

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM FLORENCE COUNTY

Michael G. Nettles, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TODDRIQUE D. HENDERSON,

APPELLANT

Appellate Case No. 2013-000256

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE } GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

STATE,)

v.)

TRANSCRIPT OF RECORD
12-GS-21-0694

TODDRIQUE D. HENDERSON,)

DEFENDANT.)

January 14, 2013
Florence, South Carolina

BEFORE :

THE HONORABLE MICHAEL G. NETTLES, JUDGE;
AND JURY

APPEARANCES:

JOHN C. JEPERTINGER, ESQ.
Assistant Solicitor

KAREN PARROTT, ESQ.
Attorney for Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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1 THE COURT: Ladies and gentlemen of the
2 jury panel, we're about to begin the trial of the
3 State of South Carolina v. Toddrique Dequil
4 Henderson. It's indictment number 2012-GS-21-00694.
5 In this indictment the State alleges that
6 Mr. Henderson on or about February 4th, 2012, did
7 engage in the trafficking of cocaine within the
8 Florence, within the county of Florence. Ladies and
9 gentlemen of the jury, we're gonna go through the
10 process of voir dire and I understand that y'all
11 have participated in this process once earlier
12 today. And the focus of these questions is gonna be
13 to determine whether or not given the facts of this
14 case, the lawyers that are involved in it, and the
15 witnesses that are involved in it, whether you can
16 be fair and impartial with regard to the trial of
17 this case. I remind you that you're under oath.
18 I'm gonna ask that you pay very close attention to
19 the questions and answer them truthfully.

20 I anticipate within the hour we'll have
21 this jury selected and the balance of you will be
22 released for the day and given instructions to call
23 back tomorrow after 6. So keep your fingers crossed
24 and perhaps you'll be selected on this jury; I know
25 y'all are waiting anxiously.

1 Ladies and gentlemen of the jury, the fact
2 that Mr. Henderson has been indicted and accused of
3 trafficking in cocaine has no evidentiary value
4 whatsoever. As a matter of fact, as Mr. Henderson
5 is seated at defense table he's presumed to be just
6 as innocent as me or you. We start from that frame
7 of reference. Ladies and gentlemen of the jury, pay
8 very close attention as I pose these various
9 questions to you.

10 First of all, Ms. Parrott, could you have
11 Mr. Henderson stand and face the jury panel. Very
12 good. Mr. Henderson, you may be seated.

13 This is Toddrique Dequil Henderson. Is
14 anyone related by blood or marriage, do you have a
15 close or social, business or personal relationship
16 with Mr. Henderson, if so, please stand.

17 (There was no response.)

18 THE COURT: Let the record reflect there's
19 no response. Potential witnesses in this case are
20 Deputy Angel Clark, Florence County Sheriff's
21 Office; Deputy Jake Chamberlain, Florence County
22 Sheriff's Office; Deputy Dane Keefe, Florence County
23 Sheriff's Office; Larry Quick, Florence County
24 Sheriff's Office; chemist, Mitchell Hansen. Is
25 anyone related by blood or marriage, do you have a

1 close or social, business or personal relationship
2 with any of these witnesses, if so, please stand.

3 (There was no response.)

4 THE COURT: No response. Mr. Jepertinger,
5 I'm gonna ask if you could stand and identify
6 yourself and the members of your office.

7 MR. JEPERTINGER: Good afternoon, my name
8 is John Jepertinger. I'm deputy solicitor here in
9 the Twelfth Judicial Circuit. This is my assistant
10 Ms. Donna Knight. And that would be it for this
11 case, Judge.

12 THE COURT: Very good. Is anyone related
13 by blood or marriage to Mr. Jepertinger and you have
14 a close social or business or personal relationship
15 with Mr. Jepertinger, if so, please stand.

16 THE POTENTIAL JUROR: I know
17 Mr. Jepertinger through school functions.

18 THE COURT: Okay. I'm gonna ask if you
19 could to come forward.

20 And, counsel, feel free to approach the
21 bench.

22 (Potential juror approached the Bench for an
23 on-the-record discussion.)

24 THE COURT: Yes, ma'am, your full name.

25 THE POTENTIAL JUROR: Karyn Sims Wilson,

1 juror number 156.

2 THE COURT: Juror number 156. The fact
3 that you know Mr. Jepertinger and you've seen him at
4 church functions, you feel like that you could set
5 that relationship aside and give the State and the
6 Defendant a fair and impartial trial?

7 THE POTENTIAL JUROR: I do.

8 THE COURT: Just by virtue of the fact
9 that you know him, do you think that would affect
10 your ability to listen to the evidence presented in
11 this case or lack thereof and give both the State
12 and the Defendant a fair and impartial trial?

13 THE POTENTIAL JUROR: No, sir.

14 THE COURT: You're qualified to serve.

15 THE POTENTIAL JUROR: I'm sorry, I
16 recognize Donna Knight, his assistant from just
17 grammar school.

18 MR. JEPERTINGER: She's much older than
19 you are, Karen.

20 THE COURT: Was that a close social
21 relationship?

22 THE POTENTIAL JUROR: I just know her.

23 THE COURT: And that wouldn't affect your
24 ability to be fair and impartial?

25 THE POTENTIAL JUROR: No, sir.

1 THE COURT: You're qualified to serve.
2 Thank you.

3 (End of on-the-record discussion.)

4 THE COURT: Ms. Parrott, could you stand
5 and identify yourself and the members of your
6 office.

7 MS. PARROTT: Thank you. My name is Karen
8 Parrott and I'm an attorney in the Public Defender's
9 Office. Also with my office is Mr. Michael Bell,
10 Scott Floyd, Vick Meetze, Daniel Jordan, Jay Jordan,
11 and Will Grove.

12 THE COURT: Is anyone related by blood or
13 marriage, you have a close social, business, or
14 personal relationship with any of these lawyers,
15 have you — if they represented you in the past, if
16 so, please stand.

17 Yes, ma'am, if you could come forward.

18 (Potential juror approached the Bench for an
19 on-the-record discussion.)

20 THE COURT: Juror number?

21 THE POTENTIAL JUROR: My name is Minnie
22 Bobbitt, juror 11.

23 THE COURT: Juror number?

24 THE POTENTIAL JUROR: 11.

25 THE COURT: Juror number 11, Ms. Bobbitt.

1 THE POTENTIAL JUROR: Scott Floyd
2 represented my husband in -- he came up in front of
3 you. You gave him four years for check.

4 THE COURT: Okay. In view of the fact
5 that Scott Floyd, he's not involved in the trial of
6 this case, could you set that aside and give both
7 the State and Defendant a fair and impartial trial?

8 THE POTENTIAL JUROR: Yes, sir.

9 THE COURT: You're qualified to serve.
10 Thank you.

11 She'll stay with us.

12 Ladies and gentlemen of the jury, I
13 understand what this case is about, who the
14 defendant is; and having been informed of that, is
15 there any member of the jury who has expressed,
16 informed an opinion about any issue or matter
17 involved in this case, if so, please stand.

18 (There was no response.)

19 THE COURT: There was no response. Is any
20 member of the jury panel aware of any bias or
21 prejudice towards either State or the Defendant in
22 this case, if so, please stand.

23 (There was no response.)

24 THE COURT: No response. Is there any
25 member of the jury panel who served as a member of

1 the grand jury that indicted this case, if so,
2 please stand.

3 (There was no response.)

4 THE COURT: No response. You know about
5 what the allegations are. Is there any member of
6 the jury who has heard anything, seen anything, or
7 read anything about this case, if so, please stand.

8 (There was no response.)

9 THE COURT: No response. Ladies and
10 gentlemen of the jury, there are a number of
11 organizations that are dedicated to the promotion of
12 law enforcement. I think the Florence County
13 Sheriff's Office has an association. The Highway
14 Patrol has an association. There are various groups
15 that focus on victims' rights like Mothers Against
16 Drunk Driving, Students Against Drunk Driving, CAVE,
17 Citizens Against Violent Crime. Is there any member
18 of the jury panel who is a member or pays dues to
19 these various organizations, if so, please stand.

20 (There was no response.)

21 THE COURT: No response. Does any member
22 of the jury panel know of any reason whatsoever why
23 you could not serve as a juror in this case with
24 particular emphasis being placed on your ability to
25 be fair and impartial to both the State and the

1 Defendant, if so, please stand.

2 (There was no response.)

3 THE COURT: Any additional questions from
4 the State?

5 MR. JEPERTINGER: No, sir.

6 THE COURT: Any from Defense?

7 MS. PARROTT: No, Your Honor.

8 THE COURT: All right. We're ready to
9 proceed forward with the jury selection and the
10 strikes will be five and five. And we'll select
11 alternates and strikes will be one and two on each.
12 Madam Clerk, you may give us the jury.

13 And ladies and gentlemen of the jury, as
14 your name is called I ask that you come forward,
15 stand right beside this podium and turn and face the
16 back of the courtroom and bring your personal
17 belongings with you.

18 THE CLERK OF COURT: 75, Yasmin Jordan
19 (black female). What say the State?

20 MR. JEPERTINGER: Please present the
21 juror.

22 THE CLERK OF COURT: What say the
23 Defendant?

24 MS. PARROTT: Please excuse Ms. Jordan.

25 THE CLERK OF COURT: You've been excused

1 for this trial only, ma'am. You may return to your
2 seat.

3 92, Linda Lynch (white female). What say
4 the State?

5 MR. JEPERTINGER: Please present the
6 juror.

7 THE CLERK OF COURT: What say the
8 Defendant?

9 DEFENSE ATTORNEY: Please seat the juror.

10 THE CLERK OF COURT: Please have a seat in
11 the jury box, ma'am.

12 69, Aaron Johnson (black male). What say
13 the State?

14 MR. JEPERTINGER: We'd excuse this juror
15 for purposes of this trial only.

16 THE CLERK OF COURT: You've been excused
17 from this trial only, sir. You may return to your
18 seat.

19 40, Christopher Fowler (white male). What
20 say the State?

21 MR. JEPERTINGER: Please present the
22 juror.

23 THE CLERK OF COURT: What say the
24 Defendant?

25 MS. PARROTT: Please seat Mr. Fowler.

1 THE CLERK OF COURT: Please have a seat in
2 the jury box, sir.

3 66, Paul Isgett (white male). What say
4 the State?

5 MR. JEPERTINGER: Please present the
6 juror.

7 THE CLERK OF COURT: What say the
8 Defendant?

9 MS. PARROTT: Please present the juror.

10 THE CLERK OF COURT: Please have a seat in
11 the jury box, sir.

12 144, Terry Thomas (white female.) What
13 say the State?

14 MR. JEPERTINGER: Please present the
15 juror.

16 THE CLERK OF COURT: What say the
17 Defendant?

18 DEFENSE ATTORNEY: Please swear
19 Ms. Thomas.

20 THE CLERK OF COURT: Please have a seat in
21 the jury box, ma'am.

22 139, Alan Stewart (white male). What say
23 the State?

24 MR. JEPERTINGER: Please present the
25 juror.

1 THE CLERK OF COURT: What say the
2 Defendant?

3 MS. PARROTT: Please excuse the juror.

4 THE CLERK OF COURT: You've been excused
5 from this trial, sir. You may return to your seat.

6 97, Gordon McCutcheon (white male). What
7 say the State?

8 MR. JEPERTINGER: Please present the
9 juror.

10 THE CLERK OF COURT: What say the
11 Defendant?

12 MS. PARROTT: Please seat
13 Mr. McCutcheon.

14 THE CLERK OF COURT: Please have a seat in
15 the jury box, sir.

16 11, Minnie Bobbitt (black female). What
17 say the State?

18 MR. JEPERTINGER: Please excuse this juror
19 for purposes of this trial only.

20 THE CLERK OF COURT: You've been excused
21 from this trial only, ma'am. You may return to your
22 seat.

23 82, Sarah Lane (black female). What say
24 the State?

25 MR. JEPERTINGER: Please present the

1 juror.

2 THE CLERK OF COURT: What say the
3 Defendant?

4 MS. PARROTT: Please swear the juror.

5 THE CLERK OF COURT: Please have a seat in
6 the jury box, ma'am.

7 99, Willie McFadden (black male). What
8 say the State?

9 MR. JEPERTINGER: We'd excuse this juror
10 for purposes of this trial only.

11 THE CLERK OF COURT: You've been excused
12 for this trial only. You may return to your seat.

13 37, Michael Ervin (black male). What say
14 the State?

15 MR. JEPERTINGER: Beg the Court's
16 indulgence. Would you excuse this juror for
17 purposes of this trial only.

18 THE CLERK OF COURT: You've been excused
19 from this trial only, sir. You may return to your
20 seat.

21 38, Frederick Ferguson (black male). What
22 say the State?

23 MR. JEPERTINGER: Please present the
24 juror.

25 THE CLERK OF COURT: What say the

1 Defendant?

2 MS. PARROTT: Please swear Mr. Ferguson.

3 THE CLERK OF COURT: Please have a seat in
4 the jury box, sir.

5 145, Patsy Thompson (white female). What
6 say the State?

7 MR. JEPERTINGER: Please present the
8 juror.

9 THE CLERK OF COURT: What say the
10 Defendant?

11 MS. PARROTT: Please excuse Mr. Thompson.

12 THE CLERK OF COURT: You've been excused
13 from this trial. You may return to your seat.

14 55, Paula Heger (white female). What say
15 the State?

16 MR. JEPERTINGER: Please present the
17 juror.

18 THE CLERK OF COURT: What say the
19 Defendant?

20 MS. PARROTT: Please swear Ms. Heger.

21 THE CLERK OF COURT: Please have a seat in
22 the jury box, ma'am.

23 80, Jerry Klein (white male). What say
24 the State?

25 MR. JEPERTINGER: Please present the

1 juror.

2 THE CLERK OF COURT: What say the
3 Defendant?

4 MS. PARROTT: Beg the Court's indulgence.
5 Please excuse the juror.

6 THE CLERK OF COURT: You've excused from
7 this trial only, sir. You may return to your seat.

8 51, Teresa Harley (black female). What
9 say the State?

10 MR. JEPERTINGER: Please present the
11 juror.

12 THE CLERK OF COURT: What say the
13 Defendant?

14 MS. PARROTT: Please swear Ms. Harley.

15 THE CLERK OF COURT: Please have a seat in
16 the jury box, ma'am.

17 7, Kimberly Barlowe (white female). What
18 say the State?

19 MR. JEPERTINGER: Please present the
20 juror.

21 THE CLERK OF COURT: What say the
22 Defendant?

23 MS. PARROTT: Please swear Ms. Barlowe.

24 THE CLERK OF COURT: Please have a seat in
25 the jury box, ma'am.

1 26, Terry Collier (white male). What say
2 the State?

3 MS. PARROTT: Please present the juror.

4 THE CLERK OF COURT: What say the
5 Defendant?

6 MS. PARROTT: Please swear, Mr. Collier.

7 THE CLERK OF COURT: Please have a seat in
8 the jury box, sir.

9 125, Annie Quick ((white female). What
10 say the State?

11 MR. JEPERTINGER: Please present the
12 juror.

13 THE CLERK OF COURT: What say the
14 Defendant?

15 MS. PARROTT: Please swear Ms. Quick.

16 THE CLERK OF COURT: Please have a seat in
17 the jury box, ma'am.

18 156, Karyn Wilson (white female). This is
19 the alternate, Judge.

20 THE COURT: Very good. Strikes are one
21 and two.

22 THE CLERK OF COURT: What say the State?

23 MR. JEPERTINGER: Please present the
24 juror.

25 THE CLERK OF COURT: What say the

1 Defendant?

2 MS. PARROTT: Please excuse Ms. Wilson.

3 THE CLERK OF COURT: You've been excused
4 from this trial, ma'am. You may return to your
5 seat.

6 98, Robert McDaniel (white male). What
7 say the State?

8 MR. JEPERTINGER: Please present the
9 juror.

10 THE CLERK OF COURT: What say the
11 Defendant?

12 MS. PARROTT: Please swear Mr. McDaniel.

13 THE CLERK OF COURT: Please have a seat in
14 the jury box. Do you want another alternate?

15 THE COURT: Yes..

16 THE CLERK OF COURT: Number 6, Sylvia
17 Anthony (black female). What say the State?

18 MR. JEPERTINGER: Please present the
19 juror?

20 THE CLERK OF COURT: What say the
21 Defendant?

22 MS. PARROTT: Please swear Ms. Anthony.

23 THE CLERK OF COURT: Please have a seat in
24 the jury box, ma'am.

25 MR. JEPERTINGER: Your Honor, we have

1 nothing in regards to. —

2 THE COURT: Any objections with regard to
3 the jury selection process, Ms. Parrott?

4 MS. PARROTT: No, Your Honor.

5 THE COURT: Any from the State?

6 MR. JEPERTINGER: No, sir.

7 THE COURT: Very good. All right. Ladies
8 and gentlemen of the jury, I'm gonna ask that you
9 stand as the clerk administers the oath.

10 THE CLERK OF COURT: Please raise your
11 right hand.

12 (WHEREUPON, the jury was sworn at 2:35
13 p.m.)

14 THE CLERK OF COURT: Please be seated.

15 THE COURT: Ms. Terry Thomas, I'm gonna
16 ask if you can serve as the forelady of this jury.
17 I'm gonna ask that you exchange chairs with this
18 lady with the attractive flannel shirt. Very good.
19 Ms. Thomas, you are gonna be called upon to serve as
20 the forelady of this jury. You like everyone else,
21 when this case is concluded and you retire to the
22 jury room to begin deliberations, you're like
23 everybody else gonna have one vote but you're gonna
24 have additional responsibilities throughout this
25 trial. If there are questions or concerns that

1 develop amongst the jurors, I'm gonna ask that they
2 communicate these questions or concerns to you,
3 reduce it to writing, and give it to the bailiff.
4 If it's something we can help you with we'll be
5 happy to do that, and I'm gonna ask that you be
6 responsible for that. In addition to that, we're
7 gonna ask that you during the deliberation process
8 preside over the deliberation procedure and
9 essentially that means that you're to insure that
10 everybody's voice is heard. I'm gonna ask that you
11 do that. We're not gonna begin this trial today and
12 we have some other legal matters we need to tend to
13 so we're gonna ask that you report back at 10:30 on
14 Wednesday and you report back to this courtroom.
15 Everybody understand that you're not to show up
16 tomorrow, that you be here Wednesday at 10:30 sharp.
17 Be here a little bit early because a lot of times
18 the elevators can be jammed, a lot of times there's
19 difficulty finding a parking space. We want to
20 start at 10:30 and we want to start 10:30 sharp and
21 I know that y'all have other places you'd rather be.
22 So we want to make sure that we start on time and
23 use your time very efficiently so let's be here and
24 be on time.

25 The clerk is gonna give you some very

1 attractive badges. Y'all have those? Very
2 attractive orange, Clemson orange badges, and we're
3 gonna ask that you put those on your shirts. And
4 there's a reason for that. Because for some reason
5 when they built this courthouse in their infinite
6 wisdom they put the courtrooms on the 10th and 11th
7 floor so that means that you have to travel on the
8 elevator. Sometimes you might be in the elevator
9 with other lawyers that are involved in this case,
10 might be there's some witnesses there. And people
11 need to know that you're on the jury so they won't
12 inadvertently engage in a conversation that you
13 might overhear because, ladies and gentlemen of the
14 jury, you have taken a solemn oath to base your
15 decision on what transpires here in this courtroom.
16 I'm gonna order and instruct and demand that you not
17 discuss this case amongst yourselves or with anyone
18 else. I promise you when you go home tonight your
19 significant other or your spouse or your coworkers
20 are gonna say, tell me what's going on with your
21 jury service. And I'm gonna order and instruct and
22 demand that you not respond to that question. This
23 is one time where you don't have to answer your
24 spouse. When they ask you what you're doing you say
25 I can't tell you. At the conclusion of the case I'm

1 gonna release you from that order and you'll be free
2 to talk to anybody about it that you want to. The
3 reason for that is that it might be that your
4 spouse, significant other or coworker, might have an
5 opinion about this type litigation. But ladies and
6 gentlemen of the jury, you need to base your
7 decision on what transpires here in this courtroom.
8 You need to base your decision on the evidence
9 presented in this case or the lack thereof and the
10 law as I charge it to you. So I'm gonna ask that
11 you proudly display those badges so you won't
12 inadvertently hear any conversations. And you know,
13 the times are kind of tough in Florence County and
14 those stickers don't have enough stickum on the back
15 and I promise you, they'll probably going to fall
16 off so when you go home tonight get a gate safety
17 pin so you can pin it on and make sure people can
18 identify you as a juror.

19 And in that same vain we're gonna ask that
20 you show up on time and when you come don't lolly
21 gag around the common areas and the elevators. Come
22 directly from your car to the elevator, come
23 directly to this jury room and the bailiff will
24 assist you in that regard and put you in the jury
25 room and that way we'll avoid any kind of

1 inadvertent contact.

2 Ladies and gentlemen of the jury, you
3 haven't heard anything about this case. We don't
4 know where these allegations arose out of other than
5 it was in Florence County. I'm gonna order and
6 instruct and demand that you not do any independent
7 investigation throughout the trial of this case. Do
8 not discuss the case. Madam Forelady, I'm gonna ask
9 you enforce that rule. When you're in the jury room
10 and while we're taking up legal matters outside of
11 your presence and you're in the jury room I'm gonna
12 ask that you enforce that rule. There will be no
13 discussion about this case. You can't talk about
14 the lawyers, you can't talk about the witnesses, you
15 can't — you can talk about anything you want to but
16 you can't talk about this case. There will be time
17 for that and I'll give you instructions as to when
18 to begin deliberation, but until then do not discuss
19 the case.

20 Ladies and gentlemen of the jury, there's
21 not anything in the world that you can't look up on
22 the internet now. I'm gonna ask, order, and demand
23 that you not do any research about this case,
24 anything about the personalities in this case, or
25 anything about the law. I will charge you the law

1 that's applicable to this case. Do not do any
2 independent investigation. There's also a thing
3 that my children tell me about it's called social
4 media. It's called Facebook, Twitter or Tweeter, or
5 whatever they call it. There is no place for that
6 in this courtroom. Do not put on Facebook, or
7 Twitter or that Linked-In, or whatever else they
8 have out there on the internet about this case.
9 Don't do that. No discussion on the internet about
10 your participation in this case. Do not do that.
11 And with those instructions we're gonna release you
12 from your service today. I'm gonna ask that you be
13 back at 10:30 Wednesday morning here on the 10th
14 floor.

