

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Charleston County  
Honorable Jennifer B. McCoy, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**  
**Dec 13 2022**  
S.C. SUPREME COURT

MARK LORENZO BLAKE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2022-000714  
\_\_\_\_\_

APPENDIX  
\_\_\_\_\_

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STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS  
COUNTY OF CHARLESTON 2013-GS-10-02729

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| STATE OF SOUTH      | ) |                      |
| CAROLINA,           | ) |                      |
|                     | ) | TRANSCRIPT OF RECORD |
| PLAINTIFF,          | ) |                      |
|                     | ) |                      |
| vs.                 | ) |                      |
|                     | ) | JUNE 14-15, 2016     |
|                     | ) | CHARLESTON, SC       |
| MARK LORENZO BLAKE, | ) |                      |
|                     | ) |                      |
| Defendant.          | ) |                      |

B E F O R E:

HONORABLE D. GARRISON HILL, JUDGE, AND A  
JURY.

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\* \* \* \* \*

Ruth C. Weese, RDR  
Official Court Reporter  
Ninth Judicial Circuit

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1                   (The following proceedings were held June  
2                   14, 2016, Charleston County, South Carolina, @  
3                   10:13 a.m.)

4                   (Whereupon, the venire entered the  
5                   courtroom at 10:13 a.m.)

6                   THE COURT: We are about to select a  
7                   jury in the case of State of South Carolina versus  
8                   Mark Lorenzo Blake, Jr. And before we select the  
9                   jury, let me just tell you a few things about  
10                  criminal cases that you will need to know and  
11                  follow in this trial or any other criminal trial.

12                  First is the fact that Mr. Blake has  
13                  been charged doesn't constitute evidence or even  
14                  create a suspicion of guilt. He is presumed  
15                  innocent. He has pled not guilty to the charge and  
16                  the burden of proof is entirely on the State.

17                  Mr. Blake has no obligation to produce  
18                  any evidence or explanation whatsoever. No one who  
19                  is with charged with a crime in this country ever  
20                  does have to prove themselves innocent or prove  
21                  themselves not guilty. Instead, they are presumed  
22                  innocent and the State bears the burden of proving  
23                  guilt beyond a reasonable doubt.

24                  Now, I'm going to read to you in just a  
25                  moment the indictment in this case and that

1 indictment is for docket number 2013-GS-10-02729.  
2 This indictment is not evidence. It's simply a  
3 piece of paper. It is the ticket so to speak that  
4 allows the State to come into the courtroom and  
5 present its case against the citizen and lets the  
6 citizen know what he or she is charged with.

7 So, again, it doesn't even create  
8 suspicion of guilt. The indictment alleges that in  
9 Charleston County, South Carolina, on or about  
10 February 22nd, 2013, the Defendant, Mark Lorenzo  
11 Blake, Jr. did manufacture, distribute, dispense,  
12 deliver, purchase or did aid, abet, attempt or  
13 conspire to manufacture, distribute, dispense,  
14 deliver or purchase or did possess with the intent  
15 to manufacture, distribute, dispense, deliver or  
16 purchase a controlled substance or a controlled  
17 substance analog, to wit, heroin in violation of  
18 44-53-370 of the South Carolina Code of Laws as  
19 amended. That is the allegation in the indictment.

20 Now, we need to seat a jury that can be  
21 fair and impartial in this case and decide this  
22 matter without any bias or prejudice whatsoever.  
23 So I'm going to ask you a series of questions to  
24 that end and the first is is there anyone here who  
25 is related by blood or marriage or kin to in any

1 way the Defendant, Mark Lorezno Blake, Jr.? Mr.  
2 Blake, if you would stand up and face the jurors so  
3 they can see you, sir.

4 (The Defendant stood.)

5 THE COURT: Thank you, sir. There is  
6 no response. Does anybody have any business,  
7 social, personal relationship or other relationship  
8 with Mr. Blake? If so, please stand. Tell me your  
9 name.

10 JUROR NO. 15: Zachary Baker.

11 THE COURT: And I'm going to ask you to  
12 come down and talk with us up here in front, please  
13 sir.

14 (The following proceedings were held at  
15 the bench.)

16 THE COURT: Ms. Weese has to be able to  
17 hear what you say, but try to keep it down.

18 JUROR NO. 15: Sure. I knew Mark  
19 actually through some mutual friends a few years  
20 ago.

21 THE COURT: Okay.

22 JUROR NO. 15: It's been years since I  
23 have seen him.

24 THE COURT: Would that affect your  
25 ability to be fair and impartial in this case?

1 JUROR NO. 15: Probably.

2 THE COURT: Okay. I will excuse you.  
3 Don't mention that to anybody else.

4 JUROR NO. 15: Okay.

5 (End of bench conference.)

6 THE COURT: Okay. I'm going to read a  
7 list of people who may testify in this case and I'm  
8 going to ask again if you have any connection or  
9 relationship with any of these people. Frank  
10 Waddell who is with Horry County, Philip Roberson  
11 who is formerly with the Charleston County  
12 Sheriff's Office, Dominique Jeter, Renee Hilton,  
13 Susan Payne, Ashley Earl Adrena Harrison, Lesa  
14 Chapman, that's spelled L-E-S-A, Jennifer Aycock,  
15 Amy Stephens, she is with SLED, Andrew Miller with  
16 the sheriff's office, Erin Meyer also with the  
17 Charleston County Sheriff's Office, Jason Riley  
18 also with the Charleston County Sheriff's Office,  
19 Mark Watson and Sergeant Mark Bryant also with the  
20 sheriff's office.

21 Is anyone -- well, a few more  
22 witnesses, I apologize. Dale Wilson, Ralph  
23 Brownell, Mark Blake, Sr., Gary Ricozzi,  
24 R-I-C-O-Z-Z-I. Is anyone related by blood or  
25 marriage or kin to any of these potential

1 witnesses? If so, please stand.

2 (No response from jury.)

3 THE COURT: Does anyone have any  
4 personal, social or business relationship with any  
5 of these potential witnesses? If so, please stand.

6 (No response from jury.)

7 THE COURT: I will ask the lawyers who  
8 are to be involved with the case to introduce  
9 themselves and people at their table. So, yes,  
10 ma'am. Ms. Linder.

11 MS. LINDER: I am Stephanie Linder and  
12 I am with the Ninth District Solicitor's office.  
13 Also sitting with me prosecuting the case is Lauren  
14 Frierson. Sitting with us at the table is Frank  
15 Waddell. He is the lead detective. Also coming in  
16 and out you may be seeing Ray Haupt.

17 THE COURT: Thank you.

18 MR. KING: I am Jason King. I am with  
19 the public defender's office. I am representing  
20 Mark Blake and sitting with me is Ms. VanPala.  
21 She's with our office.

22 THE COURT: Thank you. Is anyone  
23 related by marriage or kin in any way with any of  
24 the lawyers involved in this case or anyone they  
25 introduced? If so, please stand.



1 (No response from jury.)

2 Does anyone have any personal, social  
3 or business relationship with the lawyers or anyone  
4 they introduced? If so, please stand.

5 (No response from jury.)

6 THE COURT: Has anyone ever been  
7 represented by any of these lawyers or their law  
8 firms or been involved in any kind of dispute or  
9 transaction where the other side was represented by  
10 one of them? If so, please stand. Yes, sir.

11 JUROR NO. 246: Guy Meares. I prefer  
12 not to say out loud, Your Honor.

13 THE COURT: Okay. Come on down then.

14 JUROR NO. 246: Guy Meares. Juror 246.

15 (The following proceedings were held at  
16 the bench.)

17 THE COURT: Yes, sir.

18 JUROR NO. 246: The solicitor's office  
19 prosecuted my wife in 2009 and 2010. And then also  
20 I am currently the president of the Low Country  
21 Childrens Center and we do forensic investigation  
22 and provide testimony to the solicitor's office for  
23 child abuse cases.

24 THE COURT: Okay. So do you feel like  
25 you could be fair and impartial in this case?

1 JUROR NO. 246: No, sir.

2 THE COURT: All right. I will excuse  
3 you. Thank you for coming forward.

4 (End of bench conference.)

5  
6 THE COURT: Has anyone ever been  
7 employed by or had a member of their immediate  
8 family, by immediate family I mean spouse, parents,  
9 child, any member of your immediate family been  
10 employed by the solicitor's office for the Ninth  
11 Circuit, and the solicitor is Scarlett Wilson or  
12 formerly employed by that office. If so, please  
13 stand.

14 (No response from jury.)

15 THE COURT: Does anyone have any  
16 business relationship or other relationship with  
17 the solicitor's office? If so, please stand.

18 (No response from jury.)

19 THE COURT: Does anyone have anybody in  
20 their immediate family who is a member of a law  
21 enforcement agency or formerly employed by a law  
22 enforcement agency? Okay. We will start here on  
23 my left and, ma'am, tell me your name and what the  
24 relationship is?

25 JUROR NO. 2: Lindsay Adams and my

1 father is a police officer with the City of  
2 Charleston.

3 THE COURT: All right. Would that  
4 affect your ability to be fair and impartial in  
5 this case?

6 JUROR NO. 2: No.

7 THE COURT: You could decide the case  
8 based on the evidence and the law?

9 JUROR NO. 2: Yes.

10 THE COURT: Thank you, Ms. Adams. Sir,  
11 in the back?

12 JUROR NO. 385: My brother is a retired  
13 deputy of Charleston Sheriff's Office.

14 THE COURT: Your name?

15 JUROR NO. 385: Comer Williams, Jr.

16 THE COURT: Mr. Williams, would that  
17 affect your ability to be fair and impartial in  
18 this case?

19 JUROR NO. 385: No.

20 THE COURT: Can you decide the case  
21 based on the evidence and the law?

22 JUROR NO. 385: Yes, sir.

23 THE COURT: Thank you, Mr. Williams.  
24 You can have a seat. Yes, ma'am?

25 JUROR NO. 209: My father was a retired

1 deputy from a county in New York state, former DARE  
2 officer.

3 THE COURT: Would that affect your  
4 ability to be fair and impartial in this criminal  
5 case, ma'am?

6 JUROR NO. 209: Yes.

7 THE COURT: And tell me your name?

8 JUROR NO. 209: Samantha Kolner.

9 THE COURT: You're excused.

10 JUROR NO. 35: My son-in-law is a  
11 public defender in Franklin County, Ohio.

12 THE COURT: Would that affect your  
13 ability to be fair and impartial?

14 JUROR NO. 35: No.

15 THE COURT: Tell me your name?

16 JUROR NO. 35: Victoria Brassfield.

17 THE COURT: You could decide this case  
18 based on the evidence and the law?

19 JUROR 35: Yes.

20 THE COURT: Thank you. Yes, ma'am.

21 JUROR NO. 204: My brother-in-law is a  
22 state trooper in the State of Connecticut and my  
23 father-in-law is a judge in family court.

24 THE COURT: Your name?

25 JUROR NO. 204: Barbara Kenefick.

1 THE COURT: Would that affect your  
2 ability to be fair and impartial in this case?

3 JUROR NO. 204: Yes.

4 THE COURT: All right. And you're  
5 excused from the case. Thank you. Tell me your  
6 name?

7 JUROR NO. 204: Barbara Kenefick.

8 THE COURT: Thank you. Tell me your  
9 name?

10 JUROR NO. 209: Samantha Kolner.

11 THE COURT: No, I am sorry, the lady  
12 behind you.

13 JUROR NO. 259: Pattie Monroe. My son  
14 is a detective for the North Charleston Police  
15 Department.

16 THE COURT: Would that affect your  
17 ability to be fair and impartial?

18 JUROR NO. 259: No.

19 THE COURT: You could decide the case  
20 based on the evidence on the law?

21 JUROR NO. 259: Yes.

22 THE COURT: Thank you.

23 JUROR NO. 27: Robert Blackwell. My  
24 uncle is a former sheriff of Dorchester County.

25 THE COURT: All right. And would that

1 affect your ability to be fair and impartial?

2 JUROR NO. 27: No.

3 THE COURT: You can decide the case  
4 based on the evidence and the law?

5 JUROR NO. 27: Yes.

6 THE COURT: Thank you, sir. These next  
7 questions are a series of questions, they ask for  
8 some personal information. And if you do need to  
9 respond, I will be glad to talk to you up front in  
10 a little more private setting, although it would be  
11 on the record, but it won't be broadcast in open  
12 court among all your new-found friends here today.

13 So listen carefully to the questions  
14 and if you do need to respond, please come forward.

15 First of all, have you or any member of  
16 your immediate family, again immediate family I am  
17 talking about spouse, parent or child, even those  
18 members of your immediate family you may not like,  
19 but has anyone been arrested, prosecuted for a  
20 criminal offense by the solicitor's office here or  
21 elsewhere or any other law enforcement agency? And  
22 that's one question. The second is have you ever  
23 been a witness in a criminal case? That's the  
24 second question. Do any of you hold any belief as  
25 to whether or a belief that the drug laws of this

1 country are too strict or too lenient or  
2 legalization of them should be changed such that  
3 you don't think you could be fair and impartial in  
4 this case?

5 Is there anyone here who supports,  
6 whether it is your time or your money, the  
7 organizations that support victims rights or more  
8 aggressive law enforcement and is there anyone here  
9 who has such strong feelings about the issue of  
10 narcotics that it would make it difficult to serve  
11 on this jury and be fair and impartial? And  
12 finally, have you or any member of your immediate  
13 family ever been the victim of a drug-related  
14 crime? Any other questions the defense or the  
15 plaintiff wishes -- the State wishes me to ask?

16 MS. LINDER: Nothing from the State.

17 MR. KING: No, Your Honor.

18 THE COURT: So if you do need to  
19 respond to those questions, we will come up one at  
20 a time up here. Thank you.

21 (The following proceedings were held at  
22 the bench.)

23 THE COURT: Tell me your name and your  
24 number.

25 JUROR 125: Sophie Fowler. 125. My

1 dad was arrested for drug charges.

2 THE COURT: Was that here?

3 JUROR NO. 125: No, different county.

4 THE COURT: Would that affect your  
5 ability to be fair and impartial in this case?

6 JUROR NO. 125: No.

7 THE COURT: You can decide the case  
8 based on the evidence and the law?

9 JUROR NO. 125: Um-hmm.

10 THE COURT: Yes or no?

11 JUROR NO. 125: Yes. Sorry.

12 THE COURT: Thank you.

13 (Juror 279 approached.)

14 JUROR NO. 279: I am Juror 279. My  
15 name is Wayne Palkovitz. I was called as a witness  
16 in a homicide trial in Tucson, Arizona. And I  
17 would have no problems with respect to my being  
18 unbiased or unprejudiced in this matter.

19 THE COURT: Okay. All right. Thank  
20 you.

21 (Juror 234 approached.)

22 JUROR NO. 234: I divorced my husband  
23 two months ago based on the grounds of drunkenness  
24 and more specifically a cocaine addiction. I go to  
25 Al-A-Non for that.



1 THE COURT: This case involves an  
2 allegation of heroin trafficking. Would that  
3 affect your ability to be fair and impartial?

4 JUROR NO. 234: Yes.

5 THE COURT: All right. Tell me your  
6 name?

7 JUROR NO. 234: Kelly Martin.  
8 Juror 234.

9 THE COURT: I will excuse you from this  
10 case.

11 (Juror 350 approached.)

12 JUROR NO. 350: I'm not sure how much  
13 my situation applies, but it seems to apply to what  
14 you're saying. I'm currently the primary caregiver  
15 and guardian of two daughters who mother was  
16 prosecuted for meth production.

17 THE COURT: Okay.

18 JUROR NO. 350: I don't feel that it  
19 would affect my judgment.

20 THE COURT: Would that affect your  
21 ability to be fair and impartial?

22 JUROR NO. 350: No.

23 THE COURT: You can decide the case  
24 based on the evidence and the law. Tell me your  
25 name.

1 JUROR NO. 350: Allison Tulay.

2 THE COURT: Thank you, ma'am.

3 (Juror 230 approached.)

4 THE COURT: Tell me your name, sir.

5 JUROR NO. 230: Kevin Marcum. My  
6 brother was arrested for a felony charge of  
7 marijuana about 20 years ago. Younger brother,  
8 that's it.

9 THE COURT: Would that affect your  
10 ability to be fair and impartial?

11 JUROR NO. 230: No.

12 THE COURT: You can decide the case  
13 based on the evidence and the law?

14 JUROR NO. 230: Yes.

15 THE COURT: Thank you. All right.

16 (Juror 230 left the bench.)

17 THE COURT: Any other things?

18 MS. LINDER: We don't have anything.

19 MR. KING: No.

20 THE COURT: Is that five and five?

21 MS. LINDER: Yes.

22 THE COURT: All right. So we will go  
23 with two alternates.

24 (End of bench conference.)

25 THE COURT: Okay. Is anyone aware of

1 any kind of bias or prejudice they may have about  
2 anyone or any issue involving this case? If so,  
3 please stand.

4 (No response from jury.)

5 THE COURT: Anyone who does not think  
6 they can be fair and impartial in this case who I  
7 haven't already spoken with? All right. We will  
8 now proceed with the selection of the jury.

9 Strikes are five and five. We will go with two  
10 alternates.

11 (Brief pause.)

12 THE CLERK: Ladies and gentlemen, we  
13 will have you come forward. When your name is  
14 called I'm going to ask you to stand up where you  
15 are and we will do our jury strikes from there. If  
16 you are seated by both sides you will come forward  
17 at that point and have a seat in the jury box. If  
18 you are excused by either side you will just take a  
19 seat again. Thank you. Strikes are five and five.

20 Juror 322, Mack Shieder. What say you  
21 for the State?

22 MS. LINDER: Please excuse this juror.

23 THE CLERK: You are excused from the  
24 trial of this case. Have a seat. Juror 2, Lindsey  
25 Adams. What say you, the State?

1 MS. LINDER: Please present this juror.

2 THE CLERK: For the Defendant?

3 MR. KING: Please excuse the juror.

4 THE CLERK: You have been excused from  
5 the trial of this case. Please have a seat.

6 Juror 367, Nkeisha Washington. What say you, the  
7 State?

8 MS. LINDER: Please present this juror.

9 THE CLERK: What say you for the  
10 Defendant?

11 MR. KING: Please seat the juror.

12 THE CLERK: Mrs. Washington, you have  
13 been selected. If you will come forward and if you  
14 will, folks, come to where Mr. Pryor is standing to  
15 your right to come through. Thank you.

16 Juror No. 35, Victoria Brassfield.  
17 What say you, the State?

18 MS. LINDER: Please excuse this juror.

19 THE CLERK: Please have a seat. You  
20 are excused from the trial of this case. Juror  
21 No. 4, Jennifer Aldrich. What say you for the  
22 State?

23 MS. LINDER: Please present this juror.

24 THE CLERK: What say you for the  
25 Defendant?

1 MR. KING: Please seat this juror.

2 THE CLERK: Ms. Aldrich, please have a  
3 seat in the jury box. You have been selected as a  
4 juror in the trial of this case. Juror 383, Ronald  
5 Wiklen. What say you for the State?

6 MS. LINDER: Beg the Court's  
7 indulgence.

8 (Brief pause.)

9 MS. LINDER: Please present this juror.

10 THE CLERK: What say you for the  
11 Defendant?

12 MR. KING: Please excuse this juror.

13 THE CLERK: Please have a seat. You  
14 have been excused from the trial of this case.  
15 Juror No. 63, Elizabeth Chandler. What say you for  
16 the State?

17 MS. LINDER: Beg the Court's  
18 indulgence.

19 (Brief pause.)

20 MS. LINDER: Please present this juror.

21 THE CLERK: What say you for the  
22 Defendant?

23 MR. KING: Please seat the juror.

24 THE CLERK: MS. Chandler, have a seat  
25 in the jury box. You have been selected as a juror

1 in the trial of this case. Juror No. 126, Jeremy  
2 Frampton. What say you for the State?

3 MS. LINDER: Please present this juror.

4 THE CLERK: What say you for the  
5 Defendant?

6 MR. KING: Please seat the juror.

7 THE CLERK: Please have a seat in the  
8 jury box. You have been selected for the trial of  
9 this case. Juror No. 235, Marian Martin. What say  
10 you for the State?

11 MS. LINDER: Beg the Court's  
12 indulgence.

13 (Brief pause.)

14 MS. LINDER: Please present this juror.

15 THE CLERK: What say you for the  
16 Defendant?

17 MR. KING: Please seat the juror.

18 THE CLERK: Ms. Martin, please take a  
19 seat. You have been selected for the trial of this  
20 case. Juror 203, Nancy Kelly. What say you for  
21 the State?

22 MS. LINDER: Please present the juror.

23 THE CLERK: What say you for the  
24 Defendant?

25 MR. KING: Please seat the juror.

1 THE CLERK: Please have a seat in the  
2 jury box. You have been selected as a juror in the  
3 trial of this case. Juror No. 27, Robert  
4 Blackwell. What say you for the State?

5 MS. LINDER: Please present this juror.

6 THE CLERK: What say you for the  
7 Defendant?

8 MR. KING: Please seat this juror.

9 THE CLERK: Please have a seat. You  
10 have been selected as a juror in the trial of this  
11 case. Juror 355, Alfreida Venning. What say you  
12 for the State?

13 MS. LINDER: Beg the Court's  
14 indulgence.

15 (Brief pause.)

16 MS. LINDER: Please excuse this juror.

17 THE CLERK: Please have a seat. You  
18 have been excused from the trial of this case.  
19 State has used three strikes. Juror 336, Judith  
20 Snyder. What say you for the State?

21 MS. LINDER: Beg the Court's  
22 indulgence.

23 (Brief pause.)

24 MS. LINDER: Please present this juror.

25 THE CLERK: What say you for the

1 Defendant?

2 MR. KING: Please excuse this juror.

3 THE CLERK: Please have a seat. You  
4 have been excused from the trial of this case.  
5 Juror 8, Lillian Apple. Who say you for the State?

6 MS. LINDER: Please present this juror.

7 THE CLERK: What say you for the  
8 Defendant?

9 MR. KING: Please seat this juror.

10 THE CLERK: Please have a seat in the  
11 jury box. You have been selected for the trial of  
12 this case. Juror 16, Barbara Ball. What say you  
13 for the State?

14 MS. LINDER: Please present this juror.

15 THE CLERK: What say you for the  
16 Defendant?

17 MR. KING: Please excuse this juror.

18 THE CLERK: Please have a seat. You  
19 have been excused from the trial of this case.

20 Defendant has exhausted five strikes. Juror 317,  
21 Floyd Sallee. What say you for the State?

22 MS. LINDER: Please present this juror.

23 THE CLERK: Any challenge from the  
24 Defendant?

25 MR. KING: No.



1 THE CLERK: Mr. Sallee, you have been  
2 selected as a juror. Thank you. Juror 385, Comer  
3 Williams. What say you for the state?

4 MS. LINDER: Beg the Court's  
5 indulgence.

6 (Brief pause.)

7 MS. LINDER: Please present this juror.

8 THE CLERK: Any challenge from the  
9 Defendant?

10 MR. KING: None.

11 THE CLERK: Mr. Williams, please have a  
12 seat in the jury box. You have been selected for  
13 the trial of this case. Juror 156, Timothy  
14 Hammond. What say you for the State?

15 MS. LINDER: Please present this juror.

16 THE CLERK: Any challenge from the  
17 Defendant?

18 MR. KING: No.

19 THE COURT: Please have a seat in the  
20 jury box. You have been selected for the trial of  
21 this case. Juror 349, James Trusso. What say you  
22 for the State?

23 MS. LINDER: Please present this juror.

24 THE CLERK: Any challenge from the  
25 Defendant?

1 MR. KING: None.

2 THE CLERK: Mr. Trusso, have a seat in  
3 the jury box. You have been selected for the trial  
4 of this case. Juror 364, Stephanie Warth. What  
5 say you for the State?

6 MS. LINDER: Please present this juror.

7 THE CLERK: Any challenge from the  
8 Defendant?

9 MR. KING: None.

10 THE CLERK: Please have a seat in the  
11 jury box. You have been selected for the trial of  
12 this case. We will select our first alternate.  
13 Strikes are one and two. Juror 243, Kenneth  
14 McKelvy. What say you for the State?

15 MS. LINDER: Beg the Court's  
16 indulgence.

17 (Brief pause.)

18 MS. LINDER: Please excuse this juror.

19 THE CLERK: Mr. McKelvy, have a seat.  
20 You have been excused from the trial of this case.  
21 Juror 59, Jerel Carn. Any challenge from the  
22 State?

23 MS. LINDER: No challenge.

24 THE CLERK: What say you for the  
25 Defendant?

1 MR. KING: Please excuse this juror.

2 THE CLERK: Please have a seat. You  
3 have been excused from the trial of this case.  
4 Juror 46, Allison Burbage. Any challenge from the  
5 State?

6 MS. LINDER: No challenge from the  
7 State.

8 THE CLERK: What say you for the  
9 Defendant?

10 MR. KING: Please excuse this juror.

11 THE CLERK: Have a seat. You have been  
12 excused from the trial of this case. Juror 201,  
13 William Kearse. Any challenge from the State?

14 MS. LINDER: No challenge.

15 THE CLERK: Any challenge from the  
16 Defendant?

17 MR. KING: None.

18 THE CLERK: Sir, please have a seat in  
19 the jury box. You have been selected as the first  
20 alternate. Select a second alternate, strikes one  
21 and two. Juror 291, Lisa Quadrini. What say you  
22 for the State?

23 MS. LINDER: Please present this juror.

24 THE CLERK: What you say for the  
25 Defendant?

1 MR. KING: Please excuse the juror.

2 THE CLERK: Please have a seat. You  
3 have been excused from the trial of this case.  
4 Juror 279, Wayne Palkovitz. What say you for the  
5 State?

6 MS. LINDER: Please excuse the juror.

7 THE CLERK: You can have a seat. You  
8 have been excused from the trial of the case.  
9 Juror 376, Emily West. Any challenge from the  
10 State?

11 MS. LINDER: No challenge.

12 THE CLERK: What say you for the  
13 Defendant?

14 MR. KING: Please seat Ms. West.

15 THE CLERK: Please have a seat in the  
16 jury box. You have been selected as our second  
17 alternate in the trial of this case. The jury is  
18 selected, Your Honor.

19 THE COURT: Any objection to the  
20 selection process or composition of the jury from  
21 the State?

22 MS. LINDER: Not from the State.

23 THE COURT: Any matters or motions from  
24 the defense?

25 MR. KING: No.

1                   THE COURT: I find that the process  
2                   complied with all the statutory and constitutional  
3                   requirements. Ladies and gentlemen, you have been  
4                   selected to be the jury in the case of the State  
5                   versus Mark Lorezno Blake, Jr.

6                   We will start the trial in just a  
7                   little bit. We have some matters to take up. I  
8                   just ask that you go to the jury room now and don't  
9                   talk about the case because you haven't heard any  
10                  evidence yet and you are not to begin talking about  
11                  it until the end of the trial when you have heard  
12                  all the evidence.

13                  So just go back to the jury room and we  
14                  will start the trial as soon as we can. Thank you.

15                  (Thereupon, the jury exited the  
16                  courtroom at 10:48 a.m.)

17                  (The following proceedings were held  
18                  outside the presence of the jury.)

19                  THE COURT: All right. Those of you  
20                  who were not chosen just call back after 6:00 p.m.  
21                  tonight. They will give you further instructions.  
22                  Thank you for your cooperation and patience.

23                  (Remaining venire excused.)

24                  THE COURT: All right. Any pretrial  
25                  matters from the State?

1 MS. LINDER: Your Honor, Robin Jackson  
2 is here from Senn Legal. And she represents Frank  
3 Waddell and Andrew Miller. We would ask that the  
4 Court would hear from her.

5 THE COURT: Yes, ma'am.

6 MS. JACKSON: Good morning, Your Honor.  
7 It is my understanding that there may be some  
8 attempt to admit evidence in the civil case that  
9 was filed pro se by Mark Blake against Frank  
10 Waddell and Deputy Miller. And I just wanted to  
11 inform the Court that first of all, that case has  
12 been stayed by the federal court as not ripe and so  
13 essentially it does not exist yet.

14 Further, the issues in that case are  
15 completely separate from the issues in the criminal  
16 case. There are civil allegations as well as  
17 allegations of violations of civil rights relating  
18 to the actions of the officers in the arrest itself  
19 and in the executing of the search warrant. And it  
20 would be our position that under the rules of  
21 evidence that it is not relevant to the criminal  
22 case to have any information about the civil case  
23 entered; and further, any attempt to enter any  
24 evidence would be solely for the purpose of  
25 prejudicing the jury and it should not be admitted.

1 Further, any other civil cases that have been filed  
2 against Frank Waddell, it is my understanding that  
3 those are pending matters and that they occurred in  
4 a significant time period after this case, one of  
5 which was filed in November of 2015.

6 We would also take the position on  
7 behalf of Officer Waddell that in that civil case  
8 the burden of proof is on the Plaintiff and because  
9 it's pending that burden of proof hasn't been met.  
10 There has been no significant discovery or motion  
11 hearings such that the Court has ruled on any of  
12 the facts in that case.

13 Those allegations relate to a different  
14 suspect, a different crime and a different county  
15 that occurred years after this incident and we  
16 would take the position that first of all, it is  
17 not relevant. Second of all, even if the Court  
18 finds that it is relevant that it is more  
19 prejudicial than probative. It would put the  
20 officer in a position of answering questions about  
21 a totally different crime for which is not being  
22 prosecuted here today and that it would serve to  
23 confuse and prejudice the jury.

24 We would take the position that the  
25 defense not be permitted to ask him questions about

1       those other cases.

2               THE COURT: Thank you.

3               MS. JACKSON: I don't know if the Court  
4 any has other questions about those other cases.

5               THE COURT: All right. Thank you,  
6 ma'am. Mr. King.

7               MR. KING: Thank you, Your Honor.  
8 Regarding Mr. Blake's lawsuit against Detectives  
9 Waddell and Miller, I would ask that all I wanted  
10 to do was to ask them on the stand they are being  
11 sued civilly for civil rights violations by my  
12 client. I am seeking to admit that through  
13 Rule 608 (c) for bias or any motive present from  
14 those officers.

15               Regarding the other lawsuit, Your  
16 Honor, Detective Waddell, what I would like also to  
17 ask that he is being sued by someone else for  
18 608 (c) bias. He is being sued twice for violation  
19 of civil rights. That may be relevant to his  
20 motives and again his bias towards Defendants.  
21 There's also allegations in the complaint that  
22 Detective Waddell was dishonest. And I think that  
23 would be admissible under 608 (b) that I can  
24 inquire about specific instances of conduct that  
25 relate to truthfulness or untruthfulness.



1 I don't know that I am allowed to get  
2 into any evidence regarding that, but I think that  
3 I can -- I should be able to ask the questions  
4 related to his truthfulness or untruthfulness.

5 THE COURT: So can you clarify for me  
6 the case your client brought against Agent Waddell  
7 relates to what, this case?

8 MR. KING: Yes, Your Honor. My  
9 client's lawsuit is I think a 1983 civil rights  
10 violation for how they conducted a search.

11 THE COURT: And the second case is  
12 brought by a third party, right?

13 MR. KING: That's correct, Your Honor.

14 THE COURT: And that relates to what?  
15 What did that arise from?

16 MR. KING: Truthfulness and execution  
17 of a search warrant in Myrtle Beach.

18 THE COURT: That's the Horry County  
19 matter y'all told me about in chambers.

20 MR. KING: Yes, Your Honor.

21 THE COURT: All right. My ruling would  
22 be in this limine stage that the lawsuit Mr. Blake  
23 has pending against Agent Waddell personally for  
24 this case, I would let you ask him, that is, I  
25 would let you ask Agent Waddell if he testifies

1 whether or not it is true that Mr. Blake has sued  
2 him. I do think that would be relevant. I don't  
3 think any considerations of Rule 403 would prohibit  
4 it from being admitted. I think its substantive  
5 and probative value vastly outweighs the  
6 prejudicial effect that might have. Clearly goes  
7 to the potential for bias and would be well within  
8 the Defendant's Sixth Amendment right of  
9 cross-examination.

10 As to the second matter involving Horry  
11 County, I would find that it is too remote from  
12 this prosecution and it would involve confusion of  
13 the issues and a waste of time in going into that  
14 issue in this case, so its probative value is low.  
15 And its potential for confusing the issues and  
16 unfairly prejudicing the State in this matter and  
17 consuming time and a waste of resources would  
18 outweigh the negative probative value it has. So I  
19 would exclude that under Rule 403.

20 MR. KING: I would just ask at this  
21 point in time if I can quickly proffer the  
22 evidence.

23 THE COURT: Certainly. You may  
24 certainly do that.

25 MR. KING: I don't know if you want to

1 do it now or after.

2 THE COURT: Whatever your pleasure is.  
3 Might be easier to do when he is on the stand.

4 MR. KING: Yes, Your Honor, that's  
5 fine.

6 THE COURT: Okay.

7 MR. KING: Your Honor, I have one other  
8 motion in limine. That same day the search warrant  
9 was executed they served distribution warrants on  
10 Mr. Blake. He was arrested for the three  
11 distribution warrants. I would ask that no  
12 reference be made to any other wrongs or acts or  
13 crimes other than what's involved in the search  
14 warrant.

15 MS. LINDER: We don't have any  
16 intention to bring up or go into the other warrants  
17 that were served that day. However, a big part of  
18 this case is a lot of these strategic and tactical  
19 decisions were made in the execution of the search  
20 warrant with a felony traffic stop, and I would ask  
21 that after we have our next pretrial hearing,  
22 suppression hearing, we get some guidance from the  
23 Court. Because due to Mr. Blake's prior record,  
24 due to his pending gun and drug charges is why they  
25 did a felony traffic stop to make sure he was out

1 of the residence and didn't go in there for the  
2 safety of himself and the safety of officers and  
3 the community.

4 So we do not intend to bring up  
5 anything about pending warrants that were served  
6 that day or any other pending charges on Mr. Blake  
7 unless and until the door is opened; however, we  
8 may approach the judge at the appropriate time if  
9 we feel that we need to go into some information as  
10 to why the felony traffic stop.

11 Our concern is that with a vague  
12 question from the defense about are you being sued  
13 about civil rights -- it's not typical to do a  
14 felony traffic stop. Usually they go in when the  
15 people are in there.

16 And in this case, a vague question  
17 about are you being sued for his constitutional  
18 rights and then him alluding to almost being  
19 overzealous as a police officer and execution of a  
20 search warrant, I do have a concern and would like  
21 to ask the Court if I believe it is necessary at  
22 the appropriate time for law enforcement to be able  
23 to explain based on their intel and investigation  
24 this was one of those cases where a felony traffic  
25 stop needed to occur.

1 THE COURT: Okay. What's the next  
2 issue?

3 MR. KING: Your Honor, I have a motion  
4 to suppress regarding the search warrant.

5 THE COURT: Okay.

6 MR. KING: May I hand up a case, Your  
7 Honor? I have a federal case, federal district  
8 court case out of Ohio, but it does reference some  
9 United States Supreme Court law. If I may hand it  
10 up. The argument would be the search was conducted  
11 unreasonably.

12 THE COURT: Okay. Thank you.

13 MR. KING: (Hanging.)

14 Are there any notes on that case, Your  
15 Honor, underlines? I will address it. Judge, I  
16 have challenged the constitutionality of the  
17 search. I would ask that the State show,  
18 demonstrate that the search was executed in a  
19 reasonable manner.

20 THE COURT: All right. What's the  
21 State's position?

22 MS. LINDER: Your Honor, we are having  
23 to call some witnesses to the reasonable execution  
24 of the search warrant and then have oral argument  
25 at that time.

1 THE COURT: All right. You may  
2 proceed.

3 MS. LINDER: State calls Frank Waddell.  
4 Your Honor, I would ask that -- I see that the  
5 co-defendant and the Defendant's girlfriend in this  
6 case, Dominique Jeter, who is on the witness list  
7 is in the courtroom. If she can please be  
8 sequestered. I believe she's going to be called to  
9 testify in this matter.

10 MR. KING: I will be calling her to  
11 testify, Your Honor, if she's willing to testify.  
12 I'm not sure at this point if she is asserting her  
13 Fifth Amendment Right, but I do intend to call her  
14 for the hearing. That's fine.

15 THE COURT: Okay. Well, under Rule 615  
16 I order she be sequestered.

17 MR. KING: Your Honor, I would ask to  
18 sequester the State's witnesses as well. I don't  
19 think any of them are in here at this point.

20 THE COURT: All witnesses will be  
21 sequestered throughout the trial. I don't know who  
22 they are. You'll have to help me with that,  
23 monitor that so we don't have a situation.

24 MR. KING: I have his father on the  
25 witness list, Your Honor, just for the sole purpose

1 of I wanted to call him, he was employed -- Mr.  
2 Blake was employed with his father. He doesn't --  
3 he wouldn't testify to anything about what happened  
4 in the search warrant or anything like that. I  
5 would ask that his father be allowed to remain in  
6 the courtroom for the trial.

7 THE DEFENDANT: Your Honor, I wanted to  
8 -- my father -- I spoke --

9 THE COURT: Hold on a second now.  
10 There's no hybrid representation here. You have  
11 got a lawyer. He can speak on your behalf.

12 THE DEFENDANT: I understand. My  
13 father doesn't want to --

14 THE COURT: Sir, your lawyer has to  
15 speak for you in court, okay? Unless you are going  
16 to testify your lawyer has to speak for you.

17 MR. KING: Can I confer briefly, Your  
18 Honor?

19 THE COURT: You may.

20 (Attorney confers with client.)

21 MR. KING: Your Honor, Mr. Blake says  
22 his father doesn't want to be involved. At this  
23 point, I will just ask that he be allowed to stay  
24 in the courtroom. If Mr. Blake changes his mind or  
25 for some reason I need to discuss with Mr. Blake

1 and need to call his father I would like to keep  
2 that option open. But the point is I just don't  
3 want his father excluded from the courtroom. He is  
4 not going to testify to anything to the search  
5 warrant, just simply that Mr. Blake worked for him  
6 and he had a job.

7 MS. LINDER: Your Honor, we would  
8 respectfully request that anyone who is going to be  
9 a potential witness is sequestered. We don't know  
10 what is necessarily going to come out.  
11 Furthermore, there are jail phone calls that  
12 involve the Defendant talking to his father about  
13 everything involved with this case. We don't  
14 necessarily intend to use them; however, we do have  
15 them and I am just concerned about the Defendant's  
16 father remaining in the courtroom for this  
17 testimony.

18 THE COURT: So it appears to me based  
19 on the potential that Mr. Blake, Sr. may be a  
20 witness, in fact, may be a witness about material  
21 matters, and could be called by the State, I would  
22 have to order that he be within the sequestration  
23 order.

24 MR. KING: Thank you.

25 MS. LINDER: May it please the Court.



1 THE COURT: Is that a witness back  
2 there that needs to be sequestered?

3 MS. LINDER: No, Your Honor, that  
4 witness has been outside. This was her public  
5 defender.

6 THE COURT: I didn't know, like I say.

7 MR. KING: Your Honor, my investigator  
8 is on the witness list. I always put them on just  
9 in case if they talk to the witnesses and witnesses  
10 change their story. Can my investigator remain?

11 MS. LINDER: Absolutely. Same with the  
12 case agent we would respectfully request.

13 THE COURT: All right. I apologize. I  
14 don't know who is who.

15 FRANK WADDELL

16 having been duly sworn, testifies as follows:

17 DIRECT EXAMINATION

18 BY MS. LINDER:

19 Q. Detective Waddell, can you tell the  
20 Court your occupation?

21 A. I'm a law enforcement officer,  
22 presently a drug investigator.

23 Q. And can you tell the Court briefly  
24 about some of your training and education and  
25 awards dealing with law enforcement and narcotics?

1           A.    I am in my 12th year currently of law  
2 enforcement. The majority of those years have been  
3 involved in drug investigations as a drug  
4 investigator and as well as a K9 handler. I have  
5 received multiple trainings and certifications to  
6 include a narcotics commander school, several other  
7 investigator courses put on by the federal  
8 government as well as state and local governments.  
9 I have received several awards to include officer  
10 of the year, officer of the quarter, officer of  
11 merits. I have received national awards in  
12 recognition of the K9 team, me and my K9 partner at  
13 the time, things of that nature.

14           Q.    And approximately how many drug case  
15 investigations have you been associated with in  
16 your career?

17           A.    Easily over a thousand.

18           Q.    I would like to take you back to  
19 February 22nd of 2013. What was your job and  
20 duties at that point?

21           A.    I was currently assigned or at that  
22 time assigned to Charleston County Sheriff's Office  
23 Metro Major Case Unit. We were a narcotics  
24 division primarily and I was a drug investigator  
25 assigned to that team.

1           Q.   And were you involved with the drug  
2 investigation on the Defendant, Mark Blake?

3           A.   Yes, I was.

4           Q.   And what did the investigation on Mark  
5 Blake involve? Was it surveillance? Was it buys?

6           A.   We did multiple controlled purchases of  
7 heroin and multiple occurrences of surveillance to  
8 corroborate information that we were receiving  
9 through the use of a confidential informant and  
10 through our controlled purchases.

11          Q.   Did all of this culminate in a search  
12 warrant?

13          A.   Yes, it did.

14          Q.   And can you explain to the judge what  
15 you do as lead detective in this case about  
16 planning the search warrant execution and why you  
17 make certain decisions?

18          A.   We take certain factors into  
19 consideration to include who may be in the  
20 household, who may be a resident, who may be an  
21 acquaintance of our suspect. We determine how we  
22 are going to approach the search warrant, how we  
23 are going to make entry into the house, where we  
24 will attempt to take a suspect into custody,  
25 whether it be on property or off property.

1                   There are assignments given to the law  
2 enforcement personnel on the team who are not case  
3 agents such as surveillance, perimeter, entry team,  
4 things of that nature.

5                   Q.    All right. And in this case what  
6 decision was made about where to take this  
7 Defendant into custody?

8                   A.    Due to a criminal history that involved  
9 a previous arrest and I believe being out on bond  
10 at the time for drug and weapon violation charges,  
11 and coupled with intelligence that we received that  
12 there may be a child in the home and the nexus  
13 between drugs and weapons, we decided to attempt to  
14 take the Defendant into custody off property to  
15 prevent a dangerous outcome within the residence if  
16 children were present.

17                   Q.    And by what manner did you do that?  
18 What do you call it when you try to do that?

19                   A.    We conducted a felony traffic stop.

20                   Q.    Was it daytime, nighttime, when was it?

21                   A.    This was during the daytime hours.

22                   Q.    And can you briefly explain to the  
23 judge what a felony traffic stop is?

24                   A.    We will either approach the vehicle  
25 from one side or pinch the vehicle in to prevent

1 the vehicle from escaping with law enforcement  
2 vehicles on the front and the rear to prevent the  
3 subject from fleeing. We exit our vehicles with  
4 weapons drawn due to the heightened risk and the  
5 belief that the subject may be armed. And we give  
6 verbal commands loudly and clearly to show us their  
7 hands, to exit the vehicle, to get on the ground,  
8 at which point they would be approached and  
9 handcuffed if they complied.

10 Q. Now, in this case how did you first see  
11 the Defendant on this day, a search warrant  
12 execution, February 22nd of '13? How did you set  
13 up?

14 A. As typical with our operations, prior  
15 to the search warrant execution on that day that we  
16 were planning to execute a search warrant or take  
17 somebody into custody, we conduct what we call  
18 presurveillance meaning preoperations surveillance.  
19 Myself and another detective were actually on scene  
20 at the apartment complex or the residential complex  
21 where the suspect resided and observed him leaving  
22 his residence and getting into a vehicle that we  
23 had previously associated with the Defendant and  
24 then followed him to another location again to do  
25 the off property arrest.

1 Q. And where was that other location?

2 A. It was a -- I believe the term would be  
3 an assisted living home in the West Ashley area of  
4 Charleston County.

5 Q. And was that location significant to  
6 you for any reason?

7 A. Yes, it was.

8 Q. Why?

9 A. The co-defendant and girlfriend I  
10 assume, perhaps wife of the Defendant, was employed  
11 there or worked there at that time.

12 Q. And so you did presurveillance, you saw  
13 the Defendant. Was he in the parking lot? Did he  
14 leave a specific apartment?

15 A. He left the apartment he resided in,  
16 exited that apartment, entered a vehicle associated  
17 in this investigation with the Defendant and his  
18 girlfriend and then drove from that location to the  
19 secondary location where he was taken into custody.

20 Q. And can you tell the judge on this date  
21 during the felony traffic stop what happened? Did  
22 the Defendant comply?

23 A. No, he did not. We conducted the  
24 felony traffic stop because the parking area that  
25 he pulled through I believe was a thoroughfare type

1 so we pinched him in in the front of the suspect's  
2 vehicle as well as the back to prevent him from  
3 fleeing. We exited our vehicles. Had our guns  
4 drawn. Began to order him to show us his hands,  
5 exit the vehicle. He did not comply at that time  
6 exiting his vehicle. At which time officers on the  
7 scene approached the suspect's vehicle that he was  
8 in the driver's seat of and removed him from the  
9 vehicle with a straight arm bar takedown which is a  
10 common technique to get him on the ground to secure  
11 him until he could be cleared of any weapons and  
12 handcuffed and secured.

13 Q. Why is it important to you as law  
14 enforcement to get him out of that driver's seat of  
15 that vehicle?

16 A. Primarily because the vehicle itself  
17 can be a weapon, but also because it has not been  
18 cleared and can contain weapons. It can also  
19 contain other elements of evidence that could be  
20 destroyed.

21 Q. So after Mr. Blake was removed from the  
22 vehicle by a straight arm bar, was he cuffed? Was  
23 he placed under arrest?

24 A. Yes, he was advised he was under arrest  
25 as a result of my drug investigation for drug

1 distribution charges and handcuffed and secured in  
2 a vehicle.

3 Q. And what did you do next? Did you just  
4 pack up and head back to the apartment?

5 A. No. I then entered the business, the  
6 assisted living home business and made contact with  
7 an employee there that I encountered as I entered  
8 the structure and requested to be taken into or  
9 have brought to me the co-defendant in this case,  
10 the Defendant's girlfriend, at which time I was  
11 taken back into the building and she was brought  
12 out of the room. We met in the hallway and she was  
13 subsequently handcuffed and secured and advised she  
14 was under arrest for drug distribution charges as  
15 well.

16 Q. The room that she came out of, did that  
17 room face the front driveway where the felony  
18 traffic stop occurred?

19 A. I do not believe so.

20 Q. When the manager or employee brought  
21 you back to the co-defendant was she cooperative?

22 A. Yes, she did not resist arrest or  
23 anything of that nature.

24 Q. And did you tell her what was going on?

25 A. Advised her she was under arrest as a



1 result of my drug investigation for distribution of  
2 heroin charges.

3 Q. All right. So after you have Mr. Blake  
4 and the co-defendant in custody what happens from  
5 there? Where do you go?

6 A. We advised them that we were going back  
7 to the residence, that I had a lawful search  
8 warrant signed by a judge to search the residence.  
9 They were placed in separate vehicles and  
10 transported back to the residence which was a short  
11 distance from the arrest location. And a detective  
12 on scene would have driven their car as to not  
13 leave it at the assisted living parking out front  
14 area, brought their vehicle back to the residence  
15 as well.

16 Q. How was entry made into the apartment?

17 A. We explained --

18 Q. Did you use a ram?

19 A. No, we did not use a ram. We explained  
20 to the Defendant that we would use his keys, that  
21 we did not want to sit there in case the house was  
22 occupied by somebody else. It had not been  
23 cleared. There could potentially still be threats  
24 or risk to officer safety and we were assisted in  
25 determining which key was the house key based off

1 the keys that belonged to the Defendant. And we  
2 used the key to make entry and then clear the  
3 residence for any other subjects that may be  
4 inside.

5 Q. When you arrived at the residence where  
6 was the Defendant?

7 A. They would have been downstairs in the  
8 parking lot area, possibly still in the cars. I  
9 don't recall, but they would have been -- they  
10 would not been allowed to come upstairs into the  
11 residence until it was cleared until we knew there  
12 was no other subjects inside that posed a threat to  
13 us or them.

14 Q. And after you got there did you advise  
15 the Defendant of Miranda?

16 A. Yes, I did.

17 Q. And how did you advise him?

18 A. I keep with me on my gear a department  
19 issued preprinted card that I read from to advise  
20 Miranda rights.

21 Q. And at this point were you on the front  
22 patio of -- can you describe to the judge what this  
23 apartment is? Is it upstairs, downstairs, one  
24 story, two story?

25 A. It's in a building that contains

1 multiple apartments. His specific apartment was on  
2 the upper level or second floor. You walk up a  
3 flight of stairs. There's a little stoop area  
4 right just outside the door and then you enter the  
5 residence. It's a one story second level  
6 apartment, I believe two bedrooms.

7 Q. At any point were you on the front  
8 stoop patio of this upstairs apartment with the  
9 Defendant?

10 A. Yes, I was.

11 Q. And at some point was the Defendant and  
12 co-defendant Dominique Jeter up there?

13 A. For a very brief moment.

14 Q. Why only a brief moment?

15 A. As a matter of practice we separate  
16 suspects or Defendants so that we can speak to them  
17 individually.

18 Q. And where was Ms. Jeter, the  
19 co-defendant, taken? Was she taken from the front  
20 stoop?

21 A. She was taken inside the residence.

22 Q. And can you describe the Defendant's  
23 behavior while on the front patio or front stoop?

24 A. He was very agitated, was speaking  
25 loudly and repeatedly, not giving myself or any

1 other agent an opportunity to explain anything due  
2 to the fact that he was continually speaking in an  
3 aggressive manner.

4 Q. And was he seated?

5 A. Yes, he was seated in a chair that we  
6 had set right outside the front door.

7 Q. All right. Previously you told him  
8 there was a search warrant based on your drug  
9 investigation?

10 A. Correct.

11 Q. And you Mirandized him on the stoop?

12 A. Correct.

13 Q. And you were explaining to him or  
14 attempting to explain to him the reasoning again  
15 why you were there?

16 A. Correct.

17 Q. How long overall did the search warrant  
18 take to execute?

19 A. I would estimate maybe approximately an  
20 hour from the time we arrived to conduct the search  
21 prior to the Defendant and co-defendant being  
22 transported to the county jail and all law  
23 enforcement personnel leaving.

24 Q. At any time when you were with the  
25 Defendant did you choke him or put him in a choke

1 hold?

2 A. No, I did not.

3 Q. When you and the Defendant were on the  
4 front patio or stoop and the co-defendant was gone,  
5 did you see anyone else put him in a choke hold or  
6 try to choke him in any manner?

7 A. No, I did not.

8 Q. Did the Defendant ever request any  
9 medical attention?

10 A. No, not in my presence.

11 Q. Beg the Court's indulgence.

12 (Brief pause.)

13 Did you find drugs that day during the  
14 search warrant?

15 A. Yes, we did.

16 Q. In the residence?

17 A. Yes, ma'am.

18 MS. LINDER: I have no further  
19 questions at this time.

20 THE COURT: Yes, sir, Mr. King.

21 CROSS-EXAMINATION

22 BY MR. KING:

23 Q. Is it Detective Waddell?

24 A. Technically Agent Waddell at this time.

25 Q. Agent Waddell, you said you are

1           arresting him for distribution charges, right?

2           A.     Correct.

3           Q.     You had an arrest warrant?

4           A.     Correct.

5           Q.     It turned out those warrants were  
6           defective in some way, you had to replace those  
7           warrants; is that right?

8           A.     Not the affidavit. The warrant form  
9           had a scrivener's error from the clerk.

10          Q.     There were warrants for distribution of  
11          marijuana?

12          A.     The coding -- the affidavit was for  
13          distribution of heroin. The coding that they use  
14          on the computer was for a subsection for marijuana.

15          Q.     So you were doing surveillance on this  
16          apartment on Jobee Drive, right? Before the search  
17          warrant was executed you were conducting  
18          surveillance?

19          A.     Yes.

20          Q.     Were you waiting on him to leave at  
21          that point or were you just scoping out the  
22          situation?

23          A.     We were waiting on him to leave the  
24          residence to effect the arrest.

25          Q.     So you didn't want to arrest -- why

1 didn't you arrest him inside the apartment? Why  
2 didn't you go in when he was in there?

3 A. Like I said, due to the fact that he  
4 has a criminal record that included an arrest for a  
5 weapon law violation, possession of a firearm  
6 unlawfully, his involvement in drug distribution  
7 and the nexus between drugs and weapons, and the  
8 fact that we knew there was a child inside or  
9 believed there to be a child residing in the  
10 residence as well, we did not want to make entry  
11 and potentially have a dangerous environment erupt  
12 when children are inside. We felt or I felt like  
13 as the case agent it would be safer for all parties  
14 to take him into custody off property.

15 Q. You were -- there wasn't a child in the  
16 home?

17 A. Not at the time we executed the search  
18 warrant, no.

19 Q. You never saw a child enter into or  
20 leave while you were conducting surveillance?

21 A. No, I did not.

22 Q. And you think it is -- you believe it  
23 is safer to have arrested him in the vehicle as  
24 opposed to in the house?

25 A. At that time that was my determination

1 based on all the factors I had.

2 Q. So you conducted a felony stop when you  
3 arrest Mr. Blake, a felony arrest, a felony stop?

4 A. Correct.

5 Q. That happens pretty quickly, right?

6 A. Yes, it does.

7 Q. How long would you say it took in this  
8 case before -- when you announced your presence and  
9 when he was finally taken to the ground, matter of  
10 seconds?

11 A. Less than a minute, yes.

12 Q. When the officers get out to approach  
13 his vehicle they're now yelling I guess get out of  
14 the car. So what he does do? Does he get out of  
15 the car?

16 A. No, he does not.

17 Q. How long did he have to get out of the  
18 car before he was taken out? That would have been  
19 you have got to approach, all this happened in  
20 under a minute, you are talking just a matter of  
21 seconds?

22 A. He would have ample time to exit the  
23 vehicle or show us your hands and comply with  
24 orders that were being given.

25 Q. He didn't -- did he resist?



1           A.    Not actively.

2           Q.    So he didn't get out of the car fast  
3 enough before y'all were able to take him out?

4           A.    He made no attempt to get out of the  
5 vehicle at all.

6           Q.    He didn't try to run?

7           A.    No, he did not.

8           Q.    Where were you when this was going on?

9           A.    Best of my recollection I believe I was  
10 in front of the vehicle. The vehicle I was driving  
11 pulled in front of other people's vehicle in the  
12 back and I was covering his vehicle while agents  
13 from the rear or detectives from the rear took him  
14 into custody.

15          Q.    You didn't -- you weren't a part of  
16 taking him down?

17          A.    No, I did not personally.

18          Q.    But you were on the scene?

19          A.    Yes, I was.

20          Q.    And then you arrested Ms. Jeter at her  
21 job?

22          A.    Inside. The same location where he was  
23 taken in was the location of her job. She was just  
24 inside that if I wasn't clear about that.

25          Q.    Were you aware that he was going there

1 to pick her up based on your surveillance?

2 A. I was not aware of that prior to, but  
3 obviously when he pulled in there, you know, it was  
4 determined that that was most likely the situation.

5 Q. You knew before that Ms. Jeter worked  
6 at that place?

7 A. I had received information that she  
8 worked there.

9 Q. You weren't waiting for her to come out  
10 before arresting her in her job?

11 A. I'm sorry?

12 Q. You arrested her in her place of  
13 business in front of all the people she works with?

14 A. There was another employee there that  
15 led me to her that was present.

16 Q. So then Ms. Jeter and Mr. Blake are  
17 taken back to the apartment?

18 A. Yes.

19 Q. Why not take them -- if they're under  
20 arrest why not take them to jail?

21 A. As a matter of practice we take them  
22 back to the residence. Some people want to  
23 cooperate. Some people may want to provide  
24 statements. They may want to cooperate in the  
25 sense of like not having the ram the door, tell us

1 which key gets us in. You know, helping describe  
2 what we are going to encounter so when we go in the  
3 residence if anybody else is present, children  
4 there, if there's, you know, aggressive dogs, any  
5 number of reasons.

6 Q. You were concerned about Mr. Blake and  
7 safety issues related to him, right?

8 A. Prior to being taken into custody, yes.

9 Q. Was he cooperative after that?

10 A. I don't know that I would describe it  
11 as cooperative.

12 Q. If it's a safety issue, you keep him  
13 confined. But you are just basically sitting him  
14 on a chair handcuffed, right, while they are  
15 executing the search warrant, just kind of sitting  
16 there?

17 A. Yes, in the presence of law enforcement  
18 personnel, either myself or other people. He was  
19 not just allowed to sit out in the parking lot  
20 unattended.

21 Q. And how long did it take you to get  
22 from I guess Ms. Jeter's place of business back to  
23 the apartment?

24 A. Would have been a matter of minutes.  
25 The two locations are within a relative close

1 proximity, both in the West Ashley area.

2 Q. When you got there did you talk to Mr.  
3 Blake and Ms. Jeter when you first arrived? I  
4 guess when you first arrived what did you do?

5 A. I approached both of them and advised  
6 them of their Miranda rights.

7 Q. Did you have a search warrant with you  
8 then?

9 A. Yes, I would have had the arrest  
10 warrant and the search warrant with me.

11 Q. Did you give Mr. Blake a copy of the  
12 search warrant?

13 A. A copy was left at the residence.

14 Q. Based on your investigation you  
15 believed this to be Mr. Blake's primary residence?

16 A. Yes.

17 Q. You believe he lived there?

18 A. Yes.

19 Q. He didn't ask to see the search  
20 warrant?

21 A. He made vague inquiries as to what's  
22 going on, I haven't done anything, this is private  
23 property, what are y'all doing, general inquiries  
24 of that nature.

25 Q. He was protesting the search?

1           A.    I guess.  I assume it could be worded  
2 that way.

3           Q.    You didn't tell him to shut up when he  
4 asked about the warrant or why you were there at  
5 any time?

6           A.    Yes.

7           Q.    At any point did you tell him to shut  
8 up?

9           A.    Yes.

10          Q.    In response to him asking what's going  
11 on you told him to shut up?

12          A.    In response to his continued agitated  
13 state of speaking over us so that his questions  
14 could be answered.  They could not be answered if  
15 he did not provide us an opportunity to speak  
16 because of his agitated state.

17          Q.    He was asking -- was he asking why he  
18 was being arrested?

19          A.    Yes.

20          Q.    Don't you think if you had given him a  
21 copy of the search warrant and the arrest warrant  
22 then that might have calmed him down?

23          A.    Well, I explained to him, but again he  
24 is handcuffed behind his back sitting in a chair so  
25 he was not handed a copy to hold which he would

1 have been able to read with his hands handcuffed  
2 behind his back if he was holding the search  
3 warrant. But he was advised of his warrants and  
4 the nature of the search warrant and what got us to  
5 that point.

6 Q. Did you ever tell him don't worry about  
7 it when he asked you where the search warrant was  
8 or to see the search warrant?

9 A. No, he would have been advised that a  
10 copy was being left at the residence as standard  
11 practice.

12 Q. You never put him in a choke hold?

13 A. No, I did not.

14 Q. Did you ever have to put your hands on  
15 him?

16 A. Yes.

17 Q. How did that occur?

18 A. After multiple times of him attempting  
19 to stand up out of his chair when we are on this  
20 small stoop I told him repeatedly to sit back down.  
21 He continued to stand up after being ordered to sit  
22 back down and on what I would assume or what I  
23 remember probably the third or fourth time he stood  
24 up I placed my left hand, it would have been on his  
25 right shoulder as he was seated as I am facing him,

1 my left hand, his right shoulder and pushed him  
2 back into the seat and told him not to get up  
3 again.

4 Q. May I approach the witness, Your Honor?

5 THE COURT: You may.

6 BY MR. KING:

7 Q. Are you familiar with this statute  
8 17-13-150?

9 A. Not by number.

10 Q. Are you familiar with that statute?

11 A. I'm --

12 Q. Can you read that?

13 A. Yes. "17-13-150, person served search  
14 warrant shall be furnished copy of warrant and  
15 supporting affidavit. When any person is served  
16 with a search warrant such person shall be  
17 furnished with a copy of the warrant along with the  
18 affidavit upon which such warrant was issued."

19 (DFT. EXH. 1, copy of statute, was  
20 marked for identification.)

21 (DFT. EXH. 2, search warrant, was  
22 marked for identification.)

23 BY MR. KING:

24 Q. Your Honor, for the record I ask to  
25 make 17-13-150 part of the record as Defendant's

1 Exhibit 1. And I want to hand you this. Do you  
2 recognize Defendant's Exhibit No. 2?

3 A. Appears to be a copy of the search  
4 warrant.

5 Q. Does that look -- does that appear to  
6 be the search warrant that you -- an accurate copy  
7 of the search warrant that you served on Jobee  
8 Drive?

9 A. Yes, it appears to be.

10 Q. Now, in that search warrant that the --  
11 a judge's signed that, right? A judge has signed  
12 and issued this warrant? You went to the judge to  
13 have a judge sign it?

14 A. Yes.

15 Q. Doesn't it say on that search warrant,  
16 this would be -- I will show you the page, but  
17 where it says description of premises and  
18 description of property, I believe it's the fourth  
19 page, counting the cover sheet, do you see down  
20 there at the bottom where there's a phrase that  
21 says copy of this search warrant shall be delivered  
22 to the person in charge of the premises searched at  
23 the time of search if practical. And if not to  
24 such person as soon thereafter as is practicable.  
25 And in the event that identity of the person in



1 charge is not known or if such person cannot be  
2 found after reasonable diligence in attempting to  
3 locate the person a copy shall be attached to a  
4 prominent place on such premises, right?

5 A. Yes.

6 Q. So the judge ordered you to deliver a  
7 copy to the person in charge of the premises, who  
8 you know Mr. Blake, that was his primary residence?  
9 There was no question about that?

10 A. Correct.

11 Q. The judge ordered you to serve him a  
12 copy of the search warrant as soon as practicable?  
13 But you never gave him a copy of it?

14 A. No. I did not hand him physically. A  
15 copy was placed on the residence and it was  
16 described to him.

17 Q. He is handcuffed, he can't wander  
18 around in the residence freely, can he?

19 A. No, he cannot.

20 Q. And at the conclusion of this search  
21 you took him to jail, right?

22 A. Correct.

23 Q. He didn't stay in the apartment so he  
24 could get a copy and see what it says?

25 A. Correct.

1           Q.    You serve a copy on him when he gets to  
2 the jail?

3           A.    I'm sorry?

4           Q.    Did you serve a copy of the search  
5 warrant on Mr. Blake when he was booked into the  
6 jail?

7           A.    No, I did not.

8           Q.    You never personally gave him a copy at  
9 any point --

10          A.    I did not.

11          Q.    -- of the search warrant. I am just  
12 going to show you a couple more things.

13                   (DFT. EXH. 3, photograph, was marked  
14 for identification.)

15                   (DFT. EXH. 4, photograph, was marked  
16 for identification.)

17 BY MR. KING:

18          Q.    Showing you Defendant's Exhibit 3 and  
19 4, do you recognize those?

20          A.    Yes, they appear to be photographs of  
21 the search warrant at the residence.

22          Q.    That's showing a copy of the search  
23 warrant laying on the stove in the kitchen, right?

24          A.    Correct.

25          Q.    And also laying on the table in the

1 living room; is that right?

2 A. Living or little dining area, yes,  
3 within the residence.

4 Q. He never asked for his lawyer?

5 A. No.

6 Q. You found during the search a receipt  
7 for legal fees paid to Jim Smiley; do you remember  
8 that?

9 A. Vaguely.

10 Q. So you were aware it was dated that  
11 very day? Do you remember that?

12 A. Not from that day.

13 Q. Sorry?

14 A. I don't remember that from that day.

15 In reviewing the evidence I know that that was  
16 recovered on that day, but I don't remember it from  
17 that day.

18 Q. Are you aware that that receipt was  
19 dated February 22nd? Are you aware of that now?

20 A. Now I am.

21 Q. There was a receipt dated that day  
22 where Mr. Blake had paid Jim Smiley, a lawyer,  
23 legal fees?

24 A. Correct.

25 Q. You knew he had seen the lawyer that

1 day and paid him?

