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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

On Writ of Certiorari to Charleston County
G. Thomas Cooper, Jr., Post-Conviction Relief Judge
Deadra L. Jefferson, Trial Court Judge

Appellate Case No.: 2019-000381

Henry Nesbit, Jr.,

Petitioner,

v.

State of South Carolina, Respondent.

APPENDIX

THEOS LAW FIRM, LLC

Jerry N. Theos (Bar No.: 5518)
11 State Street
Charleston, SC 29401
(843) 577-7046
jerry@theoslaw.com

URICCHIO HOWE KRELL JACOBSON
TOPOREK & KEITH, P.A.

Jeff Buncher, Jr. (Bar No.: 78890)
Post Office Box 399
Charleston, SC 29402
(843) 723-7491
jeff@uricchio.com

Attorneys for Petitioner

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

CERTIORARI TO CHARLESTON COUNTY
G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No.: 2019-000381

RECEIVED
Nov 16 2021
SC Court of Appeals

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State of South Carolina, Respondent.

APPENDIX

OFFICE OF THE ATTORNEY GENERAL

Samantha Jo Weidauer (Bar No. 104833)
PO Box 11549
Columbia, SC 29211
(803) 734-3737

Attorney for Respondent

THEOS LAW FIRM, LLC

Jerry N Theos (Bar No 5518)
11 State Street
Charleston, SC 29401
(843) 577-7046
jerry@theoslaw.com

URICCHIO HOWE KRELL JACOBSON TOPOREK & KEITH, P.A.

Jeff Buncher, Jr. (Bar No: 78890)
Post Office Box 399
Charleston, SC 29402
(843) 723-7491
jeff@uricchio.com

Attorneys for Petitioner

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	Court of General Sessions
COUNTY OF CHARLESTON	Case Nos. 2013-GS-10-05527
	2013-GS-10-05634
	2013-GS-10-05639
STATE OF SOUTH CAROLINA	
vs.	Transcript of Record
HENRY NESBIT,	
Defendant.	
	DATE: May 5 through May 7, 2014

B E F O R E:

The Honorable Deadra L. Jefferson

A P P E A R A N C E:

Lauren Mulkey and Stephanie Linder
For the State of South Carolina

Melissa Gay and Michael Nelson
For the Defendant

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

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THE COURT: Does the defendant wish to have a formal arraignment?

MS. GAY: He wants a formal arraignment, Your Honor.

THE COURT: Ladies and gentlemen, we appreciate your patience. This will be the last jury that we select probably for the week, absent something really unusual happening. We are going to select this jury, and then we will have you call in after 6. But in all likelihood, those who are not selected for this panel will be excused for the week. That's why we are working a little bit later than usual instead of having you go to lunch and having you come back to the courthouse for jury selection, so that once we are done, we will be able to give those instructions to those remaining for this panel and then allow y'all to go for the remainder of the day.

Again, we appreciate your patience. We do not take your time for granted. During this time, we've selected a jury and also disposed of three other cases that were pending on the roster, which has significantly reduced the time that you will be required to be at the courthouse this week. Jury service is the only time while you are waiting that you are actually working. So, again, we appreciate your patience as we go through this process.

Sir, if you would stand, please, for the formal

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arraignment.

You may proceed when you are ready.

THE CLERK: Case No. 2013-GS-10-5527, the State of South Carolina vs. Henry Oliver Nesbit, Jr., indictment for failure to stop for a blue light, in the court of general sessions, convening on September 9th, 2013. The Grand Jurors of Charleston County present upon their oath that in Charleston County, South Carolina, on or about June 16th, 2013, the defendant, Henry Oliver Nesbit, Jr., while driving a motor vehicle on the road, street or highway of the state, knowingly, willfully, intentionally, and in absence of mitigating circumstances, failed to stop for a law enforcement vehicle after being signaled by a flashing light and/or siren to do so, all in violation of Section 56-5-750 of the South Carolina Code of Laws, 1976 as amended.

How say you; are you guilty or not guilty?

THE DEFENDANT: Not guilty.

THE COURT: Case No. 2013-GS-10-5634, the State of South Carolina vs. Henry Oliver Nesbit, Jr., indictment for trafficking in cocaine, in a court of general sessions, convening on September 9th, 2014, the Grand Jurors of Charleston County present upon their oath that in Charleston County, South Carolina, on or about June 16th, 2013, the defendant, Henry Oliver Nesbit, Jr., unlawfully and knowingly did sell, manufacture, cultivate, deliver,

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purchase, or bring to this state, or did provide financial assistance, or otherwise aid, abet, attempt or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this state, or did possess or attempt to possess a controlled substance or a controlled substance analog, to wit, cocaine, in excess of 10 grams, in violation of 44-53-370 of the South Carolina Code of Laws, 1976 as amended.

How say you; are you guilty or not guilty?

THE DEFENDANT: Not guilty.

THE COURT: Case No. 2013-GS-10-5639, the State of South Carolina vs. Henry Oliver Nesbit, Jr., indictment for possession with intent to distribute methylone, bath salts, at a court of general sessions, convened on September 9th, 2013, the grand jurors of Charleston County present upon their oath that in Charleston County, South Carolina, on or about June 16th, 2013, the defendant, Henry Oliver Nesbit, Jr., did manufacture, distribute, dispense, deliver, purchase, or did aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or did possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analog, to wit, methylone, in violation of 44-53-370 of the South Carolina Code of Laws, 1976 as amended.

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How say you; are you guilty or not guilty?

THE DEFENDANT: Not guilty.

THE COURT: How will you be tried; by God and country?

THE DEFENDANT: Yes.

THE COURT: May they send you a true deliverance. Are you ready for trial?

THE DEFENDANT: Yes, sir.

THE CLERK: Thank you.

THE COURT: Ladies and gentlemen, we are going to go through a process that is called voir dire, where I'm going to ask you some questions so that the attorneys can more effectively exercise their preemptory challenges in jury selection. If a question applies to you, please stand, and in a loud and clear voice, give us your name, your juror number, and an answer to the question, if applicable, and remain standing until the Court has completed questioning you.

Before we begin that process, I'm going to have counsel for the State to introduce themselves, anyone who will be assisting her in the trial of this case, and tell us the names of the lawyers in her office. And counsel for the defense will have her client stand and face the panel and provide us with the same information.

You may proceed, Ms. Linder.

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MS. MULKEY: My name is Lauren Mulkey. Assisting me in this trial is Stephanie Linder. You will see my Investigator, Jack Scarborough, coming in during the trial.

Also in our office we have Shannon Elliott, Debbie Herring-Lash, Drew Evans, Jessica Baldwin, Chris Lietzow, Emmanuel Ferguson, Tyler Whitaker, Kelley Young, Alex Ziegler, Jim Stack, Richard Waring, David Osborne, Lindsey Byrd, Jennifer McCoy, Jennifer Shealy, Jenna Newman, Nick Lewis, Nina Savas, Ted Corvey, Amy Harrell, Timmy Finch, Chad Simpson, Culver Kidd, Tod Williams, Greg Voigt, Marian Askins, Ran Stoney, Kelly LaPlante, Burns Wetmore, our elected official, Scarlett Wilson, and her deputy, Bruce Durant.

THE COURT: Ms. Gay.

MS. GAY: Thank you, Your Honor. My name is Melissa Gay. I'm from the Charleston Bar. This is my client, Henry Nesbit. I will be assisted by another attorney, Michael Nelson. He's not here today, but he will be here tomorrow when the trial starts.

THE COURT: Thank you. Again, ladies and gentlemen, if a question applies to you, please stand and in a loud and clear voice, give us your name, juror number, and answer to the question, if applicable, and remain standing until the Court has completed questioning you.

Is there any member of the panel related by blood

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or marriage to Henry Oliver Nesbit, Jr.? If so, please stand at this time.

(No response from the jury.)

THE COURT: Does any member of the panel have a close, personal, social, or business relationship with Henry Oliver Nesbit, Jr.? If so, please stand.

(No response from the Jury.)

THE COURT: The following are a list of potential witnesses. Please listen carefully: Gerardo Chavez, Erin Meyer, Thomas Buchanan, Brian Hodge, Kathy Kjellman, Mark Watson, Jason Riley, Steven Balzano, Paul McManigal, Michael Gurrieri, Herman Martin, Renee Hilton, Ashley Earl, Susan Payne, all of the Charleston County Sheriff's Office; Officer Ambras, A-m-b-a-s, and Thomas Buckhannon, III, of the Isle of Palms Police Department, and Mark Willhoft.

Is there any member of the panel related by blood or marriage to any of the people that I've just listed, or does anyone have a close, personal, or social relationship with any of these individuals? If so, please stand at this time.

(No response from the Jury.)

THE COURT: Has any member of the panel ever been represented by any of the attorneys in this case or any of the attorneys in their offices? If so, please stand at this time.

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(No response from the Jury.)

THE COURT: Is there any member of the panel related by blood or marriage to or have a close personal or social relationship with any of the attorneys involved in this case or any of the lawyers who practice in their law office or offices or anyone who is employed in their offices? If so, please stand at this time.

(No response from the Jury.)

THE COURT: Has any member of the panel formed or expressed an opinion about any issue or matter involved in this case? If so, please stand at this time.

(No response from the Jury.)

THE COURT: Is there any member of the panel aware of any bias or prejudice toward either the State or the defense in this case? If so, please stand at this time.

(No response from the Jury.)

THE COURT: Is there any member of the panel -- is there any member of the panel that was a member of the Grand Jury which issued the indictments in this case? If so, please stand at this time.

(No response from the Jury.)

THE COURT: Is any member of the panel a member of or contributor to any group which has as its primary concern the promotion of law enforcement or victims' rights? These groups would include, but are not limited to, Mothers

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Against Drunk Driving, Students Against Drunk Driving, Citizens Against Violent Crime, People Against Rape, Citizens Advocating the Return to Decency and Ethics, Parents Empowered to Save Teens, or any type of community watch group? If so, please stand at this time.

(No response from the jury.)

THE COURT: Is there any member of the panel who has a moral, philosophical, or religious opposition to sitting in judgment of a fellow human being? If so, please stand at this time.

(No response from the jury.)

THE COURT: Is there any member of the panel who has a moral, philosophical, or religious opposition to the use of illegal substances, such that it impairs your ability to be fair and impartial? If so, please stand at this time.

(No response from the jury.)

THE COURT: Is there any member of the panel who holds the belief that certain substances should be legalized? If so, please stand at this time.

(No response from the jury.)

THE COURT: Is there any member of the panel who has any relatives who are employed in law enforcement? If so, please stand at this time.

Tell me your name and juror number and which family member and which agency.

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PROSPECTIVE JUROR: John Hull, 166. My daughter is a probation officer in Lakewood, Colorado. And my son-in-law is a sheriff's deputy in Lakewood, Colorado.

THE COURT: Thank you

PROSPECTIVE JUROR: My son is -- you want the name?

THE COURT: Your name and juror number.

PROSPECTIVE JUROR: My name is Tammy Buehner. And my number is 31.

THE COURT: And your son is employed with who?

PROSPECTIVE JUROR: He works for the Mount Pleasant Police Department.

PROSPECTIVE JUROR: Miranda Jones, my number is 183. And my stepmother is a North Charleston police officer.

PROSPECTIVE JUROR: Carol Kelly, Juror No. 190. I have a stepson who is a New York State trooper, and a step son-in-law who is a captain with the New York State police.

THE COURT: As a result of these experiences, do you all feel that you can remain fair and impartial and render a fair and impartial decision in this case based solely on the evidence as it will be presented and on the laws as the Court will instruct? If the answer is yes, please take your seat.

The record should reflect that all answered yes with the exception of No. 31 who will be excused. Ma'am,

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did you stay standing or did you remain seated to tell me yes?

PROSPECTIVE JUROR: I said yes when I should have sat down.

THE COURT: Okay. Thank you. Let the record reflect all jurors answered yes.

Is there any member of the panel who has been formerly employed in any type of activities involving addiction to substances? If so, please stand at this time.

(No response from the jury.)

THE COURT: Is there any member of the panel who lives in the vicinity of Ocean Boulevard on the Isle of Palms? If so, please stand at this time.

(No response from the jury.)

THE COURT: Does any member -- has any member of the panel read, watched, or listened to any media accounts about this case? That includes anything that could have been on the radio, on the television, in the newspaper, or on the Internet? If so, please stand at this time.

(No response from the jury.)

THE COURT: Is there any member of the panel who has ever been the victim of a violent crime? If so, please stand at this time.

(No response from the jury.)

THE COURT: Does any member of the panel know of

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any reason whatsoever why he or she should not serve as juror in this case, with particular emphasis being placed on your ability to be fair and impartial to both the State and the defense? If so, please stand at this time.

(No response from the jury.)

THE COURT: Strikes will be 5 and 5. I would ask that you give the clerk your attention.

Ladies and gentlemen, if your name is called, please come forward with all of your personal belongings. You will either be seated as a juror or excused as a juror.

The bailiff is going to show you where you are to go, bring all your personal belongings if your name is called. Thank you very much for your patience and your attention.

Mike, you may proceed when you are ready.

THE CLERK: If I call your name, gather your belongings, come up to the podium, turn and face the parties.

Juror No. 180, Anna Jones.

Strikes are?

THE COURT: 5 and 5.

THE CLERK: What say you for the State?

MS. MULKEY: Please seat this juror.

THE CLERK: What say you for the defendant?

MS. GAY: One moment please. Please seat the juror

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for the trial of this case.

THE CLERK: Ms. Jones, please have a seat in the jury box. You've been selected as a juror in this case.

Juror No. 64, Dale Davis.

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: Please seat the juror for the trial of this case.

THE CLERK: Mr. Davis, if you will make your way to the jury box, you've been selected as a juror in the trial of this case.

Juror No. 73, James Dearman.

What say you for the State?

MS. MULKEY: Beg the Court's indulgence. Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: One moment, please. Please seat the juror for the trial of this case.

THE CLERK: If you will make your way to the jury box, you've been selected as a juror in the trial of this case.

Juror No. 254, Kyle Novak.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

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MS. GAY: Please excuse the juror for the trial of this case.

THE CLERK: If you will make your way back to your seat. You've been excused as a juror for this case.

Juror No. 356, Janice Underwood.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: Please seat the juror.

THE CLERK: If you will make your way to the jury box, you've been selected as a juror in the trial of this case.

Juror number 74, Carolyn Dent.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: Please seat the juror.

THE CLERK: If you will make your way to the jury box, you've been selected as a juror in the trial of this case.

Juror No. 230, Carolyn McNeal.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: Please seat the juror.

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THE CLERK: If you will make your way to the jury box, you've been selected as a juror in the trial of this case.

Juror No. 167, Katie Hurst.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: Please seat the juror for the trial in this case.

THE CLERK: If you will make your way to the jury box, you've been selected as a juror in the trial of this case.

Juror No. 190, Carol Kelly.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: Please excuse the juror.

THE CLERK: Please have a seat back in the audience, you've been excused for the trial of this case.

Juror No. 387, Harry Williams.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: One moment please. Please seat the juror for the trial of this case.

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THE CLERK: If you will make your way to the jury box, you've been selected as a juror in the trial of this case.

Juror No. 177, Gloria Jenkins.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: Please seat the juror.

THE CLERK: If you will make your way to the jury box, you've been selected as a juror in the trial of this case.

THE CLERK: Juror No. 22, Daniel Brinton.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: Hold on a sec'. Please excuse the juror.

THE CLERK: Please have a seat back in the audience. You've been excused from the trial of this case.

Juror No. 14, Maria Becker.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: Please seat the juror for the trial of this case.

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THE CLERK: If you will make your way to the jury box, you've been selected as a juror in the trial of this case.

Juror No. 111, Darryl Geriner.

What say you for the State?

MS. MULKEY: Beg the Court's indulgence. Please excuse this juror.

THE CLERK: If you will make your way back to your seat. You've been excused as a juror for this case.

Juror No. 372, Jo Ward.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: One moment please. Please seat the juror.

THE CLERK: If you will make your way to the jury box, you've been selected as a juror in the trial of this case.

174, Yolanda Jefferson.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: Please seat the juror for the trial of this case.

THE CLERK: If you will make your way to the jury

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box, you've been selected as a juror in the trial of this case.

THE COURT: One alternate; strikes will be 1 and 2.

THE CLERK: Juror No. 282, Toni Richardson.

What say you for the State?

MS. MULKEY: Please excuse the juror.

THE CLERK: Ms. Richardson, please have a seat back in the audience. You've been excused from the trial of this case.

Juror No. 88, Jonathan Ellington.

Any challenge from the State?

MS. MULKEY: No, please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: One second. Please excuse the juror from the trial of this case.

THE CLERK: Mr. Ellington, please have a seat back in the audience. You've been excused from the trial of this case.

Juror No. 323, Steven Simmons.

Any challenge from the State?

MS. MULKEY: No.

THE COURT: What say you for the defendant?

MS. GAY: Please excuse the juror.

THE CLERK: If you will make your way back to your seat. You've been excused as a juror for this case.

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THE CLERK: 249, Rhonda Myers.

Any challenge from the State?

MS. MULKEY: No.

THE COURT: Any challenge from the defendant?

MS. GAY: No.

THE CLERK: If you will make your way to the jury box, you've been selected as a juror in the trial of this case.

Your Honor, the jury has been selected and seated.

THE COURT: Any motions regarding the selection of the jury from the State?

MS. MULKEY: None from the State, Your Honor.

THE COURT: From the defense?

MS. GAY: One second, please. Let me just discuss it with him for just a half a second.

We have nothing, Your Honor, from the defense.

THE COURT: Ladies and gentlemen, you are excused for the remainder of the day. I just need you to call the jury information line after six o'clock this evening. As I've already stated, this was the last criminal trial, I believe, that we will have for selection on this docket for the week. But, again, out of abundance of caution, we need you to call back after six o'clock this evening, and we might have you call back after six o'clock on Tuesday evening. But in all likelihood, this will be the last case

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that we select. But in any event, the message will let you know whether we need you. And if we don't need you, you will be able to go about your activities as you normally would.

Again, we appreciate your patience. Hope you have a wonderful day. You are excused for the remainder of the day. Call back after six o'clock this evening for further instructions.

(Whereupon, prospective jurors leave.)

THE COURT: Ladies and gentlemen, you've been selected for the case of State of South Carolina vs. Henry Oliver Nesbit, Jr. We are going to send you home for the remainder of the day. There's a case that I'm going to try this afternoon after lunch. The next 40 minutes we are going to start that case.

We don't have what are called dates certains. We try cases on a rolling basis, which means when I finish the case that's ahead of you, we will call you in to the trial of this case. We anticipate that case will take a day and a half, two days to conclude. And then we will begin your case probably on Wednesday. And we anticipate we will conclude that case on Thursday. As I've already explained, Friday is a state holiday. So if we run into some difficulty where we will not be able to complete the case, we will let you know.

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When you return to the courthouse, you will return directly to your jury room. The bailiffs are going to show you how to do that. Also, before you leave, we will need all of your cell phone numbers so that in the event we need to contact you outside of the jury call-back system. When you call into the jury line, I will need you to call each evening after six o'clock. And the only recording you need to listen to is for Judge Jefferson's jury. That's it. Do not pay attention to any other recording, only Judge Jefferson's jury. Okay? That's the only message that will be applicable to you.

But we still need your phone numbers because I will probably have the staff call you in any event as well, just to make sure everybody is clear on what the instructions are. So if you could, as the bailiffs show you how you are going to re-enter the courtroom, I mean, the courthouse, when we resume the trial of this case, they will collect those numbers from you as you exit. So, again, we appreciate your patience.

It's been a typical Monday, probably a little atypical Monday because normally we try to get this done about 12:30, 1:00. As I've already explained, jury service is the only service where you could be waiting and be very efficient for us, because we disposed of four cases this morning before jury selection. So it was very helpful. So

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I want you to know your sitting is not in vein.

Hope y'all have a great day. We will be in touch. And, again, Judge Jefferson's jury is the only recording that you need to listen to.

Do not watch, read or listen to any media accounts about this case, if any. That includes anything in radio, television, newspaper. I'm missing something. No, I got all three, radio, television, newspaper, or do not do any independent research of any type on the Internet. Y'all have a great day. See you probably on Wednesday, possibly before then, but I'm projecting Wednesday.

(Whereupon, the jury leaves open court at 2:09 p.m.)

THE COURT: Okay. Is there anything we need to take up before we break for lunch from the State?

MS. MULKEY: No, Your Honor.

THE COURT: From the defense?

MS. GAY: Your Honor, Mr. Nesbit told me he wanted to put stuff on the record. I don't know if he does. I think he's fine with this jury. He knows the process. He's obviously had a jury before, we have been at jury trial before. But there was a lot of discovery in his case. And throughout the course of the morning, I've actually -- I don't have a copy of his warrants, the ones that were served on him. So I asked them to get me those, but they were the

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ones served on him. I've given him all the indictments. I've given him all the discovery that may or may not have been served. And he at one point had an offer that, as we said in the beginning, is between 15 and 25 --

THE COURT: With a cap of 25 and a low end of 15?

MS. GAY: Yes. And we are just going to be talking some more --

THE COURT: Are they all 85 percent?

MS. GAY: Trafficking is 85 percent.

MS. MULKEY: They are all 85.

THE COURT: Failure to stop isn't 85 percent. Bath salts is not 85 percent, only trafficking. The rest of them are 65 percent, right? Is the trafficking a strike?

MS. MULKEY: Yes.

THE COURT: Most serious or serious?

MS. MULKEY: Serious.

THE COURT: Does he have any other strikes?

MS. MULKEY: Not at this time, no, Your Honor.

THE COURT: Yes, sir, is there anything you want to state for the record?

THE DEFENDANT: No, ma'am.

THE COURT: Okay. Is the offer still open or has it been foreclosed upon?

MS. MULKEY: No, it is not.

THE COURT: Did you all ever put that on the

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record, the rejection of the offer?

MS. GAY: It was right around the time that Julie was leaving, so I don't know that Henry Nesbit was ever brought over and put that on the record.

THE COURT: Did you fully explain it to him?

MS. GAY: He's aware the offer was extended and it was denied.

THE COURT: When was the offer extended?

MS. GAY: Been extended by Julie, and then Stephanie, once she got the case.

THE COURT: I mean, when, what time frame are we talking about, what month, what year?

MS. MULKEY: Your Honor, the offer -- I have an e-mail back in the office. I believe it was March of last year. It was not re-extended when Julie left and Ms. Linder was assigned the case.

THE COURT: Sir, is it correct that you were offered -- Ms. Gay explained to you the State offered you what we call a cap, which is a minimum of 15 years, which is the minimum on one of these charges, I just can't remember which, probably the -- if they reduce the trafficking to a 7, I would guess, and a max cap of 25? Was that explained to you?

THE DEFENDANT: Yes, ma'am, and they also -- but then they also said they supposed to give me a package deal

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for me.

THE COURT: That is -- that's the package. It would encompass -- how many charges was that supposed to encompass?

MS. MULKEY: That was for the -- for him to plead guilty on all the charges, it was a negotiated 15 to 25 years.

THE COURT: What are all the charges?

MS. MULKEY: All the charges included the charges from that day, the ones we are here on trial about, failure to stop for blue lights, trafficking cocaine and methylone. And I believe she encompassed an additional three others with that.

THE COURT: Three other indictments?

MS. MULKEY: Yes.

THE COURT: What do those carry?

Mike, do you have those other indictments? I have three, but there were some others.

He also had 2012-5705, trafficking in cocaine; 2012-5706, failure to stop for a blue light; 5707, possession of a firearm during the commission of a violent crime; 5708, leaving the scene of the accident, unattended vehicle; 5710 leaving the scene of the accident; 5528, habitual traffic offender; 5529, use of vehicle without permission.

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5528 and 5529 are 2013 cases.

2013-1227, possession of a Schedule II controlled substance, morphine; 6603, distribution of cocaine; 6604, possession with the intent to distribute cocaine. So that would have encompassed all of these charges?

MS. MULKEY: Yes, Your Honor, I believe that does.

THE COURT: Sir, that was your understanding, that all of these charges would have been disposed of with a minimum of 15 and a max of 25, with your lawyer being able to argue for the lower end of it, which would be the 15?

THE DEFENDANT: Yes, ma'am.

THE COURT: And you were fully informed of that offer?

THE DEFENDANT: Yes, ma'am.

THE COURT: And, sir, did you accept or reject that offer?

THE DEFENDANT: I reject it.

THE COURT: And did you do that freely and voluntarily and of your own will?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you feel anybody forced you to do that?

THE DEFENDANT: No, ma'am.

THE COURT: Were you suffering from any mental disabilities or under the influence of any drug or alcohol?

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I need you to say yes or no.

THE DEFENDANT: No, ma'am.

THE COURT: Sir, do you understand one of these charges, the trafficking that you are facing, carries a minimum of 25 and a maximum of 30 years, which is a most serious -- no, serious strike, and that basically, it will -- not basically, it would be served at 85 percent, which is basically day for day?

THE DEFENDANT: Yes, ma'am.

THE COURT: Knowing that, do you still wish to reject the offer?

THE DEFENDANT: Yes, ma'am.

THE COURT: And Ms. Gay fully explained the offer to you?

THE DEFENDANT: Yes, ma'am.

THE COURT: Ms. Gay, did you fully explain -- do you understand they are going to trial on the rest of these cases?

THE DEFENDANT: Huh?

THE COURT: Do you understand they are still going to trial on all the rest of these cases?

THE DEFENDANT: Yes, ma'am.

THE COURT: And are some of those strikes?

MS. MULKEY: Yes, Your Honor.

THE COURT: Do you all intend to serve him with

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LWOP notice if he's convicted on this?

MS. LINDER: Your Honor, honestly, it depends. Definitely with the amount of things, the separate incidents, we do have the ability to serve him life notice and try him again and again depending on the results of this case.

THE COURT: I need to know worst-case scenario.

MS. MULKEY: Worst-case, yes.

THE COURT: Sir, do you understand that you have some other charges pending that are what we call serious and most serious strikes?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you understand that if the State tries those one at a time and gets convictions, you could be served with life without parole notice?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you understand that in South Carolina, a sentence of life means life until your natural death?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. Ms. Gay, have you fully explained to your client the offer that was extended to him?

THE DEFENDANT: Yes, ma'am.

THE COURT: And did he accept or reject the offer?

MS. GAY: He has rejected. At this point, I would

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ask for an opportunity for him to think about it before we actually starts our trial the next time we get together. That's the only thing I ask.

THE COURT: Did he do it with or without your advice?

MS. GAY: Without.

THE COURT: Meaning against your advice?

MS. GAY: Against my advice.

THE COURT: Sir, how old are you?

THE DEFENDANT: 29.

THE COURT: Okay. Do you understand how long 25 years is in South Carolina at 85 percent at your age?

THE DEFENDANT: Yes, ma'am.

THE COURT: And do you think that it is in -- the Court doesn't take a position one way or another. It doesn't matter to me whether I try your case or another case. It is just always very difficult -- I don't know if the State will re-extend it, frankly.

MS. MULKEY: No.

THE COURT: You know, Ms. Gay could always go over there and sort of beg and lean on them and ask for them to be kind and to re-extend it to you if it would dispose of all these other cases as well, but at 85 percent, 25 years is 21.25 years, basically, that you will serve day for day, which means -- how old are you now?

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THE DEFENDANT: 29.

THE COURT: Means you would be almost 50 years old, you would be right at 50 years old when you were eligible to get out. I think there's a no-parole on this too. I just want to make sure that you are fully informed of that.

Again, the Court takes no position one way or the other. I've come to a point, I've been doing this 18 years, if you can live with your consequences, I can live with them. I don't bend over too much to help folks, because I find no good deed goes unpunished. People you try to help the most are the ones that appreciate it the least. So I don't take a position one way or the other, because at the end of the day, Ms. Linder's life is not going to be affected, Ms. Mulkey's life, nor Ms. Gay, nor mine. We will be back here doing what we do every day, which is trying cases. So the only person that can make an assessment of whether that's in your best interest is you.

With the offer that has been extended, your lawyer still has the ability to argue for a lesser sentence. On the failure to stop, you are only facing a max of three years. And I don't know what you would be facing on the bath salts. I don't know what the minimum -- I would imagine that's a -- that's not very much exposure.

MS. GAY: She said it was 10 to 30, Your Honor. But, of course, the sentence would have to start at 15 if he

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took the negotiations.

THE COURT: Yeah. But I don't think that's served at 85 percent; that's 65 percent.

So only you can make the assessment based on the facts and circumstances as alleged whether this will be in your best interest or not. If you are convicted, worst-case scenario, the minimum mandatory the Court would have to impose is 25 years; however, the Court could still impose the maximum of 30 since it is your third drug offense.

And I just need to make sure that you are fully apprised of that, that you are fully informed of that, that you are comfortable with it. Because if you are comfortable, I'm comfortable. Doesn't really matter to me one way or the other whether you take it or don't take it. I just find that it has been my experience over 12 years that oftentimes young people reject an offer, and then if they are convicted, then they want the offer back. And I just need to make sure that you are fully informed and rejecting the offer, or whether you want your lawyer to ask the State to re-extend the offer to you and see if they are willing to do that over the recess while I try this other case.

MS. GAY: We will think about it, Your Honor, and I will be back in touch.

THE COURT: Well, y'all need to think quick. I

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need to know something today. Because while he's over here, I want to go ahead and dispose of it, if I can, before I restart this other case at three o'clock.

MS. GAY: Give us five minutes, if you don't mind.

THE COURT: Y'all go talk.

Y'all go call your office and see if they are willing to re-extend it, and then we will go from there.

(Whereupon, a bench conference takes place off the record.)

THE COURT: Did you all talk to your boss?

MS. LINDER: Yes, Judge, we did. And our position is that the offer should not stay the same. If we are going to consider an offer, it should be worse than the original offer. Because Ms. Gay indicated that the defendant would like a better offer, he wants a 10 to 25, which was never even in the cards, so we don't get to that next step.

THE COURT: Okay. Is that correct?

MS. GAY: That's what he told me, Your Honor. And I've talked to him about it. He, I think, was a little confused about the offer, being that he had to plead to everything in all of the cases, but I think we've discussed ad nauseam that possibility. So I think --

Do you want to plead guilty, Mr. Nesbit? You have to speak.

THE DEFENDANT: No.

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THE COURT: I'm sorry, sir. I can't hear you.

THE DEFENDANT: No, ma'am.

THE COURT: Okay. We will start the trial. Make sure they have clothes for your client when we get ready and that they bring him early enough for him to get dressed out, Ms. Gay.

MS. GAY: Yes, ma'am. Thank you.

THE COURT: We will start back.

(Whereupon, the proceedings adjourn for the day.)

(Whereupon, the trial continues on May 7, 2014.)

THE COURT: Does the State plan to introduce any prior bad acts pursuant to Lyle? There's a motion that Ms. Gay has made seeking to preclude any such evidence.

MS. MULKEY: Excuse me, Your Honor? I'm sorry.

THE COURT: Does the State plan to seek to introduce any Lyle-type evidence, prior bad acts?

MS. MULKEY: Yes, Your Honor. We have his rap sheet right here.

THE COURT: I'm not talking about his record to impeach him. I'm talking about Lyle, prior bad acts.

MS. MULKEY: No, Judge. Sorry.

THE COURT: So that is moot then, correct?

MS. MULKEY: Yes, Judge.

THE COURT: What is his prior record? And are there any statements pursuant to Jackson vs. Denno?

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MS. MULKEY: There's no statement, Your Honor. His prior record, Your Honor, 2009, DUS second and operating without a license --

THE COURT: Just tell -- well, nevermind. Go ahead.

MS. MULKEY: 2007, possession of cocaine base first, failure to stop for blue lights, PWID cocaine first times two and within proximity of a school; 2005, he had a parole revocation, failure to stop for blue lights, possession of a stolen motor vehicle, and assault with intent to kill; and in 2002, possession of a stolen pistol, B and E of a motor vehicle times two and burg' third.

THE COURT: You said possession of a stolen gun in '02? And then what were those other ones? Can you just tell me just what year was that?

MS. MULKEY: In 2002, he also had a B and E to a motor vehicle times two and a burglary third.

THE COURT: 2 from 14 is 12 years. Did you give them notice you were seeking to -- these are over 10 years old?

MS. MULKEY: Yes, Your Honor.

THE COURT: You agree they are over 10 years old?

MS. MULKEY: Yes, Your Honor.

THE COURT: Did you give them written notice of your intent to try to use those to impeach him?

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MS. MULKEY: No, Your Honor.

THE COURT: Then I don't think you can use them.

The '09 DUS and operating without a license, those are not dispositive of truthfulness. You cannot use those to impeach his credibility, as well as any of the drug offenses.

Failure to stop for a blue light is not dispositive of credibility. Possession of a stolen motor vehicle, unless it involved a theft, is not likewise. Assault with intent to kill is not; nor is possession of a stolen gun.

So it looks like you wouldn't be able to use any of his records to impeach him. But we will revisit that again at the time that we -- if, in fact, that becomes an issue if he decides he would like to testify.

Now, on the motion to suppress, we have a witness here ready to go forward?

MS. MULKEY: Yes, we do, Your Honor.

THE COURT: How many numbers does the State have on exhibits?

MS. MULKEY: One.

THE COURT: What's all that other stuff? I need to know if we have other exhibits.

MS. LINDER: We are just trying to get items pre-marked just for efficiency sake, is what we are trying to get done.

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THE COURT: So y'all haven't agreed on anything?

MS. MULKEY: We agree on everything for pretrial.

MS. GAY: There's some drugs, Your Honor. We don't -- we have to lay a foundation for the drugs before they could agree on that, obviously. But the pictures and things, we agree on all that.

THE COURT: What numbers are those?

MS. MULKEY: We have pictures as State's 1, 2, 3, 4 through 9.

THE COURT: So 1 through 9 y'all agree to without objection?

MS. GAY: Yes.

THE COURT: State's 1 through 9 will be admitted without objection.

(State's Exh. 1, Map, was marked in evidence.)

(State's Exh. 2, Map, was marked in evidence.)

(State's Exh. 3, Video, was marked in evidence.)

(State's Exh. 4 through 9, Photographs, were marked in evidence.)

THE COURT: Proceed.

MS. MULKEY: State calls Deputy Chavez.

GERARDO CHAVEZ,

having been duly sworn, testifies as follows:

THE CLERK: State your name and spell your last name.

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THE WITNESS: Deputy Chavez.

THE COURT: Your first time please.

THE WITNESS: Gerardo Chavez.

THE COURT: Please spell both your names.

THE WITNESS: G-e-r-a-r-d-o, last name is C-h-a-v-e-z.

THE COURT: You may proceed.

MS. MULKEY: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, ma'am.

DIRECT EXAMINATION

BY MS. MULKEY:

Q. What is your occupation?

A. Deputy sheriff.

Q. Did you have occasion to be working on June 16th, 2013?

A. Yes, ma'am.

Q. And what were your duties and assignments for that shift?

A. On that day, I was working off-duty patrol on Isle of Palms to assist with traffic, additional traffic enforcement and crowd control during the busy time of the beach season.

Q. On June 16th, 2013, did you have occasion to interact with the defendant?

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A. I did.

Q. Please tell us how you came into contact with the defendant?

A. On that day, ma'am, I was seated inside of my cruiser in front of the Windjammer partially parked in the median observing traffic for any violations, when I observed the defendant approaching the intersection of JC Long and Ocean Boulevard, where he proceeded to make a turn without signaling.

Q. Was there anything about his behavior that you found to be suspicious?

A. While he was approaching and as he made the turn, all while I was in plain view of where I could be seen, he would not -- he refused to look at me, which drew additional suspicion.

Q. Based upon the defendant's failure to use his turn signal, did you initiate a lawful traffic stop?

A. I did.

Q. How did you do that?

A. By activating my blue lights.

Q. Is failing to use a traffic signal a violation of state law?

A. It is under Section 56-6-2150. A person can make a turn safely when it is safe to do so, but must give signal, a continuous signal 100 feet prior to making that turn.

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Q. And how do you measure that 100 feet?

A. Through my experience, I can estimate the distance, but for preparation for this trial, I actually went out and measured it.

MS. MULKEY: Your Honor, may I approach?

THE COURT: Yes, ma'am.

BY MS. MULKEY:

Q. Deputy Chavez, I show you what has been marked as State's Exhibit No. 1. This is the -- can you tell me what this is?

A. Yes, ma'am.

Q. What is this?

A. That's the intersection where the initial violation took place.

Q. Okay. Deputy Chavez, can you please point out where you were seated in your vehicle that day?

A. Yes, ma'am. Right here. (Witness indicates.) Facing that way.

Q. And you just testified that you went out and measured where 100 feet is from that intersection.

A. Yes, ma'am.

Q. Can you please point out the intersection that you are referring to?

A. This intersection here.

Q. And what is that intersection?

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A. That is JC Long. This is JC Long here and this is Ocean Boulevard. (Witness indicates.)

Q. And where is 100 feet back from that intersection?

A. Approximately, ma'am, it's right about here.

Q. Thank you. What was the defendant driving that day?

A. A brown Harley Davidson motorcycle.

Q. And how far away from that intersection did you say that you were?

A. I would say about approximately 50 feet, maybe couple car lengths.

Q. And did this violation occur during the day or the night?

A. It was early evening, approximately 7:45 p.m.

Q. Was it still light outside?

A. It was.

Q. Do you wear contacts or glasses?

A. No, ma'am.

Q. Had you worked a bunch of overtime that week or had any reason to be overly exhausted or tired?

A. No, ma'am.

Q. Was your ability to see the intersection obstructed by anyone or anything?

A. No, ma'am.

Q. Were you driving in an updated car, the ones with

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the dashboard camera?

A. Yes, ma'am.

Q. Do those record everything?

A. Not everything.

Q. Do they record during your entire shift?

A. No, ma'am.

Q. What causes the camera to start recording?

A. If I activate my blue lights or if I manually activate the camera, it will start recording.

Q. Does it capture everything that you are able to observe?

A. No, ma'am.

Q. And why is that?

A. Because it's in a stationary location, permanently affixed behind the windshield and the front part of my vehicle facing forward. So it only observes what is directly in front of the vehicle.

Q. Regarding this incident, you testified that your camera began recording when?

A. When I activated -- it actually -- when I activated my blue lights and the 30 seconds previous to that, which is a default setting, it prerecords 30 seconds prior to the activation.

Q. Does that -- did that pre-30-seconds record the defendant's traffic violation?

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A. Partially. You could see the defendant approaching the intersection within that 100 feet prior to the intersection, but -- and you can see where he did not signal in that frame, but he goes outside the frame to make the actual turn at the stop sign.

Q. So based on the defendant's failure to use his turning signal, did you attempt a lawful traffic stop?

A. I did.

Q. Did you ultimately write the defendant a traffic citation for this offense?

A. Yes, ma'am.

Q. After you initiated a lawful traffic stop, what did the defendant do?

A. While catching up to him, I activated my blue lights and he began to slow. He made a right-hand turn onto one of the side streets, at which time I believed he was going to stop. And he turned back and yelled something to me, and then took off at a high rate of speed.

MS. MULKEY: Beg the Court's indulgence for a second, Your Honor.

Thank you, Your Honor.

BY MS. MULKEY:

Q. You had just said that the defendant took off. Did he cross through several intersections?

A. He did.

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Q. Did he move in and out of oncoming traffic?
A. He did.
Q. In your training and experience, were defendant's actions consistent with attempting to evade a lawful traffic stop?
A. Yes, ma'am.
Q. Then what happened?
A. He had a collision.
Q. So as a result of the lawful traffic stop and the defendant's subsequent flight, there was a single vehicle collision?
A. Yes, ma'am.
Q. And you came upon the defendant after he had wrecked, and then what happened?
A. Upon coming up to him, I observed him in the roadway, and he appeared to be trying to get up. He was still -- appeared he was still trying to get up to continue fleeing on foot.
Q. And what happened as you approached the defendant?
A. I gave him verbal commands to get down and stay down and turn him around, proned him out, make sure his hands were out to the side, advised dispatch that I had one detained at the moment, awaiting on backup.
Q. Why did you tell the defendant to stay on the ground?

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A. Because he was under arrest for the failing to stop.

Q. So he was under arrest at that time?

A. Yes, ma'am.

Q. Was he handcuffed?

A. Not at that time, no.

Q. Why not?

A. Because upon arrival and proning him out, while that situation was going on, I observed quite a bit of blood coming from the defendant's head area from the injury, potential injury sustained during that collision. And I didn't want to cause any further injury or potential further injury to him. I just wanted to remain there and stay still until he could be treated.

Q. Did you tell the defendant he was under arrest?

A. Not at that time, ma'am.

Q. And then what happened?

A. Upon my backup Deputy Buchanan arriving on the scene, I advised defendant, because he kept trying to push off the ground, kept trying to push up, I just advised him to go place his hands behind his back, at which time he did, and I placed him in handcuffs and secured him.

Q. So you instructed the defendant to stay on the ground, and he ultimately did. And then your testimony is that you further instructed him to place his hands behind

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his back, and he did comply?

A. He did.

Q. Did you mirandize the defendant?

A. Not at that time.

Q. Did you conduct an interview of the defendant?

A. I did not.

Q. And then what did you do?

A. I began asking him for his information, for his name, date of birth, so I could identify him. I conducted a search of his person incident to arrest, and located a sizable amount of US currency in his right front pocket along with some, what I believed to be narcotics, a large amount of narcotics, or what I believed to be narcotics, in his left front pocket.

Q. What did you do with the items you found on the defendant?

A. They were seized on location, placed in an evidence bag, and secured in the back of my vehicle.

MS. MULKEY: Thank you, Deputy Chavez. Please answer any questions the defense may have.

THE COURT: You may proceed.

CROSS-EXAMINATION

BY MS. GAY:

Q. Deputy Chavez, I'm Melissa Gay.

A. Yes, ma'am.

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Q. In your testimony, you indicated that you have one of the more recent cars with a dashboard camera.

A. Yes, ma'am.

Q. And I believe that you have provided, I guess, the DVD --

A. In-car video, yes, ma'am.

Q. -- to the Solicitor's Office?

A. Yes, ma'am.

Q. And you are aware that that was given to me as part of my discovery material?

A. Yes.

Q. And at this time, I would like for you to authenticate that.

MS. GAY: It's in the solicitor's possession. So, do you have any objection to me having him authenticate this --

MS. MULKEY: No objection.

MS. GAY: -- for this hearing?

BY MS. GAY:

Q. I'm going to give it to them because they have the equipment to use it. And I want you to watch the video. And then after we watch the video, I'm going to ask you some questions about it. Okay, sir?

A. Yes, ma'am.

THE COURT: How long is the video?

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MS. GAY: It's not long. There will be a point where we will see -- we just want to get through the first part.

While she's pulling it up, just a few more questions.

BY MS. GAY:

Q. The voice that we hear on this DVD is yours?

A. Yes, ma'am. Well, primarily, yes, ma'am.

Q. And so, I believe your testimony was that when you clicked your blue lights on, that's when the camera comes on, and then you said it's the 30 seconds before also?

A. Yes, ma'am, pre-recorded.

Q. So as we are looking, for the judge, we all looked at this before, but as the judge is looking at it, when we see the intersection and the motorcycle is coming out, that's the motorcycle that my client was driving?

A. Yes, ma'am.

THE COURT: What number is that?

MS. MULKEY: This is 3, I believe, Exhibit 3, Your Honor.

(Video Playing.)

BY MS. GAY:

Q. In the very, very beginning of the video, and I've watched it, and I don't know if the solicitor's got it, you've obviously watched it, there's a statement that you

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make in the very beginning. Like, somebody from dispatch says, what's up, or something like that, and your comment is, nothing happening.

MS. MULKEY: Objection, Your Honor.

MS. GAY: Well, it's on the video. You can actually hear it.

THE COURT: Don't talk to each other. Talk through me.

MS. MULKEY: I don't believe we heard "what is up?".

THE COURT: Says what it says. She can ask the question. We are in-camera.

BY MS. GAY:

Q. Have you listened to it enough?

A. Yes, ma'am.

Q. Do you hear yourself in the very beginning when we listen to it on a better machine --

MS. MULKEY: Objection. That's argumentative.

THE COURT: She hasn't finished the question.

MS. GAY: Your Honor --

THE COURT: Ask the question.

BY MS. GAY:

Q. When you listen to it, do you hear yourself saying something?

A. Yes, ma'am.

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Q. Do you have any idea what it is that you said at that point? Obviously, the video speaks for itself.

A. I believe it says: Why did he want Newkirk? Talking about another officer. I was talking to somebody else on the phone and asking him a question of them on the phone at that time.

Q. Okay. And that's when in the video we see the motorcycle coming to the intersection?

A. Uh-huh.

Q. And in your testimony that you said, the one that was the picture, you said that there's part of this video that we could see him coming up to the intersection, but then he -- obviously, your camera is facing forward.

A. Correct.

Q. So he passes past the range of your camera?

A. Correct.

Q. And so you would agree with me that in this video, there is no -- he's not at the intersection without a signal in this video?

A. He's within the 100 feet approaching the intersection, which by law you are required to have on continuously.

Q. I understand that, sir, but that's not point. Within the 100 feet of what you believed to be the law of when it's supposed to have the blinker on, we don't see it.

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But there's -- in the video, that's all we see. We don't see the intersection where he's supposed -- where he would have come up to the stop sign and actually turned? We don't see the intersection on the video?

A. Correct.

Q. And then when you command your car, turn to follow pursuit, you said that there was a point where you flipped your blue light on, and Mr. Nesbit, my client, is then making a right-hand turn and using a turn signal to make the right-hand turn on the side street?

A. Onto the side street, yes, ma'am. That's obvious. It's in the video.

Q. Right. And he uses the signal to make that right-hand turn?

A. And I had already activated my blue lights.

Q. I understand. And your testimony was that one of the -- when the solicitor asked you, was there anything suspicious or that could cause you to think about this, you said he didn't look at you when he came up to the intersection.

A. Yes, ma'am.

Q. Okay. But if he were to come up -- this intersection is sort of an almost -- kind of like a triangular intersection of some sort. It's not a 90-degree, more like 45-degree. And so -- I guess he's coming up JC

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Long, and he's at the stop sign. Your car is facing straight.

A. Correct.

Q. And he's actually -- would be coming at an angle to your left? If you were facing him, he would be going to your left?

A. No, ma'am. Is there any way we can pull the map back up?

Q. Yes. Okay. So where is your car?

A. I'm sitting right here. When he came -- this is approximately 100 foot. When he came down this way, you have to turn back in and stop, which would put him right here for me.

Q. I understand that, sir. So if this green line over here is you, if you went straight out, which is what we see in the video, we would have caught that, the corners off. What I'm saying is, if you are facing him, he's coming in on your left to make that right-hand turn, right?

A. Right.

Q. Like he's going this way?

A. Correct.

Q. And your field of vision is this way?

A. No. My field of vision is --

Q. Okay, this way. Do it this way.

A. My field of vision is all of this.

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Q. I understand. But your camera is faced forward?

A. Faced this way, yes.

Q. Right. And so over here, in this area, off camera, you are saying that my client didn't look at you during this period of interaction at this stop sign to take this right? That was your testimony, that he didn't look at you?

A. Yes, ma'am.

Q. And you are saying that during the time that you are watching him as he's coming down toward your left-hand side, he's not looking at you, instead looking straight, because you said he should be looking at you?

A. I never said he should be looking at me. When he arrived at the intersection, he would not look at me. He just remained looking straight.

Q. I understand that. I understand. Hold on a second. Last thing I would say, how long have you been a police officer?

A. For approximately seven years.

Q. And you have obviously been out on Isle of Palms several times in the past?

A. I formerly worked for Isle of Palms for approximately five years.

Q. So in the course of your working as an officer for that long, you've seen lots and lots of either car accidents or made a lot of stops along the way of people who were

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driving on the roads?

A. That's a good assumption, yes, ma'am.

Q. Isn't it preferable for them to be looking at the road and looking straight, instead of looking right or left?

A. Common behavior, ma'am, when a motorist arrives at a stop sign or intersection, they look around. And, generally, the general motoring public, if they see a law enforcement officer, they will glance over and see what we in law enforcement are doing for just a moment, yes, ma'am.

Q. So is it your testimony that every single person you've ever seen on the road has looked at you?

A. I said generally, ma'am; I didn't say every.

Q. But in this case, you believed it to be suspicious because my client was riding a Harley Davidson, didn't look at you?

A. No, ma'am, I didn't say that.

MS. GAY: Okay. Thank you.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MS. MULKEY:

Q. Deputy Chavez, your testimony is that the defendant failed to make an -- or excuse me, turned, but failed to signal, correct?

A. Yes, ma'am.

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Q. He failed to signal within 100 feet of the intersection, correct?

A. Yes, ma'am.

MS. MULKEY: Thank you.

THE COURT: Sir, you may step down.

(Whereupon the witness is excused.)

THE COURT: State have any further witnesses?

MS. MULKEY: No further witnesses, Your Honor.

THE COURT: Defense have any witnesses?

Does the defense have any witnesses?

MS. GAY: We are having a conversation right now with my client, Your Honor.

THE COURT: Okay. You maybe should have had this conversation before your motion. I have a jury waiting. I need to know if you have anything more to present.

MS. GAY: Your Honor, at this time I would call Mr. Nesbit.

HENRY OLIVER NESBIT, JR,

having been duly sworn, testifies as follows:

THE CLERK: State your name into the microphone and spell your last name for the record.

THE DEFENDANT: Henry Nesbit, N-e-s-b-i-t.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MS. GAY:

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Q. Mr. Nesbit, this is your trial today. And we are going to ask you some questions about what we just saw on that video and you traveling that day. Do you recall what happened that day, where you were coming from on June 16th, 2013, on the motorcycle?

A. Yes, ma'am.

Q. Can you tell the Court where you were coming from?

A. I was leaving from Subway. It was off of -- oh, man. It was on Isle of Palms. And I was turning onto -- at the light, I made a left at the light. I believe that's JC Long. And I came up JC Long. And I was going back towards, like, Sullivan's Island where Isle of Palms, past the Windjammer on that corner intersection.

Q. Now, there's been testimony from the officer that you did not use a turn signal when you came upon the intersection of JC Long and Carolina Boulevard. Tell the Court whether or not you used a turn signal that day.

A. I turned on my signal, yes, ma'am.

Q. So it's your testimony that you did, in fact, use a signal?

A. Yes, ma'am. And as a matter of fact, the signal light was still on. It's a 2011 Harley Davidson. The signal light doesn't turn off until you finish a turn and hit the button.

Q. Now, when the officer got behind you, did you see

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the officer behind you?

A. No, ma'am.

Q. When you came up, after he turned the blue light on, did you notice that he was behind you then?

A. At that point in time, yes, ma'am.

Q. And when you went onto the side road, I believe the video shows that you used a turn signal during that turn?

A. That was -- yes, ma'am.

Q. And with regard to your approach on JC Long Boulevard to Carolina, did you have any occasion to see this officer sitting there?

A. No, ma'am.

Q. Just didn't see him?

A. No, ma'am.

Q. Okay. And --

A. There were a lot of people outside, and there was traffic. It was Father's Day. They had a party at the blue -- the Windjammer that day. It was a bikini contest.

Q. Had you been there?

A. Not yet. I was on my way there.

Q. And so it's your testimony that you did, in fact, use your turn signal?

A. Yes, ma'am.

MS. GAY: I have no further questions, Your Honor.

THE COURT: Any questions for the witness?

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MS. LINDER: Very briefly, Your Honor.

CROSS-EXAMINATION

BY MS. LINDER:

Q. Mr. Nesbit, you were here a second ago when we were looking at the map and watching the video, weren't you?

A. Yes, ma'am.

Q. When we were looking at that map, do you recall when Deputy Chavez pointed out where a 100 feet back from that stop sign was?

A. Yes, ma'am.

Q. And were you signaling 100 feet back where he motioned and marked where that was on the map?

A. I don't know where 100 feet is on the map exactly, but I was -- I put on my signal light approximately, I would say, about three car lengths before the stop sign.

Q. Okay. When you were in here a moment ago watching the video from the dashboard cam, did you see the turn signal on the Harley Davidson that you were driving?

A. I couldn't see anything, ma'am. It was a brief quick second of the bike being in the camera. I saw it on once I made the right turn.

Q. Is it your testimony that you were in compliance with law, that 100 feet from behind the stop sign you had your signal on and continuously had it on?

A. Yes, ma'am.

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MS. LINDER: Thank you. Nothing further.

THE COURT: Any redirect?

MS. GAY: No, Your Honor.

THE COURT: Sir, you may step down.

(Witness is excused.)

THE COURT: Anything further from the defense?

MS. GAY: No, Your Honor.

THE COURT: Glad to hear arguments.

MS. MULKEY: Yes, Your Honor. The State argues that Deputy Chavez is a well-trained law enforcement officer. He has been in law enforcement. He has been trained not just in traffic enforcement and gone to extensive schools on it, but he testified that he observed the defendant fail to use his turn signal prior to making that right turn. The video demonstrates the defendant approaching the intersection in the 100 feet that Deputy Chavez estimated that day, but, in fact, testified he went out and remeasured, and the defendant failed to use his signal of intention in that 100 feet.

This traffic stop was based on a traffic violation 56-6-2150, which gave him probable cause to believe the defendant violated that traffic law. The subjective intentions of the officer are not playing a role here because this is a probable cause analysis. And it was a good faith stop based on the traffic violation. The map and

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the video demonstrate the same. And Deputy Chavez's testimony corroborates that.

And, finally, the defendant did testify that he continuously had his signal on. And we argue that the video does not show that; it shows otherwise.

THE COURT: Would you like to respond?

MS. GAY: Thank you, Your Honor. I know that you are in a hurry, and I know that we --

THE COURT: I'm not in a hurry.

MS. GAY: We don't want to leave the jury waiting, but if you were to take --

THE COURT: I generally don't correct attorneys, but I'm never in a hurry. I'm probably the most patient jurist in this building. And when I correct and I have the quorum in my courtroom, it's my job to run this courtroom. It's my job to run this system. I'm incredibly efficient, and I do it well. Doesn't mean I rush. I have not rushed you. We've taken the appropriate amount of time to take this hearing. And I'm going to take more than ample time to have argument. And I'm going to take whatever time I find appropriate to make a meditative decision.

MS. GAY: Only thing I would ask, Your Honor, is that you watch the video.

THE COURT: I watched it. I watched it three times when y'all just replayed it for me.

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MS. GAY: Well, it has conversations that were in the beginning where he indicates different than what he said.

THE COURT: I heard what he said on the video. I listened very intently when I had them replay it and I asked them to turn the volume up.

MS. GAY: Only thing I would say at this point, Your Honor, is that his camera has got an angle that's forward and straight, and doesn't have the whole entire situation with the turn. Obviously, my client has testified that he did, in fact, use his turn signal. This is a drug case. This is not -- you know, we are not having a trial for whether or not he failed to use his turn signal. This is a case that had to do with drugs that were found on him pursuant, long time, minutes down the road after everything happened, but all of it comes back to the probable cause for the stop.

And all of it is, we believe, fruit of the poisonous tree, a stop that was unnecessary, illegal, violation of his constitutional rights. We don't believe he committed any kind of crime.

What Officer Chavez says is that he believes that he didn't look at him and that that meant that there was some type of suspicious activity. That in itself is not at all probable cause for a stop. He went on and on about

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how -- he actually completely contradicted himself when he just spoke at the end and he said, no, I don't think that people have to look at me, that's not required, or, that's not necessary. And that's -- his testimony was that that was what was considered suspicious in his mind. And when I asked him, do you want people to be looking either right or left or forward, he said, no, that's not what I'm saying.

