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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

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APPEAL FROM CHESTER COUNTY
Court of General Sessions

Honorable Roger E. Henderson, Sixth Circuit Court Judge

Appellate Case No.: 2016-000193

The State,

Respondent

v.

Charles David Hayes

Appellant

RECORD ON APPEAL
Volume 2 of 3

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1 Q. And no one else had access to it?

2 A. That's correct.

3 Q. And then, at some point, once you gave it to Joy Smith
4 on September 16th, did she give it back to you the same
5 day?

6 A. She did.

7 Q. And did it remain at that point in your care, custody
8 and control until you left the sheriff department?

9 A. Yes, ma'am.

10 Q. Thank you. I want to show you what's been marked as
11 State's Thirty-Six, it's your evidence number seven. Did
12 that, at some point, come into your possession?

13 A. Yes, ma'am, same time.

14 Q. That was on 8/28?

15 A. Yes, ma'am, 8/27/14 at 3:00 p.m.

16 Q. Okay.

17 A. I located it in my vault on 8/28/14 at 8:45. I turned
18 it over to Joy Smith on 9/16 for her testing and she gave
19 it back to me on 9/16/14 to put back in the locker
20 location.

21 Q. And before you gave it to Joy it was in your constant
22 care, custody and control and no one else had access to it?

23 A. Yes, ma'am.

24 Q. And the same thing is true after you got it back from
25 Joy - - -

1 A. Yes, ma'am.

2 Q. - - - up until the point you left the sheriff
3 department?

4 A. That's correct.

5 Q. Give me just a second. I'm going to show you what's
6 been marked as State's Thirty-Seven, your evidence number
7 nine, did that come into your possession on August 28,
8 2014?

9 A. Yes, ma'am, it did.

10 Q. And you got it from the evidence locker, is that
11 correct?

12 A. Yes, ma'am.

13 Q. And did you place it into the evidence vault at that
14 time?

15 A. Yes ma'am, I did.

16 Q. Did it remain in your constant care, custody and
17 control, nobody else having access to it, until you gave it
18 to Joy Smith on September 16th for testing?

19 A. Yes, ma'am.

20 Q. And did you get it back from Joy Smith that same day?

21 A. Yes, ma'am.

22 Q. And did it remain in your constant, care and control
23 with no one having access to it up until the time you were
24 no longer employed with the sheriff's department?

25 A. That's correct.

1 Q. Thank you. I'm going to show you what's been marked
2 the State's Thirty-Three, your evidence number 60410.

3 A. Okay.

4 Q. Did that, at some point, come to you?

5 A. It did. It got dropped the same day 8/27/14 at 3:00
6 p.m. I put it in my evidence locker on 8/28/14. On
7 9/8/2014 I took it to SLED and turn it over to Amy
8 Stevenson which checks the inventory in for SLED. It was
9 in the inside bag sealed for her and after they do testing
10 they put it in this sealed bag.

11 Q. Okay. And some - - and up until the time you took it
12 to SLED - - well, from the time you got it from the
13 evidence locker, put it into the evidence bin, and took it
14 to SLED, - - -

15 A. It was always in my custody.

16 Q. And nobody else had access to it?

17 A. Nobody else.

18 Q. And did you, at some point, go back and get it from
19 SLED?

20 A. Yes, I did.

21 Q. When did you do that?

22 A. I did that on 1/12/2015 at 10:13 in the morning.

23 Q. And once you got it back from SLED, where did you take
24 it?

25 A. I brought it back to my evidence vault located it in

1 Bin 3, no, Room 3, Bin 5.

2 Q. Did it remain there in your care, custody, and control
3 until you were no longer employed with the Chester County
4 Sheriff's Department?

5 A. That's correct.

6 Q. I'm going to show you what's been marked as State's
7 Number Thirty-nine. Did this come into your possession at
8 some point in time? I believe that your evidence number
9 twelve.

10 A. It did.

11 Q. What date did you receive it?

12 A. It was dropped on 8/27/14 at 3:00 p.m. I took it into
13 the evidence locker on 8/28 at 8:45.

14 Q. And did it remain there until - - -

15 A. Yes, ma'am. It's been there until y'all took it out.

16 Q. Until you terminated your employment with the Chester
17 County - - -

18 A. Until I terminated my employment, it was there.

19 Q. In your constant care, custody and control?

20 A. Correct.

21 Q. Now, one more. Let me show you what's been marked as
22 State's Thirty-Eight which is your number - - -.

23 A. Um, 60412.

24 Q. Mmm, hmm.

25 A. Okay.

1 Q. Did you receive that, at some point?

2 A. Yes, ma'am, I did.

3 Q. When did you receive it?

4 A. At 8/27/14 at 3:00 p.m. I took it into the vault at
5 8/28/14 at 8:45. It stayed in my custody until I left the
6 sheriff's office.

7 Q. Nobody else has access to that room, is that correct?

8 A. That's correct.

9 Q. Did you - - did you take any part in the testing of
10 this marijuana?

11 A. I did not.

12 Q. Were you present when it was tested?

13 A. I was not.

14 MRS. HALL: There aren't any further questions, Your
15 Honor.

16 THE COURT: Mr. Grier?

17 MR. GRIER: Thank you, Your Honor.

18 CROSS EXAMINATION BY MR. GRIER:

19 Q. Good morning.

20 A. Good morning.

21 Q. Did you receive training to be an evidence room tech?

22 A. I did.

23 Q. Where did you go to receive that training?

24 A. To SLED.

25 Q. How long was the training?

1 A. I can't really recall I think it was a week.

2 Q. And when did you go to work as evidence room tech?

3 A. In 2012.

4 Q. And you work there until just recently?

5 A. May of last year.

6 Q. And while you were employed as the evidence room tech
7 were you the only person that had access to that room?

8 A. That's correct.

9 Q. Is that a two-person, three-person job?

10 A. No, not really. I mean, I handled it myself.

11 Q. Why is important to have one person over it?

12 A. Because I'm not going to jail for anybody, I mean,
13 it's just - - I mean, it's my responsibility to protect the
14 defendant, the state, anybody in a case. I have to keep it
15 secure.

16 Q. Is that to make sure that it's never somewhere
17 shouldn't be where something could be happening or tampered
18 with?

19 A. Correct. Not to be tampered with.

20 Q. And it's your testimony that you always kept it in a
21 secure location to where it was never outside your control
22 except for when it went to SLED?

23 A. Correct. Yes.

24 MR. GRIER: No further questions.

25 MS. CAMERON: Thank you.

1 THE COURT: Anything else, Mrs. Hall?

2 MRS. HALL: I'd ask that she be excused.

3 THE COURT: All right. You can step down. Any
4 objection to her being excused?

5 MR. GRIER: No, Your Honor.

6 THE COURT: All right. You may be excused.

7 MS. CAMERON: Thank you.

8 MRS. FRYAR: Your Honor, the State calls Lynn Black.

9 CLERK: Please raise your right hand. State your full
10 name?

11 MS. BLACK: Lynn D. Black.

12 CLERK: You do solemnly swear or affirm the testimony
13 you give to be the truth, the whole truth, and nothing but
14 the truth so help you God?

15 MS. BLACK: I do.

16 LYNN D. BLACK, first being
17 duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MRS. HALL:

19 Q. Could you please state your full name?

20 A. Lynn D. Black.

21 Q. Where are you employed?

22 A. I worked for the South Carolina Law Enforcement
23 Division commonly known as SLED - - -

24 Q. How long - - I'm sorry. Go ahead.

25 A. - - - in the forensic service laboratory.

1 Q. What is your - - what do you do there?

2 A. I'm a drug chemist which means I receive and analyze
3 substances brought in by law enforcement personnel and I
4 determine whether they are controlled substances or not.

5 Q. How long have you been employed in that capacity?

6 A. I've worked at SLED for almost seven and half years.

7 Q. And prior to that what did you do?

8 A. Prior to that, I worked Georgia Bureau Investigation
9 in Atlanta, Georgia also as a drug chemist for about eight
10 years.

11 Q. And did you - - what is your educational background
12 that allows you to have this job or enables you to have
13 this job?

14 A. I have a bachelors of a science degree chemistry from
15 Kentucky Wesleyan College. A certificate of medical
16 technology from the University of Louisville and a Masters
17 of a science degree in forensic science from Morrisville
18 University.

19 Q. And if you had to venture, I guess, how many times
20 would you say that you have tested controlled substances?

21 A. I just looked at that this morning, I've analyzed over
22 six thousand cases in my career.

23 Q. And it's true, is it not, that sometimes when you
24 analyzes these cases sometimes you find that they're not,
25 there negative for controlled substances, is that - - -

1 A. That's correct. That does happen.

2 MRS. HALL: Your Honor, at this time we would offer
3 Ms. Black as an expert in the field of chemical analysis.

4 MR. GRIER: No objection.

5 THE COURT: All right. I find her to be an expert in
6 that field.

7 Q. Just one second, okay?

8 A. Sure.

9 MRS. HALL: Just a second, Your Honor.

10 THE COURT: Ladies and gentlemen, why don't you stand
11 and stretch your legs for a minute if you want to. We have
12 been sitting here for about an hour. You don't have to if
13 you don't want to.

14 Q. I'm going to show you what's been marked as State's
15 Twenty-Eight for identification, do you know what that is?

16 A. This is a copy of our internal chain of custody that
17 we use at SLED in the laboratory to track evidence in this
18 case, it is this particular piece of evidence in this case.

19 Q. And does it bear the same lab number that's assigned
20 to it when it comes in to SLED?

21 A. Yes, it is.

22 Q. And that would be the lab number that carries all the
23 way through the case, through the drug analysis report and
24 everything else, is that correct?

25 A. That's correct.

1 Q. And this is a document that's kept in the normal
2 course of business at SLED, is that correct?

3 A. Yes. For every piece of evidence.

4 Q. And you stated that is the verified chain that applies
5 to L-1411251?

6 A. Yes, it is.

7 Q. That's the defendant, Charles Hayes, is that correct?

8 A. That is correct.

9 Q. Thank you.

10 MRS. HALL: Your Honor, at this time the State would
11 move the verify chain into evidence.

12 MR. GRIER: No objection.

13 THE COURT: All right. Received without objection.
14 It's admitted into evidence.

15 MRS. HALL: Thank you.

16 (Whereupon, the SLED Drug Analyses has been marked and
17 entered into evidence as State's Exhibit No. 27)

18 Q. And now I'm going to show you what's been marked as
19 State's Thirty-Three for I.D., would you tell us about this
20 please, ma'am?

21 A. Yes. This is the bag that - - the inside bag is what
22 I received in this case. This outer bag is the bag that I
23 actually put this evidence back into. Would you like me to
24 explain from kinda from the beginning how it happens? What
25 happens is at SLED we have what we call a BEST evidence kit

1 that we submit or, excuse me, we provide to law enforcement
2 agencies and this is just a kit that we provide to kind of
3 streamline drug evidence. What it is, it's a manila
4 envelope and it contains everything that the agency would
5 need to submit the evidence. That includes a tampered
6 evidence plastic bag and then the paperwork that they need
7 to fill out when it submit the evidence. So when they do
8 submit the evidence usually they place the evidence in the
9 chambers with the bag and seal it up, write, I think, it's
10 the date and the person who signed, who seals it or signs
11 it and they put their agency number and the agency on
12 there. And then they usually place that back in that
13 manila envelope that they had been provided with and they
14 bring that SLED. When they bring that into SLED they go to
15 a logging department and there an evidence technician will
16 take that evidence and enter all the information into our
17 computer system and then create a unique crime lab case
18 number bar code which is usually a yellow sticker that has
19 a bar code on it and you can usually find that case number
20 that was assigned to the case, so they place that on the
21 envelope, the manila envelope, that's submitted. And the
22 evidence sticker that came with it, then they will scan
23 that bar code too, themselves. That's - - we have our own
24 bar code that's associated with every person who works at
25 SLED especially in the laboratory and so they scan that

1 too, themselves and eventually they'll scan to the vault
2 and there that evidence will sit until I'm ready to come
3 down to pick it up. So when I pick it up, they scan the
4 evidence to me and I take it upstairs where my laboratory
5 is and if I'm ready to test it I'll take it to my bin and
6 test it, or otherwise, we have our own drug vault up there
7 that we will place our evidence in, that's a secured area.
8 And when I'm ready to test it then I will take the usually
9 - - like I said, it's usually in the manila envelope that
10 has the tampered evidence bag inside of it and I'll take
11 that out, open it up, away from the seal - - you'll see
12 there's a green part on this, that's the seal that the
13 officer sealed when she put the evidence, the sample - -
14 yeah, evidence package in this bag. So when I open this up
15 I'm going to cut at the bottom of the bag. The bag is
16 folded in this bag and then I'll take the evidence out,
17 weigh it, take a sample for my analysis, and then place it
18 back into this outer bag which is called a K Pack, that's
19 just the name that the people who made these bags, that's
20 what they call it, and we place this tampered evidence bag
21 back inside where I have written, also written a unique
22 crime case number, my initials on here and then I heat seal
23 it and then I also generate the unique crime lab case
24 number bar code sticker and I place it on the outside of
25 this so this package can be scanned back to logging when

1 I'm finished and then logging will eventually give it back
2 to the agency that brought it in to me. That's pretty much
3 how generally goes.

4 Q. And when you get this BEST kit you're talking about
5 the green seal.

6 A. Yes.

7 Q. Tell the jury about what that indicates to you?

8 A. That's seal is, you know, I look at that when I get
9 the evidence out when I'm ready to sample it and I make
10 sure that it hasn't been tampered with. It's easily, the
11 way that there's markings on here that if somebody had
12 tampered with it you can easily tell if somebody had tried
13 to open that part up after they had sealed it together,
14 it's got sticky stuff and it's very sticky and it's very, -
15 - if you try to take it apart it would be very evident and
16 then I also checked the outside seals to make sure that
17 they're still intact before I even openit up. If it's been
18 - - at this point in time, if I had received this and it
19 had been tampered with or had been opened I would not have
20 followed through with the analysis. I would've returned it
21 to the agency. But, you know, I'll write on the bag, seal
22 intact and the date so that means I've looked at the bag
23 and everything was good to go.

24 Q. And so did you - - I going to show you what's been
25 marked as State's Twenty-Seven, can you tell the Court what

1 that is?

2 A. This is a copy of my official report that I generated
3 in this case. Once I had my analysis finished I wrote this
4 report up and it was peer reviewed and it was released to
5 the solicitors office and also the Chester County Sheriff's
6 Office who was the assuming agency.

7 Q. And is that the report that applies to that BEST kit
8 that you just had in your hand. I can't remember what
9 number it is right now but I think it State's Thirty-Three

10 - - -

11 A. Thirty-Three. Yes, it is.

12 Q. And so you performed the test that you reported about
13 the findings of the test on that substance in this report
14 that you're holding in your hand, is that correct?

15 A. That's correct.

16 Q. Could you tell the jury what you found?

17 A. I found that there was cocaine base also known as
18 crack in the sample tested.

19 Q. Do you weigh it when you - - -

20 A. Yes.

21 Q. Could you tell us, do you weigh it the bag, out of the
22 bag, how do you weigh it?

23 A. I took it's net weight which means it's the substance
24 only so, yeah, this particular case had, it's in a plastic
25 bag that's been - - it was probably tied when I got it and

1 I take it out of the bag and I weigh just the substance
2 only.

3 Q. And what was the weight that you got when you weighed
4 it?

5 A. It was 6.07 grams.

6 Q. And so you state that you sealed it back, you put your
7 initials back on it and stick it in that K Pack and that's
8 the end of your involvement with this, is that correct?

9 A. That's correct.

10 MRS. HALL: Your Honor, I would move State's Twenty-
11 Seven into evidence at this time and also State's Thirty-
12 Three.

13 MR. GRIER: I would object to State's Thirty-Three as
14 procured to the unlawful search. The other exhibit, the
15 chain of custody, I have no objection.

16 THE COURT: All right, sir. I respectfully overruled
17 your objection. It's admitted into evidence, twenty-seven
18 and thirty-three.

19 MRS. HALL: This is - - twenty-seven coming in.
20 Twenty-seven is the report. Twenty-eight is the report.
21 They're both - - that's already in. Thirty-three is we've
22 already marked and so now it's in. Hold on a second.

23 (Whereupon, the Chain of Custody has been marked and
24 entered into evidence as State's Exhibit No. 28)

25 (Whereupon, the Evidence- Crack Cocaine has been

1 marked and entered into evidence as State's Exhibit No. 29)

2 MRS. HALL: I don't have anything further. Please
3 answer any questions Mr. Grier may have for you.

4 THE COURT: Mr. Grier?

5 MR. GRIER: Thank you, Your Honor.

6 CROSS EXAMINATION BY MR. GRIER:

7 Q. Good morning.

8 A. Good morning, sir.

9 Q. Can you tell the jury what's important about the chain
10 of custody?

11 A. The chain of custody is important because it tracks
12 where that evidence has been and who has had possession of
13 it. It doesn't necessarily tell you who analyzed it but it
14 will tell you whose hands it has been into and the chain of
15 custody that I talked about earlier was our internal chain
16 of custody. That's just where it's been at SLED. Before
17 it came to SLED I have no knowledge but that eternal chain
18 of custody is who touched it at SLED in the lab.

19 Q. So your involvement in this case is, basically, taking
20 the item that's presented to you, testing it, and telling
21 us what it is, correct?

22 A. That is correct.

23 Q. You have no knowledge as to how it was obtained,
24 really who it was obtained from except for the name that's
25 on the document, correct?

1 A. That is correct.

2 MR. GRIER: No further questions.

3 THE COURT: Anything else, Mrs. Hall?

4 MRS. HALL: I don't have anything further. We'd asked
5 that this witness be excused.

6 THE COURT: Is there any objection to this witness be
7 excused?

8 MR. GRIER: No, Your Honor.

9 THE COURT: All right. You may be excused. Thank
10 you.

11 MS. BLACK: Thank you, Your Honor.

12 MRS. FRYAR: Your Honor, would you like to keep going?

13 THE COURT: Do you have - - how long do you think your
14 next witness will take? I was going to take a break about
15 11:15.

16 MRS. FRYAR: Yes, sir. I'm thinking maybe that. Your
17 Honor, the State calls Joy Smith.

18 CLERK: Please raise your right hand. Place a left
19 hand on the Bible. State your full name?

20 MS. SMITH: Joy Ann Smith.

21 CLERK: You do solemnly swear or affirm the testimony
22 you give will be the truth, the whole truth, and nothing
23 but the truth so help you God?

24 MS. SMITH: I do.

25 CLERK: Thank you.

JOY SMITH, first being

duly sworn, testified as follows:

DIRECT EXAMINATION BY MRS. FRYAR:

Q. Good morning.

A. Good morning.

Q. Would you please state your name for the record?

A. Joy Ann Smith.

Q. Ms. Smith, where are you employed?

A. At the Chester County Sheriff's office.

Q. And is part of your responsibility of the sheriff's office to analyze marijuana?

A. It is.

Q. Are you certified in marijuana analysis?

A. I am.

Q. Could you tell the jury where did you become certified in marijuana analysis?

A. At the State Law Enforcement Division, otherwise, known as SLED.

Q. And how long was that training?

A. Two days.

Q. And did you have to perform a number of field task on marijuana and non-marijuana items in order to become certified?

A. I did.

Q. And do you hold that certification today?

1 A. Yes, ma'am.

2 Q. And did you hold it on August 27, 2014?

3 A. Yes, I did.

4 MRS. FRYAR: Your Honor, at this time we would ask
5 that Ms. Smith be qualified as an expert in the field of
6 marijuana analysis?

7 MR. GRIER: Without objection.

8 THE COURT: All right. I find her to be qualified as
9 an expert in that field, marijuana analysis.

10 Q. Ms. Smith, I'm going to show you what's been marked as
11 State's Exhibit Number Thirty-One for identification
12 purposes and ask you have you seen this item before?

13 A. I have.

14 Q. And how do you know that you've seen this item before?

15 A. My initials and the date that I tested it are on the
16 evidence tape.

17 Q. Where did you receive this item from?

18 A. I received it from the evidence Tech, Barbara Cameron.

19 Q. Yes, ma'am. And what date did you receive it from Ms.
20 Cameron?

21 A. On September 16, 2014.

22 Q. And did you conduct an analysis on this item?

23 A. I did.

24 Q. What did you do when you conducted this test?

25 A. Well, we weigh the sample and then we also do a

1 microscopic and a chemical test on this item.

2 Q. You weigh this package at it's weight as it was handed
3 to you?

4 A. I did.

5 Q. And what was it contained in?

6 A. A glass jar.

7 Q. Yes, ma'am. And what was the package weight on this,
8 in the jar, including the jar, how much did it way?

9 A. 267.65 grams.

10 Q. And when you took it out of the jar did you actually
11 weigh the substance believed to be marijuana?

12 A. Yes, I did.

13 Q. Did it test positive for marijuana?

14 A. Yes, it did.

15 Q. And what was the weight on that?

16 A. 4.38 grams.

17 MRS. FRYAR: Your Honor, I'm going to move State's
18 identification Number Thirty-One into evidence.

19 MR. GRIER: Your Honor, once again I'd objection as it
20 obtained to the unlawful search.

21 THE COURT: All right, sir. I'll overrule your
22 objection. It's admitted into evidence.

23 MRS. FRYAR: Your Honor, this would be State's Number
24 Forty.

25 COURT REPORTER: Thirty.

1 MRS. FRYAR: Excuse me, Thirty, Your Honor.

2 (Whereupon, the Evidence-Marijuana has been marked and
3 entered into evidence as State's Exhibit No. 30)

4 MRS. FRYAR: And, Your Honor, I'm going to asked the
5 court reporter to mark this marijuana analysis form as
6 identification at this time.

7 THE COURT: For identification only.

8 Q. I'm going to show you now Ms. Smith, what has been
9 identified as State's Forty, could you tell me what this
10 is?

11 A. This is the analysis sheet that I filled out when I
12 did the testing of the substance.

13 Q. Ms. Smith, I'm gonna ask you to look at State's
14 Exhibit Number Thirty-Two for identification purposes and
15 ask if you could tell me what that is?

16 A. This is another glass jar containing a substance that
17 I tested to see if it was marijuana?

18 Q. And did you find marijuana in the jar?

19 A. Yes, I did.

20 Q. And what was the package weight inside the jar, how
21 much did weigh?

22 A. Including the jar?

23 Q. Yes, ma'am.

24 A. 350.55 grams.

25 Q. And when you took it out of the jar, how much did it

1 weigh?

2 A. 15.60 grams.

3 Q. And did it test positive for marijuana?

4 A. Yes, it did.

5 MRS. FRYAR: Your Honor, at this time, we would move
6 to enter this into evidence.

7 Q. It's a pickle jar, right, Ms. Joy?

8 A. Yes, ma'am.

9 MR. GRIER: Once again, Your Honor, I'd object. It's
10 a product of an unlawful search.

11 THE COURT: All right, sir. And I again respectfully
12 overrule your objection. It's admitted into evidence.

13 MRS. FRYAR: And, Your Honor, this would be State's
14 Exhibit Number Thirty-one.

15 (Whereupon, the Evidence-Marijuana has been marked and
16 entered into evidence as State's Exhibit No. 31)

17 Q. Ms. Smith, I'm going to show you what's been marked as
18 State's Exhibit for identification Number Thirty-Four and
19 can you tell us what this is?

20 A. This is a Ziploc bag containing marijuana.

21 Q. And did you have an opportunity to weigh this package
22 in its container?

23 A. I did.

24 Q. How much did it weigh?

25 A. 274.94 grams.

1 Q. And what was the actual weight of the marijuana?

2 A. 265.03 grams.

3 Q. And did this to, have your - - how do you know that
4 you did this?

5 A. It has my initials and the date that I tested it.

6 Q. And it was sealed?

7 A. Yes, ma'am.

8 Q. Did he come to you in this form?

9 A. Yes, ma'am.

10 Q. This is a Ziploc bag?

11 A. Mmm, hmm.

12 Q. With the blue top on it?

13 A. Yes, ma'am.

14 Q. That's how it came to you?

15 A. Yes, ma'am.

16 MRS. FRYAR: I'd like to move this into evidence at
17 this time, Your Honor.

18 MR. GRIER: Objection. It's a product of an unlawful
19 search.

20 THE COURT: All right, sir. I overrule your
21 objection. It's admitted into evidence.

22 MRS. FRYAR: Your Honor, this is State's admitted into
23 evidence as number Thirty-Two.

24 (Whereupon, the Evidence-Marijuana has been marked and
25 entered into evidence as State's Exhibit No. 32)

1 Q. Ms. Smith, I'm gonna hand you a piece of evidence that
2 has been numbered as State's Exhibit for identification
3 purposes Number Thirty-Five and ask if you would look at
4 it. Can you tell what it is?

5 A. It's a bag containing marijuana.

6 Q. And did you have a opportunity to analyze that?

7 A. I did.

8 Q. How do you know you did?

9 A. My initials and the date I analyzed it are on the
10 evidence tape that I sealed it up with.

11 Q. And what was the package weight with it inside the
12 package that you obtained?

13 A. 63.95 grams.

14 Q. And what was the actual weight of the marijuana?

15 A. 44.29 grams.

16 Q. And did it actually test positive for marijuana?

17 A. Yes, it did.

18 MRS. FRYAR: Your Honor, at this time, I'd move to
19 introduce this into evidence.

20 MR. GRIER: Objection, Your Honor. It's a product of
21 an unlawful search.

22 THE COURT: Again, I overrule your objection. It's
23 admitted into evidence.

24 MRS. FRYAR: And, Your Honor, this is going to be
25 State's Exhibit Number Thirty-Three.

1 (Whereupon, the Evidence-Marijuana has been marked and
2 entered into evidence as State's Exhibit No. 33)

3 Q. Okay Ms. Joy, I'm going to show you what's been marked
4 as State's Exhibit Number Thirty-Six for identification
5 purposes and ask, have you seen that item before?

6 A. I have.

7 Q. And how do you know that you've seen it?

8 A. My initials and the date it was analyzed are on the
9 evidence tape I sealed the package back up with after I
10 tested it.

11 Q. And what was the package weight on that piece of
12 evidence?

13 A. 3.38 grams.

14 Q. And what was the actual weight of the marijuana inside
15 the package?

16 A. 3.15 grams.

17 Q. And did it test positive for marijuana?

18 A. Yes, it did.

19 MRS. FRYAR: At this time, Your Honor, I'd move this
20 into evidence. It would be - - -

21 MR. GRIER: Object, Your Honor. It's an unlawful
22 search.

23 THE COURT: All right. Again, overruled and it's
24 admitted into evidence.

25 MRS. FRYAR: It would be State's Number Thirty-Four

1 into evidence, Your Honor.

2 (Whereupon, the Evidence-Marijuana has been marked and
3 entered into evidence as State's Exhibit No. 34)

4 Q. I'm going to show you what's been marked as State's
5 Exhibit Number Thirty-Seven for identification purposes and
6 ask you what that is?

7 A. A bag containing marijuana.

8 Q. And did you have an opportunity to analyze that?

9 A. I did.

10 Q. And what was the package weight on that?

11 A. 382.49 grams.

12 Q. And then what was the actual weight on that?

13 A. 378.24 grams.

14 Q. And when did you conduct this analysis?

15 A. September 16, 2014.

16 Q. And did it test positive for marijuana?

17 A. Yes, it did.

18 MRS. FRYAR: Your Honor, at this time I'd admit this
19 into evidence.

20 MR. GRIER: Objection. It was obtained by an unlawful
21 search.

22 THE COURT: Again overruled and I admit it into
23 evidence.

24 MRS. FRYAR: Thank you, Your Honor. Your Honor, this
25 is going to be State's Exhibit Number Thirty-Five.

1 (Whereupon, the Evidence-Marijuana has been marked and
2 entered into evidence as State's Exhibit No. 35)

3 Q. Ms. Smith, when you analyzed all these drugs what did
4 the actual weight come out to be?

5 A. I don't have a accumulative weight of all the samples
6 I gathered.

7 Q. And did you - - when you analyzed all of these things,
8 you analyzed all of them in one day?

9 A. Yes, ma'am.

10 Q. And did you make a report following that?

11 A. Yes.

12 Q. And did you put on the report the date that the drugs
13 been received into the sheriff's department and also the
14 requesting officer of the items?

15 A. That was already on the analysis sheet, I just put the
16 date and my signature that it was tested.

17 Q. And you put the date that it was tested was September
18 16th, is that correct?

19 A. Yes, ma'am.

20 Q. 2014?

21 A. Yes.

22 MRS. FRYAR: Your Honor, I would like to enter State's
23 exhibit for identification Number Forty into evidence.

24 THE COURT: Object, Your Honor. It's a product of a
25 unlawful search of the products that were tested.

1 THE COURT: Again, I respectfully overrule objection.
2 It's admitted into evidence.

3 MRS. FRYAR: Your Honor, this is going to be State's
4 Number Thirty-Six.

5 THE COURT: Thank you.

6 (Whereupon, the Log In Sheet- Marijuana Analysis
7 Request has been marked and entered into evidence as
8 State's Exhibit No. 36)

9 MRS. FRYAR: I don't have any further questions for
10 Ms. Smith.

11 THE COURT: Mr. Grier?

12 MR. GRIER: Thank you, Your Honor.

13 CROSS EXAMINATION BY MR. GRIER:

14 Q. Ms. Smith, you tested, it looks like there was one,
15 two, three, four, five, six, seven packages of marijuana,
16 is that correct?

17 A. Yes.

18 Q. And two of those packages were glass jars, is that
19 correct?

20 A. Yes.

21 Q. And those were items number two and number three? Do
22 you want to look at your sheet if you have your notes?

23 A. Yes.

24 Q. You have that information in front of you?

25 A. Yes.

1 Q. So those were those two, correct?

2 A. Yes.

3 Q. Can you tell us what the combined weight of the
4 marijuana in the two jars were?

5 A. 29.98 grams.

6 Q. And that's for items two and three?

7 A. 19.98 grams.

8 Q. So it's less than 28 grams that was contained in those
9 two glass jars, correct?

10 A. Yes.

11 Q. How long have you been working for the sheriff's
12 department?

13 A. Two years, four months.

14 Q. And the other items where the marijuana was tested
15 they were all in Ziploc like type bags or what were they
16 in?

17 A. Ziploc bags or plastic baggies.

18 Q. When you say a plastic bag, is it sealable?

19 A. Sometimes they are. Sometimes they're just tied into
20 a knot.

21 Q. Do you know if the ones in this case were sealable?

22 A. I don't recall.

23 Q. And there were two items that had a larger quantity,
24 is that correct?

25 A. Yes.

1 Q. And was that marijuana loose or how was that, do you
2 recall? It was all kind of packed together - - -

3 A. It was like packed like a brick - - like a brick.

4 Q. But all the other marijuana was fairly loose and
5 broken up?

6 A. To my recollection it was.

7 Q. And you have no information as to, basically, how this
8 information was gathered, is that - - -

9 A. No, sir.

10 Q. Also on your sheet, does it list a suspect's name?

11 A. Yes.

12 Q. What name is listed?

13 A. Charles Hayes, Quinton Feaster, Pauline Hayes.

14 Q. But that's three people listed?

15 A. Mmm, hmm.

16 Q. Is that a yes?

17 A. Yes.

18 Q. Do you know who a Patrick Simpson is?

19 A. No.

20 Q. And all your information in this case is, basically,
21 that you were to test the product that was delivered to you
22 by narcotics office to see if it was marijuana, is that
23 correct?

24 A. Well, it was delivered to me by the evidence tech,
25 but, yes.

1 Q. So you had no interaction with Al Crawford or Johnny
2 Neal?

3 A. No.

4 MR. GRIER: No further questions.

5 THE COURT: Anything else, Mrs. Fryar?

6 MRS. FRYAR: Nothing from us.

7 THE COURT: All right. You can step down, ma'am.

8 MRS. FRYAR: May Ms. Smith be excused, Your Honor?

9 THE COURT: Any objection to this witness been
10 excused, Mr. Grier?

11 MR. GRIER: (Shaking of the head, no)

12 THE COURT: All right. No objection. You may be
13 excused. Thank you. All right, counsel. We've been going
14 on a little over hour and a half let's take a short break.
15 Let everybody stretched her legs and use the restroom. If
16 you would let the bailiffs know when everybody's used the
17 restroom, whatever, and is ready to come back, then we will
18 start back. Everybody remained seated while the jury lets
19 out.

20 (Whereupon, the jury exist the courtroom at 11:18 a.m.)

