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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of General Session

Diane S. Goodstein, Circuit Court Judge

Appellate Case No.: 2023-000698

THE STATE,

RESPONDENT,

V.

DERRICK G. BOYD,

APPELLANT.

RECORD ON APPEAL

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***** State' Exhibit 2 (Video); Court's Exhibit 1 (Photograph); Court's Exhibit 2 (Photograph); Court's Exhibit 3 (Photograph); Court's Exhibit 4 (Photograph); and Court's Exhibit 5 (Photograph) have been requested to be transported to the Court*****

State of South Carolina)	Court of General Sessions
)	First Judicial Circuit
County of Dorchester)	Case No. 2021-GS-18-01041
)	Case No. 2022-GS-18-01042
)	Case No. 2021-GS-18-01043
)	
)	
State of South Carolina,)	
)	
Plaintiff,)	
)	
-vs-)	Transcript of Record
)	
)	
Derrick G. Boyd,)	
)	
Defendant.)	
)	

March 20-21, 2023
St. George, South Carolina

B E F O R E:

The Honorable Diane Goodstein, Judge; and a jury

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

David Osborne, Esquire
Shannon Elliott, Esquire
Attorneys for the Plaintiff/State

Grant Smaldone, Esquire
Attorney for the Defendant

Proceedings taken down electronically

Transcribed by:
Krystal J. Smith
Official Circuit Court Reporter

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STATE'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1	In-car Video - now Court's 6	135	
2	Holder Clipped In-car Video	44	136
3	Marijuana	149	247
4	Cocaine		154
5	Body-worn Footage (full) - now Court's 7		
6	Clipped Body-worn Camera	53	183

DEFENDANT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1	Photo - now Court's Exhibit	58	
2	Photo - now Court's Exhibit	63	
3	Photo - now Court's Exhibit	63	

COURT REPORTER LEGEND

dashes -- intentional or purposeful interruption
or change in thought

ellipses . . . trailing off

[ph] phonetically written

[sic] written as said

[inaudible] unable to hear or understand due to
audio volume or quality

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COURT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1	Photograph		303
2	Photograph		303
3	Photograph		303
4	Photograph		303
5	Photograph		303
6	Holder Body-worn Camera		303
7	Body-worn Camera		303
8	Jury Note		75
9	Jury Note		311
10	Jury Note		311
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1 MARCH 20, 2023

2 (WHEREUPON, the proceedings began at 12:33 p.m.)

3 THE COURT: All right. Ladies and gentlemen, we are now
4 about to select our jury for our first case for trial and in
5 just a moment, I'm going to call on one of our solicitors who
6 are present.

7 And let me share with you that we in South Carolina are a
8 little unique. You're probably familiar with district
9 attorneys or the State's attorneys. In South Carolina, we
10 call our prosecuting attorney the solicitor. And in just a
11 moment, I'm going to call on our Solicitor's Office, and I'm
12 going to ask the solicitor to call our first case for trial
13 this week.

14 And then I'm going to be reading to you some of the
15 allegations to find out if anybody knows or think they may
16 know or have heard or think they may have heard anything about
17 this matter. I'm going to introduce you to some folks. I am
18 going to then ask you some questions, and then we're going to
19 get our jury in this case.

20 Now, ladies and gentlemen, at this time, I'm going to
21 call on the solicitor.

22 Solicitor Osborne?

23 MR. OSBORNE: Thank you, Your Honor.

24 THE COURT: Can you call our first case for trial,
25 please?

1 MR. OSBORNE: Thank you, Your Honor. Our first case is
2 the State versus Derrick Boyd. Mr. Boyd is charged -- the
3 first charge is trafficking in cocaine, 10 grams or more but
4 less than 28 grams. That indictment number is 2021-GS-18-
5 1041. The next charge is possession of contraband by inmate
6 or prisoner. That indictment number is 2021-GS-18-1042. And
7 the last charge is possession with intent to distribute
8 marijuana, and that indictment number is 2021-GS-18-1043.

9 THE COURT: All right. Thank you.

10 Now, ladies and gentlemen, we now have had -- our first
11 case for trial has been called, and I wanted to tell you what
12 an indictment is and what an indictment is not. First of all,
13 it is -- it's a piece of paper. And in this instance, each
14 piece of paper has an individual charge on it, and it is a
15 notice document.

16 It -- an indictment gives a citizen notice that the State
17 is alleging that that citizen has violated one or more of the
18 criminal laws of the State of South Carolina. In this
19 instance, three indictments, three charges, and the State is
20 alleging that the defendant has violated three of the criminal
21 laws of the State of South Carolina.

22 I want to hasten and tell you that to each of these three
23 indictments, Mr. Boyd has pled not guilty. Not guilty. And
24 that places the burden of proof on the State and the State
25 only to prove guilt beyond a reasonable doubt, and the State

1 must prove each and every allegation of each of these three
2 indictments beyond a reasonable doubt. And those of you that
3 will serve on the jury, you will consider these indictments
4 independently and separately, and you'll make the
5 determination whether the State has met its burden of proof
6 with regards to each of the indictments.

7 Now, ladies and gentlemen, in just a moment, I'm going to
8 be reading to you some of the allegations of these
9 indictments. Why would I do that? Well, the reason that I'm
10 going to do that is I need to find out whether or not any of
11 you know or think you may know, have you heard or think you
12 may have heard anything about these allegations? So that's
13 where we're going to start.

14 Now, I want to define a term for you that I'm going to
15 use a lot. I'm going to ask do any of you know anyone. I
16 need to find out if you are related by blood or marriage or
17 acquainted with individuals as we go through this part of the
18 process. You'll hear me say, are you related by blood or
19 marriage or acquainted with.

20 And I use a real general definition of "acquainted with"
21 because I'm trying to find out if you have any connection with
22 the people that I'll be asking about. It may be that you went
23 to school with someone that I'll ask you about 20 years ago.
24 You haven't seen this person. You haven't thought about this
25 person in 20 years, but you know that you went to school with

1 them 20 years ago.

2 Well, believe it or not, that allegation would be
3 encompassed or that relationship, I should say, would be
4 encompassed within my definition of acquainted with, and you
5 would stand and tell me I went to school with that person 20
6 years ago. It may be that you simply work at the same
7 location with someone that I'll ask you about, and you would
8 stand and you would tell me that as well.

9 So, ladies and gentlemen, please keep in mind I intend a
10 very general definition of acquainted with. I'm trying to
11 find out if you have any connection with the folks that I'll
12 be asking you about when I use that term.

13 All right. Now, ladies and gentlemen, in just a moment,
14 I am going to be reading to you some of the allegations in the
15 indictments. And my question on the other side will be, do
16 any of you know or think you may know, or have you heard or
17 think you may have heard anything about these allegations?

18 All right. Ladies and gentlemen, Indictment 2021-GS-18-
19 1041 alleges that in Dorchester County, South Carolina, on or
20 about May the 15th, 2021, that Derrick Gerard Boyd did
21 knowingly sell, manufacture, cultivate, deliver, purchase, or
22 bring into this state, or did provide financial assistance or
23 otherwise aid, abet, attempt, or conspire to sell,
24 manufacture, deliver, purchase, or bring into the state, or
25 was knowingly in actual or constructive possession, or

1 knowingly attempted to become in actual or constructive
2 possession of more than ten grams but less than 28 grams of
3 cocaine, this being in violation -- and the code section is
4 given there, 44-53-370 of the South Carolina Code of Laws, as
5 amended. Ladies and gentlemen, I hasten just to tell you that
6 to these allegations Mr. Boyd has pled not guilty.

7 Now, ladies and gentlemen, do any of you know or think
8 you may know, or have you heard or think you may have heard
9 anything about these allegations? If so, please stand.

10 And I find no one standing.

11 Now, ladies and gentlemen, Indictment 2021-GS-18-1042
12 alleges that in Dorchester County, South Carolina, on or about
13 May 15th, 2021, that Derrick Gerard Boyd did willfully and
14 unlawfully possess cocaine, a substance or article declared to
15 be contraband by the superintendent of the Dorchester County
16 Detention Center while a prisoner under its jurisdiction.
17 This offense is in violation of Section 24-71-55 of the South
18 Carolina Code of Laws, as amended. To these allegations, the
19 defendant has pled not guilty.

20 Now, do any of you know or think you may know, or have
21 you heard or think you may have heard anything about those
22 allegations? If so, please stand at this time.

23 And I find no one standing.

24 Now, Indictment 2021-GS-18-1043 alleges that in
25 Dorchester County, South Carolina, on or about May 15th, 2021,

1 Derrick Gerard Boyd did knowingly or intentionally possess
2 with the intent to distribute a quantity of marijuana, and
3 this offense is in violation of Section 44-53-37 of the South
4 Carolina Code of Laws, as amended. To these allegations, the
5 defendant, Mr. Boyd, has pled not guilty.

6 And, ladies and gentlemen, do any of you know or think
7 you may know, or have you heard or think you may have heard
8 anything about these allegations? If so, please stand at this
9 time.

10 And I find no one standing.

11 Now, ladies and gentlemen, please allow me to introduce
12 you to the solicitors involved in this matter, and then
13 they'll -- they'll introduce folks in their office. Ladies
14 and gentlemen, allow me to introduce you to Solicitor Osborne
15 and Solicitor Elliot, and they will introduce the folks in
16 their office.

17 MR. OSBORNE: Thank you, Your Honor.

18 Hello. The first assistant solicitor in the First
19 Circuit is Kelly LaPlante. Mike Spears is also a prosecutor.
20 Gillian Frederick, seated over there. John Rivers, Baker
21 Allen, Emily Gates. Shannon Carrie Huff is my legal
22 assistant, and Ray Hoff is my investigator.

23 THE COURT: Thank you so much.

24 Ladies and gentlemen, are you related by blood or
25 marriage or acquainted with the elected solicitor, David

1 your ability to be completely fair and impartial to the State,
2 as well as to Mr. Boyd? Yes or no?

3 JUROR NUMBER 80: No.

4 JUROR NUMBER 193: No.

5 THE COURT: Your number?

6 JUROR NUMBER 193: 193.

7 THE COURT: Thank you.

8 JUROR NUMBER 177: 177. No.

9 THE COURT: Yes or no?

10 JUROR NUMBER 177: No.

11 THE COURT: Thank you. Thank you all so much.

12 Are you a member of, donate money to, or receive
13 assistance from any community law enforcement or victims'
14 advocacy group, such as Mothers Against Drunk Driving or MADD,
15 South Carolina Law Enforcement Officers Association,
16 Partnership for Drug Free America, Sister Care, Al-Anon, the
17 State Office of Victims' Assistance, the South Carolina Victim
18 Assistance Network, or similar organizations? If so, please
19 stand.

20 Number?

21 JUROR NUMBER 129: 129.

22 THE COURT: That's all. That's it.

23 And number?

24 JUROR NUMBER 177: 177.

25 THE COURT: Thank you.

1 All right. Ladies and gentlemen, have you or any member
2 of your immediate family, to your knowledge, been charged with
3 or the victim of a crime and, as a result of that, you are
4 concerned that that experience or those experiences could have
5 an effect on your ability to be completely fair and impartial
6 to the State, as well as to Mr. Boyd? If so, please stand.

7 All right. Yeah. Come forward, please. Come forward.

8 JUROR NUMBER 181: I got a question about it.

9 THE COURT: Right here.

10 (WHEREUPON, a bench conference was held with Juror Number
11 181 off the record, after which the proceedings resumed
12 as follows.)

13 THE COURT: Now, here -- this is my concluding
14 instruction, and it is general. And it is just as general as
15 -- as it sounds.

16 Ladies and gentlemen, do you know any reason why you
17 ought not, should not, could not be a juror in this case? You
18 must be ready, willing, and able to listen to the evidence and
19 make up your mind based solely -- based only on what you hear
20 in court while court is in session, being completely
21 unaffected, not affected by matters, extraneous matters
22 outside the court. Being completely ready, willing, and able
23 to be completely fair and impartial to the State, as well as
24 to Mr. Boyd.

25 If you have any concerns about your ability to do that,

1 have that with you while you're serving on the jury. So if
2 you'll give it to our bailiff if it comes back with you.

3 Thank you so much. I'll see you after lunch.

4 (WHEREUPON, the jury exited the courtroom at 1:21 p.m.)

5 THE COURT: All right. Now -- okay. I know everybody
6 needs to go get some lunch, and I'm going to ask you to be
7 back at -- I think we can do it, do what we need to -- tell me
8 what we need to do. Do we need to have a *Jackson v. Denno*?

9 MR. OSBORNE: We do.

10 THE COURT: Okay. Got it.

11 MR. SMALDONE: And suppression issues, and also what we
12 talked about earlier with --

13 THE COURT: Sure. With your client. Okay. So, y'all,
14 quick lunch. I'm so sorry to do that to you, Julie.
15 Hopefully, you don't have to go out and get lunch, but we'll
16 start at ten 'til two. That gives you a little bit of time to
17 go get some lunch. Ten 'til two.

18 Great. Thank you, everyone.

19 (WHEREUPON, there was a break in the proceedings from
20 1:24 p.m. until 2:13 p.m., after which the proceedings
21 resumed as follows.)

22 THE COURT: All right. The first thing is the -- is the
23 motion that we need to handle.

24 MR. SMALDONE: Yes, Your Honor. There's a -- there's a
25 few, but regarding timing and my client's issues and motion --

1 THE COURT: Yeah.

2 MR. SMALDONE: -- motion to continue the case, speaking
3 with my client, my client's -- and I would concur. Certainly
4 not comfortable with going forward knowing that there's a
5 pretty critical piece of evidence that was given, turned over
6 to the defense. I can't -- it was either Friday or Saturday.
7 I think it might have been sent Friday, and I first saw it
8 Saturday.

9 THE COURT: Okay.

10 MR. SMALDONE: And just -- just for the record, that
11 piece of evidence was a video. I say video, but it was mostly
12 audio that mattered, but it was a video file --

13 THE COURT: Uh-huh.

14 MR. SMALDONE: -- of what sounds -- someone that sounds a
15 little bit like the defendant being searched at the jail and
16 them saying -- you can't see because it's a strip search.
17 Basically, the audio of the strip search where the cocaine is
18 alleged to have been found.

19 THE COURT: And were you unaware that that -- those were
20 the allegations?

21 MR. SMALDONE: I was aware that those were the
22 allegations.

23 THE COURT: Okay.

24 MR. SMALDONE: I did not know that that was a pretty
25 crucial piece that would support those allegations.

1 THE COURT: I gotcha. And let me ask this. When -- when
2 was that piece located?

3 MR. OSBORNE: Friday.

4 THE COURT: Friday?

5 MR. OSBORNE: Yes, ma'am.

6 THE COURT: Okay. When was it turned over?

7 MR. OSBORNE: Friday.

8 THE COURT: Okay.

9 MR. SMALDONE: So, you know, it's not the Solicitor's
10 Office's fault, but I think that video -- like I said, when
11 there's video/audio of the event alleged to have been
12 occurring, that's pretty -- pretty critical. It would change
13 our trial strategy and change -- probably change possibly the
14 client's inclination earlier on in the case to reach an
15 agreement with the State.

16 So that -- we would just ask that that be -- that be
17 continued -- the trial be continued because of that so we
18 could have more time to process that, discuss that, and
19 discuss options.

20 MR. OSBORNE: And I do agree that, as far as a plea, that
21 does sort of change the perspective a little bit for Mr.
22 Boyd, which was why I was willing to re-extend the offer, and
23 I would like to get -- if he's not willing to plead to get
24 that rejection on the record.

25 THE COURT: Okay.

1 MR. OSBORNE: The original offer months ago was -- he is
2 a trafficking cocaine third, so he's looking at 25 to 30. I
3 offered him a second, 5 to 30. He rejected that on the
4 record. I re-extended the offer, I think Thursday afternoon
5 or Friday morning, to say that it would be 10 to 30, and then
6 after which we got the body-worn camera footage in.

7 THE COURT: Uh-huh.

8 MR. OSBORNE: And I wanted to get that rejection Friday
9 afternoon, but I said, hey, we've gotten the body-worn camera
10 footage now. I'll give you over the weekend to discuss it
11 with your client, and I would re-extend it on Monday morning.

12 So at this time I would re-extend that offer to a second
13 trafficking cocaine, 10 to 30. And as far as the -- it
14 changing the scope of things, Detention Officer Green wrote a
15 report detailing what happened when they were at the detention
16 center, and so did Deputy Holder. This does nothing more than
17 audio -- give us audio of what was occurring at the time.

18 THE COURT: I gotcha. In other words, there were
19 statements that was in the report that that -- that that's
20 what actually occurred, and I gather the tape was located
21 Friday.

22 MR. OSBORNE: We had asked for it before, and they put it
23 through to their IT people --

24 THE COURT: Uh-huh.

25 MR. OSBORNE: -- trying to find it. They couldn't find

1 it. And then Deputy Cooper did another deep dive one more
2 time, and he was able to locate it.

3 THE COURT: Uh-huh. All right. Yes?

4 MR. SMALDONE: And that's why we asked for a continuance,
5 Your Honor, and I know my -- my client might want to address
6 the Court about his -- his concerns with representation.

7 THE COURT: Sure. I'll do that, but I'll -- I'll ask you
8 to leave.

9 But with regards to the -- well, let me hold the -- the
10 motion for continuance, and so if we'll do the other one.
11 Bye. I need -- I need every -- just about everybody -- just
12 not Ms. Flores, but everybody on that side of the aisle exit
13 the courtroom. I'm sorry.

14 (WHEREUPON, there was a pause in the proceedings for the
15 courtroom to be cleared, after which the proceedings
16 resumed as follows.)

17 THE COURT: All right. All right. Present in the
18 courtroom is security, obviously defense counsel, the
19 defendant, my law clerk, our clerk, our digital court
20 reporter. All -- everybody.

21 That's who's present in the courtroom at this time. That
22 will serve to preserve Mr. Boyd's attorney-client privilege.
23 Everyone is under an order not to discuss what is in this --
24 this portion of the hearing on what I understand is a motion,
25 and this part of the record would be sealed.

1 (THE SEALED PORTION OF THIS TRIAL HAS BEEN PRODUCED AS A
2 SEPARATE TRANSCRIPT TEN PAGES LONG, SEALED, AND FILED
3 WITH THE CLERK OF COURT FOR DORCHESTER COUNTY, NOT TO BE
4 OPENED EXCEPT BY COURT ORDER.)

5 (WHEREUPON, there was a pause in the proceedings, after
6 which the proceedings resumed as follows.)

7 THE COURT: All right. I have not relieved Mr. Smaldone,
8 and I believe he is prepared to proceed and I'm not granting a
9 continuance. So what other -- what other motion? I know
10 we've got a *Jackson v. Denno*.

11 MR. OSBORNE: We do, Your Honor.

12 THE COURT: And then you have a suppression hearing. So
13 --

14 MR. OSBORNE: And I think we can cover them both through
15 the testimony --

16 THE COURT: Okay.

17 MR. OSBORNE: -- of Deputy Holder.

18 THE COURT: Wonderful.

19 MR. OSBORNE: All right. The State calls Deputy Holder.

20 THE COURT: Okay.

21 MR. SMALDONE: And I've written --

22 THE COURT: Wonderful.

23 MR. SMALDONE: -- the suppression issues. There are kind
24 of two --

25 THE COURT: Thank you so much. Yeah.

RAY HOLDER - DIRECT BY MR. OSBORNE

1 MR. SMALDONE: -- two motions.

2 THE COURT: Sure. Thank you so much.

3 THE CLERK: State your full name for the record.

4 THE WITNESS: Ray Houston Holder.

5 THE CLERK: Spell your last name, please.

6 THE WITNESS: H-o-l-d-e-r.

7 THE CLERK: Do you swear or affirm that the testimony
8 you're about to give is the truth, the whole truth, and
9 nothing but the truth, so help you God?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Okay. Your witness.

12 RAY HOLDER, being first duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. OSBORNE:

16 Q: All right. Deputy, for purposes of this hearing, I've
17 just got a few questions for you. Where do you currently
18 work?

19 A: For the Dorchester County Sheriff's Office.

20 Q: Okay. And how long have you been there?

21 A: Approximately eight years, with a little short hiatus. I
22 went to Berkeley County and came back.

23 Q: All right. Were you working the night of May the 14th,
24 2021, going into the early morning hours of May the 15th,
25 2021?

RAY HOLDER - DIRECT BY MR. OSBORNE

1 A: Yes, sir.

2 Q: And what was your assignment?

3 A: I was assigned to Zone One of Dorchester County.

4 Q: All right. Just around 12:30 a.m., did you have the
5 occasion to conduct a traffic stop?

6 A: Yes, sir.

7 Q: And where was that?

8 A: Judge Street in Harleyville.

9 Q: Okay. Were you equipped with body-worn camera or in-car
10 camera that night?

11 A: Yes, sir.

12 Q: All right.

13 MR. OSBORNE: May I approach, Your Honor?

14 THE COURT: You may.

15 BY MR. OSBORNE:

16 Q: I'm just showing you what's been marked State's Exhibit
17 2. Will you take a look at that and tell me if you recognize
18 that?

19 A: Yes, sir.

20 Q: And what is that?

21 A: That is a -- the video of my in-car for my in-car.

22 Q: Okay. And this is a clipped version; correct?

23 A: Yes, sir.

24 (WHEREUPON, the video was played.)

25 Q: And I think this -- you can go ahead and turn. And just

RAY HOLDER - DIRECT BY MR. OSBORNE

1 for the judge's edification, what intersection are we looking
2 at here?

3 A: This is Judge Street and West Main Street in Harleyville.

4 Q: Okay. And is this the stop sign here?

5 A: Yes, sir.

6 Q: Does this -- and I realize the white line may be a little
7 bit more pronounced at the time that you saw it.

8 A: Yes, sir.

9 Q: But does it fairly and accurately depict where the white
10 line was on the night that you were patrolling?

11 A: Yes, sir, I believe so.

12 Q: Okay. And the vehicle -- which way would it have been
13 headed?

14 A: It was heading on Judge Street going into Harleyville.
15 So it would have been coming up to the intersection right
16 there.

17 Q: Much in the same way this red vehicle is?

18 A: Yes, sir.

19 Q: I'm just going to skip ahead a little bit. Oh, too far.
20 Yeah. Now, this is your car?

21 A: Yes, sir.

22 Q: What are you doing right here?

23 A: I'm sitting there.

24 Q: After seeing that car pass?

25 A: I'm sitting with my partner, Deputy Gahan. I'm listening

RAY HOLDER - DIRECT BY MR. OSBORNE

1 to the radio, just kind of hanging out and enjoying time,
2 watching cars pass --

3 Q: Okay.

4 A: -- during the shift.

5 Q: Did anything strike your attention, I guess, when the
6 vehicle passed?

7 A: Yes. I observed the passenger try to conceal himself
8 behind the B-pillar of the vehicle.

9 Q: In what way? What do you mean?

10 A: He tried to lean back and tried to kind of go like this
11 to hide himself from us viewing inside the car.

12 Q: Okay. In and of itself, not against the law?

13 A: Correct.

14 Q: Okay. Just a fraction of a second before that, it looks
15 like the vehicle had stopped; is that correct?

16 A: Yes.

17 Q: It -- where it stopped, is that a traffic violation?

18 A: Yes.

19 Q: All right. Explain to the judge why.

20 A: The front of your vehicle has to be behind that stop bar,
21 basically to prevent any collisions or anything like that.

22 Q: Okay. And I believe what we saw before that, which it
23 certainly does look like it's better painted here than it was
24 before, that stop bar -- is it on the same line as the stop
25 sign?

RAY HOLDER - DIRECT BY MR. OSBORNE

1 A: I don't recall, to be honest with you. I believe that it
2 might be a little past it. I'm not a hundred percent sure.

3 Q: It's a little bit past?

4 A: Yes.

5 Q: It's actually more into the intersection?

6 A: Correct.

7 Q: All right. Based on what you saw, then what did you
8 elect to do?

9 A: I elected to stop the vehicle, conduct a traffic stop on
10 the vehicle.

11 Q: All right. Let me get back to where we left off. The
12 vehicle pulls over no problems?

13 A: Correct.

14 Q: And let me -- let me ask you one other thing, and maybe
15 you know, maybe you don't. If there is no stop bar, where do
16 you have to stop if there's a stop sign?

17 A: You have to stop before the -- or at the stop sign.

18 Q: Okay. Before --

19 A: Yes.

20 Q: -- the stop sign? And if there's a stop bar, you're
21 supposed to stop before the stop sign? What if you did what
22 that car did and you were out and passed the stop bar? Is
23 there any dangers to that?

24 A: Absolutely. 18-wheelers a lot of times, especially in
25 Harleyville, they travel all the time in there because Judge

RAY HOLDER - DIRECT BY MR. OSBORNE

1 Street is a fairway to the interstate. So if you're sitting
2 on that stop bar, you absolutely could get clipped by an 18-
3 wheeler with your front end being out too far into the
4 intersection.

5 Q: And if that happened, whose fault would it be?

6 A: Your fault, for sure.

7 Q: Not the most egregious violation?

8 A: Correct.

9 Q: But still a traffic violation?

10 A: Absolutely.

11 MR. OSBORNE: Let me check something real quick. Sorry,
12 Judge. Get the sound turned on.

13 (WHEREUPON, the video was played and then stopped. Not
14 transcribed herein.)

15 BY MR. OSBORNE:

16 Q: Okay. So the defendant was a passenger in the vehicle?

17 A: Yes, sir.

18 Q: And is that true? Were you able to smell marijuana
19 coming from the vehicle?

20 A: Absolutely. Yes, sir.

21 (WHEREUPON, the video resumed playing and was then
22 stopped. Not transcribed herein.)

23 MR. OSBORNE: Judge, just for your edification, I've
24 provided this to the defense. I've redacted some parts of the
25 defendant's statements where he says that he'd just come home

RAY HOLDER - DIRECT BY MR. OSBORNE

1 from prison, that he's on probation, and that he's been
2 arrested for cocaine and marijuana.

3 THE COURT: Wait. The defendant is saying that?

4 MR. OSBORNE: Yes, ma'am.

5 THE COURT: Okay.

6 (WHEREUPON, the video resumed playing and was then
7 stopped. Not transcribed herein.)

8 MR. OSBORNE: I kind of misspoke. On this one, he asked
9 the deputy -- the deputy asked is there any weapons in the
10 car, and he says I can't have a weapon, I'm on parole or
11 probation.

12 (WHEREUPON, the video resumed playing and was then
13 stopped. Not transcribed herein.)

14 BY MR. OSBORNE:

15 Q: I can see you getting kind of personal here. Do you know
16 -- have you ever seen individuals that carry guns or concealed
17 guns in their genital area?

18 A: Yes, sir.

19 Q: Is that what you're checking here?

20 A: Yes, sir.

21 Q: What's he doing?

22 A: He's clenching his -- like, his glute muscles and stuff
23 like that. Based on my experience when people do that, they
24 usually are concealing something, whether it be, you know, a
25 weapon or illegal drugs or something of the sort.

RAY HOLDER - DIRECT BY MR. OSBORNE

1 (WHEREUPON, the video resumed playing and was then
2 stopped. Not transcribed herein.)

3 BY MR. OSBORNE:

4 Q: All right. What did -- what did he say? He does it for
5 personal use and what?

6 A: He also sells it to his friends and stuff.

7 Q: Okay.

8 MR. OSBORNE: Your Honor, may I approach?

9 THE COURT: You may.

10 BY MR. OSBORNE:

11 Q: I'm showing you State's Exhibit 3. Can you take a look
12 at that and tell me if you recognize that?

13 A: Yes, sir. It's got my initials on it on the heat seal.
14 So this would be the marijuana from that night.

15 Q: Okay. And we saw that came from a blue bag?

16 A: Yes, sir.

17 Q: And where did you recover it from?

18 A: It was inside the vehicle.

19 Q: Specifically?

20 A: I believe it was in the driver's seat, but I'm not a
21 hundred percent on that.

22 Q: Okay. Underneath the driver's seat?

23 A: Yeah. Yes, sir.

24 Q: And is that where he -- is that where the defendant said
25 that it would be found?

RAY HOLDER - DIRECT BY MR. OSBORNE

1 A: Yes, sir.

2 Q: All right. And I know we have some more going on here.
3 What did you do after this? You completed a search on the
4 car?

5 A: Yes, sir.

6 Q: Well, anything else found inside the bag other than the
7 marijuana?

8 A: Yes. There was a black digital scale that had what
9 appeared to be white residue on it, and he also had several
10 plastic bags that are commonly used to package narcotics for
11 sale.

12 MR. OSBORNE: And, Your Honor, we can keep playing it.
13 There's about ten minutes left. I think the only thing that
14 happens after this, the deputy does ask him about the powder
15 that's on it -- on the scale, and I believe the defendant says
16 that that came from the marijuana. And then Deputy Holder
17 says, if I'm going to test this, it's going to come back
18 positive for cocaine, isn't it? And he says probably. But I
19 can skip ahead to the next part of it, if you'd like.

20 BY MR. OSBORNE:

21 Q: Well, before we go on, well, what did you elect to do
22 with the defendant at this point, seizing that much marijuana?

23 A: Here, in a second, I'm going to tell him -- I'm going to
24 tell him he's under arrest and take him into custody.

25 Q: Right. Okay. And then where did you take him?

RAY HOLDER - DIRECT BY MR. OSBORNE

1 A: He was transported to the Dorchester County Detention
2 Center.

3 Q: Okay. During your interactions with the defendant on May
4 the 14th going into May the 15th, how long would you say that
5 you were with him on the scene going into the detention
6 center?

7 A: An hour and 30, hour and 45, maybe.

8 Q: During your interactions with the defendant, did he
9 appear to be intoxicated or under the influence of drugs?

10 A: No, sir.

11 Q: Did the defendant appear to have any physical or mental
12 disabilities that would have impaired his ability to
13 understand what was being said to him?

14 A: No, sir.

15 Q: Not that this is really applicable, but if he had asked
16 to use the bathroom or a drink or otherwise, I mean, would you
17 have given it to him or did you deny him in any way?

18 A: No, I didn't deny him. I mean, he would have had to have
19 clearly waited until we got to the jail, because you can't
20 just use the bathroom on the side of the road.

21 Q: Okay. Did you make any threats or promises or anything
22 in exchange for any of his comments?

23 A: No.

24 Q: When you got to the detention center, what happened?

25 Q: They conducted a pat down outside of the search room, and

RAY HOLDER - DIRECT BY MR. OSBORNE

1 then they conducted a strip search.

2 Q: Okay.

3 MR. OSBORNE: All right. Your Honor, may I approach?

4 THE COURT: Yes.

5 BY MR. OSBORNE:

6 Q: I'm showing you State's 6. Can you take a look at that
7 and tell me if you recognize that?

8 A: Yes. This looks like the detention center body camera
9 footage.

10 Q: Okay. Have you viewed that?

11 A: Yes.

12 Q: Are those your initials on it?

13 A: Yes.

14 Q: On the way to the detention center, did the defendant
15 ever say, I don't have anything else to say, I want to stop
16 talking, I want an attorney, anything like that?

17 A: No, sir.

18 Q: Okay.

19 (WHEREUPON, the video was played and then stopped. Not
20 transcribed herein.)

21 BY MR. OSBORNE:

22 Q: Who's that?

23 A: That's me and the defendant, Derrick Boyd.

24 Q: Okay. I'm just going to skip ahead to about the 2:30
25 point. You said once you got inside, they patted him and then

RAY HOLDER - DIRECT BY MR. OSBORNE

1 they did a strip search?

2 A: Yes, sir.

3 Q: Were you there during the strip search?

4 A: Yes.

5 (WHEREUPON, the video resumed playing and was then
6 stopped. Not transcribed herein.)

7 BY MR. OSBORNE:

8 Q: What's happening with the video image here?

9 A: So it's detention policy anytime they conduct a strip
10 search, they're supposed to have their camera on, but they put
11 it in their pocket to prevent exposing, like, genitalia and
12 stuff like that on the camera.

13 (WHEREUPON, the video resumed playing and was then
14 stopped. Not transcribed herein.)

15 BY MR. OSBORNE:

16 Q: All right. What did you just say?

17 A: Basically, I informed him that I saw what was between his
18 legs and to put it on the ground.

19 Q: What did it look like from what you could tell at that
20 point?

21 A: It was a -- it was a bag with -- it looked like white
22 powder substance in it.

23 Q: You said it was located between his legs?

24 A: Yes, sir.

25 (WHEREUPON, the video resumed playing and was then

RAY HOLDER - DIRECT BY MR. OSBORNE

1 stopped. Not transcribed herein.)

2 BY MR. OSBORNE:

3 Q: That's kind of hard to hear, and I could -- I could turn
4 that up in a little bit, but when you asked him how much it
5 was, what was his response?

6 A: I believe he said it's about 28 grams.

7 Q: Do you know how much it came back measuring at?

8 A: At 28 grams, a little over.

9 Q: Okay.

10 MR. OSBORNE: All right. No further questions, Your
11 Honor.

12 THE COURT: Cross-examination?

13 MR. SMALDONE: Thank you, Your Honor. May it please the
14 Court.

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. SMALDONE:

18 Q: All right. What's your role at the Dorchester County --
19 what -- I'm sorry. Recalling when this case happened, which I
20 believe was June 2021, what was your role at the Dorchester
21 County Sheriff's Office?

22 A: It was May, and I was a -- I was assigned to patrol.

23 Q: Okay.

24 A: At the time.

25 Q: All right. And is that just -- what duties do you have

RAY HOLDER - CROSS BY MR. SMALDONE

1 doing that?

2 A: To enforce the laws of the State of South Carolina and
3 the County of Dorchester.

4 Q: Right. But are you working on traffic or insider trading
5 or what? What was your specific thing that you do from day to
6 day?

7 A: Patrol the roads and enforce the laws.

8 Q: All right.

9 A: And respond to calls for service.

10 Q: Okay.

11 A: It's kind of a really big umbrella. It covers --
12 honestly, it could cover the insider trading if that's what
13 the call came out to be.

14 Q: Right. So you're just responding to calls and also --

15 A: Stopping --

16 Q: You're on the ground floor basically?

17 A: Stopping vehicles and -- you know.

18 Q: Okay. You said that you saw someone I think you said
19 duck down when they -- when they passed you on the road; is
20 that correct?

21 A: I didn't say duck. He kind of tried to hide himself
22 behind the B-pillar of the vehicle.

23 Q: Okay. And do you recall writing a report on this case?

24 A: I do.

25 Q: All right. You know that -- do you recall not saying

RAY HOLDER - CROSS BY MR. SMALDONE

1 anything about that in the report?

2 A: Correct. Absolutely.

3 Q: And fair to say you can't really see that on the video
4 either; correct?

5 A: Correct.

6 Q: All right. Additionally, you were behind the car. Well,
7 once you get behind the car, you see it driving for -- how far
8 do you think that was? A quarter mile?

9 A: I don't know.

10 Q: Okay. Fairly short distance; correct?

11 A: Sure. And that's up to interpretation.

12 Q: Okay. Probably about 20 seconds of driving; correct?

13 A: Give or take.

14 Q: Right. And the way the car was in front of you, you
15 couldn't tell -- when it was in front of you, you couldn't
16 tell when it initially stopped; correct?

17 A: No, I could. I was -- I was caught up close enough when
18 the car came to a complete stop. I was close enough where I
19 could observe where the vehicle had stopped at.

20 Q: Do you know if it came to a complete stop before then
21 also?

22 A: What do you mean?

23 Q: Do you know if that was the second stop? So let's say it
24 stopped before the stop line and then moved forward to see
25 traffic, if there was traffic and stopped there?

RAY HOLDER - CROSS BY MR. SMALDONE

1 A: Yes, I do. It was definitely not the second stop. It
2 was the first.

3 Q: Okay. First stop. And is it fair to say --

4 MR. SMALDONE: I guess I'll mark these. Sorry. First of
5 all, I'll just -- this is a still. I just ask for the Court's
6 exhibit for the jury.

7 (WHEREUPON, the photo was marked as Defendant's Exhibit
8 Number 1.)

9 BY MR. SMALDONE:

10 Q: All right. Let me just ask if you recognize -- let me
11 just ask if this picture represents about what you recognize?

12 MR. SMALDONE: May I approach?

13 THE COURT: You may.

14 MR. SMALDONE: Okay.

15 BY MR. SMALDONE:

16 Q: Is that a picture?

17 A: Correct.

18 Q: Okay. And is that a fair and accurate representation of
19 what you saw?

20 A: Uh-huh.

21 Q: And is that about -- is that what you say happened?

22 A: (No verbal response.)

23 THE COURT: Is that a yes?

24 THE WITNESS: Yes, ma'am. I'm sorry.

25 MR. SMALDONE: My fault.

RAY HOLDER - CROSS BY MR. SMALDONE

1 BY MR. SMALDONE:

2 Q: Would you say that -- and would you say the car -- that
3 represents where the car was stopped?

4 A: I'd have to see the video. I mean, it's hard to tell
5 from a still photo.

6 Q: Okay.

7 A: Because you have motion and everything else, you'd have
8 to see it in the video.

9 Q: I understand, but you're not saying that isn't where it
10 stopped; right?

11 A: Say that again?

12 Q: You're not sure; correct? You don't know if it was or
13 wasn't?

14 A: Not based off a still photo, no.

15 Q: Okay. All right. And at what point did you first smell
16 what -- what you say was the marijuana?

17 A: When I started talking to the driver, I could smell it
18 coming off of him and from when he opened the vehicle.

19 Q: Okay. And how -- how -- are you certified in smelling
20 marijuana?

21 A: I mean, everybody smelled marijuana at some point.

22 Q: Okay. What does marijuana smell like?

23 A: Marijuana. It has a distinct smell. There's no other
24 way to describe it other than it --

25 Q: Is it the only thing that smells like that?

RAY HOLDER - CROSS BY MR. SMALDONE

1 A: For the most part, yes, sir.

2 Q: All right.

3 MR. SMALDONE: Court's indulgence.

4 All right. May I approach?

5 THE COURT: You may.

6 BY MR. SMALDONE:

7 Q: All right. Would -- what would you say this is? All
8 right? Just by smell.

9 A: Am I allowed to open it?

10 Q: Sure. Go ahead.

11 A: Okay.

12 Q: I'm not going to introduce it.

13 A: Okay. It smells similar to marijuana.

14 Q: Okay. Would you be able to tell the difference by smell
15 alone?

16 A: No.

17 Q: All right. Would you be surprised to learn that that was
18 -- that is hemp bought at a convenience store?

19 A: Okay.

20 Q: Would you -- is that surprising?

21 A: To me?

22 Q: Yes.

23 A: No, not really.

24 Q: Okay. So fair to say other things might smell like
25 marijuana that are not illegal?

RAY HOLDER - CROSS BY MR. SMALDONE

1 A: Yeah.

2 Q: I hope.

3 A: Apparently, yes, sir.

4 Q: Okay. All right.

5 MR. SMALDONE: And now, may I approach and retrieve my
6 hemp, I promise?

7 THE COURT: Yes.

8 MS. OSBORNE: I was thinking that's a good way to pick up
9 a charge. Yeah, I was, like, hold on a minute.

10 THE DEPUTY: We've got some test kits, Your Honor.

11 MR. OSBORNE: Yeah.

12 THE COURT: Oh, yeah. Hemp, Mr. Smaldone.

13 MR. SMALDONE: All right.

14 BY MR. SMALDONE:

15 Q: And were you -- let's -- let's skip ahead to the -- to
16 the jail.

17 A: Okay.

18 Q: Were you the one performing the strip search or were you
19 observing?

20 A: I was observing.

21 Q: Okay. Where did you observe -- let me back up. When you
22 first saw the bag that -- that allegedly had cocaine in it,
23 was it -- not to get too graphic, but was it inside poking out
24 of my client?

25 A: No.

RAY HOLDER - CROSS BY MR. SMALDONE

1 Q: Okay. Was it on the floor?

2 A: No. It was tucked between his legs. He was -- he -- he
3 -- so what he did is he clenched his legs together, basically
4 heel to heel, toe to toe, to ensure that the bag didn't fall
5 whenever he lifted his testicles and then turned around really
6 quick and exactly the same way with his feet and squatted just
7 at the waist, basically to alleviate it from falling while he
8 was conducting the search properly.

9 Q: Okay. And do you know what made it finally fall? Did he
10 -- did he get tired or what?

11 A: No, I saw it when he -- when he bent over, I saw the
12 white powder between his legs, and I told him to throw the bag
13 on the ground and he did.

14 Q: Okay. All right.

15 MR. SMALDONE: Court's indulgence.

16 BY MR. SMALDONE:

17 Q: All right. And are you familiar with Judge Street and, I
18 believe, West Main Street?

19 A: I am.

20 Q: Is that an area you normally patrol?

21 A: I don't -- I don't patrol anymore.

22 Q: Oh, sorry.

23 A: I'm on the selective enforcement team now.

24 Q: Did patrol? I'm sorry.

25 A: Yes.

RAY HOLDER - CROSS BY MR. SMALDONE

1 Q: Okay. And let me --

2 MR. SMALDONE: May I approach?

3 THE COURT: You may.

4 MR. SMALDONE: All right.

5 BY MR. SMALDONE:

6 Q: Do those pictures -- all right. Let me make one thing
7 clear. So just -- I think we could stipulate, and I'll
8 concede this. Do those pictures fairly and accurately
9 represent that intersection as it was in 2021, except for the
10 brightness level of the stop bar?

11 A: Yes.

12 Q: Okay.

13 MR. SMALDONE: All right. Your Honor, I'm going to pass
14 these to you. I don't know if you need them to be Court's
15 exhibits or just --

16 THE COURT: It can be -- it can either be Court's
17 exhibits or it could be the defense exhibits to this hearing,
18 either way.

19 MR. SMALDONE: Okay.

20 THE COURT: Either way.

21 MR. SMALDONE: All right. I guess defense exhibits to
22 the hearing. So that's the two, and I've provided them to the
23 State. All together is fine, and I think without objection.

24 MR. OSBORNE: For this purpose.

25 MR. SMALDONE: For this purpose, without objection, and

RAY HOLDER - REDIRECT BY MR. OSBORNE

1 with -- with the condition -- with the understanding that the
2 -- three of the pictures were not from that day and only
3 represent the intersection.

4 (WHEREUPON, the photographs were marked as Defendant's
5 Exhibits Number 2 and 3.)

6 MR. SMALDONE: May I approach, Your Honor, just with
7 these exhibits? And let me just check. No further questions.

8 THE COURT: Redirect?

9 MR. OSBORNE: Just one brief question.

10 REDIRECT EXAMINATION

11 BY MR. OSBORNE:

12 Q: Before you searched the vehicle in regards to the smell
13 of marijuana and whatnot, before you searched the vehicle, did
14 the defendant say that I've got hemp inside the car?

15 A: No. He said weed.

16 Q: Okay. And how much did he say was inside the car?

17 A: Originally, he said it was two ounces.

18 Q: Okay. And what did it come back weighing to?

19 A: Approximately 91 grams.

20 Q: When y'all take something that's believed to be
21 marijuana, do you have it tested?

22 A: We do.

23 Q: Did it come back testing --

24 A: It did.

25 Q: -- as marijuana?

RAY HOLDER - RECROSS BY MR. SMALDONE

1 A: It did.

2 MR. OSBORNE: No further questions.

3 THE COURT: And recross?

4 MR. SMALDONE: Briefly.

5 RECROSS-EXAMINATION

6 BY MR. SMALDONE:

7 Q: Is it safe to say that you smelled the marijuana and
8 asked about it before he admitted to that; correct?

9 A: What do you mean?

10 Q: He did not volunteer the information about the marijuana
11 before you indicated that he was going -- you were going to
12 search the vehicle; correct?

13 A: Correct.

14 Q: Okay. Just making sure.

15 MR. SMALDONE: Thank you.

16 THE COURT: I want to see the tape, the beginning part of
17 the -- of the interaction between this officer. Can you run
18 that back for me?

19 MR. OSBORNE: Yes, ma'am.

20 THE WITNESS: Do you need these photos back, sir?

21 MR. SMALDONE: What's that?

22 THE WITNESS: Do you need these photos back?

23 MR. SMALDONE: Oh. I guess I'll take it back. Sure.

24 Thank you.

25 (WHEREUPON, the video was played and then stopped. Not

1 transcribed herein.)

2 THE COURT: Stop it right there. What is going on at
3 this point?

4 MR. OSBORNE: So --

5 THE COURT: Let me tell you what my concern is. There
6 ain't no way he smelled marijuana. How far is he? Look how
7 -- let me refresh that.

