

RECEIVED

Oct 26 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from York County

Honorable Daniel D. Hall, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

RAMON RODRIGO HOPE,

APPELLANT.

APPELLATE CASE NO. 2022-000454

---

RECORD ON APPEAL

---

WANDA H. CARTER  
Deputy Chief Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

WILLIAM M. BLITCH, JR.  
Senior Assistant Deputy Attorney General  
S.C. Bar No. 15608  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

## INDEX

|                                                     |     |
|-----------------------------------------------------|-----|
| INDEX .....                                         | i   |
| TRIAL TRANSCRIPT DATED JANUARY 11-12, 2022.....     | 1   |
| JURY VOIR DIRE .....                                | 5   |
| JURY SELECTION.....                                 | 18  |
| PRE-TRIAL MOTIONS.....                              | 28  |
| <u>NEIL V. BIGGERS</u> IDENTIFICATION HEARING ..... | 37  |
| TESTIMONY                                           |     |
| OFFICER ANTHONY BREEDEN.....                        | 37  |
| COURT’S RULING .....                                | 52  |
| OPENING REMARKS BY THE COURT.....                   | 62  |
| OPENING STATEMENT BY THE SOLICITOR.....             | 69  |
| OPENING STATEMENT BY DEFENSE COUNSEL.....           | 72  |
| TRIAL TESTIMONY                                     |     |
| OFFICER ANTHONY BREEDEN.....                        | 78  |
| OBJECTION REGARDING EXPERT TESTIMONY .....          | 88  |
| PROFFERED TESTIMONY (IN-CAMERA)                     |     |
| OFFICER ANTHONY BREEDEN.....                        | 91  |
| RULING BY THE COURT.....                            | 96  |
| TRIAL TESTIMONY                                     |     |
| OFFICER ANTHONY BREEDEN.....                        | 97  |
| OFFICER THOMAS AUSTIN.....                          | 123 |
| DISMISSAL OF ALTERNATE JUROR.....                   | 162 |

|                                                           |         |
|-----------------------------------------------------------|---------|
| MOTION FOR MISTRIAL REGARDING ALTERNATE JUROR TAINT ..... | 164     |
| COURT’S RULING .....                                      | 164     |
| MOTION FOR MISTRIAL ON IDENTIFICATION TESTIMONY .....     | 165     |
| COURT’S RULING .....                                      | 166     |
| TRIAL TESTIMONY                                           |         |
| HOLLY TOBIAS.....                                         | 167     |
| ALLISON SCOGGIN.....                                      | 176     |
| STATE RESTS .....                                         | 198     |
| MOTIONS FOR DIRECTED VERDICTS .....                       | 199-200 |
| COURT’S RULINGS .....                                     | 199-201 |
| ADVICE OF RIGHTS .....                                    | 201     |
| JURY CHARGE CONFERENCE.....                               | 209     |
| CLOSING ARGUMENT BY THE SOLICITOR .....                   | 212     |
| CLOSING ARGUMENT BY DEFENSE COUNSEL .....                 | 226     |
| LESSER OFFENSE (POSSESSION) CHARGED .....                 | 253     |
| JURY CHARGE ON THE LAW .....                              | 254     |
| RENEWED MOTION REGARDING IDENTIFICATION .....             | 273     |
| COURT’S RULING .....                                      | 273     |
| JURY NOTE .....                                           | 273     |
| VERDICTS .....                                            | 274     |
| SENTENCING .....                                          | 281     |
| RENEWAL OF ALL MOTIONS .....                              | 281     |
| COURT’S RULING .....                                      | 282     |

|                   |     |
|-------------------|-----|
| INDICTMENTS ..... | 284 |
|-------------------|-----|

|                              |     |
|------------------------------|-----|
| CERTIFICATE OF COUNSEL ..... | 288 |
|------------------------------|-----|

1 STATE OF SOUTH CAROLINA.

2 -----x

3 STATE,

4 Plaintiff,

5 Case No.

6 -against-

2020-GS-46-6577/6579

7 RAMON RODRIGO HOPE,

8 Defendant.

9 -----x

10 January 11-12, 2022

11 York, SC

12

13 B E F O R E:

14 HONORABLE DANIEL HALL

15

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

17 JOSHUA L. THOMAS

18 Attorney for the Plaintiff

19

20 JOHN A. O'LEARY

21 Attorney for the Defendant

22

23 Aileen Butler

24 Official Court Reporter

25

|    |                 |                  |              |                 |                |
|----|-----------------|------------------|--------------|-----------------|----------------|
| 1  |                 | <u>I N D E X</u> |              |                 |                |
| 2  | <u>WITNESS</u>  | <u>DIRECT</u>    | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
| 3  | Pre trial       |                  |              |                 |                |
| 4  | Anthony Breeden |                  |              |                 |                |
| 5  | Mr. Thomas      | 37               |              |                 |                |
| 6  | Mr. O'Leary     |                  | 42           |                 |                |
| 7  | Trial           |                  |              |                 |                |
| 8  | Anthony Breeden |                  |              |                 |                |
| 9  | Mr. Thomas      | 79               |              | 119             |                |
| 10 | Mr. O'Leary     |                  | 100          |                 | 120            |
| 11 | Thomas Austin   |                  |              |                 |                |
| 12 | Mr. Thomas      | 123              |              | 159             |                |
| 13 | Mr. O'Leary     |                  | 139          |                 |                |
| 14 | Holly Tobias    |                  |              |                 |                |
| 15 | Mr. Quick       | 167              |              |                 |                |
| 16 | MR. O'Leary     |                  | 174          |                 |                |
| 17 | Allison Scoggin |                  |              |                 |                |
| 18 | Mr. Thomas      | 176              |              | 196             |                |
| 19 | Mr. O'Leary     |                  | 190          |                 | 197            |
| 20 |                 |                  |              |                 |                |
| 21 |                 |                  |              |                 |                |
| 22 |                 |                  |              |                 |                |
| 23 |                 |                  |              |                 |                |
| 24 |                 |                  |              |                 |                |
| 25 |                 |                  |              |                 |                |

|    |                         |                       |             |             |
|----|-------------------------|-----------------------|-------------|-------------|
| 1  | <u>E X H I B I T S.</u> |                       |             |             |
| 2  | <u>NO.</u>              | <u>DESCRIPTION</u>    | <u>I.D.</u> | <u>EVD.</u> |
| 3  | State's 1               | CD                    |             | 85          |
| 4  | State's 2               | CD                    |             | 125         |
| 5  | State's 3-7             | Pictures              |             | 135         |
| 6  | State's 8               | Crack rock            |             | 172         |
| 7  | State's 9               | Small pieces of crack |             | 172         |
| 8  | State's 10              | White baggy           |             | 127         |
| 9  | State's 11              | Black baggy           |             | 127         |
| 10 | State's 12              | Gun                   |             | 128         |
| 11 | State's 13              | Magazine              |             | 128         |
| 12 | State's 14-15           | Pictures              |             | 137         |
| 13 |                         |                       |             |             |
| 14 | Deft's 1-9              | Pictures              |             | 110         |
| 15 |                         |                       |             |             |
| 16 |                         |                       |             |             |
| 17 |                         |                       |             |             |
| 18 |                         |                       |             |             |
| 19 |                         |                       |             |             |
| 20 |                         |                       |             |             |
| 21 |                         |                       |             |             |
| 22 |                         |                       |             |             |
| 23 |                         |                       |             |             |
| 24 |                         |                       |             |             |
| 25 |                         |                       |             |             |

1           THE COURT: Thank you for your patience ladies and  
2 gentleman. We are about to begin the trial in the  
3 case of state of South Carolina versus Ramon Hope.  
4 Mr. Hope has been charged on three Indictments that  
5 will be before the jury; Indictment 2020-GS-6577,  
6 possession with intent to distribute crack cocaine;  
7 2020-6579, unlawful carrying of a pistol, and  
8 2020-6578, possession of a stolen hand gun.

9           Representing the State of South Carolina is Mr.  
10 Josh Thomas from the solicitor's office and Mr. Joe  
11 Quick. Mr. Thomas, if you would stand up and identify  
12 yourself and your witness that you have here.

13          MR. THOMAS: Thank you, Your Honor. Again, my  
14 name is Josh Thomas. I represent the State in this  
15 matter. Sitting with me today is Joe Quick. He's  
16 also assistant solicitor in our office. At least two  
17 of the witnesses whose names you are going to hear  
18 called later is Officer Anthony Breeden who works for  
19 the Rock Hill Police Department and officer Thomas  
20 Austin who also works for the Rock Hill Police  
21 Department.

22          THE COURT: Thank you. Representing Mr. Ramon  
23 Hope is Mr. John O'Leary, an attorney. Mr. O'Leary,  
24 if you would introduce yourself, your client and who  
25 is sitting at your table.

1           THE COURT: Yes, sir. Appreciate it. I apologize  
2           for my voice. My name is John O'Leary. An attorney  
3           in Columbia, South Carolina. Retired law enforcement.  
4           This is Mr. Harry Depugh who works out of my office.  
5           Stand up Harry. And Mr. Ramon Hope who is my client  
6           on the end. Stand up if you can. Thank you.

7           THE COURT: All right. Thank you.

8           Ladies and gentlemen we're getting ready to start  
9           of the third part of the process that I talked to you  
10          about downstairs. This is what we call the Latin term  
11          is voir dire, which is where I am going to ask you  
12          some specific questions about you're ability to serve  
13          in this particular case. If at any time any of the  
14          questions I ask of you if you are uncomfortable  
15          answering those in open court if will you just raise  
16          your hand and come forward and the lawyers and I will  
17          meet with you in front of the court reporter and  
18          discuss your answers.

19          Is there any member of the jury panel who has  
20          either been represented by Mr. O'Leary or Mr. Dupree  
21          or his law firm? Have any close business,  
22          professional or social relationship with Mr. O'Leary  
23          on Mr. Dupree, if so please stand.

24          Thank you. No one stands.

25          Is there any member of the jury panel who has a

1 close friend or relative with either Mr. Thomas or Mr.  
2 Quick from the solicitor's office or do you have any  
3 close friend, business or personnel relationship with  
4 any assistant solicitor, prosecutor or employees in  
5 the solicitor's office, if so please stand.

6 Thank you. No one stands.

7 As I have indicated there are three charges that  
8 are before the Court to which the defendant has  
9 exercised his constitutional right, to enter a plea of  
10 not guilty and ask for a jury trial. That right is  
11 extended to every citizen of the United States. The  
12 indictment alleged that these incidents of possession  
13 with intent to distribute crack cocaine, the unlawful  
14 carrying of a pistol and possession of stolen hand gun  
15 took place on or about September the 27th, 2020 within  
16 the city limits of Rock Hill here in York County. Is  
17 there any member of the jury panel who has any  
18 knowledge or any information about this incident,  
19 whatsoever, if so please stand.

20 Thank you. No one stands.

21 Has any member of the jury panel or a close friend  
22 or relative ever been a member of any organization  
23 dealing with -- advocates for the abolition or reform  
24 of drug laws, such as NORMAL, drug police alliance,  
25 ACLU or subscribe or participate in any social media

1           that advocates for the abolition or reform of current  
2           drug laws? If so please stand.

3           Thank you. No one stands.

4           Is any member of the jury panel or a close  
5           relative or friend ever been charged with or convicted  
6           of an offense involving drugs? If so please stand.

7           All right. My question simply is -- I will ask  
8           that you identify yourself. Tell me your number and  
9           my question would be -- you don't have to answer the  
10          specifics of that, but the fact that you have stood to  
11          answer that question about friends or relatives been  
12          involved, convicted of an offense involving drugs,  
13          does that affect your ability to be fair and impartial  
14          to the both the State and the defense in this case?  
15          And I'll start here on my right. Sir, if you would  
16          tell me your number.

17          JUROR: 242. My husband was convicted of  
18          methamphetamine.

19          THE COURT: Would that fact affect your ability to  
20          be fair or impartial to both the State and the defense  
21          in this particular case?

22          Juror: Yeah, because I went through parole and  
23          everything.

24          THE COURT: You will be excused. You can have a  
25          seat. Thank you.

1 Yes, your number.

2 JUROR: 106.

3 THE COURT: Without going into specifics, Mr.  
4 Greer, would that fact affect your ability to be fair  
5 and impartial to both the State and the defense in  
6 this case?

7 JUROR: I believe it would.

8 THE COURT: All right. Thank you. You can have a  
9 seat. You are excused in this particular case.

10 Yes, ma'am, your number.

11 JUROR: 80.

12 THE COURT: Miss Dunn, would that fact affect your  
13 ability to be fair or impartial to both the State's  
14 and the defense in this case?

15 JUROR: No, sir.

16 THE COURT: Thank you. You may be seated.

17 Yes, your number?

18 JUROR: 92.

19 THE COURT: Mr. Evatt. Yes, sir.

20 JJUROR: I don't think it would affect me at all.

21 THE COURT: Thank you. May have a seat. Yes,  
22 ma'am, your number.

23 JUROR: 163. It would not affect me at all.

24 THE COURT: Miss Lang?

25 JUROR: No.

1 THE COURT: 153?

2 JUROR: No, 163.

3 THE COURT: Miss Marshall, would that fact affect  
4 your ability to be fair or impartial to both the State  
5 and the defense in this case?

6 JUROR: No, sir.

7 THE COURT: Thank you. Yes, ma'am, your number?

8 JUROR: 250.

9 THE COURT: Miss Stewart.

10 JUROR: My daughter.

11 THE COURT: Would that affect your ability to be  
12 fair or impartial to both the State and the defense in  
13 this particular case?

14 JUROR: No.

15 THE COURT: Thank you. You may be seated.

16 Has any member of the jury panel have a close  
17 friend or relative or personally dealt with a drug  
18 addition? If so please stand.

19 All right, I will do the same procedure. If you'll  
20 tell me your number.

21 JUROR: 58.

22 THE COURT: Mr. Clark, would that fact affect your  
23 ability to be fair or impartial to both the State and  
24 the defense in this case?

25 JUROR: No, it won't.

1 THE COURT: Thank you. Your number?

2 JUROR: 153.

3 THE COURT: 153?

4 JUROR: Yes, sir.

5 THE COURT: Mr. Lang, would that fact affect your  
6 ability to be fair and impartial to both the State and  
7 the defense in this case?

8 JUROR: No, Your Honor.

9 THE COURT: Thank you. You may be seated.

10 Has any member of the jury panel or a close friend  
11 or relative ever been a member of or made contribution  
12 to organizations that advocate for the de-funding of  
13 the police or police reform? If it so please stand.

14 Thank you. No one stands.

15 Is there any member of the jury panel that has a  
16 family member or a close friend that is a member of  
17 law enforcement? A member of law enforcement? I will  
18 simply ask you to tell me what that relationship is  
19 and would that fact affect your ability to be fair and  
20 impartial to both the State and the defense in this  
21 case?

22 Yes, ma'am, on the front row, your number.

23 JUROR: Number 55.

24 THE COURT: 55. Yes, ma'am.

25 JUROR: My uncle and I have two brother-in-laws

1                   who are deceased.

2                   THE COURT:   Would that fact affect your ability to  
3                   be fair and impartial to both parties in this case?

4                   JUROR:   No.

5                   THE COURT:   Thank you.   Yes, ma'am, on my left on  
6                   the next row your number?

7                   JUROR:   80.

8                   THE COURT:   Yes, ma'am.

9                   JUROR:   My cousin.

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

12                  JUROR:   No, sir.

13                  THE COURT:   Thank you.   You may be seated.

14                  Yes, ma'am, your number.

15                  JUROR:   Eighty-eight.

16                  THE COURT:   And your relationship.

17                  JUROR:   Its my brother-in-law.

18                  THE COURT:   Would that fact affect your ability to  
19                  be fair and impartial?

20                  JUROR:   No, sir.

21                  THE COURT:   Thank you.   You may be seated.

22                  Yes, sir, your number?

23                  JUROR:   106.

24                  THE COURT:   We had previously excused you, Mr.  
25                  Greer, so any of those who have been previously

1                   excused you won't need to stand up any further to any  
2                   questions.

3                   Yes, ma'am, your number?

4                   JUROR: 107.

5                   THE COURT: Miss Hall.

6                   JUROR: Yes, my cousin is an officer in Aikin  
7                   County. It wouldn't affect me.

8                   THE COURT: Thank you. You may be seated.

9                   Yes, sir, your number?

10                  JUROR: 188.

11                  THE COURT: Mr. Nealy, yes, sir.

12                  JUROR: I have a brother-in-law and a uncle.

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

15                  JUROR: No, sir.

16                  THE COURT: Thank you. You may be seated. Yes,  
17                  ma'am, your number.

18                  JUROR: 171.

19                  THE COURT: Yes, ma'am.

20                  JUROR: My son is a correction's officer for  
21                  federal prison.

22                  THE COURT: Would that fact affect your ability to  
23                  be fair and impartial?

24                  JUROR: No.

25                  THE COURT: Thank you. You may be seated. Yes,

1 sir, your number?

2 JUROR: 153.

3 THE COURT: Mr. Lang.

4 JUROR: My father was a police officer in Clover.

5 THE COURT: Would that fact affect your ability to  
6 be fair or impartial?

7 JUROR: It would, yes.

8 THE COURT: You are excused in this particular  
9 case. Thank you.

10 Any member of the jury panel who has ever appeared  
11 as a witness for the prosecution or defense in a  
12 criminal trial? If so please stand.

13 Thank you. No one stands.

14 Is there any member of the jury panel who has a  
15 particular conviction, opinion, belief or feeling that  
16 it's immoral or illegal to possess a weapon regardless  
17 of the circumstances? If so please stand.

18 Thank you. No one stands.

19 There does not appear to have been any media  
20 reporting of this particular allegation, however, I  
21 will ask the question, is any member of the jury panel  
22 heard anything about this case from any source at all?  
23 If so please stand.

24 Thank you. No one stands.

25 I had will read a list of potential witnesses. I

1 will ask that you listen very carefully. And when I  
2 finish reading the list I will ask you simply if you  
3 have a close business, personal or professional  
4 relationship or are related to any of these potential  
5 witnesses; Thomas Austin of the Rock Hill Police  
6 Department, Anthony Breeden of the Rock Hill Police  
7 Department, Bionca Campbell, Jesse Clamp of Rock Hill  
8 Police Department, Thomas Marco of the Rock Hill  
9 Police Department, Jerry Wesley Patterson, John  
10 Rainier of the York County drug unit, Troy Ramsbacher,  
11 the Rock Hill Police Department, Allison Scoggin of  
12 the Rock Hill Police Department, Jonathan Soto of the  
13 Rock Hill Police Department and Holly Tobias of the  
14 York County Sheriff's Office.

15 Any member of the jury panel have a close  
16 business, personal or professional relationship, or  
17 related to any of those individuals then please stand.  
18 Thank you. No one stands.

19 Is anyone of the the jury panel related by blood  
20 or marriage or have a a close personal, professional  
21 or business relationship with Mr. Ramon Hope then  
22 please stand.

23 Thank you. No one stands.

24 Has any member of the jury panel ever been subject  
25 or victim of an assault involving a firearm then

1 please stand.

2 Thank you. No one stands.

3 Has any member of the jury panel been a victim of  
4 a crime or had a friend or family member who is a  
5 victim of a crime? If so please stand.

6 Thank you. No one stands. I'm sorry, yes ma'am,  
7 your number.

8 JUROR: 250.

9 THE COURT: And if you would tell me the  
10 circumstances.

11 JUROR: Well, my daughter was murdered.

12 THE COURT: That would certainly be an answer to  
13 that question. Would that fact affect your ability to  
14 be fair and impartial in this case.

15 JUROR: No, sir.

16 THE COURT: You may be seated.

17 Yes, ma'am, your number.

18 JUROR: 228.

19 THE COURT: Yes, ma'am. Tell me your situation.

20 JUROR: I guess I just wanted to make sure. I did  
21 have three stepdaughters that were tried for federal  
22 pedophile cases.

23 THE COURT: That certainly --yes, that's  
24 information that the Court is asking for. Would that  
25 fact affect your ability to be fair and impartial to

1 both the State and the defense in this case?

2 JUROR: I don't think in this case.

3 THE COURT: All right. Let me be sure. The  
4 question simply would need a definite answer. It  
5 obviously means your thinking about it, but I need to  
6 know, would that effect --

7 JUROR: Not two of the same things so --

8 THE COURT: I'm sorry, tell me again what your  
9 stepdaughters were convicted of?

10 JUROR: They had federal pedophile charges.

11 THE COURT: I'm sorry, what?

12 JUROR: Federal pedophile charges.

13 THE COURT: This is not the same type of case.  
14 Would that fact affect your ability to be fair and  
15 impartial to both parties in this case.

16 JUROR: It might.

17 THE COURT: All right. I will excuse you in this  
18 case. Just have a seat.

19 Has any member of the jury panel ever used a  
20 weapon in defense of herself or himself, a relative or  
21 property? If so please stand.

22 Thank you. No one stands.

23 Any member of the jury panel or a family member or  
24 close friend or associate ever been falsely accused of  
25 a crime, then please stand?

1 Thank you. No one stands.

2 Any member of the jury panel formed or expressed  
3 an opinion about any issue or matter involved in this  
4 case? If so please stand.

5 Thank you. No one stands.

6 Is there any member of the jury panel aware of any  
7 bias or prejudice to either the State or the defendant  
8 in this case? If so please stand.

9 Thank you. No one stands.

10 Is there any member of the jury panel know of any  
11 reason whatsoever why he or she should not serve as a  
12 juror in this case, with particular emphasis being  
13 placed on your ability to be fair and impartial to  
14 both the State and the defendant? If so please stand.

15 Thank you. No one stands.

16 Any additional questions from the State?

17 MR. THOMAS: Nothing from the State.

18 THE COURT: From the defense?

19 MR. O'LEARY: Nothing, Your Honor.

20 THE COURT: All right. Madam clerk, if you'll  
21 give us a jury and I believe lawyers you have the  
22 strike list. My custom is to provide those to you.  
23 They will be called in the order that's on that list.  
24 Those that have not been stricken, the number that  
25 they call will not be the number on the left. It will

1 be the juror number that will be called. Does that  
2 make sense to everybody?

3 All right, the strikes are five and five, so madam  
4 clerk, give us a jury. We have not had a jury trial  
5 in this courtroom in two years. Again, I tried some  
6 cases in other parts of the state, but bare with us,  
7 we're a little bit rusty. Everybody here, including  
8 the lawyers and the clerk's staff we normally this is  
9 something we do routinely but because of Covid issues  
10 there may be some hiccups as we go forward.

11 Let me give them a little bit of instruction. She  
12 is going to call your number. When they call your  
13 number you come forward. Bring any belongings that  
14 you have with you and you'll stand here in front of  
15 the bailiff and you'll face the lawyers and they will  
16 then determine whether they will either strike you or  
17 seat you. Under our rules the State has the ability  
18 to strike, the right, to strike five jurors and the  
19 defense has a right to strike five jurors. So again,  
20 when the clerk calls your number come forward. Stand  
21 in front of the bailiff here and face the lawyers.  
22 With that, madam clerk if had you will call the  
23 numbers.

24 THE CLERK: Juror number, 1888, Robert Nealy What  
25 say you for the State?

1 MR. THOMAS: Please present Mr. Nealy.

2 THE CLERK: And for the defense?

3 MR. O'LEARY: Please excuse.

4 THE CLERK: You have been excused from the case.

5 Juror number 88, Tabithia Engle.

6 What say you for the State?

7 MR. THOMAS: Please present Miss Engle.

8 THE CLERK: And the defense?

9 MR. O'LEARY: Please excuse.

10 THE CLERK: You have been excused from the case.

11 Juror number 251, Mark Stewart. What say you for the

12 State?

13 MR. THOMA: Please present Mr. Stewart.

14 THE CLERK: And the defense?

15 MR. O'LEARY: Plus excuse.

16 THE CLERK: You've been excused from this case.

17 Juror number 80, Victoria Dunn. What say you for the

18 the State?

19 MR. THOMAS: Please present Miss Dunn.

20 THE CLERK: And the defense?

21 MR. O'LEARY: Please swear the juror.

22 THE CLERK: Please have a seat in the jury box.

23 Juror 136, Arthur Jacobs. What say you for the

24 State?

25 MR. THOMAS: Please present Mr. Jacobs.

1 THE CLERK: And the defense?

2 MR. O'LEARY: Swear the juror.

3 THE CLERK: Please have a seat in the jury box.

4 Juror number 213, Scott Ranallo. What say you for the  
5 State?

6 MR. THOMAS: Please present Mr. Ranallo.

7 THE CLERK: And the defense?

8 MR. O'LEARY: Swear the juror.

9 THE CLERK: Please have a seat in the jury box.  
10 Juror number one, Melanie Barnes. What say you for  
11 the State?

12 MR. THOMAS: Please present Miss Barnes.

13 THE CLERK: And the defense?

14 MR. O'LEARY: Swear the juror please.

15 THE CLERK: Please have a seat in the jury box.  
16 Juror number 256, Sharon Talley. What say you for the  
17 State?

18 MR. THOMAS: Please present Miss Talley.

19 THE CLERK: And the defense?

20 MR. O'LEARY: Swear the juror.

21 THE CLERK: Please have a seat in the jury box.

22 Juror number 163, Nikea Marshall. What say you  
23 for the State?

24 MR. THOMAS: Please present Miss Marshall.

25 THE CLERK: And the defense?

1 MR. O'LEARY: Please swear the juror.

2 THE CLERK: Please have a seat in the jury box.

3 Juror 198, Asha Patel. What say you for the State?

4 MR. THOMAS: Please present Miss Patel.

5 THE CLERK: And the defense?

6 MR. O'LEARY: Please swear the juror.

7 THE CLERK: Please have a seat in the jury box.

8 Juror 116, Tameisha Hinton. What say you for the

9 State?

10 MR. THOMAS: Please present Miss Hinton.

11 THE CLERK: And the defense?

12 MR. O'LEARY: Please swear the juror.

13 THE CLERK: Please have a see in the jury box.

14 Juror 63, Samuel Clowers. What say you for the

15 State?

16 MR. THOMAS: Please present Mr. Clowers.

17 THE CLERK: And the defense?

18 MR. O'LEARY: Beg the Court's indulgence.

19 THE COURT: Take your time.

20 MR. O'LEARY: Please excuse the juror.

21 THE CLERK: You have been excused from this case.

22 Number 241, Ricky Smith. What say you for the State?

23 MR. THOMAS: Please excuse Mr. Smith.

24 THE CLERK: You have been excuse from this case.

25 Juror number 231, Derek Sharp. What say you for the

1 State?

2 MR. THOMAS: Please excuse Mr. Sharp.

3 THE CLERK: You've been excused from this case.

4 Juror number 92, Pat Evatt. What say you for the  
5 State?

6 MR. THOMAS: Please present Miss Evatt.

7 THE CLERK: And the defense?

8 MR. O'LEARY: Please swear the juror.

9 THE CLERK: Please have a seat in the jury box.

10 Juror number 250, Debra Stewart. What say you for  
11 the State?

12 MR. THOMAS: Please present Miss Stewart.

13 THE CLERK: And the defense?

14 MR. O'LEARY: Can I ask what number that was?

15 THE CLERK: 250, Debra Stewart.

16 MR. O'LEARY: Please excuse.

17 THE CLERK: You have been excused from this case.

18 Juror 151, Jay Kuiper. What say you for the State?

19 MR. THOMAS: Please present Mr. Kuiper.

20 THE CLERK: And the defense?

21 MR. O'LEARY: Please seat the juror.

22 THE CLERK: Please have a seat in the jury box.

23 Juror 143, Keith Jorgensen. What say you for the  
24 State?

25 MR. THOMAS: Please excuse Mr. Jorgensen.

1 THE CLERK: You have been excused from in case.

2 Juror number 129, Stacy Hunt. What say you for the  
3 State?

4 MR. THOMAS: Please present Miss Hunt.

5 THE CLERK: And the defense?

6 MR. O'LEARY: Please seat the juror.

7 THE CLERK: Please have a seat in the jury box.

8 Juror number 279, Lauren West. What say you for  
9 the State?

10 MR. THOMAS: Please present Miss West.

11 THE CLERK: And the defense?

12 MR. O'LEARY: Please seat the juror.

13 THE CLERK: Please have a seat in the jury box.

14 THE COURT: Alternate the strikes are one for the  
15 State, two for the defense. Two alternates.

16 THE CLERK: Juror number 274, Hayleigh Washa.

17 What say you for the State?

18 MR. THOMAS: Please present Miss Washa.

19 THE CLERK: And the defense?

20 MR. O'LEARY: Please seat the juror.

21 THE CLERK: Please have a seat in the jury box.

22 Juror 55, Denise Cherney. What say you for the State?

23 MR. THOMAS: Please present Miss Cherney.

24 THE CLERK: And the defense?

25 MR. O'LEARY: Please excuse the juror.

1           THE CLERK: You have been excused from the case.  
2 Juror 184, Abdelbar Moussafir. What say you for the  
3 State?

4           MR. THOMAS: Please excuse Mr. Moussafir.

5           THE CLERK: You have been excused from this case.  
6 Juror number 83, Thomas Dyrness. What say you for the  
7 State?

8           MR. THOMAS: No challenge for cause so please  
9 present.

10          THE CLERK: And the defense?

11          MR. O'LEARY: Please excuse.

12          THE CLERK: You have been excused from this case.  
13 Juror number 107, Melody Hall. What say you for  
14 the State?

15          MR. THOMAS: No cause for the State so please  
16 present.

17          THE CLERK: And the defense?

18          MR. O'LEARY: Please swear the juror.

19          THE CLERK: Please have a seat in the jury box.

20          THE COURT: Thank you, madam clerk.

21               Ladies and gentleman of the jury, those of you who  
22 have not been selected to serve as jurors in this  
23 particular case, we're going to allow you to leave and  
24 then call back tonight some time after five. You'll  
25 receive instructions on what to do next. We have

1 several trial cases scheduled for trial this week so  
2 at this point I can't tell you what the rest of your  
3 week is going to look like other than you will need to  
4 call back tonight after five. The clerk will have  
5 instructions on the call back line to let you know  
6 what to do next. Everyone remain seated while these  
7 jurors leave the courtroom. You all can leave.

8 (WHEREUPON, jurors leave the courtroom.)

9 THE COURT: Anything from the State as far as  
10 juror selection?

11 MR. THOMAS: Nothing from the State.

12 THE COURT: From the defense.

13 MR. O'LEARY: Nothing, Your Honor.

14 THE COURT: All right. Thank you.

15 All right, ladies and gentlemen of the jury, it is  
16 ten to one. I am going to give a little basic  
17 instruction about what is going to happen next and  
18 what the Court expects of you. I'm not going to swear  
19 you in. I will allow you to go to lunch. I am going  
20 to ask that you be back in the jury room. You will  
21 leave in just a moment and the bailiff is going to  
22 show you where the jury room is. They'll tell you  
23 where to report. I will ask that you be back at 3:30.  
24 Be back at 3:30. We're not going to be laying around  
25 doing nothing. We have a lot of work to do that we

1 take up outside of your presence, but we will not need  
2 you until 3:30.

3 You're not to discuss the case at all among  
4 yourselves or with anybody else. When you go back to  
5 the jury room you can not talk about the case until  
6 the end of the case and you hear all the facts of the  
7 case and then I instruct you on what the law is in the  
8 case. The reason behind that is, ladies and gentlemen  
9 you are the fact finders in the case. You are to  
10 combine the facts as you find them to be with the law  
11 that's going to be given to you at the conclusion of  
12 the case. So you're really aren't in a position to  
13 even discuss the case at all with anyone else until  
14 you hear all that. Now, the next instruction you will  
15 hear from me -- you're going to hear it a lot  
16 throughout this trial no matter how long or short it  
17 is -- you're not allowed to look on your electronic  
18 devices and try to look up the law or people's names  
19 or police officers or defendants or anybody else.  
20 Anything related to this case. You have to stay away  
21 from social media until the case is over. Temptation  
22 sometimes to try and educate yourself on what the law  
23 is or what you might think the law is. You're not  
24 allowed to do that. Again, your decision, what you do  
25 in the case has to be based on what you see and hear

1 in this courtroom and that is it. And so, again, you  
2 can't discuss it with folks you live with. When you  
3 go back to the jury room don't be talking about the  
4 case, what you heard or hadn't heard or the charges.  
5 You can talk about anything else. You will hear me  
6 give you that instruction throughout this trial.  
7 That's important. That's extremely important to both  
8 the defendant and the State that you decide and make  
9 your decisions based on what you hear after you heard  
10 all the facts and after the law has been charged to  
11 you. With that, I will allow you to go with the  
12 bailiff. He will show you where your jury room is  
13 going to be. I will give you some further  
14 instructions this afternoon when you come back at  
15 3:30. What I anticipate when you come back at 3:30  
16 or so is that I will give you some basic instructions  
17 that I am required to give you by law. We will allow  
18 the attorney's to make their opening statements to  
19 you. We will talk about that in a little bit and that  
20 maybe all we do today. I'm not sure. What we try to  
21 do is try to stay on a schedule. I try to have you  
22 out of here by 5:00 or 5:30. I can we will do that  
23 today. Depending on the number of witnesses we have  
24 tomorrow and how we're trying to get things done you  
25 may have to stay later than that tomorrow. So if you

1 have child care issues or things that you need to do  
2 just be prepared. You may have to stay later then  
3 5:00 or 5:30 tomorrow. That will depend on how far we  
4 get and what we have left in the case. But today  
5 we'll make every effort to have you out of here no  
6 later then 5:00 or 5:30. So with that I will allow  
7 you to go to lunch. If you will follow the bailiff  
8 out this door right here. Everyone else remain seated  
9 while this jury is excused.

10 (WHEREUPON, the jury leaves the courtroom.)

11 Mr. O'Leary, the case has been called for trial.  
12 He is here. My custom especially in this particular  
13 type case, the bondsman no longer has any authority to  
14 have him here. He's released from the bond when we  
15 called the case so we will need to take Mr. Hope into  
16 custody. He will remain in custody throughout the  
17 trial.

18 Thank you.

19 (WHEREUPON, court was in recess.)

20 THE COURT: We are back on the record in  
21 2020-GS-46-6577, Ramon Hope, possession with intent to  
22 distribute crack cocaine, 2020-6578, unlawful  
23 possession of a pistol and 2020-6579, unlawful carry  
24 of a pistol.

25 The jury has been selected and have not been

1 sworn. The Court was informed that there are some  
2 pretrial motions that we need to deal with before the  
3 jury comes back. So I believe Mr. Thomas, I'll be  
4 glad to hear from you.

5 MR. THOMAS: Yes, sir, Your Honor. I submitted a  
6 pretrial motion to Your Honor. I think one through  
7 four on that.

8 THE COURT: I'm sorry, where?

9 MR. THOMAS: I gave -- I passed it up to you when  
10 we were in chambers earlier today, but I can grab you  
11 a fresh copy real quick. (Handed)

12 MR. THOMAS: Yes, I filed that with the clerk so  
13 that's in the record. I think one through four are  
14 pretty unnecessary to even talk about at this point.  
15 I don't think I need to move on any of those.

16 THE COURT: All right.

17 MR. THOMAS: We do have -- there is number five.  
18 As the defendant was being book he encountered -- or  
19 Officer Breeden encountered him in the booking area.  
20 They had a brief exchange. So we need to do sort of a  
21 Denno Hearing on that regarding that statement.

22 Number six on there, part of that, Your Honor, is  
23 Mr. Hope is charged in this case were possession of a  
24 stolen firearm or stolen gun and carrying a pistol  
25 unlawfully. Part of that, Your Honor, obviously we

1 have to show for the stolen pistol that he knew that  
2 the gun was stolen. So part of my position on that is  
3 he's obviously prohibited from possessing a firearm  
4 under federal law and in March of 2020 he plead in  
5 front of Your Honor to a domestic violence charge and  
6 he was ordered not to possess a firearm pursuant to  
7 16-25-30 thirty and was given a copy of that. So part  
8 of it, Your Honor, is obviously the pistol in this  
9 case was stolen. I have to prove that he knew it was  
10 stolen. One of the ways to do that is to show that he  
11 couldn't have purchased it through a legitimate means.  
12 So he couldn't go down to Cabela's or Nichols store  
13 and buy a gun. So I would propose that we introduce  
14 evidence that he is prohibited from purchasing a  
15 firearm. The other thing is for the unlawful carry,  
16 Your Honor, I have to prove that he did not -- the  
17 only exception to the CWP law would be if he had a  
18 CWP. The pistol in this case was found under the  
19 seat, the driver's seat of the vehicle. So if he had  
20 a CWP he could have stored the pistol there. Because  
21 he did not he can not store it there. So my proposal  
22 is to just ask Lieutenant Breeden is familiar with Mr.  
23 Hope and all these issues and he can testify and just  
24 ask him a simple yes or no question, can Mr. Hope  
25 purchase a firearm legally and does Mr. Hope have a

1 CWP. And he can just answer no to both of those. I  
2 think that gets the evidence that I need to meet my  
3 burden on those -- those elements of those charges  
4 without being overly prejudicial to him. It doesn't  
5 go into any of the reasons why he's prohibited. It  
6 doesn't go into any of his past history. It's just a  
7 simple -- you know, he could not have bought this gun  
8 through legitimate means or through a licensed dealer  
9 at least. And he does not have a CWP that allows him  
10 to store the gun where it is located. I think that  
11 can be accompanied by an appropriated limited  
12 instruction to consider those only for the elements of  
13 the crime and not for any other purpose.

14 I did find one case. Our law -- our case law in  
15 South Carolina is pretty sparse on this. I did find a  
16 case from Pennsylvania, Commonwealth versus Parker,  
17 847 A.2nd 745. And part of that case, Your Honor,  
18 that was a charge for knowingly possessing stolen  
19 property involving a gun. And the Court in that case  
20 said -- they talked about the evidence that was  
21 presented and they said a appellant a formerly  
22 convicted felon also knew it was illegal for him to  
23 obtain a hand gun and sales of handguns are highly  
24 regulated.

25 THE COURT: Let me ask you, I'm just a little bit

1           confused. I understand the possession, the unlawful  
2           carrying of a pistol because it was the facts  
3           indicated it was under the seat. The unlawful sale or  
4           delivery of a stolen hand gun, is he charged with  
5           possession of stolen pistol, is that the charge?

6           MR. THOMAS: It is, Your Honor.

7           THE COURT: Now his status about whether he could  
8           purchase one, how does that effect whether -- how does  
9           that prove that he had a stolen pistol?

10          MR. THOMAS: So, Your Honor, the individual who  
11          owns the pistol is going to testify obviously that he  
12          did not sell it to Ramon Hope. He had no idea how it  
13          got into his possession. The mens rea element I  
14          guess, the knowledge that the gun is stolen. I think  
15          one of the elements -- one of the ways to prove that  
16          reading this Commonwealth versus Parker case is by  
17          showing that he could not have obtained it from a  
18          legitimate dealer and that's what that Court there  
19          says.

20          THE COURT: I understand that. That still doesn't  
21          prove that it is stolen. Well, let me come back to  
22          you. Let me hear from Mr. O'Leary.