And, ultimately, we believe that it was a pretextual stop. We see a man on a motorcycle. He decides on some level, I want to see what this guy is up to. And he says because he didn't look at him that that would be the reason that he wants to try to check it out, get behind him, see what's going on. Mr. Nesbit uses his turn signal. He testified he didn't even know the police officer was behind him until such time as the blue lights put on. But he uses his turn signal to make the right-hand turn; wherein, he decides he doesn't want to stop.

That was a different moment, but, ultimately, Your Honor, we believe that the initial encounter with law enforcement, the initial breach occurred because of this -- we don't believe that he failed to use his turn signal. And we believe that anything that preceded after that was in violation of his constitutional rights.

THE COURT: Would the State like to respond?

MS. MULKEY: No, Your Honor.

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THE COURT: The motion to suppress is denied. Our case law is very clear. There's several legal principles or concepts applicable to this situation; however, what is germane to the Court's determination is whether this was a valid traffic stop and whether it was initiated pursuant to a valid traffic violation which created probable cause. The testimony of the officer, I have no reason to question the veracity of what he has stated while his camera had a view of Mr. Nesbit as he approached the intersection and not at the time that the actual turn was made. It is clear from the video that no traffic device was used for the turn, at least within the 100 feet, which it would have been when the motorcycle was visible as it approached the intersection.

And that he is -- the officer is correct, 56-5-2150 does provide for the appropriate use of traffic signals and devices when making certain turns from certain lanes. And it covers a whole multiplicity of situations which is not necessary for the Court to go into. But I have no reason to doubt the veracity of what he stated, which is that at least by a preponderance of the evidence, which is more likely than not, that Mr. Nesbit did not use his traffic signal as required within 100 feet of the intersection.

And Mr. Nesbit is probably a little different than most people. I don't know too many people that signal 100 feet. Some people do; some don't. Some signal as they go

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to the actual stop sign, but that does not negate the fact that the statute requires that you use the signal within 100 feet of turning left or right.

And where there's a traffic stop that is initiated pursuant to a traffic violation, that is a creation of probable cause. Our case laws also is very clear that a valid traffic stop initiated for a traffic violation is not rendered invalid where there's an allegation of it being a mere pretext for a narcotics search. This is not your typical situation where it is argued that a traffic stop is pretext for a narcotics search. It's not an unusual circumstance, but to some extent, it is. Because, actually, Mr. Nesbit became the argument of his own situation. If he had merely stopped as desired -- maybe it was pretext. I have no idea. I have no way of making that decision. I don't know what may have happened. I only know what did happen, which is that once he was alerted to stop, he didn't.

He then engaged in an active role to evade the police, which he then had a one-car accident where he injured himself. He was put under arrest for failure to stop, where search incident to arrest discovered these drugs and cash.

And I don't know what would have happened if he had actually stopped for the stop. It may well have been that

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he would have been simply given a citation and he went on with his life. I cannot assume that officer then would have embarked upon some form of targeting him for a drug search, because that's not what happened. What actually happened was he was signaled for a traffic stop, he didn't stop, caused a one-car accident where he injured himself, and as a result of that, he was bleeding. He was told not to move. And if he had not moved, he simply would have -- they would have put him under arrest, eventually anyway. So I don't know that it matters, because there still would have been a search incident to arrest. But there was no requirement to mirandize him. The search incident to arrest was appropriate. There was, in fact, probable cause for the stop by a preponderance of the evidence. And what is dispositive, again, I don't doubt the veracity of the officer's testimony, but I have a video that shows he did not signal within 100 feet of the intersection. So it really doesn't matter what happened once he got to the stop sign before he made -- immediately before he got to the stop sign and made the turn.

And, frankly, whether he looked or didn't look at the officer is not dispositive, and I'm not giving it any consideration in my decision as to whether it was a valid traffic stop or not. He didn't signal and it's a valid traffic stop. And then he exacerbated it by his own

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behavior by failing to stop.

And I do not find it persuasive that because he made a turn signal when he was getting ready to get stopped, that he had a turn signal before the first time. It wouldn't be unusual. Most people try to correct their behavior, what we call remedial measures in civil cases, where you mess up, so when you get caught, you say, let me make sure I do it right this time. It's about the same sort of analogy.

I don't find him credible that he didn't know the officer was behind him. I think he was well aware that the officer was behind him, and turned to signal to stop. And for whatever reason, just made a very poor judgment decision and didn't stop, and took off and sought to evade the police and then caused his own accident, which really was the trigger to the search incident to arrest, was the failure to stop.

So it was a good traffic stop. It was -- I cannot -- argument is that somehow this was pretext. If he had been -- if he had stopped as he should have and then there was some improper search or some -- but I can't speculate as to what could have happened because it didn't happen.

So the motion to suppress is denied.

Are we ready to go forward with opening argument

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and opening instruction from the State?

MS. MULKEY: Yes, Your Honor.

THE COURT: And from the defense?

MS. GAY: Yes, ma'am. I need to use the restroom.

THE COURT: Go right ahead.

State's Exhibit 10, Small clear plastic baggy with approximately 2 grams of what tested presumptive for cocaine, was marked for identification.)

(State's Exhibit No. 11, Baggy that field tested presumptive for cocaine, was marked for identification.)

(State's 12, Bag inside right front pocket that field tested presumptive for methamphetamines along with the cash, was marked for identification.)

(State's Exh. 13, Individualized bags that were in the defendant's left front pocket, was marked for identification.)

(State's Exh. 14, Drug analysis 01469 #1, was marked for identification.)

(State's Exh. 15, Drug analysis L13-01469 #2, was marked for identification.)

(State's Exh. 16, Chain of Custody, was marked for identification.)

THE COURT: Are we ready to get started? Is the State ready to proceed?

MS. MULKEY: Yes, Your Honor.

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THE COURT: Defense ready to proceed?

MS. GAY: Yes, ma'am.

THE COURT: Please bring in the jury. And we need to swear them and bring in Number 177 as the foreperson, Ms. Jenkins.

Madam Clerk, the jury needs to be sworn.

THE CLERK: Yes, ma'am.

(Whereupon, the jury returns to open court at 12:48 p.m.)

THE COURT: Ladies and gentlemen, let me apologize at the outset for the time that you had to wait for us to get started. We do not have -- federal court has lot more resources than we do. They get to have what we call date certains, when you know exactly what time your case is going to start. And even with them, though, they still have some delay due to pretrial matters and otherwise. But just to give you a little bit of a reference, some weeks I try four cases a week. My colleagues in the federal court might try six, seven, ten cases a year. So they have that the luxury of having date certains.

We in the state system try cases on a rolling basis, which means as we finish one trial, we start another and another and another. And as best as we try to plan, sometimes that goes extremely well, sometimes it doesn't. We had -- we started -- we finished a case yesterday and had

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what we call closing argument and instruction this morning. And because of traffic delays and otherwise, we had three jurors who were tardy this morning. So we had to wait for them to arrive before we could get started. And then had to have that closing argument and instruction process before we could begin this trial.

So I want you to know that we do not take your time for granted. And we appreciate y'all being incredibly patient with us. I knew you probably drank as much coffee as you could and you are in a room which doesn't have windows. I'm certain even though our new paint job was wonderful, it probably wasn't awe-inspiring. If you're like me, I need sunshine to function. I know this room is dark and can close in on you a little bit. So we appreciate you being so incredibly patient with us this morning.

You have been selected for the case of South Carolina vs. Henry Oliver Nesbit, Jr. And if you would stand for me, please, and raise your right hand, the clerk can administer the oath to you.

(Whereupon, the jury is sworn.)

THE COURT: Thank you, ladies and gentlemen. You may be seated.

I'm going to give you some preliminary instructions as to how we will be proceeding in the trial of this case so that you may better understand how a case is processed from

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beginning to end. I will tell you for planning purposes that this is a relatively short case. We should be able to finish it today. We may even have closing argument and instruction today. I'm not certain, but worst-case scenario, we will have closing argument and instruction in the morning. Just depends on how our time flows.

And after I give you these instructions and the attorneys give you what are called their opening arguments, we are going to break for lunch. So I want you to know we are not going to hold you hostage. Some people eat lunch earlier than others. I know a lot of people like to eat lunch between 12 and 1, so I just want you to know I'm mindful of that. And once we are done with what, I think will be fairly short, I will be able to let you go for lunch. And then we will resume after lunch with the beginning of taking the testimony of the witnesses in this case.

As I've already said, what I'm now going to say to you is intended to serve as an introduction to the trial of this case. These remarks are not a charge on the law. And just so that you know, charge and instructions are interchangeable terms. Charge is a legal term of art that means instructions. So when you hear me use the word charge, it simply means instructions. And I may use those terms interchangeable.

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I will instruct you on the law applicable to this case at the end of the trial, before you retire to consider your verdict. This is merely an explanation of the procedure that we will follow in the trial of this case so that you may better understand what is happening.

Y'all have been given notebooks. You will be given the opportunity to take notes. I will give you some instructions regarding that near the end of this instruction, but if you could write your juror number on the white sticker that is on the front of each note pad so that you will be able to identify it, and if there's not a sticker, just go ahead and write your number on the first page of that notebook so that you will be able to determine which notebook belongs to you after the break. They will be left in your seats during breaks and recesses, but if we have an evening recess, you will be able to determine which notebook belongs to you.

The defendant is charged by three indictments in this case, those being 2013-GS-10-5527, 5634 and 5639, with the offenses of failure to stop for a blue light, trafficking cocaine, and possession with the intent to distribute methylone, which are commonly referred to as bath salts. I will explain the elements of these offenses to you at the conclusion of the trial before you begin to deliberate and after the attorneys have made their closing

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arguments.

The indictments are simply the charges by which this case is brought into court. And they are not in any sense evidence of the allegations they may or may not contain.

The defendant has pled not guilty to the indictments. Therefore, the State has the burden of proving each and every element of the indictments beyond a reasonable doubt. And it will be your duty, ladies and gentlemen, to decide whether the State has met that burden or not. Your purpose as jurors is to find and determine the facts. You are the sole judges of the facts in this case. If at any time I make any comment regarding the facts, you must disregard it. The constitution of our state does not allow a trial judge to have an opinion about the facts in a case. You are to determine the facts from the testimony you hear and the other evidence that may be introduced during the trial.

It is up to you to determine the inferences which you feel may be properly drawn from that evidence. It is especially important, ladies and gentlemen, that you perform your duty of determining the facts diligently and conscientiously, because, ordinarily, there is no way to correct an erroneous determination of facts made by a trial jury.

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On the other hand, and with equal emphasis, the same law that makes you the judges of the facts makes me the judge of the law. The law as given by the Court is the only law you may consider. You must accept and follow it, even though you may disagree with the Court about it. The Court cannot tell you what the facts are, and you cannot disagree with me about what the law is or what the law should be. Your responsibility, ladies and gentlemen, is to take the law as I instruct it, and apply it to the facts as you find them from the testimony of the witnesses and the other evidence that is introduced.

After doing that, you will render your verdict, a true and just verdict under the solemn oath that you have taken as jurors in this case. Until I advise you to begin your deliberations, you must not discuss this case with anyone, that includes among yourselves, your family members, friends or otherwise. And after the case is submitted to you, you must not -- you must discuss it only in your jury room among your fellow jurors.

The attorneys and the parties have been advised, as well as the witnesses, have been advised not to speak with you at all. So if you should run into them in the garage, the elevator, the hallway, maybe even the restrooms, or a restaurant during a lunch break or otherwise, and they don't speak with you or acknowledge you, please don't think they

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are being unfriendly or untoward or even rude. They are simply strictly following the Court's instructions, because we would not want an innocent conversation to be observed by a third-party and misinterpreted.

During the trial, do not read, watch or listen to any media accounts about this case. That includes anything that could be on the radio, television, newspapers, or Internet. And you are also strictly instructed not to do any independent research regarding any issue or matter involved in this case on the Internet. Under your oath, you are bound to decide this case according to the testimony that you hear from the lips of the sworn witnesses and the other evidence that may be introduced. I would also ask that you not make any comments regarding your status on any social networking sites. That includes Facebook, Instagram, LinkedIn. There's so many, I've lost track. But, again, even an innocent comment could be so very easily misinterpreted. And with screen shots and all of these other things that people employee to preserve information, it is just better to avoid it all together. So we appreciate your cooperation in that regard.

It is essential that you maintain and keep an open mind and not decide any issue in this case until all of the evidence has been presented, the parties have made their closing arguments, and I have instructed you on the law in

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this case. It is your solemn responsibility to determine the guilt or innocence of the defendant. And your verdict must be based solely on the evidence as it is presented to you in this trial and on the law as I will instruct you during and at the close of this trial.

In just a moment, the solicitor will make what is called an opening statement in which they will explain to you what they believe the issues to be in this case. The defendant may also make an opening statement, although they are not required to do so. Keep in mind that what the attorneys tell you during their opening statements is only their contention as to what they believe the issues will be in this case or what they believe the evidence will show in this case. But their arguments are not evidence and should not be considered as evidence and is only their contention as to what they believe the evidence will show in this case.

The evidence will be presented to you by the testimony of sworn witnesses and other evidence or exhibits that may be introduced during the trial. From time to time, you will hear the attorneys say, Your Honor, I object. Just as in sports, business or any other structured activity, there are certain rules that we must obey in the presentation of evidence. These rules have a definite purpose. They ensure that you receive the most trustworthy and reliable evidence available. An objection is the

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procedure that an attorney uses to call a possible violation of these rules to my attention as the judge of this court. And for this reason, you should never hold an attorney's objection against them, nor should you conclude from the Court overruling or sustaining an objection that I favor one side or the other. In fact, in any good trial, there will be many objections. So you should expect that to happen during the course of the trial.

Also, from time to time, the attorneys may say, Your Honor, we have a matter of law to take up, or they may ask to approach the bench, or I may ask them to approach the bench, or it might even be necessary for us to exclude you for a short moment while we discuss matters of law. The reason we do this is because you are the finders of the facts. And as I've explained, I'm not allowed to have an opinion about the facts in this case. And sometimes when I'm discussing matters of law with the attorneys and making rulings regarding those issues, it might be necessary for me to comment regarding a connection with that, whether a procedural rule, evidentiary rule, or statute applies. And I may have to make some comment regarding the facts in connection with that. And for this reason, we exclude you from the courtroom so that in no way will you be influenced by anything that the Court may say or do in connection with the facts of this case.

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Sometimes we will use bench conferences and you will see the attorneys approach. We do that as a time-saving measure, so that we don't have to send you in and out of the courtroom. And you will hear white noise, basically, over your heads. And it's designed to interfere with your hearing, so that you are not able to hear our conversation. And I tell you that because I had a juror -- and I chuckle every time I think about it -- he raised his hand, and I said, yes, sir, and he said, we can't hear what you are saying. And I said, well, that's good, that means white noise is working. But I often think of that and I laugh to myself. But it's in speakers directly over your head, so that, again, it's a time-saving measure because it takes time to send you in and out of the courtroom. So we will often use bench conferences for that purpose, again, so that your impartiality will not be affected by those conferences.

In determining what the true facts are in this case, ladies and gentlemen, you must decide whether or not the testimony of a witness or witnesses is believable. It is my responsibility to rule as a matter of law as to whether certain testimony is admissible at all or not. But once it is admitted, whether or not you believe it is solely a matter for you to determine in your fact-finding province.

In deciding whether to believe a witness, you have

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the right to consider the interest of any witness, the bias of any witness, the prejudice of any witness, the opportunity for the witness to have seen the matters and things about which the witness may testify, and the way the witness acts on the witness stand, what we commonly refer to as their demeanor.

You have a right to consider anything that is in the record that will help you evaluate the testimony of the witnesses. That means that it is your duty to pay close attention to the witnesses, to observe them, to listen to them, and to pay close attention to the attorneys and the Court.

Although I know it can be incredibly difficult, please do not allow your thoughts to wonder, but give strict attention to the testimony, so that at the end of the testimony, the arguments of the attorneys and the charge on the law given by the Court, you will then be in a position to determine what the true facts are, and apply the law to those facts and, thus, render a true and just verdict in this case.

As I've already explained, you will be given the opportunity to take notes. Notetaking is a privilege you may choose to exercise or choose not to exercise. Please don't feel you are required to take notes. Not everyone finds notetaking helpful to them. If you should decide to

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take notes, please don't try to record everything that is said. It's physically impossible. And I'm an excellent note-taker, just by virtue of what I've had to do for a living. But even with that, I find that the mind processes information the way we process information. So oftentimes, we will put the beginning of a sentence at the end, the end of a sentence at the beginning, you will substitute words that are common for you versus what the witness may actually have said. And sometimes you write things in summary form.

The court reporter is the only person that has the skill to take down everything that is said, because she's trained in a very specialized form of shorthand that allows her to take down things phonetically with a stroke of her machine. But even with that, when she has to do a transcript, you will see these mics stationed around the courtroom, she goes back and listens to everything that was said to make sure that what she is taking down is accurate, because there's always the human error factor in any transcription process.

So I would ask that you not allow notetaking to become a distraction to you and dilute your powers of observations. Because as the fact finders, it's essential that you rely on that in observing the witnesses and judging their credibility and believability.

You may want to keep an outline of the main points

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that are being made and allow those, that summary or that outline, to refresh your memory as you begin the deliberation process. Your notes are not to be shared with anyone else. They are only for your individual purposes to refresh your own memory of the general arguments and witness -- general arguments that may be made by the attorneys and the evidence that is presented during the trial.

I would remind you that your notes, again, are for your specific and your individual purposes. They are only to be used to refresh your own memory. And you should also be reminded that your notes should not be considered any more reliable than someone else's memory. Their memory should be considered just as reliable as notes that may have been taken by a prior juror.

During breaks and recesses, your notes will be left in your seats. We do that so that there's no premature temptation to deliberate regarding something you may have heard prior to a break.

I have appointed a foreperson. Just so that you know, the foreperson is a completely random process that the Court employees so a cross-section of the community is represented. I wish there were a more scientific method, but there is not one. The foreperson is merely an administrative process. That person fills out the verdict

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form and writes out any questions you may have during deliberations. I emphasize that that person does not have any greater vote or voice than you do. It is merely administrative.

Madam Forelady, again, as I've already explained, it is your responsibility to write out the verdict and any questions the jury may have during deliberations. But I will give you further instructions regarding that at the conclusion of the case.

In order to preserve everyone's rights, I'm going to give the attorneys the opportunity to take exception to anything that the Court has said by way of opening instruction.

Any exceptions from the State?

MS. MULKEY: No exceptions, Your Honor.

THE COURT: From the defense?

MS. GAY: No, ma'am.

THE COURT: Ladies and gentlemen, I would ask that you give the attorneys your undivided attention.

MS. MULKEY: May it please the Court.

THE COURT: Yes, ma'am.

MS. MULKEY: Ladies and gentlemen, thank you for returning. I'm Lauren Mulkey with the Solicitor's Office.

Society has laws. It is against the law to possess drugs. It is against the law to sell drugs, distribute them

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in any manner. It is against the law to flee from law enforcement during a lawful traffic stop. As citizens coexisting in society, we recognize several duties. The duty of a juror to render a fair verdict based on the facts and the law, a duty to abide by laws in general, and the duty of someone to enforce those laws. And we give our sheriff's deputies and police officers that duty of enforcement.

I would like to take you back to June 16th, 2013, a warm, sunny Sunday afternoon in the Isle of Palms where Deputy Chavez was working. And he was specifically assigned to an area of high traffic due to the tourists in the summer months. His specific goal or responsibility, if you will, his assignment was traffic enforcement. And while seated in his marked cruiser and in full uniform, he observed the defendant approach the intersection of JC Long Boulevard and Ocean Boulevard. It's a very busy intersection on the main thoroughfare of hotels, restaurants, beach accesses, parking lots, parking meters and lots of people. And he observed the defendant approach the intersection and make a right turn, but failed to use his turn signal.

Deputy Chavez, as a member of our society, recognized his duty to enforce the law and proceeded to get behind the defendant, activate his blue lights and siren, and initiated a lawful traffic stop. The defendant turned

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onto a side street and began to slow down. All indications were that this would be an opportunity for the deputy to provide the citizen with a mild reminder of the law, a traffic warning, a citation, we don't know, because that's when everything changed.

Instead of stopping for Deputy Chavez, the defendant slowed down, looked back at Deputy Chavez, and yelled something, and took off at a high rate of speed. He went through several intersection, weaving in and out of oncoming traffic, around motorists, bicycles and other cars, until such time that he was no longer able to control the motorcycle he was operating, and slammed into a mailbox, and laid out in the middle of oncoming traffic. And that is why we are here today, ladies and gentlemen.

We spoke about duties. And my duty is to prove to you that the defendant fled from Deputy Chavez during a lawful traffic stop, that the defendant continued to flee from Deputy Chavez on that motorcycle, on a roadway, at a high rate of speed, driving recklessly, and that he continued to flee even upon crashing the motorcycle. Laid out in the middle of the street, injured, the defendant still attempted to get up and flee.

I remind you that it is against the law to possess drugs. It is against the law to sell drugs. And it is against the law to flee from law enforcement. The defendant

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fled that day because of the illegal drugs he had in his pocket that were found on him at the time of his arrest after he crashed.

I encourage you to listen to the facts presented to you and the law as charged to you by the judge. And at the conclusion of this trial, I respectfully request that you find the defendant guilty of all charges.

Thank you, ladies and gentlemen.

THE COURT: You may proceed.

MS. GAY: Thank you, Your Honor.

THE COURT: You're welcome.

MS. GAY: Good afternoon. It's been a long afternoon, I know. I told you my name is Melissa Gay from Charleston Bar. And this is Michael Nelson. He and I represent Mr. Nesbit. He wasn't here on Monday, so I let you know who he is.

I want to thank you for being here. It's not me who brought you here; it's the system. But it's the best system in the entire world.

My client is a man who is having a trial, because as you saw on Monday, he said he's not guilty. And the trial process, which the judge will explain in more detail when she talks to you on the charges of the law, trial process is something we should never, ever take halfheartedly. It is an incredibly valuable right that all

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of us as citizens of the United States have. It's not just here today, while the State says this is what we believe he did and you should convict him, it's a process where you 12 and the alternate are going to look at what's presented, and you are going to determine if that's something called, you know, guilt beyond a reasonable doubt.

And guilt beyond a reasonable doubt is what we are here about. And it's something that is guaranteed, as all of us have, and guaranteed to my client. One of the things that is often said is that my client is clothed in innocence. He comes to this court as an innocent man, just as innocent as me or the solicitor or the judge or you or these deputies. He's an innocent man. He's an innocent man until such time as the Solicitor's Office can move that cloak of innocence away and prove to you beyond a reasonable doubt that he's guilty. And if they don't do that, that's when you must acquit him and you must find that he's not guilty.

And the judge will explain more of that later, but that's the process we are here for today. We are here to determine what evidence they have and whether or not, in fact, that evidence will convict him beyond a reasonable doubt. And no case is as easy as the solicitor would have you believe, or we wouldn't be having a trial.

The solicitor would have you believe everything

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started when there was this failure to use a signal, and next thing you know, he's on the ground and all these drugs are found. But you are going to find, as you listen to the evidence in the case, that there are gaps in that process. And those gaps become the most important thing in why we are here today. And there's video of everything. There's video of him making -- on his motorcycle, video of him running from the police officer. Interestingly, there is absolutely no video of them finding drugs on him. And that's going to become very pertinent and the most important thing in this case. Because, as I said, he said to you that he's not guilty when we picked this jury.

In the process of this case, what is reasonable doubt? And it's not my job to explain all the law to you, it's going to be the judge's job, but I will tell you that it's doubt which would cause a reasonable person to hesitate to act. What that means is that as you listen to these witnesses and what's presented today, you are supposed to question every single thing they say in all ways possible. And at the end of the trial, if a reasonable person would hesitate to act to convict my client, then the judge is going to instruct you that you have to find him not guilty.

Now, you might not like the fact that there are all these drugs in the case, but if you don't find that they can prove that he possessed them or had actual possession of

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them, then you must find him not guilty.

And I will tell you that we all have jobs to do in this courtroom. And the most important part is, this is not TV. It is not nearly as entertaining as TV. If I had a script and some Hollywood writer had written it, I would be saying a whole lot of different things today. But it's a process, a very important process. And it's the most important day of Henry Nesbit's life, the most important day. And in the process, what we realize, because we are not TV people and we are just people here, is that we all have jobs to do. And the judge is the judge of the law, as she said. And she told you she's going to make legal decisions that are important. We are going to do our part. But you are the fact finders. And your decision as the fact finders of this case will never be changed.

You know, legal issues may be considered in a different court, but the facts and how you decide them never change. And so I just want to tell you how important you are, and how important you are to Henry Nesbit. And we believe at the end of this day, at the end of this trial, you are going to find as well that there are serious gaps in this case. And we believe that you will find him not guilty.

THE COURT: Madam Forelady, ladies and gentlemen, we are going to take advantage of this break in the process

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to take our lunch recess. We are going to break until 2:15, which gives you an hour for lunch. During this break, please do not discuss the case in any manner whatsoever. Please leave your note pads in your seats. And please abide by my previous instruction regarding media coverage or having any contact with anyone in or about the courtroom.

You will return to your jury room. And as soon as all jurors arrive, we will then continue with the proceedings with the beginning of presentation of the State's case. Again, we appreciate your patience. Have a great lunch and we will see you at 2:15.

(Whereupon, the jury leaves open court at 1:15 p.m.)

THE COURT: Is there anything else we need to take up before we break for lunch from the State?

MS. MULKEY: Nothing from the State, Your Honor.

THE COURT: From the defense?

MS. GAY: No, Your Honor.

THE COURT: All right. See y'all at 2:15.

(Luncheon recess was taken.)

THE COURT: State ready to proceed?

MS. MULKEY: Yes, Your Honor. We have one matter before the Court.

THE COURT: Defense ready to proceed?

MS. GAY: Yes.

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(Whereupon, the defendant is present.)

THE COURT: Yes, ma'am.

MS. MULKEY: We have spoken with the defense and we are going to enter the Items 1 through 9 that we discussed in pretrial.

THE COURT: I can barely hear you.

MS. MULKEY: We have spoken with the defense and agreed to enter 1 through 9 into evidence.

THE COURT: I already entered those without objection at the beginning of the trial.

MS. MULKEY: Thank you, Your Honor.

THE COURT: Is there anything else we need to take up before we proceed from the State?

MS. MULKEY: The State has nothing, Your Honor.

THE COURT: From the defense?

MS. GAY: Nothing, Your Honor.

THE COURT: Please bring in the jury.

(Whereupon, the jury returns to open court at 2:23 p.m.)

THE COURT: Alternate is 249, Ms. Meyers. And then the person in the back is going to need to come to the front. You may be seated.

Ladies and gentlemen, I hope that y'all had a pleasant lunch. We are now going to resume the trial of the case.

The State may proceed.

MS. MULKEY: The State calls Deputy Chavez.

THE COURT: If you will come to the witness stand and be sworn.

GERARDO CHAVEZ,

having been duly sworn, testifies as follows:

THE CLERK: State your name into the microphone and spell your last name, first and last name for the record.

THE DEFENDANT: Okay. Deputy Chavez, G-e-r-a-r-d-o; last name is C-h-a-v-e-z.

THE COURT: You may proceed.

MS. MULKEY: May it please the Court, Your Honor.

DIRECT EXAMINATION

BY MS. MULKEY:

Q. Good afternoon, Deputy Chavez.

A. Good afternoon.

Q. What is your occupation?

A. Deputy sheriff, ma'am.

Q. And who is your employer?

A. Charleston County Sheriff's Office.

Q. What are your current duties with the Sheriff's Office?

A. Currently assigned to patrol.

Q. How long have you been employed with them?

A. Approximately three years.

Q. Do you have any prior law enforcement experience?

A. I do. I have -- prior to Sheriff's Office, I have approximately five years law enforcement experience with the Isle of Palms Police Department. And prior to that, I was at the detention center for approximately six years.

Q. Can you tell us a little bit about your training and experience as a deputy?

A. Annual training consisting of legal updates, ethics training, traffic enforcement. I've had additional classes in drug interdiction with advanced traffic stops and traffic enforcement.

Q. Can you please tell the jury whether you were working on June 16th, 2013?

A. I was.

Q. What were your duties and assignments for that shift?

A. I was assigned to working off-duty patrol at the Isle of Palms Police Department to assist them with extra traffic enforcement and crowd control during the busy time of the beach season.

Q. So you were working in the Isle of Palms but as a Charleston County sheriff's deputy?

A. I was, ma'am.

Q. Is Isle of Palms in Charleston County?

A. It is.

Q. Were you in uniform?

A. Yes, ma'am.

Q. And were you in a marked Charleston County vehicle?

A. Yes, ma'am.

Q. And on June 16th, 2013, did you have the occasion to interact with the defendant?

A. I did.

Q. Can you please tell us about how you came in contact with the defendant?

A. Yes, ma'am. On that day, I was parked in front of the Windjammer, parked in the median, partially in the median observing traffic for any violations. When I observed on the defendant -- I observed the defendant approaching the intersection of JC Long Boulevard at Ocean Boulevard, at which time he proceeded to make a turn while failing to signal.

Q. And based on the defendant's failure to use his signal, did you initiate a lawful traffic stop?

A. I did.

Q. And did you ultimately write the defendant a citation for this?

A. I did.

Q. Do you know what statute he was cited under?

A. He was cited under 56-6-2150 for failing to use his turn signal.

Q. And can you please tell us what that statute requires a driver to do?

A. It requires a driver to, when safely able to make a turn or to shift lanes, they have to turn on their turn signal and keep it on continuously prior to 100 feet of where they are going to be making a turn.

MS. MULKEY: May I approach, Your Honor?

THE COURT: Yes, ma'am.

BY MS. MULKEY:

Q. At this time I would like to show you what's previously been entered into evidence as the State's Exhibit 1. Can you see that Deputy Chavez?

A. Yes, ma'am.

Q. Do you recognize this?

A. I do, ma'am.

Q. How do you recognize this?

A. I'm familiar with the intersection. That's JC Long and Ocean Boulevard where the violation occurred.

Q. Could you please point out where you were seated that day?

A. Yes, ma'am. Right here facing that way. (Witness indicates.)

Q. Does this map fairly and accurately depict the incident location on that date and time?

A. Yes, ma'am.

Q. So you were sitting right there where you've drawn that arrow?

A. Yes, ma'am.

Q. And can you please show us what you observed of the defendant using that map?

A. Yes, ma'am. Is there any way we can move the map down a little bit? Yes, ma'am. I observed the defendant traveling -- he was operating a motorcycle -- traveling on JC Long Boulevard to this intersection here where he proceeded to make a right-hand -- I'm sorry, where he proceeded to make a right-hand turn onto Ocean Boulevard without signaling.

Q. And because we moved the map, could you please show us where you were sitting again?

A. I'm sorry. Right here, facing this way.

Q. Thank you. Now, you were driving an updated car, correct?

A. Yes, ma'am.

Q. Does that car have a dashboard camera?

A. It does.

Q. Do those record everything?

A. Not everything.

Q. What causes the camera to start recording?

A. The activation of my blue lights or by manually activating the recording system.

Q. Can you please tell the jury how that camera is positioned, where in the vehicle it's at?

A. It's on the passenger's side in a fixed stationary position facing forward looking out the windshield.

Q. Your testimony is the camera is stationary?

A. Yes, ma'am.

Q. Are you stationary?

A. No, I am not.

Q. Do you have the ability to see outside the range of that camera --

A. I do.

Q. -- while you are seated in the car?

A. Yes, ma'am.

Q. The camera faces this way, to make sure I understand?

A. It faces directly forward; whereas, I can observe things around my vehicle in most directions.

Q. Regarding this incident, when and how did your camera start recording?

A. Upon activating my blue lights, after he had made the improper turn, when activating my blue lights, it activated a recording system. Furthermore, with that being said, when the blue lights were activated, it also prerecords 30 seconds prior to the activation of the recording system.

Q. And what was the defendant driving that day?
A. A brown Harley Davidson motorcycle.
Q. Is that considered a motor vehicle under South Carolina law?
A. It is.
Q. Is your testimony that based on the defendant's failure to use his turn signal, you attempted a lawful traffic stop?
A. Yes.
Q. And then what happened?
A. Upon activating my blue lights, the defendant pulled -- he started to slow down and made a right-hand turn onto a side street, and appeared that he was going to be stopping, at which time he yelled something back to me and then took off at a high rate of speed.
Q. What did the defendant yell at you?
A. "I'm going to the spot."
Q. What or where is that?
A. I have no idea.
Q. Have you ever heard that before?
A. No, ma'am.
Q. Is there a store or gas station located nearby called The Spot?
A. No, ma'am.
Q. Did you know the defendant?

A. No, ma'am.

Q. So the defendant takes off and refuses to stop for you. Then what happens?

A. I advised dispatch that he was failing to stop and requested a backup unit.

Q. And you just previously stated that you were not familiar with this defendant?

A. Correct.

Q. What road did you pursue him on after he failed to stop?

A. Started off on Ninth Avenue and proceeded onto Palm Boulevard.

Q. Is that a public roadway?

A. It is.

Q. Did you ever lose sight of the defendant while pursuing him?

A. Briefly. While pursuing him, after he made that left-hand turn onto Palmetto Boulevard, he entered the bicycle lane, and proceeded to pass vehicles in the bicycle lane, and then would cut across in-between traffic and into oncoming traffic or passing people on the proper side, where he went around a curve and I lost sight of him there.

Q. When did you next see the defendant?

A. Upon catching up to him just after the curve, he had just had a collision, and he was in the roadway and in

oncoming traffic and the motorcycle was off to the side still steaming.

Q. What did you do next?

A. Upon getting up to his location, I observed him to be in what appeared to be -- he was rocking forward in what -- I believed he was still attempting to get up and go, get up and run.

Q. Can you demonstrate for the Court what you saw the defendant doing?

A. He had his right hand kind of back and had his leg kind of posted, and he kind of was trying to rock forward, throwing his left arm up.

Q. In your training and experience as a sheriff's deputy, what did you believe the defendant to be doing?

A. Still trying to elude, still trying to get away.

Q. And what happened as you approached the defendant?

A. I gave him loud verbal commands to get on the ground, stay on the ground, at which time I also observed him to be bleeding pretty bad from his head. He had a head wound, at which time I also asked for EMS to respond to the scene.

Q. Why were you telling the defendant to stay on the ground?

A. Because he was under arrest for the failing to stop, the attempt to elude.

Q. And why specifically did you have to tell him to stay on the ground?

A. Because he still appeared to be trying to get up to go.

Q. And then what happened, Deputy Chavez?

A. I proned him out. And seeing his hands were clear, I left him there, primarily because of unknown potential other injuries that he may have sustained in the collision. But he continuously would push up, trying to get up off the ground. So as my backup Deputy Buckhannon was arriving, I advised him to go ahead and place his hands behind his back, at which time he complied, and I placed him into cuffs.

Q. If you wouldn't mind, explain to the jury what proned out means.

A. I'm sorry. They were face down, chest to the ground, and just out with his hand exposed to make sure he didn't have any weapons in his hands.

Q. You said that after that, you advised the defendant to put his hands behind his back?

A. Yes, ma'am, as my backup was arriving.

Q. And then what happened next?

A. I took him into custody, placed him under arrest for the failing to stop, placed him in handcuffs to the rear.

Q. And then what did you do?

A. I began to conduct a search incident to arrest of the subject, and located -- I didn't find any weapons on him, however, I did locate a large amount of US currency and several bags of narcotics on his person in his front pockets.

Q. How much cash did you locate on the defendant?

A. Approximately $2,900 in cash.

Q. Was there anything you noticed about the denominations of that money?

A. Majority of it was in smaller bills, 20s.

Q. Why is that significant to you through your training and experience as a law enforcement officer?

A. Through my experience and through my career, I've made numerous drug arrests, and I found that when you have somebody that deals in narcotics, they generally have a sizable amount of cash on them, a lot of it is mainly in smaller denominations from individual sales. And the way it was in his pocket, it was -- it wasn't in any kind of order. It was more stuffed in the pocket, as opposed to organized.

Q. Going back to the other items that you located in the defendant's pockets at the time of his arrest, you said you believed them to be narcotics?

A. Yes, ma'am.

Q. Could you tell us about what they looked like?

A. Yes, ma'am. In his right front pocket along with

all the cash that he had, majority of the cash that was on his person was in his right front pocket, he also had a clear plastic baggy that had a sizable amount of white powdery substance that I believed to be cocaine.

In the left front pocket, he also had a brown grocery-style plastic bag, the one you get from the grocery store, that had four individual freezer-style bags that had an amount of a brown crystallized substance inside the baggies, each one of the baggies.

And furthermore in the right, I believe it was in the right front pocket, another freezer-style bag that had a small amount of the brown crystallized substance that matched what he had in his left pocket.

Q. How much of the white powdery substance did you locate on the defendant?

A. It was about approximately 20 grams.

Q. And how much of the brown crystallized substance did you locate on the defendant?

A. Total was approximately 450 grams, nearly a pound.

Q. Based on your training and experience as law enforcement officer, you testified yourself you've made numerous drug arrests. Are the amounts that you located in the defendant's pockets characteristic of personal use?

A. No, ma'am. Typical dosage use for personal, from through my training and experience, is approximately under a

gram.

Q. Is that for the white powdery substance or --

A. For the white powdery substance.

Q. You are testifying that you located a substantial amount of cash, what you believed to be narcotics on the defendant in his pockets at the time of his arrest?

A. Yes, ma'am.

Q. What did you do next?

A. Upon backup arriving, I advised him of what I had found, advised him that we had loads of 33, which is code for narcotics in law enforcement jargon.

Q. Why would you choose to use the code to your fellow officer?

A. For officer's safety. Generally, it's not unheard of that weapons and drugs run together. So when we see an amount of either/or, we advise the other of what we've seen so they are aware of what's going on.

Q. And is that recorded?

A. It was, ma'am.

Q. How so?

A. On my body mic, it was on my body mic.

Q. So there is a camera in the car that visually records things?

A. Yes, ma'am.

Q. And there is a microphone on your body that records

what you say?

A. Yes, ma'am.

Q. And does that microphone stay with you during the process of arrest?

A. Yes, ma'am.

Q. What did you do with the items that you located in the defendant's pockets?

A. I seized them and placed them into an evidence bag. And then shortly thereafter, secured them into my patrol vehicle and locked the doors.

Q. Can you please explain what you mean by secured?

A. I placed them into an evidence bag and placed them into the backseat of my patrol vehicle, placed all the items that were in his pocket.

Q. Did you lock the doors to your patrol vehicle?

A. I did.

Q. Does anybody else have a key?

A. No, ma'am.

Q. And what is the purpose in securing them in the backseat?

A. To make sure that we maintain the chain of evidence, to make sure that it was secure while he was being tended to for any medical injuries or anything while they were taking him to go to the hospital.

Q. Do you have a standard practice yourself to sweep

or check the backseat of your vehicle prior to your shift?

A. I do.

Q. And did you do this prior to your shift that day?

A. I did.

Q. Did you locate any items?

A. No, ma'am.

Q. You've testified that your car has an in-car camera?

A. Yes, ma'am.

Q. Did it record the pursuit of the defendant?

A. It did.

Q. Have you viewed a video of this pursuit?

A. I have.

Q. I'm going to show you now what's previously been entered in as State's Exhibit No. 3. Now, this video has been entered as State's Evidence No. 3.

MS. MULKEY: And we would like to request to publish a clip of it to the jury at this time, Your Honor.

MS. GAY: Without objection.

THE COURT: Proceed.

(Video Playing.)

BY MS. MULKEY:

Q. I would like to show you what has been pre-entered into evidence as State's Exhibit No. 2. Now, we just watched the video of the pursuit that the defendant lead you

on. Can you please point out to the Court where on this map the intersection is that you initiated the lawful traffic stop.

A. Violation?

Q. The initial violation, yes, sir.

A. Initial violation is at that intersection right there.

Q. Using this map -- and if Your Honor doesn't mind, I will stand here because it's a little larger than the screen, so I can move it -- can you please take the jury and the Court on the route that you followed the defendant?

A. Yes, ma'am. I got behind the defendant in the area of right here where I initiated my blue lights to conduct a lawful traffic stop for the failing to signal. He turned down Ninth Avenue right here where it appeared that he was going to stop for a second, where he yelled back, I'm going to the spot. And then he proceeded to drive off at a high rate of speed through this intersection here at Carolina or Charleston onto Palm Boulevard, took a left onto Palm Boulevard and continued going down Palm Boulevard.

Q. Show us where you were at before I had to move it. I apologize. You stated you were on Palm Boulevard?

A. Yes, ma'am. This is 8th Avenue, so around here. And we kept on coming down Palm Boulevard where he weaved in and out of traffic and we had to keep on going down.

Can we move it a little bit more up? There we go. Yes, ma'am.

6th Avenue, this is the curve that I couldn't get around traffic that he had already gone around. And just about right here in front of the parking lot of the church is where he had his collision where I caught up to him.

Q. Thank you.

A. Yes, ma'am.

Q. Now, the video that we just viewed concluded with the defendant in the ambulance being transported by EMS?

A. Yes, ma'am.

Q. What happened after the defendant was taken by EMS?

A. After he left, I retrieved the suspected narcotics and conducted field tests, at which time the white powdery substance field tested presumptive for cocaine. And the brown crystallized substance field tested presumptive for methamphetamines.

Q. Can you please complain to the Court what field tested means?

A. There's field test kits we carry to show presumption of what a substance may be.

Q. And your testimony is the white powdery substance tested presumptive for cocaine?

A. Yes, ma'am.

Q. And the rock-like substance tested presumptive for

methamphetamine?

A. Yes, ma'am.

Q. Then what did you do?

A. Secured them back in the rear of my vehicle, locked the doors until FSU, Forensic Services Unit, arrived on the scene shortly thereafter.

Q. Why did Forensic Services Unit respond to this call?

A. So they can take all the evidence into their custody.

Q. And when they come on scene, what do they generally assist you with?

A. Dividing, accounting for all the articles that were taken and placed in the evidence bag. Everything was divided up, logged, photographed -- well, not identified yet, but everything was separated and logged into evidence, at which time they took custody of it.

Q. And can you take us through a brief summary of what you did?

A. Upon retrieving the items from the rear of my patrol vehicle, we took it in front of the camera of my patrol vehicle where I activated my camera again. And myself, along with FSU Investigator Meyer, inventoried the items that were seized, photographed and documented everything that was in the evidence bag.

Q. And was this recorded?

A. Yes, ma'am.

Q. Was this on the same CD of the clip that we previously just showed?

A. Yes, ma'am.

MS. MULKEY: Your Honor, at this time I would like to publish an additional clip of that CD that's been entered into evidence.

MS. GAY: Without objection.

THE COURT: Proceed.

(Video Playing.)

BY MS. MULKEY:

Q. Just to be clear, the evidence you sorted from that vehicle, those are the items you retrieved from the defendant's pockets at the time of his arrest?

A. Yes, ma'am.

Q. After it was sorted and counted, then what happened?

A. It was taken into -- Investigator Meyer took it into evidence custody so it could be further analyzed and placed into evidence.

Q. And when you left the scene, where did you go?

A. I went to the Medical University of South Carolina, downtown.

Q. Why did you go there?

A. To relieve Deputy Buckhannon who had followed the ambulance that transported the defendant to the hospital, to the trauma center.

Q. So on the video that we watched, the first clip, you see the defendant being loaded into the ambulance, and then there's a marked Charleston County cruiser that follows that?

A. Yes, ma'am.

Q. Is your testimony that that was Deputy Buckhannon?

A. Yes, ma'am.

Q. And what happened when you arrived at M.U.S.C.?

A. I met with Deputy Buckhannon. I believe it was in the ICU, at which time I took custody of the defendant's property that was cut off of him, his clothing that was cut off of him upon arrival at the hospital by medical staff.

Q. If you could please tell the jury what was in the bag?

A. His pants were in the bag. And when I did an inventory of his pants, in the right coin pocket, the small pocket that's next to your right front pocket, there was another small baggy of white powdery substance and another small baggy with green plant-like material in it.

Q. Why did you inventory his jeans?

A. Because they were cut off of him. They were part of the evidence.

Q. And they were his property?

A. Yes, ma'am.

Q. And he was under arrest and, therefore, you had a duty to maintain his property; is that correct?

A. Yes, ma'am.

Q. Did you field test that substance that you recovered from the coin pocket?

A. I did. It field tested presumptive for cocaine as well.

Q. And do you recall how much that bag weighed?

A. I believe it was approximately 2 grams.

Q. And what did you do with that bag?

A. It was later submitted into evidence for further analyzation.

Q. I would like to hold up and show you what has been marked as State's Exhibit 10, 11, 12 and 13. If you would please go through each one and let me know if you recognize them.

A. Yes, ma'am. This is the small clear plastic baggy, inside with approximately field weight of 2 grams of what tested presumptive for cocaine.

Q. How do you recognize that?

A. I placed it in here.

Q. And how can you tell?

A. It's my handwriting on the bag.

Q. Could you please point that out to the Court.
A. (Witness indicates.)
Q. And where was that located in?
A. The right front coin pocket of the defendant's jeans.
Q. Okay. This is State's Exhibit 11.
A. This is the baggy of, I believe, the cocaine that field tested presumptive for cocaine that was in the right pocket of the defendant's pants at the time of arrest, along with the money.
Q. And how do you recognize that?
A. I'm the one that secured it and turned it over to evidence.
Q. Are your initials on that bag?
A. Not at this time, no.
Q. But that was the bag that you gave to Crime Scene Tech Meyer?
A. Yes, ma'am.
Q. On the hood of your vehicle?
A. Yes, ma'am.
Q. On the video that we just watched?
A. Yes, ma'am.
Q. Now I hand you State's Exhibit 12.
A. This is the first bag that was inside the right front pocket along with the cash and the baggy of

presumptive cocaine that field tested presumptive for methamphetamines.

Q. And how do you recognize that?

A. I turned it over to Investigator Meyer on scene.

Q. And was that on the video recording we just watched?

A. It was.

Q. Last is State's Exhibit No. 13.

A. These were the other individualized bags that were in the defendant's left front pocket.

Q. How do you recognize those?

A. I turned them over to Investigator Meyer.

Q. And is that on the video that we just watched?

A. It was.

Q. Are all of these exhibits that I just showed you, are they in substantially the same condition as the night that you found them on the defendant?

A. Yes, ma'am.

Q. The same items that you found in the defendant's pockets?

A. Yes, ma'am, still in the freezer bag.

Q. One more thing, Deputy Chavez. The person that fled from you that initiated a lawful traffic stop on that evening and the person that you have testified you located these items in his pockets with at the time of his

collision, do you see that individual in the courtroom today?

A. I do, ma'am.

Q. Could you please point him out for the Court?

A. The defendant sitting right over here.

MS. MULKEY: Beg the Court's indulgence.

THE COURT: Yes, ma'am.

MS. MULKEY: Your Honor, I would like to let the record reflect that Deputy Chavez, who was there present that evening, pointed out the defendant in the courtroom.

THE COURT: You may proceed.

MS. MULKEY: I have nothing further. Please answer any questions of the defense.

THE COURT: Madam Forelady, ladies and gentlemen, we need to take advantage of this break. As I indicated to you, I'm basically trying two cases at the same time, and I have a question from my other jury that I need to address. So it will take about maybe ten minutes.

During this break, please do not discuss the case in any manner whatsoever. And if you could set your note pads on the ledge for me, because I'm going to have to bring that other panel in and I don't want to have to disturb your note pads. Thank you for your patience and understanding.

(Whereupon, the jury leaves open court at 3:41 p.m.)

THE COURT: Please get the jury.

(Whereupon, the jury returns to open court at 4:02 a.m.)

THE COURT: Thank you, ladies and gentlemen, for your patience. You may be seated. We will now resume the cross-examination of the witness.

CROSS-EXAMINATION

BY MR. NELSON:

Q. Good afternoon, deputy. How are you?

A. Fine. Yourself?

Q. I just want to go over your background a little bit. You spent three years with the Sheriff's Office, correct?

A. Correct, yes.

Q. And you are doing patrol now? And patrol basically means you do traffic stops and general answering calls?

A. Answering calls for service, traffic enforcement.

Q. By traffic enforcement, you mean pulling people over for speeding, waiting for people to run red lights, stop signs, et cetera?

A. Violation of state laws, correct.

Q. Did you do that for Isle of Palms also?

A. I did.

Q. You did that for about eight years, you would say?

A. Yeah.

Q. Let's talk about June 16th of 2013. And you said you were off-duty patrol?

A. I was.

Q. And that means basically -- who was paying you that day, Isle of Palms?

A. Isle of Palms.

Q. You work for the county, you are a deputy for the county, but you worked for Isle of Palms that day because -- it was a Sunday, if I remember correctly?

A. Because during the beach season, they need additional help because of traffic, because of population, because of the tourism.

Q. And where you were parked, you were parked looking away from most of the bars, correct?

A. Correct.

Q. But don't you think most of the trouble would be coming from the bars?

MS. MULKEY: Objection, Your Honor. Relevance.

THE COURT: I will give him a little latitude. You may answer the question.

THE WITNESS: No, sir.

BY MR. NELSON:

Q. Now, you are parked right -- you are parked right here?

A. Yes, sir.

Q. And you are looking towards JC Long, which is this road right here, correct?

A. Yes, sir.

Q. Why are you parked there?

A. Just in the median, just in the median observing everything.

Q. And how long were you there?

A. 30 minutes or so.

Q. And 30 minutes, pretty much observing JC Long, whatever else in front of you?

A. I was in that intersection. We were in the intersection approximately 30 minutes. I was -- previously I was on this side, and my partner was on this side. But it was coming close to the end of shift and my partner decided to do another lap around the front beach just to patrol, and I moved from here to here.

Q. Right. Okay. And you were there for 30 minutes. How many cars came up and down JC Long, would you say?

A. I can't recall that.

Q. Do you have a ballpark, more than one?

A. Probably, yes, sir.

Q. More than five?

A. Not sure.

Q. But definitely more than one?

A. I would assume so.

Q. And you mentioned that you initially came in contact with Mr. Nesbit because you said he failed to use a turn signal?

A. Correct.

Q. And we saw on the video that you obviously see him drive by, but you don't see what happened off the camera, correct?

A. When he went out of frame, no, you do not see it.

Q. You also mentioned that it's illegal for somebody to turn on the turn signal inside of 100 feet? You have to turn your signal on outside of 100 feet?

A. Before making a turn, yes, sir.

Q. And did you ever measure 100 feet on this?

A. I did.

Q. And could you approximately mark it on there?

A. Can we slide the map down?

Q. Oh.

A. Other way. Yes, sir, approximately 100 foot is right here from the stop sign.

Q. And how do you know that?

A. Because I measured it out with a measuring tape.

MS. MULKEY: Objection, Your Honor. Pretrial matter.

THE COURT: Overruled.

BY MR. NELSON:

Q. How do you know that?
A. I measured it out with a measuring tape.
Q. For what reason?
A. In preparation for this trial.
Q. But you said he never turned on the turn signal, correct?
A. I did not see a turn signal.
Q. So why would you go measure 100 feet if there was never a turn signal?
A. Because the law states it has to be 100 feet.
Q. You said he never turned on the turn signal?
A. Yes.
Q. Even if -- 100 feet was really irrelevant according to you in this?
A. Okay. Yes, sir.
Q. While you were watching JC Long, you observed Mr. Nesbit drive by?
A. He approached the intersection to make that turn.
Q. What did you observe when you saw him?
A. Observed him operating the motorcycle on JC Long heading to the intersection and he proceeded -- he stopped at the intersection and proceeded to make a right-hand turn.
Q. Was there anything strange about his driving?
A. He failed to signal.
Q. Anything suspicious about him?

A. Initially, yes, sir, he failed to make any kind of eye contact or any -- he failed to notice that I was there in plain view.

Q. You are saying he didn't make eye contact with you?

A. Yes.

Q. You thought that was suspicious?

A. After not signaling, yes, that was another tell sign, yes, sir.

Q. But he didn't make eye contact previous to him turning?

MS. MULKEY: Objection, Your Honor. Asked and answered.

THE COURT: Overruled.

BY MR. NELSON:

Q. You said it was suspicious that he did not make eye contact?

A. When he reached the stop sign, sir, he stopped, and he did not even look at my direction. That is not common behavior of the general motoring public. If you see a cop car in what is absolutely plain view, generally, the general motoring public would at least look over and see that it was a cop car, one; two, if there was anybody in it.

Q. But you never met him, so you don't know what he thinks?

A. No, sir.

Q. And you are actually taught to keep your eyes on the road, not look the opposite direction when you turn; is that correct?

A. Correct, but he was at the stop sign.

Q. Right, and turned right?

A. Stopped.

Q. And he turned right, correct?

A. Yes, sir.

Q. And your car was to the left?

A. Yes, sir.

Q. So that's suspicious that he was looking in the direction of the road he was turning at instead of looking at you?

A. Yes, sir. If you are going to make a right-hand turn, you would look left generally.

Q. Right, you look at the road?

A. Just to see if there was anything coming or -- right.

Q. You glance in the direction to see if there's oncoming traffic?

A. Right.

Q. You don't necessarily have to lock eyes on anything to your left?

A. Correct.

Q. But that's very suspicious?

A. In addition, yes.

Q. Now, if I could just play you the initial part of this, your in-car video briefly.

(Audio playing.)

BY MR. NEWMAN:

Q. Now, it's very faint, but you were talking to somebody else.

A. I believe so, yes, sir, on the phone.

Q. I'm sorry, who?

A. I believe I was on the phone.

Q. Who were you talking to?

A. I'm not sure, sir.

Q. Police? Doesn't really matter?

A. No, it doesn't. It was a year ago, or right at a year ago.

Q. Understandable. But you were talking to somebody on the phone. And do you know how long you were on that phone for?

A. No, sir.

Q. But there had to have been a reason why you were talking to whoever it was?

A. Safe to assume, sir.

Q. And you were obviously part of that conversation?

A. Yes, sir.

Q. And you were listening to whatever was going along

trying to have a conversation with that person?

A. Yes, sir.

Q. So your attention was somewhat divided during this incident?

A. Yes, sir.

Q. So while you are talking on the phone, it is possible that he actually did turn on the turn signal last second?

A. No, sir.

Q. No? 100 percent?

A. Positive.

Q. You have to look through his vehicle, because you are looking at the left side of his vehicle, correct?

A. Harley Davidson motorcycle, yes, sir. I'm looking at him completely as he's approaching the intersection, yes, sir.

Q. But you have to somewhat look through the vehicle, right?

A. No, sir.

Q. But your attention was divided, but you know 100 percent because you were involved in conversation, but you were doing multiple things?

A. Sir, I generally wear a blue tooth and I just pay attention to what's going on around me more than generally having a conversation on the phone.

Q. So after, as you stated there was no turn signal, A motorcycle chase ensues, then Mr. Nesbit gets into a wreck?

A. I initiated a lawful traffic stop for that failing to use a turn signal, and which time your client fled, yes, sir.

Q. I mean, there was a chase?

A. Yes.

Q. And Mr. Nesbit got in a single-car accident or single-motorcycle accident?

A. Collision.

Q. Whatever you want to call it. Once you caught up to Mr. Nesbit, you were in fear for your safety?

A. Could you clarify that, sir?

Q. Were you in fear for your safety?

A. Can you be more specific? I mean, fear for my safety?

Q. Did he pull a gun on you?

A. No.

Q. You weren't in fear of him attacking you at that point?

A. At that point, I assumed that he was still trying to flee since he was trying to rock forward to what appeared to be get up and keep on fleeing, because that's what he was just doing.

