any
22 difference between the knowledge of testers in the Florence
23 County lab as opposed to the knowledge of the testers say at
24 SLED who do the same analyses?

25 A: No. The knowledge is the same. In fact, I was trained

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1 at SLED.

2 Q: Okay. All right. So the degree or the knowledge -- the
3 degrees or the knowledge required to test and to testify as
4 an expert are the same at SLED as they are with the Sheriff's
5 Department?

6 A: Yes.

7 Q: Okay. Thank you. What about the equipment that is used
8 to test drugs in -- at SLED versus the equipment used to test
9 drugs at the -- at the jail? Or is there any difference in
10 that equipment?

11 A: No. As far as the equipment in the drug lab, it's the
12 same as at SLED. I believe mine is a little bit newer than
13 SLED's.

14 Q: Oh, okay. Very good. Did you test the -- did you test
15 the pills and the heroin?

16 A: Yes, I did.

17 Q: Okay. How were the pills tested?

18 A: We did a literature value and also a GC mass spec.

19 Q: What is literature value?

20 A: Literature value is where we look up two different
21 references on the scoring on the tablets.

22 Q: Okay. Is there any way -- when you test the pills, can
23 -- have you ever run across pills testing that turned out to
24 be fake?

25 A: Yes, I have.

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1 Q: Okay. And I don't -- I rely on experts to tell me this,
2 but is it -- is it not -- is it not unusual to run across and
3 test pills that are counterfeit or fake?

4 A: It's -- it's not -- from time to time, we do see them,
5 but it's -- it's not something that we see on a regular
6 occurrence.

7 Q: Okay. So you've got folks out there probably on the
8 street selling maybe pain pills for \$10 a pop that turn out
9 to be fake and they're just trying to make money?

10 A: Correct.

11 Q: Okay. And is it difficult to determine the difference
12 between something that's real and something that's fake?

13 A: To a trained eye, no. To the individual person, it
14 would be a little bit harder for them to determine that it
15 is.

16 Q: Sometimes aren't they -- don't they look similar?

17 A: Yes, they do.

18 Q: Color? Shape? Size?

19 A: The color is going to be off. It's going to be
20 splotchy. Like I said, to a trained eye, you would be able
21 to. I normally spot them right away.

22 Q: Okay. Okay. And since you're an expert and you've been
23 qualified, do you understand, like, drug -- let me get this
24 right -- what certain, say, pills are for, what their effects
25 are, what their side effects are, what their indications are,

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1 and things like that?

2 A: As far as for the most part, yes.

3 Q: Okay. The pills in this case -- there was -- I think
4 Percocet was maybe four tablets with a -- like, four 10
5 milligram tablets? Was that one of the things you tested?

6 A: Yes. That was one of them, and that was four milligram
7 tablets of active ingredient. I mean it was four tablets
8 with 10 milligrams of active ingredient.

9 Q: Okay. And is that an opiate?

10 A: That is an opioid.

11 Q: Opioid. Okay. And they're mixed with Tylenol too, as
12 well? Some of them?

13 A: Acetaminophen.

14 Q: Okay. Okay. And were these mixed with -- were these
15 325s or 650s? They have some percentage of Tylenol in them
16 as well or not?

17 A: Yes, they do.

18 Q: Were they 10/325s? 10/650s?

19 A: They would be 10/325.

20 Q: Okay. And when you see that 10/325, that tells you 10
21 milligrams of an active ingredient and 325 milligrams of
22 acetaminophen?

23 A: Correct.

24 Q: Okay. Any other ingredients in those pills?

25 A: There's bond. There's some stuff, but those normally

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1 don't come out. They're just -- they're just there to hold
2 the pill together.

3 Q: Filler and stuff like that?

4 A: Right.

5 Q: Okay. And these -- this particular pill is not illegal?

6 It's just illegal if you don't have a prescription; right?

7 A: Right. It's controlled.

8 Q: It's a controlled substance. Thank you. And the other

9 pills -- alprazolam. Is that like a Xanax?

10 A: Yes.

11 Q: Or a Valium or something like that?

12 A: It's going to be the Xanax.

13 Q: Okay. And is that for anxiety and depression? Is that

14 what it's indicated for?

15 A: I believe that's what it's normally indicated for.

16 Q: Okay. So that's not a pain medication?

17 A: No.

18 Q: Okay. But the Percocet is a pain medication?

19 A: Yes.

20 Q: And are they both considered narcotics or just a pain

21 medication?

22 A: I don't -- I don't -- I can't really make the jump

23 between narcotics and not on the oxycodones. I know the

24 schedules are a Schedule II and a Schedule IV.

25 Q: Okay. And the drug report which has been entered into

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1 evidence -- it's signed by you. This is your work. I
2 believe it was -- was it Number 5? Was that what it was? I
3 don't recall.

4 A: I think it's Number 3.

5 Q: Number 3. Yes, sir. And that's your report?

6 A: Yes, it is.

7 Q: And I noticed on the second page you have -- under
8 results, you have Item 2.1, 2.2, and 2.3; is that right?

9 A: Yes.

10 Q: And all three of those, 2.1 is heroin -- well, all three
11 are heroin; is that right?

12 A: Yes.

13 Q: And 2.1 shows 0.84 grams; 2.2., 0.92 grams; and 2.3,
14 2.92 grams?

15 A: Correct.

16 Q: And you added all that up a while ago and I did too, and
17 I'm happy to say that you were correct. It's 4.68 grams. So
18 you were correct on that. So that's the combined weight of
19 those three items?

20 A: Yes.

21 Q: All right. You did not -- the reason -- is there some
22 reason why these items are separate items, 2.1, 2.2, 2.3,
23 rather than just Item 2.0 for the whole thing?

24 A: We separated them out because of the markings on the
25 packaging. Anytime there's a different marking or the

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1 packaging is a little bit different, we separate it because
2 it could be something else.

3 Q: Okay. All right. Were you present during any of the
4 earlier testimony from the law enforcement officers who
5 seized the heroin?

6 A: No, I was not.

7 Q: Okay. All right. The -- does your -- when you test
8 something like the pills or heroin, do you ever test for
9 purity or do you just test for the presence of a particular
10 substance?

11 A: We test for a presence.

12 Q: For presence. So any mixture or compound that might be
13 added to that particular substance -- there's -- there's no
14 way to separate it out from -- to determine purity; is that
15 right?

16 A: Well, there is, but the way we were taught -- the way we
17 were trained to do it is based on the law, and the way the
18 law reads is any amount thereof.

19 Q: Right. So if it's got -- if you tested Item 2 point --
20 well, let's say -- let's say you dumped them all in a pile,
21 all three items, 2.1, 2.2, 2.3, and it tested as a 10th of a
22 gram of heroin and everything else was baking soda or sugar
23 or Italian baby laxative or whatever, it's just still going
24 to be marked as heroin; right?

25 A: Correct.

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1 Q: It's not going to say there's heroin, but it's only one
2 percent pure?

3 A: Right. We do not quantify.

4 Q: Okay. And then everything else, the other 99 percent,
5 would be some extrinsic product that's not -- that may be
6 legal or it's just over-the-counter, but it's just mixed in;
7 is that right?

8 A: Well, correct.

9 Q: Okay.

10 A: I mean we only -- we don't qual -- we'd only -- we only
11 qualify. We don't quantify.

12 Q: Okay. All right. So you qualify, but don't quantify?

13 A: Correct.

14 Q: So you identify it as an legal substance -- illegal
15 substance, whether it's one percent pure or a hundred percent
16 pure? It's all the same?

17 A: Right. Because that's the way we were trained at SLED.

18 Q: Okay. All right. And heroin is -- is -- in its -- in
19 its pure form, its origin is from an opium poppy, isn't it?

20 A: Yes.

21 Q: Okay. And that's an opium? Or opiate is a pain killer;
22 is that right?

23 A: Well, opium itself is from the poppy plant.

24 Q: Okay.

25 A: Opium can be smoked. I'm assuming it is a pain killer.

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1 I'm not too familiar with opium.

2 Q: Does -- does Percocet -- is that -- does that contain an
3 opioid or opiate from the poppy or is it synthetic
4 manufactured?

5 A: It's synthetic. You cannot transform a lot of the
6 opioids from opium.

7 Q: Okay. But heroin can be used as a painkiller?

8 A: I'm assuming, but as being a schedule I, it cannot.

9 Q: Understood.

10 MR. SUGGS: Thank you, Lieut. Hansen. I appreciate it.
11 Answer any questions that the Court has for you.

12 MR. WHITE: Thank you, Judge. Just briefly, three
13 questions for you.

14 REDIRECT EXAMINATION

15 BY MR. WHITE:

16 Q: Is alprazolam -- is that legal with a valid
17 prescription?

18 A: With a valid prescription.

19 Q: Is oxycodone legal with a valid prescription?

20 A: With a valid prescription.

21 Q: Is heroin legal with a valid prescription?

22 A: You can't get a prescription for heroin.

23 MR. WHITE: Thank you, Your Honor. I have nothing
24 further.

25 THE COURT: All right. Thank you very much, sir. You

1 may step down. All right. Call your next witness.

2 MR. WHITE: Thank you, Your Honor. At this time, the
3 State would rest.

4 THE COURT: All right.

5 Ladies and gentlemen, the State has rested their case.
6 It's about 24 minutes to five. So we are going to break a
7 little bit early today.

8 At the close of the State's case and in all cases that
9 we try here, I have to take up matters of law with the
10 lawyers. And rather than put you in the back and have you
11 sit there while I do that and then by that time it's five
12 o'clock and it's time to go anyway, I'm going to go ahead and
13 excuse you a little early. We'll stay and take up those
14 matters of law and then when you arrive back in the morning,
15 we'll be ready to go and pick up with the case.

16 So now you're about to leave and go home and be around
17 your family, friends, and loved ones. They may very well be
18 curious as to how your day has gone, were you selected to be
19 on a case, what kind of case is it. You can tell them that
20 you've been selected to be on a case, that you have been here
21 today trying the case, but that's where it needs to end.

22 Saying something as innocent as, well, it's a case where
23 the guy has been charged with trafficking in heroin or it's a
24 case involving a fellow by the name of Jackson, that could
25 possibly elicit a response that may compromise your ability

1 to remain fair and impartial. It's very important that you
2 do everything to protect that.

3 So it's best and I would instruct you that what you need
4 to tell your family, friends, and loved ones, if they're
5 curious, is that the case is not over. You're not allowed to
6 discuss the case. You're not allowed to tell them what kind
7 of case it is. However, if they'll be patient, I'm confident
8 you'll get this case tomorrow for your consideration and,
9 once the case is over, you can tell them everything they want
10 to know. There'll be no restrictions on -- you're allowed to
11 talk about the case.

12 So ask them to please be patient for one more day. Let
13 you get to the end of your task and then you can share with
14 them what they would like to know.

15 I'm going to ask, if you would, to be back at 9:30 in
16 the morning and, if you will do that, we will pick up where
17 we left off. When you come back in the morning, just come
18 straight up to the 11th floor and they'll direct you back into
19 the jury room. Okay?

20 So everyone else please remain seated while the jury is
21 excused.

22 We'll see you at 9:30, folks.

23 (WHEREUPON, the jury exited the courtroom at 4:39 p.m.)

24 THE COURT: All right. At this time, I'll take up any
25 motions at the close of the State's case.

1 MR. SUGGS: Yes, sir, Your Honor. Judge, for the record

2 --

3 THE COURT: Yes, sir.

4 MR. SUGGS: I make the motion for directed verdict on
5 both counts in the indictment for the failure of the State to
6 satisfy all the elements of all the -- of the offenses beyond
7 a reasonable doubt.

8 THE COURT: All right, sir.

9 MR. SUGGS: And I make that motion at this end and I
10 intend to make it on the other end, should the Court deny my
11 motion.

12 THE COURT: All right, sir. Well, I'm going to
13 respectfully deny it. I think it's a jury question.

14 MR. SUGGS: Yes, sir.

15 THE COURT: I think there is evidence in the record,
16 depending on how the jury would view it, and I think it is a
17 jury issue.

18 MR. SUGGS: I understand, Your Honor.

19 THE COURT: Now, Mr. Suggs, do you want me to talk with
20 Mr. Jackson this evening about -- and then y'all can continue
21 to talk in the evening and in the morning and I won't ask him
22 for his decision this evening, but I'll at least go over it
23 with him.

24 MR. SUGGS: That'll be fine, Judge.

25 THE COURT: Okay.

1 MR. SUGGS: Thank you.

2 THE COURT: Mr. Jackson, any -- anytime anyone is
3 charged with a criminal offense, they have a constitutional
4 right to either remain silent or they have a constitutional
5 right to testify.

6 A person charged with a criminal offense -- and this is
7 what I will tell the jury -- is never required to prove their
8 innocence. The burden of proof is on the State. You don't
9 have to prove anything and so you can exercise your
10 constitutional right and you can remain silent and not
11 testify.

12 If you choose to do that, I will tell the jury that that
13 is your constitutional right. That the burden of proof rests
14 with the State and that the fact that you chose to remain
15 silent could not be considered by the jury in any way during
16 their deliberations as to your guilt or innocence.

17 I would tell them that the fact that you chose to
18 remain silent cannot even be discussed in the jury room. It
19 is not a factor that they are to take into consideration at
20 all because you have the constitutional right to remain
21 silent, and your exercise of that right cannot be considered
22 by them.

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: And I would told them that when I give them

1 the charge on the law.

2 Now, you also have the right to testify, if you choose
3 to. And if you decide to testify -- we discussed earlier --
4 you recall when we were here earlier this afternoon, we
5 discussed your prior record. So if you decide to testify,
6 you understand that you would have to answer questions from
7 Mr. Suggs, who would ask you questions.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. You would also have to answer
11 questions from Mr. White, from the State's attorney.

12 Do you understand that?

13 THE DEFENDANT: (No verbal response.)

14 THE COURT: I need you to speak loudly.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Now, you would also -- if you chose
17 to testify, the State or Mr. Suggs would have the right to
18 ask you about your prior record as far as the unlawful --
19 what was the charge? Unlawful --

20 MR. SUGGS: Use of vehicle.

21 THE COURT: Unlawful use of a vehicle. They would be
22 able to ask you is it true that you've been convicted of that
23 offense, and they would also be able to ask you -- now, with
24 regards to the distribution of crack charge that you had from
25 2008, I believe it was, they would only be able to ask you

1 isn't it true that you've been convicted of a felony that
2 carries more than a year. They would not be able to ask you
3 about the fact that it was a drug case.

4 Do you understand that?

5 THE DEFENDANT: (No verbal response.)

6 THE COURT: Okay?

7 THE DEFENDANT: Yes.

8 THE COURT: All right. Now, I would not allow them to
9 go in any details about either one of those charges. I would
10 not allow them to go into any details about whatever sentence
11 you may have served. I would only allow them to ask whether
12 or not you have been convicted of those offenses.

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Okay. Now, you have these -- both of these
16 rights. You can testify if you choose to and answer
17 questions from both attorneys or you can remain silent and,
18 if you remain silent, I will let the jury know what I told
19 you earlier about they cannot consider that at all.

20 If you choose to remain silent, that does not mean that
21 you cannot call other witnesses. Okay? I'm just referring
22 to your -- your rights to testify or not testify. If you
23 choose to testify, you can call other witnesses and you can
24 testify or if you choose not to testify, you can remain
25 silent, but you can call other witnesses if you choose to.

1 Do you understand these things?

2 THE DEFENDANT: Yes.

3 THE COURT: All right. Now, I'm going -- I'm not going
4 to ask you for your decision this afternoon. I'm going to
5 give you and Mr. Suggs an opportunity to discuss it this
6 evening and in the morning, but at some point in the morning
7 before we get started, then I'll ask you what your decision
8 is. Okay?

9 THE DEFENDANT: All right, sir.

10 THE COURT: All right.

11 THE DEFENDANT: All right.

12 THE COURT: Mr. Suggs, we're going to start at 9:30.

13 MR. SUGGS: Yes, sir.

14 THE COURT: And I won't need to go over this until we
15 get ready to get started.

16 MR. SUGGS: Yes, sir, Judge.

17 THE COURT: So y'all take what time you need.

18 Is there anything we need to deal with?

19 MR. WHITE: Just two things, Your Honor. In regards to
20 the State's witnesses, we would respectfully ask that they be
21 released from subpoena. We'd obviously invite them to be
22 back tomorrow, with the exception of Inv. Chamberlain. He
23 has to be back, but we would respectfully request they be
24 released.

25 THE COURT: Mr. Suggs, do you foresee any reason to keep

1 them here?

2 MR. SUGGS: I don't, Your Honor. I have no objection.

3 THE COURT: All right.

4 MR. WHITE: The second matter, Your Honor, is we would
5 respectfully request that Mr. Suggs turn over the social
6 security numbers, date of births of his potential witnesses
7 tomorrow.

8 THE COURT: Okay. You can get those for them --

9 MR. SUGGS: Yes, sir.

10 THE COURT: -- and let them know.

11 MR. SUGGS: Yes, sir.

12 THE COURT: All right. Anything else for this evening?

13 MR. SUGGS: No, sir.

14 MR. WHITE: No, sir, Your Honor.

15 THE COURT: All right. Well, folks, we'll -- then we'll
16 be in recess until 9:30 tomorrow.

17 Oh, if you have any specific request to charge --

18 MR. SUGGS: Yes, sir.

19 THE COURT: If you could, email them to Emily. I've got
20 -- we've got a charge that we've put together, but if you
21 have anything specific that we may not have, just shoot Emily
22 an email with that and we'll look at it. Okay?

23 MR. WHITE: Your Honor, the State is on board with
24 whatever charge you put together. We'll be prepared to
25 respond to any --

1 MR. JEPERTINGER: Don't jump too -- don't jump too
2 quickly until we see the charge.

3 THE COURT: No. I understand. Everybody will have a
4 chance to respond to each other's requests.

5 MR. WHITE: Sounds great, Judge. Thank you, Your Honor.

6 THE COURT: All right, guys. Everyone have a great
7 evening. We'll see y'all tomorrow.

8 MR. SUGGS: Thank you, Judge.

9 (WHEREUPON, the proceedings adjourned for the day at
10 4:47 p.m.)

11 SEPTEMBER 15, 2017

12 (WHEREUPON, the proceedings resumed at 9:57 a.m.)

13 THE COURT: All right. Mr. Suggs, have you and Mr.
14 Jackson had an opportunity to discuss Mr. Jackson's
15 intentions with regards to presenting -- number one,
16 presenting a case and then, number two, if he would be a part
17 of that case by way of his own testimony?

18 MR. SUGGS: Yes, sir. He is going to testify.

19 THE COURT: All right. Mr. Jackson, Mr. Suggs has
20 indicated to me that you have decided that you would like to
21 exercise your right to testify in your own defense. Is that
22 correct, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Now, as I told you yesterday,
25 you understand that you would need to answer questions not

1 just from Mr. Suggs, but you would also have to answer Mr.
2 White's questions. Do you understand that, sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. And again, we discussed the fact that
5 even though I would not allow them to go into any details,
6 they would be able to ask you about your prior convictions
7 for the use of vehicle and the -- the crack cocaine charge,
8 the felony. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. And understanding those things,
11 you do wish to testify?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Has that been your decision, Mr. Jackson?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Has anybody forced you or coerced you in any
16 way to get you to make that decision?

17 THE DEFENDANT: No, sir.

18 THE COURT: Is that a decision that you've made of your
19 own free will, sir?

20 THE DEFENDANT: Yes.

21 THE COURT: All right, sir. Well, we certainly will
22 honor that and give you that opportunity.

23 Let me -- if I may, folks, I was thinking about -- I
24 didn't know whether or not Mr. Jackson would testify or not,
25 but, Scott, I'm thinking the best way to do it -- and I

1 apologize that we're not really handicapped accessible here
2 like we should be, but maybe if we could put Mr. Jackson with
3 his wheelchair, like, in front of Krystal, not right in
4 front, but maybe right here in front of the bench, facing the
5 jury panel, and then y'all could examine him. And that way,
6 the jury could hear him, Krystal could hear him, everyone
7 that needs to hear him could hear him.

8 MR. SUGGS: Yes, sir. I think that would be fine.

9 THE COURT: And we'll move this.

10 MR. SUGGS: Yes, sir.

11 THE COURT: This television -- we'll move that out of
12 the way.

13 MR. SUGGS: Yes, sir. Maybe have his wheelchair --

14 THE COURT: Just --

15 MR. SUGGS: -- in line with the witness box?

16 THE COURT: Well, I'd like to have him maybe back this
17 way a little bit so Krystal could see him.

18 MR. SUGGS: Okay.

19 THE COURT: So his back wouldn't be to the court
20 reporter.

21 MR. SUGGS: Okay. Okay.

22 THE COURT: You know, I mean, like, I'm thinking, if we
23 could, like right here.

24 MR. SUGGS: Okay.

25 THE COURT: Krystal could then listen to his testimony,

1 the jury could hear it, and you could examine from over
2 there.

3 MR. SUGGS: All right. Could I -- could I examine from
4 over there perhaps?

5 THE COURT: Wherever you two are -- wherever you're
6 comfortable.

7 MR. SUGGS: Okay.

8 THE COURT: Yeah. I don't care where you examine from,
9 but I want to make sure that Krystal can get the testimony
10 down and that the jury can hear.

11 MR. SUGGS: Yes, sir.

12 THE COURT: Would you tap that mic and see if it --

13 MR. SUGGS: Yes, sir.

14 THE COURT: -- is working?

15 Okay. What we might do is actually have Mr. Jackson --
16 we can take it off of that mic stand and actually let him
17 hold it like -- just like somebody who is talking into it.
18 And the reason being is he's soft-spoken.

19 MR. SUGGS: Yes, sir.

20 THE COURT: And I would want to make sure he can be
21 heard, but we can do that after he comes up.

22 MR. SUGGS: Okay. I think that's good. I think we've
23 got plenty of slack here.

24 THE COURT: There should be plenty of cord there.

25 MR. SUGGS: Yeah, there is. Let me just get it so it

1 won't cause us some trouble later on. I'll just kind of
2 unwind it here. Okay. There. How's that? Oh, we've got
3 lots of room, Judge.

4 THE COURT: Okay.

5 MR. SUGGS: Krys, can I sit that right there? Is that
6 okay?

7 Okay. Okay. A couple of other matters whenever you're
8 ready, Judge.

9 THE COURT: All right. Yes, sir.

10 MR. SUGGS: In terms of -- since we were talking about
11 his placement, Mr. Jackson informed me yesterday afternoon
12 that he was having some difficulty hearing --

13 THE COURT: Okay.

14 MR. SUGGS: -- the questions and answers, and I didn't
15 know -- and I've spoken to Mr. White about this. Would it be
16 all right to maybe position him somewhere in here on the
17 other side of this, maybe closer to the -- to the lawyers
18 when they make closing arguments and you when you do --
19 because I know you like to do your charge --

20 THE COURT: Yeah.

21 MR. SUGGS: -- here in front of the jury.

22 THE COURT: No. I --

23 MR. WHITE: I would -- I would object to that, Judge. I
24 think the purpose is to kind of show the jury his leg. I
25 don't see the difference between him sitting here or sitting

1 over here with hearing. I would imagine that he could hear
2 better if he was over here.

3 MR. SUGGS: Well, even there would be fine, just
4 somewhere closer. And it has nothing to do with showing the
5 jury that he's --

6 THE COURT: I've got to say I'm --

7 MR. SUGGS: -- in a wheelchair. They know he's in a
8 wheelchair.

9 MR. WHITE: Well, I believe his leg is exposed and --

10 MR. SUGGS: No. No, it's not exposed.

11 MR. WHITE: It was exposed yesterday. I was making
12 certain.

13 MR. SUGGS: Oh, okay. No, it's not today. He has long
14 pants on.

15 THE COURT: I'm hoping the jury is more sophisticated
16 than to understand they can't make a decision based on
17 sympathy or compassion or anything else. That's not
18 appropriate. And I'm going to charge them that. So --

19 MR. SUGGS: Yes, sir.

20 MR. WHITE: And that -- that leads us to our next point,
21 Judge. We've got some pictures here that Mr. Suggs would
22 like to bring in that I would vehemently object to.

23 THE COURT: Okay. We can take that up at this time.

24 MR. SUGGS: Yes, sir, Judge. May I approach?

25 THE COURT: Yes, sir.

1 MR. SUGGS: These are part of our defense, Your Honor;
2 and I'll explain that in a moment.

3 THE COURT: Yeah, I'll listen to you.

4 MR. SUGGS: Judge, the -- the other day when we were all
5 three communicating back and forth about the timing of this
6 case, I think I indicated to you that this case had some
7 wrinkles in it. I didn't want to express those to the Court
8 in my letter. I didn't really want to let my trial strategy
9 get out --

10 THE COURT: Sure.

11 MR. SUGGS: -- of the bag, Judge.

12 THE COURT: Sure.

13 MR. SUGGS: Mr. -- my client, Mr. Jackson -- he admits
14 or is going to admit that the heroin in his pocket was his
15 and that he purchased it, and I don't think it would be -- I
16 think probably a very poor idea to try to convince a jury he
17 didn't know it was in his pocket, but he told me flat out
18 that it's his. He takes it for pain.

19 His testimony would be that he can't -- he doesn't get
20 any pain medication; so he buys the heroin for pain. And
21 he's had one leg -- one foot amputated right below the knee,
22 his left, and he still has phantom pains associated with
23 losing that limb, and I certainly understand that. I have
24 experienced that with other clients in the past, the phantom
25 pains, and he takes the heroin for that.

1 And he's about to have his right foot amputated for the
2 same reason. He has diabetes, poor circulation, and it's --
3 and the other foot was amputated because gangrene was setting
4 in. It's setting in on the right foot now and he's going to
5 have to have that amputated. So he uses the heroin to
6 control his pain, and I think the pictures support our
7 defense in this case.

8 THE COURT: How is that a defense?

9 MR. SUGGS: Well, it's not a defense.

10 THE COURT: It's not a defense.

11 MR. SUGGS: It's not a defense, No, it's not a defense,
12 but it's -- it's -- it's for mitigation purposes. It does
13 show why he uses the heroin, and I think the jury has a --
14 has a right to understand why. And the photographs I think
15 depict the reason why very clearly.

16 MR. WHITE: The prejudicial effect of this is large,
17 Judge, compared to the relevance. I mean I think, you know,
18 Mr. Suggs just kind of proves my point. He just said he
19 can't get around that he was in possession of heroin. I mean
20 that he had no -- you cannot -- like Mitchell Hansen
21 testified to, you cannot get a prescription for heroin. I
22 don't care how bad his pain is.

23 THE COURT: Well, it's not legal. I mean it's not legal
24 in any sense. It's not legal medically. It's not legal,
25 period. And I don't know that the reason why he takes it is

1 relevant to any issue in the case.

2 MR. SUGGS: Well --

3 THE COURT: This is a case that he was charged with
4 trafficking, and the trafficking is based upon the amount or
5 the weight of the -- of the substance. And I'm -- I'm not of
6 the belief that there's any relevance to why he chooses to
7 take it.

8 MR. SUGGS: Well, the chemist testified that opiate --
9 that heroin is from an opioid.

10 THE COURT: Well, even if he takes it for pain relief,
11 that's not relevant to the charges that he's facing.

12 MR. SUGGS: Well, I know he's facing a trafficking
13 charge, but as you'll recall, he was not in actual possession
14 of the amount required by statute to fall into the
15 trafficking.

16 THE COURT: Well, it depends on how the jury views the
17 evidence. He may be in constructive possession.

18 MR. SUGGS: I understand that.

19 MR. WHITE: And even if that's true, I mean that's --
20 that's an argument he makes to the jury. We don't bring in
21 pictures to --

22 THE COURT: Well --

23 MR. WHITE: And also, Your Honor, it's my understanding
24 there's going to be no expert testimony from a doctor or
25 anything. I don't know how we can take pictures and use them

1 to, I guess, explain to the jury and enhance his level of
2 pain.

3 THE COURT: I'm going to deny the motion -- or I'm going
4 to, I guess, grant the motion to exclude these photographs.
5 Mr. Suggs, I don't think they're relevant to any issue in the
6 case. I think they're highly prejudicial beyond any
7 probative value they may have toward any issue in the case.

8 I will be happy -- if you would like, I'll make them a
9 Court's exhibit and they can be preserved for that reason and
10 certainly note your objection to the ruling, but I'm going to
11 grant the motion to exclude these photographs.

12 MR. WHITE: Thank you, Your Honor.

13 MR. SUGGS: Well, so am -- am I not allowed to question
14 my client on why he takes the heroin?

15 THE COURT: You can question him all you want on the
16 reason.

17 MR. SUGGS: Okay.

18 THE COURT: Yeah.

19 MR. SUGGS: I just can't use photographs?

20 THE COURT: Right.

21 MR. SUGGS: I can't --

22 THE COURT: You can't use these photographs.

23 MR. SUGGS: All right. Well, I know there's case law
24 out there where defendants are allowed to exhibit parts of
25 their body to the jury --

1 THE COURT: No, sir.

2 MR. SUGGS: -- without it being subject to -- to them
3 being subject to cross-examination.

4 THE COURT: And that -- and that may be the case in
5 other cases, depending on what the issues were in those
6 cases. I'm not going to allow that in this case.

7 MR. SUGGS: So he cannot exhibit his body parts --

8 THE COURT: No, sir.

9 MR. SUGGS: -- to the jury?

10 THE COURT: No, sir.

11 MR. SUGGS: And the photos are disallowed?

12 THE COURT: That's correct.

13 MR. SUGGS: All of them?

14 THE COURT: Yes, sir.

15 MR. WHITE: And, Judge, obviously, Mr. Suggs' client can
16 testify to whatever he wants to. I'm nervous about how -- I
17 don't want to maintain a running objection throughout his
18 testimony. I don't know what relevance his test -- any
19 testimony to his medical condition and why he takes heroin.
20 I don't -- I don't know any relevance.

