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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Charleston County

Honorable Walton J. McLeod, IV, Circuit Court Judge

JONTEZ M. WARD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000897

APPENDIX

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AJZ/0306206
WITNESSES

Charleston County Sheriff's Office

AGENCY CASE NUMBER
2014-017231

ARREST WARRANT NUMBER
2018-GS-10-04100

DATE OF ARREST

06/23/2015

ACTION OF GRAND JURY

James S. Lucas 7/10/18
Foreperson of Grand Jury
Date:

VERDICT

TRUE BILL

Covility
2-7-19

DOCKET NO. 2018-GS-10-04100

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
JULY TERM 2018

THE STATE

VS.

JONTEZ MYRELLE WARD
B/M DOB [REDACTED]

Indictment for
**TRAFFICKING IN HEROIN, 28G OR
MORE**

SC Code: § 44-53-0370(e)(3)(c)
CDR Code: 0149

JUL 10 2018

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

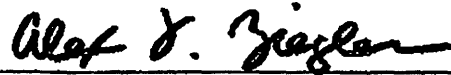
INDICTMENT

At a Court of General Sessions, convened July 2018, the Grand Jurors of Charleston County present upon their oath:

Trafficking in Heroin

The defendant, Jontez Myrelle Ward, did on or about November 6, 2014, in Charleston County, South Carolina, 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, cultivate, 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 twenty-eight (28) grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, namely Heroin, as described in Section 44-53-190 or 44-53-210, or twenty-eight (28) grams or more of any mixture containing any of these. All in violation of 44-53-0370(e)(3)(c), South Carolina Code of Laws (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ALEXANDER J. ZIEGLER
ASSISTANT SOLICITOR

AJZ/0306206
WITNESSES

Charleston County Sheriff's Office

AGENCY CASE NUMBER

2014-017231

ARREST WARRANT NUMBER

2015A1010201419

DATE OF ARREST

06/23/2015

ACTION OF GRAND JURY

TRUE BILL

APR 11 2016

Forfeiture of Grand Jury

Date:

VERDICT

Guilty

Forfeiture of Petit Jury

Date:

2-7-19

DOCKET NO. 2016-GS-10-00903

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

APRIL TERM 2016

THE STATE

VS.

JONTEZ MYRELLE WARD

B/M DOB: [REDACTED]

Indictment for

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME

SC Code: § 16-23-0490
CDR Code: 0549

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened April 2016, the Grand Jurors of Charleston County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That in Charleston County, South Carolina, on or about November 6, 2014, the Defendant, Jontez Myrelle Ward, did possess a firearm or did visibly display what appeared to be a firearm or did visibly display a knife during the commission of or attempted commission of a violent crime, to wit: Trafficking Heroin; in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided,



ALEXANDER J. ZIEGLER
ASSISTANT SOLICITOR

AJZ/0306206
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER

2014-017231

ARREST WARRANT NUMBER

2015A1010201420

DATE OF ARREST

06/23/2015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

APR 11 2011

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date:

2-7-19

DOCKET NO. 2016-GS-10-00904

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

APRIL TERM 2016

THE STATE

VS.

JONTEZ MYRELLE WARD
B/M DOB [REDACTED]

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE A CONTROLLED
SUBSTANCE WITHIN PROXIMITY OF A
PARK

SC Code: § 44-53-0445(A)
CDR Code: 0107

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened April 2016, the Grand Jurors of Charleston County present upon their oath:

Possession with Intent to Distribute a Controlled Substance within Proximity of a Park
The defendant, Jontez Myrelle Ward, did on or about November 6, 2014, in Charleston County, South Carolina, with knowledge that he was within a one half mile radius of the grounds of Collins Park, a public or private elementary, middle or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university, distribute, sell, manufacture, or unlawfully possess with intent to distribute Heroin, a controlled substance under provisions of Section 44-53-110, et seq., South Carolina Code of Laws (1976, as amended). All in violation of 44-53-0445(A), South Carolina Code of Laws (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ALEXANDER J. ZIEGLER
ASSISTANT SOLICITOR

1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS
2 COUNTY OF CHARLESTON) TRANSCRIPT OF RECORD

3 -----x
4 STATE OF SOUTH CAROLINA)
5 vs.) Case No. 2018-GS-10-04100,
6 JONTEZ MYRELLE WARD,) et al.,
7 Defendant.)
8 -----x

July 25, 2018

9
10 B E F O R E:

The Honorable R. Markley Dennis, Jr., Presiding Judge

11
12 A P P E A R A N C E S:

Alexander J. Ziegler Esq.
Assistant Solicitor for the State

14 Peter McCoy, Esq.
Attorney for the Defendant

15
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23
24 Court Reporter: Phyllis Norton (ret.)

25 Transcribed by: Bobbi Fisher
SC Official Court Reporter III

1

I N D E X

2

DESCRIPTION

PAGE

3

Proceedings

3

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10

E X H I B I T S

11

(None.)

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19

COURT REPORTER LEGEND

20

Dash (--)

Indicates an interruption in speech

21

Ellipses (...)

Indicates trailing off in speech

22

(ph)

Indicates phonetic word

23

[Verbatim]

Indicates the word is said as written

24

(Indiscernible)

[Transcription] Indicates word(s) is
not known due to audio recording
quality

25

1 P R O C E E D I N G S

2 (The following proceedings started at 1:11 p.m.):

3 THE COURT: Are you Jontez Ward?

4 THE DEFENDANT: Excuse me?

5 THE COURT: Are you Jontez Ward?

6 THE DEFENDANT: For the record, I am --

7 THE COURT: Sir?

8 THE DEFENDANT: I'm stating my name for the record.

9 THE COURT: All right.

10 THE DEFENDANT: For the record, I am Jontez Ward,
11 but [indiscernible] American making a special appearance
12 appropriate persona [indiscernible].

13 THE COURT: What does "appropriate persona" mean?

14 THE DEFENDANT: I plead the Fifth.

15 THE COURT: No, what does that mean?

16 THE DEFENDANT: As the Court knows, this is a
17 determination that the judge presiding over this case does
18 not have --

19 THE COURT: Sir? The script that you're reading is
20 the script that I give every --

21 THE DEFENDANT: It's not, sir.

22 THE COURT: Let me finish. It's my turn to speak.
23 You interrupted me now.

24 -- is the same script that I have heard over and
25 over again, and it's the same wording, and no one really

1 knows how it plays because it has no application to
2 anything that you're saying.

3 You're here today because your lawyer -- you don't
4 want your lawyer to represent you?

5 THE DEFENDANT: I filed for relief of counsel --

6 THE COURT: That's what I asked you. You don't want
7 your lawyer to represent you?

8 THE DEFENDANT: No, sir, I don't.

9 THE COURT: You're going to represent yourself?

10 THE DEFENDANT: Yes, sir, I will.

11 THE COURT: And you have the capability of doing
12 that?

13 THE DEFENDANT: Yes, sir, I do.

14 THE COURT: Do you understand that you're faced
15 with --

16 What are the charges, Mr. McCoy? Drug charges?

17 MR. MCCOY: Judge, he's got -- it's a -- Mr. Ziegler
18 can probably read the warrants out to you quicker, Judge,
19 but he's got a handful of charges.

20 THE COURT: And what's the exposure?

21 MR. MCCOY: Potential significant time, Judge. I
22 think, with the strikes, he's facing life without parole.

23 Is that right?

24 MR. ZIEGLER: Yeah, it is potential of life without
25 parole if he were convicted on all the separate incidents.

1 THE COURT: So they're all separate charges that
2 would be handled together, but if you go forward with the
3 trial, you can't try them altogether; is that correct?

4 MR. ZIEGLER: Correct.

5 MR. MCCOY: Correct, Judge.

6 THE COURT: Do you understand that, sir?

7 THE DEFENDANT: No, I do not understand.

8 THE COURT: Well, why do you want to represent
9 yourself if you don't understand your exposure?

10 THE DEFENDANT: The Sixth Amendment grants me the
11 right to be informed of the nature and the cause of the
12 accusation.

13 THE COURT: Well, you're informed by the indictment.
14 And the Sixth Amendment gives you a right to counsel, but
15 you're talking about now that you want to go forward,
16 which is your constitutional right to do. But you don't
17 understand that you're facing life without parole.

18 THE DEFENDANT: Can the prosecutor produce the
19 binding contract between me and the State?

20 THE COURT: I just asked you a question. Do you
21 understand you're facing life without parole?

22 THE DEFENDANT: No, I do not understand.

23 THE COURT: Well, you are. And you still want to
24 represent yourself?

25 THE DEFENDANT: Yes, I do.

1 THE COURT: Do you understand anything about the
2 rules of evidence?

3 THE DEFENDANT: I plead the Fifth.

4 THE COURT: Well, you don't plead the Fifth on that.
5 You have to answer.

6 THE DEFENDANT: Objection. I asked you a question.
7 Can the prosecutor produce the binding contract between me
8 and the State?

9 THE COURT: Binding contract? What binding contract
10 do you have?

11 THE DEFENDANT: For the plaintiff to have standing.

12 THE COURT: You're not the plaintiff. You're a
13 defendant.

14 THE DEFENDANT: Can I speak?

15 THE COURT: I just told you -- well, if you're going
16 to say something, say something that makes sense.

17 THE DEFENDANT: For the plaintiff to have standing
18 and the Court to have subject matter jurisdiction, there
19 must be an existence of a bona fide contract binding the
20 accused into the criminal maritime jurisdiction.

21 THE COURT: And what -- and what --

22 THE DEFENDANT: There's no such contract exists.

23 THE COURT: And what case do you cite for that?

24 THE DEFENDANT: *Hill (ph) v. Franklin.*

25 THE COURT: Thank you, sir.

1 Let the record reflect that this person, as everyone
2 else, who claims this position of sovereign citizen, is
3 stating --

4 THE DEFENDANT: Objection.

5 THE COURT: Sir, it's my turn to speak.

6 THE DEFENDANT: I'm not a sovereign citizen.

7 THE COURT: Well, whatever you claim to be. You
8 claim to be -- what do you claim to be? A Moorish? A
9 person who is Moorish descent?

10 THE DEFENDANT: Repeat that.

11 THE COURT: What do you claim to be?

12 THE DEFENDANT: I am of African descent. My
13 nationality is --

14 THE COURT: And your name is Jontez Ward, your given
15 name?

16 THE DEFENDANT: Correct, sir. My name is Jontez
17 Ward [indiscernible].

18 THE COURT: Have you changed your name?

19 THE DEFENDANT: I have evidence to support --

20 THE COURT: No, sir. Have you changed your name in
21 family court? Do you have a family court order?

22 THE DEFENDANT: I have evidence of what my name --

23 THE COURT: Do you have a family court order?

24 THE DEFENDANT: Such a name change character, exact
25 same legal right as the Court to create name change as

1 long as it is not done with fraudulent intent.

2 THE COURT: And who told you that?

3 THE DEFENDANT: *United States v. McKay*.

4 THE COURT: Oh, that told you that you can change
5 your name without following procedure?

6 THE DEFENDANT: Such a name change --

7 THE COURT: Thank you, sir.

8 THE DEFENDANT: -- that same legal way.

9 THE COURT: Let the record reflect that this is a
10 problem that the lower court is facing with determining a
11 *Faretta* hearing in which these persons have indicated --
12 they're citing matters that absolutely have no application
13 to any of this proceeding or any proceeding forth within
14 the future. But yet he's maintaining his continued
15 persistence that he represents himself, which is exactly
16 what he has a constitutional right to do. I find that
17 that's extremely dangerous. He's facing life without
18 parole. He's indicated he doesn't understand that, but
19 the Court is not going to create a situation where he
20 could have a lawyer and then claim post-conviction relief
21 and have another expense to the State.

22 Therefore, I have tried to have a *Faretta* hearing.
23 I can't have an intelligent *Faretta* hearing, so this
24 individual will be brought for trial on each charge as the
25 State chooses to present, and he will come without an

1 attorney, as he wishes, and he'll handle the case himself,
2 and he'll present it.

3 And, Mr. McCoy, you are discharged from further
4 representation. If you'll prepare the appropriate order,
5 sir.

6 MR. MCCOY: Yes, sir, I will. Thank you, Judge.

7 THE COURT: Thank you very much.

8 We'll let you know when your first trial is.

9 MR. ZIEGLER: Thank you, Judge.

10 (The above matter concluded at 1:16 p.m.)
11
12
13
14
15
16
17
18
19
20
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22
23
24
25

1 CERTIFICATE OF TRANSCRIBER

2 CASE NAME/NUMBER: State v. Jontez Myrelle Ward

3 2018-GS-10-04100

4 DATE OF HEARING: 7/25/2018

5 COURT REPORTER/MONITOR: Phyllis Norton (ret.)

6
7 I, Bobbi Fisher, do hereby certify that the foregoing
8 transcript is a true and correct record of the recorded
9 proceedings; that said proceedings were transcribed to the
10 best of my ability from the audio recording and supporting
11 information, and that I am neither counsel for, related
12 to, nor employed by any of the parties to this case, and I
13 have no interest, financial or otherwise, in its outcome.
14

15 17 /s/ Bobbi Fisher

18 Bobbi Fisher, Certified Transcriber

19 Date Prepared: July 17, 2023

20
21
22 NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT
23 REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR
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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
State of South Carolina,	)	CASE NO. 2018-GS-10-04100
	)	2016-GS-10-00903
	)	2016-GS-10-00904
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	ORIGINAL
	)	
Jontez Myrelle Ward,	)	
	)	
DEFENDANT.	)	
	)	

February 5, 2019 to February 7, 2019

Charleston, South Carolina

B E F O R E:

The Honorable Diane Goodstein, and a Jury.

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

Alexander J. Ziegler, Assistant Solicitor
For the State

Ashley Brown, Assistant Solicitor
For the State

Jontez Myrelle Ward, AKA Bey
Defendant - Pro se

Certified Transcript Provided For: S.C. Atty. Gen. Office

Phyllis Norton, CVR-Master, Nationally Certified Verbatim Court Reporter
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464
PNorton@sccourts.org

I N D E X

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(DW) - DENOTES DEFENSE WITNESS

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If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

<u>S T A T E ' S E X H I B I T S</u>			
<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
1	Photo	47	128
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3	Photo	47	144
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14	Photo	47	144
15	Photo	47	144
16	Photo	47	144
17	Photo	47	144
18	Photo	47	144
19	Photo	47	144
20	Photo	47	144

<u>S T A T E ' S E X H I B I T S</u>			
<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
21	Photo	47	144
22	Photo	47	144
23	Photo	47	144
24	Photo	47	144
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<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
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1 [Whereupon, trial 2/5/19, 2:00 p.m.)

2 PROCEEDINGS

3 THE COURT: All right. Yes, sir, Mr. Bey.

4 MR. BEY: Okay.

5 THE COURT: Good afternoon.

6 MR. WARD, A/K/A MR. BEY: Good afternoon to you, too.

7 Your Honor, I cannot continue without counsel. I did not
8 arrive back at the detention center until after 6:00 p.m. All
9 offices were closed.

10 I was removed this morning at 4:00 a.m. Clearly, I have
11 had no possible way to use a telephone or obtain counsel by
12 today as ordered. I did not receive any schedule dates,
13 pretrial dates, or jury selection dates from the Court or the
14 prosecutor. My past attorney, further, has not provided full
15 discovery in this case. I surely can't rely on justifiable
16 reliance of counsel.

17 There are many other issues, such as my own witnesses, to
18 which need to be noticed, videos and other discovery, to which
19 has been withheld. I simply need to be -- to be completely
20 informed to be able to make a proper decision of this
21 magnitude.

22 I cannot plea to charges that are not correct. I cannot
23 continue to a trial without counsel and/or discovery. I
24 respectfully request seven business days to secure an attorney
25 in this matter.

1 THE COURT: Let me ask you this question. You said you
2 were removed at 4:00 a.m. What does that mean?

3 MR. WARD, A/K/A MR. BEY: It means that I wasn't able to
4 use the phone. Because I'm here at two o'clock today, so if I
5 was -- transport at the jail, they picked me up at four
6 o'clock this morning; so I was never able to make any calls to
7 any attorneys this morning, either.

8 THE COURT: And did you have access to the phone last
9 evening?

10 MR. WARD, A/K/A MR. BEY: Last night I went ---

11 THE COURT: Uh-huh.

12 MR. WARD, A/K/A MR. BEY: I came back after 6:00 p.m.

13 THE COURT: Yes. Did you attempt to call anyone after
14 6:00 p.m.?

15 MR. WARD, A/K/A MR. BEY: I called several, and ---

16 THE COURT: Okay. And tell me who you called.

17 MR. WARD, A/K/A MR. BEY: It was Ben Stack. I called
18 Michael Dupree. I called a guy by -- I can't remember his
19 first name. It was something or another Anderson. I called
20 several individuals.

21 THE COURT: Uh-huh.

22 MR. WARD, A/K/A MR. BEY: And I left -- I had my mother
23 leave a voice message. So seeing that I have been here since
24 four o'clock this morning, I haven't corresponded with her to
25 find out did she reach anyone.

1 THE COURT: Uh-huh. Okay. All right. Let me ask you
2 this question. When you had your status conference with Judge
3 Dennis do you remember him asking you some questions and do
4 you remember having a conversation with him about whether or
5 not you wanted to be represented or if you wanted to represent
6 yourself; do you remember having those conversations?

7 MR. WARD, A/K/A MR. BEY: To be honest, I can't remember
8 if he asked me that on that particular day. I just can't
9 remember.

10 THE COURT: Well, do you remember telling him that you
11 preferred to represent yourself?

12 MR. WARD, A/K/A MR. BEY: Once upon a time, I did.

13 THE COURT: Okay.

14 MR. WARD, A/K/A MR. BEY: But seeing the magnitude of the
15 entire situation, I'm not ready to move forward; so I would
16 like to have counsel.

17 THE COURT: All right. Mr. Ziegler, talk to me.

18 MR. ZIEGLER: Thank you, Your Honor.

19 THE COURT: Uh-huh.

20 MR. ZIEGLER: Just to update the Court on the events that
21 occurred since the recess about twenty-four hours ago, the --
22 this -- I went to -- back to Ms. Wilson, the solicitor, and
23 got some more authorization for plea offers; because the
24 defendant had indicated that he wanted to find a way to plea
25 and resolve the case, potentially.

1 So I did get that authorization and then went down to
2 lockup to speak with the defendant and made a plea offer to
3 him. That plea offer was to plead to trafficking heroin, four
4 to fourteen grams, for a negotiated fifteen years in the
5 Department of Corrections. Also, he would be pleading to the
6 proximity charge and the possession of a weapon during the
7 commission of a violent crime and the -- it would be the
8 maximum sentences on those and they would run concurrent with
9 the fifteen years on the trafficking. That would be a
10 negotiated sentence.

11 I would also dismiss a possession of stolen handgun and
12 dismiss two counts of distribution of heroin, with that offer.
13 So I communicated that offer to the defendant. He asked to
14 have the night to consider that offer. At that time, he
15 didn't -- he didn't say he needed to -- he didn't specifically
16 say he needed to speak to a lawyer about it. He just asked
17 for a night to consider it. So we told him we would see him
18 in the morning and ask him whether he was accepting or
19 rejecting that offer.

20 So we did that this morning after 9:00 a.m., and he
21 informed us that he needed to obtain counsel. He didn't make
22 any statements whether he was accepting or rejecting the plea
23 offer. That was the end of the conversation.

24 When I got back to my office I received a call from Chip
25 Cannon who is a private attorney that works with Rutledge

1 Durant. And he had been hearing from the defendant's family
2 about potentially retaining -- or -- I'm not sure exactly what
3 their conversation was. But he had heard from the defendant's
4 family. So the defendant's family was able to get the word
5 out that Mr. Ward wanted to speak to a lawyer.

6 Then after that we just waited to come back. Haven't
7 spoken to Mr. Ward again since. So that's what's transpired
8 since yesterday evening.

9 I do have a lengthy argument and some things to put on
10 the record about Mr. Ward's request to -- for a continuance,
11 as well; but I don't know if you are ready to hear it.

12 THE COURT: Go for it. Yeah, go ahead.

13 MR. ZIEGLER: Okay.

14 THE COURT: Now is the time.

15 MR. ZIEGLER: All right. Thank you.

16 The Gardner vs. State, 351 S.C. 407, is a case that deals
17 with the right to counsel, waiver of right to counsel, and
18 what someone must be advised of when waiting. The accused --
19 this case provides that the accused must be, one, advised in
20 his right to counsel and, two, adequately warned of the
21 dangers of self-representation.

22 The State argues that the chief administrative judge in
23 this circuit and for Charleston County, Judge Dennis, has
24 adequately advised the defendant of his right to counsel at
25 numerous hearings, most particularly on July 25th, 2018, when

1 he granted the defendant's motion to relieve his counsel; and
2 Judge Dennis, number two, has also adequately warned the
3 defendant of the dangers of self-representation. That was at
4 the July 25th, 2018 hearing.

5 THE COURT: Is there an order?

6 MR. ZIEGLER: There is -- there is not an order. The --
7 and I don't have a record of it either, so it's -- I don't
8 have a -- I don't have a perfect recollection of what occurred
9 at that hearing; but I do remember Judge Dennis speaking with
10 the defendant about his situation, whether he wanted to
11 represent himself and the seriousness of doing that.

12 And I do remember that Judge Dennis and the defendant
13 were not -- the defendant wasn't really cooperating with the
14 hearing and communicating clearly with Judge Dennis, so Judge
15 Dennis made the record clear that he believed that the record
16 was clear that he was advising the defendant of his rights and
17 warnings under Faretta. And so -- but, again, I don't
18 remember the exact record of that hearing.

19 The Gardner case goes on to say that even if the trial
20 judge fails to address the disadvantages of appearing pro se,
21 as required by the second prong of Faretta, the Court would
22 look to the record to determine whether the petitioner had
23 sufficient background or was apprised of his rights by some
24 other source.

25 The way the court -- the way a court makes that analysis

1 is by looking at -- the Gardner case lists ten factors. The
2 first factor is the accused's age, educational background, and
3 physical and mental health. This defendant has, during these
4 proceedings, been thirty to thirty-four years old. There is
5 some evidence that he had involvement with Trident Tech, so
6 his education is sufficient. And he seems to be of normal
7 health and mental abilities.

8 The second factor is whether the accused was previously
9 involved in criminal trials. I don't believe the defendant
10 has been involved in actual trials, but has in the past had
11 many charges in general sessions court and has pled guilty to
12 charges in general sessions court.

13 The third factor is whether the accused knew the nature
14 of the charges and the possible penalties. The defendant has
15 been advised at numerous hearings of the charges he is facing
16 and the possible penalties for that, the most serious of which
17 is a -- the trafficking of heroin more than 28 grams which
18 carries twenty-five to forty years in prison.

19 The fourth factor is whether the accused was represented
20 by counsel before trial and whether that attorney explained to
21 him the dangers of self-representation.

22 The defendant was represented for a long period of time
23 by Peter McCoy. Peter McCoy, to the best of my knowledge, did
24 put on the record at a hearing before Judge Dennis that he had
25 advised -- that he had spoken to the defendant at length about

1 representing -- the potential of representing himself and what
2 that meant, and had advised the defendant of the dangers of
3 doing that.