23          MR. O'LEARY: Your Honor, my understanding is that  
24          he's talking about he couldn't buy it from a dealer.  
25          You can buy it from an individual. That's -- I don't

1           see that it shows what he think it shows. There's no  
2           question -- there's nothing on the weapon I saw that  
3           shows that it was stolen and I don't think that shows  
4           his knowledge that it was stolen. If he had it.

5           THE COURT: Well, I guess, what I'm saying is I'm  
6           not to concerned about limiting you on the issue of  
7           the possession of a stolen hand gun. Whatever  
8           evidence you have that you intend to introduce we'll  
9           have to deal with that. If you can tell us -- may be  
10          you need to tell us what that evidence is sooner  
11          rather than later without the jury hearing it. But  
12          the fact that he could not purchase a handgun because  
13          of his record does not mean he is in possession of  
14          stolen handgun.

15          MR. THOMAS: Your Honor, the evidence --  
16          obviously I can prove possession because his  
17          fingerprint is on it. I can prove the gun was stolen  
18          because the person who was stolen from will come in  
19          and say it was stolen out of his car. It was several  
20          years earlier. So the last element I have to prove is  
21          knowledge. And I agree with Your Honor that the fact  
22          that he is not allowed to buy a gun legally is not  
23          dispositive of that element but it's some evidence.  
24          The other evidence that would be introduced would be  
25          that the officers can testify in their experience they

1 very rarely find crack users don't usually have guns.  
2 They sell them to dealers in exchange for drugs. But  
3 I think you're right in that this single fact that I  
4 can't purchase it legally isn't dispositive of the  
5 issue, but it is some evidence and I think that some  
6 evidence I need --

7 THE COURT: I will have to think on this over  
8 night. All right.

9 MR. THOMAS: I was planning on putting that  
10 witness up first.

11 THE COURT: We got to get through our pretrial.  
12 We got to get through the preliminary instructions and  
13 we've got to get through openings. I'm not sure we  
14 are going to get to the first witness depending on  
15 what time it is, but wherever it is before you call  
16 that witness we'll answer that issue -- answer that  
17 question whether that is admissible or for the.

18 MR. THOMAS: So I think other than that, we've got  
19 Denno obviously. I can put Officer Breeden up. We  
20 can cover suppression, we can cover Denno and then Mr.  
21 O'Leary has he style it and Biggers motion on the  
22 identification.

23 THE COURT: Well, let me hear what motions he has.  
24 Mr. O'Leary.

25 MR. O'LEARY: The motion that I had was

1           essentially the notes and reports of Officer Biggers  
2           (sic) basically said that he saw a man but he couldn't  
3           identify him. And then about two to three, I believe  
4           days later, a warrant is obtained and I have some  
5           trouble with, he didn't know him at the time of the  
6           incident that he observed, couldn't identify him. But  
7           later he identified him or he wants to identify him in  
8           court and I think that's improper because it had to  
9           have been identity that he obtained --

10           THE COURT: I'm going to cut you off there.  
11           That's an issue we will resolve during the testimony  
12           when he puts up his witness.

13           MR. O'LEARY: Okay.

14           THE COURT: I'll be glad to hear whatever argument  
15           you have either against that admissibility at that  
16           point.

17           MR. O'LEARY: That's fine.

18           THE COURT: Let's wait and see what he says he is  
19           going to do before you do that. I understand the ID  
20           is issue. What else?

21           MR. O'LEARY: Judge, that's really all I had.  
22           There was some question from the information that was  
23           provided to me by the solicitor's office his last  
24           point was 404 -- I guess that's it judge.

25           THE COURT: Okay. So you do not have a

1 suppression motion?

2 MR. O'LEARY: No, I don't have a suppression  
3 motion other than again to prohibit the officer from  
4 testifying his identity in court.

5 THE COURT: That's an ID issue. We're not having  
6 a suppression hearing on any of the evidence.

7 MR. THOMAS: If he's not asking for one.

8 THE COURT: All right.

9 MR. O'LEARY: Judge, I don't have a suppression  
10 motion with reference to what was found in the car.  
11 It wasn't his car.

12 THE COURT: That's your defense. That's your call  
13 about whether we have a suppression motion. A little  
14 bit different on the ID issue. I think there's some  
15 burden on the Court to flush out those issues  
16 regardless of where we are to create a record for  
17 that. But there's no suppression motion and if there  
18 some issue on th admissibility of the evidence during  
19 the course of the trial we will deal with that. If we  
20 need to deal with it outside of the presence of the  
21 jury we will do that.

22 MR. O'LEARY: I didn't -- I didn't bring it up to  
23 you the, suppression issue, on the grounds it was not  
24 his vehicle.

25 THE COURT: I'm not here to try your case.

1 MR. O'LEARY: I am just saying --

2 THE COURT: I am just asking is there a pending  
3 suppression motion. What I've been told is no, there  
4 is no motion.

5 MR. O'LEARY: No, there isn't.

6 THE COURT: All right then on the issue of ID,  
7 Neil v Biggers issue, Mr. Thomas call your first  
8 witness.

9 MR. THOMAS: Your Honor, the State calls  
10 Lieutenant Breedon to the stand.

11 ANTHONY BREEDON, called as a witness, having been  
12 duly sworn by the clerk, was examined and testified as  
13 follows:

14 DIRECT EXAMINATION

15 BY MR. THOMAS:

16 Q Lieutenant Breedon, what is your current job at the  
17 Rock Hill Police Department?

18 A I am a lieutenant on patrol, with the patrol supervisor  
19 assigned to patrol division.

20 Q And were you working in that job the early morning  
21 hours of September 27, 2020?

22 A Yes, sir, I was.

23 Q Did you observe -- at that time did you observe any  
24 sort of traffic violation or what were you doing around four  
25 a.m.?

1           A       I was sitting in a parking lot off Black Street and  
2 observed a vehicle heading towards downtown at a very high rate  
3 of speed. I pulled out of the parking lot to attempt to catch  
4 up to the vehicle then initiate a traffic stop. The vehicle  
5 made a quick right hand turn and pulled into a parking lot off  
6 of Confederate.

7           Q       And when you say he pulled into a parking lot. What  
8 was that parking lot of?

9           A       It was a parking lot I believe it's at Family Promises  
10 in Rock Hill and just parked up against a row of bushes in  
11 facing back towards Black Street where he came. So it was two  
12 quick right hand turns into a parking lot and then a right hand  
13 turn into a parking space.

14          Q       Describe to me, were there street lights in the parking  
15 lot? Were your headlights on? What were the lighting  
16 conditions?

17          A       Headlights were on. There was some ambient lighting.  
18 I could see the vehicle. I could see the person getting out of  
19 the vehicle and there was enough ambient light where I could  
20 recognize a person of that distance of my car length and the  
21 next car length.

22          Q       Okay. So you estimate you were maybe two car lengths  
23 away from the person?

24          A       Yes, sir. Give or take.

25          Q       And you said you saw someone getting out of the car?

1           A     Yes, sir. I instructed the person to stop. He stopped  
2 approximately right in front of the vehicle near the front  
3 corner panel, front passenger headlight. Looked back at me and  
4 then took off running toward Black Street.

5           Q     Did you have a opportunity to observe that person's  
6 face at that time?

7           A     Yes.

8           Q     Was that person familiar to you?

9           A     Very.

10          Q     At that time did you -- were you able to put, you know,  
11 as we say sometimes you can't put a name to the face. Were you  
12 able to put a name to the face at that time?

13          A     Not at that point. I knew the person. I knew I dealt  
14 with him. I knew who he was. Just could not think of the name.  
15 A few minutes later the identification of the car came across.  
16 The owner of the car, the name was mentioned and then that's  
17 when I automatically knew who the individual was by name.

18          Q     How long do you think was your opportunity to observe  
19 him face to face?

20          A     Maybe two seconds. One or two seconds give or take.

21          Q     Long enough for to you recognize him?

22          A     Yes, sir.

23          Q     And do you recognize that person that you saw? Do you  
24 see that person in the courtroom?

25          A     Yes, sir.

1 Q And who is that?

2 A It's Mr. Hope seated between his counsel.

3 Q After you -- you said -- what did he do after you saw  
4 him?

5 A He took off running. I had -- we had a pretty serious  
6 motorcycle collision earlier that night. I had paged a member  
7 of our command staff because it was a family member of one of  
8 our staff that was involved in a wreck and as I pulled in the  
9 parking lot the major returned my call and it was one of those  
10 where I was trying to tell him hold on and that was in that  
11 brief moment where I told him to stop and he took off.

12 Q Did you give chase?

13 A We gave chase. He crossed over Black Street. We had a  
14 lot units, plenty of units in the area. His girlfriend lived  
15 about two blocks from where he jumped and ran from.

16 Q But you didn't catch him that night?

17 A Not that evening, no.

18 Q Did you go back to the car after you chased him  
19 briefly?

20 A Just briefly. I instructed Officer Austin and his  
21 trainee to tow the car, search the car, conduct an inventory of  
22 the vehicle and that's when I was called and alerted to the  
23 things that were in the car.

24 Q When you got back to the car what was its condition?

25 A Well, it was still running. I mean, sitting there door

1 open in the same position it was when I first pulled behind it.

2 Q Were you all able to make contact with the owner of the  
3 car that night?

4 A Not -- I think she may have called later that evening,  
5 but we did not make contact with her immediately. Nobody  
6 answered the door at the residence. Couldn't get a hold of her  
7 right then. It was some time later.

8 Q So you made the decision to tow the car at that point?

9 A Yes, sir.

10 Q Did you have an opportunity after this incident to  
11 interact with Mr. Hope again?

12 A Yes, sir. I was coming back in to work and they  
13 informed me they had picked had him on the warrants. Our DCU had  
14 picked him up on the warrants. He was in the jail at that  
15 point.

16 Q Okay. And was that some time later or was that that  
17 evening? When did that happen?

18 A It was -- it wasn't that evening. It would have been  
19 the next day. I don't know exactly the date they picked him up,  
20 but it was not that evening as a continuation of what we were  
21 doing.

22 Q And you said he was in the jail. So was he in custody  
23 at that time?

24 A Yeah, he was in the holding cell.

25 Q What was your interaction with him?

1           A     I was just walking back to the jail. Just saw him and  
2 then he actually initiated the conversation with me.

3           Q     Did you ask him any questions?

4           A     No, sir.

5           Q     Did you do anything to try to encourage him to talk to  
6 you?

7           A     No, sir.

8           Q     What did he say to you?

9           A     He asked me Bars what -- Bars being my name -- and he  
10 said, "Why did you do this to me?" And I said, "What do you  
11 mean what did I do to you?" And he said, "Put these charges on  
12 me." And I said, "Why did you run?" He said, "I wasn't even in  
13 the car." And I said, "You're forgetting I saw you." Then he  
14 just kind of put his head down and sat down.

15          Q     He gave that statement to you. You didn't threaten him  
16 or coerce him in any way to say that to you, sir?

17          A     No, sir.

18                   MR. THOMAS: I think that's all the questions I  
19 have right now, lieutenant. I'll let you answer any  
20 and questions Mr. O'Leary might have.

21 CROSS EXAMINATION

22 BY MR. O'LEARY:

23          Q     Officer, that night you were working alone?

24          A     In my vehicle, yes, sir. Yes, sir.

25          Q     And did you have a -- you had a video in your car,

1 didn't you?

2 A Yes, sir.

3 Q And you said I think you were stopped and you saw the  
4 car speeding?

5 A Yes, sir.

6 Q And then what did you do?

7 A I pulled out to my left to try and catch up with the  
8 vehicle to initiate a stop on the car and it turned right. I  
9 didn't see it turn into the parking lot right a way. I just saw  
10 it make a right off Black Street. As I was trying to catch up I  
11 didn't see it ahead of me and then saw it over to my right as I  
12 got up to the parking lot and saw it parked.

13 Q So your video from the car doesn't show anybody you're  
14 chasing?

15 A I didn't chase him, no, sir.

16 Q You didn't see any cars in front of you?

17 A No, because there's a delay on our camera and it  
18 wouldn't have come on until after I got behind it and activated  
19 my -- and I didn't even get a chance to turn my lights on  
20 because it was just one of those to where -- when I turned on to  
21 Confederate and didn't see the car I assumed I had lost it. So  
22 as continued up I saw it in the packing lot and turned in real  
23 quick. So I never turn on my blue lights. It was never a  
24 pursuit. It was never a chase or anything of that matter.

25 Q Did you recognize the car?

1           A     No, sir, I didn't. Not from seeing it before, no, sir.

2           Q     And then you pulled up into that parking lot -- or  
3     wherever he supposedly pulled into -- and your car at that point  
4     did you have your blue lights on?

5           A     No, sir.

6           Q     And at that point you're on the phone?

7           A     It rang right as I was pulling in the parking lot.

8           Q     And you said at that point you saw a male next to the  
9     car, correct?

10          A     Yes, sir. Yes, sir.

11          Q     And you saw him for two seconds?

12          A     Give or take. Yes, sir, give or take.

13          Q     And that's all you saw of him?

14          A     Yes, sir.

15          Q     And you didn't know who it was, did you?

16          A     I knew who he was. I just didn't know his name.

17          Q     You knew who he was by a two second observation?

18          A     Yes, sir.

19          Q     Was it foggy out that morning?

20          A     I don't recall any fog.

21          Q     You're on the phone. You got another phone call while  
22     you were doing that, didn't you?

23          A     I just got the call from major. If it had been anybody  
24     but my major I probably wouldn't have answered it. It's four in  
25     the morning. He called me. I had paged him earlier and I was

1 just going to tell him to hold on and then I dropped the phone  
2 and went on pursuit.

3 Q And you ultimately parked, got out and chased him on  
4 foot, correct?

5 A Yes, sir.

6 Q So did you ever get in behind him where you could  
7 observe him?

8 A Behind him?

9 Q When you were running on foot?

10 A No, sir, due to the delay with the phone and by the  
11 time I got around the row of bushes and then when you cross  
12 Black Street it's a bunch of houses, a bunch of residences and I  
13 just didn't see him again when I came out. Another unit I  
14 believe spotted him but not then after where they initially just  
15 saw him.

16 Q Now in your report, didn't you indicate that you didn't  
17 know who it was?

18 A No, sir, I said I didn't know his name originally. I  
19 knew his face. I knew him. I just could not recall his name.

20 Q And you didn't recall his name. How did you find out  
21 his name?

22 A We have something in ZIRCA called link analysis where  
23 if I enter a name in our computer and you can go to link  
24 analysis and it shows any report attached. One of the officers  
25 that wasn't on the scene was running the tag, running link

1 analysis and then it came across the radio that the vehicle  
2 belonged to Mr. Hope's girlfriend and then I said, oh, it was  
3 Ramon Hope.

4 Q How do you know it's his girlfriend?

5 A Due to previously reports with him in the vehicle and  
6 him and her associated with him in link analysis.

7 Q So it's through that link analysis thing that you  
8 decided that the man running was my client?

9 A No, sir. That's not why I decided. I decided because  
10 his name resonated with me matching his face. I knew who he  
11 was. I've been doing this a long time. I've dealt with him on  
12 a lot of occasions. I know who he. I just didn't -- couldn't  
13 put a face with the name initially.

14 Q How far away were you when you first saw him?

15 A I would probably say from here to maybe the counsel  
16 table, give or take. Somewhere around there.

17 Q It's about 4:50 in the morning or something?

18 A 4:19.

19 Q It's dark?

20 A Yes.

21 Q And would you say it was foggy then?

22 A No, I didn't say it was foggy. I don't recall any kind  
23 of fog.

24 Q What kind of clothes was he wearing? Do you remember?

25 A I think he was wearing some dark clothes but I didn't

1 make a note of the clothing because we weren't still actively  
2 pursuing him. We weren't calling the dogs. It was one of those  
3 quick chases and I gave a quick description out but I don't -- I  
4 don't remember exactly what clothes he was wearing. I did see  
5 his face.

6 Q Did you ever put out to the other officers who were  
7 looking for him who to look for?

8 A I mean, I told them we was looking for somebody. It's  
9 four o'clock in the morning. There's not a ton of people out on  
10 the street at four in the morning. We had multiple units on the  
11 south end that started to converge, but it was also one of those  
12 that when we find out his girlfriend's house is two blocks --  
13 less than two blocks from the stop and we didn't continue to see  
14 him running we just assumed he made it to her house.

15 Q And you went to that house and he wasn't there, right?

16 A No, sir. Nobody answered.

17 Q Nobody there?

18 A No, sir. Nobody answered.

19 Q Now, why wouldn't you have put out right away when you  
20 realized that's who it was? Why didn't you put out over to the  
21 air to somebody?

22 A Well, we did. Once I found out who he was we knew who  
23 he was but there's no -- there's no sense in putting out over  
24 the air if we're not actively pursuing somebody. He's not in a  
25 vehicle. We're not still chasing him. We're going to type

1 warrants on him, but we're not putting out on the air that this  
2 is who we're looking for because we are not actively still  
3 pursuing him.

4 Q So your testimony is based upon that two second view of  
5 him, correct?

6 A Yes.

7 Q You then later got a warrant?

8 A I'm not understanding you.

9 Q Did you get a warrant based upon your observation of  
10 two seconds?

11 A No, I got a warrant based on the fact that it was Ramon  
12 Hope that ran from that car. That's why we had a warrant on  
13 him.

14 Q From that two second observation?

15 A My identification of Mr. Hope, yes, sir.

16 Q When did you tell the other officers you knew who it  
17 was?

18 A As soon as I heard the name then I knew that's who it  
19 was. I knew who it was when I saw him. I just didn't know a  
20 name. I deal with a lot of people. I've been doing this thirty  
21 years.

22 Q So, did you go and write the report saying this is who  
23 it is?

24 A Yes, sir.

25 Q Where did you write that report?

1           A     We just put it in the original incident report and it  
2 was later done in the general sessions summary and then when the  
3 warrants were typed.

4           Q     So what else did you look at after this incident to  
5 convince yourself that's who it was?

6           A     I'm not tracking you.

7           Q     What else did you see? Did you see a book, pictures of  
8 him? Anything like that?

9           A     I know who he is, sir. I know who he is. I dealt with  
10 him. I know who he is and once I identified him and knew his  
11 name I didn't need to do anything else.

12          Q     Well, why would you put in your report you didn't know?

13          A     You're talking about initially?

14          Q     Yeah.

15          A     I said that when I first saw him get out of the car I  
16 didn't recognize him. When I heard his name that's when I knew  
17 who he was.

18          Q     So you didn't recognize him at the scene. You  
19 recognized him from the name?

20          A     No, sir. I recognized him but I did not recall his name  
21 when he ran. I knew who he was but could not put a name with  
22 the face sir.

23          Q     And there was nothing unique about his clothing or  
24 anything that night you remember?

25          A     I wasn't paying attention to his clothing. I just saw

1 it and gave out a brief recollection. It's not like he had a  
2 bright florescent jacket on that I remember now. There's  
3 nothing that stood out so unique about his clothes that I  
4 remember today. I would have obviously put it out when I saw it  
5 that night but it's not something that I just automatically  
6 remember now.

7 Q Did you deal with one of the detectives that was  
8 investigating -- ultimately investigation this? Did you tell  
9 them who you thought it was?

10 A We typed warrants on him.

11 Q Who type them, you or someone else?

12 A I believe Officer Austin and his trainee did.

13 Q Okay. And this is all from a two second observation?

14 A No, sir. It's from all my years of knowing him and  
15 knowing him and identifying him. Not from just from the two  
16 seconds. That's when I saw him but I knew him. Have dealt with  
17 him and that's where I knew him from I just saw him that night  
18 and just immediately recalled when I heard had the name.

19 MR. O'LEARY: No further questions.

20 THE COURT: Anything further from the State?

21 MR. THOMAS: Nothing from the State.

22 THE COURT: All right. Thank you. Lieutenant you  
23 can step down.

24 Any other witnesses?

25 MR. THOMAS: As far as the Denno and the

1 identification issue, nothing from the State.

2 THE COURT: I will be glad to hear from you, Mr.  
3 O'Leary.

4 MR. O'LEARY: Judge, it's obvious that after the  
5 incident he got the name. He got it from that system  
6 that he just mentioned and I think that it should be  
7 insufficient because at the time he saw this man next  
8 to a car he says he identified him. He knew who he  
9 was but he didn't know who he was. Didn't know his  
10 name. And I think it's totally speculative. It's a  
11 two-second observation and he'll show you the video  
12 I'm sure and you will see it is a foggy night based  
13 upon the weather reports, and I think it's unfair to  
14 allow in court identification. I think he can say he  
15 saw a man he thought was him. That he later found out  
16 or made the connection, but at that time he didn't  
17 make the connection and I think what we're doing is  
18 we're letting him come in to court -- the night he saw  
19 the incident he couldn't identify him and now, you  
20 know, a couple of years later or so he's coming in and  
21 saying, yeah, that is definitely the man in that two  
22 seconds and I think that's just not right.

23 THE COURT: All right. Thank you. Anything  
24 further?

25 MR. O'LEARY: Nothing, judge, at this time.

1           THE COURT: All right. Well, I find that based on  
2           what the lieutenant has testified I will overrule the  
3           objection and deny the motion to keep the  
4           identification out. He's testified that -- he did not  
5           testify that he did not know who he was, but what the  
6           Court heard the testimony he indicated that he knew  
7           him. He could not remember his name. In fact he did  
8           see face to face albeit very shortly, for two seconds.  
9           He stated he immediately recognized him and the  
10          defendant took off running. He was able to realize  
11          who he was once they learned that the owner of the  
12          vehicle appeared to be or they had information that  
13          the owner of the vehicle was the defendant's  
14          girlfriend. He also testified that he's had multiple  
15          instances of contact with the defendant over the  
16          years. In fact it appears when he was walking in the  
17          jail the next day or some time after that, that the  
18          defendant himself recognized, knows the lieutenant.  
19          In fact they had a conversation that appeared to be a  
20          mutual conversation where they both were familiar with  
21          each other prior to that time. And so it's not really  
22          an in court identification in the context of a Neil v  
23          Biggers. I think those are first time  
24          identifications. Neil v Biggers doesn't really deal  
25          with first time identifications in court. However,

1           those are allowed typically and yet they are allowed  
2           to be introduced but then can be attacked on cross  
3           examine of the witness.

4           In this particular case, again, was able to place  
5           a name with the person that he identified the next  
6           day. So I will allow any testimony he has as far as  
7           identification. I'll allow it in. That certainly can  
8           be attacked on cross examination and argued to the  
9           jury but I find that testimony and that evidence is  
10          admissible. It appears there is was no -- as far as  
11          any statement that he gave in the jail it did not  
12          appear to be a custodial interrogation. In fact, the  
13          defendant was in a jail cell while the lieutenant  
14          indicated that he was walking by. The defendant  
15          initiated the conversation. Again, he was in a cell  
16          and the officer was walking by. The defendant  
17          initiated the conversation. They had a conversation.  
18          But I find that that was not a custodial  
19          interrogation. It was not subject to any protection  
20          under Miranda. Whatever he said appeared to be freely  
21          and voluntarily made to the officer so I will allow  
22          that in as well.

23          All right. Anything else we need to take up?

24          MR. O'LEARY: Excuse me, judge, I have one more I  
25          should have brought this up to you. There's testimony

1           about the relationship between my client and the girl  
2           he's talking about. There is nothing -- I'm not sure  
3           exactly how he knows that other than that's just a  
4           conclusion.

5           THE COURT: Mr. Thomas.

6           MR. THOMAS: I don't have any need to bring that  
7           out in my direct on him. I think the way I was going  
8           to ask those questions, if at all, would be just did  
9           you attempt to find the owner of that vehicle that  
10          night. I don't think he needs to get into how he knew  
11          who was who.

12          THE COURT: He's indicated he's not going to ask  
13          how. I was anticipating the question might be -- or  
14          that they found out that he had been a boyfriend of  
15          the owner either currently or in the past but it  
16          appears your not going into that.

17          MR. THOMAS: I don't think that is necessary at  
18          this point.

19          THE COURT: He's indicated he's not going to go  
20          into that line of questioning.

21          MR. O'LEARY: Judge, so, will he be able to  
22          testify in front of the jury as to the fact that there  
23          is or isn't a relationship between my client and that  
24          woman?

25          THE COURT: The solicitor has indicated that's

1 he's not going to elicit that testimony from any of  
2 his witnesses.

3 MR. O'LEARY: He said it today.

4 THE COURT: Well, I know he said it today, but  
5 what he just told the Court is that he was not going  
6 to go into that in front of the jury. Is that right  
7 Mr. Thomas?

8 MR. THOMAS: That's right, Your Honor. The only  
9 reason asked that -- I think that came out in my  
10 direct here in the context of -- I was just trying to  
11 create a little bit of record. They tried to find the  
12 owner of the car. They couldn't so they towed it.  
13 They had to search it. I don't think we need to go  
14 into that at trial.

15 THE COURT: You can instruct -- one, it appears  
16 that he's not going to ask that line of questioning.  
17 He can instruct his witnesses not to go down that  
18 path.

19 MR. O'LEARY: I didn't object today because it's a  
20 hearing. I do think it's improper.

21 THE COURT: The rules of evidence are a little  
22 different in a hearing. Anything else?

23 MR. O'LEARY: Nothing.

24 THE COURT: All right. On the issue of the --  
25 well, let me do this. I will look at some law on the

1 stolen gun.

2 MR. THOMAS: I can hand you that Pennsylvania  
3 case I cited earlier just for your review.

4 THE COURT: If you will hand that up.

5 MR. THOMAS: It's just one little paragraph.

6 THE COURT: Give me the name. I use Google  
7 Scholar.

8 MR. THOMAS: Commonwealth versus Parker. It's 847  
9 A.2d 745. It's a 2004 Pennsylvania Superior Court  
10 case.

11 THE COURT: I will take a look at that issue.  
12 Let's be back in here about twenty after and we will  
13 deal with that issue at that time.

14 Is there anything we need to deal with from the  
15 State?

16 MR. THOMAS: I am good.

17 THE COURT: From the defense?

18 MR. O'LEARY: No, Your Honor.

19 MR. THOMAS: My opening will be 45 seconds maybe.

20 THE COURT: Okay. And then who is your first  
21 witness?

22 MR. THOMAS: Lieutenant Breeden would be my first  
23 witnesses. He's working nights and Austin can come  
24 back in the morning.

25 THE COURT: We should be able to do all that and

1 get Lieutenant Breeden in before we break for the  
2 evening. All right.

3 (WHEREUPON, there was a brief recess.)

4 THE COURT: Is State ready to proceed?

5 MR. THOMAS: The State is ready.

6 THE COURT: Defense ready?

7 MR. O'LEARY: Ready, Your Honor.

8 THE COURT: Let me address the issue on what  
9 evidence is allowed in as far as the possession of a  
10 stolen pistol, handgun.

11 The most recent case, State v Michael Smith, a  
12 Supreme Court case reported in 2020 involved a  
13 shooting down in the Five Points area of Columbia.  
14 The defendant in that case got into a dispute with an  
15 individual. Pulled out a weapon and shot and it was a  
16 transferred intent. He missed the intended target and  
17 hit the victim. That defendant in that case was  
18 charged with attempted murder and a host of other gun  
19 related charges including possession of firearm by a  
20 person convicted of a felony and also the footnote  
21 indicates was also charged with the unlawful  
22 possession of a stolen handgun. The judge directed a  
23 verdict on the possession of a stolen handgun even  
24 though the defendant was also charged with a felony,  
25 possession of a -- unlawful possession of a pistol and

1           that ruling by Judge Hood in directing the verdict and  
2           the facts of that case was not appealed.  However,  
3           it's interesting the Supreme Court did note that in  
4           their footnote eight, that Smith, the defendant, was  
5           also indicted on a fifth gun charge, possession of  
6           stolen handgun.  However, the trial court later  
7           granted Smith's motion for a directed verdict on this  
8           charge because the State did not present any evidence  
9           Smith knew that he was in possession of a stolen  
10          firearm and then they site 16-23-30 (C) a person shall  
11          not knowingly -- and they emphasis knowingly --  
12          possess any stolen handgun.  And so I think applying  
13          the way the Supreme Court has viewed that particular  
14          case in this case, this case we don't even have the  
15          charge of, one, the defendant being charged with the  
16          unlawful possession because of a prior felony.  What  
17          was presented to the court is that he had a conviction  
18          for domestic violence.  Under the federal law he would  
19          not be allowed to have a handgun but he was not  
20          charged of that and so, based on what I see is their  
21          analysis of that statute, what has been presented so  
22          far, allowing the officer to testify that this  
23          defendant was not allowed to be in possession of a  
24          handgun I'm not going to allow that in.  All right.

25               MR. THOMAS:   In light of that ruling the State

1 would withdraw that indictment and just go forward on  
2 the PWID and the unlawful carry.

3 THE COURT: All right. Thank you. I think that  
4 does clean it up. Again, my analysis is based on the  
5 application of State v Michael Smith, it is 430 S.C.  
6 226 (2020) 845 S.E.2nd 495.

7 All right. That leaves us with on possession with  
8 intent to distribute crack cocaine and the unlawful  
9 carry of a pistol.

10 MR. THOMAS: And I'm assuming based on that, Your  
11 Honor I can ask Officer Breeden does Ramon Hope have a  
12 concealed weapon's permit and he can answer no. That  
13 be acceptable.

14 I just don't want to ask that question and ring  
15 that bell.

16 THE COURT: Well, Mr. O'Leary I will hear you on  
17 that.

18 MR. O'LEARY: Judge, I really don't think he  
19 should be allowed to ask that particular question that  
20 way. It just suggests so many other things when he  
21 opens about having permits. The burden is on them to  
22 prove that he doesn't have it and I just don't think  
23 it can come from the word of the officer himself.

24 THE COURT: Well --

25 MR. THOMAS: Actually, Your Honor, the case law

1           on that particular statute says that -- I don't know  
2           how, but it says basically it's actually his burden.  
3           All I have to show is that he possessed it on or about  
4           his person and it's the defendant's burden to show  
5           that he meets one of the I think it's 16 enumerated  
6           exceptions.

7           THE COURT: Well, what you told me the evidence is  
8           going to be is that they found the handgun under the  
9           driver's seat of the car that he was driving and your  
10          evidence is going to be that he had dominion, control  
11          and custody and he's in possession. Certainly all  
12          that is admissible. Whether he had a concealed  
13          weapon's permit or not have a concealed weapon's  
14          permit I'm not going to allow that in. I agree with  
15          Mr. O'Leary.

16          Now, if the door is open for some reason -- I  
17          mean, your position would be any time somebody has a  
18          handgun on them they have to -- and they come to Court  
19          -- they would have to offer proof that they had a  
20          concealed weapon's permit.

21          MR. THOMAS: I think -- and I was also confused by  
22          that because that seems to be sort of going against  
23          the idea that the defendant has no burden. That's  
24          what the case law on that section says.

25          THE COURT: And I haven't looked at the case law,

1 but I assume that the burden would be that they would  
2 have to prove -- is it that they have to prove they  
3 had legitimate permit?

4 MR. THOMAS: I think it's yeah, they have the  
5 burden.

6 THE COURT: It's not that they did have a permit.  
7 I'm not going to allow that in. All right.

8 MR. O'LEARY: Thank you, judge.

9 THE COURT: All right. Anything else before we  
10 bring the jury in?

11 MR. O'LEARY: No.

12 THE COURT: All right. Then you all need to  
13 refresh yourselves before we get started? Are you all  
14 ready to go?

15 MR. THOMAS: I'm good.

16 THE COURT: You good?.

17 MR. O'LEARY: I'm good.

18 THE COURT: Let's bring the jury in.

19 (WHEREUPON, the jury enters the courtroom.)

20 THE COURT: Thank you ladies and gentlemen, we  
21 appreciate your promptness. With that we are ready to  
22 start this trial. The first thing that we do to start  
23 this trial is madam clerk will issue the oath. So  
24 madam clerk, if you'll swear the jury in.

25 THE CLERK: Please stand and raise your right

1 hand. You shall well and truly try and true  
2 deliverance make between the State of South Carolina  
3 and the defendant at the bar who you shall have in  
4 charge and a true verdict give, according to the  
5 evidence and the law. So help you God. Please  
6 respond by saying I will.

7 (Jurors respond, I will.)

8 THE COURT: Thank you. You may be seated. Ladies  
9 and gentleman of the jury, we're getting ready to  
10 start the case of the State versus Ramon Rodrigo Hope.  
11 I have two indictments that are presented to you for  
12 trial; Indictment 2020-GS-46-577, an indictment for  
13 possession with intent to distribute crack cocaine.  
14 Indictment 2020-GS-46-579 is an indictment for unlaw  
15 carrying of a pistol.

16 In just a little bit after I give you my  
17 preliminary instruction, the lawyers will be given an  
18 opportunity to make an opening statement to you. When  
19 they give that opening statement that is not evidence  
20 in the case, but that's their analysis of the case and  
21 the way they view the case. But it is not evidence in  
22 the case. Once they finish their opening statements  
23 then the State will be given an opportunity to present  
24 whatever witnesses they have to prove their case. I  
25 think probably where we'll get together is hopefully

1 we'll be able to have opening statements in a little  
2 bit and you should be able to -- we should be able to  
3 have at least one witness before we leave for the day.

4 The indictments that are before the Court are  
5 simply charging papers. The indictment themselves are  
6 the fact that an individual has been charged with a  
7 crime. It is not in any sense evidence of any of the  
8 allegations against the defendant.

9 In this particular case, the defendant has plead  
10 not guilty to each of those indictments and therefore  
11 the State has the burden of proving each of the  
12 elements of each of those offenses beyond a reasonable  
13 doubt. It will be your duty, ladies and gentleman to  
14 decide whether the State has met that burden. Your  
15 purpose as jurors is to find and determine the facts  
16 in the case. You're the sole judges of the facts. If  
17 at any time I make any comment regarding the facts you  
18 must disregard that comment from the Court. You're to  
19 determine the facts from the testimony you hear and  
20 the other evidence introduced in court. It is up to  
21 you to determine the inferences which you feel maybe  
22 properly drawn from the evidence. Again, as I  
23 stressed earlier, you're role is to find and determine  
24 those facts based on the evidence that you hear in  
25 court. Not from any other source.

1           The law that makes you the judges of the facts  
2           makes me the judge of the law. That is the law you  
3           are required to follow in this case. You have to  
4           accept the law even though you may disagree with it.  
5           I can't tell you what the facts are and you can't  
6           determine on your own what the law is. You take the  
7           law as the Court gives it to you.

8           There are going to be times in this trial when  
9           lawyers may object and we may be able to deal with  
10          those objections immediately here in the courtroom.  
11          On the other hand we may need to send you out to take  
12          care of particular objections. I ask that you not  
13          hold that against the attorneys. They're simply doing  
14          their job and just when they make those objections  
15          there maybe issues that we have to take up outside of  
16          your presence. That's because my job is to determine  
17          what the law is and what the procedure is. We will  
18          need to do that sometimes when you're not here in the  
19          courtroom. On the other hand I may call them up here  
20          at the bench. We maybe able to resolve the issue and  
21          discuss it briefly without you hearing that. But  
22          again, those are all issues of law. You're not to  
23          consider any of that. You have got to decide this  
24          case based on the evidence presented in the courtroom.  
25          You can't leave here -- I'm instructing you, do not

1 leave here this evening and go home tell whoever  
2 you're staying with, look up in the computer to figure  
3 out what you think might have happened in the case or  
4 try to resolve issues or answer questions about the  
5 law in your mind. That is not allow. Again, we're  
6 confined to what we see and hear in this courtroom.

7 Are you all allowed to have your cell phones in  
8 the jury room. (Jurors shake their heads no)

9 Okay, if you have emergency or something and you  
10 need to use a cell phone, just let one the bailiffs  
11 know. They will take care of and get that to you.  
12 Again, you're not to have those in the jury room.  
13 Temptation to use those sometimes is to great.

14 There should not be any -- I don't anticipate any  
15 news reports about the case. However, if you're made  
16 aware of that please don't pay any attention to those.  
17 Don't read them. Don't listen to them. No one is to  
18 to contact you about the case. If anybody says  
19 something to you about the case then you need to let  
20 the bailiff know and he will bring that to the  
21 attention of the Court immediately and we'll deal with  
22 that.

23 It's important that you keep an open mind. Not  
24 decide any issues in the case until all the evidence  
25 is in and I have instructed you on the law. At that

1 point you can retire to the jury room and decide the  
2 issues based on the facts that you find them to be and  
3 the law as I give that to you. It's your solemn  
4 responsibility to determine the guilt or the innocence  
5 of the defendant and your verdict must be based solely  
6 on the evidence that's presented to you at trial. As  
7 I said earlier, in a moment the solicitor is going to  
8 make an opening statement.

9 Do you all need to address the Court?

10 MR. O'LEARY: Your Honor, misunderstanding as to  
11 the issue of sequestration.

12 THE COURT: We'll deal with that later. In just a  
13 moment the solicitor is going to make an opening  
14 statement and once he has made his opening statement  
15 the defense may if they wish to make an opening  
16 statement as well.

17 In determining what the true facts are in this  
18 case, you as jurors must decide whether or not the  
19 testimony of the witnesses are believable. It's going  
20 to be my responsibility to rule as a matter of law  
21 whether certain is admissible at all or not, but once  
22 testimony is admitted whether or not you believe is  
23 solely for you to determine. In deciding whether to  
24 believe a witness you have the right to consider the  
25 interest of any witness, the bias of any witness, the

1 prejudice of any witness, the opportunity for the  
2 witness to have seen the matters and things about  
3 which the witness may testify and the way the witness  
4 acts on the stand.

5 You have a right to consider anything that's in  
6 the record that will help you evaluate the testimony  
7 of witnesses. That's means it's your duty to pay  
8 close attention to the witnesses, to observe them,  
9 listen to them and pay close attention to the  
10 attorneys and the Court.

11 Tomorrow morning when you come in, before you come  
12 back in the courtroom, I am going to ask that you  
13 elect a foreperson from among yourselves. The  
14 foreperson has no greater say in what goes on, the  
15 outcome of a particular case. The foreperson is  
16 certainly needed by the Court for the Court to be able  
17 to communicate back and forth to the jury and to  
18 follow some of the instructions. But when you do that  
19 in morning, before you come back when you come back in  
20 if the foreperson will just take this end seat on the  
21 front row and maintain that seat throughout the rest  
22 of the trial. The two alternates if you all will  
23 continue to maintain those last two seats up on the  
24 back row there on the jury box. Everyone else is free  
25 to sit wherever you want to. Wherever you're

1 comfortable in the jury box. However, just be sure  
2 the foreperson is there and the alternates are in the  
3 two seats on the end. You can bring water in and out  
4 of the courtrooms. Certainly we have water available  
5 to us. You all can feel free to do that. I rather  
6 you not bring soft drinks or coffee in the courtroom.  
7 We try make an effort to keep this place as clean as  
8 we can. Tax payers spent a whole lot of money on  
9 these courtrooms so leave your coffee or your soft  
10 drinks back in the jury room, but feel free to bring  
11 any water with you. We'll generally try to go about  
12 an hour, hour and a half before we take breaks.  
13 However, if at any time during the course of the trial  
14 you need to take a break just simply raise your hand  
15 and be sure either I see that or one of the bailiffs  
16 see you and we will excuse everybody. We don't allow  
17 one person to go out. Everybody goes out at the same  
18 time. But just let us know if you need to take a  
19 break. We certainly understand that. We are not in  
20 any hurry to try this case. However, on the other  
21 hand we like to be as efficient as we can and have the  
22 case move along as efficiently as we can.