21 THE COURT: I'll give you wide latitude on your cross.

22 MR. WHITE: Yes, sir.

23 THE COURT: And I'll certainly entertain any objections
24 if things become overly repetitive or, you know, asked and
25 answered, all those types of objections that are typically

1 given out there, but I don't think it would be appropriate to
2 preclude Mr. Suggs --

3 MR. WHITE: Certainly.

4 THE COURT: -- from asking him why he -- why he takes
5 it. It may be irrelevant, but I don't want to discourage you
6 from making any objections that you want to make, and I'll
7 certainly rule on that.

8 MR. WHITE: Thank you, Judge.

9 THE COURT: All right.

10 MR. SUGGS: Judge, I was telling Mr. White that --
11 advising him and actually showing him that during closing
12 argument sometimes I use demonstrative evidence or
13 demonstrative items not in evidence to prove or to clarify my
14 meaning or point to the jury.

15 And in this case, Judge, what I have to offer is three
16 separate bags, not to come into evidence. They're marked 1,
17 2, and 3. They're simply packs of Sweet 'n Low that have
18 been opened up and put in plastic bags, and this is -- number
19 1 is one gram, number 2 is two grams, and number 3 is three
20 grams.

21 - Now, in the evidence from --

22 THE COURT: Can I suggest that y'all listen to what Mr.
23 Suggs is saying because --

24 MR. WHITE: I'm sorry, Your Honor. My apologies.

25 THE COURT: -- maybe you don't object to it and, if you

1 don't, tell me and we'll just -- we won't have to worry about
2 it.

3 MR. WHITE: My apologies, Your Honor.

4 MR. SUGGS: Thank you, Judge. And State's -- I don't
5 remember the exhibit number. It was the chemist's --

6 THE COURT: Right --

7 MR. SUGGS: -- report.

8 THE COURT: Right now, I don't have any issue with you
9 using those as demonstrative reasons --

10 MR. SUGGS: Okay.

11 THE COURT: -- in closing. Do you have any objection to
12 that?

13 MR. WHITE: No, sir, Your Honor.

14 THE COURT: All right.

15 MR. SUGGS: Okay. Thank you. Not coming into evidence,
16 not coming in.

17 THE COURT: No, no, no. It's not into evidence, but for
18 demonstrative. I mean I've used bottles of water. I've used
19 cans.

20 MR. SUGGS: Okay.

21 THE COURT: I've used all kind of stuff for
22 demonstrative purposes in closing.

23 MR. SUGGS: Thank you.

24 THE COURT: It doesn't come in and I guess it just
25 remains to be seen how you use it as to whether there's an

1 objection. If there's an objection, I'll rule on it.

2 MR. WHITE: And my apologies. I certainly didn't mean
3 any disrespect to the Court or Mr. Suggs. I was going to
4 concede that point --

5 THE COURT: Yeah. It's not your fault.

6 MR. WHITE: -- all along.

7 THE COURT: It's Mr. Jepertinger's fault.

8 THE BAILIFF: Your Honor?

9 THE COURT: Yes?

10 THE BAILIFF: The jury is knocking on the door.

11 THE COURT: See what they want.

12 MR. WHITE: And there's one last issue I'd like to take
13 up, Judge. It's just fine.

14 THE COURT: Let's wait for just a second.

15 MR. WHITE: Yes, sir.

16 THE COURT: Let Ann see what they got there. They want
17 coffee?

18 THE BAILIFF: Drinks. But I mean if we're getting ready
19 to bring them in, they're going to wait.

20 THE COURT: No. Go ahead and get them whatever they
21 want.

22 THE BAILIFF: Okay.

23 THE COURT: Are they asking for coffee?

24 THE BAILIFF: No. I'm going to just take Cokes and
25 stuff.

1 THE COURT: Take them some drinks.

2 THE BAILIFF: Okay.

3 THE COURT: Yeah. Do that.

4 MR. WHITE: Last issue, Your Honor. Yesterday in
5 opening, Mr. Suggs made a comment about my inexperience as an
6 attorney. I certainly didn't take any offense to it. Like
7 we talked about afterwards, you know, the gloves come off
8 when we're in here. When we step outside, it's completely
9 cordial and professional.

10 THE COURT: Sure.

11 MR. WHITE: And I agree with that.

12 MR. SUGGS: I've already apologized to him.

13 THE COURT: I know you have.

14 MR. SUGGS: Via text and personally, and I gave him a
15 \$25 gift certificate for Redbone Alley, and I told him I
16 would also tell the jury that I was sorry.

17 MR. WHITE: And that's -- and although I appreciate all
18 those gestures, I truly do, and I never forget.

19 THE COURT: Let's not do any of that. Okay?

20 MR. WHITE: The issue I have is I don't want -- I'd
21 rather that not be brought to the Court. I certainly don't
22 want this being brought up to the jury --

23 THE COURT: No.

24 MR. WHITE: -- in closing.

25 THE COURT: Here's --

1 MR. WHITE: So that would be my motion.

2 THE COURT: Listen, let's make this simple. I would
3 like -- and I give folks leeway in closings, but I would like
4 for your closings to relate to the issues in this case.
5 Okay?

6 MR. WHITE: Yes, sir, Your Honor.

7 THE COURT: Your experience or inexperience, Mr. Suggs'
8 experience or his later-year dementia, none of that should --
9 should be a part of this trial. Okay?

10 MR. WHITE: Yes, sir.

11 THE COURT: So let's just -- I've known Mr. Suggs for a
12 long, long time. He's one of the most gracious folks I've
13 ever met. I've known you for a shorter time --

14 MR. WHITE: Yes, sir.

15 THE COURT: -- Mr. White, and you're one of the nicest
16 men I've ever met. So you guys are fine.

17 MR. WHITE: Oh, yeah. Absolutely.

18 THE COURT: And it doesn't need to be brought into here.

19 MR. WHITE: I agree.

20 THE COURT: Okay.

21 MR. WHITE: And I appreciate it, Mr. Suggs.

22 THE COURT: All right.

23 MR. WHITE: I really do.

24 THE COURT: That certainly will --

25 MR. SUGGS: Thank you, Mr. White, for your graciousness.

1 Judge, a couple other things. I'm just trying to make
2 sure we get everything out of the way.

3 THE COURT: Yeah.

4 MR. SUGGS: The -- I will be bringing -- I'm trying to
5 get Mr. Jackson's sister up here.

6 THE COURT: Yes, sir.

7 MR. SUGGS: Hazel Jackson. That she would testify that
8 she loaned Mr. Jackson the money.

9 THE COURT: Yeah.

10 MR. SUGGS: I think that may come up at some point and
11 so I will provide date of birth and social if she -- if I'm
12 able to get her up here.

13 THE COURT: Okay.

14 MR. SUGGS: And ideally, I'd like to put her up first
15 and then Mr. Jackson second, but if I can't get her in time,
16 we'll just do Mr. Jackson first and then wait on her. I
17 don't want to delay the Court.

18 THE COURT: Yes, sir.

19 MR. WHITE: And, Your Honor, and to that point, again,
20 Mr. Suggs can call whoever he'd like. They can testify to
21 whatever they'd like.

22 Your Honor, you made a ruling yesterday that we were to
23 kind of get away from that co-mingled funds issue, but I
24 think if he calls this lady to testify to what I believe
25 she's going to testify to -- and that is that she loaned the

1 money -- I believe that -- that brings -- that pushes the
2 door wide open and then we should be able to address the
3 issue of where that \$50 came from, and that makes him --

4 THE COURT: Help me out on the \$50 because, apparently,
5 I missed something.

6 MR. WHITE: The \$50 --

7 MR. SUGGS: I might've missed something too. I remember
8 hearing that, but is that something previous?

9 MR. WHITE: We addressed that at the bar, Judge. I kept
10 it out of my case in chief.

11 THE COURT: I understand. Where was \$50 ever mentioned
12 in this case?

13 MR. WHITE: Well, it wasn't, but for -- but for the
14 purpose of not getting off the rails, Judge. And we'd have
15 to check back, but I understand -- I mean it was my
16 understanding that that was part of the ruling that we would
17 not address that issue because it had to do with the CI.

18 But there was \$1,485 recovered in this case. Judge, 50
19 of that was buy money. It is marked money. It is Florence
20 County Sheriff's Office \$50 bill, Your Honor. It's proof
21 that, first of all, not all that money could have been loaned
22 to him. It's also proof of he knowingly sold heroin. I mean
23 I think we just -- it's an issue.

24 MR. SUGGS: Well, I missed that part, Judge, about the
25 -- a previous some kind of buy, but I do know that -- that he

1 said the money was loaned to him by his sister. Now, he
2 didn't say all of it, but certainly --

3 THE COURT: Here's the problem with that, Mr. White, is,
4 you know, maybe his sister bought off the CI and then loaned
5 him the money. So that's not proof that he sold anything to
6 the CI.

7 MR. WHITE: Well, I mean I guess my argument to that
8 would be if I'd known that we were going to go down this
9 road, which I thought we agreed not to, I would've presented
10 evidence, strong evidence, that that's not the case, that we
11 have evidence --

12 THE COURT: Well, here's the thing.

13 MR. WHITE: -- that he was the person who sold it.

14 THE COURT: Again, I'm not trying to -- he was charged
15 with trafficking.

16 MR. WHITE: That's correct.

17 THE COURT: He was not charged with distribution.

18 MR. WHITE: That's correct.

19 THE COURT: And if you wanted to prove the case of
20 distribution, you would've brought your CI in and you
21 would've put him on the stand and you would've had him
22 testify that he bought from Mr. Jackson.

23 MR. WHITE: That's correct.

24 THE COURT: But you've gone forward on trafficking.

25 MR. WHITE: Absolutely, Your Honor.

1 THE COURT: I understand that. And the thing is a
2 distribution -- it's a -- it's a part of trafficking, but
3 it's not -- I mean it's trafficking if you're in possession
4 of that -- that much.

5 So you don't need the distribution, but if you wanted to
6 put that into your case, you could have. If there's \$50 out
7 of 1,500 that is buy money, unless you brought your CI in to
8 testify that that's the funds that he had earmarked that he
9 used on Mr. Jackson, you certainly had the right to do that.

10 I'm not understanding the -- I mean I think you have a
11 lot of leeway or ammunition to attack the 1,450 with the 50
12 not being a part of it, but --

13 MR. WHITE: Your Honor, my only response is that the
14 only reason we -- we decided to keep it general alleged drug
15 activity. I believe that was the Court's ruling.

16 THE COURT: What --

17 MR. WHITE: It's the only reason I didn't -- I didn't
18 get into the issue of the buy money and that sort of thing.
19 Now, it's about to be brought out, you know, kind of used
20 against me.

21 THE COURT: Let me back up the train here for a minute.

22 MR. WHITE: Yes, sir.

23 THE COURT: Because I feel like when y'all were up here
24 at the bench --

25 MR. WHITE: Yes, sir.

1 THE COURT: -- and we were talking, I didn't even
2 understand what you meant about \$50. I don't think Mr. Suggs
3 knows or knew.

4 MR. WHITE: Yes, sir.

5 THE COURT: There was something about co-mingled funds
6 in all this. And all I said was, well, I don't know what all
7 that is; we're not going to get into all that.

8 But let me ask you this: If I would have said, no,
9 anything is wide open, were you prepared to call your CI and
10 do that? That was part of your case?

11 MR. WHITE: No, sir. Your Honor, I was prepared to
12 allow Inv. Chamberlain to testify as to -- when he testified
13 to the amount of money they pulled off of him, I was prepared
14 to ask him questions.

15 THE COURT: You can call him in rebuttal.

16 MR. WHITE: Yes, sir.

17 THE COURT: If Mr. Suggs puts up a witness that
18 testifies she gave him all that money, when he rests, then
19 you can call a witness in rebuttal.

20 MR. SUGGS: Just to --

21 MR. WHITE: Thank you, Your Honor.

22 MR. SUGGS: Just to save time, Judge, and then --

23 THE COURT: Yeah.

24 MR. SUGGS: -- just put this thing to rest -- and I
25 certainly don't want to do anything that's unfair to Mr.

1 White, but at the same time, I have to do what's best for my
2 client.

3 THE COURT: It's not unfair --

4 MR. SUGGS: Well --

5 THE COURT: -- I don't think.

6 MR. SUGGS: I think there was a misunderstanding and it
7 might be my fault.

8 THE COURT: I don't think it's anybody's fault. I just
9 think that -- I understand Mr. White's concerns, but I think
10 his concerns are easily protected where, depending on what
11 the defense puts up, he can always call a witness in
12 rebuttal.

13 MR. SUGGS: And I may not put -- I may not put that up
14 at all.

15 THE COURT: Sure.

16 MR. SUGGS: What I was going to suggest is I remember
17 our in-front-of-the-bench conference was that anything after
18 the -- after the Miranda warnings were given and anything
19 after --

20 THE COURT: Any statements made.

21 MR. SUGGS: -- when he said, you know, after do you have
22 anything else to say, no, that we're not going to address any
23 of that.

24 THE COURT: Right.

25 MR. SUGGS: And just to be fair, I don't want to put

1 anything in about -- about any money because I don't want to
2 take a chance of opening any doors and I don't want to do
3 anything that would be unfair to Mr. White.

4 And I think this might be actually risky for my client;
5 so I might just leave that alone and not even bring it up and
6 then that makes certain that it's not mentioned at all.

7 THE COURT: Okay. But I don't want you to -- I don't
8 want to preclude you from --

9 MR. SUGGS: Yes, sir.

10 THE COURT: -- putting up whatever you want to put up.

11 MR. SUGGS: Yes, sir.

12 THE COURT: Because I mean we're not going to be unfair
13 to anybody. Mr. White can certainly get in everything he
14 wanted to if -- again, it's all contingent on what's
15 presented, but if evidence is presented regarding money and
16 that that money came from his sister, then he certainly would
17 have the right to call --

18 MR. SUGGS: Yes, sir. In reply.

19 THE COURT: -- the investigator in rebuttal and, if that
20 doesn't come in, then it's kind of no harm/no foul thing.

21 MR. SUGGS: Yes, sir.

22 THE COURT: I mean you know what I'm saying.

23 MR. SUGGS: And I think that might be best because I
24 think Ryan was actually preparing and presenting his case
25 with that in mind not being brought up, and I don't -- even

1 though he could bring it up in reply, I'm not going to.

2 THE COURT: Yeah. But if you bring it up, he could
3 always address it in reply.

4 MR. SUGGS: Okay. Well, let's just forget that. Let's
5 forget all about any money.

6 MR. WHITE: Well --

7 MR. SUGGS: All of it.

8 MR. WHITE: Well, I hate to drag this out, but \$1,485
9 was testified to. It was testified that it was in small
10 denominations, ones, fives, tens, and twenties. I plan to
11 address that on close.

12 THE COURT: Was that the testimony? Because I don't
13 recall. I don't recall the denominations being testified to
14 it all.

15 MR. JEPERTINGER: That was in camera.

16 MR. WHITE: The denominations? Okay. Your Honor, we'll
17 leave the denominations out.

18 THE COURT: Here's the thing. Whatever is in evidence
19 is fair game for you to address in closing.

20 MR. WHITE: Okay.

21 THE COURT: The money is in evidence as far as -- I mean
22 the pictures, the video, he's taking money out and I think
23 the amount was mentioned.

24 MR. WHITE: Yes, sir.

25 THE COURT: But it wasn't the denominations. It wasn't

1 broken down in denominations and there was no testimony as to
2 where it came from.

3 MR. WHITE: That's correct.

4 THE COURT: But you -- you know, as you watch that
5 video, you are free to discuss that video and point out
6 anything on that video that you wish to point out. I mean
7 that's fair game for Mr. Suggs. It's fair game for you.

8 MR. WHITE: Okay. Very good.

9 THE COURT: That's in evidence.

10 MR. SUGGS: But was the -- I know the denominations
11 weren't, but was the amount mentioned in testimony --

12 MR. WHITE: Yes.

13 THE COURT: Yes. The amount --

14 MR. SUGGS: -- before the jury or in camera?

15 THE COURT: No. The amount was mentioned, but -- and
16 I'll be honest. I was sitting here thinking to myself. I
17 think I maybe even asked, you know, nobody decided because I
18 didn't know and I still don't know, was it in hundreds or was
19 it in twenties and was it in fives. I don't know.

20 MR. WHITE: I think that was my --

21 THE COURT: But it was never mentioned. It was never
22 testified to. I knew based on the testimony what the amount
23 was.

24 MR. WHITE: Yes, sir.

25 THE COURT: I just never heard any testimony about the

1 denominations.

2 MR. SUGGS: Did the jury hear the amount?

3 THE COURT: Yeah. I mean it was testified to --

4 MR. SUGGS: Okay.

5 THE COURT: -- by the officer.

6 MR. SUGGS: Not -- not in camera?

7 THE COURT: I don't believe so.

8 MR. WHITE: Judge, I believe that -- it's my mistake. I

9 believe that denominations were testified to in the in-camera

10 and the amount -- and the amount in-camera, but only the

11 amount was brought up in front of the jury.

12 THE COURT: Well, what we'll do is we'll look back at

13 that to verify it before anybody goes out there and starts

14 arguing facts that are not in evidence.

15 MR. WHITE: Yes, sir, Your Honor.

16 THE COURT: Okay.

17 MR. WHITE: Thank you, Judge.

18 MR. SUGGS: Okay. And if -- if it is, if I were to --

19 I'm just trying to make sure I don't do anything wrong.

20 THE COURT: Yeah.

21 MR. SUGGS: If he took the stand and I asked him where

22 did the money come from and he says my sister loaned it to

23 me, does that then open the door for Mr. White to bring it in

24 or not? The 50 or not?

25 THE COURT: Well, yeah. I mean --

1 MR. SUGGS: Okay.

2 THE COURT: I think it would.

3 MR. SUGGS: All right. I just want to make sure.

4 THE COURT: But, you know, I don't know what the
5 testimony will be.

6 MR. SUGGS: We'll still look at that and see.

7 THE COURT: Yeah.

8 MR. SUGGS: All right. One other thing, Judge, and I
9 want to make certain that I'm clear on this. As far as his
10 prior record is concerned -- and ordinarily, when I have a
11 client who takes the stand and testifies, which is not that
12 often, but when it does happen and they do have a prior
13 record --

14 THE COURT: You bring it up.

15 MR. SUGGS: Yeah. I like to take the wind out of the
16 sails, obviously.

17 THE COURT: Yeah.

18 MR. SUGGS: In my -- and I know we said we're allowed to
19 say can I -- can I say something like, Mr. Jackson, let's
20 tell the Court about your prior record? You have a prior
21 record for a felony and you have a prior record for use of
22 vehicle without owner's consent. Is that the best way to say
23 it without causing any of the other stuff to come up?

24 THE COURT: I think that is well within --

25 MR. SUGGS: Okay.

1 THE COURT: -- the boundaries to ask that -- ask it that
2 way.
3 MR. SUGGS: Okay. Can I ask the years when the --
4 THE COURT: Yeah.
5 MR. SUGGS: -- use of vehicle was and the felony was?
6 THE COURT: Yeah.
7 MR. SUGGS: The year that it happened?
8 THE COURT: Yes, sir.
9 MR. SUGGS: All right. Finally --
10 THE COURT: Well, the year of the conviction, I guess.
11 MR. SUGGS: Yeah. The year of the conviction.
12 THE COURT: 2007 and 2008 I believe was the two.
13 MR. SUGGS: What was it again?
14 THE COURT: I believe the use of vehicle was 2007 and
15 the distribution was 2008.
16 MR. JEPERTINGER: That is correct.
17 MR. SUGGS: Okay. So I can say, Mr. Jackson, it's true,
18 isn't it, that you have a use of vehicle conviction for 2007
19 --
20 THE COURT: From 2007.
21 MR. SUGGS: -- and a prior felony conviction from 2008?
22 THE COURT: Yeah.
23 MR. SUGGS: Without causing any --
24 THE COURT: That -- that would be well within the
25 boundaries.

1 MR. SUGGS: All right. And lastly, am I allowed to ask
2 him on the use of vehicle -- can I say that it's a
3 misdemeanor?

4 MR. JEPERTINGER: No. It wasn't.

5 THE COURT: I think you --

6 MR. SUGGS: It's not a misdemeanor? I thought it was a
7 three-year misdemeanor.

8 MR. WHITE: It is. It was a misdemeanor.

9 MR. JEPERTINGER: I don't -- I don't think the
10 significance of misdemeanor or felony have any --

11 THE COURT: The only reason felony comes into play is
12 because the courts have ruled that when a crime is so similar
13 --

14 MR. SUGGS: Right.

15 THE COURT: -- that it's more prejudicial than
16 probative, and so I think the Court's response to that was
17 that you've been convicted of a felony that carries more than
18 a year.

19 MR. JEPERTINGER: It's under 16-21-60, the use of
20 vehicle without owner's permission.

21 THE COURT: I'm just looking here. I've got use of
22 vehicle without owner's permission. Well, shoot. This
23 doesn't give me --

24 MR. JEPERTINGER: 16-21-60.

25 THE COURT: Yeah, I've got this -- I've got a little --

1 kind of a cheat sheet here that gives me the -- it carries
2 three years, but it doesn't tell me whether it's a
3 misdemeanor or some --

4 MR. JEPERTINGER: It would be a misdemeanor under the --

5 THE COURT: I would imagine it probably is.

6 MR. JEPERTINGER: Class A misdemeanor.

7 MR. SUGGS: It is a Class A misdemeanor. Yes, sir.

8 THE COURT: Yeah. But I don't think -- I don't -- does
9 it matter? I don't think it matters. You can ask him if you
10 want.

11 MR. SUGGS: Okay.

12 THE COURT: The use of vehicle. That it's a
13 misdemeanor. The other charge is a felony.

14 MR. SUGGS: Then I would say --

15 THE COURT: I think if you get too much into that, you
16 get people wondering what a felony is, what a misdemeanor is
17 and, you know, what is -- what is that. I don't know.

18 MR. SUGGS: Okay. Then I can -- I will keep it in that
19 -- in that neighborhood and then on the felony I can say
20 isn't it true in 2008 you were convicted of a felony which
21 carries more than one year?

22 THE COURT: Yeah.

23 MR. SUGGS: Okay. All right. I'm good.

24 Judge, It seems like there was one more matter and I'm
25 not -- we talked about the photos, which you disallowed the

1 photos.

2 THE COURT: Yeah. Do you want me to mark those as a
3 Court's exhibit?

4 MR. SUGGS: Yes, sir, please.

5 THE COURT: All right. If you want to do these as a
6 group, Krystal, as a Court's exhibit?

7 (WHEREUPON, the photographs were marked as Court's
8 Exhibit Number 1.)

9 MR. SUGGS: And did we decide about where he might could
10 -- did we make a decision on where he could be positioned
11 during the charge and the -- and the closing or not? Did we
12 decide?

13 THE COURT: I mean I don't care as long as it's not
14 interfering with either.

15 MR. SUGGS: Mr. White didn't want him out here.

16 MR. WHITE: I just don't understand the reason -- the
17 reason for it. I don't think it was for his hearing.

18 THE COURT: Well, his reason was for hearing.

19 MR. WHITE: But I would -- I would assume he could hear
20 better in that location. I'm not sure.

21 THE COURT: You don't want him over here sitting next to
22 the jury listening?

23 MR. WHITE: Well, I just wanted him in a position right
24 in front of the witness box where he would be --

25 THE COURT: Are you talking about for his testimony?

1 MR. WHITE: That's right.

2 THE COURT: No. He's not talking about that.

3 MR. SUGGS: No, sir. For the closing.

4 THE COURT: He's talking about during closing arguments
5 and during jury charge.

6 MR. WHITE: Oh, okay. Well, again, I --

7 THE COURT: I'm not --

8 MR. SUGGS: It's not evidence.

9 MR. WHITE: It's kind of like demonstrative, you know,
10 evidence. He's --

11 THE COURT: Yeah. He can just remain. You guys are
12 loud. He can remain where he's at. Closing arguments and
13 jury charge are not --

14 MR. SUGGS: Okay, Judge. I think that -- sorry, Judge.
15 There was one other thing.

16 THE COURT: Yeah.

17 MR. SUGGS: You talked with us last night about
18 suggestions on charges, and I mean we could take that up now
19 or after the defense case.

20 THE COURT: I'd rather do it when we -- when we send the
21 jury out after the defense rests.

22 MR. SUGGS: Okay. Because I want to be able to know
23 what I could talk about in closing.

24 THE COURT: We'll go over that, but they've been sitting
25 back there an hour now.

1 MR. SUGGS: Okay. Yes, sir. I'm ready then, Judge.

2 THE COURT: Okay. All right. Is the State ready?

3 MR. WHITE: Yes, sir, Your Honor.

4 THE COURT: Let's bring the jury in, please.

5 (WHEREUPON, the jury entered the courtroom at 10:31
6 a.m.)

7 THE COURT: Ladies and gentlemen, thank you for your
8 patience. I came in this morning at 9:30 and half of the
9 jury box was full of inmates from Marion County, but there
10 was a little bit of miscommunication about taking up some
11 matters from Marion County this morning and so I took care of
12 a couple of matters because we had lawyers from Columbia that
13 were here rather than just tell them to, you know, go back or,
14 whatever.

15 So I took up a couple of matters and we're now ready to
16 proceed. The other -- the local matters are just going to
17 have to wait until we get done.

18 So if you recall yesterday, we -- when we broke, the
19 State had rested their case and I had to take up matters of
20 law with the attorneys before we proceeded. And we have done
21 that and so now we're ready to proceed and we'd recognize Mr.
22 Suggs on behalf of the defense.

23 MR. SUGGS: Thank you, Your Honor. May it please the
24 Court.

25 THE COURT: Yes, sir.

1 MR. SUGGS: The defense would call Robert Jackson to the
2 stand.

3 THE COURT: All right. And, folks, because Mr. Jackson
4 is in a wheelchair, I'm going to -- we're going to have him
5 come right up here and sit up here and then use that
6 microphone. If anyone has any difficulty hearing, please
7 don't hesitate to let us know and we'll make sure that that
8 stuff is repeated.

9 And -- there you go. That's good.

10 MR. SUGGS: Right here, Judge?

11 THE COURT: That's good.

12 All right. And, Mr. Jackson, if you would, just listen
13 carefully as the clerk places you under oath, sir.

14 THE DEFENDANT: Okay.

15 THE COURT: Just put your left hand on the Bible and
16 raise your right. All right.

17 THE CLERK: Do you swear to tell the truth, the whole
18 truth, and nothing but the truth, so help you God?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: All right. Thank you, sir.

21 THE CLERK: State your name for the record.

22 THE COURT: And, Mr. Jackson, you're kind of soft-
23 spoken; so I'm going to hand you this microphone or Ann is
24 going to hand you this microphone.

25 THE DEFENDANT: Okay.

ROBERT JACKSON - DIRECT BY MR. SUGGS

1 THE COURT: And if you just would speak into that when
2 you answer questions. Okay?

3 THE DEFENDANT: All right, sir.

4 THE COURT: Thank you, sir.

5 THE DEFENDANT: Thank you.

6 THE COURT: Mr. Suggs?

7 MR. SUGGS: Thank you, Judge. I'm trying to cool off,
8 Judge.

9 THE COURT: I know. You know what? It's always too
10 cold in here and I don't know -- for whatever reason, it
11 seems a little warm now.

12 MR. SUGGS: A little warm. Yes, sir. And, Your Honor,
13 I can --

14 THE COURT: Wherever you'd like to --

15 MR. SUGGS: -- go over --

16 THE COURT: Wherever you'd like to do your examination
17 is fine.

18 MR. SUGGS: I'm going to go right here, Judge.

19 THE COURT: Okay. That's fine.

20 MR. SUGGS: Good morning, ladies and gentlemen.

21 ROBERT JACKSON, being first
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. SUGGS:

25 Q: Good morning, Mr. Jackson.

ROBERT JACKSON - DIRECT BY MR. SUGGS

- 1 A: Good morning.
- 2 Q: Can you hear me okay?
- 3 A: Yeah.
- 4 Q: Okay. All right. I'm just going to ask you a few
- 5 questions. Okay?
- 6 A: Okay.
- 7 Q: And just -- just give us your name?
- 8 A: Robert Jackson.
- 9 Q: Okay. Robert. And where do you live?
- 10 A: In Florence, 915 W. Marion Street.
- 11 Q: Where again?
- 12 A: 915 W. Marion Street.
- 13 Q: Okay. And how long have you lived at that address?
- 14 A: About 50 -- about 50 years -- 51 years.
- 15 Q: Fifty-one?
- 16 A: Yeah.
- 17 Q: All right, sir. And how old are you, sir?
- 18 A: Seventy-six.
- 19 Q: Okay. And your birthday?
- 20 A: July the -- [REDACTED].
- 21 Q: All right. And how far did you go in school?
- 22 A: Fifth grade.
- 23 Q: All right. Did you go to school here in Florence?
- 24 A: Savannah Grove.
- 25 Q: Savannah Grove? Okay. And can you read and write?

ROBERT JACKSON - DIRECT BY MR. SUGGS

1 A: No, sir.

2 Q: All right. But you understand me okay?

3 A: Yes, sir.

4 Q: And any military service?

5 A: No, sir.

6 Q: All right. What about employment? Do you work now?

7 A: No. I get my wife's benefits.

8 Q: Okay. Your wife is -- is she deceased?

9 A: Yes, she deceased in '92.

10 Q: Okay. What was her name?

11 A: Marjorie Jackson.

12 Q: Okay.

13 A: Peterson.

14 Q: How long were y'all married?

15 A: Fifteen years.

16 Q: Okay. Did y'all have any children?

17 A: One girl.

18 Q: Okay. All right. Do you have any other children

19 without your -- outside of your wife and your marriage?

20 A: I got -- I got four other kids by my first wife.

21 Q: Okay. All right. And was one of them here earlier?

22 TJ?

23 A: Yes.

24 Q: Okay. All right. And where was the last place that you

25 worked?