4 The fifth factor, and this is the one I would direct the
5 Court to focus most closely on, is whether the accused was
6 attempting to delay or manipulate the proceedings. The -- I
7 will -- I'll go back to that factor, actually, after I finish
8 the rest of the factors ---

9 THE COURT: Okay.

10 MR. ZIEGLER: --- because that will be the longest
11 explanation.

12 The sixth factor is whether the Court appoint -- whether
13 the Court appointed standby counsel. Standby counsel has not
14 been appointed for the defendant. But at the January 18th
15 hearing before Judge Dennis of this year, Judge Dennis asked
16 Jim Smiley, a local private attorney, to speak to the
17 defendant when the defendant arrived here for that status
18 hearing. Mr. Smiley did go into the lockup area and attempt
19 to talk to the defendant. And it's my understanding that the
20 defendant told him he was not interested in speaking to Mr.
21 Smiley.

22 But I believe Judge Dennis wanted Mr. Smiley to speak to
23 the defendant just to see if he could -- just to see whether
24 the defendant wanted counsel or what he -- if he could help
25 him resolve this case. And the defendant indicated he did not

1 want that.

2 The seventh factor is whether the accused knew he would
3 be required to comply with the rules of procedure at trial. I
4 believe the defendant is under notice that if he is
5 participating in representing himself, that he's going to have
6 to follow the rules.

7 He has -- it's not like he has done nothing while
8 unrepresented. He has filed a number of motions with the
9 Court and behaved as if he is aware of the rules of court and
10 has cited many rules in his motions.

11 The eighth factor is whether the accused knew of legal
12 challenges he could raise in defense to the charges against
13 him. The State believes that the defendant, in filing these
14 motions with the Court, and representing himself for a long
15 period of time, suggests that he does know he can raise
16 defenses. He has done that in those motions.

17 The ninth factor is whether the exchange between the
18 accused and the Court consisted merely of pro-forma answers to
19 pro-forma questions. It seems to me that the interactions
20 between Judge Dennis and the defendant on January 18th, 2019,
21 and July 25th of 2018, were indicative to the defendant that
22 it was a very serious matter that he was going to be
23 representing himself.

24 The tenth factor is whether the accused's waiver resulted
25 from either coercion or mistreatment. I am not aware of any

1 coercion or mistreatment of the defendant. I don't believe
2 any has been alleged in his waiver of his right to counsel.

3 So, Your Honor, I'll go back to the factor, the fifth
4 factor, which is whether the accused was attempting to delay
5 or manipulate the proceedings. And I think some of the
6 history in this case needs to be put on the record to
7 illustrate this factor for the Court.

8 The defendant was initially arrested on November 21st,
9 2014, for two counts of distribution of heroin. He was in
10 jail for a short period of time. I'm sorry, it was November
11 the 6th, 2014, that he was initially arrested. He was
12 released from jail November 21st, 2014. At that time he had
13 pending two distribution of heroin arrest warrants.

14 He was lined up to continue to cooperate, potentially,
15 with Detective Fink, which he had already done once. He never
16 did cooperate again with Detective Fink. Instead was released
17 on bond.

18 And at some point, Detective Fink, because he had not
19 received that cooperation -- he had been holding on to some
20 warrants for the defendant from the execution of a search
21 warrant on November 6th.

22 On March 20th, 2015, arrest warrants for trafficking
23 heroin, possession with intent to distribute controlled
24 substance in proximity, possession of a weapon during the
25 commission of a violent crime, the warrant was signed. That

1 was March 20th, 2015.

2 Then on May 29th, 2015, while the defendant was
3 represented by Mr. McCoy, he failed to appear for a second
4 appearance on those initial distribution of heroin charges.
5 He had asked to be -- his attorneys had asked for him to be
6 excused from that appearance. I declined to excuse him from
7 that appearance because I was aware that, and made the
8 attorneys aware that, the defendant had outstanding arrest
9 warrants and they needed to be served on him.

10 Nonetheless, the defendant did not appear for that second
11 appearance and a bench warrant was issued for failure to
12 appear. About a month later on June 23rd, 2015, the defendant
13 was arrested on those bench warrants and the remaining
14 outstanding arrest warrants were served.

15 A few months later on November 12th, 2015, the State
16 communicated a plea offer in writing to defense counsel
17 encompassing all of the defendant's pending charges. While
18 the defendant faced a minimum of twenty-five years, up to
19 forty on the trafficking heroin charge, and possibly even life
20 without parole because of his record, the plea offer was a
21 negotiated sentence of ten years in prison and that was
22 calculated to reflect cooperation he had provided to law
23 enforcement.

24 The defendant was scheduled on guilty plea dockets on
25 nine separate terms of court from January 4th, 2016, to

1 October 16th, 2017. So nine different schedulings on plea
2 dockets. I had contact with his attorneys ---

3 (WHEREUPON, indications from defendant wishing to speak)

4 THE COURT: I'm going to hear from you.

5 MR. ZIEGLER: At around the times of all of those plea
6 hearings I had contact with the defendant's attorneys.
7 They -- Mr. McCoy and his associate always indicated to me
8 that the defendant did not want a trial, that this was much
9 more likely to be a plea; and I continued to leave that plea
10 offer open believing that the defendant would accept the plea
11 offer and wanted to, but just I was informed he wasn't ready
12 yet.

13 So on December 12th, 2016 - this was after nine different
14 plea hearings - we had a -- we were coming up on a plea
15 hearing; and the morning of the plea, the defendant indicated
16 that he was able to provide information in a case of high
17 importance. As a result, with the consent of defense counsel,
18 the State delayed those guilty plea proceedings and relayed
19 this back to law-enforcement so that they could look into it.

20 Authorities interviewed the defendant in April of 2017
21 but determined that his information that he was providing to
22 them was of no value. And so we then were back where we had
23 started before he said he had the information.

24 There was a period of time in January of 2017 to June
25 2017 when Mr. McCoy was protected and this case could not be

1 scheduled for trial. Nonetheless, the State still hadn't been
2 made aware that the defendant wanted a trial.

3 At some point between May of 2017 and August 2017 the
4 defendant indicated through his attorney that he was seeking
5 an improved plea offer from the ten years we had previously
6 offered. So as a result, the State modified that plea offer
7 for the defendant reducing the minimum exposure with a
8 negotiated range of seven to twelve years. It was my
9 understanding that that was -- that was potentially attractive
10 to the defendant.

11 On March 27th, 2018, a status conference was held before
12 Judge Dennis; and at that conference, the defendant sought to
13 have Mr. McCoy relieved as counsel. Judge Dennis at that time
14 determined that the defendant was rejecting the State's plea
15 offer because he had not accepted it and was not accepting it
16 on that day. This was the defendant's first rejection of the
17 plea offer, to my knowledge, during the course of this case.
18 Mr. McCoy was not relieved as counsel at that time in March.

19 The hearing to -- the hearing for the defendant's motion
20 to relieve counsel was heard on July 25th, 2018, before Judge
21 Dennis. Judge Dennis granted the defendant's motion to
22 relieve Mr. McCoy at that time, and, as I have stated,
23 attempted to advise the defendant of his rights under Faretta
24 versus California.

25 So since July 25th, 2018, the defendant has not had

1 counsel and, by his choice, has represented himself. The
2 filings -- some of the filings that the defendant has made on
3 his own behalf, some of these were while he was still
4 represented by counsel.

5 On December 14th, 2017, a petition for writ of
6 certiorari, that was filed while represented. On that same
7 day, a memorandum of law on liberty and a notice of removal.
8 On March 26th of 2018, a motion to dismiss. On May 29th,
9 2018, a motion to relieve counsel. On September 7, 2018, an
10 affidavit of fact and a writ of discovery. On November 9th,
11 2018, a motion to dismiss. On November 26, 2018, a motion of
12 constitutional challenge. So the defendant has taken an
13 active role in representing himself and has filed a number of
14 motions on his own behalf.

15 The State's position is that this defendant, as you can
16 see through the history of this case, has made multiple
17 attempts to delay the trial in this case. More recently
18 before Your Honor, the defendant has again made specific
19 attempts to delay this trial.

20 The first -- he went through a series of graduated steps
21 in attempting to delay. The first was -- after we had already
22 begun motions pretrial, the Jackson v. Denno motion, the
23 defendant's first step was to say that he was going to provide
24 some information about another case of high importance. The
25 State rejected this offer for him to provide information,

1 partly because we had heard this from him before. It was not
2 valuable information.

3 So that didn't work for the defendant; and he moved to
4 the second step, which was saying that he didn't really want a
5 trial, that he possibly wanted to plead and resolve this case.

6 I, right here in court with the defendant, engaged in
7 some plea discussions with him and concluded in those
8 discussions that we were too far apart on our numbers; and so
9 we moved on and were ready to move on with trial again.

10 The third step that the defendant went to was saying that
11 he wanted a lawyer. And this is the first time he had
12 indicated that to the Court since he had Mr. McCoy relieved in
13 July of 2018. He did not even indicate that he wanted a
14 lawyer at the outset of this trial before the Jackson v. Denno
15 motion and the State called its witnesses.

16 Your Honor, if I may approach, I have a matter that we
17 might need to be addressed with you off the record, the
18 defendant.

19 THE COURT: Okay.

20 MR. ZIEGLER: I'll approach and you can ---

21 [Whereupon, an off-the-record bench conference is held]

22 THE COURT: All right. Back on the record.

23 And counsel just shared with me that there was a matter
24 of -- that was a confidential matter and that his impression
25 was that the defendant wished to go to trial and sooner rather

1 than later, was his impression. Beyond that, I don't -- I
2 don't want anything beyond that to be on this record.

3 All right. You may continue.

4 MR. ZIEGLER: Thank you, Your Honor.

5 So this case has been pending for a very long time. The
6 State has been very patient with leaving a plea offer open for
7 the defendant. And the State has been ready to proceed to
8 trial for some time, as well. We were just waiting for the
9 Court to put it on the docket.

10 This is -- this is the date that the general sessions
11 court has placed this case on the docket, and the State is
12 prepared to move forward at this time.

13 In addition, we have multiple witnesses who in the future
14 may be going out of the country. Detective Captain Fink is in
15 the navy and gets deployed from time to time and he could be -
16 - he could be gone for around a year. And he believes he will
17 have deployment coming up this summer, be out of the country
18 for a significant period of time.

19 There's another witness, Mr. Hochreiter, who works for a
20 military contractor. And he has informed me that he sometimes
21 goes out of state and the country for work with SPAWAR.

22 So in an effort to avoid any further delay and potential
23 continuances because of witnesses being away, the witnesses
24 are here and ready this week and the State is prepared to go
25 forward and respectfully requests that Your Honor deny the

1 motion to continue on behalf of the defendant.

2 THE COURT: All right. Very well.

3 And how long do you anticipate that it will take the
4 State to put up the State's case?

5 MR. ZIEGLER: I think we can be -- believe we can be done
6 by the end of the day Thursday.

7 THE COURT: Okay. All right. Thank you.

8 I will hear from you fully. Yes, sir?

9 MR. WARD, A/K/A MR. BEY: Okay. One thing I wanted to
10 mention is even though he's not here to defend himself, Peter
11 McCoy was very conjulent [ph] throughout the -- without -- I
12 mean throughout my entire rapport with him.

13 He would -- initially -- I can't remember the date, but
14 it was some time in November of 2016, he initially came to me
15 and he said that, hey, the State is making an offer, they have
16 an offer for seven years. So he said he wasn't thrilled by
17 that -- by those numbers. So I said, hey, is it possible that
18 I could go to Turning Leaf or something like that. He said,
19 well, I'll speak to the solicitor about it.

20 He -- we were down here. He said that he would go speak
21 to the solicitor. I never heard from him.

22 So it was months after that time, maybe almost a year,
23 and one day Sarah Turner scheduled a video conference with me.
24 And she said, hey, how you doing. I said, I'm doing fine.
25 She said, well, I'm contacting you because I just got an email

1 and it's a -- it's a plea offer. So she said that it was a
2 plea offer for ten years. And I said -- I said, Sarah, I
3 spoke to Peter some time ago and Peter told me that it was
4 seven years. She said, hold on. I said -- she went away from
5 the screen. She came back. She says, well, I usually try to
6 update you anytime I hear from the solicitor and this is the
7 first time that I've heard from him and this is a ten-year
8 case.

9 So it had me kind of -- let me see how I could put it.
10 It had me kind of confused why would Peter McCoy convey a
11 message just saying that it was seven years. But over the
12 years when this has been going on, I asked Peter McCoy about
13 that; and he told me that he doesn't remember having that
14 conversation with me.

15 But I told Peter McCoy; I said, at the end of the day,
16 you may not be intimate with every one of your cases like
17 that, but at the end of the day this is my life so I'm going
18 to remember what you tell me.

19 And so from there, he went back and forth. He was like,
20 you know -- he never said that it's a ten-year plea, it's a
21 ten year plea. So that's when I asked him can he -- can he
22 get a renegotiated plea. And he came back and said that he --
23 he got it to an open plea for seven to twelve years. And this
24 was around November, 2017.

25 THE COURT: Well, I think that is what Mr. Ziegler just

1 told me.

2 Isn't that right, Mr. Ziegler?

3 MR. ZIEGLER: (Nods head.)

4 THE COURT: Okay.

5 MR. WARD, A/K/A MR. BEY: And that was correct.

6 THE COURT: And Mr. Ziegler would agree with you. Okay.

7 MR. WARD, A/K/A MR. BEY: Around November of 2017, ---

8 THE COURT: Right.

9 MR. WARD, A/K/A MR. BEY: --- I had my girlfriend contact
10 Peter McCoy via text, and I asked her -- we were on video
11 visit, and I told her to text Peter and ask him did he get the
12 solicitor to come down off of the plea.

13 He texted her back and said, I can't get them to come
14 down, he's still at ten years. So right then and there I made
15 the decision to fire Peter McCoy. I no longer wanted him.
16 Because Peter McCoy was telling me one thing and then all of
17 the things wasn't adding up.

18 He said that they got it to a seven- to twelve-year plea;
19 and then he goes back and says that he can't get them to come
20 down, it's a ten-year plea. So I felt like he wasn't in the
21 best of my interest, so I fired Peter McCoy. He didn't have
22 any problem with me firing him.

23 As far as me relaying that I feel like I'm -- I'm
24 incompetent to represent myself ---

25 THE COURT: Stop, now. When was that? When did that

1 happen?

2 MR. WARD, A/K/A MR. BEY: When Peter McCoy say that when
3 he was fine with it?

4 THE COURT: No -- yeah, when Peter McCoy was relieved,
5 when that ---

6 MR. WARD, A/K/A MR. BEY: He was actually ---

7 THE COURT: In July?

8 MR. WARD, A/K/A MR. BEY: He was officially relieved on
9 June -- was it June 25th?

10 THE COURT: Okay. Of 2017?

11 MR. WARD, A/K/A MR. BEY: '18.

12 THE COURT: '18. Okay.

13 MR. WARD, A/K/A MR. BEY: But in -- March 26th, ---

14 THE COURT: Uh-huh.

15 MR. WARD, A/K/A MR. BEY: --- I tried to -- I tried to
16 fire Peter McCoy, ---

17 THE COURT: Right.

18 MR. WARD, A/K/A MR. BEY: --- and Judge Dennis didn't
19 allow me to at that time.

20 THE COURT: Right.

21 MR. WARD, A/K/A MR. BEY: But Peter McCoy said that he
22 was fine ---

23 THE COURT: Right.

24 MR. WARD, A/K/A MR. BEY: --- with being relieved.

25 But why I said that I am incompetent to represent

1 myself ---

2 THE COURT: I would stay with June. And then -- and at
3 that same hearing in June ---

4 MR. ZIEGLER: Your Honor, it is July 25th.

5 MR. WARD, A/K/A MR. BEY: It's July 25th.

6 THE COURT: July 25th? Okay.

7 MR. ZIEGLER: Excuse me.

8 THE COURT: Okay. July 25th was when he was -- the order
9 was signed; correct?

10 MR. WARD, A/K/A MR. BEY: Correct.

11 THE COURT: Or was that the hearing?

12 MR. ZIEGLER: That was the hearing. The order was signed
13 I believe in October, but the --- reflected at the hearing was
14 in July.

15 THE COURT: I understand that it was held in July. Okay.

16 And do you remember at that point do you remember that
17 Judge Dennis having a conversation with you about now what do
18 you do now that Mr. McCoy was no longer representing you, what
19 next; do you remember that conversation?

20 MR. WARD, A/K/A MR. BEY: Correct.

21 THE COURT: Tell me about that conversation.

22 MR. WARD, A/K/A MR. BEY: I can't remember verbatim what
23 it was about, but he ---

24 THE COURT: You don't have to tell me verbatim. Tell me
25 what you remember about it.

1 MR. WARD, A/K/A MR. BEY: But he stated something about
2 did I want to represent myself, ---

3 THE COURT: Yes.

4 MR. WARD, A/K/A MR. BEY: --- and I told him that I
5 would.

6 THE COURT: Okay.

7 MR. WARD, A/K/A MR. BEY: And at that point in time I
8 just -- I wanted the case to be done with and get it over
9 with, but I knew that Peter McCoy didn't have my best of
10 interest. And to have someone that I am confiding in and
11 hoping that he had my best interest and when a person sustains
12 another -- a position of trust and confidence, it kind of had
13 me kind of sketchy about dealing with another lawyer because
14 it's my life on the line. And this is the first time that
15 I've ever had a lawyer actually -- I have caught him lying. I
16 don't have proof of it, but I have caught him lying.

17 And at this point in time I didn't have money like that
18 to retain another lawyer, but I was willing to fire him. He
19 was paid in full, but I was willing to fire him because Peter
20 McCoy didn't have my best of interest.

21 But at this time now, I'm able financially to hire
22 counsel. And as far as ---

23 THE COURT: Well, hold on, now.

24 So in July you remember telling Judge Dennis that you
25 wanted to represent yourself, yes?

1 MR. WARD, A/K/A MR. BEY: Correct.

2 THE COURT: Okay. So y'all had that conversation?

3 MR. WARD, A/K/A MR. BEY: Correct.

4 THE COURT: Okay. He probably told you that if you -- if
5 you wanted to retain counsel, you certainly could, or if you
6 wanted to make an application for the public defender's office
7 if you thought you couldn't afford it ---

8 MR. WARD, A/K/A MR. BEY: No. No, he didn't mention any
9 of that.

10 THE COURT: Okay, prob- -- well, perhaps he didn't
11 because you said you wanted to represent yourself. Okay.

12 MR. WARD, A/K/A MR. BEY: No, he didn't mention that.

13 THE COURT: So you're representing yourself in July,
14 right?

15 MR. WARD, A/K/A MR. BEY: It was official -- yeah, July
16 25th.

17 THE COURT: Yes. Okay.

18 MR. WARD, A/K/A MR. BEY: So ---

19 THE COURT: Right.

20 MR. WARD, A/K/A MR. BEY: With me coming in here -- and,
21 you know, sometimes I know what I want to say, but sometimes
22 my thoughts evade me and I feel like I'm not competent to
23 represent myself.

24 No disrespect to you guys, but y'all have been doing this
25 thirty and forty years plus. And I feel that it would be in

1 the best of my interest to have counsel to represent me.

2 THE COURT: When did you make that decision?

3 MR. WARD, A/K/A MR. BEY: I made that decision on -- that
4 was a few days ago when I was in here, when I came in here.
5 Maybe it was -- it was yesterday.

6 THE COURT: Okay. So yesterday you decided that you
7 wanted to have counsel appointed. Okay, ---

8 MR. WARD, A/K/A MR. BEY: Yes, ma'am.

9 THE COURT: --- you wanted counsel yesterday?

10 MR. WARD, A/K/A MR. BEY: That was -- yeah, when we had
11 the jury roll call or whatever.

12 THE COURT: Uh-huh.

13 MR. WARD, A/K/A MR. BEY: Yeah, because ---

14 THE COURT: Yes.

15 MR. WARD, A/K/A MR. BEY: I just felt like -- you know,
16 in my mind I felt like I wanted to represent myself and that's
17 what I wanted to do; but when I'm here and in the situation,
18 that I just couldn't -- I wasn't as quick on my feet as I
19 would like to be. And I feel like the best of my interest
20 would be to have counsel, which and I am able to obtain.

21 THE COURT: Uh-huh. Now, there was a lawyer that called
22 Mr. Ziegler on your behalf. And that lawyer's name is?

23 MR. ZIEGLER: Mister -- oh, Chip Cannon. Mr. Cannon.

24 MR. WARD, A/K/A MR. BEY: No, that's news to me. Because
25 I have been here today, so I don't know what's -- what went

1 on.

2 THE COURT: His name is Chip?

3 MR. ZIEGLER: Chip Cannon.

4 THE COURT: Cannon. Chip Cannon.

5 Do you know Chip Cannon?

6 MR. WARD, A/K/A MR. BEY: No, I don't.

7 THE COURT: Okay. So you did not contact Chip Cannon?

8 MR. WARD, A/K/A MR. BEY: No. It was impossible that I
9 contacted him today, ---

10 THE COURT: Okay.

11 MR. WARD, A/K/A MR. BEY: --- because I was here
12 since ---

13 THE COURT: Okay.

14 MR. WARD, A/K/A MR. BEY: --- eight o'clock this morning.

15 THE COURT: All right. And so you think maybe ---

16 MR. WARD, A/K/A MR. BEY: I know for a fact it was my
17 mother.

18 THE COURT: Okay, so your mom?

19 MR. WARD, A/K/A MR. BEY: Yeah, because ---

20 THE COURT: Okay.

21 MR. WARD, A/K/A MR. BEY: --- being that I was calling
22 last night and I couldn't ---

23 THE COURT: Yes.

24 MR. WARD, A/K/A MR. BEY: I was getting the
25 voicemails, ---

1 THE COURT: Yes.

2 MR. WARD, A/K/A MR. BEY: --- I told her to leave
3 messages and try to get somebody this morning.

4 THE COURT: Okay. And you think that your mom called
5 Chip Cannon?

6 MR. WARD, A/K/A MR. BEY: Definitely.

7 THE COURT: I gotcha.

8 And what did -- and you told Chip Cannon what the --
9 where you were in terms of the proceeding?

10 MR. ZIEGLER: Yes. I told him that we were starting
11 again at 2:00 p.m. today ---

12 THE COURT: Gotcha.

13 MR. ZIEGLER: --- and that there was a plea offer open.

14 THE COURT: I understand. Okay. All right.

15 So let me be clear. Judge Dennis has been through the
16 colloquy with you to allow you to represent yourself and found
17 that you could represent yourself; and, in fact, you have been
18 representing yourself; yesterday you have changed your mind
19 and you want -- you would prefer to have counsel representing
20 you; and you've asked me to continue this case to allow you
21 that opportunity; ---

22 MR. WARD, A/K/A MR. BEY: Correct.

23 THE COURT: --- is that it in a nutshell?

24 MR. WARD, A/K/A MR. BEY: Correct.

25 THE COURT: All right. So let me ask you this question.

1 What's -- and is it true that you showed up for -- on the plea
2 roster nine times?

3 MR. WARD, A/K/A MR. BEY: About the nine times, I could
4 recall maybe three times that I even asked to be -- on one.
5 There's been times that I've been brought down here without
6 notice. I've just been brought down here.