15 Anything before we release the jury,
16 Mr. Solicitor?

17 MR. JEPERTINGER: No, sir.

18 THE COURT: Ms. Parrott?

19 MS. PARROTT: No, Your Honor.

20 THE COURT: Very good. Everyone remain
21 seated as the jury exists the courtroom. We'll see
22 you back at 10:30 Wednesday morning.

23 (WHEREUPON, the jury was removed from the
24 courtroom at 2:42 p.m., and the following
25 proceedings commenced in open court.)

1 THE COURT: Counsel, we're gonna ask that
2 y'all report back at 9:30 on Wednesday; and we're
3 going to take up the issue of any exhibits that need
4 to be marked, any pretrial motions. Do you have any
5 at this time that you can -- need to serve on the
6 defendant?

7 MR. JEPERTINGER: No, not that I'm aware
8 of. There is a video that we -- Ms. Parrott has
9 already seen. We're making a copy for her right
10 now. And of course, the drugs are down in the
11 evidence room at the Sheriff's Department. We'll
12 bring those up Wednesday morning. I do want to
13 bring up that the State has no opposition to him
14 remaining out on bond. He's been here whenever I've
15 asked, Your Honor.

16 THE COURT: Very good. Mr. Henderson, do
17 you understand that the State has agreed for you to
18 be released on bond. Technically once this trial
19 starts they can move to have you detained and that
20 happens from time to time, but they're gonna agree
21 that you remain out on bond and I'm gonna allow you
22 to do that. But you understand that if you don't
23 show up on Wednesday morning we're going to proceed
24 without you, you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: In addition to that, that
2 would amount to an additional criminal charge for
3 failure to appear. You understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. And you need to be
6 back 10:30 Wednesday morning. You understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Very good. If you aren't
9 we'll proceed forward without you and there will be
10 a bench warrant for your arrest. You understand
11 that; don't you?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Thank you so much.

14 Ms. Parrott, anything that you have any
15 motions on your behalf?

16 MS. PARROTT: I don't believe so, Your
17 Honor.

18 THE COURT: Are there any statements that
19 the State intends to introduce?

20 MR. JEPERTINGER: There are no statements.

21 THE COURT: And photographic lineups or
22 anything like that?

23 MR. JEPERTINGER: Nothing of that nature.

24 THE COURT: Very good. We'll stand at
25 ease with regard to this case, and I'm gonna give

1 the State an opportunity to get together some pleas
2 if y'all would like for me to.

3 (WHEREUPON, the proceedings were concluded
4 for the day to be reconvened on January
5 16, 2012.)

6 (WHEREUPON, State Exhibit No. 1 was marked
7 for identification only.)

8 THE COURT: Mr. Jepertinger, you're
9 recognized.

10 MR. JEPERTINGER: Judge, we don't — I
11 can't think of any pretrial matters that the State
12 may have in this case, Your Honor.

13 THE COURT: Very good. Do y'all have all
14 the exhibits marked?

15 MR. JEPERTINGER: Judge, we have one
16 exhibit marked and it was a video of a car chase;
17 and I've shown it to the defendant's attorney, made
18 a copy of it, she's seen it. The cocaine base and
19 money are on their way.

20 THE COURT: Okay, good. Ms. Parrott, do
21 you have anything that you — any motions before the
22 Court at this time?

23 MS. PARROTT: Judge, just to cover just
24 two main things. One would be motion to renew Rule
25 5. I don't believe that the State has anything

1 because they did share the video with me on Friday,
2 but I don't know — but I did get something, a use
3 of force from Monday I believe so I just want to
4 make sure there's nothing else.

5 MR. JEPERTINGER: We don't have anything
6 else that's been provided to us by law enforcement
7 or anything we're aware of, Your Honor.

8 THE COURT: Very good, all right. Well,
9 he's responded on the record in that regard.

10 MS. PARROTT: Thank you. Secondly, Your
11 Honor, there's a question of whether or not
12 witnesses should be sequestered in this matter
13 because, one, there's only one report that was
14 written by one officer but yet he's planning on
15 calling two officers, and it's the main officer who
16 didn't write a report so I was asking for that but
17 he's now saying that he would just call that officer
18 first and keep the person who wrote the report in
19 here which kind of defeats the purpose of a
20 sequestration motion.

21 THE COURT: Well, what's the State have to
22 say about that?

23 MR. JEPERTINGER: I am going to put that
24 other officer, the one that didn't write, first.
25 He's going to testify the officer that did write the

1 report for all intents and purposes will be here
2 second.

3 THE COURT: All right.

4 MR. JEPERTINGER: And just looking at it
5 logically it would defeat a motion for sequestration
6 if you allow her to remain, at least have one
7 officer in here.

8 THE COURT: And the chief investigating
9 officer is who?

10 MR. JEPERTINGER: It would have been the
11 one that wrote the report.

12 THE COURT: Okay. Well, you know, the law
13 is very clear on that, that you know, you can move
14 for a sequestration order. And just by virtue of
15 the fact that they might benefit from listening to
16 the other evidence is not necessarily a grounds to
17 sequester them. Is that your understanding of the
18 law?

19 MS. PARROTT: Your Honor, it is, but I
20 guess just given that I'm not sure that she really
21 is the main investigating officer in this case given
22 all the facts that would be presented. She's not
23 the driver. She's not the one who ran after the
24 officer. She's not the one who is supposed to have
25 found the drugs. She's not — but she's just the

1 one who got assigned the task of writing the report.

2 THE COURT: Okay. Well, given all of
3 those circumstances I'm going to allow him to allow
4 that officer to remain and call him in the order
5 that he anticipated. And of course, you're gonna be
6 given wide latitude in cross-examining them about
7 how they learned the knowledge from which they
8 testified. I'm gonna give you wide range in that
9 regard, but I think that under these circumstances
10 sequestration order is not really called for.

11 MR. JEPERTINGER: The other two officers,
12 persons, just chain of custody and chemist.

13 MS. PARROTT: I'm not worried about those.
14 Thank you, Your Honor.

15 THE COURT: Anything further?

16 MS. PARROTT: I don't believe so, Your
17 Honor.

18 MR. JEPERTINGER: That will do it, Judge.

19 THE COURT: We'll stand at ease until
20 10:30. Let's be here a little bit ahead of time.
21 As soon as the jurors get here we'll start.

22 MR. JEPERTINGER: Your Honor, we're just
23 gonna put -- when the cocaine base gets here with
24 the evidence guy we're going to mark it and...

25 THE COURT: And y'all have seen the video

1 and there's not any kind of redactions that need to
2 be made or anything such as that?

3 MR. JEPERTINGER: I didn't hear anything
4 or see anything.

5 MS. PARROTT: The only thing that I heard
6 when listening to it a couple of times on my own
7 yesterday was it starts with, is that the one or is
8 that him, and as they're flipping around on him.
9 But I think that -- I don't know that that's enough
10 to make it --

11 MR. JEPERTINGER: Yeah, and then there's
12 allegation, I guess, window tint violation which
13 they're going to stop him for.

14 MS. PARROTT: Right. So I don't, I don't
15 think there's enough for redaction, Your Honor.

16 THE COURT: Okay. Well, very good. In
17 view of the fact there is no motion we'll proceed
18 forward in that fashion. We'll stand at ease until
19 10:30.

20 (WHEREUPON, a recess was taken from the
21 proceedings.).

22 (WHEREUPON, State Exhibits Nos. 2 and 3
23 were marked for identification only.).

24 MR. JEPERTINGER: While we're here, I
25 don't think the defendant needs to be present for

1 this. I'd just have the defense look at State's
2 Exhibit 1 which is the video. State's Exhibit 2 is
3 the alleged cocaine base. And State's Exhibit 3 is
4 a deposit ticket from the Florence County Sheriff's
5 Office for money retrieved off the defendant, Your
6 Honor. And I didn't know whether she could consent
7 to any of it being introduced into evidence or if
8 she wants me to — make me prove chain and so on so
9 forth.

10 THE COURT: We'll, what's the Defense's
11 position on those?

12 MS. PARROTT: Without objection.

13 THE COURT: Okay. So all of the items are
14 in the evidence without objection.

15 MS. PARROTT: Yes, Your Honor.

16 THE COURT: Very good.

17 (WHEREUPON, State Exhibits Nos. 1, 2 3
18 were admitted into evidence.)

19 (Defendant is returned to the courtroom.)

20 MR. JEPERTINGER: Your Honor, the
21 defendant is present. Once again, it's my
22 understanding that State's Exhibit 1, the video,
23 State's Exhibit 2 which is the alleged cocaine base,
24 and State's Exhibit 3 are in evidence without
25 objection.

1 THE COURT: Is that correct, Ms. Parrott?

2 MS. PARROTT: Yes, Your Honor, it is.

3 THE COURT: Very good. Anything from the
4 State before we bring the jury out?

5 MR. JEPERTINGER: No, sir.

6 THE COURT: Anything from Defense?

7 MS. PARROTT: No, Your Honor.

8 THE COURT: Very good.

9 (WHEREUPON, the jury was returned to the
10 courtroom at approximately 10:30 a.m., and
11 the following proceedings commenced in
12 open court.)

13 THE COURT: Madam Foreman, ladies and
14 gentlemen of the jury, good morning. Thank y'all
15 for being here and being here on time. I see
16 everybody has their badges proudly displayed. Thank
17 you for abiding with that instruction. Many of you
18 had indicated that you had not served on a jury
19 before and I want to talk to you a little bit about
20 what you might need to expect. As I indicated
21 earlier the defendant Toddrique Dequil Henderson has
22 been accused in indictment 2012-GS-21-00694. He's
23 being accused of trafficking in cocaine base.
24 Ladies and gentlemen of the jury, the fact that he's
25 been indicted is not evidence whatsoever. As a

1 matter of fact, Mr. Henderson is seated at the
2 defense table. He's presumed to be just as innocent
3 as me or you. Any time somebody in the United
4 States of America is accused of a crime there are
5 certain constitutional safeguards that come into
6 play, the first of which is he's presumed to be
7 innocent. That presumption stays with him
8 throughout the trial of this case and actually
9 follows him into the deliberation process. The
10 second safeguard is that the State has the burden of
11 proof. There's some logical reasons for that
12 because law enforcement have the wherewith all and
13 ability and personnel to gather the evidence.
14 They're the ones who are making this accusation and
15 they're the ones who have the burden of proof. The
16 defendant need not testify, need not present any
17 evidence. There's a good reason for that because
18 many of us throughout our years have been accused of
19 something, and it's absolutely impossible to prove
20 your innocence. In the United States of America if
21 you're accused of a crime you don't have to prove
22 your innocence, but the burden is on the State.

23 The third constitutional safeguard is that
24 in this judicial proceeding the State needs or is
25 required to meet the highest burden of proof known

1 to our judicial system proof beyond a reasonable
2 doubt. Reasonable doubt is defined as a doubt which
3 would cause a reasonable juror to hesitate to act.
4 I will define that in greater detail at the
5 conclusion of the case when I charge you the law.

6 Let me tell you a little bit about how
7 we're going to proceed. First of all, the State is
8 going to have an opportunity to stand up before you
9 in summary fashion and kind of tell you what this
10 case is about. I anticipate he might mention a
11 little bit about the law and what the evidence he
12 intends to establish here in this trial. After that
13 defense counsel, Ms. Parrott, is going to have an
14 opportunity to stand up and give an opening
15 statement and put forth any defenses they might
16 have. After the closing, I mean after the opening
17 statements, each side, the State is gonna start
18 their presentation by the introduction of evidence.
19 Most of that takes the form of oral testimony.
20 Witnesses will come to this witness stand. They'll
21 take an oath, and they'll have a seat. The State
22 will ask them questions. The defense counsel will
23 have an opportunity to cross-examine them. And
24 there are other forms of evidence, sometimes
25 documentary evidence, stipulations of counsel. You

1 need to pay very close attention as the evidence is
2 presented in this case. After the State presents
3 their case the defendant is gonna have an
4 opportunity to present any evidence that they might
5 have.

6 Ladies and gentlemen of the jury, my job
7 in this proceeding is to be the arbiter of the law.
8 I preside over the proceedings. I determine what
9 evidence you get to hear, and at the conclusion of
10 the case I charge you the law. Ladies and gentlemen
11 of the jury, you have a separate and distinct role,
12 and that is, to be the triers of the fact. You're
13 the ones that are gonna listen to the evidence and
14 determine what the truth is. In every case that's
15 tried in the court system in the United States of
16 America — in every case that's tried in the United
17 States of America there is a factual question.
18 Sometimes there's a very rare occasion where there
19 is no dispute about the facts but there's a dispute
20 with regard to the inferences to be drawn from the
21 facts. In both instances you as jurors are gonna be
22 called upon to determine what the truth is. It's a
23 very important role that you have, and I'm gonna ask
24 you pay very close attention as the evidence is
25 presented in this case.

1 Ladies and gentlemen of the jury, in your
2 fulfilling your job as the trier of fact it's gonna
3 be incumbent upon you to determine what the
4 believability of the witnesses, their credibility.
5 And I'm gonna tell you from the very outset that
6 you -- the law requires that you not leave your
7 common sense at home. We all in our every day lives
8 are called upon to determine whether or not someone
9 is telling us the truth. I'll tell you from the
10 very beginning that you can believe one witness
11 against many, many against one. You can believe a
12 part of what one witness says, none of what a
13 witness says, or a portion thereof. That's
14 completely within your province as a juror to do
15 that. You need to ask yourself whether or not the
16 witness has an interest, a bias, or prejudice in
17 their testimony. You need to ask yourself what
18 opportunity they had to observe the things to which
19 they've testified to. In addition to that you need
20 to determine and pay attention to their demeanor.
21 You know, any of us who have teenage children, it's
22 sometimes important to pay attention to what they
23 say but also the way in which they say it. The law
24 says that you can take into consideration witness'
25 demeanor as they're testifying. I'm gonna ask that

1 you do that.

2 The State goes first in the presentation
3 of evidence. The Defense once again doesn't have to
4 present the evidence, doesn't have to testify.
5 They'll be afforded an opportunity if they elect to
6 present any evidence, they'll be allowed to do so.
7 At the conclusion of the evidence the lawyers once
8 again, are gonna have an opportunity to stand up
9 before you and give what's called a closing
10 argument, and it's very similar in form to a opening
11 statement. However, it's truly argumentative in
12 nature in that in that point in time all of the
13 evidence will have been presented. They'll be able
14 to point to the evidence that supports their
15 relative position. After the closing arguments I
16 will charge you the law, then I'll give you
17 instructions with regard to deliberations.

18 Throughout the trial of this case I'm
19 gonna ask that you not take notes given the nature
20 of the case, the length of the case. I'm gonna ask
21 that you pay very close attention as the witnesses
22 testify. Ladies and gentlemen of the jury, you have
23 taken a solemn oath to listen to the evidence to
24 determine what the truth is and apply it to the law.
25 I'm confident that you will do that. Ladies and

1 gentlemen of the jury, this is an important case.
2 It's an important case to the State of South
3 Carolina. It's an important case to the Defendant.
4 It's an important case to you. I'm gonna ask that
5 you pay very close attention. These are important
6 matters. Let's proceed forward with a serious mind.

7 Mr. Jepertinger.

8 MR. JEPERTINGER: Thank you, if it please
9 the Court, Counsel. Madam Forelady and ladies and
10 gentlemen of the jury, good morning. My name is
11 John Jepertinger. I'm deputy solicitor here in this
12 circuit. I suppose if we were to travel to about
13 150-miles north west of Minneapolis, Saint Paul,
14 we'd find a lake there. And off of that lake, the
15 lake is called Lake Itaska, you would find a small
16 river that each of us could hop over. Nothing much
17 at the beginning of its course, but if you go down
18 about 400 miles and you'd have to cross the mighty
19 Mississippi because what started off small and
20 insignificant is tremendously great in our country.
21 It's probably the main thoroughfare in the heartland
22 of America, north and south. Great cities are built
23 along the Mississippi: Memphis, Saint Lewis. You
24 can eat on the only floating McDonalds in Saint
25 Lewis Missouri out of Mississippi. Paul Roberson

1 sang Ol' Man River. Mark Twain wrote books about
2 the Mississippi. That which was insignificant,
3 small at the beginning has taken on great
4 importance; and that's what happens many times in
5 life, folks. That which becomes insignificant at
6 the beginning becomes great later on.

7 On the evening of February 4th, 2012, here
8 in Florence County an insignificant event took place
9 at the beginning. Deputies Dane Keefe and Angel
10 Clark were traveling on Lucas Street here in
11 Florence County on what we refer to as Darlington
12 Highway; and they were going to stop a vehicle for a
13 window tint violation, a minor traffic violation.
14 The car did not stop. It increased speed as it
15 pulled through a motel parking lot, zoomed back
16 towards Florence on Lucas Street, turned down Cashua
17 going in excess of 90-miles an hour, turning left on
18 Sumter Street turning into a driveway apartment
19 complex housing complex where the driver, who is an
20 unknown African American male, jumps out the
21 driver's side car, followed by Toddrique Henderson.
22 There's a third person in the back seat who does not
23 flee, does not run, but remains in the car. And how
24 do we know that that all happened? You'll be able
25 to see it this morning on the video that was on Dane

1 Keefe's car. You'll see Toddrique run, but what you
2 won't see at that point is what was not captured on
3 film. Deputy Keefe will testify that he saw
4 Toddrique throw an object right before he got tazed
5 by Deputy Keefe. And what was that object that he
6 saw throw that they found at the scene in close
7 proximity to Toddrique's person that was on the
8 ground after he got tazed? 17.84-grams of cocaine
9 base also known as crack cocaine.

10 What else did they find on Toddrique after
11 he was arrested? They found 1,646-dollars on
12 Toddrique Henderson. And in State's Exhibit 3
13 you'll see how the money has been broken down.
14 You'll also see a deposit ticket on what the
15 Sheriff's Department has done with the money they
16 deposit into a account at BB&T for safe keeping.
17 And that's what this case is about. Trafficking in
18 cocaine base. You will hear that the driver got
19 away. We have no idea who the driver is. We know
20 who the back seat passenger that remained in the
21 vehicle is. We know who Toddrique Henderson is. We
22 know Toddrique had money on him. We know Toddrique
23 threw the cocaine base 'cause all that will be
24 testified to by these fine officers.

25 The judge at the end of this trial will

1 tell you in a trafficking cocaine base case that the
2 State has to prove three things: One, that the
3 substance was cocaine base; two, that the amount to
4 constitute trafficking that he was in possession of,
5 was 10 grams or more; and three, that he was in
6 possession of that cocaine base. And you will hear
7 from this officer, as I've already said, now this is
8 my third time, that he saw him throw that object
9 that they recovered which was a bag of cocaine base.

10 In each and every case the State is
11 required, as His Honor told you, to prove guilt
12 beyond a reasonable doubt. Not it is not doubt
13 beyond a shadow of a doubt; it's beyond a reasonable
14 doubt. But there shall be no hesitation to act in
15 your mind for the evidence is clear, and it will be
16 convincing to you that this young man trafficked in
17 cocaine base on February 4th, 2012 here in Florence
18 County. Thank you.

19 THE COURT: Thank you, Mr. Jepertinger.

20 Ms. Parrott, you're recognized.

21 MS. PARROTT: Thank you, Your Honor, may
22 it please the Court.

23 THE COURT: Yes.

24 MS. PARROTT: Mr. Solicitor, ladies and
25 gentlemen of the jury, good morning. My name is

1 Karen Parrott as I introduced myself the other day,
2 and I am an attorney in the Public Defender's Office
3 and I represent Mr. Toddrique Henderson. Now you've
4 heard both the judge as well as the solicitor
5 present some information to you as opening
6 statements, and I will do so also. But please know
7 that the last word in this case is up to you as well
8 as up to the judge whenever he gives you your
9 instructions. Any mistakes that are made along the
10 way that I make are solely mine. Don't please infer
11 those or imply those to my client. But the main
12 thing that you have to keep in mind is that in this
13 case especially you were selected because of your
14 abilities to review evidence and information, listen
15 to all of it clearly, and make up your own mind as
16 to what you believe the facts are. The State does
17 have that burden of beyond a reasonable doubt. My
18 client is cloaked in innocence until and if you
19 believe that they have met their burden which is
20 proving beyond a reasonable doubt, that he is guilty
21 of trafficking cocaine base, also known as crack.
22 And I submit to you that I don't believe that they
23 will meet that burden.

24 One of the things my family does around
25 Christmas is we put together puzzles and sometimes

1 you look at pieces and they seem to fit and you put
2 them together, but they don't. The colors may be
3 the same, the structures may even look like they are
4 close to the same, you know that they may be
5 something -- that they belong somewhere around the
6 same area or that they're gonna be in the same area,
7 but just because something is in the same area
8 doesn't mean that that's a fit. And in this case
9 that's what I'm asking you to use your common sense
10 and your powers of observation to decide. Watch the
11 video that they're gonna present, look at it for
12 exactly what it is and not their perspective. You
13 watch it and use your common sense and your powers
14 of observation. And in this case I think you'll see
15 that sometimes things may be in the same area, that
16 that doesn't mean that they belong together. Thank
17 you, Your Honor.

18 THE COURT: Thank you, Ms. Parrott.

19 Mr. Jepertinger, you're recognized. You
20 may call your first witness.

21 MR. JEPERTINGER: We call Deputy Dane
22 Keefe please.

23 THE COURT: Deputy Keefe, if you could
24 come forward. I'm gonna ask you if you could place
25 your left hand on the Bible and raise your right

SW - T. KEEFE - DIRECT

1 hand as the clerk administers the oath.

2 WHEREUPON,

3 **TIMOTHY DANE KEEFE,**

4 having been duly sworn by the Clerk of Court,

5 testified as follows:

6 THE CLERK OF COURT: Please be seated and
7 state your full name for the record.

8 THE COURT: I'm gonna ask that you pull up
9 real close. Speak loudly, clearly, and slowly in
10 order that we can hear everything that you got to
11 say. And let's start with your full name.

12 THE WITNESS: Timothy Dane Keefe.

13 THE COURT: Mr. Jepertinger.

14 **DIRECT EXAMINATION**

15 BY MR. JEPERTINGER:

16 Q Deputy Keefe, can you tell us how long you've
17 been working for the Florence County Sheriff's
18 Office?

19 A Nine years.

20 Q Okay. And your current responsibilities with
21 Florence County Sheriff's Office are?

22 A I work with the Proactive Community Enforcement
23 Unit.

24 Q All right. And is that known euphemistically as
25 the PACE Team?

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1 A Yes, sir.