ROBERT JACKSON - DIRECT BY MR. SUGGS

1 A: I worked -- I used to do brake work and mechanic work,
2 messing with old cars and stuff.

3 Q: Mechanic?

4 A: Yes.

5 Q: All right. And what else did you say? Brick?

6 A: Messing with old cars and brake work and mechanic work.

7 Q: Brake work?

8 A: Yes.

9 Q: Okay. All right. And do you remember the last time you
10 were working full-time?

11 A: It's been a while.

12 Q: Yes, sir. That's okay. And what sort of income do you
13 receive? Did you say your wife's disability?

14 A: Yeah.

15 Q: Okay. Any other income from disability or anything
16 else?

17 A: No, sir.

18 Q: All right. And obviously, you're -- you're in a
19 wheelchair. How long have you been in -- well, how long have
20 you been disabled?

21 A: Ever since 90 -- ever since 90 -- 2002.

22 Q: 2002? All right. You've got long pants on, but do you
23 have an artificial limb?

24 A: Yes, sir.

25 Q: Which one?

ROBERT JACKSON - DIRECT BY MR. SUGGS

1 A: My left leg.

2 Q: Left leg? And what -- what was your -- was your foot --

3 has your foot been amputated?

4 A: Yeah.

5 Q: Your left foot?

6 A: Up -- up to about here.

7 Q: All right. Below the knee?

8 A: Yes, sir.

9 Q: All right. And that was done when?

10 A: In '12.

11 Q: Okay. Are you wearing a prosthetic device now?

12 A: Yes.

13 Q: Okay. Can you get around without the wheelchair?

14 A: No, sir. I can only -- I can only -- I can get around a

15 little bit.

16 Q: All right. Do you use a cane when you're not using a

17 wheelchair?

18 A: Yes, sir. Or my son.

19 Q: Okay. And you have that with you today?

20 A: I ain't got the cane, but I got a walker.

21 Q: Okay. Now, why did you lose the -- the left foot?

22 A: Well, it started off when they take the toe off first

23 and then they said I had to have to take --

24 Q: Is your microphone cut off?

25 A: I don't know.

ROBERT JACKSON - DIRECT BY MR. SUGGS

1 THE COURT: It could be finicky. I don't know.
2 MR. SUGGS: May I approach, Judge?
3 THE COURT: Yeah. Just wiggle the cord there.
4 MR. SUGGS: I'll try to give him some more slack, Judge,
5 so --
6 THE COURT: Yeah. Just see if you can hang it off
7 there.
8 MR. SUGGS: Okay. I'll do it maybe like this.
9 THE COURT: Okay. All right.
10 BY MR. SUGGS:
11 Q: Is it working now, Mr. Jackson?
12 A: I reckon. It don't -- it don't sound like it is.
13 Q: Okay.
14 A: It's working.
15 Q: And I'm sorry. Why did you lose your left foot?
16 A: They first take my -- several of my toes off and then it
17 got gangrene in the bottom of the foot and finally they had
18 to take the whole leg off.
19 Q: Below the knee?
20 A: Yes, sir.
21 Q: Okay. And did you say gangrene?
22 A: Yes, it was gangrene. They tried to cut the toe off and
23 they couldn't get it to heal up and so they -- they take the
24 whole leg off.
25 Q: All right. What is your underlying medical condition?

ROBERT JACKSON - DIRECT BY MR. SUGGS

1 A: I had -- had heart surgery in 2000 and I still got high
2 blood pressure and that's all.

3 Q: All right. Are you diabetic?

4 A: Yes, sir.

5 Q: Are you insulin-dependent?

6 A: I take insulin twice a day.

7 Q: All right. How do you take the insulin? By pill or
8 injection?

9 A: Injection.

10 Q: All right. Have you had your insulin today?

11 A: I had my morning shot.

12 Q: Morning shot. How do you feel?

13 A: I feel all right.

14 Q: Okay. Now, since -- since your foot was amputated, do
15 you still suffer from any pains as a result of that?

16 A: I sometimes feel like my left foot has a lot of phantom
17 pains in it and my right foot -- it'll be burning all in my
18 feet and in the top of my feet, my big toe. Can't even sleep
19 at night a lot of times.

20 Q: All right. And did you say phantom pain?

21 A: Yeah. Phantom pain from this leg here. Seems like it
22 still be on there. Feels like the other leg where the foot
23 be, but there don't be none there.

24 Q: Okay. Do you have pain anywhere else besides your --
25 the phantom pain in your left leg?

ROBERT JACKSON - DIRECT BY MR. SUGGS

1 A: I have pain towards the back of my back, the lower part
2 of my back.
3 Q: Okay. And where else, if any? Anywhere else?
4 A: My fingers get tight.
5 Q: Okay. What about your right foot?
6 A: It always hurts. That's the one they talk about they've
7 got to amputate.
8 Q: Okay. Who -- who said it had to be amputated? Your
9 doctor?
10 A: Yeah, the doctor. The doctor in Dr. Cunningham's
11 office.
12 Q: Here in Florence?
13 A: Yes, sir.
14 Q: Okay. Do you know if, in fact, they're going to take
15 your right foot off?
16 A: I beg your pardon? I didn't hear what you said.
17 Q: Are they going to take your right foot off?
18 A: They told me if I can't deal with the pain, they've got
19 to take it off. They say I'm going to get more blood -- more
20 blood circulating -- more blood go through it.
21 Q: All right. Do you have any pain in your right foot?
22 A: Yes. It hurt about all the time, you know. My toe and
23 the bottom of my feet be burning.
24 Q: Okay. Do you take any pain medication for the -- for
25 the pain?

ROBERT JACKSON - DIRECT BY MR. SUGGS

1 A: Well, the doctor -- my doctor won't give me none.
2 That's what they told me yesterday, but I was up here and I
3 -- they -- the other doctor check my circulation. He gave me
4 some -- some Percocets.
5 Q: Okay. Do -- do you ever get -- do you get Percocets on
6 a regular basis?
7 A: No. The doctor won't give me none.
8 Q: Okay. So what -- what do you do for the pain?
9 A: Sometimes I get a couple bags of the heroin.
10 Q: Okay. All right. And that's what we're here about
11 today; is that right?
12 A: Yes, sir.
13 Q: All right. You've been sitting here since the trial
14 began, of course; is that right?
15 A: That's right.
16 Q: All right. And did you hear the testimony about the
17 officer taking the heroin out of your front shirt pocket?
18 A: Yes, sir.
19 Q: Okay. Is that, in fact, true?
20 A: That's true.
21 Q: Okay. And where did that heroin -- did you buy that
22 heroin from someone?
23 A: I just had bought it.
24 Q: Okay. When did you buy it relative to the arrest?
25 A: The same day.

ROBERT JACKSON - DIRECT BY MR. SUGGS

1 Q: The same day? Okay. Did you buy it from someone here
2 in Florence?
3 A: Yes, sir.
4 Q: And you don't have to tell us the person's name, but was
5 that person with you on June the 2nd, the day you were
6 arrested?
7 A: Yeah. He went in the store.
8 Q: He was where?
9 A: He got out and went in the store.
10 Q: Okay. Was he with you in the car at some point?
11 A: Yeah. He was in the car with me.
12 Q: Okay. Now, when the officer came and approached you
13 that day, do you remember that?
14 A: Yes, sir.
15 Q: All right. Where was this other gentleman when the
16 officer approached your car?
17 A: He run into the store.
18 Q: He was actually inside the store?
19 A: I guess. I couldn't see. I was up on the side of the
20 store.
21 Q: Okay. Did -- did he go in the store?
22 A: I don't know.
23 Q: You don't know? Okay. He wasn't in the car?
24 A: No, sir.
25 Q: All right. Did you hear the testimony about there also

ROBERT JACKSON - DIRECT BY MR. SUGGS

1 being pills in the car?

2 A: Yes.

3 Q: Okay. And do you -- did you hear where the pills were
4 found?

5 A: Yes.

6 Q: All right. Did those pills belong to you in that
7 bottle?

8 A: No, sir.

9 Q: Okay. Do you know who they belonged to?

10 A: They belonged to a guy. They belonged to a guy named
11 Lynn Grimsley.

12 Q: Who?

13 A: Lynn Grimsley.

14 MR. SUGGS: Can you hear?

15 THE COURT REPORTER: No. I don't know what --

16 BY MR. SUGGS:

17 Q: Try to speak a little clearer. The court reporter is
18 having trouble hearing you.

19 A: Lynn Grimsley. Lynn.

20 Q: Lynn?

21 A: Grimsley.

22 Q: Grimsley.

23 A: Yes.

24 Q: Would you like some water?

25 A: That would be all right. My throat is a little dry.

ROBERT JACKSON - DIRECT BY MR. SUGGS

1 MR. SUGGS: May I get him some water, Judge?

2 THE COURT: Yes, sir. Absolutely.

3 MR. SUGGS: Maybe his testimony might be a little

4 clearer, Judge.

5 Here you go, Mr. Jackson.

6 BY MR. SUGGS:

7 Q: Did -- did you know that the pills were in the bottle in

8 your car?

9 A: I didn't know it at the time.

10 Q: Okay. Do you know how they got there?

11 A: The guy, Lynn, was driving my car to the drugstore.

12 Q: All right. When did he do that?

13 A: Same day.

14 Q: All right.

15 A: Or the day before, one of them -- one of them days.

16 Q: Okay. All right. Did you have -- did you get a chance

17 to look at the pill bottle?

18 A: No. I ain't never see -- I ain't never really see the

19 pill bottle.

20 Q: All right.

21 A: Until the officer.

22 Q: Okay. Did -- do you ever let -- did you let him use

23 your car?

24 A: Yeah. He was staying there with me.

25 Q: At your house?

ROBERT JACKSON - DIRECT BY MR. SUGGS

- 1 A: Yes.
- 2 Q: Okay. And had he used your car in the past?
- 3 A: Yeah. He used to use it pretty regular.
- 4 Q: Okay. Do you let other people use your vehicle?
- 5 A: Yes. Sometimes.
- 6 Q: Okay. And why do you let people use your car, Mr.
- 7 Jackson?
- 8 A: They might give me a few dollars to buy me some gas.
- 9 Q: Okay. And how long have you been doing that?
- 10 A: For the last -- ever since -- ever since I had my leg
- 11 cut off or a little bit before that.
- 12 Q: And you've had other cars besides this one, haven't you?
- 13 A: At the time.
- 14 Q: Okay. Well, did you let folks use your other cars too
- 15 when you had them?
- 16 A: Yes, sir.
- 17 Q: Okay. And is that how you would earn extra money or get
- 18 gas in your car?
- 19 A: Yes.
- 20 Q: All right. What about the testimony about -- well,
- 21 let's talk about the heroin that was in your pocket. Did
- 22 that belong to you?
- 23 A: Yes. That's what I bought from the guy that went in my
- 24 shirt pocket.
- 25 Q: Okay. Did you know what it was when you bought it?

ROBERT JACKSON - DIRECT BY MR. SUGGS

1 A: Yes.

2 Q: Okay. And the way it was packaged -- was it packaged
3 that way when you bought it?

4 A: Yes. I just stick it in my shirt pocket.

5 Q: Okay. How long had you had it in your pocket before the
6 officer arrested you?

7 A: About -- about 10 or 15 minutes.

8 Q: Not very long?

9 A: No.

10 Q: How much did you pay for it?

11 A: I paid a hundred dollars.

12 Q: Okay. And what do you use that heroin for when you buy
13 it?

14 A: For the -- for my pain in my foot and in my leg.

15 Q: Does it help?

16 A: Yeah, it helps.

17 Q: All right. If you don't have any pain pills and you
18 don't have any money to buy heroin, what do you do?

19 A: I just wait around and somebody might give me a dollar
20 or two every now and then.

21 Q: Okay. All right. Now, the other -- the other heroin --
22 we've talked about the pills, but the other heroin -- I think
23 there was three separate containers, one in your pocket, one
24 in the console, and one on the floorboard, if I remember the
25 evidence right. What -- the heroin that was on the

ROBERT JACKSON - DIRECT BY MR. SUGGS

1 floorboard and the console that the officer testified about
2 -- did that belong to you?
3 A: No, sir. That didn't belong to me.
4 Q: Did you know that it was in the console?
5 A: No, sir.
6 Q: Did you know that it was on the floorboard?
7 A: No, sir.
8 Q: Okay. Do you know who it belonged to?
9 A: It belonged to the guy. It had -- I don't know who it
10 belonged to. It had to been belong to the guy who got out of
11 the car and went in the store.
12 Q: It belonged to the guy who sold you what you had in your
13 pocket?
14 A: Yes, sir.
15 Q: Okay.
16 A: It had to belong to him, I guess.
17 Q: All right. Had you let him use your car as well?
18 A: Yeah. He had drive it.
19 Q: Okay. How often?
20 A: He didn't drive it too often. He had a little moped.
21 Q: Okay. And had he used it before you were arrested?
22 A: Yeah.
23 Q: Okay. Now, when -- when you bought that heroin that was
24 in your pocket, did you buy it just for you?
25 A: Yes, sir.

ROBERT JACKSON - DIRECT BY MR. SUGGS

1 Q: All right. Did you buy that -- that heroin to give to
2 anybody else?

3 A: No, sir.

4 Q: Did you buy it to sell to anybody else?

5 A: No, sir.

6 Q: Did you buy it to share with anybody else?

7 A: No, sir.

8 Q: Did you buy it just for your personal use?

9 A: Yes, sir.

10 Q: And you didn't get a chance to even use it, did you?

11 A: No, sir.

12 Q: Do you ever -- strike that. When you take the heroin,
13 does -- does it -- does it, in fact, help your pain?

14 A: Yes, sir.

15 Q: And how does -- how does it help your pain? Can you
16 describe how it helps it?

17 A: My feet stop burning and my phantom pain don't come
18 directly.

19 Q: How long does this last? The pain relief I mean?

20 A: The heroin? What? What did you say?

21 Q: How -- when you take the heroin, how long does it last
22 to relieve the pain?

23 A: It lasts a couple three or four hours.

24 Q: Okay. All right. And after the pain comes back, do you
25 have to take more?

ROBERT JACKSON - DIRECT BY MR. SUGGS

1 A: Yes. If I got it.

2 Q: Okay. If you have it. All right. Now, let's talk a
3 little bit about -- about your age again. You're 76?

4 A: Yes, sir.

5 Q: Okay. And you have a prior criminal record; is that
6 correct?

7 A: Yes, sir.

8 Q: All right. Now, isn't -- isn't it, in fact, true that
9 you have a prior felony conviction that carries more than one
10 year from 2000 and -- was it --

11 THE COURT: Eight.

12 BY MR. SUGGS:

13 Q: 2008?

14 A: Yes, sir.

15 Q: Okay. And in 2007, do you have a misdemeanor conviction
16 for use of vehicle without owner's consent?

17 A: Yes, sir.

18 MR. SUGGS: Okay. All right. All right. Answer any
19 questions that Mr. White has for you or the Court. Okay?

20 THE DEFENDANT: All right, sir.

21 CROSS-EXAMINATION

22 BY MR. WHITE:

23 Q: Good morning, Mr. Jackson.

24 A: Good morning.

25 Q: How are you doing this morning?

ROBERT JACKSON - CROSS BY MR. WHITE

1 A: Pretty good.

2 Q: I want to ask you a few questions, if that's all right.

3 A: Yes.

4 Q: Is it okay if I stand right here?

5 A: Yes.

6 Q: And can you hear me okay?

7 A: I can hear you.

8 Q: Now, I want to go over some things you said with your

9 attorney. Is that all right with you?

10 A: Yeah.

11 Q: You said you had gangrene; is that correct?

12 A: Yes, sir.

13 Q: And you said you had amputation to the --

14 A: Right leg -- left leg.

15 Q: And you said you had high blood pressure; is that

16 correct?

17 A: Yes, sir.

18 Q: And you said you're diabetic?

19 A: Yes.

20 Q: Is that right?

21 A: That's right.

22 Q: And you said you have phantom pain; is that right?

23 A: Yes, sir.

24 Q: And you said you have back pain?

25 A: Yes.

ROBERT JACKSON - CROSS BY MR. WHITE

1 Q: Isn't that correct? And you said your doctor says
2 you've got have an amputation on your other foot; isn't that
3 -- isn't that correct?

4 A: Yes, sir.

5 Q: And the doctor -- and isn't it true that you've been in
6 and out of the doctor several times and had several
7 procedures over the last few years?

8 A: Yeah.

9 Q: And are you telling us that the doctor has prescribed
10 you no medication?

11 A: No. No pain pills.

12 Q: Have you tried to switch medical providers?

13 A: I was about to try to do that, but after they operated
14 on the foot, I ain't had no Percocets.

15 Q: But you said heroin helps?

16 A: Yeah.

17 Q: How do you take it?

18 A: Snort it.

19 Q: You snort it?

20 A: Yeah.

21 Q: Now, let me ask you this. You said that Lynn Grimsley
22 was with you that day?

23 A: Yeah. Yes, sir.

24 Q: But he wasn't in the video, was he?

25 A: No, he wasn't down there.

ROBERT JACKSON - CROSS BY MR. WHITE

- 1 Q: So he took off rather fast?
- 2 A: No. He wasn't -- he wasn't in there. He was at the
- 3 house down there where he live at.
- 4 Q: Now, isn't it correct you just testified that Lynn
- 5 Grimsley took off into the store?
- 6 A: I said the guy who sold me the heroin took off into the
- 7 store.
- 8 Q: So the guy who sold you the heroin -- now, you just
- 9 testified that Lynn Grimsley, who sold you the drugs, took
- 10 off into the store?
- 11 A: No, I don't remember that. I didn't testify to that. I
- 12 testified that was his pill bottle. That he was driving my
- 13 car.
- 14 Q: You testified that you had -- you'd just bought the 50
- 15 bindles of heroin; isn't that correct?
- 16 A: Yeah.
- 17 Q: Now, you testified that you bought it for a hundred
- 18 dollars?
- 19 A: Yes.
- 20 Q: And you were in the courtroom earlier yesterday when law
- 21 enforcement testified; isn't that correct?
- 22 A: Yes.
- 23 Q: Were you in here when Inv. Chamberlain testified?
- 24 A: Yes, sir.
- 25 Q: Were you in here and hear him testify to the -- to the

ROBERT JACKSON - CROSS BY MR. WHITE

- 1 street value of the drugs?
- 2 A: Yeah.
- 3 Q: And isn't it true that he said that a bindle of heroin
- 4 goes for \$20?
- 5 A: Yeah.
- 6 Q: Now, how did you get such a discount?
- 7 A: I know the guy.
- 8 Q: You know the guy?
- 9 A: Yeah.
- 10 Q: The guy who was in your vehicle?
- 11 A: Yeah. I know him.
- 12 Q: You're saying that you let a known drug dealer use your
- 13 car from time to time?
- 14 A: Yeah. I let him drive it.
- 15 Q: So you were found in possession of 50 bindles of heroin?
- 16 A: Yeah.
- 17 Q: And you're saying you -- another 50 were found in your
- 18 center console and you're saying another 10 bindles were
- 19 found on your floorboard?
- 20 A: I don't know. I don't know where they find that, but
- 21 that's what they said it was on my floorboard in court here.
- 22 Q: Of your car?
- 23 A: Yeah.
- 24 Q: That you let a known drug dealer use from time to time?
- 25 A: Yeah.

ROBERT JACKSON - CROSS BY MR. WHITE

1 Q: Let me ask you this. You said you had five children;
2 isn't that correct?

3 A: I said eight.

4 Q: You said eight? Okay. Let me make a correction here.
5 You have eight children?

6 A: Yes.

7 Q: And you said one of them was in court helping you around
8 yesterday and today; isn't that correct?

9 A: That was my cousin. That was my son brought me up here
10 today.

11 Q: Your son brought you up here today. That's a good son.
12 I got a daughter myself and I hope one day I can count on her
13 the way that you can count on your son.

14 A: Yeah.

15 Q: You didn't think you could count on your son whenever
16 you are in pain and needed drugs that the doctors wouldn't
17 give to you? That you couldn't ask another doctor and you
18 couldn't switch medical providers? Every time you go to the
19 doctor, they deny you prescriptions, and you couldn't ask
20 your son to help you out or anybody else to help you out to
21 solve that situation so you didn't have to resort to --

22 MR. SUGGS: Your Honor, I'm going to object. Your
23 Honor, that's a rather long question, if it's a question.
24 It's a rather long examination to me.

25 THE COURT: It's a rather long question. It's a valid

ROBERT JACKSON - CROSS BY MR. WHITE

1 question.

2 MR. SUGGS: Shorten it a little bit.

3 THE COURT: I'm going to let him ask it, but he needs to
4 ask it a little bit more artfully.

5 MR. WHITE: Yes, sir, Your Honor. Thank you.

6 BY MR. WHITE:

7 Q: Did you think to ask any of your eight children for help
8 whenever the doctors would not prescribe you medication?

9 A: Well, I asked my daughter, but she couldn't help.

10 Q: How about your other seven children?

11 A: Well, all of them ain't here.

12 Q: Your son is here?

13 A: Yeah, he here.

14 Q: How do you -- you said you snort heroin?

15 A: Yeah.

16 Q: Now, obviously you've got a lot of medical problems, but
17 I didn't hear you list addiction. We deal a lot with
18 addiction in our office. How did you come to be off of
19 heroin?

20 A: How am I coming to get off it?

21 Q: Yes, sir.

22 A: Well, you just have to suffer your way off.

23 Q: Say again?

24 A: I guess you have to suffer your way off it.

25 Q: Suffer your way off of it?

ROBERT JACKSON - CROSS BY MR. WHITE

1 A: Yeah.

2 Q: So you can --

3 A: If you can't get none.

4 Q: Are you saying you can suffer through addiction, but you

5 can't suffer through high blood pressure, phantom pain, and

6 back pain?

7 A: No, I can't. I mean it hurts. It still hurts.

8 Q: Now, Mr. Jackson --

9 A: Huh?

10 Q: Let me ask you this: The drugs, the 50 bindles of

11 heroin, you admit, don't you, that those are your drugs?

12 A: No. Not -- not no more than what is in my pocket.

13 Q: The ones in your pocket?

14 A: Yes.

15 Q: And were you in here when the chemist testified that the

16 50 bindles of heroin that were in your pocket -- they were

17 stamped with a red print and a purple print, I believe, and

18 some of them had -- were in a blue wax paper bag; isn't that

19 correct?

20 A: I don't know about -- I don't know about all of that.

21 Q: You weren't listening when the chemist testified?

22 A: I hear him say that, but I ain't -- I ain't know nothing

23 about all that.

24 Q: Were you here when he testified that the blue print, the

25 red print, and the wax paper bags that were inside of your

ROBERT JACKSON - CROSS BY MR. WHITE

1 pocket were also inside the bundles of bindles in your center
2 console, as well as your floorboard?

3 A: I don't know. See, I don't know nothing about that.

4 Q: You don't know anything about that?

5 A: No. I found out later on who the -- who the bindles
6 belong to.

7 Q: So you bought 50 bindles of heroin?

8 A: Yeah.

9 Q: For your pain?

10 A: Yeah.

11 Q: So your doctor won't prescribe you anything. You're
12 kind of your own doctor; isn't that correct?

13 A: I had to do something. I was hurting.

14 Q: You're your own pharmacist too?

15 Q: Huh?

16 Q: Are you your own pharmacist as well, Mr. Jackson?

17 A: No.

18 Q: You're not?

19 A: No, I ain't no pharmacist.

20 Q: But it was packaged into 50 separate bindles. That's --
21 I mean it seems as if that's, you know, pretty structured
22 behavior.

23 MR. SUGGS: I object to that. That's not a question.
24 That's a statement.

25 THE COURT: Sustained.

ROBERT JACKSON - CROSS BY MR. WHITE

1 MR. SUGGS: Thank you, Your Honor.

2 BY MR. WHITE:

3 Q: Mr. Jackson, you're 76 years old?

4 A: Yes, sir.

5 Q: Do you know that the 50 bindles you had on you were

6 illegal?

7 A: Yes, sir.

8 Q: Do you know that the 60 bindles they recovered from your

9 car are illegal?

10 A: Yeah. I sort of know that now. Yeah, I know it.

11 Q: You know it? Do you know that heroin cannot be obtained

12 with a valid prescription?

13 A: Yeah, I know that.

14 Q: And you testified that you got Percocet as early as

15 yesterday?

16 A: I got them in the last two months. The last two months

17 the doctor -- the doctor who was working on my foot -- he

18 give me some Percocet.

19 Q: So with the trial date looming, your doctor was able to

20 prescribe you medicine?

21 A: Not that doctor. My family doctor, the doctor that done

22 the wounds, not work at the center, but close in the

23 hospital.

24 Q: So you did switch medical providers?

25 A: No. I had to go about this leg and I went to see about

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1 -- about my foot and I had to go to him. They send me to
2 him.

3 MR. WHITE: Okay. Thank you, Mr. Jackson. I have
4 nothing further.

5 THE DEFENDANT: Okay.

6 MR. WHITE: Thank you very much.

7 THE DEFENDANT: All right.

8 MR. SUGGS: Just a few --

9 THE COURT: Anything on redirect?

10 MR. SUGGS: A few follow-up questions, Judge.

11 THE COURT: Sure.

12 MR. SUGGS: If that would be okay?

13 THE COURT: Yeah.

14 MR. SUGGS: Thank you, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. SUGGS:

17 Q: Mr. Jackson, you said in the last -- that the doctor had
18 given you some Percocets. When the last time?

19 A: About two weeks -- about three weeks ago.

20 Q: Okay. And how many did he give you?

21 A: He gave me 60.

22 Q: Sixty? Okay. All right. And you took all of those?

23 A: Yes. I got about one or two more.

24 Q: Okay. All right. Do those help? Are they better than
25 heroin or about the same or what?

ROBERT JACKSON - REDIRECT BY MR. SUGGS

1 A: I guess if you take enough of them. They ain't --

2 Q: How --

3 A: No, they ain't -- they ain't as good as heroin.

4 Q: All right. And Mr. White kept saying the number of
5 bindles that -- that you had in your actual possession. I
6 think he said 50. Do you know how many bindles were in your
7 pocket or you just know that you had them in your pocket?

8 A: Well, I know I had them in my pocket. I didn't know
9 exactly how many it was.

10 Q: Okay. All right. And do -- do you have any idea of how
11 -- what the purity is on that that you bought? I mean did
12 you have a chance -- you didn't have a chance to test it, did
13 you?

14 A: I don't know. I didn't have a chance to check it.

15 Q: Okay.

16 A: I wouldn't have known no way. I couldn't tell.

17 Q: You couldn't tell? Okay. All right. But you don't
18 have any knowledge of purity or anything like that?

19 A: No, sir.

20 MR. SUGGS: All right. That's all I have, Judge. Thank
21 you.

22 THE COURT: Anything further?

23 MR. WHITE: No, sir, Your Honor.

24 THE COURT: All right. Thank you, Mr. Jackson. I'm
25 going to let you give that microphone back to the bailiff.

1 (WHEREUPON, there was a bench conference held in the
2 presence of the jury but out of the hearing of the jury
3 as follows.)

4 MR. SUGGS: That's going to be our case, Judge.

5 THE COURT: I'll let you say it in a minute.

6 (WHEREUPON, the bench conference ended and the
7 proceedings resumed as follows.)

8 MR. SUGGS: That would be the defense's case, Your
9 Honor.

10 THE COURT: All right. Ladies and gentlemen, I'm going
11 to -- at the close of the defense's case -- I have to take up
12 matters of law at the close of the defense's case.

13 So I'm going to get you to step back into your jury
14 room. Please have no conversation about the case and let me
15 take up these matters of law, and then we'll come back and
16 resume.

17 (WHEREUPON, the jury exited the courtroom at 11:03 a.m.)

18 THE COURT: All right. At this time, we'll take up any
19 motions at the close of the evidence.

20 MR. SUGGS: Thank you, Your Honor.

21 Judge, again, I would move for a directed verdict on not
22 all counts in the indictment, but, Judge, I think it's quite
23 clear that through the testimony from the State and from the
24 defense that Mr. Jackson was in actual possession of an
25 amount of heroin in his front shirt pocket.

1 Now, I know that there was a package of heroin in his
2 pocket and there were two other packets that came into
3 evidence, but one packet was in the console, if I recall
4 correctly, and the other packet was on the floorboard, I
5 think, on the passenger side of the car. And the pills,
6 Judge, were not in his actual possession either. They were
7 in the door of the driver's side door, I believe is the
8 testimony.

9 So in terms of the drugs or the heroin that Mr. Jackson
10 had in his actual possession, I think, obviously, that's been
11 proved by the State and admitted to by the defendant.
12 However, the other drugs, the other two batches of heroin and
13 -- for lack of a better term, and the bottle of pills, were
14 not in his actual possession.

15 They were in constructive possession and, in terms of
16 constructive possession, I do not think that the State has
17 put forth enough evidence to support that, number one, that
18 Mr. Jackson exercised dominion and control over the vehicle
19 where these three separate drug caches were found and, number
20 two, I do not believe that they have proved that he knew that
21 they were present.

22 There's been no evidence from the State saying that in
23 any sort of testimony that would show the defendant knew that
24 the three separate caches were -- were in the vehicle with
25 his knowledge. So in terms of constructive possession of

1 those three caches of drugs, I would move for a directed
2 verdict.

3 THE COURT: All right. I'm going to respectfully deny
4 that. I think it's a jury question.

5 MR. SUGGS: Yes, sir.

6 THE COURT: I think it depends on how the jury views the
7 evidence.

8 MR. SUGGS: Yes, Your Honor.

9 THE COURT: So I'm going to respectfully deny that.

10 MR. SUGGS: Yes, sir.

11 THE COURT: Anything further?

12 MR. SUGGS: No, sir. Thank you.

13 THE COURT: Anything from the State?

14 MR. WHITE: No, sir.

15 THE COURT: Well, why don't we -- at least initially,
16 why don't we informally step back into chambers. We'll talk
17 about the charge and see where we're at on that and then
18 we'll put anything on the record that we need to put on the
19 record. Okay?

20 MR. SUGGS: Okay Judge.

21 THE COURT: So we'll take a short break while we discuss
22 the -- informally discuss the jury charge.

23 (WHEREUPON, there was a break in the proceedings from
24 11:07 a.m. until 12:04 p.m., after which the proceedings
25 resumed as follows.)

1 THE COURT: All right. Now, I want to give everybody an
2 opportunity to put matters on the record regarding the
3 charge. I have discussed it with the attorneys for both the
4 State and the defense, and what I intend to charge other than
5 the -- well, I'll just kind of briefly go over it.