8 I am concerned that he says he smelled marijuana coming
9 from the car for this reason. While no one has established
10 the distance, what is occurring is that he does not walk up to
11 the vehicle with the person remaining in the car with the
12 window down, which is typically what happens when they say I
13 smelled marijuana emanating from the vehicle.

14 He never walks beyond his car, and I can't tell the --
15 the distance between the two cars with the camera, but it is a
16 distance. And this is some sort of sedan that appears to be a
17 four-door sedan, and the driver of the vehicle gets out of the
18 vehicle, closes the door, walks back several -- several feet
19 to the officer's car. He then moves him in front of his
20 vehicle. I guess at some point as he's on the way, he turns
21 him around and says, go get your driver's license, and he gets
22 his wallet and he closes the door and he comes back.

23 MR. OSBORNE: You know what, Judge? I will tell you, one
24 of the best days that I've had in the last five years --

25 THE COURT: Yes.

1 MR. OSBORNE: -- is when I saw my neighbor put up a for
2 sale sign, and then I knew I wouldn't have to smell marijuana
3 coming from his house anymore. It is one of the most pungent
4 smells that you will ever smell. And that guy -- his house
5 had to be at least 50 yards from my house, but I knew every
6 time that he was smoking, every time that he brought weed over
7 there, because it would waft over into my yard.

8 And I can also tell you that if you're sitting at a stop
9 sign, I can't -- or in traffic at a red light, how many times
10 you've looked at your -- I know I've done it several times,
11 looked at the passenger that was inside the car, somebody's
12 smoking weed around here.

13 And in this case, when he smelt it, there's only one car,
14 and that was the car that was in front of him. And so -- and
15 lo and behold, it wasn't just a little bit of weed, it was a
16 lot of weed.

17 THE COURT: Well, what's -- what's concerning is I gather
18 -- I gather they did not find any burned cigarettes in the
19 vehicle.

20 MR. OSBORNE: And he even mentions that when -- when the
21 defendant says, I -- you know, I've been smoking, that's been
22 a while ago. And he says, I'm not smelling burnt weed, I'm
23 smelling raw weed.

24 THE COURT: Yeah, I heard that. I heard that, which is
25 not helpful. And the reason is -- I'll tell you the reason

1 because we're not handling the traffic stop. We've got
2 somebody rolling across a stop bar, and he's not saying I
3 stopped you because you rolled across the stop bar. I mean,
4 he's, bam, onto you ever have any problem, you ever been
5 arrested. There's not -- it looks -- I'm concerned about the
6 fact that this stop looks pre-textual. Help me, because he
7 never asked him. He never tells him I stopped you because you
8 rolled.

9 And the other thing that I noticed -- and I don't -- you
10 haven't even mentioned it, Mr. Smaldone. So I gather you were
11 given the -- they don't -- they're not having any
12 conversation. The law enforcement officers in the vehicle --
13 he says he's talking to a buddy. He's not having any
14 conversation about I'm going to stop this person because I
15 don't like whatever, whatever reason. No, no. Okay.

16 MR. SMALDONE: Oh, no, I've not heard that conversation.

17 THE COURT: Okay.

18 MR. OSBORNE: I mean, we've all seen the stops where, you
19 know, the deputy says or the officer says he smells marijuana
20 in the car, and then he finds a whole big bag of cocaine, and
21 we're all wondering, where's the marijuana? That's not what
22 we have here. He said he smelled marijuana, and he found a
23 bunch of marijuana inside the car. And then he is going to
24 raise his hand now?

25 THE WITNESS: Yes.

1 MR. OSBORNE: And ultimately, well, it comes down to a
2 credibility issue. And like I've said before -- well, like I
3 just said, the stops where they find stuff and they don't see
4 the marijuana, I get it, but in this case right here, there's
5 a bunch of it and, not to mention, it's been sealed twice now
6 and it's been sitting in my office for a little bit and you
7 could smell it. Anyone walking by could smell it. And I
8 think the defendant even said that at one point, something
9 along the lines of this isn't just skunk weed, this -- this
10 was good stuff.

11 MR. SMALDONE: All that, but just --

12 THE COURT: I mean, come on, man. Finish with it.

13 THE WITNESS: Okay. Can I say one thing, though?

14 THE COURT: No.

15 THE WITNESS: Okay.

16 MR. OSBORNE: And, Your Honor, we do have -- all right.
17 So I thought what you were referring to when you were asking,
18 just -- just for your edification, the reason why the sound
19 sounds a little weird at one point is because I've literally
20 switched from in-car to body-worn. And so because the body-
21 worn, you can hear much better.

22 THE COURT: Yeah.

23 MR. OSBORNE: So if you want to come back and listen to
24 the in-car, you can hear that little brief conversation
25 between the deputy and the driver for that -- for that second

1 or two. And he does tell him, you know, I pulled you over
2 because you ran by a stop line.

3 THE COURT: Couldn't hear that at all.

4 MR. OSBORNE: Do you want to --

5 THE COURT: Yeah.

6 MR. OSBORNE: Can I go ahead and play that?

7 THE COURT: Yeah. That would be helpful.

8 MR. OSBORNE: Yes, ma'am.

9 THE COURT: That would be helpful.

10 MR. OSBORNE: All right.

11 THE COURT: Unless you heard it and you can confirm it.

12 MR. SMALDONE: I've -- I've not heard that one.

13 THE COURT: Okay. Okay.

14 MR. SMALDONE: But I certainly would have a lot of
15 argument, but I'll wait. I think that's what Your Honor wants
16 me to do. I don't want to -- just when he talks, don't take
17 my lack of responding as a lack of response is what I'm
18 saying.

19 MR. OSBORNE: You're not acquiescing?

20 MR. SMALDONE: Right.

21 MR. OSBORNE: All right. I'm playing State's 1, which we
22 wouldn't seek to introduce because it's got a bunch of
23 unredacted stuff, but we were going to ID it.

24 Okay. Ms. Elliot already has it pulled up. So we're
25 going to do a little computer search.

1 (WHEREUPON, the video resumed playing and was then
2 stopped. Not transcribed herein.)

3 MR. OSBORNE: I thought it picked it up, Judge, but I
4 can't hear it.

5 THE COURT: I don't hear it, and I want to hear -- I want
6 you to fast forward to the Miranda warnings also.

7 (WHEREUPON, the video resumed playing and was then
8 stopped. Not transcribed herein.)

9 THE COURT: What did you say? Can you back up a little
10 bit? Because I was curious about what he just said.

11 (WHEREUPON, the video resumed playing and was then
12 stopped. Not transcribed herein.)

13 THE COURT: We're not proceeding to -- stop it. I'm
14 going to go ahead and send the jury home. We got -- because
15 you've got a motion to suppress. We've got to argue this, and
16 we'll just start in the morning. Let me have the jury.

17 (WHEREUPON, the jury entered the courtroom at 3:28 p.m.)

18 THE COURT: All right. Ladies and gentlemen, there's a
19 matter that -- that is needing my attention that I must attend
20 to, and I don't want to keep you in your jury room while I do
21 that work.

22 And so I think that -- this is kind of neat. This is
23 wonderful. This is fantastic. I'll try to answer what I can
24 of these questions, but there is a matter that I must attend
25 to and, therefore, I don't want to keep you in your jury room.

1 Y'all are obviously ready to go. I think it is better to let
2 me do my work rather than trying to pay attention and being
3 concerned about, you know, you all waiting on me. We have
4 been working over the -- over the lunch break, and I simply
5 need a little more time to do my work. So we're going to
6 begin in the morning at 9:30 -- at 9:30.

7 Now, those that -- I think I've talked to -- I know I've
8 talked to one of you who was going this evening. Anyone else
9 working at night? Good. You can't work at night and then pay
10 attention to these matters during the day. So I'm going to
11 instruct you not to do that.

12 Now, you're going to be going home. There's going to be
13 someone curious about what you have been up to, and it is
14 certainly fine to say that you responded to your juror summons
15 and that you have been chosen on a jury and that it is a
16 criminal matter as opposed to a civil matter, but beyond that,
17 you must not discuss this matter or allow anyone to discuss it
18 with you.

19 You go, oh, we haven't started the trial yet. Well, that
20 is correct, but you have a little bit of information. I have
21 read you some of the allegations in the indictments and
22 introduced you to some folks. So you do have a little bit of
23 information, and for that reason I'm going to ask that you be
24 mindful not to discuss the matter.

25 Don't do any Colombo. Don't do any research, no

1 investigative reporting. You must receive all of the
2 information from which you will make up your mind here in
3 court while court is in session. And again in the morning
4 when you return, I do have a few preliminary remarks I will
5 make to you, and then we will get into the trial of this case.

6 Thank you so much. Have a very pleasant evening. If
7 you'll go with your bailiff.

8 Oh, and you know what, you guys? Let me -- let me go
9 ahead and answer some of these because, you know, with regards
10 to an iPad, there is -- we have a rule that you cannot use a
11 communication device that has the ability to access the
12 internet for accessing information. So iPads would be out.

13 Do we deliberate on one trial or multiple trials? I've
14 never had that question before. Brilliant question. One.
15 One. You will be concerning yourself on this trial.

16 Yes, it is a unanimous decision. Majority does not rule.
17 We're a long way from talking about that. No one person rules
18 and the majority doesn't rule. Your decision must be
19 unanimous.

20 Can the alternate contribute to the deliberations?
21 That's magnificent. No. And the way that that works is the
22 alternate is present in the event that one of our twelve
23 jurors cannot conclude the case. I ask -- I'm going to tell
24 you this. I do ask our alternates. It is my practice to ask
25 that the alternate remain 15 minutes after the jury begins its

1 deliberations because I've actually -- I've had jurors get
2 sick immediately, like, and -- and I've been able to stop the
3 deliberations, seat the alternate. So I do ask for a little
4 bit of time.

5 Now, we've talked about deliberations, but I want to be
6 very clear. You will not deliberate until you have received
7 the evidence in this case, arguments of counsel, my charge on
8 the law, and -- and I have given you a specific instruction to
9 begin your deliberations. There won't be a question in your
10 mind when that time has come.

11 Until that time has come, it is so important that you not
12 discuss this matter, that you not allow anyone to discuss it
13 with you. And again, the reason is, is because when we begin
14 to talk about a matter, we begin to form opinions about it,
15 and it's important that you are able to listen open mindedly
16 to everything and make up your mind about nothing until you've
17 heard everything. So that's the reason for the instruction.

18 Wonderful questions, wonderful questions, and thank you
19 for them.

20 THE FOREMAN: Your Honor, I'm sorry. I think they wanted
21 to know if it was possible to have a pad to take notes.

22 THE COURT: Gotcha. We'll talk about -- gotcha. Let me
23 say that I will talk to you about that in the morning
24 specifically, but if notes are to be taken, we provide that.
25 We gotcha. Thank you.

1 As a matter of fact, we have breakfast. We've got
2 breakfast in the morning. I don't know if it's going to be
3 donuts, don't know if it's going to be biscuits, but there'll
4 be breakfast. Thank you so much.

5 (WHEREUPON, the jury exited the courtroom at 3:34 p.m.)

6 THE COURT: We'll mark this as a Court's exhibit.

7 (WHEREUPON, the jury note was later marked as Court's
8 Exhibit Number 8.)

9 THE COURT: All right. Do you have any additional
10 witnesses?

11 MR. OSBORNE: No, Your Honor.

12 THE COURT: I thought -- I thought that was correct.

13 All right. And is there a motion?

14 MR. SMALDONE: Yes, Your Honor, a motion to -- well, a
15 motion to suppress evidence and also a motion pursuant to
16 *Jackson v. Denno* to suppress the statement. Would Your Honor
17 like to hear argument?

18 All right. There are several issues with this stop.
19 Your Honor alluded to several of them. As Your Honor alluded
20 to it, the stop itself -- I'm sorry, not the stop itself. The
21 initial interaction itself has some waving red flags, at least
22 for me. It looks like it's a fishing expedition. That,
23 combined with a traffic violation that we'll get into later
24 may not exist, the fishing expedition --

25 THE COURT: Before we do that, first things first.

1 MR. SMALDONE: Yes.

2 THE COURT: First things first. Talk to me about that.

3 MR. SMALDONE: Okay. Your Honor, I did a little
4 research, and it is -- I always think stop before the stop
5 line. That's just driver's ed. You know, it's been a very
6 long time since that, but I did take that, and so I did some
7 -- some searching for the statute.

8 What statute did they violate? And there's -- there's
9 two statutes that are kind of redundant, 56-5-2330(b) and also
10 56-5-2740, and they're alluded to in my written motion. I
11 hope Your Honor has seen that.

12 THE COURT: Uh-huh. I have.

13 MR. SMALDONE: Yeah. May I approach --

14 THE COURT: Yes.

15 MR. SMALDONE: -- with those?

16 THE COURT: Yes. Thank you.

17 MR. SMALDONE: I'll let Your Honor read.

18 (WHEREUPON, there was a pause in the proceedings, after
19 which the proceedings resumed as follows.)

20 THE COURT: Okay.

21 MR. SMALDONE: All right. So reading those statutes, we
22 always -- like I said, driver's ed, front wheels, back wheels
23 behind, all that, but reading the statute, the language says
24 at. It says at the stop line, very clear in both of those
25 redundant statutes.

1 I just did it the other day when I was preparing this. I
2 searched for the word "at" at Miriam Webster Dictionary. I'm
3 like the first -- I think it was the first term. I never
4 looked up "at" before. The first term was "on." So I think
5 when I'm say I'm at my house, my front porch, am I just
6 saying, oh, I can't go outside of my house by going in? I can
7 say at my house if I'm anywhere in the house.

8 And, Your Honor, I would submit to you -- and I do have a
9 still image. I would -- I would indicate to Your Honor that
10 that is pulled from when the car is stopped. We can watch --
11 if Your Honor would prefer, we could all watch the video as
12 many times as we want, but it's very clear that the back
13 wheels of -- of that car are behind the stop line. I think
14 hopefully we can all agree on that. They're behind the stop
15 line.

16 It is as much at the stop line as I can possibly think
17 of. It is literally at the stop line. It is straddling it.
18 The front wheels seem to be over it. The back wheels seem to
19 be behind it. Therefore, the car itself, the vehicle, as per
20 the statute, is at the stop line. I -- I just -- applying --
21 applying common sense to the word "at."

22 Additionally, I'll talk about the intersection in a
23 minute. Applying common sense to the word "at" means "at."
24 Additionally, not without even that, the rule of -- I submit
25 to Your Honor the rule of lenity of -- I think we have to

1 construe the statute in the light most favorable to the
2 defendant, and I don't even think we need to go into that.
3 But construing it, let's say we are construing it most
4 favorably to the defendant. At -- again, I don't know how
5 many times I can say "at."

6 So, Your Honor, I submit to you on the stop that there
7 was no grounds for a stop in this matter. Additionally, if
8 Your Honor looks at the -- I think if Your honor looks at the
9 intersection, the intersection I submit to Your Honor would be
10 kind of dangerous to stop at that stop line. It's just -- it
11 appears to have a shoulder. I thought it was 60. It's hard
12 to tell in pictures, but that's probably closer to ten feet on
13 the shoulder of the road.

14 You would have to -- absolutely have to as a matter of
15 necessity, pull beyond that line to see if traffic is coming.
16 There's houses on either side. Especially if you're in a
17 sedan like the deceased driver of this case says, you can't
18 see. It is dangerous.

19 So I don't think we even -- I submit we don't need to get
20 to that prong of the analysis, but if we do, I think there's
21 necessity to be safe, to stop where you can -- where the
22 driver could see oncoming traffic. So that is the stop
23 issue.

24 Then, Your Honor, we have immediately what seems to be
25 again, like I said earlier, a fishing expedition. Looking --

1 each time I see the video, I notice more. The -- the deputy
2 in this matter never -- before he talks about marijuana, he
3 never approaches the car, never gets within -- you know, it's
4 hard to tell, like you indicated, but there is some
5 significant amount of distance between the deputy and that
6 vehicle and where that marijuana was alleged to have been
7 recovered.

8 I understand that Mr. Osborne had a neighbor that grew it
9 or whatever, but it's not about growing. It's not even about
10 smoking. There -- it is about raw marijuana that I believe
11 was in bags. It's supposedly making this magical find me
12 homing device that only law enforcement can detect. So I
13 submit to Your Honor that there's -- there's certainly an
14 issue that also I don't think we need this prong in the
15 analysis.

16 But if we do get there, that smell -- as of several years
17 ago, this forbidden smell I submit to the Court is no longer
18 probable cause to search a vehicle under the Hemp Act and CBD,
19 medical issues, certainly not medical marijuana in this state
20 yet, but that smell is no longer an indication that a crime
21 probably has been committed, that the smell of what we call
22 marijuana is actually -- I call it cannabis. That is the
23 plant. Legally, it would be hemp or marijuana, but the
24 cannabis plant, its terpenes are what one smells from a
25 distance, much shorter than anything on this case.

1 So that -- the probable cause, certainly ten years ago
2 that may have been probable cause, but now we have several
3 other things that might -- that give off that same odor, and
4 it's not the mari -- it's not the plant that is illegal. It
5 is the Delta 9 tetrahydrocannabinol in the plant, which we
6 have heard no testimony. My understanding is that does not
7 give off an odor. So it's indiscernible from a legal product.

8 Your Honor, let me -- oh, right. And also, Your Honor,
9 regarding the *Jackson v. Denno* issue, what concerns me and
10 gives me pause on that is two things.

11 One, I think -- and I know of at least once, but I think
12 it's more than once. There's kind of a -- not even an
13 implication, but there's a statement about help. I can help
14 you out, things like that. My client, if it is my client on
15 the video, says -- seems to lean on that and kind of fall for
16 that. And that is why, in my opinion, he gave that initial
17 admission in the case.

18 Additionally, when we did hear the -- we finally did hear
19 the Miranda rights, I -- I've been to one or two auctions, but
20 it did -- it reminded me of an auctioneer just kind of
21 rattling off the Miranda rights. And I understand that as a
22 -- as a police officer, it may be a matter of routine. It may
23 be something that's a box to check. But to this defendant, as
24 all defendants, it's something very important to them that's
25 enshrined in our Constitution and also case law, and they need

1 to understand that. And I don't believe that the auction --
2 that anyone can understand that. So that is my argument, Your
3 Honor.

4 THE COURT: Got it.

5 Yes, sir?

6 MR. OSBORNE: All right. The stop. I would just put
7 this back up here because I think this is a pretty good -- and
8 Mr. Smaldone said this is a good representation or an accurate
9 and fair representation of what it looked like -- that's --
10 there we go -- on the night of the incident.

11 And I think this right here is -- this picture right here
12 I think accurately, perfectly depicts why the law is what it
13 is. If you read Mr. Smaldone's interpretation of the law,
14 that you can go -- and by the way, Webster's also defines "at"
15 as near, near. So near, if you -- if you were to read it,
16 that you don't need to stop before the line, which my legal
17 assistant reminded me, everyone knows from driver's ed, you're
18 not going to pass that driver's test if you stop past that
19 line.

20 But anyways, if you do pass the line and you stop, like
21 the deputy said, you're out in that intersection and you're
22 going to get clipped. And when you get clipped, that's going
23 to be on you.

24 And there's a reason why that bar is there. We've all
25 come up to the stop signs where there is no bar, and that's

1 when the other statute that Mr. Smaldone mentioned is
2 implicated. 56-5-2740 says places where drivers shall stop
3 for stop signs. The other statute, what we were talking
4 about, 56-5-2330, deals with when there's a bar.

5 If you're to read his interpretation, we might as well
6 tell the DMV to stop putting that bar there, because they can
7 go right on by it. The proper way to stop at a stop sign,
8 which is pretty obvious, I thought, you're supposed to stop in
9 front of the bar, then ease up until you know you have it. If
10 you fly past it, then stop, then the line might as well not be
11 there and you get clipped. It's not a -- it's not an
12 egregious infraction, but it is still an infraction.

13 And I do have to kind of admit this or mention this. We
14 chose not to seek to introduce his jail recordings. The
15 defendant, by his own statement, knew. When asked, why did
16 you get stopped, quote, old boy ran the stop sign.

17 The -- the smell of marijuana. I think that one's pretty
18 easy. I mean, what Mr. Smaldone is asking you to do is create
19 new case law. I mean, there are states in which the smell of
20 PC or the smell of marijuana is no longer PC for a search. We
21 haven't got there yet.

22 Help you out. Okay. Now we're getting into an area I'm
23 a little bit more familiar with with *Denno*. To me, help you
24 out is no different than *Compton, State v. Compton*, 366 S.C.
25 671, which basically stands for the proposition any statement

1 of an -- of a promise of leniency is involuntary --
2 involuntary only if so connected with the inducement as to be
3 a consequence of the promise.

4 So *Peake* goes on -- I think the two -- well, the two --
5 that's the proposition in *Compton*. The two cases that I like
6 to cite are *Peake* and *Rochester*. In *Peake*, the -- the officer
7 just told the defendant flat out, you tell me what happened,
8 and we won't seek the death penalty. The Supreme Court said
9 that's too much. That's directly related. The inducement is
10 directly related to the statement.

11 *Rochester*, I think, is pretty much on point to what we
12 have in, and in *Rochester*, the polygraph examiner conveyed to
13 the defendant that cooperation would be in his best interest.
14 And the Supreme Court said that's not what we're talking about
15 in *Peake*. In *Peake*, the inducement, the promise. We're tying
16 those together, but just a vague sort of "it would be in your
17 best interest" is not the type of promise to -- that we
18 consider to induce the statement. And helping you out, to me,
19 is just sort of like the same thing, it would be in your best
20 interest.

21 And then, I think, in reference to the whole, you know,
22 could he have smelled it, I mean, had there not been -- like I
23 said before, had there not been any marijuana there, I think
24 that would certainly become an issue, but there was marijuana
25 there. And I think that goes to the credibility of the

1 deputy, which you can certainly attack, you know, on cross-
2 examination.

3 MR. SMALDONE: Just one and a half sentences, if
4 possible, Judge.

5 THE COURT: No. You go right ahead.

6 MR. SMALDONE: Okay. All right. Regarding the first
7 argument, I'd -- one, the other -- the other word mentioned
8 that Mr. Osborne said is "near." I submit to Your Honor that
9 that is quite -- is on top. Again, I hate to say the word
10 "at" again. At is near.

11 And additionally, this isn't about driver's school or
12 anything like that. This is about the statute, the violated
13 statute. If -- and what Mr. Osborne also indicated about
14 driver safety and things like that, I think you can see from
15 pretty much every angle that in this matter, he didn't -- he
16 did not get anywhere near -- when stopped did not get anywhere
17 near oncoming traffic.

18 In cases where Mr. Osborne indicated it's possible if you
19 were to stop past it or getting into an intersection, that's a
20 separate violation of either failure to yield right of way or
21 -- I've never been a traffic officer, but that would be
22 probably failure to yield right of way at the least. So that
23 would create another infraction.

24 So it's not that we don't have enforcement of it that
25 would create pure chaos. It's just that this statute was not

1 -- was not violated, especially in the light most favorable to
2 the defense. And that's -- we'll call that a run-on sentence,
3 Judge.

4 THE COURT: All right. Well, so here are my concerns.

5 My concerns are that the testimony -- I'm concerned about
6 the testimony elicited, this business about hiding behind the
7 the -- the -- I guess -- I guess he's talking about the bar
8 that goes between the front seat and the back seat. I'm
9 concerned about that. If he's talking to a buddy and this car
10 is going -- the car is going by at whatever the speed, I guess
11 35 or whatever, 25, whatever the speed is, it's happening and
12 it's -- it's -- you know, it's not broad daylight, and so I'm
13 concerned about that. That's the small piece.

14 And then I'm concerned about the immediacy with -- when
15 that car goes by, the immediacy with -- and I guess they've
16 been sitting there for some period of time. That -- that it
17 almost looks like there's pursuit of that car.

18 They're stopped at the intersection. I get this business
19 about what is at, what is near, what is before the stop bar,
20 and I'm concerned about that because they don't say that he
21 ran the stop sign. What they say is they don't like where he
22 is with regards to the stop bar and have some concern about
23 that. Like, I had concern about one of the lights being out
24 over the tag light, which was very popular. It's less popular
25 these days, but it was real popular.

1 And to your point, Mr. Osborne, they are -- they're
2 parked in front of a mobile home. They passed a home going
3 into the -- the little driveway. He's in front of somebody's
4 -- someone's home. They pass -- it appears they pass a little
5 home as they enter this little road back there. So it's some
6 kind of little -- it appears to be some sort of living -- some
7 sort of residential area. So what -- maybe it is coming from
8 the neighbor. Maybe it's coming from the mobile home. Maybe
9 it's coming from the car -- the house they just passed.

10 And my concern is, is that if -- if there's marijuana in
11 the neighborhood that is emanating in the neighborhood, does
12 that mean every single vehicle in the neighborhood could be
13 stopped willy nilly? He's nowhere near this car. He's
14 nowhere near the car when he says that. Nowhere near it.

15 Typically what occurs, just as we all know, happens with
16 alcohol as was has -- as happens with marijuana, you roll down
17 the window, get in your car, please, and you roll down the
18 window. I smelled the odor of alcohol or marijuana emanating
19 from the vehicle.

20 That is absolutely not what is occurring here. The --
21 and -- and he's -- I gather he's having a free sniff, free air
22 sniff as he gets out of his car. That this -- the driver of
23 that vehicle gets out and shuts his door very quickly. Now,
24 he goes back to get -- retrieve his driver's license, but he
25 shuts it again.

1 So that's not classically what has been occurring in
2 these cases. What classically has been occurring is the
3 typical stop where the -- where the law enforcement officer is
4 on the passenger side or on the driver's side and states that
5 they smell the odor of alcohol or marijuana emanating from the
6 vehicle, as opposed to from the house that is right in front
7 of the vehicle, to your example, right behind the vehicle that
8 they have just passed.

9 And he is a -- I do not hear him make any reference
10 whatsoever to -- I -- do you know why I stopped you or I
11 stopped you because you did -- what do they call them? A
12 California style? You rolled through the stop sign or you --
13 you don't stop.

14 And you tell me that it's there, and if you've heard it,
15 then -- then I trust it's there somewhere. I just did not
16 hear it.

17 MR. OSBORNE: I recall hearing it, but -- but if I may
18 just -- just make a couple of points too to -- to -- to what
19 you had said.

20 THE COURT: Uh-huh.

21 MR. OSBORNE: I have -- I have chosen to take the
22 position that, you know, I believe that Mr. Holder or Deputy
23 Holder had smelled marijuana, but let's go back and look at
24 what happened in the order in which it occurred. Let's just
25 say that when Deputy Holder approaches the car and the driver

1 then approaches him, that he never smelled marijuana. Let's
2 say that never happened.

3 Then he -- then the officer comes over and then -- then
4 the driver. Glen Way I think was his name.

5 THE COURT: Uh-huh.

6 MR. OSBORNE: He comes up and then he says, you know, I
7 smell marijuana inside the car. Let's say that that was a
8 lie. Let's say that he never smelled a thing. Okay? And
9 then let's keep going through the traffic stop.

10 I don't know what you're talking about. Mr. Way says I'm
11 not smoking any marijuana, and he says, okay, hold on. Stand
12 right here. I want to go deal with -- with the passenger. He
13 can certainly do that.

14 He goes up to the passenger. He looks inside. He sees
15 an open container of alcohol. Right now he can make arrests
16 and start searching the vehicle, but he doesn't. He asks the
17 driver to step out. Now he's at the car -- or the passenger.
18 The passenger then steps out. So then he gets them both out.

19 And let's just say that he never smelled marijuana at all
20 and he's lying again, which he can do. I'm not saying he is,
21 but he can still do that. And then he says, I smell marijuana
22 inside the car. And then the defendant says, I've got two
23 ounces. Even if he were lying, which I'm not saying he was,
24 that's still okay. The defendant then admits that there's two
25 ounces of marijuana inside the car. That's what leads to the

1 search, which he would have been able to search anyways
2 because of the open container of alcohol inside the car.

3 THE COURT: Now, when did he -- when did that occur? I
4 didn't -- I don't remember that, and I could have been
5 listening --

6 MR. OSBORNE: When he pulls --

7 THE COURT: -- to other things.

8 MS. OSBORNE: When he pulls the defendant back, he says
9 is there anything inside the car, and now he's talking to both
10 the driver and the defendant.

11 MS. ELLIOTT: Mr. Way and the officer -- on both of the
12 body-worns, you can see him walk to the car and talk to his
13 partner.

14 THE COURT: And let me ask you this question and -- and
15 because -- and I'm looking for information. I'm not prepared
16 to rule at this moment. I'm going to -- I'm going to spend --
17 since I'm going to have maybe little bit of time, and we've
18 had some Fourth Amendment -- Fourth Amendment cases that have
19 come up fairly -- one came out last week, so don't anybody
20 worry about it because this has no precedential value. I love
21 that they do that, you know. So we're going to report this
22 case, but we really didn't. It's, like, why bother?

23 In any event -- in any event -- so, I mean, isn't --
24 isn't the point of the Fourth Amendment is that we don't want
25 law enforcement officers using pretext to -- to invade

1 people's rights? I mean, isn't that sort of the point? And
2 what is concerning me is that if this is a traffic stop, it
3 never had the -- it just never -- arguably --

4 MR. OSBORNE: Yes.

5 THE COURT: I'm just devil's advocate. It -- it could be
6 argued that it never had -- it just never had the -- the
7 normal indicia of a traffic stop. Do you know why I stopped
8 you? I stopped you because you rolled through the stop sign.

9 And I know I'm very mindful, and this obviously inures to
10 the benefit of the State is a reasonable suspicion and --
11 which is a low bar and even PSA is low and it's low. It's a
12 low bar. But it appears that the last case -- well, *State v.*
13 *Frazier*, the Court said huh-uh, and the Court of Appeals said,
14 yeah, this raises suspicion, and the Supremes did not. They
15 -- they didn't go for that.

16 So my concern is, is that we -- if we know that to
17 articulate I smell marijuana coming from the vehicle opens the
18 door for whatever you want to do -- and that's right out of
19 his mouth right out of the gate. Bam. I smell marijuana
20 coming from your vehicle. You got anything illegal in there?
21 And we're off to the races, and that's -- that's of concern to
22 me.

23 And you're -- it's very difficult to prove what somebody
24 sniffs, what they smell, and where they smell it. But it's a
25 lot more comforting when the nose is in the window than --

1 than the nose is in their own window. And so that's -- that's
2 of concern to me.

3 And I'm going to ask -- I'm -- I'm letting y'all watch
4 the sausage being made. I probably shouldn't. I should keep
5 these thoughts to myself, but when I got brilliant lawyers
6 that can help me, I'm going to take benefit of it. So that is
7 of concern.

8 The other thing that is of concern is that when you --
9 when -- when you begin to pull the string on reasonable
10 suspicion and that string continues as you pull it, then you
11 can continue. What worries me is that the case law is, is
12 that when you have concluded the traffic stop, you've got to
13 go.

14 So if the reason that you stopped the person was for a
15 traffic -- was genuinely for a traffic violation, then should
16 ought it look like a traffic violation and then go and then
17 morph into something else or can you just stop somebody and
18 you're off to the races? I stopped you. I smell marijuana,
19 I'm nowhere near to your car, and we're off to the races.
20 That's what concerns me. That's -- that's the part of this
21 that concerns me.

22 And -- and I'm not so sure that we haven't put law
23 enforcement officers in that place because I have noticed that
24 there is a concern about -- I just saw him at a house buying
25 drugs and put the drugs in the car. I'm going to stop the car

1 because I just saw you buying drugs at the house down the
2 street, and I'm not so sure. And I would say I am concerned
3 that law enforcement officers think in that circumstance that
4 they've got to stop for a traffic violation other than the
5 drugs in that car, and I have probable cause to believe that
6 there are drugs in that car and I'm stopping that car for that
7 reason.

8 And what worries me is that we've got to play in the game
9 and that we've done that. Their interest is, is to get --
10 obviously, is to be concerned about having illicit illegal
11 drugs on -- out in the community. What worries me is, is that
12 I would like there to be just a whole lot more transparency
13 about that. If you think somebody's got drugs and you got
14 probable cause, stop them for that reason.

15 But what concerns me about this stop -- and I'm going to
16 -- I'm going to take the little tape with me and take a look
17 at it and really study it for -- you know, for my own
18 purposes, because reasonable suspicion is a very, very low
19 bar. And -- and he has testified that he smelled marijuana
20 and, boy, when that happens, all bets are off, and it really
21 boils down considerably to that.

22 MR. OSBORNE: The only thing I would say, Your Honor,
23 real quick --

24 THE COURT: Uh-huh.

25 MR. OSBORNE: -- is obviously pretextual stops are legal.

1 Supreme Court has said they're legal. And the reason why I
2 believe they're legal is because they do -- that -- that -- it
3 is a tool for law enforcement. I mean, there's an expression
4 criminals say themselves. If you want to drive around with a
5 bunch of dope in your car, obey the law. Do not run stop
6 signs. You know you need to be careful.

7 And so -- and, you know -- and I was talking to a
8 prosecutor who was talking to law enforcement in the Ninth
9 Circuit and, you know, they wanted to do away with pre-textual
10 stops altogether. And I said, well, let me -- let me give you
11 a hypothetical. Okay?

12 And this happens. Law enforcement gets a tip that an
13 individual is coming into their jurisdiction and they're
14 meaning to do harm. They're loaded down with guns, and
15 they're meaning to do harm. Here's what the vehicle looks
16 like, very vague description, maybe coming in on this road.

17 Well, when they get on that road and they see that
18 vehicle coming in, they're doing exactly what you said they're
19 going to do. They're going to get behind that car, and
20 they're going to wait and see if they do a traffic violation.
21 And if they do, they pull it over.

22 And I would submit that's what we want law enforcement to
23 do. When they receive --

24 THE COURT: That's not what this is.

25 MR. OSBORNE: It is not, but that's exactly what our

1 Supreme Court says. We're not going to do away with pre-
2 textual stops because there's a reason for it. And now, you
3 know, like this one --

4 THE COURT: But there's got to be a reason for pre-
5 textual stops. There's got to be something that backs that
6 up. Just what you've said. They got a tip that there are a
7 bunch of -- that there are a bunch of guns coming in a car and
8 this is what it looks like, blah, blah, blah.

9 MR. OSBORNE: That -- I mean, Your Honor --

10 THE COURT: Uh-huh.

11 MR. OSBORNE: I think that makes us feel better, but
12 sometimes that's not what happens. Sometimes if you see
13 something that seems a little bit suspicious to you, and
14 that's exactly what he said. He's not lying. I saw something
15 that seemed a little bit suspicious to you. Ends up getting
16 behind the car. If they stop at the stop sign, then pulled
17 into the house, we're not sitting here today, but he didn't.
18 He ran the stop sign. And that's exactly what he said on his
19 report was like, why did y'all get pulled over? Old boy ran
20 the stop sign.

21 THE COURT: Oh, I know, but I thought it was because he
22 -- I thought he stopped at the stop sign. It was that --

23 MR. OSBORNE: No, no. That's --

24 THE COURT: -- he didn't like that where he was at the
25 bar.

1 MR. OSBORNE: No, no, no. That's exactly correct.

2 THE COURT: Yeah.

3 MR. OSBORNE: But this is what the defendant said --

4 THE COURT: I get that.

5 MR. OSBORNE: -- on a jail call.

6 THE COURT: Yeah, I get that.

7 MR. OSBORNE: Yeah.

8 THE COURT: I get that.

9 MR. OSBORNE: So, you know, I -- I understand what you're
10 saying and I do get it in the grand scheme, which quite
11 honestly, this is why we get the -- considering his record, a
12 very friendly plea offer. But the fact of the matter is --
13 but the fact of the matter is if he does -- if he -- if they
14 obey by the law, obey traffic laws, we're not here today.

15 THE COURT: Now, let me ask you this question. Must
16 there be given a meaningful Miranda warning?

17 MR. OSBORNE: Does it have to use the magic words?

18 THE COURT: I know that.

19 MR. OSBORNE: I asked --

20 THE COURT: Must you be able to understand those words
21 which are given?

22 MR. OSBORNE: Got to be allowed to understand the words.
23 I asked Ms. Elliott to go back and listen to it again to make
24 sure that he hit the five points that are important, and she
25 says she hears them. I'll give them to you, you know.

1 THE COURT: Yeah.

2 MR. OSBORNE: But, you know, I would just offer if you
3 feel that Miranda wasn't properly administered, then we're
4 losing the statements after that, but not before that. But I
5 think they're properly administered. I think he read them.
6 He's a fast talker. It's a little quicker than what you'd
7 like, but --

8 THE COURT: I'm with you. Yes?

9 MR. SMALDONE: All right. Your Honor, I -- I think I've
10 said most of what I need to say. I'm just very concerned.
11 There was testimony. I don't care what he said on a jail
12 call. He could have said they were doing 200 in a 35. That
13 doesn't have anything to do with the stop because we see the
14 stop. There was testimony.

15 We -- one, you see the stop. There was testimony that --
16 from the officer that he did stop at the stop sign. We could
17 go back. I recall it. I wrote it down. I just want to make
18 sure we're not, like, blowing past my argument because he blew
19 -- ran the stop sign. He did not run the stop sign. We all
20 agree. I just didn't want us to get on the wrong axis for the
21 argument.

22 Additionally, I think it's, you know, a hypothetical
23 thing. You know, would you go back in time and kill Mussolini
24 or whatever? These things just don't -- that's not what we're
25 here for. I get like, you know, they ask presidential

1 candidates, would you torture someone if you knew there was a
2 bomb loose in the city? We don't have to make that decision
3 here today because that's just not the planet we live on. And
4 that's -- those aren't the facts given.

5 So that -- that's -- I think that's all I really need to
6 say. I'm just concerned that we all shifted into running the
7 stop sign because --

8 THE COURT: No, no. That's why I stopped and said I
9 don't think -- I don't think that's the position. The
10 position has to do with the -- the -- the bar, the -- the
11 paint on the road. And -- and there's perhaps even another
12 issue when it's clearly marked. That one is -- that one needs
13 a little work. That one isn't visible. I wouldn't bother.

14 MR. OSBORNE: Well -- and I just --

15 THE COURT: That stop bar is looking a little --

16 MR. OSBORNE: Just -- just at that point.

17 THE COURT: Looking a little -- I have some places on my
18 house that look like that stop bar I need to put a little
19 paint on.

20 MR. OSBORNE: It does look like he's got a fresh coat of
21 paint since the Googled one. I think we both agreed on that.

22 THE COURT: Wonderful.

23 All right. Now, everybody hold what you've got and let
24 us chat. Let me -- let me grab y'all. We'll take -- let me
25 talk to you just a moment, and I need to step to chambers real

1 quick. Y'all can come on in there for just a minute. We can
2 do it here or we can do it in there.

3 (WHEREUPON, there was a break in the proceedings from
4 4:13 p.m. until 5:08 p.m., after which the proceedings
5 resumed as follows.)

6 THE COURT: All right. I appreciate y'all putting that
7 on a thumb drive for me. That's so helpful. What they're
8 doing is they're putting the recording on the thumb drive for
9 me.

10 MR. SMALDONE: Okay.

11 THE COURT: All right. Wonderful. Well, we will begin
12 anew in the morning. Thank you all for spending that little
13 bit of time. Very helpful. I've got some work to do tonight,
14 which I will get accomplished.

15 And obviously, now the bond terms -- the terms of bond.
16 The bond is done at this point. We will need to take Mr. Boyd
17 into custody this evening.

18 Okay. Anything further from the State before we take our
19 leave? Other than I know you're going to give me that thumb
20 drive.

21 MR. OSBORNE: I am, Your Honor, and -- and I'll shoot an
22 email to Amy, cc'ing to Grant, the part in which he's
23 explaining the stop, just because I know I a little bit
24 misspoke before he explains it at the 32-minute mark. So I'll
25 give you that.

1 And then, also, oh, the other thing. So whenever he's up
2 there talking to Mr. Way, the driver, what he does do is he
3 kind of points back to the direction of. You just can't hear
4 it, but he is kind of pointing back, indicating the reason for
5 the stop.

6 THE COURT: Okay. Very well. All right. And I'll take
7 the memos with me. I'll probably be here a little -- it'll
8 probably be 9:15-ish in the morning. Very well. Thank you.

9 (WHEREUPON, the proceedings adjourned for the day at 5:09
10 p.m.)

11 MARCH 21, 2023

12 (WHEREUPON, the proceedings resumed at 10:07 a.m.)

13 MR. OSBORNE: We've got two quick matters, Your Honor.

14 THE COURT: Okay.

15 MR. OSBORNE: Ms. Elliott needs to put something on the
16 record.

17 THE COURT: Okay.

18 MR. OSBORNE: An encounter this morning, and then I think
19 we have a plea or rejection.

20 THE COURT: Okay.

21 MS. ELLIOTT: Judge, this morning before I knew Mr.
22 Smaldone to have been here, I got called down to the front
23 saying that someone wanted to speak to me. One of our victim
24 advocates, Lynn Gotti, had kind of walked up at the same time.

25 And a Mr. Roger Edwards, who is the defendant's uncle

1 I've come to learn, was speaking. He kind of handed us a
2 couple of papers that were handed to me. I took a brief
3 glance at them, didn't really read it in -- in any -- with any
4 intensity. Saw that it was a letter from Mr. Smaldone,
5 appearing to Mr. -- to be to Mr. Boyd. The second page was an
6 unfinished order of substitution of counsel.

7 Mr. Edwards told me Mr. Smaldone has been fired and just
8 kept waving at me those papers. I indicated to him that you
9 had already ruled on the matter of representation, asking if
10 he was going to be in the courtroom later. He said he was.
11 So I gave him back the paperwork. I told Mr. Smaldone about
12 this encounter, and I'm now making the Court aware of that as
13 well.

14 THE COURT: All right. Well -- and what was his
15 demeanor?

16 MS. ELLIOTT: Oh, perfectly fine.

17 THE COURT: Okay.

18 MS. ELLIOTT: He just seem concerned, and I think, you
19 know, he wasn't here for any of those. He just wanted to make
20 people aware that it was his impression that Mr. Smaldone had
21 been fired as his nephew's counsel.

22 THE COURT: Thank you.

23 MR. OSBORNE: And I think we were also just concerned
24 that maybe some documentation from the defendant to his
25 attorney or attorney to defendant had been given to us. And,

1 you know, we didn't see any of that. We kind of went over
2 this.

3 THE COURT: Absolutely, absolutely.

4 And, Mr. Smaldone, do you have any concerns about --
5 about the -- without getting deep into it, what -- what Ms.
6 Elliott is saying is that she saw a document that appeared to
7 be something involving you perhaps, and I'm sure her concern
8 was, was it -- it had something to do with the attorney-client
9 privilege. And do you need any further explanation other than
10 what she's already given us?

11 MR. SMALDONE: No, Your Honor, and I've talked to --
12 talked to them outside the presence of Your Honor, and we're
13 on the same page.

14 THE COURT: Okay. Very well. And I am -- I am satisfied
15 that there's been no invasion of the attorney-client privilege
16 certainly by the solicitor.

17 And thank you for doing -- first of all, thank you for
18 doing that. That's 100 percent, of course, the way to handle
19 it. So thank you for apprising me of that, and it -- it
20 appears that you've handled it. I don't mind in discussing
21 with Mr. Edwards that that's not an appropriate way to go
22 about matters, if you wish.

23 MS. ELLIOTT: I think it's fine, Your Honor. I think --
24 you know, I think Mr. Smaldone has explained it to the family.
25 They understand now. They just -- they're concerned family

1 members.

2 THE COURT: Very well. And then -- okay. Remind me.
3 Totally different matter. Just remind me just so we can have
4 a conversation later when this trial is over with just
5 protocol.

6 Okay. Now, all right. Now, Mr. Smaldone, Mr. Boyd, good
7 morning.

8 THE DEFENDANT: Good morning.

9 THE COURT: It's my understanding that there was a plea
10 offer that was made yesterday afternoon, and I gather the
11 solicitor -- that's what you were intimating, and you want to
12 know if it's accepted or rejected. And, of course, it's -- so
13 I suppose I'll ask that question of you, sir.

14 MR. SMALDONE: Your Honor, I've spoken with my client at
15 length. My understanding is of a few minutes ago -- and
16 things could change in the next 30 seconds or so, but my
17 understanding is of a few minutes ago he does not wish to
18 plead to this matter.

19 THE COURT: Okay. Very well.

20 All right. And just -- Mr. Boyd, that is -- this is 100
21 percent your choice. As you know, it's your life, your
22 choice.

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And has Mr. Smaldone correctly relayed that
25 information?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Thank you, sir. Thank you, sir.