2 Q Okay. And who is on that team with you?

3 A Myself, Deputy Angel Clark, and Deputy Jason
4 Bazen, Deputy Anderson Bean, Deputy Jay Chamberlain
5 and Lieutenant Mark Fuleihan.

6 Q All right. And were you on duty on February 4th,
7 2012?

8 A Yes, sir.

9 Q Okay. And were you in your patrol vehicle?

10 A I was.

11 Q And is the patrol car marked or unmarked?

12 A It's unmarked.

13 Q All right. And were you by yourself or was there
14 someone else with you?

15 A Myself and Deputy Clark.

16 Q And that would be Angel Clark who is sitting in
17 the courtroom?

18 A Correct.

19 Q Okay. Was she a new person to the PACE Team?

20 A Correct, it was her first night.

21 Q All right. And did you happen to have an
22 occasion to be on Lucas Street in Florence County?

23 A Yes, sir, we were.

24 Q Okay. For lack of a better term were you
25 patrolling that area?

SW - T. KEEFE - DIRECT

- 1 A I was.
- 2 Q All right. And can you tell the ladies and
3 gentlemen of the jury what you spotted that evening
4 that caught your attention involving this case?
- 5 A It was a gold Buick Sentry traveling into
6 Florence from Darlington and with dark tinted
7 windows.
- 8 Q Okay. And when you see those dark tinted windows
9 does that create some concern for you as a law
10 enforcement officer?
- 11 A Yes, sir, safety concern.
- 12 Q All right. Is there a level that you can't be
13 more opaque than on a window?
- 14 A 27 percent.
- 15 Q Is the — as far as opaqueness, correct?
- 16 A Yeah, yes, sir.
- 17 Q So if it is more than that that is illegal?
- 18 A Correct.
- 19 Q Did you want to on the vehicle, that gold Sentry,
20 did you want to check to see if it was more than
21 27 percent?
- 22 A I did.
- 23 Q All right. As a result of that what did you do
24 with that vehicle?
- 25 A I attempted to make a traffic stop on the vehicle

SW - T. KEEFE - DIRECT

1 in front of the Waffle House at 52 and 95, or better
2 known as Lucas Street.

3 Q Did you put your — let me just back up. Is your
4 car equipped with a blue light and siren?

5 A Yes, sir, it is.

6 Q All right. And did you put your blue lights on?

7 A I did.

8 Q All right. And as a result of you putting your
9 blue lights on what did the Buick do?

10 A He proceeded around the Waffle House. We made it
11 to the back of the Waffle House, then he failed to
12 stop, accelerating in speed getting back on the
13 highway.

14 Q All right. Now is — before I get into this next
15 question let me ask you, did — is there a motel
16 behind the Waffle House?

17 A There is.

18 Q Did he pull into the parking lot of that motel?

19 A Yes, sir, the Waffle House and motel are
20 together.

21 Q All right. And he did he stop at the motel?

22 A No, sir.

23 Q Where did he proceed to?

24 A Around the back through the parking lot.

25 Q Okay. And then where?

SW - T. KEEFE - DIRECT

1 A Back around the front side of the motel by the
2 entrance.

3 Q All right. And at that point where did he go?

4 A Back out on to Lucas Street.

5 Q Okay. And towards Darlington or towards
6 Florence?

7 A He was on Lucas Street heading back to Florence
8 at that point.

9 Q Okay. Now that, and I keep saying back towards,
10 but that Lucas Street location is in Florence
11 County; is it not?

12 A Correct.

13 Q Okay. But back towards downtown Florence,
14 correct?

15 A Correct.

16 Q And where did he drive to?

17 A He drove down Lucas for a small ways and then
18 turned, made a right-hand turn on to which would be
19 better known as north Cashua. Also when he turned
20 on to north Cashua he was headed back towards
21 downtown Florence towards the big post office.

22 Q All right. And was his — would you consider his
23 speed elevated at that point?

24 A Yes, sir. The speed on north Cashua at one point
25 is 35 and at one point it's 45. And we were running

SW - T. KEEFE - DIRECT

1 it at one point in excess of 90-mile an hour.

2 Q All right. And at that — at that point did he
3 continue all the way to Evans Street for reference,
4 or where did he go?

5 A He continued down north Cashua Street to the
6 intersection of Cashua and Sumter Street making a
7 left-hand turn on to Sumter Street.

8 Q Okay. And at Sumter Street where did he go to?

9 A He continued down Sumter Street towards to Chase
10 Street area making another right-hand, making a
11 right-hand turn into a, I think — the best to my
12 knowledge it is like a, kind of like apartment
13 complex but it's houses, it's like a duplex.

14 Q A residential area?

15 A Exactly.

16 Q Okay. And at that point what happened, what did
17 you observe?

18 A The vehicle proceeded in between the right-hand
19 corner of the house and a fence, tried — he went to
20 the right side of the home and run into the fence on
21 the right-hand side and jumped out of the car and
22 exited on foot running.

23 Q Now we're talking about "he." Was Toddrique
24 Henderson the driver?

25 A No, sir, Toddrique wasn't the driver.

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1 Q Okay. Did -- who came out of the vehicle first?

2 A The driver exited first and Toddrique followed.

3 Q All right. Now, all -- your car was equipped
4 with what?

5 A A video.

6 Q Okay. And what you have just testified to is on
7 State's Exhibit 1; is it not?

8 A Correct.

9 Q Okay. And I'm gonna ask you questions
10 afterwards, but I'm gonna ask if we could publish
11 State's Exhibit 1 which is in evidence, to the jury
12 at this point.

13 THE COURT: Any objection from Defense?

14 MS. PARROTT: No, Your Honor.

15 THE COURT: All right. That's in
16 evidence, and you're allowed to publish it before
17 the jury. Pay very close attention.

18 MR. JEPERTINGER: Judge, it's going to
19 take a while for us to set this up.

20 (Pause.)

21 (State's Exhibit No. 1 was played for the jury.)

22 BY MR. JEPERTINGER:

23 Q Let's go over a little bit what the jury just saw
24 and what they didn't see. There are a couple of
25 scenes on there you need to explain it to me if you

SW - T. KEEFE - DIRECT

1 can. I notice that there were deputy sheriffs and
2 looked like city police officers?

3 A Right..

4 Q Can you tell the jury the significance of the
5 city police officers being there?

6 A Normally whenever we get inside a chase or any,
7 anything substantial, and we go into the city we
8 notify the city in which we're going into as far as
9 any municipality, not just Florence City. That goes
10 for any city that we go into just so they're aware
11 of the situation and normally they respond to help
12 us in reference to extra manpower backup so on and
13 so forth.

14 Q Okay. So that's why it would explain why we saw
15 city officers?

16 A Exactly.

17 Q All right. Now having said that, when you
18 pursued the two individuals that came out of the
19 driver's side door —

20 A Uh-huh.

21 Q Okay? Can you tell us — and I don't think we
22 saw this on camera, that's why I'm asking you. Can
23 you tell us what you observed in terms of those two
24 individuals?

25 A The driver exited out of the driver door. The

SW - T. KEEFE - DIRECT

1 second subject, the windows was too dark so I'm not
2 exactly sure where he was seated inside the vehicle.
3 I could not tell how many occupants were in the
4 vehicle but the second, second subject, came out of
5 the vehicle behind the driver out of the driver's
6 door as well.

7 Q And who is that second subject?

8 A That would be the defendant Toddrique.

9 Q And can you tell us what you observed in terms of
10 those two individuals?

11 A The driver fled straight in front of his vehicle
12 with the passenger following. The passenger made it
13 almost to a break in the fence, and he threw an
14 object out of his pocket. I couldn't -- he just --
15 I seen him throw an object over like a six foot
16 fence.. The driver continued straight down the path
17 he was running, but the defendant Toddrique was
18 trying to jump the fence to his right. That was
19 when I deployed the tazer and stopped him,
20 apprehended him.

21 Q Okay. At that point do you -- were you aware of
22 what Deputy Clark was doing?

23 A No, sir, I wasn't. I knew she would be behind
24 me, but I was not aware that there was another
25 person inside the vehicle. Like I said, it was too

SW - T. KEEFE - DIRECT

1 dark.

2 Q Well, let me ask you this, you deployed your
3 tazer and you struck Mr. Henderson with the tazer;
4 is that correct?

5 A Correct.

6 Q Now the tazer, what is that, for the ladies and
7 gentlemen?

8 A The tazer is a tool that we use. It's lesser
9 than pepper spray.

10 Q Let me ask you, it's a thing that zaps people.

11 A Exactly. It's got electrodes that come out,
12 subdue subjects.

13 Q So when it hits your body, if it makes contact
14 what's gonna happen to the human body?

15 A You're gonna fall.

16 Q Did that happen with Mr. Henderson?

17 A Correct.

18 Q After you deployed your tazer did Ms. Clark give
19 you her tazer?

20 A She did.

21 Q Okay. And what did you ask Deputy Clark to do?

22 A To stay with this -- with Toddrique, and handcuff
23 him.

24 Q Okay. And your goal in doing that was?

25 A To catch the driver.

SW - T. KEEFE - DIRECT

1 Q Okay. Now at that point did you tell Deputy
2 Clark that, I saw Toddrique throw something?

3 A I don't remember if it was at that point. I
4 think it was when I got back.

5 Q Okay. Now that is what I'm gonna ask you, how
6 far did you chase the driver?

7 A Across at least two streets over. I mean, I
8 don't know in relation to how many feet, but it
9 would have been a good ways.

10 Q Is the street Carver Circle kind of behind this
11 area?

12 A It is. We went across Carver Circle and into the
13 next street. I went almost to Darlington Street.

14 Q And did not find the driver?

15 A No, sir, I didn't.

16 Q Okay. So what did you do after you stopped your
17 pursuit of the driver?

18 A I turned around and came back to the scene to
19 help Deputy Clark as long as — as well as the other
20 deputies and city officers that were on scene.

21 Q Okay. And at that point when you got back on
22 scene, not only did you know that you already had
23 Toddrique, correct?

24 A Correct.

25 Q Did you see that another individual was there

SW - T. KEEFE - DIRECT

1 that you did not know was there?

2 A I did.

3 Q Okay. And who was that individual if you recall
4 his name?

5 A Mr. Black.

6 Q Okay. And do you know where he came from at that
7 point?

8 A At the point when I got back I didn't. It wasn't
9 until later on we started talking, me and Deputy
10 Clark. I found out he was actually in the back seat
11 of the vehicle.

12 Q Okay. Now at that point did you tell Deputy
13 Clark about the throwing of the object?

14 A I did.

15 Q Okay. Now we see on the video that you walk both
16 Henderson, the defendant in this case, and Black,
17 the back seat passenger, back to the vehicle?

18 A Correct.

19 Q Okay, what was the purpose for doing that?

20 A They had locked the doors to the vehicle and I
21 was attempting to get the keys.

22 Q Did either of them have the keys?

23 A No, sir.

24 Q Okay, all right. At that point did you — and I
25 think the video kind of cut off at that point. What

SW - T. KEEFE - DIRECT

1 happened after you walked them back to the vehicle?

2 A We separated the two.

3 Q Okay. And you put one in one patrol car?

4 A Yes, sir. Mr. Black went to my car and Mr.

5 Henderson went to a City car.

6 Q Okay. And at that point when did you start

7 looking for the object that was thrown?

8 A When we separated them, during the time that they

9 were being separated is when I was looking for the

10 drugs, and they were located before he was actually

11 put in the vehicle.

12 Q Okay. And I'm gonna show you State's Exhibit 2

13 that's in evidence. Obviously they did not come in

14 this big bag that I have in my hand, correct?

15 A Correct.

16 Q All right. Do you see the object that the drugs

17 were in?

18 A It was that bag, small bag.

19 Q This smaller plastic bag?

20 A Yes, sir.

21 Q All right. Now where did you find that bag in

22 relation to where Mr. Henderson fell after you tazed

23 him?

24 A It would have been immediately to his right.

25 Q 5 feet, about 10 feet, 15 feet?

SW - T. KEEFE - DIRECT

1 A Less than 10 feet.

2 Q And how far was that fence that you said was at
3 least 6 feet tall?

4 A From where he fell?

5 Q Yes.

6 A Approximately 5 feet.

7 Q All right. Now when you picked up those drugs
8 that were in that bag, did you notice that that bag
9 was, had any soil on it or looked old, or had any
10 rain marks on it, or anything that would tend to
11 think that it'd been there a long time?

12 A No, sir, it looked fresh.

13 Q It looked what?

14 A Fresh.

15 Q And you have been nine years with the PACE Team,
16 correct?

17 A Been with the PACE Team for about six.

18 Q Six years?

19 A Yes, sir.

20 Q And have you ever had to make drug arrests during
21 your six year period?

22 A Yes, that's pretty much all we do.

23 Q Okay. And well, let me back that up. Have you
24 ever had to make window tint violation citations
25 before?

SW - T. KEEFE - DIRECT

1 A Yes, sir.

2 Q Okay. And if the person's window tint is
3 27 percent or less what do you do with that driver?

4 A Either write them up — it's state law. Now you
5 have to write a warning to everybody you stop, just
6 stop them, explain the reason for the stop, the
7 violation that you stopped them for, tell them have
8 a good day and have them go on about their way.

9 Q And if it complies with the law tell them to be
10 on their way.

11 A Go on their way, have a good day.

12 Q And your purpose for trying to stop that Buick
13 Sentry was the window tint?

14 A Correct.

15 Q All right. Now in your dealing with drug
16 offenses how much does a gram of crack go for on the
17 streets of Florence?

18 A About a hundred dollars.

19 Q A hundred dollars a gram?

20 A Hundred dollars a gram.

21 Q So over 17, we're talking about between 17 and
22 1800-dollars?

23 A Correct.

24 Q All right. Now once you found that object did
25 you point that out to any of your other officers

SW - T. KEEFE - DIRECT

1 there?

2 A Yes, sir. When we — when I found it, myself,
3 Deputy Chamberlain and there was city a officer
4 there, that all was there at the same time.

5 Q Did Deputy Clark see where it was?

6 A Yeah, yes, sir.

7 Q All right. And at that point once you retrieved
8 that in that plastic bag did you make a decision
9 what to charge Toddrique with?

10 A I did.

11 Q And what was that, sir?

12 A Trafficking crack.

13 Q Base?

14 A Cocaine base.

15 Q Based on weight, correct?

16 A Correct.

17 Q All right. Did you weigh that at the scene or
18 how did you know?

19 A I did. I conducted approximate field weight at
20 the scene.

21 Q And the field weight would contain the drugs as
22 they have in the packaging, correct?

23 A Correct.

24 Q All right. But an official determination is made
25 later by a chemist; is that correct?

SW - T. KEEFE - DIRECT

1 A Correct.

2 Q All right. Now after you retrieve those drugs
3 who did you give them to?

4 A The drugs would have been taken to Florence
5 County Sheriff's Office.

6 Q Would you give them to Deputy Clark?

7 A Yes, sir, we went together.

8 Q Okay. And what she did with the drugs I'd have
9 to ask her; is that correct?

10 A Correct.

11 Q All right. Now was there -- we saw three
12 individuals pop up kind of like neighbors or
13 something that live there. When you saw the object
14 flying from Toddrique Henderson's hand, okay, did
15 you see anybody standing there near him when he
16 threw the drugs?

17 A No, sir, there was no one around.

18 Q All right. Now did you search Toddrique
19 Henderson?

20 A Correct, I did.

21 Q Okay. And what did you find on Toddrique
22 Henderson?

23 A He had U.S. currency in his pocket.

24 Q Okay. And who did you count that U.S. currency
25 with?

SW - T. KEEFE - DIRECT

1 A It would have been counted at the office. I
2 counted it with Deputy Clark and then it would have
3 went to evidence.

4 Q And the evidence custodian would also count it
5 again?

6 A Correct.

7 Q And the evidence custodian is Larry Quick?

8 A That's correct.

9 Q All right. And how much did you count that he
10 had on his person?

11 A It looks like 1,646-dollars, no change.

12 Q All right. Now did you ever try to ascertain who
13 the driver was?

14 A Yes, sir, I did.

15 Q And any success in doing that?

16 A No, sir, none.

17 Q All right. What did you have done with the
18 vehicle?

19 A The vehicle was towed.

20 Q All right. To an impound lot?

21 A Correct.

22 Q Over in Effingham?

23 A It would have been towed to their vehicle, the
24 wreckers impound.

25 Q Okay, all right. That's all the questions I

SW - T. KEEFE - CROSS

1 have. Please answer any questions that Ms. Parrott
2 may have for you.

3 A Thank you.

4 THE COURT: Ms. Parrott, you're
5 recognized.

6 MS. PARROTT: Thank you, Your Honor.

7 **CROSS-EXAMINATION**

8 BY MS. PARROTT:

9 Q Deputy Keefe, did you prepare a report in this
10 matter?

11 A No, ma'am, I didn't.

12 Q Okay. And why is that?

13 A Because Deputy Clark handled the incident report.

14 Q Okay. But you're the officer who, according to
15 your testimony, is the one who you're driving the
16 patrol car that's behind this as part of the chase,
17 correct?

18 A Correct.

19 Q You're the one who is on the mic who is calling
20 saying I'm on a 10-0 or I'm in a chase, right?

21 A Correct.

22 Q And that alerts all the other officers who were
23 in the immediate vicinities to respond, correct?

24 A Correct.

25 Q Okay. And you're the one who has thrown the blue

SW - T. KEEFE - CROSS

1 lights and flipped, got the siren going, correct?

2 A Correct.

3 Q Okay. You're the one who is in patrol car, it
4 turns on to Sumter and then turns into the duplex
5 yard, I guess, behind that other car, correct?

6 A Correct.

7 Q You the one who throws your car in park and then
8 runs immediately out of the car and goes after those
9 people that are jumping out of the car, correct?

10 A Correct.

11 Q You're the one who deploys the tazer after
12 Mr. Henderson?

13 A Correct.

14 Q And you're the one who then continues after the
15 runner, whoever that may be?

16 A Correct.

17 Q Okay. So you don't consider yourself to be
18 somebody who was important and in control of this
19 stop and should have written a report?

20 A Well, would you like me to explain why I didn't?

21 Q I'm asking you that question. You don't consider
22 it necessary for you to have been written a report
23 given you're the one who is the main person in all
24 that?

25 A No. I wrote a report about the tazer incident.

SW - T. KEEFE - CROSS

1 Q Okay. Did you sign that one?

2 A Uh-huh. It would have been a use of force.

3 Q Use of force form, correct?

4 A Uh-huh, yes.

5 MS. PARROTT: My I approach, Your Honor.

6 THE COURT: You may.

7 BY MS. PARROTT:

8 Q Could you tell me where the incident location is
9 that you've written on this matter for this use of
10 force form?

11 A It looks like [REDACTED].

12 Q Thank you. And it's standard for you to do this
13 form whenever a tazer has been deployed, correct?

14 A Correct.

15 Q Okay. Did you even review Officer Clarke's
16 report since this would have been the first night
17 that she was on PACE Team with you?

18 A No, ma'am, I don't do that. That would have been
19 the supervisor's job.

20 Q But you were the officer who was there with her
21 and she was riding with you so you didn't do
22 anything then?

23 A I'm not allowed to review reports.

24 Q Okay. You stated that it was a gold Buick
25 Sentry?

SW - T. KEEFE - CROSS

1 A Yes, ma'am.

2 Q Okay.

3 A Gold or silver.

4 Q Gold or silver?

5 A I mean, it was a goldish silver.

6 Q Okay.

7 A Maybe like a pewter color.

8 Q All right. You had been out on 52 prior to this,
9 correct? This is where you're saying you were
10 patrolling?

11 A Yes, ma'am.

12 Q Had you searched the area there on Sumter Street?

13 A No, ma'am.

14 Q You hadn't been in this area prior to whenever
15 this stop occurred?

16 A No, ma'am.

17 Q Okay. And Your Honor, if I might, do you know if
18 you called out the location of where this stop
19 ended?

20 A I — I'm not sure.

21 Q Okay. Your Honor, if I may also — okay. Could
22 I direct your attention to the report that was filed
23 in this matter that says that the vehicle failed to
24 stop for emergency lights which led to a vehicle
25 pursuit that ended at [REDACTED]?

SW - T. KEEFE - CROSS

1 A Okay, that might be true.

2 Q But you wrote [REDACTED] on your use of
3 force; is that correct?

4 A I may have had the address wrong.

5 Q Okay.

6 A Did the use of force have Toddrique Henderson's
7 name on it?

8 MS. PARROTT: Your Honor, I would instruct
9 the witness to —

10 THE COURT: All right, the way this
11 operates, she asks the questions, you provide the
12 answer. You can't ask her questions.

13 THE WITNESS: I'm sorry, I apologize.

14 BY MS. PARROTT:

15 Q We'll do this, if you'd like to review. What is
16 the name on the top of that?

17 A Toddrique Henderson.

18 Q And what is that that I've just shown you?

19 A That is my use of force form. Thank you.

20 Q The area where you stopped, has it got lights all
21 over the place?

22 A There's no street lights, no, ma'am.

23 Q Okay.

24 A Just yard lights, housing lights.

25 Q Okay. And you said that that was a duplex you

SW - T. KEEFE - CROSS

1 believe wherever you were pulled, or wherever this
2 stop finally ends?

3 A It was — I really don't know what you call it.

4 A couple of houses together.

5 Q Okay.

6 A Duplex, complex.

7 Q And so multiple people would live in that area?

8 A Correct.

9 Q And as you saw on the video, as you saw whenever
10 you were there performing whatever search you did,
11 multiple people came up on that stop; didn't they?

12 A Yes, ma'am.

13 Q Did you ever try and secure that scene?

14 A No, ma'am, I was chasing the driver until I got
15 back.

16 Q And whenever you got back did you order that
17 everybody remain out?

18 A When I got back you see on the video one guy came
19 out front. I told him to step back into the house
20 and they did go back into the house.

21 Q But in the meantime you don't know what happened
22 while you were running after somebody?

23 A No, ma'am, I can't attest to that.

24 Q Okay. You were pretty quick out that car;
25 weren't you?

SW - T. KEEFE - CROSS

1 A I guess.

2 Q Okay. You're looking at two people that are
3 jumping out of the car, correct?

4 A Correct.

5 Q Okay. Mr. Henderson you believe was a passenger
6 somewhere in that car according to what you
7 testified, correct?

8 A That's correct.

9 Q Passengers don't have control over where a stop
10 occurs, do they, where the chase ends?

11 A No, ma'am.

12 Q Okay. You're watching the runner or the driver
13 who continues to run, you're watching Mr. Henderson
14 as he's jumping out the car, you're looking at what
15 side the fence is that he's supposed to be possibly
16 jumping over, you're deploying a tazer and you're
17 watching where you're running so that maybe you
18 don't fall as well?