6 The boilerplate language. I got the presumption of
7 innocence that I'll charge them.

8 I have a charge that deals with multiple charges. In
9 this case, there's two different charges. There's the
10 trafficking charge that is associated with the heroin and
11 then there's the charge that is associated with the pills.
12 And that they are not to be influenced by their decision on
13 one charge. They can find him guilty of both, not guilty of
14 both, guilty of one and not guilty of the other, and
15 basically a charge that says that.

16 Reasonable doubt charge is the firmly convinced charge
17 that I use.

18 I'll let them know that the arguments of counsel,
19 although beneficial, are not evidence and that the evidence
20 is from the witness stand and any exhibits that have come in.

21 That they're the judges of the credibility and the
22 believability of the witnesses. I have an expert witness
23 charge because we had the chemist who testified.

24 I have a charge on direct and circumstantial evidence.

25 Then I've got the trafficking charge, which deals with

1 the -- the -- the heroin in this case, and then I've got a
2 possession with intent as a lesser included to that heroin
3 charge, and then I have a simple possession as it relates to
4 the heroin, depending on how the jury views the evidence.

5 Then I have a charge on possession of a controlled
6 substance under Schedules I through V. I have a charge on
7 actual and constructive possession, which includes the mere
8 presence language that Scott asked about.

9 And that's pretty much what I have. So from the State,
10 Mr. White?

11 MR. JEPERTINGER: Well, I was going to address it for
12 the State.

13 THE COURT: Oh, I'm sorry. Mr. Jepertinger?

14 MR. JEPERTINGER: Yes. Your Honor, the only objections
15 we would have -- obviously, we bantered this around a little
16 bit -- would be the inclusion of possession with the intent
17 to distribute and possession with lesser included offenses,
18 and we based that on -- I raised Matthews v. State and State
19 v. Grant.

20 THE COURT: Okay. Yeah. And we did talk about that. I
21 believe the premise of those cases is that a person cannot be
22 -- a case cannot go to the jury on trafficking and possession
23 with intent for the same drugs if -- if -- if there's no
24 question as to the weight.

25 Here, I think there is -- there's question regarding the

1 weight. I don't think there's any -- no one has disagreed
2 that the total weight of the drugs in this case is over 4
3 grams, but the defense's position is is that he was not in
4 possession but for only -- but of only a portion of that and
5 that he was unaware of the other drugs in the case, and so I
6 think the weight is in controversy here.

7 MR. JEPERTINGER: Your Honor, based on -- based on that
8 fact and if he's saying that the other drugs weren't his, we
9 can't -- I would ask for a charge also -- and I should've
10 done this -- in terms of joint possession because the drugs
11 are right there on the console within --

12 THE COURT: Yeah.

13 MR. JEPERTINGER: -- easy access to them, and more than
14 one person can --

15 THE COURT: Well, in the testimony, he made the -- he
16 gave the testimony -- if you're to believe his testimony --
17 that the guy who had possession of those drugs was just in
18 the car with him and left.

19 MR. JEPERTINGER: Right. So you can have joint
20 possession. It's out there in the open. It wasn't on the
21 guy. I mean if you were to believe his testimony.

22 THE COURT: Mr. Suggs?

23 MR. SUGGS: Well, there was no evidence either way, I
24 don't think, that he either saw or knew that the other person
25 had these other packages of heroin. I don't think I asked

1 him. I may have. I don't think I asked him did you know
2 that he had or did you see it because, again, he had just
3 bought it. He said he just bought it.

4 THE COURT: He said he just bought it from him.

5 MR. SUGGS: Yeah. Did you see the others? I didn't ask
6 that. I don't think the State has. So I think it's up to
7 the jury to -- I guess to determine whether or not --

8 THE COURT: Yeah.

9 MR. SUGGS: -- you know, the time is compressed like
10 that, whether, in fact, he would've seen it.

11 THE COURT: I think it is a jury question, but I think
12 the charge is appropriate and I will -- I will charge --

13 MR. SUGGS: I don't know that it needs to be pointed out
14 to them in the form of a charge, but it's just --

15 THE COURT: No. It's just part of the charge.

16 MR. SUGGS: Yes, sir.

17 THE COURT: It would be part of the charge regarding
18 actual and constructive possession.

19 MR. SUGGS: Okay.

20 THE COURT: Yeah. Anything further from the State?
21 I'll note your objection to the --

22 MR. JEPERTINGER: Yes, sir. And after you give the
23 charge, I'm going to object because it's not --

24 THE COURT: Yes.

25 MR. JEPERTINGER: -- until it's done.

1 THE COURT: Yes, sir. Okay.

2 MR. JEPERTINGER: Yes, sir. Thank you, Judge.

3 THE COURT: Mr. Suggs?

4 MR. SUGGS: Yes, sir. Could I have -- or what were you
5 going to -- what was the charge we're going to use on mere
6 presence? Do you have that in front of you?

7 THE COURT: That mere presence at the scene of where
8 drugs were found is not enough to prove possession.

9 MR. SUGGS: Okay. Thank you, Judge.

10 THE COURT: All right. Anything else regarding the
11 charge then?

12 MR. WHITE: Not from the State.

13 THE COURT: Is the State ready to proceed --

14 MR. WHITE: Yes, sir, Your Honor.

15 THE COURT: -- to closing arguments? Is the defense
16 ready?

17 MR. SUGGS: Yes, Your Honor.

18 (WHEREUPON, there was a pause in the proceedings, after
19 which the proceedings resumed as follows.)

20 THE COURT: All right. We'll -- all right. Let's bring
21 the jury in, please.

22 (WHEREUPON, the jury entered the courtroom at 12:16
23 p.m.)

24 THE COURT: All right. Ladies and gentlemen, I've taken
25 up the matters of law that I needed to take up at the close

1 of the evidence and so we've now reached the portion of this
2 trial where the attorneys are going to have an opportunity to
3 present to you what we typically refer to as closing
4 arguments.

5 It's important that you listen carefully to what they
6 have to tell you, but it's also important that you understand
7 this. The evidence in this case is closed. The evidence is
8 the testimony from the witness stand, the items -- the
9 exhibits that came in during the course of the trial. That's
10 the evidence in this case, but this is their opportunity to
11 argue to you what they believe the evidence in this case has
12 shown. So I would ask that you give them your undivided
13 attention as they address you.

14 The State has the burden of proof and, therefore, they
15 will go first with their closing argument. Then Mr. Suggs
16 will have an opportunity to address you on behalf of the
17 defense with a closing argument, and the State, if they
18 choose to, can then present a short rebuttal or a response to
19 Mr. Suggs's argument.

20 Once they've concluded their closing remarks to you, I
21 will then give you the charge on the law, and then you will
22 be in a position to have the case for your consideration.

23 So please, if you would, give the lawyers your undivided
24 attention as they address you with their closing remarks.

25 Mr. White?

1 MR. WHITE: Thank you, Your Honor. May it please the
2 Court.

3 THE COURT: Yes, sir.

4 MR. WHITE: Mr. Suggs.

5 CLOSING ARGUMENT ON BEHALF OF THE STATE

6 MR. WHITE: An incredible story, ladies and gentlemen,
7 an absolutely incredible story that we heard today. That
8 story can only be described as the worst day in the history
9 of days. A man, the defendant in this case, Robert Jackson,
10 gangrene, bad heart, bad back, amputation, is denied
11 medication at every medical provider he goes to. His only
12 outlet is to purchase heroin.

13 (WHEREUPON, State's Exhibit Number 1, video, was played
14 in open court, with closing argument continuing during
15 the playing of the video.)

16 MR. WHITE: There he is right there, ladies and
17 gentlemen. Law enforcement is courteous to him. They asked
18 for his ID.

19 It's at this time, ladies and gentlemen, that Inv. Pate
20 sees the bindles of heroin in Robert Jackson's pocket. It's
21 at -- it's at this point he's detained, ladies and gentlemen.
22 Subsequently, a search is conducted, as you've heard from the
23 witness stand. They find 60 more bindles.

24 Now, the defense would have you believe those 60 bindles
25 just kind of were there. There was somebody else in this car

1 and that person just jettied off. Now, that is a bad day. No
2 medication. Has to turn to heroin. Your drug dealer leaves
3 you high and dry and runs off. I don't see anybody else
4 there, ladies and gentlemen. I see a lot of drugs on the
5 hood of that car.

6 The defendant also testified he has eight children.
7 Well, first he testified he had five and then I guess he
8 remembered he had eight. None of them would help him. None
9 of them would help him with his medication situation. He had
10 to turn to heroin.

11 Ladies and gentlemen, you're going to see in just a
12 second he had enough money on him to help himself. You're
13 going to see law enforcement. They're going to pull out
14 money from every conceivable part of Mr. Jackson's person.

15 And although he testified from his wheelchair and,
16 regretfully, his medical condition, we sympathize with him,
17 but he looks like he's moving around pretty good there. Now,
18 that looks like a pretty good bit of money, ladies and
19 gentlemen. I would argue that that's enough money to help
20 yourself.

21 He said on the witness stand or from his wheelchair that
22 he paid a hundred dollars for that heroin, but we never found
23 out where that money came from. You heard Inv. Chamberlain
24 testify from the stand, \$1,485. I don't know. I can't
25 remember the last time I carried that much money on me. And

1 it's just stuffed in there, ladies and gentlemen. It's
2 spilling out.

3 Keith, you can stop it right there.

4 (WHEREUPON, the video was stopped.)

5 MR. WHITE: Now, ladies and gentlemen, in just a few
6 minutes, the judge, Judge Russo, is going to charge you on
7 the law in this case, and I'll tell you he can do it so much
8 more eloquently than I can, but I'd like to go over the law a
9 little bit with you so to point out specific aspects of the
10 law that I think are important in this case.

11 And I appreciate your time this week. I know it's been
12 a long week, but we're almost to the end of this thing and I
13 want you to pay close attention, if you could, because
14 although -- in his opening, Mr. Suggs said he'll give you
15 several examples of different levels of possession. He said
16 there were three or four. Trafficking is the most serious
17 and although he used an example -- as an example, marijuana,
18 ladies and gentlemen, this is not about marijuana. This is
19 about heroin, and the law states this.

20 Any person who knowingly sells, manufactures,
21 cultivates, delivers, purchases or brings into this state or
22 who provides financial assistance or otherwise aides, abets,
23 attempts or conspires to sell, manufacture, cultivate,
24 deliver, purchase, or bring into this state or who is
25 knowingly in actual or constructive possession or who

1 knowingly attempts to become in actual or constructive
2 possession of 4 grams or more of heroin is guilty of a felony
3 which is known as trafficking in illegal drugs.

4 Now, ladies and gentlemen, that's a lot of words and the
5 law is good about doing that, but I'm going to simplify it
6 for you. See, any person -- any person who is knowingly in
7 actual or constructive possession of 4 grams or more of
8 heroin is guilty of a felony which is known as trafficking in
9 illegal drugs. It's that simple, ladies and gentlemen. It's
10 that simple.

11 Now, possession. In order to prove it, the State must
12 prove beyond a reasonable doubt that the defendant had both
13 the power and the intent to control the disposition or the
14 use of the heroin, but possession may be either actual or
15 constructive. Now, ladies and gentlemen, actual, you see it
16 plain as day. He has it in his pocket. That's actual
17 possession. It's on his person. It's in his reach.

18 Now, constructive can be little bit more complicated,
19 but it's really not that hard to understand. Constructive
20 possession means that the defendant had dominion and control
21 or the right to exercise dominion or control over either the
22 heroin itself or the property -- the property on which the
23 heroin is found.

24 Now, the Supreme Court -- in this state, it says the
25 defendant's knowledge and possession may be inferred. It's

1 an inference that you can take back there with you when a
2 substance is found on a property under the defendant's
3 control.

4 Now, property, as we all know, can mean a lot of things.
5 In this -- in this case, it's a burgundy Nissan Altima. And
6 you see on that video that the defendant was the only person
7 in the car. In fact, he testified from right over there that
8 it was his car.

9 Now, I argue two things to you, ladies and gentlemen.
10 First, he had the right to exercise dominion and control over
11 that vehicle because he was the only person in it, but if you
12 believe that there was some very fast drug dealer who ran
13 inside, it doesn't matter, ladies and gentlemen, because he
14 owned that vehicle. He said so.

15 Let me ask you something. Do you have the right to
16 exercise dominion and control over your vehicle? There was
17 heroin found inside. And the evidence says, yes, ladies and
18 gentlemen. First, possession. We went over it before, but
19 actual. He had 50 bindles on his person. That's actual.

20 Constructive. The defendant was in constructive
21 possession of 60 bindles, 50 in the center console and 10 on
22 the floorboard. In fact, Inv. Clark testified that as soon
23 as she opened that driver's door, she saw it. It was in
24 plain view laying right there.

25 Now, I don't know if that proved to you that he

1 knowingly possessed. Ladies and gentlemen, that's just
2 common sense. I mean do you know what's in your shirt pocket
3 right now? Do you know what's in your pants pocket? Do you
4 know what's in your center console in your car right now? Do
5 you know what's on your floorboard? If it was heroin, should
6 you know? I mean it's that simple.

7 He's also been -- excuse me. He's also been charged
8 with possession of a controlled substance. That's for those
9 30 Xanax pills that you heard throughout the trial.

10 That law states it shall be unlawful for any person
11 knowingly or intentionally to possess a controlled substance
12 unless the substance was obtained with a valid prescription.
13 He had that Xanax. He was in constructive possession of
14 that's Xanax and no valid prescription was ever turned over.

15 Now, ladies and gentlemen, I've been thinking a lot
16 about this case recently. I was doing so on the way home and
17 it's almost sweet potato season, which is a little off topic,
18 but if you'll indulge me.

19 My mom makes sweet potato pies. She does so whenever I
20 ask her to. I'm lucky in that way.

21 So whenever it's this season -- I live over in
22 Darlington. When I'm coming home from work, I always look
23 out to see if there are any vendors on the side of the road,
24 and I'll grab three or four sweet potatoes and I'll take them
25 home to my mom.

1 And those vendors inevitably have a truckload full. The
2 truck is completely piled with sweet potatoes, but I grab
3 three or four and I take them home to my mother and she cooks
4 them up for me.

5 I'd be shocked if I walked into my mom's house at any
6 given time and I saw more than three or four sweet potatoes,
7 but that vendor always has a truckload full. Now, you've got
8 to pay in cash. Always in cash. I pull out my cash and he
9 pulls out a big wad too because he's a vendor. He's got a
10 large amount and a large amount of cash to conduct
11 transactions.

12 Now, if me and my mom are at home and my dad walked in
13 the door and there were 110 sweet potatoes on the table, my
14 dad would say, inevitably, what are you doing? Getting into
15 the sweet potato business? Are you selling sweet potatoes
16 now? Well, he might let that go. He's a good guy. But I
17 guarantee you if my mom pulled out \$1,485 in a big wad and
18 laid it next to the sweet potatoes, we'd have to have a
19 discussion. We'd have to have a discussion as to whether
20 we're making sweet potato pies or we're selling them on the
21 side of the road.

22 Now, in just a few minutes, the judge is going to charge
23 you on the law, as I said, and then you're going to go back
24 here. I said in my opening age is just a number, but there
25 have been a lot of numbers in this case I do want you to take

1 back there with you because they have meaning. They mean
2 something in this case. They mean something under the law.

3 How about the number 50? Inv. Pate recovered those 50
4 bindles, like I said, from the defendant's person, 5 bundles
5 containing 10 bindles each. And we heard testimony that a
6 bindle is just a bag. It's a baggie.

7 And then 60. Sixty bindles recovered from that Nissan
8 Altima: 50 from the center console, 10 from the floorboard.
9 That's 110 sweet potatoes, ladies and gentlemen. That's a
10 lot of sweet potatoes. Thanksgiving is looking good.

11 Then how about 2,200, ladies and gentlemen? That's the
12 amount -- we have to do a little math. Inv. Chamberlain got
13 on that witness stand and he said each individual bag's
14 street value is \$20. 110 times 20 is \$2,200.

15 The defendant in this case was in poor health, worst day
16 in his life, can't do anything but turn to heroin to ease the
17 pain, but when he does, he jumps all the way in, ladies and
18 gentlemen, 110 bags of heroin valued at \$2,200, and \$1,485 in
19 a big wad of cash. That's a pretty awful day.

20 And then we heard the chemist. 4.68 is a very important
21 number I want you to take back with you, ladies and
22 gentlemen. Now, he broke it down for us. Ten blue wax paper
23 bags, .84. Thirty wax paper bags with a purple print, .92.
24 Seventy wax paper bags with a red print, 2.92. If you do the
25 math on that, ladies and gentlemen, it's 4.68, and that gets

1 us past the requisite number, 4 grams or more.

2 Now, throughout the trial, defense counsel wanted to
3 kind of muddy the water because 50 bindles were recovered
4 from his person, 10 from the floorboard, and another 50 from
5 the center console. So he's trying to say how did it end up
6 in this configuration, 10, 30, 70, and I'll tell you.

7 Let's say you've got three bags, three plastic bags. In
8 each one of them, you've got what appears to be Starburst,
9 what appears to be M&Ms, and what appears to be Skittles in
10 each one of them. And you've got them all together and you
11 want to test them to see is that Starburst? Is that M&Ms?
12 Is that Skittles? Well, that's what you do. You pull out
13 what you think is Skittles, you pull out what you think is
14 Starburst, and you pull out what you think is M&Ms.

15 It's not that hard. It's not that complicated. That's
16 the way it's broken down. Blue wax paper bags, bags with
17 purple print, bags with red print, because they were all
18 types of those prints and those colors contained within each
19 bundle. It's not that complicated, ladies and gentlemen.

20 The next number I want you to take back there with you
21 is 30, and that's that 30 Xanax pills right there in the
22 floorboard. It was the first thing that caught -- or excuse
23 me -- in the door. The first thing that caught Inv. Pate's
24 attention, and you're going to be able to take all this
25 evidence back there with you, ladies and gentlemen, and one

1 of those items is that prescription bottle. You're going to
2 see what we're talking about when we say the name was
3 removed. You're going to see that.

4 The next number is 1,485. That's that cash. That's a
5 lot of it.

6 All those numbers, 50, 60, 110, 2,200, 4.68, 30, 1,485.
7 Please take all those numbers back there in the jury room,
8 weigh them, think about them, give them the weight they
9 deserve, mull them over.

10 There's one number that I don't want you to take back
11 there with you, ladies and gentlemen. There's one number
12 that I wish you would leave right out here where it needs to
13 be. And that's this number, ladies and gentlemen. That's
14 this number here and that's the defendant's age. Because
15 like I told you in my opening, ladies and gentlemen, age is
16 just a number.

17 So please take all the numbers, all the evidence that
18 was given to you in this trial, and I trust you'll make the
19 right decision. Thank you.

20 THE COURT: Thank you, Mr. White.

21 Mr. Suggs?

22 MR. SUGGS: Yes, Your Honor.

23 THE COURT: Do you -- do you need --

24 MR. SUGGS: I can -- I can use that in lieu of the -- of
25 the --

1 THE COURT: Work on top of it?

2 MR. SUGGS: -- podium, if that's okay.

3 THE COURT: It's fine.

4 MR. SUGGS: Okay. It should work okay. I used it on
5 the fifth floor one day. Yeah. This is fine. Thank you,
6 Judge.

7 THE COURT: Okay.

8 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

9 MR. SUGGS: Thank you, ladies and gentlemen, for sitting
10 through this trial. I'll try not to be as long on my closing
11 as I was on my opening. I didn't mean to be that long the
12 other day.

13 And also, you know, during the trial of this case, you
14 know, if I said or did anything that was upsetting to anyone,
15 don't -- don't blame my client. Just blame me. I didn't
16 intend to, but if I did, don't blame Mr. Jackson for my
17 misdeeds or misconduct in any way.

18 I remember one thing I said yesterday about trial
19 strategy and that trials are fluid. They're not static.
20 They're always changing; so you have to sort of go with the
21 flow.

22 I got to thinking about that later and I didn't want you
23 folks to imply anything sinister about that. It's simply
24 not. It just means that, you know, on -- on just about every
25 case I've ever handled, whether I've tried it or whether in

1 some way it's resolved itself short of a trial, I'd like to
2 think that I know everything there is to know about that
3 case.

4 But more often than not, I normally find out things
5 about a case that -- that I didn't know and at the time that
6 I probably should've known, but I didn't know, and I guess
7 that happens to everyone. And when that happens, you have to
8 sort of adjust yourself accordingly and that's all I meant by
9 that. It's, again, nothing sinister. It's just facts,
10 circumstances change often because of things that you don't
11 know and should've known, and you just have to adjust
12 yourself. That's all I meant by that.

13 All right. I want to talk about the law first just a
14 little bit and then we can talk about the facts and the
15 evidence and how the facts and the evidence through the
16 testimony or whatever was admitted applies to the facts or
17 applies to the law.

18 We talked yesterday about possession. I believe I told
19 you there's two kinds of possession. There's actual
20 possession and constructive possession, and I think it's
21 clear to everyone what that means; actual possession being
22 having something on you and then constructive being having
23 something in an area where you exercise dominion and control.

24 But again, with actual possession, there's not too much
25 to that in the State being able to prove actual possession,

1 and it's even easier when the defendant steps forward and
2 admits, yes, I was in actual possession of that. So that's
3 sort of a no-brainer. You know, you can just check that off
4 your list and keep going.

5 But when you get to the constructive possession, you
6 know, the State has the burden of proving, number one, that
7 you exercise dominion and control over the area where the
8 items, drugs in this case, were found, and, number two, that
9 you had knowledge that those drugs were there.

10 Because again, I used that example the other day about
11 you being a passenger in someone's car. They maybe pick you
12 up, you want a ride to work, and in their car is drugs. And
13 you get stopped and you didn't know there were drugs there.
14 You're exercising dominion and control over that vehicle, but
15 you had no knowledge the drugs were there. So it would be
16 the State's burden of proving beyond a reasonable doubt that
17 you knew that the drugs were in that car.

18 Or a similar example -- you probably can think of a
19 million of them. You pick up a hitchhiker. It is not
20 recommended. Some people still do it. You pick up a
21 hitchhiker and the hitchhiker has drugs on his or her person
22 and they slide it under the seat when the blue light comes up
23 from behind and you get pulled over. The car is searched.
24 Drugs are found under the seat. Both are in constructive
25 possession and you're going to jail or you're maybe going to

1 jail or maybe your car is getting towed.

2 So that's the thing about constructive. Not only does
3 the State have the burden of proving that you exercise
4 control over the place where the drugs are found, they also
5 have to prove that you knew that the drugs were there, and
6 that's not the easiest thing. You have to do that.

7 You can't get into somebody's mind really. We're not
8 mind readers. So how do you -- how do you do that? Well,
9 you have to try to determine that from other facts and
10 circumstances which are present in the case to draw your own
11 conclusions.

12 Now, we have actual and constructive possession in this
13 case, and we've already -- we've already talked about that.
14 And I talked a little bit about the four crimes that are
15 generally associated with drugs.

16 We talked about possession again or simple possession,
17 and simple possession, depending on what the drug is, is
18 based upon the amount that you have.

19 Then there's distribution, where you actually are
20 distributing it. You're selling it or you're giving it to
21 someone. Again, it could be an innocent exchange. We talked
22 about a friend who had a headache and you had an extra
23 Percocet; so you gave it to your friend. You know, you've
24 broken the law and that's distribution. It doesn't matter
25 what the amount is.

1 And number three was -- was possession with intent to
2 distribute, which means that you had a certain type of drug
3 and because the statute says that if you have more than that
4 amount on your person, even if you didn't sell or distribute
5 it, it's inferred. It's an inference there that you had it
6 for more than just personal use.

7 Keep in mind that that is an inference only. It's not a
8 burden shifting sort of thing. The burden in a criminal case
9 never shifts to the defendant. It always stays with the
10 State. So an inference is not a shifting of the burden of
11 proof. An inference is simply that, something that you can
12 accept or you can disregard.

13 And then the last was trafficking, and that's simply
14 based upon an amount. There's really no inference in
15 trafficking. Trafficking, I think, is more of a punitive
16 statute by the State of South Carolina. It focuses on
17 amounts only. You have over a certain amount, then it's
18 trafficking, and the trafficking in heroin -- I think it's 4
19 grams or more.

20 So that -- that would be -- it's a very small amount.
21 As a matter of fact, I have -- I brought this with me today.
22 We talked a little bit about amounts and about grams and
23 thinks the other day and I assure you this is -- this is not
24 what it looks like. This is Sweet 'n Low that I have in the
25 bags here, and I just actually -- these aren't in evidence,

1 by the way. These are simply for demonstrative purposes and
2 I've got them marked 1, 2, and 3, but this is one gram. This
3 is what one gram of sugar looks like, and I would -- I would
4 presume that one gram of heroin would look -- would take up
5 about the same amount of space. Now, that's marked number
6 one.

7 Number two -- well, that's -- that's two grams. That's
8 two sugar packs.

9 And of course, number three is -- that's three sugar
10 packs or three of these packs right here.

11 Now, the amounts that we're talking about here today,
12 there was an amount that was of heroin that was in Mr.
13 Jackson's pocket, his front pocket, which he admitted
14 ownership of. He admitted that to you. That was his.

15 The pills that were in the car in the driver's side door
16 did not belong to him. The heroin which was, I believe, in
17 the console and the other batch which was in the -- on the
18 floor on the -- I think on the passenger side, he didn't know
19 about.

20 And may I use the exhibits for a moment, Judge?

21 THE COURT: Yes, sir.

22 MR. SUGGS: Thank you.

23 THE COURT: Absolutely.

24 MR. SUGGS: State's Exhibit Number 3 is the drug report,
25 and the three packs -- one was 2.92 grams and that would be

1 -- this is three grams. So it would be a little less than
2 that in one -- in one batch. And then one was 84 -- .84
3 grams. which would be less than that, and then the other was
4 .92 grams, which again would be less than that.

5 But if you add -- if you add this up and this up, three
6 and one, you have four. The combined weight I believe was
7 just right over four. It was 4.68 when you add it up. It
8 was just barely over the four, and that would be the total
9 weight of all three.

10 Now, you may remember -- I don't remember and I'm not
11 even sure if it came out, but I'm not certain what particular
12 amounts were where. The amount in Robert's pocket -- he
13 admitted that to you, but I don't remember if that is the
14 2.92, the .92 or the .84. I just don't remember.

15 I kept hearing 110 bindles, and then I heard 50, 50, and
16 then 10, and then I heard some other testimony, 70, 30, and
17 10, and I don't know if anybody else heard that, but that had
18 me kind of confused, but it still all adds up to 110. You've
19 got 50, 50, and 10, 110, and I heard that testimony. Then I
20 heard 70, 30, and 10, and I -- whatever you remember is what
21 you should go with, but I just don't remember how the numbers
22 were packaged and I don't remember what particular amounts
23 were found where. Okay? But in any event, I'll leave that
24 up to you.

25 Now, in terms of penalty, I'm not allowed to discuss

1 that with you. I cannot discuss penalties of crimes with
2 you. That's for the judge. That's the judge's venue.

3 We talked about -- you've already heard that in our
4 system, the jury -- you are the trier of the facts and the
5 judge is the trier of the law. The judge cannot tell you
6 what the facts are, what they should be or shouldn't be.
7 That's your purview. By the same token, you can't tell the
8 judge what the law is. The judge decides what the law is.

9 You decide the facts when you deliberate. You go back
10 there and start talking about this case and deliberate. But
11 before you do that, that judge is going to come up here, and
12 I've known Judge Russo for a lot of years and I remember him
13 when he was just a trial lawyer like me, and he and I tried
14 several cases together and -- but I think I've -- he's been a
15 judge on more cases that I've tried than he and I have tried
16 together, but I know what he likes to do when he charges the
17 jury. He doesn't do it from up there on the bench like a lot
18 of judges do. He likes to come down here where the lawyers
19 are and gives his charge.

20 I think he'll do that again today. That's what he
21 usually does. And I think he does that so he can stay kind
22 of -- kind of nimble and maybe one day he'll leave the bench
23 and go practice law again like me and like some of my
24 friends, and then he won't forget what it's like to stand in
25 front of a jury. I think that's what he does -- why he does

1 it, just to keep himself fresh.

2 But he will tell you what the law is and then you will
3 take that law and then all this evidence here and then what
4 you've heard and go back there and deliberate and take the
5 law and apply the facts, your facts to his law, and come up
6 with a verdict.

7 Now, in terms of the law, we're still talking about
8 that. Let's talk about reasonable doubt for a minute. It's
9 very important in this case, as important as constructive
10 possession and actual possession is concerned.

11 Reasonable doubt. The judge will tell you -- and I've
12 heard lots of different definitions. I've heard that -- and
13 I think it's still good law. The judge won't charge this on
14 reasonable doubt. That kind of doubt which causes a
15 reasonable person to hesitate to act. That's still good law,
16 but the judge is not going to charge that definition of
17 reasonable doubt that you'll take back into the jury room.
18 The judge will say that -- you know, what is reasonable
19 doubt? He'll make the comparison between the different
20 standards of proof between civil cases and criminal cases.

21 Now, in civil cases when people sue one another for
22 breach of contract or car accidents and things like that, the
23 burden of proof is preponderance of the evidence or greater
24 weight of the evidence. All you really have to show to
25 prevail in a civil case or to satisfy your burden of proof is

1 just to show by a greater weight of the evidence that you're
2 entitled to a specific verdict or judgment. So you only have
3 to tip the scales ever so slightly.

4 Now, in criminal cases, the standard is higher. The
5 standard is beyond a reasonable doubt, which we will define.
6 It's a more powerful standard of proof, and proof beyond a
7 reasonable doubt is that kind of proof that leaves you firmly
8 convinced of the defendant's guilt.

9 All right. So there again, proof beyond a reasonable
10 doubt is that kind of -- proof beyond a reasonable doubt is
11 proof that leaves you firmly convinced of the defendant's
12 guilt.