7 Which and I tell you, they wake us up at four o'clock in
8 the morning. So I have to sit down at the jail until maybe
9 8:00 when they transport us over here. There's been times
10 that I sat here from 8:00 in the morning all the way until
11 4:30, five o'clock in the afternoon, I never see Peter McCoy,
12 I had no idea why I was down there. That has happened on a
13 number of times.

14 THE COURT: Okay. Okay. All right.

15 MR. WARD, A/K/A MR. BEY: So the majority of those
16 times -- I could honestly say that I spoke to Peter McCoy out
17 of those nine times I may have spoken to him three times
18 downstairs. But it was never a prior notice like he says
19 he'll call or visit me and say, hey, well, we got a plea
20 offer, we'll be down there tomorrow. That was never the case.
21 It was just like somebody -- the CO knocks on my bed, wakes me
22 up, hey, you have got court today.

23 So I am oblivious to the fact of why I have to be down
24 here. I am brought down here. Never get to -- it is just
25 basically a turnaround.

1 THE COURT: Okay. All right. You remember three times,
2 though, that you were down here and saw somebody?

3 MR. WARD, A/K/A MR. BEY: And actually spoke to Peter
4 McCoy.

5 THE COURT: Okay. All right.

6 MR. WARD, A/K/A MR. BEY: And on one of those occasions,
7 he was supposed to get back with me. He said that he would go
8 and speak to Mr. Ziegler. I don't remember exactly what the
9 conversation was about, but he was going up to speak to him
10 and he would come back to me. But he never came back to me.

11 THE COURT: All right. This will be the order of the
12 Court: It appears that the defendant, Mr. Bey, had retained
13 counsel and -- Mr. McCoy, and that Mr. McCoy represented Mr.
14 Bey for a substantial period of time, ending in July of 2018,
15 apparently from some time in 2015 and concluding in July of
16 2018. At the time that Mr. McCoy was relieved, Mr. Bey
17 indicated to the Court that he wished to represent himself.
18 And apparently, based upon the communications between Judge
19 Dennis and Mr. Bey, he then proceeded to represent himself.
20 So apparently he was qualified under Faretta and its progeny
21 to represent himself. And he has been very candid with me
22 that he was, I gather, content to continue in that fashion
23 until yesterday during the -- I gather during the Jackson v.
24 Denno and the jury qualification process, perhaps when he made
25 his pretrial motions, that he became concerned and at that

1 point wanted to have counsel appointed.

2 Yesterday after Mr. Bey argued his motions he asked to be
3 able to share information with the Solicitor's Office for the
4 purpose, I gather, for negotiating his own plea; and we took
5 an early lunch recess to allow him to do that. And when we
6 returned from lunch Mr. Ziegler shared with me that Solicitor
7 Wilson was uninterested in any information that Mr. Bey would
8 share.

9 Following that, Mr. Bey indicated that he did not want to
10 proceed and indicated that he wanted to have counsel
11 appointed. And apparently that is the first time that that's
12 been indicated to the Court since the order releasing Peter
13 McCoy following the hearing in July of 2018.

14 When Mr. Ward indicated that he wanted counsel and that
15 he could afford to pay counsel and he wanted to retain
16 counsel, as opposed to having a public offender appointed, but
17 indicated clearly that he could have -- he could and was in a
18 position to obtain counsel and to retain counsel, we concluded
19 early yesterday to afford him the opportunity to do that. And
20 for whatever reason, he has been unable to do that. Although
21 apparently his family was able to make some contact, because
22 while Mr. Cannon apparently hasn't spoken with Mr. Bey he has
23 spoken with Mr. Ziegler.

24 There really isn't anything else that I know to do. I
25 don't know of anything additional that I am able to do, other

1 than to continue the case. I am concerned -- I am very
2 concerned that Mr. Bey interposes the request for counsel for
3 the purpose of delay. He's been representing himself since
4 July. And that would be July, August, September, October,
5 November, December. That's seven months.

6 I am concerned that counsel tells me that he was brought
7 over for plea rosters nine times, although Mr. Bey does say he
8 remembers only three of those. But even to be brought over
9 for three plea rosters -- and then I understand the case
10 management order that is in existence currently, one is not
11 placed on the plea roster unless there is a plea.

12 Isn't that correct, Mr. Ziegler?

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

14 THE COURT: Okay. And so if he was on the plea roster a
15 number of times, then somebody thought ---

16 (WHEREUPON, defendant indicating desire to speak)

17 THE COURT: I will hear from you in just a minute.

18 So ---

19 MR. ZIEGLER: Your Honor, I will clarify that when he was
20 on those plea rosters it was the State that was still in
21 control of the plea dockets, so we were putting them on there.

22 THE COURT: Okay. Thank you for that clarification.
23 Yes. Got it.

24 And so you hoped, you thought, I guess, that Mr. Bey was
25 going to plea, but you did not know; is that what you were

1 telling me?

2 MR. ZIEGLER: It was indicated to me by Mr. McCoy that it
3 was -- he did not expect it to be a trial, that he thought it
4 was a plea.

5 THE COURT: I gotcha. Okay.

6 And so he came over a number of times. He remembers
7 three. Mr. Bey remembers three. And apparently the plea
8 negotiations -- I gather the lowest that the plea negotiations
9 reached was a range of between seven and twelve years and at
10 some point that was -- that plea was -- offer was revoked and
11 the plea offer was -- is now at fifteen years negotiated; is
12 that right?

13 MR. ZIEGLER: That's right.

14 THE COURT: Okay. So and that is where we are. So at
15 the end of the day I have no other means -- I have no other
16 finding that I can make in good faith other than the request
17 for counsel at this point is made for the purposes of delay.
18 While I -- you know, I certainly empathize, there must be an
19 end to litigation.

20 And Mr. Bey obviously indicated to Judge Dennis his
21 desire to represent himself. And all are in attendance, all
22 is ready, the jury panel is downstairs, and we must go forward
23 at this time.

24 All right.

25 MR. WARD, A/K/A MR. BEY: So ---

1 THE COURT: Yes?

2 MR. WARD, A/K/A MR. BEY: --- I won't be able to get Chip
3 Cannon? I'm trying to get an understanding of what you are
4 saying, so ---

5 THE COURT: I'm not going to continue the case for you to
6 get Chip Cannon. I would have been delighted to have Mr.
7 Cannon here. Would have been delighted for you to have Mr.
8 Cannon or any lawyer of your choosing represent you. That's
9 why I gave you the continuance until two o'clock today.

10 MR. WARD, A/K/A MR. BEY: Correct.

11 THE COURT: Uh-huh.

12 MR. WARD, A/K/A MR. BEY: And I don't know if you
13 understand the procedures or how they deal with us here
14 from -- leaving from here to the jail. But transport comes to
15 pick us up maybe at like four o'clock. So when we get to the
16 jail we would have to sit until six o'clock when shift
17 changes. So I wasn't able to call anybody. But ---

18 THE COURT: I know that. But you certainly had your
19 mother call Chip Cannon.

20 MR. WARD, A/K/A MR. BEY: Correct.

21 THE COURT: Chip Cannon could have come over here to see
22 you, if he wished to today.

23 MR. WARD, A/K/A MR. BEY: I don't know what they spoke
24 about. When he told me that, that was news to be because I
25 haven't spoken to her.

1 THE COURT: I get it. I'm with you completely. But
2 obviously somebody was communicating ---

3 MR. WARD, A/K/A MR. BEY: Correct.

4 THE COURT: --- with folks for you today.

5 MR. WARD, A/K/A MR. BEY: But I personally do not wish to
6 continuously to delay this case. I want it also to be over.
7 So I would like to have Chip Cannon.

8 THE COURT: Okay. Well, I don't -- I don't know how to
9 help you. That was the whole purpose of what I did yesterday.
10 If you had told me, Judge Goodstein, that's nice that you're
11 going to give me until two o'clock tomorrow but it ain't going
12 to help me because, you see, you don't understand this process
13 and that's not going to work ---

14 MR. WARD, A/K/A MR. BEY: To be honest, I thought you did
15 know. I'm not -- I wasn't sure. When you said that, I
16 thought you knew.

17 THE COURT: Well, ---

18 MR. WARD, A/K/A MR. BEY: That's ---

19 THE COURT: --- why would you think I would have done it?
20 Why would I have -- I mean that's nonsensical. Why would I
21 have granted you a continuance until two o'clock to seek
22 counsel if you weren't going to be able to seek counsel? That
23 nonsensical, right?

24 MR. WARD, A/K/A MR. BEY: I mean I don't know -- I just
25 assumed that you knew how things ---

1 THE COURT: Well, ---

2 MR. WARD, A/K/A MR. BEY: --- operated with us.

3 THE COURT: --- assuming is a bad thing to do, Mr. Bey.
4 I'm sorry that you made that assumption. I'm sorry you made
5 that assumption. I am.

6 So if you can get Chip Cannon to come on in and meet with
7 you this evening, that is fine. But we've got to get this
8 trial started. These people have been sitting around here now
9 for days.

10 MR. WARD, A/K/A MR. BEY: So how would I be able to call
11 Chip Cannon?

12 THE COURT: I don't know. I don't know.

13 MR. WARD, A/K/A MR. BEY: You mean from here?

14 THE COURT: I don't know. I don't know. I don't know
15 what the communication abilities are, Mr. Bey. I simply
16 don't. This is -- I don't know.

17 MR. WARD, A/K/A MR. BEY: I assume that like when I -- if
18 I was able to get back to the jail, that's the way I could
19 talk to him and then I could call him. Because ---

20 THE COURT: Okay.

21 MR. WARD, A/K/A MR. BEY: --- now my mother has his
22 number so.

23 THE COURT: Okay. Well, you will be there tonight.

24 MR. WARD, A/K/A MR. BEY: Okay.

25 THE COURT: You will be at the jail tonight. So if you

1 want to call him, that's fine.

2 MR. WARD, A/K/A MR. BEY: I will give him a call.

3 THE COURT: Okay. That will be fine. But we are going
4 to pick a jury. Okay?

5 MR. WARD, A/K/A MR. BEY: I don't know how to pick a
6 jury.

7 THE COURT: I'm sorry. I ---

8 MR. WARD, A/K/A MR. BEY: That's why I asked ---

9 THE COURT: --- you know -- yeah.

10 MR. WARD, A/K/A MR. BEY: -- to have counsel, because I
11 don't know how to pick a jury.

12 THE COURT: I know. You should have thought of that, Mr.
13 Bey, in July. At the end of the day ---

14 MR. WARD, A/K/A MR. BEY: So I'm basically being forced
15 against my will to move forward without counsel?

16 THE COURT: No, you're actually getting the benefit of
17 your will. You just wanted to change your will yesterday.
18 But you got benefit of your will in July.

19 That's the problem, you see. When you told Judge Dennis
20 I want to represent myself and he went through that
21 conversation with you and said, okay, what the law says --
22 it's a case called Faretta. And it says whether you like it
23 as a judge or you don't like it as judge, you have to allow
24 the person to represent themselves, they have a constitutional
25 right to do that. And he, for you, preserved that for you,

1 your constitutional right to represent yourself. Okay? And
2 you got that.

3 MR. WARD, A/K/A MR. BEY: That ---

4 THE COURT: You made that decision.

5 MR. WARD, A/K/A MR. BEY: That ---

6 THE COURT: Now you want to make a different decision.

7 MR. WARD, A/K/A MR. BEY: The only thing that -- the only
8 decision that I wanted to make is to have Chip Cannon to help
9 me with picking a jury. That's the only thing.

10 THE COURT: Well, that's news. And that's news. In July
11 you made the decision with Judge Dennis that you wanted to
12 represent yourself, and this is what you chose. We are in
13 your choice.

14 And our Supreme Court has been very, very, vigilant about
15 protecting a defendant's right to represent himself or
16 herself, ---

17 MR. WARD, A/K/A MR. BEY: But I ---

18 THE COURT: --- and that is where you are.

19 MR. WARD, A/K/A MR. BEY: And I am incompetent to
20 represent myself; because, ---

21 THE COURT: Well ---

22 MR. WARD, A/K/A MR. BEY: --- like I said, I don't know
23 how to pick a jury.

24 THE COURT: Well, you know what? Unfortunately, what I
25 want to tell you is you should have thought of that in July;

1 because I am absolutely confident that that was pointed out to
2 you and you made that choice. This is the result of that
3 choice. What you cannot do is you cannot cause delay.

4 You ---

5 MR. WARD, A/K/A MR. BEY: I don't want to cause delay.

6 THE COURT: Yeah?

7 MR. WARD, A/K/A MR. BEY: I just want ---

8 THE COURT: Really?

9 MR. WARD, A/K/A MR. BEY: I just want Chip to help me.

10 That's all. I don't want to cause delay. If he can do it and
11 he can come in tomorrow and do it, I will be happy to let him
12 do it. I don't want to continuously delay. I don't need ---

13 THE COURT: So here's what you're telling me. You want
14 me to continue this matter until in the morning?

15 MR. WARD, A/K/A MR. BEY: If you could do that and I
16 could speak to Chip and Chip ---

17 THE COURT: Well, I don't know. I'm not guaranteeing ---

18 MR. WARD, A/K/A MR. BEY: Well, ---

19 THE COURT: --- that you speak to Chip; ---

20 MR. WARD, A/K/A MR. BEY: I ---

21 THE COURT: --- do you understand?

22 MR. WARD, A/K/A MR. BEY: I more than likely can contact
23 Chip.

24 THE COURT: Okay. You think you're going to contact Chip
25 between now and in the morning, we'll pick a jury in the

1 morning?

2 MR. WARD, A/K/A MR. BEY: My mother has -- my mother has
3 his number, so I should be able to call him.

4 THE COURT: I don't know. You understand ---

5 MR. WARD, A/K/A MR. BEY: I understand exactly what you
6 are saying.

7 THE COURT: --- that you're either going forward on your
8 own or you are going to have Chip in the morning?

9 MR. WARD, A/K/A MR. BEY: Okay.

10 THE COURT: You understand?

11 MR. WARD, A/K/A MR. BEY: I understand.

12 THE COURT: 9:30? All right. Very well.

13 Counsel, I apologize. And I apologize to all of you.
14 But I will tell you that our Supreme Court has been
15 extraordinarily vigilant about folks' ability to represent
16 themselves and their ability not to represent themselves.

17 And I am concerned about the delay in this case,
18 completely concerned about it; but the last thing that I want
19 any of all -- of us to do is to try a case futilely. You
20 don't have time for it. None of you have time for it. And
21 neither do I.

22 He -- I will give this gentleman one final chance to
23 contact counsel and have counsel present. I think he's waived
24 it. He tells me he thinks he can do it by in the morning. We
25 are going forward and pick a jury in the morning. He will

1 either be representing himself or have someone here.

2 Now, what I'm going to ask you to do for me is I need an
3 order that he be provided a telephone so that he can call. I
4 gather -- it is probably not long distance. The County
5 probably doesn't want to pay for long distance. But he can
6 call a lawyer, have access to telephone service.

7 MR. WARD, A/K/A MR. BEY: We do. We have access to a
8 telephone until 11:30 at night.

9 THE COURT: Okay. But no one wants to talk to you
10 after --- 11:00 anyway, 11:30. Until 11:30 this evening and
11 in the morning that he would have access to the telephone up
12 until -- he's got to have time to dress and get here. What
13 time do y'all transport?

14 COURTROOM DEPUTY: He will probably have to be here on
15 the 8:30. And they'll probably leave the jail at least by
16 6:30, seven o'clock to get here.

17 THE COURT: You -- a little earlier ---

18 COURTROOM DEPUTY: We've got the traffic sometimes.

19 THE COURT: I understand. And there isn't any access
20 here at the courthouse for him to make a call; is that
21 correct?

22 COURTROOM DEPUTY: I can -- I can look into that. Let me
23 look into that.

24 THE COURT: Thank you so much.

25 And then put in there that -- our hero of the day ---

1 COURTROOM DEPUTY: I can't promise you, but I will check
2 into it as soon as ---

3 THE COURT: --- is going to use his best efforts ---

4 COURTROOM DEPUTY: I will.

5 THE COURT: --- so that Mr. Bey can have access to the
6 phone in the morning if he can't reach anybody in the
7 afternoon.

8 COURTROOM DEPUTY: As we take him back I will talk to
9 them about getting him on the phone right away.

10 THE COURT: Thank you so much. All right. Everybody,
11 tomorrow morning at 9:30, jury.

12 And just tell this jury I am so sorry, but we're doing it
13 in the morning.

14 Are there any other pretrial matters?

15 [No response]

16 THE COURT: All right. Tell Mr. Cannon if he comes on
17 board I'm excited to have him but I'm not continuing it.

18 MR. ZIEGLER: Your Honor, ---

19 THE COURT: Hold on, Mr. Bey. Mr. Ziegler has got
20 something to tell you.

21 Yes?

22 MR. ZIEGLER: I don't believe there are any other
23 pretrial matters. But the -- at this point the plea offer is
24 revoked.

25 THE COURT: Okay. Which one was that?

1 MR. ZIEGLER: The one -- the fifteen years.

2 THE COURT: The fifteen years. Well, if he can -- he can
3 still plead straight-up if he wants to so.

4 MR. ZIEGLER: That would be twenty-five to forty years
5 then.

6 THE COURT: Yep. Got it. Thank you. Thank you so much.

7 [Whereupon, jury trial adjourns 2/5/19, 2:58 p.m.]

8 [Whereupon, trial resumes 2/6/19, 9:44 a.m.]

9 [Whereupon, State's Exhibit Number 1 through 28, photos,
10 are pre-marked for identification]

11 [Whereupon, State's Exhibit Number 29, box ammo,
12 pre-marked for identification]

13 [Whereupon, State's Exhibit Number 30, brown bag,
14 pre-marked for identification]

15 [Whereupon, State's Exhibit Number 30-A, plastic baggies,
16 pre-marked for identification]

17 [Whereupon, State's Exhibit Number 30-B, scale,
18 pre-marked for identification]

19 [Whereupon, State's Exhibit Number 31, gun, pre-marked
20 for identification]

21 [Whereupon, State's Exhibit Number 32, magazine and
22 rounds, pre-marked for identification]

23 [Whereupon, State's Exhibit Number 33, shotgun,
24 pre-marked for identification]

25 [Whereupon, State's Exhibit Number 34, envelope,

1 pre-marked for identification]

2 [Whereupon, State's Exhibit Number 34-A, plastic,
3 pre-marked for identification]

4 [Whereupon, State's Exhibit Number 34-B, small inside of
5 A, pre-marked for identification]

6 [Whereupon, State's Exhibit Number 34-C, small inside of
7 A, pre-marked for identification]

8 [Whereupon, State's Exhibit Number 35, Miranda card,
9 pre-marked for identification]

10 [Whereupon, State's Exhibit Number 36, Bing map,
11 pre-marked for identification]

12 [Whereupon, State's Exhibit Number 37, overhead
13 satellite, pre-marked for identification]

14 [Whereupon, State's Exhibit Number 38, Google map,
15 pre-marked for identification]

16 [Whereupon, State's Exhibit Number 39, photo, pre-marked
17 for identification]

18 [Whereupon, State's Exhibit Number 40, photo, pre-marked
19 for identification]

20 [Whereupon, State's Exhibit Number 41, photo, pre-marked
21 for identification]

22 [Whereupon, State's Exhibit Number 42, report, pre-marked
23 for identification]

24 PROCEEDINGS

25 THE COURT: Good morning, everyone.

1 And Mr. Bey has joined us this morning. Yes, sir, Mr.
2 Bey, are you ready to proceed?

3 MR. WARD, A/K/A MR. BEY: I have a question.

4 THE COURT: Okay.

5 MR. WARD, A/K/A MR. BEY: How come do I keep receiving
6 bits and pieces of the discovery instead of the full
7 discovery? Why have I -- I have still-shots of videos, but I
8 have never seen the videos.

9 THE COURT: Are you asking me ---

10 MR. WARD, A/K/A MR. BEY: Yes, when I ---

11 THE COURT: --- have you received all the discovery?

12 MR. WARD, A/K/A MR. BEY: No, I am asking you why have I
13 not. I know I didn't. Because every so often I am getting
14 more discovery and more discovery, when I'm supposed to have
15 full discovery. And I have never seen any of the videos, but
16 I have seen still shots of the videos.

17 THE COURT: Well, I will ask. How about that?

18 Mr. Ziegler, has Mr. Bey received all of the discovery?

19 MR. ZIEGLER: The State believes he has received all of
20 the discovery he is entitled to. There are videos from the
21 controlled purchases that he has not seen. The State believes
22 that we have the right to protect the identity of the
23 confidential informant still.

24 We're not -- we're not trying those cases. We're not
25 trying the distributions. We are strictly limiting this to

1 the search warrant case. So we believe the defendant himself
2 doesn't have the right to view the videos that reveal the C.I.

3 I have provided still shots from the buys to allow him to
4 get the understanding of what's in those. But we're not
5 introducing them in evidence. We're not going to be referring
6 to them in the case-in-chief. And don't believe he has the
7 right to view them.

8 THE COURT: Okay. And let me see if I understand.
9 What -- tell me a little bit more about what you are telling
10 me.

11 MR. ZIEGLER: Sure. There are three controlled
12 purchases ---

13 THE COURT: Okay.

14 MR. ZIEGLER: --- that occurred in this case.
15 There's ---

16 THE COURT: Okay.

17 MR. ZIEGLER: There is one on October 8th, 2014, at the
18 Dorchester Road address.

19 THE COURT: Okay.

20 MR. ZIEGLER: There is one on October 21st, 2014, at the
21 Dorchester Road address. And there is one on October 29th,
22 2014, at the Britten Court address. He is only charged with
23 the two controlled purchases from the Dorchester Road address.

24 THE COURT: Okay.

25 MR. ZIEGLER: He is not charged with the purchase at

1 Britten Court. That -- the one at Britten Court was the --
2 was supporting probable cause for the search warrant. So
3 that's a little background on it.

4 THE COURT: All right. So, now -- all right. So there
5 are videos from all three purchases?

6 MR. ZIEGLER: Yes.

7 THE COURT: And he has been shown still photographs from
8 what -- from which ones?

9 MR. ZIEGLER: The still photographs are from each of
10 them.

11 THE COURT: Okay.

12 MR. WARD, A/K/A MR. BEY: I have ---

13 THE COURT: Let him -- let him finish, please.

14 (WHEREUPON, defendant retrieving documents)

15 MR. ZIEGLER: You know, there are -- there are
16 still-photographs from all three of the controlled purchases.

17 THE COURT: Okay. And do you intend to offer the videos
18 in evidence?

19 MR. ZIEGLER: No, Your Honor.

20 THE COURT: Okay. Okay.

21 MR. ZIEGLER: And we do not intend to make any reference
22 at all to any controlled purchases from the defendant.

23 THE COURT: All right. And do you make a representation
24 to the Court that there is no exculpatory evidence whatsoever
25 in any of those three videos?

1 MR. ZIEGLER: Yes, Your Honor.

2 THE COURT: All right. And so it would be the position
3 of the State that there has been sufficient information
4 provided through the still photographs from the Britten buy to
5 support probable cause to seek the search warrant, and with
6 regards to the videos themselves, in that there is no Brady
7 material, there is no exculpatory material, it is the position
8 of the State that those items are non-discoverable?