Q. But you weren't scared at that point because you

didn't pull out your firearm?

A. I didn't see any weapons.

Q. Okay. Now, at that point we saw the video, Mr. Nesbit was screaming. Did he seem to be in pain?

A. Yes, sir.

Q. And you admit you saw blood all over him and he was injured?

A. As I was making the initial contact, yes, sir.

Q. Now, you kept asking him if he has a license, correct?

A. Yes, sir, ID.

Q. Did he?

A. No, sir.

Q. Who owned the motorcycle?

A. He said his homeboy.

Q. Not him?

A. Not him.

Q. Were you able to verify it wasn't his motorcycle?

A. Yes, sir.

Q. Now, let's talk about -- at that point, you had already called in backup?

A. Yes, sir.

Q. And I think you said Deputy Buckhannon was the first one there?

A. That was my backup, yes, sir.

Q. Was he the partner you were talking about earlier?
A. Yes.
Q. So he came very quickly thereafter?
A. Shortly thereafter, yes, sir.
Q. Matter of probably minute and a half, if that?
A. I didn't time it on video, sir.
Q. But shortly --
A. Relatively short time, yes, sir.
Q. And at that point, your car -- did Deputy Buckhannon have a camera in his car?
A. Yes.
Q. I think all county cars have cameras in it?
A. Not all county cars.
Q. But most of them?
A. Yes.
Q. And Buckhannon had a camera in his car, correct?
A. I believe he does. I'm not sure, sir.
Q. Okay. So when Buckhannon got there, that's when you searched Mr. Nesbit?
A. That's when I secured Mr. Nesbit.
Q. Okay. He was secured at that point when you searched him out?
A. Yes, sir.
Q. Now, at that point you had cover?
A. He's under arrest, yes, sir.

Q. And he's obviously yelling, I believe, about his leg; he was yelling because he was in pain?

A. Uh-huh, yes.

Q. At that point, you weren't concerned about him going anywhere?

A. What do you mean, sir?

Q. Well, you got him in handcuffs and he just got in a motorcycle accident, he's bleeding.

A. Yes, sir.

Q. Did you think he was going to run away at that point?

A. Not run, sir, but he was going to be transported.

Q. Oh, no, I understand that. I understand that. But you weren't scared of Mr. Nesbit fleeing by himself without you at that point?

A. No, sir, not at that point.

Q. You had enough time, you could have -- in hindsight, you could have done a couple things different, as you always can in any situation, right?

A. In hindsight, sir.

Q. You had Deputy Buckhannon there as your backup. You had yourself there. And I can't remember the timing of this, and we just watched the video, but then EMS came?

A. Yes.

Q. Did you search Mr. Nesbit before or after EMS came?

A. Before, sir.

Q. So it was just you and Buckhannon then?

A. I believe so, yes, sir.

Q. And you had your car there with the camera?

A. Yes, sir.

Q. And like we just talked about, you had enough time, you could have done a couple of things different in hindsight?

A. I did what I had to do at the moment that this incident occurred, sir.

Q. I'm not disputing anything you did. We talked, and you are a good policeman. But Mr. Nesbit was secured?

A. Yes, sir.

Q. He wasn't going anywhere at that point. You have two deputies there and he's handcuffed. You have a camera in your car, but you didn't take the time to turn the camera to actually see what happened when you searched him?

A. I searched him as soon as I secured him, sir.

Q. Right. But you just said at that point you weren't scared of him going anywhere, you had backup, so you could have taken the time to adjust your camera and see what happened when you searched him?

A. Potentially, in hindsight.

Q. Because it would have been easier, I mean --

A. It wasn't top on my list to redo my camera at that

time.

Q. Wasn't top of your list? You said you weren't in fear your safety. You also said Mr. Nesbit wasn't going anywhere at that point. What was on the top of your list?

A. Search him and secure the contraband on his person.

Q. At that point, you didn't know there was contraband on his person?

A. When I secured him, sir, I did a search of his person incident to arrest.

Q. Right. But that was after he was already handcuffed and after Deputy Buckhannon was there.

A. That was at that moment, sir, when Deputy Buckhannon pulled up, is when I secured him.

Q. Right. But at that point when you searched him --

A. Yes.

Q. -- Deputy Buckhannon was there, correct?

A. He just pulled up, yes, sir.

Q. Mr. Nesbit was handcuffed?

A. Yes, sir.

Q. And you could have gone to your car and put the camera on Mr. Nesbit so everybody can see what actually happened?

A. I can't speculate to what the camera could have picked up.

Q. Well, I mean, you've seen the camera. It picks up

the straight ahead of you.

A. Right. He was to the front left of my vehicle, right at the quarter panel. I don't know if it would have picked him up even there. I'm not sure.

Q. Are you telling me a digital camera that we just saw a car chase on, and then a 35-minute video of you counting money, could not pick up something right in front of you?

A. It's fixed to the windshield, sir. It's adhered to the windshield in a fixed position. All you could do is rotate it side to side or up and down. And he was in the position he was in, to the front left of my patrol vehicle, I don't even know if it would have picked him up on the video.

Q. The car moves. You could have adjusted your car to place it right on the defendant, correct?

A. In hindsight, yes, sir.

Q. But you didn't do that?

A. No, sir.

Q. Because at that point, the priority wasn't to make sure everybody in the future knows what happens; it was to make sure the man that's handcuffed, is not going anywhere, has to be searched right then?

A. He was searched and secured for transport and EMS.

Q. Now, you testified that you found a lot of stuff in

Mr. Nesbit's pockets?

A. Yes, sir.

Q. And I believe you said approximately $3,000? You said $2,900, but let's round it up for sake of argument approximately 3,000.

A. 2,918 and some change, sir.

Q. How many bills were there?

A. I'm not sure, sir.

Q. You counted it for a good 25 minutes?

A. Yes, sir.

Q. So there were a lot?

A. There was approximately $108 in 5's, 10's and 1's. There was approximately 7- to $750 in 100's and 50's. And the rest was in 20's. And I believe that was approximately 100 or 103, 102, $20 bills stuffed, crushed, shoved inside his pocket.

Q. Wadded up?

A. Sir?

Q. I mean, the bills on the video, they didn't look to come out like bank bills, just flat and crisp.

A. Yes. They were shoved, wadded, pushed in.

Q. By your count, I think you said 108, something 102, and several other bills, at least 210 actual bills?

A. I guess, sir.

Q. And you said he had all that money wadded up in his

pocket?

A. Yes, sir.

Q. Along with, I believe --

MR. NELSON: May I approach, Your Honor?

THE COURT: Yes.

BY MR. NELSON:

Q. Along with all this other stuff?

A. Yes.

Q. What kind of pants was he wearing? Were they huge pants?

A. They were jeans with deep pockets, sir.

Q. He was wearing jeans, and he's got $3,000, at least 210 bills wadded up in his pockets? He had cigarettes too, didn't he?

A. I can't recall if he had cigarettes on him or not.

Q. But you wouldn't be surprised if he had cigarettes in his pocket also?

A. I don't recall if he had cigarettes or not, sir.

Q. Got 210 dollars -- and those are all on one side pocket or one front pocket?

A. Yes, sir.

Q. The money was all in the pockets?

A. Majority of it.

Q. And 210 --

A. You keep saying 200, but I'm not sure that it's 200.

Q. You said 1 --

A. 100 in 20s; 700 to 750 in the 100's and 50's, which is seven, eight, nine bills maybe, nine, ten bills maybe. And then 108 in 5's, 10's and 1's. Most of it was 10's, some 5's, eight 1's.

Q. You said 100 bills in 20s, 108 by --

A. Excuse me, sir?

Q. You said 102 in 5's, 10's and 1's?

A. $108 in 5's, 10's and 1's.

Q. I'm sorry. I misunderstood you. I thought you said 108 bills.

A. No, sir.

Q. He had over 100 actual bills; is that fair to say?

A. Yes, that is fair to say.

Q. That's not all crisp and folded over, that's wadded up?

A. Any form or fashion you could probably stuff bills in your pocket, yes, sir.

Q. And that was all in one pocket? Was that a right pocket or left pocket?

A. Right.

Q. And you also found, according to you, a lot of drugs in his right pocket also?

A. The bag, the clear plastic baggy containing sizable amount of cocaine, yes, sir.

Q. So did you notice that when you walked up on him? That sounds huge.

A. Yeah, he had large bulging pockets.

Q. Then you found a lot of stuff in his left pocket you say too, right?

A. Grocery bags, sir, brown grocery bag that had four individual freezer-style bags containing a brown crystallized substance inside the brown bag, inside the left pocket.

Q. And how many police officers ended up showing up to that scene?

A. I'm not sure, sir.

Q. How many squad cars?

A. I'm not sure, sir.

Q. It was you, Deputy Buckhannon, and that's just the Sheriff's Office?

A. Yes, sir.

Q. And then this happened on Isle of Palms, so Isle of Palms police would have showed up there too, correct?

A. Yes, sir, they would have showed up. I believe there was two.

Q. Total of four police vehicles, maybe more?

A. And supervisor from Isle of Palms arrived.

Q. That would be five?

A. No, that would be part of the two from Isle of Palms, and another officer. But she ended up leaving and assisting with traffic control, redirecting traffic in the area.

Q. So at least at any point there's four police vehicles?

A. Three.

Q. Okay. Three? And do you know if they were equipped with video capabilities?

A. I'm not sure, sir.

Q. Did you ever check?

A. No, sir.

Q. You are the lead officer in this case, correct?

A. Yes, yes.

Q. So it is your job to make sure all the evidence is collected?

A. Yes, sir.

Q. Now, if there was another, say, video of the scene from another police car, that would be potential evidence that needed to be collected, correct?

A. If they were able to catch anything.

Q. Did they?

A. I imagine so. The vehicles that arrived on scene later on parked behind me, so I would imagine so.

Q. You said you would imagine, but you don't know?

A. No, I don't know. There was also a fire truck parked behind me and Deputy Buckhannon came around the right side of me, and your client was on the left front side of the me, so --

Q. You don't know?

A. I don't know.

Q. So potentially there could be another video out there that maybe not shows the whole thing, but part of what happened since you didn't move your camera to see, show us what happened?

A. I can't say that there would be.

Q. But you don't know?

A. But I don't know, sir.

Q. Did you take the time to check?

A. No, sir.

Q. In hindsight, would you have taken the time to check?

A. Like I said, sir, the vehicles that showed up after I did parked behind me. And the odds of them -- the angles that they were in, I doubt very seriously they would have gotten anything from the scene.

Q. You doubt, but you are not sure?

A. Correct. And Deputy Buckhannon came around my right side, and your client was on the left front quarter

panel of -- my left front quarter panel of my vehicle, so...

Q. But you don't know?

A. No, sir.

Q. Because you didn't check?

A. Correct.

Q. Now, after you searched, supposedly searched Mr. Nesbit --

A. I did search Mr. Nesbit.

Q. But it's not on video, I just have to take that for your word for it.

A. Okay.

THE COURT: No editorial comment. Please ask a question.

BY MR. NELSON:

Q. Sorry. You went to M.U.S.C -- actually, let me back up. Back to the scene, you found all the stuff in his pockets, according to you?

A. Yes.

Q. That's a decent search, right?

A. Fairly quick, yes, sir.

Q. But your job at that point when you search somebody, you want to make sure you get everything?

A. Or try to, yes, sir.

Q. And in actuality, you went, according to you, you went through his pockets?

A. Yes.

Q. Then you go to M.U.S.C. and you check his -- you take his belongings? You get his belongings?

A. Get his belongings.

Q. Who collected the clothes?

A. Deputy Buckhannon.

Q. Why did Buckhannon search the clothes?

A. He just held onto the clothes. Once the medical staff cut the clothes off, he collected them and held them there for me, because I'm primary.

Q. Do you know if he watched them cut the clothes off?

A. I can't say. I don't know if he did or not. I wasn't at the hospital when he arrived at the hospital. I was still on scene.

Q. I understand that. So you can't tell me those are definitely the clothes that came off of Mr. Nesbit because you didn't see it being cut off?

A. No.

Q. Now, once you --

A. Stilled covered in blood.

Q. But you didn't see it?

A. No, I can't say that I saw them cut it off.

Q. Then you searched the clothes again?

A. Uh-huh.

Q. And you say that you found --

MR. NELSON: May I approach, Your Honor?

THE COURT: Uh-huh.

BY MR. NELSON:

Q. This is State's 10?

A. Yes, sir.

Q. And that is what you said you found in Mr. Nesbit pocket; is that correct?

A. Yes, sir, in right front coin pocket at the hospital. And what triggered that search was when I walked in the room, I could still smell a strong odor of marijuana, raw marijuana in the room.

Q. Now, did you -- you didn't initial that bag?

A. That bag?

Q. Yeah.

A. No, that's my handwriting on it.

Q. You initialed all the other bags?

A. No, sir. I turned them over straight to evidence on scene.

Q. Now, part of your job as lead officer in this case is, like we talked about before, is to collect all the evidence and do everything you can to get evidence, potential evidence, correct?

A. Yes, sir.

Q. And you say that all of this stuff was found in Mr. Nesbit' pockets?

A. We already went over there, sir, yes.

Q. And a lot of bills? We went over that, I understand.

A. Yes.

Q. As a police officer, when you are the lead officer in a case, can you turn things over to, say, crime scene tech to investigate it more, further?

A. Yes, sir.

Q. And what's crime scene?

A. Forensics.

Q. Just explain that.

A. Evidence custodians, they maintain, they keep and maintain all of our evidence that we obtain from crime scenes.

Q. And they also do tests on potential pieces of evidence?

A. On certain ones, yes.

Q. On things like dollar bills, can you get fingerprints off those?

A. I would imagine you could, sir.

Q. Did you?

A. No, sir.

Q. Why not? Did you turn it in to get fingerprinted?

A. No, turned it in to evidence.

Q. But you could have requested it get fingerprinted?
A. I could have, yes, sir.
Q. And you didn't?
A. No.
Q. Is that one of the things --
A. It came straight from his pocket, so --
Q. But in hindsight, you could have done that?
A. In hindsight, you can do a lot of things, sir.
Q. And you also say there's a lot of bags, various -- I believe you said white powder material or brown crystalline --
A. Substances, yes, sir.
Q. Thank you. And were those fingerprinted?
A. No, sir.
Q. Could you have?
A. Yes, sir, but they came out of his pocket.

MR. NELSON: Court's indulgence.

THE COURT: Uh-huh.

BY MR. NELSON:

Q. I'm sorry to take so long ago. Just to make sure I understand this, you are the one that collected the approximately two grams from the hospital?
A. Yes, sir.
Q. And just one other question. We talked about earlier, in addition to everything else you say you found,

there were cigarettes in his pocket too?

A. No, I said I don't recall.

Q. Yeah, that's right, you said you don't recall.

A. Correct.

Q. Would it refresh your recollection if I showed you the evidence sheet?

A. Sure.

MR. NELSON: May I approach, Your Honor?

THE COURT: Yes, sir.

THE WITNESS: Okay.

BY MR. NELSON:

Q. He also had a pack of cigarettes in his pocket?

A. Along with other items.

MR. NELSON: Court's indulgence.

THE COURT: Yes, sir.

BY MR. NELSON:

Q. You've done patrol and traffic enforcement for awhile?

A. Yes.

Q. Do you pull everybody over that doesn't just stop at a traffic light or turn signal outside --

A. The only thing we are talking about at this time, sir, is this case right here.

Q. Right. But, in general, do you pull everybody over who doesn't do a turn signal outside of a --

MS. MULKEY: Objection. Relevance, Your Honor.

THE COURT: I will give him some latitude. Sir, I need you to answer the question yes or no and then you may explain your answer.

THE WITNESS: Can you repeat the question, please.

BY MR. NELSON:

Q. You say that you pulled over Mr. Nesbit because he did not use a turn signal outside of 100 feet?

A. Correct. He did not use a turn signal, period.

Q. But you kept on bringing up 100 feet.

A. Because that's what the law stipulates.

Q. Do you pull everybody that doesn't use a turn signal outside of 100 feet?

A. No, sir.

Q. Why not?

A. Because of situational issues. If I'm going to a call and somebody doesn't use a turn signal, I can't pull them over. If I'm headed to a call or if I'm dealing with something else and the infraction is done, I can't stop what I'm doing at the time.

Q. Short about having other things to do, which I do agree that's probably more important than pulling somebody over for a turn signal, short of that, do you pull over everybody that doesn't use a turn signal within 100 feet?

A. I can't say everybody, but I do pull over people

for failing to use their turn signal.

Q. The reason you did that in this case is because he didn't make eye contact with you?

A. No, sir.

Q. In addition to him not using a turn signal?

A. No, sir. No, sir. The initial reason why I initiated the traffic stop was because he failed to use a turn signal.

Q. But you also said one of the things that you thought was suspicious was he didn't make eye contact?

A. Yes.

Q. And if he would have made eye contact, would you have 100 percent pulled him over?

A. I would have probably pulled him over, yes, sir.

MR. NELSON: Nothing further. Thank you.

THE COURT: Any redirect of the witness?

MS. MULKEY: Yes, Your Honor.

REDIRECT EXAMINATION

BY MS. MULKEY:

Q. Just so we are clear, Deputy Chavez, why did you pull the defendant over on June 16th, 2013?

A. Because he failed to use his turn signal.

Q. And can you please remind the Court of your specific assignment in Isle of Palms that day?

A. To be a support for extra traffic enforcement and

to assist in traffic crowd control on the beach during that time of the year and tourist time, beach season.

Q. Can you pull someone over -- is it legal to pull somebody over just because they are acting suspicious?

A. Reasonably.

Q. But did you pull the defendant over because he was acting suspicious?

A. No, ma'am.

Q. Now, the traffic stop you said was based on the defendant's failure to signal?

A. Correct.

Q. And please remind the Court what that statute requires.

A. That you must use -- the driver can make a turn any time they see that it's safe to do so, but they must turn on their turn signal prior to 100 foot, and have it come on continuously until they make that turn.

Q. And did the defendant signal within 100 feet of the stop sign?

A. No, ma'am.

Q. Did the defendant signal within 100 feet of making that right turn?

A. No, ma'am.

Q. Did he signal within 50 feet?

A. No, ma'am.

Q. Did he signal immediately before turning while he was stopped?

A. No, ma'am.

Q. Changing gears for a minute, I wanted to go back to the pursuit. You were involved in a vehicle pursuit?

A. Yes, ma'am.

Q. And does your department have a policy regarding an outside agency investigating that pursuit?

A. Yes, ma'am.

Q. Who is that outside agency?

A. The highway patrol.

Q. And does that require you to keep your vehicle stationary until they arrive?

A. Yes, ma'am.

Q. Was South Carolina Highway Patrol on there during the time that you were searching the defendant's pockets incident to his arrest?

A. No, ma'am.

Q. And switching gears once again, let's go to M.U.S.C., the clothes in the bag that Deputy Buckhannon handed to you.

A. Yes, ma'am.

Q. You testified that he pulled out jeans?

A. Yes, ma'am.

Q. Correct?

A. Yes, ma'am.

Q. Were those jeans similar to the ones that the defendant was wearing on scene?

A. Yes, ma'am.

Q. Did they look like the same clothes that he was wearing when you arrived, when you came up to him after he had been in a collision?

A. Yes, ma'am.

Q. And did those jeans appear to be the same ones that you pulled the drugs and the currency from on scene?

A. Yes, ma'am.

Q. Did you find any drugs in the street?

A. No, ma'am.

Q. Did you find any drugs that day anywhere else other than on the defendant?

A. In his jeans.

Q. And those jeans at M.U.S.C. appeared to be the same ones that that the defendant was wearing at the time that you pulled drugs and currency from him?

A. Yes, ma'am.

Q. Were they skinny jeans?

A. No, ma'am.

MS. MULKEY: Beg the Court's indulgence. I have nothing further, Your Honor.

THE COURT: Any objection to the witness being

excused from the State?

MS. MULKEY: No.

THE COURT: From the defense?

MS. GAY: No, Your Honor.

THE COURT: Sir, you are excused.

(Whereupon the witness is excused.)

THE COURT: The State will call its next witness.

MS. MULKEY: The State calls Deputy Buckhannon.

THOMAS BUCKHANNON,

having been duly sworn, testifies as follows:

THE CLERK: State your name into the microphone and spell your last name for the record.

THE WITNESS: Thomas B-u-c-k-h-a-n-n-o-n, I'm the fourth.

THE COURT: If you would speak directly into the microphone for us, please, because we can't move the microphone. You may proceed.

MS. MULKEY: May it please the Court, Your Honor.

DIRECT EXAMINATION

BY MS. MULKEY:

Q. What is your occupation?

A. Charleston County deputy sheriff.

Q. And so you are employed by the Sheriff's Department?

A. Yes, ma'am.

Q. What are your duties with the Charleston County Sheriff's Department?

A. Currently assigned to the judicial enforcement division amongst courtroom and inmates, protect employees of the courthouse.

Q. If you could, please tell the jury how long you've been employed by the Charleston County Sheriff's Office?

A. About four years.

Q. Do you have any prior law enforcement experience?

A. Yes. I worked for Berkeley County Sheriff's Office for about four years, and Folly Beach public safety department prior to that for about two years.

Q. And did you have the occasion to be working on June 16th, 2013?

A. Yes, I did.

Q. What were your assignments and duties for that shift?

A. We were working an off-duty assignment on the Isle of Palms where we helped out crowd control, traffic enforcement, investigation of traffic collisions.

Q. You were working in Isle of Palms but as a Charleston County deputy?

A. Yes.

Q. Is the Isle of Palms in Charleston County?

A. Yes, it is.

Q. And did you have the occasion to become involved in the investigation in this case on that date?

A. Yes.

Q. How were you brought into this case?

A. I heard Deputy Chavez was involved in a vehicle pursuit, and I responded to his location to provide backup.

Q. What did you do when you arrived on the scene?

A. As I entered my vehicle, I was approaching Deputy Chavez and realized that he was searching the defendant. I went back to my patrol car, got some evidence bags, went back to Deputy Chavez.

Q. And what did Deputy Chavez locate on the defendant?

A. He was pulling things out of his pockets, putting them into the bags, and he located some cash and what appeared to be narcotics.

Q. Do you recall where exactly on the defendant he was pulling these items from?

A. In the area of his pockets.

Q. And what, if anything, did you do with the defendant?

A. I accompanied the defendant to the hospital. He was transported by EMS.

Q. Did you ride in the EMS wagon?

A. No, I did not.

Q. Then how did you accompany him?

A. I followed the ambulance to the Medical University hospital.

Q. Was the defendant handcuffed during his transport to M.U.S.C.?

A. Yes, he was.

Q. Is that normal practice?

A. It is.

Q. And when you got to M.U.S.C., what happened next?

A. They took him out of the ambulance, wheeled him into the emergency room. They proceeded to cut all of his clothes off.

Q. Were you present for this?

A. Yes, I was standing right there witnessing them do it.

Q. And what happened next?

A. I gathered his clothes off of the ground and put them into an evidence bag.

Q. Did you go through them at that time?

A. No, I did not.

Q. What did you do with that bag?

A. I kept it with me until Deputy Chavez came to relieve me at the hospital.

Q. Was that bag in your sole care, custody and control from the time that you placed the clothing into it to the time that you handed it to Deputy Chavez?

A. Yes, it was.

Q. And when Deputy Chavez arrived at M.U.S.C., what did you do with that bag?

A. I turned it over to Deputy Chavez and he proceeded to inventory it.

Q. Do you recall what, if anything, Deputy Chavez found?

A. He located a clear, small plastic baggy with a white powdery substance in the coin pocket of the pants.

Q. And the person that we've been speaking of, the person who you saw Deputy Chavez out with in the Isle of Palms in the lane of traffic, and the same person that you then testified you collected his clothes, do you see that individual in the courtroom tonight?

A. Yes, I do, he's right there.

MS. MULKEY: Please let the record reflect Deputy Buckhannon has identified the defendant.

THE COURT: You may proceed.

MS. MULKEY: I beg the Court's indulgence. We have nothing further.

THE COURT: Any questions for the witness?

MR. NELSON: Briefly, Your Honor.

CROSS-EXAMINATION

BY MR. NELSON:

Q. You were the second one on the scene?

A. Yes, I was.

Q. And part of being a police officer, or deputy in this case, is to see things, watch things, observe things, correct?

A. Correct.

Q. And this happened about a year ago, give or take?

A. Yes.

Q. And part of -- another thing part of police -- excuse me, being a police officer, is you write police reports?

A. What was the question?

Q. You write police reports, don't you?

A. Yes, I do.

Q. Did you write a police report in this case?

A. I believe I did.

Q. Now, when Deputy Chavez supposedly observed Mr. Nesbit make a turn without a signal, you weren't there?

A. No, I wasn't.

Q. So you don't know what happened there?

A. No, I have no clue what happened.

Q. Only thing, you came upon after he got in an accident?

A. Correct.

Q. And I just want to see if I'm clear on this. When

you got there, Deputy Chavez was already searching him?

A. When I got out of my patrol car, was walking towards Deputy Chavez, he was with the defendant searching him.

Q. Okay. Now, do you have video capabilities for your car?

A. I do.

Q. And in addition to recording video, it also records audio, correct?

A. Correct.

Q. Now, another thing about being a police officer is you want to obtain evidence at the scene, correct?

A. Correct.

Q. At this point, Deputy Chavez already has Mr. Nesbit secured?

A. Yes, he was in handcuffs.

Q. And you could have positioned your car to actually show what was going on, correct?

A. I could have, yes.

Q. You didn't?

A. I did not.

Q. In fact, I just want to be somewhat clear on this. I'm a little confused. You said when you were walking up to Deputy Chavez, you saw he was already searching him, and then you went back to the car?

A. Yes.
Q. Your car?
A. I did, yes.
Q. Was your back turned to him?
A. Yes.
Q. So you didn't actually see him go through the pockets and pull out everything?
A. When I came back up to him, he was going through the pockets, when I handed Deputy Chavez the bags.
Q. And then you went to M.U.S.C.?
A. Correct.
Q. And you didn't collect any evidence? I'm sorry. You collected the clothes, but you didn't go through the clothes?
A. I did not go through the clothing.
MR. NELSON: Court's indulgence.
BY MR. NELSON:
Q. Now, I just want to go back to the video, or excuse me, lack of video, because you didn't put any video from the location into evidence?
A. No.
Q. Because according to you, you didn't position your car so you could see what was going on?
A. No, I did not.
Q. But you were around Mr. Nesbit, you were around

Deputy Chavez?

A. Yes.

Q. And you have a mic on?

A. My lights?

Q. A mic.

A. I don't remember.

Q. Most of the time police officers when they have in-car videos have mics?

A. Correct.

Q. To pick up what you say and, in turn, if a defendant says something, correct?

A. Correct.

Q. Is it more than likely you had a mic on that day?

A. Yes.

Q. And I'm not trying to fool you or anything here. So even if you didn't see anything on the video, it would have recorded what you said, what was being said all around you while you were around Deputy Chavez and Mr. Nesbit?

A. Right.

Q. Did you preserve that?

A. I downloaded the video, which is the protocol.

Q. Did you turn it into evidence?

A. It's downloaded into a system. It's already in evidence.

Q. Did you ever review it?

A. No, I did not.
Q. Do you know if it has any evidentiary value?
A. I do not.
Q. Could it?
A. Possibly.
MR. NELSON: Nothing further.
THE COURT: Any redirect?
MS. MULKEY: We have no redirect.
THE COURT: Any objection to the witness being excused from the State?
MS. MULKEY: No, Your Honor.
THE COURT: From the defense?
MS. GAY: Nothing, Your Honor.
THE COURT: Sir, you are excused.
(Whereupon the witness is excused.)
THE COURT: Call your next witness.
MS. MULKEY: The State calls Crime Scene Investigator Meyer.

ERIN MEYER,

having been duly sworn, testifies As follows:

THE CLERK: State your name and spell your last name for the record.
THE WITNESS: My name is Erin Meyer. My last name is M-e-y-e-r.
THE COURT: You may proceed.

MS. MULKEY: May it please the Court, Your Honor.

THE COURT: Yes, ma'am.

DIRECT EXAMINATION

BY MS. MULKEY:

Q. Investigator Meyer, what is your current occupation?

A. I'm a forensics investigator with the Charleston County Sheriff's Office. I'm assigned to the criminal investigations unit.

Q. And how long have you been a deputy there?

A. I've been a certified deputy for 14 years. And I've been assigned to the forensics division for the last six and a half.

Q. If you could, please tell the Court what your duties are as a forensics investigator?

A. We have a lot of duties. Primarily, our two main duties, we respond to scenes and we identify and collect evidence. And then our other duty is to process and maintain, preserve evidence. Again, that's compounded at the facility.

Q. And did you have the occasion to be working on June 16th, 2013?

A. Yes, ma'am.

Q. In what capacity?

A. I was the on-call investigator for that week.

Q. And could you please tell the Court how you became involved in this particular case?

A. I was advised by Sergeant McManigal to respond to a pursuit involving a motorcycle with Deputy Chavez on Isle of Palms.

Q. And what did you do when you arrived on scene?

A. Traditionally, when we arrive on scene, we briefly speak to the officers involved, basically kind of find out what happened. And then we go into processing the scene and taking and collecting evidence and photographing and documenting everything.

Q. And what were the items that Deputy Chavez told you he had collected?

A. Deputy Chavez told that -- he briefly told me about what had happened in the incident, and indicated that he had collected some cash and some drugs from subject Nesbit after pursuit had occurred. He had come up on the crash site. He collected those things that happened in his possession.

Q. And once you were done processing those items which you had come on site to do, did you meet with Deputy Chavez again?

A. Yeah, I spoke with him and I explained to him to go ahead and hold onto them and I'll process the scene, take photographs and do what I need to do, and then I would go back and meet with him again and collect those items, and I

did.

Q. And can you please explain for the Court the steps you took to inventory and to physically take custody of those items?

A. Once I was at the scene, I met with him and he -- took evidence paper bag out, put it on the trunk of his car, and we both went through the items as he pulled them out of the bag. I photographed them. I examined them, photographed them, and then put them in evidence bags of mine, and took them into my possession and put them -- secured them in my vehicle.

Q. And was this recorded on Deputy Chavez's video?

A. Yes, ma'am.

Q. Then what did you do with those items of evidence?

A. Secured them in my vehicle.

Q. And from there, where did they go?

A. When I cleared from the scene, I transported them to the Charleston County Sheriff's Office evidence compound, a secure facility where we house all of our evidence and maintain all of our evidence.

Q. Can you please let the Court know about your procedures for securing things into evidence, what exactly that entails?

A. Our facility is locked either by deadbolt, combination lock, keypad or keys. We have gated wire and

constantine wire around several facilities. Once you enter those premises, you have to have a key or keypad to get into the building. We secure the evidence. It stays there until we begin the tracking period, enter it into evidence system, and then it gets to get tracked. If it ever leaves that facility, it gets tracked, it gets signed out, somebody signs for it. For instance, if it were to go -- drugs would have gone for drug analysis, they would be signed out from our facility and then come back.

MS. MULKEY: May I approach, Your Honor?

THE COURT: You may.

BY MS. MULKEY:

Q. I would like to direct your attention to the monitor and show you some photos that have been previously entered into evidence. The first of which is going to be State's Exhibit No. 4. Can you please tell the Court what this is a picture of?

A. This is Deputy Chavez. He has pulled the brown paper bag that contained all the evidence that he collected when he got on the scene. He's got it on the hood of his car and we are beginning to go through it.

Q. Now I would like to show you what's previously been entered into evidence as State's Exhibit No. 5. If you could please tell the Court what this is.

A. This is the same bag. He's now got it open and

pulling out individually. These are the items inside. You can see the money and the white powder inside the clear plastic bag.

Q. I would like to show you State's Exhibit No. 6, if you could tell the Court what this is.

A. He's pulling items out of the bag, as you could see, and I'm photographing them.

Q. And just to be clear, Deputy Meyer, these photographs that we are showing previously entered into evidence are your photographs?

A. Yes, ma'am.

Q. And these are the ones taken on scene?

A. Yes.

Q. Please draw your attention to State's Exhibit No. 7. Can you tell the Court what that is?

A. It's white powder, what we believe to be cocaine.

Q. This is State's Exhibit No. 8, if you could please tell the Court what that is.

A. He's pulling all the bags out, but the bags on the hood is, again, the drugs. And he's pulling out the remaining bags out of the evidence bag and then the money. I mean, it's just the procedure he's going through. I'm photographing as he's pulling them out.

Q. And this procedure is your procedure for documenting and inventorying evidence?

A. Yeah, it's -- I'm -- we are verifying what he's giving me, documentation.

Q. And last, if you could please tell me what is State's Exhibit No. 9?

A. Those are all -- that's -- those are all the bags of drugs that he had collected prior to me getting there. And they were all -- he's got his hand on the hood now. That's while I'm photographing it.

MS. MULKEY: Thank you. Beg the Court's indulgence.

THE COURT: Uh-huh.

BY MS. MULKEY:

Q. Just a few more things, Deputy Meyer.

MS. MULKEY: May I approach?

THE COURT: You may.

BY MS. MULKEY:

Q. I would like to show you what's been pre-marked for evidence State's Exhibit 11. If you could open this and tell me if you know what it is.

A. This is the bag of white powder that he was showing in the exhibits that I took custody of on scene he indicated he got from subject Nesbit. My initial's at the top.

Q. And is that in substantially the same condition that you saw that evening?

A. Yes, ma'am.

Q. Thank you.

Next I would like to show you State's Exhibit No. 12 and have you look at that as well, and advise the Court if you recognize what that is?

A. This is one of the five bags of the crystal, kind of like rock substance, that he indicated he had also collected from subject Nesbit. He had given me on the -- Deputy Chavez gave me on the scene. This is a smaller of the five bags, and this is my initial.

Q. Is that substantially the same condition you saw it that evening?

A. Yes, ma'am.

Q. Thank you.

Finally, I have for you State's Exhibit No. 13. If you could look at that and please let the Court know if you recognize those items?

A. Yes. These are the four larger bags of the same brown crystal-like substance. It's the smaller one that I just pulled out. These are the same four bags that I got from Deputy Chavez that night, indicated he got off subject Nesbit. And you can see it's signed. I have sealed my initials. I'm the one that put the red markings on each bag.

Q. And is that in substantially the same condition as that evening?

A. Yes.

MS. MULKEY: Thank you. I have no further questions. Please answer any the defense may have.

THE COURT: Any questions for the witness?

MR. NEWMAN: None, Your Honor.

THE COURT: Any objection to the witness being excused from the State?

MS. MULKEY: No, Your Honor.

THE COURT: From the defense?

MR. NELSON: No, Your Honor.

THE COURT: Ma'am, you are excused.

Who is the State's next witness?

MS. MULKEY: State calls Mark Watson.

THE COURT: Ladies and gentlemen, if you could bear with us, I know it is 5:01, it is my understanding this next witness is fairly short, so we could dispose of that witness before breaking for the evening. We appreciate your indulgence. You may proceed.

MARK WATSON,

having been duly sworn, testifies as follows:

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Mark Edward Watson, W-a-t-s-o-n.

DIRECT EXAMINATION

BY MS. LINDER:

Q. Where are you presently employed?
A. Charleston County Sheriff's Office.
Q. How long have you been with the Sheriff's Office.
12 years.
Q. And what's your current position there?
A. I'm a forensics investigator.
Q. Was that your position back in June of 2013?
A. It was.
Q. And what do your general duties include?
A. I process crime scenes, maintain evidence, log stuff, log in evidence, keep track of it, transport items to SLED, transport items to be tested.
Q. Did you handle any evidence in this case, the State vs. Henry Nesbit?
A. I did.
MS. LINDER: Your Honor, may I approach?
THE COURT: Uh-huh.
BY MS. LINDER:
Q. At this time, I show you what's been marked as State's Exhibit 10 for identification purposes. Do you recognize that?
A. Yes, ma'am.
Q. How do you recognize it?
A. These are -- this was actually transported out to be tested.

Q. I'm going to show you also what's been marked State's Exhibit 11 and 12. Can you look at those two items, please?

A. Yes, ma'am.

Q. Do you recognize those?

A. I do.

Q. How do you recognize those?

A. These are the other two items. I remember carrying three items down there. And when the city does it, they put letters there, up here, 1 of 3, and the other says 1, and this says 2 and 3. I know I transported two items associated with this case. I also picked them up and brought them back when it was completed.

Q. And when you took those items from the compound at the Sheriff's Office, where did you take them?

A. The city actually has a forensics lab inside of M.U.S.C. It's in the eye tower down there on the second floor, and that's where they do all their drug testing.

Q. Do you recall who you gave this -- these items to?

A. I wish my memory was that great, but, no, I don't recall. They have three or four different girls working there. And which one that particular day took it out, I don't know.

Q. Would it refresh your recollection if I showed you a chain of custody?

A. Yes, ma'am, it would.

Q. Are you familiar with chains of custody that are kept?

A. I am.

Q. And what's the purpose of a chain of custody?

A. Chain of custody is to say who all came in contact with that evidence in order for you to be able to track for court purposes.

Q. At this time I show you what's going to be marked as State's Exhibit 15 for identification purposes. Does that help refresh your recollection as to who you gave the three items to?

A. Yes, ma'am, it does.

Q. And who did you give those three items to?

A. I gave it to Susan Payne.

MS. GAY: Your Honor, may we see that item please?

THE COURT: Uh-huh.

BY MS. LINDER:

Q. After you left it with Susan Payne at the city lab, did you then, more or less, go about your business that day?

A. I did. When we go to take the items to the city, they actually have an electronic keypad that we have to sign, kind of like you do your credit card. And each of our items has a bar code. And when we pre-log it into the

sheet. That's how they get their little label. But we have to pre-log it to forensic's advantage. And each thing is itemized. And that's how they know what we do. When we put it into the system, we use OCA and an item number, which is located up here, and then a brief description of what it is. And we go there, they actually scan their paperwork, and then generate their labels, and we put their labels on it and also puts it into the chain of custody, and then I sign for it. And it keeps electronic chain, as opposed to having paper. But, of course, you have to print it up.

MS. LINDER: Thank you. I have no further questions. Please answer any questions the defense may have.

THE COURT: Any questions of the witness?

MS. GAY: One moment, please.

MR. NELSON: No questions, Your Honor.

THE COURT: Any objection to the witness being excused from the State?

MS. MULKEY: None from the State, Your Honor.

THE COURT: From the defense?

MS. GAY: No, Your Honor.

THE COURT: Call your next witness.

MS. LINDER: The State calls Jason Riley.

JASON RILEY,

having been duly sworn, testifies as follows:

THE CLERK: State your full name and spell your last name for the record.

THE WITNESS: Jason Harold Riley. Last name is R-i-l-e-y.

MS. LINDER: Thank you, Your Honor. May it please the Court.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MS. LINDER:

Q. Where are you presently employed?

A. Charleston County Sheriff's Office.

Q. And how long have you been with the Sheriff's Office?

A. Eleven and a half years.

Q. What's your position there?

A. I work in the forensics service unit as a forensics investigator.

Q. And were you working in that capacity in June of 2013?

A. I was.

Q. And did you handle any evidence involved with this case, the State vs. Henry Nesbit?

A. I did, yes, ma'am.

MS. LINDER: May I approach?

THE COURT: You may.

BY MS. LINDER:

Q. At this time, I show you what's been pre-marked as State's Exhibit 13 for identification purposes. Do you recognize that item?

A. I do.

Q. How do you recognize it?

A. I recognize it by the label with the evidence tag that's listed on it and also by the top right label from the forensics analysis of the city lab.

Q. And does that appear to be substantially the same condition it was when you handled it?

A. Yes, ma'am.

Q. And when you handled that item, where did you take it from and where did you take it to?

A. I took it from our forensics service evidence compound and I transported that in my vehicle to M.U.S.C. to the City of Charleston drug lab.

Q. And do you recall who you gave that to at the city drug lab?

A. I don't recall specifically; usually it's Susan.

Q. Would it help refresh your recollection if you saw a chain of custody?

A. Yes, ma'am, it would.

Q. I misspoke last time. I'm going to be showing these State's exhibits for identification purposes only,

State's Exhibit 16. Do you recognize this?

A. I do.

Q. And is it typical to have a chain of custody form with the Sheriff's Office when you deal with evidence?

A. Yes, ma'am.

Q. And does seeing that paper, State's Exhibit 16, does that help refresh your recollection?

A. It does.

Q. And who did you give that item to?

A. Ms. Susan Payne.

MS. LINDER: At this time I have no further questions for this witness. Please answer any questions the defense may have.

THE COURT: Any questions for the witness?

MS. GAY: May I see the document you showed him, which was number 16 please?

I have no questions.

THE COURT: Any objection to the witness being excused from the State?

MS. LINDER: None from the State.

THE COURT: From the defense?

MS. GAY: No.

THE COURT: You are excused. Is that the last?

MS. LINDER: It is, Your Honor.

Madam Forelady, ladies and gentlemen, we are going

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to take advantage of this break in testimony to take our evening recess. Again, we appreciate you allowing us to go beyond five o'clock. We will resume in the morning at 10:30. I anticipate that we will finish this case tomorrow for your planning purposes.

During the break, please do not discuss the case in any manner whatsoever. Please don't allow yourselves to be exposed to any media coverage about this case. That includes anything on the radio, newspapers, television or Internet, and don't do any independent research on the Internet. Do not have any contact with anyone in or about the courthouse.

When you return in the morning, you will come directly to your jury room. And as soon as y'all arrive, again, we will resume testimony at 9:30.

If you would leave your note pads on the banister as you leave, that would be helpful to the bailiffs. They will collect them and will secure them for the evening recess.

Have a wonderful evening. We will see you in the morning at 9:30. If you would follow the bailiffs for me.

(Whereupon, the jury leaves open court at 5:11 p.m.)

THE COURT: Y'all can take your seats. Is there anything before we break for the evening from the State?

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MS. LINDER: No, Your Honor.

THE COURT: From the defense?

MS. GAY: No, Your Honor.

THE COURT: And you have two witnesses left; is that correct, that being Ms. Payne, who is a chain witness from the city lab, and Ms. Hilton, who is the analyst?

MS. LINDER: Yes.

THE COURT: How long do you think that testimony will take?

MS. LINDER: Five minutes maybe.

THE COURT: I would imagine the analyst might be a little longer?

MS. LINDER: Analyst will be about 15, since we are going to attempt to qualify her as an expert.

THE COURT: So that would be your last witness then and the State would rest?

MS. LINDER: Yes.

THE COURT: Does the defense anticipate calling any witnesses?

MS. GAY: Probably not, but we do have to speak to Mr. Nesbit.

THE COURT: I'm going to question him about that, but I'm asking for scheduling purposes.

MS. GAY: Probably not.

THE COURT: If you all have any request to

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instruct, you need to tell me now because I'm going to do my charges before I leave.

MS. GAY: I don't think we are going to get a mere presence to talk about that, Your Honor.

THE COURT: I don't think there's any support for a mere presence. Yeah, oh, are you being facetious? That was funny. Okay.

MS. GAY: That's the only one I could think of.

THE COURT: Any request from the State?

MS. MULKEY: No, Your Honor.

THE COURT: Okay. Are there any -- other than the ordinary, usual stuff, any requests from the defense?

MS. GAY: I don't believe so.

THE COURT: Okay, guys, then I will see y'all in the morning at 9:30. Have a good evening.

(Whereupon, the trial continues on June 8th, 2014 under a separate transcript.)

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CERTIFICATE OF REPORTER.

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

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

Witness my hand, I have hereunto affixed my official seal this 12th day of October, 2014, at Charleston, Charleston County, South Carolina.

Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

1 [redacted]

STATE OF SOUTH CAROLINA — COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON — 2013-GS-10-05527
2013-GS-10-05634
2013-GS-10-05639

STATE OF SOUTH CAROLINA)
)
VS.) TRANSCRIPT OF RECORD
) VOLUME II
)
HENRY OLIVER NESBIT, JR.)
) MAY 8, 2014
) CHARLESTON, SC
)
)

B E F O R E:

HONORABLE DEADRA L. JEFFERSON, JUDGE, AND A JURY.

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

STEPHANIE LINDER, ESQUIRE
LAUREN MULKEY, ESQUIRE
Attorneys for the State

MELISSA GAY, ESQUIRE
MICHAEL NELSON, ESQUIRE
Attorneys for the Defendant

Ruth L. Mott, RPR, CRR
Official Court Reporter

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
HENRY OLIVER NESBIT, JR.				
THE COURT	4			
SUSAN MARIE PAYNE				
MS. LINDER	12			
MS. GAY		14		
RENE HILTON				
MS. LINDER	15			
CLOSING ARGUMENTS				
MS. LINDER	40			
MS. GAY	54			
CHARGE OF THE COURT	67			
VERDICT OF THE JURY	94			
SENTENCE OF THE COURT	108			
CERTIFICATE OF REPORTER	110			

E X H I B I T S

NO.	DESCRIPTION	ID	EVD
S-10	DRUGS 138992	3	22
S-11	DRUGS 139026	3	22
S-12	DRUGS 139028	3	22
S-13	DRUGS - 4 ZIPLOCKS - 139029	3	22
S-14	DRUG ANALYSIS 01469 #1	3	19
S-15	DRUG ANALYSIS L13-01469 #2	3	19
S-16	CHAIN OF CUSTODY REPORT	3	
C-1	JURY NOTE	86	
C-2	JURY NOTE	92	
C-3	JURY NOTE	93	
C-4	SENTENCING SHEET	109	

- - -

(State's Exhibits 10-16 premarked for identification.)

THE COURT: Another form of plea offer has been extended, and you're accepting it at this point?

MR. NELSON: He's rejected it, Your Honor.

THE COURT: And what was the substance of that plea offer?

MS. LINDER: The substance of that plea offer, Your Honor, was a plea to a negotiated 18, and ultimately it would wrap up, out of all the pending charges, I do not have the actual number pending in front of me, I would end up dismissing about a quarter of them of my choice and -- yes.

THE COURT: Okay. Is that the substance of the plea offer, Ms. Gay?

MS. GAY: Yes, ma'am.

THE COURT: And did you fully explain that to your client?

MS. GAY: Yes. Mr. Nelson and I both did, and we allowed his mother to talk too for a period of time.

THE COURT: And did he accept or reject the offer?

THE DEFENDANT: Reject.

MS. GAY: He rejected the offer.

THE COURT: Sir, if you'd stand for me please and raise your right hand to be sworn.

HENRY OLIVER NESBIT, JR.,

being first duly sworn, testified as follows:

THE COURT: You can put your right hand down. State your full name for the record.

THE DEFENDANT: Henry Nesbit.

THE COURT: And, Mr. Nesbit, is it correct that the State offered you an additional extended plea offer to you this morning?

THE DEFENDANT: Yes, ma'am.

THE COURT: What is your understanding of that deal?

THE DEFENDANT: 18 years.

THE COURT: Okay. And did you accept or reject that offer?

THE DEFENDANT: Reject.

THE COURT: Did you fully discuss it with your attorneys?

THE DEFENDANT: Yes, ma'am.

THE COURT: Are you suffering from any mental disabilities, or are you under the influence of any drugs or alcohol?

THE DEFENDANT: No, ma'am.

THE COURT: Did you do that freely and voluntarily and of your own will?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you feel anyone forced you to do it?

THE DEFENDANT: No, ma'am.

THE COURT: And you do understand that if convicted

you're facing a minimum mandatory of 25 years, which is served day for day and is a no parole offense.

THE DEFENDANT: Yes, ma'am.

THE COURT: Knowing all of that, do you still wish to reject the plea offer?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. Thank you, sir. You may take a seat. Are you ready to get started?

MS. LINDER: Ready to go, Judge.

THE COURT: Are you folks ready to get started?

MS. GAY: Yes, ma'am.

THE COURT: Are your witnesses here?

MS. LINDER: Yes, witnesses are here.

THE COURT: Where are they at?

MS. LINDER: Out in the hallway.

THE COURT: Get your first one so we don't have to wait for them.

MS. GAY: Should we resolve the jury issue?

THE COURT: I've got to figure out which juror it is. Describe her again for me.

MR. NELSON: She is 50's, early 60's, blond hair.

THE COURT: Does she have glasses on?

MR. NELSON: I don't know, Your Honor.

THE COURT: Does that sound familiar?

THE BAILIFF: Doesn't sound like one of ours. There was

a lady with a juror badge on out there, but she had on a yellow top, but she wasn't with us.

THE COURT: Yellow top?

MR. NELSON: I would be a horrible witness, Your Honor.

THE COURT: So there's another jury or there's a juror here.

THE BAILIFF: She was at one of the other courts, had a juror badge on, and she went downstairs.

THE COURT: So maybe this person wasn't even on our jury.

THE BAILIFF: It's possible.

THE COURT: Let's bring in the jury, and if you recognize the person, approach, tell me who it is. We'll deal with it from there. May well not even have been -- I'm trying to figure out what other jury is going on in this building.

THE BAILIFF: Had a plea or something in one of the other courts, and I asked her about it.

THE COURT: I guess it is possible probate court could have had a jury trial. We'll figure it out. Go ahead and bring them in.

(The jury enters the courtroom.)

THE BAILIFF: All present, Your Honor.

THE COURT: Thank you. You may be seated.

(A bench conference was held off the record in the

presence of the jury but out of the hearing of the jury.)

THE COURT: Madam Forelady, ladies and gentlemen, it's good to see you all this morning. I'm glad everyone arrived safely. We apologize for the delay. Our court reporter was delayed due to an accident on the interstate this morning, so we appreciate your patience. I have a brief matter of law I need to take up with the attorneys. I'm going to turn you over to the hands of the bailiff, and if you would follow his instructions for me, please. And leave your notepads in your seats for me, please.

(Jury exits the courtroom.)

THE COURT: The lady in the white shirt that was sitting right here on the front row, bob and glasses, if you'd bring her back in for me.

(Requested juror enters the courtroom.)

THE COURT: Ma'am, how are you this morning?

THE JUROR: Good, thank you.

THE COURT: I need you all to close that door for me, please. Thank you.

Ma'am, what is your name and your juror number?

THE JUROR: Joanne Ward, 372.

THE COURT: Ms. Ward, were you in the elevator this morning with some attorneys?

THE JUROR: Yes, ma'am.

THE COURT: Yes. Just out of an abundance of caution

and not to make you feel compromised in any way, the attorneys have agreed to excuse you from this panel just because of the nature of the comment that the attorney made unwittingly. We appreciate your service. We don't question your impartiality at all, but just out of an abundance of caution, we're going to excuse you from this panel. We apologize for any inconvenience to you. Sometimes people unwittingly just say things and they don't realize until it's already out of their mouth, and so you've been diligent.

THE JUROR: Yes, I just -- I said to the attorney that I was a juror.

THE COURT: Exactly, and that's what made them all -- the bells and whistles then went off because then they realized -- well, the attorney that made the comment then realized that they probably -- it probably was not a good idea to have made that comment; but nevertheless, again, we don't question your impartiality or your ability to serve as a juror, but just out of an abundance of caution and to not make you feel uncomfortable, which I don't think you do, but just again out of an abundance of caution, we're going to excuse you from this panel, but we appreciate your time and your attention to this case. You've been timely, and we appreciate, again, your attentiveness and your willingness to participate in the process. You will be excused for the remainder of the week. You can discuss your jury service,

but I ask that you not do it until after Friday when the entire panel is excused; and, again, we thank you so very much, and you're excused with the Court's thanks.

(Juror exits the courtroom.)

MS. GAY: Your Honor, before they move the jury panel back --

THE COURT: Wait one second. Is there any exception to the dismissal of Juror No. 372 from the State?

MS. LINDER: No, Your Honor.

THE COURT: From the Defense?

MS. GAY: No, ma'am. I just wanted to get the record clear that it wasn't any of the attorneys in this trial, it was a different attorney.

THE COURT: Yes, I thought I made that clear.

MS. GAY: I was confused. It doesn't matter, just for purposes of the record.

THE COURT: Yes, I thought that was clear, but that's fine.

Now, Mr. Nesbit, I was sitting here thinking, I need to -- tell me why you rejected the plea offer, without compromising yourself or saying anything that's privileged. I guess I'm trying to figure out the rationale. Again, there are no consequences to me. I'm getting older now. I've been doing this 18 years, and I figure if folk can live with their consequences, I can live with their consequences. I don't

really bother myself very much because I learned a long time ago no good deed goes unpunished, so I really don't try to help folk anymore, but I'm just -- I think of your age, and you're so very young, and I always have to look at the worst case scenario, as a judge, and I think people think that judges have to get worked up to sentence people. We don't. We recognize somebody has to do it. And so I'm just curious, is it that you think you can get a better plea deal out of the State or that -- it just -- I'm at a little bit of a loss. I'm just a little confused as to why you would run the substantial risk you're facing at such a young age.

THE DEFENDANT: Because I'm not guilty, Your Honor.

THE COURT: Okay. I can live with that. I'm a believer in the jury system, a great believer in the jury system, so if you -- I would never discourage you from exercising that right.

You can get the jury panel for me, please.

And I don't want my remarks to be interpreted at all that I took a position one way or the other because I don't.

How long does the State think it will take to finish their case?

MS. LINDER: 30 minutes, total, both witnesses.

THE COURT: Okay. That's, worst case scenario, 11:00. How long do you think -- are you all going waive opening on the law or are you going to open and close?

MS. LINDER: Just close.

THE COURT: How long do you anticipate closing arguments?

MS. GAY: 20 minutes maybe.

THE COURT: Okay. How long do you think you're going to be?

MS. LINDER: 15 minutes, 15, 20 minutes.

THE COURT: I'm going to have the jury's lunches ordered by noon. I think that's probably a safe bet.

(The jury enters the courtroom.)

THE COURT: You may be seated. Ladies and gentlemen, we appreciate your patience. As a result of those matters of law the alternate is now seated with the remainder of the panel. We are now going to resume testimony. I ask that you give the attorneys your undivided attention.

You may proceed.

MS. LINDER: Thank you, Your Honor. May it please the Court, the State calls Susan Payne.

SUSAN MARIE PAYNE,

being first duly sworn, testified as follows:

THE CLERK: State your name.

THE WITNESS: My name is Susan Marie Payne, P-A-Y-N-E.

THE COURT: Ma'am, if you could speak directly into the microphone for me and speak up just a little bit more, ma'am.

THE WITNESS: Yes, ma'am.

DIRECT EXAMINATION BY MS. LINDER:

Q. Where are you presently employed?

A. The City of Charleston Police Department.

Q. And how long have you been there?

A. Almost nine years.

Q. What is your position there?

A. Currently I'm the LIMS administrator.

Q. And what was your position in the summer of 2013?

A. I was the LIMS administrator, and I'm also responsible for the evidence for the forensic services division.

Q. And what are your responsibilities and duties as being in charge of the evidence of the forensics?

A. I'm responsible for picking evidence up from the station and bringing it to the drug lab at MUSC and returning evidence and accepting evidence from outside agencies into the lab.

Q. And when an outside agency submits something to the lab, how do they go about doing that?

A. They come to the lab, and they bring it to us in a sealed evidence container along with all of the coordinating paperwork.

