

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lancaster County

Honorable Brian M. Gibbons, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BILLY FRANKLIN CRIMINGER,

APPELLANT

APPELLATE CASE NO 2022-001648

RECORD ON APPEAL

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INDEX

INDEX	i
PRE-TRIAL MOTION ON AMENDED INDICTMENTS	4
PRE-TRIAL MOTION TO SUPPRESS.....	8
IN-CAMERA HEARING	
KIERRA FAYALL	9
COURT’S RULING	29
JURY VOIR DIRE	32
JURY SELECTION.....	47
OPENING REMARKS BY THE COURT	54
OPENING STATEMENT BY THE SOLICITOR.....	59
OPENING STATEMENT BY DEFENSE COUNSEL.....	61
TRIAL TESTIMONY	
KIERRA FAYALL	64
ED LOCKHART	105
ANN HORTON	139
BETHANY DAVIDSON.....	149
WILLIE SMITH	154
STATE RESTS	179
MOTION FOR DIRECTED VERDICT.....	180
RULING BY THE COURT.....	182
ADVICE OF RIGHTS COLLOQUY	182
JURY CHARGE CONFERENCE.....	194

TRIAL TESTIMONY

ROBBIE CRIMMINGER.....	199
DEFENSE RESTS	209
RENEWAL OF ALL MOTIONS	209
RULING BY THE COURT.....	209
CLOSING ARGUMENT BY THE SOLICITOR	210
CLOSING ARGUMENT BY DEFENSE COUNSEL	218
CLOSING REBUTTAL BY THE SOLICITOR	223
JURY CHARGE ON THE LAW	223
VERDICT	239
MOTION FOR A NEW TRIAL AND RENEWAL OF ALL MOTIONS.....	240
RULING BY THE COURT.....	240
SENTENCING HEARING	241
SENTENCING	246
INDICTMENTS	249
CERTIFICATE OF COUNSEL	255

1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF LANCASTER
4 2019-GS-29-01168
5 State of South Carolina
6 Vs.
7 Billy Crimminger
8
9 Lancaster, South Carolina
10 November 7-9, 2022
11 Before the Honorable Brian M. Gibbons

12 APPEARANCES
13 For the State: Nicole Wine, Jason Allen
14 For the Defendant: William Frick
15

16 Reported by: Michael C. Watkins
17 Official Court Reporter
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1	INDEX	
2	Pretrial Motions:	4
3	Voir Dire:	32
4	Opening Statements:	59
5	Kierra Fayall:	64
6	Ed Lockhart:	104
7	Ann Horton:	139
8	Bethany Davidson:	149
9	Willie Smith:	153
10	Robbie Crimminger:	199
11	Closing Arguments:	210
12	Jury Charge:	223
13	Jury Verdict:	239
14	Sentencing:	246
15	Certificate:	248
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1		STATE'S EXHIBITS	
2			
3	1	Chain of Custody	ID
4	2	Photo	109
5	3	Photo	108
6	4	Photo	109
7	5-6	Photos	114
8	7-28	Photos	115
9	29	BEST Kit	122
10	30	Bag of Items	ID
11	31	Glass Pipe	129
12	32	Scale	179
13	33	Bag of Items	ID
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

PRETRIAL MOTIONS

1 MS. WINE: Before you is the matter of State versus
2 Billy Crimminger. We're here for a trial on five different
3 indictments, they are 2019-GS-29-2719, 2019-GS-29-1174,
4 2019-GS-29-1170, 2019-GS-29-1172, and 2019-GS-29-1168.
5 These charges have all been before the grand jury and have
6 been true billed. Just by way of housekeeping, they have
7 been amended and there are some direct indictments as well,
8 and so I just wanted to make sure we are referencing the
9 most recent and accurate versions of these indictments, and
10 so the indictments we are using have all been amended as of
11 the February 2022 grand jury, so they've been true billed
12 and signed off, there's just been other provisions that were
13 made prior to then, so I just wanted to clarify that we are
14 using that --

15 THE COURT: So the indictments that the State is
16 calling were acted upon by the February -- in the February
17 of 2022 general -- grand jury term of court?

18 MS. WINE: Yes, sir.

19 THE COURT: Or grand jury.

20 MS. WINE: They were originally indicted by the grand
21 jury in June of 2019 and there have just been revisions to
22 the language, or the charges.

23 THE COURT: But the language that the State is relying
24 on is from the February of '22.

25 MS. WINE: Yes, sir.

PRETRIAL MOTIONS

1 THE COURT: All right. Mr. Frick, are you aware of
2 that?

3 MR. FRICK: I wasn't but I am now. Can I just get a
4 copy of the indictments?

5 THE COURT: All right. Can we have a copy of the
6 indictments so that the defendant can be on notice, if
7 you'll hand those to Mr. Frick.

8 MR. FRICK: Judge, it's my understanding when they sent
9 it to the grand jury originally they were titled as first
10 offenses, I've looked to see if my client does have a prior
11 conviction that would make all of these a second offense, so
12 I don't have any problem with that. That's a sentencing
13 issue anyway versus --

14 THE COURT: Sure. I mean, the jury won't hear that
15 they're second offenses.

16 MS. WINE: No, sir. We've instructed all of our
17 witnesses to not reference any prior convictions or arrests,
18 and we don't intend to elicit any testimony as to any
19 priors.

20 THE COURT: All right. So we're ready to proceed
21 without the indictment issue then.

22 MR. FRICK: Yes, sir, no problem with the indictments.

23 THE COURT: All right, sounds good.

24 MS. WINE: And, Judge, we also I think as to the
25 defense's motion, the cases that we're going forward on are

PRETRIAL MOTIONS

1 the result of a search warrant of a residence, and the basis
2 to get to that search warrant was a controlled buy done with
3 this defendant. And in lieu of -- or, I'm sorry, to the
4 cautionary we are trying to work with our witnesses to come
5 up with the best phrasing to, number one, completely avoid
6 referencing the controlled buy, but with our witnesses on
7 the stand I'm not sure if there's going to be any objection
8 to the using the term search warrant as to why they were at
9 the residence, so we just wanted to get guidance from the
10 Court as to how best to phrase that and we can communicate
11 that to our witnesses so they are not giving information to
12 the jury.

13 THE COURT: Well, I mean, I haven't decided whether or
14 not the search warrant was valid yet. If the search warrant
15 is deemed to be a valid search warrant, and the search was
16 legally done in my opinion, then certainly they can testify
17 that this is what we found during the execution of a search
18 warrant. I mean, at this point in time I don't know if
19 that's going to happen.

20 MS. WINE: Of course, understood. We'll revisit that
21 issue after we handle this other pretrial matter. The State
22 is also prepared to offer the certified chain of custody
23 from SLED as State's Exhibit 1. We do have the SLED
24 individuals prepared to come and testify this week and they
25 will be here Wednesday, but we're happy to offer that in as

PRETRIAL MOTIONS

1 an exhibit as well.

2 THE COURT: All right.

3 MR. FRICK: I don't have any objection to the chain of
4 custody, Your Honor.

5 THE COURT: All right. So is the defense then waiving
6 the presence of the SLED witness for the chain of custody?

7 MR. FRICK: Yes, sir, the intermediary stuff.
8 Obviously I want them to have their evidence custodian and
9 whoever handled it that gave them that as the custodian, and
10 I know Ann Horton drove to SLED and drove it back from SLED.
11 As far as who took it out of the box and took it up to the
12 analyst, I don't have a problem with that.

13 THE COURT: Okay.

14 MS. WINE: And we're prepared to offer Ms. Horton as
15 well as the SLED person that took it out of the box, but
16 we're happy to admit this as well.

17 THE COURT: That will be fine, why don't you do that.
18 But I'll tell you, better safe than sorry, just have them on
19 standby to testify if that's an issue.

20 MS. WINE: Yes, sir, absolutely. I believe that that's
21 all the motions that the State has, and then we're prepared
22 to go forward with the defense's pretrial motions.

23 THE COURT: All right. What you want to hear first?

24 MR. FRICK: We probably just need to go ahead and talk
25 about the search warrant, because that will be the most

PRETRIAL MOTIONS

1 dispositive motion, I suppose.

2 THE COURT: Okay.

3 MR. FRICK: Judge, I'm going to hand you a copy of the
4 search warrant.

5 THE COURT: Mike, let's have this marked as a Court's
6 exhibit, Court's Exhibit 1, the search warrant. All right.
7 So it's defense's motion to suppress the search warrant.
8 Mr. Frick, you have the floor.

9 MR. FRICK: Your Honor, as you see I filed a motion to
10 suppress the search warrant because it's overly broad.
11 Obviously they say in the search warrant that they went to
12 this residence, that they made the controlled buy, they
13 don't necessarily say that they made the controlled buy from
14 Mr. Crimminger, but they said a controlled buy was made from
15 this, of heroine specifically, and then they go to wonder
16 through the house looking for heroine. It didn't specify
17 any particular location or anything like than, and quite
18 frankly only specifically references heroine, and then, of
19 course, we've got other drugs that they get here. So I
20 think it's overly broad because they didn't narrow down the
21 scope of the warrant, where they were going. And, of
22 course, you see at the very end where they mention that they
23 had received some information and that Mr. Crimminger was
24 involved in drug activity but don't say in that that he was
25 the person that conducted, or that sold the drugs to their

PRETRIAL MOTIONS

1 CI, which was the basis of the search warrant in the first
2 place.

3 THE COURT: All right. What's the State's position on
4 that?

5 MR. ALLEN: Well, Your Honor, the State would argue the
6 residence is where the CI buy occurred and therefore the
7 search warrant is for that residence. At the appropriate
8 time we'll be calling Investigator Fayall to discuss the
9 particulars of how the search warrant came to be and why
10 Billy Crimminger was specifically implicated. Would you
11 like us to do that at the appropriate time?

12 THE COURT: Yeah, go ahead and call your witness.

13 MR. ALLEN: Yes, Your Honor. The State calls
14 Investigator Kierra Fayall.

15 THE COURT: All right, come on up here.

16 The witness, KIERRA FAYALL, was first duly sworn and
17 Testified as follows:

18 THE COURT: All right, thank you very much.

19 DIRECT EXAMINATION

20 BY MR. ALLEN:

21 Q Investigator, could you state your name and occupation?

22 A My name is Detective Kierra Fayall, I'm a detective
23 with the City of York Police Department.

24 Q And how long have you been with the York Police
25 Department?

PRETRIAL MOTIONS

1 A I've been with the York Police Department for two to
2 three years.

3 Q And what do you with York?

4 A I'm currently a Detective Sergeant there with their
5 general investigations.

6 Q So you're still in investigations?

7 A Yes, sir.

8 Q Tell me, what kind of training and certifications do
9 you have?

10 A Throughout just here at the City of York or just
11 throughout my career?

12 Q Throughout your career.

13 A Throughout my career I have several different
14 trainings. I've been trained in law enforcement, I've been
15 trained in criminal investigations as far as narcotics and
16 gang investigations.

17 Q So just to be clear, general investigations and
18 narcotics are two separate certifications that they possess?

19 A Yes, sir.

20 Q All right. And tell me, were you employed in your
21 present capacity March of 2019?

22 A Yes, sir.

23 Q Were you working for York or for a different agency?

24 A No, sir. I was working for the Lancaster County
25 Sheriff's Office.

PRETRIAL MOTIONS

1 Q All right. And what were you doing at the Lancaster
2 County Sheriff's Office?

3 A I was assigned a task as a Narcotics Investigator with
4 the Drug Task Force.

5 Q All right. Tell me, what do you do as an Investigator
6 with the Drug Task Force?

7 A As an Investigator of the Drug Task Force we specialize
8 in specifically narcotics investigations that can deal with
9 anybody that may be dealing in narcotics manufacturing, use,
10 dealing as well.

11 Q And were you the lead investigator for the
12 investigation that led to Billy Crimminger's March 2019
13 arrest?

14 A Yes, sir.

15 Q And what does that look like, I mean, when you're
16 investigating someone, particularly Mr. Crimminger?

17 A As the lead investigator with any drug investigations
18 you actually have to build evidence and information based on
19 what you receive. You actually will pursue evidence in the
20 direct target, pursue any type of investigations dealing
21 directly with them. In this case it was Mr. Billy
22 Crimminger.

23 Q Okay. And how did Mr. Crimminger come to your
24 attention?

25 A Mr. Crimminger came to our attention as a unit as a

PRETRIAL MOTIONS

1 whole based on information that was provided from
2 individuals within society, the civilians in their
3 community, as well as there was a controlled purchase or buy
4 that was made. That's how he specifically got -- that's how
5 we specifically came down with dealing with Mr. Crimminger
6 directly and making charges.

7 Q I'll come back to that in a moment, but in the process
8 of this investigation did you obtain a search warrant?

9 A Yes.

10 Q Were you the affiant for that search warrant?

11 A Yes, sir.

12 Q And what property was the search warrant for?

13 A The search warrant in whole was probably -- the
14 property was basically for any narcotics, illicit drugs, but
15 specifically the controlled buy with the purchase was for
16 heroine.

17 Q And did that control buy occur at the house that you
18 got the search warrant for?

19 A Yes, sir.

20 Q And would that be at [REDACTED] Baskins Hill Road in Heath
21 Springs?

22 A Yes, sir.

23 Q So what events preceded the search warrants of the
24 defendant's residence.

25 A I'm sorry, can you rephrase your question?

PRETRIAL MOTIONS

1 Q Yeah, absolutely. So before you got the search warrant
2 what did you do that said: Hey, I need to get a search
3 warrant for that house?

4 A Well, prior to the search warrant there was a
5 controlled buy that was conducted with a confidential
6 informant. The confidential informant ended up -- through
7 our process of what we do in their requirements ended up
8 going to the -- directly to the target's location where they
9 decided to meet them, the transaction occurred there within
10 the residence, and then thereafter the subject came directly
11 back to us, the informant did, to where we seized the
12 narcotics and then we go through the process of submitting
13 that information into evidence -- excuse me, evidence, and
14 then from there we do proper documentation in getting a
15 search warrant.

16 Q Okay. I'm going to take you on back so I want to be
17 sure I got this straight. You have a CI.

18 A Yes.

19 Q How did you pick that person? Who was that person when
20 you get a CI?

21 A We don't choose a CI. Basically they end up coming to
22 us and notifying us that they have information about any
23 type of narcotics activity. And basically from there we
24 begin to build a historical is what we call it in knowing
25 that what the information that they're providing is fact

PRETRIAL MOTIONS

1 based.

2 Q Okay. And tell me, how did the CI get directed at the
3 defendant, Mr. Billy Crimminger, in particular?

4 A Basically the individual provided us information that
5 they knew from their own dealings, personal dealings,
6 whether that be their own personal use or other individuals
7 that would associate with them that Mr. Crimminger was
8 selling and dealing narcotics, they knew that as personal
9 knowledge.

10 Q Okay. And so at that time, how do you get that person
11 to try and buy drugs?

12 A Basically what they end up doing, they'll contact them
13 via whatever their communications is, whether that be
14 cellphone, text, which in this case he did, he contacted him
15 via telephone. We actually had the phone on speakerphone,
16 he spoke with Mr. Crimminger, we heard Mr. Crimminger, we
17 verified it through a telephone number and identifying him,
18 as well as identifying whether or not he actually resided at
19 the location that the subject was headed to.

20 Q So you were there listening in as this person was
21 making arrangements?

22 A Correct.

23 Q All right. And at that point do you wire this person
24 up for like video or audio?

25 A Yes, sir, we do. We end up having surveillance

PRETRIAL MOTIONS

1 equipment that we provide to them prior. We give them a
2 designated location that they meet us. We end up basically
3 searching their vehicle and their person to ensure that
4 there's not any ill or malicious things going on as far as
5 narcotic activities going on. We provide them with marked
6 funds after doing so, and they go from the designated point
7 to the target location, and directly back to us.

8 Q And they're wired for audio and video?

9 A Yes, sir. They are wired and monitored the entire
10 time.

11 Q And was this CI on this day wired with audio and video
12 equipment?

13 A Yes, sir, that would be correct.

14 Q Have you been able to review the video of that buy?

15 A Yes, sir.

16 Q Is that the disc we have, let's see, that's currently
17 unmarked? Is that the disc that you reviewed earlier today
18 that's in our possession?

19 A Yes, sir. The disc that was reviewed is the annotated
20 part, it hasn't been changed in any way whatsoever outside
21 of, I guess, for court purposes, the timeframe, but it shows
22 exactly what occurred and what was reviewed on the original
23 video.

24 Q All right.

25 MR. ALLEN: We have provided defense counsel copies of

PRETRIAL MOTIONS

1 this video. Your Honor, this is, as the detective said,
2 only abbreviated for the purpose of time from the time the
3 CI gets out of the car from the time he gets in, we would
4 ask that it be entered into evidence for the purposes of
5 supporting the search warrant.

6 THE COURT: All right. Any objection?

7 MR. FRICK: Your Honor, I'll concede that they did a CI
8 buy and that's the basis of the search warrant, that's not
9 my argument.

10 THE COURT: So that issue has been stipulated to.

11 MR. FRICK: Yes, sir.

12 THE COURT: There was a controlled buy made.

13 MR. FRICK: Yes, sir.

14 THE COURT: Okay. Go ahead.

15 MR. ALLEN: Well, Your Honor, we would ask --

16 THE COURT: I don't need to see the video then.

17 MR. ALLEN: Did the defense stipulate that it was Mr.
18 Crimminger's address and Mr. Crimminger? Because all of
19 that is on the video.

20 THE COURT: Does the defendant stipulate that it was
21 Mr. Crimminger and his address?

22 MR. FRICK: I concede they conducted a controlled buy
23 and that was the basis of the search warrant that we're
24 having the trial on.

25 THE COURT: Okay. The issue that you don't concede is?

PRETRIAL MOTIONS

1 MR. FRICK: The search warrant was too broad, that's
2 all.

3 THE COURT: And the breadth of the search warrant.

4 MR. FRICK: Correct.

5 THE COURT: Okay. Well, just gear your testimony and
6 questions concerning that and then we'll proceed further.

7 MR. ALLEN: Understood, Your Honor.

8 Q So when the CI gets to the house, do you know who that
9 person spoke to?

10 A I'm sorry, you're talking about this case specifically,
11 correct?

12 Q Yes, that's correct.

13 A The CI spoke directly to Mr. Crimminger.

14 Q And how do you know that?

15 A Mr. Crimminger is seen on video providing the CI with
16 the narcotics in exchange for the marked funds that we
17 previously provided them.

18 Q All right. And what happened after this exchange
19 occurred?

20 A After the exchange occurred the informant got back in
21 their vehicle to which they came into and came right back to
22 us.

23 Q And so at that time what led you to get a search
24 warrant at that house?

25 A At that time on the return of the informant after the

PRETRIAL MOTIONS

1 search was conducted within their vehicle we seized what
2 they brought back, which was the illicit narcotic,
3 specifically heroine. They came back with that amount of
4 heroine, we weighed it knowing that the individuals
5 connected -- the individual, being Mr. Crimminger, was
6 connected with their residence and the narcotics trade, and
7 them actually distributing this narcotics. We then in turn
8 based off of the buy ended up requesting the search warrant.

9 Q And just to review, the purchase actually happened at
10 the house where the search warrant was?

11 A Correct.

12 Q And to the best your knowledge at this time it was, in
13 fact, heroine. Did you field test it at that time?

14 A No, sir. At that time due to possible exposure we did
15 not actually field test it. We were notified basically from
16 the informant and also the point of exchange based on the
17 prior communication that it was going to be heroine that
18 would sell to him.

19 Q And it was held out to be heroin when the purchase
20 occurred?

21 A Correct, yes, sir.

22 MR. ALLEN: I beg the Court's indulgence.

23 (Break in proceedings.)

24 MR. ALLEN: Your Honor, may I approach the witness?

25 THE COURT: Yes.

PRETRIAL MOTIONS

1 MR. ALLEN: Let the record reflect I'm handing
2 Detective Fayall a copy of the original search warrant.

3 Q Detective, do you recognize that document?

4 A Yes, sir, I do.

5 Q What is it?

6 A It's the original search warrant that I submitted for a
7 requested signature.

8 Q And you're the affiant on that, which means all of this
9 is your personal knowledge inside?

10 A Yes, sir.

11 Q Can you tell us the types of property sought in that
12 search warrant?

13 A The description of the property sought within the
14 search warrant states that heroine is listed under the South
15 Carolina Code of Laws as being a controlled substance. Any
16 paraphernalia or equipment connected to the unlawful sale,
17 use, production, or manufacturing of heroine. Any money
18 connected to the unlawful sale of heroine. Any records of
19 illegal drug transactions. Any documents proving ownership
20 of the residence, as well as documents proving residency at
21 the location. Any vehicles or outbuildings at the residence
22 to be searched, and any tools of the drug such as but not
23 limited to weapons, scanners, handheld radios, cellphones,
24 or scales.

25 Q And as part of the -- I'm sorry, I'll get to that a

PRETRIAL MOTIONS

1 moment. The premises to be searched, was it a particular
2 room of the house or was it the house as a whole?

3 A It is the house as a whole.

4 Q And so why did you get a search warrant for the entire
5 house?

6 A There is no way based on my experience that we could
7 actually know specifically where narcotics would be
8 possessed, or where it would be inside the residence or on
9 the outside of the residence.

10 Q So during this controlled buy it's not like you saw a
11 specific hidy hole where he kept the stash, you don't know
12 where a larger quantity of heroine would be other than the
13 house?

14 A No, sir.

15 Q Tell me, in your training and experience, is that
16 normal?

17 A Is it normal for --

18 Q Is it normal for drugs to be in basically many places
19 in the house, not necessarily one centralized location?

20 A Yes, sir.

21 Q So tell me more about what tools of the drug trade
22 means. What are you looking for when you say tools of the
23 drug trade?

24 A In my experience based on the -- basically tools of
25 drug trade could be scales, weapons, anything that would

PRETRIAL MOTIONS

1 assist an individual that is conducting sales of narcotics
2 to either evade law enforcement and/or help carry through
3 their illegal behavior.

4 Q Thank you. And about how long after the controlled buy
5 occurred did you get the search warrant?

6 A 72 hours.

7 Q About 72 hours? Is that timeline typical?

8 A Yes, sir.

9 Q Is it important or even required to have search warrant
10 that close to the time of the buy?

11 A Yes. It's our best practice there at the sheriff's
12 office simply because we -- being that we have the sale that
13 was conducted, we don't know exactly all of the particulars
14 that it comes to with them being a dealer, so you want to
15 act upon it being that this was freshly done.

16 Q Thank you, Investigator.

17 MR. ALLEN: Beg the Court's indulgence for one more
18 moment.

19 THE COURT: Yes, sir.

20 (Break in proceedings.)

21 Q So tell me, Investigator, I've noticed that there are
22 things other than heroine that was seized as far as first
23 narcotics, why did you seize things that you didn't know
24 were heroine?

25 A Because they're illegal based on state law and federal

PRETRIAL MOTIONS

1 law. They were controlled substances, they were narcotics,
2 they're illegally possessed.

3 Q So while searching for heroine, was it immediately
4 apparent that these things were not lawfully possessed
5 drugs?

6 A Based on my experience, yes, sir.

7 Q And I noticed that there were some other things that
8 were not narcotics at all that were seized. Could you tell
9 me what else you took from the home?

10 A Those were the items that we were deemed based on our
11 experience to be part of the drug trade, things such as
12 ledgers, things that actually list different transactions
13 that the individual may have been conducting, the way that
14 certain things were actually bagged, they're bagged
15 separately. Most often times you find that it's there for
16 the convenience of being able to supply quickly with the
17 avoidance of law enforcement the narcotics to whomever
18 they're selling it to. Scales, in order for them to weigh
19 what specifically they're providing. It just varies,
20 different things. Phones. Phones often times is what they
21 utilize to communicate, which we know this to be from our
22 informant that that was actually one of their means of
23 communication.

24 Q And so all of these things were seized because they
25 directly tied to, based upon your training and experience,

PRETRIAL MOTIONS

1 the sale of drugs?

2 A Yes, sir.

3 Q And just to review that, Heath Springs is within
4 Lancaster County?

5 A Yes, it is.

6 MR. ALLEN: Thank you. I have nothing further.

7 THE COURT: All right. Mr. Frick?

8 MR. FRICK: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. FRICK:

11 Q Detective, the CI buy in this transaction, it was for a
12 specific amount the drugs? I think it was a \$60 buy, isn't
13 that what it was?

14 A Yeah. But it was \$60 that we provided to the actual
15 informant, but for the specific amount of the drugs it's
16 determined based off of the actual individual's prices.

17 Q Okay. All right. But it was \$60 what I would call
18 hand to hand transaction, right?

19 A Yes, sir.

20 Q Okay. And you said that y'all did not test what the CI
21 purchased, correct?

22 A After receiving it we did not simply because of not
23 wanting to be exposed, it's a safety issue.

24 Q Got you. So prior to submitting the search warrant
25 request it had not been tested.

PRETRIAL MOTIONS

1 A No, prior to it it was not.

2 Q Okay. And, of course, this is a hand to hand
3 transaction at a residence, so essentially on the video we
4 see a hand to hand transaction occurring, right?

5 A Yes. Within the residence, yes, sir.

6 Q Right, within the residence. And, in fact, it's just
7 basically in the front room of the residence, is it not?

8 A I'm not exactly sure of the layout, yes, sir.

9 Q Okay. All right. And obviously you want fresh
10 information so you got the search warrant itself within 72
11 hours, correct?

12 A Yes, sir, it was requested.

13 Q Right. When did y'all serve the search warrant?

14 A I'm not exactly sure exactly how many days after that
15 the -- it was actually served, but it looks like it was
16 requested on the 8th or 7th -- 7th or 8th, I'm sorry.

17 Q Right. So when y'all collect things y'all do what's
18 called a return, correct?

19 A I'm sorry, you were speaking on the evidence or are you
20 speaking on the search warrant?

21 Q Search warrant.

22 A Yes, sir. The search warrant return is provided back
23 if it's not pending.

24 Q Right. And there's a return with that search warrant,
25 is there not?

PRETRIAL MOTIONS

- 1 A Yes, sir, there is.
- 2 Q Okay. What's the date on that return?
- 3 A It looks like the return is the 15th, yes, sir.
- 4 Q Yeah. And it says executed on March 15th, correct?
- 5 A Uh-huh.
- 6 Q At 6:00 in the morning, right, or 6:10.
- 7 A Yes, sir, uh-huh.
- 8 Q So y'all got it on the 7th or 8th and executed it on
- 9 the 15th.
- 10 A Yes, sir.
- 11 Q Okay. All right. And at the time that you got the
- 12 items from the residence of that search warrant, was there
- 13 any field testing of that -- same policy, no field testing,
- 14 was there?
- 15 A I'm sorry --
- 16 Q The stuff that you got --
- 17 A -- of the narcotics?
- 18 Q Of the search warrant.
- 19 A It was submitted into SLED to be tested and analyzed.
- 20 Q Right. But as far as anything prior to SLED getting it
- 21 y'all didn't do a field test on that.
- 22 A I can't say for sure right now because I have no
- 23 knowledge right now. It would be referenced in a
- 24 supplement, one of our supplements, yes, sir.
- 25 Q All right. But the policy at the time was because of

PRETRIAL MOTIONS

1 the possibility of exposure y'all just generally didn't
2 field test, right?

3 A Well, I can't say this for sure, here is why, because
4 based on us being narcotics we often times had the ability
5 and did do some field testing, but it is based on case by
6 case.

7 Q I got you. All right.

8 MR. FRICK: Thank you, ma'am, that's all of the
9 questions I have.

10 THE COURT: Any redirect?

11 MR. ALLEN: Only one thing.

12 REDIRECT EXAMINATION

13 BY MR. ALLEN:

14 Q Investigator, is it normal to execute a search warrant
15 about seven days after you get that warrant?

16 A It usually is. We go ahead and execute it but, I mean,
17 it's just based upon what's going on at that moment and that
18 time. It's no specific thing that takes that, but it does
19 have to be executed within a certain amount of time.

20 Q And what kind of thing would cause that to happen
21 sooner or later?

22 A Sooner I mean, is always better, but later it could
23 be -- just definitely has to be exigent or a strenuous
24 circumstance, whether it be that at that time we couldn't
25 get it done physically because of not all resources most

PRETRIAL MOTIONS

1 often times is the case.

2 Q And what kind of resources are we talking about?

3 A Bodies, people, being able to properly, based on the
4 officer's safety, being able to execute it.

5 Q So really it's just a question of how many people are
6 available to show up and do the thing?

7 A. Correct.

8 MR. ALLEN: Thank you. I have nothing further.

9 THE COURT: Anything else?

10 MR. FRICK: No, sir.

11 THE COURT: Thank you, ma'am, you can step down. Any
12 further witnesses on the issue of breadth of search warrant?

13 MR. ALLEN: No, Your Honor.

14 THE COURT: All right, argument. Mr. Frick?

15 MR. FRICK: Your Honor, you heard there was a \$60
16 transaction, it was not tested so we don't know what the
17 drugs were potentially at the time. We don't know where it
18 came from in the house. It's a hand to hand transaction,
19 not wandering through the house, it's just simply to meet,
20 the transaction occurs, therefore they did not need to
21 wander all over the house as they did conducting this search
22 warrant. And it took about eight days for it to get served.
23 I understand the window allows them ten days to serve a
24 search warrant, but with drugs the freshness of information
25 is paramount, so waiting eight days to execute the search

PRETRIAL MOTIONS

1 warrant certainly calls into question the staleness of the
2 information that they had. Judge, just overall I don't
3 think they had enough to get the search warrant at the time.
4 I do believe that it's overly broad to do just a random
5 going through of every room in this house to find drugs,
6 which we then do not determine whether they are at that time
7 narcotics or not, we just simply go get the arrest warrants
8 and go forward. So with all of the circumstances in this I
9 do not think that they have met the requirements for it to
10 be narrow enough to be a valid search warrant and I would
11 ask you to suppress.

12 THE COURT: Thank you. Solicitor?

13 MR. ALLEN: Yes, Your Honor. As Your Honor is well
14 aware probable cause is all that's required to get a search
15 warrant, and while the drugs may not have been tested at
16 that moment they were held out to be heroine. As you heard
17 the investigator say, they've been getting complaints about
18 drug sales so they would believe reasonably it would be more
19 likely than not they were, in fact -- it was, in fact,
20 heroine that they purchased. It was within ten days, and
21 obviously as the investigator said, sooner would be better
22 but it wasn't so long as to be stale. The search warrant
23 allows them to go anywhere the drugs can reasonably be
24 found. Heroin is small, and so yes, they did go through the
25 entire house, and we would suggest that that's a reasonable

PRETRIAL MOTIONS

1 assertion that anywhere in the home you would be able to
2 find narcotics.

3 THE COURT: All right. Any reply argument?

4 MR. FRICK: No, sir.

5 THE COURT: All right. I'm going to respectfully deny
6 the defense's motion to quash and/or suppress the search
7 warrant and the results of the findings of the search
8 warrant. Based upon the totality of the circumstances which
9 have been shown I do find there was probable cause for the
10 issuance of the search warrant, and I find that the search
11 warrant was appropriately done. All right.

12 MR. FRICK: Judge, my other issue would be, in fact,
13 the CI buy that we've been talking about, that's my bad acts
14 motion right there. I do not think it is relevant, I do not
15 think it is appropriate, I do think it's volitive of 404B
16 for us to talk about another drug activity that led to the
17 search warrant. Now that you've ruled I believe they can
18 certainly say that there was a search warrant executed, I
19 don't believe there is any reason whatsoever to get in to
20 what led to getting that search warrant.

21 THE COURT: Okay. Solicitor, good point, what do you
22 do?

23 MR. ALLEN: Oh, Your Honor, we would agree. As long as
24 we say there was a search, that's it.

25 THE COURT: All right, beautiful. All right, good.

PRETRIAL MOTIONS

1 Search warrant was issued, law enforcement complied with the
2 search warrant, and upon a search this is what law
3 enforcement found without mentioning that the reason for the
4 search warrant was because there was a controlled buy made
5 to a confidential informant, keep that out and that way you
6 don't run into any Lyle issue.

7 MR. FRICK: Or complaints in the neighborhood, I think
8 that would --

9 THE COURT: That's too general a term, don't say -- all
10 you've got to do, you know -- you know what to do. Yeah.
11 Don't talk about complaints in the neighborhood or gossip
12 and rumors and stuff. All right. What else?

13 MR. FRICK: That's basically it, Your Honor.

14 THE COURT: All right. Good. What's the deal --
15 what's -- let me ask you this -- all right. Any other
16 pretrial issues involved before we go off the record to
17 discuss scheduling?

18 MR. FRICK: Judge, I don't think there was a statement.
19 I do want to ask, there was some mention about a ledger, I
20 don't know whether they intend to introduce this or talk
21 about the said ledger, but I would have issues if they do.

22 THE COURT: Certainly your investigator can talk about
23 what was found at the execution of what the courts found to
24 be a valid -- or just a search warrant. Okay?

25 MR. ALLEN: Your Honor, I would say just for the

PRETRIAL MOTIONS

1 purposes of the record, there was one page of ledger that
2 says .1 grams equals one bag, which I wouldn't say is a
3 ledger per say, but if we can agree that that picture is
4 indicative of the sale of drugs, which is directly to the
5 matter of possession with intent to distribute, then the
6 rest of it stays out.

7 MR. FRICK: I can answer that question, no, I do not
8 agree.

9 THE COURT: Well, we'll deal with that when it comes
10 up. I mean, you know, my gut is to let that in.

11 (Break in proceedings.)

12 THE COURT: What else?

13 MR. FRICK: And that would be my only question is do
14 they intend to offer anybody as an expert in that area.
15 I've seen that done and I don't think it's appropriate.

16 THE COURT: Have you? Are you?

17 MR. ALLEN: We've discussed it, but no, we've decided
18 that's not --

19 THE COURT: No. To me it seems straight forward, this
20 is what we found and that's it. All right. What else?

21 MR. FRICK: That's all I've got.

22 THE COURT: Anything else from the State?

23 MR. ALLEN: Nothing further from the State.

24 (Court recessed for the day and resumed on Tuesday,
25 November 8th, 2022, at 9:35 a.m.)

VOIR DIRE

1 THE COURT: Before we start this process I'm going to
2 have the State call the case and I'll tell you briefly what
3 the case is about, and then we'll go from there. All right.
4 Solicitor, call the case.

5 MS. WINE: Thank you, Your Honor. The State is calling
6 Billy Franklin Crimminger on indictments 2019-GS-29-1168,
7 2109-GS-29-1170, 2019-GS-29-1172, 2019-GS-29-1174, and
8 2019-GS-29-2719.

9 THE COURT: All right. Have you got the indictments?

10 MS. WINE: Yes, sir.

11 THE COURT: All right. So, ladies and gentlemen, while
12 the solicitor is getting the indictments, indictments are
13 just pieces of paper by which a case comes to trial, so
14 these indictments don't mean anything. Okay? Don't draw
15 any conclusion as to what they say because, as you know,
16 someone who's charged with a crime is presumed innocent
17 until proven guilty. So I'm going to ask you some questions
18 here in a moment, and then I'm going to let you know what
19 the charges are once they hand me the indictments.

20 (Break in proceedings.)

21 THE COURT: All right, ladies and gentlemen. So we're
22 about to begin the trial of the State of South Carolina, who
23 is represented by lawyers who are called solicitor's,
24 they're called district attorneys or prosecutors or whatever
25 in other states or jurisdictions, and the defendant, Mr.