21 THE COURT: All right. We're at ease for about ten
22 minutes.

23 (Whereupon, the Court took a short break)

24 THE COURT: Are you ready for the jury, Mrs. Fryar?

25 MRS. FRYAR: Yes, sir, Your Honor.

1 THE COURT: All right. Bring the jury in.
2 (Whereupon, the jury enters the courtroom at 11:32 a.m.)

3 THE COURT: Yes, Your Honor, the State would call
4 Investigator Brian Sanders.

5 CLERK: Place raise your right hand. Place your left
6 on the Bible. State your full name.

7 MR. SANDERS: Terry Brian Sanders.

8 CLERK: You do solemnly swear or affirm the testimony
9 you give to be the truth, the whole truth, and nothing but
10 the truth so help you God?

11 MR. SANDERS: Yes, ma'am.

12 BRIAN SANDERS, first being
13 duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MRS. FRYAR:

15 Q. Hello Investigator Sanders, how are you?

16 A. Good.

17 Q. Could you please tell the jury where you employed,
18 sir?

19 A. Chester County Sheriff's Office.

20 Q. And what is your position there?

21 A. Investigator.

22 Q. And as part of your investigative duties, do you
23 sometimes try to obtain fingerprints off the items
24 collected?

25 A. Yes, ma'am.

1 Q. Did you have anything to do with this case other than
2 fingerprinting the items in this case?

3 A. No, ma'am.

4 Q. When were you asked to fingerprint some items in this
5 case?

6 A. January 8th.

7 Q. I'm going to show you an item marked as State's
8 Exhibit Number Thirty-One, excuse me, State's Exhibit
9 Number Thirty, ask you to open the bag and tell the jury
10 whether or not you've ever seen this before?

11 A. Yes, ma'am.

12 Q. Pull it out and show the jury, sir. What is it, sir?

13 A. It's a jar.

14 Q. Is it a mason jar?

15 A. Yes, ma'am.

16 Q. What is that white stuff all over the mason jar?

17 A. It's the chemicals from super glue.

18 Q. Tell the jury how you try to get fingerprints off the
19 items?

20 A. What we're doing is we'll place items inside the
21 container with the top on it, with, what's we'll do, is
22 we'll put a small type of bowl on top of the lightbulb,
23 turn the lightbulb on with a cup of hot water, and a fan
24 inside of it and we'll pour super glue inside the little
25 bowl on top of the lightbulb, and what it will do it will

1 turn the super glue from liquid to a fume. The steam from
2 the water will attach on to fingerprints on the items and
3 put moisture into them and the fume, a fume will attach to
4 the item itself and bring out a fingerprint if it's there.

5 Q. And so you attempted to fingerprint this item or
6 obtain prints from this item, what was the results of your
7 efforts?

8 A. We got nothing on this.

9 Q. When you say you got nothing, what does that mean?

10 A. There's no viable fingerprint ridge details on it.

11 Q. And where did you obtain this from?

12 A. Evidence tech, Chuck Starnes.

13 Q. And return to Mr. Chuck Starnes, is that correct?

14 A. Yes, ma'am.

15 Q. On that same day?

16 A. Yes, ma'am.

17 Q. Investigator Sanders, I'm going to show you what's
18 been marked as State's Exhibit Number Thirty-One and ask
19 you can you tell us what this is?

20 A. Yes, ma'am. It's a jar, it's a pickle jar.

21 Q. Did you attempt to obtain fingerprints off of that?

22 A. Yes, ma'am.

23 Q. Did you try to obtain the same way that you tried to
24 obtain the fingerprints off the mason jar?

25 A. Yes, ma'am.

1 Q. And what were your findings when you tried to obtain
2 fingerprints off the pickle jar?

3 A. I didn't find any type of fingerprint ridge detail on
4 it.

5 Q. If you can put it back in the bag. Investigator
6 Sanders, I'm going to show you what's been marked as
7 State's Exhibit, a State's Exhibit and ask you can you
8 identify what this is?

9 A. It's a scale.

10 Q. Let the record reflect that he is looking at a State's
11 Exhibit Number Thirty-Nine. If you could show it to the
12 jurors. Did you attempt to obtain fingerprints off of this
13 item as well?

14 A. Yes, ma'am.

15 Q. And what was the findings on that?

16 A. I found a small ridge detail on the side.

17 Q. Show them where you found it?

18 A. On the side here.

19 Q. Yes, sir.

20 A. As well as some ridge detail on the back of the bottom
21 of it, right there.

22 Q. And when you were able to discover some ridge detail,
23 what did you do?

24 A. I photographed it.

25 Q. And how many photographs did you take of it or how

1 many did you submit to be tested?

2 A. I submitted one photograph of each. I usually take
3 several to find which one to make sure that if I take one
4 that if it comes out blurry or anything, I'll take several
5 of the same picture and find the clearer one and submit it.

6 Q. So you submitted two photographs of this, the
7 fingerprints obtained from this item, is that correct?

8 A. Yes, ma'am.

9 Q. One from one side and one from the other side?

10 A. Yes, ma'am.

11 Q. All right. If you'll put it back in the bag. And
12 then I'm going to show you what's been marked as State's
13 Exhibit Number Thirty-Two and ask you what this is?

14 A. It's a Hefty Ziploc bag containing what appears to be
15 marijuana.

16 Q. And did you examine that bag?

17 A. Yes, ma'am, I did.

18 Q. And how can you tell?

19 A. You can see the fume that's attached to the bag, the
20 white power substance that attaches to the outside of the
21 bag.

22 Q. Did you obtain all of these items from Chuck Starnes,
23 the evidence tech at the sheriff department?

24 A. Yes, ma'am.

25 Q. And did you, after attempting to fingerprint them, did

1 you return them to him on the same day?

2 A. Yes, ma'am.

3 Q. When you attempted obtain fingerprints off of this
4 bag, were you able to find anything useful or was there
5 enough ridge detail to submit?

6 A. Yes, ma'am. I found three different prints, ridge
7 detail prints on the bag itself.

8 Q. On the outside of the bag, where does it say it came
9 from?

10 A. It's evidence found in Hayes bedroom and shoe box that
11 was on the floor.

12 Q. Let's put that back in. And so you submitted all, in
13 total, five photographs of what you hope to be identifiable
14 fingerprints, is that correct?

15 A. Yes, ma'am.

16 Q. And when you say you submitted them for testing, what
17 did you do?

18 A. I emailed them to York County's forensic lab.

19 Q. What are you talking about you email, the photographs?

20 A. Yes, ma'am.

21 Q. And I'm showing you now - - well, I need to mark it.
22 I'm showing you now a photograph.

23 A. Yes, ma'am.

24 Q. And I'm asking you can you identify that?

25 A. Yes, ma'am.

1 Q. And what is that?

2 A. That is a - - I believe it was an item, picture number
3 Thirty-Nine, I believe it was an index finger that came off
4 the Ziploc bag.

5 Q. And you submitted this for a identification, is that
6 correct?

7 A. Yes, ma'am.

8 Q. I'm showing you this photograph, what is that?

9 A. It's another print off of the Ziploc bag that I took
10 and submitted in to be checked - - -

11 MRS. FRYAR: And, at this time, I'd like to admit
12 these into evidence. We'll put number Thirty-Nine - -
13 Photograph Number Thirty-Nine as Exhibit Number Thirty-
14 Seven and we'll put photograph Number Forty as Exhibit
15 Number Thirty-Eight.

16 Q. And when you submitted these items for
17 fingerprints - - -

18 MR. GRIER: Objection, Your Honor.

19 MRS. FRYAR: Oh, I apologize.

20 MR. GRIER: I was going to object on the grounds of
21 the evidence was seized on an unlawful search.

22 THE COURT: All right. I respectfully overrule the
23 objection. I admit them into evidence.

24 MRS. FRYAR: Thank you, sir.

25 (Whereupon, the Photo has been marked and entered into

1 evidence as State's Exhibit No. 37)

2 (Whereupon, the Photo has been marked and entered into
3 evidence as State's Exhibit No. 38)

4 Q. And so you were in contact with the person who test
5 things for fingerprints, is that correct?

6 A. Yes, ma'am.

7 Q. And you submitted both of these photographs to him and
8 they were deemed to be identifiable, is that correct?

9 A. Yes, ma'am.

10 Q. As to the fingerprints that you took off the scales,
11 how was that identified?

12 A. Not enough ridge detail.

13 Q. It couldn't be identified?

14 A. No, ma'am.

15 Q. Prints were there but couldn't be - - not enough ridge
16 detail, is that correct?

17 A. Yes, ma'am.

18 Q. Are these the only two photographs that we had given
19 to be tested for fingerprints that were able to be
20 identified?

21 A. Yes, ma'am.

22 Q. And do you know who they were identified as belonging
23 to?

24 A. Charles Hayes.

25 Q. Yes, sir. Thank you.

1 MRS. FRYAR: I don't have any further questions. Hold
2 on just one moment. That's all we have for you
3 Investigator Sanders.

4 THE COURT: Mr. Grier?

5 MR. GRIER: Thank you, Your Honor. May I approach the
6 witness, Your Honor?

7 THE COURT: Yes, sir.

8 CROSS EXAMINATION BY MR. GRIER:

9 Q. Investigator Sanders, would you please remove the item
10 again from the bag?

11 A. Yes, sir.

12 Q. Is the marijuana in this bag in a separate container
13 or was it all in just one bag, one Ziploc bag? You opened
14 before?

15 A. I did not open this bag at all.

16 Q. Okay.

17 A. This bag itself?

18 Q. Yes.

19 A. I didn't open it.

20 Q. Can you tell if there's another bag of marijuana
21 wrapped inside of that bag?

22 A. Looking at it I cannot - - I do not see another bag in
23 it.

24 Q. Can you open it? Is there no other container with the
25 marijuana?

1 A. I do not see a bag inside of it at all.

2 Q. You dusted - - what was the process again? What is
3 the substance all over the bag?

4 A. What we do is we place the item in a container with
5 the top on it because we have a lightbulb inside of it we
6 turn on, the small bowl on top of the lightbulb. Put a cup
7 of hot water and the container itself as well. Once after
8 that we put the super glue, pour it into the small bowl on
9 top of the lightbulb. Lightbulb, the heat from the
10 lightbulb turns the liquid into a fume, the moisture from
11 the water and the steam attaches itself onto the item and
12 it puts moisture into the fingerprints and a fume attaches,
13 the fume attaches to the bag and puts this white substance
14 off onto it.

15 Q. And you got, you said, three usable prints from that
16 bag?

17 A. Yes, sir. I took pictures of three different prints.

18 Q. And you sent them to York County to be tested,
19 correct?

20 A. Yes, sir.

21 Q. Did you get those results back on separate occasions
22 or all at once?

23 A. I got the first results back on - - I was notified
24 that they were - - I'll tell you the exact date that I got
25 it back on was January 13th. I got one back from, from up

1 there - - -

2 Q. Was that for the - - -

3 A. - - - where they identify - - -

4 Q. Was that for the index finger?

5 A. Right index finger, yes, sir.

6 Q. When did you get the other one back?

7 A. I did not receive a copy of that one. It came to the
8 solicitor's office, I believe.

9 Q. And you don't know the date of that one?

10 A. No, sir.

11 Q. And when you sent them to be tested, you sent a print
12 card, is that correct?

13 A. No, sir. I sent - - I sent the pictures as well as a
14 copy of the incident report and the suspects name are on
15 the incident report and they go through AFIS

16 Q. They go through a, what now?

17 A. They go through AFIS.

18 Q. Okay. And you had prints from the scales, is that
19 correct?

20 A. Yes, sir.

21 Q. And those did not match anybody who's been charged
22 with this crime?

23 A. I was told - - no, sir.

24 Q. And did you send them Patrick Simpson's prints to run
25 or do you know who that is?

1 A. I didn't know whose names, the suspects names on the
2 report itself, I just got a copy of and faxed it to them.

3 Q. It was just the three that was charged, correct?

4 A. I don't know. I didn't really know the names on
5 there. I didn't look to see whose names were on the
6 report. I didn't know anything about it.

7 Q. So out of all the items you sent to be tested, only
8 one item came back positive for Mr. Hayes, is that correct?

9 A. The one - - I didn't - - I didn't receive a copy of
10 the other report.

11 Q. Other print?

12 A. The other print.

13 Q. And that's for the, was that like a gallon size Ziploc
14 bag, is that what it is?

15 A. Possibly, it doesn't say what size bag it is.

16 Q. Is there any writing on it?

17 A. It says, Hefty of stronger seal. Closes this way.
18 Opens that way.

19 Q. But the scales came back negative, correct, for any
20 prints to my client?

21 A. Yeah, I was told they didn't - - there wasn't enough
22 ridge detail on it.

23 Q. And no one from the Chester County Sheriff's Office
24 has the training to test or you sent it to an independent
25 agency?

1 A. We don't have the equipment to test fingerprints.

2 Q. Do you ever send them to SLED?

3 A. I have sent stuff to SLED before, yes, sir.

4 Q. Does SLED take longer?

5 A. I - - I cannot say yes or no but I probably say, yes.

6 Q. So if you sent them on January 8th to be tested to
7 SLED, would they have been back by today?

8 A. Most likely, not.

9 MR. GRIER: No further questions, Your Honor.

10 THE COURT: Anything else, Mrs. Fryar?

11 MRS. FRYAR: No, Your Honor.

12 THE COURT: All right. You can step down. Thank you,
13 sir.

14 MRS. FRYAR: Your Honor, the State calls Brian
15 Bagwell.

16 CLERK: Please raise your right hand. Place a left
17 hand on the Bible and state your full name.

18 MR. BAGWELL: Brian Bagwell.

19 CLERK: You do solemnly swear or affirm the testimony
20 you about to give be the truth, the whole truth, and
21 nothing but the truth so help you God?

22 MR. BAGWELL: I do.

23 BRIAN BAGWELL, first being
24 duly sworn, testified as follows:

25 DIRECT EXAMINATION BY MRS. FRYAR:

1 Q. Good afternoon, sir. How are you?

2 A. I'm well. How are you?

3 Q. I'm good. Thank you. Could you please tell the jury
4 where you employed, sir?

5 A. Yes. I work for the York County Sheriff's Office.

6 Q. And how long have you been there?

7 A. I have been there for approximately nineteen years.

8 Q. And what is your position there, sir?

9 A. I am a forensic investigator. I'm a deputy sheriff
10 assigned as a forensic investigator.

11 Q. Please explain to the jury what a forensic
12 investigator is?

13 A. We do crime scenes. We process crime scenes. We look
14 at fingerprints. We download video surveillance, that sort
15 of thing. If you're familiar with CSI on tv, we're just
16 York County version. Anything that deputies go out and
17 work a crime scene, if it's a robbery, a burglary, or
18 whatever it may be, if there's evidence that needs to
19 documented and collected, they would call us out to do
20 that.

21 Q. Have you been trained to be in an forensic
22 investigator?

23 A. I have.

24 Q. Please tell the Court about your training?

25 A. I had basic fingerprint class from Publication

1 Training Council. I've had crime scene hands-on from the
2 Publication Training Council. I've had forensic
3 application for DNA from the International Association for
4 Identifications. I've had latent process class, forty
5 hours, at the South Carolina Criminal Justice Academy.
6 I've had crime scene search and evidence recovery from
7 Publication Training Council. I've had basic fingerprint
8 identification through the South Carolina Criminal Justice
9 Academy. I have had AFIS certifications through the South
10 Carolina Law Enforcement Division. I've had advanced palm
11 print and comparison techniques through Ron Smith and
12 Associates. As far as fingerprint classes that's pretty
13 much it.

14 Q. What is AFIS?

15 A. It's the Automated Fingerprint Identification System.

16 Q. And have you ever been qualified as an expert in the
17 field of forensic investigation before?

18 A. I have, multiple times.

19 Q. Multiple times?

20 A. Yes, ma'am.

21 Q. And do y'all have a lab up in York that y'all do this
22 investigation in?

23 A. Yes. We process items and work with, yes, ma'am.

24 MRS. FRYAR: Your Honor, at this time I would move
25 that he be qualified as an expert in the field of forensic

1 investigation.

2 MR. GRIER: Without objection.

3 THE COURT: All right. I find him to be qualified as
4 an expert in the field of forensic investigation.

5 MRS. FRYAR: And I'd also move that he be qualified as
6 an expert in fingerprint analysis?

7 MR. GRIER: No objection, Your Honor.

8 THE COURT: All right. I also find him to be
9 qualified as an expert in the field of fingerprint
10 identification analysis.

11 Q. Investigator Bagwell, were you contacted by Sheriff
12 deputies from the Chester County Sheriff's Department
13 regarding trying to obtain the fingerprints?

14 A. I was not. I was actually contacted by my director
15 who was contacted by Mr. Sanders. He passed it on to
16 George Week's who is my boss and passed it down to me.

17 Q. So what was submitted to y'all's lab or to you
18 specifically at the end of the day for testing?

19 A. Five photographs.

20 Q. And did you know where these five photographs came
21 from?

22 A. Not originally, I did not. Not until identification
23 was made was I told where they were from.

24 Q. And did you have an opportunity to look at these five
25 photographs?

1 A. I did.

2 Q. And can you tell the jury about the photographs that
3 you are able to look at?

4 A. I think it was number thirty-nine and number forty
5 contained a identifiable ridge detail. We were given a
6 latent, excuse me, ink ten print card for comparison
7 purposes and that's what I did was to compare the two.

8 Q. What is a ink print card and where did you get it?

9 A. It was provided to me by George Weeks. And ink ten
10 print card is typically from an arrest that's an ink card
11 that they take at the time of your arrest.

12 Q. And why is it called ten print?

13 A. Because you have ten fingers usually.

14 Q. Can you tell us how you obtained this card and the
15 information that was on it?

16 A. I have a copy of the card if I can refer to it.

17 Q. Yes, sir.

18 A. Like I said, it was handed to me by my director,
19 George Weeks - - -

20 Q. Yes, sir.

21 A. - - - and we have capabilities to print any arrest
22 records that are through York County. We also have a AFIS
23 machine which is located in Rock Hill that we can go and
24 run South Carolina identification numbers and print cards
25 so I really don't know where he obtained this from which

1 side he got it from but this is the card in question, it's
2 identified as Charles David Hayes, Jr.

3 Q. And so those are the fingerprints or ink fingerprints
4 of Mr. Charles David Hayes, Jr., is that correct?

5 A. That's correct.

6 Q. And so besides the ink fingerprints, the ten ink print
7 card, what else did you receive?

8 A. Just the five photographs.

9 Q. And you indicated that two of them you were able to to
10 make identification on, is that correct?

11 A. That's correct.

12 Q. Tell us about the other three?

13 A. The other three didn't have enough sufficient ridge
14 detail to make the identification. Which, basically, means
15 there may have been a couple of ridges that had no pulse
16 minutiae in it for us to do a positive id with.

17 Q. Tell the jury how you go about trying identifying
18 somebody's fingerprint?

19 A. All right. You'll take, like I said, ink ten print
20 card, it's a known standard of someone and you have the
21 latent print, in this case the photographs, and what we'll
22 do is take them side-by-side and do a comparison and
23 you're, basically, looking for a similar ridge flow, you're
24 looking for same pattern type. There's point
25 characteristics in a fingerprint which are bifurcation in

1 the ridge, dots, that sort of thing, we use those for s
2 dedication purpose. And in the next level, you have scars,
3 warts, creases, the actual tendency of the ridge itself,
4 the way they flow, little nooks on the ridge that kind of
5 thing, so we use all that combination to make
6 identification.

7 Q. And if you had found any other identifiable prints,
8 would you have run it through the AFIS System?

9 A. Yes, ma'am, I would have.

10 Q. But you didn't find any others, is that correct?

11 A. No, ma'am.

12 Q. And you indicated that you were able to identify two
13 fingerprints, is that correct?

14 A. That's correct.

15 Q. I'm going to show you this document, I'm going to show
16 you these documents and ask you can you identify what they
17 are?

18 A. Yes, ma'am. It's the two reports that I generated on
19 the identifications.

20 Q. If you could tell the jury what was your findings on
21 fingerprint and photograph number thirty-nine?

22 A. Thirty-nine is compared by the methods as I mentioned
23 earlier it was a positive identification to fingered number
24 two on Hayes.

25 Q. And so what finger would that be of Mr. Hayes?

1 A. That would be his right index finger.

2 Q. Right index finger?

3 A. Yes, ma'am.

4 Q. As to the photograph number forty, were you able to
5 identify that to Mr. Hayes as well?

6 A. I was.

7 Q. And what finger did that come from?

8 A. That came from finger number seven.

9 Q. That's the ring finger, right?

10 A. Actually it's the left index, I just noticed I have a
11 typo and I apologize.

12 Q. That's okay.

13 A. But it's the left index.

14 Q. The left index, okay. So you found one index finger
15 on one side?

16 A. Yes, ma'am.

17 Q. And one index finger on the other side?

18 A. Correct.

19 Q. To identifiable prints on this photograph?

20 A. Correct.

21 MRS. FRYAR: I don't have any further questions,
22 Investigator Bagwell. Thank you for traveling here today.

23 A. Your welcome.

24 THE COURT: Mr. Grier?

25 CROSS EXAMINATION BY MR. GRIER:

1 Q. So you did not actually observe the evidence that was
2 dusted for prints, correct?

3 A. That's correct.

4 Q. You just looked at what they - - pictures and then run
5 it through, how?

6 A. That's correct. They provide us with the pictures.
7 Typically, if we don't have a suspect we'll run it through
8 the AFIS System. At this time, we had a suspect and a card
9 to compare it to so all prints that were identifiable were
10 made to that individual so we didn't need to go through
11 AFIS search.

12 Q. So you just ran it for Mr. Hayes, is that correct?

13 A. I just looked at it for Mr. Hayes. There was no
14 running involved. It was a manual comparison.

15 Q. And it looks like they were done on separate days, is
16 that correct?

17 A. That is correct.

18 Q. Is there reason why they were done separate days?

19 A. Yeah, because I work for York County and we have other
20 obligations so I looked at one made identification, sent it
21 to them so they would have that information. There was
22 another print that we thought was identifiable and I
23 believe I relayed that information back but we just didn't
24 have time at that point time to look at it. A couple of
25 days later we were able to get to it and positively

1 identified the second one as well.

2 Q. The second one was made on what date?

3 A. The second report?

4 Q. Yes.

5 A. Was on the 21st.

6 Q. Of what month?

7 A. January, I'm sorry.

8 Q. This month?

9 A. Yes, sir.

10 Q. Less than a week ago, correct?

11 A. Correct.

12 Q. And you're saying that you have a typographical error
13 on that?

14 A. I do on that report, yes, sir. I have it listed as
15 finger number seven which it should say left index instead
16 of left ring.

17 Q. Okay. Is there different types of fingerprints?

18 A. There are three types of different fingerprints.

19 Q. What are they?

20 A. Whorls, loops and arches.

21 Q. What about the latent prints, things like that, are
22 there different types of fingerprints that you identify?

23 A. I'm not sure what the question is.

24 Q. With like getting a partial print, is kinda what I'm
25 referring to or a full print?

1 A. All of them are referred to as latent prints whether
2 they are partial or basically full looking rolls. We refer
3 to all of them as a latent fingerprint. Latent, basically,
4 just means a hidden print, we have to use some kind of
5 development to make it visible, so it could be one ridge or
6 it could be thirty ridges it's the same.

7 Q. Well, in this case, how much of the fingerprint was
8 identifiable, can you tell me?

9 A. I don't know how - - I'm not sure of that question
10 either. We had enough to make a positive identification.
11 There's no set number of pulse that you need to make an ID.
12 I think if we looked it up I actually have a picture of it
13 on a file, the print that I ID, was probably eight to ten
14 characteristics that I had blotted out but consistent and
15 like the photo.

16 Q. Do you know these prints came from a plastic bag, is
17 that correct?

18 A. I was advised they came from a plastic bag.

19 Q. You don't know that firsthand?

20 A. Do not. Just what I was told, sir.

21 Q. Do you know that they were jars that were also
22 fingerprinted?

23 A. I did not. I knew that - - I got pictures from a
24 scale and from a bag is what I was told.

25 Q. Do fingerprints show up on different items more

1 easily?

2 A. Yes. Smooth, non-coarse items tend to hold a
3 fingerprint better than a coarse item would.

4 Q. What would be like a better item to leave a print?

5 A. Glass. Anything smooth and non-coarse. Hard plastic,
6 smooth plastic, nothing with dimples and ripples in it, but
7 that type of surface would be best.

8 Q. So glass would be a good one, typically?

9 A. Typically, it is, yes, sir.

10 Q. What about like a metal surface?

11 A. It depends on the metal. To be honest, sometimes some
12 metals want to absorb so when you put powder on it you just
13 get a smearing on the item. You don't get the ridge
14 details. It is really depends on the metal.

15 Q. And you have your reports, correct?

16 A. I do.

17 Q. Do you know what the date of incident of this was?

18 A. I do not.

19 Q. Is it not at the top of your report?

20 A. Oh yes, I'm sorry. It's 8/27/14.

21 Q. And that was about, not quite, a year and a half ago,
22 correct?

23 A. That's correct, sir.

24 Q. And y'all were contacted about running prints in
25 January, is that correct?

1 A. That's correct.

2 Q. Is it possible that prints could fade over time?

3 A. They definitely can fade over time.

4 Q. So would it have been more advisable, in your opinion,
5 to have done this at the time that these were taken into
6 evidence?

7 A. It is typically, you'll get better results if you
8 process items immediately after you are done with them.

9 Q. What about a handgun, are those typically good to get
10 prints from?

11 A. It's hit and miss, to be honest with you. We process
12 them and have good luck and sometimes we don't have any
13 luck so it just depends.

14 Q. But you have fingerprinted handguns and positively got
15 identification?

16 A. Absolutely. Yes, sir.

17 MR. GRIER: No further questions.

18 MRS. FRYAR: Just beg the Court's indulgence for just
19 one second.

20 THE COURT: Yes, ma'am.

21 REDIRECT EXAMINATION BY MRS. FRYAR:

22 Q. Investigator Bagwell, you indicated that you had a
23 better chance of getting fingerprints if you do them closer
24 to the time. That doesn't mean the fingerprints are going
25 to change over time, is that correct?

1 A. No, ma'am. They will not change but they can fade,
2 they can lighten, they could be rubbed off accidentally or
3 anything so you have various things that could affect it.

4 Q. So you're more likely to get fingerprints closer to
5 time?

6 A. I'm not even gonna say more likely. It's just better
7 practice to do it immediately for those reasons because if
8 you leave them sitting - - fingerprints are ninety percent
9 water so they can evaporate over time. You might have to
10 rehydrate them to get them to come back up. If you have
11 one on a paper bag and you're handling it through the
12 evidence department, you could inadvertently rub the prints
13 off by handling the bag. So it's just better practice to
14 do it immediately.

15 Q. Thank you very much. I appreciate it, sir.

16 A. Your welcome.

17 MRS. FRYAR: I have no further questions

18 THE COURT: Anything else, Mr. Grier?

19 MR. GRIER: No re, Your Honor.

20 THE COURT: You can step down.

21 MRS. FRYAR: Can Investigator Bagwell go back to York
22 County, Your Honor?

23 THE COURT: Any objection?

24 MR. GRIER: He's free to leave.

25 MRS. FRYAR: Thank you.

1 THE COURT: You may be excused. Thank you, sir.

2 MRS. FRYAR: The State calls Burly McDaniel.

3 CLERK: Please state your full name.

4 MR. McDANIEL: Burly McDaniel, Jr.

5 CLERK: You do solemnly swear or affirm the testimony
6 you give is the truth, the whole truth, and nothing but the
7 truth so help you God?

8 MR. McDANEIL: I do.

9 BURLY McDANIEL, first being
10 duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MRS. HALL:

12 Q. Your name is Burly McDaniel, right?

13 A. That's correct.

14 Q. And tell me what you do over at the Chester County
15 Sheriff's Department?

16 A. I'm an investigator for the Chester County Sheriff's
17 Office.

18 Q. And were you employed in that capacity back on, in
19 August 2014?

20 A. I was.

21 Q. At that time did you have any involvement in this
22 case?

23 A. I did not.

24 Q. What is been your involvement with this case?

25 A. The only involvement I had in it was processing the

1 baggie that was asked to be processed.

2 Q. When you say you are processing, what were you
3 processing for?

4 A. Fingerprints.

5 Q. Who ask you to do that?

6 A. Agent Al Crawford.

7 Q. I want to show you what's been entered into evidence
8 as State's Twenty-Nine, tell me what that is?

9 A. The baggie which I attempted to get latent prints
10 from.

11 Q. When you say a baggie, that's the BEST kit that was
12 entered into evidence earlier, there's baggie inside of
13 baggie, are you talking about the baggie that contains the
14 cocaine?

15 A. Well, the baggie that's inside the sealed baggie which
16 I sealed that after I attempted to get latent prints off
17 of. So the latent prints that I was trying to get off of
18 it was a small baggie which appeared to be crack cocaine on
19 the inside of it but I had to do latent on the outside the
20 baggie.

21 Q. So you just printed the little baggie of cocaine, that
22 was it?

23 A. That's correct.

24 Q. Or attempt to?

25 A. Yes.

1 Q. Tell me how that went?

2 A. Well, I attempted to get latents and there was none to
3 be found on it.

4 Q. There was nothing to be found on it?

5 A. No.

6 Q. What did you - - -

7 MRS. HALL: That's it. Thank you. Answer any
8 questions that Mr. Grier has.

9 THE COURT: Mr. Grier?

10 MR. GRIER: No questions.

11 THE COURT: Ok

12 MRS. HALL: We'd asked that he be excused as well?

13 THE COURT: Any objection to the gentleman being
14 excused?

15 MR. GRIER: No, Your Honor.

16 THE COURT: You may be excused as well, sir.

17 MRS. HALL: The State calls Chuck Starnes.

18 CLERK: Please state your full name.

19 MR. STARNES: Roger D. Starnes.

20 CLERK: You do solemnly swear or affirm the testimony
21 you'll give to be the truth, the whole truth, and nothing
22 but the truth so help you God?

23 MR. STARNES: I do.

24 CHUCK STARNES, first being
25 duly sworn, testified as follows:

DIRECT EXAMINATION BY MRS. HALL:

Q. Hello, Chuck Starnes, right?

A. It's really Roger D. Starnes but my sister couldn't say Roger when I was little so everybody called me Chuck my entire life.

Q. Did you - - where are you employed?

A. Chester County Sheriff's Department.

Q. And what is your job there?

A. The evidence clerk, the evidence technician.

Q. So is it your job to take evidence in?

A. Yes, ma'am.

Q. And are you in control of the evidence locker and the evidence room?

A. Yes, ma'am. I took it over from Barbara Cameron when she became a judge.

Q. When did you take it over from her?

A. March 1st, excuse me, May 1st of this year, 2015.

Q. I'm going to show you what's been marked for identification State's Thirty-Nine. I believe this is been testified to earlier that this is a scale and it's your evidence number, your evidence number twelve?

A. That's correct. Yes, ma'am.

Q. When you took over at the sheriff's department in May of 2014, where was this item?

A. It was in the bin that states on there.

1 Q. Here I'm going to let you hold it.

2 A. Yeah, because we have to go through and scanned all of
3 the bar codes and it was located, at that time, in the Room
4 2, Bin 61.

5 Q. Do you keep records on things that are checked in and
6 out?

7 A. Yes, ma'am, I do.

8 Q. At any point in time, was that checked out of the
9 evidence room after you took over?

10 A. Yes, ma'am. This particular one is also item number
11 twelve, digital scale. I checked that out to Brian Sanders
12 on 8th, January, 2016 at 16:30 which is 4:30 p.m.

13 Q. And did he check it back into you?

14 A. Brian checked that back into me on 8th, January, 2016
15 at 18:09 which is 6:09 p.m.

16 Q. So he didn't have it very long?

17 A. No, ma'am.

18 Q. So before he checked it out and after he gave it back
19 has it been in your exclusive care, custody and control?

20 A. It's been in my custody the entire time. No one else
21 had access to.

22 Q. And really you brought it here to court with you
23 yesterday - - -

24 A. That's correct.

25 Q. - - - and held on to it up to this point, right?

1 A. Yes, ma'am.

2 MRS. HALL: State would move Thirty-Nine into evidence
3 as Thirty-Nine.

4 MR. GRIER: Objection, Your Honor. A product of an
5 unlawful search.

6 THE COURT: All right. I overrule the objection.
7 It's admitted into evidence.

8 (Whereupon, the Digital Scales has been marked and
9 entered into evidence as State's Exhibit No. 39)

10 Q. Let me show you what's been marked the State's Thirty-
11 Eight and, obviously, it's a gun, correct?

12 A. Yes, ma'am.

13 Q. When you took over at the sheriff's department was
14 that gun in the evidence locker or evidence room?

15 A. It was. It was located in Room 3 which is where we
16 keep all the firearms.

17 Q. Was there anything else in that box with that gun when
18 you - - -

19 A. Yes, ma'am. I have cartridges live and spent
20 cartridges in my pocket. I do not keep the two together.

21 Q. So when you brought that court yesterday, you
22 separated them and put the bullets in your pocket and kept
23 the gun in the box, right?