3 MR. OSBORNE: Your Honor, if I may just real quick, I
4 don't know that I ever really put the offer on the record
5 yesterday. If I could just very quickly?

6 THE COURT: Thank you.

7 MR. OSBORNE: He is -- by my account, he has an extensive
8 criminal history with trafficking and PWID cocaine. So he's
9 actually third by enhancement purposes.

10 THE COURT: Okay.

11 MR. OSBORNE: So if convicted for trafficking cocaine,
12 he's facing a mandatory minimum of 25 years to 30 years.

13 THE COURT: Yes.

14 MR. OSBORNE: The offer that I extended -- and just to
15 recap real quick, the --

16 THE COURT: Okay.

17 MR. OSBORNE: -- offer that I originally sent him was 5
18 to 30 on a second. That was rejected in front of Judge
19 Goldstein on October 12th.

20 THE COURT: Or Goldsmith, whatever.

21 MR. OSBORNE: Goldsmith. Goldsmith. I've now made it
22 too. Goldsmith on October 12th of 2022.

23 THE COURT: Sure.

24 MR. OSBORNE: On Thursday afternoon, this past Thursday,
25 March the 16th, I called Mr. Smaldone in an attempt to resolve

1 the case without a trial. I offered a negotiated range of 10
2 to 30 on trafficking in cocaine second, to expire on Friday,
3 the following day, at 1:30 to plead in front of you.

4 We didn't hear anything back. The expiration came and
5 went. We then got our -- got a hold of some body-worn camera
6 that could change the story a little bit, in the sense that
7 the body-worn camera footage showed the search. At least we
8 heard the audio of it, and that captured what had already been
9 documented on Deputy Holder and Deputy Green's supplemental
10 reports, but now you get to hear him in his own voice say that
11 that's cocaine and it's 20 grams.

12 So in light of that, I decided to go ahead and extend the
13 offer from 10 to 30, to be rejected on Monday morning. Mr.
14 Smaldone indicated that his client wasn't interested in
15 pleading.

16 After the motion to suppress hearing, I thought in an
17 attempt to once again resolve the case based on arguments, I
18 would go back to the original offer of 5 to 30. So that's
19 what's been rejected today, 5 to 30 trafficking cocaine
20 second.

21 THE COURT: Okay. And just so that we're complete,
22 trafficking third has consequences, along with the fact that
23 it's five -- that it's a minimum of 25, such as it is a
24 serious offense, is it not?

25 MR. OSBORNE: It is a serious, Your Honor.

1 THE COURT: Okay.

2 MS. OSBORNE: And he -- he was already LWOP eligible
3 based on his prior trafficking convictions, but we didn't
4 serve him with LWOP in this case. But with this third, he 100
5 percent would be LWOP eligible.

6 THE COURT: Okay. And LWOP means life without the
7 possibility of parole, just so everyone is clear.

8 All right. And if you -- if you and Mr. Boyd would just
9 stay for me, please, Mr. Smaldone.

10 MR. SMALDONE: Yes, Your Honor.

11 THE COURT: And -- yeah. Mr. Boyd, do you solemnly swear
12 or affirm that the information you will give me is the truth
13 and the whole truth?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Thank you so much, Mr. Boyd.

16 Mr. Boyd, the first thing I want you to know is that
17 we're here to try your case, and I don't want you to feel any
18 pressure to -- to plead you. Are we straight about that?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: All I care about -- all I care about is that
21 folks are informed. You can't make a decision unless you're
22 informed. Can we agree to that?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. And as I understand, the charge
25 -- the charges that you face, it would be a trafficking, third

1 offense. And it's the -- it's from 25 to --

2 MR. OSBORNE: Thirty.

3 THE COURT: Twenty-five to 30, minimum 25 to 30, but has
4 the consequence of a serious offense. And it's my
5 understanding that -- that you already have a serious offense,
6 and so the solicitor is saying that they could have served
7 notice of life without the possibility of parole, so that if
8 you were convicted in this trial that the sentence would be
9 life without the possibility of parole.

10 That's not where you are, though, because they didn't
11 serve notice. Are you with me? So that's not something you
12 need to be concerned about. Okay?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: It's 25 to 30. But because it is -- it --
15 because it is a trafficking, third or greater offense, it is
16 also a serious offense. So that -- and I hope I don't have to
17 worry about it, but should you ever in your life going forward
18 be charged with another trafficking offense or serious -- or
19 any other serious offense or most serious offense, the State
20 could serve you notice that the State intends to seek a
21 penalty of life without the possibility of parole, and if you
22 were then convicted, you would be spending the rest of your
23 life in prison without the possibility of parole. Do you
24 understand that?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Perfect. I just wanted to be sure that you
2 understand the -- the extension of -- of your circumstance.
3 Understanding all of that, it is your desire to reject the
4 offer? Which I understand wouldn't be trafficking, third
5 offense, it would be trafficking, second offense, which is
6 also a serious offense, isn't it?

7 MS. OSBORNE: Yes, ma'am.

8 THE COURT: Okay. So -- so just to be 100 percent clear,
9 it was -- it being trafficking, second offense, would still be
10 a serious offense. So in the event in the future, if you
11 would be convicted of a serious -- another serious offense,
12 you could be given notice of life without the possibility of
13 parole. You could. That doesn't mean you would, but you
14 could. That wouldn't -- but obviously, under the terms of the
15 offer, that wouldn't be on -- that wouldn't be a consequence,
16 a potential consequence. Does that make sense what I'm
17 saying?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Okay. So understanding all of those matters,
20 do -- first of all, do you have any questions?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: Okay. And you wish to reject that plea?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Very well. Thank you.

25 All right. Any other argument that counsel wishes to

1 make with regards to the *Jackson v. Denno* and with regards to
2 the motion for suppression?

3 MR. OSBORNE: Judge, I don't think so. The only thing
4 that I would point out -- I think I said this yesterday. It's
5 kind of bleeding a little bit, was that when Deputy Holder
6 first went up to the car that he did -- you can't hear it.
7 Okay? But I guess I was kind of putting together what
8 happened later into that when I said he did, but what you can
9 see is he's motioning back toward the stop sign whenever he's
10 engaged with Mister Way.

11 I believe it was the testimony from Holder that he did
12 explain to him why the reasoning for the stop, but either way.
13 And then after that encounter, he did ask the passenger out of
14 the car, and then he then engages the passenger. Now, it was
15 Deputy Holder's testimony that he heard -- or that he smelled
16 the marijuana when the driver got out of the car, whenever he
17 had that encounter with the driver, but he certainly smelled
18 it when he had the encounter with the passenger.

19 And I believe there's a Supreme Court case that --

20 MR. SMALDONE: *Maryland v. Wilson*.

21 MR. OSBORNE: *Maryland v. Wilson* that gives the deputy
22 the authority to ask the passenger out of the car. And at
23 that point, once he did ask the passenger out of the car and
24 smelled the marijuana, the reasonable suspicion under *Frazier*
25 would have justified the length of the detention going longer.

1 THE COURT: Let me ask you this question. Under the case
2 -- because I have not -- I have not reviewed that case. What
3 was the reason under those facts for the officer asking the
4 passenger to exit the vehicle?

5 MR. OSBORNE: And that was what the Supreme Court looked
6 at.

7 THE COURT: Uh-huh.

8 MR. OSBORNE: The Supreme Court looked at -- it's an
9 officer safety issue. They can ask passengers out of the car
10 on any sort of side. It's not even a suspicion standard, as I
11 understand it. It's an officer safety standard. And once --
12 and so he has the right then to ask the driver. Well, we had
13 already had cases, as I'm reading it, that says you can ask
14 the driver.

15 THE COURT: Right.

16 MR. OSBORNE: *Wilson* deals with the passenger
17 specifically, and then once he asks him out. So -- so my --
18 my only point in citing that is to say that he had the
19 authority to then ask him out of the car. So that's what gets
20 him to the car door, and then while there, then he smells the
21 marijuana.

22 THE COURT: Let me check that case.

23 MR. OSBORNE: Okay.

24 THE COURT: I did not have that one. Thank you for that.

25 (WHEREUPON, there was a pause in the proceedings, after

1 which the proceedings resumed as follows.)

2 THE COURT: Okay. All right. I am prepared to rule.
3 All right. Let me see if I can just articulate my thoughts.

4 Obviously, I am concerned about the stop and have been
5 concerned about the stop, but I've had a chance to look at it
6 and to analyze my thoughts about it, analyze the -- the
7 position of the defendant. And this is -- this would explain
8 my thoughts and my justification.

9 First of all, with regards to the stop and the meaning of
10 the word "at" and whether it was intended to be that way or
11 not, the stop sign as it relates to the -- the bar, the line,
12 the stop line on the road, they are not exactly -- they very
13 well may not be in compliance certainly with the national
14 standards for -- for signage because they're not exactly
15 consistent. As I recall, there's the stop sign and then the
16 line, if -- I think I remember that correctly.

17 And let me grab those pictures. That will help me.
18 Thanks, Ms. Brown. Awesome. Thank you. Thank you, Kim.
19 Thank you so much.

20 Well, they're not quite as helpful as I thought they
21 would be. Oh, this one is. There I remember seeing a close-
22 up and it didn't look like they were together, but -- and
23 maybe that's because the -- the stop sign apparently looks
24 like maybe it's been bumped a few times because it's -- it's
25 leaning.

1 But the word "at" in order to be consistent with the
2 reasonableness standard of interpretation of statutory
3 provisions, it would be difficult to think that "at" means on.
4 And while I certainly understand the position of the
5 defendant, I don't believe that the -- I don't believe that
6 this was an illegal stop. Now, one of the things, maybe the
7 highway department needs to take a look at the -- that
8 particular line, but -- but -- but it certainly can be seen,
9 and so I don't think the stop was an illegal stop.

10 I am concerned with the beginning of the stop and the
11 officer who does not approach the vehicle and does -- there is
12 some distance between the front of the officer's vehicle and
13 the back of the defendant's vehicle in which he was a
14 passenger. There -- there is some distance between the front
15 of the officer's vehicle, the back of the defendant's vehicle,
16 and it is a four-door sedan. And so there was a considerable
17 distance. Although no one's testified to it, there is a
18 considerable distance between the -- the front of the
19 officer's vehicle and the back of the defendant's vehicle.
20 And -- and when you add to that the -- the driver's side door,
21 there is a considerable amount of concern that I had about
22 that.

23 I have looked at the case law and the -- what the case
24 law says is, is that -- and I would call to your attention the
25 court case *The State* -- it's a Court of Appeals -- *State v.*

1 *Robinson* is a Court of Appeals decision, February 15th, 2012.
2 And in that case, the Court talks about the officer smells
3 marijuana and continues to approach a porch and -- and then
4 there are those cases where an officer smells marijuana but as
5 he approaches the vehicle, the -- the odor of marijuana is
6 more discernible.

7 When you -- when you consider the fact that he makes that
8 statement and then has a conversation and then gets the
9 passenger out, when he gets the passenger out of the vehicle,
10 he does approach the vehicle. He knocks on the glass and the
11 door is opened, and he is standing there while the passenger
12 exits the vehicle.

13 And under the *Maryland* -- the *Wilson* -- or *Wilson v.*
14 *Maryland* -- *Maryland v. Wilson* case, which is the United
15 States Supreme Court case, the removal of the passenger and
16 that that is not a Fourth Amendment violation, and then he
17 continues with his assertion that he has smelled marijuana. I
18 think he goes on to say that it is raw marijuana as opposed, I
19 gather, burnt marijuana, I suppose. That gives a basis to
20 reasonable suspicion.

21 I also expressed a concern about the manner in which the
22 Miranda rights were given and researched that. Must the
23 Miranda rights be discernible? And there really -- in the
24 corners of consideration of that, two things matter.

25 Number one, based upon the defendant's statement, the

1 defendant obviously had knowledge of the criminal justice
2 system, which under the case law is important. And probably
3 more important, when asked do you understand, both -- each of
4 these gentlemen said, yes, I do.

5 So while, again, I am concerned with the manner in which
6 the Miranda rights are given because they are important and it
7 is not a colloquy to be given and gotten out of the way, I
8 would simply mention that each of these gentlemen stated that
9 they understood them. Therefore, certainly, the Miranda
10 rights, the -- the elements were certainly given.

11 All right. So I do not think it's an illegal stop. The
12 -- and the statements made by the defendant -- and I would
13 just say, based on the demeanor of the defendant, the
14 voluntariness, as I listen to the statements that he is
15 making, I'm -- I have less concern about -- about those.

16 He, being the officer, makes a whole lot about you got to
17 tell me the truth. It'll go better if you -- you tell me the
18 truth. I can help you if you tell me the truth. That again,
19 while that is concerning, it does not arise to the
20 transactional nature of what -- of the case that says if you
21 -- if you tell me the truth, then I won't seek the death
22 penalty. It's not as -- it's not as transactional as that,
23 although it's -- it is, again, somewhat concerning.

24 All right. So by the preponderance of the evidence, the
25 statements made by the defendant, the voluntariness has been

1 met. With regards to the suppression hearing, the standard
2 being reasonable suspicion, which is a very low bar, that
3 likewise has been met.

4 Anything further from the State?

5 MR. OSBORNE: No, Your Honor.

6 THE COURT: Anything further from the defense?

7 MR. SMALDONE: No. No, Your Honor.

8 THE COURT: All right. Let's have the jury, please.

9 (WHEREUPON, the jury entered the courtroom at 10:38 a.m.)

10 THE COURT: All right. Ladies and gentlemen, good
11 morning.

12 THE JURORS: Good morning.

13 THE COURT: Good morning. At this time, I'm going to ask
14 you to please stand, raise your right hand, and be sworn in as
15 the jury in this case.

16 Yes, ma'am. Thank you so much.

17 THE CLERK: Do you solemnly swear or affirm that you
18 shall well and truly and true deliverance make between the
19 State of South Carolina and the defendant at bar, whom you
20 shall have in charge, and a true verdict give according to the
21 law and evidence. If you accept this oath, please say "I do"
22 and be seated.

23 THE JURORS: I do.

24 THE CLERK: Thank you.

25 THE COURT: Ladies and gentlemen, what I intend to say to

1 you now is an introduction to the case. What I'm going to
2 talk to you about is not intended to be a charge on the law
3 applicable to this case. I will give you the law applicable
4 to this case at the conclusion of the evidence after you've
5 heard the arguments of counsel and before you retire to
6 consider your verdict. This is merely an explanation of the
7 procedure that we will follow in the trial, so that you may
8 better understand what may be happening.

9 You know, it's my experience if a jury understands what
10 -- where they are, where they're going, it's like, okay, it's
11 easier to concentrate because you know where you are in the
12 process and what is next to come, instead of trying to figure
13 that out while you're trying to absorb the evidence, the
14 arguments of counsel, statements of counsel, and the like.

15 Now, obviously, you guys are a grand jury because the
16 questions that you have asked are so smart, and one of them is
17 note taking. And I want to talk about that, and I want to
18 explain to you fully my -- my policy, therefore, my decision
19 with regard to taking notes. Let me tell you the debate that
20 is ongoing about the taking of notes.

21 The argument for the taking of notes is obvious. The
22 taking of notes allows a juror to refresh his or her
23 recollection prior to deliberation. Makes all the sense in
24 the world.

25 I take the strangest notes. I will think I'm taking

1 notes as I'm listening to particularly arguments of counsel
2 and I'll think I'm taking notes, and then I'll look back and
3 they make absolutely no sense. And I've realized over time
4 that what the taking of notes does for me, it just helps me
5 concentrate, because so often I'll go back and they make no
6 sense at all, and that's really an argument for the taking of
7 notes, if it's -- if it is of assistance in that regard.

8 Now, let me tell you the argument against the taking of
9 notes. There is a real concern that a juror can miss
10 something as it's coming from the witness stand when they take
11 a note. It is a dynamic experience, the giving and the
12 receiving of testimony, and there's a real concern about that.
13 The other concern is that if one juror has a note and another
14 juror doesn't have a note, we're so -- we're so indoctrinated
15 in it's in writing that there can be an undue amount of
16 influence placed on the notes.

17 Here's my issue. I think both sides -- both arguments
18 are excellent, and I agree with both. What do I do about
19 that? Well, this is where I have come down. I have come down
20 to the belief that if a trial is expected to be of relatively
21 short duration --and this is a trial that is expected to be of
22 relatively short duration -- I ask the jurors to pay
23 attention, not let your thoughts wander and not take notes.
24 If trials are expected to be of more lengthy duration, then we
25 have pads and pencils and pens and -- and a whole procedure

1 about the taking and the preserving and even the destruction
2 of notes. Yeah.

3 Because again, this trial is expected to be of relatively
4 short duration, I'm going to ask you to please pay attention
5 and not take notes. Now, I have made a comment about the
6 anticipated duration of this trial. I in no way diminish the
7 importance of it. It is of the utmost importance to these
8 parties and to our system. I simply didn't want you to be
9 concerned about my instruction not to take notes, especially,
10 once again, I already had a note about taking any notes.

11 Now, ladies and gentlemen, as you know, the defendant --
12 and if -- if I say the word defendant, I am referring to Mr.
13 Boyd, and sometimes I'll say Mr. Boyd, sometimes I'll say the
14 defendant, but if I say defendant, that's who I'm speaking
15 about.

16 The defendant is charged with possession with intent to
17 distribute marijuana. He's also charged with possession of
18 contraband and trafficking in cocaine, ten grams or more but
19 less than 28 grams, and I'm going to give you those elements
20 later. I'm going to give you those elements when I give you
21 the charge on the law.

22 I read to you yesterday the indictments. And just to
23 reiterate, the indictments are simply the charges, the pieces
24 of paper reflecting the charges by which the case is brought
25 into court, and the indictments are in no way and in any sense

1 evidence of any of the allegations that they contain.

2 The defendant, Mr. Boyd, has pled not guilty to each of
3 these indictments. The State -- the State, therefore, has the
4 burden of proving each of the elements of each of these
5 indictments beyond a reasonable doubt, and it will be your
6 duty, ladies and gentlemen, to decide whether the State has
7 met that burden. The definition of the burden of beyond a
8 reasonable doubt is the kind of doubt that would cause a
9 reasonable person to hesitate to act.

10 Now, ladies and gentlemen, you and I have different
11 duties to perform over the course of this trial. I am the
12 judge of the law, and the law as given to you by the Court is
13 the only law that you may consider. If you had an opinion
14 regarding what the law is or what it ought to be and it
15 disagrees from what I tell you the law is, by your oath you
16 are bound to accept and to apply the law as I gave it to you.
17 Now, that doesn't mean that when the trial is over that you
18 don't schedule an appointment with your legislator and have a
19 conversation, but for our system to work correctly, you must
20 accept and apply the law as I state it to you.

21 Now, ladies and gentlemen, you are the judges of the
22 facts in this case, and no one else -- no one else but you
23 will be allowed to make the findings of fact in this case.
24 The findings of fact made by a trial juror are the facts for
25 all time, and no one else save you will be able to make that

1 determination.

2 I cannot comment on, intimate, or make any intimation to
3 a trial jury regarding the facts. And if I do or say or make
4 an expression over the course of this trial, I'm going to ask
5 you in advance if you think that that gesture or word or
6 statement has anything to do with the facts, please disregard
7 that because I don't have an opinion regarding these facts.
8 That's a matter solely for you -- for you to determine.

9 Now, you are to determine the facts from the testimony
10 that you hear and the other evidence which is introduced into
11 court, if you will, maybe exhibits into the record of this
12 court. It is up to you to determine any inferences which you
13 feel may properly be drawn from the evidence. It is
14 especially important that you perform your duty of determining
15 the facts diligently and conscientiously, because ordinarily
16 there is no way to correct an erroneous determination of the
17 facts by a trial jury.

18 And as I've already discussed, on the other hand and with
19 equal emphasis, the same law that makes you the judges of the
20 facts make me the judge of the law. Now, ladies and
21 gentlemen, your job is to take the law as I give it to you and
22 apply it to the facts as you find them to be, and that is how
23 you reach your verdict. That is how you determine whether the
24 State has met its burden of proof under the solemn oath that
25 you just took as jurors.

1 Until I advise you to begin your deliberations, you must
2 not discuss this case with anyone, including your fellow
3 jurors, your friends, family members, or anyone involved in
4 the case. This includes discussions face to face and those by
5 telephone, email, blogs, text. Messenger on Facebook is a
6 thing, Instagram is a thing, Snapchat is a thing, or in any
7 other methods of communication.

8 You must -- you may not use a compute -- a computer, a
9 cellular phone, or other electronic device with communication
10 capabilities at any time while in the courtroom or during
11 deliberations. During your breaks for meals and overnight,
12 you -- if necessary, you may use these devices. However, you
13 may not at any time use these devices to get or to send
14 information about the case. This includes information about a
15 party, a witness, an attorney, a court officer, news accounts
16 about the case, research on any topics raised, or any topics
17 that you feel may be helpful in deciding the case, or any
18 testimony presented by any witnesses.

19 Now, ladies and gentlemen, after this case is submitted
20 to you, you must discuss it only in your jury room with your
21 fellow jurors. The attorneys and the parties in this case
22 have been advised that they are not to talk to you at all.
23 And as I stated yesterday, if you see these folks coming and
24 going around the courtroom and they don't even say hello,
25 please don't think they're being rude. They're not. They are

1 simply following my instructions.

2 Ladies and gentlemen, it is your solemn responsibility to
3 determine whether the State has met its burden of proof, and
4 your verdict must be based solely on the evidence as it is
5 presented to you in this trial and on the law as I instruct
6 you during and at the close of the trial.

7 Now, ladies and gentlemen, in just a moment, the
8 solicitor will make -- one of our solicitors will make what is
9 called an opening statement to you, in which the solicitor
10 will have an opportunity to explain to you what he or she
11 thinks the issues are in this case, and maybe to introduce
12 from their perspective this case to you. And the defendant,
13 through his attorney, also may make an opening statement if he
14 wishes.

15 Now, ladies and gentlemen, I want you to understand that
16 what the attorneys tell you during the course of this trial,
17 what they say is important. Please give them your undivided
18 attention, but also it is important that you know that what
19 the attorneys say is not evidence. Remember, the evidence
20 comes from the sworn witnesses in this case and from any
21 exhibits which are admitted into evidence.

22 Now, I want you to understand a procedure. There's no
23 doubt this will also come into play during the course of the
24 trial. Now, I want you to understand exactly what's
25 happening. As in sports or business or any other structured

1 activity -- and a trial is a structured activity -- there are
2 certain rules that both sides must obey when presenting
3 evidence. These are called the rules of evidence, and it is
4 these attorneys' obligation to call a possible violation of
5 the rules of evidence to my attention.

6 So the way that they will do that is that they will say
7 objection. You may hear them say, Your Honor, we have a
8 matter of law. That isn't a joke, and I'm going to deal with
9 them in one of three ways. The first method is when they
10 stand and they object, they may say a word or two regarding
11 the nature of the objection.

12 Let me give an example. Objection. Hearsay. And I'll
13 be able to rule on it. And if I overrule the objection, that
14 means I don't think that there's a violation of the rules and
15 that testimony or evidence can be received in the manner in
16 which it's being offered. It may be that I sustain the
17 objection, and that means that I think there is a -- I think
18 there is a violation of the rules of evidence, and that bit of
19 evidence or testimony cannot be received as it is being
20 offered.

21 Now, ladies and gentlemen, please keep in mind that
22 because it is the attorneys' obligation to call the possible
23 violation of the rules to my attention, you must not hold an
24 objection against her or his client, nor should you conclude
25 from my ruling on the objection that I have an opinion on the

1 evidence because I do not. Ruling on the admissibility of
2 evidence is a matter of law. Once, however, evidence is
3 admitted, whether you believe it, the weight you give to it,
4 the inferences you draw from it, those are matters solely for
5 you to determine.

6 Now, ladies and gentlemen, from time to time, you'll --
7 you'll hear me ask the lawyers to approach with regards
8 perhaps to an objection, and you will hear this.

9 (WHEREUPON, white noise sound played.)

10 THE COURT: You go to the beach. Sort of an ocean sound.
11 You can work with it.

12 The reason that I'm playing that white noise, if you
13 will, is absolutely so you do not hear my conversation that is
14 occurring at the bench. From time to time, I may need you to
15 step from the jury room so that I can discuss the matter with
16 the attorneys.

17 Why would I have them approach? Why would I have them to
18 step -- have you step to your jury room? Quite frankly, I do
19 not want you to hear my conversations, because I would not
20 want you to think from my conversations, which are allowing me
21 perhaps to hear a little bit more so that I can rule on the
22 admissibility of evidence, I wouldn't want you to think from
23 anything that I am saying to be a comment on the facts. It's
24 to let me do my job precisely.

25 All right. Now, ladies and gentlemen, in determining

1 what the facts are in this case, you must decide whether or
2 not the testimony of the witnesses is credible. Credibility
3 and credible simply means believable. It's the believability
4 of it.

5 And in deciding whether to believe a witness, you have
6 the right to consider the interest of any witness, the bias of
7 any witness, the prejudice of any witness, the opportunity for
8 the witness to have seen the matters and things about which
9 the witness may testify, and the way in which the witness acts
10 on the witness stand. You have a right to consider anything
11 that is in the record that would help you evaluate the
12 testimony of the witnesses.

13 This means that it is your duty to pay close attention to
14 the witnesses, observe them, listen to them, and pay close
15 attention to the attorneys and to the Court. Please do not
16 let your thoughts wander, but give the strictest attention to
17 these matters and to the testimony in this case, so that at
18 the end of all of the testimony, after the arguments of
19 counsel, which will come at the conclusion of the case, and
20 the charge of the law by me, you will then be in a position to
21 perform your solemn duty and determine the facts and apply the
22 law to those facts and determine whether the State has met its
23 burden of proof of beyond a reasonable doubt.

24 Now, ladies and gentlemen, I am going to ask for your
25 cooperation, but in order for it to make sense, I've got to

1 tell you a story. I was a little girl, and our mother would
2 take us to services. I had two older brothers. I was the
3 troublemaker. I always had to sit by her. Well, I was very
4 good until she did this. I thought she was sleeping. That
5 was my invitation to take the little card, you know, that's
6 there with the little pencil and scrawl on it. Elbow my
7 brother. And then if I didn't get enough attention, I'd pinch
8 him. I'd squirm, you know, and if I really was having a good
9 day, I was liable to crawl on the floor.

10 Inevitably, that hand came over and I got that little
11 pinch, which was a preview of things to come. Now, I thought
12 my mom was sleeping. I thought that was my invitation to
13 squirm and to probably be a little rambunctious. That was my
14 mama. I couldn't tell when my own mama was sleeping.

15 I am going to ask, because we just met, please don't
16 concentrate with your eyes shut because if I can't tell that
17 my own mama is concentrating with her eyes shut, I don't stand
18 a chance with you guys. So I'm going to ask you to please
19 help me and concentrate with your eyes open so that I won't
20 think you're concentrating or that you are sleeping. So
21 please concentrate with your eyes open for me.

22 Now, ladies and gentlemen, in order to preserve
23 everyone's rights, I will give the parties an opportunity to
24 object to anything that I have said.

25 Any exception on behalf of the State?

1 MR. OSBORNE: Nothing from the State, Your Honor.

2 THE COURT: From the defense?

3 MR. SMALDONE: None from defense.

4 THE COURT: Ladies and gentlemen, please draw close to
5 hear opening statements.

6 Ms. Elliott.

7 MS. ELLIOTT: Thank you, Your Honor.

8 OPENING STATEMENT ON BEHALF OF THE STATE

9 MS. ELLIOTT: Ladies and gentlemen, before I get into the
10 facts of this case, I just want to take a minute and thank you
11 so much for being here with us this week. You might be
12 thinking, well, I was summonsed, I didn't have much of a
13 choice, and that's true, but as you saw, there were multiple
14 people who came up here and gave the judge reasons why they
15 couldn't serve and wouldn't serve, and you all didn't do that.

16 So for that, we thank you very much for being here,
17 because as you've heard, this is a drug case and it's a simple
18 case, but it's an important case. It's important to the State
19 of South Carolina, and it's important to Derrick Boyd, the
20 defendant. But just because it's a simple case, make no
21 mistakes. You know, we are here because of his actions.

22 Just after midnight -- midnight on May 15th of 2021 on
23 Judge Street in Harleyville, the defendant was a passenger in
24 a car that was stopped because it didn't properly stop at a
25 stop sign. Deputy Ray Holder -- he gets out with the driver

1 and the defendant, and he can smell the odor of marijuana and
2 so he decides to search them.

3 The driver -- his name was Glen Way, and he searched him.
4 Nothing was found on him, but when he went to search the
5 defendant, something happened. Something changed. The
6 defendant's demeanor changed. He felt him tense up. Deputy
7 Holder asked him, do you got anything on you? He said, no,
8 no. But then when Deputy Holder indicated that he was going
9 to go and search the car, the defendant said, all right, you
10 know that -- that marijuana in the car, that's mine. So
11 Deputy Holder searched the car, found a blue bag. In that
12 bag, he found a scale and two ounces of marijuana.

13 Post-Miranda, the defendant said -- he admitted I sell
14 some weed, and for that reason, the defendant was charged with
15 possession with intent to distribute marijuana. He was
16 arrested, taken to the detention center.

17 Now, because of his demeanor, that tensing up and because
18 of the nature of his charges, they did a strip search, and it
19 was at that time that Deputy Holder understood why the
20 defendant had tensed up. He noticed that tucked in his groin
21 area was a bag, a rather large bag with a white powder-like
22 substance.

23 So he asked him what's in the bag. The defendant said
24 it's cocaine. How much? About 28 grams. And you'll hear
25 from the forensic drug analyst who analyzed that bag it was

1 about 28 grams of cocaine. Now, we'll talk about the law
2 later, but in the state of South Carolina, possessing that
3 much cocaine makes you guilty of trafficking.

4 And that's it, ladies and gentlemen. Those are the facts
5 of this case. Simple, no frills, no exaggeration. The
6 defendant is charged with possession with intent to distribute
7 marijuana, possession of contraband by an inmate in a
8 detention center, and trafficking in cocaine because of that
9 28 grams that was on his person. And once this trial is over,
10 we're going to ask that you find him guilty of all three of
11 those charges.

12 THE COURT: Thank you, Ms. Elliott.

13 Mr. Smaldone.

14 MR. SMALDONE: Thank you, Your Honor. May it please the
15 Court.

16 THE COURT: Yes, sir.

17 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

18 MR. SMALDONE: Good morning. I never actually had the
19 chance to introduce myself during the early jury selection
20 process. My name is Grant Smaldone. It's my honor here to
21 represent Derrick Boyd. As you heard, Mr. Boyd is charged
22 with trafficking cocaine, possession of weed, possession with
23 intent to distribute marijuana, and contraband at the jail.

24 I'll start off honestly, like, honestly, I'm going to
25 start off the marijuana was Mr. Boyd's. That's not really up

1 for dispute. The marijuana was his. It was his, in his
2 possession. You'll hear that, yeah, it's mine.

3 Everything else is just a little fishy. You'll hear
4 evidence in this case, but pay attention to the lack of
5 evidence. Pay attention to the stuff you don't hear, pay
6 attention to the stuff you don't see, and think about the
7 whole process of what happened. Think about what it looks
8 like.

9 Does it -- the traffic stop, the process. Who is ignored
10 in the stop? Who was targeted in the stop? It just doesn't
11 add up. Something -- there's something we don't know. I
12 don't know what it is, but it's not my job to prove it to you.

13 When I was -- I think I was a teenager. I might have
14 been in early high school. I had this grandmother, and she --
15 my grandfather was Italian. She married him. So she -- that
16 means you have to learn how to cook Italian food.

17 So my grandmother -- she was starting to get dementia.
18 And one day, you know, she says, oh, there's lasagna in the
19 refrigerator. Right? So, okay, I'm kind of hungry. I'll
20 take out the lasagna. So I look at the lasagna, I'm like,
21 great, you know, and I start to scoop it and I smell
22 something. I'm not sure what it is. I'm like, huh, maybe
23 that's weird. And I scoop a little bit more, and then I take
24 that second sniff, and I think to myself this ain't going to
25 happen. I don't know what it is. I can't name the specific

1 ingredient. It just didn't add up, and I ain't going to eat
2 it.

3 What the State wants you to do today is not even smell
4 it. They just want you to put that old lasagna in the
5 microwave and just have at it. I'm going to ask you to take a
6 second smell at it. That second smell, that's reasonable
7 doubt, and that's what this case is going to boil down to.
8 There's so much reasonable doubt.

9 So at the end of the day, I'm going to ask you to take
10 that second sniff and do the right thing and think about what
11 you see, think about what you don't see, and think about how
12 it all plays out and find my client, Derrick, not guilty.

13 It's an important -- as you heard, this is an important
14 day for Derrick and his family, his children, and you were
15 selected, as you heard, because you didn't have any biases.
16 You didn't -- you know, you're here. You responded to the
17 summons. Thank you, by the way.

18 So the last thing, as people, it's easy to look at the
19 news or easy to see someone in that chair right there and
20 think, what did he do? Right? That's what people do. You
21 see on the news, oh, this guy is arrested. Good. Case
22 closed. And that's whatever. That's fine. As people, I
23 guess, you shouldn't do it, but that's what people do.

24 But when you sit in that chair right there and you become
25 jurors, you have a special job. You have to not -- you have

1 to take those biases aside. You have to remember that sitting
2 in that chair, he's as innocent as I am, and you have to weigh
3 things as a juror, not just as a person, because it has
4 special responsibility that you were selected to do.

5 And when you do that special responsibility, when you
6 weigh those out and when you think has the State met its
7 burden of proof to this case beyond a reasonable doubt, I know
8 you'll do the right thing. I know you will. Take that second
9 sniff and find Derrick not guilty of trafficking in cocaine
10 and the contraband charge. Thank you.

11 THE COURT: Thank you.

12 Call your first witness, please.

13 MR. OSBORNE: Thank you, Your Honor. The State calls
14 Deputy Ray Holder.

15 THE CLERK: If you'll please raise your right hand and
16 state your full name for the record.

17 THE WITNESS: Ray Houston Holder, Jr.

18 THE CLERK: Spelling your last name, please.

19 THE WITNESS: H-o-l-d-e-r.

20 THE CLERK: And do you swear or affirm to tell the truth,
21 the whole truth, and nothing but the truth?

22 THE WITNESS: I do.

23 THE CLERK: Thank you, sir.

24 RAY HOLDER, being first duly
25 sworn, testified as follows:

RAY HOLDER - DIRECT BY MR. OSBORNE

DIRECT EXAMINATION

1

2 BY MR. OSBORNE:

3 Q: Good morning, Deputy.

4 A: Good morning.

5 Q: Where do you currently work?

6 A: Dorchester County Sheriff's Office.

7 Q: And how long have you been with the Dorchester County
8 Sheriff's Office?

9 A: On and off for about eight years.

10 Q: All right. What have been some of your various
11 assignments while with the Sheriff's Office?12 A: I started at the jail, and then I worked there for about
13 two and a half years and then moved to the road, where I
14 currently am assigned. Then I got promoted to corporal, left
15 and went to Berkeley County, came back, went back to the road.
16 And then now I'm currently assigned to the Selective
17 Enforcement Team.18 Q: Okay. And -- well, let's talk about that just for a
19 second. What are some of your duties and responsibilities as
20 a member of the Selective Enforcement Team?21 A: We patrol high crime areas and try to get the criminal
22 element off the street as a proactive unit.23 Q: Okay. Have you received any training as a deputy that, I
24 guess, it might be related or important in this case?

25 A: Yes.

RAY HOLDER - DIRECT BY MR. OSBORNE

1 Q: And what is that?

2 A: It's called criminal interdiction.

3 Q: What does that mean? Criminal interdiction?

4 A: So criminal interdiction is used to interrupt illicit
5 activity. Generally guns, money that's used with illegal
6 narcotic sales, narcotics alone. You know, they travel our
7 roadways, and it's our job to, you know, make routine traffic
8 stops and see if there's any behavior that would pique or, you
9 know, make us look further into it.

10 Q: Okay. Sometimes -- I don't know if maybe you've heard
11 this expression, maybe you haven't, but I've also described or
12 heard it described as sort of going beyond the stop.

13 A: Yes, sir.

14 Q: All right. So let's get into this case. Were you
15 working the night of May the 14th, 2021, going into the early
16 morning hours of May the 15th, 2021?

17 A: Yes, sir.

18 Q: And what was your assignment that night?

19 A: I was assigned to patrol. I was assigned to Zone One of
20 Dorchester County, which is, like, St. George, Harleyville,
21 Reidsville, the more rural area of the county.

22 Q: Okay. And that's Zone One?

23 A: Yes, sir.

24 Q: How many zones are there in Dorchester?

25 A: Five.

RAY HOLDER - DIRECT BY MR. OSBORNE

1 Q: Five? Okay. I'm not going to ask you to go through the
2 whole county. We're in Zone One now, I guess?

3 A: Yes.

4 Q: Okay. Were you patrolling alone that night or did you
5 have a partner?

6 A: No, I had a partner. His name is Kyle Gahan.

7 Q: Kyle Gahan?

8 A: Yes, sir.

9 Q: Okay. All right. So around 12:30 a.m., just after
10 midnight, did you have the occasion to conduct a traffic stop?

11 A: Yes, sir.

12 Q: And where did you conduct a stop?

13 A: Judge Street, at the intersection of Judge Street and
14 West Main Street in Harleyville.

15 Q: Okay. Is that in the county of Dorchester?

16 A: Yes, sir.

17 Q: All right. For those who don't know -- well, the area of
18 Judge Street, is that what y'all would consider to be, like, a
19 high crime area?

20 A: Yes.

21 Q: Okay.

22 A: There's a lot of narcotics that are moved because it's a
23 fairway to the interstate.

24 Q: Okay. That night, were you equipped with body-worn
25 camera or in-car cameras?

RAY HOLDER - DIRECT BY MR. OSBORNE

1 A: Yes, sir.

2 Q: Okay. All right.

3 MR. OSBORNE: Your Honor, may I approach?

4 THE COURT: You may.

5 BY MR. OSBORNE:

6 Q: For ID purposes only, I'm showing you State's Exhibit 1,
7 but I also want you to take a look at State's Exhibit 2, and
8 you tell me if you recognize these two exhibits. And if so,
9 what are they?

10 A: State's Exhibit 2 is a copy of my in-car camera that is
11 clipped. And then this is a flash drive with the rest of my
12 footage on it.

13 Q: Okay. So 2 is just a clip of the traffic stop that
14 night, but 1 is all the videos from traffic stops that night?

15 A: Yes, sir.

16 Q: And do they fairly and accurately depict the events
17 surrounding the traffic stop?

18 A: They do.

19 MR. OSBORNE: Your Honor, at this time, the State seeks
20 to admit 2 into evidence.

21 THE COURT: Any objection?

22 MR. SMALDONE: Your Honor, renew objection made at
23 pretrial motions.

24 THE COURT: Very well. Thank you.

25 Very well. It's overruled. You may proceed. It's in

RAY HOLDER - DIRECT BY MR. OSBORNE

1 evidence.

2 (WHEREUPON, State's Exhibit Number 2, video/audio clips
3 from police video, was admitted into evidence.)

4 THE COURT: Do y'all want to go ahead and put the screen
5 up? Thank you.

6 (WHEREUPON, State's Exhibit Number 2 was played and then
7 stopped. Not transcribed herein.)

8 BY MR. OSBORNE:

9 Q: Okay. All right. What are we looking at here?

10 A: This is -- I'm sitting on Judge Street in Harleyville.

11 Q: Okay. I guess this is your dashcam?

12 A: Yes, sir.

13 (WHEREUPON, State's Exhibit Number 2 was played and then
14 stopped. Not transcribed herein.)

15 MR. OSBORNE: Let's start over. There we go.

16 BY MR. OSBORNE:

17 Q: Now, you know, as the -- it's moving here, the clicker,
18 so what are you all doing?

19 A: I'm sitting talking to my partner, Gahan.

20 Q: Okay.

21 A: And I'm listening to the radio, just watching cars pass.

22 Q: All right. And we just saw a vehicle pass in front of
23 the camera. Did you take notice of anything about the car?
24 Could you see? It's kind of quick. Could you see anything?

25 A: Yes, sir. I could see that the passenger -- it looked

RAY HOLDER - DIRECT BY MR. OSBORNE

1 like he had tried to conceal himself behind the B-pillar of
2 the vehicle, which is the bar between the front seat and back
3 seat.

4 Q: When you said tried to conceal himself, what do you mean?

5 A: He tried to hide himself, like tried to slump back and --
6 basically, to avoid detection.

7 Q: Okay. In and of itself, I mean, no reason to stop the
8 car or anything? It wasn't --

9 A: Correct.

10 Q: Is that correct? That's not against the law, I guess, is
11 what --

12 A: Correct.

13 Q: -- I'm saying.

14 A: Yes, sir.

15 Q: But it made you suspicious? Is that fair to say?

16 A: Yes, sir.

17 (WHEREUPON, State's Exhibit Number 2 was played and then
18 stopped. Not transcribed herein.)

19 BY MR. OSBORNE:

20 Q: Same car?

21 A: Yes, sir.

22 Q: All right. I'm going to stop it right here for a second.
23 You can see, I guess, from the reflection on the buildings and
24 whatnot, it looks like you had activated your blue lights?

25 A: Yes, sir.

RAY HOLDER - DIRECT BY MR. OSBORNE

1 Q: And why was that?

2 A: To conduct a traffic stop on the vehicle.

3 Q: Okay. And what was -- why were you stopping the car
4 then? What was the violation?

5 A: As you see in the video, the white line that's on the
6 ground, that's called a stop line. The front of your vehicle
7 has to stop before it to prevent you from going out into the
8 intersection.

9 Q: All right. Let's just back that up and let's look at
10 what we've got here.

11 (WHEREUPON, State's Exhibit Number 2 was played and then
12 stopped. Not transcribed herein.)

13 BY MR. OSBORNE:

14 Q: Okay. It does look like -- it's kind of hard to see, but
15 it looks like the vehicle -- okay. It just started to move
16 right there. All right. So repeat that and explain this stop
17 again?

18 A: So the white bar that you -- or the white line that you
19 see on the ground, you're supposed to stop behind it to
20 prevent yourself from going out into the intersection.

21 Q: Okay. And why -- you know, I mean, I guess just out of
22 curiosity, what might happen if you stop your car at this
23 particular intersection in the manner in which this car is
24 stopped?

25 A: An 18-wheeler or, you know, other vehicles could make a

RAY HOLDER - DIRECT BY MR. OSBORNE

1 wide turn and they could take off the front of your car.

2 Q: Okay. So that might be the reason why the law says
3 you're supposed to stop in front of the white line?

4 A: Correct. Yes, sir.

5 Q: This isn't the most egregious traffic violation, I guess,
6 you would see in a normal shift?

7 A: No, it's not.

8 Q: Do you make stops like this routinely?

9 A: Yes, sir.

10 Q: And how do they normally go?

11 A: It usually takes, you know, ten minutes or so if there's
12 -- if I don't suspect any other criminal activity is going on,
13 you know, I give them a warning and get them out of there.

14 Q: Okay. Is that what happened in this case?

15 A: No.

16 Q: Do you -- do you make any -- are you trained with
17 Dorchester County Sheriff's Office to make any, I guess,
18 interactions with citizens to educate them on the law?

19 A: Yes.

20 Q: And is that another thing that you do sometimes during
21 these stops?

22 A: Absolutely. That's the main intention most of the time
23 is to educate people to make our roadways safer.

24 (WHEREUPON, State's Exhibit Number 2 was played and then
25 stopped. Not transcribed herein.)

RAY HOLDER - DIRECT BY MR. OSBORNE

1 BY MR. OSBORNE:

2 Q: Now, I just want to stop it for one second. It looks
3 like -- and please correct me if I'm wrong, but it looks like
4 the driver got out of the car before you even approached the
5 car or asked him to step out of the car or anything like that?

6 A: Yes, sir.

7 (WHEREUPON, State's Exhibit Number 2 was played and then
8 stopped. Not transcribed herein.)

9 BY MR. OSBORNE:

10 Q: All right. We just saw it very quick, but you're
11 motioning off on this side, and I know -- well, let's just go
12 ahead and clarify this right now. You said you're equipped
13 with body-worn camera?

14 A: Yes.

15 Q: What we're hearing right now, is this the audio from your
16 body-worn camera or from your in-car camera?

17 A: This is from the microphone inside of the car.

18 Q: Okay. Why is the body-worn camera audio not picking up
19 at this moment?

20 A: I don't have my body camera on. This is approximately
21 halfway through the shift. The batteries don't last, you
22 know, an entire shift. So, you know, if we're not in the
23 middle of doing something right then and there, a lot of
24 times, you know, you'll put it on the charger because we have
25 a charger in our car, and that's where my body camera was at

RAY HOLDER - DIRECT BY MR. OSBORNE

1 the beginning of this traffic stop.