VOIR DIRE

1 Crimminger, is seated with his attorney, Mr. William Frick,
2 and I'm going to have both sides introduce themselves in a
3 moment. Let me tell you a little bit about what the State
4 has alleged that Mr. Crimminger did, and remember, these are
5 just allegations. The State has alleged that the -- that
6 Mr. Crimminger did in Lancaster County on or about
7 March 15th, 2019, possess with the intent to distribute
8 heroine. That he possessed with the intent to distribute
9 crack cocaine. That he possessed with the intent to
10 distribute methamphetamine. That he possessed with the
11 intent to distribute certain scheduled 1, 2, or 3 controlled
12 substances. And that he possessed with intent to distribute
13 scheduled 4 controlled substance. So those are the charges.
14 Okay? And, of course, as I told you, Mr. Crimminger is
15 presumed innocent until proven guilty by the State of South
16 Carolina. So at this point in time before I have -- start
17 asking the questions I'm going to have each side introduce
18 themselves. Madam Solicitor, if you'll introduce your
19 table.

20 MS. WINE: Thank you, Judge. My name is Nicole Wine,
21 I'm an Assistant Solicitor here in Lancaster County. Seated
22 beside me is Mr. Jason Allen, he is also an Assistant
23 Solicitor here in Lancaster. On my other side is Harlene
24 Carter, she was our investigator here with the solicitor's
25 office. And behind me I have our elected Solicitor, Mr.

VOIR DIRE

1 Randy Newman, he's a little hidden, he's right here. And
2 then next to him we have Investigator Kierra Fayall formerly
3 of the Lancaster County Sheriff's Office, she is currently
4 with the York Police Department.

5 THE COURT: Thank you, Madam Solicitor. Mr. Frick?

6 MR. FRICK: Thank you, Your Honor. Good morning,
7 ladies and gentlemen, my name is William Frick, I practice
8 criminal law in Lancaster County, and I represent Mr. Billy
9 Crimminger. Stand up, Billy. Thank you.

10 THE COURT: All right, thank you. So the first
11 question I have, ladies and gentlemen, just like yesterday,
12 if a question applies to you just stand where you are and
13 we'll go from there. All right. Is any member of the jury
14 panel related by blood or marriage, or have any close,
15 personal, or social relationship with any of the lawyers
16 involved in this case? If so, please stand. No response.
17 Is any member of the jury panel related by blood or
18 marriage, or have any close, personal, or social
19 relationship to Billy Crimminger? If so, please stand. All
20 right, no response. I'm going to read out some names.
21 These are witnesses who may or may not testify in the trial
22 of this case, and it's going to be the same question I just
23 had about the lawyers and Mr. Crimminger, that is is anybody
24 related by blood or marriage to any of these people, or do
25 you have any close, personal, or social relationship with

VOIR DIRE

1 any of these people? Investigator Ed Lockhart with the
2 Lancaster Sheriff's Office. Kierra Fayall, am I saying it
3 right? Fayall. Captain Eric Jaillette. Investigator
4 Brittany Hudson with the Lancaster Sheriff's Office. Ann
5 Horton with the Lancaster Sheriff's Office. Does anybody
6 recognize those names as stated? All right, no response.
7 Lieutenant Christy Rogers with the sheriff's office.
8 Charlotte Pitts, formerly of SLED, which is what we call the
9 South Carolina Law Enforcement Division. Willie Smith with
10 SLED. Bethany Davidson with SLED. And potentially Carol
11 Williams, Deputy Clerk of Court for Lancaster County. Does
12 anybody know those people as previously described? All
13 right, no response. All right, various questions. Has any
14 member of the jury panel ever been, or a member of your
15 family ever been the victim of a crime or been accused of
16 committing a crime? If so, please stand. All right. Yes,
17 ma'am, what's your juror number?

18 THE JUROR: 26.

19 THE COURT: How do you answer that?

20 THE JUROR: My son is currently serving a 12 year
21 sentence.

22 THE COURT: Okay. Where was he prosecuted?

23 THE JUROR: In Lancaster County.

24 THE COURT: All right. And what was the -- what was he
25 prosecuted for?

VOIR DIRE

1 THE JUROR: Armed robbery.

2 THE COURT: All right. Would that affect your ability
3 to be fair or impartial in the trial of this case?

4 THE JUROR: No.

5 THE COURT: All right. Thank you, ma'am. All right.
6 Anybody else? Next question. Is any member of the jury
7 panel a member of, served on the board or directors of,
8 excuse me, volunteer with, or a financial contributor to any
9 type of organization which advocates for victim's rights or
10 for law enforcement, or for any social justice organization
11 like Black Lives Matter or Blue Lives Matter? Anything like
12 that? Is anybody a member of, board of directors of,
13 financial supporter of any of those types of organizations?
14 In so, please stand. All right. Yes, ma'am, juror number?

15 THE JUROR: 48.

16 THE COURT: How do you answer that?

17 THE JUROR: I've given money to several of those,
18 victims of abuse, the police fund, and I can't remember the
19 other one. I've given money to them but I don't really
20 belong to them.

21 THE COURT: Okay. Would that affect your ability to be
22 fair and impartial in the trial of this case?

23 THE JUROR: It will not.

24 THE COURT: Thank you, ma'am. Has any member of the
25 jury panel ever received services from a victim's advocate

VOIR DIRE

1 program such as the State Office of Victims Assistance, or
2 PCASA, or Sister Care, or anything like that? If so, please
3 stand. All right, no response. Has any member of the jury
4 panel previously served on a trial jury? If so, please
5 stand. All right. We will go from my left to my right.
6 Yes, sir, in the front, what's your juror number?
7 THE JUROR: 154.
8 THE COURT: What type of jury was it?
9 THE JUROR: A criminal trial.
10 THE COURT: How long ago?
11 THE JUROR: Six years ago, I believe.
12 THE COURT: Was it up here?
13 THE JUROR: No, Miami.
14 THE COURT: All right. Do you remember what the
15 verdict was?
16 THE JUROR: Guilty.
17 THE COURT: Would that affect your ability to be fair
18 and impartial in this case?
19 THE JUROR: No.
20 THE COURT: Thank you. Yes, ma'am?
21 THE JUROR: 185.
22 THE COURT: Yeah.
23 THE JUROR: It was a civil jury back in the nineties.
24 THE COURT: Would that affect your ability to be fair
25 and impartial?

VOIR DIRE

1 THE JUROR: No.

2 THE COURT: Thank you. Yes, sir?

3 THE JUROR: 157.

4 THE COURT: Yes, sir?

5 THE JUROR: I was on a criminal and a civil back in
6 Florida ten years ago.

7 THE COURT: Would that affect your ability to be fair
8 or impartial?

9 THE JUROR: No.

10 THE COURT: Yes, ma'am?

11 THE JUROR: I'm juror I think it's 56.

12 THE COURT: Okay. Is that correct, 56? What's your
13 last name?

14 THE JUROR: Frazier.

15 THE COURT: Frazier? 57. Okay. Go ahead, yes, ma'am?

16 THE JUROR: I was on a civil trial about ten years ago
17 here in Lancaster.

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

20 THE JUROR: No.

21 THE COURT: Thank you. Yes, ma'am?

22 THE JUROR: 171, Sidney Stroble.

23 THE COURT: Yeah.

24 THE JUROR: It was criminal about eight or nine years
25 ago.

VOIR DIRE

1 THE COURT: Do you remember what the verdict was?

2 THE JUROR: I don't.

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

5 THE JUROR: No.

6 THE COURT: All right. Has any member of the jury
7 panel ever been a witness in a criminal case regardless of
8 whether or not it actually went to trial, as a witness?
9 Yes, sir, juror number?

10 THE JUROR: 147.

11 THE COURT: And how do you answer that?

12 THE JUROR: Yes, sir. About six months it was a civil
13 case against my neighbor.

14 THE COURT: Would that affect your ability to be fair
15 or impartial?

16 THE JUROR: No.

17 THE COURT: Okay. All right. Thank you, sir, you can
18 be seated. What's your juror number again?

19 THE JUROR: 147.

20 THE COURT: All right, thank you. Has any member of
21 the jury panel ever served as or sought employment in law
22 enforcement in any capacity, or worked for a prosecutor's
23 office, or a criminal defense attorneys office? If so,
24 please stand. All right. We'll start from left to my right
25 again. Yes, sir, juror number?

VOIR DIRE

1 THE JUROR: 76, Austin Hinson.

2 THE COURT: Okay.

3 THE JUROR: I was actually with the Lancaster County
4 Sheriff's Office in 2018 or 2019.

5 THE COURT: All right. Were you involved in this case
6 at all?

7 THE JUROR: No.

8 THE COURT: Did you serve on the narcotics division?

9 THE JUROR: No, sir.

10 THE COURT: All right. Would that affect your ability
11 to be fair or impartial in the trial of this case?

12 THE JUROR: No, sir.

13 THE COURT: What's your juror number again, sir?

14 THE JUROR: 76.

15 THE COURT: 76. All right, thank you. Yes, sir?

16 THE JUROR: Juror 91. I worked for the Department of
17 Corrections about ten years ago.

18 THE COURT: All right. Would that affect your ability
19 to fair or impartial?

20 THE JUROR: No, sir.

21 THE COURT: All right, thank you. Yes, sir?

22 THE JUROR: I worked for the Department of Corrections
23 about 20 years ago.

24 THE COURT: And what's your juror number?

25 THE JUROR: 67.

VOIR DIRE

1 THE COURT: Would that affect your ability to be fair
2 or impartial?

3 THE JUROR: No.

4 THE COURT: All right, thank you. Yes, sir?

5 THE JUROR: 62.

6 THE COURT: Yes, sir.

7 THE JUROR: I retired from law enforcement after 20
8 years.

9 THE COURT: Okay. And where did you serve in law
10 enforcement?

11 THE JUROR: New York.

12 THE COURT: Would that affect your ability to be fair
13 or impartial in the trial of this case?

14 THE JUROR: No, sir.

15 THE COURT: Thank you. Yes, ma'am?

16 THE JUROR: I was a dispatcher in -- I was a dispatcher
17 for highway patrol, sheriff's office, and city police in
18 (inaudible) Montana from 1976 to 1978, and it would not
19 affect me.

20 THE COURT: Thank you very much.

21 MS. WINE: What's that number?

22 THE COURT: 76. What's your last name, ma'am?

23 THE JUROR: 48.

24 THE COURT: All right, 48, sorry. Everybody got that?
25 Has any member of the jury panel read or posted anything

VOIR DIRE

1 about this case in any type of social media, or maybe you've
2 heard about it in any type of media whatsoever? If so,
3 please stand. All right, yes, ma'am, what's your juror
4 number?

5 THE JUROR: 128.

6 THE COURT: 128. Where did you hear about it?

7 THE JUROR: It was on Facebook through one of the
8 sheriff's sites.

9 THE COURT: Hold on before you say anything, how long
10 was it?

11 THE JUROR: Six, seven months maybe.

12 THE COURT: All right. Would that affect your ability
13 to be fair or impartial in the trial of this case?

14 THE JUROR: No, sir.

15 THE COURT: All right, thank you. What's your juror
16 number again, ma'am?

17 THE JUROR: 128.

18 THE COURT: 128. Is there any member of the jury panel
19 who doesn't understand the difference between social media
20 and real media? I have to ask that question. Does any
21 member of the jury panel currently have a -- does anybody --
22 is any member of the jury panel, or a member of your family,
23 or a close personal friend currently being prosecuted by the
24 6th Circuit Solicitor's Office, or represented by the 6th
25 Circuit Public Defender's Office? If so, please stand. No

VOIR DIRE

1 response. Has any member of the jury panel, or a member of
2 your family, or a close personal friend ever been accused of
3 or charged with drug offenses? If so, please stand. All
4 right. Yes, ma'am, juror number?

5 THE JUROR: 187.

6 THE COURT: 187? How do you answer that?

7 THE JUROR: Yes. My brother and my baby daddy have,
8 but it's been years ago.

9 THE COURT: Was that here in Lancaster County?

10 THE JUROR: Yeah.

11 THE COURT: Would that affect your ability to be fair
12 or impartial?

13 THE JUROR: No.

14 THE COURT: Thank you. Yes, sir?

15 THE JUROR: My son was -- 157. My son was arrested in
16 college for a substance.

17 THE COURT: Would that affect your ability to be fair
18 or impartial?

19 THE JUROR: No.

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

21 THE JUROR: My son was arrested for possession of
22 marijuana.

23 THE COURT: All right. Would that affect your ability
24 to be fair and impartial?

25 THE JUROR: No, sir.

VOIR DIRE

1 THE COURT: What is your juror number, ma'am?

2 THE JUROR: Twenty-six.

3 THE COURT: All right, thank you. Have you, or a
4 member of your family, or a close personal friend ever
5 suffered harmful consequences from drug use, drug abuse or
6 addiction? If so, please stand. I'm going to go right to
7 left this time. All right. Yes, sir, what's your juror
8 number?

9 THE JUROR: 147.

10 THE COURT: How do you answer that?

11 THE JUROR: My ex-wife.

12 THE COURT: All right. Would that affect your ability
13 to be fair or impartial?

14 THE JUROR: Probably so.

15 THE COURT: All right. Thank you, sir. All right.
16 Yes, sir?

17 THE JUROR: My brother-in-law, multiple stints in
18 rehab.

19 THE COURT: Would that affect your ability to be fair
20 or impartial?

21 THE JUROR: No.

22 THE COURT: And what's your juror number?

23 THE JUROR: 134.

24 THE COURT: Thank you, sir. Yes, ma'am. He's tall.

25 THE JUROR: My son, he's addicted to drugs.

VOIR DIRE

1 THE COURT: And your juror number again?

2 THE JUROR: 26.

3 THE COURT: Can you still be fair and impartial?

4 THE JUROR: Yes, sir.

5 THE COURT: That's always the question, can you be fair

6 and impartial, even though you disclosed that information.

7 In the very back, yes, ma'am, juror number?

8 THE JUROR: 119.

9 THE COURT: 118. Yes, ma'am?

10 THE JUROR: 119.

11 THE COURT: 119, sorry.

12 THE JUROR: My cousin just died from a fentanyl

13 overdose about four months ago.

14 THE COURT: Can you be fair or impartial?

15 THE JUROR: Probably not.

16 THE COURT: Okay. And what's your juror number?

17 THE JUROR: 119.

18 THE COURT: All right, thank you. All right. Yes,

19 ma'am?

20 THE JUROR: 158. My sister in law sought treatment for

21 addiction.

22 THE COURT: All right. Can you be fair or impartial in

23 the trial of this case?

24 THE JUROR: Yes.

25 THE COURT: Thank you. Yes, ma'am?

VOIR DIRE

1 THE JUROR: 18.

2 THE COURT: Yeah.

3 THE JUROR: One of my uncles died due to addiction,
4 another one served time for possession.

5 THE COURT: Can you be fair and impartial?

6 THE JUROR: Yeah.

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

8 THE JUROR: Number 69. A very close family friend died
9 from a fentanyl overdose.

10 THE COURT: Can you be fair and impartial?

11 THE JUROR: Yes, I can.

12 THE COURT: All right. Yes, ma'am?

13 THE JUROR: My brother was an addict for a long time
14 before he passed away, but it wasn't due to the addiction,
15 it was a swimming accident.

16 THE COURT: Can you be fair and impartial?

17 THE JUROR: Yeah.

18 THE COURT: What's your juror number?

19 THE JUROR: 185.

20 THE COURT: All right, thank you. And then lastly,
21 yes, ma'am?

22 THE JUROR: 187.

23 THE COURT: Yes, ma'am?

24 THE JUROR: I have four cousins died between 2020 and
25 2021 from an overdose.

VOIR DIRE

1 THE COURT: Can you be fair and impartial?

2 THE JUROR: Yeah.

3 THE COURT: Thank you. All right. Is there any other
4 reason, philosophical, moral, religious, other reason why
5 any member of the jury panel could not be a fair or
6 impartial juror? If so, please stand. All right, thank
7 you. Any further voir dire from the State?

8 MS. WINE: Nothing further.

9 THE COURT: Any further from the defense?

10 MR. FRICK: No, sir.

11 THE COURT: All right, thank you. So ladies and
12 gentlemen, what's going to happen right now, that's it for
13 all of the questions I'm going to ask you.

14 (Break in proceedings.)

15 (A recess was taken.)

16 THE CLERK: If I call your name, if you would please
17 stand, and if you are chosen what we will do, I will say
18 follow the bailiff to the jury room, so you will go back and
19 follow him down this hallway. All right. Juror Number 7,
20 Taria Bailey. What say the State?

21 MS. WINE: Please excuse this juror from this case.

22 THE CLERK: You're excused, please be seated. Juror
23 69, Stacy Hale. What say the State?

24 MS. WINE: Please present this juror.

25 THE CLERK: Defendant?

VOIR DIRE

1 MR. FRICK: Please excuse the juror from the trial of
2 this case.

3 THE CLERK: You're excused, please be seated. Juror
4 72, Nerissa Harris. What say the State?

5 MS. WINE: Please present this juror.

6 THE CLERK: Defendant?

7 MR. FRICK: Please seat the juror.

8 THE CLERK: Please follow the bailiff to the jury room.
9 Juror 26, Jan Cauthen. What say the State?

10 MS. WINE: Please excuse this juror.

11 THE CLERK: You're excused, please be seated. Juror
12 73, Sandra Havermann. What say the State?

13 THE JUROR: Please present this juror.

14 THE CLERK: Defendant?

15 MR. FRICK: Please seat the juror.

16 THE CLERK: Please follow the bailiff to the jury room.
17 Juror 192, Caitlyn White. What say the State?

18 MS. WINE: Please present this juror.

19 THE CLERK: Defendant?

20 MR. FRICK: Please seat the juror.

21 THE CLERK: Please follow the bailiff to the jury room.
22 Juror 180, Iryna Ushnevyh. What say the State?

23 MS. WINE: Please present this juror.

24 THE CLERK: Defendant?

25 MR. FRICK: Please seat the juror.

VOIR DIRE

1 THE CLERK: Please follow the bailiff to the jury room.
2 Juror 128, Lisa Moree. What say the State?
3 MS. WINE: Please present this juror.
4 THE CLERK: Defendant?
5 MR. FRICK: Please excuse the juror from the trial of
6 this case.
7 THE JUROR: You're excused, please be seated. Juror
8 70, Jerome Hall. What say the State?
9 MS. WINE: Please present this juror.
10 THE CLERK: Defendant?
11 MR. FRICK: Please excuse the juror from the trial of
12 this case.
13 THE CLERK: You're excused, please be seated. Juror
14 116, Heather Mazzuca. What say the State?
15 MS. WINE: Please present this juror.
16 THE CLERK: Defendant?
17 MR. FRICK: Please seat the juror.
18 THE CLERK: Please follow the bailiff to the jury room.
19 Juror 158, Sarah Schmitt. What say the State?
20 MS. WINE: Please present this juror.
21 THE CLERK: Defendant?
22 MR. FRICK: Please excuse the juror from the trial of
23 this case.
24 THE CLERK: You're excused, please be seated. Juror
25 76, Austin Hinson. Your Honor, that's --

VOIR DIRE

1 THE COURT: Mr. Hinson, you're excused from the trial
2 of this case, thank you, sir.

3 THE CLERK: Juror 18, Jennifer Caenepeel. What say the
4 State?

5 MS. WINE: Please present this juror.

6 THE CLERK: Defendant?

7 MR. FRICK: Please excuse the juror from the trial of
8 this case.

9 THE CLERK: You're excused, please be seated. Juror
10 157, Bruce Schilian. What say the State?

11 MS. WINE: Please present this juror.

12 THE CLERK: Any challenge for cause?

13 MR. FRICK: No challenge for cause.

14 THE CLERK: Please follow the bailiff to the jury room.
15 Juror 21, Juan Canizales. What say the State?

16 MS. WINE: Please present this juror.

17 THE CLERK: Any challenge for cause?

18 MR. FRICK: No, sir.

19 THE CLERK: Please follow the bailiff to the jury room.
20 Juror 62, Gary Gaudio. What say the State?

21 MS. WINE: Please present this juror.

22 THE CLERK: Any challenge for cause?

23 MR. FRICK: May we approach?

24 THE COURT: Yeah.

25 (A bench conference was held with the Judge and

VOIR DIRE

1 Attorneys.)

2 THE CLERK: Thank you, follow the bailiff. Juror 185,

3 Sally Wahl. What say the State?

4 MS. WINE: Please present this juror.

5 THE CLERK: Any challenge for cause?

6 MR. FRICK: No, sir.

7 THE CLERK: Please follow the bailiff to the jury room.

8 Juror 112, Richard Martin. What say the State?

9 MS. WINE: Please excuse this juror.

10 THE CLERK: You're excused, please be seated. Juror

11 54, Christopher Flowers. What say the State?

12 MS. WINE: Please present this juror.

13 THE CLERK: Any challenge for cause?

14 MR. FRICK: No, sir.

15 THE CLERK: Please follow the bailiff to the jury room.

16 Juror 187, Jaleesa Wallace. What say the State?

17 MS. WINE: Judge, can we approach?

18 THE COURT: Yeah.

19 (A bench conference was held with the Judge and the

20 Attorneys.)

21 THE COURT: All right.

22 MS. WINE: Please present this juror.

23 MR. FRICK: No, sir, no challenge for cause.

24 THE CLERK: Please follow the bailiff to the jury room.

25 Juror 147, David Richards.

VOIR DIRE

1 THE COURT: You're excused from the trial of this case,
2 thank you, sir.

3 THE CLERK: Juror 99, Scout Landrie. What say the
4 State?

5 MS. WINE: Please present this juror.

6 THE CLERK: Any challenge for cause?

7 MR. FRICK: No, sir.

8 THE CLERK: Please follow bailiff to the jury room.
9 First alternate?

10 THE COURT: Yeah. One and two on alternates.

11 THE CLERK: Juror 184, Patrick Wagner. What say the
12 State?

13 MS. WINE: Please present this juror.

14 THE CLERK: Defendant?

15 MR. FRICK: 184?

16 THE CLERK: Yes.

17 MR. FRICK: Please excuse the juror from the trial of
18 this case.

19 THE CLERK: You're excused, please be seated. Juror
20 195, Patricia Wilfong. What say the State?

21 MS. WINE: Please present this juror.

22 THE CLERK: Defendant?

23 MR. FRICK: Please seat the juror.

24 THE CLERK: Please follow the bailiff to the jury room.
25 Juror 89, Joshua Jordan. What say the State?

VOIR DIRE

1 MS. WINE: Please present this juror.

2 THE CLERK: Defendant?

3 MR. FRICK: Please seat the juror.

4 THE CLERK: Please follow the bailiff to the jury room.

5 THE COURT: All right. Any matters of law regarding
6 jury selection from the State?

7 MS. WINE: No, Your Honor.

8 THE COURT: From the defense?

9 MR. FRICK: None from the defense.

10 THE COURT: All right, thank you.

11 (The remaining panel was excused.)

12 (Back in the courtroom.)

13 THE COURT: Is there any pretrial issues that needs to
14 be put on the record before the jury comes in?

15 MR. FRICK: Yes, sir. When we were doing jury
16 selection obviously I had exhausted my strikes, juror number
17 62 is a retired detective from New York State, I had asked
18 for a court strike on that and the Court did deny my request
19 on that and I just wanted to put that on the record.

20 THE COURT: That's correct. I denied your request
21 because I asked him if he could be fair and impartial and he
22 said: Yes, I can be fair and impartial. Okay. Anything
23 else?

24 MR. FRICK: Judge, and just so I don't have to go
25 through a whole lot of it, obviously I made my objection

OPENING STATEMENTS

1 yesterday to the search warrant. The State, I believe,
2 intends to introduce some pictures from that search warrant,
3 I'm just going to stand up and so I don't have to object to
4 every picture I will just say continue my objection.

5 THE COURT: Absolutely. You'll be -- I'll make sure
6 you're protected in the record, and again I'll remind the
7 State, y'all aren't publishing the sale.

8 MS. WINE: No, sir.

9 THE COURT: You're not talking about the sale.

10 MS. WINE: No, sir.

11 THE COURT: The sale was just a precursor to getting
12 the search warrant, which after a hearing I allowed all of
13 the evidence in from the search warrant.

14 MS. WINE: Yes, sir. We don't intend to elicit --

15 THE COURT: You're not going to mention the prior bad
16 act of the sale.

17 MS. WINE: Absolutely.

18 THE COURT: Okay. Just want to make sure. Anything
19 else before we bring in the jury?

20 MS. WINE: Nothing further from the State.

21 (The jury returned to the courtroom.)

22 THE COURT: All right, Madam Clerk, if you'll swear in
23 the trial jury.

24 (The jury was sworn at this time.)

25 THE COURT: All right. Thank you, ladies and

OPENING STATEMENTS

1 gentlemen. Let me talk briefly to you about how a trial
2 proceeds, because many people don't have the chance to
3 attend actual court sessions much less participate in them
4 like you're doing, and those people tend to think what they
5 see on TV or see in movies is the way that court always is,
6 and I promise you it's not that way. Okay? While sometimes
7 there may be riveting drama and intense circumstances, most
8 of the time it's not that way. This courtroom is a place of
9 honor dedicated to the preservation and protection of
10 citizens' rights through what is the greatest justice system
11 in the world. Okay? So sometimes seeking justice can be a
12 slow repetitive process, the opposite of what you may be
13 expecting. Okay? Now, let me -- the way a trial proceeds
14 is first the State will make an opening statement to you,
15 which is not evidence, but it's basically an outline of what
16 the State believes the evidence will show. Okay? The
17 defense will make an opening statement to you if they want
18 but they don't have to for reasons I'll get in to later on.
19 Following opening statements that's when we'll begin what I
20 call the testimony and evidence phase of the trial where the
21 State will offer various witnesses who will testify from
22 this witness stand, as well as any exhibits which may come
23 into evidence for you to consider when you deliberate your
24 verdict. After the testimony and evidence phase of the
25 trial, that's when you get to hear directly from the

OPENING STATEMENTS

1 lawyers, again, through what's called closing arguments
2 where the lawyer gets to argue to you as to what the
3 evidence has shown and what your verdict should be, so
4 that's kind of how a trial proceeds. Okay? So what is your
5 role in all of this? Well, ladies and gentlemen, you're the
6 judge of the facts, you determine what happened. You're the
7 judge of the facts collectively and I'm the judge of the
8 law. Okay? I instruct you on what the law is at the end of
9 the trial. Okay? And you use that law that I instruct you
10 and apply that to the facts as you find them to be to reach
11 your verdict. Okay? That's how this works. Okay? Now, as
12 you know this is a criminal case, it's been brought by the
13 State of South Carolina who has charged the defendant with
14 various substance offenses, or drug offenses. The charges
15 against the defendant are contained in the indictments which
16 I read to you earlier. Again, the indictments are not
17 evidence of anything, that's just simply the written piece
18 of paper by which a case comes into court. The defendant
19 has pled not guilty to these charges and is presumed
20 innocent unless and until proven guilty beyond a reasonable
21 doubt by the State of South Carolina, and a reasonable doubt
22 is the kind of doubt that would make a reasonable person
23 hesitate to act. A defendant has the right not to testify.
24 A defendant never has to prove innocence. A defendant never
25 has to present evidence, that's why the defendant doesn't

OPENING STATEMENTS

1 have to do an opening statement if he doesn't want to.
2 Okay? The burden of proof is always on the State of South
3 Carolina. Ladies and gentlemen, please don't take anything
4 I may say or do during the trial as indicating what you
5 think I think of the evidence because that's your job,
6 you're the one who determines what the evidence is. Now,
7 you know, I play the role essentially of a gatekeeper. As a
8 judge of the law we have rules of evidence in court. Just
9 like businesses have rules you have to comply with, just
10 like sports have rules, you know, everybody gets mad at the
11 referees and umpires and stuff, just like sports that have
12 certain rules you've got to comply with, in court you've got
13 these evidence rules. Okay? And the purpose of these rules
14 is to not keep things from you, but to make sure you get the
15 best evidence possible to make your very important decision.
16 So if a lawyer on one side thinks that what's being offered
17 into evidence or what's being questioned is improper under
18 the rules that lawyer may say: Objection. Y'all know what
19 that is, y'all have heard it before. Okay? And that's the
20 lawyers way of notifying me, the Court, of what may be
21 something that's run afoul of the evidence rules. If I
22 overrule the objection that means the question can be
23 answered or the thing can come into evidence. If I sustain
24 an objection that means the question cannot be answered or
25 the thing cannot come into evidence. You know, and when I

OPENING STATEMENTS

1 sustain an objection you are not to speculate about what the
2 answer would have been or what the thing would have shown,
3 because see, that would be violating your oath. Your oath
4 is to weigh the evidence presented, not what's not
5 presented. That's why when you leave the courthouse
6 whenever we take breaks or whatever you are not to do any
7 independent research of this case. Your verdict has to be
8 based solely from the information gathered in this courtroom
9 and the courtroom alone. So you can't go out and get your
10 Smart Phone and google names and google evidence and look up
11 stuff like that, you can't do that, because you would be
12 violating your oath to try this case and reach a verdict
13 based on the evidence received in this courtroom. Okay?
14 Everybody understand? All right. Well, thank you again,
15 ladies and gentlemen, for participating in this process.
16 You may notice you don't have pens and ink pads -- or,
17 excuse me, pens and paper pads. The reason I don't do that,
18 I used to allow jurors to take notes and I found out that
19 what they would do is much like what I do, I'd draw all
20 kinds of stuff and doodle a lot and not really pay
21 attention. Okay? So I want you to pay attention, that's
22 why you're not going to be allowed to take notes. And when
23 you start deliberating the case you're going to have to go
24 from your memory and your collective memory when you talk
25 about it, because it's very difficult and time consuming for

OPENING STATEMENTS

1 my court reporter to print out a transcript for you. You're
2 not going to have a transcript of everything so pay
3 attention to things as it happens. All right. So let's go
4 ahead and start. We'll hear opening statements. Madam
5 Solicitor -- or Solicitor?

6 MR. ALLEN: Thank you, Your Honor. Ladies and
7 gentlemen, as you heard earlier before you were chosen to be
8 on this jury, Billy Crimminger has been charged with
9 possession with intent to distribute a number of drugs.
10 Now, obviously you can't possess drugs, that's a crime
11 called possession, and obviously you can't sell drugs. I
12 mean, I think we all know that, you probably didn't even
13 need to come into court and learn that today, and that's
14 distribution of drugs, but South Carolina has a thing called
15 possession with intent to distribute. See, you don't have
16 to be caught actually doing a deal, there are a few
17 different ways where you can get caught with drugs, and we
18 would suggest to you with some additional evidence that
19 makes it clear obviously Billy Crimminger was selling drugs.
20 And there's a few different ways to go about that, one of
21 which is what's called an inferential amount, and the Judge
22 is going to tell you about that, I won't dwell on it, but if
23 you have enough drugs the State says, well, that's more than
24 personal use, this guy's in business. And then there's
25 another way of going about it, which is basically the

OPENING STATEMENTS

1 context. You know, here is the way I like to think about
2 it. When I was in college I worked in a warehouse, and I
3 worked in the warehouse of a hardware store and I was a
4 stocker, you know, and I always had a box cutter on me, I
5 always had that little sticker gun that you put the prices
6 on. In one of my pockets I would have the little stickers
7 that had the hole in it so you could hang stuff on a
8 pegboard, and you would know from across the store, you
9 would go: That guy works in the warehouse, because I had
10 the tools of the trade, it was obvious. I wasn't in that
11 warehouse with a box cutter and little sticker gun because I
12 was shopping at the warehouse, I was there because I was at
13 work. Well, you're going to hear evidence from Investigator
14 Fayall, you're going to hear evidence and testimony from
15 Investigator Lockhart about what was found in Billy
16 Crimminger's house on March 15th, 2019. You're going to
17 hear about tools of the trade. You're going to hear about
18 little scales, just like I had my little sticky gun. You're
19 going to hear about all the baggies, all the wrappers, just
20 like I had my little stickers that hang things up on the
21 pegboard, if you're in the business of selling drugs you've
22 got to package up drugs, and you're going to hear about
23 that. And most importantly like any store we've got to hear
24 about the merchandise, and Mr. Crimminger had a store full
25 of merchandise. You're going to hear testimony from the

OPENING STATEMENTS

1 South Carolina Law Enforcement Division that tells you
2 everything that was found in Mr. Crimminger's house on that
3 day, and that analyst, that scientist with all of his
4 experience, he'll explain to you what was found. And I'm
5 not going to go on, I'm not going to go into detail because
6 there are people who are better able to explain because they
7 were the ones that were there and they're the ones who
8 tested it, but I'm just going to ask that you pay attention
9 to every one of those types of drugs, the kinds of pills,
10 the kinds of powder, the methamphetamine, cross them off the
11 list in your head, because at the end of this you're going
12 to be asked to reach a verdict. And the word verdict comes
13 from the Latin word Veredictum to speak the truth. The
14 investigators are going to speak the truth, the SLED
15 scientist is going to speak the truth, and at the end I
16 trust that you will hear that truth and you too shall speak
17 the truth, and the truth is going to be a guilty verdict.
18 So I want to thank you for your time and I would like to
19 thank you for your attention.

20 THE COURT: Thank you, Solicitor. Mr. Frick?

21 MR. FRICK: Good morning. Today is a big historic day
22 whether you realize it or not, there's a lot of stuff going
23 on today. One, we had an eclipse this morning, I had hoped
24 to see it but I didn't realize it was at 4:00 so I missed
25 it, so I hope somebody got to see it and enjoyed it. And

OPENING STATEMENTS

1 it's an election day, which is a huge thing in our country.
2 And you have now become part of history that you did not
3 even know. You are now the part of a system of settling
4 disputes that began over 800 years ago with the Magna Carta
5 in 1215 where they first started assembling citizen juries
6 to hear disputes and decide cases. So congratulations, you
7 are now part of that long line of history, and it's a good
8 history and it's a necessary part of what we do. It's just
9 as important as going to the polls and voting, it is
10 participating in our process. Because we all have very
11 important rights guaranteed to us in the Constitution, and
12 the main of that is just because the government comes up
13 here and accuses you of doing something does not mean that
14 you did it. The government then has to put a case up to
15 prove beyond a reasonable doubt that you did, in fact, do
16 what they accused you of. And the Solicitor can stand up
17 here and talk about how the agents are going to speak the
18 truth, well, make no bones about it, you get to decide
19 whether they're speaking the truth, not just because they
20 say it. You also get to decide about any other evidence
21 that comes up there, because what happens is folks are going
22 to get on this stand, they're going to swear on the Bible to
23 tell the truth, and just because they put their hand on the
24 Bible and swear to tell the truth doesn't mean that you've
25 got to believe it as the truth. You get to examine their

OPENING STATEMENTS

1 demeanor, you get to examine what they say, and you get to
2 examine frankly whatever you want to make your determination
3 as to whether or not you want to believe that evidence. If
4 the State has presented you believable evidence, credible
5 evidence beyond a reasonable doubt that Mr. Crimminger did
6 what they say he did, well, then you must find him guilty.
7 However, if they have failed to meet that burden, if they
8 have not proven to you beyond a reasonable doubt that Billy
9 Crimminger had the tools of the trade and was -- and had
10 these drugs in his possession then you must find him not
11 guilty. Reasonable doubt, ladies and gentlemen, it's a
12 very, very high standard, it's the highest standard we have
13 because we're in criminal court. What the State has to
14 prove to you is not, well, I don't know, I've been looking
15 at Billy, kind of looks like maybe he would sling a little
16 dope. I don't know, just his demeanor, he could have, it's
17 possible, maybe he had that stuff in his house, maybe he
18 knew that stuff was in his house, I don't know. It's more
19 than maybe, it's more than possible, it's more than
20 probably, it's is there any other reasonable explanation.
21 And, ladies and gentlemen, I submit to you once you've seen
22 what the State puts up that they will not have reached their
23 burden. I'll remind you on one other thing, again, the
24 burden lays solely with the government to prove to you the
25 case. Mr. Crimminger does not have to prove a thing to you.