23 With that anything further as far as preliminary  
24 instructions from the State.

25 MR. THOMAS: Nothing from the State, Your Honor.

1 THE COURT: From the defense?

2 MR. O'LEARY: Nothing from the defense, Your  
3 Honor.

4 THE COURT: Lawyers approach.

5 (WHEREUPON, there was an off the record  
6 discussion.)

7 THE COURT: All right. Thank you. Ladies and  
8 gentleman I think we are ready for opening statements.  
9 Solicitor.

10 MR. THOMAS: Thank you, Your Honor. May it  
11 please the Court.

12 THE COURT: Yes.

13 MR. THOMAS: Ladies and gentlemen of the jury, on  
14 September 27th of 2020, Ramon Hope, around four a.m.  
15 in the morning came speeding down Black Street in the  
16 city of Rock Hill and he happened to drive by a  
17 lieutenant with the Rock Hill Police Department who  
18 was sitting there conducting patrol. And when he saw  
19 him the lieutenant tried to it get in behind him and  
20 pull him over. Talk to him. But he didn't make it.  
21 The car got out ahead of him and ended up pulling into  
22 a parking lot. A business that is closed. It's four  
23 a.m.. So the car pulls into the parking lot.  
24 Lieutenant Breeden gets out of the car. Sees the  
25 driver of the car get out of the car and then that

1 driver takes off running and Lieutenant Breedon  
2 doesn't catch him. Goes back to the car. It's left  
3 running. Just sitting with the door opening in the  
4 parking lot at four a.m.. So they decide they got to  
5 tow the car. Before they get around to that they go  
6 through it and they find a couple of things. First  
7 thing they find is what turns out to be some crack  
8 cocaine and it's on the ground outside of that car.  
9 They collect that. The other thing they find is a 45  
10 caliber handgun that's located under the car seat,  
11 under the driver's seat. And that's really about as  
12 simple and as straight forward as this case is. It's  
13 going to be fairly short. You'll not hear from a lot  
14 of witnesses because that's the long and short of it  
15 is they found two and a half grams of crack cocaine  
16 and a handgun in that car, and so that's why Ramon  
17 Hope sits here today charged with possession with  
18 intent to distribute crack cocaine and unlawful  
19 carrying of a pistol.

20 You're going to hear a description of what those  
21 charges mean, what the law is, what the elements of  
22 those crimes are. But it's fairly straight forward.  
23 You'll hear the words, it's called possession with  
24 intent to distribute crack cocaine. It's possession.  
25 Did he have some crack cocaine that he intended to

1 distribute. So you will hear evidence about that.  
2 Unlawful carrying of a pistol. Did he have a pistol  
3 that he was carrying not in compliance with the law.  
4 You're going to hear some testimony about that. And  
5 that's what we are going to do over the next several  
6 hours and tomorrow is, we're going to hear that  
7 evidence. You will get to hear from witnesses in this  
8 stand. You will get to see some exhibits. Maybe some  
9 some videos, some pictures. Maybe see the crack. And  
10 then at the end of the day you are going to get a  
11 chance to go back into that jury room and you get to  
12 deliberate. And you're going to take back there with  
13 you your common sense, your life experiences. That's  
14 why we pick the 12, 14 of you to sit here today and  
15 you're going to get to render a verdict in this case.  
16 And my job in this courtroom is to give you the tools  
17 with which you can render that verdict. To put the  
18 witnesses up. To let you hear the evidence. To let  
19 you see the evidence. And then you get to go back  
20 there and your job is going to be review everything.  
21 Review the law. Review the evidence and find what the  
22 facts are in this case. And it's really that simple  
23 and straight forward.

24 The law is not as complicated as we think it is.  
25 It's common sense. I just ask that you pay attention.

1           That you listen closely to what the witnesses say and  
2           that if you do that you will render the correct  
3           verdict in this case.

4           Thank you.

5           THE COURT: Thank you Mr. Thomas. Mr. O'Leary.

6           MR. O'LEARY: Ladies and gentlemen of the jury,  
7           I'm sorry if I speak a little loud. My voice is  
8           messed up. I had surgery and they pulled the tube out  
9           and I lost my voice.

10          You know the judge was right today when he said  
11          it's been about year since we've done a trial. I  
12          think I had one in two years and this is sort of all  
13          new experience for us and I'm sure it's a new  
14          experience for you all. Let me just start off by  
15          saying it is pleasure to represent Ramon Hope. He is  
16          43 years old today. Not today being his birth date,  
17          but he is 43. And he's been charged and we are here  
18          because he says he is innocent. He says he is not  
19          guilty.

20          Now, let me just mention just a few things. The  
21          burden of proof is on the State to prove beyond a  
22          reasonable doubt that he did what they accused him of.  
23          That's what the rule is. That's how the system works.  
24          That's their burden. Now what you are going to hear  
25          today and probably starting today going into tomorrow.

1 He's basically right about what occurred. I have some  
2 variation on that. But what occurred was Officer  
3 Breeden was in a patrol car and he was patrolling  
4 about 4:15 or 20, in the morning and he's on the phone  
5 with a supervisor talking about, you know -- find out  
6 a motorcycle accident that involved one of the  
7 officers or relatives of one of the employees. And  
8 while he's on that phone call with his major, he  
9 observes a vehicle go by. Now, he doesn't know really  
10 what is in that vehicle. Whether there's one, two,  
11 three people doesn't know. But the vehicle goes by  
12 and he pulls out I believe from Black Street on and he  
13 goes down the street to follow that vehicle. Well,  
14 there's nothing on the street. Whatever was on that  
15 street is no longer there. So he proceeds ahead and  
16 he sees a light to the right and he pulls into that  
17 parking lot that he says. Now, when he pulls into the  
18 parking lot -- and remember, this is 4:15 or 20. It  
19 varies in the morning here. It's obviously dark. And  
20 you will see that the weather that day was actually  
21 foggy too. And what happens is as he pulls in he sees  
22 an unidentified male next to the vehicle with the  
23 lights on. Now that man is already out of a vehicle.  
24 Whoever it is. Maybe two or three. Who knows. He  
25 pulls in. He observed that person for two to three

1 seconds and the man runs into the woods. The officer  
2 parks his car. Hangs up obviously the phone. And he  
3 chases this person on foot and never catches him.  
4 That's basically what happens. Never catches him.  
5 The officer then comes back to that vehicle and he  
6 checks the vehicle out. He looks to see what's in it.  
7 And as he said, the officer supposedly found a weapon  
8 under the seat. Whose weapon, what type of weapon, se  
9 know. He checks that and at the same time he sees on  
10 the ground what he thinks is crack cocaine. He says  
11 crack. Now, it hadn't been analyzed so nobody knew at  
12 that point what it really is. And other officers come  
13 and assist him and they search the car. And Officer  
14 Breeden who is at the scene now. After the foot chase  
15 he comes back to that vehicle and he's checking the  
16 car out. Other officers come in to the system and  
17 they retrieve a small amount of what later turns out  
18 to be crack that's on the ground. They take  
19 fingerprints from the gun. They take fingerprints  
20 from the door of the car and from the wheels of the  
21 car and from the door frame of the car and that's  
22 basically it. That is on the 29th of October. Excuse  
23 me. September. And what happens is four or five days  
24 go by and on the second of the next month they get a  
25 warrant for my client.

1           Now when he saw that man there, that unidentified  
2 man he does not know who it is. It's a two second  
3 observation that we are hearing.

4           Now you'll find when the officers testify they'll  
5 say, well, I picked up this crack. I found it with a  
6 little piece of bag or something. And they'll say  
7 they found a gun. And then they'll say that they  
8 found a print on the magazine's part of the gun. This  
9 that was apparently under the seat of the vehicle, the  
10 driver's vehicle. It's not his vehicle. Officer  
11 doesn't know who he is, but in those two or three  
12 seconds -- two to three seconds -- and we'll show you  
13 the pictures of it -- that is what they based the  
14 warrant on to arrest him. So on the 2nd of the next  
15 month they get the warrant and four days go beyond the  
16 2nd, goes to the 6th, and on 6th my client is arrested  
17 on those warrants. He's arrested at school picking up  
18 a child. He's pulled from the car. Thrown on the  
19 ground and arrested. And then ultimately he gets a  
20 bon and he has been out. This is in 2020. This has  
21 been two years. It's a long time.

22           We're here because he didn't do it. But they want  
23 you on that two second observation where the officer  
24 initially he doesn't know who it is. Period. Maybe I  
25 don't know. From that we are here.

1           Now, let me just say a couple of things. This is  
2           important. What's really important, I think you learn  
3           as you get older. I graduated from college, the  
4           Citidel in 1966. So I'm and old dude. Okay. I  
5           realize that. You get down the line you're at the old  
6           end of the spectrum -- how important the system is.  
7           The system is the best system in the world. It's a  
8           system that each one of you have to be convinced  
9           beyond a reasonable doubt that whoever is in front of  
10          you and being tried that the State proves whatever it  
11          is they want. They have to prove it. You have the  
12          ultimate decision. Now the thing that's interesting  
13          that I think is important to note, that not all  
14          decisions of arrest are correct. Not everybody that's  
15          in that state prison is guilty, but they get  
16          convicted. It's important that you take -- it's a  
17          short case, but it's an important case. It's an  
18          important case because it determine the future of my  
19          client. I've only been on a jury once and they  
20          through me off at the very beginning. So, I never  
21          really had that experience. But when you go back  
22          there the judge will give you the law. He'll charge  
23          you the law and I tell you, I taught law school for  
24          several years and problem is it's hard to listen to  
25          something for the first time and really comprehend it.

1 Because you all are going to hear it and interpret it  
2 in a little different way. That's why you have jury  
3 deliberations. The judge will give you the law. You  
4 take that law and you apply it to what you heard in  
5 this courtroom and what you see. The decision as to  
6 the credibility of any witness, any witness, is your  
7 decision. That's for law enforcement, for civilians,  
8 for whoever. That credibility question is going to be  
9 left to you to make a decision. Is it possible the  
10 officer in this case made a mistake in that two  
11 seconds. That's what you're going to have to decide.  
12 And I say this in all honesty, that this man is a hard  
13 working man who's here to tell his story. That burden  
14 remains on them and I ask that you listen carefully  
15 today to the judge and to the charge in particular  
16 when you get to that point. Listen carefully. You go  
17 back and then after you designated a foreman you  
18 discuss it and it has to be unanimous verdict. And it  
19 has to be beyond a reasonable doubt. You say what's a  
20 reasonable doubt. A reasonable doubt has changed in  
21 it's definition since I entered law school back in I  
22 think '68, '69. The law is on reasonable doubt is a  
23 doubt that you have a reason. It causes one to  
24 hesitate to act. Now I think when you hear the facts  
25 you're going to say, it really boils down in this case

1 to one fact; the observation in two seconds, in the  
2 dark, in the fog, at four in the morning. That's what  
3 it is going to boil down. That's going to be your  
4 decision and it's going to be after you all hear all  
5 of the evidence. And on behalf of my client, his  
6 family and my partner here, we really thank you for  
7 your time. Its tough to come in. It's really tough  
8 to be in a empty courthouse accept for one jury going  
9 on. But it's a pleasure to be here and it's honor to  
10 be here in front of any court regardless of what a lot  
11 of people think. It is an honor. And you got a  
12 tremendous honor to be able to make decisions in this  
13 court and so we thank very much for that and for your  
14 time an effort and hopefully it will be a relatively  
15 short case for you. Hopefully tomorrow my voice will  
16 be better. But we really appreciate your time. Thank  
17 you.

18 THE COURT: Thank you Mr. O'Leary. Mr. Thomas  
19 call your first witness.

20 MR. THOMAS: State calls Lieutenant Anthony  
21 Breedon to the stand.

22 ANTHONY BREEDON, called as a witness, having been  
23 duly sworn by the clerk, was examined and testified as  
24 follows:

25 DIRECT EXAMINATION

1 BY MR. THOMAS:

2 Q Lieutenant Breeden, where do you work?

3 A Rock Hill Police Department.

4 Q And how long have you worked there?

5 A This is my 28th year.

6 Q And what is your current job?

7 A I am a patrol lieutenant assigned to the patrol  
8 division over Charley shift. Over one of patrol shifts.

9 Q I is that I guess a supervisory position?

10 A Yes, sir.

11 Q What kind of training and experience do you have to  
12 have to make supervisory rank?

13 A It varies. Leadership. A lot of experience.  
14 Sometimes I work in street crimes. When I was in the detective  
15 division, traffic for about ten years and then primarily in  
16 uniform on patrol other than those two assignments.

17 Q So you have done a little bit of everything it sounds  
18 like?

19 A A little bit.

20 Q Were you working the night of September 27th, 2020?

21 A Yes, sir.

22 Q What were you doing it around four a.m.?

23 A I was sitting on Black Street. Just what you call a  
24 routine patrol. Sitting in I guess it's little child  
25 development center right there on Black Street near Orange

1 Street. I had pulled over to make a phone call to one of the  
2 command staff. We had a motorcycle collision earlier. I was  
3 waiting to inform him about something like that. I was sitting  
4 in the parking lot and I observed a vehicle pass me going  
5 towards down town on Black Street at a really high rate of  
6 speed.

7 Q What kind of vehicle was it?

8 A It was Dodge Charger.

9 Q What color?

10 A Silver.

11 Q When you say high rate of speed, what is the speed  
12 limit on that street?

13 A Thirty-five.

14 Q In your estimation what was it going?

15 A Well above fifty.

16 Q And what did you do after you saw that?

17 A I pulled out on to Black Street. The vehicle I guess  
18 when it saw me it make a quick right hand turn on Confederate.  
19 I turned out and when I turned on to Confederate I assumed it  
20 either made it to Main Street -- that's a really short block or  
21 I had just lost it because of its speed and then when I turned  
22 on to confederate I immediately saw the vehicle pulled into a  
23 parking lot. I believe it's Family Promises on my right and saw  
24 the vehicle in a parking lot right to my immediate right just  
25 parked.

1 Q And the Family Promise that's a like I guess a business  
2 in Rock Hill or non-profit?

3 A I think so, yes, sir.

4 Q And you said you saw the vehicle parked. Was there  
5 anyone around the vehicle?

6 A As I pulled in behind it there was a male exiting the  
7 vehicle.

8 Q He was getting out of the vehicle?

9 A Getting out of the vehicle.

10 Q That parking lot that was in were there lights? Was it  
11 well light? What was the lighting?

12 A It was ambient light. There was a street light. It  
13 wasn't like it was out in the middle of no where and completely  
14 dark. It was early in morning but there was some ambient light  
15 so you can see through the parking lot, street light or just  
16 various typical in the city ambient lighting.

17 Q Did you have your head lights on?

18 A I had my head lights on.

19 Q Did you ever turn my blue lights on?

20 A No, I didn't because it was not actually a pursuit. I  
21 wasn't going to turn them on until I got the tag. A lot of  
22 times we try to get the tag before we turn them on. That way  
23 you have the tag already before there's a pursuit. I was never  
24 close enough to turn them on until I pulled in behind it.

25 Q So you just pulled into the parking lot behind this

1 car?

2 A Yes, sir.

3 Q Was that the same car you saw speeding by earlier?

4 A Yes, sir.

5 Q You said you saw someone getting out of the car. Could  
6 you describe that person?

7 A It was a black male. Didn't -- like I say nothing  
8 about the clothing stands out now, but I saw him exciting the  
9 vehicle. I indicated -- I told him to stop. At that point my  
10 phone rang back and it was the major calling me. If it was  
11 anybody but a major I probably wouldn't have answered it, but I  
12 had just called him at four o'clock in the morning and I was  
13 just going to tell him to hold up. I was on a stop. And that's  
14 when I had the interaction and told the subject stop. Get back  
15 in the car.

16 Q Did you have opportunity, I guess, to lay eyes on the  
17 face of the person who got out of the car?

18 A Yes, sir. We looked right at each other.

19 Q Is that person in the courtroom today?

20 A Yes, sir, he is.

21 Q Could you identify him for the jury?

22 A It is Mr. Hope seated between his counsel.

23 Q And you said you made eye contact with him?

24 A Yes, sir.

25 Q What did he do after that?

1           A     Took off running.

2           Q     Did you give chase?

3           A     Yes, sir, I did. I had to put my phone back down and  
4 then take off. There's a row of bushes in between where his car  
5 was parked and as you cross back out towards Black Street and by  
6 the time I come around those I didn't see where he had crossed  
7 or gone on Black Street behind the house. It's a lot of  
8 residents. Pretty heavily congested with houses in that area.  
9 You can cross the street, get behind houses or anything pretty  
10 quick. I just didn't see him once I come around the row of  
11 bushes.

12          Q     So I guess -- what did you do after you lost track of  
13 him?

14          A     Well, we put on the radio we were looking for somebody  
15 and then I went back to the car. Officer Austin and his trainee  
16 were arriving to back me up and I gave him instructions on  
17 inventory the car and tow the car.

18          Q     When you got back to the car what condition was the car  
19 in?

20          A     Still in the same condition. Door open. Sitting in the  
21 parking lot.

22          Q     Was it running or had been turned off?

23          A     I don't know if they turned it off at that point or  
24 not. I don't recall that by the time I got back.

25          Q     And after you got back to the car did you -- what did

1   you do with it, just sit with it?

2           A     No, they were there pretty quick and then I ended up  
3   just passing the car over to them and then I actually went back  
4   out and started circulating.  Seeing if -- we were going to  
5   determine whether we were going to set up a perimeter or what we  
6   were going to do as far as whether we were going to continue to  
7   look for the suspect.

8           Q     And I guess did you make the decision to tow the car at  
9   that point?

10          A     Yes, sir.

11          Q     Were you wearing body cam this night when this  
12   happened?

13          A     Yes, sir.

14          Q     I'll show you what has been marked as State's Exhibit  
15   one.  Do you recognize that disc?

16          A     Yes, sir, my initials.  This is the disc that we saw  
17   with my body cam on.

18          Q     So that disc is your body cam?

19          A     Yes, sir.

20          Q     Is that a true and accurate depiction of what happened  
21   in that very brief foot pursuit?

22          A     Yes, sir.

23                   MR. THOMAS:  Your Honor, at this time I move  
24                   State's Exhibit One into evidence and publish to the  
25                   jury.

1 MR. O'LEARY: Judge, no objection.

2 THE COURT: State's One is entered in evidence.

3 (WHEREUPON, State's One, was so marked and  
4 received in evidence.)

5 Q And Your Honor, pursuant to stipulation with the  
6 defense these body cams will be played without any volume?

7 THE COURT: All right.

8 (WHEREUPON, the body cam was played.)

9 Q Lieutenant Breedon, these the first few seconds what  
10 are we watching?

11 A Our body cams -- one of the options that we went to is  
12 when they're activated there's a thirty second back up on it.  
13 Our body cams are constantly active and when we hit record it  
14 backs up seconds prior to that. Being activated it's kind of on  
15 a loop. That way if there was any encounter prior to, there was  
16 interaction that would be captured on the body cam prior to us  
17 turning it on.

18 Q So you turned on when you got out the car?

19 A Yeah, I turn it on when I got out of the car and it  
20 backed up that thirty seconds that I was on the street.

21 Q So at about the thirty second mark is when you would  
22 have turn it on, roughly?

23 A When I step out of the car I would have hit it. That's  
24 where my phone rang.

25 Q That individual getting out of the car who is that

1 again?

2 A Mr. Hope.

3 Q And you are sure of that?

4 A Yes, sir.

5 Q It looks like you're running. What are you doing?

6 A I didn't want him circling back and getting in the car  
7 in case that were to happen.

8 Q That white car there that is that yours?

9 A Yes, sir.

10 Q What would you estimate the distance is between where  
11 you got out of the car and where you observed Mr. Hope at?

12 A Just about two or three car lengths. Two car lengths.

13 Q And how long do you think you had to look him in the  
14 eyes?

15 A Probably two seconds. Give or take.

16 Q And I believe you said that you had Officer Austin come  
17 and inventory the car prior to towing?

18 A Yes, sir.

19 Q Did you do -- I guess as far as what we're here for  
20 today, Officer Austin did all the searching and evidence  
21 collecting?

22 A Yes, sir.

23 Q Did you have an opportunity to observe the evidence --  
24 to like see the evidence after?

25 A Yeah, when he came in and showed me what he had

1 recovered, yes.

2 Q And I'm just going to show you State's eight through  
3 thirteen. I want you to take a look at those and tell me if  
4 that is the evidence that the Officer Austin collected, or  
5 appears to be?

6 A Yes, sir. It was a quantity of crack cocaine and also  
7 a firearm.

8 Q And let me ask you this it. How long did you say you  
9 have been working at Rock Hill PD?

10 A This is my 28th year.

11 Q And you've have made a number of arrests over the years  
12 of people possessing crack cocaine?

13 A Yes, sir.

14 Q Have you had a chance to arrest users of crack cocaine  
15 versus dealers?

16 A Both.

17 Q When you arrest a user, what amount I guess typically  
18 of crack cocaine do they have on them?

19 A Typically a small amount. Typically less than a gram.  
20 Half gram. And they normally have implements to use that --

21 MR. O'LEARY: Your Honor, I will object to this  
22 question. Speculation.

23 THE COURT: I'll sustain the objection.

24 MR. THOMAS: Your Honor, may we approach.

25 THE COURT: Yes, you may.

1 (WHEREUPON, there was an off the record  
2 discussion.)

3 THE COURT: Let's do this. Ladies and gentlemen,  
4 we need to take up an issue outside of your presence.  
5 This will be a good time to take a quick refresher  
6 break. You been here almost 45 minutes or so. I will  
7 have you back in here in a few minutes. Do not talk  
8 about the case. Do not talk about the case. Everyone  
9 remain seated.

10 (WHEREUPON, the jury leaves the courtroom.)

11 THE COURT: All right, Mr. Thomas, I'll be glad  
12 to hear.

13 MR. THOMAS: Your Honor, I have always when I  
14 asked those types of questions of witnesses I've  
15 always tried to qualify them as an expert, but we had  
16 a case that came out, November 24th of '21, State  
17 versus Jonathan Ostrowski.

18 THE COURT: Hold on a minute. Let me bring that  
19 up. All right, I have that in front of me.

20 MR. THOMAS: And basically the issue in that case  
21 it sounds like the solicitor there tried to qualify  
22 the officer as an expert to testify about how the  
23 items that he recovered in the search of that house  
24 could be related to drug trafficking and sort of what  
25 their contemporaneous perception of what they saw

1           during the course of the investigation.

2           So it's my position, I think reading that case and  
3           they said, basically you don't have to qualify the  
4           officer as an expert. Officers don't have to be  
5           experts to testify how -- about how things that they  
6           find are some times used in drug trafficking based on  
7           what they've seen in previous investigations. How it  
8           forms the perceptions of what they see while  
9           investigating appellant. That sort of thing. We have  
10          -- I guess the officer there was trying to argue or  
11          trying to testify about some items that were found.

12          We got State versus Robinson, where officers  
13          testified about how it wasn't typical for a simple  
14          user of crack to have seven rocks of crack at one  
15          time. State versus Cherry. Same thing. They didn't  
16          have any paraphilia with him indicating it was  
17          personal consumption. I guess what I'm getting at  
18          with those questions I'm am trying to give the jury  
19          some evidence of the intent to distribute. We got the  
20          statutory inference obviously, which I have yet to  
21          ask him about which gets us that information in front  
22          the jury. But I think the other information about how  
23          much a user typically has versus what a dealer would  
24          have is relevant to the issue of whether he possessed  
25          it with intent to distribute and that relevance is not

1           outweighed by the prejudicial value because he's  
2           testified to his experience arresting users of crack  
3           cocaine and what they usually have on them and do not  
4           have on them. And I think I can lay the foundation to  
5           qualify him as an expert based on his training and  
6           experience but I don't think that's necessary under  
7           Ostrowski's opinion now.

8           THE COURT: Mr. O'Leary, I'll be glad to hear from  
9           you.

10          MR. O'LEARY: Judge, I think it's speculative.  
11          One, if he has got the weight, the weight is a real  
12          fact. There is no fact to what he's testifying to  
13          now. He's saying based on other cases that this is  
14          what had happened. I think it's unfair and I think  
15          it's highly prejudicial. He's got -- he says by his  
16          own words that he had presumption by the weight. I  
17          think that's obviously admissible, but I don't think  
18          his past experiences with other people in other  
19          locations is relevant. More than prejudicial in this  
20          case.

21          THE COURT: All right. What was the last  
22          question.

23          MR. THOMAS: I asked -- I don't even remember.

24          THE COURT: Let's do this, proffer any testimony.  
25          Questions you have to him. Have a seat Mr. O'Leary. I

1 want to find out what questions.

2 MR. O'LEARY: I'm not sure what he has.

3 THE COURT: We're going to find out right now.

4 MR. O'LEARY: Okay.

5 DIRECT EXAMINATION CONT'D:

6 Q You testified earlier that part of your 28 years of  
7 experience you worked on the street crimes division?

8 A Yes, sir.

9 Q What is street crime division?

10 A We were a unit assigned to the detective division to  
11 supplement narcs with uniformed assistance and detectives and we  
12 were a uniformed division of C.I.D. that enforced high crime  
13 areas and things like that that were high target areas among the  
14 city.

15 Q Was a large part of that narcotics investigations?

16 A A very large part.

17 Q And in the course of those narcotic investigations how  
18 many arrests would you say you have made for I guess what we  
19 call simple possession?

20 A I mean, dozens and dozens for simple possession I'm  
21 sure. I don't know. Maybe more. I don't know how to put a  
22 number but a large, large amount.

23 Q And how many for I guess something what we call  
24 possession with intent to distribute or trafficking?

25 A Probably similar. Maybe a little less on PWID.

1           Q     So you had an opportunity to interact with and to  
2 search users of crack cocaine?

3           A     Yes, sir.

4           Q     And you had the opportunity to interact with and search  
5 dealers of crack cocaine?

6           A     Yes, sir.

7           Q     And in the opportunities you had with simple users,  
8 people who are only possessing the drug for their own  
9 consumption, what sort of things do you normally find with them?

10          A     Pipes, steal wool. Implements. Things that they can  
11 smoke the crack with. Things that they can prepare the crack to  
12 smoke with. Small amounts of crack. Things like that. A stem.  
13 Things to press it in the pipe and steel wool. Things like that  
14 it.

15          Q     And do you normally find those things with people who  
16 are selling the crack cocaine verses using it themselves?

17          A     No, sir.

18          Q     And guns, how many times have you arrested a user of  
19 crack cocaine with a gun?

20          A     I can't -- I don't recall of one, if there was one.

21          Q     And all of that is based on your -- I guess, your  
22 experience and training?

23          A     Yes, sir.

24          Q     Throughout the years. And you had an opportunity to  
25 observe the evidence here and participate in this investigation?

1           A     Yes, sir.

2           Q     And that amount of crack cocaine that you found is that  
3 -- I guess this goes to the ultimate issue so I guess this would  
4 be a question for you as an expert. Is that amount of drugs  
5 that a user would normally have on them?

6           A     No, sir.

7                     MR. THOMAS: I think that's all I have to proffer  
8 on that.

9                     THE COURT: Well, I'm curious. What did he find?

10                    MR. THOMAS: It's two and a half grams of crack  
11 cocaine, Your Honor, and two separate packaging  
12 material types and one big rock.

13                    THE WITNESS: Its right here. (Indicating)

14                    THE COURT: All right. Thank you. Mr. O'Leary.

15                    MR. O'LEARY: Judge, I think it's unfair to have  
16 him speculate that this is a distributor. Obviously  
17 when you have somebody selling they would have money.  
18 They would have a lot of different things. A lot of  
19 packages. There was cocaine -- the crack that was on  
20 the ground were in two separate locations and was in  
21 one bag.

22                    THE COURT: All right. Tell me again, where was  
23 it found?

24                    MR. THOMAS: It was found on the ground, Your  
25 Honor, next to the car. So right outside the door.

1           THE COURT: Well -- and I'm looking at State v  
2           Ostrowski and that was a York County case. I was not  
3           the trial judge. In that particular case they did  
4           allow the -- the Court had allowed to obviously for  
5           the officer to testify what he saw. He can testify  
6           about what he saw. He can testify about the way the  
7           house was. He can testify about what he found it in.  
8           He can testify about what a pipe looks like. He can  
9           testify about what a sandwich bag is and the  
10          significance of a sandwich bag. And the Court stated  
11          that he can testify all about -- all about that and  
12          his experience and knowledge and skill as an officer,  
13          investing officer, with the DEU without attracting the  
14          label of an expert.

15                 In this particular case it appears that what we  
16          have is two baggies. In one bag or two bags?

17          MR. THOMAS: So the one bag is -- and Your Honor,  
18          I'll pass up. This might help you a little bit.

19                 THE COURT: Well, here's the thing. He can  
20          testify to what he saw on the ground. How it was  
21          packaged. But to then allow him to go further to  
22          testify what -- then it becomes speculative what he  
23          determines a dealer is and what a user is which I  
24          think that goes beyond what the law allows him to do.  
25          Certainly that's your argument based on the weight.

1 When there was no other evidence. There was a gun  
2 found in the car and there was a baggy found of crack  
3 outside the car. To allow him to go into testifying  
4 in his experience in other cases how things are  
5 packaged and who's a user and who's a dealer and how  
6 much dealers have and how much users have and whether  
7 they have guns on them or not, I'm not going to allow  
8 him to do that.

9 MR. THOMAS: In that case, Your Honor, I would  
10 proffer him. I think I asked him all the right  
11 questions. I can proffer him as an expert under State  
12 versus Robinson where he can give that opinion on  
13 those ultimate issues.

14 THE COURT: All right. Let's take a quick break.

15 MR. THOMAS: That's 396 SC 577.

16 THE COURT: State v Robinson?

17 MR. THOMAS: Yes.

18 MR. O'LEARY: Judge, my only response to that  
19 would be -- if you want me to give you my response to  
20 that what he just said. If he had found multiple  
21 baggies and things like that I would agree with that.  
22 But I don't think you should allow any witness to  
23 speculate as to what this person or that person is  
24 going to do with that particular amount of drugs.

25 THE COURT: All right. Let me take a short break

1 and we will be back in about five minutes.

2 (WHEREUPON, there was a brief recess.)

3 THE COURT: We are back on the record and I have  
4 looked at State versus Jonathan Ostrowski and I think  
5 the solicitor is correct. I'm going to deny the  
6 motion, or overrule the objection to the testimony.  
7 In Ostrowski, the officer can testify to what he saw,  
8 how he perceived it in this particular case, I do  
9 caution -- I don't think that he can make broad  
10 definitive statements about. He can base it on his  
11 experience, what he sees and observes and an  
12 indication of what that has been in the past. He does  
13 not have to be qualified as an expert. They go  
14 through a pretty good analysis of federal rule 701 and  
15 what the officer can testify to and testifying on  
16 their experiences.

17 MR. THOMAS: And I think the compromise is to sort  
18 of for me to clean that up a little bit, instead of  
19 just asking -- I think the question I can ask is, you  
20 know, when you typically arrest a user of crack  
21 cocaine do they have two and a half grams on them and  
22 he can answer that.

23 THE COURT: I'll rule that's appropriate.

24 MR. THOMAS: I think that's all I need.

25 THE COURT: All right. And I do think that's an

1 area we're trying to determine what the limits are as  
2 lawyers and courts. But clearly he can offer that lay  
3 opinion based on he's been an officer for 28 years.  
4 He's made thousands of arrests. He can testify about  
5 what he observed and what he believes that would lead  
6 to in this particular case.

7 All right. Let's bring the jury in.

8 (WHEREUPON, the jury enters the courtroom.)

9 THE COURT: All right, thank you, ladies and  
10 gentlemen. (Noted handed to the judge.) All right.  
11 The jury got a little bit ahead of me. They elected a  
12 foreperson and so Mr. Kuiper, is that correct?

13 JUROR: Yes.

14 THE COURT: Juror number 151 is seated in the end  
15 chair. He will be the foreperson for the remainder of  
16 this case. Again, the foreperson's duty he has no  
17 greater say about the ultimate issue in the case than  
18 any other juror. The foreperson's role is to  
19 communicate with the Court and to be sure that the  
20 instructions that the Court gives are followed. With  
21 that we are prepared to go forward. Mr. Thomas, ask  
22 your next question.

23 DIRECT EXAMINATION CONT'D:

24 Q Lieutenant Breeden, circling back around. You say you  
25 have been working as a law enforcement officer for how long?

1           A     Almost 30. Twenty-eight in Rock Hill.

2           Q     And I think you said earlier that part of that was part  
3 of the street crimes unit?

4           A     Yes, sir.

5           Q     What was the street crimes unit?

6           A     We were a uniform division that was assigned to the  
7 detective division to help supplemental detectives in narcotics,  
8 D.E.U. in their investigations and working in some of the higher  
9 crime, high problem, high target areas in the city.

10          Q     So a lot of narcotic work with that?

11          A     Yes, sir.

12          Q     And did you have the opportunity to arrest people that  
13 you classify as users of crack cocaine?

14          A     Yes, sir.

15          Q     How many of those would you estimate?

16          A     Hundreds. I don't know. It's a lot.

17          Q     When you would arrest someone that was a user that  
18 would have some for like personal use on them, would two and a  
19 half grams be a typical amount that you would see on a user?

20          A     No, sir.

21          Q     Okay. What would you normally find in addition to any  
22 cocaine, crack cocaine?

23          A     You find pipes. Items to smoke it with. Items to  
24 prepare it to smoke with, steel wool, stems. Things like that.  
25 If they're going to use a can or glass pipe or metal pipe or

1 something to that degree.

2 Q So paraphernalia?

3 A Normally, yes, sir.

4 Q And Officer Austin did all searching and inventory in  
5 this case?

6 A Yes, sir.

7 Q Did you have -- after the night of September 27th, did  
8 you have an opportunity to interact with Mr. Hope after that?

9 A Yes, sir.

10 Q Just briefly where was he when you saw him?

11 A In the jail. I was coming in to work and I was notified  
12 that he had been picked up on our warrants.

13 Q Did you go, I guess, into the jail at that point?

14 A Yes, sir. I walked back into the jail. He was in the  
15 holding cell.

16 Q Did you say anything to him at that point?

17 A I just turned the corner and saw him and he looked at  
18 me. Called me by my nickname and said, you know, why did you do  
19 this to me, and I said what are you talking about. And I said,  
20 I didn't put the charges on you. Why did you run from the car?  
21 And he said, who said I was even in the car. Well, I looked  
22 right at you and he just put his head down and sat down.

23 Q But you didn't ask him -- you didn't ask him any  
24 questions about that or anything?

25 A No, I was outside the cell. It was just a brief

1 encounter.

2 Q But he looked at you and what did he say?

3 A He called me Bars. It's a name that I have been called  
4 in Rock Hill for a while. I use to have a push bumper on my  
5 patrol car. It's just a nickname.

6 Q And then what did he say to you?

7 A Why did you do this to me?

8 Q Did you actually -- was your name on any of the  
9 warrants or anything he would have been served at that point?

10 A No, I think that it would have been -- I think Austin  
11 and Marco did everything and were the affiants on it. I just  
12 would have been maybe listed in a paragraph or something, but  
13 not in great detail. I didn't really pay attention to the  
14 warrants.

15 Q And that was I guess your last interaction with this  
16 case?

17 A Yes, sir.

18 Q I will let you -- thank you so much Lieutenant Breedon,  
19 I will let you answer any questions that Mr. O'Leary may have.

20 THE COURT: Mr. O'Leary.

21 MR. O'LEARY: I appreciate it.

22 CROSS EXAMINATION

23 BY MR. O'LEARY:

24 Q Officer, why did you go to the jail that evening? I  
25 think that would have been about the 6th?

1 A I think so.

2 Q Why did you go in the jail?

3 A Just to go back.

4 Q Did you go in to see him?

5 A Yeah, I just went back there to see him in the jail.

6 Q So you went back there to specifically see him?

7 A As I recall, I think so. Yes, sir.

8 Q Because you go to work nights. You wouldn't go there?

9 You would normally go out on patrol, correct?

10 A Well, I'm there considerably earlier. There are times  
11 I go into the jail to check with the jail staff to see if we  
12 transports. There are other reasons that I go in the jail. I  
13 check with the jail staff. We have the same jail staff that  
14 works with our shift go. I go in dispatch. I go in the jail  
15 because we are all part of the Charley shift. So there are  
16 times I go in the jail outside of seeing particular inmates.

17 Q And you went in there that day to see him?

18 A I think so. They told me he was back there.

19 Q To get something incriminating?

20 A Do what now?

21 Q To get something incriminating that he might say or do?

22 A No, sir. I didn't need anything incriminating.

23 Q Okay. Now, let's talk about the night you are on  
24 patrol and you pull into the parking lot. You said that the --  
25 as you pulled in you saw the vehicle, right?

1 A Yes, sir.

2 Q And the vehicle's door was open?

3 A As I pulled in he was getting out.

4 Q Was he out standing or...

5 A I think he was still by the driver's side. I leaned  
6 back in to put my -- I told him to stop. I went to put my phone  
7 back. As I seen him he kept walking towards the front of the  
8 car. Then it was obvious that he wasn't going to stop. I told  
9 the major I had to go. Through my phone down and I took off.

10 Q When you pulled in, could there have been a second man  
11 there with him?

12 A No.

13 Q You don't know?

14 A No, because I didn't -- the camera is still -- I'm  
15 still sitting in my car but I'm looking to my right.

16 Q Let me show you this. That's a picture -- it's a  
17 picture taken off of the video itself.

18 A Yes, sir. Yes, sir.

19 Q What does that show, the door is closed, correct?

20 A Yeah, it does.

21 Q And is the subject -- can you see the subject in there?

22 A No, but like I said, sir, as I'm a driving up to the  
23 parking lot my body cam can't turn with me. I can turn my head  
24 and see somebody in the car and as I'm getting out of my car I  
25 see him get out of the driver's side of the car that you're not

1 going to see until I get out of the car. I can see the judge  
2 here but until I turn my body cam that way he is not going to  
3 come in view. But I clearly see him as I turn my head.

4 Q So you're saying you saw him but the cam didn't see  
5 him?

6 A Not until I turned my body, no, sir.

7 Q Now, did the person -- you said he look directly at  
8 you, correct?

9 A Yes, sir.

10 Q Was he wearing glasses or a mask or anything?

11 A I didn't see him wearing a mask. I didn't recall that,  
12 but I saw his face.

13 Q Did he have glasses on?

14 A I don't recall if he had glasses on. I don't remember  
15 to that degree.

16 Q And you saw him for about two seconds, correct?

17 A Give or take, yes, sir.

18 Q Take a look at all those pictures just for a second f  
19 you don't mind. Can you tell what the subject is wearing?

20 A Well, you didn't give me a picture of anything of him  
21 in it.

22 A He's in it.

23 Q Oh, their I see. He's in dark clothes. He is right  
24 beside the Ford pickup I see.

25 Q Okay. Can you tell if he is wearing glasses or a mask?

1           A     I can't tell by the video, sir. The video is not as  
2 fair representation as my eyes. You know, when you watch a  
3 pursuit the car appears to be way ahead of you and it's really  
4 not. The camera is not the same depiction of what I see in my  
5 eyes. It's not the same distance. It doesn't look the same.  
6 If they made a video of my camera you wouldn't look like you  
7 look to me standing there right now.