2 Q: Okay. And do you activate the body-worn camera here in a
3 second?

4 A: Yes.

5 Q: Okay. Then we can hear the audio?

6 A: Yes.

7 Q: What do you -- what do you -- as best you can recall the
8 driver's name, what -- do you remember his name? Is it Way?

9 A: Yes. Sorry.

10 Q: When you're talking to Mr. Way, what are you -- what are
11 you saying to him?

12 A: I'm advising him of the reason why I stopped him. That
13 he passed the stop line.

14 Q: And you just motioned, and that's why you motioned back?

15 A: Yes, sir.

16 (WHEREUPON, State's Exhibit Number 2 was played and then
17 stopped. Not transcribed herein.)

18 BY MR. OSBORNE:

19 Q: Okay. I just want to stop right there for a second. And
20 you had told the driver that you had smelled marijuana?

21 A: Yes.

22 Q: Was that true?

23 A: Yes.

24 Q: When you got to the car to the passenger side and the
25 passenger side door opened, first, who was the passenger in

RAY HOLDER - DIRECT BY MR. OSBORNE

1 the car?

2 A: That was the defendant, Mr. Boyd.

3 Q: Okay. Do you see him in the courtroom?

4 A: I do.

5 Q: Can you describe what he's wearing?

6 A: He's wearing a white shirt.

7 Q: Okay. That odor of marijuana, did it become less or
8 more, I guess, pungent or strong when the passenger door
9 opened?

10 A: It became very strong.

11 (WHEREUPON, State's Exhibit Number 2 was played and then
12 stopped. Not transcribed herein.)

13 BY MR. OSBORNE:

14 Q: Now, I heard you say it smells like raw marijuana. So
15 through your training and experience, is there, you know, I
16 suppose a different odor to burnt marijuana as opposed to raw
17 marijuana?

18 A: In my experience, yes.

19 Q: And you're telling them you smelled raw marijuana, not
20 burnt?

21 A: Yes.

22 (WHEREUPON, State's Exhibit Number 2 was played and then
23 stopped. Not transcribed herein.)

24 BY MR. OSBORNE:

25 Q: I'm going to stop it one second. You had said that

RAY HOLDER - DIRECT BY MR. OSBORNE

1 because you smelled marijuana, you had probable cause to
2 search them and the car?

3 A: Yes.

4 Q: That's true?

5 A: Yes.

6 Q: And did you then?

7 A: Yes.

8 Q: Had you not smelled marijuana, would we be seeing all of
9 this?

10 A: Yes, off the open container as well that was in the
11 vehicle that the driver admitted was in there.

12 Q: Okay. For the driver?

13 A: Correct.

14 Q: Okay.

15 A: Oh, yes. Yeah. I would not have been searching the
16 passenger at this point, no.

17 (WHEREUPON, State's Exhibit Number 2 was played and then
18 stopped. Not transcribed herein.)

19 BY MR. OSBORNE:

20 Q: Now, I realize it got a little up close and personal
21 there. Have you ever found weapons or know of any deputies
22 that have found weapons in the groin area of individuals?

23 A: Yes.

24 Q: Did you run into these same, I guess, frisking or
25 searching issues when you were doing that with Mr. Way?

RAY HOLDER - DIRECT BY MR. OSBORNE

1 A: No.

2 (WHEREUPON, State's Exhibit Number 2 was played and then

3 stopped. Not transcribed herein.)

4 BY MR. OSBORNE:

5 Q: What color bag did he say it was in?

6 A: It was in a blue bag, he said.

7 Q: Okay.

8 (WHEREUPON, State's Exhibit Number 2 was played and then

9 stopped. Not transcribed herein.)

10 BY MR. OSBORNE:

11 Q: All right. We'll stop right there for a couple seconds

12 and let me ask you a couple questions, I guess, regarding

13 Miranda and your entire encounter with the defendant. How

14 long was your entire interaction with the defendant on May the

15 14th going into May the 15th, 2021, do you estimate?

16 A: Probably an hour and a half, an hour and 45.

17 Q: During your interactions with the defendant, did he

18 appear to be intoxicated or under the influence of any drugs?

19 A: No.

20 Q: Did the defendant appear to have any physical or mental

21 disabilities that would have impaired his ability to

22 understand what was being said to him?

23 A: No.

24 Q: It's kind of apparent, I guess, but prior to or during

25 your interaction with the defendant, did you offer or, I guess

RAY HOLDER - DIRECT BY MR. OSBORNE

1 more importantly, deny him a bathroom break, a drink, or
2 otherwise?

3 A: No.

4 Q: And were there any threats or promises made in exchange
5 for his statement?

6 A: No.

7 Q: Now, I notice you put him in -- both, I guess, in
8 handcuffs, and then told them they weren't under arrest?

9 A: Correct.

10 Q: Is that true?

11 A: Yes.

12 Q: I'm not asking this. Well, maybe I am asking you to
13 speculate in some ways, but could there be a scenario in which
14 you take the handcuffs off the defendant after he has just
15 admitted that there are two ounces of marijuana inside the
16 car?

17 A: Absolutely.

18 Q: And what might it -- and I'm not saying this happened in
19 this scenario, but what might a scenario like that entail, so
20 we can understand what you mean?

21 A: Well, I mean it depends on, like, their level of
22 cooperation as far as, you know, if they're willing to work
23 with narcotics and stuff like that. Also, you know, based on
24 his statements, you know, that he tells me he sells marijuana,
25 it's kind of hard to overlook that. That's a serious crime.

RAY HOLDER - DIRECT BY MR. OSBORNE

1 Most of our homicides in Dorchester County are over people
2 selling marijuana.

3 Q: Right. I don't think we've got there though yet.

4 A: Correct.

5 Q: But at this point right here, I think what we're talking
6 about is sometimes you kind of look up the chain --

7 A: Correct.

8 Q: -- and might let him talk to narcotics and things like
9 that?

10 A: Yes.

11 Q: So that's one way in which this may not result into an
12 arrest?

13 A: Correct.

14 Q: Okay.

15 (WHEREUPON, State's Exhibit Number 2 was played and then
16 stopped. Not transcribed herein.)

17 BY MR. OSBORNE:

18 Q: Okay. What are you holding in your hand there?

19 A: It's a black digital scale that has a white residue on
20 it.

21 Q: Okay. And that's what you -- when you made that comment,
22 what is this? Cocaine?

23 A: Yes.

24 (WHEREUPON, State's Exhibit Number 2 was played and then
25 stopped. Not transcribed herein.)

RAY HOLDER - DIRECT BY MR. OSBORNE

1 BY MR. OSBORNE:

2 Q: All right. Before we get to the money, what else was
3 inside the bag?

4 A: He had several plastic bags that are commonly used to
5 package narcotics that are for sale.

6 Q: That kind of went -- well, it kind of went through, but
7 am I hearing him correctly in saying that the powder that was
8 on the scale was a result of powder that would have been on
9 the marijuana?

10 A: Correct. That's what he's saying.

11 Q: Okay.

12 (WHEREUPON, State's Exhibit Number 2 was played and then
13 stopped. Not transcribed herein.)

14 BY MR. OSBORNE:

15 Q: All right. So you then searched the rest of the car?

16 A: Yes.

17 Q: All right. We're just going to play it for a little bit,
18 and then I'll ask you some questions while you're searching
19 the car. You asked him how much money he had on him. Did --
20 did he have any currency in his possession?

21 A: He did.

22 Q: Do you remember how much it was?

23 A: I believe it was \$1,614.

24 Q: Okay. What happened to that currency?

25 A: It was seized by our narcotics detectives.

RAY HOLDER - DIRECT BY MR. OSBORNE

1 Q: Okay.

2 (WHEREUPON, State's Exhibit Number 2 was played and then
3 stopped. Not transcribed herein.)

4 BY MR. OSBORNE:

5 Q: So it's kind of hard to see. What are we looking at
6 there, and --

7 A: Um --

8 Q: -- where is that?

9 A: Say that again? I'm sorry.

10 Q: What are we looking at there, and where did it come from?

11 A: It came from that -- that blue bag that he was talking
12 about. It's, like I said, several plastic bags. A couple of
13 them had white powder in it a little bit.

14 Q: Okay. And when you said if I test this, it's going to be
15 cocaine -- it will probably be cocaine, what did he say?

16 A: He said it probably would be.

17 (WHEREUPON, State's Exhibit Number 2 was played and then
18 stopped. Not transcribed herein.)

19 BY MR. OSBORNE:

20 Q: If I heard you correctly, you said if you test that, it's
21 not going to be regular weed?

22 A: Yes.

23 Q: It's going to be laced with cocaine?

24 A: Correct.

25 Q: Okay. All right.

RAY HOLDER - DIRECT BY MR. OSBORNE

1 MR. OSBORNE: Your Honor, may I approach?

2 THE COURT: You may.

3 BY MR. OSBORNE:

4 Q: I'm showing you State's Exhibit 3. Can you take a look
5 at that and tell me if you recognize that?

6 A: Thank you so much. It's got my initials and the date on
7 it. It looks like this is the marijuana that would have been
8 seized.

9 Q: Okay. And you know that based on how?

10 A: I sealed it.

11 Q: Okay. And you said those were your initials on it?

12 A: Yes, sir.

13 Q: I'm sorry. I'll take it back.

14 A: Do you want it back in the bag?

15 Q: Okay. What was -- do you need to see it again to know
16 the date that you sealed it?

17 A: It was sealed on the night of the traffic stop, which was
18 May 15th.

19 Q: All right. So -- and you didn't find -- this is the --
20 is it fair to say this is the only contraband that you found
21 that night?

22 A: In relation to the traffic stop, for -- for the traffic
23 stop is concerned, yes.

24 Q: Okay. And at that point, did you place the defendant
25 under arrest?

RAY HOLDER - DIRECT BY MR. OSBORNE

1 A: Yes.

2 Q: And what did you do with him?

3 A: He was transported to the Dorchester County Detention
4 Center.

5 Q: Okay. Was it -- I mean, was it argumentative, I guess,
6 on the way to the -- to the detention center with the
7 defendant?

8 A: No, not that I recall.

9 Q: Okay. At any point when you were with the defendant from
10 the part that we saw right here to when you get to the
11 detention center, did he ever request an attorney?

12 A: No.

13 Q: Did he ever say I don't want to say anything else?

14 A: No.

15 Q: All right. Once you got to the detention center, what
16 happened then?

17 A: He was brought into the booking room. The jail staff met
18 me out there. They conducted a pat down, and then they took
19 him into the strip search room --

20 Q: Okay.

21 A: -- to conduct the strip search.

22 Q: Why? Well, this might be a better question for a deputy
23 that works at the detention center. Did you ever use to work
24 at the detention center?

25 A: I did, for two and a half years.

RAY HOLDER - DIRECT BY MR. OSBORNE

1 Q: Okay. Is it the policy at the detention center to search
2 all -- strip search all inmates?

3 A: Yes.

4 Q: All inmates?

5 A: It was at the time that I worked there, yes.

6 Q: Okay. So I guess you wouldn't know what the policy is
7 now?

8 A: Yeah. It's been a while since I worked there.

9 Q: Okay. All right. What happened once you -- well, we got
10 to the part where he's patted down. Then you bring him into
11 the strip search area. What happened then?

12 A: During the strip search, after he got down to his
13 underwear, I asked him if he -- if he was trying to conceal
14 anything, basically to bring it into the jail. He -- I
15 watched him reach into his underwear from behind. He pulled
16 his hand around to the front and it looked like he tried to
17 stuff something. And then he was like, no, not that I think
18 -- not that I can think of or something, something along those
19 lines.

20 Q: Okay. So walk me through that. So y'all are in the --
21 in the strip cell area. He's literally told to strip down?

22 A: Correct.

23 Q: Who all is in there with you?

24 A: Me and a couple detention officers. I think it was Green
25 and Sanders, I think.

RAY HOLDER - DIRECT BY MR. OSBORNE

1 Q: Okay. And so -- and then you said that he reaches into
2 his underwear. So I guess he's down -- I don't mean to be
3 graphic, but I guess he's down all the way down to his
4 underwear?

5 A: Yes.

6 Q: Okay. And then you said he tries to reach or something?

7 A: Yes.

8 Q: Toward the back of his underwear? Front of his
9 underwear?

10 A: Towards the back, and he keeps his hand in the -- in his
11 underwear and then kind of pulls it around his body, puts it
12 in front, puts his hand up in the front, and then pulls his
13 his hand out.

14 Q: Did you say anything to him at that point? Do you
15 remember?

16 A: I think I asked him, you know, basically trying to give
17 him another opportunity to be honest about the, you know,
18 potentially introducing something into the jail, and he said
19 that he didn't think he had anything on him.

20 Q: Okay. Was that untrue? Did you all actually find
21 something on him?

22 A: We did.

23 Q: Okay. And what was that?

24 A: It was a bag with approximately 28 grams of a white
25 powder.

RAY HOLDER - DIRECT BY MR. OSBORNE

1 Q: And how did you find it? Like, how did that come about?
2 How did you retrieve it?

3 A: So I don't recall if he was actually instructed to take
4 off his underwear or not, but once the underwear was down, he
5 put his toes -- his feet together and, like, put his legs
6 together, and then very quickly lifted his genitals, turned
7 around, and then bent at the waist and with his legs continued
8 to be closed. He basically tried to rush the strip search, if
9 that makes sense, and then when he did that, I saw the bag,
10 and then I told him that I saw it, to throw it on the ground.
11 He tried to hand it to me, and I told him that I didn't want
12 it because it was between his legs, basically, and I didn't
13 have gloves on at the time. So he threw it on the ground, and
14 then we recovered it.

15 Q: Okay.

16 MR. OSBORNE: Your Honor, may I approach?

17 THE COURT: Yes.

18 BY MR. OSBORNE:

19 Q: I'm showing you State's Exhibit 4. Can you take a look
20 at that and tell me if you recognize it?

21 A: Yes, sir. It's got my initials on it, and it looks like
22 the bag of powder that was recovered.

23 MR. OSBORNE: Your Honor, at this time, the State seeks
24 to admit 4 into evidence, subject to Rule -- I think it's 106
25 fulfilling a condition precedent with other witnesses acting.

RAY HOLDER - DIRECT BY MR. OSBORNE

1 MR. SMALDONE: Your Honor, one moment. I beg the Court's
2 indulgence. Your Honor, I'd renew my previous objection that
3 was made at pretrial suppression motion.

4 THE COURT: Thank you. Thank you. Overruled.

5 (WHEREUPON, State's Exhibit Number 4, bag of white powder
6 cocaine, was admitted into evidence.)

7 BY MR. OSBORNE:

8 Q: Okay. So let's talk about this bag here for a second.
9 All right. Now, it looks like we have a bag of cocaine?

10 A: Yes, sir.

11 Q: And that bag is in another bag?

12 A: Correct.

13 Q: Okay. Now, do you see anything in regards to the other
14 bag that makes you able to identify this?

15 A: Which bag? What are you --

16 Q: The bag of cocaine that is in the -- the next bag.

17 A: Okay.

18 Q: Do you see anything that -- that strikes you as seeming
19 familiar that you might be able to recognize that?

20 A: Yes. It's got my initials and the date on it.

21 Q: And what's the date?

22 A: The date is 5/15/21.

23 Q: Okay. Same day?

24 A: Yes, sir.

25 Q: Now, we've got a bag of cocaine that you got from the

RAY HOLDER - DIRECT BY MR. OSBORNE

1 floor. Then you put it into a bag?

2 A: Yes, sir.

3 Q: Did you seal it?

4 A: In the bag, yes. It is heat-sealed with my initials on
5 it.

6 Q: Okay. That bag is then placed in another bag?

7 A: Yes, sir.

8 Q: Okay. And what is -- his bag, your bag. What is the
9 third bag called?

10 A: It's called a BEST kit.

11 Q: Okay. Is that what we're looking at here?

12 A: Yes.

13 Q: The SLED BEST kit; correct?

14 A: Yes.

15 Q: Okay. And why is the bag of cocaine put into your bag
16 that you initialed and sealed and then put into another bag,
17 the SLED BEST kit? What is that all about?

18 A: That's just -- that's the way SLED wants it packaged to
19 be sent up to them for testing.

20 Q: Okay. So it's sealed yet again?

21 A: Yes.

22 Q: All right. So once you took the bag of cocaine from the
23 ground, what did you -- now I want to go back to the detention
24 center. You actually took it from the ground. What did you
25 do then with the cocaine?

RAY HOLDER - DIRECT BY MR. OSBORNE

1 A: It was taken out -- it was taken out to the -- to the
2 booking room where detention staff photographed it and stuff
3 for their -- for their report. Then it was taken outside to
4 the front of my patrol car. It was weighed and tested.

5 Q: What -- presumptive test; right?

6 A: Yes, it was presumptive tested positive for cocaine.

7 Q: Okay. What did you do with it after that?

8 A: Then it was sealed in the bag after I got back to the
9 office, and then I completed the evidence as far as to submit
10 it to SLED for testing.

11 Q: Okay. All right. As a result of finding the cocaine on
12 the defendant at the detention center, did you make any
13 additional charges?

14 A: Yes.

15 Q: And what was that?

16 A: Trafficking cocaine and introducing a contraband to a
17 jail or prison.

18 Q: Okay. Now, at a certain point later on, were you ever
19 notified by the evidence technician that the third bag, the
20 BEST kit, had not been properly sealed?

21 A: Yes.

22 Q: And does that happen occasionally?

23 A: Yes.

24 Q: And what did you do then?

25 A: I went up to crime scene, and I put it in a new BEST kit

RAY HOLDER - DIRECT BY MR. OSBORNE

1 and resealed it --

2 Q: Okay.

3 A: -- properly.

4 Q: Correct me if I'm wrong, but the bag in which there is
5 your initials, the one that's vacuum sealed 5/15/21 --

6 A: Uh-huh.

7 Q: You didn't touch -- you didn't reseal that?

8 A: Correct.

9 Q: That was already sealed?

10 A: Correct.

11 Q: You just did the outer bag --

12 A: Correct.

13 Q: -- when you did that?

14 A: Yes, sir.

15 Q: And that's common?

16 A: Yes.

17 Q: Okay. And I think that would have been on June the 15th
18 of 2021?

19 A: It was either the 15th or 16th. I'm not -- I'm not a
20 hundred percent sure.

21 Q: Okay.

22 MR. OSBORNE: All right. No further questions.

23 THE COURT: Cross-examination.

24 CROSS-EXAMINATION

25 BY MR. SMALDONE:

RAY HOLDER - CROSS BY MR. SMALDONE

1 Q: All right. Good morning.

2 A: Good morning.

3 Q: All right. This was around midnight?

4 A: Give or take, yes, sir.

5 Q: Okay. And this is Judge Street in Harleyville. Is that
6 -- is that close to the main center part of Harleyville or
7 where is that in Harleyville?

8 A: Yes, it is.

9 Q: Okay.

10 A: It is. It can -- it -- actually, the intersection that
11 we're talking about is the main street. It's literally called
12 Main Street in Harleyville.

13 THE COURT: Yeah?

14 THE FOREMAN: Just got a question. Somebody wants to go
15 to the bathroom.

16 THE COURT: Somebody -- hold on one second. You can't
17 just leave. You can't -- wait a minute. It's --

18 A JUROR: No, I can't.

19 THE COURT: Okay. That's fine. That's okay. Thank you
20 for letting us know.

21 Ladies and gentlemen, one of your number needs to be --
22 go to the ladies' room. Please step to your jury room. Do
23 not discuss this matter or allow anyone to discuss it with
24 you. We will take about a ten-minute break.

25 (WHEREUPON, the jury exited the courtroom at 11:57 a.m.)

RAY HOLDER - CROSS BY MR. SMALDONE

1 THE WITNESS: Your Honor, is that for us too?

2 THE COURT: You can take a break. You -- just don't
3 discuss your testimony with anyone since you're on the stand.

4 All right, we'll take ten minutes.

5 (WHEREUPON, there was a break in the proceedings from
6 11:58 a.m. until 12:10 p.m., after which the proceedings
7 resumed as follows.)

8 MR. SMALDONE: No, Your Honor.

9 (WHEREUPON, the jury entered the courtroom at 12:10 p.m.)

10 THE COURT: All right. Ladies and gentlemen, we will
11 continue with the cross-examination. And of course, we are in
12 the State's case.

13 Yes, sir.

14 MR. SMALDONE: All right. I forget where I left off, but
15 I know it was close to the beginning.

16 THE COURT: It was, and if you need to start over, please
17 do. Please do.

18 MR. SMALDONE: All right.

19 BY MR. SMALDONE:

20 Q: What was the name of your partner that night?

21 A: His name is Gahan.

22 Q: Okay. And it was just y'all two in that car?

23 A: No, we weren't in a car together.

24 Q: Okay.

25 A: Yeah.

RAY HOLDER - CROSS BY MR. SMALDONE

1 Q: You were in separate cars?

2 A: Correct. Yeah, we were sitting next to each other.

3 Q: Okay. Did that deputy follow you when you pulled out?

4 A: I don't -- I don't know. I don't look behind me when I'm
5 driving a lot of times.

6 Q: Okay. How many cars had driven past you when you were
7 parked, other than this one?

8 A: I don't -- I don't know.

9 Q: Okay. Do you know if any did?

10 A: I don't know if any did or not, to be honest with you.

11 Q: Okay. So when you pulled out of that -- where -- I'm
12 sorry. Let me back up. Was that a parking lot that you were
13 in?

14 A: Correct. Yes.

15 Q: Okay. So when you pulled out of that parking lot, you
16 were planning on pulling over the car; correct?

17 A: I mean, not if I didn't have a reason, no.

18 Q: Right. You were planning on -- you were looking for a
19 reason though; correct?

20 A: Correct.

21 Q: Okay. And you found it?

22 A: Correct.

23 Q: And you said earlier that you smelled marijuana; right?

24 A: Correct.

25 Q: What -- when was the first point where you smelled

RAY HOLDER - CROSS BY MR. SMALDONE

1 marijuana?

2 A: When I made contact with the driver.

3 Q: Okay.

4 A: When he approached me, I could smell it coming from him.

5 Q: Okay.

6 A: And then when I approached the car and made contact with
7 the defendant, I could smell it then coming from inside the
8 car.

9 Q: Okay. And not coming from the defendant?

10 A: I mean, he was in the car, so it's -- I mean, it's not
11 like a -- you know, where you see on TV where you got, you
12 know, green smoky -- you know what I'm saying? -- showing
13 exactly where.

14 Q: Okay. And the -- you said that it was coming from the
15 driver. Did he smell like raw marijuana?

16 A: He just -- he smelled like -- he smelled like marijuana,
17 like he had been around somebody that was smoking.

18 Q: Okay. After you talked with him, you got Mr. Boyd out of
19 the car after about 2 or 3 minutes; correct?

20 A: I'd have to look, but sure.

21 Q: Yeah. You talked to him; right?

22 A: Yes.

23 Q: And how long -- and how long did it take for him to -- to
24 say that he had weed in the car?

25 A: I'm not sure. A few minutes.

RAY HOLDER - CROSS BY MR. SMALDONE

1 Q: Right.

2 A: Give or take.

3 Q: Okay. And the length of this whole interaction was an
4 hour and a half; right?

5 A: Give or take, yes, sir.

6 Q: Okay. So after three minutes, he said he had it in the
7 car, and he helped you find it; correct?

8 A: He did.

9 Q: Okay. And he was pretty up front? After those three
10 minutes, he was pretty up front; right?

11 A: After several times of asking him about it, yes.

12 A: After that. Right. If you look at the tape, he never
13 says -- do you ever -- he never gives out a flat denial that
14 he had the marijuana in the car; correct? He just wavers?

15 A: I believe the first couple of times I asked him, he said
16 there was nothing in the car.

17 Q: But you said he smoked -- he said he smoked weed; right?

18 A: Yeah. He said that he smoked weed.

19 Q: Okay. So after those three minutes, four minutes, you
20 find the marijuana, he owns up to it, and then you say you
21 found some baggies?

22 A: Correct.

23 Q: All right. And then he said it was from the weed;
24 correct?

25 A: Correct.

RAY HOLDER - CROSS BY MR. SMALDONE

1 Q: And you're familiar with marijuana? They have -- it has
2 -- sometimes has -- it's called trichomes, sometimes white
3 crystals on it; right?

4 A: I mean, I'm not familiar with the way that, you know,
5 marijuana plants work now.

6 Q: Okay.

7 A: I'm not.

8 Q: Have you -- have you dealt with marijuana before?

9 A: Yes.

10 Q: Have you -- and you've seen it and looked at it?

11 A: I mean, I haven't examined it under a microscope, no, but
12 I've seen it, you know, sitting on the side of the road, yes.

13 Q: Okay. Did you get up close and get a good look?

14 A: Did I get up close and get a good look?

15 Q: Of the stuff on the side of the road or of any marijuana?

16 A: Yes.

17 Q: Okay. And have you seen -- have you noticed before that
18 there's crystals on it sometimes that are part of the plant?

19 A: I mean, I've never specifically noticed that, no.

20 Q: Okay. And so you wouldn't know that sometimes the better
21 stuff has more crystals on it?

22 A: No, I wouldn't know that. No, sir.

23 Q: All right. You said the baggies had cocaine in them;
24 right?

25 A: Yes, I did.

RAY HOLDER - CROSS BY MR. SMALDONE

- 1 Q: All right. And he said it -- he said it was the weed;
2 right?
- 3 A: At first.
- 4 Q: Okay. He never said it was cocaine though, did he?
- 5 A: I mean, he said that if I -- because I asked him if I
6 tested it, it would probably test for cocaine, and he said,
7 yeah, it probably would.
- 8 Q: He said -- after he said it was weed, you said it's
9 probably cocaine, and he shook his head probably; right?
- 10 A: No. He told me that it would probably test for cocaine
11 when I asked him about it.
- 12 Q: Okay. Did you test for it?
- 13 A: No.
- 14 Q: All right. Are those baggies here?
- 15 A: No, they're not.
- 16 Q: All right. And just to be clear, they never tested --
17 you never tested the small baggies; right?
- 18 A: No, I did not.
- 19 Q: Okay. And the first thing you said was that it was weed;
20 right?
- 21 A: Yes.
- 22 Q: Okay. And I think it was mentioned earlier -- you didn't
23 testify to it, one of the Osbornes did, but when -- you said
24 it -- you said it was not regular weed; right? He said that?
- 25 A: He said that, yes.

RAY HOLDER - CROSS BY MR. SMALDONE

1 Q: Mr. Boyd said that?

2 A: Correct.

3 Q: And then -- and then somehow that became that the weed
4 had cocaine on it? Is that what you testified to?

5 A: No, I didn't test it, so I don't know what was on it.

6 Q: Okay. It was mentioned earlier that -- that it could
7 have had cocaine on it. Did Mr. Boyd ever talk about having
8 cocaine on marijuana?

9 A: No, he never said that there was cocaine on the
10 marijuana. No, he did not.

11 Q: Okay. But you heard it brought up earlier though;
12 correct?

13 A: Yeah, it was mentioned. Yes, sir.

14 Q: Okay. I just want to be clear. And in your experience,
15 you know, that one typically does not ever smoke powdered
16 cocaine; correct?

17 A: No, that is not correct. People put cocaine on blunts
18 all the time, sir.

19 Q: Okay.

20 A: And they call -- they call them woolies.

21 Q: Right. You're aware that cocaine decomposes when it
22 burns and is basically inactive?

23 A: Well, I don't get into the specifics of why people do
24 what they do, sir, but I've seen it in the past. Yes, I have.

25 Q: Okay.

RAY HOLDER - CROSS BY MR. SMALDONE

1 A: With people putting powdered cocaine or even crack
2 cocaine on marijuana and smoking it.

3 Q: Right. So you know that you can smoke crack; right?

4 A: Correct. You can smoke cocaine as well.

5 Q: Okay. And -- but your testimony is that you don't know
6 that it would decompose and nothing would happen to --

7 A: No, I don't know. Like I said, I can't get into the
8 specifics of what people think of, you know.

9 Q: I just want to make sure. Going to the -- after where
10 you found the baggies, you arrested him after a pretty
11 significant amount of time; correct? It was about, I think,
12 an hour and a half?

13 A: No. What do you mean?

14 Q: I'm sorry. When you -- when was he placed in the squad
15 car? Was that after about an hour and a half?

16 A: No, I don't think so. I don't know exactly how long it
17 was, but it shouldn't have been no hour and a half. No, sir.

18 Q: Okay. Well, the whole interaction at the scene, though,
19 was about an hour and a half-ish; correct?

20 A: It could be. I'm not sure. When he asked that question,
21 I thought he meant, like, taking him to the jail and
22 everything else.

23 Q: Okay.

24 A: That's what I thought he was talking about.

25 Q: All right. So between the stop and the jail you said is

RAY HOLDER - CROSS BY MR. SMALDONE

1 about an hour and a half?

2 A: Like, from the stop to the jail?

3 Q: From the stop. Yeah, from -- from point A to point B,
4 from stop to jail. Right?

5 A: It does not take an hour and a half to get there, no.
6 I'm talking about the entire traffic stop, then the transport
7 and everything at the jail.

8 Q: Right. I'm saying -- and I'm sorry if I was unclear. I
9 meant from the initial traffic stop.

10 A: Okay.

11 Q: The length of time for the search and all of that, not
12 just the drive, but that -- that was about an hour and a half;
13 right?

14 A: Give or take, yes, sir.

15 Q: All right. And other than when you asked him for a few
16 times and said would this test for cocaine, he never admitted
17 to having cocaine; correct?

18 A: He did at the jail.

19 Q: Okay. He never admitted to having cocaine on the drive?

20 A: No.

21 Q: Okay.

22 A: Not that I can recall, no.

23 Q: Okay. And let's -- let's talk about the jail.

24 A: Okay.

25 Q: All right. And just to be clear, you did not perform the

RAY HOLDER - CROSS BY MR. SMALDONE

1 strip search?

2 A: I was in there when it was done, but no, I did not
3 instruct him to take off his clothes and stuff.

4 Q: Okay. And was that someone that works at the jail that
5 does that typically?

6 A: Yes.

7 Q: Okay. And you said -- I can't remember. That he -- he
8 reached into his underwear?

9 A: Yes.

10 Q: Okay. And -- and did what?

11 A: He reached in his underwear from behind him.

12 Q: Okay.

13 A: And then without removing his hand, he brought it around
14 the right side and put his hand in front of his -- his
15 genitals and then pulled his hand out.

16 Q: Okay. So he could have been fixing his strap?

17 A: No, because his hand was, like, all the way down pretty
18 much. It wasn't fixing the strap.

19 Q: All right.

20 MR. SMALDONE: Court's indulgence.

21 THE COURT: Okay.

22 BY MR. SMALDONE:

23 Q: And what was the -- was this a small cell that you --
24 that the strip search happened in?

25 A: I mean, it's a bathroom in a cell, yeah.

RAY HOLDER - CROSS BY MR. SMALDONE

1 Q: Okay. And and again, you don't -- you didn't work at the
2 jail at that time; correct?

3 A: Not during this, no. I was on the road.

4 Q: All right. When did -- your testimony was that he bent
5 over, and you saw it?

6 A: Correct.

7 Q: Okay. And what happened after that?

8 A: I informed him that I saw it and that he needed to
9 discard it. He needed to get rid of it.

10 Q: Okay.

11 A: Or not get rid of it, but turn it over, basically.

12 Q: All right. And you said or you testified earlier that he
13 tried to hand it to you?

14 A: Yes.

15 Q: All right. And have you read your -- your report on
16 this?

17 A: I mean, not recently, no, I haven't.

18 Q: Okay. Would it refresh your memory if I showed it to
19 you?

20 A: Sure.

21 Q: Okay.

22 MR. SMALDONE: Court's indulgence. Let me make sure I
23 have the right page.

24 BY MR. SMALDONE:

25 Q: All right. Second paragraph.

RAY HOLDER - CROSS BY MR. SMALDONE

1 A: Okay.

2 Q: And there's nothing about him trying to hand it to you,
3 is there?

4 A: No, there's not.

5 Q: Okay. It's just you saw it; right?

6 A: What do you mean?

7 Q: There's just -- there's just a report about how you saw
8 it and --

9 A: In this -- in this incident report, yes.

10 Q: Okay. And you wrote that?

11 A: I did.

12 Q: All right.

13 MR. SMALDONE: Court's indulgence.

14 THE COURT: All right.

15 BY MR. SMALDONE:

16 Q: And at the scene -- let's go back to the initial arrest
17 and search. You did pat him down; right?

18 A: Correct.

19 Q: All right. And you see on the video that you did kind of
20 grab him under the area; correct?

21 A: No. I didn't grab him, no.

22 Q: Not in an aggressive way, but you do see a hand on his
23 groin area; correct?

24 A: Correct.

25 Q: You didn't feel anything then; right?

RAY HOLDER - CROSS BY MR. SMALDONE

1 A: No, I did. He continued to clench his -- his groin or
2 his glute muscles, preventing me from conducting my search
3 fully.

4 Q: So you didn't -- you didn't feel a bag or any drugs;
5 right?

6 A: I couldn't, no.

7 Q: So no. And in the video, I mean, he's in plenty of --
8 you see him bent over the car; right.

9 A: Okay.

10 Q: Hands on the brush guard; right?

11 A: Uh-huh.

12 Q: At no point did any -- did you see anything fall to the
13 ground?

14 A: No, I didn't.

15 Q: And so it's after an hour -- at least an hour and a half
16 that this bag suddenly shows up; correct?

17 A: Yeah.

18 Q: It's for -- and by shows up, I mean is first seen --

19 A: Correct.

20 Q: -- by law enforcement. All right. And what happened to
21 the driver of the car at the scene?

22 A: He was released on scene.

23 Q: Okay. Was he given a traffic ticket?

24 A: No, he was not.

25 Q: All right. He was given a warning?

RAY HOLDER - CROSS BY MR. SMALDONE

1 A: Correct. Yes, sir.

2 Q: Did he get anything regarding an open container?

3 A: No.

4 Q: He did not? Okay.

5 MR. SMALDONE: Indulgence. All right. No further
6 questions.

7 THE COURT: Redirect?

8 MR. OSBORNE: Briefly, Your Honor.

9 THE COURT: All right.

10 REDIRECT EXAMINATION

11 BY MR. OSBORNE:

12 Q: In reference to the driver -- and I don't want to go back
13 and play it all again, but where did he say he stopped the
14 vehicle?

15 A: What do you mean?

16 Q: Like, where was he?

17 A: He originally told me it was his home. Then it was his
18 mother's home.

19 Q: Anybody you actually saw?

20 A: His mother attempted to come outside. Yes, sir.

21 Q: Okay.

22 A: Because she wanted to know what was going on.

23 Q: Now, he was the driver? The Way guy, he was the driver
24 of the car; right?

25 A: Yes, sir.

RAY HOLDER - REDIRECT BY MR. OSBORNE

1 Q: And I think I played that whole thing. I mean, you --
2 you went to the driver's side compartment searching; correct?

3 A: Yes.

4 Q: You went into the passenger side compartment searching?

5 A: Correct.

6 Q: You went in the rear driver's side compartment searching?

7 A: Correct.

8 Q: Rear passenger side compartment searching?

9 A: Correct.

10 Q: The hood?

11 A: Yes.

12 Q: And the trunk?

13 A: Yes.

14 Q: If you found anything inside that car like what you found
15 with the defendant, would Way have been free to go?

16 A: No, he would have absolutely went to jail.

17 Q: Okay.

18 MR. OSBORNE: Your Honor, may we approach?

19 THE COURT: You may.

20 (WHEREUPON, a bench conference was held off the record,
21 after which the proceedings resumed as follows.)

22 THE COURT: All right. Ladies and gentlemen, I have your
23 note. And I got it once -- once you all had been seated when
24 you came back in. Let me help, hopefully, and to explain.
25 Obviously, you all are paying attention and, for that, I am

RAY HOLDER - REDIRECT BY MR. OSBORNE

1 grateful, but in South Carolina, as of this point, we don't
2 have a jury system that is audience participation, if you
3 will.

4 So what I need you all to do is to pay attention and to
5 be patient and to listen to the evidence that is presented.
6 And to answer one of the questions, every exhibit which is
7 admitted into evidence will be with you in your jury room for
8 deliberations, and so that's really the most important part of
9 the presentation is that what goes into evidence goes to you.

10 Sometimes -- sometimes attorneys will share items as they
11 are being presented, and that's called -- that's publishing to
12 the jury is what that is called. One of those concerns about
13 that is, again, if you are handed a document, you will miss
14 something as it's coming from the witness stand, because we
15 typically don't -- particularly if the -- if the document is a
16 more lengthy document, we don't stop. It is obviously my
17 concern is that you can miss something as it's coming from the
18 witness stand as you read the document.

19 But rest assured, every item which is admitted into
20 evidence will be with you in your jury room for your
21 deliberations. I hope that's helpful. I am so grateful that
22 you are as engaged as you are, I mean, so thankful. But
23 patience, patience.

24 Very well. You may proceed.

25 MR. OSBORNE: Thank you, Your Honor. Well, let's talk

RAY HOLDER - REDIRECT BY MR. OSBORNE

1 about something. May I approach?

2 THE COURT: You may.

3 BY MR. OSBORNE:

4 Q: I'm going to show you page 4 of your incident report,
5 something that Mr. Smaldone was -- referred you to look at.

6 A: Uh-huh.

7 Q: And so let's go back to the second paragraph again. You
8 talked about things that weren't -- you talked about some --
9 one thing that wasn't on the report. Let's talk about what is
10 on the report. I observed Boyd bend at the knees and cough
11 quickly?

12 MR. SMALDONE: Objection.

13 THE COURT: All right. Yes?

14 MR. SMALDONE: I didn't impeach him on that. I didn't
15 impeach him on any of these issues. Just pointing out it's an
16 improper impeachment. Hearsay.

17 MR. OSBORNE: I'm pointing out the parts of the report
18 that are covered.

19 THE COURT: Overruled.

20 BY MR. OSBORNE:

21 Q: Okay. I observed Boyd bend at the knees and cough
22 quickly; is that correct?

23 A: I believe it was supposed to say bend at the waist, but
24 yes.

25 Q: Okay. Well --

RAY HOLDER - REDIRECT BY MR. OSBORNE

1 A: I typed --

2 Q: -- what did you say?

3 A: I typed knees, but --

4 Q: Okay. I observed Boyd bend at the knees and cough
5 quickly; is that correct?

6 A: Yes.

7 Q: I observed what appeared to be a plastic bag under his
8 scrotum in between his legs; is that correct?

9 A: Yes.

10 Q: I observed Boyd turn and face deputies and lift his
11 genitals; is that correct?

12 A: Yes.

13 Q: I observed a plastic bag containing white powder, which
14 Boyd attempted to conceal to get it into the general
15 population of the jail; is that correct?

16 A: Correct.

17 Q: I approached Boyd and observed him. I saw the bag; is
18 that correct?

19 A: Correct.

20 Q: I observed him remove the bag and throw it to the ground;
21 is that correct?

22 A: Correct.

23 Q: Okay. So the one thing you left out was that he tried to
24 hand it to you?

25 A: Correct.

RAY HOLDER - REDIRECT BY MR. OSBORNE

1 Q: Okay. Okay. Let's clarify the issue that -- that Mr.
2 Smaldone was talking about in reference to the white flakes or
3 the white powder that was -- the defendant said was in the
4 cocaine. Did you ever test the scale that had the white
5 powder on top of it?

6 A: No.

7 Q: Okay. Is he being charged with being in possession of a
8 scale with white powder on top of it?

9 A: No.

10 Q: Okay. Is he being charged with being in possession of
11 marijuana that's been laced with cocaine?

12 A: No.

13 Q: Okay. When you told him if I test this scale, it'll
14 probably come back positive for cocaine, what was his
15 reaction?

16 A: It probably would.

17 Q: Okay. But again, he's not being charged with that?

18 A: Correct.

19 Q: Okay. When you came into possession of the marijuana and
20 came into possession of the cocaine, did you handle, package,
21 and place into evidence those items in accordance with
22 Dorchester County policy?

23 A: You're talking about the -- the alleged cocaine and
24 marijuana or --

25 Q: I'm talking about all of the evidence.

RAY HOLDER - REDIRECT BY MR. OSBORNE

1 A: Yes.

2 Q: You followed policy and procedure?

3 A: Correct.

4 Q: Okay.

5 MR. OSBORNE: No further questions.

6 THE COURT: Recross?

7 MR. SMALDONE: Nothing, Your Honor.

8 THE COURT: All right. You can go back down to counsel
9 table.

10 Call your next witness, please.

11 MR. OSBORNE: The State calls Deputy Richard Green.

12 THE CLERK: Please raise your right hand and state your
13 full name for the record, spelling your last.

14 THE WITNESS: Richard Green, G-r-e-e-n.

15 THE CLERK: Do you swear or affirm to tell the truth, the
16 whole truth, and nothing but the truth?

17 THE WITNESS: Yes, ma'am.

18 THE CLERK: Thank you, sir.

19 THE COURT: Your witness.

20 RICHARD GREEN, being first duly
21 sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. OSBORNE:

24 Q: Deputy? Well, I guess private first class; correct?

25 A: Yes, sir.

RICHARD GREEN - DIRECT BY MR. OSBORNE

1 Q: Sorry about that. Where do you currently work?

2 A: Dorchester County Detention Center.

3 Q: All right. And how long have you been with the detention
4 center?

5 A: Just passed four years.

6 Q: And what is the address of the Dorchester County
7 Detention Center?

8 A: 220 Hodge Road.

9 Q: Is that in the county of Dorchester?

10 A: Yes, sir.

11 Q: And do you have any prior work experience?

12 A: Security before I came there.

13 Q: Okay. I think I've already said this, but what is your
14 current position with the detention center?

15 A: As of right now, I'm a private first class and
16 transporter.

17 Q: Okay. What do you do in transport? What's --

18 A: I -- I transport inmates from -- to court, to anything
19 they need, to doctor's appointments, anything like that.

20 Q: All right. What have been some of your previous
21 positions while at the Dorchester County Detention Center?

22 A: I've worked in the back of the jail with the inmates on
23 working in the dorms. I've done control towers, rover,
24 emergency transports to the hospital.

25 Q: Okay. All right. Let's go back to the early morning

RICHARD GREEN - DIRECT BY MR. OSBORNE

1 hours of May the 15th of 2021. Were you working that night?

2 A: Yes, sir.

3 Q: And what was your position then?

4 A: I was a rover that night.

5 Q: All right. So I guess just explain to the jury what do
6 you do as a rover? What are your duties?

7 A: We help out wherever we need to, in booking if they need
8 help searching people, helping out with the dorms if they need
9 assistance with getting stuff done on time, just really
10 anything that they need done.

11 Q: While you were working that night, did you have the
12 occasion to come into contact with the defendant in this case,
13 Derrick Boyd?

14 A: Yes, sir.

15 Q: All right. Walk the jury through how that came about.

16 A: Deputy Holder brought in -- brought detainee Derrick in,
17 and it was -- I got called up to the front to go help with the
18 search. When we got up there, myself and PFC Sanders
19 conducted a pat down search of detainee Boyd. And at that
20 time, we entered in to do the strip search after the pat
21 search was conducted.

22 Q: Okay. And so you said pat down search. I'm going to ask
23 you just to sort of describe that and the difference between
24 that and a strip search to the jury.

25 A: The pat search is just above the clothing, like you saw

RICHARD GREEN - DIRECT BY MR. OSBORNE

1 in Deputy Holder's video where he patted down in front of the
2 patrol car. We do the same thing just for our own safety and
3 in case something was missed.

4 Q: And strip search, if it's not obvious?

5 A: Strip search is where we take them into a holding cell
6 that's there in intake and we have them remove clothing as --
7 and we search each pair -- each individual clothing piece as
8 we ask them to take it off.

9 Q: Okay. Is it current Dorchester County Detention Center
10 policy to search every inmate that comes into the detention
11 center?

12 A: No, sir.

13 Q: Okay. What is the current policy of the detention
14 center? If they come in with narcotic charges or the deputy
15 is -- the arresting officer expects them to have anything on
16 them, we search.

17 Q: Okay. So it's either-or?

18 A: Yes, sir.

19 Q: Not an and?

20 A: Huh-uh.

21 Q: Okay. And would marijuana be a narcotic charge?

22 A: Yes, sir.

23 Q: So that would -- if you came into the detention center
24 with that type of charge, regardless of who you are or the
25 circumstances, you're going to get strip searched?