KIERRA FAYALL - DIRECT

1 He sits there as an innocent man until, unless and until the
2 State has provided you sufficient evidence. Again, I submit
3 to you at the end of the day -- and it won't take long, I
4 know that everybody gets worried. My wife got jury duty
5 notice yesterday, she's asking me how to get out of it.
6 It's a civil case, I can't help her on that one. But
7 anyway, everybody gets all excited and like: Oh my god, I'm
8 going to get called on this jury trial for weeks and weeks
9 and weeks. Folks, it ain't going to be like that. It's
10 going to last a little bit of time but it will be short and
11 quick, but it is important and I ask you to pay attention,
12 and at the end I'll ask you to return verdicts of not
13 guilty. Thank for your time, attention, and service.

14 THE COURT: All right. We will now proceed with the
15 testimony and evidence phase of the trial. The State can
16 call its first witness.

17 MS. WINE: Thank you, Your Honor. May it please the
18 Court? The State calls Investigator Kierra Fayall.

19 The witness, KIERRA FAYALL, was first duly sworn and
20 Testified as follows:

21 THE COURT: All right.

22 MS. WINE: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MS. WINE:

25 Q Good morning, Investigator. Could you please introduce

KIERRA FAYALL - DIRECT

1 yourself for the jury?

2 A Yes. My name is Kierra Shanay (phonetically) Fayall,
3 I'm a detective with the York Police Department.

4 Q All right. And how long have you been with the York
5 Police Department?

6 A I've been with the York Police Department for about two
7 years.

8 Q Two years?

9 A Yes.

10 Q And did you work in law enforcement prior to being with
11 York? I'm sorry.

12 A Yes, ma'am, I have.

13 Q And where did you work previously?

14 A Previously I worked for Lancaster County Sheriff's
15 Office.

16 Q All right. And what types of duties did you have while
17 you were here in Lancaster?

18 A While employed at Lancaster County Sheriff's Office I
19 was a Narcotics Investigator for the Drug Task Force, as
20 well as a criminal investigator.

21 Q All right. And generally what kind of -- you had
22 mentioned narcotics, but what would sort of be your main
23 daily role with that team?

24 A My day to day rolls within that position would be to
25 conduct investigations specifically toward narcotics,

KIERRA FAYALL - DIRECT

1 investigations that consisted of different activities and
2 different elements that basically look for any type of ill
3 or illicit behavior when it came to narcotics and laws that
4 had been broken.

5 Q And to become a law enforcement officer you have to go
6 to the academy first; is that correct?

7 A Yes, ma'am.

8 Q And as with your -- you stated with your narcotics
9 experience, do you have any other specializations or
10 trainings, anything else specific to narcotic
11 investigations?

12 A Yes, ma'am. I have different certifications specific
13 for certain narcotics, whether it be methamphetamine and
14 recognizing those type of narcotics, as well as in
15 conducting surveillance and just being able to be well
16 versed in knowing exactly what narcotics is, and determining
17 whether or not it's actually based on visual something
18 that's sold as a drug.

19 Q And how long were you in Lancaster?

20 A I was with Lancaster for about five to six years.

21 Q Okay. And your total law enforcement experience with
22 York, Lancaster, and anywhere else?

23 A My total law enforcement experience was 13 years.

24 Q Thank you. When you were -- I'm sorry, so were you
25 with the sheriff's office back in March of 2019?

KIERRA FAYALL - DIRECT

- 1 A Yes, ma'am, I was.
- 2 Q And in your capacity as an investigator with the drug
3 force -- Drug Task Force here in Lancaster back in March of
4 2019, were you involved in the arrest of Billy Crimminger?
- 5 A Yes, ma'am.
- 6 Q Did you get a search warrant in connection with that
7 arrest?
- 8 A Yes, ma'am.
- 9 Q Who drafted that search warrant?
- 10 A I did.
- 11 Q And with the search warrant, were you the affiant?
- 12 A Yes, ma'am.
- 13 Q And does that mean that you went and you were sworn in
14 by a judge prior to having that search warrant signed?
- 15 A Yes, ma'am.
- 16 Q And what did, or where did that search warrant
17 authorize you with the task force to search?
- 18 A At that time based on that search warrant it was for me
19 to be able to search the address that was associated with
20 Mr. Billy Crimminger.
- 21 Q And do you recall that address?
- 22 A That address, I believe, is [REDACTED] Baskins Hill Road.
- 23 Q And is that in Heath Springs?
- 24 A Yes, ma'am, which is in the County of Lancaster.
- 25 Q Lancaster, South Carolina?

KIERRA FAYALL - DIRECT

1 A Yes.

2 Q And if you recall what were you authorized to search
3 for?

4 A Within the search warrant I was authorized to search
5 for heroine, any other illicit narcotics, and different
6 tools of the trade, anything associated with narcotic sales.

7 Q And generally speaking the tools of the trade, are
8 those illegal narcotics that you mentioned? Why would you
9 be seeking those items as a member of the Drug Task Force?

10 A Based on my experience those items such as scales,
11 scanners, any type of weapons, those things are often times
12 associated with those that sell illicit drugs or illicit
13 narcotics, basically illicit meaning illegal. Often times
14 like such as a scale, they utilize that to weigh the items
15 that they may be possessing or that they have or
16 distributing, as well as weapons. Often times as dangerous
17 as they are, they are just as dangerous as the narcotics and
18 possession often times they do. As well as other items such
19 as scales, anything to evade or disregard, you know, any
20 search from an officer's standpoint law enforcement, often
21 times possess even such things as baggies separated in
22 certain manner are things that often times we see based on
23 our experience.

24 Q And what date was the search warrant executed at that
25 [REDACTED] Baskins Hill Road?

KIERRA FAYALL - DIRECT

1 A I don't remember the -- recall the exact date, it was
2 in the month of March in 2019.

3 Q Okay. March 15th, does that sound about right?

4 A Yes, ma'am.

5 Q And around what time of day was that?

6 A It was in the early morning hours.

7 Q Is that typical?

8 A Yes, ma'am.

9 Q Okay. So you go -- when you're executing a search
10 warrant, what is that process generally like with you as the
11 lead investigator?

12 A It executing -- in executing, excuse me, that search
13 warrant it is not -- it's a collective effort, it's not just
14 me by myself. Based on for officers safety issues reasons
15 we collectively briefing and going over exactly what our
16 target is and our -- basically the scope of what we're doing
17 as a group.

18 Q Okay. And I'm not sure if I specified this, but you
19 were the lead investigator for this particular case; is that
20 right?

21 A Yes, ma'am, I was.

22 Q And who else was with you on that morning on March 15th
23 for this search warrant?

24 A On March 15th there was myself along with the Drug Task
25 Force members, as well as SWAT and a few other investigators

KIERRA FAYALL - DIRECT

1 that were present.

2 Q Okay. And you mentioned SWAT. Is that something
3 that's utilized for safety?

4 A Yes, ma'am, it is.

5 Q And before you went in and executed this search warrant
6 at this residence, did you as a lead investigator assign any
7 certain duties to specific members of your team, whether it
8 was collection, photographs, video?

9 A Yes, ma'am. We -- basically, like I said, we worked
10 collectively, we split some of our duties. We assigned
11 someone to execute the actual search warrant as well as to
12 conduct photographs and help in seizure of items if they're
13 discovered.

14 Q All right. And on the morning of March 15th, who was
15 at the residence at [REDACTED] Baskins Hill Road?

16 A That morning I remember there being two individuals, it
17 was Mr. Billy Crimminger, who resides at the residence, as
18 well as a female subject that was associated with him.

19 Q Okay. And do you see either of those individuals that
20 you just referenced here in court today?

21 A Yes, ma'am, I do.

22 Q Could you point them out and what they're wearing?

23 A It will be Mr. Billy Crimminger on the right side here,
24 some of you may be your left, he's wearing a white T-shirt
25 and blue jeans.

KIERRA FAYALL - DIRECT

1 Q Here at the defense table?

2 A Yes.

3 Q Where was Mr. Crimminger located when you were at the
4 home that morning?

5 A On that morning when SWAT made contact Mr. Crimminger,
6 if I'm not mistaken, was actually at the residence door and
7 receded and went back in his room after seeing SWAT.

8 Q Generally after having been in the home that morning,
9 can you describe the house? Is it a large, you know, 12
10 bedroom house, or --

11 A No. It's I guess what you would deem a typical single
12 family home, one floor, there wasn't two floors to the
13 residence.

14 Q And so the only two individuals were Mr. Crimminger and
15 another female; is that right?

16 A Yes, ma'am.

17 Q Did either of those individuals know that the sheriff's
18 office was coming that morning?

19 A Prior to our arrival, no, ma'am.

20 Q And is it typical that a resident is not made aware
21 ahead of time?

22 A Yes, ma'am, due to safety issues.

23 Q So you mentioned that there were other members of the
24 Drug Task Force team with you that morning. Who entered the
25 residence with you during this search warrant?

KIERRA FAYALL - DIRECT

1 A During the search warrant to my recollection
2 Investigator Lockhart entered the residence with me along
3 with Lieutenant Jaillette, which was our supervisor, and
4 Investigator Pete Beck.

5 Q And once you're inside -- or let me back up. So SWAT,
6 they, I guess, clear the residence, is that a fair --

7 A Yes, ma'am. That's normally their proper procedure for
8 tactical efforts.

9 Q And so then you and the other members of the task force
10 that you just referenced, they entered the residence, or you
11 all entered the residence together; is that right?

12 A Yes, ma'am.

13 Q And when you're inside what's your next steps? What
14 did you do next?

15 A Our very next step is to advise the individual why
16 we're there and our purpose and make sure that that's what
17 we call in the execution of the search warrant. It's read
18 fully in its entirety to them, as well as able to be viewed
19 by them based on a copy that we provide to them.

20 Q And after the execution or the formal reading of the
21 search warrant, what did you do next?

22 A Next we basically secure individuals within the
23 residence. We take them -- if they're in the residence we
24 have them outside of the residence so that they don't have
25 the ability to disturb anything, and then from there we

KIERRA FAYALL - DIRECT

1 begin to conduct our search.

2 Q And when you say you begin to conduct the search, can
3 you walk us through what you did that morning?

4 A Sure. As a lead investigator the first thing that I
5 did is making everyone know, you know, basically
6 understanding where they're assigned within the residence,
7 where they are, where they'll begin their search. From that
8 point we basically, you know, begin searching. Anytime at
9 any point that anything is discovered that we find is within
10 our search warrant and it's illicit or not allowed to have
11 criminally, it is photographed prior to them seizing it,
12 seizing being taking it, picking it up, manipulating it in
13 any type of way.

14 Q Okay. And you mentioned the sort of immediately
15 apparent nature of items that may be illicit. Does that
16 include the subject of your search warrant that you were
17 authorized to search for the illegal narcotics?

18 A Correct.

19 Q And while you're conducting this search, are you and
20 the other task force members communicating out loud? Are
21 you doing things individually? How does that work?

22 A Yes, ma'am. We communicate at each step that we are --
23 steps being whether something is discovered, any type of
24 concerns, we basically communicate that and talk with one
25 another so that we're all on the same page.

KIERRA FAYALL - DIRECT

1 Q And that's an ongoing sort of --

2 A That is ongoing, yes, ma'am.

3 Q And were there items -- pursuant to the search warrant
4 that you referenced, were there items collected that
5 morning?

6 A Yes, ma'am.

7 Q And these items, were they photographed prior to being
8 collected?

9 A Yes, ma'am.

10 Q And were these photographs to your knowledge, were they
11 submitted into the Lancaster County Sheriff's evidence
12 department?

13 A Yes, ma'am.

14 MS. WINE: Beg the Court's indulgence.

15 THE COURT: Okay.

16 (Break in proceedings.)

17 MS. WINE: Your Honor, may I approach the witness?

18 THE COURT: Yes.

19 Q Investigator Fayall, I've handed you a stack of items.
20 Do you recognize those items?

21 A Yes, ma'am, I do.

22 Q And how do you recognize them?

23 A I recognize them to be the items that were seized from
24 Mr. Crimminger's residence.

25 Q Okay. Are these the actual items or are those

KIERRA FAYALL - DIRECT

1 photographs printed out for us?

2 A These are photographs printed out of the actual items.

3 Q Okay. And if you could just take a moment and just
4 review those, I think there is 27 in total, so just take a
5 moment and let me know when you've had a look at all of
6 them.

7 (Break in proceedings.)

8 Q So you've had a chance to look at all of them?

9 A Yes, ma'am.

10 Q And those -- I think I referred to them as items, but
11 those photos, or those papers that you're holding, they are
12 photos of items that you personally observed during the
13 search warrant at Mr. Crimminger's residence; is that
14 correct?

15 A Yes, ma'am.

16 Q And that was on March 19th, 2019?

17 A March --

18 Q I'm sorry, March 15th.

19 A 15th, yes.

20 Q I apologize, I'm very sorry. Okay. And so during the
21 search warrant and these items that you discuss and that
22 we've referenced in those photos, what happens after they
23 are found or located?

24 A After they're found and located we do -- basically we
25 take them into our possession and we place them, and we do

KIERRA FAYALL - DIRECT

1 bag them and mark them as the evidence that we'll be
2 submitting.

3 Q And that process that you talked about, bagging them
4 and marking them, does that take place there at the scene or
5 at the sheriff's office?

6 A Yeah, it's like a dual process. The first process is
7 basically where we bag them to secure them for transport,
8 and then those that are actually like drugs that need to be
9 tested are analyzed, they are placed in their proper
10 bagging, or their BEST kit is what we call it, it's a
11 requirement from the State and SLED so that they can be sent
12 off.

13 Q Okay. And I'm going to unpack a bit of what you said,
14 I think it had several elements in there. The items -- you
15 referenced packaging or putting them into something else, if
16 you find an item in a bag, a plastic bag, a shopping bag, a
17 wrapper of some sort, do you as law enforcement take it out
18 of that bag or that packaging?

19 A No, ma'am, we don't manipulate it in any way. We don't
20 change what it's in or it's form. We place it in our bags
21 that we actually bring with us to secure it.

22 Q Okay. And when these items are seized and then this
23 process is going on, is there someone specifically tasked
24 with taking an inventory or writing down specifically where
25 these items are found and what the task force believes they

KIERRA FAYALL - DIRECT

- 1 are?
- 2 A Yes, ma'am.
- 3 Q Okay. And so that is done as part of the search
- 4 warrant process, correct?
- 5 A Yes, ma'am.
- 6 Q And did you -- during this search warrant -- so you and
- 7 the other task force members, did you have occasion to go
- 8 around and meet together and review these items there at the
- 9 scene, or did you meet together back at the sheriff's
- 10 office?
- 11 A Yes, ma'am. Often times we just go ahead and we meet
- 12 back at the sheriff's office. We make sure that all of the
- 13 items are secured. We do our best to secure it in one area
- 14 of the vehicle that's actually occupied from the lead
- 15 investigator, and then from there we go back to the
- 16 sheriff's office.
- 17 Q All right. And so did you collect the items on this
- 18 day or was it someone else?
- 19 A It was actually -- it's collective. I actually rode
- 20 with the items that was there. The individual that did the
- 21 execution and bagged them, they kept this in their
- 22 possession for chain of custody, and when we got back to the
- 23 office then from there we processed them.
- 24 Q Okay. And who collected the items, if you can recall?
- 25 A At that time if I recall correctly it was Detective

KIERRA FAYALL - DIRECT

1 Beck.

2 Q Okay. So he's charged with -- as a lead investigator
3 you instruct him to take these items into possession, keep
4 them, maintain their integrity, and bring them back to the
5 sheriff's office?

6 A Yes, as the one executing the warrant.

7 Q And what items were located during this search if you
8 can recall?

9 A There were various items that were recovered. In
10 trying to recall I know there was some narcotics
11 specifically, which narcotics I'm not sure amounts-wise.
12 But there were also scales, individual baggies of the actual
13 drugs in the bags, cellphones, smoke pipes, scales, and also
14 documentation with that appeared to be what we call a ledger
15 that is written down on the distribution of those narcotics.

16 Q Okay. And among all of those items, did you find any
17 paperwork or any other documentation relating to either of
18 those individuals that you found in the house that morning?

19 A Yes, we did find a ledger.

20 Q Okay.

21 A I don't remember specifically what was written on it.

22 Q Fair enough. Did you find any bills, or mail, any
23 forms of ID?

24 A Yes. We -- normally it's common practice for us that
25 we actually have a piece of mail verifying, or even just a

KIERRA FAYALL - DIRECT

1 driver's license verifying who resides at the residence, and
2 also that our target is actually someone that resides at
3 that residence.

4 Q And did you find a driver's license that morning?

5 A Yes, we did.

6 Q And did you take a look at it?

7 A Yes. We actually have a photograph here that you
8 provided me that we took of --

9 Q And that license, who did it belong to?

10 A That license belongs to Mr. Billy Crimminger, and it
11 does have his address of [REDACTED] Baskins Hill on it.

12 Q And that's the residence or the address where you were
13 executing that search warrant?

14 A Yes, ma'am.

15 Q And was that a valid license at the time back in --

16 A Yes, ma'am, it was.

17 Q So you've referenced several of the items that were
18 found. Would it help refresh your memory if you reviewed a
19 report that was drafted by you right after this incident?

20 A Yes.

21 MS. WINE: May I approach the witness?

22 THE COURT: Yes.

23 Q Investigator Fayall, do you recognize what I just
24 handed up to you?

25 A Yes, ma'am.

KIERRA FAYALL - DIRECT

1 Q And is that -- or what is that?

2 A It's a supplement for the search warrant execution.

3 Q And did you write that supplement?

4 A Yes, ma'am.

5 Q And is that identified by your name or initials?

6 A Yes. It has my name at the top as well as the subject
7 of what it is, which is a search warrant execution.

8 Q Okay. And was that created near or very shortly after
9 this search warrant took place?

10 A Yes, immediately after.

11 Q So if you'll please just take a moment to review that,
12 and when you're finished if you could testify from memory,
13 if you could, about the items that were discovered that
14 morning.

15 (Break in proceedings.)

16 A In reviewing the supplement that I didn't write, it
17 begins to speak of a summarization of the search warrant
18 activities when we arrived on the scene, individuals that
19 were actually present at the house --

20 Q So as far as the items, is there a list of the items
21 that were recovered in relation?

22 A Yes. It appears that there were powder substance
23 inside a blue pill bottle found in a tool box. A crystal
24 substance, rock substance individually wrapped. Powder
25 substance approximately -- found in the pants pocket on a

KIERRA FAYALL - DIRECT

1 couch. Crystal substance in the master bedroom dresser
2 drawer in the bottom drawer. Four pills inside a purple
3 container. Two individually wrapped powder substance within
4 the master bedroom drawer. Powder substance master bedroom
5 nightstand. Crystal substance found in the master bedroom
6 on the floor. A pill bottle containing five orange pills on
7 top of the fridge. A meth smoke pipe, scale, both found in
8 the living room. Black smart phone inside of a clear case.
9 Meth pipe. Another crack pipe, silver grinder, and a
10 ledger. Seven rounds of ammunition. Black flip phone.
11 Four scales and another ledger. Additional scale found in
12 the living room dresser drawer. Sandwich bags and other
13 drug paraphernalia.

14 Q Okay. Thank you. And you mentioned that some of these
15 items were individually packaged. The -- I want to back up
16 to the second item that you referenced that was a crystal
17 substance or a rock substance in seven individual packages;
18 is that correct?

19 A Yes, ma'am.

20 Q And that was located where?

21 A It was located in the pants pocket on the couch in the
22 living room.

23 Q And were any other items discovered in that pants
24 pocket?

25 A Based on what is written it doesn't appear that there

KIERRA FAYALL - DIRECT

1 is -- it says a crystal substance, rock substance in the
2 individual wrapped powder substance. So, yes, there were
3 additional stuff with the substances, but outside of that,
4 no.

5 Q Okay. No problem, thank you. And do you recall where
6 the -- driver's license, was it located on a kitchen table?
7 Was it contained in any other item?

8 A The driver's license based on the photo was actually
9 on -- in the jeans pocket.

10 Q Okay.

11 A I'll go back to the photograph, sorry. Within the
12 wallet.

13 Q In a wallet.

14 A Uh-huh.

15 Q And were there any other house keys or car keys with
16 that?

17 A Not to my knowledge currently.

18 Q No problem. So those are the items that were collected
19 that morning, they're taken into custody with the sheriff's
20 office and then they're brought back to the sheriff's
21 office. What did you do next with those items?

22 A From there we actually ended up going through our
23 evidence process of placing each designated item into a bag
24 for securing to go into our evidence holding area.

25 Q Okay. And when you're going into the evidence holding

KIERRA FAYALL - DIRECT

1 area, what is the process the sheriff's office uses
2 specifically? Is it all of you around a table together
3 talking about what you are doing, or is it one person alone
4 in a room? Can you tell us more about that?

5 A Well, as far as our process when we're actually, for
6 lack of better words breaking down everything and seeing
7 everything that we have, often times there are either one or
8 two individuals doing it. I think in this particular
9 instance it was one taking care of the evidence aspect. At
10 that time as a lead investigator I'm working on warrants,
11 and individuals that were recovering photographs and video
12 footage, each person is doing that. But we're all in a room
13 together in the same area, it never leaves the presence of
14 the other.

15 Q Okay. And were these items weighed prior to packaging
16 them?

17 A Prior to us packaging them?

18 Q Prior to them being packaged pursuant to your evidence
19 processing that you described.

20 A Yes.

21 Q They're weighed in whatever form they are collected in.

22 A Yes, ma'am.

23 Q And do you have those weights in front of you? If not
24 that's not a problem.

25 A I do not.

KIERRA FAYALL - DIRECT

1 Q Okay. No problem. Are you -- during this
2 investigation when you see these items or these substances
3 with your experience as a law enforcement officer, how does
4 that come into play when you're viewing the items themselves
5 and determining what they are?

6 A Basically as an investigator in my experience when you
7 view the items even individually collectively together, the
8 behavior signifies distribution, someone actually selling
9 drugs. All these items placed together, a scale, often
10 times drug dealer has a scale present, it was more than one
11 scale present even in the individual baggies they're there
12 for convenience in order to sell them to be undetected.

13 Q Okay. And specific to the substances themselves, do
14 drugs or different narcotics have different appearances that
15 you've been able to learn about over time?

16 A Yes. There's certain things that you can identify,
17 like I stated, from the eye based on the experience, of
18 course, that let's you know or can infer that this is a
19 particular drug or associated within that category. Also,
20 drugs vary based on how they affect the body, too, so --

21 Q So different substances or forms of the drug themselves
22 lead you to make an informed decision using your experience
23 of what is in front of you in this specific case?

24 A Correct.

25 Q So the items are weighed as you mentioned. Are they

KIERRA FAYALL - DIRECT

1 field tested, or are they tested prior to being sent to
2 SLED?

3 A We do field test, it's a case by case circumstance,
4 just to see -- if we don't have knowledge based on speaking
5 to or have had an opportunity to speak to the suspect
6 themselves for them to tell us what it is we do field test
7 it.

8 Q And let me ask you, so is it -- do you always field
9 test whether or not that suspect or person -- anything that
10 you do directly as a result of your investigation, does that
11 determine whether or not you do any field testing? Or is it
12 visual inspection?

13 A Most often time we do our best to do visual, but we do
14 field test. Like I said, it's a case by case circumstance.
15 What we don't want to do is expose ourselves to the
16 narcotics.

17 Q Okay. And so the items, they're brought back, they are
18 weighed, they are evaluated visually, is that fair?

19 A Yes.

20 Q And they are then sealed into what you mentioned
21 earlier was a SLED BEST kit. Could you walk us through or
22 explain that to us?

23 A I can. My knowledge is only based off of having to
24 utilize the item, but basically it is to submit for
25 analyzing what specifically they do, this nice science stuff

KIERRA FAYALL - DIRECT

1 specifically to determine what the substance is. So what we
2 actually do, we don't, like I stated, manipulate the -- what
3 we suspect to be the drugs in any type of way. We package
4 it, we label it to what we suspect it to be, we place it in
5 the SLED BEST kit, and then that entire kit is submitted
6 into evidence, which is then -- it goes through another
7 process of transportation to SLED to be analyzed.

8 Q Okay. And you mentioned that you label it as a
9 substance of what you suspect it to be and that's based on
10 the visual inspection that you just referenced.

11 A Yes. And visual being not that we place all of this is
12 meth, we place that as a crystal like substance or a rock
13 like substance. We describe visually what we see.

14 Q And the items from when they were discovered there at
15 [REDACTED] Baskins Hill Road to when they were being packaged into
16 the SLED BEST kit that you just referenced, were they either
17 by you or members of your team manipulated or changed or
18 tampered with in any way?

19 A No, ma'am.

20 Q Why is it important to maintain the integrity of items
21 whether they're narcotics or anything that are seized for
22 investigations?

23 A Well, the most important part is we are not accustomed
24 to having drugs in our system so we don't want to expose
25 ourselves. But in not manipulating it, it means it --

KIERRA FAYALL - DIRECT

1 basically it needs to be an unbiased process. This is
2 exactly how it was found, and we maintain that integrity of
3 what it was from that point going forward. Altering it any
4 way doesn't make it -- it doesn't make it just or it's pure
5 form.

6 Q Okay.

7 A If that makes sense.

8 Q So items are not sort of all poured into one big
9 collective bag together.

10 A No, ma'am.

11 MS. WINE: All right. Beg the Court's indulgence one
12 moment.

13 THE COURT: Yeah.

14 (Break in proceedings.)

15 MS. WINE: May I approach the witness?

16 THE COURT: Yes.

17 Q Investigator Fayall, do you recognize what I just
18 handed you?

19 A Yes, ma'am.

20 Q And what does it appear to be?

21 A It appears to be the narcotics that were seized from
22 the search warrant.

23 Q And is that what you're holding, the SLED BEST kit that
24 we were just discussing?

25 A Yes, ma'am.

KIERRA FAYALL - DIRECT

1 Q And that's was sealed together there at the sheriff's
2 office once you're finished collecting all of the evidence,
3 right?

4 A Yes, ma'am.

5 Q And once the SLED BEST kit is sealed, what's the next
6 step on its journey?

7 A We submit it along with the additional evidence that
8 would not be drug related into our evidence, the Lancaster
9 County Sheriff's evidence.

10 Q Okay. And when you say our evidence, can you just
11 explain that to us?

12 A It basically is a separate area that they actually
13 specialize on evidence submissions, as well as ensuring that
14 the narcotics gets to its proper chains and security
15 basically is what they do, secure evidence.

16 Q Okay. And that evidence area that you referenced, can
17 anyone come and go from there?

18 A No, ma'am.

19 Q Okay. And is there documentation that you complete or
20 that the sheriff's office completes anytime someone comes
21 into contact with evidence?

22 A Yes, ma'am, we do conduct logs.

23 Q Okay. And the BEST kit that you were just referencing
24 that I have handed you, is that the same, you know, as it
25 appeared to you when you sealed it up that day other than

KIERRA FAYALL - DIRECT

1 sort of being open, but the items inside, is that how it
2 appeared to you on March 15th, 2019?

3 A Yes, ma'am.

4 Q So once this evidence and other items that you've
5 referenced are submitted into Lancaster County evidence,
6 what is the next step in the process with the search
7 warrant? Is there other paperwork that has to be completed?

8 A Yes, ma'am. The information that we have with the
9 search warrant it has to be what we call a return. We have
10 to go back in front of the Judge, let them know what was
11 seized and found and have a listed item of what was taken.

12 Q And does that have to be done within a certain time
13 frame?

14 A Yes, ma'am.

15 Q And was that done in this case?

16 A Yes, ma'am.

17 Q And that was done by you or another member of your
18 team?

19 A It was done by another member of my team.

20 Q Okay. And is that typical that one person is the same
21 throughout?

22 A Yes. From the moment that the search warrant is
23 executed that individual has the responsibility of
24 conducting the returns.

25 Q Okay. Thank you. And so just briefly, I know I've you

KIERRA FAYALL - DIRECT

1 had up here for awhile, utilizing your years of law
2 enforcement experience especially as it relates to narcotics
3 and narcotics investigations, with the items that you've
4 described and that you've referenced seeing in this specific
5 case here, what do those items indicate to you in the drug
6 task force after this --

7 MR. FRICK: Objection, Your Honor, I think she's asking
8 for opinion.

9 THE COURT: Rephrase your question. I'll sustain that
10 as far as that question.

11 Q The items that you have discussed finding, collecting,
12 submitting into evidence, did you make any charging
13 decisions based on those items?

14 A Yes, ma'am, we did.

15 Q And what were those decisions?

16 A Those decisions I can't give you specifically, but they
17 were in reference to the drug possession with the intent to
18 distribute. It was clear to us that with him possessing --
19 with Mr. Crimminger possessing these items in this variety,
20 as well as how they're packaged, as well as the fact that he
21 had scales, that it was his intent to basically distribute
22 narcotics.

23 Q And let me ask you, when we talked about the weighing
24 of these items and -- under South Carolina law we know that
25 there is, you know, a possession level, and then there's

KIERRA FAYALL - DIRECT

1 this other level that you talked about possession with
2 intent to distribute, are there any threshold levels that
3 are used by law enforcement to make different charging
4 decisions?

5 A Based on the law there are what we call inference
6 weights, however it does not have to be specific to each
7 circumstance, especially when you have a plethora of
8 narcotics present.

9 Q And were any of the substances in this case to your
10 recollection over what you reference as the inference
11 weight?

12 A To my knowledge they were not.

13 MS. WINE: Beg the Court's indulgence one moment.

14 THE COURT: Okay. Ladies and gentlemen, let's take a
15 quick break, don't talk about the case, I'll get you back
16 out here momentarily. Okay?

17 (The jury left the courtroom.)

18 THE COURT: All right. Madam Witness, you can't
19 discuss your testimony while we're on a break.

20 (A break was taken.)

21 (The jury returned to the courtroom.)

22 THE COURT: It doesn't matter where you sit. The only
23 person who is going to be seated right there is going to be
24 the forelady or the foreman, whoever we elect and that is
25 going to be. All right, you can resume questioning.

KIERRA FAYALL - DIRECT

1 MS. WINE: Thank you, Your Honor.

2 BY MS. WINE:

3 Q Investigator Fayall, I'm going to hand you some
4 additional items, if you could tell me if you recognize
5 them, please. Actually we'll start with those two. Those
6 items what's been marked for State's identification as
7 Number 30, do you recognize that bag?

8 A Yes, ma'am.

9 Q And where do you recognize that from?

10 A I recognize them to be items that we seized from the
11 search warrant.

12 Q And what do those items appear to be?

13 A These items appear to be scales and a notebook with
14 information of different times, a ledger.

15 Q Okay. And Item 31, is that up there with you?

16 A Yes, ma'am.

17 Q Do you recognize that?

18 A Yes, ma'am, I do.

19 Q And is that from the same incident from March 15th of
20 2019?

21 A Yes, ma'am, it is.

22 Q What does that appear?

23 A This appears to be a smoke pipe, the remnants inside of
24 it look like it is possibly -- visually possibly meth.

25 Q Okay. I'm going to approach with two more items. If I

KIERRA FAYALL - DIRECT

1 may grab those two from you so we can keep them all
2 straight. So item -- do you have Item 32 that's been marked
3 for identification?

4 A Yes, ma'am.

5 Q And what is that?

6 A It's a scale.

7 Q Okay. And Item 33, is that up there as well?

8 A Yes, ma'am.

9 Q And what does that contain?

10 A It contains a glass smoke pipe, another glass what we
11 call a stem pipe, and a grinder with a notepad with writing.

12 Q That's fine -- well -- as long as we've got that up
13 there. And then finally I'm going to hand you what's marked
14 for identification as State's 34, if you could tell us if
15 you recognize that item. Or tell us, do you recognize that
16 item as being part of this investigation with any
17 identifying marks on the actual bag?

18 A Yes, ma'am.

19 Q Okay. And what are the items inside of that paper bag?

20 A Sandwich baggies, individual papers, and a make-shift
21 tub with several small baggies inside.

22 Q Could you show us those items inside?

23 MR. FRICK: Your Honor, I don't think it's been
24 introduced so I don't think it should be shown.

25 Q Okay. We'll withdraw that, just leave it in there.

KIERRA FAYALL - DIRECT

1 And so all these items that we've just discussed or that you
2 have referenced as recognizing from this incident, those
3 were all seized from the home of Mr. Crimminger at [REDACTED]
4 Baskins Hill Road; is that right?

5 A Yes, ma'am.

6 Q And they were submitted into Lancaster County Sheriff's
7 Office evidence, the narcotics that you referenced, those
8 were then sent to SLED; is that correct?

9 A Yes, ma'am.

10 MS. WINE: Thank you so much for your patience with me,
11 please answer questions from Mr. Frick.

12 THE COURT: Mr. Frick, your witness.

13 MR. FRICK: Thank you.

14 CROSS EXAMINATION

15 BY MR. FRICK:

16 Q Detective, do you still have your report up there, or
17 the supplement?

18 A Yes, sir.

19 Q Okay. You may need to refer to it at some points if I
20 ask a question you don't remember.

21 A Sure.

22 Q And so this was a search warrant, correct?

23 A Yes, sir.

24 Q And y'all executed it about 6:00 in the morning,
25 correct?

KIERRA FAYALL - CROSS

- 1 A Yes, ma'am. I mean, yes, sir, my apologies.
- 2 Q Don't worry about it. And this March, the middle of
- 3 March, was it daylight or was it still dark?
- 4 A It was dark.
- 5 Q It was still dark. Okay. And I think you used the
- 6 phrase in your report tactfully approached the residence on
- 7 foot. Can you tell me what tactfully approached meant?
- 8 A Yes. Basically that's a word that's associated with
- 9 SWAT often times, they are there for tactical approaches,
- 10 meaning anything dealing safety wise that they do. I can't
- 11 get more specific than that.
- 12 Q That's fine.
- 13 A I'm not SWAT.
- 14 Q That's fine. That's fine. But SWAT was there, and
- 15 SWAT, of course, they've got all kinds of equipment.
- 16 They've got flap jackets, right?
- 17 A Yes, sir.
- 18 Q They've got helmets, right?
- 19 A Yes, sir.
- 20 Q They've got large guns, right?
- 21 A Yes, sir.
- 22 Q Okay. And there were several of them, correct?
- 23 A Yes, sir.
- 24 Q Okay. Do you recall how entry to the house was
- 25 effected?

KIERRA FAYALL - CROSS

1 A I do not. I know I can speak from often times past
2 experience that we basically announce ourselves letting them
3 know that we're there. Their approach is based on SWAT --

4 Q Hold on. You've got your report, right?

5 A Yes.

6 Q All right. I'm going to look at this line, it's the
7 same report, right?

8 A Yes, sir.

9 Q Do you see that line SWAT team began?

10 A Yes, I do.

11 Q What --

12 A It stated in the report that at this time the SWAT team
13 began using a door ram as well as breaking out a panel to
14 the front glass window in order to maintain visual on the
15 suspect.

16 Q All right. So y'all busted the door in, SWAT did.

17 A Yes, sir.

18 Q Okay. And then y'all go in the house, and when you get
19 in the house obviously had seen Mr. Crimminger at the door
20 earlier is what you said, right?

21 A Yeah. Prior to that the line before that one states he
22 was observed opening the front door of the residence, then
23 he abruptly closed it back.