2 A. After the fact.

3 Q. How long did you say -- by the time you  
4 took them back to the residence how long did it  
5 take to conduct the search at that point before it  
6 was over and you took them to jail?

7 A. I would say probably approximately an  
8 hour.

9 Q. Do you know what time the search  
10 started?

11 A. I do not off the top of my head. It  
12 would have been daylight hours in the afternoon.

13 Q. Does the time 1500 hours, does that  
14 sound about right?

15 A. That sounds about right for when the  
16 operation began when he was taken into custody. On  
17 the search warrant return there is another time for  
18 when the search warrant was executed.

19 Q. What time was that?

20 A. 1542 hours.

21 Q. That's 3:42?

22 (DFT. EXH. 5, booking sheet, was marked  
23 for identification.)

24 BY MR. KING:

25 Q. Show you Defendant's Exhibit No. 5. Do

1       you recognize that?

2               A.   Appears to be the booking sheet for the  
3       Defendant.

4               Q.   Do you see a time on there when he was  
5       booked in?

6               A.   Looks like 2100 hours.

7               Q.   So that's a good -- quite a few hours  
8       away from 1500, right?

9               A.   Correct.

10              Q.   Can you explain that, the -- why that  
11       time would say 2100 and you said it took an hour to  
12       do the search?

13              A.   Yes, because he wouldn't have been  
14       officially booked in until the scrivener's error  
15       was corrected and the warrant forms updated with  
16       the correct coding as we have discussed just a few  
17       minutes ago and that's when he would have actually  
18       been booked into the system.

19              Q.   So that -- I guess that took that a few  
20       hours or a couple hours to do that?

21              A.   Probably so.

22                   MR. KING: I don't have any other  
23       questions, Your Honor.

24                   THE COURT: Thank you. Any redirect?

25                   MR. KING: I would ask that all my

1 exhibits be entered at least for this hearing.

2 THE COURT: Any objection?

3 MS. LINDER: No objection.

4 THE COURT: All right. They are in  
5 evidence for this hearing.

6 (DFT. EXH. 1-5 in evidence.)

7 MS. LINDER: I don't have any further  
8 questions for this witness for the purpose of this  
9 hearing.

10 THE COURT: All right. You may step  
11 down, sir. Thank you.

12 MS. LINDER: Briefly, Your Honor, the  
13 State calls Sergeant Mark Bryant.

14 MARK BRYANT

15 Having been duly sworn, testifies as follows:

16 DIRECT EXAMINATION

17 THE CLERK: State your full name and  
18 spell your last name.

19 THE WITNESS: Mark Anthony Bryant,  
20 spelled B-R-Y-A-N-T.

21 BY MS. LINDER:

22 Q. Good morning.

23 A. Good morning.

24 Q. Can you please tell the judge what your  
25 occupation is?

1           A.    I'm a Sergeant with the Charleston  
2 County Sheriff's Office. I work in the detective  
3 division.

4           Q.    And you said Charleston County?

5           A.    Yes, ma'am.

6           Q.    And can you explain how long you have  
7 been in law enforcement?

8           A.    I started my law enforcement career  
9 nearly 20 years ago.

10          Q.    And in February of 2013 what capacity  
11 were you working?

12          A.    I was newly -- newly assigned Sergeant  
13 to the Metro Narcotics Division.

14          Q.    As a Sergeant of the Narcotics Division  
15 can you just briefly explain the importance of a  
16 prebriefing and researching and gathering as much  
17 intel as possible for execution of a search  
18 warrant?

19          A.    Any time you are going to do a search  
20 warrant we do a preplanning package with the  
21 detectives to see if there's any children at the  
22 house, possible animals, any type of dangers that  
23 possibly could result in the community getting hurt  
24 or anything like that in the preplanning. So  
25 hopefully lessen any type of chance of anything

1           happening.

2           Q.    Do you remember being involved with  
3 this case, State versus Mark Blake, at all?

4           A.    Yes.

5           Q.    Why do you remember it?

6           A.    I have known Mark since he was probably  
7 about 12 or 14 years old. And it being the first  
8 case I was ever involved in in metro as a takedown.

9           Q.    And can you describe or tell the judge  
10 in this case why a felony traffic stop was decided  
11 to be used?

12          A.    My understanding was based on the  
13 history. In our line of work drugs and guns are  
14 associated together. When we conducted this stop  
15 we pinched him in that prevents him from possibly  
16 fleeing and it's kind of an overwhelming situation  
17 where it is kind of a shock and hopefully that will  
18 prevent him from fleeing, anyone else in the  
19 community getting hurt and the officers safety.

20          Q.    And did he comply when he was first  
21 ordered out of the car and pinched in?

22          A.    No, ma'am.

23          Q.    So what happened?

24          A.    I approached him and if I remember  
25 correctly Detective Waddell came from behind me.



1 Mark was still sitting behind the wheel. Detective  
2 Waddell reached in, grabbed Mark by the arm, pulled  
3 him out and placed him on the ground and we placed  
4 him in handcuffs.

5 Q. And was Mr. Blake told about his  
6 charges at that point?

7 A. I don't recall at that point.

8 Q. And did you ever go back to [REDACTED] Jobee  
9 to do a search warrant?

10 A. At his apartment, yes.

11 Q. And can you describe this Defendant's  
12 behavior while that's going on?

13 A. Mark had a bit of an attitude and  
14 that's pretty much all I can say.

15 Q. Was he talking back, was he raising a  
16 voice?

17 A. Oh, yes. That's pretty typical since I  
18 have known him.

19 Q. And was he following instructions and  
20 orders as far as being calm, staying where he was?

21 A. No.

22 Q. And did you do a choke hold on Mark  
23 Blake?

24 A. No.

25 Q. Did you see anyone else do a choke hold

1 on him?

2 A. No.

3 Q. Did the Defendant request medical  
4 attention at any point?

5 A. No.

6 Q. Did you see any visible injuries?

7 A. No. I would have not allowed him --  
8 that situation to get to that point.

9 Q. Because you were the supervisor?

10 A. I was the supervisor on the scene, was  
11 my first scene, and I know Mark. I just wouldn't  
12 do that plain and simple.

13 Q. And were people starting to gather  
14 outside kind of watching what was happening in the  
15 public?

16 A. A few people, but that comes with the  
17 territory with that many of us going around in our  
18 bulletproof vests and guns, different cars.

19 Q. And what was done? Did Blake and his  
20 girlfriend Dominique Jeter stay out front on the  
21 front stoop the whole time together?

22 A. I don't believe so.

23 Q. Where was the girlfriend brought?

24 A. I brought her into the bathroom to get  
25 a statement from her.

1 Q. Why the bathroom?

2 A. Well, the bathroom is the easiest place  
3 to search. When you first initially clear a  
4 residence the bathroom is a small area. You can  
5 search that area fairly quickly, check for any type  
6 of guns and because it takes a lot more time in the  
7 bigger rooms.

8 Q. And did you ever hear this Defendant  
9 ask for an attorney?

10 A. No.

11 Q. And did you end up getting a statement  
12 from or being part of a statement that was given  
13 from this Defendant and Defendant Dominique Jeter?

14 A. I got a statement from Ms. Jeter.

15 Q. When you got her statement did you  
16 threaten her in any way?

17 A. No.

18 Q. Did you threaten to take her kids?

19 A. No, ma'am.

20 Q. Did you tell her if she told you what  
21 you wanted to hear that she wouldn't be going to  
22 jail that day?

23 A. No, ma'am. I told her what charges she  
24 was facing and she immediately put it all back on  
25 Mark and said she would do a statement.

1 Q. Beg the Court's indulgence.

2 (Brief pause.)

3 MS. LINDER: No further questions.

4 Please answer anything the defense may have.

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Mr. King.

7 CROSS-EXAMINATION

8 BY MR. KING:

9 Q. Sergeant Bryant, you testified that it  
10 was Agent Waddell who took down Mr. Blake in the  
11 felony stop?

12 A. As I recall I believe that's what  
13 happened.

14 Q. And then were you -- did you go back  
15 with either Mr. Blake or Ms. Jeter? Were you with  
16 them when you went back to the apartment?

17 A. I believe I was with Detective Uber in  
18 his car. I don't believe I rode with either of  
19 them.

20 Q. When you got there was Mr. Blake and  
21 Ms. Jeter already there?

22 A. No, we took Mr. Blake back.

23 Q. You took Mr. Blake?

24 A. We took Mr. Blake back, the team did.

25 Q. So you got there at the same time?

1 A. Yes, we all pulled in.

2 Q. Did Agent Waddell come at that point  
3 when Mr. Blake was at the apartment or was he late  
4 getting there?

5 A. I don't recall. I would assume he was  
6 there at the same time we were. It was his search  
7 warrant. He was the case agent.

8 Q. You said Mr. Blake had an attitude?

9 A. Yes.

10 Q. You say he was talking back, he was  
11 raising his voice?

12 A. Yes. I remember talking to him about  
13 it.

14 Q. Do you remember what he was saying?  
15 What was he saying? He was raising his voice?

16 A. Just gets a little belligerent, starts  
17 cussing and telling us about ourselves.

18 Q. Did he physically threaten anyone?

19 A. I don't believe so.

20 Q. You said he was cussing at the  
21 officers?

22 A. Yes, he gets an attitude. He starts  
23 cussing. Ever since -- I mean not unusual.

24 Q. That's his personality?

25 A. In our line of work. I haven't seen

1 Mark since that time in years before, but I  
2 remember him before. He's got a bad attitude.

3 Q. He is not the first person you have  
4 seen protested a search warrant, right?

5 A. No.

6 Q. And you don't remember exactly what he  
7 was saying? He wasn't saying why am I here, why  
8 are you arresting me, why are you searching me?

9 A. Not that type of attitude.

10 Q. Can you explain anything that he said,  
11 any words that he said?

12 A. Basically we're wrong, we are dirty,  
13 we're F'ing pigs, we're this, that type of  
14 language. I can't verbatim say what he said.

15 Q. Did you at any point give Mr. Blake a  
16 copy of the search warrant?

17 A. No.

18 Q. Did you ever hear Agent Waddell tell  
19 Mr. Blake to shut up?

20 A. Those particular words, shut up, I'm  
21 sure we told him to be quiet. I didn't hear that,  
22 but I remember us telling him to calm down and be  
23 quiet.

24 Q. Did he ever calm down and get quiet?

25 A. When I talked to him he had his

1 moments. One minute he's upset about the  
2 situation, the next minute he's calming down, but I  
3 mean I can't say that he stayed calm the whole time  
4 or I can't say that he was belligerent the whole  
5 time either.

6 MR. KING: I believe that's all the  
7 questions I have, Your Honor.

8 THE COURT: Any redirect?

9 MS. LINDER: No redirect.

10 THE COURT: Thank you. You may step  
11 down.

12 MS. LINDER: State calls Andrew Miller.

13 ANDREW MILLER

14 having been duly sworn, testifies as follows:

15 THE CLERK: State your full name and  
16 spell your last name for the record.

17 THE WITNESS: Andrew Miller,  
18 M-I-L-L-E-R.

19 DIRECT EXAMINATION

20 BY MS. LINDER:

21 Q. Can you please tell the judge your  
22 current rank and employer?

23 A. Current employer is Charleston County  
24 Sheriff's Office. I work as a detective in  
25 property crimes.

1 Q. And how long have you been in law  
2 enforcement?

3 A. Eighteen years.

4 Q. What was your role and duty back in  
5 February of 2013?

6 A. I was a narcotics detective.

7 Q. And do you remember being involved with  
8 this case, State versus Mark Blake?

9 A. Yes, ma'am.

10 Q. Do you remember being involved with a  
11 search warrant execution that day?

12 A. Yes, ma'am.

13 Q. Do you recall tactically why a felony  
14 traffic stop was decided to be used?

15 A. If I remember correctly, I believe he  
16 already had charges for possession of a firearm or  
17 having a firearm and that and drugs, guns and drugs  
18 go together. So at that point we felt it was  
19 necessary as he could possibly have a firearm with  
20 him at that time.

21 Q. And were you part of the felony traffic  
22 stop?

23 A. Yes, ma'am.

24 Q. And can you explain what your role was?

25 A. I'm not sure -- I don't remember



1 exactly which car I was in. But I remember how it  
2 took place. I remember he pulled up in front of  
3 the nursing home. A car blocked him in the front,  
4 a car blocked him in the back. That was to limit  
5 our injuries as well his so we can get up and take  
6 the vehicle down with the least amount of problems  
7 as we could.

8 Q. Did he get out of the car immediately  
9 and cooperatively?

10 A. No, he did not. He had to be directed  
11 several times. Then he was taken out of the  
12 vehicle. I do not remember who took him out of the  
13 vehicle.

14 Q. And was anybody else -- do you remember  
15 anybody else being arrested at that assisted living  
16 center?

17 A. Yes, his girlfriend which I believe is  
18 Ms. Jeter.

19 Q. And was she outside when the felony  
20 traffic stop occurred?

21 A. No, she was not outside. She was  
22 inside her place of employment which was the  
23 nursing home.

24 Q. And did you ever go back to [REDACTED] Jobee  
25 to execute a search warrant?

1                   A.     Yes, ma'am.

2                   Q.     And can you describe the Defendant's  
3 behavior?

4                   A.     The Defendant in the beginning was very  
5 boisterous, just continued to ask the same question  
6 over and over again even after it was explained why  
7 he was being arrested at that time.

8                   Q.     It was explained to him why he was  
9 being arrested?

10                  A.     Yes, ma'am.

11                  Q.     Was he asking and demanding a lawyer?

12                  A.     Not that I'm aware of.

13                  Q.     Were you ever out front on the stoop or  
14 patio with the Defendant?

15                  A.     Not in the beginning. But at the end  
16 when we walked him down to the car I believe I was  
17 a part of walking him down to the vehicle.

18                  Q.     At this point did you put Blake in a  
19 choke hold?

20                  A.     No, ma'am.

21                  Q.     Did you see anyone else put him in a  
22 choke hold?

23                  A.     No, ma'am.

24                  Q.     Is the apartment itself pretty small?

25                  A.     Yes, ma'am.

1 Q. If someone was yelling and you were  
2 inside, and they were yelling from outside would  
3 you have heard it?

4 A. Yes, ma'am.

5 Q. Are you aware of co-defendant Jeter  
6 being questioned inside the residence?

7 A. Yes. They were both separated and  
8 questioned.

9 Q. Were you inside the residence when she  
10 was questioned?

11 A. Yes, ma'am.

12 Q. And did you hear any raised voices,  
13 yelling, threats, anything?

14 A. No, ma'am.

15 Q. Beg the Court's indulgence.

16 (Brief pause.)

17 Did Blake request any medical attention  
18 that day?

19 A. No, ma'am.

20 MS. LINDER: Nothing further.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. KING:

24 Q. Detective Miller, you were present  
25 during the felony arrest?

1 A. Yes.

2 Q. Did it happen pretty quickly?

3 A. Yes, sir.

4 Q. How long do you think that took?

5 A. No more than a couple of minutes.

6 Q. That's part of the felony stop, moving  
7 quick?

8 A. Yes, sir.

9 Q. You went back to the apartment. Who  
10 were you with when you went back to the apartment?

11 A. I'm not sure which vehicle, might have  
12 been the van. I'm not sure which vehicle I was in.  
13 I don't remember specifically.

14 Q. When you got back what was your role  
15 when you got back to the apartment?

16 A. I was the evidence custodian.

17 Q. Did you at any point give Mr. Blake a  
18 copy of the search warrant?

19 A. I did not, no.

20 Q. Did you ever hear him ask for a copy of  
21 the arrest warrant or search warrant?

22 A. He may have. I do not remember.

23 Q. You said you weren't out there guarding  
24 him, you weren't one of the ones guarding Mr. Blake  
25 when he was sitting on the patio?

1 A. No.

2 Q. Were you ever present when there was an  
3 exchange between him and Agent Waddell?

4 A. No. I mean he was very boisterous all  
5 the time. You could hear him yelling, but nobody  
6 else.

7 Q. Did you hear what he was yelling?

8 A. No, I had to focus on my task at hand.

9 MR. KING: That's all the questions I  
10 have.

11 THE COURT: Any redirect?

12 MS. LINDER: No redirect.

13 THE COURT: Thank you, sir.

14 MS. LINDER: We have no other  
15 witnesses.

16 THE COURT: Mr. King?

17 MR. KING: Your Honor, defense would  
18 call Dominique Jeter. She was the co-defendant and  
19 has an attorney Mary Ford.

20 MS. FORD: Your Honor, she does not  
21 wish to testify. She wants to assert her Fifth  
22 Amendment Right not to incriminate herself.

23 MR. KING: Can I call her and make sure  
24 that she asserts that herself? The jury is not  
25 here or anything.

1 THE COURT: Sure.

2 MS. FORD: Your Honor, may I step up  
3 with her?

4 THE COURT: You may.

5 DOMINIQUE JETER

6 having been duly sworn, testifies as follows:

7 THE CLERK: State your name and spell  
8 your last name for the record.

9 THE WITNESS: Dominique Jeter,  
10 J-E-T-E-R.

11 BY MR. KING:

12 Q. Ms. Jeter, do you remember a search  
13 warrant being executed at an apartment on Jobee  
14 Drive on February 22nd, 2013?

15 A. No, I never saw a search warrant.

16 MS. FORD: Your Honor, I apologize.  
17 I'm not sure how far we should get into it. He's  
18 asking basic questions right now.

19 As far as anything substantively, I  
20 don't know if he just wants her to say to  
21 particular questions I assert --

22 MR. KING: Just going to ease into it,  
23 Your Honor. I just don't know what she is willing  
24 to testify to. If she is willing to testify to  
25 anything how the officers acted that day, that's

1 the purpose of this hearing that I am asking, not  
2 asking her substantive questions about the drugs or  
3 guilt or innocence. I am just asking about how the  
4 officers behaved. I don't know if I am asking her  
5 to incriminate herself. I will try to take it  
6 slowly.

7 MS. FORD: Your Honor, I don't know as  
8 far as then the State would be able to  
9 cross-examine her, I don't know if they can  
10 actually fully cross-examine her if she is going to  
11 be able to assert the Fifth Amendment right.

12 MS. LINDER: Your Honor, if I may, just  
13 to give some overview, and Ms. Ford and Mr. King  
14 can correct me if I'm wrong, my understanding is  
15 Mr. King is trying to get information out from Ms.  
16 Jeter about law enforcement behavior on the front  
17 end of the search warrant. And I would fully --  
18 Ms. Jeter gave one statement, a written statement  
19 to law enforcement the day of, two years later gave  
20 a written affidavit that was submitted as part of  
21 Mr. Blake's federal lawsuit that was in opposition  
22 of what she told law enforcement.

23 So if Mr. King is asking about law  
24 enforcement behavior, then I absolutely intend to  
25 ask about any other aspect of it which I believe is

1 Ms. Ford's concern.

2 THE COURT: Mystery solved. So what is  
3 it your client wishes to do? Do you need to confer  
4 with her?

5 MS. FORD: Your Honor, it is my  
6 understanding she does not wish to involve herself  
7 in this. She does not want to give testimony  
8 considering that she could do something to  
9 incriminate herself, Your Honor.

10 THE COURT: All right. So we have had  
11 one question asked and answered.

12 MR. KING: May I just ask if Ms. Jeter  
13 agrees with what her attorney is saying? I know  
14 her attorney is speaking for her, but she is on the  
15 stand. Ms. Jeter, are you willing to answer any  
16 questions if I ask about how the search warrant was  
17 executed?

18 THE WITNESS: No.

19 MR. KING: Thank you.

20 THE COURT: And is that based on your  
21 indication of the right not to incriminate yourself  
22 guaranteed by the Fifth Amendment?

23 THE WITNESS: Yes.

24 MR. KING: Can I ask her to  
25 authenticate the affidavit?



1 THE COURT: I don't know what affidavit  
2 you are talking about.

3 MR. KING: There's an affidavit that  
4 describes what happened.

5 THE COURT: Her affidavit?

6 MR. KING: Ms. Jeter's affidavit.

7 THE COURT: Okay.

8 MR. KING: Just if she would be willing  
9 to ask if she wrote the affidavit.

10 MS. FORD: I would still say that she  
11 would assert her Fifth Amendment right, Your Honor.

12 THE COURT: Well --

13 BY MR. KING:

14 Q. Ms. Jeter, if I show you this affidavit  
15 would you be willing to say whether you wrote this  
16 or not?

17 MS. FORD: Again, Your Honor, my  
18 objection or my concern is just that the State may  
19 want to go into the contents of the affidavit.

20 THE COURT: Okay. So you're  
21 instructing her not to answer based on the Fifth  
22 Amendment.

23 MS. FORD: Yes, Your Honor.

24 THE COURT: Are you invoking the  
25 privilege in regards to the authenticity of that

1 affidavit in question as well, Ms. Jeter?

2 THE WITNESS: Yes.

3 THE COURT: All right.

4 MR. KING: Okay.

5 THE COURT: Anything further?

6 MR. KING: I don't believe so. Not  
7 much I can do with this witness, Your Honor.

8 MS. LINDER: Judge, based on her  
9 asserting her Fifth Amendment right we would  
10 obviously have no questions; however, her attorney  
11 expressed that she wished to assert that and then  
12 she answered part of a question. My concern is she  
13 was uncertain and I would ask that her answer,  
14 whether or not she understood it, not be considered  
15 in this portion of the case.

16 THE COURT: Her answer in regards to  
17 what? She answered the question, but what are you  
18 getting at there?

19 MS. LINDER: She said she did not see a  
20 search warrant.

21 THE COURT: Okay.

22 MS. LINDER: When Mr. King asked that,  
23 but Ms. Ford -- appeared from my perspective that  
24 she was trying to explain again that her client  
25 wished to assert the Fifth Amendment right.

1 THE COURT: Okay. I understand your  
2 position. Thank you.

3 MS. FORD: Your Honor, my client is  
4 under subpoena. I don't know if she can be  
5 excused. She has to go to work at 2:00.

6 MR. KING: I guess I'm -- I don't know  
7 I want to release her at least to the subpoena, but  
8 I don't think I would need her today, Your Honor.

9 THE COURT: You wouldn't?

10 MR. KING: I don't believe so.

11 THE COURT: You are still under  
12 subpoena. You need to be back here and available  
13 tomorrow morning at the start of court which would  
14 be 9:00. Thank you.

15 MS. FORD: Thank you.

16 MR. KING: Actually, Your Honor, I  
17 spoken with Mr. Blake. And he says we can release  
18 her from the subpoena. I don't believe she's going  
19 to testify in the trial case in chief anyway based  
20 on what happened today.

21 THE COURT: All right. So you're  
22 released from the subpoena, Ms. Jeter, entirely.  
23 Thank you. Okay. Next issue.

24 MR. KING: Your Honor, I think I have  
25 one more witness, Mr. Blake.

1                   Your Honor, I advised Mr. Blake that he  
2 could testify at this pretrial hearing regarding  
3 the officer's conduct, but not waive his right to  
4 remain silent in the trial itself. I have advised  
5 him that he doesn't waive his Fifth Amendment right  
6 by testifying at the pretrial hearing.

7                   THE COURT: What's the State's position  
8 on that?

9                   MS. LINDER: Judge, that's a difficult  
10 one as I don't know exactly what Mr. Blake is going  
11 to say. If he talks about conduct now that has  
12 been brought up in trial by Mr. King, obviously I  
13 would want to go into some things. It's very hard  
14 for me to definitively say one way or the other  
15 without hearing from him.

16                  MR. KING: The only issue is I don't  
17 believe that he will be testifying now about the  
18 execution of the search warrant. I believe he can  
19 still remain silent. That doesn't waive his right  
20 to remain silent. Anything he says today may be  
21 used against him if he mentions anything about the  
22 heroin, but I don't plan on going into that, just  
23 asking about how the officers conducted themselves  
24 that day, what he experienced.

25                  THE COURT: So it would not -- by

1       testifying here right now Mr. Blake would not give  
2       up his right to not testify during the trial and  
3       remain silent, but I don't know about restricting  
4       the use of what he says here today as evidence  
5       during the trial for impeachment purposes or if he  
6       did testify.

7               MR. KING: I understand. If he  
8       testified during the trial, I agree, I believe that  
9       he would be able to be impeached if he said  
10      anything different than what he said.

11             THE COURT: Okay.

12                     MARK LORENZO BLAKE

13      having been duly sworn, testifies as follows:

14             THE CLERK: Please state your full  
15      name.

16             THE WITNESS: Mark Lorenzo Blake, Jr.

17                     DIRECT EXAMINATION

18      BY MR. KING:

19             Q. Mr. Blake, do you remember the events  
20      that there has been testimony about from  
21      February 22nd, 2013?

22             A. Yes, I remember it like yesterday.

23             Q. Now, I want to start with at some point  
24      police surround your car. Start there. What  
25      happened that day when you first noticed police

1 around your car? Where were you going?

2 A. I was upon my arrival to pick up my  
3 girlfriend.

4 Q. And what happened when you went there?

5 A. Two unmarked cars apparently boxed me  
6 in while they pulled up. And after that I was on  
7 the phone during the time of them pulling up on me  
8 and guns blazing at me, and I was trying to  
9 cooperate the best way and tell the person on the  
10 phone I have to call them back because apparently  
11 I'm being arrested. I stepped out of the car and  
12 after that I was tackled and put my hands up.

13 Q. Did you resist?

14 A. Not at all.

15 Q. How long did they give you before you  
16 were tackled?

17 A. I couldn't even get two feet on the  
18 ground before I was tackled.

19 Q. And then later were you interviewed by  
20 Agent Waddell and Detective Miller?

21 A. Yes.

22 Q. Back on Jobee Drive?

23 A. Yes.

24 Q. You have heard testimony about them  
25 saying that you were yelling and saying things.

1       What were you saying to the detectives back at  
2       Jobee Drive?

3           A.    Upon Detective Waddell making his  
4       arrival which he was supposed to furnish me with  
5       search warrant and arrest warrants, he then states  
6       what me and Ms. Jeter were being arrested for at  
7       that time and I asked to speak with my attorney at  
8       that point. They declined my request and then I  
9       asked to see a copy of the search warrant and he  
10      declined that request also. And that's why I, you  
11      know, got agitated and got an attitude because I  
12      felt a lot of foul play was going on at that point  
13      based on all my questions were being declined.

14           Q.   What did the detectives say to you when  
15      you asked for the search warrant?

16           A.   Don't worry about that.

17           Q.   Did they mistreat you in any way?

18           A.   Very much so.

19           Q.   Can you explain that?

20           A.   Well, they denied me my right of  
21      attorney, violation of my constitutional amendment.  
22      They further tried to interrogate me after denying  
23      my right to ask to speak to my attorney. Me and  
24      Detective Waddell, we had got into a verbal dispute  
25      about the furnishment of the search warrants and I

1 did stand up. I felt as though I was being  
2 intruded in my house was ransacked and nobody could  
3 supply the answers that I wanted based on that it  
4 was my residence and I just felt as though my  
5 rights were being trod on and I was being  
6 overdrawn.

7 Q. Did they ever put their hands on you?

8 A. Yeah, Detective Waddell did. Put his  
9 hands on me, pushed me back in the chair and we  
10 still engaged in a verbal dispute. He told me to  
11 shut up. I told him I wasn't going to shut up  
12 because this is my residence. Whether I am under  
13 arrest or not, I have the floor so he has to  
14 respect that fact that I can say what I want to  
15 say. It's a free world.

16 Q. Did he put you in a choke hold?

17 A. Yes. Afterward he did put me in a  
18 choke hold because he was going back and forth. He  
19 did put me in a choke hold. Didn't last no more  
20 than about five seconds. Wasn't really, really,  
21 real serious, but I think it was really, really  
22 unnecessary based upon they wanted me to be quiet  
23 and I didn't want to be quiet. I didn't know not  
24 being quite was a crime.

25 Q. Did you ever threaten anyone?



1 A. Never threatened anyone.

2 Q. Ever get physically violent?

3 A. Never.

4 Q. Were you ever at any time given a copy  
5 of the search warrant?

6 A. Never.

7 Q. You have seen photographs where the  
8 search warrant was inside the apartment. Did they  
9 ever let you in the apartment to go look at it?

10 A. No, never.

11 Q. How long would you say they kept you in  
12 that apartment while the search was going on?

13 A. It was a long time. I was being held  
14 against my will. Was probably like maybe three  
15 hours roughly.

16 Q. And then they eventually took you to  
17 the jail?

18 A. Yes, they finally took me to the jail  
19 which they should have done once I asked to speak  
20 to my attorney. They eventually took me to the  
21 jail. They insisted on trying to hold me and  
22 trying to make me cooperate, threatening me to  
23 cooperate, trying to entrap me, doing everything  
24 they could trying to make me admit to the drugs  
25 that they eventually found in my apartment was

1 mine. They tried to make me cooperate and try to  
2 use me as an informant. They wanted me to call my  
3 understanding of the drug dealers apparently and  
4 that's when I provided them with a statement that I  
5 provided with my discovery.

6 Q. When you got to the jail did anything  
7 happen there? Did you go back in there  
8 immediately?

9 A. Yes, we got booked in immediately. It  
10 was different transporting officers. Waddell did  
11 not book me in personally. It was a discrepancy in  
12 between the warrants amongst the jail staff and the  
13 transporting officers and they immediately phoned  
14 Waddell. It was so fast, it was two or three  
15 minutes later he got there. So it was like he was  
16 saying took a long time, but it did not take a long  
17 time to book me because he came so quick. He was  
18 right there.

19 Q. I think that's all the questions I  
20 have, Your Honor.

21 THE COURT: Thank you. Ms. Linder.

22 CROSS-EXAMINATION

23 BY MS. LINDER:

24 Q. I want to make sure that I understand  
25 everything you testified to here today okay, Mr.

1 Blake?

2 A. Okay.

3 Q. You said you remember this like it was  
4 yesterday, right?

5 A. Absolutely.

6 Q. And you said that when you pulled up to  
7 the girlfriend's work it was all unmarked cars  
8 around you; is that right?

9 A. Yes, as far as I can see was all  
10 unmarked cars.

11 Q. All unmarked cars?

12 A. Yes.

13 Q. And is it your testimony that you then  
14 got out of your car?

15 A. Yeah, I got out of my vehicle.

16 Q. Okay. And then you were told about  
17 what you were getting placed under arrest for,  
18 right?

19 A. Right there and then? No, I asked  
20 numerous times. Transporting officer said he did  
21 not know what my arrest was. I asked to speak to  
22 my attorney. I told him. I just --

23 Q. Sir, if you can just please try to  
24 answer what I am asking you. I am trying to  
25 understand exactly what's going on. Thank you.

1           A.    I was never told what I was being  
2 arrested for initially.

3           Q.    You said when you got back to your  
4 apartment, you were the leaseholder at Jobee,  
5 right?

6           A.    Correct.

7           Q.    And when you got back to the apartment  
8 where were you? Where did you go in the beginning?

9           A.    Took us -- walked us up to the front,  
10 my front balcony.

11          Q.    And who was up there?

12          A.    It was maybe -- I can't really recall  
13 exactly, but I know it wasn't Waddell. We was  
14 waiting on his arrival.

15          Q.    And when you got walked upstairs to  
16 your patio is that when you were told you were  
17 under arrest for distribution?

18          A.    No.

19          Q.    Okay. When you were upstairs on the  
20 patio is that when you were told that the search  
21 warrant was because there was an informant who  
22 bought from you?

23          A.    Can you rephrase that question?

24          Q.    When you went up the stairs when you  
25 got there -- I am trying to figure out what

1 happened when. You went up the stairs when you  
2 first got there. You said Waddell was not the one  
3 who was walking you up immediately, right?

4 A. Right.

5 Q. And you got there and you just  
6 testified that when you were standing at the front  
7 patio of your apartment you were not told that you  
8 were under arrest for distribution at that point;  
9 that's what you just said?

10 A. No, I was not told.

11 Q. And then my next question which I am  
12 trying to clarify is at that point were you told  
13 that they were searching your house, were you told  
14 that they were searching your house?

15 A. No, I wasn't told that. I just saw  
16 them in my house.

17 Q. Were you told that they were searching  
18 your house based on a drug buy that was done out of  
19 your house?

20 A. No. The transporting officer did not  
21 have any information for me so I had to wait on  
22 Waddell about five minutes to tell me that I have  
23 outstanding drug warrants. That is when I was  
24 informed that's what I was being arrested for.

25 Q. And you were informed of all this on

1 your patio?

2 A. Yeah.

3 Q. I'm going to show you something that  
4 I'm going to mark as State's Exhibits 1 for ID  
5 purposes. Do you recognize this, Mr. Blake?

6 A. Yes, that's my statement that I gave.

7 Q. Okay. And so that's your statement  
8 that you gave to law enforcement when -- the same  
9 day of the search warrant, right, February 22nd of  
10 2013?

11 A. Correct.

12 Q. And can you read the names that are  
13 down here as the witnesses?

14 A. Yes, Waddell and A. Miller.

15 Q. Can you read the highlighted portion?  
16 Is that your handwriting?

17 A. Yes. That's my handwriting.

18 Q. Can you read the highlighted portion,  
19 please?

20 A. It says, "Up the stairs and told us we  
21 were both under arrest for distribution of heroin  
22 and we sold over two ounces which was Tuesday  
23 February 19th."

24 Q. Thank you. So tell me about this choke  
25 hold. How is a choke hold done? Is it like this,

1 behind you?

2 A. Yes, I was handcuffed sitting in a  
3 chair and came from behind, just put me in like a  
4 choke hold like that.

5 Q. Okay. And you said you were there for  
6 over three hours?

7 A. Yes, it was roughly like three hours,  
8 they were trying to do everything they could.

9 Q. You were threatened?

10 A. I was threatened.

11 Q. You said you were entrapped?

12 A. Yeah, they was trying to entrap me.

13 Q. You said your house was being intruded?

14 A. Absolutely.

15 Q. Did you stand up when you were asked to  
16 sit down when they were talking to you about what  
17 was going on? Did you ever stand up?

18 A. Yes, I did stand up. I confirmed I did  
19 stand up.

20 Q. And you were supposed to be sitting  
21 down?

22 A. I mean they didn't give me no  
23 instructions to sit down before I stood up.

24 Q. Was there a chair on the patio?

25 A. There was a chair. That don't mean I

1 got to sit down.

2 Q. Okay. Beg the Court's indulgence.

3 (Brief pause.)

4 BY MS. LINDER:

5 Q. I just want to make sure we get this  
6 pinned down about the choke hold. Where were you  
7 on the patio? Is it a big patio like the sides of  
8 this big area? Is it a small patio?

9 A. No, it is probably like from right here  
10 maybe to that door.

11 Q. And where are the stairs? Stairs come  
12 up this way or from the side? How do the stairs  
13 come up?

14 A. Stairs come up from the side.

15 Q. From the side. And where is the door?  
16 Is the door in the center or on the left-hand side  
17 or the right-hand side where you look?

18 A. You go up the stairs and the door would  
19 be on your left side.

20 Q. Okay. Where were you seated or where  
21 were you standing when you were there?

22 A. I was not too far from the door.

23 Q. So you were like in the middle of it?

24 A. Yeah, I was in the middle of it.

25 Q. Were you standing against the wall,



1       against the railing? How did that go?

2           A.    No, I wasn't standing against the wall.

3           Q.    You what?

4           A.    I was not standing against the wall.

5           Q.    You weren't standing against the wall.

6       And when were you -- you were told why you were  
7       under arrest or told why the search warrant was  
8       happening, right?

9           A.    Correct.

10          Q.    And Waddell told you that?

11          A.    Waddell told me that.

12          Q.    So the choke hold lasted five seconds?

13          A.    Yes, approximately five seconds.

14          Q.    You just testified the choke hold was  
15       not serious?

16           A.    I mean you asked me how long it lasted.  
17       You asked me if it was serious, that's two  
18       different questions.

19           Q.    No, I understand that, Mr. Blake. Your  
20       attorney asked you the same thing. You described  
21       it. I am trying to make sure that I understand.  
22       You previously testified the choke hold was not  
23       serious?

24           A.    Um-hmm.

25          Q.    And you previously testified that it

1       lasted five seconds. I am just making sure, Mr.  
2       Blake, that I'm fully understanding everything.

3               A.     Yeah, it was -- like I said, it wasn't  
4       that serious, but it left marks on my neck, but  
5       just a show after the spurt, you know, adrenaline  
6       rushing, you know, he took a little of the wind out  
7       of me, but it was --

8               Q.     Did you ask for medical attention?

9               A.     No. I'm trying to uphold my  
10       constitutional rights and trying to stand my ground  
11       while some intruders -- I mean I am trying to do  
12       all of this at one time. It is like at that point  
13       in time you got to think, like medical attention is  
14       not on your mind. That's the farthest thing from  
15       your mind at that point.

16              Q.     Okay. Mr. Blake, when you ended up  
17       getting booked at the jail did you ask for medical  
18       attention then?

19              A.     No. That was the farthest thing from  
20       my mind at that point.

21                    MS. LINDER: I don't have anything  
22       further. Thank you very much.

23                    MR. KING: Nothing further.

24                    THE COURT: Thank you, Mr. Blake. You  
25       may step down, sir.

1 MR. KING: Your Honor, that's all the  
2 witnesses. May I proceed with argument?

3 THE COURT: You may.

4 MR. KING: Your Honor, I have handed up  
5 the case United States vs. Terry W. Thompson. That  
6 is a 667 F. Supp. 2d 758, 2009 case. This case is  
7 a federal case, it deals with the United States  
8 Constitution. It talks about there are two parts  
9 to the Fourth Amendment and search warrants. One  
10 is the warrant requirement. There is a required  
11 probable cause. There is also a requirement that  
12 the search is reasonable. And this case holds that  
13 -- this case suppresses evidence because they found  
14 that the execution of the search warrant was  
15 unreasonable. In this case when they arrived the  
16 woman is not clothed, they allow her to put on a  
17 shirt, they put her outside, I think it's in the  
18 hot sun. She asks to see the search warrant. They  
19 don't show it to her until toward the end of the  
20 search.

21 They give her a copy. They actually  
22 give her a copy of the search warrant at some  
23 point. It's just not immediately. Now, under the  
24 law of this case that I have read they are not  
25 required to give him a copy of the search warrant

1 before the search. But at some point I believe  
2 they are required to give him a copy. The statute  
3 that I admitted into evidence requires them to  
4 serve him a copy, not just leave it at the  
5 residence. The point of leaving it at the  
6 residence is if no one is there. They do a search,  
7 they don't know who the owner is, they can leave  
8 the search warrant inside the apartment.

9 But they believed it was his primary  
10 residence based on knowledge they had. But they  
11 never gave him a copy of the search warrant. And I  
12 think it is telling that they are talking about how  
13 agitated he was and that's a perfect explanation  
14 for why he might be agitated if they are not giving  
15 him documents that he is requesting. Your Honor,  
16 this does reference a United States Supreme Court  
17 case, Croh v. Ramirez which I believe frames the  
18 issue in a footnote. It talks about whether it  
19 would be unreasonable to refuse a request to  
20 furnish a warrant at the outset of the search when  
21 the occupant of the premiss is present and poses no  
22 threat to the officers safety.

23 They haven't testified that he was  
24 being violent toward them, or that he was  
25 threatening anyone. He's just -- he does have a

1 right to free speech. He has a right to speak. He  
2 is speaking his mind. They told him to shut up.  
3 There was testimony from Agent Waddell he told him  
4 to shut up at one point. I believe if they had  
5 given him a copy of the search warrant and let him  
6 see the paperwork it might have calmed him down and  
7 could have defused the whole situation.

8 I think that's the whole point of this  
9 case, Judge, to not -- starting in the very  
10 beginning, you know, the felony stop. They have  
11 their explanations for that. But, you know,  
12 according to what Mr. Blake says, he is on the  
13 phone. He hears the police and the next thing you  
14 know they are jerking him out of the car. There  
15 was testimony it happened quickly. They couldn't  
16 have given him that much time to comply with their  
17 request if they are moving in on the felony stop  
18 that happens in less than a minute.

19 So I think from the excessive force  
20 used in that takedown, then taking him back, not  
21 giving him a copy of the search warrant, I think  
22 the execution is unreasonable. And the defense  
23 would move to suppress the evidence, all evidence  
24 found as a result of this search under the United  
25 States Constitution and the South Carolina

1 Constitution. We have the same provision in our  
2 constitution about same unreasonable searches. So  
3 I would move to suppress all the evidence, Your  
4 Honor.

5 THE COURT: Thank you. Ms. Linder.

6 MS. LINDER: May it please the Court,  
7 Your Honor, here I believe we need to look at the  
8 totality of the circumstances and with that what is  
9 or is not reasonable.

10 In the case that Mr. King handed before  
11 the Court, it was there was felony traffic stops  
12 done on the target of the investigation, the male  
13 who was left. He was in custody. At that point  
14 law enforcement went into the home to -- the female  
15 who was not part of the investigation. She was  
16 then only allowed to put a shirt on, had to dress  
17 in front of officers, five hours long, outside in  
18 the heat, denied food and drink. Law enforcement  
19 did not identify themselves as law enforcement nor  
20 did they explain anything or furnish a copy of the  
21 search warrant.

22 Your Honor, I do not believe that that  
23 is the situation we have at this case in hand.  
24 First of all, talking about the reasonableness, you  
25 heard from especially Waddell, but also Miller and

1 Sergeant Bryant, you heard about them as far as all  
2 the preplanning that goes into executing a  
3 narcotics search warrant from the nexus between  
4 guns and drugs, the intel they gathered for any  
5 children, aggressive dogs, elderly, anything like  
6 that inside a residence trying to minimize the  
7 safety or minimize the danger to the community, the  
8 individual and law enforcement.

9 They also knew that Mr. Blake had prior  
10 convictions for guns and drugs, you heard the  
11 testimony, and he had a pending gun and drugs that  
12 he was on bond for at the time of this incident.

13 All those reasons you heard about the  
14 preplanning and why they decided to do the felony  
15 traffic stop. They did the felony traffic stop.  
16 At that time you heard testimony from law  
17 enforcement that Mr. Blake was informed why he was  
18 getting arrested, that he was under arrest, that a  
19 search warrant was going to be executed at his  
20 residence where he was the leaseholder.

21 From there law enforcement used his  
22 keys to get into the house. The case Mr. King  
23 handed up they rammed in the door. They used the  
24 Defendant's keys. They asked him which key is it  
25 so they weren't fumbling with keys not knowing

1        what's going on fully inside. They used his keys  
2        to do it, they were able to clear the residence.

3                As far as the choke hold and attorney  
4        requests, testimony from all the officers is that  
5        there was no choke hold, there was no raised voice  
6        demanding an attorney, there was, in fact, no  
7        request for an attorney. All of that was testified  
8        to by the officers. The apartment, there was  
9        testimony that it was very small so you could hear  
10       things inside and out. He didn't request an  
11       attorney. He was not placed in a choke hold. He  
12       was Mirandized. Even by the Defendant's own  
13       statement it was not serious if you were to believe  
14       there was a choke hold. No medical attention was  
15       ever requested for him or by him in this case. The  
16       case at hand happened in approximately an hour.  
17       Mr. Blake said three, law enforcement said  
18       approximately one hour. The case that was handed  
19       up by the Defendant cited five hours. Again, five  
20       hours, not the target, female, was not clothed, it  
21       was a very, very different situation.

22                As far as the search warrant service in  
23        this case, the Defendant was informed the reason he  
24        was getting arrested and the reason of the search  
25        warrant. He was informed that multiple times. You



1 heard testimony from law enforcement that he was  
2 informed that during the felony traffic stop at the  
3 assisted living. Further, they were told again  
4 when they were at the residence at the beginning of  
5 the search warrant execution. Mr. Blake gave a  
6 written statement that day which was read into the  
7 record which is State's Exhibit 1 for the purposes  
8 of this hearing how, in fact, he said that he was  
9 under arrest for distribution of heroin, so he knew  
10 more than just drugs or under arrest, he knew  
11 specifically what and he in his statement in his  
12 handwriting also said it was for selling heroin out  
13 of the residence within 72 hours prior to  
14 February 19th. Those are very specific. This was  
15 executed the 22nd. And he knew enough that day  
16 while at the residence to write in his statement  
17 that he was -- it was for selling drugs within  
18 72 hours, the drug deal happened on February 19th.  
19 He knew all that.

20 And I think that's significant to show  
21 that he, in fact, did know why he was there, why  
22 law enforcement was there and doing all this.

23 A copy was left -- of the search  
24 warrant was left at the residence. Mr. Blake was  
25 the leaseholder of the residence. And, frankly, he

1 was going to jail for the distributions if nothing  
2 else. Upon entering jail everything is taken into  
3 your property so I would submit that it was, in  
4 fact, safer for the detailed printout of everything  
5 for the search warrant to be left at the residence  
6 that he is the sole leaseholder and occupier on as  
7 he can get it at a later time.

8 As far as handing him a copy of the  
9 actual document while the execution was occurring,  
10 you heard testimony from Waddell and Byrant and  
11 Miller that he was talking about F'ing pigs and  
12 saying very nasty things. I believe he was  
13 described as belligerent and having an attitude.  
14 He also was cuffed behind his back. He was cuffed  
15 behind his back which would make it difficult, if  
16 not impossible, to hold the document. He was  
17 disobeying law enforcement by standing up three to  
18 four times at least was the testimony and he was  
19 cursing at law enforcement. None of those are  
20 really a recipe for handing him the document when  
21 he couldn't hold it in the first place. He was  
22 instructed and explained exactly why they were  
23 there and I believe his statement shows that.

24 Your Honor, I think based on the  
25 totality of the circumstances that this was not

1 unlawful government behavior. And suppressing a  
2 search warrant in this case would not deter  
3 unlawful government behavior because it is our  
4 position that the government behaved lawfully and  
5 reasonably within the confines of the law while all  
6 keeping in the back of their minds the safety for  
7 the community, to themselves and to those suspects  
8 in the case. Thank you, Your Honor.

9 THE COURT: All right. Anything  
10 further?

11 MR. KING: Just briefly point out that  
12 in Terry Thompson that I handed up, at the  
13 conclusion of the search Ms. Thompson was provided  
14 with a copy of the search warrant. So they  
15 suppressed even though she was eventually given a  
16 copy.

17 I think there's no dispute that he was  
18 never given or served a copy of the search warrant.  
19 There's some evidence they may have read it to him,  
20 but that's not what the law requires. The law  
21 requires that he is served a copy of the search  
22 warrant so he can see it. And part of the reason  
23 for that is it diffuses the situations to show that  
24 there is legal authority to search a residence.

25 And as far as him being belligerent,

1 there was no testimony that he was threatening  
2 anyone or he was -- he had an attitude and I think  
3 he has a right to free speech, right to speak his  
4 mind and protest. That doesn't waive his right for  
5 him to be able to get a copy of the search warrant  
6 just because he's protesting. It's a perfectly  
7 good explanation why he would be protesting if he  
8 is not served proper copies of the paperwork.

9 THE COURT: All right. Let me see the  
10 statute 17-13-150.

11 MS. LINDER: Your Honor, if I may  
12 briefly address, this statute and the warrant  
13 itself says if practicable to give a copy of it. A  
14 copy was. It was left at the residence. And  
15 everything was described to him. As I said in my  
16 initial argument to Your Honor, it was not  
17 practical based on his cuffs, his behavior, et  
18 cetera. But a copy also was furnished and he was  
19 explained verbally everything. Thank you.

20 THE COURT: I don't see that in the  
21 statute.

22 MS. LINDER: That's in the search  
23 warrant itself is the practicable.

24 MR. KING: Yes, Your Honor. I forgot  
25 to argue that. The search warrant itself the judge

1 orders to give him a copy as soon as practicable.

2 THE COURT: But the statute just says  
3 person shall be furnished with a copy of the  
4 warrant along with the affidavit of which such  
5 warrant was issued. It doesn't say anything about  
6 being practicable.

7 Okay. Thank you for your final  
8 arguments and your well-researched approach to this  
9 issue. The case of United States v. Thompson which  
10 is a district court case out of eastern -- Southern  
11 District of Ohio has a bizarre factual setting.  
12 Lions, tigers and bears no less. About the search  
13 of a resident where as y'all have pointed out the  
14 district court found first of all, that the  
15 executing agents refused to present the warrant  
16 upon request to this lady. I believe her name -- I  
17 apologize -- Ms. Thompson who was the Defendant's  
18 wife, presumably also a resident of that home  
19 lawfully.

20 But the Court found that the failure to  
21 give her a copy of the warrant upon request which  
22 is controlled by federal Criminal Rule 41 (F) was  
23 an issue left open as Mr. King pointed out in the  
24 Grubbs case footnote, the government had no reasons  
25 explaining or justifying refusal to show Ms.

1 Thompson a copy of the warrant when she asked to  
2 see it. Nor have they identified the exigent  
3 circumstances. The court found the refusal to  
4 present the warrant upon request completely  
5 unreasonable and unjustified. And that was only  
6 one factor among all the circumstances that made  
7 the search and seizure unreasonable.

8 The other factors was the fact that Ms.  
9 Thompson who apparently was naked at the time of  
10 the initial entry was forced to partially dress in  
11 plain view of 14 officers with guns pointed at her.  
12 She was then required to sit outside in the heat  
13 for approximately five hours, naked from the waist  
14 down in plain view of the same 14 officers while  
15 her home was searched. She was not permitted to  
16 put on pants or even underwear during the course of  
17 the hours long search. She went without food and  
18 water. The officers had secured the premises and  
19 had her in a confined area where spoliation of  
20 evidence would not be an issue. Despite all this  
21 she was not furnished the warrant despite repeated  
22 requests.

23 When viewed in all the circumstances  
24 the Court found execution to be unreasonable in  
25 violation of the Fourth Amendment.

1 I believe Mr. King has a good point  
2 that the reason for requiring showing the subject  
3 of the warrant a copy of it is to diffuse the  
4 tension to deescalate the confrontation between the  
5 police and the citizen.

6 This was discussed at some point in  
7 United States v Grubbs and in the footnote three of  
8 this case which cites Grubbs it talks about the  
9 fact by not furnishing a warrant upon request after  
10 the premises had been secured the possibility a  
11 confrontation will occur is more likely.

12 And Mr. Blake testified that this was  
13 his residence. That he had the right to free  
14 speech, which is true. And as many cases going  
15 back decades talk about a man's home is his castle  
16 and that's one of the underpinnings of the Fourth  
17 Amendment.

18 Given all that, however, I find in this  
19 case there was not an unreasonable search. The  
20 officers based on the credible testimony presented  
21 here today gave justifiable reasons for the way the  
22 arrest was conducted. There was no question the  
23 arrest was valid, no question search warrant was  
24 valid. There was no issue about the probable cause  
25 or anything of that nature.

1           The Defendant, Mr. Blake, had been  
2 convicted before of violent offenses or offenses  
3 that classified as violent including weapons  
4 violations, therefore, there was a risk to the  
5 officers safety, safety of the public, and  
6 therefore the entire arrest and search sequence was  
7 reasonable.

8           I don't find that the failure to give a  
9 warrant -- a copy of the warrant to Mr. Blake, put  
10 it in his hands when he was handcuffed behind his  
11 back as I understand it is enough in and of itself  
12 to deem the search unreasonable within the meaning  
13 of the Fourth Amendment. He does have a right to  
14 free speech. However, anyone with a right to  
15 speech is not absolute and it can come up against  
16 other rights and affect other rights, including  
17 your Fourth Amendment rights.

18           And that is because if a Defendant or  
19 the subject of the search becomes agitated, which  
20 Mr. Blake agreed he was agitated, hostile,  
21 uncooperative, non-compliant and that puts the  
22 entire officers safety issue in play. It could  
23 jeopardize the safety, it could jeopardize the  
24 integrity of the search if the person is  
25 interfering with it. I'm not saying there was any



1 overt interference by Mr. Blake with the search,  
2 but it was disruptive, his behavior would as the  
3 Grubbs case indicate pose a threat to the officers  
4 safe and effective performance of their mission.

5 If they had to constantly protect  
6 themselves and integrity of the search against Mr.  
7 Blake's outburst and statements then that may be a  
8 reason why they were not able to give him a copy of  
9 the warrant.

10 Now, this is somewhat of a chicken and  
11 egg problem because as Mr. King points out had they  
12 simply given him the warrant he may have had his  
13 hostility diminished to the point where he did  
14 remain peaceful throughout the search, but that  
15 didn't happen. And based on all the circumstances  
16 and overview of the entire chain of events I do  
17 find the search was conducted reasonably and  
18 professionally. It was a volatile situation. I  
19 find the evidence beyond a reasonable doubt  
20 supports that it was a volatile situation of the  
21 search based on a felony stop involving drugs  
22 involving a Defendant who had previously been  
23 convicted of drug and weapon violations and  
24 therefore posed a serious risk to public safety.

25 Based on all that I find the search was

1 reasonable within the means of the Fourth  
2 Amendment and I respectfully deny the motion to  
3 suppress. All right. That took a lot longer than  
4 I think anyone anticipated, that hearing did, so it  
5 is now 12:50 I think. I suppose we better let the  
6 jury go to lunch and reconvene at say 2:15. Or do  
7 you want to say 2:30? Give everybody enough time.

8 MS. LINDER: We have no preference.

9 THE COURT: Let's say 2:30, give  
10 everybody time. All right. Thank you very much.

11 (STATE'S EXH. 1 was marked for  
12 identification.)

13 (A luncheon recess transpired from  
14 12:48 to 2:30 p.m.)

15 (STATE'S EXH. 2-49 were marked for  
16 identification.)

17 THE COURT: Anything else before we  
18 bring the jury in?

19 MS. LINDER: Nothing from the State.

20 MR. KING: There was some photographs I  
21 went over with the solicitor and some things they  
22 are going to admit that I have some objections, so  
23 I don't know if you want to take them up as they  
24 are admitting them or now. It is like a Pyrex  
25 glass with some looks like white powder on it. But

1 there's -- as far as I know there's no chemical  
2 test showing it tested positive for drugs or  
3 anything like that. So there is some things I  
4 think they are going to seek to admit that I don't  
5 believe are relevant.

6 MS. LINDER: Judge, our response would  
7 be that because this is a PWID case we think it is  
8 important to be able to enter and discuss anything  
9 that shows indication of sales. Typically Pyrex  
10 dishes, there's a small whisk that's there, there's  
11 a scale, there's weights, there is other items,  
12 empty capsules that are all about packaging  
13 narcotics and we think that all that is important.

14 What you will hear tomorrow I guess in  
15 this case with the drug testing itself, there were  
16 two types of drugs located, a small amount of crack  
17 and a large amount of heroin. The chemist has  
18 since left. Everything has been retested and with  
19 that retest the crack amount has gone to a residue  
20 which is why we are not going with that case.

21 So I do think it is important still to  
22 have the Pyrex dishes which are used for cooking,  
23 the whisks and all those other indicia of sales and  
24 the intent to distribute.

25 THE COURT: Okay. I will overrule the

1 objection. I assume that some chain would be  
2 established on the Pyrex dish and that it's in the  
3 current -- the state it is in now was the state it  
4 was in when it was seized. I don't think the  
5 presence of untested white powder would be  
6 something that would unfairly prejudicial to the  
7 Defendant. There could be all kinds of  
8 explanations for that, some of which might be good  
9 for one side and bad for the other and vice versa.  
10 So anything else?

11 MR. KING: No, Your Honor.

12 THE COURT: All right. You can bring  
13 the jury in, please, sir.

14 Let me just tell you since I'm not from  
15 around here, any witnesses that testify are  
16 automatically excused. You don't have to ask to be  
17 excused unless you want them not to be excused.  
18 You don't have to ask me permission to approach the  
19 witness and no speaking objections. Other than  
20 that I have no neurosis.

21 (Whereupon, the jury entered the  
22 courtroom at 2:45 p.m.)

23 THE COURT: Y'all have a seat. Ladies  
24 and gentlemen, good afternoon. I don't think I  
25 introduced myself to you this morning. Some of you

1 may have been in the earlier jury panel that I  
2 selected yesterday in a civil case, but I am Gary  
3 Hill. I'm one of the circuit judges and I'm  
4 actually from Greenville and as the phrase circuit  
5 judge suggests, we travel around the state  
6 periodically and the constitution requires that we  
7 hold court in different circuits and I'm glad to be  
8 here with you in Charleston this week.

9           You probably know that you got selected  
10 to be a juror because you are either licensed to  
11 drive or you're registered to vote. You got a card  
12 issued by the highway department.

13           You probably are curious as to why you  
14 got selected for this particular case. And the  
15 reason is is because both sides in this case  
16 believe you can be fair and impartial and you can  
17 decide this case based strictly on the evidence and  
18 the law and not any kind of outside influence.

19           Now, any time there is a trial in  
20 circuit court there are always two judges. There's  
21 the judge of the facts and the judge of the law.  
22 And you are the judge of the facts. I'm going to  
23 tell you a little more about your job and my role  
24 in this as well. First I'm going to ask the clerk  
25 to swear you in.

1 (Jury sworn.)

2 THE COURT: So our Constitution says  
3 that there is a judge of the law, that's the role  
4 that I fulfill, and the judge of the facts, and  
5 that's the role that you fulfill. And our  
6 Constitution says that as the judge of the law I  
7 can't comment on the facts of the case. Even if I  
8 had an opinion on the case I wouldn't be able to  
9 share it with you. So don't construe anything I  
10 might say or do during the trial as any indication  
11 as to what I think your verdict should be or what  
12 the facts should be.

13 Now, my job as the judge of the law is  
14 much easier than yours so let me tell you what I  
15 have to do during the trial. Primarily I have to  
16 do two things. First I have to rule on the  
17 admissibility of evidence. I know very little  
18 about the case. That's just the way our system is  
19 set up. But there may be objections to evidence  
20 during this trial and don't hold it against the  
21 lawyers for making objections. They have a sworn  
22 obligation to do that, an ethical obligation if  
23 they think the evidence is improper under the law.

24 My job is to determine whether the  
25 evidence is proper under the law if an objection is

1 made. Usually I can do that on the spot.  
2 Sometimes we have to take a break so I can discuss  
3 it if things get a little complicated, but  
4 nevertheless that is my first job as the judge of  
5 the law, to rule on the admissibility of evidence.

6 The second job I have as the judge of  
7 the law is to make sure the trial runs smoothly and  
8 at the end of the trial that I give you instruction  
9 on what the law is that applies to the facts of  
10 this case. So I will instruct you on the law at  
11 the end of the trial.

12 Now, you are the judges of the facts  
13 and as I said your job is much more difficult than  
14 mine. You decide the facts by determining the  
15 facts from the evidence in the case. And evidence  
16 consists of two sources. The first source is the  
17 one you are probably most familiar with, that is  
18 sworn witness testimony. The second source is by  
19 way of an exhibit. An exhibit is simply a physical  
20 or tangible object, it might be a map or a  
21 photograph, something of that nature, but you will  
22 know it is an exhibit and you'll know it is  
23 evidence you can use to determine the facts in the  
24 case because it will be back in the jury room with  
25 you at the end of the trial.

1                   Those are the only things you can use,  
2 ladies and gentlemen, to determine the facts in  
3 this case. Sworn witness testimony, and an  
4 exhibit. So nothing else can enter your mind in  
5 making your decision about what the facts are.

6                   Now, as the judge of the facts you will  
7 by necessity have to determine the credibility of  
8 the evidence. That means for every witness who  
9 testifies, every exhibit that's admitted you will  
10 have to determine its believability.

11                  In the case of a witness who testifies  
12 there are many things you can use to decide  
13 credibility. You can consider how their testimony  
14 stacks up against the other evidence in the case,  
15 is it consistent or inconsistent, you can determine  
16 credibility based on a party's demeanor on the  
17 stand, whether their testimony is hesitant or  
18 forthright or consistent. You may consider if the  
19 witness has an interest in the outcome of this case  
20 or some kind of bias or prejudice towards someone  
21 involved in the case. And you may use whatever you  
22 use in your day-to-day life to determine whether  
23 someone is believable because your common sense did  
24 not suddenly evaporate when you walked into the  
25 courthouse lobby.



1                   Now, bear in mind as I told you at the  
2 outset this is a criminal trial. And there are  
3 certain principles that I'm going to repeat to you  
4 because they are so important with criminal trials.  
5 The first is that the indictment in this case that  
6 I read to you accuses Mr. Blake of a crime. This  
7 indictment is not evidence. Remember, it is not  
8 exhibit. It is not a witness. So it doesn't -- it  
9 is not something you can use to determine the facts  
10 of this case. Mr. Blake pled not guilty to this  
11 indictment. And our Constitution and system of  
12 justice requires that he is presumed innocent not  
13 just now, but throughout the trial and even into  
14 your deliberations.

15                   And that presumption of innocence can  
16 only be removed if and only if you as a jury  
17 unanimously find the State has met each and every  
18 element, has proven each and every element of the  
19 crime beyond a reasonable doubt. So that is the  
20 burden of proof that the State and the State alone  
21 bears.

22                   And as I said, Mr. Blake, like any  
23 other person charged with a crime, has no burden of  
24 proof. Doesn't have to offer any evidence or  
25 explanation whatsoever during the course of this

1 trial.

2 Now, some of you may have served as  
3 jurors before. I will just ask if you have served  
4 as a juror in a criminal trial before if you can  
5 just raise your hand. Okay. You may know from  
6 your experience about the structure of a criminal  
7 trial, but just to kind of demystify the  
8 proceedings for you, let me go over that with you  
9 briefly.

10 In just a moment you are going to hear  
11 the opening statement by the solicitor or  
12 prosecutor and she is going to go first because the  
13 State bears the burden of proof as I have said and  
14 she will give you a brief outline or road map of  
15 what she thinks the evidence will be in this trial,  
16 what the issues are. Then the Defendant through  
17 his attorney will have the opportunity, but not the  
18 obligation, to give an opening statement. Then we  
19 will go into the evidence presentation of the trial  
20 where again the State going first will present  
21 their evidence which the defense may confront and  
22 then after the State completes its presentation of  
23 evidence the defense has the opportunity, but again  
24 not the obligation, to present any evidence that he  
25 wishes to and then you'll hear the closing

1 arguments where the lawyers tell you what they  
2 think the evidence showed and what your verdict  
3 should be. And then I will give you the  
4 instructions on the law that you are to apply to  
5 the facts in the case and then you will go back and  
6 deliberate, determine the facts, take the law as I  
7 give it to you and apply it to the facts and you  
8 will be able to reach a verdict.

9 Now, until we get to that point do not  
10 discuss this case with anyone or among yourselves.  
11 These trials are often like jigsaw puzzles. And  
12 they must be presented one piece at a time and you  
13 certainly wouldn't try to solve a puzzle if you had  
14 all the pieces in the box. You don't have all  
15 these pieces until you have heard all the evidence  
16 and heard the closing arguments and I have given  
17 you the law. So keep an open mind. Don't talk  
18 about the case, don't do any outside investigation.  
19 You must confine your decision to the evidence you  
20 hear in open court during this trial.

21 So thank you for your attention. The  
22 lawyers we have in the case, they are advocates for  
23 their clients. They are going to zealously  
24 represent them to the best of their ability. You  
25 and I, ladies and gentlemen, we are not advocates.

1 Our job is to be neutral and your job is to  
2 determine facts from the evidence and determine  
3 whether the State has met its burden of proof  
4 beyond a reasonable doubt. So, yes, ma'am.

5 MS. LINDER: Thank you, Your Honor, may  
6 it please the Court. Good afternoon, ladies and  
7 gentlemen. We are here today because drugs are  
8 illegal. It's illegal to possess drugs, and it's  
9 illegal to possess drugs with the intent to  
10 distribute them. In the State of South Carolina  
11 and federally heroin is an illegal drug. You're  
12 all here today with us because back on February  
13 the 22nd of 2013, a search warrant was executed at  
14 the Defendant's address at [REDACTED] Apartment [REDACTED] Jobee  
15 Drive which is in the West Ashley area of  
16 Charleston County.

17 You will hear testimony from a variety  
18 of witnesses and you'll hear about all the  
19 preparation that was done before executing this  
20 lawful search warrant. The preparation that was  
21 based on the investigation, and information,  
22 intelligence received and you will also hear about  
23 the decisions that were made how to go about  
24 executing this search warrant in this case on the  
25 Defendant's residence.