RICHARD GREEN - DIRECT BY MR. OSBORNE

1 A: Yes, sir.

2 Q: And why is that?

3 A: Just on the off chance maybe you might have some more on
4 you or if it was suspected that you had -- had any more
5 anywhere.

6 Q: Are y'all trying to keep drugs out of the detention
7 center?

8 A: Yes, sir.

9 Q: Is that a problem?

10 A: Not to my knowledge.

11 Q: Maybe because it falls? All right. Once y'all all got
12 into the strip search room, tell the jury what happened then.

13 A: At that time, PFC Sanders started the strip search
14 requesting him to take off clothing, and we began to search
15 it. When we got down to the -- to him just having his
16 underwear on, he reached behind him, and you saw him move his
17 arm to the front of himself, from behind to front. And at
18 that time, he was asked to remove what he had, and that's when
19 he took it and tried to hand it to Deputy Holder, and instead
20 Deputy Holder asked him to throw it on the floor.

21 Q: Okay. All right.

22 MR. OSBORNE: May I approach?

23 THE COURT: You may.

24 BY MR. OSBORNE:

25 Q: I'm showing you State's Exhibit 6. Can you take a look

RICHARD GREEN - DIRECT BY MR. OSBORNE

1 at that and tell me if you recognize that?

2 A: Yes, sir. This is body-cam footage, and my name is
3 initialed on it.

4 Q: Okay.

5 MR. OSBORNE: Your Honor, at this time, State seeks to
6 admit 6 in evidence.

7 THE COURT: Objection?

8 MR. SMALDONE: Under -- under previous suppression of
9 Miranda issues, yes, I object.

10 THE COURT: Very well.

11 (WHEREUPON, State's Exhibit Number 6, clipped body-worn
12 camera footage, was admitted into evidence.)

13 BY MR. OSBORNE:

14 Q: I've got -- I want to show you -- I'll do this just one
15 more time. I want to show you 5 and 6. What is 5? 5 is
16 going to be for ID purposes only.

17 A: This is a flash drive with my initials on it of body-cam
18 footage.

19 Q: Okay. And does 5 capture all of the videos and the body-
20 worn camera footage involving the interaction with the
21 defendant?

22 A: Yes, sir.

23 Q: Okay. And 6 is a clipped version of that?

24 A: Yes, sir.

25 Q: All right. And you -- you testified to this, but let's

RICHARD GREEN - DIRECT BY MR. OSBORNE

1 just make sure there's no confusion. You've seen these
2 before?

3 A: Yes, sir.

4 Q: And you've initialed them?

5 A: Yes, sir.

6 Q: These are your initials on them?

7 A: Yes, sir.

8 Q: All right.

9 (WHEREUPON, State's Exhibit Number 6 was played and then
10 stopped. Not transcribed herein.)

11 BY MR. OSBORNE:

12 Q: All right. Who are the two people we're looking at here?

13 A: That is Deputy Holder and Derrick Boyd.

14 (WHEREUPON, State's Exhibit Number 6 was played and then
15 stopped. Not transcribed herein.)

16 BY MR. OSBORNE:

17 Q: All right. Just as a point of clarification, is this
18 your body-worn camera footage?

19 A: No, sir. This is PFC Sanders.

20 Q: Can you see yourself or have you seen yourself in the
21 footage?

22 A: Yes, sir.

23 (WHEREUPON, State's Exhibit Number 6 was played and then
24 stopped. Not transcribed herein.)

25 BY MR. OSBORNE:

RICHARD GREEN - DIRECT BY MR. OSBORNE

1 Q: The camera there?

2 A: Yes, sir.

3 Q: All right. I noticed you did a little motion with said
4 camera. What's happening here?

5 A: To help, you know, with their privacy, we put our bodycam
6 inside of our shirt pocket so there's no video of them
7 stripping and being naked, basically.

8 Q: Yeah. And is that part of Dorchester County Detention
9 Center policies?

10 A: Yes, sir.

11 (WHEREUPON, State's Exhibit Number 6 was played and then
12 stopped. Not transcribed herein.)

13 BY MR. OSBORNE:

14 Q: All right. Kind of a little hard to see. What -- what
15 did we just see?

16 A: He was -- when we were doing the search, he -- that's
17 when he moved his hand from behind his pants or his underwear
18 up to the front, and that's when the underwear came off and he
19 lifted up his genitals and was going to squat and cough.

20 Q: Okay. And did we -- I thought we might have heard and
21 maybe not. Did we hear throw it to the ground?

22 A: Yes.

23 Q: And who would -- whose voice was that?

24 A: Deputy Holder.

25 Q: Okay. Did you see -- can you just describe what you saw,

RICHARD GREEN - DIRECT BY MR. OSBORNE

1 I guess without being graphic? Like, what did you see?

2 A: I -- all I -- when -- I didn't catch it when he turned,
3 but I did see the bag when he removed it being thrown on the
4 floor.

5 Q: Okay. And so the defendant himself removed it?

6 A: Yes, sir.

7 Q: And where did he remove it from?

8 A: Underneath his genitals.

9 (WHEREUPON, State's Exhibit Number 6 was played and then
10 stopped. Not transcribed herein.)

11 BY MR. OSBORNE:

12 Q: What did Holder say? What is that?

13 A: He asked him if -- if -- if that was crack or cocaine,
14 and detainee Boyd said, yes, it's cocaine. And then he asked
15 him how much it was. He said, that's over ten grams, and he
16 said, yeah, it's 28 grams.

17 Q: Okay. And I think we heard right at the very end Holder
18 said, and that's yours?

19 A: Yep. And --

20 Q: What did he say?

21 A: He said, it's on me. It's mine.

22 Q: Mine now?

23 A: Yeah.

24 Q: All right. After the defendant threw the bag of what he
25 described as being cocaine to the ground, did you see what

RICHARD GREEN - DIRECT BY MR. OSBORNE

1 happened to the bag?

2 A: Yes, sir. Deputy Holder took it to his vehicle to do a
3 field test on it after we took photos of it for our own
4 records.

5 Q: Okay. And is cocaine considered contraband by the
6 Dorchester County Detention Center?

7 A: Yes, sir.

8 Q: And so, I guess are inmates alerted in any way, you know,
9 not a good idea to bring cocaine into the detention center?

10 A: Yes, sir.

11 Q: And how is that?

12 A: On the door coming into the facility through the red
13 slider from our vehicle sally port, there is a sign that
14 states what is contraband and what is not.

15 Q: And is drugs contraband?

16 A: Yes, sir.

17 Q: Okay.

18 MR. OSBORNE: Your Honor, may I approach?

19 THE COURT: You may.

20 BY MR. OSBORNE:

21 Q: I'm just going to show you State's Exhibit 4. Can you
22 take a look at that and tell me if that looks familiar to you?

23 A: Yes, sir.

24 Q: And what is that?

25 A: That's the bag of white powdery substance that he had

RICHARD GREEN - DIRECT BY MR. OSBORNE

1 between his legs.

2 Q: And when you say he, do you mean the defendant?

3 A: Yes, sir.

4 Q: Okay.

5 MR. OSBORNE: All right. No further questions.

6 THE COURT: Cross-examination?

7 CROSS-EXAMINATION

8 BY MR. SMALDONE:

9 Q: All right. So it's your testimony that you did not see
10 the cocaine in his -- we'll call it crotch area; right? You
11 testified to that earlier?

12 A: When he went to bend over, I did not see it at -- at
13 first until he removed it and threw it on the floor.

14 Q: Okay. Which -- when did you first see it?

15 A: When he went to lift his genitals up and remove it.

16 Q: Okay. But you didn't see it in his genitals; right?

17 A: I saw him remove it from his genitals.

18 Q: Okay. But never -- so what does that mean? In his hand
19 at the time?

20 A: No, sir. He reached behind himself, and that's when he
21 pulled it -- pulled his hand to the front. And once the
22 underwear came off and he -- we went to conduct our normal
23 stuff with the squat and cough to make sure there's nothing
24 that he's got hiding in him, that's when -- when he bent over
25 that Deputy Holder saw that there was something there.

RICHARD GREEN - CROSS BY MR. SMALDONE

1 Q: But you didn't; right?

2 A: I was not the one that was looking directly at him. No,
3 sir.

4 Q: That's fine. But you didn't -- you didn't see it on him;
5 right?

6 A: No, sir.

7 Q: All right. And let's talk about the sign at the jail.
8 There's a -- what did you say? There's a sign about
9 contraband at the jail?

10 A: Yes, sir. When you're coming from the vehicle sally port
11 where the officers bring the new intakes, when you're coming
12 through the red slider, there is a door that states that if
13 you come in with -- with contraband, which whether it be
14 weapons, drugs, anything of the sort, that you will be charged
15 with introducing contraband to the facility.

16 Q: Okay. Is there an amnesty box there?

17 A: No, there's no box outside the door.

18 Q: Right. Is there, like, a room that they can go in and no
19 questions asked or get rid of the contraband or what's the
20 deal?

21 A: No, sir. Usually, we -- when we're doing the -- before
22 we conduct the pat down search, we ask them if they have
23 anything on them, depending on what their charge is.

24 Q: Okay. And you're a little bit familiar with this case;
25 correct?

RICHARD GREEN - CROSS BY MR. SMALDONE

1 A: Yes, sir.

2 Q: All right. You know that -- did -- did he drive himself
3 to the jail to visit someone or was he escorted?

4 A: Yes, sir. Deputy Holder brought him in.

5 Q: All right. And he -- if he said, actually, I don't feel
6 like coming to the jail, I have contraband, I'm going to go
7 home, that isn't policy that they would release him; right?

8 A: No.

9 Q: Okay.

10 MR. SMALDONE: Court's indulgence.

11 THE COURT: All right.

12 BY MR. SMALDONE:

13 Q: And it's your testimony there were -- there were two
14 people in the strip search room?

15 A: There was three officers and detainee Boyd.

16 Q: All right. And obviously, in the nature of a strip
17 search room, no one else can see in other than all three?

18 A: No, sir.

19 Q: Okay.

20 MR. SMALDONE: All right. Court's indulgence.

21 BY MR. SMALDONE:

22 Q: You heard the audio; correct?

23 A: Yes, sir.

24 Q: You were there; correct?

25 A: Yes, sir.

RICHARD GREEN - CROSS BY MR. SMALDONE

1 Q: And you said -- I think you testified earlier that Mr.
2 Boyd said it was his cocaine?
3 A: Yes, sir.
4 Q: All right. But you heard the audio. He said it's on me
5 now; right?
6 A: Yes, sir.
7 Q: All right. He didn't say it's his; right?
8 A: No, sir.
9 Q: He says it's on me now?
10 A: And then he claimed it.
11 Q: He claimed it after -- after that?
12 A: When he -- when he was removing it, yes. And when it was
13 on the floor, when Deputy Holder was going -- asking him what
14 it was, how much, and if it was his, he admitted to it being
15 his.
16 Q: Okay. Did you hear that on the audio?
17 A: Yes, sir. I've heard it on the body-cam.
18 Q: Okay. But at the end he said -- he doesn't say it's mine
19 at the end, he says it's on me now; right?
20 A: It's on me. So I guess it's mine.
21 Q: Okay.
22 MR. SMALDONE: Court's indulgence. No further questions.
23 THE COURT: All right. Yeah. Redirect?
24 MR. OSBORNE: Very briefly.
25 THE COURT: All right.

RICHARD GREEN - REDIRECT BY MR. OSBORNE

REDIRECT EXAMINATION

1

2 BY MR. OSBORNE:

3 Q: When Deputy Holder brought the inmate into the detention
4 center that night, he came in through the sally port?

5 A: Yes, sir.

6 Q: And that's where that sign is?

7 A: Yes, sir.

8 Q: Is there any possibility that Deputy Holder could have
9 brought the inmate through the front door and bypassed that
10 sign?

11 A: No, sir.

12 Q: Okay. And so let's -- let's go back to the strip search.
13 Piggybacking off what Mr. Smaldone said, you said there were
14 three deputies in there and the defendant?

15 A: Yes, sir.

16 Q: Okay. When y'all were conducting the strip search, let's
17 say that you're the defendant and, you know, we've got the
18 three deputies, and I'll be one of the deputies. Are they up
19 close and personal to him while he's strip searching or is
20 there a distance?21 A: Yes, there is. There is a distance between the officer
22 and the detainee.23 Q: Okay. That distance, would you -- can you -- I'm not
24 asking if a tape measure or anything, but is it greater than
25 ten feet or so or --

RICHARD GREEN - REDIRECT BY MR. OSBORNE

1 A: It's --

2 Q: What would you estimate?

3 A: It's supposed to be anywhere from 6 to 10.

4 Q: Okay. So you're away from them from about this distance
5 or so?

6 A: Yes, sir.

7 Q: Maybe a little bit further, I guess. All three of you?

8 A: Yes, sir.

9 Q: Okay. And so it's -- he had had his underwear off?

10 A: When he moved his hand around from back to front, he had
11 them on.

12 Q: Okay. And then he took them off?

13 A: And then we -- we told him to remove his underwear, and
14 that's when he did.

15 Q: Okay. And so was he facing you or did he have his back
16 turned to you when he first removed his underwear, if you can
17 remember?

18 A: I do not recall.

19 Q: Okay. And now you previously identified State's 4. Your
20 testimony to Mr. Smaldone was that you didn't see this when
21 the bag was protruding from his body; is that correct?

22 A: Yes, sir.

23 Q: But did you see it when he had it in his hand?

24 A: Yes, sir.

25 Q: And put it to the ground?

RICHARD GREEN - REDIRECT BY MR. OSBORNE

1 A: Yes, sir.

2 Q: And did any deputy or any -- any of you three take this
3 bag of cocaine and give it to the defendant for him to put
4 down on the ground?

5 A: No, sir.

6 Q: So this -- just so we're all abundantly clear, this man,
7 the defendant, had this bag of cocaine in his hand that he
8 pulled from his body and then put on the ground?

9 A: Yes, sir.

10 Q: Okay.

11 MR. OSBORNE: No further questions.

12 THE COURT: Recross?

13 MR. SMALDONE: No recross.

14 THE COURT: Very well. Thank you. You may come down.

15 Call your next witness. Wait. It's nearly 1 o'clock.

16 Ladies and gentlemen, it's almost 1 o'clock. It is time
17 for us to take our lunch break. We're going to start back at
18 2:15.

19 Please be mindful. Do not discuss this matter or allow
20 anyone to discuss it with you. Remember the admonition with
21 regards to cellphones or other communication devices. I'll
22 see you at 2:15. Thank you. Go with the bailiff.

23 (WHEREUPON, the jury exited the courtroom at 12:56 p.m.)

24 THE COURT: All right. Anything before we take our lunch
25 break?

1 MS. OSBORNE: No, Your Honor.

2 THE COURT: Nope, nope.

3 MR. SMALDONE: No, Your Honor.

4 THE COURT: I'll be out just a little bit before 2:15.

5 You all have a good lunch.

6 (WHEREUPON, there was a break in the proceedings from
7 12:57 p.m. until 2:27 p.m., after which the proceedings
8 resumed as follows.)

9 THE COURT: Anything before we bring the jury out?

10 MR. OSBORNE: No, Your Honor.

11 THE COURT: From the defense?

12 MR. SMALDONE: No, Your Honor.

13 THE COURT: Okay.

14 (WHEREUPON, the jury entered the courtroom at 2:27 p.m.)

15 THE COURT: Ladies and gentlemen, I hope you had a very
16 pleasant lunch. At this time, we will continue with the
17 State's case.

18 Ms. Elliott?

19 MS. ELLIOTT: Thank you, Judge. The State calls Karen
20 Noffsinger.

21 THE CLERK: Please raise your right hand and state your
22 full name for the record, spelling your last name.

23 THE WITNESS: Karen Noffsinger, N-o-f-f-s-i-n-g-e-r.

24 THE CLERK: Do you swear or affirm to tell the truth, the
25 whole truth, and nothing but the truth?

KAREN NOFFSINGER - DIRECT BY MS. ELLIOTT

1 THE WITNESS: I do.

2 THE CLERK: Thank you.

3 THE COURT: Your witness.

4 MS. ELLIOTT: Thank you, Judge.

5 KAREN NOFFSINGER, being first
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. ELLIOTT:

9 Q: Ms. Noffsinger, will you tell us where you're currently
10 employed?

11 A: At the First Circuit Judicial Circuit Solicitor's Office.

12 Q: And what do you do for the Solicitor's Office?

13 A: I'm an investigator.

14 Q: How long have you been with the Solicitor's Office?

15 A: Since November of 2022.

16 Q: Where did you work before that?

17 A: Dorchester County Sheriff's Office.

18 Q: What different roles did you hold with the Sheriff's
19 Office?

20 A: I worked as a patrol deputy and then as a crime scene
21 investigator.

22 Q: And for how long did you work in crime scene with the
23 Sheriff's Office?

24 A: Three and a half years.

25 Q: What were your duties and responsibilities in crime

1 scene?

2 A: So in crime scene, we take in evidence, anything that's
3 submitted by deputies, along with -- and what's logged into
4 our evidence system. And then, along with processing crime
5 scenes and evidence and preparing evidence to be processed at
6 SLED.

7 Q: Let's talk about taking in evidence at the Sheriff's
8 Office, specifically in the arena of drug evidence. If an
9 officer recovered drugs from an incident, how would they get
10 it into evidence?

11 A: They drop it in our evidence room and evidence lockers
12 that are secured. And then we -- every morning, one of us
13 from crime scene will go down and take those, take whatever
14 evidence has been submitted, and then we'll process it and log
15 it into our records management system.

16 Q: All right. Well, let's -- you said that they're
17 submitting it somewhere secure. Talk to us about what makes
18 it secure.

19 A: There are evidence lockers that have a key, that they
20 have like a -- it's a mailbox type thing that's secured, and
21 they drop the key in the mailbox so nobody has any access to
22 it except for crime scene employees.

23 Q: So if I understand this, they go in their lockers. They
24 can put the evidence in, but once they lock it, they can't go
25 back and get it out?

KAREN NOFFSINGER - DIRECT BY MS. ELLIOTT

1 A: No, ma'am. No.

2 Q: And the other side of those lockers, who has access to
3 that?

4 A: Just crime scene.

5 Q: And that's a secure area as well?

6 A: Correct.

7 Q: And you said that you put it into your records management
8 system. How -- is that how the Sheriff's Office tracks
9 evidence?

10 A: Yes.

11 Q: Tell us a little bit about what that's like.

12 A: So each piece of evidence that the deputy lists on a
13 chain of custody is entered electronically, and the system
14 automatically generates an evidence number for that piece of
15 evidence. And then, depending on what type of evidence it is,
16 it is sent on its way to either the lab or storage or just
17 depending if it needs to be tested or what needs to be done
18 with it from there.

19 Q: So if you were to receive a piece of drug evidence and
20 you put it into the record management system, what happens to
21 it then?

22 A: It gets logged in with the number. It depends if it's --
23 assuming that it's going to be tested, it would be prepared
24 and logged into the pre-log system for SLED and be sent to
25 what we call the SLED drug bin, and it's held there until it's

KAREN NOFFSINGER - DIRECT BY MS. ELLIOTT

1 transported to SLED.

2 Q: And what kind of containers or packaging is required for
3 drug evidence to be sent to SLED?

4 A: So SLED mandates that all drugs that are being submitted
5 to their lab be sent in a -- what they call a BEST kit, which
6 is a packaging kit that they provide all agencies throughout
7 the state. It's a standard system, and it has to be signed
8 and sealed properly or they will not accept it. So everything
9 has to be contained in that BEST kit before they will accept
10 it. So the deputy has to complete that properly prior to us
11 taking it up there.

12 Q: And that BEST kit, is that a kit that's considered, like,
13 tamper resistant?

14 A: Yes.

15 Q: And did you come into evidence related to this case
16 against Derrick Boyd?

17 A: I did.

18 Q: I'm going to show you what's been marked for
19 identification purposes as State's Exhibit 3 and what's been
20 admitted into evidence previously as State's Exhibit 4.

21 A: Okay.

22 Q: So take a look at these.

23 A: Okay. This is 3. Okay.

24 Q: Did you come into possession of this evidence on May 17th
25 of 2021?

KAREN NOFFSINGER - DIRECT BY MS. ELLIOTT

1 A: I did.

2 Q: Okay. And where did you get it from?

3 A: This was submitted to the evidence lockers downstairs.

4 Q: And do you know who put it into the evidence lockers?

5 A: I believe it was Ray Holder that was submitting. Yes, he
6 was a submitting deputy.

7 Q: And was it properly sealed when you received it?

8 A: It appeared that the BEST kit wasn't completely sealed.
9 There's a tape seal at the top of that kit that seals the
10 drugs, and then they have to be signed and dated, and the
11 deputy has to acknowledge that they're sealed property --
12 properly. And in this case, the BEST kit seal was not sealed
13 properly.

14 Q: So what did you do with the evidence as a result of that?

15 A: So at that point, we will send the deputy an email
16 stating this is what's wrong with the evidence and this is
17 what needs to happen to fix it. And that -- it goes into a
18 holding area that we call the drug deputy bin, which is where
19 evidence that is waiting to be fixed until it -- you know, it
20 can't go anywhere until the deputy comes in to fix whatever
21 errors or whatever's wrong with it.

22 Q: So now it was just the BEST kit that had a seal problem;
23 is that correct?

24 A: Correct.

25 Q: It wasn't the vacuum-sealed packaging that the

KAREN NOFFSINGER - DIRECT BY MS. ELLIOTT

1 presumptive cocaine and the -- and the green plant-like
2 material was?

3 A: No, no, no. It was just the outer envelope that needed
4 to be sealed properly.

5 Q: Those seals were fully intact?

6 A: Correct.

7 Q: And did those appear to have been tampered with or
8 altered in any way?

9 A: No, not at all.

10 Q: Did you tamper with those or alter those in any way?

11 A: Absolutely not.

12 Q: Do they remain sealed?

13 A: Correct.

14 Q: Do you know when Deputy Holder came back in to fix that
15 BEST kit?

16 A: It looks from the electronic chain that it was on June
17 17th of 2021, and he came in and Krista Couffen [ph] went to
18 get -- she retrieved it from the deputy bin that were -- that
19 holding area and helped him get it corrected so that it could
20 be resubmitted for SLED.

21 Q: And does she still work with the Sheriff's Office?

22 A: No, she does not.

23 Q: Do you know where she is now?

24 A: She's actually in Arizona. Her husband is a DEA agent
25 and got -- that's where they got transferred to.

KAREN NOFFSINGER - DIRECT BY MS. ELLIOTT

1 Q: Did she have a job similar to yours?

2 A: Yes.

3 Q: Would she have had any reason to have opened those --
4 that packaging in any way?

5 A: No, not at all.

6 Q: And with it being in a tamper-resistant packaging, would
7 it have been apparent had she?

8 A: Excuse me?

9 Q: Since this was in tamper-resistant packaging, would it
10 have been apparent if she had opened it or altered it in any
11 way?

12 A: Oh, yes. Yes.

13 Q: And what would she have done with the BEST kit once it
14 was properly sealed?

15 A: That would have gone into the area that we call the SLED
16 bin, which just means it's pending transport to SLED.

17 Q: And you or someone else with the Sheriff's Office would
18 have transported it up to SLED?

19 A: Correct.

20 Q: Would it have been Deputy Holder?

21 A: No, no, no, no. It would've been somebody from crime
22 scene.

23 MS. ELLIOTT: Court's indulgence, Your Honor.

24 THE COURT: All right.

25 MS. ELLIOTT: Investigator Noffsinger, that's all I have

KAREN NOFFSINGER - CROSS BY MR. SMALDONE

1 for you for now.

2 THE WITNESS: Okay.

3 THE COURT: Cross-examination?

4 CROSS-EXAMINATION

5 BY MR. SMALDONE:

6 Q: Good afternoon.

7 A: Good afternoon.

8 Q: So the purpose of a BEST kit is to make sure that no one
9 tampers with evidence; correct?

10 A: That, and to make sure there's a uniform -- I guess SLED
11 -- it's their -- they want a uniform process for submitting
12 evidence into their lab, and that's part of the purpose of a
13 BEST kit.

14 Q: Okay. And each BEST kit is -- do they have individual
15 numbers?

16 A: Yes, they do. Yes. They have a tracking number.

17 Q: Okay. And now, one of -- since one of the purposes of a
18 BEST kit -- I'm sorry. Let me back up. To ensure they're not
19 tampered with, one of the reasons -- one of the things you do
20 is seal it; correct?

21 A: Yes. Well, I don't seal it. The deputy seals it.

22 Q: Okay. And in this case, though, it was Deputy Holder?

23 A: Correct.

24 Q: All right. And your understanding is it was not sealed?

25 A: It was -- no. The -- the outer seal was not completely

KAREN NOFFSINGER - CROSS BY MR. SMALDONE

1 -- it's a tape seal where you have to take the tape strip off
2 and seal it, and they can be a little tricky sometimes.
3 They're very sensitive. If there's any kind of gap or leak in
4 that seal, it's not properly sealed. So we have to -- it can
5 be a very minor-like gap in that seal, and it's not sealed
6 properly.

7 Q: Okay. So in this case, it was not sealed properly for
8 about a month?

9 A: Yeah. According to to the chain, yes.

10 Q: Okay.

11 MR. SMALDONE: Court's indulgence.

12 THE COURT: All right.

13 BY MR. SMALDONE:

14 Q: You said earlier that the bags -- the vacuum bags were
15 inside of the BEST kit?

16 A: Correct.

17 Q: They didn't have an -- they weren't numbered, though,
18 were they?

19 A: No. They are -- well, as you can see like here, that
20 inner bag that has Deputy Holder's initials and then the date,
21 and that's sealed and then put inside the BEST kit.

22 Q: Okay. But there's no -- there's no -- there's nothing
23 identifying them as unique; correct?

24 A: It -- the way -- just the heat-sealed pouches that --
25 that they're submitted in.

KAREN NOFFSINGER - CROSS BY MR. SMALDONE

1 Q: What's inside of the BEST kit?

2 A: I mean, our evidence tracking system would generate a
3 evidence number for that piece of evidence. So --

4 Q: Okay.

5 A: -- they would have that, but --

6 Q: All right. Did you check that in this case?

7 A: Well, for instance, what I'm talking about, like this
8 label, this label is generated and has a separate number on it
9 that identifies this. This substance here is assigned that
10 number. So that would have been generated prior to Holder
11 coming up and fixing it.

12 Q: Okay.

13 A: If I -- if I'm being understood correctly.

14 Q: I think so. But essentially, the main bag is the bag
15 that SLED cares about, and that is the BEST kit; correct?

16 A: The -- the outer. Yeah, that BEST kit bag.

17 Q: Okay.

18 MR. SMALDONE: No further questions.

19 THE COURT: All right. Redirect?

20 REDIRECT EXAMINATION

21 BY MS. ELLIOTT:

22 Q: The BEST kit is a second layer of protection; right?

23 A: Correct.

24 Q: And what makes the bags -- the vacuum-sealed bags unique
25 are the officer's initials and the date?

1 A: Correct.

2 Q: And there's paperwork that's also attached to this that
3 helps track what it is and make sure that it's -- when he says
4 this is what's taken from Derrick Boyd that it is what's taken
5 from Derrick Boyd?

6 A: Correct.

7 Q: And you all log it into evidence to confirm that what he
8 took from Derrick Boyd is what's up there?

9 A: Correct. Basically, our system creates that -- that --
10 that unique identifying number, but there's also a -- SLED has
11 a number assigned to that BEST kit. So it basically has their
12 tracking and our tracking.

13 Q: And even though it's waiting for him to perhaps correct
14 something, it's still secure?

15 A: Correct.

16 Q: Not being thrown in and mixed with other evidence?

17 A: No, no, no, no.

18 Q: It's clearly identifiable that the drugs that were taken
19 from Derrick Boyd are the ones that Derrick -- that Deputy
20 Holder went back and corrected --

21 A: Correct.

22 Q: -- the correction for?

23 A: Correct. Yeah. We will put an email. The email that we
24 send to the deputy is attached to the -- whatever packaging
25 and put in that drug deputy bin for -- for that. It's

KAREN NOFFSINGER - REDIRECT BY MS. ELLIOTT

1 basically that holding area so we can identify what's wrong
2 with it, who the email went to, and that that -- that evidence
3 belongs to that specific case.

4 Q: And is it common to have -- to have deputies to come in
5 and fix the BEST kit seals?

6 A: It happens occasionally.

7 Q: Have you ever tried to seal a BEST kit?

8 A: Yes. Yes.

9 Q: Is it tricky?

10 A: Yes. They can be tricky.

11 Q: Especially since you're looking for perfection?

12 A: Right. It has to be completely flat and sealed with no
13 little air bubbles or anything in it. And it can be a little
14 -- a little finicky sometimes.

15 Q: But in this case, the vacuum seal was perfectly intact?

16 A: Yes.

17 Q: No problems?

18 A: Yes. That wasn't a problem.

19 MS. ELLIOTT: Nothing further.

20 THE COURT: Recross?

21 MR. SMALDONE: No, Your Honor.

22 THE COURT: All right. Thank you.

23 THE WITNESS: Okay.

24 THE COURT: Call your next witness, please.

25 MS. ELLIOTT: Hannah Carter.

HANNAH CARTER - DIRECT BY MS. ELLIOTT

1 THE CLERK: Okay. Ms. Carter, will you please raise your
2 right hand and state your full name for the record, spelling
3 the last name, please?

4 THE WITNESS: Hannah Carter, C-a-r-t-e-r.

5 THE CLERK: And do you swear or affirm to tell the truth,
6 the whole truth, and nothing but the truth?

7 THE WITNESS: Yes, ma'am.

8 THE CLERK: Thank you.

9 THE COURT: Your witness.

10 MS. ELLIOTT: Thanks, Judge.

11 HANNAH CARTER, being first duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. ELLIOTT:

15 Q: Officer Carter, will you tell us where you're currently
16 employed?

17 A: The North Charleston Police Department.

18 Q: And how long have you been working with North
19 Charleston's Police Department?

20 A: Since September of 2021.

21 Q: And what do you do for North Charleston?

22 A: I'm currently in the patrol division.

23 Q: And did you have any law enforcement experience before
24 that?

25 A: Yes, ma'am. I worked for the Dorchester County Sheriff's

HANNAH CARTER - DIRECT BY MS. ELLIOTT

1 Office starting in 2013 until I left in 2021.

2 Q: And what different roles did you have with the Dorchester
3 County Sheriff's Office?

4 A: I was a patrol officer initially. I worked within the
5 School Resource Officer Unit and then also in the Crime Scene
6 Division.

7 Q: How long did you work in the Crime Scene Division?

8 A: I went into crime scene in the end of 2017.

9 Q: And what were your duties and responsibilities in crime
10 scene?

11 A: So as a crime scene detective, we would -- our
12 responsibilities were handling evidence that came in from the
13 patrol officers, as well as responding to calls for service
14 whenever crime scenes needed to be processed. We also handled
15 all the evidence that would come in.

16 Q: As part of your responsibilities at times, would you do
17 -- take evidence up to SLED for processing?

18 A: Yes, ma'am.

19 Q: And did you have occasion to come into possession of
20 evidence from this case?

21 A: Yes, ma'am.

22 Q: I'm going to show you -- it's previously been admitted as
23 State's Exhibit 4 and what's been marked for identification as
24 State's Exhibit 3, if you'll take a look at them, please. Did
25 you come into possession of these items on June 23rd of 2021?

HANNAH CARTER - DIRECT BY MS. ELLIOTT

1 A: I believe that's the day I took them to SLED.

2 Q: And they would have been signed over to you at that
3 point?

4 A: Well, we just -- whenever they're brought into evidence,
5 they get placed into the SLED bin to get taken up there, and
6 then we just collect them from the bin and then take them to
7 SLED.

8 Q: Do you know who placed these items in the SLED bin?

9 A: It was at the time Detective Martin, Krista Martin, the
10 crime scene investigator.

11 Q: Was she also known as Krista Couffen?

12 A: Yes. Sorry. Couffen. She got married.

13 Q: And does she still work for the Sheriff's Office?

14 A: No, ma'am.

15 Q: So she placed them there. You retrieved them from there.
16 What did you do with them?

17 A: Whenever you take them out of the SLED bin, you --
18 basically, you carry a box and you put it in your patrol car
19 and you drive to Columbia. At the time, SLED had Covid
20 procedures to where you had to make an appointment. And then
21 once you got there, you actually sat in your car with the
22 evidence until they called you and told you to come into the
23 building.

24 And once you get the phone call, you take your box of
25 evidence that you have and you go into the SLED building and

HANNAH CARTER - DIRECT BY MS. ELLIOTT

1 they have a set of secured -- it's like a secured area with
2 lockers where you have to sign it all in. You have to do a
3 date stamp, like a time and date stamp on it, and then place
4 it in the lockers.

5 Q: And are those lockers similar to the ones that the
6 Dorchester Sheriff's Office has for deputies to submit
7 evidence?

8 A: Yes.

9 Q: And the evidence that you submitted in this case, was it
10 properly sealed when you handed it over to SLED?

11 A: To my knowledge, yes, ma'am. We don't check them before
12 we take them up to SLED, because it's already been through --
13 like, whoever brought in the evidence and put it in that bin
14 has already checked it to make sure that it's sealed. So --

15 Q: So Krista Couffen would have done that?

16 A: Yes.

17 Q: And did you open any of the packaging?

18 A: No, ma'am.

19 Q: Tamper with it in any way?

20 A: No, ma'am.

21 Q: Alter it or change it?

22 A: No, ma'am.

23 Q: Did you have any further contact with those items?

24 A: No, ma'am.

25 MS. ELLIOTT: Those are all the questions that I have for

BAILEY HAYNES - DIRECT BY MS. ELLIOTT

1 Ms. Carter.

2 THE COURT: Cross-examination?

3 MR. SMALDONE: Nothing from this witness, Your Honor.

4 THE COURT: Thank you. Thank you.

5 Call your next witness, please.

6 MS. ELLIOTT: Thank you, Judge. The State would call
7 Bailey Haynes.

8 THE CLERK: Please raise your right hand and state your
9 full name for the record, spelling your last name, please.

10 THE WITNESS: Bailey Haynes, H-a-y-n-e-s.

11 THE CLERK: Do you swear or affirm to tell the truth, the
12 whole truth, and nothing but the truth?

13 THE WITNESS: Yes, ma'am.

14 THE CLERK: Thank you.

15 THE COURT: Your witness.

16 MS. ELLIOTT: Thank you, Judge.

17 BAILEY HAYNES, being first duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. ELLIOTT:

21 Q: Ms. Haynes, will you tell us where you work?

22 A: I work at the South Carolina State Law Enforcement
23 Division, otherwise known as SLED.

24 Q: And how long have you worked for SLED?

25 A: I've been there since June of 2020.

BAILEY HAYNES - DIRECT BY MS. ELLIOTT

1 Q: What's your position there?

2 A: I'm a forensic technician for the evidence control
3 department.

4 Q: So what are your duties and responsibilities?

5 A: I am responsible for the intake of evidence from agencies
6 across the state of South Carolina, and the distribution of
7 that evidence throughout our laboratory.

8 Q: And how does SLED track evidence -- evidence and how it
9 moves through the facility?

10 A: We track evidence through our electronic chain of
11 custody.

12 Q: On June 23rd, 2021, in the course of your duties, did you
13 come into possession of evidence related to SLED Lab Number
14 L21-15907?

15 A: Yes, ma'am.

16 Q: And this -- was this evidence entered as part of your
17 evidence pending electronic submission?

18 A: Yes, ma'am.

19 Q: What does that mean?

20 A: Evidence pending electronic submission or otherwise what
21 we call EPES is a secured storage location that for evidence
22 pending electronic submission to our laboratory.

23 Q: So, in other words, you get in so much evidence, it
24 sometimes has to wait for you to do the full type up?

25 A: Yes, ma'am.

BAILEY HAYNES - DIRECT BY MS. ELLIOTT

1 Q: And where did you get this evidence from?

2 A: I received it from our secured locker area.

3 Q: And how is that area secured? Can you kind of describe
4 that for us?

5 A: Sure. Agencies will submit evidence through our secured
6 locker area, and every locker is -- is individually locked and
7 secured, and evidence control is responsible for retrieving
8 evidence from those lockers and we're the only ones with
9 access to those lockers.

10 Q: That being you all as the evidence techs?

11 A: Yes, ma'am.

12 Q: I'm going to show you what has previously been admitted
13 as State's Exhibit 4 and what has been marked for
14 identification as State's Exhibit 3.

15 A: Can I -- can I look inside the envelope, ma'am?

16 Q: Please do.

17 A: Thank you. Okay.

18 Q: Do those appear to be the -- what came -- what came into
19 SLED as SLED's Items 1 --

20 A: Yes, ma'am.

21 Q: -- assigned to this case?

22 A: Yes, ma'am.

23 Q: When you received them, were they sealed with all of this
24 -- with everything intact, with the seals intact?

25 A: Yes, ma'am. They were properly sealed.

BAILEY HAYNES - DIRECT BY MS. ELLIOTT

1 Q: And if it hadn't been properly sealed, what would you
2 have done with it?

3 A: Since I was involved in scanning this evidence through
4 EPES, if I had noticed them to not be properly sealed, I would
5 have brought them up to our laboratory policy, I would have
6 logged in the case, and I would have made a notation in the
7 record.

8 Q: And you've reviewed the chain of custody in this case?

9 A: Yes, ma'am.

10 Q: Any indication that anything came to you with any
11 abnormalities or inadequacies in the sealing process?

12 A: No, ma'am.

13 Q: Did you open that BEST kit?

14 A: No, ma'am.

15 Q: Did you alter anything inside of it?

16 A: No, ma'am.

17 Q: Change it?

18 A: No, ma'am.

19 MS. ELLIOTT: Nothing further, Your Honor.

20 THE COURT: Cross-examination?

21 MR. SMALDONE: None, Your Honor.

22 THE COURT: Very well. Thank you.

23 THE WITNESS: Thank you.

24 THE COURT: Call your next witness, please.

25 MS. ELLIOTT: Madison Willis.

MADISON WILLIS - DIRECT BY MS. ELLIOTT

1 THE CLERK: Please raise your right hand and state your
2 full name for the record, spelling your last name, please.

3 THE WITNESS: Madison Willis, W-i-l-l-i-s.

4 THE CLERK: Do you swear or affirm to tell the truth, the
5 whole truth, and nothing but the truth?

6 THE WITNESS: Yes.

7 THE CLERK: Thank you.

8 MADISON WILLIS, being first duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. ELLIOTT:

12 Q: Ms. Willis, where do you work?

13 A: I work at the South Carolina Law Enforcement Division.

14 Q: And how long have you been with the South Carolina Law
15 Enforcement Division?

16 A: Almost two years now.

17 Q: And what position do you hold at SLED?

18 A: I currently work in the drug analysis department at SLED,
19 but I was a former forensic technician in evidence control.

20 Q: And is that what you were doing in the summer of 2021?

21 A: Yes, ma'am.

22 Q: What were your duties and responsibilities?

23 A: As a forensic technician, I was responsible for the
24 intake and the storage and making sure that the evidence that
25 was coming in throughout the state of South Carolina was

MADISON WILLIS - DIRECT BY MS. ELLIOTT

1 sealed and making sure that it was stored properly within
2 SLED.

3 Q: And in the course of your duties, did you have occasion
4 to come into evidence -- come into possession of evidence on
5 July 21st, 2022, for evidence related to SLED Lab Number L21-
6 15907, Derrick Boyd's case?

7 A: Yes, ma'am.

8 Q: Where did you get this evidence from?

9 A: I got it from our secure evidence storage room, and I
10 took it off of a drug evidence intake storage shelf.

11 Q: I'm going to show you what has been deemed admitted as
12 State's Exhibit 4 and what has been marked for identification
13 as State's Exhibit 3. Now, are these -- were these SLED Item
14 1 as submitted to SLED?

15 A: Yes.

16 Q: And this is what you came into custody of?

17 A: Yes, ma'am.

18 Q: Now, you said you got that from a drug evidence intake
19 storage. Who actually put those items there?

20 A: It would be forensic technician Hannah Jefferson.

21 Q: And when did she receive them?

22 A: She received it on August 23rd of 2021.

23 Q: And she would have actually logged the evidence in?

24 A: Yes, ma'am.

25 Q: When you received it, were all the seals properly intact

MADISON WILLIS - DIRECT BY MS. ELLIOTT

1 and in order?

2 A: Yes, ma'am.

3 Q: Would you -- would Hannah Jefferson have had any reason
4 to open it, alter it, change it in any way?

5 A: No, ma'am.

6 Q: If she had noticed anything was wrong with the packaging,
7 what would she have done?

8 A: She would have notated it in the case, and then she also
9 would have notified probably the department as well.

10 Q: Is that notated anywhere in the documentation from SLED?

11 A: No, ma'am.

12 Q: Did you alter it, open it, change it in any way?

13 A: No, ma'am.

14 Q: Did you notice that it had been opened, altered, or
15 changed in any way?

16 A: I did not. When I came in contact, the seal was intact.

17 Q: What did you do with the evidence once you received it?

18 A: Once I took it from the evidence intake storage, I gave
19 it to forensic scientist Lynn Black.

20 Q: And when did you give that to her?

21 A: I gave it to her on 7/21 of 2022.

22 MS. ELLIOTT: Your Honor, those are all the questions I
23 have.

24 THE COURT: Thank you.

25 Cross-examination?

SAMUEL SANDERS - DIRECT BY MR. OSBORNE

1 MR. SMALDONE: None, Your Honor.

2 THE COURT: Thank you.

3 Call your next witness, please.

4 MR. OSBORNE: The State calls Samuel Sanders, Officer
5 Samuel Sanders.

6 THE CLERK: Please raise your right hand and state your
7 full name for the record, spelling your last name, please.

8 THE WITNESS: Yes, ma'am. Samuel Sanders, S-a-n-d-e-r-s.

9 THE CLERK: Do you swear or affirm to tell the truth, the
10 whole truth, and nothing but the truth?

11 THE WITNESS: I do.

12 THE CLERK: Thank you, sir.

13 THE WITNESS: Yes, ma'am.

14 SAMUEL SANDERS, being first duly
15 sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. OSBORNE:

18 Q: Good afternoon, Officer.

19 A: Good afternoon, sir.

20 Q: My name is David Osborne. I'm the prosecutor on this
21 case. Thanks for coming in this afternoon.

22 A: Not a problem.

23 Q: Especially on short notice. I'm going to pick your brain
24 about something that happened a couple of years ago, but
25 before then, let's just take a second to introduce you to the

SAMUEL SANDERS - DIRECT BY MR. OSBORNE

1 jury. Okay?

2 A: Yes, sir.

3 Q: Where do you currently work?

4 A: North Charleston Police Department.

5 Q: And how long have you been with NCPD?

6 A: Just over a year.

7 Q: And what's your position there?

8 A: Police officer.

9 Q: Police officer? Okay. Are you a patrol officer now?

10 A: Yes.

11 Q: That's your assignment?

12 A: Yes.

13 Q: Okay. I know you haven't been there all that long, but I
14 want to ask you about just -- just general protocol of an
15 officer. Have you been involved in the arrest of anyone for
16 narcotic violations?

17 A: Yes, sir.

18 Q: When you arrest an individual for narcotic violations and
19 you take the evidence or the -- or the drugs into evidence, is
20 it proper protocol to take the detainee to the detention
21 center first, then put the drugs into evidence?

22 A: Yes, sir.

23 Q: Is it -- that's just common practice?

24 A: Yes, sir.

25 Q: Any idea why that might be?

SAMUEL SANDERS - DIRECT BY MR. OSBORNE

1 A: You want to keep eyes on the detainee at all times until
2 they are transferred over to the custody of the detention
3 center.

4 Q: Right. I guess if you were to flip it, that would mean
5 you would be putting drugs into evidence and leaving the
6 detainee alone in your car?

7 A: Correct.

8 Q: Okay. All right. So let's go back to May the 15th of
9 2021. Where did you work then?

10 A: Dorchester County Detention Center.

11 Q: And what was your position with the detention center?

12 A: Standard detention officer.

13 Q: Okay. How long did you work with them?

14 A: I want to say a year and some change, in between one year
15 and two years.

16 Q: Okay. On that date, May the 15th, did you have the
17 occasion to become involved in the strip search of an inmate,
18 Derrick Boyd, the defendant in this case?