24 Q Okay. All right. And then when y'all got in the house
25 he was in the back bedroom, right?

KIERRA FAYALL - CROSS

1 A Yes, sir. It appeared that SWAT witnessed him back in
2 his bedroom.

3 Q Okay. And then there was another person in that
4 bedroom, correct?

5 A Yes, sir.

6 Q In fact, that was a Tammy Lynn Wright?

7 A Yes, sir.

8 Q All right. And, of course, you don't really know the
9 relationship between those, do you?

10 A No, sir, I do not.

11 Q And then obviously y'all began the search of the home.
12 One of the things I think you mentioned before is what y'all
13 look for occasionally is a scanner?

14 A No, it's something that's listed on there. Because
15 based on our experience they often times -- when I say they,
16 those that are evading police officers or dealing any type
17 of criminal acts, often times basically try in simpler terms
18 to keep with us. So a scanner being a radio, they scan any
19 activity from law enforcement that's dispatched over a
20 radio.

21 Q And Crimminger didn't have a scanner, did he?

22 A Not to my knowledge.

23 Q Okay. Y'all didn't find one, right?

24 A No, sir, not to my knowledge we didn't.

25 Q I mean, whatever y'all recovered is --

KIERRA FAYALL - CROSS

1 A Yeah. I don't know of a scanner being recovered.

2 Q Okay. All right. And then talk about firearms. You
3 found a gun, correct?

4 A It appears that they found seven rounds of .22 ammo and
5 .22 rifle, yes, sir.

6 Q A .22 Marlon rifle.

7 A Yes, sir.

8 Q Okay. And seven bullets in laymen's term, right?

9 A Yes, sir.

10 Q And I know we found some substances in the pants pocket
11 and some -- was it some jeans that were in the front room?

12 A Yes, sir.

13 Q Okay. But it appears to me the majority of the things
14 were found in the master bedroom is what we're calling it?

15 A Yes, sir.

16 Q Okay. Do you have any idea how many bedrooms are in
17 this house?

18 A I do not.

19 Q Okay. But the master bedroom that we're calling it,
20 that's where both individuals were found when y'all came in,
21 correct?

22 A Yes, sir.

23 Q And then, of course, to identify Mr. Crimminger
24 somebody looked in his wallet, right?

25 A No, sir, to identify him. He was identified at the

KIERRA FAYALL - CROSS

- 1 door when SWAT was breaching.
- 2 Q I mean, y'all took a picture of his ID, right?
- 3 A Yes, we did.
- 4 Q And that's for the purpose of identification, correct?
- 5 A Yes, sir, and confirmation, yes, sir.
- 6 Q And you stated that was taken out of his wallet, right?
- 7 A It was photographed while in his wallet.
- 8 Q It was in his wallet.
- 9 A Yes, sir.
- 10 Q Okay. And while y'all were searching the house y'all
- 11 looked through his wallet, didn't you?
- 12 A Yes, sir.
- 13 Q Okay. Did y'all find any money?
- 14 A That I don't have knowledge of, I didn't search his
- 15 wallet.
- 16 Q Okay. All right. In fact, there's no money listed in
- 17 the return of the search warrant, is there?
- 18 A No, sir, I did not see any.
- 19 Q So it's fair to say that y'all did not find any money
- 20 in the search of this house.
- 21 A It's fair to say we didn't find any.
- 22 Q And so basically, I mean, whatever -- the list of items
- 23 that's in that report and these things that are collected
- 24 here that the solicitor was asking you about, that's what
- 25 y'all found.

KIERRA FAYALL - CROSS

1 A Was what we seized.

2 Q Right, that's what you seized.

3 A It's not necessarily for us to take every item that we
4 find.

5 Q Got you, that's a fair statement. But this is what you
6 seized to support your case, correct?

7 A Yes, sir.

8 Q Okay. And the pipes that we're talking about you call
9 them smoke pipes and there was a stem pipe, that's used to
10 smoke drugs, is it not?

11 A To my knowledge, yes.

12 Q Okay. All right. And I think it's in that brown paper
13 bag that we'll get to in a little bit, you don't have to
14 open it up, but the baggies that we found, I mean, they were
15 sandwich bags, right?

16 A There are two different styles of baggies inside this
17 bag. There is a bag of sandwich bags that was also located
18 along with two smaller containers, looked like there were
19 previously cottage cheese in it maybe. And there is a small
20 individually for lack of better words look like dime bags,
21 small little Ziplock bags.

22 Q Okay. So we've got small little Ziplock bags and
23 sandwich bags.

24 A Yes, sir.

25 Q Okay. And in this -- I know it's a case by case basis,

KIERRA FAYALL - CROSS

1 but in this particular case y'all didn't test anything at
2 the scene, correct?

3 A No, we don't test on the scene.

4 Q Right. But y'all didn't do any field testing when
5 you --

6 A We did field test back in the office, actually it's
7 read on the bottom of the supplement.

8 Q Okay. All right. And that's where y'all do the
9 initial weighing?

10 A Yes, sir, in a secured area.

11 Q Okay. Got you. But the official weighing and testing
12 is what's done by SLED, correct?

13 A For the accuracy, yes, that's the official document.

14 Q So that's why we don't have you talking about that
15 stuff, we're going to have a SLED agent come in and talk
16 about that later.

17 A Yes, sir.

18 Q Okay. All right.

19 MR. FRICK: Thank you, ma'am, that's all the questions
20 I have.

21 THE COURT: Redirect?

22 MS. WINE: Yes, briefly. Briefly, Your Honor, thank
23 you.

24 REDIRECT EXAMINATION

25 BY MS. WINE:

KIERRA FAYALL - REDIRECT

1 Q Investigator Fayall, this other individual that was at
2 the residence that morning, Tammy Wright; is that correct?

3 A Yes, ma'am, it was Tammy Lynn Wright.

4 Q And Mr. Frick had asked you about, you know, about this
5 other individual being present, and the determination was
6 made to charge Mr. Crimminger with the these narcotics; is
7 that correct?

8 A Yes, ma'am.

9 Q And that -- well, let me rephrase. The identification
10 that you talked about, the driver's license, where was that
11 located again?

12 A It was located within the wallet, at which the wallet
13 was in the pants pocket.

14 Q And the pants, were those in the master bedroom to your
15 recollection?

16 A I do not recall.

17 Q Okay. Fair enough. And that -- when you -- when that
18 address was viewed on there as well as the -- did it have a
19 photograph on there, on the license?

20 A Yes.

21 Q And did it appear to be Mr. Crimminger's photograph?

22 A Yes.

23 Q And the -- I'm sorry. The final determination was made
24 by you or additional investigators to charge Mr. Crimminger
25 due to -- or I guess let me have you clarify, what is the

KIERRA FAYALL - REDIRECT

1 final determining factor that you were charging Mr.

2 Crimminger with these narcotics?

3 A The final determining factor we do often times, and
4 most times it's done by a supervising lieutenant, they speak
5 with anybody occupying the residence and they ask about the
6 items that were present, it is notated in the report --

7 MR. FRICK: Your Honor, object to this question.

8 Q Without that --

9 A Yeah --

10 THE COURT: Hang on, woah, woah, woah. Ask the
11 question.

12 Q In terms of your investigation with what you found
13 there at the home --

14 A Yes.

15 Q -- what -- how did that go into your determination to
16 charge Mr. Crimminger?

17 A We determined that he was in possession of this in his
18 residence and all the items -- I mean, we charge accordingly
19 based on what we find.

20 Q And that was at the residence that was then obviously
21 identified as Mr. Crimminger's residence.

22 A Yes.

23 MS. WINE: Okay. No further questions, thank you.

24 THE COURT: Recross?

25 MR. FRICK: Real quick.

KIERRA FAYALL - RECROSS

1 RECROSS EXAMINATION

2 BY MR. FRICK:

3 Q Have you still got your report up there?

4 A Yes, sir, I do.

5 Q Look at -- in that list it's the second one down as
6 614, crystal substance?

7 A Okay.

8 Q Is that the pants we're talking about?

9 A You said 614 it says meth pipe living room table.

10 Q I'm sorry. These are the pants that we were asking
11 about, right?

12 A Yes, sir.

13 Q And you notated where you found them.

14 A Yes.

15 Q Where did you found them.

16 A It states pants pocket on couch in the living room.

17 Q Pants in the living room.

18 MR. FRICK: Thank you, ma'am.

19 A Yeah.

20 MS. WINE: Nothing further, Judge.

21 THE COURT: Thank you, ma'am, you can step down. You
22 can call your next witness.

23 MR. ALLEN: State calls Investigator Ed Lockhart to the
24 stand.

25 The witness, ED LOCKHART, was first duly sworn and

ED LOCKHART - DIRECT

1 Testified as follows:

2 DIRECT EXAMINATION

3 BY MR. ALLEN:

4 Q State your name and occupation.

5 A Lieutenant Lockhart with the Lancaster County Sheriff's
6 Office.

7 Q And what do you do with the Lancaster County Sheriff's
8 Office?

9 A I'm over the Drug Task Force Unit currently.

10 Q And what do you do as a Lieutenant who's in charge of
11 the Drug Task Force Unit?

12 A Supervise narcotics agents who investigate day to day
13 narcotic crimes and stuff throughout the day.

14 Q So tell me, what does that mean to investigate narcotic
15 crimes? Will tell them the kind of things you do?

16 A We have different complaints coming in. People call
17 about people selling drugs and we have to conduct
18 surveillance. We do independent investigations on
19 particular people, organization and groups, stuff like that.

20 Q And how long have you been with the Lancaster County
21 Sheriff's Office?

22 A Ten years.

23 Q And how long have you been over the Lancaster County
24 Drug Task Force?

25 A One year.

ED LOCKHART - DIRECT

1 Q One year?

2 A Yeah.

3 Q And tell me, is there any kind of special training or
4 certification to become a narcotic investigator?

5 A We do independent training. Like Investigator Fayall
6 stated earlier, you do an investigator school at the academy
7 and you go through all of the stuff at the academy,
8 different specialized trainings you go through as far as
9 drug analyzation and drug recognition and stuff like that.

10 Q All right. And I'm going to draw your attention to
11 this case in particular, were you involved in the case that
12 we're discussing today?

13 A Yes, sir.

14 Q How?

15 A At that time I was part of the drug team. Of course,
16 we were there that morning, myself, Lieutenant Jaillette and
17 Investigator Fayall, Investigator Beck, along with the SWAT
18 team, I think Captain Miller was there as well for
19 supervision.

20 Q And this was the execution of a search warrant?

21 A Yes, sir.

22 Q And what were you looking for?

23 A At that point I think originally we went there for
24 heroine, any other illicit drugs, tools of the drug trade as
25 stated earlier.

ED LOCKHART - DIRECT

1 Q And what was your role in this search? I mean, I
2 assume everybody has got kind of a different job?

3 A Yes, sir. Well, you do it collectively, you know, and
4 you just take it upon yourself to do stuff assisting with
5 the search, also took some photographs of the stuff that we
6 found.

7 Q So what do you mean assist with the search? What does
8 that look like?

9 A Well, after the execution of a search warrant, when a
10 search warrant is read to an individual at the home and
11 people go to the restrictive area to start searching, you
12 assist with that, unless stuff will start being found, and
13 then once stuff is found I was in charge of taking the
14 pictures of the stuff that we seized.

15 Q Okay. So if somebody finds something, what would
16 happen then?

17 A They would contact me if I'm in another room or
18 whatever I'm doing, I'm coming to take a picture of what
19 they got and note it for report purposes of where it was at.

20 Q So would they bring it to you or would they call you
21 over? How was that -- what would they do?

22 A I would go to them and they would -- the seizing
23 officer would get it at that point but I would take a
24 picture of it.

25 Q Well, why wouldn't the officer just bring it to you?

ED LOCKHART - DIRECT

1 A Would the officer bring it to me? Well, we needed to
2 know exactly where it was at, where it was located at.

3 Q So this policy what I'm hearing you say, and correct me
4 if I'm wrong please, you were in charge of keeping track of
5 it, basically getting pictures of it as the officer found
6 it?

7 A Yes, sir.

8 Q And unmoved.

9 A Unmoved.

10 Q All right. Thank you. I'm going to draw your
11 attention -- do you have some pictures in front of you by
12 the way?

13 A Yes, sir.

14 Q I'm going to ask you to look at the one marked State's
15 Exhibit 2.

16 A Yes.

17 Q Without describing what's on it, can you tell me what
18 it is?

19 A Without describing what's on it?

20 Q Well, the document itself, what is it?

21 A It's a picture.

22 Q It's a picture. Do you recognize what it's a picture
23 of?

24 A Yes.

25 Q Is it a picture that you took in the execution of the

ED LOCKHART - DIRECT

1 search warrant?

2 A Yes, sir.

3 Q Does it fairly and accurately depict what you saw on
4 that day?

5 A Yes.

6 MR. ALLEN: Your Honor, I ask this be entered into
7 evidence as State's Exhibit 2.

8 MR. FRICK: I don't have the first clue what State's 2
9 is.

10 MR. ALLEN: My apologies.

11 MR. FRICK: Judge, with all the pictures I'll have my
12 continuing objection based on pretrial motions.

13 THE COURT: Okay. Objection noted, objection
14 overruled.

15 (State's 2 was received.)

16 Q All right. Now, at this time can you tell me exactly
17 what's on the picture?

18 A I can't see it.

19 Q Oh, my apologies. I'm about to set it up so we can
20 look at it on the big screen?

21 MR. ALLEN: Your Honor, I ask at this time that we be
22 able to publish this to the jury.

23 THE COURT: Yeah. Permission to publish granted. Is
24 y'all's screens working in front of you?

25 (Break in proceedings.)

ED LOCKHART - DIRECT

1 Q All right. Investigator, can you see the picture now?

2 A Yes.

3 Q And what are we looking at here?

4 A This was a container that was in the bedroom, I
5 believe, there's some pills and different stuff. There's
6 two orange pills at the top left, and the wrapper is
7 important, too, because at this point we took a picture of
8 this. Because narcotics are generally packaged, especially
9 when you get in powder, or heroine, or something like that,
10 it's packaged in stuff that look like a piece of aluminum
11 foil, so it's wrapped up really tight. So that was a
12 picture of that, as well as the pills that it had inside of
13 this container.

14 Q Thank you. Now I'm going to ask you to find what's
15 marked as State's Exhibit 3.

16 A Yes.

17 Q And can you tell me what it is without saying what's on
18 it?

19 A It's a picture.

20 MR. ALLEN: May I approach?

21 THE COURT: Yes.

22 MR. ALLEN: Your Honor, at this time I would ask that
23 we admit State's 3 into evidence.

24 MR. FRICK: Same objection.

25 THE COURT: Objection noted, objection overruled,

ED LOCKHART - DIRECT

1 publish.

2 (State's 3 was received.)

3 Q And Investigator, now, at this time can you tell me
4 what are we looking at here?

5 A Yes sir. This is a pill bottle that we located during
6 the search, it was an Arnold Langley (phonetically), this
7 person was not at the residence, did not live at the
8 residence, for Oxymorphone. Specifically for another person
9 to possess this medication is why we took it because it
10 wasn't specifically his medication.

11 Q And do you know anything about Oxymorphone? Why would
12 they say --

13 A It's a controlled substance, yes, sir.

14 Q Thank you. And can you please find State's Exhibit 4?

15 A Yes.

16 Q And what is that?

17 A It's a picture.

18 Q And once again, is this a fair and accurate
19 representation of what you saw on that day?

20 A Yes, sir.

21 Q Is the same true for State's Exhibit 3?

22 A Yes.

23 MR. ALLEN: Your Honor, at this time I ask that we
24 submit State's Exhibit 4 into evidence.

25 MR. FRICK: Same objection.

ED LOCKHART - DIRECT

1 THE COURT: All right. Objection noted, objection
2 overruled. Permission to publish.

3 (State's 4 was received.)

4 Q And what are we looking at here?

5 A This is a picture of a cardboard box, inside of the box
6 there's a pill bottle -- a blue pill bottle, no labels on
7 it. And we could go further into --

8 Q Yeah. Okay. I mean, what's that -- is that in a
9 cardboard box?

10 A Yes. There's a box around it but there's a pill bottle
11 that is down there in it. Do you see it?

12 Q And do you recall where that cardboard box was found?

13 A It's notated in the supplement, I don't have it in
14 front of me, I'm thinking it's in the master bedroom.

15 Q Would it refresh your memory if I showed you that
16 supplement?

17 A Yes, sir.

18 MR. ALLEN: May I approach the witness?

19 THE COURT: Yeah.

20 Q Investigator, please review that and then testify from
21 your memory.

22 A Let me back up. This is going to be the toolbox. It's
23 a pill bottle that was found in a toolbox.

24 Q In the front room?

25 A Yes, sir.

ED LOCKHART - DIRECT

1 Q Let me grab that supplement from you. Thank you. Now
2 I'll draw your attention to State's Exhibit 5. And again,
3 do recognize what it is?

4 A Yes, sir.

5 Q It's a fair and accurate representation of what you saw
6 that day? Let me grab that from you.

7 A Both of them?

8 Q Actually -- yeah. Just for the sake of brevity we also
9 have Exhibit 6. Is that also a fair and accurate
10 representation?

11 A Yes, sir.

12 MR. ALLEN: Your Honor, I ask that Exhibits 5 and 6 be
13 entered into evidence and published.

14 MR. FRICK: Same objection.

15 THE COURT: Objection noted, objection overruled,
16 permission to publish.

17 (State's 5 and 6 were received.)

18 Q And what are we seeing here?

19 A That's a small container.

20 Q Is that the same blue pill container that we just
21 talked about?

22 A Yes, sir.

23 Q And what appears to be inside?

24 A It's a plastic wrapping with a white substance in it,
25 right now I don't know what it is until we pull it out.

ED LOCKHART - DIRECT

1 MR. ALLEN: Your Honor, I ask that Exhibit 6 be entered
2 and published.

3 THE COURT: All right.

4 MR. FRICK: Same objection?

5 THE COURT: I thought we just did that, but without
6 objection, noted and publish.

7 Q And what is this?

8 A That's the rock substance that come from inside.

9 Q And what does it appear to be? I mean obviously you're
10 not a chemist.

11 A It appears to be crack cocaine.

12 Q It appears to be crack cocaine?

13 A Yes, sir.

14 Q All right. Please review the next few. And we can do
15 these in small batches.

16 A Okay.

17 (Break in proceedings.)

18 Q So now that you've had a chance to review State's
19 Exhibits 7 through 28, are they all fair and accurate
20 representations of what you saw on that day?

21 A Yes, sir.

22 MR. ALLEN: Your Honor, I ask now that State's
23 Exhibits 7 through 28 be entered into evidence and
24 published.

25 MR. FRICK: Same objection.

ED LOCKHART - DIRECT

1 THE COURT: Objection noted, objection overruled,
2 permission to publish.

3 (State's 7-28 are received.)

4 Q And can you tell me what we're looking at here?

5 A Yes, sir. This is a pill bottle, there's several pills
6 at the bottom of the pill bottle.

7 Q And State's Exhibit 8?

8 A This is a glass pipe typically used with
9 methamphetamine.

10 Q And do you recall where this was found?

11 A That was on a table, I believe.

12 Q And State's Exhibit 9. What do we have here?

13 A Digital scales.

14 Q And why would you take note of a digital scale?

15 A Digital scales are typically used when you're weighing
16 narcotics to sell and package. If you weigh it by the gram
17 or selling it by the point you need to know what you're
18 doing.

19 Q I'm sorry, you said by the point. What does that mean?

20 A By the point means .1, .2 grams of the substance, so a
21 lot of people breakdown heroine and fentanyl in that aspect
22 of points.

23 Q And State's Exhibit 10, what do we have here?

24 A It look like two additional pipes, one glass pipe and
25 one straight pipe it looks like.

ED LOCKHART - DIRECT

1 Q And why would somebody draw your attention to this?

2 A Typically associated with methamphetamine.

3 Q And I'll now draw your attention to State's Exhibit 11.

4 And what is this?

5 A This was a small ledger that they found, I think it was
6 in the back bedroom.

7 Q And why would you take a picture of this in particular?

8 A Because it states on there 1.1 bag on Tuesday.

9 Q And State's Exhibit 12, what do we have here?

10 A It's an additional set of digital scales. I'm not sure
11 what -- it looks like it was beside the bed in the bedroom.

12 Q State's Exhibit 13, what is this?

13 A Two additional set of scales.

14 Q Now, is that the same -- to the best of your knowledge
15 the same scale that was in State's Exhibit 12?

16 A Yes.

17 Q So that's just you pulled it out and then took a better
18 picture of it?

19 A Yes, sir.

20 Q I'm now going to draw your attention to State's Exhibit
21 14. What do we have here?

22 A On the right here you have the sandwich bags, on the
23 left side you have the small ripped up pieces of foil that I
24 spoke about earlier that is used to put the narcotic in and
25 wrap it up tightly for sale.

ED LOCKHART - DIRECT

- 1 Q Now, tell me, did you notice anything on any of those
2 wrappers?
- 3 A I can't recall.
- 4 Q Were you concerned about contamination --
- 5 A Yes.
- 6 Q -- from illicit narcotics?
- 7 A Yes.
- 8 Q And what do we see here?
- 9 A It's powder.
- 10 Q And what do we see here?
- 11 A Powder.
- 12 Q Is that powder?
- 13 A Might be a white spot. I'm not exactly sure what that
14 is to be honest with you.
- 15 Q Now I'm going to draw your attention to State's Exhibit
16 15.
- 17 A Those are jeans that were on the living room with the
18 bag of powder substance that come out the pocket.
- 19 Q And State's Exhibit 16?
- 20 A Same pair of jeans with an additional package that came
21 out of there.
- 22 Q So is it my understanding that both of those came out
23 of the same set of jeans?
- 24 A Yes, sir.
- 25 Q State's Exhibit 17?

ED LOCKHART - DIRECT

1 A Same pair of jeans just showing -- it was just taken
2 before, I think.

3 Q And State's Exhibit 18?

4 A This was a picture of his wallet and his
5 identification, it comes out of the back pocket of the
6 jeans. We just sat it there for identification and
7 confirmation that these were his jeans and we're in the
8 right place.

9 Q So they were the same set of jeans as those two baggies
10 of powder that we just saw?

11 A Yes, sir.

12 Q This is State's Exhibit 19. What are we looking at?

13 A If you look closely right here in the --

14 Q Hold on, I actually can look closely, I believe.

15 A It's -- right there's a small plastic bag with some
16 sort of substance inside.

17 Q State's Exhibit 20.

18 A Do you want to back it out? It's a small purple
19 container, I think there's another picture associated with
20 it. As you open it up it had an additional package inside
21 of there.

22 Q Yeah. We'll go through these briefly. State's 21. Is
23 that the same --

24 A Yes, sir, same.

25 Q States 22?

ED LOCKHART - DIRECT

- 1 A Yes. That's after we opened it and saw the plastic and
2 the substance inside.
- 3 Q And I can't see really well, could you describe the
4 substance found inside?
- 5 A Yes. It's a plastic substance, I think it had a powder
6 substance in this one. It was rock substance in one and I
7 think this was a powder substance.
- 8 Q States 23?
- 9 A That's currency, U.S. currency with a plastic container
10 containing some powder substance.
- 11 Q Where is that plastic container?
- 12 A No, plastic bag, it's a plastic bag. The currency is
13 wrapped around the plastic bag.
- 14 Q Are you referring to --
- 15 A Yes, sir.
- 16 Q Okay. And where was that found?
- 17 A I would have to look back at my notes, yes, sir.
- 18 MR. ALLEN: Your Honor, may I approach the witness?
- 19 THE COURT: Yes.
- 20 Q Refresh your memory.
- 21 A It was on the floor.
- 22 Q Thank you. State's Exhibit 24. What do we have here?
- 23 A Some more packaging, straws, paraphernalia items.
- 24 Q What part of this contains packaging?
- 25 A The part to the right with the scissors and all, yes,

ED LOCKHART - DIRECT

1 sir, where you've got your finger at.

2 Q Right there?

3 A Uh-huh.

4 Q And do you recall what kind of packaging that is? I
5 can't quite make it out.

6 A Small foil packages that was used to wrap the narcotics
7 in.

8 Q State's Exhibit 25. What do we have here?

9 A Those are the sandwich bags that were located in the
10 kitchen.

11 Q And those were just sandwich bags, right?

12 A Yes, sir.

13 Q States 26?

14 A That was a sandwich bag in the container that we saw
15 earlier, this was just a different picture of it. It was
16 smaller -- like I say, a smaller -- the container actually
17 some smaller plastic bag like, like some smaller Ziplock
18 bags and the foil wrapper in there.

19 Q And about how big are these smaller plastic bags?

20 A They're probably the size of maybe a quarter, it's real
21 small.

22 Q And 27?

23 A It's just different frame on the picture of the glass
24 pipe.

25 Q And finally, State's Exhibit 28?

ED LOCKHART - DIRECT

1 A That's the picture of the door lock, the damage of the
2 door that was done when they used the door ram that they
3 entered on.

4 Q Thank you, Investigator. Now I'm going to draw your
5 attention to some physical items that we were discussing
6 earlier. Is there a bag in front of you that says State's
7 Exhibit 29?

8 A Yes.

9 Q Without describing the contents, can you tell me what
10 it is?

11 A It's a plastic bag.

12 Q It's a plastic bag? Does it have a writing on it? I
13 mean, is it a --

14 A Yes, it's a SLED BEST kit.

15 Q Tell me, what is a SLED BEST kit?

16 A A SLED BEST kit is essentially another evidence bag
17 that is secured that we enter our evidence bags in after --
18 we seal our evidence bag, and then we enter our sealed
19 evidence bag into the SLED BEST kit bag, and that's entered
20 into evidence to be packaged to go to SLED. What that does
21 is keeping up with who sealed the bag, the time the bag was
22 sealed and chain of custody, it goes all the way -- so
23 everything is documented, you know, who touched what and
24 when they touched it.

25 Q And were you present when that SLED BEST kit was

ED LOCKHART - DIRECT

1 sealed?

2 A Yes, sir.

3 Q And did you seal it personally?

4 A No, I did not seal it personally.

5 Q But you were there?

6 A Yes, sir.

7 Q And is it in substantially the same condition as it was
8 when it was sealed that night obviously with the exception
9 of being opened by SLED?

10 A Yes, sir.

11 MR. ALLEN: Your Honor, we ask that at this time the
12 SLED BEST kit be entered into evidence as State's Exhibit
13 Number 29.

14 MR. FRICK: Same objection.

15 THE COURT: All right. Objection noted, objection
16 overruled.

17 (State's 29 was received.)

18 (Break in proceedings.)

19 MR. ALLEN: Thank you, Your Honor. I have a quick
20 matter of law that perhaps we should address on side bar?

21 THE COURT: All right. Hang on.

22 (A bench conference was held with the Judge and
23 Attorneys.)

24 THE COURT: Ladies and gentlemen, let's take a brief
25 recess. While we're doing that, don't talk about the case

ED LOCKHART - DIRECT

1 but here is what I want you to do, I want you to elect among
2 yourselves who's going to be your foreperson. It can't be
3 an alternate, obviously, but it has to be one of the first
4 12 who were selected, so if you're an alternate, sorry,
5 you're not in the running. But talk amongst yourselves,
6 obviously get to know each other, but don't talk about the
7 case itself because you haven't heard everything and I
8 haven't given you the law yet. So y'all go ahead and do
9 that right now during the break and then let the bailiff
10 know who the foreperson is going to be and we'll bring you
11 back out here momentarily while they get whatever they've
12 got to do straight. Okay?

13 (The jury left the courtroom.)

14 THE COURT: All right, let's go back on the record.
15 The lawyers asked to approach the bench dealing with a
16 matter of law. Solicitor, tell for the record what the
17 matter of law was.

18 MR. ALLEN: We have a sealed evidence bag that contains
19 two scales, a pack of cigarettes -- well, three scales, a
20 pack of cigarettes and a spiral bound notebook. It's the
21 State's intention to only enter in the three scales, and so
22 we ask just from a housekeeping standpoint how to keep these
23 things separate and preserved.

24 THE COURT: Okay. And what are you planning on doing,
25 opening up the bag and taking out the stuff that ain't the

ED LOCKHART - DIRECT

1 scales?

2 MR. ALLEN: Yes, Your Honor, that's correct.

3 THE COURT: All right. What's the defense's position
4 on that?

5 MR. FRICK: I would have my same objection. But, Your
6 Honor, I don't think there was any testing done on it so I
7 think they can remove that, put a marker on it and just
8 enter that separately.

9 THE COURT: Because nobody knows what's in the book or
10 whatever it is, right? Well, the defense, at least, doesn't
11 know what's in the book.

12 MR. FRICK: I don't think the State has the first clue
13 either.

14 MR. ALLEN: Also true.

15 THE COURT: All right. Permission granted then to open
16 up the bag, remove that book, whatever it is, and remove the
17 pack of cigarettes leaving only the three scales, which your
18 position is protected in the record. I overrule your
19 objection on those documents -- or that's -- the scale is
20 coming into evidence.

21 MR. FRICK: Right. Your Honor, I would have a similar
22 issue on another package over here.

23 (Break in proceeding.)

24 THE COURT: All right. We have an issue. Solicitor,
25 go ahead.

ED LOCKHART - DIRECT

1 MR. ALLEN: Yes, Your Honor. Considering some evidence
2 did test positive for fentanyl there is a concern about the
3 residue that's on the scales, it appears that they are not
4 separately bagged. From a safety standpoint --

5 THE COURT: Well, here is the thing, the jury is not
6 going to be able to go into the bag anyway. I'm not going
7 to let the jury go into the bag and touch the scales anyway
8 for that safety concern. Go ahead.

9 MR. FRICK: I would have an additional grounds for
10 objection in that case, Your Honor. They have photographs
11 of all of this stuff, those have been admitted into
12 evidence, this is not necessary, it's cumulative.

13 THE COURT: I agree with the defense on that.

14 MR. ALLEN: Understood.

15 THE COURT: All right, good. That way we don't have to
16 deal with the bag at all.

17 MR. ALLEN: Yes, sir.

18 THE COURT: The picture is in already, so -- okay.
19 Anything else?

20 MR. FRICK: And just to clarify -- Number 33 there's
21 another -- this is what they've called the ledger, they've
22 got the photograph in, they've got the pipes in, and again,
23 I don't know what's on the rest of these pages, although I
24 see writing on them, so I would make the same objection that
25 everything has been photographed into evidence, the rest of

ED LOCKHART - DIRECT

1 the stuff is just cumulative and doesn't need to come in.

2 THE COURT: Well, I'm going to deny your motion as to
3 that because that's the pipe that's identified, that's a
4 crucial piece of evidence for the State. That's also the
5 book, or whatever they refer to as the ledger, that one pint
6 equals the one thing and that's already in evidence and so
7 I'm going to deny your motion on that, or overrule your
8 objection on that. Anything you want to add for the record
9 on that?

10 MR. ALLEN: I am going to defer to counsel, if I could
11 just beg the Court's indulgence.

12 MS. WINE: We're happy to withdraw that particular bag,
13 I think it would be 33. I do share Mr. Frick's concern that
14 we don't -- I don't know myself what's on those other pages.

15 THE COURT: Okay. So the State then consents to having
16 the bag itself not go back to the jury?

17 MS. WINE: Yes.

18 THE COURT: The photos then.

19 MS. WINE: Yes, sir.

20 THE COURT: All right. So the State consents.

21 MS. WINE: Yes, sir.

22 THE COURT: Okay. So ordered then, perfect. All
23 right. So we get them out and let them sit there -- well,
24 no, go ahead and get it out of view so the jury won't ask
25 why doesn't it come back with us.

ED LOCKHART - DIRECT

1 (Break in proceedings.)

2 THE COURT: What about that bag there in front of you,
3 Jason?

4 MS. WINE: That's a scale.

5 MR. ALLEN: Another scale? This is 32.

6 THE COURT: Have you moved that in yet?

7 MR. ALLEN: We have not moved that in yet.

8 THE COURT: That can go in because that's all it is is
9 a scale, that way they can see what a scale is.

10 MR. ALLEN: All right. And 31 is what's been
11 identified as a glass pipe.

12 THE COURT: A who?

13 MR. ALLEN: A glass pipe.

14 THE COURT: That's all that's in there.

15 MR. ALLEN: That's all that's in there.

16 THE COURT: There is no issue on that except for the
17 previous objections.

18 MR. FRICK: Yes, sir.

19 THE COURT: All right. And you'll make that
20 contemporaneous to those things being offered.

21 MR. FRICK: Yes, sir.

22 THE COURT: All right. Anything else before we bring
23 the jury back out? All right. Will you go see if they've
24 selected a foreperson and if they have bring them on back
25 out?

ED LOCKHART - DIRECT

1 (Break in proceedings.)

2 MR. ALLEN: Your Honor, we also have one more issue
3 that Investigator Lockhart was kind enough to remind me,
4 there is this bag of baggies, once again there's a picture
5 of them into evidence and I feel like we could probably just
6 handle it the same way.

7 THE COURT: That's all it is is baggies?

8 MR. ALLEN: Bag of baggies.

9 THE COURT: We don't know what's on them. Okay? Well,
10 I mean, you don't care.

11 MR. FRICK: Yeah, that sounds good to me.

12 THE COURT: All right.

13 (The jury returned to the courtroom.)

14 THE COURT: That's you. Ma'am, you're the --

15 THE JUROR: Yes, sir.

16 THE COURT: You will be the foreperson of the jury, and
17 as the foreperson, ma'am, you will be the juror to preside
18 over deliberations in the jury room. You will also be the
19 juror spokesperson here in court, like if y'all need a break
20 or something somebody may try to look around, that kind of
21 thing. And you'll be the -- it will be your duty to write
22 whatever the jury's verdict is on the verdict form, which I
23 will go over with you in detail at the end of the trial.
24 Okay. And -- but you can't write on the verdict form until
25 all 12 of you agree as to what the verdict is going to be,

ED LOCKHART - DIRECT

1 and I'll get to that in a moment -- well, at the end of
2 trial. Okay? Thank you. You can resume questioning.

3 MR. ALLEN: Thank you, Your Honor.

4 BY MR. ALLEN:

5 Q At this time we're going to bring up to you what's
6 marked as State's Exhibit 31. Can you identify what's in
7 that at this time?

8 A It's a glass pipe.

9 Q Do you recognize where that glass pipe is from? Is
10 that --

11 A Yes, sir. That's the one that was on the living room
12 table.

13 Q All right.

14 MR. ALLEN: Your Honor, at this time we would ask that
15 State's Exhibit 31 be moved into evidence.

16 MR. FRICK: Same objection, Your Honor.

17 THE COURT: Objection overruled. You've already
18 published a picture of it.

19 (State's 31 was received.)

20 Q At this time we'll bring up what's been marked as
21 State's Exhibit 32. And can you tell me what that is?

22 A It's digital scale.

23 Q And is that the same digital scale as one that was
24 depicted in one of these pictures?

25 A Yes, sir.

ED LOCKHART - DIRECT

1 Q So just to review real quickly, all of these physical
2 items that we just talked about were captured in these
3 pictures; is that right?

4 A Yes, sir.

5 Q All right. Next I'm going to ask you about the
6 decision to charge. Were you involved in the decision of
7 who to charge with what crime?

8 A It was a collective, I guess, conversation between the
9 supervisor but I don't think I was privy to it.

10 Q All right. Then I'll go and direct your attention
11 to -- I believe I heard earlier that there was a woman who
12 was in the house when the drug team made entry; is that
13 right?

14 A Yes, sir.

15 Q Do you recall who that was?

16 A Tammy Wright I think is her name, she was also in the
17 back bedroom.

18 Q To the best of your knowledge was Ms. Wright charged
19 with anything?

20 A No, sir.

21 Q Did she, to the best of your knowledge, live in that
22 house?

23 A To the best of my knowledge, no, sir, she didn't.

24 Q Who else lived in the house, I mean, as far as you
25 know?

ED LOCKHART - DIRECT

1 A Mr. Crimminger and his father, and I think his father
2 was deceased.

3 Q And Ms. Wright didn't have a pair of pants with an ID
4 in it?

5 A No, sir. We did not locate anything like that.

6 Q Was there any mail?

7 A For her? No, sir.

8 Q Was there any kind of personal effects?

9 A I can't recall.

10 Q Do you recall finding any like jewelry or toiletries?

11 A No, sir.

12 Q So what led you to believe that Mr. Billy Crimminger
13 was the only person in the house? I mean, apparently his
14 deceased father used to live there.