1           You'll hear about presurveillance which  
2 is a typical thing done before entering a residence  
3 to sit, to watch, to make sure someone is still  
4 associated with that address, to make sure if the  
5 people are still around exiting and entering,  
6 things like that. This is all about assessment of  
7 safety not just for law enforcement, but also for  
8 individuals who are parties, plus the community as  
9 a whole.

10           You'll also hear how in this case it  
11 was determined that a felony traffic stop was  
12 needed in order to secure this Defendant, Mark  
13 Blake, safely before the execution of the search  
14 warrant.

15           You'll hear how during that felony  
16 traffic stop he was non-compliant. He was  
17 non-compliant and officers at that time explained  
18 to him the basis for the search warrant that was  
19 about to take place on his residence.

20           You'll also hear about during the  
21 beginning parts of the execution of the search  
22 warrant Mr. Blake was brought back to his home, and  
23 officers attempted again to explain to him the  
24 process of what was happening, why things were  
25 going on, and again, you'll hear how the Defendant,

1 Mark Blake, was non-compliant. You will hear how  
2 he got belligerent, how he kept standing up. How  
3 he was cussing, a variety of things that he was  
4 doing. Then most importantly, you are going to  
5 hear about the search of the residence. A search  
6 of his residence, two bed one bath apartment  
7 somewhat smaller in size. You'll hear that the  
8 Defendant in this case was the sole leaseholder on  
9 that apartment for that time frame. And you will  
10 hear how inside the apartment there was paperwork  
11 with his name on it, with the date that ties to  
12 that approximate time, and he had multiple IDs  
13 inside of his.

14               You will also hear most importantly  
15 about the heroin that was found. There was a  
16 container with many, many bundles of heroin and all  
17 the drug lingo, a bundle, heroin, weights and  
18 costs, you'll learn of that throughout the course  
19 of this trial. There was a container containing  
20 multiple bundles of heroin at his residence all  
21 packaged for sale. There were also empty bindles,  
22 waxing bindles that is used in packaging of  
23 narcotics. There was scales, there were weights  
24 for calibration, there were empty capsules, there  
25 was a firearm magazine, all items that were located

1 at his residence during the search warrant  
2 execution.

3 As I said moments ago, drugs are  
4 illegal. They are illegal. It's illegal to  
5 possess them or posses them with intent to  
6 distribute them. Heroin is illegal and that's why  
7 we are here today. This Defendant, Mark Blake,  
8 possessed the intent to distribute heroin back on  
9 February the 22nd of 2013. Thank you.

10 THE COURT: Thank you, Ms. Linder. Mr.  
11 King.

12 MR. KING: There is a war on drugs  
13 going on out there. Like any war there are  
14 casualties like Mr. Blake. And in war sometimes  
15 people go too far. And we hope that the police do  
16 their job and do the right thing, but just like all  
17 of us, the police are human and they are flawed  
18 like we all are.

19 The State has to prove that he, Mark  
20 Blake, possessed heroin and that he had an intent  
21 to distribute it. The police didn't arrest him  
22 with any heroin on him. He had no drugs or  
23 paraphernalia when he was arrested. He did not  
24 have any large amounts of cash on him when he was  
25 arrested. There's no large amounts of cash found

1 at the apartment. There's no evidence -- you are  
2 not going to hear any evidence that there are any  
3 fingerprints on this bowl where they said they  
4 found the heroin, on a plastic bag inside the bowl  
5 on any of these little, small packages of heroin,  
6 on anything that was found they claim was inside  
7 the residence.

8 In a criminal case the burden of proof  
9 is very high. They don't have to prove that he  
10 probably did it or maybe did it. They have to  
11 prove beyond a reasonable doubt that he committed  
12 this crime. So the defense is just asking that you  
13 keep an open mind, listen to the evidence and we  
14 think at the end you'll see that Mr. Blake is not  
15 guilty.

16 THE COURT: Thank you, Mr. King. Ms.  
17 Linder, you may call your first witness.

18 MS. LINDER: Thank you, Your Honor.  
19 May it please the Court, the State calls agent  
20 Frank Waddell.

21 FRANK WADDELL  
22 having been duly sworn, testifies as follows:

23 THE CLERK: Please state your full name  
24 and spell your last name.

25 THE WITNESS: Frank Waddell, last name



1 is W-A-D-D-E-L-L.

2 DIRECT EXAMINATION

3 BY MS. LINDER:

4 Q. Good afternoon.

5 A. Good afternoon.

6 Q. Can you tell the jury what's your  
7 occupation?

8 A. I'm a law enforcement officer here in  
9 South Carolina.

10 Q. And what's your title? Who do you work  
11 for?

12 A. I'm currently working with the 15th  
13 Circuit Drug Enforcement Unit. 15th Circuit is  
14 Horry and Georgetown Counties of South Carolina.

15 Q. And who was your employer back in  
16 February of 2013?

17 A. My employer was the Hannahan Police  
18 Department.

19 Q. What unit were you assigned?

20 A. I was personally assigned to the  
21 Charleston County Sheriff's Office Metro Major Case  
22 Unit Narcotics Definition as a task force officer.

23 Q. And what were your duties as a task  
24 force officer with Metro?

25 A. I was a -- primarily a drug

1 investigator. We also investigated other crimes  
2 that were being major crimes, but the primary  
3 function of our unit was narcotics investigations.

4 Q. And can you tell the jury about your  
5 education, any special trainings, skills, awards,  
6 things like that that you have received?

7 A. I received extensive training in law  
8 enforcement investigations, primarily drug  
9 investigations. Trainings provided by the federal  
10 government as well as state and local. I have  
11 received multiple awards such as --

12 MR. KING: Objection, bolstering.

13 THE COURT: Overruled.

14 BY MS. LINDER:

15 Q. You may answer.

16 A. Received awards such as officer of the  
17 year, officer of the quarter, officers of merit  
18 provided or awarded by Fraternal Order of Police.  
19 I have received national recognition awards from  
20 when I was doing work as a K9 handler through  
21 national organizations.

22 Q. How long overall have you been with law  
23 enforcement?

24 A. I'm in my twelfth year.

25 Q. And how many drug cases have you been

1 associated with throughout your career?

2 A. Well over a thousand.

3 Q. Were you working back on February  
4 the 22nd of 2013?

5 A. Yes, I was.

6 Q. And did you have the occasion to become  
7 involved in the investigation of this case, the  
8 State versus Mark Blake, in any way on that date?

9 A. Yes, I did. I was the case agent.

10 Q. And on that day how were you first  
11 brought into the case as the case agent? What was  
12 -- were you executing a search warrant that day?

13 A. Yes, I was executing a search warrant  
14 stemming from an ongoing investigation.

15 Q. And where was that search warrant  
16 executed?

17 A. In the West Ashley area of Charleston  
18 County at [REDACTED] Jobee Drive in West Ashley, is an  
19 apartment complex, Ashley Town Village if I am not  
20 mistaken.

21 Q. And can you kind of explain to the jury  
22 how you, how a metro task force officer, how you go  
23 about and what you do to prepare for a search  
24 warrant?

25 A. There are several elements of or facets

1 of the investigation leading up to the day that  
2 would culminate in a search warrant being executed  
3 and a physical arrest being made, somebody being  
4 taken into custody. Aside from investigating the  
5 criminal acts there are other considerations for  
6 assuring that the location you were looking at is  
7 directly associated with the subject or the crime  
8 that you are investigating, who may also reside at  
9 that location, safety concerns such as elderly or  
10 children or aggressive animals that we may  
11 encounter. There's typically extensive  
12 surveillance prior to that date to corroborate  
13 intelligence that we are getting by other  
14 investigative means.

15 Q. And the day of the search warrant did  
16 you conduct any presurveillance?

17 A. Yes, we do.

18 Q. Can you explain to the jury what is  
19 presurveillance?

20 A. Presurveillance is surveillance that is  
21 conducted on a location that you have determined to  
22 be associated with this investigation that is done  
23 prior to an operation, whether that operation is an  
24 arrest, search warrant of a location, surveillance  
25 is done in those moments leading up to the actual

1 operation being executed.

2 Q. When you are preparing for a search  
3 warrant execution is it just you doing it? How  
4 many people are involved?

5 A. There's numerous people involved as a  
6 member of the team, and there are several roles  
7 that are involved. As a case agent I would  
8 delegate responsibilities to other members of my  
9 team such as who is going to be evidence custodian,  
10 who is going to be perimeter units in case somebody  
11 was to run perhaps on the outside. You have an  
12 entry team that's going to actually make entry into  
13 the residence. You have surveillance and  
14 presurveillance positions. There are several roles  
15 and responsibilities that are filled by the case  
16 agent through delegation.

17 Q. And in this case what was the basis for  
18 the search warrant?

19 A. The investigation included controlled  
20 purchases.

21 MR. KING: Objection, Your Honor. 404

22 (b). May we approach?

23 THE COURT: Yes.

24 (Off-the-record bench conference.)

25 THE COURT: Okay. I will sustain the

1 objection. Ladies and gentlemen, there may be  
2 times during the trial where, as I said, when  
3 objections are made and I have to rule on whether  
4 the evidence is proper under the law. I have just  
5 concluded that evidence was not proper and, in  
6 fact, it should be stricken from the record and the  
7 last question and answer are not part of the record  
8 in this case, not something you can use to  
9 determine the facts.

10 So you may proceed. Yes, ma'am.

11 MR. KING: Your Honor, may we approach  
12 briefly one more second?

13 THE COURT: Sure.

14 (Off-the-record bench conference.)

15 BY MS. LINDER:

16 Q. On this case in particular at Jobee  
17 Drive, you had a lawful search warrant, correct?

18 A. Correct.

19 Q. And before making entry that day was  
20 any presurveillance conducted?

21 A. Yes, there was.

22 Q. Can you explain that a little bit,  
23 please?

24 A. Myself and I assigned another detective  
25 in our unit to assist me with postioning ourselves

1 at a point of observation to the residence that was  
2 referenced in the parking lot so that we could see  
3 the Defendant leave the residence and attempt to  
4 take him into custody off property instead of  
5 inside the residence.

6 Q. And what determination did you make as  
7 the case agent about the manner in which you were  
8 going to take the Defendant into custody?

9 A. The investigation gave us cause to want  
10 to effect the arrest outside of the residence and  
11 in doing so we determined to conduct what is  
12 considered or commonly referred to as a felony  
13 traffic stop.

14 Q. And can you explain why or how a felony  
15 traffic stop is conducted?

16 A. Typically the reason why it is  
17 conducted is due to a heightened risk or threat  
18 assessment that's being conducted on that situation  
19 or any particular subject involved that we  
20 determine poses a higher risk. To mitigate those  
21 risks, then we conduct this operation or this  
22 takedown in a manner that we have trained for  
23 extensively to limit the risk of injury to both us,  
24 members of the community, as well as subjects that  
25 we are actually arresting.

1           Q.    So this day of when presurveillance was  
2           occurring, was this nighttime, early morning, when  
3           was this?

4           A.    This was in the afternoon.  It was  
5           daylight hours.

6           Q.    And during the presurveillance did you  
7           see this Defendant, Mark Blake?

8           A.    Yes, I did.

9           Q.    And what did you see him do?

10          A.    I saw him exit the residence and enter  
11          a vehicle that I knew to be associated with my  
12          investigation and then leave that apartment complex  
13          area.

14          Q.    And what happened when he left the  
15          apartment complex area?  Did somebody stay on the  
16          house?

17          A.    Yes.  The other detective that I had  
18          assigned the presurveillance with myself was in a  
19          separate vehicle.  He stayed in the parking lot to  
20          secure to make sure no other persons come or go or  
21          gain further intelligence if perhaps there was  
22          other occupants in the residence, things of that  
23          nature.  And I followed him away from that location  
24          in my point vehicle.

25          Q.    So you followed him.  Can you explain



1       how the felony traffic stop is typically done? How  
2       it is specifically done in this situation?

3           A.     Due to the heightened threat assessment  
4       and risk associated with either who we are dealing  
5       with or the nature of what we are dealing with, a  
6       felony traffic stop is generally done where you  
7       stop the car or pinch a car in by your vehicles  
8       coming in from directions to limit access for  
9       fleeing that scene. Guns are typically drawn  
10      already when we encounter them, and start giving  
11      them clear orders loudly to show us their hands, to  
12      exit the vehicle, to get down on the ground in an  
13      effort that we can then approach safely and get  
14      them secured in handcuffs.

15           Q.     And are there unmarked cars, marked  
16      cruisers, what vehicles were utilized on this date?

17           A.     Both. There were unmarked vehicles  
18      like the one that I had been in the parking lot  
19      occupying on my presurveillance and we also had a  
20      marked police cruiser, a Charleston County  
21      Sheriff's Office marked police cruiser with us.

22           Q.     And what are you wearing --

23           A.     We were wearing --

24           Q.     -- when you do this?

25           A.     -- our assigned duty outfit which is a

1 black shirt with gold letters that say sheriff's  
2 office down the sleeves and on the front and back  
3 and a tac vest is what we refer to it as a  
4 bulletproof vest that's sectioned in outer  
5 carriers, some that you see concealed under a shirt  
6 that also says sheriff on it.

7 Q. And when the traffic stop was conducted  
8 back on February the 22nd and Mr. Blake was pinched  
9 in I believe you said, was he compliant with  
10 orders?

11 A. No, he was not.

12 Q. Can you explain what happened as a  
13 result of his non-compliance? What were you forced  
14 to do?

15 A. When he was not showing us his hands he  
16 was actually on the cell phone and would not get  
17 off the phone. He was not showing his hands, not  
18 exiting the vehicle. We then made the decision to  
19 approach the vehicle and physically remove him from  
20 the vehicle onto the ground and secured him in  
21 handcuffs.

22 Q. And did you tell the Defendant at some  
23 point during the felony stop about the search  
24 warrant that was about to be conducted at his place  
25 of residence?

1 A. Yes, I did.

2 Q. I would like to move to the actual [REDACTED]  
3 Jobee Drive Apartment [REDACTED] for the execution. What  
4 type entry was done by law enforcement to get into  
5 the residence?

6 A. Due to the fact that we had already  
7 taken into him custody and his vehicle was there  
8 and we are able to obtain his keys, we made what we  
9 refer to as a soft entry, meaning that we used the  
10 key to enter his residence and did not use any sort  
11 of battering ram or any other sort of distraction  
12 devices.

13 Q. And can you just describe to the jury  
14 briefly about the layout of the apartment, the  
15 size, all of that?

16 A. It's within a building structure that  
17 contains several apartment style homes. It's a  
18 second level so you have to walk up some stairs to  
19 get to the front door. Being it's a second level  
20 it's a one story or one level apartment, two  
21 bedrooms, kitchen area, living room or den area,  
22 pretty standard two bedroom apartment layout.

23 Q. At this time I will approach and I am  
24 going to hand you State's Exhibits 2 and 3. If you  
25 can take a look at those, please.

1 A. (Witness complies with request.)

2 Q. Do you recognize those?

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

4 Q. And do they fairly and accurately  
5 represent what's being depicted?

6 A. Yes, they do.

7 Q. How are you familiar with that?

8 A. From the investigation into this matter  
9 we identified the apartment as the residence  
10 belonging to the Defendant which is noted here on  
11 the map on both pages.

12 Q. At this time the State would seek to  
13 admit State's Exhibit 2 and 3 into evidence.

14 MR. KING: I have no objection.

15 THE COURT: They're in evidence.

16 (STATE'S EXH. 2 and 3, Google maps, in  
17 evidence.)

18 BY MS. LINDER:

19 Q. You can look behind you or there is a  
20 screen in front of you.

21 A. Yes, ma'am.

22 Q. Can you explain what this depicts to  
23 the jury?

24 A. The area surrounding the little red  
25 icon marker, you can see that on the map, this area

1 is going to be the area of the apartment complex  
2 surrounding. There is some -- as you can see on  
3 the outside of that circle, Jobee Drive makes a  
4 horseshoe here. The interior of that horseshoe in  
5 the area immediately surround his apartment  
6 building, his apartment building being marked by  
7 the original red marker.

8 Q. And do you see any major roads on that  
9 map that you are familiar with?

10 A. Ashley River Road.

11 Q. At this time I will show you State's  
12 Exhibit 3. Can you tell the jury what that is?

13 A. This is an aerial view or overhead view  
14 of that interior of the horseshoe of that immediate  
15 area of the apartment complex around his building.

16 Q. Now, when you were conducting  
17 presurveillance that day, can you show on the map  
18 and touch the screen, however you would like to  
19 show the jury, where you were to be conducting that  
20 presurveillance to see the Defendant exit?

21 A. Yes. I had another detective in this  
22 area canvassing the trees and I was right over here  
23 in the area.

24 Q. It's hard with the trees. Is that a  
25 drive-through; is there a barrier?

1           A.     Right where your hand was just going is  
2     an open thoroughfare through the complex.

3           MR. KING: I have no objection.

4     BY MS. LINDER:

5           Q.     At this time I would like to show you  
6     State's Exhibit 4 and 5, if you can please take a  
7     look.

8           A.     (Witness complies with request.)

9           Q.     Do you recognize those?

10          A.     Yes.

11          Q.     How do you recognize them?

12          A.     It's the front exterior view of the  
13     apartment in question.

14          Q.     Does it fairly and accurately depict  
15     the building at [REDACTED] Jobee Drive here in Charleston  
16     County?

17          A.     Yes, they do.

18                 MS. LINDER: Your Honor, at this time  
19     the State would seek to admit State's Exhibit 4 and  
20     5 into evidence.

21                 MR. KING: Just preserve my pretrial  
22     objections in the motion to suppress.

23                 THE COURT: Yes, sir, Mr. King.  
24     They're in evidence.

25                 (STATE'S EXH. 4-5, photos, in

1 evidence.)

2 BY MS. LINDER:

3 Q. This is State's Exhibit 4. Can you  
4 tell the jury what that picture shows?

5 A. This is the stairway from the ground  
6 floor that would approach the front door. This is  
7 a little porch stoop area. This side right here is  
8 going to be your front door entrance and then this  
9 side here is just a window. That is not an actual  
10 wall access point to the residence. You have a  
11 window and a door.

12 Q. And then State's Exhibit 5, can you  
13 explain what that shows?

14 A. This is a wider angle view of that  
15 front exterior view of the apartment building from  
16 the parking lot area.

17 Q. Can you circle which apartment was the  
18 one that was the search warrant?

19 A. This is the front door to the apartment  
20 we were entering.

21 Q. At this time I'm going to show you  
22 State's Exhibit 6, 7, 8, 9, 10, 11, 12, and if ask  
23 you can look at 6 through 12.

24 A. (Witness complies with request.)

25 Q. Also adding State's Exhibit 57 to that

1 stack for you to review. Do you recognize those?

2 A. Yes, ma'am.

3 Q. How do you recognize them?

4 A. These are photographs of the front door  
5 and then subsequent to that of the interior of the  
6 referenced apartment.

7 Q. Do they fairly and accurately represent  
8 the apartment as it was back on February the 22nd  
9 of 2013?

10 A. Yes, they do.

11 MS. LINDER: Your Honor, the State  
12 would seek to admit State's Exhibits 6 through 12  
13 and 57.

14 MR. KING: Renew my pretrial motions.

15 THE COURT: Okay. They're in evidence.  
16 Thank you.

17 (STATE'S EXH. 6-12 and 57, photos, in  
18 evidence.)

19 BY MS. LINDER:

20 Q. You may explain, what does this picture  
21 show?

22 A. Shows the exterior of the front door to  
23 the residence as viewed if you were standing on the  
24 stoop or that front level at the top of the  
25 stairwell.



1 Q. And is the door damaged in any manner?

2 A. It is not damaged due to the fact that  
3 we did not execute a dynamic entry.

4 Q. State's Exhibit 7, what does that show?

5 A. This is the view as you open the front  
6 door from that front door area looking into the  
7 residence.

8 Q. And what's the point of having these  
9 photographs taken of the residence?

10 A. Prior to any searching being done we  
11 commonly do what we call overall photographs where  
12 we photograph the entire interior of the apartment  
13 so that we can document the condition it was in  
14 prior to our arrival or prior to any searches being  
15 done or anything being manipulated in the house.

16 Q. State's Exhibit 8, can you explain what  
17 that shows?

18 A. This is the kitchen view from the  
19 entranceway to the kitchen.

20 Q. State's Exhibit 9?

21 A. Same, just a view moved to the left of  
22 the previous picture.

23 Q. 10?

24 A. The living room or den area.

25 Q. State's Exhibit 11?

1           A.    This is a view if you can see to the  
2 right is the den area. That is a view from the  
3 little hall that would be leading back into a  
4 bedroom.

5           Q.    State's 12?

6           A.    This is one of the two bedrooms.

7           Q.    State's 57?

8           A.    This is another bedroom.

9           Q.    When you are executing a search warrant  
10 such as this one at [REDACTED] Jobee, what type of items  
11 are you looking for?

12          A.    Being this is a drug investigation  
13 we're obviously looking for drugs, elicit drugs.  
14 We are also looking for items that would be  
15 indicative of sales or distribution or trafficking  
16 of those drugs. Also we commonly come across items  
17 such as ledgers or written copies of who owes  
18 money, who is a source of supply. We find shipping  
19 labels. A lot of illegal narcotics are actually  
20 sent from point A to point B through our mail  
21 system versus hand delivered. There's a direct  
22 nexus between firearms and weapons so we are always  
23 looking for unlawfully possessed or illegal  
24 firearms and other weapons.

25          Q.    What indicators were there to you

1 through training and experience that indicate  
2 packaging and sales of narcotics?

3 A. There's a lot -- different drugs kind  
4 of have a common way they're packaged, heroin being  
5 one of those drugs. It has usually a distinct  
6 manner of packaging. So we are looking for those  
7 items of packaging, also looking for scales.  
8 Things that are used to calibrate scales, to show  
9 that -- they want to make sure if they are involved  
10 in distribution that they are selling what they  
11 intend to sell as it is a business with financial  
12 gains. They are not wanting to arbitrarily sell  
13 certain amounts.

14 Q. When you arrived at Jobee Drive that  
15 day, did you ever address the Defendant?

16 A. Yes, I did.

17 Q. And where did you speak with him at  
18 first?

19 A. On the front stoop of his residence.

20 Q. And what did you tell him about while  
21 on the front stoop or front patio? What did you  
22 explain to him was occurring?

23 A. That we were executing a lawful search  
24 warrant at his residence which culminated from my  
25 active drug investigation.

1 Q. And did you Mirandize him?

2 A. Yes, I did.

3 Q. And how did you Mirandize him?

4 A. I carried with me a department issued  
5 preprinted card that has the Miranda rights written  
6 on them which I read directly from so it eliminates  
7 human error of me possibly forgetting something or  
8 leaving something out.

9 Q. And was he detained at the time?

10 A. Yes, he was.

11 Q. And how was he detained?

12 A. He was handcuffed behind his back and  
13 seated in a chair on the front just outside the  
14 front door of the residence.

15 Q. And when you were telling him about  
16 everything at Jobee and giving him instructions was  
17 he compliant then?

18 A. No, he was not.

19 Q. And can you explain that?

20 A. He was becoming very agitated and  
21 belligerent and trying to talk over us, being very  
22 loud and using profane language and was just in a  
23 general agitated or aggravated state of mind.

24 Q. He was agitated, he was belligerent.

25 Did you punch him? Did you put him in a choke

1 hold? Did you do anything really aggressive like  
2 that to him?

3 A. Absolutely not.

4 Q. Did you cuss at him?

5 A. No, I did not.

6 Q. Did you try to explain to him about the  
7 search warrant going on inside the residence?

8 A. Yes, I did.

9 Q. Since this arrest back in 2013 have you  
10 had any contact from this Defendant?

11 A. Yes, I have.

12 Q. How so?

13 A. I received a considerable amount of  
14 time after this, I'm not sure of the exact date,  
15 but I received a handwritten lawsuit that he filed  
16 without an attorney suing me in civil court.

17 Q. And what's the status of that civil  
18 suit?

19 A. A federal judge has placed a stay on  
20 that charge pending the outcome of criminal  
21 charges.

22 Q. And has knowing about that handwritten  
23 lawsuit that he filed affected anything here today?

24 A. Absolutely not.

25 Q. So let's go back to the execution of

1 the search warrant on Jobee. Was anything of  
2 interest found that day during the execution?

3 A. Yes, there was.

4 Q. What items of interest were found that  
5 day?

6 A. There was a considerable amount of  
7 packaging supplies, scales, calibration, tools for  
8 the scales, illegal drugs, and a magazine that  
9 belonged to a firearm.

10 Q. And can you explain to the jury a  
11 little bit about heroin? Heroin is something that  
12 -- if you can just explain to them what is a  
13 typical serving size, cost, packaging, all of that.

14 A. Yes, ma'am. The heroin is sold in a  
15 couple of different ways. My investigation was in  
16 the powdered heroin. There is also you may have  
17 heard about black tar heroin which is more of a tar  
18 substance. Our case was in powder heroin which is  
19 a brown powder substance. It is commonly packaged  
20 the most similar thing I can explain to you to  
21 paint a picture in your mind is a BC Headache  
22 Powder. That's a little piece of wax paper, we  
23 call them bindles. In that bindle of wax paper  
24 they put a small quantity, usually varies between  
25 0.01 to .03 grams of heroin in each bindle due to

1 the fact that heroin is very a strong substance.  
2 It's not sold to the end user in large quantities  
3 typically. Each bindle has a very small amount.

4 Those wax paper bindles are typically  
5 packaged in a collection of ten. That packaging of  
6 ten bindles is commonly referred to as a bundle.  
7 That can explain that without being confusing.

8 Q. How much would one of those bindles,  
9 one of those servings, how much would that cost  
10 somebody to purchase?

11 A. Different areas different times, but  
12 generally the bindle is going to be ten to \$15 a  
13 bindle. So a bundle of ten would likewise be a  
14 hundred to \$150 for that bundle of ten.

15 Q. In this case did you locate any  
16 paperwork relating to this Defendant?

17 A. Yes, we did. We located miscellaneous  
18 paperwork such as I believe one of them was a water  
19 bill in the Defendant's name with that address on  
20 it.

21 Q. And are you aware of the leaseholder  
22 for the time period on Jobee Drive?

23 A. It was the Defendant, Mark Blake.

24 Q. Any other named leaseholder?

25 A. No, not to my knowledge.

1 Q. And you had mentioned a magazine.

2 Where was the magazine located in the case?

3 A. The magazine was located in the closet  
4 in a shoe box or a box of some sort that contained  
5 calibration tools that you would use to calibrate  
6 your scales so that you insured you are selling the  
7 intended amount that you're looking to sell. And  
8 identification cards, state issued ID of the  
9 Defendant.

10 Q. And did you request any additional  
11 testing of that firearm magazine once it was taken  
12 into evidence?

13 A. Yes, I did.

14 Q. And what were the results of that?

15 A. There were no latent prints able to be  
16 lifted.

17 Q. And the heroin in this case, where was  
18 the heroin located?

19 A. The heroin was located in the  
20 refrigerator in a Tupperware bowl and inside that  
21 bowl was a quantity of packaged heroin and rice  
22 which as you may be familiar with some people do  
23 it --

24 MR. KING: I just object to referring  
25 to it as heroin at this point. There has been no



1 testimony from a chemist.

2 THE COURT: All right. Sustained.

3 BY MS. LINDER:

4 Q. The substance that you believed to be  
5 heroin that was located, can you describe how it  
6 was packaged?

7 A. The substance that I believed to be  
8 heroin was packaged in bundles. It was also an  
9 individual slip, a bindle. It was in a bowl of  
10 rice which as some of you may as I was saying could  
11 be familiar with putting rice in your salt shakers.  
12 It is used to control moisture content.

13 Q. And did you request any additional  
14 testing done, aside from a chemist, about taking  
15 the container or other items seized dealing with  
16 the supposed heroin?

17 A. Yes. The same as the firearm magazine,  
18 no latent prints were able to be lifted off that  
19 Tupperware bowl.

20 Q. Did you collect a phone in this case?

21 A. Yes, we did.

22 Q. And did you request any additional  
23 testing or further investigation with the phone?

24 A. Yes. I actually obtained myself a  
25 search warrant on the phone itself to conduct a

1 separate search of that phone and submitted that to  
2 our digital evidence technician, but due to the  
3 locking mechanism, the screen lock on the phone and  
4 the Defendant not being cooperative to unlock the  
5 phone our software tech would not --

6 MR. KING: Objection. Can we approach?

7 THE COURT: Yes.

8 (Off-the-record conference.)

9 THE COURT: All right. Ladies and  
10 gentlemen, as I have said, the Defendant in a  
11 criminal case never has any obligation to produce  
12 evidence or even cooperate with law enforcement so  
13 disregard any testimony about the Defendant's  
14 cooperation or lack of cooperation with the  
15 request. That was not something that is relevant,  
16 not part of the record in this case anymore so  
17 please disregard it and put it out of your mind.  
18 Go ahead.

19 BY MS. LINDER:

20 Q. Was your digital evidence technician  
21 able to download contents of the seized phone?

22 A. No, ma'am. I apologize. The phone was  
23 not able to be accessed.

24 Q. And was this Defendant arrested as a  
25 result of the search warrant?

1 A. Yes.

2 Q. And what, if anything, did he have on  
3 his person?

4 A. I believe he had the cell phone and  
5 possibly an ID, I think a little bit of money.

6 Q. Beg the Court's indulgence.

7 THE COURT: Yes, ma'am.

8 (Brief pause.)

9 MS. LINDER: I have nothing further.  
10 Please answer anything the defense may have.

11 THE COURT: Cross-examination, Mr.  
12 King.

13 CROSS-EXAMINATION

14 BY MR. KING:

15 Q. Agent Waddell, you testified you're the  
16 case agent?

17 A. Yes.

18 Q. And you're sort of in charge of this  
19 whole operation?

20 A. Yes.

21 Q. As part of being a case agent you write  
22 reports; is that right?

23 A. Yes.

24 Q. You document what happens?

25 A. Yes.

1 Q. You draft the search warrant, things  
2 like that?

3 A. Yes.

4 Q. The arrest warrants he was arrested on?

5 A. Yes.

6 Q. Now, you testified that you waited  
7 until he left before you had officers move in to  
8 arrest and take him into custody, right?

9 A. Right.

10 Q. He was picking up his girlfriend at  
11 work, right?

12 A. Yes.

13 Q. And you were aware of that? You were  
14 aware where she worked?

15 A. I was aware -- I wasn't aware that's  
16 where he was headed at that moment, but I was aware  
17 she worked at a similar facility. I wasn't a  
18 hundred percent sure if it was that, but as we  
19 pulled in or as he pulls and we are following him,  
20 you put two and two together. You assume this is  
21 most likely where the girlfriend works and he may  
22 be picking her up.

23 Q. And then you said you conducted this  
24 felony stop, right?

25 A. Correct.

1 Q. Isn't that where or that happens pretty  
2 quickly, right, do a felony stop?

3 A. Yes.

4 Q. That whole thing. The officers didn't  
5 walk up, knock on the door and politely ask him to  
6 get out of the car in this situation, right?  
7 That's not a felony stop?

8 A. No.

9 Q. They came out guns drawn; is that  
10 right?

11 A. Yes, we had our guns drawn.

12 Q. How many officers would you say?

13 A. Maybe six. I don't recall specific  
14 number, but typically it would have been maybe half  
15 dozen.

16 Q. I am assuming yelling, right, get out  
17 of the car?

18 A. Show us your hands, step out of the  
19 vehicle, things of that nature.

20 Q. And how long before they moved in and  
21 pulled him out of the car, how long would you say  
22 from the moment the officers first came out and  
23 said get out of the car, whatever, how long of a  
24 gap before he is pulled from the car, seconds,  
25 right? Maybe 30 seconds, a minute?

1           A.   Probably less than a minute. It is not  
2 a very long time. You either comply or you don't.

3           Q.   He didn't try to run, right?

4           A.   His vehicle was pinched in. There was  
5 nowhere for him to go.

6           Q.   He didn't get out of the car and try to  
7 run?

8           A.   No, he did not.

9           Q.   He didn't try to back the car up and  
10 get away?

11          A.   No, he did not.

12          Q.   He didn't resist once he is taken down?

13          A.   He did not actively resist. Resistance  
14 is still being non-compliant. It's a passive  
15 resistance.

16          Q.   So he's sitting in this car, right,  
17 from his perspective, he's sitting in his car, all  
18 of a sudden six police officers come running up to  
19 the car screaming get out, show me your hands, show  
20 me your hands, right?

21          A.   Giving loud commands.

22          Q.   He didn't get out fast enough so y'all  
23 jerked him out, right? Isn't that how it basically  
24 happened?

25          A.   You are using words I wouldn't use.

1           Q.    Somebody has got to have some time to  
2 register that's what is going on and they are  
3 getting yelled at and they got six officers  
4 pointing guns at them, so --

5           A.    He had enough time for that to  
6 register. He was not jerked out of the car in a  
7 reckless manner. He was removed from the vehicle  
8 without injury in a manner that was safe to him and  
9 officers on the scene and secured in handcuffs.

10          Q.    You wrote a report that he was taken  
11 into custody without incident; isn't that right?

12          A.    Correct.

13          Q.    So when you're talking about being  
14 non-compliant you just mean when he was told to get  
15 out of the car he didn't get out of the car within  
16 about a minute?

17          A.    He did not get out of the car at all on  
18 his own.

19          Q.    Y'all gave him less than a minute to  
20 register and figure out what he was supposed to do?

21          A.    Yes.

22          Q.    And then you went inside and arrested  
23 his girlfriend Ms. Jeter?

24          A.    Yes.

25          Q.    In her place of business?

1 A. Yes.

2 Q. Took her out in handcuffs. Now, at  
3 that point they are taken back to this Jobee Drive  
4 apartment, right?

5 A. Yes.

6 Q. At some point you make entry into the  
7 residence, right?

8 A. Correct.

9 Q. Y'all hadn't already gone to the  
10 residence before they were brought back?

11 A. I don't recall. I believe Mr. Blake  
12 was taken in the marked police car from the  
13 secondary location where he was arrested or placed  
14 under arrest. I don't recall what vehicle his  
15 girlfriend who was also placed under arrest at the  
16 time was taken back to, but the entry team would  
17 have gone there and you're basically talking about  
18 the same time, but which vehicles pulled in the  
19 parking lot first I couldn't definitively say.

20 Q. I guess my question is did you enter  
21 into the -- did you breach the door -- did you go  
22 inside the residence before either one of those  
23 were brought back there? Or was it after they were  
24 brought back?

25 A. I don't recall. It would have been --



1 if they weren't on scene yet and the team that I  
2 delegated as an entry team had already gone in  
3 using his key so that we did not have to do a  
4 dynamic entry and to clear the residence, because  
5 we still don't know if there may be other people  
6 there, whether he was in the parking lot already or  
7 in route, I'm not a hundred percent sure. But he  
8 would not have been allowed back upstairs until we  
9 had secured the entire residence.

10 Q. You're saying you made a soft entry  
11 into the door using his key?

12 A. Correct.

13 Q. How did you get his key?

14 A. He was driving and we secured his keys  
15 and his vehicle from the arrest location and took  
16 those keys and that vehicle back to his residence  
17 location and used his keys.

18 Q. Now, you testified that they were  
19 arrested, then taken into custody there, then an  
20 officer would have gotten the keys, right, and I  
21 guess drove that vehicle back to Jobee Drive?

22 A. Right.

23 Q. And then turned those keys over to  
24 someone, not you, but someone?

25 A. I don't recall.

1 Q. I guess they had to figure out which  
2 key might fit, all that stuff?

3 A. Correct.

4 Q. You put in your report, you talked  
5 about how metro detectives responded to the area,  
6 were able to take both suspects into custody.  
7 Moments later the detectives executed a lawful  
8 search warrant and list a target residence. So you  
9 put in your report that it was moments after they  
10 were taken into custody that y'all went in?

11 A. Correct. The two locations are very  
12 close to each other. The arrest location and the  
13 residence, it is not a long drive or across town.  
14 There are very in close proximity geographically to  
15 each other.

16 Q. You testified it was a soft entry. So  
17 there was -- you didn't have to bash the door in,  
18 right?

19 A. Correct.

20 Q. Why are there photographs of damage to  
21 the door?

22 A. Yes --

23 (DFT. EXH. 6-8, photos, were marked for  
24 identification.)

25 BY MR. KING:

1           Q.    Show you Defendant's Exhibit 6, 7 and  
2           8. My question is why is there a photograph of  
3           damage to the door if you made a soft entry? Do  
4           you recognize those photographs?

5           A.    Appears to be the front door in the  
6           stoop area of that residence.

7           Q.    Is that photograph a fair and accurate  
8           representation of the way it was when you conducted  
9           the search warrant?

10          A.    I don't recall this being a door that  
11          was rammed open. From my recollection I thought  
12          that the entry team had keys from the arrest  
13          location.

14          Q.    Let me -- you were the case agent,  
15          right?

16          A.    Right.

17          Q.    You're familiar with all the  
18          photographs that were taken during the search  
19          warrant, right?

20          A.    For the most part, yes.

21          Q.    And those are photographs that were  
22          taken during the search warrant?

23          A.    Yes.

24          Q.    So why is there damage to the door?  
25          And why was photographs taken of damage to the

1 door?

2 A. Well --

3 Q. You busted in, you busted in before he  
4 got there, right?

5 A. Well, had we used a ram we had a lawful  
6 search warrant to make entry. If for some reason  
7 they did not have the keys, I thought the team had  
8 keys from his arrest location to enter. If they  
9 didn't it in no way affects the lawfulness of the  
10 search warrant and the photographs would have been  
11 taken to document any damage that in case a  
12 complaint came into the sheriff's office or  
13 anything of that nature.

14 Q. You swore under oath and testified that  
15 you made soft entry, that you made a soft entry  
16 because you had his keys, an officer brought the  
17 keys back and you opened up the door. I mean you  
18 see there is a problem there? I mean the question  
19 is did you bust the door down or did you use the  
20 key?

21 MS. LINDER: Objection, Your Honor. I  
22 believe he was asked and answered.

23 THE COURT: Overruled.

24 THE WITNESS: I thought we used a soft  
25 entry. I was not present at the time they went in

1 and as I arrived -- I have done literally hundreds  
2 of these since three and-a-half years ago. My  
3 recollection was I thought we had got the keys from  
4 Mark Blake. If we did not and the entry team  
5 arrived on scene and used a ram to get in the  
6 residence, then we certainly would not have tried  
7 to conceal this or hide that in any way which is  
8 why we photograph if there is any damage.

9 BY MR. KING:

10 Q. So it indicates that y'all busted in  
11 and went in before you ever had any keys or he was  
12 brought back, right?

13 MS. LINDER: Objection.

14 THE WITNESS: They may very well have  
15 made entry before they had keys. And I may have  
16 been mistaken on that in my recollection. But that  
17 has no bearing on the lawfulness of the search  
18 warrant execution.

19 BY MR. KING:

20 Q. But it has bearing on your credibility,  
21 right, doesn't it?

22 MS. LINDER: Objection, Your Honor,  
23 argumentative.

24 THE COURT: Well, all right.  
25 Overruled.

1 BY MR. KING:

2 Q. Based on your surveillance you believe  
3 Dominique Jeter, his girlfriend, was staying in  
4 that apartment, right?

5 A. Correct.

6 Q. It appears a child was staying there  
7 too at some point, right, from the photographs?

8 A. It appeared that way. There was no  
9 child present that day.

10 Q. You testified he was belligerent,  
11 right, when you're conducting the search and he is  
12 brought back to the scene that he was yelling and  
13 stuff, right? You never gave him a copy of the  
14 search warrant, did you?

15 A. The search warrant was explained to him  
16 and left at the residence. I did not physically  
17 hand him a search warrant while he was handcuffed  
18 behind his back.

19 Q. You left it in the residence, but then  
20 took him to jail and he couldn't read it in the  
21 residence, could he?

22 A. It was explained to him, but no, he was  
23 not handed the actual search warrant.

24 Q. Isn't that what he was yelling about?

25 A. No. He was yelling about various

1 things.

2 Q. So you are inside the apartment now  
3 executing the search warrant, right? You didn't  
4 find any cash inside the apartment, did you?

5 A. I don't believe so to my recollection.

6 Q. That's one of the things you would be  
7 looking for as part of this investigation would be  
8 large amounts of cash?

9 A. Right.

10 Q. Drug dealers stash large amounts of  
11 cash, right?

12 A. Correct.

13 Q. They often don't have bank accounts  
14 because they want to conceal that money?

15 A. Right.

16 Q. That wasn't found. You testified I  
17 think no prints, there's -- his fingerprints aren't  
18 on that plastic bowl?

19 A. No, I believe the forensic services  
20 were unable to locate any prints.

21 Q. They're not on that plastic bag, the  
22 bigger plastic bag that was inside that bowl?

23 A. I don't believe so.

24 Q. Or on any of the bindles or smaller  
25 packages?

1 A. Correct.

2 Q. There are no prints on anything --

3 A. Correct.

4 Q. -- found, right? He's suing you in  
5 federal court for a civil rights violation, right?

6 A. Correct.

7 Q. You have experience with heroin in  
8 general as part of your job, right?

9 A. Investigating.

10 Q. Investigating heroin. How is heroin  
11 used? It can be injected?

12 A. Any number of ways.

13 Q. Snorted?

14 A. Snorted.

15 Q. Smoked?

16 A. If you wanted to. It can be injected  
17 by needles, it can be injected orally, snorted, can  
18 be absorbed.

19 Q. And you are familiar with how heroin is  
20 packaged in general, right?

21 A. Yes.

22 Q. In your experience. It's sold in these  
23 smaller bundles, right?

24 A. Correct.

25 Q. But it is also purchased that way,



1 right? If I wanted to buy some heroin I would have  
2 to buy those bindles?

3 A. Correct.

4 Q. So you can't really tell if it's  
5 packaged for sale or if it's just been bought,  
6 right?

7 A. You can due to the investigation  
8 leading up to this event and also the number of  
9 bundles that were located is not indicative of a  
10 user.

11 Q. You drafted the arrest warrant for what  
12 you claim you found in the refrigerator, right?

13 A. Right.

14 Q. Do you have any idea I guess when it  
15 came back from the lab just roughly how much heroin  
16 it ended up being when it came back from the lab?

17 A. Off the top of my head I do not recall  
18 the lab's weight.

19 Q. You swore out the affidavit for the  
20 arrest warrant?

21 A. Correct.

22 Q. You actually arrested him for  
23 trafficking heroin, right?

24 A. Correct.

25 Q. You put in the warrant, and when you do

1 this I guess you put under oath and swear to the  
2 judge, then the judge signs the warrant?

3 A. Correct.

4 Q. So you swore under oath to the judge  
5 that the Defendant did willfully and unlawfully  
6 possess approximately 30 gross aggregate grams of a  
7 brown powder substance, right?

8 A. Correct.

9 Q. That wasn't a bit true, was it? It  
10 isn't anywhere near 30 grams, right?

11 A. I weigh that as a package weight which  
12 is why it says gross aggregate weight. That's a  
13 weight including the packaging. I'm not a lab  
14 technician so I don't pour out each quantity of  
15 bindles. That's why we send things to the lab.  
16 Sometimes when we're -- the lab sends stuff back  
17 due to the packaging being removed the weight  
18 changes and it may meet a different threshold for a  
19 different charge which is why this was amended from  
20 trafficking to possession with intent to  
21 distribute.

22 Q. You're familiar with these bindles,  
23 right? You have dealt with them before, you said  
24 maybe a thousand cases you have been involved in?  
25 You even testified to how much heroin generally is

1 in one of those bindles?

2 A. Correct.

3 Q. But instead of trying to figure out how  
4 much brown powder there really was in there, you  
5 weighed the package, the rubber bands, right? You  
6 weighed everything and then charged him with  
7 trafficking 30 grams, right?

8 A. Correct.

9 Q. And trafficking is a more serious  
10 charge than possession with intent to distribute  
11 heroin, right?

12 A. Correct.

13 Q. Based on weight?

14 A. Correct.

15 Q. And that's actually the highest level  
16 of trafficking you can go, right?

17 A. I would have to review the statute for  
18 the different thresholds.

19 Q. You are not aware that according to the  
20 chemist it was closer to between two and three  
21 grams, in that general area, and you put 30 grams  
22 in the warrant?

23 A. Correct.

24 Q. So when you're arresting him and  
25 drafting the warrant you know these bindles only

1 have about .01 to .03 grams?

2 A. That's something I have learned more  
3 recently through some training that I have  
4 received. At the time of this, as a matter of  
5 practice, we drafted affidavits based on gross  
6 aggregate weight which includes packaging. That  
7 was a standard matter of practice in our  
8 affidavits. Knowing that when we get an actual lab  
9 result back if that is different in any way then we  
10 amend those charges appropriately which has been  
11 the case in this case.

12 Q. It makes a difference what you charge  
13 him with, right? It can affect his bond, right,  
14 you charge him with a more serious charge?

15 A. Absolutely, which is why we amended the  
16 charge.

17 Q. You amended the charges?

18 A. No, that's done when we submit the case  
19 through the solicitor's office.

20 Q. Solicitors end up doing that later,  
21 right?

22 A. Right.

23 Q. You never went back and changed this  
24 warrant when the lab results came back, did you?

25 A. No.

1 Q. Because he's arrested for trafficking  
2 in heroin, that's considered a violent crime?

3 MS. LINDER: Objection, Your Honor,  
4 beyond the scope.

5 THE COURT: Overruled.

6 BY MR. KING:

7 Q. Trafficking is considered a violent  
8 crime, right?

9 A. Yes.

10 Q. So someone charged with this is treated  
11 differently at the jail as a violent offender?

12 A. I wouldn't have any testimony to one  
13 inmate being treated differently than another  
14 inmate based on the jailers. I believe them all to  
15 be professionals and treat people equally.

16 Q. Would you agree that you overcharged  
17 him?

18 A. No. I charged him as a matter of  
19 practice in our procedures of how we did things at  
20 the time when I was in Charleston County Sheriff's  
21 Office and again that is through charging through  
22 gross aggregate weight. We are not lab  
23 technicians. We do not start dumping things out  
24 where we could jeopardize the integrity of the  
25 evidence. We charge based on gross aggregate

1 weight. That's what I did. When the lab came back  
2 the solicitor's office is notified of the lab  
3 results and the charges are amended accordingly.

4 Q. But what you put in the warrant is 30  
5 gross aggregate grams of a brown powder substance.  
6 You didn't say 30 gross aggregate grams of  
7 packaging and powder. Did you lie to the judge  
8 when you got this warrant?

9 MS. LINDER: Objection, Your Honor,  
10 argumentative and asked and answered.

11 THE COURT: Overruled.

12 THE WITNESS: No, I did not lie. It is  
13 an inference in gross aggregate weight that this is  
14 including packaging.

15 BY MR. KING:

16 Q. You didn't put packaging anywhere on  
17 the warrant? As far as the judge would have known  
18 you found 30 grams of a brown powder and he signed  
19 the warrant? That's what you presented to him?

20 A. Correct.

21 Q. Did you handle -- once the evidence is  
22 taken into custody, right, there's a chain of  
23 custody. Were you part of that? Did you handle  
24 the drugs at any point?

25 A. I don't recall. I would have to look

1 at the report. I have an assigned evidence  
2 custodian at the time of the search warrant,  
3 another detective who is responsible for  
4 photographing and collecting evidence that's  
5 located within the residence.

6 Q. Would you have taken it out of the  
7 evidence room or anything for any reason?

8 A. No. Once it is logged into evidence it  
9 would stay there until the paperwork -- the  
10 paperwork we fill out would request an analysis,  
11 further weight and identification analysis is sent  
12 -- is submitted and then there are other employees  
13 and other people with those job responsibilities  
14 that do the testing and analysis and so forth.

15 Q. The drugs would have been submitted to  
16 the lab, I guess that day, the 22nd, the warrant was  
17 served?

18 A. I don't recall the date they were  
19 submitted.

20 (DFT. EXH. 9, lab report, was marked  
21 for identification.)

22 BY MR. KING:

23 Q. Show you Exhibit 9. At the bottom of  
24 the page there do you recognize that document where  
25 it refers to 11 bundles and one bindle, 30.2 grams,

1 right?

2 A. Right, it's the -- I believe printout  
3 of what is printed from the forensic services unit  
4 or through the RMS program if I remember correctly.

5 Q. That was submitted by Andrew Miller on  
6 2-22?

7 A. Correct. He was the evidence custodian,  
8 that day.

9 Q. And then I guess it is received by  
10 Jason H. Riley on 2-25, I assume he's an evidence  
11 room employee?

12 A. I believe so.

13 Q. Then on 3-8-2103 has an entry with your  
14 name on it. Do you know what that's about? 3-8-13  
15 at 10:35:55 a.m.?

16 A. I don't recall.

17 MR. KING: I have no other questions,  
18 Your Honor.

19 THE COURT: Redirect?

20 REDIRECT EXAMINATION

21 BY MS. LINDER:

22 Q. Thank you, briefly, Your Honor. If you  
23 can just explain why are things moving so quickly  
24 during a felony traffic stop like this one?

25 A. A big part of a felony traffic stop or



1 any kind of high risk operation, there's an intent  
2 to disrupt that person's thought process. You want  
3 things to happen very quickly so that they don't  
4 have the opportunity to formulate an assault or an  
5 attempt to flee or something of that nature so that  
6 they can be taken into custody and that again is  
7 for their safety as well as officer safety on the  
8 scene as well as members of the community or  
9 society that could potentially be in the area.

10 Q. And when you conduct a felony traffic  
11 stop why is it so important to pinch in their car  
12 and take their keys?

13 A. Due to the fact that the vehicle itself  
14 could be used as a weapon in the immediate area if  
15 they flee, but also even they don't have intent to  
16 use the vehicle as a weapon per se, we always want  
17 to limit the risk of any vehicle chase. We don't  
18 want him getting out of that parking lot. As you  
19 can imagine a vehicle chase would put countless  
20 other people in our community and on our roadways  
21 at risk.

22 Q. And there were lots of questions about  
23 the door and whatnot. Did you do the actual -- did  
24 you personally do the entry into this residence?

25 A. No, I did not.

1 Q. Did you do the search room to room in  
2 this case?

3 A. No, I did not.

4 Q. It was brought up that the Defendant  
5 didn't have a lot of cash on him when he was  
6 arrested. I would like to talk about the alleged  
7 heroin in the refrigerator. How much did you say a  
8 bindle costs?

9 A. A bindle is based on supply and demand,  
10 obviously fluctuates some, but most typically it's  
11 ten to \$15 for the individual bindle.

12 Q. And that price can vary based on  
13 location, supply and demands?

14 A. Correct.

15 Q. And how many bindles are in a bundle?

16 A. Ten bindles in a bundle typically.

17 Q. So one bundle is 100, \$150; is that  
18 right?

19 A. In that ballpark.

20 Q. If you have let's say five bundles, how  
21 much is that worth in money, in dollars?

22 A. Well, that could easily be sold on the  
23 street for \$750.

24 Q. And if you had ten bindles how much  
25 would that be?

1                   A.    1,500.

2                   Q.    Isn't it true there are different types  
3 of currency in the drug world?

4                   A.    Absolutely.

5                   Q.    Talking about the warrant in this case,  
6 the 30 grams on the initial warrant, which was  
7 later amended, properly charged after the chemist  
8 results, on the initial you stated I believe 30  
9 aggregate grams, gross grams?

10                  A.    Gross aggregate.

11                  Q.    Can you tell me the difference on  
12 someone's salary between gross and a net salary?

13                  A.    One would be prior to being taxed and  
14 obviously one is after taxed, what is liquid money  
15 to them.

16                  Q.    And if you liken it to your example of  
17 the headache powder, if there are ten bindles, ten  
18 headache powders in a bundle, and there's lots of  
19 bundles, the amount of actual powder versus  
20 packaging with your training and experience, would  
21 the packaging weigh a lot more than the powder  
22 itself?

23                         MR. KING:  Objection, leading, Your  
24 Honor.

25                         THE COURT:  Sustained.

1 BY MS. LINDER:

2 Q. Would the packaging weigh more, less,  
3 the same?

4 A. It could weigh more than the substance.

5 Q. As far as Defense Exhibit 9, did you  
6 create this?

7 A. No, I did not.

8 Q. Who is this record maintained by?

9 A. I believe it's either through the RMS  
10 reporting system or through the forensic unit of  
11 the sheriff's office which I was not assigned or do  
12 not work for.

13 MS. LINDER: Beg the Court's  
14 indulgence.

15 (Brief pause.)

16 MS. LINDER: I have nothing further.  
17 Thank you.

18 THE COURT: Recross?

19 MR. KING: I have no further questions.

20 THE COURT: All right. Thank you, sir.  
21 You may step down. We will take about a ten-minute  
22 recess.

23 Ladies and gentlemen, don't talk about  
24 the case. Keep an open mind. If you would during  
25 your break select someone to be the foreperson of

1 the jury and write their name down and give it to  
2 one of the bailiffs, thank you.

3 (Thereupon, the jury exited the  
4 courtroom at 4:07 p.m.)

5 THE COURT: You wanted to put something  
6 on the record?

7 MR. KING: Yes, Your Honor. There were  
8 two instances where I made objections at the bench,  
9 Your Honor, and I guess made a motion for a  
10 mistrial. Evidence came out about controlled buys,  
11 the invasion of the residence. I think the jury  
12 heard that. I know it's a curative instruction,  
13 but I don't think it is possible to unring that  
14 bell and would make a motion for a mistrial.

15 THE COURT: Okay. I respectfully deny  
16 the motion. I don't think the brief exposure of  
17 the jury to that evidence would warrant the drastic  
18 remedy of a mistrial. The curative instruction is  
19 certainly a less drastic alternative and is  
20 presumed to have been heard and followed by the  
21 jury and I don't find the nature of the instances  
22 to have affected the trial fairness or injustice to  
23 the point a mistrial would be appropriate. So I  
24 respectfully deny your motion.

25 You also wanted to proffer some

1 testimony earlier from Agent Waddell. Did you wish  
2 to do that, Mr. King?

3 MR. KING: Yes, Your Honor. As far as  
4 my mistrial motion, I forgot about the testimony  
5 about him being compliant, just the cumulative  
6 effect of that is in addition to my motion for  
7 mistrial.

8 THE COURT: Yes, sir. Same ruling on  
9 that.

10 MR. KING: Call Agent Waddell to the  
11 stand.

12 THE CLERK: You are still under oath.

13 EXAMINATION

14 BY MR. KING:

15 Q. Just to proffer just a few questions  
16 that I had asked to be admitted regarding not Mr.  
17 Blake's lawsuit, but the separate lawsuit that was  
18 taking place from Myrtle Beach. Agent Waddell, you  
19 are being sued by another Defendant, right, in  
20 Myrtle Beach?

21 MS. LINDER: Your Honor, I would  
22 respectfully request we stand by the Court's  
23 ruling. Further, Ms. Jackson when she was here  
24 indicated that since it was so early on there have  
25 been no depositions, and he has been advised not to

1 answer any questions about this new lawsuit that  
2 occurred just late last year.

3 MR. KING: I feel like I have to  
4 proffer it.

5 THE COURT: He has got a right to  
6 proffer it. I don't know that I can stop him from  
7 doing that. Go ahead.

8 BY MR. KING:

9 Q. You are involved in another lawsuit  
10 with a Defendant Mr. Betton, Julian Betton; is that  
11 right?

12 A. Correct.

13 Q. And that lawsuit involves an execution  
14 of a search warrant in Myrtle Beach, right?

15 A. Correct.

16 Q. And where the Defendant was shot; is  
17 that right?

18 A. Correct.

19 Q. He survived?

20 A. Yes.

21 Q. He filed this lawsuit?

22 A. Correct.

23 Q. Now, he's alleging in this lawsuit, ask  
24 you about a few things, that you initially told  
25 authorities that officers knocked and announced

1 before entering the residence, but then  
2 surveillance video showed that nobody really  
3 knocked, right; is that right? Did you -- first  
4 did you tell authorities that you and other  
5 officers knocked and announced before entering?

6 MS. LINDER: Your Honor, may we  
7 approach?

8 THE COURT: Well, I am happy for you to  
9 approach. I think -- yes, come on.

10 (Off-the-record conference.)

11 BY MR. KING:

12 Q. In the lawsuit there are allegations  
13 that you lied about knocking and announcing before  
14 entering, right? You are aware that is part of the  
15 lawsuit?

16 A. There are allegations that lies were  
17 told.

18 Q. Did you tell the authorities that you  
19 or any other officer knocked and announced before  
20 entering?

21 THE COURT: Well, I think --

22 THE WITNESS: I am being put in a  
23 predicament.

24 THE COURT: Wait, okay? Do you  
25 understand me?



1 THE WITNESS: Yes, sir.

2 THE COURT: You can put on the record  
3 what questions you wanted to ask him, but I don't  
4 think it is necessary for him to answer them for  
5 purposes of the proffer. How about that?

6 MR. KING: Okay. Are you saying he is  
7 not required to answer?

8 THE COURT: You put on the record what  
9 questions you wanted to ask him that I am going to  
10 exclude from evidence. That way we don't have a  
11 problem with him.

12 MR. KING: It was basically three  
13 questions, Your Honor. That according to the  
14 allegations that Agent Waddell was dishonest in  
15 telling the authorities first that they knocked and  
16 announced when later video showed something  
17 different. Second, that Agent Waddell told the  
18 authorities initially that they were wearing  
19 clearly marked clothing identifying them as police  
20 officers and the video shows different. And  
21 finally, that Agent Waddell told authorities that  
22 Julian Betton shot first and they returned fire  
23 when later SLED determines that Mr. Betton never  
24 fired his gun at all. So three lies to authorities  
25 to cover up misconduct in executing the search

1 warrant. Those are the questions that I would ask.

2 THE COURT: Okay. That would be the  
3 evidence you would elicit from Agent Waddell in  
4 front of the jury if my ruling were different and  
5 you proffered the substance of the evidence. So  
6 anything further, Mr. King?

7 MR. KING: No, Your Honor.

8 THE COURT: Thank you very much. You  
9 can step down. Thank you.

10 THE WITNESS: Thank you, sir.

11 THE COURT: All right. We will take a  
12 ten-minute recess.

13 (A recess transpired.)

14 (Whereupon, the jury entered the  
15 courtroom at 4:31 p.m.)

16 (COURT'S EXH. 1, jury note, was  
17 marked.)

18 THE COURT: You can have a seat. All  
19 right. Mrs. Apple, looks like you have been  
20 selected as the foreperson so you will be the  
21 liaison between the Court and the jury. If anyone  
22 on the jury needs to contact me I can only  
23 communicate with you out here on the record or by  
24 way of a written note made part of the record.  
25 Hopefully you won't have to communicate with me,

1 but if you do that's the protocol.

2           Someone asked about taking notes. You  
3 are welcome to do so. Just remember that part of  
4 your job as the judge of the facts is to decide the  
5 credibility of the witnesses so don't get so  
6 engrossed in your notes that you don't pay  
7 attention to them on the stand and closely assess  
8 their credibility in that respect. And remember,  
9 too, that notes as we all know from our school days  
10 sometimes can just be flat wrong. So don't use  
11 your notes to try to trump someone else's memory  
12 who didn't take notes. They are just for your own  
13 personal use. All right. With that, you may call  
14 your next witness, Ms. Linder.

15           MS. LINDER: Thank you, Your Honor.  
16 May it please the Court, the State calls Philip  
17 Roberson.

18                   PHILIP ROBERSON

19 Having been duly sworn, testifies as follows:

20           THE CLERK: If you could give us your  
21 full name and spell your last, please.

22           THE WITNESS: My name is Philip  
23 Roberson, R-O-B-E-R-S-O-N.

24                   DIRECT EXAMINATION

25 BY MS. LINDER:

1 Q. Good afternoon. Can you tell the jury  
2 what's your occupation?

3 A. I'm a Sergeant in narcotics at Colleton  
4 County Sheriff's Office.

5 Q. And who was your employer back in  
6 February of 2013?

7 A. Charleston County Sheriff's Office.

8 Q. And what unit were you assigned to?

9 A. To the Metro Unit.

10 Q. What were your duties in the Metro  
11 Unit?

12 A. We investigated drug related crimes,  
13 drug crimes, things of that nature, handle CI's and  
14 informants.

15 Q. And can you tell the jury a little  
16 about your education, any training you have  
17 attended or certain skills?

18 A. Yes, ma'am. I have the DA school,  
19 narcotics school, ATF task force for seven years,  
20 SWAT commander for two years, SWAT training, and  
21 interrogation interview schools, and multiple other  
22 schools dealing with narcotics and homicides and  
23 larger cases.

24 Q. And how long have you been in law  
25 enforcement?

1 A. Twenty-one years.

2 Q. Were you working back on February  
3 the 22nd of 2013?

4 A. Yes, ma'am.

5 Q. And were you -- did you have the  
6 occasion to become involved in the investigation of  
7 this case, the State versus Mark Blake, on the  
8 date?

9 A. Yes, ma'am.

10 Q. And were you involved with executing a  
11 search warrant at the house?

12 A. Yes, ma'am.

13 Q. And what was your role during the  
14 execution of the search warrant?

15 A. My role was part of the search team.

16 Q. And can you explain to the jury how you  
17 go about conducting a search during the actual  
18 search warrant?

19 A. We are assigned or picked rooms that we  
20 search, usually two to a room depending on what  
21 size the room is. And you go from top to bottom  
22 from ceiling to floor searching everything where  
23 something could be hid, where there's light  
24 sockets, electrical sockets, drawers, light  
25 fixtures, cabinets, refrigerators, sinks, anything,

1 trash, anything that comes up when you come across  
2 when you are going up and down from ceiling to  
3 floor you are going to look into and search.

4 Q. And when you are executing a narcotics  
5 search warrant such as this one, what types of  
6 items are you looking for aside from just the  
7 drugs?

8 A. You are going to be looking for like I  
9 said drugs, but also you are going to be looking  
10 for things used in the manufacturing of the drugs.  
11 Things used for the distribution or weighing of the  
12 drugs such as scales, your packaging, things of  
13 that nature. As far as when you sell it, when you  
14 weigh it out, because usually drug dealers will get  
15 a larger amount and break it down into smaller  
16 amounts, so you will find scales and things to cut  
17 it with or either to mix it up with.

18 Q. And what area did you search on Jobee  
19 Drive?

20 A. I searched the kitchen and assisted in  
21 the bedroom.

22 Q. And did you find any items of interest  
23 in the kitchen that day?

24 A. Yes, ma'am.

25 Q. What items did you find?

1           A.    In the refrigerator I found a  
2           Tupperware bowl that had rice and drugs in it and  
3           then above the kitchen and the cabinets there was  
4           like a whisk and a mixing bowl and scales.

5           Q.    And how was -- the items that you  
6           perceived to be drugs, how were they packaged in  
7           the Tupperware?

8           A.    They were packaged in looked like it  
9           was called bundles.

10          Q.    If you can explain that to the jury?

11          A.    A bundle in narcotics terms is made up  
12          of ten bindles. The easiest way I can explain a  
13          bindle to you is a BC powder, the powder we break  
14          open and that's powdery, not the tablet, but it's  
15          the nasty tasting BC powder. That's a bindle. Ten  
16          of those make a bundle.

17          Q.    And about what is the weight of one  
18          bindle of heroin?

19          A.    It is usually approximately .02 grams.

20          Q.    And is that a serving size?

21          A.    Yes, ma'am.

22          Q.    And how are the ten bindles held  
23          together in a bundle?

24          A.    Usually with rubber bands.

25          Q.    And were -- was the substance found in

1 the kitchen in the refrigerator, were those in  
2 bindles with rubber bands into bundles?

3 A. Yes, ma'am.

4 MR. KING: Your Honor, I would make an  
5 objection to Exhibit 13 through 29 based on my  
6 pretrial motion, relevance and Rule 403.

7 BY MS. LINDER:

8 Q. At this time I'm going to show you what  
9 has been marked as State's Exhibits 13 through 29.  
10 If you can look at those, please.