Q. And did you handle any evidence in this case, State versus Henry Nesbit?

A. Yes, ma'am.

Q. And how many items did you handle?

A. I handled, I believe it was three pieces for one submission and I think four for the next.
Q. And who did you receive those items from?
A. The first submission I received them from Deputy Watson and the second submission I received them from Deputy Riley.
Q. And when you received those submissions, and specifically the submissions in this case, from Riley and Watson, what did you do with them?
A. I make sure they are sealed with initials half on and half off the seal and that the description on the paperwork also matches what's actually in the evidence bag.
Q. And then where do you physically place them?
A. After they've been received and entered into the system, I place them into the safe.
MS. LINDER: Your Honor, may I approach?
THE COURT: Yes, ma'am.
MS. LINDER: Thank you, Judge.
THE COURT: You're welcome.
Q. At this time I'm going to hand you what's been premarked for identification purposes as State's Exhibit 10, 11, 12 and 13. If you could please take a look at those.
Do you recognize those items?
A. Yes, ma'am.
Q. How do you recognize them?
A. Each evidence bag has a sticker from the lab on it with

the analyst's initials, lab number, case number and the date it was sealed.

Q. And are these the items that you received in relation to this case, State versus Henry Nesbit?

A. Yes, ma'am.

Q. And do they appear to be in substantially the same condition as when you first received them?

A. Yes, ma'am.

MS. LINDER: Thank you. I have no further questions for this witness. Please answer anything the Defense may have.

THE COURT: You may proceed.

MS. GAY: Thank you, Your Honor.

THE COURT: You're welcome.

CROSS-EXAMINATION BY MS. GAY:

Q. Hey, how are you?

A. Good.

Q. I just have one question. Today your testimony is all about the analysis of these drugs, do you have any information or you don't have any information to help the jury determine what went on on June 16th, 2013?

A. No, ma'am.

MS. GAY: I have no further questions, Your Honor?

THE COURT: Any redirect of the witness?

MS. LINDER: No redirect, Your Honor.

THE COURT: Any objection to the witness being excused

from the State.

MS. LINDER: No objection from the State.

THE COURT: From the Defense?

MS. GAY: Nor the Defense.

THE COURT: Ma'am, you're excused.

THE WITNESS: Thank you.

THE COURT: Call your next witness you may.

MS. LINDER: State calls Rene Hilton.

RENE HILTON,

being first duly sworn, testified as follows:

THE CLERK: State your name and spell your last name for the record.

THE WITNESS: Rene Hilton, H-I-L-T-O-N.

THE COURT: You may proceed.

DIRECT EXAMINATION BY MS. LINDER - VOIR DIRE:

Q. What's your occupation?

A. I am laboratory manager.

Q. And where did you work in the summer of 2013?

A. The City of Charleston Police Department.

Q. And what position did you hold at that time?

A. I was an associate criminalist.

Q. And what do your duties include being an associate criminalist?

A. I perform drug analysis on evidence submitted by agencies, whether it be CPD or any outer agency within the

area. I perform quality checks on our instruments, and at the time I assisted the current laboratory manager with any other duties that she requested of me.

Q. Can you please tell the jury what type of training and education you have?

A. Yes. I have a chemistry -- a bachelor's of chemistry from the University of South Carolina. I completed the city's inhouse training, which consisted of shadowing an examiner, reading tests and actually performing competency tests, and then I also performed training that was inhouse, excuse me, online or in-person training.

Q. And have you had the occasion to chemically analyze substances in your career to determine whether or not the substance contains a narcotic or a narcotic type drug?

A. Yes.

Q. And approximately how many times have you conducted those tests?

A. I have completed almost 3,000 cases.

Q. And do you conduct those analyses as a part of your everyday work?

A. Yes.

Q. And what type of equipment do you use in the laboratory for testing?

A. We have an FTIR, which that's a short term for Fourier transform infrared spectrometer we also have a GC-MS, which

stands for gas chromatograph mass spectrometer.
Q. And this equipment that you use, is it precise and accurate in its testing ability?
A. Yes.
Q. And are there standards that you have to hold up to in order for your lab?
A. Yes.
Q. Have you previously ever been admitted as an expert in trial to testify?
A. Yes.
Q. And did you actually testify --
A. Yes.
Q. -- in those cases?
A. Yes.
MS. LINDER: Your Honor, at this time I would ask that Rene Hilton be declared an expert in the field of drug analysis.
THE COURT: Any objections or questions?
MS. GAY: No, Your Honor, no objections or questions.
THE COURT: Admitted without objection. You may proceed.
MS. LINDER: Thank you, Judge.
THE COURT: You're welcome.
Q. In this case, the State versus Henry Nesbit, did you complete any drug analyses?

A. Yes.
Q. And as a result of those drug analyses did you create a report?
A. Yes.
MS. LINDER: If I may approach?
THE COURT: Yes, ma'am.
Q. At this time I show you what's been marked as State's Exhibits 14 and 15 for identification purposes only, if you could look at these, please. Do you recognize those?
A. Yes.
Q. How do you recognize it?
A. My signature's on them.
Q. And who prepared that?
A. I did.
Q. When did you prepare the report?
A. The first report was done on July 2nd of 2013, and the second one was August 13 of 2013.
Q. And who was the subject of this drug report?
A. Henry Nesbit.
MS. LINDER: Your Honor, at this time I'd like to admit State's Exhibit 14 and 15 into evidence.
THE COURT: Any objection?
MS. GAY: One moment, please.
Your Honor, there was a previous motion filed in pretrial motions, but I understand the ruling, and so we are

agreeing they can go in.

THE COURT: Marked and admitted without objection.

(State's Exhibits 14-15 admitted into evidence.)

Q. Ms. Hilton, at this time I'm going to show you -- we're first going to go over State's Exhibit 14. I'm going to put it on this screen, and it will actually show up in front of you.

A. Okay.

Q. Can you tell the jury what State's Exhibit 14 is?

A. It's my lab report for the first submission that was submitted to me on July 1st, 2013.

Q. And what is this up here (indicating)?

A. It is our laboratory number.

Q. And this (indicating)?

A. It's the case number associated with this case.

Q. And what is this information (indicating)?

A. The suspect's name.

Q. And what is this down here (indicating)?

A. It's my signature.

Q. And this is the report that you generated?

A. Yes, ma'am.

Q. And can you please tell the jury what were your findings on this case for this report?

A. For the first two items that were the plastic bag with white powder, I determined them to be cocaine, and then the

final bag with the crystalline substance I determined to be Methylone.

Q. And can you tell me the weight of cocaine?

A. The individual or the total?

Q. The individual.

A. The first bag, item 138992, was 1.72 grams. The second item, 139026, was 19.53 grams.

Q. And then for those can you explain what this column over here says (indicating)?

A. That column is the methods that I used to determine the result of cocaine, so for those particular items I used a wet color test, and the FTIR, which was or Fourier transform infrared spectrometer.

Q. And on this report what was the third substance, what did you determine that third substance to be?

A. Methylone.

Q. And what was the weight of that?

A. 14.39 grams.

Q. At this time I'm going to show you what's already been admitted into evidence as State's Exhibit 15. What is this (indicating)?

A. The laboratory number.

Q. And what is this (indicating)?

A. The case number.

Q. And again what is down here (indicating)?

A. My signature.
Q. And can you please tell the jury in your expert opinion what your findings were after completing tests on these submissions?
A. For four -- all four items I determined them to be Methylone.
Q. And what were the weights of each individual submission?
A. Item 139029, which was a plastic bag of crystalline substance, was 95.18 grams. The second item, the same plastic bag with crystalline substance, Item 139029-3, was 94.85. Item 3 -- excuse me, Item 13909 -- 29-4 was the weight of 95.31 grams, and then the final item, 139029-5 was 94.93 grams.
Q. And both of the reports that we just went through for the jury, State's Exhibit 14 and 15, these both were submissions from the same case, correct?
A. The same case number, yes.
Q. The same case number.
A. Yes.
Q. And can you tell the jury the total weight of all of the cocaine in this case?
A. 21.25 grams.
Q. And can you tell the jury the total weight of all the Methylone in this case?
A. 394.66 grams.

Q. And is Methylone a Schedule I substance?
A. Yes.
Q. At this time I show you what's been marked for identification purposes as State's Exhibit 10, 11, 12 and 13, if you can please look at those.
A. Okay.
Q. And do you recognize those items?
A. Yes.
Q. How do you recognize them?
A. My initials are on them as well as a City of Charleston Police sticker that I put on there while analyzing the evidence.
Q. And do they appear to be in substantially the same condition as when you first received them?
A. Yes.
MS. LINDER: Your Honor, at this time the State would seek to admit State's Exhibits 10, 11, 12 and 13 into evidence.
THE COURT: Any objection?
MS. GAY: Over previous objection, Your Honor.
THE COURT: Marked and admitted.
(State's Exhibits 10-13 admitted into evidence.)
Q. All right. First I want to talk about State's Exhibit 10. Can you explain what State's Exhibit 10 is?
A. It's a plastic bag with a white powdery substance.

Q. And it appears there's a little blue in here. What's that blue, do you have any idea?
A. The officer color tested the substance before submitting it.
Q. And what was your -- in your expert opinion what was this white substance?
A. Cocaine.
Q. All right. And then I'll take from you State's Exhibit 11, and can you tell the jury what this item is?
A. A plastic bag with white powder.
Q. And in your expert opinion what is the substance?
A. Cocaine.
Q. And what are all these -- it looks like Sharpie, for lack of a better word -- what are all these markings and writings on that little bag inside?
A. Our policies state that, when we get evidence, we have to mark it with the laboratory number, the weight and our initials to prove that we actually touched that evidence and there was no tampering once we -- excuse me, after we put it back in the bag and sealed it.
Q. And what are these initials up here (indicating)?
A. Those are my initials.
Q. And is there a significance to the location of where those initials are?
A. It's just half on and half off the seal so we know it's

not broken.

Q. And is this the same procedure that you go through with all items of narcotics that you receive?

A. Yes, ma'am.

Q. And is that true that you did that in all of your cases -- all of the submissions in this case?

A. Yes, ma'am.

Q. All right. Next I'm going to look at State's Exhibit 12, if you can tell the jury what this is.

A. It's a plastic bag with crystalline substance.

Q. And in your expert opinion what was this?

A. Methylone.

Q. And then finally I'd like to look at State's Exhibit 13. What is this substance?

A. It's four individual bags with plastic -- excuse me, with plastic bags with crystalline substance.

Q. And what was that crystalline substance?

A. Methylone.

MS. LINDER: Your Honor, I don't have any other questions for this witness.

If you can please answer any questions that the defendants may have.

THE COURT: Any questions for the witness?

MS. GAY: No questions for this witness, Your Honor.

THE COURT: Any objection to the witness being excused,

from the State?

MS. LINDER: None from the State.

THE COURT: From the Defense?

MS. GAY: No, ma'am.

THE COURT: Ma'am, you're excused.

State may proceed.

MS. LINDER: State rests.

THE COURT: Madam forelady, ladies and gentlemen, the State has rested their case. I have some matters of law to take up with the attorneys. During this break please do not discuss the case among yourselves, and leave your notepads in your seats. We do appreciate your patience.

(Jury exits the courtroom.)

THE COURT: You may be seated. You can take your seat, Ms. Gay. I'll deal with motions in just a minute.

Okay. Are there any motions? The State has rested their case.

MS. GAY: Yes, ma'am. At this time I make a motion for directed verdict on behalf of my client, Mr. Nesbit. Even in the light most favorable to the State this evidence that has been presented does not rise to the level of the elements of the case, and I'll of course leave that to the Court's discretion.

THE COURT: Would the state like to respond?

MS. LINDER: Briefly, Your Honor, we believe that when

looking at it in the light most favorable to the state it does pass that. The State has put up witnesses and gotten exhibits admitted to show Mr. Nesbit was in possession of the weights of the drugs. There's been testimony about the intent to distribute. There's been testimony about the weight which would get us to the trafficking. There's also been testimony, coupled with the video, of the eluding the police themselves for the failure to stop, so we believe that in the light most favorable to the State that the directed verdict motion should be denied and this case should go to the jury.

THE COURT: Anything further, Ms. Gay?

MS. GAY: No, ma'am.

THE COURT: Considering the evidence in the light most favorable to the State, the Court is concerned with the existence or nonexistence of evidence, not its weight. If there is direct or substantial circumstantial evidence reasonably tending to prove the defendant's guilt, it is appropriate that the matter be submitted to the jury. The State is not required to prove the defendant's guilt to the exclusion of every other reasonable hypothesis. There is direct testimony as well as substantial circumstantial evidence in this case reasonably tending to prove the defendant's guilt. There's already been testimony from a chemist regarding the weight of the cocaine which is

presumptive for the 10 to 28 gram range, and as well as the Methylone does not have to have a weight inference. Its packaging in and of itself is sufficient to rise to the level of possession with the intent to distribute. And there's more than ample evidence on the failure to stop. There's a video of the actual pursuit after the defendant was put on notice of a lawful traffic stop, and therefore the motion for directed verdict is denied.

Sir, if you would stand, please, and raise your right hand to be sworn -- actually, I'll remind you you're still under oath, as I already swore you in earlier. You can put your right hand down.

Sir, I'm now going to explain to you certain of your rights. If you don't understand something that I say, please let me know. If you need me to repeat something, please let me know. Do you understand?

THE DEFENDANT: Yes, ma'am.

THE COURT: We have now reached the stage of the trial where you may present your defense. You have the right to claim the protections given to you by the Fifth Amendment to the Constitution, and that amendment states in part that no person shall be compelled in any criminal case to be a witness against himself. In other words, you have no burden of proof in this case. You do not have to testify, and you do not have to say anything that would incriminate you in the

prosecution of this case. This means that you cannot be required to testify. You have the right to testify, however, no one can make you testify. This is a personal right, and no one can waive that right except you. If you decide to testify, you will be subject to the same rules that govern other witnesses, and you may be examined and cross-examined on any relevant issue in this case. In addition, if you have any convictions involving dishonesty or false statement or for crimes punishable by imprisonment for more than one year and this Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to you, the solicitor will be allowed to use that record to attack your credibility.

If you decide not to -- if you decide to testify, this decision on your part must be made freely, voluntary and intelligently with knowledge of the protections given to you by the Fifth Amendment to the Constitution of the United States. If you decide not to testify, I will instruct the jury that they're not to give that fact any consideration whatsoever, that there is to be no prejudice to you nor any inferences drawn from you not testifying, that you have no burden of proof in this case, that the burden remains on the State to prove each and every element of the offenses you're charged with beyond a reasonable doubt, and that you have no burden to prove yourself innocent and the fact that you did

not testify should not be discussed in any manner whatsoever in the jury room.

You may talk with your family members, your friends, your attorneys or anyone else, but the decision whether to testify or not to testify is left entirely up to you. Do you understand your rights as I've explained them to you?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you have any questions about what I've just explained to you?

THE DEFENDANT: No, ma'am.

THE COURT: Have you discussed with your attorneys whether you should or should not testify?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you wish to speak with them any more at this time?

THE DEFENDANT: No, ma'am.

THE COURT: And you all gave me his record earlier. It was a 2005 parole revocation, a failure to stop for a blue light, possession of a stolen motor vehicle, assault with intent to kill, possession of a stolen gun in 2002, '09 DUS 2nd, operating without a driver's license, '07 crack 1st, failure to stop for a blue light, PWID cocaine 1st and a proximity, and there are two counts of the PWID; is that accurate?

MS. LINDER: Yes, Judge.

THE COURT: Is there any of this that the State would be seeking to use to impeach his credibility?

MS. LINDER: Nothing to impeach his credibility.

THE COURT: Oh, there's an '02 B&E motor vehicle, two counts, and a burglary 3rd; but those would be beyond the ten years, and no notice was given to the Defense of the intent to use those.

Okay. Sir, do you wish to testify.

THE DEFENDANT: No, ma'am.

THE COURT: All right. You can take your seat.

Does the Defense have any other witnesses or any evidence that they would be seeking to introduce, as Mr. Nesbit does not desire to testify?

MS. GAY: No, Your Honor.

THE COURT: So does the Defense rest as well?

MS. GAY: Defense rests, and we renew our motion, Your Honor.

THE COURT: Would the State like to respond?

MS. LINDER: Your Honor, I believe we stated our position previously.

THE COURT: The Court would deny the motion based on its previous ruling and incorporates that -- those findings into this portion of the record.

If you all will give me a few minutes, we'll have charge conference. I just need to print a couple things. Are there

any requests for any lesser included offenses?

MS. GAY: I think, based on the weight, we would like to ask for possession with intent to distribute, think it actually fits.

THE COURT: I just need to print a couple things and we'll go over it, and we'll see if it's supported by the facts; and then what I'll do is we'll bring back in the jury, you'll be able to rest in their presence, and then we'll go forward with the charge and instructions.

MS. GAY: In furtherance of that argument, there are two packets of drugs. One of them is a smaller amount, and one was a larger amount, the cocaine, and both of those there's a smaller amount.

THE COURT: I can't hear you.

MS. GAY: There's smaller amounts. It's not just one baggy. And so if we -- I mean, the jury may want to pick an option of having him be convicted of one baggy and not the other baggy.

THE COURT: I don't think you can. I think, the way the law is structured, the packaging works against your client because that supports the fact that he intended to distribute it, sell it.

MS. GAY: Well, I understand, but that's my argument for possibly getting a lesser included offense.

THE COURT: I'll think about it. Give me about ten

minutes, and then we'll have a charge conference.

(Recess held.)

THE COURT: State ready?

MS. LINDER: State's ready.

THE COURT: Defense ready?

MS. GAY: Yes, ma'am.

THE COURT: I will give the jury a general instruction regarding their responsibility and my responsibility. I'll give the judge witness credibility and believability. I'll give them a general instruction regarding expert witness testimony. I'll give them a general instruction on direct and circumstantial evidence from State versus Grippon. I'll then give general instruction that the charges, the arrest and the indictment are not evidence or create any presumptions, as well as on the presumption of innocence. I'll charge Victor versus Nebraska on reasonable doubt. I'll then instruct on the elements of failure to stop for a blue light, which is 56-5-750; and then the elements of trafficking in cocaine, which are the usual elements, without me belaboring it at this time, which deals with the proof of any mixture containing cocaine pursuant to 44-53-370(e)(2)(a), 10 grams or more but less than 28 grams, as the testimony has been it was 21.25 grams of cocaine. And then on the elements of possession with the intent to distribute Methylone, which I may say commonly referred to as

bath salts, but I may not, just say Methylone. Now, I have searched the statute. Is there any presumptive amount of Methylone in the statute?

MS. LINDER: Not that I'm aware of, Your Honor.

THE COURT: I'm not either. I'll then instruct on multiple charges. He's charged with several things. The jury can acquit or convict him on any or all of them and that they are to consider each and every element of these offenses separately and independently based on the evidence that has been presented, and then I will instruct on the form of the verdict. Are there any exceptions to the charge as proposed from the State?

MS. LINDER: None from the State.

THE COURT: From the Defense?

MS. GAY: Your Honor, in light of the fact that there is no presumptive weight on the Methylone, I would ask you to also charge possession as a lesser included, possession with intent. We have multiple packages, but we have no deal. We have no actual hand to hand. We have no information that's been put into evidence that there was any kind of distribution or sale going down or any type of -- so I would just ask that you charge also possession.

THE COURT: Any exception from the State?

MS. LINDER: Judge, I believe that there was testimony about the packaging, the overall weight, that it was not

personal use and about the -- what the cash on him indicates. I don't believe possession charged as a lesser included is warranted in this case.

THE COURT: And you can't get a valid prescription for Methylone, I would imagine, correct?

MS. LINDER: No, Judge.

THE COURT: I'm going to instruct the lesser included just because I don't really see any prejudice to the State in instructing it. I will, however, note that the record is void of any testimony that it was for his personal use or that he simply possessed it, but I don't see any harm or foul in instructing.

MS. LINDER: Thank you, Judge.

THE COURT: You're welcome. Is there anything further from the Defense regarding any exceptions to the charge as proposed?

MS. GAY: No, ma'am.

THE COURT: Now, PWID is a lesser included of trafficking. Is there any request to instruct the lesser included of PWID on the cocaine --

MS. GAY: Yes.

THE COURT: -- from the State or the Defense?

MS. GAY: I asked that right before you took the break, to consider that. You said you would look into that. On behalf of the defendant I would ask you to please charge

that.

THE COURT: What's the State's position?

MS. LINDER: Your Honor, I do not think that a possession with intent to distribute cocaine charge should be instructed to the jury, kind of exactly what Ms. Gay just talked about the Methylone, there's been no evidence, no testimony that there was a deal, that there was anything of the sort, so in kind of her using her argument why possession of Methylone should be charged, I would say that is why possession with intent to distribute cocaine should not be charged. It is possession of a weight, and that is what the testimony has been.

MS. GAY: Just because I felt the need to have to do this, it is a possession of a weight, but often in many cases when there's possession with intent to distribute when there isn't actual testimony of a sale that was set up or whatever, this is up to the jury to determine the weight of the packaging and those types of things to determine whether or not they believe the person possessed with intent to distribute or not, and I believe that we should give the jury that option.

MS. LINDER: I'm sorry, Your Honor, in my response to that, in the trafficking statute itself, even if you take apart the end where it's just about the possession, it does encompass, in the trafficking, possession with intent to

distribute, deliver, dispense, all of that is within the trafficking statute itself, so I think it covers it.

THE COURT: Again, I don't see any prejudice to the State in instructing PWID. PWID deals more -- less with weight, State doesn't have a duty to prove weight, responsibility to prove weight or the element of weight, but it can be proven by the way it was packaged, the circumstances surrounding it. In this instance the amount of money he had on him, the way the drugs were packaged, otherwise could conceivably support a PWID charge. However, I would -- what concerns me a little is the State did not present any testimony regarding -- usually when you testify about the amount of cocaine, you also have the chemist convert it to grains, and you all did not, and I was just curious. Usually the chemist talks about the amount of grams and grains of cocaine, and they didn't in this instance, so I'm not going to instruct anything about the presumption of the weight in the PWID under the statute because we don't have any testimony regarding the conversion of the cocaine to grains, so I'm not going to instruct that portion of it.

Okay. Anything further regarding requests for instruction or exceptions to the Court's instructions from the State?

MS. LINDER: Beg the Court's indulgence. I could absolutely be wrong, but I thought in the statute it does

talk about anything over 1 gram of cocaine is the presumptive weight.

THE COURT: I think it says one gram of marijuana. I might need to look back to make sure.

MS. LINDER: Give me one second. I have the statute right here.

THE COURT: I may have overlooked it. Give me one second, Ms. Linder. You might be accurate, and I may have deleted a portion of what I printed inadvertently.

MS. LINDER: Your Honor, in 44-53-370, if you look for (b)(4), it's possession of more than one gram of cocaine, and then it talks about other things, is prima facie evidence of being guilty of violation of subsection (a), and subsection (a) is the PWID.

THE COURT: Then I'll insert the one gram in the PWID lesser included on the trafficking. Any exception from the Defense?

MS. GAY: No, ma'am.

THE COURT: How does it read exactly, is it one gram or more?

MS. LINDER: Judge, it says, possession of more than one gram of cocaine. Yes, Judge.

THE COURT: Okay. Is there anything else we need to take up before we proceed with closing arguments and instructions, from the State?

MS. LINDER: Nothing from the State.

THE COURT: From the Defense?

MS. GAY: No, ma'am.

THE COURT: Can you all make sure all the evidence is in place because I'm not going to stop. I might stop for a restroom break, but let's just make sure.

(Brief pause.)

THE COURT: Okay. Is all the evidence in place?

MS. LINDER: It is, Your Honor.

THE COURT: Please bring in the jury. And I'll give you the chance to rest in the presence of the jury, Ms. Gay, and then we'll go into closing argument.

MS. GAY: Judge, I was wondering, I'd have to ask you if it's even possible, but the packaging that they have, the large package, I had wanted to cut the package open and hold individual bags. She says I can't do that without talking to you. And, I mean, I realize it's been put into evidence.

THE COURT: Let me see what you're talking about.

MS. LINDER: Your Honor, I believe she wants to cut open the clear plastic sealed evidence bag to pull out all the different bags of drugs, and I just said that's nothing I've ever seen done, and it's certainly not up to me to do that because if by chance there were a conviction or PCR, it was retried, then the seal would be broken.

THE COURT: I guess I'm trying to figure out why you

need to.

Wait one second for me, please.

MS. GAY: I have my reason, but in the scheme of things --

THE COURT: In the scheme of things, I can see how it's packaged.

MS. LINDER: I guess the jury wouldn't be allowed --

THE COURT: No. It's a security issue, really, more than anything else because these can be unsealed because they're in just, basically, Ziploc bags. They're not even Ziploc bags.

MS. GAY: So your concern is that they --

THE COURT: My concern is more of a safety issue, but I don't see any prejudice to your client because it's clearly visible from this large baggy how each individual one is packaged and how many are inside. I mean, literally, you can move it around to see how they're individually packaged, and you can feel how they're individually packaged.

MS. GAY: I understand.

THE COURT: If it were different than that, I might let you open it, but I just don't see anything could be accomplished by that; and I have to balance that with the security issues and the preservation issues, but I mean, it's very clear -- and also from each baggy it's clear how each is individually marked, and you can move it around, and you

can -- they can feel it, they can feel the contents, and they can see, if you move it around, you can see each individual bag that's in here and how much is in each individual bag.

MS. GAY: I understand.

THE COURT: So I think you can accomplish what you need to in its current state.

All right. Tell them to bring in the jury.

(The jury enters the courtroom.)

THE BAILIFF: All present, Your Honor.

THE COURT: Thank you. You may be seated. The Defense may proceed.

MS. GAY: Your Honor, at this time the Defense would rest.

THE COURT: Madam forelady, ladies and gentlemen, both the State and the Defense have rested their cases. The next part of the process is closing arguments and the Court's instructions. I would ask that you give the attorneys your undivided attention. State may proceed.

MS. LINDER: Thank you, Your Honor, may it please the Court.

THE COURT: Yes, ma'am.

MS. LINDER: In the beginning of this case yesterday Ms. Mulkey told you that we live in a society of laws. In a society of laws we, as citizens, have been afforded many freedoms; and with those freedoms come a lot of

responsibilities, including obeying the laws. Deputies, police officers are all sworn to uphold and enforce those laws. In this case there are traffic laws, specifically 52-2-2150. That is that you must use your turn signal for the continuous 100 feet leading up to and through making your turn. There is also another law in this case that if law enforcement signals to you, via blue lights or sirens, then you must yield to law enforcement and stop for them.

This case also involves drug laws. It involves possession, possession with intent to distribute, and it involves trafficking. And the drugs that are involved in this case are cocaine and Methylone, which are also bath salts, which is a Schedule I. At the beginning of the trial Ms. Gay told you that this is a very important day, very important day for Mr. Nesbit, and I agree. I agree it's a very important day. But for Mr. Nesbit and his choices and his actions, we wouldn't all be here. I urge you to focus on Mr. Nesbit when you go back there and deliberate.

I'd like to take a second and go through a little bit of the testimony that you've heard over the past day or so. You heard from Deputy Chavez. Eight years he's been with law enforcement. Eight years he has done traffic violations. It was June 16th of 2013. It was a normal patrol day. There was extra law enforcement for traffic laws, speeding, running a red light, running a stop sign, not using signals, just any

traffic violations. A lot of people around. It was summer on Isle of Palms. It was a regular day for him. He and his partner were sitting on opposite ends of a median in that main drag of IOP, and then it was getting close to the end of the shift, so he scooted around; and then he was just there by himself, waiting out the rest of his shift, just having a normal day. And in that normal day for Deputy Chavez he saw somebody violate 56-5-2150 that all of us, when we go around and are driving vehicles, we have to abide by those laws for the safety of that driver and the safety of all other people walking, riding, anything, on the rode. He attempted to make a traffic stop. He saw somebody he didn't know not use a turn signal. They didn't signal at all, and then they turned right. You're here for the defendant's actions, Mr. Nesbit. He did not signal 100 feet out as required by law, or 50 feet out as required by law, or 45 or 40 or 35 or 30. He did not signal all the way to the stop sign. He did not signal as he was turning. He didn't signal at all. So Deputy Chavez did what he's charged to do, did what we ask him to do, and he activated his blue lights and sirens to initiate a traffic stop.

You know, it could have all been over right then. Could have pulled over, gotten a ticket, a warning, "There's a lot of people. Make sure you use those signals." Could have been a ticket. I don't even know how much that fine is. Who

knows? But Mr. Nesbit's actions made it to where we'll never know. Mr. Nesbit saw those blue lights. You watched the video. You saw him and then, oh, hey, now he's using that turn signal, he's getting pulled over. He pulls over, after not doing it at the stop sign at J.C. Long and Ocean Boulevard. He goes onto Ninth, then he looks back, "I'm going to the spot." It looks like he's turning over to slow down for just an average everyday traffic stop that Deputy Chavez has been doing for eight years, but then Mr. Nesbit's actions, Mr. Nesbit's decision, Mr. Nesbit's choices changed that moment, changed that day, and brought all of us here together today. He took off. I mean, he took off. You watched that video. The video is in evidence, if you want to watch it again, feel free.

Deputy Chavez took you through the map, and he showed you the intersection. He showed you 100 feet back. He showed you the area that he could have put the light on and he didn't. He showed you how he turned, and then he turned, and then he turned, and then he took off. We even had to move the map because it was such a long chase. He was fleeing from Deputy Chavez. He was fleeing from the blue lights and the sirens. Deputy Chavez told you he activated his blue lights and sirens. You know he activated his blue lights and sirens because that's what turned on his camera, and when you watch that video, you hear the sirens, and you

see the reflections. And Mr. Nesbit's obviously knew that was going on because he started pulling over, and he turned around and said something about it before taking off and all of that.

So let's talk about that. Went through the map. You know, Judge Jefferson in her jury qualifications on Monday morning talks a lot about Court TV and how it's really exciting and entertaining, and it is not like that. She's right. It's not like that, but, oh, my gosh, in this case you actually have a video. I mean, very typically cars are not equipped with cameras. Very typically there's no -- nothing for us to press play for you to watch for you to see yourself the laws being broken, but in this case we saw it. 86 miles an hour he was going. He was weaving around, in the bike lane, out of the bike lane, in the other traffic, all over. He was failing to stop for a blue light. And the only reason that that pursuit stopped was not for the hard work of Deputy Chavez, unfortunately, was the defendant's actions. He lost control of the vehicle because he was crazily, recklessly driving it all over, and he ran into something. His actions. His driving at the high rate of speed. His wreck.

You know, when that wreck happened, it is a shame for anyone ever to be injured, absolutely, and Deputy Chavez pulled his cruiser up, did his duty. Because not only does

he have a duty to worry about traffic violations, he has the duty for people's safety, including the safety of somebody who was just running from him. He got out. He jumped out of the car. He was there enforcing those laws. He jumped out of the car. His duty was to preserve the scene. He had to preserve the scene. He couldn't be moving stuff all over. He also couldn't be moving his car all over. Whenever there's a pursuit and then an accident, even though Deputy Chavez was not involved in the accident, it's like, ooh, hands off, you need an impartial other party, in this case South Carolina Highway Patrol, who had to come and investigate it. He couldn't move his car because of those laws, those set of laws that we have. Those checks and balances that give us so many amazing freedoms. Pulled up, stopped his car, as he had to, and he was trying to -- he ran around, trying to make sure he wasn't moving, trying to make sure Mr. Nesbit wasn't trying to run. But, again, we're here today because of the defendant, the defendant's actions, and Mr. Nesbit tried to run. I think Deputy Chavez showed you he was rocking and trying to get up. I mean, you just were in a wreck, and you're trying to get up and run. So you heard him on the video, Deputy Chavez is giving him -- stay on the ground, stay on the ground, get on the ground, stay on the ground. Yes, part of that is because he just ran from him. He needed to place him under arrest, but part of that is

because, holy cow, this wreck just happened. You need to stay still. Don't hurt yourself anymore. Are you hurt? Don't hurt any more. So he went over there. He got him to stay on the ground. He then cuffed him and just kind of stayed there with him. Mr. Nesbit was covered in blood. He just was in a horrible motorcycle accident, so he's just standing with him, watching him, making sure he doesn't run because earlier the defendant shows him that he was trying to run, so Deputy Chavez had to stay and stand and watch and make sure and wait for his back up.

Backup arrived. Deputy Buckhannon arrived on scene. As soon as Deputy Buckhannon came up on scene. Chavez knew he wasn't alone anymore. He doesn't have to stand guard over Mr. Nesbit and just stand and watch and make sure that no other cars are coming on scene. Because he's looking to protect himself, Mr. Nesbit, everybody else in the community. He doesn't want another car ramming in, driving. He doesn't want any of that, so he's just standing, looking around, keeping eyes on him, keeping eyes on him. As soon as Buckhannon comes, Buckhannon's taking over that duty, so he's able to continue the arrest process that he already started; and part of that that goes along, as prescribed by law, is a search incident to arrest. Pulling stuff out of your pockets. I got an ID. I got nothing else. All right. Let's go. If that was the case, he just would have gone to

the hospital and things would be fine. But, again, it's the defendant's actions that bring us here today, which is why that's where it didn't end.

When Deputy Chavez did the search of the defendant instant to arrest, he looked in his pockets, similar to how I just did, and he used kind of a lingo or code, saying loads of 33, loads of 33. 33 means drugs. You know, so he did that to let his backup, Deputy Buckhannon, know what was going on, know the kind of situation there was. Then he also talked about there was lots of cash. So as soon as hearing that, Deputy Buckhannon, who arrived on scene kind of started looking around at other traffic. Heard that, 33. Went to his car. Got an evidence bag. Brought it over to him. It's all on the video. You see Buckhannon bringing over the evidence bag after Deputy Chavez indicates, loads of 33. So everything that was taken off the defendant's person from his pockets were put in the bag, and then Deputy Chavez testified that he locked it in the back seat of his car. He was the only one with the key. He'd checked the area before. There was nothing in there. It's all the stuff off of his person.

You know, the Defense brought up a bunch of points about prints. Why didn't you print the bags, why didn't you print the bags, why didn't you print the bags. Well, you know, if there was a wreck here, and then way over here something was found that seemed out of place, you know, I don't know if

they belong to that guy or they don't, so maybe in those situations you may try to print the bag to figure out who it belonged -- who they belonged to. But in this case that didn't happen because it was in his pockets, in his right and his left pockets in his pants that he was wearing, pants that he was wearing when he was driving the motorcycle, pants that he was wearing when he wrecked the motorcycle, pants that he had on him when Deputy Chavez searched him.

A lot of issues also are brought up about cameras. You know, I was tickled that there was a video at all in this case, honestly. You know what, sure, Deputy Buckhannon could have said, I'm here to for backup oh, wait, am I in the shot (indicating)? I mean, sure, I guess so, but both of them are more concerned with a fellow citizen who is on the ground, bleeding. Both of them were more concerned that other people on the Isle of Palms, visiting, live there, whatever, were going to come up on it and maybe get in the middle of something. You know, that's what their focus was. Their focus was the community's safety and the defendant's safety and the defendant's injuries and health.

So, again, after all the defendant's choices there was that wreck, and he was under arrest, and he got taken by EMS to MUSC for medical attention. Deputy Buckhannon, as they always do, again, prescribed by law, these society of laws we live in, followed the evidence. At the very end of that very

long video -- seemed kind of boring for big chunks of it -- of the first clip, you see the ambulance take off, and then you see Buckhannon's car drive off after it. That's what happened. They both testified, Deputy Chavez and Deputy Buckhannon testified that's what happened. That's procedure. That's what we do.

Then crime scene came out. Erin Meyer, she testified for you yesterday afternoon. There was video also when crime scene went out, and that was that second clip that you all watched. She took pictures. The pictures are here. They're in evidence. You can check them out. You can look at them. You'll have all this stuff back there with you. You know, you can look at the pictures, and the evidence bag things are being brought out of, you can look at all this stuff. All of this is going to be back there with you. She took pictures. That's her job. The law makes her do it. She then packaged everything.

And then they had to count the money, so that was a very long time on the video, and you saw them pulling out all this money. Wads of money. Bills and bills and bills and bills and bills. It was $2,918. Out of that 103 bills were $20 bills, so there were over 100 $20 bills in that wad of cash in his pocket. And as Deputy Chavez testified to you, that's an indicator of sales. $20 bills are common denominations for drug transactions. So at the hospital Buckhannon was

with the defendant. He went in for medical attention. He had his clothing cut off. Buckhannon stood there, watched his clothes being cut off. Took the clothes as property, as evidence, and then after Chavez finished with everything on the scene, he then followed through, as he has to by law. Went to the hospital. He got the bag from Buckhannon. All right. Let's make sure nothing was amiss. I mean, he's covered in blood on the street, so you weren't digging in every nook and cranny, so he went through it, and in the little coin pocket, that I still don't understand why they put on jeans to this day, they found more drugs. They were field tested. All of those drugs Deputy Chavez ended up taking into evidence, as he has to as prescribed by law. He has them all bagged. He takes them into evidence. He submits them.

You heard a bunch of people -- kind of boring -- the chain witnesses, little bit yesterday and first thing this morning; and they're more or less saying, I took it, it wasn't tampered here, I checked it here, I wrote this down, I did this, and I put it back. That's what that is. We have to go through that to show you that everything's above board with how things are handled because this is a serious case. Because every case, no matter how big or small, is serious.

You heard from the chemical analyst, Rene Hilton. She talked to you. The weight of the total cocaine was 21.25

grams and the Methylone was 394., I believe, 66 grams. My math is not good, so you feel free to add it up, tally it up yourself. You're going to have these back there with you. These were the lab reports that you saw up on the screen that have which bag, what's the amount, what is it. You can add them all up. And you're going to have these back there with you. You'll have the drugs. You've got some Methylone, looks like little -- she called them crystalline substances, I think. You'll have those. You'll have this back there. This is some cocaine, really big written right there so you'll know what that is. You'll have this big bag of cocaine, and you'll have this, all this Methylone. And you'll see in this, you can move it around and do whatever you want to the bag, check it out, touch it. It's all sealed -- pardon me. It's all sealed, so you can go through all that back there.

We're in a society of laws, and with those laws come many freedoms and many duties. The Judge will talk to you about what the law is in this case, and I urge you to listen to her. She's a Judge for a reason. You need to listen to everything, when it comes to the law, from her. But I just want to briefly talk to you about it so you kind of know what you're going to be looking for. Mr. Nesbit's charged with failure to stop for a blue light. What that means is he was operating a motor vehicle. Deputy Chavez testified a

motorcycle is a motor vehicle. And upon being signaled to stop by blue lights and/or sirens he did not stop, and the video I believe shows that.

Next he is charged with possession with intent to distribute Methylone. Possession with intent to distribute Methylone means that he possessed it, in this case in his pockets. The with intent to distribute, when you think about that, it's kind of a weird concept. More or less, all the cash on him I would submit to you means he was selling. He was dealing. I don't walk around with three grand in cash on me. But if you don't think that, then you can look (indicating). Four packages, all about the same weight, multiple packaging, all measured out. You're allowed to infer items into that if you believe it shows you that he had the intent to distribute that. Distribute could be for money. Distribute could be to share with a friend. It could mean whatever.

He's also charged with trafficking in cocaine. Trafficking cocaine is ultimately possessing cocaine of a specific weight, and in this case I would submit to you that he possessed cocaine. He had this in a pocket, and he had this in his little coin pocket (indicating). He possessed it. And the weight, it has to be over 10 grams and less than 28. So you heard testimony from the expert -- and like I said, you're going to have these back there. You can read

the reports. You can read that she wrote on here, this one alone is 19.53. I submit 19.53 is over 10 and under 28.

Back on June 16th of 2011 Mr. Nesbit made a lot of choices, and his actions all have consequences, and that's why we're here. On June 16th of 2011 Mr. Nesbit was driving down J.C. Long. Didn't use his signal. Didn't use his signal 100, 50 feet out, or at the stop sign when he turned. Deputy Chavez did his job, which is to pull him over. Mr. Nesbit continued on Ocean, decided to turn down Ninth, looked like he was pulling over, then he took off, going down Ninth and then down Palm Boulevard for a long time. He failed to stop for blue lights, and then when he was being arrested for failing to stop for blue lights, a search incident to arrest occurs. It is what happens. And that's when they found all of those drugs on him. He had all of those drugs on him when he was fleeing from police, and he had all of those drugs on him when he was ultimately, I'd say caught by police, but, I mean, he was the architect of his own life there. I mean, he fled, he wrecked, and we're here today.

I ask that you go back, you consider all the evidence. Like I said, you'll have all this for you. You'll also have the video if you'd like to watch that. Consider everything, please give it a lot of thought, and I'm confident that at the end of the day you'll come back with a verdict of guilty

on all three counts, to trafficking cocaine, 10 to 28 grams, guilty of possession with intent to distribute Methylone and guilty of failure to stop for a blue light. Thank you.

THE COURT: You may proceed.

MS. GAY: Thank you, Your Honor, may it please the Court.

THE COURT: You're welcome, yes, ma'am.

MS. GAY: We started this trial yesterday. We all met on Monday. One of the things I told you all is how important this is, how important it is to Mr. Nesbit, because it's about his life and his future, and he's pled not guilty. But he's guilty of failure to stop for a blue light, and that's a fact. We've all -- he's seen the video. He did that. There is no question whatsoever that he rode his motorcycle away from law enforcement in an evasive manner, and he's guilty. Now, he disputed, and you saw us cross-examine the officer about the fact that he didn't use a turn signal in the beginning, and that's -- you know, that's in dispute at this point because, I mean, obviously the officer testified eventually that -- well, he testified he was 100 percent positive that he did. But, you know, on the video you can't see it, and there's always question when things are not -- you know, when you don't have a movie of something. So Mr. Nesbit says that he used his turn signal, or the inference is that there was a turn signal used; but he did

fail to stop for the blue light, and so he's traveling away, minding his own business. He's an African-American male on a really nice Harley-Davidson on a beautiful Sunday afternoon on the Isle of Palms, and he comes, and there's inference that he did in fact use his signal; but then the officer gets behind him, and we have testimony that he did not have a driver's license, we have testimony that the car -- the motorcycle belonged to someone else, not him, and so there's all kinds of evidence that's in the record about why he may have chosen to fail to stop for the blue light. Obviously, the solicitor's, you know, position is, well, he had drugs on him, and that's ultimately what's going on; but the officer testified this was just going to be a standard stop, you know, possibly a warning, possibly a ticket for failing to use his turn signal, but with a man with no driver's license and driving someone else's bike, you know, he chose not to.

So when we look at all that and when we talk about what happened and the evidence in the case, we're totally aware that he failed to stop for a blue light. The dispute becomes later on what isn't on the videos, and that's what I told you when we started this. We have two videos in this case. We have a video of a camera facing forward with a man who's outside of the view of the camera, where all the activity and all the stuff that they claim is the incriminating facts in this case, facts beyond change are that he's outside of that

camera view, and we don't have a picture of that; and so this isn't as open and shut of a case as the solicitor would have you believe because there's all kinds of possibility what might have been going on there that we don't see. And what we also know is that the officer testified that -- she says that he could not have moved his vehicle. However, this is a significant situation where he's coming up. Easily -- because he knows what's being filmed. Easily there could have been a manipulation of the camera movement of the -- just tweak the car just so that it could be on video. Because if that had happened, we may not be here. If we had had everything on video so that we couldn't dispute -- you know, so we could see what was transpiring, we may all not be here; but we don't, and that's the fact.

The other video that we have is the video of the crime scene, and with the video of the crime scene people coming and weighing everything and taking all these bags out, we don't have any video of the drug testing where they're doing the field tests and they're making it turn blue or not. And you see in these pictures that you'll get back in the jury room that some of the stuff and even in the bags is blue, area that is blue. We don't see any of that on video. So here we have all this technology and all these trained officers for eight years doing all these things, and this most important stuff is not on camera. The most important

stuff about where and if he found the drugs on Mr. Nesbit, whether or not the drugs tested presumptively -- you know, turned blue on video, you don't have any of that on video.

But I think what's most interesting about the evidence that was presented is that Detective Chavez and Detective Buckhannon -- Deputy Chavez and Deputy Buckhannon have different views of what happened. They have conflicting testimony about what happened it. Chavez said that he did not search Mr. Nesbit until Buckhannon came. Buckhannon says that he had already searched Mr. Nesbit by the time he came. So there's things that we -- things that witnesses said that were inconsistent, and that's very important. You need to think about that when you're back in the jury room.

The other thing that was interesting about Buckhannon is that he had a car with a camera in it. He had a car that could have come up and placed it -- placed his vehicle in a situation that could have seen all of this, and he would have -- we would have known so much more about this day and what happened if he'd been able -- if he'd chosen to use his camera and if he'd chosen -- he also said that he -- all of them have little collar mikes, and we don't have any of that. There's no evidence that was presented. He also testified that he believed he put his video in evidence. We don't have that. That video is not in evidence. We have no audio, no video of what his car -- what he saw or said. And, you know,

his comment was, well, I believe I did put that in evidence. Where is it?

You know, in any case what you have to consider is the actual stuff they present and admit into evidence, and then you have to consider the stuff that they don't have and the lack of what they bring to the table because that is, as the Judge charges you about the credibility of the witnesses and the evidence, that's what they talk about, is what is not here and also what is here. And what is not in this case is what we're all about. We're all about whether or not there may have been a much more effective way to show what was going on. The officer admitted that he would have done things differently, in hindsight knew that he should have done things differently. Both of these officers were testifying that there was a possibility that they could have done it differently, and we would have a different set of evidence today.

I think that what's interesting about the substances -- like I said, totally guilty of failure to stop for a blue light. He crashes his car. He's on the ground. He's obviously in need of medical assistance. One of the things that they talk about is that -- Deputy Chavez talks about is that there's blood everywhere. That's what he said. The place is covered in blood. He doesn't want him to move because there's blood everywhere. There's absolutely no

blood on any of these drug packages. Never was there any blood on the drug packages. That's something to consider. What I think that we sat around and discussed, as we were discussing this closing argument, is where are the pants? Where are they? These giant pants that are supposed to be like a magic hat with rabbits and scarves and all kinds of things popping out. Things this big in this -- you know in these pictures -- that much stuff are supposed to be in these magic pants somewhere, and the magic pants aren't in evidence. She asked him, well, were they skinny jeans. Well, obviously they weren't skinny jeans, but they are alleging that -- I would have loved to have been able to cut this open, which was not -- we can't do that because it's packaged this way -- and taken each one of these and balled them all up because these are all laying in here real nice and neat, but balled up they're going to be about this big (indicating). And then there's $3,000 worth of -- 100-and-something 20s, okay, balled up. If you watch the video, they're laying each bill out. Okay. You take $3,000 and ball it up, and it's like this big too (indicating). So we've got, what, this much room in somebody's pocket, and they're trying to ride a motorcycle. It was almost impossible. And, you know, these magic pants are not in evidence, and the realty and the possibility of that is how could that be? You know, where are these pants? How could

we -- I mean, if they had brought the pants in, we could -- you, as the jury, could take it back and try to imagine stuffing it in these pants to see whether or not it's even possible. Is it even possible for all this stuff to be in these pants? And, you know, this is someone else's bike. There's containers and things and, you know, maybe the seat lifts up or there's storage packs or something like that. I mean, all kinds of possibilities on someone else's bike that a gigantic package of drugs, you know, could have been in that.

These drugs that they found in his pocket, okay, I understand, they found some drugs in his pants that they claimed he was wearing, the little money packet. That's obviously a completely different situation. The officer testified that he saw them get cut off of him and they handed the pants over to Chavez, and I understand that, but these other larger packages of drugs that are alleged to have been taken off his person, how do we know they weren't taken out of some other -- it's not on video. How do we know that they weren't taken off of some other part of that motorcycle or other place. And the concept that fingerprints don't matter and -- well, why would they fingerprint them? Well, they do matter, and they could have been fingerprinted. These are plastic bags. Especially these (indicating). You know, if we're having a conversation just about these is one thing,

but to have this much stuff that they're alleging belonged to my client, there could have been so many opportunities to see whether or not Mr. Nesbit's fingerprints were on these bags. Plus there could have been so many opportunities to fingerprint the larger grocery bag which was referred to, which is also not in evidence. There would have been opportunity to fingerprint that. It's plastic. So prints would have been easy.

You know, as far as the drugs go, with the weights of the drugs, the drugs, the Judge is going to instruct you about drug weights and drug weights are not the only piece of evidence that goes into a charge. It has to do with other things as well. And there's going to be some -- the bigger charges, the possession with intent to distribute Methylone, and there's the even bigger charge of the trafficking cocaine. She's also going to charge you on some lesser included offenses that have to do with other factors and things. We call them lesser included because they're the same charge but maybe they don't rise to the level of the next charge. If this is the big pot, and you're making chilli, and it's a big pot of chilli, here's the beans. The beans don't just make the chilli. You add in other stuff, but you can also pull the beans out and that's a separate -- that's a separate charge. That's like a lesser included charge. So again, you, the jury, are going to have to decide

what you believe, if any, of what's going on with these drugs in terms of the evidence and the elements of the charge but -- and like I said, we understand the pants thing. You know, in many ways we understand that they claim they came out of the coin pocket of his pants; but these other drugs and the fact that it's not on video at all and there's this motorcycle that belongs to someone else that we don't have any idea -- we did not see -- we heard testimony that it was taken off this person, but we don't see that. And in this case with the type of technology that they have and the type of police officers' training and the amount of time they've been officers, we should be seeing more. We should be seeing the fact that this search is on video. We should have this today for this jury. These guys know what has to be shown to a jury to prove something, and that's the point is that today, and when I started this case with you all, I told you there's video of a lot of stuff, but there's not video of what we need. There's not video of the things that matter. There's things out of the scope of this camera, and the credibility and/or the possibility of them not coming from where these officers say -- this officer says. I'm not calling him -- you know, saying he's not telling the truth. I'm just saying, you've seen, he's stressed; he's busy. There's a point in the video where he just becomes silent and you think the guy's just going to go whoa. It's obviously a

very, very stressful event. And, you know, somehow that stuff made it into the second video on top of the car, turning blue already and all that, but we don't see the in between. We don't see what really happened. We don't have a record of that. And then they're piling all these drugs out and claiming that they came out of his pockets, without seeing the pants. How do we even know if that's possible or not?

You know, it's like one of those things they say, hey, in horseshoes it's one of the things that you can be close and still get points. This isn't horseshoes. This is life, Henry Nesbit's life. He's got family. He's a person. He's a man. He's got a future. He's got things in his world that are important. As we said in the beginning, this is the most important day of his life. We can't just be close here. We can't be close. And the Judge is going to instruct you about what reasonable doubt is. As I said in the beginning, it's a doubt which would cause a reasonable person to hesitate to act. And I firmly believe you're going to find some doubts when you go back there. I firmly believe you're going to have them in your head and in your heart, and you're going to go, you know, this isn't enough. It's just not enough. Why? Why do we not have the rest of the stuff. These questions that it leaves us with, how can we then choose to convict somebody on this, and how can we choose to take somebody's

freedom away based on this.

You know, America has the greatest system in the world, and all the jury process that we have is because we have a right, as citizens, to have members of the community, our peers, make decisions. Not the police, not the solicitor's office but members of the community can come in and say, you know, we don't see this as being enough to convict. And you know, the last thing I'd like to tell you is that -- it's goofy, and I want to tell you that ahead of time, it's goofy, but many people have said in the course of a criminal case a person charged with a crime gets called a lot of things. He gets called inmate. He gets called defendant. He gets called a lot of things. He gets called the guilty dude, whatever. But in the long run Mr. Nesbit wants you to call him Henry Nesbit, the innocent man. That's his name. He's not a defendant. He's not -- you know, he's not an inmate. He's a man, and his name is Henry Nesbit, and he would ask you when you go back to the jury room to please go through all this evidence and figure out could that stuff have been in a pocket or not. Is there some other possible way that it could have been in some other situation that has to do with that motorcycle that doesn't even belong to him and please find him not guilty.

THE COURT: Would you all move that podium for me, please.

Does anyone need to use the restroom, or is everyone comfortable?

MS. GAY: I'd like to use the restroom. Can I make it quick?

THE COURT: Yes. Ladies and gentlemen, we're going to take a very brief restroom break. This should be less than five minutes. Please do not discuss the case and please leave your notepads in your seats.

(Jury exits the courtroom.)

(Recess held.)

THE COURT: State ready to proceed?

MS. LINDER: State's ready to proceed.

THE COURT: Defense ready to proceed?

MS. GAY: Yes, ma'am. Your Honor, may I approach?

THE COURT: Mm-hmm.

(A bench conference was held off the record.)

THE COURT: Mr. Nesbit, I did not hear anything improper or inappropriate that your counsel argued. She argued within the ambit of the evidence that was presented, and that's what I just told her.

THE DEFENDANT: I didn't say improper, I was just -- never mind.

MS. LINDER: Judge, I don't know if it's necessary for the trafficking --

THE COURT: Let me ask one quick question. Is there any

exception to the form of the verdict from the State?

MS. LINDER: Yes, Judge. That's what we're saying for the trafficking I didn't know if we needed it to say 10 to 28 grams, since that's an element of it.

THE COURT: No.

MS. LINDER: Okay. I just wanted to make sure.

THE COURT: No. I've never done it that way.

MS. GAY: Can I see it one second?

THE COURT: Because I'm going to instruct them that that's -- because there are different categories of weight in that statute.

MS. LINDER: Yes.

THE COURT: That's not the only category. If it was the only category, I might.

MS. LINDER: Thank you, Judge.

THE COURT: You're welcome. Any exceptions to the form of the verdict from the State?

MS. LINDER: None from the State, Your Honor.

THE COURT: From the Defense?

MS. GAY: No, ma'am.

THE COURT: Are we ready to proceed with instruction, from the State?

MS. LINDER: Yes, Judge.

THE COURT: From the Defense.

MS. GAY: None, Your Honor.

THE COURT: Okay. Please bring in the jury.

(The jury enters the courtroom.)

THE BAILIFF: All present, Your Honor.

THE COURT: Thank you. Ladies and gentlemen, you may be seated. During this trial, ladies and gentlemen, you and I have certain duties to perform. As the trial judge, it is my responsibility to provide over the trial of this case. I also have the duty to rule upon or pass upon the admissibility of evidence offered during this trial. You are to consider only the competent evidence before you, and you are to disregard and disabuse from your mind any testimony ordered stricken from the record in this case during the progress of this trial if there has been any. You are to consider only the testimony which has been presented from the witness stand, together with any exhibits which have been made a part of the record in this case. I have the additional duty to charge or instruct you on the law applicable to this case. As the presiding judge, I'm the sole judge of the law of this case, and it is your duty as jurors to accept and apply the law as I now state it to you. If you have a preconceived idea as to what you believe the law should be or what the lawsuit ought to be in a case or in this case and it should not agree with what I now tell you the law is, you are obligated under your oath to abandon this preconception on your part because you are sworn to accept

the law and apply the law precisely as I now state it to you.

In every case tried in this Court before a jury the jury becomes the sole and exclusive judges of the facts. You, the jury, are the judges of the facts in this case. This Court is the judge of the law. The constitution of our state has declared that a trial judge shall not intimate, state, comment upon or make any statement to a trial jury about the facts in a case. Since you, the jury, are the sole judges of the facts in this case, you are not to infer anything from what I've said during the progress of this trial in ruling upon the admissibility of evidence or otherwise or anything that I say now to you during the course of this instruction that I have any opinion about the facts. The law does not allow me to have an opinion about the facts. This is a matter solely for you, the jury, to determine.

As jurors then it is your duty, as I've instructed you, to determine the effect, the value, the weight and the truth of the evidence presented during this trial. Necessarily, you must assess the credibility of the witnesses who have testified in this case. Credibility is simply a legalistic term meaning the believability of each witness who has testified. It becomes your duty, as jurors, to analyze and evaluate the evidence and determine that evidence which convinces you of its truth. Some of the things you may consider as you decide whether or not to believe a witness's

testimony about a particular matter include what was the manner and appearance of the witness who testified, was he or she straightforward or hesitant in answering, was the testimony of a witness consistent or inconsistent, how did the witness come to know the facts that he or she testified to, or what was his or her ability to know these facts, is there some reason a witness would want to give testimony which would help or hurt one side or the other, in other words, was the witness biased or prejudiced, and was the testimony of a witness strengthened or weakened by other testimony or evidence.