9 MR. ZIEGLER: Yes, Your Honor.

10 THE COURT: All right. Because I am unaware -- and you
11 please correct me if I am not correct. That while I
12 understand that the State has an interest in nondisclosure of
13 confidential informants, I am unaware of an opinion from the
14 Supreme Court from the United States or the South Carolina
15 Supreme Court that allows discovery to be excluded for that
16 reason.

17 Having said that, if I set that aside, if the State
18 maintains that there is no exculpatory evidence contained and
19 there is no intention on behalf of the State to introduce that
20 evidence, and that the one buy that was used for probable
21 cause to obtain the search warrant that there have been
22 still-photographs of relevant portions of that buy that was
23 used to obtain the search warrants, then I think probable
24 cause has been established and discovery has been shared. And
25 so do I understand the scenario that I have just laid out? Is

1 that correct?

2 MR. ZIEGLER: That is correct, Your Honor.

3 THE COURT: All right. Very well.

4 So, Mr. Bey, there -- first of all, the tapes are not
5 going to be shown to the jury. And, secondly, the State
6 certainly has an obligation to Brady to share in discovery any
7 exculpatory evidence.

8 The State has made a recommendation -- or has made a
9 representation on the record that there is no Brady material
10 contained within the videos, that it does -- that the State
11 does not intend to admit, and that the still photographs that
12 were shared with you were shared for the purpose of
13 establishing probable cause. So that's -- that would be the
14 explanation.

15 MR. WARD, A/K/A MR. BEY: Okay. So why have I not been
16 able to cross-examine the C.I.? If he's supposed to be a
17 witness, don't I have the right to face my accuser?

18 THE COURT: You certainly do have the right to
19 cross-examine any witness who is called. You absolutely do.
20 Yes, you do. And if the C.I. is called, you absolutely will
21 have an opportunity to cross-examine him. Yes, sir.

22 Anything further?

23 MR. WARD, A/K/A MR. BEY: Not at this time.

24 THE COURT: Okay.

25 MR. ZIEGLER: And, Your Honor, I would add that when

1 Peter McCoy represented the defendant I did share the --
2 everything I had with Peter McCoy and had them -- him and his
3 associate be able to view it.

4 And it's the State's position that in the defendant --
5 the defendant's hands, personally, that that information does
6 not -- for safety of the informant, that information does not
7 need to be provided directly to the defendant. But I did
8 provide that to Mr. McCoy.

9 THE COURT: All right. So from my perspective it would
10 be my perspective that it has been shared with the defense,
11 and the remaining part of my determination would stand.

12 What I don't -- what I do not want my determination to be
13 based upon is that -- that Brady or Rule 5 do not trump, if
14 you will, the right of a defendant to view the evidence,
15 exculpatory evidence, or evidence discoverable under Rule 5,
16 is not trumped by the State's desire to protect the identity
17 of the C.I. It's just not -- I don't -- I don't believe that
18 to be the law. I understand the concern.

19 And when you balance whether or not you are going to use
20 it, whether or not you have shared that information which is
21 relevant with regards to the search warrant, I'm okay with
22 that.

23 However, if there is exculpatory evidence contained in
24 those videos, you must show that to the defendant, I think.
25 And I think you understand that. And I think what you've told

1 me is that there is none in there.

2 MR. ZIEGLER: That's correct.

3 THE COURT: Okay. Good. All right.

4 Now, we're about to select the jury in this case.

5 Anything from the State before we call in our jurors?

6 MR. ZIEGLER: No, Your Honor.

7 THE COURT: All right. Yes, sir, Mr. Bey, anything
8 further from you?

9 MR. WARD, A/K/A MR. BEY: Yes, I do. I stated upon
10 yesterday that I wanted to have counsel, and I called -- well,
11 my mother called last night. My mother last night -- I called
12 her last night. I spoke to her, and she said that she spoke
13 to a Ben Sapp and Ben Sapp was supposed to call my girlfriend
14 at seven o'clock this morning. I was offered the phone at
15 five o'clock this morning. I had no one to call at five
16 o'clock this morning. But I told the sergeant that I needed
17 to use the phone at seven o'clock. Shift changed at six
18 o'clock. No one ever came to me with the phone.

19 THE COURT: Gotcha. Okay. You know, Mr. Bey, today is
20 Wednesday.

21 MR. WARD, A/K/A MR. BEY: I understand exactly what
22 you're saying.

23 THE COURT: Yes. And based on what you shared with me
24 yesterday, based on what I have learned from the State back in
25 July, that July the 25th counsel was relieved, you established

1 with Judge Dennis your desire to represent yourself, while you
2 may have changed your mind after pretrial motions began, I
3 have accommodated you as much as I can.

4 MR. WARD, A/K/A MR. BEY: I understand that. But at this
5 point in time you would basically be violating my rights
6 because I never received any due notice of a trial, no
7 pretrial conference, no full discovery. And which, like I
8 said, I didn't see the videos or was able to cross-examine the
9 C.I. But you explained that part. But I never received due
10 notice of any type of correspondence with a pretrial
11 conference or a trial. I have never had a pretrial
12 conference.

13 THE COURT: Okay. Gotcha. There is no requirement,
14 under South Carolina criminal law, that there be a pretrial
15 conference prior to calling a matter to trial. There just is
16 not a requirement.

17 I do believe that there have been pretrial conferences in
18 this matter with Judge Dennis, is my understanding. However,
19 there is no requirement that there be pretrial conferences.
20 Matters are put down on the trial roster and then they can be
21 called for trial. That is what has happened to you. But I do
22 note your exception for the record, Mr. Bey.

23 MR. WARD, A/K/A MR. BEY: Well, does the law require
24 proof of jurisdiction to appear on the record?

25 THE COURT: It does.

1 MR. WARD, A/K/A MR. BEY: Then I have never seen proof of
2 jurisdiction. I challenged the jurisdiction and I asked for
3 proof of jurisdiction on the record, and which I have never
4 seen.

5 THE COURT: We did that on Monday. We're not going to do
6 that again.

7 MR. WARD, A/K/A MR. BEY: You never showed it to me, so
8 what are you -- what are you talking about? No one ever
9 showed me proof of jurisdiction.

10 THE COURT: Okay. Anything further?

11 MR. WARD, A/K/A MR. BEY: I want to see proof of
12 jurisdiction on the record.

13 THE COURT: We went through that on Monday.

14 MR. WARD, A/K/A MR. BEY: You did? So you're saying on
15 the record that you ---

16 THE COURT: Mister ---

17 MR. WARD, A/K/A MR. BEY: --- showed it to me, that I've
18 seen -- I saw physical proof of jurisdiction? Is that what
19 you're saying?

20 THE COURT: Right. No, sir, no, sir, not physical proof.
21 And I don't ---

22 MR. WARD, A/K/A MR. BEY: Written proof.

23 THE COURT: I gotcha. We went through the establishment
24 of jurisdiction on Monday. I put that on the record for you.
25 I am not going to do it again, and I am not going to do it any

1 further.

2 MR. WARD, A/K/A MR. BEY: And ---

3 THE COURT: I have noted your exception for the record.
4 That concern of yours is preserved for appeal. And anything
5 further?

6 MR. WARD, A/K/A MR. BEY: Can the State of South Carolina
7 lawfully be a party to and judge or prosecute their own
8 action?

9 THE COURT: Yes.

10 MR. WARD, A/K/A MR. BEY: It can?

11 THE COURT: Anything else?

12 MR. WARD, A/K/A MR. BEY: Say that again?

13 THE COURT: Anything else before I bring the jury in?

14 MR. WARD, A/K/A MR. BEY: I am asking. You said yes that
15 the State of South Carolina can be a party to and prosecute or
16 judge its own action.

17 THE COURT: Okay.

18 MR. WARD, A/K/A MR. BEY: That's what I'm asking. And is
19 the State of South Carolina the plaintiff?

20 THE COURT: No, the State of South Carolina is the
21 prosecutor. It is the State. Anything further?

22 MR. WARD, A/K/A MR. BEY: You say it is the State?

23 THE COURT: Anything further?

24 MR. WARD, A/K/A MR. BEY: Well, I demand to face the
25 State of South Carolina.

1 THE COURT: Okay. Good for you. Anything further?

2 MR. WARD, A/K/A MR. BEY: Or what is the principle party
3 in interest?

4 THE COURT: You know what, you don't get to ask me
5 questions. This is not a quiz for me.

6 Mr. Bey, do you have any ---

7 MR. WARD, A/K/A MR. BEY: That is not ---

8 THE COURT: --- other ---

9 MR. WARD, A/K/A MR. BEY: --- power of discovery of ---

10 THE COURT: Don't interrupt.

11 Do you have any other objections or any other matters you
12 wish to put on the record; if so, please do, so we can bring
13 the jury out.

14 MR. WARD, A/K/A MR. BEY: Has the Court made a judicial
15 determination that I do not have the right to be heard upon
16 every question involving my rights and interest? Because as I
17 was doing, I was asking you questions. You say I'm quizzing
18 or something of that nature.

19 THE COURT: You did. You don't get to quiz me. You
20 don't get to ask me questions. If you ---

21 MR. WARD, A/K/A MR. BEY: Okay. I don't have any ---

22 THE COURT: --- have objections ---

23 MR. WARD, A/K/A MR. BEY: I'm asking you a question.

24 THE COURT: If you have objections you certainly can
25 place those on the record. I want to give you an opportunity

1 to make any pretrial motions that you need to, and this is
2 your time to do that. So if you would like to do that, please
3 do so.

4 MR. WARD, A/K/A MR. BEY: Am I presumed innocent of these
5 alleged charges?

6 THE COURT: Yes.

7 MR. WARD, A/K/A MR. BEY: Am I presumed innocent of every
8 element of these alleged charges?

9 THE COURT: Absolutely.

10 MR. WARD, A/K/A MR. BEY: So I'm presumed innocent of
11 every element of these alleged charges?

12 THE COURT: Absolutely.

13 MR. WARD, A/K/A MR. BEY: Correct.

14 THE COURT: Anything further?

15 MR. WARD, A/K/A MR. BEY: I do have another question.

16 THE COURT: Okay.

17 MR. WARD, A/K/A MR. BEY: In order -- in order for a
18 crime to exist, four elements must exist: There must be a
19 defined crime. There must be a victim corpus delicti. That
20 victim must have been damaged. And the intent of the accused
21 must be established mens rea and actus reus. Without proof of
22 all four of these elements no action can be considered
23 criminal.

24 Where is the injured party and are they present here
25 today?

1 THE COURT: You can argue that to the jury.

2 MR. WARD, A/K/A MR. BEY: But I ask you that.

3 THE COURT: You can argue that to the jury. Anything
4 further, sir?

5 MR. WARD, A/K/A MR. BEY: Why was I not able to contact
6 this counsel, because he was supposed to come in here like he
7 said on yesterday.

8 THE COURT: Why weren't you able -- why were you not able
9 to contact counsel? I have no idea. I have no idea. I don't
10 know. Anything further?

11 MR. WARD, A/K/A MR. BEY: So, basically, you will be
12 forcing me against my will to proceed without counsel?
13 Because I asked for counsel on yesterday.

14 THE COURT: Mr. Bey, let's go through this once more.
15 You had extraordinarily competent counsel in Mr. McCoy.

16 MR. WARD, A/K/A MR. BEY: How ---

17 THE COURT: You chose to -- you can't interrupt me.

18 You chose to relieve him. You told Judge Dennis back in
19 July that you wished to represent yourself. You maintained
20 that position until after the pretrial motions were argued.

21 I have accommodated you as much as I intend to
22 accommodate you, to allow you to try to reach counsel, which
23 you thought you could retain counsel. I am so sorry that you
24 have been unable to do that. However, at this moment, all of
25 this is interposed for the purpose of delay. We're going to

1 move forward this morning. I am going to select a jury and we
2 are going to begin the trial of your case.

3 Anything further?

4 MR. WARD, A/K/A MR. BEY: Say that again? I didn't
5 understand -- I didn't hear what you said.

6 THE COURT: I'm so sorry. Anything further?

7 MR. WARD, A/K/A MR. BEY: I don't have anything to say.

8 THE COURT: Okay. Very well.

9 Please let us have the jury.

10 [Whereupon, the jury panel begins to enters the courtroom
11 2/6/19, 10:12 a.m.]

12 THE COURT: Do we have some more folks who are going to
13 join us?

14 THE BAILIFF: Yes.

15 THE COURT: We do? Well, I'm going to say good morning
16 anyway. And I may say good morning again.

17 I am Diane Goodstein. And I am presiding here this week.
18 And I am so grateful to you all being here this week and for
19 your patience as we have taken care of some matters. And I am
20 just delighted to be here with you this morning, and I am
21 going to leave it there until everyone else can make it
22 upstairs.

23 [Off the record momentarily while awaiting remainder of
24 jury panel]

25 THE COURT: Is everybody here? Thank you so much.

1 JURY VOIR DIRE

2 THE COURT: So to everybody on this side, I'm going to
3 say good morning.

4 JURY PANEL MEMBERS: Good morning (in unison).

5 THE COURT: And thank you all so much for being here. I
6 am Diane Goodstein, and I am presiding here this week in the
7 Ninth Judicial Circuit. And I am so happy to report to you
8 that you live in the Ninth Judicial Circuit, which is
9 Charleston and Berkeley counties.

10 I am actually a resident judge from the First Judicial
11 Circuit. So what happened this morning, did I get lost and go
12 the wrong way on the interstate? No. I have been assigned to
13 be here by Chief Justice -- Chief Justice Betty. Because as a
14 circuit court judge not only do I have the opportunity to
15 rotate around my circuit, the First Circuit, but I get to
16 rotate around the state. Which is -- I cannot tell you how
17 much fun that is.

18 I have been to places that I didn't even know existed.
19 Have you all ever been to Allendale? Well, it's a wonderful
20 community like so many other wonderful communities in our
21 state. And as I drove into Allendale for the first time I saw
22 their billboard that said welcome to Allendale, home of the
23 Cooter Festival. And I was -- I called my husband and I said,
24 I hate to be really dumb, but what's a cooter? And he was
25 most instructive.

1 And so in any event, we have a wonderful state with
2 wonderful communities. And one of the delights of this job is
3 that I get to go places like Allendale. And so I asked -- I
4 asked our chief justice, please let me go back during the
5 Cooter Festival. I haven't made it, but I'm going. I had
6 a -- I had a law clerk once that brought me a tee-shirt, and I
7 treasure it.

8 So in any event, ladies and gentlemen, welcome this
9 morning. I'm so grateful to each and every one of you for
10 being here this morning and for every moment, every tick of
11 the clock, that you have been here this week.

12 We are a citizen-based judicial system in this country;
13 and if you were not here, there would be no reason for any of
14 us to be here.

15 Ladies and gentlemen, you have come this week to be a
16 part of our jury panel in Charleston County to help fellow
17 citizens resolve disputes. How powerful, how wonderful, a
18 system that invites -- you like the term invites? I know it
19 was a summons. But I like to call it an invitation. We
20 invite fellow citizens to come into court to help fellow
21 citizens resolve disputes.

22 Now, you have reported in Charleston; because in
23 Charleston, unlike many of the rural counties in South
24 Carolina, you have a courthouse that is big enough to handle
25 civil court and criminal court at the same time. And so when

1 you report for jury service in Charleston County you are a
2 part of a very big pool from which we ask jurors to come and
3 help resolves disputes on the civil side and on the criminal
4 side.

5 Well, ladies and gentlemen, I'm here this week for this
6 term of general sessions or criminal court. So the matter
7 that we are about to try is a criminal matter. It is a matter
8 under general sessions jurisdiction, under the criminal court,
9 if you will. We call it general sessions in South Carolina.
10 So in just a moment we're going to begin that process. And
11 I'm so grateful to you, being here this morning for that
12 purpose.

13 Now, I want to give you a little bit of an overview about
14 how we're going to be proceeding. In just a few moments I am
15 going to call on the solicitor. In South Carolina, unlike any
16 other state, we call our State's attorney or our prosecuting
17 attorney or our district attorney, which is what the other
18 forty-nine states call their prosecutors, we in South Carolina
19 call our prosecuting attorneys, our State's attorneys,
20 solicitors. It is a holdover from England.

21 I majored in English history in college. What was I
22 thinking? If you're going to major in history, you should
23 major in -- I majored in English history. I get to use it
24 twice a year. I get to use it to explain to jury panels about
25 the solicitor and to tell jury panels that that is a holdover

1 from English jurisprudence, to call your prosecuting attorneys
2 solicitors, and when I get to qualify grand juries in January
3 of each year. That's it. Thank you, Dad, thank you, Mom, for
4 helping me get that degree.

5 In any event, ladies and gentlemen, it is a holdover from
6 English jurisprudence that we call our prosecutors solicitors.
7 And in just a moment, I am going to call on our solicitors
8 present this morning. I think we have a couple of them who
9 are present. I will get a chance to introduce those folks to
10 you. But I'm going to call on the solicitor who is present to
11 call our first case for trial who is going to do that.

12 And then I am going to read to you some of the
13 allegations - and they are allegations - of the indictment.
14 And I am going to tell you what an indictment is and what it
15 is not. I then am going to read some of the allegations to
16 you just to find out if any of you know or think you know
17 anything about the matter. And then I get to introduce you to
18 some folks. I am going to ask a few questions of you, and
19 then we're actually going to select our jury for our first
20 case for trial. And then we're going to get right into the
21 trial of this case. So that gives you an overview about how
22 we're going to be proceeding.

23 Now, ladies and gentlemen, at this time I am going to
24 call on the solicitor, Solicitor Ziegler. We also have
25 Solicitor Brown with us. I am going to introduce them to you

1 in just a moment. But the first order of business is to call
2 on Solicitor Ziegler, who I understand is going to do this for
3 us this morning. But I am going to call on him to please call
4 our first case for trial this week.

5 MR. ZIEGLER: Thank you, Your Honor.

6 THE COURT: Yes.

7 MR. ZIEGLER: The State calls the case of the State
8 versus Jontez Myrelle Ward.

9 THE COURT: And your indictment numbers, please?

10 MR. ZIEGLER: Yes, Your Honor. The State will be
11 proceeding -- the State will be proceeding on Indictment
12 Numbers 2018-GS-10-04100, 2016-GS-10-00903, and
13 2016-GS-10-00904.

14 THE COURT: Thank you so much.

15 Ladies and gentlemen, let me just tell you what has
16 happened. What has just occurred is that Solicitor Ziegler
17 has just called to my attention the first case for trial this
18 week and the indictment numbers.

19 Now, in just a moment I am going to be reading to you a
20 list -- or some of the allegations of those indictments. But
21 before I do that I want to tell you two things. I want to
22 tell you what an indictment is and what it is not.

23 What an indictment is is it's a piece of paper. It's a
24 notice document. It is a piece of paper that tells a citizen
25 that the State alleges that that citizen has violated one or

1 more of the criminal laws of the State of South Carolina.

2 I want to tell you immediately that to each and every
3 allegation of each of these indictments, that the defendant in
4 this matter -- and Mr. Ziegler has referred to him as Mr.
5 Ward, and his name on the indictment is Jontez Myrelle Ward.
6 Mr. Ward, I have had the pleasure of spending some time with
7 Mr. Ward, and he would like for me to refer to him as Mr. Bey;
8 and I am absolutely happy to do that. You are going to hear
9 me refer to him as Mr. Bey.

10 And, ladies and gentlemen, I want you to understand
11 clearly that Mr. Bey has pled not guilty to each and every
12 allegation of each of these indictments, and that places upon
13 the State the burden of proving each allegation of each of
14 these indictments. The State must prove them beyond a
15 reasonable doubt. Those of you that serve on this jury, we're
16 going to talk much more about that. But I want to tell you,
17 before I even utter the first allegation of these indictments,
18 that he has pled not guilty.

19 Now, ladies and gentlemen, in just a moment I am going to
20 be reading to you some of the allegations of the indictments.
21 And the reason I am doing that is to find out whether or not
22 any of you know or think you may know or have you heard or
23 think you may have heard, anything about these indictments.
24 Then I'm going to have the pleasure of introducing you to some
25 folks.

1 Now, ladies and gentlemen, you are also going to hear me
2 ask this question of you; because I'm going to ask you do you
3 know certain people. I'm going to ask it like this: Ladies
4 and gentlemen, are you related by blood or marriage, or
5 acquainted with, so-and-so.

6 I need to define acquainted with for you; because I
7 intend a very general definition of acquainted with, and you
8 need to know that. For example, you may have gone to school
9 with someone that I will ask you about, twenty years ago. You
10 have not seen this person, you have not thought about this
11 person in twenty years, but you know that you went to school
12 with this person twenty years ago. Well, believe it or not
13 that relationship, as old as it is, as limited as it is, would
14 be encompassed within my definition of acquainted with and you
15 would stand and say, well, I know so-and-so. And then I'll
16 ask you some follow-up questions about that.

17 It may be that you simply work at the same location with
18 someone that I will ask you about. Maybe you wave at each
19 other across the parking lot occasionally. Believe it or not,
20 that relationship, as limited as it is, would be encompassed
21 within my definition of acquainted with and you would simply
22 stand and say, I work at the same location with so-and-so, and
23 then I'll ask you some limited follow-up questions.

24 So please keep the very general, very broad definition,
25 of acquainted with that I intend. I'm trying to find out if

1 you have any connection with these folks that I'll be asking
2 about, do you have any connection at all with them. So please
3 keep that in mind as we go through this process.

4 Now, ladies and gentlemen, I'm now going to be reading to
5 you some of the allegations of each of these indictments. The
6 reason that I'm doing that -- and the question on the other
7 side is going to be do -- ladies and gentlemen, do any of you
8 know or think you may know, or have you heard or think you may
9 have heard, anything about the allegations.

10 Ladies and gentlemen, Indictment 2016-GS-10-9- -- 903, it
11 actually is 00903, alleges that in Charleston County, South
12 Carolina, on or about November the 6th, 2014, the defendant,
13 Jontez Myrelle Ward - I will call him Jontez Myrelle Ward Bey,
14 as he has asked me to - did possess a firearm or did visibly
15 display what appeared to be a firearm or did visibly display a
16 knife during the commission of or attempted commission of a
17 violent crime, to wit, trafficking heroin, in violation of
18 Section 16-23-409 Code of Laws of South Carolina.

19 Ladies and gentlemen, Indictment 2016-GS-10-00904 alleges
20 that the defendant, Jontez Myrelle Ward - I will refer to him
21 as Jontez Myrelle Ward Bey, as he has asked me to - did, on or
22 about November the 6th of 2014 in Charleston County, South
23 Carolina, with knowledge that he was within a one-half mile
24 radius of the grounds of Collins Park, a public or private
25 elementary, middle, or secondary school, a public playground,

1 or a park, distribute, sell, or unlawfully possess with intent
2 to distribute heroin, a controlled substance, on the
3 provisions of Section 44-53-110 at Sect South Carolina Code of
4 Laws, as amended, all in violation of 44-53-0445(a) of the
5 South Carolina Code of Laws 1976 as amended.