24 A. Right.

25 Q. And you do that for what reason?

1 A. So that should anyone gain access to this they don't
2 also have the ammunition for which to shoot us with.

3 Q. So we keep that separated but that was when you took
4 over as the evidence technician, those two items were
5 located together and that box?

6 A. Right. And when we submit them into evidence it gets
7 submitted and goes with that.

8 Q. But yesterday before you brought it to court you
9 separated those.

10 A. Yes, ma'am.

11 Q. And once you took over as the evidence technician was
12 that item ever checked out?

13 A. This item has not been checked out since I took over.

14 Q. So from the time you took over in May up until this
15 moment right here that item has been in your exclusive
16 care, custody, and control, is that correct?

17 A. It's been in my custody the entire time.

18 MRS. HALL: State could move Thirty-Eight into
19 evidence.

20 MRS. FRYAR: Objection, Your Honor. A product of an
21 unlawful search.

22 THE COURT: All right. I overrule the objection.
23 It's admitted into evidence.

24 MRS. HALL: It's admitted into evidence as State's
25 Forty.

1 THE COURT: Forty?

2 MRS. HALL: Yes, sir.

3 (Whereupon, the Evidence-Gun has been marked and
4 entered into evidence as State's Exhibit No. 40)

5 MRS. HALL: Please answer any questions that Mr. Grier
6 may have.

7 THE COURT: Mr. Grier?

8 MR. GRIER: No questions, Your Honor.

9 THE COURT: All right. You may be excused. You can
10 step down.

11 MR. STARNES: Thank you.

12 MRS. FRYAR: Your Honor, the State would call
13 Investigator Brad Bowers.

14 CLERK: State your full name.

15 MR. BOWERS: Brad Bowers.

16 CLERK: You do solemnly swear or affirm the testimony
17 you give be the truth, the whole truth, and nothing but the
18 truth so help you God?

19 MR. BOWERS: Yes, ma'am, I do.

20 BRAD BOWERS, first being
21 duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MRS. FRYAR:

23 Q. Lieutenant Bowers, where are you employed?

24 A. Chester County Sheriff's Office.

25 Q. What is your position there?

1 A. I'm the lieutenant assigned to the narcotics unit.

2 Q. And how long have you been in narcotics?

3 A. Approximately little over five years.

4 Q. And have you been trained to be, trained in the field
5 of narcotics?

6 A. Yes, ma'am.

7 Q. Could you please tell the Court about your training in
8 the field of narcotics?

9 A. Multiple classes in different locations throughout the
10 United States. I've been to Mississippi a few times,
11 there's like a training academy down there. They
12 specializing in narcotics training. It's the Counter Drug
13 Training Academy is what it's called. Multiple classes at
14 the South Carolina Criminal Justice Academy and multiple
15 classes with all different sheriff's offices and training
16 facilities throughout South Carolina.

17 THE COURT: Could you move away from that microphone,
18 sir. It's popping and cracking.

19 Q. And would you say that most of your law enforcement
20 career has been involved in narcotics?

21 A. It has.

22 Q. And how many narcotics investigation do you think you
23 been involved with?

24 A. A hundred or more.

25 Q. How many defendants do you think that you have been

1 involved with or people who have been arrested for
2 narcotics?

3 A. The number of cases that I have been involved with,
4 two, three hundred I guess. I have no - - that might be a
5 little high but, I mean, that's roughly a ballpark figure,
6 a few hundred I would say.

7 MRS. FRYAR: Your Honor, at this time I'd move that
8 Mr. Bowers be qualified as an expert in the field of
9 narcotics investigations.

10 MR. GRIER: No objection, Your Honor.

11 THE COURT: All right. I find them qualified in the
12 field of narcotics investigations.

13 Q. Lieutenant Bowers, were you involved in this case in
14 which we're in court today?

15 A. Yes, ma'am.

16 Q. Could you please tell the jury how you became
17 involved?

18 A. I was assigned to the narcotics unit at this time. We
19 went out to attempt to locate a suspect that was wanted on
20 a warrant out of North Carolina and that was just part of
21 the team that was assigned to go to that location that day.

22 Q. And when you got to the home - - are we referring to
23 557 Fifth Street here in Chester, South Carolina?

24 A. Yes, ma'am.

25 Q. What did you do when you arrived?

1 A. Upon my arrival there just assisted with the perimeter
2 initially, you know, making sure the scene was secure for
3 the initial knock and talk that was going to take place at
4 the front door of that house. A few of this kind of went
5 around to the sides and the back of the house, different
6 locations, and just to make sure that everything was secure
7 for the person to go on the porch and do the knock and
8 talk. And due to the fact that you're going to knock on
9 somebody's door and announced that you're the police would
10 kind make sure nobody takes off running out the back doors.
11 You just assemble a secure - - you want a secure location.

12 Q. What's the knock and talk?

13 A. Ma'am?

14 Q. What is a knock and talk?

15 A. A knock and talk is where you just simply knock on
16 someone's front door and announce who you are and offered
17 to speak to them under their own free will.

18 Q. What was the purpose of knocking and talking on this
19 occasion?

20 A. The purpose of knocking and talking at this location
21 was to speak with who we understood to be our suspects
22 grandmother an attempt to see if he was there or had been
23 there or if she knew his whereabouts.

24 Q. And what was the results of that knock and talk?

25 A. To my knowledge she stated that he was not there.

1 Q. Mmm, hmm.

2 A. Did not know where he was - - -

3 Q. Okay.

4 A. - - - and we left.

5 Q. And did you, subsequently, go back to the location?

6 A. We did.

7 Q. And when you went back to the location what happened
8 then?

9 A. Upon our arrival back at the location the second time,
10 the suspect was located in the backyard of the residence of
11 557 Fifth Street.

12 Q. And was consent gained from the home owner to search
13 that residence?

14 A. Yes, it was.

15 Q. And did a search of the residence begin at that time?

16 A. Yeah. A consensual search did start.

17 Q. Did you participate in that consensual search?

18 A. I believe I was in the den area of the home at that
19 time, I believe, that's where I was. I'm not one hundred
20 percent - - a lot of us were out there, I mean, there was a
21 lot going on. We were just trying to make sure everything
22 was secure and as you can expect a lot of people aren't
23 overly joyous when law enforcement shows up at their house
24 even if it's under a consensual search pretenses to be
25 searching at somebody's house. You just want to make sure

1 everybody secured. I mean, I don't know if I was actively
2 involved in that initial search or if we were just kind of
3 securing, like the same thing with the perimeters, just
4 kind of a security role at that point.

5 Q. And while you were looking in this home, what were you
6 looking for?

7 A. We believe that the suspect that was involved in the
8 armed robbery in Charlotte, North Carolina, the subject we
9 were there to arrest, who was found in the backyard of the
10 house, we had reason to believe that he was staying there
11 at that residence and that he was in possession of a
12 firearm that could have potentially have been used in the
13 crime in North Carolina.

14 Q. So the reason for the search of the home and the
15 reason to, after consent was gained, was to try to locate
16 the weapon used in the robbery in Charlotte, North
17 Carolina, is that correct?

18 A. Yes, ma'am. Any - - any gun in that house would've
19 been checked and possibly seized as evidence in that crime
20 in North Carolina. Yes, ma'am.

21 Q. What happened once the search began?

22 A. Once that search began, there were a couple of agents
23 that went to one of the back bedrooms of the house and I
24 believe we identified that as being the defendant's
25 bedroom, Mr. Hayes's bedroom, through his mother or

1 grandmother said that, that was his bedroom - - his mother
2 said that was his bedroom. There were multiple items of
3 illegal narcotics located in that bedroom.

4 Q. And initially what was found was two jars of marijuana
5 and something that appeared to be crack cocaine, is that
6 correct?

7 A. Correct. Yes, ma'am.

8 Q. And what happened at that time with those items were
9 located?

10 A. At that point, even though we're in the house under a
11 consensual search the home owner has given us permission to
12 go inside that house, at that point, decide - - we just
13 decided it would be in our best interest if we would stop
14 what we're doing and go in obtained a legal search warrant
15 from a judge that gives us permission to continue
16 searching. You don't want to stumble across - - you don't
17 want to stumble across, you know, a street value of a
18 million dollars worth of crack cocaine in something that's
19 been compressed very, very tiny where a gun could be stored
20 and if you seize that crack cocaine later in court it's
21 going to come up, why were you looking in that very small
22 container because a gun couldn't be in there even though
23 it's a consensual search. Once you start finding
24 narcotics, you want to be able to look further and deeper
25 to see if there's any other narcotics hidden inside that

1 house anywhere so a search warrant gives you permission to
2 continue doing that.

3 Q. So even though you were legally there and you've been
4 given consent to search this house, you could've searched
5 it all day long, y'all out of abundance of caution went got
6 a search warrant, is that correct?

7 A. That is correct.

8 Q. And who went and got that search warrant?

9 A. I did.

10 Q. I hand this to you, Lieutenant Bowers, and ask you can
11 you identify what this is?

12 A. This is a search warrant from the State of South
13 Carolina.

14 MRS. FRYAR: Let the record reflect that this is
15 Court's Exhibit Number Six.

16 Q. Did you obtain the search warrant, sir?

17 A. Yes, ma'am, I did.

18 Q. Can you tell the jury how you went about obtaining the
19 search warrant?

20 A. I left 557 Fifth Street and I return to the sheriff's
21 office and sat down and typed up an affidavit which
22 basically states your probable cause or reason to believe
23 or reason that you're requesting to continue a search or to
24 have a search conducted at any locations. I typed up that
25 affidavit and took it to a judge for their approval or

1 disapproval.

2 Q. Can you please read the affidavit that you submitted
3 to the magistrate to obtain, seek to obtain a search this
4 home?

5 A. Yes, ma'am. "That within the past seventy-two hours
6 the Chester County Sheriff's Office Narcotics Unit
7 conducted a search for a suspect wanted in an armed
8 robbery. The warrant was entered in NCIC. During the
9 course of that search, the subject was located at the
10 residence of his grandmother, Pauline Hayes, who resides at
11 557 Fifth Street, Chester, South Carolina, 29706, who also
12 shares the home with her" - - there some typographical
13 errors, I wasn't sure of their relationship, I labeled him
14 as her husband - - "Charles and their son. During a lawful
15 consensual search a consent form was signed by Ms. Hayes.
16 Agents with the narcotics unit while searching for a weapon
17 believed to have been used during the armed robbery as
18 stated in the warrant, discovered a quantity of marijuana
19 and what is believed to be crack cocaine inside the home.
20 It is your affiant's belief that there could possibly be
21 more evidence into the narcotics violations already
22 discovered. An agent wish to conduct a more thoroughal
23 search of the residence and also continue the search for
24 the weapon to believed to have been used in the armed
25 robbery. This search is to include all outbuildings

1 surrounding the home."

2 Q. And based on the affidavit that you submitted to the
3 judge, were you able to obtain a search warrant?

4 A. I was granted a search warrant.

5 Q. And is that attached?

6 A. Yes, it is.

7 Q. Once you obtain the search warrant, what did you do?

8 A. I return to 557 Fifth Street.

9 Q. And what did you do once you returned there?

10 A. I, basically, what we call executed or served the
11 search warrant on Ms. Pauline Hayes who is the home owner
12 or custodian of the home at that time, she was in charge of
13 the home.

14 Q. And so did you give her - - what did you do with Ms.
15 Pauline Hayes regarding the search warrant?

16 A. I read it verbatim everything in the entire search
17 warrant. We read it front to back. Explain to them,
18 basically, what it means. There's a lot of legal
19 definitions and legal jargon inside of a search warrant. I
20 don't even like some of the wording in them so what I do is
21 I'll read it through and I, basically, explain in layman
22 terms what it means. This is what were going to do. This
23 is, basically, what we're here looking for and you
24 explained to that anything that's taken from their home
25 will be listed on what we call the last page of the return.

1 Anything taken from their home will be listed on the
2 return. It's, basically, a receipt for their items whether
3 they claim ownership of them or not that's a copy of
4 everything that leaves that house.

5 Q. And once you had the search warrant, what happened
6 after that?

7 A. After I read the search warrant, other agents and
8 people, officers that were there began resume the search of
9 the house but now were under the pretense of a search
10 warrant so they can, basically, look inside that house
11 anywhere they want to look.

12 Q. Okay.

13 A. And that search was conducted then.

14 Q. And so when the search began, what was your job during
15 this time?

16 A. Basically, being the affiant on the search warrant, I
17 remained in the den area.

18 Q. Yes, sir.

19 A. And I don't recall really getting involved heavily
20 with the actual search of the house.

21 Q. Yes, sir.

22 A. Basically, my responsibility has now become to seize
23 the search and making sure that, that return is filled out
24 completely so no items leave that house without being
25 notated on that return.

1 Q. When someone found some evidence in that home, did
2 they alert an officer?

3 A. Yes.

4 Q. And who did they alert?

5 A. I want to say the seizing agent on all of the evidence
6 for this case was Agent Crawford.

7 Q. And so all the agents in the house, if anybody found
8 anything, they would alert Agent Crawford and what would
9 Agent Crawford do?

10 A. Typically, if you're just simple part of the search
11 team and you're not going to be the evidence custodian, you
12 don't to be involved in that chain of custody, you can
13 locate, I can see that laying right there, alert the
14 evidence custodian, it can come to be photographed, it can
15 come be collected, sealed in an evidence bag and now it
16 becomes the evidence custodian's because it's they're
17 responsibility, basically.

18 Q. So for example, if Major Marsh located or saw a piece
19 of crack cocaine he would alert Investigator Al Crawford -
20 - -

21 A. Correct.

22 Q. - - - or Agent Al Crawford and what would Agent
23 Crawford do at that time?

24 A. Agent Crawford would collect that piece of evidence,
25 secured into an evidence bag, and now becomes his property.

1 It's his responsibility.

2 Q. And then after all the evidence collected that can be
3 found in the home, what do you do?

4 A. Sometimes we may have a box that we'll collect, that
5 one evidence that has been collected, we'll put all of
6 those items together in one box so they can be securely
7 removed from the home, just depends on how much evidence
8 you have really. Sometimes you may not have but two or
9 three items then they can just come up to me, you know, the
10 evidence custodian at that point or whoever is in charge of
11 that evidence, can come up to me and simply tell me what
12 they've got and I can write on a return. But everything
13 was turned over to Agent Crawford's custody and then he
14 would stop off by me, I think, I was back in the den area
15 at that time, and before anything went out the door of that
16 house we made sure that it was on the receipt of the return
17 of the search warrant to be left at the home.

18 Q. And so when he took custody of it and had it he would
19 document what was found - - -

20 A. Yes.

21 Q. - - - and put it what was called - - -

22 A. Everything that he collected he brought to me and show
23 me what it was and we notated it on the return or I notated
24 it on the return.

25 Q. Let the jury know what a return is?

1 A. A return is, is just another word for a receipt,
2 that's really all that is. It's the last page on a search
3 warrant. When you print a search warrant you print three
4 copies. One my copy, one's the copy to take back to the
5 judge, and one's a copy to leave at the home. So you have
6 to leave a copy of anything that you removed from that home
7 with that homeowner and it's just a receipt. A return is
8 just another word for it.

9 Q. And do you have a return in this case?

10 A. Yes, I do.

11 Q. Could you please read out the items that were placed
12 on the return and received from this home?

13 A. "The following is an inventory of property taken of
14 person to the warrant: a glass mason jar, I'm sorry, glass
15 mason jar containing marijuana, glass mason jar containing
16 marijuana, a Ziploc bag containing marijuana, a plastic bag
17 containing marijuana, a plastic baggie containing crack
18 cocaine, a plastic baggie containing marijuana, a black
19 Taurus .38 Revolver, Serial Number XE75476, plastic bag
20 containing marijuana, \$1,650.00 in US currency, and a black
21 digital scale."

22 Q. And so - - is this documentation, the documents of the
23 search warrant return in this case?

24 A. Yes.

25 MRS. FRYAR: Your Honor, at this time I'd like to move

1 it into evidence.

2 MR. GRIER: Your Honor, I object because it was a
3 result of an unlawful search.

4 THE COURT: All right. I overrule your objection.
5 It's admitted into evidence.

6 MRS. FRYAR: Thank you, Your Honor. This is going to
7 be State's Exhibit Number Forty-One, Judge Henderson.

8 (Whereupon, the Search Warrant has been marked and
9 entered into evidence as State's Exhibit No. 41)

10 Q. Once the evidence was documented by you on this
11 return, what happened next?

12 A. Once it's completed, once the search is done, we make
13 sure the returns, you know, completely filled out, it's
14 witnessed by the other officers not just the affiant, just
15 to make sure, you know, there is more than one sets of eyes
16 verifying what's actually left that house. If everybody's
17 done and completed the search of their room that they been
18 assigned to or chose to go search, you back out of the
19 house, make sure all of your paperwork is filled out, leave
20 a copy of that search warrant with the custodian or the
21 homeowner of the house that you're searching, and we leave.

22 Q. And would you say y'all did thoroughal search of the
23 house?

24 A. Yes, ma'am.

25 Q. And did you - - you indicated that one of the things

1 that you found was a black Taurus .38 Revolver, Serial
2 Number XE75476, is that correct?

3 A. Yes, ma'am.

4 Q. Do you know - - when you find a weapon in a home like
5 this, what you normally do?

6 A. Most important thing is to make sure either loaded or
7 unloaded, you know, you want to verify that for safety
8 reasons and, basically, from that point you verify that the
9 gun is safe to be picked up or removed from where you
10 located it at, the first thing I would look for would be
11 the serial number - - -

12 Q. Yes, sir.

13 A. - - - so that we can run a check on that serial number
14 to see if that gun is being legally owned or if it's been
15 reported stolen or if the serial number has been scratched
16 off it or anything illegal going on with that particular
17 weapon.

18 Q. And was - - and what was the results on this gun?

19 A. This gun was reported stolen. Once we called in the
20 serial number into dispatch, they reported back to us that
21 this gun had been reported stolen.

22 Q. And, in fact, it had been stolen about one month
23 before at the home of Ms. Chisholm, is that correct?

24 A. That is correct.

25 Q. And that was stolen from Second Street here in

1 Chester, is that correct?

2 A. That is correct.

3 Q. And that is - - how far is Second Street from Fifth
4 Street here in Chester?

5 A. Three streets over. Less than - - less than a half a
6 mile.

7 Q. Following gathering the information, who was the
8 person who actually took custody of the evidence?

9 A. Agent Crawford took custody of the evidence.

10 Q. And then where did he go?

11 A. Once we left the residence and the search was
12 complete, he returned to the sheriff's office.

13 Q. And did he have things to do, document the evidence?

14 A. He did.

15 Q. Okay.

16 A. There is a substantial amount of paperwork that goes
17 along with any search warrant. There's reports to be
18 written. There's evidence of paperwork to be done.
19 Paperwork to be sent to SLED for any evidence that you've
20 got to send to SLED for whatever reason that may be.
21 There's - - he had a lot of paperwork to start with.

22 Q. Were you present when the advise of rights were read
23 to the folks in this home on this occasion?

24 A. I don't recall being present during the reading of the
25 rights at the home. I don't - - I don't remember.

1 Q. Were you there when anybody made any statements at the
2 home regarding the possession of any of this evidence?

3 A. I'm not hundred percent sure.

4 Q. What did you do after you took down the return as your
5 responsibilities are, take down the return, what did you
6 do?

7 A. Left a copy of the search warrant with the homeowner
8 and return to the sheriff's office, to the jail, went to
9 the jail side of the sheriff's office.

10 Q. And so the next time you're back in the picture is
11 when you were at the jail side of the sheriff's office, is
12 that correct?

13 A. Correct. Yes, ma'am.

14 Q. Can you tell the jury what you did when you were over
15 there and what your purpose was for being there?

16 A. The purpose of being there was to sit down and speak
17 with the person that had been arrested, Mr. Hayes, as to
18 his involvement with this case as far as the drugs that
19 were found and the weapon that was found in the home. Just
20 wanted to have a conversation with him about that.

21 Q. And did you and Lieutenant Neal have an opportunity to
22 advise Mr. Hayes of his rights regarding making any
23 statements to you?

24 A. Yes, ma'am. Mr. Hayes agreed to speak with us. We
25 took him to a room adjacent to the jail and he was advised

1 of his rights, if I remember correctly, I believe it to be
2 a third time he was advised of his rights and he did agree
3 to speak with us and provide a statement at that time
4 without a lawyer present so we did speak with him then.

5 Q. So Mr. Hayes had been read his rights at the scene, is
6 that correct?

7 A. Yes, ma'am.

8 Q. And then he had been read his rights again at the
9 jail, is that correct?

10 A. Yes, ma'am.

11 Q. Individually, each right, is that correct?

12 A. Yes.

13 Q. Were you present when he was read these rights?

14 A. Yes, I was in the room.

15 Q. Is your signature here at the bottom of the page where
16 he had been read his rights and given the rights form?

17 A. Yes, ma'am.

18 Q. Did he initialed that he understood everything that
19 was going on at that time?

20 A. By each line, yes, ma'am..

21 Q. Did he initial - - did he indicate that he ever wanted
22 to have an attorney?

23 A. He never stated that he wanted an attorney present.

24 Q. Was he read the information regarding, and I'm now
25 referring to State's Exhibit Number Four, did he indicate

1 to you that he knowingly and purposely waive his rights?

2 A. He did.

3 Q. Tell us about this. When y'all, you and Lieutenant
4 Neal were talking with him, did you promise him anything?

5 A. No, ma'am.

6 Q. Did you - - did he appear to be cognizance to you?

7 A. Mmm, hmm.

8 Q. Knowledgeable, fully understanding his rights?

9 A. Yes, ma'am, he did.

10 Q. Did he voluntarily talk to you?

11 A. Yes, ma'am, he did.

12 Q. Did y'all promise him anything if he talked to you?

13 A. We didn't have anything to promise at that time.

14 Q. And so he then wrote a statement, is that correct?

15 A. He did.

16 Q. How did that go about, did y'all just hand him a piece
17 of paper and say write down what happened?

18 A. There's no two interviews that have ever been the
19 same.

20 Q. Okay.

21 A. You can start speaking with somebody, they can tell
22 you their entire life story without ever picking up a pen
23 and writing a single word down on a piece of paper. Some
24 people just don't like to talk. I don't. In fact, if
25 we're going to have an interview and we talked for five

1 minutes and that's really all you have to say I'm going to
2 give you the opportunity to write down on paper what your
3 version of what happened or your version of why you claimed
4 ownership of these items or whatever the case may be. So
5 Mr. Hayes was given the opportunity to put down on paper
6 the reason for the items being in his bedroom or the items
7 that came out of that house he claimed ownership of so he
8 was given the opportunity to put it on paper as to why
9 those items were in there or why, you know, or why they
10 were in his possession.

11 Q. Was it your understanding that he had, was gonna write
12 this down on a piece of paper is because he had already
13 admitted to the officers that he was the owner of all the
14 narcotics and the gun in the home, is that correct?

15 A. Yes. Lieutenant Neal had advised me that, that was
16 the reason Mr. Hayes was arrested at the scene because he
17 had claimed ownership of the items that were found at the
18 house.

19 Q. Well, let's say you are at a house and it had a bunch
20 of drugs in the house and there were three people living in
21 the house, how can you determine who is the owner of the
22 gun - - of the drugs?

23 A. You can ask them. Ask everybody individually or, you
24 know, do these items belong to you? Do these items belong
25 to you? You know, just asked them individually if they

1 want to claim ownership of it. But, I mean, if they don't
2 claim ownership of it then - - there's other ways of
3 determining who it belongs to, I mean, like forensically
4 you can have stuff fingerprinted and that kind of stuff, I
5 mean, that might be that person had in his possession at
6 some point in time. Unless they just openly admit to you
7 that those items are theirs.

8 Q. And so if three people are standing there and they've
9 all of been advised of their rights and they all waive the
10 right to remain silent and they talk to police and one
11 person says, these are all my narcotics, then that is the
12 person you're going to arrest, is that correct?

13 A. Yes, ma'am.

14 Q. If you're in a position where all three people are
15 living in the house, have the ability to exercise dominion
16 and control over things, what do you do at that point
17 regarding the arrest of those?

18 A. State law says that, "The hand of one, is the hand of
19 all." That's not a rule or a policy that we have at the
20 sheriff's office, that's state law that we have to abide
21 by. Basically, that means if there's three people that
22 have access and control or the ability to control items
23 that are illegal, you know, inside of the home or inside of
24 a car and if everybody has access of those items and nobody
25 claims ownership of it, according to the state law those

1 items now belong to everybody that had access to them.

2 Q. So if you could exercise any kind of - - if you lived
3 there, you could exercise any kind of control over it, then
4 you too can be charged - - -

5 A. Well, legally speaking you can be charged.

6 Q. And so once Mr. Hayes got to the jail and spoke with
7 you and Mr. Lieutenant Neal, did he disclaim ownership of
8 some of the items?

9 A. He did. He did try to claim not having any knowledge
10 of some of the items that were in the house in this matter.
11 Yes, ma'am.

12 Q. And once he wrote this statement down, I'm gonna ask
13 you to read it briefly to the jury once again, just
14 briefly.

15 A. Just this portion?

16 Q. Yes, sir.

17 A. Mr. Hayes wrote, "I'm claiming up to what was found in
18 the house and in order to keep my parents from going to
19 jail so the weed, gun and I think, crack is mine.
20 Therefore, there is no need to go back and arrest anyone
21 else there. My reason for saying that was I didn't see
22 none of this come out of the house but, I, myself, did have
23 in my possession a black gun and some weed in jars."

24 Q. And so once he wrote that statement down, did you have
25 more questions for him?

1 A. I did.

2 Q. Did you prepare a Q and A for him?

3 A. I did.

4 Q. And what is a Q and A?

5 A. Basically, it's just something I was taught from a
6 previous lieutenant that I had in investigations. If the
7 statement that you have been given is fairly short or
8 doesn't answer some of the questions that you may still
9 have, just write out some questions on a piece of paper,
10 advise the person that I'm going to write some questions
11 out, I'm going to leave you room to write out the right
12 answers below those questions, and hand them the piece of
13 paper and give them the opportunity to answer the questions
14 that you may still have left.

15 Q. And you did that in this case, is that correct?

16 A. Yes, ma'am, I did.

17 Q. And I am showing you what's been marked as State's
18 Exhibit Number Five, there some writing in blue, who wrote
19 those questions?

20 A. In the blue, I did.

21 Q. There's some writing in black, who wrote those
22 answers?

23 A. Mr. Hayes did.

24 Q. If you could read to the jury what questions and the
25 answers were that you posed to the defendant?

1 A. I wrote the question, "Where did the gun come from?
2 And in parentheses I put, (the stolen gun that was found in
3 your bedroom). His answer was, he wrote, "Charles."

4 Q. Mmm, hmm.

5 A. He initially wrote, "My dad", but he scribbled that
6 out and beside that he wrote, "Charles."

7 Q. Okay.

8 A. The next question I wrote was, "Did you know the gun
9 was stolen?" His answer was, "No." The next question,
10 "How much weed was in your bedroom?" His answer was, "Two
11 ounces and a quarter."

12 Q. What can that mean?

13 A. Simply stating a quarter could mean, you know, a
14 quarter pound, quarter ounce, quarter, I mean, he could - -
15 he could take any weight and cut it into quarters.

16 Q. All right.

17 A. And he could be referring to any amount of narcotics.
18 or weed in this case, any amount referred to as a quarter.

19 Q. And - - -

20 A. But based on the amount of marijuana that was found in
21 that bedroom, you're not talking sandwich bag size - -
22 you're not talking sandwich baggies full of marijuana where
23 you would be referring to like a quarter ounce. We found
24 grocery bags that have been compressed into what it looked
25 like bricks that would be used to build a house. You're

1 talking pounds so a quarter pound that's a substantial
2 amount of marijuana and I believe that's what he's
3 referring to in this case.

4 Q. What else was the next question?

5 A. The next question I wrote was, "How much crack was in
6 your bedroom?" His answer he wrote was, "Don't know." The
7 next question I wrote was, "Where was the weed stored? And
8 in parentheses, I put (kept). His answer was, "Behind my
9 bed." The next question I wrote was, "Ehere was the
10 crack/stored? His answer was, "Don't know." The next
11 question, "How long have you had the gun in your
12 possession?" And I wrote below that, "When did you buy
13 it?" His answer was, "I think about three years or more."
14 The next question was, "Did you write this statement on
15 your own free will?" His answer was, "Yes."

16 Q. And so he did indicated that this was his bedroom, is
17 that correct?

18 A. Yes, ma'am.

19 Q. And this is the same bedroom where all of these items
20 that the jury has seen today, items of marijuana and crack
21 cocaine and a gun were found, is that correct?

22 A. Correct.

23 Q. And there was no other gun found in the house, is that
24 correct?

25 A. No, ma'am.

1 Q. And regarding this gun he said that he had over three
2 years, is it possible for this gun to have over three
3 years?

4 A. No, ma'am.

5 Q. Why not?

6 A. It had been reported stolen from a residence a month
7 before this so it's clearly in someone else's possession a
8 month before.

9 Q. And so once you obtain this statement - - excuse me,
10 once you obtain this statement from the defendant, did that
11 conclude your involvement in this case?

12 A. Yes, I believe so.

13 Q. Let me ask you this, do you see the defendant who gave
14 you those answers who said I voluntarily want to talk to
15 you, who had his rights read to him three times, do you see
16 him in the courtroom today?

17 A. Yes, ma'am.

18 Q. Could you please point him out to the jury?

19 A. The defendant sitting right there.

20 Q. You have talked about quarter ounces, quarter pounds
21 and things of that nature, if you can tell us how many, how
22 many grams are in a ounce of marijuana?

23 A. It's 28.35.

24 Q. So a little over 28 grams in a ounce of marijuana?

25 A. Yes.

1 Q. And so when you, in your job, arrest somebody for
2 marijuana use, is there a inference you use to determine
3 whether or not they are possessing the marijuana for their
4 own personal use or if they possessing it with intent to
5 distribute?

6 A. There's very few - - there's a few exceptions to the
7 rule, the state law says 28 grams is the inference, that's
8 the threshold.

9 Q. All right.

10 A. If you got below 28 grams it's possession. They
11 consider that to be enough marijuana for personal use.
12 Anything over 28 grams it's considered possession with
13 intent to distribute.

14 Q. If someone wanted to possess marijuana and they wanted
15 to buy marijuana, how would they generally buy in what
16 degrees or what portions?

17 A. The most common weights that marijuana is sold that
18 I'm aware of is grams, ounces and pound.

19 Q. Was a nickel bag?

20 A. Is about five dollars worth of marijuana. That's
21 probably enough to put inside one cigar.

22 Q. Okay.

23 A. Take the cigar, dump the tobacco out of it, and put
24 marijuana back in it.

25 Q. What's a dime bag?

1 A. It's ten dollars worth marijuana. That's still about
2 the same, about equal, about enough marijuana to put inside
3 of one cigar.

4 Q. And how many grams would you think would be in a
5 nickel or dime bag?

6 A. A nickel might be if it's a gram or half a gram.

7 Q. All right.

8 A. And then a dime bag is it just depends on you're
9 getting it from.

10 Q. Mmm, hmm.

11 A. Over a gram, maybe two grams, maybe three and I've
12 seen dime bags go up to seven or eight grams. How you know
13 what you're getting is how well you know the person you're
14 buying it from.

15 Q. So if somebody had three grams or approximately three
16 grams of marijuana in their pocket, would that be about a
17 dime bag?

18 A. Roughly, yes, ma'am.

19 Q. That would cost them about ten dollars - - -

20 A. Yes, ma'am.

21 Q. - - - or a little more perhaps?

22 A. Yes.

23 Q. What is a quarter bag?

24 A. A quarter bag that's generally referred to five
25 dollars worth of marijuana.

1 Q. Is that referred to as a quarter ounce of marijuana or
2 is it more about the money than the - - -

3 A. It's more about the - - when you're talking that small
4 of amount you're talking more like money.

5 Q. Okay. And when you arrest people with this amount, an
6 ounce or less of marijuana on them, what do you charge them
7 with?