I further instruct you that in determining the question of the credibility or believability of witnesses who have testified you may believe one witness as against several witnesses or several witnesses as against one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. If you have a good and sound reason, you may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety. You may consider the demeanor of the witness, that is, the manner and appearance of the witness from the witness stand. Of course, ladies and gentlemen, throughout this process you have but one objective, to seek the truth regardless of its source.

I further instruct you that our rules of evidence

ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses. A witness, who by their education, training and experience has become an expert in some art, science or profession or calling may state an opinion as to relevant and material matters in which the witness claims to be an expert and may also state the reasons for that opinion. You should consider any expert opinion received in this case like any other evidence. Give it the weight you think it deserves. If you decide that the opinion of an expert witness is not based on sufficient education and experience or if you conclude that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you may disregard the opinion entirely. An expert witness's testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert, and you are not required to accept an expert's opinion even though it is not contradicted.

Ladies and gentlemen, there are two types of evidence which are presented during a trial, direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact such as an eye witness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction

between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all of the evidence in this case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty. Conversely, if you are convinced of the guilt of the defendant beyond a reasonable doubt, then you must find him guilty. I instruct you, ladies and gentlemen, that the fact that the defendant was arrested, charged and indicted is not evidence in this case and cannot be considered by you as evidence of guilt in this case, nor does it create any presumption or inference of guilt. This documentation, ladies and gentlemen, are simply the formal written instruments which contain the charge or charges made against a defendant. They serve as the formal documentation by which the case is processed or brought into this court.

The defendant has pled not guilty to the indictments, and that plea casts the burden on the State to prove the defendant guilty because a person charged with committing a criminal offense in South Carolina is never required to prove themselves innocent. I charge you, madam forelady, ladies and gentlemen, that it is a cardinal and important rule of the law and evidence that the defendant in a criminal trial, no matter what the seriousness of the charge or charges made

against him may be, will always be presumed to be innocent of the crime or crimes for which he is indicted unless his guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt. This presumption of innocence does not cease when you retire to deliberate, but it accompanies the defendant from the time of his appearance or arraignment throughout the trial until you reach a verdict in this case. Our Supreme Court has said that the presumption of innocence is like a robe of righteousness placed about the shoulders of the defendant, and it remains with him and assigns him to that class, the innocent, until that presumptive robe of righteousness has been stripped from his person by evidence satisfying you of that guilt beyond a reasonable doubt. The presumption of innocence is not mere legal theory. It is not just a legal phrase. It is a substantial right to which every defendant is entitled unless you, the jury, are satisfied from the evidence of his guilt beyond a reasonable doubt.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases where you were told that it is only necessary to prove that a fact is more likely true than not true, such as by the greater weight or the preponderance of the evidence. In criminal cases the State's proof must be more powerful than that, it must be beyond a reasonable

doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crimes charged, you must find the defendant guilty. If, on the other hand, you think there is a real possibility that the defendant is not guilty, you must give him the benefit of that doubt and find him not guilty.

If you could bear with me just one moment, ladies and gentlemen.

I further instruct you, ladies and gentlemen, and emphasize that the fact that the defendant did not testify is not a factor to be considered by you in any way in your deliberation and in your consideration on the question of the guilt or innocence of the defendant. It must not be considered by you in any manner whatsoever. A defendant has the constitutional right to remain silent, and the assertion of this right must not be considered by you in your deliberations. I repeat, under your oath you are to draw no conclusion whatsoever from the fact that the defendant in this case did not testify. The fact that this defendant did not testify should not be discussed in any manner whatsoever

in the jury room. The defendant does not have a burden of proof in this case. The burden of proof, as I've stated to you, is on the State. The defendant is not required to prove his innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt.

The defendant is charged with failing to stop for a blue light. In order to prove this crime the State must prove beyond a reasonable doubt that the defendant was driving a motor vehicle, that the defendant was driving the motor vehicle on a road, street or highway of this state, that the defendant was signaled to stop by a law enforcement vehicle by means of a siren or flashing light and that the defendant did not stop. In determining whether or not there are mitigating circumstances which would justify the defendant's failure to stop for the blue light you may consider actual road conditions, actual roadside conditions, other conditions such as lighting and weather, officer, driver and/or passenger safety, and any other circumstances you believe to reasonably mitigate the alleged violation. An official signal requiring a motorist to stop may be a siren or flashing lights, but both are not required. An attempt to increase the speed of a vehicle or in some other manner avoid the pursuing law enforcement vehicle when signaled by a siren or flashing light may be considered as evidence of failure to stop for a blue light; however, it is merely an evidentiary

fact to be taken into consideration by you along with all the other evidence in the case and to be given the weight, value and effect you decide it should receive.

The defendant is charged with trafficking in cocaine. The State must prove beyond a reasonable doubt that the defendant knowingly sold, manufactured, cultivated, delivered, purchased, brought into the State, provided financial assistance, or otherwise aided, abetted, attempted or conspired to sell, manufacture, cultivate, deliver, purchase or bring into this state, was knowingly in actual or constructive possession, knowingly attempted to become in actual possession of cocaine. The State must also prove beyond a reasonable doubt that the amount of cocaine, or any mixture containing cocaine, was 10 grams or more but less than 28 grams. To prove possession the State must prove beyond a reasonable doubt that the defendant had both the power and intent to control the disposition or use of the cocaine.

Possession may either be actual or constructive. Actual possession means that the cocaine was in the actual, physical custody of the defendant. Constructive possession means that the defendant had dominion and control or the right to exercise dominion or control over either the cocaine itself or the property on which the cocaine was found. Mere presence at the scene where the drugs were found is not

enough to prove possession. Actual knowledge of the presence of the cocaine is strong evidence of the defendant's intent to control its disposition or use. The defendant's knowledge and possession may be inferred when a substance is found on the property under the defendant's control; however, this inference is simply an evidentiary fact to be taken into consideration by you along with the other evidence in the case and to be given the weight, value and effect you decide it should have. Two or more persons may have joint possession of a drug. To deliver means to actually constructively or attempt to transfer the drug. Distribute means to deliver other than by administering or dispensing a drug. Manufacture means to produce, prepare, convert, process, plant, cultivate, grow or harvest a drug naturally or chemically. Manufacturing includes any packaging or repackaging of the drug or labeling or relabeling of the drug's container.

Included within the offense of trafficking is the lesser offense of possession with intent to distribute. Possession with intent to distribute contains all of the elements of trafficking except the amount of the cocaine. In addition, the State must prove beyond a reasonable doubt that the defendant had the intent to distribute the cocaine. In order to prove possession with intent to distribute the State must prove beyond a reasonable doubt that the defendant possessed

cocaine with the intent to distribute it. To prove, as I've previously instructed, to prove possession the State must prove beyond a reasonable doubt that the defendant had both the power and intent to control the disposition or use of the cocaine. Possession may either be actual or constructive. Actual possession means that the cocaine was in the actual physical custody of the defendant. Constructive possession means that the defendant had dominion and control or the right to exercise dominion or control over either the cocaine itself or the property on which the cocaine was found. Mere presence at the scene where the drugs were found is not enough to prove possession. Actual knowledge of the presence of the cocaine is strong evidence of the defendant's intent to control its disposition or use.

The defendant's knowledge and possession may be inferred when a substance is found on the property under the defendant's control; however, this inference is simply an evidentiary fact to be taken into consideration by you along with the other evidence in the case and to be given the weight, value and effect you decide it should receive. Two or more persons may have joint possession of a drug. The State must also prove beyond a reasonable doubt that the intent -- that the defendant intended to distribute the cocaine. Distribute means to deliver other than by administering or dispensing a drug. Intent may be shown by

acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent. In determining whether the defendant had the intent to distribute the cocaine you may consider the circumstances surrounding the defendant's alleged possession, you may consider the amount of the substance alleged to have been possessed, the manner in which it was allegedly possessed, the place where it was allegedly possessed and other factors which you consider to be important. You must find that the defendant did not intend to have the cocaine solely for his own use.

I instruct you the possession of more than one gram of cocaine creates an inference that the defendant possessed the cocaine with the intent to distribute it. I further instruct you that this inference does not relieve the State from proving beyond a reasonable doubt that the defendant had the intent to distribute it. It is simply an evidentiary fact to be taken into consideration by you along with the other evidence in the case and to be given the value, the weight and effect you decide it should have.

The defendant is also charged with possession with intent to distribute Methylone, or as it is referred to in the indictment, Methylone (bath salts). The State must prove beyond a reasonable doubt that the defendant possessed Methylone with the intent to distribute it. To prove

possession the State must prove beyond a reasonable doubt that the defendant had both the power and intent to control the disposition or use of the Methylone. Possession may either be actual or constructive. Actual possession means that the Methylone was in the actual, physical custody of the defendant. Constructive possession means that the defendant had the dominion or control or the right to exercise dominion or control over either the Methylone itself or the property on which the Methylone was found. Mere presence at the scene where the drugs were found is not enough to prove possession. Actual knowledge of the presence of the Methylone is strong evidence of the defendant's intent to control its disposition or use. The defendant's knowledge and possession may be inferred when a substance is found on the property under the defendant's control; however, this inference is simply an evidentiary fact to be taken into consideration by you along with the other evidence in the case and to be given the weight, value and effect you decide it should have. Two or more persons may have joint possession of a drug.

The State must also prove beyond a reasonable doubt that the defendant intended to distribute the Methylone. Distribute means to deliver other than by administering or dispensing a drug. Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent. In determining

whether the defendant had the intent to distribute the Methylone you may consider the circumstances surrounding the defendant's alleged possession. You may consider the amount of the substance alleged to have been possessed, the manner in which it was allegedly possessed, the place where it was allegedly possessed and other facts which you consider to be important. You must find that the defendant did not intend to have the Methylone solely for his own use.

Included within the offense of possession with intent to distribute is the lesser offense of simple possession. Simple possession does not require an intent to distribute the Methylone. The defendant -- in order to prove possession of Methylone the State must prove beyond a reasonable doubt that the defendant knowingly or intentionally possessed Methylone. Knowingly means with knowledge, consciously, not accidentally. Intentionally means willfully intending the result which actually occurs, not accidentally or involuntarily. Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent. To prove possession the State must prove beyond a reasonable doubt that the defendant had both the power and intent to control the disposition or use of the Methylone. Possession may either be actual or constructive. Actual possession means that the Methylone was in the actual physical custody of the

defendant. Constructive possession means that the defendant had dominion and control or the right to exercise dominion or control over either the Methylone itself or the property on which the Methylone was found. Mere presence at the scene where the drugs were found is not enough to prove possession. Actual knowledge of the presence of the Methylone is strong evidence of the defendant's intent to control its disposition or use. The defendant's knowledge and possession may be inferred when a substance is found on the property under the defendant's control; however, this inference is simply an evidentiary fact to be taken into consideration by you along with the other evidence in the case and to be given the weight, value and effect you decide it should have. Two or more persons may have joint possession of a drug.

Ladies and gentlemen, the indictments in this case allege several different offenses against the defendant. Those charges are Indictment 2013-5527, failure to stop for a blue light; 2013-5634, trafficking in cocaine; and 2013-5639, possession with the intent to distribute Methylone. Each indictment alleges -- charges a separate and distinct offense. You must decide each indictment separately on the evidence and the law applicable to it, uninfluenced by your decision as to any other indictment. The defendant may be convicted or acquitted on any or all of the offenses charged. You will be asked to write a separate verdict of guilty or

not guilty for each indictment. There are several possible verdicts for each of the indictments. I will read each of those to you. You don't have to try to write it down. The verdict form will go into the jury room with you, and there's absolutely no significance whatsoever to the order in which I state these potential verdicts. It is simply that one must be stated first. As to Indictment 2013-GS-10-5527, we, the jury, by unanimous consent find the defendant guilty of failure to stop for a blue light, or not guilty. As to Indictment 2013-5634, we, the jury, by unanimous consent find the defendant guilty of trafficking in cocaine, or as to the lesser included offense, guilty of possession with intent to distribute cocaine, or not guilty. And Indictment 2013-5639, we, the jury, by unanimous consent find the defendant guilty of possession with the intent to distribute Methylone, or as to the lesser included offense, guilty of possession of Methylone, or not guilty. Again, there's no significance whatsoever to the order in which I state these potential verdicts. It is simply that one must be stated first.

Ladies and gentlemen, in order for you to reach a verdict your decision must be unanimous, which means all 12 of you must agree in order to reach a verdict on each and every indictment. Again, your verdict must be unanimous, which means that all 12 of you must agree in order to reach a verdict. Madam forelady, when the jury has reached a

unanimous verdict on each indictment, it is your responsibility to fill out each verdict form and to sign and date each form and to knock on the door and advise the bailiffs that the jury has reached a verdict. Ladies and gentlemen, if you have any questions during deliberations, please know that there will be a delay in our response and that is because there's a procedure that I must follow in answering your questions, so know that if you have a question, that there will be a delay because we are following that process. Again, your verdict must be a unanimous one, and just as a reminder, your foreperson does not have any greater vote or voice than you do. It is purely an administrative function. They fill out the verdict form and write out any questions during the deliberations. Madam forelady, if the jury has any questions, it will be your responsibility to write those questions out, and then, again, knock on the door and advise the bailiffs that the jury has a question.

Ladies and gentlemen, I'm going to ask that you return to your jury room, but do not yet begin your deliberations. I have some matters of law that I need to take up with the attorneys that may require further instruction or clarification of an instruction. However, if there's no further instruction, we will send in your notepads, the evidence and the verdict form, and at that time you will be

allowed to begin your deliberations. Your lunch has also arrived. It is in the jury room, and so I just wanted you to know that so that if we don't need you any further, you'll be allowed to go ahead and start eating and begin your deliberations. If you'll go with the bailiffs, please.

(Jury exits the courtroom at 12:44 p.m.)

THE COURT: You may be seated. Are there any exceptions to the charge from the State?

MS. LINDER: No, Your Honor.

THE COURT: From the Defense?

MS. GAY: No, Your Honor.

THE COURT: All right. Could you all make sure for me one more time that all the evidence is in place so the bailiffs can take that in?

Is all the evidence in place?

MR. NELSON: Yes, Your Honor.

THE COURT: The record should reflect that the jury began delineations at 12:45. Their lunch is already here. It came as we were getting ready to charge, and I already had the bailiffs put it in there with their drinks, so they will be eating. I would suggest you all go take about 30 minutes to go get something to eat as well because that's about how long it will take them, if anybody wants to smoke, to go outside; and then if we have any questions, it will probably be soon after that. So you'll all have a chance to eat, and

if you all could leave your cell phone numbers with my clerk in the event we need to contact you short of that timeframe.

(Recess held.)

THE COURT: The jury has sent a note, would like to view video. Do you have a password for that laptop that's in the jury room that hooks up to the monitor?

THE CLERK: We do. They have a laptop in there.

THE COURT: Let's go figure that out because I don't think they should have to come back in here to watch it. They should be able to watch it like they want to watch it. In one of the other jury rooms we have a clean laptop and it goes to a TV monitor, so I've just got to get the password and make sure that it's working as it should, and we've got to test drive it right quick. Is there any exception to that from the State?

MS. LINDER: None from the State.

THE COURT: From the Defense?

MR. NELSON: No. Is there any mention which video they want to watch.

MS. LINDER: It's one video; there are two clips.

THE COURT: They just said video, so I assumed we'll put it in and they can -- they'll watch whatever they determine they want to watch. It will be marked as a Court's Exhibit, let me go see how this works and make sure it does work.

(Brief pause.)

THE COURT: For whatever reason we can't get a signal for the monitor in the other jury room, so we just took the laptop, the clerk's laptop, and we tested out the DVD to make sure it worked, and it does, and so they have it, and I told the clerk to let them know that if they wanted to see it on a bigger screen than the computer to let us know and we'd bring them back into the courtroom for that. Is there an exception from the State?

MS. LINDER: None from the State.

THE COURT: From the Defense?

MS. GAY: None, Your Honor.

THE COURT: Okay. We'll keep you posted.

(The Court's Exhibit 1 marked for identification.)

(Recess held.)

THE COURT: Okay. The jury sent a note out to me, and the first note was can't decide on 2013-GS-10-5634, question for Judge.

MR. NELSON: Which indictment is that, Judge?

THE COURT: That's the trafficking in cocaine.

MR. NELSON: Thank you.

THE COURT: So I sent the note back -- as you can tell, they balled it up and put it in the garbage can -- and told them that they had to write out what their question was. They sent this note out: Can we select the lesser charge for cocaine possession even though the law says greater than 10

grams is trafficking. And I think the simple answer is yes. It's a lesser included offense.

Oh, you know what -- I just read this note again -- I'm thinking PWID, not possession.

MS. LINDER: Correct.

THE COURT: I think I need more clarity on this note because I need to figure out what they're asking. Can we select the lesser charge for cocaine possession. Well, the only thing they could be talking about is PWID because those are the only two that are on the verdict form. They may have used different terminology, but those are the only two options.

MR. NELSON: They might also be thinking about the charge you gave for the possession with intent of Methylone.

THE COURT: No.

MR. NELSON: Even though you didn't charge it for the trafficking, they might, I don't know, I'm just --

THE COURT: I don't think so. Juries are very direct when they ask questions. If that was the case, they would have said possession of Methylone. They only have two options on that verdict form, which is trafficking and PWID. And when I charge possession with intent, possession is one of the elements that you instruct, and you instruct actual and constructive possession, so that is my thought process of what they're asking, but I could also always ask the

foreperson to come in and clarify for me, but the problem is I don't want them getting into their internal deliberations, and I don't want her to tell me too much.

MS. LINDER: One option is just to read both of the statutes to them.

THE COURT: Why would I do that? Why would I take 15 minutes to reinstruct something they've already listened to when they haven't indicated to me they want me to do that? I know exactly what they're asking. When you instruct on trafficking, it says one of the elements the State has to prove is that it was more than 10 grams but less than 28. When you instruct PWID cocaine it says that --

MR. NELSON: It refers to the grams.

THE COURT: Exactly, and I think what the -- I don't want to say confusion, and I don't want to anticipate what they're doing in there because their internal deliberations are private, but there might be -- I don't know whether they -- the PWID is included in the trafficking, and so they have the option. They can pick the less -- in other words, they're not required to find trafficking, even if the State proved up to 28 grams, if they feel the PWID is proven as well. I think the simple answer is yes. I don't want to make it overly complicated.

MS. LINDER: Judge, I think if they're asking if they can choose --

THE COURT: I'm not going tell them they can only pick trafficking because that's not correct.

MS. LINDER: No, no, no, Judge, what I'm saying is if they're saying can they pick possession, I think our position is the response should be you can pick trafficking or you can pick the lesser included, which is possession with intent to distribute.

THE COURT: Well, that's a fair answer.

MS. GAY: And then the other question on his behalf, Your Honor, is we would ask maybe for a King charge because I think that is exactly what they're saying.

THE COURT: It's a little late at this point for a King charge because it would draw undue attention to it at this point. It would almost, in my estimation, be almost a charge on the facts at this stage in the game.

MS. GAY: I understand.

THE COURT: Because then I basically would be telling them that you don't have any choice, but the way that is worded, outside of the context of an entire instruction, would almost be an instruction on the facts at this point. And I don't know that it's prejudicial to your client. I think it -- I don't know that it's necessary. They're asking, do we have the option to pick between the greater and the lesser, and the answer is, yes, it's always their option.

So I think I could simply write on this note, you can

select trafficking in cocaine, or you can select possession with the intent to distribute cocaine. How did you word that, Ms. Linder? I can't remember what you said.

MS. LINDER: I believe I said something like, you can select trafficking in cocaine or you can select the lesser included offense of possession with intent to distribute cocaine.

MR. NELSON: Or, Judge, you can go another route and say the only options you have are what are on the verdict form, trafficking or possession with intent.

THE COURT: I think the confusion is with the amounts and they don't -- should not be left with the misapprehension that's their only option because it's not.

MR. NELSON: Yes, Your Honor.

THE COURT: And they said possession, and I don't think that is any indication that they're confused because it's possession with the intent to distribute cocaine, I just think they didn't write out PWID.

Is there any exception to me writing on the note, you can select trafficking in cocaine or the lesser included offense of possession with the intent to distribute cocaine.

MR. NELSON: Or not guilty.

THE COURT: They didn't ask me that question. That's already on the form. They already know with that.

MS. LINDER: I agree with that response, Your Honor.

THE COURT: Is there any exception from the Defense to that response?

MS. GAY: One moment, please.

One thing that we could add, Your Honor, is the weight of the drugs is just a factor for your consideration.

THE COURT: I've already instructed that. It is not just a factor because in the trafficking it's mandatory that the State prove one of those quantities in their elements. In PWID it is not mandatory, it is only an evidentiary fact to consider, and I instructed both of those, and I think for me to state that is misleading. That's not a correct statement of the law. Then it gets overly complicated.

MS. GAY: I understand, but you're telling them they don't have to --

THE COURT: They can pick either one, that's their choice. I don't want them leaving with the impression that they have to do one or the other, and I have already instructed them on the full elements of trafficking and the full elements of PWID, and I saw them writing down the elements as I was instructing. You may have some people in there who were feeling like, well, they proved -- we have to pick this one because you have a chemist that came in and testified and they don't.

MS. GAY: Right, I understand.

THE COURT: And I don't want them left with that

misapprehension.

Is there any exception from the Defense to the Court responding as I've already stated for the record?

MS. GAY: No, Your Honor.

(The Court's Exhibit 2 marked for identification.)

MS. GAY: Your Honor, Mr. Nesbit would like for you to consider the possibility in your note of stating, trafficking, PWID or not guilty. He's asked me to ask you that.

THE COURT: I've already addressed that. It is already on the form. I've already instructed them as to that. And I have already instructed you that there is no hybrid representation. You either represent Mr. Nesbit or you don't. If he tells you something, you can articulate that for the Court.

MS. GAY: I understand.

THE COURT: I think they're clear they can select not guilty, and if that was their consternation, they would have said that in the note. And they still might find not guilty. Who knows. Their internal deliberations are secret, and I'm not going to go but so far into the question because I'm not going to have them disclosing exactly what they're discussing.

Okay. You all can approach to look at what I wrote on the note.

MR. NELSON: Yes, Your Honor.

MS. LINDER: Yes, Your Honor.

THE COURT: Any exception from the State?

MS. LINDER: No exception from the State.

THE COURT: Any exception from the Defense?

MR. NELSON: No.

THE COURT: We'll mark that as a Court's Exhibit and then give it to the bailiff.

(The Court's Exhibit 3 premarked for identification.)

THE COURT: And then you all need to instruct the jury to make sure they don't discard any notes.

(Recess held.)

THE COURT: The jury has reached a verdict. Is there anything before we bring in the jury from the State?

MS. LINDER: Nothing from the State.

THE COURT: From the Defense?

MS. GAY: No, Your Honor.

THE COURT: Please bring in the jury.

(The jury enters the courtroom at 4:53 p.m.)

THE BAILIFF: All present, Your Honor.

THE COURT: You may be seated. Madam forelady, is it correct that the jury has reached a verdict?

THE FOREPERSON: Yes.

THE COURT: If you would give the verdict forms to the bailiff for me, please.

Madam clerk (indicating).

Sir, if you would stand for publication of the verdict.

THE CLERK: In the Court of General Sessions for the Ninth Judicial Circuit, Indictment No. 2013-GS-10-5527, State of South Carolina, County of Charleston, versus Henry Oliver Nesbit, Jr., the defendant, as to the indictment we, the jury, by unanimous consent find the defendant guilty of failure to stop for a blue light, signed, Forelady Gloria Jenkins, May 8, 2014. As to the Indictment No. 2013-GS-10-5634, we, the jury, by the unanimous consent find the defendant guilty of possession with intent to distribute cocaine, signed, Forelady Gloria Jenkins, May 8, 2014. As to Indictment No. 2013-GS-10-5639, we, the jury, by unanimous consent find the defendant guilty of possession of Methylone (bath salts), signed Gloria Jenkins, foreperson, May 8, 2014.

Ladies and gentlemen of the jury, if this is your verdict, please raise your right hand.

(All members of the jury raised their right hand.)

THE CLERK: Thank you.

THE COURT: Is there any request to poll the jury from the State?

MS. LINDER: None from the State, Your Honor.

THE COURT: From the Defense?

MS. GAY: One moment, please.

No, Your Honor.

THE COURT: Ladies and gentlemen, we thank you for your time and your attention to this case. We know that jury service is thankless, based on what we pay you, and we apologize in advance, but it is absolutely no indication of how very much we value your service to us. We try cases with juries probably -- we usually have four trial courts operating every week with the exception of only a few weeks, and we hold court every week with the exception of holidays. We have one of the busiest trial circuits in the state. Richland County, which is Columbia, the capital, and Greenville probably are the only two counties or circuits that have as many cases on the trial rosters and work in terms of trial work as much as Charleston County does. We would not be able to do what we do without you all being willing to come and sit as the fact finders in cases. While there are cases where the Court acts as the fact finder, the majority of what we do involves the need of citizens to act as the fact finders in the cases. South Carolina has one of the largest case filings per capita per judge in the nation at 5,000 cases per judge. We have 49 circuit judges -- well, 46, who hear cases throughout the state. For those of you who do not know, our constitution requires that circuit judges rotate throughout the state. Before we had our great budget crisis, generally, circuit judges live outside of their circuit for the months of January through June, and

then they come home during the months of July through December, which means we literally live someplace else for six months and then we come home for six months, only home on weekends. Because of the budget crisis our travel was suspended for a good while, but we have resumed limited travel, where we travel about a week a month throughout the state. Our system is very unusual. It is one of the rare systems in the country where judges rotate throughout the state and have statewide jurisdiction to hear and dispose of cases.

Just so that you have a point of reference, the City of Philadelphia has nine judges that only hear murder cases. The State of South Carolina, with our retired judges, has 51 judges who hear every type of case, civil and criminal, throughout the entire state. And even with that we still dispose of cases more quickly than most states, in about 18 months, which is almost unheard of because most states take four to five years to dispose of litigation. So even with our limited resources we still do what is a tremendous job in terms of being able to handle our overwhelming dockets.

And just so that you know, in this building we don't only hold circuit court, which is both civil and criminal, but on the second floor we have four to five family courts that operate on a daily basis as well as the Master-in-Equity that holds court on the second floor, and the Probate Court

is also located in this building that often has two to three judges hearing cases as well. So I just give you that anecdotal information so that you can know just how very much we appreciate your service to us. Our system is the only kind where individual citizens determine what the facts are in a case, apply the law to those facts and then render verdicts.

We are going to move to post-trial motions and sentencing. If any of you would like to remain for that process, please let the bailiffs know, you can actually just raise your hand, and we'll allow you to remain in the courtroom. Those who wish to be excused certainly can be at this time, and you all are excused for the remainder of the week. If you need a work excuse today, we can provide those for you, since it is already 5:00, and the deputy clerks at the windows downstairs have probably already left for the evening. Otherwise they will be mailed to you along with your checks.

You are welcome to discuss this case if you would like. By the name token, you don't have to discuss the case. Lawyers will often contact you to get feedback on their performance. That's why we call it the practice of law because you never quite perfect it, so people always want to get feedback on how they performed, how they could do things better, and just to have a layperson's perspective on the

process and the fact finding part of that process because it is often helpful to lawyers as they try new cases that come through the system.

Again, if you would like to remain for sentencing -- is there anyone who would like to remain for the sentencing, if so if you'd raise your hand for me. Okay, since there's no one --

JUROR: I would like to.

THE COURT: Okay. You're welcome, and any of you are welcome to remain. Otherwise, if you do not wish to remain, you are excused with the Court's profound thanks.

I'll hear post-trial motions, and then if you all can get sentencing sheets for me. Thanks.

(Brief pause.)

THE COURT: Are there any post-trial motions?

MS. GAY: Your Honor, there's motion to set aside the verdict. Notwithstanding the fact that, even though they convicted him, we don't believe the evidence would have been sufficient in follow-up of our motion for directed verdict and our renewed motion at the end of my case.

THE COURT: Would the State like to respond?

MS. LINDER: Your Honor --

MS. GAY: And reiterating my prior objections with regard to the motion to suppress and such.

THE COURT: Yes, ma'am.

MS. LINDER: Your Honor, I believe that regards to Ms. Gay's previous objections or motions, I believe that I've already argued enough on the record. I don't believe anything has changed. With her motion to set aside the verdict, I would ask that you deny that motion. I believe that there is ample testimony and exhibits to support the jury finding this verdict, and I believe that the jury showed that they absolutely took this very seriously. They took a lot of time deliberating over this. They reviewed the video. They asked multiple questions. I think that they did give this careful thought and attention, and we would ask that you deny that motion.

THE COURT: The record reflects that the jury gave this great deliberation. They deliberated from 12:45 until 4:50, which -- and that they gave careful consideration to the facts as well as to the law, applying the law to those facts. There is no basis to set aside the verdict. There is more than ample factual support in the record for, even if he had been found culpable on the greater offenses, there's more than ample evidence to support the findings on the lesser included offenses of PWID cocaine as well as possession of Methylone, and certainly there's more than adequate evidence in the record regarding the failure to stop with the video that is a contemporaneous record of the entire process of him being notified that law enforcement was -- had commanded him

to stop and that he then took evasive action to evade them and failed to stop. Therefore, the motion to set aside the verdict is denied, and the Court incorporates its previous rulings on the previous motions as well as the motion for directed verdict in these findings.

Now, that then leaves us -- to make sure that I'm clear, his prior record, he had an '05 parole revocation for failure to stop for a blue light and possession of stolen -- and he had a possession of a stolen motor vehicle in '05, is that correct, and an assault with intent to kill; in '02, possession of stolen gun; in '02, two counts of breaking entering a motor vehicle and burglary in the 3rd degree; 2009, DUS, which is driving under suspension, 2nd, and operating a car without a South Carolina driver's license; 2007, possession of crack cocaine 1st and a failure to stop for a blue light, and possession with the intent to distribute cocaine 1st, two counts, and also a proximity charge. Is that his accurate record?

MS. LINDER: I believe so. I just went through it again. I don't know if you have, in 2007 he also has a possession of marijuana conviction.

THE COURT: I'm sorry. I didn't hear you.

MS. LINDER: 2007 possession marijuana conviction. I don't know if you had that down.

THE COURT: I did not.

MS. LINDER: Yes, Judge, I believe that covers everything that he has.

THE COURT: With these convictions what enhancement would they be?

MS. LINDER: These are third or subsequent.

THE COURT: On both the possession of the Methylone and the PWID, correct?

MS. LINDER: Yes, Judge.

THE COURT: And also the failure to stop. There's an enhancement. He has a previous failure to stop, doesn't he?

MS. LINDER: He does.

MS. GAY: He does.

THE COURT: So this would be his second failure to stop.

MS. LINDER: He has a failure to stop in 2006 and failure to stop in 2008. This is the third. And, Your Honor, Ms. Mulkey went back to our office to get -- we have two sentencing sheets but don't have a third, so she went back to the office to get those.

THE COURT: I just wanted to make sure I have the range of penalty correct. On failure to stop that would be a maximum of five years and a minimum of 90 days or $500 and his license has to be suspended, correct?

MS. LINDER: Correct.

THE COURT: On PWID cocaine, third or subsequent, minimum of ten years, maximum of 30 years and/or $50,000

fine, and that's a serious with no suspension and no probation but is not classified as violent, correct?

MS. LINDER: Correct.

THE COURT: And on possession of Methylone, third or subsequent, zero to one and/or 2,000.

MS. LINDER: Yes, that is what I have.

THE COURT: All right. How long's he been in jail, Ms. Gay?

MS. GAY: He's been in jail --

THE COURT: Has he been in jail since the date of this incident?

MS. GAY: No. I think it's July 26th.

THE COURT: July 26th of what year?

MS. GAY: 2013.

THE COURT: Was that because his bond was revoked because he has other charges?

MS. GAY: No. He got re-arrested on a different charge, Your Honor.

THE COURT: Which also begs the question, does he want to dispose of some of these other charges and is the State amenable to that?

MS. GAY: Maybe if you gave us some time, Your Honor.

THE COURT: No time like the present. You all have been discussing it for a while. I don't think the State's going to be amenable to doing anything. They're not going to bring

him back from the Department of Corrections to plea. If anything, they're going to do an enhancement and serve him with an LWOP notice.

MS. GAY: That's what I was about ready to try to explain to him.

THE COURT: What's he still have outstanding?

MS. LINDER: Your Honor, he still has outstanding multiple other arrests: Temporary use of a vehicle, two failure to stop for blue lights, two habitual traffic offenders, possession of stolen motor vehicle, possession of controlled substance, trafficking cocaine.

THE COURT: I need you to slow down. Trafficking cocaine.

MS. LINDER: Trafficking cocaine, possession of a weapon during the commission of a violent crime, two counts of hit and run and possession with intent to distribute cocaine. Those are from multiple separate arrests.

THE COURT: What were you willing to nolle pros previously?

MS. LINDER: Your Honor, honestly, I hadn't really gotten to which charges I was willing to nolle pros because Mr. Nesbit said he was not interested in any sort of plea offer.

THE COURT: What you need to explain to him, Ms. Gay, is that he will not get anything, once he goes to the Department

of Corrections, he's not going get any more time on these things that are outstanding.

MS. GAY: I understand that.

THE COURT: So the clock's going to be ticking. Now, I don't want him to plead guilty if he doesn't feel he's guilty. If he wants a trial on these other things, he needs to avail himself of this process. As I told him before, I'm a great believer in the trial system. I've never vacated a verdict. I've never questioned what a jury has done. I have great confidence in their ability to make the right decision.

MS. GAY: Hold on. Can we just have a minute?

THE COURT: Mm-hmm. Is there any restitution that's due on any of these hit and runs?

MS. LINDER: No, Your Honor, the State's not seeking any restitution on any of the hit and runs.

THE COURT: Is there any restitution on the possession of a stolen motor vehicle?

MS. LINDER: Your Honor, to be candid with the Court, due to Mr. Nesbit's prior record and the volume of charges he had, there's really no point for us to try to get money out of him. I mean, all of these things have mandatory minimums along with his record making him have mandatory minimums, so we were not seeking any restitution on any of his outstanding charges.

THE COURT: The only one that was going to have a

mandatory minimum at this point is the PWID and the trafficking. Possession of a stolen motor vehicle is not, nor the habitual traffic offender or the -- well, the failure to stop doesn't have mandatory time either.

MS. LINDER: Correct, Judge, but how the arrests were broken up, the trafficking has the mandatory time, the weapon has an automatic five, and then the other drug charge, and those were kind of spread out through his arrests, and we just didn't feel it necessary or appropriate to be going after money.

THE COURT: I agree with what you're saying.

(Brief recess.)

THE COURT: All right. Are we ready to proceed?

MS. LINDER: State's ready.

THE COURT: Defense ready to proceed? Be glad to hear any argument.

MS. GAY: From me?

THE COURT: State goes first, usually.

MS. LINDER: Your Honor is very aware of the facts of the case, as you were sitting here throughout, and you're also aware of the defendant's prior record and the numerous pending charges that he still has in our office. We believe that Mr. Nesbit is a danger to our society. We believe that his criminal history spans a variety of different agencies in this area, and we believe at this point a very substantial

sentence for the upper end would be appropriate, and depending on the sentence, we may be able to just dispose of the other charges without serving him life notice.

THE COURT: Ms. Gay?

MS. GAY: Thank you, Your Honor.

THE COURT: You're welcome.

MS. GAY: Mr. Nesbit is 29 years old. His mother has been with him in the courtroom throughout this trial, Your Honor. Her name is Rebecca Nesbit. She's the woman that's been sitting behind him in the black jacket, Your Honor. He has two children which he, before his arrest and during the course of his time, has worked to support. His family owns an upholstery business, and so he's done some of that on his own, plus he's done other work. As a group I think they do a lot of upholstery. He is --

THE COURT: How old are the children?

MS. GAY: Two and three, Your Honor. There's been a lot of facts that came out in this trial about the -- you know, he admitted to certain things that he did, and then he said that he wasn't in possession or control of the drugs, but obviously the jury has spoken at this point, and he's aware of that. He would ask you to please consider a sentence on the lower end of the range, just so that he can begin to take care of his children as much as possible, and in the process, Your Honor, we would ask you to give him credit for the time

served since July of last year. He's been -- there was a point where his bonds were revoked also, so we would just ask that -- it's the date of arrest. What was the date of arrest for the July arrest?

26th of July, I believe it's the 26th of July, but I can look at my file on that, Your Honor, but he's been in jail continuously since then.

How many days did you spend in jail when you were first arrested?

THE DEFENDANT: Eight, nine days.

MS. GAY: Eight extra days, and I'll get that date, Your Honor.

THE COURT: They'll calculate it. They'll get a report from the jail. I don't calculate time. The statute requires the Department of Corrections to calculate time. If I put 20 days on there, that's all he's going to get, even if he has 40. They'll get a report of how many days he's served and they'll give him his pre-detention time.

MS. GAY: Thank you, Your Honor. We would just ask you to please be as lenient as possible.

THE COURT: Ma'am, is there anything you would like to state for the record on your son's behalf?

MS. NESBIT: Just like for, if you can just be a little bit more lenient on him so he can help with raising those children.

THE COURT: Ma'am, could you state your name for the record?

MS. NESBIT: My name is Rebecca.

THE COURT: Nesbit?

MS. NESBIT: Nesbit.

THE COURT: Is there anything else you'd like to tell me, ma'am?

MS. NESBIT: I know he may have made some poor choices, but he's really a good person, and he's not really a harm to society. I think everything he did he did it to himself. He didn't hurt nobody.

THE COURT: Thank you, ma'am.

Sir, is there anything you'd like to state for the record on your own behalf?

(No audible response.)

THE COURT: Record should indicate that the defendant's indicated he did not want to speak on his own behalf. Is there anything further from the State?

MS. LINDER: Nothing further, Your Honor.

THE COURT: Does your client need any alcohol or drug treatment Ms. Gay?

MS. GAY: He says no, Your Honor.

THE COURT: How old is your client, Ms. Gay?

MS. GAY: 29, Your Honor.

THE COURT: Sir, if you would stand for sentencing. On

failure to stop for a blue light, sir, you're sentenced to the State Department of Corrections for a period of five years. On the possession of Methylone you're sentenced to one year. On the PWID cocaine you're sentenced to the State Department of Corrections for a period of 15 years. You will get credit for the time that you have served, and these sentences will run concurrently with one another. That time will be calculated by the Department of Corrections pursuant to 24-13-40. Thank you all very much.

MS. LINDER: If I may approach, I have the certified convictions for the drug priors to make a Court's Exhibit.

THE COURT: That's fine. Just give it to the court reporter.

MS. LINDER: Thank you.

(The Court's Exhibit 4 marked for identification.)

--- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

I, the undersigned Ruth L. Mott, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the matter of the above-captioned case, relative to appeal, in the First Judicial Circuit Court for Charleston County, South Carolina, on the 8th of May, 2014.

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

October 6, 2014

/s/ Ruth L. Mott

Official Court Reporter

JPG20130604613

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2013008740B

ARREST WARRANT NUMBER

2013A1010203901

DATE OF ARREST

July 27, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: SEP 0 9 2013

VERDICT

Foreperson of Petit Jury *Date:*

INDICT

DOCKET NO. 2013GS1005634

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2013

THE STATE

vs.

HENRY OLIVER NESBIT JR
DOB: [redacted]
B/M

Indictment for

Trafficking in Cocaine

FILED

9/24/2013 9:01:00 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 9, 2013 the Grand Jurors of Charleston County present upon their oath:

Trafficking in Cocaine

That in Charleston County, South Carolina, on or about June 16, 2013, the Defendant, HENRY OLIVER NESBIT JR, unlawfully and knowingly did sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did possess or attempt to possess a controlled substance or a controlled substance analogue, to wit: cocaine, in excess of 10 grams; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

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

JULIE GARDNER CARDILLO
ASSISTANT SOLICITOR

JPG20130604613

DOCKET NO. 2013GS1005639

[redacted]

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2013008740B

ARREST WARRANT NUMBER

2013A1010203902

DATE OF ARREST

July 27, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: SEP 0 9 2013

VERDICT

Foreperson of Petit Jury *Date:*

INDICT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2013

THE STATE

vs.

HENRY OLIVER NESBIT JR
DOB: [redacted]
B/M

Indictment for

Possession With Intent to Distribute Methylone (Bath Salts)

FILED
9/24/2013 9:01:00 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 9, 2013 the Grand Jurors of Charleston County present upon their oath:

Possession With Intent to Distribute Methylone (Bath Salts)

That in Charleston County, South Carolina, on or about June 16, 2013, the Defendant, HENRY OLIVER NESBIT JR, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue, to wit: methylone; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended

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

JULIE GARDNER CARDILLO
ASSISTANT SOLICITOR

JPG20130604613

DOCKET NO. 2013GS1005527

WITNESSES

Charleston County Sheriff

The State of South Carolina

County of Charleston

AGENCY CASE NUMBER

2013008740B

COURT OF GENERAL SESSIONS

September Term 2013

FILED

9/24/2013 9:01:00 AM
JULIE J. ARMSTRONG
CLERK OF COURT

ARREST WARRANT NUMBER

51804GF

DATE OF ARREST

June 17, 2013

THE STATE

vs.

HENRY OLIVER NESBIT JR
DOB: [redacted]
B/M

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: SEP 0 9 2013

Indictment for

Failure to Stop for Blue Light

VERDICT

Foreperson of Petit Jury *Date:*

INDICT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 9, 2013 the Grand Jurors of Charleston County present upon their oath:

Failure to Stop for Blue Light

That in Charleston County, South Carolina, on or about June 16, 2013, the Defendant, HENRY OLIVER NESBIT JR, while driving a motor vehicle on a road, street, or highway of the State, did knowingly, willfully, intentionally, and in the absence of mitigating circumstances, fail to stop for a law enforcement vehicle after being signaled by a flashing light and/or a siren to do so; all in violation of Section 56-5-750 of the South Carolina Code of Laws (1976) as amended.

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

JULIE GARDNER CARDILLO
ASSISTANT SOLICITOR

21723

ANDERS
NO DEF. BRIEF
No Respondent's Brief Filed
RECEIVED
DEC 09 2014
SC Court of Appeals

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HENRY OLIVER NESBIT, JR.,

APPELLANT

APPELLATE CASE NO. 2014-001231

RECORD ON APPEAL

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

Attorneys for Respondent

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STATE OF SOUTH CAROLINA	
	Court of General Sessions
COUNTY OF CHARLESTON	Case Nos. 2013-GS-10-05527
	2013-GS-10-05634
	2013-GS-10-05639
STATE OF SOUTH CAROLINA	
vs.	Transcript of Record
HENRY NESBIT,	
Defendant.	
	DATE: May 5 through May 7, 2014

B E F O R E:

The Honorable Deadra L. Jefferson

A P P E A R A N C E:

Lauren Mulkey and Stephanie Linder
For the State of South Carolina

Melissa Gay and Michael Nelson
For the Defendant

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

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THE COURT: Does the defendant wish to have a formal arraignment?

MS. GAY: He wants a formal arraignment, Your Honor.

THE COURT: Ladies and gentlemen, we appreciate your patience. This will be the last jury that we select probably for the week, absent something really unusual happening. We are going to select this jury, and then we will have you call in after 6. But in all likelihood, those who are not selected for this panel will be excused for the week. That's why we are working a little bit later than usual instead of having you go to lunch and having you come back to the courthouse for jury selection, so that once we are done, we will be able to give those instructions to those remaining for this panel and then allow y'all to go for the remainder of the day.

Again, we appreciate your patience. We do not take your time for granted. During this time, we've selected a jury and also disposed of three other cases that were pending on the roster, which has significantly reduced the time that you will be required to be at the courthouse this week. Jury service is the only time while you are waiting that you are actually working. So, again, we appreciate your patience as we go through this process.

Sir, if you would stand, please, for the formal

arraignment.

You may proceed when you are ready.

THE CLERK: Case No. 2013-GS-10-5527, the State of South Carolina vs. Henry Oliver Nesbit, Jr., indictment for failure to stop for a blue light, in the court of general sessions, convening on September 9th, 2013. The Grand Jurors of Charleston County present upon their oath that in Charleston County, South Carolina, on or about June 16th, 2013, the defendant, Henry Oliver Nesbit, Jr., while driving a motor vehicle on the road, street or highway of the state, knowingly, willfully, intentionally, and in absence of mitigating circumstances, failed to stop for a law enforcement vehicle after being signaled by a flashing light and/or siren to do so, all in violation of Section 56-5-750 of the South Carolina Code of Laws, 1976 as amended.

How say you; are you guilty or not guilty?

THE DEFENDANT: Not guilty.

THE COURT: Case No. 2013-GS-10-5634, the State of South Carolina vs. Henry Oliver Nesbit, Jr., indictment for trafficking in cocaine, in a court of general sessions, convening on September 9th, 2014, the Grand Jurors of Charleston County present upon their oath that in Charleston County, South Carolina, on or about June 16th, 2013, the defendant, Henry Oliver Nesbit, Jr., unlawfully and knowingly did sell, manufacture, cultivate, deliver,

purchase, or bring to this state, or did provide financial assistance, or otherwise aid, abet, attempt or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this state, or did possess or attempt to possess a controlled substance or a controlled substance analog, to wit, cocaine, in excess of 10 grams, in violation of 44-53-370 of the South Carolina Code of Laws, 1976 as amended.

How say you; are you guilty or not guilty?

THE DEFENDANT: Not guilty.

THE COURT: Case No. 2013-GS-10-5639, the State of South Carolina vs. Henry Oliver Nesbit, Jr., indictment for possession with intent to distribute methylone, bath salts, at a court of general sessions, convened on September 9th, 2013, the grand jurors of Charleston County present upon their oath that in Charleston County, South Carolina, on or about June 16th, 2013, the defendant, Henry Oliver Nesbit, Jr., did manufacture, distribute, dispense, deliver, purchase, or did aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or did possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analog, to wit, methylone, in violation of 44-53-370 of the South Carolina Code of Laws, 1976 as amended.

How say you; are you guilty or not guilty?

THE DEFENDANT: Not guilty.

THE COURT: How will you be tried; by God and country?

THE DEFENDANT: Yes.

THE COURT: May they send you a true deliverance. Are you ready for trial?

THE DEFENDANT: Yes, sir.

THE CLERK: Thank you.

THE COURT: Ladies and gentlemen, we are going to go through a process that is called voir dire, where I'm going to ask you some questions so that the attorneys can more effectively exercise their preemptory challenges in jury selection. If a question applies to you, please stand, and in a loud and clear voice, give us your name, your juror number, and an answer to the question, if applicable, and remain standing until the Court has completed questioning you.

Before we begin that process, I'm going to have counsel for the State to introduce themselves, anyone who will be assisting her in the trial of this case, and tell us the names of the lawyers in her office. And counsel for the defense will have her client stand and face the panel and provide us with the same information.

You may proceed, Ms. Linder.

MS. MULKEY: My name is Lauren Mulkey. Assisting me in this trial is Stephanie Linder. You will see my Investigator, Jack Scarborough, coming in during the trial.

Also in our office we have Shannon Elliott, Debbie Herring-Lash, Drew Evans, Jessica Baldwin, Chris Lietzow, Emmanuel Ferguson, Tyler Whitaker, Kelley Young, Alex Ziegler, Jim Stack, Richard Waring, David Osborne, Lindsey Byrd, Jennifer McCoy, Jennifer Shealy, Jenna Newman, Nick Lewis, Nina Savas, Ted Corvey, Amy Harrell, Timmy Finch, Chad Simpson, Culver Kidd, Tod Williams, Greg Voigt, Marian Askins, Ran Stoney, Kelly LaPlante, Burns Wetmore, our elected official, Scarlett Wilson, and her deputy, Bruce Durant.

THE COURT: Ms. Gay.

MS. GAY: Thank you, Your Honor. My name is Melissa Gay. I'm from the Charleston Bar. This is my client, Henry Nesbit. I will be assisted by another attorney, Michael Nelson. He's not here today, but he will be here tomorrow when the trial starts.

THE COURT: Thank you. Again, ladies and gentlemen, if a question applies to you, please stand and in a loud and clear voice, give us your name, juror number, and answer to the question, if applicable, and remain standing until the Court has completed questioning you.

Is there any member of the panel related by blood

or marriage to Henry Oliver Nesbit, Jr.? If so, please stand at this time.

(No response from the jury.)

THE COURT: Does any member of the panel have a close, personal, social, or business relationship with Henry Oliver Nesbit, Jr.? If so, please stand.

(No response from the Jury.)

THE COURT: The following are a list of potential witnesses. Please listen carefully: Gerardo Chavez, Erin Meyer, Thomas Buchanan, Brian Hodge, Kathy Kjellman, Mark Watson, Jason Riley, Steven Balzano, Paul McManigal, Michael Gurrieri, Herman Martin, Renee Hilton, Ashley Earl, Susan Payne, all of the Charleston County Sheriff's Office; Officer Ambras, A-m-b-a-s, and Thomas Buckhannon, III, of the Isle of Palms Police Department, and Mark Willhoft.

Is there any member of the panel related by blood or marriage to any of the people that I've just listed, or does anyone have a close, personal, or social relationship with any of these individuals? If so, please stand at this time.

(No response from the Jury.)

THE COURT: Has any member of the panel ever been represented by any of the attorneys in this case or any of the attorneys in their offices? If so, please stand at this time.

(No response from the Jury.)

THE COURT: Is there any member of the panel related by blood or marriage to or have a close personal or social relationship with any of the attorneys involved in this case or any of the lawyers who practice in their law office or offices or anyone who is employed in their offices? If so, please stand at this time.

(No response from the Jury.)

THE COURT: Has any member of the panel formed or expressed an opinion about any issue or matter involved in this case? If so, please stand at this time.

(No response from the Jury.)

THE COURT: Is there any member of the panel aware of any bias or prejudice toward either the State or the defense in this case? If so, please stand at this time.

(No response from the Jury.)

THE COURT: Is there any member of the panel -- is there any member of the panel that was a member of the Grand Jury which issued the indictments in this case? If so, please stand at this time.

(No response from the Jury.)

THE COURT: Is any member of the panel a member of or contributor to any group which has as its primary concern the promotion of law enforcement or victims' rights? These groups would include, but are not limited to, Mothers

Against Drunk Driving, Students Against Drunk Driving, Citizens Against Violent Crime, People Against Rape, Citizens Advocating the Return to Decency and Ethics, Parents Empowered to Save Teens, or any type of community watch group? If so, please stand at this time.

(No response from the jury.)

THE COURT: Is there any member of the panel who has a moral, philosophical, or religious opposition to sitting in judgment of a fellow human being? If so, please stand at this time.

(No response from the jury.)

THE COURT: Is there any member of the panel who has a moral, philosophical, or religious opposition to the use of illegal substances, such that it impairs your ability to be fair and impartial? If so, please stand at this time.

(No response from the jury.)

THE COURT: Is there any member of the panel who holds the belief that certain substances should be legalized? If so, please stand at this time.

(No response from the jury.)

THE COURT: Is there any member of the panel who has any relatives who are employed in law enforcement? If so, please stand at this time.

Tell me your name and juror number and which family member and which agency.

PROSPECTIVE JUROR: John Hull, 166. My daughter is a probation officer in Lakewood, Colorado. And my son-in-law is a sheriff's deputy in Lakewood, Colorado.

THE COURT: Thank you

PROSPECTIVE JUROR: My son is -- you want the name?

THE COURT: Your name and juror number.

PROSPECTIVE JUROR: My name is Tammy Buehner. And my number is 31.

THE COURT: And your son is employed with who?

PROSPECTIVE JUROR: He works for the Mount Pleasant Police Department.

PROSPECTIVE JUROR: Miranda Jones, my number is 183. And my stepmother is a North Charleston police officer.

PROSPECTIVE JUROR: Carol Kelly, Juror No. 190. I have a stepson who is a New York State trooper, and a step son-in-law who is a captain with the New York State police.

THE COURT: As a result of these experiences, do you all feel that you can remain fair and impartial and render a fair and impartial decision in this case based solely on the evidence as it will be presented and on the laws as the Court will instruct? If the answer is yes, please take your seat.

The record should reflect that all answered yes with the exception of No. 31 who will be excused. Ma'am,

did you stay standing or did you remain seated to tell me yes?

PROSPECTIVE JUROR: I said yes when I should have sat down.

THE COURT: Okay. Thank you. Let the record reflect all jurors answered yes.

Is there any member of the panel who has been formerly employed in any type of activities involving addiction to substances? If so, please stand at this time.

(No response from the jury.)

THE COURT: Is there any member of the panel who lives in the vicinity of Ocean Boulevard on the Isle of Palms? If so, please stand at this time.

(No response from the jury.)

THE COURT: Does any member -- has any member of the panel read, watched, or listened to any media accounts about this case? That includes anything that could have been on the radio, on the television, in the newspaper, or on the Internet? If so, please stand at this time.

(No response from the jury.)

THE COURT: Is there any member of the panel who has ever been the victim of a violent crime? If so, please stand at this time.

(No response from the jury.)

THE COURT: Does any member of the panel know of

any reason whatsoever why he or she should not serve as juror in this case, with particular emphasis being placed on your ability to be fair and impartial to both the State and the defense? If so, please stand at this time.

(No response from the jury.)

THE COURT: Strikes will be 5 and 5. I would ask that you give the clerk your attention.

Ladies and gentlemen, if your name is called, please come forward with all of your personal belongings. You will either be seated as a juror or excused as a juror.

The bailiff is going to show you where you are to go, bring all your personal belongings if your name is called. Thank you very much for your patience and your attention.

Mike, you may proceed when you are ready.

THE CLERK: If I call your name, gather your belongings, come up to the podium, turn and face the parties.

Juror No. 180, Anna Jones.

Strikes are?

THE COURT: 5 and 5.

THE CLERK: What say you for the State?

MS. MULKEY: Please seat this juror.

THE CLERK: What say you for the defendant?

MS. GAY: One moment please. Please seat the juror

for the trial of this case.

THE CLERK: Ms. Jones, please have a seat in the jury box. You've been selected as a juror in this case.

Juror No. 64, Dale Davis.

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: Please seat the juror for the trial of this case.

THE CLERK: Mr. Davis, if you will make your way to the jury box, you've been selected as a juror in the trial of this case.

Juror No. 73, James Dearman.

What say you for the State?

MS. MULKEY: Beg the Court's indulgence. Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: One moment, please. Please seat the juror for the trial of this case.

THE CLERK: If you will make your way to the jury box, you've been selected as a juror in the trial of this case.

Juror No. 254, Kyle Novak.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: Please excuse the juror for the trial of this case.

THE CLERK: If you will make your way back to your seat. You've been excused as a juror for this case.

Juror No. 356, Janice Underwood.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: Please seat the juror.

THE CLERK: If you will make your way to the jury box, you've been selected as a juror in the trial of this case.

Juror number 74, Carolyn Dent.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: Please seat the juror.

THE CLERK: If you will make your way to the jury box, you've been selected as a juror in the trial of this case.

Juror No. 230, Carolyn McNeal.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: Please seat the juror.

THE CLERK: If you will make your way to the jury box, you've been selected as a juror in the trial of this case.

Juror No. 167, Katie Hurst.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: Please seat the juror for the trial in this case.

THE CLERK: If you will make your way to the jury box, you've been selected as a juror in the trial of this case.