8           Q     You agree with me it only took about two seconds you  
9 had to see him, correct?

10          A     Yes, sir.

11          Q     Then he ran into the woods?

12          A     Yes, sir.

13          Q     And at the time you saw him you were still on the phone  
14 or has you already hung up?

15          A     When I first looked at him I was out of my car and I  
16 said get back in the car. I'm looking at him and then when he  
17 takes off running then I threw my phone in the car to take off  
18 after him.

19          Q     Now, when you wrote a report up did you say -- do you  
20 recall saying you didn't know who it was that night?

21          A     Well, I knew who he was by his face and we later  
22 determined the name and I knew him from multiple dealings with  
23 him over the years, but I just didn't recall his name. There's  
24 a lot of people I know by face and then I'll will see a name and  
25 say, oh, that's who that is.

1 Q And you told the supervisors that that night or whoever  
2 was in charge of the investigation? That you knew who he was?

3 A I was the supervisor that night.

4 Q No, somebody above you. You turned the case over to an  
5 investigator, correct?

6 A No, sir. The D.C.U. went to serve the warrants, but we  
7 were the case. We made the case. There was nobody else besides  
8 myself and Officer Austin that were involved in making the case.  
9 Another unit went and served the warrants on him. But we didn't  
10 pass the case to anybody.

11 Q Who served warrants and when did they do that.?

12 A Violent crimes unit that following week.

13 Q And where was -- who was on that unit that went to  
14 arrest them?

15 A I don't know who went that day but it's three or four  
16 people that were were in unit. Like I said, I didn't go with  
17 them to serve that unit. He was arrested when I came in that  
18 night. I'm on nights. Some of that transpired prior to me  
19 coming in. I was just told that D.C.U. arrested him and that  
20 he was in the jail. I don't know who actually arrested him.  
21 That had nothing to do with this particular case. We had  
22 already made our case by that point.

23 Q Were you aware at some point in time that the unit that  
24 actually arrested him one of those officers was terminated?

25 MR. THOMAS: Objection. Irrelevant.

1 THE COURT: I'll sustain.

2 Q You don't know who those four officers were?

3 A I wasn't there, sir.

4 Q Okay. You were talking about paraphernalia for use and  
5 all that stuff. Do you know what that person that you are  
6 chasing has in their pocket?

7 A Not unless we catch them.

8 Q Okay. You didn't catch them?

9 A Not that night.

10 Q But you found the gun in the car?

11 A Yes.

12 Q Was it his car?

13 A It wasn't registered to him but he was driving it.

14 A Okay. Did you find the gun or somebody else?

15 A Officer Austin and his trainee found the gun. Once I  
16 got back I just asked him to handle it because we didn't know  
17 what was in the car at that point. I was just having him tow it  
18 because we thought it was abandoned vehicle. He conducted the  
19 search and that's when he located the items.

20 A Did you after the that night, did you work the next day  
21 too or did you go off shift or what?

22 A I have to look what the 27th was. We work Monday,  
23 Tuesday. Then off Wednesday, Thursday. Work Friday, Saturday,  
24 Sunday and it is opposite the next week. So I don't know if I  
25 worked. I'm not sure if I worked that next night or not. I can

1 look at the calendar and tell you.

2 Q That's fine. Did you go back -- at some time did you  
3 go back to work and look through your notes or investigative  
4 files to see who it was you think it was?

5 A Not once I identified him, no, sir.

6 Q You identified him how?

7 A Because we found some connections between him and the  
8 vehicle. He was identified and his name was said over the  
9 radio a short time after that almost pretty quick within a  
10 couple of minutes and then it resonated with me, oh, that's who  
11 it was and I immediately recognized and put a name with the  
12 face.

13 Q You said it went over the air. What type of system was  
14 it?

15 A Our radio. We have a -- our computer system we have is  
16 called Zirca central square and every report, every arrest,  
17 everything with anybody in Rock Hill is entered into that  
18 computer. And one of the formats of it is something called link  
19 analysis and if I have John Doe and anybody he's ever been  
20 listed in a report with; witness, defendant, anything  
21 affiliating him with anybody else, if you click that link  
22 analysis it brings up what looks like a -- best way to describe  
23 it is a molecule with the person in the center and basically  
24 lines coming off with each person associated with them. You can  
25 click on that and see what their analysis and what their

1 connection is to that person.

2 We had another officer because he's on another side of town  
3 parked. He's doing a lot of this on his computer while we're  
4 doing the chase, what not. He's one that came over and said  
5 he's has been associated with that car before. It's Ramon Hope.

6 Q You never saw him or anybody drop any drugs, did you?

7 A Not from where I was, no, sir.

8 Q That program you're just talking about, who developed  
9 it? Where did it come from? Do you know?

10 A No, sir. I can turn it on and as long as I don't screw  
11 up the buttons I can use it all night.

12 Q Do you know what the application confidence level is  
13 for that system?

14 A No, I don't know how to work my watch but if I keep the  
15 battery in it it will tell me what time it is.

16 Q Similar to link?

17 A Yes, sir.

18 Q Do you know anything about a program error rate with  
19 that system?

20 A No. To me it's also different if you're talking about  
21 imputing information and if I'm the one inputting it, but if I  
22 can open it up and see an incident report, it's not like it just  
23 says, hey, theirs is a chance that this person knows him. I can  
24 click on that and then pull up an incident report that was done  
25 with documentation of those people associated with it. So it's

1 not just a name that throws out there and says, hey, this guy  
2 might be affiliated with it. I can check that name that pops up  
3 with that car and then go find that report and see how they're  
4 affiliate together. This is not something just that you can  
5 conjecture and say it's programing error. I can confirm it by  
6 looking at report that was entered into the system.

7 Q So you don't know if that system has ever been tested  
8 for confidence levels at all? Accuracy?

9 A I mean, we're an accredited agency. I don't have  
10 anything to do with computers, but I do know that I can't  
11 imagine we wouldn't have a system that was tested and checked  
12 against those type of things.

13 Q Is that system Apple or Microsoft? Do you know  
14 anything about it?

15 A No, sir.

16 Q Okay.

17 A I started in nineties. We didn't even have cell  
18 phones.

19 Q You didn't see him in the car, did you?

20 A I saw him exciting the driver's seat.

21 Q You saw that?

22 A Yes, sir.

23 Q But the video doesn't show that because your head is  
24 going like you said, correct?

25 A I'm looking, but until I step out and turn that's when

1 he's already passing the headlight, passing go the car.

2 Q Now those pictures I showed you -- and I move that they  
3 put into evidence.

4 THE COURT: Hold on hold on.

5 MR. THOMAS: No objection.

6 THE COURT: Let's identify them. Let's have them  
7 marked.

8 Let's do it this way. Put on the record what they  
9 are.

10 MR. O'LEARY: Defendant's exhibits one through  
11 nine.

12 THE COURT: All right State's Exhibit -- I'm  
13 sorry, defense exhibits one through nine are  
14 introduced into evidence without objection. Is that  
15 right Mr. Thomas?

16 MR. THOMAS: No objection Your Honor.

17 THE COURT: In without objection.

18 (WHEREUPON, Defendant's Exhibits one through nine  
19 were entered in evidence.

20 MR. O'LEARY: Exhibit number one, Your Honor,  
21 that's a picture that was taken from the video tape  
22 that the State had. That shows the parking lot as  
23 he's pulling in.

24 Q Number two -- number two, again, as you're pulling into  
25 the parking lot and it shows the car, subject car the officer

1 talked about on the left side?

2 A My door is already opened at that point.

3 Q Pardon?

4 A My door is already open at that point. I'm out of the  
5 car.

6 Q I realize that.

7 A Okay.

8 Q Can you tell me what number three is here?

9 A That's him right in front of the passenger side,  
10 headlight.

11 Q And can you -- can you tell what he's -- how he looks?  
12 Is he looking towards you or away? What do you see their?

13 A In that picture, all I can tell you is he's got a dark  
14 shirt on in that picture but that's also not a fair  
15 representation of what my eyes saw that night.

16 Q I understand that.

17 A Yes, sir.

18 Q But that's what the pictures shows, correct?

19 A Right.

20 Q Okay. What does number four here show?

21 A Now, it looks like he's in between the car and the  
22 truck.

23 Q Can you tell is he still looking at you?

24 A I can't. I really can't honestly tell by that picture.  
25 I see his shirt. I see his pants a little better, but I can't

1 with the leaves and everything else bleeding in I just can't --  
2 I can't tell you what I saw between my eyes and what the camera  
3 is showing you at that point. I can't.

4 Q You don't, officer, by any chance wear contacts, do  
5 you?

6 A Sir?

7 Q Do you wear contact lenses?

8 A Yes, sir.

9 Q And you had contacts on that night or that morning?

10 A I think I had my glasses on. I had my glasses on that  
11 morning.

12 Q Okay. Can you tell if the person you looked at any  
13 time had glasses on?

14 A Not from just what I see here. No, I can't.

15 Q And don't remember?

16 A I didn't make a note of it if I did or I didn't. I  
17 don't think that it would have been that significant to me.

18 Q This date was in 2020, correct?

19 A Yes, sir.

20 Q Was the issue about masks and all that involved back at  
21 that time?

22 A I have know clue.

23 Q Or before?

24 A I don't have an idea. I don't know.

25 Q I'm not trying to trick you. This is number five.

1 What does that show?

2 A It looks like he's about to go behind the pickup truck?

3 Q Officer, you chanced him in your vehicle for a  
4 few minutes, correct?

5 A No, sir, I didn't pursue him at all. I went to try and  
6 catch up with him to initiate a traffic stop but I did not chase  
7 him.

8 Q Did you ever issue him any kind of ticket for speeding  
9 or anything later?

10 A No, sir.

11 Q Okay. Did you stay there and watch the other  
12 technicians collect the evidence?

13 A No, sir. I still had other duties that I had to do  
14 and once I left them with the car I secured from the scene. And  
15 when I first got back I went around to float around to see if we  
16 can find him. See if we were going to set a perimeter and see  
17 if we were going to look any further for him. When I left them  
18 with the car that's what I did.

19 Q So basically your testimony is that you saw a man you  
20 think you knew but you didn't know his name?

21 A Yes, I saw Mr. Hope exit the vehicle and run past the  
22 bushes.

23 Q But you didn't realize it was Mr. Hope?

24 A Not immediately. I knew who he was by face. There is  
25 is know doubt I knew who he was. I just didn't have a name to

1 his face until I heard it.

2 Q And you got the name to the face when you got that  
3 transmission from that system, correct?

4 A Yes, sir.

5 Q And that was the same day?

6 A It was pretty close to within a few minutes.

7 Q Did you ever write a report about that?

8 A I typed just a very short narrative. The incident  
9 report narrative that was only a couple of sentences and it's  
10 just brief synopsis of everything and more of it's done in what  
11 is called a general sessions summary.

12 Q And at the time you first saw him he was actually out  
13 of the car, correct?

14 A Exiting the vehicle.

15 Q Exiting the vehicle?

16 A Yes, sir.

17 Q When he exited was the door left open at that point in  
18 time?

19 A I don't recall. I didn't really pay attention to the  
20 door. I'm looking at him cross between the car trying to get  
21 him to stop. I'm on the phone trying to tell the major and then  
22 I drop the phone and took off. If you want to know the honest  
23 truth, I didn't really pay attention to the door. Once I saw  
24 him get out I didn't worry about the car at that point.

25 Q Did you give out anything over the air, BOLO as to who

1 to look out for?

2 A At first I would have given the clothing description  
3 and which way he ran and the direction he ran. But the car was  
4 registered to a resident that was only two blocks from where he  
5 ran from. And so, if we didn't get him in the first few seconds  
6 we just assume he made it to the residence.

7 Q Did you -- you gave a description of his clothes,  
8 correct?

9 A Yes, sir.

10 Q But did you give any description as to his name or  
11 address?

12 A Once his name came out then we would have said who we  
13 were looking for. Yes, sir.

14 Q And his name came out from that system?

15 A Yes, sir, and attached to that car.

16 Q Okay. Just a couple last questions. When you got on  
17 the air were you transmitting to dispatch or could you go to  
18 other cars?

19 A I can do both. But we can talk to each other. We  
20 don't have to go through dispatch. We can talk direct direct.  
21 And even when I'm talking to dispatch everybody hears the  
22 transmission. It's just one channel we were working on unless  
23 we're going to a separate channel to call for a wreck or check  
24 for warrants. But the great majority would have been done on  
25 channel one at that time of morning.

1 Q Okay. Let me ask you, in your experience you've been  
2 on how many years?

3 A Almost 28. Starting my 28th year. Thirty total.

4 Q What year were you certified by the academy?

5 A Originally '92 and then '94 beginning of '95 in South  
6 Carolina.

7 Q Have you been certified as an instructor in drugs or  
8 anything?

9 A Instructor in drugs?

10 Q Yeah. Narcotics.

11 A I'm not an instructor in narcotics. No, sir.

12 Q Did you teach at the police academy?

13 A I have.

14 Q Drug stuff?

15 A Not drug stuff, no, sir, but I've taught traffic  
16 classes, enforcement classes and things like that.

17 Q You teach to your department?

18 A Yes, sir.

19 Q Are you an instructor?

20 A Yes, sir.

21 Q One last question here. When you went over to the jail  
22 and you saw him right after he had been arrested, he's put in  
23 jail?

24 A Yes, sir.

25 Q And you said you went there basically to see him,

1 right?

2 A Possibly. I go to jail for other reasons, but I would  
3 assume I went back there to see him. I didn't go back to  
4 question him. I didn't go back to interview him. I just went  
5 back to see him. Like I said I had some familiarity with him.  
6 I dealt with him over the years.

7 Q And so did you go back to mock him?

8 A No, sir.

9 MR. O'LEARY: Beg the Court's indulgence one  
10 second, Your Honor.

11 THE COURT: All right.

12 Q When you first pulled into the lot, okay and then you  
13 parked and you were getting out, correct?

14 A Yes, sir.

15 Q And your testimony is, you didn't chase him on foot at  
16 all?

17 A At all?

18 Q Yeah.

19 A I did chase him eventually. Yes, sir.

20 Q Okay, how long did you chase him?

21 A Down to Black Street. Down to about that next block on  
22 Black Street you can see where I got out, threw my phone. Ran  
23 around behind my car. Ran down Confederate, turned on Black  
24 Street. Went down to almost to next street. Maybe the first  
25 house past this fence. Almost to the next block.

1 Q Was your intention initially when you saw the car go by  
2 you thought at a high rate of speed, fifty or so?

3 A Yes, sir.

4 Q You with pulling out to get behind the car and stop it?

5 A Yes, sir.

6 Q But you didn't have to get to that. You saw the light  
7 to the right. You saw a light in the woods to right. You  
8 pulled in the parking lot.

9 A No, I saw the vehicle turn right on Confederate.

10 Q Okay.

11 A I pulled out to go after the vehicle.

12 Q Okay.

13 A When I turned onto Confederate I didn't see the car  
14 ahead of me. Which told me he had either really sped up and  
15 turned on Main or he turned off. So when I didn't see it I  
16 looked to my right and saw the car in the parking lot and you  
17 can see I turn into the parking lot.

18 A That's pretty close to where you were parked.

19 A Yes, sir, it is right in front of me.

20 Q I know in the video you don't see a car in front of  
21 you?

22 A When I'm pulling in?

23 Q When you're pulling out to get on the main road there  
24 is no vehicle in front of you?

25 A Well, the only camera I had was here and that was

1 inside my car. My car camera didn't cut on. It was only this  
2 and you can only see my steering while at that point.

3 Q Your telling me your video doesn't show --

4 A The on -- there's two cameras. I have car camera and a  
5 body camera. My car camera is activated when I turn on my blue  
6 lights or when I manually activate it. I never turned on my  
7 blue lights therefore I didn't active my in-car camera because I  
8 never got behind the car to initiate a traffic stop. I saw him  
9 pull in and jumped out of my car.

10 Q One last question. Did you find the gun in the car?

11 A No, sir.

12 Q Okay. Who found that?

13 A I believe I was Officer Austin his trainee.

14 Q Were you there when he found it?

15 A No, sir. I was told about it but I wasn't there.

16 Q No problem. Thank you very much officer.

17 MR. O'LEARY: No further questions.

18 THE COURT: Thank you. Mr. Thomas, any redirect?

19 REDIRECT EXAMINATION

20 BY MR. THOMAS:

21 Q How long did you say you had an opportunity to view his  
22 face?

23 A It was just a couple of seconds just between the two  
24 cars. One or two seconds. I don't know.

25 Q Did you need any more time to view his face to

1 recognize him as Ramon?

2 A Not when you know somebody, no, sir.

3 Q And your positive that's who you saw getting out of  
4 that car?

5 A Yes, sir.

6 MR. THOMAS: Thank you.

7 RECROSS EXAMINATION

8 BY MR. O'LEARY:

9 Q But you didn't report it right away, did you?

10 A No, sir. Like I said I knew who he was. I knew his  
11 face but I did not know his name but as soon as I heard I knew  
12 who it was.

13 Q Your positive because you heard over your own  
14 departmental system a name?

15 A No, sir. I'm positive because I know him, I just did  
16 not -- I know hundreds and hundreds of people from dealing with  
17 them.

18 Q I understand.

19 A And I know tons of people that I'm like ah, ah, ah, and  
20 then when I hear, oh, yeah.

21 Q But once you knew who you thought it was, why didn't  
22 you notify everybody else in your department?

23 A We did sir. We knew that night. That's why we typed  
24 warrants on him.

25 Q The warrants were typed two days later?

1           A     All right. Well, that's why we have the information to  
2 enter into the system, I didn't type the warrants. I just know  
3 we knew who he was and we put it on this.

4           Q     And you got the warrants before the tests were done on  
5 the drugs, correct?

6           A     Yes, sir. I guess.

7           Q     And also on the gun?

8           A     What tests?

9           Q     You got the warrant before you actually tested the gun?

10          A     Yes, sir.

11          Q     Okay.

12                   MR. O'LEARY: No further questions. Thank you  
13 judge.

14                   THE COURT: All right. Thank you, lieutenant.  
15 You can step down.

16                   All right, ladies and gentlemen this is a good  
17 place for us to stop today. I will allow you to leave  
18 the courtroom. If you have any belongings in the jury  
19 room be sure you pick those up. Be back in the jury  
20 room ready to go around nine o'clock in the morning.  
21 We will try to get started shortly after nine o'clock.  
22 Do not discuss the case when you go home tonight with  
23 anybody. It will be pretty tempting to tell whoever  
24 you live with with the details about how exciting  
25 court was today and all things you've done, but do not

1 discuss the case at all. Don't use your social media  
2 or any electronic devices to do any independent  
3 research. Enjoy the evening without thing about this  
4 case, if you can. With that, we will allow you to  
5 leave everyone remain seated while this jury is  
6 excused.

7 (WHEREUPON, the jury leaves the courtroom).

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

10 MR. THOMAS: Nothing from the State.

11 MR. O'LEARY: Nothing from the defense.

12 THE COURT: You all be in place ready to go nine  
13 o'clock. Thank you.

14 (Court was adjourned for the day.)

15 (WHEREUPON, the trial resumed on January  
16 12, 2022.)

17 THE COURT: All right we are back on the record in  
18 the State versus Ramon Hope. After a day of trial  
19 yesterday, we are back in court ready to proceed. Is  
20 the State ready?

21 MR. THOMAS: Yes, Your Honor.

22 THE COURT: Defense ready?

23 MR. O'LEARY: The defense is ready.

24 THE COURT: Let's bring the jury in.

25 (WHEREUPON, the jury enters the courtroom.)

1 THE COURT: Good morning ladies and gentlemen. I  
2 appreciate your promptness. I believe we're ready to  
3 proceed at this point.

4 Mr. Thomas if you'll call your next witness.

5 MR. THOMAS: Thank you, Your Honor. The State  
6 calls Thomas Austin.

7 THOMAS AUSTIN, called as a witness, having been  
8 duly sworn by the clerk, was examined and testified as  
9 follows:

10 THE COURT: Solicitor.

11 DIRECT EXAMINATION

12 BY MR. THOMAS:

13 Q Officer Austin, where do you work?

14 A Rock Hill Police Department.

15 Q And how long have you worked there?

16 A Since May 2018. So going on four years.

17 Q And what's your job at the Rock Hill PD?

18 A I'm a patrol officer.

19 Q And what does that involve?

20 A We answer calls for service. We do routine, fairly  
21 routine traffic stops. Things of that nature. Enforce city  
22 ordinances and state laws.

23 Q And was Lieutenant Breeden your supervisor on that  
24 shift?

25 A Yes, sir.

1 Q Were you working in that capacity on September 27,  
2 2020?

3 A Yes.

4 Q Did you get involved in a case involving Lieutenant  
5 Breeden some time around four a.m. that morning?

6 A Yes, sir.

7 Q How did you end up involved in that?

8 A Lieutenant Breeden stopped a car. Called out on radio.  
9 Told us the driver of the vehicle had ran therefore I quickly  
10 got to his location and assisted him in securing the vehicle.  
11 All that sort of stuff.

12 Q So I guess you were basically called out to secure the  
13 vehicle?

14 A Yes, sir.

15 Q Were you going to do something with the vehicle, search  
16 it? Tow it?

17 A Yes, sir. We were going to tow it. In order to tow it  
18 you have to do an inventory of the vehicle and all its contents.

19 Q And I guess you had someone with you that night?

20 A I had a trainee because I'm a field training officer as  
21 well.

22 Q So, I guess you were responsible for training someone?

23 A Yes, sir.

24 Q What did you do when you started searching the car?

25 A When we started searching the car that was after we had

1 attempted to make contact with the registered owner of the car.  
2 So we started searching the car to see who may have been driving  
3 the car because it's registered to a female. It was driven by a  
4 male per Lieutenant Breedon.

5 So, we were searching the car to see who was driving the  
6 car. Searching the car for anything of value to notate on a  
7 inventory report that we have to do any time we tow a car.

8 Q So just basically looking for, I guess, some  
9 identifying information or anything of value?

10 A Yes, sir.

11 Q And I guess you looked for things of value so you don't  
12 get accused like later of stealing something out of the car  
13 before it's towed?

14 A Yes, sir.

15 Q And during your search of that vehicle did you find  
16 anything else relevant to this case?

17 A Yes. While I was searching the vehicle underneath the  
18 front driver's seat of the vehicle I located a handgun and as I  
19 was continuing my search I glanced down towards my feet and saw  
20 a large amount of crack cocaine on the ground right outside the  
21 vehicle.

22 Q So you said you found the crack cocaine outside of the  
23 vehicle?

24 A Yes, sir. If you're looking at the vehicle, if it the  
25 door's open, it's right there in the apex of that door.

1 Q So, how far away would say from the door? Close? Far?

2 A Right beside. I guess where you would sit down.

3 Q And you said you found a large amount of crack cocaine.

4 Let me show you what has been marked as State's 8, 9, 10 and 11  
5 and ask if you recognize those items?

6 What is State's number eight?

7 A That is a crack rock which I had weighed whenever we  
8 were at the jail at 2.12 grams.

9 Q And what is State's number 9?

10 A That's another smaller crack rock as well as kind of  
11 some crushed up bits that when I weighed it it 1.15 grams.

12 Q And State's number 10. What is that?

13 A That would be a torn almost like a grocery bag which  
14 contained crack cocaine.

15 Q And State's 11?

16 A That would be another black grocery bag that was torn.

17 Q And are all those items you located outside of that  
18 car?

19 A Immediately outside the vehicle, yes, sir.

20 Q And where was that vehicle parked at?

21 A Family Promise.

22 Q And what is that?

23 A Family promise is nonprofit organization that helps  
24 families, mother's with kids. Stuff like that with a place to  
25 stay.

1 Q Okay. And what county is all this business, parking  
2 lot, what county is that located in?

3 A It's in York County in the City of Rock Hill.

4 Q Thank you. Let me show State's 10 and 11. Those are  
5 the items that you collected?

6 A Yes, sir.

7 Q Okay.

8 MR. THOMAS: At this time, Your Honor, the State  
9 would move 10 and 11 into evidence.

10 THE COURT: Mr. O'Leary.

11 MR. O'LEARY: No objection at this time, Your  
12 Honor.

13 THE COURT: State's Exhibit 10 and State's Exhibit  
14 11 introduced are into evidence without objection.

15 (WHEREUPON, State's 10 and 11 were received in  
16 evidence.)

17 Q And I'm going to show you State's 12 and 13 and ask you  
18 if you recognize those?

19 A Yes, sir.

20 Q What is State's number 12?

21 A Number 12 is the FN handgun that I located under the  
22 driver's seat of the vehicle.

23 Q And State's number 13, what is that?

24 A Number 13 is the magazine as well as multiple 45  
25 caliber bullets that was inside the handgun at the time of its

1 location.

2 Q Okay, so the magazine was in the gun?

3 A Yes, sir.

4 Q And is that is the same firearm that you recovered from  
5 the vehicle?

6 A Yes, sir.

7 Q And that's the same magazine and bullets that you  
8 found?

9 A Yes, sir.

10 MR. THOMAS: Your Honor, at this time the State  
11 would move 12 and 13 into evidence.

12 THE COURT: Mr. O'Leary.

13 MR. O'LEARY: No objection Your Honor.

14 THE COURT: State's 12 and State's exhibit 13 in  
15 evidence without objection.

16 (WHEREUPON, State's 12 and 13 was received in  
17 evidence.)

18 Q Officer Austin, did you have a camera on you that  
19 night?

20 A Yes, sir.

21 Q And was that camera recording?

22 A Yes, sir.

23 Q Have you had a chance to review that body camera?

24 A Yes, sir.

25 Q Let me show you what's been marked as State's Exhibit

1 Number 2. Do you recognize that?

2 A Yes, sir.

3 Q What is State's number 2?

4 A That's a disc containing my body camera.

5 Q Have you had a chance to review that?

6 A Yes, sir.

7 Q Is that a true and accurate depiction of your body cam  
8 as it recorded that night?

9 A As much as a body camera can portray it.

10 MR. THOMAS: At this time we move State's 2 into  
11 evidence.

12 MR. O'LEARY: No objection.

13 THE COURT: State's Exhibit 2 has been introduced  
14 without objection.

15 (WHEREUPON, State's Exhibit 2 was received in  
16 evidence.)

17 MR. THOMAS: At this time, Your Honor, we would  
18 like to publish. We've stipulated with the defense we  
19 will turn the volume off.

20 THE COURT: All right.

21 Q Now Officer Austin, I will ask you some questions and  
22 try to narrate this as best we can. I know we have a few  
23 seconds here at the beginning. Why do we have video of you just  
24 driving?

25 A The way our body cameras are set it records both video

1 and sound thirty seconds prior to it's activation. It constantly  
2 recorded on a loop so you're always going to get that prior  
3 thirty seconds in case of a critical incident.

4 Q I see you pull in. It looks like there is another car  
5 there. Two other cars. Who is in this white car?

6 A That's Lieutenant Breedon.

7 Q And who is that other person with you?

8 A That would be Winthrop police officer. A Sergeant I  
9 believe.

10 Q I see you putting on gloves there. Why are you putting  
11 on gloves?

12 A Any time I search a vehicle I always put on gloves.

13 Q And why is that?

14 A Safety for me and if I do locate something to keep my  
15 prints off of that item.

16 Q I believe you said your -- what was your initial focus  
17 when you searching you are looking in the car?

18 A My initial focus is preliminary anything I see in plain  
19 view. Anything I see that identifies the driver of that  
20 vehicle. Anything I see that identifies more up to date contact  
21 information for the owner of that vehicle.

22 Q And what did you say your secondary purpose?

23 A Identifying anything of value that's inside the vehicle  
24 to notate it on inventory report.

25 Q And what is happening now?

1           A     At that point I had glanced down at my feet and  
2 observed what appeared to be crack cocaine at the time laying on  
3 the ground.

4           Q     And those items that's State's number 10 and 11?

5           A     Yes, sir, the bag.

6           Q     When you observed those items on the ground did you  
7 instruct your training officer to do something?

8           A     I instructed him to go back to my vehicle and get some  
9 clear plastic baggies which is similar to what it's packaged in  
10 now. That way we can collect it.

11          Q     What are you doing right now?

12          A     I am searching underneath that front driver's seat.

13          Q     What did you just pull out?

14          A     The FN handgun.

15          Q     State's number 12.

16          A     I believe so.

17          Q     State's number 12?

18          A     Yes, sir.

19          Q     Right here, what are you doing?

20          A     I'm collecting the drugs that were located and  
21 attempting to collect the drugs that are laying out on the  
22 ground and securing the firearm.

23          Q     And was that firearm loaded or unloaded?

24          A     It was loaded.

25          Q     And who is this person assisting you?

1 A That was my trainee at the time.

2 Q At this point have you collected the items that are  
3 currently marked as State's 9?

4 A Yes, sir.

5 Q State's 9? Have you collected State's 9 yet? Let me  
6 ask you this, what was your plan to collect State's 9?

7 A State's 9 was crushed out onto the ground so I had to  
8 use a business card to kind of scrape it into a baggy.

9 Q It looks like at this point you are no longer -- did  
10 you collect any more after that?

11 A I don't believe so.

12 Q I will stop this video at the 16 minute mark. What  
13 does the rest of the video show?

14 A We are waiting on the tow truck.

15 Q Did you continue I guess to search the car after that  
16 for inventory purposes?

17 A No, sir. Our inventory was complete.

18 Q While were you searching the car did you observe  
19 anything that we would commonly call like drug paraphernalia?

20 A No, sir.

21 Q Did you collect anything out of that in the car?

22 A No, sir.

23 Q The gun that you found in the car was it in a locked  
24 container?

25 A No, sir.

1 Q Was it in a container that is integral to the car?

2 A No. The gun was shoved up under the front seat.

3 Q The pavement that you collected the suspected crack  
4 cocaine from was that solid pavement or was it loose gravel?

5 A Its was solid but it was not perfectly smooth.

6 Q So you -- did you collect all of the suspected  
7 narcotics?

8 A I had to leave some kind of in the groves. I did my  
9 best.

10 Q I'll show you what's -- I will hand you what has been  
11 premarked as State's 4, 5, 6, 7, and 3 and ask you if you  
12 recognize those.

13 A Number 3 would be a photograph I took of the crushed  
14 out crack cocaine while it was still laying on the ground.  
15 Number 4, is a photograph I took of the other amount of crack  
16 cocaine and the black torn baggy. Number 5, that's the smaller  
17 amount of crack cocaine that was collected off the ground on a  
18 scale. Number 6, is the larger amount on the scale and number 7  
19 would be the firearm that was recovered.

20 Q And some of those pictures we saw you taking in the  
21 video?

22 A Yes.

23 Q And the other ones are those pictures you took later on  
24 back at the station?

25 A Yes.

1 Q And those are true and accurate?

2 A Yes.

3 MR. THOMAS: Your Honor, at this time the State  
4 would move 3-7 into evidence..

5 MR. O'LEARY: No objection.

6 THE COURT: State's Exhibit three through seven  
7 are in evidence without objection.

8 (WHEREUPON, State's number 3-7 were received in  
9 evidence.)

10 Q State's number 3, what is that again?

11 A Number 3 would be the the smaller amount of crack  
12 cocaine that was crushed out on the asphalt.

13 Q And what else is in that picture?

14 A A white torn grocery bag.

15 Q And State's number 4?

16 A Is the larger amount of crack cocaine, the crack rock  
17 that was located outside the vehicle inside a black torn grocery  
18 bag.

19 Q And when you collect that -- where is this picture  
20 taken at?

21 A This picture is taken on the roof of the car because I  
22 was able to collect that and I didn't want to step on it so I  
23 moved it to the roof of the car.

24 Q And then State's 5, was is that?

25 A That's a picture of the smaller amount on the scale at

1 the evidence counter at the Rock Hill office.

2 Q And I guess what was the -- let's go back to State's  
3 number 3. What was the condition of -- can you describe the  
4 crack cocaine when you collected it?

5 A Some of it was kind of damp, but it was -- it was --  
6 obviously in the picture crushed out, strewed out with a couple  
7 larger pieces in there.

8 Q And on State's number 5, when you put it on that scale,  
9 what's your process for weighing it?

10 A We get the plastic bag. Place it on the scale and zero  
11 the scale. That way we have a true weight of what the actually  
12 contents inside are. So once the scale was zeroed I transferred  
13 the drugs from the bag I had collected them into that bag and  
14 then placed it back on the scale to get that weight which is the  
15 photograph.

16 Q And same thing for State's number 6?

17 A Yes, sir the same process.

18 Q And that is -- what is that?

19 A That is the larger amount, the larger crack rock that  
20 is located in the black bag. I believe exhibit 4.

21 Q And then State's number 7 is just a picture of the gun?

22 A Yes, sir.

23 Q Number State's number 8, and number 9, what did you do  
24 with that after you collected it and weighed it?

25 A After it was collected and weighed it was placed in

1 this evidence and property bag and it was secured in our  
2 evidence locker.

3 Q So explain to me the process for submitting evidence?

4 A So once we weigh it, once we process it, we take this  
5 bag we peel the the seal off. We fold it over. We sign our  
6 name and put the date on it. Once it's sealed we attach the  
7 evidence label that is on the front of the bag and I sign it  
8 over from myself to evidence with the date and the time that I  
9 placed it into evidence.

10 Q When you say placed it into evidence, how does that  
11 work?

12 A So since there was a firearm involved it was placed in  
13 a locked evidence locker. Once it's locked with a padlock the  
14 only person that can access is our evidence technician who  
15 retrieves it and then places it into our evidence -- our bigger  
16 evidence locker.

17 Q And did you do that with the crack cocaine, the  
18 suspected crack cocaine?

19 A And the firearm.

20 Q Let me show what I have premarked as States 14 and 15.  
21 Is it safe to say -- I know we talked with Lieutenant Breedon  
22 about how sometimes your body cam -- your eyes see things that  
23 your body cam doesn't. Could the opposite of that be true?

24 A Yes, sir.

25 Q So I would assume so. What are those two items that I

1 have handed up?

2 A So number 14 is a photograph from my camera of my first  
3 approach to the vehicle where you can see the drugs and the  
4 white -- the lighter colored baggy laying on the ground directly  
5 outside the vehicle.

6 Q And State's -- the next item?

7 A Number 15 is those same items when I went to retrieve  
8 them off the ground.

9 Q And those are just still shots from your --

10 A Yes.

11 Q And are those true and accurate picture of what the  
12 body cam had on it?

13 A Yes.

14 MR. THOMAS: Your Honor, at this time I would move  
15 State's 14 and 15 into evidence.

16 MR. O'LEARY: No objection.

17 THE COURT: States 14 and 15 are in evidence  
18 without objection.

19 (WHEREUPON, State's 14 and 15 were received into  
20 evidence.)

21 Q Officer, I am going to try and use our fun technology  
22 here. All right, if you could -- well, could you on that screen  
23 could you just circle for the jury so they can see what you are  
24 talking about when you say you can see the things on the ground?

25 A Right here.

1 Q So that's what you're talking about when you say you  
2 can see the -- what did you say that is?

3 A That would be the lighter colored baggy. So number --  
4 that would be the crushed out crack cocaine number 9 and the  
5 lighter colored baggy number, I believe 10.

6 Q And this still shot, is this from I guess your initial  
7 approach to the car?

8 A Yes, sir.

9 Q Is this, I guess, what are we looking at here?  
10 (Indicating)

11 A That's the -- right in front of my hand, my right hand  
12 is the black torn baggy. Right I guess below the front of my  
13 flash light is going be that white baggy and then the crushed  
14 out crack cocaine more to the top right of the screen.

15 Q And when you initially observed that black baggy did  
16 you pick it up initially and then drop it back down?

17 A Yes, sir.

18 Q And that's what we saw on video?

19 A Yes, sir.

20 Q Last bit of matters. Who typed the warrants up on this  
21 case?

22 A I did.

23 Q So whose name would have been on it as the prosecuting  
24 officer?

25 A Mine would.

1 Q And who signed the warrants?

2 A The judge.

3 Q Well, what officer I guess? Did you take the warrants  
4 to the judge?

5 A No, sir. It was either Sam Buchanan or Ray Murphy.

6 Q And those are the people from Rock Hill that do  
7 warrants for you all?

8 A Yes.

9 Q When you typed up the warrants did you include  
10 Lieutenant Breeden's name at all?

11 A I don't believe so.

12 MR. THOMAS: All right. That's all the questions  
13 I have for you. I will let you answer anything Mr.  
14 O'Leary may have.

15 THE COURT: Mr. O'Leary.

16 CROSS EXAMINATION

17 BY MR. O'LEARY:

18 Q Officer, you were a training officer on that day?

19 A Yes, sir.

20 Q And you had trainee with you,

21 A Yes, sir.

22 Q What was his name?

23 A Thomas Marco.

24 Q Is he still with the department?

25 A Yes, sir.

1 Q Now, you got a call and you responded to the location,  
2 correct?

3 A Yes, sir.

4 Q And how long did it take you to respond?

5 A Maybe a couple minutes.

6 Q What was the call? How did it it come out?

7 A The lieutenant was trying to stop a vehicle for  
8 speeding.

9 Q Did he describe the vehicle at all?

10 A Yes, sir. It was going to be a light colored Dodge,  
11 four-door sedan.

12 Q Did he describe the occupants inside the vehicle?

13 A I don't recall.

14 Q Okay. Now you get to the scene. Is Breeden there?

15 A Yes, sir.

16 Q And he's in the white car?

17 A Yes, sir.

18 Q And he's alone in the car, correct?

19 A Yes, sir.

20 Q He has his glasses on, correct?

21 A Yes, sir.

22 Q Now, how did he describe the subject he was looking for  
23 with you?

24 A I don't recall.

25 Q Do you recall him saying the man was in black clothes

1 or dark clothes?

2 A Yes, I believe he had put out over the radio prior to  
3 me getting there that the subject running from him was a black  
4 male in dark clothing.

5 Q In dark clothes. And he never gave a name or who it  
6 was or anything to you?

7 A I believe after -- shortly thereafter when we were  
8 still looking for the suspect he determined that it was Ramon  
9 Hope and that's the name he gave.

10 Q Now, were you, at that time -- does he leave? Does  
11 Breeden leave and go somewhere else or does he stay there with  
12 you?

13 A He leaves so he can go circulate so he can locate the  
14 person that ran since he is the one that actually laid eyes on  
15 him.

16 Q And you stay there and your processing the scene with  
17 the other officer, correct?

18 A Yes, sir.

19 Q And how did the Winthrop officer get there?

20 A Your guess is as good as mine.

21 Q Okay. You guys didn't ask for his help or is it on  
22 Winthrop property?

23 A No, sir.

24 Q So, when you first get there and you walk over to the  
25 car is the door open or shut?

1 A I believe the door was shut.

2 Q Okay. Did you immediately see something on the ground?

3 A No, sir.

4 Q Okay.

5 Q Had the Winthrop officer been walking around that car?

6 A He was approaching the car at the same time.

7 Q He was there first though, wasn't he.

8 A He was there first but he was walking towards that  
9 vehicle at the same time I was walking towards that vehicle.

10 Q And he's walking in the same area that you ultimately  
11 pick up the drugs from?

12 A I also walked in that area, yes, sir.

13 Q So you didn't see it at first?

14 A No, sir.

15 Q Okay. So now then you take over. Put your gloves on I  
16 think in the video?

17 A Yes, sir.

18 Q And you start to search the car and you search the  
19 inside of the car and there's a lot of trash. How would you  
20 describe it?