19 A: Yes, sir.

20 Q: Okay. And I think we've already heard some testimony in
21 the strip search room it was you, Deputy Holder?

22 A: Yes.

23 Q: And detention officer Richard Green?

24 A: Yes, sir.

25 Q: Just y'all three?

SAMUEL SANDERS - DIRECT BY MR. OSBORNE

1 A: Yes, sir.

2 Q: And the defendant?

3 A: Correct.

4 Q: All right. And I do have your report here if you need to
5 refresh your memory, but just off your memory from back then,
6 what happened once you got into the room?

7 A: Once we got into the room, we started with the standard
8 strip search procedure of shirt, pants, take them off, hand
9 them over to the detention officer so we can check the seams
10 and whatnot, socks, shoes. And then once -- when we get down
11 to the undergarments, we ask them to remove the undergarments
12 so we can check that. Once the undergarment is removed, we
13 ask them to lift their arms, shake their hair if they have
14 long hair, and then we ask them to lift up their genitals to
15 see if there's perhaps something under there, spread their
16 legs and then turn around, spread their legs again, and then
17 bend over and cough hard three times to --

18 Q: Okay. I'm sorry.

19 A: To uncover any possible contraband to prevent that from
20 coming into the jail.

21 Q: Okay. And while going through that procedure and that
22 protocol with the defendant, was there any contraband located?

23 A: Yes, sir.

24 Q: And what was that?

25 A: It was a white baggie containing a white powdery

SAMUEL SANDERS - DIRECT BY MR. OSBORNE

1 substance, later identified as cocaine.

2 Q: Okay. And was it Deputy Holder who took possession of
3 the -- of the substance?

4 A: Correct.

5 Q: All right.

6 MR. OSBORNE: Your Honor, may I approach?

7 THE COURT: Yes.

8 BY MR. OSBORNE:

9 Q: I'm showing you what's been marked as State's Exhibit 4.
10 You can pull that out, take a look at that, and tell me if
11 that's what you remember.

12 A: Yes, sir.

13 Q: What does that look like?

14 A: It looks like the baggie that we recovered.

15 Q: I know it was on his person and it was during the strip
16 search, and we're not trying to get graphic or anything like
17 that. Where was the bag on his person?

18 A: So he had his legs close together, and it was in between
19 his two legs up underneath his genitalia.

20 Q: Okay.

21 MR. OSBORNE: All right. No further questions.

22 THE COURT: Cross-examination?

23 MR. SMALDONE: May it please the Court.

24 THE COURT: Yes.

25 CROSS-EXAMINATION

SAMUEL SANDERS - CROSS BY MR. SMALDONE

1 BY MR. SMALDONE:

2 Q: This occurred last -- this occurred June of -- I'm sorry.
3 May of 2021?

4 A: Yes, sir.

5 Q: Okay. And you said you recognized the bag?

6 A: Correct.

7 Q: All right. How do you -- how do you recognize the bag?

8 A: While we were conducting the strip search, I noticed
9 something that should not have been there. It's not a part of
10 his body in between his legs.

11 Q: I'm sorry. I didn't mean -- no, I appreciate that. I
12 was unclear. How do you recognize that specific bag tied back
13 to this case?

14 A: So I remember the bag being somewhat of a large quantity,
15 and I do remember that he did do a BEST kit on it, and the
16 BEST kit date matches the date of the incident.

17 Q: Okay. And were you there when the BEST kit was done?

18 A: No, sir.

19 Q: Okay. All right.

20 MR. SMALDONE: Court's indulgence.

21 THE COURT: All right.

22 MR. SMALDONE: No further questions.

23 THE COURT: Redirect?

24 MR. OSBORNE: Just a couple, Judge.

25 REDIRECT EXAMINATION

SAMUEL SANDERS - REDIRECT BY MR. OSBORNE

1 BY MR. OSBORNE:

2 Q: When you have made narcotic arrests in the past and you
3 have sealed the BEST kit, when you sealed it, did you put your
4 initials over it?

5 A: Yes, sir.

6 Q: So that -- that's the way that when you seal it, you can
7 tell what it is?

8 A: Correct.

9 Q: And, you know, if Deputy Holder was the one who happened
10 to have sealed it in this case, he might have put his initials
11 on it? Would that surprise you?

12 A: No, sir.

13 Q: Okay.

14 MR. OSBORNE: No further questions.

15 THE COURT: Recross?

16 MR. SMALDONE: None, Your Honor.

17 THE COURT: Very well. Thank you, sir.

18 THE WITNESS: Not a problem.

19 THE COURT: All right. Call your next witness, please.

20 MS. ELLIOTT: The State calls Lynn Black.

21 THE CLERK: Please raise your right hand and state your
22 full name for the record, spelling your last name, please.

23 THE WITNESS: Lynn B. Black, B-l-a-c-k.

24 THE CLERK: Do you swear or affirm to tell the truth, the
25 whole truth, and nothing but the truth?

LYNN BLACK - DIRECT BY MS. ELLIOTT

1 THE WITNESS: I do.

2 THE CLERK: Thank you.

3 THE COURT: Your witness.

4 MS. ELLIOTT: Thank you, Judge.

5 LYNN BLACK, being first duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. ELLIOTT:

9 Q: Ms. Black, will you tell us what your occupation is?

10 A: I'm a forensic scientist. Currently, I work for the
11 Beaufort County Sheriff's Office down in Beaufort, South
12 Carolina. And before that, I worked for the South Carolina
13 Law Enforcement Division, also as a forensic chemist.

14 Q: How long have you been with Beaufort County?

15 A: I've been there almost three months now. I've been since
16 January.

17 Q: And how long were you employed with SLED?

18 A: I worked for SLED for about 14 years.

19 Q: And what position did you hold with SLED?

20 A: I was a forensic chemist there as well.

21 Q: And any prior experience as a forensic chemist at any
22 other labs?

23 A: Yes. Before that, I worked for the Georgia Bureau of
24 Investigation as a forensic chemist, and that's in Atlanta,
25 Georgia.

LYNN BLACK - DIRECT BY MS. ELLIOTT

1 Q: And that's for how long?

2 A: That was eight years.

3 Q: And so while you were at SLED, what were your duties and
4 responsibilities?

5 A: I would receive and analyze substances brought in by law
6 enforcement personnel and analyze them to determine if they
7 are controlled substances or not and also write up reports
8 from my findings and testify in courts of law.

9 Q: And what type of training and education and experience do
10 you have that -- that helped you accomplish that job?

11 A: I have a Bachelor of Science degree in chemistry from
12 Kentucky Wesleyan College, a certificate of medical technology
13 from the University of Louisville, and a Master of Science
14 degree in forensic science from Marshall University. I also
15 successfully completed the training for a forensic -- forensic
16 chemist at the -- at GBI, also at SLED, and then I did a short
17 little training just to learn how they do things in Beaufort
18 this year as well.

19 Q: Now, you said that as part of your job you chemically
20 analyze substances to see whether or not they contain
21 controlled substances. How many times would you say you've
22 done that type of testing?

23 A: Over my career, it's probably over 20,000 cases. So, you
24 know, a lot in Georgia, a lot more at SLED, and just a few so
25 far at Beaufort.

LYNN BLACK - DIRECT BY MS. ELLIOTT

1 Q: So if you're looking for controlled substances, can you
2 explain to us what controlled substances are?

3 A: Controlled substances are as part of the law that talks
4 about different entities that are -- that are in a --
5 scheduled as a 1, 2, 3 or 4 or 5 in the federal law, also in
6 our state law as well. And it just depends on what kind of
7 drugs they are. Like, if you think about your prescription
8 drugs, those are actually not controlled substances unless
9 they are some sort of -- like, an opiate is -- is a higher
10 schedule drug, but just your run of the mill prescriptions,
11 like for an antibiotic or say you have blood pressure pills,
12 those are just prescription drugs.

13 But say you have something like oxycodone or codeine or
14 something like that. You're taking that for your cough.
15 Those are more scheduled because they are a little more
16 addictive than just your run of the mill prescription drugs.

17 So depending on how addictive they are and -- and if they
18 have any medicinal value, you know, the higher the -- I'm
19 trying to think how to explain it. The schedules go from 1 to
20 5, but the -- the lower the number. So the 1s are the highest
21 schedule. Those are the ones that do not have any current
22 medicinal value. 2s have some medicinal value. 3s have
23 medicinal value, but they're -- they're all highly addictive
24 and they've been put into the -- their different schedules
25 according to those properties.

LYNN BLACK - DIRECT BY MS. ELLIOTT

1 Q: And for those scheduled drugs, there are restrictions on
2 who can possess them, when and how?

3 A: That's correct, yes.

4 Q: And so an example of a controlled substance you'd be
5 testing for could be cocaine or marijuana?

6 A: That's correct.

7 Q: Or maybe, as you said, oxycodone or Xanax?

8 A: Correct.

9 Q: But you're not going to be testing to see if something's
10 Benadryl?

11 A: Well, we do actually get some of those in, and we will
12 test it. And if it's -- if it is Benadryl, then it would go
13 out as no controlled substances detected.

14 Q: And how many drug analyses would you say roughly you did
15 in a week while you worked for SLED?

16 A: Typically, I would do maybe 20 cases a week, sometimes a
17 little more, sometimes a little less, depending on what's
18 going on.

19 Q: And so performing these analyses is part of your regular
20 duties?

21 A: That's correct.

22 Q: Pretty much your only duty?

23 A: Pretty much, yes.

24 Q: What type of equipment do you use in your lab or did you
25 use in the lab at SLED to test for the presence of controlled

1 substances?

2 A: We had a variety of different things we could use. We --
3 besides just some chemicals, we could do chemical tests. We
4 also had instrumentation. We had two instruments that we
5 would use routinely, one of them more -- more so than the
6 other because it depends on what kind of substance you have.

7 But the main one we -- we would use in the lab is called
8 a gas chromatograph mass spectrometer, which is a mouthful.
9 So we've shortened it to GCMS. That's really the workhorse of
10 the lab.

11 The other instrument is called the Fourier transform
12 infrared spectroscopy. Again another mouthful called FTIR.
13 That one you can use if you have more of a pure substance, and
14 it will give you -- both of them will give you confirmatory
15 answers. It'll tell you, you know, what the drug is. The
16 chemical tests will just kind of give you an indication. This
17 is really a preliminary test, but those are basically the
18 three types that we would use.

19 Q: So when you're talking about chemical testing, is that
20 what most people hear as presumptive testing?

21 A: Yes.

22 Q: And -- and by knowing the results of that -- that
23 chemical testing, what does that help you do with your
24 subsequent testing?

25 A: It can give you a direction to go in. It can tell you,

LYNN BLACK - DIRECT BY MS. ELLIOTT

1 well, this -- this might be meth, this might be cocaine, this
2 could be fentanyl, or it could be something that just reacts
3 with the chemicals in the same way. And it sometimes it would
4 tell me, you know, oh, I should go do the GCMS or sometimes I
5 should do the FTIR.

6 But most of the times, I -- just because of my
7 experience, I can -- some of the substances -- like, crystal
8 meth is very -- usually very pure crystal. Excuse me.
9 Usually very pure methamphetamine. So, typically, I would run
10 that on the -- the FTIR because it's more pure and it would
11 come out on that.

12 Now, if I had just a powder substance, a lot of times I
13 would go, ah, this is probably cut with something, you know,
14 some sort of diluent or cutting agent. Sometimes they'll
15 throw in different things just to bulk up their samples. So I
16 would run that on the GCMS because the GCMS will separate
17 those components. So if it's got, you know, some other thing
18 in it, like caffeine, and it's got cocaine, it'll separate
19 those out so you can see the caffeine and you can see the
20 cocaine, but the FTIR cannot separate them out. So the color
21 test won't tell me that I got caffeine and cocaine, but
22 typically I can pretty much look at some of them and determine
23 whether or not I want to run it on either -- either of those
24 instrumentations.

25 Q: So now are -- is the equipment that you use precise and

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1 accurate in its testing ability?

2 A: Yes.

3 Q: How do you ensure that it's working the way it's supposed
4 to work?

5 A: We have different -- at SLED we had -- excuse me -- I
6 should say different procedures that we would perform before
7 we would ever run anything on the instruments. For the FTIR,
8 we would -- had a monthly check that we would run. And then
9 each time -- each day that you would use it, you had a daily
10 check that you would run to ensure that it's running
11 correctly.

12 The GCMS is very similar. You would have to do certain
13 checks weekly, and then you would run standards with your
14 samples so that you could compare your known drug standards to
15 your unknowns.

16 Q: Now, have you previously been admitted as an expert on
17 drug analysis in court?

18 A: Yes.

19 Q: How many times?

20 A: 148 times.

21 Q: Can you tell us which courts?

22 A: A hundred of those were in Georgia in both state and
23 federal courts, 48 here in South Carolina in state and federal
24 courts.

25 Q: And did you actually get to testify in each case?

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1 A: Yes.

2 Q: Have you ever failed to qualify as an expert?

3 A: No.

4 MS. ELLIOTT: Your Honor, at this time, the State moves
5 that Ms. Black be declared an expert in the field of drug
6 analysis.

7 THE COURT: Is there any voir dire?

8 MR. SMALDONE: No, Your Honor, no voir dire or objection.

9 THE COURT: Very well. Thank you.

10 Ladies and gentlemen, I want to explain to you where we
11 are and why that offer is, so you'll understand. Ordinarily,
12 under our rules of evidence, witnesses are not allowed to
13 testify regarding their opinions or the reasons for those
14 opinions.

15 There is an exception when, by virtue of someone's
16 knowledge, training, or profession, they have become an expert
17 in some field. Typically, it can be a -- it's typically a
18 scientific field, perhaps a medical field, it can be an
19 artistic field, and they have become an expert in that field.
20 And under our rules, those witnesses are allowed to testify
21 within their articulated expertise and give the reasons for
22 those opinions.

23 I will give you additional instructions when I give you
24 the including instruction on the law, but I would say that
25 expert testimony is given for the purpose of helping you

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1 understand the evidence, not for the purpose of controlling
2 your judgment. And we'll talk about you evaluate an expert
3 testimony as you do other testimony. We'll talk about that
4 when I give you the instructions.

5 Thank you. And you may proceed.

6 MS. ELLIOTT: Thank you, Judge.

7 BY MS. ELLIOTT:

8 Q: As part of your job, did you receive substances to test
9 related to Derrick Boyd under SLED Lab Number L21-15907?

10 A: Yes, I did.

11 Q: And when did you receive those items?

12 A: I received those -- if I may refer to some of my notes
13 here? I received those on July 21st of 2022.

14 Q: And who did you receive them from?

15 A: I received that from forensic technician Madison Willis.

16 Q: I'm going to show you what's previously been admitted as
17 State's Exhibit 4 and what has been marked for identification
18 as State's Exhibit 3.

19 A: Okay.

20 Q: Now, are these the items that you received in a BEST kit
21 labeled as SLED's Item 1?

22 A: Yes, I did.

23 Q: And were -- was the -- the baggie with the white
24 substance and the baggie with the green plant-like material,
25 was that in the same BEST kit?

LYNN BLACK - DIRECT BY MS. ELLIOTT

1 A: They were.

2 Q: Were they sealed in their own individual bags within it?

3 A: Yes, they were. Uh-huh.

4 Q: And so what did you do -- and the BEST kit itself, that
5 was sealed appropriately?

6 A: That's correct.

7 Q: Any evidence of tampering or mishandling?

8 A: No, there was not.

9 Q: If there had been, what would you have done?

10 A: If there had been, I would have noted it in my -- on my
11 worksheet. I also would have noted it on the actual BEST bag
12 that's in -- that's -- that's what's inside this outer bag,
13 this one with the blue around it. That's actually the BEST
14 bag, and on here I have seal intact and the date, 7/21/22,
15 which is when I opened this. And it would -- I would have not
16 have written that there. And then also on my report, I would
17 have said that the BEST kit was received improperly sealed and
18 -- and I do not have that note on there.

19 Q: And so what did you do when you received this BEST kit?

20 A: When I received it -- do you want me to go into the
21 testing or the weighing or all of that?

22 Q: Let me ask you this. Did you test both of those
23 substances?

24 A: I did not.

25 Q: Okay. Which one didn't you test?

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1 A: I did not test the suspected marijuana.

2 Q: So that would have been -- that's State's Exhibit 3.
3 Your item number, I believe, is 1.2?

4 A: That's correct.

5 Q: Now, when I first handed that up to you, I asked you if
6 you received it as SLED's Item 1?

7 A: Correct.

8 Q: Why are there now different item numbers?

9 A: Because they are different substances. So they were --
10 when I received the BEST kit, I took everything out of this --
11 this bag -- this blue-rimmed bag and inventoried it. So I had
12 this heat-sealed bag that has a plastic bag that has some
13 white powder substance in it. And then I also had this Ziploc
14 bag that has green leafy material. And just looking at it, I
15 decided that it was probably going to be over 28 grams, so I
16 didn't even -- I don't even think I even said that it was
17 green leafy material on my -- in my report or on my -- in my
18 notes. Excuse me.

19 So at SLED, we have different people who will test the
20 suspected marijuana. So what I did was place it in this
21 evidence bag here, and mine is -- my signature and my date and
22 my initials are also on the seal up here. I placed it in this
23 and then generated this barcode sticker and then placed it in
24 our drug vault and then told my colleague, forensic scientist
25 Ashley Lyles, that this was in there because she was, I

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1 believe, the person on call who would be taking this case. So
2 -- so I did not do anything besides that to that one.

3 Q: So at that time, you weren't testing green plant-like
4 material to see if it was marijuana?

5 A: Correct.

6 Q: Okay. So you repackaged it?

7 A: Yes.

8 Q: Made sure that it was properly sealed?

9 A: Yes.

10 Q: And sent it on to the next analyst?

11 A: Correct.

12 Q: All right. And so that was -- so what was Item 1 became
13 Item 1.1 and Item 1.2?

14 A: Correct. This became Item 1.2. The leafy material and
15 the -- excuse me. The white powder substance was 1.1.

16 Q: And the white powder substance being State's 4, you
17 tested that?

18 A: Correct.

19 Q: So what test did you use on that substance?

20 A: On this one, I did a chemical test and the instrumental
21 test that I -- that I spoke about before, which is the FTIR.

22 MS. ELLIOTT: Your Honor, at this time, I'm going to --
23 I'm sorry. State's 4 has already been admitted. So let's
24 talk about that.

25 BY MS. ELLIOTT:

LYNN BLACK - DIRECT BY MS. ELLIOTT

1 Q: You said -- well, from the tests that you performed, were
2 you able to form an expert opinion on what State's Exhibit 4
3 was or what it contained?

4 A: Yes.

5 Q: Please give me your expert opinion on what that substance
6 is and how you reached those conclusions.

7 A: Cocaine was found in the -- in the sample that I tested.
8 As I said before, I did a color test, the preliminary test,
9 and I did the confirmatory -- excuse me -- the confirmatory
10 test, the FTIR, Fourier transform infrared spectroscopy.

11 Q: And I believe you said that that test is usually reserved
12 for items that appear to be more pure?

13 A: Correct.

14 Q: What did that mean for you in this case?

15 Q: That just meant that was the only test I needed to do
16 basically. If I -- if I had gotten a result from that test
17 that was not up to the standards of the laboratory, the
18 protocols that we have in place, then I -- meaning that it
19 didn't have a very good match, then I would have taken another
20 sample from it and done the other test using the other
21 instrument, the GCMS.

22 But in this case, since I got a very good match, I did
23 not need to do that. So that meant I was pretty much done
24 with my analysis in that, you know, it showed that it was
25 cocaine.

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1 Q: Now, if this hadn't been a pure sample, you would have
2 had to put it on the -- on the GSMC -- GCMS?

3 A: GCMS, yes.

4 Q: But with the results you got, it's a -- it's a pure
5 sample?

6 A: Correct.

7 Q: And you said it was 20 -- 28 point -- how many grams?

8 A: The weight was 28.28 grams.

9 Q: Now going to State's Exhibit 3, the green plant-like
10 material. I know you said you sealed it up and you -- I
11 believe you said you put it in the drug vault?

12 A: I did.

13 Q: Do you remember what date you put it there?

14 A: That -- I do have a record of that as well. Hold on a
15 minute. You know, I haven't had to look at these kinds of
16 chain of custodies in a while. It looks like I put it in
17 there on July 28th, 2022.

18 MS. ELLIOTT: Court's indulgence, Your Honor.

19 THE COURT: Okay.

20 BY MS. ELLIOTT:

21 Q: You testified that you received the BEST kit that was
22 properly sealed, but were the inner heat-sealed bags also
23 appropriately sealed?

24 A: The -- I think all I can say about that is the -- the one
25 with the powder substance was a heat-sealed bag. So it -- and

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1 it did have initials and a date on them. So that was properly
2 sealed. The -- the other one, I did not make a note as to
3 what kind of packaging it was. So --

4 Q: Is the original packaging still in there?

5 A: I believe so, yes.

6 Q: Okay. And I think it's in your left hand. Do you see
7 initials and a date?

8 A: Yes, yes.

9 Q: Can you read --

10 A: It looks like a heat-sealed bag as well and then a Ziploc
11 bag also. That -- that may be my colleague. Yes. I'm sorry,
12 I can read now. It says bag added, so that the Ziploc bag was
13 added. So that would make sense that that was a heat-sealed
14 bag, and she added the other bag.

15 Q: So from what you're seeing, the -- the heat -- the heat-
16 sealed bag with dates and initials would have been in there as
17 well?

18 A: Correct.

19 Q: Okay. And it's your practice that if it had been altered
20 or if that -- something had been wrong with that, you would
21 have made a note in the chain of custody?

22 A: No. Only if the outer BEST kit bag had been tampered
23 with or was not sealed or anything properly. The inner bags
24 aren't as important to us. So as long as the outer package is
25 sealed, then the inner ones are secure as well.

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1 Q: Okay.

2 MS. ELLIOTT: Thank you. Those are all the questions I
3 have for Ms. Black.

4 THE COURT: All right. Cross examination?

5 MR. SMALDONE: None, Your Honor.

6 THE COURT: Very well. Thank you.

7 THE WITNESS: Thank you.

8 Call your next witness, please.

9 MS. ELLIOTT: The State calls Ashley Lyles.

10 THE CLERK: Raise your right hand and state your full
11 name for the record, spelling your last name, please.

12 THE WITNESS: Ashley Lyles, L-y-l-e-s.

13 THE CLERK: And do you swear or affirm to tell the truth,
14 the whole truth, and nothing but the truth?

15 THE WITNESS: I do.

16 THE CLERK: Thank you.

17 THE COURT: Your witness.

18 MS. ELLIOTT: Thank you, Judge.

19 ASHLEY LYLES, being first duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. ELLIOTT:

23 Q: Ms. Lyles, where do you work?

24 A: I work at the South Carolina Law Enforcement Division,
25 which is more commonly referred to as SLED.

ASHLEY LYLES - DIRECT BY MS. ELLIOTT

1 Q: And what do you do for SLED?

2 A: I am a forensic scientist.

3 Q: And how long have you worked there?

4 A: I've been at SLED for a total of 11 years, but I've been
5 with my current department, the drug analysis department, for
6 eight years.

7 Q: Tell us a little bit about your job duties and
8 responsibilities.

9 A: As a forensic scientist in the drug analysis department,
10 I'm responsible for examining items of evidence and
11 determining the presence or absence of any controlled
12 substances, as well as performing THC quantitation.

13 Q: And what type of training and education do you have that
14 enables you to do your job?

15 A: I have a Bachelor of Science degree in biochemistry from
16 Washington and Lee University. I have successfully completed
17 extensive in-house training at SLED under a court-qualified
18 expert in forensic drug analysis, and I have also successfully
19 completed online coursework with West Virginia University in
20 forensic drug chemistry and forensic mass spectrometry.

21 Q: Have you had occasion to chemically analyze substances to
22 determine whether the substance is or contains controlled
23 substances?

24 A: Yes.

25 Q: How many times have you done that?

ASHLEY LYLES - DIRECT BY MS. ELLIOTT

1 A: Hundreds, if not thousands.

2 Q: And so what are some of the substances that you test for
3 on a -- on a daily basis?

4 A: Substances that are controlled.

5 Q: Any specific ones?

6 A: Specifically marijuana plant material, cannabis, crack,
7 cocaine, methamphetamine.

8 Q: How many drug analyses would you say you do a week with
9 SLED?

10 A: It varies, but typically about 25 to 30 cases a week.

11 Q: So how many would that be in your career, roughly?

12 A: We're in the thousands somewhere.

13 Q: So this is a regular part of your duties?

14 A: Yes.

15 Q: The primary focus of your duties?

16 A: Correct.

17 Q: What kind of equipment do you use in the lab setting
18 specifically when testing for marijuana and THC levels?

19 A: I use a presumptive chemical test, as well as a
20 microscope to look for hairs that are specific to cannabis,
21 and I also -- I do those -- use those for presumptive testing.
22 I then use a GCMS or a gas chromatograph mass spectrometer for
23 confirmatory testing.

24 Q: And is the equipment that you use precise and accurate in
25 its testing ability?

ASHLEY LYLES - DIRECT BY MS. ELLIOTT

1 A: Yes.

2 Q: And how do you ensure that?

3 A: We have several quality control standards. We run
4 negative controls, positive controls, blanks in between every
5 sample to ensure that there's no carryover from one item of
6 evidence to another. We ensure that our instrument is working
7 properly weekly prior to running any casework on our
8 instrumentation.

9 Q: And have you previously been admitted as an expert in
10 drug analysis in court?

11 A: Yes, I have.

12 Q: How many times?

13 A: Nine times.

14 Q: In what courts?

15 A: Both state and federal.

16 Q: Did you actually testify in all nine of those courts?

17 A: Yes, I did.

18 Q: Did you ever fail to qualify as an expert?

19 A: No, ma'am.

20 MS. ELLIOTT: Your Honor, at this time, we would offer
21 Ms. Lyles as an expert in the field of drug analysis.

22 THE COURT: Any voir dire?

23 MR. SMALDONE: No, Your Honor.

24 THE COURT: Any objection?

25 MR. SMALDONE: No, Your Honor.

ASHLEY LYLES - DIRECT BY MS. ELLIOTT

1 THE COURT: Very well. So qualified. You may proceed.

2 BY MS. ELLIOTT:

3 Q: As part of your job, did you receive substances to test
4 related to Derrick Boyd under Lab Number L21-15907?

5 A: Yes, I did.

6 Q: When did you receive those items?

7 THE WITNESS: May I refer to my notes, please?

8 THE COURT: Sure.

9 BY MS. ELLIOTT:

10 A: I would have received the evidence on July 25th of 2022.

11 Q: And when you're referring to those, that's the chain of
12 custody from SLED?

13 A: Correct.

14 Q: I am going to show you what has previously been
15 identified as State's Exhibit 3. Now, is that what was
16 labeled as SLED Item 2 that you received in this case?

17 A: It is labeled as --

18 Q: I'm sorry, 1.2.

19 A: Yes, ma'am. It is labeled as SLED Item Number 1.2.

20 Q: I believe you testified you got it on July 25th. Are you
21 sure it wasn't July 28th?

22 A: Excuse me. Yes, I misspoke. It should be July 28th of
23 2022.

24 Q: And where did you get it from?

25 A: Our department's secure drug vault.

ASHLEY LYLES - DIRECT BY MS. ELLIOTT

1 Q: Do you know who put it there?

2 A: Yes.

3 Q: Who is that?

4 A: Lynn Black.

5 Q: And when you got it, was everything properly sealed?

6 A: Yes, it was.

7 Q: So was there an inner bag and then an outer bag?

8 A: That appears to be correct. Yes, ma'am.

9 Q: Did it appear to have been tampered with or altered in
10 any way?

11 A: No, ma'am.

12 Q: And what tests did you perform on this item?

13 A: I would have performed the chemical presumptive test that
14 I spoke about, as well as a microscopic exam. That would have
15 been my preliminary analysis done. And then I would have
16 taken a sample for confirmatory analysis to run on the
17 instrumentation, the GCMS.

18 Q: Did you weigh the substance?

19 A: Yes, I did.

20 Q: And did you prepare a report?

21 A: Yes, ma'am, I did.

22 MS. ELLIOTT: Your Honor, at this time, I would move into
23 evidence State's Exhibit 3.

24 THE COURT: Very well. Any objection?

25 MR. SMALDONE: I renew previous objection.

ASHLEY LYLES - DIRECT BY MS. ELLIOTT

1 THE COURT: Very well. So admitted.

2 (WHEREUPON, State's Exhibit Number 3, marijuana, was
3 admitted into evidence.)

4 BY MS. ELLIOTT:

5 Q: So from the tests that you performed, were you able to
6 form an expert opinion as to what State's Exhibit 3, which you
7 have as SLED's Item Number 1.2, what that actually is?

8 A: Yes, ma'am.

9 Q: Would you please give us your expert opinion and tell us
10 how you arrived at that conclusion?

11 A: Okay. Item 1.2 was the drug evidence, which is what you
12 guys see here. I would have created a subitem, Item 1.2.1,
13 which is the plant material contained within.

14 The results were marijuana, when tested a net weight of
15 91 grams, 3.21, plus or minus 0.04 ounces. Confidence level
16 for the weight is 99.7 percent. Total Delta 9
17 tetrahydrocannabinol or THC, percent dry weight greater than
18 1.00 percent.

19 Q: So it was 99 -- 91 grams of marijuana?

20 A: Yes, ma'am.

21 Q: Now, what's the legal cut off for THC?

22 A: 0.30 percent.

23 Q: And you said this had greater than 1 percent?

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

25 Q: So it had three times over the legal limit?

ASHLEY LYLES - DIRECT BY MS. ELLIOTT

1 A: Yes.

2 MS. ELLIOTT: Thank you, Ms. Lyles. That's all the
3 questions I have for you at this time.

4 THE COURT: Cross-examination?

5 MR. SMALDONE: None, Your Honor.

6 THE COURT: Very well. Thank you.

7 Call your next witness, please.

8 MR. OSBORNE: Your Honor, the State rests.

9 THE COURT: Very well.

10 All right. Ladies and gentlemen, you have now heard the
11 witnesses and received the evidence which you will from the
12 State in the State's case in chief. That signifies to me that
13 there are matters that I must take up outside your presence.
14 It's also a good time for the afternoon break.

15 So please step to your jury room. Do not discuss this
16 matter or allow anyone to discuss it with you. We'll be with
17 you shortly, probably about 15 -- 15 to 20 minutes.

18 (WHEREUPON, the jury exited the courtroom at 3:33 p.m.)

19 THE COURT: All right. Are there any motions?

20 MR. SMALDONE: Yes, Your Honor.

21 First, I'd renew my pretrial motions, particularly the
22 motion to suppress. Additionally, I'd like to add testimony
23 from the first witness that he was part of a -- I believe, a
24 drug interdiction unit that was basically planning on pulling
25 over this car that we didn't hear in the suppression hearing.

1 So I'd like to add that concern to the -- to the notion that
2 it is a pretextual stop.

3 THE COURT: Very well. Thank you. Thank you very much.

4 Any -- anything you want to --

5 MR. OSBORNE: The only thing I would add --

6 THE COURT: -- respond?

7 MR. OSBORNE: That was in reference to the training that
8 he had received, not that he was part of the unit. The unit
9 is what he is in right now, the SET unit. That's his current
10 assignment. Back then he was just a patrolman, but he has
11 received interdiction training.

12 THE COURT: Okay.

13 MR. OSBORNE: The car wasn't stopped for any interdiction
14 purpose.

15 THE COURT: Okay. Very well. There is evidence on each
16 element of each of these offenses. It's not for me to weigh.
17 It's for the jury to do the weighing. And your -- you did not
18 finish? You had not finished?

19 MR. SMALDONE: I did -- I didn't. I just renewed the
20 previous motions. I haven't asked for a directed verdict yet.
21 I have -- I have a few arguments for that.

22 THE COURT: I'm listening.

23 MR. SMALDONE: Okay. Your Honor, first of all, with the
24 contraband charge.

25 THE COURT: Okay.

1 MR. SMALDONE: My client is charged with introducing
2 contraband to the jail.

3 THE COURT: Yes.

4 MR. SMALDONE: Your Honor, there is no evidence --
5 there's no evidence of intent. Basically, this is a person
6 who was arrested and brought to the jail, given no opportunity
7 -- no opportunity to get rid of the drugs without consequence.
8 Any opportunity to get rid of the drugs would have violated
9 his Fifth Amendment right against self-incrimination.

10 So it is my firm belief that this would be a directed
11 verdict because of no element of intent and the
12 unconstitutionality of this statute. He has a right to not
13 testify against himself and not be a witness against himself
14 and remain silent. And this statute, the way it's written and
15 the way -- and really not just the way it's written, and
16 that's why I didn't make it pretrial. It's the way these
17 facts are jammed into this statute.

18 Your Honor, I would -- I would ask for a directed verdict
19 because of that.

20 THE COURT: All right. Yes, sir?

21 MR. OSBORNE: It is an interesting argument. Never
22 prosecuted one of these before. Was talking to the PDs, and
23 they -- Mr. Chisholm told me the same thing.

24 And I think it is interesting, I do, but it is the law.
25 I can see this coming up, you know, at some point, maybe on

1 appellate courts and them asking legislators to carve out a
2 caveat for individual -- individuals that are being brought
3 in.

4 The one thing I would say, though, in reference to this
5 case, Deputy Green did testify that whenever he was patting --
6 and he's one of the detention officers, and he said while
7 patting him down, that's something they always ask. And if
8 they -- now, the next question wasn't asked. What if they say
9 it is on them and they take him out? Do they then avoid a
10 charge? That wasn't followed up on. So we don't know the
11 answer to that.

12 But -- but in this case, he brought it in and that is the
13 charge, you know. So I do understand that position, and maybe
14 that is something that would be addressed on appellate
15 purposes, but for now it was on his possession. He had the
16 intent. He was bringing it in. He certainly knew it was
17 there based on where it was.

18 So I think it's enough to submit to the jury, Your Honor.

19 MR. SMALDONE: Your Honor, one matter, and I have a
20 directed verdict on the other charge too, of course. But this
21 is just for the contraband, and I forgot to bring this up, but
22 one counterpoint. Not really counterpoint. My point there's
23 -- in the statute, it says -- I apologize.

24 Matters considered contraband within the meaning of this
25 section are those which are designated as contraband and

1 published by the Department of Corrections rule as -- sorry.
2 Department of Corrections as Regulation 33.1 of the Department
3 of Corrections, and this regulation must be displayed in a
4 conspicuous place, available and visible to visitors and
5 inmates at the facility.

6 There was testimony about a sign, but we don't know if
7 that sign was in compliance with the statute.

8 THE COURT: What about that?

9 MR. OSBORNE: Well, let me -- let me read what he said,
10 compliance with the statute, one more time.

11 Okay. So I know we heard testimony from Deputy Green
12 that said the sign was clearly visible whenever you entered in
13 through the sally port. I asked is it possible that Deputy
14 Holder brought him in through a different area? He said, no,
15 that's not possible. They all go through the sally port. He
16 said it was conspicuously displayed.

17 And I asked about cocaine. Would that be considered
18 contraband? And he said, yes, narcotics are contraband.

19 THE COURT: Let me ask you a question with regards to the
20 -- to your argument. Do you have any authority to support
21 that?

22 MR. SMALDONE: Your Honor, I have -- I have the statute,
23 24-7-1 --

24 THE COURT: I'm talking about Fifth Amendment violation.
25 Do you have -- is there any -- is there any authority? Has it

1 been addressed on a nationwide basis? Have you looked?

2 MR. SMALDONE: I looked last night at the state level.

3 THE COURT: Sure.

4 MR. SMALDONE: I was researching things. I had bigger --
5 a bigger concern last night, of course, with the suppression
6 issue.

7 THE COURT: Sure.

8 MR. SMALDONE: I did spend a little time, and I could not
9 find anything at the state level for this -- for that charge.

10 THE COURT: Okay. All right. Again, I'm going to
11 listen. Keep -- continue.

12 MR. SMALDONE: All right. And so that -- that's my
13 argument regarding the contraband.

14 Finally, Your Honor, with the -- I was listening to the
15 testimony recently in regards to the trafficking charge. I've
16 never heard of this. There's definitely no case law for this,
17 but I think that's because it probably never happened.

18 The State has specified in their indictment that the
19 defendant had more than ten grams and less than 28 grams. We
20 heard testimony from the chemist that he -- that alleges that
21 the cocaine -- well, they know the cocaine weighs 28.2 grams
22 that is alleged to belong to -- that is alleged to be in
23 possession of my client at one point in time.

24 I have never -- again, I've never ran into this issue,
25 but I think that under the specificity of the indictment, he

1 has to know what he is charged with. He has to know. It is a
2 notice document to tell him, and that notice document
3 specifically says less than 28 grams. It doesn't say between.
4 It's -- the words "less than 28 grams" are present in that
5 indictment.

6 So I -- I would ask for a directed verdict because that
7 element has not been met. The State is not alleging less than
8 28 grams. The State is alleging more.

9 THE COURT: All right. What about that?

10 MR. OSBORNE: That's a lesser-included. It's less than
11 28 grams, so it's a lesser-included. If he wanted to complain
12 about or challenge the indictment, the time to do that would
13 have been before we swore the jury. But -- but we went
14 forward with the lesser-included. It was right on the edge,
15 28.2. So we decided to go with the lesser.

16 I do think that is a novel argument to complain about
17 going forward with a lesser charge than the more serious
18 charge, but we contemplated that coming into it, and it was
19 just too close to it. The next statute contemplates 28 to 100
20 grams.

21 And then, you know, obviously the argument would then be
22 it's too close to the edge to say to find not guilty. So
23 we're kind of stuck between a rock and a hard place. We
24 decided to give him the benefit of the doubt and go under it.

25 THE COURT: Okay. What about that?

1 MR. SMALDONE: Your Honor, I just -- one, I just want to
2 address the concern. I didn't challenge the indictment
3 because there was no evidence of it. There was no evidence
4 presented yet of what the weight was. If the indictment
5 didn't allege an offense, I would challenge the indictment, or
6 if there was a deficiency in the body of the indictment,
7 something of that nature, I would have challenged it.

8 The reason I'm making it now is because there has now
9 been evidence presented by SLED that he had more than 28
10 grams. So I don't want -- I believe the time would be now to
11 -- to -- not just -- not necessarily challenge the indictment
12 but ask for a directed verdict on that charge.

13 As far as the lesser-included, Your Honor, the -- all I
14 -- I know the indictment says less than 28 grams. It does not
15 say between the range. It just says less than 28. So that's
16 -- that's my argument.

17 THE COURT: Got it. What else? What else do you have?

18 MR. SMALDONE: Your Honor, I just want to add one
19 sentence to that. Lesser-included offenses are, trust me I
20 know, only available when there is evidence to support them.
21 I know that in a murder charge, you do not automatically get
22 voluntary manslaughter.

23 THE COURT: Right.

24 MR. SMALDONE: And this -- there's no -- I didn't ask
25 questions from the chemist for a reason once I realized what

1 the issue was. There's no allegation that there's less than
2 28 grams. So I don't think there's evidence to support a
3 lesser-included.

4 THE COURT: Let me ask you this question. In that it is
5 a number, it is a weight, didn't they have to pass through 10
6 to 28 to get to 28.2?

7 MR. SMALDONE: I don't -- I don't believe it's a
8 chronological issue. I don't think it's like I'm 38 now, I
9 was 34 last year. I just think it is. I think the number
10 five is the number five. It is not the numbers one through
11 five, if that makes sense. I don't --

12 THE COURT: Yes. I think that -- so the question is, is
13 did he have in his possession an amount less than 28 grams,
14 not a total amount of less than 28 grams, but an amount of
15 less than 28 grams.

16 MR. SMALDONE: I don't believe he had anything in his
17 possession, but --

18 THE COURT: I understand 100 percent but because we have
19 this intellectual conversation.

20 MR. SMALDONE: Okay.

21 THE COURT: He is -- at this -- at this moment, he sits
22 there 100 percent innocent, not guilty, but you -- you've made
23 the motion and we've got to talk about it.

24 MR. SMALDONE: Yes.

25 THE COURT: I've been talking about it with you.

1 MR. SMALDONE: For argument's sake. I'm sorry.

2 THE COURT: Yes, we are, we are. So in order to have
3 28.2 grams, don't you have to have 23 grams and 24 grams and
4 25 grams? That's not a total. But if you were going to put
5 it on -- on -- on a scale, and we know that the ultimate --
6 the maximum amount is 24 -- 28.2, but as you put it on that
7 scale, aren't you passing all of those other parts along the
8 continuum on the scale, to include -- in other words, the
9 argument is, is that -- is that -- it's less. It's not 28.2,
10 which puts you in the higher category. You're getting the
11 benefit of what if they were incorrect on .2 -- .2 grams and
12 they they are proceeding under the lesser-included.

13 My larger concern would be this, and so I'll ask this of
14 the solicitor. What if this jury returned -- that if that is
15 argued and the jury returns a verdict of not guilty because
16 it's more than 28 grams, it's not less than 28 grams, do you
17 believe that jeopardy has attached for more than 28 grams?

18 MR. OSBORNE: Yeah. I think -- what is the -- gosh, what
19 is the test? It's not *Blockburger*, but there is a test
20 because I think -- because I would be presenting the same
21 exact facts.

22 THE COURT: Yes.

23 MR. OSBORNE: Yeah. So, no, I think if it comes back not
24 guilty, it's his lucky day. We're precluded.

25 THE COURT: Okay. I just -- I just wanted that on the

1 record irrespective. You know what I mean?

2 MR. SMALDONE: And I appreciate that.

3 THE COURT: I did not want to -- I didn't want to thicken
4 the porridge. I wanted to be sure that we all agreed that
5 that would not give the State the opportunity for a -- a
6 second bite at the apple, so to speak. Okay?

7 MR. OSBORNE: The only thing I would add is a point of
8 clarification. I don't think Mr. Smaldone meant it this way,
9 but I did furnish to him the complete SLED report showing that
10 it was 28.2 grams of --

11 THE COURT: Yes.

12 MR. OSBORNE: -- cocaine on August the 15th of 2022.

13 THE COURT: Got it. Very well. Any -- any other
14 argument?

15 MR. SMALDONE: There's no other argument. Just directed
16 -- we're asking for you to direct a verdict on those grounds.

17 THE COURT: Got it. Thank you. Well, with regard to the
18 28.2, I do think it's a lesser-included, and so I would
19 respectfully deny your motion with regards to that.

20 I'm going to take a few moments with regards to the
21 contraband, but -- but -- and I'll do that, but I am -- with
22 regards to the marijuana -- with regards to the -- the
23 trafficking, those are going.

24 So let me ask this question. Will it -- would it make a
25 difference with your client depending on how I rule on your

1 directed verdict motion on the contraband with regards to
2 whether he wishes to testify or not?

3 MR. SMALDONE: I do not believe -- I don't believe --
4 well, I'll discuss that with him.

5 THE COURT: Okay. Very well. So give me just a few
6 moments and -- and I'll examine your client.

7 Step that -- set that aside for a second. Will there be
8 any witnesses? And I'm not talking about Mr. Boyd. Will
9 there be any additional?

10 MR. SMALDONE: No, Your Honor.

11 THE COURT: Okay. Very well.

12 Well, I wanted to -- so you very well may be ready to
13 argue and charge. So why don't you all take -- just take your
14 break and then come back in chambers? I wanted to have an
15 informal charge conference and let me take a look at the other
16 issue.

17 MR. SMALDONE: I'm sorry, Your Honor. Did you want me to
18 go back there now or --

19 THE COURT: No. I'm just going to take a comfort break.

20 MR. SMALDONE: Sorry.

21 THE COURT: Just go take a comfort break, if you need to
22 before you chat with me. Then come on back, I don't know,
23 about five minutes, ten minutes, come on back. Y'all come on
24 back.

25 (WHEREUPON, there was a break in the proceedings from

1 3:49 p.m. until 4:29 p.m., after which the proceedings
2 resumed as follows.)

3 THE COURT: All right. I am going to allow all three
4 charges to -- to go to the jury. I think you have raised a
5 valid appellate argument, sure. The statute on contraband
6 does appear to go back to the Supreme Court. I don't know
7 that that issue was specifically raised, but -- but I -- after
8 having considered it and taking a little bit of time, I am
9 going to send all three to -- to the jury. So I would
10 respectfully deny your motion for a directed verdict, noting
11 your exception thereto.

12 All right. Now, I would like to ask some questions of
13 your client, if I may, with regards to whether he wishes to
14 testify or not testify. And we'll add that depending on what
15 what he wishes to do.