6 Ladies and gentlemen, 2018-GS-10-04100, alleges that the
7 defendant, Jontez Myrelle Ward - I'll refer to him as Jontez
8 Myrelle Ward Bey, based upon his request - did, on or about
9 November the 6th, 2014, in Charleston County, South Carolina,
10 knowingly sell, manufacture, cultivate, deliver, purchase, or
11 bring into this state, or did provide financial assistance or
12 otherwise aid, abet, attempt or conspire to sell, manufacture,
13 cultivate, deliver, purchase, or bring into this state, or was
14 knowingly in actual or constructive possession, or knowingly
15 attempted to become in actual or constructive possession, of
16 28 grams or more of any morphine, opium, salt, isomer, or
17 salt of an isomer thereof, mainly heroin, as described in
18 Section 44-53-190, or 44-53-210, or 28 grams or more of any
19 mixture containing any of these, all in violation of
20 44-53-0370(e)(3)(c) of South Carolina Code of Laws 1976 as
21 amended.

22 Ladies and gentlemen, let me hasten to tell you that to
23 each allegation of each of these indictments Mr. Bey has pled
24 not guilty, which places upon the State the burden to prove
25 each and every allegation of each and every indictment beyond

1 a reasonable doubt.

2 Ladies and gentlemen, I ask do any of you know or think
3 you may know, have you heard or think you may have heard,
4 anything about these allegations; if so, please stand at this
5 time.

6 [Whereupon, there is no response]

7 THE COURT: And I find no one standing.

8 Ladies and gentlemen, please allow me now to introduce
9 you to Mr. Ziegler and Ms. Brown. They are both assistant
10 solicitors, and one of them is going to name the folks in
11 their office. I should have told y'all that earlier. It's a
12 pop quiz.

13 If one of you would please be so kind. If you will stand
14 and face our jury panel, please. And this is Mr. Ziegler.

15 MR. ZIEGLER: Thank you, Your Honor.

16 THE COURT: And he is going to turn around.

17 [Whereupon, Mr. Ziegler complies]

18 MR. ZIEGLER: Yes.

19 THE COURT: And this is Ms. Brown, and she's going to
20 stand.

21 [Whereupon, Ms. Brown complies]

22 THE COURT: Thank you so much, and you may be seated.
23 Thank you.

24 And Mr. Ziegler is going to name for you the folks in his
25 office. Yes, sir.

1 MR. ZIEGLER: Your Honor, I have a -- I have a list of
2 the prosecutors in our office.

3 THE COURT: Perfect.

4 MR. ZIEGLER: The assistant solicitors in the Ninth
5 Circuit Solicitor's Office are Scarlett Wilson, Bruce Durant,
6 Spiro Federigos, Shawn Barfield, Ann Seymore, Kelly McQueen,
7 Jennifer Shealy, Price Segal, Tyler Whitaker, David Osborne,
8 Marian Askins, Daniel Cooper, Ben Mathews, Burns Wetmore, Anne
9 Williams, Ashley Brown who is here with me today, Amy Harrell,
10 Nina Savas, Jason Heggelke, Fred Davis, Alex Ginsburg, Whit
11 Sowards, Richard Waring, Debbie Herring Lash, Lauren Frierson,
12 Hunt Russell, Kelsey Reuben, Jessica Baldwin, David Detrembel,
13 Nick Lewis, Shannon Elliott, Anna Richter, Anna Marsh, Chris
14 Lietzow, Stephanie Linder, Len Zeigler, Elliott Barrow,
15 Chris -- Todd Williams. Excuse me.

16 THE COURT: And, of course, your elected solicitor of the
17 Ninth Circuit is Scarlett Wilson. And I did hear you call her
18 name first.

19 MR. ZIEGLER: Yes.

20 THE COURT: Ladies and gentlemen, are you related by
21 blood or marriage or acquainted with either Mr. Ziegler, Ms.
22 Brown, or any of the solicitors that Mr. Ziegler has just
23 mentioned; if so, please stand at this time.

24 [Whereupon, there is no response]

25 THE COURT: And I find no one standing.

1 Ladies and gentlemen, allow me, please, to introduce you
2 to Mr. Jontez Myrelle Ward Bey.

3 Mr. Bey, if you would be so kind as to stand and face our
4 jury panel.

5 MR. WARD, A/K/A MR. BEY: I don't feel -- I feel
6 lightheaded. I just told the marshal that.

7 THE COURT: You feel lightheaded?

8 MR. WARD, A/K/A MR. BEY: Yes.

9 THE COURT: Do you want to stay seated?

10 MR. WARD, A/K/A MR. BEY: I -- it feels like I'm -- I
11 feel faint.

12 THE COURT: You feel faint?

13 MR. WARD, A/K/A MR. BEY: I just tried to tell him ---

14 THE COURT: Let him know you feel faint? Okay.

15 MR. WARD, A/K/A MR. BEY: Can I go get some water or
16 something?

17 THE COURT: You want to get some water? Sure. You can
18 have some, absolutely have some water.

19 [Whereupon, pause for water]

20 MR. WARD, A/K/A MR. BEY: I need to use the restroom.

21 THE COURT: You need to use the restroom?

22 THE COURT: Uh-huh.

23 THE COURT: Okay. Very well. So before you do that
24 can -- can you just face my jury panel and then we'll take a
25 little break, if that's okay.

1 [Whereupon, Mr. Ward Bey complies]

2 THE COURT: Thank you. That's perfect. Just spin right
3 around.

4 [Whereupon, Mr. Ward Bey complies]

5 THE COURT: Thank you so much.

6 Ladies and gentlemen, are you related by blood or
7 marriage or acquainted with Mr. Jontez Myrelle Ward Bey; if
8 so, please stand at this time.

9 [Whereupon, there is no response]

10 THE COURT: And I find no one standing.

11 Now, how are you feeling now? Not any better?

12 MR. WARD, A/K/A MR. BEY: I need to use the restroom.

13 THE COURT: You need to use -- okay. Very well.

14 Ladies and gentlemen, we need to take a very short break.
15 What I need to ask you to do for me is to go with your
16 bailiffs. I need to ask you just to step outside of my
17 courtroom just for a few moments. Y'all can just -- I think
18 there are some benches or whatnot out there. If you'll just
19 bear with us for just a moment. And y'all get to take a
20 comfort break, too.

21 [Whereupon, the jury panel exits the courtroom 2/6/19,
22 10:34 a.m.]

23 THE COURT: Thank you. Mr. Bey, I know that took a
24 little while; but I didn't want the jury to see you going into
25 lockup. That's why I wanted them to leave. I know that took

1 a bit of time. So do you need the -- do you need the folks to
2 help you?

3 MR. WARD, A/K/A MR. BEY: No, I need ---

4 THE COURT: Do you think you can walk okay?

5 MR. WARD, A/K/A MR. BEY: All right.

6 THE COURT: Very well. You go right ahead, then.

7 [Whereupon, a recess is taken 2/6/19, 10:35 a.m.]

8 [Whereupon, resume 2/6/19, 11:12 a.m.]

9 [Whereupon, during break defendant's condition was
10 accessed by a EMS paramedic]

11 THE COURT: Thank you so much. If you would just state
12 your name for our record.

13 PARAMEDIC: John McGinnis.

14 THE COURT: Mr. McGinnis, can you if you have had an
15 opportunity to examine Mr. Beck?

16 PARAMEDIC: I have.

17 THE COURT: And tell me what you found.

18 PARAMEDIC: I'm not a medical doctor. I can't diagnose
19 him or anything. But all of his vital signs look okay. His
20 heart looks completely normal. He said he hasn't had anything
21 to eat for a couple of days and he felt faint so.

22 THE COURT: Oh. Very well. And just, as I complete our
23 record, tell me, do you have any certifications?

24 PARAMEDIC: Yes, ma'am.

25 THE COURT: And what are they?

1 PARAMEDIC: I am a nationally registered paramedic.

2 THE COURT: Thank you so kindly for helping us this
3 morning. Do you believe that he should be transported to the
4 hospital at this time?

5 PARAMEDIC: Per our policy, I am going to suggest that he
6 gets transported.

7 THE COURT: To the hospital?

8 PARAMEDIC: Yes, ma'am.

9 THE COURT: Very well.

10 PARAMEDIC: I can make a phone call if you would like me
11 to, to talk with our medical director and I can see what he
12 says.

13 THE COURT: Well, if you think that's appropriate.

14 PARAMEDIC: It would be appropriate.

15 THE COURT: I would be very grateful.

16 PARAMEDIC: Okay.

17 THE COURT: Thank you kindly.

18 PARAMEDIC: No problem.

19 THE COURT: Thank you. And you will report back to us?

20 PARAMEDIC: Yes, ma'am.

21 THE COURT: Thank you kindly.

22 PARAMEDIC: Yep.

23 [Whereupon, a recess is taken 2/6/19, 11:16 a.m.]

24 [Whereupon, resume 2/6/19, 11:18 a.m.]

25 THE COURT: Okay.

1 PARAMEDIC: I spoke with Dr. David French who is our
2 medical control doctor. He said that he's -- that as far as
3 my -- my opinion, his opinion, is to sit here through trial.

4 THE COURT: And you are referring to Mr. Bey?

5 PARAMEDIC: Yes.

6 THE COURT: All right. And you've got his -- do I need
7 to have him repeat his name?

8 THE COURT REPORTER: No, ma'am.

9 THE COURT: You've got it?

10 THE COURT REPORTER: Yes, ma'am.

11 PARAMEDIC: And he would like him to seek medical
12 attention when he gets back to Al Cannon at the end of the
13 day.

14 THE COURT: All right.

15 PARAMEDIC: And if it happens again we'll have to
16 transport him.

17 THE COURT: Thank you so much.

18 PARAMEDIC: Yep.

19 THE COURT: Appreciate your being here.

20 PARAMEDIC: Yes, ma'am.

21 THE COURT: Very well.

22 [Whereupon paramedic exits courtroom]

23 THE COURT: And when you -- I need to be sure that Mr.
24 Bey has had that information relayed to him so he can have the
25 option to come out and join us ---

1 DEPUTY SHEPPHERD: Okay.

2 THE COURT: --- or we shall proceed without him.

3 DEPUTY SHEPPHERD: Okay.

4 [Deputy Sheppherd exits courtroom]

5 [Deputy Sheppherd returns to courtroom and is duly sworn]

6 THE COURT: State your full name for the record.

7 MR. SHEPPHERD: William Joseph Sheppherd.

8 THE COURT: Yes, sir. Detective Sheppherd, for -- isn't
9 that right -- Detective, is that okay; is that cool?

10 MR. SHEPPHERD: That would be fine.

11 THE COURT: Okay. Pursuant to my request did you assure
12 that Mr. Bey had communicated to him by the -- by the
13 paramedic what the findings of the paramedic and his
14 supervisor were?

15 MR. SHEPPHERD: Yes. They confirmed to him that he was
16 fine, all his vital signs were okay, and that they could not
17 find anything wrong with him.

18 THE COURT: All right. And did you also relay to him
19 that he was invited back out into the courtroom to continue
20 with jury selection but if he chose not to come out that we
21 would be continuing?

22 MR. SHEPPHERD: Yes, ma'am, I did.

23 THE COURT: And did he share with you whether he wished
24 to come out or not?

25 MR. SHEPPHERD: He stated that he did not want to come

1 out, he didn't feel well.

2 THE COURT: All right. And was he unwilling to come out
3 and tell me that?

4 MR. SHEPPHERD: I did not ask him that part, but I can.

5 THE COURT: All right. Very well. And would you ask him
6 if he would be willing to come out so that I can make a record
7 of his own voice in that decision. Otherwise, I will
8 certainly take your testimony. And you can tell him that as
9 well.

10 And if he chooses not to come out or even to come out to
11 relay that to me, would you share with him that should he
12 change his mind at any time and wish to come out that he need
13 only request that and we would be happy to have him join us at
14 any time?

15 MR. SHEPPHERD: Yes, ma'am, I will.

16 THE COURT: Thank you.

17 [Whereupon, a recess is taken 2/6/19, 11:30 a.m.]

18 [Whereupon, resume 2/6/19, 11:32 a.m.]

19 THE COURT: Ready.

20 MR. SHEPPHERD: I relayed everything that you asked me
21 to, Your Honor; and Mr. Bey says forgive him but he says he's
22 physically unable to come out.

23 THE COURT: All right. And you relayed also to him that
24 at any point should he change his mind, please let us know?

25 MR. SHEPPHERD: I did that. And I also made the same

1 thing in front of the detention officers that would be
2 happening. They said, you know, if he contacts them and wants
3 to come, they will bring him right back up.

4 THE COURT: Thank you so much.

5 MR. SHEPPHERD: Yes, ma'am.

6 THE COURT: All right.

7 [Whereupon, an off-the-record bench conference is held]

8 THE COURT: Bring me my jury.

9 [Whereupon, the jury panel enters the courtroom 2/6/19,
10 11:33 a.m.]

11 THE BAILIFF: Your Honor, the jury is complete.

12 THE COURT: Thank you so much.

13 CONTINUED JURY VOIR DIRE

14 THE COURT: Ladies and gentlemen, again, I thank you so
15 much for your patience. And let me explain a couple of things
16 to you. Ladies and gentlemen, you know, a defendant in any
17 case has the absolute right to be present or not to be present
18 for trial. That is a choice that an individual is absolutely
19 entitled to make. I will also tell you that a person charged
20 with a crime has an absolute right under our constitution to
21 represent himself or herself. And so I share that with you.

22 Ladies and gentlemen, you will notice that Mr. Bey is not
23 present. That is his right. It is his right not to be
24 present, as it is his right not -- it is his right to
25 represent himself. And I want you to be mindful of that.

1 Ladies and gentlemen, the fact that Mr. Bey is not
2 present, the fact that he is representing himself, does not in
3 any way lessen the burden upon the State to prove guilt beyond
4 a reasonable doubt; and I want you to likewise keep that in
5 mind.

6 Ladies and gentlemen, at this time I am going to continue
7 with our jury selection process. I am going to next read to
8 you a list of witnesses. And they are perspective witnesses.
9 I received from the parties, at this time, a list of potential
10 witnesses so that I can simply ask this question: Do any of
11 you know or think you may know, or have you heard or -- excuse
12 me -- do you know or think you know, are you related by blood
13 or marriage, or acquainted with, any of the following
14 individuals.

15 And if you happen to be in the courtroom when your name
16 is called I am going to ask you to stand, because it is so
17 much easier to put a face with a name than just the name
18 alone.

19 James Howard; Lisa Branham, James White, Murray Fink.

20 [Whereupon, Mr. Fink standing]

21 THE COURT: And this is Mr. Fink. Thank you so much.

22 Christopher Hochreiter, Jason Riley, Ashley Earl, Charika
23 Nathaniel, Gilbert Baldwin, Eddie Bohlander Philip Motez,
24 Fletcher Ferguson, James Brennan, James Miltz, Ashley Foster,
25 Robert Bittner or Bittner, Susan Gill, Robert Smith, Nathaniel

1 Alston, Sr., Elmyra Alston, Joshua Ward, Renee Hilton, Erin
2 Meyer, Michael Intini.

3 Are you related by -- ah, thank you, Mr. Intini.

4 [Whereupon, Mr. Intini standing]

5 Are you related by blood or marriage or acquainted with
6 any of the foregoing mentioned folks; if so, please stand at
7 this time.

8 [Whereupon, there is no response]

9 THE COURT: And I find no one standing.

10 Now, ladies and gentlemen, have you or any member of your
11 immediate family, to your knowledge, ever had any criminal
12 charges adjudicated by or currently pending with the
13 Charleston County Solicitor's Office; if so, please stand at
14 this time.

15 And I find no one standing. Yes. I'm sorry. Yes.

16 Yes? Your juror number?

17 JUROR NUMBER 94: Ninety-four.

18 THE COURT: You, or a member of your family?

19 JUROR NUMBER 94: My ex -- my dead husband.

20 THE COURT: Oh. Very well. And as a result of that
21 occurrence in your life, might that -- could that in any
22 respect interfere with your ability to be completely fair and
23 impartial to the State, as well as to Mr. Bey? And it needs
24 to be a yes or no answer.

25 JUROR NUMBER 94: Yes. It wouldn't -- it wouldn't affect

1 me.

2 THE COURT: It would not affect. Okay. Very well.

3 Thank you. Please stay with us.

4 Your juror number, please?

5 JUROR NUMBER 37: Thirty-seven.

6 THE COURT: Thirty-seven. You, or a member of your
7 family?

8 Juror number 37: A member of my family.

9 THE COURT: Currently, or in the past?

10 JUROR NUMBER 37: Both.

11 THE COURT: Very well. And as a result of those
12 experiences, might they, could they, in any respect interfere
13 with your ability to be completely fair and impartial to the
14 State as well as to Mr. Bey? I need you to answer yes or no.

15 JUROR NUMBER 37: Yes.

16 THE COURT: It would?

17 JUROR NUMBER 37: It would.

18 THE COURT: I am going to ask you to sit this one out,
19 but please stay with us.

20 Yes, ma'am? Your Number?

21 JUROR NUMBER 9: Nine.

22 THE COURT: You, or a member of your family?

23 JUROR NUMBER 9: A member of my family.

24 THE COURT: A member of your family?

25 JUROR NUMBER 9: Uh-huh.

1 THE COURT: Now, or in the past?

2 JUROR NUMBER 9: In the past.

3 THE COURT: Might that, could that, interfere with your
4 ability to be completely fair and impartial to the State as
5 well as to Mr. Bey?

6 JUROR NUMBER 9: No.

7 THE COURT: Please stay with us.

8 THE BAILIFF: Your Honor.

9 THE COURT: Yes, your number?

10 JUROR NUMBER 62: Sixty-two.

11 THE COURT: You, or a member of your family?

12 JUROR NUMBER 62: A member of my family.

13 THE COURT: In the past, or now?

14 JUROR NUMBER 62: In the past.

15 THE COURT: Might that, could that, interfere with your
16 ability to be completely fair and impartial both to the State,
17 as well as to Mr. Bey?

18 JUROR NUMBER 62: No, Your Honor.

19 THE COURT: Thank you so much.

20 Your number?

21 JUROR NUMBER 160. 160.

22 THE COURT: You, or a member of your family?

23 JUROR NUMBER 160: My son.

24 THE COURT: In the past, or currently?

25 JUROR NUMBER 160: Past.

1 THE COURT: Might that, could that, in any regard
2 interfere with your ability to be fair and impartial to
3 the ---

4 JUROR NUMBER 160: No, ma'am.

5 THE COURT: --- State and Mr. Bey?

6 JUROR NUMBER 160: No, ma'am.

7 THE COURT: Can you set that aside and make up your mind
8 based on what you hear in court while court is in session?

9 JUROR NUMBER 160: Yes, ma'am.

10 THE COURT: Thank you, sir. Please stay with us.

11 Ladies and gentlemen, have you previously been a witness
12 in a civil case or a criminal case? Have you ever been a
13 witness? If so, please stand.

14 And your number?

15 JUROR NUMBER 160: One sixty.

16 THE COURT: Sit down, please.

17 JUROR NUMBER 9: Nine.

18 THE COURT: Thank you so much.

19 Your number?

20 JUROR NUMBER 114: One fourteen.

21 THE COURT: Thank you.

22 Ladies and gentlemen, have you had any experience with
23 law-enforcement, the legal system, or the penal system -
24 that's the penitentiary punishment system - that would render
25 you incapable of being fair and impartial? What that means is

1 it was so fabulous, this experience, that it would have an
2 effect on your ability to be fair and impartial or it was so
3 negative that it would impact your ability to be fair and
4 impartial.

5 Ladies and gentlemen, if you've had either experience
6 such that that experience would interfere with your ability to
7 be completely fair and impartial to the State or Mr. Ward, I'm
8 going to ask you to please stand at this time.

9 [Whereupon, there is no response]

10 THE COURT: And I find no one standing.

11 And do you have any personal, political, or religious
12 beliefs or convictions that it would make it difficult for you
13 to sit in judgment of another person; if so, please stand.

14 And your number?

15 JUROR NUMBER 327: Three twenty-seven.

16 THE COURT: Thank you so much.

17 THE BAILIFF: One more, Your Honor.

18 THE COURT: Oh.

19 JUROR NUMBER 60: Sixty.

20 THE COURT: Sixty. Thank you so much. You may be
21 seated.

22 Yes?

23 JUROR NUMBER 52: Fifty-two.

24 THE COURT: Thank you so much.

25 Ladies -- I'm going to ask -- I'm going to ask two

1 questions together. Have you or any member of your immediate
2 family, to your knowledge, ever been arrested for a crime, or
3 have you or any member of your immediate family ever been the
4 victim of a crime; if so, please stand at this time.

5 All right. I'm going to ask you -- we'll start over
6 here. I'm just going to ask you -- okay.

7 JUROR NUMBER 250: Two fifty.

8 THE COURT: That's it. Thank you.

9 JUROR NUMBER 272: I don't know my number.

10 THE COURT: You know your name?

11 JUROR NUMBER 272: Yes. Rebecca Schultz.

12 THE COURT: Thank you.

13 JUROR NUMBER 348: Three forty-eight.

14 THE COURT: Thank you.

15 JUROR NUMBER 94: Ninety-four.

16 JUROR NUMBER 37: Thirty-seven.

17 JUROR NUMBER 102. One oh two.

18 JUROR NUMBER 9: Nine.

19 JUROR NUMBER 14: Fourteen.

20 JUROR NUMBER 62: Sixty-two.

21 JUROR NUMBER 60: Sixty.

22 JUROR NUMBER 222: Two -- (cough in audience).

23 THE COURT REPORTER: I'm sorry. I didn't get that one.

24 JUROR NUMBER 222: Two two two.

25 THE COURT REPORTER: Thank you.

1 JUROR NUMBER 160: One sixty.

2 THE COURT: Thank you.

3 Now, for any of those folks that just stood, would
4 that -- those experiences be such that they might or they
5 could interfere with your ability to be completely fair and
6 impartial both to the State as well as to Mr. Bey; if so,
7 please stand at this time.

8 [Whereupon, two standing]

9 THE COURT: I have already got you. I'm going to ask --
10 I've already got you. Thank you so much.

11 And just for our record, you know, I jumped to the --
12 y'all don't have to stand up again, but your number, please,
13 ma'am? Yes.

14 JUROR NUMBER 37: Thirty-seven.

15 THE COURT: Thank you.

16 JUROR NUMBER 94: Ninety-four.

17 THE COURT: No, ma'am. You didn't stand -- right behind
18 you.

19 JUROR NUMBER 60: Sixty. Six oh.

20 THE COURT: Ladies and gentlemen, does any member of our
21 jury panel have such a strong opinion regarding drugs and/or
22 guns that that opinion would interfere with your ability to
23 listen to the evidence and make up your mind, based upon what
24 you hear in court while court is in session, and interfere
25 with your ability to be completely fair and impartial to the

1 State, as well as to Mr. Bey?

2 Your number?

3 JUROR NUMBER 327: Three twenty-seven.

4 THE COURT: Your number?

5 JUROR NUMBER 52: Fifty-two.

6 THE COURT: All right. I got you, guys. Y'all are out.

7 All right. Now, ladies and gentlemen, this is going to
8 be my concluding instruction -- or question. And it is this:
9 Do you know any reason why you ought not, should not, could
10 not, be a juror in this case, being ready, willing and able to
11 listen to the evidence and make up your mind based solely,
12 based only, on what you hear in court while court is in
13 session, being completely unaffected, not affected, by matters
14 extraneous, is what the case laws says, and that is outside
15 the courtroom? If you know any reason why you ought not or
16 should not be a juror in this case, I'm going to ask you to
17 please stand at this time.