21 A There was a lot of trash. I would say that.

22 Q Is that both in the front seat area and the right  
23 passenger side and also in the back?

24 A The entire car. The trunk. Everything.

25 Q The trunk was a little disorganized would you say?

1 A Yes.

2 Q Did you open ever item in the trunk or in the car  
3 itself?

4 A I opened all the book bags in the trunk, all the little  
5 chain purses in the trunk.

6 Q And you didn't collect that and take it with you?

7 A No, sir.

8 Q You left it in the car?

9 A I notated in on the inventory report.

10 Q You were just looking for valuable stuff, correct?

11 A Pretty much, yes.

12 Q To put on the inventory for the tow?

13 A And even the valuable stuff I wouldn't have took with  
14 me.

15 Q Okay. Now, was my client there at the time were you  
16 there?

17 A No, sir.

18 Q Did you see him drop anything?

19 A No, sir.

20 Q And did you see anybody drop anything?

21 A No, sir.

22 Q Now, you're in the car, your searching the car and then  
23 you say you reach up under the seat and you found the weapon,  
24 correct?

25 A Yes, sir.

1 Q And it was under the driver's seat?

2 A Yes, sir.

3 Q You pull it out and unload it, correct?

4 A Yes, sir.

5 Q And you put it in the bag?

6 A Yes, sir.

7 Q And who transported all the documents and all the  
8 evidence you have here?

9 A Me and my trainee.

10 Q Pardon?

11 A Me and my trainee.

12 Q Okay. You guys are in the same car?

13 A Yes, sir.

14 Q Okay. So, you transported it down to the department,  
15 correct?

16 A Yes, sir.

17 Q So at the time your next to the car and you see white  
18 powder or whatever on the ground there, you don't know that's  
19 crack at that time do you?

20 A Based off my prior training and experience I did.

21 Q But it could have been something else?

22 A It could have been, but based on my training and  
23 experience it was crack cocaine.

24 Q Now, you picked up the bag, a piece of the green bag,  
25 was that off of a garbage bag?

1 A It appeared to be.

2 Q The corner?

3 A It wasn't the corner. I mean, it was larger portion of  
4 the bag but it was a more like a grocery bag. It wasn't as  
5 thick as a garbage bag.

6 Q It's that little piece that you collected, correct?

7 A Yes.

8 Q So it's not a garbage bag. It's just some of the  
9 plastic from a garbage bag?

10 A Yes, sir.

11 Q So, why did you throw it back down? Once you picked it  
12 up why didn't you keep it?

13 A I'm not sure if I dropped it or I was putting it back  
14 down on on the ground because I saw the larger rock fall out of  
15 it or laying on the ground.

16 Q Okay. Now, when you collected these items it kind of  
17 interest me, you are picking up the alleged crack at that time?

18 A Uh-huh.

19 Q And you are sweeping it up with a card?

20 A Uh-huh.

21 Q Because it's kind of all over the pavement, correct,  
22 and the payment is really not a smooth payment?

23 A No, sir.

24 Q Okay. Now, I notice when you take that and put it into  
25 the bags and transport it down to the jail or whatever you take

1 it to the facility you put it on the scale, correct?

2 A Yes, sir.

3 Q Now, you put that substance into plastic evidence bags,  
4 correct?

5 A Yes, sir.

6 Q And you're weighing them along with the drugs?

7 A No, sir. Like I said before, I place that plastic bag  
8 on the scale. I zero the scale. That way it doesn't include  
9 the weight of that plastic bag. Then I place the drugs into the  
10 plastic bag so I'm only getting the weight of those drugs.

11 Q Okay. And that's what those pictures show the two -- I  
12 think it is only two pictures, correct?

13 A Yes, sir.

14 Q Now I notice back when the Winthrop officer was there  
15 he came over to the car originally with a bag. Did you see him  
16 carrying something?

17 A No, sir. Not initially.

18 Q He didn't have like a garbage bag there?

19 A I didn't notice.

20 Q Okay. Now, your job is you've collected the gun, you  
21 put the gun into evidence along with your partner, your trainee.  
22 And you pick up what you think is drugs at that time, correct?

23 A Uh-huh.

24 Q And you search the car and those are the only items you  
25 took, correct.

1           A     I believe so. We may have taken the two cell phones  
2 that we located.

3           Q     Where did you locate the cell phones?

4           A     Inside that vehicle.

5           Q     And did you track back to see whose -- do you recall  
6 picking those up and putting them in evidence?

7           A     I recall picking them up. I don't recall if we took  
8 them with us or not.

9           Q     And did you check those cell phones to see whose they  
10 were?

11          A     No, sir.

12          Q     Okay. How long were you there processing the scene?

13          A     I was there for a good thirty, forty minutes.

14          Q     And then the car is transported. It's picked up. It's  
15 towed?

16          A     Yes.

17          Q     And at that point you and your partner leave?

18          A     Yes. We go and we transport all this to the law  
19 center.

20          Q     And did Mr. Breeden come back yet?

21          A     I don't believe he returned. If he did it was briefly  
22 to speak with us about the case.

23          Q     Did you -- did you see him later that evening?

24          A     Yes.

25          Q     Okay. Where back at the station?

1 A Yes.

2 Q Okay. But you didn't go back out on patrol looking for  
3 anybody?

4 A I didn't go back out looking for anybody related to  
5 this specific incident at that time. No, sir.

6 Q And I think you said you been on the department about  
7 four years?

8 A Yes, sir.

9 Q And your job has been patrol all the time?

10 A Yes, sir.

11 Q At that time what was your rang?

12 A I was -- I believe I was a police officer one. I'm a  
13 police officer officer two at this time.

14 Q And you were trained at the criminal justice a academy?

15 A Yes, sir.

16 Q And you were certified as an officer in what year?

17 A In 2018.

18 Q Were you trained specially to be a field training  
19 officer?

20 A I have gone through training to be a field training  
21 officer, yes, sir.

22 Q Does the academy certify those field training officers?

23 A I believe so. I did not take my classes at the  
24 academy, but I believe it is academy accredited class.

25 Q Okay. So you went through all of the evidence here

1 that was picked up. You put it in the bags and then you  
2 transported those items to the evidence room, correct?

3 A Yes, sir.

4 Q And did you take all of those items yourself or did you  
5 your partner take some and put into evidence?

6 A I placed all these items into evidence.

7 Q Okay. And you signed off when you put it in there?

8 A Yes, sir.

9 Q Did you go back and pick those things up and transport  
10 it all over to the lab for the analysis?

11 A No, sir. That would have been done by somebody that  
12 worked for evidence or forensics unit.

13 Q Did you follow up on what their results were when they  
14 had done the analysis?

15 A Yes, sir. There was a lab report.

16 Q Okay. But that's done by another unit?

17 A That is done by I believe the sheriff's office.

18 Q Now, on that particular night how many other officers  
19 had responded out there? When you got there, your supervisor  
20 was there?

21 A Yes.

22 Q And were there other officers there too that we don't  
23 see?

24 A No, sir. Everybody else that was in the area they were  
25 circulated for the suspect.

1           Q     And one of the systems you use with the department is  
2 the link system?

3           A     Link analysis through Zerca, yes, sir.

4           Q     Do you use it a lot?

5           A     Yes, sir.

6           Q     Are you train on that?

7           A     Yes, sir.

8           Q     Do you know how -- what that system consists of?

9           A     It pulls -- any time your name is associated with  
10 somebody else's name whether it be through a call of service,  
11 whether it be through a report, a traffic stop. Anything like  
12 that. Any time your name is associated with somebody's name it  
13 pulls all those reports, all those hits and puts them together.  
14 Yesterday Lieutenant Breeden described it as a molecule. I  
15 describe it as a spiderweb and it pinpoints exactly why you are  
16 linked together.

17          Q     And if there's information that is coming out on that  
18 is that heard by all the officers?

19          A     Link analysis is something we look at on our computer  
20 system.

21          Q     It's strictly on the computer?

22          A     Yes, approximate if somebody is looking at it they can  
23 put out on the radio.

24          Q     Did you see anything come out on the link system about  
25 any specific person?

1           A     I specifically did not look because I was inventorying  
2 the vehicle.

3           Q     And your saying the Breeden he had a link system in his  
4 car too?

5           A     Everybody has one. Yes, sir.

6           Q     Okay. And do you know if the link information was put  
7 out that night or was it the next day or do you know?

8           A     It was put out moments after I arrived to where the car  
9 was.

10          Q     And did he say anything to you about what he just  
11 received or what was he was going to do?

12          A     We all heard it. It was that the vehicle was register  
13 to a female who she herself and the vehicle had known relations  
14 with Mr. Hope.

15          Q     Can you print that out or does it disappear?

16          A     It's there. I don't know if you can print it out. I'm  
17 not a technology expert.

18          Q     Okay. I understand. I really do it. And the pictures  
19 that you were shown. Let's see here. That picture here which  
20 is marked exhibit number 14?

21          A     Yes, sir.

22          Q     And that shows the Winthrop officer, correct?

23          A     Yes, sir.

24          Q     How long did he stay or do you know?

25          A     I'm not sure.

1 Q Do they have the capability in the Winthrop vehicles to  
2 hear the transmissions of what's going on?

3 A I am sure they do. I am not sure exactly how their  
4 vehicles are set up.

5 Q Scanners?

6 A I don't work for Winthrop.

7 Q Did you all talk to him at all that night?

8 A He spoke with him briefly.

9 Q Okay. In the meantime your checking the car, under the  
10 seats, the front, the back and the trunk, correct?

11 A Yes, sir.

12 Q And then this one here, which is number 15, what was  
13 that?

14 A That's when I was recovering the bags and the drugs.

15 Q Okay. And that bag is it -- show me which one that is?  
16 What exhibit that is. I'm a not sure? Is this it here?

17 A Yes, sir that's it. Number 11.

18 Q This is the bag? Part of the bag?

19 A Yes, sir.

20 Q Is it actual bag or just rip off of a garbage bag?

21 A It's part of a bag.

22 Q It's part of a bag. It's not a complete bag?

23 A No, sir.

24 Q And that's the part you picked up and then dropped down  
25 at the car?

1 A Yes.

2 Q Let's see what else you got here real quick.

3 A Here is the other bag as well.

4 Q Now let me ask you this, why would this -- what it's in  
5 this bag here which is number -- exhibit number 10?

6 A What's in it currently?

7 Q What's that?

8 A It's another piece of a ripped bag.

9 Q But the bag in the picture is white. This is yellow?

10 A Yes, sir.

11 Q Why the different colors?

12 A Because our forensics unit was testing that bag for  
13 fingerprints.

14 Q Okay. And that's what turned it to yellow?

15 A Yes, sir. Whatever chemical they use to locate those  
16 prints changed the color the bag.

17 Q And they use chemicals to track for fingerprints,  
18 correct?

19 A Yes, sir, depending on the material.

20 Q You didn't do that the chemist did?

21 A Somebody did that knows more about that than I do.

22 Q Okay. You don't have any desire to become a chemist --

23 A No, sir.

24 Q -- and stay on parole, correct?

25 A Yes, sir.

1 Q So, you will agree that Breeden told you it was a black  
2 man in a black or dark outfit?

3 A Yes, sir.

4 Q Okay. Did he describe his weight or height or  
5 anything?

6 A Not that I recall.

7 Q Did he put that out over the air?

8 A Yes, sir.

9 Q And how did he say, just look for a black guy that's in  
10 black?

11 A I don't remember exactly how it came across the radio.  
12 This was in September of 2020.

13 Q Can you remember anything specific about it? Would you  
14 agree with me if I get a dispatch and it says look for a black  
15 man in black, dark clothes that's kind of general, isn't it?

16 A It's kind of general but at four o'clock, four-thirty  
17 in the morning, I mean, there's not really anybody out in the  
18 city.

19 Q Okay. When was your shift started that night,  
20 midnight?

21 A No, we start at six p.m. and we get off at six am.

22 Q Six to six?

23 A Yes, sir.

24 Q So you guys basically been up all night?

25 A That's our shift. That's what we work.

1 Q Did you stay over and have to keep working beyond that  
2 that day?

3 A I don't recall. I don't believe so.

4 Q Okay. When you first got there was Breeden on the  
5 phone with anybody?

6 A I believe he answered the phone as I was speaking with  
7 him. We had had a pretty major collision earlier in the night  
8 so he was working with command staff to get stuff figured out  
9 for that as well.

10 Q And did he indicate to you that at the time that he  
11 pulled into that parking lot there, that parking area, that he  
12 was on the phone talking about that wreck?

13 A Can you -- I'm not sure I understand your question.

14 Q Did you know what he was doing when he pulled into the  
15 lot and saw the car that you ultimately searched?

16 A No, sir. I wasn't there.

17 Q Okay. And did he indicate to you he got out of his car  
18 and he chased the man on foot?

19 A I knew he had briefly chased him on foot because he was  
20 on the radio when that was taking place.

21 Q Okay.

22 A So we could hear that.

23 Q Would you say that's a pretty dark area there?

24 A I mean, if the street lights weren't working it could  
25 be.

1 Q Would you describe it? It's not daylight yet, correct?

2 A It's not day light but there are street lights all  
3 throughout the city. You got ambient lighting in the city.

4 Q Did Breeden describe to you exactly what he saw when he  
5 pulled in and saw that vehicle?

6 A He didn't specifically explain anything to me.

7 Q Nothing?

8 A He's my supervisor. He doesn't have to explain himself  
9 to me.

10 Q But he is trying to ask for other people to help. To  
11 check for this person, isn't that true?

12 A Yes, sir. We were looking for a black male wearing  
13 dark clothing in the middle of the night when nobody else is  
14 out.

15 Q Okay. And he wasn't sure who that black male was?

16 A Moments after this incident started he became aware of  
17 who this individual was.

18 Q So he became aware because of the link system that put  
19 out my client's name?

20 A The link system that connected your client to the  
21 vehicle and to the registered owner the vehicle, yes, sir.

22 Q So because that name comes out is that where Breeden  
23 came up with the fact that he thought this was the subject?

24 A I believe that's a question you asked him yesterday and  
25 you're going to have to ask him because I'm not in his head.

1 No, sir.

2 Q But, you think it might make the officer a little  
3 prejudiced towards that person if he hears the name come out?

4 A No. I'm from Rock Hill so I know a lot of people from  
5 Rock Hill. I don't necessary know their name when I see their  
6 face.

7 Q Would you agree as an officer, if you are shown a  
8 single picture you're more inclined to pick that single picture  
9 then if you saw seven or eight in a line-up or some type of  
10 show?

11 A Not everybody looks the same. No, sir.

12 Q Okay. But it does kind of target my client when his  
13 name comes out, correct?

14 A Not necessarily because when the link system puts the  
15 name up it puts multiple names up. So when the link system puts  
16 the name up it don't show the picture with the name. It just  
17 shows the name. You have to actually click on the name to see a  
18 picture.

19 Q Did it put a lot of names on the link in this case?

20 A Yes, sir.

21 Q Have you seen it?

22 A I've seen it after the fact, yes, sir.

23 Q After the fact. Okay. And you had no dealings with my  
24 client after this incident, have you?

25 A No, sir, I have not.

1 Q You didn't. He was arrested. Do you know when he was  
2 arrested?

3 A Maybe about a week after this.

4 Q Okay. And do you know who arrested him?

5 A Our violent crimes unit, I believe.

6 Q Was he injured in that arrest?

7 MR. THOMAS: Objection. Irrelevant.

8 THE COURT: Sustained.

9 MR. O'LEARY: I withdraw the question.

10 THE COURT: He withdrew the question.

11 Q So you weren't there, so you don't know?

12 A I have no idea.

13 MR. O'LEARY: I beg the Court's indulgence.

14 Q Your body camera, you put on you're uniform the same  
15 place every day, the middle of your chest?

16 A Yes.

17 Q And when you got the camera on and you're driving, it  
18 shows a little over your dashboard, correct?

19 A My does from the way I sit in the vehicle.

20 Q So depending on the officer's height and where he  
21 places it?

22 A Yes.

23 Q And was there anything that morning at four-thirty or  
24 whatever time you were over there, was it foggy? Clear?

25 A Its was fairly clear.

1 Q Okay. You haven't seen the report of fog in the area?

2 A The reports I mean --

3 Q I am just saying?

4 A I know what my video shows and what I saw.

5 Q Okay. Officer, thank you very much. I appreciate it.

6 THE COURT: Redirect.

7 MR. THOMAS: Just briefly.

8 REDIRECT EXAMINATION

9 BY MR THOMAS:

10 Q Officer Austin, when you pulled up on scene Lieutenant  
11 Breeden and that Winthrop officer were both there already?

12 A Yes.

13 Q And they were both in their car?

14 A The Winthrop officer was exiting his vehicle as I  
15 pulled up and Lieutenant Breeden was still in his vehicle.

16 Q Okay. And I heard you say earlier you and the Winthrop  
17 officer approached the car at the same time?

18 A Yes, sir.

19 Q When you collected -- when you collected that suspected  
20 crack cocaine on the ground, did you try to collect only the  
21 crack cocaine? Did you collect dirt with it? What was your  
22 thought process?

23 A The goal was to collect only the crack cocaine. I did  
24 my best of collecting only the crack cocaine.

25 Q And taking a look at the exhibit in front of you does

1 it appear that you collected crack cocaine or dirt?

2 A It appears that if there's any dirt it's not a lot of  
3 dirt.

4 Q Thank you officer Austin. I appreciate it.

5 MR. O'LEARY: No questions.

6 THE COURT: All right. Thank you, officer Austin.  
7 You can can step down.

8 Ladies and gentlemen, this is a good place for us  
9 to take a break. I will allow you to go back for a  
10 jury room. We'll take about a 15 to 20 minute break.  
11 I instruct you do not have any discussion about the  
12 case whatsoever and we'll have you back in about 15  
13 minutes. Everyone remain seated while this jury  
14 exits.

15 (WHEREUUPON, jurors leave the courtroom.)

16 THE COURT: Anything at this point from the State?

17 MR. THOMAS: Not from the State. I have two  
18 witnesses left.

19 MR. O'LEARY: Nothing, Your Honor.

20 THE COURT: The security officer notified the  
21 Court this morning that that particular officer  
22 believed that one of the alternate jurors was here in  
23 a -- or came in a jacket that in his view appeared to  
24 be a confederate flag type jacket. That alternate did  
25 not -- that was not warn in the courtroom. That was

1 his particular perception of what he saw indicated  
2 that the jacket was red, black, blue and did have a  
3 star on it. When I notified the attorneys at the  
4 bench that that had been brought to the Court's  
5 attention when the jury came in neither of alternates  
6 had on that type of clothing. So that has not been  
7 addressed. Mr. O'Leary.

8 MR. O'LEARY: Judge, what I would like to mention  
9 to the Court and put on the record I would ask the  
10 Court to ask the two alternates to come -- I'm worried  
11 she went into the jury room with that on and may have  
12 impact the jury and I don't have any way of knowing  
13 without an inquiry into what she was wearing when she  
14 came in.

15 Just the fact if there was one back there I think  
16 that could contaminate a jury or at least impact a  
17 jury.

18 THE COURT: All right. Let's take a break and we  
19 will deal with that when we come back all right.

20 (WHEREUPON, there was a brief recess.)

21 THE COURT: What I intend to do with the  
22 alternate. I believe it is juror number 274 the first  
23 alternate we chose. I am going to ask that she be  
24 brought out with her belongings. Just explain to her  
25 it appeared that she may have had on a confederate

1 flag coat and I will ask her if she had any discussion  
2 with anybody in the jury room about that. If her  
3 answer is no then I'm simply going to say thank you  
4 for your service and we'll excuse you for the rest of  
5 the case.

6 Alternate juror number 274, Miss Washa. If you  
7 will bring her out and ask her to bring her belongings  
8 with her.

9 (WHEREUPON, Miss Washa was brought into the  
10 courtroom.)

11 THE COURT: Miss Washa, if you don't mind pulling  
12 your mask down. I need to ask you just a couple of  
13 questions. It appears this morning when you came in  
14 it looked like you have a confederate flag coat with  
15 you. Is that right?

16 MISS WASHA: Yes.

17 THE COURT: When you wore that in this morning did  
18 you have any conversation with anybody in the jury  
19 room about what you had on?

20 MISS WASHA: No.

21 THE COURT: Well, thank you. You didn't have any  
22 conversation with anybody?

23 MISS WASHA: No.

24 THE COURT: Well, thank you. We're going to  
25 excuse you. Certainly, its fine to wear whatever you

1           deem appropriate. We're not criticizing you for that  
2           but you are alternate in this case as a juror and we  
3           will excuse you for the remainder of the case. In  
4           fact you are free for the rest of the week. We'll  
5           tell the rest of the jury panel today that they are  
6           free for the rest of the week too. So thank you for  
7           serving. Thank you.

8           MISS WASHA: Thank you.

9           (WHEREUPON, Miss Washa leaves the courtroom.)

10          THE COURT: All right, for the record, juror 274,  
11          Haley Washa, again it was brought to the Court's  
12          attention this morning that she appeared when she came  
13          to Court that she had on a confederate flag coat.  
14          When she came out this morning with the rest of the  
15          jury panel for the first testimony of the officer she  
16          did not have that on. However, during the break I  
17          asked her to come out of the jury room with her  
18          belongings she had her coat in her hand. Clearly --  
19          it was black and white, but it was to the Court  
20          clearly it appeared to be a confederate flag type  
21          coat. The Court did ask her if she had any  
22          conversations with anybody in the jury room about what  
23          she was wearing. She indicated that her answer was no  
24          she had not. And so therefore the Court thanked her  
25          for her service and excused her for this case and the

1 remainder of the week.

2 With that, Mr. O'Leary, I'll be glad to hear  
3 anything from you.

4 MR. O'LEARY: Your Honor, I would move for a  
5 mistrial on the grounds the fact that she was in the  
6 jury room with a confederate flag coat I think it  
7 damaged the impartiality of the jury and I think it's  
8 prejudicial and I think it has contaminated the jury.  
9 For those reasons I would ask for a mistrial.

10 THE COURT: All right. Thank you. Mr. Thomas do  
11 you wish to be heard?

12 MR. THOMAS: Your Honor, I think her answers that  
13 she hadn't discussed it with anyone, and again, she  
14 wasn't wearing it when she came in here in the  
15 courtroom. I mean, all the jurors said they could be  
16 fair and impartial. I don't think there is anything  
17 here to show they would give that up because she was  
18 wearing a coat.

19 THE COURT: All right, thank you.

20 I'll note your objection, Mr. O'Leary, however, I  
21 deny your motion and we will proceed.

22 MR. O'LEARY: Thank you, judge. Can I just make  
23 one more motion?

24 THE COURT: Yes, sir.

25 MR. O'LEARY: Based upon the link system and the

1 testimony of the last witness, the link system  
2 obviously puts the relationships between a person who  
3 owns the car I guess and who they may be dealing with,  
4 which was my client, and I think that that has really  
5 created -- is unduly suggestive. Very similar to a  
6 line-up situation where, you know, if I show one  
7 picture to a witness their tendency is going to go  
8 with that one picture. Here they give the name and I  
9 think that name is unduly suggestive and it would  
10 contaminate his testimony and in court identification  
11 and that's what I was trying to do at the beginning,  
12 but I wasn't sure of the link analysis itself. But I  
13 think based upon that I think the fact that there was  
14 in court identification by the first witness, Mr.  
15 Breeden, I think it was unduly suggestive from the  
16 link and for those reasons I think the in court  
17 identification would create reversible error and I  
18 would ask for a mistrial on that.

19 THE COURT: All right. Thank you. Mr. Thomas, do  
20 you wish to be heard.

21 MR. THOMAS: Your Honor, all of that testimony  
22 about whatever this link system is, all of that came  
23 out on cross examination from Mr. O'Leary. I think  
24 Lieutenant Breeden's testimony was fairly clear that  
25 he identified Mr. Hope from prior past experience, not

1 from anything to do with the computer. They just used  
2 that to associate a name with it. Again, that's a  
3 good argument he can make to a jury but I don't think  
4 that precludes the in court identification and  
5 certainly at this point there's no -- that bell has  
6 been run. There is no remedy at this point.

7 THE COURT: Mr. O'Leary.

8 MR. O'LEARY: Judge, my only response to that was  
9 the jury was asked about prejudice at first before  
10 they were picked, but that really was before he took  
11 the stand. And I think it is definitely unduly  
12 suggestive. I really believe it's very similar to the  
13 one photograph showup versus an actual showup with  
14 multiple pictures is because that name right, after  
15 the name comes across the link-up then the officer  
16 comes up with my client's name. And it definitely had  
17 an impact and I do think it's prejudicial.

18 THE COURT: All right, well, I appreciate your  
19 analysis of it, however, I deny your motion for a  
20 mistrial.

21 His testimony was -- and the jury has to determine  
22 the weight and the believability of the officer, but  
23 he testified that he knew who it was. He had dealt  
24 with him in the past. He just did not remember his  
25 name and certainly when he heard the name among --

1 another officer testified a number of other names were  
2 likely produced by the link system -- that he realized  
3 that the person, the individual that he saw that he  
4 knew, the name he couldn't remember, was the defendant  
5 in this case. So based upon that I will deny the  
6 motion for the mistrial.

7 MR. O'LEARY: Thank you, Your Honor.

8 THE COURT: State ready to proceed?

9 MR. THOMAS: Yes, Your Honor.

10 THE COURT: Defense ready?

11 MR. O'LEARY: Yes, Your Honor.

12 THE COURT: All right. Let's bring the jury out.

13 (WHEREUPON, the jury enters the courtroom.)

14 THE COURT: All right, thank you ladies and  
15 gentlemen. I appreciate your patience.

16 Solicitor, call your next witness.

17 MR. QUICK: The State calls Holly Tobias.

18 HOLLY TOBIAS, called as a witness, having been  
19 duly sworn by the clerk, was examined and testified as  
20 follows:

21 THE COURT: All right, solicitor.

22 DIRECT EXAMINATION

23 BY MR. QUICK:

24 Q Good morning.

25 A Morning.

1 Q Miss Tobias, who do you work for?

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

3 Q Okay. And how long have you been with York County?

4 A I have been with York County for three years.

5 Q And could you explain your educational background?

6 A For my education I attended Wofford College which is in  
7 Spartanburg, South Carolina, where I majored in chemistry. I  
8 have a Bachelors in Science in chemistry.

9 Q And you say you have been with York County for three  
10 years, what is your title with York County?

11 A My title is a forensic chemist.

12 Q And before you were with York County did you work  
13 anywhere else?

14 A I worked on Spartanburg County as a forensic chemist as  
15 well and I was there about three years as well.

16 MR. O'LEARY: Judge, may I ask the witness remove  
17 the mask.

18 THE COURT: Yes. Well, if she's comfortable.  
19 Either remove your mask if you're comfortable. If  
20 you're not comfortable just speak up loud.

21 THE WITNESS: I'll speak up. Work wants us to  
22 wear them right now.

23 THE COURT: I'm sorry.

24 THE WITNESS: Work wants us to wear them but if I  
25 need to take it down I can.

1           THE COURT: Okay. I think your way more than six  
2           feet from anybody. You are behind plexiglass so if  
3           you could pull it down that would be very helpful.  
4           Thank you.

5           THE WITNESS: Is this better?

6           MR. O'LEARY: Thank you.

7           Q     So did I hear you say a total of six years?

8           A     Right over six years. That is correct.

9           Q     And what sort of training have you gotten in your  
10          field?

11          A     So, after I graduated with a chemistry degree from  
12          there you go for about six months of drug analysis training  
13          where you learn all the drugs. How to use the instrument.  
14          Everything. And then every year you have continuing education  
15          to see what new substances are coming out, new methods, testing  
16          samples. That sort of analysis.

17          Q     So, it's safe to say you have experience testing drugs?

18          A     I would say so.

19          Q     So, can you just explain to the Court how drug testing  
20          works?

21          A     The drug testing we receive a substance. It could be  
22          anything from a powder, a tablet, a plant, et cetera, just any  
23          form of a substance that officer may find. From there we will  
24          take the substance. We do a presumptive test which can be like  
25          a color test. We can also do like if it's a tablet the markings

1 on it. But overall our main is a two part confirmatory test  
2 which is on Gas Chromatograph/Mass Spectrometry also known as a  
3 GC/MS and that allows us to confirm what is found in the  
4 substance and then we testify on our findings.

5 Q All right. That's a lot of science. Let me ask you,  
6 the method you use is it the accepted science in the State of  
7 South Carolina?

8 A Every lab I know uses GC/MS and the presumptive and  
9 confirmatory test.

10 Q And your work is peer reviewed?

11 A Everything we do in the drug lab has to be peer  
12 reviewed.

13 Q Now, Miss Tobias, have you been qualified previously as  
14 an expert?

15 A I have.

16 Q And in what field?

17 MR. O'LEARY: Your Honor, we would stipulate to  
18 her qualifications.

19 THE COURT: All right. Tell me what area of  
20 expertise you would like to have her declared an  
21 expert.

22 MR. THOMAS: Yes, Your Honor, we would like to  
23 qualify her as an expert forensic chemistry and drug  
24 analysis.

25 THE COURT: No objection?

1 MR. O'LEARY: No objection.

2 THE COURT: All right. The Court finds she is  
3 qualified to testify as expert in forensic chemistry  
4 and drug analysis.

5 Ladies and gentleman of the jury I'll instruct you  
6 now and I will instruct you later on, that normally a  
7 person can not give opinion testimony. Normally when  
8 a person testifies they must testify as to what they  
9 either saw or heard or sensed by smell or something of  
10 that nature. However, there is an exception when  
11 someone is qualified because of education or  
12 experience they're permitted to give their opinion in  
13 certain areas if the Court qualifies them that way.  
14 This witness will be qualified in the area of as a  
15 forensic chemist and drug analysis. To give an  
16 opinion testimony in that area that does not mean that  
17 you must accept the opinion but it's evidence for you  
18 to use in any way you see fit and give the weight and  
19 credibility you believe is important. All right.  
20 Thank you. Mr. Quick.

21 A So in the current matter did you receive any drug  
22 evidence to analyze?

23 A I did.

24 Q I will put the mask on as I move forward. Let me know  
25 if you can't hear me.

1 I am showing you what has been marked State's exhibit eight  
2 and nine,. Do you recognize those exhibits?

3 A I do.

4 Q Okay. And has the packaging tampered?

5 A It does not appear so.

6 Q And you tested the substances inside the exhibits?

7 A Each one I did analyze.

8 Q And can you -- what are they?

9 A Okay, I'll start with exhibit eight. It's a bag with  
10 an off white -- we call it a rock-like substance. It's a  
11 compressed substance. As far as number nine, it's crushed but  
12 it's still off white, a harder substance.

13 Q Okay. And can you state within a reasonable scientific  
14 state that based on your scientific knowledge that the substance  
15 you tested in those exhibits are to be crack cocaine?

16 A My may I refer to my report?

17 Q Yes.

18 A I found let's start with number exhibit eight, was  
19 found to be cocaine base also known as crack and then exhibit  
20 nine was found to be cocaine base also known as crack.

21 Q Okay. May I have the exhibits back. I'm showing  
22 defense counsel State's Exhibit eight and nine?

23 MR. O'LEARY: No objection.

24 MR. QUICK: Judge, the State would like to move  
25 exhibits eight and nine in.

1 THE COURT: State's eight and nine are in evidence  
2 without objection.

3 (WHEREUPON, State's 8 and 9 were received in  
4 evidence.)

5 Q Miss Tobias, I just want to clarify. You mentioned  
6 that the substance is crack cocaine. Is crack cocaine -- which  
7 is more potent, crack in that form, the rock substance form, or  
8 in cocaine form -- powdered form?

9 A Cocaine powder is the base form of it. You have to  
10 smoke it so it is suppose to be more potent.

11 Q And you worked on -- presumably you worked on  
12 possession with intent to distribute cases before. Are you  
13 familiar with the amount needed for the statutory threshold?

14 MR. O'LEARY: Objection.

15 THE COURT: The basis for the objection?

16 MR. O'LEARY: The basis of my objection is she's  
17 testified about the substance itself not questions of  
18 law.

19 THE COURT: All right. I'll sustain the  
20 objection.

21 Q Miss Tobias, how much did the crack cocaine weigh way?

22 A For exhibit eight, it was found to weigh 1.73 and for  
23 exhibit nine, it was found to weigh 0.78 grams.

24 Q I think that is enough science for me. Thank you Miss  
25 Tobias?

1 THE COURT: Thank you, Mr. Quick. Mr. O'Leary.

2 CROSS EXAMINATION

3 BY MR. O'LEARY:

4 Q Ma'am, you said you've been working for how long with  
5 the sheriff's office?

6 A For York County I have been here for three years and  
7 Spartanburg prior to York, I was another three years.

8 Q Okay. You are chemist. Have you been certified as a  
9 law enforcement officer?

10 A I am sworn.

11 Q Would it be proper for officer if he picks up something  
12 he believes to be drugs and the bag that's with it, the covering  
13 that is with it, is it proper for an officers to drop that back  
14 to the ground?

15 A I'm not at the scene when they do that part, I just  
16 receive the evidence from an evidence custodian and that's where  
17 I receive it. I'm not at the scene.

18 Q Okay. Do you have a specialty in the lab or just  
19 general for everything?

20 A It's drug chemistry.

21 Q Whatever comes in the door?

22 A Yes.

23 Q So you have no personal knowledge where this came from  
24 or how it was handled?

25 A As far as I know, minus what maybe the officer wrote in

1 the report. I don't read the reports. I just get the evidence  
2 and I analyze it from there. I just go based off what's in this  
3 bag. I determine what it is.

4 Q And the substance in this case, do you know was date it  
5 was actual recovered and then what date you analyzed it?

6 A I would have to see the evidence to tell you when it  
7 was recovered. I received it December 2nd of 2020.

8 Q And when did you do the test on it?

9 A So when I receive it, within that month and then --  
10 let's see. If I can see the evidence. Sorry. The date would  
11 be on the evidence. So I analyzed it on January 4th of 2021.

12 Q And then after you analyzed it you then what do with  
13 the evidence? Do you return it?

14 A So once it is analyzed I will reseal the bag and then  
15 everything gets returned back to the evidence room for this  
16 agency would have been Rock Hill. So they would have one of  
17 their evidence custodians come and receive the evidence from me.

18 Q And they pick it up from somebody in your office, not  
19 necessarily you, correct.

20 A They would pick it up from me directly.

21 Q Directly from you. And then you have to sign a slip,  
22 correct?

23 A That's correct.

24 Q Thank you. I appreciate that. I didn't get to close  
25 to you.

1 A No, your good.

2 THE COURT: Mr. Quick, any redirect?

3 MR. QUICK: None, Your Honor.

4 THE COURT: All right. Thank you, Miss Tobias.  
5 You can step down.

6 All right, solicitor, call your next witness.

7 MR. THOMAS: Your Honor, the next witness is going  
8 to be Allison Scoggin from Rock Hill Police  
9 Department.

10 ALLISON SCOGGIN, called as a witness, having been  
11 duly sworn by the clerk, was examined and testified as  
12 follows:

13 DIRECT EXAMINATION

14 BY MR. THOMAS:

15 Q Investigator Scoggin, where do you work?

16 A Rock Hill Police Department.

17 Q And what do you do there?

18 A I am forensic investigator.

19 Q And what does that entail?

20 A I collect evidence, process evidence. Process evidence  
21 for cases.

22 Q And in terms of processing evidence do you do -- I  
23 guess you collect and analyze fingerprints as part of that?

24 A Yes.

25 Q And what kind of training and experience do you have

1 specifically in analyzing fingerprints?

2 A Just a basic fingerprint class from the South Carolina  
3 Criminal Justice Academy as well as analyzing prints on a daily  
4 basis.

5 Q And is that something you have regular training on  
6 that, I guess, recertification?

7 A Yes.

8 Q And as part of that do you have I guess someone else in  
9 your office that does the same things?

10 A Yes, we all do.

11 Q Okay, and do you all sort of review each other's work?

12 A Yes.

13 Q How many times would you say you have had an  
14 opportunity to -- I guess, when we talk about prints, you take a  
15 print that is collected from the scene or from an object do you  
16 collect those some times from other people?

17 A Yes.

18 Q And when you do that, what do you compare that to?

19 A Either ten-print card from an unknown subject or a  
20 ten-print card from a known subject.

21 Q A ten-print card that's just a fingerprint card?

22 A A fingerprint card.

23 Q And how many times do you think you had an opportunity  
24 to do a fingerprint comparison?

25 A Rough estimate, five hundred to a thousand times. It's

1 pretty standard on a daily basis that we look at prints.

2 Q And have you ever come to court and testified as an  
3 expert in fingerprint analysis and comparison before?

4 Q How many times?

5 A Twice.

6 MR. THOMAS: At this time, Your Honor, I would ask  
7 that we qualify Investigator Scoggin as an expert in  
8 fingerprint comparison and analysis.

9 THE COURT: Mr. O'Leary?

10 MR. O'LEARY: Your Honor I would like to ask a  
11 couple of questions.

12 THE COURT: All right. Let's give him an  
13 opportunity to cross examine.

14 CROSS EXAMINATION

15 BY MR. O'LEARY:

16 Q Ma'am, when were you trained at the academy in this?

17 A I don't have the exact date off hand. It is in my  
18 records at the office.

19 Q What year?

20 A I joined the forensic academy, class in 2016 . Probably  
21 2017.

22 Q Were you trained at all by a FBI agent name Sam  
23 Greesey? (Phonetics)

24 A No.

25 Q Was that an answer?

1 A No.

2 Q Sorry about that. How long is the training class?

3 A It was a week long class.

4 Q And they test you, don't they at the academy?

5 A Yes.

6 Q Periodically during the time you were there?

7 A Yes, we had exercises that we would do daily.

8 Q And did you do them at the actual academy or out on the  
9 ranges?

10 A The academy itself.

11 Q And you said it was five days?

12 A It was week long, yes, sir. Well, five days.

13 Q You have to be recertified every how many years?

14 A We don't get recertified in fingerprints.

15 Q So once you're certified you're certified?

16 A Yes.

17 Q Okay. Now in your testing period on the test questions  
18 did you ever make errors?

19 A I'm sure, yes.

20 Q Have you ever made errors on just normal when you got  
21 back to the department, have you erred on any of the tests you  
22 run?

23 A The tests I run or the comparison I've done.

24 A I am sure, yeah.

25 Q Do you have peer review?

1 A Yes.

2 Q Okay. And is that in your department do you have peer  
3 review?

4 A Yes.

5 Q So when you come up with your finding on it you then  
6 send it to whom?

7 A One of our other investigators in our office.

8 Q Not your superiors or bosses?

9 A No.

10 Q Just the other officers in the unit?

11 A One of our officers is a sergeant but yes.

12 Q And you say you testified in court how many times?

13 A Twice.

14 MR. O'LEARY: I have no further questions and  
15 judge I have no objection.

16 THE COURT: All right. Then the Court finds  
17 Investigator Allison is qualified to testify as an  
18 expert in fingerprint analysis and comparison.