16 If you -- yes, sir. If you'd please stand, Mr. Boyd.

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And raise your right hand. Do you solemnly
19 swear or affirm that the testimony that you will give will be
20 the truth and the whole truth?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Thank you so much, sir. Mr. Boyd, of course,
23 you are Derrick Boyd; right?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: All right. At this time, I'm going to

1 explain to you certain of your rights. If you do not
2 understand anything I say, please -- please let me know. If
3 you want me to explain anything in more detail, please let me
4 know. Do you understand?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Very well. We've now reached the stage of
7 the trial where you may present your defense. You have the
8 right to claim the protections given to you by the Fifth
9 Amendment to the Constitution of the United States. This
10 amendment states in part no person shall be compelled in any
11 criminal case to be a witness against himself.

12 This means that you cannot be required to testify in this
13 case. You have the right to testify on your own behalf.
14 However, no one can make you testify. This is a personal
15 right, and no one can waive this right except you.

16 If you decide to testify, you will be subject to the same
17 rules that govern other witnesses, and you may be examined and
18 cross-examined on any relevant issue in this case. In
19 addition, if you have any convictions involving dishonesty or
20 false statement or for crimes punishable by imprisonment for
21 more than one year and this Court determines that the
22 probative value of admitting the evidence outweighs its
23 prejudicial effect to you, the solicitor will be able to
24 introduce your record to attack your credibility or
25 believability. It's relevant on the issue of truthfulness.

1 If you decide to testify, this decision on your part must
2 be freely, voluntarily, and intelligently made with knowledge
3 of the protections given to you by the Fifth Amendment and the
4 consequences of your decision to testify. If you decide not
5 to testify, I will instruct the jurors that they cannot give
6 the fact that you did not testify any consideration
7 whatsoever, and that there is to be absolutely no prejudice to
8 you because you did not testify.

9 It is left entirely up to you whether or not you testify.
10 You may talk -- you should talk to your attorney, family and
11 friends, or other people with whom you have confidence in
12 their judgment and their advice, but the final decision will
13 be left entirely up to you. Do you understand what I have
14 explained to you?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Okay. Do you have any questions about what
17 I've explained to you?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: All right. And have you discussed with your
20 attorney whether you should testify or whether you should not
21 testify?

22 THE DEFENDANT: Yes, ma'am. We talked about it.

23 THE COURT: All right. And do you need any more time to
24 speak with him regarding that?

25 THE DEFENDANT: No, ma'am.

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

2 THE DEFENDANT: No, ma'am.

3 THE COURT: Very well. I will add that charge so that
4 the jury will have that, the charge regarding Mr. Boyd's
5 decision not to testify.

6 MR. SMALDONE: Thank you, Your Honor.

7 THE COURT: All right. All right. Anything further?

8 MR. SMALDONE: Your Honor, no. I just want to examine
9 the -- sorry -- the things admitted into evidence briefly just
10 to --

11 THE COURT: Sure.

12 MR. SMALDONE: Just two seconds.

13 THE COURT: Absolutely.

14 And you can be seated, Mr. Boyd. Thank you so much.

15 MR. SMALDONE: Okay. Done.

16 THE COURT: Okay. Good.

17 Very well. Anything from the State?

18 MR. OSBORNE: No, Your Honor.

19 THE COURT: All right. And you'll argue first and then
20 you'll have the last argument.

21 Very well. Let's have a jury.

22 (WHEREUPON, the jury entered the courtroom at 4:34 p.m.)

23 THE COURT: All right. Ladies and gentlemen, I hope you
24 enjoyed your break.

25 Mr. Smaldone?

1 MR. SMALDONE: Defense rests, Your Honor.

2 THE COURT: Ladies and gentlemen, you have now received
3 all of the evidence. You've heard the testimony in this case.
4 What remains for us are the arguments of counsel and then my
5 charge or instruction on the law, and we are prepared to do
6 that now.

7 You will first hear from Mr. Osborne in his closing
8 argument. You will then hear from Mr. Smaldone in his closing
9 argument. Mr. Osborne argues on behalf of the State. Mr.
10 Smaldone obviously argues on behalf of Mr. Boyd.

11 Once you have heard the arguments of counsel, I will
12 explain the law applicable to this case and then you will
13 receive this case for your deliberations. Now, ladies and
14 gentlemen, at this time, I'm going to ask you to please draw
15 close as we listen to the closing arguments.

16 Yes, sir, Mr. Osborne.

17 MR. OSBORNE: Thank you, Your Honor. May it please the
18 Court.

19 THE COURT: Yes, sir.

20 CLOSING ARGUMENT ON BEHALF OF THE STATE

21 MR. OSBORNE: Ladies and gentlemen, we want to thank you
22 again for serving as jurors. As Ms. Elliott told you in the
23 beginning of this trial, this is a simple case and probably
24 the most straightforward case that a jury will ever see. But
25 make no mistake, it is an important case. It's important to

1 the defendant, and it's also important to the State.

2 I want to talk to you first about something that's
3 important and, as jurors, this is going to be all yours, and
4 it's credibility. You're going to hear the judge instruct you
5 on something like, credibility, you can believe all, none, or
6 some of what a witness tells you. And when you're judging
7 credibility, look at what fits. Look at what doesn't. You
8 corroborate. You corroborate the evidence in the case by what
9 witnesses tell you, and you corroborate it by the physical
10 evidence.

11 And lastly -- and this is most important skill that you
12 all have as jurors. Use your common sense. You are not
13 required to check your common sense when you go into the
14 deliberation room. You can bring it with you.

15 All right. I'm going to start by talking about the law.
16 In light of what Judge Goodstein said, here's the way it's
17 going to go. I'm going to talk first, then Mr. Smaldone is
18 going to talk, and then the judge is going to instruct you on
19 the law.

20 If I say something or you hear something from me that
21 differs from what Judge Goodstein says, or Mr. Smaldone,
22 ignore what we're telling you. The judge instructs you on the
23 law, and I would bet that you're going to hear something like
24 this.

25 The defendant has been charged with trafficking in

1 cocaine between 10 grams to 28 grams. So what does that mean?
2 You can get there from selling, manufacturing, cultivating,
3 delivering, purchase, or brought into the State. The next
4 way, same thing, except this way you're helping someone else
5 do it. You're aiding them. You're abetting them. You're
6 attempting to, conspiring to. And the last way -- and this is
7 why we're all here. You can simply possess it. When you get
8 to a certain weight of cocaine -- and that's ten grams or more
9 -- in this state that's trafficking.

10 And coming into this, I'm sure, you know, if someone told
11 you, you know, a guy has been arrested and charged with
12 trafficking cocaine, that's probably -- the first thing that
13 comes to your mind is probably, well, he's selling it. Well,
14 that's true. You can get there from selling it, but if you're
15 possessing that much cocaine, you're guilty of trafficking.

16 And while I'm talking about this, when the judge
17 instructs you on the law, you will not hear her say that if
18 you don't find he was trafficking, you can find him guilty of
19 possession of cocaine. You won't hear that because that's not
20 available to him. When you possess that much cocaine, you're
21 either guilty of trafficking or you're not guilty, one or the
22 other.

23 This is not a simple possession case. And then just to
24 hammer down the fact or a point, if you find that the
25 defendant possessed cocaine that the officers found between

1 his legs, he is guilty of trafficking in cocaine.

2 And I -- and just one other little point. I don't know
3 what Mr. Smaldone is going to say, but you're going to see --
4 and you might remember. It was -- this is 10 to 28 grams.
5 The forensic scientist testified that it's 28.2 grams. Well,
6 you might think, well, that's not 10 to 28. So, therefore,
7 he's not guilty.

8 That's not how that works. The next level from that is
9 28 to 100 grams. I mean, technically, could we have gone with
10 trafficking in cocaine between 28 to 100 grams? We could
11 have, but it's 28.2. Quite simply, that's too close to the
12 line. So we went with the lesser charge. If you find that he
13 possessed 28.2 grams, you find that he possessed 28 grams.
14 He's still trafficking.

15 Okay. I want to talk about another point, and this is a
16 little technical point about cocaine. And I'm not sure if Mr.
17 Smaldone is going to argue this or not, but he might say
18 something like, you know, the analysts only tested a small
19 amount of cocaine. So how do we know the rest that's in the
20 bag is also cocaine. That goes to sort of like a purity
21 argument or a quality argument. The law says this.

22 The State must also prove beyond a reasonable doubt that
23 the amount of the cocaine or any mixture containing cocaine
24 was ten grams or more, but not less than -- but less than 28
25 grams. So basically what that's contemplating is that if it's

1 super pure or it's not, maybe it's cut really good, it doesn't
2 matter. If the mixture tests positive for cocaine, it's
3 cocaine.

4 All right. The next charge, possession with intent to
5 distribute marijuana. We have to prove that the defendant was
6 in possession of marijuana, and the defendant had the intent
7 to distribute it.

8 So when we're talking about intent, the judge is going to
9 tell you something like intent may be shown by acts and
10 conduct of the defendant and other circumstances from which
11 you may infer intent. Intent. You'll remember that Deputy
12 Holder said inside the bag there was a scale with the
13 marijuana. There was also little baggies inside the scale,
14 and if he was selling, you would also expect to find a large
15 amount of cash on him. He had over \$1,600 cash on him.

16 And this is over two ounces of marijuana. So -- but --
17 so if you look at all of that, you've got the bag, you've got
18 the baggies, you've got the marijuana, you've got the scale,
19 you've got the money. It looks like he's intending to sell,
20 but you don't have to take my word for it. He said it
21 himself. Deputy Holder asked him, are you out there selling
22 this? Yeah, I sell it. That's possession with intent to
23 distribute.

24 Okay. When we're talking about possession, we have two
25 ways to prove possession. Okay? There's constructive

1 possession and actual possession. So when we're dealing with
2 the marijuana that's not actually found on him, so that's
3 constructive possession.

4 So what does that mean? Constructive possession means
5 that the defendant had knowledge of, dominion over, and the
6 intent to control. Well, you know he had knowledge of it
7 because when Deputy Holder asked him is there anything inside
8 the car, yeah, there's two ounces of weed. And I made a point
9 to ask, well, where did he say it was? Well, it was in a blue
10 bag. When he pulled it out, it was a blue bag. That's
11 constructive possession.

12 It's a bigger problem though, to be perfectly frank, is
13 the actual possession of the cocaine. Actual possession means
14 exactly what you think it does, that he was actually in
15 physical custody of the -- well, I say custody of the
16 defendant. Actual possession means the actual physical
17 custody of the defendant. It just means that it was actually
18 in his possession.

19 And, you know, I don't know, you might be back there
20 thinking, you know, when Holder asked, is that yours, he says,
21 well, it's mine now. Well, it was his all along. It's on his
22 body. It's in his possession. It's his.

23 The next charge, possession of contraband by an inmate.
24 It is unlawful for an inmate of a facility, in this case
25 Dorchester County Detention Center, to possess a -- to possess

1 a matter declared to be contraband. You've heard that there
2 were signs outside that said you can't bring dope, you can't
3 bring narcotics into the detention center. A narcotic is a
4 contraband.

5 And that's it. It's pretty straightforward. I could,
6 you know, play these CDs for you back there. We have a
7 computer that may or may not go back. If you want the
8 computer back there with you, it'll have a CD drive in there.
9 You can pop it in there. You can play it all yourself.

10 If not and you do want to see any part of it, just send
11 up a note to the judge and then we can come back in here and
12 play it. It'd be good if you tell us exactly what you want to
13 hear so we can go to that.

14 But being the last time that I'm going to talk to you, in
15 this state you don't get to ask me questions. So I sort of
16 have to kind of envision what some of your questions might be
17 and also address any issues that I think Mr. Smaldone might
18 bring up.

19 The first thing I want to talk about is the traffic stop.
20 Mr. Smaldone might say, you know, it's a bad stop. Well, I
21 think we've all understood -- all -- remember back to our
22 driver's ed day and when we took that driver's test. When we
23 saw that line, you stopped behind the line. Everybody knows
24 that.

25 Now, I'm not saying if you did what he -- what Mr. Way

1 did and you crossed the line and stopped in the middle of it
2 that you would fail. You might not fail the driver's test,
3 but you're certainly going to get dinged on it. It's a
4 traffic infraction.

5 It's not the most serious infraction that you'll ever see
6 or the most egregious one, but Mr. Way is not on trial. If he
7 were on trial for that traffic violation, I'd be talking to
8 you about the same thing that I'm talking right now. When you
9 break the law, you get held accountable. I want to talk to
10 you in a minute about jury nullification and how that plays
11 into this case.

12 All right. The next thing I want to talk about is
13 evidence. You're going to hear the judge -- the judge tell
14 you that evidence is what comes out of that witness stand.
15 What I'm saying right now is not evidence. What Mr. Smaldone
16 says is not evidence. Evidence came out of that stand.

17 The only evidence that you saw in this case was presented
18 by the State. If you hear Mr. Smaldone say something that you
19 did not hear come out of that witness stand, that's
20 conjecture. You can ignore conjecture because it's not
21 evidence. He didn't have to put up any evidence. We did.
22 And we have to. It just -- it's a high burden, but it's one
23 that we welcome.

24 I want to talk about the BEST kit for a second with the
25 cocaine, just to make sure that we were abundantly clear on

1 this. So, you know, if Mr. Smaldone does argue that this was
2 somehow improperly sealed -- and you'll have this back there
3 with you, I think. The BEST kit is what's inside. It's the
4 blue kit. All it is is a bag. It's labeled the BEST kit.

5 When Mr. -- when Deputy Holder put that in, he didn't
6 line up -- like Miss Noffsinger told you, he didn't line up
7 the -- the sticky, and it kind of left a little bit of air
8 coming through the BEST kit. So he had to come back and then
9 reseal it.

10 But the cocaine was in a heat-sealed bag that he sealed
11 and put his initials on. That was never compromised. The
12 only thing that was compromised is the BEST kit, but -- but
13 you heard testimony from multiple people the cocaine would
14 have never been compromised. Don't get distracted by that.

15 The -- the -- and I just have to point this out. So in
16 his opening, Mr. Smaldone didn't make the comment like -- you
17 know, he told a story about his grandmother, and he said that
18 his grandmother made lasagna. And one time she had been -- I
19 think the story went one time she asked him to reheat the
20 lasagna, and he took a sniff and it didn't smell right.

21 And he says -- you know, he's asking you to take a second
22 sniff, and if you don't take a second sniff, then I suppose
23 you have to find the defendant not guilty. I think you're
24 going to have this back there with you. If you want to take a
25 second sniff, you certainly can, but based on where this came

1 from, I wouldn't recommend it. I know I wouldn't sniff it.

2 All right. I want to talk to you about reasonable doubt.
3 Now, sometimes you'll hear defense attorneys come up here and
4 they'll give you clever metaphors or analogies about what
5 reasonable doubt is. Reasonable doubt. And that's not the
6 law though. The law is clear. Proof beyond a reasonable
7 doubt is the proof that leads you firmly convinced of the
8 defendant's guilt. The law does not require proof that
9 overcomes every possible doubt.

10 There are few things in life that we know to an absolute
11 certainty, but I would submit to you that this case isn't
12 about reasonable doubt. There's no doubt. It was literally
13 found on his person.

14 And the last thing I want to talk about -- and I kind of
15 mentioned this a little bit. It's jury nullification. We
16 don't talk about this a lot in criminal cases, but it's a term
17 that we all use, and basically what it means is this. The
18 jury is firmly convinced of the defendant's guilt, but they
19 come back with a verdict of not guilty for some other reason.
20 Okay?

21 Usually that reason has something to do with the fact
22 that the jury doesn't think the crime is all that serious, and
23 they don't want to see the defendant punished. Okay?
24 Punishment. When a jury starts thinking about that, a jury is
25 going outside of your lane. You're going outside of your

1 oath.

2 Punishment, a sentence, if you decide to convict him, is
3 determined by the judge. That's her job. That's her lane.
4 If you convict, the judge is going to hear all the factors
5 regarding all the sentence -- regarding the sentence, and
6 that's her job to do.

7 In this case, Deputy Holder did his job. You heard from
8 all of the chain witnesses that came up here. We had to call
9 them. If we didn't call them, you sure would have heard --
10 heard about it. They did their job. The forensic analyst did
11 her job, both of them, and now we're asking you to do your
12 job.

13 The defendant was in possession of between 10 to 28 grams
14 of cocaine. So that would be a trafficking. So we're asking
15 you to convict him of trafficking in cocaine, possession with
16 the intent to distribute marijuana, and possession of
17 contraband by an inmate.

18 Thank you.

19 THE COURT: Thank you.

20 Mr. Smaldone, on behalf of Mr. Boyd.

21 MR. SMALDONE: May it please the Court.

22 THE COURT: Yes, sir.

23 CLSOING ARGUMENT ON BEHALF OF THE DEFENDANT

24 MR. SMALDONE: Good afternoon. I know it's fairly late.
25 I'll try to be as brief as possible, but I ask that you just

1 give me this one last opportunity to speak with you because I
2 think it's important for everyone, and I know it's important
3 for Derrick and his family that are here.

4 In the beginning of this case, you were basically handed
5 a puzzle; right? A box with a bunch of puzzle pieces in it,
6 and the State's job was to assemble that puzzle. Now, of
7 course, the puzzle was unsealed when you got it, but that's
8 neither here nor there. Their job is to assemble the puzzle,
9 and they didn't do it. There's missing pieces. There's
10 backwards pieces. There's pieces of other puzzles in there.
11 It's just wrong. And when that puzzle is wrong, Derrick's not
12 guilty.

13 So what's wrong with this case? What's fishy about this
14 case? What's weird about this case? Well, going back, look
15 at the stop. Right? I asked myself, who gets pulled over for
16 stopping after the stop line of a stop sign?

17 You heard testimony that basically his job was to pull
18 that car over; right? He -- any reason, going to pull that
19 car over. So he's already a target. He goes to the car,
20 immediately smells marijuana. It's from like 15, 20 feet
21 away, but somehow he smells marijuana. Targets Derrick right
22 away; right? Within I think a minute and a half, maybe two
23 minutes gets him out of the car.

24 And what did Derrick do? Yes. About -- officer asked
25 about the weed. He said yeah. After a little while he said,

1 yeah, I sell it. First, he said I smoke it. And he's like, I
2 have weed. The weed is mine. I sometimes sell it. He didn't
3 say that that weed was for him to sell. Of course, he just
4 said, sometimes I sell it and I have weed. Honest about
5 everything; right?

6 And then searched, patted down. Nothing. Right? Find
7 some bags that he says are cocaine and then doesn't test them.
8 Finds a scale that supposedly has white powder on it. Doesn't
9 test that. Not in evidence in this case. I don't know where
10 that went. Probably the great attic in the sky, along with
11 the baggies that were supposedly in the truck, along with the
12 bags that had a little bit of residue. We submit, if they
13 existed, it was just crystals or residue from the weed. We
14 don't know that though because they're not here and they
15 weren't tested. So all of that.

16 And then like I said, he was patted down. Look at the
17 pat down. Grabs him pretty firmly. Not -- not in an
18 aggressive way, but grabs him, searches him. Said he -- said
19 he -- Derrick said you came close to my nuts, something like
20 that. So it was pretty intimate. Nothing.

21 And look at Derrick on the video. He moves around, is
22 bent over the car for a while. He's not waddling. He's not
23 -- he's not a penguin; right? No. Just a normal -- normal
24 dude. So where was it? I don't know. It's not my job to
25 tell you because I don't know. I wasn't there.

1 All I know is I'm here because the State thinks that they
2 could prove beyond a reasonable doubt, and they handed you a
3 check at the beginning of this case, and that check just
4 bounced. Gone. They failed. So what do we have?

5 All right. Gets to the jail. Patted down again on
6 video; right? And then he's in public; right? Not public,
7 but everyone at the jail could see. And then when they find
8 this -- this bag that supposedly exists, despite patting him
9 down and intimately, I'll say -- despite patting him down, the
10 one place where they find it is the place where no one else
11 can see. He strips in a little closed area, a strip search
12 room, and conveniently, the one time that this isn't on
13 camera, is not on video, you don't see it.

14 You hear audio, and he says I guess it's mine now because
15 he knows what's up. He knows if it is found anywhere near
16 him, he's out of luck. He doesn't say it's mine. He doesn't
17 say, yeah, that's the cocaine. He said, what is this? He
18 says, well, it looks like cocaine. Never says it's his.
19 Despite what you've been told from several witnesses, never
20 says it's mine now. He's out of luck.

21 Then this cocaine that appeared in the one private area
22 at the jail after -- oh, by the way, after -- I think it was
23 an hour and a half is from the beginning of the traffic stop
24 to the time at the jail, an hour and a half, and he said he
25 was clenching.

1 Maybe -- maybe Derrick works out a lot. I cannot clench
2 for an hour and a half, two hours. That's just not going to
3 happen. Nor what time did it fall out? I don't know where it
4 is. I know where it wasn't, and that's on Derrick. I know
5 what didn't happen, and that's the State did not prove beyond
6 a reasonable doubt that it was Derrick's.

7 So that's really what we're here for; right? We're not
8 here to determine, to weigh the scale, and say I think it
9 might be -- I think it might be Derrick. I think it might not
10 be Derrick. That's not what this is. That's not what a
11 criminal case is about. In fact, if you're, like, I think
12 it's probably Derrick, it's possible something else happened,
13 but it's probably him, that is the same thing as a not guilty
14 verdict.

15 Back in the day, I think it was -- I don't know --
16 Scotland or something, we get part of our justice system from
17 there. They used to have three verdicts. It was guilty,
18 innocent, and not proven. That was the third verdict. And
19 when you get your verdict form in hopefully a few short
20 minutes, you won't see innocent and you won't see not proven.
21 They kind of merged into one verdict called not guilty. It
22 means that Derrick's innocent or Derrick's -- the State didn't
23 prove their case.

24 Like I said, if you think there is a real possibility --
25 and you'll hear that from the judge. A real possibility, that

1 is a not guilty verdict. Check your emotions at the door.
2 Like I said at the beginning, a not guilty verdict. So that's
3 what reasonable doubt is. Reasonable doubt is thinking
4 something else could possibly have happened, and that's what
5 you'll hear from the judge.

6 And when you go back there in a few minutes, I ask that
7 you do that. I ask that you think logically, rationally.
8 Think about everything missing in this case and everything
9 present. Everything present. You've got a video. He's not
10 on it. The one time that there's no video shown, it's
11 supposedly fine. In the one private area of the jail after an
12 hour and a half, not waddling, it doesn't add up. You got a
13 messed up puzzle. You got a bounced check. I don't know how
14 many metaphors I can throw in there. I'll just use those two.

15 So I want you to go back there in a few minutes and do
16 the right thing. Each of you individually is a juror. You're
17 a jury collectively, but each of you individually is your own
18 juror. You bring your own set of life experiences. Each of
19 you has the power to do the right thing. Each of you,
20 individually and together, have the power to say, no, this
21 doesn't work. Something's not right. Something's not adding
22 up. It didn't prove beyond a reasonable doubt because that's
23 that cocaine and because they didn't prove beyond a reasonable
24 doubt that he possessed that cocaine, he didn't introduce or
25 furnish contraband to the jail, and they didn't prove that

1 that -- that exact weed was -- he was planning to sell it
2 because he said I smoked weed. They have to prove that that's
3 the marijuana that he was going to sell. Didn't do it.

4 So that's what I'm asking you to do. I'm asking you to
5 find Derrick not guilty because the State has not proven
6 beyond a reasonable doubt. There's that bag that was open for
7 a month. Is that a missing puzzle piece? I think so. That's
8 an open puzzle piece. The wrong puzzle piece. It's
9 backwards, missing, wrong puzzle.

10 And then -- and then they don't charge him with the right
11 thing. Of course, they say that he had less than 28 grams.
12 And you heard what he said, but like you -- like I told you,
13 you have to listen to the judge. Listen to what she says.
14 She will say that he possessed less than 28 grams.

15 Now, he didn't possess anything, but that's just one more
16 piece; right? That's just one more example of things not
17 working. That's one more real possibility, like I said.

18 So I'm almost done talking. I've got about 30 seconds
19 before I'm going to sit down. I ask you to do the right
20 thing, find him not guilty, because I'm going to not be able
21 to talk anymore. I'm not going to come out and answer
22 questions and do a group chat and give you another argument.

23 So I just ask that you answer those questions for me,
24 answer those questions before you because he's not -- he's out
25 of my hands at this point and I'm going to put -- put him in

1 your hands. I know you're going to do the right thing. Find
2 him not guilty. Thanks.

3 THE COURT: And thank you.

4 All right. Ladies and gentlemen, stand up right quick.
5 Just stretch a moment before I deliver the charge to you so
6 that you will be able to listen to me as I do that, and then
7 just move around a little bit, get some oxygen going, and when
8 you're ready to be seated, be seated.

9 That's great. Very well. And let me hold the
10 indictments, and I am ready when you guys are ready. I'll
11 just -- does anybody need to take a quick comfort break?
12 Everybody's good for about 15 -- 20 minutes?

13 CHARGE ON THE LAW

14 THE COURT: All right. Ladies and gentlemen, you have
15 now heard the evidence and you've heard the arguments of both
16 sides. It is now my duty to explain to you the law applicable
17 to this case.

18 I remind you that during this trial, you and I have had
19 certain duties to perform. As the trial judge, it is my
20 responsibility to preside over the trial, and I also have the
21 duty to rule on the admissibility of the evidence. You are to
22 consider the evidence before you. You are to consider the
23 testimony which has been presented and the exhibits which have
24 been made a part of the record in this case. I have the
25 additional duty to charge you regarding the law applicable to

1 this case.

2 As the presiding judge, I am the sole judge of the law,
3 and it is your duty as jurors to accept and apply the law as I
4 now state it to you. If you already have any idea about what
5 the law is or what it ought to be and it does not agree with
6 what I now tell you the law is, you must abandon your
7 preconceived idea because you are sworn to accept and to apply
8 the law as I now state it to you.

9 Ladies and gentlemen, in every case tried before a jury,
10 the jury becomes the sole and the exclusive judge of the
11 facts. A trial judge cannot intimate, state, comment on, or
12 make any statement to a trial jury about the facts.

13 Since you, the jury, are the sole judges of the facts,
14 you are not to infer from what I have said during the progress
15 of this trial in ruling on the admissibility of the evidence
16 or otherwise, or anything that I say now during the course of
17 this instruction to you that I have any opinion about the
18 facts. The law does not allow me to have an opinion about the
19 facts. This is a matter solely for you to determine. As
20 jurors, it is your duty to determine the effect, the value,
21 the weight, and the truth of the evidence.

22 Now, ladies and gentlemen, the indictments in this case
23 -- and there are three of them. Each of them allege one
24 offense against the defendant. The charges are trafficking in
25 cocaine, ten grams or more, but less than 28 grams,

1 manufacturing or possession with intent to distribute
2 marijuana, and possessing or furnishing prohibited contraband
3 in a county or municipal prison.

4 Each indictment charges a separate and distinct offense.
5 You must decide each indictment separately on the evidence and
6 the law applicable to it, uninfluenced by your decision as to
7 any other indictment. The defendant may be convicted or
8 acquitted on any or all of the offenses charged, meaning found
9 guilty or not guilty on any or all of the offenses charged.
10 You will be asked to write a separate verdict of guilty or not
11 guilty for each indictment.

12 The defendant has pled not guilty to these indictments,
13 and that plea places the burden on the State to prove the
14 defendant guilty. A person charged with committing a criminal
15 offense in South Carolina is never required to prove himself
16 not guilty. I charge you that it is an important rule of the
17 law that a defendant in a criminal trial, no matter the
18 seriousness of the charge, will always be presumed to be
19 innocent of the crime for which the indictment or indictments
20 were issued unless guilt has been proven by evidence
21 satisfying you of that guilt beyond a reasonable doubt.

22 This presumption of innocence does not end when you begin
23 your deliberations, but it accompanies the defendant
24 throughout the trial until you should reach a verdict of guilt
25 based on evidence satisfying you of that guilt beyond a

1 reasonable doubt. The presumption of innocence is like a robe
2 of righteousness placed about the shoulders of the defendant,
3 which remains with the defendant until it has been stripped
4 from the defendant by evidence satisfying you of the
5 defendant's guilt beyond a reasonable doubt, and you do this
6 analysis separately and independently on each of these three
7 indictments.

8 The presumption of innocence is not a mere legal theory.
9 It is not just a legal phrase. It is a substantial right to
10 which every defendant is entitled unless you, the jury, are
11 satisfied from the evidence of the defendant's guilt beyond a
12 reasonable doubt.

13 What is reasonable doubt in the law? A reasonable doubt
14 is the kind of doubt that would cause a reasonable person to
15 hesitate to act. The State has the burden of proving the
16 defendant guilty beyond a reasonable doubt.

17 Some of you may have served as jurors in civil cases,
18 where you were told that it is only necessary to prove that a
19 fact is more likely true than not true, such as the greater
20 weight or the preponderance of the evidence. In criminal
21 cases, the State's proof must be more powerful than that. It
22 must be beyond a reasonable doubt.

23 Proof beyond a reasonable doubt is proof that leaves you
24 firmly convinced of the defendant's guilt. There are very few
25 things in this world that we know with absolute certainty, and

1 in criminal cases the law does not require proof that
2 overcomes every possible doubt.

3 If, based on your consideration of the evidence, you are
4 firmly convinced that the defendant is guilty of the crime
5 charged, you must find the defendant guilty. If, on the other
6 hand, you think there is a real possibility that the defendant
7 is not guilty, you must give the defendant the benefit of the
8 doubt and find him not guilty. You will do this analysis
9 independently and separately with regard to each of these
10 three indictments.

11 Now, ladies and gentlemen, there are typically two types
12 of evidence which are presented during a trial. One is called
13 direct evidence and the other is circumstantial evidence.

14 Direct evidence is the testimony of a person who claims
15 to have actual knowledge of a fact, such as an eyewitness.
16 Circumstantial evidence is proof of a chain of facts and
17 circumstances indicating the existence of a fact.

18 The law makes absolutely no distinction between the
19 weight or value to be given to either direct or circumstantial
20 evidence, nor is a greater degree of certainty required of
21 circumstantial evidence than of direct evidence. You should
22 weigh all of the evidence in the case, and after weighing all
23 of the evidence, if you are not convinced of the guilt of the
24 defendant beyond a reasonable doubt, you must find the
25 defendant not guilty.

1 The State has the burden of proving the defendant guilty
2 beyond a reasonable doubt. This burden rests with the State,
3 regardless of whether the State relies on direct evidence,
4 circumstantial evidence, or some combination of the two.

5 Necessarily then, you must determine the credibility of
6 the witnesses who have testified. Credibility simply means
7 believability. It becomes your duty as jurors to analyze and
8 to evaluate the evidence and determine which evidence
9 convinces you of its truth.

10 In determining the believability of the witnesses who
11 have testified, you may believe one witness as opposed to
12 several witnesses or several witnesses over one witness. You
13 may believe a part of a witness's testimony and reject the
14 remaining part of that same witness's testimony. You may
15 believe the testimony of a witness in its entirety, or you may
16 reject the testimony of a witness in its entirety. You may
17 consider whether any witness has exhibited to you any
18 interest, bias, prejudice, or other motive. You may also
19 consider the appearance and the manner of a witness while on
20 the witness stand.

21 Now, ladies and gentlemen, in this case, you have heard
22 the testimony of one deemed to be an expert witness. Our
23 rules of evidence ordinarily do not permit witnesses to
24 testify to opinions or conclusions. An exception to this rule
25 exists for witnesses we call expert witnesses, a witness who

1 by education and experience has become an expert in some art
2 or science or profession or calling, and they may state an
3 opinion as to relevant and material matters in which the
4 witness claims to be an expert, and they may also state the
5 reasons for the opinion or opinions.

6 You should consider any expert opinion received in
7 evidence and, like any other evidence, give it the weight that
8 you think it deserves. If you decide that the opinion of an
9 expert witness is not based on sufficient education and
10 experience or if you conclude that the reasons given in
11 support of the opinion are not sound or that the opinion is
12 outweighed by other evidence, you may disregard the opinion
13 entirely.

14 An expert's testimony is to be given no greater weight
15 than that of other witnesses simply because the witness is an
16 expert. Further, you are not required to accept an expert's
17 opinion, even though it is not contradicted.

18 I instruct you and I emphasize that the fact that the
19 defendant did not testify is not -- is not a factor to be
20 considered by you in any way in your deliberation and in your
21 consideration on the questions of whether the defendant is
22 guilty or not guilty. It must not be considered by you in any
23 manner whatsoever.

24 A defendant has the constitutional right to remain
25 silent, and the assertion of this right must not be considered

1 by you in any way whatsoever. I repeat, under your oath, you
2 are not to draw any conclusion whatsoever from the fact that
3 the defendant in this case did not testify. The fact that
4 this defendant did not testify, ladies and gentlemen, should
5 not be discussed. It should not be mentioned in your jury
6 room during your deliberations.

7 The burden of proof, as I have stated to you, is on the
8 State and only on the State. The defendant is not -- is not
9 required to prove himself not guilty. The burden of proof
10 remains on the State to prove guilt beyond a reasonable doubt.
11 This, of course, applies to all three charges.

12 Now, ladies and gentlemen, a statement alleged to have
13 been made by the defendant has been admitted into evidence.
14 While the Court has determined that the statement is
15 admissible, I instruct you that you make the ultimate decision
16 of whether or not the defendant made the statement. If the
17 defendant did make the statement, you must determine whether
18 the statement was made by the defendant voluntarily and of his
19 own free will. This means that the statement was not caused
20 by pressure or force or fear or threats, coercion or
21 intimidation, or by hope or a promise of leniency or a reward
22 of any kind.

23 In determining whether the statement was voluntary, you
24 should consider both the characteristics of the defendant and
25 the details of the questioning. Some of the factors that you

1 must consider are the age of the defendant, the defendant's
2 education or lack of education, the defendant's mental ability
3 or capacity, the defendant's IQ or intelligence, the
4 defendant's background and environment, the place and length
5 of detention, the nature of the questioning, and the advice or
6 lack thereof to the defendant of his constitutional rights,
7 including but not limited to the right to remain silent, that
8 any statement could be used against him in a court of law, the
9 right to have a lawyer present, that if he could not afford a
10 lawyer, a lawyer would be appointed to represent him without
11 any cost, and that he could stop making a statement at any
12 time. You must carefully consider all of the surrounding
13 circumstances before you give any weight to an alleged
14 statement.

15 The State has the burden of proving beyond a reasonable
16 doubt that the alleged statement was voluntary. If you
17 consider it was, you may give the statement any further
18 consideration that you deem proper. You must decide what
19 weight, if any, should be given to the alleged statement. If
20 you determine the alleged statement was not the free and
21 voluntary statement of the defendant, you should not consider
22 the statement at all.

23 Now, in order to establish criminal liability, criminal
24 intent is required. For example, the mental state required to
25 be proven by the State for a particular crime might be

1 purpose, intent, knowledge, recklessness, or criminal
2 negligence. Criminal intent must be proven by the State
3 beyond a reasonable doubt. Criminal intent is always a matter
4 that must be determined by the jury from the circumstances
5 surrounding the situation.

6 There is no way to prove intent to a mathematical
7 certainty. There is no way medical science can dissect a
8 person's brain and determine what the person had in mind. So
9 the State -- so the law says that criminal intent may be
10 inferred from the circumstances shown to have existed. This
11 is how you make a determination whether or not the element
12 requiring intent is present.

13 It is not necessary to establish intent by direct and
14 positive evidence, but intent may be established by inference
15 in the same way as any other fact, by taking into
16 consideration the acts of the parties and all the facts and
17 circumstances of the case. Criminal intent is a mental state,
18 a conscious wrongdoing. It is up to you to determine what the
19 defendant intended to do based on the circumstances shown to
20 have existed.

21 Criminal intent can arise from action or failure to act.
22 It may arise from other matters, violations of duty under the
23 law, and it can arise out of circumstances which the law finds
24 to be the equivalent of criminal intent.

25 Now, ladies and gentlemen, I'm going to now define for

1 you the three charges and the elements and, again, these
2 charges have their own elements, and the State must prove each
3 element of each offense beyond a reasonable doubt. You must
4 consider them separately and independently. I'm first going
5 to talk to you about trafficking.

6 Ladies and gentlemen, the defendant is charged with
7 trafficking in cocaine. The State must prove beyond a
8 reasonable doubt that the defendant knowingly sold,
9 manufactured, cultivated, delivered, purchased, brought into
10 this state, provided financial assistance, or otherwise aided,
11 abetted, attempted, or conspired to sell, manufacture,
12 cultivate, deliver, purchase, or bring into this state
13 cocaine, was knowingly in actual or constructive possession
14 and -- or knowingly attempted to become in actual or
15 constructive possession of cocaine.

16 Now, ladies and gentlemen, obviously, the State must
17 prove that the substance was, in fact, cocaine and must prove
18 that beyond a reasonable doubt, and the State must also prove
19 beyond a reasonable doubt that the amount of cocaine or any
20 mixture containing cocaine was 10 grams or more, but less than
21 28 grams.

22 Now, to prove possession, the State must prove beyond a
23 reasonable doubt that the defendant had both the power and the
24 intent to control the disposition of the cocaine. Possession.
25 The State must also prove beyond a reasonable doubt that the

1 defendant had the power and the intent -- intent to control.
2 I mentioned disposition, but also -- or the use of the
3 cocaine. So it is the -- the power and the intent to control
4 the disposition or use of the cocaine.

5 Possession may be either actual or constructive. Actual
6 possession means that the cocaine was in the actual physical
7 custody of the defendant. Constructive possession means that
8 the defendant had the right and power to exercise control over
9 the cocaine itself, and that the defendant had the right and
10 power to -- to exercise control over the disposition and use
11 -- or use, I should say, disposition or use of the cocaine.

12 Mere presence at the scene where the drugs were found is
13 not enough to prove possession. The defendant's knowledge and
14 possession may be inferred when a substance is found under the
15 defendant's control -- under the defendant's control.

16 However, inference is simply an evidentiary fact to be taken
17 into consideration by you, along with the other evidence in
18 the case, and to be given the weight you decide it should
19 have. Now, ladies and gentlemen, that is trafficking.

20 Next, possession with intent to distribute. The
21 defendant is charged with possession with intent to distribute
22 marijuana. The State must prove beyond a reasonable doubt
23 that the defendant possessed marijuana with the intent to
24 distribute it. To prove possession, the State must prove
25 beyond a reasonable doubt that the defendant had both the

1 right, the power, and the intent to control the disposition or
2 use of the marijuana, as well as the possession of the
3 marijuana.

4 The possession may be either actual or constructive.
5 Actual possession means that the marijuana was in the actual
6 physical custody of the defendant. Constructive possession
7 means that the defendant had the right and power over the
8 marijuana itself and the right and power over the disposition
9 or use of the marijuana.

10 Mere presence at the scene where the drugs were found is
11 not enough to prove possession. The State must also prove
12 beyond a reasonable doubt that the defendant intended to
13 distribute the marijuana. Distribute means to deliver, other
14 than by administering or dispensing a drug. Intent may be
15 shown by acts and conduct of the defendant and other
16 circumstances which you may naturally and reasonably infer
17 intent.

18 In determining whether the defendant had the intent to
19 distribute the marijuana, you may consider the circumstances
20 surrounding the defendant's alleged possession. You may
21 consider the amount of the substance alleged to have been
22 possessed, the manner in which it was alleged -- allegedly
23 possessed, and the other factors which you consider to be
24 important.

25 You must find that the defendant did not intend to have

1 the marijuana solely for his own use. The possession of more
2 than 28 grams or one ounce of marijuana creates an inference
3 that the defendant possessed the marijuana with intent to
4 distribute. This inference does not, however, relieve the
5 State from proving beyond a reasonable doubt that the
6 defendant had the intent to distribute. It is simply an
7 evidentiary fact to be taken into consideration by you, along
8 with the other evidence in the case, and it is to be given the
9 weight you decide it should have.

10 Now, ladies and gentlemen, the defendant has been charged
11 with possessing or furnishing prohibited contraband in a
12 county or municipal prison. It is unlawful for a person to
13 furnish or attempt to furnish a prisoner in any county,
14 municipal, or multi-jurisdictional jail, prison camp, work
15 camp, or overnight lock-up facility with a matter declared to
16 be contraband. It is unlawful for an inmate of a facility to
17 possess a matter declared to be contraband.

18 Ladies and gentlemen, contraband is defined as any item
19 which is not issued to the prisoner officially or which cannot
20 be purchased by him or her in the prison canteen. Weapons,
21 any and all firearms, knives of any and all description,
22 clubs, billies, or other article that may be used for offense
23 or defense, drugs of any description and particularly
24 barbiturates, narcotics, medicines, and poisons, any and all
25 types of alcoholic drinks and any liquid containing alcohol,

1 keys and locks, tools of any description not approved for
2 issue to prisoners by the director, money in any denomination
3 or amount not submitted through the prison treasurer.

4 Ladies and gentlemen, the notice of contraband and what
5 is contraband pursuant to law and regulation must be displayed
6 -- must be displayed in a conspicuous place, available and
7 visible to visitors and inmates at the facility.

8 Now, ladies and gentlemen, as I told you at the beginning
9 of the trial, we have certain duties to perform. It is and
10 has been my duty to preside over the trial, and I have had the
11 duty to rule on the admissibility of the evidence offered
12 during the trial.

13 The State has entered a video record -- or video
14 recordings and audio recordings into evidence for your
15 consideration. Prior to these videos and audio being offered
16 into evidence, there have been certain portions of the
17 recordings which have been redacted or edited out. I now
18 charge you that you are not to consider the fact that portions
19 of the video and audio may appear to be edited in any way
20 during your deliberations.

21 Now, ladies and gentlemen, in just a moment, I'm going to
22 go over with you the verdict forms. There is a verdict form
23 for each of these indictments. There are two possible
24 verdicts with regards to each of these indictments, and they
25 have been placed on paper. One is first and one is second.

1 Ladies and gentlemen, you are to take no hidden meaning
2 in the order in which these two possible verdicts are placed
3 on this paper. It's just reality one's got to be first and
4 one's got to be second. There's no hidden meaning, and please
5 don't take that there's any hidden meaning or hidden message
6 to you based upon the order in which these possible verdicts
7 are placed on this paper. I could have just as easily put the
8 second one first and the first one second.

9 Let me also tell you that before we go over the verdict
10 forms, your verdict must be unanimous. This is not a majority
11 rule, and this is not any one of you rule. This verdict must
12 be the verdict of each and every one of you twelve.

13 The little bit of notice, Mr. Alternate, that I need you
14 to remain with me when the jury leaves for deliberations.
15 Thank you, Mr. Provost. All right, now -- or Prevost.

16 Now, ladies and gentlemen, Indictment 2021-GS-18-01041,
17 which is the indictment for trafficking in cocaine, the
18 verdict form states as to the indictment for trafficking in
19 cocaine, we, the jury, unanimously find the defendant, Derrick
20 Gerard Boyd, and the two possible verdicts. One is guilty and
21 one is not guilty. With regards to whichever is the unanimous
22 verdict of this jury, I'm going to ask you to circle whichever
23 is the verdict of the jury so it's clear.

24 In Indictment 2021-GS-18-01043, this verdict form states
25 as to the indictment for possession with intent to distribute

1 marijuana, we, the jury, unanimously find the defendant,
2 Derrick Gerard Boyd, and there are two possible verdicts. One
3 is not guilty, one is guilty. Whichever is the unanimous
4 verdict of this jury, circle it once the jury has reached its
5 verdict.

6 And with regards to Indictment 2021-GS-18-01042, the
7 verdict form states as to the indictment for possessing or
8 furnishing prohibited contraband in a county or municipal
9 prison, we, the jury, unanimously find the defendant, Derrick
10 Gerard Boyd, two possible verdicts, guilty or not guilty.
11 Whichever is the unanimous verdict of the jury, I'm going to
12 ask you to please circle that so that it is clear which is the
13 verdict of -- the unanimous verdict of the jury with regards
14 to that charge as well.

15 Now, in just a moment, I'm going to ask you to step to
16 your jury room with this instruction. Do not discuss this
17 matter or allow anyone to discuss it with you. What? This is
18 what I told you. You're getting prepared to deliberate. So
19 let me tell you what will happen.

20 Ladies and gentlemen, when you step back to your jury
21 room on this next occasion, I'm going to turn to these
22 attorneys and I'm going to ask them two questions. Have I
23 given this jury all of the law that they may need for their
24 deliberations and have I stated it for them correctly? I may
25 need to bring you back out because I have failed to give you

1 an instruction that you may need for your deliberations.

2 So in the event that I need to bring you back out for
3 that reason, please don't consider that instruction with any
4 emphasis. Just know this is my one chance to get this right,
5 to give you all of the law that you may need for your
6 deliberations.