Juror No. 190, Carol Kelly.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: Please excuse the juror.

THE CLERK: Please have a seat back in the audience, you've been excused for the trial of this case.

Juror No. 387, Harry Williams.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: One moment please. Please seat the juror for the trial of this case.

THE CLERK: If you will make your way to the jury box, you've been selected as a juror in the trial of this case.

Juror No. 177, Gloria Jenkins.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: Please seat the juror.

THE CLERK: If you will make your way to the jury box, you've been selected as a juror in the trial of this case.

THE CLERK: Juror No. 22, Daniel Brinton.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: Hold on a sec'. Please excuse the juror.

THE CLERK: Please have a seat back in the audience. You've been excused from the trial of this case.

Juror No. 14, Maria Becker.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: Please seat the juror for the trial of this case.

THE CLERK: If you will make your way to the jury box, you've been selected as a juror in the trial of this case.

Juror No. 111, Darryl Geriner.

What say you for the State?

MS. MULKEY: Beg the Court's indulgence. Please excuse this juror.

THE CLERK: If you will make your way back to your seat. You've been excused as a juror for this case.

Juror No. 372, Jo Ward.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: One moment please. Please seat the juror.

THE CLERK: If you will make your way to the jury box, you've been selected as a juror in the trial of this case.

174, Yolanda Jefferson.

What say you for the State?

MS. MULKEY: Please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: Please seat the juror for the trial of this case.

THE CLERK: If you will make your way to the jury

box, you've been selected as a juror in the trial of this case.

THE COURT: One alternate; strikes will be 1 and 2.

THE CLERK: Juror No. 282, Toni Richardson.

What say you for the State?

MS. MULKEY: Please excuse the juror.

THE CLERK: Ms. Richardson, please have a seat back in the audience. You've been excused from the trial of this case.

Juror No. 88, Jonathan Ellington.

Any challenge from the State?

MS. MULKEY: No, please present this juror.

THE CLERK: What say you for the defendant?

MS. GAY: One second. Please excuse the juror from the trial of this case.

THE CLERK: Mr. Ellington, please have a seat back in the audience. You've been excused from the trial of this case.

Juror No. 323, Steven Simmons.

Any challenge from the State?

MS. MULKEY: No.

THE COURT: What say you for the defendant?

MS. GAY: Please excuse the juror.

THE CLERK: If you will make your way back to your seat. You've been excused as a juror for this case.

THE CLERK: 249, Rhonda Myers.

Any challenge from the State?

MS. MULKEY: No.

THE COURT: Any challenge from the defendant?

MS. GAY: No.

THE CLERK: If you will make your way to the jury box, you've been selected as a juror in the trial of this case.

Your Honor, the jury has been selected and seated.

THE COURT: Any motions regarding the selection of the jury from the State?

MS. MULKEY: None from the State, Your Honor.

THE COURT: From the defense?

MS. GAY: One second, please. Let me just discuss it with him for just a half a second.

We have nothing, Your Honor, from the defense.

THE COURT: Ladies and gentlemen, you are excused for the remainder of the day. I just need you to call the jury information line after six o'clock this evening. As I've already stated, this was the last criminal trial, I believe, that we will have for selection on this docket for the week. But, again, out of abundance of caution, we need you to call back after six o'clock this evening, and we might have you call back after six o'clock on Tuesday evening. But in all likelihood, this will be the last case

that we select. But in any event, the message will let you know whether we need you. And if we don't need you, you will be able to go about your activities as you normally would.

Again, we appreciate your patience. Hope you have a wonderful day. You are excused for the remainder of the day. Call back after six o'clock this evening for further instructions.

(Whereupon, prospective jurors leave.)

THE COURT: Ladies and gentlemen, you've been selected for the case of State of South Carolina vs. Henry Oliver Nesbit, Jr. We are going to send you home for the remainder of the day. There's a case that I'm going to try this afternoon after lunch. The next 40 minutes we are going to start that case.

We don't have what are called dates certains. We try cases on a rolling basis, which means when I finish the case that's ahead of you, we will call you in to the trial of this case. We anticipate that case will take a day and a half, two days to conclude. And then we will begin your case probably on Wednesday. And we anticipate we will conclude that case on Thursday. As I've already explained, Friday is a state holiday. So if we run into some difficulty where we will not be able to complete the case, we will let you know.

When you return to the courthouse, you will return directly to your jury room. The bailiffs are going to show you how to do that. Also, before you leave, we will need all of your cell phone numbers so that in the event we need to contact you outside of the jury call-back system. When you call into the jury line, I will need you to call each evening after six o'clock. And the only recording you need to listen to is for Judge Jefferson's jury. That's it. Do not pay attention to any other recording, only Judge Jefferson's jury. Okay? That's the only message that will be applicable to you.

But we still need your phone numbers because I will probably have the staff call you in any event as well, just to make sure everybody is clear on what the instructions are. So if you could, as the bailiffs show you how you are going to re-enter the courtroom, I mean, the courthouse, when we resume the trial of this case, they will collect those numbers from you as you exit. So, again, we appreciate your patience.

It's been a typical Monday, probably a little atypical Monday because normally we try to get this done about 12:30, 1:00. As I've already explained, jury service is the only service where you could be waiting and be very efficient for us, because we disposed of four cases this morning before jury selection. So it was very helpful. So

I want you to know your sitting is not in vein.

Hope y'all have a great day. We will be in touch. And, again, Judge Jefferson's jury is the only recording that you need to listen to.

Do not watch, read or listen to any media accounts about this case, if any. That includes anything in radio, television, newspaper. I'm missing something. No, I got all three, radio, television, newspaper, or do not do any independent research of any type on the Internet. Y'all have a great day. See you probably on Wednesday, possibly before then, but I'm projecting Wednesday.

(Whereupon, the jury leaves open court at 2:09 p.m.)

THE COURT: Okay. Is there anything we need to take up before we break for lunch from the State?

MS. MULKEY: No, Your Honor.

THE COURT: From the defense?

MS. GAY: Your Honor, Mr. Nesbit told me he wanted to put stuff on the record. I don't know if he does. I think he's fine with this jury. He knows the process. He's obviously had a jury before, we have been at jury trial before. But there was a lot of discovery in his case. And throughout the course of the morning, I've actually -- I don't have a copy of his warrants, the ones that were served on him. So I asked them to get me those, but they were the

ones served on him. I've given him all the indictments. I've given him all the discovery that may or may not have been served. And he at one point had an offer that, as we said in the beginning, is between 15 and 25 --

THE COURT: With a cap of 25 and a low end of 15?

MS. GAY: Yes. And we are just going to be talking some more --

THE COURT: Are they all 85 percent?

MS. GAY: Trafficking is 85 percent.

MS. MULKEY: They are all 85.

THE COURT: Failure to stop isn't 85 percent. Bath salts is not 85 percent, only trafficking. The rest of them are 65 percent, right? Is the trafficking a strike?

MS. MULKEY: Yes.

THE COURT: Most serious or serious?

MS. MULKEY: Serious.

THE COURT: Does he have any other strikes?

MS. MULKEY: Not at this time, no, Your Honor.

THE COURT: Yes, sir, is there anything you want to state for the record?

THE DEFENDANT: No, ma'am.

THE COURT: Okay. Is the offer still open or has it been foreclosed upon?

MS. MULKEY: No, it is not.

THE COURT: Did you all ever put that on the

record, the rejection of the offer?

MS. GAY: It was right around the time that Julie was leaving, so I don't know that Henry Nesbit was ever brought over and put that on the record.

THE COURT: Did you fully explain it to him?

MS. GAY: He's aware the offer was extended and it was denied.

THE COURT: When was the offer extended?

MS. GAY: Been extended by Julie, and then Stephanie, once she got the case.

THE COURT: I mean, when, what time frame are we talking about, what month, what year?

MS. MULKEY: Your Honor, the offer -- I have an e-mail back in the office. I believe it was March of last year. It was not re-extended when Julie left and Ms. Linder was assigned the case.

THE COURT: Sir, is it correct that you were offered -- Ms. Gay explained to you the State offered you what we call a cap, which is a minimum of 15 years, which is the minimum on one of these charges, I just can't remember which, probably the -- if they reduce the trafficking to a 7, I would guess, and a max cap of 25? Was that explained to you?

THE DEFENDANT: Yes, ma'am, and they also -- but then they also said they supposed to give me a package deal

for me.

THE COURT: That is -- that's the package. It would encompass -- how many charges was that supposed to encompass?

MS. MULKEY: That was for the -- for him to plead guilty on all the charges, it was a negotiated 15 to 25 years.

THE COURT: What are all the charges?

MS. MULKEY: All the charges included the charges from that day, the ones we are here on trial about, failure to stop for blue lights, trafficking cocaine and methylone. And I believe she encompassed an additional three others with that.

THE COURT: Three other indictments?

MS. MULKEY: Yes.

THE COURT: What do those carry?

Mike, do you have those other indictments? I have three, but there were some others.

He also had 2012-5705, trafficking in cocaine; 2012-5706, failure to stop for a blue light; 5707, possession of a firearm during the commission of a violent crime; 5708, leaving the scene of the accident, unattended vehicle; 5710 leaving the scene of the accident; 5528, habitual traffic offender; 5529, use of vehicle without permission.

5528 and 5529 are 2013 cases.

2013-1227, possession of a Schedule II controlled substance, morphine; 6603, distribution of cocaine; 6604, possession with the intent to distribute cocaine. So that would have encompassed all of these charges?

MS. MULKEY: Yes, Your Honor, I believe that does.

THE COURT: Sir, that was your understanding, that all of these charges would have been disposed of with a minimum of 15 and a max of 25, with your lawyer being able to argue for the lower end of it, which would be the 15?

THE DEFENDANT: Yes, ma'am.

THE COURT: And you were fully informed of that offer?

THE DEFENDANT: Yes, ma'am.

THE COURT: And, sir, did you accept or reject that offer?

THE DEFENDANT: I reject it.

THE COURT: And did you do that freely and voluntarily and of your own will?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you feel anybody forced you to do that?

THE DEFENDANT: No, ma'am.

THE COURT: Were you suffering from any mental disabilities or under the influence of any drug or alcohol?

I need you to say yes or no.

THE DEFENDANT: No, ma'am.

THE COURT: Sir, do you understand one of these charges, the trafficking that you are facing, carries a minimum of 25 and a maximum of 30 years, which is a most serious -- no, serious strike, and that basically, it will -- not basically, it would be served at 85 percent, which is basically day for day?

THE DEFENDANT: Yes, ma'am.

THE COURT: Knowing that, do you still wish to reject the offer?

THE DEFENDANT: Yes, ma'am.

THE COURT: And Ms. Gay fully explained the offer to you?

THE DEFENDANT: Yes, ma'am.

THE COURT: Ms. Gay, did you fully explain -- do you understand they are going to trial on the rest of these cases?

THE DEFENDANT: Huh?

THE COURT: Do you understand they are still going to trial on all the rest of these cases?

THE DEFENDANT: Yes, ma'am.

THE COURT: And are some of those strikes?

MS. MULKEY: Yes, Your Honor.

THE COURT: Do you all intend to serve him with

LWOP notice if he's convicted on this?

MS. LINDER: Your Honor, honestly, it depends. Definitely with the amount of things, the separate incidents, we do have the ability to serve him life notice and try him again and again depending on the results of this case.

THE COURT: I need to know worst-case scenario.

MS. MULKEY: Worst-case, yes.

THE COURT: Sir, do you understand that you have some other charges pending that are what we call serious and most serious strikes?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you understand that if the State tries those one at a time and gets convictions, you could be served with life without parole notice?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you understand that in South Carolina, a sentence of life means life until your natural death?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. Ms. Gay, have you fully explained to your client the offer that was extended to him?

THE DEFENDANT: Yes, ma'am.

THE COURT: And did he accept or reject the offer?

MS. GAY: He has rejected. At this point, I would

ask for an opportunity for him to think about it before we actually starts our trial the next time we get together. That's the only thing I ask.

THE COURT: Did he do it with or without your advice?

MS. GAY: Without.

THE COURT: Meaning against your advice?

MS. GAY: Against my advice.

THE COURT: Sir, how old are you?

THE DEFENDANT: 29.

THE COURT: Okay. Do you understand how long 25 years is in South Carolina at 85 percent at your age?

THE DEFENDANT: Yes, ma'am.

THE COURT: And do you think that it is in -- the Court doesn't take a position one way or another. It doesn't matter to me whether I try your case or another case. It is just always very difficult -- I don't know if the State will re-extend it, frankly.

MS. MULKEY: No.

THE COURT: You know, Ms. Gay could always go over there and sort of beg and lean on them and ask for them to be kind and to re-extend it to you if it would dispose of all these other cases as well, but at 85 percent, 25 years is 21.25 years, basically, that you will serve day for day, which means -- how old are you now?

THE DEFENDANT: 29.

THE COURT: Means you would be almost 50 years old, you would be right at 50 years old when you were eligible to get out. I think there's a no-parole on this too. I just want to make sure that you are fully informed of that.

Again, the Court takes no position one way or the other. I've come to a point, I've been doing this 18 years, if you can live with your consequences, I can live with them. I don't bend over too much to help folks, because I find no good deed goes unpunished. People you try to help the most are the ones that appreciate it the least. So I don't take a position one way or the other, because at the end of the day, Ms. Linder's life is not going to be affected, Ms. Mulkey's life, nor Ms. Gay, nor mine. We will be back here doing what we do every day, which is trying cases. So the only person that can make an assessment of whether that's in your best interest is you.

With the offer that has been extended, your lawyer still has the ability to argue for a lesser sentence. On the failure to stop, you are only facing a max of three years. And I don't know what you would be facing on the bath salts. I don't know what the minimum -- I would imagine that's a -- that's not very much exposure.

MS. GAY: She said it was 10 to 30, Your Honor. But, of course, the sentence would have to start at 15 if he

took the negotiations.

THE COURT: Yeah. But I don't think that's served at 85 percent; that's 65 percent.

So only you can make the assessment based on the facts and circumstances as alleged whether this will be in your best interest or not. If you are convicted, worst-case scenario, the minimum mandatory the Court would have to impose is 25 years; however, the Court could still impose the maximum of 30 since it is your third drug offense.

And I just need to make sure that you are fully apprised of that, that you are fully informed of that, that you are comfortable with it. Because if you are comfortable, I'm comfortable. Doesn't really matter to me one way or the other whether you take it or don't take it. I just find that it has been my experience over 12 years that oftentimes young people reject an offer, and then if they are convicted, then they want the offer back. And I just need to make sure that you are fully informed and rejecting the offer, or whether you want your lawyer to ask the State to re-extend the offer to you and see if they are willing to do that over the recess while I try this other case.

MS. GAY: We will think about it, Your Honor, and I will be back in touch.

THE COURT: Well, y'all need to think quick. I

need to know something today. Because while he's over here, I want to go ahead and dispose of it, if I can, before I restart this other case at three o'clock.

MS. GAY: Give us five minutes, if you don't mind.

THE COURT: Y'all go talk.

Y'all go call your office and see if they are willing to re-extend it, and then we will go from there.

(Whereupon, a bench conference takes place off the record.)

THE COURT: Did you all talk to your boss?

MS. LINDER: Yes, Judge, we did. And our position is that the offer should not stay the same. If we are going to consider an offer, it should be worse than the original offer. Because Ms. Gay indicated that the defendant would like a better offer, he wants a 10 to 25, which was never even in the cards, so we don't get to that next step.

THE COURT: Okay. Is that correct?

MS. GAY: That's what he told me, Your Honor. And I've talked to him about it. He, I think, was a little confused about the offer, being that he had to plead to everything in all of the cases, but I think we've discussed ad nauseam that possibility. So I think --

Do you want to plead guilty, Mr. Nesbit? You have to speak.

THE DEFENDANT: No.

THE COURT: I'm sorry, sir. I can't hear you.

THE DEFENDANT: No, ma'am.

THE COURT: Okay. We will start the trial. Make sure they have clothes for your client when we get ready and that they bring him early enough for him to get dressed out, Ms. Gay.

MS. GAY: Yes, ma'am. Thank you.

THE COURT: We will start back.

(Whereupon, the proceedings adjourn for the day.)

(Whereupon, the trial continues on May 7, 2014.)

THE COURT: Does the State plan to introduce any prior bad acts pursuant to Lyle? There's a motion that Ms. Gay has made seeking to preclude any such evidence.

MS. MULKEY: Excuse me, Your Honor? I'm sorry.

THE COURT: Does the State plan to seek to introduce any Lyle-type evidence, prior bad acts?

MS. MULKEY: Yes, Your Honor. We have his rap sheet right here.

THE COURT: I'm not talking about his record to impeach him. I'm talking about Lyle, prior bad acts.

MS. MULKEY: No, Judge. Sorry.

THE COURT: So that is moot then, correct?

MS. MULKEY: Yes, Judge.

THE COURT: What is his prior record? And are there any statements pursuant to Jackson vs. Denno?

MS. MULKEY: There's no statement, Your Honor. His prior record, Your Honor, 2009, DUS second and operating without a license --

THE COURT: Just tell -- well, nevermind. Go ahead.

MS. MULKEY: 2007, possession of cocaine base first, failure to stop for blue lights, PWID cocaine first times two and within proximity of a school; 2005, he had a parole revocation, failure to stop for blue lights, possession of a stolen motor vehicle, and assault with intent to kill; and in 2002, possession of a stolen pistol, B and E of a motor vehicle times two and burg' third.

THE COURT: You said possession of a stolen gun in '02? And then what were those other ones? Can you just tell me just what year was that?

MS. MULKEY: In 2002, he also had a B and E to a motor vehicle times two and a burglary third.

THE COURT: 2 from 14 is 12 years. Did you give them notice you were seeking to -- these are over 10 years old?

MS. MULKEY: Yes, Your Honor.

THE COURT: You agree they are over 10 years old?

MS. MULKEY: Yes, Your Honor.

THE COURT: Did you give them written notice of your intent to try to use those to impeach him?

MS. MULKEY: No, Your Honor.

THE COURT: Then I don't think you can use them.

The '09 DUS and operating without a license, those are not dispositive of truthfulness. You cannot use those to impeach his credibility, as well as any of the drug offenses.

Failure to stop for a blue light is not dispositive of credibility. Possession of a stolen motor vehicle, unless it involved a theft, is not likewise. Assault with intent to kill is not; nor is possession of a stolen gun.

So it looks like you wouldn't be able to use any of his records to impeach him. But we will revisit that again at the time that we -- if, in fact, that becomes an issue if he decides he would like to testify.

Now, on the motion to suppress, we have a witness here ready to go forward?

MS. MULKEY: Yes, we do, Your Honor.

THE COURT: How many numbers does the State have on exhibits?

MS. MULKEY: One.

THE COURT: What's all that other stuff? I need to know if we have other exhibits.

MS. LINDER: We are just trying to get items pre-marked just for efficiency sake, is what we are trying to get done.

THE COURT: So y'all haven't agreed on anything?

MS. MULKEY: We agree on everything for pretrial.

MS. GAY: There's some drugs, Your Honor. We don't -- we have to lay a foundation for the drugs before they could agree on that, obviously. But the pictures and things, we agree on all that.

THE COURT: What numbers are those?

MS. MULKEY: We have pictures as State's 1, 2, 3, 4 through 9.

THE COURT: So 1 through 9 y'all agree to without objection?

MS. GAY: Yes.

THE COURT: State's 1 through 9 will be admitted without objection.

(State's Exh. 1, Map, was marked in evidence.)

(State's Exh. 2, Map, was marked in evidence.)

(State's Exh. 3, Video, was marked in evidence.)

(State's Exh. 4 through 9, Photographs, were marked in evidence.)

THE COURT: Proceed.

MS. MULKEY: State calls Deputy Chavez.

GERARDO CHAVEZ,

having been duly sworn, testifies as follows:

THE CLERK: State your name and spell your last name.

THE WITNESS: Deputy Chavez.

THE COURT: Your first time please.

THE WITNESS: Gerardo Chavez.

THE COURT: Please spell both your names.

THE WITNESS: G-e-r-a-r-d-o, last name is C-h-a-v-e-z.

THE COURT: You may proceed.

MS. MULKEY: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, ma'am.

DIRECT EXAMINATION

BY MS. MULKEY:

Q. What is your occupation?

A. Deputy sheriff.

Q. Did you have occasion to be working on June 16th, 2013?

A. Yes, ma'am.

Q. And what were your duties and assignments for that shift?

A. On that day, I was working off-duty patrol on Isle of Palms to assist with traffic, additional traffic enforcement and crowd control during the busy time of the beach season.

Q. On June 16th, 2013, did you have occasion to interact with the defendant?

A. I did.

Q. Please tell us how you came into contact with the defendant?

A. On that day, ma'am, I was seated inside of my cruiser in front of the Windjammer partially parked in the median observing traffic for any violations, when I observed the defendant approaching the intersection of JC Long and Ocean Boulevard, where he proceeded to make a turn without signaling.

Q. Was there anything about his behavior that you found to be suspicious?

A. While he was approaching and as he made the turn, all while I was in plain view of where I could be seen, he would not -- he refused to look at me, which drew additional suspicion.

Q. Based upon the defendant's failure to use his turn signal, did you initiate a lawful traffic stop?

A. I did.

Q. How did you do that?

A. By activating my blue lights.

Q. Is failing to use a traffic signal a violation of state law?

A. It is under Section 56-6-2150. A person can make a turn safely when it is safe to do so, but must give signal, a continuous signal 100 feet prior to making that turn.

Q. And how do you measure that 100 feet?

A. Through my experience, I can estimate the distance, but for preparation for this trial, I actually went out and measured it.

MS. MULKEY: Your Honor, may I approach?

THE COURT: Yes, ma'am.

BY MS. MULKEY:

Q. Deputy Chavez, I show you what has been marked as State's Exhibit No. 1. This is the -- can you tell me what this is?

A. Yes, ma'am.

Q. What is this?

A. That's the intersection where the initial violation took place.

Q. Okay. Deputy Chavez, can you please point out where you were seated in your vehicle that day?

A. Yes, ma'am. Right here. (Witness indicates.) Facing that way.

Q. And you just testified that you went out and measured where 100 feet is from that intersection.

A. Yes, ma'am.

Q. Can you please point out the intersection that you are referring to?

A. This intersection here.

Q. And what is that intersection?

A. That is JC Long. This is JC Long here and this is Ocean Boulevard. (Witness indicates.)

Q. And where is 100 feet back from that intersection?

A. Approximately, ma'am, it's right about here.

Q. Thank you. What was the defendant driving that day?

A. A brown Harley Davidson motorcycle.

Q. And how far away from that intersection did you say that you were?

A. I would say about approximately 50 feet, maybe couple car lengths.

Q. And did this violation occur during the day or the night?

A. It was early evening, approximately 7:45 p.m.

Q. Was it still light outside?

A. It was.

Q. Do you wear contacts or glasses?

A. No, ma'am.

Q. Had you worked a bunch of overtime that week or had any reason to be overly exhausted or tired?

A. No, ma'am.

Q. Was your ability to see the intersection obstructed by anyone or anything?

A. No, ma'am.

Q. Were you driving in an updated car, the ones with

the dashboard camera?

A. Yes, ma'am.

Q. Do those record everything?

A. Not everything.

Q. Do they record during your entire shift?

A. No, ma'am.

Q. What causes the camera to start recording?

A. If I activate my blue lights or if I manually activate the camera, it will start recording.

Q. Does it capture everything that you are able to observe?

A. No, ma'am.

Q. And why is that?

A. Because it's in a stationary location, permanently affixed behind the windshield and the front part of my vehicle facing forward. So it only observes what is directly in front of the vehicle.

Q. Regarding this incident, you testified that your camera began recording when?

A. When I activated -- it actually -- when I activated my blue lights and the 30 seconds previous to that, which is a default setting, it prerecords 30 seconds prior to the activation.

Q. Does that -- did that pre-30-seconds record the defendant's traffic violation?

A. Partially. You could see the defendant approaching the intersection within that 100 feet prior to the intersection, but -- and you can see where he did not signal in that frame, but he goes outside the frame to make the actual turn at the stop sign.

Q. So based on the defendant's failure to use his turning signal, did you attempt a lawful traffic stop?

A. I did.

Q. Did you ultimately write the defendant a traffic citation for this offense?

A. Yes, ma'am.

Q. After you initiated a lawful traffic stop, what did the defendant do?

A. While catching up to him, I activated my blue lights and he began to slow. He made a right-hand turn onto one of the side streets, at which time I believed he was going to stop. And he turned back and yelled something to me, and then took off at a high rate of speed.

MS. MULKEY: Beg the Court's indulgence for a second, Your Honor.

Thank you, Your Honor.

BY MS. MULKEY:

Q. You had just said that the defendant took off. Did he cross through several intersections?

A. He did.

Q. Did he move in and out of oncoming traffic?

A. He did.

Q. In your training and experience, were defendant's actions consistent with attempting to evade a lawful traffic stop?

A. Yes, ma'am.

Q. Then what happened?

A. He had a collision.

Q. So as a result of the lawful traffic stop and the defendant's subsequent flight, there was a single vehicle collision?

A. Yes, ma'am.

Q. And you came upon the defendant after he had wrecked, and then what happened?

A. Upon coming up to him, I observed him in the roadway, and he appeared to be trying to get up. He was still -- appeared he was still trying to get up to continue fleeing on foot.

Q. And what happened as you approached the defendant?

A. I gave him verbal commands to get down and stay down and turn him around, proned him out, make sure his hands were out to the side, advised dispatch that I had one detained at the moment, awaiting on backup.

Q. Why did you tell the defendant to stay on the ground?

A. Because he was under arrest for the failing to stop.

Q. So he was under arrest at that time?

A. Yes, ma'am.

Q. Was he handcuffed?

A. Not at that time, no.

Q. Why not?

A. Because upon arrival and proning him out, while that situation was going on, I observed quite a bit of blood coming from the defendant's head area from the injury, potential injury sustained during that collision. And I didn't want to cause any further injury or potential further injury to him. I just wanted to remain there and stay still until he could be treated.

Q. Did you tell the defendant he was under arrest?

A. Not at that time, ma'am.

Q. And then what happened?

A. Upon my backup Deputy Buchanan arriving on the scene, I advised defendant, because he kept trying to push off the ground, kept trying to push up, I just advised him to go place his hands behind his back, at which time he did, and I placed him in handcuffs and secured him.

Q. So you instructed the defendant to stay on the ground, and he ultimately did. And then your testimony is that you further instructed him to place his hands behind

his back, and he did comply?

A. He did.

Q. Did you mirandize the defendant?

A. Not at that time.

Q. Did you conduct an interview of the defendant?

A. I did not.

Q. And then what did you do?

A. I began asking him for his information, for his name, date of birth, so I could identify him. I conducted a search of his person incident to arrest, and located a sizable amount of US currency in his right front pocket along with some, what I believed to be narcotics, a large amount of narcotics, or what I believed to be narcotics, in his left front pocket.

Q. What did you do with the items you found on the defendant?

A. They were seized on location, placed in an evidence bag, and secured in the back of my vehicle.

MS. MULKEY: Thank you, Deputy Chavez. Please answer any questions the defense may have.

THE COURT: You may proceed.

CROSS-EXAMINATION

BY MS. GAY:

Q. Deputy Chavez, I'm Melissa Gay.

A. Yes, ma'am.

Q. In your testimony, you indicated that you have one of the more recent cars with a dashboard camera.

A. Yes, ma'am.

Q. And I believe that you have provided, I guess, the DVD --

A. In-car video, yes, ma'am.

Q. -- to the Solicitor's Office?

A. Yes, ma'am.

Q. And you are aware that that was given to me as part of my discovery material?

A. Yes.

Q. And at this time, I would like for you to authenticate that.

MS. GAY: It's in the solicitor's possession. So, do you have any objection to me having him authenticate this --

MS. MULKEY: No objection.

MS. GAY: -- for this hearing?

BY MS. GAY:

Q. I'm going to give it to them because they have the equipment to use it. And I want you to watch the video. And then after we watch the video, I'm going to ask you some questions about it. Okay, sir?

A. Yes, ma'am.

THE COURT: How long is the video?

MS. GAY: It's not long. There will be a point where we will see -- we just want to get through the first part.

While she's pulling it up, just a few more questions.

BY MS. GAY:

Q. The voice that we hear on this DVD is yours?

A. Yes, ma'am. Well, primarily, yes, ma'am.

Q. And so, I believe your testimony was that when you clicked your blue lights on, that's when the camera comes on, and then you said it's the 30 seconds before also?

A. Yes, ma'am, pre-recorded.

Q. So as we are looking, for the judge, we all looked at this before, but as the judge is looking at it, when we see the intersection and the motorcycle is coming out, that's the motorcycle that my client was driving?

A. Yes, ma'am.

THE COURT: What number is that?

MS. MULKEY: This is 3, I believe, Exhibit 3, Your Honor.

(Video Playing.)

BY MS. GAY:

Q. In the very, very beginning of the video, and I've watched it, and I don't know if the solicitor's got it, you've obviously watched it, there's a statement that you

make in the very beginning. Like, somebody from dispatch says, what's up, or something like that, and your comment is, nothing happening.

MS. MULKEY: Objection, Your Honor.

MS. GAY: Well, it's on the video. You can actually hear it.

THE COURT: Don't talk to each other. Talk through me.

MS. MULKEY: I don't believe we heard "what is up?".

THE COURT: Says what it says. She can ask the question. We are in-camera.

BY MS. GAY:

Q. Have you listened to it enough?

A. Yes, ma'am.

Q. Do you hear yourself in the very beginning when we listen to it on a better machine --

MS. MULKEY: Objection. That's argumentative.

THE COURT: She hasn't finished the question.

MS. GAY: Your Honor --

THE COURT: Ask the question.

BY MS. GAY:

Q. When you listen to it, do you hear yourself saying something?

A. Yes, ma'am.

Q. Do you have any idea what it is that you said at that point? Obviously, the video speaks for itself.

A. I believe it says: Why did he want Newkirk? Talking about another officer. I was talking to somebody else on the phone and asking him a question of them on the phone at that time.

Q. Okay. And that's when in the video we see the motorcycle coming to the intersection?

A. Uh-huh.

Q. And in your testimony that you said, the one that was the picture, you said that there's part of this video that we could see him coming up to the intersection, but then he -- obviously, your camera is facing forward.

A. Correct.

Q. So he passes past the range of your camera?

A. Correct.

Q. And so you would agree with me that in this video, there is no -- he's not at the intersection without a signal in this video?

A. He's within the 100 feet approaching the intersection, which by law you are required to have on continuously.

Q. I understand that, sir, but that's not point. Within the 100 feet of what you believed to be the law of when it's supposed to have the blinker on, we don't see it.

But there's -- in the video, that's all we see. We don't see the intersection where he's supposed -- where he would have come up to the stop sign and actually turned? We don't see the intersection on the video?

A. Correct.

Q. And then when you command your car, turn to follow pursuit, you said that there was a point where you flipped your blue light on, and Mr. Nesbit, my client, is then making a right-hand turn and using a turn signal to make the right-hand turn on the side street?

A. Onto the side street, yes, ma'am. That's obvious. It's in the video.

Q. Right. And he uses the signal to make that right-hand turn?

A. And I had already activated my blue lights.

Q. I understand. And your testimony was that one of the -- when the solicitor asked you, was there anything suspicious or that could cause you to think about this, you said he didn't look at you when he came up to the intersection.

A. Yes, ma'am.

Q. Okay. But if he were to come up -- this intersection is sort of an almost -- kind of like a triangular intersection of some sort. It's not a 90-degree, more like 45-degree. And so -- I guess he's coming up JC

Long, and he's at the stop sign. Your car is facing straight.

A. Correct.

Q. And he's actually -- would be coming at an angle to your left? If you were facing him, he would be going to your left?

A. No, ma'am. Is there any way we can pull the map back up?

Q. Yes. Okay. So where is your car?

A. I'm sitting right here. When he came -- this is approximately 100 foot. When he came down this way, you have to turn back in and stop, which would put him right here for me.

Q. I understand that, sir. So if this green line over here is you, if you went straight out, which is what we see in the video, we would have caught that, the corners off. What I'm saying is, if you are facing him, he's coming in on your left to make that right-hand turn, right?

A. Right.

Q. Like he's going this way?

A. Correct.

Q. And your field of vision is this way?

A. No. My field of vision is --

Q. Okay, this way. Do it this way.

A. My field of vision is all of this.

Q. I understand. But your camera is faced forward?
A. Faced this way, yes.
Q. Right. And so over here, in this area, off camera, you are saying that my client didn't look at you during this period of interaction at this stop sign to take this right? That was your testimony, that he didn't look at you?
A. Yes, ma'am.
Q. And you are saying that during the time that you are watching him as he's coming down toward your left-hand side, he's not looking at you, instead looking straight, because you said he should be looking at you?
A. I never said he should be looking at me. When he arrived at the intersection, he would not look at me. He just remained looking straight.
Q. I understand that. I understand. Hold on a second. Last thing I would say, how long have you been a police officer?
A. For approximately seven years.
Q. And you have obviously been out on Isle of Palms several times in the past?
A. I formerly worked for Isle of Palms for approximately five years.
Q. So in the course of your working as an officer for that long, you've seen lots and lots of either car accidents or made a lot of stops along the way of people who were

driving on the roads?

A. That's a good assumption, yes, ma'am.

Q. Isn't it preferable for them to be looking at the road and looking straight, instead of looking right or left?

A. Common behavior, ma'am, when a motorist arrives at a stop sign or intersection, they look around. And, generally, the general motoring public, if they see a law enforcement officer, they will glance over and see what we in law enforcement are doing for just a moment, yes, ma'am.

Q. So is it your testimony that every single person you've ever seen on the road has looked at you?

A. I said generally, ma'am; I didn't say every.

Q. But in this case, you believed it to be suspicious because my client was riding a Harley Davidson, didn't look at you?

A. No, ma'am, I didn't say that.

MS. GAY: Okay. Thank you.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MS. MULKEY:

Q. Deputy Chavez, your testimony is that the defendant failed to make an -- or excuse me, turned, but failed to signal, correct?

A. Yes, ma'am.

Q. He failed to signal within 100 feet of the intersection, correct?

A. Yes, ma'am.

MS. MULKEY: Thank you.

THE COURT: Sir, you may step down.

(Whereupon the witness is excused.)

THE COURT: State have any further witnesses?

MS. MULKEY: No further witnesses, Your Honor.

THE COURT: Defense have any witnesses?

Does the defense have any witnesses?

MS. GAY: We are having a conversation right now with my client, Your Honor.

THE COURT: Okay. You maybe should have had this conversation before your motion. I have a jury waiting. I need to know if you have anything more to present.

MS. GAY: Your Honor, at this time I would call Mr. Nesbit.

HENRY OLIVER NESBIT, JR,

having been duly sworn, testifies as follows:

THE CLERK: State your name into the microphone and spell your last name for the record.

THE DEFENDANT: Henry Nesbit, N-e-s-b-i-t.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MS. GAY:

Q. Mr. Nesbit, this is your trial today. And we are going to ask you some questions about what we just saw on that video and you traveling that day. Do you recall what happened that day, where you were coming from on June 16th, 2013, on the motorcycle?

A. Yes, ma'am.

Q. Can you tell the Court where you were coming from?

A. I was leaving from Subway. It was off of -- oh, man. It was on Isle of Palms. And I was turning onto -- at the light, I made a left at the light. I believe that's JC Long. And I came up JC Long. And I was going back towards, like, Sullivan's Island where Isle of Palms, past the Windjammer on that corner intersection.

Q. Now, there's been testimony from the officer that you did not use a turn signal when you came upon the intersection of JC Long and Carolina Boulevard. Tell the Court whether or not you used a turn signal that day.

A. I turned on my signal, yes, ma'am.

Q. So it's your testimony that you did, in fact, use a signal?

A. Yes, ma'am. And as a matter of fact, the signal light was still on. It's a 2011 Harley Davidson. The signal light doesn't turn off until you finish a turn and hit the button.

Q. Now, when the officer got behind you, did you see

the officer behind you?

A. No, ma'am.

Q. When you came up, after he turned the blue light on, did you notice that he was behind you then?

A. At that point in time, yes, ma'am.

Q. And when you went onto the side road, I believe the video shows that you used a turn signal during that turn?

A. That was -- yes, ma'am.

Q. And with regard to your approach on JC Long Boulevard to Carolina, did you have any occasion to see this officer sitting there?

A. No, ma'am.

Q. Just didn't see him?

A. No, ma'am.

Q. Okay. And --

A. There were a lot of people outside, and there was traffic. It was Father's Day. They had a party at the blue -- the Windjammer that day. It was a bikini contest.

Q. Had you been there?

A. Not yet. I was on my way there.

Q. And so it's your testimony that you did, in fact, use your turn signal?

A. Yes, ma'am.

MS. GAY: I have no further questions, Your Honor.

THE COURT: Any questions for the witness?

MS. LINDER: Very briefly, Your Honor.

CROSS-EXAMINATION

BY MS. LINDER:

Q. Mr. Nesbit, you were here a second ago when we were looking at the map and watching the video, weren't you?

A. Yes, ma'am.

Q. When we were looking at that map, do you recall when Deputy Chavez pointed out where a 100 feet back from that stop sign was?

A. Yes, ma'am.

Q. And were you signaling 100 feet back where he motioned and marked where that was on the map?

A. I don't know where 100 feet is on the map exactly, but I was -- I put on my signal light approximately, I would say, about three car lengths before the stop sign.

Q. Okay. When you were in here a moment ago watching the video from the dashboard cam, did you see the turn signal on the Harley Davidson that you were driving?

A. I couldn't see anything, ma'am. It was a brief quick second of the bike being in the camera. I saw it on once I made the right turn.

Q. Is it your testimony that you were in compliance with law, that 100 feet from behind the stop sign you had your signal on and continuously had it on?

A. Yes, ma'am.

MS. LINDER: Thank you. Nothing further.

THE COURT: Any redirect?

MS. GAY: No, Your Honor.

THE COURT: Sir, you may step down.

(Witness is excused.)

THE COURT: Anything further from the defense?

MS. GAY: No, Your Honor.

THE COURT: Glad to hear arguments.

MS. MULKEY: Yes, Your Honor. The State argues that Deputy Chavez is a well-trained law enforcement officer. He has been in law enforcement. He has been trained not just in traffic enforcement and gone to extensive schools on it, but he testified that he observed the defendant fail to use his turn signal prior to making that right turn. The video demonstrates the defendant approaching the intersection in the 100 feet that Deputy Chavez estimated that day, but, in fact, testified he went out and remeasured, and the defendant failed to use his signal of intention in that 100 feet.

This traffic stop was based on a traffic violation 56-6-2150, which gave him probable cause to believe the defendant violated that traffic law. The subjective intentions of the officer are not playing a role here because this is a probable cause analysis. And it was a good faith stop based on the traffic violation. The map and

the video demonstrate the same. And Deputy Chavez's testimony corroborates that.

And, finally, the defendant did testify that he continuously had his signal on. And we argue that the video does not show that; it shows otherwise.

THE COURT: Would you like to respond?

MS. GAY: Thank you, Your Honor. I know that you are in a hurry, and I know that we --

THE COURT: I'm not in a hurry.

MS. GAY: We don't want to leave the jury waiting, but if you were to take --

THE COURT: I generally don't correct attorneys, but I'm never in a hurry. I'm probably the most patient jurist in this building. And when I correct and I have the quorum in my courtroom, it's my job to run this courtroom. It's my job to run this system. I'm incredibly efficient, and I do it well. Doesn't mean I rush. I have not rushed you. We've taken the appropriate amount of time to take this hearing. And I'm going to take more than ample time to have argument. And I'm going to take whatever time I find appropriate to make a meditative decision.

MS. GAY: Only thing I would ask, Your Honor, is that you watch the video.

THE COURT: I watched it. I watched it three times when y'all just replayed it for me.

MS. GAY: Well, it has conversations that were in the beginning where he indicates different than what he said.

THE COURT: I heard what he said on the video. I listened very intently when I had them replay it and I asked them to turn the volume up.

MS. GAY: Only thing I would say at this point, Your Honor, is that his camera has got an angle that's forward and straight, and doesn't have the whole entire situation with the turn. Obviously, my client has testified that he did, in fact, use his turn signal. This is a drug case. This is not -- you know, we are not having a trial for whether or not he failed to use his turn signal. This is a case that had to do with drugs that were found on him pursuant, long time, minutes down the road after everything happened, but all of it comes back to the probable cause for the stop.

And all of it is, we believe, fruit of the poisonous tree, a stop that was unnecessary, illegal, violation of his constitutional rights. We don't believe he committed any kind of crime.

What Officer Chavez says is that he believes that he didn't look at him and that that meant that there was some type of suspicious activity. That in itself is not at all probable cause for a stop. He went on and on about

how -- he actually completely contradicted himself when he just spoke at the end and he said, no, I don't think that people have to look at me, that's not required, or, that's not necessary. And that's -- his testimony was that that was what was considered suspicious in his mind. And when I asked him, do you want people to be looking either right or left or forward, he said, no, that's not what I'm saying.

And, ultimately, we believe that it was a pretextual stop. We see a man on a motorcycle. He decides on some level, I want to see what this guy is up to. And he says because he didn't look at him that that would be the reason that he wants to try to check it out, get behind him, see what's going on. Mr. Nesbit uses his turn signal. He testified he didn't even know the police officer was behind him until such time as the blue lights put on. But he uses his turn signal to make the right-hand turn; wherein, he decides he doesn't want to stop.

That was a different moment, but, ultimately, Your Honor, we believe that the initial encounter with law enforcement, the initial breach occurred because of this -- we don't believe that he failed to use his turn signal. And we believe that anything that preceded after that was in violation of his constitutional rights.

THE COURT: Would the State like to respond?

MS. MULKEY: No, Your Honor.

THE COURT: The motion to suppress is denied. Our case law is very clear. There's several legal principles or concepts applicable to this situation; however, what is germane to the Court's determination is whether this was a valid traffic stop and whether it was initiated pursuant to a valid traffic violation which created probable cause. The testimony of the officer, I have no reason to question the veracity of what he has stated while his camera had a view of Mr. Nesbit as he approached the intersection and not at the time that the actual turn was made. It is clear from the video that no traffic device was used for the turn, at least within the 100 feet, which it would have been when the motorcycle was visible as it approached the intersection.

And that he is -- the officer is correct, 56-5-2150 does provide for the appropriate use of traffic signals and devices when making certain turns from certain lanes. And it covers a whole multiplicity of situations which is not necessary for the Court to go into. But I have no reason to doubt the veracity of what he stated, which is that at least by a preponderance of the evidence, which is more likely than not, that Mr. Nesbit did not use his traffic signal as required within 100 feet of the intersection.

And Mr. Nesbit is probably a little different than most people. I don't know too many people that signal 100 feet. Some people do; some don't. Some signal as they go

to the actual stop sign, but that does not negate the fact that the statute requires that you use the signal within 100 feet of turning left or right.

And where there's a traffic stop that is initiated pursuant to a traffic violation, that is a creation of probable cause. Our case laws also is very clear that a valid traffic stop initiated for a traffic violation is not rendered invalid where there's an allegation of it being a mere pretext for a narcotics search. This is not your typical situation where it is argued that a traffic stop is pretext for a narcotics search. It's not an unusual circumstance, but to some extent, it is. Because, actually, Mr. Nesbit became the argument of his own situation. If he had merely stopped as desired -- maybe it was pretext. I have no idea. I have no way of making that decision. I don't know what may have happened. I only know what did happen, which is that once he was alerted to stop, he didn't.

He then engaged in an active role to evade the police, which he then had a one-car accident where he injured himself. He was put under arrest for failure to stop, where search incident to arrest discovered these drugs and cash.

And I don't know what would have happened if he had actually stopped for the stop. It may well have been that

he would have been simply given a citation and he went on with his life. I cannot assume that officer then would have embarked upon some form of targeting him for a drug search, because that's not what happened. What actually happened was he was signaled for a traffic stop, he didn't stop, caused a one-car accident where he injured himself, and as a result of that, he was bleeding. He was told not to move. And if he had not moved, he simply would have -- they would have put him under arrest, eventually anyway. So I don't know that it matters, because there still would have been a search incident to arrest. But there was no requirement to mirandize him. The search incident to arrest was appropriate. There was, in fact, probable cause for the stop by a preponderance of the evidence. And what is dispositive, again, I don't doubt the veracity of the officer's testimony, but I have a video that shows he did not signal within 100 feet of the intersection. So it really doesn't matter what happened once he got to the stop sign before he made -- immediately before he got to the stop sign and made the turn.

And, frankly, whether he looked or didn't look at the officer is not dispositive, and I'm not giving it any consideration in my decision as to whether it was a valid traffic stop or not. He didn't signal and it's a valid traffic stop. And then he exacerbated it by his own

behavior by failing to stop.

And I do not find it persuasive that because he made a turn signal when he was getting ready to get stopped, that he had a turn signal before the first time. It wouldn't be unusual. Most people try to correct their behavior, what we call remedial measures in civil cases, where you mess up, so when you get caught, you say, let me make sure I do it right this time. It's about the same sort of analogy.

I don't find him credible that he didn't know the officer was behind him. I think he was well aware that the officer was behind him, and turned to signal to stop. And for whatever reason, just made a very poor judgment decision and didn't stop, and took off and sought to evade the police and then caused his own accident, which really was the trigger to the search incident to arrest, was the failure to stop.

So it was a good traffic stop. It was -- I cannot -- argument is that somehow this was pretext. If he had been -- if he had stopped as he should have and then there was some improper search or some -- but I can't speculate as to what could have happened because it didn't happen.

So the motion to suppress is denied.

Are we ready to go forward with opening argument

and opening instruction from the State?

MS. MULKEY: Yes, Your Honor.

THE COURT: And from the defense?

MS. GAY: Yes, ma'am. I need to use the restroom.

THE COURT: Go right ahead.

State's Exhibit 10, Small clear plastic baggy with approximately 2 grams of what tested presumptive for cocaine, was marked for identification.)

(State's Exhibit No. 11, Baggy that field tested presumptive for cocaine, was marked for identification.)

(State's 12, Bag inside right front pocket that field tested presumptive for methamphetamines along with the cash, was marked for identification.)

(State's Exh. 13, Individualized bags that were in the defendant's left front pocket, was marked for identification.)

(State's Exh. 14, Drug analysis 01469 #1, was marked for identification.)

(State's Exh. 15, Drug analysis L13-01469 #2, was marked for identification.)

(State's Exh. 16, Chain of Custody, was marked for identification.)

THE COURT: Are we ready to get started? Is the State ready to proceed?

MS. MULKEY: Yes, Your Honor.

THE COURT: Defense ready to proceed?

MS. GAY: Yes, ma'am.

THE COURT: Please bring in the jury. And we need to swear them and bring in Number 177 as the foreperson, Ms. Jenkins.

Madam Clerk, the jury needs to be sworn.

THE CLERK: Yes, ma'am.

(Whereupon, the jury returns to open court at 12:48 p.m.)

THE COURT: Ladies and gentlemen, let me apologize at the outset for the time that you had to wait for us to get started. We do not have -- federal court has lot more resources than we do. They get to have what we call date certains, when you know exactly what time your case is going to start. And even with them, though, they still have some delay due to pretrial matters and otherwise. But just to give you a little bit of a reference, some weeks I try four cases a week. My colleagues in the federal court might try six, seven, ten cases a year. So they have that the luxury of having date certains.

We in the state system try cases on a rolling basis, which means as we finish one trial, we start another and another and another. And as best as we try to plan, sometimes that goes extremely well, sometimes it doesn't. We had -- we started -- we finished a case yesterday and had

what we call closing argument and instruction this morning. And because of traffic delays and otherwise, we had three jurors who were tardy this morning. So we had to wait for them to arrive before we could get started. And then had to have that closing argument and instruction process before we could begin this trial.

So I want you to know that we do not take your time for granted. And we appreciate y'all being incredibly patient with us. I knew you probably drank as much coffee as you could and you are in a room which doesn't have windows. I'm certain even though our new paint job was wonderful, it probably wasn't awe-inspiring. If you're like me, I need sunshine to function. I know this room is dark and can close in on you a little bit. So we appreciate you being so incredibly patient with us this morning.

You have been selected for the case of South Carolina vs. Henry Oliver Nesbit, Jr. And if you would stand for me, please, and raise your right hand, the clerk can administer the oath to you.

(Whereupon, the jury is sworn.)

THE COURT: Thank you, ladies and gentlemen. You may be seated.

I'm going to give you some preliminary instructions as to how we will be proceeding in the trial of this case so that you may better understand how a case is processed from

beginning to end. I will tell you for planning purposes that this is a relatively short case. We should be able to finish it today. We may even have closing argument and instruction today. I'm not certain, but worst-case scenario, we will have closing argument and instruction in the morning. Just depends on how our time flows.

And after I give you these instructions and the attorneys give you what are called their opening arguments, we are going to break for lunch. So I want you to know we are not going to hold you hostage. Some people eat lunch earlier than others. I know a lot of people like to eat lunch between 12 and 1, so I just want you to know I'm mindful of that. And once we are done with what, I think will be fairly short, I will be able to let you go for lunch. And then we will resume after lunch with the beginning of taking the testimony of the witnesses in this case.

As I've already said, what I'm now going to say to you is intended to serve as an introduction to the trial of this case. These remarks are not a charge on the law. And just so that you know, charge and instructions are interchangeable terms. Charge is a legal term of art that means instructions. So when you hear me use the word charge, it simply means instructions. And I may use those terms interchangeable.

I will instruct you on the law applicable to this case at the end of the trial, before you retire to consider your verdict. This is merely an explanation of the procedure that we will follow in the trial of this case so that you may better understand what is happening.

Y'all have been given notebooks. You will be given the opportunity to take notes. I will give you some instructions regarding that near the end of this instruction, but if you could write your juror number on the white sticker that is on the front of each note pad so that you will be able to identify it, and if there's not a sticker, just go ahead and write your number on the first page of that notebook so that you will be able to determine which notebook belongs to you after the break. They will be left in your seats during breaks and recesses, but if we have an evening recess, you will be able to determine which notebook belongs to you.

The defendant is charged by three indictments in this case, those being 2013-GS-10-5527, 5634 and 5639, with the offenses of failure to stop for a blue light, trafficking cocaine, and possession with the intent to distribute methylone, which are commonly referred to as bath salts. I will explain the elements of these offenses to you at the conclusion of the trial before you begin to deliberate and after the attorneys have made their closing

arguments.

The indictments are simply the charges by which this case is brought into court. And they are not in any sense evidence of the allegations they may or may not contain.

The defendant has pled not guilty to the indictments. Therefore, the State has the burden of proving each and every element of the indictments beyond a reasonable doubt. And it will be your duty, ladies and gentlemen, to decide whether the State has met that burden or not. Your purpose as jurors is to find and determine the facts. You are the sole judges of the facts in this case. If at any time I make any comment regarding the facts, you must disregard it. The constitution of our state does not allow a trial judge to have an opinion about the facts in a case. You are to determine the facts from the testimony you hear and the other evidence that may be introduced during the trial.

It is up to you to determine the inferences which you feel may be properly drawn from that evidence. It is especially important, ladies and gentlemen, that you perform your duty of determining the facts diligently and conscientiously, because, ordinarily, there is no way to correct an erroneous determination of facts made by a trial jury.

On the other hand, and with equal emphasis, the same law that makes you the judges of the facts makes me the judge of the law. The law as given by the Court is the only law you may consider. You must accept and follow it, even though you may disagree with the Court about it. The Court cannot tell you what the facts are, and you cannot disagree with me about what the law is or what the law should be. Your responsibility, ladies and gentlemen, is to take the law as I instruct it, and apply it to the facts as you find them from the testimony of the witnesses and the other evidence that is introduced.

After doing that, you will render your verdict, a true and just verdict under the solemn oath that you have taken as jurors in this case. Until I advise you to begin your deliberations, you must not discuss this case with anyone, that includes among yourselves, your family members, friends or otherwise. And after the case is submitted to you, you must not -- you must discuss it only in your jury room among your fellow jurors.

The attorneys and the parties have been advised, as well as the witnesses, have been advised not to speak with you at all. So if you should run into them in the garage, the elevator, the hallway, maybe even the restrooms, or a restaurant during a lunch break or otherwise, and they don't speak with you or acknowledge you, please don't think they

are being unfriendly or untoward or even rude. They are simply strictly following the Court's instructions, because we would not want an innocent conversation to be observed by a third-party and misinterpreted.

During the trial, do not read, watch or listen to any media accounts about this case. That includes anything that could be on the radio, television, newspapers, or Internet. And you are also strictly instructed not to do any independent research regarding any issue or matter involved in this case on the Internet. Under your oath, you are bound to decide this case according to the testimony that you hear from the lips of the sworn witnesses and the other evidence that may be introduced. I would also ask that you not make any comments regarding your status on any social networking sites. That includes Facebook, Instagram, LinkedIn. There's so many, I've lost track. But, again, even an innocent comment could be so very easily misinterpreted. And with screen shots and all of these other things that people employee to preserve information, it is just better to avoid it all together. So we appreciate your cooperation in that regard.

It is essential that you maintain and keep an open mind and not decide any issue in this case until all of the evidence has been presented, the parties have made their closing arguments, and I have instructed you on the law in

this case. It is your solemn responsibility to determine the guilt or innocence of the defendant. And your verdict must be based solely on the evidence as it is presented to you in this trial and on the law as I will instruct you during and at the close of this trial.

In just a moment, the solicitor will make what is called an opening statement in which they will explain to you what they believe the issues to be in this case. The defendant may also make an opening statement, although they are not required to do so. Keep in mind that what the attorneys tell you during their opening statements is only their contention as to what they believe the issues will be in this case or what they believe the evidence will show in this case. But their arguments are not evidence and should not be considered as evidence and is only their contention as to what they believe the evidence will show in this case.

The evidence will be presented to you by the testimony of sworn witnesses and other evidence or exhibits that may be introduced during the trial. From time to time, you will hear the attorneys say, Your Honor, I object. Just as in sports, business or any other structured activity, there are certain rules that we must obey in the presentation of evidence. These rules have a definite purpose. They ensure that you receive the most trustworthy and reliable evidence available. An objection is the

procedure that an attorney uses to call a possible violation of these rules to my attention as the judge of this court. And for this reason, you should never hold an attorney's objection against them, nor should you conclude from the Court overruling or sustaining an objection that I favor one side or the other. In fact, in any good trial, there will be many objections. So you should expect that to happen during the course of the trial.

Also, from time to time, the attorneys may say, Your Honor, we have a matter of law to take up, or they may ask to approach the bench, or I may ask them to approach the bench, or it might even be necessary for us to exclude you for a short moment while we discuss matters of law. The reason we do this is because you are the finders of the facts. And as I've explained, I'm not allowed to have an opinion about the facts in this case. And sometimes when I'm discussing matters of law with the attorneys and making rulings regarding those issues, it might be necessary for me to comment regarding a connection with that, whether a procedural rule, evidentiary rule, or statute applies. And I may have to make some comment regarding the facts in connection with that. And for this reason, we exclude you from the courtroom so that in no way will you be influenced by anything that the Court may say or do in connection with the facts of this case.

Sometimes we will use bench conferences and you will see the attorneys approach. We do that as a time-saving measure, so that we don't have to send you in and out of the courtroom. And you will hear white noise, basically, over your heads. And it's designed to interfere with your hearing, so that you are not able to hear our conversation. And I tell you that because I had a juror -- and I chuckle every time I think about it -- he raised his hand, and I said, yes, sir, and he said, we can't hear what you are saying. And I said, well, that's good, that means white noise is working. But I often think of that and I laugh to myself. But it's in speakers directly over your head, so that, again, it's a time-saving measure because it takes time to send you in and out of the courtroom. So we will often use bench conferences for that purpose, again, so that your impartiality will not be affected by those conferences.