19 Mr. Thomas.

20 DIRECT EXAMINATION

21 BY MR. THOMAS CONT'D:

22 Q Investigator Scoggin explain to us what a latent  
23 fingerprint is?

24 A Latent fingerprints everybody has. If you look at the  
25 fingertips everybody has fingerprints. A latent print is when a

1 subject leaves a print behind whether it be from oils on your  
2 skin or other materials and if you touch an object you will most  
3 likely, not all the time, leave a print behind.

4 Q And when we talk about a known ink fingerprint what do  
5 we mean by that?

6 A Just an ink fingerprint from a subject that we know  
7 name, date of birth, FBI number, SID number, South Carolina  
8 identification number. A subject who we know they belong to.

9 Q So a process by which you can make sure that you know  
10 that the fingerprints you are looking at belongs to a specific  
11 person?

12 A Yes.

13 Q And I think you mentioned how people leave  
14 fingerprints. Does the type of surface that you touch or any  
15 other environmental conditions effect whether a print is left,  
16 how long it will stay there, that sort of thing?

17 A Yes.

18 Q Could you just explain that to us a little bit?

19 A Texture on a surface is a big play on whether a  
20 fingerprint is left behind or not. A textured surface, a porous  
21 surface has a harder time obtaining a print that is left behind.  
22 Where a smooth surface, shiny, glass, cans, are better for  
23 leaving prints.

24 Q And so when you collect a fingerprint -- what's your  
25 procedure by which you test an item or object to see if you can

1 find fingerprints on it?

2 A Depending on the material there are a few different  
3 processes we can do. For this instance I used cyanoacrylate  
4 which is essentially a supper glue it is put into a feeding  
5 chamber and the process is completed with a heat source and the  
6 super glue turns to vapors and sticks to an object.

7 Q And I think you said in this case -- I'll go ahead and  
8 show you State's number -- State's number ten. Does that look  
9 familiar?

10 A Yes.

11 Q And that's already in evidence. That's a piece of  
12 something that you tested?

13 A Yes.

14 Q Using that method?

15 A Yes, and then die stained.

16 Q That's why it's --

17 A Yellow.

18 Q Okay. You weren't able to lift any prints off of this?

19 A No.

20 Q When we talk about fingerprints and people leaving them  
21 behind, I guess couple little basic things. You may have already  
22 covered this. Each individual -- does each individual  
23 fingerprints are they unique or certain copies of prints? How  
24 does work?

25 A They are unique. Not two people have the same

1 fingerprints. They can be similar but they will always be  
2 different.

3 Q And when you look at fingerprints are there certain  
4 like characteristics that you can look at?

5 A We do. We look at the friction ridges which are the  
6 ridges on your finger tips that we compare. We will look at the  
7 core, the pattern of it, the flow, as well as the delta. Each  
8 one is all unique. Points of comparison that we look at.  
9 Points of interest on a fingerprints we look at.

10 Q And in going back to this case specifically, did you  
11 receive item number 13 to process also?

12 A Yes, it came out of the bag.

13 Q State's 12 and 13?

14 A Yes.

15 Q Okay. And did you process those items for  
16 fingerprints?

17 A I did.

18 Q Did you find any prints on the firearm?

19 A Not on the firearm itself.

20 Q Does that surprise you in any way?

21 A No.

22 Q Why is that?

23 A It depends on how it's handled. The fingerprints can  
24 wipe off of them.

25 Q And you talk about ridges and surfaces. Is that made

1 of plastic and sort of have a grip?

2 A The grip is plastic which does not hold very good  
3 prints, but the slide is metal which can hold decent prints.

4 Q And what about that magazine?

5 A Magazine, yes, it can hold.

6 Q So that's a metal surface. It's flat?

7 A Yes.

8 Q And you had a opportunity in this case also to review a  
9 fingerprint card as well?

10 A Yes.

11 Q And who did that fingerprint card belong to?

12 A Mr. Hope.

13 Q And you identified that based on his identifying  
14 information on the card?

15 A Yes.

16 Q And you were able to compare that to prints that you  
17 listed in this case?

18 A Yes.

19 Q And I guess go back to item 13, State's number 13, did  
20 you find any prints on that?

21 A I did.

22 Q So did you compare the prints you found on that to the  
23 prints you found on on the known standard?

24 A Yes.

25 Q I think did you, we talked earlier you prepared a

1 slideshow to help you testify about that process?

2 A Yes.

3 Q You had a chance to review that, right?

4 A Yes.

5 Q And would that slideshow that you prepared assist you  
6 in testifying to the jury?

7 A Yes.

8 MR. THOMAS: Your Honor, at this time I'd ask to  
9 just put the slideshow up and for her to go through  
10 it.

11 THE COURT: Does she need to -- I forget we have  
12 technology. She is able to use the screen at her  
13 seat, is that right?

14 MR. THOMAS: I can make it go back and forth for  
15 her.

16 THE COURT: I'll leave that up to you.

17 Q All right. What are we looking at here?

18 A This is templet card that was used to compare the  
19 latent print on the magazine to Mr. Hope.

20 Q And so all of those prints that are on there, those are  
21 fingerprints that had been confirmed associated with Mr. Hope?

22 A Yes.

23 Q And that was done by the person that took the prints?

24 A Yes.

25 Q But that wasn't you?

1 A No.

2 Q Okay. And just moving on to the next slide. What is  
3 that?

4 A The back of the ten print card that was used.

5 Q And that contains identifying information?

6 A That just has our OIR number, which is our agency  
7 number.

8 Q Okay, and did you tell me you blocked that out for  
9 privacy reasons?

10 A The other information.

11 Q What are we looking at here?

12 A This is the pistol that was requested to be processed  
13 for latent prints. It's the FNX 45 caliber.

14 Q State's exhibit 12 in front of you?

15 A Yes.

16 Q And how did you process that?

17 A With cyanoacrylate as well.

18 Q And how does that work again?

19 A First I swab the pistol for DNA on the magazine -- I'm  
20 sorry not the magazine, the grip, the trigger. Afterwards the  
21 pistol is placed into our fuming chamber where cyanoacrylate,  
22 which is superglue, gets placed on a heat tray. The heat tray  
23 turns on. Makes the glue into a vapor and throughout the  
24 process it adheres to the objects that are in it.

25 Q And what are we looking at hear?

1           A     That is the pistol magazine belonging to the -- with  
2 the firearm.

3           Q     And did you test that as well?

4           A     I did.

5           Q     What method did you use?

6           A     Same process.

7           Q     Did you find anything on -- did you find any prints on  
8 this magazine?

9           A     Yes.

10          Q     I guess when it comes out of the chamber you exam it I  
11 guess to see if you see any prints?

12          A     We introduce basic yellow stain to it and allow it to  
13 dry. That basic yellow stain adheres to the superglue and will  
14 turn a fingerprint like a blue yellow color when looked under  
15 with alternative light source.

16          Q     And do you then document that somehow?

17          A     With photographs.

18          Q     Okay. So what are we looking at here?

19          Q     That was the latent print that was photographed off of  
20 the magazine?

21          Q     So that is a picture you took of the latent print?

22          A     Yes.

23          Q     What did you do you once you get that photograph?

24          A     That will be placed into our comparison program at  
25 essentially my desk and we can look at that print versus a known

1 print or we can enter it. But in this case it was compared to a  
2 known print.

3 Q Okay. And you were able to I guess upload that known  
4 print also into the system?

5 A Yes.

6 Q And then when you to upload it into the system do you  
7 go through and manually identify the point of comparison?

8 A Yes.

9 Q And when we say points of comparison, what are we  
10 talking about?

11 A Just different characteristics on the fingerprint that  
12 we look at, whether it be a bifurcation or ridge ending.

13 Q So just things that I guess you can match up and say  
14 this is this?

15 A Yes.

16 Q So, what are we looking at on this slide?

17 A The comparison that was done by me. The left is the  
18 photograph of the print that was recovered off of the magazine  
19 and the right slide -- the right side is the known print to Mr.  
20 Hope.

21 Q And I guess if you would just walk us through your  
22 analysis and findings of these two?

23 A Yes. We'll start with the one on the left. Each  
24 number represents a point of comparison that was identified in  
25 the print. As you can see on the right there are also numbered

1 as well which is just a comparison between the two prints.

2 So on each side you have number one which is a ridge ending  
3 that into a bifurcation. It may be hard on here because it's  
4 small. Number 1 is similar on the left as well as the right.  
5 So when we do comparisons and we have one point of comparison  
6 done we count ridges to find another one. So if you go from  
7 number one count up one, you have number two as you can see that  
8 is similar on the right hand side.

9 Number three, we'll just kind of go briefly because we have  
10 a few. Number three and four is a short ridge and as you can  
11 see on the right hand side they're there as well. Number five,  
12 going in you have a ridge ending. Number six is another ridge  
13 ending and this is where it kind of gets a little -- you can see  
14 the characteristics in it. You have six which is the ridge  
15 ending. One above is another ridge ending, and as well above  
16 that is another ridge ending. So you have six. I'm going to  
17 skip to nine and eight just because they are all in the same  
18 area. As you can see on the right hand side, six nine and eight  
19 are also similar on both sides which would give it a good point  
20 of comparison between the two prints.

21 Counting up to number seven, you have a ridge ending as well  
22 and that is the same on the right hand side to Mr. Hope's.  
23 Jumping to ten since we've already covered eight and nine, you  
24 have a ridge ending which is closer to the core, which is the  
25 pattern -- where the pattern is in the middle. Eleven is a

1 bifurcation as well that's close to the core.

2 So on top of all the points of comparisons that we look at  
3 we also look at the flow of the pattern, the core. If we have a  
4 lot of decent core we look at the core, the pattern, the flow  
5 and just the points of comparisons that we identify to look at  
6 the known subject.

7 Q And on this you said you found 11 points of comparison?

8 A Yes.

9 Q Is that enough for you to make a determination in this  
10 case?

11 A Yes.

12 Q To a reasonable degree of certainty in your field  
13 what's your analysis of these two?

14 A The photo on the left which is 0579 which was recovered  
15 off of the magazine is Mr. Hope's left middle figure which is  
16 number eight.

17 Q And for the photo that you took of what you found off  
18 the magazine how would that fingerprint have gotten on to the  
19 magazine?

20 A By Mr. Hope touching the magazine.

21 Q Thank you Investigator Scoggin, I'll let you answer any  
22 questions Mr. O'Leary may have?

23 THE COURT: Mr. O'Leary.

24 CROSS EXAMINATION

25 BY MR. O'LEARY:

1 Q Ma'am, on the photograph you showed of the weapon  
2 itself?

3 A Yes.

4 Q You found nothing on that, correct?

5 A No.

6 Q And now onto the magazine and your saying there's a  
7 print from my client at the base of the magazine, correct?

8 A Yes.

9 Q So, do you know when that was put on there?

10 A No.

11 Q How long it had been on there?

12 A No.

13 Q There is no way to tell in your analysis, correct?

14 A No.

15 Q So in this case how many normal points of  
16 identification do they teach you at the academy?

17 A There is no set minimum. It's whether or not you feel  
18 comfortable as a fingerprint analyst to call that print.

19 Q So it's nothing like a number of 26 or anything like  
20 that? Have you ever heard those numbers, 26? 28?

21 A As far as points of comparison?

22 Q Yeah.

23 A Have I heard, yes, we call a minimum in number of  
24 points of comparison.

25 Q Doesn't the academy in the training teach that as the

1 minimum?

2 A Twenty-six?

3 Q Yeah.

4 A No.

5 Q Twenty-eight?

6 A No.

7 Q They don't teach it as a standard?

8 A That's a lot of points of comparison.

9 Q But they don't teach a standard?

10 A There is no set number.

11 Q How about a minimum number?

12 A As far as we like to say at least a minimum of six to  
13 eight, but it also depends on the print is. Whether you can  
14 compare the flow of the pattern, the core of the pattern, the  
15 delta of the pattern.

16 Q So, you also processed the bullets, didn't you, that  
17 were in the magazine?

18 A I would have to look at the report. It was a while  
19 ago.

20 Q But you didn't find any other print other than on the  
21 bottom of the magazine, correct.

22 A Is it was on the actual stock of the magazine, not the  
23 bottom of it.

24 Q One print?

25 A Yes.

1 Q Did you -- were you involved in the scene itself with  
2 the car that was involved in this case?

3 A No.

4 Q Do you know if the car was dusted for prints?

5 A I believe it was.

6 Q And there was nothing found in the car on the door, was  
7 there? Was there anything in the car found?

8 A I believe I entered prints that came off of the door  
9 frame.

10 Q Okay.

11 A But I would have to look at the report to confirm that.

12 Q But you testified today if there was one there,  
13 correct?

14 A Yes.

15 Q And you didn't find anything on the steering wheel,  
16 correct?

17 A The steering wheel is porous. It does not hold latent  
18 prints.

19 Q Where else would you dust a car for?

20 A What else would I dust a car for?

21 Q Yeah.

22 A Latent prints. To dust, just latent prints.

23 Q Do they usually in your department tow the car back  
24 down to the lab?

25 A Not all the time.

1 Q Or do they it do it at the scene?

2 A We can do both.

3 Q Is it your testimony that you did not test the bullets  
4 themselves?

5 A Test them for --

6 Q Dust them?

7 A We don't dust the bullets.

8 Q So show me on the magazine? Where would this be on the  
9 magazine?

10 A I would have to look at the side. It would be right at  
11 the bottom of the metal. Right before the plastic on the inside  
12 of the magazine. (Indicting)

13 Q Show that again to the jury?

14 A It would be right down at the bottom of the metal,  
15 right before the plastic where it actually gets inserted into  
16 firearm.

17 Q And you don't know when that was put on there?

18 A No.

19 Q And based on comparison you said that whoever had that  
20 print -- you say it's my client -- touched that, correct?

21 A Yes.

22 Q He touched that surface?

23 A Yes.

24 Q There's nothing on there to show that it was held and  
25 picked up or anything? Just that one print?

1           A     The one print.

2           Q     And we don't know when it was put on?

3           A     No.

4           Q     And did you know where the -- excuse me -- where the  
5 magazine came from?

6           A     It was inside the firearm when I received it or with  
7 the firearm when I received it.

8           Q     But you don't know whether that was found in the car or  
9 not?

10          A     I do not.

11          Q     The point you just pointed to on the magazine, was that  
12 significant at all as to the magazine? Do you hit that point or  
13 is it just --

14          A     You would hit that point to be inserting a magazine  
15 into a firearm.

16          Q     Would you hit -- to insert it into a firearm would you  
17 usually hit the palm of your hand?

18          A     To make sure it's seated in properly you may use your  
19 palm of your hand on the bottom the magazine.

20          Q     You probably put it in that way, correct?

21          A     Yes, when you grip a magazine you essentially grip this  
22 part of the firearm to insert it.

23          Q     What chemical do you put on that again? I can't say  
24 that chemical?

25          A     Cyanoacrylate.

1 Q That's a tough one. Okay, thank you ma'am.

2 THE COURT: Any redirect?

3 REDIRECT EXAMINATION

4 BY MR. THOMAS:

5 Q When we're talking about loading a magazine, I mean I  
6 guess different people may be trained to load it in different  
7 ways?

8 A Yes.

9 Q But you also -- are there any other times you may find  
10 yourself holding a magazine?

11 A Any time you feel like it to load a magazine.

12 Q If I handed you a copy of your report would that help  
13 you remember if you pulled any prints off of it? (Handed)

14 A Yes.

15 Q Does that refresh your recollection?

16 A Yes.

17 Q So whose prints did you find that came off of the door  
18 panel?

19 A Off the door panel is the pillar.

20 Q Whatever.

21 A Bianca Campbell.

22 Q And again, in your opinion as an expert, the  
23 fingerprint on State's number 13 belonged to who?

24 A Mr. Hope.

25 Q And that opinion -- your work was reviewed by somebody

1 else in your office?

2 A Yes.

3 Q Who confirm that?

4 A I believe Investigator George did.

5 Q And is he a sergeant

6 A He is a sergeant.

7 MR. THOMAS: Thank you very much.

8 MR. O'LEARY: I beg the Court's indulgence.

9 RECROSS EXAMINATION

10 BY MR. O'LEARY:

11 Q So, the only print you found supposedly from my client  
12 was on the bottom of that right there? (Indicating)

13 A Yes.

14 Q Have you been privy to a class where they teach you to  
15 put the magazine properly into the pistol?

16 A There's several different ways you can place a magazine  
17 into a pistol.

18 Q Depending on the pistol too, correct?

19 A Yes.

20 Q Was George -- he's your supervisor or just a coworker?

21 A He's my supervisor as well as one of our investigators  
22 in our unit.

23 Q And he checked to see if your analysis was correct?

24 A Yes.

25 Q And did anybody outside of your department check it

1 other then Mr. George?

2 A No.

3 Q You don't have a third party?

4 A We have four people in our unit, but as far as outside  
5 we rarely use outside.

6 Q Okay. And I think you said earlier I'd asked you in  
7 the training you've made mistakes. Have you ever made a mistake  
8 when you're doing the real job?

9 A I'm sure when I look at fingerprints all day they all  
10 kind of blend together.

11 Q I believe that. I can't see them now. Thank you very  
12 much.

13 THE COURT: Thank you investigator Scoggin. You  
14 can step down.

15 Solicitor call your next witness.

16 MR. THOMAS: Your Honor, at this time the State  
17 rests.

18 THE COURT: All right, thank you.

19 Ladies and gentleman of the jury the State has  
20 indicated that that is all the evidence they intend to  
21 present. At this time we need to take up some matters  
22 outside of your presence. I will allow you to go back  
23 to the jury room. Again, do not discuss the case at  
24 all. We should have you back in here momentarily.  
25 Everyone remain seated while the jury is excused.

1 (WHEREUPON, the jurors exit the courtroom).

2 THE COURT: All right, thank you. Anything from  
3 the defense?

4 MR. O'LEARY: Your Honor, I would move for a  
5 directed verdict on the issue of the weapon. I don't  
6 think there is any sufficient evidence to go to a jury  
7 as to the possession of the weapon itself.

8 THE COURT: All right, Mr. Thomas, do you wish to  
9 be heard?

10 MR. THOMAS: Your Honor, Investigator Scoggin just  
11 testified that there was a fingerprint on the inside  
12 of that magazine and that magazine was placed into  
13 that weapon. So that associates Mr. Hope with the  
14 weapon. He was also obviously identified as running  
15 away from the car where the weapon was found. State's  
16 position is that is sufficient evidence to survive a  
17 DV motion in that regard.

18 THE COURT: All right, I'm going to deny the  
19 motion for directed verdict. Taking the evidence in a  
20 light most favorable to the non-moving party in this  
21 particular case, the State, I find there is sufficient  
22 evidence based upon the officer's testimony that he  
23 identified the individual running away from the car  
24 that he followed in the parking lot as being Mr. Ramon  
25 Hope. Found in the car was a pistol under the

1 driver's seat with a fingerprint on it that matched  
2 the testimony is that match defendant hope. That is  
3 sufficient evidence for the State to survive a motion  
4 for a directed verdict. So I deny the motion for  
5 directed verdict as to the gun.

6 MR. O'LEARY: Judge, I'll make one more motion  
7 with reference to drugs themselves. I think it's  
8 insufficient evidence to go to the jury on the grounds  
9 I believe that the identification in Court was tainted  
10 by the link system and I would move for a directed  
11 verdict.

12 THE COURT: Mr. Thomas.

13 MR. THOMAS: Your Honor, I stand by my previous  
14 arguments on that Id. It was very clear that he  
15 identified Mr. Hope. Mr. Hope took off running  
16 without any blue lights being on, evidence of flight.  
17 There is sufficient evidence there for the jury as  
18 well.

19 THE COURT: All right, the Court does note as far  
20 as the drugs on the ground certainly that would be  
21 circumstantial evidence. The Court is aware of the  
22 standard for circumstantial evidence to survive a  
23 directed it has to substantial circumstantial  
24 evidence. This particular case it appears that just  
25 as stated before the officer indicated that Mr. Hope

1                   exited the car. Took off running. He was able to  
2                   identify. He did find drugs located directly beside  
3                   the driver's door on the ground by the car.

4                   I find that is substantial circumstantial evidence  
5                   to survive a motion for a directed verdict. That  
6                   motion is denied.

7                   MR. O'LEARY: Thank you, judge.

8                   THE COURT: Anything else?

9                   MR. O'LEARY: Nothing at this time.

10                  THE COURT: Do you intend to put up any evidence.

11                  MR. O'LEARY: No, Your Honor, we do not.

12                  THE COURT: Let's bring your client around and let  
13                  me talk to him about his rights. If you don't mind  
14                  pulling your mask down.

15                  Mr. Hope.

16                  THE DEFENDANT: Yes, sir.

17                  THE COURT: I need to ask you some questions, what  
18                  I am required under the law to do.

19                  THE DEFENDANT: Yes, sir.

20                  THE COURT: Is to talk to you about your right not  
21                  to testify. That's a constitutional right and the  
22                  Court has to be fully informed of your decision to not  
23                  testify. So what I'm going to need to do is place you  
24                  under oath. I'll simply be asking you a number of  
25                  questions about that right. Do you understand that?

1 About the right not to testify. Do you understand  
2 that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. If you would raise your  
5 right hand please. Madam clerk, if you'll swear Mr.  
6 Hope in.

7 THE CLERK: Do you swear to tell the truth, the  
8 whole truth and nothing but the truth so help you God?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: All right.

11 Mr. Ramon Hope, I'm going to explain to you  
12 certain of your rights. You can put your hand down.  
13 If you don't understand anything I say please let me  
14 know. We have reached the state of the trial where  
15 you may present a defense. You have a right to claim  
16 the protections given to you under the Fifth Amendment  
17 of the Constitution of the United States. That states  
18 in part that no person shall be compelled in any  
19 criminal case to be a witness against himself. That  
20 means you can not be required to testify in this case.  
21 You have a right to testify on your behalf, however,  
22 no one can make you testify. This is a personal right  
23 and no one can waive this right except you. Your  
24 lawyer can't waive it for you. Your family can't  
25 waive it for you. This is your right. If you decide

1 to testify you would be subject to the same rules that  
2 governs other witnesses and you may be examined and  
3 crossed examined on any relevant issue in the case.  
4 In addition, if you have any convictions involving  
5 dishonesty or false statements or for crimes  
6 punishable by imprisonment for more than one year and  
7 this Court determines that probative value of  
8 admitting this evidence outweighs its prejudicial  
9 effect to you the solicitor will be able to introduce  
10 your record to attack your credibility. If you decide  
11 to testify this decision on your part must be freely,  
12 voluntarily, intelligently made with knowledge of the  
13 protections given to you by the Fifth Amendment and  
14 the consequences of your decision to testify.

15 If you decide not to testify, I will instruct the  
16 jurors that they can not give the fact that you did  
17 not testify any consideration whatsoever and there is  
18 to be absolutely no prejudice to you because you did  
19 not the testify. In other words I will tell the jury  
20 not hold that against you. That's your constitutional  
21 right. I would tell the jury that the burden is on  
22 the State to prove your guilt beyond a reasonable  
23 doubt on each element of these offenses that you, Mr.  
24 Hope, have absolute constitutional right not to  
25 testify and they are not to hold that against you.

1           It's left up entirely up to you whether or not, you  
2           can talk with the attorney, your family and friends or  
3           anyone else but the final decision will be left  
4           entirely up to you. Do you understand what I have  
5           explained to you about your rights?

6           THE DEFENDANT: Yes, sir.

7           THE COURT: Do you have any questions about what I  
8           explained to you?

9           THE DEFENDANT: No, sir. I'm not testifying.

10          THE COURT: I'm sorry, have you talked to your  
11          lawyer about testifying?

12          THE DEFENDANT: No, sir.

13          THE COURT: About whether to testify or not  
14          testify?

15          THE DEFENDANT: No, sir, I'm not testifying.

16          THE COURT: So, have you time to talk to your  
17          lawyer about that right?

18          THE DEFENDANT: No, not really.

19          THE COURT: Okay. Well, I will give you time to  
20          do that. We will take about a ten minute break and he  
21          can talk to you about your right to testify. Again,  
22          that's not his decision, but he's your lawyer and you  
23          told me that you don't want to testify.

24          THE DEFENDANT: Yeah.

25          THE COURT: But still because you have a lawyer, I

1 want to be -- and I've asked you the question, have  
2 you talked to your lawyer about that right?

3 THE DEFENDANT: No, sir.

4 THE COURT: You have not. I'm going to give you  
5 about ten minutes to talk to him about it. We will  
6 take a break. We'll be back in here in ten minutes  
7 and I'll ask you one further question about whether  
8 you are going to testify or not. Does that make  
9 sense?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. We will take a ten minute  
12 break.

13 (WHEREUPON, there was a brief recess.)

14 THE COURT: Thank you. Please be seated.

15 All right, we are back on the record of State  
16 versus Ramon Hope. Mr. Hope, if you don't mind  
17 standing again. Where the Court was with you, we had  
18 gone over all of your rights not to testify. And I  
19 asked you have had an opportunity to talk to your  
20 lawyer, Mr. O'Leary, about that right. You indicated  
21 that you did not wish to testify. The Court felt it  
22 was more appropriate that I give you an opportunity to  
23 talk to Mr. O'Leary about that decision. Were you  
24 able to talk to him about that?

25 THE DEFENDANT: Yes, sir I did. I didn't

1 comprehend everything you were saying because I was  
2 sitting here about to fall asleep. I did have spoke  
3 with him about that a while back but it erased my  
4 mind. So I didn't really get to understand what you  
5 were saying. I thought you were saying I was going to  
6 testify today. No, sir.

7 THE COURT: Well, thank you. I'm glad we got that  
8 cleared up. So you don't need any more time to talk  
9 to him about that?

10 THE DEFENDANT: No, sir.

11 THE COURT: And do you wish to testify?

12 THE DEFENDANT: No, sir.

13 THE COURT: All right. You're not going to  
14 testify?

15 THE DEFENDANT: No, sir.

16 THE COURT: All right. Thank you.

17 And then Mr. O'Leary, you have no evidence?

18 MR. O'LEARY: None, Your Honor.

19 THE COURT: Okay. All right. What I'll do is  
20 bring the jury in. Instruct them that we're at the  
21 point where they've heard all the evidence that is  
22 going to be presented in the case. The next thing  
23 they will need to do is hear closing statements and  
24 then I'll charge them on the law. I think what I'll  
25 do is I'm going to let them go to lunch and be back at

1 two. If you all will be back in here at 1:30 we can  
2 go back in chambers and talk about instructions. Does  
3 1:30 work for everybody?

4 MR. O'LEARY: It does judge and I gave -- submitted  
5 the jury charges to the Court yesterday. I'm sure  
6 they're probably the same ones you have.

7 THE COURT: Most of them were. I went through  
8 those last night. I will give each of you a copy of  
9 my charge and we will sit down.

10 MR. THOMAS: That was the only thing I was going  
11 to ask.

12 THE COURT: But in essence it's just a basic  
13 standard charge. Some of the words I didn't use there  
14 but --

15 MR. THOMAS: I just hadn't tried a case with you  
16 so I don't know what your standard charge is.

17 THE COURT: I'll give you a copy and we'll go  
18 through them at 1:30.

19 Let's bring the jury in.

20 (WHEREUPON, the jury enters the courtroom.)

21 THE COURT: Thank you, ladies and gentlemen. We  
22 reached the point in the trial where you have heard  
23 all of the evidence that you going to hear in the  
24 case. There will be no more evidence presented and  
25 what that means is the next two things that will

1           happen is that the lawyers will be given an  
2           opportunity to give their closing statements to you.  
3           Once they complete their closing statements then I  
4           will read to you what applicable law is in the case  
5           and all those two things will probably take an hour,  
6           an hour and a half or so, and then you'll be able to  
7           begin deliberating. So we should finish today.  
8           However, you all be able to take as much time as you  
9           need in your deliberations. What that practically  
10          means logistically is I'm going to allow you to go to  
11          lunch and be back at two o'clock and that seems a  
12          little bit long, two hours. We have work that we will  
13          be doing related to the case outside of your presence  
14          for a lot of that time but we will be ready for you if  
15          you will be back at two o'clock. Even though you  
16          heard all the evidence in the case, you still have not  
17          heard closing statements or received -- I have not  
18          instructed you on the law, which means you're still  
19          not to discuss the case, among yourselves or with  
20          anyone else during this break. So with that I will  
21          allow you to leave for lunch. Just be back in the  
22          jury room by two o'clock. With that we will allow you  
23          to go to lunch. If everyone will remain seated while  
24          this jury is excused.

25               (WHEREUPON, the jurors leave the courtroom.)

1 THE COURT: All right. Thank you. Anything  
2 further from the State?

3 MR. THOMAS: Nothing from the State, Your Honor.

4 THE COURT: From the defense?

5 MR. O'LEARY: Nothing, Your Honor.

6 THE COURT: All right. If you will all just be  
7 back here at 1:30 then we will go over the charge.

8 (WHEREUPON, the court was adjourned for lunch.)

9 THE COURT: All right, have you all had a  
10 opportunity to go through the charge? Any requests  
11 for change from the State?

12 MR. THOMAS: The only thing I got, Your Honor I'm  
13 looking at the unlawful carry. I think I can just  
14 argue it to the jury. I just don't want them to think  
15 that nobody can ever carry a handgun around because  
16 you cite the statute, "It's unlawful for anyone to  
17 carry about the person a handgun whether concealed or  
18 not except as follows." All those exceptions, I mean  
19 I think the only one that applies is in the car in a  
20 secured glove compartment, etc. I think I can just  
21 argue that to the jury.

22 THE COURT: I will allow you to do I that.

23 Mr. O'Leary.

24 MR. O'LEARY: Judge, the only thing I would  
25 request is that the jury be the charge that we

1 submitted. I would ask that you reconsider jury  
2 charge number per 12 on the variables of  
3 identification and number 11, cross racial  
4 identification jury charge and charge number seven.  
5 Those were submitted. I can submit another copy to  
6 you.

7 THE COURT: I have those and if you want to make a  
8 record of that just submit those charges.

9 MR. O'LEARY: I will, judge.

10 THE COURT: Make it part of the record. I did go  
11 over those however I believe that the charge that I  
12 have is sufficient and I will not include those  
13 specific charges.

14 MR. O'LEARY: Okay. Thank you. Can I give this to  
15 the clerk?

16 THE COURT: We don't need to make the whole packet  
17 that you handed me. Just those particular charges.

18 Hand them to the court reporter.

19 (Whereupon, Defendant's numbers 11 and 12 were  
20 marked for identification?)

21 THE COURT: All right. Then if that's the case I  
22 think we are ready. How long do you anticipate you'll  
23 need Mr. Thomas?

24 MR. THOMAS: If I go on for more than 30 minutes  
25 Your Honor, I'll have Mr. Quick stop me.

1 THE COURT: Mr. O'Leary.

2 MR. O'LEARY: Judge I shouldn't go over three  
3 hours. I'm just kidding. Just teasing. Half an hour  
4 is fine with me.

5 MR. THOMAS: And I guess just to clarify, judge,  
6 he did enter exhibits so my understanding is I will  
7 open in full. He will open in full and then anything  
8 that he brings out that's new --

9 THE COURT: You're allowed to rebut. I think the  
10 application is suppose to be you're limited to  
11 rebuttal of what might be new.

12 MR. THOMAS: Right.

13 THE COURT: That he brought up.

14 MR. THOMAS: The times I did it has been fairly  
15 brief.

16 MR. O'LEARY: I realized that when I put those  
17 documents in.

18 THE COURT: Okay. All right. Then we're ready.  
19 Bring the jury in.

20 (WHEREUPON, the jury enters the courtroom.)

21 THE COURT: Ladies and gentlemen, thank you for  
22 promptness. We are ready to begin this afternoon.  
23 The next step you'll hear from the State give their  
24 closing argument. Then the defense will have an  
25 opportunity to give their closing and then the State

1 will have an opportunity for a rebuttal after the  
2 defense finishes. With that Mr. Thomas I'll turn it  
3 over to you.

4 MR. THOMAS: Thank you, Your Honor. May it please  
5 the Court.

6 Why you got to put all those charges on me.  
7 That's the first thing that Ramon Hope said to  
8 Lieutenant Breeden the first time he saw him after  
9 September 27, 2020. Why did you put all those charges  
10 on me. That's what we have been hearing. For the  
11 past day, day and a half about.

12 The answer to that question, ladies and gentlemen,  
13 is that because Ramon Hope, a little after four a.m.  
14 the night of September 27, 2020, got behind the wheel  
15 of that silver charger, went speeding down Black  
16 Street, passed Lieutenant Breeden. Detective Breeden  
17 gets in behind him tries to catch up to him in the  
18 parking lot of this Family Promise, this like family  
19 nonprofit organization. And Lieutenant Breeden when  
20 he pulls that car in doesn't turn his blue lights  
21 rights. Doesn't get out and scream, hey, police, what  
22 are you doing? Gets out of the car, sees Ramon Hope  
23 get out of the driver's side of that car. They look  
24 dead at each other and then Ramon Hope goes around the  
25 front of the car, goes through the bushes and he's

1           gone. He left the scene. But he left behind a couple  
2           of things. Lieutenant Breeden comes back to the car.  
3           He chases him a little bit, but he comes back to the  
4           car, sits there waits for Officer Austin to get there  
5           to inventory the vehicle before they tow it. The car  
6           is still running. Reaches in and turns it off. But  
7           Ramon Hope left behind inside that car, a 45 caliber  
8           handgun, loaded, under that front seat. He also left  
9           behind when he got out of that car on the ground about  
10          two and a half grams of crack cocaine, one large rock  
11          of it and then several little tiny rocks that at some  
12          point got stepped on and crushed into the ground. Had  
13          that in a little white baggy and little black baggy.  
14          He left behind something else. He left his  
15          fingerprint on that metal surface, that flat metal  
16          surface of that magazine body where it was up inside  
17          that gun not getting rubbed off when it rolls around  
18          on the floorboard under the seat. Left his  
19          fingerprint on that.

20               Ladies and gentleman, that's the evidence that has  
21          been presented to you over the last 24 plus hours.  
22          Those are the facts that you are going to go back into  
23          that jury room and deliberate about and you are going  
24          to take that evidence and you're going figure out what  
25          the facts are in this case. You will get to apply

1           that to the law in this case. Judge Hall is going to  
2           instruct you on what the law is regarding several  
3           things here. I'm going to give a little preview of  
4           it. I got a PowerPoint here. This is just a little  
5           preview of what we've got as far as the law is  
6           concerned. And again, Judge Hall is going to go into  
7           some detail about that. But obviously, we all went  
8           all of us lawyers went to law school for three to  
9           learn the law and Judge Hall has been a judge for  
10          many, many years and he's learned all of it. So we  
11          can't tell you everything so we got to give you sort  
12          of a bird's eyes view of it. So I'm going try and  
13          give you some points and things that I think is  
14          important.

15                The first thing you're going to hear about, you're  
16          going to hear in Judge Hall's charge, you're going to  
17          hear about the burden of proof. You're going to hear  
18          the phrase, beyond a reasonable doubt so many times  
19          that you'll go to bed tonight hearing it in your  
20          sleep. And there is a reason for that. That's the  
21          burden of proof. When Mr. Quick and I come in to this  
22          courtroom and we ask you to find someone guilty of  
23          crime we've got to prove it to you. We got to prove  
24          it to you by a pretty high burden, but it's not an  
25          insurmountable burden. It is not beyond every

1 reasonable doubt. It's not beyond every possible  
2 conceivable shadow of a doubt. It's beyond a  
3 reasonable doubt and what that really means -- and  
4 Judge Hall is going to tell you this -- it means that  
5 you are firmly convinced. Are you firmly convinced  
6 that Ramon Hope is the person that got out of car left  
7 that gun and that crack cocaine behind. Are you  
8 firmly convinced that he possessed that crack cocaine  
9 with intent to distributed it and carried that weapon  
10 unlawfully.

11 So, we have to meet that burden by presenting to  
12 you evidence, right? And that's what you heard from  
13 this witness stand. That's what you got here, you  
14 will get to take most of this back into the jury room.  
15 May be we won't send the gun and the bullets but we  
16 got a picture of the gun. So you will get to take  
17 that back, look at it, examine it. You also got to  
18 hear the testimony from the officers in this case and  
19 it was all law enforcement. And they all got up there  
20 and they testified. And so what that is, we presented  
21 you evidence and there's two types of evidence. The  
22 first type is direct it evidence. And Judge Hall will  
23 explain to you that is evidence that proves a fact  
24 directly. Direct evidence. It's what somebody sees.  
25 I saw Ramon Hope get out of that car and take off

1 running. It's what someone hears. I heard Ramon Hope  
2 tell me why did you do that? Why did you give me  
3 those charges? It's what somebody does. I analyzed  
4 this crack cocaine and I found out that it's in fact  
5 crack cocaine and that it weighs a little over two and  
6 a half grams. Its what somebody did. I took a copy  
7 of a fingerprint of Ramon Hope that I knew was his and  
8 I compared it to the fingerprint I found on this  
9 magazine and that's Ramon Hope's fingerprint on the  
10 magazine. Those are direct evidence. Things people  
11 saw. Thing people saw. Things people did.

12 The other type of evidence is circumstantial  
13 evidence. Circumstantial evidence is not -- doesn't  
14 directly prove something. It's what you're going to  
15 hear a chain of facts and circumstances and those have  
16 to sort of lead you to logically conclusion. That's  
17 what I told you yesterday. That's what you bring in  
18 here. You use your common sense. You use your life  
19 experiences and you apply it to what you got here.

20 Circumstantial evidence, the way story I always  
21 tell -- I like to tell is when I was younger and I was  
22 single I had a dog. An eighty pound chocolate lab.  
23 And I come home one day and I walk into my living room  
24 and I see sitting there -- I have a couch and then an  
25 end table and then his little bed. His name was

1 Hampton. Hampton's bed was next to the end table. So  
2 I come in one day and I see a pack of crackers, an  
3 empty pack of crackers sort of torn up sitting on the  
4 ground near the end table. So it's possible, it's  
5 possible, that my dad he would come by some times I  
6 guess whenever he would go meet with had buddies that  
7 they he use work and go to Lowe's and do whatever it  
8 is that retired people do at Lowe's. He would swing  
9 back by the house and play with the dot and stuff. So  
10 it's possible that he came in the house, was hungry,  
11 wanted a pack of crackers. Went and got it. Started  
12 eating them on the couch. Got done with it. Sat it  
13 on the end table and it sort of fell off onto the  
14 ground. That's a possible story. But then what  
15 happens is I go over and I pick up the pack of  
16 crackers and I notice that it's not torn neatly at  
17 that little notch that you can tear and open it up.  
18 It's sort of mangled and torn and shredded and not  
19 only that but when I pick it up it's wet. Damp. And  
20 then I look over to the corner, right next to the  
21 hallway and Hampton is sitting right there and we make  
22 eye contact and then I see him break eye contact and  
23 he looks at what's in my hand and he tucks his tail,  
24 turns around sprints down the road hallway. So, it's  
25 a possible story that my dad came over and left the

1 wrapper sitting there, but based on the condition of  
2 the evidence, how I found it, based on the behavior of  
3 my suspect when he found out that I had found that  
4 evidence, I know good and well that Hampton crawled up  
5 on the counter got that pack of crackers, took it to  
6 his little place, ate the crackers and left the  
7 wrapper on the floor. That's what circumstantial  
8 evidence is. I didn't see him do it. I don't have  
9 any direct knowledge that it happened but I can use my  
10 life experience, I can use my common sense and I can  
11 use that sort of the evidence the way I found it, how  
12 he acted and I can come to that logical conclusion  
13 that that's what happened. So that's what  
14 circumstantial evidence is.