19 A Correct.

20 Q You can do all that at once?

21 A Yes, ma'am.

22 Q And through a car as you're approaching from
23 behind it?

24 A I guess; I did it.

25 Q You believe that fence was 6 feet?

SW - T. KEEFE - CROSS

1 A That's about how high it seemed when I had to
2 jump it, yes, ma'am.

3 Q The video doesn't show you jumping the fence.
4 When did you jump a fence?

5 A If you watch the video you'll see my flashlight
6 go over the fence.

7 Q As part of the chase?

8 A Yes, ma'am.

9 Q The driver goes this way, correct?

10 A Yes, ma'am.

11 Q And you said you tazed him before he ever got to
12 the fence?

13 A Yes, ma'am. The fence is all the way around the
14 house. The driver jumped the fence in the back.

15 Q Okay. Whenever somebody is tazed do they control
16 where they fall?

17 A No, ma'am, not usually.

18 Q And then after you come back on scene you're
19 asking for a flashlight even to kind of help look
20 around, right? Or using a flashlight to look
21 around?

22 A Yes, ma'am, I was using one.

23 Q I believe it shows where you're actually handing
24 one back and forth; is that correct? Do you
25 remember doing that?

SW - T. KEEFE - CROSS

1 A I don't remember handing a flashlight. I
2 probably had my little small flashlight in my hand.
3 I keep it in my vest.

4 Q All right. You've stated that you walked both of
5 them back up to the car; is that correct?

6 A Yes, ma'am.

7 Q You took Mr. Black as well as Mr. Henderson?

8 A Yes, ma'am.

9 Q Okay. That you knew that the driver was long
10 gone, correct?

11 A Correct.

12 Q You just weren't sure who was in control of what?

13 A I just wanted to see if either one of them had
14 the keys; they were both in the car.

15 Q Okay. You stated also on the PACE Team that
16 drugs are pretty much all y'all do or drug stops; is
17 that correct?

18 A Correct.

19 Q Okay. So in your years of experience don't you
20 find that it is not uncommon at all, or rather very
21 common, for drug dealers to leave their drugs at the
22 fence line or in what would be commonly accessed
23 area so that they can't be found in all possession
24 of drugs? They can only be found in constructive
25 possession, if they are arrested?

SW - T. KEEFE - CROSS

1 A I —

2 Q Or is that not the kind of stop that you do, you
3 usually do traffic stops.

4 A I can't, I can't one hundred percent testify to
5 that. I mean, I —

6 Q Okay.

7 A It depends on who you are, where you are.

8 Q Okay. And in your time on the PACE Team whenever
9 you have cars that are towed like this or you
10 believe there's been cars that have been as part of,
11 used as part of illegal drug activity, you could
12 send them to the Florence County Sheriff's Office
13 impound to be further searched and inventoried;
14 could you not?

15 A We could.

16 Q And be printed?

17 A We could.

18 Q And did you even try to do that in this matter?

19 A No, ma'am, because of all the occupants inside
20 the vehicle there would be prints everywhere.

21 Q Did you even try printing?

22 A No, ma'am, I didn't feel the need.

23 Q Okay. Did you try printing the bag?

24 A No, ma'am, I didn't feel the need.

25 Q Did you submit it to forensics for them to try

SW - T. KEEFE - CROSS

1 and print?

2 A I submitted it to forensics for testing.

3 Q Just for whether or not it was crack, but not to
4 see whether or not there are prints on the bag,
5 correct?

6 A Would you like me to explain why?

7 THE COURT: All right. She asks the
8 questions and typically cross-examination calls for
9 a yes or no answer and you're gonna be compelled to
10 answer yes or no and then you can explain.

11 THE WITNESS: No —

12 THE COURT: Ask the question again.

13 BY MS. PARROTT:

14 Q Submit the drugs for just testing for crack and
15 not for printing of the bag?

16 A That's correct.

17 THE COURT: Now you can explain.

18 THE WITNESS: I didn't feel the need to
19 submit the drugs for testing for fingerprints seeing
20 as I seen him throw the drugs.

21 BY MS. PARROTT:

22 Q So that's not captured on video, is it?

23 A I couldn't tell from when I was running. I
24 didn't know if it was on video or not.

25 Q Okay. And your time on the PACE Team in

SW - T. KEEFE - REDIRECT

1 February which this occurred on February 4th of
2 2012, correct?

3 A Correct.

4 Q Okay. People start getting tax return or tax
5 money back in February or March, you have a lot of
6 paper tags on cars; don't you?

7 A Yes, ma'am.

8 Q Okay. So it's not unusual for people to have
9 money whenever tax returns come back, is it?

10 A No, ma'am.

11 MS. PARROTT: Nothing further, Your Honor.

12 THE COURT: Any redirect, Mr. Jepertering?

13 **REDIRECT EXAMINATION**

14 BY MR. JEPERTINGER:

15 Q Just one thing. Did you see anybody else throw
16 anything, the driver that —

17 A No, sir, I did not.

18 Q Who is the only person that you saw throw
19 anything?

20 A The only person that I observed throwing anything
21 was the defendant.

22 Q Okay. Was there any other object that you saw on
23 the ground near these drugs?

24 A No, sir.

25 Q Beer can, a wadded up piece of paper, anything?

SW - A. CLARK - DIRECT

1 A No, sir, that was it.

2 Q All right. Thank you so much.

3 A Thank you.

4 THE COURT: Yes, sir, you may step down.
5 Thank you. You're free to leave, welcome to stay if
6 you like. Thank you, sir.

7 Mr. Jupertinger, you may call your next
8 witness.

9 MR. JEPERTINGER: Yes, sir. I would call
10 Deputy Angel Clark to the stand.

11 THE COURT: All right. Deputy Clark, if
12 you could come forward. I'm gonna ask you, if you'd
13 likewise place your left hand on the Bible, raise
14 your right hand as the clerk administers the oath.
15 WHEREUPON,

16 ANGEL CLARK,
17 having been duly sworn by the Clerk of Court,
18 testified as follows:

19 THE WITNESS: Angel Maria Clark.

20 THE COURT: Thank you, Ms. Clark.

21 Mr. Jupertinger.

22 MR. JEPERTINGER: Yes.

23 **DIRECT EXAMINATION**

24 BY MR. JEPERTINGER:

25 Q Deputy Clark, how long have you been with the

SW - A. CLARK - DIRECT

1 Sheriff's Office?

2 A For two years.

3 Q Okay. And in February 2012 were you assigned to
4 a new group?

5 A Yes, sir, the PACE team.

6 Q And that group would have been the Proactive
7 Criminal Enforcement Unit or Team; is that correct?

8 A Correct.

9 Q Okay. And on February 4th, 2012, was that —
10 which day for you with the PACE team? Was that your
11 —

12 A That was my first day with the PACE team.

13 Q All right. Were you riding with anybody that
14 evening?

15 A I was riding with Deputy Keefe.

16 Q All right. Now we're gonna go back to Lucas
17 Street on February 4th, 2012. Which of you two
18 noticed the vehicle first?

19 A Deputy Keefe.

20 Q And was it his decision to stop the vehicle to
21 determine if the windows violated the tint statute?

22 A Yes.

23 Q And at that point — we've already seen what
24 happened on the chase, okay?

25 A Uh-huh.

SW - A. CLARK - DIRECT

1 Q When you got to the Sumter Street address, okay,
2 what did you do that we did not see on the video
3 after you followed Deputy Keefe?

4 A After I followed Deputy Keefe I got his tazer
5 from him. I gave him my tazer for him to continue
6 chasing after the driver.

7 Q Now who had he tazed?

8 A He tazed the passenger Toddrique Henderson.

9 Q Okay. And how far was Toddrique from the fence
10 that we've heard about?

11 A About 9 or 10 feet close to it.

12 Q All right. And was anybody — did you stay at
13 that scene with Toddrique?

14 A Yes, sir.

15 Q Did you handcuff Toddrique?

16 A Yes, sir.

17 Q And why would you handcuff Toddrique?

18 A He was involved in drug activity. He was
19 involved in the chase. He got out and ran —

20 Q Well, you didn't know he was involved in drug
21 activity at that time. Was that for your safety?

22 A Yes, sir, for my safety, our safety.

23 Q All right. And at that point was there anybody
24 on the other side of the fence opposite Toddrique?

25 A No, sir.

SW - A. CLARK - DIRECT

1 Q Okay. Not one individual?

2 A No, sir.

3 Q Okay. Because we saw a couple —

4 MS. PARROTT: Objection, leading.

5 THE COURT: Sustained.

6 BY MR. JEPERTINGER:

7 Q How many — were there other people on the video
8 that were not involved in this case?

9 A Yes, sir.

10 Q All right. Did you see any of those individuals
11 on the other side of the fence?

12 A No, sir, not in that area.

13 Q Okay. Now, what did you observe going on in the
14 vehicle that you had just chased while Toddrique
15 Henderson was down on the ground?

16 A I saw another subject in the vehicle. He was in
17 the back seat of the vehicle. I ordered him out of
18 the vehicle, told him to come around where I was and
19 get down on the ground.

20 Q Did that individual do what you asked him to do?

21 A Yes, sir.

22 Q Okay. And who was that individual?

23 A Travis Black.

24 Q All right. And he got down on the ground; is
25 that correct?

SW - A. CLARK - DIRECT

1 A Yes, sir.

2 Q Did you have an extra set of handcuffs?

3 A I didn't at the time. There was another city
4 officer that came up.

5 Q All right. And at that point is your — are you
6 just watching what's going on all around? What are
7 you doing?

8 A Yes, sir, I'm just being observant.

9 Q All right. When the other city police officer
10 came up what did you do?

11 A The city officer handcuffed Travis Black. We got
12 both subjects up and escorted them back to the cars.

13 Q All right. And at that point did Deputy Keefe
14 come back from wherever he went?

15 A Shortly after, yes, sir.

16 Q Okay. And after Deputy Keefe came up what did
17 you all do after you walked? It looks like you
18 walked on the video you walked back to the vehicle?

19 A Correct.

20 Q Okay. After that happened what did you
21 personally do? Did you go get a cup of coffee, walk
22 around the area, what did you do?

23 A Yeah, we went back and searched for the drugs —
24 searched for, excuse me, searched for the object
25 that was found.

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1 Q Okay. And did you have a general idea that
2 Deputy Keefe gave you of where the object would have
3 been thrown?

4 A Yes, sir.

5 Q Now were you present when Deputy Keefe found
6 whatever he found?

7 A Yes, sir.

8 Q Okay. Did you have a chance to look around that
9 area as well?

10 A Yes, sir.

11 Q And did you see any object on that ground other
12 than what's in State's Exhibit 2?

13 A No. No, sir.

14 Q Was there any trash, a beer can, a cigarette
15 pack, anything else other than this object?

16 A No, sir.

17 Q All right. When you viewed this object did you
18 find it in this kind of inner packaging that we see
19 here in State's Exhibit 2?

20 A Yes, sir.

21 Q Okay. Now did it seem wet or soiled or — I
22 don't know if I can come up with the right term, but
23 did it seem like any of that?

24 A No, sir.

25 Q If you had to make a guess, I guess, about its

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1 length of duration —

2 MS. PARROTT: Objection, speculation.

3 THE WITNESS: It was —

4 THE COURT: I'll — overruled. I'll allow
5 her to ask [sic] that, if she can.

6 THE WITNESS: It was freshly placed. It
7 hadn't been there for a long period of time at all.

8 BY MR. JEPERTINGER:

9 Q All right. Now, after you found that what did
10 you personally do after the officers found it,
11 including Keefe and yourself and I guess another
12 city police officer? What did you do with the
13 objects?

14 A We packaged the drugs in a ziplock bag.

15 Q Okay. And who would have done that?

16 A Myself and Deputy Keefe.

17 Q Okay. And where would you have done that?

18 A At the scene.

19 Q Okay. And are you familiar with what's called a
20 Best Pack?

21 A Yes, sir.

22 Q Can you tell the ladies and gentlemen of the jury
23 what a Best Pack is?

24 A A Best Pack is, it's for it to be sent off and
25 tested to labs. Our lab would take it and confirm

SW - A. CLARK - DIRECT

1 whether it was or was not an illegal substance.

2 Q All right. And that was done by you and Keefe,
3 correct?

4 A Yes, sir.

5 Q All right. And after you did that what did you
6 personally do with what we see in State's Exhibit 2?

7 A I put it into evidence.

8 Q If you would explain to the ladies and gentlemen
9 of the jury what evidence?

10 A Our evidence room we have lockers. We have to
11 fill an evidence sheet as to what goes into the
12 locker, which we fill out the evidence sheet we keep
13 a copy of it and the other copy goes to evidence.
14 After that is done we place the whatever, whatever
15 we have, whatever we log into evidence we place into
16 the locker, lock it. The next morning if it's — we
17 will retrieve it with a key.

18 Q And your evidence technician is Mr. Quick who is
19 sitting right behind me; is that correct?

20 A Correct.

21 Q And afterwards after you did that did Deputy
22 Keefe ask you to write a report?

23 A Yes, sir, I had to do a report for the incident.

24 Q Now I'm gonna ask you to review your report to
25 refresh your recollection, okay. Was this the first

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1 report you had written as a member of the PACE team?

2 A Yes, sir.

3 Q Okay. And who asked you to write the report?

4 A My lieutenant and Deputy Keefe.

5 Q Okay. Would you normally have written the report
6 or Deputy Keefe normally would have written it?

7 A Deputy Keefe would. Yes, Deputy Keefe would
8 normally write the report.

9 Q Why do you think they asked you to write the
10 report in this case?

11 A For training and experience.

12 Q All right. Would you say this report is as
13 thorough as it could have been?

14 A No, it could have been a bit more detailed.

15 Q Okay. What details did you leave out that you
16 know should have been in there?

17 A I wasn't driving the vehicle. I have in the
18 report that I was driving the vehicle. Deputy Keefe
19 was driving the vehicle. That is a mistake. It
20 could have been a bit more detailed as to the object
21 being thrown.

22 Q Did that have anything in there about the object
23 being thrown?

24 A No, sir.

25 Q What do you recall Deputy Keefe -- did Deputy

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1 Keefe mention an object being thrown to you at the
2 scene?

3 A Yes, sir.

4 Q But that was not in your report?

5 A Correct.

6 Q All right. After you wrote that report did you
7 do anything else, Deputy Clark, in regards to this
8 case?

9 A As far as the evidence I did the evidence. We
10 also filled out a currency form. That was
11 completed. It was entered into evidence. It was
12 taken back out in evidence and deposited to the bank
13 for safekeeping.

14 Q Were you present when any of that happened?

15 A Yes, sir.

16 Q Which part were you present for?

17 A Getting the money out and taking it to the bank.

18 Q Did you personally — were you personally in
19 there when they counted it?

20 A Yes, sir.

21 Q And the breakdown in terms of currency is listed
22 in State's Exhibit 3. Were you there when they did
23 the different denominations of bills?

24 A Yes, sir.

25 Q And the total amount was?

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1 A 1,646-dollars.

2 Q All right, okay. And that was your only
3 involvement in this case, correct?

4 A Yes, sir.

5 Q Okay. Thank you so much. I appreciate it.
6 Please answer any questions that Ms. Parrott may
7 have for you.

8 THE COURT: Ms. Parrott, you're
9 recognized. Cross-examination.

10 MS. PARROTT: Thank you, Your Honor.

11 **CROSS-EXAMINATION**

12 BY MS. PARROTT:

13 Q Officer Clark, you said you've only been with the
14 Sheriff's Office two years now?

15 A Yes, ma'am.

16 Q As part of your time during at the Sheriff's
17 Office did they send you off to the police academy?

18 A Yes, ma'am.

19 Q And as part of the police academy you go through
20 training to hopefully enable you to do your job out
21 on the street and part of that is writing reports;
22 is it not?

23 A A portion of it.

24 Q Okay. And whenever you're being taught about how
25 to do your reports they want you to do them, and you

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1 would want to do them, where they are accurate,
2 correct?

3 A Yes, ma'am.

4 Q And you would want them to be detailed, correct?

5 A Yes, ma'am.

6 Q And you would want them to be complete?

7 A Yes, ma'am.

8 Q So in this case whenever you wrote your report
9 you believe that everything you were writing there
10 was accurate, detailed, and complete; did you not?

11 A At the time.

12 Q And would you say that your recollection at the
13 time was better than it might be a year later?

14 A Yes, ma'am.

15 Q Okay. So whenever you wrote this report do you
16 recall what you wrote?

17 A Yes, ma'am.

18 Q Okay. Do you recall writing that this occurred
19 with a silver Buick SENTRY?

20 A After I read the report, yes, ma'am.

21 Q And do you recall that you wrote that this
22 vehicle pursuit ended at [REDACTED]?

23 A Yes, ma'am.

24 Q Do you know anything about [REDACTED]

25 [REDACTED]?

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1 A I don't know the difference. I don't know which
2 one could be correct. I don't -- I don't know where
3 ■ is, or if -- right now thinking about it, no, I
4 don't know exactly where that it is on Sumter
5 Street. I know where the incident location ended.
6 I know where the chase ended.

7 Q Okay.

8 A So...

9 Q Okay. Did you control where the stop ended?

10 A No, ma'am.

11 Q Did you control how the chase was pursued?

12 A No, ma'am.

13 Q Okay. Were you calling for any officers?

14 A I mean, we were all talking on the radio. I
15 can't recall exactly what I said.

16 Q So basically whenever that call goes out for
17 officers to respond or to help as part of the chase
18 anybody within the area is going to respond,
19 correct?

20 A Yes, ma'am.

21 Q Which means that all these officers were within,
22 since this is, what, maybe two to three minutes that
23 this whole thing occurred, the chase itself?

24 A About, yes, ma'am.

25 Q So all those officers were within two to three

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1 minutes of this whole area, correct?

2 A Give or take.

3 Q Okay. They were on regular patrol as far as you
4 know?

5 A As far as I know.

6 Q Okay. When this occurs Deputy Keefe is stopping
7 the car and then hopping out. You're hopping out
8 right behind him, correct?

9 A Correct.

10 Q But you're coming from the passenger side which
11 is kind of more behind where the car is actually
12 stopped, correct?

13 A Yes, ma'am.

14 Q All right. So did you actually see him taze
15 Mr. Henderson?

16 A I was a little ways behind him. I didn't, I mean
17 I was — I heard it. I was —

18 Q You could hear it click and —

19 A Right.

20 Q —deploy basically?

21 A Right. It's got a — it's a popping noise that
22 lasts for five seconds.

23 Q Kind of like a tat, tat, tat, tat?

24 A Yeah, uh-huh. I mean, I was right there at it.
25 I mean, I wasn't far behind him.

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1 Q Okay. Did you see — did you see Mr. Henderson
2 make any throwing motion?

3 A No, ma'am, I wasn't that close to be able to see
4 that.

5 Q At the time that you're running are you noticing
6 all these people who are apparently right in the
7 area and walking up from their yards?

8 A No, ma'am. I don't believe they were outside at
9 the time. I believe whenever they heard the sirens
10 and seen the lights that's when they came out the
11 residence; but no, ma'am, they were not outside at
12 the time but —

13 Q Okay, but there within a minute or so being able
14 to walk out right there on scene as well, correct?

15 A Correct.

16 Q Okay. Did you — did you notice anything about
17 the driver as he took off in a run, Forest
18 Gump-kind-of-run?

19 A No, ma'am.

20 Q Okay. And did you do anything to help determine
21 who that person might have been?

22 A I believe maybe we ran the tag to see if it came
23 back who it came back to. We asked the passengers
24 and no one could identify who he was.

25 Q Okay. And this was on February the 4th, correct?

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1 A Correct.

2 Q And this is about 7:00 in the evening?

3 A Yes.

4 Q So it's pretty dark at this point, correct?

5 A Yes, ma'am.

6 Q You're walking around with a flashlight?

7 A Yes, ma'am.

8 Q And again, you're also trying to make sure you
9 don't fall down I'm sure, correct? Okay. But at
10 that point basically your job was to handcuff
11 Mr. Henderson?

12 A Yes, ma'am.

13 Q Had you been told at that point — do I
14 misunderstand — had you been told at that point
15 he'd seen him throw something or was that later?

16 A No, that was later.

17 Q So did you look around to see if there was
18 anything?

19 A Not at the time, no. I know there was — there
20 was nobody else around. There was no one that
21 resides at that location that was walking around me.
22 I would have noticed that.

23 Q Okay.

24 A That would have been a big safety issue if I had
25 someone behind me or around me.

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1 Q But they all were there within a minute or so
2 right there in that same area, correct?

3 A No, not in the same area, not in the back where
4 we were. They were behind the car; we were in front
5 of the car.

6 Q So about 4 feet, 5 feet?

7 A No, it was more than that.

8 Q Okay. Did you search the car?

9 A I believe later after the video was shut off I
10 believe, yes, ma'am, I did search the car. We —

11 Q And did you find anything in that car?

12 A We located marijuana in the back seat of the car,
13 a small bag of marijuana.

14 Q Okay. And you're the one who actually found the
15 1,646 dollars on Mr. Henderson?

16 A It was on Mr. Henderson's person.

17 Q Okay. Did you ever at any point see the drugs or
18 any drugs in Mr. Henderson's actual possession?

19 A No, ma'am.

20 Q Are you the one who weighs the drugs and finds
21 them to be 28-grams?

22 A Yes, ma'am. We weighed them at the scene.

23 Q Okay. But you're the one who does that, or did
24 that?

25 A We weighed them at the scene and at the office,

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1 yes, ma'am.

2 Q Did you interview anybody on scene?

3 A We spoke to Toddrique and Mr. Black.

4 Q Okay. I'm talking about anybody who was right
5 there around that day?

6 A No.

7 Q And you haven't included any of that in your
8 report, have you?

9 A Which part? That I didn't talk to anybody or
10 anything?

11 Q Interview, yes, right.

12 A I mean, there was someone that came out of the
13 house that we talked to. But as to asking them if
14 they'd seen — if that's where you're going — as to
15 asking if they'd seen someone throw an object, no.

16 Q Okay. Did you list all the officers who
17 responded on scene as part of your report?

18 A No, ma'am. There were city officers there.
19 There was — I can't tell you how many. There were
20 officers there in the area that didn't come to the
21 scene so I couldn't tell you who they were. Myself,
22 Deputy Keefe, the city officer was there.

23 Q Starling?

24 A Yes, that's who it was.

25 Q And are you an expert in forensics?

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1 A No, ma'am.