8 A. With that small amount of marijuana?

9 Q. Yes, sir.

10 A. That's just possession of marijuana. Simple
11 possession is what it's called.

12 Q. If you arrest somebody with more than an ounce of
13 marijuana, what you charge them with?

14 A. That bumps it up to the next level. The State has set
15 forth, its possession with intent to distribute.

16 Q. Could you tell the jury, sometimes you find marijuana
17 actually on somebody's person, is that correct?

18 A. Yes

19 Q. And sometimes you find it - - and that's called actual
20 possession, is that correct?

21 A. It is.

22 Q. And sometimes you find it in their surroundings, is
23 that correct?

24 A. Correct.

25 Q. And you charge them with the control of that as well?

1 A. Yes.

2 Q. Explain that to the jury.

3 A. That would be considered constructive possession.

4 Q. All right. Explain that.

5 A. Having something on your person as it's referred to in
6 the law that is simply possessing an item. If you have the
7 access or ability to have control of that item or at one
8 point, have it in your possession but it's no longer on
9 your person but you're still in control of it that's the
10 constructive possession.

11 Q. If - - can more than one person be in constructive
12 possession of something?

13 A. Yes.

14 Q. If you and I lived in the same house and there was a
15 quantity of marijuana and crack cocaine in that house,
16 could we both be charged with constructive possession of
17 drugs?

18 A. Absolutely.

19 Q. And in this case, there was three people charged with
20 constructive possession, is that correct?

21 A. Yes.

22 Q. And all three of these people live in this house, is
23 that correct?

24 A. That is correct.

25 Q. But only one person lived in the bedroom, is that

1 correct?

2 A. That is correct.

3 Q. If you could tell us now, let's go to crack cocaine,
4 do you know how many grades are in a gram of crack cocaine?

5 A. I forgot.

6 Q. If you could tell us what is - - what is the inference
7 regarding crack cocaine the gram weight?

8 A. It's four grams - - I'm - - -

9 Q. If you don't know - - -

10 A. I don't remember. I keep a sheet with me in my car.
11 I don't remember, most a lot of them off the top of my
12 head, there's so many.

13 Q. Let me just ask you this, if somebody was found to be
14 in possession of more than five or six grams of crack
15 cocaine, what would they be charged with?

16 A. Possession with intent to distribute.

17 Q. And why is that?

18 A. That is above what I believe - - I can't remember the
19 threshold, but I believe that's over the threshold that the
20 State set forth as part of being able to charge possession
21 with intent to distribute once believed to be more crack
22 than personal use.

23 Q. Let's talk about how crack cocaine is sold and how
24 you've seen it sold in your career. How do - - how do drug
25 dealers buy crack cocaine? Do they buy a lot of rocks or

1 do - - how do they generally buy?

2 A. Most people are going to buy powdered cocaine and
3 convert it to crack themselves or have somebody that knows
4 how to cook what they referred to as knows how to cook
5 converted into crack for them.

6 Q. And so tell the jury again just briefly if you have
7 cocaine base.

8 A. Mmm, hmm.

9 Q. You can do some stuff with and turn it into crack
10 cocaine?

11 A. Correct.

12 Q. Is that correct?

13 A. Yes.

14 Q. If you just have some cocaine, you can turn it into
15 crack cocaine?

16 A. Mmm, hmm.

17 Q. And why would somebody want to do that?

18 A. You can have cutting agent of pure powder cocaine,
19 increasing quantity, cook it, convert it into crack cocaine
20 and you now have more street value worth of drugs than you
21 would of just straight selling them straight powder
22 cocaine. So you convert it and cook it into crack and it's
23 just a different form of ingesting the same drug but it's
24 technically a little bit more profitable to do it that way
25 because you're adding a cutting agent to it, increase the

1 quantity of it or the amount of the drug that you have.

2 Q. And do you generally find that people buy rocks of
3 crack cocaine?

4 A. Depends on your area, but, yeah generally, speaking
5 that's - - -

6 Q. And how do you find them packaged?

7 A. Aluminum foil, tiny Ziploc baggies, corner of - - the
8 corner of a baggie, you know, broken off and twisted into a
9 little knot. There's many, many different ways.

10 Q. Do you know how much, if you know, how much does a
11 gram of crack cocaine go for?

12 A. A gram, is about a hundred dollars a gram.

13 Q. All right.

14 A. I believe that's relatively a safe estimate.

15 Q. And that's what the State of South Carolina and you've
16 gone to classes on that and that's kind of the going rate,
17 is that correct?

18 A. Generally speaking, yes, ma'am.

19 Q. It has to do with - - what does it have to do with?

20 A. Supply and demand, where you live, who you're getting
21 from, how well you know your dealer and a lot of it's got
22 to do with how - - where it's coming from. If you're
23 getting pure powder cocaine that's coming up from Mexico
24 and it's got to travel all the way here, the price is going
25 to be a little bit higher because there's more risk

1 involved of getting it here but if you've got a good 'in'
2 with a guy in Atlanta and you're getting your cocaine from
3 Atlanta, he's making his profit elsewhere so, you know,
4 your risk is only getting it from Atlanta to here so you
5 may not pay quite as much.

6 Q. How is crack cocaine usually ingested?

7 A. To my knowledge it smoked, usually.

8 MRS. FRYAR: I beg the Court's indulgence.

9 Q. What's it smoked out of?

10 A. I've seen it come out a lot of different things but
11 the most common form I've seen is a little small glass
12 tube. Just take some Brillo pad and kind of make shift
13 filter. Stuff the Brillo pad on the end of it. Put your
14 little tiny rock in the end of the glass pipe and light it
15 and smoke it.

16 MRS. FRYAR: All right. Thank you, Investigator
17 Bowers. I appreciate it. Please answer any questions Mr.
18 Grier has.

19 THE COURT: Mr. Grier?

20 MR. GRIER: Do you want me to cross now, Your Honor?

21 THE COURT: Is your cross going to be sort of lengthy?

22 MR. GRIER: I would anticipate.

23 THE COURT: I believe everybody in the jury is ready
24 for break, the Court is, so let's take a lunch break here.
25 I hope it won't take as long for me to get lunch as it did

1 yesterday, we'll see. Why don't shoot to be back here at
2 2:15, 2:15. Now, I have to caution you again and I know
3 you've heard this before but you cannot discuss the case
4 amongst yourselves again. You can't discuss it with
5 anybody else that you might see at lunch as I caution you
6 earlier until all the evidence is in, you don't talk about
7 the case at all until such time I submitted to you for
8 deliberations. Have a nice lunch. Everybody remain seated
9 while the jury leaves.

10 (Whereupon, the jury exits the courtroom at 12:54 p.m.)

11 THE COURT: Mr. Bowers, I have to caution you that you
12 can't talk to anybody during the break. Your subject to be
13 cross-examination by counsel. Don't talk to your lawyer.
14 You can talk about the weather, sports, Panthers, or
15 whatever you want to but not about this case, all right?

16 MR. BOWERS: Yes, sir.

17 THE COURT: Thank you.

18 MRS. FRYAR: Your Honor, we would ask that
19 Investigator Al Crawford excused? He has to be at the VA
20 hospital this afternoon and he needs to leave attend that
21 appointment.

22 THE COURT: you don't anticipate needing him
23 afternoon?

24 MRS. FRYAR: I do not anticipate - - -

25 THE COURT: Do you have a problem with that Mr. Grier?

1 MR. GRIER: No, Your Honor.

2 THE COURT: Certainly I want to go to the doctor.

3 MRS. FRYAR: Thank you, Your Honor.

4 THE COURT: He's excuse for the afternoon. Anything
5 else before we break for lunch?

6 MRS. FRYAR: No, sir.

7 MR. GRIER: No, Your Honor.

8 THE COURT: All right. Why don't we reconvene at
9 2:15.

10 (Whereupon, the Court broke for lunch at 12:54 p.m.)

11 THE COURT: Anything from anybody before we begin?

12 MRS. FRYAR: No, Your Honor.

13 MR. GRIER: No, Your Honor.

14 THE COURT: All right. Bring the jury back in.

15 (Whereupon, the jury enters the courtroom at 2:34 p.m.)

16 THE COURT: All right. You ready, Mr. Grier?

17 MR. GRIER: Thank you, Your Honor.

18 CROSS EXAMINATION BY MR. GRIER:

19 Q. Mr. Bowers?

20 A. Yes, sir.

21 Q. You're familiar with my client, Charles Hayes,
22 correct?

23 A. Know of him.

24 Q. And, basically, you went out to the house that he
25 resides in to arrest someone wanted on a fugitive warrant,

1 is that correct?

2 A. Yes, sir.

3 Q. That was out of the State of North Carolina, correct?

4 A. It was.

5 Q. Did you ever see the actual warrant for Mr. Simpson?

6 A. I did not.

7 Q. And you don't know exactly what kind of gun it was
8 that y'll were looking for when you went into the house,
9 correct?

10 A. No, sir.

11 Q. In order to go and search a home, what exactly do you
12 need to do to establish probable cause?

13 A. In order to go search a home?

14 Q. Yes. If you're looking for, say a weapon that was
15 used in a crime.

16 MRS. FRYAR: Your Honor, I think that's a question of
17 law. May we approach?

18 (Whereupon, a bench conference was held)

19 Q. Let me rephrase that question. As a law enforcement
20 officer if you wanted to search a home that you believe a
21 gun happens to be located in, in preparing a search
22 warrant, what would you put in there for the magistrate to
23 grant you a search warrant?

24 A. You would need to have belief beyond a reasonable
25 doubt that a crime occurred or it could occur or the

1 evidence related to a crime that has occurred or could
2 occurred at that location.

3 Q. So why didn't y'all not do that in this case, get a
4 search warrant from the beginning?

5 A. Because we obtained consent from the homeowner.

6 Q. And were you present when the conversation took place
7 with Ms. Hayes'?

8 A. I was at the house but I wasn't present there standing
9 by to listen to that conversation, no, sir. Do you mean
10 when the consent to search her residence from her was
11 obtained?

12 Q. That's correct.

13 A. Yeah, I was there but I wasn't beside her when that
14 conversation happened.

15 Q. You don't know what happened to transpired in the
16 conversation?

17 A. I do not.

18 Q. Your job in this case was, basically, to go and get a
19 search warrant once some drugs were located in the house,
20 correct?

21 A. Turned out to be that way but that wasn't my initial
22 assigned duty but it turned out that I was the one who left
23 to go get the search warrant, yes, sir.

24 Q. Were you one of the first ones in the house?

25 A. During the execution of the search warrant or the

1 initial consensual search?

2 Q. The initial consensual search?

3 A. I don't recall.

4 Q. When you went into the house, did you smell marijuana?

5 A. I do recall smelling marijuana.

6 Q. There's been testimony as to smoke marijuana versus
7 unsmoked marijuana, which did you smell?

8 A. Do what now?

9 Q. Which did you smell?

10 A. Initially, I smelt smoked marijuana, what smelt to me
11 to be smoked marijuana.

12 Q. Did you smell cigarette smoke?

13 A. I don't recall smelling cigarette smoke, no, sir.

14 Q. And once you got into the house and the drugs were
15 located in the back bedroom, whose idea was it to stop the
16 search to get a search warrant?

17 A. Not - - I don't know who made that decision or who may
18 that actual call. It probably - - to my best memory it was
19 just kind of a collective thing. We stopped and discussed
20 between two, three, or four of us I don't remember who all
21 was involved but it was a decision that was made at some
22 point to stopping go get a search warrant. I don't know
23 who made that decision.

24 Q. Were you part of that conversation?

25 A. I believe I was, yes, sir.

1 Q. Was Sheriff Underwood part of that conversation?

2 A. He was not - - he was not in the house at that time
3 that I recall, no, sir.

4 Q. He had already left?

5 A. He may have still been on the scene but I didn't see
6 him there, no, sir.

7 Q. Was the mother inside the house at that time, Ms.
8 Hayes?

9 A. I don't remember.

10 Q. And consent searches - - whenever you get consent
11 searches to search through a person's car or their home at
12 any point, do you usually stop and go get a search warrant
13 after getting a consent to search?

14 A. It's been done numerous times, yes, sir.

15 Q. Why?

16 A. When you come across evidence that's gonna involve
17 making other charges other than your initial reason that
18 you were in that house to start with, it's best to go get a
19 search warrant. That's just the way we're taught.

20 Q. Do narcotic officers wear body cameras?

21 A. Not typically. I mean, the ability is there, you
22 know, the capability of your issuance of a body camera to
23 wear one, you would be able to clip it on your tac vest if
24 you have a tac vest on but, generally speaking, we're
25 plainclothes officers and we don't wear body cameras.

1 Q. Do y'all have them at your disposal?

2 A. The narcotics unit? I do not believe they have
3 assigned anybody cameras, no, sir.

4 Q. Does patrol wear them?

5 A. I believe there are officers that do have body cameras
6 but I don't have the information to tell you who all does
7 and who doesn't.

8 Q. It's not a department policy at this time?

9 A. If you're issued one, I believe, it is a policy that
10 you wear it but as far as if you don't have one, you can't
11 abide by the policies so to the best of my knowledge that's
12 all I know of them.

13 Q. Did you ever go to the back bedroom?

14 A. I did go into the back bedroom.

15 Q. What purpose did you go back there for?

16 A. I want to say, if I remember correctly, that's where
17 the conversation was happening, a couple of us, a few of us
18 about stopping and getting the search warrant. It was at
19 that point, you know, they see what we've got laying on the
20 floor and behind the bed and, you know, what you think,
21 what you think, it was kind of a collective thing but, I
22 mean, I only when in the bedroom just to see what they had
23 and we kind of agreed amongst ourselves to go and stop and
24 get a search warrant.

25 Q. Now that's when you left the scene to go get one, is

1 that correct?

2 A. I did.

3 Q. And you typed it up and then presented it to the
4 magistrate to sign, correct?

5 A. I did.

6 Q. Which magistrate signed off on it?

7 A. I'm sorry.

8 Q. Which magistrate signed the warrant?

9 A. Judge Underwood.

10 MRS. FRYAR: Your Honor, I object. Can we approach?

11 (Whereupon, a bench conference was held)

12 Q. After receiving the warrant, did you return back to
13 the house?

14 A. I did.

15 Q. And what happened to the warrant at that time?

16 A. What happened to the warrant?

17 Q. Yes.

18 A. It remained in my possession. I read it to Ms. Hayes.

19 Q. You read it to her?

20 A. I did.

21 Q. Did you give her a copy?

22 A. Once we left, I did.

23 Q. At the scene you had an extra copy for her?

24 A. If I recall I did. Hold on, I think I did.

25 Q. You sure she wasn't denied a copy of it and went to

1 request one and one was issued later, do you recall that?

2 A. I don't have any knowledge of her being denied of it,
3 no, sir.

4 Q. Was she told to stay outside of the house while y'all
5 perform the search?

6 A. Not to my knowledge.

7 Q. She denied access to the house to use the restroom?

8 A. Not to my knowledge that I recall.

9 Q. So once all the drugs are collected and Mr. Hayes
10 shows up, what happens then?

11 A. You said once all the drugs are what now?

12 Q. Once y'all collected the drugs and Mr. Hayes arrives
13 at the scene, what happens next?

14 A. Agent Crawford was in charge of all the evidence.
15 Secured that in his vehicle. Finished up with the search
16 warrant and then we return to the sheriff's office with Mr.
17 Hayes in custody.

18 Q. Were you present when Mr. Hayes was questioned at the
19 scene?

20 A. Not that I - - no, sir.

21 Q. Who transported Mr. Hayes to the law enforcement
22 center?

23 A. I couldn't tell you.

24 Q. It was not you?

25 A. No, sir.

1 Q. At some point, did you accompany Lieutenant Neal to
2 question Mr. Hayes further?

3 A. I did.

4 Q. Walk me through that process? When did y'all meet up
5 at the detention center to do that?

6 A. Once Mr. Hayes arrived at the detention center, we
7 went to the booking counter and went through the process of
8 getting booked in. Lieutenant Neal and I went back to the
9 attorney/visitation room which is right behind the booking
10 - - behind the booking in area at the law enforcement
11 center, took Mr. Hayes into the room to conduct an
12 interview with him.

13 Q. And that room is called what?

14 A. The attorney/visitation room or lawyer/visitation room
15 or something like that.

16 Q. It's not called the interrogation room?

17 A. No.

18 Q. Do y'all have what's called an interrogation room?

19 A. They are interview rooms at the law enforcement
20 center, yes, sir.

21 Q. You call them interview rooms?

22 A. Yes, sir.

23 Q. And they are at the sheriff's department wing, is that
24 correct?

25 A. Same building, different side of the building, yes,

1 sir.

2 Q. What's different from those rooms as opposed to the
3 lawyer interview room?

4 A. They have a one-way mirror glass window that you can
5 see through from one side that you can't see through the
6 other and they have the ability to record audio and video.

7 Q. But the attorney interview room does not have that?

8 A. Correct. Well the attorney/visitation room does have
9 a one-way window but it doesn't have the ability to video
10 and record audio to my knowledge.

11 Q. And once you got in there, did you give Mr. Hayes's
12 any forms to sign?

13 A. He was given a Miranda rights form.

14 Q. Was he given any other documents to sign?

15 A. He was given a statement, voluntary statement form.

16 Q. Was he given any kind of forfeiture of money seize
17 form?

18 A. Not at that time, no, sir.

19 Q. That wasn't the first form y'all asked him to sign,
20 was to sign away the money that y'all found?

21 A. No, sir. That's not the process.

22 Q. At that point, he was reread his rights, correct?

23 A. He was. I believe for the third time.

24 Q. And he initialed all the lines to show he understood,
25 correct?

1 A. Correct.

2 Q. And then y'all told him to write a statement?

3 A. Ask him if he was willing to write a statement, he
4 voluntarily did.

5 Q. And, basically, in that statement he did state that he
6 was, basically, only doing this to keep his parents out of
7 jail, correct?

8 A. Initially in the statement, he did. The first
9 sentence or two is what he said.

10 Q. And then did he add language after that?

11 A. He did. At the very end where he states, "he did have
12 in his possession the drugs and the gun."

13 Q. And then from that y'all did another statement called
14 the Q and A, is that correct?

15 A. Is not a separate statement is a continuation form.
16 Basically, it's the same exact form of a voluntary
17 statement is just without the headings, it's a blank page
18 and gives you room to write and I did write the questions
19 and gave him room for answers.

20 Q. But on that form you ask, "Where was the crack",
21 correct?

22 A. Mmm, hmm.

23 Q. And he did not know where it was, correct?

24 A. Correct.

25 Q. And you also asked him how long he had the gun,

1 correct?

2 A. Correct.

3 Q. He said three years?

4 A. I believe he said three years or more.

5 Q. And y'all already knew at that time that, that wasn't
6 a correct?

7 A. Knew that the gun - - I knew that the gun was stolen
8 at that time because that had been confirmed through our
9 dispatch but for how long and where it was stolen from and
10 the facts surrounding the case of the stolen gun itself, I
11 didn't know any of that information at that time.

12 Q. And Mr. Hayes has been charged with possession of a
13 stolen pistol, correct?

14 A. Correct.

15 Q. And y'all knew it was stolen, how?

16 A. We were - - it was confirmed through our dispatch
17 stated that there was - - in the NCIC System the Crime
18 Information Center, they had information that gun have been
19 reported stolen based on the serial number.

20 Q. And regular people have access to that database?

21 A. Regular people?

22 Q. Yes.

23 A. No, sir.

24 Q. Why not?

25 A. You have to get certified to run those criminal

1 histories and that kind of information and then it's sent
2 to law enforcement personnel.

3 Q. Are there any other place that you can go and find
4 that a gun is stolen?

5 A. I have no clue.

6 Q. As a narcotics officer when recover money in a drug
7 bust, what happens that money?

8 A. That money is logged in and secured just as regular
9 evidence, an item any other evidentiary item that you find
10 at the scene, it's taken back to the sheriff's office where
11 that money is counted under dual control or what we refer
12 to as dual control which means two people, two people take
13 part in the counting of that money to make sure there's no
14 mistakes and you have that exact dollar amount. And then
15 it's our policy at the sheriff's office we do not put money
16 into evidence. It's immediately put into a night drop or a
17 bank deposit bag and taken to the bank before we leave work
18 or anything gets done. Getting that money away from the
19 sheriff's office and to the bank is pretty much a top
20 priority.

21 Q. So after he provided the written statement and then
22 the Q and A, at what point did y'all go back and arrest his
23 mother and her boyfriend?

24 A. I don't recall the time frame or when that actually
25 took place. The duties that come along after a search

1 warrant has been executed and money has been seized and you
2 got that much evidence, there's so much paperwork that goes
3 along with those things that we kind of divide up the
4 duties back in the narcotics office amongst all of the
5 agents and everything back there. So being tied up with
6 paperwork and stuff I don't think I actually went back to
7 the house to take part of the arrest so I don't recall.

8 Q. But wasn't he told by law enforcement that if he took
9 responsibility they wouldn't be charged?

10 A. Was he told that?

11 Q. Yes.

12 A. Not by me.

13 Q. Not by you but was he told by others?

14 A. Not that I have knowledge of.

15 Q. You also testified earlier that with constructive
16 possession, you refer to it as "the hand of one, is the
17 hand of all", correct?

18 A. Yes, sir.

19 Q. So, basically, anybody that takes part in a crime is
20 all charged with the same crime, is that correct?

21 A. Can be.

22 Q. Can be?

23 A. Mmm, hmm.

24 Q. And in this case, weren't there four people at the
25 location?

BRAD BOWERS- REDIRECT EXAMINATION BY MRS. FRYAR:

1 A. Correct.

2 Q. How many were charged?

3 A. Three, to my knowledge.

4 Q. And who wasn't charged?

5 A. The gentleman that had the warrant out of North
6 Carolina.

7 Q. Did he also have drugs in his possession?

8 A. He had a very small amount of marijuana in his pocket.

9 Q. Was he charged for that?

10 A. I believe he was.

11 Q. Did you not, yourself, think that it was a good idea
12 to talk to him about what he saw in the house where he had
13 been there for a few days?

14 A. He may have been interviewed but he wasn't by me. I
15 don't know if he was spoken to by someone else or if he was
16 interviewed at the scene there before he actually left to
17 go to jail. I wasn't a part of any interviews with him so
18 I don't know.

19 Q. But you were part of this investigation, correct?

20 A. I was there.

21 Q. And to your knowledge there's no statement ever been
22 provided by Mr. Simpson?

23 A. Based on the fact that he did not live at that house,
24 I don't think there was a reason to get a statement from
25 him about what goes on in that house. Now, he had been

BRAD BOWERS- REDIRECT EXAMINATION BY MRS. FRYAR:

1 staying there from what I was told but I didn't speak with
2 him so I don't know.

3 Q. And you don't know where he was staying inside the
4 house either, do you?

5 A. It appeared from his belongings he had been sleeping
6 on the couch in the den area.

7 Q. But you can't say for a fact that he was not in that
8 back bedroom?

9 A. I didn't spend the night there with him, I don't know.

10 MR. GRIER: Court's indulgence for a moment please?

11 THE COURT: Yes, sir.

12 MR. GRIER: No further questions, Your Honor.

13 THE COURT: Mrs. Fryar?

14 MRS. FRYAR: Thank you.

15 REDIRECT EXAMINATION BY MRS. FRYAR:

16 Q. Lieutenant Bowers, as far as the gun charge's are
17 concerned and the questions that you ask him regarding the
18 gun in your Q and A, did you know at that time that you are
19 asking these questions that the gun had recently been
20 stolen or were you just asking that question to determine
21 information about the gun and where he got it from?

22 A. Yeah, the only information that I had was simply that
23 the gun had been stolen from where and when and how long it
24 had been, I mean, I didn't have any other information so I
25 wanted to know how long it had been in his possession and

1 where did he obtained the gun from.

2 Q. So you didn't ask him this question knowing in advance
3 that the gun had just recently been stolen - - -

4 A. No.

5 Q. - - - and it couldn't have been three years ago that
6 it was stolen?

7 A. The only thing if I called dispatch right now and we
8 have a stolen gun sitting here and run the serial numbers
9 they're going to come back and tell me either yes, it
10 stolen or no, it's not. Other than that it's on the
11 officer who is requesting that information to take it upon
12 himself to go and find the report that goes along with that
13 gun been stolen to find out from where and when it was
14 stolen.

15 Q. So that information was not known until after the - -
16 -

17 A. Correct. - - - -

18 Q. - - - interview was concluded?

19 A. It was not readily available.

20 Q. Let's talk about when you can seize what we call drug
21 money.

22 A. Okay.

23 Q. When can you seize money that is on or belongs to
24 someone who is charged with having drugs on them or in
25 their possession?

1 A. Every drug has a different threshold. Basically,
2 anything over 28 grams of marijuana is considered
3 possession with intent to distribute. Anything less than
4 that is considered possession. The same thing with crack,
5 same thing with cocaine, LSD, any drug has got a minimum
6 and a maximum or a minimum you've got to have to consider
7 possession with intent to distribute. Once you reach that
8 threshold of possession with intent to distribute, if you
9 feel like you can articulate or explain why you believe
10 that this money goes along with these drugs then by law you
11 have the right to seize that money if you believe it's drug
12 proceeds

13 Q. And so if you seize money and you seize these drugs at
14 the same place and you believe that they are related, they
15 had the same nexus to them, then you can file civil
16 paperwork to say we want to seize that money because we
17 think it's drug money?

18 A. That's right.

19 Q. And if you find - - and if you find money on someone
20 who is charged with possession with intent to distribute
21 marijuana and possession with intent to distribute crack
22 cocaine and it's in their pocket at the time of their
23 arrest and you believe that it is linked to drug money,
24 then you can file a civil action to seize that money, is
25 that correct?

1 A. Follow the right legal steps, you have the legal right
2 to see that money, yes, ma'am.

3 Q. But what you do with the defendant is, you ask them,"
4 do you want to go through this procedure or do you admit
5 that this is related to drug money and you sign over the
6 money to us as being part of drug money?"

7 A. That's the procedure.

8 Q. And in this case Mr. Charles Hayes signed over the
9 money to you, is that correct?

10 A. Voluntarily. Yes, ma'am.

11 Q. Didn't want to have a hearing about it?

12 A. No.

13 Q. And so you're saying that you didn't participate in
14 the paperwork, the civil paperwork where you advise Mr.
15 Hayes that you were going to seek to seize the money
16 because you believe that it was drug-related money?

17 A. Correct. I - - -

18 Q. You did not do that personally?

19 A. Yeah, I did not take part in that. Correct.

20 Q. That's just how this is done?

21 A. That's our procedure. Yes, ma'am.

22 Q. And the person who actually went over there and seized
23 the money, he had no, no talking with the defendant about
24 his statement or his guilt or anything like that, is that
25 correct?

1 A. Correct.

2 Q. Those are two separate things that happened?

3 A. Absolutely.

4 Q. With different people?

5 A. Yes, ma'am.

6 Q. And so Trey Hunter handled that?

7 A. Yes.

8 Q. But what we know is that Trey Hunter handled that and
9 Mr. Charles Hayes signed the document saying I agree that
10 that's drug money and you're seizing it?

11 A. He did.

12 Q. And you can seize it?

13 A. Yes.

14 Q. And is Trey Hunter injured at this time?

15 A. He is.

16 Q. Is he out because he's recently had surgery?

17 A. Yeah. I believe last week or week before he had
18 surgery.

19 MRS. HALL: Your Honor, give us just a second please.

20 THE COURT: Yes, ma'am.

21 Q. In fact, when y'all do seizures - - when y'all make a
22 case against somebody, y'all create what we call a case
23 file, is that correct?

24 A. Correct.

25 Q. That's where you keep all the information about the

1 case in it, is that correct?

2 A. Yes, ma'am.

3 Q. When y'all do a seizure of drug money y'all keep a
4 different file on that, right?

5 A. Completely separate.

6 Q. Two separate things, right?

7 A. Mmm, hmm.

8 Q. Once a criminal matter?

9 A. Right.

10 Q. Once a civil matter?

11 A. Right. They're not somewhere together or anything.

12 They're file separately in different filing cabinets.

13 Q. Now, you testified that there was indication that
14 three people actually lived in the house, is that correct?

15 A. Correct.

16 Q. Did you go through the house and see - - how many
17 bedrooms were there?

18 A. That I recall - - the best, three - - two bedrooms,
19 that I recall.

20 Q. And one bedroom was in the back where Charles Hayes
21 possessions were found, is that correct?

22 A. Correct.

23 Q. And another bedroom was the bedroom occupied by Ms.
24 Pauline Hayes and Mr. Quinton Feaster, is that correct?

25 A. Correct.

BRAD BOWERS- RE-CROSS EXAMINATION BY MR. GRIER:

1 Q. There was no indication that Mr. Simpson had anything
2 throughout this house or lived in this house at all, is
3 that correct?

4 A. Other than what was on the couch.

5 Q. Other than what was on the couch in the living room
6 which was contained in a grocery bag, is that correct?

7 A. Correct.

8 MRS. FRYAR: I don't have any further questions for
9 Lieutenant Bowers. Thank you.

10 THE COURT: Mr. Grier?

11 RE-CROSS EXAMINATION BY MR. GRIER:

12 Q. As to the gun that was seized from the house, y'all
13 went there looking for a gun, correct?

14 A. I'm sorry.

15 Q. You went there looking for a gun, correct?

16 A. Yes, sir.

17 Q. And Mr. Simpson was never a questioned about the gun
18 that y'all seized from the house, was he?

19 A. No, sir. Mr. Hayes claimed ownership of it.

20 Q. But you asked Patrick Simpson about it?

21 A. I didn't.

22 MR. GRIER: No further questions.

23 THE COURT: All right. You can step down Mr. Bowers.
24 Thank you, sir.

25 MR. BOWERS: Thank you, sir.

1 MRS. FRYAR: May we approach?

2 (Whereupon, a bench conference was held)

3 MRS. FRYAR: I don't have anything further. Thank you
4 very much. The State would rest at this time.

5 THE COURT: The State rest. Okay. You have some
6 motions?

7 MR. GRIER: I do have a motion, Your Honor.

8 THE COURT: I'm going to asked the jury to retire to
9 the jury room. This is one of those points in time we have
10 to take up some legal issues with the lawyers and I don't
11 want you to be present when that takes place. If you would
12 please retire and we'll get you back out as soon as we
13 possibly can.

14 (Whereupon, the jury exits the courtroom at 3:05 p.m.)

15 THE COURT: Mr. Grier?

Is my State knowingly?

16 MR. GRIER: Thank you, Your Honor. Your Honor, at
17 this time the defense would make a motion for a directed
18 verdict and that the State has failed to meet their burden
19 of proof and that the constructive possession case, they
20 haven't demonstrated my client had dominion and control
21 over the drugs in this case or even the stolen gun.
22 They've presented no evidence to show that my client even
23 knew the gun was stolen as well as the fact, Your Honor, we
24 reiterate our prior motion as to the unlawfulness of the
25 search and that the evidence that they've collected through

1 that was gained in an unlawful manner and we, basically,
2 ask for directed verdict in favor of the defense.

3 THE COURT: Any response?

4 MRS. FRYAR: Yes, Your Honor. In the light most
5 favorable to the State, we certainly believe there's enough
6 evidence in this case to go forward to the jury.

7 THE COURT: All right. I do find that in the light
8 most favorable to the State there is sufficient evidence
9 here that a jury question raised so this matter will be
10 submitted to the jury. I said respectfully deny your
11 motion for directed verdict, Mr. Grier.