13 If -- after you talk and listen to the law and apply the
14 facts to the law, if you are not firmly convinced of the
15 defendant's guilt, then the State has not met its burden of
16 proof beyond a reasonable doubt and then it would then be
17 your job to find the defendant not guilty, and that's what
18 reasonable doubt is.

19 Now, in addition to reasonable doubt, the judge will
20 also charge you on what's called the law of mere presence.
21 Now, mere presence is -- as it applies to this case, it
22 applies a lot mostly to drug cases. Mere presence talks
23 about the location of the drugs or the illegal items, and
24 it's really part of constructive possession.

25 When you talk about actual possession of something,

1 actual possession of heroin, Mr. Jackson was in actual
2 possession of heroin in his front pocket, but when you talk
3 about the other two caches of drugs and the pills -- caches
4 of heroin and the pills, you're talking about constructive
5 possession and when you talk about that, you have to
6 understand the law of mere presence.

7 Mere presence as it applies to constructive possession
8 is that mere presence at the scene where drugs are found is
9 not enough to prove possession. Again, mere presence at the
10 scene where drugs are found is not enough to prove
11 possession.

12 Now, Mr. White is a wonderful storyteller and he talked
13 about age yesterday and he talked a little bit more about age
14 today and age is just a number and I agree, but, you know,
15 Mr. Jackson is not -- he's 76, but he's not in the best of
16 health and that's been testified to.

17 Being a diabetic and being insulin-dependent and having
18 one foot amputated, experiencing phantom pains, then having
19 the possibility of another foot being amputated and having to
20 deal with the phantom pains probably associated with that, on
21 top of everything else, he doesn't strike me as the kind of
22 person who is all that concerned about his health, either now
23 or in the future. He's more concerned about pain control,
24 and I kind of get that. It's not -- it's not quantity of
25 life with Mr. Jackson at this point; it's quality.

1 He is -- he wants to control his pain and I don't think
2 he's concerned about the consequences. I would assume that
3 snorting heroin while you're a diabetic in poor health is
4 probably a recipe for dying and, you know, I wouldn't be
5 surprised if he kept -- kept up doing it, he'd be dead the
6 next day. It wouldn't surprise me a bit, but I don't -- I
7 honestly don't think he cares about that. I think he cares
8 about living what remains of his life in a pain-free -- on a
9 pain-free basis, and that's why he takes the heroin.

10 I mean I -- anybody can stand by and say, you know, you
11 shouldn't do that. Not only is it illegal, it's dangerous,
12 but you know, again, I'm not sure that he much cares about
13 whether he wakes up tomorrow morning. I think he just wants
14 to make sure he's not hurting when he does wake up.

15 Now, in terms of the -- the pill bottles, I looked at
16 that. I looked at that pill bottle while we were examining
17 witnesses. I did notice -- it'll go back in the jury room
18 with you; so you'll have a chance to look at it.

19 The label has been torn off, but there is some
20 information left on the bottle. There is no name of any
21 patient that -- that I see, but, you know, if I were in law
22 enforcement and this case were two years old -- we're talking
23 about June 2nd of 2015. You can't use the excuse that you
24 didn't have time to follow up on it.

25 But, you know, being a lawyer, I think I'm naturally

1 investigative too. I like to follow up on things, and
2 there's enough information on this bottle where you could
3 really kind of follow up, if you wanted to, to find out whose
4 name was on this bottle. It's got the doctor's name, I
5 think. It's got the date it was filled, which appears to be
6 the same date that the arrest occurred, June 2nd. It's got
7 the -- it says that it's for anxiety. I can't tell what the
8 drug is. It's got the name of the pharmacy, the number of
9 pills.

10 Surely enough information if the officers wanted to
11 follow up on that. You know, they could've done that and
12 they could come in here and tell you little bit more about
13 this, but no one did. Don't know why, but they didn't.

14 The -- one of the things that -- and I'm about done and
15 I don't mean to jump around, but I can't read my own
16 handwriting.

17 One of the things that occurs to me is the way that the
18 heroin is packaged. You know, I just did this this morning.
19 I just cut up some packs and I just dumped it in. I mean I
20 didn't have any wax paper to go and make any little bindles
21 or whatever they're called, but, you know, there's bindles in
22 there and they say 110. I didn't count because we can't open
23 the BEST pack. You're not allowed to open the BEST pack back
24 there either, but 110 and, you know, of course, there's going
25 to be this argument that -- you know, look at the way it's

1 packaged. Look at the way it's packaged. If it were for
2 individual personal use, wouldn't it be not -- wouldn't it
3 not look more, you know, like this, like these mixed together
4 in one bag for personal use. Why would it be in individual
5 slips, which looks like obvious, you know, it's for sale.

6 Well, I'll answer that question for you. The officer
7 when he -- Officer Pate, when he first approached Mr.
8 Jackson, he saw -- he saw in his pocket. He recognized
9 immediately what it was. He knew right away what it was.
10 Remember that? It didn't take -- I mean he didn't have to
11 pull it out and look at it to know that that's what it was.

12 Well, that's how it's sold. You know, whether -- Mr.
13 Jackson is not Denzel Washington from *American Gangster*.
14 He's not packaging. He's not getting blocks of kilos of
15 heroin from Vietnam or Cambodia and taking it back to New
16 York, shipping it back in caskets of American servicemen who
17 died, and stepping on it. I guess these were stomped.
18 Stepping on it, mixing it with other things to double the
19 quantity and then putting it in little blue magic slips.
20 It's blue magics. Mr. Jackson's not doing that, but the
21 State wants to make him out like he's Denzel Washington in
22 *American Gangsters*. He's not.

23 We've got 4.68 grams, just over the trafficking statute.
24 And, again, the legislature said 4 grams, even though that's
25 very small. It's not Denzel Washington. I mean this might

1 be one pack of blue magic on the show, but the legislature
2 has said -- our elected officials have said 4 grams. That's
3 your trafficking. That's your cut off. That's the folks
4 that we've voted for that said that. That's not something we
5 can change down here. It is what it is.

6 But -- and that's a shame because I don't honestly
7 think, me, that 4 grams ought to be -- inherent ought to be
8 trafficking, but that's just me. I think it ought to be a
9 lot more. I think it ought to be trafficking, transporting,
10 bringing it in, stomping on it, cutting it down, breaking it
11 up, and then that's what I think trafficking and that's what
12 I think it should be, but it's not. It's something where the
13 officer can see already in his pocket. He just bought it.
14 That's the way it's bought. That's the way it's bought. He
15 bought it like that and that's the way it was.

16 So he recognized it immediately and, you know, the
17 officer said during his -- Jason Pate said during direct
18 examination -- he said -- and it's on the video too. Hey,
19 partner, what you got in your pocket? And at one time, I
20 think he said Mr. Jackson just pulled it out and handed it to
21 him, and then the other time he said -- of course, the
22 officer already knew what it was. The other time he said Mr.
23 Jackson said it's heroin.

24 And I didn't catch that on the video and I looked at the
25 video a couple of times and even when Jason testified on

1 direct and Mr. White was examining him and Jason said that
2 Mr. Jackson said it's heroin, I saw Mr. White kind of jump
3 back, like are you sure? I mean did he say that? And I rely
4 on you because I think that that answer surprised him too
5 because it's not on the video and I didn't hear it. You may
6 hear it. I didn't hear it, but he knew what he was dealing
7 with from the beginning because of the recognition of the
8 packets.

9 Now, you know, Mr. Jackson fully cooperated with law
10 enforcement. He did not try to get away. He couldn't. He
11 didn't try to deny anything. He didn't have any weapons in
12 the car, like you would think a drug dealer might have
13 weapons. There were no weapons in the car. There was no --
14 no vicious guard dogs in the car protecting his stash like in
15 American Gangster. All that money was under the doghouse and
16 the dog was some vicious German Shepherd. There wasn't
17 anything like that.

18 There was some argument from Mr. White about, well, you
19 sure got a good deal if you paid a hundred dollars and you
20 had either 50 or 70 bindles -- I don't remember -- slips in
21 your pocket, each worth \$20 apiece. Well, I mean I don't
22 know what they sell for. We'll have to go with what the
23 officer said. I don't know what the purity is in those
24 slips. It could be one grain of heroin and 99 percent -- 99
25 grains of sugar or baking soda or baking powder or something

1 like that. We don't know what the purity is at all. So we
2 don't know what value to assign to it.

3 I don't know what relationship Mr. Jackson had with the
4 gentleman who sold it to him. Evidently, they must be
5 friends because he lets the man use his car, like he lets
6 other people use his vehicle or used back then in 2015. They
7 put the gas in the car. They paid him a little extra money.
8 The man is on a limited income. I hate to see him spending
9 his money on heroin, but that's what he's doing. But he's on
10 a limited income, surviving off his wife's disability or his
11 wife's death.

12 But I don't know. Maybe they're good friends. I have
13 no idea. But that was what the testimony was. So again
14 purity, friendship, I don't know values vis-à-vis amounts or
15 anything like that.

16 I think -- I think that's about all. I just wanted to
17 leave you with a few parting comments.

18 In 27 years that I've practiced law, as many cases as
19 I've tried up here and all over the state, civil cases,
20 criminal cases, in terms of criminal cases, I don't think
21 I've ever asked the jury to convict my client. I don't think
22 I've ever asked the jury to do that. This will be the first
23 time.

24 The judge is going to give you a jury form and you'll
25 have to decide between trafficking and some of the lesser-

1 included offenses. I just feel that this case is a simple
2 possession of heroin case. I don't see it as a trafficking
3 case. I don't think that -- I think Mr. Jackson is -- is
4 telling you what he's guilty of.

5 Now, the amount that -- if you just look at the amount
6 that's in his pocket. Now, that's going to be more than two
7 grains, and two grains would make it possession with intent
8 to distribute. So if you find him not guilty on the pills
9 and you find him not guilty on the other two caches of
10 heroin, the amount he had in his pocket would be more than
11 for simple possession, but it would be less than for
12 trafficking.

13 It would fit into the PWID, but remember again that PWID
14 is just an inference. It doesn't mean -- it's not like
15 trafficking. When you have trafficking, if he had 4 grams of
16 trafficking -- of heroin in his pocket, then there's no
17 inference whether you intended to use it for yourself or sell
18 it or give it away. It doesn't matter. If he had 4 grams or
19 more in his pocket, actual possession, then it's trafficking,
20 no ifs, ands, or buts, but if he has less than 4 grams in his
21 pocket but more than two grains, which he did, I think
22 whether you do one, two -- one batch, two batch, three batch,
23 one of those batches is in his pocket -- all of them are more
24 than two grains -- it'll be PWID, but again, there's an
25 inference there. It doesn't mean he's guilty of PWID of

1 heroin simply because of the amount. You have to decide
2 whether or not that amount was just for his personal use or
3 did he intend to distribute or sell it.

4 Now, if you decide that -- that he intended to sell it
5 or distribute it and then find that the other drugs are not
6 his, then it would be a PWID of heroin, but if you find that,
7 with all of the other factors as I just said, but you find
8 the inference is not valid, that even though it's present,
9 you disregard it and say that it was for his personal use
10 only, then it's simple possession of heroin, and that's what
11 I think he's guilty of and that's what I'm asking you to
12 convict him of.

13 And again, I've never asked anybody in a jury to convict
14 my client before, but that's what I think he's guilty of and
15 not the rest. Thank you.

16 THE COURT: Thank you, Mr. Suggs.

17 Mr. White?

18 CLOSING ARGUMENT ON BEHALF OF THE STATE

19 MR. WHITE: Thank you, Your Honor.

20 Ladies and gentlemen, just briefly. I just want to
21 remind you guys Mr. Jackson is not on trial for trafficking
22 pixie sticks. He's on trial for trafficking heroin. You
23 know, this isn't Hollywood. There weren't guard dogs. There
24 weren't weapons. There were 110 bags of individually-
25 packaged heroin. There was \$1,485.

1 Now, the judge is the law in this courtroom, and I'm
2 sure you all know no cell phones allowed. This is Mr. John
3 Jepertinger. My boss is Ed Clements, but when the boss is
4 away, this is my boss, but I guarantee you this. Throughout
5 this trial I'm sitting here, ladies and gentlemen, if his
6 cell phone goes off and the judge throws me in jail for
7 contempt of court, I'm pointing at this man. I'm pointing at
8 this man, with all due respect.

9 Now, the defense wants you to believe that there's some
10 slippery drug dealer out there. As law-enforcement arrived,
11 they got out of Dodge in the nick of time. Just in the nick
12 of time.

13 I think Mr. Suggs described himself as a natural
14 investigator. He described his client as fully cooperative.
15 Well, this slippery drug dealer scenario is -- today is the
16 first time I've heard of it. He said this case is two years
17 old. How much investigation? How much cooperation by Mr.
18 Jackson? I'll point out the ringing of the cell phone.

19 This is not trafficking pixie sticks. You can buy a bag
20 of five-pound sugar for how much? Five dollars? Ten
21 dollars? The weight of that is 4.68. Street value is
22 \$2,200. It's heroin.

23 I want to thank you for your time. I appreciate it. I
24 trust you'll make the right decision.

25 THE COURT: Thank you, Mr. White.

1 (WHEREUPON, the Court left the bench and approached the
2 podium in front of the jury.)

3 THE COURT: I thoroughly enjoyed my time as a trial
4 lawyer, but I'm not looking to go back to that. I come down
5 here and I share the jury charge with you because when the
6 State is presenting the evidence and the defense is
7 presenting their case, those things are the facts or the
8 evidence that the factfinder is supposed to decide, and
9 that's you, the factfinders.

10 And it's appropriate that I'm out of the way while that
11 occurs, but now, as I said before, we've reached the portion
12 of this trial where you and I are in this together, you as
13 the factfinders and me as the judge of the law. So I just
14 think it's appropriate to be with you as I give the charge.

15 CHARGE ON THE LAW

16 THE COURT: Mr. Foreman and members of the jury, you
17 have heard the evidence and the arguments of both parties.
18 I'm now going to explain to you the rules of law that you
19 must follow and apply in deciding this case.

20 When I have finished, you will go into your jury room
21 and have -- or begin your deliberations. Your decision in
22 this case must be based only upon the evidence presented here
23 in this courtroom. You must not be influenced in any way by
24 either sympathy for or prejudice against anyone.

25 The indictment in this case charges the defendant,

1 Robert Jackson, with trafficking in heroin and possession of
2 a controlled substance. Now, I told you before that an
3 indictment is simply the formal written instrument which
4 contains the charges made against the defendant.

5 I remind you that the fact that the defendant was
6 arrested, charged, and indicted in this case is not evidence
7 in this case and cannot be considered by you as evidence of
8 guilt in this case, nor does it create any presumption or
9 inference of guilt.

10 The defendant has pled not guilty to the charges of
11 trafficking in heroin and possession of a controlled
12 substance, and those pleas put the burden on the State to
13 prove him guilty beyond a reasonable doubt. A person charged
14 with committing a criminal offense in South Carolina is never
15 required to prove him or herself innocent.

16 I charge you that it is an important rule of law that a
17 criminal defendant, no matter what the seriousness of the
18 charge may be, will always be presumed to be innocent of the
19 crime for which the indictment was issued unless guilt has
20 been proven by satisfying you of that guilt beyond a
21 reasonable doubt.

22 This presumption of innocence does not end when you
23 begin your deliberations, but it accompanies the defendant
24 throughout the trial until you reach a verdict. The
25 presumption of innocence is not a mere legal theory. It is

1 not just a legal phrase, but it is a substantial right to
2 which every defendant is entitled unless you, the jury, are
3 satisfied from the evidence of the defendant's guilt beyond a
4 reasonable doubt.

5 Now, the indictments in this case allege two different
6 offenses against Mr. Jackson. Each count charges a separate
7 and a distinct offense. You must decide each count
8 separately upon the evidence and the law applicable to it,
9 uninfluenced by your decision as to the other charge.

10 The defendant may be convicted or acquitted on any or
11 all of the offenses charged. You will be asked to write a
12 separate verdict of guilty or not guilty for each of the
13 charges the defendant is facing.

14 Now, we talked about reasonable doubt. So what is that?
15 Some of you may have served as jurors in civil cases where
16 you were told that it is only necessary to prove that a fact
17 is more likely true, such as by the greater weight or the
18 preponderance of the evidence.

19 In criminal cases, the State's proof must be more
20 powerful than that. It must be beyond a reasonable doubt.
21 Proof beyond a reasonable doubt is proof that leaves you
22 firmly convinced of the defendant's guilt.

23 Now, there are very few things in this world that we
24 know with absolute certainty, and the law does not require
25 proof that overcomes every possible doubt. If, based on your

1 consideration of the evidence, you are firmly convinced that
2 the defendant is guilty of the crime charged, you must find
3 the defendant guilty. If, on the other hand, you think there
4 is a real possibility that the defendant is not guilty, then
5 you must give him the benefit of that doubt and find him not
6 guilty.

7 As I said before, you must consider only the evidence
8 that I have admitted into this case. That evidence includes
9 the testimony from the witnesses and the exhibits that came
10 in during the course of the trial.

11 You should not assume from anything that I have said
12 that I have any opinion about the facts or any issue in this
13 case. Except for my instructions to you on the law, you
14 should disregard anything I may have said during the course
15 of this trial in arriving at your decision about the facts.
16 Your own recollection and interpretation of the evidence is
17 what matters. In considering the evidence, you may use
18 reason and common sense to make deductions and to reach
19 conclusions.

20 Now, while the arguments of counsel are beneficial, it
21 is important to remember that the statements made by counsel
22 are not evidence. In presenting their arguments, counsel
23 often refers to the evidence. However, you should base your
24 verdict upon the evidence as you remember it. Therefore, if
25 there is any conflict between the recollection of counsel

1 about the evidence and your own recollection, you should rely
2 upon your own understanding of the evidence.

3 Now, when I say you must consider all the evidence, I
4 don't mean that you must accept all of the evidence as true
5 or accurate. You have to decide whether to believe what each
6 witness has had to say and how important that testimony was.

7 In making those decisions, you may believe or disbelieve
8 any witness in whole or in part. The number of witnesses
9 testifying concerning a particular point does not necessarily
10 matter.

11 To decide whether to believe any witness, I suggest that
12 you ask yourself a few questions.

13 Did the witness impress you as one who was telling the
14 truth?

15 Did the witness have any particular reason not to tell
16 the truth or have a personal interest in the outcome of the
17 case?

18 Did the witness have the opportunity and the ability to
19 accurately observe the things that he or she testified about?

20 Did the witness appear to understand the questions
21 clearly and answer them directly?

22 And did the witness's testimony differ from that of
23 other evidence in the case?

24 However, keep in mind that a simple mistake does not
25 mean that a witness wasn't telling the truth as he or she

1 remember it. People naturally tend to forget some things or
2 to remember them inaccurately. So if a witness did misstate
3 something, you must decide whether it was an innocent lapse
4 of memory or whether it was an intentional deception. The
5 significance of your decision may depend on whether the
6 misstatement is about an important fact or an unimportant
7 detail.

8 Now, the rules of evidence ordinarily do not permit
9 witnesses to testify as to opinions or to conclusions.
10 There's an exception to this rule that exists for witnesses
11 that we call expert witnesses. A witness who by education
12 and experience has become an expert in some art, science or
13 profession may state an opinion as to relevant and material
14 matter in which the witness claims to be an expert and may
15 also state the reasons for that opinion.

16 You should consider any expert opinion received into
17 evidence in this case and, like any other evidence, give it
18 the weight that you think it deserves. If you decide that
19 the opinion of an expert witness is not based upon sufficient
20 education and experience or if you conclude that the reasons
21 given in support of that opinion are not sound or that the
22 opinion is outweighed by other evidence, you may disregard
23 that opinion in its entirety.

24 An expert witness's testimony is to be given no greater
25 weight than that of any other witness simply because that

1 witness is an expert. Furthermore, you're not required to
2 accept the witness -- an expert's opinion, even though it's
3 not contradicted.

4 Now, in trials, there are generally two types of
5 evidence which are presented. There's direct evidence and
6 there's circumstantial evidence.

7 Direct evidence is the testimony of a person who claims
8 to have actual knowledge of a fact, such as an eyewitness.
9 Circumstantial evidence is proof of a chain of facts and
10 circumstances which indicate the existence of a fact.

11 Crimes may be proven by circumstantial evidence. To the
12 extent that the State relies on circumstantial evidence, all
13 of the circumstances must be consistent with each other and,
14 when taken together, point conclusively to the guilt of the
15 accused beyond a reasonable doubt. If these circumstances
16 merely portray the defendant's behavior as suspicious, then
17 that proof has failed.

18 The State has the burden of proving the defendant guilty
19 beyond a reasonable doubt, and this burden rests with the
20 State, regardless of whether it relies on direct evidence,
21 circumstantial evidence, or some combination of the two.

22 The law makes absolutely no distinction between the
23 weight or the value to be given to either direct or to
24 circumstantial evidence. There is not a -- there is no
25 greater degree of certainty required of circumstantial

1 evidence than of direct evidence. You should consider and
2 weigh all of the evidence in this case.

3 Now, Mr. Jackson is charged with trafficking in heroin
4 in an amount at least 4 grams or more but less than 14 grams.

5 The State must prove beyond a reasonable doubt that the
6 defendant knowingly sold, manufactured, cultivated,
7 delivered, purchased, or brought into this state heroin or
8 provided financial assistance or otherwise aided, abetted,
9 attempted or conspired to sell, manufacture, cultivate,
10 deliver, purchase or bring into this state heroin or was
11 knowingly in actual or constructive possession or knowingly
12 attempted to become in actual or constructive possession of
13 heroin. The State must also prove beyond a reasonable doubt
14 that the amount of the heroin or any mixture containing
15 heroin was 4 grams or more but less than 14 grams.

16 Now, if you determine that the State has not proven
17 trafficking in heroin beyond a reasonable doubt, you should
18 then consider whether the State has proven beyond a
19 reasonable doubt that the defendant is guilty of possession
20 with intent to distribute heroin. Possession with intent to
21 distribute contains all of the elements of trafficking except
22 for the amount. In addition, the State must prove beyond a
23 reasonable doubt that the defendant had the intent to
24 distribute the heroin.

25 Two or more persons may have joint possession of a drug.

1 To distribute means to deliver other than by
2 administering or dispensing a drug.

3 Intent may be shown by acts and conduct of the defendant
4 and other circumstances from which you may naturally and
5 reasonably infer intent.

6 In determining whether the defendant had the intent to
7 distribute the heroin, you may consider the circumstances
8 surrounding the defendant's alleged possession. You may
9 consider the amount of the substance alleged to have been
10 possessed, the manner in which it was allegedly possessed,
11 the place where it was allegedly possessed, and other factors
12 which you consider to be important.

13 You must find that the defendant did not intend to have
14 the heroin solely for his personal use. Possession of more
15 than two grains of heroin creates an inference that the
16 defendant possessed the heroin with the intent to distribute
17 it.

18 This inference does not relieve the State from proving
19 beyond a reasonable doubt that the defendant had the intent
20 to distribute. It is simply an evidentiary fact to be taken
21 into consideration by you, along with other evidence in this
22 case, and you give it whatever weight you feel it should
23 have.

24 Now, if you determine that the State has not proven
25 trafficking in heroin or possession with intent to distribute

1 heroin beyond a reasonable doubt, you should then consider
2 whether or not the State has proven possession of heroin. To
3 prove possession, the State must prove beyond a reasonable
4 doubt that the defendant had both the power and the intent to
5 control the disposition or use of the heroin.

6 Possession may either be actual or constructive. Actual
7 possession means that the heroin was in the actual physical
8 custody of the defendant. Constructive possession means that
9 the defendant had the dominion and control or the right to
10 exercise dominion and control over either the heroin itself
11 or the property upon which the heroin was found.

12 Mere presence at the scene where drugs were found is not
13 enough to prove possession. The defendant's knowledge and
14 possession may be inferred when a substance is found on the
15 property under the defendant's control. However, this
16 inference is simply an evidentiary fact to be taken into
17 consideration by you along with other evidence, and you give
18 it whatever weight you think it should have.

19 Now, Mr. Jackson is also charged with possession of
20 alprazolam, also known as Xanax. The State must prove beyond
21 a reasonable doubt that the defendant knowingly or
22 intentionally possessed alprazolam.

23 Knowingly means with knowledge or consciously, not
24 accidentally. Intentionally means willfully, intending the
25 result which actually occurs and not accidentally or

1 involuntarily. Intent may be shown by acts and conduct of
2 the defendant and other circumstances from which you may
3 naturally and reasonably infer intent.

4 Possession of alprazolam is a crime unless alprazolam
5 was obtained directly from or through a valid prescription or
6 order of a practicing physician or a practitioner acting in
7 the course of their professional practice.

8 A practitioner is a physician, dentist, veterinarian,
9 podiatrist, scientific investigator, pharmacy, hospital or
10 other person or institution licensed, registered or otherwise
11 permitted to distribute, dispense, conduct research with
12 respect to or administer a controlled substance in the course
13 of his professional practice.

14 Now, your verdict in this case, ladies and gentlemen,
15 must be unanimous. All of you must agree on the verdict,
16 whatever it is. Your deliberations are secret, and you will
17 never have to explain your verdict with anyone. Each of you
18 must decide this case for yourself, but only after fully
19 considering the evidence with the other jurors and so you
20 must discuss -- discuss the case with one another.

21 While discussing the case, don't hesitate to re-examine
22 your own opinion and change your mind if you are convinced
23 that you were wrong, but don't give up your honest or firmly-
24 held beliefs simply to be in agreement with the others.

25 A verdict form has been prepared for you and I'll send

1 it back into the jury room and, Mr. Benjamin, whenever we
2 send back these exhibits, this verdict form will be with the
3 exhibits.

4 It is a -- again, it's a simple form. It's self-
5 explanatory.

6 The top is just the caption of the case, but then it
7 gets -- when it gets into the form itself, it says as to
8 Count I of the indictment, we, the jury, find the defendant,
9 Robert Jackson, either guilty of trafficking in heroin or
10 guilty of possession with intent to distribute heroin or
11 guilty of possession of heroin or not guilty.

12 And then with regards to Count II of the indictment, the
13 verdict form reads as to possession of a controlled
14 substance, we, the jury, find the defendant, Robert Jackson,
15 either guilty or not guilty of possession of a controlled
16 substance.

17 You will mark the appropriate slot on the verdict form
18 that reflects the jury's verdict and then just sign as the
19 foreperson.

20 Now, I'm going to ask you to step back into your jury
21 room. Do not begin your deliberations quite yet. I'm going
22 to confer with the lawyers to make sure I didn't misquote
23 anything or leave anything out. If I need to make any
24 corrections, I'll bring you back out and I will do that.

25 If the charge is good as is, we will collect these

1 exhibits and this verdict form, and we'll send them back to
2 you. Your cue to begin your deliberations is when you
3 receive these items.

4 Now, also --

5 Is their food here?

6 THE CLERK: It is.

7 THE COURT: All right. Your food is here. So I'm going
8 to leave it up to y'all. You can hold off, eat and then
9 begin your deliberations or you can deliberate while you eat.
10 I'm going to leave it up to y'all to do whatever you'd like
11 to do, but we will -- I'm going to discuss with the lawyers.

12 If the charge is good, we'll send these items back,
13 we'll send the food back, and it'll be your case. Okay?

14 So please step back into your jury room and await these
15 items.

16 (WHEREUPON, the jury exited the courtroom at 1:31 p.m.)

17 THE COURT: All right. Objections or exceptions of the
18 charge from the State?

19 MR. JEPERTINGER: Your Honor, based on the previous
20 Matthews v. State and State v. Grandy, I would -- we would
21 object to the charge of the lesser-included offenses, PWID or
22 possession.

23 THE COURT: All right, sir. I'll note that exception
24 for the record.

25 MR. SUGGS: None, Your Honor, from the defense. Thank

1 you.

2 THE COURT: All right. Would y'all get with Krystal to
3 see if we have -- make sure we have all the exhibits that are
4 supposed to go back?

5 (WHEREUPON, there was a pause in the proceeding as the
6 evidence was checked.)

7 MR. WHITE: Judge, thank you for everything.

8 MR. SUGGS: Thank you, Judge. Appreciate everything.

9 THE COURT: It's always a pleasure. And if we could get
10 the alternate out?

11 MR. SUGGS: Yes, sir.

12 THE CLERK: Ms. White.

13 THE COURT: All right. Ask Ms. White to step out
14 whenever you leave them.

15 THE BAILIFF: Ms. White?

16 THE COURT: Yeah. That's the alternate.

17 (WHEREUPON, jury deliberations began at 1:33 p.m.)

18 (WHEREUPON, the alternate juror, Juror Number 153,
19 entered the courtroom.)

20 THE BAILIFF: Right here. The judge is going to talk to
21 you.

22 THE COURT: Ms. White, I want to thank you for your
23 service. I think the main panel are all healthy and able to
24 do the deliberations.

25 JUROR NUMBER 153: Yes, sir.

1 THE COURT: So that would conclude your service.
2 JUROR NUMBER 153: Thank you.
3 THE COURT: I want to thank you so much for your service
4 this week. I think you were on both cases, weren't you?
5 JUROR NUMBER 153: Yes.
6 THE COURT: Well, you -- you've earned your keep.
7 JUROR NUMBER 153: Thank you.
8 THE COURT: Thank you, ma'am. You're free to go.
9 JUROR NUMBER 153: Thank you.
10 THE COURT: Yeah. Go ahead and take them their food and
11 we'll just remain then at ease while the jury is
12 deliberating. Okay?
13 MR. WHITE: Thank you, Judge.
14 MR. SUGGS: Thank you, Your Honor.
15 (WHEREUPON, there was a break in the proceedings from
16 1:35 p.m. until 2:16 p.m., after which the proceedings
17 resumed as follows.)
18 THE COURT: Thank you, folks. Please have a seat.
19 All right. Ladies and gentlemen, I understand that the
20 jury has reached a verdict. I don't know -- I'm like you. I
21 don't know what it is. I certainly -- I simply know that
22 I've been told they have one.
23 So I would ask that whatever the verdict be, whether you
24 agree with it or disagree with it, that the jury's verdict be
25 received in a professional manner.