In determining what the true facts are in this case, ladies and gentlemen, you must decide whether or not the testimony of a witness or witnesses is believable. It is my responsibility to rule as a matter of law as to whether certain testimony is admissible at all or not. But once it is admitted, whether or not you believe it is solely a matter for you to determine in your fact-finding province.

In deciding whether to believe a witness, you have

the right to consider the interest of any witness, the bias of any witness, the prejudice of any witness, the opportunity for the witness to have seen the matters and things about which the witness may testify, and the way the witness acts on the witness stand, what we commonly refer to as their demeanor.

You have a right to consider anything that is in the record that will help you evaluate the testimony of the witnesses. That means that it is your duty to pay close attention to the witnesses, to observe them, to listen to them, and to pay close attention to the attorneys and the Court.

Although I know it can be incredibly difficult, please do not allow your thoughts to wonder, but give strict attention to the testimony, so that at the end of the testimony, the arguments of the attorneys and the charge on the law given by the Court, you will then be in a position to determine what the true facts are, and apply the law to those facts and, thus, render a true and just verdict in this case.

As I've already explained, you will be given the opportunity to take notes. Notetaking is a privilege you may choose to exercise or choose not to exercise. Please don't feel you are required to take notes. Not everyone finds notetaking helpful to them. If you should decide to

take notes, please don't try to record everything that is said. It's physically impossible. And I'm an excellent note-taker, just by virtue of what I've had to do for a living. But even with that, I find that the mind processes information the way we process information. So oftentimes, we will put the beginning of a sentence at the end, the end of a sentence at the beginning, you will substitute words that are common for you versus what the witness may actually have said. And sometimes you write things in summary form.

The court reporter is the only person that has the skill to take down everything that is said, because she's trained in a very specialized form of shorthand that allows her to take down things phonetically with a stroke of her machine. But even with that, when she has to do a transcript, you will see these mics stationed around the courtroom, she goes back and listens to everything that was said to make sure that what she is taking down is accurate, because there's always the human error factor in any transcription process.

So I would ask that you not allow notetaking to become a distraction to you and dilute your powers of observations. Because as the fact finders, it's essential that you rely on that in observing the witnesses and judging their credibility and believability.

You may want to keep an outline of the main points

that are being made and allow those, that summary or that outline, to refresh your memory as you begin the deliberation process. Your notes are not to be shared with anyone else. They are only for your individual purposes to refresh your own memory of the general arguments and witness -- general arguments that may be made by the attorneys and the evidence that is presented during the trial.

I would remind you that your notes, again, are for your specific and your individual purposes. They are only to be used to refresh your own memory. And you should also be reminded that your notes should not be considered any more reliable than someone else's memory. Their memory should be considered just as reliable as notes that may have been taken by a prior juror.

During breaks and recesses, your notes will be left in your seats. We do that so that there's no premature temptation to deliberate regarding something you may have heard prior to a break.

I have appointed a foreperson. Just so that you know, the foreperson is a completely random process that the Court employees so a cross-section of the community is represented. I wish there were a more scientific method, but there is not one. The foreperson is merely an administrative process. That person fills out the verdict

form and writes out any questions you may have during deliberations. I emphasize that that person does not have any greater vote or voice than you do. It is merely administrative.

Madam Forelady, again, as I've already explained, it is your responsibility to write out the verdict and any questions the jury may have during deliberations. But I will give you further instructions regarding that at the conclusion of the case.

In order to preserve everyone's rights, I'm going to give the attorneys the opportunity to take exception to anything that the Court has said by way of opening instruction.

Any exceptions from the State?

MS. MULKEY: No exceptions, Your Honor.

THE COURT: From the defense?

MS. GAY: No, ma'am.

THE COURT: Ladies and gentlemen, I would ask that you give the attorneys your undivided attention.

MS. MULKEY: May it please the Court.

THE COURT: Yes, ma'am.

MS. MULKEY: Ladies and gentlemen, thank you for returning. I'm Lauren Mulkey with the Solicitor's Office.

Society has laws. It is against the law to possess drugs. It is against the law to sell drugs, distribute them

in any manner. It is against the law to flee from law enforcement during a lawful traffic stop. As citizens coexisting in society, we recognize several duties. The duty of a juror to render a fair verdict based on the facts and the law, a duty to abide by laws in general, and the duty of someone to enforce those laws. And we give our sheriff's deputies and police officers that duty of enforcement.

I would like to take you back to June 16th, 2013, a warm, sunny Sunday afternoon in the Isle of Palms where Deputy Chavez was working. And he was specifically assigned to an area of high traffic due to the tourists in the summer months. His specific goal or responsibility, if you will, his assignment was traffic enforcement. And while seated in his marked cruiser and in full uniform, he observed the defendant approach the intersection of JC Long Boulevard and Ocean Boulevard. It's a very busy intersection on the main thoroughfare of hotels, restaurants, beach accesses, parking lots, parking meters and lots of people. And he observed the defendant approach the intersection and make a right turn, but failed to use his turn signal.

Deputy Chavez, as a member of our society, recognized his duty to enforce the law and proceeded to get behind the defendant, activate his blue lights and siren, and initiated a lawful traffic stop. The defendant turned

onto a side street and began to slow down. All indications were that this would be an opportunity for the deputy to provide the citizen with a mild reminder of the law, a traffic warning, a citation, we don't know, because that's when everything changed.

Instead of stopping for Deputy Chavez, the defendant slowed down, looked back at Deputy Chavez, and yelled something, and took off at a high rate of speed. He went through several intersection, weaving in and out of oncoming traffic, around motorists, bicycles and other cars, until such time that he was no longer able to control the motorcycle he was operating, and slammed into a mailbox, and laid out in the middle of oncoming traffic. And that is why we are here today, ladies and gentlemen.

We spoke about duties. And my duty is to prove to you that the defendant fled from Deputy Chavez during a lawful traffic stop, that the defendant continued to flee from Deputy Chavez on that motorcycle, on a roadway, at a high rate of speed, driving recklessly, and that he continued to flee even upon crashing the motorcycle. Laid out in the middle of the street, injured, the defendant still attempted to get up and flee.

I remind you that it is against the law to possess drugs. It is against the law to sell drugs. And it is against the law to flee from law enforcement. The defendant

fled that day because of the illegal drugs he had in his pocket that were found on him at the time of his arrest after he crashed.

I encourage you to listen to the facts presented to you and the law as charged to you by the judge. And at the conclusion of this trial, I respectfully request that you find the defendant guilty of all charges.

Thank you, ladies and gentlemen.

THE COURT: You may proceed.

MS. GAY: Thank you, Your Honor.

THE COURT: You're welcome.

MS. GAY: Good afternoon. It's been a long afternoon, I know. I told you my name is Melissa Gay from Charleston Bar. And this is Michael Nelson. He and I represent Mr. Nesbit. He wasn't here on Monday, so I let you know who he is.

I want to thank you for being here. It's not me who brought you here; it's the system. But it's the best system in the entire world.

My client is a man who is having a trial, because as you saw on Monday, he said he's not guilty. And the trial process, which the judge will explain in more detail when she talks to you on the charges of the law, trial process is something we should never, ever take halfheartedly. It is an incredibly valuable right that all

of us as citizens of the United States have. It's not just here today, while the State says this is what we believe he did and you should convict him, it's a process where you 12 and the alternate are going to look at what's presented, and you are going to determine if that's something called, you know, guilt beyond a reasonable doubt.

And guilt beyond a reasonable doubt is what we are here about. And it's something that is guaranteed, as all of us have, and guaranteed to my client. One of the things that is often said is that my client is clothed in innocence. He comes to this court as an innocent man, just as innocent as me or the solicitor or the judge or you or these deputies. He's an innocent man. He's an innocent man until such time as the Solicitor's Office can move that cloak of innocence away and prove to you beyond a reasonable doubt that he's guilty. And if they don't do that, that's when you must acquit him and you must find that he's not guilty.

And the judge will explain more of that later, but that's the process we are here for today. We are here to determine what evidence they have and whether or not, in fact, that evidence will convict him beyond a reasonable doubt. And no case is as easy as the solicitor would have you believe, or we wouldn't be having a trial.

The solicitor would have you believe everything

started when there was this failure to use a signal, and next thing you know, he's on the ground and all these drugs are found. But you are going to find, as you listen to the evidence in the case, that there are gaps in that process. And those gaps become the most important thing in why we are here today. And there's video of everything. There's video of him making -- on his motorcycle, video of him running from the police officer. Interestingly, there is absolutely no video of them finding drugs on him. And that's going to become very pertinent and the most important thing in this case. Because, as I said, he said to you that he's not guilty when we picked this jury.

In the process of this case, what is reasonable doubt? And it's not my job to explain all the law to you, it's going to be the judge's job, but I will tell you that it's doubt which would cause a reasonable person to hesitate to act. What that means is that as you listen to these witnesses and what's presented today, you are supposed to question every single thing they say in all ways possible. And at the end of the trial, if a reasonable person would hesitate to act to convict my client, then the judge is going to instruct you that you have to find him not guilty.

Now, you might not like the fact that there are all these drugs in the case, but if you don't find that they can prove that he possessed them or had actual possession of

them, then you must find him not guilty.

And I will tell you that we all have jobs to do in this courtroom. And the most important part is, this is not TV. It is not nearly as entertaining as TV. If I had a script and some Hollywood writer had written it, I would be saying a whole lot of different things today. But it's a process, a very important process. And it's the most important day of Henry Nesbit's life, the most important day. And in the process, what we realize, because we are not TV people and we are just people here, is that we all have jobs to do. And the judge is the judge of the law, as she said. And she told you she's going to make legal decisions that are important. We are going to do our part. But you are the fact finders. And your decision as the fact finders of this case will never be changed.

You know, legal issues may be considered in a different court, but the facts and how you decide them never change. And so I just want to tell you how important you are, and how important you are to Henry Nesbit. And we believe at the end of this day, at the end of this trial, you are going to find as well that there are serious gaps in this case. And we believe that you will find him not guilty.

THE COURT: Madam Forelady, ladies and gentlemen, we are going to take advantage of this break in the process

to take our lunch recess. We are going to break until 2:15, which gives you an hour for lunch. During this break, please do not discuss the case in any manner whatsoever. Please leave your note pads in your seats. And please abide by my previous instruction regarding media coverage or having any contact with anyone in or about the courtroom.

You will return to your jury room. And as soon as all jurors arrive, we will then continue with the proceedings with the beginning of presentation of the State's case. Again, we appreciate your patience. Have a great lunch and we will see you at 2:15.

(Whereupon, the jury leaves open court at 1:15 p.m.)

THE COURT: Is there anything else we need to take up before we break for lunch from the State?

MS. MULKEY: Nothing from the State, Your Honor.

THE COURT: From the defense?

MS. GAY: No, Your Honor.

THE COURT: All right. See y'all at 2:15.

(Luncheon recess was taken.)

THE COURT: State ready to proceed?

MS. MULKEY: Yes, Your Honor. We have one matter before the Court.

THE COURT: Defense ready to proceed?

MS. GAY: Yes.

(Whereupon, the defendant is present.)

THE COURT: Yes, ma'am.

MS. MULKEY: We have spoken with the defense and we are going to enter the Items 1 through 9 that we discussed in pretrial.

THE COURT: I can barely hear you.

MS. MULKEY: We have spoken with the defense and agreed to enter 1 through 9 into evidence.

THE COURT: I already entered those without objection at the beginning of the trial.

MS. MULKEY: Thank you, Your Honor.

THE COURT: Is there anything else we need to take up before we proceed from the State?

MS. MULKEY: The State has nothing, Your Honor.

THE COURT: From the defense?

MS. GAY: Nothing, Your Honor.

THE COURT: Please bring in the jury.

(Whereupon, the jury returns to open court at 2:23 p.m.)

THE COURT: Alternate is 249, Ms. Meyers. And then the person in the back is going to need to come to the front. You may be seated.

Ladies and gentlemen, I hope that y'all had a pleasant lunch. We are now going to resume the trial of the case.

The State may proceed.

MS. MULKEY: The State calls Deputy Chavez.

THE COURT: If you will come to the witness stand and be sworn.

GERARDO CHAVEZ,

having been duly sworn, testifies as follows:

THE CLERK: State your name into the microphone and spell your last name, first and last name for the record.

THE DEFENDANT: Okay. Deputy Chavez, G-e-r-a-r-d-o; last name is C-h-a-v-e-z.

THE COURT: You may proceed.

MS. MULKEY: May it please the Court, Your Honor.

DIRECT EXAMINATION

BY MS. MULKEY:

Q. Good afternoon, Deputy Chavez.

A. Good afternoon.

Q. What is your occupation?

A. Deputy sheriff, ma'am.

Q. And who is your employer?

A. Charleston County Sheriff's Office.

Q. What are your current duties with the Sheriff's Office?

A. Currently assigned to patrol.

Q. How long have you been employed with them?

A. Approximately three years.

Q. Do you have any prior law enforcement experience?

A. I do. I have -- prior to Sheriff's Office, I have approximately five years law enforcement experience with the Isle of Palms Police Department. And prior to that, I was at the detention center for approximately six years.

Q. Can you tell us a little bit about your training and experience as a deputy?

A. Annual training consisting of legal updates, ethics training, traffic enforcement. I've had additional classes in drug interdiction with advanced traffic stops and traffic enforcement.

Q. Can you please tell the jury whether you were working on June 16th, 2013?

A. I was.

Q. What were your duties and assignments for that shift?

A. I was assigned to working off-duty patrol at the Isle of Palms Police Department to assist them with extra traffic enforcement and crowd control during the busy time of the beach season.

Q. So you were working in the Isle of Palms but as a Charleston County sheriff's deputy?

A. I was, ma'am.

Q. Is Isle of Palms in Charleston County?

A. It is.

Q. Were you in uniform?

A. Yes, ma'am.

Q. And were you in a marked Charleston County vehicle?

A. Yes, ma'am.

Q. And on June 16th, 2013, did you have the occasion to interact with the defendant?

A. I did.

Q. Can you please tell us about how you came in contact with the defendant?

A. Yes, ma'am. On that day, I was parked in front of the Windjammer, parked in the median, partially in the median observing traffic for any violations. When I observed on the defendant -- I observed the defendant approaching the intersection of JC Long Boulevard at Ocean Boulevard, at which time he proceeded to make a turn while failing to signal.

Q. And based on the defendant's failure to use his signal, did you initiate a lawful traffic stop?

A. I did.

Q. And did you ultimately write the defendant a citation for this?

A. I did.

Q. Do you know what statute he was cited under?

A. He was cited under 56-6-2150 for failing to use his turn signal.

Q. And can you please tell us what that statute requires a driver to do?

A. It requires a driver to, when safely able to make a turn or to shift lanes, they have to turn on their turn signal and keep it on continuously prior to 100 feet of where they are going to be making a turn.

MS. MULKEY: May I approach, Your Honor?

THE COURT: Yes, ma'am.

BY MS. MULKEY:

Q. At this time I would like to show you what's previously been entered into evidence as the State's Exhibit 1. Can you see that Deputy Chavez?

A. Yes, ma'am.

Q. Do you recognize this?

A. I do, ma'am.

Q. How do you recognize this?

A. I'm familiar with the intersection. That's JC Long and Ocean Boulevard where the violation occurred.

Q. Could you please point out where you were seated that day?

A. Yes, ma'am. Right here facing that way. (Witness indicates.)

Q. Does this map fairly and accurately depict the incident location on that date and time?

A. Yes, ma'am.

Q. So you were sitting right there where you've drawn that arrow?

A. Yes, ma'am.

Q. And can you please show us what you observed of the defendant using that map?

A. Yes, ma'am. Is there any way we can move the map down a little bit? Yes, ma'am. I observed the defendant traveling -- he was operating a motorcycle -- traveling on JC Long Boulevard to this intersection here where he proceeded to make a right-hand -- I'm sorry, where he proceeded to make a right-hand turn onto Ocean Boulevard without signaling.

Q. And because we moved the map, could you please show us where you were sitting again?

A. I'm sorry. Right here, facing this way.

Q. Thank you. Now, you were driving an updated car, correct?

A. Yes, ma'am.

Q. Does that car have a dashboard camera?

A. It does.

Q. Do those record everything?

A. Not everything.

Q. What causes the camera to start recording?

A. The activation of my blue lights or by manually activating the recording system.

Q. Can you please tell the jury how that camera is positioned, where in the vehicle it's at?

A. It's on the passenger's side in a fixed stationary position facing forward looking out the windshield.

Q. Your testimony is the camera is stationary?

A. Yes, ma'am.

Q. Are you stationary?

A. No, I am not.

Q. Do you have the ability to see outside the range of that camera --

A. I do.

Q. -- while you are seated in the car?

A. Yes, ma'am.

Q. The camera faces this way, to make sure I understand?

A. It faces directly forward; whereas, I can observe things around my vehicle in most directions.

Q. Regarding this incident, when and how did your camera start recording?

A. Upon activating my blue lights, after he had made the improper turn, when activating my blue lights, it activated a recording system. Furthermore, with that being said, when the blue lights were activated, it also prerecords 30 seconds prior to the activation of the recording system.

Q. And what was the defendant driving that day?
A. A brown Harley Davidson motorcycle.
Q. Is that considered a motor vehicle under South Carolina law?
A. It is.
Q. Is your testimony that based on the defendant's failure to use his turn signal, you attempted a lawful traffic stop?
A. Yes.
Q. And then what happened?
A. Upon activating my blue lights, the defendant pulled -- he started to slow down and made a right-hand turn onto a side street, and appeared that he was going to be stopping, at which time he yelled something back to me and then took off at a high rate of speed.
Q. What did the defendant yell at you?
A. "I'm going to the spot."
Q. What or where is that?
A. I have no idea.
Q. Have you ever heard that before?
A. No, ma'am.
Q. Is there a store or gas station located nearby called The Spot?
A. No, ma'am.
Q. Did you know the defendant?

A. No, ma'am.

Q. So the defendant takes off and refuses to stop for you. Then what happens?

A. I advised dispatch that he was failing to stop and requested a backup unit.

Q. And you just previously stated that you were not familiar with this defendant?

A. Correct.

Q. What road did you pursue him on after he failed to stop?

A. Started off on Ninth Avenue and proceeded onto Palm Boulevard.

Q. Is that a public roadway?

A. It is.

Q. Did you ever lose sight of the defendant while pursuing him?

A. Briefly. While pursuing him, after he made that left-hand turn onto Palmetto Boulevard, he entered the bicycle lane, and proceeded to pass vehicles in the bicycle lane, and then would cut across in-between traffic and into oncoming traffic or passing people on the proper side, where he went around a curve and I lost sight of him there.

Q. When did you next see the defendant?

A. Upon catching up to him just after the curve, he had just had a collision, and he was in the roadway and in

oncoming traffic and the motorcycle was off to the side still steaming.

Q. What did you do next?

A. Upon getting up to his location, I observed him to be in what appeared to be -- he was rocking forward in what -- I believed he was still attempting to get up and go, get up and run.

Q. Can you demonstrate for the Court what you saw the defendant doing?

A. He had his right hand kind of back and had his leg kind of posted, and he kind of was trying to rock forward, throwing his left arm up.

Q. In your training and experience as a sheriff's deputy, what did you believe the defendant to be doing?

A. Still trying to elude, still trying to get away.

Q. And what happened as you approached the defendant?

A. I gave him loud verbal commands to get on the ground, stay on the ground, at which time I also observed him to be bleeding pretty bad from his head. He had a head wound, at which time I also asked for EMS to respond to the scene.

Q. Why were you telling the defendant to stay on the ground?

A. Because he was under arrest for the failing to stop, the attempt to elude.

Q. And why specifically did you have to tell him to stay on the ground?

A. Because he still appeared to be trying to get up to go.

Q. And then what happened, Deputy Chavez?

A. I proned him out. And seeing his hands were clear, I left him there, primarily because of unknown potential other injuries that he may have sustained in the collision. But he continuously would push up, trying to get up off the ground. So as my backup Deputy Buckhannon was arriving, I advised him to go ahead and place his hands behind his back, at which time he complied, and I placed him into cuffs.

Q. If you wouldn't mind, explain to the jury what proned out means.

A. I'm sorry. They were face down, chest to the ground, and just out with his hand exposed to make sure he didn't have any weapons in his hands.

Q. You said that after that, you advised the defendant to put his hands behind his back?

A. Yes, ma'am, as my backup was arriving.

Q. And then what happened next?

A. I took him into custody, placed him under arrest for the failing to stop, placed him in handcuffs to the rear.

Q. And then what did you do?

A. I began to conduct a search incident to arrest of the subject, and located -- I didn't find any weapons on him, however, I did locate a large amount of US currency and several bags of narcotics on his person in his front pockets.

Q. How much cash did you locate on the defendant?

A. Approximately $2,900 in cash.

Q. Was there anything you noticed about the denominations of that money?

A. Majority of it was in smaller bills, 20s.

Q. Why is that significant to you through your training and experience as a law enforcement officer?

A. Through my experience and through my career, I've made numerous drug arrests, and I found that when you have somebody that deals in narcotics, they generally have a sizable amount of cash on them, a lot of it is mainly in smaller denominations from individual sales. And the way it was in his pocket, it was -- it wasn't in any kind of order. It was more stuffed in the pocket, as opposed to organized.

Q. Going back to the other items that you located in the defendant's pockets at the time of his arrest, you said you believed them to be narcotics?

A. Yes, ma'am.

Q. Could you tell us about what they looked like?

A. Yes, ma'am. In his right front pocket along with

all the cash that he had, majority of the cash that was on his person was in his right front pocket, he also had a clear plastic baggy that had a sizable amount of white powdery substance that I believed to be cocaine.

In the left front pocket, he also had a brown grocery-style plastic bag, the one you get from the grocery store, that had four individual freezer-style bags that had an amount of a brown crystallized substance inside the baggies, each one of the baggies.

And furthermore in the right, I believe it was in the right front pocket, another freezer-style bag that had a small amount of the brown crystallized substance that matched what he had in his left pocket.

Q. How much of the white powdery substance did you locate on the defendant?

A. It was about approximately 20 grams.

Q. And how much of the brown crystallized substance did you locate on the defendant?

A. Total was approximately 450 grams, nearly a pound.

Q. Based on your training and experience as law enforcement officer, you testified yourself you've made numerous drug arrests. Are the amounts that you located in the defendant's pockets characteristic of personal use?

A. No, ma'am. Typical dosage use for personal, from through my training and experience, is approximately under a

gram.

Q. Is that for the white powdery substance or --

A. For the white powdery substance.

Q. You are testifying that you located a substantial amount of cash, what you believed to be narcotics on the defendant in his pockets at the time of his arrest?

A. Yes, ma'am.

Q. What did you do next?

A. Upon backup arriving, I advised him of what I had found, advised him that we had loads of 33, which is code for narcotics in law enforcement jargon.

Q. Why would you choose to use the code to your fellow officer?

A. For officer's safety. Generally, it's not unheard of that weapons and drugs run together. So when we see an amount of either/or, we advise the other of what we've seen so they are aware of what's going on.

Q. And is that recorded?

A. It was, ma'am.

Q. How so?

A. On my body mic, it was on my body mic.

Q. So there is a camera in the car that visually records things?

A. Yes, ma'am.

Q. And there is a microphone on your body that records

what you say?

A. Yes, ma'am.

Q. And does that microphone stay with you during the process of arrest?

A. Yes, ma'am.

Q. What did you do with the items that you located in the defendant's pockets?

A. I seized them and placed them into an evidence bag. And then shortly thereafter, secured them into my patrol vehicle and locked the doors.

Q. Can you please explain what you mean by secured?

A. I placed them into an evidence bag and placed them into the backseat of my patrol vehicle, placed all the items that were in his pocket.

Q. Did you lock the doors to your patrol vehicle?

A. I did.

Q. Does anybody else have a key?

A. No, ma'am.

Q. And what is the purpose in securing them in the backseat?

A. To make sure that we maintain the chain of evidence, to make sure that it was secure while he was being tended to for any medical injuries or anything while they were taking him to go to the hospital.

Q. Do you have a standard practice yourself to sweep

or check the backseat of your vehicle prior to your shift?

A. I do.

Q. And did you do this prior to your shift that day?

A. I did.

Q. Did you locate any items?

A. No, ma'am.

Q. You've testified that your car has an in-car camera?

A. Yes, ma'am.

Q. Did it record the pursuit of the defendant?

A. It did.

Q. Have you viewed a video of this pursuit?

A. I have.

Q. I'm going to show you now what's previously been entered in as State's Exhibit No. 3. Now, this video has been entered as State's Evidence No. 3.

MS. MULKEY: And we would like to request to publish a clip of it to the jury at this time, Your Honor.

MS. GAY: Without objection.

THE COURT: Proceed.

(Video Playing.)

BY MS. MULKEY:

Q. I would like to show you what has been pre-entered into evidence as State's Exhibit No. 2. Now, we just watched the video of the pursuit that the defendant lead you

on. Can you please point out to the Court where on this map the intersection is that you initiated the lawful traffic stop.

A. Violation?

Q. The initial violation, yes, sir.

A. Initial violation is at that intersection right there.

Q. Using this map -- and if Your Honor doesn't mind, I will stand here because it's a little larger than the screen, so I can move it -- can you please take the jury and the Court on the route that you followed the defendant?

A. Yes, ma'am. I got behind the defendant in the area of right here where I initiated my blue lights to conduct a lawful traffic stop for the failing to signal. He turned down Ninth Avenue right here where it appeared that he was going to stop for a second, where he yelled back, I'm going to the spot. And then he proceeded to drive off at a high rate of speed through this intersection here at Carolina or Charleston onto Palm Boulevard, took a left onto Palm Boulevard and continued going down Palm Boulevard.

Q. Show us where you were at before I had to move it. I apologize. You stated you were on Palm Boulevard?

A. Yes, ma'am. This is 8th Avenue, so around here. And we kept on coming down Palm Boulevard where he weaved in and out of traffic and we had to keep on going down.

Can we move it a little bit more up? There we go. Yes, ma'am.

6th Avenue, this is the curve that I couldn't get around traffic that he had already gone around. And just about right here in front of the parking lot of the church is where he had his collision where I caught up to him.

Q. Thank you.

A. Yes, ma'am.

Q. Now, the video that we just viewed concluded with the defendant in the ambulance being transported by EMS?

A. Yes, ma'am.

Q. What happened after the defendant was taken by EMS?

A. After he left, I retrieved the suspected narcotics and conducted field tests, at which time the white powdery substance field tested presumptive for cocaine. And the brown crystallized substance field tested presumptive for methamphetamines.

Q. Can you please complain to the Court what field tested means?

A. There's field test kits we carry to show presumption of what a substance may be.

Q. And your testimony is the white powdery substance tested presumptive for cocaine?

A. Yes, ma'am.

Q. And the rock-like substance tested presumptive for

methamphetamine?

A. Yes, ma'am.

Q. Then what did you do?

A. Secured them back in the rear of my vehicle, locked the doors until FSU, Forensic Services Unit, arrived on the scene shortly thereafter.

Q. Why did Forensic Services Unit respond to this call?

A. So they can take all the evidence into their custody.

Q. And when they come on scene, what do they generally assist you with?

A. Dividing, accounting for all the articles that were taken and placed in the evidence bag. Everything was divided up, logged, photographed -- well, not identified yet, but everything was separated and logged into evidence, at which time they took custody of it.

Q. And can you take us through a brief summary of what you did?

A. Upon retrieving the items from the rear of my patrol vehicle, we took it in front of the camera of my patrol vehicle where I activated my camera again. And myself, along with FSU Investigator Meyer, inventoried the items that were seized, photographed and documented everything that was in the evidence bag.

Q. And was this recorded?
A. Yes, ma'am.
Q. Was this on the same CD of the clip that we previously just showed?
A. Yes, ma'am.
MS. MULKEY: Your Honor, at this time I would like to publish an additional clip of that CD that's been entered into evidence.
MS. GAY: Without objection.
THE COURT: Proceed.
(Video Playing.)
BY MS. MULKEY:
Q. Just to be clear, the evidence you sorted from that vehicle, those are the items you retrieved from the defendant's pockets at the time of his arrest?
A. Yes, ma'am.
Q. After it was sorted and counted, then what happened?
A. It was taken into -- Investigator Meyer took it into evidence custody so it could be further analyzed and placed into evidence.
Q. And when you left the scene, where did you go?
A. I went to the Medical University of South Carolina, downtown.
Q. Why did you go there?

A. To relieve Deputy Buckhannon who had followed the ambulance that transported the defendant to the hospital, to the trauma center.

Q. So on the video that we watched, the first clip, you see the defendant being loaded into the ambulance, and then there's a marked Charleston County cruiser that follows that?

A. Yes, ma'am.

Q. Is your testimony that that was Deputy Buckhannon?

A. Yes, ma'am.

Q. And what happened when you arrived at M.U.S.C.?

A. I met with Deputy Buckhannon. I believe it was in the ICU, at which time I took custody of the defendant's property that was cut off of him, his clothing that was cut off of him upon arrival at the hospital by medical staff.

Q. If you could please tell the jury what was in the bag?

A. His pants were in the bag. And when I did an inventory of his pants, in the right coin pocket, the small pocket that's next to your right front pocket, there was another small baggy of white powdery substance and another small baggy with green plant-like material in it.

Q. Why did you inventory his jeans?

A. Because they were cut off of him. They were part of the evidence.

Q. And they were his property?
A. Yes, ma'am.
Q. And he was under arrest and, therefore, you had a duty to maintain his property; is that correct?
A. Yes, ma'am.
Q. Did you field test that substance that you recovered from the coin pocket?
A. I did. It field tested presumptive for cocaine as well.
Q. And do you recall how much that bag weighed?
A. I believe it was approximately 2 grams.
Q. And what did you do with that bag?
A. It was later submitted into evidence for further analyzation.
Q. I would like to hold up and show you what has been marked as State's Exhibit 10, 11, 12 and 13. If you would please go through each one and let me know if you recognize them.
A. Yes, ma'am. This is the small clear plastic baggy, inside with approximately field weight of 2 grams of what tested presumptive for cocaine.
Q. How do you recognize that?
A. I placed it in here.
Q. And how can you tell?
A. It's my handwriting on the bag.

Q. Could you please point that out to the Court.
A. (Witness indicates.)
Q. And where was that located in?
A. The right front coin pocket of the defendant's jeans.
Q. Okay. This is State's Exhibit 11.
A. This is the baggy of, I believe, the cocaine that field tested presumptive for cocaine that was in the right pocket of the defendant's pants at the time of arrest, along with the money.
Q. And how do you recognize that?
A. I'm the one that secured it and turned it over to evidence.
Q. Are your initials on that bag?
A. Not at this time, no.
Q. But that was the bag that you gave to Crime Scene Tech Meyer?
A. Yes, ma'am.
Q. On the hood of your vehicle?
A. Yes, ma'am.
Q. On the video that we just watched?
A. Yes, ma'am.
Q. Now I hand you State's Exhibit 12.
A. This is the first bag that was inside the right front pocket along with the cash and the baggy of

presumptive cocaine that field tested presumptive for methamphetamines.

Q. And how do you recognize that?

A. I turned it over to Investigator Meyer on scene.

Q. And was that on the video recording we just watched?

A. It was.

Q. Last is State's Exhibit No. 13.

A. These were the other individualized bags that were in the defendant's left front pocket.

Q. How do you recognize those?

A. I turned them over to Investigator Meyer.

Q. And is that on the video that we just watched?

A. It was.

Q. Are all of these exhibits that I just showed you, are they in substantially the same condition as the night that you found them on the defendant?

A. Yes, ma'am.

Q. The same items that you found in the defendant's pockets?

A. Yes, ma'am, still in the freezer bag.

Q. One more thing, Deputy Chavez. The person that fled from you that initiated a lawful traffic stop on that evening and the person that you have testified you located these items in his pockets with at the time of his

collision, do you see that individual in the courtroom today?

A. I do, ma'am.

Q. Could you please point him out for the Court?

A. The defendant sitting right over here.

MS. MULKEY: Beg the Court's indulgence.

THE COURT: Yes, ma'am.

MS. MULKEY: Your Honor, I would like to let the record reflect that Deputy Chavez, who was there present that evening, pointed out the defendant in the courtroom.

THE COURT: You may proceed.

MS. MULKEY: I have nothing further. Please answer any questions of the defense.

THE COURT: Madam Forelady, ladies and gentlemen, we need to take advantage of this break. As I indicated to you, I'm basically trying two cases at the same time, and I have a question from my other jury that I need to address. So it will take about maybe ten minutes.

During this break, please do not discuss the case in any manner whatsoever. And if you could set your note pads on the ledge for me, because I'm going to have to bring that other panel in and I don't want to have to disturb your note pads. Thank you for your patience and understanding.

(Whereupon, the jury leaves open court at 3:41 p.m.)

THE COURT: Please get the jury.

(Whereupon, the jury returns to open court at 4:02 a.m.)

THE COURT: Thank you, ladies and gentlemen, for your patience. You may be seated. We will now resume the cross-examination of the witness.

CROSS-EXAMINATION

BY MR. NELSON:

Q. Good afternoon, deputy. How are you?

A. Fine. Yourself?

Q. I just want to go over your background a little bit. You spent three years with the Sheriff's Office, correct?

A. Correct, yes.

Q. And you are doing patrol now? And patrol basically means you do traffic stops and general answering calls?

A. Answering calls for service, traffic enforcement.

Q. By traffic enforcement, you mean pulling people over for speeding, waiting for people to run red lights, stop signs, et cetera?

A. Violation of state laws, correct.

Q. Did you do that for Isle of Palms also?

A. I did.

Q. You did that for about eight years, you would say?

A. Yeah.

Q. Let's talk about June 16th of 2013. And you said you were off-duty patrol?

A. I was.

Q. And that means basically -- who was paying you that day, Isle of Palms?

A. Isle of Palms.

Q. You work for the county, you are a deputy for the county, but you worked for Isle of Palms that day because -- it was a Sunday, if I remember correctly?

A. Because during the beach season, they need additional help because of traffic, because of population, because of the tourism.

Q. And where you were parked, you were parked looking away from most of the bars, correct?

A. Correct.

Q. But don't you think most of the trouble would be coming from the bars?

MS. MULKEY: Objection, Your Honor. Relevance.

THE COURT: I will give him a little latitude. You may answer the question.

THE WITNESS: No, sir.

BY MR. NELSON:

Q. Now, you are parked right -- you are parked right here?

A. Yes, sir.

Q. And you are looking towards JC Long, which is this road right here, correct?

A. Yes, sir.

Q. Why are you parked there?

A. Just in the median, just in the median observing everything.

Q. And how long were you there?

A. 30 minutes or so.

Q. And 30 minutes, pretty much observing JC Long, whatever else in front of you?

A. I was in that intersection. We were in the intersection approximately 30 minutes. I was -- previously I was on this side, and my partner was on this side. But it was coming close to the end of shift and my partner decided to do another lap around the front beach just to patrol, and I moved from here to here.

Q. Right. Okay. And you were there for 30 minutes. How many cars came up and down JC Long, would you say?

A. I can't recall that.

Q. Do you have a ballpark, more than one?

A. Probably, yes, sir.

Q. More than five?

A. Not sure.

Q. But definitely more than one?

A. I would assume so.

Q. And you mentioned that you initially came in contact with Mr. Nesbit because you said he failed to use a turn signal?

A. Correct.

Q. And we saw on the video that you obviously see him drive by, but you don't see what happened off the camera, correct?

A. When he went out of frame, no, you do not see it.

Q. You also mentioned that it's illegal for somebody to turn on the turn signal inside of 100 feet? You have to turn your signal on outside of 100 feet?

A. Before making a turn, yes, sir.

Q. And did you ever measure 100 feet on this?

A. I did.

Q. And could you approximately mark it on there?

A. Can we slide the map down?

Q. Oh.

A. Other way. Yes, sir, approximately 100 foot is right here from the stop sign.

Q. And how do you know that?

A. Because I measured it out with a measuring tape.

MS. MULKEY: Objection, Your Honor. Pretrial matter.

THE COURT: Overruled.

BY MR. NELSON:

Q. How do you know that?
A. I measured it out with a measuring tape.
Q. For what reason?
A. In preparation for this trial.
Q. But you said he never turned on the turn signal, correct?
A. I did not see a turn signal.
Q. So why would you go measure 100 feet if there was never a turn signal?
A. Because the law states it has to be 100 feet.
Q. You said he never turned on the turn signal?
A. Yes.
Q. Even if -- 100 feet was really irrelevant according to you in this?
A. Okay. Yes, sir.
Q. While you were watching JC Long, you observed Mr. Nesbit drive by?
A. He approached the intersection to make that turn.
Q. What did you observe when you saw him?
A. Observed him operating the motorcycle on JC Long heading to the intersection and he proceeded -- he stopped at the intersection and proceeded to make a right-hand turn.
Q. Was there anything strange about his driving?
A. He failed to signal.
Q. Anything suspicious about him?

A. Initially, yes, sir, he failed to make any kind of eye contact or any -- he failed to notice that I was there in plain view.

Q. You are saying he didn't make eye contact with you?

A. Yes.

Q. You thought that was suspicious?

A. After not signaling, yes, that was another tell sign, yes, sir.

Q. But he didn't make eye contact previous to him turning?

MS. MULKEY: Objection, Your Honor. Asked and answered.

THE COURT: Overruled.

BY MR. NELSON:

Q. You said it was suspicious that he did not make eye contact?

A. When he reached the stop sign, sir, he stopped, and he did not even look at my direction. That is not common behavior of the general motoring public. If you see a cop car in what is absolutely plain view, generally, the general motoring public would at least look over and see that it was a cop car, one; two, if there was anybody in it.

Q. But you never met him, so you don't know what he thinks?

A. No, sir.

Q. And you are actually taught to keep your eyes on the road, not look the opposite direction when you turn; is that correct?

A. Correct, but he was at the stop sign.

Q. Right, and turned right?

A. Stopped.

Q. And he turned right, correct?

A. Yes, sir.

Q. And your car was to the left?

A. Yes, sir.

Q. So that's suspicious that he was looking in the direction of the road he was turning at instead of looking at you?

A. Yes, sir. If you are going to make a right-hand turn, you would look left generally.

Q. Right, you look at the road?

A. Just to see if there was anything coming or -- right.

Q. You glance in the direction to see if there's oncoming traffic?

A. Right.

Q. You don't necessarily have to lock eyes on anything to your left?

A. Correct.

Q. But that's very suspicious?

A. In addition, yes.

Q. Now, if I could just play you the initial part of this, your in-car video briefly.

(Audio playing.)

BY MR. NEWMAN:

Q. Now, it's very faint, but you were talking to somebody else.

A. I believe so, yes, sir, on the phone.

Q. I'm sorry, who?

A. I believe I was on the phone.

Q. Who were you talking to?

A. I'm not sure, sir.

Q. Police? Doesn't really matter?

A. No, it doesn't. It was a year ago, or right at a year ago.

Q. Understandable. But you were talking to somebody on the phone. And do you know how long you were on that phone for?

A. No, sir.

Q. But there had to have been a reason why you were talking to whoever it was?

A. Safe to assume, sir.

Q. And you were obviously part of that conversation?

A. Yes, sir.

Q. And you were listening to whatever was going along

trying to have a conversation with that person?

A. Yes, sir.

Q. So your attention was somewhat divided during this incident?

A. Yes, sir.

Q. So while you are talking on the phone, it is possible that he actually did turn on the turn signal last second?

A. No, sir.

Q. No? 100 percent?

A. Positive.

Q. You have to look through his vehicle, because you are looking at the left side of his vehicle, correct?

A. Harley Davidson motorcycle, yes, sir. I'm looking at him completely as he's approaching the intersection, yes, sir.

Q. But you have to somewhat look through the vehicle, right?

A. No, sir.

Q. But your attention was divided, but you know 100 percent because you were involved in conversation, but you were doing multiple things?

A. Sir, I generally wear a blue tooth and I just pay attention to what's going on around me more than generally having a conversation on the phone.

Q. So after, as you stated there was no turn signal, A motorcycle chase ensues, then Mr. Nesbit gets into a wreck?

A. I initiated a lawful traffic stop for that failing to use a turn signal, and which time your client fled, yes, sir.

Q. I mean, there was a chase?

A. Yes.

Q. And Mr. Nesbit got in a single-car accident or single-motorcycle accident?

A. Collision.

Q. Whatever you want to call it. Once you caught up to Mr. Nesbit, you were in fear for your safety?

A. Could you clarify that, sir?

Q. Were you in fear for your safety?

A. Can you be more specific? I mean, fear for my safety?

Q. Did he pull a gun on you?

A. No.

Q. You weren't in fear of him attacking you at that point?

A. At that point, I assumed that he was still trying to flee since he was trying to rock forward to what appeared to be get up and keep on fleeing, because that's what he was just doing.

Q. But you weren't scared at that point because you

didn't pull out your firearm?

A. I didn't see any weapons.

Q. Okay. Now, at that point we saw the video, Mr. Nesbit was screaming. Did he seem to be in pain?

A. Yes, sir.

Q. And you admit you saw blood all over him and he was injured?

A. As I was making the initial contact, yes, sir.

Q. Now, you kept asking him if he has a license, correct?

A. Yes, sir, ID.

Q. Did he?

A. No, sir.

Q. Who owned the motorcycle?

A. He said his homeboy.

Q. Not him?

A. Not him.

Q. Were you able to verify it wasn't his motorcycle?

A. Yes, sir.

Q. Now, let's talk about -- at that point, you had already called in backup?

A. Yes, sir.

Q. And I think you said Deputy Buckhannon was the first one there?

A. That was my backup, yes, sir.

Q. Was he the partner you were talking about earlier?
A. Yes.
Q. So he came very quickly thereafter?
A. Shortly thereafter, yes, sir.
Q. Matter of probably minute and a half, if that?
A. I didn't time it on video, sir.
Q. But shortly --
A. Relatively short time, yes, sir.
Q. And at that point, your car -- did Deputy Buckhannon have a camera in his car?
A. Yes.
Q. I think all county cars have cameras in it?
A. Not all county cars.
Q. But most of them?
A. Yes.
Q. And Buckhannon had a camera in his car, correct?
A. I believe he does. I'm not sure, sir.
Q. Okay. So when Buckhannon got there, that's when you searched Mr. Nesbit?
A. That's when I secured Mr. Nesbit.
Q. Okay. He was secured at that point when you searched him out?
A. Yes, sir.
Q. Now, at that point you had cover?
A. He's under arrest, yes, sir.

Q. And he's obviously yelling, I believe, about his leg; he was yelling because he was in pain?

A. Uh-huh, yes.

Q. At that point, you weren't concerned about him going anywhere?

A. What do you mean, sir?

Q. Well, you got him in handcuffs and he just got in a motorcycle accident, he's bleeding.

A. Yes, sir.

Q. Did you think he was going to run away at that point?

A. Not run, sir, but he was going to be transported.

Q. Oh, no, I understand that. I understand that. But you weren't scared of Mr. Nesbit fleeing by himself without you at that point?

A. No, sir, not at that point.

Q. You had enough time, you could have -- in hindsight, you could have done a couple things different, as you always can in any situation, right?

A. In hindsight, sir.

Q. You had Deputy Buckhannon there as your backup. You had yourself there. And I can't remember the timing of this, and we just watched the video, but then EMS came?

A. Yes.

Q. Did you search Mr. Nesbit before or after EMS came?

A. Before, sir.

Q. So it was just you and Buckhannon then?

A. I believe so, yes, sir.

Q. And you had your car there with the camera?

A. Yes, sir.

Q. And like we just talked about, you had enough time, you could have done a couple of things different in hindsight?

A. I did what I had to do at the moment that this incident occurred, sir.

Q. I'm not disputing anything you did. We talked, and you are a good policeman. But Mr. Nesbit was secured?

A. Yes, sir.

Q. He wasn't going anywhere at that point. You have two deputies there and he's handcuffed. You have a camera in your car, but you didn't take the time to turn the camera to actually see what happened when you searched him?

A. I searched him as soon as I secured him, sir.

Q. Right. But you just said at that point you weren't scared of him going anywhere, you had backup, so you could have taken the time to adjust your camera and see what happened when you searched him?

A. Potentially, in hindsight.

Q. Because it would have been easier, I mean --

A. It wasn't top on my list to redo my camera at that

time.

Q. Wasn't top of your list? You said you weren't in fear your safety. You also said Mr. Nesbit wasn't going anywhere at that point. What was on the top of your list?

A. Search him and secure the contraband on his person.

Q. At that point, you didn't know there was contraband on his person?

A. When I secured him, sir, I did a search of his person incident to arrest.

Q. Right. But that was after he was already handcuffed and after Deputy Buckhannon was there.

A. That was at that moment, sir, when Deputy Buckhannon pulled up, is when I secured him.

Q. Right. But at that point when you searched him --

A. Yes.

Q. -- Deputy Buckhannon was there, correct?

A. He just pulled up, yes, sir.

Q. Mr. Nesbit was handcuffed?

A. Yes, sir.

Q. And you could have gone to your car and put the camera on Mr. Nesbit so everybody can see what actually happened?

A. I can't speculate to what the camera could have picked up.

Q. Well, I mean, you've seen the camera. It picks up

the straight ahead of you.

A. Right. He was to the front left of my vehicle, right at the quarter panel. I don't know if it would have picked him up even there. I'm not sure.

Q. Are you telling me a digital camera that we just saw a car chase on, and then a 35-minute video of you counting money, could not pick up something right in front of you?

A. It's fixed to the windshield, sir. It's adhered to the windshield in a fixed position. All you could do is rotate it side to side or up and down. And he was in the position he was in, to the front left of my patrol vehicle, I don't even know if it would have picked him up on the video.

Q. The car moves. You could have adjusted your car to place it right on the defendant, correct?

A. In hindsight, yes, sir.

Q. But you didn't do that?

A. No, sir.

Q. Because at that point, the priority wasn't to make sure everybody in the future knows what happens; it was to make sure the man that's handcuffed, is not going anywhere, has to be searched right then?

A. He was searched and secured for transport and EMS.

Q. Now, you testified that you found a lot of stuff in

Mr. Nesbit's pockets?

A. Yes, sir.

Q. And I believe you said approximately $3,000? You said $2,900, but let's round it up for sake of argument approximately 3,000.

A. 2,918 and some change, sir.

Q. How many bills were there?

A. I'm not sure, sir.

Q. You counted it for a good 25 minutes?

A. Yes, sir.

Q. So there were a lot?

A. There was approximately $108 in 5's, 10's and 1's. There was approximately 7- to $750 in 100's and 50's. And the rest was in 20's. And I believe that was approximately 100 or 103, 102, $20 bills stuffed, crushed, shoved inside his pocket.

Q. Wadded up?

A. Sir?

Q. I mean, the bills on the video, they didn't look to come out like bank bills, just flat and crisp.

A. Yes. They were shoved, wadded, pushed in.

Q. By your count, I think you said 108, something 102, and several other bills, at least 210 actual bills?

A. I guess, sir.

Q. And you said he had all that money wadded up in his

pocket?

A. Yes, sir.

Q. Along with, I believe --

MR. NELSON: May I approach, Your Honor?

THE COURT: Yes.

BY MR. NELSON:

Q. Along with all this other stuff?

A. Yes.

Q. What kind of pants was he wearing? Were they huge pants?

A. They were jeans with deep pockets, sir.

Q. He was wearing jeans, and he's got $3,000, at least 210 bills wadded up in his pockets? He had cigarettes too, didn't he?

A. I can't recall if he had cigarettes on him or not.

Q. But you wouldn't be surprised if he had cigarettes in his pocket also?

A. I don't recall if he had cigarettes or not, sir.

Q. Got 210 dollars -- and those are all on one side pocket or one front pocket?

A. Yes, sir.

Q. The money was all in the pockets?

A. Majority of it.

Q. And 210 --

A. You keep saying 200, but I'm not sure that it's 200.

Q. You said 1 --

A. 100 in 20s; 700 to 750 in the 100's and 50's, which is seven, eight, nine bills maybe, nine, ten bills maybe. And then 108 in 5's, 10's and 1's. Most of it was 10's, some 5's, eight 1's.

Q. You said 100 bills in 20s, 108 by --

A. Excuse me, sir?

Q. You said 102 in 5's, 10's and 1's?

A. $108 in 5's, 10's and 1's.

Q. I'm sorry. I misunderstood you. I thought you said 108 bills.

A. No, sir.

Q. He had over 100 actual bills; is that fair to say?

A. Yes, that is fair to say.

Q. That's not all crisp and folded over, that's wadded up?

A. Any form or fashion you could probably stuff bills in your pocket, yes, sir.

Q. And that was all in one pocket? Was that a right pocket or left pocket?

A. Right.

Q. And you also found, according to you, a lot of drugs in his right pocket also?

A. The bag, the clear plastic baggy containing sizable amount of cocaine, yes, sir.

Q. So did you notice that when you walked up on him? That sounds huge.

A. Yeah, he had large bulging pockets.

Q. Then you found a lot of stuff in his left pocket you say too, right?

A. Grocery bags, sir, brown grocery bag that had four individual freezer-style bags containing a brown crystallized substance inside the brown bag, inside the left pocket.

Q. And how many police officers ended up showing up to that scene?

A. I'm not sure, sir.

Q. How many squad cars?

A. I'm not sure, sir.

Q. It was you, Deputy Buckhannon, and that's just the Sheriff's Office?

A. Yes, sir.

Q. And then this happened on Isle of Palms, so Isle of Palms police would have showed up there too, correct?

A. Yes, sir, they would have showed up. I believe there was two.

Q. Total of four police vehicles, maybe more?

A. And supervisor from Isle of Palms arrived.

Q. That would be five?

A. No, that would be part of the two from Isle of Palms, and another officer. But she ended up leaving and assisting with traffic control, redirecting traffic in the area.

Q. So at least at any point there's four police vehicles?

A. Three.

Q. Okay. Three? And do you know if they were equipped with video capabilities?

A. I'm not sure, sir.

Q. Did you ever check?

A. No, sir.

Q. You are the lead officer in this case, correct?

A. Yes, yes.

Q. So it is your job to make sure all the evidence is collected?

A. Yes, sir.

Q. Now, if there was another, say, video of the scene from another police car, that would be potential evidence that needed to be collected, correct?

A. If they were able to catch anything.

Q. Did they?

A. I imagine so. The vehicles that arrived on scene later on parked behind me, so I would imagine so.

Q. You said you would imagine, but you don't know?

A. No, I don't know. There was also a fire truck parked behind me and Deputy Buckhannon came around the right side of me, and your client was on the left front side of the me, so --

Q. You don't know?

A. I don't know.

Q. So potentially there could be another video out there that maybe not shows the whole thing, but part of what happened since you didn't move your camera to see, show us what happened?

A. I can't say that there would be.

Q. But you don't know?

A. But I don't know, sir.

Q. Did you take the time to check?

A. No, sir.

Q. In hindsight, would you have taken the time to check?

A. Like I said, sir, the vehicles that showed up after I did parked behind me. And the odds of them -- the angles that they were in, I doubt very seriously they would have gotten anything from the scene.

Q. You doubt, but you are not sure?

A. Correct. And Deputy Buckhannon came around my right side, and your client was on the left front quarter

panel of -- my left front quarter panel of my vehicle, so...

Q. But you don't know?

A. No, sir.

Q. Because you didn't check?

A. Correct.

Q. Now, after you searched, supposedly searched Mr. Nesbit --

A. I did search Mr. Nesbit.

Q. But it's not on video, I just have to take that for your word for it.

A. Okay.

THE COURT: No editorial comment. Please ask a question.

BY MR. NELSON:

Q. Sorry. You went to M.U.S.C -- actually, let me back up. Back to the scene, you found all the stuff in his pockets, according to you?

A. Yes.

Q. That's a decent search, right?

A. Fairly quick, yes, sir.

Q. But your job at that point when you search somebody, you want to make sure you get everything?

A. Or try to, yes, sir.

Q. And in actuality, you went, according to you, you went through his pockets?

A. Yes.

Q. Then you go to M.U.S.C. and you check his -- you take his belongings? You get his belongings?

A. Get his belongings.

Q. Who collected the clothes?

A. Deputy Buckhannon.

Q. Why did Buckhannon search the clothes?

A. He just held onto the clothes. Once the medical staff cut the clothes off, he collected them and held them there for me, because I'm primary.

Q. Do you know if he watched them cut the clothes off?

A. I can't say. I don't know if he did or not. I wasn't at the hospital when he arrived at the hospital. I was still on scene.

Q. I understand that. So you can't tell me those are definitely the clothes that came off of Mr. Nesbit because you didn't see it being cut off?

A. No.

Q. Now, once you --

A. Stilled covered in blood.

Q. But you didn't see it?

A. No, I can't say that I saw them cut it off.

Q. Then you searched the clothes again?

A. Uh-huh.

Q. And you say that you found --

MR. NELSON: May I approach, Your Honor?

THE COURT: Uh-huh.

BY MR. NELSON:

Q. This is State's 10?

A. Yes, sir.

Q. And that is what you said you found in Mr. Nesbit pocket; is that correct?

A. Yes, sir, in right front coin pocket at the hospital. And what triggered that search was when I walked in the room, I could still smell a strong odor of marijuana, raw marijuana in the room.

Q. Now, did you -- you didn't initial that bag?

A. That bag?

Q. Yeah.

A. No, that's my handwriting on it.

Q. You initialed all the other bags?

A. No, sir. I turned them over straight to evidence on scene.

Q. Now, part of your job as lead officer in this case is, like we talked about before, is to collect all the evidence and do everything you can to get evidence, potential evidence, correct?

A. Yes, sir.

Q. And you say that all of this stuff was found in Mr. Nesbit' pockets?

A. We already went over there, sir, yes.
Q. And a lot of bills? We went over that, I understand.
A. Yes.
Q. As a police officer, when you are the lead officer in a case, can you turn things over to, say, crime scene tech to investigate it more, further?
A. Yes, sir.
Q. And what's crime scene?
A. Forensics.
Q. Just explain that.
A. Evidence custodians, they maintain, they keep and maintain all of our evidence that we obtain from crime scenes.
Q. And they also do tests on potential pieces of evidence?
A. On certain ones, yes.
Q. On things like dollar bills, can you get fingerprints off those?
A. I would imagine you could, sir.
Q. Did you?
A. No, sir.
Q. Why not? Did you turn it in to get fingerprinted?
A. No, turned it in to evidence.

Q. But you could have requested it get fingerprinted?
A. I could have, yes, sir.
Q. And you didn't?
A. No.
Q. Is that one of the things --
A. It came straight from his pocket, so --
Q. But in hindsight, you could have done that?
A. In hindsight, you can do a lot of things, sir.
Q. And you also say there's a lot of bags, various -- I believe you said white powder material or brown crystalline --
A. Substances, yes, sir.
Q. Thank you. And were those fingerprinted?
A. No, sir.
Q. Could you have?
A. Yes, sir, but they came out of his pocket.
MR. NELSON: Court's indulgence.
THE COURT: Uh-huh.
BY MR. NELSON:
Q. I'm sorry to take so long ago. Just to make sure I understand this, you are the one that collected the approximately two grams from the hospital?
A. Yes, sir.
Q. And just one other question. We talked about earlier, in addition to everything else you say you found,

there were cigarettes in his pocket too?

A. No, I said I don't recall.

Q. Yeah, that's right, you said you don't recall.

A. Correct.

Q. Would it refresh your recollection if I showed you the evidence sheet?

A. Sure.

MR. NELSON: May I approach, Your Honor?