11 A. (Witness complies with request.)

12 Q. After you have finished looking at all  
13 those, can you please tell me do you recognize  
14 them?

15 A. Yes, ma'am, I recognize them.

16 Q. And how do you recognize those?

17 A. These were items that I found in the  
18 kitchen during the search warrant.

19 Q. And do all those pictures fairly and  
20 accurately depict the items that you located during  
21 your search back on February the 22nd of 2013?

22 A. Yes, ma'am.

23 MS. LINDER: Your Honor, at this time  
24 the State would seek to admit State's Exhibits 13  
25 through 29 into evidence.



1 THE COURT: All right. They're in  
2 evidence. Objection is overruled.

3 (STATE'S EXH. 13-29 in evidence.)

4 BY MS. LINDER:

5 Q. At this time I'm going to put these up.  
6 It will come in front of you. That is a touch  
7 screen. You can erase, you can put a circle or put  
8 an X or whatever you would like. If you can please  
9 look at State's Exhibit 13. What does that show?

10 THE DEFENDANT: Relevance.

11 BY MS. LINDER:

12 Q. What does State's Exhibit 13 show?

13 A. Ma'am, I'm not sure honestly on that  
14 one. I can't tell what that is.

15 Q. State's 14?

16 A. That's the one I was having problems  
17 with telling. That looks like a glass bowl of a  
18 sifter and plastic straws with white residue on it.

19 Q. Can you tell me whose arm this is?

20 A. That's mine.

21 Q. State's 15?

22 A. Those looks like capsules we found like  
23 you would take for vitamins, the clear capsules  
24 they put things in.

25 Q. All right. And State's 17?

1           A.    That's a measuring bowl with items  
2           looked like that was used to mix stuff up in or  
3           white powder residue in it.

4           Q.    State's 18?

5           A.    That is -- right in that drawer there  
6           you can see the zipper on top, that is kind of I  
7           guess like a shave bag, that type of bag. I'm not  
8           sure if that's what you call it, but you can see  
9           the zipper there on top. It was a bag.

10          Q.    This is State's 19?

11          A.    That's the same bag with a closer up  
12          with plastic bag beside it or baggies beside it.

13          Q.    What do plastic sandwich baggies  
14          signify to you in your training and experience?

15          A.    That's usually what illegal drugs are  
16          stored in to be sold in or stored in.

17          Q.    State's 20?

18          A.    That is that same bag where we took the  
19          close-up of in the drawer that's open now and you  
20          can see into it.

21          Q.    State's 21?

22          A.    That is the scale that I pulled out of  
23          that same bag that's got the white powder residue  
24          on it.

25          Q.    State's 22?

1           A.    That is what we refer to as a grinder  
2   that I pulled out of the same bag and looks like  
3   has marijuana residue in it.

4           Q.    State's 23?

5           A.    This is what I pulled out of a bag and  
6   it is a plastic bag containing a waxy papers. This  
7   is the same -- looks like the same thing you get  
8   your BC powders in, is multiple bags there of that.

9           Q.    State's 25?

10          A.    25 is inside the refrigerator. It  
11   shows at the bottom there is a Tupperware bowl,  
12   plastic bowl with a red lid on it.

13          Q.    State's 26?

14          A.    That's what we -- what I found the  
15   drugs in. If you can start seeing in there you can  
16   already start seeing a white inside of the plastic  
17   there.

18          Q.    State's 27?

19          A.    That's open, of that same Tupperware  
20   and taking a photograph of inside of the waxy  
21   bindles that contained the illegal drugs.

22          Q.    And what else is in this plastic bag  
23   along with the bindles and bundles?

24          A.    What else is in there is rice and the  
25   being reason just like you put rice in your salt

1 shakers. It keeps the humidity and moisture out of  
2 the drugs.

3 Q. What does State's Exhibit 29 show?

4 A. Rice in a bag.

5 Q. And 28?

6 A. That is the bindles -- bundles that we  
7 had -- that we had taken out of the plastic  
8 containers that were obtained and came out of the  
9 refrigerator.

10 Q. And does this represent -- in your  
11 21 years of training and experience represent  
12 typical packaging of heroin?

13 A. Yes, ma'am. Each bundle usually  
14 contains ten bindles and each bindle is one dosage  
15 for consumption.

16 Q. When you located these items who did  
17 you identify? Who did you tell that you located?

18 A. Andy Miller.

19 Q. And did he collect the items?

20 A. Yes, ma'am.

21 MS. LINDER: I have no further  
22 questions. If you can ask -- answer anything that  
23 the defense may have.

24 THE COURT: Cross-examination, Mr.  
25 King.

CROSS-EXAMINATION

1  
2 BY MR. KING:

3 Q. Did you write a report in this case,  
4 are you aware?

5 A. Not that I remember.

6 Q. You didn't document anything?

7 A. Just by the photographs. I know when  
8 we were taking the photograph we were documenting  
9 what I found then.

10 Q. You have been in law enforcement for  
11 21 years?

12 A. Yes, sir.

13 Q. Is that your whole career pretty much  
14 in law enforcement?

15 A. Yes, sir.

16 Q. And do you have to write a lot of  
17 reports as far as when you're a police officer in  
18 law enforcement?

19 A. Yes, sir.

20 Q. Big part of what you do?

21 A. Yes, sir.

22 Q. You didn't document anything in writing  
23 that happened that day?

24 A. No, sir.

25 Q. You found sandwich bags in the kitchen?

1 A. Yes, sir.

2 Q. That's not a big shocker, is it?

3 A. No, sir.

4 Q. A lot of people have bags in their  
5 kitchen?

6 A. Yes.

7 Q. Measuring cup in the kitchen?

8 A. Yes, sir.

9 Q. Are you aware whether or not that  
10 measuring cup was ever tested to see what was in  
11 it?

12 A. Not that I can remember.

13 Q. You were part of a group of people that  
14 went into this apartment, right?

15 A. Yes, sir.

16 Q. How many people went in as far as what  
17 you remember?

18 A. You'd have to ask the case agent. I'm  
19 not sure.

20 Q. Was it more than just you and Detective  
21 Miller and Waddell?

22 A. Yes.

23 Q. Can you estimate just, ten people,  
24 eight people?

25 A. Six to ten.

1 Q. Law enforcement officers?

2 A. Yes, sir.

3 Q. Now, were you the first to go in or  
4 what order were you in going into the apartment?

5 A. I don't remember.

6 Q. So you don't know if you were the first  
7 one in or they had already gone in before you went  
8 in?

9 A. Sir, I don't remember. That was three  
10 years ago.

11 Q. Do you remember how you went in, if it  
12 was forced entry or unlocked with a key?

13 A. I don't remember doing forced entry on  
14 this one, no, sir.

15 Q. Do you remember how you got inside?

16 A. To the best that I can recall I thought  
17 we opened it -- somebody opened it for us or we had  
18 keys that I can recall.

19 Q. Again, if you had documented it in  
20 writing do you think that -- that's one of the  
21 reasons you document, right?

22 A. The case agent does that, yes, sir.

23 Q. But the case agent isn't the only one  
24 who writes reports, right? Other officers involved  
25 write reports too?

1           A.    When he's the case agent he writes the  
2 report, yes, sir.

3           MR. KING:   That's all the questions I  
4 have.

5           THE COURT:   Any redirect?

6           MS. LINDER:   No redirect, Your Honor.

7           THE COURT:   You may step down, sir.

8 Thank you.   You may call your next witness.

9           MS. LINDER:   State calls Andrew  
10 Miller.

11                        ANDREW MILLER

12 having been duly sworn, testifies as follows:

13           THE CLERK:   Give us your full name and  
14 spell your last name.

15           THE WITNESS:   Andrew Miller,  
16 M-I-L-L-E-R.

17                        DIRECT EXAMINATION

18 BY MS. LINDER:

19           Q.    Good afternoon.   What's your  
20 occupation?

21           A.    Deputy sheriff for Charleston County  
22 Sheriff's Office.

23           Q.    What are your current duties with the  
24 sheriff's office?

25           A.    I'm currently a property crimes



1 detective.

2 Q. And what were your duties back in  
3 February of 2013?

4 A. I was a narcotics detective.

5 Q. And can you please tell the jury about  
6 any education or special training and skills that  
7 you have?

8 A. I have an associate's degree in  
9 criminal justice. And I have a bachelor's degree  
10 in public justice and I have a two-week training  
11 academy from the DEA, go to school for two weeks,  
12 interview, interrogation classes, installation for  
13 vehicles, install cameras in vehicles, just some of  
14 the classes that I have taken.

15 Q. How long have you been with law  
16 enforcement?

17 A. I have been a police officer for  
18 18 years.

19 Q. Were you working back on February  
20 the 22nd, 2013?

21 A. Yes, ma'am.

22 Q. And were you involved in any way in  
23 this case, the State versus Mark Blake, back on  
24 that day?

25 A. Yes, ma'am.

1 Q. How were you brought into this case  
2 initially?

3 A. I was brought in to do a search warrant  
4 or help with a search warrant at [REDACTED] Jobee I  
5 believe it's Drive, Apartment [REDACTED].

6 Q. And is that Charleston County?

7 A. Yes, ma'am.

8 Q. And who was the leaseholder at that  
9 residence?

10 A. The Defendant, Mark Blake.

11 Q. And is he the only name on the lease?

12 A. I believe so, yes.

13 Q. Have you ever seen him in and around  
14 that address?

15 A. Yes. On two occasions prior to the  
16 search warrant I saw him come and go from the  
17 address. And also I seen his vehicle there on  
18 several other occasions.

19 Q. What was your role during the execution  
20 of this search warrant?

21 A. I was the evidence custodian.

22 Q. And what does the evidence custodian  
23 mean?

24 A. The evidence custodian is mainly I come  
25 in and testify to all the evidence that was seized

1 during the search warrant. If someone located  
2 something within the house, they yell evidence. I  
3 come to them. I pick it up. I take it then to the  
4 return, then write down exactly what was taken from  
5 the residence and I place it into a bag and I see  
6 it sits there with the return person. Then I go  
7 back and someone else yells evidence, I do that all  
8 over again. So I pick up the evidence from the  
9 scene and bring it back to the table, then I take  
10 it from there.

11 Q. And did you take photographs during  
12 this?

13 A. Yes, ma'am.

14 Q. And during this search warrant  
15 execution back in February of '13 did you have the  
16 opportunity to observe the Defendant's behavior  
17 throughout the course of the day up to and  
18 including the search warrant?

19 A. Yes, ma'am. He was very belligerent  
20 with us and very boisterous.

21 Q. And have you had any contact with this  
22 Defendant since February 22nd of '13?

23 A. Yes. I was served with a lawsuit, a  
24 handwritten lawsuit by the Defendant.

25 Q. And what's the status of that case?

1 A. It's on hold at this point.

2 Q. And will that in any way affect your  
3 testimony here today?

4 A. No, ma'am.

5 Q. Does that in any way affect what  
6 happened that day?

7 A. No, ma'am.

8 Q. Let's go back to why we are here today.  
9 Did you collect any items from [REDACTED] Jobee Drive?

10 A. Yes, ma'am, I collected a variety of  
11 items, from small capsules that looked like pills,  
12 but they are empty until you put into something  
13 them. Pyrex dishes that had residue and then --

14 MR. KING: Your Honor, just renew my  
15 objection as to relevance.

16 THE COURT: Yes, sir.

17 MR. KING: And my motion to suppress.

18 THE COURT: Yes, sir.

19 BY MS. LINDER:

20 Q. You may continue.

21 A. After the Pyrex there was also I guess  
22 a small little whipping, I'm not sure if I am using  
23 the correct word, you beat your eggs like they are  
24 for mixing drugs. And --

25 Q. Did you find any drugs?

1           A.    Yes, we did. We found drugs. I  
2 apologize. Found heroin within the residence and  
3 various other items were located.

4           MR. KING: Objection. We haven't had  
5 chemist testimony yet referring to the heroin.

6           THE COURT: All right. Sustained.

7           (STATE'S EXH. 31-49 and 55, photos,  
8 were marked for identification.)

9           MR. KING: Your Honor, I am also  
10 objecting to Exhibits 31 through 49 and 55 based on  
11 my motion to suppress, relevance.

12          THE COURT: Thank you. I will overrule  
13 the objection.

14 BY MR. LINDER:

15          Q.    At this time I'm going to show you  
16 what's been marked as State's Exhibits 31  
17 through 49 along with State's Exhibit 55. If you  
18 can please look at those.

19          A.    (Witness complies with request.)

20          Q.    Do you recognize those?

21          A.    Yes, ma'am. These are the pictures I  
22 have taken as being evidence in the residence.

23          Q.    And do those fairly and accurately  
24 represent the scene at that time back in February  
25 of 2013?

1 A. Yes, ma'am.

2 Q. Your Honor, at this time the State  
3 would seek to admit State's Exhibits 31 through 49  
4 and 55.

5 THE COURT: They're in evidence.

6 (STATE'S EXH. 31-49 and 55 in  
7 evidence.)

8 BY MS. LINDER:

9 Q. This is State's Exhibit 31. Can you  
10 please tell me what that is?

11 A. This is the driver's license of Mark  
12 Blake with the address of [REDACTED] Liverpool Drive  
13 located inside of Jobee Drive.

14 Q. State's Exhibit 32?

15 A. That is a shoe box inside the closet.

16 Q. State's 33?

17 A. Those are items that were located  
18 inside of the shoe box.

19 Q. What items were located inside the shoe  
20 box?

21 A. In there you see little, heavy weights.  
22 They are all marked and those weights have specific  
23 gram amounts on them. Those weights would be  
24 placed on the scale to show the scale is true and  
25 accurate so you would have those to make sure that

1 your scale on which you put your drugs on would  
2 actually have a weight so you would have a little  
3 weight that showed that.

4 Q. Then State's 34?

5 A. These are rubber bands, large amount of  
6 rubber bands that were also located around the  
7 bindles and the bundles.

8 Q. And what do rubber bands indicate to  
9 you in your training and experience with regards to  
10 narcotics in the narcotics trade?

11 A. In my training and experiencing this is  
12 how they would in -- especially with the drugs that  
13 he was selling, how they would keep those together.  
14 They would wrap it up so they wouldn't lose any of  
15 the drugs that were inside.

16 Q. And in this box, this is State's  
17 Exhibit 33, again, you have a touch screen in front  
18 of you. What are these?

19 A. These are the weights in which I was  
20 speaking of earlier, they have the specific gram  
21 amounts on them.

22 Q. And what are these?

23 A. These are the rubber bands that were  
24 located in the large bag as well.

25 Q. And was a firearm magazine located

1           also?

2                   A.    Yes, ma'am.

3                   Q.    State's 35?

4                   A.    This is another driver's license from  
5 Mark Blake.

6                   Q.    And what address is on this one?

7                   A.    This one I believe says Queens Castle  
8 Court in Charleston, South Carolina. Again was  
9 found inside the Jobee Road address, has a  
10 different address on it.

11                  Q.    State's 36?

12                  A.    This is one of the bundles that we  
13 weighed. Inside this bundle there would be several  
14 bindles and bindles are little baggies that have  
15 drugs or narcotics in them and there's usually ten  
16 bindles to one bundle. Then they will wrap them  
17 all together.

18                  Q.    Why are you weighing them?

19                  A.    We are weighing them to see because the  
20 -- even though it looks like a slight amount of  
21 drugs in there, if we dump all the drugs out we  
22 don't want to lose obviously all the drugs that are  
23 in there. So we will weigh it as a gross weight  
24 and let the chemist later give us a total weight of  
25 the drugs that were located in the bag.



1 Q. All right. State's 37, what is that?

2 A. Again is another bundle that has  
3 several bindles inside.

4 Q. State's 38?

5 A. Same, another bundle with several  
6 bindles.

7 Q. State's 39?

8 A. I believe that is just one bindle.

9 Q. State's 40?

10 A. Again another bundle, several bindles  
11 inside.

12 Q. State's 41?

13 A. Again another bundle with several  
14 bindles.

15 Q. State's 42?

16 A. Again another bundle with several  
17 bindles.

18 Q. State's 43?

19 A. Another bundle with several bindles  
20 inside.

21 Q. State's 44?

22 A. Again another bundle with several  
23 bindles inside.

24 Q. State's 45?

25 A. Again another bundle with several

1 bindles.

2 Q. State's 46?

3 A. Again another bundle with several  
4 bindles.

5 Q. State's 47?

6 A. Same, another bundle with several  
7 bindles.

8 Q. Can you describe what State's 48 is?

9 A. This is a heroin test kit that shows  
10 that these -- we tested just one package. We don't  
11 test every single package. This gives us our  
12 probable cause for arrest for the search warrant.  
13 This chemical test shows that this was heroin  
14 inside of these bindles.

15 Q. There is a presumptive test?

16 A. Yes, ma'am.

17 Q. And the chemist is the confirmatory?

18 A. Yes, ma'am.

19 Q. And what does State's 49 show?

20 A. Shows each bundle that I weighed, how  
21 many bindles were actually inside each bundle and  
22 that would be the gross weight of all the packaging  
23 as well as the narcotics.

24 Q. What does State's 55 show?

25 A. This is a receipt received from Mark

1 Blake.

2 Q. And can you see the date on it?

3 A. 2-22-2013.

4 Q. And what is marked here?

5 A. Cash payment.

6 Q. All those bindles that we just went  
7 through weighing, this has already been entered,  
8 but State's 26, what does this show?

9 A. This is a Tupperware container inside  
10 the refrigerator where all the bindles were stored.

11 Q. And did you take this photograph?

12 A. Yes, I did.

13 Q. 27?

14 A. This shows the Tupperware container  
15 open with all the bindles inside and the other  
16 substance in there is rice.

17 Q. And 28?

18 A. These are all the bindles laid out  
19 after we take them out of the Tupperware container  
20 and I believe on the table.

21 Q. As the evidence custodian aside from  
22 taking pictures do you collect evidence?

23 A. Yes, ma'am. Once the evidence is  
24 located by one of my team members I'm the only one  
25 that will come and take the evidence from them.

1 Q. And when you collect the evidence where  
2 do you end up dropping it off?

3 A. I end up dropping it off was -- back  
4 then it was our headquarters.

5 Q. Is that a secured facility?

6 A. Yes, ma'am.

7 (STATE'S EXH. 51, Pyrex dish, was  
8 marked for identification.)

9 BY MS. LINDER:

10 Q. At this time I'm going to hand you  
11 what's been marked as State's Exhibit 51. If you  
12 could open it, please, and look at the items.

13 A. (Witness complies with request.)

14 Q. After looking at the item do you  
15 recognize it?

16 A. Yes, ma'am. It's one of the Pyrex  
17 dishes from --

18 Q. And does it appear in substantially the  
19 same condition as it was when you first collected  
20 it back in February of '13?

21 A. No, looks like the evidence was checked  
22 for fingerprints.

23 Q. Minus the fingerprint powder. State  
24 would move State's Exhibit 51 into evidence.

25 MR. KING: Your Honor, renew my

1 pretrial motion and objection.

2 (STATE'S EXH. 51 in evidence.)

3 BY MS. LINDER:

4 Q. So the jury can see, this is State's 51  
5 and this is what again?

6 A. The Pyrex dish.

7 Q. Collected from Jobee Drive?

8 A. Yes, ma'am.

9 (STATE'S EXH. 52, Tupperware container,  
10 was marked for identification.)

11 BY MS. LINDER:

12 Q. Can you open, please, State's 52?

13 A. (Witness complies with request.)

14 Q. After that can you please tell me if it  
15 looks familiar?

16 A. Yes, ma'am. It's the Tupperware  
17 container that was located in the refrigerator.

18 Q. And is that the same -- Tupperware  
19 container in substantially the same condition as it  
20 was when you collected it?

21 A. Yes, ma'am. Besides being obviously  
22 dusted for fingerprints.

23 MS. LINDER: Your Honor, at this time  
24 the State would ask State's Exhibit 52 to be  
25 admitted into evidence.

1 MR. KING: Your Honor, same objections.

2 THE COURT: It's in evidence.

3 (STATE'S EXH. 52 in evidence.)

4 BY MS. LINDER:

5 Q. ~~All right. If you can please explain~~  
6 to the jury what this is?

7 A. Inside the Tupperware is rice and the  
8 same reason the rice you would put in your salt  
9 shaker is the same reason the rice is inside the  
10 Tupperware bowl, to absorb up all the moisture so  
11 the narcotics would not be wet or bind together.

12 (STATE'S EXH. 53, drug items, was  
13 marked for identification.)

14 BY MS. LINDER:

15 Q. State's 53, if you will please open  
16 this and look at it.

17 A. (Witness complies with request.)

18 Q. Let me know if you recognize it. Do  
19 you recognize all those items?

20 A. Yes, ma'am. These are the pills,  
21 containers, open these up and place the substance  
22 inside, close them together and swallow it just  
23 like a normal pill. This is empty right now. And  
24 these are glass smoking pipes used to smoke either  
25 marijuana or various drugs. These are the weights

1 that I took a picture I explained earlier, top of  
2 each weight has a gram amount, different sizes.  
3 Obviously they are weights. More pills that are  
4 empty, but casing of the pills I guess I would call  
5 them. Here you have a sifter, small little  
6 hand-held sifter that you would use to separate the  
7 drugs and shake it just like you would shake flour.  
8 There is also three cut straws in here used for  
9 using narcotics. Forks and the two whisks, that's  
10 the term I was looking for earlier, were all inside  
11 the Pyrex dish and they were all covered with  
12 residue at the time of the seizure. I believe  
13 that's annotated in the picture.

14 Q. And do all these items appear in  
15 substantially the same condition as they were when  
16 you first collected them?

17 A. Yes, ma'am. I did not open. There was  
18 also -- this is what they call a grinder. You put  
19 marijuana inside and then you would grind it and  
20 then obviously the marijuana would fall through  
21 each lower level and it would be a finer substance  
22 you would sprinkle onto your cigarette, your cigar,  
23 whichever you want to mix it.

24 THE DEFENDANT: Objection, Your Honor.  
25 How can this go to the jury?

1 THE COURT: All right.

2 THE DEFENDANT: I ask that this  
3 evidence be excluded.

4 THE COURT: Ladies and gentlemen --

5 ~~THE DEFENDANT: It's a waste of time.~~

6 THE WITNESS: There is a small digital  
7 scale. Obviously there still is some sort of  
8 residue on top. And here are the baggies that do  
9 not have obviously any drugs in them at this point  
10 in time. But they are the same and similar to the  
11 baggies, the ones that have the drugs inside.

12 BY MS. LINDER:

13 Q. Do all these appear to be in  
14 substantially the same condition as they were when  
15 you first collected them?

16 A. Yes, ma'am.

17 MS. LINDER: At this time the State  
18 would seek to admit State's 53 into evidence.

19 MR. KING: Renew my same objection.

20 THE COURT: All right. They're in  
21 evidence. Objection is overruled.

22 (STATE'S EXH. 53 in evidence.)

23 BY MS. LINDER:

24 Q. Can you describe what these are to the  
25 jury?



1           A.    Those are the weights that I explained  
2 earlier.   The gram amounts that are imprinted on  
3 the top so you would know exactly how much each one  
4 weighed.   That's what placed on your scale to make  
5 sure the scale is accurate.

6           Q.    And this item?

7           A.    This is the digital scale that you  
8 would -- obviously is placed or placed things on  
9 before.   That's the residue that was outside on the  
10 top of the scale.

11          Q.    What items are in this little baggie?

12          A.    Those are empty right now, but that is  
13 what the heroin would be placed in or other  
14 narcotics in the small baggie folded over.   That's  
15 what you see in the pictures that are folded over,  
16 then a rubber band is placed around the outside.

17                   (STATE'S EXH. 56, water bill, marked  
18 for identification.)

19 BY MS. LINDER;

20          Q.    Like to show you State's Exhibit 56.  
21 Do you recognize this?

22          A.    Yes, ma'am.

23          Q.    And does it appear to be in  
24 substantially the same condition as it was when you  
25 collected it?

1 A. Yes, ma'am.

2 MS. LINDER: Your Honor, I would I  
3 respectfully request that State's Exhibit 56 be  
4 admitted into evidence.

5 ~~MR. KING: Renew my previous objection~~  
6 on my motion to suppress.

7 THE COURT: Let me see the item. Okay.  
8 Objection is overruled. It's in evidence.

9 (STATE'S EXH. 56 in evidence.)

10 BY MS. LINDER:

11 Q. Once I put it up here if you can  
12 explain to the jury what is this?

13 A. This is a Charleston Water System, I  
14 believe, water bill.

15 Q. Whose it addressed to?

16 A. Mark Blake.

17 Q. At what address?

18 A. [REDACTED] Jobee Drive, Apartment [REDACTED],  
19 Charleston County, South Carolina.

20 Q. What is the statement date?

21 A. Payment on 2-6 of '13. That's when it  
22 looks like he paid it.

23 Q. I apologize. For the bill information?

24 A. February 14, 2013.

25 Q. When was this search warrant executed?

1           A.    I believe the 22nd.

2           Q.    All right. The last thing I would like  
3 for you to look at is State's 54.

4                    (STATE'S EXH. 54, gun magazine, was  
5 marked for identification.)

6           MR. KING: Your Honor, I would object  
7 to this also, the relevance of 403 and motion to  
8 suppress.

9           THE COURT: Okay.

10 BY MS. LINDER:

11           Q.    Do you recognize the item?

12           A.    Yes, ma'am.

13           Q.    Is that the item that you collected  
14 back on February the 22nd of 2013?

15           A.    Yes, it is.

16           Q.    Does it appear in substantially the  
17 same condition as it was when you first collected  
18 it?

19           A.    Yes, ma'am.

20           MS. LINDER: Your Honor, at this time  
21 we respectfully request that State's Exhibit 54 be  
22 admitted into evidence.

23           THE COURT: Same? I know your  
24 objection, but it is overruled.

25                    (STATE'S EXH. 54 in evidence.)

1 BY MS. LINDER:

2 Q. Can you please tell the jury what this  
3 is?

4 A. This is a magazine for a Glock handgun  
5 ~~which is a high capacity, hold more rounds than a~~  
6 normal Glock.

7 Q. What does high capacity mean?

8 A. It can handle more rounds. Each one of  
9 these little dots is where a bullet can go all the  
10 way down. So all the way down to here. Normal  
11 Glock magazine are about this big. They hold eight  
12 to -- depending on what size, you get eight to ten  
13 rounds. This is going to hold about well over 20  
14 rounds.

15 Q. And where was this located again?

16 A. Inside the Jobee Road address and I  
17 believe it was inside the shoe box. I can look at  
18 the picture again to make sure I don't make a  
19 mistake.

20 (STATE'S EXH. 50, heroin, was marked  
21 for identification.)

22 BY MS. LINDER:

23 Q. Lastly I'd like to show you State's  
24 Exhibit 50. Can you look at those, please.

25 A. (Witness complies with request.)

1 Q. Do you recognize them?

2 A. Yes, ma'am.

3 Q. How do you recognize them?

4 A. These are the bindles/bundles that we  
5 collected and then weighed, entered into evidence.

6 Q. And do they appear to be in  
7 substantially the same condition as when you first  
8 collected them?

9 A. Yes, ma'am.

10 Q. And what did you do upon collecting  
11 those bindles and bundles of the substance that  
12 field tested presumptive as heroin?

13 A. Placed them into evidence so they could  
14 be tested.

15 Q. Evidence at the county?

16 A. Yes, ma'am.

17 MS. LINDER: I have nothing further.  
18 Please answer any questions the defense may have.

19 CROSS-EXAMINATION

20 BY MR. KING:

21 Q. Detective Miller, you testified Mr.  
22 Blake has sued you in federal court?

23 A. Yes, sir.

24 Q. You said it was like a handwritten  
25 lawsuit or something?

1 A. Yes, sir.

2 Q. But it's still a lawsuit?

3 A. I believe so, yes.

4 Q. Do you have a lawyer?

5 A. ~~Do I? The county has one.~~

6 Q. It's actually a filed lawsuit that's  
7 pending in the federal court?

8 A. Yes.

9 Q. How many officers would you say were  
10 involved in this search in the residence?

11 A. Off the top of my head I would think  
12 seven or eight, maybe more.

13 Q. At what point did you enter into the  
14 apartment?

15 A. I was there initially towards the  
16 beginning. I was the -- after the team swept to  
17 make sure there was no other people inside the  
18 residence I was the one who took the initial  
19 photographs. We take all of our own pictures  
20 before anyone enters and searches.

21 Q. Do you know how entry was made into the  
22 apartment?

23 A. I don't remember. I thought we used a  
24 key, but I could be wrong. It was three years ago  
25 so I do not remember.

1 Q. Do you remember taking the photographs  
2 of damage to the door?

3 A. Yes, I remember. We always take  
4 pictures of the door. There was possibly damage to  
5 the door; I don't know.

6 Q. I'm going to show you Defendant's  
7 Exhibit 6, 7 and 8. Do you recognize those?

8 A. Yes, sir. Looks like a picture of the  
9 door jamb.

10 Q. You took those photos?

11 A. Yes, sir.

12 Q. At this apartment we are talking about  
13 on Jobee Drive?

14 A. Yes, sir.

15 Q. Those pictures show damage to the door?

16 A. To the door frame.

17 Q. Is that because the door was forced  
18 open and no -- no key was used?

19 A. Again, I don't remember if a key was  
20 used or not, but possibly.

21 Q. It looks like the door has been busted  
22 open?

23 A. Yes.

24 Q. Right? The stuff you've been  
25 testifying that you collected, Mr. Blake's prints

1       aren't on any of those items, right?

2           A.    To my knowledge, no.

3           Q.    Based on your experience didn't you  
4       testify about how much heroin is typically in one  
5       of those bindles?

6           A.    I don't know if I said, but I believe  
7       it's .02 if I am correct.

8           Q.    You roughly know how much is in a  
9       bundle of heroin?

10          A.    It varies, yeah, depends on how  
11       accurate the person is who put them in there, but  
12       yes.

13          Q.    When you weighed it you weighed the  
14       heroin plus the packaging plus the rubber bands; is  
15       that right?

16          A.    Yes.

17          Q.    So you said typically it's what,  
18       .02 grams in each bindle?

19          A.    Yes.

20          Q.    So if there's a bundle of ten that is  
21       .2, then times .02?

22          A.    Sounds about right.

23          Q.    .2 grams. If there are ten bundles  
24       then we are talking about roughly two grams, if  
25       there was 11 bundles, so somewhere in the



1 neighborhood of two to three grams?

2 A. Yes, if the math is right.

3 Q. But instead of charging Mr. Blake with  
4 trafficking or possessing two to three grams, were  
5 you involved in charging him with trafficking  
6 30 grams?

7 A. I was not. That's up to the case  
8 agent.

9 Q. You just did what Agent Waddell  
10 instructed you to do?

11 A. Yes, I just weigh the drugs.

12 Q. And then let the chemist figure it out  
13 later?

14 A. Yes. I mean we always let the chemist  
15 figure it out later because --

16 Q. You know trafficking is more a serious  
17 charge than possession with intent to distribute  
18 heroin?

19 A. Yes, I do.

20 Q. And trafficking 30 grams, are you aware  
21 that that's the highest level of trafficking  
22 heroin?

23 A. Yes.

24 Q. So he was -- would you agree he was  
25 overcharged?

1           A.    Well, if you look at the totality of  
2 the circumstances and the amount of drugs he had  
3 and the way it was packaged, I don't believe he was  
4 overcharged.

5           ~~Q.    Was there 30 grams of heroin?~~

6           A.    I do not believe there was 30 grams.

7           Q.    It wasn't anywhere close to 30 grams?

8           A.    No, there was not.

9           MR. KING: That's all the questions I  
10 have, Your Honor.

11          THE COURT: All right. Any redirect?

12          MS. LINDER: Briefly.

13                   REDIRECT EXAMINATION

14 BY MS. LINDER:

15          Q.    You had said that you take photographs  
16 of the residence before a search warrant is  
17 executed?

18          A.    Yes, ma'am.

19          Q.    And Mr. King showed you an exhibit  
20 about the door. I'm showing you what's already  
21 been entered as State's Exhibit 6. Can you tell me  
22 what's in that picture?

23          A.    It's a picture of the front door.

24          Q.    And does the front door appear damaged  
25 to you?

1                   A.    Does not.

2                   Q.    When entrance is done by means of a ram  
3 is that common in search warrant executions?

4                   A.    No.   Usually on the door there will be  
5 a steel bar, that leaves a very large round mark on  
6 the front of the door.  If you hit the handle the  
7 handle usually breaks.

8                   Q.    So with your training and experience  
9 and your 18 years in law enforcement if it's forced  
10 entry can you clarify what does the naked eye  
11 typically see on the exterior of the door?

12                  A.    You will see a large indentation on the  
13 door as well as the door may even fold in on  
14 itself.

15                  Q.    Does this door appear that its handle  
16 has been knocked off or ripped off?

17                  A.    No.

18                  Q.    In fact, is this sticker disturbed at  
19 all?

20                  A.    Does not appear to be.

21                  Q.    And this is a photo that you took,  
22 correct?

23                  A.    Yes, ma'am.

24                  Q.    And this photo is of Apartment ■ on  
25 Jobee Drive?

1 A. Yes, ma'am.

2 Q. And when did you take this photograph?

3 A. The day of the search warrant, the  
4 22nd, I believe.

5 ~~MS. LINDER: Thank you. I have no~~  
6 further questions.

7 THE COURT: Recross?

8 MR. KING: Briefly, Your Honor.

9 RECROSS-EXAMINATION

10 BY MR. KING:

11 Q. This photograph, State's Exhibit No. 6,  
12 do you recognize this photograph here?

13 A. Yes, sir.

14 Q. Isn't this just a photograph of the  
15 door before it was busted open?

16 A. I wouldn't take photographs before the  
17 room was clear because now I'm -- I wouldn't want  
18 to be in front of the door if there was someone  
19 inside that did not want us to come in.

20 Q. So you didn't take the photograph  
21 before the door was busted?

22 A. I never take a photograph before we  
23 make entry into the home because that puts me at  
24 risk.

25 MR. KING: I have no other questions.

1                   THE COURT: All right. Yes, sir. Mr.  
2 Miller, you may step down. Thank you. Okay.

3                   Ladies and gentlemen, we are going to  
4 recess for the evening. Just be back in the jury  
5 room at 9:30 in the morning. We will resume the  
6 trial at that point. Don't do any kind of outside  
7 investigation or research. Don't try to satisfy  
8 your curiosity about something you may have heard  
9 about today by going on the internet or do any kind  
10 of outside research because as I told you you must  
11 confine your decision to the evidence you heard  
12 while you are in court. And don't discuss the case  
13 with anyone. Continue to keep an open mind. You  
14 haven't heard the entire case and have a good  
15 evening. See you back at 9:30 tomorrow morning.

16                   (Thereupon, the jury exited the  
17 courtroom at 5:25 p.m.)

18                   (The following proceedings were held  
19 outside the presence of the jury with the Defendant  
20 present.)

21                   THE COURT: Anything before we recess  
22 for the evening?

23                   MS. LINDER: Nothing.

24                   MR. KING: Your Honor, Mr. Blake makes  
25 a request that he can briefly speak with his

1 family. Not his father who is sequestered, but he  
2 has other family.

3 THE COURT: I will leave that up to the  
4 deputies. They don't tell me how to do my job and  
5 ~~I don't tell them how to do theirs. That's a~~  
6 matter of their own policies and security.

7 THE DEFENDANT: Your Honor, I haven't  
8 seen my family in a long time. I just want to say  
9 to hi.

10 THE COURT: I understand that, sir.

11 THE DEPUTY: See them at the jail.

12 THE COURT: We will resume in the  
13 morning. Thank you.

14 (Whereupon, the proceedings adjourned  
15 at 5:27 p.m.)  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 (Whereupon, the proceedings continued  
2 on June 15, 2016, @ 9:50 a.m.)

3 (The following proceedings were held  
4 outside the presence of the jury with the Defendant  
5 present.)

6 THE COURT: I did receive a note to be  
7 made part of the record. It says in essence Juror  
8 No. 385 knows woman with blond hair, Marie in  
9 audience. Is she related to the Defendant?

10 MR. KING: That could have been Mary  
11 Ford who was the attorney for Ms. Jeter that took  
12 the stand.

13 THE COURT: We will bring her out here  
14 and clarify that.

15 MR. KING: Or it could be there's one  
16 of his family members had blondish hair, too.

17 THE COURT: Can you bring No. 385 out?  
18 Comer Williams.

19 (Juror 385 entered the courtroom.)

20 THE COURT: Mr. Williams, how are you?

21 JUROR NO. 385: Fine, sir.

22 THE COURT: Tell me exactly who it was  
23 you said you knew?

24 JUROR NO. 385: The lady with the --

25 THE COURT: She's in the courtroom now?

1 JUROR NO. 385: Yes, sir.

2 THE COURT: Okay. I tell you -- let me  
3 come around this way. Y'all come up here. Okay.  
4 Ms. Weese has to be able to hear what you say.  
5 Tell me again?

6 JUROR NO. 385: She's the lady that's  
7 with the blond hair. She very close friends of one  
8 of my employees and I know her very well.

9 THE COURT: All right. Do you feel  
10 that would affect your ability to be fair and  
11 impartial in this case?

12 JUROR NO. 385: Yes.

13 THE COURT: All right. We have an  
14 alternate so I can excuse you. And I appreciate  
15 you bringing it forward. Do you have anything in  
16 the jury room that you need to retrieve?

17 JUROR NO. 385: No, sir.

18 THE COURT: Okay.

19 JUROR NO. 385: I thought to be fair.

20 THE COURT: Yes, sir, I understand that  
21 completely. And thank you again for your candor.  
22 So you are excused and have a good day. Have you  
23 advised anyone?

24 JUROR NO. 385: No, sir.

25 THE COURT: Have you talked to anybody



1 on the jury about your knowledge of the person or  
2 the relationship with her?

3 JUROR NO. 385: Just the head person.

4 THE COURT: Who was the head person?

5 JUROR NO. 385: Lady at the head table.

6 THE COURT: Forelady?

7 JUROR NO. 385: Forelady. I had to  
8 tell her so she could report to the bailiff.

9 THE COURT: Okay. You didn't elaborate  
10 on it?

11 JUROR NO. 385: No, sir.

12 THE COURT: Okay. Thank you, sir.

13 (Juror 385 left the courtroom.)

14 THE COURT: Mr. Williams, No. 385, is  
15 excused for cause. That means Mr. Kearse would be  
16 the -- well, actually, I believe we're supposed to  
17 choose the replacement by lot according to the  
18 statute. Do not we have two alternates?

19 THE CLERK: We do, sir.

20 THE COURT: We will pull up the  
21 statute. So based on Section 14-7-1340 we will  
22 draw the name of the replacing juror by lot or  
23 ballot.

24 THE CLERK: Sir, I can create a random  
25 strike sheet of our 14 jurors and the alternate's

1 name that appears first in that list. Would that  
2 be sufficient or would you rather track down the  
3 old school barrel?

4 THE COURT: No. Go ahead.

5 THE CLERK: Random strike sheet. In  
6 other words, it would mix up all 14 of our jurors  
7 and whatever alternate's name is first on that list  
8 would be the alternate selected. Or I can put two  
9 slips of paper in a barrel.

10 THE COURT: I believe that randomness  
11 of the computer is consistent with the intent of  
12 the statute so we will do it that way.

13 (Brief pause.)

14 Okay. So based on the random computer  
15 selection Mr. Kearse is the alternate that will be  
16 seated to replace Mr. Williams as a regular juror.  
17 All right. Anything further before we bring the  
18 jury in?

19 MS. LINDER: Nothing from the State.

20 THE COURT: Mr. King?

21 MR. KING: No, Your Honor. I am sorry.  
22 I was talking to my client.

23 THE COURT: That's fine, no problem.  
24 Everybody ready for the jury?

25 MR. KING: Yes, sir.

1 THE COURT: Okay. Yes, sir. Thank  
2 you.

3 (Whereupon the jury entered the  
4 courtroom at 10:00 a.m.)

5 THE COURT: Good morning, ladies and  
6 gentlemen. We are going to proceed now with the  
7 testimony. So yes, ma'am, you may call your next  
8 witness.

9 MS. FRIERSON: State calls Jason Riley.

10 (COURT'S EXH. 2, jury note, marked for  
11 identification.)

12 JASON RILEY

13 having been duly sworn, testifies as follows:

14 THE CLERK: Please give us your full  
15 name and spell your last name, please.

16 THE WITNESS: Jason Harold Riley,  
17 R-I-L-E Y.

18 DIRECT EXAMINATION

19 BY MS. FRIERSON:

20 Q. May it please the Court, Your Honor,  
21 good morning, Mr. Riley.

22 A. Good morning.

23 Q. Where are you employed?

24 A. I work for Charleston County Sheriff's  
25 Office.

1           Q.    And how long have you been with the  
2 Charleston County Sheriff's Office?

3           A.    Fourteen years.

4           Q.    What is your current position there?

5           A.    I work in the forensic services unit.

6           Q.    And how long have you been employed in  
7 that position?

8           A.    Four years and 11 months.

9           Q.    And could you please tell the jury what  
10 your duties are as a forensic technician?

11          A.    My duties are twofold. We both  
12 investigate crime scenes and we deal with evidence  
13 intake and evidence holding.

14          Q.    Do you ever have the occasion to  
15 transport evidence?

16          A.    I do.

17          Q.    Are there multiple people in your  
18 office with the same job and duties as you?

19          A.    Yes, ma'am, currently there are five.

20          Q.    And could you please tell the jury  
21 about how evidence is stored at the Charleston  
22 County evidence facility and the process for  
23 submitting evidence?

24          A.    I will start with the submitting  
25 process. Whenever an officer or deputy submits

1 evidence to our unit there's an evidence drop-off  
2 location which is a wall or a bank of sealed  
3 containers or almost like safes and they would  
4 prelock their evidence in the evidence systems  
5 computer base. There is a piece of paper they  
6 attach to the evidence, they seal it inside the  
7 evidence locker and they turn the lock and that  
8 locks it from the outside.

9 And on the reverse side of that wall,  
10 the only people that have access to that are the  
11 ones who work in forensic services. We pick the  
12 evidence out from the bag, use their evidence  
13 sheet, log it into the computer, and then we will  
14 store that evidence in the storage location.

15 Q. When you receive the evidence is it  
16 sealed?

17 A. Yes, ma'am.

18 Q. What are the types of seals that they  
19 can produce?

20 A. Seals can be sealed tape which is like  
21 masking tape I guess. Tamperproof tape. The  
22 things that are in plastic bags there is a heat  
23 seal that is used. Those are the two basic types  
24 of seals besides the bags being stapled or closed  
25 prior to being sealed.

1           Q.    And are there any markings or labels on  
2 the bag when they are submitted to evidence?

3           A.    Most of the time the paper bags have  
4 information written on them. If it's heat sealed  
5 the heat seal is generally dated or at least  
6 initialled.

7           Q.    And when you receive those items tell  
8 us what receiving actually entails?

9           A.    When we receive the items, again they  
10 have the piece of paper that shows pending  
11 evidence. There's a bar code number on that in the  
12 evidence system. We will bring up that bar code  
13 number under the evidence section and we will type  
14 that bar code number there, bring up all the  
15 information on that piece of evidence, case  
16 officer, what the evidence entails, and then we  
17 choose a storage location for that evidence. We  
18 click the status bar which changes the evidence  
19 from pending to in custody. That adds a line of  
20 chain of custody at the bottom and then we put a  
21 label on that bag. We inspect the evidence to make  
22 sure it looks like what it says it is on the  
23 paperwork. That it has not been messed with,  
24 tampered with or it's got to look like what it is  
25 supposed to look like, otherwise we will reject it.

1 That goes in the proper storage location in the  
2 evidence compound.

3 Q. Once items are into evidence is it  
4 preserved in that location until it is removed?

5 A. Yes, ma'am.

6 Q. Can anyone take evidence out?

7 A. No, the only people that can move the  
8 evidence within the unit are the ones who work at  
9 the unit. Evidence can be checked out, but they  
10 have to go through one of us who work in forensic  
11 services.

12 Q. Let me make sure I understand  
13 correctly. One of the five I think you said of you  
14 that work there are the only five that can release  
15 it?

16 A. Yes, ma'am.

17 Q. And do you track that in any way?

18 A. We do. We have a chain of custody.

19 Q. Can you explain to the jury what a  
20 chain of custody is?

21 A. Chain of custody is each piece of  
22 evidence is the documentation of that piece of  
23 evidence, what the evidence is, what the evidence  
24 status is, and where the evidence is located at,  
25 who removed the evidence, who transported the

1 evidence. Every time they move or touch or the  
2 status is changed a new line is added to the chain.

3 Q. I'd like to show you what has been  
4 marked Defendant's Exhibit No. 9. If you could  
5 take a look at this.

6 MR. KING: Your Honor, objection. Not  
7 in evidence.

8 MS. FRIERSON: I'll show it him.

9 BY MS. FRIERSON:

10 Q. I would like to you what's been marked  
11 as Defendant's Exhibit for ID only. Do you know  
12 what that is?

13 A. Yes, ma'am.

14 Q. What is that?

15 A. This is a sheriff's office chain of  
16 custody report.

17 Q. And does it refer to evidence in this  
18 case?

19 A. Yes, ma'am, it does.

20 Q. And is that the chain of custody  
21 paperwork that you just discussed?

22 A. Yes, ma'am.

23 Q. As regard to the evidence submitted ID  
24 No. 135986, what evidence is that?

25 A. 135986 was listed as 11 bundles and one



1       bundle of brown substance.

2               Q.    And can you tell me who submitted that  
3       into evidence?

4               A.    Submitted by Detective Andrew Miller.

5               Q.    And who accepted it or entered it into  
6       evidence?

7               A.    I did.

8               Q.    And was that evidence ever transferred  
9       to another deputy on a subsequent date?

10              A.    Not to another deputy, no, ma'am.

11              Q.    Was it ever physically transferred to  
12       another deputy?

13              A.    No, ma'am.

14              Q.    Was it ever transferred within your  
15       system to another deputy other than Deputy Miller?

16              A.    Within the system the status was  
17       changed.

18              Q.    What -- can you explain what that means  
19       to the jury?

20              A.    There's a yearly audit that is done for  
21       all the evidence in Charleston County Sheriff's  
22       Office. All the officers who work for us once a  
23       year will go through all the evidence in their  
24       custody electronically offsite and they will go  
25       through and they will tell the system to keep or to

1 destroy. That lets the system know that when we  
2 audit and check each bar code the computer will  
3 tell us in custody or destroyed. We're the only  
4 ones that can actually physically destroy any  
5 evidence.

6 This particular piece of evidence the  
7 status was changed. It was in our custody  
8 physically. The case agent checked it remotely  
9 from his computer. Told the computer to keep that  
10 evidence in custody. So the computer will retell  
11 the chain that it is still in custody I guess is  
12 the best way to describe that. So it is in custody  
13 physically with us. Remotely the deputy checks it,  
14 decides to keep it or destroy it. If he chooses to  
15 keep it the computer will say it's still in  
16 custody.

17 Q. So Frank never physically took it out  
18 of custody?

19 A. He did not. The chain would represent  
20 that if he did.

21 Q. Thank you. Now, you testified earlier  
22 that part of your job is to transport evidence?

23 A. Yes, ma'am.

24 Q. Do you transport evidence if any of the  
25 seals that you previously described to the jury are

1 damaged or tampered or broken?

2 A. No, ma'am.

3 Q. And did you handle any evidence in this  
4 particular case?

5 A. I did.

6 Q. What did you handle?

7 A. I handled quite a few bags of  
8 presumptive brown substance. I also handled on  
9 intake it was some paraphernalia type of items.  
10 There was some containers and some weapon  
11 accessories.

12 Q. I'd like to hand you what has been  
13 premarked as State's Exhibit No. 50. Would you  
14 take a look at those for identification and tell me  
15 if you have seen those items before?

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

17 Q. When did you first see them?

18 A. This particular item if I can refer to  
19 my chain, I first saw these on February the 25th of  
20 2013.

21 Q. And did you accept them into evidence?

22 A. I did.

23 Q. Would you have accepted them into  
24 evidence if they had appeared to be tampered with?

25 A. No, ma'am.

1 Q. Do they appear to be in more or less  
2 the same condition now as when you first saw them?

3 A. Yes, ma'am.

4 Q. And you did you transport that  
5 evidence?

6 A. I did on several occasions.

7 Q. And each time you transported that  
8 evidence did it remain in your sole care and  
9 custody between where you took it out of evidence  
10 to the location that you dropped it off?

11 A. Yes, ma'am.

12 Q. And where did you drop it off?

13 A. I took it to the City of Charleston's  
14 drug lab.

15 Q. On any of those occasions that you  
16 transported it would you have transported it if it  
17 was damaged or tampered with?

18 A. No, ma'am.

19 MS. FRIERSON: Court's indulgence, Your  
20 Honor.

21 (Brief pause.)

22 BY MS. FRIERSON:

23 Q. You mentioned that there are other  
24 people in your unit?

25 A. Yes, ma'am.

1 Q. And they have the same role as you?

2 A. Yes, ma'am.

3 Q. Are there any other people based on  
4 your chain of custody that had touched or  
5 transported those particular drugs?

6 A. Outside of the five people that work  
7 within the unit?

8 Q. Yes.

9 A. There was another investigator that did  
10 handle some courier services with this piece of  
11 evidence to the city drug lab.

12 Q. If you could just identify the people  
13 in your office that had custody of that item for  
14 transport?

15 A. Investigator Mark Watson and  
16 Investigator Aaron Meyer. Those are the names that  
17 I see who has access or touched this evidence  
18 during that time frame.

19 MS. FRIERSON: Thank you. I have no  
20 further questions at this time. Please answer any  
21 the defense may have.

22 THE COURT: Mr. King.

23 CROSS-EXAMINATION

24 BY MR. KING:

25 Q. I want to refer to one of these

1 documents. Defendant's Exhibit 9. You just  
2 testified regarding that, right?

3 A. Yes, sir.

4 Q. So your name is on here a few times,  
5 right, within this chain of custody?

6 A. Yes, sir.

7 Q. You first received it you said on  
8 February 25th 9:13:05 a.m., right? That's when you  
9 would have taken it out of this evidence locker  
10 that you mentioned, when they put it in the locker  
11 you can get it out of the other side?

12 A. Yes, sir.

13 Q. And then on March 11th, 2013, it was  
14 signed out to the CPD lab?

15 A. Yes, sir.

16 Q. It leaves -- it goes to the lab?

17 A. That's correct.

18 Q. At that point it's out of your control  
19 so you can't say what happens to it once it gets to  
20 the lab, right?

21 A. Correct. My duty is just the courier.

22 Q. Then it is brought back to Mark Watson  
23 on 4-1-13, right?

24 A. Yes, sir.

25 Q. So it goes out to the lab 3-11-13 to

1 4-1-13, about 20 days or so. Then it stays in the  
2 evidence room until 6-1-15; is that right? Then  
3 it's signed out again?

4 A. Yes, sir.

5 Q. To the lab?

6 A. Yes.

7 Q. And then it comes back on 6-8-15 from  
8 the lab?

9 A. Correct.

10 Q. And then it's signed out again on  
11 11-23-15, right?

12 A. Yes, sir.

13 Q. And it comes back on 12-7-15?

14 A. Yes, sir.

15 Q. So it's been sent out to the lab three  
16 times, right?

17 A. This particular piece, yes, sir.

18 Q. Do you have a lot of experience with  
19 dealing with drug evidence like this?

20 A. Dealing with drug evidence, yes, sir.  
21 Are you asking about multiple trips?

22 Q. Yes. Is it common in your experience,  
23 multiple trips to the chemist's lab?

24 A. I have only had that a few times come  
25 up.

1           Q.    But it generally goes to the lab one  
2 time and comes back, right?

3           A.    Generally.

4           Q.    And would you say I guess part of  
5 keeping it in custody, the more times it leaves  
6 your custody in the evidence room the greater  
7 chance of some sort of tampering or something  
8 happening to it, right?

9           A.    Not while it's within my control.

10          Q.    Exactly. But whenever it leaves your  
11 control you can't keep an eye on that evidence?  
12 You have no control?

13          A.    It's outside of my scope then, yes,  
14 sir.

15          Q.    And it left outside of your scope three  
16 different times?

17          A.    Correct.

18               MR. KING: That's all the questions I  
19 have, Your Honor.

20               MS. FRIERSON: We have no further  
21 questions, Your Honor.

22               THE COURT: All right. Thank you, Mr.  
23 Riley. You may step down, sir. You may call your  
24 next witness.

25               MS. FRIERSON: The State calls Susan



1 Payne.

2 SUSAN PAYNE

3 having been duly sworn, testifies as follows:

4 THE CLERK: Please give us your full  
5 name and spell your last name last for the record

6 THE WITNESS: Susan Payne, P-A-Y-N-E.

7 DIRECT EXAMINATION

8 BY MS. FRIERSON:

9 Q. May it please the Court, Your Honor.  
10 Good morning, Ms. Payne. Could you please tell the  
11 jury where you are employed?

12 A. I work for the City of Charleston  
13 Police Department.

14 Q. And what is your position there?

15 A. I am the loads administrator, evidence  
16 custodian in the forensic services division.

17 Q. And how long have you been employed  
18 with the City of Charleston?

19 A. Approximately 11 years.

20 Q. What are your duties as they relate to  
21 evidence courtering?

22 A. I'm responsible for going to the  
23 station in the morning and picking up evidence and  
24 bringing it to the correct disciplines for  
25 analysis.

1                   Q.    Can you explain how that process works  
2 or any procedures that you may follow?

3                   A.    Yes, ma'am. In the morning I go to the  
4 station to the evidence room where I pick up  
5 evidence. I make sure everything is packaged and  
6 sealed correctly. And then I will transport it to  
7 the correct discipline.

8                   Q.    And can you kind of elaborate on what  
9 you mean by packaged and sealed correctly?

10                  A.    Yes, ma'am. I make sure that the  
11 description I have matches what's inside the  
12 evidence container. I make sure the evidence  
13 container is sealed and I also make sure that their  
14 initials are half on half off the seal.

15                  Q.    And do you open these items?

16                  A.    No, ma'am.

17                  Q.    So your role is strictly to carry it  
18 from one place to another?

19                  A.    Yes, ma'am.

20                  Q.    Did you handle any evidence in this  
21 case, the State versus Mark Blake?

22                  A.    Yes, ma'am.

23                  Q.    And did you handle this evidence on  
24 more than one occasion?

25                  A.    Yes, ma'am.

1 Q. Per policy with your department would  
2 you have accepted that evidence if it was tampered  
3 with?

4 A. No, ma'am.

5 Q. Would you have transported that  
6 evidence if it was tampered with?

7 A. No, ma'am.

8 Q. I would like to hand you what has been  
9 premarked as State's Exhibit No. 50 for  
10 identification. If you can please look at that and  
11 tell me if you have seen that before.

12 A. (Witness complies with request.) Yes,  
13 ma'am.

14 Q. And when did you first see that?

15 A. The first time? I don't have that  
16 chain on me at the moment, but the second time I  
17 saw it November 23rd.

18 Q. And where did you see it?

19 A. In the lab.

20 Q. And who controls that lab?

21 A. Could you rephrase?

22 Q. Whose lab is it?

23 A. The City of Charleston Police  
24 Department's laboratory.

25 Q. And is that where drugs are tested?

1 A. Yes, ma'am.

2 Q. And does that appear to be in -- that  
3 packaging in substantially the same condition as  
4 when you first saw it?

5 A. Yes, ma'am.

6 MS. FRIERSON: Court's indulgence, Your  
7 Honor?

8 THE COURT: Yes, ma'am.

9 (Brief pause.)

10 BY MS. FRIERSON:

11 Q. And when you took that, couriered that  
12 did you -- do you have record of who you dropped  
13 that off to?

14 A. Yes, ma'am.

15 Q. Who was that?

16 A. Renee Hilton.

17 Q. And who did you receive it from?

18 A. I received from it Jason Riley.

19 MS. FRIERSON: Thank you, Ms. Payne. I  
20 have no further questions at this time. Please  
21 answer any questions the defense may have.

22 THE WITNESS: Yes, ma'am.

23 CROSS-EXAMINATION

24 BY MR. KING:

25 Q. You testified you handled this evidence

1 more than once, right?

2 A. Yes, sir.

3 Q. You first received it from Jason Riley  
4 on 3-1-13; isn't that right?

5 A. I don't have that chain in front of me.

6 Q. If you had that would it refresh your  
7 recollection?

8 A. Yes, sir.

9 (DFT. EXH. 10, chain of custody report,  
10 was marked for identification.)

11 BY MR. KING:

12 Q. Showing you Defendant's Exhibit No. 10.

13 A. Thank you.

14 Q. Can you see that number there that we  
15 are talking about, 135986?

16 A. Yes, sir.

17 Q. Is that right?

18 A. Yes, sir.

19 Q. So you received it first from Jason  
20 Riley on 3-1-13?

21 A. Yes, sir.

22 Q. And then you gave it to somebody,  
23 right?

24 A. I placed it in the safe.

25 Q. You placed it in the safe?

1 A. Yes, sir.

2 Q. And do you know who it went to after  
3 that?

4 A. It went to Elizabeth Mitchell.

5 Q. Then you handled it again; is that  
6 right? At some point then it goes back to the  
7 sheriff's office?

8 A. Yes, sir.

9 Q. And then it comes back to you again on  
10 6-1-15; is that right?

11 A. Yes, sir.

12 Q. And that's when it goes to Renee  
13 Hilton; is that right? It's at CPD for about seven  
14 days from 6-1 to 6-8-15?

15 A. Yes, sir.

16 Q. And then it goes back to the sheriff's  
17 office, right?

18 A. Yes, sir.

19 Q. Then you got it again on 11-23-15?

20 A. Yes, sir.

21 Q. And it goes to Renee Hilton again?

22 A. Yes, sir.

23 Q. So it is -- you testified you got it  
24 and you gave it to Renee Hilton in the same  
25 condition. But you actually handled -- it came to

1       you three different times, right?

2               A.    According to the chain, yes, sir.

3               Q.    And at some point a chemist cut that  
4       bag open?

5               A.    Yes, sir.

6               Q.    So is Elizabeth Mitchell a chemist?

7               A.    She was, yes, sir.

8               Q.    So when you received it on 6-1-15 after  
9       Elizabeth Mitchell had cut it open it wasn't in the  
10      same condition as when you first saw it, was it?

11              A.    Substantially the same condition.

12              Q.    The tamper proof sealed had been  
13      broken?

14              A.    It had been opened.

15              Q.    And you don't know what happened to it  
16      when it was opened?

17              A.    I did not witness the analysis.

18              Q.    And do you know how long it takes to do  
19      an analysis?

20              A.    I'm not qualified to answer that  
21      question.

22              Q.    So you don't know why it is kept for  
23      21 days at one point or seven days or 14 days?

24              A.    No, sir. I am not an analyst.

25                   MR. KING: No other questions, Your

1 Honor.

2 MS. FRIERSON: The State has no further  
3 questions.

4 THE COURT: All right. Thank you, Ms.  
5 Payne. You may call your next witness.

6 MS. FRIERSON: Thank you, Your Honor.  
7 State calls Renee Hilton.

8 RENEE HILTON

9 having been duly sworn, testifies as follows:

10 THE CLERK: Give us your full name and  
11 spell your last name.

12 THE WITNESS: Renee Hilton,  
13 H-I-L-T-O-N.

14 DIRECT EXAMINATION

15 BY MS. FRIERSON:

16 Q. May it please the Court, Your Honor.  
17 Ms. Hilton, what is your occupation?

18 A. I'm a criminalist.

19 Q. And who are you employed by?

20 A. The Charleston Police Department.

21 Q. And how long have you worked for the  
22 Charleston Police Department?

23 A. About five and-a-half years.

24 Q. And could you please tell the jury what  
25 your duties as a criminalist entail?



1           A.    Well, I perform drug analysis, fire  
2 debris analysis and serology analysis. I'm also a  
3 laboratory manager so I also maintain the  
4 laboratory, keep the upkeep, manage the instruments  
5 and also manage the personnel.

6           Q.    And could you tell the jury a little  
7 bit about your background and your education and  
8 the training you have received to have a job like  
9 that?

10          A.    I have a Bachelor's of Chemistry from  
11 the University of South Carolina. I have completed  
12 CP or Charleston Police Department's internal  
13 training program. I have gone to various on site  
14 and online trainings to include GCMS  
15 troubleshooting and maintenance, mass spectrum  
16 interpretation, drug analysis interpretation and  
17 the actual analysis of controlled substances and  
18 too many to list actually.

19          Q.    Now, have you had the occasion in this  
20 position that you currently hold to chemically  
21 analyze substances to determine whether the  
22 substance is or actually contains a controlled  
23 substance?

24          A.    Yes.

25          Q.    And how many times would you say you

1 have done that?

2 A. I have completed about 4,500 cases.

3 Q. And on any given week how many analyses  
4 would you say that you make?

5 A. I probably do between 20 and 30 cases a  
6 week.

7 Q. Would you consider these analyses part  
8 of your regular duties?

9 A. Yes.

10 Q. Could you tell the jury a little bit  
11 about the equipment that you have at the lab for  
12 testing the drugs and who supplies that equipment?

13 A. Yes. We have an FTIR which is a  
14 Fourier Transform Infrared Spectrometer. And this  
15 instrument produces a laser on the substance and  
16 based on how the substance reacts to this laser it  
17 vibrates and then it will relax and it will give us  
18 a spectrum that we can analyze and compare to known  
19 substances.

20 The second use of equipment or  
21 instrument that we have is the GCMS which is a gas  
22 chromatograph mass spectrometer. This is two  
23 instruments in one. The GC or the gas  
24 chromatograph separates a sample into its  
25 components. And then the mass spec or MS provide

1 the identity of each of the components.

2 Q. And is that equipment precise and  
3 accurate in its testing ability?

4 A. Yes.

5 Q. After making these analyses that you  
6 described as a regular part of your duties do you  
7 produce a report?

8 A. Yes.

9 Q. And have you previously been admitted  
10 as an expert in drug analysis in court?

11 A. Yes.

12 Q. Approximately how many times?

13 A. I have testified nine times.

14 MS. FRIERSON: Your Honor, at this  
15 time, the State would introduce Ms. Hilton as an  
16 expert in drug analysis.

17 THE COURT: Any voir dire, Mr. King?

18 (Attorney confers with client.)

19 MR. KING: I have no voir dire of this  
20 witness.

21 THE COURT: Okay. She's qualified.

22 Ladies and gentlemen, the rules of evidence  
23 generally limit a witness who testifies to  
24 expressions of things they have observed  
25 through one of their senses. There is an exception

1 for people who by reason of their training,  
2 experience or education have achieved expertise in  
3 their given field. These people are qualified as  
4 expert witnesses. Unlike other witnesses they can  
5 give their opinions from things they have observed.

6 Just to give a simple example, if  
7 someone is qualified as a medical doctor he or she  
8 would be allowed to testify not only that they  
9 touched a child's forehead and it was hot, but that  
10 that heat was coming from a fever in all  
11 probability. Whereas an ordinary lay witness  
12 wouldn't be able to give that opinion. So that's  
13 the difference.

14 But all witnesses have their  
15 credibility judged by you whether they are expert  
16 witnesses or not. You can accept or reject their  
17 testimony, give it whatever weight you deem  
18 appropriate. So, yes, ma'am. You may continue.

19 BY MS. FRIERSON:

20 Q. Thank you, Your Honor. Ms. Hilton, did  
21 you analyze the substances in this case?

22 A. Yes.

23 Q. Was that substance previously tested by  
24 your lab?

25 A. Yes.

1 Q. Do you know approximately when it was  
2 tested previously?

3 A. Approximately two years ago.

4 Q. And how do you know that?

5 A. I performed the technical  
6 administrative review on the previous analysis of  
7 this case, meaning I had to look over the previous  
8 analyst's work and had to come to the same  
9 conclusion that she did based on her results that  
10 she had and all of the other testing that she  
11 performed. So I had to come to the same conclusion  
12 and the fact that I did I was -- when I did I was  
13 able to pass the review and then she was able to  
14 release the report for our customers.