1 Is the State ready to receive the verdict?

2 MR. WHITE: Yes, sir, Your Honor.

3 THE COURT: Is the defense ready?

4 MR. SUGGS: Yes, Your Honor.

5 THE COURT: Bring them in, please.

6 (WHEREUPON, the jury entered the courtroom at 2:17 p.m.)

7 THE COURT: All right. Mr. Benjamin, has the jury
8 reached a unanimous verdict, sir?

9 THE FOREMAN: We have, Your Honor.

10 THE COURT: All right. If you would, please hand that
11 to Madam Clerk for me.

12 (WHEREUPON, the foreman complied.)

13 THE COURT: Thank you, ma'am. All right. Madam Clerk,
14 if you would, please publish the jury's verdict for me.

15 VERDICT

16 THE CLERK: State of South Carolina, County of Florence,
17 in the Court of General Sessions, State of South Carolina
18 versus Robert Jackson, Indictment Number 2017-GS-21-01033.

19 As to Count I of Indictment Number 2017-GS-21-01033, we,
20 the jury, find the defendant, Robert Jackson, guilty of
21 trafficking in heroin.

22 And as to Count II of Indictment Number 2017-GS-21-
23 01033, possession of controlled substance, we, the jury, find
24 the defendant, Robert Jackson, guilty of possession of
25 controlled substance.

1 September the 15th, 2017. Lemuel Benjamin IV,
2 foreperson.

3 Members of the jury, if this is your verdict, please
4 raise your right hand.

5 (WHEREUPON, all jurors complied.)

6 THE CLERK: Thank you.

7 THE COURT: All right. Thank you, ladies and gentlemen.

8 Folks, I want to thank you for your service this week.
9 It's been a busy week. We've had -- we had a trial. I don't
10 -- y'all may not be aware. Oh, I guess you were aware
11 because you were here Monday. We had the trial that they
12 drew on Monday and then we have had a couple of trials here
13 in this courtroom.

14 And so you've worked as much as many juries do, and I
15 want to thank you for your service. You have earned that
16 exemption that I'm sure Judge Brown shared with you on Monday
17 when he qualified the jury panel. You know, you only have to
18 serve on jury duty in this court only once every three
19 calendar years. So you have earned that exemption so that if
20 you get summonsed for jury service in this court either the
21 balance of this year, all of 2018, and all of 2019, if you
22 wish to exercise that exemption, you certainly have the right
23 to do that.

24 It does not mean you're not qualified to serve. It
25 simply means that you have the right to say I choose not to.

1 So if you do get a summons and you want to serve again, you
2 certainly are welcome to do that. I would encourage you to
3 do that.

4 But I want to thank you for your service. That
5 concludes the service for the -- for the week and if you need
6 a work excuse, you can get that from either the Clerk's
7 Office downstairs or, if you can wait, they're going to mail
8 out checks and -- and you'll get that next week in the mail
9 and there will be a work excuse in there. So if you can wait
10 for that, then that's fine, but if you need it before then,
11 you can --

12 Downstairs? Is that right, Melissa? They can go
13 downstairs?

14 THE CLERK: Yes, sir.

15 THE COURT: Excuse me. You can go down to the Clerk's
16 Office if you need it before then. Okay?

17 So if everyone would remain seated, ladies and
18 gentlemen, thank you again for your service and you're free
19 to go.

20 (WHEREUPON, the jury was released and exited the
21 courtroom at 2:21 p.m.)

22 THE COURT: All right. At this time, I'll take up any
23 motions at the reading of the verdict.

24 MR. JEPERTINGER: Nothing from the State, Your Honor.

25 THE COURT: Anything from the defense?

1 MR. SUGGS: Just as to two matters, Your Honor, that were
2 requested by the defense at trial which were denied by the
3 Court: the request that the confidential, reliable informant
4 from the Sheriff's Office be produced for confrontation and
5 examination by the defense, not being able to face his
6 accusers in court pursuant to the Sixth Amendment; and also
7 the Court's refusal or to not allow the defense to introduce
8 the photographs that -- that we took and we produced and were
9 prepared to use to introduce to the Court and to the jury
10 that -- that he does indeed suffer from the pain that he
11 described. I think the photographs are very -- depict that
12 to be a fact -- to be factual, and that we weren't allowed to
13 introduce those photographs into evidence, Judge.

14 So those two items we would --

15 THE COURT: Yeah.

16 MR. SUGGS: -- like preserved for purposes of appellate
17 review.

18 THE COURT: All right, sir. And I certainly would note
19 those exceptions. I mean the photographs -- I did -- we did
20 admit those as a Court's exhibit.

21 MR. SUGGS: Court's exhibit.

22 THE COURT: So they are available for any additional
23 review that may be necessary. I don't know that there --
24 there was plenty of testimony about the pain he was in, but
25 then again, as I said earlier when I ruled on the

1 photographs, that's not a defense.

2 MR. SUGGS: Yes, sir.

3 THE COURT: And so, therefore, I don't know that that
4 would have had any bearing and shouldn't have had any bearing
5 with regards to the jury's verdict, but I certainly note your
6 exception to that.

7 MR. SUGGS: Thank you, Judge. The -- Mr. White has
8 provided me with the sentencing sheets.

9 THE COURT: Yes, sir.

10 MR. SUGGS: Mr. Jackson, as you know, cannot read and
11 write.

12 THE COURT: Yes, sir.

13 MR. SUGGS: So I simply affixed an X on his signature
14 line for him.

15 THE COURT: Okay.

16 MR. SUGGS: And, Judge, since we are dealing with a
17 mandatory minimum sentence that we would waive any reading of
18 his prior record into the record. I don't really see whether
19 that's --

20 THE COURT: Okay.

21 MR. SUGGS: -- you know, necessary in light of the --

22 THE COURT: Well, I think --

23 MR. SUGGS: -- legislature's mandatory --

24 THE COURT: And I think we covered that earlier in the
25 trial --

1 MR. JEPERTINGER: We did, Your Honor.

2 THE COURT: -- when we went over the --

3 MR. JEPERTINGER: We went over his record of what we
4 could use and not use and, obviously, he's had -- we have
5 certified copies if the Court wants to see it, but we've gone
6 over it and he's got two to three --

7 THE COURT: Sure.

8 MR. JEPERTINGER: -- prior convictions dealing with
9 drugs.

10 THE COURT: Okay.

11 MR. SUGGS: And I only admit that in terms of at
12 sentencing it's generally proper and appropriate for the
13 Court to inquire into someone's background in order to
14 determine what best sentence --

15 THE COURT: I have no discretion here.

16 MR. SUGGS: There is no reason here.

17 THE COURT: Yes, sir.

18 MR. SUGGS: It is what it is. The legislature has taken
19 that discretion away from the judiciary.

20 THE COURT: Yes, sir.

21 MR. SUGGS: At least as it relates to this charge.

22 And all I could really ask for, Judge, in terms of
23 consideration in sentencing I suppose would be a concurrent
24 sentence, for what good that would do given his age and his
25 health, but I don't know that we need to make any

1 presentation or recitation of anything at this point in
2 mitigation or anything else, Your Honor.

3 THE COURT: All right, sir.

4 MR. SUGGS: Thank you, Judge.

5 THE COURT: All right. Solicitor, have you got that
6 sentencing sheet?

7 MR. WHITE: Yes, sir. And, Your Honor, do you need the
8 certified convictions for the record or --

9 THE COURT: Well, I think we -- I think we went over them
10 with regard --

11 MR. JEPERTINGER: Just out of an abundance of caution.

12 THE COURT: Well, I mean you can just put back in the
13 record just the -- the previous conviction.

14 MR. WHITE: I'll just pass these up to you, Judge, in
15 the case.

16 THE COURT: All right. All right. We'll make -- these
17 are the -- this is the certified record?

18 MR. WHITE: Yes, sir, Your Honor.

19 THE COURT: All right. I'll just make this a Court's
20 exhibit then.

21 MR. SUGGS: Thank you, Your Honor --

22 THE COURT: All right.

23 MR. SUGGS: -- very much.

24 THE COURT: We'll make those a Court's exhibit.

25 (WHEREUPON, the certified record of the defendant was

1 marked as Court's Exhibit Number 2.)

2 MR. SUGGS: May he stay here for sentencing, Your Honor?

3 May he stay here?

4 THE COURT: Yes. Absolutely.

5 MR. SUGGS: Thank you, Judge.

6 THE COURT: Is there anything from the State with

7 regards to -- well, let me ask --

8 Mr. Suggs, did Mr. Jackson spend any time in jail or do

9 you recall?

10 THE DEFENDANT: Two days.

11 MR. SUGGS: He says two days.

12 THE COURT: All right, sir.

13 MR. SUGGS: Yes, sir.

14 THE COURT: All right. Anything further from the State

15 as it relates to sentencing then?

16 MR. WHITE: No, sir, Your Honor.

17 THE COURT: All right.

18 (WHEREUPON, there was a pause in the proceedings, after

19 which the proceedings resumed as follows.)

20 SENTENCE

21 THE COURT: All right. As to Indictment 2017-GS-21-

22 1033, Count I, trafficking in heroin, the sentence of the

23 Court is that you be committed to the State Department of

24 Corrections for a period of 25 years. You're to be given

25 credit for any time that you have served.

1 Count II, the sentence of the Court is that you be
2 committed to the State Department of Corrections for a period
3 of one year. Be given credit for any time that you have
4 served.

5 Those are to run concurrent with each other.

6 Good luck to you, sir.

7 MR. SUGGS: Thank you, Your Honor.

8 MR. WHITE: Thank you, Judge.

9 (WHEREUPON, the proceedings ended at 2:29 p.m.)

10

11 --- END REQUESTED TRANSCRIPT ---

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1 State of South Carolina)
2) Certificate
3 County of Florence)

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 350, constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 General Sessions for Florence County, South Carolina, on the
13 14th and 15th days of September, 2017.

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

Kristal J. Smith
Court Reporter

20 Florence, South Carolina
21 August 29, 2018

20 18 CP 21 962

STATE OF SOUTH CAROLINA

County of FloranceRobert Jackson #138725

Full name and prison number (if any) of Applicant,

vs.

Florance

Name of Respondent.

In the Court of Common Pleas

APPLICATION FOR
POST-CONVICTION RELIEF2019 APR 16 AM 10:50
DOUGLAS COUNTY
CLERK OF COURT

FILED

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lee Correction Infirmary C-Ward 990
Wissack Highway Bishopville SC 29000
2. Name and location of Court which imposed sentence Florance General Sessions
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) Warrant # 2015A 211040086 for afflicting heroin
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) I was given 25 years for trafficking heroin
 - (b) on 9-15-2017
 - (c) _____

SCANNED

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
- (b) after a plea of not guilty not guilty
- (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

NO, lawyer didn't appeal.

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. _____
- ii. _____
- iii. _____

(b) the result in each such Court to which you appealed:

- i. _____
- ii. _____
- iii. _____

(c) the date of each such result:

- i. _____
- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. _____
- ii. _____
- iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) I request my lawyer to do it but he didn't
- (b) I had my leg cut off and now I'm bedridden in the hospital
- (c) I do not know how to read or write

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Inaffordable counsel.
- (b) New found evidence: My lawyer didn't allow my witness.
- (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) Not a lawyer Requesting a Public Defender
- (b) _____
- (c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. The Gardner Law Firm
P.O. BOX 6557
- ii. Florence S.C. 29501
Scott Suggs
- iii. 506 W. EVANS ST.
Florence, S.C. 29501

(b) the proceedings at which each such attorney represented you:

- i. trial
- ii. sentencing
- iii. _____

18. State clearly the relief you seek in filing this application.

over turn sentence New trial

19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

County of

Florence

VERIFICATION

I, Robert Jackson Robert Jackson, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Robert Jackson

SWORN to and subscribed before me this

9th

day of

April2018

Uniqua Greene
Notary Public

(L.S.)

My Commission Expires:

9-29-2027

2018 APR 16 AM 10:50
DEANIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Robert Jackson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Robert Jackson
Applicant

SWORN or affirmed to and subscribed before me this

9th

day of

April2018

Uniqua Greene
Notary Public

My Commission Expires

9-29-2027

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Robert Jackson, # 138725

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

2018-CP-21-962

RETURN AND MOTION FOR A MORE DEFINITE STATEMENT

In response to the application for post-conviction relief (PCR) filed by Robert Jackson on April 16, 2018, the State files this return:

I. Procedural History

Jackson is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Jackson was indicted at the August 2017 term of the Florence County Grand Jury for trafficking in heroine, and possession of a controlled substance, second offense. (2017-GS-21-1033). Jackson was represented by B. Scott Suggs, Esquire. Jackson proceeded to trial before the Honorable Thomas A. Russo on September 15, 2017. The jury found Jackson guilty as indicted. Judge Russo sentenced Jackson to concurrent terms of imprisonment of twenty-five years for trafficking in heroin, and one year for possession of a controlled substance. Jackson did not appeal his conviction or sentence.

II. Facts

Robert Jackson was arrested for selling heroin on June 2, 2015. That day, Investigator Jake Chamberlain of the Florence County Sheriff's Department received a tip that drugs were being

sold in the Cruizers convenience store parking lot. Chamberlain was informed that Robert Jackson was selling drugs out of a burgandy Nissan Altima. (Tr. 59–60). Chamberlain called Investigator Jason Pate, who was in the area of Cruizers, and asked him to investigate the reported drug activity. (Tr. 47–49, 59–60). Chamberlain told Pate to be on the lookout for Jackson driving a burgandy Nissan Altima. (Tr. 49, 59).

Pate drove to Cruizers and saw a burgandy Altima.¹ Pate exited his car and approached the Altima. The driver side door was open, and Jackson was sitting in the driver's seat. (Tr. 124). Jackson's legs were outside the open door and his feet were on the ground. (Tr. 24). As he approached, Pate noticed a pill bottle—with the label torn off—in the pocket of the door. (Tr. 124–25, 136). The pill bottle was in plain sight. (Tr. 128).

Pate asked to see Jackson's driver's license, and when Jackson leaned forward, he saw what appeared to be bindles of heroin in Jackson's shirt pocket. (Tr. 125). Pate asked Jackson to hand over the contents of his shirt pocket. Jackson handed him fifty bindles of heroin. (Tr. 130, 138). Pate placed the fifty bindles from Jackson's shirt pocket on the hood of his car. (Tr. 129). Officer Angel Clark, who was riding with Pate, searched Jackson's car. She found fifty more bindles in the center console, and ten more bindles on the passenger side floorboard. (Tr. 151). Jackson was arrested for selling heroin.

Jackson proceeded to trial on September 14–15, 2017. Jackson testified at trial. (Tr. 260–87). Before he testified, the trial court advised Jackson of his constitutional rights. (Tr. 221–24).

Jackson stated that Officer Pate did get heroin out of his shirt pocket. However, Jackson testified that he was not selling heroin, but was buying the heroin instead. (Tr. 268). Jackson

¹ Pate's vehicle was equipped with a dash camera. (Tr. 126). The video recording from the dash camera was published to the jury. (Tr. 127).

explained that he purchased the heroin because he was in pain. (Tr. 268). Jackson stated the person who sold him the heroin got into his car, sold him the heroin, and then got out of the car. (Tr. 268). As for the pill bottle, Jackson stated it belonged to a friend he let borrow his car. (Tr. 270).

Jackson admitted that he purchased the fifty bindles of heroin found in his shirt pocket for \$100. (Tr. 272–73). However, Jackson claimed the other heroin found in his car “belonged to the guy. . . . It had to been belong to the guy who got out of the car and went in [Cruizers].” (Tr. 274). Jackson stated that he had let the person selling the heroin borrow his car. (Tr. 274).

The jury found Jackson guilty of trafficking heroin and possession of a controlled substance. Judge Russo sentenced Jackson to concurrent terms of twenty-five years for trafficking heroin and one year for possession of a controlled substance. Jackson did not appeal his conviction or sentence. Jackson commenced this PCR action on April 16, 2018.

III. Current Application

In his application for post-conviction relief, Jackson alleges that he is being held in custody unlawfully for the following reasons:

1. “Ineffective Assistance of Counsel”
 - a. “Not a lawyer requesting a public defender”
2. “New found evidence: my lawyer didn’t allow my witness”

As requested relief, Jackson is seeking “overturn sentence and new trial.”

Attached to this return and incorporated herein are the Florence County Clerk of Court records, Jackson’s records from the South Carolina Department of Corrections, the trial transcript, and the records of this current PCR action.

IV. Response to Allegation of Ineffective Assistance of Counsel

The State submits Jackson’s allegation of ineffective assistance of counsel is without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel’s

performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). However, counsel is presumed to have adequately assisted and exercised reasonable professional judgment in making decisions in the case. *Edwards*, 392 S.C. at 456, 710 S.E.2d at 64. “[W]here counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.” *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

The State submits Jackson cannot satisfy either requirement of *Strickland*. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the State requests an evidentiary hearing to fully resolve this issue. See *Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983).

V. Motion for a More Definite Statement

The State also hereby moves for a more definite statement. Jackson has failed to set forth any facts to “support each ground” or to explain with any specificity the facts upon which his

claims are based. Section 17-27-50 of the South Carolina Code (2014) requires the Jackson to “specifically set forth the grounds upon which the application is based.” The State respectfully submits that it is incumbent upon Jackson, through counsel, to amend his application to set forth specific facts upon which his allegations are based so the State may adequately prepare for an evidentiary hearing. Therefore, The State requests that Jackson be required to amend his application to set forth specifically the grounds on which his claim is based.

VI. Any Future Amendments

Jackson must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to the Uniform Post-Conviction Relief Act² and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)–(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Jackson has been appointed an attorney, the attorney, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

VII. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VIII. Request for an Evidentiary Hearing

WHEREFORE, the State requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel.

² S.C. Code Ann. §§ 17-27-10 to -160.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMUEL L. KEY
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

October 24, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

ROBERT JACKSON, #138725)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

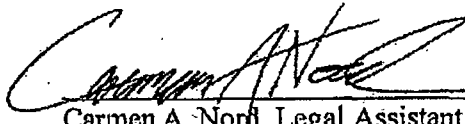
2018-CP-21-0962

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion for a More Definite Statement in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D Waller
Waller Law Group, LLC
1116 Blanding Street
Suite 2B
Columbia, SC 29201

DATED this the 24th day of October, 2018.


Carmen A. Nord, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	
Robert Jackson, 138725,	)	AMENDMENT TO APPLICATION FOR
	)	POST CONVICTION RELIEF
Applicant,	)	
	)	
Vs.	)	Case No. 2018-CP-21-00962
	)	
State of South Carolina	)	
	)	
Respondent.	)	

Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post Conviction Relief filed April 16, 2018, by adding the claims of ineffective assistance of to question 10 and by adding the following specific prayers for relief to his original allegations:

1. As to representation rendered by Scott Suggs, Esquire:
 - a. Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding the allegations against Applicant.
 - b. Counsel was ineffective for failing to adequately prepare for trial.
 - c. Counsel was ineffective for failing to move to sequester witnesses.
 - d. Counsel was ineffective for failing to object to impermissible comment on Applicant's right to remain silent during the closing argument of the State.
 - e. Counsel was ineffective for failing to file a notice of appeal on behalf of Applicant, thus denying Applicant appellate review.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,



Jonathan D. Waller
Waller Law Group
1116 Blanding Street
Suite 2B
Columbia, South Carolina 29201
ATTORNEY FOR APPLICANT

June 19, 2019

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	
COUNTY OF FLORENCE	)	COURT OF COMMON PLEAS
	)	2018-CP-21-00962
	)	
	)	
	)	
Robert Jackson	)	TRANSCRIPT OF RECORD
vs.	)	
State of South Carolina	)	
	)	
DEFENDANT	)	June 28, 2019
		Florence, South Carolina

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR..

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

JONATHAN D. WALLER, ESQ.
Attorney for the Applicant

BRIANNA SCHILL, ASSISTANT ATTORNEY GENERAL
Attorney for the State

KESHIA REED
Official Court Reporter

1		<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Robert Jackson				
4	Mr. Waller	5			
5	Ms. Schill		18		
6					
7	Johnny Etheridge				
8	Mr. Waller	22			
9					
10	Scott Suggs				
11	Mr. Waller	26			
12	Ms. Schill		33		
13					
14	Robert Jackson				
15	Mr. Waller			38	
16					
17	Scott Suggs				
18	Ms. Schill	42		46	
19	Mr. Waller		43		
20					
21	Certificate of Reporter	51			
22					
23					
24					
25					

1 THE COURT: Call your case.

2 MS. SCHILL: Thank you, Your Honor. The next
3 matter is Robert Jackson vs. The State of South Carolina
4 docket number 2018-CP-21-0962. During it's August 2017
5 term, the Florence County grand jury indicted applicant
6 for trafficking herion, possession of control substance
7 second offense. Applicant was represented by B. Scott
8 Suggs, Esquire and J. Ryan White prosecuted the case.
9 Applicant proceeded to trial before the Honorable Thomas
10 A. Russo on September 15th 2017. A jury found applicant
11 guilty as indicted. Judge Russo sentenced applicant to
12 concurrent terms of imprisonment of 25 years for
13 trafficking herion and one year for possession of control
14 substance. Applicant did not appeal his conviction or
15 sentence.

16 On April 16, 2018, applicant filed a timely PCR
17 application alleging one allegation of ineffective
18 assistance of counsel which the State interpreted as
19 failing to present a witness during his trial. On
20 June 19th 2019, applicant by and through his counsel,
21 Jonathan D. Waller filed an amended application asserting
22 one that trial counsel was ineffective for failing to
23 properly investigate, two for failing to prepare for
24 trial, three for failing to sequester witnesses, four for
25 failing to object to the impermissible comment on

1 applicant's right to remain silent during the closing
2 argument of the State and five failing to file a notice of
3 appeal. Applicant is present today and represented by
4 Jonathan D. Waller. And I would just ask that Mr. Waller
5 verify that those are the allegations they're going
6 forward on.

7 THE COURT: All right. Mr. Waller.

8 MR. WALLER: Judge, that's correct. The
9 amendments were in addition to any issues raised by
10 Mr. Jackson. Judge, I will clarify one thing.
11 Mr. Jackson originally hired the Gardener Law Firm and
12 Johnny Etheridge. Mr. Etheridge as Your Honor is well
13 aware has had some health issues the last couple of years.
14 So did not -- he didn't participate in the trial, but he
15 certainly was involved in Mr. Jackson's representation.
16 So we will certainly ask the Court to consider him as a
17 witness as well, but, Judge, those are the issues. Do you
18 have a copy of the amendment that was filed. It was just
19 filed with the clerk on Monday? I have a copy if you
20 don't.

21 THE COURT: I don't think I do.

22 MR. WALLER: Your Honor, may I approach?

23 THE COURT: Sure, that would be great. Call
24 your first witness.

25 MR. WALLER: Thank you, Your Honor, call Robert

1 Jackson.

2 THE CLERK: Mr. Jackson, do you swear to tell
3 the truth, the whole truth, and nothing but the truth so
4 help you God?

5 THE DEFENDANT: I do.

6 THE CLERK: Thank you.

7 MR. WALLER: Thank you, Your Honor.

8 WHEREUPON,

9 Robert Jackson,
10 after first having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. WALLER:

13 Q All right. How are you this morning, Mr. Jackson?

14 A Pretty good.

15 Q Can you hear me okay?

16 A Yes, sir.

17 Q All right. I'm going to ask if you can just to make
18 sure you speak into that microphone so the court reporter
19 can hear what you're saying, the judge can hear everything
20 you're saying and we can make sure we get everything on
21 the record. All right. Mr. Jackson, when you were first
22 arrested, do you remember what you were arrested for?

23 A I was sitting in the door of the truck. I was arrest
24 for herion.

25 Q Okay. You were arrested for herion, okay. And was

1 it trafficking weight is what they said?

2 A I didn't have but two ten packs, ten dollar bundles
3 in my pocket. I didn't have 20 bundles rest of them in
4 the car.

5 Q Okay. So you were arrested with some on your person
6 and there were some more in the car?

7 A Yes.

8 Q And you were charged with all of it, is that right?

9 A Yes. My cousin the one in the car he went in the
10 store.

11 Q Okay. Do you remember what his name was?

12 A Herbert McDaniel.

13 Q Okay.

14 A He dead now though.

15 Q Okay. When did Mr. McDaniel pass away?

16 A In 2018. I mean, 2017, I think I ain't sure.

17 Q Was it after your trial?

18 A Yes.

19 Q Okay. And you said that he was your cousin?

20 A My first cousin.

21 Q Okay. All right. Who -- I want to get back to Mr.
22 McDaniel here in a minute. When you were arrested, who
23 was your attorney?

24 A Suggs Scott that's who was representing me, but I
25 hired Mr. Gardner, Johnny Gardner.

1 Q Okay. The Gardner Law Firm?

2 A Yes, sir.

3 Q Johnny Etheridge?

4 A Yeah.

5 Q Okay. All right. When you were arrested, were you
6 in the county detention center or did you make bond?

7 A I made bond.

8 Q Okay. So you were out. Were you able to meet with
9 either Mr. Suggs or Mr. Etheridge?

10 A Yes, sir.

11 Q Okay. How many times you think you met with them?

12 A Maybe about ten times.

13 Q Okay. You remember what y'all talk about?

14 A I wasn't paying -- he talked about my case.

15 Q Okay. Did y'all talk about possibly going to trial?

16 A Yeah, one time they tell me try to get -- tell me --
17 talking about Herbert. I was in the back. I couldn't
18 walk and so -- he was up there told him he have to give me
19 three months, but then when I went to trial I got 26
20 years.

21 Q Okay. So there were times when you went to go meet
22 with the law firm and you couldn't get out the car?

23 A I can get out the car. I had one leg but -- at that
24 time I had one of my legs and I can walk with a stick.

25 Q Okay. So you couldn't get to their office, is that

1 right?

2 A Yes, I got in the office.

3 Q Okay. Did you talk to Mr. Etheridge or Mr. Suggs
4 about that plea offer?

5 A No, we ain't never talk about that after that. He
6 told me something about they was taking pictures in the
7 store yard, they was going to do that.

8 Q Okay.

9 A That's what his son say.

10 Q All right. You said earlier you hired Mr. Etheridge.
11 You hired the Gardner Law Firm?

12 A Yeah.

13 Q How did Scott Suggs come to be your lawyer?

14 A They told me he was my lawyer go down there. He was
15 on Evans Street.

16 Q Okay. And did you know he was going to be the one
17 doing your trial?

18 A I didn't know that, but he send me down there. The
19 day I went to trial a couple days they tell me -- he told
20 me to go down there and he talk with me before I went to
21 trial.

22 Q So just a couple days before you went to trial that
23 you found out Mr. Suggs was going to do your trial?

24 A Yeah.

25 Q Okay. Did you have enough time to talk to Mr. Suggs

1 and kind of know who he was and what he was all about?

2 A Not really.

3 Q Okay. What did y'all talk about as far as any sort
4 of strategy or anything like that?

5 A We didn't talk none.

6 Q Okay. Did y'all talk about any defenses that you
7 might have?

8 A No.

9 Q Okay.

10 A I can't remember. If he did, I can't remember now.

11 Q Okay. Did you think you had any defenses to these
12 charges?

13 A I didn't know I was facing all that time, but I
14 thought I had -- I thought I had to bring whoever snitch
15 on me up to the thing, but they didn't. And I thought
16 they was gone give me less time and they didn't.

17 Q Okay. Let me back up and ask you about two things
18 then. So did you have an understanding as to why you were
19 charged with all of the drugs and not just the drugs in
20 your pocket?

21 A No, I didn't.

22 Q Okay. What did you think you were charged with?

23 A I thought I would be charge with the two bundles I
24 had in my pocket. And then I thought I got them all out
25 the car. I know I was gone be charged with them.

1 Q Okay. So there's no question you had herion on you,
2 right?

3 A Yeah.

4 Q You weren't ever fighting that?

5 A No, I wasn't.

6 Q Okay. It was just the amount, is that right?

7 A Yeah.

8 Q Okay. What -- did you and Mr. Suggs ever talk about,
9 you know, what amount you had on you might have carried as
10 a penalty versus all of the amount?

11 A Well, he didn't say, but in the court, he brought
12 three sugar packs, you know, Sweet and Low packs he said
13 that's what I had much as that four to six grams.

14 Q Okay. All right. Talking back you said snitch, you
15 use the word snitch a minute ago. Is it your
16 understanding that a confidential informant for the
17 sheriff's department or law enforcement told them where to
18 find you essentially?

19 A I don't think so. I don't know for sure. He's a
20 friend of mine at the time. He did some work for me the
21 guy that snitch.

22 Q Okay. So you think you know who it was?

23 A Yeah.

24 Q Now, you do. Okay.

25 A I think I know then.

1 Q Okay. And that person did not testify at your trial,
2 is that right?

3 A No, he wasn't there.

4 Q Did you and Mr. Suggs talk about that?

5 A No, we didn't.

6 Q Okay. All right. What did you and Mr. Suggs talk
7 about?

8 A I forgot now.

9 MS. SCHILL: What was that answer?

10 MR. WALLER: He forgot.

11 MS. SCHILL: He's forgot, okay.

12 A We talk about -- I told him about my cousin was to
13 take the other part of the drugs, but he ain't say
14 nothing. He tell me don't say too much. Don't say no
15 more than they ask me.

16 Q Okay. Did you ever ask Mr. Suggs to talk to your
17 cousin Mr. McDaniel?

18 A No, I didn't, but my cousin was up there the first
19 day. The next day he wasn't in the courtroom. He had to
20 go to the doctor.

21 Q Okay. Do you know if Mr. McDaniel ever talk to
22 Mr. Suggs?

23 A No, he ain't never talk with him.

24 Q Okay. So Mr. McDaniel was in the courtroom the first
25 day you said?

1 A Yeah.

2 Q Do you know if he was on your witness list?

3 A No, I don't know.

4 Q Okay. Did you want Mr. McDaniel to testify?

5 A Yes, sir.

6 Q Okay. What did you think Mr. McDaniel was going to
7 say?

8 A I guess he tell he was telling the truth ---

9 MS. SCHILL: Objection, Your Honor.

10 THE COURT: Sustained.

11 MR. WALLER: Judge, Mr. McDaniel has passed
12 away. Judge, I think he's unavailable. I think that it
13 is an exception to hearsay that Mr. Jackson can testify to
14 what direct knowledge he has of Mr. McDaniels, what he was
15 going to testify to.