18 I already have you. Yes, ma'am, I've got you. You're
19 60. Yes, ma'am, I have got you.

20 Yes, ma'am? Your number?

21 JUROR NUMBER 137: One thirty-seven.

22 THE COURT: All right. And do you want to approach and
23 let me know what that is?

24 JUROR NUMBER 137: Okay.

25 THE COURT: Counsel, y'all can come on up.

1 MR. ZIEGLER: Thank you, Your Honor.

2 THE COURT: Thank you so much. Your number?

3 JUROR NUMBER 137: One thirty-seven.

4 THE COURT: One thirty-seven.

5 THE COURT REPORTER: Do y'all want to -- I can't hear ---

6 THE COURT: Oh, I'm sorry. Come on. We're going to
7 slide this way.

8 [Whereupon, bench conference as follows:]

9 JUROR NUMBER 137: First of all, I work for a Wall Street
10 trading firm and I have a very big trip starting on Monday and
11 if this runs over I can't be here.

12 THE COURT: Not a problem.

13 JUROR NUMBER 137: Okay.

14 THE COURT: Okay. Good. Wonderful.

15 [Whereupon, bench conference complete]

16 THE BAILIFF: Two twenty-two, Your Honor.

17 [Whereupon, bench conference as follows]

18 THE COURT: Yes?

19 JUROR NUMBER 222: I was in a school shooting when I was
20 seventeen. That won't affect my opinion as to whether someone
21 is guilty or not; but there are certain elements of that that
22 affects me still, so. And gun violence.

23 THE COURT: All right. And, you know what; I don't know
24 anything about the facts of this matter; but I think maybe if
25 there was a gun discharged or not -- but I am going to that in

1 an abundance of caution and to protect your mental health
2 we're not going to seat you on this case. Is that okay with
3 you?

4 JUROR NUMBER 222: Uh-huh.

5 THE COURT: You're so wonderful to share that with me,
6 and I'm so sorry you had that experience.

7 JUROR NUMBER 222: Thank you.

8 THE COURT: All right. Very well.

9 [Whereupon end of bench conference]

10 THE COURT: I've got -- I have to tell y'all this story.
11 We reached this point with that question up in Dorchester, not
12 here; my county, Dorchester County. We reached a point right
13 here and a young man stood up and he said, Your Honor, may I
14 please go be with my wife as she delivers our first child at
15 Trident Hospital. True story.

16 Is anybody in labor? Is anybody's family member in
17 labor?

18 [Whereupon, there is no response]

19 THE COURT: Whew. Okay. I'm okay. I'm good.

20 Ladies and gentlemen, now let me tell you what happens.
21 And usually I run down there and do -- do you want to just ---

22 MR. ZIEGLER: Your Honor, may we approach real quickly?

23 THE COURT: Sure.

24 [Whereupon, an off-the-record bench conference is held]

25 THE COURT: Let me tell you what's going to happen now.

1 And here's what I want you to know. About two million years
2 ago I sat in not this courtroom, but a similar one, and I did
3 what you're about to do. So here's what's going to happen.
4 If your number is called I am going to ask you to come through
5 the gates and just come and stand somewhere near the podium.
6 If you want to hide behind it, that's fine.

7 And then you're going to hear from one of the attorneys
8 from the State. You'll hear excuse the juror or seat the
9 juror. And if you hear excuse the juror, then just go take
10 your seat back in the audience.

11 Let me tell you something about jury selection. There
12 are about a thousand considerations that goes through a
13 lawyer's mind when selecting a juror; but let me tell you the
14 one consideration that never goes through the mind of a lawyer
15 and particularly these lawyers, it doesn't go through their
16 mind, is a desire to embarrass you. That doesn't.

17 So if you are asked to take your seat back into the
18 audience, don't let it bother you at all. It's just our
19 process. It's the way we have selected juries in this state
20 for over two hundred years.

21 So if your name is called, bring your stuff with you and
22 just come on through the gates and stand somewhere right in
23 here near the podium and just wait to either be seated or to
24 be asked to take your seat back in the audience. Is everybody
25 clear about that? All right.

1 Thank you, Ms. April, turning it over to you.

2 Oh, and it is always fun to be the first person, oh, by
3 the way.

4 [Whereupon, jury lists distributed]

5 JURY SELECTION

6 THE COURT: And you know you've got five strikes; right?

7 MR. ZIEGLER: Yes, Your Honor.

8 THE COURT: And you have got one on the alternates. And
9 we're going to have -- let's have two alternates.

10 THE CLERK OF COURT: Ladies and gentlemen, when I call
11 your name, please collect your belongings and come to the
12 podium and face the parties.

13 Juror Number 340, Holden Woods.

14 [Whereupon, Juror Number 340, a white male, comes
15 forward]

16 THE CLERK OF COURT: What say you for the State?

17 MR. ZIEGLER: Please present Mr. Woods.

18 THE COURT: All right.

19 THE CLERK OF COURT: Mr. Woods, if you would take a seat
20 in the jury box. You have been selected for this case.

21 THE COURT: Exhibit A.

22 [Whereupon, Juror Number 340 is seated in the jury box as
23 a juror]

24 THE CLERK OF COURT: Juror Number 127, Robert Hair.

25 THE COURT: Mr. Holden, smile.

1 [Whereupon, Juror Number 127, a white male, comes
2 forward]

3 THE CLERK OF COURT: What say you for the State?

4 MR. ZIEGLER: Please present this juror.

5 THE CLERK OF COURT: Sir, you may take a seat in the jury
6 box. You have been selected for this case.

7 [Whereupon, Juror Number 127 is seated in the jury box as
8 a juror]

9 THE CLERK OF COURT: Juror Number 218, Serena Monkers.

10 [Whereupon, Juror Number 218, a white female, comes
11 forward]

12 THE CLERK OF COURT: What say you for the State?

13 MR. ZIEGLER: Please present Ms. Monkers.

14 THE CLERK OF COURT: Ma'am, please take a seat in the
15 jury box. You have been selected for this trial.

16 [Whereupon, Juror Number 218 is seated in the jury box as
17 a juror]

18 THE CLERK OF COURT: Juror Number 175, Katelyn Lewis.

19 [Whereupon, Juror Number 175, a white female, comes
20 forward]

21 THE CLERK OF COURT: What say you for the State?

22 MR. ZIEGLER: Please present Ms. Lewis.

23 THE CLERK OF COURT: Ma'am, please take a seat in the
24 jury box. You have been selected for this trial.

25 [Whereupon, Juror Number 175 is seated in the jury box as

1 a juror]

2 THE CLERK OF COURT: Juror Number 229, Brittany Osgood.

3 [Whereupon, Juror Number 229, a white female, comes
4 forward]

5 THE CLERK OF COURT: What say you for the State?

6 MR. ZIEGLER: Please present Ms. Osgood.

7 THE CLERK OF COURT: Ma'am, please take a seat in the
8 jury box. You have been selected for this trial.

9 [Whereupon, Juror Number 229 is seated in the jury box as
10 a juror]

11 THE CLERK OF COURT: Juror Number 272, Rebecca Schultz.

12 [Whereupon, Juror Number 272, a white female, comes
13 forward]

14 THE CLERK OF COURT: What say you for the State?

15 MR. ZIEGLER: Please excuse Ms. Schultz.

16 THE CLERK OF COURT: Ma'am, you have been excused from
17 the trial. Please take a seat back in the audience.

18 [Whereupon, Juror Number 272 returns to the audience]

19 THE CLERK OF COURT: Juror Number 200, Christina
20 McKittrick.

21 [Whereupon, Juror Number 200, a white female, comes
22 forward]

23 THE CLERK OF COURT: What say you for the State?

24 MR. ZIEGLER: Please present Ms. McKittrick.

25 THE CLERK OF COURT: Ma'am, please take a seat in the

1 jury box. You have been seated for this trial.

2 [Whereupon, Juror Number 200 is seated in the jury box as
3 a juror]

4 THE CLERK OF COURT: Juror Number 258, Lynne Russell.

5 [Whereupon, Juror Number 258, a white female, comes
6 forward]

7 THE CLERK OF COURT: What say you for the State?

8 MR. ZIEGLER: Please excuse Ms. Russell.

9 THE CLERK OF COURT: Ma'am, please have a seat back in
10 the audience.

11 [Whereupon, Juror Number 258 returns to the audience]

12 THE CLERK OF COURT: Juror Number 114, Jennifer Gibbins.

13 [Whereupon, Juror Number 114, a white female, comes
14 forward]

15 THE CLERK OF COURT: What say you for the State?

16 MR. ZIEGLER: Please present Ms. Gibbins.

17 THE CLERK OF COURT: Ma'am, please have a seat in the
18 jury box. You have been selected for this trial.

19 [Whereupon, Juror Number 114 is seated in the jury box as
20 a juror]

21 THE CLERK OF COURT: Juror Number 270, Julia Schroder.

22 [Whereupon, Juror Number 270, a white female, comes
23 forward]

24 THE CLERK OF COURT: What say you for the State?

25 MR. ZIEGLER: Please present Ms. Schroder.

1 THE CLERK OF COURT: Ma'am, please have a seat in the
2 jury box. You have been selected for this trial.

3 [Whereupon, Juror Number 270 is seated in the jury box as
4 a juror]

5 THE CLERK OF COURT: Juror Number 14, Christine
6 Blackburn.

7 [Whereupon, Juror Number 14, a white female, comes
8 forward]

9 THE CLERK OF COURT: What say you for the State?

10 MR. ZIEGLER: Please present Ms. Blackburn.

11 THE CLERK OF COURT: Please have a seat in the jury box.
12 You have been selected for this trial.

13 [Whereupon, Juror Number 14 is seated in the jury box as
14 a juror]

15 THE CLERK OF COURT: Juror Number 87, Alan Edwards]

16 [Whereupon, Juror Number 87, a white male, comes forward]

17 THE CLERK OF COURT: What say you for the State?

18 MR. ZIEGLER: Please present Mr. Edwards.

19 THE CLERK OF COURT: Please have a seat in the jury box.
20 You have been selected for this trial.

21 [Whereupon, Juror Number 87 is seated in the jury box as
22 a juror]

23 THE CLERK OF COURT: Juror Number 100, Cecelia Fludd.

24 [Whereupon, Juror Number 100, a black female, comes
25 forward]

1 THE CLERK OF COURT: What say you for the State?

2 MR. ZIEGLER: Please present Ms. Fludd.

3 THE CLERK OF COURT: Please have a seat in the jury box.
4 You have been selected for this trial.

5 [Whereupon, Juror Number 100 is seated in the jury box as
6 a juror]

7 THE CLERK OF COURT: Juror Number 49, Lauren Chapman.

8 [Whereupon, Juror Number 49, a white female, comes
9 forward]

10 THE CLERK OF COURT: What say you for the State?

11 MR. ZIEGLER: Please present Ms. Chapman.

12 THE CLERK OF COURT: Ma'am, please have a seat in the
13 jury box. You have been selected for this trial.

14 [Whereupon, Juror Number 49 is seated in the jury box as
15 a juror]

16 THE CLERK OF COURT: Now selecting for our alternates.
17 Juror Number 62, Freddie Collins.

18 [Whereupon, Juror Number 62, a black male, comes forward]

19 THE CLERK OF COURT: What say you for the State?

20 MR. ZIEGLER: Please excuse Mr. Collins.

21 THE CLERK OF COURT: Mr. Collins, you have been excused.
22 Please take a seat in the audience.

23 [Whereupon, Juror Number 62 is excused and returns to the
24 audience]

25 THE CLERK OF COURT: Juror Number 109, Dario or Dario

1 Garcia.

2 [Whereupon, Juror Number 109, a Hispanic male, comes
3 forward]

4 THE CLERK OF COURT: What say you for the State?

5 MR. ZIEGLER: Please present Mr. Garcia.

6 THE CLERK OF COURT: Please have a seat in the jury box.
7 You have been selected for this trial.

8 [Whereupon, Juror Number 108 is seated in the jury box as
9 an alternate juror]

10 THE CLERK OF COURT: Juror Number 305, Darrel Thomas.

11 [Whereupon, Juror Number 305, a black male, comes
12 forward]

13 THE CLERK OF COURT: What say you for the State?

14 MR. ZIEGLER: Please present Mr. Thomas.

15 THE CLERK OF COURT: Sir, you have been selected for this
16 trial. Please have a seat in the jury box.

17 [Whereupon, Juror Number 305 is seated in the jury box as
18 an alternate juror]

19 THE CLERK OF COURT: The panel has been completed, Judge.

20 THE COURT: Thank you so much.

21 Are there any matters regarding the selection or the
22 qualification of the jury from the State?

23 MR. ZIEGLER: No, Your Honor.

24 THE COURT: Very well. Thank you.

25 Ladies and gentlemen, you are now known as our remaining

1 jurors. I want to thank you so much for every tick of the
2 clock that you have given us this morning. It is my
3 understanding that you are going to go back down to your juror
4 assembly room for further instructions.

5 [Off the record momentarily]

6 THE COURT: So if you will just follow our bailiffs, they
7 will take you back down to the jury assembly room for further
8 instructions.

9 [Whereupon, the jury panel exits the courtroom 2/6/19,
10 12:24 p.m.]

11 THE COURT: All right. Ladies and gentlemen, here's what
12 we're going to do really quickly. I'm going to -- first of
13 all, I'm going to try to get rid of this frog that has been in
14 my throat. What we are going to do in just a moment is I am
15 going to ask our bailiffs to take you to your jury room for
16 just a moment, and that will give anybody that needs to take a
17 comfort break. Because we're going to work for about another
18 hour before we take our lunch break.

19 And I'm going to give you -- when you return, you're
20 going to be sworn in as the -- as the jury in this case. And
21 then I have a -- just a few, preliminary remarks that I am
22 going to make to you and then we're going to get right into
23 the trial of this case. We will take a break around one
24 o'clock for lunch, just to give you an overview.

25 So, ladies and gentlemen, each and every time that we

1 leave each other I am going to give you this instruction: Do
2 not discuss this matter or allow anyone to discuss it with
3 you. The reason I give you that instruction is that you are
4 about to be the jury in this case and it is very important
5 that you are able to listen open-mindedly to everything and
6 make up your mind about nothing until you have heard
7 everything.

8 And, ladies and gentlemen, what we know from having tried
9 cases for over two-hundred years is when we begin to talk
10 about something, we begin to make up our minds about that
11 something and form an opinion about it. My reason for the
12 instruction, do not discuss this matter or allow anyone to
13 discuss it with you, is to help you in that regard. It is to
14 support your ability to listen open-mindedly to everything and
15 make up your mind about nothing until you've heard everything.

16 So I'm going to ask you to step to your jury room,
17 remembering not to discuss this matter or allow anyone to
18 discuss it with you.

19 I do need to share with you though real quickly, because
20 you are going to be coming back in just a moment and I need
21 to -- Mr. Garcia and Mr. Thomas, y'all are our alternates; so
22 I need y'all to keep those seats. Now if y'all want to swap
23 those two seats, that is perfectly fine. But I need to keep
24 up with you as our alternates, so keep those two seats.

25 Ladies and gentlemen, our law provides that there should

1 be one of your number who is your presiding juror. I am going
2 to ask you at some point during one of our breaks to please
3 select your own presiding juror. And when you have selected
4 your presiding juror, that person is going to take this seat
5 closest to the door, on the front row, and keep that seat
6 throughout the trial.

7 The presiding juror has three additional tasks of being a
8 juror. You've got to write the verdict of the jury when
9 you've finished your deliberations. And there will be no
10 question in your mind when that time has come because I'm
11 going to tell you start your deliberations.

12 And you won't be talking about this case at all with
13 anyone, to include your fellow jurors, until I have told you
14 to begin your deliberations. But your presiding juror, once
15 your deliberations are finished, then the presiding juror is
16 just going to be the scrivener, write it down.

17 The presiding juror, during those deliberations, just
18 makes sure everybody has a chance to talk. And then, finally,
19 if the jury needs to communicate with me for whatever reason,
20 the presiding juror writes it on a piece of paper, gives it to
21 our bailiff, who will in turn give that to me. Like, we sure
22 would like some warm chocolate chip cookies, or could you ask
23 everybody to speak up; or gee it's cold in here, which I can
24 do absolutely nothing about. But you can put it on a piece of
25 paper and give it to me, if you would like to. The presiding

1 juror is also the jury's spokesperson here in court.

2 And here is the problem for you, is most of the time, in
3 my experience, if you've got the chair, you keep the chair.
4 But it doesn't matter -- it doesn't matter who is your
5 presiding juror. I just need to know who that person is
6 before you retire to deliberate.

7 And I -- y'all can let me know in one of three ways. You
8 can tell me when you walk in, you can give me a note saying I
9 am juror number and I am the presiding juror, or you can keep
10 the seat and see if I'm smart enough to figure it out. Any
11 one of those three are perfectly fine. I just need to know
12 who your presiding juror is before you begin your
13 deliberations.

14 Ladies and gentlemen, we're not going to take very long,
15 but please step to your room. Do not discuss this matter or
16 allow anyone to discuss it with you. If you have a cell phone
17 with you, please give it to one of our bailiffs and we will
18 give it back to you at lunch. And we will be with you very
19 shortly.

20 [Whereupon, the jury exits the courtroom 2/6/19, 12:59
21 p.m.]

22 THE COURT: All -- yes?

23 MR. ZIEGLER: Your Honor, would you like us to stand when
24 the jury enters and exits?

25 THE COURT: I don't care. It's up to you.

1 Now, I need you all to communicate, please, to Mr. Bey
2 that we - one of you, please - that we are about to begin this
3 trial and we are issuing to him a continuing invitation to
4 please join us.

5 COURTROOM DEPUTY: Okay.

6 THE COURT: If he chooses not to, that's fine. It's his
7 right to be here or not be here. But if he chooses at this
8 moment not to join us, again, if he changes his mind at any
9 time, don't keep it to himself, let the detention folks know
10 and they'll bring him on up.

11 COURTROOM DEPUTY: I will let you know. I will give them
12 a call now.

13 THE COURT: Thank you.

14 And let's everybody take -- let's all take our little
15 comfort break.

16 [Whereupon, a recess is taken 2/6/19, 12:10 p.m.]

17 {Whereupon, resume 2/6/19, 12:16 p.m.}

18 DEPUTY SHEPPHARD: Lieutenant Halley informed me that he
19 declines to come to court at this time.

20 THE COURT: Okay.

21 MR. ZIEGLER: Your Honor, we're getting ready to -- we're
22 running the evidence over right now. We didn't want to have
23 it in here, obviously, while the jury was in here. But
24 they're bringing it over from our office right now.

25 THE COURT: All right. That's okay. They can just bring

1 it on in. I'm not -- we can go on and do our thing.

2 MR. ZIEGLER: There's a -- there's a shotgun - I mean,
3 it's not in evidence yet - that we have to bring in. That's
4 the only

5 THE COURT: Oh, do you mean you are going to bring it in
6 and hide it? Okay. Well, just throw it -- you know, somebody
7 take your coat off and throw on it. We have got to get ---

8 MR. ZIEGLER: We're going to bring a blanket for it.

9 THE COURT: Yeah, just hide it or put it in -- why don't
10 you put it in one of those rooms, okay.

11 MR. ZIEGLER: Okay.

12 THE COURT: Because have got to keep going. All right.

13 THE BAILIFF: Ready for the jury?

14 THE COURT: Yes.

15 MR. ZIEGLER: Well, and actually my -- my co-counsel is
16 not back yet. She is getting -- has gone to get the evidence
17 so.

18 THE COURT: She -- oh, she went to get the evidence?
19 Well, she can come on in. I'm just going to swear them in.

20 MR. ZIEGLER: Oh, okay.

21 THE COURT: I'm just going to make my preliminary
22 remarks. Y'all aren't starting yet.

23 MR. ZIEGLER: Okay.

24 [Off the record momentarily]

25 [Whereupon, the jury panel enters the courtroom 2/6/19,

1 12:19 p.m.]

2 THE BAILIFF: Your Honor, the jury is -- I'm sorry.

3 [Whereupon, additional jury panel member enters
4 courtroom]

5 THE BAILIFF: The jury is complete.

6 THE COURT: Thank you so much. We already have a note.
7 Okay. Great. Wonderful.

8 [Whereupon, the Court reviews jury note]

9 [Whereupon, Court's Exhibit Number 3, jury note, is
10 marked for identification]

11 THE COURT: Thank you for serving as our presiding juror.
12 I appreciate that. Juror 218. Wonderful. Dang, y'all are
13 good. Efficient.

14 All right. Ladies and gentlemen, at this time I'm going
15 to ask you to please stand and raise your right hand and be
16 sworn in as the jury in this case.

17 [Whereupon, the jury is duly sworn by the deputy clerk of
18 court]

19 THE COURT: Do we have any juror who did not take the
20 oath; if so, please stand.

21 [Whereupon, there is no response]

22 THE COURT: I find no one standing.

23 Now, ladies and gentlemen, the case that we are about to
24 try is the State of South Carolina versus Jontez Myrelle Ward
25 Bey. He is the defendant. If you hear me say the defendant,

1 I mean Mr. Bey. So please keep that in mind.

2 Now, ladies and gentlemen, these remarks that I'm going
3 to give you now are intended to serve really as an
4 introduction to this case and to give you a bit of a structure
5 of how we're going to be proceeding.

6 I think it's easier for you to pay attention and to
7 concentrate on what you're hearing if you kind of know what
8 the structure of the case -- what it is and you'll know where
9 we are in the progress of the trial. I think that's important
10 for jurors to know.

11 And so I want you to know that this is not intended to be
12 the instruction on the law in this case. I am going to give
13 you the instruction on the law applicable to this case at the
14 conclusion of the evidence and before you retire to consider
15 your verdict.

16 Now, ladies and gentlemen, I want to reiterate that it is
17 a person's right to decide whether or not they wish to be
18 present or not for their trial, and that does -- the fact that
19 Mr. Bey is not present in the courtroom at this time in no way
20 lessens the burden of proof applicable to the State. The
21 State, and the State only, has the burden of proving each
22 allegation of each of these three indictments beyond a
23 reasonable doubt.

24 Ladies and gentlemen, I will give you the instruction of
25 what we mean by beyond a reasonable doubt when I give you the

1 concluding instruction on the law applicable to this case at
2 the end of the trial.

3 Now, ladies and gentlemen, first of all, let me talk to
4 you a little bit about note-taking. Jurors often want to take
5 notes. And they want to take notes really for a couple of
6 reasons. Number one, it helps a juror refresh his or her
7 recollection during or prior to deliberations. Some people,
8 it helps them concentrate.

9 I will tell you that note-taking is one of those areas in
10 the law that there's an ongoing debate. And there's been an
11 ongoing debate since I've been a judge. And that's been
12 twenty years. And also before I was a judge and when I am no
13 longer a judge I am sure that it will continue. And the
14 debate is this. There is a concern that when jurors take
15 notes during deliberation if one juror has a note and another
16 juror doesn't have a note there can be an undue amount of
17 influence placed upon the note. There is also a concern that
18 a juror can miss something as it's coming from the witness
19 stand because a juror is taking a note.