2 Q So you can't tell the time line of decay on
3 something or deterioration?

4 A I'm not understanding what you're asking.

5 Q Nothing further.

6 THE COURT: Any redirect?

7 **REDIRECT EXAMINATION**

8 BY MR. JEPERTINGER:

9 Q In terms of marijuana you found in the back seat
10 you charged Travis Black with that; isn't that
11 correct?

12 A Correct.

13 Q And he accepted responsibility for that
14 marijuana?

15 A Yes, sir.

16 Q All right. Thank you so much.

17 MR. JEPERTINGER: That's it, Judge. We're
18 about to go again one more time.

19 THE COURT: You may step down. Madam
20 Forelady, ladies and gentlemen of the jury, at this
21 time we're gonna take a recess for lunch. I'm gonna
22 ask that you be back at 1:30, 130 sharp. I'm gonna
23 ask you once again to wear those attractive badges
24 as you exit and enter the courtroom. Do not do any
25 independent investigation. At this point in time

1 we kind of know where this took place. It would be
2 inappropriate to go and do any kind of investigation
3 on your behalf. You need to base your decision on
4 what transpires here in this courtroom. Do not do
5 any investigation on the internet or do not discuss
6 the case amongst yourselves or with anyone else.
7 Certainly it's inappropriate, illegal, for anyone to
8 try to contact you about this case. I don't
9 anticipate they would; but if they were to try to do
10 that, identify them as best you can, report it to me
11 and I'll deal with them accordingly. I don't
12 anticipate that would happen. I'm gonna ask
13 everyone to remain seated as the jury exits the
14 courtroom.

15 (WHEREUPON, the jury was removed from the
16 courtroom at 12:02 p.m., and the following
17 proceedings commenced in open court.)

18 THE COURT: Anything from the State before
19 we recess for lunch?

20 MR. JEPERTINGER: No, sir.

21 THE COURT: Anything from Defense?

22 MS. PARROTT: No, Your Honor.

23 THE COURT: All right, very good.

24 MR. JEPERTINGER: 1:30?

25 THE COURT: 1:30. And with regard to

1 custody of the defendant, is there any objection to
2 him remaining out on bond with regard to this?

3 MR. JEPERTINGER: No, he's shown up —

4 THE COURT: Very good.

5 MR. JEPERTINGER: —all the time.

6 THE COURT: You need to be back at 1:30.

7 (WHEREUPON, a lunch break was taken.)

8 THE COURT: Anything from the State before
9 we proceed?

10 MR. JEPERTINGER: Judge, I'm anticipating
11 putting up two more witnesses in this matter which
12 would be very, very quick and I didn't know since
13 the jury is out right now instead of having them
14 come back and forth if —

15 THE COURT: Now might be a good time in
16 view of the fact that we're nearing the end of the
17 State's case let's — hang on just one second.
18 Mr. Henderson, I'm gonna ask if you could stand
19 where you are as the clerk administers the oath.

20 THE CLERK OF COURT: Please raise your
21 right hand.

22 WHEREUPON,

23 **TODDRIQUE HENDERSON,**

24 having been duly sworn by the Clerk of Court,
25 testified as follows:

1 THE COURT: Mr. Henderson, how are you
2 doing today?

3 THE DEFENDANT: All right.

4 THE COURT: I'm gonna take this
5 opportunity to explain certain of your
6 constitutional rights. If you don't understand
7 anything I say please let me know. If you want me
8 to explain anything in more detail let me know that,
9 I'll be happy to do that. You understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. We have now
12 reached the stage of the trial where you may present
13 your defense. You have the right to claim the
14 protections given to you by the Fifth Amendment of
15 the Constitution of the United States which provides
16 in relevant part: No person shall be compelled in
17 any criminal case to be a witness against himself.
18 this means that you cannot be required to testify in
19 this case. You have the right to testify on your
20 own behalf; however, no one can make you testify.
21 This is a personal right and no one can waive this
22 right except you. If you decide to testify you'll
23 be subject to the same rules that govern other
24 witnesses, and you may be examined and
25 cross-examined on any relevant issue in this case.

1 In addition, if you have any convictions involving
2 dishonesty or false statements or crimes punishable
3 by imprisonment for more than one year, this Court
4 determines that the probative value of admitting in
5 evidence outweighs its prejudicial effect to you,
6 the solicitor will be able to introduce your record
7 to attack your credibility. If you decide to
8 testify this decision on your part must be freely
9 and voluntarily intelligently made. Knowledge of
10 the protections given to you by the Fifth Amendment
11 of the Constitution of the United States and the
12 consequences of your decision to testify. If you
13 decide not to testify I will instruct the jurors
14 that they cannot give the fact that you did not
15 testify any consideration whatsoever, that there is
16 absolutely no prejudice to be assigned to you from
17 your failure to testify. You understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: It's left entirely up to you
20 whether or not you testify. You may talk to your
21 attorney, your family members, and friends, anyone
22 else, but the final decision will be left entirely
23 up to you. You understand what I've explained to
24 you, Mr Henderson?

25 MS. PARROTT: Yes, sir.

1 THE COURT: Do you have any questions
2 about what I've explained to you?

3 THE DEFENDANT: No, sir.

4 THE COURT: Have you discussed this matter
5 with your lawyer?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you wish to talk to your
8 lawyer any further about this matter?

9 THE DEFENDANT: No, sir.

10 THE COURT: Do you have any additional
11 questions of me?

12 THE DEFENDANT: No, sir.

13 THE COURT: All right. Do you wish to
14 testify?

15 THE DEFENDANT: No, sir.

16 THE COURT: Very good. Thank you.
17 Anything further?

18 MR. JEPERTINGER: Your Honor, I just, like
19 I said, we're getting near the end. I've looked at
20 some case law here. I don't think the court allows
21 in these types of drop scene cases as I call them,
22 allows to or have the court to charge constructive
23 possession. It's an actual possession, Your Honor.
24 I hand up this case for your perusal. I didn't make
25 another copy; but it's based on State v. Ballenger,

1 a case called State v. Diamond Fripp, opinion number
2 4956. They refer to this language -- I just want to
3 put this on the record. The facts in this case are
4 similar to those in Ballenger and that the
5 contraband was discovered in a public area of which
6 Fripp had no dominion and control. The State's
7 theory as in Ballenger was that Fripp had full
8 possession of drugs and tossed them when he
9 disappeared behind the black pickup truck. Such a
10 scenario means a constructive possession theory is
11 not applicable and the giving of a constructive
12 possession charge was erroneous. So I would ask
13 that only an actual possession where he actually
14 possessed it so it just keeps it clean.

15 THE COURT: You know, well, I'm gonna hear
16 from Ms. Parrott on that. But you know, one of the
17 things that -- you can prove constructive possession
18 in two different ways, one of which is if you have
19 dominion and control over the cocaine itself or
20 dominion and control over the land upon which it is
21 found or the property upon which it's found. And I
22 don't -- I haven't read this case yet, but I, you
23 know, in going through my charge I was not gonna
24 charge the element of constructive possession that
25 says that you can find him in constructive

1 possession of the property if you found that he had
2 dominion and control over the property itself which
3 would mean the lot. There's been no evidence to the
4 fact and I doubt he does own that land; so
5 therefore, I think that part of constructive
6 possession would, in fact, be erroneous to charge
7 that. But I think if the jury could determine
8 that -- and I think it would be advantageous for the
9 State --

10 MR. JEPERTINGER: Sure it would.

11 THE COURT: --to have that, but because
12 they could determine that he didn't actually didn't
13 see him throw it, but that it was in his presence
14 and therefore he would have constructive possession
15 of it in that respect.

16 MR. JEPERTINGER: I understand that and I
17 did that with an abundance of caution on the State's
18 part but the law is the law and I just, you know,
19 I'd ask you to just consider that case and read it
20 over. I just want to make sure this is clean as a
21 whistle.

22 THE COURT: What do you think about that?
23 Do you think -- obviously there are two different
24 types of constructive possession.

25 MR. JEPERTINGER: Well, if you look at

1 MS. PARROTT: Not really, Your Honor.

2 THE COURT: Okay, all right. And your
3 request is that I not charge constructive
4 possession?

5 MR. JEPERTINGER: My request is that you
6 charge whatever the extant laws in the State of
7 South Carolina in terms of possession, actual versus
8 constructive, and I just handed up a case and ask
9 Your Honor just leave that up to the Court to
10 decide. However, my reading of it I think this is a
11 Ballenger situation, Judge, but I could be wrong.
12 I've been wrong before.

13 THE COURT: Since we're taking this brief
14 moment here to discuss the charge. What do you
15 think about mere presence and if I charge that what
16 do you think about the hand of one is the hand of
17 all?

18 MR. JEPERTINGER: Judge, there can be
19 mutual possession. There can be possession by more
20 than one person. I'd ask that you charge that and
21 —

22 THE COURT: That's a whole different thing
23 and obviously that is the law. And I will charge
24 that more than one person can have possession of a
25 drug —

1 those cases I would say this fits under a kind of
2 Ballenger circumstance like they refer to where he
3 actually possessed it and threw it.

4 THE COURT: Well, I think in that case
5 they charged, it had to do — the charge was
6 probably erroneous because it said that he didn't
7 have dominion and control over the property but I'm
8 going to read it and see but. What do you have to
9 say about that, Ms. Parrott? Very little?

10 MS. PARROTT: Yeah, I'm gonna go with what
11 you're arguing.

12 THE COURT: Well, what do you think?

13 MS. PARROTT: I mean, I think what John is
14 putting forth is against the State's. If that's
15 what he wants to go with then that would be better
16 for my client and I'll go with that. But you know,
17 I understand that where you're coming for on the
18 element —

19 THE COURT: So you don't have a position
20 on it one way or the other?

21 MS. PARROTT: Not necessarily because I
22 think I can argue it either way.

23 THE COURT: All right, okay. So you don't
24 care whether I charge it or not? You don't have a
25 position?

1 MR. JEPERTINGER: That's correct.

2 THE COURT: And I'm gonna charge that, but
3 the other law that I'm asking you about is —

4 MR. JEPERTINGER: About mere presence,
5 yes, I think —

6 THE COURT: —mere presence.

7 MR. JEPERTINGER: —I think those things
8 would be linked up in this case, Your Honor.

9 THE COURT: What do you think — what's
10 your position with regard to the hand of one is the
11 hand of all?

12 MR. JEPERTINGER: I'd ask that you both,
13 charge both.

14 THE COURT: What's your position,
15 Ms. Parrott?

16 MS. PARROTT: Your Honor, obviously I'd be
17 asking for mere presence, but not the hand of one is
18 the hand of all because in this case there are
19 certainly different circumstances for each of the
20 three people. One person stays, one person starts
21 to leave and another person is gone and still not
22 found for all we know.

23 THE COURT: Well, that would all seem to
24 be at least some evidence that are acting in
25 concert.

1 MS. PARROTT: With all due respect I
2 totally disagree. I don't see where there's any
3 concert in that. It looks like there's nothing that
4 they had in common on that so I would say that it's
5 just mere presence.

6 THE COURT: They all have an interest in
7 fleeing law enforcement which brings me to another
8 point. What is the state of the law with regard to
9 a charge that fleeing law enforcement is evidence,
10 can be considered as evidence of guilt?

11 MR. JEPERTINGER: I don't think you're
12 allowed to charge that. I think ---

13 THE COURT: At one time there was; wasn't
14 it?

15 MR. JEPERTINGER: It may have been. I
16 think I can argue it, but I don't think the Court is
17 allowed to charge it. I think that's an improper
18 charge.

19 THE COURT: Okay. What would -- why would
20 you say the hand of one is -- the hand of one is the
21 hand of all is not appropriate?

22 MS. PARROTT: Just to say as what I was
23 just arguing, Your Honor, as I don't see where there
24 is the same act of any of the three. One stays, one
25 starts to leave, and another one absolutely gets

1 away so I don't know that — I mean, I think for his
2 sake for him he is just there where the drugs were
3 found but —

4 THE COURT: Common scheme is escape and
5 common scheme is the dealing of the drugs or
6 trafficking in drugs.

7 MS. PARROTT: Just because people are all
8 in the same place doesn't, I mean, that is, that's
9 the theory of mere presence.

10 THE COURT: I'm gonna charge that, yeah.

11 MS. PARROTT: So I mean, I think that, I
12 don't know that you have any kind of common scheme
13 between them. You have no evidence of any kind of
14 concert or agreement between them to do any such.
15 This is just simply some people jumping out of a car
16 and one person stays so I don't know where there is
17 any kind of agreement or anything that seems to be
18 the act that would common between any of them.

19 THE COURT: What do you have to say about
20 that, Mr. Jupertinger?

21 MR. JEPERTINGER: Well, I, to keep it safe
22 I would ask that you not charge it. I think it will
23 behoove me for you not to charge, charge mere
24 presence, I agree with that.

25 THE COURT: Oh, okay, very good. All

1 right. Anything further before we bring the jury
2 out?

3 MS. PARROTT: Nothing from Defense, Your
4 Honor.

5 THE COURT: We're ready for the jury.
6 (WHEREUPON, the jury was returned to the
7 courtroom at approximately 1:44 p.m, and
8 the following proceedings commenced in
9 open court.)

10 THE COURT: Madam Forelady, ladies and
11 gentlemen of the jury, thank you for being here and
12 being here on time. We have one legal matter that
13 we had to tend to outside of your presence. Thank
14 you for being prompt.

15 Mr. Jupertinger, you're recognized.

16 MR. JEPERTINGER: Yes, sir. I'd call
17 Deputy Larry Quick to the stand.

18 THE COURT: Deputy Quick, if you could
19 please come forward, place your left hand on the
20 Bible and raise your right hand as the clerk
21 administers the oath.

22 WHEREUPON,

23 LARRY H. QUICK,
24 having been duly sworn by the Clerk of Court,
25 testified as follows:

SW - L. QUICK - DIRECT

1 THE CLERK OF COURT: Please be seated,
2 state your full name for the record.

3 THE COURT: I'd ask you pull up real close
4 to that microphone. Speak loudly, clearly, and
5 slowly in order that we can hear everything that
6 you've got to say.

7 THE WITNESS: Yes, sir.

8 THE COURT: Give us your full name,
9 Officer Quick.

10 THE WITNESS: My name is Larry Howard
11 Quick.

12 THE COURT: Thank you, Mr. Quick.

13 **DIRECT EXAMINATION**

14 BY MR. JEPERTINGER:

15 Q Deputy Quick, for how long have you been employed
16 with the Florence County Sheriff's Office?

17 A I've been working for them for — I'm on my tenth
18 year. I worked almost six years in the Detention
19 Center, and I'm working on my fourth area in the
20 evidence.

21 Q Okay. You were employed as the evidence
22 custodian back on February 4th, 2012?

23 A Yes, sir, I was.

24 Q Can you tell the ladies and gentlemen of the jury
25 what your responsibilities are as an evidence

SW - L. QUICK - DIRECT

1 custodian?

2 A The first thing in the morning I go and retrieve
3 the keys. I go and open up the evidence room. At
4 that time I usually bring up my computer. And then
5 there I go into narcotics; I pick up whatever
6 evidence they have in their safe. And then I go to
7 the squad room and I'll pick up the evidence that
8 the deputies have left during the night or the day
9 before. They're usually in lock boxes and I'm the
10 only one that has the key to that.

11 Q All right. Did you have an occasion on in
12 February to receive from the lock box item 2 that's
13 in evidence?

14 A Yes, sir, I did.

15 Q Okay. And what did you do once you retrieved
16 that item from the box?

17 A I'll take the evidence back to the evidence room,
18 and then I'll log it in on the computer. And it's
19 already placed in a sealed bag which is called a
20 Best pack. And once I complete it all, the drugs,
21 I'll take the Best pack to our chemist and we'll do
22 a chain of custody on that and I'll leave it with
23 him and he'll do his testing. Once he's finished he
24 will call me and let me know; I'll come pick it up.
25 We'll do a chain of custody again, and I'll bring

SW - L. QUICK - CROSS

1 it back to the evidence room and from there I'll
2 have certain boxes I put the evidence in.

3 Q And in this case did you do that with State's
4 Exhibit 2?

5 A Yes, sir, I did.

6 Q Okay. And did you bring State's Exhibit 2 to
7 court with you today?

8 A Yes, I did.

9 Q All right. Thank you. Please answer any
10 questions that the defense attorney might have for
11 you?

12 THE COURT: Ms. Parrott.

13 **CROSS-EXAMINATION**

14 BY MS. PARROTT:

15 Q Mr. Quick, you don't tamper with whatever is in
16 that Best pack in any way, do you?

17 A No, ma'am, I do not.

18 Q You receive it sealed?

19 A Yes, ma'am, I do.

20 Q And when you deliver it to the chemist it is
21 sealed as well?

22 A Yes, ma'am, that is correct.

23 Q The 1646-dollars in U.S. currency, you also
24 received that as well?

25 A Yes, ma'am, I did. Once I receive that I'll

SW - L. QUICK - CROSS

1 count the money, and once the money has been counted
2 it's put on a log sheet and from there it's packaged
3 into an envelope and then it's put in our gun safe.

4 Q And does it ever get withdrawn?

5 A If the deputies that turned it in, a lot of times
6 they'll come and pick it up and they'll sign out for
7 it and they'll take it to the bank.

8 Q And does it just stay in the Sheriff's Office
9 account at that point?

10 A Yes, ma'am.

11 Q It's considered a forfeiture; is it not?

12 A As far as I know, yes, ma'am.

13 Q Okay.

14 MS. PARROTT: Nothing further, Your Honor.

15 THE COURT: Any redirect?

16 MR. JEPERTINGER: Nothing further for
17 Deputy Quick and we'd ask if he could be excused.

18 THE COURT: Deputy Quick, you're free to
19 leave but you're welcome to stay if you would like.

20 THE WITNESS: Thank you, I appreciate it.

21 THE COURT: Very good, all right. You're
22 free to leave. Thank you.

23 You may call your next witness.

24 MR. JEPERTINGER: We call Mitchell Hansen
25 to the stand.

SW - M. HANSEN - DIRECT

1 THE COURT: Yes, sir, Mr. Hansen. If you
2 could come forward, place your left hand on the
3 Bible and raise your right hand as the Clerk
4 administers the oath.

5 WHEREUPON

6 MITCHELL R. HANSEN,
7 having been duly sworn by the Clerk of Court,
8 testified as follows:

9 THE CLERK OF COURT: Please be seated and
10 state your full name for the record.

11 THE COURT: Once again, I'm gonna ask you
12 to speak loudly, clearly and slowly in order that we
13 can hear everything that you got to say. And speak
14 into the microphone. And what is your full name?

15 THE WITNESS: Mitchell Reed Hansen.

16 **DIRECT EXAMINATION**

17 BY MR. JEPERTINGER:

18 Q Mr. Hansen, for whom are you employed?

19 A Florence County Sheriff's Office.

20 Q And what are your responsibilities for the
21 Florence County Sheriff's Office?

22 A I test control — substances turned in for
23 controlled substances.

24 Q And can you tell the ladies and gentlemen of the
25 jury what qualifications you may have in terms of

SW - M. HANSEN - DIRECT

1 testing controlled substances?

2 A I have a associates in science from Florence
3 Darlington TEC, associates in arts from Florence
4 Darlington TEC, a bachelor in chemistry from Francis
5 Marion University. I've been trained in forensic
6 drug analysis at SLED, and I have basic law
7 enforcement training from the academy.

8 Q All right. And approximately how many narcotics
9 cases have you tested during your tenure with the
10 Sheriff's Department?

11 A With the Florence County or total?

12 Q Yes. Do it Florence County and then in total?

13 A Florence County as far as cases wise, roughly
14 probably a little over a thousand.

15 Q And in total?

16 A Total probably over 8,000.

17 Q The other 7,000 where did you get that training
18 or experience from?

19 A From Sumter County Sheriff's Office and also
20 SLED.

21 Q All right. And have you ever been qualified in
22 state court in terms of being an expert in the field
23 of drug analysis?

24 A Yes.

25 Q Okay. How many times have you been qualified as

SW - M. HANSEN - DIRECT

1 an expert in the field of drug analysis?

2 A 34 times.

3 Q And today will be, if you're qualified this will
4 be your 35th time?

5 A Yes.

6 MR. JEPERTINGER: At this time I would
7 move to qualify Mr. Hansen as an expert in the field
8 of drug analysis.

9 THE COURT: Ms. Parrott, do you have any
10 query with regard to his qualification?

11 MS. PARROTT: No, Your Honor.

12 THE COURT: Madam Forelady, ladies and
13 gentlemen of the jury, normally a person can't give
14 opinion testimony. Normally when a person testifies
15 they must testify as to what they either saw, heard,
16 or sense by smell. However, there's an exception
17 when someone is qualified because of their education
18 or experience. They're permitted to give their
19 opinions in certain areas if the Court qualifies
20 them that way. This witness will be qualified in
21 the area of drug analysis to give opinion testimony
22 in that area. It does not mean that you must accept
23 the opinion. It is evidence for you to use any way
24 you see fit.

25 Mr. Jepertinger.

SW - M. HANSEN - DIRECT

1 MR. JEPERTINGER: Thank you, Your Honor.

2 BY MR. JEPERTINGER:

3 Q Mr. Hansen, I'm going to show you what's been
4 marked as State's Exhibit 2; but before I do I'm
5 just gonna ask you if you could tell the ladies and
6 gentlemen of the jury what the difference is between
7 cocaine and cocaine base, also commonly referred to
8 as crack?

9 A Regular cocaine is and cocaine crack are
10 basically the same thing. It's just in different
11 what we call forms. One is a salt form. The other
12 is in a base form. And that is the main difference
13 between the two.

14 Q Now which one is in the salt form?

15 A Regular cocaine or powder cocaine is in the salt
16 form.

17 Q Okay. And the crack would be in the base form

18 —

19 A Correct.

20 Q —is that correct? Would someone have to do
21 something to cocaine to make it crack cocaine?

22 A Yes.

23 Q And could you tell the ladies and gentlemen a
24 little bit about how you make crack cocaine?

25 A Mainly to change the form they'll use a base.

SW - M. HANSEN - DIRECT

1 That base most of the time is baking soda; and
2 they'll actually take and mix the two together, heat
3 it up, and it will react and convert to base form.

4 Q All right. Is that something that can be done on
5 a stove top?

6 A Yes.

7 Q Okay. Now I will get to State's Exhibit 2. Can
8 you tell the ladies and gentlemen how you received
9 this complete package. And I know there's an outer
10 bag here; is that correct?