15 A Because of the stuff that was there; his ID, his
16 clothing, his tools, all of the stuff that belonged to him
17 led us to believe, and also through surveillance that we had
18 done weeks prior to --

19 MR. FRICK: Objection, Your Honor.

20 THE COURT: Sustained.

21 Q All right. I'm going to just ask you --

22 MR. FRICK: Move to strike, Your Honor.

23 THE COURT: Sustained. Move to strike. The jury will
24 disregard that last statement by the investigator.

25 MR. ALLEN: If I can beg the Court's indulgence for one

ED LOCKHART - CROSS

1 moment.

2 THE COURT: Yeah.

3 (Break in proceedings.)

4 Q As far as you can tell based on only what you saw that
5 day, Mr. Crimminger had access to the entire house and he
6 was the only one living there?

7 A Yes, sir.

8 MR. ALLEN: Thank you, I have nothing further.

9 THE COURT: Mr. Frick?

10 MR. FRICK: Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MR. FRICK:

13 Q What are you, a lieutenant now?

14 A Yes, sir.

15 Q Okay. Lieutenant Lockhart, essentially your role in
16 this case was photographing the evidence, correct?

17 A Yes, sir.

18 Q I mean, you went in with the team but your role was
19 just making the photographs, correct?

20 A Yes, sir.

21 Q You weren't involved with testing of items or charging
22 decisions it sounded like.

23 A Not charging decisions but, I mean, searching, I
24 assisted with that, but essentially, yes.

25 Q Right. Okay. So you're familiar with all of the stuff

ED LOCKHART - REDIRECT

1 that got collected here. And, of course, you've been in law
2 enforcement a long time, before that you were a probation
3 agent for a long time, correct?

4 A Been in law enforcement for 17 years.

5 Q Seventeen years. Okay. So you've seen glass pipes
6 before.

7 A Yes, sir.

8 Q Those were indicative of drug use, are they not?

9 A Yes, sir.

10 Q And I think you said that Mr. Crimminger's father had
11 lived at this house prior, I mean, before?

12 A Yes, sir.

13 Q Okay. And you said he'd passed away?

14 A I'm not sure when, yes, sir.

15 Q Okay. And, of course, you've been in law enforcement
16 in Lancaster a long time, you're just familiar with the
17 community and you -- that's why you knew that.

18 A Yes, sir.

19 MR. FRICK: Okay. All right. Thank you, sir, that's
20 all of the questions I have.

21 THE COURT: Any redirect?

22 MR. FRICK: I'm sorry, can I ask one quick question?

23 THE COURT: Sure.

24 BY MR. FRICK:

25 Q All right. We made the determination that Mr.

ED LOCKHART - REDIRECT

1 Crimminger, that this was his residence, but at 6:10 in the
2 morning when y'all came in the front door Ms. Wright was in
3 the bed in the back bedroom, correct?

4 A When I initially laid eyes on her she was being brought
5 out of the house, but per the SWAT team commander, yes, sir,
6 she was located in the back bedroom.

7 Q At 6:10 in the morning.

8 A Yes, sir.

9 Q Okay.

10 MR. FRICK: Thank you, sir.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION

13 BY MR. ALLEN:

14 Q So you've been in the game 17 years as Mr. Frick just
15 mentioned, and based on your experience you know that the
16 glass pipe is consistent with drug usage.

17 A Yes, sir.

18 Q What about little foil wrappers?

19 A Foil wrappers that are empty?

20 Q That's right.

21 A And, you know, no substance on them is used for drug
22 packaging.

23 Q What about a small scale?

24 A Scales are used typically to weigh the substance.

25 MR. ALLEN: Thank you. Nothing further.

1 THE COURT: Anything else?

2 MR. FRICK: No, sir.

3 THE COURT: Thank you, sir, you can step down. All
4 right. Ladies and gentlemen, we'll take a break for the day
5 actually, I have an appointment out of town this afternoon,
6 I apologize, don't get mad at them, get mad at me, so we
7 will reconvene in the morning, 9:30. Listen to the
8 bailiffs, they'll tell you where to show up. Remember what
9 I said at the outset of the trial this morning, while you're
10 away from here don't do any independent research. You only
11 can judge the evidence that you receive and hear in this
12 courtroom, and you haven't heard anything yet so don't talk
13 to anybody, even yourselves, about this case. Now, I'm not
14 naive, when you get home whoever you live with, if you live
15 with somebody, may ask you: Hey, are you on trial? Yeah.
16 What kind of case is it? Well it's a criminal case, or
17 whatever, that's fine, but you can just simply shut it down
18 and say: The Judge said I can't talk about it. Just blame
19 me, I'm used to being the bad guy. Okay? Thank you very
20 much, have a great afternoon and evening, we'll see you
21 first thing in the morning tomorrow morning. 9:30.

22 (The jury left the courtroom at 12:38 p.m.)

23 THE COURT: All right. Anything else for the record
24 before we recess for the day?

25 MS. WINE: Nothing from the State.

1 THE COURT: All right, thank you. See y'all tomorrow
2 morning.

3 (Court recessed for the day and resumed at 9:45 a.m.
4 On Wednesday, November 9, 2022.)

5 THE COURT: Back on the record. Before we bring the
6 jury back in, one of main jurors has a sick child that she
7 had to stay home with and I've excused her, so now we have
8 whichever alternate comes up. I have the clerk, she's
9 prepared to blind draw for the alternate. Mr. Frick, you
10 come draw and we'll see who gets moved up. And the winner
11 is juror number 89, Joshua Jordan has now moved to the
12 regular trial jury. Will you make a notation of that, Madam
13 Clerk?

14 THE CLERK: Yes, sir.

15 THE COURT: And do you have the juror number 73 as the
16 forelady of the jury?

17 THE CLERK: I did not, I was going to ask.

18 THE COURT: They voted on her yesterday. All right.
19 Anything else before we bring the jury for the purpose of
20 the record?

21 MS. WINE: I do not believe so, Judge.

22 THE COURT: Okay. Scheduling wise, anything from you,
23 Mr. Frick? Anything else before we bring the jury in?

24 MR. FRICK: I don't think so, Judge, no.

25 THE COURT: All right. Schedule wise?

1 MS. WINE: We have three witnesses left and they're all
2 in the room ready to go.

3 THE COURT: Okay. So we're -- the State will finish by
4 lunchtime.

5 MS. WINE: Yes, sir.

6 THE COURT: All right. At this point in time do you
7 see the defense putting up a case?

8 MR. FRICK: Mr. Crimminger may testify.

9 THE COURT: All right. So if he does that may be after
10 lunch, but nonetheless we're going to argue and charge
11 today.

12 MS. WINE: Yes, sir.

13 THE COURT: The jury will deliberate this this
14 afternoon. Okay, that's what I needed to know. The law
15 clerk is working on the charge and the proposed verdict for
16 at this time. Is there anything specific? I know we're
17 only two or three witnesses in, but anything specific that
18 either one of you think you may want to charge that I don't
19 already know from trying lots of these cases?

20 MS. WINE: Nothing from the State I don't believe.

21 MR. FRICK: Judge, I was looking, I don't know, I have
22 not tried one of these particular cases with you so I don't
23 know what your PWID charge is, but I was just looking at the
24 Anderson Charge Book, I suppose that's kind --

25 THE COURT: I have classic stuff. I think this is

ANN HORTON - DIRECT

1 going to be -- again, I don't want to -- we'll have a charge
2 conference officially later on, but just for the purpose of
3 him preparing something for me to read and hand out to y'all
4 before we have a charge conference, the defense's theory is
5 either it's not mine, or if it is it was just possession
6 level, correct?

7 MR. FRICK: Yes, sir.

8 THE COURT: All right. Is there an issue from the
9 State that I shouldn't charge a lesser offense of
10 possession?

11 MS. WINE: No, nothing from the State.

12 THE COURT: Okay. So, I mean, mere presence. What
13 else?

14 MR. FRICK: That's it.

15 THE COURT: Hand of one, hand of all?

16 MR. FRICK: The Logan Charge that you always do.

17 THE COURT: I always do that. Okay. I think we're all
18 on the same -- all of the lawyers are on the same page so
19 we'll see where it goes. All right. Bring the jury in.

20 (The jury returned to the courtroom.)

21 THE COURT: Good morning, ladies and gentlemen. All
22 jurors are present. There was a juror who I actually
23 discharged because her children were sick or something like
24 that so that means one of the alternates gets moved, and the
25 way the procedure works is that two alternates are put in a

ANN HORTON - DIRECT

1 cup and the lawyers pick out whoever they pick out is who
2 the alternate is going to be, and the alternate chosen was
3 Mr. Jordan, juror number 89. Where are you, sir? All
4 right. You are now on the jury. Okay? So I just have one
5 remaining alternate left. I've been advised by the
6 attorneys we'll finish this case today. Okay? So we all
7 should be good already. All right? All right. Thank you
8 very much, ladies and gentlemen. Madam Solicitor, or
9 Solicitor, you can call your next witness.

10 MS. WINE: Thank you, Your Honor. The State calls Ann
11 Horton.

12 The witness, ANN HORTON, was first duly sworn and
13 Testified as follows:

14 DIRECT EXAMINATION

15 BY MS. WINE:

16 Q Good morning. Would you please state your name and
17 occupation?

18 A My name is Ann Horton. I am the custodian of evidence
19 for the Lancaster County Sheriff's Office.

20 Q Okay. And I may have you speak into the microphone
21 just a bit so we can make sure --

22 A Good?

23 Q Perfect -- for the Sheriff's Office here in Lancaster
24 County. And how long have you been in that role?

25 A Thirteen years.

ANN HORTON - DIRECT

1 Q All right. And have you served in any other capacity
2 with the sheriff's office here?

3 A No, and that's completely full-time.

4 Q In the evidence department.

5 A That's right.

6 Q And what kind of certifications or trainings do you
7 have to undergo?

8 A When I first started at the sheriff's office I was sent
9 to Tennessee to do an evidence class to show me how to
10 package and deal with the different types of evidence,
11 biological evidence, different ways of doing things and how
12 to store them in a room so that they would be taken care of,
13 we would know the individual pieces of evidence that we had
14 and be able to find those. Then after that I did go through
15 training that the intake people at SLED, the forensic intake
16 people, where they take my evidence in when I take it to
17 SLED to be analyzed, and they train us on how it needs to be
18 packaged for evidence preservation.

19 Q And relating to the role that you have, is the main
20 purpose of your role to preserve evidence that's collected
21 during investigations?

22 A That's correct, preserve and individualize it so that
23 it may be cataloged in the chain of custody.

24 Q Okay. And the cataloging, is that done through a
25 computer system?

ANN HORTON - DIRECT

1 A It is. When we receive a piece of evidence, each piece
2 is -- for a case is given a specific number so that it tells
3 you, number one, is this type of evidence, and then it tells
4 me where it is stored.

5 Q And the procedure from when evidence, regardless of
6 what it is, is brought to the evidence department of the
7 sheriff's office, could you walk us through that, the
8 receiving procedure?

9 A Sure. Each one of the officers has a scan card that
10 they can come into a portion of the evidence where they
11 secure their evidence in a locker system for us. They
12 cannot come back into the evidence department. And certain
13 times during the day we go out with keys to these lockers
14 and we're able to go in the lockers and secure the evidence
15 out of there into the department. They do package their
16 things out there depending on how what analysis is going to
17 be done, and then when we bring it in we either add
18 additional packaging like into a box or whatever so that it
19 can transfer to SLED, or go back to our crime scene
20 investigators where they do some work.

21 Q Okay. And as part of your role you are maintaining the
22 evidence as its presented to you, is that a fair
23 characterization?

24 A That is correct. I do not change anything.

25 Q Okay. So you don't make decisions as to what is

ANN HORTON - DIRECT

1 analyzed or for what purpose.

2 A I do not. That is directed by investigators, what they
3 are looking for. I'm not an investigator. There's a
4 lieutenant over our department and she converses with the
5 investigation department, and then I am told what type of
6 evidence or what type analysis we need for that evidence.

7 Q All right. And the process that you talked about with
8 the secured lockers, are you the only person that deals with
9 evidence, or are there other individuals with the
10 department?

11 A I am not. Like I said, we do have a lieutenant over us
12 in the evidence department, and then there is another
13 evidence technician that does work with me, and we usually,
14 both of us together, including the lieutenant, will empty
15 these lockers together and all. But there are two other
16 people.

17 Q Okay. And is that for just personnel reasons, one
18 person can't do the whole job?

19 A Well, it is a lot and one person really can't do the
20 whole job, but that is also for a chain of custody reasons
21 with that evidence. We want more than one person to be with
22 that evidence at all times to -- we have to say that nothing
23 has been changed, nothing has been done to that evidence.
24 We do also have cameras in there, so if anything, you
25 know -- if there was any question.

ANN HORTON - DIRECT

1 Q Okay. And these evidence technicians, do they work
2 directly with you?

3 A Yes.

4 Q And have they -- do they go through similar training,
5 maybe not the same exact classes but similar training as
6 you?

7 A Yes, they do. The other evidence technician that works
8 with me, she came years after I started, but I have trained
9 her the exact way I was trained and the way we do things
10 under or lieutenant's direction, and it's all done in a
11 uniformed manner.

12 Q Okay. And that uniformed manner, is that documented
13 through a paperwork system or a log system implemented by
14 the sheriff's office?

15 A Through paperwork and through our computer system.

16 Q Okay. So would it be a fair characterization that if
17 evidence is received by you or an evidence technician using
18 the protocols and policies that you've been trained under
19 and that you have to adhere to, that you would expect those
20 policies to be followed in cases where evidence is received.

21 A Absolutely.

22 Q Okay. And if we had any concerns about that there's
23 cameras or other logs that we could check about the
24 integrity of those items.

25 A Absolutely.

ANN HORTON - DIRECT

1 Q And so you mentioned you've been there for about 13
2 years, so this goes without saying, but you were in that
3 role in March of 2019; is that right?

4 A I was.

5 Q And with the case currently before the Court, you did
6 not go to the incident location on Baskins Hill Road; is
7 that right?

8 A No, that is not part of my job.

9 Q Okay. And so you're mainly based out of the evidence
10 department there at the sheriff's office.

11 A I am.

12 Q And could you please describe your involvement with
13 this case that's before the Court?

14 A Well, when things come into the evidence lockers and an
15 investigator, deputy, any of our officers put things in one
16 of our lockers or in one of the secured drawers, they drop a
17 key into our door, which we retrieve to go out and get that
18 evidence. Now, in this case I don't know who was with
19 Brittany, we have a two or three person role, but she was
20 the one that signed off on this particular piece of evidence
21 and brought it into the department. She logged it into the
22 computer system, which means she gave it a specific number
23 for this case so it could be tracked, and then she put it in
24 our secure area of things that would most likely be tested
25 when our lieutenant told us it was time to take it to SLED.

ANN HORTON - DIRECT

1 At that point I would retrieve it from that area, and then I
2 began to do what we call an I-Lab, and that's through the
3 South Carolina Law Enforcement Division, which is known as
4 SLED, that I tell them this is the piece of evidence I have,
5 this is what type of case it is on, and give them a little
6 information about that, and then tell them specifically what
7 type of analysis we need for that.

8 Q Okay. And you mentioned briefly this two person rule.
9 Could you just explain that to us?

10 A Well, what we try to do at all times, when we empty
11 these lockers we want more than one person out there. It's
12 just not a good idea to not have that extra person with you.
13 When we go into the safe or anything that has to do with our
14 evidence it needs to be two people there for -- just for
15 security.

16 Q Okay. And this other individual with this case, did
17 she -- is she still employed by the sheriff's office?

18 A Yes, she is.

19 Q Okay. Is that Ms. Brittany Hudson?

20 A It is.

21 Q Okay. And did she -- she works along side of you, and
22 did you help train her in her duties when she came on board?

23 A I did.

24 Q Okay. All right. I have just handed you what has been
25 admitted into evidence as State's Exhibit Number 29. Do you

ANN HORTON - DIRECT

1 recognize that item?

2 A I do.

3 Q And what is that?

4 A This is a BEST kit that the officer put items in that
5 needed to be tested believed to be narcotics. And we always
6 used what is called a BEST kit, it's a Best Evidence
7 Sampling Test kit is what it is, and they secure their
8 evidence bag inside of this -- the plastic bag that's in
9 here. It has an integrity around it, this blue marking
10 around it, and if you tried to open that it would be
11 distorted in there. And so I checked -- the first thing I
12 check is that it is secure and has not been altered in any
13 way, and then I'm able to send it on to SLED with the proper
14 documentation and paperwork.

15 Q Okay. And tell us about this process of sending it to
16 SLED, or transporting to SLED. What's your role and
17 responsibility with that?

18 A Okay. Well, after I have everything in the I-Lab and
19 I've requested what type of analysis is to be done I box
20 these items up. But then someone -- I loosely call them a
21 gun toter, it will be an investigator, or one of the
22 officers will always go with me to SLED. Because the items
23 like this are with me, of course, which are illegal items
24 usually, or items of value or narcotics or things like that,
25 so someone always goes with me, in the car with me. They

ANN HORTON - DIRECT

1 drive, I ride.

2 Q Okay. And when you get to SLED, what do you do with
3 the items once you arrive?

4 A I have to make an appointment ahead of time, and then I
5 go in a secured room, not out in a lobby, in a secured room
6 where I take my I-Lab paper that I have done and I have to
7 punch a time clock for each piece of evidence when it goes
8 to SLED, I put it in a secured locker in there, and then
9 their forensic intake people come and get it from that
10 locker and do -- send it on upstairs where it needs to go.

11 Q Okay. And the evidence that you're holding is Number
12 29. Did you follow that procedure with that particular
13 piece of evidence?

14 A I did.

15 Q Okay. And is there -- when you look at it today aside
16 from it having been opened for any sort of analysis, is that
17 substantially the same as what you viewed it back in March
18 of 2019?

19 A Yes, it is.

20 Q And does it look like it has been tampered with
21 maliciously at all?

22 A No.

23 Q So when you submit it into the SLED with the request
24 for forensic analysis that's been instructed to you by the
25 investigator, does it stay with SLED in perpetuity, or

ANN HORTON - DIRECT

1 what's the next process?

2 A Well, after they complete their analysis then they are
3 going to send the investigator that I have told them is in
4 charge of this case, they're going to send that person an
5 analysis so they know exactly what it is. Then on the
6 following trip when I go to SLED to take more evidence, then
7 they're going to return this piece of evidence to me after
8 they've given the investigator the analysis.

9 Q Okay. And so you take it back to the sheriff's office
10 here in Lancaster?

11 A I do. And then I go back through the same process of
12 tracking the chain of custody back into our computer system
13 and then giving this a specific location so that later on
14 I'm able to retrieve it for court, or whenever necessary.

15 Q Okay. And did you transport the evidence in this case
16 to court here for us this week?

17 A Yes, I did.

18 Q Okay.

19 MS. WINE: Beg the Court's indulgence one moment.

20 THE COURT: Yeah.

21 (Break in proceedings.)

22 MS. WINE: That's all of the questions I have, please
23 answer Mr. Frick's questions.

24 THE COURT: Mr. Frick?

25 MR. FRICK: I have no questions for Ms. Horton.

BETHANY DAVIDSON - DIRECT

1 THE COURT: Thank you, ma'am, you can step down. The
2 State can call its next witness.

3 MS. WINE: The State calls Bethany Davidson.

4 The witness, BETHANY DAVIDSON, was first duly sworn

5 And testified as follows:

6 DIRECT EXAMINATION

7 BY MR. ALLEN:

8 Q Good morning. Would you state your name and
9 occupation?

10 A My name is Bethany Davidson, I am currently the
11 coordinator for our training unit at the South Carolina Law
12 Enforcement Division also known as SLED.

13 Q Is it agent or Miss, or what's your title?

14 A Miss.

15 Q Miss. All right. So currently you're with the
16 training division?

17 A Yes. Previously I was a Forensic Technician in our
18 Evidence Control Department for our Forensic Service
19 Laboratory.

20 Q And how long were you working in the Forensic Service
21 Laboratory?

22 A I was a Forensic Technician from July of 2018 until
23 October of 2020.

24 Q And what does a Forensic Technician do?

25 A A Forensic Technician for Evidence Control is in charge

BETHANY DAVIDSON - DIRECT

1 of all of the incoming evidence into our laboratory. We --
2 any evidence that is submitted from outside agencies or our
3 SLED agents, we take that evidence in, we ensure that it is
4 sealed and secure, we then process that evidence to generate
5 a unique lab and item number, and then we store it in our
6 secured evidence room until it is requested for analysis.

7 Q And what kind of training does it take to become a
8 technician?

9 A There is a lot of hands-on training. When I first
10 joined the Evidence Control Department I was sent to Georgia
11 for an evidence class, which goes over all of the proper
12 steps of taking in evidence and also securing evidence, and
13 then I worked one on one with an already trained forensic
14 technician for about a year.

15 Q So you worked with somebody for about a year before you
16 were on your own?

17 A Correct.

18 Q And is there any ongoing training as part of that job?

19 A It's all hands-on. What we do for the first couple of
20 months, we pretty much just observe the already trained
21 forensic technician. Once we start seeing how they -- how
22 our laboratory policies and procedures are we then are
23 signed off, and that's what we are released to be on our own
24 to log in evidence.

25 Q And is it fair to say, so you basically deal with the

BETHANY DAVIDSON - DIRECT

1 intake and outgoing of evidence?

2 A Correct.

3 Q But you don't process it yourself, you don't run any
4 tests or anything.

5 A No. The only thing we do is take in the evidence, and
6 then we're pretty much just transferring the evidence back
7 and forth from the submitting agencies and then our forensic
8 scientists.

9 Q And tell me, were you involved in this particular case,
10 the evidence in this case?

11 A Yes, sir, I was.

12 Q In what role?

13 A I would have transferred the evidence from our secured
14 evidence room to our forensic scientist, Willie Smith.

15 Q And tell us what that procedure looks like, when you
16 say transferred, do you just leave it on his desk, or what
17 is the process?

18 A So our forensic scientist, Willie Smith, would have
19 requested this evidence for analysis. I would have gone to
20 our secured evidence room, which only our forensic
21 technicians and our chain of command have access to. Once
22 we retrieve that evidence the forensic scientist would come
23 to our desk. We have -- as a technician we have a bar code
24 which would transfer that evidence into our custody, so it
25 generates on our chain of custody. The forensic scientist

BETHANY DAVIDSON - DIRECT

1 also has a bar code as well. We would have to scan -- when
2 we scan their bar code to transfer the evidence to their
3 custody they then have to put their password into our
4 computer system before they can even physically take custody
5 of that evidence.

6 Q And as part of your training, do they cover why you go
7 through all of this procedure?

8 A It is so that we can generate a chain of custody, that
9 way we know where the piece of evidence is at all times, and
10 we know everybody who has handled that evidence in our
11 laboratory.

12 Q All right. And so then the scientist, I guess, does
13 scientist things, and are you also the one who takes it back
14 to the locker?

15 A One of the forensic technicians -- whenever the
16 forensic scientist completes his analysis they will bring it
17 back down to our evidence room. One of us technicians that
18 worked in the evidence control would take custody of it,
19 transfer it back into our secured evidence room where it
20 would stay, and the submitting agency comes back to retrieve
21 that evidence.

22 Q And what happens when the submitting agency comes back?

23 A When they come back we have a -- essentially it's a
24 window that opens up to our secured evidence room, because
25 they are not allowed back there to us, we would then scan

BETHANY DAVIDSON - DIRECT

1 that evidence back into our custody, and then we scan it
2 into the custody of this submitting agency. They have to
3 physically sign for that evidence before we physically
4 transfer the evidence to them.

5 Q And all of this scanning and passwords and signature, I
6 assume that gets recorded somewhere?

7 A It is reported on our chain of custody.

8 Q So the SLED chain of custody explains who had it or
9 where it was every minute from the time you receive it to
10 the time that it leaves to the agency?

11 A Yes, sir.

12 Q Thank you.

13 MR. ALLEN: Beg the Court's indulgence.

14 (Break in proceedings.)

15 MR. ALLEN: I have nothing, please answer any questions
16 Mr. Frick may have.

17 THE COURT: Mr. Frick?

18 MR. FRICK: No questions for Ms. Davidson.

19 THE COURT: Thank you, ma'am, you can step down. The
20 State can call its next witness.

21 MS. WINE: The State calls Willie Smith.

22 The witness, WILLIE SMITH, was first duly sworn and
23 Testified as follows:

24 DIRECT EXAMINATION

25

WILLIE SMITH - DIRECT

1 BY MR. ALLEN:

2 Q Good morning. State your name and where you work.

3 A My name is Willie C. Smith, III, and I work for the
4 South Carolina Law Enforcement Division also known as SLED.

5 Q And what's your position at the South Carolina Law
6 Enforcement Division?

7 A I am a Forensic Chemist Senior Agent in that
8 department.

9 Q And what does a forensic chemist do? What is your day
10 to day job?

11 A Well, I work in the drug analysis department where we
12 receive evidence from across the state, and I analyze
13 whatever is submitted and determine if there's controlled
14 substances in it or not, and issue a report for it.

15 Q And how long have you been doing that?

16 A Twenty-two years and four months.

17 Q Well, what kind of training does it take to become a
18 chemist with SLED?

19 A I earned a Bachelor of Science Degrees in Biology and
20 Chemistry from the University of South Carolina. I went to
21 the South Carolina Criminal Justice Academy to become a
22 sworn law enforcement officer. I went through a year of
23 training to become a Certified Chemist and Drug Analyst.
24 And I also attend meetings to keep me up to date on new
25 drugs and new technology in the field.

WILLIE SMITH - DIRECT

1 Q And so that's a formal continuing education that you go
2 through?

3 A Yes, sir. Because I'm a member of a group Clandestine
4 Laboratory Investigators, and we keep -- meet every year
5 with chemists from around the world to discuss what's new in
6 the drug market and what new instrumentation we need to use
7 to determine all of these new type of drugs.

8 Q And so I assume on a number of occasions, have you been
9 ever asked to analyze heroine for example?

10 A Yes, all the time.

11 Q What about crack cocaine?

12 A Every drug on the market in my 22 years there I have
13 seen every single drug that's on the market.

14 Q Methamphetamines, prescription drugs, the whole gamut?

15 A Everything.

16 Q And about how many times -- I mean, on a given day how
17 often are you testing a new kit of drugs?

18 A Well, it all depends on the type of case, but I have
19 tested over 20,000 cases.

20 Q And have you ever testified in courts about the
21 analysis of a subject? You know, for example we have, I
22 think, four or five different kinds of drugs here, so have
23 you testified in court about your analysis?

24 A Yes. I've been certified an expert 102 times within
25 the State of South Carolina.

WILLIE SMITH - DIRECT

1 MR. ALLEN: Your Honor, at this time the State moves to
2 have Agent Smith qualified as an expert witness in the field
3 of chemical analysis.

4 THE COURT: All right.

5 MR. FRICK: No objection, Your Honor.

6 THE COURT: All right. Ladies and gentlemen, normally
7 when a witness testifies a witness can only testify about
8 what they saw, heard, smelled, et cetera, stuff like that.
9 However there is an exception for witnesses who were
10 qualified as experts in a particular field, or knowledge, or
11 training, and because of their training, expertise,
12 knowledge in a particular field they can be qualified as an
13 expert, meaning that they can offer an opinion. Okay? Now,
14 normally lay witness can't offer an opinion. Now, just
15 because an expert offers an opinion doesn't mean you have to
16 accept that expert's opinion, it's simply something that you
17 should consider giving the weight of all of the evidence
18 whenever you begin deliberating your verdict. Okay? All
19 right.

20 MR. ALLEN: Thank you.

21 Q Now, in this particular case were you asked to analyze
22 a substance, or multiple substances?

23 A Yes, I was.

24 Q And tell me like where did you retrieve -- I believe
25 it's called BEST kit; is that right?

WILLIE SMITH - DIRECT

1 A Right. It's a Best Evidence Sample Testing kit. It's
2 a kit that was supplied to agencies to submit to the
3 laboratory so that when I receive the evidence that the
4 evidence is secure.

5 Q And what does that retrieval process look like? Like
6 how do you get it to test it?

7 A Well, when I need work to do I send an email down to
8 our log-in evidence control department, and they pull cases
9 from our secure evidence room, and I pick up the evidence
10 from the secure evidence room from a technician that's found
11 there, and I put the evidence into my custody, and I take it
12 and I'll put it in our secure vault that's in our drug lab
13 until I have time to do my analysis of it.

14 Q And on what date and time did you take possession of
15 this particular kit?

16 A In this case I took possession of the evidence on
17 October 11th, 2019.

18 Q And after you received that kit, where did you take it?

19 A I took the kit and put it in our secure evidence vault
20 until I had time to work the case.

21 Q And how is that stored? You said it's a vault?

22 A It's a vault that's -- each of us analysts have a
23 separate area in the vault that has our area or evidence in
24 it, and it's -- no one else has access to it except the
25 forensic analysts, and no one has access to our evidence

WILLIE SMITH - DIRECT

1 except the analysts themselves.

2 Q Thank you. And is that the BEST kit?

3 MR. ALLEN: May I approach the witness, Your Honor?

4 THE COURT: Yes.

5 Q So do you recognize what's marked there as State's
6 Exhibit 29?

7 A Yes, I do.

8 Q And how do you recognize it?

9 A Every single one of our BEST kits would have a BEST kit
10 number and it's a B number, and in this case the B number is
11 B298416. Then once the evidence is received by the
12 laboratory we give it a unique laboratory number, and in
13 this case the laboratory number was L19-06996. And it also
14 has my work sealed intact with my initials on it and
15 laboratory number on it. And the reason why I do that is I
16 examine the tamper indicative bag that it's in to see if the
17 evidence had been tampered with, and if the evidence has not
18 been tampered with that's when I put the word sealed intact
19 with my date and initials on it.

20 Q And so is that the same bag that you put in the vault
21 and subsequently retrieved from the vault back in 2019?

22 A That's correct. It's the same BEST kit that I received
23 out of our drug vault.

24 Q And did you analyze the substances that were in that
25 kit?

WILLIE SMITH - DIRECT

1 A Yes. I analyzed -- I take an inventory first of the
2 evidence, and once I take an inventory of the evidence I
3 determine which items I need to analyze.

4 Q And when did you do that?

5 A I did that on October 14th.

6 Q And how do you analyze drugs? What does that look
7 like?

8 A Well, it all depends on what the substance is. If it's
9 a tablet I determine on the amount of tablets or what I
10 have. I can do published literature and I do instrumental
11 tests. But if it's a powdered substance or any other type
12 of substance, I do a chemical test, which is just a basic
13 color test, and it identifies the functional groups, and
14 then I do an instrumental test to identify it on a molecular
15 level.

16 Q So when you say identify the functional groups and the
17 molecular, I went to law school because I didn't understand
18 math, what does that mean exactly? Do you just figure out
19 what it is?

20 A Yes. Basically just say if I have cocaine, if I
21 suspect it to be cocaine I have these chemicals that I use
22 that when I drop the powder substance in there it should
23 turn blue/blue. If I suspect it to be heroine, if I drop
24 the powdered substance in there and the chemical test is
25 suspected to be purple. And just say if I run it on

WILLIE SMITH - DIRECT

1 instrumentation, which is called Gas Chromatography-mass
2 Spectrometry, it's the instrument that's used by all
3 forensic scientists in this field to identify a substance on
4 a molecular level and it breaks down the substance into its
5 molecular components in which I run a standard board versus
6 the actual substance and match the two together to identify
7 on a molecular level.

8 Q So after analyzing what's marked as State's Exhibit 29
9 there, what did you do with it?

10 A After I took an inventory of it and determined what
11 items that I needed to test, I fill out my worksheet, do a
12 report, and have -- it goes through an administrative and
13 technical review. And what I mean by that is not only it's
14 going through one review, it's going through two reviews by
15 another forensic scientist in the drug analysis department
16 to make sure I'm doing everything scientifically correct and
17 that I didn't make any mistakes as far as my casework or as
18 far as the way I did my testing before the report is issued
19 and officially out on the I-Lab report system.

20 Q And on what date and time did State's Exhibit 29 go
21 back to evidence control?

22 A After I did my analysis on this evidence and determined
23 what was inside this evidence it went back to evidence
24 control on October 31st, 2019.

25 Q All right. And so what were the results of the

WILLIE SMITH - DIRECT

1 analysis?

2 A All right. Item 1 -- well, this is Item 2 of SLED lab
3 number L19-06996, it has the BEST kit number of B298416. It
4 had an evidence bag containing prescription bottle, and
5 inside of that item it had three orange tables with the
6 AN415 marked on them. And I identified those by visual
7 examination, it was identified as Buprenorphine/Naloxone.
8 Item 2.1.2 was a plastic bag that contained two orange
9 tablets with the markings of 54375, and I visually examined
10 those and they were determined to be Buprenorphine/Naloxone.

11 Q And I'm sorry, I'm going to interrupt you real quick.
12 That Buprenorphine/Naloxone, what is that? Is that what's
13 commonly known as Suboxone?

14 A Yes. They use it for pain.

15 Q Okay. And is that a controlled substance in the State
16 of South Carolina?

17 A Yes, it's a scheduled 3 drug substance.

18 Q All right, now, go ahead and proceed.

19 A Item 2.2 was an evidence bag containing a prescription
20 bottle containing a plastic bag containing another plastic
21 bag containing a powdered substance. That powder substance
22 was identified to be heroine and fentanyl, and it had a net
23 weight of 1.10. The next item, 2.3, was an evidence bag
24 containing a Ziplock back containing a crystal substance. I
25 did a chemical test on that item because I had some of the

WILLIE SMITH - DIRECT

1 same item later on in the case, this item spotted just like
2 methamphetamine. And I did not do any analysis to it, all I
3 did was a chemical test to it, and it had a net weight of
4 less than 0.1 grams. Item 2.4 was an evidence bag
5 containing a plastic bag containing a foil wrapper
6 containing a powder substance, and I did a chemical test on
7 this item right here. It spotted on the chemical test just
8 like the heroine and the fentanyl sample, I did not do
9 anything to it. This item had a net weight of less than 0.1
10 grams.

11 Q And I'm sorry, if I could interrupt you again. So why
12 didn't you do anything else with it?

13 A Per our policy and procedure since we have cases that
14 have several items in it, like this case had several items
15 in it, it takes a long time to analyze these items. Once we
16 reached the statutory threshold weight on items we do not
17 test anymore of the items, all we do is a chemical test on
18 those items.

19 Q So what do you mean when you say a statutory threshold
20 weight?

21 A I mean by law the highest charge that they can be
22 charged with that item.

23 Q And so in this case by weight, what's the highest
24 charge they could be charged with?

25 A It depends on in this case --

WILLIE SMITH - DIRECT

1 Q For example, the heroine.

2 A The heroine was -- well, heroine is 0.128 or 4 grams.
3 So if I would have gotten to 0.128 in this case, or 0.129 in
4 this case, if I had any additional items in this case, since
5 I already had a gram of it, I wouldn't test any of the other
6 items because it's not going to have up to 4 grams for the
7 rest of the page items that I have in the case. As far as
8 meth goes, meth goes up to one gram, and then after you have
9 one gram of methamphetamine the next statutory threshold is
10 10 grams of methamphetamine, then all the way up to 28 grams
11 of methamphetamine. And I only test up to one gram, and
12 once I got to 1 gram then I do not test anymore.