12 MRS. FRYAR: Thank you.

13 MR. GRIER: Can we go ahead and do the motion with the
14 defendant now?

15 MRS. FRYAR: Yes, Your Honor.

16 THE COURT: You want to deal with that now?

17 MRS. FRYAR: Thank you, sir.

18 MR. GRIER: While they are out.

19 MRS. FRYAR: Your Honor, I know that the Court is
20 going to inquire the defendant about whether or not if he
21 would care to testify in this case and put his credibility
22 issue when he does that, I have copies of sentencing
23 sheets which I can provide to the Court which indicate that
24 Mr. Hayes was found guilty or pled guilty to possession of
25 cocaine based on April 16, 2012 as well as possession of a

1 handgun by a person under eighteen on July 29, 2008. Your
2 Honor, the first offense possession of cocaine base carries
3 up to three years. The second offense of possession of a
4 handgun by somebody under eighteen carries up to two years.
5 Both of these convictions occurred within the last ten
6 years. You know, Your Honor, Rule 609, governs this and
7 for purposes of attacking Mr. Hayes's credibility, sir,
8 "evidence that a witness has been convicted of a crime
9 shall be admitted if you serve the term of the probative
10 value of admitting the evidence outweighs it's prejudicial
11 effect to the defendant." Your Honor, the Supreme Court
12 has held that just because prior convictions might be
13 similar they are not, per se, inadmissible. In other
14 words, similar prior conditions can be admissible and we
15 look to Green versus State that says that. In Green versus
16 State it says, "We decline to hold similar prior
17 convictions inadmissible in cases. Trial Court's must
18 weigh the probative value of the prior convictions against
19 the prejudicial effect to the accused and determine in
20 their discretion whether to admit the evidence." Our
21 Courts have been reversed, Your Honor, when we didn't have
22 the test. When the trial Court failed to conduct an on the
23 record balancing test to see if the probative value
24 outweighed the prejudicial effect. The Courts have not
25 reversed just because the prior convictions are similar.

1 And so under Colf which I've provided a copy up to you,
2 sir, there are five factors that the Court is to consider.
3 They also said they're not the only factors to consider in
4 Colf but there are some things for you to consider, sir, to
5 determine whether or not these prior convictions are going
6 to be admitted as to credibility of the defendant who
7 testifies.

8 The first one, Your Honor, is the impeachment value
9 of the prior crime. Your Honor, this impeachment of the
10 defendant is critical to the State it goes to his
11 credibility. He is not coming into the courtroom with
12 clean hands, Your Honor. He has been convicted of crimes
13 that carry over a year within the ten year period and that
14 goes to his credibility.

15 Secondly, Your Honor, it goes to the point and time of
16 the conviction of the witness's subsequent history. That's
17 the second factor and these were very much related in time,
18 Your Honor. The latter one in 2012, which was just
19 recently in the other one in 2008. So really it wasn't
20 like it was a long time ago when these incidents occurred,
21 they occurred within the recent history.

22 Now, the Court's did say to consider the similarity
23 between the past crimes and the charge crimes. Your Honor,
24 these are similar but they are not the same by any means.
25 Just because you had possession of a gun when you were

1 under eighteen years of age does not mean that you now own
2 stolen guns. They're two different things. They're not
3 that - - they are only similar in that they both involve
4 guns. One is about a stolen gun. One is about having a
5 gun under the age of eighteen. We are not offering the
6 evidence of possession of the gun under eighteen years of
7 age to say that he has stolen guns, we're just saying that
8 the jury is entitled to know that to determine his
9 credibility when he testifies. And the same is true, Your
10 Honor, of the crack cocaine. We're not offering to admit
11 the prior conviction or possession of crack cocaine to say
12 that he is a crack dealer, in fact, that is two different
13 things. Possession of crack cocaine does not make you
14 possession with intent to distribute crack cocaine and
15 we're not trying to offer it to say that he is a drug
16 dealer in any way. We're offering it because it goes to
17 his credibility and because it carries over one year and
18 it's admissible under the rule.

19 The fourth and the fifth elements of the factors that
20 you're suppose to consider, Your Honor, are the
21 similarities between, excuse me, the importance of the
22 defendant's testimony and finally the centrality of the
23 credibility issue and, Your Honor, in this case, the
24 credibility of the defendant is huge. We don't have DNA in
25 this case. We don't have a whole lot of forensic evidence

1 in this case. We have a fingerprint on a baggie and pretty
2 much other than that the jury is going to have to decide
3 between the credibility of the witnesses that they've heard
4 from the State who were police officers and scientists and
5 the credibility of the defendant. This whole case centers
6 on the credibility of the defendant and the State should
7 not be penalized because the crimes that he's committed are
8 somewhat similar to the crimes that we propose to introduce
9 into evidence. And, Your Honor, we looked at some cases
10 that we have in South Carolina.

11 First of all, let's look to State versus Dunlap and
12 State versus Broadnax. In State versus Dunlap, I am within
13 the law to have these cases submitted. The defendant was
14 on trial in 1999 for distribution crack cocaine.

15 Impeachment was allowed in that case, Your Honor, when the
16 priors were a 1997 conspiracy with intent to distribute
17 crack cocaine and 1994 distribution of imitation substance
18 and the conviction was upheld and admission was allowed.

19 Going even beyond that, Your Honor, the next case
20 State versus Broadnax says, in this case, the defendant was
21 on trial for armed robbery which was identical to the
22 charges that he had been guilty of. He had been convicted
23 of armed robbery before and the conviction - - the Court
24 allowed this to come into evidence and the Supreme Court
25 said that is fine, that is good, the conviction was upheld

1 and admission was allowed.

2 So the problem is when you don't do the balancing test
3 and so that is the time that we get in trouble is when you
4 don't do a balancing test. If you do this balancing test
5 and you consider these five factors that I've laid out then
6 it is certainly the Supreme Court's decision in these cases
7 that prior convictions can be allowed. Like I said,
8 they're no eyewitnesses in this case or anything of that
9 nature. The defendant's credibility is the issue in this
10 case and I don't think that the State should be hamstrung
11 from being able to let the jury know about his credibility.
12 If he wants to take the stand and testify then his
13 credibility becomes an issue and the jury has the right to
14 know about that. And so that is our position, Your Honor,
15 and I think I've provide a copy of those cases if you would
16 like to look at those. And I would point out, that unlike
17 other cases this is not - - this is a case where the test
18 is not whether is substantially outweighs, it's just
19 whether or not it outweighs and the probative value does
20 outweigh the prejudicial effect on the defendant in this
21 case. He's not entitled to automatic and blanket
22 protection of excluding his prior convictions and thus
23 given a free pass on the witness stand just because they
24 are somewhat similar to the charges in the indictment. We
25 feel that we are entitled to use them, Your Honor, and we

1 would ask that you allow us to use them if he so desires to
2 take the stand.

3 THE COURT: Mr. Grier, before I hear from you, does
4 your client intend to take the stand?

5 MR. GRIER: Yes, he does, Your Honor.

6 THE COURT: Before you argue, let me question the
7 defendant.

8 MR. GRIER: Sure.

9 THE COURT: Stand up and raise your right hand please,
10 sir. Do you swear or affirm the testimony you're about to
11 give will be the truth so help you God?

12 MR. HAYES: Yes, sir.

13 THE COURT: Now, Mr. Hayes I'm sure you have discussed
14 this with great length with both of your attorneys,
15 correct?

16 MR. HAYES: Yes, sir.

17 THE COURT: Do you understand the risk that you take
18 in testifying?

19 MR. HAYES: Yes, sir.

20 THE COURT: And that's what we're arguing now. It
21 could be that your prior record or any prior convictions
22 could come into play and be used to attack your credibility
23 as you testify, you understand that?

24 MR. HAYES: Yes, sir.

25 THE COURT: I also want you to clearly understand that

1 you do have the right to remain silent and that you do not
2 have to testify at this trial and that cannot be held
3 against you in any way whatsoever and the jury will be
4 instructed as to that if you decide that you want to remain
5 silent and not testify, but there are certain risk that you
6 do take my testifying and I want to make sure that you are
7 aware of those.

8 MR. HAYES: Yes, sir.

9 THE COURT: You've indicated to me that you are?

10 MR. HAYES: Yes, sir.

11 THE COURT: And if you testify in this case you're
12 telling me that you're doing that freely and voluntarily?

13 MR. HAYES: Yes, sir.

14 THE COURT: And we may address this again at such
15 point time when you call him as a witness but you have any
16 questions that you want to ask him, Mr. Grier?

17 MR. GRIER: No, Your Honor.

18 THE COURT: Okay. All right, sir. Yes, sir?

19 MR. GRIER: I have a case of my own, State vs. Bryant
20 and it was decided after, I believe, Mrs. Fryar's cases.
21 It, basically, states that both weapons and drug cases are
22 not indicative to use to credibility and that once again
23 you do the test the way the probative value versus the
24 prejudicial. And in this case, it's specifically also say
25 that the defendant's credibility, in his defense, was a

1 great importance just like in this case, his credibility is
2 great importance and; therefore, he should be given that
3 advantage to not have that admitted because there aren't
4 evidence of his credibility. Basically, they're not crimes
5 where moral turpitude, things of that nature or fraud.
6 They are drug and weapons offenses. He does have those
7 prior. They're also what he has today. I think if the
8 jury hears it's is going to give them an inference that
9 well, he was guilty before, he must be guilty today and I
10 think the State is really pushing that inference and that
11 will bolster their case and it would greatly disadvantage
12 my client. And so we feel that the probative value is just
13 not there to overcome the prejudice it will give to my
14 client if that was submitted.

15 MRS. FRYAR: And, Your Honor, clearly credibility
16 becomes an issue under our Rule 609 if it is crime of
17 dishonesty or if it is a crime that carried over a year and
18 both of these crimes carry over a year, sir, and so that is
19 why we are saying it is in this - - we're just - - give me
20 just one minute, Your Honor?

21 MRS. HALL: If we could have just a second, judge,
22 that would be great.

23 THE COURT: Sure.

24 MRS. FRYAR: I think from reading this from what I can
25 tell so far, Your Honor, is the problem with Bryant is that

1 the trial Court did not address the issue of similarities
2 which is what I'm saying we need to do today. What I'm
3 saying is you need to conduct the balancing test and
4 consider the similarity of the crimes when you are making
5 your decision whether or not these are admissible or not.
6 The case got reversed because the trial Court failed to
7 conduct the test is my understanding so far and that is
8 exactly right. It said that the trial judge should've
9 considered that and put it on the record and they didn't do
10 it and that's what's required of Colf and that's why that
11 case got reversed.

12 One moment, Your Honor. That's all I got. I'd asked
13 that you read the cases and see that I'm right, Your Honor.

14 THE COURT: Mr. Grier, any response to that?

15 MR. GRIER: Yes, Your Honor. Your Honor, the State
16 versus Colf the similarities of prior crimes increases
17 prejudiced not probative values. The fact that they are
18 similar increases the prejudicial value and not the
19 probative value. Also, basically, in Bryant it also goes
20 into saying, "that the danger of unfair prejudice the
21 defendant would impeachment by that prior offense weighs
22 against admission." So, basically, Your Honor the fact
23 that they are similar crimes, they are not crimes to go to
24 credibility. The prejudicial value is so much more so than
25 probative value; therefore, you should not be allowed to be

1 admitted unless he opens the door through his own testimony
2 at that time, of course, you know, all bets are off but I
3 think just, pre se, to let them come out of the gate
4 attacking his credibility based on similar convictions
5 which would be far more prejudicial value for the State and
6 it would verily hurt his chances in this case. We'd asked
7 that it not be allowed to be used.

8 THE COURT: All right. I'm going to take a couple of
9 minutes. I want to run back and read the case that he's
10 handed up. I've read the others but I want take a few
11 moments to do that and consider it so we'll just stand at
12 ease a few minutes.

13 MRS. FRYAR: And if you would review my memorandum,
14 Your Honor, I've cited other cases.

15 THE COURT: I've got it.

16 MRS. FRYAR: Thank you.

17 (Whereupon, the Court took a short break to read documents)

18 THE COURT: Mrs. Fryar, do we need to wait on Mrs.
19 Hall?

20 MRS. FRYAR: No, Your Honor, we can begin.

21 THE COURT: All right, counsel, in reviewing the
22 balancing test which both of you have pointed out to the
23 Court which we must address. If you look at the first part
24 of the balancing test, the impeachment value of the prior
25 crime itself and in reviewing the language in the Bryant

1 case the Court clearly says, "that violations of narcotics
2 laws are generally not probative of truthfulness." It goes
3 further to say, "that, likewise, firearm violations also
4 are not generally probative of truthfulness." Obviously,
5 it doesn't involve crimes of dishonesty but I know the
6 State's argument, well, it's a crime that carries more than
7 one year in prison but our Court has recognized that
8 there's some concern about that, about the probative
9 towards truthfulness. So in looking at number one, this is
10 a balancing test, I find that the scales tip in favor of
11 the defendant with regards to that. Now, number two, the
12 point and time of the conviction in which the subsequent
13 history, I think that clearly points in the favor of the
14 State. These crimes were committed in relatively close
15 proximity in time over the course of years but still not a
16 lot of time in between those convictions in this crime so
17 thus saying that, would weigh on the State's side with
18 number one being on the defendant side.

19 I'm gonna skip over to similarities for a moment and
20 look at the importance of the defendant's testimony and
21 that sort of, it's always been sort of strange how do you
22 define that, I mean, if you look at it from the simple
23 standpoint the defendants testimony you would think
24 involving every case is important, you know, it's just to
25 the degree of importance that we look at that. In this

1 case, it's from the Court's perspective that it certainly
2 can see that the defendant's testimony would be critical to
3 his defense based on the, quite frankly, overwhelming
4 testimony that's presented by the State, thus far. But in
5 saying that, I have to look to the similarities for the
6 balancing test in looking at the importance of the
7 testimony. I think they sort of go hand-in-hand quite
8 frankly. In the similarities test I think is the one this
9 generally turns and I say this, the decision to allow
10 impeachment or not to allow, still strongly hinges on the
11 similarity question. Obviously, as pointed out by
12 counsel, I think you made a comment these aren't the same
13 but the law doesn't say it had to be the same. The law
14 says just be similar. And it's clearly that we've got
15 prior convictions for possession of crack which even though
16 it's not possession with intent to distribute it still
17 similar, drug offense. Same thing with the firearm charge.
18 It was a minor in possession of a weapon but you still got
19 him in possession allegedly of a stolen weapon in this
20 case, so they're very similar and the Court, this Court is
21 concerned that sometimes when we allowed evidence of
22 similar offenses in and quoting from the case, "inevitably
23 suggest to the jury the defendant's propensity to commit
24 the crime with which he is charged." Therefore, creating,
25 in my opinion, prejudiced against the defendant. So with

1 regard the similarity test, I find that it tips in the
2 favor of the defendant. The centrality of the credibility
3 issue, obviously, in this case it's the States witnesses
4 versus the defendant testimony, the defendant's witnesses
5 testimony. Then I go back to the same thing that I
6 considered when I was considering impeachment value, you
7 know, for these probative of truthfulness to begin with.
8 If I follow the case law in Bryant, "violations of
9 narcotics laws are generally not probative of
10 truthfulness," as I stated earlier, "firearms violations
11 are also are not generally probative to truthfulness." So
12 in doing a balancing test this may not of been exactly the
13 way the Court wanted to do it but it's the way I'm going to
14 do it. I mean, I clearly find that the prejudicial value
15 of this testimony, impeachment testimony, outweighs and
16 substantially outweighs the probative value; therefore, I'm
17 not going to allow the impeachment of this gentleman by his
18 prior convictions.

19 MR. GRIER: Thank you, Your Honor.

20 MRS. FRYAR: Thank you, Your Honor. And I would just
21 like to state now I agree - - I'm not disagreeing with your
22 ruling, Your Honor, I'm just saying that I'm just wanting
23 to let the Court know that if the defendant opens the door
24 - - -

25 THE COURT: Certainly, by all means. I think defense

1 counsel knows that if he opens the door it's all full speed
2 ahead - - -

3 MRS. FRYAR: Thank you, Your Honor.

4 THE COURT: - - - so to speak, if he opens the door.
5 So, Mr. Grier, I'm sure will be very careful with regards
6 to that but I do caution the solicitors office to be
7 careful when you cross-examine him that you don't cross the
8 line with regards to his prior convictions.

9 MRS. FRYAR: Yes, sir.

10 THE COURT: Has everybody had a break - - -

11 MR. GRIER: Yes, sir, Your Honor.

12 THE COURT: - - - they needed? Are we ready for the
13 jury? Okay. Bring the jury in. I did want to state one
14 other thing with regards to the reasoning behind my
15 decision. Through the Court's view of the testimony that
16 has been presented already shows to me fairly substantial
17 credibility issues already raised with regards to the
18 conflicting statements, the testimony about the firearm
19 having been in his possession for three years, by testimony
20 two months or whatever he had it, I mean, the credibility
21 issues is strongly in favor of the State with the testimony
22 that's been presented so far. And I think to allow the
23 prior convictions would just be for lack of a better term
24 "piling on" so to speak and again made it much more
25 prejudicial to the defendant than the probative value. I

1 just want get that on the record. Thank you.

2 MR. GRIER: Yes, Your Honor.

3 (Whereupon, the jury enters the courtroom at 3:53 p.m.)

4 THE COURT: Thank you for your patience, ladies and
5 gentlemen. We had a number of legal issues that we had to
6 take up and those are now disposed of so we are ready to
7 resume the trial in this case. Mr. Grier?

8 MR. GRIER: Thank you, Your Honor. Your Honor,
9 defense calls Sharonda Cherry.

10 CLERK: Please raise your right hand. Place your left
11 on the Bible and state your full name.

12 MS. CHERRY: Sharonda Cherry.

13 CLERK: You do solemnly swear or affirm the testimony
14 you give to be the truth, the whole truth, and nothing but
15 the truth so help you God?

16 MS. CHERRY: I do.

17 COURT REPORTER: Spell your name.

18 MS. CHERRY: S-h-e-r-o-n-d-a.

19 SHERONDA CHERRY, first being
20 duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. GRIER:

22 Q. Ms. Cherry, where do you live?

23 A. Where do I live?

24 Q. Yes, ma'am.

25 A. Rock Hill.

1 THE COURT: Ma'am, you need to speak up where we can
2 all hear you.

3 Q. Speak up real loud so they can here you.

4 A. Rock Hill.

5 Q. Do you know my client, Charles Hayes?

6 A. I do.

7 Q. How do you know him?

8 A. He's one of my close friends through my brothers.

9 Q. How long have you known him?

10 A. I want to say over ten years at least.

11 Q. And back in August 2014, roughly, the 27th, did he
12 give you a call needing a ride?

13 A. He did.

14 Q. Did he state what was going on that day?

15 A. He was just telling me that the police was at his
16 house and he needed to get home.

17 Q. And where did you pick him up at?

18 A. York Tech.

19 Q. And where did you take him to?

20 A. His house.

21 Q. Is his house - - -

22 A. On Fourth Street.

23 Q. It's on Fifth Street?

24 A. I mean, Fifth Street, yeah.

25 Q. And when you got to his house what was going on?

1 A. The police was - - well, his mama and them were
2 standing on the porch and the police were like in the
3 middle of the road like all over that area.

4 Q. So where did you pull up and park?

5 A. I was in the middle-of-the-road because there was
6 nowhere to pull.

7 Q. And what happened then?

8 A. He got out the car and put his book bag on the porch
9 and he was arrested.

10 Q. He was what?

11 A. Arrested.

12 Q. He was immediately arrested?

13 A. Yeah, pretty much.

14 Q. And did you see them put the handcuffs on him?

15 A. Yeah, they started - - when they started locking him
16 up I drove off. Once they started putting the handcuffs on
17 him - - -

18 COURT REPORTER: You're going to have to speak up.

19 Q. How long were you at the house?

20 A. About five minutes.

21 Q. And you didn't hear anything that was discussed at the
22 house, is that correct?

23 A. Right.

24 Q. And you don't know what was going on at the house when
25 you pulled up, correct?

1 A. I just know they went in there for his nephew or
2 whatever and they found what they found.

3 MR. GRIER: No further questions. Answer any
4 questions that the prosecutor may have.

5 CROSS EXAMINATION BY MRS. FRYAR:

6 Q. You didn't see the police officers drive off with Mr.
7 Hayes, did you?

8 A. No.

9 Q. He was just detained and handcuffed while you saw him?

10 A. Right.

11 Q. He was still at the scene when you saw him, still at
12 the house?

13 A. Right.

14 MRS. FRYAR: Thank you, Ms. Cherry.

15 THE COURT: Anything else, Mr. Grier?

16 MR. GRIER: No, Your Honor.

17 THE COURT: All right. You can step down.

18 MR. GRIER: Can I ask that this witness be excused?

19 THE COURT: Any objection, counsel?

20 MRS. FRYAR: None from the State, Your Honor.

21 THE COURT: You may be excused, ma'am. You can leave
22 if you desire or you can stay it's up to you.

23 MR. GRIER: Your Honor, the defense would call the
24 next witness Pauline Hayes.

25 CLERK: please raise your right hand. State your full

1 name?

2 MS. HAYES: Pauline Boulware Hayes.

3 CLERK: You do solemnly swear or affirm the truth you
4 tell be the truth, the whole truth?

5 MS. HAYES: I do.

6 PAULINE HAYES, first being
7 duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. GRIER:

9 Q. Please state your name for the record?

10 A. Pauline Boulware Hayes.

11 Q. And where do you live?

12 A. ~~XXXXXX~~ in Chester.

13 Q. Who lives at that house with you?

14 A. Quinton Feaster and Charles Hayes.

15 Q. I need you to speak up. I think they're probably
16 having a little trouble hearing you.

17 A. Quinton Feaster, Charles Hayes, Jr.

18 Q. And today we're here about some charges that have been
19 brought against your son, they're also brought against you
20 as well, is that correct?

21 A. Correct.

22 Q. And that revolves around an incident that happened
23 around August of 2014, do you remember that day?

24 A. Yes.

25 Q. What was going on that day?

1 A. Well, I had gotten up and got ready to start breakfast
2 and from my bedroom to my kitchen you can see in my living
3 room and I just glanced in there and I didn't see my
4 grandson so I said good he done went home. So went on in
5 the kitchen and then I started fixing breakfast then I get
6 a knock at the door and I went to the door there was the
7 police and they identified themselves and he said he was
8 looking for Patrick Simpson which is my grandson and I told
9 him he wasn't there because I didn't see him on the couch
10 where he normally sleeps so I assume he wasn't there. So
11 they left and I went back in the kitchen to finish cooking
12 breakfast and later, my boyfriend Quinton, he came and he
13 said, "The police are back out there. What do they want?"
14 By that time Patrick ran out of Charles's bedroom and he
15 dropped a bag on the floor. And I ask him I said - - well
16 I call him 'D', but his name is Patrick. I said, "D, "what
17 are you doing?" And he shot past me, ran out the back of
18 the kitchen door, and so I went and picked up the bag and
19 in the bag was his clothes and his wallet. So I placed the
20 bag on the floor beside the couch in the living room.

21 Q. And why was Patrick staying at your house?

22 A. He was down for his grandfather's funeral.

23 Q. When did he - - how long had he been at the house
24 prior to that?

25 A. Probably about five days.

1 Q. And had you been doing anything the night before that
2 kept you out of the house?

3 A. Well, our revival was going on that week so I went to
4 church every night.

5 Q. And so what time would you normally get home?

6 A. Probably - - my churches in the country so I would get
7 home probably about 9:30 quarter till 10:00.

8 Q. So the night before this, did you see Patrick at the
9 house?

10 A. No.

11 Q. So you didn't know if he was there?

12 A. No.

13 Q. And when you woke up the next morning he was gone, to
14 your knowledge?

15 A. Right. Right. He wasn't on the couch where he
16 normally would sleep.

17 Q. When the police first came to your house, who did you
18 talk to?

19 A. I forget his name but - - -

20 Q. Is he in the courtroom?

21 A. I'm not sure if it was him or the other black
22 detective.

23 Q. And so at some point how long from when they first
24 came to talk to you to when they came back, how much time
25 passed, do you think?

1 A. I want to say about five minutes.

2 Q. And you had been cooking breakfast?

3 A. Mmm, hmm.

4 Q. Had you finish cooking yet?

5 THE COURT: Ma'am - - -

6 A. No.

7 Q. - - - if you would say yes or no when you answer these
8 questions please.

9 A. Yes, sir.

10 Q. Had you finish cooking yet?

11 A. No.

12 Q. And so did the police take Patrick into custody?

13 A. Yes.

14 Q. And at that point, did you have any interaction with
15 law enforcement? Did they come to the house to talk to
16 you?

17 A. They came and knocked on the door and by the time when
18 I got to the door once I heard somebody say, "We got him,"
19 and whoever was at the door they turned around at that
20 point.

21 Q. Did the police come back to your house?

22 A. Yes.

23 Q. How soon?

24 A. Well, I mean, they didn't leave - - -

25 Q. Okay.

1 A. - - - the second time when they got Patrick.

2 Q. So after - - -

3 A. Huh?

4 Q. So after they knocked on your door, what happened
5 then?

6 A. When they knocked on the door, like I said, somebody
7 yelled, "We got him," and the person that knocked on the
8 door turned around. And then he come, they said something
9 about he was involved in a armed robbery and they wanted to
10 know if they can search the house for a gun.

11 Q. And so when you heard Patrick kind of stirring in the
12 house, where was he coming out from?

13 A. He came out of Charles's bedroom.

14 Q. Was Charles home?

15 A. No. Charles was at school.

16 Q. Do you know what time he left?

17 A. No. He had to - - I think he had to be there at 8:00
18 that morning so he would've left home probably around 7:15,
19 7:30.

20 Q. And so when law enforcement came you said there had
21 been a armed robbery with Patrick, what else they want to
22 do at your house?

23 A. They wanted to search the room that Patrick had been
24 in to look for a gun that was supposedly used in an armed
25 robbery.

1 Q. And who are you talking to at this point, do you
2 remember?

3 A. I don't remember who initially started that
4 conversation but I do know that Sheriff Underwood was the
5 one that asked me again and I said, "No, because I didn't
6 see him with a gun." And he said, "Well if you don't let
7 us search the house we're going to go and get a warrant and
8 if I find a gun in there all of y'all are going to jail."

9 Q. So at that point, how did you feel about giving
10 permission to search?

11 A. I hurried up and sign those papers because I'm fifty-
12 three years old I've never been to jail and I wasn't about
13 to start that day.

14 Q. Were you frightened?

15 A. Yes. I was terrified.

16 Q. Did they tell you had a right to refuse the search?

17 A. No.

18 Q. What happened when they came into the house, where did
19 you go?

20 A. We sat in the living room for a while and when they
21 started the search I heard one of the people that were
22 searching say, "Uh, oh, we found drugs here". And Mr.
23 Feaster and myself looked at each other was like, "drugs."
24 And that's when ask, "Could I come and watch them search, I
25 mean, finish searching," and he told me, "No."

1 Q. at some point, were you removed from the house?

2 A. Yes. They made us go sit on the porch.

3 Q. For how long?

4 A. Oh it was a long time.

5 Q. More than an hour?

6 A. Yes.

7 Q. Did that cause you any inconvenience?

8 A. Yes, because I had to use the bathroom. I take
9 medication that makes me have to go to the bathroom a lot
10 and I asked, "Could I go?" And they told me, "No."

11 Q. Did you have a cell phone on you?

12 A. Yes. They told me that I needed to call Charles now
13 and tell him he needs to get home.

14 Q. Did you do that?

15 A. Yes, I did.

16 Q. How long did it take him to get there?

17 A. It wasn't too long. I guess about, maybe, forty-five
18 minutes.

19 Q. Do you recall any officers leaving to get a search
20 warrant?

21 A. Yes.

22 Q. And did they show you the search warrant when they got
23 back?

24 A. No. It was read to me.

25 Q. Did you get a copy of it?

1 A. No, not at that time.

2 Q. Did you get one later?

3 A. Yes. He brought one back.

4 Q. How long after that?

5 A. Oh, it was a good little while but I ask for one and
6 he said that I could come to the station and get one but
7 when we went to the station we were told that when he
8 finished with it we would get it.

9 Q. So while Charles is on his way to the house, what are
10 the law enforcement agents doing in your home?

11 A. They were still searching.

12 Q. Could you see in there to see what they were doing?

13 A. No, not really because we, like I said, they had put
14 us on the porch at that point.

15 Q. Do you know exactly what they found from your own
16 observations, did you ever see anything brought out?

17 A. When they brought it out it was in brown envelopes
18 type things, so no I didn't see what was in there.

19 Q. Was it a document like this?

20 A. Yes.

21 Q. Did you know what was in those?

22 A. No, I did not.

23 Q. They told you they wanted to look for the gun, is that
24 correct?

25 A. Correct.

1 Q. Did he ever tell you they found the gun?

2 A. No.

3 Q. Once Charles was there, what do they do?

4 A. After Charles got there he and I and Mr. Feaster, we
5 was sitting on the porch and they read us our rights and
6 then they ask each one of us was the drugs ours and we all
7 said, no.

8 Q. At any point, were either you or anyone else
9 handcuffed?

10 A. Yes. They handcuffed all of us but they handcuffed
11 Charles first.

12 Q. When they were reading your rights, were you
13 handcuffed?

14 A. No.

15 Q. Who was doing the questioning of you at that point?

16 A. I'm not really sure who did the questioning.

17 Q. You don't know if it was Lieutenant Neal who's sitting
18 here?

19 A. I want think it was Major Marsh, the gray hair.

20 Q. Okay. So when y'all all denied the drugs was yours,
21 what happened next?

22 A. That's when I heard somebody say something well - - -

23 MRS. FRYAR: I'm going to object. First of all, we
24 don't know who the person was that's allegedly saying it,
25 it's hearsay. She can't even identify the person's

1 allegedly saying it - - -

2 A. But I heard it - - -

3 THE COURT: Wait a minute, ma'am. Ma'am, you can't
4 say anything. Wait just a minute. She's arguing. I
5 agree. I sustain the objection. It's hearsay. You can't
6 tell us what somebody told you even though you may have
7 heard it that's still hearsay.

8 Q. You don't remember of all the officers you've seen
9 that's testified which one said it, you don't remember?

10 A. I can't.

11 Q. Did you ever tell Charles that he needed to take
12 responsibility for the drugs?

13 A. No, I do not.

14 Q. Did Charles ever admit taking the drugs?

15 A. No.

16 Q. He didn't claim them so you wouldn't go to jail - - -

17 MRS. FRYAR: Your Honor, she - - it's hearsay.

18 MR. GRIER: It's hearsay - - -

19 THE COURT: He's referencing the defendant.

20 MR. GRIER: Yeah.

21 THE COURT: I'll allow the question.

22 MR. GRIER: Thank you.

23 A. Could you repeat it?

24 Q. Did Charles ever give them an answer as to whose drugs
25 they were?

1 A. Did Charles ever give them - - -

2 Q. Did he say whose they were to the law enforcement
3 officers? Did he - - -

4 A. He suggested that they ask Patrick - - -

5 MRS. FRYAR: Your Honor, is this not hearsay?

6 A. Because I - - -

7 THE COURT: Ma'am, you can't say anything.

8 MRS. FRYAR: All right. Go ahead.

9 MR. GRIER: Thank you.

10 THE COURT: She can answer the question.

11 Q. So did Charles suggest that they ask Patrick about the
12 drugs they found?

13 A. Right.

14 Q. Did they mention a gun, at any point, to you?

15 A. No.

16 Q. And so at some point, did they place Charles under
17 arrest?

18 A. Yes, they did.

19 Q. Did you get to speak to him before he left?

20 A. Yes. I went - - I had her two officers talking and
21 they said - - -

22 MRS. FRYAR: Can we not have hearsay?

23 THE COURT: Sustained. Yeah, I'm not going to allow
24 that.

25 Q. You can't say what unknown officer said unless you can

1 identify them. Did you talk to Charles before he left?

2 A. Yes. I told him that they hadn't questioned Patrick
3 about any drugs and one of the officers told me to shut up
4 - - -

5 MRS. FRYAR: Your Honor?

6 THE COURT: No, ma'am. You can't tell us what one of
7 the officers said. That is hearsay.

8 Q. So at that point, did they take Charles away?

9 A. Yes, they did.

10 Q. And how long after that before they left your house?

11 A. Shortly after they took Charles, they all left.

12 Q. Did they come back to your house?

13 A. Yes, they did.

14 Q. How long later?

15 A. I want to say it was maybe three to four hours later.

16 Q. Do you know which officers came back?

17 A. No, I don't.

18 Q. And what happened after they came back to your house?

19 A. They came back and they arrested Mr. Feaster and
20 myself.

21 Q. Do you remember if anyone, when they were questioning
22 you, talked about, "the hand of one, the hand of all?"

23 A. No.

24 Q. Do you remember them talking to you about constructive
25 possession, the drugs found in the house, that one of you

1 had to take responsibility?

2 MRS. FRYAR: Your Honor, I'm really trying to not
3 object every second but I ask him not to lead the witness
4 and suggest an answer to her.

5 THE COURT: You can't lead the witness. Don't lead
6 the witness, sir.

7 Q. Is there anything else that you can remember from when
8 they were talking to you on the porch that you think will
9 be helpful in the case other than what the unknown officer
10 said?