11 A Yes.

12 Q And there seems to be a wrapped up little bag
13 here, correct?

14 A Correct.

15 Q With writing on it?

16 A Yes.

17 Q And an inner bag with the cocaine base; is that
18 correct?

19 A Yes.

20 Q Okay. Tell me how you received this packaging
21 and how it came to be sealed again.

22 A This packaging would have come to me, at the top
23 it would have been sealed in this outer, this bag
24 that you're seeing. I have folded it. The contents
25 that were inside were the plastic bag and this

SW - M. HANSEN - DIRECT

1 substance here. I actually, when I test it I had to
2 take it out of this bag so I placed it into this
3 ziplock bag. This bag is sealed. At the top of
4 this bag it is a very sticky adhesive and there's
5 markings all the way around the bag. This is a Best
6 kit bag. It's a tamper evident bag. So when I get
7 it I look at it to see if these markings are
8 stretched or cut open or anything to see if it's
9 been tampered with.

10 Q Was there any — upon your visual examination was
11 there any proof of tampering with the substance?

12 A No, it was not.

13 Q All right. Okay, go on please. What did you do
14 then?

15 A From there I will check the seal. The seal was
16 intact. I actually wrote on the bag. I will
17 actually cut the bottom to get the contents of the
18 bag out and from there proceed to testing.

19 Q Now at any point along this testing do you weigh
20 the substances that are submitted to you?

21 A Yes. Once we open them up, the first thing we do
22 is weigh the substance by itself after we remove all
23 the packaging. From there we'll do a chemical test
24 and that kind of indicates what we're dealing with,
25 what form it's in, whether it's in a salt form or

SW - M. HANSEN - DIRECT

1 base form. From there I pull a small sample where
2 we use the GC mass spec to identify the substance.

3 Q Let's get back to the weight. If the officers
4 testified that there was an approximate field weight
5 of 28-grams can you explain any discrepancy between
6 a field weight of 28-grams versus the weight that
7 you came to say the substance weighed?

8 A Most of the time when officers weigh it in the
9 field they'll weigh the packaging and everything.
10 when it comes for actual testing we only weigh the
11 actual substance to get an exact weight of the
12 substance. We don't weigh any package or anything.

13 Q Do you — are you familiar with the scales that
14 the officers use on field?

15 A I'm not familiar with the ones they actually use;
16 but I'm familiar in recent, with other, you know,
17 officers using scales.

18 Q And are they the same make and model that you use
19 in the laboratory?

20 A No, they're not. Ones that are used in the field
21 are basically just a, to give a rough estimate.
22 They're a cheap scale. The ones we actually weigh
23 on weigh out to several decimal places. They're
24 actually calibrated and checked monthly.

25 Q We couldn't pick up your scale at Wal-Mart?

SW - M. HANSEN - DIRECT

1 A No.

2 Q Okay, all right. Now you did weigh. Now let me
3 ask you this, when you get a substance like cocaine
4 base is — does the substance contain liquid at
5 times since I guess it's cooked on with baking soda?

6 A Could it be liquid?

7 Q Well, what I'm asking, could water increase the
8 weight?

9 A Yes, water, water can increase the weight if it
10 happened to get wet.

11 Q Okay. When you tested it did you notice whether
12 it was wet or dry, or was it a period of time before
13 you got it from when it was first seized?

14 A Let's see, apparently it was seized on
15 February 4th and I received it on February 7th.

16 Q Three days later?

17 A Three days later.

18 Q Okay.

19 A It's possible that it could have been wet and
20 dried some. It did not appear to be wet when I —
21 the crack, the substance itself did not appear to be
22 wet when I took it out the bag.

23 Q Okay. Now you mentioned something about two
24 types of tests. I think you did a, what, a chemical
25 test on it?

SW - M. HANSEN - DIRECT

1 A I did a chemical test.

2 Q Now explain that to the jury once again slowly
3 and try to keep it in layman's terms if you can.

4 A A chemical test, we'll use just a little spot
5 test dishes where we can put chemicals in. We will
6 take a small sample of the substance, place it into
7 the dish, and we'll put some of the chemicals on it.
8 What will happen in a chemical reaction will turn.
9 it will turn in color and that color will kind of
10 indicate what we're dealing with. It's a
11 presumptive test.

12 Q Okay. When you did the presumptive test on the
13 substances in State's Exhibit 2 what did it tell
14 you?

15 A It told me that I was dealing with a cocaine
16 base.

17 Q Okay. What is your confirmatory test that you do
18 then?

19 A Confirmatory test we use a GC mass spec. We'll
20 actually pull a sample and that actually gets run
21 through the GC.

22 Q What is a GC?

23 A The GC is an instrument. There are two parts to
24 a GC mass spec. There's a GC part and a mass spec
25 part. The GC part wants to injects the sample into

SW - M. HANSEN - DIRECT

1 it. It runs through a 30-meter column and what
2 happens is the different compounds get separated.
3 Most of the time we have more than one thing in a
4 compound so you have what the GC doesn't separate it
5 out. The mass spec actually identifies each
6 compound.

7 Q Okay. So you ran it through both of these
8 things, correct?

9 A Yes.

10 Q And I think the GC was a gas— gas —

11 A Gas chromatograph mass spectrometer.

12 Q Okay, you ran it through both those things. I
13 don't think I can pronounce them again, but you ran
14 it through that. And what did the substance
15 ultimately that you can render an opinion within a
16 reasonable degree of drug analytical certainty, that
17 this substance turned out to be?

18 A It turned out to be cocaine base.

19 Q And that's commonly known as crack cocaine?

20 A Correct.

21 Q Okay. And in terms of weight how much did the
22 substance weigh?

23 A My weight was 17.84 grams.

24 Q Could you write that on the chalk board please.

25 A (Complies.)

SW - M. HANSEN - CROSS

1 Q Okay. After you tested that and determined that
2 it was cocaine base and it weighed 17.84-grams what
3 did you do with the substance?

4 A Once my testing was complete I actually put it in
5 this heat sealed package. I wrote sealed, dated it,
6 and initialed it on the inside and I heat sealed it.
7 Once that's done I turn it back into evidence.

8 Q Did you do that in this case?

9 A Yes, I did.

10 Q All right. Thank you so much. Please answer any
11 questions that Ms. Parrott may have for you.

12 **CROSS-EXAMINATION**

13 BY MS. PARROTT:

14 Q What you're basically telling me is that that is
15 packaged — Your Honor, may I approach?

16 THE COURT: Yes.

17 BY MS. PARROTT:

18 Q This is packaged here today, that's not how it
19 was out on the street, is it?

20 A No, it's not.

21 Q Okay. You've actually put it in, or they have
22 put it in more bags because that's how a Best kit is
23 done, correct?

24 A Yes.

25 Q Okay. Whenever you weigh it you've taken it out

SW - M. HANSEN - CROSS

1 of this big bag, right?

2 A Correct.

3 Q And you've taken it out of -- you put it in this
4 little bag in here, correct?

5 A I've taken it out of the Best kit itself out of
6 the original packaging and weigh just the substance.

7 Q Okay.

8 A Once I'm done I put it back in that ziplock bag.

9 Q And that plastic that's right there?

10 A That is one of the bags that was in the -- the
11 bag that the substance was in.

12 Q Whenever it was original, in its original form?

13 A Correct.

14 Q Okay. So whenever you take it out or took it out
15 of its original packaging you put it back in here.

16 Do you make sure you get all of the substance?

17 A As much as I possibly can. We have wax coated
18 weighing papers that normally everything slides
19 right off.

20 Q Okay. Is there any residue that's been left that
21 you can see?

22 A I'm sure there probably is residue on the bag.

23 It's impossible to get all the substance out of a
24 plastic bag.

25 Q Okay, but it would be minimal?

SW - M. HANSEN - CROSS

1 A It would be minimal.

2 Q Okay. So whenever you are looking at it, it was
3 28-grams as it was delivered to you in their
4 paperwork; is that correct?

5 A I don't know what their paperwork would be. I do
6 not receive that.

7 Q Okay. But when you weigh it it comes to 17.84?

8 A Correct.

9 Q Do you agree if they said it was 28-grams and now
10 you're saying it's 17.84, that's a difference of
11 10.16-grams?

12 A Yes.

13 Q That's almost half of the weight?

14 A Well, I wouldn't say it's half but it's —

15 Q 28 down to 17 is a difference of 10 so?

16 A Yes.

17 Q Okay. 10/28 would be the fraction?

18 A I'm sorry, I didn't hear you.

19 Q That's okay. The usual variance that you found
20 whenever you've been doing this over your thousands
21 of cases, is it usually 10-grams difference?

22 A It can be. It depends on the weight. It depends
23 on the scales that are actually used. Some of the
24 scales that are used are just approximate weights.
25 They're not, they're not calibrated scales.

SW - M. HANSEN - CROSS

1 Normally when we find those cases out there we let
2 them know and get them to stop using those kinds of
3 scales.

4 Q So their scales can be totally wrong?

5 A Sometimes.

6 Q Okay. I have nothing further.

7 THE COURT: Any redirect?

8 MR. JEPERTINGER: No, sir. And I would
9 ask that Deputy Hansen be allowed to leave.

10 THE COURT: All right. You're free to
11 leave.

12 Any objection, Ms. Parrott?

13 MS. PARROTT: No, Your Honor.

14 THE COURT: You're free to leave.

15 MR. JEPERTINGER: Your Honor, that will be
16 the State's case.

17 THE COURT: Very good. Madam Forelady,
18 the State has rested and that requires that we take
19 up some matters of law outside of your presence.
20 Once again, I'm gonna ask that you retire to the
21 jury room, but do not discuss the case.

22 (WHEREUPON, the jury was removed from the
23 courtroom at 2:07 p.m., and the following
24 proceedings commenced in open court.)

25 THE COURT: Happy to entertain motions at

1 this time.

2 MS. PARROTT: Your Honor, the Defense
3 would make a motion for a directed verdict based on
4 the evidence that's been presented. I understand
5 that this is a case that's based on circumstantial
6 evidence, and as my understanding is, is that when
7 it is a circumstantial evidence case it has to be
8 substantial circumstantial evidence to override
9 what's necessary for a directed verdict and I would
10 submit to you that the evidence presented is not
11 substantial.

12 THE COURT: Mr. Jепertinger, I'll be glad
13 to hear from you.

14 MR. JEPERTINGER: I disagree with my
15 cocounsel here. I think it is substantial
16 circumstantial and direct evidence.

17 THE COURT: Very good. Your motion is
18 noted for the record. And I think in view of the
19 fact that we have testimony that the arresting
20 officer saw him discard the crack cocaine and that
21 it was found in close proximity to circumstantial
22 evidence of where it was found and the fact that we
23 have direct evidence that he saw him throw it, I
24 think that gets us past the directed verdict stage
25 but you'll be given wide latitude with regard to

1 argument in that regard. So your motion is noted
2 but denied.

3 MS. PARROTT: Thank you, your Honor.

4 THE COURT: Ms. Parrott, do you intend on
5 introducing any evidence?

6 MS. PARROTT: No, Your Honor.

7 THE COURT: All right. I'm gonna ask if
8 y'all can come forward and take a look at the
9 verdict form.

10 (WHEREUPON, counsel approached the Bench
11 for an on-the-record discussion.)

12 THE COURT: Do you have an objection?

13 MR. JEPERTINGER: The only, it would be
14 trafficking cocaine base between 10 to 28-grams. I
15 don't know if that makes any difference but I
16 would — that's what it will be I guess.

17 THE COURT: I don't think that's necessary
18 but I'll put on the verdict form I think traffic is
19 going to be defined in the charge. It's going to be
20 set out in your argument, but if you want me to put
21 that on there I'll put it. Do you want me to put
22 that on there? I'm gonna define what obviously
23 verdict form. There are a bunch of elements that go
24 into it, and of course, I charge them the law. And
25 there's only one thing it could be is trafficking

1 from 10 to 28, and I think that's very clear. Do
2 you want me to put it on there?

3 MR. JEPERTINGER: I just brought it up,
4 Judge. I think we'll be okay.

5 THE COURT: Okay, very good. So no
6 objection to the verdict form from the State?

7 MR. JEPERTINGER: No objection, Your
8 Honor.

9 THE COURT: Any from Defense?

10 MS. PARROTT: No, Your Honor.

11 THE COURT: All right. Let's go over at
12 this time, we'll have us a jury charge conference.
13 I'm going to charge the law the fact that he is
14 indicted is not evidence, presumption of innocence,
15 reasonable doubt, duties of the jury and the trial
16 judge, direct and circumstantial evidence. I'm
17 gonna explain to them the law about how to evaluate
18 the credibility of witnesses. I'm gonna charge them
19 the law with regard to failure of the defendant to
20 testify. I'm gonna charge trafficking, the law --
21 the basic law about what trafficking is. I'm gonna
22 charge possession. And based on the request of the
23 State and the acquiescence on behalf of the
24 Defendant I'm not gonna charge the aspects of
25 constructive possession. Is that the State's

1 position?

2 MR. JEPERTINGER: Yes, sir.

3 THE COURT: Is that the Defense's
4 position?

5 MS. PARROTT: Yes, Your Honor.

6 THE COURT: Very good. I'll also charge
7 two or more people may have joint possession of the
8 drug. I'm gonna charge that the State in this case
9 has to prove the amount of the drugs was 10-grams,
10 more than 10-grams, 10-grams or more but less than
11 28-grams. I'm gonna charge mere presence. And I'm
12 also gonna charge the law with regard to expert
13 testimony. And after I charge the law you'll be
14 given ample opportunity to object or ask for
15 additional charges; but at this time,
16 Mr. Jepertinger, do you have any objections or
17 additional requests?

18 MR. JEPERTINGER: I think it's just right,
19 Judge.

20 THE COURT: I like that, there you go.

21 Ms. Parrott?

22 MS. PARROTT: No, Your Honor.

23 THE COURT: It meets with your approval?

24 MS. PARROTT: Yes, Your Honor.

25 THE COURT: Very good. And under these

1 circumstances, Mr. Jepertinger, you'll go first. Do
2 you need some time to gather your thoughts?

3 MR. JEPERTINGER: Yes, sir.

4 THE COURT: All right. We will take about
5 a ten minute recess. Very good.

6 (WHEREUPON, a recess was taken from the
7 proceedings.)

8 THE COURT: Anything before we bring the
9 jury out, Mr. Jepertinger?

10 MR. JEPERTINGER: No, sir.

11 THE COURT: Have you gathered your
12 thoughts?

13 MR. JEPERTINGER: Oh, they're gathering,
14 Judge.

15 THE COURT: Ms. Parrott, anything before
16 we bring the jury in?

17 MS. PARROTT: No, Your Honor.

18 THE COURT: You're ready for the jury.

19 MS. PARROTT: Yes, sir.

20 (WHEREUPON, the jury was returned to the
21 courtroom at approximately 2:25 p.m., and
22 the following proceedings commenced in
23 open court.)

24 THE COURT: Madam Forelady, ladies and
25 gentlemen, the State has concluded their case.

1 At this time, Ms. Parrott, you're
2 recognized.

3 MS. PARROTT: Your Honor, Defense would
4 rest.

5 THE COURT: Very good, all right. Madam
6 Forelady, ladies and gentlemen of the jury, at this
7 juncture we've heard all of the evidence that's
8 going to be presented in this case. As I mentioned
9 to you at the outset of this case, now is the time
10 for closing arguments. What these lawyers are gonna
11 say to you is not evidence; however, it will aid you
12 immensely in your deliberation process. I'm gonna
13 ask you pay very close attention as these very fine
14 lawyers give you their closing arguments.

15 Mr. Jepertinger.

16 MR. JEPERTINGER: Thank you. May it
17 please the Court, counsel, Madam Forelady, and
18 ladies and gentlemen. I know my youthful outer
19 appearance to the contrary, I'm as old as dirt and
20 one of the old adages that I remember growing up
21 that I learned, that you may have heard yourself, is
22 that the guilty flee where none pursue. And in this
23 case we don't have to go over every little detail.
24 I'm not gonna show you the video again. You're
25 gonna have it. If you want to watch it you'll let

1 us know and we'll show it to you again. The video
2 stated, if you paid attention — I know it kind of
3 popped up on the screen there. They did mention
4 something about the window tint, and they stopped,
5 and whoever the driver was took off like a scalding
6 dog. I mean, he, no question about that. And when
7 you look at that screen I know the folks in the back
8 row probably have a little difficulty but there kind
9 of on the left you can see the speed. They were the
10 speed section on there and you could see them going
11 over 90-miles an hour on Cashua. But that's neither
12 here nor there. And you say to yourself, well, that
13 driver, man, he knew, he knew he was in trouble.
14 Whether it was for this or something else, he had
15 enough. He had enough. You know, why you gonna go
16 crazy over window type situation, you know. And I
17 don't know if he knew why the police were stopping
18 him at that time, but he was going to get stopped.
19 And he ran, no question about that. But this begs
20 the question for us. This begs the question, if
21 Toddrique was just riding along and in this high
22 speed chase yelling at the guy what are you doing,
23 what are you doing, what are you doing, why when
24 that driver door opened on Sumter Street, why did he
25 run? He was scared? He wasn't driving, that was

1 obvious. You know, think about it. When you look
2 at the context who didn't run? The other back seat
3 passenger. In fact, it took this young lady, she
4 had to look over at that car, took her telling him,
5 giving him a hand, get out of the car. What did he
6 do? Calmly walked around the car as you saw and he
7 laid down. There was no running at that point.
8 There wasn't even attempt to run. You know, you
9 didn't see him as she gone by jump out of the car
10 and come running towards the camera. Ha, ha, they
11 didn't see me, let me get out. He didn't run at
12 all. His conduct, Travis Black's conduct, by the
13 video is greatly to the consciousness of guilt by
14 conduct that we see in Toddrique Henderson.

15 What did Officer Keefe testify to that we
16 couldn't see on the video? I saw him throw
17 something over the fence. Was anything else around
18 that, any garbage, beer can, cigarette pack, Juicy
19 fruit wrapper, nothing. The only thing that was
20 there was 17.84-grams of crack cocaine also known as
21 cocaine base; that was it. Who threw it? The only
22 person who saw throw it was who? Toddrique
23 Henderson. You see the driver throw it? No. What
24 was — we found this little baggie here. What was
25 the condition of that? It looked like it had been

1 freshly placed there. Not one officer, but two
2 officers testified to that. There was no dirt on
3 it. You look at the bag yourself. No dirt on it,
4 doesn't look like it'd been rained on, nothing. As
5 if it were freshly placed there. Did you see
6 anybody lay anything down? Listen, I was right out
7 there with him, he had just been tazed, I handcuffed
8 him, there were no people on the other side of that
9 fence. That was it. He was a sole customer.
10 Travis Black walked around. She didn't say Travis
11 threw anything, nothing. The only person that could
12 have thrown that, that could have placed it there
13 freshly, was the individual that Dane Keefe saw
14 throw it and who is that? Toddrique Henderson.
15 How much were the drugs? 17.84-grams.
16 Now why is that significant? The Court is going to
17 tell you if you are in possession of 10-grams or
18 more of cocaine base that constitutes the crime of
19 trafficking. Discrepancy. They field tested it and
20 said it came up to 28-grams on the field. It came
21 back 17.84-grams. If they were trying to really
22 stick it to Toddrique don't you think they would
23 have field tested it and made it 5-grams or
24 something like that and the weight would have been
25 more when it was officially tested. I mean, it is

1 what it is, folks. We — the Court is going to ask
2 you to use your good old fashioned common sense.
3 This case speaks but for one verdict and that
4 verdict is guilty. I'm not saying Toddrique is a
5 bad person. I'm just saying to ask the question,
6 did he possess 17.84-grams on that day? Yes, he
7 did.

8 Now the judge is going to tell you that we
9 have to prove that he possessed it, that he was in
10 actual possession of those drugs. No, the drugs
11 were not found on him; that goes without saying.
12 But the officer saw the drugs in his hand and he
13 threw it. Circumstantially, the circumstantial
14 evidence is a chain of evidence where you can draw
15 one conclusion and then form one fact from another.
16 The only object that was on the other side of that
17 fence were those drugs that the officer saw he
18 threw. The Court is gonna tell you that it can also
19 be mutual possession, if there are more than one
20 codefendant. If you think, hey, maybe it was the
21 driver's stuff and he just told him get rid of it,
22 they can both be guilty of mutually possessing a
23 drug if it is in close proximity to them. Folks, I
24 mean, I don't know what was in the driver's mind.
25 It'd be very hard to tell, don't even know who the

1 driver is; but the certainty, the certainty is that
2 he had it, he threw it, he possessed it.

3 In each and every case we are required to
4 prove guilt beyond a reasonable doubt. It's not a
5 fanciful doubt. It's not beyond a shadow of a
6 doubt. Listen, if I could have been there I would
7 have ripped that camera out of the car, patrol
8 vehicle, and walked up while he was tazing him,
9 walked up while he was doing it. This is not a
10 motion picture; this is a real life. They presented
11 to you what they had. They had to act very quickly
12 to get Toddrique. They gave chase to get the driver
13 and it couldn't be done, but they did what they
14 should have done in this case and because of their
15 actions 17.84-grams of crack that we know that is
16 valued at approximately a hundred dollars a gram.
17 Just add, multiply that by a hundred you know that's
18 right at 1,784-dollars, that that stuff is off the
19 street and for that I'm grateful.

20 Now Ms. Parrott, in her cross-examination
21 argued or was suggesting, implying, well it was
22 around tax season. How do you know that the 1646
23 didn't come from a tax return. That's an
24 interesting question, but — and another thing that
25 I left out, well, he found all this cash. He's got

1 all this 1724-grams, why didn't he just throw the
2 drugs out the window on Cashua. Well, I don't think
3 he thought he was going to get caught. And if
4 you're in the business of trafficking crack cocaine
5 you're not gonna get rid of your product and you're
6 not gonna get rid of your cash register. You don't
7 do that until the building is burning down
8 completely. You walk away with your inventory and
9 your cash register. If you're in business like this
10 you don't do it until the bloody end.

11 I thank you for your attention. I ask
12 that you reach a verdict that speaks the truth.
13 Hold your convictions on this but the evidence
14 points to only one conclusion in this case, that
15 this young man is guilty. Thank you.