THE COURT: Yes, sir.

THE WITNESS: Okay.

BY MR. NELSON:

Q. He also had a pack of cigarettes in his pocket?

A. Along with other items.

MR. NELSON: Court's indulgence.

THE COURT: Yes, sir.

BY MR. NELSON:

Q. You've done patrol and traffic enforcement for awhile?

A. Yes.

Q. Do you pull everybody over that doesn't just stop at a traffic light or turn signal outside --

A. The only thing we are talking about at this time, sir, is this case right here.

Q. Right. But, in general, do you pull everybody over who doesn't do a turn signal outside of a --

MS. MULKEY: Objection. Relevance, Your Honor.

THE COURT: I will give him some latitude. Sir, I need you to answer the question yes or no and then you may explain your answer.

THE WITNESS: Can you repeat the question, please.

BY MR. NELSON:

Q. You say that you pulled over Mr. Nesbit because he did not use a turn signal outside of 100 feet?

A. Correct. He did not use a turn signal, period.

Q. But you kept on bringing up 100 feet.

A. Because that's what the law stipulates.

Q. Do you pull everybody that doesn't use a turn signal outside of 100 feet?

A. No, sir.

Q. Why not?

A. Because of situational issues. If I'm going to a call and somebody doesn't use a turn signal, I can't pull them over. If I'm headed to a call or if I'm dealing with something else and the infraction is done, I can't stop what I'm doing at the time.

Q. Short about having other things to do, which I do agree that's probably more important than pulling somebody over for a turn signal, short of that, do you pull over everybody that doesn't use a turn signal within 100 feet?

A. I can't say everybody, but I do pull over people

for failing to use their turn signal.

Q. The reason you did that in this case is because he didn't make eye contact with you?

A. No, sir.

Q. In addition to him not using a turn signal?

A. No, sir. No, sir. The initial reason why I initiated the traffic stop was because he failed to use a turn signal.

Q. But you also said one of the things that you thought was suspicious was he didn't make eye contact?

A. Yes.

Q. And if he would have made eye contact, would you have 100 percent pulled him over?

A. I would have probably pulled him over, yes, sir.

MR. NELSON: Nothing further. Thank you.

THE COURT: Any redirect of the witness?

MS. MULKEY: Yes, Your Honor.

REDIRECT EXAMINATION

BY MS. MULKEY:

Q. Just so we are clear, Deputy Chavez, why did you pull the defendant over on June 16th, 2013?

A. Because he failed to use his turn signal.

Q. And can you please remind the Court of your specific assignment in Isle of Palms that day?

A. To be a support for extra traffic enforcement and

to assist in traffic crowd control on the beach during that time of the year and tourist time, beach season.

Q. Can you pull someone over -- is it legal to pull somebody over just because they are acting suspicious?

A. Reasonably.

Q. But did you pull the defendant over because he was acting suspicious?

A. No, ma'am.

Q. Now, the traffic stop you said was based on the defendant's failure to signal?

A. Correct.

Q. And please remind the Court what that statute requires.

A. That you must use -- the driver can make a turn any time they see that it's safe to do so, but they must turn on their turn signal prior to 100 foot, and have it come on continuously until they make that turn.

Q. And did the defendant signal within 100 feet of the stop sign?

A. No, ma'am.

Q. Did the defendant signal within 100 feet of making that right turn?

A. No, ma'am.

Q. Did he signal within 50 feet?

A. No, ma'am.

Q. Did he signal immediately before turning while he was stopped?

A. No, ma'am.

Q. Changing gears for a minute, I wanted to go back to the pursuit. You were involved in a vehicle pursuit?

A. Yes, ma'am.

Q. And does your department have a policy regarding an outside agency investigating that pursuit?

A. Yes, ma'am.

Q. Who is that outside agency?

A. The highway patrol.

Q. And does that require you to keep your vehicle stationary until they arrive?

A. Yes, ma'am.

Q. Was South Carolina Highway Patrol on there during the time that you were searching the defendant's pockets incident to his arrest?

A. No, ma'am.

Q. And switching gears once again, let's go to M.U.S.C., the clothes in the bag that Deputy Buckhannon handed to you.

A. Yes, ma'am.

Q. You testified that he pulled out jeans?

A. Yes, ma'am.

Q. Correct?

A. Yes, ma'am.

Q. Were those jeans similar to the ones that the defendant was wearing on scene?

A. Yes, ma'am.

Q. Did they look like the same clothes that he was wearing when you arrived, when you came up to him after he had been in a collision?

A. Yes, ma'am.

Q. And did those jeans appear to be the same ones that you pulled the drugs and the currency from on scene?

A. Yes, ma'am.

Q. Did you find any drugs in the street?

A. No, ma'am.

Q. Did you find any drugs that day anywhere else other than on the defendant?

A. In his jeans.

Q. And those jeans at M.U.S.C. appeared to be the same ones that that the defendant was wearing at the time that you pulled drugs and currency from him?

A. Yes, ma'am.

Q. Were they skinny jeans?

A. No, ma'am.

MS. MULKEY: Beg the Court's indulgence. I have nothing further, Your Honor.

THE COURT: Any objection to the witness being

excused from the State?

MS. MULKEY: No.

THE COURT: From the defense?

MS. GAY: No, Your Honor.

THE COURT: Sir, you are excused.

(Whereupon the witness is excused.)

THE COURT: The State will call its next witness.

MS. MULKEY: The State calls Deputy Buckhannon.

THOMAS BUCKHANNON,

having been duly sworn, testifies as follows:

THE CLERK: State your name into the microphone and spell your last name for the record.

THE WITNESS: Thomas B-u-c-k-h-a-n-n-o-n, I'm the fourth.

THE COURT: If you would speak directly into the microphone for us, please, because we can't move the microphone. You may proceed.

MS. MULKEY: May it please the Court, Your Honor.

DIRECT EXAMINATION

BY MS. MULKEY:

Q. What is your occupation?

A. Charleston County deputy sheriff.

Q. And so you are employed by the Sheriff's Department?

A. Yes, ma'am.

Q. What are your duties with the Charleston County Sheriff's Department?

A. Currently assigned to the judicial enforcement division amongst courtroom and inmates, protect employees of the courthouse.

Q. If you could, please tell the jury how long you've been employed by the Charleston County Sheriff's Office?

A. About four years.

Q. Do you have any prior law enforcement experience?

A. Yes. I worked for Berkeley County Sheriff's Office for about four years, and Folly Beach public safety department prior to that for about two years.

Q. And did you have the occasion to be working on June 16th, 2013?

A. Yes, I did.

Q. What were your assignments and duties for that shift?

A. We were working an off-duty assignment on the Isle of Palms where we helped out crowd control, traffic enforcement, investigation of traffic collisions.

Q. You were working in Isle of Palms but as a Charleston County deputy?

A. Yes.

Q. Is the Isle of Palms in Charleston County?

A. Yes, it is.

Q. And did you have the occasion to become involved in the investigation in this case on that date?

A. Yes.

Q. How were you brought into this case?

A. I heard Deputy Chavez was involved in a vehicle pursuit, and I responded to his location to provide backup.

Q. What did you do when you arrived on the scene?

A. As I entered my vehicle, I was approaching Deputy Chavez and realized that he was searching the defendant. I went back to my patrol car, got some evidence bags, went back to Deputy Chavez.

Q. And what did Deputy Chavez locate on the defendant?

A. He was pulling things out of his pockets, putting them into the bags, and he located some cash and what appeared to be narcotics.

Q. Do you recall where exactly on the defendant he was pulling these items from?

A. In the area of his pockets.

Q. And what, if anything, did you do with the defendant?

A. I accompanied the defendant to the hospital. He was transported by EMS.

Q. Did you ride in the EMS wagon?

A. No, I did not.

Q. Then how did you accompany him?

A. I followed the ambulance to the Medical University hospital.

Q. Was the defendant handcuffed during his transport to M.U.S.C.?

A. Yes, he was.

Q. Is that normal practice?

A. It is.

Q. And when you got to M.U.S.C., what happened next?

A. They took him out of the ambulance, wheeled him into the emergency room. They proceeded to cut all of his clothes off.

Q. Were you present for this?

A. Yes, I was standing right there witnessing them do it.

Q. And what happened next?

A. I gathered his clothes off of the ground and put them into an evidence bag.

Q. Did you go through them at that time?

A. No, I did not.

Q. What did you do with that bag?

A. I kept it with me until Deputy Chavez came to relieve me at the hospital.

Q. Was that bag in your sole care, custody and control from the time that you placed the clothing into it to the time that you handed it to Deputy Chavez?

A. Yes, it was.

Q. And when Deputy Chavez arrived at M.U.S.C., what did you do with that bag?

A. I turned it over to Deputy Chavez and he proceeded to inventory it.

Q. Do you recall what, if anything, Deputy Chavez found?

A. He located a clear, small plastic baggy with a white powdery substance in the coin pocket of the pants.

Q. And the person that we've been speaking of, the person who you saw Deputy Chavez out with in the Isle of Palms in the lane of traffic, and the same person that you then testified you collected his clothes, do you see that individual in the courtroom tonight?

A. Yes, I do, he's right there.

MS. MULKEY: Please let the record reflect Deputy Buckhannon has identified the defendant.

THE COURT: You may proceed.

MS. MULKEY: I beg the Court's indulgence. We have nothing further.

THE COURT: Any questions for the witness?

MR. NELSON: Briefly, Your Honor.

CROSS-EXAMINATION

BY MR. NELSON:

Q. You were the second one on the scene?

A. Yes, I was.

Q. And part of being a police officer, or deputy in this case, is to see things, watch things, observe things, correct?

A. Correct.

Q. And this happened about a year ago, give or take?

A. Yes.

Q. And part of -- another thing part of police -- excuse me, being a police officer, is you write police reports?

A. What was the question?

Q. You write police reports, don't you?

A. Yes, I do.

Q. Did you write a police report in this case?

A. I believe I did.

Q. Now, when Deputy Chavez supposedly observed Mr. Nesbit make a turn without a signal, you weren't there?

A. No, I wasn't.

Q. So you don't know what happened there?

A. No, I have no clue what happened.

Q. Only thing, you came upon after he got in an accident?

A. Correct.

Q. And I just want to see if I'm clear on this. When

you got there, Deputy Chavez was already searching him?

A. When I got out of my patrol car, was walking towards Deputy Chavez, he was with the defendant searching him.

Q. Okay. Now, do you have video capabilities for your car?

A. I do.

Q. And in addition to recording video, it also records audio, correct?

A. Correct.

Q. Now, another thing about being a police officer is you want to obtain evidence at the scene, correct?

A. Correct.

Q. At this point, Deputy Chavez already has Mr. Nesbit secured?

A. Yes, he was in handcuffs.

Q. And you could have positioned your car to actually show what was going on, correct?

A. I could have, yes.

Q. You didn't?

A. I did not.

Q. In fact, I just want to be somewhat clear on this. I'm a little confused. You said when you were walking up to Deputy Chavez, you saw he was already searching him, and then you went back to the car?

A. Yes.

Q. Your car?

A. I did, yes.

Q. Was your back turned to him?

A. Yes.

Q. So you didn't actually see him go through the pockets and pull out everything?

A. When I came back up to him, he was going through the pockets, when I handed Deputy Chavez the bags.

Q. And then you went to M.U.S.C.?

A. Correct.

Q. And you didn't collect any evidence? I'm sorry. You collected the clothes, but you didn't go through the clothes?

A. I did not go through the clothing.

MR. NELSON: Court's indulgence.

BY MR. NELSON:

Q. Now, I just want to go back to the video, or excuse me, lack of video, because you didn't put any video from the location into evidence?

A. No.

Q. Because according to you, you didn't position your car so you could see what was going on?

A. No, I did not.

Q. But you were around Mr. Nesbit, you were around

Deputy Chavez?

A. Yes.

Q. And you have a mic on?

A. My lights?

Q. A mic.

A. I don't remember.

Q. Most of the time police officers when they have in-car videos have mics?

A. Correct.

Q. To pick up what you say and, in turn, if a defendant says something, correct?

A. Correct.

Q. Is it more than likely you had a mic on that day?

A. Yes.

Q. And I'm not trying to fool you or anything here. So even if you didn't see anything on the video, it would have recorded what you said, what was being said all around you while you were around Deputy Chavez and Mr. Nesbit?

A. Right.

Q. Did you preserve that?

A. I downloaded the video, which is the protocol.

Q. Did you turn it into evidence?

A. It's downloaded into a system. It's already in evidence.

Q. Did you ever review it?

A. No, I did not.
Q. Do you know if it has any evidentiary value?
A. I do not.
Q. Could it?
A. Possibly.
MR. NELSON: Nothing further.
THE COURT: Any redirect?
MS. MULKEY: We have no redirect.
THE COURT: Any objection to the witness being excused from the State?
MS. MULKEY: No, Your Honor.
THE COURT: From the defense?
MS. GAY: Nothing, Your Honor.
THE COURT: Sir, you are excused.
(Whereupon the witness is excused.)
THE COURT: Call your next witness.
MS. MULKEY: The State calls Crime Scene Investigator Meyer.

ERIN MEYER,

having been duly sworn, testifies As follows:

THE CLERK: State your name and spell your last name for the record.
THE WITNESS: My name is Erin Meyer. My last name is M-e-y-e-r.
THE COURT: You may proceed.

MS. MULKEY: May it please the Court, Your Honor.

THE COURT: Yes, ma'am.

DIRECT EXAMINATION

BY MS. MULKEY:

Q. Investigator Meyer, what is your current occupation?

A. I'm a forensics investigator with the Charleston County Sheriff's Office. I'm assigned to the criminal investigations unit.

Q. And how long have you been a deputy there?

A. I've been a certified deputy for 14 years. And I've been assigned to the forensics division for the last six and a half.

Q. If you could, please tell the Court what your duties are as a forensics investigator?

A. We have a lot of duties. Primarily, our two main duties, we respond to scenes and we identify and collect evidence. And then our other duty is to process and maintain, preserve evidence. Again, that's compounded at the facility.

Q. And did you have the occasion to be working on June 16th, 2013?

A. Yes, ma'am.

Q. In what capacity?

A. I was the on-call investigator for that week.

Q. And could you please tell the Court how you became involved in this particular case?

A. I was advised by Sergeant McManigal to respond to a pursuit involving a motorcycle with Deputy Chavez on Isle of Palms.

Q. And what did you do when you arrived on scene?

A. Traditionally, when we arrive on scene, we briefly speak to the officers involved, basically kind of find out what happened. And then we go into processing the scene and taking and collecting evidence and photographing and documenting everything.

Q. And what were the items that Deputy Chavez told you he had collected?

A. Deputy Chavez told that -- he briefly told me about what had happened in the incident, and indicated that he had collected some cash and some drugs from subject Nesbit after pursuit had occurred. He had come up on the crash site. He collected those things that happened in his possession.

Q. And once you were done processing those items which you had come on site to do, did you meet with Deputy Chavez again?

A. Yeah, I spoke with him and I explained to him to go ahead and hold onto them and I'll process the scene, take photographs and do what I need to do, and then I would go back and meet with him again and collect those items, and I

did.

Q. And can you please explain for the Court the steps you took to inventory and to physically take custody of those items?

A. Once I was at the scene, I met with him and he -- took evidence paper bag out, put it on the trunk of his car, and we both went through the items as he pulled them out of the bag. I photographed them. I examined them, photographed them, and then put them in evidence bags of mine, and took them into my possession and put them -- secured them in my vehicle.

Q. And was this recorded on Deputy Chavez's video?

A. Yes, ma'am.

Q. Then what did you do with those items of evidence?

A. Secured them in my vehicle.

Q. And from there, where did they go?

A. When I cleared from the scene, I transported them to the Charleston County Sheriff's Office evidence compound, a secure facility where we house all of our evidence and maintain all of our evidence.

Q. Can you please let the Court know about your procedures for securing things into evidence, what exactly that entails?

A. Our facility is locked either by deadbolt, combination lock, keypad or keys. We have gated wire and

constantine wire around several facilities. Once you enter those premises, you have to have a key or keypad to get into the building. We secure the evidence. It stays there until we begin the tracking period, enter it into evidence system, and then it gets to get tracked. If it ever leaves that facility, it gets tracked, it gets signed out, somebody signs for it. For instance, if it were to go -- drugs would have gone for drug analysis, they would be signed out from our facility and then come back.

MS. MULKEY: May I approach, Your Honor?

THE COURT: You may.

BY MS. MULKEY:

Q. I would like to direct your attention to the monitor and show you some photos that have been previously entered into evidence. The first of which is going to be State's Exhibit No. 4. Can you please tell the Court what this is a picture of?

A. This is Deputy Chavez. He has pulled the brown paper bag that contained all the evidence that he collected when he got on the scene. He's got it on the hood of his car and we are beginning to go through it.

Q. Now I would like to show you what's previously been entered into evidence as State's Exhibit No. 5. If you could please tell the Court what this is.

A. This is the same bag. He's now got it open and

pulling out individually. These are the items inside. You can see the money and the white powder inside the clear plastic bag.

Q. I would like to show you State's Exhibit No. 6, if you could tell the Court what this is.

A. He's pulling items out of the bag, as you could see, and I'm photographing them.

Q. And just to be clear, Deputy Meyer, these photographs that we are showing previously entered into evidence are your photographs?

A. Yes, ma'am.

Q. And these are the ones taken on scene?

A. Yes.

Q. Please draw your attention to State's Exhibit No. 7. Can you tell the Court what that is?

A. It's white powder, what we believe to be cocaine.

Q. This is State's Exhibit No. 8, if you could please tell the Court what that is.

A. He's pulling all the bags out, but the bags on the hood is, again, the drugs. And he's pulling out the remaining bags out of the evidence bag and then the money. I mean, it's just the procedure he's going through. I'm photographing as he's pulling them out.

Q. And this procedure is your procedure for documenting and inventorying evidence?

A. Yeah, it's -- I'm -- we are verifying what he's giving me, documentation.

Q. And last, if you could please tell me what is State's Exhibit No. 9?

A. Those are all -- that's -- those are all the bags of drugs that he had collected prior to me getting there. And they were all -- he's got his hand on the hood now. That's while I'm photographing it.

MS. MULKEY: Thank you. Beg the Court's indulgence.

THE COURT: Uh-huh.

BY MS. MULKEY:

Q. Just a few more things, Deputy Meyer.

MS. MULKEY: May I approach?

THE COURT: You may.

BY MS. MULKEY:

Q. I would like to show you what's been pre-marked for evidence State's Exhibit 11. If you could open this and tell me if you know what it is.

A. This is the bag of white powder that he was showing in the exhibits that I took custody of on scene he indicated he got from subject Nesbit. My initial's at the top.

Q. And is that in substantially the same condition that you saw that evening?

A. Yes, ma'am.

Q. Thank you.

Next I would like to show you State's Exhibit No. 12 and have you look at that as well, and advise the Court if you recognize what that is?

A. This is one of the five bags of the crystal, kind of like rock substance, that he indicated he had also collected from subject Nesbit. He had given me on the -- Deputy Chavez gave me on the scene. This is a smaller of the five bags, and this is my initial.

Q. Is that substantially the same condition you saw it that evening?

A. Yes, ma'am.

Q. Thank you.

Finally, I have for you State's Exhibit No. 13. If you could look at that and please let the Court know if you recognize those items?

A. Yes. These are the four larger bags of the same brown crystal-like substance. It's the smaller one that I just pulled out. These are the same four bags that I got from Deputy Chavez that night, indicated he got off subject Nesbit. And you can see it's signed. I have sealed my initials. I'm the one that put the red markings on each bag.

Q. And is that in substantially the same condition as that evening?

A. Yes.

MS. MULKEY: Thank you. I have no further questions. Please answer any the defense may have.

THE COURT: Any questions for the witness?

MR. NEWMAN: None, Your Honor.

THE COURT: Any objection to the witness being excused from the State?

MS. MULKEY: No, Your Honor.

THE COURT: From the defense?

MR. NELSON: No, Your Honor.

THE COURT: Ma'am, you are excused.

Who is the State's next witness?

MS. MULKEY: State calls Mark Watson.

THE COURT: Ladies and gentlemen, if you could bear with us, I know it is 5:01, it is my understanding this next witness is fairly short, so we could dispose of that witness before breaking for the evening. We appreciate your indulgence. You may proceed.

MARK WATSON,

having been duly sworn, testifies as follows:

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Mark Edward Watson, W-a-t-s-o-n.

DIRECT EXAMINATION

BY MS. LINDER:

Q. Where are you presently employed?
A. Charleston County Sheriff's Office.
Q. How long have you been with the Sheriff's Office.
12 years.
Q. And what's your current position there?
A. I'm a forensics investigator.
Q. Was that your position back in June of 2013?
A. It was.
Q. And what do your general duties include?
A. I process crime scenes, maintain evidence, log stuff, log in evidence, keep track of it, transport items to SLED, transport items to be tested.
Q. Did you handle any evidence in this case, the State vs. Henry Nesbit?
A. I did.
MS. LINDER: Your Honor, may I approach?
THE COURT: Uh-huh.
BY MS. LINDER:
Q. At this time, I show you what's been marked as State's Exhibit 10 for identification purposes. Do you recognize that?
A. Yes, ma'am.
Q. How do you recognize it?
A. These are -- this was actually transported out to be tested.

Q. I'm going to show you also what's been marked State's Exhibit 11 and 12. Can you look at those two items, please?

A. Yes, ma'am.

Q. Do you recognize those?

A. I do.

Q. How do you recognize those?

A. These are the other two items. I remember carrying three items down there. And when the city does it, they put letters there, up here, 1 of 3, and the other says 1, and this says 2 and 3. I know I transported two items associated with this case. I also picked them up and brought them back when it was completed.

Q. And when you took those items from the compound at the Sheriff's Office, where did you take them?

A. The city actually has a forensics lab inside of M.U.S.C. It's in the eye tower down there on the second floor, and that's where they do all their drug testing.

Q. Do you recall who you gave this -- these items to?

A. I wish my memory was that great, but, no, I don't recall. They have three or four different girls working there. And which one that particular day took it out, I don't know.

Q. Would it refresh your recollection if I showed you a chain of custody?

A. Yes, ma'am, it would.

Q. Are you familiar with chains of custody that are kept?

A. I am.

Q. And what's the purpose of a chain of custody?

A. Chain of custody is to say who all came in contact with that evidence in order for you to be able to track for court purposes.

Q. At this time I show you what's going to be marked as State's Exhibit 15 for identification purposes. Does that help refresh your recollection as to who you gave the three items to?

A. Yes, ma'am, it does.

Q. And who did you give those three items to?

A. I gave it to Susan Payne.

MS. GAY: Your Honor, may we see that item please?

THE COURT: Uh-huh.

BY MS. LINDER:

Q. After you left it with Susan Payne at the city lab, did you then, more or less, go about your business that day?

A. I did. When we go to take the items to the city, they actually have an electronic keypad that we have to sign, kind of like you do your credit card. And each of our items has a bar code. And when we pre-log it into the

sheet. That's how they get their little label. But we have to pre-log it to forensic's advantage. And each thing is itemized. And that's how they know what we do. When we put it into the system, we use OCA and an item number, which is located up here, and then a brief description of what it is. And we go there, they actually scan their paperwork, and then generate their labels, and we put their labels on it and also puts it into the chain of custody, and then I sign for it. And it keeps electronic chain, as opposed to having paper. But, of course, you have to print it up.

MS. LINDER: Thank you. I have no further questions. Please answer any questions the defense may have.

THE COURT: Any questions of the witness?

MS. GAY: One moment, please.

MR. NELSON: No questions, Your Honor.

THE COURT: Any objection to the witness being excused from the State?

MS. MULKEY: None from the State, Your Honor.

THE COURT: From the defense?

MS. GAY: No, Your Honor.

THE COURT: Call your next witness.

MS. LINDER: The State calls Jason Riley.

JASON RILEY,

having been duly sworn, testifies as follows:

THE CLERK: State your full name and spell your last name for the record.

THE WITNESS: Jason Harold Riley. Last name is R-i-l-e-y.

MS. LINDER: Thank you, Your Honor. May it please the Court.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MS. LINDER:

Q. Where are you presently employed?

A. Charleston County Sheriff's Office.

Q. And how long have you been with the Sheriff's Office?

A. Eleven and a half years.

Q. What's your position there?

A. I work in the forensics service unit as a forensics investigator.

Q. And were you working in that capacity in June of 2013?

A. I was.

Q. And did you handle any evidence involved with this case, the State vs. Henry Nesbit?

A. I did, yes, ma'am.

MS. LINDER: May I approach?

THE COURT: You may.

BY MS. LINDER:

Q. At this time, I show you what's been pre-marked as State's Exhibit 13 for identification purposes. Do you recognize that item?

A. I do.

Q. How do you recognize it?

A. I recognize it by the label with the evidence tag that's listed on it and also by the top right label from the forensics analysis of the city lab.

Q. And does that appear to be substantially the same condition it was when you handled it?

A. Yes, ma'am.

Q. And when you handled that item, where did you take it from and where did you take it to?

A. I took it from our forensics service evidence compound and I transported that in my vehicle to M.U.S.C. to the City of Charleston drug lab.

Q. And do you recall who you gave that to at the city drug lab?

A. I don't recall specifically; usually it's Susan.

Q. Would it help refresh your recollection if you saw a chain of custody?

A. Yes, ma'am, it would.

Q. I misspoke last time. I'm going to be showing these State's exhibits for identification purposes only,

State's Exhibit 16. Do you recognize this?

A. I do.

Q. And is it typical to have a chain of custody form with the Sheriff's Office when you deal with evidence?

A. Yes, ma'am.

Q. And does seeing that paper, State's Exhibit 16, does that help refresh your recollection?

A. It does.

Q. And who did you give that item to?

A. Ms. Susan Payne.

MS. LINDER: At this time I have no further questions for this witness. Please answer any questions the defense may have.

THE COURT: Any questions for the witness?

MS. GAY: May I see the document you showed him, which was number 16 please?

I have no questions.

THE COURT: Any objection to the witness being excused from the State?

MS. LINDER: None from the State.

THE COURT: From the defense?

MS. GAY: No.

THE COURT: You are excused. Is that the last?

MS. LINDER: It is, Your Honor.

Madam Forelady, ladies and gentlemen, we are going

to take advantage of this break in testimony to take our evening recess. Again, we appreciate you allowing us to go beyond five o'clock. We will resume in the morning at 10:30. I anticipate that we will finish this case tomorrow for your planning purposes.

During the break, please do not discuss the case in any manner whatsoever. Please don't allow yourselves to be exposed to any media coverage about this case. That includes anything on the radio, newspapers, television or Internet, and don't do any independent research on the Internet. Do not have any contact with anyone in or about the courthouse.

When you return in the morning, you will come directly to your jury room. And as soon as y'all arrive, again, we will resume testimony at 9:30.

If you would leave your note pads on the banister as you leave, that would be helpful to the bailiffs. They will collect them and will secure them for the evening recess.

Have a wonderful evening. We will see you in the morning at 9:30. If you would follow the bailiffs for me.

(Whereupon, the jury leaves open court at 5:11 p.m.)

THE COURT: Y'all can take your seats. Is there anything before we break for the evening from the State?

MS. LINDER: No, Your Honor.

THE COURT: From the defense?

MS. GAY: No, Your Honor.

THE COURT: And you have two witnesses left; is that correct, that being Ms. Payne, who is a chain witness from the city lab, and Ms. Hilton, who is the analyst?

MS. LINDER: Yes.

THE COURT: How long do you think that testimony will take?

MS. LINDER: Five minutes maybe.

THE COURT: I would imagine the analyst might be a little longer?

MS. LINDER: Analyst will be about 15, since we are going to attempt to qualify her as an expert.

THE COURT: So that would be your last witness then and the State would rest?

MS. LINDER: Yes.

THE COURT: Does the defense anticipate calling any witnesses?

MS. GAY: Probably not, but we do have to speak to Mr. Nesbit.

THE COURT: I'm going to question him about that, but I'm asking for scheduling purposes.

MS. GAY: Probably not.

THE COURT: If you all have any request to

instruct, you need to tell me now because I'm going to do my charges before I leave.

MS. GAY: I don't think we are going to get a mere presence to talk about that, Your Honor.

THE COURT: I don't think there's any support for a mere presence. Yeah, oh, are you being facetious? That was funny. Okay.

MS. GAY: That's the only one I could think of.

THE COURT: Any request from the State?

MS. MULKEY: No, Your Honor.

THE COURT: Okay. Are there any -- other than the ordinary, usual stuff, any requests from the defense?

MS. GAY: I don't believe so.

THE COURT: Okay, guys, then I will see y'all in the morning at 9:30. Have a good evening.

(Whereupon, the trial continues on June 8th, 2014 under a separate transcript.)

CERTIFICATE OF REPORTER.

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

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

Witness my hand, I have hereunto affixed my official seal this 12th day of October, 2014, at Charleston, Charleston County, South Carolina.

Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

STATE OF SOUTH CAROLINA — COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON — 2013-GS-10-05527
2013-GS-10-05634
2013-GS-10-05639

STATE OF SOUTH CAROLINA)
)
VS.) TRANSCRIPT OF RECORD
) VOLUME II
)
HENRY OLIVER NESBIT, JR.)
) MAY 8, 2014
) CHARLESTON, SC
)
)

B E F O R E:

HONORABLE DEADRA L. JEFFERSON, JUDGE, AND A JURY.

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

STEPHANIE LINDER, ESQUIRE
LAUREN MULKEY, ESQUIRE
Attorneys for the State

MELISSA GAY, ESQUIRE
MICHAEL NELSON, ESQUIRE
Attorneys for the Defendant

Ruth L. Mott, RPR, CRR
Official Court Reporter

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
HENRY OLIVER NESBIT, JR.				
THE COURT	4			
SUSAN MARIE PAYNE				
MS. LINDER	12			
MS. GAY		14		
RENE HILTON				
MS. LINDER	15			
CLOSING ARGUMENTS				
MS. LINDER	40			
MS. GAY	54			
CHARGE OF THE COURT	67			
VERDICT OF THE JURY	94			
SENTENCE OF THE COURT	108			
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E X H I B I T S

NO.	DESCRIPTION	ID	EVD
S-10	DRUGS 138992	3	22
S-11	DRUGS 139026	3	22
S-12	DRUGS 139028	3	22
S-13	DRUGS - 4 ZIPLOCKS - 139029	3	22
S-14	DRUG ANALYSIS 01469 #1	3	19
S-15	DRUG ANALYSIS L13-01469 #2	3	19
S-16	CHAIN OF CUSTODY REPORT	3	
C-1	JURY NOTE	86	
C-2	JURY NOTE	92	
C-3	JURY NOTE	93	
C-4	SENTENCING SHEET	109	

- - -

(State's Exhibits 10-16 premarked for identification.)

THE COURT: Another form of plea offer has been extended, and you're accepting it at this point?

MR. NELSON: He's rejected it, Your Honor.

THE COURT: And what was the substance of that plea offer?

MS. LINDER: The substance of that plea offer, Your Honor, was a plea to a negotiated 18, and ultimately it would wrap up, out of all the pending charges, I do not have the actual number pending in front of me, I would end up dismissing about a quarter of them of my choice and -- yes.

THE COURT: Okay. Is that the substance of the plea offer, Ms. Gay?

MS. GAY: Yes, ma'am.

THE COURT: And did you fully explain that to your client?

MS. GAY: Yes. Mr. Nelson and I both did, and we allowed his mother to talk too for a period of time.

THE COURT: And did he accept or reject the offer?

THE DEFENDANT: Reject.

MS. GAY: He rejected the offer.

THE COURT: Sir, if you'd stand for me please and raise your right hand to be sworn.

HENRY OLIVER NESBIT, JR.,

being first duly sworn, testified as follows:

THE COURT: You can put your right hand down. State your full name for the record.

THE DEFENDANT: Henry Nesbit.

THE COURT: And, Mr. Nesbit, is it correct that the State offered you an additional extended plea offer to you this morning?

THE DEFENDANT: Yes, ma'am.

THE COURT: What is your understanding of that deal?

THE DEFENDANT: 18 years.

THE COURT: Okay. And did you accept or reject that offer?

THE DEFENDANT: Reject.

THE COURT: Did you fully discuss it with your attorneys?

THE DEFENDANT: Yes, ma'am.

THE COURT: Are you suffering from any mental disabilities, or are you under the influence of any drugs or alcohol?

THE DEFENDANT: No, ma'am.

THE COURT: Did you do that freely and voluntarily and of your own will?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you feel anyone forced you to do it?

THE DEFENDANT: No, ma'am.

THE COURT: And you do understand that if convicted

you're facing a minimum mandatory of 25 years, which is served day for day and is a no parole offense.

THE DEFENDANT: Yes, ma'am.

THE COURT: Knowing all of that, do you still wish to reject the plea offer?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. Thank you, sir. You may take a seat. Are you ready to get started?

MS. LINDER: Ready to go, Judge.

THE COURT: Are you folks ready to get started?

MS. GAY: Yes, ma'am.

THE COURT: Are your witnesses here?

MS. LINDER: Yes, witnesses are here.

THE COURT: Where are they at?

MS. LINDER: Out in the hallway.

THE COURT: Get your first one so we don't have to wait for them.

MS. GAY: Should we resolve the jury issue?

THE COURT: I've got to figure out which juror it is. Describe her again for me.

MR. NELSON: She is 50's, early 60's, blond hair.

THE COURT: Does she have glasses on?

MR. NELSON: I don't know, Your Honor.

THE COURT: Does that sound familiar?

THE BAILIFF: Doesn't sound like one of ours. There was

a lady with a juror badge on out there, but she had on a yellow top, but she wasn't with us.

THE COURT: Yellow top?

MR. NELSON: I would be a horrible witness, Your Honor.

THE COURT: So there's another jury or there's a juror here.

THE BAILIFF: She was at one of the other courts, had a juror badge on, and she went downstairs.

THE COURT: So maybe this person wasn't even on our jury.

THE BAILIFF: It's possible.

THE COURT: Let's bring in the jury, and if you recognize the person, approach, tell me who it is. We'll deal with it from there. May well not even have been -- I'm trying to figure out what other jury is going on in this building.

THE BAILIFF: Had a plea or something in one of the other courts, and I asked her about it.

THE COURT: I guess it is possible probate court could have had a jury trial. We'll figure it out. Go ahead and bring them in.

(The jury enters the courtroom.)

THE BAILIFF: All present, Your Honor.

THE COURT: Thank you. You may be seated.

(A bench conference was held off the record in the

presence of the jury but out of the hearing of the jury.)

THE COURT: Madam Forelady, ladies and gentlemen, it's good to see you all this morning. I'm glad everyone arrived safely. We apologize for the delay. Our court reporter was delayed due to an accident on the interstate this morning, so we appreciate your patience. I have a brief matter of law I need to take up with the attorneys. I'm going to turn you over to the hands of the bailiff, and if you would follow his instructions for me, please. And leave your notepads in your seats for me, please.

(Jury exits the courtroom.)

THE COURT: The lady in the white shirt that was sitting right here on the front row, bob and glasses, if you'd bring her back in for me.

(Requested juror enters the courtroom.)

THE COURT: Ma'am, how are you this morning?

THE JUROR: Good, thank you.

THE COURT: I need you all to close that door for me, please. Thank you.

Ma'am, what is your name and your juror number?

THE JUROR: Joanne Ward, 372.

THE COURT: Ms. Ward, were you in the elevator this morning with some attorneys?

THE JUROR: Yes, ma'am.

THE COURT: Yes. Just out of an abundance of caution

and not to make you feel compromised in any way, the attorneys have agreed to excuse you from this panel just because of the nature of the comment that the attorney made unwittingly. We appreciate your service. We don't question your impartiality at all, but just out of an abundance of caution, we're going to excuse you from this panel. We apologize for any inconvenience to you. Sometimes people unwittingly just say things and they don't realize until it's already out of their mouth, and so you've been diligent.

THE JUROR: Yes, I just -- I said to the attorney that I was a juror.

THE COURT: Exactly, and that's what made them all -- the bells and whistles then went off because then they realized -- well, the attorney that made the comment then realized that they probably -- it probably was not a good idea to have made that comment; but nevertheless, again, we don't question your impartiality or your ability to serve as a juror, but just out of an abundance of caution and to not make you feel uncomfortable, which I don't think you do, but just again out of an abundance of caution, we're going to excuse you from this panel, but we appreciate your time and your attention to this case. You've been timely, and we appreciate, again, your attentiveness and your willingness to participate in the process. You will be excused for the remainder of the week. You can discuss your jury service,

but I ask that you not do it until after Friday when the entire panel is excused; and, again, we thank you so very much, and you're excused with the Court's thanks.

(Juror exits the courtroom.)

MS. GAY: Your Honor, before they move the jury panel back --

THE COURT: Wait one second. Is there any exception to the dismissal of Juror No. 372 from the State?

MS. LINDER: No, Your Honor.

THE COURT: From the Defense?

MS. GAY: No, ma'am. I just wanted to get the record clear that it wasn't any of the attorneys in this trial, it was a different attorney.

THE COURT: Yes, I thought I made that clear.

MS. GAY: I was confused. It doesn't matter, just for purposes of the record.

THE COURT: Yes, I thought that was clear, but that's fine.

Now, Mr. Nesbit, I was sitting here thinking, I need to -- tell me why you rejected the plea offer, without compromising yourself or saying anything that's privileged. I guess I'm trying to figure out the rationale. Again, there are no consequences to me. I'm getting older now. I've been doing this 18 years, and I figure if folk can live with their consequences, I can live with their consequences. I don't

really bother myself very much because I learned a long time ago no good deed goes unpunished, so I really don't try to help folk anymore, but I'm just -- I think of your age, and you're so very young, and I always have to look at the worst case scenario, as a judge, and I think people think that judges have to get worked up to sentence people. We don't. We recognize somebody has to do it. And so I'm just curious, is it that you think you can get a better plea deal out of the State or that -- it just -- I'm at a little bit of a loss. I'm just a little confused as to why you would run the substantial risk you're facing at such a young age.

THE DEFENDANT: Because I'm not guilty, Your Honor.

THE COURT: Okay. I can live with that. I'm a believer in the jury system, a great believer in the jury system, so if you -- I would never discourage you from exercising that right.

You can get the jury panel for me, please.

And I don't want my remarks to be interpreted at all that I took a position one way or the other because I don't.

How long does the State think it will take to finish their case?

MS. LINDER: 30 minutes, total, both witnesses.

THE COURT: Okay. That's, worst case scenario, 11:00. How long do you think -- are you all going waive opening on the law or are you going to open and close?

MS. LINDER: Just close.

THE COURT: How long do you anticipate closing arguments?

MS. GAY: 20 minutes maybe.

THE COURT: Okay. How long do you think you're going to be?

MS. LINDER: 15 minutes, 15, 20 minutes.

THE COURT: I'm going to have the jury's lunches ordered by noon. I think that's probably a safe bet.

(The jury enters the courtroom.)

THE COURT: You may be seated. Ladies and gentlemen, we appreciate your patience. As a result of those matters of law the alternate is now seated with the remainder of the panel. We are now going to resume testimony. I ask that you give the attorneys your undivided attention.

You may proceed.

MS. LINDER: Thank you, Your Honor. May it please the Court, the State calls Susan Payne.

SUSAN MARIE PAYNE,

being first duly sworn, testified as follows:

THE CLERK: State your name.

THE WITNESS: My name is Susan Marie Payne, P-A-Y-N-E.

THE COURT: Ma'am, if you could speak directly into the microphone for me and speak up just a little bit more, ma'am.

THE WITNESS: Yes, ma'am.

DIRECT EXAMINATION BY MS. LINDER:

Q. Where are you presently employed?

A. The City of Charleston Police Department.

Q. And how long have you been there?

A. Almost nine years.

Q. What is your position there?

A. Currently I'm the LIMS administrator.

Q. And what was your position in the summer of 2013?

A. I was the LIMS administrator, and I'm also responsible for the evidence for the forensic services division.

Q. And what are your responsibilities and duties as being in charge of the evidence of the forensics?

A. I'm responsible for picking evidence up from the station and bringing it to the drug lab at MUSC and returning evidence and accepting evidence from outside agencies into the lab.

Q. And when an outside agency submits something to the lab, how do they go about doing that?

A. They come to the lab, and they bring it to us in a sealed evidence container along with all of the coordinating paperwork.

Q. And did you handle any evidence in this case, State versus Henry Nesbit?

A. Yes, ma'am.

Q. And how many items did you handle?

A. I handled, I believe it was three pieces for one submission and I think four for the next.
Q. And who did you receive those items from?
A. The first submission I received them from Deputy Watson and the second submission I received them from Deputy Riley.
Q. And when you received those submissions, and specifically the submissions in this case, from Riley and Watson, what did you do with them?
A. I make sure they are sealed with initials half on and half off the seal and that the description on the paperwork also matches what's actually in the evidence bag.
Q. And then where do you physically place them?
A. After they've been received and entered into the system, I place them into the safe.

MS. LINDER: Your Honor, may I approach?

THE COURT: Yes, ma'am.

MS. LINDER: Thank you, Judge.

THE COURT: You're welcome.

Q. At this time I'm going to hand you what's been premarked for identification purposes as State's Exhibit 10, 11, 12 and 13. If you could please take a look at those.

Do you recognize those items?

A. Yes, ma'am.
Q. How do you recognize them?
A. Each evidence bag has a sticker from the lab on it with

the analyst's initials, lab number, case number and the date it was sealed.

Q. And are these the items that you received in relation to this case, State versus Henry Nesbit?

A. Yes, ma'am.

Q. And do they appear to be in substantially the same condition as when you first received them?

A. Yes, ma'am.

MS. LINDER: Thank you. I have no further questions for this witness. Please answer anything the Defense may have.

THE COURT: You may proceed.

MS. GAY: Thank you, Your Honor.

THE COURT: You're welcome.

CROSS-EXAMINATION BY MS. GAY:

Q. Hey, how are you?

A. Good.

Q. I just have one question. Today your testimony is all about the analysis of these drugs, do you have any information or you don't have any information to help the jury determine what went on on June 16th, 2013?

A. No, ma'am.

MS. GAY: I have no further questions, Your Honor?

THE COURT: Any redirect of the witness?

MS. LINDER: No redirect, Your Honor.

THE COURT: Any objection to the witness being excused

from the State.

MS. LINDER: No objection from the State.

THE COURT: From the Defense?

MS. GAY: Nor the Defense.

THE COURT: Ma'am, you're excused.

THE WITNESS: Thank you.

THE COURT: Call your next witness you may.

MS. LINDER: State calls Rene Hilton.

RENE HILTON,

being first duly sworn, testified as follows:

THE CLERK: State your name and spell your last name for the record.

THE WITNESS: Rene Hilton, H-I-L-T-O-N.

THE COURT: You may proceed.

DIRECT EXAMINATION BY MS. LINDER - VOIR DIRE:

Q. What's your occupation?

A. I am laboratory manager.

Q. And where did you work in the summer of 2013?

A. The City of Charleston Police Department.

Q. And what position did you hold at that time?

A. I was an associate criminalist.

Q. And what do your duties include being an associate criminalist?

A. I perform drug analysis on evidence submitted by agencies, whether it be CPD or any outer agency within the

area. I perform quality checks on our instruments, and at the time I assisted the current laboratory manager with any other duties that she requested of me.

Q. Can you please tell the jury what type of training and education you have?

A. Yes. I have a chemistry -- a bachelor's of chemistry from the University of South Carolina. I completed the city's inhouse training, which consisted of shadowing an examiner, reading tests and actually performing competency tests, and then I also performed training that was inhouse, excuse me, online or in-person training.

Q. And have you had the occasion to chemically analyze substances in your career to determine whether or not the substance contains a narcotic or a narcotic type drug?

A. Yes.

Q. And approximately how many times have you conducted those tests?

A. I have completed almost 3,000 cases.

Q. And do you conduct those analyses as a part of your everyday work?

A. Yes.

Q. And what type of equipment do you use in the laboratory for testing?

A. We have an FTIR, which that's a short term for Fourier transform infrared spectrometer we also have a GC-MS, which

stands for gas chromatograph mass spectrometer.

Q. And this equipment that you use, is it precise and accurate in its testing ability?

A. Yes.

Q. And are there standards that you have to hold up to in order for your lab?

A. Yes.

Q. Have you previously ever been admitted as an expert in trial to testify?

A. Yes.

Q. And did you actually testify --

A. Yes.

Q. -- in those cases?

A. Yes.

MS. LINDER: Your Honor, at this time I would ask that Rene Hilton be declared an expert in the field of drug analysis.

THE COURT: Any objections or questions?

MS. GAY: No, Your Honor, no objections or questions.

THE COURT: Admitted without objection. You may proceed.

MS. LINDER: Thank you, Judge.

THE COURT: You're welcome.

Q. In this case, the State versus Henry Nesbit, did you complete any drug analyses?

A. Yes.
Q. And as a result of those drug analyses did you create a report?
A. Yes.
MS. LINDER: If I may approach?
THE COURT: Yes, ma'am.
Q. At this time I show you what's been marked as State's Exhibits 14 and 15 for identification purposes only, if you could look at these, please. Do you recognize those?
A. Yes.
Q. How do you recognize it?
A. My signature's on them.
Q. And who prepared that?
A. I did.
Q. When did you prepare the report?
A. The first report was done on July 2nd of 2013, and the second one was August 13 of 2013.
Q. And who was the subject of this drug report?
A. Henry Nesbit.
MS. LINDER: Your Honor, at this time I'd like to admit State's Exhibit 14 and 15 into evidence.
THE COURT: Any objection?
MS. GAY: One moment, please.
Your Honor, there was a previous motion filed in pretrial motions, but I understand the ruling, and so we are

agreeing they can go in.

THE COURT: Marked and admitted without objection.

(State's Exhibits 14-15 admitted into evidence.)

Q. Ms. Hilton, at this time I'm going to show you -- we're first going to go over State's Exhibit 14. I'm going to put it on this screen, and it will actually show up in front of you.

A. Okay.

Q. Can you tell the jury what State's Exhibit 14 is?

A. It's my lab report for the first submission that was submitted to me on July 1st, 2013.

Q. And what is this up here (indicating)?

A. It is our laboratory number.

Q. And this (indicating)?

A. It's the case number associated with this case.

Q. And what is this information (indicating)?

A. The suspect's name.

Q. And what is this down here (indicating)?

A. It's my signature.

Q. And this is the report that you generated?

A. Yes, ma'am.

Q. And can you please tell the jury what were your findings on this case for this report?

A. For the first two items that were the plastic bag with white powder, I determined them to be cocaine, and then the

final bag with the crystalline substance I determined to be Methylone.

Q. And can you tell me the weight of cocaine?

A. The individual or the total?

Q. The individual.

A. The first bag, item 138992, was 1.72 grams. The second item, 139026, was 19.53 grams.

Q. And then for those can you explain what this column over here says (indicating)?

A. That column is the methods that I used to determine the result of cocaine, so for those particular items I used a wet color test, and the FTIR, which was or Fourier transform infrared spectrometer.

Q. And on this report what was the third substance, what did you determine that third substance to be?

A. Methylone.

Q. And what was the weight of that?

A. 14.39 grams.

Q. At this time I'm going to show you what's already been admitted into evidence as State's Exhibit 15. What is this (indicating)?

A. The laboratory number.

Q. And what is this (indicating)?

A. The case number.

Q. And again what is down here (indicating)?

A. My signature.
Q. And can you please tell the jury in your expert opinion what your findings were after completing tests on these submissions?
A. For four -- all four items I determined them to be Methylone.
Q. And what were the weights of each individual submission?
A. Item 139029, which was a plastic bag of crystalline substance, was 95.18 grams. The second item, the same plastic bag with crystalline substance, Item 139029-3, was 94.85. Item 3 -- excuse me, Item 13909 -- 29-4 was the weight of 95.31 grams, and then the final item, 139029-5 was 94.93 grams.
Q. And both of the reports that we just went through for the jury, State's Exhibit 14 and 15, these both were submissions from the same case, correct?
A. The same case number, yes.
Q. The same case number.
A. Yes.
Q. And can you tell the jury the total weight of all of the cocaine in this case?
A. 21.25 grams.
Q. And can you tell the jury the total weight of all the Methylone in this case?
A. 394.66 grams.

Q. And is Methylone a Schedule I substance?
A. Yes.
Q. At this time I show you what's been marked for identification purposes as State's Exhibit 10, 11, 12 and 13, if you can please look at those.
A. Okay.
Q. And do you recognize those items?
A. Yes.
Q. How do you recognize them?
A. My initials are on them as well as a City of Charleston Police sticker that I put on there while analyzing the evidence.
Q. And do they appear to be in substantially the same condition as when you first received them?
A. Yes.
MS. LINDER: Your Honor, at this time the State would seek to admit State's Exhibits 10, 11, 12 and 13 into evidence.
THE COURT: Any objection?
MS. GAY: Over previous objection, Your Honor.
THE COURT: Marked and admitted.
(State's Exhibits 10-13 admitted into evidence.)
Q. All right. First I want to talk about State's Exhibit 10. Can you explain what State's Exhibit 10 is?
A. It's a plastic bag with a white powdery substance.

Q. And it appears there's a little blue in here. What's that blue, do you have any idea?
A. The officer color tested the substance before submitting it.
Q. And what was your -- in your expert opinion what was this white substance?
A. Cocaine.
Q. All right. And then I'll take from you State's Exhibit 11, and can you tell the jury what this item is?
A. A plastic bag with white powder.
Q. And in your expert opinion what is the substance?
A. Cocaine.
Q. And what are all these -- it looks like Sharpie, for lack of a better word -- what are all these markings and writings on that little bag inside?
A. Our policies state that, when we get evidence, we have to mark it with the laboratory number, the weight and our initials to prove that we actually touched that evidence and there was no tampering once we -- excuse me, after we put it back in the bag and sealed it.
Q. And what are these initials up here (indicating)?
A. Those are my initials.
Q. And is there a significance to the location of where those initials are?
A. It's just half on and half off the seal so we know it's

not broken.

Q. And is this the same procedure that you go through with all items of narcotics that you receive?

A. Yes, ma'am.

Q. And is that true that you did that in all of your cases -- all of the submissions in this case?

A. Yes, ma'am.

Q. All right. Next I'm going to look at State's Exhibit 12, if you can tell the jury what this is.

A. It's a plastic bag with crystalline substance.

Q. And in your expert opinion what was this?

A. Methylone.

Q. And then finally I'd like to look at State's Exhibit 13. What is this substance?

A. It's four individual bags with plastic -- excuse me, with plastic bags with crystalline substance.

Q. And what was that crystalline substance?

A. Methylone.

MS. LINDER: Your Honor, I don't have any other questions for this witness.

If you can please answer any questions that the defendants may have.

THE COURT: Any questions for the witness?

MS. GAY: No questions for this witness, Your Honor.

THE COURT: Any objection to the witness being excused,

from the State?

MS. LINDER: None from the State.

THE COURT: From the Defense?

MS. GAY: No, ma'am.

THE COURT: Ma'am, you're excused.

State may proceed.

MS. LINDER: State rests.

THE COURT: Madam forelady, ladies and gentlemen, the State has rested their case. I have some matters of law to take up with the attorneys. During this break please do not discuss the case among yourselves, and leave your notepads in your seats. We do appreciate your patience.

(Jury exits the courtroom.)

THE COURT: You may be seated. You can take your seat, Ms. Gay. I'll deal with motions in just a minute.

Okay. Are there any motions? The State has rested their case.

MS. GAY: Yes, ma'am. At this time I make a motion for directed verdict on behalf of my client, Mr. Nesbit. Even in the light most favorable to the State this evidence that has been presented does not rise to the level of the elements of the case, and I'll of course leave that to the Court's discretion.

THE COURT: Would the state like to respond?

MS. LINDER: Briefly, Your Honor, we believe that when

looking at it in the light most favorable to the state it does pass that. The State has put up witnesses and gotten exhibits admitted to show Mr. Nesbit was in possession of the weights of the drugs. There's been testimony about the intent to distribute. There's been testimony about the weight which would get us to the trafficking. There's also been testimony, coupled with the video, of the eluding the police themselves for the failure to stop, so we believe that in the light most favorable to the State that the directed verdict motion should be denied and this case should go to the jury.

THE COURT: Anything further, Ms. Gay?

MS. GAY: No, ma'am.

THE COURT: Considering the evidence in the light most favorable to the State, the Court is concerned with the existence or nonexistence of evidence, not its weight. If there is direct or substantial circumstantial evidence reasonably tending to prove the defendant's guilt, it is appropriate that the matter be submitted to the jury. The State is not required to prove the defendant's guilt to the exclusion of every other reasonable hypothesis. There is direct testimony as well as substantial circumstantial evidence in this case reasonably tending to prove the defendant's guilt. There's already been testimony from a chemist regarding the weight of the cocaine which is

presumptive for the 10 to 28 gram range, and as well as the Methylone does not have to have a weight inference. Its packaging in and of itself is sufficient to rise to the level of possession with the intent to distribute. And there's more than ample evidence on the failure to stop. There's a video of the actual pursuit after the defendant was put on notice of a lawful traffic stop, and therefore the motion for directed verdict is denied.

Sir, if you would stand, please, and raise your right hand to be sworn -- actually, I'll remind you you're still under oath, as I already swore you in earlier. You can put your right hand down.

Sir, I'm now going to explain to you certain of your rights. If you don't understand something that I say, please let me know. If you need me to repeat something, please let me know. Do you understand?

THE DEFENDANT: Yes, ma'am.

THE COURT: We have now reached the stage of the trial where you may present your defense. You have the right to claim the protections given to you by the Fifth Amendment to the Constitution, and that amendment states in part that no person shall be compelled in any criminal case to be a witness against himself. In other words, you have no burden of proof in this case. You do not have to testify, and you do not have to say anything that would incriminate you in the

prosecution of this case. This means that you cannot be required to testify. You have the right to testify, however, no one can make you testify. This is a personal right, and no one can waive that right except you. If you decide to testify, you will be subject to the same rules that govern other witnesses, and you may be examined and cross-examined on any relevant issue in this case. In addition, if you have any convictions involving dishonesty or false statement or for crimes punishable by imprisonment for more than one year and this Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to you, the solicitor will be allowed to use that record to attack your credibility.

If you decide not to -- if you decide to testify, this decision on your part must be made freely, voluntary and intelligently with knowledge of the protections given to you by the Fifth Amendment to the Constitution of the United States. If you decide not to testify, I will instruct the jury that they're not to give that fact any consideration whatsoever, that there is to be no prejudice to you nor any inferences drawn from you not testifying, that you have no burden of proof in this case, that the burden remains on the State to prove each and every element of the offenses you're charged with beyond a reasonable doubt, and that you have no burden to prove yourself innocent and the fact that you did

not testify should not be discussed in any manner whatsoever in the jury room.

You may talk with your family members, your friends, your attorneys or anyone else, but the decision whether to testify or not to testify is left entirely up to you. Do you understand your rights as I've explained them to you?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you have any questions about what I've just explained to you?

THE DEFENDANT: No, ma'am.

THE COURT: Have you discussed with your attorneys whether you should or should not testify?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you wish to speak with them any more at this time?

THE DEFENDANT: No, ma'am.

THE COURT: And you all gave me his record earlier. It was a 2005 parole revocation, a failure to stop for a blue light, possession of a stolen motor vehicle, assault with intent to kill, possession of a stolen gun in 2002, '09 DUS 2nd, operating without a driver's license, '07 crack 1st, failure to stop for a blue light, PWID cocaine 1st and a proximity, and there are two counts of the PWID; is that accurate?

MS. LINDER: Yes, Judge.