15 Q. And you said it was actually two years  
16 ago approximately. Did your lab hold any  
17 certifications then?

18 A. Yes. We were ASCLD/LAB Legacy  
19 accredited.

20 Q. And what does that mean if you could  
21 explain that to the jury?

22 A. At the time that meant that we had an  
23 accrediting body, the American Society of Crime  
24 Laboratory Directors/Laboratory Accreditation  
25 Board. They came and we had to follow a certain

1 number of standards that they deemed necessary for  
2 all those in a forensic science field. We passed  
3 all of the standards and they gave an  
4 accreditation, ASCLD/LAB Legacy accreditation at  
5 that time.

6 Q. And that was two years ago. Do you  
7 still hold that certification?

8 A. Currently we are actually ASCLD/Lab  
9 International which means we -- it is more  
10 stringent. We actually have about 300 standards  
11 that we have to adhere to so it's a lot more  
12 stringent now than it was two years ago.

13 Q. And do you happen to know why the drugs  
14 were retested?

15 A. The previous analyst is unavailable to  
16 testify for court.

17 Q. Is she employed there anymore?

18 A. No.

19 Q. But for purposes of your testimony  
20 today I just want to be clear. Are you referring  
21 to your analysis you did or to the one that you  
22 peer reviewed?

23 A. My analysis.

24 Q. And each time you test a substance is  
25 there an amount that is removed for testing?

1 A. Yes.

2 Q. Would that change the weight?

3 A. Yes.

4 Q. Is there anything else that affects the  
5 weight of a substance?

6 A. Depending on how the substance is  
7 stored, if the temperature with which the substance  
8 is stored is really hot it can affect the chemical  
9 structure of a substance and can reduce the weight.  
10 There's also diluent or what we call fillers inside  
11 of substances that also can be affected by the  
12 weight. The length of time that something is  
13 stored in that humid, hot heat can definitely  
14 change the weight.

15 (STATE'S EXH. 58, lab report, was  
16 marked or identification.)

17 BY MS. FRIERSON:

18 Q. I would like to show you what has been  
19 marked for identification as State's Exhibit  
20 No. 58. If you could please look at that.

21 A. (Witness complies with request.)

22 Q. Have you seen that before?

23 A. Yes.

24 Q. And what is that?

25 A. This is my laboratory report.

1 Q. Who prepared that?

2 A. I did.

3 Q. When did you prepare that report?

4 A. December 1st of 2015.

5 Q. Is that report signed by you?

6 A. Yes.

7 Q. And who is the subject of that report?

8 A. Mark Blake.

9 MS. FRIERSON: Your Honor, at this time  
10 I would request to admit that report and publish it  
11 to the jury.

12 MR. KING: Your Honor, I have an  
13 objection to the report and the drugs and the chain  
14 of custody as to -- maybe I have an objection as a  
15 matter of law.

16 THE COURT: All right. Ladies and  
17 gentlemen, we are going to take a brief recess.  
18 Don't talk about the case and keep an open mind.

19 (Thereupon, the jury exited the  
20 courtroom at 10:37 a.m.)

21 (The following proceedings were held  
22 outside the presence of the jury with the Defendant  
23 present.)

24 THE COURT: Mr. King.

25 MR. KING: Your Honor, I just thought



1 maybe that the chain of custody is more complicated  
2 than what I think has been presented. I have got  
3 two pages laying out where the chain of custody  
4 went.

5 The crux of the issue is they haven't  
6 called Elizabeth Mitchell who was the previous  
7 chemist that cut open this bag and tested the  
8 drugs. I have a case, Your Honor, State vs. Marcus  
9 Joseph that holds similar a case where drugs were  
10 tested twice and they didn't call the first  
11 chemist. Because the chemist is not a courier who  
12 just takes a sealed package from one place to the  
13 other, they actually cut it open, they are going to  
14 manipulate these baggies. They are going to  
15 manipulate the powder. They can't demonstrate the  
16 manner of handling by Elizabeth Mitchell. It is  
17 more than that. They have to prove the chain of  
18 custody as far as practicable. And the way it goes  
19 is Jason Riley who has testified gave it to Susan  
20 Payne who then gave it to Elizabeth Mitchell, the  
21 first chemist, who tested it in 2013.

22 Then an Ashley Carr Earl gave it back  
23 to Mark Watson. We haven't heard from Ashley Carr  
24 Earl or Mark E. Watson. Then it stays at the  
25 Charleston County Sheriff's Office for two years

1 and two months. And then Jason Riley gives it back  
2 to Susan Payne, and it goes to Ms. Hilton on 6-1-15  
3 and then goes back from Susan Payne back to the  
4 sheriff's office for five months and 15 days.

5 And it is sent from Jason Riley to  
6 Susan Payne to Ms. Hilton again on 11-23-15. So  
7 Ms. Hilton actually had it two different times. So  
8 she hasn't called Ashley Carr Earl or Mark E.  
9 Watson or Elizabeth Mitchell. I have a case I am  
10 handing it up.

11 THE COURT: Sure.

12 MR. KING: This case, Your Honor.

13 THE COURT: Thank you.

14 MR. KING: Elizabeth Mitchell is the  
15 crucial element of the chain and I would move to  
16 exclude the drugs based on the chain of custody.

17 MS. FRIERSON: Thank you, Your Honor.  
18 I have some cases I'd like to hand to the defense  
19 and to the Court as part of my argument. Thank  
20 you. Ms. Hilton, in fact, did just testify as to  
21 the manner of handling and including the lab  
22 certifications and the stringent process that they  
23 followed. She also peer reviewed the drugs a  
24 previous time, came to the same results despite the  
25 fact that she is only testifying to her results

1 today.

2           State v. Hatcher says that fungible  
3 items, which is drugs, must establish a complete  
4 chain of custody as far as practicable. And while  
5 Your Honor may be familiar with State v. Chisolm,  
6 which is what the court formerly relied on, it  
7 required each person in the chain to be  
8 specifically identified by either testifying under  
9 oath or producing sworn statements. Through the  
10 testimony of Deputy Riley, Susan Payne and Ms.  
11 Hilton, as well as the cross-examination by Mr.  
12 King, we have established everyone by name there.  
13 However, State v. Chisolm was overruled in State v.  
14 Taylor which I have provided to the Court. It says  
15 that requiring the testimony of each person in the  
16 chain in all cases is inconsistent with the  
17 precedent that's been established in State v.  
18 Hatcher which is also provided to the Court.

19           It is not a prerequisite to  
20 establishing a valid chain of custody sufficient  
21 for admissibility to have the testimony of each  
22 custodian. That's also referred to in State v.  
23 Cope handed up. Every person need not be  
24 identified according to State v. Hatcher, but yet  
25 we have identified, both the State and defense

1 every single person that has handled this evidence.  
2 And absent proof of tampering or bad faith there's  
3 no abuse of discretion by a trial court in allowing  
4 the establishment of chain of custody even if it  
5 doesn't include the identity or the testimony of  
6 everyone involved. That's from State v. Hatcher.

7 Specifically, as to retesting, Your  
8 Honor the State would offer up Flemming v. U.S.  
9 which is a district court Maryland case from 2015.  
10 It actually came to the court as a PRC issue where  
11 the government learned their initial chemist would  
12 be unavailable such as we have been informed. Ms.  
13 Mitchell is no longer with the lab. She chose  
14 another career, there's no unsavory circumstances  
15 or anything. She's just in another career and is  
16 unavailable to testify.

17 And in the Fleming case the government  
18 learned the initial chemist was unavailable, had  
19 the drugs retested, and it came before the Court on  
20 a PCR issue as to possible confrontation clause  
21 issue.

22 The Court found that because the  
23 chemist focused on her independent finding which  
24 was free from reliance on the former test, which  
25 Ms. Hilton has testified she would be testifying

1       only to her current analysis, also because she was  
2       able to acknowledge that the disparity in drug  
3       weights, as she testified just previously that over  
4       time there's a reduced weight and there's a sample  
5       that's removed for testing, that there was no PCR  
6       issue, there was no deficient performance and  
7       there's no prejudice to their client.

8               We have had the testimony that Miller  
9       -- Deputy Miller collected the evidence. He then  
10      stored it where it was taken in by Deputy Riley who  
11      testified that he transported it and other people  
12      in his same position, the limited five, have also  
13      performed that role. We identified them. Ms.  
14      Payne came on the stand and said that she received  
15      it from Mr. Riley and that she gave it to Ms.  
16      Hilton and Ms. Hilton said that she actually tested  
17      it.

18             The State believes that a sufficient  
19      chain of custody has been established and that all  
20      the proper procedures were not only followed  
21      between the additional or, excuse me, the  
22      independent agency action, and that the lab report  
23      and the drugs should be admitted.

24             THE COURT: Thank you.

25             MR. KING: Your Honor, I think under

1     State v. Joseph, when Elizabeth Mitchell received  
2     it, we don't know if she received it intact, if she  
3     received it -- we don't know the condition it was  
4     when she got it. And we don't know the manner of  
5     handling when she manipulated it.

6             I think that's the important part  
7     there. It was peer reviewed by Ms. Hilton. That's  
8     after she had already performed the test. So Ms.  
9     Mitchell has manipulated the evidence, cut the bag  
10    open. That is just -- in State v. Hatcher it talks  
11    about you don't have to call every single person,  
12    but the courts focus in on couriers, people who  
13    have taken intact packages from one place to  
14    another and the chemist is a different story.

15            There's also a period of seven days  
16    where it was brought to the lab and not tested at  
17    all for some reason. There's a -- from 6-1-15 to  
18    6-8-15 it is taken to the lab and brought back. No  
19    apparent testing as far as I'm concerned or as far  
20    as I know. So there's something unusual about the  
21    chain of custody, Your Honor. I have been arguing  
22    during the trial there's a problem with the weight.  
23    Started off with 30 grams, we don't know how much  
24    it weighed in the beginning when the police officer  
25    weighed the packaging and everything. So we don't

1 know how much the powder weighed. So I have made  
2 that an issue in the case.

3 And I think without Elizabeth Mitchell  
4 being able to testify about the manner of handling  
5 I don't think they have completed the chain of  
6 custody, in addition to Ashley Earl and Mark  
7 Watson.

8 And I also argue the confrontation  
9 issue. We have a right to confront and to  
10 cross-examine Elizabeth Mitchell.

11 MS. FRIERSON: May I respond? In the  
12 case that he provided the substance was absent for  
13 six months with the chemist. As to that one brief  
14 time, June 1st to June 8th, there was a discrepancy  
15 between the agency and our office and the lab as to  
16 why these drugs were being retested. I would be  
17 willing to proffer testimony if Your Honor would  
18 like to hear it because Ms. Mitchell has left they  
19 are retesting the drugs on her cases so that the  
20 chemist can actually come in and testify to these  
21 results because Ms. Mitchell is unavailable.

22 There was that initial discrepancy  
23 because they looked at the drugs and they said we  
24 have already tested this. It was sent back. After  
25 further communication between the two offices it

1 was determined this is why we are sending it back  
2 because despite the fact that you peer reviewed it  
3 we would like the actual analyst to come in and  
4 testify to the results. The manner of handling has  
5 been testified to by every single person that's  
6 handled it. They have all testified that when they  
7 received it it was intact. They wouldn't have  
8 moved it along the line and transported it if it  
9 wasn't. And Ms. Hilton also described the  
10 certifications that were in place both then and now  
11 at her lab which requires certain protocol which  
12 would also cover the handling of evidence. There's  
13 no confrontation issue in the case. We would not  
14 refer to the former results. Ms. Hilton would not  
15 refer to former results. She is here to testify  
16 specifically to her own results that were done for  
17 this case.

18 THE COURT: I don't understand the  
19 confrontation argument or proffer argument where  
20 you are going. What would that be based on? As to  
21 Ms. Mitchell. There is no statement of Ms.  
22 Mitchell to be presented before the jury.

23 MR. KING: That's right, Your Honor,  
24 but Ms. Mitchell is a crucial member of the chain  
25 who she didn't -- she cut the bag open. She



1 manipulated the powder. We have no way of knowing  
2 how she received it, the condition it was in when  
3 she received it, to know that it was the same as  
4 when it was sent by Charleston County Sheriff's  
5 Office. So it is not just a confrontation, it's  
6 there's a break in the chain. There's a --

7 THE COURT: You are abandoning the  
8 confrontation argument?

9 MR. KING: No, Your Honor, I think that  
10 he has a right because this person did handle the  
11 evidence and manipulate it, took the powder out,  
12 weighed it, the weight has changed. The weights  
13 are different on the second test than the first.  
14 We do have a right to confront and cross-examine  
15 that witness. I think -- and a lab report is  
16 prepared testimony at trial, I think it is  
17 testimonial. It is -- the purpose of Elizabeth  
18 Mitchell testing the drugs is preparing for trial  
19 so that's testimonial and that we have a right to  
20 confront her.

21 THE COURT: About what?

22 MR. KING: The manner of handling and  
23 the condition that it was in when she received it  
24 and when it left her care.

25 THE COURT: Well, if she were here

1 would you have any objection to the chain up to the  
2 point where she got it?

3 MR. KING: I would still with Ashley  
4 Carr Earl and Mark E. Watson. They're still two  
5 other people who handled the evidence who haven't  
6 testified, Your Honor. Again, it's going to the  
7 lab and back three different times which is I think  
8 is a very unusual procedure. The typical case it's  
9 going to go to the lab once and gets tested. This  
10 has gone back and forth to the lab three times. I  
11 think with that and I will still object based on  
12 Ashley Carr Earl and Mark E. Watson. They both  
13 handled -- Mark E. Watson handled it more than  
14 once, 12-7-15 and 4-1-13.

15 THE COURT: Okay. So backing up for a  
16 moment, does the State agree with Mr. King's  
17 summary of the chain? Do you want to go through it  
18 one more time?

19 MR. KING: Yes, sir.

20 THE COURT: And tell me if you disagree  
21 with Mr. King or not.

22 MR. KING: Detective Roberson gives it  
23 to Miller who checks it into evidence on 2-2-13 to  
24 Jason Riley. It is sent out to the lab on 3-11-13.  
25 Susan Payne receives it. It is then handled by

1 Elizabeth Mitchell on 3-11-13, the chemist, where  
2 it is cut open and tested. It was put in a storage  
3 on 3-28, removed by Ashley Carr Earl on 4-1-13 and  
4 taken back to the Charleston County Sheriff's  
5 Office on 4-1-13 where it remained at the  
6 Charleston County Sheriff's Office for about two  
7 years and two months until 6-1-15. Jason Riley  
8 then gives it to Susan Payne. It is received by  
9 Ms. Hilton on 6-1-15. And then it is taken back on  
10 6-8-15 to the Charleston County Sheriff's Office  
11 where it is received by Christopher Hockrighter.  
12 I'm sorry, I left another name off.

13 THE COURT: Wait a minute. I lost you  
14 at Jason Riley.

15 MR. KING: 6-1-15.

16 THE COURT: Right.

17 MR. KING: Jason Riley gives it to  
18 Susan Payne at the Charleston laboratory. It is  
19 then received by Renee Hilton that same day,  
20 6-1-15. Then on 6-8-15 Susan Payne takes it back  
21 to the Charleston County Sheriff's Office where it  
22 is received by Christopher Hockrighter. I don't  
23 believe that person has been named at all in the  
24 previous testimony. I think that's the evidence  
25 custodian. Then it stays at the Charleston County

1 Sheriff's Office for five months, five and-a-half  
2 months. Then 11-23-15 Jason Riley gives it again  
3 to Susan Payne who gives it again to Renee Hilton  
4 on 11-22.

5 THE COURT: Wait a minute. What  
6 happens to Christopher? He gave it back to Jason  
7 Riley?

8 MR. KING: No. I believe Christopher  
9 Hockrighter is an evidence custodian at Charleston  
10 County Sheriff's Office who would be doing the same  
11 job as Jason Riley. He received it back into  
12 evidence. But then 11-23-15 it leaves the lab  
13 again. Jason Riley takes to it Susan Payne, who  
14 takes to it Renee Hilton. That's when the lab  
15 report is generated that the State is seeking to  
16 admit. Then it goes to Susan Payne on 12-7-15,  
17 back to Charleston County Sheriff's Office 12-7-15  
18 where it is received by Mark E. Watson who I  
19 believe is another evidence custodian. It stays at  
20 the Charleston County Sheriff's Office until the  
21 trial.

22 So that's actually -- there has been no  
23 mention of the name of Christopher Hockrighter as  
24 far as I know in the previous testimony. That's  
25 one person who is handling who hasn't been named at

1 all.

2 THE COURT: What happens the first time  
3 Ms. Hilton received it? Was it tested then?

4 MR. KING: Yes, Your Honor. There's a  
5 lab report generated.

6 MS. FRIERSON: No, the first time she  
7 receives it --

8 MR. KING: I apologize, Your Honor. I  
9 don't know. They have to explain that. It is not  
10 tested.

11 MS. FRIERSON: Yes, Your Honor, that  
12 was what I referred to earlier, a miscommunication  
13 between our office. Just for clarification, Ms.  
14 Nicky Mitchell, Elizabeth Mitchell is gone. She is  
15 no longer available. Ashley Earl is out on  
16 maternity leave, that's why she is not being  
17 called, but the State also doesn't believe that she  
18 needs to based on Pope and Hatcher. Jason Riley  
19 testified about the other people in his office that  
20 have the same job that do the same thing. They  
21 have identified the other people, but every person  
22 handling the evidence does not need to be  
23 identified in all cases is what Hatcher has said.  
24 We have the testimony of all of the people who have  
25 we believe more than satisfied the chain of custody

1 and you don't have to have -- State v. Pope, which  
2 quotes, "The testimony of each custodian of  
3 fungible evidence is not a prerequisite to  
4 establishing a chain of custody sufficient for  
5 admissibility."

6 Both Ms. Payne and Mr. Riley never  
7 opened it and they testified to that. They were  
8 merely a courier. They testified that they touched  
9 it more than once and that was physically to move  
10 it back and forth.

11 The transfer where it came out on 6-1  
12 from Riley to Payne to the lab back to Payne on the  
13 8th as I explained was a miscommunication between  
14 offices. They didn't -- not being lawyers  
15 themselves -- realize that if a drug had already  
16 been tested and peer reviewed that somebody else  
17 could not stand up and testify to that. That was a  
18 miscommunication and therefore they returned it  
19 back because in their mind they had already tested  
20 the drugs. Once that was cleared up and the case  
21 was headed to trial we would actually need the  
22 chemist who tested the drugs. Ms. Mitchell is not  
23 available. We requested that the drugs be retested  
24 for purposes of this case.

25 And, therefore, we believe that a more

1       than sufficient chain of custody -- there is no  
2       evidence where there has been a tampering and that  
3       is something that's required under Hatcher.  
4       Otherwise it is not an abuse of discretion for Your  
5       Honor to let it in. Thank you.

6               THE COURT: Is there any evidence of  
7       the disparity in the results? I'm not sure I have  
8       heard that before.

9               MS. FRIERSON: We haven't got all the  
10      way into it, but so far, Your Honor, Ms. Hilton has  
11      testified that there can be a discrepancy based on  
12      the temperature can change, type of substance. I  
13      don't want to get too scientific and misspeak, but  
14      there are things that are within the substance that  
15      can dissipate or evaporate and change. But she  
16      also testified that there's a sample that is  
17      removed for purposes of testing and we would  
18      elaborate on that in front of the jury or I could  
19      proffer that testimony right now. But she can  
20      explain the disparity in weight.

21              THE COURT: Well, cutting to the chase,  
22      what is the difference in the weight between what  
23      Ms. Mitchell found and Ms. Hilton found?

24              MS. FRIERSON: One second, Your Honor.  
25      It's up here. I believe it was just slightly under

1 a gram that was lost over the period of time that  
2 it was stored in evidence and that there was a  
3 sample that had been removed for purposes of  
4 testing. There's no way -- my understanding, and  
5 she can elaborate on this, there's no way to  
6 pinpoint a specific amount as to what evaporates or  
7 dissipates over time. But it is again my  
8 understanding in dealing with these cases it is  
9 scientifically accepted that the substance does  
10 reduce its weight over time.

11 THE COURT: What was the weight Ms.  
12 Mitchell found?

13 MS. FRIERSON: I believe the combined  
14 weight was 2.73.

15 THE COURT: Ms. Hilton found what?

16 MS. FRIERSON: I am sorry, about two  
17 and-a-half. Allow us to do the math real quick,  
18 Your Honor.

19 (Off-the-record conference.)

20 MS. FRIERSON: Thank you, Your Honor.  
21 Appreciate the time. So Ms. Mitchell it was a  
22 combined weight of 2.46. Ms. Hilton was a combined  
23 weight of 1.12. And there's 1.34 that would have  
24 either dissipated or been used as a sample.

25 THE COURT: All right. We will take a



1       brief recess while I look at these cases.

2                   (A recess transpired.)

3                   (The following proceedings were held  
4       outside the presence of the jurors with the  
5       Defendant present.)

6                   THE COURT: Does the State agree with  
7       the sequence of the chain Mr. King has set forth?

8                   MS. FRIERSON: Yes, Your Honor.

9                   MR. KING: I apologize, Your Honor.  
10       While you were out I noticed one small discrepancy.

11                   THE COURT: All right.

12                   MR. KING: Between the Charleston  
13       County Sheriff's chain and the city or the lab's  
14       chain. Charleston County Sheriff's Office when I  
15       went through the testimony with Jason Riley, it  
16       left the lab on 6-1-15. It left the sheriff's  
17       office to the lab on 6-1-15. And came back to  
18       Jason Riley on 6-8-15. But according to the  
19       laboratory chain of custody it came back to  
20       Christopher Hockrighter on 6-8-15. So there is a  
21       discrepancy between the two different chain of  
22       custodies who received the evidence back at the  
23       sheriff's office. That's why I think I missed that  
24       Christopher's name the first time because his name  
25       is not included anywhere on the Charleston County

1 Sheriff's Office chain of custody. And I have  
2 those exhibits.

3 THE COURT: All right.

4 MS. FRIERSON: Would you like a  
5 response, Your Honor?

6 THE COURT: Sure.

7 MS. FRIERSON: Just briefly. We would  
8 say Mr. Riley, Deputy Riley testified that there  
9 are five people in their office that do those jobs  
10 interchangeably and that multiple people in their  
11 office handled -- testified that each time he  
12 handled the evidence it was not tampered.

13 THE COURT: What evidence is there as  
14 to the state of the evidence? By that I mean how  
15 it was packaged when Ms. Mitchell, the initial  
16 chemist, finished with it?

17 MS. FRIERSON: Your Honor, the State  
18 would submit that after -- up until that point  
19 there was testimony that it had not been tampered  
20 with. And then Susan Payne testified that she had  
21 transported the evidence back and forth. She would  
22 not have done so if it appeared to be tampered  
23 with. She acknowledged the fact that it had been  
24 opened for a previous test. But then when she  
25 transports she doesn't actually open those bags as

1 a courier. And then Ms. Hilton testified that when  
2 she received it in she would have been the next  
3 person that would have opened that seal, that there  
4 was no other evidence of tampering other than the  
5 fact that she was also aware that it had previously  
6 been tested by Ms. Mitchell.

7 MR. KING: I'm not sure how -- the  
8 evidence custodian didn't testify that it wasn't  
9 tampered with when it was cut open at some point by  
10 Ms. Mitchell and they never opened it and looked  
11 inside of it. So in a sense, it was tampered with  
12 in the sense that Elizabeth Mitchell cut it open.  
13 So I don't know how they can testify to the  
14 contents not being tampered with when they have no  
15 idea what happened to it when Elizabeth Mitchell  
16 had it.

17 MS. FRIERSON: I think she actually  
18 testified, Ms. Payne, that it was in substantially  
19 the same condition and acknowledged the difference  
20 that it was -- that it had been opened. She can't  
21 testify to the drugs, she never tried to enter that  
22 testimony. She was clearly a courier that says  
23 that she transported the evidence. She wouldn't  
24 know if it appeared tampered with. It did appear  
25 to be in substantially the same condition not

1       withstanding because she acknowledged the fact that  
2       it had to have been opened in order for the chemist  
3       to initially test it.

4               (Brief pause.)

5               THE COURT: I will be right back.

6               (Brief recess.)

7               (The following proceedings were held  
8       outside the presence of the jurors with the  
9       Defendant present.)

10              THE COURT: I guess I am still unclear  
11      what exactly happened after Ms. Mitchell got it.  
12      And where I am coming from is this, it's the  
13      Hatcher case where the chemist from SLED, that case  
14      details exactly what that chemist did. And of  
15      course it talks about the BEST evidence kit which  
16      is routinely used in these type of cases.

17              The SLED chemist, Ms. Wilson, said she  
18      had retrieved the evidence from the Log-In  
19      Department at SLED and that it was still sealed in  
20      a BEST evidence kit or bag. Wilson testified she  
21      wrote the seal on the evidence bag. Inside she  
22      found a second bag from the Marlboro County  
23      Sheriff's Department containing two clear plastic  
24      corner bags. Both of the plastic corner bags were  
25      still knotted with a rock-like substance inside

1       them. Wilson removed the substances from torn bags  
2       and analyzed them before repackaging the contents  
3       into two zip lock bags. She placed the repackaged  
4       evidence into a heat sealed pouch and wrote her  
5       initials on the date it was sealed of 5/04/07. She  
6       returned the pouch to the SLED Log-In Department,  
7       then gave the evidence back to Marlboro Sheriff's  
8       Office. Wilson identified the SLED heat seal  
9       package which was still sealed with her initials,  
10      the one she had returned to the SLED Log-In  
11      Department. She confirmed it was in the same  
12      condition as when she had sealed it.

13      Now, what evidence is there about the manner in  
14      which Ms. Mitchell handled it?

15               MS. FRIERSON: First, just for  
16      clarification, BEST evidence is only what SLED  
17      uses.

18               THE COURT: I understand that.

19               MS. FRIERSON: Then Ms. Hilton, and we  
20      can proffer this additional testimony, I believe we  
21      got part of it out, is that she can testify that  
22      when she received those into her lab and she tested  
23      the drugs there were individual bags in a bigger  
24      bag.

25               And when she opened that bag which she

1 wouldn't have accepted but for if it was not  
2 tampered with, so it wasn't tampered, she accepted  
3 it into the lab. And when she opened that bag what  
4 she found were the previously sealed packages that  
5 Ms. Nicky Mitchell had tested and since she was a  
6 participant on that peer review, these were  
7 actually the same drugs that she previously tested.  
8 But because Nicky was the lead chemist for lack of  
9 a better word, she was just the chemist on that  
10 case, she tested those drugs. She sealed them up.  
11 She had to and she did testify earlier that she has  
12 to go through and perform this same test, make sure  
13 that the results are the same in order for that to  
14 have that initial lab result to be submitted in the  
15 first place.

16 THE COURT: May I stop you right there  
17 and ask how does she know Ms. Mitchell sealed them  
18 up?

19 MS. FRIERSON: Because her initials are  
20 on the heat seal.

21 THE COURT: Okay.

22 MS. FRIERSON: And having worked with  
23 her I'm sure she could testify to whether or not  
24 she recognizes the initials that she saw.

25 THE COURT: That's something that y'all

1 are going to put into evidence?

2 MS. FRIERSON: We absolutely can, Your  
3 Honor.

4 THE COURT: All right. Those are heat  
5 sealed.

6 MS. FRIERSON: Yes, Your Honor.

7 THE COURT: I didn't mean to -- go  
8 ahead.

9 MS. FRIERSON: And we also have the  
10 testimony as far as the manner of handling  
11 regarding they had certain accreditation standards  
12 in place at the time when they were initially  
13 tested. I think they have since been enhanced even  
14 further. They have received additional  
15 accreditation. Both parties -- both of those  
16 accreditation standards deal with the evidence  
17 handling and the manner in which it comes in.  
18 There was testimony from everyone involved in this  
19 chain that when they received it it did not appear  
20 to be tampered with. It was in their sole care,  
21 custody and control until they hit the next spot,  
22 whether it be the lab or the evidence courier,  
23 whomever picked it up.

24 And then we elicited testimony from  
25 each individual as to while it was in their care

1 and custody it wasn't tampered with and they would  
2 not have accepted it if there was any tampering.  
3 That the seals were intact, and that were  
4 separated, initialled, things were packaged. There  
5 were individual labels. Deputy Riley talked about  
6 they label the evidence as to the case number, what  
7 is purported to be in there and then they  
8 testified, both he and Ms. Payne, that they don't  
9 physically open these bags. They are merely there  
10 as a transporter, as a courier, to get from one  
11 place to another.

12 THE COURT: Thank you. Mr. King.

13 MR. KING: I don't think Ms. Hilton can  
14 testify to the condition of the packages when Ms.  
15 Mitchell received it. That's the unknown part  
16 right there. There is no testimony as to the  
17 condition it was in when Elizabeth Mitchell  
18 received that first package.

19 THE COURT: I thought Ms. Payne  
20 testified that she delivered it to Ms. Mitchell.

21 MR. KING: She didn't look inside.  
22 She's a courier.

23 THE COURT: Didn't she testify she at  
24 all times handled the seal? Mr. Riley testified  
25 that he would not accept it unless it was sealed.



1 Ms. Payne testified she did not handle it except  
2 when it was sealed. So what evidence do you have  
3 that it was not, that we don't know what condition  
4 it was in when Ms. Mitchell tested it?

5 MR. KING: Just that we haven't heard  
6 from Ms. Mitchell. And also that we don't know the  
7 manner of handling when Ms. Mitchell had it. We  
8 know she receives it. Again, the same as the  
9 courier, she's cutting that tamper proof seal. We  
10 don't have any information about how she handled  
11 it. What she did with it even if she received it  
12 intact from the courier from Charleston County  
13 Sheriff's Office, we don't know how she handled it  
14 when she received it.

15 THE COURT: Okay. I understand your  
16 argument. I appreciate everybody's patience while  
17 I kind of sifted through all this. But based on  
18 the evidence as it stands assuming the foundation  
19 is further laid that Ms. Frierson just assured me  
20 it would be concerning the heat sealing and the  
21 basis of Ms. Hilton's knowledge of the initials of  
22 the chemist Ms. Mitchell who is unavailable, who  
23 first tested the drugs, I do find that the chain  
24 has been sufficiently established within the  
25 meaning of the State v. Williams.

1           Of course all the chain of custody is  
2           to ensure the item is what it is purported to be.  
3           I find that there was sufficient evidence presented  
4           by the State as to how the item was obtained and  
5           how it was handled to insure that it is, in fact,  
6           what it's purported to be, that it is heroin seized  
7           from the leased premises pursuant to the search  
8           warrant. And the chain has been established as far  
9           as practicable. The identity of all people who  
10          have handled it has been established to my  
11          satisfaction. There's no evidence anyone outside  
12          of law enforcement ever had the item after it was  
13          seized. There's no evidence of tampering,  
14          alterations or substitution and the evidence about  
15          the sealing from both Mr. Riley and Ms. Payne and  
16          Ms. Hilton is sufficient to establish the chain.

17                To the extent there are discrepancies  
18          that certainly is grounds Mr. King can pursue on  
19          cross-examination by credibility, but doesn't  
20          change my ruling about the admissibility.

21                So with that, we can -- is there  
22          anything else before we bring the jury in?

23                MS. FRIERSON: This is our last  
24          witness, but other than that we don't have  
25          anything.

1 MR. KING: I think we are at the stage  
2 they are offering to admit the report. Since it is  
3 -- I'm objecting to that again when they admit the  
4 drugs under the chain of custody, but also preserve  
5 my pretrial motion to suppress. So I will try to  
6 contemporaneously object when they admit the drugs.

7 THE COURT: Thank you.

8 MR. KING: Or do I need to object when  
9 they move to admit the report? She has just  
10 requested that, make sure that is preserved.

11 THE COURT: Well, to the extent I can  
12 preserve that I do so.

13 (Whereupon the jury entered the  
14 courtroom at 12:55 p.m.)

15 THE COURT: Okay. I apologize for the  
16 length of that. It took me a lot longer than I  
17 thought. That's my fault. So I apologize, but we  
18 had to wade through an issue and we have done so.  
19 So yes, ma'am, you may continue.

20 MS. FRIERSON: Thank you, Your Honor.  
21 May it please the Court.

22 BY MS. FRIERSON:

23 Q. Ms. Hilton, I believe you were looking  
24 at what has been offered as State's Exhibit No. 58.

25 A. Um-hmm.

1 Q. And what was that again?

2 A. It's my lab report.

3 Q. And when did you complete that?

4 A. December 1st of 2015.

5 Q. And who was the subject of that report?

6 A. Mark Blake.

7 Q. And is it signed by you?

8 A. Yes.

9 MS. FRIERSON: Your Honor, at this time  
10 the State would move to admit and publish to the  
11 jury State's Exhibit 58.

12 MR. KING: Just renew my objections I  
13 made.

14 THE COURT: Yes, sir. All right.  
15 Renew all the arguments of Mr. King and I  
16 respectfully overrule the objection. It's in  
17 evidence.

18 (STATE'S EXH. 58 in evidence.)

19 BY MS. FRIERSON:

20 Q. I would like to talk a little bit about  
21 the substances that you used to come up with this  
22 report. Okay? First, I'd like to show you what  
23 has been marked as State's Exhibit No. 50. If you  
24 could look at those.

25 A. (Witness complies with request.)

1 Q. Do you recognize these?

2 A. Yes.

3 Q. Could you please tell the Court how you  
4 recognize them?

5 A. There is a sticker that has my  
6 handwriting and my initials on it as well as  
7 there's a heat seal with my initials on it.

8 Q. And do those appear to be in  
9 substantially the same condition as when you  
10 received them?

11 A. Yes.

12 Q. Any significant difference in the form  
13 or appearance?

14 A. No.

15 Q. Per your protocol certification of your  
16 lab would you have accepted those into the lab and  
17 tested them if they had appeared to have been  
18 tampered with in any manner whatsoever?

19 A. No.

20 Q. Now, I want to talk about a few things  
21 before we go a little further as they relate to  
22 those specific alleged drugs. You testified  
23 earlier that you were aware these had been examined  
24 before?

25 A. Yes.

1 Q. And do you know who they were examined  
2 by?

3 A. Elizabeth Nicole Mitchell.

4 Q. Is she currently employed at your lab?

5 A. No.

6 Q. Did she leave under any unsavory  
7 circumstances?

8 A. No.

9 Q. Did she leave for a different career?

10 A. Yes.

11 Q. And as a result of her leaving have  
12 substances -- other tests that she has done have to  
13 be retested?

14 A. We are not required. Only by request  
15 would it have been retested due to her  
16 unavailability.

17 Q. And what is your understanding of the  
18 nature of that request? Why would we ask for it to  
19 be retested? What is your understanding.

20 A. I'm sorry. Because she was unavailable  
21 would be why we retested something.

22 Q. And the drugs that she tested, did you  
23 physically test those drugs as well as part of the  
24 peer review?

25 A. No.

1 Q. And do you know how she would have  
2 sealed back up the drugs after she tested them?

3 A. She would have been required to heat  
4 seal them and put an initial over it as well as  
5 putting the same sticker that I talked about  
6 earlier on the evidence package.

7 Q. And do you see her initials on those?

8 A. Yes.

9 Q. And would that have been part of your  
10 analysis in terms of whether you accepted that into  
11 your lab to be tested?

12 A. Yes.

13 Q. And is each bundle separated?

14 A. Yes.

15 Q. And are those combined into a bundle in  
16 a larger bag?

17 A. Yes.

18 Q. And those are all individually sealed?

19 A. By zip lock, yes.

20 Q. And those are initialled?

21 A. Yes.

22 MR. KING: Objection, leading.

23 MS. FRIERSON: I am sorry.

24 THE COURT: Sustained.

25 BY MS. FRIERSON:

1 Q. Are those initialled?

2 A. Yes.

3 Q. Thank you.

4 MS. FRIERSON: Your Honor, at this time  
5 I would like to go ahead and publish State's  
6 Exhibit 58.

7 THE COURT: All right. It's in  
8 evidence. You may do so.

9 BY MS. FRIERSON:

10 Q. Now; Ms. Hilton, I'd like to start at  
11 the top. I'd like to go through your report. You  
12 have a screen in front of you. You can point out  
13 things as we go through. Tell me generally what is  
14 this?

15 A. This is my lab report.

16 Q. And just generally what were the  
17 results of your analysis in this case?

18 A. Heroin.

19 Q. Is heroin an illegal substance under  
20 South Carolina law?

21 A. Yes.

22 Q. Now, tell the jury a little bit about  
23 the test that you performed in this case.

24 A. I performed a wet color test which is a  
25 chemical that's based on once you add the



1 substances the chemical is going to react by a  
2 color. And based on this color we can  
3 presumptively identify what the substance could be.  
4 After I perform the color test I performed the GCMS  
5 analysis, the gas chromatograph mass spectrometry  
6 analysis again which it separated the bulk powder  
7 into its components. And then based on the  
8 individual components of the mass spec, then I was  
9 able to obtain a mass spectra from each one of  
10 those components and determined by their mass spec  
11 that it was heroin.

12 Q. And did you personally independently  
13 perform all those tests?

14 A. Yes.

15 Q. Did you do those free from reliance on  
16 any other knowledge on the other report?

17 A. Right, yes.

18 Q. And those tests, can you -- they are  
19 designed to determine what specifically?

20 A. Determine the unknown substance.

21 Q. And the result of those tests were that  
22 the substance was?

23 A. Heroin.

24 Q. Were you able to determine an amount or  
25 a weight?

1 A. Yes.

2 Q. What was that?

3 A. 1.12 grams.

4 Q. And are you familiar with a conversion  
5 from grams to grains?

6 A. Yes.

7 Q. And can you explain that to the jury,  
8 what that conversion is?

9 A. The conversion is one gram equals  
10 15.432 grains. And it is just a conversion factor.  
11 Substances can come in pill form, they can come in  
12 powder, they can come in grains. And so I believe  
13 our statutes determine that for heroin it is in  
14 grains. And so there's a conversion from grams  
15 which is what we report to grains.

16 Q. And looking at this report briefly,  
17 just take us through, up at the top. What does  
18 this lab number indicate?

19 A. The lab number is a unique identifier  
20 that our electronic system assigns to each case  
21 that our laboratory receives into evidence.

22 Q. And is this lab report or lab number  
23 contained on the evidence as well?

24 A. Yes.

25 Q. And then what is this case number?

1           A.    That is the case number, the agency  
2 case number. It's the number that the agency or  
3 police department has assigned to the specific  
4 evidence.

5           Q.    And if you can tell us, Charleston  
6 County Sheriff's Office, is that where you were  
7 located, where is that information?

8           A.    That information is actually the name  
9 and the address of the submitting agency.

10          Q.    And then the date submitted on this  
11 particular one?

12          A.    Is November 23rd of 2015.

13          Q.    And then tell us what all of this here  
14 is?

15          A.    This would be the evidence inventory.  
16 So when I receive evidence in I have to inventory  
17 it. So I have to count all the bags. I have to  
18 count any items within the evidence package and  
19 inventory it into our system.

20          Q.    And in this particular case I believe  
21 you have the evidence in front of you, that is --  
22 make sure I understand correctly -- when it comes  
23 to you do you open this?

24          A.    After I receive it into my custody,  
25 yes.

1 Q. And then do each of those numbers there  
2 respond or correspond, excuse me, to an individual  
3 bag in here?

4 A. Yes.

5 Q. And so this first page is a listing of  
6 all the evidence?

7 A. Yes.

8 Q. And moving on to the second page of  
9 your report, could you please explain to the jury  
10 what this describes?

11 A. This section here is my results. So it  
12 inventories all of the items or it -- it  
13 corresponds the item to its weight and the results  
14 of that particular item as well as the method that  
15 I used to determine the result.

16 Q. And so are each of those items  
17 corresponding to the individual bags in there?

18 A. Yes.

19 Q. And what were your results again?

20 A. Heroin.

21 Q. And which category here shows the  
22 actual weight?

23 A. The second column.

24 Q. What is this third column?

25 A. The third column is the uncertainty of

1 measurement for my balance.

2 Q. And was there anything in your test  
3 this time that was outside the standard deviation  
4 of the -- outside the standard deviation of what  
5 the test results should be?

6 A. No.

7 Q. I'm going to ask you a few more  
8 questions about the heroin that is in front of you.  
9 Specifically, I want to go back to something you  
10 testified about earlier. When you perform a test  
11 are you required to pull out a sample?

12 A. Yes.

13 Q. And does that sample vary each time?

14 A. It can depending on the amount of tests  
15 that I performed on that particular sample.

16 Q. And as a result of you pulling out that  
17 sample does the weight change?

18 A. Yes.

19 Q. So when you received it the weight  
20 would be different than what you sent back; is that  
21 correct?

22 A. Correct.

23 Q. And earlier you also testified about  
24 that the weight can change due to, and you gave a  
25 much more scientific explanation, but basically

1       there are things that are contained sometimes  
2       within a sample? If you can just elaborate for the  
3       jury on that on the other cause of something to  
4       change weight while it is in custody.

5               A.    Again, temperature can cause something  
6       to change. If it's really hot it could change the  
7       molecular structure of something, it can shrink, it  
8       can evaporate. Although it's contained in a  
9       plastic bag it can happen. And there's other  
10      diluent or like I said additives that are also --  
11      that can be present in a sample that again change  
12      form when heat is added and they lose weight.

13             Q.    Thank you. At this time, Your Honor, I  
14      would move to admit what Ms. Hilton has confirmed  
15      is heroin, State's Exhibit 50, into evidence.

16             MR. KING: Your Honor, renew my  
17      objection based on my motion to suppress and chain  
18      of custody.

19             THE COURT: Yes, sir. All right. I  
20      will overrule the objection.

21             MS. FRIERSON: Thank you. Court's  
22      indulgence, Your Honor.

23             THE COURT: It's in evidence.

24             (STATE'S EXH. 50 in evidence.)

25             MS. FRIERSON: I have no further

1 questions at this time. Please answer any the  
2 defense may have.

3 THE COURT: Mr. King,  
4 cross-examination.

5 CROSS-EXAMINATION

6 BY MR. KING:

7 Q. Ms. Hilton, you are familiar with --  
8 you don't work for the Charleston County Sheriff's  
9 Office, but you receive a lot of packages from law  
10 enforcement, drug, exhibits like this?

11 A. Yes, sir.

12 Q. Generally when you receive them the  
13 seal is unbroken, right?

14 A. Yes, sir.

15 Q. You can testify it's the same when you  
16 received it from the Charleston County Sheriff's  
17 Office?

18 A. Yes.

19 Q. When you first received this exhibit,  
20 though, it had already been cut open; isn't that  
21 right?

22 A. Yes. And sealed back and I wouldn't  
23 have taken it had it not been sealed.

24 Q. When you first saw it, unlike many  
25 cases when you receive it and you break the seal,

1 the first time you received it the seal had already  
2 been broken?

3 A. Yes.

4 Q. The contents had already been removed  
5 and something was done to it?

6 A. Yes.

7 Q. How long does it take to do an exam  
8 typically?

9 A. Honestly it depends on how many samples  
10 it takes, but if I have one sample it can take me  
11 anywhere from 30 minutes just to prep the sample  
12 and then obviously it has to sit on our instrument  
13 and however long on the instrument, could be 30  
14 minutes to an hour. And then I would have to  
15 review the data and then do my lab report. So it  
16 could take me anywhere from a couple hours to a day  
17 or a week.

18 Q. There's periods when this exhibit is  
19 remaining at I guess your laboratory for I guess  
20 one time for a period like 21 days, then seven  
21 days, then like 14 days. Where is it when --  
22 during that time where it is I guess in the custody  
23 of the Charleston lab?

24 A. When it's in my personal custody I have  
25 a locker within the laboratory that I only have a



1 key to. So when it's in my custody it's in that  
2 locker and I'm not working on it, it's sitting in  
3 that locker locked up every night. The key is in  
4 my custody. When it is not in my custody, and I am  
5 finished with it, it's in our secure safe that's  
6 within the laboratory which is locked every night.

7 Q. There's another report out there like  
8 you prepared, isn't that right, based on that  
9 exhibit?

10 A. Yes.

11 Q. That would be by Elizabeth Mitchell?  
12 Another report written by Elizabeth Mitchell just  
13 like your report?

14 A. Yes.

15 Q. And that report would have different  
16 weights, the numbers would be different, right?

17 A. Yes.

18 Q. I want to show you this exhibit here,  
19 Defendant's Exhibit 10. Does that look familiar?  
20 Do you recognize that?

21 A. Yes.

22 Q. Those are the chain of custody  
23 documents?

24 A. Yes.

25 Q. You are involved in the chain of

1 custody?

2 A. Yes.

3 Q. Those documents are kept by the  
4 Charleston City Police Department laboratory?

5 A. Yes.

6 Q. And anyone who handles the evidence in  
7 that laboratory makes some entry in the chain of  
8 custody?

9 A. Yes.

10 Q. And that chain of custody should also  
11 match up with that to the extent that it coincides  
12 with the Charleston County Sheriff's Office chain  
13 of custody, right?

14 A. It would -- their chain would end where  
15 ours begins and then would pick up again once our  
16 chain ends and the evidence is returned back to  
17 their custody.

18 Q. Can I refer you to those chain of  
19 custody documents? I think it's around page 24.  
20 You see that that is Exhibit 135986 that we are  
21 discussing here?

22 A. Yes, sir.

23 Q. And so based on the chain of custody  
24 you're aware of it came to your laboratory on  
25 3-11-13 for the first time, right?

1 A. Yes.

2 Q. And then it's returned on 4-1-13 back  
3 to the Charleston County Sheriff's Office; is that  
4 right?

5 A. Yes.

6 Q. And then it came back to your lab again  
7 on 6-1-15?

8 A. Yes.

9 Q. Is that right?

10 A. Yes.

11 Q. And who do you have it being returned  
12 to on 6-8-15 at Charleston County?

13 A. Officer Christopher Hockrighter.

14 Q. Hockrighter?

15 A. I believe is how you say it.

16 Q. So you don't have, according to your  
17 records, on 6-8-15 it was not returned to Jason H.  
18 Riley from Charleston Sheriff's Office. It was  
19 returned to a Christopher Hockrighter?

20 A. According to my chain, yes.

21 Q. And if everything is correct, then your  
22 chain of custody like I said, when it shows a  
23 return to someone at the Charleston Sheriff's  
24 Office that should match the one at the Charleston  
25 County Sheriff's Office records as well, right?

1           A.    After it leaves the laboratory I don't  
2 know. But that would make sense to me, yes, it  
3 would pick up from there with theirs.

4           MR. KING: That's all the questions I  
5 have, Your Honor.

6           THE COURT: Redirect?

7           MS. FRIERSON: None from the State,  
8 Your Honor.

9           THE COURT: Thank you.

10          MS. FRIERSON: State rests, Your Honor.

11          THE COURT: Ladies and gentlemen, the  
12 State has completed their presentation of evidence.  
13 And as I mentioned to you earlier, that means that  
14 the defense now has the opportunity, not the  
15 obligation, to present any evidence it wishes to,  
16 so we are going to take a recess. I don't know,  
17 the lunch should be here. So we will probably take  
18 our lunch break now and resume after that. Thank  
19 you for your patience again and don't talk about  
20 the case and continue to keep an open mind.

21                 (Thereupon, the jury exited the  
22 courtroom at 1:16 p.m.)

23                 (The following proceedings were held  
24 outside the presence of the jury with the Defendant  
25 present.)

1 THE COURT: Okay. Y'all can have a  
2 seat. I wanted to elaborate a little bit on my  
3 earlier ruling. I think I misspoke when I said  
4 that the chain of custody was established  
5 consistent with State v. Williams. Which it is,  
6 but I meant to say State v. Hatcher even though  
7 State v. Williams is also a chain of custody case.  
8 Hatcher is the most recent one I'm aware of and  
9 have been provided which is a 2011 decision of the  
10 State Supreme Court and I do find that the manner  
11 of handling this evidence was reasonably  
12 demonstrated by the State. There was expert  
13 testimony by Ms. Hilton that the State presented  
14 that demonstrates the likely and probable manner in  
15 which Ms. Mitchell tested and resealed this  
16 fungible item. And the identity of the people who  
17 transported it and had control at various times was  
18 established as far as practicable. I'm also  
19 relying on the Court of Appeals en banc decision in  
20 2004 by Judge Howard which is State v. Taylor. All  
21 right. Anything at this stage?

22 MR. KING: Your Honor, at this point I  
23 would renew my motion to suppress pretrial or  
24 motion to suppress the evidence based on the  
25 reasonable search and seizure. I would also renew

1 my motion to suppress based on the faulty chain of  
2 custody. I also make a motion for a directed  
3 verdict.

4 THE COURT: I respectfully deny the  
5 motion. There is sufficient evidence for the case  
6 to go to the jury pursuant to Rule 19. As to each  
7 and every element of the crime the State has  
8 presented evidence which if believed by the jury  
9 would satisfy their burden of proof as to those  
10 elements, so I respectfully deny the motion and all  
11 other motions at this stage. Anything from the  
12 State?

13 MS. LINDER: Nothing, Judge.

14 THE COURT: All right. Did you want me  
15 to discuss with your client the right to testify?

16 MR. KING: You can, Your Honor, now.

17 THE COURT: Mr. Blake, you can stay  
18 seated. You don't have to stand.

19 (Thereupon, the Defendant was sworn.)

20 THE COURT: Sir, you have the  
21 opportunity to testify in this case. You also have  
22 the opportunity and the right not to testify. I  
23 want to make sure you understand your options and  
24 consequences of your choice about whether you are  
25 going to testify. If I ask you a question or if I

1 say something that doesn't make sense, just ask me  
2 to repeat it or try to clear it up. Is that okay  
3 with you, sir?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. You can testify  
6 in this case and take the stand and tell your side  
7 of the story, present evidence that's relevant to  
8 this trial. If you do that, though, you need to  
9 understand the State can cross-examine you on the  
10 stand just as your lawyer has cross-examined their  
11 witnesses, okay? And that means that they can ask  
12 you anything that might bear on your credibility,  
13 that might be relevant to the issues in this case.  
14 I don't know, is there any prior record the State  
15 would seek to impeach him with if he testified?

16 MS. LINDER: Your Honor, there is  
17 nothing to impeach him with unless he would open  
18 the door to some of the other items.

19 THE COURT: Okay. So do you understand  
20 that you would have the right to take the stand and  
21 testify, sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And you also have the right  
24 not to testify, the right to remain silent. I have  
25 already told the jury repeatedly you don't have the

1       burden of proof in this case, and you don't have to  
2       offer any evidence or explanation. I will tell  
3       them if you choose not to testify that they can't  
4       hold that against you or even discuss the fact that  
5       you didn't testify during their deliberations. It  
6       would not be keeping with their oath to talk about  
7       or discuss the fact that you didn't take the stand  
8       because everyone has a right to remain silent  
9       guaranteed by the Constitution. Do you understand  
10      that, sir?

11               THE DEFENDANT: I do.

12               THE COURT: All right. I do not know,  
13      has the defense presented any evidence at this  
14      point?

15               MR. KING: No, Your Honor.

16               THE COURT: I know there was some  
17      exhibits. There is also a consideration that you  
18      need to know about which you probably already  
19      discussed with your lawyer. If you do present  
20      evidence in this trial, the State will then get the  
21      final closing argument for the jury. That means  
22      they get the last word so to speak before the jury.  
23      If you don't present evidence your lawyer would  
24      have the final closing argument in the sequence of  
25      the closing arguments. Do you understand that?



1 THE DEFENDANT: Yes.

2 THE COURT: Okay. Now, do you have any  
3 questions of me about your right to testify or not  
4 to testify and the consequences of the choice?

5 THE DEFENDANT: No sir.

6 THE COURT: Thank you for your  
7 attention. Do you know how many witnesses you may  
8 be having?

9 MR. KING: At this point unless Mr.  
10 Blake changes his mind I don't intend to put up a  
11 case. I intend to get the last closing argument.  
12 I have advised Mr. Blake of that. He was in  
13 agreement unless he has changed his mind.

14 THE COURT: Okay. Is that your  
15 decision, sir?

16 THE DEFENDANT: Can me and my lawyer  
17 have a brief moment?

18 THE COURT: You may take as long as you  
19 need to talk to him about that. In fact, we are  
20 going to take a lunch recess so why don't you take  
21 that time to discuss it with him further and if you  
22 have any other questions just let me know, sir.  
23 Thank you. So we will take a lunch break. Our  
24 lunch is here. How long do y'all need?

25 MS. LINDER: I have food in the office.

1 I don't go anywhere during trial.

2 THE COURT: Is it 1:30? We will shoot  
3 for 2:15? Does that give everybody enough time?

4 Ms. LINDER: That's enough time, Judge.

5 THE COURT: Thank you.

6 (A luncheon recess transpired.)

7 (The following proceedings were held  
8 outside the presence of the jury with the Defendant  
9 present.)

10 THE COURT: Anything else before we  
11 bring the jury in?

12 MR. KING: Assuming we go into closing  
13 arguments, Your Honor, I have discussed with the  
14 solicitor, she is okay with allowing his father to  
15 come in once I rest.

16 THE COURT: Sure. Have you made a  
17 decision about Mr. Blake?

18 MR. KING: He has indicated he does not  
19 wish to testify, Your Honor. Defense is not  
20 putting up any evidence.

21 THE COURT: Do y'all have any request  
22 for a lesser included offense?

23 (Attorney confers with client.)

24 MR. KING: I just discussed with him  
25 any lesser included and we are not -- I thought

1 about asking for possession or a lesser included,  
2 but we are not requesting it unless you amend the  
3 charges based on Mr. Blake's desire.

4 THE COURT: That's a matter of  
5 strategy?

6 MR. KING: Yes, Your Honor. I have  
7 asked Mr. Blake and he wants to go all or nothing  
8 and I'll go with his desire.

9 THE COURT: So, Mr. Blake, is that  
10 correct?

11 THE DEFENDANT: That's correct.

12 THE COURT: And maybe the evidence  
13 would support a charge of possession which the jury  
14 would have the option of considering if they found  
15 the State had not proven all elements of possession  
16 to distribute. But you're saying you don't want  
17 the jury to have that option. You would rather  
18 them say guilty or not guilty as to the greater  
19 offense of possession with intent to distribute?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: All right. Do you have any  
22 questions of me about that?

23 THE DEFENDANT: No.

24 THE COURT: All right. Thank you. Any  
25 jury charges you'll specifically request? Either

1 side?

2 MS. LINDER: Judge, I believe your  
3 standard charges will cover most items. I have  
4 already brought up with the defense we would ask  
5 for -- 44-53-370 is a very long statute. But we  
6 would ask for you to read the portion of it that  
7 talks about the permissive inference based on the  
8 two grains of heroin weight.

9 THE COURT: I'll show you what I have  
10 got and y'all can tell me if you agree or disagree.

11 MS. LINDER: Yes, Judge. Should we  
12 approach?

13 THE COURT: Sure.

14 (Off-the-record conference.)

15 THE COURT: Bring the jury in, please.

16 MR. KING: Your Honor, I am resting in  
17 front of the jury and proceed straight to closing?

18 THE COURT: Yes, sir.

19 MR. KING: I guess I renew my motion  
20 for directed verdict if you assume that --

21 THE COURT: We note them as made and  
22 heard and denied.

23 MR. KING: Thank you, Your Honor.

24 (Whereupon the jury entered the courtroom  
25 at 2:40 p.m. )

1 THE COURT: All right. Mr. King.

2 MR. KING: Your Honor, at this time the  
3 defense rests.

4 THE COURT: Ladies and gentlemen, the  
5 defense has rested. That means the evidence is all  
6 in. We will now have the closing arguments. After  
7 you hear the closing arguments which will consist  
8 of the State's closing and the defense closing I  
9 will instruct you on the law and then the case will  
10 be in your hands for a decision and a verdict. So  
11 yes, ma'am.

12 MS. LINDER: Thank you, Your Honor, may  
13 it please the Court.

14 THE COURT: Yes, ma'am, Ms. Linder.

15 MS. LINDER: Good afternoon, ladies and  
16 gentlemen. There are a couple things that I'd like  
17 to address with you here today in my opportunity to  
18 speak with you in my closing argument. First I'd  
19 like to talk to you a little bit about the law in  
20 this case. As the judge instructed you before  
21 everything got started, he is the judge of the law.  
22 At the end of our arguments you will hear from him.  
23 He will instruct you on the law that you must apply  
24 to the facts as you so determine.

25 So I'm going to tell you a little bit

1 about the law, my interpretation of the law, my  
2 understanding of the law. Please keep in mind that  
3 if I say anything that doesn't seem to make sense,  
4 go with the judge. The judge is the judge of the  
5 law. I am just trying to tell you a bit of my  
6 interpretation of how it applies to this case.

7 In this case you're going to be told  
8 about a couple of different things, including  
9 reasonable doubt. Reasonable doubt is proof that  
10 leaves you firmly convinced of the Defendant's  
11 guilt. There are very few things in the world that  
12 we know with absolute certainty and beyond all  
13 doubt, but that's not what's required here today.  
14 We are not required to prove beyond every possible  
15 doubt.

16 The next thing I want to talk to you  
17 about is direct and circumstantial evidence. There  
18 are two the types of evidence that you will hear  
19 about from the judge. Direct and circumstantial  
20 evidence. Direct evidence and circumstantial  
21 evidence are two different types of evidence that  
22 you hear in a case. Direct is what you think about  
23 with your five senses. What you see, what you  
24 touch, what you taste, what you hear. That's from  
25 an eyewitness, that's direct evidence.

1                   And then there's circumstantial  
2 evidence which is a chain of events or  
3 circumstances surrounding a situation that leads  
4 you to a conclusion. Both of those are to be given  
5 the weight that you desire. Neither one is worth  
6 more or weighs more in your deliberations.

7                   The next point of law that I would like  
8 to talk to you about is types of possession.  
9 There's actual and there's constructive possession.  
10 Actual possession is actually physically having  
11 something in your custody. Constructive possession  
12 is having something in your dominion and control or  
13 having in your dominion and control the property on  
14 where the item or items are located. Those are the  
15 two different aspects of constructive possession.  
16 Dominion and control over the item itself or  
17 dominion and control over the property where it is.

18                   One thing I want to hit on since the  
19 reasonable doubt slide is still up, an easy example  
20 I think about explaining what is reasonable doubt  
21 and how you can draw conclusions. We are not  
22 dealing with it today, but in this courtroom there  
23 are no windows to the outside. We can't see what's  
24 going on. We don't know what's going on with the  
25 weather. If you saw someone come in and they had

1 on a rain slicker and they were brushing some water  
2 off of them, and then took it off and sat down, two  
3 or three minutes you saw someone else come in,  
4 close up an umbrella, shake off water and set that  
5 down. You didn't see outside that it was raining.  
6 I didn't see outside that it was raining; however,  
7 it is reasonable for you to conclude that sometime  
8 recently it indeed has rained. That's a way that I  
9 like that's kind of basic that puts it in real  
10 terms as far as what reasonable doubt is.

11 Another thing I like to talk about is  
12 the statute itself for what Mr. Blake is charged  
13 with. He is charged with possession with the  
14 intent to distribute heroin. It is a wordy  
15 statute. The people who write them do not consider  
16 that. Possession with the intent to distribute is  
17 possession, it's delivery, dispensing, purchasing,  
18 distributing, manufacturing, creating, attempting,  
19 aiding, abetting, conspiring and actual possession  
20 with intent to distribute. So any one of those  
21 means he is guilty of possession with intent to  
22 distribute.

23 So he could be aiding and abetting.  
24 That's guilty. He could be conspiring. That's  
25 guilty. He could be possessing it. Guilty. Any



1 of those items, that's why the or's are  
2 capitalized, any of those items mean possession  
3 with intent to distribute.

4 And then the other aspect of the  
5 statute, that this occurred in Charleston County,  
6 and that the drugs were heroin.

7 Lastly, what I would like talk to you  
8 about is a permissive inference. And like I said,  
9 the judge will instruct you on this and many other  
10 things and I urge you to listen to the judge. But  
11 possession with intent to distribute is kind of a  
12 large concept. And there's a permissive inference  
13 that you can make. You do not have to make it;  
14 however, you can make that permissive inference if  
15 the weight alone was two grains. Not two grams,  
16 but two grains. And one gram is equal to  
17 15.43 grains. So one gram is approximately seven  
18 times the permissive inference of you as jurors to  
19 say it was with intent to distribute. That's  
20 something important I ask you to remember when you  
21 think about the law.

22 Something else I want to talk to you  
23 about is I would like to talk to you a bit about  
24 distractions in a case. There are lot of things  
25 that were brought up and I just would like to touch

1 on them briefly. One example is there was some  
2 talk about this pending civil lawsuit. I urge you  
3 to remember that that lawsuit according to  
4 testimony was handwritten, there was no attorney,  
5 it was filed well after, a long time after all of  
6 this occurred. And also, I would submit this is  
7 not the venue. This is criminal court. This is  
8 not the venue to decide civil matters. And, in  
9 fact, the civil judge has said that thing. The  
10 civil judge has stayed the case which means we are  
11 not deciding it now.

12 Another distraction that's been talked  
13 about, there was a lot of talk about entry, entry  
14 to the residence. The officers testified that  
15 during that felony traffic stop they received the  
16 keys. They were told which key it was to open the  
17 door and they were doing a soft entry. They had  
18 intel that a child lived there. They did not want  
19 to use any flash bang device or any ram as to  
20 startle the individuals inside.

21 There was the defense talked about  
22 damage to the door, no damage to the door. I would  
23 submit to you is it an old door? Did a previous  
24 owner have a dog that clawed on the door in the  
25 inside? I don't know. But what I would ask you to

1 remember is I urge you to go back, look at the  
2 pictures in evidence. Look at the picture of the  
3 front of the door that had no damage to the knob.  
4 It didn't even disturb that little sticker. It had  
5 no damage at all to the door. And you heard from  
6 Detective Miller that you don't go taking pictures  
7 outside before you go in. This is an intense time.  
8 They have to make entry into a sweep to make sure  
9 that no one else is in there, that one else in the  
10 community or law enforcement are going to be hurt.  
11 So they went in and then they went back once it was  
12 safe and photographed everything.

13 Another distraction that's has been  
14 brought up is the warrant. Ladies and gentlemen, I  
15 remind you we are not here today because of a  
16 warrant. We are here today because of an  
17 indictment. And an indictment was done for  
18 possession with intent to distribute heroin. There  
19 were issues made about 30 gross aggregate grams.  
20 Gross aggregate, all of that indicates overall.  
21 There was testimony the officers don't know. I am  
22 scientifically challenged so I certainly wouldn't  
23 know myself. Another thing I would ask you to go  
24 back and look again at the pictures that are in  
25 evidence. All of this will go back in that room

1 with you. And the pictures that are in evidence  
2 show, probably got a little boring picture after  
3 picture after picture of the bundle, packaging, the  
4 rubber bands and the weight based on the scale that  
5 the officers had. And a lot of them were .29 --  
6 2.9, 2.5, but you see they are not chemists and  
7 they are not supposed to be altering the drugs in  
8 the field. They don't dump everything out and then  
9 weigh it. That's the job for the chemist to do.

10 So I would ask you again to go look.  
11 Add up those weights on the pictures that the  
12 officers had. Look at the picture of the dry erase  
13 board with the summary of all the weight, of all  
14 the bindles, all the bundles. I submit to you that  
15 this is approximately 30 gross aggregate grams.  
16 Either way we are here based on an indictment which  
17 is possession with intent to distribute. It is not  
18 for anything more, anything greater.

19 The last distraction I want to talk to  
20 you about are the drugs itself. Ladies and  
21 gentlemen of the jury, again, those drugs are in  
22 evidence. Those are part of the case. The drugs  
23 are in evidence. The lab report is in evidence.  
24 All of that you can go back and look at. There was  
25 a lot of back and forth today as you heard from a

1 variety of witnesses about a chain of custody and  
2 about seals on things, and about training. And  
3 while it can seem monotonous at some points, it is  
4 important. It's important because you say who is  
5 doing what where and when. There are seals and you  
6 will be able to look at everything. There are heat  
7 seals with initials over the heat seals. There's  
8 initials inside on each separate package that was  
9 weighed. All of that is there. The labs are  
10 accredited. The law enforcement officers, all the  
11 evidence, they all have procedures and protocol  
12 that they must abide by.