16 THE COURT: And what would that be for exception
17 specifically?

18 MR. WALLER: Unavailable declarant, Judge. And
19 I apologize, Judge, I don't have the number off top of my
20 head.

21 THE COURT: Let me hear from the State.

22 MS. SCHILL: Yes, Your Honor. First of all, we
23 don't have any proof that he's in fact deceased. We would
24 like some proof of that. And also to the extent that he's
25 suggesting that Herbert McDaniel is going to testify that

1 the drugs belong to him. I mean, that's certainly a
2 statement against interest that we would need
3 corroborating evidence to support those statements.

4 (WHEREUPON, a pause in the proceedings.)

5 THE COURT: You know, I take a look at 804
6 hearsay exceptions declarant unavailable B(3) and it's
7 possible it could fall up under that. However, it's not
8 admissible unless corroborating circumstances clearly
9 indicate trust worthiness of the statement.. I have a
10 little bit of a problem with that.

11 MR. WALLER: Certainly, Your Honor.

12 THE COURT: However, this individual might be
13 saying he said all kinds of stuff.

14 MR. WALLER: Certainly, Your Honor.

15 THE COURT: And he's deceased and he's not here
16 and we can't get him and we can't corroborate it.

17 MR. WALLER: I understand, Your Honor. And
18 certainly other people will testify today and that may lay
19 more of a foundation later on. I'll move on as it relates
20 to this witness.

21 THE COURT: Thank you. Sustained.

22 BY MR. WALLER:

23 Q All right. Mr. Jackson, when you started your trial,
24 what -- did you know the workings of a trial and how a
25 trial was going to go?

1 A How I know what?

2 Q Did you know how a trial was going to go procedurally
3 like the steps in each trial?

4 A Sort of.

5 Q Okay. Did you and Mr. Suggs have a chance to talk
6 about that?

7 A I been to his office that morning two days before I
8 went to trial.

9 Q Okay. There was a video from law enforcement. Did
10 you have a chance to see that video?

11 A I see part of it.

12 Q Okay. When did you see part of it?

13 A In the courtroom.

14 Q Okay. So had you seen it before then?

15 A No.

16 Q Okay. Did you and Mr. Suggs have a chance to talk
17 about any of the testing done on any of the drugs?

18 A No, we didn't.

19 Q Okay. So you didn't know about the weights and all
20 that? What it added up to?

21 A I had 110 grams. I mean, 110 grams, yeah.

22 Q 110 bindles or packs?

23 A 110 packs.

24 Q Okay. There was a difference in what the State
25 originally thought the drugs weigh and what they actually

1 weighed, is that right?

2 A Well, when they got them, they claim they got three
3 grams, but they ain't sure. I mean 120 bags.

4 Q Okay. But there was a difference from when you were
5 first arrested and what they thought it was going to weigh
6 versus what it actually weighed, is that right?

7 A Yeah.

8 Q Okay. Did you ask Mr. Suggs to do any investigation
9 or talk to any witnesses for you?

10 A No, I didn't.

11 Q Okay. Did you give him any information you wanted
12 him to follow up on?

13 A No, I don't think so.

14 Q Okay. Do you know -- did he tell you of any
15 investigation that he had done?

16 A No, he didn't.

17 Q Okay.

18 A Because I hired the other lawyer.

19 Q Mr. Etheridge?

20 A Yeah.

21 Q Okay. Did Mr. Etheridge tell you about any
22 investigation he done?

23 A He told me I was in bad health and then he told me to
24 just take care of myself and go to the doctor.

25 MS. SCHILL: I'm sorry what was that?

1 MR. WALLER: He said Mr. Etheridge told him to
2 take care of himself and go to the doctor.

3 MS. SCHILL: Okay.

4 BY MR. WALLER:

5 Q Okay. All right. Mr. Jackson, after your trial,
6 after you were convicted, did you and Mr. Suggs talk about
7 an appeal in your case?

8 A No, I ain't talk with him since.

9 Q Okay. You raised in your application that you
10 requested your lawyer to file an appeal, but he didn't do
11 it?

12 A No, he didn't.

13 Q Okay. Do you know if an appeal was ever filed in
14 your case?

15 A I put in a post-conviction, not an appeal not on
16 trial.

17 Q Okay. All right. And says it in your application
18 also was part of the trial. What's your educational
19 background?

20 A I ain't got none.

21 Q Okay. How far did you go in the school?

22 A About the sixth grade.

23 Q Okay. Can you read and write?

24 A No.

25 Q Okay. All right. Mr. Jackson, you testified earlier

1 that your lawyer told you not to talk to anybody?

2 A He tell me don't say no more, don't bring up no
3 court.

4 Q Okay. You had -- you talk to law enforcement the day
5 you were arrested, is that right?

6 A Talk to law enforcement?

7 Q Yes, sir. The police officer that arrested you did
8 you talk to any of them?

9 A No, I ain't never talk to them.

10 Q Okay. You testified at your trial though, is that
11 right?

12 A Yeah.

13 Q Okay. In between the day you were arrested and the
14 day you testified, did you ever talk to the police any
15 more?

16 A No.

17 Q Okay. All right. Mr. Jackson, I've asked you all
18 the questions that I have for you. Is there anything you
19 think that I've left out or that Judge Seals needs to know
20 about Scott Suggs and Johnny Etheridge's representation of
21 you?

22 A No, not really.

23 Q Okay.

24 MR. WALLER: Please answer questions Ms. Schill
25 has. Thank you.

CROSS-EXAMINATION

1
2 BY MS. SCHILL:

3 Q Mr. Jackson, how you?

4 A How you doing?

5 Q Good. So how many times did you meet with
6 Mr. Etheridge prior to Mr. Suggs representing you, do you
7 recall?

8 A Mr. Evans?

9 Q Mr. Etheridge, Johnny Etheridge from the Gardner Law
10 Firm?

11 A I met with him a lot of times.

12 Q Okay, a lot of times. How about Mr. Suggs?

13 A I meet with him several times. He had a case I been
14 in an accident one time. I been see him before then. I
15 meet him about a few times.

16 Q A few times?

17 A About two or three times before I went to court on
18 this case.

19 Q Was those in person?

20 A Uh?

21 Q Were those meetings in person with -- we'll start
22 with Mr. Etheridge. Did you meet him in person or over
23 the phone.

24 A In person.

25 Q Okay. What about Mr. Suggs?

1 A Meet him in person.

2 Q Okay. Did you talk to them over the phone or by
3 letter at all?

4 A No.

5 Q No. Okay. So I know you mention the video. I
6 believe was it your testimony that you did not review the
7 video?

8 A When they arrested me?

9 Q Yeah, the video of your arrest from the officers.
10 Did you review that with either Mr. Etheridge or ---

11 A I view that in the courtroom.

12 Q So the first time you saw the video was during your
13 trial is that your testimony?

14 A Yes, ma'am.

15 Q Okay. So I know you mention a Mr. Herbert McDaniel
16 who you said is your cousin, is that right?

17 A Yes, ma'am.

18 Q Okay. I'm sorry I might have missed this. Did you
19 -- you gave that -- did you testify that you gave the name
20 Herbert McDaniel to Mr. Suggs or no?

21 A No.

22 Q So you never told Mr. Suggs about Herbert McDaniel?

23 A I told him that in the courtroom, told him I had
24 Herbert to testify for me. He said he didn't need him, so
25 he didn't come back.

1 Q Okay. So you're saying that you told Mr. Suggs about
2 Herbert McDaniel at your trial?

3 A Yes, ma'am.

4 Q Okay. But you prior to your trial you did not
5 mention Herbert McDaniel, is that correct?

6 A No, ma'am.

7 Q Okay. And I know you had testified during your trial
8 that the bindles that were not in your pocket the
9 remaining bindles of herion belong to someone else, but
10 you did not provide that name to the court or the jury,
11 did you?

12 A No, ma'am.

13 Q Okay.

14 MS. SCHILL: Beg the Court's indulgence, Your
15 Honor.

16 THE COURT: Yes, ma'am.

17 (WHEREUPON, a pause in the proceedings.)

18 MS. SCHILL: No further questions, Your Honor.

19 THE COURT: Mr. Waller, any follow up?

20 MR. WALLER: No redirect, Your Honor.

21 THE COURT: Thank you. You may go back to the
22 table. Thank you.

23 (WHEREUPON, the witness leaves the witness
24 stand.)

25 THE COURT: All right. You call your next

1 witness.

2 MR. WALLER: Your Honor, may we approach
3 briefly?

4 THE COURT: Sure.

5 (WHEREUPON, a bench conference was held.)

6 THE COURT: We take a short break and let me
7 know when you ready.

8 MR. WALLER: Thank you, Judge.

9 (WHEREUPON, a break was taken.)

10 THE COURT: Call your next witness.

11 MR. WALLER: Thank you, Your Honor. The
12 applicant would call Johnny Etheridge. Judge, Mr.
13 Etheridge is testifying by telephone today.

14 THE COURT: That will be fine.

15 MR. WALLER: With consent of both parties and
16 the Court. The phone is set up right next to you to make
17 sure everybody can hear.

18 THE COURT: All right. And if you would like to
19 come up, you can do whatever suites you, that way you can
20 hear.

21 WHEREUPON,

22 Johnny Etheridge,
23 after first having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25

1 BY MR. WALLER:

2 Q Mr. Etheridge, you can hear me?

3 A Yes, sir, pretty good how you doing today?

4 Q I'm doing well. Mr. Etheridge, is that better? Can
5 you hear us a little bit better?

6 A Yeah, a lot better. And I want to thank everybody
7 for allowing me to do this because of my health. I really
8 appreciate it.

9 Q Mr. Etheridge, this Jonathan Waller here on behalf of
10 Mr. Jackson.

11 A Yes, sir.

12 Q Do you recall -- did you represent Mr. Jackson?

13 A Yes, sir.

14 Q Okay. How did you come to represent him?

15 A Robert came to see me and I had represented him on
16 some other matters.

17 Q Okay. And how did it work were you involved in his
18 case from the beginning until the end or what was your
19 role specifically?

20 A My role I was involved from the beginning and then
21 toward the -- Mr. Suggs was involved from the beginning
22 too, but I more did the early like pleadings and trying to
23 talk to the Solicitor and about how to work -- about had a
24 deal worked out and then unfortunately Mr. Jackson got in
25 some more trouble which led to this situation he's in now.

1 Q Okay. Did you receive discovery in this case?

2 A Yes, sir.

3 Q Okay. Did you have a chance to review that with
4 Mr. Jackson?

5 A Yes, sir.

6 Q Okay. Did you discuss with him any potential
7 defenses that me might have?

8 A I don't recall doing that specifically, but that
9 would normally be what I would do. But I'm not gone sit
10 here and tell you I remember exactly what I told Robert.

11 Q Okay.

12 A But, yes, that would be my normal practice to discuss
13 the Rule 5's and what information they can give me to help
14 us in connection with the charges.

15 Q Okay. Did you have a copy of the video at the time.

16 A I don't think I did. I think Mr. Suggs had the
17 video.

18 Q Okay. Did Mr. Jackson give you any information or
19 any witnesses he wanted you to investigate?

20 A Say that again I'm sorry, Mr. Waller.

21 Q Did Mr. Jackson give you any information or any
22 witnesses that he wanted you to investigate?

23 A I don't think so.

24 Q Okay. Do you have any notes or any recollection of
25 any investigation that you performed independently?

1 A Yes, most of it involved going over to the
2 Solicitor's office and talking to them about the cases.
3 And like I say it was going pretty good until he got
4 rearrested which kind of made negotiations go away.

5 Q Okay. You testified that Mr. Suggs was involved from
6 the beginning?

7 A Yes, sir.

8 Q At what point was it decided that Mr. Suggs was going
9 to represent Mr. Jackson at trial?

10 A I don't recall specifically when that happened, but I
11 was having, you know, some physical problems and that
12 might have been when that happened.

13 Q Okay.

14 A Mr. Waller, I just don't remember the exact date or
15 exact timing of it I sure don't.

16 Q Okay. Was Mr. Jackson -- was he aware of that and
17 was he involved in those conversations?

18 A Yes, sir.

19 Q Okay. How does it work -- was the Gardner Law Firm
20 retained?

21 A Yes, sir, and Suggs Law Firm.

22 Q Okay, that was going to be my next question. What
23 was the -- how did it work that Mr. Suggs came to be
24 involved? He doesn't work directly for the Gardner Law
25 Firm, is that right?

1 A That is correct, right.

2 Q He was from the beginning he was part of the team so
3 to speak?

4 A Yes, sir, yes, sir.

5 Q Okay.

6 A And normally like one of us would be able to go to
7 the initial appearance or the preliminary hearing or the
8 docket or whatever we divided those up. And at some point
9 we -- my role kind of diminished. We were unable to get
10 it resolved. Although we came close and then he got in
11 significant other trouble.

12 Q Okay. Did you participate in any of the trial
13 preparation or anything like that?

14 A Other than kicking ideas around with Mr. Suggs.

15 Q Okay.

16 MR. WALLER: Beg the Court's indulgence please.

17 THE COURT: Yes, sir.

18 (WHEREUPON, a pause in the proceedings.)

19 MR. WALLER: Thank you, Mr. Etheridge. I don't
20 have any further questions for you.

21 MR. ETHERIDGE: Thank you too. Again, I
22 appreciate y'all's courtesy in doing it this way. Thank
23 y'all so much.

24 THE COURT: Hold on one second. Do you have any
25 questions?

1 MS. SCHILL: No questions, Your Honor.

2 THE COURT: All right, thank you. Well, you
3 have you a good weekend and a good day.

4 MR. ETHERIDGE: Do I just need to hang up now,
5 that mess anything up?

6 THE COURT: That will be fine. Go ahead and
7 hang up, that will be perfect.

8 MR. ETHERIDGE: Thank y'all, bye, bye.

9 THE COURT: Thank you, Mr. Etheridge.
10 If you like, call your next witness.

11 MR. WALLER: I call Scott Suggs.

12 THE CLERK: Mr. Suggs, if you'll place your left
13 hand on the Bible and raise your right hand. Do you swear
14 to tell the truth, the whole truth, and nothing but the
15 truth so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Thank you.

18 MR. WALLER: Thank you, Your Honor. May it
19 please the Court.

20 THE COURT: Sure.

21 WHEREUPON,

22 Scott Suggs,
23 after first having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25

1 BY MR. WALLER:

2 Q Good morning, Mr. Suggs. How are you today?

3 A I'm fine. Thank you. I hope you are. And I
4 apologize, sir, to you and everyone in the courtroom
5 particularly the Court for being late. I hope I didn't
6 hold the Court up too long.

7 THE COURT: Thank you.

8 BY MR. WALLER:

9 Q Yes, sir. Mr. Suggs, how did you come to represent
10 Mr. Jackson?

11 A Mr. Jackson was -- as Mr. Etheridge testified was
12 sent to my office for a consult on his charges for which
13 he was convicted.

14 Q Okay. Do you recall the time line -- how long after
15 he been arrested that he first came to see you?

16 A I don't remember.

17 Q Okay. Was it well in advance of his trial?

18 A Yes.

19 Q Okay. Do you recall what you and Mr. Jackson might
20 have talked about the charges?

21 A We discussed them in detail, yes, sir.

22 Q Okay. Were there any potential defenses that you
23 saw?

24 A Yes.

25 Q Okay. If you don't mind for Judge Seals, what were

1 those defenses?

2 A Well, one of the -- I think, the charge or one of the
3 charges in his indictment was trafficking in herion. And
4 what one of the defenses that had occurred to me was not a
5 defense that would necessarily get him off the hook so to
6 speak, but which would in a way operate as a
7 lesser-included offense of what he was charged with.

8 Q Okay. Did you do any investigation or anything to
9 develop that or how did you go about developing that as a
10 defense?

11 A Well, Mr. Jackson told me that the herion which was
12 found in his possession was both actual and constructive
13 because there were three different caches (sic) of herion
14 in his car and only one of those was on his actual person.

15 Q Okay.

16 A And so we discussed how we could approach his case
17 from that angle as far as a defense to the trafficking
18 charge.

19 Q Okay. And how did you intend to do that? What was
20 your thought process in trying to develop that
21 particularly as it relates to the constructive possession?

22 A Well, the amount that he had in his pocket or on his
23 person I believe was less than four grams and the other
24 two caches of herion were in the car. I think one was in
25 the console and one was on the floorboard of the car maybe

1 on the mat or on top or under the mat. And so I intended
2 to try and do that by getting a charge from the judge on,
3 you know, the lesser-included offense of simple maybe
4 possession of herion.

5 Q Okay. Mr. Jackson when he testified that there
6 was -- the other drugs owned by the person who sold it to
7 him and he walked into the store, did you have any
8 information about that or were you able to develop who
9 that person might be?

10 A No, not to the extent that it would be helpful in any
11 way to Mr. Jackson's defense.

12 Q Okay. There was a person named Herbert McDaniel on
13 your witness list. Do you recall that name?

14 A Herbert McDaniel?

15 Q Yes, sir.

16 A No, I don't recall. Now, a name was mention to me by
17 the attorney general of a Herbert McDowell. And she and I
18 had a conversation about that gentlemen because I
19 represent him now for a murder case, a murder charge, but
20 McDaniel I don't recall that name.

21 Q Okay. Did you do a formal witness list or do you
22 recall how you did that?

23 A No, I don't remember.

24 Q Okay. You have a copy of the transcript with you?

25 A Yes, sir, I do.

1 Q Okay. If I get can you to turn to page -- starts on
2 42 and really contends on -- continues onto 43. One of
3 the witnesses that you ask the judge to question the jury
4 about is a Herbert McDaniel?

5 A May I take a few minutes?

6 Q Yes, sir.

7 A Okay. I see three names mentioned.

8 Q Do you have any recollection of Mr. McDaniel?

9 A No.

10 Q Okay. Do you know why he was on your list witness?

11 A Only if Mr. Jackson asked me to, you know, told me
12 they were potential witnesses, then certainly I would have
13 mention those to the court.

14 Q Was Mr. McDaniel under subpoena or anything?

15 A I don't think so.

16 Q Okay. Do you recall issuing an subpoena for him?

17 A I don't recall.

18 Q Okay.

19 A I mean, I really don't even remember why -- I mean,
20 why he gave me those names or what they would be witnesses
21 for.

22 Q Okay. Mr. Suggs, were you provided with the video in
23 this case?

24 A I don't remember.

25 Q Okay. Would it have been well in advance of trial or

1 close to trial?

2 A I don't remember.

3 Q Okay. Remember when you reviewed the video?

4 A Pardon?

5 Q Do you remember when you were able to review the
6 video?

7 A No, I don't remember, no.

8 Q Okay.

9 A Is a video of what?

10 Q The video of law enforcement approaching Mr. Jackson
11 and arresting him?

12 A I think I do remember a video of law enforcement
13 placing the drugs on the hood of a car. I think I
14 remember that.

15 Q Okay. Did you and Mr. Jackson have a chance to
16 review that together?

17 A I don't remember.

18 Q Okay. There was some talk towards the end of the
19 trial about some of the money that was seized from
20 Mr. Jackson about \$1,400. Do you -- was there a separate
21 forfeiture action filed do you know?

22 A I have no knowledge of that.

23 Q Okay. You didn't have anything to do -- you weren't
24 representing Mr. Jackson?

25 A I don't think so. I normally don't handle forfeiture

1 actions. I've handled a few in the past, but whether I
2 did on this case, I couldn't tell you.

3 Q Okay.

4 A The amount would be -- would probably tell me, no,
5 that I wouldn't mess with it.

6 Q Okay. All right. Mr. Suggs, Mr. Jackson was
7 ultimately convicted?

8 A Yes, sir.

9 Q Did you file an appeal on his behalf.

10 A No, I did not.

11 Q Okay. Did you and Mr. Jackson discuss filing an
12 appeal?

13 A Well, yes, we discussed it way in advance of the
14 trial. You know, I alerted him as I do all clients that I
15 don't handle appeals. So if it came to pass that his case
16 would go to trial and he were convicted, he probably
17 should do something proactive to prepare himself in some
18 fashion to contact an appellate lawyer to do that for him,
19 but, no, I don't handle appeals in my office.

20 Q Okay. Did he ever sign a waiver or tell you he
21 didn't want to file an appeal?

22 A No, not that I'm aware of.

23 Q Okay.

24 MR. WALLER: Beg the Court's indulgence please.

25 THE COURT: Yes, sir.

1 (WHEREUPON, a pause in the proceedings.)

2 MR. WALLER: Mr. Suggs, I don't think I have any
3 further questions for you. Thank you.

4 THE COURT: All right, cross-examination.

5 CROSS-EXAMINATION

6 BY MS. SCHILL:

7 Q Hi, Mr. Suggs, how are you?

8 A Very well. Thank you. Hope you are.

9 Q Thank you for being here. I'm just going to start
10 with a couple basic questions first. How long have you
11 been practicing law?

12 A Almost 30 years. August will be 30 years.

13 Q Okay. And how much of that has been criminal law?

14 A More than half.

15 Q Okay. I just want to clarify so you were involved
16 from applicant's case from the beginning, is that correct?

17 A From the beginning, no, I mean, I wasn't present at
18 any bond hearings or anything like that.

19 Q Okay. But you were involved fairly prior to the
20 trial?

21 A Oh, yes.

22 Q Okay. And I think might have missed a couple things
23 about the discovery. So did you say you had the video and
24 do you recall reviewing that with the applicant?

25 A I probably did, I can't -- I'm not going to testify

1 absolutely that I did, but just normal practice if I have
2 a video then, you know, it's accessible, then I certainly
3 will alert the client of that fact and, you know, he was
4 out of jail at the time. I understand he has problems
5 probably getting around, but he could have come to the
6 office any time and looked at it and may very well have
7 looked at it I just don't remember.

8 Q Okay. Did applicant ever give you a name for the
9 person who allegedly owned the remaining herion and that
10 have run into the store?

11 A He may have. I think he told me that he had just --
12 that he wasn't selling it. He was buying for himself
13 personally. He had just purchased the herion from an
14 individual, but I don't remember his name. It might have
15 been initials or something like a T.J. or something, but I
16 don't remember the name.

17 Q Okay.

18 A I do remember him telling me that though.

19 Q Okay.

20 A And in fact I wanted to use that as a possible, you
21 know, defense. And I don't know if I mentioned it at
22 trial or not, but I know that Judge Russo would not allow
23 me to introduce photographs of Mr. Jackson's excuse me --
24 his stomach and his other leg which at that time it was --
25 the leg and the foot particularly were pretty bad

1 medically. You could tell without being an expert that
2 they were -- that he was in bad shape and I wanted to use
3 those photographs to develop a defense that the heroin
4 was for his personal use for pain because his doctor would
5 not prescribe any conventional narcotics, but I wasn't
6 allowed to use the photographs.

7 Q Okay.

8 MS. SCHILL: Beg the Court's indulgence, Your
9 Honor.

10 THE COURT: Yes.

11 (WHEREUPON, a pause in the proceedings.)

12 MS. SCHILL: Those are all the questions we may
13 have, Your Honor.

14 MR. SUGGS: May I add something would that be
15 okay?

16 MS. SCHILL: I think we're good. Thank you.

17 THE COURT: All right. Any follow up?

18 MR. WALLER: I don't have anything further, Your
19 Honor.

20 THE COURT: Thank you. Appreciate you coming.

21 MR. SUGGS: Again, I apologize.

22 (WHEREUPON, the witness leaves the witness
23 stand.)

24 THE COURT: Call your next witness.

25 MR. WALLER: Judge, I would ask to recall Mr.

1 Jackson. Judge, I think that based on Mr. Suggs testimony
2 and I believe, Judge, the State has open the door to Mr.
3 Jackson's testimony about Mr. McDaniel. Mr. Suggs
4 testified that he wanted to use that the drugs were owned
5 by someone else. Judge, it's not being offered as proof
6 of the matter asserted, but my burden is to show that a
7 witness name on the witness list that wasn't called could
8 have helped. And that's certainly for the jury to decide,
9 but I think the State through their questioning Mr. Suggs
10 asking him about it I think that has opened the door. So
11 I would ask to recall Mr. Jackson on that limited issue,
12 but I would ask Your Honor, I guess, to make a ruling
13 before we get there.

14 THE COURT: And if you asked a question as to
15 what Mr. Jackson said or whatever, I think you are asking
16 it for the truth of the matter. Otherwise, it be no
17 reason to.

18 MR. WALLER: Your Honor, I do agree that I think
19 it's really close.

20 THE COURT: So that will make it hearsay.

21 MR. WALLER: Your Honor, it would. Again, it
22 certainly is hearsay. I do think that it's an exception.

23 THE COURT: I think you can probably ask
24 questions of your client that would be admissible and
25 probably accomplish the same thing without having to

1 elicit hearsay.

2 MS. SCHILL: Your Honor, at this time I would
3 ask to recall Mr. Jackson.

4 THE COURT: I don't have any problem with that.

5 MS. SCHILL: Your Honor, I just want to put our
6 objection on the record. For one -- I mean, also we have
7 to respond to the allegations that he didn't prepare for
8 trial and investigate it and generally asking about the
9 witnesses.

10 THE COURT: But I think that goes to preparing
11 for a trial and investigating. And Mr. Suggs is here if
12 we need to recall him as well, but this is the only chance
13 he gets to have his post-conviction relief hearing and
14 he's here and you can cross-examine. Let's go ahead and
15 let him come up. He is still sworn in and let him testify
16 and you can cross. And if you like to recall Mr. Suggs
17 you can.

18 MS. SCHILL: Is your ruling that he can now
19 testify?

20 THE COURT: He can't say what that other
21 individual said. He can testify as to what...

22 Go ahead.

23 MR. WALLER: Thank you, Your Honor.

24 REDIRECT EXAMINATION

25

1 BY MR. WALLER:

2 Q Okay. All right. Mr. Jackson, we had to bring you
3 back for one more little set of questions here. You
4 testified at your trial and also today that there was
5 another individual who -- the remaining drugs that were
6 not in your pocket they were theirs, is that right?

7 A (Nodded head in the affirmative.)

8 Q Is that a yes?

9 A Yes, sir.

10 Q Okay. Did you give the name of that person at all to
11 Mr. Suggs or Mr. Etheridge?

12 A No, I didn't.

13 Q Okay. Mr. McDaniel was on the witness list at your
14 trial. Do you know he got on that witness list?

15 A Not really.

16 Q Okay. You testified earlier that you brought him
17 there?

18 A Yeah.

19 Q Okay. Why did you bring him there?

20 A He was coming to court along with me to testify if he
21 needed to.

22 MS. SCHILL: Objection, Your Honor, that's
23 hearsay.

24 MR. WALLER: Judge, he didn't say anything he
25 said.

1 THE COURT: No, that isn't hearsay. He just
2 said why did you bring him there. He said so that he
3 could testify if he was needed is what I heard.

4 MR. WALLER: I believe's correct, Your Honor.

5 THE COURT: Okay.

6 BY MR. WALLER:

7 Q Okay. Did you and Mr. Suggs talk about him being put
8 on the witness list?

9 A Well, I think so.

10 Q Okay.

11 A I don't remember really.

12 Q Why did you want him on the witness list?

13 A He can tell part of the drugs was his.

14 MS. SCHILL: Objection, Your Honor.

15 THE COURT: Sustained. That's not necessarily
16 really hearsay. I'm going to overrule that.

17 MR. WALLER: I don't believe it was.

18 THE COURT: He didn't say what he said. He just
19 asked him why did you put him on the witness list and
20 bring him.

21 BY MR. WALLER:

22 Q Did you tell Mr. Suggs why you wanted Mr. McDaniel to
23 testify?

24 A No, I didn't.

25 Q Okay. Did you believe that Mr. McDaniel's testimony

1 would help you?

2 A I did.

3 Q Okay. Did you tell Mr. Suggs that?

4 A No, I didn't.

5 Q Okay. What did you tell Mr. Suggs about why
6 Mr. McDaniel was there?

7 A I didn't tell him.

8 Q Okay. Do you have any knowledge of how he ended up
9 on the witness list then?

10 A I don't know how he ended up on there.

11 Q Okay.

12 MR. WALLER: I don't have anything further.

13 Thank you, Mr. Jackson.

14 THE COURT: Any cross-examination?

15 MS. SCHILL: No, Your Honor.

16 THE COURT: Thank you again. All right.

17 Anything else, Mr. Waller?

18 MR. WALLER: No further witnesses, Judge. Just
19 some very brief argument.

20 THE COURT: Any witnesses on behalf of the
21 State?

22 MS. SCHILL: No, Your Honor.

23 THE COURT: All right. Hold up one second.

24 (WHEREUPON, a pause in the proceedings.)

25 MS. SCHILL: Before we close our case, Your

1 Honor, we would just move to dismiss allegations C and D
2 from the amended application hearing testimony as to those
3 allegations.

4 THE COURT: And what are those allegations?

5 MS. SCHILL: I'm sorry, Your Honor. C is
6 counsel's ineffective failure to move to sequester
7 witnesses. And D is counsel's ineffective of failing to
8 object to impermissible comment on applicant's right to
9 remain silent during closing argument of the State.

10 THE COURT: All right. Any problems with that?

11 MR. WALLER: Judge, I can see to C the motion to
12 sequester witnesses. Judge, as it relates to failure to
13 object, the transcript is part of the record. If I
14 haven't met my burden, certainly if the Court finds that
15 it was a strategy decision not to object to that and I
16 think that will be the ruling of the Court. But I don't
17 -- I can't concede to it even though there has not been
18 direct testimony on it today.

19 THE COURT: All right. Yes, ma'am.

20 MS. SCHILL: Your Honor, I would like to
21 entertain D, we would then ask to recall Mr. Suggs.

22 THE COURT: Go ahead and recall him.

23 MS. SCHILL: Okay.

24 THE COURT: And I'm going to grant it in regard
25 to C.

DIRECT-EXAMINATION

BY MS. SCHILL:

Q Just a couple quick questions, Mr. Suggs. Do you recall anything objectionable that was said by the State during its closing arguments?