16 THE COURT: Thank you, Mr. Jepertinger.
17 Ms. Parrott, you're recognized.

18 MS. PARROTT: Thank you, Your Honor. May
19 it please the Court, and counsel.

20 THE COURT: Yes.

21 MS. PARROTT: With all due respect to my
22 opposing counsel, I think that the evidence is
23 exactly opposite to everything he's just told you.
24 That there is only one verdict in this case, we can
25 agree on that, but that the only verdict that is

1 just in this with the evidence that has been
2 presented to you is not guilty. I do not believe
3 that they have met their burden beyond a reasonable
4 doubt that Mr. Henderson possessed those drugs. Now
5 this has been a short case and so I don't, you know,
6 I don't mean to belabor anything because this is
7 something I believe everyone had been paying great
8 attention to and that video does speak volumes. Mr.
9 Henderson was in a white shirt. You saw him get out
10 the car after for lack of a better name for him,
11 Forest Gump, ran and has been gone ever since. But
12 you saw Mr. Henderson get out. They say that he got
13 out of the car, went around it, and was jumping or
14 trying to jump a 6-foot fence. I submit to you that
15 that video does not show a white shirt approaching
16 any kind of fence much less one that was 6-feet. I
17 don't believe that fence they showed is 6-feet, but
18 I don't see a white shirt going towards there.

19 Now, again, with all due respect to
20 Officer Keefe, he's getting out of a car. He's
21 trying to run after people that he believes are in
22 some sort of wrong. He's coming from behind.
23 They're running in two different directions. And he
24 is pulling his tazer out and he thinks he sees
25 somebody throw something at the same time he's also

1 trying to taze somebody and keep track of where the
2 other person is going? That's a lot that's going on
3 at the same time. And I -- even if he thinks that
4 he saw him possibly throw something, isn't it
5 possible also that if he really was trying to jump a
6 fence that the motion of trying to jump might have
7 looked different, especially as you're rounding a
8 car.

9 This is an open area; this is Sumter
10 street. You saw as the video is, that they didn't
11 have to force down any fences to get into this area.
12 This is just where the car wrecked into that fence
13 as to where they stop. Mr. Henderson is not the
14 driver. He didn't choose where to stop; he didn't
15 choose to go on the chase. Wouldn't you think it
16 would have made sense if you knew that there were
17 drugs in the car and you're on a two to three minute
18 chase on a four lane road going down the road and
19 then if you turn on to Sumter Street where there are
20 always cops in the area, and you know you're fixing
21 to be in a cop ridden area, wouldn't you have wanted
22 to get rid of something if you knew you had it
23 before you ever get to a stop, before you ever have
24 to deal with a cop? Again though, as you watch that
25 video, you see almost immediately people are walking

1 out. You can even see them kind of trying to look
2 without being seen necessarily by that cop standing
3 on the other side. It's in their nature possibly to
4 be curious; but I submit you, it's also in their
5 nature, especially if you have someone who is
6 dealing drugs who lives in that area to leave
7 something on a fence line to where they can't be
8 found to be in actual possession of it whenever
9 those cops who are always in the area are coming
10 around. And the State wants you to believe that
11 they're gonna have other kinds of debris in the
12 area. Well, I would also submit to you that drug
13 dealers are actually smarter than that, as crazy as
14 it may be, that most of the time they're not gonna
15 hide their stash in a place that's gonna draw a
16 cop's attention. So they're not gonna keep a bunch
17 of stuff around on the ground. They're not gonna
18 have somebody constantly looking to see what is
19 that. So if they keep it outside they're gonna keep
20 it in a place where they have easy access to it and
21 it's not gonna draw a cop's attention.

22 They want to say that he's got 1600
23 dollars on him and so that must be evidence of drug
24 dealing. Well, I would also submit to you that it
25 is tax time and it's not illegal to have some cash

1 on you particularly if you don't necessarily have
2 bank accounts like a lot of people. You know, you
3 might be carrying around a just cashed check, but I
4 also submit to you that they want it to be
5 Mr. Henderson because that 1646 dollars got
6 deposited into the Sheriff's Office and that's where
7 it stays. There's no mention of Mr. Black having
8 any money on him, and we have no idea what the
9 driver had, but they found 1646-dollars on him so if
10 the drugs are his they keep the money, they get the
11 stat.

12 There are discrepancies in the report,
13 28-grams versus 17-grams. Did it happen at [REDACTED]
14 [REDACTED], did it happen at [REDACTED],
15 was this officer present, was this officer driving?
16 Who was in charge of everything involved here? She
17 states — excuse me, when she wrote that report
18 right after this occurs that she believes that she
19 had a correct, accurate, detailed, complete report.
20 It didn't include all of these things. Ladies and
21 gentlemen, I submit to you it didn't include all of
22 these things because it didn't happen that way. It
23 didn't happen that he saw him throw the drugs
24 because that wasn't the way it was, otherwise, it
25 would have been included. That is pretty important.

1 But a year later, it's a lot easier to make up and
2 say it now, and I'd have to answer for it a year
3 ago. It's a lot easier to try to pad your report a
4 year later if you didn't put all the details in.

5 This is a duplex where this occurs.
6 Multiple people have access. And I submit to you
7 that just because you are where something else
8 illegal has occurred doesn't necessarily mean that
9 you're the person responsible. If I go walking on
10 the rail trail and I see a bunch of beer bottles
11 down on the side, does it mean that I'm the one who
12 was the one who was drinking them or drinking
13 whatever alcohol that was? If I'm at West Florence
14 going around the track I see condoms on the side
15 where somebody may have been doing something they
16 shouldn't have, does that mean I'm the one that did
17 it or I'm just the person who was there and saw it.
18 I submit to you that just because you're there
19 doesn't mean that you're the one who did it. I also
20 submit to you that this officer admitted exactly
21 what this was. She put him in cuffs because she
22 believed him to be in drug activity, involvement.
23 She said that she put him in cuffs then later
24 because of officer safety, but her first reason was
25 she believed him to be in drug activity. It appears

1 that there was already an idea of what they thought
2 this was. This is what this PACE team does,
3 basically have done. They're basically drug agents.
4 They'd already made up their mind what the stop was
5 about before they ever started looking for anything
6 or were ever told anything. They already had their
7 ideas. And now that it's gone to trial it's time to
8 fit the evidence to what they believed it was and
9 the facts that they wanted it to be.

10 Ladies and gentlemen, I submit to you that
11 they haven't prove than Mr. Henderson was in actual
12 possession, and therefore, the only just verdict in
13 this case is not guilty. Thank you.

14 THE COURT: Thank you, Ms. Parrott.

15 Madam Forelady, ladies and gentlemen of
16 the jury, you've heard all of the evidence, you've
17 heard the closing arguments. You've paid very close
18 attention. At this time I'm gonna charge you the
19 law because that's what you've taken a solemn oath
20 to do, to listen to the evidence, find out what the
21 truth is and apply it to the law. I wish there was
22 an easy way to do that but there isn't. I know that
23 you just had lunch, it's the middle of the
24 afternoon. These are important matters. It's
25 important to the State of South Carolina; it's

1 important to the Defendant. I'm gonna ask that you
2 pay very close attention as I charge you the law.

3 Madam Foreman, ladies and gentlemen of the
4 jury, the indictment charges the defendant with
5 trafficking in cocaine base. I remind you that the
6 fact the defendant was arrested, charged, and
7 indicted is not evidence. It cannot be considered
8 by you as evidence of guilt, nor does it create any
9 presumption or inference of guilt. This document is
10 simply the formal written instrument which contains
11 the charge made against the defendant. It is the
12 formal document by which this case is brought into
13 this court. Ladies and gentlemen of the jury, the
14 defendant has pled not guilty to this indictment,
15 and that plea puts the burden on the State to prove
16 the defendant guilty.

17 A person charged with committing a
18 criminal sex— criminal offense in South Carolina is
19 never required to prove himself innocent. I charge
20 you that it is an important rule of law that the
21 defendant in a criminal trial no matter what the
22 seriousness of the charge may be, will always be
23 presumed to be innocent of the crime for which the
24 indictment was issued and his guilt has been proven
25 by evidence satisfying you of that guilt beyond a

1 reasonable doubt.

2 This presumption does not end when you
3 begin your deliberations, but it accompanies the
4 defendant throughout the trial till you reach a
5 verdict of guilt based on the evidence satisfying
6 you of that guilt beyond a reasonable doubt. The
7 presumption of innocence is like a robe of
8 righteousness placed about the shoulders of the
9 defendant which remains with the defendant until it
10 has been stripped from the defendant by evidence
11 satisfying you of the defendant's guilt beyond a
12 reasonable doubt. The presumption of innocence is
13 not a mere legal theory; it's not just a legal
14 phrase. It is a substantial right to which every
15 defendant is entitled as you, the jury, are
16 satisfied from the evidence of the defendant's guilt
17 beyond a reasonable doubt.

18 What is reasonable doubt in the law? A
19 reasonable doubt is the kind of doubt that would
20 cause a reasonable person to hesitate to act. The
21 State has the burden of proving the defendant guilty
22 beyond a reasonable doubt. Some of you may have
23 served as jurors in civil cases where you were told
24 that it's only necessary to prove that a fact is
25 more likely true than not true, such as by a greater

1 weight or preponderance of the evidence. In
2 criminal cases the State's proof must be more
3 powerful than that; it must be beyond a reasonable
4 doubt. Proof beyond a reasonable doubt is proof
5 that leaves you firmly convinced of the defendant's
6 guilt. There are very few things in this world that
7 we know with absolute certainty. And in criminal
8 cases the law does not require proof that overcomes
9 every possible doubt.

10 If based on your consideration of the
11 evidence you're firmly convinced that the defendant
12 is guilty of the crime charged you must find the
13 defendant guilty. If on the other hand you think
14 there's a real possibility that the defendant is not
15 guilty you must give the defendant the benefit of
16 the doubt and find him not guilty.

17 I remind you that during this trial you
18 and I have certain duties to perform. As the trial
19 judge it is my responsibility to preside over the
20 trial. I also have the duty to rule on
21 admissibility of evidence offered during this trial.
22 You're to consider only the competent evidence
23 before you. If there was any evidence ordered
24 stricken from the record in this case during this
25 trial you must disregard that testimony. You're to

1 consider only the testimony which has been presented
2 from this witness stand and any exhibits which have
3 been made a part of the record in this case and any
4 stipulations of counsel. I have the additional duty
5 to charge you the law applicable to this case. As
6 the presiding judge I am the sole judge of the law
7 of this case. It is your duty as jurors to accept
8 and apply the law as I now state it to you.

9 If you already have an idea as to what the
10 law is or what the law ought to be, it does not
11 agree with what I now tell you the law is, you must
12 abandon this idea 'cause you are sworn to accept the
13 law and apply the law exactly as I state it to you.
14 In every case tried in this court before a jury the
15 jury becomes the sole and exclusive judge of the
16 facts in a case. A trial judge cannot intimate,
17 state, comment on, or make any statement to a trial
18 jury about the facts in a case. Since you, the
19 jury, are the sole judge of the facts in this case
20 you're not to infer from what I've said during the
21 progress of this trial in ruling on admissibility of
22 evidence or otherwise or anything that I say now
23 during the course of this instruction to you, that I
24 have any opinion about the facts in this case. The
25 law simply does not allow me to have an opinion

1 about the facts. This is a matter solely for you,
2 the jury, to determine. As jurors it is your duty
3 to determine the effect, value, weight, and truth of
4 the evidence presented during this trial.

5 Ladies and gentlemen of the jury, there
6 are two types of evidence which are generally
7 presented during a trial, direct evidence and
8 circumstantial evidence. Direct evidence is the
9 testimony of a person who claims to have actual
10 knowledge of a fact such as an eyewitness. It is
11 evidence which immediately establishes the main fact
12 to be proved. Circumstantial evidence is proof of a
13 chain of facts and circumstances indicating the
14 existence of a fact. It is evidence which
15 immediately establishes collateral facts from which
16 the main fact may be inferred. Circumstantial
17 evidence is based on inference and not on personal
18 knowledge or observation. The law makes absolutely
19 no distinction between the weight or value to be
20 given to either direct or circumstantial evidence,
21 nor is a greater degree of certainty required of
22 circumstantial evidence than of direct evidence.
23 You should weigh all of the evidence in a case after
24 weighing all of evidence. If you're not convinced
25 of the guilt of the defendant beyond a reasonable

1 doubt you must find the defendant not guilty.

2 Necessarily, you must determine the
3 credibility of witnesses who have testified in this
4 case. Credibility simply means believability. It
5 becomes your duty as jurors to analyze and to
6 evaluate the evidence to determine which evidence
7 convinces you of its truth. In determining the
8 believability of the witnesses who have testified in
9 this case you may believe one witness over several
10 witnesses or several witnesses over one witness.
11 You may believe a part of the testimony of a witness
12 and reject the remaining part of the testimony of
13 that same witness. You may believe the testimony of
14 a witness in its entirety or reject the testimony of
15 a witness in its entirety. You may consider whether
16 any witness has exhibited to you any interest, bias,
17 prejudice, or other motive in this case. You may
18 also consider the appearance and manner of a witness
19 while on the witness stand, their demeanor.

20 The rules of evidence ordinarily do not
21 permit witnesses to testify to opinions or
22 conclusions. An exception to this rule exists for
23 witnesses we call expert witnesses, the witness who
24 by education and experience have become expert in
25 some art, science, profession, or calling may state

1 an opinion as to relevant and material matter in
2 which the witness claims to be an expert may also
3 state the reasons for the opinion. You should
4 consider any expert opinion received in evidence in
5 this case like any other evidence, give it the
6 weight you think it deserves. If you decide that
7 the opinion of an expert is not based on sufficient
8 education and experience and you conclude that the
9 reasons given in support of the opinion are not
10 sound, the opinion is outweighed by other evidence,
11 you may disregard the opinion in its entirety. The
12 expert witness's testimony is not to be given
13 greater weight than that of other witnesses simply
14 because the witness is an expert. Further, you're
15 not required to accept an expert's opinion even
16 though it is not contradicted.

17 I instruct you and I emphasize that the
18 fact the defendant did not testify is not a fact to
19 be considered by you in any way in your
20 deliberations and your consideration on the question
21 of guilt or innocence of the defendant. It must not
22 be considered by you in any manner whatsoever. A
23 defendant has the constitutional right to remain
24 silent, and the assertion of this right must not be
25 considered by you in your deliberations. I repeat,

1 under your oath you're to draw no conclusion
2 whatsoever from the fact that the defendant in this
3 case did not testify. The fact that this defendant
4 did not testify should not even be discussed in the
5 jury room. Madam Forelady, I'm gonna ask that you
6 enforce that rule. The fact the defendant did not
7 testify should not even be a part of your
8 deliberations. I'm gonna ask that you enforce that
9 rule in toto. The burden of proof as I stated to
10 you is on the State. The Defendant is not required
11 to prove his innocence. The burden of proof remains
12 on the State to prove guilt beyond a reasonable
13 doubt.

14 I'm gonna charge you the law with regard
15 to trafficking in cocaine base, which is commonly
16 known as crack cocaine. The defendant is charged
17 with trafficking in cocaine base. The State must
18 prove beyond a reasonable doubt that the defendant
19 knowingly sold, manufactured, cultivated, delivered,
20 purchased, brought into this state, provided
21 financial assistance or otherwise aided, abetted,
22 attempted, or conspired to sell, manufacture,
23 cultivate, deliver, purchase or bring into this
24 state, was knowingly in actual or construct— in
25 actual possession knowingly intending to become in

1 actual possession of cocaine base.

2 To prove possession the State must prove
3 beyond a reasonable doubt that the defendant had
4 both power and intent to control the disposition or
5 use of the cocaine base. Actual possession means
6 that the cocaine base was in the actual physical
7 custody of the defendant. Two or more persons may
8 have joint possession of a drug. The State must
9 also prove beyond a reasonable doubt the amount of
10 the cocaine base, and in this instance 10-grams or
11 more, but less than 28-grams.

12 Ladies and gentlemen of the jury, mere
13 presence at the scene is not sufficient to prove
14 someone guilty of a crime. A defendant's presence
15 where a crime is being committed or mere association
16 with a person who commits a crime does not make a
17 defendant an accomplice or an aider, an abettor of
18 the person committing the crime. The burden is on
19 the State to prove every element of the crime
20 charged. If you find after reviewing all of the
21 evidence that the State has proved that the
22 defendant was only present at the scene of the
23 crime, that they have not proved beyond a reasonable
24 doubt any other participation in the crime, then you
25 must find the defendant not guilty. The law is that

1 proof of one being at the scene of a crime is not
2 sufficient to find someone guilty.

3 Ladies and gentlemen of the jury, I'm
4 gonna come forward and review with you the verdict
5 form. Madam Forelady, I'm gonna ask if you could
6 stand as I review the form with you. Of course,
7 this document is entitled verdict form and it's in
8 the Court of General Sessions, 12th circuit, which
9 is here in Florence and Marion County, and it's got
10 the indictment number. State of South Carolina,
11 County of Florence, State of South Carolina versus
12 Toddrique Dequill Henderson. It's only one count
13 which he's been indicted for and that's trafficking
14 in cocaine base. I've explained the law to you.
15 And there are two verdicts, one of which is not
16 guilty and the other is guilty. I'll tell you that
17 the verdict must be unanimous. It can't be 11 to 1,
18 8 to 4, 6 to 6. Everyone has to agree. I'm gonna
19 ask if you could to hold on to the verdict form and
20 you can have a seat.

21 Ladies and gentlemen of the jury, it might
22 be such that y'all have a question in your
23 deliberation process, but I don't really think that
24 there will be because y'all paid very close
25 attention to the evidence that's been presented in

1 this case and you've also paid attention to the law
2 that I've explained to you. I've explained the law
3 -- the difficult questions in this trial you're
4 gonna have to answer, and those are the questions of
5 fact. If you have a question about the law, if you
6 don't understand the law as I charged it to you I'll
7 be happy to recharge that. I don't anticipate there
8 is gonna be a question because y'all paid very close
9 attention to the law and the evidence. If there's a
10 question in your mind as to whether or not the
11 uncertainty in the jury room is a legal question or
12 a factual question, reduce it to writing, give it to
13 the forelady, she will give it to the bailiff and if
14 it's something I can help you with I'll be happy to
15 do that.

16 The alternates, I believe Mr. McDaniel,
17 Mr. McDaniel and Ms. Anthony, y'all are at the end
18 of the road. I'll speak to y'all in a minute.
19 Y'all will not go back into the jury room. I'm
20 gonna ask y'all retire to the jury room, but do not
21 begin deliberations because I'm gonna have to ask
22 these very fine lawyers if they have an objection to
23 the manner which I charged the law or if I
24 inadvertently left something out or I charged
25 something inadvertently. I need to make that

1 determination before you begin deliberations. If
2 there is no reason for me to bring you back into the
3 jury room I'm gonna give the bailiff the documentary
4 evidence and the tangible evidence and send in some
5 paper to assist you in the deliberation process and
6 tell you to begin deliberations. But do not begin
7 deliberations till such time as I instruct you to do
8 so. I'm gonna ask the alternates remain with us and
9 the remainder of jury panel return to your jury
10 room. Thank you.

11 (WHEREUPON, the jury was removed from the
12 courtroom at 3:00 p.m., and the following
13 proceedings commenced in open court.)

14 THE COURT: Mr. McDaniel and Ms. Anthony,
15 I want to thank y'all for your time. I know y'all
16 feel like y'all got invited to a dance and didn't
17 get to dance, but there are numerous occasions — it
18 happens all the time — where there's a conflict
19 that develops with one of the jurors. People get
20 sick, people have problems with rides, and y'all are
21 sort of our insurance policy and I want to thank
22 y'all for being here and being willing to do that.
23 I wish I could release you for the week but y'all
24 need to back 9:30 in the morning on the 11th floor.
25 I want to thank you for your service. Y'all are

1 free to leave at this time.

2 (Alternates were excused.)

3 THE COURT: Any objections with regard to
4 the jury charge from the Solicitor, Mr. Jepertinger?

5 MR. JEPERTINGER: No, sir.

6 THE COURT: Any from the Defense?

7 MS. PARROTT: No, Your Honor.

8 THE COURT: Let's come forward and take a
9 look at the tangible evidence we have here,
10 documentary and otherwise.

11 MR. JEPERTINGER: If they want to watch it
12 again we'll make it available to them, of course,
13 which would be State's Exhibit 1.

14 THE COURT: We'll send the crack back
15 there but we're not going to send a pipe back there.

16 MS. PARROTT: Please, no.

17 MR. JEPERTINGER: The bag better come back
18 sealed.

19 THE COURT: All right, Mr.
20 Mr. Jepertinger, is everything in that box in the
21 evidence?

22 MR. JEPERTINGER: Yes, sir.

23 THE COURT: Is there anything in that box
24 that's not in evidence?

25 MR. JEPERTINGER: There are two pieces of

1 paper and pens.

2 THE COURT: Very good. Any objection to
3 what's in the box?

4 MR. JEPERTINGER: No, sir.

5 THE COURT: Ms. Parrott, do you agree
6 everything in the box is in evidence?

7 MS. PARROTT: Yes, Your Honor.

8 THE COURT: Anything in the box that's not
9 in evidence?

10 MS. PARROTT: Nothing further, Your Honor.

11 THE COURT: I'm gonna ask you to tell them
12 to begin deliberations..

13 THE BAILIFF: Yes, sir.

14 (WHEREUPON, court was in recess while the
15 jury was in deliberations.)

16 THE COURT: I have received a note from
17 the forelady of the jury. It says, may we watch the
18 video again. It's in evidence, and we have set it
19 up to play. Any objection from the State?

20 MR. JEPERTINGER: No, sir.

21 THE COURT: Any from Defense?

22 MS. PARROTT: No, Your Honor.

23 THE COURT: All right, we'll bring them
24 out.

25 (WHEREUPON, the jury was returned to the

1 courtroom at approximately 3:32 p.m.)

2 THE BAILIFF: Some of them had a hard time
3 seeing back there.

4 MR. JEPERTINGER: Can we move it closer to
5 you?

6 THE JUROR: Yes, can you move it closer?
7 Can we make it bigger this time?

8 (State's Exhibit Number 1 was shown to the jury.)

9 (Forelady speaks to bailiff and the bailiff
10 approaches the Bench for an off-the-record
11 discussion.)

12 THE COURT: The jury has asked that it
13 be re-wound to the point where they got out of the
14 car. Any objection from the State?

15 MR. JEPERTINGER: None from the State,
16 Your Honor.

17 THE COURT: Any from Defense?

18 MS. PARROTT: No, Your Honor.

19 THE COURT: I ask that you re-wind it to
20 that point. While he's re-winding that there's been
21 a second question that's been posed.

22 Mr. Solicitor, it says, is it possible
23 that we review the report written by Deputy Clark.
24 It's my understanding that item is not in evidence?

25 MR. JEPERTINGER: It is not in evidence.

1 THE COURT: It's not in evidence. The
2 answer is no.

3 (State's Exhibit Number 1 was shown to the jury.)