13 Now, I'd like to bring your focus to  
14 what this case is about. And that is that the case  
15 is about Mark Blake. And the case is about  
16 possession with intent to distribute heroin. When  
17 I first started talking to you about it in my  
18 opening I was telling you how drugs are illegal.  
19 And I was telling you how a lot of planning goes  
20 into executing search warrants. And I was telling  
21 you about the search warrant execution itself. I  
22 also was telling you a lot about the items found  
23 during the search warrant execution.

24 More specifically I'd like to get into  
25 the planning. There's testimony, you heard from a

1 variety of officers that this search warrant was  
2 going to occur on [REDACTED] Apartment [REDACTED] Jobee Drive  
3 which is in West Ashley here in Charleston County.  
4 Also with that there was a lot of intel and  
5 investigation on the location itself and on the  
6 Defendant. And with that they realized it was an  
7 apartment building, there was downstairs neighbors,  
8 there were neighbors to the left and right, a child  
9 lived there. There were all these things they  
10 talked about.

11           You heard from these officers who have  
12 -- Detective Waddell has over a thousand drug cases  
13 he has been associated with. You heard from  
14 officers with 12, 18, and 21 years experience.  
15 That's a lot of experience I would submit to you.  
16 You also heard that during the briefing before they  
17 execute a search warrant they do a threat  
18 assessment and decide roles during it, perimeter  
19 security, who is searching what rooms, who is the  
20 evidence guy, who is there that day, whose taking  
21 pictures. They also decide how are we going to  
22 take this person into custody in the safest manner  
23 for the community, for law enforcement and the  
24 individuals themselves.

25           Based on that a decision was made to do

1 a felony traffic stop. You heard a lot about what  
2 is a felony traffic stop. Felony traffic stop like  
3 I said is about safety. They take into account  
4 things such as aggressive dogs, kids. They take  
5 into account weapons. They take into account a  
6 variety of things. And they have determined that  
7 this case had a heightened risk and therefore they  
8 did a felony traffic stop.

9 You also heard testimony that they had  
10 -- they did surveillance prior to the date of the  
11 search warrant. Within a month prior these  
12 officers located -- saw the Defendant on at least  
13 two occasions entering and exit the residence. On  
14 at least four other occasions they saw his vehicle  
15 parked right there at the apartment in the parking  
16 lot. So that's all the planning.

17 Next we move to the location itself  
18 there at Jobee Drive. The Defendant is the sole  
19 leaseholder. He is the one named on the lease.  
20 And that lease covered the time of February 22nd,  
21 2013. You also heard how there were two IDs  
22 belonging to the Defendant that were located inside  
23 the residence. You also heard about a water bill  
24 addressed to the Defendant at that address.  
25 Statement date was February 14th of 2013 which is a

1 week prior to the execution of this search warrant.  
2 You also heard about a receipt that was there that  
3 day. It was a receipt dated February 22nd of 2013  
4 to Mark Blake. Paid cash. You also heard about  
5 location as I previously mentioned all the prior  
6 times of law enforcement seeing him and surveilling  
7 him going in and out in his vehicle. You heard  
8 about the day of. Waddell and another officer went  
9 and sat in their cars and they watched. It's the  
10 afternoon. It's daylight. They watched. They saw  
11 him exit the door of apartment [REDACTED], go down the  
12 stairs, enter this same car that he has been  
13 associated with, and started driving.

14 Detective Waddell followed along with  
15 other officers who were in the general area because  
16 they were going to effect the felony traffic stop  
17 and the other officer sat on the apartment, stared  
18 at it. No one else entered or exited after he  
19 left.

20 The next thing I'd like to talk to you  
21 about is the search warrant execution itself.  
22 There were photos taken overall after they cleared  
23 it of each individual room. That's done to show  
24 the layout, to show the overall condition of the  
25 residence before they start doing the search for



1 everything that they are entitled to search for  
2 according to the search warrant.

3 They also have photographs of all their  
4 findings. And there's -- again, all of these are  
5 in evidence. You will be able to see all of them.  
6 You'll see everything that they found. You'll see  
7 -- you will have back there the scale. You'll have  
8 the grinder back there. You'll have the whisks  
9 back there. You'll have the extended clip magazine  
10 back there. You'll have the glass measuring cup  
11 back there. You'll have the container that held  
12 all of Mr. Blake's heroin back there. You'll have  
13 all of this. Look at it. Look through it. There  
14 was in the kitchen located the heroin. Again,  
15 there is a series of photographs. The heroin was,  
16 you know, really obvious spot. If you look where  
17 the heroin was, the fridge opened, it's a standard  
18 upper/lower refrigerator. It's on the bottom shelf  
19 right there, anyone, any age, any height can access  
20 that. It's right above the veggie drawer right  
21 down there. I would submit to you every time that  
22 the door is opened to get some orange juice out or  
23 get the eggs out, right there. You see that every  
24 time you open that. Every time you open and close  
25 that fridge you see that.

1                   You see this heroin. And even in this  
2 picture if you look at it, even with the heroin  
3 being closed and not moved, it is clear. Not  
4 anymore because they did prints. It is clear. You  
5 see all the bindles. You see the bundles. You see  
6 rubber bands. You see the narcotics that are  
7 packaged for sale. You see all of that.

8                   Also back there there are more items  
9 that you'll have, you can take back, you'll see  
10 these. These are the waxy bindles. These are  
11 empty. These are the ones that are described like  
12 the headache powder that that's what you use. This  
13 is the before, this is the after. That's what they  
14 use to package, that's what Mr. Blake uses to  
15 package.

16                   Well, what else does he use to package?  
17 Ladies and gentlemen, I direct your attention to  
18 the scale found in the drawer of the kitchen  
19 cabinet. I would direct your attention to the shoe  
20 box that was in the hallway. In that shoe box  
21 there were all those tiny different weighted  
22 weights so he could calibrate his scale. So he  
23 doesn't sell too much. It's a money making  
24 business. All those are in here. The rubber bands  
25 are in here. The rubber bands which is the second

1 part of the packaging to make the heroin. Again,  
2 all this stuff is going to be back there with you.  
3 All the evidence is going to be back there.

4 You know, it's important to think about  
5 all of this. It's also important to think about  
6 the followup the law enforcement did. The followup  
7 that law enforcement did, they attempted as you can  
8 see to print, to print the bags that are inside the  
9 heroin container, to print the container, to print  
10 the whisk. They tried to print everything and as  
11 you heard, there were no prints lifted. I am not  
12 an expert. I do not know why. Sometimes this if  
13 you brush it it won't work. You know, sometimes  
14 who knows why. But no prints were located. They  
15 tried to follow up. And it was just nothing could  
16 be helped.

17 Also they tried to do a phone dump on  
18 Mr. Blake's cell phone. You know, a second search  
19 warrant was gotten for that. It was given to  
20 digital evidence. They tried to get it and they  
21 couldn't break the pin code. They could not break  
22 the pin code so they couldn't get in the phone. I  
23 don't know what was in the phone if anything. But  
24 they couldn't do it, but the police were trying to  
25 do this followup investigation to make it work.

1                   Now, I want to talk to you a little bit  
2 about heroin. Heroin is a drug and as the officers  
3 testified to, kind of like a BC headache powder,  
4 how it is folded in waxine and folded up. That's  
5 how it is done. That's how it is packaged. You  
6 heard how one bindle is a serving. One bindle is  
7 .01 to .03. One bindle is a serving. Ten bindles  
8 make a bundle. And the cost of bindles and  
9 bundles, all of that varies based on the supply and  
10 demand.

11                   That's what you heard testimony from  
12 Waddell about. So ten bindles is a bundle. One  
13 bundle is held together typically by a rubber band.  
14 In this case we have 11 bundles, 11 bundles. One  
15 bindle is a serving. Ten bindles in a bundle,  
16 11 bundles. You do the math. It's a lot of heroin  
17 I submit to you, ladies and gentlemen.

18                   I also want to talk about the lab  
19 weight. You'll have -- Renee Hilton testified  
20 she's the head lab manager at the city. The city  
21 does drug testing for the county. She's been there  
22 for five years. She's declared an expert. She has  
23 testified a number of times. You'll have the lab  
24 report and you can see the different items. It was  
25 kind of blurry on the screen, but you'll see

1 plastic bag, plastic bag, and you will see plastic  
2 bag with tan powder (ten), that means ten bindles  
3 were in the bundle which is item number. That's  
4 how it is broken down and is all detailed and  
5 weighed out all by itself. This will be back  
6 there. Feel free to look at it.

7 But she testified to you that the  
8 weight was I believe 1.12 grams I believe it was.  
9 It is important to remember she also told you that  
10 one gram is 15.432 grains. So the law says two  
11 grains is an inference to PWID. Here again, math  
12 is not my strong suit. We have over a gram. One  
13 gram is 15.432 grains. So rounding it way down  
14 from what she found, let's say one gram, you have  
15 more than seven times that amount for the inference  
16 of making it a PWID, of making possession with  
17 intent to distribute.

18 You know, like I said a minute ago, I  
19 think it is important to realize and recognize just  
20 how this is left open so casually on that open  
21 bottom drawer of their refrigerator. Anyone can  
22 access. Anytime you get your leftovers, your  
23 juice, anytime. You see it. Anytime you see it.  
24 The leaseholder, the only leaseholder, IDs,  
25 receipts dated that day, water bills, right there

1 in the fridge. Packaged for sale. Empty packaging  
2 for other stuff. The weight, the scales,  
3 everything.

4 Now, as far as the law is concerned in  
5 this case, again, Judge Hill is the judge of the  
6 law. You need to listen to him. However, as we  
7 have gone throughout the course of this trial he  
8 has made legal determinations. Legal  
9 determinations about admissibility of evidence.  
10 And there was a lawful search warrant in this case.

11 That search warrant had probable cause  
12 and was reasonably executed. The drugs were  
13 entered into evidence. Drugs are in. You also  
14 have different items and pictures that were  
15 entered. All this stuff I have here, more I have  
16 up there, all of that stuff, all this stuff is  
17 going back due to legal determinations that this  
18 judge has found as far as admissibility and the  
19 weight is up to you. All of this is in. Go back,  
20 look at all these pictures. Look at all these  
21 items. Check it out.

22 So possession. I would submit to you,  
23 ladies and gentlemen of the jury, that as far as  
24 possession is concerned, the State has proven  
25 beyond a reasonable doubt that the Defendant had

1 possession. As I described to you earlier, there  
2 is constructive possession which is exercising  
3 dominion and control over property. Leaseholder,  
4 all of the IDs, that's what I have talked about.  
5 He also has dominion and control. They have seen  
6 him there a number of times. Also the with intent  
7 to distribute portion, I urge you to look at the  
8 statute. Look at all the different things, the  
9 aid, attempt, abet, conspire, possess with intent  
10 to distribute, all of those things, any one of  
11 those makes Mr. Blake guilty.

12 I urge you to look at the indicators of  
13 sales. All the things I mentioned earlier, the  
14 empty bindles, the rubber bands, the weights,  
15 everything. Those are all packaging items that  
16 indicate sales. How the drugs themselves in this  
17 case were located indicates sales. One serving is  
18 one bindle. There were -- again, you do the math.  
19 A hundred bindles? A hundred servings in that  
20 Tupperware container. One Mr. Blake. Hundred  
21 servings.

22 I also urge you to remember the issue  
23 of grains in the statute. As I told you earlier,  
24 drugs are illegal. It is illegal in the State of  
25 South Carolina to possess with intent to distribute

1 heroin. Heroin is an illegal drug. That is what  
2 our laws say. That is why we are here today. Back  
3 on February the 22nd of 2013 a lawful search  
4 warrant was executed after much investigation and  
5 much planning by law enforcement. They executed  
6 that lawful search warrant and they located in an  
7 obvious location heroin, and a lot of it.

8 Ladies and gentlemen of the jury, I  
9 respectfully request that you go back. You take  
10 your time. You discuss and you look through all  
11 the evidence in this case and I would ask that you  
12 come back with a verdict of guilty on possession of  
13 intent to distribute heroin. Thank you.

14 THE COURT: Thank you, Ms. Linder. Mr.  
15 King.

16 MR. KING: A war is being waged out  
17 there like I said in the opening. And the  
18 government is a powerful force. If they decide to  
19 get you, how can you fight against them? Handwrite  
20 a lawsuit, get a public defender is what Mr Blake  
21 has done. The trial is really the only way. The  
22 only way we can protect ourselves from overreaching  
23 and overzealous government and police.

24 And a jury is really Mark Blake's only  
25 hope, twelve people stand between him and the



1 government. We hope law enforcement does their  
2 job. We trust them. We put a special trust in  
3 them. They can devastate people's lives. And they  
4 are human just like all of us. We see it all the  
5 time. We see it in the news, documentaries, people  
6 have been falsely convicted. Sometimes because of  
7 police misconduct. It happens.

8 Can you trust these officers? That's  
9 really the question. Agent Waddell and Miller  
10 testified that it was a soft entry. That's what  
11 they started off telling you. But the door was  
12 busted open. They took photographs of the busted  
13 door. Now, I didn't put those into evidence. I  
14 didn't put anything into evidence. They're  
15 procedural advantages for that. The reason is they  
16 have to admit those. They submit evidence to you,  
17 not me. And if you don't have pictures of that  
18 busted door, there is only one reason why. You can  
19 blame them. Why would anything be hidden from you?  
20 Why wouldn't you have those pictures? Without me  
21 you would have just known about that one picture of  
22 the door, not even known the door was busted open.  
23 But there is something going on there. Why  
24 wouldn't they show you that?

25 They said they used his keys, but we

1 don't know who took his keys. We don't know. And  
2 where are they now? There's no keys into evidence.  
3 Did someone bust into that door, go into the  
4 apartment before the key was used? There was time  
5 to go into the apartment. They waited for him to  
6 leave. They didn't arrest him as soon as he left.  
7 They let him drive all the way to the girlfriend's  
8 business and stop him there. Let him get a good  
9 distance away from the apartment. And somebody  
10 busted in that door. Then they tell you that they  
11 opened it with a key. We don't know who went in  
12 the apartment first. I was asking, no one seems to  
13 remember. Who went in first? Miller didn't write  
14 a report. Roberson didn't write a report. That's  
15 something that officers do. Document what happens.  
16 This is three and-a-half years ago. Roberson says  
17 he found the bowl in the refrigerator. He's the  
18 one who says he found it. He doesn't remember when  
19 he first entered. He didn't write a report. He is  
20 remembering something from over three years ago.

21 And there were a lot of other officers  
22 there. I have asked how many police officers were  
23 there conducting the search. There were a lot more  
24 than what you saw testify. Where are they? Why  
25 are they not here? Whose job is it to bring them

1 here? Give that evidence to you? It's their job.

2 Why hide anything from you? Can you  
3 trust these officers? We know that they charged  
4 him with the most serious charge that they could  
5 possibly do. Trafficking, 30 grams of heroin.  
6 Agent Waddell swore to a judge that there was 30  
7 gross aggregate grams of a brown powder substance.  
8 He didn't say anything about packaging or rubber  
9 bands or anything like that. Thirty gross  
10 aggregate grams. He just knew you had all the  
11 powder together. He said brown powder substance.  
12 He swore that to a judge. That judge didn't know  
13 there was a bunch of packaging and rubber bands.  
14 That's not clear what he swore to him.

15 So a judge signed that warrant,  
16 30 grams of brown powder. Testimony in this trial  
17 is 1.42 grams. That is a lot less than 30 grams.  
18 How did it get from 30 to there? They did that to  
19 him. They knew. They told you all the experience  
20 they have. Training that they have had.  
21 Commendations they have had. They know what they  
22 are doing. They understand what heroin is. They  
23 knew exactly what they were doing when they charged  
24 him with that crime knowing full well he wasn't  
25 guilty of it. If they are willing to charge him a

1 man with trafficking 30 grams of heroin, there's no  
2 way that they know don't that's not true, what else  
3 are they willing to do?

4 We know they did that. We know they  
5 did that to him. This could be the tip of the  
6 iceberg.

7 I tried my best to ask questions, turn  
8 up anything I can find. Things have come to the  
9 surface. This is serious. This story begins with  
10 violence and excessive force. They wait for him to  
11 get to his girlfriend's place of business to do the  
12 felony stop so they can be sure to arrest him where  
13 she works so they can all see that and then drag  
14 her out of where she works so she can be humiliated  
15 in that way. They didn't wait for her to leave.  
16 She is coming out. They didn't stop him before he  
17 got there. They did that on purpose.

18 That's what happens when the government  
19 turns against you. They wait for him to get to his  
20 girlfriend's place of business.

21 They do a felony stop. Bunch of  
22 officers with guns drawn block the car in, yelling  
23 like soldiers in battle. Imagine the shock and  
24 surprise when they surrounded Mr. Blake's car. And  
25 we see these type of arrests on cops and reality

1 shows. There's screaming. They have guns drawn.  
2 And he gets jerked out of the car and taken down in  
3 a violent way. He didn't fight with them. He  
4 didn't run. But they tell you that he is  
5 dangerous. He's the dangerous one. They tried  
6 like a smear campaign. Let's make him look as bad  
7 as we can. They commit the violence on him and  
8 then they have the nerve to tell you he's the  
9 violent one.

10 They take him back to the apartment.  
11 Don't give him a copy of the search warrant. He  
12 protests, speaks his mind and they call him  
13 belligerent and uncooperative.

14 I am talking about a war and a war on  
15 drugs because in war there's a mentality all is  
16 fair in war. And it can change the way people  
17 think. They have been involved in this a long time  
18 in a lot of cases. In their world Mr. Blake  
19 driving to pick up his girlfriend is a danger that  
20 needs to be jerked out of his car. In their world  
21 they approach a citizen in his car like soldiers in  
22 battle with guns drawn. In their world you get  
23 less than a minute to obey before you get jerked  
24 out of the car and then taken down violently. In  
25 this world you don't get a copy of the search

1 warrant. No, you don't get it. In their world  
2 when you speak your mind and protest, you are  
3 belligerent and uncooperative. Is that the world  
4 we want to live in? When you speak your mind?  
5 That's the world they live in.

6 It is not the world we want. In their  
7 world sandwich baggies in a kitchen are sinister.  
8 Measuring cups and a whisk become sinister. So we  
9 started out with 30 grams. Now it is down to 1.42.  
10 What's going on with that? It went to the  
11 laboratory three times. Why would it go to the  
12 laboratory three different times? No explanation  
13 for that. Handled by a chemist we have not heard  
14 from who cut it open.

15 And there's a problem with their chain  
16 of custody. When Jason Riley was testifying I went  
17 through the times it left the lab, left the  
18 evidence room and came back from the lab. The  
19 three separate times. And on 6-8-15, that's the  
20 second time that it was returned from the lab for  
21 the Charleston County Sheriff's Office, they have  
22 it being received by Jason H. Riley of 8-15.

23 But the records with the laboratory  
24 have it going back to some guy named Hockrighter,  
25 not Jason Riley. They have it going to two

1 different people. And the chemist testified that  
2 those should match up. Ideally those should match  
3 up, the records that they have going to a  
4 particular officer ought to match up what the  
5 sheriff's office has as being received by that  
6 officer, but it is two different officers. There  
7 is a problem in there.

8 Remember I told you in the opening,  
9 they didn't find anything on him. They didn't pull  
10 over the car. He didn't have heroin in his pocket  
11 or hash in his pocket or anything. They don't have  
12 a fingerprint on any of the stuff that they are  
13 giving you. Not on the plastic bowl, not on the  
14 plastic bag inside, not on the packages. If you  
15 can't trust these officers, and you can't trust  
16 this evidence, how can you convict a man?

17 We're not discussing the weather and  
18 whether or not it is raining outside as the  
19 solicitor gives her example. This is a man's life.  
20 And there are rules in place to protect him. And  
21 right now you are all he has got. So if you can't  
22 trust these officers, you can't trust this  
23 investigation, you can't trust the evidence, he's  
24 not guilty.

25 THE COURT: Thank you, Mr. King.

1 Ladies and gentlemen, it is my duty now to instruct  
2 you on the law that applies to this case and it is  
3 your duty to find the facts from the evidence you  
4 heard during the trial. To those facts you must  
5 apply the law as I give it to you and you must  
6 follow the law as I give it to you. You should not  
7 be concerned about what you think the law should  
8 be, but what it is.

9           You must not be influenced by any  
10 personal like or dislikes, opinions, prejudices or  
11 undue sympathy. And that means you must decide the  
12 case solely on the evidence and according to the  
13 law. You will recall you took an oath to do just  
14 that when we began this case earlier in the week.

15           In following my instructions you must  
16 follow all of them and not single out some and  
17 ignore others because they are all equally  
18 important.

19           And you must not read into these  
20 instructions or into anything I may have said or  
21 done during this trial as any indication as to what  
22 I think your verdict should be or what the facts  
23 are in this case because as I told you at the  
24 outset, our Constitution makes you the sole and  
25 exclusive judge of the facts.



1 I am certainly not going to intrude on  
2 your constitutional right to determine what the  
3 facts are, just as I know you are not going to on  
4 my right to tell you what the law is.

5 Now, ladies and gentlemen, you decide  
6 what facts are by evaluating or weighing the  
7 evidence you have heard. There's no way for you to  
8 weigh the evidence in a literal sense. Instead, it  
9 is a mental process and you weigh and evaluate the  
10 evidence by simply using your good common sense and  
11 your sound judgment and life experiences and you  
12 bring those things to bear on the evidence.

13 Now, I told you that evidence consists  
14 of two sources, sworn witness testimony and  
15 exhibits. I also told you that nothing else is  
16 evidence. Anything that has been stricken from the  
17 record or you were instructed to disregard is not  
18 evidence in this case that you can use to determine  
19 the facts. And the argument and statements by the  
20 lawyers are not evidence because they're not  
21 witnesses. So while you should pay attention to  
22 what the lawyers said and argued, because they are  
23 trying to help you understand the evidence, if your  
24 memory of the testimony or the exhibits differs  
25 from that of the lawyers, your memory controls.

1                   Now, there are also two different types  
2 of evidence and what I am talking about now is  
3 direct and circumstantial evidence. Direct  
4 evidence is direct proof of a fact such as  
5 testimony of an eyewitness. It is evidence that if  
6 believed immediately establishes a facts.

7                   Circumstantial evidence is indirect  
8 evidence. It is proof of a chain of facts from  
9 which you can find that another fact exists even  
10 though it has not been proven to you directly.  
11 Crimes may be proven by either direct or  
12 circumstantial evidence or some combination. The  
13 law makes no distinction between the weight or  
14 value to be given to either direct or  
15 circumstantial evidence. You're entitled to  
16 consider them both. However, to the extent the  
17 State relies on circumstantial evidence, all of the  
18 circumstances must be consistent with each other  
19 and when taken together point conclusively to the  
20 guilt of the accused beyond a reasonable doubt.

21                   If these circumstances merely portray  
22 the Defendant's behavior as suspicious you must  
23 find the proof has failed. The State has the  
24 burden of proving the Defendant guilty beyond a  
25 reasonable doubt. This burden rests with the State

1 regardless of whether the State relies on direct  
2 evidence or circumstantial evidence or some  
3 combination.

4 I told you also at the outset that you  
5 would have to decide as the judges of the facts the  
6 credibility of all the evidence. I am not going to  
7 go back over that with you because I know you heard  
8 me the first time. But I will tell you that when  
9 it comes to a witness's testimony you may believe  
10 everything a witness says. You can believe nothing  
11 a witness says. You can believe parts of their  
12 testimony and disbelieve other parts. You can  
13 believe one witness over several or several over  
14 one. But you certainly won't decide this important  
15 matter of credibility arbitrarily. You will have a  
16 sound reason for the credibility determinations you  
17 do make.

18 You have also heard testimony from a  
19 person who was qualified as an expert. I  
20 instructed you that an expert is entitled, unlike  
21 other witnesses, to give you their opinion. But I  
22 also told you that you are the sole judge of the  
23 expert's credibility as well and that means you can  
24 accept or reject their testimony or give it as much  
25 weight as you think it deserves. I also told you

1 about taking notes and I know you heard me when I  
2 told you about that. Just remember they are all  
3 your own personal use, not to be given or read to  
4 anyone else and not to be used in the place of or  
5 to trump someone else's memory.

6 Now, Mr. Blake pled not guilty to the  
7 indictment. And that put the burden of proof on  
8 the State. One charged with committing a criminal  
9 offence is never required to prove himself  
10 innocent. And no matter what the charge may be, a  
11 Defendant will always be presumed innocent of the  
12 crime for which the indictment was issued unless  
13 and until guilt has been proven by evidence  
14 satisfying you of guilt beyond a reasonable doubt.

15 This presumption of innocence does not  
16 end when you begin your deliberations. It  
17 accompanies the Defendant throughout the trial  
18 until and unless you reach a verdict of guilt based  
19 on evidence satisfying you of that guilt beyond a  
20 reasonable doubt. This presumption of innocence is  
21 not some legal technicality. It is a substantial  
22 and fundamental right to which every Defendant is  
23 entitled unless you, the jury, are satisfied from  
24 the evidence of the Defendant's guilt beyond a  
25 reasonable doubt.

1                   So what is a reasonable doubt? The law  
2 defines a reasonable doubt as the kind of doubt  
3 that would make or cause a reasonable, sincere,  
4 honest and conscientious person to hesitate to act  
5 in the important matter in their own affairs.  
6 Proof beyond a reasonable doubt is proof that  
7 leaves you firmly convinced of the Defendant's  
8 guilt. There are very few things that we can know  
9 with absolute certainty and in criminal cases the  
10 law does not require proof that overcomes every  
11 possible doubt. If based on your view of the  
12 evidence you are firmly convinced the Defendant is  
13 guilty of the crime charged, you must find him  
14 guilty. On the other hand, if you think there is a  
15 real possibility that he is not guilty, you must  
16 give him the benefit of that doubt and find him not  
17 guilty.

18                   Now, a reasonable doubt may arise from  
19 the evidence or from a lack of evidence. A  
20 Defendant is entitled to every reasonable doubt  
21 that may arise in a case and that just means that  
22 if upon any issue of fact that is essential to a  
23 finding of guilt you have a reasonable doubt as to  
24 how the issue should be resolved, you should  
25 resolve it in favor of Mr. Blake.

1                   Now, ladies and gentlemen, the fact  
2                   that the Defendant in this case did not testify is  
3                   not something you can consider in any manner. We  
4                   all have a right to remain silent. And that right  
5                   is guaranteed by the Constitution of the United  
6                   States and the State of South Carolina. And a  
7                   person claiming that right to remain silent cannot  
8                   be considered by you in your deliberations. Under  
9                   your oath you are to draw no conclusion whatsoever  
10                  from the fact the Defendant in this case did not  
11                  testify. It shouldn't even be discussed in the  
12                  jury room. It would not be in keeping with your  
13                  oath to discuss that. The burden of proof, as I  
14                  have told you, is entirely on the State and the  
15                  Defendant is not required to prove himself innocent  
16                  or prove himself not guilty or produce any evidence  
17                  or explanation whatsoever.

18                  Now, in this case the Defendant is  
19                  charged with possession with intent to distribute  
20                  heroin. In order to convict Mr. Blake of that  
21                  offense the State must prove beyond a reasonable  
22                  doubt that Mr. Blake possessed the heroin with the  
23                  intent to distribute. To prove possession the  
24                  State must prove beyond a reasonable doubt the  
25                  Defendant had both the power and the intent to

1 control the disposition or use of the heroin.

2 Now, possession may be actual or  
3 constructive. The State does not necessarily have  
4 to prove the Defendant physically possessed the  
5 heroin for you to find him guilty. The law  
6 recognizes two kinds of possession, actual  
7 possession and constructive possession. Either one  
8 if proven by the government beyond a reasonable  
9 doubt is enough to convict if the other elements of  
10 the offense are also proven beyond a reasonable  
11 doubt.

12 To establish actual possession the  
13 government must prove the Defendant had actual --  
14 excuse me -- had direct physical control over the  
15 heroin and knew that he had control of it. To  
16 establish constructive possession the State must  
17 prove the Defendant had the right to exercise  
18 physical control over the heroin and knew that he  
19 had this right and that he had intended to exercise  
20 physical control over the heroin sometime either  
21 directly or through other persons.

22 For example, if you left something with  
23 a friend intending to come back later and pick it  
24 up or intending to send someone else to pick up for  
25 you, you would have constructive possession of it

1 while it was in the actual possession of your  
2 friend. But understand that just being present  
3 where something is located does not equal  
4 possession. The State must prove the Defendant had  
5 actual or constructive possession of the heroin and  
6 knew that he did for you to find him guilty of the  
7 crime. And this, of course, is all for you to  
8 decide.

9 Now, the State must also prove beyond a  
10 reasonable doubt that the Defendant intended to  
11 distribute the heroin. Distribute means to deliver  
12 other than by administering or dispensing a drug.  
13 Intent may be shown by acts and conduct of the  
14 Defendant and other circumstances from which you  
15 may naturally and reasonably infer intent.

16 In determining whether the Defendant  
17 has the intent to distribute the heroin you may  
18 consider the circumstances surrounding the  
19 Defendant's alleged possession. You may consider  
20 the amount of the substance alleged to have been  
21 possessed, the manner in which it was allegedly  
22 possessed, the place where it was allegedly  
23 possessed and any other factors which you consider  
24 to be important. You must find the Defendant did  
25 not intend to have the heroin solely for his own



1 use.

2 Possession of two or more grains of  
3 heroin creates an inference that the Defendant  
4 possessed the heroin with intent to distribute.  
5 This inference does not relieve the State from  
6 proving beyond a reasonable doubt the Defendant had  
7 the intent to distribute. It's simply an  
8 evidentiary fact that you can take into  
9 consideration along with any other evidence in the  
10 case and you can give it whatever weight you decide  
11 it should have. You may accept or reject this  
12 inference. It is entirely up to you, but remember  
13 the State bears the burden of proving the intent to  
14 distribute beyond a reasonable doubt.

15 Now, in order to convict someone of a  
16 crime, the State always has to prove criminal  
17 intent beyond a reasonable doubt. Criminal intent  
18 is a mental state of conscious wrongdoing and it's  
19 up to you to determine what the Defendant intended  
20 to do based on the circumstances.

21 That covers all the substantive law. I  
22 have prepared a verdict form, and Madam Forelady, I  
23 will bring it down.

24 It's fairly straightforward. It just  
25 asks as to the charge of possession of heroin with

1 the intent to distribute we the jury find the  
2 Defendant -- unanimously find the Defendant Mark  
3 Blake guilty or not guilty.

4 So that's fairly straightforward. Let  
5 me just remind you you don't serve as a juror in  
6 this case or any case to be a partisan or an  
7 advocate for either the State or the Defendant.  
8 You were chosen because both sides believe you can  
9 be fair and impartial and you can decide the case  
10 without bias or prejudice. So you are only  
11 authorized to sign the form when the verdict is  
12 unanimous. Each of you has a vote and your vote is  
13 exactly that. It is your vote, no one else's. So  
14 I know you will discuss the evidence in a calm,  
15 thorough and courteous manner. The genius of our  
16 jury system is it allows 12 people to come together  
17 from different backgrounds and life experiences and  
18 perspectives and discuss the evidence and  
19 ultimately reach a verdict.

20 If you went to the dictionary and  
21 looked up the word jury you would see it comes from  
22 an old European word that means people sworn to  
23 render a true answer. So your job is to determine  
24 the facts of the case, take the law as I give it to  
25 you and apply it to those facts and ultimately

1 reach a verdict. And the record is closed. There  
2 are not going to be any more witnesses or exhibits,  
3 so if there is something that was referred to  
4 during this case and you don't have it back there  
5 with you, I can't give it to you. So keep that in  
6 mind as well and thank you for your attention to  
7 me. Don't start discussing the case until you get  
8 all the exhibits that you will be receiving and you  
9 can finally start talking about the evidence. But  
10 again thank you for your attention. And, ma'am, if  
11 you will just wait behind I will talk to you  
12 separate. Thank you.

13 (Thereupon, the jury exited the  
14 courtroom at 3:35 p.m.)

15 (The following proceedings were held  
16 outside the presence of the jury with the Defendant  
17 present.)

18 THE COURT: Keep your seats. Mr.  
19 Pryor, Ms. West, could you just go outside with her  
20 for one second while I take up something with the  
21 lawyers. You can't go to the jury room at this  
22 time, but I'll talk to you in just a moment.

23 (Whereupon, the alternate juror left  
24 the courtroom.)

25 THE COURT: Any objection or exception

1 to the charge from the State?

2 MS. LINDER: Yes, Your Honor. When you  
3 were discussing constructive possession you  
4 mentioned dominion and control over the drugs  
5 themselves. You did not mention or the property  
6 which was written in the charges that we discussed  
7 during charge conference. You did not say "or  
8 property." Dominion and control over property.

9 THE COURT: Well, you're right. And  
10 that stemmed -- as I mentioned I didn't have time  
11 to meld the constructive possession charge. I  
12 usually ease into the PWID heroin charge so I  
13 missed that. So that's my fault. Is there any  
14 objection to that being stated to the jury?

15 MR. KING: I just hate to put undue  
16 emphasis on that one particular part, that's my  
17 only concern.

18 THE COURT: Well, I will tell them that  
19 mere presence at the scene where the drugs are  
20 found does not prove possession as well. But I  
21 think the State is entitled to have that.

22 MR. KING: Yes, sir.

23 THE COURT: Anything else?

24 MS. LINDER: Your Honor, I would ask  
25 that you not charge mere presence for a second

1 time. You already charged that to the jury and I  
2 believe if you say the one thing that was -- one  
3 item that was left out to the jury coupling that  
4 with something that's said a second time, I worry  
5 about the inferences that a jury can draw from  
6 that, Your Honor.

7 THE COURT: Well, it's actually in the  
8 standard charge mere presence at the scene where  
9 drugs were found is not enough to prove possession.  
10 The sentence immediately after the sentence the  
11 State wishes me to charge, so I think in fairness  
12 it should be charged. Anything else?

13 MS. LINDER: Nothing from the State.

14 MR. KING: Not from the defense, Your  
15 Honor.

16 THE COURT: All right. So you can  
17 bring them back in, bring all jurors back in.

18 (Whereupon the jury entered the courtroom at  
19 3:39 p.m.)

20 THE COURT: Y'all can have a seat. I  
21 left out one part that I wanted to instruct you on  
22 the law about when I was talking about constructive  
23 possession in addition to what I already told about  
24 that. Constructive possession means the Defendant  
25 has dominion and control or the right to exercise

1       dominion or control over either the drug itself or  
2       the property on which the drug was found. Mere  
3       presence at the scene where the drugs were found is  
4       not enough to prove possession. That's the part I  
5       left out and I wanted to instruct you on that.

6               So with that you go back to the jury  
7       room and we will have the exhibits back to you  
8       shortly, and you can start talking about the case.

9               (Thereupon, the jury exited the  
10      courtroom at 3:40 p.m.)

11              (The following proceedings were held  
12      outside the presence of the jury with the Defendant  
13      present.)

14              THE COURT: Any other objections or  
15      exceptions?

16              MS. LINDER: Not from the State.

17              MR. KING: I would object to the --  
18      ideally that language about him, he had to have  
19      known, there was some more language, I am just  
20      concerned that they don't think that because he has  
21      dominion and control over the apartment he's guilty  
22      of whatever was found inside there without having  
23      -- believing that he had knowledge of what was in  
24      there. So it was more language that you read the  
25      first time about having to prove that you knew that

1 the items were there.

2 THE COURT: Well, that's why I said in  
3 addition to what I already told them. So they are  
4 presumed to follow the instructions they have been  
5 given which would include those points, but I  
6 understand your objection. Okay.

7 Ms. West, if you can bring her out.

8 (Alternate juror brought to the  
9 courtroom.)

10 THE COURT: Ms. West, the law does not  
11 allow you to go back in the deliberation room. I  
12 thank you for your service which is at an end now.  
13 This week you don't have to come back or call back,  
14 but we appreciate your contributions this week and  
15 thank you very much. We will be at ease until we  
16 hear something else.

17 Y'all want to make sure all the  
18 exhibits are in order up here before they go back.

19 (Whereupon, the jury began deliberating  
20 at 3:50 p.m.)

21 (The following proceedings were held  
22 outside the presence of the jury at 5:35 p.m. with  
23 the Defendant present.)

24 THE COURT: All right. Everybody is  
25 present. We have a note from the jury that states,

1 "Is it possible to obtain the evidence of the  
2 transcript of Frank Waddell's testimony? Also, the  
3 information from judge regarding the law?  
4 Instructions at the end. Thank you."

5 That will be made Court's Exhibit  
6 No. 3. And I'm happy to listen to how y'all  
7 propose to answer these questions. Obviously they  
8 can come back in and listen to Agent Waddell's  
9 testimony, couldn't they? I can ask them is there  
10 a specific part they want to listen to, might be  
11 one part. That's often the case. As far as --  
12 they might not want to come back here and listen.  
13 To answer their question precisely, there's not a  
14 way to give them a transcript. So we can just say  
15 no. Do y'all want to come look at the note?

16 (Off-the-record conference.)

17 MS. LINDER: I would say if there's a  
18 written instruction of the law, can we go back to  
19 them, if they can be more specific about what they  
20 want to hear about.

21 MS. VANPALA: Do you mean like to  
22 recharge the jury or part or do you bring them in  
23 and recharge them in its entirety?

24 MS. LINDER: As far as the wanting the  
25 transcript of Waddell, I mean I feel like a full



1 answer would be there is no transcript; however, if  
2 you would like to rehear a portion you can let us  
3 know. And I know sometimes in the past they have  
4 sent them back out, sometimes they get weirded out  
5 sitting here with it and I know before they have  
6 come back and said what portion and the court  
7 reporter has gone back to their jury room to play  
8 it so they are not watching us watching them  
9 listen. I don't know if that's --

10 THE COURT: I wouldn't do that.

11 MS. LINDER: Okay.

12 THE COURT: Not that I don't trust Ms.  
13 Weese completely, but it has to be done in open  
14 court.

15 MR. KING: If we send your whole charge  
16 back.

17 THE COURT: Well, so when you say  
18 whole, what do you mean?

19 MR. KING: I guess what I am worried  
20 about is undue emphasis on one particular part that  
21 if they want to hear a part of it, they could hear  
22 the whole thing or either have the whole entire  
23 charge jury printed out and back there so there's  
24 no particular part of it and they can see the whole  
25 charge.

1 THE COURT: Sure. I can send back --  
2 here's the problem with that. What I have got  
3 written out, I skip around. Like, you know, do  
4 they really need a written copy what I told them  
5 about their deliberations?

6 MS. LINDER: Judge, I would propose  
7 since they actually specifically asked about one  
8 part, is there a way to replay back kind of like  
9 they can replay testimony, can we replay your  
10 instruction about the specific thing that they  
11 asked for? So that way if you're as far as trying  
12 not to --

13 THE COURT: What do you mean  
14 specifically part?

15 MS. LINDER: Well, I thought they said  
16 also the information from judge regarding the law,  
17 instructions at the end.

18 THE COURT: That was the end of the  
19 case.

20 MS. LINDER: I don't know.

21 THE COURT: Isn't that what they mean?  
22 That's the problem.

23 MS. LINDER: Ask them to clarify?

24 THE COURT: We can ask them if they  
25 want -- let's do it one at a time. I propose we

1 answer the first question no, there is not a  
2 transcript of this testimony. However, if you want  
3 to come back in the courtroom to listen to the  
4 testimony or portions of it, please advise.

5 MS. LINDER: Yes, sir.

6 MR. KING: Yes.

7 THE COURT: Second question be  
8 responded to by saying I can give you written  
9 instructions about the law if you will tell me  
10 which ones you specifically want.

11 MS. LINDER: Yes, Judge.

12 THE COURT: Or I can do this. I can  
13 send back kind of the meat of it, by that I mean  
14 send back presumption of innocence, reasonable  
15 doubt, right to remain silent, circumstantial  
16 evidence, direct evidence, and the elements of the  
17 crime. That pretty much gives them all the main  
18 stuff. The other stuff is they're the judges of  
19 the facts, credibility, I have already told them.

20 MS. LINDER: Our position --

21 THE COURT: What evidence is, blah,  
22 blah.

23 MS. LINDER: Our position is if we are  
24 going to send back a clarifying question if we can  
25 just ask a verifying question for them if they

1 would like the entirety or specific parts of the  
2 jury charge similar to the question about  
3 transcript rehearing testimony. Would they like it  
4 in whole or any portions of it and just let them  
5 clarify what they are looking for.

6 MR. KING: I guess that's all right.  
7 If they want to hear like constructive possession,  
8 I request that you I guess go through the whole  
9 part because when they came back -- what I am  
10 worried is they are focused on the last part that  
11 they were brought back to be recharged on  
12 constructive possession. I would say if that's  
13 what they are looking for, recharge that whole  
14 section that included the knowledge part, that he  
15 has to know that the drugs are in there.

16 MS. LINDER: Hopefully they will  
17 clarify and it will be sorted out.

18 THE COURT: Okay. Hopefully they will  
19 and we will all look like fools with respect to  
20 that.

21 MS. LINDER: Exactly. Overanalyze.

22 THE COURT: I'll draft a response and  
23 let y'all look at it before I send it back.

24 (Brief pause.)

25 Do you'll want to look at this?

1                   Okay. Thank you. We will make this a  
2 Court's exhibit.

3                   (COURT'S EX. 3-4, jury notes, marked  
4 for identification.)

5                   (Whereupon, the notes were returned to  
6 the jury at 5:22 p.m.)

7                   (Whereupon, the jury continued  
8 deliberating.)

9                   (The following proceedings were held  
10 outside the presence of the jurors at 6:19 p.m.  
11 with the Defendant present.)

12                  THE COURT: We have another note. It  
13 says we would like to be reminded of the exact  
14 definition of distribution for clarity. That's the  
15 essence of it. I will make it a court's exhibit.  
16 Y'all can examine it if you wish. I can bring them  
17 in and recharge them or I can send them back a copy  
18 of the charge.

19                  MS. LINDER: I'm fine if you want to  
20 recharge them on the PWID statute or if you want to  
21 send back the PWID statute. I would respectfully  
22 request that it's the full statutory language  
23 including the part of the statute with the  
24 permissive inference and then -- yes, I think  
25 that's it.

1 MR. KING: The definition of  
2 distribution? I guess I'm okay with that if we  
3 recharge the elements of possession with intent to  
4 distribute.

5 THE COURT: Tell you what. It is  
6 probably just as easy if I bring them back in and  
7 charge them. I will show you what I'll -- I would  
8 propose. So that is what I charged them earlier.  
9 I had to read -- Ms. Clark had to retype it. Y'all  
10 want to come look at this?

11 What we did, we gave them that  
12 supplemental charge. So it should include  
13 everything I have already told them about  
14 distribution.

15 MR. KING: I have no objection.

16 MS. LINDER: It is fine.

17 THE COURT: Everybody is good with  
18 that, okay. Mr. Pryor, if you would bring the jury  
19 back in.

20 (Whereupon, the jury entered the  
21 courtroom at 6:26 p.m.)

22 THE COURT: Y'all can sit down. Ladies  
23 and gentlemen, you asked me to remind you of the  
24 exact definition of distribution. And I will  
25 instruct you again on the elements of the crime of

1 possession of heroin with the intent to distribute.

2           The State must prove beyond a  
3 reasonable doubt that the Defendant possessed  
4 heroin with the intent to distribute it. To prove  
5 possession the State must prove beyond a reasonable  
6 doubt the Defendant had both the power and the  
7 intent to control the disposition or use of the  
8 heroin. Possession may be actual or constructive.  
9 The State doesn't necessarily have to prove the  
10 Defendant physically possessed the heroin for you  
11 to find him guilty. The law recognizes two kinds  
12 of possession, actual possession and constructive  
13 possession. Either if proved by the State is  
14 enough to convict if the other elements of the  
15 events are also proven beyond a reasonable doubt.

16           To prove actual possession the State  
17 must prove the Defendant had direct physical  
18 control over the heroin and knew that he had  
19 control of it. To prove constructive possession  
20 the State must prove the Defendant had the right to  
21 exercise physical control over the heroin or the  
22 property on which the heroin was found and knew  
23 that he had this right and that he intended to  
24 exercise physical control over the heroin at some  
25 time either directly or through other persons.

1                   For example, if you left something with  
2                   a friend intending to come back later and pick it  
3                   up or intending to send someone else to pick it for  
4                   you, you would have constructive possession of the  
5                   item while it was in the actual possession of your  
6                   friend. But understand that just being present  
7                   where something is located does not equal  
8                   possession. The State must prove that the  
9                   Defendant had actual or constructive possession of  
10                  the heroin and know that he did for you to find him  
11                  guilty of this crime. This is of course for you to  
12                  decide. The State must also prove beyond a  
13                  reasonable doubt that the Defendant intended to  
14                  distribute the heroin. Distribute means to deliver  
15                  other than by administering or dispensing a drug.  
16                  Intent may be shown by acts and conduct of the  
17                  Defendant and other circumstances from which you  
18                  may naturally and reasonably infer intent.

19                         In determining whether the Defendant  
20                         has the intent to distribute the heroin you may  
21                         consider the circumstances surrounding his alleged  
22                         possession. You may consider the amount of the  
23                         substance alleged to have been possessed, the  
24                         manner in which it was allegedly possessed, the  
25                         place where it was allegedly possessed and other



1 factors that you consider important. You must find  
2 the Defendant did not intend to have the heroin  
3 solely for his own use. Possession of two or more  
4 grains of heroin creates an inference that the  
5 Defendant possessed the heroin with the intent to  
6 distribute it.

7 This inference does not relieve the  
8 State from proving beyond a reasonable doubt that  
9 the Defendant had the intent to distribute. It is  
10 simply an evidentiary fact you may choose to  
11 consider or not consider along with other evidence  
12 in the case. And you may give it the weight you  
13 decide it should have. You may accept it or reject  
14 it completely. All right.

15 That covers the elements and let me  
16 know if you need any further clarification on  
17 anything.

18 (Thereupon, the jury exited the  
19 courtroom at 6:31 p.m.)

20 (COURT'S EXH. 5, jury note, marked for  
21 identification.)

22 (Whereupon, the jury continued  
23 deliberating and reached a verdict at 6:46 p.m.)

24 (The following proceedings were held  
25 outside the presence of the jury with the Defendant

1 present.)

2 THE COURT: I understand we have a  
3 verdict. Anything before we bring the jury in?

4 MS. LINDER: Nothing from the State.

5 MR. KING: No.

6 THE COURT: I appreciate everyone's  
7 decorum throughout the trial and there is to be no  
8 reaction to the verdict. If someone doesn't think  
9 they can control their emotions when the verdict is  
10 read, on either side, the time to leave would be  
11 now so I don't have to take care of it. All right.  
12 You can bring the jury in.

13 (Whereupon, the jury entered the  
14 courtroom at 6:58 p.m.)

15 THE COURT: All right. Please have a  
16 seat. Has the jury reached a unanimous verdict,  
17 ma'am? If you will hand it to Mr. Pryor, we will  
18 receive it and publish it.

19 (Brief pause.)

20 THE CLERK: All right. The State of  
21 South Carolina, County of Charleston, Court of  
22 General Sessions, Ninth Judicial Circuit, case  
23 No. 2013-GS-10-2729. State of South Carolina  
24 versus Mark Lorenzo Blake, Jr.

25 As to the charge of possession of

1 heroin with intent to distribute, we the jury  
2 unanimously find the Defendant -- excuse me -- find  
3 the Defendant, Mark Blake, Jr. guilty. Signed  
4 foreperson of the jury, dated June 15th, 2016.  
5 Madam foreperson, ladies and gentlemen of the jury,  
6 if this is your jury verdict please signify by  
7 raising your right hand.

8 (All hands raised.)

9 THE CLERK: Thank you. You may put  
10 them down. Your Honor, let the record reflect all  
11 jurors their hands.

12 THE COURT: All right. Thank you. You  
13 wish to have the jury polled?

14 MR. KING: Yes, Your Honor.

15 THE CLERK: Ladies and gentlemen of the  
16 jury, I'm going to ask you each two questions.  
17 First is this your verdict, then second is this  
18 still your verdict. Please answer each question  
19 accordingly. When I call your juror number if you  
20 would please raise your hand so I know who I am  
21 speaking with, thank you. Juror No. 4? Is this  
22 your verdict, ma'am?

23 JUROR NO. 4: Yes.

24 THE CLERK: Is this still your verdict?

25 JUROR NO. 4: Yes.

1 THE CLERK: Juror No. 8? Is this your  
2 verdict, ma'am?

3 JUROR NO. 8: Yes.

4 THE CLERK: Is this still your verdict?

5 JUROR NO. 8: Yes, sir.

6 THE CLERK: Thank you. Juror No. 63,  
7 is this your verdict, ma'am?

8 JUROR NO. 63: Yes.

9 THE CLERK: Is this still your verdict?

10 JUROR NO. 63: Yes.

11 THE CLERK: Thank you. Juror 126, is  
12 this your verdict, sir?

13 JUROR NO. 126: Yes.

14 THE CLERK: Is this still your verdict?

15 JUROR NO. 126: Yes.

16 THE CLERK: Thank you, sir. Juror 156,  
17 is this your verdict?

18 JUROR NO. 156: Yes.

19 THE CLERK: Is this still your verdict?

20 JUROR NO. 156: Yes.

21 THE CLERK: Thank you. Juror 201, is  
22 this your verdict?

23 JUROR NO. 201: Yes.

24 THE CLERK: Is this still your verdict?

25 JUROR NO. 201: Yes.

1 THE CLERK: Thank you. Juror 203, is  
2 this your verdict, ma'am?

3 JUROR NO. 203: Yes.

4 THE COURT: Is it still your verdict?

5 JUROR NO. 203: Yes.

6 THE CLERK: Juror 235, is this your  
7 verdict?

8 JUROR NO. 235: Yes.

9 THE CLERK: Is it still your verdict?

10 JUROR NO. 235: Yes.

11 THE CLERK: Thank you, ma'am. Juror  
12 317, is this your verdict, sir?

13 JUROR NO. 317: Yes.

14 THE CLERK: Is it still your verdict?

15 JUROR NO. 317: Yes.

16 THE CLERK: Thank you, sir. Juror 349,  
17 is this your verdict, sir?

18 JUROR NO. 349: Yes.

19 THE CLERK: Is it still your verdict?

20 JUROR NO. 349: Yes.

21 THE CLERK: Thank you. Juror 364, is  
22 this your verdict, ma'am?

23 JUROR NO. 364: Yes.

24 THE CLERK: Is it still your verdict?

25 JUROR NO. 364: Yes.

1 THE CLERK: Thank you, ma'am.

2 Juror 367, is this your verdict?

3 JUROR NO. 367: Yes.

4 THE CLERK: Is it still your verdict?

5 JUROR NO. 367: Yes.

6 THE CLERK: Thank you, ma'am. Your  
7 Honor, the jury has been polled. The verdict  
8 stands.

9 THE COURT: Any other matters before  
10 the jury is discharged from the defense?

11 MS. LINDER: Nothing from the State.

12 MR. KING: No, Your Honor.

13 THE COURT: All right. Ladies and  
14 gentlemen, thank you for your service. We don't  
15 have professional jurors in this country thankfully  
16 so we have to rely on responsible citizens who have  
17 jobs and families and other things going on in  
18 their lives and take you away from those important  
19 aspects of your lives and ask you to serve in  
20 difficult cases. So we appreciate the  
21 contributions you made to your community and the  
22 docket as I understand, the solicitor has called  
23 the last case they intend to call this week and  
24 therefore there are no other cases.

25 So your juror obligation is complete

1 and you don't -- you now have an exemption from  
2 jury service in circuit court for the next three  
3 years. And thank you again for your service. If  
4 you wish to see the sentencing phase of this you  
5 certainly are welcome to do so. The bailiff can  
6 bring you around to do that if you wish to see it,  
7 but you are certainly not required to. Thank you.

8 (Thereupon, the jury exited the  
9 courtroom at 7:02 p.m.)

10 THE COURT: Any motions at this stage?

11 MR. KING: Yes, Your Honor. At this  
12 time I renew my previous motion and make a motion  
13 for a new trial, to reconsider the motion to  
14 suppress and the chain of custody.

15 THE COURT: Okay. I respectfully deny  
16 the motions. See if any of the jurors want to come  
17 around and then we will proceed with the sentence.  
18 Is all the paperwork in order?

19 MS. LINDER: Yes, Judge. I am getting  
20 the certified convictions to hand up.

21 THE COURT: Okay.

22 (Brief pause.)

23 THE COURT: All right. Yes, ma'am.

24 MS. LINDER: May it please the Court,  
25 as far as sentencing for Mr. Blake in this matter,

1 Your Honor, I think it is important to note for the  
2 record as far as prior convictions he has a 2006  
3 unlawful carrying of a pistol, he has a 2009  
4 possession of marijuana and 2009 possession of  
5 cocaine.

6 Your Honor, this case gives us great  
7 distress. He was on bond when he committed this  
8 offense. Although you cannot consider it  
9 necessarily a factor in sentencing, I think it is  
10 important to note that Mr. Blake has an attempted  
11 murder of a police officer, possession of a weapon  
12 during the commission of a violent crime, failure to  
13 stop for a blue light pending from 2013. He also  
14 has two other -- two counts of distribution of  
15 heroin pending from 2013. He also has a  
16 distribution of heroin pending from 2012. He has a  
17 2012 trafficking cocaine and unlawful carrying of a  
18 pistol charge pending.

19 All those charges are still pending.  
20 The State does intend to go forward on those  
21 charges. Your Honor, we believe Mr. Blake has  
22 shown himself to be a danger to the community.  
23 Based on his prior record, his pending charges,  
24 also the fact that he had that extended magazine in  
25 his home that we believe is used in furtherance of



1 his drug trade, we would request that you give a  
2 significant sentence. We understand that your  
3 range is five to 30 years for this. Thank you,  
4 Judge.

5 THE COURT: Thank you, Ms. Linder.

6 MR. KING: He may be disputing one of  
7 the firearm convictions, if I may just clarify.

8 THE COURT: Sure.

9 (Attorney confers with client.)

10 MR. KING: Thank you, Your Honor.

11 THE COURT: Mr. King.

12 MR. KING: Your Honor, his family is  
13 here. They have been here the whole time. Some of  
14 his family sat out. His father was sequestered,  
15 they have been here showing support the whole time.  
16 He has three kids, Your Honor. He has an 11-year  
17 old son, a seven-year old daughter and three-year  
18 old daughter. Some of the photos admitted into  
19 evidence, the apartment, I mean they were building  
20 a nice home so there's a nice apartment. You know,  
21 there's things set up for the child. He had a job  
22 at the time. He was working for hospitality  
23 staffing. I had at least a witness I would have  
24 been able to present that if I had put up a case  
25 that he was working at the time. He started

1 February 14th, worked up until his bond was  
2 revoked. So he was working. His dad has a  
3 business. He also did some work with his dad.

4 He has some record, Judge, but at this  
5 point there's a little on there, but it's not the  
6 worst record. I know he has pending charges,  
7 Judge, but that's for another day. We ask you not  
8 hold that against him and to be as lenient as  
9 possible in this sentence. He has been in jail  
10 from my count 1,156 days.

11 THE COURT: All right. Mr. Blake?

12 MR. KING: I always advise my clients  
13 to remain silent pending the appeal so I have  
14 advised him of that. He's going with my advice.  
15 We just ask if you be lenient.

16 THE COURT: Is there anyone who wishes  
17 to speak?

18 MR. KING: I don't believe his family  
19 wishes to speak. They are just here for support,  
20 Your Honor.

21 THE COURT: Okay. Is that correct?  
22 Mr. Blake, based on your attorney's advice you  
23 don't want to speak?

24 THE DEFENDANT: Correct.

25 THE COURT: Anything further?

1 MS. LINDER: Nothing further from the  
2 State.

3 THE COURT: All right.

4 (Brief pause.)

5 THE COURT: I'm not taking account  
6 anything pending against Mr. Blake. That wouldn't  
7 be appropriate. I do take into account his prior  
8 record and I too, Mr. King, was struck by the  
9 photographs that did indicate that he was building  
10 a nice home there with his family which puzzles me  
11 as to why he has found himself in this position.  
12 And also because his family has been here  
13 throughout the trial which is unusual in cases of  
14 this type. There's usually not much family support  
15 at all. You have strong family support. And you  
16 are very fortunate. Some of the victims of the  
17 heroin aren't so lucky either.

18 So it's an issue that society has  
19 spoken about in the form of the sentence. That's  
20 why the sentences are what they are for these type  
21 offenses. And the sentence in this case based on  
22 these circumstances and your prior record is you be  
23 committed to the Department of Corrections for a  
24 period of 12 years. Credit for time served.

25 Mr. King, I commend you on the

1 outstanding job you did for Mr. Blake and a  
2 well-tried case you tried and the State for their  
3 well-tried case as well. Thank you very much.

4 (These proceedings were concluded at  
5 7:16 p.m., June 15, 2016, Charleston County, South  
6 Carolina.)  
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21 CERTIFICATE OF REPORTER  
22

23 I, Ruth C. Weese, Registered Diplomate  
24 Reporter for the State of South Carolina at Large,  
25 do hereby certify that the foregoing transcript is

1 a true, accurate, and complete record.

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

5 Witness my hand, I have hereunto affixed my  
6 official seal this 28th day of July, 2016 at  
7 Charleston, Charleston County, South Carolina.

8  
9 *Ruth C. Weese*

10  
11 \_\_\_\_\_  
12 Ruth C. Weese

13 Registered Diplomate

14 Reporter  
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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Charleston County

Honorable D. Garrison Hill, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

MARK LORENZO BLAKE,

APPELLANT

APPELLATE CASE NO 2016-001364

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FINAL BRIEF OF APPELLANT

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**STATEMENT OF ISSUES ON APPEAL**

1. Did the trial judge err admitting the second chemist's report, testimony and drug evidence when the State failed to establish an adequate chain of custody for the substance tested?
2. Did the trial judge err in refusing to suppress evidence obtained as a result of an unreasonable search of Appellant's home?

**STATEMENT OF THE CASE**

In June of 2013, the Charleston County Grand Jury indicted Appellant Blake for possession with intent to distribute heroin, indictment #2013-GS-10-2729. On June 14, 2016, Appellant proceeded to jury trial before the Honorable D. Garrison Hill. Jason King and Tamara Vanpala represented Appellant at trial. Stephanie Linder and Lauren Frierson prosecuted the case. The jury returned a verdict of guilty and Judge Hill sentenced Appellant to twelve (12) years in prison. A timely notice of intent to appeal was served on June 24, 2016. This appeal follows.

ARGUMENTS

1. The trial judge erred admitting the second chemist's report, testimony and drug evidence when the State failed to establish an adequate chain of custody for the substance tested.

The jury found Appellant guilty of possession with intent to distribute heroin. A substance was found in Appellant's home during the execution of a search warrant. The substance was first tested on March 11, 2013, by Elizabeth Mitchell, a chemist with the Charleston City Police Department. (R. p. 251, line 22 – p. 252, lines 1-2). Mitchell's report indicates that the substance was 2.46 of heroin. (R. p. 257, lines 20-22). The substance was then transported to the Charleston County Sheriff's Office on April 1, 2013, by Ashley Carr Earl. (R. p. 252, lines 3-5). Neither the chemist nor Ashley Carr Earl testified at trial.

The substance remained at the Charleston County Sheriff's Office until June 1, 2015, when it was again transferred to the Charleston City Police Department. (R. p. 252, lines 6 – 20). On June 8, 2015 the substance was returned to the Charleston County Sheriff's Office and received by either Christopher Hockrighter, according to the Charleston City Police Department lab chain of custody, or Jason Riley, according to the Charleston County Sheriff's Office chain of custody. (R. p. 252, lines 9 – 25; R. p. 258, line 9 – p. 292, lines 1-2). Hockrighter did not testify at trial. The substance remained at the Charleston County Sheriff's Office until November 23, 2015, when the substance was transferred to the Charleston City Police Department lab for a third time. (R. p. 253, lines 1-16). The substance was tested a second time by Renee Hilton, another chemist with the Charleston City Police Department. Hilton reported the substance as 1.12 grams of heroin. (R. p. 257, lines 22-23).

Appellant objected to the admission of Hilton's report based on the State's failure to establish an adequate chain of custody. (R. p. 241, lines 12-15). After hearing arguments from both sides, (R. pp. 261-266), the judge found that the chain had been adequately established, "assuming the foundation is further laid that Ms. Frierson just assured me it would concerning the heat sealing and the basis of Ms. Hilton's knowledge of the initials of the chemist Ms. Mitchell who is unavailable, who first tested the drugs ..." (R. p. 266, lines 18-25). The judge later elaborated on his ruling citing State v. Hatcher, 392 S.C. 86, 708 S.E.2d 750 (2011); and State v. Taylor, 360 S.C. 18, 598 S.E.2d 735 (S.C. Ct.App. 2004) in addition to State v. Williams, 297 S.C. 290, 376 S.E.2d 773 (1989). (R. p. 286, lines 1-21). Appellant renewed the objection prior to the testimony of the chemist. (R. p. 268, lines 1-12). Appellant renewed the objection when the drugs were admitted in evidence. (R. p. 279, lines 16-18). Appellant again renewed the objection at the close of the case and after the jury returned a verdict. (R. p. 286, line 25 – p. 287, lines 1-12; p. 352, lines 11-14). The trial judge abused his discretion in admitting the testimony, report and drugs tested by the second chemist when the State failed to establish an adequate chain of custody.

As correctly argued by counsel for Appellant, the missing link in the chain in the present case is the first chemist, Elizabeth Mitchell, and not simply a custodian who received and/or stored a sealed package. (R. p. 242, lines 5-25). In State v. Hatcher, 392 S.C. 86, 708 S.E.2d 750 (2011), the missing link was simply a witness from the South Carolina Law Enforcement division [SLED] Log-In Department who received a double sealed package from an officer with the Marlboro County Sheriff's Office. The SLED chemist testified that when she retrieved the evidence from the Log-In Department, the evidence was still sealed in a best evidence kit. The

Court in Hatcher found that the judge did not abuse his discretion in admitting drug evidence writing:

Courts have abandoned inflexible rules regarding the chain of custody and the admissibility of evidence in favor of a rule granting discretion to the trial courts. United States v. De Larosa, 450 F.2d 1057, 1068 (3d Cir.1971). "The trial judge's exercise of discretion must be reviewed in the light of the following factors: '... the nature of the article, the circumstances surrounding the preservation and custody of it, and the likelihood of intermeddlers tampering with it.' " Id. (citation omitted). "If upon the consideration of such factors the trial judge is satisfied that in reasonable probability the article has not been changed in important respects, he may permit its introduction in evidence." Gallego v. United States, 276 F.2d 914, 917 (9th Cir.1960).

Considering those factors here, we find no abuse of discretion in the trial judge's admission of the drug evidence in Hatcher's case. We agree with the Court of Appeals that the mere fact that evidence is sealed upon presentation for testing does not, in itself, establish a sufficient chain of custody. **Evidence is still required as to how the item was obtained and how it was handled to ensure that it is, in fact, what it is purported to be.** However, we have consistently held that the chain of custody need be established only as far as practicable, and we reiterate that every person handling the evidence need not be identified in all cases.

Hatcher, 392 S.C. at 94-95, 708 S.E.2d at 754-55 (bold added). The first chemist in the present case is a critical part of the chain, unlike the missing witness in Hatcher. Evidence is lacking in the present case as to how the first chemist obtained and handled the substance.

In State v. Williams, 297 S.C. 290, 376 S.E.2d 773 (1989), the Court found that the chain of custody for a blood sample was sufficient although the nurse who drew the blood did not testify at trial. The Court wrote, "Nurse Yorke testified she removed the blood sample from a locked refrigerator on the morning after the accident and took it to the lab for testing. The vial was labeled with appellant's name, his patient number, his date of birth, and the date the blood was drawn. The hospital's internal chain of custody form was initialled by Nurse Burns indicating she had obtained the sample from appellant and then locked it in the refrigerator." Williams, 297 S.C. at 293, 376 S.E.2d at 774. Importantly, Williams challenged the chain of

custody **not** based on a missing chemist, but rather on the fact that the nurse who drew the blood sealed the vial and labeled it did not testify. The challenge in the present case is based on the fact that the first chemist who handled and tested the substance did not testify.