13 Q All right. I apologize, keep going.

14 A Item 2.5, which is in the evidence bag, and inside that
15 evidence bag contains a Ziplock bag that contained a crystal
16 substance, and that crystal substance was identified on a
17 molecular level to be methamphetamine, it's a schedule two
18 substance, and had a net weight of 0.2 grams. Item 2.5.2
19 was a plastic bag that contained a rock substance, that
20 substance was identified as cocaine base crack, it's a
21 scheduled 2 drug, had a net weight of 0.52 grams. I had
22 eight plastic bags containing pieces of foil containing
23 powder substance. It tested -- chemical tested just like
24 heroine and fentanyl, and I took the weight of one bag and
25 took a weight of the rest of the bags, and it was

WILLIE SMITH - DIRECT

1 0.10 grams, less than 0.01 grams for the bag that I tested.

2 With the bags that I didn't test was 1.74 grams. In 2.6 --

3 Q I'm sorry, I could not -- just pause you right there.

4 So in total these eight bags, what was the net weight of the
5 powder substance?

6 A The net weight of the powdered substance was less than

7 0.1 gram, and the net weight -- the rest of the bags --

8 gross weight of the rest of the bags was 1.74 grams. And I

9 didn't test -- I tested the one chemical test of the bag,

10 and I did a gross weight of the rest to make sure that I

11 wasn't going to get up to 4 grams. Because I knew I already

12 had 0.129 grams when I tested the 1 grams for item 2.2,

13 which was 1.01 grams of heroine and fentanyl. When I went

14 through the rest of my case and weighed all the items I was

15 not going to get up to the next threshold for heroine, which

16 is 4 grams. So what I do in those cases, I test one of the

17 items to make sure that there are spotty, have a chemical

18 test just like the other items, and then I just take a gross

19 weight of the rest to make sure I'm not going to get up to

20 that next threshold of the weight.

21 Q All right. Thank you. Continue.

22 A Item 2.6 was an evidence bag containing a plastic bag

23 that contained a crystal substance. It was found to be

24 methamphetamine, had a net weight of 0.22 grams.

25 Methamphetamine is a scheduled 2 drug. The next evidence

WILLIE SMITH - DIRECT

1 bag had two plastic bags containing pieces of foil wrapped
2 in powder substance. It spotted just like the items in 2.2,
3 the heroine and fentanyl. And the item that I tested, one
4 of the bags I did a chemical test on, it had a chemical test
5 just like heroine and fentanyl in the item 2.2, and it had a
6 substance weight of 0.15 grams, and the other bag had a
7 weight of 0.27 grams. Then I had a plastic container, and
8 inside of this plastic container I had an orange tablet with
9 the markings of E65560, and in this tablet I did test it on
10 instrumentation, and this tablet was found to be morphine.
11 I had three more tablets inside of the same container. It
12 was three blue tablets with the markings of Teva 3927, and I
13 did a visual examination of these tablets and they were
14 determined to be Diazepam, and it's a scheduled 4 drug. And
15 those are all of the items that I found in this case.

16 Q And I'm sorry, maybe I missed it, but the morphine, is
17 that a scheduled narcotic?

18 A Morphine is a scheduled 2 drug, and it's used for pain.

19 Q I appreciate it. Tell me, while you're doing this
20 testing, what kind safety measures do you use?

21 A I only work on one item at a time. In between each and
22 every item that I test I clean my area because I do not want
23 to cross contaminate, and I also change my gloves to make
24 sure that there's no cross condemnation in any of the items.

25 Q Do you use any kind of personal protection equipment?

WILLIE SMITH - DIRECT

1 A Yes. We do wear personal protection equipment to
2 protect ourselves, especially from drugs like fentanyl,
3 which is very deadly.

4 Q I mean, how deadly? What kind of equipment do you use
5 and for what purpose?

6 A Well, we wear lab coats, sometimes wear masks, safety
7 masks, safety goggles, especially when we know we're dealing
8 with major fentanyl cases.

9 Q And how much would cause a negative medical reaction?

10 A Could you repeat the question?

11 Q I'm sorry. So how much are you worried about? I mean,
12 is it enough to throw a cup up in your face or less than
13 that?

14 A You can overdose on as little as three grains of
15 fentanyl, that's how dangerous it is. That's why we do have
16 precautions in our laboratory to where we have Narcan
17 available just in case something happens to where we became
18 exposed to fentanyl and pass out.

19 Q I'm sorry, did you say three grains?

20 A Three grains.

21 Q What's a grain.

22 A A grain is like a grain of sand, that's how minute --
23 how powerful that drug is.

24 Q Thank you.

25 MR. ALLEN: Beg the Court's indulgence.

WILLIE SMITH - DIRECT

1 (Break in proceedings.)

2 Q So a couple of quick issues. One, after you do this
3 analysis, do you memorialize it in any way?

4 A Yes. After I do the analysis I put this in my heat
5 sealed pack, the evidence that all I tested, and I put my
6 date and initial. And this evidence is still sealed and
7 intact from the date that I finish my analysis. And you can
8 see it's -- there's -- this heat sealed pack has not been
9 tampered with.

10 Q And do you file any type of report?

11 A Yes. I issue for every case that I do analysis on or I
12 test, even if it's negative or positive, I issue an official
13 SLED report to my results and for every single case.

14 Q And can you briefly tell me the difference between
15 chemical and instrumental analysis? I've heard you use both
16 of those terms.

17 A Chemical test, right, chemical analysis is basically a
18 color test. And there are several color tests that we use,
19 that everybody use in the forensic scientific community to
20 determine functional groups, where they belong to and what
21 they are and everything, and all of these drugs have unique
22 colors to them. Like meth turns cobalt blue. The cobalt
23 diisocyanate testing for cocaine turns like a blue/blue
24 color, which is a two part test. For heroine you get like a
25 purple color, a very unique purple color that's specific --

WILLIE SMITH - DIRECT

1 each one of these color tests are specific for a certain
2 compound that you're looking for a functional group. And
3 then for fentanyl you use a mix and it gives unique a bright
4 orange color.

5 MR. ALLEN: Thank you, I have nothing further.

6 A Oh.

7 Q The instrumental as well.

8 A The instrumental. GCMS is the instrumentation that
9 costs about \$150,000, it's used to run samples, which we
10 extract, and then it inject samples on the first part which
11 has got a Gas Chromatography, and it uses a gas carrier,
12 which is helium, and it carries it around and it takes to --
13 see how long does it take the molecule, the structure of the
14 substance to go like from one end of the football field to
15 the next end of the football field. Let's say it's is a
16 smaller something it's going to go quicker, if it's a bigger
17 something it's going be larger and go down slower to the end
18 of the field and everything. The next part is the Mass
19 Spectroscopy part. That's when we take this structure of
20 the item and we just bombard it and it breaks it into all of
21 these fragments and stuff. And the way you identify it, you
22 identify it by the molecular weight of it, because every
23 thing has a weight of it and stuff. So you have a standard
24 that you use that you get from a certified lab that I run
25 with the unknown sample, and those two spectrums, the GCMS,

WILLIE SMITH - DIRECT

1 and the Gas Chromatography and the Mass Spectroscopy, both
2 of them match with the known standard and the unknown sample
3 that I ran in this case where I did not know what it was
4 before I call it positive.

5 MR. ALLEN: Thank you. I have nothing further.

6 THE COURT: Mr. Frick?

7 MR. FRICK: Thank you.

8 CROSS EXAMINATION

9 BY MR. FRICK:

10 Q Good morning, Mr. Smith.

11 A Good morning.

12 Q You've still got your report up there?

13 A Yes, I do.

14 Q Let's just go through the item numbers here. I'm
15 looking at 2.11 --

16 A Right.

17 Q -- and that was the three pills, you said that was
18 Suboxone or --

19 A Well, usually I just call it what it is,
20 Buprenorphine/Naloxone, that's the ingredient that's in it.
21 There are trade names for it that they are found in
22 different forms, but usually that's where I report it out
23 it's just the actual ingredients that's in there.

24 Q Got you. And in that you didn't do a chemical or
25 otherwise analysis, it's a visual analysis, correct?

WILLIE SMITH - CROSS

1 A That is correct. Because the way our policy and
2 procedures read I look at all of the tablets that I have in
3 the case, and in this case the Buprenorphine/Naloxone is a
4 scheduled 3 drug. But I had a tablet that I had as a
5 scheduled 2 drug, which was morphine in this case, so per
6 our policy and procedure I only have to test the one tablet,
7 which is morphine, and the rest of them I could indicate the
8 other tablets.

9 Q Okay. And I think you said that that particular drug
10 is used for pain?

11 A Yes.

12 Q Going on to 2.2, that's the one that's it's a mix of
13 heroine and fentanyl, correct?

14 A That is correct.

15 Q Can you figure out which part is heroine and which part
16 it fentanyl, or is it just part of all combined and that's
17 the weight we've here?

18 A That's the weight we have. We just report out what it
19 is, and we report it out according to state law as to what
20 it is.

21 Q So there's no breakdown, this is how much heroine was
22 in it and this is how much fentanyl.

23 A No. According to state law we just have to tell what
24 it is, not how much it is.

25 Q Okay. And on that one you did the full analysis on it,

WILLIE SMITH - CROSS

- 1 correct?
- 2 A That is correct.
- 3 Q Okay. And then I think in 2.4 you used the term I
- 4 wasn't really familiar with, you said is spotted like the
- 5 same drug?
- 6 A It spotted like the same drug. I did a chemical test,
- 7 it had the same purple color. Due to that right there since
- 8 it was already -- I had already over a gram of drugs and I
- 9 knew I wasn't going to get to the next level 4 grams I just
- 10 didn't test the rest of the items.
- 11 Q Okay. And the total weight on that was in 2.4 is a
- 12 tenth of a gram?
- 13 A It's less than 0.10 grams. We do not report out unless
- 14 it's, you know, an actual number for it, but if it's less
- 15 than that we just report out less than 0.10 grams. But the
- 16 thing that we do, we use a system called the Lab X. With
- 17 the Lab X I actually do have a weight of it but per our
- 18 policy and procedure we only report out less than that right
- 19 there, but the actual weight of that 2.4 was 0.099.
- 20 Q Okay. But it wasn't fully analyzed on that one,
- 21 correct?
- 22 A No, it wasn't analyzed.
- 23 Q Okay. And then going on trying to stay within that
- 24 same type of substance, 2.53. You did the same thing with
- 25 that, right? You just kind of -- it spotted like, you

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1 weighed it?

2 A It had a chemical test and -- it had a chemical test,
3 which is a color test just like item 2.2, and after I saw
4 that I determined since I already reached my threshold for
5 that weight I did not test that item.

6 Q Now, the weight you've got on here, 1.74 grams, that's
7 everything, that's the packaging and the powder?

8 A The item that I tested out of the eight bags, the one
9 bag that I did do a color test on, a chemical test on,
10 weighed less than 0.10. So the rest of the bags that I did
11 not do anything with, that gross weight was 1.74 grams.

12 Q Okay. But that includes everything. That's not just
13 the drugs, that's all of the packaging.

14 A Right. That's the packaging that included the powder
15 substance.

16 Q Okay. All right. And then let's go back to what
17 tested as -- and I think it is 2.51, that's the meth, you
18 did the full analysis on that item, right?

19 A That is correct. I did the full analysis on 2.51. I
20 did a chemical test and I did an instrumental test, it was
21 found to be 0.29 grams.

22 Q And the net weight on that was -- yeah.

23 A 0.29 grams.

24 Q .29 grams?

25 A 0.29 grams.

WILLIE SMITH - CROSS

1 Q Right. But, I mean, there's a decimal and then it's
2 29, right?

3 A Right, 0.29.

4 Q So far less than a gram, correct?

5 A Yes, that is not a gram.

6 Q And then I think on the other met one was 2.6; is that
7 right?

8 A Right. In which I did a chemical and instrumental test
9 on that, and methamphetamine, which is a scheduled 2 drug,
10 and it had a net weight of 0.22 grams.

11 Q So we've got a total weight of meth of around a half a
12 gram?

13 A Yes. It was whatever is 0.29 plus 0.22.

14 Q Okay. And then 2.52. That's cocaine base or what is
15 commonly referred to as crack, correct?

16 A That is correct.

17 Q Okay. And you did the full analysis on that one,
18 right?

19 A Yes. Because the way I did a chemical test on it, the
20 chemical test I had to do on that substance, and you can
21 look at the substances -- well, all of the substances look
22 different. Cocaine base, which is cocaine base crack, has a
23 rock substance, it's a white rock substance, and that's why
24 I said -- and I did the right chemical test for it, and when
25 I did that chemical test for it it had an indication that it

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1 was going to be cocaine crack, and I tested that on a full
2 testing of it.

3 Q And so on this one we've got a half a gram of crack.

4 A Yes. It was cocaine base crack, which is a scheduled 2
5 drug, had a net weight of 0.52 grams.

6 Q And correct me if I'm wrong, I don't think there's any
7 other crack in the analysis, is there?

8 A No.

9 Q Okay. All right. Then let's go to the 2.7.2.1. That
10 was one tablet of morphine?

11 A Yes.

12 Q Okay.

13 A It was a morphine tablet. I tested it on a molecular
14 level. And I'm not just testing it on a molecular level, I
15 also go through published literature to look at it too like
16 I do in all of these cases. I'm not just -- I'm doing a
17 physical visual examination to make sure that the
18 markings -- that I can read the markings on the tablet, and
19 then I go to a published literature to make sure before I
20 even run the tablet to what the tablet is. And when I went
21 to the published literature on this item it said it should
22 be morphine, and when I test it on my instrumentation it
23 came out as morphine.

24 Q Okay. And then the next item down, 2.7.2.2, that was
25 came back as a scheduled 3, right, diazepam?

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1 A Right. And what I did in that case, I looked at the
2 tablets -- I was looking at the tablets to see if
3 clandestinely made, the tablets weren't clandestinely made
4 or anything. I looked at the tablets, the imprints of the
5 tablets on the front and the back of tablets to determine
6 what it was, and after I did my visual examination and my
7 published literature it was determined that that tablet is
8 diazepam. And I indicated that tablet, I did not say found,
9 I indicated that tablet.

10 Q And you say that because it's not tested, right?

11 A Right, because I indicated the tablet.

12 Q Right. Because you just did the visual examination and
13 compared it to what you had in that published literature.

14 A Right.

15 Q And going back to the previous items morphine, that, of
16 course, you testified to is --

17 A I test it. Because the way our policy and procedure
18 reads is you test the highest controlled substance tablet in
19 the case. And the way we do -- the reason why we do that,
20 we get cases where we have thousands upon thousands of
21 tablets, not only do we have to take an inventory of all of
22 the tablets, we have to determine the type of tablets and
23 which tablets that we need to test. And that's the
24 alternative that we came up with is we're testing the
25 highest control pharmaceutical tablet that we have in the

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1 case.

2 Q Okay. And I think you indicated morphine is generally
3 used for pain?

4 A Yes, that is correct.

5 Q And then when you're doing that examination, say on the
6 morphine or diazepam or the Suboxone, when you're doing that
7 you can't say how old the pill is, can you?

8 A No.

9 MR. FRICK: Thank you, sir, that's all of the questions
10 I have.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION

13 BY MR. ALLEN:

14 Q I just had a couple of followup questions. One, the
15 substances that were tested positive for heroine and
16 fentanyl, how were they packaged?

17 A They were all -- the substance that test for heroine
18 and fentanyl, it was an evidence bag that contained a
19 prescription bottle that contained a plastic bag containing
20 another plastic bag that contained a powder substance, and
21 it was one bag that was heroine and fentanyl that was found
22 in that item, which was a scheduled 2 drug, and heroine is a
23 scheduled 1 drug. And it had a net weight of 1.01 grams.

24 Q So there's a plastic bag that was inside of another
25 plastic bag?

WILLIE SMITH - REDIRECT

1 A It had an evidence bag that contained a prescription
2 bottle that had a plastic bag inside another plastic bag,
3 and inside that plastic bag was a powder substance.

4 Q Got you. What about item 2.4?

5 A 2.4 was an evidence bag that contained a plastic bag
6 that contained a piece of foil wrapper containing a powder
7 substance.

8 Q And how much was in that foil wrapper?

9 A Was less than 0.10 grams.

10 Q All right. So there was a larger quantity in a plastic
11 bag in a plastic bag in a prescription bottle, and then
12 there was 0.10 grams that was in a foil --

13 A Right. It's tiny little folded pieces of foil. The
14 way people do, they have their main bag, and the way they
15 usually sell drugs is they want to sell -- with heroine and
16 fentanyl it only takes a small amount for heroine and
17 fentanyl to sell it. And they usually put it in pieces of
18 foil a little bit of the powder in there, and they wrap it
19 up into foil or they (sic) glassine bags, and that's the way
20 they prepare the items for sale.

21 Q What's glycine bag did you say?

22 A Glycine bags. The reason they use glycine bags,
23 they're like wax paper for people and baking and stuff, but
24 they make them into two tiny little bags and stuff. And the
25 way they -- the reason why they use those glycine bags is

WILLIE SMITH - REDIRECT

1 because of the powder they use in such a small amount that
2 they put into these little bags and it will not stick to the
3 side of the walls of the bag.

4 Q And how is the methamphetamine packaged?

5 A The methamphetamine in this case was a Ziplock bag that
6 contained a crystal substance.

7 Q Do you recall how big that Ziplock bag was? Like a
8 sandwich bag or --

9 A I don't recall, but it is all inside of this evidence
10 bag. The only thing I say is this case does contain
11 fentanyl, it is available and it is in here.

12 Q Is it fair to say it would not be safe to open up the
13 package so that we can look closely at --

14 A I mean, if you need to open it we can open it.

15 Q That's all right. And how were the pills packaged?

16 A As far as item 2.1, it was a prescription bottle that
17 was -- inside of those were two different type of pills in
18 that one, and inside the other one was a plastic container
19 that had the two different types of pills in it.

20 Q All right. And what about the crack cocaine?

21 A The cocaine base crack, which is a scheduled 2 drug,
22 was in a plastic bag and it was a rock substance.

23 Q So like a Ziplock bag or a -- what do you mean when you
24 say a plastic bag, do you remember?

25 A It was a plastic bag. Because as far as you can see

WILLIE SMITH - REDIRECT

1 item 2.5.1, that was a Ziplock bag that contained a crystal
2 substance. Item 2.5.2 was actually a plastic bag that
3 contained a rock substance.

4 MR. FRICK: All right. Thank you, I have nothing
5 further.

6 THE COURT: Any recross?

7 MR. FRICK: No, sir.

8 THE COURT: All right. Thank you, sir, you may step
9 down. State can call its next witness.

10 MS. WINE: Judge, at this time the State just wants to
11 for the record move in Item Number 32, it was introduced and
12 identified through Kierra Fayall yesterday but I just don't
13 know that we housekeeping-wise actually moved to admit it
14 with the court reporter.

15 THE COURT: All right.

16 MR. FRICK: Same objection.

17 THE COURT: All right. Objection noted, objection
18 overruled, admitted into evidence.

19 (State's 32 was received.)

20 MS. WINE: And, Judge, at this time the State rests.

21 THE COURT: The State rests. Ladies and gentlemen, the
22 State has rested. There are some matters I need to take up
23 outside of your presence so I am going to ask that you head
24 on back to your jury room, do not discuss the case. Okay?
25 Thank you very much. I'll get you back out here just as

1 soon as possible.

2 (The jury left the courtroom.)

3 THE COURT: All right. Mr. Frick?

4 MR. FRICK: Thank you, Your Honor. At this time the
5 defense would move for a directed verdict. Taking the
6 evidence in the light most favorable to the State I don't
7 think they have established the statutory requirements of
8 possession with intent to distribute. Judge, certainly on
9 the pills I would suggest that the visual examination is not
10 sufficient. There was no testing, it's just simply a
11 comparison with what I've understood to be just the
12 Physician's Desk Reference, and so there's no chemical
13 analysis so they cannot tell you that those pills are, in
14 fact, those controlled substances. In regard to the heroine
15 itself we've got an actual tested weight of 1.01 grams. I'm
16 trying to pull up the statute, but in my recollection in
17 researching this case, the statutory amount of heroine
18 required to reach that inference level is measured in
19 grains, not grams, and there was no testimony about the
20 grains, we only have the testimony about there being one
21 gram. If we get to trafficking that's 4 grams, we certainly
22 did not reach that level, so I don't think the evidence is
23 sufficient testimony in that area. On the methamphetamine
24 you've got a half a gram, and on the cocaine base you've got
25 half a gram. Judge, understanding that the State has these

1 other items that they state are indicia of distribution or
2 intent to distribute, I humbly suggest that what they call a
3 ledger is a single line written on a piece of paper that's
4 indicative of nothing, nobody can tell you what that means.
5 They have nothing further on that so I would ask you to
6 respectfully to at the very least reduce the charges to
7 possessions to be considered by the jury. If not, grant an
8 entire verdict of not guilty for Mr. Crimminger.

9 THE COURT: All right. Any reply?

10 MR. ALLEN: Yes, sir, Your Honor. We would only submit
11 that while I am no professional metrologist, both grains and
12 grams are acknowledged measurements of mass. One gram is
13 15.43 grains, which is only a matter from an almanac,
14 certainly not expert testimony, though it is a unitive
15 measurement that I personally am unfamiliar with, therefore
16 the heroine would exceed the mass required for a presumption
17 of distribution. As far as the scales and the wrappers is
18 an indication of distribution, that's a matter for the jury,
19 but we would submit that it's definitely in the total
20 evidence probable cause and so we should go forward.

21 THE COURT: Any brief -- all right. Anything else?

22 MR. ALLEN: Oh, I would only add that the
23 identification of pills, it's standard procedure to consult
24 reference material, and while it may just be a book it's
25 still the best book available and is enough for a measure of

1 scientific certainty.

2 THE COURT: Okay. Anything?

3 MR. FRICK: Judge, just on that point, I would submit
4 this day in time we all know that the pills that we see are
5 not the items that they portray to be, so I think just
6 looking at it and saying that's what it is is not sufficient
7 to meet the requirement in criminal court.

8 THE COURT: All right. I'm going to respectfully deny
9 your motion for a directed verdict. I do believe there's
10 enough evidence in the record for the case to go to the
11 jury. I also believe, however, there's enough evidence in
12 the record for lesser offenses of possession to be
13 considered by the jury based upon your argument. All right.
14 So I do anticipate -- any objection from the State upon the
15 Court if I decide I'm going to charge the jury as a possible
16 alternative finding him guilty of a lesser offense?

17 MS. WINE: No objection.

18 THE COURT: All right, thank you. Mr. Crimminger, I
19 need to talk to you at this time. If you'll stand for me,
20 sir, raise your right hand.

21 (The defendant was sworn.)

22 THE COURT: Thank you, you can be seated there. Turn
23 on that microphone, Mr. Frick, and make sure --

24 MR. FRICK: Yes, sir.

25 THE COURT: You can just be seated. I'm going go to

1 talk to you right now to make sure you understand your
2 rights. If you don't understand anything I say please let
3 me know and I'll be glad to go over it with you in more
4 detail. Okay?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. You've got to speak up, if not
7 I'm going to make you come up here. Okay?

8 THE DEFENDANT: All right.

9 THE COURT: We've now reached the stage of the trial
10 where you get to present your defense. In presenting your
11 defense and deciding how you want to proceed, you do have a
12 5th Amendment Right to remain silent. What that means is,
13 the 5th Amendment says that no person shall be compelled in
14 any criminal case to be a witness against themselves, that
15 means that nobody can make you testify. Now, you have the
16 right to testify if you want to, but nobody can make you
17 testify. The State cannot call you as a witness against
18 yourself. Now, your lawyer can call you as a witness if you
19 want to be a witness, do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, if you do decide to testify you'll be
22 subject to the same rules of cross examination just like
23 your lawyer has tried to trip up the State's witnesses and
24 make them look bad or not credible in front of the jury, the
25 State can do that with you. They can cross examine you on

1 any relevant issue and try to make you look not believable
2 to the jury, do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. The State can also cross
5 examine you about any prior criminal record you have, which
6 involves dishonesty or any prior convictions that I deem
7 would come in as it regards to the believability or
8 credibility of your testimony. Okay? As to that,
9 Solicitor, does Mr. Crimminger have a prior record that the
10 State would seek to enter to try to go toward his
11 credibility?

12 MS. WINE: Nothing for credibility, Judge. There are
13 other convictions but we would not go into any of those
14 without opening the door. But as far as credibility and
15 probative of truthfulness and dishonesty, nothing that the
16 State would use.

17 THE COURT: All right. So there's no evidence that the
18 State would intend to impeach his testimony with.

19 MS. WINE: No, Your Honor, the items that he --

20 THE COURT: Unless he opens the door.

21 MS. WINE: Right. And the items, I think they are too
22 remote in terms of what would be possibly used, I think
23 they're just way too remote.

24 THE COURT: All right. So you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And you understand how the State could try
2 to make you not look believable?

3 THE DEFENDANT: Yes, sir. Can my brother testify?

4 THE COURT: Well, I'm going to -- I haven't got -- I'm
5 just talking about you right now.

6 THE DEFENDANT: All right.

7 THE COURT: So have you -- if you decide to testify I
8 just want to make sure you understand your rights. Yes,
9 sir?

10 MR. FRICK: Judge, I just want to clarify an issue on
11 his record, and I'm not trying to convince the State to use
12 his record against him, but he did have a convictions in
13 2016 for some drug charges that would -- I would have
14 anticipated the State would have tried to use that, but --

15 MS. WINE: So the State's position is that we wouldn't
16 seek to introduce those outright as evidence of dishonesty
17 or unbelievability. If he opens the door in terms of drug
18 usage or prior arrests then that's where we would seek to
19 use those.

20 THE COURT: Well, what I -- let me respond to you this
21 way, under 403 I wouldn't allow the State to question him
22 about that -- those prior drug convictions, I do believe
23 that would be unduly prejudicial rather than probative here
24 for these charges --

25 MR. FRICK: Right.

1 THE COURT: -- okay? Now, if he opens the door when
2 he's testifying, you know, if he said: Oh, I ain't never
3 had drugs before, or I don't know what -- hang on, I'm
4 talking to your lawyer right now, then they can bring up
5 that and try to make it look -- that would be devastating to
6 his case. You know, I think that's -- I don't want to put
7 words in your mouth, Madam Solicitor, but is that the reason
8 why you weren't going to bring up that, you anticipated my
9 ruling?

10 MS. WINE: Yes, sir.

11 THE COURT: Okay. Fine, there you go.

12 MR. FRICK: Fantastic. That was what I was going to
13 argue against it.

14 THE COURT: All right. So, you know, if you testify --
15 if you testify, not your brother, but if you testified the
16 State would not be asking you about your prior criminal
17 record unless you opened the door to that by them tripping
18 you up on cross examination or something. Do you understand
19 that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. Now, do you understand your 5th
22 Amendment rights?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you have any other questions about them?

25 THE DEFENDANT: No, sir.

1 THE COURT: Have you been over all of that with your
2 lawyer?

3 THE DEFENDANT: Not really.

4 THE COURT: All right. Do you want to talk to your
5 lawyer a little bit more about that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. At this time do you anticipate any
8 other witnesses or any other evidence, Mr. Frick?

9 MR. FRICK: Judge, and I apologize, I did not put this
10 on a witness list so I know we have to deal with that issue
11 and the State may object to it, but there may be a
12 possibility I could elicit the information I would need from
13 his brother rather than from Mr. Crimminger. I just need a
14 little opportunity to try to see whether that's correct or
15 not, but that potentially could be the witness.

16 THE COURT: Is that his brother right there?

17 MR. FRICK: Yes, sir.

18 THE COURT: All right. Well, what's the State's
19 position on having the brother testify?

20 MS. WINE: Judge, as Mr. Frick stated, we haven't been
21 provided with a witness list, I think this may have been
22 more of a recent development, so if that's the case we would
23 ask for some time to at least run a rap sheet and make sure
24 we're --

25 THE COURT: Let's go do it.

1 MS. WINE: -- prepared before that.

2 THE COURT: Go do it right now and then we'll still be
3 in recess while we do that. Let's reconvene in about ten
4 minutes, and then you can talk to your lawyer some more,
5 your lawyer is talking to your brother about maybe what he
6 can could testify, and then I'll ask you if you want to
7 testify. Okay? All right. Thank you, we're in recess for
8 ten minutes.

9 (A break was taken.)

10 THE COURT: I've handed you the proposed verdict form,
11 any objection from the State?

12 MS. WINE: None from the State.

13 THE COURT: Any objection from the defense?

14 MR. FRICK: None from defense.

15 THE COURT: All right, thank you. We will have a
16 charge conference here momentarily. There is an issue Mr.
17 Frick -- well, let's go back. Mr. Crimminger, have you had
18 an opportunity to discuss further with your client -- with
19 your lawyer about whether or not you're going to testify?

20 THE DEFENDANT: Yeah, I'm not.

21 THE COURT: All right. You are not testifying. You've
22 got to talk, I can't hear you.

23 MR. FRICK: We decided my brother is going to do the
24 talking.

25 THE COURT: Okay. So you understand I will tell the

1 jury that they cannot hold you against that -- they cannot
2 hold that against you in any way whatsoever, they can't even
3 talk about it in the jury room the fact that you didn't
4 testify, do you understand that? And that's what you want
5 to do?

6 THE DEFENDANT: It'll be fine, yeah.

7 THE COURT: Sounds good. And you agree with that
8 strategy, Mr. Frick?

9 MR. FRICK: I do, assuming that I can get brother in to
10 testify, Judge.

11 THE COURT: All right. Well, let's talk about that.
12 Tell me about what you plan on doing.

13 MR. FRICK: Well, all I want him to do is testify as to
14 Billy's living situation and what was going on with him at
15 the time, which is his firsthand knowledge of it. It was
16 indicated to me by the State, however, if I do that they
17 intend to talk about (sic) Agent Lockhart to talk about
18 surveilling the house, which I don't think they can get in
19 to. I just want to address that before we get the jury out
20 here and everything back out.

21 THE COURT: All right. Madam Solicitor?

22 MS. WINE: Judge, I think with it being new testimony
23 or, you know, from this witness about living arrangements, I
24 think there have been discussions in pretrial about Mr
25 Crimminger's residence being under surveillance, and if the

1 issue the defense is wanting to get at --

2 THE COURT: And I struck that from the record when the
3 witness actually said that, correct?

4 MS. WINE: Right. During pretrial, when it was just us
5 and just the discussion of it.

6 THE COURT: Right.

7 MS. WINE: But I think that if we're talking about
8 living arrangements, I guess, right prior or simultaneous to
9 when this incident happened it's my understanding there's
10 been surveillance that was conducted, so we intend to call
11 Investigator Lockhart about comings and goings from the
12 house as to what Mr. Frick would be seeking to introduce.

13 THE COURT: All right. So brother is going to testify
14 about what, what is he --

15 MR. FRICK: Basically that Billy lived there, he lived
16 with the person they've identified as the lady who was in
17 the back bedroom, that prior to that his daddy lived there
18 with him when he was sick and he was taking care of daddy
19 and his brother would come by and visit, so that's how he
20 knows the living situation.

21 THE COURT: What's that have to do with anything about
22 the drugs that were found in the house?

23 MR. FRICK: The pills were dad's.

24 THE COURT: The pills are daddy's.

25 MR. FRICK: Dad died and the pills were still in the

1 house.

2 THE COURT: What about the crack cocaine?

3 MR. FRICK: Well, that's just -- I've got to do some
4 legal stuff on that.

5 THE COURT: What about the heroin?

6 MR. FRICK: Yeah. I mean, that's just argument to the
7 jury.

8 THE COURT: Okay, got you.

9 MR. FRICK: I'm trying to explain --

10 THE COURT: Okay. I understand exactly what you're
11 saying, but the reason I ask that is because if the -- so --
12 got it.

13 MR. FRICK: And specifically, Judge, I'm going to
14 establish that he stayed in the living room and she stayed
15 in the back bedroom.

16 THE COURT: Okay. Fine. What did the CI allegedly buy
17 from the house?

18 MS. WINE: I believe it was heroine.

19 THE COURT: Okay. And this witness wouldn't be
20 testifying that the heroine was his father's.

21 MR. FRICK: No. I'm not trying to say dad was doing
22 cocaine or heroine, I'm just saying that dad was in pain had
23 the morphine and other pain pills potentially.

24 THE COURT: All right. I'm not going to let the State
25 bring up the issue of the surveillance, I don't believe that

1 this defense witness would open the door. That's my gut at
2 this time, let's see where it goes. Okay? And I may allow
3 you to call a reply witness after his testimony, but if he's
4 going to testify based upon only what Mr. Frick just told me
5 that may explain the pills or whatever, but, you know, it
6 doesn't get to the illegal stuff.

7 MS. WINE: Yes, sir.

8 THE COURT: The really illegal stuff.

9 MS. WINE: Yes, sir.

10 THE COURT: Okay. All right. Y'all wish to be heard,
11 anything further on that on the record?

12 MR. ALLEN: Your Honor, at this point the State is
13 willing to stipulate that the pills belonged to daddy,
14 that's fine, because that's not the crux of our case that
15 we're concerned about.

16 MR. FRICK: So are they going to dismiss those charges?

17 MR. ALLEN: Which pills belonged to the father?

18 MR. FRICK: The pain pills.

19 MR. ALLEN: Which ones?

20 MS. WINE: In the pill bottles? How are they
21 identified?

22 MR. FRICK: Well, I thought you said you stipulated
23 that the pills belonged to daddy, so if that's the
24 stipulation then I think all of the pills should be gone.

25 THE COURT: Well, hang on a second. Okay. If y'all

1 were to stipulate that, that still doesn't make it not a
2 possible crime, that's going to be up to the jury to
3 determine. You've got a great argument based upon that.
4 Okay? But then again, if that's all this witness is going
5 to say, why even stipulate to it?

6 MR. ALLEN: Well, Your Honor, I can question how the
7 brother knows that those are the pills --

8 THE COURT: That's a great cross examination question,
9 you know what I mean? And how he wasn't even on the defense
10 witness list. You can't bring that up, but you know what I
11 mean. That's a credibility issue for the jury to determine.
12 But no, I'm sticking to my guns on this. I don't think it
13 would, you know, in the big scheme of things in the long run
14 whatever happens, whatever the jury's verdict is I don't
15 think it's that important that this house was under
16 surveillance and I'm going to keep that prior bad act out
17 that was at least stipulated to in pretrial prior to the
18 case starting. Okay? I just don't -- you know, looking at
19 the record as a whole the jury doesn't need to know that. I
20 think the State has submitted enough evidence where there
21 could be a conviction on any or all of these indictments
22 with what's in there, even if this witness testifies that
23 those were daddy's, I mean, because I can imagine, you know,
24 your follow-up questions to that. Okay?

25 MS. WINE: And Judge, I will just clarify, I was -- I

1 sort of was misunderstanding what information Mr. Frick was
2 seeking to elicit, if it's more ownership of the pills the
3 father himself then we certainly agree.

4 THE COURT: Right. I'm just giving y'all my gut
5 reaction right now. Now, if his brother gets up here and
6 testifies, and I'm glad his brother is hearing all of this,
7 if his brother gets up here and testifies as to something
8 different than what we've been talking about, that may very
9 well open the door and the State gets to offer a reply
10 witness. And Mr. Frick, he knows about that, he knows.

11 MR. FRICK: And like I said, what we're talking about
12 is living arrangements and pills, that's all I'm interested
13 in exploring.

14 THE COURT: All right. So, I'm going to -- all right,
15 sounds good. So -- okay. His brother is going to -- I'm
16 going to allow his brother to testify. Is there any prior
17 record I need to know about with the brother?