11 A. No.

12 Q. Were you eventually allowed to use the restroom?

13 A. Eventually, yes, but it took them a long time and I
14 have to take blood pressure pills and therefore, I have to
15 go regularly but they took their time and they did let me
16 go.

17 Q. When you were taken to the law enforcement center when
18 you were arrested, did any of the agents come to you to ask
19 you about the drugs?

20 A. No.

21 Q. You were never asked to give a statement?

22 A. No.

23 MR. GRIER: One moment, Your Honor. No further
24 questions, Your Honor.

25 THE COURT: Mrs. Fryar?

CROSS EXAMINATION BY MRS. FRYAR:

Q. Ms. Hayes?

A. Yes.

Q. When this happened, you lived at 557 Fifth Street, is that right?

A. Yes.

Q. How long have you been living there, ma'am?

A. Eighteen, - - about eighteen years.

Q. About how old was Charles at the time when this incident occurred?

A. Twenty-three.

Q. Had Charles lived there his whole life?

A. Not his whole life.

Q. Tell us about how much of his life had he lived there?

A. Probably when he was around nine.

Q. He came to live there then?

A. Yes.

Q. From nine into the day he was arrested he lived there?

A. Yes.

Q. And he had a bedroom at your house, is that correct?

A. Correct.

Q. And that bedroom was at the very back of the house, is that correct?

A. Correct.

Q. And that's where the officers you saw them looking in

1 his room and finding things, is that right?

2 A. Correct.

3 Q. And he had gotten up that morning around 8 o'clock to
4 go to school, right?

5 A. He had to be there at eight.

6 Q. Had gotten up even earlier then to be at school at 8
7 o'clock, is that correct?

8 A. Correct.

9 Q. And so he left out of his bedroom at that time, is
10 that correct?

11 A. I'm assuming because he was in school.

12 Q. Yes, ma'am. And so he - - you have another bedroom in
13 your house, is that right?

14 A. Yes.

15 Q. That is the bedroom that you and Mr. Feaster share, is
16 that right?

17 A. Right.

18 Q. How long have you and Mr. Feaster been together?

19 A. Approximately four or five years.

20 Q. Do you see Mr. Feaster in the courtroom?

21 A. Yes, I do.

22 Q. Would you point him out for the jurors?

23 (Whereupon, the witness points to Mr. Feaster)

24 Q. Now, here's Mr. Feaster right here. Let the record
25 reflect that she's pointed to a gentleman in a blue shirt

1 in the courtroom. Okay. And so he share that bedroom with
2 you, is that correct, ma'am?

3 A. That's correct.

4 Q. Now, Patrick lived in Charlotte, is that right?

5 A. Correct.

6 Q. And he had come down for a funeral?

7 A. That's correct.

8 Q. And he slept on the couch, I believe, you said, is
9 that right?

10 A. That's right.

11 Q. And that's in your living room?

12 A. That's right.

13 Q. And he had - - you had assumed that he had left, is
14 that your testimony, ma'am?

15 A. Yes, it is.

16 Q. And when was the last time you had seen him then?

17 A. After the - - after the funeral.

18 Q. Was that the day before?

19 A. Yes.

20 Q. So you had seen him at the funeral?

21 A. After the funeral.

22 Q. After the funeral. And did he spend the night at the
23 house?

24 A. No.

25 Q. He did not spend the night at the house?

1 A. No, he did not, not to my knowledge. I didn't know he
2 was there.

3 Q. You didn't see him - - when you came home from church
4 he wasn't there?

5 A. No.

6 Q. Now, when the police came the next day, you said that
7 Mr. Feaster came up and told you the police were there, is
8 that right?

9 A. When they came the second time.

10 Q. When they came the second time. And had the house
11 already been searched at that time?

12 A. No, it had not.

13 Q. So he came before the search even began?

14 A. He was already there.

15 Q. Had he been dropped off by a lady named Charlene
16 Snyder?

17 A. No.

18 Q. He had not been dropped off by a lady named - - -

19 A. Not that morning. No, he had not.

20 Q. And so when he indicated to you that the police
21 officers were there, did you look out the window and see
22 the police officers?

23 A. No, I did not. Like I said, Patrick - - Patrick
24 must've heard him. He ran out of CJ's bedroom and dropped
25 the bag and I asked him what was he doing, he ran on out

1 the back door. I picked up the bag and I saw that it
2 contained his clothes and his wallet and I put it on the
3 floor beside the couch.

4 Q. And so all Mr. Simpson's clothes were in the bag, it
5 was only Mr. Simpson's clothes in the bag?

6 A. Yes.

7 Q. And his wallet in the bag?

8 A. Yes.

9 Q. And that was his clothes and his wallet - - -

10 A. Yes.

11 Q. - - - that he had at your house?

12 A. Yes.

13 Q. Did he wear those clothes to the funeral?

14 A. I'm not sure if those were the things that he wore to
15 the funeral or what.

16 Q. Or clothes that he had on at the time he was arrested

17 - - -

18 A. Right.

19 Q. It's going to be one or the other, right?

20 A. Right.

21 Q. And so you saw the police officer apprehend Patrick in
22 your yard?

23 A. No, I did not.

24 Q. So you don't know what questions they asked Patrick,
25 right?

1 A. No, I don't.

2 Q. But you told - - your testimony was you told Charles
3 that they didn't ask Patrick any questions, is that right?

4 A. Yes, I did.

5 Q. But you don't know, right?

6 A. I was going by what I heard.

7 Q. But you don't know whether or not the police asked
8 Patrick any questions, right?

9 A. No.

10 Q. Okay.

11 A. I don't - - I don't know.

12 Q. Okay.

13 A. I was going on what I heard.

14 Q. What you heard and what you didn't hear? Never mind.
15 So when they were - - they had you on the front porch
16 there, they had you in detention, right there on the porch,
17 correct?

18 A. Yes.

19 Q. You were detained?

20 A. Right.

21 Q. And did you ever tell the officers anything about Mr.
22 Patrick Simpson?

23 A. No, I did not.

24 Q. And when you got taken down - - he didn't live there,
25 right?

1 A. Excuse me.

2 Q. He didn't live there?

3 A. No, he didn't permanently live there.

4 Q. And so - - he only come for the funeral, right?

5 A. Right. He was there a few days for the funeral.

6 Q. And so when you went down to the station when you were
7 arrested, did you just tell us that nobody ask you to give
8 a statement, is that right?

9 A. Correct.

10 Q. Did you tell somebody I want to talk to somebody,
11 these are not my drugs and I would like to say that to
12 somebody?

13 A. No, I didn't. I wasn't aware that I had that
14 privilege.

15 Q. When you were read the rights right there on the porch
16 at your house, ma'am - - -

17 A. Mmm, hmm.

18 Q. - - - they said you have a right to give a statement?

19 A. Right.

20 Q. Did you say these are not my drugs?

21 A. Yes, I did.

22 Q. And so they were not your drugs?

23 A. Right.

24 Q. Did you ever have an opportunity to go into Charles's
25 room?

1 A. Yes, I go in there.

2 Q. Okay.

3 A. Because my freezer is in there.

4 Q. Do you have any kind of problems with your
5 sensibilities? Can you smell?

6 A. Yes.

7 Q. Now, with Charles living at the house, does he
8 sometime have friends come over?

9 A. Rarely.

10 Q. And when they come over, do they visit in the back
11 room with Charles?

12 A. No, they normally sit in the living room and watch
13 t.v. or he'll ask can he plays game on the t.v. because my
14 screen is bigger than the one that was in his room.

15 Q. So do you know if he has a friend named Dewonya
16 Worthy, called Awonya?

17 A. Dewonya - - -

18 Q Dewonya Worthy. I think they called him Wonya.

19 A. I really don't know.

20 Q. Are you familiar - - okay. Are you familiar with his
21 friend named Demario Boyd, they call him, Man? Do you
22 know, Man?

23 A. No, I don't.

24 Q. Do you know many of Charles's friends?

25 A. I know them when I see them but I don't really know

1 them by name.

2 Q. So you can't say that you know these people or you
3 don't know them?

4 A. Right.

5 Q. You can't say whether or not they have been to your
6 house or they haven't been to your house?

7 A. Not by their name.

8 Q. If you saw a picture you might could tell?

9 A. Right.

10 Q. Did you spend your days at the house, ma'am, were you
11 working?

12 A. No, I'm not.

13 Q. So you're not employed?

14 A. No.

15 Q. Were you at that time?

16 A. No, I wasn't.

17 Q. Was Mr. Feaster employed?

18 A. No, he's on disability.

19 MRS. FRYAR: I don't have any further questions.

20 Thank you, Ms. Hayes.

21 THE COURT: Mr. Grier?

22 MR. GRIER: Thank you, Your Honor.

23 REDIRECT EXAMINATION BY MR. GRIER:

24 Q. You said you go back to Charles room to the freezer,
25 is that correct?

1 A. Correct.

2 Q. And I think they ask if you had a smell coming from
3 the room, is that correct?

4 A. I didn't understand the question.

5 Q. Does you smell anything in his room, odd?

6 A. No, I didn't.

7 Q. Do you smoke?

8 A. Yes, I do.

9 Q. Does Mr. Feaster?

10 A. Yes, he does.

11 Q. Does Charles?

12 A. Yes.

13 Q. What do you smoke?

14 A. Newport cigarettes.

15 Q. How often?

16 A. Probably about a half a pack a day. I do probably
17 about a half a pack a day.

18 Q. So would you say there's an odor of cigarette smoke in
19 your home?

20 A. Yes, it should be.

21 Q. And going back to Patrick, you got home that night
22 around 9:30, you said?

23 A. Between 9:30 and a quarter till 10:00.

24 Q. What time did you go to bed?

25 A. Shortly - - well, probably about 11:00.

1 Q. And at that time you hadn't heard if he come back
2 home?

3 A. No.

4 Q. But in the morning, once the police were there, you
5 realized he was in the house, correct?

6 A. Correct.

7 Q. And he was in the bedroom, correct?

8 A. Correct.

9 Q. And is clothes were not by the couch where he had been
10 sleeping, correct?

11 A. Correct.

12 Q. He had them with him when he came out of room?

13 A. He had them in his hand when he came out of the room
14 and he dropped them.

15 MR. GRIER: No further questions.

16 THE COURT: Mrs. Fryar?

17 MRS. FRYAR: Briefly, Your Honor.

18 RE-CROSS EXAMINATION BY MRS. FRYAR:

19 Q. When you came home that evening was Charles home?

20 A. No, he was not.

21 Q. Do you know when he came home?

22 A. No, I do not.

23 Q. But you know that he spent the night in the bedroom
24 and got up the next morning and went to school, is that
25 right?

1 A. I can assume.

2 Q. Yes, ma'am.

3 A. I didn't see him either.

4 Q. But if he was - - so when you said earlier that he had
5 left the house earlier that morning to go to school and it
6 was before 8 o'clock because he had to be there at 8
7 o'clock.

8 A. Right.

9 Q. That's the truth of the testimony?

10 A. I didn't see him but I know he had to have been there
11 because he had changed his clothes from the previous day.

12 MRS. FRYAR: Thank you. No further questions of Ms.
13 Hayes.

14 THE COURT: You can step down, ma'am.

15 MR. GRIER: Your Honor, the defense calls Charles
16 Hayes to the stand.

17 THE COURT: Okay. Come around.

18 CLERK: Please state your full name.

19 MR. HAYES: Charles David Hayes, Jr.

20 CLERK: You do solemnly swear or affirm the testimony
21 you give be the truth, the whole truth, and nothing but the
22 truth so help you God?

23 MR. HAYES: So help me God.

24 CHARLES HAYES, first being
25 duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GRIER:

Q. Mr. Hayes, where do you live?

A. 557 Fifth Street.

Q. How long have you lived there?

THE COURT: If you will back off just a little bit so it will stop the cracking.

A. Probably a long time but seem to think. It's been

Q. Has it been more than ten years?

A. Yeah. It's been longer than ten.

Q. Who lives at the house there?

A. Me, my mama, and her boyfriend?

Q. What's his name?

A. Quinton Feaster.

Q. How many bedrooms are there?

A. Two.

Q. And where is your bedroom?

A. Mines in the back bedroom. When you first walk in the house go through the living room and keep straight, there's my room.

Q. Is there a backdoor to the house?

A. Yes.

Q. Back on August 27, 2014, were you working or going to school at that time?

A. I was doing both.

Q. Where were you going to school?

1 A. I was going to school at York Tech.

2 Q. On the date this happened, where were you?

3 A. I was at school.

4 Q. How did you get to school?

5 A. A friend came and got me that morning and took me to
6 school.

7 Q. At some point, did you receive a phone call from your
8 mother?

9 A. Yes, I did.

10 Q. What was the nature of that phone call?

11 A. She called me I was in class and I ask the teacher
12 could I step out. She was like, "They fix'en to lock us
13 up." And I was like, "For what?" And she said, "Becausey
14 they found drugs and the gun." I said, "What?" She said,
15 "They came looking for 'D'." And I said, "Why they locking
16 you up?" - - -

17 MRS. FRYAR: Your Honor, Your Honor, we don't need to
18 be having some hearsay going on.

19 THE COURT: Okay. Don't tell us what somebody else
20 said to you or told you, do you understand?

21 A. He asked me the nature of the call.

22 THE COURT: You can't tell us what they said. Saying
23 what the nature is one thing but saying what they actually
24 said is another. You can't tell us what they said.

25 A. Well, I guess the nature of the call was they were

1 being arrested.

2 Q. Did you at that time make a phone call to someone?

3 A. Yes. Sharonda Cherry.

4 Q. And what did she do?

5 A. She's the one that came and gave me a ride home.

6 Q. And what happened when you got to the house?

7 A. When I got to the house I seen my mama on the porch,
8 Quinton Feaster on the porch and also seen the officer in
9 the house, an officer at the door and three standing around
10 my mama and them. So I got on out the car and Neal yelled,
11 "this is Charles." So they started going in my pockets and
12 pulling my money out. That's when I said, "No, what are
13 you doing, y'all can't just go in my pockets?" And they
14 pulled my money out and they took my backpack off my back
15 and went through that. And then I said, "What the f'up?"
16 That's when I was told that 'D' had armed robbery and they
17 found drugs and the gun. I said, "How y'all just put it on
18 me?" And Neal pointed his finger right in my chest, and
19 said, you gonna - - -

20 MRS. FRYAR: Your Honor, I object. It's hearsay.

21 A. That's not hearsay.

22 THE COURT: Wait a minute, sir. I sustain the
23 objection. They've already heard it so for what it's
24 worth.

25 THE COURT: You can't say anything else what somebody

1 said, do you understand?

2 MRS. FRYAR: Remember how the judge just explain to
3 you that you can't say what somebody else said, that still
4 holds true through the whole testimony.

5 A. Well, - - -

6 THE COURT: Just answer the questions that your lawyer
7 ask you.

8 A. So when I got to the house they looked through my
9 pockets and took my backpack off. I told them that it had
10 to be my nephew.

11 Q. And at that point, were you advised of what
12 constructive possession is or "the hand of one, the hand of
13 all?"

14 A. No.

15 Q. Did, at some point, did you have to claim up to the
16 drugs, though?

17 A. Yes.

18 Q. Why is that?

19 A. For my parents freedom.

20 Q. Were they your drugs?

21 A. No.

22 Q. Was it your gun?

23 A. No.

24 Q. At that point, were you transported to the detention
25 center?

1 A. Yes.

2 Q. And where do they take you?

3 A. They took me Dawson Drive to book me there.

4 COURT REPORTER: I'm sorry I didn't get that. You're
5 gonna have to speak up and a little bit clearer.

6 Q. They took me to Dawson Drive to booking. Once they
7 booked me in that's when they took me to a back room and I
8 didn't never ask to go to that room. They said I had to
9 make a statement to go along with my plea. And so I went
10 back there and the first piece of paper I was handed was to
11 sign my money over and I said, "No." They said, "Well,
12 your mother not gonna get free."

13 MRS. FRYAR: Your Honor, I object - - the man knows
14 what hearsay is. He's been educated by the Court. He just
15 continues to violate the rules.

16 THE COURT: Don't tell us what they were saying to
17 you.

18 A. Oh. Oh.

19 THE COURT: You can tell us what you did or something
20 as a result of what they said but don't tell us what they
21 said, do you understand?

22 A. Okay. The first piece of paper I got was to sign my
23 money over. I signed it. The next one was to made a
24 statement saying that I'm taking the blame and I was like,
25 "I already told y'all," and he said, "Well, we need a

1 statement in order to keep your mama out of jail." Oh,
2 excuse me. Excuse me.

3 THE COURT: Don't tell us what - - -

4 A. I wrote a statement and they gave me one piece of
5 paper I agree with it. And another and I agree with it. I
6 went along with everything.

7 Q. Why did you do that?

8 A. Because my mother's more important.

9 Q. Had you seen Patrick at all the day before?

10 A. Yes.

11 Q. Where?

12 A. He was at the house.

13 Q. Did he ever sleep in your room while he was there?

14 A. That last night.

15 Q. The police have charged you with possession of a
16 stolen gun, the little box you've seen here, is that your
17 gun?

18 A. No.

19 Q. When you gave your statement to law enforcement, were
20 you doing so because you want to take responsibility for it
21 or did you have fear that they were going to do something
22 to your mother?

23 A. I was scared that they were going to do something to
24 my mama.

25 Q. Because in your statement, you actually reference that

1 when you wrote that?

2 A. Yes.

3 Q. You said you're only doing this so - - let me grab it
4 for you so you can read it.

5 A. "I am taking the blame for everything that they said
6 they found in order to keep my mama, my parents, my parents
7 is what I said, my parents out of jail."

8 Q. You remember it?

9 A. Yes.

10 Q. And was that good enough for them?

11 A. No.

12 Q. Did they make you continue to write other statements?

13 A. Yes.

14 Q. Did you feel pressured to do so?

15 A. Yes.

16 Q. How long did you stay in jail before you got bonded
17 out?

18 A. I think a month.

19 Q. Anytime after that, did they come back and talk to
20 you?

21 A. No.

22 Q. What else happened while you're at the detention
23 center that you think the jury needs to hear besides what
24 law enforcement said?

25 A. Oh, um, another set of officers came and took me to

1 another room interrogated me about the people that they
2 just ask my mama did they know.

3 COURT REPORTER: I didn't get that last part.

4 A. Another set of officers took me to another room after
5 they was through with me to question me about some other
6 people.

7 Q. In your statement, you talk about drugs behind a bed
8 or a couch, did you know those drugs were there?

9 A. No.

10 Q. Were you told what to write?

11 A. Yes.

12 Q. You also stated that you had the gun for three years,
13 where did that number come from?

14 A. I was just saying anything just to help my mama. I
15 was, basically, just agreeing just to get this out of the
16 way so they wouldn't arrest my mama.

17 Q. But that didn't happen, did it?

18 A. No.

19 Q. There's a Ziploc bag that they introduced as evidence
20 saying they had your fingerprints on, do you have any idea
21 how your prints got on that bag?

22 A. I can't say.

23 Q. But you did not put a brick of marijuana in that bag,
24 did you?

25 A. No.

1 MR. GRIER: I have no further questions at this time.

2 THE COURT: Mrs. Fryar?

3 MRS. FRYAR: Thank you.

4 CROSS EXAMINATION BY MRS. FRYAR:

5 Q. Mr. Hayes, you were read your rights on the front
6 porch along with your mother and Mr. Feaster, is that
7 correct?

8 A. After they went in my pockets, yes.

9 Q. And when they read you your rights you said, "I own
10 these drugs and this gun", is that correct?

11 A. Not right after that.

12 Q. Did you say while you were at the scene that you own
13 the drugs and the gun in the house?

14 A. If they would let my mama go I said I would take the
15 blame - - -

16 Q. I don't ask you - - sir, I need for you to answer my
17 questions, okay. Did you say, these are my gun - - this is
18 my gun and anything you got out of that bedroom, any drugs,
19 is mine?

20 A. Eventually, yes I did.

21 Q. No, sir. Did you say it right then and there at the
22 scene?

23 A. No.

24 Q. You did not say that at the scene of the crime - - -

25 A. I said eventually when they were taken me away.

1 Q. They didn't arrest you until after you said it, right?

2 A. No. They arrested everyone.

3 Q. No, sir, they did not. No one went to the jail but
4 you, is that correct?

5 A. What I'm saying is I took it after they put us in the
6 car.

7 Q. They put your mama and Mr. Feaster in the car?

8 A. They walked them to the car. They already had put me
9 in the car. When I had seen him walking my mother and them
10 to the car and that's when I said, "No, tell my mama to
11 come here, I'm gonna take the blame if y'all let her go."

12 Q. Because you lived in your mama's house, right?

13 A. Yes.

14 Q. And that's her house, she exercises dominion and
15 control over it, right?

16 A. Yes.

17 Q. And there's a bunch of marijuana in the house, right?

18 A. That's what they say.

19 Q. And you slept in the room where the marijuana was,
20 right?

21 A. Yeah.

22 Q. Okay. Have you ever smelled marijuana before?

23 A. Yes.

24 Q. Okay. You sleep with the smell of marijuana around
25 you?

1 A. No.

2 Q. Yes, you do. And you didn't want your mama to go to
3 jail along with you - - -

4 MR. GRIER: Objection, Your Honor.

5 THE COURT: I agree. You don't need to say that.
6 Don't argue with witness.

7 MRS. FRYAR: Yes, sir.

8 Q. But your mama called you to come to the house when the
9 police came and said you needed to come on home, that's
10 what you testified to, right?

11 A. Yes.

12 Q. She said they found drugs and gun at the house, that's
13 right?

14 A. Yes.

15 Q. So you knew on the way there that they found drugs and
16 gun at the house, right?

17 A. Yes.

18 Q. So if you had any drugs on you at the time, you would
19 of gotten rid of them, right?

20 A. I wouldn't have came.

21 Q. You would not have come to help your mama?

22 A. Yeah, but if I knew I had something why would I want
23 to come.

24 Q. Did you not want your mama to go to jail?

25 A. No, I don't my mama - - -

1 Q. And so did you go home?

2 A. That's why went.

3 Q. And you left the school and you had all the
4 opportunity in the room in the world, if you had any drugs
5 with you, to get rid of them for you got home, right?

6 A. I didn't have drugs.

7 Q. You're telling this jury that you did say these are my
8 drugs and my gun that you found in the bedroom while you
9 are at your house, is that right?

10 A. Yes, I did.

11 Q. And they had read your rights to you, right?

12 A. After.

13 Q. No, sir. I would like you to answer my question. You
14 had just said that they had read your rights when you got
15 there after they look in your pocket and your backpack?

16 A. Yes.

17 Q. That's when they read you your rights?

18 A. Yes.

19 Q. They read you your rights before you confessed, right?

20 A. Oh, yes, ma'am.

21 Q. Okay.

22 A. I ain't understand what you were saying.

23 Q. That's okay. All right. Let's go on down to the next
24 thing that happened, you're a smart fella, right?

25 A. Sure.

1 Q. Yeah, you're in school?

2 A. Yes, ma'am.

3 Q. What are you studying in school?

4 A. Business management.

5 Q. Business management. How are your grades?

6 A. Not good.

7 Q. Why is that?

8 A. Because once I was arrested I was absent so my courses
9 were canceled.

10 Q. Well, in business management, were your grades good
11 before your arrest?

12 MR. GRIER: Objection, Your Honor, relevancy?

13 MRS. FRYAR: I'm trying to determine his ability to
14 understand his rights, Your Honor.

15 THE COURT: I'll overrule the objection. I let you
16 continue.

17 A. So far.

18 Q. So you had made good grades?

19 A. Yes.

20 Q. And so when you went down to the police station after
21 having been arrested and had verbally said this, now, they
22 read you your rights again, is that right?

23 A. If it was on that paper, then, yes.

24 Q. Okay.

25 A. They read what was on my statement.

1 Q. Let's look at your statement. You've read - - -

2 THE COURT: Sir - - stay where - - you don't want him
3 to go forward. You just sit straight.

4 Q. And you've read that statement - - you have read that
5 statement many times since you've made it, is that correct?

6 A. No.

7 Q. You're able to recite - - -

8 THE COURT: Can you hear him?

9 A. No.

10 THE COURT: Don't get too close to the microphone.

11 Q. You said on your testimony, "I am claiming up to
12 what's found in the house in order to keep my parents from
13 going to jail."

14 A. Yes.

15 Q. So you knew that you had said that, correct?

16 A. I wrote it.

17 Q. And so you are familiar with what you said word for
18 word in this - - -

19 A. Yes.

20 Q. - - - statement, is that correct? Because you
21 reviewed it, correct?

22 A. Yes.

23 Q. And so when they got you down to the police station
24 they had already read you your rights one time, you're a
25 reasonably knowledgeable fellow, you understood those

1 rights, is that correct?

2 A. Yes.

3 Q. They read them to you again, is that right?

4 A. If it was on that paper, yes.

5 Q. You don't recall whether they read you your rights or
6 not?

7 A. I said they read what was on that paper.

8 Q. Well, let's take a look then, did they read you these
9 rights right here?

10 A. Right here. Yeah - - -

11 THE COURT: Speak up so we can hear you.

12 A. They read everything on this paper that they gave me
13 to sign.

14 Q. And they said and I'm preferring to State's Exhibit
15 Number Three, "Before he we ask you any questions you must
16 understand your rights?" And what did you do?

17 A. Yes. Yes.

18 Q. Is that your initials?

19 A. Yes.

20 Q. All right, then they said, "You have the right to
21 remain silent?" Did you sign that you understood that?

22 A. Yes.

23 Q. Then they said, "Anything you say can be used against
24 you in court?" Ddid you sign and initial it there?

25 A. Yes.

1 Q. And then they said, "You have the right to talk to a
2 lawyer for advice for any questions and have him or her
3 with you during questioning?" Is that your initials right
4 there?

5 A. Yes.

6 Q. "And if you cannot afford a lawyer one will be
7 appointed for you before you're questioned if you wish."
8 Did you sign right there?

9 A. Yes.

10 Q. "And if you decide to answer any questions now without
11 a lawyer present you'll have the right to stop answering
12 questions any time until you talk to a lawyer." Is that
13 correct?

14 A. Yes.

15 Q. And you understood these rights, didn't you?

16 A. Yes, I did.

17 Q. And you signed your on initial each one, is that
18 correct?

19 A. Yes, I did.

20 Q. And then you told the police that you would like to
21 make a statement, is that correct?

22 A. No.

23 Q. Well, you got Mr. - - I'm showing you this document
24 right here with your statement on it, is that your
25 statement?

CHARLES HAYES- CROSS EXAMINATION BY MRS. FRYAR:

1 A. But I didn't tell them I want to.

2 Q. They made you do it? Do they hold your hand down?

3 A. No. They said you got to in order to keep your mama
4 free.

5 Q. Did they say you got to give a statement? Did you
6 understand that you have the right to ask for a lawyer?

7 A. I know.

8 Q. Did you voluntary sign your name on that document?

9 A. Yes. I want to my mama free.

10 Q. And so - - because the drugs were in her house under
11 her domain as well as in your room, correct?

12 A. Correct.

13 Q. There's no need for both of you to go to jail, isn't
14 that right?

15 THE COURT: Back away from the witness.

16 MRS. FRYAR: I'm sorry, sir.

17 Q. So then they gave you a pen and an opportunity to
18 write down statements, is that correct?

19 A. Yes.

20 Q. And so in the statement you said, that some of these
21 items were yours but you said what you said in order to
22 keep your parents from going to jail. They gave you the
23 opportunity to write down anything you wanted, right?

24 A. Yes.

25 Q. Where in there does it say, I said this to keep

1 Patrick Simpson from going to jail, where is that? Show me
2 where you see that?

3 A. What does that got to do with it.

4 Q. I want you to show the jury or tell the jury we
5 misread your statement?

6 A. I wasn't trying to keep him out of jail.

7 Q. And so is there anywhere in your statement that says
8 Patrick Simpson had the drugs?

9 A. No. I told them.

10 Q. You told them but you didn't write it down in your
11 statement?

12 A. No.

13 Q. Is that your testimony?

14 A. I didn't write it in my statement because they told me
15 that my statement was for me to take the blame to keep my
16 mama out of jail.

17 Q. But you did not write in your statement at any time
18 that Patrick Simpson had anything to do with these drugs,
19 am I right about that?

20 A. You right.

21 Q. And after you said that you had possession of a black
22 gun and some weed in jars, had they shown you weed in jars?

23 A. No. He told me.

24 Q. Did they show you the gun?

25 A. No. He told me.

1 Q. And so then they said we want to ask you some more
2 questions, is that right?

3 A. Yes.

4 Q. And they wrote some questions out for you in State's
5 Exhibit Number Five and they said, "Where did the gun come
6 from?" And you said, "Charles." Is that correct?

7 A. Yes.

8 Q. You wrote that down, right?

9 A. Yes.

10 Q. Had the officers written all these questions out and
11 given you the paper to write it down?

12 A. Yes.

13 Q. And you indicated to them that you did have some
14 marijuana in your bedroom which weed is marijuana, right?

15 A. Yes.

16 Q. But you said you only had two ounces and a quarter, is
17 that your answer?

18 A. That's what I said.

19 Q. And you also said in this statement, that you had a
20 gun, is that correct?

21 A. No.

22 Q. Let's go over the first one again. "Where did the gun
23 come from?" "The stolen gun found in your bedroom?"

24 "Charles." So your gun, right?

25 A. There's a lot of Charles.

1 Q. So were you referring to another Charles?

2 A. I just wrote anything that would make them - -
3 basically, my statement was to keep my mama free.

4 Q. And - - -

5 A. And whenever they told me that I needed to take
6 initial of to keep her free, I did.

7 Q. And you don't want to go to prison, do you?

8 A. No. But - - -

9 Q. Well, you - - -

10 A. - - - if it will keep my mama free, I go.

11 Q. If it'll keep your mama free you would go to prison?

12 A. Mmm, hmm.

13 Q. Well, if it kept you free not tell the truth because
14 you're willing to not tell the truth, then you're willing
15 to not tell the truth, is that correct?

16 A. I was telling the truth.

17 Q. Is this the truth - - -

18 A. Not in the statements.

19 Q. So are you lying now or were you lying then?

20 A. In the statements.

21 Q. So you're saying that you didn't want your mama to go
22 to jail so you're willing to lie, is that right, on a piece
23 of paper?

24 A. Yes. I will take the blame so my mama won't go to
25 jail.

1 Q. Because they're your drugs, right?

2 A. No.

3 Q. Yes, they are. Excuse me. I'm sorry.

4 A. Who was in possession.

5 THE COURT: I'm sorry I didn't hear what you said.

6 Q. I was asking who was in possession.

7 MRS. FRYAR: I would just ask that you instruct the
8 witness not to ask me questions.

9 THE COURT: Just respond to the questions.

10 Q. And so you're majoring in business management, right?

11 A. No, I ain't finished. That's what I was going to
12 school for.

13 Q. You want to be a businessman?

14 A. Yes.

15 Q. You are a businessman, aren't you, Mr. Hayes?

16 A. I've been selling Avon for three years now.

17 Q. And you've also been selling crack cocaine and
18 marijuana, hadn't you?

19 A. Have you seen me do that?

20 Q. Sir, you're not to ask me questions - - -

21 THE COURT: Just answer her questions.

22 A. No, I haven't. No. No.

23 Q. In fact, you were selling marijuana and crack cocaine
24 at York technical College, isn't that correct?

25 A. No.

1 Q. You were selling drugs out of your bedroom, is that
2 not correct?

3 A. No.

4 Q. Did you have scales in your bedroom?

5 A. No.

6 Q. You did not have any scales in your bedroom?

7 A. No.

8 Q. Let's just - - isn't it the true that you, in fact,
9 sold drugs out of the window in the back side of your
10 bedroom?

11 A. No. My windows have been nailed before my daddy died.

12 THE COURT: Back up a little please, sir.

13 A. My windows have been nailed ever since my daddy died,
14 before he died.

15 Q. You have previously sold drugs out the window in your
16 bedroom, is that correct?

17 A. No.

18 Q. Let's talk about Demario Boyd, who is that?

19 A. I don't - - -

20 Q. I'm sorry I couldn't - - -

21 A. Probably somebody around in Chester.

22 Q. Do you know him?

23 A. Not by that name.

24 Q. Do you know him as, Man?

25 A. No.

1 Q. What do you know him as?

2 A. I don't know who you are talking about.

3 Q. Well, you said some officers came down there and ask
4 you about Demario Boyd and Dewonya Worthy?

5 A. Yes.

6 Q. And so what - - -

7 A. I told him the same thing I'm telling you, I didn't
8 know them but one of them asked me about the other one,
9 Wonya and I told them I know them if I see him before.