15 So, we have to use that evidence, direct  
16 circumstantial evidence to prove this case to you. So  
17 let's talk a little bit now about what the charges are  
18 in this case.

19 The first charge that you are going to get to  
20 consider is possession with intent to distribute crack  
21 cocaine. And all that is is a person it's illegal for  
22 you to possess with intent to distribute crack cocaine  
23 or cocaine base. So the first element of that, the  
24 easiest one is crack cocaine. Obviously you heard  
25 Holly Tobias take the stand. She's a chemist. She

1           took State's nine and eight. She did whatever it is  
2           that they do in the chemistry lab down there and she  
3           was able to determine that it is in fact crack  
4           cocaine. So she told us I think crack cocaine is --  
5           and it's the form of cocaine that is suitable for  
6           smoking. So we got that.

7           The other thing that we got to prove is that Ramon  
8           Hope and this is probably, the other two elements are  
9           the most important things for you to think about. Is  
10          whether he possessed it and did he possess it with  
11          intent to distribute. And so, for possession we have  
12          to prove that he had actual physical custody of the  
13          drugs, or the right or power to exercise control over  
14          those drugs. So how do we know that those were his?  
15          Well, the first thing we got is that it was found  
16          right outside sort of the apex of the door of that car  
17          that he got out of and there's been a lot of talk  
18          about Lieutenant Breeden identifying Ramon Hope as the  
19          person who got out of that car. You all heard that  
20          testimony. You can judge the credibility of  
21          Lieutenant Breeden. You can put whatever weight you  
22          want that, but I submit to you that Tony Breeden was  
23          absolutely certain that that's the man he saw get out  
24          of that car that night. So, its right there in the  
25          apex of that door. And you can -- you can -- you know

1           its found on premises. It's found in a car that he  
2           was under control of. He's obviously the person  
3           getting out of the driver's side of that door. The  
4           gun is found under the seat with his print on it. So  
5           he has been in that car at least some point to put the  
6           gun under there. Again, so its found right there and  
7           it's found in a place it's a parking lot for a  
8           nonprofit; Family Forever, Family First. So it's not  
9           like it's a place a crack cocaine would normally be  
10          just laying about. It's found in a parking lot of a  
11          nonprofit and it's well -- you heard both of this them  
12          say it's what they would consider -- well, the amount  
13          of crack cocaine was significant. Was important to  
14          them when they collected it. When they saw it. So  
15          it's there. And then the other thing you got is  
16          evidence of flight and that's what I was talking about  
17          earlier. Tony Breeden didn't turn his blue lights on.  
18          He didn't get out and say, he stop. Police. Draw his  
19          gun. He pulled up behind him and I will let you watch  
20          that video real quick. Again, I'm playing State's  
21          Exhibit Number one.

22                   (WHEREUPON, video was played.)

23           MR. THOMAS: And you guys can watch this video and  
24           again Lieutenant Breeden was pretty clear what this  
25           video show doesn't show what his eyes saw because that

1 body cam is stuck right here on his chest and it  
2 points wherever his chest points, but its fairly well  
3 lit out there. It's not foggy at all. And you see  
4 him walking away may be three car lengths. I submit  
5 to you that is enough for you to view. You can review  
6 that with Lieutenant Breeden's testimony to come to  
7 the conclusion there as to his credibility.

8 So the last element in terms of possession with  
9 intent to distribute is we have to prove that Ramon  
10 Hope didn't just possess that crack cocaine for his  
11 own personal use but he possessed it with the intent  
12 to distribute it. And there is a few things that you  
13 can consider when you consider the intent element.  
14 Intent is element of every crime. You will hear about  
15 it. It has got to be proven but it can be proven by  
16 circumstantial evidence just like everything else.  
17 And what you can look at are certain things. The  
18 first thing we have what we call a threshold. So  
19 possession of one or more grams of cocaine base is  
20 something that you can consider in terms of whether  
21 someone intends to distribute it. And a lot of times  
22 a lot of the laws that our legislature -- the guys  
23 down in Columbia passed don't make a lot of sense.  
24 This one is something that you heard is based on some  
25 experiential knowledge from law enforcement officers

1                   and they told you that usually crack, you know, a  
2                   person who is an addict generally has less than a gram  
3                   on them. Sometimes they'll have more but generally as  
4                   a practical matter they don't have a lot on them. And  
5                   what we have here is we have two and a half grams  
6                   which is two and a half times what that statutory  
7                   threshold is. So you can consider that. You can also  
8                   consider the fact that when they searched that car and  
9                   Officer Austin said, you know, I riffled through all  
10                  the bookbags and all the little change purses. They  
11                  didn't find -- nothing popped out to him that looked  
12                  like paraphernalia. You know, a pipe to smoke it in,  
13                  needles, all of the other little tools that you need  
14                  to actually prepare it to use it. None of that was in  
15                  the car. So we got that which you've seen.

16                 We also have, obviously, this is one of those  
17                 things where there's one -- two separate baggies that  
18                 are located. There's a white baggy with a little bit  
19                 and there's a black baggy with another one in it and  
20                 one of these is a little chunk of it there. That's a  
21                 pretty good size. The other one as best as officer  
22                 Austin could collect it, because again, it had been  
23                 stepped on at some point and ground into the ground.  
24                 You got several little rocks here.

25                 You also have in the car a firearm and, you know,

1 guns are certainly tools of the drug trade. And  
2 again, this is something that is based on sort of  
3 experience. Again, it makes sense. It's common  
4 sense. This to a drug it dealer represents profit.  
5 And so drug dealers generally carry a gun to protect  
6 their profit. They're like and armored driver that  
7 has a littler revolver on there side when they clears  
8 out the ATM. So, again, there's presence of a gun.  
9 All of these things that you can consider when  
10 considering whether he possessed this crack cocaine  
11 with the intent to distribute.

12 The last charge is unlawful carrying of a pistol.  
13 I don't want to dwell on this to long. I think you  
14 have enough. It's pretty clear that was his  
15 fingerprint on this magazine. How it got there I  
16 don't know. I mean it's one of those any number of  
17 ways. It could have gotten on there when he loaded it  
18 into the weapon. It could got there when he is  
19 holding it to load the bullets. It could have got on  
20 there while he was just handling it before he put it  
21 under the car. I don't know. But the evidence, the  
22 testimony from Investigator Skoggin was she was very  
23 certain that that was his fingerprint and that he put  
24 it on there. So, the only thing I want to touch on  
25 that is I don't want you to think that -- well, the

1 elements are he has got to carry it on or about his  
2 person. That doesn't mean it's in your pocket or  
3 something. It just means that it's readily assessable  
4 for use. So, again, if you are riding in your car and  
5 it's under the seat it is convenient to use. The only  
6 thing I don't want you to think it's completely  
7 illegal for anyone to ever carry a gun. There's lots  
8 of reasons why people why you can. We have a whole  
9 long list of statute exceptions. So if up you want to  
10 carry a gun in your car you can carry it. You just  
11 can't put it under the floorboard. It has got to be  
12 in some sort of closed container, the glove box, the  
13 center console, a range bag, a bag in the back seat.  
14 And again, that because you don't want it rolling  
15 around under there because if it's loaded like this  
16 one was and it has got a round in the chamber and  
17 something gets inside that trigger guard and pulls  
18 that trigger it will be off. So you go to secure it  
19 in the car. It wasn't in this case. So, that ladies  
20 and gentlemen is sort of the long and short of it. I  
21 know I stood up for a little while and talked probably  
22 longer then I told you I would.

23 You got everything you need. You got the  
24 testimony. You got these items which you can look at.  
25 You got the videos. You have everything you need.

1 And you know looking back at it, the flight with him  
2 running, the amount of the drugs, the location they  
3 were found in, the number of baggies, the location of  
4 gun, the lack of paraphernalia, the fingerprint and  
5 his statement to Lieutenant Breeden when he went back  
6 in the jail when he was being booked. And that  
7 statement was, "Hey why did you put all those charges  
8 on me?" Well, you heard that Officer Austin typed up  
9 the warrant and got another officer to sign it.  
10 Lieutenant Breeden's name wasn't in that paperwork  
11 anywhere that he got read when he was arrested. So  
12 the only way he knows upon seeing Lieutenant Breeden  
13 that that's who put the charges on him is if he's the  
14 one getting out of that car and taking off running.  
15 So, that's what we have. That is the evidence you  
16 have. Those are the facts that you're going to go  
17 back into the jury room and deliberate on and take  
18 that back there, take your common sense, take your  
19 life experiences. The fact that you go back there, I  
20 want you to do this. I mean, we all took an oath,  
21 right? The judge took an oath to try this case fair  
22 and impartially. We took an oath to bring you the  
23 best evidence we could. Mr. O'Leary took an oath to  
24 defend his client zealously. Everyone has upheld  
25 their oath so far and now you took an oath to go back

1           there and critically, critically examine all of this.  
2           I want you to go back and think about it. I don't  
3           want you just to go back there and come to a  
4           conclusion. But you took an oath to fair and  
5           impartially and critically review this evidence and  
6           now is your opportunity to go back into that jury room  
7           and to do your job. And I submit to you in this case,  
8           that is to go back there and answer his question for  
9           him. Why did you put all those charges on me and the  
10          answer to that is, it's because he's guilty. He's  
11          guilty of possession with intent to distribute crack  
12          cocaine and he's guilty of unlawfully carrying a  
13          weapon, the pistol.

14                 Thank you so much.

15                 THE COURT: Thank you Mr. Thomas. Mr. O'Leary.

16                 MR. O'LEARY: I appreciate it. Your Honor, can I  
17          move this over?

18                 THE COURT: Yes.

19                 MR. O'LEARY: Well, I have appreciated you having  
20          the time to listen to us this afternoon. In the  
21          opening statement by the State, when he told the story  
22          about the dog he took me off base. I really wasn't  
23          expecting that, but two months ago I had a lab in my  
24          car. Went to court in Lancaster. Went in to court  
25          for about between 20 minutes came out and my Sirius

1 radio had been eaten. The lab is in the car and I  
2 look at the lab he's got the wire stuck in his teeth  
3 which is an indicator that it was probably him. I  
4 tell you that because, you know, that is a  
5 circumstantial issue just like he described.

6 Let's talk about the case. It really is a simple  
7 case and I started out by saying it's a simple case  
8 because it gets down to the issue of whether my client  
9 was the man, the man in that video. Now, what's  
10 interesting is when the State looks at this thing, the  
11 whole case is based upon Breeden. Honestly it gets  
12 down to that and I say that's important why? Because  
13 why would Breeden -- why would he go back over to the  
14 jail after he was arrested like eight days later or  
15 something. Why did he go in there? He didn't have to  
16 go in there. He came in there to tell you the story  
17 that he made a reaction to it. My client said to him,  
18 "why are you doing this to me?" You being the law  
19 enforcement. Why me? You know why the reason why his  
20 name came up was because of the link system. He  
21 didn't know him. Let's just go through the facts here  
22 real quick. Breeden is on patrol. He's on a side  
23 street. He's on the phone I believe talking to his  
24 major about an incident that had occurred I believe  
25 earlier in that day or the day before or whatever.

1 And he saw a car go by. Didn't see any occupant  
2 specifically. Described the car. It went by at about  
3 50 miles an hour I think he said. He then takes his  
4 car and he moves his car out onto the street. Turns  
5 on to the street. He's on Black Street. I thinks  
6 turns on to Confederate. I'm not sure of those  
7 streets to be honest with you because I don't live  
8 here. But it is easy to get lost here I can tell you  
9 that. So, he pulls out and he's following him and you  
10 see that in his video. His body video. No other cars  
11 but he says he's driving down the street and he sees a  
12 light to the right in that packing lot. Now one thing  
13 that's important the State just said oh, that's a good  
14 parking lot. It's clean. Now the officer said when  
15 he was here on his testimony he was at that location  
16 because it's a rough area. It's apparently a high  
17 crime area. I don't know, but that's why he's over  
18 there on patrol to begin with. He pulls in and he  
19 sees the car in the parking lot that he thinks he saw  
20 that pulled by him. Now, you just saw the video  
21 again. And I say to you the video is real important  
22 because -- and I've watched it a bunch of times and I  
23 don't have the greatest of eyes and I tired to slow it  
24 down and some other things. We took that video and  
25 made some pictures which we'll show you in a few

1 minutes. But what happens is, as he pulls in you will  
2 see a person two seconds. Officer said that he was on  
3 the phone as he pulled in and he says he saw the man.  
4 Looked him right in the eye. You can look somebody  
5 right in the eye in two seconds. Seriously. And  
6 because of that you recognize him. But you don't know  
7 his name. But you learn the name later when they put  
8 it on the link system to you.

9 Now, let me just say this, his testimony was his  
10 belief or impression of what he saw, and I don't have  
11 any problem with that. I'm retired, 25 years of law  
12 enforcement as director of the police academy.  
13 Officers make mistakes. That officer is a good  
14 officer but he's making a mistake. What's  
15 interesting in this, if you believe the witness he  
16 could be insincere, he could be mistaken, but he's  
17 wrong on his observation. He said he looked him  
18 directly in the eye. You tell me how you can look  
19 anybody directly in the eye in that two second span.  
20 Now it's almost like he said like I saw him more  
21 because my head moves and the body cam goes forward  
22 and it's a different angle or whatever. That's like  
23 saying -- it's like when you heard the old elections  
24 don't believe what you actually -- what your crazy eye  
25 is telling you. This officer made a mistake. And

1           it's a mistake that is something that will effect my  
2           client's life forever. It's critical. This is as  
3           important as a murder case. It really is. It's  
4           important because you have to make a decision based  
5           upon what you see. You see the video, the two  
6           seconds.

7           Now, let me just run through a few things you can  
8           think about. Witnesses make mistakes. Period. Ain't  
9           no question about it. And I'll tell you now that  
10          thousands of people across this country annually are  
11          convicted based upon eye-witness identification that  
12          is mistaken. Mistaken. You ask yourself on --  
13          whether the observation was good. This is an officer  
14          who's been working from the six o'clock shift. This  
15          is four thirty in the morning. So has an hour, hour  
16          and half before he goes off shift. And so he has been  
17          up all night. He's wearing contacts. He's on the  
18          phone. He pulls in and in that two seconds he's  
19          saying that man in that car, that unidentified person  
20          at the time, dressed in black. The man in black. I  
21          don't know him but I do later when I hear that link.  
22          When I hear that link, bam, that's when he made the  
23          decision who he was.

24          You know some of the things you should look and  
25          consider the length of time the witnesses really

1 observed the person. Two seconds. That's what we  
2 got. That is it. Period. The distance between the  
3 witnesses and the actor. He's three, maybe three car  
4 lengths away. Period. And its it's something  
5 unanticipated because he pulls in. The officer pulls  
6 in in his patrol vehicle without the lights on. The  
7 cruiser lights on. He's on the phone and bam, the man  
8 is there. Two seconds gone. Officer stops his car.  
9 Gets out and pursues him. Does not catch him but all  
10 he knows at that point is it's a man in black and it's  
11 is a black man. Period. See his eyes. He looked him  
12 in the eye. You can't even see his head. If you look  
13 at that video -- and again, I'm not trying to say that  
14 the officer is a bad officer. I'm just telling you he  
15 made a mistake. Period. The distances between the  
16 witnesses and the actor. That's three car lengths.  
17 I'm not sure what that would be to be honest with you.  
18 It's kind of hard for me to judge it. But with the  
19 vision I got it's hard for me really to make any  
20 judgements about anybody's vision on what they can  
21 see. Period.

22 The next thing you should consider the extent to  
23 which the body features were visible. What kind of  
24 clothing is he wearing. All he knows is the man is in  
25 black. Did he have glasses on? I don't know. Did he

1 have a mask on? I don't know. But I'm looking him  
2 right in the eye but I don't know if he's got glasses  
3 on and I don't know -- I just don't know if he had a  
4 mask on you are look being him right in the eye.  
5 You'll notice my client wears glasses. The thing you  
6 should look at were the actors features visible? Were  
7 there any blockages in terms of cars if front of him  
8 or movement. The officer is kind of shock situation  
9 when he comes upon it because he comes upon it right  
10 away when pulls out, goes down a little. Sees the  
11 light and pulls into that little parking lot there.  
12 The time of day and the place. It's four thirty in  
13 the morning. He's been up all night. He's sleepy.  
14 Does that effect how much you're going to see? Are  
15 you expecting to see somebody as you turn the corner  
16 into that parking lot? Most likely not because he  
17 didn't even have his lights on like he was chasing  
18 somebody. So it's really not anticipated that the  
19 person would be there. If it's even that person. Now  
20 you'll will notice in the video the man is out of the  
21 car. I mean was somebody else in the car with him and  
22 took off, who knows. The door is shut. The man is  
23 out. This unidentified black mail goes two seconds  
24 into the woods. Why would he run? Lots of reasons.  
25 Some of the reason might be suspended license or

1 anything like that. Young black black males run a lot  
2 of times. That's just the statistics. I can't  
3 change. People don't trust the police some times.  
4 Obviously my client didn't really trust anybody. When  
5 the officer comes in after he's arrested, "Why are you  
6 doing this to me? Why are the police doing this to  
7 me? I wonder why?

8 Is there any distractions around? I don't know.  
9 I wasn't there. But I'll say this, he was distracted  
10 because he was taken off guard as he pulled into the  
11 parking lot. Period. And he is on the phone and he  
12 hangs up the phone. He gets another phone call before  
13 he gets out the car and tells the major at that time,  
14 you know, I have to call him back. I guess he then  
15 parked his car. Gets outs and runs. He's distracted.  
16 He's doing two or three things at the same time. All  
17 of us do that unfortunately in today's society.  
18 Driving down the highway talking on the phone. It's  
19 not a great thing to do but everybody is doing it.  
20 You're distracted to two different things. That's the  
21 theory of the person gets arrested for DUI they have  
22 them walk a line. They have them walk the line and  
23 hold his head back. Those things are distractions.  
24 And can you do two things at the same time. Some can.  
25 Some can't. Some can do it better but there is a

1 chance of error. Is this a chance of error in two  
2 seconds and that's what this is.

3 I'm sorry for having to look down. I got  
4 tri-focal glasses the other day. I'll never get them  
5 again. I told the judge I'm not sure which of the  
6 judges I'm seeing. If it's the one in the middle or  
7 the one on the right. But in any event, this officer  
8 had glasses on, middle age man, dark, working all  
9 night could he have erred? Yes. No question. No  
10 question.

11 Was there stress in this situation? I would say  
12 this as an officer who is responding to anything,  
13 okay, anything, and he pulls out and he's going to  
14 chase a motorist speeding. There's stress. I don't  
15 care if you have been on 25, 30 years. Period. Your  
16 adrenaline, it just moves and you react. Your  
17 nervous. That's what happens. But he's also on the  
18 phone during this period. Now again, that's not to  
19 say the witness was insincere, but merely he's  
20 mistaken. That's really what I'm saying. I'm not  
21 calling the officer a liar. I'm not saying that. You  
22 just don't do that. But I'm saying he could be  
23 mistaken. You know, I think a lot of people believe  
24 that police officers don't make mistakes. People make  
25 mistakes all the time. Carrie, can you get me that

1 chart for a second. I say that for a reason. I took  
2 this out of the New York Times a couple of weeks ago.  
3 Malcolm X years and years ago, he was at a rally in  
4 New York and at the rally there are hundreds and  
5 hundreds of people and he gets killed. Shot in front  
6 of that many people and lots of witnesses identify  
7 him. Three of them get charged. Three of them go to  
8 trial based upon the eyewitness of the group. And  
9 their wrong. Thirty years later those aren't the  
10 right guys. Thirty years in prison by a mistaken  
11 identity. That is with multiple people. What I'm  
12 saying is here we have one man and it's his identity  
13 which I'm telling you is not accurate is the basis for  
14 this arrest. Period.

15 The State talks about that the officer, that  
16 Breeden starts out. He calls for officers to come  
17 help. The officer that testified today. He's the one  
18 that gathers the evidence up. He's a young officer.  
19 He's a good officer. He's a great looking officer.  
20 He's an honest and sincere officer, but he didn't see  
21 him there. All he's doing is collecting evidence.  
22 Period. So what's the evidence? Did you see the car?  
23 The car is a beauty. I'm not saying it's a bad car  
24 but maybe it could be cleaned out inside. Had stuff  
25 everywhere. What's in there? Did he itemize

1 everything? Did he open every package and go in every  
2 cranny and crevice? I don't know what's in that car.  
3 They're saying, oh, he didn't find anything in that  
4 car that shows that whoever was in that car was using  
5 drugs. Like a pipe. Well, I don't necessarily think  
6 you can find much in that car unless you go item for  
7 item. I don't know what was in that car but I don't  
8 think it's fair for the State to say there's nothing  
9 in there when you saw all that stuff. It's not like a  
10 brand new cleaned out model. People make mistakes.  
11 That's what the purpose of this article is. You know,  
12 I thought it was real interesting because I can't  
13 imagine being in a prison for 30 years or so and then  
14 at the end, oh, we're sorry. You're not the right  
15 guy. How do you compensate? That's why it is  
16 extremely critical that you all be absolutely  
17 accurate. You know, when you look at the number  
18 across the United States and the prison population a  
19 lot of -- and I'm not supporting them. I'm an  
20 attorney. I practice law. I've been in law  
21 enforcement. I want the truth on this thing and the  
22 truth is that not everybody that is arrested is guilty  
23 of what they are arrested for. Period. You see it  
24 every day on TV, across the country. I'm sorry to  
25 show you that but I didn't want to -- I don't normally

1 save the New York Times front headlines but I thought  
2 that was a pretty important one.

3 You know, the fact is the distractors and the  
4 distractions of Officer Breeden who is turning and  
5 responding to it. He's driving his car. He's looking  
6 for a vehicle that he doesn't see when he makes the  
7 turn on to that street. He's on the phone. He pulls  
8 down, he sees a light. He pulls to the right and  
9 boom, there is the subject in that video and from that  
10 two seconds they're saying that has to be the guy even  
11 though he wasn't in the car and there's nothing in the  
12 video that shows him getting out of the car. But  
13 assume that person was in the car. Why did he run?  
14 Oh, there's lots of reasons. I'm not getting into  
15 reasons why people do things, but they're saying he  
16 had a large amount of drugs. You know what a gram is,  
17 it's a paper clip weight wise. That's what it is.  
18 They're saying, oh, he must be possessing to sell.  
19 No. And then they say, well, he got the indicia of a  
20 dealer by having a gun under a seat. Well, let's talk  
21 about that for a second. It isn't his car. Period.  
22 If theres's a gun under the seat don't you think if he  
23 was handling the gun his prints would be all over it.  
24 One print. Eleven points the girl found. She said,  
25 yeah, I've been doing this so long. I got a eleven

1 point that shows it's one fingerprint. Period. Is  
2 that enough? How are you going to hold the gun with  
3 one finger?

4 I think she testified that she used one of the  
5 smaller fingers to push the magazine in. You show me  
6 somebody, Officer Hunter, anybody that has a weapon  
7 like that with a magazine, push in a magazine with a  
8 finger. I don't think so. That's what they want you  
9 to believe. They said this is this guy's gun. If it  
10 was this guy's gun and he had it in his possession  
11 then why didn't he take it? Why didn't he take it?  
12 And why when they walk up to the car we have the  
13 Winthrop Officer that comes in there -- and I'm not  
14 blaming him but somebody stepped on the drugs. Okay.  
15 And you see it had to be swept up and put into the bag  
16 and measured and it is crack and the crack when they  
17 did the test on it changes some of the colorations on  
18 it. I'm not a chemist. I went to the Citadel. I was  
19 lucky to get out of the Citadel. I tried pre-med for  
20 about an hour. It's a tough situation. The chemist,  
21 she's telling you the truth. That's crack. Period.  
22 And they're saying, well, because of that weight this  
23 guy is a major dealer. He must have come in right  
24 from South American today. He came in on boat and  
25 he's out selling drugs. No. Did you find lot of

1 money in the car? No. Did you check every item in the  
2 car to see whether in there to see may be there wasn't  
3 a pipe or something else? No. He's looking.  
4 Obviously they're trained to itemize what they're  
5 responsible for it. So you got to see if there some  
6 valuable items is what they're looking for, cameras or  
7 whatever it happens to be so you can put it on the  
8 inventory list so when it turns up missing after it's  
9 towed it isn't put on your head. So as a result of  
10 the search of the car the officer picks up all of  
11 these items.

12 Now, one of the things I wanted to show you just  
13 real quick here. That right there you will see it.  
14 These are stills taken off of the film, and basically  
15 -- that's the Winthrop officer that is there and it  
16 shows that he was there. He was there right at the  
17 very beginning. I think when Austin got there. They  
18 were pretty close in time. I'm not exactly sure who  
19 was where first but that shows what he was doing. He  
20 is looking into the car. The door is shut. You will  
21 see -- these are stills you can take back too and  
22 look. You will be able to watch the video again and  
23 they'll put it on for you somehow. Being the  
24 technician that I am, I would have to get my four-year  
25 old grandchild to show me how to do it. But you guys

1 can watch and you can see the timeframe. Two seconds.  
2 Period. This video here -- excuse me. This  
3 photograph is in evidence. This is just we just blew  
4 it up and we have it for you to look at here now or if  
5 you want to take it back. That basically -- see if  
6 you can see a man at the very beginning running  
7 across. See if he is looking directly at the car and  
8 see if you can see his face. I couldn't tell if he  
9 was black or white but I know he had black on. That's  
10 what the officer said. Unidentified man. That's the  
11 one slide in the video.

12 Now, what we did is I took -- I took a time wise  
13 out and basically those are the times that the officer  
14 pulls in. You see the suspect. The suspect runs. I  
15 came up with almost three seconds. He said two. So  
16 there's no question it is a very, very short period of  
17 time in these visuals hear. Period. That is what  
18 this case boils down to. Two seconds. And I swear I  
19 don't want you to all think that I'm attacking the  
20 officer because I'm not. Officers make mistakes. You  
21 have bad officers. This is not a bad officer. But  
22 they make mistakes. But the problem here is when you  
23 make a mistake in a case like this it's involving a  
24 man's life and this is, again, serious. Are there to  
25 many drug violations? Yes. This isn't the man that

1 violated it. There is nobody but Breeden that says  
2 that's him in the video itself. That's the identity.

3 Now, let me just tell you -- I'm trying to do  
4 this as quick as I can for you all because you all  
5 have been here a couple of days. Again, this thing --  
6 this thing here was a timeframe that I put out and had  
7 my secretary type up. The officer sees the suspect.  
8 Suspect disappears into the rear of the property.  
9 Three seconds. That he's gone out of the property.  
10 Then the officer gets out, follows him on foot. Runs  
11 on foot and gives up. Comes back to his car and gets  
12 in his car and by then Austin has got there. Austin  
13 is not there at the time. He was there along with the  
14 other officer from the school. He's there but they  
15 weren't there when this all happened and it happened  
16 in a split second. And it happened in an area that's  
17 let's say this, a difficult area. That's why officers  
18 patrol those. You know, I was with the Detroit  
19 police. You do timeframes every day. You do a crime  
20 pattern every day. You say, what happened last night  
21 and where was all the crime last night. Well,  
22 district five, district two, district one. That's  
23 where you assign your officers to and then you  
24 saturate those areas. The problem with that is when  
25 you saturate an area the crime moves to another area,

1 eventually but you might suppress it that night in  
2 that area. So it's a high concentration of officers  
3 working there and that's why Breeden is there. But  
4 again, at his age, middle age, it is tough to stay up  
5 and work 12 hour shifts all night. It really is and  
6 when I was college and stuff maybe I could stay up all  
7 night. Well, I couldn't do it now. But this is 4:30  
8 in the morning. You think you're at your peak and  
9 your judgement and what you are see and what looking  
10 at. He says he looked him right in the eye in two  
11 seconds and you can't tell me if he has glasses or you  
12 can't tell me he had face mask. I don't remember  
13 that. All I remember is he has black on. Period. So  
14 how are you going to put that over the air? Be on the  
15 lookout for an unidentified black male in black  
16 clothes. That's not really good. The link system is  
17 what brought my client into this. It's not his car.  
18 Period. It's not his gun. Period. But they say, oh,  
19 it must be your gun because you got one print from one  
20 finger and that is on the magazine and that's how you  
21 push the magazine in. Push it in you're going to have  
22 a broken figure. It's not going to work. You put the  
23 magazine and you pop it up. Anybody that has ever  
24 used a weapon would know that. But that's the tie in  
25 to the gun. That's what makes possession of the gun.

1 Well, if it's his gun I think he would have taken it.  
2 Period. He didn't take it because he wasn't there and  
3 it wasn't his gun. Period.

4 Now, just a couple more points here. I got in  
5 evidence -- you all can look at these. These are --  
6 it was tough to get these off, but these are basically  
7 stills of the first part of that video. That's really  
8 what it is and it's identical. It's just not moving  
9 action. But you look in there and you see now what  
10 you can see. Period.

11 Now, one of the other things that is kind of  
12 important on this, they're numbered in sequence. I've  
13 tried to keep them in order for you all. And this is  
14 the sequence of events from the time he pulls in there  
15 with his car. Period. You know, it's easy to say,  
16 well, the video didn't catch everything. The video  
17 can't change the time that this occurred. It can't  
18 change the fact that you're on the phone. Hang up.  
19 Get another phone call all in that time and that's in  
20 the two seconds. Period. It surprised him obviously  
21 when he pulled into the parking lot of whatever  
22 building that was and he saw a car that matched what  
23 he thought he saw go by at a high rate of speed, fifty  
24 miles an hour, I guess in a thirty-five or so,  
25 whatever it happened to be. So when you're in shock

1 or your hyped up because you think you might be a high  
2 speed chase because of this going by, you don't know.  
3 And I'll tell you why. Every time an officer gets in  
4 his car and is pursuing somebody before -- even before  
5 he flips on the lights and the siren your adrenaline  
6 is pumping. You're pretty psyched up. Period.  
7 That's just human nature and why, to protect the  
8 officer, protect whoever that person is. All your  
9 senses are made more aware. But when you are  
10 distracted with a phone call talking to a major at  
11 four-thirty in the morning who just called, which I  
12 think from his testimony I think he was probably a  
13 little worried that he called the major at four-thirty  
14 in the morning because they don't really appreciate  
15 that. But he's on that phone and that distracted him  
16 and for how long I don't know. I just wanted to make  
17 it very, very crystal clear to you here at the very  
18 beginning that I am not criticizing the officer. I am  
19 just saying he made a mistake. Period. A mistake.  
20 And when you look at the overall charge the judge is  
21 going to give you they're talking about possession of  
22 the gun and they're talking about possession of the  
23 drugs and everything. One, there is nothing on the  
24 drugs to tie my client to that other than the fact  
25 it's near the car near where he parked. Period.

1           That's it. Was it him? No. Investigation -- this  
2 happens on the 27th I believe of the month of  
3 September and in four or five days they got the  
4 warrant. Officer admitted on the stand he couldn't  
5 put out specifics on the guy. Period. But he later  
6 signed the warrant. When did he sign it? After he  
7 realized, believed honestly, that that man by the link  
8 was my client. Period.

9           Now, I'll wind up in a second. The chemist, we're  
10 not contesting that it's drugs. It period. It is  
11 drugs. How much, I don't know the weight. I really  
12 don't. I just know what they say it weighed. Period.

13           Now, it's interesting because when an officer at  
14 the scene picks up the rocks -- they call them rocks.  
15 When they pick those up they don't know the weight and  
16 they don't really know whether if it's drugs. Period.  
17 And in today's world with drugs across the country  
18 there is a lot of phoney drugs and there is all sorts  
19 of things out there that are really, really hurting  
20 our community. I'm not saying rocks is good. Crack  
21 is good, I'm not saying that. I'm just saying that  
22 this man it's not his and he wasn't there. So you got  
23 to believe that nothing distracted the officer when he  
24 supposedly identified my client. He knew him but he  
25 couldn't remember his name. It's not something like

1 at a cocktail party. Oh, I knew who he is but I can't  
2 remember his name. We're in the real world. We're in  
3 the world here where what you all do will decide his  
4 fate and the fate of his family. Period. And it's  
5 been over two years ago now. This is 2020 is when it  
6 happened.

7 I thought what's most interesting here is the fact  
8 the officer is looking in through that car. That car  
9 it could have had anything in it. God knows. Who  
10 really knows. But the officer found under the seat,  
11 under the front seat, he found a gun and that's the  
12 gun that my client's prints -- print from one finger  
13 was at the bottom of the magazine. You don't hold one  
14 like that and you certainly don't jam it in and load a  
15 magazine with that. I said, how long had it been  
16 there? I don't know. I don't know how long it has  
17 been there. There's lots of variables and if you put  
18 a print on something, the weather and the conditions,  
19 rain, all that, that may change things. So she didn't  
20 know. It could have been there for two weeks, three  
21 weeks four weeks. How did it get there? I don't  
22 know. Period. But I'm telling you it's not his car.  
23 That's not his gun. That's not his dope. Period.

24 They're saying, well, he isn't an addict because  
25 we didn't find a pipe. It could have been God knows

1                   what in the back of the car. It really wasn't  
2                   searched. You saw that. Period. I will end this and  
3                   close because this is my only chance. Sorry about  
4                   that. You know I think the most stunning thing about  
5                   this to me is there really is no evidence other than  
6                   the fact that Officer Breeden who pulled in was taken  
7                   by surprise and from that two seconds alleges it's  
8                   him. Period. That's your decision. You know, I  
9                   would say one other thing to you, you know people say  
10                  well the gun was in the car. He must have had  
11                  something to do with the gun. I have seen cases where  
12                  a lot of people say, well, it was under the seat of  
13                  the car and the driver he must know it's there. Do  
14                  you know what's under your seat. Seriously. We did a  
15                  trial once in Detroit and one of the guys put one of  
16                  the dummy guns from the police academy, put a gun  
17                  under the witness stand and the officer says, oh, he  
18                  must know that there was a gun up the seat. Would you  
19                  stand up and look under your seat? We had the dummy  
20                  gun. You know, you can't -- you can't realize how  
21                  difficult our system is. It is an incredibly complex  
22                  system and we're relying really on the faith and the  
23                  ability to use common sense on these things. Do you  
24                  really want to convict a man on a two second  
25                  observation in a stressful situation when the man is

1                   distracted on the phone and he's at the end of 12 hour  
2                   shift. Do you really want to do that?

3                   I ask that you use common sense in this, and not  
4                   everybody that gets arrested -- accept for you say,  
5                   well, he went to the jail and he reacted. I'd react  
6                   to if somebody arrested me and I wasn't guilty. You  
7                   are doing this to me? Why? Why? And why would the  
8                   officer himself -- when I asked him, is it normal to  
9                   go to jail and see a man who was arrested on a warrant  
10                  you were involved in from months ago or from weeks  
11                  ago? No. Why? I think he probably wanted him to  
12                  break down and confess. That's why they're in here  
13                  testifying he put his head down. How are you going to  
14                  feel? You're in jail. You got a family and you're  
15                  locked up and you didn't do anything.

16                 Ladies and gentleman, I really appreciate your  
17                 time. I'm sorry, the judge was right when he said  
18                 it's been difficult. We have been out two years not  
19                 doing this stuff. As the judge says it's difficult  
20                 the first couple of trials. This is only my second.  
21                 I had a murder two weeks ago. But I'm just saying to  
22                 you all that it's your job and it is the most sacred  
23                 job really that any citizen can undertake. A lot of  
24                 people don't want to be on jury duty. Period. They  
25                 just don't want to be on it but it's an obligation.

1 We wouldn't have a society if we didn't have something  
2 like this. Period. But remember, not every person  
3 that is arrested is guilty. Not every officer is a  
4 hundred percent accurate. They see things, they  
5 perceive things, it may or may not be wrong. It's  
6 effected by all sorts, distance, eyes, like I went  
7 through with you.

8 In this case think the most important of those  
9 factors is the time factor and you look at video again  
10 and you see in two seconds see the guy looking  
11 directly at the officer. You say, his explanation  
12 was, well, the video didn't catch it. Well, the video  
13 caught it. This was a man he wasn't even looking at  
14 you. I think? You have to make that determination.  
15 And I would like to thank the State for being  
16 cooperative in this case and the judge for putting up  
17 with my antics. I'm just saying I believe in this  
18 man. I believe in this man. There's not sufficient  
19 evidence to prove beyond a reasonable doubt. There's  
20 a reasonable doubt as to whether that officer could  
21 have made a mistake. There's a reasonable doubt.

22 Thank you very much and I appreciate -- these are  
23 not in evidence these boards, but I think, you know,  
24 when you look at situation of the number of people in  
25 the United States where you got hundreds and hundreds

1 of witnesses they make a mistake on people. In this  
2 case three guys virtually spent there whole life in  
3 jail and they were wrong and improper ID. So thank  
4 you very very much and I hopefully I will see you at  
5 some time in the future and thank you very much for  
6 your service for the county. Thank you for the  
7 service to this court.

8 THE COURT: Mr. O'Leary. Mr. Thomas.

9 MR. THOMAS: You know, Tony Breeden is not a  
10 couple of civilians at a Malcomn X rally. He's a 28  
11 year, almost 30 year veteran of law enforcement. Been  
12 in investigation, SWAT team, street crimes. The man  
13 is trained to do more than one thing at once. He can  
14 answer a phone and he can look out the car and see  
15 Ramon Hope and you're going to hear about the factors  
16 you can consider on that identification. And one of  
17 those things is, you know, corroborating evidence. An  
18 opportunity that he had to interact with him before.  
19 He was very clear with you that him and Ramon Hope  
20 know each other. How do you know they know each other  
21 and whatever his purpose for going back there was -- I  
22 understand that. I understand Mr. O'Leary's concern  
23 with that, but whatever his purpose the first thing he  
24 said he told Ramon and looked Bars. Hey,  
25 Bars, why are you doing this to me and Lieutenant

1 Breeden told you that's because he used to drive the  
2 car that had the brush guard on the front, the bars,  
3 and that was his nickname that he got was Bars. He is  
4 not sitting back there going oh, why am the victim of  
5 some law enforcement harassment. He says Breeden why  
6 did you put those charges on me because he knows  
7 that's who he saw that night when he got out of the  
8 car. And I understand what Mr. O'Leary is saying  
9 about young black man getting out of cars and running  
10 I get that and there is a lot of societal things  
11 that's going on and I understand that and that's not a  
12 young black main that is 42-year old man. He got out  
13 of that car and ran because he had dope. He had a  
14 gun. That's what the evidence in this case shows  
15 ladies and gentleman. So, I ask you to go back in  
16 that jury room and render a verdict in case and that  
17 verdict is guilty.