18 MS. WINE: No, sir.

19 THE COURT: I can take that out then. All right.
20 Before I bring the jury back in, I'm going through -- all
21 right. Let's go -- we'll do our charge conference real
22 quick because I can't imagine anything differently coming up
23 that wouldn't be in there. All right. Mere presence, I'll
24 charge that. Any problem with that from the State? No?
25 Okay.

1 MS. WINE: No, Judge.

2 THE COURT: All right. Is one hand of one, hand of all
3 an issue? I don't really think it is.

4 MS. WINE: Unless it possibly is in --

5 THE COURT: I mean, it is his house.

6 MS. WINE: -- terms of what comes out with their
7 witnesses.

8 MR. FRICK: I mean, if you're going to charge mere
9 presence I think you can charge hand of one, I guess.

10 THE COURT: All right, I'll charge hand of one. All
11 right. Possession with intent to distribute scheduled 4
12 that's the diazepam, it's right out the book. I talk about
13 actual possession, I talk about possession. I talk about
14 what constructive possession is. I go into -- and, of
15 course, I talk about criminal intent. Two or more persons
16 may have joint possession of a drug. The State must also
17 prove beyond a reasonable doubt that the defendant intended
18 to distribute the controlled substance. Distribute means to
19 deliver other by administering or dispensing a drug. Intent
20 may be shown by acts and conduct by the defendant in other
21 circumstances. You may consider the totality of the
22 circumstances around there, all of that kind stuff. And
23 it's the same thing -- hold on a second, why do I have this
24 twice? Oh, that's just possession. Possession with intent
25 to distribute and then possession. If you find that the

1 State has failed to prove beyond a reasonable doubt that the
2 defendant is guilty of possession with intent to distribute
3 diazepam, a scheduled 4 controlled substance, you may then
4 consider whether the State has proved beyond a reasonable
5 doubt the defendant is guilty of simple possession of
6 diazepam. Simple possession does not require an intent to
7 distribute. All right. And then I'll go through and talk
8 about possession again and then intent. Okay?

9 MS. WINE: Yes, sir.

10 THE COURT: And then the same thing with PWID crack
11 cocaine, cocaine base, same type of situation. I may not
12 read the entire, you know, once I define first and
13 distribute one thing, I ain't going to define it each time.

14 MS. WINE: Yes, Your Honor.

15 THE COURT: All right. And then we'll talk about
16 possession as an alternative PWID heroine, which is a
17 scheduled 1 BC narcotic, again, it's the same things.
18 Possession of more than two grains of heroine, this is the
19 one thing that's in there. Possession of more than two
20 grains of heroine creates in inference that the defendant
21 possessed the heroine with intent to distribute. This
22 inference does not relieve the State from proving beyond a
23 reasonable doubt that he had the intent to distribute,
24 that's simply and evidentiary factor to be taken into
25 consideration by you. That's straight out the book. Any

1 objection to that? Okay, none. And then straight
2 possession of heroine. And then the PWID scheduled 1, 2, 3,
3 controlled substance -- I don't know how to say it. Do you
4 know what is Buprenorphine, is that how you said it?

5 MR. ALLEN: That's why I said Suboxone.

6 MR. FRICK: If you google it your phone will tell you.

7 THE COURT: It's Suboxone?

8 MR. ALLEN: Yes, that's the brand name.

9 THE COURT: And then the rest is possession, that's
10 straight out the book. And then the meth, that's straight
11 out of the book. Anything else? And then duty to
12 deliberate, conclusion.

13 MR. FRICK: You've got included in here statement of
14 defendant.

15 THE COURT: I took that out, there's no statement of
16 the defendant. I think we're good. All right.

17 MS. WINE: Judge, just one brief matter. As to the
18 heroine, I understand that the statute charge uses that
19 grain measurement that Mr. Frick referenced earlier as well,
20 and, you know, the State would ask for, I guess, some sort
21 of guidance on the fact that a grain and a gram are both
22 units of measurement. And while I understand that the grain
23 is what's in the statute, you know, we relied on the gram
24 from the expert's testimony and they're just -- they're not
25 interchangeable but a grain and gram are both used for

1 measuring this quantity of drug.

2 MR. FRICK: The statute says grain, Your Honor.

3 THE COURT: I'm going to read what it says, I mean, I
4 don't know what to tell is. You've got an alternative
5 charge you want me to read on that?

6 MS. WINE: No, sir. I just wanted to put that on the
7 record.

8 THE COURT: I mean, I think that's the law.

9 MS. WINE: Understood.

10 THE COURT: All right. Anything else on the charge?

11 MS. WINE: No.

12 THE COURT: We have the charge, we agree on the verdict
13 form, the defense has one witness.

14 MR. FRICK: Yes, sir.

15 THE COURT: All right. So after that then we'll
16 determine whether the State has anything in reply, if the
17 State does not have anything in reply we will then take a
18 recess. If the defense decides to call the witness that
19 means we'll invoke the State versus Beatty Rule. Would you
20 request that the State open on the law and the facts first
21 and then they get to do it twice, or do you just want them
22 to do it the old fashioned way where they get to go up in
23 front of them one time?

24 MR. FRICK: I don't know, I was thinking about that.
25 Let me ponder on that just a little bit more.

ROBBIE CRIMMINGER - DIRECT

1 THE COURT: Okay. All right. All right.

2 (Break in proceedings.)

3 THE COURT: All members of the jury are present, sorry
4 for the protracted delay, we were taking care of some
5 scheduling things, and I actually have lunch for you so
6 that's good, you don't have to go anywhere, we'll get this
7 done. Okay? All right. The State has rested. Mr. Frick,
8 you may call your witness.

9 MR. FRICK: Thank you, Your Honor. The defense calls
10 Robbie Crimminger.

11 THE COURT: All right, sir, come on up here.

12 The witness, ROBBIE CRIMMINGER, was first duly sworn
13 And testified as follows:

14 DIRECT EXAMINATION

15 BY MR. FRICK:

16 Q Can you give us your name for the record?

17 A Robbie Crimminger.

18 Q And you're doing good, stay about right there with the
19 microphone so we can all hear you. Mr. Crimminger, do you
20 know the guy sitting at defense table over here?

21 A I do.

22 Q How do you know him?

23 A He is my brother.

24 Q Okay. All right. Who's the older brother?

25 A I am.

ROBBIE CRIMMINGER - DIRECT

1 Q You're the older brother. How much younger than you is
2 he?

3 A Not quite a year, lacks about ten or 12 days, pretty
4 close.

5 Q Good deal. And where do you currently live?

6 A In Lancaster in the Elgin area, I've been there about
7 35 years.

8 Q The Elgin area?

9 A Yeah.

10 Q Okay. In March of 2019, do you know where Billy was
11 living?

12 A Yeah. At my other residence in Ridge Hill, Baskins
13 Hill taking care of my dad.

14 Q Ridge Hill?

15 A Ridge Hill, yeah.

16 Q Pull that microphone just a little bit towards you.

17 A How about that? Good?

18 Q Yes, sir. Ridge Hill now, I mean, there's been some
19 testimony that this was in the Heath Springs area. Is that
20 near Heath Springs?

21 A That is -- the address is Heath Springs but Ridge Hill
22 is the community.

23 Q Is that the suburbs of Heath Springs so to speak?

24 A The outskirts, yeah, I guess.

25 Q It's out in the country?

ROBBIE CRIMMINGER - DIRECT

1 A Yeah.

2 Q All right. And how long do you know had Billy been
3 living at that address?

4 A Fifteen years maybe, 20. He went to Florida and stayed
5 with mom, and when he come back up here he was taking care
6 of daddy.

7 Q Okay. Taking care of your daddy. Tell me a little bit
8 about that situation.

9 A He was 78 when he passed, and at 48 he was diagnosed
10 with heart and lung disease that took him down, they retired
11 him, he was disabled basically.

12 Q Okay.

13 A And he had to have somebody pretty much all the time
14 after that.

15 Q All right. So who looked after him mainly?

16 A My brother, Billy.

17 Q Okay. All right. Did he stay in the house with him?

18 A Oh, yeah, 24/7.

19 Q All right. And you said your dad had some health
20 issues. Did he have any medication for that?

21 A Lots.

22 Q Do you know specifically what he had?

23 A The pain meds and a -- just a tray of pills on top of
24 the refrigerator that big, he took a dozen a day for
25 different things.

ROBBIE CRIMMINGER - DIRECT

- 1 Q Okay. Got you. And your father ultimately passed?
- 2 A Uh-huh.
- 3 Q Did you know about when that was?
- 4 A That was in July of 2018.
- 5 Q Okay. After July of 2018, was Billy still living in
- 6 the house?
- 7 A Yes.
- 8 Q At some point did he ever have anybody living with him?
- 9 A Yes.
- 10 Q Okay. Who stayed with him?
- 11 A You want her name? I think I know her name, she's
- 12 given false names, Jenny Green, I think.
- 13 Q But there was a female that lived with him?
- 14 A Yeah, in and out.
- 15 Q Okay. In March of '19, was she still staying with him?
- 16 A Yes.
- 17 Q Did they get along?
- 18 A Sometimes.
- 19 Q Okay. All right. Would you go over and visit during
- 20 that period of time occasionally?
- 21 A Everyday.
- 22 Q Everyday?
- 23 A Everyday.
- 24 Q Okay. All right. What was -- are you familiar with
- 25 the living situation?

ROBBIE CRIMMINGER - DIRECT

1 A Yes.

2 Q Who was staying where?

3 A Daddy was in the front living room and Billy was in the
4 front room, they stayed there, and she stayed in the back
5 corner or bedroom by herself, door locked or whatever all of
6 the time.

7 Q But that would have been in '18. Let's go to March of
8 '19 after your father had passed, is she still there?

9 A Yeah.

10 Q What were the living arrangements then?

11 A The same.

12 Q She stayed in the back?

13 A She stayed in the back and he was up front.

14 Q Okay. All right. Do you recall, did your father have
15 any firearms?

16 A Yeah. Over the years he always had guns.

17 Q Okay.

18 A Yeah.

19 Q All right.

20 A I thought we had got rid of all of them but there's
21 been one somewhere.

22 Q Okay. All right.

23 MR. FRICK: Thank you, sir, that's all of the questions
24 I have, please answer any that the solicitor has.

25 THE COURT: All right. Solicitor?

ROBBIE CRIMMINGER - CROSS

1 CROSS EXAMINATION

2 BY MR. ALLEN:

3 Q So Mr. Crimminger, you said you visited the house
4 everyday and that was -- was that before your father passed
5 away?

6 A Yes.

7 Q And what about after?

8 A Occasionally.

9 Q Occasionally? I mean twice a week --

10 A Twice a week maybe.

11 Q All right. And what would you do when you would go
12 over and visit?

13 A After or before?

14 Q After, I'm sorry.

15 A We've got a garage that we have a lot of shop tools in,
16 and me and him worked on projects all the time, and we've
17 got a trailer with stuff in it like parts that we use,
18 rebuild.

19 Q Okay. Now, in the house you said this woman -- what
20 did you say her name was?

21 A Jenny, I think, Green.

22 Q I'll say Jenny and we'll just know it was that woman, I
23 don't know if it really matters.

24 A She was giving false names is what I heard.

25 Q We'll just say Jenny.

ROBBIE CRIMMINGER - CROSS

- 1 A Okay.
- 2 Q You said Jenny was staying in the back bedroom and
- 3 Billy was staying in like the front it was like a living
- 4 room?
- 5 A Yeah. It was a four room house and he stayed in the
- 6 front and she stayed in the back.
- 7 Q And where would he sleep?
- 8 A In the front.
- 9 Q Well, I mean, on the floor, on a couch, on the bed?
- 10 A On a couch or a cot, bed. He had a bed in there, a
- 11 cot, couch.
- 12 Q And where did he keep his stuff?
- 13 A What stuff?
- 14 Q I mean, I assume he had clothes and toiletries and nick
- 15 nacks or whatever?
- 16 A Well, most of it was folded up and put in the corner of
- 17 the room or in a case or wherever he kept his clothes, you
- 18 know. And then they had a kitchen. And then the bathroom,
- 19 there was only one, so I guess all of them used that
- 20 bathroom.
- 21 Q So tell me about the common rooms of the house like
- 22 they would share. How many rooms did they share, and which
- 23 rooms were those?
- 24 A Unless they were in the kitchen that's the only room
- 25 that I know they might would share.

ROBBIE CRIMMINGER - CROSS

1 Q Okay. So there's the kitchen that they share, the
2 bathroom, I guess they would share that. It's just a one
3 bathroom house?

4 A One, yeah.

5 Q And you said the woman was staying in the bedroom; is
6 that right?

7 A In the back, yes, in the back bedroom.

8 Q And you say your brother was staying in the front room,
9 which is like the living room.

10 A Yeah. They made it another bedroom for daddy
11 basically.

12 Q And where did he sleep, your dad, when he was staying
13 in the front?

14 A He had a hospital bed and one of those chairs that help
15 you up, and he couldn't walk after that.

16 Q Well tell me, about how big was this living room?

17 A I think all of the rooms are probably 12 by 12 maybe,
18 they're not very big.

19 Q So there was -- you're saying there was room for a
20 hospital bed, a reclining chair, and the place where Billy
21 would sleep and keep his clothes all in this 12 by 12 room?

22 A Yeah, just piled up on his bed.

23 Q All right. So tell me, you said your dad had a lot of
24 medical problems and he had dozens and dozens of daily meds
25 that he had to take?

ROBBIE CRIMMINGER - CROSS

- 1 A Correct.
- 2 Q Now, were you in charge of giving him his medication?
- 3 A Billy was.
- 4 Q Billy was. But, I mean, you knew that there were pill
5 bottles everywhere, and --
- 6 A They were all in the same place in a -- they kept them
7 on top of the refrigerator, I think, and he had a list of
8 what he took everyday and a ledger of how much fluid he
9 would put out. For instance, the Lasix for his kidneys, he
10 had so much a day he had to put out, you know.
- 11 Q Understood. And tell me, what was your father's name?
- 12 A Robert Walter Crimminger.
- 13 Q So it's my understanding that your brother and your
14 father -- well, who owned the house is my first thing I want
15 to --
- 16 A It was a grandparents' house, it was left in the
17 family, willed in the family. He basically had a living
18 will, as long as he lived he would stay there, you know, and
19 then it would be passed on to the family.
- 20 Q Understood. Well, how exactly did your father end up
21 in the living room and your brother end up in the living
22 room but the woman who may have been named Jenny ends up in
23 the bedroom?
- 24 A What's the question?
- 25 Q Well, how did the arrangement come to be that the two

ROBBIE CRIMMINGER - CROSS

1 people who were blood relatives share sleeping arrangements
2 in the living room, and a woman who gives false names, she
3 gets the bedroom?

4 A That's where all of his medical equipment was, his
5 oxygen machines, his portable beds, his potties, and where
6 they -- Hospice give him a bath, everything he had was up
7 there set up not to move.

8 Q Well, how did Jenny come to live in the house?

9 A I don't know how she come to live in there, she would
10 just come and go, I don't know about that. Him and her been
11 knowed each other all of their life, I guess, you know, back
12 and forth.

13 Q So they knew each other all of their lives, and they
14 knew each other well enough to live together, but she would
15 stay in the master bedroom with a locked door?

16 A Well, it was just one bedroom back there. It wasn't
17 really nothing nice, it was just a bedroom, a room with just
18 piled up junk. And she would come and go, might not see her
19 for days.

20 Q All right.

21 MR. FRICK: Thank you, I have nothing further.

22 THE COURT: Mr. Frick, any redirect?

23 MR. FRICK: No redirect.

24 THE COURT: Thank you, sir, you may step down. Defense
25 can call its next witness.

1 MR. FRICK: Defense rests, Your Honor.

2 THE COURT: Defense rests. Does the State have
3 anything in reply?

4 MS. WINE: No, Your Honor.

5 THE COURT: All right, nothing in reply. Ladies and
6 gentlemen, we have completed the testimony and evidence
7 phase of the trial. Okay? I told the lawyers I would give
8 them just a few moments to get their thoughts together and
9 run to the restroom or whatever they need to do before we
10 hear closing arguments. After that I'll give you the law
11 that you are supposed to consider when you reach whatever
12 your verdict is going to be. All right. So let's take a
13 five minute recess real quick, y'all go freshen up. Lunch
14 has been delivered, I hope it ain't cold, it won't be, we'll
15 keep moving forward and go from there. Okay? So don't talk
16 about the case yet because you haven't heard closing
17 arguments or the law. Thank you very much.

18 (The jury left the courtroom.)

19 THE COURT: Mr. Frick?

20 MR. FRICK: I will ask for the Beatty Rule.

21 THE COURT: Okay. And you want to renew all your
22 motions and objections?

23 MR. FRICK: Yes, sir. I want to renew my directed
24 verdict motion and all previous motions.

25 THE COURT: Noted, and those are denied, and you're

CLOSING ARGUMENTS

1 protected in the record. All right. And so pursuant to
2 State versus Beatty, that means the person with the right of
3 second argument gets to choose -- if requested by the party
4 with the right to second argument the party with the right
5 to open and close will have to open in full on the law and
6 facts, and then they can close in rebuttal based upon
7 anything that the defense may bring up, but you can't bring
8 up new stuff. Y'all understand that?

9 MS. WINE: Yes, sir.

10 THE COURT: And that's State versus Beatty. So just
11 like a civil case.

12 MS. WINE: Yes, Your Honor.

13 THE COURT: Okay. Everybody understand. Y'all go
14 first, you go, y'all get up back up to rebut what he says.

15 MS. WINE: Yes.

16 THE COURT: Everybody understand that? All right. And
17 y'all are ready to roll.

18 MS. WINE: Yes, sir.

19 (A break was taken.)

20 (The jury returned to the courtroom.)

21 THE COURT: All right. All members of jury are
22 present. Thank you, ladies and gentlemen, we now commence
23 with the closing arguments, please direct your attention to
24 the attorneys. Solicitor?

25 MR. ALLEN: Ladies and gentlemen, I want to thank you

CLOSING ARGUMENTS

1 for the time that you spent here. When I gave my opening
2 argument I asked for your time, and I've certainly taken
3 that, and I asked for your attention, and I appreciate that
4 I got that, and now I'm just going to sum up everything
5 you've seen today and yesterday. And another thing I asked
6 you was pay attention to what Billy Crimminger had on him,
7 because there's going to be kind of a test later. He's
8 charged with a number of things. He's charged with
9 indictment 2019-GS-29-1168, which is possession with intent
10 to distribute scheduled 1 BC narcotic, LSD, or scheduled 2
11 narcotic controlled substance. Well, that sounds pretty
12 complicated, we're just talking about the heroine. He's
13 just charged with possession with intent to distribute
14 heroine. He's charged with indictment 2019-GS-29-1170,
15 possession with intent to present methamphetamine. Well,
16 that makes a little more sense because it's in the name,
17 we're talking about the meth. He's charged with indictment
18 2019-GS-29-1172, possession with intent to distribute
19 cocaine base. Cocaine base is just crack, crack cocaine,
20 the law calls it cocaine base. He's charged in
21 2019-GS-29-1174, possession with intent to distribute
22 scheduled 1, 2, 3 controlled substance, or, and I've never
23 learned how to say that word -- we're talking about
24 Suboxone, some of the pills. He's also charged with
25 2019-GS-29-2719, possession with intent to distribute

CLOSING ARGUMENTS

1 scheduled 4 controlled substance. We're just talking about
2 diazepam some blue pills, it's a scheduled 4 controlled
3 substance in the State of South Carolina. Indictment
4 2019-GS-29-1168, the heroine. That is State's Exhibit 5.
5 You're going to have State's Exhibit 5 back with you when
6 you go to deliberate. Well, I don't know that's what's
7 going on there so I am glad y'all have TV's. You heard the
8 SLED analyst talk about how over a certain weight they don't
9 keep track of exactly how much heroine, it is over the
10 inferential amount for possession with intent to distribute.
11 I believe the law reads -- and if I misstate this definitely
12 rely on what the Judge says, because the Judge is making
13 sure that the law is fair, and I apologize if I misstate
14 this, but two grains of heroine is possession with intent to
15 distribute. Well, you heard the SLED analyst explain, we're
16 talking grains, we're talking about like grains of sand.
17 Well, Billy Crimminger had over a gram, that's a lot of
18 sand. He had it in this big bag, which was a little over a
19 gram, and then he had some other bags containing foiled
20 wrappers, keep that in mind, we're going to talk about that
21 later, that each contained .1 gram of heroine. Indictment
22 2019-GS-29-1170, possession with intent to distribute
23 methamphetamine. Well, he had .29 grams of meth, and some
24 of that was in that bag that came out of his jeans in the
25 living room. There's another bag that had .1 gram of

CLOSING ARGUMENTS

1 crystal substance, and you can see that picture, that's in
2 the State's exhibits so you can review that, but that in
3 particular is State's Exhibit 16. 2019-GS-29-1172,
4 possession with intent to distribute crack cocaine,
5 .52 grams of crack. Please refer to State's Exhibit 6 when
6 you're back there, that's the crack. 2019-GS-29-1174, the
7 Suboxone. Three orange tablets, and then two more wrapped
8 up in a little plastic bag in a prescription bottle. That's
9 it, State's Exhibit 7. And finally for the drugs
10 2019-GS-29-2719, the diazepam. Those blue tablets, State's
11 Exhibit 22. Now, in my opening argument I talk about
12 working in a warehouse and I think that was very apt,
13 because I ended my little analogy by saying let's talk about
14 the merchandise. Well, there's the merchandise, that's the
15 merchandise of this store. And I'm sure one of the things
16 that's going to come up in the defense is: Well, it wasn't
17 that much. Well, there's a rapper, the Notorious Big, who
18 had a song, and one of the lines was rule number eight,
19 don't keep a weight on you. Well, Billy did a pretty good
20 job, he did a pretty good job, but he did keep some weight
21 on him with heroine, that's over the inferential amount.
22 But where he messed up is the other stuff I was talking
23 about in opening argument, tools of the trade. Because
24 while he didn't have a ton of weight of meth, or of crack,
25 or of pills, he certainly had the tools of the trade. And

CLOSING ARGUMENTS

1 when I say the tools of the trade I'm talking about scales,
2 I'm talking about packaging for drugs, I'm talking about a
3 notebook. You heard from Mr. Crimminger's brother and he
4 says: Well, there were ledgers that had medication and
5 things like that. Well, we'll get back to that in a moment.
6 First the scales, that's State's Exhibit 9 and State's
7 Exhibit 12. So what we have here is on the left one scale,
8 and on the right one, two, and what looks like a cigarette
9 box, that's a third scale. The man had four scales in the
10 house. And I don't know what kind of medication their
11 father may have been on, but I doubt he was weighing out
12 medication on these four scales. In fact, this is State's
13 Exhibit 25. This picture was taken in the kitchen of the
14 Crimminger's home. Now, at first you heard me ask
15 Investigator Lockhart, I go: Well, the sandwich bags, that
16 looks like sandwich bags in the kitchen. Well, we'll go
17 back for a moment. There are two little plastic containers
18 behind those sandwich bags, and just like I worked in a
19 warehouse and I broke down boxes and I took wholesale stuff
20 and I had gotten ready for retail, Mr. Crimminger had a
21 warehouse, too, that's the warehouse. There were big bags,
22 there were, if you look on the right side of the picture,
23 small bags, although those were called glassine bags from
24 the SLED analyst. Down at the bottom of that picture on the
25 left is a whole cup full of little pieces of foil. Well,

CLOSING ARGUMENTS

1 what are those little pieces of foil for? Y'all know
2 because you were listening, I saw you paying attention and I
3 appreciate it, you know that's to divide up heroine into
4 points. Well, Mr. Crimminger knew that, too, because he
5 made a note of it. States 11. Look down at the bottom
6 where it says 1.1 bag. Now, Mr. Crimminger's brother came
7 up here and talked about some woman named Jenny, and I want
8 to make it clear that I think the Mr. Crimminger who
9 testified is a big brother and I will not speak ill of him,
10 I will not say he was lying. I think he's a big brother
11 trying to help out his little brother any way he can and I
12 don't think he lied, but I think he had imperfect
13 information. Because he would have us believe that Jenny,
14 this woman who is not related by blood, comes and goes as
15 she pleases, she sleeps in the bedroom, even though Billy
16 Crimminger and his dad are asleep in a 12 by 12 living room.
17 And beyond that, you heard the testimony of Investigator
18 Lockhart, because I thought this might be the case, I said:
19 Investigator, was there any evidence the woman who was in
20 the house lived in the house? Well, I didn't see any.
21 Well, were there like toiletries and things? No. Did you
22 see any clothes? No. Did you see any jewelry? No. So she
23 was there but you didn't see any of her stuff. Right. Now,
24 there's no secret that Mr. Crimminger lived there. You
25 heard the testimony of his brother, you saw his ID in his

CLOSING ARGUMENTS

1 pants, which were in the living room with a wallet and bags
2 of drugs. So we've got the merchandise, we've got the tools
3 of the trade. And in my openings statement I gave a little
4 speech about the word verdict -- oh, I'm sorry, I should add
5 one more thing. I asked Mr. Crimminger: What was your
6 father's name? And he said: My father's name, Robert
7 Walter Crimminger. And their father had a long history of
8 health problem and he was on dozens of medications everyday,
9 and they kept him on top of the fridge, and Billy was very
10 diligent about giving their father his medication, dozens.
11 Well, they would have you believe that out of those dozens
12 of medications the only ones that made it to the house when
13 the sheriff's office kicked in the door were three pills of
14 diazepam and some Suboxone, and the State would argue just
15 out of hand that's implausible. But the other thing I would
16 like for you to notice is this, which is marked as State's
17 Exhibit 3, that's Arnold Laney's pill bottle, that doesn't
18 belong to Robert Walter Crimminger. It's just implausible.
19 Frequently in cases like this I'll have a card table here to
20 where I'll point to stuff and spread it out as far as I can
21 and make it look like as much as possible, but we can't do
22 that here because there's fentanyl with that heroine, and it
23 is so dangerous that we just can't handle this stuff, and
24 that's why you didn't see a lot of physical evidence because
25 you can't really take it out of the bags and show you what

CLOSING ARGUMENTS

1 it is, and so the best we can do is show you these pictures.
2 When I was giving my opening statement I gave a little
3 speech about the word verdict coming from the Latin
4 Veredictum, and I'll confess something to you all, I do that
5 because I can do it by memory and I can do it pretty
6 quickly, and it gives me about 20 seconds to think is there
7 anything I left out? Is there anything more I want to say?
8 But that little speech isn't actually that important in this
9 particular case, because while everybody spoke the truth
10 their words are not what is ultimately going to convict
11 Billy Crimminger, because we have the stuff. We have the
12 drugs. We have the heroine. We have the methamphetamine.
13 We have the crack cocaine. We have the Suboxone. We have
14 the diazepam. We have the wrappers. We have the big
15 baggies. We have the little baggies. We have four scales.
16 And so I'm not going to give you a little speech about
17 reasonable doubt, although many lawyers do, because I think
18 this is too obvious. You all got dressed and you got to
19 court today so I think you have the common sense to get to a
20 conviction, because Billy Crimminger was in the business of
21 selling drugs. When I was young working in that warehouse I
22 thought I wanted to work in the criminal justice field
23 because I want to get bad guys. I had this idea that there
24 were bad people in this world and I wanted to get them, and
25 in the next 20 years I've learned that's a lie. There are

CLOSING ARGUMENTS

1 almost no bad guys, that's not how the world works. If you
2 want good guys and if you want bad guys go see a movie. The
3 world is a complicated place. I don't think Billy
4 Crimminger is a bad guy, but he's a guilty guy, he sold
5 drugs. And the day is going to come when all of this is
6 behind him, and we look forward to that day, but in the
7 courtroom he will have to answer for what they've done. And
8 Billy Crimminger is charged with possession with intent to
9 distribute all of these drugs. How do we know he was
10 intending to sell all of these drugs? Well, I'm not going
11 to go over it all again, y'all have heard the spill before,
12 it's not just the drugs, it's the scales, it's the wrappers,
13 but for these reasons I trust you will find him guilty on
14 all counts. And once again thank you for time, thank you
15 for your service.

16 THE COURT: Thank you, Solicitor. Mr. Frick?

17 MR. FRICK: At 6:10 a.m. on a dark March morning in
18 2019, the Lancaster County Sheriff's Department, with the
19 SWAT team in full gear, busted in the door of Billy
20 Crimminger's house. 6:10 in the morning busted in the door.
21 Remember, you've got the picture of the damage right there,
22 they told you what they did. Busted his window, too, as
23 they were coming in the house to uncover this cache of drugs
24 that the State referred to as, and I wrote this down, I
25 don't usually read notes in closing, a store full of

CLOSING ARGUMENTS

1 merchandise. Well, ladies and gentlemen, you've got a half
2 a gram of crack, you've got half a gram of meth, you've got
3 the only part that they actually tested, a gram of heroine,
4 and about five pills. A store full of merchandise is what
5 they call this. Ladies and gentlemen, I would suggest to
6 you it's not a store full of merchandise. The State has got
7 to do a couple of things here because they've charged Mr.
8 Crimminger with possession with intent to distribute. What
9 they're alleging is that he had enough weight that it looks
10 like he was selling drugs, or he had enough other stuff that
11 it looked like he was selling drugs. And they're going to
12 show you the piece of paper that they put up here that they
13 call a ledger. A ledger. It has got one line on it that
14 nobody can explain to you what the heck it means, and they
15 tell you that that is evidence of drug transactions.
16 There's a word I would really like to use right now but I'm
17 not going to use that. Okay. It's not. It's not. It
18 doesn't prove anything. He's got sandwich bags in the
19 kitchen, must be a drug deal. He's got these little
20 glassine bags that the SLED analyst testified to also is
21 used in baking, those were in the kitchen. What didn't they
22 find? What didn't they find, besides a lot of drugs? They
23 didn't find any money. 6:10 in the morning, Billy is in his
24 house, and Jenny, Tammy, I don't care what her name is,
25 there's another person in the house in the back bedroom,

CLOSING ARGUMENTS

1 where incidentally most of the drugs were found. They
2 didn't have time to go hide the money. Heck, they didn't
3 even look in Billy's wallet. There's no money here. Rest
4 assured if they would have found money they would have sure
5 told you all about it and how it's indicative of him being
6 involved in selling drugs. So they've got to prove that he
7 had some kind of intent. Another part of it is there is an
8 inference level, and that's why I'm talking about the amount
9 of drugs we find here. On cocaine and meth the inference
10 level for drugs is one gram. Half a gram of cocaine, half a
11 gram of meth. On the pills there's a certain level of
12 number of pills that you've got to have for the inference
13 level to come in. As I said, it was about five pills, one
14 morphine pill. On the heroine it says two grains, which is
15 not a grain of sand, it is a specific measurement. That is
16 not a gram, it is a grain. Now, they could have explained
17 what it was, they chose not to ask those questions, that's
18 fine, it's their case. You don't know how much a grain is,
19 and you don't know whether one gram levels up to that, but
20 all we know that they got is a gram of heroine mixed with
21 fentanyl and you can't tell which part is which. Ladies and
22 gentlemen, you're going to hear from the Judge about
23 something called mere presence. If you're around drugs or
24 some other illegal activity and you're just simply there but
25 you're not involved with it then you are merely present, and

CLOSING ARGUMENTS

1 that doesn't mean that you're guilty of a thing other than
2 maybe some bad judgment. There is also another principle
3 about if it kind of looks suspicious. And folks, I would be
4 the first to tell you, I mean, Billy is in the house and
5 there's just drugs in the house, it don't look good, I agree
6 with that, but simply because it looks suspicious, simply
7 because he's simply there doesn't mean that he's guilty of
8 anything. The State has got to prove beyond a reasonable
9 doubt that all of this stuff adds up to possession with
10 intent to distribute, and also you're going to get the
11 opportunity to determine if it doesn't rise to that level is
12 he guilty of possession. If you believe that these drugs
13 were his then you can find him guilty of the possession and
14 not guilty of the possession with intent to distribute, but
15 I'm not asking you to do that. I submit to you all of these
16 drugs belong to someone else. All of these drugs were Jenny
17 or Tammy or whoever the heck was in that back bedroom where
18 most of the drugs were found. The pills were there because
19 he was taking care of his father, that's where the morphine
20 comes from, that's where the Suboxone is coming from. And
21 this bottle that the State just showed up here about oh
22 there's this bottle with this other name on it, that is a
23 Red Herring, ladies and gentlemen. Because if you look it
24 said oxymorphone, which is not a substance you've got in
25 this case, so who cares about an empty pill bottle? Ladies

CLOSING ARGUMENTS

1 and gentlemen, they cannot meet the burden. They cannot
2 prove intent to distribute. They cannot prove that whatever
3 you think the tin foil stuff is for, whatever you think
4 these bags are for, they can't prove that they have the
5 intent to distribute. There are drugs less than the
6 inference level in the house, and I submit to you they can't
7 prove ownership of those drugs. They don't have the
8 instrumentalities. There is no way that he could have
9 hidden whatever money if he's this drug dealer. And another
10 thing, since my friend, the Solicitor, brought up the great
11 Biggie Smalls, there was another line in that song that
12 Biggie talked about of don't get high on your own supply.
13 Well, if he's the big drug dealer he's got all these meth
14 pipes and stuff around the house, is it possession with
15 intent to distribute or is it possession and consumption?
16 Again, I'm not suggesting that he's guilty of the
17 possession, but because they can't prove whose drugs they
18 were for all we know Jenny or whoever else was at the house
19 was smoking them. They can't tell you who was doing it.
20 But they cannot prove beyond a reasonable doubt that Billy
21 Crimminger is guilty of a big charge. I ask you to go back
22 and return a verdict of not guilty. Thank for your time,
23 attention, and service.

24 THE COURT: Thank you, Mr. Frick. Does the State have
25 a brief rebuttal?

JURY CHARGE

1 MR. ALLEN: Thank you. Never said that Billy
2 Crimminger was a good drug dealer, probably not going to be
3 a movie made about this case. This search warrant was
4 executed eight days after they got one. Well, there's time
5 to do a lot of things, and if you want money you can move
6 money. I don't know how much money there really was. He's
7 living in this house, apparently for awhile he was living in
8 this house for his dad, maybe some woman who could have been
9 named Jenny. We never said he was making a fortune on
10 drugs, we're just saying he was selling drugs, and that's
11 why I say Billy Crimminger is not a bad man. People do
12 things for many different reasons, some of those things are
13 against the law, some of those things are immoral. But here
14 is one picture that makes it clear we're not talking about
15 consumption of drugs. Each one of those wrappers wraps up a
16 tenth of a gram of heroine. Each one of those wrappers is
17 going to get sold. I don't see any powder on those, those
18 aren't used, they're on the way out, and that's how we know
19 he's selling. And a gram is well over the inferential
20 amounts of grains, but we don't have to get into old timey
21 measurement system because we've got each of those wrappers
22 present, and I don't know what he's bagging with those, but
23 it's clear that he's bagging up drugs and he's selling them.
24 Thank you.