10 Q. You know him because you bought a stolen gun off of
11 him, isn't that the truth?

12 A. No.

13 MRS. FRYAR: I don't having further questions for this
14 witness.

15 THE COURT: Mr. Grier?

16 MR. GRIER: Thank you, Your Honor.

17 REDIRECT EXAMINATION BY MR. GRIER:

18 Q. Mr. Hayes, the solicitor said that your bedroom smells
19 of marijuana, does it smell like your cigarette smoke?

20 A. I smoke cigarettes.

21 Q. What kind of cigarettes?

22 A. Newport's.

23 Q. How often?

24 THE COURT: Back up just a little bit.

25 COURT REPORTER: Back up from it and talk like you

1 would normally talk just don't talk into it. Talk up,
2 okay?

3 A. Newport. I smoke heavily.

4 Q. The statement that the solicitor wanted to go over and
5 over and over with you, as to you admitting to everything,
6 what is your understanding of what was going to happen if
7 you didn't sign that?

8 A. If I didn't sign that my mother was being arrested.

9 Q. You did not sign that so as to basically, come in here
10 and, basically, admits everything, correct?

11 A. No, I did not.

12 Q. You've sat in here for the whole trial and listen to
13 the officers testify, correct?

14 A. Yes.

15 Q. You heard them testify they took you into this room so
16 as to help you out, is that correct?

17 A. Yes.

18 Q. And your understanding that signing this confession to
19 the drugs and admitting to everything, is that helping you
20 out?

21 A. No.

22 Q. Did things go on in that room that are different than
23 what's been testified to?

24 A. Yes.

25 Q. Did things go differently at the house that has been

1 testified to?

2 A. Yes.

3 Q. You talked about the your windows been nailed shut,
4 what's that about?

5 A. Someone broke into our home years back and my daddy
6 nailed the windows before he died. He nailed them.

7 Q. How long ago has that been?

8 A. I'd say five years ago.

9 MR. GRIER: No further questions.

10 THE COURT: Mrs. Fryar?

11 MRS. FRYAR: I've got nothing for this witness.

12 THE COURT: Okay. You can step down, sir.

13 MR. GRIER: The defense rest, Your Honor.

14 THE COURT: Okay. Let me asked the jury to retire to
15 the jury room for a short while. I'll have some
16 instructions for you shortly.

17 (Whereupon, the jury exits the courtroom 4:53 p.m.)

18 THE COURT: Anything else from counsel?

19 MR. GRIER: Your Honor?

20 THE COURT: Anything else from counsel?

21 MR. GRIER: Your Honor, just to renew our motion for a
22 directed verdict as the State's failure to meet their
23 burden of proof.

24 MRS. FRYAR: Your Honor, we would just rely on your
25 ruling.

1 THE COURT: I respectfully deny your motion for
2 directed verdict. I think there's sufficient evidence for
3 the jury to have the question submitted to them.

4 Now, why don't we, us, be back here let's say 9:30 if
5 we have any request charge you can submit them to me and we
6 can go over them. Will have the jury come in at 10
7 o'clock.

8 MRS. FRYAR: Very good, Your Honor.

9 THE COURT: That will give us time to do what we need
10 to do before we argue or charge the jury, does that sound
11 good?

12 MRS. FRYAR: Yes, Your Honor.

13 MR. GRIER: Sounds perfect, Your Honor.

14 THE COURT: Bring them back in so I can let them go
15 for the night.

16 (Whereupon, the jury enters the courtroom at 4:58 p.m.)

17 THE COURT: I didn't give you time to sit down, did I?
18 Alright, ladies and gentlemen, we have completed the taking
19 of the testimony in this trial. What we have left to do is
20 for the attorneys to argue to you then I will charge you on
21 the law after the lawyers argue. We're not going to do
22 that tonight. It's 5 o'clock and I'm going to let you go
23 home. I want you back in here at 10 o'clock. I'm going to
24 meet with the lawyers at 9:30 to cover some legal issues
25 and rather than have you sit in the jury room you can sit

1 at home or talk shop or whatever. So if you'll be back at
2 10 o'clock we'll try to start as close to 10 o'clock as we
3 possibly can once we've completed our discussions of legal
4 issues. But if you can be back in here at 10 o'clock
5 tomorrow morning I would appreciate it. Again, same
6 instructions, you cannot discuss this with anybody at this
7 point in time because it has not yet been submitted to you
8 for your deliberations. So go home and talk about anything
9 else with your significant other or whoever but just don't
10 talk about anything if you don't want to. You can use this
11 as an excuse not to talk to your spouse if you want to.
12 But we'll resume 10 o'clock tomorrow morning. Thank you.
13 And report back to the jury room as you did this morning.
14 (Whereupon, the jury exits the courtroom at 5:00 p.m.)

15 THE COURT: All right. I will plan to be here at 9:30
16 and that way we can meet and discuss and go over the charge
17 and everything.

18 MRS. FRYAR: Thank you, Your Honor.

19 MR. GRIER: Thank you, Your Honor.

20 THE COURT: Thank you. Have a good evening.

21 (CONCLUSION OF THE HEARING OF DAY 3 ON JANUARY 27, 2016)
22
23
24
25

January 28, 2016- Day 4

THE COURT: Do we need Mrs. Hall in here?

MRS. FRYAR: No, Your Honor. Ms. Hall is going to be conducting other solicitor business this morning.

THE COURT: All right. Where is my bailiff?

BAILIFF: Yes, sir.

THE COURT: I need to get Mr. Tisdale, just the one juror, Mr. Tisdale.

BAILIFF: Yes, sir.

THE COURT: You'll have to bring him into the jury box.

(Whereupon, the jurors, Mr. Tisdale, enters the courtroom)

THE COURT: Mr. Tisdale?

MR. TISDALE: Yes, sir.

THE COURT: I was looking back over the information, you're the night manager at Walmart?

MR. TISDALE: Yes, sir.

THE COURT: Have you been trying to work this week at night and do the jury service?

MR. TISDALE: Yes, sir.

THE COURT: Because I've noticed a couple of times during the course of the trial that you nodded off to sleep and on a couple occasions I saw where a couple of your fellow jurors had to punch you to wake you up. Because, and I'm not being critical of you that's why I ask if

1 you've been trying to work at night too but I'm concerned
2 that when you nodded off that means you did not hear the
3 testimony and; therefore, have not heard all of the
4 evidence that's been presented in this case, is that
5 correct? I'm not going to do anything to you I'm just
6 asking. I just want the truth. I mean, if you have not
7 heard all of the evidence because you've been nodding off
8 or whatever, I'm going to have to excuse you from your
9 service because it's not fair to the State or the defendant
10 if you didn't hear all the testimony, do you understand?

11 MR. TISDALE: Yes, sir, I fully understand. It
12 certainly wasn't for extended periods, you know, I may have
13 been in and out.

14 THE COURT: But it happened several times. I've been
15 observing you throughout the trial. As I said I'd noticed
16 a couple occasions a couple of your fellow jurors had to
17 punch you to wake you up. So, if you missed any of the
18 testimony, I mean, what could've been critical at some
19 point in time. I'm concerned about that so what I want to
20 do we've got an alternate I'm going to replace you with the
21 alternate because I'm just afraid and I want to be fair to
22 everybody that you haven't heard everything. Again, I'm
23 not being critical - - if you had told me on the first day
24 that you had to work the night shift and try to come in
25 here, I probably would have excused you. You understand

1 that?

2 MR. TISDALE: Yes, sir.

3 THE COURT: I'm appreciative of the fact that you were
4 willing to work at night and come in here and serve on the
5 jury because without jurors our justice system wouldn't
6 work at all and I appreciate your willingness to do that
7 but out of abundance of caution, I'm going to excuse you
8 and replace you with the alternate in order to be fair to
9 both sides in this case, all right, sir? You'll be paid
10 for your services today, not - - every day that you've been
11 here just as you hadn't sat through the verdict, do you
12 understand?

13 MR. TISDALE: Okay.

14 THE COURT: Okay. Thank you, sir. You are excused.
15 Any questions or anything about this, counsel?

16 MRS. FRYAR: No, Your Honor.

17 MR. GRIER: No, Your Honor.

18 (Whereupon, Mr. Tisdale was excused from the jury panel)

19 (Whereupon, the jury enters the courtroom at 11:08 a.m.)

20 THE COURT: All right. Ladies and gentlemen, I
21 apologize to you. I told you to be here at 10 o'clock. I
22 thought we could take care of all of our business between
23 9:30 and 10:00. We had some technical problems with
24 getting some stuff printed because of the computer. We had
25 some issue to discover and one other issue arose as well.

1 Ms. Johnson? Ms. Johnson, you are now a juror and no
2 longer an alternate for reason we had to excuse Mr. Tisdale
3 from his services as a juror so you are now are no longer
4 an alternate but a member of the jury panel, do you
5 understand?

6 MS. JOHNSON: (Shaking of the head, yes)

7 THE COURT: Counsel, anything before we argue?

8 MRS. FRYAR: No, Your Honor.

9 MR. GRIER: No, Your Honor.

10 THE COURT: Are you going to waive opening?

11 MRS. FRYAR: I'm going to waive opening and just talk
12 to the jury one time and incorporate the law with the
13 facts, Your Honor.

14 THE COURT: That's fine. Mr. Grier?

15 MR. GRIER: Thank you, Your Honor.

16 (Whereupon, this is where the lawyers do their closing
17 arguments)

18 *****

19 JURY CHARGE:

20 THE COURT: All right, ladies and gentlemen, we have
21 reached the point of the trial where I am required to
22 charge you what the law is in this case. I have a lot that
23 I'm required by law to read to you and it gets rather
24 tedious but I do please ask you pay close attention to what
25 I say because the law I give is what you'll have to apply

1 to the facts that have been presented here during this
2 trial.

3 Now, I remind you that during this trial you and I
4 have certain duties to perform. As a trial judge, it is my
5 responsibility to reside over the trial of the case and I
6 also have a duty to rule on the admissibility of the
7 evidence offered during the trial and you saw me do that on
8 several occasions. You are to consider only the competent
9 evidence before you. If there was any testimony ordered
10 stricken from the record in this case during the trial you
11 must disregard that testimony. You are to consider only
12 the testimony which has been presented from this witness
13 stand, any exhibits which have been made part of the record
14 in this case and any stipulation of counsel.

15 I have the additional duty to charge you the law
16 applicable to this case. As presiding judge, I am the sole
17 judge of the law in this case and it is your duty as jurors
18 to accept and apply the law as I state it you. If you
19 already have any ideas as to what the law is or what the
20 law ought to be, if does not agree with what I now tell you
21 what the law is, you must abandon this idea because you are
22 sworn to accept the law and apply the law exactly as I
23 state it to you. In every case tried before this Court
24 before a jury, the jury becomes the sole and exclusive
25 judge of the facts in a case. A trial judge cannot state,

1 comment on or make any statements to a trial jury about the
2 facts in the case. Since you the jury are the sole judge
3 of the facts in this case you are not to infer from what I
4 have said during the progress of this trial and ruling upon
5 the admissibility of evidence or otherwise or anything that
6 I say now during the course of this instruction to you that
7 I have an opinion about the facts in this case. The law
8 does not allow me to have an opinion about the facts in
9 this case. This is a matter solely for you, the jury. As
10 jurors it is your duty to determine the effect, value,
11 weight, and truth of the evidence presented during this
12 trial.

13 Now, the indictments in this matter as far as the
14 defendant, with possession with intent to distribute
15 marijuana; possession with intent to distribute cocaine
16 base; and possession of a stolen pistol, I remind you that
17 fact the defendant was arrested, charged, and indicted in
18 this case, is not evidence in this case and it cannot be
19 considered by you as evidence of guilt in this case, nor
20 does it create any presumption or inference of guilt.
21 These documents simply are the formal written instrument
22 which contain the charges made against the defendant. They
23 are the formal documents by which the case is brought into
24 court. Each indictment charges a separate and distinct
25 offense. You've heard this on several occasions. You must

1 decide each indictment separately on the evidence and the
2 law applicable to it uninfluenced by your decisions to any
3 other indictment. Very simply put, each one stands on his
4 own and has to be ruled on its own by you. A decision made
5 for each one. One doesn't affect the other. They get
6 looked at individually. Defendant may be convicted or
7 acquitted on any or all of the offenses charged. You'll be
8 asked to write a separate verdict of guilty or not guilty
9 for each indictment.

10 Now, the defendant has pled not guilty for these
11 indictments and that plea puts the burden on the State of
12 South Carolina to prove the defendant guilty. A person
13 charged with committing a criminal offense in South
14 Carolina has never required to prove himself innocent. I
15 charge you that it is an important rule of the law that the
16 defendant in a criminal trial no matter what the
17 seriousness of the charge may be will always be presumed to
18 be innocent of the crime for which the indictment was
19 issued unless guilt has been proven by evidence satisfying
20 you of that guilt beyond a reasonable doubt. This
21 presumption of innocence does not end when you begin your
22 deliberations. But it accompanies the defendant throughout
23 the trial until you reach a verdict of guilt based on
24 evidence satisfying you of that guilt beyond a reasonable
25 doubt. The presumption of innocence is like a robe of

1 righteousness placed about the shoulders of the defendant
2 which remains with the defendant until it has been stripped
3 from the defendant by evidence satisfying you of the
4 defendant's guilt beyond a reasonable doubt. The
5 presumption of innocence is not mere legal theory. It is
6 not just a legal phrase. It is a substantial right to
7 which every defendant is entitled unless you, the jury, are
8 satisfied from the evidence of the defendant's guilt beyond
9 a reasonable doubt.

10 Now, reasonable doubt, the State has the burden of
11 proving defendant is guilty beyond a reasonable doubt.
12 Some of you may have served as jurors in civil cases where
13 you were told that is only necessary to prove that a fact
14 is more likely true than not, such as by the greater weight
15 preponderance of the evidence. In a criminal case, the
16 States proof must be more powerful than that. It must be
17 beyond a reasonable doubt. Proof beyond a reasonable doubt
18 is proof that leaves you thoroughly convinced of the
19 defendant's guilt. They are very few things in this world
20 that we know when absolute certainty and in a criminal case
21 that the law does not require proof that overcomes every
22 possible doubt. If based on your consideration of the
23 evidence you are firmly convinced that the defendant is
24 guilty of the crime charged you must find the defendant,
25 guilty. If on the other hand, you think there is a real

1 possibility that the defendant is not guilty, you must give
2 the defendant the benefit of the doubt and find him, not
3 guilty.

4 Ladies and gentlemen, there's two types of evidence
5 which are generally presented during a trial, direct
6 evidence and circumstantial evidence. Direct evidence is
7 the testimony of a person who claims to have actual
8 knowledge of a fact such as an eyewitness and is evidence
9 which immediately establishes the main fact to be proven.

10 Circumstantial evidence is proof of a chain of facts
11 and circumstances indicating the existence of the fact. It
12 is evidence which immediately establishes the lateral
13 facts from which the main facts may be inferred.

14 Circumstantial evidence is based on inference and not on
15 personal knowledge or observation. The law makes
16 absolutely no distinction between the weight of value to be
17 given either direct or circumstantial evidence, nor is a
18 greater degree of certainty requires circumstantial
19 evidence than a direct evidence. You should weigh all the
20 evidence in the case. After weighing all of the evidence
21 and you are not convinced of the guilt of the defendant
22 beyond a reasonable doubt, you must find the defendant, not
23 guilty.

24 Now, in this case there's inferences of correlation or
25 lack of preservation of evidence. The State not only has

1 the burden proof of guilt but also it has the burden
2 producing evidence which could established the innocence of
3 the defendant. When evidence is possibly spoiled because
4 of a lapse of time or a lack of preservation, you may
5 inferred that the evidence which was possibly spoiled
6 would've been the burden of the party in control of the
7 evidence. If you find first the evidence was possibly
8 spoiled and you further find that the evidence would help
9 establish the innocence of the defendant, you may then
10 consider those facts in deciding whether or not the State
11 has met its burden of proof. Necessarily, you must
12 determine the credibility of witnesses who have testified
13 in this case. Credibility simply means believability. It
14 becomes your duty as jurors to analyze and to evaluate the
15 evidence and determine which evidence convinces you of its
16 truth. In determining the believability of the witnesses
17 who have testified in this case, you may believe one
18 witness over several witnesses or several witnesses over
19 one witness. You may believe a part of a testimony of a
20 witness and reject the remaining part of the testimony of
21 that same witness. You may believe the testimony of the
22 witness and its entirety or reject the testimony of the
23 witness and its entirety. You may consider whether any
24 witnesses exhibit to you any interest, bias, prejudice or
25 other motive in this case. You may also consider the

1 appearance and manner of the witness while on the witness
2 stand. In making a determination as to the credibility of
3 a witness there are many factors that you may and should
4 take into consideration such as the appearance or manner of
5 the witness as he or she gave testimony from the witness
6 stand, known to the law as a demeanor of a witness. Did
7 the witness have an interest in the outcome of this trial?
8 Was the witness forthright or hesitant? Was the witness's
9 testimony consistent or did it contain discrepancies? What
10 was the ability of the witness to know about the facts
11 concerning which he or she gave testimony? Did the witness
12 have cause or reason to bias or prejudice in favor of the
13 testimony that he or she gave? Was the testimony of the
14 witness corroborated and made stronger by other testimony
15 and evidence or was it made weaker and impeach by other
16 testimony and evidence presented?

17 Normally, a person cannot give opinion testimony in a
18 trial. Normally, when a person testifies they must testify
19 to what they either saw, heard, or sense by smell or
20 something by that nature. However, there is an exception
21 when someone is qualified because of education or
22 experience. They are permitted to give their opinion in
23 certain areas if the Court qualifies in that way. You
24 heard four witnesses that were qualified in the area of
25 narcotics investigation, chemical analysis, marijuana

1 analysis, and forensic investigation in fingerprint
2 analysis and they gave an opinion, an opinion testimony in
3 those areas, if you recall. That does not mean that you
4 must accept the opinions but it is evidence for you to use
5 in any way you see fit and give the weight and credibility
6 that you believe is appropriate.

7 In order to establish criminal liability, criminal
8 intent is required. For example, the mental state required
9 to be proven by the State for a particular crime might with
10 purpose, intent, knowledge, recklessness or criminal
11 negligence. Criminal intent must be proven by the State
12 beyond a reasonable doubt. Criminal intent is always a
13 matter that must be determined by the jury from the
14 circumstances surrounding the situation. There's no way to
15 improve intent for a mathematical certainty. There's no
16 way medical science can dissect a person's brain and
17 determine what the person had in mind. So the law says
18 that criminal intent may be inferred from the circumstances
19 shown to have existed. This is how you make a
20 determination of whether or not the element requiring
21 intent was present. It is not necessary to establish
22 intent by direct and positive evidence. The intent may be
23 established by inference in the same way as any other fact
24 by taking into consideration the acts of the party and all
25 of the facts and circumstances from the case.

1 Criminal intent is a mental state. A conscious
2 wrongdoing. It is up to you to determine what the
3 defendant intended to do based on the circumstances shown
4 to have existed. Criminal intent can arise from an action
5 or a failure to act. It may arise from negligence,
6 recklessness, or indifferent to duty or to consequences
7 that is considered by the law to be equivalent to criminal
8 intent.

9 Mr. Bailiff, don't let anybody else - - sir, I don't
10 want anybody else getting up or down while I'm doing this
11 charge. Nobody can come in and nobody get up and go out.
12 Is that clear? I want the jury to pay full attention to me
13 and not what's moving around the courtroom.

14 Probable cause is a good faith belief that a person
15 has committed a crime and that belief rest on grounds that
16 would make an ordinary prudent and cautious person under
17 circumstances to have the same belief.

18 Probable cause for arrest in misdemeanor cases without
19 a warrant is something more than a mere suspicion that the
20 person has committed a crime. An arrest made on a hunch or
21 mere belief or guess unsupported by facts, circumstances or
22 credible information showing that the person has committed
23 the crime is not made on probable cause. Probable cause is
24 somewhere between suspicion and sufficient evidence to
25 convict. In deciding whether there was probable cause to

1 arrest the probability cannot be technical but must be
2 based on factual and practical consideration of everyday
3 life on which reasonable prudent and cautious people act.

4 Now, in this case there has been evidence presented
5 that witnesses have made prior statements which are not
6 consistent with the witnesses present testimony. You may
7 use this evidence to decide whether to believe the witness.
8 You may also use evidence of the earlier contradictory
9 statements to determine the truth of those statements. It
10 is up to you to decide whether to believe the earlier
11 statements or the testimony given at trial. If a witness
12 has shown that have knowingly testified untruthfully
13 concerning any material matter, you may consider this in
14 determining whether to trust the witness's testimony as to
15 other matters. You may reject all testimony of that
16 witness or give all or part of the testimony the weight you
17 think it deserves.

18 A statement alleged to have been made by the defendant
19 is being admitted into evidence in this case. While the
20 Court has determined that the statement is admissible, I
21 instruct you that you make the ultimate decision of whether
22 or not the defendant made the statement. If the defendant
23 did make the statement, you must determine whether the
24 statement was made by the defendant voluntarily and of his
25 own free will. This means that the statement is not caused

1 by pressure, force, fear, threats, coercion or intimidation
2 about hopeful or a promise of leniency or a reward of any
3 kind. In determining whether the statement was voluntary
4 you should consider both the characteristics of the
5 defendant and the details of the question. Some of the
6 factors you must consider are: the age of the defendant;
7 the defendant's education or lack of education; the
8 defendant's mental ability or capacity; the defendant's IQ
9 or intelligence, the defendant's background and
10 environment; the place and link of detention; the nature of
11 the questioning and the advice or lack thereof to the
12 defendant of his or her constitutional rights including but
13 not limited to the right to remain silent; that any
14 statement could be used against him in a court of law; the
15 right to have a lawyer present; if he cannot afford a
16 lawyer, a lawyer will be appointed to represent him without
17 cost; and that he could stop making a statement at any
18 time. You must carefully consider all of the surroundings
19 circumstances before you give any weight in an alleged
20 statement. The State has a burden of proving beyond a
21 reasonable doubt that the alleged statement was voluntary.
22 If you determine that it was, you may the statement any
23 further consideration that you deem proper. You must
24 decide what weight, if any, should be given to the allege
25 statement. If you determine the allege statement was not

1 free and voluntary statement of the defendant, you should
2 not consider the statement at all.

3 Now, in this case the defendant is charged with
4 possession with intent to distribute cocaine base. The
5 State must prove beyond a reasonable doubt that the
6 defendant possessed cocaine base with the intent to
7 distribute it. To prove possession, the State must prove
8 beyond a reasonable doubt that the defendant had both power
9 and intent to control the disposition or use of the cocaine
10 base. Possession may be either actual or constructive.
11 Actual possession means that the cocaine base was in the
12 actual physical custody of the defendant. Constructive
13 possession means that the defendant had the dominion and
14 control of the right to exercise dominion or control over
15 either the cocaine base itself or the property in which the
16 cocaine base was found. In mere presence at the scene
17 where the drugs were found is not enough to prove
18 possession. The defendant's knowledge and possession may
19 be inferred when a substance is found on the property under
20 the defendant's control. However, this inference is simply
21 an evidentiary fact to be taken into consideration by you
22 along with the other elements in the case and to be given
23 the weight that you decide it should have. Two or more
24 persons may have joint possession of a drug. The State
25 must also prove beyond a reasonable doubt that the

1 defendant intended to distribute the cocaine base.
2 Distribute means is to deliver other than by administering
3 or dispensing a drug. Intent may be shown by acts in
4 conduct of the defendant and other circumstances for which
5 he may naturally and reasonably inferred intent. In
6 determining whether the defendant had the intent to
7 distribute cocaine base, you may consider the circumstances
8 surrounding the defendant's alleged possession. You may
9 consider the amount of the substance alleged being
10 possessed. The manner in which it was allegedly possessed.
11 The place where it was allegedly possessed and other
12 factors which you consider to be important. You must find
13 that the defendant did not intend to have the cocaine base
14 solely for his own use. Possession of one or more grams of
15 crack cocaine creates an inference that the defendant
16 possessed the cocaine base with intent to distribute. This
17 inference does not relieve the State from proving beyond a
18 reasonable doubt that the defendant had the intent to
19 distribute. It's simply an evidentiary fact to be taken
20 into consideration by you along with the other evidence in
21 the case and to be given the weight that you decide it
22 should have.

23 The defendant is charged with possession with intent
24 to distribute marijuana. The State must prove beyond a
25 reasonable doubt that the defendant possess marijuana with

1 intent to distribute it. With possession the State must
2 prove beyond a reasonable doubt that defendant have both
3 the power and the intent to control the disposition and use
4 of the marijuana. Possession may be either actual or
5 constructive. Again, I emphasized actual possession means
6 that the marijuana was in the actual physical custody of
7 the defendant or constructive possession means that
8 defendant had dominion and control of the right to exercise
9 the dominion or control over either the marijuana itself or
10 the property on which the marijuana was found. The mere
11 presence at the scene where the drugs were found is not
12 enough to prove possession. The defendant's knowledge and
13 possession may be inferred when a substance is found on the
14 property under the defendant's control. However, this
15 inference is simply an evidentiary fact to be taken into
16 consideration by you along with the other elements in the
17 case and to be given the weight you decide it should have.
18 Two or more persons may have joint possession of the drug,
19 the State must also prove beyond a reasonable doubt that
20 the defendant intended to distribute the marijuana. Again,
21 distribute means to deliver other than by administering or
22 dispensing a drug. Intent may be shown by acts and conduct
23 of the defendant and other circumstances which you may
24 naturally, reasonably infer intent. In determining whether
25 the defendant had the intent to distribute marijuana you

1 may consider the circumstances surrounding the defendant's
2 alleged possession. You may consider the amount of the
3 substance alleged to have been possessed, the manner in
4 which it was allegedly possessed. The place where it was
5 allegedly assessed and other factors that you consider to
6 be important. You must find that defendant did not intend
7 to have the marijuana solely for his own use. Possession
8 of more than 28 grams and 1 ounce (28.1 grams) of marijuana
9 creates an inference that the defendant possessed the
10 marijuana with intent to distribute. This inference does
11 not relieve the State from proving beyond a reasonable
12 doubt the defendant had the intent to distribute, it is
13 just simply an evidentiary fact to be taken into
14 consideration by you along with the other evidence in the
15 case and be given the weight that you decide it should
16 have. You can see from both of those statements about the
17 actual and constructive possession, it's the same with
18 regard to both of the drugs alleged to have been
19 distributed by the defendant.

20 The defendant is also charged with possession of a
21 stolen pistol. The State must prove beyond a reasonable
22 doubt that the defendant bought, sold, transported, pawn
23 receipt or possess a pistol and that the defendant knew or
24 had reason to believe that the pistol was stolen. Actual
25 possession means that the pistol was in the actual physical

1 custody of the defendant. Constructive possession means
2 that defendant had dominion and control or the right to
3 exercise dominion or control of either the pistol itself or
4 the property in which the pistol was found. The mere
5 presence at the scene where the pistol was found is not
6 enough to prove possession. The defendant's knowledge and
7 possession may be inferred when a stolen pistol is found on
8 the property under the defendant's control. However, this
9 inference is simply an evidentiary fact to be taken into
10 consideration by you along with the other evidence in the
11 case and to be given the weight that you decide it should
12 have. Whether the defendant knew or had reason to believe
13 that the pistol was stolen may be shown by direct or
14 circumstantial evidence. The State may prove that the
15 defendant knew or had reason to believe that the pistol was
16 stolen by showing that the defendant knew facts that would
17 make a reasonable person believe that the pistol was
18 stolen. Again, mere presence at the scene is not
19 sufficient to prove someone guilty of a crime. A
20 defendant's presence where a crime is being committed or
21 mere association with a person who commits a crime does not
22 make a defendant an accomplice or aider and abettor of a
23 person committing the crime. The burden is on the State to
24 prove every element of the crime charged. If you find
25 after reviewing all of the evidence that the State has

1 proved that the defendant was only present at the scene of
2 the crime and that they had not prove beyond a reasonable
3 doubt any other participation in the crime, you must find
4 the defendant, not guilty. The law is, at proof of, at the
5 scene of the crime is not sufficient to find someone
6 guilty.

7 Now, ladies in gentlmen, there are six possible
8 verdicts that you may find in this case. Guilty of
9 possession with intent to distribute marijuana or not
10 guilty of possession with intent to distribute marijuana.
11 Guilty of possession with intent to distribute cocaine
12 base. Not guilty of possession with intent to distribute
13 cocaine base. Guilty of possession of a stolen pistol.
14 Not guilty of possession of a stolen pistol. There's no
15 significance, whatsoever, in the order in which I've just
16 stated these possible verdict. Simply one must be stated
17 before the other.

18 Ladies and gentlemen, your verdict must be a unanimous
19 one. Madame, forelady, if the jury agrees on the verdict,
20 you will write the verdict on the verdict form which I'll
21 have presented to you and sign your name as foreperson.
22 You would then knock on the jury room door and informed the
23 bailiff that you have reached a verdict. At that time, we
24 will receive you back in the courtroom.

25 Now, in just a few minutes I'm going to asked that you

1 return to the jury room but I, again, caution as I have
2 several times don't start your deliberations yet. You
3 can't do that until the bailiff or the clerk tells you to
4 do so. I have to make sure there's not any other legal
5 matters to be discussed with the attorneys before I submit
6 the evidence to you and let you begin your deliberations.

7 Alright, ladies and gentlemen, I want to go ahead and
8 let you know before I send you back to the jury room that
9 we will provide lunch to you today. The clerk will make
10 arrangements for that and have it delivered to the jury
11 room shortly. Once I send you word to you begin your
12 deliberations, you can certainly begin your deliberations
13 before your food comes. You don't have to wait on that.

14 Now, I'm going to ask you to retire to the jury room.
15 Again, do not begin your deliberations until I take up
16 matters with the jury, once I've done that I will send word
17 to you that you can begin. Thank you.

18 (Whereupon, the jury exits the courtroom at 12:18 p.m.)

19 (Whereupon, the jury was told to begin deliberations)

20 THE COURT: All right. Counsel as I pointed out
21 earlier at the sidebar we have three jurors now they want
22 to smoke a cigarette and it is my understanding that
23 neither one of you have an objection so long as their
24 properly escorted, is that correct?

25 MRS. FRYAR: That's correct. We just asked that the

1 jury panel not deliberate of course while they're away.

2 MR. GRIER: That's fine, Your Honor.

3 THE COURT: Okay. I guess what I better do in that
4 regard is bring the foreperson back in and explain to her
5 that so she's in charge unless you want me to bring the
6 entire jury in.

7 MRS. FRYAR: No, sir, we're fine with that. Now, Mr.
8 Stewart would you raise your right hand. Mr. Fred Stewart,
9 do you swear or affirm that you will escort the jurors who
10 wish to smoke outside and keep them from being approached
11 by anybody during that period of time?

12 MR. STEWART: Yes, sir, I do.

13 THE COURT: Okay. Thank you, sir.

14 (Whereupon, the foreperson enters the courtroom)

15 THE COURT: Madam, foreperson, I just want to instruct
16 you that while these individuals who want to smoke, go
17 outside, you have to suspend your deliberations. You
18 cannot talk about what your decision is or your analysis or
19 anything while they're absent from the room. So y'all take
20 a break from deliberations. Talk about something else but
21 I want you to make that clear to the other jurors, you
22 can't talk about it at this time.

23 MADAM FOREPERSON: Okay.

24 THE COURT: We're going to try to get them out and
25 back in as soon as possible.

1 MADAM FOREPERSON: Okay. Thank you.

2 THE COURT: Thank you, ma'am.

3 (Whereupon, the foreperson exits the courtroom)

4 THE COURT: All right. Counsel, will you approach the
5 bench?

6 (Whereupon, a bench conference was held)

7 THE COURT: All right. Let's bring the jury back in.

8 MR. GRIER: We need to get Mr. Hayes, Your Honor?

9 THE COURT: We do.

10 MR. GRIER: Yes.

11 (Whereupon, the jury enters the courtroom at 2:29 p.m.)