20 Ladies and gentlemen, I think that both sides of the
21 debate -- I just told you the criticisms of the debate. And
22 the positive part of taking a note, it lets you refresh your
23 recollection, it helps you perhaps concentrate.

24 I think both sides of that argument are so good and so
25 legitimate that I've had to sort of compromise with myself

1 about note-taking. Here's the compromise. If trials are
2 expected to be of relatively short duration - and this is a
3 trial that is expected to be of relatively short duration - I
4 ask jurors just to listen very carefully, pay attention, give
5 to these witnesses, give to these matters, your undivided
6 attention and not take notes. If trials are expected to be of
7 longer duration then we provide notes and paper and the
8 ability to take notes.

9 Ladies and gentlemen, because this is a trial that is
10 anticipated to be of relatively short duration I'm going to
11 ask you not to take notes. But I want you to understand that
12 I am in no way demeaning the importance of this trial. It is
13 of the utmost importance to the State, to Mr. Bey, and to our
14 system. I just commented on the anticipated duration because
15 I just wanted you to understand why I was going to instruct
16 you not to be taking notes.

17 Now, ladies and gentlemen, Mr. Bey is charged in this
18 case with three indictments; and they are trafficking in
19 heroin, and possession with intent to distribute a controlled
20 substance within the proximity of a park, and -- I'm just
21 double-checking my numbers, ladies and gentlemen. Hold on one
22 second.

23 [Whereupon, the Court reviews documents]

24 THE COURT: Here we go. Here we go.

25 ... and possession of a weapon during the commission of a

1 violent crime. And I'm going to explain the elements of these
2 offenses to you later.

3 I want to share with you again that these indictments are
4 simply pieces of paper and they are the notice to the
5 defendant regarding the charges to which this defendant has
6 been alleged to have violated.

7 They are the -- each one of these indictments contains a
8 separate charge. And, of course, to each and every charge,
9 Mr. Bey has pled not guilty and the State has the burden of
10 proving each of the elements of each of these indictments
11 beyond a reasonable doubt. And it is your duty -- it will be
12 your duty, ladies and gentlemen, to decide whether the State
13 has met its burden of proof.

14 Now, in order to determine whether the State has met its
15 burden, necessarily you must find and determine the facts.
16 You're the sole judges of the facts. And under our system
17 ordinarily there is no way to correct an erroneous
18 determination of the facts by a trial jury, which is why it is
19 so important that you listen carefully, that you give to these
20 matters your full attention, because the facts as determined
21 by a trial jury, under our system, are the facts for all time.

22 Ladies and gentlemen, our law does not allow me to have
23 an opinion regarding the facts, to comment on the facts, to
24 intimate in any way to a trial jury anything regarding the
25 facts.

1 So, ladies and gentlemen, if I do or say something that
2 you think might be a comment on the facts, I'm going to ask
3 you at this moment please, please, disregard that; because I
4 don't have an opinion regarding the facts. That is a matter
5 solely for you to determine.

6 And you are to determine the facts from the testimony
7 that you hear and from other evidence which is introduced into
8 court. It is up to you to determine any inferences which you
9 feel may properly be drawn from the evidence. It is
10 especially important that you perform your duty of determining
11 the facts diligently and conscientiously; because, as I say,
12 there is no way under our system to correct an erroneous
13 determination of the facts by a trial jury.

14 On the other hand and with equal emphasis, the same law
15 that makes you the judges of the facts makes me the judge of
16 the law. The law as given to you by me, by the Court, is the
17 only law that you may consider. You must accept and apply the
18 law exactly as I state it to you, even though you may disagree
19 with it. It is your duty to accept and apply the law as I
20 state it to you. I

21 Now, if you disagree with it, go have an appointment and
22 a meeting with your legislator. But for our system to work
23 correctly, you must accept and apply the law as I state it to
24 you.

25 Now, the way that our system works is that you will find

1 the facts as you find them to be and you will take the law as
2 I give it to you and you will apply it to those facts. And
3 that is how you reach your verdict.

4 Now, until I advise you to begin your deliberations you
5 must not discuss this case with anyone including your fellow
6 jurors, your family, your friends, or anyone involved in the
7 case. This includes discussions face-to-face and those by
8 telephone, email, text, blogs, or any other method of
9 communication, or at any time while in the courtroom or during
10 your breaks.

11 Now, ladies and gentlemen, you may not use a computer, a
12 cell phone, or other electronic device, with communication
13 capabilities at any time while in the courtroom or during your
14 deliberations.

15 During your breaks for meals or overnight if you must,
16 use these devices. However, you may not at any time use these
17 devices to get or send information about the case. This
18 includes information about a party, a witness, an attorney, a
19 court officer, news accounts about the case, research on any
20 topics to include a definition of a word. You must, you must,
21 receive all of the information from which you will make up
22 your mind here in court while court is in session.

23 During the trial do not read, listen to, or watch any
24 news reports about this case. And this includes anything that
25 may be in the newspapers or on the internet, on the radio or

1 television. You must not consider anything you may have read
2 or heard about the case outside the courtroom, whether before
3 or during the trial. After the case is submitted to you you
4 must discuss it only in the jury room with your fellow jurors.

5 Ladies and gentlemen, the folks who are associated with
6 this matter, they know not to talk to you at all. So if you
7 happen to see the attorneys or anyone associated with this
8 case coming and going from the courthouse, perhaps during the
9 lunch break or at the end of the day or even in the morning,
10 if they don't even say hello to you, if they seem to shun away
11 from you, I want you to understand they really aren't being
12 rude, they're following my instructions.

13 In other words, not only, ladies and gentlemen, can they
14 not speak to you, should they not speak to you, they really
15 shouldn't even be in the vicinity so that anyone else would
16 think they were speaking to you.

17 Ladies and gentlemen, it is important that you keep an
18 open mind and that you not decide any issue in this case until
19 all the evidence has been presented, you've heard closing
20 argument, and I have instructed you on the law applicable to
21 this case.

22 Now, ladies and gentlemen, in just a moment you will hear
23 from the solicitor in the opening statement. What is an
24 opening statement? An opening statement is an opportunity for
25 the party or parties to explain to you what the issues are in

1 the case. They're not true arguments. It's just an
2 opportunity to discuss with you what is believed to be the
3 issues in the case.

4 I want you to also understand that from time to time
5 there's the possibility that you will hear an objection. And
6 I'm go to talk about that for just a moment.

7 Ladies and gentlemen, there are certain rules that apply
8 to a trial. You are learning that a trial is a structured
9 activity. And in sports, business, or any other structured
10 activity, there are rules that must be obeyed when presenting
11 evidence. They are called the rules of evidence. And an
12 objection is the way that a possible violation of the rules
13 are called to my attention.

14 Ladies and gentlemen, it is my duty as the judge to rule
15 on whether or not evidence is admissible at all or not.
16 That's a matter of law. But once it is admitted, whether you
17 believe it, any weight or what weight you give to it and any
18 inferences you draw from it, are matters solely for you to
19 determine.

20 So, ladies and gentlemen, because that is our process you
21 shouldn't hold an objection against a party nor should you
22 conclude from my ruling on the objection that I favor one side
23 or the other, because I can assure you I do not.

24 Now, ladies and gentlemen, in determining what the true
25 facts are in this case you must decide whether or not the

1 testimony of the witnesses who testify before you are
2 believable. It will be my responsibility to rule on the
3 admissibility. But, again, once evidence is admitted, whether
4 or not you believe it is solely for you to determine. And in
5 deciding whether to believe a witness you have the right to
6 consider the interest of any witness, the bias of any witness,
7 the prejudice of any witness, the opportunity for the witness
8 to have seen the matters and things about which the witness
9 may testify, and you may consider the way that the witness
10 acts on the witness stand.

11 You have a right to consider anything that is in the
12 record that will help you evaluate the testimony of the
13 witness. And this means that it is your duty to pay close
14 attention to these witnesses, observe them, listen to them,
15 and pay close attention to the parties in court.

16 Please don't let your thoughts wander but give the strict
17 attention to these matters so at the end of the testimony and
18 the arguments and the charge you will be in a position to
19 deliberate and render your verdict.

20 I'm going to -- finally, I'm going to ask a favor of you.
21 But to do that I have to tell you a story about me. When I
22 was a little girl and we would go to service my mom would do
23 this [indicates]. I thought she was sleeping.

24 I'm a fidgeter. You may see me stand. I will -- I will
25 try not to in any way disrupt the proceedings, and I don't

1 want to keep you from being able to focus; but I'm a fidgeter.
2 I have to fight it. I've had to fight it since I was a little
3 girl.

4 Well, inevitably, I would fidget. But I thought I was
5 good to go because my mama was sleeping. And then -- she made
6 me sit next to her. My brothers got to sit -- you think they
7 would have to sit -- no. I had to sit next -- they got to sit
8 away. I had to sit next to her. And inevitably I would get
9 the pinch, which was not a good thing. It was a signal for
10 things to come.

11 Well, because we've just met I am afraid that I'm going
12 to make the error that you're sleeping. And I'm sure you
13 wouldn't be. I'm sure you would just be concentrating with
14 your eyes closed. Because clearly I can't tell the
15 difference. So I'm going to ask as a favor to me, concentrate
16 with your eyes open so I don't make the same mistake. I would
17 be so grateful if you would do that for me.

18 Now, ladies and gentlemen, at this time we're going to
19 hear opening statements. So I'm going to ask you to please
20 draw close. Oh, but before we do that, just to be sure I have
21 preserved everybody's rights, any objection?

22 MR. ZIEGLER: No, Your Honor.

23 THE COURT: Very well. Please draw close as we listen to
24 the opening statement.

25 Mr. Ziegler?

1 MR. ZIEGLER: Thank you, Your Honor.

2 THE COURT: Yes.

3 MR. ZIEGLER: May it please the Court.

4 OPENING STATEMENT

5 MR. ZIEGLER: Good afternoon, ladies and gentlemen.

6 This case is about 28 grams, 28 grams of heroin.

7 And it's about a simple equation, 28 plus P equals T.

8 Twenty-eight plus P equals T. Twenty-eight grams of heroin,
9 plus possession, equals trafficking.

10 The person who made the decision to possess and traffic
11 heroin, the person who made the decision to bring more than 28
12 grams of heroin into the bedroom where he laid his head, has
13 already been introduced to you. He is the defendant, Jontez
14 Myrelle Ward. You also will hear him referred to as Mr. Bey,
15 Jontez Ward Bey.

16 So this case began when narcotics detectives from the
17 Charleston County Sheriff's Office went to the residence where
18 the defendant was living on the morning of November 6th, 2014.
19 The residence was [REDACTED] Britten Court in North Charleston.
20 That's in a complex, an apartment complex off of Dorchester
21 Road not far from the airport.

22 The detectives who went there had a lawful search warrant
23 authorizing them to enter the residence at [REDACTED] Britten Court.
24 So a team from the Sheriff's Office did enter that residence
25 on the morning of November 6th, 2014. When they entered, they

1 quickly moved to secure the individuals who were located in
2 the residence. That's their first step, for safety purposes.

3 So upon entering the front door two officers quickly
4 moved upstairs and located the defendant and Ms. Charika
5 Nathaniel in the master bedroom. One officer saw that the
6 defendant was moving his hand under a pillow and ordered him
7 to stop. He then took the defendant into custody and placed
8 handcuffs on the defendant to secure the scene. Ms. Nathaniel
9 was also secured by an officer. You will also hear that there
10 were three children located inside the house.

11 Once downstairs -- once the defendant came downstairs, a
12 detective began an interview of the defendant. After being
13 advised of his Miranda rights, which the detective went
14 through with him - you'll hear from this detective - the
15 defendant agreed to speak to the detective. The defendant
16 told the detective that he was then living at the residence
17 [REDACTED] Britten Court. That was the first detective who advised
18 him of Miranda rights.

19 The lead detective in this case, Detective Fink, then
20 arrived at the residence and picked up the interview with the
21 defendant. He entered into a conversation with the defendant
22 and he asked him if he had any guns or drugs in the house.
23 The defendant answered that he did and that he would actually
24 take Detective Fink to the drugs. So the defendant led
25 Detective Fink upstairs into the master bedroom and motioned

1 with his foot towards the top-right dresser drawer.

2 So Detective Fink opened -- Detective Fink opened that
3 drawer there, with the defendant right there, and he saw
4 inside the drawer a large bag of drugs and a gun, among other
5 things. You'll see photos of that. The defendant then
6 proceeded to tell Detective Fink that the drugs and the gun in
7 the drawer were his.

8 After that, the residence was searched by the police and
9 evidence was collected. Officers located another bag of drugs
10 on the bed in the master bedroom where the defendant had
11 initially been found.

12 So the two bags of drugs that were collected were tested
13 by an analyst at the Charleston Police Department. That
14 analyst found that the substance contained in both bags was
15 heroin. In one bag found in the dresser, there were more than
16 28 grams. In the other bag on the bed, there were more than
17 five grams. Note, also, that [REDACTED] Britten Court is less than
18 a half-mile away from a public park called Collins Park.

19 I'd like to briefly introduce you to the three crimes
20 with which the defendant is charged. The first, trafficking
21 heroin, 28 grams or more, is committed by any person who is
22 knowingly in actual or constructive possession of 28 grams or
23 more of heroin.

24 The second, possession of a firearm during the commission
25 of a violent crime, this occurs when a person is in possession

1 of a firearm during the commission of a violent crime. And
2 for purposes of this offense, a violent crime is one listed in
3 Section 16-1-60 of the South Carolina Code of Laws. In that
4 list is trafficking heroin.

5 The third crime is possession with intent to distribute a
6 controlled substance in proximity of a park. That occurs when
7 a person unlawfully possesses, with intent to distribute, a
8 controlled substance while in or within one-half mile radius
9 of the grounds of a public playground or park.

10 The Court has instructed you about the defendant's right
11 to represent himself and to not be present. It's important to
12 remember that he has that right. Nonetheless, the State takes
13 this case seriously. And the State will present evidence to
14 you to prove these charges beyond a reasonable doubt.

15 I will conclude by reminding you that this case is about
16 28 grams and an equation, 28 plus P equals T. The defendant
17 made a decision to store more than 28 grams of heroin in his
18 bedroom.

19 After you have heard all of the evidence I will ask you
20 to hold this defendant accountable for his actions by
21 returning a verdict of guilty for trafficking heroin,
22 possession of a firearm during the commission of a violent
23 crime, and possession with intent to distribute heroin in
24 proximity of a park. Thank you.

25 THE COURT: Thank you so much. If you will please call

1 your first witness.

2 MR. ZIEGLER: The State calls Detective James Howard.

3 THE COURT: They can come on in too. They don't need to
4 stay out. They don't need to be sequestered. They -- bring
5 them all in if they want to. Yeah, I don't need to keep them
6 out.

7 [Whereupon, Mr. Howard comes forward]

8 THE CLERK OF COURT: Will you please place your left hand
9 on the Bible and raise your right.

10 [Whereupon, Mr. Howard is duly sworn by the deputy clerk
11 of court]

12 THE CLERK OF COURT: For the record, please state your
13 full name, spelling your last name. You may have a seat.

14 [Whereupon, the witness takes the witness stand]

15 THE WITNESS: James Lewis Howard, III. H-O-W-A-R-D.

16 THE COURT: Your witness.

17 MR. ZIEGLER: Thank you, Your Honor.

18 Good afternoon, Detective Howard.

19 THE WITNESS: Good afternoon.

20 JAMES L. HOWARD, III, Having Been First Duly Sworn, was
21 Examined and Testified as Follows:

22 **DIRECT EXAMINATION BY MR. ZIEGLER OF JAMES HOWARD:**

23 Q. What agency are you a member of?

24 A. Charleston County Sheriff's Office.

25 Q. What's your current assignment?

1 A. I am currently assigned as a detective to the metro major
2 case unit.

3 Q. And what is -- what is the metro major case unit?

4 A. We investigate -- mainly, the biggest things that we've
5 got are anything narcotics related, vice related, which
6 includes alcohol, prostitution, and things of that nature.

7 Q. And what was your assignment in November 2014?

8 A. I was assigned as a detective for the unit itself.

9 Q. At that time? Okay.

10 A. Yes, sir.

11 Q. What's your total law enforcement time overall?

12 A. The total officer time, I have seven years. And that
13 includes -- and that is all with the Charleston County
14 Sheriff's Office. And five-and-a-half years are with the
15 metro major case unit.

16 Q. Okay. Were you involved in the case that we're here
17 about today?

18 A. I was.

19 Q. So I want to direct you to November 6th, 2014. Were you
20 working in metro then?

21 A. Yes, sir, I was.

22 Q. Okay. And on that day what was the -- what assignment
23 did you have that day?

24 A. Being a detective, the case agent will distinguish as far
25 as different assignments throughout the detectives in the

1 unit. My assignment for that was to prepare and establish
2 the -- it is what we call the search warrant return for that.

3 Q. But from a -- from a larger perspective, what was the
4 team going to do that day?

5 A. We were in the process of getting ready to execute a
6 search warrant.

7 Q. Okay. So where did you begin the workday?

8 A. At our metro -- at our office, which is located off of
9 Bridgeview.

10 Q. So did you have to transport over to the residence where
11 the search warrant was executed?

12 A. Yes, sir, that is correct.

13 Q. And do you -- what was the residence where the search
14 warrant was executed?

15 A. [REDACTED] Britten Court.

16 Q. Okay. About what time of day did you and the rest of the
17 team go there?

18 A. I'm not sure what -- about what time it was. I do know
19 it was before dawn, so ---

20 Q. Okay.

21 A. --- it was in the early hours of the morning.

22 Q. And can you describe the like the approximate location of
23 [REDACTED] Britten Court what is around it?

24 A. So I believe that the street that runs off of Dorchester
25 Road is called Fellowship, which is in the area of Collins

1 Park. Which is if you travel down Dorchester Road towards the
2 Airbase it is going to be on your right-hand side just prior
3 to Michaux Parkway.

4 Q. Okay. When you entered -- well, first of all, when you
5 arrived at [REDACTED] Britten Court did you -- did you go into the
6 residence?

7 A. I did.

8 Q. And that -- was that pursuant to the search warrant?

9 A. Yeah, it was. That is correct.

10 Q. What was the -- what were you and the team wearing when
11 you went to carry out that search warrant?

12 A. As far as part of our attire when we execute a search
13 warrant, we wear bullet-proof vests which are black in color,
14 which are clearly marked sheriff on the front and the back.
15 We wear an undershirt, generally either a long-sleeve or a
16 short-sleeve shirt. Which obviously there are some pictures
17 on the sleeves on both of them that will say Sheriff's Office
18 on the side. And then we all generally wear green pants for
19 that.

20 Q. And what did you do when you entered the residence?

21 A. I was about the -- you know, I was thinking I was the
22 third -- the third person that was through the door. The
23 first couple of people stayed downstairs. This was a
24 two-story apartment. I proceeded up the staircase and into
25 the master bedroom.

1 Q. And who did you make contact with?

2 A. I'm not sure what the female's name was, but we
3 encountered one female as we entered the room. And then we --
4 as we pushed farther into the room that's when we encountered
5 Jontez Ward. He was actually on the bed, near the headboard,
6 underneath the pillow, with his hands in between the headboard
7 and underneath the pillow.

8 Q. What did you do then?

9 A. Gave the appropriate commands and then ended up taking
10 him into custody without incident.

11 Q. Was -- so besides the female and Jontez Ward, was anyone
12 else in the house?

13 A. There were some children, but I -- they're -- they
14 weren't in -- I don't remember them being in the room itself,
15 so.

16 Q. Okay. But were they inside the residence?

17 A. They're -- a short distance away from the master bedroom
18 is the -- is the bedroom where the -- I guess it was clearly
19 it's -- there was some children's stuff that was in there, so
20 I believe that's where they were at so. I wasn't the
21 individual that was in that room, so.

22 Q. Okay. What did you -- so what did you do once the
23 residence was secured?

24 A. Once the residence was secured, due to the fact that one
25 of my tasks is to complete the search warrant return, I

1 proceeded to come back downstairs and to set basically a
2 collection point for, for one, where the evidence would be
3 kept during the search warrant, as well as I would set up my
4 computer so that I could take the information that was given
5 to me.

6 Q. So what is a search warrant return?

7 A. A search warrant return is a document that we use to take
8 the evidence that is collected during the lawful search
9 warrants and we put it onto that form so that we can show the
10 items that are seized or taken from the residence. And then
11 that form is eventually signed by a judge, which will -- which
12 would go in with the search warrant and be kept.

13 Q. Okay. So the -- where was the evidence collected -- or
14 where was it -- once the evidence was collected, where was it
15 placed with you, like in front of you; ---

16 A. It was ---

17 Q. --- can you explain - I'm sorry - explain the process of
18 you making that return?

19 A. Okay. So with the return itself, the evidence custodian
20 will collect the evidence. They will bring it to me and then
21 tell me the items that they are -- that they have there. And
22 I will take that information that is given to me and I will
23 put it into a -- into the form that we have, typing it out.
24 And then it is kept within the vicinity of me so that I can
25 remain -- you know, have custody and control over the

1 evidence.

2 MR. ZIEGLER: Your Honor, may I approach the witness?

3 THE COURT: You may.

4 Q. I am going to show you some items. I am showing you what
5 would be pre-marked as State's Exhibit 1 and 2. Do you
6 recognize these items?

7 A. I do.

8 Q. What are they?

9 A. The first picture that we have is a picture of the --
10 from the apartment complex, which is -- clearly notates the
11 numerics on there of [REDACTED].

12 Q. And we'll -- if -- when we publish to the jury we'll go
13 through the specifics of the photos.

14 A. Okay.

15 Q. But do you recognize the photos?

16 A. I do.

17 Q. Do they -- do they -- what -- do they accurately reflect
18 the residence on that day?

19 A. Yes, sir, they do.

20 MR. ZIEGLER: Your Honor, the State moves to admit into
21 evidence Exhibits 1 and 2.

22 THE COURT: Very well. So admitted.

23 [Whereupon, State's Exhibit Numbers 1 and 2 are admitted
24 into evidence by the Court]

25 MR. ZIEGLER: May I publish to the jury?

1 THE COURT: You may.

2 MR. ZIEGLER: Thank you.

3 Q. If you could briefly explain what we're looking at here
4 in this photograph.

5 A. This will be the apartment complex which is -- which you
6 will see the numerics are just to the left of the front door,
7 which clearly marked the address as being [REDACTED]. And the
8 street that we were on is Britten Court.

9 Q. And now showing State's Exhibit Number 2. Can you
10 explain what this photo shows, please?

11 A. This is going to be the master bedroom. This is where
12 we -- we ultimately found Jontez Ward and ---

13 Q. And where was -- where was Mr. Ward when you found him;
14 can you show on the photo?

15 A. Do you want me to stand up and look at it; is that okay
16 or ...?

17 Q. That's -- I believe that's about it, yes.

18 A. All right.

19 THE COURT: Yes, that's good. That is fine.

20 [Whereupon witness informed by court reporter of touch
21 screen capabilities at witness stand]

22 A. There we go [indicating on touch screen].

23 Q. Okay.

24 A. Are you done with that?

25 Q. Okay.

1 A. So.

2 Q. Thank you. And that's where -- you said that's where Mr.
3 Ward was?

4 A. Yes, sir.

5 Q. In what county is [REDACTED] Britten Court?

6 A. Charleston County.

7 Q. Thank you.

8 MR. ZIEGLER: No further questions of this witness, Your
9 Honor.

10 THE COURT: All right. You can come on back down.

11 THE WITNESS: Thank you, ma'am.

12 [Whereupon, the witness exits the witness stand]

13 THE COURT: Ladies and gentlemen, it's almost one
14 o'clock. It's time for lunch. And we're going to take an
15 hour. I'm going to ask you to please be back in your jury
16 room ready to continue with this matter let's say at 2:15.
17 You know, you've got to get out and you've got to get back.
18 That gives you an hour to find some lunch and to come back.