7 Sometimes something comes out wrong, and these lawyers
8 help me know that. Goodness knows it's unintended, but
9 sometimes it does happen. And in the event that I need to
10 bring you back out for that reason, I'm going to ask you in
11 advance to please allow me to correct my error in your mind
12 because this is my one chance to get this right, to give you
13 all the law that you may need for your deliberations and to
14 state it for you correctly. Now, in the event that I do not
15 need to be bring you back out, you will be brought the verdict
16 forms and the exhibits and an instruction to begin your
17 deliberations.

18 Now, ladies and gentlemen, at this time, please step back
19 to your jury room. Do not discuss this matter. Do not allow
20 anyone to discuss it with you. We will be with you shortly.

21 Except for you.

22 THE ALTERNATE JUROR: Do I stay here?

23 (WHEREUPON, the jury exited the courtroom at 5:40 p.m.)

24 THE COURT: What I'm going to ask you to do for us,
25 they're going to place you in the other jury room, and let me

1 tell you why. I'm going to ask you to give us 15 minutes of
2 your time once the jury begins its deliberations because I
3 believe that if something should happen to one of our jurors
4 -- and it's happened before when they began -- then I can stop
5 the deliberations, seat you, begin again. So you can save the
6 day.

7 So Ms. Campbell will take you to a different location,
8 and if I need to bring the jury back out, I'll bring you back
9 out as well. If I don't, then one of these folks will let you
10 know.

11 THE ALTERNATE JUROR: Fifteen minutes?

12 THE COURT: Start your time. Thank you so much.

13 All right. Any exceptions or additions?

14 MR. OSBORNE: None from the State, Judge.

15 MR. SMALDONE: None from defense.

16 THE COURT: If you all will be so kind as to look one
17 more time at these verdict forms and put your eyes on these
18 exhibits that are going to go back to the jury, please, and
19 then we will be in recess until we hear from our jury.

20 (WHEREUPON, there was a pause in the proceedings.)

21 (WHEREUPON, jury deliberations began at 5:41 p.m.)

22 (WHEREUPON, there was a break in the proceedings from
23 5:41 p.m. until 6:17 p.m., after which the proceedings
24 resumed as follows.)

25 (WHEREUPON, the jury entered the courtroom at 6:17 p.m.)

1 THE COURT: All right. Ladies and gentlemen, I have your
2 note. Thank you for your note, and what I'm going to do is
3 I'm going to recharge you on contraband. I figured -- I mean,
4 I'm only going to charge you on the third charge, and I just
5 figured that's going to be better than trying to dissect your
6 note. I just -- it's not particularly long, and I figured
7 it's just best to give it to you again.

8 Now, ladies and gentlemen, the defendant has been charged
9 with possessing or furnishing prohibited contraband in a
10 county or municipal prison. And the statute is -- I'm going
11 to read to you from the statute and, of course, the State has
12 the burden of proving each element beyond a reasonable doubt.

13 Now, ladies and gentlemen, it is unlawful for a person to
14 furnish or to attempt to furnish a prisoner in any county,
15 municipal, or multi-jurisdictional jail, prison camp, work
16 camp, or overnight lock-up facility with a matter declared to
17 be contraband. It is unlawful for an inmate of a facility to
18 possess a matter declared to be contraband. Okay. The State
19 has the burden of proving those -- those elements of the
20 statute.

21 Now, ladies and gentlemen, the -- I'm now going to go
22 over what has been declared to be contraband. Contraband is
23 defined as any item which was not issued to the prisoner
24 officially, or which cannot be purchased by him or her in the
25 prison canteen. Weapons, any and all firearms, knives of any

1 and all descriptions, clubs, billies, or other articles that
2 may be used for offense or defense, drugs or any description
3 -- excuse me. I'm sorry. Drugs of any description, and
4 particularly barbiturates, narcotics, medicines, and poison,
5 any and all kinds of alcoholic drinks and any liquid
6 containing alcohol, keys and locks, tools of any description
7 not approved for issue to prisoners by the director, and money
8 in any denomination or amount not submitted through the prison
9 treasurer.

10 Now, ladies and gentlemen, this regulation, which is this
11 list of contraband, must be displayed in a conspicuous place
12 available and visible to visitors and inmates at the facility.
13 Ladies and gentlemen, the State has the burden to prove beyond
14 a reasonable doubt that the defendant has violated this
15 statutory provision.

16 Now, please retire to your jury room and continue your
17 deliberations.

18 (WHEREUPON, the jury exited the courtroom at 6:22 p.m.)

19 THE COURT: All right. Exceptions? Additions?

20 MR. OSBORNE: No.

21 THE COURT: Exceptions and additions. None from the
22 State. None of the defense. We will continue in recess.

23 (WHEREUPON, there was a break in the proceedings from
24 6:22 p.m. until 6:41 p.m., after which the proceedings
25 resumed as follows.)

1 THE COURT: You concur?

2 MR. SMALDONE: That is an accurate representation of the

3 --

4 THE COURT: Yes. Let's have the jury.

5 THE CLERK: Yeah. I'm sorry.

6 MR. OSBORNE: That's okay. I'm sorry. This is so
7 finicky. Okay. All right. Good. Is this not even on my
8 screen anymore?

9 (WHEREUPON, the jury entered the courtroom at 6:42 p.m.)

10 THE COURT: Ladies and gentlemen, we are -- I have your
11 note, and we are prepared to play that portion that you have
12 requested, and we will do that now.

13 (WHEREUPON, a video was played and then stopped. Not
14 transcribed herein.)

15 THE COURT: Very well. Ladies and gentlemen, I do think
16 that that is in compliance with your request.

17 Now, ladies and gentlemen, first, madam, I'm going to ask
18 you all to let me know. It is completely within your purview.
19 You've got a couple of choices. We can order supper for you
20 or you can continue to deliberate for a little bit longer.
21 You can -- and then adjourn for the evening or you can adjourn
22 for the evening now.

23 So go back, caucus your group, and let us know.

24 THE FOREMAN: Yes, Your Honor. I think we're close
25 though.

1 THE COURT: Y'all let us know. We are here at your
2 pleasure.

3 THE FOREMAN: Okay.

4 (WHEREUPON, the jury exited the courtroom at 6:44 p.m.)

5 THE COURT: All right. Any objection from the State?

6 MR. OSBORNE: None, Your Honor.

7 THE COURT: From the defense?

8 MR. SMALDONE: No, Your Honor.

9 THE COURT: Very well. Continuing recess.

10 (WHEREUPON, there was a break in the proceedings from
11 6:44 p.m. until 6:46 p.m., after which the proceedings
12 resumed as follows.)

13 MR. OSBORNE: [*Inaudible.*]

14 THE COURT: Absolutely. Sure.

15 MR. OSBORNE: Your Honor -- and this is -- I believe by
16 consent, we made Defense Exhibit 1 -- we turned that into a
17 Court's exhibit, as well as 2, 3, 4, and 5 are all now Court's
18 exhibits.

19 THE COURT: Okay.

20 MR. OSBORNE: And then we'll -- we'll do corresponding
21 numbers to this, Court's Exhibit 1 through 5 to match defense
22 1 through 5. And then my State's Exhibit 1 that was ID only,
23 we'll make that Court's Exhibit 6. And State's Exhibit 5,
24 we'll make that Court's Exhibit 7.

25 THE COURT: Okay. And they're ready. They've got a

1 verdict.

2 THE CLERK: Are you ready?

3 THE COURT: I'm ready. Absolutely, I am.

4 (WHEREUPON, the jury entered the courtroom at 6:47 p.m.)

5 THE COURT: All right. Mr. Presiding Juror, it is my
6 understanding that the jury has reached its verdict. If
7 that's correct, if you'll hand the verdict sheets to Ms.
8 Catherine and she'll pass those to me.

9 Thank you. Very well. I find that the verdict forms are
10 due -- in due form.

11 And if you'll publish them for me --

12 THE CLERK: Yes, ma'am.

13 THE COURT: -- please, Madam Clerk.

14 VERDICT

15 THE CLERK: The State of South Carolina, County of
16 Dorchester, South Carolina, on Indictment 2021-GS-18-01041
17 that charges the defendant, Derrick Gerard Floyd, as the
18 indictment for trafficking in cocaine, we, the jury,
19 unanimously find the defendant, Derrick Gerard Boyd, guilty.
20 Signed this 21st day of 2023, presiding juror, Rick Withers.

21 State of South Carolina, County of Dorchester, Indictment
22 Number 2021-GS-18-01042, as indictment for possessing or
23 furnishing prohibited contraband in a county or municipal
24 prison, we, the jury, unanimously find the defendant, Derrick
25 Gerard Boyd, not guilty.

1 State of South Carolina, County of Dorchester, on
2 Indictment 2021-GS-18-01043, as the indictment for possession
3 with intent to distribute marijuana, we, the jury, unanimously
4 find the defendant, Derrick Gerard Boyd, guilty.

5 THE COURT: Ladies and gentlemen, if this was your
6 verdict in your jury room and continues to be your verdict
7 here in the courtroom, please indicate by raising your right
8 hand.

9 And I observe for the record that -- if you could raise
10 it just a little bit -- that all -- all of our jurors have
11 their right hands raised. Thank you. Thank you very much.
12 Yeah. You could put them down.

13 Anything from the jury before we dismiss them?

14 MR. OSBORNE: No, Your Honor.

15 THE COURT: Anything before we dismiss the jury?

16 MR. SMALDONE: I'd ask to poll, Your Honor.

17 THE COURT: Very well. And, Ms. Kim, do you want me to
18 do it or you got it?

19 THE CLERK: When I call your jury number, please stand.
20 Juror 114. Was this your verdict in the jury room?

21 JUROR NUMBER 114: Yes, ma'am.

22 THE CLERK: Is this still your verdict?

23 JUROR NUMBER 114: Yes, ma'am.

24 THE CLERK: Thank you.

25 Juror 192. Was this your verdict in the jury room?

1 JUROR NUMBER 192: Yes, ma'am.

2 THE CLERK: Is this still your verdict?

3 JUROR NUMBER 192: Yes, ma'am.

4 THE CLERK: Thank you, sir.

5 Juror 29. Was this your verdict in the jury room?

6 JUROR NUMBER 29: Yes, ma'am.

7 THE CLERK: Is it still your verdict?

8 JUROR NUMBER 29: Yes, ma'am.

9 THE CLERK: Thank you.

10 Juror 50. Was this your verdict in the jury room?

11 JUROR NUMBER 50: Yes, ma'am.

12 THE CLERK: Is this still your verdict?

13 JUROR NUMBER 50: Yes, ma'am.

14 THE CLERK: Thank you.

15 145. Was this your verdict in the jury room?

16 JUROR NUMBER 145: Yes.

17 THE CLERK: Is this still your verdict?

18 JUROR NUMBER 145: Yes.

19 THE CLERK: Thank you.

20 58. Was this your verdict in the jury room?

21 JUROR NUMBER 58: Yes, ma'am.

22 THE CLERK: Is this still your verdict?

23 JUROR NUMBER 58: Yes, ma'am.

24 THE CLERK: Thank you.

25 193. Was this your verdict in the jury room?

1 JUROR NUMBER 193: Yes, ma'am.

2 THE CLERK: Is this still your verdict?

3 JUROR NUMBER 193: Yes, ma'am.

4 THE CLERK: Thank you.

5 Juror 3. Was this your verdict in the jury room?

6 JUROR NUMBER 3: I can't agree on one of them charges.

7 THE COURT: Can you repeat what you said? I'm sorry.

8 JUROR NUMBER 3: I can't agree on one of them charges. I
9 find him not guilty.

10 THE COURT: All right. Very well.

11 Well, ladies and gentlemen, if you would please step to
12 your jury room for me and await further instruction.

13 (WHEREUPON, the jury exited the courtroom at 6:51 p.m.)

14 THE COURT: All right. If y'all will bear with me just a
15 moment.

16 (WHEREUPON, there was a pause in the proceedings, after
17 which the proceedings resumed as follows.)

18 THE COURT: All right. Obviously, the jury -- at this
19 point here that they are not unanimous and, therefore, the --
20 what I have been able to find -- and let me just -- I believe
21 that the -- it's discretionary with the Court whether to send
22 them back out or declare a mistrial, and I am inclined to send
23 them back out for deliberation for this reason.

24 I do not -- they have not deliberated for a particular --
25 particularly long period and they've asked two questions which

1 have been responded to, and I am inclined to send them out and
2 to allow them to continue to deliberate. And it appears to me
3 that that is provided for, and I can -- I can find very
4 quickly no statute and no current case law that provides
5 otherwise.

6 And I'll hear from you all, first of all, from -- from
7 the State. Are y'all looking or -- let me hear from you.

8 MR. OSBORNE: One of the -- I think it might have been
9 the second trial that I ever tried. The exact same thing
10 happened.

11 THE COURT: Uh-huh.

12 MR. OSBORNE: And I wish I could remember the judge's
13 name, but he did the exact same thing, and I think I remember
14 him saying a similar thing.

15 THE COURT: Uh-huh.

16 MR. OSBORNE: And he let them go back out and deliberate
17 again.

18 THE COURT: Very well. I'm going to let them deliberate
19 for a little bit longer.

20 And let me hear from you, Mr. Smaldone, but I'm certainly
21 inclined to do that. I think that's within my discretion, but
22 let me hear from you.

23 MR. SMALDONE: Your Honor, I would request a mistrial at
24 this point. I think that, one, knowing this is -- this is
25 basically akin to requesting an Allen -- requesting an Allen

1 charge when the jury division and spread is known, I think it
2 would be unduly coercive and, for that reason, I think that a
3 mistrial is the appropriate remedy.

4 MR. OSBORNE: The only other thing I would add, Judge,
5 real quick is that I did notice when she said it, I turned
6 over and looked, as did it looked like everyone else in the
7 jury. So I think they were surprised by that.

8 THE COURT: Yeah, yeah. I am -- okay. And if -- I would
9 feel differently if they had been deliberating for a very long
10 time. They have not been deliberating for a very long time.
11 And if she feels very strongly, she -- she will continue in
12 that vein, but I am concerned that the duration of the -- of
13 their deliberation has been very short.

14 All right. Bring them back out for me.

15 (WHEREUPON, the jury entered the courtroom at 6:58 p.m.)

16 THE COURT: Ladies and gentlemen, in that it appears from
17 the polling that you have been unable to reach a unanimous
18 verdict and given the relatively short period of time that you
19 all have been deliberating, it is appropriate that I ask that
20 you continue your deliberations.

21 Now, Mr. Presiding Juror, I'm going to ask you to caucus
22 your jury again and see do you want -- I'm -- you know, I'm a
23 Jewish mother. I worry about everybody eating. So you've got
24 a couple of options. You can continue to deliberate. I can
25 order dinner. Or if you all wish, I can -- you know, we'd

1 adjourn for the evening, and you all can return in the morning
2 and continue your deliberations. Why don't you caucus your
3 group and send me a note letting me know what you all decide.

4 THE FOREMAN: All right.

5 THE COURT: Thank you. And please retire to your jury
6 room. I will send fresh verdict forms out in just a moment.

7 THE FOREMAN: Okay.

8 THE COURT: Thank you.

9 (WHEREUPON, the jury exited the courtroom at 7:00 p.m.)

10 THE COURT: All right. Why don't you just -- why don't
11 we just wait a minute and let them tell us what they want to
12 do? And I've got to print the new verdict forms.

13 THE BAILIFF: Coming in now, Judge.

14 THE COURT: Thank you.

15 Okay. This question, is it normal to announce the
16 presiding juror's name during the verdict?

17 And I know that's probably -- that's more likely than not
18 that could be coming from what he may have heard on
19 television. And we are transitioning between using, of
20 course, names and just numbers. And it seems that in the
21 higher profile cases we're not using names. And so I will
22 explain that to him.

23 I'll mark this as a Court's exhibit, and I'll explain
24 that to him, probably not right now, but -- but if y'all want
25 to follow it.

1 (WHEREUPON, the jury notes were marked as Court's
2 Exhibits 9 through 12.)

3 THE COURT: All right. We'll just wait and let -- wait
4 for a note on that.

5 (WHEREUPON, there was a break in the proceedings from
6 7:02 p.m. until 7:07 p.m., after which the proceedings
7 resumed as follows.)

8 THE COURT: All right.

9 (WHEREUPON, the jury entered the courtroom at 7:07 p.m.)

10 THE COURT: All right. Has the jury reached its verdict?

11 THE FOREMAN: Yes, Your Honor.

12 THE COURT: All right. If you'll pass the sheets,
13 please.

14 All right. The jury's verdict forms appear to be
15 appropriate, meaning they're filled out. They're unanimous.
16 Verdicts are indicated.

17 You may publish them now.

18 VERDICT

19 THE CLERK: State of South Carolina, County of
20 Dorchester, on Indictment 2021-GS-18-01041 as indicted for
21 trafficking and cocaine, we, the jury, unanimously find the
22 defendant, Derrick Gerard Boyd, guilty. Signed, the jury
23 foreman.

24 State of South Carolina, County of Dorchester, on
25 Indictment 2021-GS-18-01042 as the indictment for possessing

1 or furnishing prohibited contraband in a county or municipal
2 prison, we, the jury, unanimously find the defendant, Derrick
3 Gerard Boyd, not guilty.

4 State of South Carolina, County of Dorchester, on
5 Indictment 2021-GS-18-01043, as the indictment for possession
6 with intent to distribute marijuana, we, the jury, unanimously
7 find the defendant, Derrick Gerard Boyd, guilty. Signed, the
8 jury foreman.

9 THE COURT: Ladies and gentlemen, if this was your
10 verdict in your jury room and if it continues to be your
11 verdict here in the courtroom, please indicate by raising your
12 right hand.

13 Let me observe that all of our jurors have their right
14 hands raised. Thank you.

15 All right. Any further than the State?

16 MR. OSBORNE: No, Your Honor.

17 THE COURT: From the defense?

18 MR. SMALDONE: Your Honor, I would request that they be
19 polled.

20 THE COURT: Yes. Very well.

21 THE CLERK: Juror Number 114. Was this your verdict in
22 the jury room?

23 JUROR NUMBER 114: Yes, ma'am.

24 THE CLERK: Is this still your verdict?

25 JUROR NUMBER 114: Yes, ma'am.

1 THE CLERK: Thank you.

2 Juror 192. Was this your verdict in the jury room?

3 JUROR NUMBER 192: Yes, ma'am.

4 THE CLERK: Is this still your verdict?

5 JUROR NUMBER 192: Yes, ma'am.

6 THE CLERK: Thank you.

7 Juror 29. Was this your verdict in the jury room?

8 JUROR NUMBER 29: Yes, ma'am.

9 THE CLERK: Is this still your verdict?

10 JUROR NUMBER 29: Yes, ma'am.

11 THE CLERK: Thank you.

12 Juror 50. Was this your verdict in the jury room?

13 JUROR NUMBER 50: Yes, ma'am.

14 THE CLERK: Is it still your verdict?

15 JUROR NUMBER 50: Yes, ma'am.

16 THE CLERK: Thank you.

17 145. Was this your verdict in the jury room?

18 JUROR NUMBER 145: Yes, ma'am.

19 THE CLERK: Is this still your verdict?

20 JUROR NUMBER 145: Yes, ma'am.

21 THE CLERK: Thank you.

22 58. Was this your verdict in the jury room?

23 JUROR NUMBER 58: Yes, ma'am.

24 THE CLERK: Is this still your verdict?

25 JUROR NUMBER 58: Yes, ma'am.

1 THE CLERK: Thank you.

2 193. Was this your verdict in the jury room?

3 JUROR NUMBER 193: Yes, ma'am.

4 THE CLERK: Is this still your verdict?

5 JUROR NUMBER 193: Yes, ma'am.

6 THE CLERK: Thank you.

7 Juror Number 3, was this your verdict in the jury room?

8 JUROR NUMBER 3: Yeah.

9 THE CLERK: Is this still your verdict?

10 JUROR NUMBER 3: Yeah.

11 THE CLERK: Thank you.

12 Juror 183. Was this your verdict in the jury room?

13 JUROR NUMBER 183: Yes.

14 THE CLERK: Is this still your verdict?

15 JUROR NUMBER 183: Yes.

16 THE CLERK: Thank you.

17 167. Was this your verdict in the jury room?

18 JUROR NUMBER 167: Yes.

19 THE CLERK: Is this your verdict?

20 JUROR NUMBER 167: Yes.

21 THE CLERK: Thank you.

22 94. Was this your verdict in the jury room?

23 JUROR NUMBER 94: Yes.

24 THE CLERK: Is this still your verdict?

25 JUROR NUMBER 94: Yes.

1 THE CLERK: Thank you.

2 203. Was this your verdict in the jury room?

3 JUROR NUMBER 203: Yes, ma'am.

4 THE CLERK: Is this still your verdict?

5 JUROR NUMBER 203: Yes, ma'am.

6 THE CLERK: Did I omit anyone?

7 (WHEREUPON, there was no response.)

8 THE CLERK: Thank you.

9 THE COURT: All right. I'll observe for our record that
10 all of our jurors have been polled, and they have all
11 indicated that their verdicts, as have been published, were
12 their verdicts in the jury room and continue to be their
13 verdict here in the courtroom.

14 All right. Ladies and gentlemen, I want to thank you for
15 your service on this jury. And you know, I know the hour is
16 late, so I will not go on and on. I will tell you that we do
17 continue our work this week, and we will select our jury for
18 our next case for trial in the morning. So I'm going to ask
19 you all to please be present at 10 a.m. -- at 10 a.m. Those
20 of you who would work at night, rest this evening, rest for
21 this evening.

22 Now, you are at liberty to discuss this matter if you
23 wish, but if it's someone at your home that wants to talk
24 about it, I certainly think you're at liberty to talk about
25 it. But I would appreciate it if you would reserve from

1 talking about this matter to your coworkers or ongoing
2 discussions on social media until the entire panel has been
3 dismissed for the week.

4 But when you go home this evening, it's perfectly fine,
5 particularly in the hour, to discuss with whomever is curious
6 where you have been and what you have been up to today. I
7 think that's fine, but I would appreciate it if you would not
8 discuss this matter with your fellow members on your jury
9 panel that will be coming in tomorrow or social media or
10 others. But you certainly can when you've been dismissed from
11 this jury panel and this week has ended.

12 And you're at liberty, if you wish, to talk to whomever
13 you wish to about it. I would tell you, though, is that
14 should someone insist on talking about this case and you have
15 told them you don't want to talk about it, should they
16 persist, the appropriate way for you to proceed is to contact
17 our clerk's office, who will contact me, and I'll be happy to
18 intercede on your behalf, although I sure hope it's not your
19 office. That would be awkward, but, alas, I certainly would.

20 Now, ladies and gentlemen, again, we will begin in the
21 morning at 10 o'clock, and I can't wait to see you early in
22 the morning at ten. You'll report in the morning though to
23 the jury assembly room. And thank you so much for your time.
24 Thank you.

25 (WHEREUPON, the jury was released and exited the

1 courtroom.)

2 (WHEREUPON, the verdict form was marked as Court's
3 Exhibit Number 13.)

4 THE COURT: Just for your information, I've explained to
5 the juror why it was that his name was used rather than his
6 number. And what I told him was we're transitioning, and the
7 higher the profile case, the more protective we are of jurors.
8 And -- but we are in a transition where more often we're using
9 juror numbers rather than names, but names are still used,
10 particularly where there's not the pressure of a high-profile
11 trial and the -- the concern -- the great concern about
12 protecting jurors and their privacy.

13 I would cite, just to make our record complete, that my
14 determination to ask the jury to continue the deliberation
15 following the first polling, I would cite *State v. Wright*,
16 which is a Court of Appeals decision. That cite is 432 S.C.
17 365, 852 S.E.2d 468. That is a Court of Appeals decision. It
18 is a 2020 decision.

19 However, I would also state -- also cite *State v. Kelly*,
20 372 S.C. 167 and 641 S.E.2d 468. That's a Court of Appeals
21 decision in 2007. And there's *In Re*: -- let's see. That's
22 also a Circuit Court decision.

23 All right. All right. Now, since -- oh, yeah. Thank
24 you. And record, please, for Mr. Boyd, if you could share
25 that with me.

1 MR. OSBORNE: Yes, Your Honor. All right. Your Honor,
2 his record is, in 1999, he has a possession of cocaine first.

3 In 2005, he has a possession with intent to distribute
4 marijuana.

5 In '06, he has a trafficking cocaine base, 10 to 28
6 grams. Also sentenced on that same date is a trafficking
7 crack cocaine, 10 to 28 grams. We're treating this as one
8 trafficking offense for enhancement purposes since he pled on
9 the same date. The next -- and also on that same date, he
10 pled to possession with intent to distribute marijuana.

11 In 2011, he was found guilty for failure to stop for blue
12 lights.

13 And in 2019 is a possession with intent to distribute
14 cocaine second, as well as another possession with intent to
15 distribute cocaine second. In those PWID seconds, we're
16 counting for the second enhancement, making the third on the
17 trafficking. They're within the ten years. So that -- that's
18 what brings it to the third. And I have the certified
19 convictions for those.

20 THE COURT: Yes, please.

21 MR. OSBORNE: If you'd like to see them.

22 THE COURT: Let's make them part of the record.

23 MR. OSBORNE: Okay. Court's exhibits, Your Honor?

24 THE COURT: Yes.

25 MR. OSBORNE: Okay.

1 THE COURT: And thank you.

2 MR. OSBORNE: Thank you.

3 THE COURT: You're welcome. I don't know what we're up
4 to at this point.

5 (WHEREUPON, the certified convictions/sentence sheet were
6 marked as Court's Exhibits 14 and 15.)

7 THE COURT: Okay. Very well. Yes, sir?

8 MR. SMALDONE: Thank you, Your Honor. May it please the
9 Court.

10 THE COURT: Yes, sir.

11 MR. SMALDONE: Your Honor has heard the verdict. So your
12 Honor has heard the record. I want to point out that the only
13 thing, you know, in his past has been drug offenses. I don't
14 think I've ever seen someone with only drug offenses, and the
15 -- his record is why we're here today. So I ask you not to
16 hold it against him twice because of his prior record.

17 Your Honor has heard the facts in this case. You've
18 heard -- you've heard lack of -- lack of any firearms, overall
19 candor, always very polite with the police. He's just -- he's
20 always been very polite with me.

21 Your Honor has heard that we've had disagreements in the
22 past. That's come to light. Throughout that process, he's
23 always still been great. He says, listen, it's just a parting
24 of ways. He's a good person, and he got caught up in
25 something a while ago that he couldn't get out of.

1 With regard to 2021-GS-18-1043, which, of course, is the
2 possession with intent to distribute marijuana, I commit you
3 to the State Department of Corrections for a period of five
4 years.

5 These sentences will run concurrent, and you're to be
6 given credit certainly for the time that you have served.

7 Good luck to you.

8 THE COURT: All right. Everyone, thank you for staying
9 late. I am so sorry that we have gone as late as we have.

10 Any motions that you want to file or do want to take the
11 ten days?

12 MR. SMALDONE: I will take the ten days.

13 THE COURT: Okay. All right. Very well. We'll be
14 adjourned. I'll see everybody in the morning.

15 MR. SMALDONE: Thank you, Judge.

16 (WHEREUPON, the proceedings ended at 7:26 p.m.)

17

18 --- END REQUESTED TRANSCRIPT ---

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STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

) IN THE COURT OF GENERAL SESSIONS
) FOR THE FIRST JUDICIAL CIRCUIT

CERTIFIED COPY
2023 MAR 28 AM 11:35

Warrant No(s): 2021-GS-18-1041, 1043

Cheryl Robinson
CLERK OF COURT
DORCHESTER COUNTY

Charge(s)
Trafficking Cocaine, PWID
Marijuana

STATE OF SOUTH CAROLINA

vs.

DERRICK BOYD,

Defendant.

RENEWED MOTION FOR DIRECTED VERDICT, or in the alternative, a MISTRIAL, or in the alternative, NEW TRIAL

Comes now the Defendant in the above-captioned case, by and through undersigned counsel, and respectfully moves this Honorable Court for a directed verdict, mistrial, or new trial in accordance with Rules 19 and 29 of the South Carolina Rules of Criminal Procedure, based on the following grounds:

I. INTRODUCTION

Derrick Boyd was convicted of Possession With Intent to Distribute Marijuana and Trafficking Cocaine after a jury trial in this Court. Prior to trial, Defendant Boyd filed a motion to suppress evidence obtained as a result of an unlawful search and seizure and a motion to suppress statement given by Defendant. Each of these motions was denied by the Court.

II. MOTION TO SUPPRESS EVIDENCE

Defendant moves for a new trial based on the Court's denial of his motion to suppress evidence. The evidence was obtained as a result of an unlawful search and seizure, in violation of the Fourth Amendment of the United States Constitution and Article I, Section 10 of the South Carolina Constitution. The police officers who conducted the search did not have reasonable suspicion for the traffic stop, probable cause for a search or seizure, nor did they have a valid search warrant. As a result, the evidence should have been suppressed and not admitted at trial. The Court's denial of the motion to suppress deprived Defendant] of his constitutional right to be free from unreasonable searches and seizures, and his right to due process of law.

III. MOTION TO SUPPRESS STATEMENT

Defendant moves for a new trial based on the Court's denial of his motion to suppress his statement. The statement was obtained in violation of his Fifth Amendment right against self-incrimination and his Sixth Amendment right to counsel. The police officers who obtained the statement did not advise

Defendant of his Miranda rights prior to his giving incriminating statements while seized at a traffic stop. Additionally, the promise or implication of "help" while the defendant was seized made any statements given by Defendant inadmissible due to their involuntary nature. As a result, the statements should have been suppressed and not admitted at trial. The Court's denial of the motion to suppress deprived Defendant of his constitutional rights.

IV. MOTION FOR A MISTRIAL

Defendant moves for a new trial based on the Court's denial of his motion for a mistrial. During the jury's deliberations, one juror indicated that the verdict was not her verdict. This constitutes a failure of the jury to reach a unanimous verdict, which is required by the Sixth Amendment of the United States Constitution and Article I, Section 14 of the South Carolina Constitution. Additionally, jury deliberations after this point would have been coercive. This was indicated by the jury returning with a verdict a short time after the initial polling, at which time a juror—not the initial holdout juror—was seen crying in the courtroom. The Court's denial of the motion for a mistrial deprived Defendant of his right to a fair trial.

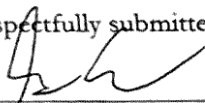
V. DIRECTED VERDICT

Defendant renews his motion for a directed verdict that was initially made at the close of the State's case. Additionally, Defendant renews all previous objections and motions made at trial that are not enumerated in this written motion.

VI. CONCLUSION

Based on the foregoing, Defendant respectfully requests that this Honorable Court grant his motion for a directed verdict, or in the alternative—a mistrial, or in the alternative—a new trial.

Respectfully submitted,



Grant Smaldone, Bar #100410
 Attorney for Defendant
 142 Williman St
 Charleston, SC 29403
 Office: (843)808-2100
 Fax: (843) 589-1288
 grant@gbslawfirm.com

Dated: 3/27/23

FILED-RECORDED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

2023 APR 17 PM 3:19

COUNTY OF DORCHESTER) WARRANT NO(s): 2021-GS-18-1041 and
2021-GS-18-1043

STATE OF SOUTH CAROLINA,)

vs.)

DERRICK BOYD)

Defendant.)

**ORDER DENYING DEFENDANT'S
RENEWED MOTION FOR A DIRECTED
VERDICT, OR IN THE ALTERNATIVE, A
MISTRIAL, OR IN THE ALTERNATIVE A
NEW TRIAL**

This matter came before this Court by way of Defendant's Renewed Motion for a Directed Verdict, or in the alternative, a Mistrial, or in the alternative a New Trial brought forth pursuant to South Carolina Rules of Criminal Procedure 19 and 29. Derrick Boyd was convicted on Possession with Intent to Distribute Marijuana and Trafficking Cocaine after a jury trial.

After reviewing the materials submitted, I find that oral arguments will not assist in the ruling of Defendant's Renewed Motion for a Directed Verdict, or in the alternative, a Mistrial, or in the alternative a New Trial and the Motion can be determined on briefs filed by the parties. The Defendant's Renewed Motion for a Directed Verdict, or in the alternative, a Mistrial, or in the alternative a New Trial is denied.

Motion to Suppress Evidence and Motion to Suppress Statement

Prior to trial, a motion to suppress evidence and a motion to suppress Defendant's statements was made. This court denied both motions.

“The admissibility of evidence is within the sound discretion of the trial judge.” *State v. Mansfield*, 343 S.C. 66, 77, 538 S.E.2d 257, 263 (Ct. App. 2000). “Accordingly, evidentiary rulings of the trial court will not be reversed on appeal absent an abuse of discretion or the commission of a legal error which results in prejudice to the defendant.” *Id.* “Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury’s verdict.” *State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011). “Where ‘guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached,’ an insubstantial error that does not affect the result of the trial is considered harmless.” *Id.* at 447, 710 S.E.2d at 60 (quoting *State v. Pagan*, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006)); *State v. Heyward*, 432 S.C. 296, 314, 852 S.E.2d 452, 461 (Ct. App. 2020).

The court fully incorporates the bases articulated fully in the transcript at the trial regarding the denial of both motions and sees no reason to change or otherwise alter that determination. The motion for reconsideration regarding the motion to suppress evidence and motion to suppress the Defendant’s statement is denied.

Motion for a Directed Verdict

At the close of the State’s case, Boyd moved for a directed verdict. The trial court denied Boyd’s motion, finding there was direct and substantial circumstantial evidence which reasonably tends to prove accused’s guilt on each of his charges. At the close of Boyd’s case-in-chief, he renewed his directed verdict motion, which the trial court denied. Following the denial of the renewed motion for directed verdict Boyd’s case was submitted to the jury and he was found guilty of Possession with Intent to Distribute Marijuana and Trafficking Cocaine.

A motion for judgment notwithstanding the verdict (JNOV) is a renewal of a directed verdict motion. Rules Crim.Proc., Rule 50(b); *Wright v. Craft*, 372 S.C. 1, 640 S.E.2d 486 (Ct. App. 2006). When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. *Sellers v. State*, 362 S.C. 182, 607 S.E.2d 82 (2005); *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004); *State v. Wilds*, 355 S.C. 269, 584 S.E.2d 138 (Ct.App.2003).

If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury. *Cherry*, 361 S.C. at 593–94, 606 S.E.2d at 478; *State v. Harris*, 351 S.C. 643, 572 S.E.2d 267 (2002); *State v. Follin*, 352 S.C. 235, 573 S.E.2d 812 (Ct.App.2002); *see also State v. Horton*, 359 S.C. 555, 598 S.E.2d 279 (Ct.App.2004) (noting judge should deny motion for directed verdict if there is any direct or substantial circumstantial evidence which reasonably tends to prove accused's guilt, or from which his guilt may be fairly and logically deduced).

When a motion for a directed verdict is made in a criminal case in which the State relies exclusively on circumstantial evidence, the trial judge is required to submit the case to the jury if there is any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. *State v. Walker*, 349 S.C. 49, 562 S.E.2d 313 (2002); *State v. Buckmon*, 347 S.C. 316, 555 S.E.2d 402 (2001); *Al-Amin*, 353 S.C. at 411, 578 S.E.2d at 35; *State v. Padgett*, 354 S.C. 268, 580 S.E.2d 159 (Ct.App.2003); *State v. Zeigler*, 364 S.C. 94, 101–02, 610 S.E.2d 859, 863 (Ct. App. 2005); *see also State v. Martin*, 340 S.C. 597, 533 S.E.2d 572 (2000) (stating trial court has duty to submit case to jury where evidence is circumstantial, if there is substantial circumstantial evidence which reasonably tends to prove guilt of accused or from which his guilt may be fairly and logically deduced).

In the instant case, the record provides substantial circumstantial evidence reasonably tending to prove Defendant's guilt for each charge. Viewed in the light most favorable to the State, there was substantial circumstantial evidence to submit the charge to the jury. The court sees no reason to change or otherwise alter that determination and the motion for reconsideration for the directed Verdicts are denied.

Motion for Mistrial and Motion for a New Trial

Defendant made a motion for a mistrial and a motion for a new trial following the polling of the jury that resulted in one juror recanting the verdict. The court requested the jury return to the jury room to continue deliberations. Defendant's motion for a mistrial was denied. The court sees no reason to change or otherwise alter either determination.

"The decision to grant or deny a mistrial is within the sound discretion of the trial court." *State v. Carrigan*, 284 S.C. 610, 328 S.E.2d 119 (Ct. App. 1985); *State v. Ayers*, 284 S.C. 266, 325 S.E.2d 579 (Ct. App. 1985); *State v. McDaniel*, 275 S.C. 222, 268 S.E.2d 585 (1980); *Washington v. Whitaker*, 317 S.C. 108, 451 S.E.2d 894 (1994); *State v. Vazquez*, 364 S.C. 293, 613 S.E.2d 359 (2005); *State v. Adams*, 354 S.C. 361, 580 S.E.2d 785 (Ct.App.2003); *State v. Thompson*, 352 S.C. 552, 575 S.E.2d 77 (Ct.App.2003); *State v. Stanley*, 365 S.C. 24, 33, 615 S.E.2d 455, 460 (Ct. App. 2005). A mistrial should only be granted upon exercise of the greatest of caution for "plain and obvious reasons," *State v. Wasson*, 299 S.C. 508, 386 S.E.2d 255 (1989), or "only if there is a manifest necessity or the ends of public justice are served," *State v. Brown*, 389 S.C. 84, 94, 697 S.E.2d 622, 627–28 (Ct. App. 2010), or when absolutely necessary. *State v. Wilson*, 389 S.C. 579, 585–86, 698 S.E.2d 862, 865–66 (Ct. App. 2010); *State v. Creech*, 314 S.C. 76, 441 S.E.2d 635 (Ct. App. 1993).

“Whether a mistrial is manifestly necessary is a fact specific inquiry. It is not a mechanically applied standard, but rather is a determination that must be made in the context of the specific difficulty facing the trial judge.” *State v. Bantan*, 387 S.C. 412, 417, 692 S.E.2d 201, 203 (Ct. App. 2010) (quoting *State v. Rowlands*, 343 S.C. 454, 457–58, 539 S.E.2d 717, 719 (Ct. App. 2000)); *State v. Benton*, 435 S.C. 250, 259, 865 S.E.2d 919, 923 (Ct. App. 2021), *reh'g denied* (Nov. 18, 2021), *cert. granted* (Sept. 7, 2022).

Further, the determination of what curative measures are appropriate in a given case rests in the sound discretion of the [circuit court]. [It] should *exhaust other methods* to cure the prejudice before aborting a trial.” (emphasis added) (quoting *State v. Stone*, 290 S.C. 380, 382, 350 S.E.2d 517, 518 (1986)); *State v. Smith*, No. 2018-000952, 2022 WL 223326, at *1 (S.C. Ct. App. Jan. 26, 2022); *State v. Kelly*, 372 S.C. 167, 171, 641 S.E.2d 468, 470 (Ct. App. 2007).

If the poll reveals the jury's announced verdict is not in fact unanimous, the verdict cannot stand, and the trial court may, as circumstances warrant, direct further deliberation or declare a mistrial. *State v. Kelly*, 372 S.C. 167, 170–71, 641 S.E.2d 468, 470 (Ct. App. 2007). Just as trial counsel has no duty to request a poll, the trial court has no duty to conduct one without a request. *Green v. State*, 351 S.C. 184, 196, 569 S.E.2d 318, 324 (2002); *State v. Linder*, 276 S.C. 304, 309, 278 S.E.2d 335, 338 (1981); *State v. Wright*, 432 S.C. 365, 369, 852 S.E.2d 468, 470 (Ct. App. 2020), *aff'd*, No. 2021-000146, 2023 WL 2291747 (S.C. Mar. 1, 2023). “If it is made known to the court when it is time to render the verdict that any juror does not assent to it, the verdict cannot be received and the jury should retire to their room until they have agreed.” *State v. Singleton*, 319 S.C. 312, 316, 460 S.E.2d 573, 576 (1995). A judge has a duty to urge the jury to reach a verdict, but he may not coerce them. *Id.* at 316, 460 S.E.2d at 575; *see also*, *State v. Kelly*, 372 S.C. 167, 171, 641 S.E.2d 468, 470 (Ct. App. 2007).

Here, the jury initially deliberated for a short amount of time before returning with its verdict. Upon Defendant's request, the jurors were individually polled and one juror recanted on one of the verdicts. Because jury deliberation had occurred for a limited period of time prior to the initial verdict, the court returned the jury to continue deliberation. After further deliberations, the court was notified the jury had reached its verdict, which was verified after a second request for polling. The court was satisfied after the second polling, which was unanimous, that there was no coercion. At no time did the jury indicate it was deadlocked. Following the jury's deliberation there was no indication whatsoever that the recanting juror was pressured into concurring with the ultimate unanimous verdict. The court denied the motions and sees no reason to change or otherwise alter that determination.

Conclusion

After review, I find no reason to alter the previous rulings. After considering Defendant's Renewed Motion for a Directed Verdict, or in the alternative, a Mistrial, or in the alternative a New Trial, I find they should be denied for the reasons stated herein.

IT IS SO ORDERED!



Hon. Diane S. Goodstein
Presiding Judge, First Judicial Circuit

April 14, 2023
St. George, South Carolina

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED-RECORDED
2022 JUL 21 AM 9:48
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

DOCKET NO. 2021GS18-1043

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

July TERM

THE STATE
vs.

Derrick Gerard Boyd

Indictment for

MANUF., POSS. OF OTHER SUB. IN
SCH. I, II, III OR FLUNITRAZEPAM OR
ANALOGUE, WITH INTENT TO
DISTRIBUTE - 1ST OFFENSE

SC Code: 44-53-370(b)

WITNESSES

Thomas G Wilson II

Dorchester County Sheriff

21-004555

ARREST WARRANT NUMBER
2021A1810200062

Arrested: 5/15/2021

ACTION OF GRAND JURY

TRUE BILL

Shirley Beck

Foreperson of Grand Jury
Date: July 21, 2022

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

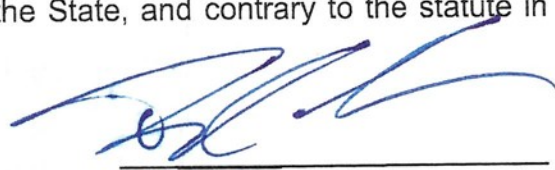
INDICTMENT
2021GS18-1043

At a Court of General Sessions, convened on July the Grand Jurors of Dorchester County present upon their oath:

MANUF., POSS. OF OTHER SUB. IN SCH. I, II, III OR FLUNITRAZEPAM OR ANALOGUE, WITH INTENT TO DISTRIBUTE - 1ST OFFENSE

That in Dorchester County, South Carolina, on or about May 15, 2021, the Defendant, Derrick Gerard Boyd, did knowingly or intentionally possess with the intent to distribute a quantity of marijuana a drug classified as a Schedule I, II, III, IV, or V non-narcotic controlled substance, and that such possession was not authorized by law. This offense in violation of Section 44-53-370 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



David L Osborne, Solicitor

After being fully advised as to my legal rights, I hereby waive presentation to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED-RECORDED
2022 JUL 21 AM 9:48
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

DOCKET NO. 2021GS18-1041

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

July TERM

THE STATE
vs.

Derrick Gerard Boyd

Indictment for

TRAFFICKING IN COCAINE, 10 G OR MORE, BUT LESS THAN 28 G - 1ST OFFENSE

SC Code: 44-53-370(e)

WITNESSES

Thomas G Wilson II

Dorchester County Sheriff

21-004555

ARREST WARRANT NUMBER
2021A1810200060

Arrested: 5/15/2021

ACTION OF GRAND JURY
TRUE BILL

Shirley R. [Signature]

Foreperson of Grand Jury
Date: July 21, 2022

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

INDICTMENT
2021GS18-1041

At a Court of General Sessions, convened on July the Grand Jurors of Dorchester County present upon their oath:

TRAFFICKING IN COCAINE, 10 G OR MORE, BUT LESS THAN 28 G - 1ST OFFENSE

That in Dorchester County, South Carolina, on or about May 15, 2021, the Defendant, Derrick Gerard Boyd, did knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of more than 10 grams, but less than 28 grams of cocaine. This offense in violation of Section 44-53-370 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

David L Osborne, Solicitor

RECEIVED

Dec 03 2024

SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

December 3, 2024

s/ Tristan Shaffer

Tristan M. Shaffer (SC Bar 77565)

P.O. Box 1135

Irmo, SC 29063

(803) 626-0188

Attorney for Appellant