In State v. Taylor, 360 S.C. 18, 598 S.E.2d 735 (S.C. Ct.App. 2004), this Court found that the chain of custody for drug evidence was sufficient although an evidence custodian did not testify a trial. This Court found that the State introduced evidence to establish the identity of each person in the chain of possession and the manner of handling. Like the missing link in Hatcher, the missing link in Taylor was simply the evidence custodian who delivered the sealed evidence bag to SLED. Again, the missing link in the present case is the first chemist who tested the substance and the State did not introduce sufficient evidence to establish the manner of handling of the substance by the first chemist.

Additionally, the State failed to establish that the first chemist was unavailable as defined by the Rule 804, SCRE. The State simply argued that, "Ms. Mitchell is no longer with the lab. She chose another career, there's no unsavory circumstances or anything. She's just in another career and is unavailable to testify." (R. p. 245, lines 12-16). The State failed to show that they tried to procure Ms. Mitchell's testimony. This Court in Taylor wrote:

A party offering into evidence fungible items such as drugs or blood samples must establish a chain of custody as far as practicable. See, e.g., Benton v. Pellum, 232 S.C. 26, 33, 100 S.E.2d 534, 537 (1957); State v. Cribb, 310 S.C. 518, 522, 426 S.E.2d 306, 309 (1992); State v. Joseph, 328 S.C. 352, 364, 491 S.E.2d 275, 281 (Ct.App.1997); State v. Johnson, 318 S.C. 194, 196, 456 S.E.2d 442, 443 (Ct.App.1995). Where the analyzed substance has passed through several hands, the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis. While the proof of chain of custody need not negate all possibility of tampering, it must establish a complete chain of evidence as far as practicable. State v. Williams, 297 S.C. 290, 293, 376 S.E.2d 773, 774 (1989); Johnson, 318 S.C. at 196, 456 S.E.2d at 443.

360 S.C. at 22–23, 598 S.E.2d at 737. The analyzed substance in the present case passed through many hands before finally being tested by the second chemist. The evidence leaves to conjecture what was done with the substance when it was in the hands of the first chemist. The State did not establish that the first chemist was unavailable. The State failed to establish a complete chain of custody as far as practicable.

In State v. Joseph, 328 S.C. 352, 491 S.E.2d 275 (S.C.Ct.App. 1997), this Court found the chain of custody for drug evidence was inadequate where the State offered an affidavit instead of the testimony of the chemist who tested the substances because the chemist had moved to Michigan. In reversing the conviction, this Court wrote:

In the case at bar, we conclude that the State failed to establish an adequate chain of custody. Kilmer was the critical link in the State's chain of custody—it was Kilmer who retrieved the evidence from the drop box and first analyzed the evidence, and it was Kilmer who retained possession of evidence for six months. The fact that Kilmer had moved to Michigan does not render Kilmer unavailable or make it impracticable for the State to produce her for trial once Joseph objected to the use of her affidavit. Given Kilmer's importance in the chain of custody and the inconsistencies in the State's proof of the chain of custody, Joseph's right to cross-examine Kilmer cannot be abridged simply because she no longer lived in South Carolina. We therefore conclude that the State's evidence of the chain of custody was fatally deficient and that the trial court erred by admitting the drug evidence.

Joseph, 328 S.C. at 364–65, 491 S.E.2d at 281–82 (footnotes omitted).

In present case the State had the substance re-tested by a second chemist. The re-testing, however, did not cure the problem with the chain. The second chemist's recognition of the first chemist's initials on a sealed bag does not provide evidence of handling by the first chemist. As noted by the Court in Hatcher, "... the mere fact that evidence is sealed upon presentation for testing does not, in itself, establish a sufficient chain of custody." Hatcher, 392 S.C. at 94–95, 708 S.E.2d at 754–55. The first chemist was a critical link in the chain and not just a custodian.



The trial judge abused his discretion in admitting the report, testimony and drugs tested by the second chemist when the State failed to establish an adequate chain of custody.

2. The trial judge erred in refusing to suppress evidence obtained as a result of an unreasonable search of Appellant's home.

Prior to trial Appellant moved to suppress evidence found inside his home during the execution of a search warrant. (R. p. 13, lines 3-25). Appellant did not challenge the validity of the search warrant. Instead, Appellant argued that the search was conducted unreasonably. The State called three officers from the Charleston County Sheriff's Office to testify as to how the search warrant was executed. (R. pp. 14-61). Appellant also testified at the suppression hearing. (R. pp. 69-82). Counsel for Appellant argued that the excessive force used during the felony traffic stop in connection with the officers' actions during the search of Appellant's home, including their failure to provide Appellant with a copy of the search warrant, rendered the execution of the search warrant unreasonable. (R. pp. 83- 86; p. 91, line 11 – p. 92, lines 1-8, line 24 – p. 93, line 1). Appellant moved to suppress all evidence obtained as a result to the search warrant based on both the United States Constitution and the South Carolina Constitution. (R. p. 85, line 22 – p. 86, lines 1-4).

The judge denied the motion to suppress. (R. pp. 93-98). The judge found that the officers were justified in the manner in which they conducted the felony stop and later search of Appellant's home. (R. p. 95, line 18 – p. 96, lines 1-7). With regard to the failure to provide Appellant with a copy of the search warrant the judge stated, "I don't find that the failure to give a warrant – a copy of the warrant to Mr. Blake, put it in his hands when he was handcuffed

behind his back as I understand it is enough in and of itself to deem the search unreasonable within the meaning of the Fourth Amendment.” (R. p. 96, lines 8-13).

During trial Appellant objected, based on the pre-trial suppression motion, to photos taken at the home on the day of the search (R. p. 121, line 14; p. 169, lines 4-6; p. 182, lines 9-11), and evidence seized at the home including the substance which the chemist testified was heroin. (R. p. 189, line 25 – p. 190, line 1; p. 191, line 1; p. 193, line 19; p. 196, lines 6-8; p. 279, lines 16-18). The judge overruled the objection each time. At the close of the case Appellant renewed the motion to suppress and the judge again denied the motions. (R. p. 286, line 22- p. 287, lines 1-12). Appellant renewed the motion to suppress after the jury returned the verdict. (R. p. 352, lines 11-18). The trial judge erred in refusing to suppress the evidence obtained as a result of an unreasonable search.

The Fourth Amendment to the United States Constitution protects a person's right to be free from unreasonable searches and seizures. U.S. Const. amend. IV. “In parallel with the protection of the Fourth Amendment, the South Carolina Constitution also provides a safeguard against unlawful searches and seizures.” State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001); S.C. Const. art. I, § 10. “The relationship between the two constitutions is significant because ‘[s]tate courts may afford more expansive rights under state constitutional provisions than the rights which are conferred by the Federal Constitution.’ ” Forrester, 343 S.C. at 643, 541 S.E.2d at 840 (quoting State v. Easler, 327 S.C. 121, 131 n. 13, 489 S.E.2d 617, 625 n. 13 (1997)). “Therefore, state courts can develop state law to provide their citizens with a second layer of constitutional rights.” Id. “This relationship is often described as a recognition that the federal Constitution sets the floor for individual rights while the state constitution establishes the ceiling.” Id. “Thus, this Court can interpret the state protection against unreasonable searches and

seizures in such a way as to provide greater protection than the federal Constitution.” *Id.* at 644, 541 S.E.2d at 840.

As persuasive authority to support the argument that the officer’s failure to provide Appellant with a copy of the search warrant rendered the search unreasonable, Appellant cited United States v. Thompson, 667 F. Supp. 2d 758, 763 (S.D. Ohio 2009). (R. p. 83, line 4 – p. 84, lines 1-8). In Thompson one of the factors the judge relied upon in finding that the search, pursuant to a warrant, was unreasonable, was the fact that officers refused to provide the defendant’s wife with a copy of the search warrant. In Thompson the district judge wrote:

The reasonableness of a search and seizure is evaluated based upon the totality of the circumstances. Ohio v. Robinette, 519 U.S. 33, 39, 117 S.Ct. 417, 136 L.Ed.2d 347 (1996). “To satisfy the Reasonableness Clause, officers not only must obtain a valid warrant but they also must conduct the search in a reasonable manner.” Baranski, 452 F.3d at 445. The willingness (or unwillingness) of officers to present a warrant to an occupant when asked goes to the reasonableness of a search. *See id.* at 443 (stating that “the decision of officers not to present an incorporated affidavit to the occupant upon request may be a relevant factor in determining the reasonableness of a search”). After all, an integral component of the Fourth Amendment’s protection of the home is the requirement that a warrant must be obtained prior to a search. Karo, 468 U.S. at 715, 104 S.Ct. 3296.

S.C. Code Ann. § 17-13-150 provides that, “When any person is served with a search warrant, such person shall be furnished with a copy of the warrant along with the affidavit upon which such warrant was issued.”

In Groh v. Ramirez, 540 U.S. 551, 124 S. Ct. 1284, 157 L. Ed. 2d 1068 (2004), the United States Supreme Court left open the question of whether it would be unreasonable under the Fourth Amendment for an officer executing a search warrant to refuse to provide an occupant, present at the scene, with a copy of the search warrant. The Court wrote in footnote #5, “Whether it would be unreasonable to refuse a request to furnish the warrant at the outset of the search when, as in this case, an occupant of the premises is present and poses no threat to the

officers' safe and effective performance of their mission, is a question that this case does not present." In Groh v. Ramirez, 540 U.S. 551, 562, 124 S. Ct. 1284, 1292, 157 L. Ed. 2d 1068 (2004).

In the present case Appellant was arrested pursuant to a felony traffic stop and taken back to his home where officers executed the search warrant. Appellant testified that he became agitated after he asked to see a copy of the search warrant and the officers refused. (R. p. 71, lines 3-16). Detective Frank Waddell admitted that he never personally gave Appellant a copy of the search warrant. (R. p. 41, lines 11-16; p. 42, lines 4-11). The detective admitted that the search warrant itself ordered the detective to serve Appellant with a copy of the search warrant. (R. p. 40, line 10 – p. 41, lines 1-14). Rather than providing Appellant with a copy of the search warrant, pursuant to S.C. Code §17-13-150 and the search warrant itself, the detective simply left the search warrant at the residence. (R. p. 36, lines 7-13). The detective admitted that Appellant would not have had an opportunity to see the search warrant because he was arrested and taken to jail at the conclusion of the search. (R. p. 41, lines 20-25).

As noted by the judge in Thompson:

One of the purposes served by the warrant requirement is informing citizens that the executing agents are acting under proper authorization when they invade the sanctity of a citizen's home. That sentiment is succinctly but eloquently stated by the Supreme Court in Camara v. Mun. Ct., 387 U.S. 523, 530-33, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967):

In our opinion, these arguments unduly discount the purposes behind the warrant machinery contemplated by the Fourth Amendment. Under the present system, when the inspector demands entry, the occupant has no way of knowing whether enforcement of the municipal code involved requires inspection of his premises, no way of knowing the lawful limits of the inspector's power to search, and no way of knowing whether the inspector himself is acting under proper authorization. That purpose cannot be served if executing officers arbitrarily decide to withhold presentation of the warrant until the conclusion of the search despite an occupant's repeated requests to view the warrant.

See also United States v. Chadwick, 433 U.S. 1, 9, 97 S.Ct. 2476, 53 L.Ed.2d 538 (1977) (noting that "... a warrant assures the individual whose property is searched or seized of the lawful authority of the executing officer, his need to search, and the limits of his power to search."), *abrogated on other grounds*; California v. Acevedo, 500 U.S. 565, 111 S.Ct. 1982, 114 L.Ed.2d 619 (1991).

Thompson, 667 F. Supp. 2d at 764-65. As noted in footnote #3 in Thompson:

In United States v. Grubbs, 547 U.S. 90, 126 S.Ct. 1494, 164 L.Ed.2d 195 (2006), the Supreme Court noted that "[t]he Constitution protects property owners not by giving them license to engage the police in a debate over the basis for the warrant, but by interposing, *ex ante*, the deliberate, impartial judgment of a judicial officer ..." *Id.* at 99, 126 S.Ct. 1494. This Court agrees that confrontations between the police and home occupants about the validity of a search should be as limited as possible. It appears to this Court that by *not* furnishing a warrant upon request, after the premises have been secured, the possibility that a confrontation will occur is *more* likely. Producing a warrant reassures an occupant that her Constitutional rights are not being violated, such that the search may proceed without incident.

Thompson, 667 F. Supp. 2d at 764. The trial judge in the present case noted, "I believe Mr. King has a good point that the reason for requiring showing the subject of the warrant a copy of it is to diffuse the tension to deescalate the confrontation between the police and the citizen." (R. p. 95, lines 1-5). The trial judge later stated, "Now, this is somewhat of a chicken and egg problem because as Mr. King points out had they simply given him the warrant he may have had his hostility diminished to the point where he did remain peaceful throughout the search, but that didn't happen." (R. p. 97, lines 11-15). The officer was unreasonable in not providing Appellant with a copy of the search warrant.

Based on the totality of circumstances, including the violation of S.C. Code §17-13-150 and the directive of the search warrant itself, the excessive force used, the search in the present case was unreasonable under the Fourth Amendment of the United States Constitution and the heightened privacy protection provided by the South Carolina Constitution art. I, § 10. The trial judge erred in failing to suppress the evidence seized as a result of the unreasonable search.

CONCLUSION

Based on the above arguments, Appellant's conviction and sentence should be reversed.

Erman B. Hackett for  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of July, 2017.

## CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 6th, 2017

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable D. Garrison Hill, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARK LORENZO BLAKE,

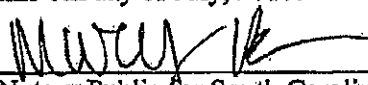
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant and in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 6th day of July, 2017.

  
Kathrine H. Hudgins  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 6th day of July, 2017.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: May 12, 2027



STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY

Court of General Sessions

D. Garrison Hill, Circuit Court Judge

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Appellate Case No. 2016-001364

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THE STATE,

Respondent,

v.

MARK LORENZO BLAKE,

Appellant.

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FINAL BRIEF OF RESPONDENT

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**STATEMENT OF ISSUES ON APPEAL****I.**

The trial judge properly admitted the second chemist's report, testimony, and drug evidence because the State established a sufficient chain of custody for the substance tested.

**II.**

The trial judge properly denied Appellant's motion to suppress the evidence obtained as a result of the search of his home.

**STATEMENT OF THE CASE**

A Charleston County Grand Jury indicted Appellant for possession with intent to distribute (PWID) heroin. (R. 444-445) On June 14-15, 2016, Appellant proceeded to a trial before the Honorable D. Garrison Hill and a jury. Jason King and Tamara Vanpala, Esquires, represented Appellant, and Assistant Solicitors Stephanie Linger and Lauren Frierson represented the State. The jury found Appellant guilty, and Judge Hill sentenced him to twelve years' imprisonment with credit for time served. (R. 348, 356).

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

### STATEMENT OF FACTS

As part of an ongoing drug investigation, officers from the Charleston County Sheriff's Office conducted surveillance on Appellant after receiving information through a confidential informant that involved controlled purchases. (R. 18, line 18–R. 19, line 10). As a result of the investigation, the officers obtained a search warrant for Appellant's residence. (R. 19, line 11–13). After taking into consideration Appellant's criminal history, which included drug and weapon charges, a tip that a child may be in the home, and the nexus between drugs and weapons<sup>1</sup>, law enforcement decided to take Appellant into custody by way of a felony traffic stop. (R. 20, lines 5–19). A felony traffic stop involves officers "pinching" in the suspect's vehicle to prevent escape by maneuvering law enforcement vehicles in front and behind; exiting with weapons drawn; commanding loudly for the suspect to show his hands, exit the vehicle, and get on the ground; and then handcuffing the suspect when he complies. (R. 20, line 22–R. 21, line 9).

On February 22, 2013, officers followed Appellant from his residence to the workplace of his girlfriend, where they conducted the felony traffic stop. (R. 18, lines 18–19; R. 22, lines 1–19). The officers pinched in Appellant's vehicle, exited with their guns drawn, and ordered him to show his hands and exit his vehicle. (R. 22, line 20–R. 23, line 5). He did not comply, so the officers removed him from his vehicle and took him to the ground. (R. 23 lines 5–12). He was placed under arrest for drug distribution charges, handcuffed, and secured in an officer's vehicle. (R. 23, line 21–R. 24, line 2). The officers had obtained a lawful search warrant signed by a judge to search Appellant's residence; they drove him there following the arrest and used his keys to gain access. (R. 25, line 6–R. 26, line 4). In the kitchen, officers found a bowl containing rice and drugs, a whisk, a mixing bowl, and scales. (R. 168, lines 1–4).

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<sup>1</sup> *State v. Banda*, 371 S.C. 245, 253–54, 639 S.E.2d 36, 40–41 (2006).

Pretrial, Appellant moved to suppress the evidence found during the search, claiming the search was conducted unreasonably. (R. 13, lines 3-11). He challenged the constitutionality of the search and asked that the State demonstrate the search was executed in a reasonable manner. (R. 13, lines 15-19). The State called Detective Frank Waddell of the Charleston County Sheriff's Office to testify regarding the felony traffic stop and arrest. (R. 14, line 3). Detective Waddell testified that following Appellant's arrest, the officers had also arrested his girlfriend and then headed to Appellant's residence to conduct a search. (R. 24, line 3-R. 25, line 8). He advised Appellant he had a lawful search warrant signed by a judge to search his residence. (R. 25, lines 6-8). He explained they did not use a ram to get into the apartment but used Appellant's keys. (R. 25, line 16-R. 26, line 4).

Appellant was detained on the front stoop while officers conducted the search, and he was very agitated, speaking loudly and repeatedly in an aggressive manner. (R. 27, line 1-R. 28, line 3). Det. Waddell testified he even had to put his hands on Appellant when he continued to stand up after being ordered to sit back down; he placed his left hand on Appellant's right shoulder and pushed him back into the seat. (R. 38, line 14-R. 39, line 3). Det. Waddell further stated that after being taken into custody, Appellant was not cooperative; rather, he indicated they kept Appellant in the presence of law enforcement personnel instead of leaving him unattended because it was a safety issue. (R. 35, lines 9-20). Det. Waddell testified that he tried to explain to Appellant the reason for the search. (R. 28, lines 13-16). On cross-examination, defense counsel asked whether Det. Waddell gave Appellant a copy of the search warrant, to which he replied that he left a copy at the residence. (R. 36, lines 7-13). He testified that Appellant "made vague inquiries as to what's going on, I haven't done anything, this is private property, what are y'all doing, general inquiries of that nature," but did not say that Appellant asked to see the search warrant. (R. 36, lines 19-24). He further explained Appellant was

handcuffed behind his back sitting in a chair so he was not handed a copy as he would not have been able to hold it and read it behind his back, but he was advised of his warrants and the nature of the search warrant and what led to it. (R. 37, line 20–R. 38, line 5). He denied telling Appellant not to worry about where the search warrant was; rather, he opined that he would have been advised that a copy was being left at the residence as standard practice. (R. 38, lines 6–11).

Defense counsel introduced a copy of the search warrant statute, section 17-13-150 of the S.C. Code, as Defendant's Exhibit #1 and asked Det. Waddell to read it. (R. 39, lines 7–20). The statute provided in part: "When any person is served with a search warrant such person shall be furnished with a copy of the warrant along with the affidavit upon which such warrant was issued." (R. 39, lines 15–18). He also introduced a copy of the search warrant as Defendant's Exhibit #2. (R. 40, lines 1–9). Defense counsel pointed out that the search warrant contained a phrase that read: "copy of this search warrant shall be delivered to the person in charge of the premises searched at the time of search if practical." (R. 40, lines 15–23). Sergeant Mark Bryant also testified regarding his involvement in the felony traffic stop and search warrant. (R. 45, line 2–R. 49, line 10). He testified Appellant had "a bit of an attitude," was talking back and raising his voice, and was not calm while the search was in progress. (R. 49, lines 11–21). On cross-examination, he admitted he did not give Appellant a copy of the search warrant. (R. 54, lines 15–17).

Next, Detective Andrew Miller testified that while the officers were conducting the search, Appellant asked repeatedly why he was being arrested even though Det. Miller said it was explained to him at the time. (R. 58, lines 2–10). On cross-examination, he testified he did not give Appellant a copy of the search warrant and did not recall him asking for one. (R. 60, lines 17–22). The defense then called Appellant, who offered a slightly different version of the felony traffic stop and the events that transpired. He claimed he stepped out of the car and was



tackled. (R. 70, lines 2–18). He also testified that he asked for the search warrant but the detectives told him, “Don’t worry about that.” (R. 71, lines 3–16). On cross-examination, the State presented Appellant with his statement and asked him to read a portion that stated: “Up the stairs and told us we were both under arrest for distribution of heroin and we sold over two ounces . . . .” (R. 78, lines 3–23). Appellant confirmed Det. Waddell told him why he was under arrest and why the search was happening. (R. 81, lines 6–11).

After the testimony of the witnesses, defense counsel argued based on *United States v. Thompson*, 667 F. Supp. 2d 758, 763 (2009), that the search was unreasonable because officers did not “give” Appellant a copy of the search warrant, and he moved to suppress all the evidence. (R. 83, lines 4–R. 86, line 4). He argued the statute requires officers to serve a copy on the defendant, not just leave a copy at the residence. He claimed they could only leave a copy at the residence if no one was there, which was not the case here. (R. 84, lines 1–8). He further argued the takedown that was part of the felony traffic stop was a factor in the unreasonableness of the execution of the search. (R. 85, lines 15–22).

The State then argued the circumstances in *Thompson* were different because a woman who was not part of the investigation was left outside in the heat for five hours with only a shirt on, and law enforcement did not identify themselves or explain what they were doing. (R. 86, lines 10–21). The solicitor argued that here, the felony traffic stop was necessary—based on the information officers had about Appellant’s prior conviction and pending charges for guns and drugs—to minimize danger upon taking Appellant into custody. (R. 87, lines 1–15). She referred to the testimony by officers that Appellant was informed why he was being arrested and that a search was going to be executed at his residence. (R. 87, lines 16–20; R. 88, lines 22–25). She further argued that a copy of the search warrant could not be handed to him because he was belligerent and had his hands cuffed behind his back such that it would have been impossible for

him to hold the copy. (R. 90, lines 8-23). Finally, she pointed out that the rationale behind suppressing evidence is to deter unlawful government behavior and because the government behaved lawfully and reasonably here while taking into consideration the safety of the community, suppression would not deter unlawful behavior. (R. 90, line 24-R. 91, line 8).

The trial judge distinguished the *Thompson* case and ultimately found this was not an unreasonable search. He based his ruling on the testimony of the officers that established justifiable reasons for the way the arrest and search were conducted. (R. 95, lines 18-25). He took into consideration the risk to officer safety based on Appellant's criminal history and found that the failure to give a copy of the search warrant to Appellant when he was handcuffed behind his back was not "enough in and of itself to deem the search unreasonable within the meaning of the Fourth Amendment." (R. 96, lines 1-13). He therefore denied the motion to suppress. (R. 98, lines 1-3).

At trial, Detective Frank Waddell testified similarly to his pretrial testimony. Afterward, the State called Philip Roberson, who was a narcotics sergeant with the Charleston County Sheriff's Office and was involved in executing the search warrant at Appellant's residence. (R. 164, line 16-R. 166, line 12). His role was to search the kitchen and part of the bedroom. (R. 167, lines 18-21). He testified that in the kitchen he found a bowl in the refrigerator that contained rice and drugs; he also found a whisk, mixing bowl, and scales. (R. 168, lines 1-4). He explained that the drugs he found were in bindles, which he said were packaged similar to a headache powder, and ten of them make up a bundle. (R. 168, lines 7-16). On cross-examination, Roberson testified that he recalled getting into the apartment not by forced entry but by using a key. (R. 176, lines 11-18).

Deputy Andrew Miller testified next regarding his role in the search as evidence custodian. (R. 179, lines 1-21). He collected all evidence found on the scene, took photographs

of it, and transported it back to headquarters. (R. 179, line 24–R. 180, line 13; R. 189, lines 1–6). He verified at trial that the bowls the drugs were found in were in the same condition as the day of the search except for the addition of fingerprint powder. (R. 189, line 7–R. 190, line 22). On cross-examination, defense counsel questioned him about a photograph of the door, and Dep. Miller testified he did not remember whether a key was used for entry. (R. 200, lines 15–20). He admitted the door looked like it had been busted open, but on redirect, he said it did not look like the door had been rammed because there was no large round mark on the door and the handle was not broken. (R. 200, lines 15–23; R. 204, lines 2–17). When defense counsel asked him on recross, “Isn’t this just a photograph of the door before it was busted open?” he answered that he would not take a photograph before entry because it would put him at risk. (R. 205, lines 14–24).

Jason Riley then testified as a forensic technician for the sheriff’s department and went through the evidence storage process and explained chain of custody. (R. 212, line 9–250, line 2). He recalled that Dep. Miller submitted Evidence ID No. 135986, eleven bundles and one bindle of a brown substance, into evidence to him. (R. 217, line 23–R. 218, line 7). He testified he would not have accepted them into evidence if they had been tampered with. (R. 220, lines 21–25). He transported the evidence on several occasions, taking it to the City of Charleston’s drug lab, and testified that it appeared to be in the same condition as when he first saw it. (R. 221, lines 1–14). He named two other people in his unit who also touched the evidence: Investigators Mark Watson and Aaron Meyer. (R. 222, lines 12–18). On cross-examination, he went over the dates the evidence was signed in and out and testified it was outside of his control three times. (R. 223, line 4–R. 225, line 17).

Next, Susan Payne testified as the evidence custodian in the forensic services division of the City of Charleston Police Department. (R. 226, lines 2–16). She handled the evidence in

Appellant's case and testified she would not have transported it if it had been tampered with. (R. 227, line 20-R. 228, line 7). She testified it looked like it was in the same condition as when she first saw it and that she received it from Jason Riley and transported it to Renee Hilton. (R. 229, lines 2-18). On cross-examination, she testified in more detail that after receiving the evidence from Riley on March 1, 2013, she placed it in a safe and then it went to Elizabeth Mitchell before coming back to her on June 1, 2015. (R. 230, line 3-R. 231, line 11). It then went to Renee Hilton and stayed at the Charleston Police Department for seven days, from June 1-8, 2015, before going back to the sheriff's office. (R. 231, lines 12-18). Payne received it again on November 23, 2015, before it went to Hilton again. (R. 231, lines 19-22). She admitted that when she received it back from Mitchell on June 1, 2015, the bag had been cut open. (R. 232, lines 8-14).

Renee Hilton, a criminalist at the City of Charleston Police Department, testified next. (R. 233, lines 8-20). The trial court qualified her as an expert in drug analysis without voir dire or objection by the defense. (R. 236, lines 14-21). Hilton testified she analyzed the substances in this case and that they were previously tested by her lab two years before. She had to look over the previous analyst's work to see if she came to the same conclusion; she did and was able to pass the review and release the report. (R. 237, line 20-R. 238, line 14). She testified that the reason the drugs were retested was because the previous analyst was no longer employed there and was not available to testify. (R. 239, lines 13-18). She testified each time a substance is tested there is an amount removed for testing that changes the weight and that temperature can also affect weight. (R. 239, line 24-R. 240, line 14). She testified that she prepared a lab report on December 1, 2015. (R. 240, line 15-R. 241, line 8). When the State tried to admit the report, defense counsel objected and the jury took a recess. (R. 241, lines 9-20).

Appellant objected to the chain of custody based on the fact that the State did not call Elizabeth Mitchell to testify, citing *State v. Joseph*, 328 S.C. 352, 491 S.E.2d 275 (Ct. App. 1997). (R. 242, lines 5–21). He also complained that Ashley Carr Earl and Mark E. Watson did not testify. (R. 242, line 22–R. 243, line 9). Appellant moved to exclude the drugs based on the chain of custody, claiming Mitchell was a crucial element. (R. 243, lines 14–16). The State argued that case law including *State v. Hatcher*, *State v. Taylor*, *State v. Pope*, and *Fleming v. United States* supported its argument that for fungible evidence such as drugs, the chain of custody must be established as far as practicable, that not every person was required to testify, and that the State presented a sufficient chain of custody. (R. 243, line 17–R. 246, line 23). After thorough arguments from both parties, the trial judge ruled the chain of custody had been sufficiently established, noting that the purpose of a chain of custody is to ensure the item is what it is purported to be. (R. 266, line 15–R. 267, line 8). He found the chain had been established as far as practicable, the identity of all people who handled the evidence had been established, and there was no evidence of tampering. (R. 267, lines 8–16). Finally, he determined that any discrepancies were certainly grounds the defense could pursue on cross-examination regarding credibility but did not change his ruling on admissibility. (R. 267, lines 17–20).

After the State rested, the trial judge clarified his ruling after realizing he had misnamed the case he was relying on. He explained he was relying on *State v. Hatcher* and *State v. Taylor*. He noted “[t]here was expert testimony by Ms. Hilton that the State presented that demonstrates the likely and probable manner in which Ms. Mitchell tested and resealed this fungible item. And the identity of the people who transported it and had control at various times was established as far as practicable.” (R. 286, lines 1–21). Defense counsel renewed his motions to suppress based on the search and also based on the chain of custody and moved for a directed verdict. The trial judge denied all the motions. (R. 286, line 22–R. 287, line 11).

Ultimately, the juror found Appellant guilty and Judge Hill sentenced him to twelve years' imprisonment with credit for time served. (R. 348, 356).

## ARGUMENT

### I.

**The trial court properly admitted the second chemist's report, testimony, and drug evidence because the State established a sufficient chain of custody for the substance tested.**

Appellant argues the trial court erred in admitting the second chemist's report, testimony, and drug evidence, claiming the State failed to establish an adequate chain of custody for the substance tested. On the contrary, the trial court properly determined the State had demonstrated a sufficient chain of custody as far as practicable based on South Carolina case law and properly admitted the evidence. Thus, this Court should affirm its decision.

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *Id.*

A party offering into evidence fungible items such as drugs must establish a complete chain of custody as far as practicable. *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011). "Where the substance analyzed has passed through several hands the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis." *Id.* However, testimony from each custodian of the evidence is not required to establish a chain of custody sufficient for admissibility. *Id.* "Where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling of the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent witness." *Id.* In proving chain of custody, the State need not negate all possibility of

tampering so long as the chain of possession is complete. *Id.* at 92, 708 S.E.2d at 753. “In applying this rule, we have found evidence inadmissible only where there is a missing link in the chain of possession *because the identity of those who handled the [substance] was not established at least as far as practicable.*” *Id.* “The ultimate goal of chain of custody requirements is simply to ensure that the item is what it is purported to be.” *Id.* at 95, 708 S.E.2d at 755. “Where there is evidence to establish the identity of those who have handled the evidence and the manner in which it was handled, a weakness in the chain merely raises a question of credibility, not admissibility.” *State v. Taylor*, 360 S.C. 18, 24, 598 S.E.2d 735, 737 (Ct. App. 2004). The *Taylor* Court pointed out that our Supreme Court noted this distinction between credibility and admissibility in *State v. Carter*, 344 S.C. 419, 424, 544 S.E.2d 835, 837–38 (2001), when it stated: “[w]e have found evidence inadmissible only where there is a missing link in the chain of possession because the identity of those who handled the [evidence] was not established at least as far as practicable . . . . On the other hand, where the identity of persons handling the specimen is established, we have found evidence regarding its care goes only to the weight of the specimen as credible evidence.” *Id.* at 25, 598 S.E.2d at 738. This Court held, “We believe it is clear from these decisions that if the identity of each person in the chain handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion is shown in the admission, *absent proof of tampering, bad faith, or ill-motive.*” *Id.* (emphasis added).

Here, the identity of each person in the chain was established, the manner of handling was reasonably demonstrated, and there was no proof of tampering, bad faith, or ill-motive. The State called witnesses in the chain of custody to explain their roles, beginning with Sergeant Roberson who was part of the search team and actually found the drugs and related items in the kitchen of Appellant’s residence. Dep. Miller then testified he received the evidence from the



members of the search team and put it in a bag. Jason Riley then testified that Dep. Miller submitted the drug evidence to him for transport to the City of Charleston Police Department drug lab on March 11, 2013. (R. 218, lines 2-7; R. 223, lines 13-17). Riley then testified the evidence came back to Mark Watson, another staff member in his office, on April 1, 2013. (R. 223, lines 22-24). He testified it stayed in the evidence room until June 1, 2015, when it was signed out to the lab; then it came back from the lab on June 8, 2015, and was signed out again on November 23, 2015, and came back December 7, 2015. (R. 223, line 25-R. 224, line 17). He explained he does not transport evidence if any of the seals are broken and would not have accepted the items into evidence if they appeared to be tampered with. (R. 220, line 24-R. 221, line 2, lines 23-25). Next, Susan Payne of the City of Charleston Police Department testified about picking up the evidence and transporting it for analysis. Payne testified she received it from Riley on March 1, 2013, and placed it in the safe.<sup>2</sup> It went to Elizabeth Mitchell next and then went back to the sheriff's office before it was returned to Payne on November 23, 2015. It then was transported to Renee Hilton on June 1, 2015, where it stayed until June 8, 2015. Payne admitted Mitchell had cut the bag open. She testified that on June 1, 2015, and November 23, 2015, the evidence was in substantially the same condition as when she first saw it. (R. 228, line 14-R. 229, line 5; R. 232, lines 8-11). She testified her procedure is to always check the package before transporting to make sure it is sealed correctly and check for initials on the seal. (R. 227, lines 1-14). She would not have accepted it if it appeared to have been tampered with. (R. 228, lines 1-7). Hilton then testified she tested the substance after it had been tested two years prior by Mitchell. She testified she knew Mitchell had previously examined the evidence

<sup>2</sup> The record shows Riley testified the date he transported the evidence to the City of Charleston Police Department was March 11, 2013, while Payne testified she received it from Riley on March 1, 2013. However, no dispute regarding this date has arisen, and it is likely simply a typographical error on the part of the court reporter.

but was no longer employed because she left for another career. She explained that because Mitchell was unavailable to testify, the drugs were retested. (R. 237, line 20–R. 239, line 18; R. 271, lines 1–21). Hilton testified that Mitchell would have been required to heat seal them after testing and put an initial over the heat seal. (R. 272, lines 1–8).

At trial, Appellant argued this case was similar to *State v. Joseph*, 328 S.C. 352, 491 S.E.2d 275 (Ct. App. 1997), where this Court found the trial court erred in admitting drug evidence because of defects in the chain of custody. However, *Joseph* is based on Rule 6(a)(2)(C), SCRCrimP, which allows a party to object to the introduction of a chemist's report and if such an objection is made, the trial judge shall require the chemist to testify at trial. This Court noted that Rule 6 provided an alternative means of establishing a chain of custody in circumstances where reports and affidavits were admitted in lieu of live testimony. However, that is not what happened here. The State did not attempt to admit any report from the first chemist, Elizabeth Mitchell. Indeed, the State had the drugs retested by Hilton because Mitchell was not available to testify. So Rule 6 does not apply and neither does *Joseph*.

Despite Appellant's contention otherwise, evidence exists in the record as to how Mitchell obtained and handled the substance. Even though Mitchell did not testify, her identity and the manner in which she handled the evidence were established. Susan Payne testified she placed the evidence in the safe and that it then went to Elizabeth Mitchell, the first chemist. She received the substance after Mitchell had cut open the bag but testified that her policy is to make sure everything she transports is packaged and sealed correctly and has the person's initials on the seal. She also testified the substance was in substantially the same condition when she received it from Mitchell. Hilton testified Mitchell's initials were over the heat seal. All of this constitutes evidence as to how Mitchell obtained it (from Payne) and how she handled it (cut it

open and then resealed it and initialed on the seal). The record also provides evidence that when Mitchell had the substance, she tested it.

It is interesting that Appellant cites *Hatcher* for the proposition that "the mere fact that evidence is sealed upon presentation for testing does not, in itself, establish a sufficient chain of custody." *Hatcher*, 392 S.C. at 95, 708 S.E.2d at 755. The Supreme Court stated this in the context of agreeing with this Court on that statement. However, if one looks at this Court's opinion, which the Supreme Court reversed, this Court stated, "[E]vidence the drugs had not been tampered with is not sufficient to overcome missing links in the chain of custody." *State v. Hatcher*, 384 S.C. 372, 378, 681 S.E.2d 925, 928 (Ct. App. 2009) *reversed*, *State v. Hatcher*, 392 S.C. 86, 708 S.E.2d 750 (2011). Whether one considers the actual bag being sealed upon presentation for testing or more generally whether there is any evidence of tampering, the Supreme Court properly contemplated this as simply one factor in its determination that the trial judge had not abused his discretion in admitting the drug evidence. However, the Court made clear it also looked at the requirement that evidence of how the item was obtained and handled was present for the purpose of ensuring it was what it was purported to be. Finally, the Court reiterated its consistent holding that the chain of custody need be established only as far as practicable and that every person handling the evidence need not be identified in all cases. *Hatcher*, 392 S.C. at 95, 708 S.E.2d at 755. In *Hatcher*, in determining the chain of custody was insufficient, this Court noted: (1) a party who received the evidence at SLED was not identified, (2) no testimony of how the evidence was handled while in one officer's possession was presented, (3) one officer did not testify regarding how the evidence came to be in her custody, (4) the date the evidence was left at SLED was not revealed, and (5) no evidence was presented as to where the evidence was stored pending the analysis. Nevertheless, our Supreme Court found the chain of custody was established as far as practicable. The Court considered the

testimony of members of the chain of custody regarding "their handling of the drugs and the fact that there was no evidence of tampering" and properly focused on the record's indication that "the drugs received for testing were in fact, those taken from Hatcher without any alteration, tampering, or substitution." *Id.*

As in *Hatcher*, here there is much more than simply evidence that the bag was sealed or not tampered with. Indeed, the chain of custody established here did not have as many deficiencies as the one in *Hatcher* that the Supreme Court still found sufficient. The trial court did not abuse its discretion in admitting the drug evidence based on a sufficient chain of custody, and this Court should affirm.

## II.

**The trial judge properly denied Appellant's motion to suppress the evidence obtained as a result of the search of his residence.**

Appellant argues the trial judge erred in denying his motion to suppress the evidence obtained as a result of the search of his residence, claiming the search violated the Fourth Amendment and the South Carolina Constitution because it was conducted unreasonably. Specifically, he argues the officers used excessive force during the felony traffic stop and that combined with the officers' actions during the search and their failure to hand Appellant a copy of the search warrant rendered the execution of the search warrant unreasonable. Thus, he argues the evidence obtained during the search should have been suppressed. On the contrary, the trial court properly denied the motion to suppress, finding the search was not conducted unreasonably. This Court should affirm.

"The reasonableness of a search and seizure is evaluated based upon the totality of the circumstances." *United States v. Thompson*, 667 F. Supp. 2d 758, 763 (S.D. Ohio 2009). In order to satisfy the reasonableness factor, officers must both obtain a valid warrant *and* conduct the search in a reasonable manner. *Id.* "The willingness (or unwillingness) of officers to present a warrant to an occupant when asked goes to the reasonableness of a search." *Id.* The United States District Court acknowledged in *Thompson* that the Fourth Amendment does not require the executing officer to present a copy of the search warrant before conducting the search. *Id.* *Thompson* answered the question left open by the United States Supreme Court in *Groh v. Ramirez*—"whether it would be unreasonable under the Fourth Amendment for an executing officer to refuse to produce a warrant at the outset of a search *upon the request* of an occupant." *Id.* Specifically, the *Groh* Court stated: "Whether it would be unreasonable to refuse a request to furnish the warrant at the outset of the search when, as in this case, an occupant of the premises

is present and poses no threat to the officers' safe and effective performance of their mission, is a question that this case does not present." *Id.* (quoting *Groh v. Ramirez*, 540 U.S. 551, 562 n.5 (2004)).

Here, Appellant did pose a threat to officer safety as attested to by the officers' testimony. Det. Waddell testified Appellant was agitated, speaking loudly and repeatedly in an aggressive manner. (R. 27, line 1–R. 28, line 3). He even had to put his hands on him when Appellant continued to stand up after being ordered to sit back down; he placed his left hand on Appellant's right shoulder and pushed him back into the seat. (R. 38, line 14–R. 39, line 3). Det. Waddell further stated that after being taken into custody, Appellant was not cooperative; rather, he indicated they kept Appellant in the presence of law enforcement personnel instead of leaving him unattended because it was a safety issue. (R. 35, lines 9–20). Sergeant Mark Bryant testified that Appellant had "a bit of an attitude," was talking back and raising his voice, and was not calm while the search was in progress. (R. 49, lines 11–21). Even Appellant himself testified he got agitated and got an attitude with the officers. (R. 71, lines 10–13). He described getting into a verbal dispute with Det. Waddell and admitted he stood up and Det. Waddell pushed him back down into the chair. (R. 71, line 23–R. 72, line 10). This testimony shows that Appellant did pose a "threat to the officers' safe and effective performance of their mission" and, thus, distinguishes this case from the question left open in *Groh* and answered in part by *Thompson*.

In *Thompson*, which Appellant presented to the trial judge to support his argument that the failure to hand Appellant a copy of the search warrant rendered the search unreasonable, one of the factors the Court considered was the officers' refusal to provide Mrs. Thompson with a copy of the search warrant. However, the Court focused on the fact that she asked for a copy. Here, the only evidence indicating Appellant asked for a copy is his own self-serving testimony.

Det. Waddell testified that Appellant did not ask to see the search warrant but merely made vague inquiries about what was going on. (R. 36, lines 19-24). Det. Miller testified that Appellant kept asking why he was being arrested but did not remember him asking for a copy of the arrest warrant or search warrant. (R. 58, lines 2-10; R. 60, lines 20-22). The other factors in *Thompson* that made the search unreasonable included the fact that she was naked when officers arrived, they only allowed her to put on a shirt, they made her wait outside in the heat for five hours, she remained naked from the waist down in view of fourteen officers, and she went without food and water.

As the trial judge pointed out, the case at hand is quite different from *Thompson*. He found the officers presented credible testimony giving justifiable reasons for the way the arrest was conducted, that there was no question the arrest was valid, no question the search warrant was valid, and no issue about probable cause. Due to Appellant's prior convictions for violent offenses involving weapons, the trial judge found there was a risk to officer safety that made the entire arrest and search sequence reasonable. He specifically found the failure to put a copy of the search warrant in Appellant's hand when he was handcuffed behind his back was not enough, in and of itself, to deem the search unseasonable within the meaning of the Fourth Amendment. Because Appellant became agitated, hostile, uncooperative, and non-compliant, he put the officers' safety at risk. The trial judge noted that "[i]f they had to constantly protect themselves and [the] integrity of the search against [Appellant]'s outburst and statements then that may be a reason why they were not able to give him a copy of the warrant." (R. 97, lines 5-9). He found the search was conducted reasonably within the Fourth Amendment and denied the motion to suppress. (R. 93-98). To the extent Appellant argues a State constitutional violation, this issue is not preserved for appeal. Although Appellant argued at trial that the search violated both the United States and the South Carolina Constitutions, the trial judge did not rule on whether a

violation of the State constitution occurred. Thus, this issue is not preserved for this Court's review. *See State v. Dunbar*, 356 S.C. 138, 140, 587 S.E.2d 691, 693–94 (2003) (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.”). This Court should affirm.



**CONCLUSION**

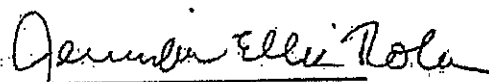
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

July 5, 2017

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY

Court of General Sessions  
D. Garrison Hill, Circuit Court Judge

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Appellate Case No. 2016-001364

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THE STATE,

Respondent,

v.

MARK LORENZO BLAKE,

Appellant.

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CERTIFICATE OF COUNSEL

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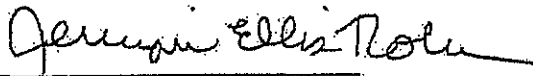
The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b),  
SCACR.

ALAN WILSON  
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D. Garrison Hill, Circuit Court Judge

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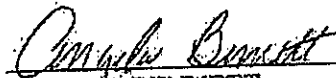
PROOF OF SERVICE

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I, Angela Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Kathrine H. Hudgins, Esquire  
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
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I further certify that all parties required by Rule to be served have been served.  
This 5th day of July, 2017.

  
ANGELA BENNETT  
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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Mark Lorenzo Blake, Jr., Appellant.

Appellate Case No. 2016-001364

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Appeal From Charleston County  
D. Garrison Hill, Circuit Court Judge

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Unpublished Opinion No. 2018-UP-111  
Submitted February 1, 2018 – Filed March 14, 2018

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**AFFIRMED**

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Appellate Defender Kathrine Haggard Hudgins, of  
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant  
Attorney General Jennifer Ellis Roberts, both of  
Columbia; and Solicitor Scarlett Anne Wilson, of  
Charleston, for Respondent.

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**PER CURIAM:** Mark Lorenzo Blake, Jr., appeals his conviction and twelve-year sentence for possession with intent to distribute heroin, second offense. On appeal, Blake argues the trial court erred by (1) admitting a chemist's report, her testimony,

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and related drug evidence because the State failed to establish an adequate chain of custody for the substance tested; and (2) refusing to suppress evidence obtained during an unreasonable search of Blake's home. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

As to issue 1: *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." (quoting *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006))); *State v. Sweet*, 374 S.C. 1, 6, 647 S.E.2d 202, 205-06 (2007) ("[I]f the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill-motive."); *id.* at 7, 647 S.E.2d at 206 ("Testimony from each custodian of fungible evidence . . . is not a prerequisite to establishing a chain of custody sufficient for admissibility.").

As to issue 2: *State v. Adams*, 409 S.C. 641, 647, 763 S.E.2d 341, 344 (2014) ("On appeals from a motion to suppress based on Fourth Amendment grounds, this [c]ourt applies a deferential standard of review and will reverse if there is clear error." (quoting *State v. Tindall*, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010))); *id.* ("However, this [c]ourt reviews questions of law de novo."); *United States v. Hurwitz*, 459 F.3d 463, 472 (4th Cir. 2006) ("The Fourth Amendment does not require an officer to serve a search warrant before executing it."); *id.* ("In fact, the Fourth Amendment is not offended where the executing officer fails to leave a copy of the search warrant with the property owner following the search or fails even to carry the warrant during the search."); *Florida v. Jimeno*, 500 U.S. 248, 250 (1991) ("The touchstone of the Fourth Amendment is reasonableness."); *Nordlinger v. Hahn*, 505 U.S. 1, 26 (1992) ("A violation of state law does not by itself constitute a violation of the Federal Constitution.").

**AFFIRMED.<sup>1</sup>**

**HUFF, GEATHERS, and McDONALD, JJ., concur.**

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

MARK LORENZO BLAKE, JR.,

PETITIONER

APPELLATE CASE NO 2016-001364

Appeal from Charleston County

Honorable D. Garrison Hill, Circuit Court Judge

Opinion No. 2018-UP-111

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel for Mark Lorenzo Blake, Jr. petitions the Court for rehearing and respectfully submits there are three factors that this Court overlooked or misapprehended in affirming the conviction for possession with intent to distribute heroin. First, counsel respectfully submits that this Court overlooked the fact that although the identity of each person handling the evidence was established, in failing to call the initial chemist who tested the drugs and the person who first transported the drugs from the City of Charleston Police Department, where the drugs were tested, back to the Charleston County Sheriff's Office, the State was unable to reasonably demonstrate the manner in which the drugs were handled. The first chemist handled the

drugs and was a critical link in the chain rather than merely a custodian. Second, counsel respectfully submits that this Court overlooked the fact that while the Fourth Amendment may not require an officer to serve a copy of the search warrant before executing the warrant, the fact that the officers violated state law and the plain language of the search warrant in failing to provide Petitioner with a copy of the search warrant is certainly a factor to be considered in determining that the search was unreasonable. Third, counsel respectfully submits that this Court overlooked the heightened privacy protection provided by the South Carolina Constitution art. I, § 10.

1. **The trial judge erred admitting the second chemist's report, testimony and drug evidence when the State failed to establish an adequate chain of custody for the substance tested.**

The jury found Petitioner guilty of possession with intent to distribute heroin. A substance was found in Petitioner's home during the execution of a search warrant. The substance was first tested on March 11, 2013, by Elizabeth Mitchell, a chemist with the Charleston City Police Department. (R. p. 251, line 22 – p. 252, lines 1-2). Mitchell's report indicates that the substance was 2.46 of heroin. (R. p. 257, lines 20-22). The substance was then transported to the Charleston County Sheriff's Office on April 1, 2013, by Ashley Carr Earl. (R. p. 252, lines 3-5). Neither the chemist nor Ashley Carr Earl testified at trial.

The substance remained at the Charleston County Sheriff's Office until June 1, 2015, when it was again transferred to the Charleston City Police Department. (R. p. 252, lines 6 – 20). On June 8, 2015, the substance was returned to the Charleston County Sheriff's Office and received by either Christopher Hockrighter, according to the Charleston City Police Department lab chain of custody, or Jason Riley, according to the Charleston County Sheriff's Office chain of custody. (R. p. 252, lines 9 – 25; R. p. 258, line 9 – p. 292, lines 1-2). Hockrighter did not testify at trial. The substance remained at the Charleston County Sheriff's Office until November

23, 2015, when the substance was transferred to the Charleston City Police Department lab for a third time. (R. p. 253, lines 1-16). The substance was tested a second time by Renee Hilton, another chemist with the Charleston City Police Department. Hilton reported the substance as 1.12 grams of heroin. (R. p. 257, lines 22-23).

Petitioner objected to the admission of Hilton's report based on the State's failure to establish an adequate chain of custody. (R. p. 241, lines 12-15). After hearing arguments from both sides, (R. pp. 261-266), the judge found that the chain had been adequately established, "assuming the foundation is further laid that Ms. Frierson just assured me it would concerning the heat sealing and the basis of Ms. Hilton's knowledge of the initials of the chemist Ms. Mitchell who is unavailable, who first tested the drugs ..." (R. p. 266, lines 18-25). The judge later elaborated on his ruling citing State v. Hatcher, 392 S.C. 86, 708 S.E.2d 750 (2011); and State v. Taylor, 360 S.C. 18, 598 S.E.2d 735 (S.C. Ct.App. 2004) in addition to State v. Williams, 297 S.C. 290, 376 S.E.2d 773 (1989). (R. p. 286, lines 1-21). Petitioner renewed the objection prior to the testimony of the chemist. (R. p. 268, lines 1-12). Petitioner renewed the objection when the drugs were admitted in evidence. (R. p. 279, lines 16-18). Petitioner again renewed the objection at the close of the case and after the jury returned a verdict. (R. p. 286, line 25 – p. 287, lines 1-12; p. 352, lines 11-14). The trial judge abused his discretion in admitting the testimony, report and drugs tested by the second chemist when the State failed to establish an adequate chain of custody.

As correctly argued by counsel for Petitioner, the missing link in the chain in the present case is the first chemist, Elizabeth Mitchell, and not simply a custodian who received and/or stored a sealed package. (R. p. 242, lines 5-25). In State v. Hatcher, 392 S.C. 86, 708 S.E.2d 750 (2011), the missing link was simply a witness from the South Carolina Law Enforcement



division [SLED] Log-In Department who received a double sealed package from an officer with the Marlboro County Sheriff's Office. The SLED chemist testified that when she retrieved the evidence from the Log-In Department, the evidence was still sealed in a best evidence kit. The Court in Hatcher found that the judge did not abuse his discretion in admitting drug evidence writing:

Courts have abandoned inflexible rules regarding the chain of custody and the admissibility of evidence in favor of a rule granting discretion to the trial courts. United States v. De Larosa, 450 F.2d 1057, 1068 (3d Cir.1971). "The trial judge's exercise of discretion must be reviewed in the light of the following factors: '... the nature of the article, the circumstances surrounding the preservation and custody of it, and the likelihood of intermeddlers tampering with it.' " Id. (citation omitted). "If upon the consideration of such factors the trial judge is satisfied that in reasonable probability the article has not been changed in important respects, he may permit its introduction in evidence." Gallego v. United States, 276 F.2d 914, 917 (9th Cir.1960).

Considering those factors here, we find no abuse of discretion in the trial judge's admission of the drug evidence in Hatcher's case. We agree with the Court of Appeals that the mere fact that evidence is sealed upon presentation for testing does not, in itself, establish a sufficient chain of custody. Evidence is still required as to how the item was obtained and how it was handled to ensure that it is, in fact, what it is purported to be. However, we have consistently held that the chain of custody need be established only as far as practicable, and we reiterate that every person handling the evidence need not be identified in all cases.

Hatcher, 392 S.C. at 94-95, 708 S.E.2d at 754-55 (bold added). The first chemist in the present case is a critical part of the chain, unlike the missing witness in Hatcher. Evidence is lacking in the present case as to how the first chemist obtained and handled the substance.

In State v. Williams, 297 S.C. 290, 376 S.E.2d 773 (1989), the Court found that the chain of custody for a blood sample was sufficient although the nurse who drew the blood did not testify at trial. The Court wrote, "Nurse Yorke testified she removed the blood sample from a locked refrigerator on the morning after the accident and took it to the lab for testing. The vial was labeled with Petitioner's name, his patient number, his date of birth, and the date the blood

was drawn. The hospital's internal chain of custody form was initialed by Nurse Burns indicating she had obtained the sample from Petitioner and then locked it in the refrigerator." Williams, 297 S.C. at 293, 376 S.E.2d at 774. Importantly, Williams challenged the chain of custody not based on a missing chemist, but rather on the fact that the nurse who drew the blood sealed the vial and labeled it did not testify. The challenge in the present case is based on the fact that the first chemist who handled and tested the substance did not testify.

In State v. Taylor, 360 S.C. 18, 598 S.E.2d 735 (S.C. Ct.App. 2004), this Court found that the chain of custody for drug evidence was sufficient although an evidence custodian did not testify a trial. This Court found that the State introduced evidence to establish the identity of each person in the chain of possession and the manner of handling. Like the missing link in Hatcher, the missing link in Taylor was simply the evidence custodian who delivered the sealed evidence bag to SLED. Again, the missing link in the present case is the first chemist who tested the substance and the State did not introduce sufficient evidence to establish the manner of handling of the substance by the first chemist.

Additionally, the State failed to establish that the first chemist was unavailable as defined by the Rule 804, SCRE. The State simply argued that, "Ms. Mitchell is no longer with the lab. She chose another career, there's no unsavory circumstances or anything. She's just in another career and is unavailable to testify." (R. p. 245, lines 12-16). The State failed to show that they tried to procure Ms. Mitchell's testimony. This Court in Taylor wrote:

A party offering into evidence fungible items such as drugs or blood samples must establish a chain of custody as far as practicable. See, e.g., Benton v. Pellum, 232 S.C. 26, 33, 100 S.E.2d 534, 537 (1957); State v. Cribb, 310 S.C. 518, 522, 426 S.E.2d 306, 309 (1992); State v. Joseph, 328 S.C. 352, 364, 491 S.E.2d 275, 281 (Ct.App.1997); State v. Johnson, 318 S.C. 194, 196, 456 S.E.2d 442, 443 (Ct.App.1995). Where the analyzed substance has passed through several hands, the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis. While the proof of

chain of custody need not negate all possibility of tampering, it must establish a complete chain of evidence as far as practicable. State v. Williams, 297 S.C. 290, 293, 376 S.E.2d 773, 774 (1989); Johnson, 318 S.C. at 196, 456 S.E.2d at 443.

360 S.C. at 22-23, 598 S.E.2d at 737. The analyzed substance in the present case passed through many hands before finally being tested by the second chemist. The evidence leaves to conjecture what was done with the substance when it was in the hands of the first chemist. The State did not establish that the first chemist was unavailable. The State failed to establish a complete chain of custody as far as practicable.

In State v. Joseph, 328 S.C. 352, 491 S.E.2d 275 (S.C.Ct.App. 1997), this Court found the chain of custody for drug evidence was inadequate where the State offered an affidavit instead of the testimony of the chemist who tested the substances because the chemist had moved to Michigan. In reversing the conviction, this Court wrote:

In the case at bar, we conclude that the State failed to establish an adequate chain of custody. Kilmer was the critical link in the State's chain of custody—it was Kilmer who retrieved the evidence from the drop box and first analyzed the evidence, and it was Kilmer who retained possession of evidence for six months. The fact that Kilmer had moved to Michigan does not render Kilmer unavailable or make it impracticable for the State to produce her for trial once Joseph objected to the use of her affidavit. Given Kilmer's importance in the chain of custody and the inconsistencies in the State's proof of the chain of custody, Joseph's right to cross-examine Kilmer cannot be abridged simply because she no longer lived in South Carolina. We therefore conclude that the State's evidence of the chain of custody was fatally deficient and that the trial court erred by admitting the drug evidence.

Joseph, 328 S.C. at 364-65, 491 S.E.2d at 281-82 (footnotes omitted).

In the present case the State had the substance re-tested by a second chemist. The re-testing, however, did not cure the problem with the chain. The second chemist's recognition of the first chemist's initials on a sealed bag does not provide evidence of handling by the first chemist. As noted by the Court in Hatcher, "... the mere fact that evidence is sealed upon presentation for testing does not, in itself, establish a sufficient chain of custody." Hatcher, 392

S.C. at 94–95, 708 S.E.2d at 754–55. The first chemist was a critical link in the chain and not just a custodian. The trial judge abused his discretion in admitting the report, testimony and drugs tested by the second chemist when the State failed to establish an adequate chain of custody.

In affirming the conviction this Court wrote:

As to issue 1: State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006))); State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205-06 (2007) ("[I]f the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill-motive."); *id.* at 7, 647 S.E.2d at 206 ("Testimony from each custodian of fungible evidence . . . is not a prerequisite to establishing a chain of custody sufficient for admissibility.").

The decision overlooks the critical role the chemist played in the chain. In failing to call the first chemist and the person who transported the drugs from the chemist back to the Sheriff's Office, the State failed to reasonably demonstrate the manner in which the drugs were handled.

**2. The trial judge erred in refusing to suppress evidence obtained as a result of an unreasonable search of Petitioner's home.**

Prior to trial Petitioner moved to suppress evidence found inside his home during the execution of a search warrant. (R. p. 13, lines 3-25). Petitioner did not challenge the validity of the search warrant. Instead, Petitioner argued that the search was conducted unreasonably. The State called three officers from the Charleston County Sheriff's Office to testify as to how the search warrant was executed. (R. pp. 14-61). Petitioner also testified at the suppression hearing. (R. pp. 69-82). Counsel for Petitioner argued that the excessive force used during the felony traffic stop in connection with the officers' actions during the search of Petitioner's home, including their failure to provide Petitioner with a copy of the search warrant, rendered the

execution of the search warrant unreasonable. (R. pp. 83- 86; p. 91, line 11 – p. 92, lines 1-8, line 24 – p. 93, line 1). Petitioner moved to suppress all evidence obtained as a result to the search warrant based on both the United States Constitution and the South Carolina Constitution. (R. p. 85, line 22 – p. 86, lines 1-4).

The judge denied the motion to suppress. (R. pp. 93-98). The judge found that the officers were justified in the manner in which they conducted the felony stop and later search of Petitioner's home. (R. p. 95, line 18 – p. 96, lines 1-7). With regard to the failure to provide Petitioner with a copy of the search warrant the judge stated, "I don't find that the failure to give a warrant – a copy of the warrant to Mr. Blake, put it in his hands when he was handcuffed behind his back as I understand it is enough in and of itself to deem the search unreasonable within the meaning of the Fourth Amendment." (R. p. 96, lines 8-13).

During trial Petitioner objected, based on the pre-trial suppression motion, to photos taken at the home on the day of the search (R. p. 121, line 14; p. 169, lines 4-6; p. 182, lines 9-11), and evidence seized at the home including the substance which the chemist testified was heroin. (R. p. 189, line 25 – p. 190, line 1; p. 191, line 1; p. 193, line 19; p. 196, lines 6-8; p. 279, lines 16-18). The judge overruled the objection each time. At the close of the case Petitioner renewed the motion to suppress and the judge again denied the motions. (R. p. 286, line 22- p. 287, lines 1-12). Petitioner renewed the motion to suppress after the jury returned the verdict. (R. p. 352, lines 11-18). The trial judge erred in refusing to suppress the evidence obtained as a result of an unreasonable search.

The Fourth Amendment to the United States Constitution protects a person's right to be free from unreasonable searches and seizures. U.S. Const. amend. IV. "In parallel with the protection of the Fourth Amendment, the South Carolina Constitution also provides a safeguard

against unlawful searches and seizures.” State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001); S.C. Const. art. I, § 10. “The relationship between the two constitutions is significant because ‘[s]tate courts may afford more expansive rights under state constitutional provisions than the rights which are conferred by the Federal Constitution.’ ” Forrester, 343 S.C. at 643, 541 S.E.2d at 840 (quoting State v. Easler, 327 S.C. 121, 131 n. 13, 489 S.E.2d 617, 625 n. 13 (1997)). “Therefore, state courts can develop state law to provide their citizens with a second layer of constitutional rights.” Id. “This relationship is often described as a recognition that the federal Constitution sets the floor for individual rights while the state constitution establishes the ceiling.” Id. “Thus, this Court can interpret the state protection against unreasonable searches and seizures in such a way as to provide greater protection than the federal Constitution.” Id. at 644, 541 S.E.2d at 840.

As persuasive authority to support the argument that the officer’s failure to provide Petitioner with a copy of the search warrant rendered the search unreasonable, Petitioner cited United States v. Thompson, 667 F. Supp. 2d 758, 763 (S.D. Ohio 2009). (R. p. 83, line 4 – p. 84, lines 1-8). In Thompson one of the factors the judge relied upon in finding that the search, pursuant to a warrant, was unreasonable, was the fact that officers refused to provide the defendant’s wife with a copy of the search warrant. In Thompson the district judge wrote:

The reasonableness of a search and seizure is evaluated based upon the totality of the circumstances. Ohio v. Robinette, 519 U.S. 33, 39, 117 S.Ct. 417, 136 L.Ed.2d 347 (1996). “To satisfy the Reasonableness Clause, officers not only must obtain a valid warrant but they also must conduct the search in a reasonable manner.” Baranski, 452 F.3d at 445. The willingness (or unwillingness) of officers to present a warrant to an occupant when asked goes to the reasonableness of a search. See id. at 443 (stating that “the decision of officers not to present an incorporated affidavit to the occupant upon request may be a relevant factor in determining the reasonableness of a search”). After all, an integral component of the Fourth Amendment’s protection of the home is the requirement that a warrant must be obtained prior to a search. Karo, 468 U.S. at 715, 104 S.Ct. 3296.

S.C. Code Ann. § 17-13-150 provides that, "When any person is served with a search warrant, such person shall be furnished with a copy of the warrant along with the affidavit upon which such warrant was issued."

In Groh v. Ramirez, 540 U.S. 551, 124 S. Ct. 1284, 157 L. Ed. 2d 1068 (2004), the United States Supreme Court left open the question of whether it would be unreasonable under the Fourth Amendment for an officer executing a search warrant to refuse to provide an occupant, present at the scene, with a copy of the search warrant. The Court wrote in footnote #5, "Whether it would be unreasonable to refuse a request to furnish the warrant at the outset of the search when, as in this case, an occupant of the premises is present and poses no threat to the officers' safe and effective performance of their mission, is a question that this case does not present." In Groh v. Ramirez, 540 U.S. 551, 562, 124 S. Ct. 1284, 1292, 157 L. Ed. 2d 1068 (2004).

In the present case Petitioner was arrested pursuant to a felony traffic stop and taken back to his home where officers executed the search warrant. Petitioner testified that he became agitated after he asked to see a copy of the search warrant and the officers refused. (R. p. 71, lines 3-16). Detective Frank Waddell admitted that he never personally gave Petitioner a copy of the search warrant. (R. p. 41, lines 11-16; p. 42, lines 4-11). The detective admitted that the search warrant itself ordered the detective to serve Petitioner with a copy of the search warrant. (R. p. 40, line 10 – p. 41, lines 1-14). Rather than providing Petitioner with a copy of the search warrant, pursuant to S.C. Code §17-13-150 and the search warrant itself, the detective simply left the search warrant at the residence. (R. p. 36, lines 7-13). The detective admitted that Petitioner would not have had an opportunity to see the search warrant because he was arrested and taken to jail at the conclusion of the search. (R. p. 41, lines 20-25).