25 THE COURT: Thank you, Solicitor. All right, ladies

JURY CHARGE

1 and gentlemen, I'm going to charge you the law that is
2 applicable to this case. I'm coming down here so you can
3 hear me better, and I'm going to try to do it as quickly as
4 I can, but everything I tell you is very important. And, of
5 course, I have it all typed up. I'm going to try to not sit
6 here and read it to you, because I know there's nothing
7 worse than just looking at a talking head, and I know that,
8 so I'm going to try to make eye contact with you, number
9 one, to make sure you're paying attention; number two, to
10 make sure you understand the law. Okay? So as you know
11 under the constitution and laws of South Carolina you're the
12 finders of fact and I am the judge of the law. It is your
13 duty to determine the effect, the value, the weight, and the
14 credibility of the evidence that's been presented during
15 this trial. It has been my responsibility as the trial
16 judge to preside over the trial and rule upon the
17 admissibility of evidence that has been offered during this
18 trial. Again, you are to consider only the evidence and the
19 testimony which has been presented from this witness stand
20 along with any other exhibits which may have come in in part
21 of this record. Okay? As the presiding judge I'm the sole
22 judge of the law in this case, and it is your duty to accept
23 as correct and to apply the law as I now state it to you and
24 use that to reach your verdict. Now, the fact that I may
25 instruct you on various subjects in this case must not be

JURY CHARGE

1 taken by you as indicating what I think of the evidence,
2 because remember, you're the judge of the facts. And
3 finally, I charge you you should not be concerned with what
4 you think the law ought to be, but rather what I charge you
5 the law is. Now, the indictments in this case allege
6 several different offenses against the defendant, and each
7 indictment charges a separate and distinct offense. You
8 must decide each indictment separately on the evidence and
9 the law applicable to it uninfluenced by your decision as to
10 any other indictment. The defendant can be convicted or
11 acquitted on any or all of the offenses charged, and I will
12 go over that verdict form with you in a moment. Now, ladies
13 and gentlemen, you are the sole judges of the credibility,
14 also known as the believability of the witnesses and the
15 evidence in this case. Now, in deciding credibility you can
16 take into consideration many things, such as the demeanor or
17 the manner in which a witness testified, whether or not a
18 witness had reason to be biased or prejudiced, or whether or
19 not a witness' testimony was contradicted on the one hand or
20 supported and corroborated on the other hand. All of these
21 things you'll consider bearing in mind that you should give
22 the defendant the benefit of any reasonable doubt. It's
23 your duty as jurors to analyze and to evaluate the evidence,
24 and determine that evidence which convinces you of its
25 credibility. There's two different types of evidence

JURY CHARGE

1 offered in a trial typically. You have direct evidence,
2 which directly proves the existence of something, i.e. eye
3 witness testimony or something like that. Okay? Then you
4 also have something called circumstantial evidence, which is
5 a proof of a chain of facts and circumstances which when put
6 together indicate the existence of a fact. For example, you
7 know, before you go to bed tonight you look outside on your
8 front lawn and your grass is starting to turn brown, I guess
9 because it's November, and you go to bed, the next morning
10 you wake up there's snow on the ground with footprints in
11 it. All right? Well, you can infer that it snowed
12 overnight, and you can infer that somebody has been walking
13 on your lawn. See, these are things that you can infer even
14 though you didn't actually see it happen. Okay? So that's
15 what circumstantial evidence is, and crimes can be proven by
16 circumstantial evidence. And the law makes no distinction
17 between the weight or value to be given to either direct or
18 circumstantial evidence. Now, however, ladies and
19 gentlemen, to the extent that the State relies on
20 circumstantial evidence all of the circumstances must be
21 consistent with each other, and when taken together point
22 conclusively to the guilt of the accused beyond a reasonable
23 doubt. Now, if the circumstances merely portray the
24 defendant's behavior as suspicious, that proof has failed.
25 The State has the burden of proving a defendant guilty

JURY CHARGE

1 beyond a reasonable doubt for each charge. This burden
2 rests with the State regardless of whether the State relies
3 on direct evidence, circumstantial estimated, or some
4 combination of the two. I already told you about expert
5 witnesses. Expert witnesses can give opinion testimony as
6 to certain things. That doesn't mean you have to accept
7 that opinion, it's simply something for you to be -- to
8 consider with the weight of all of the evidence when you
9 start talking about it. And plus you're not required to
10 accept an expert's opinion, especially if the expert's
11 opinion is not contradicted. Okay? That's something for
12 you to consider when you deliberate the case. Now, ladies
13 and gentlemen, I instruct you and emphasize to you the fact
14 that the defendant did not testify is not a factor to be
15 considered by you in any way in your deliberations and in
16 your consideration of guilt or innocence. It must not be
17 considered by you whatsoever. A defendant has a
18 constitutional right to remain silent, and the assertion of
19 that right must not be considered by you in your
20 deliberations. So I repeat, under your oath you are to draw
21 no conclusion whatsoever from the fact that the defendant in
22 this case did not testify. The fact that he didn't testify
23 should not even be discussed in the jury room. The burden
24 of proof is always on the State of South Carolina. The
25 defendant is not required to prove innocence. The burden of

JURY CHARGE

1 proof is on the State to prove beyond a reasonable doubt the
2 crimes charged. Now, the defendant has pled not guilty and
3 therefore the State, as you know, has to prove guilt. A
4 defendant is never required to prove innocence. It's an
5 important rule of law, ladies and gentlemen, that a
6 defendant in a criminal trial, no matter what the
7 seriousness of the charge may be, will always be presumed
8 innocent of the crime for which he was charged unless guilt
9 has been proven by evidence satisfying you of that guilt
10 beyond a reasonable doubt. This presumption of innocence
11 doesn't end when you start your deliberations, but it
12 accompanies the defendant throughout your deliberations
13 until you find that there's been evidence satisfying you of
14 that burden of beyond a reasonable doubt. It's not just a
15 mere legal theory, it's not a legal phrase, it's a
16 substantial right to which every defendant is entitled to
17 unless you, the jury, are satisfied that the State has met
18 its burden. So what does beyond a reasonable doubt mean? A
19 reasonable doubt is a doubt which makes an honest, sincere,
20 conscientious juror in search of a verdict to hesitate to
21 act. Proof beyond a reasonable doubt must therefore be
22 proof of such a convincing character that a reasonable
23 person would not hesitate to rely and act upon it in the
24 most important of his or her own affairs. Now, proof beyond
25 a reasonable doubt can also be described as proof that

JURY CHARGE

1 leaves you firmly convinced of the defendant's guilt. Now,
2 ladies and gentlemen, there's very few things we know in
3 this world with absolute certainty, and in criminal cases
4 the law does not require proof that overcomes every possible
5 doubt. So if based upon your review of the evidence you're
6 firmly convinced that the defendant is guilty, you must find
7 him guilty. If on the other hand you think there's a real
8 possibility he's not guilty, you must give him the benefit
9 of that doubt and find him not guilty. Let's talk about
10 criminal intent. Okay? In order to establish criminal
11 liability criminal intent is required. For example, the
12 mental state required to be proven by the State for a
13 particular crime might be purpose, intent, knowledge,
14 recklessness, or criminal negligence. Criminal intent must
15 be proven beyond a reasonable doubt. Criminal intent is
16 always something that the jury has to decide from the
17 circumstances surrounding the situations. There is no way
18 that anybody can prove intent to a mathematical certainty.
19 There is no medical procedure or scientific method that can
20 dissect a person's brain to determine what they had on their
21 mind. Okay? So criminal intent can be inferred from
22 circumstances which have been shown to have existed, that's
23 how you make a determination of whether or not the element
24 requiring intent was present. Criminal intent is a mental
25 state, a conscious wrongdoing. It's up to you to determine

JURY CHARGE

1 what the defendant intended to do based on the circumstances
2 which have been shown to have existed. Now, mere presence
3 at the scene of a crime is not sufficient to prove somebody
4 guilty of a crime. A defendant's presence where a crime is
5 being committed or mere association with a person who
6 commits a crime does not make a defendant an accomplice or
7 an aider or abettor of the person committing a crime. The
8 burden is on the State to prove every element of the crime
9 charged. So if you find after reviewing all of the evidence
10 that the State has proved the defendant was only present at
11 the scene of a crime, and that the State hasn't proved
12 beyond a reasonable doubt any other participation in the
13 crime, then you must find the defendant not guilty. The law
14 is that proof of mere presence at the scene of a crime is
15 not sufficient to find someone guilty. Let's talk about
16 hand of one hand of all. If a crime is committed by two or
17 more people who are acting together in committing a crime,
18 the act of one is the act of all. A person who joins with
19 another to commit an unlawful act is criminally responsible
20 for everything done by the other person, which happens as a
21 probable or natural consequence of the acts done in carrying
22 out a common plan and purpose. For example, two people can
23 be guilty of killing another person when only one of the two
24 had a gun, there was only one bullet and only one of the two
25 fired the shot that caused the death. If two or more people

JURY CHARGE

1 are together acting together assisting each in committing an
2 offense, the act of one is the act of all, or as it is
3 sometimes said, the hand of one is the hand of all. All
4 right. Let's talk about the specific indictments here and
5 crimes charged, and I am going to try to get the words
6 right, I'm not a chemist. Possession with intent to
7 distribute scheduled 4, or the diazepam, I said that right.
8 The defendant is charged with possession with intent to
9 distribute, dispense, or deliver diazepam, which is a
10 scheduled 4 controlled substance. The State must prove to
11 you beyond a reasonable doubt that the defendant possessed
12 that controlled substance with the intent to distribute it.
13 Okay? Now, I'm going to describe some words like possession
14 and distribute, I've already told you what intent is. So
15 each one of these indictments that I define possession and
16 distribute means the same throughout so listen very
17 carefully. To prove possession the State must prove beyond
18 a reasonable doubt that the defendant had both the power and
19 the intent to control the disposition or use of the
20 controlled substance. Possession can either be actual or
21 constructive. Actual possession means that the controlled
22 substance was in the actual physical custody of the
23 defendant. Constructive possession means that the defendant
24 had dominion and control, or the right to exercise dominion
25 and control over either the controlled substance itself or

JURY CHARGE

1 the property on which the controlled substance was found.
2 Mere presence at the scene where drugs were found is not
3 enough to prove possession. Actual knowledge of the
4 presence of the controlled substance is evidence that you
5 are to consider to determine the defendant's intent to
6 control its disposition or use. A defendant's knowledge and
7 possession may be inferred when the substance is found on
8 the property under the defendant's control. However, this
9 inference is simply an evidentiary fact to be taken into
10 consideration by you, along with the other evidence in the
11 case, and is to be given the weight you decide it should be.
12 Two or more persons may have joint possession of a drug.
13 The State must also prove beyond a reasonable doubt that the
14 defendant intended to distribute the controlled substance.
15 Distribute means to deliver other than by administering or
16 dispensing a drug. Intent may be shown by the acts and
17 conduct of the defendant and other circumstances from which
18 you may naturally and reasonably infer intent. You can
19 consider the circumstances surrounding the defendant's
20 alleged possession. You can consider the amount of the
21 substance alleged to have been possessed, the manner in
22 which it was allegedly possessed, the place where it was
23 allegedly possessed, and any other factors which you
24 consider to be important. You must find that the defendant
25 did not intend to have that controlled substance solely for

JURY CHARGE

1 his own use. Now, if you find that the defendant (sic) has
2 failed to prove beyond a reasonable doubt that the defendant
3 is guilty of possession with intent to distribute diazepam,
4 you may then consider the lesser offense of possession of
5 diazepam. Possession does not require an intent to
6 distribute the controlled substance. You would -- the State
7 has the burden of proving beyond a reasonable doubt that the
8 defendant knowingly or intentionally possessed the
9 controlled substance. Knowingly means with knowledge,
10 consciously, not accidentally. I've already described to
11 you what intent means, and I've already described to you
12 what possession means. Let's talk about possession with
13 intent to distribute crack cocaine, or cocaine base. The
14 State must prove beyond a reasonable doubt that the
15 defendant possessed crack cocaine with the intent to
16 distribute it. To prove possession, again, the State must
17 prove beyond a reasonable doubt that the defendant had both
18 the power and the intent to control the disposition or use
19 of the crack cocaine. Again, possession can either be
20 actual or constructive, and I previously described what
21 actual or constructive means. I've already instructed you
22 that two or more persons may have joint possession of a
23 drug. The State must prove beyond a reasonable doubt that
24 the defendant intended to distribute the crack cocaine.
25 Again, distribute means to deliver other than by

JURY CHARGE

1 administering or dispensing the drug. You can look at the
2 totality of the circumstances which you believe the State
3 has proven beyond a reasonable doubt to determine what the
4 defendant's intent was. You must find that the defendant
5 did not intend to have crack cocaine solely for his own use.
6 Possession of more than -- possession of more than ten
7 grains of crack cocaine creates an inference that the
8 defendant possessed the cocaine with intent to distribute
9 it. Now, this inference does not relieve the State from
10 proving beyond a reasonable doubt that the defendant had the
11 intent to distribute it, it's simply an evidentiary fact
12 that should be considered by you along with everything else.
13 Now, if you find that the State has failed to prove beyond a
14 reasonable doubt possession with intent to distribute the
15 crack cocaine, you can consider whether or not the State has
16 met its burden of possession of cocaine base, not possession
17 with intent to distribute, but simple possession of cocaine
18 base. And you understand what intent means, I've described
19 that to you. I've also described to you what possession
20 means. Let's move on to possession with intent to
21 distribute a schedule 1BC narcotic, LSD, or scheduled 2
22 narcotic controlled substance. That's a fancy way of saying
23 heroine. Okay? The defendant is charged with possession
24 with intent to distribute heroine. The State must prove,
25 again, beyond a reasonable doubt that the defendant

JURY CHARGE

1 possessed heroine with the intent to distribute it. You
2 understand the State's burden of proof of actual possession.
3 I've described to you what actual versus constructive
4 possession means. I've described to you that two or more
5 persons may have joint possession of a drug. You
6 understand -- I've described to you what distribute means
7 under the law as well as intent. And you must find that the
8 defendant did not intend to have this heroine solely for his
9 own use. Possession of more than two grains of heroine
10 creates an inference that the defendant possessed the
11 heroine with the intent to distribute it. That's just
12 something for you to consider along with the weight of
13 everything else. If you find that the State has failed to
14 prove the intent element of distributing heroine, you can
15 consider the lesser offense of simple possession of heroine
16 with the same legal instructions concerning possession and
17 intending to possess, not accidentally possessing, along
18 with mere presence and everything else. Lastly, I believe
19 lastly, possession with the intent to distribute scheduled
20 1, 2 three controlled substance, or that flunitrazepam we
21 call that -- I believe it's called Suboxone, I believe. The
22 defendant is charged with possession with intent to
23 distribute that drug. Same definition of possession. Same
24 definition of actual and constructive possession. Same
25 definition of two or more persons have joint possession.

JURY CHARGE

1 Same definition of intent. And you must find that the
2 defendant did not intend to have that controlled substance
3 solely for his own personal use. Possession of Suboxone.
4 You can consider that as a lesser offense if you find that
5 the State has not met its burden of proof on possession with
6 intent to distribute. All right. Possession with intent to
7 distribute methamphetamine. Same definition of possession,
8 actual and constructive possession. Same definition of two
9 or more persons may have joint possession, and it's more
10 than just mere presence. Same definition of distribute.
11 Same definition of intent. And you must find that the
12 defendant did not intend to have that controlled substance,
13 methamphetamine, solely for his own use. If you find that
14 the State has failed to meet its burden of PWID, or
15 possession with intent to distribute methamphetamine, you
16 can consider the lesser offense of simple possession of
17 methamphetamine. And you understand the -- or I described
18 to you what possession means -- simple possession means.
19 All right. Let's talk about deliberations real quick, then
20 ladies and gentlemen, you'll get the case. Deliberation is
21 defined as a careful consideration weighing up with a view
22 to a decision. See, the genius of our jury system and our
23 criminal justice system is that it allows 12 good people,
24 both men and women from different walks in life, from
25 differing backgrounds, life experience and perspectives to

JURY CHARGE

1 consider the evidence that's been presented to them, talk
2 about it and ultimately reach a verdict. The task of a jury
3 is called deliberations for a reason, you're to consider the
4 evidence in this case carefully, deliberately. Discuss it
5 calmly, thoroughly. Remember, you're not partisans or
6 advocates or one side or the other, you're the judges of the
7 facts. The U.S. Constitution, the supreme law of our land,
8 affords everyone a day in court and a fair trial, so this
9 case is very important to both sides, it is their day. I
10 charge you, ladies and gentlemen, listen to the views of
11 your fellow jurors, carefully consider their viewpoints, and
12 courteously discuss the evidence. Remember, you're doing
13 something deliberately, you're not in a big hurry and you're
14 tasked with a duty of utmost importance. Your verdict
15 cannot be based on sympathy, passion, prejudice, emotion, or
16 any other consideration that's not in evidence in this case.
17 In conclusion you've been selected by both the State and the
18 defense to be fair and impartial jurors. It is your duty
19 then to determine the facts in this case giving the
20 defendant the benefit of every reasonable doubt on the
21 charge, you take and apply the law to the facts which you
22 determine to be relevant, and I've given you the law, and
23 that's how you reach your verdict. Now, ladies and
24 gentlemen, you've heard the evidence, you've heard the law,
25 whatever your verdict is, guilty or not guilty, Madam

JURY CHARGE

1 Forelady, you will indicate it by marking the jury's
2 decision on the verdict form. And the verdict form is
3 numbered, each indictment separately, and it's straight
4 forward. As to each charge we, the jury, unanimously find
5 the defendant, Billy Franklin Crimminger, as follows:
6 Number one, it lists what the charge is, you either find him
7 not guilty, guilty, or guilty of a lesser offense. Okay?
8 You can only check one blank per number. Okay? And then at
9 the end you will sign it and date it. Okay? And, Madam
10 Forelady, you cannot fill out this verdict form or sign and
11 date it until all 12 of you agree as to what your verdict is
12 going to be. So what's going to happen now, ladies and
13 gentlemen, you're going to go back to your jury room, I
14 indicated to you we have lunch for you, and don't start
15 discussing it until you get all of the evidence as well as
16 this verdict form, and once you get those things that's your
17 signal to finally begin to talk about this case. Once you
18 start your deliberations you will continue until you've
19 reached a verdict at which time you'll tell the bailiff and
20 we'll bring you back out here to receive the verdict. So at
21 this time I'm going to have everybody go back to the jury
22 room except my alternate, I need my alternate to remain here
23 in the courtroom with me. Okay?

24 (The jury left the courtroom.)

25 THE COURT: Any exceptions to the charge from the

SENTENCING HEARING

1 State?

2 MS. WINE: None, Your Honor.

3 THE COURT: From the defense?

4 MR. FRICK: None from the defense.

5 THE COURT: All right, thank you.

6 (The alternate juror was dismissed.)

7 (The exhibits and verdict form were sent to the jury

8 And the jury began deliberations.)

9 THE COURT: All right. All members of the jury are
10 present. And, Madam Forelady, it's my understanding that
11 the jury has reached a verdict.

12 THE JUROR: Yes, sir.

13 THE COURT: Is the verdict unanimous?

14 THE JUROR: Yes, sir.

15 THE COURT: Thank you. If you will hand that to the
16 clerk, please. All right. Mr. Clerk, you may publish the
17 verdict.

18 THE CLERK: Thank you, Your Honor. The State of South
19 Carolina versus Billy Franklin Crimminger, defendant,
20 indictment number 2019-GS-29-1168, possession with intent to
21 distribute scheduled 1 or scheduled 2 narcotic controlled
22 substance, guilty. Indictment number 2019-GS-29-2719,
23 possession with intent to distribute a scheduled 4
24 controlled substance, not guilty. Indictment number
25 2019-GS-29-1174, possession with intent to distribute

SENTENCING HEARING

1 Suboxone, not guilty. Indictment 2019-GS-29-1170,
2 possession with intent to distribute methamphetamine, guilty
3 of the lesser included possession of methamphetamine.
4 Indictment number 2019-GS-29-1172, possession with intent to
5 distribute cocaine base, guilty of the lesser included
6 possession of cocaine base crack cocaine. Ladies and
7 gentlemen of the jury, if this be your verdict say so by the
8 raising of your right hands. Let the record reflect they
9 raised their right hands. This was signed by Sandra
10 Havermann, foreperson, November 9, 2022.

11 THE COURT: All right. Thank you, Mr. Clerk. Ladies
12 and gentlemen, thank you so much for your jury service, I'm
13 going to ask that you go back to your jury room just for a
14 few more moments. Okay? Thank you very much.

15 (The jury left the courtroom.)

16 THE COURT: Mr. Frick?

17 MR. FRICK: Your Honor, at this time the defense would
18 request a new trial based on the previous pretrial motions
19 and objections throughout the trial.

20 THE COURT: All right. I'm going to respectfully deny
21 that motion. I think this jury -- this is a mixed verdict,
22 I mean, I think they thoughtfully considered everything. I
23 can't imagine your client will get a more fair trial than he
24 did. I mean, they found him not guilty of two things,
25 guilty of possession of the lesser offense of two things,

SENTENCING HEARING

1 and then guilty of PWID for one thing, but I will tell
2 that -- so that motion is denied. All right. For the
3 State's purposes for sentencing sheets, I need a sentencing
4 sheet for 2019-1168, PWID, that must be the heroine.

5 MS. WINE: Yes, sir.

6 THE COURT: And then I need a sentencing sheet for
7 indictment 1170, for possession of methamphetamine.

8 MS. WINE: Yes, sir.

9 THE COURT: And then I need a sentencing sheet for
10 1172, possession of cocaine base.

11 MS. WINE: Yes, sir.

12 THE COURT: All right. If you'll go ahead and get
13 those prepared while we're in recess. Mr. Crimminger is in
14 custody but he doesn't have to be held there, just don't let
15 him leave this courtroom.

16 (A break was taken.)

17 THE COURT: All right. Mr. Crimminger, I need you to
18 approach the bench, please. Before we proceed to sentencing
19 let me hear from the State first in regards to sentencing,
20 tell me -- I need to know his prior record and what the
21 State is recommending.

22 MS. WINE: Yes, sir. Your Honor, Mr. Crimminger's
23 record goes back to 1987, he has three counts of fraudulent
24 check, and he also has an additional five counts from that
25 same year. 1988, two counts of fraud check. 1991, two

SENTENCING HEARING

1 counts of obtaining false -- obtaining finances under false
2 pretenses, and one count of fraud check. In 2003 he had
3 probation for nine counts of forgery. In 2004 he had
4 possession of crack cocaine base first offense. 2005 he had
5 a probation revocation for that charge because of a new
6 forgery conviction. In 2016 he pled guilty to six counts of
7 manufacturing, distribution, or possession with intent to
8 distribute a controlled substance, cocaine base or other
9 narcotics, and scheduled 1 or 2 first offense, so all six of
10 those were first offense. He was sentenced to 15 years
11 suspended to 40 months of service and two years of
12 probation. And those are all South Carolina charges as
13 well. 1995 he has a possession of cocaine in Florida, as
14 well as a probation violation in 1988 in Florida. He had a
15 petty theft conviction in 2003 in Florida, a possession of a
16 firearm by a felon as well as driving under suspension. And
17 the convictions today do qualify as enhancements, and they
18 were indicted as second offenses for the charges that he was
19 convicted on today.

20 THE COURT: All right. Anything further from the State
21 in regards to sentencing?

22 MS. WINE: Judge, we do have a letter that was drafted
23 by a member of law enforcement who lives in the same
24 community as Mr. Crimminger, I do have a copy of it, I would
25 ask that we hand it up for your review, and I'm also happy

SENTENCING HEARING

1 to provide a copy from Mr. Frick as well. May I approach?

2 THE COURT: Yeah. Anything further other than this?

3 MS. WINE: No, Your Honor. This is just an unfortunate
4 day that we're here. I think -- I actually I would ask
5 if -- Investigator Lockhart has nothing to add, but we would
6 just ask that you take special notice that these are second
7 offenses in the same community from his first -- or from his
8 prior convictions back in 2016.

9 THE COURT: Thank you. Give me just a moment, Mr.
10 Frick.

11 (Break in proceedings.)

12 THE COURT: Mr. Frick?

13 MR. FRICK: Judge, Mr. Crimminger is going to be 59
14 this [REDACTED], and you heard his record and you know what it
15 is but I'll tell you anyway, it is someone who is an addict.
16 Everything that he's got on there is indicative of being an
17 addict and any illegal activity he's been involved with. In
18 fact, I see I think it was back on his rap sheet one of
19 those first forgery convictions back in '91 he was suspended
20 to go to drug rehab, so it was -- this has been a
21 longstanding issue for him. I can tell you, Judge, I've
22 actually -- I can't remember if I represented Billy before
23 or not, but I've known Billy, he's in the best shape he has
24 been in in all the years that I've known him. I believe
25 he's clean now, he's got a job, he's working. He has tried

SENTENCING HEARING

1 to overcome his past. And in all frankness with the Court,
2 and I'm not fussing at the Solicitor about this, but the
3 verdict that we reached here today was essentially what I
4 was asking for in a plea offer, so that was what we were
5 trying to negotiate to. Judge, I understand it's second
6 offenses. He has not been in trouble since the charges that
7 he's been convicted of here today.

8 THE COURT: If it wasn't a second offense, what would
9 PWID heroine be? Zero to 15?

10 MS. WINE: Yes, sir.

11 MR. FRICK: I think, yes, sir. So -- and I will tell
12 you on that prior offense that he had back in '16, it was a
13 split sentence. He had big number hanging over his head, it
14 was suspended to some time in the department of corrections
15 and out on probation.

16 THE COURT: Was I the sentencing judge?

17 MR. FRICK: I have no idea.

18 THE COURT: Anyway, go ahead, she'll tell me.

19 MR. FRICK: And at that time, Judge, he was allowed to
20 do a delayed report, he had had -- I think it was right when
21 his father died, so he had had some time to report. Judge,
22 this is his home. The Jenny, Tammy, whatever the heck her
23 name is, she's still living at the house, he's been trying
24 to get her evicted. I'm asking for you to give him an
25 opportunity so he can try to straighten out some affairs,

SENTENCING HEARING

1 his brother can verify that. They have made several
2 attempts to get her out of the home and she's -- for one
3 reason or another they can't get her out. And he's also
4 recently had an automobile accident where he's trying to
5 collect on his insurance check and they have not given that
6 to him. I know that's not all great reasons to delay the
7 report, Judge, but he reported previously. I can tell you
8 every time that I've needed Billy I can find him, I don't
9 have any reservations in asking for that. We're just asking
10 for leniency, here, Judge, he's not a danger to anybody
11 except himself. Whatever he may have done as I said is a
12 result of an addiction that he has fought for a long time
13 that I think he may actually have a handle on at this point.
14 I don't know -- I told his brother I would look back here if
15 he wanted to say anything, I don't know if --

16 SPEAKER: With that being his second offense --

17 THE COURT: Come on up, sir.

18 SPEAKER: He took the blame for --

19 THE COURT: Hang on. We've got to get you on the
20 record, come on up.

21 SPEAKER: That being a second offense I think he took
22 the blame so our dad wouldn't have to come up here, and he
23 was on oxygen and life support things all that time, he
24 couldn't even walk, and he did take the blame for that in
25 2016. And the second offense, he even took the blame for

SENTENCING HEARING

1 that girl he's talking about on the crack charge years ago
2 that messed him up. But he's a good guy, got a good heart.

3 THE COURT: Thank you, sir. Mr. Crimminger, anything
4 you want to tell me before I impose your sentence?

5 THE DEFENDANT: No, sir. I would like a little time to
6 get my affairs in order before I have to go if that's
7 possible. I've got some stuff at the bank I need to get
8 straightened out, a couple of loans.

9 THE COURT: I've got your birthdate at [REDACTED]/65; is that
10 correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: So you're going to be 58?

13 THE DEFENDANT: I think so.

14 THE COURT: Are you 57?

15 THE DEFENDANT: Fifty-eight.

16 MR. FRICK: None of us are got at math.

17 THE COURT: Well, [REDACTED] 65 is fixing to be -- I'm 55, I'm
18 going to be 56 this month and I was born in 1966, you were
19 born in 1965 so you're fixing to be 58.

20 THE DEFENDANT: Okay.

21 THE COURT: All right. I'm trying to figure out how
22 old you're going to be when you make parole, although I
23 don't really consider that whenever I do a sentence. All
24 right. Mr. Crimminger, on indictment 19-GS-29-1172, having
25 been found guilty by a jury of your peers to the charge of

SENTENCING HEARING

1 possession of methamphetamine, it's a second offense, it
2 carries zero to five years, I sentence you to five years in
3 the South Carolina Department of Corrections, it will be
4 concurrent to the remaining sentences and you'll be given
5 credit for any previous time you've served. On indictment
6 19-GS-29-1170, having been found guilty by a jury of
7 possession of methamphetamine, I believe that's the correct
8 one, same sentence, five years in prison to run concurrent,
9 credit for time served. As to indictment 19-GS-29-1168,
10 having been found guilty by a jury of your peers of
11 possession with intent to distribute heroine, that being a
12 second offense, I sentence you to 12 years in the South
13 Carolina Department of Corrections to run concurrent with
14 the other indictments, credit for time served. And as to
15 your request for a delayed reporting, that request is
16 denied. Take him into custody. Good luck to you, sir.

17 (End of the hearing.)

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1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned
7 case relative to appeal in the Court of General
8 Sessions for Lancaster County, South Carolina, on
9 the 7th-9th days of November, 2022.

10 I further certify that I am not of counsel, nor
11 interest to any party hereto.

12

13

April 3, 2023

14

15

16


Michael C. Watkins

17

Court Reporter

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WITNESSES

Fayall - LCSO #19-12094

Adams

ARREST WARRANT NUMBER/DOA

Direct Indictment IN RE: AW#
2019A2910200025 (DOA-3-15-19)

ACTION OF GRAND JURY

TRUE BILL

Angela R. Baker
Foreperson of Grand Jury
Date: FEB 24 2022

VERDICT

Foreperson of Petit Jury
Date:

AMENDED
DOCKET NO. 2019-GS-29-1168

The State of South Carolina
County of Lancaster

COURT OF GENERAL SESSIONS

JUNE TERM 2019
AMENDED FEBRUARY TERM 2022

THE STATE
VS.

Billy Franklin Criminger

Amended Direct Indictment for
Possession With Intent to Distribute
Schedule I(b), (c) Narcotic, LSD, or
Schedule II Narcotic Controlled
Substance- Second Offense
SC Code: § 44-53-370(a), (b)(1)
CDR Code: 0184
Class: Felony, A

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CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

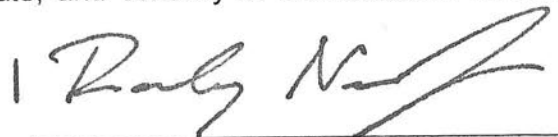
AMENDED DIRECT INDICTMENT

At a Court of General Sessions, convened on February 24, 2022, the Grand Jurors of Lancaster County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE SCHEDULE I(B), (C)
NARCOTIC, LSD, OR SCHEDULE II NARCOTIC CONTROLLED SUBSTANCE –
SECOND OFFENSE

That Billy Franklin Criminger did in Lancaster County, South Carolina, on or about March 15, 2019, possess with intent to distribute, dispense, or deliver Heroin, a Schedule I(b) or (c) narcotic, LSD, or a Schedule II narcotic controlled substance in violation of § 44-53-370(a), (b)(1), *Code of Laws of South Carolina, (1976), as amended*. The Defendant has been previously convicted of a prior criminal offense for possession of a controlled substance other than marijuana, in violation of S. C. law within 10 years of March 15, 2019, making this a second or subsequent offense as defined by S. C. Code §44-53-470(A)(3).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Randy E. Newman, Jr., SOLICITOR

WITNESSES

Fayall – LCSO #19-12094

Adams

ARREST WARRANT NUMBER/DOA

Direct Indictment IN RE: AW#
2019A2910200023 (DOA 3-15-19)

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury
Date:

AMENDED
DOCKET NO. 2019-GS-29-1170

The State of South Carolina
County of Lancaster

COURT OF GENERAL SESSIONS

JUNE TERM 2019

AMENDED FEBRUARY TERM 2022

THE STATE
vs.

Billy Franklin Criminger

Amended Direct Indictment for
Possession with Intent to Distribute
Methamphetamine
2nd Offense
SC Code: §44-53-375(B)(2)
CDR Code: 3199
Class: Felony, A

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CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LANCASTER)

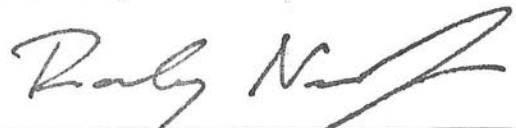
AMENDED DIRECT INDICTMENT

At a Court of General Sessions, convened on February 24, 2022, the Grand Jurors of Lancaster County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE OF METHAMPHETAMINE- 2ND
OFFENSE

That Billy Franklin Criminger did in Lancaster County, South Carolina, on or about March 15, 2019, possession with the intent to distribute, dispense, or deliver methamphetamine to another person, in violation of §44-53-375(B), *Code of Laws of South Carolina, (1976), as amended*. The Defendant has been previously convicted of a prior criminal offense for possession of a controlled substance other than marijuana in violation of S. C law within 10 years of March 15, 2019, making this the Defendant's second or subsequent offense as defined by §44-53-470(A)(3).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 Randy E. Newman, Jr., SOLICITOR

WITNESSES

Fayall - LCSO #19-12094

Adams

ARREST WARRANT NUMBER/DOA

2019A2910200024 (DOA-3-15-19)

ACTION OF GRAND JURY

TRUE BILL

Camela Roberts
Foreperson of Grand Jury
Date:

FEB 24 2022

VERDICT

Foreperson of Petit Jury
Date:

AMENDED
DOCKET NO. 2019-GS-29-1172

The State of South Carolina
County of Lancaster

COURT OF GENERAL SESSIONS

JUNE TERM 2019
AMENDED FEBRUARY TERM 2022

THE STATE
vs.

Billy Franklin Criminger

Amended Indictment for

Possession with Intent to Distribute
Cocaine Base (Crack Cocaine)

2nd Offense

SC Code: § 44-53-375(B)

CDR Code: 3015

Class: Felony, A

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2022 FEB 24 AM 10:44

CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

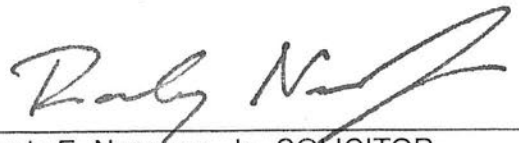
AMENDED INDICTMENT

At a Court of General Sessions, convened on February 24, 2022, the Grand Jurors of Lancaster County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE (CRACK COCAINE)-
2ND OFFENSE

That Billy Franklin Criminger did in Lancaster County, South Carolina, on or about March 15, 2019, unlawfully possess cocaine base (crack cocaine) with the intent to distribute, dispense, deliver, or sell it to another person, and the Defendant has been previously convicted of a prior criminal offense for possess of a controlled substance other than marijuana, in violation of S. C. law within 10 years of March 15, 2019, making this a second or subsequent offense as defined by S. C. Code §44-53-470(A)(3), all in violation of § 44-53-375(B), of the *Code of Laws of South Carolina*.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

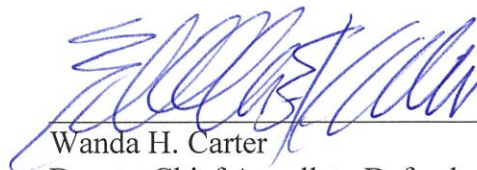


Randy E. Newman, Jr., SOLICITOR

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."

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

ATTORNEY FOR APPELLANT

This 7th day of July, 2023.

RECEIVED

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lancaster County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

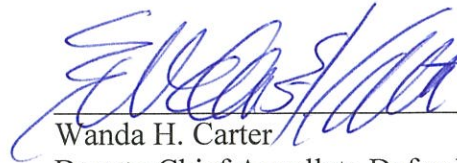
V.

BILLY FRANKLIN CRIMINGER,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon William M. Blich, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), and on Billy Franklin Criminger, 141556, at Wateree River Correctional Institution, PO Box 189, Rembert, SC, 29128, this 7th day of July, 2023.



Wanda H. Carter
Deputy Chief Appellate Defender