4 (Forelady speaks with the bailiff.)

5 THE FORELADY: That's enough.

6 THE BAILIFF: That's it, Judge.

7 THE COURT: Very good. We can stop it
8 there. You may return to the jury room and resume
9 deliberations.

10 (WHEREUPON, the jury was removed from the
11 courtroom at 3:39 p.m., and court was in
12 recess while the jury continued their
13 deliberations.)

14 (Court's Exhibit Nos. 1 and 2 were marked
15 and made a part of the record.)

16 MR. JEPERTINGER: Judge, the detail on
17 this thing we have, that small screen where Keith
18 can do it frame by frame from the place they may
19 want to see it. If he expands it to the whole TV
20 screen he can't do that. My suggestion to the
21 Court, if one of them wants to see it they can stand
22 right ---

23 THE COURT: I don't think we need to
24 engage in any particular type inquiry. They say
25 want to see it and they want to start it when they

1 get out the car I think adding anything more to that
2 might add to difficulty.

3 MR. JEPERTINGER: Okay, do they want to
4 see it on the blown-up screen or small screen?

5 THE COURT: I think the way you would
6 normally see it. I haven't seen the blown-up or
7 the -- I think the way he originally showed it he
8 needs to start the way you originally showed it and
9 just play it from the time they get out the car.
10 Let's do it that way. If they have any specific
11 request we will do it that way.

12 MR. JEPERTINGER: If they want full screen
13 they'll have to ask you.

14 THE COURT: We're ready for the jury.

15 (WHEREUPON, the jury was returned to the
16 courtroom at approximately 4:30 p.m., and
17 a portion of State's Exhibit No. 1 was
18 shown to the jury.)

19 THE JUROR: See? Can you rewind it?

20 (State's Exhibit No. 1 portion was re-played.)

21 THE COURT: You may return to the jury
22 room and resume deliberations.

23 (WHEREUPON, the jury was removed from the
24 courtroom at 4:34 p.m.)

25 THE COURT: We'll stand at ease.

1 (WHEREUPON, court was recess while the
2 jury resumed their deliberations.)

3 THE COURT: We have a note that's been
4 submitted to me from the forelady that says, we're
5 not coming to a unanimous decision, should we
6 continue. I think what I would propose to do would
7 be to dismiss them in the morning, give them an
8 Allen charge, and let them deliberate in the
9 morning.

10 MS. PARROTT: That's fine.

11 MR. JEPERTINGER: You just want to release
12 them for the night to come back in the morning
13 before you give the Allen charge?

14 THE COURT: For an Allen charge, that's
15 correct. What is the State's position?

16 MR. JEPERTINGER: That's fine.

17 THE COURT: Defense's position?

18 MS. PARROTT: That's fine, Your Honor.

19 THE COURT: Very good. We're ready for
20 the jury.

21 (Court's Exhibit Numbers 3 and 4 were
22 marked and made a part of the record.)

23 (WHEREUPON, the jury was returned to the
24 courtroom at approximately 5:07 p.m., and
25 the following proceedings commenced in

1 open court.)

2 THE COURT: Madam Forelady, ladies and
3 gentlemen of the jury, I received your last note and
4 it would seem to indicate you're having difficulty
5 reaching a unanimous decision. It is 5:00 and many
6 of you probably have other things to tend to. Some
7 of you may have day care concerns or some personal
8 matters. So these are important matters. And we're
9 gonna ask that you come back at 9:30 in the morning.
10 We're gonna ask that you continue deliberations.
11 I'm gonna charge you the law with regard to how a
12 jury is supposed to handle this situation where you
13 reached what appears to be an impasse. I will
14 charge you the law with regard to that in the
15 morning and with that instructions, with that
16 instruction direct you to resume deliberations with
17 that instruction in mind. So once again, it's
18 ultimately important for y'all not to discuss the
19 case amongst yourselves or with family members
20 friends. You need to base your decision on what's
21 transpired here in this courtroom and the
22 deliberations that take place in that jury room.

23 I'm gonna ask you be back at 9:30, 9:30
24 sharp, and everybody probably needs to get a safety
25 pin because those stickers don't last five minutes

1 for two days. They aren't going to be sticking very
2 good. So be sure to come back with those attractive
3 signs on. Don't tarry around in the public areas,
4 get directly on the elevator, come directly to the
5 jury room and we'll — I'm gonna charge you the law
6 with regard to this particular situation and ask
7 that you resume deliberations.

8 One good news, one item of good news is
9 that the rest of the jury panel is reconvening for
10 another trial, another two day trial in the morning
11 at 9:30 and seeing how y'all are deliberating on
12 this one y'all will not be involved in a two day
13 trial so that's the good news. But at any rate
14 we'll ask you be back at 9:30, 9:30 sharp, and be
15 sure to be here on time. Thank you very much.

16 (WHEREUPON, the jury was removed from the
17 courtroom at 5:10 p.m., and the following
18 proceedings commenced in open court.)

19 THE COURT: Anything from the State?

20 MR. JEPERTINGER: Yes, Judge. And
21 normally I wouldn't do this but, you know, we're in
22 kind of an unusual situation. We've disbursed
23 jurors to go to their homes for this evening. And
24 the defendant has been out on bond. I've not
25 required or not asked that he be locked up, but

1 based on the jury still being out I just want to
2 make — I just want to make sure no shenanigans one
3 way or the other, the only way I can do that, Judge,
4 and I feel safe is to ask you revoke his bond for
5 the evening and we'll have him here tomorrow
6 morning. And that's the request I have.

7 THE COURT: I'll be glad to hear from
8 Defense.

9 MS. PARROTT: Your Honor, I understand
10 what the Solicitor is saying, but as he's already
11 stated to you multiple times today whenever we've
12 been discussing this, and even on Monday he came to
13 jury selection on Monday. He came on Wednesday for,
14 you know, his trial. He came back after lunch after
15 he'd been allowed to leave so I believe that Mr.
16 Henderson would come back tomorrow and he knows the
17 consequences if he doesn't so.

18 THE COURT: And with regard to the concern
19 about shenanigans or improper conduct, the jury has
20 been informed if anybody tries to contact them that
21 they are to inform me and I'll deal with them
22 accordingly. Of course, the defendant has had
23 identity of the jurors throughout the trial of this
24 case. I don't anticipate that will be a problem.

25 But you understand that you have to be

1 back in the morning at 9:30. If you don't, a bench
2 warrant will be issued and there will be additional
3 criminal charges. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Will you be back
6 at 9:30 in the morning?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And we'll allow you to remain
9 out on bond until 9:30 in the morning. Good luck to
10 you.

11 See you in the morning at 9:30.

12 (WHEREUPON, the proceedings were concluded
13 for the day to be reconvened on January
14 17, 2012.)

15 THE COURT: Anything before we bring the
16 jury out, Mr. Jepertinger?

17 MR. JEPERTINGER: No, sir.

18 THE COURT: Anything from Defense?

19 MS. PARROTT: No, Your Honor.

20 THE COURT: All right, we're ready for the
21 jury.

22 (WHEREUPON, the jury was returned to the
23 courtroom at approximately 9:35 a.m., and
24 the following proceedings commenced in
25 open court.)

1 THE COURT: Madam Forelady, ladies and
2 gentlemen of the jury, everybody looks well rested
3 and wide eyed. Thank you for being here and for
4 being here on time. I'm gonna ask that you pay very
5 close attention as we discuss the matter that's
6 before us. Ladies and gentlemen, you have stated
7 that you have been unable to reach a verdict. I
8 instructed you earlier the verdict of the jury must
9 be unanimous. When a matter is in dispute is — it
10 isn't always easy for even two people to agree so
11 when 12 people must agree it becomes even more
12 difficult. In most cases absolute certainty cannot
13 be reached or expected; however, you have a duty to
14 make every reasonable effort to reach a unanimous
15 verdict. In doing this you should consult one
16 another, express your own views, and listen to the
17 opinions of your fellow jurors. Tell each other how
18 you feel and why you feel that way. Discuss your
19 differences with open minds. Although the verdict
20 of the jury must be unanimous, every one of you has
21 the right to your own opinion. The verdict you
22 agree to must be your own verdict, the result of
23 your own convictions, and you should not give up
24 your firmly held beliefs merely to be in agreement
25 with your fellow jurors. The majority should

1 consider the minority's opinion. The minority
2 should consider the majority's position. You should
3 carefully consider and respect the opinions of each
4 other and reevaluate your position for
5 reasonableness, correctness, and impartiality. You
6 must lay aside all outside matters and re-examine
7 the question before you based on the law and
8 evidence in this case.

9 If you do not agree on a verdict in this
10 case I must declare a mistrial. In that case it
11 does not mean anyone wins. It just means that at
12 some future time I will try this case with some
13 other jury sitting where you now sit. The same
14 participants will come and the same lawyers will ask
15 basically the same questions and get basically the
16 same answers, and we'll go through the whole process
17 once again. You were selected in the same — these
18 jurors will be selected in the same manner and from
19 the same source as any future jury, and there is no
20 reason for me to suppose that the case will ever be
21 submitted to twelve more intelligent, impartial,
22 conscientious, and competent jurors. And I cannot
23 expect there'll be any more evidence or clearer
24 evidence will be produced on either side. I
25 therefore ask you to return to the jury room and

1 resume deliberations. I ask you to do that at this
2 time. Thank you very much.

3 (WHEREUPON, the jury was removed from the
4 courtroom at 9:39 a.m. and court was in
5 recess while the jury continued their
6 deliberations.)

7 THE COURT: We've received a verdict. If
8 we can, before we bring the jury out obviously
9 there's going to be no reaction. I have no idea
10 what the verdict is, but it's necessary there be no
11 reaction from anyone with regard to the verdict.
12 We're ready for the jury.

13 (WHEREUPON, the jury was returned to the
14 courtroom at approximately 10:30 a.m., and
15 the following proceedings commenced in
16 open court.)

17 THE COURT: Madam Forelady, have you
18 reached a verdict?

19 THE FORELADY: We have.

20 THE COURT: Is it indeed unanimous?

21 THE FORELADY: It is.

22 THE COURT: I ask you to give the bailiff
23 the verdict form.

24 (Tendered to the Court.)

25 THE COURT: The verdict form seems to be

1 in order. You may publish the verdict.

2 THE CLERK OF COURT: State of South
3 Carolina, County of Florence, in the Court of
4 General Sessions, Twelfth Judicial Circuit,
5 indictment number 2012-GS-21-694, State of South
6 Carolina versus Toddrique Dequill Henderson. We, the
7 jury, by unanimous consent — excuse me, trafficking
8 in cocaine base. We, the jury, find the defendant
9 Toddrique Dequill Henderson guilty. Signed Terri
10 Thomas, foreperson, dated January 17th, 2013.
11 Members of the jury, if this is your verdict please
12 raise your right hand.

13 (All jurors complied by raising their right hand.)

14 THE COURT: Any requests for polling,
15 Ms. Parrott?

16 MS. PARROTT: No, Your Honor.

17 THE COURT: Anything before we proceed
18 forward with sentencing?

19 MR. JEPERTINGER: No, sir.

20 THE COURT: All right. Madam Forelady,
21 ladies and gentlemen of the jury, I want to thank
22 you for your time and attention. Clearly I've
23 watched you throughout the trial of this case. You
24 paid very close attention to the facts and the law.
25 You've taken a considerable amount of time to

1 deliberate this case. I want to thank you for your
2 time and your efforts. It's my responsibility for
3 the State of South Carolina to sentence someone. As
4 a legal matter it doesn't involve you; however, this
5 is a public forum. If you would like to watch the
6 sentencing for whatever reason, it's a public forum.
7 I'm gonna release you from your jury service.
8 Everyone is gonna remain seated. However, if you
9 would like to see the sentencing procedure going to
10 take place you can walk in the back door and you can
11 watch and observe if you would like to do so.
12 Otherwise, you're free to leave. You're released
13 for the week. You're released for the week. Thank
14 you so much for your service.

15 (WHEREUPON, the jury was removed from the
16 courtroom at 10:35 a.m., and the following
17 proceedings commenced in open court.)

18 THE COURT: Ms. Parrott, if you could
19 bring your client forward.

20 MR. JEPERTINGER: If it please the Court,
21 a couple of things, Your Honor, in terms of record.
22 He did have malicious injury to personal property.
23 He was given a YOA sentence. It looks like that was
24 back in 2007, had received probation initially but
25 apparently that did not work out well for him, and

1 he wound up at the YOA facility. He was received
2 into YOA in, I think, 2008. That's the only record
3 I have for him in terms of criminal history. I did
4 tell —

5 (Ms. Parrott confers with her client.)

6 THE COURT: Hang on just one second. Let
7 —

8 MS. PARROTT: I'm sorry.

9 THE COURT: Go ahead, Mr. Jepertinger.

10 MR. JEPERTINGER: Well, let me just
11 address that point. It says received malicious
12 injury to property. I don't know if it was received
13 Department of Corrections. It says South Carolina
14 Department of Corrections, received 6/26/2008.

15 (Document is shown to Ms. Parrott.)

16 MS. PARROTT: Okay.

17 MR. JEPERTINGER: Your Honor, when this
18 crime happened on February 4th, 2012 he did have a
19 pending case under 2012-282 for possession with
20 intent to distribute marijuana and possession with
21 intent to distribute marijuana within proximity of a
22 school. Your Honor, part of the plea bargaining
23 that process that we went through is if he pled to
24 the minimum on this charge we were gonna dismiss
25 this case, Your Honor. I'm still gonna dismiss this

1 case. I don't think it's gonna make a whole lot of
2 difference in terms of the State's dealing — I know
3 he has to get mandatory time on this sentence, at
4 least mandatory minimum of 3 years. It is a serious
5 offense, it's a violent offense, Your Honor, but I'm
6 going to honor that and dismiss 2012-282 in its
7 entirety.

8 THE COURT: Very good. All right,
9 anything further from the State with regard to
10 sentencing?

11 MR. JEPERTINGER: No, sir. I don't know
12 if law enforcement has anything to add. I think
13 you're okay with that?

14 (Officers shake head.)

15 THE COURT: Ms. Parrott, I'll be glad to
16 hear from you.

17 MS. PARROTT: Thank you, Your Honor, may
18 it please the Court. Your Honor, he did three days
19 in Effingham before he was able to be released on
20 this matter. He and I have talked about the fact
21 that there is a mandatory minimum of three years
22 that goes with this and the possibility of up to
23 ten. The fact that it is violent and it is serious
24 so that it is a strike on the three strike scheme
25 and the fact he cannot get a suspended sentence in

1 this matter. As you've heard he does not have any
2 prior drug convictions. He had a prior drug charge
3 that was pending at the time but no prior drug
4 convictions and he is 22 years of age. His — he
5 has a mother who is here in town but she works at a
6 day care, and he even though she's been calling to
7 check on him he didn't actually want her to come and
8 have to watch this because he knows that that would
9 be very painful for her if this was the outcome,
10 Your Honor. So I would ask if you would, given his
11 lack of a prior drug record and his lack really of a
12 record, for the most part because as I have it I
13 don't have the Y being revoked from what I
14 understand that the Solicitor says as well, I would
15 ask if you would consider just doing the three years
16 minimum in this case especially since it is three
17 years basically day for day.

18 THE COURT: There seems to be some —
19 everybody seems to be looking at one another with
20 regard to whether or not he had served an active YOA
21 sentence. Let me ask Mr. Henderson.

22 Did you serve an active YOA sentence?

23 THE DEFENDANT: Yes, sir. They gave me
24 probation for the malicious damage. He gave me 90
25 day shock and I was on a Y. I was home ever since.

1 THE COURT: Okay, so you did a shock
2 incarceration?

3 THE DEFENDANT: Well, it was ten months.
4 I was — I didn't go through with the shock.

5 THE COURT: Okay. They recommended shock,
6 but you for whatever reason didn't complete shock so
7 you did an active YOA?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay.

10 MS. PARROTT: Okay.

11 THE COURT: Very good. You weren't aware
12 of that but now you are.

13 MS. PARROTT: No, sir, it wasn't part of
14 my paperwork, no, I wasn't.

15 THE COURT: Okay, very good.

16 Mr. Henderson, you have been convicted and your
17 lawyer spoke on your behalf. It's not necessary
18 that you speak, but I'd like to hear anything you
19 got to say if you'd like to say anything. You've
20 got a right to speak, and you don't have to but if
21 you want to I'll be glad to hear from you.

22 THE DEFENDANT: Yes, sir. I'd just like
23 to say that even though they found me guilty, you
24 know, the crack wasn't mine. Like I told them, I
25 would have took — I would have plead to the weed

1 charge if, you know what I'm saying, if they dropped
2 the crack charge 'cause the crack wasn't mine. The
3 weed mine. So I just ask that you be lenient with
4 me.

5 THE COURT: All right. Anything else?

6 THE DEFENDANT: No, sir.

7 THE COURT: Thank you. Anyone else want
8 to speak on his behalf, Ms. Parrott?

9 MS. PARROTT: There's no one else here for
10 him, Your Honor.

11 THE COURT: Very good. All right.
12 Mr. Henderson on indictment 2012-GS-21-00694,
13 trafficking in crack, the sentence of the Court is
14 you be committed to the State Department of
15 Corrections for a period of 7 years, give him credit
16 for 3 days. Good luck to you.

17 MS. PARROTT: Your Honor, I guess just for
18 purposes of protecting the record for on his behalf
19 I would make a motion for a new trial.

20 THE COURT: All right. Well, I'll be glad
21 to hear your motions at this time.

22 MS. PARROTT: Your Honor, based on the
23 fact that the jury was out for so long I do believe
24 based on the Allen charge that was also presented to
25 them and the evidence being what it was of course,

1 we've all heard it, it didn't take that long to hear
2 it. But based upon all of that I would ask if you
3 would consider granting a new trial in this matter.

4 THE COURT: Okay. Well, I think they
5 probably deliberated what?

6 MR. JEPERTINGER: Two hours and 42 minutes
7 in total.

8 THE COURT: Today?

9 MR. JEPERTINGER: 42 minutes today and
10 about two hours yesterday.

11 THE COURT: So it's 2 hours and 42
12 minutes. And was there a specific objection with
13 the manner in which I charged the Allen?

14 MS. PARROTT: No, Your Honor, it's just
15 simply the fact they were, seemed to be deadlocked
16 at one point and then had to have an Allen change.

17 THE COURT: Okay, all right. Well, I'm
18 not real sure whether that's grounds for a new
19 trial, the fact that it took 2 hours and 42 minutes
20 to deliberate. I think that probably is an
21 indication that they took the case seriously and
22 they deliberated all of the facts and the law. And
23 the state of the law specifically calls for an Allen
24 charge under those circumstances and obviously if
25 they would have come back on another occasion I

1 would have declared a mistrial because I think
2 that's the state of the law, that you can't
3 repeatedly send them in one right after the other
4 so. But they were able to pay attention to the
5 Allen charge. They went in and reached a verdict;
6 and I think that the evidence was substantial
7 against him, both direct and circumstantial evidence
8 and I think that the verdict should stand. And
9 you're protected on the record in that regard. Any
10 other motions that you would like to make?

11 MS. PARROTT: No, Your Honor.

12 THE COURT: All right. Well, good luck to
13 you, Mr. Henderson.

14 MR. JEPERTINGER: Thank you, Your Honor.

15 THE COURT: Anything further? You look
16 like you want to say something?

17 THE DEFENDANT: Yeah, I mean, 7 years, I
18 mean, I don't know — y'all don't got to believe me
19 but I know that the crack wasn't mine, you know what
20 I'm saying. I wouldn't even take it this far if it
21 was mine. Like I told them, I'm manning up to the
22 weed 'cause it mine, the crack wasn't mine, you
23 know, so I just — I got two kids, two newborn 3
24 months and six months.

25 THE COURT: All right. Well, you were

1 entitled to a jury trial and you had a very fine
2 lawyer and put up very good defense. They were able
3 to point out the weaknesses in the State's case, but
4 they have found you guilty and I think that you
5 received a fair trial and I think that's a fair
6 sentence given the substantial amount of cocaine
7 that was found in your possession. Good luck to
8 you.

9 MS. PARROTT: Thank you, Your Honor.

10 THE COURT: Wish you the best of luck.

11
12 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
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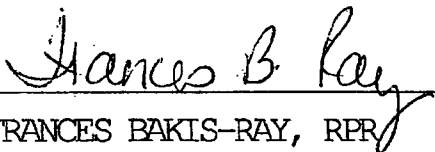
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 22nd day of March, 2013.


FRANCES BAKIS-RAY, RPR

WITNESSES

A. Clark

Florence County Sheriff

John C. Jeperfinger

ARREST WARRANT NUMBER

M274653

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 5/31/2012

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-21-00694

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JUNE

TERM

2012

THE STATE

vs.

TODDRIQUE DEQUIL HENDERSON

Indictment for

TRAFFICKING IN COCAINE BASE

FILED

2012 MAY 31 PM 12:52

CORRE REEL-SHEARIN
COOP & OS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

INDICTMENT FOR

TRAFFICKING IN COCAINE BASE

At a Court of General Sessions, convened on MAY 31, 2012 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- TRAFFICKING IN COCAINE BASE

That TODDRIQUE DEQUIL HENDERSON did in Florence County on or about the February 4, 2012, knowingly, sell, deliver, purchase, or bring into this state; or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this state, or was in actual or constructive possession or attempted to become in actual or constructive possession of a quantity of Cocaine Base in an amount of more than ten grams but less than twenty-eight grams, same being a controlled substance all within the meaning of Section 44-53-110, et seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized and in violation of Section 44-53-375(C)(1)(a), S. C. Code of Laws, 1976, as amended, for the crime of trafficking.

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

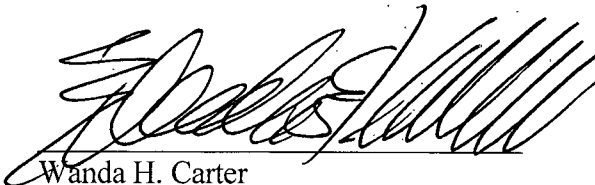


E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 1st, 2013



Wanda H. Carter

Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TODDRIQUE D. HENDERSON,

APPELLANT.

Appellate Case No. 2013-000256

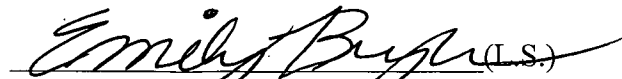
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Toddrique D. Henderson, #329158, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 1st day of July, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 1st day of July, 2013.


Notary Public for South Carolina

My Commission Expires: November 16, 2022.

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SC Court of Appeals