18 Thank you.

19 THE COURT: Thank you.

20 Ladies and gentleman, it will take me about 15 or  
21 20 minutes to read the charge to you. It is probably  
22 appropriate we take a short ten-minute break before we  
23 do that. I will allow you to go back in the jury  
24 room. Don't discuss closing remarks that you heard or  
25 anything else. Just quickly refresh yourself and

1 we'll have you back her in ten minutes. Thank you.

2 (WEHREUPON, there was a brief recess.)

3 THE COURT: All right. Let's bring the jury in.

4 You all look at the verdict form?

5 MR. THOMAS: I put a sticky note on there because  
6 the PWID --

7 THE COURT: Hold on there. Don't bring them in.

8 MR. THOMAS: PWID didn't have a possession on it.

9 THE COURT: Well, my view is there was no  
10 possession. That's a defense. Do you want to be  
11 heard on this

12 MR. THOMAS: I would agree with you. There's an  
13 old case, Vicky Cude, C-U-D-E. It was basically PWID  
14 heroin and the defense was it wasn't her heroin and  
15 the Court said they are not entitled to a lesser  
16 included of simple possession in that situation. So I  
17 am fine with that. I'm fine.

18 THE COURT: That's the way I viewed the facts of  
19 this particular case. Did you have any --

20 MR. O'LEARY: Judge, I thought it was going to  
21 included, the regular possession. That's what I  
22 thought.

23 THE COURT: Well, let's be sure we are heard on  
24 that. I did not include simple possession because the  
25 facts of the case is that he did not possess. They

1           were not his, so I believe it's improper to include  
2           the lesser included of simple possession of crack  
3           cocaine.

4           MR. O'LEARY: I understand, judge, but he argued  
5           it I believe on his slide, didn't you?

6           MR. THOMAS: I argued about possession in the  
7           context of the elements of possession.

8           MR. O'LEARY: It was shown to the jury.

9           THE COURT: What he argued is not evidence in the  
10          case. Not facts in the case. Certainly that can  
11          raise a potential issue. Then I don't have a problem  
12          with adding simple possession to that verdict form.

13          MR. O'LEARY: I appreciate that.

14          MR. THOMAS: I understand where it's coming from  
15          and I think to some extent obviously there was some  
16          questions in cross about -- and I think in his closing  
17          too he hit on, you know, that he's not some big drug  
18          dealer. I think that there's enough to justify that.  
19          I've already got my name one opinion that says we  
20          chide the State for trying to get a compromised  
21          verdicts. I just want to be sure I am clear on that.

22          THE COURT: We'll make that change.

23          MR. THOMAS: I think that's is fine.

24          MR. O'LEARY: Thank you judge.

25          THE COURT: Let's bring the jury in.

1 (WHEREUPON, the jury enters the courtroom.)

2 THE COURT: Ladies and gentlemen of the jury, it's  
3 now my responsibility to charge you on the applicable  
4 law. That simply means that I am going to read you  
5 what the law is as to this ask you on to listen very  
6 carefully as I go through.

7 Mr. Foreman, ladies and gentleman of the jury, you  
8 have seen and heard the evidence presented as well as  
9 arguments of counsel. It is now my duty and  
10 obligation to instruct you on the law that is  
11 applicable in this case. It will then be your solemn  
12 duty and obligation to begin your deliberations  
13 through which process you will decide the facts, apply  
14 the law as I've instructed and render a fair and  
15 impartial decision.

16 It's your exclusive duty to determine what the  
17 facts are in case. You do that based on your own  
18 common sense, examination and evaluation of the  
19 testimony and other evidence received during this  
20 trial. You 12 jurors alone will decide what effect,  
21 value and weight is to be given to any particular  
22 testimony or other evidence received. Quite simply,  
23 your ultimate goal is to find the truth in this case  
24 and by doing so you will have fulfilled your  
25 obligation as jurors in giving both the State and the

1 defendant a fair and impartial trial based on the  
2 evidence presented and the law applicable to this  
3 case.

4 The defendant in this case, Ramon R. Hope, has  
5 been indicted on the charges of possession with intent  
6 to distribute crack cocaine and the unlawful carrying  
7 of a handgun, allegedly occurred on September the  
8 27th, 2020. I remind you the fact that the defendant  
9 was arrested charged and indicted in this case is not  
10 evidence in this case and can not be considered by you  
11 as evidence of guilt in this case. Nor does it create  
12 any presumption or inference of guilt. These  
13 documents are simply the formal written instruments  
14 which contain the charges made against the defendant.  
15 They are the formal documents by which this case is  
16 brought into this court. The defendant has plead not  
17 guilty to the charges and that plea puts the burden on  
18 on the State to prove the defendant's guilt beyond a  
19 reasonable doubt. A person charged with committing a  
20 criminal offense in South Carolina is never required  
21 to prove himself innocent. I charge you it's a  
22 cardinal, important and vital rule of law that in a  
23 criminal trial no matter what the seriousness of the  
24 charge may be for which he stands charged, the  
25 defendant will always be presumed to be innocent of

1 the crime for which the indictment was issued unless  
2 guilt has been proven by evidence satisfying you of  
3 that guilt beyond a reasonable doubt. This  
4 presumption of innocence does not end when you begin  
5 your deliberations but it accompanies the defendant  
6 throughout the trial until you reach a verdict of  
7 guilt based on evidence satisfying you of that guilt  
8 beyond a reasonable doubt.

9 The presumption innocence is like a robe of placed  
10 about the shoulders of the defendant which remains  
11 with the defendant from the moment of his arrest and  
12 continues until it has been stripped from the  
13 defendant's shoulders by evidence satisfying you of  
14 the defendant's guilt beyond a reasonable doubt. The  
15 presumption of innocence is not a mere legal theory  
16 nor is it a legal phrase. It is a substantial right  
17 to which every defendant is entitled unless you 12  
18 jurors are satisfied from the evidence of the  
19 defendant's guilt beyond a reasonable doubt.

20 I remind you that during this trial you and I have  
21 certain duties to perform. As the trial judge it is  
22 my responsibility to preside over the trial of this  
23 case and I also have the duty to rule on the  
24 admissibility of evidence offered during this trial.  
25 You are to consider only the competent evidence before

1           you. If there was any testimony ordered stricken from  
2           the record in this case during this trial you must  
3           disregard that testimony. You are to consider only  
4           the testimony which has been presented from this  
5           witness stand, any exhibits which have been made a  
6           part of the record in this case and any stipulations  
7           of counsel. I have the additional duty to charge you  
8           the law applicable to this case. As the presiding  
9           judge I'm the sole judge of the law of this case and  
10          it is your duty as jurors to accept and apply the law  
11          as I now state it to you. If you already have any  
12          idea as to what the law is or what the law ought to be  
13          and it does not agree with what I now tell you the law  
14          is you must abandon your idea because you're sworn to  
15          accept the law and apply the law exactly as I state to  
16          you.

17                 In every case tried in this Court before a jury  
18          the jury becomes the sole and exclusive judge of the  
19          facts in the case. A trial judge can intimate, state,  
20          comment on or make any statement to a trial jury about  
21          the facts in the case. Since you the jury are the  
22          sole judges of the facts in this case you're not to  
23          infer from what I've said during the progress of this  
24          trial in ruling upon the admissibility of evidence or  
25          otherwise, or anything that I say now during the

1 course of this instruction to you that I have any  
2 opinion about the facts in this case. The law does  
3 not allow me to have an opinion about facts in this  
4 case. This is a matter solely for you the jury to  
5 determine. As jurors, it is your duty to determine  
6 the effect, value, weight and truth of the evidence  
7 presented during this trial. The State has the burden  
8 of proving the defendant beyond a reasonable doubt.

9 Proof beyond a reasonable doubt is proof that  
10 leaves you firmly convinced of the defendant's guilt.  
11 There are very few things in this world that we know  
12 with absolutely certainty and with criminal cases the  
13 law does not require proof that overcomes every  
14 possible doubt. A reasonable doubt may also be  
15 described as the kind of doubt that would cause a  
16 reasonable person to hesitate to act. If you have  
17 such a doubt as to the guilt of the defendant then he  
18 would be entitled to a verdict of not guilty.  
19 Reasonable doubt may arise from evidence which is in  
20 the case or from the absence or lack of evidence in  
21 the case. If based on your consideration of the  
22 evidence your firmly convinced that the defendant is  
23 guilty of the crime charged, you must find him guilty.  
24 If on the other hand you think there's a real  
25 possibility that he is not guilty, you must give him

1 the benefit of the doubt and find him not guilty. You  
2 alone must make the determination whether or not  
3 reasonable doubt exists as to the guilt of the  
4 defendant. There are two types of evidence that are  
5 generally presented during a trial, direct evidence  
6 and circumstantial shall evidence.

7 Direct evidence is the testimony of a person who  
8 claims to have actual knowledge of a fact such as an  
9 eye-witness. It is evidence which immediately  
10 establishes the main fact to be proved.

11 Circumstantial evidence is proof of a chain of  
12 facts and circumstance existing indicating the  
13 existence of a fact. It is evidence which immediately  
14 establishes collateral facts from which the main fact  
15 may be inferred. Circumstantial evidence is based on  
16 inference and not on personal knowledge or  
17 observation. The law makes absolutely no distinction  
18 between the weight or value to be given to either  
19 direct or circumstantial evidence, nor is a greater  
20 degree of certainty required of circumstantial  
21 evidence than of direct evidence. You should weigh  
22 all of the evidence in the case. After weighing all  
23 the evidence if you are not convinced of the guilt of  
24 the defendant beyond a reasonable doubt you must find  
25 the defendant not guilty. However, to the extent the

1 State relies on circumstantial evidence all of the  
2 circumstances must be consistent with each other and  
3 when taken together point conclusively to the guilt of  
4 the accused beyond a reasonable doubt. If these  
5 circumstances merely portray the defendant's behavior  
6 as suspicious the proof has failed.

7 Under the constitution of South Carolina you are  
8 the finder of the facts in this case. Necessarily you  
9 must determine the credibility of witnesses who have  
10 testified in this case. Credibility simply means  
11 believable. It becomes your duty as jurors to analyze  
12 and to evaluate the evidence and determine which  
13 evidence convinces you of its truth. In determining  
14 the believability of witnesses who have testified in  
15 this case, you may believe one witness over several  
16 witnesses or several witnesses over one witness. You  
17 may believe a part of the testimony of a witness and  
18 reject the remaining part of the testimony of that  
19 same witness. You may believe the testimony of a  
20 witness in its entirety or reject the testimony of a  
21 witness in it's entirety. You may consider whether  
22 any witness has exhibited to you any interest, bias,  
23 prejudice or other motive in this case. You may also  
24 consider the appearance and manner of a witness while  
25 on the witness stand. Was the witness state forward

1 in answering questions or hesitant responding to  
2 questions. Simply put, do you believe the witness was  
3 telling the truth. You may consider how the witness  
4 came to know the facts to which he or she testified  
5 and whether or not the witness had an opportunity to  
6 hear, observe or perceive a fact by means of their  
7 senses. Whatever your good judgement and common sense  
8 tells you is the most believable testimony is the  
9 testimony you should accept and reject that testimony  
10 which you find not to be credible or believable.

11 Criminal intent is a necessary element of each  
12 crime that must be proved by the State beyond a  
13 reasonable doubt. Criminal intent is always a matter  
14 that must be determined by the jury from the  
15 circumstances surrounding the situation. There is no  
16 way to prove intent to a mathematical certainty.  
17 There is no way medical science can dissect a person's  
18 brain and determine what he had in mind. So the law  
19 says that criminal intent may be inferred from the  
20 circumstances shown to have existed. This is how a  
21 jury makes the determination of whether or not the  
22 element requiring intent was present. Criminal intent  
23 is the State of mind which operated jointly with an  
24 act is the commission of a crime. Criminal intent is  
25 mental state. A conscious wrongdoing. So it is up to

1           you, the jury, to determine what the defendant  
2           intended to do based on the circumstances shown to  
3           have existed. I tell you that the State must prove  
4           criminal intent beyond a reasonable doubt, just as the  
5           State must prove every element beyond a reasonable  
6           doubt as I previously explained to you. It is not  
7           necessary to establish intent by direct and positive  
8           evidence, but intent may be established by inference  
9           in the same way as any other fact by taking into  
10          consideration the acts of the parties and all the  
11          facts and circumstance of the case. While the State  
12          may prove motive it is unnecessary the State do so.  
13          However, the State must prove intent.

14                I instruct you and emphasis that the fact that the  
15          defendant did not testify is not a factor to be  
16          considered by you in any way in your deliberation and  
17          in your consideration of the question of the guilt or  
18          the innocence of the defendant. It must not be  
19          considered by you in any manner whatsoever. A  
20          defendant has the constitutional right to remain  
21          silent and the assertion of this right must not be  
22          considered by you in your deliberations. I repeat,  
23          under your oath you are to draw no conclusion  
24          whatsoever from the fact that the defendant in this  
25          case did not testify. The fact that this defendant

1 did not the testify should not even be discussed in  
2 the jury room.

3 The burden of proof as I've stated to you is on  
4 the State. The defendant is not required to prove his  
5 innocence. The burden of proof remains on the State  
6 to prove guilt beyond a reasonable doubt.

7 The rules of evidence ordinarily do not permit  
8 witnesses to testify to opinions or conclusions. An  
9 exception to this rule exists for witnesses we call  
10 expert witnesses. A witness who by education and  
11 experience has become an expert in some art, science  
12 profession or calling may state an opinion as to  
13 relevant and material matters in which the witness  
14 claims to be an expert and may also state the reasons  
15 for the opinion. You should consider any expert  
16 opinion received in evidence in this case like any  
17 other evidence, give it the weight you think it  
18 deserves. If you decide that the opinion of an expert  
19 witness is not based on sufficient education and  
20 experience or if you conclude that the reasons given  
21 in support of opinion are not sound or that the  
22 opinion is outweighed by other evidence you may  
23 disregard the opinion entirely. An expert witness's  
24 testimony is to be given no greater weight than that  
25 of other witnesses simply because the witness is an

1 expert. You are not required to accept an expert's  
2 opinion even though it is not contradicted.

3 An issue in this case is the identification of the  
4 defendant is the person who committed the crime  
5 charged. The State has the burden of proving identity  
6 beyond a reasonable doubt. You must be satisfied  
7 beyond a reasonable doubt of the accuracy of the  
8 identification of the defendant before you may convict  
9 the defendant. Identification testimony is an  
10 expression, a belief or impression by a witness. You  
11 must determine the accuracy of the identification of  
12 the defendant. You must consider the believability of  
13 each identification witness in the same way as any  
14 other witness. You may consider whether the witness  
15 had an adequate opportunity to observe the offender at  
16 the time of the offense. This will be effected by  
17 things like how long or short a time was available,  
18 how far or close the witness was, the lighting  
19 conditions and whether the witness had the chance to  
20 see or know the person in the past.

21 Once again, I instruct you the burden of proof on  
22 the State extends to every element of the crime  
23 charged and this specifically included the burden of  
24 proving beyond a reasonable doubt the identity of the  
25 defendant as the person who committed the crime. If

1 after examining the testimony you have a reasonable  
2 doubt as to the accuracy of the identification you  
3 must find the defendant not guilty.

4 I will instruct you on the charge of possession of  
5 crack cocaine with intent to distribute. Section  
6 44-54-370 of our code of laws states and provides in  
7 pertinent part, it is unlawful for any person to, one,  
8 possess with intent to distribute a controlled  
9 substance. This section makes it unlawful for any  
10 person to possess with intent to distribute a  
11 controlled substance. Crack cocaine is classified as  
12 a controlled substance.

13 The indictment charges in substance that Ramon R.  
14 Hope, the defendant, did on or about the 27th day of  
15 September 2020 in York County, State of South Carolina  
16 possess with intent to distribute a quantity of crack  
17 cocaine, a controlled substance in violation of the  
18 State of South Carolina. Before the defendant can be  
19 found guilty of this charge the State must prove  
20 beyond a reasonable doubt that the defendant, Ramon R.  
21 Hope, did possess with intent to distribute a quantity  
22 of crack cocaine at the time and place and manner  
23 alleged in the indictment. Possession requires that a  
24 person be in actual or constructive possession of the  
25 controlled substance with actual knowledge of its

1 presence. Actual possession of a controlled substance  
2 exists when the controlled substance is found in the  
3 actual physical custody of the person charged with  
4 possession. Constructive possession of a controlled  
5 substance exists when a person, although not in actual  
6 physical possession of the controlled substance  
7 exercises dominion and control over the controlled  
8 substance, or has the right to exercise dominion and  
9 control over the controlled substance. A person has  
10 possession of a controlled substance within the  
11 meaning of the law when he has both the power and  
12 intent to control its deposition or use. The mere  
13 presence where drugs are found is not sufficient. It  
14 must be shown that the defendant had possession of the  
15 crack cocaine and that the defendant knew he had the  
16 crack cocaine in his possession. Knowledge of the  
17 presence of crack cocaine by the defendant is  
18 essential. And I'll instruct you a little bit later  
19 on in your deliberations you will also have a  
20 potential finding of not guilty or guilty of the  
21 charge of simply possessing crack cocaine which is  
22 what I have just instructed you on.

23 In this particular case, the first charge, the  
24 State must not only prove possession of the crack  
25 cocaine by the defendant, but the State must also

1 establish beyond a reasonable doubt that the defendant  
2 possessed the crack cocaine with the intent to  
3 distribute it. The intent to distribute the  
4 controlled substance is an essential element of that  
5 offense. Intent is defined as a purpose or aim or  
6 design and in law it is the state a of person's mind  
7 which direct its actions toward a specific object.  
8 Distribute means to deliver the crack cocaine. The  
9 actual constructive or attempted transfer of the  
10 substance with or without payment. Intent may be  
11 shown by acts and conduct of the defendant and other  
12 circumstances from which you may naturally and  
13 reasonably infer intent. In determining whether the  
14 defendant had intent to distribute the crack cocaine,  
15 you may consider the circumstances surrounding the  
16 defendant's alleged possession. You may consider the  
17 amount of substance alleged to have been possessed,  
18 the manner in which it was allegedly possessed, the  
19 place where it was allegedly possessed and other  
20 factors which you consider to be important. You must  
21 find the defendant did not intent to have the crack  
22 cocaine solely for his own use. I charge you that  
23 possession of more than one gram of crack cocaine  
24 creates a permissive inference that the defendant  
25 possessed the crack cocaine with the intent to

1 distribute it. The resulting implication only permits  
2 rather than require you the jury to infer a violation  
3 of this section. This permissive inference does not  
4 the relieve the State from actually proving beyond a  
5 reasonable doubt the element of intent to distribute.  
6 This permissive inference is simply an evidentiary  
7 fact to be taken into consideration by you, the jury,  
8 along with the other evidence in the case and to be  
9 given such weight as you determine it should receive.  
10 A permissive inference is one which you may or may not  
11 make based on your view of the evidence.

12 I further charge you that if you find beyond a  
13 reasonable doubt that the defendant possessed crack  
14 cocaine but did not intend to distribute it then you  
15 would you find the defendant guilty of the lesser  
16 included offense of simple possession of crack  
17 cocaine. You would not find the defendant guilty of  
18 either offense unless you find that the State has  
19 proven the elements of that offense beyond a  
20 reasonable doubt.

21 The defendant in this case is charged with the  
22 unlawful carrying of a handgun. Section 16-23-10 of  
23 the South Carolina Codes of law defines a handgun as  
24 any firearm designed to expel a projective and design  
25 to be fired from the hand, but shall not include any

1 firearm generally recognized or classified as an  
2 antique, curiosity, or collector's item, or any that  
3 does not fire fixed cartridges.

4 South Carolina Code section 16-23 states that it  
5 is unlawful for anyone to carry about the person any  
6 handgun whether concealed or not, accept as follows,  
7 unless specifically prohibited by law. The State must  
8 prove beyond a reasonable doubt that the defendant  
9 carried a handgun about his person, whether concealed  
10 or not. A weapon is about the defendant's person if  
11 it is readily accessible and convenient for immediate  
12 use. The handgun may not be actually touching the  
13 person of the defendant. The State must prove the  
14 elements unlawful carrying of a handgun beyond a  
15 reasonable doubt. These elements the are that one,  
16 the defendant did in fact possess a handgun. If you  
17 find the item that the defendant possessed was  
18 something other than a handgun then you can not find  
19 him guilty of this offense. And two, the defendant  
20 carried a handgun about his person. The phrase about  
21 the person means any position where the handgun is  
22 readily accessible and convenient for its immediate  
23 use whether or not it actually touches the person of  
24 the defendant.

25 You have been selected as fair and impartial

1 jurors, sworn to impartially try and determine the  
2 facts of this case and when you comply with your oath  
3 to do so then no one will have a right to criticize  
4 your verdict and you would have fully discharged your  
5 duty as jurors. You are to decide this case according  
6 to the testimony that you have heard from the lips of  
7 the sworn witnesses, along with other evidence  
8 introduced during the trial. During your  
9 deliberations, Mr. Foreman, you're only to deliberate  
10 when all of the jurors are present in the jury room.  
11 If somebody has to step out for example, to go to the  
12 restroom or make a phone call you must cease  
13 deliberations until all 12 jurors are back together in  
14 the jury room. In just a moment I will allow you to  
15 go back to the jury room. Do not beginning discussing  
16 the case until I take up some matters with the  
17 attorneys and we send back the evidence that has been  
18 introduced in the case. When we do that you will be  
19 able to begin deliberations. The bailiff will bring  
20 that back, and instruct you to can get started. There  
21 will be two -- they'll be two verdict forms that will  
22 go back with you, Mr. Foreman. The first one is a  
23 verdict form for possession with intent to distribute.  
24 It says on the charge of possession with intent to  
25 distribute cocaine we the jury find by unanimous

1 consent the defendant either not guilty or guilty.  
2 The order in which I state them has no significance.  
3 I simply have to read one before the other. You would  
4 check that. If you answer not guilty to the  
5 possession with intent to distribute you will need to  
6 answer the question on simple possession of cocaine.  
7 On the charge of simple possession of cocaine we the  
8 jury by unanimous consent find the defendant not  
9 guilty or guilty. Once you have reached a unanimous  
10 decision if you'll just sign your name and date the  
11 verdict form.

12 The other verdict form is for the unlawful  
13 carrying of a pistol. On the charge of unlawful  
14 carrying of a pistol we the jury by unanimous consent  
15 find the defendant either guilty or not guilty. You  
16 would check the appropriate finding and sign and date  
17 the jury form. Once you reached a verdict knock on the  
18 door. The bailiff -- I will ask that you then bring  
19 the verdict form back in the courtroom with you. When  
20 you come back in here I will ask you if you have  
21 reached a verdict. If you have then you'll hand it up  
22 to the bailiff and then he'll then hand it up to the  
23 Court. So when you reach a verdict knock on the door.  
24 He'll let you all out but you keep the verdict forms  
25 in your hand and bring them back in to court with you.

1 With that I'm gong allow you to be excused to your  
2 jury room. Again, don't start deliberating until the  
3 bailiff hands you the verdict forms and then also  
4 hands you the evidence. And my alternate if you would  
5 just stand right here by the court reporter while they  
6 leave I'll talk to you in just a moment. With that I  
7 will allow you to go back to the jury room.

8 (WHEREUPON, jurors leave the courtroom.)

9 THE COURT: Thank you for being attentive and being  
10 here, this day and age we very rarely make it to end  
11 of trial even if it's a day with all 12 jurors still  
12 there and we need alternates. However, in this  
13 particular case all 12 are here with us and in the  
14 jury room. So you are relieved from serving any  
15 longer. You can talk to anybody you want to about the  
16 case. Some times lawyers may call to get information  
17 from you. You can talk to them if you want to. On  
18 the other hand you're not required to. You don't have  
19 to talk to anybody about it.

20 All right, thank you for your service. The  
21 bailiff will escort you out.

22 (WHEREUPON, the alternate juror leaves the  
23 courtroom.)

24 THE COURT: Anything else as far jury instructions  
25 or charges from the State?

1 MR. THOMAS: Nothing from the State.

2 THE COURT: From the defense?

3 MR. O'LEARY: The only one is the jury request I  
4 had with referenced to identification.

5 THE COURT: All right.

6 MR. O'LEARY: I put in there.

7 THE COURT: That was one of the requests that is  
8 part of the record. I note your objection and I deny  
9 that motion. All right, if you'll come on up and make  
10 sure we got what needs to go back.

11 What I generally do is, I tell the jury when we  
12 got videos if they want to see the video they'll need  
13 to to knock on the door and let us know that and then  
14 THE COURT: Mr. Thomas and Mr. O'Leary do you all  
15 want to come up for a moment.

16 (WHEREUPON, there was an off the record  
17 discussion.)

18 THE COURT: Let's do this on the record. I have a  
19 note from the jury. Jurors 213 and 80 request a smoke  
20 break. Response from the court is a smoke break is  
21 allowed. Deliberations must cease until all 12 jurors  
22 are back in the jury room. I'll send that back.

23 (Court was in recess.)

24 THE COURT: All right. I believe everybody is in  
25 place. The Court was notified by the bailiff that the

1 jury has a verdict. So let's bring the jury in.

2 (WHEREUPON, the jury enters the courtroom.)

3 THE COURT: All right, thank you ladies and  
4 gentlemen. Put all that right here on the table.

5 All right. Thank you. Mr. Forman, has the jury  
6 reached a verdict?

7 THE FOREMAN: Yes, sir we have.

8 THE COURT: If you will hand the bailiff the  
9 verdict form.

10 Madam clerk if will you publish the verdict  
11 please.

12 THE CLERK: In the State of South Carolina, County  
13 of York in the Court of General Sessions, 16th  
14 Judicial Circuit, Indictment number 2020-GS-46-06577,  
15 in the matter of State versus Ramon Hope, on the  
16 charge of possession with intent to distribute cocaine  
17 we the jury by unanimous consent find the defendant  
18 guilty. Signed this day by the foreperson, January  
19 12th. On the charge of unlaw carrying of a pistol we  
20 the jury by unanimous consent find the defendant  
21 guilty. Signed this day January 12th by foreperson of  
22 the jury. Ladies and gentleman of the jury if this is  
23 your verdict say you all by raising your right hand.

24 Thank you. Let the record reflect all confirmed  
25 this verdict.

1 THE COURT: All right. Thank you, anything  
2 further from the State?

3 MR. THOMAS: Nothing from the State, Your Honor.

4 THE COURT: From the defense?

5 MR. O'LEARY: Nothing at this time, judge.

6 THE COURT: All right, thank you.

7 Ladies and gentleman, we appreciate your service  
8 this week. That concludes your service for the week.  
9 We got a full date of work tomorrow and Friday we will  
10 not need a jury. You are free to discuss case with  
11 anybody that you wish. Sometimes lawyers may try to  
12 get in touch with you to talk about the case. That  
13 helps them to assess what they could have done or need  
14 to do. You're not required to talk to them or to  
15 anybody. On the other hand, you free to use your own  
16 judgement. You can you talk to anybody you want to  
17 about the case, but that's left up to you what you  
18 deem is appropriate. With that, again, we thank you  
19 for your service this week. The bailiff will show you  
20 out and you all be careful going home. Thank you.

21 (WHEREUPON, the jurors leave the courtroom.)

22 THE COURT: All right. Thank you, anything  
23 further from the State before we proceed to  
24 sentencing.

25 MR. THOMAS: No, sir, Your Honor. I am preparing

1 the sentencing sheet right now.

2 THE COURT: Mr. O'Leary, anything?

3 MR. O'LEARY: Nothing, Your Honor, except do you  
4 plan on doing the sentencing?

5 THE COURT: Yes. Let's bring him on around. Yes,  
6 sir.

7 THE COURT: You got your sentencing sheets?

8 MR. THOMAS: I am hitting print on them right.

9 The printer is right here.

10 THE COURT: We have the indictment. I just need  
11 the sentencing sheets.

12 All right. Let me hear you as far as sentencing,  
13 solicitor, and I need to know Mr. Hope's prior record.

14 MR. THOMAS: Yes, sir, Your Honor. His prior  
15 record is -- it's somewhat lengthy, but sort of  
16 disjointed. In 1996 he was convicted of a public  
17 disorderly conduct. In 1997 he was convicted of first  
18 offense PWID crack cocaine, assaulting a police  
19 officer while resisting arrest. In 1999 -- he got YOA  
20 sentence on those charges, Your Honor. In 1999 he had  
21 a simple assault and battery. 1999 he had an escape  
22 charge, escape conviction. Ending getting a three  
23 year sentence on that. Got a parole revocation on his  
24 YOA. And he has a conviction, Your Honor -- he has a  
25 conviction in 2020, March of 2020 for indecent

1 exposure and criminal domestic violence, 2nd degree.  
2 Those were time served pleas. Your Honor, actually  
3 took those. The reason for the gap, Your Honor,  
4 between his 2003 and his 2020 convictions is that he  
5 was actually charged by state authorities with several  
6 drug offenses in 2004, 2005. Those ended up getting  
7 adopted by the FEDS. I believe the DEA indicted him.  
8 He was actually convicted in 2006 and sentenced to one  
9 hundred months in federal prison for -- they charged  
10 him with drugs and a gun. He got a hundred month  
11 sentence on that gun charge. Your Honor, he served  
12 his hundred months. He got out on supervised release.  
13 He was revoked on his supervised released twice. In  
14 2014 he got a 12 month revocation and then in 2016 he  
15 got 18 months revocation. I'm sorry, 2017. So, he's  
16 done by my calculations a little over ten years of  
17 actual service in the federal prison system, Your  
18 Honor. He got out of federal prison and he picked up  
19 a charge from Rock Hill City Police that's somewhat  
20 similar to the one you had heard this week. He  
21 actually was a suspect in a pointing and presenting  
22 charge at Crazy Horse. When they went to get with him  
23 and speak with him about that he took off running.  
24 They eventually catch him. They go back and retrace  
25 it and they find three bags of suspected drugs at that

1 point, six and a half -- six'ish grams of crack, six  
2 grams of cocaine and then about a 15 gram bag of what  
3 turned out to be some sort of non-controlled  
4 substance. Baking soda or something. Our position  
5 would have been obviously he was planning to cut the  
6 drugs with to make more. He gets out on bond on that.  
7 He picks up that domestic violation charge that he'd  
8 been convicted of. Goes to the jail. Picks up an  
9 indecent exposure charge in the jail. Pleads to those  
10 for time served to get out of jail and then September  
11 picks up this charge here, Your Honor.

12 I have been in communication with Sergeant Watson  
13 who is with the violent crimes unit. Mr. Hope has  
14 been a problem for the city of Rock Hill going on his  
15 entire time that he has not been incarcerated and that  
16 is just something that he just can't seem to keep  
17 himself out of trouble, Your Honor. Obviously these  
18 are first offenses under the law. They're going to be  
19 parole eligible. He's going to get good time credits  
20 on that. Our position on sentencing, Your Honor, he's  
21 already served over ten years in federal prison. To  
22 get him even close to that based on these charges is  
23 going to be the maximum sentence on the PWID. So we  
24 would just ask something towards the upper end of that  
25 sentencing range. I mean, I wouldn't think it

1           unreasonable to give him the maximum sentence.

2           Your Honor is fully aware we got a problem with  
3           guns in this community. Normally I ask for those to  
4           be run consecutive, but I will leave that in your  
5           discretion. But the State's position obviously is a  
6           lengthy incarcerated sentence just to get Mr. Hope out  
7           of this community so they can stop dealing with him  
8           again.

9           THE COURT: All right. Thank you. Mr. O'Leary I  
10          will be glad to hear from you and your client.

11          MR. O'LEARY: Judge, I looked at his record and I  
12          really have never been able to totally interpret it.  
13          I think -- I would ask the Court for a medium type of  
14          sentence. He's got family support and he may have  
15          some kind of an emotional problem. And I would ask  
16          that during the incarceration he's is imposed that the  
17          court order some sort of treatment for him. I don't  
18          know what it is. Whether it be an evaluation,  
19          psychological. I honestly don't know. But I would  
20          ask for something that is reasonable. He has had  
21          obviously several problems. He's been incarcerated,  
22          and I'm not sure if he fully understands his  
23          background to be honest with you. I talked to him for  
24          long periods of time. I think he's basically a good  
25          guy but he does have a criminal history and I would

1 ask the Court in it's discretion to do something that  
2 is reasonable and also very positive to try and help.  
3 I don't know about the relationship here in the Rock  
4 Hill community, but obviously they've had some  
5 difficulty or he wouldn't be here and we leave it to  
6 the Court's discretion.

7 THE COURT: All right. Thank you. Anything you  
8 want to say Mr. Hope?

9 THE DEFENDANT: Yes. I'm fine with the trial and  
10 I was asking, another thing about the criminal history  
11 all I have is four priors. The rest of those charges  
12 on there just have been charges I have not been able  
13 to get dismissed off my record, like expunged, and I  
14 have the indecent exposure, th possession of a firearm  
15 which I with to Feds for and escape which is 20  
16 something years old and the other charges like 25  
17 years old. But upon my release, yes, I had to go back  
18 to the community where I took from the first time  
19 which is going to be same thing. I didn't have no  
20 type of money to get out of this county when I came  
21 back and I had kids here to come back here to. So of  
22 course you're going to be around stuff that can get  
23 you in trouble. And I have not been trying to get in  
24 trouble. It's just maybe I've been in the wrong place  
25 at the wrong time like my situation now. I mean, the

1 jury made their verdict and there's nothing I can do  
2 about it, but I'm for sure to speak with you here  
3 today that was not me but there's nothing else I can  
4 do so...

5 THE COURT: All right. Thank you. I will take a  
6 five minute break. Let's take him back. I will be  
7 out in five minutes.

8 (WHEREUPON, there was a brief recess.)

9 THE COURT: All right. After hearing all the  
10 case, the facts of the case, the prior record, the  
11 position of the State and the defense, the Court  
12 sentence is Mr. Ramon Rodrigo Hope on Indictment  
13 2020-GS-46-06577, possession with intent to distribute  
14 crack cocaine, first offense, sentence of the Court he  
15 is committed to the Department of Corrections for 15  
16 years to run concurrent. I don't know how much time  
17 he gets credit for. The Department of Corrections  
18 will figure that out. 2020-GS-46-06579, the unlawful  
19 carrying of a pistol, that he be committed to the  
20 Department of Corrections for one year to run  
21 concurrent to the previous indictment. Thank you.

22 MR. O'LEARY: Thank you, Judge.

23 MR. THOMAS: Just for the record all previous  
24 motions renewed?

25 MR. O'LEARY: Yes, I've renewed my motions on the

1 record. I probably will not be doing an appeal.

2 THE COURT: All right. You renewed your motions.  
3 The Court's rulings on all the prior motions stay the  
4 same. Thank you.

5 (END OF TRANSCRIPT)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter  
for the 16TH Judicial Circuit of the State of South Carolina, do  
hereby certify that the foregoing is a true, accurate, and  
complete transcript of record of all the proceedings in the  
captioned case, in the Circuit Court for York County, South  
Carolina, on the 11th and 12th day of January, 2022.

I do further certify that I am neither of kin, counsel, nor  
interest to any party hereto.

June 21, 2022

*Aileen Butler*

**WITNESSES**

RHPD

Witnessing Officer: *Clamp*

**ARREST WARRANT NUMBER**

2020A4620302398

**ACTION OF GRAND JURY**

**TRUE BILL**

*Quintan J. Boulton*  
Foreperson of Grand Jury  
Date: *7/8/2021*

**VERDICT**

*[Signature]*  
Foreperson of Petit Jury  
Date: *1-12-22*

**DOCKET NO. 2020-GS-46-06577**

**The State of South Carolina**

**County of York**

**COURT OF GENERAL SESSIONS**

**JULY 8 TERM 2021**

**THE STATE**

**VS.**

**RAMON RODRIGO HOPE**

**INDICTMENT FOR**

**POSSESSION WITH INTENT TO  
DISTRIBUTE CRACK COCAINE**

SC Code: § 44-53-375(B)  
CDR Code: 3014

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

204

**Defendant**

I \_\_\_\_\_  
hereby appear in my own proper  
person and plead guilty to the within  
indictment or to

**Defendant**

**Witness:**

**C.C.C. PLS. AND G.S.**

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

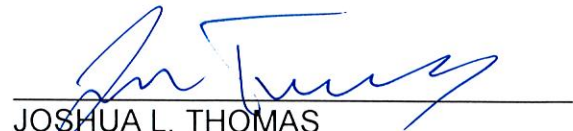
INDICTMENT

At a Court of General Sessions, convened on July 8, 2021, the Grand Jurors of York County present upon their oath:

**POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE**

The defendant, Ramon Rodrigo Hope, on or about September 27, 2020, in York County, South Carolina, did manufacture, distribute, dispense, deliver, or purchase, or did otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or did possess with the intent to manufacture, distribute, dispense, deliver, or purchase crack cocaine, a cocaine base, all in violation of Section 44-53-375(B)(1), Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
JOSHUA L. THOMAS  
ASSISTANT SOLICITOR

**WITNESSES**

RHPD

Witnessing Officer: *Clamp*

**ARREST WARRANT NUMBER**

2020A4620302399

**ACTION OF GRAND JURY**

**TRUE BILL**

*Gentry J. Barber*  
Foreperson of Grand Jury  
Date: *7/8/2021*

**VERDICT**

*Jay M. [Signature]*  
Foreperson of Petit Jury  
Date: *1-12-22*

**DOCKET NO. 2020-GS-46-06579**

**The State of South Carolina**

**County of York**

**COURT OF GENERAL SESSIONS**

**JULY 8 TERM 2021**

**THE STATE**

**VS.**

**RAMON RODRIGO HOPE**

**INDICTMENT FOR**

**UNLAWFUL CARRYING OF A PISTOL**

SC Code: § 16-23-20  
CDR Code: 0044

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

206

**Defendant**

I \_\_\_\_\_  
hereby appear in my own proper person and plead guilty to the within indictment or to

**Defendant**

**Witness:**

**C.C.C. PLS. AND G.S.**

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

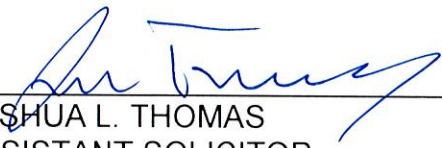
INDICTMENT

At a Court of General Sessions, convened on July 8, 2021, the Grand Jurors of York County present upon their oath:

**UNLAWFUL CARRYING OF A PISTOL**

The defendant, Ramon Rodrigo Hope, in York County, South Carolina, on or about September 27, 2020, did unlawfully carry on or about his or her person a handgun, whether concealed or not, all in violation of Section 16-23-20, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

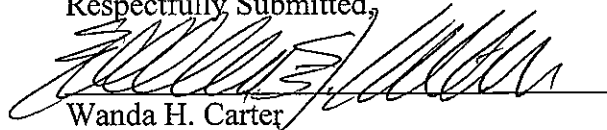
  
\_\_\_\_\_  
JOSHUA L. THOMAS  
ASSISTANT SOLICITOR

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the 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."

**RECEIVED****Oct 26 2022****SC Court of Appeals**

Respectfully Submitted,



Wanda H. Carter

Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S.C. 29211-1589

This 26th day of October, 2022.

ATTORNEY FOR APPELLANT