A Not specifically. No more than what was mentioned by the attorneys just now.

Q Do you have a blanket policy about objecting during closing arguments?

A A blanket policy?

Q Or usual policy?

A Yeah, I never - I almost never interrupt a lawyer during opening or closing unless I feel that they've strayed too far or they have said something that wasn't in evidence or something improper then I would object, but I generally don't as a courtesy. But I do object if I think it's obviously prejudicial to my client somewhat.

Q And do you recall anything like that happening in this case?

A If it's on the transcript, I don't right off, but if it's in the transcript, I'll take a look at it.

Q Okay.

MS. SCHILL: That's all the questions we have.

THE COURT: All right. Cross-examination.

CROSS-EXAMINATION

1 BY MR. WALLER:

2 Q Mr. Suggs, when Mr. Jackson was first arrested, he
3 spoke briefly with law enforcement prior to his Miranda
4 rights being read. Do you recall that?

5 A Yes, I think at the store. Yes, sir, I think he did
6 speak with them prior to that.

7 Q Okay. You made a motion to suppress anything that he
8 said after he was Mirandized when he talked to other law
9 enforcement officers he was not re-Mirandized and the
10 judge agreed with you and suppressed all that time
11 testimony or statement. Do you recall that?

12 A No, I don't. I don't recall. I've tried so many
13 cases, Mr. Waller.

14 Q No, sir, I understand.

15 A All I know is I remember Robert being very very
16 pleasant man who was very sick when I met him and he
17 appears to have declined. And I've noticed just now that
18 he's lost his other leg and I'm so sorry. All I can say
19 is that he was very respectful to me. He was always very
20 courtesy. He was -- he seems less lucid now to me than he
21 was when I represented him. I just think that he got a
22 bad deal. I don't think -- I think the solicitor just --
23 they should have been a little bit more -- and not
24 responsive to your question I apologize, but I just had to
25 say this I just don't think the solicitor treated him

1 fairly. I don't.

2 Q Well, I appreciate that, Mr. Suggs. If it's in the
3 transcript, will you take my word for it that you move to
4 suppress anything after Mr. Jackson invoked his right to
5 remain silent said he wasn't going to speak without a
6 lawyer?

7 A Whatever in the transcript I wouldn't have any basis
8 to disagree with it, sir.

9 Q Okay. The solicitor during his closing argument and
10 it's on page 326 if you have a copy of the transcript told
11 the jury that the -- that another drug dealer or someone
12 else who possibly into drugs is the first time that he's
13 heard of it -- first time that Mr. Jackson has said that.
14 Begins on line 13.

15 A Is this the State's closing argument?

16 Q Yes, sir, it is.

17 A All right, line I'm sorry, sir.

18 Q Line 13 page 326.

19 A Okay.

20 THE COURT: What page again?

21 MR. WALLER: 326, Your Honor.

22 A I've read it the paragraph, yes, sir.

23 Q Do you have a strategy reason for not objecting to
24 those comments?

25 A I mean, I would have to read more than that to

1 understand in what perspective the solicitor was making
2 that argument. You know, this is a case that, you know,
3 that I didn't want to go to trial. It's one that
4 Mr. Jackson didn't want to go to trial on, but we had no
5 choice, you know. I don't recall the solicitor saying
6 that I'm a natural investigator I don't remember that.

7 Q Okay.

8 A I don't know what he's talking about there.

9 Q Okay. So you just don't recall just cause it's been
10 so long?

11 A It's fair to say.

12 Q Okay. Do you have any specific recollection of a
13 strategy decision not to object right there?

14 A Are you referring specifically to line 17.

15 Q No, sir, I'm referring to line 15 and 16. Today is
16 the first time I've heard of it as far as Mr. Jackson's
17 comments to law enforcement or to the jury?

18 A What is your question? I don't understand the
19 question.

20 Q Did you have a strategy reason for not objecting to
21 those comments?

22 A What would be the objecting if you could help me?

23 Q Mr. Suggs, my question did you have a strategy reason
24 for not objecting right there?

25 A No, I mean, not that I can think of.

1 MR. WALLER: Nothing further. Thank you.

2 THE COURT: Anything from the State?

3 MS. SCHILL: Yes, Your Honor.

4 REDIRECT EXAMINATION

5 BY MS. SCHILL:

6 Q Do you think the comment on lines 15 through 16 that
7 Mr. Waller just referenced is objectionable?

8 A I think it would be in some -- if the facts were
9 different, but, you know, I think that we approached this
10 case as one that we really couldn't win out right. It was
11 one that we were trying to take, you know, a different
12 approach on or approach where maybe we could convince the
13 jury that, you know, that he wasn't a drug dealer. He was
14 just a user. And I think that works in combination with
15 intense efforts in chambers with Judge Russo to get a
16 charge of simple possession. So the strategy in this
17 case, I believe, was one that, you know, we wouldn't win
18 it unless, you know, all the evidence were suppressed, but
19 the heroin that was initially found was in plain view. It
20 was right in Mr. Jackson's top pocket. And there was a
21 pill bottle too right there in the console -- not console,
22 but in the door open of the car with the door open. And I
23 didn't see any way that we could suppress all of the
24 drugs. So we had to take the approach in this trial that,
25 you know, that Mr. Jackson was cooperative and, you know,

1 he did what he was asked to do. He was honest with law
2 enforcement about, you know, that he was a user and not a
3 dealer, you know that sort of thing. I mean, I know we
4 couldn't win it. I was looking for something less than
5 trafficking. I mean, I guess, maybe that would be one of
6 the reasons that I didn't object, unless I'm reading the
7 context wrong.

8 MS. SCHILL: Those all the questions we have.

9 THE COURT: All right.

10 MR. WALLER: Nothing further, Your Honor.

11 THE COURT: All right. Thank you again.

12 (WHEREUPON, the witness leaves the witness
13 stand.)

14 THE COURT: Anything else from the State?

15 MS. SCHILL: No, Your Honor.

16 THE COURT: All right. Would you like to give a
17 closing statement, Mr. Waller?

18 MR. WALLER: Judge, just very briefly. I would
19 just ask you to take a look at a couple things in the
20 transcript, Your Honor. Page 42 is the -- Mr. Suggs
21 presentation of the witness list. Judge, I don't know if
22 it was a afore witness list or not. The jury had already
23 been struck and Mr. Suggs asked Judge Russo to question
24 the petit jury if they knew any of the witnesses. Judge,
25 I also ask you to look at page 76 and this goes to my

1 allegation by preparation. It appears there were some
2 problems with the video after being provided to Mr. Suggs.
3 He was unable to play the video. And they had to, I
4 guess, play it, you know, here in the courtroom. Judge,
5 the trial had started at that point and Mr. Suggs hadn't
6 seen the video. Certainly that was a technical problem,
7 but, Judge, that's something that I think should have been
8 worked out and resolved prior to the trial starting. I
9 would just ask you to look at those on page 42 and page 76
10 in conjunction with our other allegations and the
11 amendments in the application, Your Honor.

12 THE COURT: And how would the video have made a
13 difference whether it was before, during, so long as isn't
14 after?

15 MR. WALLER: Your Honor, I think -- quite
16 honestly I don't know how the video would have made a
17 difference in the trial. I don't know if there was any
18 potential way to challenge the video or possibly use that
19 if there was certainly due to technical issues certainly
20 there was limited amount and if any amount of time to be
21 able to prepare either to defending the incident or try to
22 suppress it or anything like that. Certainly the timing
23 would have been limited, so I don't know even if the video
24 were -- I don't know if the video itself would have
25 changed the outcome, but having the opportunity to prepare

1 for it and to possibly suppress it, that outcome could
2 have been different.

3 THE COURT: There was nothing to prevent Mr.
4 Suggs from moving to suppress it at trial. And he's a
5 very experienced criminal defense lawyer. I'm just
6 speaking out loud. I'm not arguing with you.

7 MR. WALLER: Yes, sir, he is. And again I -- in
8 all candor to the Court, I don't know that any of that
9 could have been done. I just ask the Court to consider
10 that as far as -- and certainly things come up in trial
11 all the time. You know, we recall two witnesses here
12 today. So it certainly, you know, doesn't go always
13 exactly as you planned, but, Judge, a technical issue that
14 could have been worked out well before would have just
15 gone to the preparation, investigation. Thank you.

16 THE COURT: All right. Thank you.

17 Anything you want to put on the record?

18 MS. SCHILL: Yes, sir, Your Honor. I just want
19 to clarify something. It was actually that he -- that
20 Mr. Suggs at first couldn't hear the video. He could see
21 it. He couldn't audibly hear it and then I believe they
22 fixed that issue. I believe he had watched it on the
23 judge's laptop or something to that effect, so he was able
24 hear it. And, of course, Mr. Waller just said they can't
25 -- they hadn't really alleged that would have made a

1 difference in this case.

2 Also as far as the witnesses are concerned,
3 applicant testified here today that he doesn't even really
4 recall informing his counsel about the witnesses or any
5 other contact information or anything to that effect. So
6 those would be our rebuttal to that, I guess.

7 THE COURT: All right. I'll take it under
8 advisement and let you all know something. Thank you,
9 Your Honor.

10 MR. WALLER: Thank you, Your Honor.

11 MS. SCHILL: Thank you, Your Honor.

12 END OF REQUESTED TRANSCRIPT

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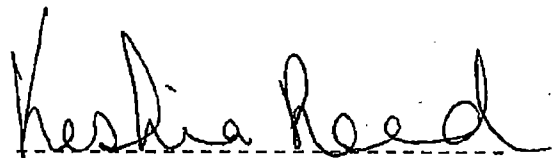
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 51, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of Common Pleas for Florence County, South Carolina, on the 28th day of June, 2019.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 25th day of November 2019.

A handwritten signature in cursive script that reads "Keshia Reed". The signature is written in dark ink and is positioned above a dashed horizontal line.

Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Robert Jackson, #138725

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Case No.: 2018-CP-21-962

**ORDER OF DISMISSAL AND
GRANT OF APPEAL PURSUANT
TO WHITE V. STATE¹**

2019 SEP - 4 AM 11:23
FLORENCE COUNTY, SC
CLERK OF COURT

FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Robert Jackson (Applicant) on January 31, 2018. Respondent made its Return on October 24, 2018. An evidentiary hearing into the matter was convened on June 28, 2019, at the Florence County Courthouse before the undersigned. Jonathan D. Waller, Esquire, represented Applicant. Assistant Attorney General Brianna L. Schill of the South Carolina Attorney General's Office represented Respondent.

At the hearing, Applicant testified on his own behalf. B. Scott Suggs, Esquire, and John R. Ethridge, Jr., Esquire, were also called to testify. This Court had before it a copy of the records of the Florence County Clerk of Court, records from the South Carolina Department of Corrections, the PCR application, Respondent's Return, and the plea transcript. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant

¹ White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).

CERTIFIED: A TRUE COPY
Shirley Powell Ottara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

to orders of commitment of the Florence County Clerk of Court. In August 2017, the Florence County Grand Jury indicted Applicant for trafficking in heroin and possession of controlled substance-second offense (2017-GS-21-1033). B. Scott Suggs and John R. Ethridge, Esquires, represented Applicant. Assistant Solicitor Ryan White, Esquire prosecuted the case. On September 15, 2017, Applicant proceeded to trial before the Honorable Thomas A. Russo. The jury found Applicant guilty as indicted. Judge Russo sentenced Applicant to imprisonment for concurrent terms of twenty-five years for trafficking in heroin and one year for possession of a controlled substance. Applicant did not appeal his conviction or sentence.

ALLEGATIONS

In his original application for post-conviction relief, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Not a lawyer requesting a public defender"
2. "New found evidence: my lawyer didn't allow my witness"

On June 19, 2019, Applicant submitted an Amended PCR application, asserting the following allegations:

1. Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding the allegations against Applicant;
2. Counsel was ineffective for failing to adequately prepare for trial;
3. Counsel was ineffective for failing to move to sequester witnesses;
4. Counsel was ineffective for failing to object to the Solicitor's impermissible comment on Applicant's right to remain silent during the closing argument of the State; and
5. Counsel was ineffective for failing to file a notice of appeal on behalf of Applicant, thus denying Applicant appellate review.

At the evidentiary hearing, Applicant proceeded solely with the allegations set forth in his amended application. This Court thus finds the allegations pleaded in Applicant's original application are waived and abandoned, and the Court denies and dismisses them with prejudice.

SUMMARY OF TESTIMONY

Applicant's Testimony

Applicant testified he hired the Gardner Law Firm to represent him on this case, but he was ultimately represented by both Suggs and Ethridge. Applicant testified he met with Suggs and/or Ethridge a total of approximately ten times. Applicant testified neither Suggs nor Ethridge discussed trial strategy or possible defenses with him. Applicant testified Ethridge instructed him to speak to Suggs regarding taking his case to trial. Applicant testified he was not aware that Suggs would go to trial if Applicant had wanted to go to trial. Applicant testified he had did not have enough time to talk with Suggs regarding his trial. Applicant testified he and Suggs reviewed trial procedure two days before his trial.

Applicant testified he recalled being arrested on heroin-related charges. Applicant further testified he had "two ten dollar balls" in his pocket, and that there was additional heroin found in his car. Applicant testified he was charged with trafficking all of the heroin found on his person and in his car. Applicant testified the heroin found in his car belonged to his first cousin, Herbert McDaniel. Applicant testified McDaniel died in either 2017 or 2018.

Applicant gave conflicting testimony regarding McDaniel's presence at trial. Applicant testified he never told Suggs or Ethridge that the drugs found in his car belonged to McDaniel. Applicant testified he was not sure why McDaniel was on Applicant's potential witness list because he did not tell Suggs he believed testimony from McDaniel would help his case, nor did he tell Suggs he wanted McDaniel to testify prior to trial. Applicant testified he told Suggs about McDaniel on the day of his trial. Applicant testified he had not mentioned McDaniel to either Suggs or Ethridge prior to trial. Applicant testified McDaniel was present for the first day of his trial, but Suggs and McDaniel did not talk at that time. Applicant further testified McDaniel could

not attend Applicant's second day of trial because he had a doctor appointment. However, Applicant testified he was unsure if McDaniel was on his witness list, but he wanted McDaniel to testify. Applicant testified he testified on his own behalf at trial, but he did not provide McDaniel's name to the Court or the jury. Applicant testified he did not ask Suggs to talk to any witnesses.

Applicant testified he did not understand why he was charged with trafficking all of the heroin, including the heroin that was found in his car and not on his person. Applicant testified he thought he was charged only for the drugs found on his person. Applicant testified he never denied possessing the drugs found on his person.

Applicant testified he believed a confidential informant ultimately led to his arrest. Applicant testified he was not sure who this confidential informant was, but he believed it was a friend of his. Applicant testified this confidential informant did not testify at his trial. Applicant testified he did not talk with Suggs about this confidential informant.

Applicant testified he saw a part of the video obtained by law enforcement. Applicant testified he first saw the video in the courtroom at trial. Applicant testified he did not see any part of the video prior to his trial. Applicant testified he did not discuss the SLED drug analysis with Suggs.

Johnny Ethridge's Testimony

Ethridge testified he previously represented Applicant on other charges unrelated to this PCR application. Ethridge testified he was involved in Applicant's case from the beginning. Ethridge testified his involvement primarily concerned the pleadings and early negotiations with the Solicitor's Office. Ethridge testified he received discovery and reviewed the discovery with Applicant. Ethridge also testified it his normal practice to discuss defenses with his clients, although he could not specifically recall what he said to Applicant in that regard. Ethridge testified

Applicant did not provide him with any helpful information including the names of a witnesses Applicant wanted Ethridge to investigate. Ethridge stated he had not viewed any video evidence, but he also indicated Suggs had reviewed video evidence. Ethridge stated he began preliminary negotiations with the Assistant Solicitor, but the preliminary negotiations halted when Applicant was arrested for additional charges.

Ethridge testified Suggs was involved from the beginning of Applicant's case. Ethridge testified although Suggs did not work directly for Ethridge's law firm, The Gardner Law Firm, Suggs was involved in Applicant's case from the beginning.

Scott Suggs's Testimony

Suggs testified he was not present at Applicant's bond hearings, but was involved in Applicant's case well in advance of his trial. Suggs testified he discussed Applicant's charges with him in detail, including possible defenses. Suggs testified his defense strategy was to convince a jury Applicant was only guilty of a lesser-included possession charge based on the heroin found on Applicant's person. Suggs testified Applicant did not deny possessing the heroin found on his person, but he denied being in constructive possession of the heroin found in the center console and floorboard of Applicant's car. Suggs testified he intended to use this information to ask the trial judge for a jury charge of simple possession. Suggs testified he attempted to introduce photographic evidence depicting Applicant's physical ailments to support Applicant's argument he was merely in simple possession and utilized narcotics to help with physical pain.

Suggs testified Applicant testified at his trial that the drugs found in the center console and beneath the floorboard belonged to another individual. Suggs testified Applicant did not provide a name or any other identifying information to the jury. Suggs testified he could not recall anyone

by the name of Herbert McDaniel on Applicant's trial witness list. Suggs did not recall whether he subpoenaed an individual by the name of Herbert McDaniel. Suggs could not recall any possible significance to Herbert McDaniel other than the possibility Applicant mentioned McDaniel as possible witness, generally.

Suggs recalled the existence of a video depicting law enforcement approaching, questioning, and arresting Applicant for the incident at issue in this PCR action. Suggs recalled reviewing the video prior to Applicant's trial. Suggs testified he probably reviewed the video with Applicant, but he was not absolutely sure.

Suggs testified he did not see any basis to object to anything argued by the State during its closing. As to the comment made by the state in its closing argument: "Well, this slippery drug dealer scenario is -today is the first time I've heard of it," Suggs testified he did not believe it was objectionable. Suggs further testified the statement could have been possibly objectionable under a different set of facts, but he did not believe it was under the facts in Applicant's case. Suggs testified it is his business practice not to object to statements made in closing arguments, unless the statement made is prejudicial or mentions evidence not presented during trial.

Suggs testified Applicant briefly spoke to law enforcement prior to being given Miranda warnings. Suggs testified he made a motion to suppress any statement that was given after the second officer did not re-inform Applicant of his Miranda rights, and this motion was successful.

Suggs testified he did not file a notice of appeal in Applicant's case. Suggs testified he informed Applicant at the outset of his representation that he did not handle appeals. Suggs testified he told Applicant at the outset of his representation Applicant should be "proactive" and contact an appellate lawyer in advance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record and heard the testimony at the PCR hearing. This Court has observed the witnesses presented at the evidentiary hearing, judged their credibility, and weighed their testimony accordingly in its discussion below. Set forth below are findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code.

Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding

would have been different.” Id. at 117-18, 386 S.E.2d at 625. When there has been a guilty plea, the applicant must prove counsel’s representation was below the standard of reasonableness and, but for counsel’s unprofessional errors, there is a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

For the reasons stated below, the Court denies relief under the Uniform Post-Conviction Relief Procedure Act, but grants Applicant belated appellate review pursuant to White v. State. S.C. Code Ann. §§ 17-27-10 to -160; 263 S.C. 110, 108 S.E.2d 35 (1974).

Issue #1: Failure to Investigate

Applicant alleges Suggs and Ethridge were ineffective because they did not properly investigate Applicant’s case. This Court disagrees and finds they provided effective assistance in this case.

“[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014)). Failure to conduct an independent investigation does not constitute ineffective assistance

of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

This Court finds credible Suggs's testimony Applicant did not provide information regarding the individual who was allegedly responsible for the drugs found in the center console or floorboard. Further, this Court finds credible Suggs's testimony he viewed the video depicting law enforcement's questioning and arrest of Applicant. The credible testimony shows Suggs reviewed discovery with Applicant and reviewed Applicant's case file. Therefore, this Court finds Suggs was not deficient.

This Court further finds credible Ethridge's testimony his representation primarily concerned the pleadings and early negotiations with the Solicitor's Office. The credible testimony shows Ethridge reviewed the discovery and discussed it with Applicant. This Court also finds credible Ethridge's testimony Applicant did not provide him any contact information for any potential witnesses. Accordingly, this Court finds Ethridge was not deficient. This Court further finds Applicant failed to meet his burden of proof as to prejudice requiring him to show this Court what further information Ethridge and Suggs would have uncovered through additional investigation. Accordingly, this allegation is denied and dismissed with prejudice.

Issue #2: Failure to Adequately Prepare for Trial

Applicant alleges Suggs was ineffective for failing to adequately prepare for trial. This Court disagrees. To establish counsel failed to adequately prepare for trial, the applicant must

present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not presented at the PCR hearing); Moorehead, 329 S.C. at 334, 496 S.E.2d at 417 (holding trial counsel's failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997) (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court finds credible Suggs's testimony Applicant did not provide a name or any contact information for the individual allegedly responsible for the drugs found in the center console and floorboard of Applicant's car. This finding is further supported by the fact Applicant did not name the individual during his own testimony at trial. Additionally, this Court finds credible Suggs's testimony he viewed the video prior to Applicant's trial. Furthermore, this Court finds credible Suggs's testimony he made a motion to suppress certain statements made by Applicant prior to his trial. This Court finds credible Suggs's testimony Applicant never denied possessing the drugs on his person, and therefore, Suggs's defense consisted of attempting to obtain a jury charge for simple possession, which he was successful in obtaining. This Court finds credible Suggs's testimony he attempted to introduce photographic evidence depicting Applicant's physical ailments to support Applicant's argument he was merely in simple possession and utilized

narcotics to help with physical pain. Because this Court finds Applicant has failed to meet his burden as to either deficiency or prejudice, this allegation is denied and dismissed with prejudice.

Issue #3: Failure to Sequester Witnesses

In his amended application, Applicant alleged Suggs was ineffective for failing to sequester witnesses. At the conclusion of the evidentiary hearing, Applicant conceded no evidence was presented to support this allegation, and consented to the dismissal of this claim. Accordingly, this allegation is dismissed with prejudice.

Issue #4: Failure to Object to Impermissible Comment in State's Closing Argument

In his amended application, Applicant asserts Suggs was ineffective for failing to object to an "impermissible comment" made in the State's closing argument. More specifically, Applicant asserts Suggs was ineffective for failing to object to the following statement: "Well, this slippery drug dealer scenario is – today is the first time I have heard of it." (Trial Tr. 326). This Court disagrees.

Although courts may not indulge "post hoc rationalization" for counsel's decision making that contradicts the available evidence of counsel's actions, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. Wiggins v. Smith, 539 U.S. 510, 526-527 (2003). There is a "strong presumption" counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 8 (2003).

This Court finds Suggs's testimony credible that he did not believe this comment was objectionable, particularly under the facts of Applicant's case. The State's closing argument was not a comment regarding Applicant's right to remain silent because Applicant testified at his own trial. This Court finds credible Suggs's testimony the State's closing argument would not have had an effect on the outcome of Applicant's case. Furthermore, this Court finds Suggs's testimony

credible that it is his usual practice and strategy not to object to statements made in closing arguments, unless the statement made was prejudicial or unless the statement mentioned evidence not presented during trial. Accordingly, this Court finds that Suggs was not deficient for failing to object to the comment made during the State's closing argument.

Furthermore, this Court finds Applicant was not prejudiced by Suggs's failure to object to the comment made during the State's closing arguments. With respect to prejudice, an applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." Id. at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. at 687. See Harrington, 562 U.S. 86. This Court finds Applicant has failed to meet his burden proving he was prejudiced by Suggs's failure to object to the statement made during the State's closing argument. Applicant provided no evidence to support his argument the statement damaged Applicant's case, and it was one comment in a lengthy closing argument. See State v. Tucker, 324 S.C. 155 (1996) (Affirming conviction, in part, because the statement made in Solicitor's closing argument was "one isolated event in the entire argument.")). Accordingly, because Suggs was not deficient, nor was Applicant prejudiced, this allegation is denied.

Issue #5: Failure to File a Notice of Appeal

Applicant asserts Suggs was ineffective for failing to file a direct appeal on his behalf, and Applicant asserts he wanted to appeal his convictions and sentence. "Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal." Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010) (internal citations omitted). "In the absence of an

intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738 (1967).” Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) (internal citation omitted). “To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal.” Simuel, 390 S.C. at 271, 701 S.E.2d at 740 (citing Sheppard v. State, 357 S.C. 646, 651, 594 S.E.2d 462, 465 (2004) (internal citation omitted)).

In the present case, there is no evidence Applicant made a knowing and intelligent decision not to pursue a direct appeal. Applicant credibly testified he intended to pursue an appeal. Although Suggs testified he informed Applicant at the outset of his representation that he did not pursue appeals on behalf of his clients, Suggs should have filed a notice of appeal on behalf of Applicant to protect Applicant’s appellate rights. Therefore, since Applicant did not knowingly and intelligently waive his right to appeal, he is entitled to petition the South Carolina Supreme Court for belated appellate review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief pursuant to the Uniform Post Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10 to -160. Neither Suggs nor Ethridge were deficient in any manner regarding their performance before or during trial, nor was Applicant prejudiced by their representation. However, this Court finds Applicant did not knowingly and intelligently waive his right to appeal and, therefore, he is entitled to petition the South Carolina Supreme Court for belated appellate review of direct appeal issues pursuant to

White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). All remaining allegations are denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Further, Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

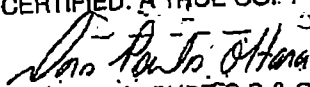
IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice;
2. That the Applicant is granted a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Within thirty days of service of this Order, counsel for Applicant must file a Notice of Appeal to secure the appropriate review of Applicant's convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 277(g) for the appropriate procedure for securing belated appellate review.
3. Applicant shall be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.

August 29, 2019


WILLIAM H. SEALS, JR.
Presiding Circuit Court Judge
Twelfth Judicial Circuit

2019 SEP -4 AM 11:23
FILED
FLORENCE COUNTY S.C.
CLERK OF COURT C.P. & G.S.
CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY S.C.

WITNESSES

Jake Chamberlain

Florence County Sheriff

Ryan White

ARREST WARRANT NUMBER

2017GS2101033

2017GS2101033A

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 8-24-17

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-21-01033

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

AUGUST

TERM

2017

THE STATE

vs.

ROBERT JACKSON

Indictment for

TRAFFICKING IN HEROIN—2ND; AND
POSSESSION OF CONTROLLED
SUBSTANCE—2ND

FILED

2017 AUG 24 PM 3:16

DORIS POULOS OTTAWA
COP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR
 TRAFFICKING IN HEROIN—2ND; AND
 POSSESSION OF CONTROLLED SUBSTANCE—2ND

At a Court of General Sessions, convened on AUGUST 24, 2017 the Grand Jurors of FLORENCE County present upon their oath:

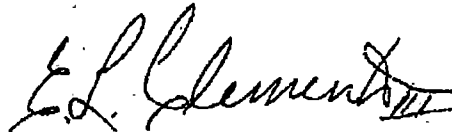
COUNT ONE- TRAFFICKING IN HEROIN—2ND OR SUBSEQUENT OFFENSE
 CDR: 0156 44-53-0370(e)(3)(a)(2)

That ROBERT JACKSON did in Florence County on or about June 2, 2015 sell, deliver, purchase, or bring into this state, or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this state; or was knowingly in actual or constructive possession of a quantity of Heroin in an amount of four grams or more but less than fourteen grams, same being a controlled substance all within the meaning of Section 44-53-110; et. seq., S. C. Code of Laws, 1976, as amended, in violation of Section 44-53-0370(e)(3), S. C. Code of Laws, 1976, as amended, for the crime of Trafficking.

COUNT TWO- POSSESSION OF CONTROLLED SUBSTANCE—2ND OR
SUBSEQUENT OFFENSE
 CDR: 0180 44-53-0370(d)(2)

That ROBERT JACKSON did in Florence County on or about June 2, 2015, knowingly and intentionally possess a quantity of Alprazolam (Xanax), a Schedule IV Narcotic under provisions of Section 44-53-370, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law, in violation of Section 44-53-0370(d)(2), S. C. 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.



E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Florence

VS.

Robert Jackson

AKA:

Race: Black Sex: M Age: 76

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip:

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Drugs / Trafficking in Heroin, morph., etc, 4 g or more, but less than 14 g - 2nd or sub. offense

IN THE COURT OF GENERAL SESSIONS

(25)

INDICTMENT/CASE#: 2017-GS-21-01033

A/W#: 2017GS2101033

Date of Offense: 6/2/2015

S.C. Code § : 44-53-0370(e)(3)(a)2

CDR Code #: 0156

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0370(e)(3)(a)2 of the S.C. Code of Laws, bearing CDR Code # 0156

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation ☐ Negotiated Sentence ☐ Recommendation by the State.

ATTEST:

White, Ryan

102584

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed years

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

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

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

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

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$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(I) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 8.25

TOTAL

\$ 283.25

Clerk of Court/ Deputy Clerk

Court Reporter:

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel. Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code:

Sentence Date:

CERTIFIED A TRUE COPY
 Clerk of Court C.P.A.G.S.
 FLORENCE COUNTY

2141
9-15-2017

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Florence

VS.

Robert Jackson

AKA:

Race: Black Sex: M Age: 76

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip:

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Drugs / Poss. of other controlled sub. in Sched. I to V - 2nd or sub. offense

IN THE COURT OF GENERAL SESSIONS

(0-1)

INDICTMENT/CASE#: 2017-GS-21-01033

A/W#: 2017GS2101033A

Date of Offense: 6/2/2015

S.C. Code § : 44-53-0370(d)(2)

CDR Code #: 0180

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

(6-1)

in violation of § 44-53-0370(d)(2) of the S.C. Code of Laws, bearing CDR Code # 0180

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

White, Ryan

102584

SC Bar#

Defendant

Attorney for Defendant

012596

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed years

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

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

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

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

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 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/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$ 8.25

TOTAL

\$ 283.25

Clerk of Court/ Deputy Clerk

Court Reporter:

PTUP

days/hours Public Service Employment

Obtain GED ☐

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May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code:

Sentence Date:

2141
9-15-2017
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 Clerk of Court C.P. & G.S.
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