As noted by the judge in Thompson:

One of the purposes served by the warrant requirement is informing citizens that the executing agents are acting under proper authorization when they invade the sanctity of a citizen's home. That sentiment is succinctly but eloquently stated by the Supreme Court in Camara v. Mun. Ct., 387 U.S. 523, 530-33, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967):

In our opinion, these arguments unduly discount the purposes behind the warrant machinery contemplated by the Fourth Amendment. Under the present system, when the inspector demands entry, the occupant has no way of knowing whether enforcement of the municipal code involved requires inspection of his premises, no way of knowing the lawful limits of the inspector's power to search, and no way of knowing whether the inspector himself is acting under proper authorization. That purpose cannot be served if executing officers arbitrarily decide to withhold presentation of the warrant until the conclusion of the search despite an occupant's repeated requests to view the warrant.

See also United States v. Chadwick, 433 U.S. 1, 9, 97 S.Ct. 2476, 53 L.Ed.2d 538 (1977) (noting that "... a warrant assures the individual whose property is searched or seized of the lawful authority of the executing officer, his need to search, and the limits of his power to search."), *abrogated on other grounds*, California v. Acevedo, 500 U.S. 565, 111 S.Ct. 1982, 114 L.Ed.2d 619 (1991).

Thompson, 667 F. Supp. 2d at 764-65. As noted in footnote #3 in Thompson:

In United States v. Grubbs, 547 U.S. 90, 126 S.Ct. 1494, 164 L.Ed.2d 195 (2006), the Supreme Court noted that "[t]he Constitution protects property owners not by giving them license to engage the police in a debate over the basis for the warrant, but by interposing, *ex ante*, the deliberate, impartial judgment of a judicial officer ..." *Id.* at 99, 126 S.Ct. 1494. This Court agrees that confrontations between the police and home occupants about the validity of a search should be as limited as possible. It appears to this Court that by *not* furnishing a warrant upon request, after the premises have been secured, the possibility that a confrontation will occur is *more* likely. Producing a warrant reassures an occupant that her Constitutional rights are not being violated, such that the search may proceed without incident.

Thompson, 667 F. Supp. 2d at 764. The trial judge in the present case noted, "I believe Mr. King has a good point that the reason for requiring showing the subject of the warrant a copy of it is to diffuse the tension to deescalate the confrontation between the police and the citizen." (R. p. 95, lines 1-5). The trial judge later stated, "Now, this is somewhat of a chicken and egg problem



because as Mr. King points out had they simply given him the warrant he may have had his hostility diminished to the point where he did remain peaceful throughout the search, but that didn't happen." (R. p. 97, lines 11-15). The officer was unreasonable in not providing Petitioner with a copy of the search warrant.

Based on the totality of circumstances, including the violation of S.C. Code §17-13-150 and the directive of the search warrant itself, the excessive force used, the search in the present case was unreasonable under the Fourth Amendment of the United States Constitution and the heightened privacy protection provided by the South Carolina Constitution art. I, § 10. The trial judge erred in failing to suppress the evidence seized as a result of the unreasonable search.

Addressing the issue this Court wrote:

As to issue 2: State v. Adams, 409 S.C. 641, 647, 763 S.E.2d 341, 344 (2014) ("On appeals from a motion to suppress based on Fourth Amendment grounds, this [c]ourt applies a deferential standard of review and will reverse if there is clear error." (quoting State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010))); id. ("However, this [c]ourt reviews questions of law de novo."); United States v. Hurwitz, 459 F.3d 463, 472 (4th Cir. 2006) ("The Fourth Amendment does not require an officer to serve a search warrant before executing it."); id. ("In fact, the Fourth Amendment is not offended where the executing officer fails to leave a copy of the search warrant with the property owner following the search or fails even to carry the warrant during the search."); Florida v. Jimeno, 500 U.S. 248, 250 (1991) ("The touchstone of the Fourth Amendment is reasonableness."); Nordlinger v. Hahn, 505 U.S. 1, 26 (1992) ("A violation of state law does not by itself constitute a violation of the Federal Constitution.").

The decision overlooks the fact that while the Fourth Amendment may not require an officer to serve a copy of the search warrant before executing the warrant, the officers' violation of state law and the plain language of the search warrant in failing to provide Petitioner with a copy of the search warrant is certainly a factor, among others, to be considered in determining that the search was unreasonable. The failure to provide Petitioner with a copy of the search warrant in combination with the nature of the felony stop render the search unreasonable.

Additionally, the decision overlooks the heightened privacy protection provided by the South Carolina Constitution art. I, § 10. Based on the above arguments, counsel for Petitioner seeks rehearing.

Respectfully Submitted,

  
KATHRINE H. HUDGINS  
Appellate Defender

This 29th day of March, 2018.

## STATE OF SOUTH CAROLINA

## IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable D. Garrison Hill, Circuit Court Judge

THE STATE,

RESPONDENT,

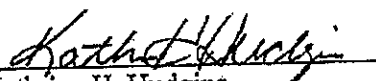
V.

MARK LORENZO BLAKE, JR.,

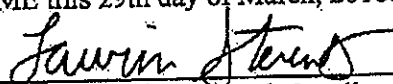
PETITIONER

## CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon Jennifer Ellis Roberts, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Mark Lorenzo Blake, #00368687, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 22nd day of March, 2018.

  
Kathrine H. Hudgins  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO BEFORE  
ME this 29th day of March, 2018.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires:

# The South Carolina Court of Appeals

The State, Respondent,

v.

Mark Lorenzo Blake, Jr., Appellant.

Appellate Case No. 2016-001364

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## ORDER

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After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas C. Huff J.

John D. Burt J.

Stephen P. Arnold J.

Columbia, South Carolina

cc: Alan McCrory Wilson, Esquire  
Kathrine Haggard Hudgins, Esquire  
Jennifer Ellis Roberts, Esquire  
Scarlett Anne Wilson, Esquire

**FILED**

April 26, 2018

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Charleston County

Honorable D. Garrison Hill, Circuit Court Judge

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Opinion No. 2018-UP-111 (S.C. Ct. App. Filed 3/14/2018)

13-GS-10-02729

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THE STATE,

RESPONDENT,

V.

MARK LORENZO BLAKE, JR.,

PETITIONER

APPELLATE CASE NO 2016-001364

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PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF APPEALS

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KATHRINE H. HUDGINS

Appellate Defender

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Division of Appellate Defense  
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(803) 734-1330

ATTORNEY FOR PETITIONER

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**CERTIFICATE OF COUNSEL**

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on April 26, 2018.

**QUESTIONS PRESENTED**

1. Did the Court of Appeals err in finding that the trial judge did not err in admitting the second chemist's report, testimony and drug evidence when the State failed to establish an adequate chain of custody for the substance tested?
2. Did the Court of Appeals err in finding that the trial judge did not err in refusing to suppress evidence obtained as a result of an unreasonable search of Petitioner's home?



**STATEMENT OF THE CASE**

In June of 2013, the Charleston County Grand Jury indicted Petitioner Blake for possession with intent to distribute heroin, indictment #2013-GS-10-2729. On June 14, 2016, Petitioner proceeded to jury trial before the Honorable D. Garrison Hill. Jason King and Tamara Vanpala represented Petitioner at trial. Stephanie Linder and Lauren Frierson prosecuted the case. The jury returned a verdict of guilty and Judge Hill sentenced Petitioner to twelve (12) years in prison. A timely notice of intent to appeal was served on June 24, 2016, and the direct appeal perfected. On March 14, 2018, the South Carolina Court of Appeals affirmed the conviction and sentence. A timely petition for rehearing was filed and then denied on April 26, 2018. This petition for writ of certiorari follows.

ARGUMENTS

1. **The Court of Appeals erred in finding that the trial judge did not err in admitting the second chemist's report, testimony and drug evidence when the State failed to establish an adequate chain of custody for the substance tested.**

The jury found Petitioner guilty of possession with intent to distribute heroin. A substance was found in Petitioner's home during the execution of a search warrant. The substance was first tested on March 11, 2013, by Elizabeth Mitchell, a chemist with the Charleston City Police Department. (R. p. 251, line 22 – p. 252, lines 1-2). Mitchell's report indicates that the substance was 2.46 grams of heroin. (R. p. 257, lines 20-22). The substance was then transported to the Charleston County Sheriff's Office on April 1, 2013, by Ashley Carr Earl. (R. p. 252, lines 3-5). Neither the chemist nor Ashley Carr Earl testified at trial.

The substance remained at the Charleston County Sheriff's Office until June 1, 2015, when it was again transferred to the Charleston City Police Department. (R. p. 252, lines 6 – 20). On June 8, 2015, the substance was returned to the Charleston County Sheriff's Office and received by either Christopher Hockrighter, according to the Charleston City Police Department lab chain of custody, or Jason Riley, according to the Charleston County Sheriff's Office chain of custody. (R. p. 252, lines 9 – 25; R. p. 258, line 9 – p. 292, lines 1-2). Hockrighter did not testify at trial. The substance remained at the Charleston County Sheriff's Office until November 23, 2015, when the substance was transferred to the Charleston City Police Department lab for a third time. (R. p. 253, lines 1-16). The substance was tested a second time by Renee Hilton, another chemist with the Charleston City Police Department. Hilton reported the substance as 1.12 grams of heroin. (R. p. 257, lines 22-23).

Petitioner objected to the admission of Hilton's report based on the State's failure to establish an adequate chain of custody. (R. p. 241, lines 12-15). After hearing arguments from both sides, (R. pp. 261-266), the judge found that the chain had been adequately established, "assuming the foundation is further laid that Ms. Frierson just assured me it would concerning the heat sealing and the basis of Ms. Hilton's knowledge of the initials of the chemist Ms. Mitchell who is unavailable, who first tested the drugs ..." (R. p. 266, lines 18-25). The judge later elaborated on his ruling citing State v. Hatcher, 392 S.C. 86, 708 S.E.2d 750 (2011); and State v. Taylor, 360 S.C. 18, 598 S.E.2d 735 (S.C. Ct.App. 2004) in addition to State v. Williams, 297 S.C. 290, 376 S.E.2d 773 (1989). (R. p. 286, lines 1-21). Petitioner renewed the objection prior to the testimony of the chemist. (R. p. 268, lines 1-12). Petitioner renewed the objection when the drugs were admitted in evidence. (R. p. 279, lines 16-18). Petitioner again renewed the objection at the close of the case and after the jury returned a verdict. (R. p. 286, line 25 – p. 287, lines 1-12; p. 352, lines 11-14). The trial judge abused his discretion in admitting the testimony, report and drugs tested by the second chemist when the State failed to establish an adequate chain of custody.

As correctly argued by counsel for Petitioner, the missing link in the chain in the present case is the first chemist, Elizabeth Mitchell, and not simply a custodian who received and/or stored a sealed package. (R. p. 242, lines 5-25). In State v. Hatcher, 392 S.C. 86, 708 S.E.2d 750 (2011), the missing link was simply a witness from the South Carolina Law Enforcement division [SLED] Log-In Department who received a double sealed package from an officer with the Marlboro County Sheriff's Office. The SLED chemist testified that when she retrieved the evidence from the Log-In Department, the evidence was still sealed in a best evidence kit. The

Court in Hatcher found that the judge did not abuse his discretion in admitting drug evidence writing:

Courts have abandoned inflexible rules regarding the chain of custody and the admissibility of evidence in favor of a rule granting discretion to the trial courts. United States v. De Larosa, 450 F.2d 1057, 1068 (3d Cir.1971). "The trial judge's exercise of discretion must be reviewed in the light of the following factors: '... the nature of the article, the circumstances surrounding the preservation and custody of it, and the likelihood of intermeddlers tampering with it.' " Id. (citation omitted). "If upon the consideration of such factors the trial judge is satisfied that in reasonable probability the article has not been changed in important respects, he may permit its introduction in evidence." Gallego v. United States, 276 F.2d 914, 917 (9th Cir.1960).

Considering those factors here, we find no abuse of discretion in the trial judge's admission of the drug evidence in Hatcher's case. We agree with the Court of Appeals that the mere fact that evidence is sealed upon presentation for testing does not, in itself, establish a sufficient chain of custody. **Evidence is still required as to how the item was obtained and how it was handled to ensure that it is, in fact, what it is purported to be.** However, we have consistently held that the chain of custody need be established only as far as practicable, and we reiterate that every person handling the evidence need not be identified in all cases.

Hatcher, 392 S.C. at 94–95, 708 S.E.2d at 754–55 (bold added). The first chemist in the present case is a critical part of the chain, unlike the missing witness in Hatcher. Evidence is lacking in the present case as to how the first chemist obtained and handled the substance.

In State v. Williams, 297 S.C. 290, 376 S.E.2d 773 (1989), the Court found that the chain of custody for a blood sample was sufficient although the nurse who drew the blood did not testify at trial. The Court wrote, "Nurse Yorke testified she removed the blood sample from a locked refrigerator on the morning after the accident and took it to the lab for testing. The vial was labeled with Petitioner's name, his patient number, his date of birth, and the date the blood was drawn. The hospital's internal chain of custody form was initialled by Nurse Burns indicating she had obtained the sample from Petitioner and then locked it in the refrigerator." Williams, 297 S.C. at 293, 376 S.E.2d at 774. Importantly, Williams challenged the chain of

custody not based on a missing chemist, but rather on the fact that the nurse who drew the blood sealed the vial and labeled it did not testify. The challenge in the present case is based on the fact that the first chemist who handled and tested the substance did not testify.

In State v. Taylor, 360 S.C. 18, 598 S.E.2d 735 (S.C. Ct.App. 2004), the Court of Appeals found that the chain of custody for drug evidence was sufficient although an evidence custodian did not testify a trial. This Court found that the State introduced evidence to establish the identity of each person in the chain of possession and the manner of handling. Like the missing link in Hatcher, the missing link in Taylor was simply the evidence custodian who delivered the sealed evidence bag to SLED. Again, the missing link in the present case is the first chemist who tested the substance and the State did not introduce sufficient evidence to establish the manner of handling of the substance by the first chemist.

Additionally, the State failed to establish that the first chemist was unavailable as defined by the Rule 804, SCRE. The State simply argued that, "Ms. Mitchell is no longer with the lab. She chose another career, there's no unsavory circumstances or anything. She's just in another career and is unavailable to testify." (R. p. 245, lines 12-16). The State failed to show that they tried to procure Ms. Mitchell's testimony. This Court in Taylor wrote:

A party offering into evidence fungible items such as drugs or blood samples must establish a chain of custody as far as practicable. See, e.g., Benton v. Pellum, 232 S.C. 26, 33, 100 S.E.2d 534, 537 (1957); State v. Cribb, 310 S.C. 518, 522, 426 S.E.2d 306, 309 (1992); State v. Joseph, 328 S.C. 352, 364, 491 S.E.2d 275, 281 (Ct.App.1997); State v. Johnson, 318 S.C. 194, 196, 456 S.E.2d 442, 443 (Ct.App.1995). Where the analyzed substance has passed through several hands, the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis. While the proof of chain of custody need not negate all possibility of tampering, it must establish a complete chain of evidence as far as practicable. State v. Williams, 297 S.C. 290, 293, 376 S.E.2d 773, 774 (1989); Johnson, 318 S.C. at 196, 456 S.E.2d at 443.

360 S.C. at 22–23, 598 S.E.2d at 737. The analyzed substance in the present case passed through many hands before finally being tested by the second chemist. The evidence leaves to conjecture what was done with the substance when it was in the hands of the first chemist. The State did not establish that the first chemist was unavailable. The State failed to establish a complete chain of custody as far as practicable.

In State v. Joseph, 328 S.C. 352, 491 S.E.2d 275 (S.C.Ct.App. 1997), the Court of Appeals found the chain of custody for drug evidence was inadequate where the State offered an affidavit instead of the testimony of the chemist who tested the substances because the chemist had moved to Michigan. In reversing the conviction, this Court wrote:

In the case at bar, we conclude that the State failed to establish an adequate chain of custody. Kilmer was the critical link in the State's chain of custody—it was Kilmer who retrieved the evidence from the drop box and first analyzed the evidence, and it was Kilmer who retained possession of evidence for six months. The fact that Kilmer had moved to Michigan does not render Kilmer unavailable or make it impracticable for the State to produce her for trial once Joseph objected to the use of her affidavit. Given Kilmer's importance in the chain of custody and the inconsistencies in the State's proof of the chain of custody, Joseph's right to cross-examine Kilmer cannot be abridged simply because she no longer lived in South Carolina. We therefore conclude that the State's evidence of the chain of custody was fatally deficient and that the trial court erred by admitting the drug evidence.

Joseph, 328 S.C. at 364–65, 491 S.E.2d at 281–82 (footnotes omitted).

In the present case the State had the substance re-tested by a second chemist. The re-testing, however, did not cure the problem with the chain. The second chemist's recognition of the first chemist's initials on a sealed bag does not provide evidence of handling by the first chemist. As noted by the Court in Hatcher, "... the mere fact that evidence is sealed upon presentation for testing does not, in itself, establish a sufficient chain of custody." Hatcher, 392 S.C. at 94–95, 708 S.E.2d at 754–55. The first chemist was a critical link in the chain and not just a custodian. The trial judge abused his discretion in admitting the report, testimony and

drugs tested by the second chemist when the State failed to establish an adequate chain of custody.

In affirming the conviction the Court of Appeals wrote:

As to issue 1: State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006))); State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205-06 (2007) ("[I]f the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill-motive."); *id.* at 7, 647 S.E.2d at 206 ("Testimony from each custodian of fungible evidence . . . is not a prerequisite to establishing a chain of custody sufficient for admissibility.").

The Court of Appeals overlooked the fact that although the identity of each person handling the evidence was established, in failing to call the initial chemist who tested the drugs and the person who first transported the drugs from the City of Charleston Police Department, where the drugs were tested, back to the Charleston County Sheriff's Office, the State was unable to reasonably demonstrate the manner in which the drugs were initially handled. The first chemist handled the drugs and was a critical link in the chain rather than merely a custodian. The decision overlooks the critical role the chemist played in the chain. The State failed to establish that the first chemist was unavailable. The State failed to establish a complete chain of custody as far as practicable. In failing to call the first chemist and the person who transported the drugs from the chemist back to the Sheriff's Office, the State failed to reasonably demonstrate the manner in which the drugs were handled.

2. The Court of Appeals erred in finding that the trial judge did not err in refusing to suppress evidence obtained as a result of an unreasonable search of Petitioner's home.

Prior to trial Petitioner moved to suppress evidence found inside his home during the execution of a search warrant. (R. p. 13, lines 3-25). Petitioner did not challenge the validity of the search warrant. Instead, Petitioner argued that the search was conducted unreasonably. The State called three officers from the Charleston County Sheriff's Office to testify as to how the search warrant was executed. (R. pp. 14-61). Petitioner also testified at the suppression hearing. (R. pp. 69-82). Counsel for Petitioner argued that the excessive force used during the felony traffic stop in connection with the officers' actions during the search of Petitioner's home, including their failure to provide Petitioner with a copy of the search warrant, rendered the execution of the search warrant unreasonable. (R. pp. 83- 86; p. 91, line 11 – p. 92, lines 1-8, line 24 – p. 93, line 1). Petitioner moved to suppress all evidence obtained as a result to the search warrant based on both the United States Constitution and the South Carolina Constitution. (R. p. 85, line 22 – p. 86, lines 1-4).

The judge denied the motion to suppress. (R. pp. 93-98). The judge found that the officers were justified in the manner in which they conducted the felony stop and later search of Petitioner's home. (R. p. 95, line 18 – p. 96, lines 1-7). With regard to the failure to provide Petitioner with a copy of the search warrant the judge stated, "I don't find that the failure to give a warrant – a copy of the warrant to Mr. Blake, put it in his hands when he was handcuffed behind his back as I understand it is enough in and of itself to deem the search unreasonable within the meaning of the Fourth Amendment." (R. p. 96, lines 8-13).

During trial Petitioner objected, based on the pre-trial suppression motion, to photos taken at the home on the day of the search (R. p. 121, line 14; p. 169, lines 4-6; p. 182, lines 9-



11), and evidence seized at the home including the substance which the chemist testified was heroin. (R. p. 189, line 25 – p. 190, line 1; p. 191, line 1; p. 193, line 19; p. 196, lines 6-8; p. 279, lines 16-18). The judge overruled the objection each time. At the close of the case Petitioner renewed the motion to suppress and the judge again denied the motions. (R. p. 286, line 22- p. 287, lines 1-12). Petitioner renewed the motion to suppress after the jury returned the verdict. (R. p. 352, lines 11-18). The trial judge erred in refusing to suppress the evidence obtained as a result of an unreasonable search.

The Fourth Amendment to the United States Constitution protects a person's right to be free from unreasonable searches and seizures. U.S. Const. amend. IV. "In parallel with the protection of the Fourth Amendment, the South Carolina Constitution also provides a safeguard against unlawful searches and seizures." State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001); S.C. Const. art. I, § 10. "The relationship between the two constitutions is significant because '[s]tate courts may afford more expansive rights under state constitutional provisions than the rights which are conferred by the Federal Constitution.' " Forrester, 343 S.C. at 643, 541 S.E.2d at 840 (quoting State v. Easler, 327 S.C. 121, 131 n. 13, 489 S.E.2d 617, 625 n. 13 (1997)). "Therefore, state courts can develop state law to provide their citizens with a second layer of constitutional rights." Id. "This relationship is often described as a recognition that the federal Constitution sets the floor for individual rights while the state constitution establishes the ceiling." Id. "Thus, this Court can interpret the state protection against unreasonable searches and seizures in such a way as to provide greater protection than the federal Constitution." Id. at 644, 541 S.E.2d at 840.

As persuasive authority to support the argument that the officer's failure to provide Petitioner with a copy of the search warrant rendered the search unreasonable, Petitioner cited

United States v. Thompson, 667 F. Supp. 2d 758, 763 (S.D. Ohio 2009). (R. p. 83, line 4 – p. 84, lines 1-8). In Thompson one of the factors the judge relied upon in finding that the search, pursuant to a warrant, was unreasonable, was the fact that officers refused to provide the defendant's wife with a copy of the search warrant. In Thompson the district judge wrote:

The reasonableness of a search and seizure is evaluated based upon the totality of the circumstances. Ohio v. Robinette, 519 U.S. 33, 39, 117 S.Ct. 417, 136 L.Ed.2d 347 (1996). "To satisfy the Reasonableness Clause, officers not only must obtain a valid warrant but they also must conduct the search in a reasonable manner." Baranski, 452 F.3d at 445. The willingness (or unwillingness) of officers to present a warrant to an occupant when asked goes to the reasonableness of a search. See id. at 443 (stating that "the decision of officers not to present an incorporated affidavit to the occupant upon request may be a relevant factor in determining the reasonableness of a search"). After all, an integral component of the Fourth Amendment's protection of the home is the requirement that a warrant must be obtained prior to a search. Karo, 468 U.S. at 715, 104 S.Ct. 3296.

S.C. Code Ann. § 17-13-150 provides that, "When any person is served with a search warrant, such person shall be furnished with a copy of the warrant along with the affidavit upon which such warrant was issued."

In Groh v. Ramirez, 540 U.S. 551, 124 S. Ct. 1284, 157 L. Ed. 2d 1068 (2004), the United States Supreme Court left open the question of whether it would be unreasonable under the Fourth Amendment for an officer executing a search warrant to refuse to provide an occupant, present at the scene, with a copy of the search warrant. The Court wrote in footnote #5, "Whether it would be unreasonable to refuse a request to furnish the warrant at the outset of the search when, as in this case, an occupant of the premises is present and poses no threat to the officers' safe and effective performance of their mission, is a question that this case does not present." Groh v. Ramirez, 540 U.S. 551, 562, 124 S. Ct. 1284, 1292, 157 L. Ed. 2d 1068 (2004).

In the present case Petitioner was arrested pursuant to a felony traffic stop and taken back to his home where officers executed the search warrant. Petitioner testified that he became agitated after he asked to see a copy of the search warrant and the officers refused. (R. p. 71, lines 3-16). Detective Frank Waddell admitted that he never personally gave Petitioner a copy of the search warrant. (R. p. 41, lines 11-16; p. 42, lines 4-11). The detective admitted that the search warrant itself ordered the detective to serve Petitioner with a copy of the search warrant. (R. p. 40, line 10 – p. 41, lines 1-14). Rather than providing Petitioner with a copy of the search warrant, pursuant to S.C. Code §17-13-150 and the search warrant itself, the detective simply left the search warrant at the residence. (R. p. 36, lines 7-13). The detective admitted that Petitioner would not have had an opportunity to see the search warrant because he was arrested and taken to jail at the conclusion of the search. (R. p. 41, lines 20-25).

As noted by the judge in Thompson:

One of the purposes served by the warrant requirement is informing citizens that the executing agents are acting under proper authorization when they invade the sanctity of a citizen's home. That sentiment is succinctly but eloquently stated by the Supreme Court in Camara v. Mun. Ct., 387 U.S. 523, 530-33, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967):

In our opinion, these arguments unduly discount the purposes behind the warrant machinery contemplated by the Fourth Amendment. Under the present system, when the inspector demands entry, the occupant has no way of knowing whether enforcement of the municipal code involved requires inspection of his premises, no way of knowing the lawful limits of the inspector's power to search, and no way of knowing whether the inspector himself is acting under proper authorization. That purpose cannot be served if executing officers arbitrarily decide to withhold presentation of the warrant until the conclusion of the search despite an occupant's repeated requests to view the warrant.

See also United States v. Chadwick, 433 U.S. 1, 9, 97 S.Ct. 2476, 53 L.Ed.2d 538 (1977) (noting that "... a warrant assures the individual whose property is searched or seized of the lawful authority of the executing officer, his need to search, and the limits of his power to search."), *abrogated on other grounds*, California v. Acevedo, 500 U.S. 565, 111 S.Ct. 1982, 114 L.Ed.2d 619 (1991).

Thompson, 667 F. Supp. 2d at 764–65. As noted in footnote #3 in Thompson:

In United States v. Grubbs, 547 U.S. 90, 126 S.Ct. 1494, 164 L.Ed.2d 195 (2006), the Supreme Court noted that “[t]he Constitution protects property owners not by giving them license to engage the police in a debate over the basis for the warrant, but by interposing, *ex ante*, the deliberate, impartial judgment of a judicial officer ...” *Id.* at 99, 126 S.Ct. 1494. This Court agrees that confrontations between the police and home occupants about the validity of a search should be as limited as possible. It appears to this Court that by *not* furnishing a warrant upon request, after the premises have been secured, the possibility that a confrontation will occur is *more* likely. Producing a warrant reassures an occupant that her Constitutional rights are not being violated, such that the search may proceed without incident.

Thompson, 667 F. Supp. 2d at 764. The trial judge in the present case noted, “I believe Mr. King has a good point that the reason for requiring showing the subject of the warrant a copy of it is to diffuse the tension to deescalate the confrontation between the police and the citizen.” (R. p. 95, lines 1-5). The trial judge later stated, “Now, this is somewhat of a chicken and egg problem because as Mr. King points out had they simply given him the warrant he may have had his hostility diminished to the point where he did remain peaceful throughout the search, but that didn’t happen.” (R. p. 97, lines 11-15). The officer was unreasonable in not providing Petitioner with a copy of the search warrant.

Based on the totality of circumstances, including the violation of S.C. Code §17-13-150 and the directive of the search warrant itself, the excessive force used, the search in the present case was unreasonable under the Fourth Amendment of the United States Constitution and the heightened privacy protection provided by the South Carolina Constitution art. I, § 10. The trial judge erred in failing to suppress the evidence seized as a result of the unreasonable search.

Addressing the issue, the Court of Appeals wrote:

As to issue 2: State v. Adams, 409 S.C. 641, 647, 763 S.E.2d 341, 344 (2014) (“On appeals from a motion to suppress based on Fourth Amendment grounds, this [c]ourt applies a deferential standard of review and will reverse if there is clear error.” (quoting State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010))); *id.* (“However, this [c]ourt reviews questions of law de novo.”); United

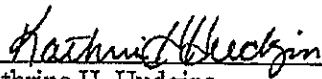
States v. Hurwitz, 459 F.3d 463, 472 (4th Cir. 2006) ("The Fourth Amendment does not require an officer to serve a search warrant before executing it."); id. ("In fact, the Fourth Amendment is not offended where the executing officer fails to leave a copy of the search warrant with the property owner following the search or fails even to carry the warrant during the search."); Florida v. Jimeno, 500 U.S. 248, 250 (1991) ("The touchstone of the Fourth Amendment is reasonableness."); Nordlinger v. Hahn, 505 U.S. 1, 26 (1992) ("A violation of state law does not by itself constitute a violation of the Federal Constitution.").

The Court of Appeals overlooked the fact that while the Fourth Amendment may not require an officer to serve a copy of the search warrant before executing the warrant, the officers' violation of state law and the plain language of the search warrant in failing to provide Petitioner with a copy of the search warrant is certainly a factor, among others, to be considered in determining that the search was unreasonable. The failure to provide Petitioner with a copy of the search warrant in combination with the nature of the felony stop render the search unreasonable. Additionally, the Court of Appeals overlooked the heightened privacy protection provided by the South Carolina Constitution art. I, § 10. The trial judge erred in refusing to suppress evidence obtained through the use of an unreasonable search.

**CONCLUSION**

Based on the above argument, this Court should grant the petition for writ of certiorari to allow further briefing on the issue.

Respectfully Submitted,

  
\_\_\_\_\_  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

This 25th day of May, 2018.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Charleston County  
Honorable D. Garrison Hill, Circuit Court Judge

\_\_\_\_\_  
Opinion No. 2018-UP-111 (S.C. Ct. App. filed 3/14/2018)  
13-GS-10-02729

THE STATE,

RESPONDENT,

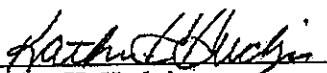
V.

MARK LORENZO BLAKE, JR.,

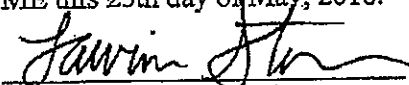
PETITIONER

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

I certify that a copy of the Petition for Writ of Certiorari and a copy of the Appendix in this case has been served on Jennifer Ellis Roberts, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Mark Lorenzo Blake, #368687, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 25th day of May, 2018.

  
Kathrine H. Hudgins  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO BEFORE  
ME this 25th day of May, 2018.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: July 5, 2027.

STATE OF SOUTH CAROLINA  
In The Supreme Court

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On Writ of Certiorari to the Court of Appeals  
Appeal from Charleston County  
Court of General Sessions

D. Garrison Hill, Circuit Court Judge

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Appellate Case No. 2018-000967

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THE STATE,

Respondent,

v.

MARK LORENZO BLAKE, JR.,

Petitioner.

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RETURN TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENT

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**STATEMENT OF ISSUES ON APPEAL****I.**

Whether the trial court abused its discretion by admitting a chemist's report, related testimony, and drugs where the drugs had previously been analyzed by another chemist but the State established a complete chain of custody.

**II.**

Whether the trial court abused its discretion by denying Petitioner's motion to suppress the evidence obtained during a search of his home where the search was conducted reasonably.

## STATEMENT OF THE CASE

A Charleston County grand jury indicted Petitioner for possession with intent to distribute heroin. On June 14–15, 2016, Petitioner proceeded to jury trial before the Honorable D. Garrison Hill. Petitioner was convicted and sentenced to twelve years' imprisonment with credit for time served. The court of appeals affirmed his conviction in a *per curiam* opinion, *State v. Blake*, Op. No. 2018-UP-111 (S.C. Ct. App. filed March 14, 2018), and denied his petition for rehearing on April 26, 2018. Petitioner filed this petition on May 25, 2018.

**STANDARD OF REVIEW**

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *Id.*

### STATEMENT OF FACTS

As part of an ongoing drug investigation, officers from the Charleston County Sheriff's Office conducted surveillance on Petitioner based on information received from a confidential informant and obtained a search warrant for Petitioner's residence. (R. 18, line 18- R. 19, line 13). After taking into consideration Petitioner's criminal history, which included drug and weapons charges, a tip that a child may be in the home, and the nexus between drugs and weapons<sup>1</sup>, law enforcement decided to take Petitioner into custody by conducting a felony traffic stop. (R. 20, lines 5-19). A felony traffic stop involves officers "pinching" in the suspect's vehicle to prevent escape by maneuvering law enforcement vehicles in front and behind; exiting with weapons drawn; commanding loudly for the suspect to show his hands, exit the vehicle, and get on the ground; and then handcuffing the suspect when he complies. (R. 20, line 22-R. 21, line 9).

On February 22, 2013, officers followed Petitioner from his residence to the workplace of his girlfriend, where they conducted the felony traffic stop. (R. 18, lines 18-19; R. 22, lines 1-19). The officers pinched in Petitioner's vehicle, exited with their guns drawn, and ordered him to show his hands and exit his vehicle. (R. 22, line 20-R. 23, line 5). He did not comply, so the officers removed him from his vehicle and took him to the ground. (R. 23 lines 5-12). He was placed under arrest for drug distribution charges, handcuffed, and secured in an officer's vehicle. (R. 23, line 21-R. 24, line 2). The officers drove Petitioner to his home following the arrest and used his keys to gain access and execute the search warrant. (R. 25, line 6-R. 26, line 4). In the kitchen, officers found a bowl of rice containing many small packages of heroin bundled together, a whisk, mixing bowl, and scales. (R. 168, lines 1-4).

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<sup>1</sup> See *State v. Banda*, 371 S.C. 245, 253-54, 639 S.E.2d 36, 40-41 (2006).

Before trial, Petitioner moved to suppress the evidence found during the search. (R. 13, lines 3–11). He challenged the constitutionality of the search and asked that the State demonstrate the search was executed in a reasonable manner. (R. 13, lines 15–19). The State called Detective Frank Waddell of the Charleston County Sheriff's Office to testify regarding the felony traffic stop and arrest. (R. 14, line 3). Detective Waddell testified that following Petitioner's arrest, the officers had also arrested his girlfriend and then headed to Petitioner's residence to conduct the search. (R. 24, line 3–R. 25, line 8). He advised Petitioner he had a lawful search warrant signed by a judge to search his residence. (R. 25, lines 6–8). He explained they did not use a ram to get into the apartment, but instead used Petitioner's keys. (R. 25, line 16–R. 26, line 4).

Petitioner was detained on the front stoop while officers conducted the search. He was very agitated, speaking loudly and aggressively. (R. 27, line 1–R. 28, line 3). Det. Waddell testified he even had to restrain Petitioner because he continued to stand up after being ordered to stay seated. (R. 38, line 14–R. 39, line 3). Det. Waddell stated they kept Petitioner in the presence of law enforcement personnel instead of leaving him unattended because it was a safety issue. (R. 35, lines 9–20). Det. Waddell testified that he tried to explain to Petitioner the reason for the search. (R. 28, lines 13–16). On cross-examination, defense counsel asked whether Det. Waddell gave Petitioner a copy of the search warrant, to which he replied that he left a copy at the residence. (R. 36, lines 7–13). He testified that Petitioner "made vague inquiries as to what's going on, I haven't done anything, this is private property, what are y'all doing, general inquiries of that nature," but did not say that Petitioner asked to see the search warrant. (R. 36, lines 19–24). He further explained Petitioner was handcuffed sitting in a chair so he was not handed a copy as he would not have been able to hold it and read it behind his back, but he was

advised of his warrants and the nature of the search warrant and what led to it. (R. 37, line 20-R. 38, line 5). He denied telling Petitioner not to worry about where the search warrant was; rather, he stated that Petitioner would have been advised that a copy was being left at the residence as standard practice. (R. 38, lines 6-11).

Defense counsel introduced a copy of the search warrant statute, S.C. Code section 17-13-150, as Defendant's Exhibit #1 and asked Det. Waddell to read it. (R. 39, lines 7-20). The statute provides in part: "When any person is served with a search warrant such person shall be furnished with a copy of the warrant along with the affidavit upon which such warrant was issued." (R. 39, lines 15-18). He also introduced a copy of the search warrant as Defendant's Exhibit #2. (R. 40, lines 1-9). Defense counsel pointed out that the search warrant contained a phrase that read: "copy of this search warrant shall be delivered to the person in charge of the premises searched at the time of search if practical." (R. 40, lines 15-23). Sergeant Mark Bryant also testified regarding his involvement in the felony traffic stop and search warrant. (R. 45, line 2-R. 49, line 10). He testified Petitioner had "a bit of an attitude," was talking back and raising his voice, and was not calm while the search was in progress. (R. 49, lines 11-21). On cross-examination, he admitted he did not give Petitioner a copy of the search warrant. (R. 54, lines 15-17).

Next, Detective Andrew Miller testified that while the officers were conducting the search, Petitioner asked repeatedly why he was being arrested even though Det. Miller said it was explained to him at the time. (R. 58, lines 2-10). On cross-examination, he testified he did not give Petitioner a copy of the search warrant and did not recall him asking for one. (R. 60, lines 17-22). The defense then called Petitioner, who offered a slightly different version of events. He claimed he stepped out of the car and was tackled. (R. 70, lines 2-18). He also

testified that he asked for the search warrant but the detectives told him, "Don't worry about that." (R. 71, lines 3–16). On cross-examination, the State showed Petitioner his statement and asked him to read a portion that stated: "Up the stairs and told us we were both under arrest for distribution of heroin and we sold over two ounces . . . ." (R. 78, lines 3–23). Petitioner confirmed Det. Waddell told him why he was under arrest and why the search was happening. (R. 81, lines 6–11).

Defense counsel argued based on *United States v. Thompson*, 667 F. Supp. 2d 758, 763 (2009), that the search was unreasonable because officers did not give Petitioner a copy of the search warrant, and he moved to suppress all the evidence. (R. 83, lines 4–R. 86, line 4). He argued the statute requires officers to serve a copy on the defendant, not just leave a copy at the residence. He claimed they could only leave a copy at the residence if no one was there, which was not the case here. (R. 84, lines 1–8). He further argued the felony traffic stop was a factor in the unreasonableness of the execution of the search. (R. 85, lines 15–22).

The State argued the circumstances in *Thompson* were different because a woman who was not part of the investigation was left outside in the heat for five hours with only a shirt on, and law enforcement did not identify themselves or explain what they were doing. (R. 86, lines 10–21). The solicitor argued that in this case the felony traffic stop was necessary—based on the information officers had about Petitioner's prior conviction and pending charges for guns and drugs—to minimize danger of taking Petitioner into custody. (R. 87, lines 1–15). She referred to the testimony by officers that Petitioner was informed why he was being arrested and that a search was going to be executed at his residence. (R. 87, lines 16–20; R. 88, lines 22–25). She further argued that a copy of the search warrant could not be handed to him because he was belligerent and had his hands cuffed behind his back such that it would have been impossible for



him to hold the copy. (R. 90, lines 8-23). Finally, she pointed out that the rationale behind suppressing evidence is to deter unlawful government behavior and because the government behaved lawfully and reasonably here while taking into consideration the safety of the community, suppression would not deter unlawful behavior. (R. 90, line 24-R. 91, line 8).

The trial judge distinguished the *Thompson* case and ultimately found the search was reasonable. He found the testimony of the officers established justifiable reasons for the way the arrest and search were conducted. (R. 95, lines 18-25). He took into consideration the risk to officer safety based on Petitioner's criminal history and found that the failure to give a copy of the search warrant to Petitioner while his hands were cuffed behind his back was not "enough in and of itself to deem the search unreasonable within the meaning of the Fourth Amendment." (R. 96, lines 1-13). He therefore denied the motion to suppress. (R. 98, lines 1-3).

At trial, Detective Frank Waddell testified consistently with his pretrial testimony. The State then called Philip Roberson, a sergeant with the Charleston County Sheriff's Office who was involved in executing the search warrant at Petitioner's residence. (R. 164, line 16-R. 166, line 12). His role was to search the kitchen and part of the bedroom. (R. 167, lines 18-21). He testified that in the kitchen he found a bowl in the refrigerator that contained rice and drugs; he also found a whisk, mixing bowl, and scales. (R. 168, lines 1-4). He explained that the drugs he found were in bindles, which he said were packaged similarly to headache powder, and ten of them make up a bundle. (R. 168, lines 7-16). On cross-examination, Roberson testified that he recalled getting into the apartment not by forced entry but by using a key. (R. 176, lines 11-18).

Deputy Andrew Miller testified next regarding his role in the search as evidence custodian. (R. 179, lines 1-21). He collected all evidence found on the scene, took photographs of it, and transported it back to headquarters. (R. 179, line 24-R. 180, line 13; R. 189, lines 1-6).

He also field-tested a sample, which tested positive for heroin. (R. 187, lines 9-14). He verified at trial that the bowls the drugs were found in were in the same condition as the day of the search except for the addition of fingerprint powder. (R. 189, line 7-R. 190, line 22). On cross-examination, defense counsel questioned him about a photograph of the door, and Dep. Miller testified he did not remember whether a key was used for entry. (R. 200, lines 15-20). He admitted the door looked like it had been busted open, but on redirect, he said it did not look like the door had been rammed because there was no large round mark on the door and the handle was not broken. (R. 200, lines 15-23; R. 204, lines 2-17). When defense counsel asked him on recross, "Isn't this just a photograph of the door before it was busted open?" he answered that he would not take a photograph before entry because it would put him at risk. (R. 205, lines 14-24).

Jason Riley then testified as a forensic technician for the sheriff's department and went through the evidence storage process and explained chain of custody. (R. 212, line 9-250, line 2). He recalled that Dep. Miller submitted a sealed package containing the bindles of heroin into evidence to him. (R. 217, line 23-R. 218, line 7). He testified he would not have accepted them into evidence if they had been tampered with. (R. 220, lines 21-25). The items were inventoried by evidence technicians and stored in a secure location. (R. 214). He transported the evidence on several occasions, taking it to the City of Charleston's drug lab, and testified that it appeared to be in substantially the same condition as when he first saw it. (R. 221, lines 1-14). He named two other people in his unit who also touched the evidence: Investigators Mark Watson and Aaron Meyer. (R. 222, lines 12-18). On cross-examination, he went over the dates the evidence was signed in and out and testified it was outside of his control three times. (R. 223, line 4-R. 225, line 17).

Next, Susan Payne testified as the evidence custodian in the forensic services division of the City of Charleston Police Department. (R. 226, lines 2–16). She testified she received the drug evidence at the city’s lab, that the evidence had not been tampered with, and that she would not have transported the evidence at any time if it had appeared to be tampered with. (R. 227, line 20–R. 228, line 7). Payne identified State’s Exhibit # 50 as the sample she first received from Jason Riley on March 1, 2013 (R. 227; R. 230, line 3– R. 231, line 11). Payne testified she placed it in a safe until it went to Elizabeth Mitchell for analysis. (R. 231, lines 2-4). The lab’s chain of custody report confirms Mitchell retrieved the package from the safe on March 11, 2013, and returned it to the safe on March 28, 2013. (Defendant’s Exhibit # 10). Payne confirmed that when she received it back from Mitchell on June 1, 2015, the bag had been opened. (R. 232, lines 8–14). Although Payne was not asked specifically about how the package was sealed upon return, she testified she only transported evidence that had been properly sealed and initialed. (R. 227). The sample was returned to the sheriff’s office and stayed there until it was brought back to the lab on June 1, 2015. (R. 231). It stayed at the lab for seven days, from June 1–8, 2015, before going back to the sheriff’s office. (R. 231, lines 12–18). During an *in camera* hearing, the prosecutor explained the evidence was not tested at this time because of a miscommunication between the lab and the sheriff’s office— because the sample had already been tested, the lab returned it to the sheriff’s office assuming they had sent it by accident. (R. 255, lines 14-20). Payne received it again on November 23, 2015, and it went to Renee Hilton for retesting. (R. 231, lines 19–22).

Hilton, a criminalist and laboratory manager at the City of Charleston Police Department, testified next. (R. 233, lines 8–20). As lab manager, Hilton was responsible for the upkeep and management of the lab’s equipment and personnel. (R. 267, lines 1-5). The trial court qualified

her as an expert in drug analysis without objection. (R. 236, lines 14–21). Hilton explained that the police department's lab was nationally accredited and followed strict standards of operation. (R. 238–39). Hilton testified she analyzed the substances in this case and prepared a report on December 1, 2015. (R. 240–41). She testified the same sample had previously been tested by Elizabeth Mitchell. She knew this because she performed the technical review of the previous analysis. (R. 237, line 20–R. 238, line 14). She testified the drugs were retested because the Mitchell was no longer employed at the lab and was not available to testify. (R. 239, lines 13–18). When she received the drugs for testing, the package was sealed with Elizabeth Mitchell's initials intact. (R. 272, lines 1–8). She testified each time a substance is tested there is an amount removed for testing that changes the weight and that temperature can also affect weight. (R. 239, line 24–R. 240, line 14). When the State tried to admit the report, defense counsel objected and the jury was excused. (R. 241, lines 9–20).

Petitioner objected to the chain of custody based on the fact that the State did not call Elizabeth Mitchell to testify, citing *State v. Joseph*, 328 S.C. 352, 491 S.E.2d 275 (Ct. App. 1997). (R. 242, lines 5–21). He also objected on the basis that Ashley Earl and Mark Watson, two people who were identified as having had possession of the drugs at some point, did not testify. (R. 242, line 22–R. 243, line 9). Petitioner moved to exclude the drugs based on the chain of custody, claiming Mitchell was a crucial element. (R. 243, lines 14–16). The State argued that it had presented a sufficient chain of custody. (R. 243, line 17–R. 246, line 23). After arguments from both parties, the trial judge ruled the chain of custody had been sufficiently established, noting that the purpose of a chain of custody is to ensure an item is what it is purported to be. (R. 266, line 15–R. 267, line 8). He found the chain had been established as far as practicable, the identity of all people who handled the evidence had been established, and

there was no evidence of tampering. (R. 267, lines 8-16). Finally, he determined that any discrepancies were certainly grounds the defense could pursue on cross-examination regarding credibility, but did not change his ruling on admissibility. (R. 267, lines 17-20). Following the court's ruling, Hilton testified to the results of her analysis. She tested eleven separate samples contained within the sealed package. Each was found to be heroin. (R. 273; State's Exhibit # 58). Defense counsel attacked the credibility of the chain of custody during his cross examination of Hilton and his closing argument. (R. 281-82; 319-20).

After the State rested, the trial judge clarified his ruling after realizing he had misnamed the case he was relying on. He explained he was relying on *State v. Hatcher* and *State v. Taylor*. He noted "[t]here was expert testimony by Ms. Hilton that the State presented that demonstrates the likely and probable manner in which Ms. Mitchell tested and resealed this fungible item. And the identity of the people who transported it and had control at various times was established as far as practicable." (R. 286, lines 1-21). Defense counsel renewed his motions to suppress based on the search and chain of custody and moved for a directed verdict. The trial judge denied the motions. (R. 286, line 22-R. 287, line 11).

## ARGUMENT

### I.

**The court of appeals correctly found the trial court did not err by admitting a chemist's report, related testimony, and drugs where drugs had previously been analyzed by another chemist but the State established a complete chain of custody.**

Petitioner argues the trial court erred by admitting Renee Hilton's drug analysis report, testimony, and the drugs, claiming the State failed to establish an adequate chain of custody for the substances tested. However, the record shows the trial court properly determined the State had demonstrated a complete chain of custody as far as practicable based on South Carolina case law and properly admitted the evidence. The court of appeals correctly affirmed and this Court should deny certiorari.

The admissibility of evidence is a preliminary question to be decided by the trial court. SCRE 104(a). Though a piece of evidence is admitted, a party may still argue the weight of the evidence. SCRE 104(e). Courts have abandoned inflexible rules regarding the chain of custody and the admissibility of evidence in favor of a rule granting discretion to the trial courts. *State v. Hatcher*, 392 S.C. 86, 93, 708 S.E.2d 750, 754 (2011) (citing *United States v. De Larosa*, 450 F.2d 1057, 1068 (3d Cir.1971)). A party offering into evidence fungible items such as drugs must establish a complete chain of custody as far as practicable. *Hatcher*, 392 S.C. at 91. "Where the substance analyzed has passed through several hands the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis." *Id.* However, testimony from each custodian of the evidence is not required to establish a chain of custody sufficient for admissibility. *Id.* "Where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling of the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent

witness.” *Id.* In proving chain of custody, the State need not negate all possibility of tampering so long as the chain of possession is complete. *Id.* at 92, 708 S.E.2d at 753. “In applying this rule, we have found evidence inadmissible only where there is a missing link in the chain of possession *because the identity of those who handled the [substance] was not established at least as far as practicable.*” *Id.* (emphasis in original). “The ultimate goal of chain of custody requirements is simply to ensure that the item is what it is purported to be.” *Id.* at 95, 708 S.E.2d at 755. “Where there is evidence to establish the identity of those who have handled the evidence and the manner in which it was handled, a weakness in the chain merely raises a question of credibility, not admissibility,” *State v. Taylor*, 360 S.C. 18, 24, 598 S.E.2d 735, 737 (Ct. App. 2004). The *Taylor* Court pointed out that our Supreme Court noted this distinction between credibility and admissibility in *State v. Carter*, 344 S.C. 419, 424, 544 S.E.2d 835, 837–38 (2001), when it stated: “[w]e have found evidence inadmissible only where there is a missing link in the chain of possession because the identity of those who handled the [evidence] was not established at least as far as practicable . . . . On the other hand, *where the identity of persons handling the specimen is established, we have found evidence regarding its care goes only to the weight of the specimen as credible evidence.*” *Id.* at 25, 598 S.E.2d at 738 (emphasis added). This Court held, “We believe it is clear from these decisions that if the identity of each person in the chain handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion is shown in the admission, *absent proof of tampering, bad faith, or ill-motive,*” *Id.* (emphasis added). “The trial judge’s exercise of discretion must be reviewed in the light of the following factors: ‘... the nature of the article, the circumstances surrounding the preservation and custody of it, and the likelihood of intermeddlers tampering with it.’ If upon the consideration of such factors the trial judge is satisfied that in *reasonable*

*probability the article has not been changed in important respects*, he may permit its introduction in evidence.” *Hatcher*, 392 S.C. at 94–95 (citations omitted and emphasis added).

As an initial matter, Petitioner’s contention that the trial court erred by not considering Rule 804 SCRE to determine whether Mitchell was unavailable to testify is misguided. Trial courts are not bound by the rules of evidence when making preliminary determinations about the admissibility of evidence, so Rule 804’s definition of unavailability is irrelevant to the court’s decision. SCRE 104(a). Though the trial court could have been more inquisitive as to the reasons for Mitchell’s unavailability, Petitioner did not question the prosecutor’s explanation or inquire into the issue at trial. Therefore, the argument is not preserved for appeal. *Ex parte McMillan*, 319 S.C. 331, 334, 461 S.E.2d 43, 45 (1995) (holding a party cannot acquiesce to an issue at trial, but then complain on appeal); *Jackson v. Speed*, 326 S.C. 289, 306 S.E.2d 750, 759 (1997) ( “[I]t is the responsibility of trial counsel to preserve issues for appellate review.”); *Stephens v. CSX Transportation, Inc.*, 400 S.C. 503, 514, 735 S.E.2d 505, 511 (Ct. App. 2012) (finding “[b]ecause Stephens did not present this argument to the trial court, the court was not given the opportunity to exercise its discretion as to that argument, and the argument is not preserved for appeal”).

Petitioner argues this case is controlled by *State v. Joseph*, 328 S.C. 352, 491 S.E.2d 275 (Ct. App. 1997), where a divided court of appeals found the trial court erred in admitting drug evidence because of defects in the chain of custody. However, this case is distinguishable from *Joseph*. *Joseph* involved a similar scenario where the chemist who originally tested drug evidence left the lab and moved to another state. The State had another chemist retest the drugs and did not call the first chemist at trial, instead relying on an affidavit pursuant to Rule 6, SCRCrimP. Over defense counsel’s objection, the trial court erroneously admitted the affidavit



to establish chain of custody. In the present case, the State did not rely on an affidavit to establish chain of custody. Instead, the State filled the gap with other witnesses, as allowed by *Hatcher*. Renee Hilton, the lab manager, testified she peer-reviewed the first analysis and thus had personal knowledge of it. Hilton also explained that as supervisor, she oversaw the lab's protocols governing how chemists handle evidence during testing. Combined with the testimony of the lab's evidence custodian, the State showed how Mitchell obtained the sample (from Payne with an intact seal), how lab protocol dictated she handle it (by cutting it open for testing and then resealing it with initials on the seal), and that her seal was intact when received by Hilton. All of this testimony is corroborated by a detailed chain of custody report. (Defendant's Exhibit 10). In *Joseph*, the State apparently relied on the first chemist's affidavit to establish these facts. Here, the State did not rely on an affidavit, instead establishing these facts through other witnesses.

Two other facts distinguish this case from *Joseph*. In *Joseph*, the first chemist had possession of the drugs for six months. *Joseph*, 328 S.C. at 356. This unusually prolonged period of possession increased the chance that the sample could have been accessed by a third party, thereby breaking the known chain of possession. Instead of the drugs being in the secure hands of an evidence custodian, they were stored in an unspecified location by the chemist who had already tested the drugs but didn't promptly return them. This left open the possibility that someone could have swapped or corrupted the drugs in the meantime. In this case, Mitchell only had possession of the drugs for seventeen days, and then promptly returned them to the evidence custodian. Additionally, in *Joseph* there was a discrepancy about when the test occurred. *Joseph*, 328 S.C. at 365 n. 3. The drug report and chemist's affidavit had conflicting dates, raising the possibility that a mix-up occurred. Here, there was no such discrepancy.

Other jurisdictions have allowed the admission of drug evidence that was tested twice without the testimony of the chemist who performed the first analysis. *Commonwealth v. Curry*, 35 N.E.3d 435 (Mass. App. 2015), is illustrative. In that case, the chemist who originally tested a heroin sample had been fired for misconduct at the time of Curry's trial.<sup>2</sup> The chemist had fabricated the results of some analyses in order to increase her productivity, but had not adulterated any of the samples. The State retested the sample and presented a complete chain of custody. The chain of custody and the first chemist's handling of the evidence was "fully explored" at trial and formed the crux of Curry's defense. *Curry*, 35 N.E.3d at 437. The Massachusetts appellate court found the trial court did not err in admitting the evidence because a jury could find the State established a complete chain of custody and evidence of the first chemist's misconduct went to the weight of the evidence, not its admissibility. *Curry*, 35 N.E.3d at 439. Courts in other jurisdictions have reached the same conclusion. See e.g., *Ashley v. State*, 728 S.E.2d 706, 709 (Ga. App. 2012) (finding no error because "Ashley presented no evidence of tampering, only mere speculation that because the initial handling of the drugs at the crime lab was unknown, tampering could have occurred"); *Lagrone v. State*, 942 S.W.2d 602, 617 (Tex. Crim. App. 1997) (finding "no reason to prohibit the admission of properly identified evidence just because it has been kept in an evidence room for an extended period of time and undergone prior forensic testing"); *People v. Olin*, 186 A.D.2d 74, 75 (N.Y. App. Div. 1992) (finding no error where "retest was done because the chemist who first tested the vials was on vacation and out of the State at the time of the trial"). This Court should follow the same rule: where drug evidence has been tested twice and the chemist who performed the first test is unavailable,

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<sup>2</sup> For a detailed discussion of the chemist's actions and their effects on related cases, see *Commonwealth v. Scott*, 467 Mass. 336, 5 N.E.3d 530 (2014).

results of the second analysis are admissible absent evidence of tampering if the State establishes a chain of custody and manner of handling as far as practicable.

These decisions and this Court's precedents illustrate that the central tenet of chain of custody law is found in its very name: chain of *custody*. The primary question is whether the evidence is sufficient to allow jurors to be reasonably certain that the evidence presented at trial is the *same evidence* collected by law enforcement. Hence the emphasis on custody and possession. This is not a case where the sample was left sitting on a desk, *see Benton v. Peltum*, 232 S.C. 25, 100 S.E.2d 534 (1957), or the hood of a car, *see State v. Pulley*, Op. No. 27811 (S.C. Sup. Ct. filed June 6, 2018) (Shearhouse Adv.Sh. No. 23 at 21), with no explanation how it ended up at its destination. The drugs in this case were accounted for at all times, and each person in the chain of custody was identified. There is no mystery or conjecture that the drugs tested by Hilton were the same drugs seized by law enforcement. Furthermore, Hilton's testimony regarding the lab's protocols and her personal knowledge of the first test gained from her peer review established how the drugs were handled while in Mitchell's possession. There was no evidence of tampering, bad faith, or ill motive, particularly given the circumstances in which the drugs were found and the fact that they field-tested positive for heroin. (R. 187). Because the State need not negate all possibility of tampering, *see Hatcher, supra* p. 14, where the method of handling is reasonably demonstrated, mere speculation that the sample could have been tampered with is an insufficient reason to exclude the evidence. *See Ashley, supra* p. 17. The evidence amply demonstrated a "reasonable probability the article [had] not been changed in important respects[.]" *Hatcher*, 392 S.C. at 94-95. The court of appeals correctly found the trial court did not abuse its discretion in admitting the evidence. This Court should deny certiorari.

## II.

**The court of appeals correctly found the trial judge did not err by denying Petitioner's motion to suppress evidence obtained during search of his home because the search was reasonable.**

Petitioner argues the trial judge erred in denying his motion to suppress the evidence obtained as a result of the search of his residence, claiming the search violated the Fourth Amendment and the South Carolina Constitution because it was conducted unreasonably. Specifically, he argues the officers used excessive force during the felony traffic stop and that combined with the officers' actions during the search and their failure to hand Petitioner a copy of the search warrant rendered the execution of the search warrant unreasonable. Thus, he argues the evidence obtained during the search should have been suppressed. However, the trial court properly denied the motion to suppress, finding the search was not conducted unreasonably. The court of appeals correctly affirmed and this Court should deny certiorari.

"The reasonableness of a search and seizure is evaluated based upon the totality of the circumstances." *United States v. Thompson*, 667 F. Supp. 2d 758, 763 (S.D. Ohio 2009). In order to satisfy the reasonableness factor, officers must both obtain a valid warrant and conduct the search in a reasonable manner. *Id.* "The willingness (or unwillingness) of officers to present a warrant to an occupant when asked goes to the reasonableness of a search." *Id.* The federal district court acknowledged in *Thompson* that the Fourth Amendment does not require the executing officer to present a copy of the search warrant before conducting the search. *Id.* *Thompson* answered the question left open by the United States Supreme Court in *Groh v. Ramirez*—"whether it would be unreasonable under the Fourth Amendment for an executing officer to refuse to produce a warrant at the outset of a search *upon the request* of an occupant." *Id.* Specifically, the *Groh* Court stated: "Whether it would be unreasonable to refuse a request to

furnish the warrant at the outset of the search when, as in this case, an occupant of the premises is present and poses no threat to the officers' safe and effective performance of their mission, is a question that this case does not present." *Id.* (quoting *Groh v. Ramirez*, 540 U.S. 551, 562 n.5 (2004)).

Here, Petitioner did pose a threat to officer safety as attested to by the officers' testimony. Det. Waddell testified Petitioner was agitated, speaking loudly and repeatedly in an aggressive manner. (R. 27, line 1–R. 28, line 3). He even had to restrain Petitioner when he continued to stand up after being ordered to sit back down. (R. 38, line 14–R. 39, line 3). Det. Waddell further stated that after being taken into custody, Petitioner was not cooperative; rather, he indicated they kept Petitioner in the presence of law enforcement personnel instead of leaving him unattended because it was a safety issue. (R. 35, lines 9–20). Sergeant Mark Bryant testified that Petitioner had "a bit of an attitude," was talking back and raising his voice, and was not calm while the search was in progress. (R. 49, lines 11–21). Even Petitioner himself testified he got agitated and got an attitude with the officers. (R. 71, lines 10–13). He described getting into a verbal dispute with Det. Waddell and admitted he stood up and Det. Waddell pushed him back down into the chair. (R. 71, line 23–R. 72, line 10). This testimony shows that Petitioner did pose a "threat to the officers' safe and effective performance of their mission" and, thus, distinguishes this case from the question left open in *Groh* and answered in part by *Thompson*.

In *Thompson*, one of the factors the court considered was the officers' refusal to provide Mrs. Thompson with a copy of the search warrant. However, the Court focused on the fact that she asked for a copy. Here, the only evidence indicating Petitioner asked for a copy is his own self-serving testimony. Det. Waddell testified that Petitioner did not ask to see the search

warrant but merely made vague inquiries about what was going on. (R. 36, lines 19-24). Det. Miller testified that Petitioner kept asking why he was being arrested but did not remember him asking for a copy of the arrest warrant or search warrant. (R. 58, lines 2-10; R. 60, lines 20-22). The other factors in *Thompson* that made the search unreasonable included the fact that she was naked when officers arrived, they only allowed her to put on a shirt, they made her wait outside in the heat for five hours, she remained naked from the waist down in view of fourteen officers, and she went without food and water.

As the trial judge pointed out, the case at hand is quite different from *Thompson*. He found the officers presented credible testimony giving justifiable reasons for the way the arrest was conducted, that there was no question the arrest was valid, no question the search warrant was valid, and no issue about probable cause. Due to Petitioner's prior convictions for violent offenses involving weapons, the trial judge found there was a risk to officer safety that made the entire arrest and search sequence reasonable. He specifically found the failure to put a copy of the search warrant in Petitioner's hand when he was handcuffed behind his back was not enough, in and of itself, to deem the search unseasonable within the meaning of the Fourth Amendment. Because Petitioner became agitated, hostile, uncooperative, and non-compliant, he put the officers' safety at risk. The trial judge noted that "[i]f they had to constantly protect themselves and [the] integrity of the search against [Petitioner]'s outburst and statements then that may be a reason why they were not able to give him a copy of the warrant." (R. 97, lines 5-9). He found the search was conducted reasonably within the Fourth Amendment and properly denied the motion to suppress. (R. 93-98). To the extent Petitioner argues a state constitutional violation, this issue is not preserved for appeal. Although Petitioner argued at trial that the search violated both the United States and South Carolina Constitutions, the trial judge did not rule on whether a

violation of the State constitution occurred. Thus, this issue is not preserved for this Court's review. *See State v. Dunbar*, 356 S.C. 138, 140, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal."). This Court should deny certiorari.

**CONCLUSION**

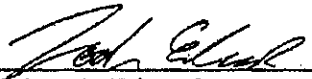
For all the foregoing reasons, it is respectfully submitted that certiorari be denied.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOSHUA A. EDWARDS  
Assistant Attorney General

SCARLETT A. WILSON  
Solicitor, Ninth Judicial Circuit

BY:   
Joshua A. Edwards  
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ATTORNEYS FOR RESPONDENT

June 25, 2018



STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of General Sessions

D. Garrison Hill, Circuit Court Judge

---

Appellate Case No. 2018-000967

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THE STATE,

Petitioner,

v.

MARK LORENZO BLAKE,

Respondent.

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PROOF OF SERVICE

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I, Anne Mueller, certify that I have served the within Return to the Petition for Writ of Certiorari on Petitioner by delivering a copy to Kathrine H. Hudgins, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.  
This 25<sup>th</sup> day of June, 2018.

  
Anne A. Mueller  
Legal Assistant

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# The Supreme Court of South Carolina

The State, Respondent,

v.

Mark Lorenzo Blake, Jr., Petitioner.

Appellate Case No. 2018-000967

Lower Court Case No. 2013-GS-10-02729

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## ORDER

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Based on the vote of the Court, the petition for a writ of certiorari to the Court of Appeals is denied.

FOR THE COURT

BY Drenda J. Shealy  
Chief Deputy CLERK

Columbia, South Carolina

November 9, 2018

cc:

Kathrine Haggard Hudgins, Esquire  
Alan McCrory Wilson, Esquire  
Jennifer Ellis Roberts, Esquire  
Scarlett Anne Wilson, Esquire  
Joshua Abraham Edwards, Esquire  
Mark Lorenzo Blake, Jr., 368687  
The Honorable Julie J. Armstrong  
The Honorable Jenny Kitchings