12 THE COURT: Madam foreperson, I understand that you
13 have a question. For the record that question being, "What
14 are we to do if we cannot reach a decision?" At this point
15 in time, during your deliberations the only thing - - the
16 answer to that is, is that I return you to the jury room
17 and you continue with your deliberations. It may not seem
18 early in the process do you but it is still early in the
19 process of deliberations and I will have some further
20 instructions later on if you still are unable to reach a
21 decision. But at this point in time the best way to answer
22 that question is, you go back in, listen each other, listen
23 to each other's opinions and discuss this. The Court knows
24 it is hard for two people to agree on something sometimes
25 and I know twelve people makes it even that much more

1 difficult but for our process to work, we have to depend on
2 jurors to make the decision so I'm going to send you back
3 to your jury room and asked to continue your deliberations.
4 If you have any other questions put them in writing, signed
5 it and bring back to the Court and we will respond.

6 MADAM FOREPERSON: Yes, sir.

7 (Whereupon, the jury exits the courtroom at 3:15 p.m.)

8 THE COURT: Any exceptions to my answer to the
9 question?

10 MRS. FRYAR: No, Your Honor. It's exactly what I
11 would ask you to say.

12 MR. GRIER: No, Your Honor.

13 THE COURT: Okay. Stand at ease and we'll deal with
14 these pleas.

15 (Whereupon, the jury is deliberating)

16 THE COURT: Counsel, before the jury comes in I'd like
17 to put on the record the first question we had which is
18 "What are we to do if we cannot reach a decision?" This is
19 the one we had about 3 o'clock or so. And I had it marked
20 as Court's exhibit number seven.

21 (Whereupon, the Question by the Jury has been marked
22 and entered into evidence as Court's Exhibit No. 7)

23 (Whereupon, the jury enters the courtroom at 6:08 p.m.)

24 THE COURT: Ladies and gentlemen, I appreciate the
25 effort you have put in this afternoon, how diligent you

1 have been. I commend you for having to reach a decision on
2 two of the charges based on the note I have from the
3 foreperson, Ms. Roberts, says, "We have reached a decision
4 on the two charges but cannot come to an agreement on one
5 of the charges." With that being said, I am required by
6 law to read you an additional charge concerning your jury
7 service. You have stated to me you have been able to agree
8 on a verdict on one of the charges. As I instructed you
9 earlier the verdict of the jury must be unanimous and you
10 are well aware of that. When a matters in disputed it
11 isn't always easy for even to people to agree so when
12 twelve people must agree it becomes even more difficult,
13 reference that to you earlier. In most cases, absolute
14 certainty cannot be reached or expected; however, you have
15 a duty to make every reasonable effort to reach a unanimous
16 verdict. In doing this you should consult with one another
17 express your own views and listen to the opinions of your
18 fellow jurors. Tell each other how you feel and why you
19 feel that way. Discuss your differences with open minds.
20 Although, the verdict of the jury must be unanimous every
21 one of you has the right to your own opinion. The verdict
22 you agree to must be your own verdict, result in your own
23 convictions and you should not give up you're firmly held
24 beliefs merely to be in agreement with your fellow jurors.
25 The majority should consider the minorities position. The

1 minority should consider the majority's position. You
2 should carefully consider and respect the opinions of each
3 other and reevaluate the position for reasonableness, for
4 reckless and impartiality. You must lay aside all outside
5 matters and re-examine the questions before you based on
6 the law and evidence in this case. If you cannot agree on
7 a verdict in this case, I must declare a mistrial with
8 regards to the one indictment you can't reach an agreement
9 on. You've already reached agreement on those two so we're
10 talking about the one that you still have yet to come to an
11 agreement on. But if you do not agree on a verdict on the
12 other indictment you have not reached an agreement on, I
13 must declare a mistrial. In that case, it does not mean
14 anybody wins it just means that at some future time I will
15 try this case with some of the jury sitting where you sit
16 now. The same participants will come and the same lawyers
17 will ask basically the same questions and give basically
18 the same answers and we will go through the whole process
19 again. You're selected in the same manner and from the
20 same source as any future jury will be. There's no reason
21 for me to suppose that the case will ever be submitted to
22 twelve more intelligent, impartial, conscientious or
23 competent jurors than you are or that more or clear
24 evidence will be produced on one side or the other. I,
25 therefore, have to ask you to return to your jury room and

1 continue your deliberation on the one issue that you cannot
2 agree on and put forth the effort as I express just now
3 appear in this charge. That being said, it's 6:15 p.m.
4 we're prepared to order you some sort of supper. I'm sure
5 you're getting hungry and then we'll see where we go from
6 there. Do you have any questions Madam, foreperson?

7 MADAM FOREPERSON: I don't think so, sir.

8 THE COURT: I just ask you to go back in as I said I
9 commend you for the diligence that you shown here today.
10 Jury service is not easy. You all believe me on that right
11 now, I'm sure. It's a difficult process but our judicial
12 system, our justice system would not work without jurors.
13 You're the key element to our system so this is what our
14 country is founded on and this is what we have to do and
15 the process we use in reaching decisions concerning dispute
16 between the State individual or between individuals in
17 civil court. So I'm going to send you back to your jury
18 room, encourage you to try to reach a decision on this one
19 other indictment and somebody will be in there to talk to
20 you about something to eat in a few minutes. Thank you.

21 MADAM FOREPERSON: Can we take those, sir?

22 THE COURT: Those what?

23 MRS. FRYAR: Diagrams.

24 THE COURT: Were they admitted into evidence?

25 MRS. FRYAR: They were not admitted into evidence.

1 They were just shown to the jury. I didn't - - -

2 MADAM FOREPERSON: The reason being is was because
3 there was question on where something was located in the
4 room. That was the only reason.

5 THE COURT: If they were not admitted into evidence I
6 can't send them back to the jury room, ma'am. I'm sorry.

7 MADAM FOREPERSON: Okay.

8 (Whereupon, the jury exits the courtroom at 6:15 p.m.)

9 THE COURT: All right. For the record, Madam court
10 reporter, I am having the last question that was asked, "We
11 have reached a decision on two of the charges but cannot
12 come to an agreement on one of the charges." Okay.
13 Signed by Kathy Walters. I'm making that Court's Exhibit
14 Number Eight.

15 (Whereupon, the Question by the Jury has been marked
16 and entered into evidence as Court's Exhibit No. 8)

17 THE COURT: Yes, ma'am, Ms. Fryar?

18 MRS. FRYAR: Your Honor, since we know what the
19 question is, I would ask the Court to consider telling the
20 jury that they are entitled to rehear testimony if they
21 care to do that. And so if they know of some person who
22 has said something to them that would be meaningful to them
23 and they want to hear a particular person's testimony again
24 I would ask the Court to let them have that information if
25 that is available to them.

1 THE COURT: That's a reasonable request under the
2 circumstances.

3 MR. GRIER: Someone would have to request. I mean, if
4 they're confused about a certain element I'm sure we can
5 have stuff played back. I strongly think they're confused
6 but just don't know what they're confused about.

7 THE COURT: Well, in a sense they've asked that
8 question though, I mean, that juror, I mean, pose that
9 question to the Court about - - -

10 MRS. FRYAR: Your Honor, I think we should - - -

11 THE COURT: Either that or if y'all can agree that,
12 that goes back to the jury room. I'll take an agreement by
13 both sides.

14 MRS. FRYAR: I have no opposition to it going back,
15 Your Honor, but I do also think they should know they had
16 the opportunity to listen to the testimony. I don't know
17 that they know that. They'd still have to request it, it's
18 just that you can tell them that - - even though - - or
19 this may be available by consent.

20 MR. GRIER: What? The diagrams?

21 MRS. FRYAR: Yes.

22 THE COURT: I'm not going to send it back unless y'all
23 both agree because it's not in evidence.

24 MR. GRIER: No.

25 MRS. FRYAR: All right. Then, Your Honor - - -

1 THE COURT: I'm not going to send it back.

2 MRS. FRYAR: - - - then I would ask you to inform them
3 although the diagrams cannot be made, you know, you've made
4 the call that the diagrams could not because we could not
5 agree on that, don't tell them that part I'm not asking you
6 to, Your Honor. I'm just asking you to tell them you do
7 have the opportunity to listen to a witness's testimony.
8 If there is a witness you would like to listen to again we
9 can come back in the courtroom and listen to the testimony
10 again. I think that they should know that. I think they
11 should know they have that option.

12 THE COURT: What's your position, Mr. Grier?

13 MR. GRIER: Your Honor, that's so convoluted as to a
14 two-day trial as to what - - the time it would take to
15 narrow down exactly who said what, they'd have to know the
16 name, and what particular - - I just don't know if we can
17 narrow it down to a specific - - -

18 THE COURT: I wouldn't go on a fishing expedition. If
19 they can specifically tell me somebody.

20 MR. GRIER: If they could state it in a specific form
21 and it would be easy to locate then I think that would be
22 one thing but to just - - -

23 THE COURT: I'm not going to have my court reporter
24 just go up and down, you know, if they can tell me they
25 want, like Officer Crawford portion of his testimony, we

1 can locate that, can we, madam, court reporter?

2 COURT REPORTER: Yes, sir.

3 THE COURT: We can bring them back in and I'll tell
4 them that. Ma'am?

5 MRS. FRYAR: I'm sorry I didn't know if you were
6 saying that.

7 THE COURT: Bring them back in. I hate to do this to
8 them.

9 MR. GRIER: Your Honor, since the drawings aren't in
10 evidence and they are looking at them when they come in,
11 I'd like those moved so the jury can't see those.

12 MRS. FRYAR: Oh, I'm sorry. Should we do that, Your
13 Honor?

14 THE COURT: Yeah, put them back up here and turned
15 them around backwards.

16 MRS. FRYAR: I didn't purposely do that. Honestly.
17 (Whereupon, the jury enters the courtroom at 6:23 p.m.)

18 THE COURT: All right. I apologize for dragging you
19 right back in but after the question was raised about the
20 diagrams. I explained to you I can't send them back in to
21 the jury room because they're not marked into evidence,
22 they were not admitted into evidence. However, after
23 discussion with the attorneys I would inform you that if
24 you happen to have a specific question about any persons
25 testimony, we do have the capabilities of playing that

1 particular person's testimony back to you if that will help
2 clarify anything with regard to any issues that you're
3 discussing. You don't have to. I'm just telling you that
4 you do have the opportunity. We have capabilities, you
5 know, we would have to know specifically what witness
6 you're concerned about and what portion of the testimony.
7 If you can narrow it down to that, if you even have that
8 situation for that question, but I can't send that. We can
9 let you hear testimony again if it's so desired by you.
10 But we have to be, as I said, specifically who the
11 witnesses is. We can't just go running up and down the
12 tape. We have to know who the witness is and what portion
13 of the testimony you would want to hear again. I just
14 wanted to advise you of that. I hate to bring you back in
15 like this but it's the only way I can explain it to but
16 with that said I'm going to send you back in the jury room
17 again unless, you come up with the question you want here,
18 you knock on the door, let us know, if not continue your
19 deliberations and somebody is going to come in there with
20 something to take orders for supper too.

21 (Whereupon, the exits the courtroom at 6:25 p.m.)

22 THE COURT: All right. Counsel, any objection to that
23 explanation to the jury?

24 MRS. FRYAR: I think it was very clear.

25 MR. GRIER: No, Your Honor.

1 THE COURT: Thank you.

2 (Whereupon, it was put on the record that some more jurors
3 needed to go take a smoke break)

4 (Whereupon, the jury had another question for the judge)

5 THE COURT: Madam, court reporter for the record the
6 question now is asked by the jury is, "Would you explain
7 the difference between actual and constructional
8 possession?" Kathy Walters, obviously, constructional she
9 meant constructive but that's the question if you will mark
10 that next Court's Exhibit

11 (Whereupon, the Question by the Jury has been marked
12 and entered into evidence as Court's Exhibit No. 9)

13 (Whereupon, the jury enters the courtroom at 8:47 p.m.)

14 THE COURT: All right. Ladies and gentlemen, I
15 understand that the question is, "Would you explain the
16 difference between actual and constructional possession?"
17 It's actually constructive possession is the term, the
18 legal term that we use. I understand, that's no problem.
19 What I can do for you is read to you the charge on the law
20 that I did earlier today changing it just a little bit.
21 I'm not going to refer specifically to either of the
22 substance, I'm just going to use the subject or object in
23 talking about this.

24 All right. Actual possession means that the substance
25 or object was in the actual physical custody of the

1 defendant. Constructive possession means that the
2 defendant had dominion and control or the right to exercise
3 dominion or control over either the substance or object
4 itself or the property on which the substance or object was
5 found. The mere presence at the scene where the drugs were
6 found is not enough to prove possession. The defendant's
7 knowledge and possession may be inferred when a substance
8 is found on the property under the defendant's control.
9 However, this inference is simply an evidentiary fact to be
10 taken into consideration by you along with the other
11 evidence in the case and be given the weight you decide it
12 should have. Would you like for me to read that again?

13 MADAM FOREPERSON: I think that does it.

14 THE COURT: All right. Thank you.

15 MADAM FOREPERSON: Thank you.

16 THE COURT: I want you to resume your deliberations.

17 (Whereupon, the jury exits the courtroom at 8:49 p.m.)

18 THE COURT: All right. Counsel, any exceptions or
19 objections to the instructions I just gave the jury?

20 MRS. FRYAR: Not from the State, Your Honor.

21 MR. GRIER: No, Your Honor.

22 THE COURT: Thank you.

23 (Whereupon, the Court is informed they have received a
24 verdict)

25 THE COURT: Instead of submitting another verdict form

1 to the jury, I'm inclined just to have that stapled to the
2 original indictment rather than have the foreperson go back
3 and write on the indictment as well. Any problem with
4 that?

5 MRS. FRYAR: No, Your Honor.

6 MR. GRIER: No, Your Honor.

7 THE COURT: Are we ready to bring the jury out?

8 MRS. FRYAR: Yes, sir.

9 THE COURT: If his parents come in, we'll let them in.

10 MR. GRIER: Thank you, Your Honor.

11 THE COURT: All right. Bring them in.

12 (Whereupon, the jury enters the courtroom at 8:59 p.m.)

13 VERDICT

14 THE COURT: Madam, foreperson, I understand you have
15 reached a verdict on all three indictments?

16 MADAM FOREPERSON: Yes, sir.

17 THE COURT: Is your verdict unanimous?

18 MADAM FOREPERSON: Yes, sir.

19 THE COURT: Would you hand them up please? Madam,
20 Clerk would you publish the verdict?

21 CLERK: On this case of the State of South Carolina
22 versus Charles David Hayes, 2014-GS-12-651, we the jury
23 find the defendant, Charles David Hayes, not guilty of
24 possession with intent to distribute marijuana.

25 THE COURT: No, ma'am, you're reading it wrong. The

1 one that is signed.

2 CLERK: Oh, I'm sorry. We find the defendant, Charles
3 Hayes, guilty of possession with intent to distribute
4 marijuana. On 2016-GS-12-65, the State versus Charles
5 David Hayes, we find the defendant guilty of possession of
6 a stolen pistol. On 2014-GS-12-650, we find the defendant
7 Charles David Hayes, guilty of possession with intent to
8 distribute cocaine base. If this is your verdict would you
9 signify by raising the right-hand?

10 (Whereupon, the jury panel raised their right hands)

11 THE COURT: Do y'all wish to poll the jury
12 individually?

13 MR. GRIER: No, Your Honor.

14 MRS. FRYAR: No, sir.

15 THE COURT: All right. Ladies and gentlemen, this has
16 been a long day, a long week for you, the Court is very
17 much aware of that; however, I am very appreciative and the
18 State of South Carolina is very appreciative of the service
19 you have provided to the State this week. As I indicated
20 earlier jury service is not an easy thing to do but it's a
21 civic duty that I feel like everyone should participate in
22 at some point time in their life. Our justice system would
23 not work as I told you earlier without jurors and without
24 conscientious jurors to render a service such as you've
25 done.

1 Now, I want you to understand your services have
2 ended. You have the right, if you so desire, to discuss
3 this with anybody who wants to discuss it with you,
4 attorneys or anybody else, or you have the right to refuse
5 to discuss this with anybody who inquire of you what you
6 did. If you decide you want to talk to somebody about it
7 and during the course of the conversation decide you no
8 longer want to talk about it, you don't have to talk about
9 it anymore. You can cut them off. If somebody harasses
10 you about a decision or tries to infer to get information
11 from you, you report that to the clerk of court and the
12 Court will deal with it accordingly. Any questions about
13 that? Okay. Again, thank you very much for your service.
14 Like I said, it's been a long week, a long day but you have
15 provided a great service to the State of South Carolina.
16 Thank you.

17 (Whereupon, the jury exits the courtroom at 9:02 p.m.)

18 THE COURT: Would the defendant come around please.
19 Mr. Grier, I'll be glad to hear from you.

20 MR. GRIER: Your Honor, Mr. Hayes he does have some
21 record, Your Honor, but there's no felony convictions. He
22 has two prior drug convictions which both of them were
23 simple possession, one with marijuana and will with
24 cocaine. You have to have a prior, I think, two drug gun
25 convictions, Your Honor. You've, basically, been here this

1 week and got to kind of seek in and whatnot but, Your
2 Honor, we would just ask if you'll give any consideration
3 if you could for Mr. Hayes. I know that the sentence for
4 the crack cocaine is apparently substantial sentence. We'd
5 asked that you please give any leniency the Court is
6 willing to give to Mr. Hayes in the trial of this case.

7 MRS. FRYAR: Your Honor, Mr. Hayes was adjudicated
8 delinquent for the offense of disturbing schools on April
9 11, 2005 that's when that charge was incurred in McCormick
10 County. He was ordered to be evaluated in a secure
11 evaluation facility by the Honorable Richard Chewning on
12 August 29, 2005. He was placed on probation on October 5,
13 2005 by the Honorable Wesley Brown with a suspended
14 commitment to the Department of Juvenile Justice
15 Institution. I'm just going to read adjudications, Your
16 Honor. His probation requirement ended on December 29,
17 2006. On December 12, 2005, he incurred a charge of
18 possession of marijuana first offense on January 25, 2006.
19 He was given a determinate sentence followed by probation
20 by the Honorable Richard Chewning. He was - - probation
21 was violated on October 26, 2006 and that was filed in
22 Chester County. The previous charge, Your Honor, of the
23 marijuana conviction was also in Chester County. The
24 violation, Your Honor, on November 1, 2006 the Honorable
25 Brian Gibbons gave him a determinate sentence followed by

1 probation. That determinate sentence followed by probation
2 order the probation ended on December 29, 2006. Your
3 Honor, Mr. Hayes was convicted for the offense of
4 possession of a person, of a handgun by a person under the
5 age of eighteen on July 29, 2008. He was given one year
6 suspended to one year probation. That same day he was
7 convicted of unlawful caring of a pistol and he was given
8 one year suspended to one year probation to run concurrent.
9 In 2008, he was also convicted of violating beginners
10 permit, hit and run accident, with property damage and
11 purchase of beer or wine by a minor.

12 Following that, Your Honor, on April 16, 2012, he was
13 convicted of the offense of possession of marijuana and he
14 was given the sentence of time served. On April 16, 2012
15 the same day, Your Honor, he was convicted of the offense
16 of possession of cocaine base, crack cocaine, and he was
17 sentenced to ninety days suspended to nine months
18 probation. This is technically his third conviction for
19 drugs, Your Honor, and regarding the marijuana that time
20 period expired for the State to be within the ten year
21 frame in December of this past year, 2015, so that does not
22 count against him as a third offense. So he is currently
23 convicted of a second offense marijuana and second offense
24 of crack cocaine.

25 MR. GRIER: Your Honor, his mother, I think, returned

1 to the courtroom and she may wish to address the Court as
2 well in this matter.

3 THE COURT: Yes, sir. And I'll also hear from the
4 defendant if he wishes to speak as well. Mr. Hayes, do you
5 wish to say anything?

6 MR. HAYES: No. I love you, ma.

7 THE COURT: Ms. Hayes, would you like to say anything?

8 MS. HAYES: Yes. I just like to say my son was trying
9 to turn his life around. He was working at Dollar Tree,
10 selling Avon, and trying to go to York Tech when all of
11 this took place. He really was trying to turn his life
12 around.

13 THE COURT: Anything from anyone else? I'll be glad
14 to hear from anybody who wishes to speak.

15 (Whereupon, no one responded to his question)

16 SENTENCING

17 THE COURT: All right. Mr. Hayes, the jury has spoken
18 in this case and has found you guilty of these three very
19 serious charges and I take no pleasure in sentencing anyone
20 to prison but I have to do that first as a punishment and
21 also to set an example to others who might decide they want
22 to get involve in the drug trade.

23 Therefore, the sentence of the Court is with regards
24 to indictment 2014-GS-12-650, possession of cocaine base
25 with intent to distribute, I sentence you to the State

SENTENCING:

486

1 Department of Corrections for a term of twenty years. With
2 regards to indictment 2014-GS-12-651, possession with the
3 intent to distribute marijuana, I sentence you to State
4 Department of Corrections for a term of five years that
5 sentence runs concurrent with the twenty year sentence. As
6 to the indictment 2016-GS-12-065, possession of a stolen
7 handgun, the sentence of the Court you be committed to the
8 State Department of corrections for a term of three years
9 this also runs concurrent with a twenty year sentence under
10 2014-650. Good luck to you.

11 (CONCLUSION OF THE HEARING OF DAY 4 ON JANUARY 28, 2016)
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CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Sixth Circuit Court for Chester County, South Carolina, on the 25th through the 28th day of January, 2016.

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

Lisa S. Carter

Lisa S. Carter

Circuit Court Reporter

April 23, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER)

IN THE COURT OF GENERAL SESSIONS
OF THE SIXTH JUDICIAL CIRCUIT

State of South Carolina,)
vs.)
Charles David Hayes,)
Defendant.)

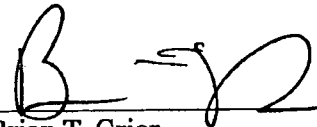
Warrant Nos. 2014A1210400072,
2014A1210400073, 2014A1210400074,
2014A1210400075

MOTION TO SUPPRESS EVIDENCE PURSUANT TO UNLAWFUL SEARCH

You will please take notice that the undersigned will move before the Presiding Judge of General Sessions Court on the 25th day of January, 2016, or as soon thereafter as counsel may be heard that the Court suppress the evidence seized pursuant to an unlawful search.

This motion is further based upon the attached Memorandum of Law.

**HAMILTON, DELLENEY
GRIER & COTTEN, LLC**

BY: 
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ATTORNEY FOR DEFENDANT

Chester, South Carolina

January 25, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	OF THE SIXTH JUDICIAL CIRCUIT
COUNTY OF CHESTER	)	
State of South Carolina,	)	
	)	Warrant Nos. 2014A1210400072,
vs.	)	2014A1210400073, 2014A1210400074,
	)	2014A1210400075
Charles David Hayes,	)	
	)	
Defendant.	)	

**MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS EVIDENCE PURSUANT
TO UNLAWFUL SEARCH**

Introduction

The complaint filed in this action alleges that the Defendant, Charles David Hayes, was in possession of sufficient marijuana and crack cocaine to reasonably infer an intention to distribute said illegal drugs and was simultaneously in possession of a stolen pistol. The drugs and pistol were discovered during a police search of the home of the Defendant's parents under the jurisdiction of an arrest warrant issued for another individual. The Defendant was not present on the premises at the time of the search and was subsequently arrested and detained based on the fact that he was a resident of the home where the drugs were found which was also the home of his parents. Neither the Defendant nor his parents were named in the original arrest warrant executed by law enforcement on the home which resulted in these charges. After obtaining a consent to search from Pauline Hayes, the owner of the house and mother of the Defendant, law enforcement discovered a quantity of marijuana, crack cocaine and a pistol. Law enforcement then went to seek a search warrant based on this discovery to continue the search for more evidence.

The Defendant was interviewed by the police, who indicated to him that if he did not claim the drugs and pistol, law enforcement would issue warrants for his parents. The Defendant's reasonable understanding of police statements during his interrogation was that if

he claimed possession of the drugs and firearms discovered during the search, his parents would not be charged. Only at that point and for that reason did the Defendant indicate to police that the drugs and pistol discovered by police pursuant to the search warrant were his.

Argument

Law enforcement came to the 557 5th Street, Chester SC residence to arrest Patrick Simpson on an arrest warrant for the charge of Armed Robbery from North Carolina. Law enforcement came to the residence and performed a "knock and talk" as contended by the State in their memorandum, but did not ask at that time to search the home and left. They later returned and observed Mr. Simpson outside of the home and placed him under arrest. It was at this time that law enforcement wanted to search the home and asked Mrs. Hayes for consent to search the home. The Defendant contends that the search of the home was not reasonable due to the fact that law enforcement need a reasonable suspicion that some further criminal activity existed to search the home of Mrs. Hayes. *State v. Williams* 351 S.C. 591 (2002). The consent to search must also be given freely and voluntarily and the consent to search must not be the product of duress or coercion. *State v. Greene* 330 S.C. 551 (Ct. App 1997.) Other factors to be considered in determining voluntariness are the parties signing a consent to search form and the party's accompanying officers to the place or thing to be searched. *State v. Greene* 330 S.C. 551 (Ct. App 1997.) Mr. Simpson was in custody and the authority from the arrest warrant had concluded. The State contends that the purpose for searching the home was to locate the weapon used in the Armed Robbery. The search of the home goes beyond the powers from the arrest warrant and ★ intrudes on the right of the people to be secure from unreasonable searches and seizures. U.S. Const amend IV and *State v Butler* 343 S.C. 198 (Ct. App 2000). The arrest of a person is an ongoing process that is finalized "only when the defendant is properly confined." *State v. Dowd* 306 S.C. 268 (1991.) Thus the need for continued law enforcement presence at the home ended once Mr. Simpson was taken into custody and placed in the patrol car.

- already
over
no felony
evidence
to arrest -
standing?

Upon entering the home with the consent of Pauline Hayes, law enforcement smelled a strong odor of marijuana from the bedroom occupied by the Defendant and Patrick Simpson. It was at this time that they entered the room and began to discover the marijuana and crack cocaine. Law enforcement had no reasonable suspicion of drug activity in the home until after they entered the residence. Law enforcement then obtained a search warrant for the home to look for further evidence of drug activity. Mrs. Hayes was not allowed in the home while officers performed their search of her home. Defendant was not present to give consent to search the bedroom he used along with Mr. Simpson. He was not even in Chester County at the time of the search. Law enforcement had obtained a consent to search from Mrs. Hayes to look for the firearm Mr. Simpson used in the Armed Robbery and now discovered illegal items outside of the consent to search.

There are seven exceptions to the warrant requirement to search the home and consent is the one they rely upon in this case. Looking at the circumstances of the search of the home in its entirety it is clear that law enforcement had no reasonable suspicion or probable cause to search the home. Law enforcement did not advise Mrs. Hayes that she had a right to refuse the search of the home for the weapon. Mr. Hayes did not give permission to search his bedroom. Patrick Simpson was arrested outside of the home and law enforcement had no legal authority to search the home at that time. The drugs were not in plain view from the first "knock & talk" law enforcement had with Mrs. Hayes either. In order for the consent search to be valid law enforcement needed to have a reasonable suspicion that further criminal activity existed. "The fruit of the poisonous tree doctrine holds that where evidence would not have come to light but for the illegal actions of police, and the evidence has been obtained by the exploitation of that illegality, the evidence must be excluded." *State v Copeland* 321 S.C. 318 (1996.) Defendant contends that the drugs seized in the home should be considered "fruit of the poisonous tree" as they were located during an illegal search of the home and should be suppressed.

Conclusion

492

For these reasons it is respectfully requested that the Court suppress the evidence collected during the illegal search of the home.

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ATTORNEY FOR DEFENDANT

Chester, South Carolina

January 25, 2016

493

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER)

IN THE COURT OF GENERAL SESSIONS
OF THE SIXTH JUDICIAL CIRCUIT

State of South Carolina,)
vs.)
Charles David Hayes,)
Defendant.)

Warrant Nos. 2014A1210400072,
2014A1210400073, 2014A1210400074,
2014A1210400075

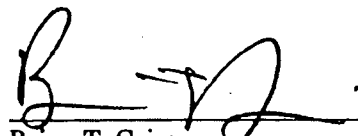
MOTION TO SUPPRESS STATEMENTS

You will please take notice that the undersigned will move before the Presiding Judge of General Sessions Court on the 25th day of January, 2016, or as soon thereafter as counsel may be heard that the Court suppress the statements given by the Defendant in this matter to police for the reason that the statements were coerced by improper police conduct and, therefore, were involuntary.

This motion is further based upon the attached Memorandum of Law.

**HAMILTON, DELLENEY
GRIER & COTTEN, LLC**

BY:



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ATTORNEY FOR DEFENDANT

Chester, South Carolina

January 25, 2016

494

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER)

IN THE COURT OF GENERAL SESSIONS
OF THE SIXTH JUDICIAL CIRCUIT

State of South Carolina,)
vs.)
Charles David Hayes,)
Defendant.)

Warrant Nos. 2014A1210400072,
2014A1210400073, 2014A1210400074,
2014A1210400075

MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS STATEMENTS

Introduction

The complaint filed in this action alleges that the Defendant, Charles David Hayes, was in possession of sufficient marijuana and crack cocaine to reasonably infer an intention to distribute said illegal drugs and was simultaneously in possession of a stolen pistol. The drugs and pistol were discovered during a police search of the home of the Defendant's parents under the jurisdiction of an arrest warrant issued for another individual. The Defendant was not present on the premises at the time of the search and was subsequently arrested and detained based on the fact that he was a resident of the home where the drugs were found which was also the home of his parents. Neither the Defendant nor his parents were named in the original arrest warrant executed by law enforcement on the home which resulted in these charges.

The Defendant was interviewed by the police, who indicated to him that if he did not claim the drugs and pistol, law enforcement would issue warrants for his parents. Patrick Simpson, the individual who was wanted by the arrest warrant, had a quantity of marijuana in his pocket at the time of the arrest. He was also staying in the same room as the Defendant. The Defendant's reasonable understanding of police statements during his interrogation was that if he claimed possession of the drugs and pistol discovered during the search, his parents would not be charged. Only at that point and for that reason did the Defendant indicate to police that the drugs and pistol discovered by police pursuant to the search warrant were his.

Argument

I. The false statements and threats made to the Defendant by law enforcement during the course of his interrogation constitute improper police conduct that rendered the Defendant's statements involuntary.

The Defendant is requesting a Jackson v Denno hearing to determine whether the statements made by the Defendant are admissible. An involuntary confession is one "extracted by any sort of threats or violence, [or] obtained by any direct or implied promises, however slight, [or] by the exertions of any improper influence." *Hutto v. Ross* (1976) 429 U.S. 28, 30. A threat or promise made by police against a family member of the Defendant is a particularly compelling factor in determining if subsequent statements made by the Defendant are involuntary, particularly if said family member is a parent or child of the Defendant. "The relationship between parent and child embodies a primordial and fundamental value of our society." *United States v. Tingle* (9th Cir. 1981) 658 F.2d 1332, 1336. Threatening the parent of a Defendant with arrest if said Defendant does not confess to a crime constitutes coercion of a confession. *Harris v. South Carolina* (1949) 338 U.S. 68.

The Defendant will testify that police threatened to issue arrest warrants for both his mother and his father if he did not "take responsibility" for the drugs and firearms found on the premises of the family home and that the reasonable implication of said statements, to his mind, was that if he did in fact confess to possession of these items, his parents would not be charged with any crime. As both of his parents were subsequently charged pursuant to this same evidence, these statements by the police constitute not only coercion of the Defendant confession but false statements made to so coerce said confession.

"A confession is not admissible unless it was voluntarily made". *State v. Childs* 299 SC 471 (1989). "A determination of whether a confession was given voluntarily requires an examination of the totality of the circumstances". *Schneckloth v. Bustamonte* 412 US 218 (1973). "The question is whether the Defendant's will was overborne when he confessed."

496

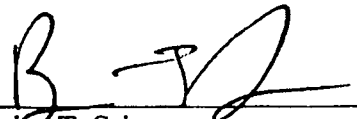
Schneckloth. Defendant contends that law enforcement used coercion in order to obtain the statement of the Defendant. The Defendant provided an oral statement at the residence after law enforcement stated that they would arrest his mother and mother's boyfriend if he did not admit that the drugs and pistol were his alone. At the detention center in Defendant's written statement, the Defendant stated "I am claiming up to what was found in the house in order to keep my parents from going to jail so the weed, gun and I think crack is mines, therefore there is no need to back and arrest anyone else." Upon examining the totality of circumstances of the statements made by Defendant it is clear that law enforcement used the threat of charging Defendant's mother with these charges in order to obtain the confession and that it was not voluntarily made.

Conclusion

For these reasons it is respectfully requested that the Court suppress the statements made by the Defendant while in police custody.

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