19 Please be mindful -- if your cell phone follows you back
20 in after lunch, please give it to one of our bailiffs. You
21 must not have a phone with you while you're serving on the
22 jury. And please be mindful, likewise, not to discuss this
23 matter. Do not allow anyone to discuss it with you. Please
24 be mindful that if you see anyone that has anything to do with
25 this matter coming and going during lunch that -- and they

1 shun away from you, they're not being rude. They're -- just
2 know that they're not supposed to have any communication with
3 you.

4 Have a good lunch, and I look forward to seeing you at
5 2:15. Have a good lunch.

6 [Whereupon, the jury exits the courtroom 2/6/19, 12:58
7 p.m.]

8 THE COURT: Would you reiterate, please, to Mr. Bey ---

9 DEPUTY SHEPPHARD: I will.

10 THE COURT: --- at a little bit before 2:15 another
11 invitation to join us.

12 DEPUTY SHEPPHARD: Yes, ma'am, I will.

13 THE COURT: Thank you so much.

14 Everybody have a good lunch. I'll see y'all just a
15 couple of minutes before 2:15.

16 [Whereupon, a recess is taken 2/6/19, 1:00 p.m.]

17 [Whereupon, jury trial resumes at 2:15 p.m. Mr. Ward,
18 a/k/a Mr. Bey, is also present]

19 THE COURT: All right. Anything from the State before we
20 bring the jury out?

21 MR. ZIEGLER: For planning purposes, Your Honor, we were
22 looking at the rest of the witnesses for the day, wanted to
23 know how long you wanted to go today. We have seven more
24 witnesses. I believe we can -- I think -- I don't know
25 exactly how it's going to go, but there's a chance we could

1 get to our very last witness at about 5:00. So that would be
2 the analyst, the drug analyst.

3 THE COURT: Gotcha.

4 MR. ZIEGLER: But ---

5 THE COURT: Probably the drug analyst, then, in the
6 morning. You know, I try not to go past 5:00 ---

7 MR. ZIEGLER: Okay.

8 THE COURT: --- for court personnel. Thanks. Great.

9 All right. All right.

10 Anything from the defense?

11 MR. WARD, A/K/A MR. BEY: No, ma'am.

12 THE COURT: Thank you. All right. When they're ready,
13 we're ready.

14 THE BAILIFF: We're still missing one, Your Honor.

15 THE COURT: No worries.

16 [Off the record momentarily]

17 MR. ZIEGLER: I wanted to make clear, walking over into
18 the courtroom, there was at least one juror over in the
19 hallway right here (indicating). And I believe there -- one
20 of our witnesses was sitting on the bench. And then there was
21 a female that I don't know sitting next to her. And they
22 were -- they were speaking. And the female I don't know was
23 speaking on the phone. I just don't know what they were
24 saying. I have no idea what they were saying. But I just
25 wanted to make that clear to not ---

1 THE COURT: All right. Run that by me again, now. There
2 was a juror in ---

3 MR. ZIEGLER: In the hallway.

4 THE COURT: Out in the hall.

5 MR. ZIEGLER: And there was -- they were -- our witness
6 was sitting on the bench, Ms. Nathaniel. And ---

7 THE COURT: How far apart were they?

8 MR. ZIEGLER: They were sitting right -- the -- Ms.
9 Nathaniel was sitting right next to another female on the
10 phone. She was in the courtroom a little earlier. I don't
11 know who she is. But that juror was just ten feet away ---

12 THE COURT: Okay.

13 MR. ZIEGLER: --- from them.

14 THE COURT: Okay. And were they talking?

15 MR. ZIEGLER: The -- there was a female talking on the
16 phone, that is -- the one that was not our witness. That's
17 all I heard. I don't know what she was saying on the phone.

18 THE COURT: I understand. So -- all right. Let me see
19 if I'm clear. You have a witness sitting on the bench and
20 seated next to your witness on the bench is another person ---

21 MR. ZIEGLER: Yes.

22 THE COURT: --- who's speaking on the telephone?

23 MR. ZIEGLER: Yes.

24 THE COURT: Your witness is not talking to the juror?

25 MR. ZIEGLER: Not when I saw it. Not when I saw her.

1 THE COURT: Okay.

2 MS. BROWN: No, we -- not when I saw it, either, Your
3 Honor. We just wanted to make you aware that there were -- I
4 think there was actually more -- there was a couple of jurors
5 just waiting out there before they had gotten back to the jury
6 room.

7 THE COURT: Okay.

8 MS. BROWN: And I saw one -- just one of our witnesses
9 was out with another female, who we are unaware of, just
10 having a conversation. And we weren't aware if it was
11 anything to do with this case or not. But just because the
12 jurors were out there we just wanted to make you aware of
13 it ---

14 THE COURT: Okay. I understand.

15 MS. BROWN: --- in case something was brought up or
16 what -- I mean, not that the jurors were doing anything wrong.
17 Just being in that open space right there ---

18 THE COURT: Okay.

19 MS. BROWN: --- just needing to note that for the record.

20 THE COURT: Okay. All right. And your witness, so far
21 as you saw, your witness wasn't saying anything?

22 MR. ZIEGLER: Not that I saw.

23 MS. BROWN: Correct, not that we saw, no.

24 THE COURT: Not that you -- all right.

25 MS. BROWN: So.

1 THE COURT: And, clearly, neither the woman on the
2 telephone nor your witness was having conversation with a
3 witness -- with a juror or jurors, that ---
4 MS. BROWN: Not that ---
5 MR. ZIEGLER: Right.
6 THE COURT: --- you saw?
7 MS. BROWN: --- like -- Your Honor, correct.
8 THE COURT: All right. Thank you.
9 THE BAILIFF: They are all here.
10 THE COURT: Let's have the jury.
11 And is your next witness in the courtroom?
12 MR. ZIEGLER: Yes, Your Honor.
13 [Whereupon, the jury enters the courtroom 2/6/19, 2:20
14 p.m.]
15 THE BAILIFF: Your Honor, the jury is complete.
16 THE COURT: Thank you so much.
17 All right. Call your next witness, please.
18 MR. ZIEGLER: Thank you, Your Honor. The State calls
19 Deputy Lisa Branham.
20 [Whereupon, Ms. Branham comes forward]
21 THE CLERK OF COURT: Put your left hand on the Bible, and
22 raise your right.
23 [Whereupon, Ms. Branham is duly sworn by the clerk of
24 court]
25 THE CLERK OF COURT: For the record, please state your

1 full name, spelling your last. You may have a seat.

2 [Whereupon, the witness takes the witness stand]

3 THE WITNESS: Lisa Marie Branham. B-R-A-N-H-A-M.

4 THE COURT: Your witness.

5 MR. ZIEGLER: Hi, Deputy Branham.

6 LISA M. BRANHAM, Having Been First Duly Sworn, was Examined
7 and Testified as Follows:

8 **DIRECT EXAMINATION BY MR. ZIEGLER OF DEPUTY LISA BRANHAM:**

9 Q. What law-enforcement agency are you a part of?

10 A. Charleston County Sheriff's Office.

11 Q. How long have you been in law-enforcement?

12 A. Seventeen-and-a-half years.

13 Q. And what is your current assignment?

14 A. Patrol.

15 Q. What was your assignment in November of 2014?

16 A. I worked for the metro major case unit.

17 Q. So I want to direct you to November 6th, 2014. Are
18 you -- were you involved in the case that we're here about
19 today?

20 A. Yes, sir, I was.

21 Q. And on November 6, 2014, what was -- what was going to
22 happen in that case ---

23 A. We were ---

24 Q. --- in this case that day?

25 A. We were going to serve a search warrant at [REDACTED] Britten

1 Court.

2 Q. And where did the -- where did the day begin?

3 A. We started at the office.

4 Q. What role were you assigned in that search warrant?

5 A. I was on the -- excuse me -- I was listed as evidence. I
6 was the evidence custodian for that day.

7 Q. Did you go there with a team?

8 A. We did. Yes, sir.

9 Q. What happened when the team arrived at the residence?

10 A. Once the perimeter was established we made entry into the
11 residence. And then we did a detective sweep, where we
12 retained all parties that were in the residence.

13 Q. And what did you do once the residence was secure?

14 A. Once the residence was secure, as Detective Howard stated
15 earlier, he was on the return, I was on evidence. I retrieved
16 the camera. And from that point when you're on evidence, what
17 we do is we start on the exterior of the residence and we
18 begin to take what we call over-alls.

19 So over-alls are everything from outside to inside, and
20 in its entirety. So initially I would start where you saw the
21 photo earlier where it said ■■■ Britten -- ■■■■, excuse me,
22 Britten Court. I started on the outside of the residence, as
23 well as the back. Then I would have entered. And I would
24 have started on the bottom floor going room to room. And then
25 I would have went upstairs, going room to room. And then once

1 the photos were done, over-alls were completed, then we would
2 have began the search.

3 Q. Okay. And what type of search do you mean that you
4 begin?

5 A. So when we begin to do the search we're looking for any
6 kind of contraband, whether it be guns, whether it be
7 narcotics. Sometimes it's mail that we're looking for,
8 something that would be in someone's name stating that they
9 lived at that residence or that they are at that residence.
10 Cell phones. Anything that would be on the list at that point
11 in time, sir.

12 Q. And could you explain the process of the search and how
13 you work with the rest of the team?

14 A. Yes, sir. Given that there's normally a handful of
15 people on scene and everybody is searching in different like
16 individual areas, Detective Howard at that point, given that
17 he was on the return, he would have already established a
18 small little command center, if you would. Sometimes it's a
19 table. Sometimes it's a desk. Wherever he can get
20 comfortable. At that point, he will open up his computer and
21 then he'll pull up some sheets and it will say where he's got
22 the return. That's where he's going to enter all of his
23 information that I'm getting ready to bring to him.

24 So at that point, I will wait on someone -- it's a common
25 practice that given that there are so many people and

1 everybody's searching in different areas, that when evidence
2 is located or recovered they will either yell aloud, depending
3 on how big the residence is, evidence. And that is for me to
4 come to whoever it is that has at this point located it. So
5 once they -- once they state that they have located evidence,
6 I will then go to where the evidence is located; and they'll
7 point to it. Nobody touches it. Sometimes it's in a drawer.
8 Sometimes it's not in a drawer. Sometimes it's under stuff.
9 Sometimes it's not.

10 Once they've shown me where the evidence is, then I will
11 take -- I will step back and I will take a photo from a
12 distance; and then I'll zoom in and I'll take another photo.
13 And sometimes I'll take two or three photographs to indicate
14 where the actual evidence was located.

15 And then once I -- once I take the photos of the
16 evidence, I will then collect the evidence and then I'll take
17 it back to where the return is. In this case it was Detective
18 Howard. I'll explain what it is that I have or what I've
19 located, whether it be mail or anything else. I'll tell him
20 where it was located. And then he'll place it in the return.

21 Q. Okay. And what did you do once all the evidence was
22 collected and put in one place?

23 A. Once all the evidence was collected and put in one
24 place ---

25 Q. What did you do with the evidence after it was all taken

1 to Detective Howard?

2 A. Okay. So after the search warrant is complete and we
3 have collected all evidence and it's in bags, then what we do
4 is we will place it into the back of the vehicle that I'm
5 currently assigned to. So whether it's in one of our UC cars,
6 whether it's a patrol car, whatever car that I was in at the
7 time, the evidence will come back with me and we'll return
8 back to the office and all evidence will be taken to the
9 evidence table where it will sit with me the entire time.

10 Q. And so now the evidence is back at the office?

11 A. That's correct.

12 Q. What do you do with it then?

13 A. Okay. What it is is normally when I'm back at the - in
14 this case we'll say the evidence counter or the evidence
15 table - I will pull out any of the narcotics that we have in
16 there. With the narcotics they go into --- anything
17 significant in nature. Once I pull out the narcotics, we have
18 field-test kits, some of them, whether it be heroin, cocaine,
19 whatever the case may be, whatever it is that we're looking at
20 at the time. I'll then have a white sheet of paper. We
21 normally write the case number at the top of it, the date.
22 And then I'll test it. We'll weigh it, test it. And then
23 normally on the sheet of paper you'll see the test kit and
24 whether or not it was presumptive for whatever narcotic it was
25 that I was testing for that day.

1 Q. Okay. And the rest of the evidence there back at the
2 office, is there anything you have to do with it?

3 A. No, sir, it all gets logged into evidence once we bring
4 it back. Sit down at the computer and once we enter it into
5 evidence, it's assigned its own tag number. Sometimes the tag
6 numbers are not sequential. Sometimes they're -- it's
7 computer generated, so whatever the next one is that the
8 computer is pulls. After the evidence is done we'll print out
9 two sheets of paper. One will stay with the case file. The
10 other one will get stapled to whatever we put the evidence in,
11 whether it be a manila envelope or a bag, to indicate what it
12 is in that particular bag or manila envelope.

13 Q. So you assign it a number?

14 A. Yes, sir. In theory.

15 Q. And how is the -- how is the evidence packaged -- or how
16 do you -- where do you take it after the office, after you've
17 collected it ---

18 A. Okay. So once we've done all of the evidence in its
19 entirety then it will go with me into my vehicle. And at that
20 time we were located over on Pinehaven. I'll then take the
21 evidence, put it in my vehicle, drive over to Pinehaven. And
22 we have a lot of lockers with locks on the outside.

23 When we were located at Pinehaven we had what we called
24 the duty officer. A duty officer sits right outside where
25 those lockers are. So the lockers are watched 24-7. Our

1 office stays open. We always have a duty officer 24-7.

2 So at that time the evidence would have been placed into
3 a locker. And then the next morning forensics would have came
4 in, who were the only people with the keys, and they would
5 have opened those lockers and then taken it over to the actual
6 evidence compound.

7 Q. So specifically with the evidence in this case, we've
8 just explained some of this but ---

9 A. Yes, sir.

10 Q. --- where -- where did you put the evidence once -- to
11 log it into the County's evidence?

12 A. Into the lockers.

13 Q. Okay. And can you explain the process with the lockers;
14 are they secure, ---

15 A. Yes, sir.

16 Q. --- who has access and things like that?

17 A. No, sir, they're secure.

18 Q. And who has access to the lockers?

19 A. Only FSU. Only forensics.

20 Q. Okay. And who is forensics?

21 A. Forensics is going to be the evidence compound that's
22 going to come and pick them up the next day.

23 Q. Okay.

24 MR. ZIEGLER: Your Honor, I'd like to approach the
25 witness; but first I want to show the evidence to the

1 defendant.

2 THE COURT: Thank you.

3 [Whereupon, Mr. Ziegler and Mr. Ward, a/k/a, Mr. Bey,
4 confer]

5 MR. ZIEGLER: Your Honor, I flipped through the photos to
6 show them to the defendant before I take them to the witness
7 stand.

8 THE COURT: All right. Very well. Have they been
9 marked?

10 MR. ZIEGLER: They've all been pre-marked.

11 THE COURT: Very well.

12 MR. ZIEGLER: They are Exhibits 3 through 28.

13 THE COURT: Okay.

14 Q. If you could just quickly flip through those, Deputy
15 Branham, and let me know if you recognize those.

16 A. Yes, sir, I do.

17 [Whereupon pause for review of documents]

18 A. Yes, sir.

19 Q. And what are those photos?

20 A. These are going to be the photos that I had taken that
21 day. Over-alls.

22 Q. Of where?

23 A. I apologize. The incident location, the [REDACTED] Britten
24 Court.

25 Q. Okay. Your Honor, at this time the State moves to

1 introduce into evidence State's Exhibits 3 through 28.

2 THE COURT: Thank you. Any objection?

3 MR. WARD, A/K/A MR. BEY: No.

4 THE COURT: Very well. So entered.

5 [Whereupon, State's Exhibit Numbers 3 through 28 are
6 admitted into evidence by the Court.]

7 MR. ZIEGLER: If I may publish them to the jury at this
8 time, Your Honor?

9 THE COURT: All right.

10 Q. I'm now showing you State's Exhibit 3. Can you explain
11 this photo, please?

12 A. Yes, sir. That would have been the photo that was taken
13 to indicate the address of the residence that the search
14 warrant was served at.

15 Q. Okay.

16 [Whereupon photo displayed]

17 A. Again, the address.

18 [Whereupon photo displayed]

19 A. This is going to be as we began to walk through. On the
20 left-hand side you can see the forced entry is. Again, this
21 is to document the residence in its entirety, how we found it
22 and the damage that was created upon entering.

23 [Whereupon photo displayed]

24 A. The same thing.

25 [Whereupon photo displayed]

1 A. Again, a walk-through of the residence.

2 Q. This is State's Exhibit 7. What is this?

3 A. Yes, sir. As stated earlier, whenever we do evidence,
4 whether it be narcotics, guns, mail. Again, this is going to
5 be the address and the name. So we've taken a photo of the
6 mail.

7 Q. This is State's Exhibit 8.

8 A. Yes, sir. Master bedroom.

9 Q. This is actually State's Exhibit 2.

10 A. And, again, these are just over-all. So you may see a
11 different angle at any point in time.

12 Q. And what room is that?

13 A. Master bedroom.

14 Q. This is State's Exhibit 9. What is located in this
15 photo?

16 A. Same thing. Like I said, we try to cover all the nooks
17 and crannies whenever we're taking the over-alls. Down there
18 on the bottom you'll see a pair of red pants, a pillow. Just,
19 again, over-all of the actual location.

20 Q. Okay. And State's Exhibit 10?

21 A. That's going to be the master bed. And I don't know if
22 you can see it or not, but in the center of it you can see --
23 its narcotics. You'll probably have to zoom in just a little
24 bit. Or if they can see it.

25 Q. You can -- you -- I think that's a touch screen there.

1 A. Oh. Okay. So you want me to zoom in so they can see it?

2 Q. Oh, you can just probably ---

3 A. Oh, okay.

4 Q. --- point it out.

5 A. Anyways, it's right there [indicates].

6 Q. Okay. Thank you.

7 A. Uh-huh.

8 Q. And why does that -- why does that photo look different
9 from the over-alls that you were mentioning?

10 A. Again, so as we're taking the over-alls, at this point in
11 time that pillow could have either fallen --- or it was
12 sitting on the side, and that's where the defendant at the
13 time -- that was the side that he was sleeping on. As
14 Detective Howard stated earlier, he had his hands under the
15 pillow.

16 Q. Okay. This is State's Exhibit 11. Can you explain --
17 that's a different photo from State's Exhibit 10.

18 A. Okay. Same master bedroom. No, sir, it's the same
19 items. It's probably just a -- zoomed in just a little bit.
20 I don't know if that helps or not. But, again, it's right
21 there in the center.

22 Q. And next we will have State's Exhibit 12. What is that?

23 A. Again, it's going to be the same bag.

24 Q. Okay. Is it just zoomed in?

25 A. What's that?

1 Q. Is it zoomed in there?

2 A. Yes, sir, it is.

3 Q. Okay.

4 What is shown here?

5 A. It may be a little difficult to see. However, in this
6 area right here [indicates] what you see there is a scale that
7 you would normally weigh narcotics on. And you see the white
8 powdery residue on it, a couple of cell phones, a few other
9 odds and ends up there.

10 Q. And this is State's Exhibit 14.

11 A. Again, it's another photo of the cell phones and the
12 scale.

13 Q. State's Exhibit 15?

14 A. Okay. At this point someone would have called for
15 evidence and they would have pointed that the evidence was
16 going to be in the top right-hand drawer. So as I step back
17 I began to, like I stated earlier, that I began to take
18 over-alls. So -- or after the over-alls I step back and then
19 I'll take a photo. And then I'll begin to zoom in here in
20 just a second.

21 Q. Okay. Are there any other items of note in that photo?

22 A. Yes, sir. Down here [indicates] you'll see the red pants
23 and a driver's license.

24 Q. Do you know where that driver's license was?

25 A. In one of -- if I'm not mistaken, in the left-front

1 pocket of those pants.

2 Q. And this is State's Exhibit 16.

3 A. Yes, sir.

4 Q. What's shown here?

5 A. Here you're going to have the cell phone, you're going to
6 have the weapon. And then in this box right here [indicates]
7 -- I know it may be a little difficult to see, but right in
8 the center is going to be narcotics. There's going to be
9 another cellophane bag inside there, or a sandwich bag
10 usually.

11 Q. State's Exhibit 17?

12 A. That's going to be my hand in there. I'm just pulling
13 out the box and then showing that the narcotics was down in
14 it.

15 Q. Okay.

16 [Whereupon photo displayed]

17 A. Again, now we're moving over to the pants where the
18 license was.

19 [Whereupon photo displayed]

20 A. Here I'm just zooming in to show the name on the driver's
21 license.

22 Q. Whose name is on that driver's license?

23 A. Jontez Ward.

24 Q. This is State's Exhibit 20.

25 A. Yes, sir, it's going to be the weapon. When we recover

1 weapons we normally try to put in the return as if it was
2 loaded and chambered. Meaning the magazine that you see over
3 here to the left (indicating), and then the weapon here
4 (indicating). So what we do is normally since I have to hold
5 the camera and everything else, in this case this would have
6 been Detective Howard sitting by the computer. I would have
7 asked him to release the magazine on the weapon, so, again, I
8 could take the photos. So he would have released the
9 magazine.

10 And then there should be another ---

11 [Whereupon photo displayed]

12 A. This is where he is going to pull the slide back to
13 indicate whether or not, or to show whether or not, the weapon
14 was loaded at the time. And right in the center of that is
15 going to show where the weapon was loaded.

16 Q. State's Exhibit 22?

17 A. Again, I've been called for evidence in this one. This
18 long, black-in-color case is what we're looking at.

19 There will be another photo where I'm going to open it.
20 Inside that black case is going to be a shotgun.

21 Q. State's Exhibit 24?

22 A. Evidence has been called once again at this time. So we
23 were in the drawer up here [indicates] earlier when we found
24 the weapon and the narcotics. However, at this time we're now
25 in the bottom, right-hand drawer to the box of bullets.

1 [Whereupon photo displayed]

2 A. This is cash, just showing that there was cash in the
3 front right-hand pocket.

4 Q. This is State's 26.

5 A. Yes, sir. This is going to be the evidence table. What
6 you see here is that the scale - I apologize, I made that a
7 little bit too close - is zeroed out. Over here (indicating),
8 this is the narcotics that were found. If I'm not mistaken,
9 that's going to be the one that was located on the bed.

10 Here you've got the case number for the incident. And
11 then here you've got the date.

12 Q. And State's Exhibit 27?

13 A. Yes, sir. Here you've got that same bag. Which here's
14 the test kit on the left-hand side (indicating). Okay. I
15 know it's a little fuzzy. I don't know if you can use it or
16 not. But at the very top of it it's going to say that it's a
17 heroin test kit. Again, same case number, same date.

18 The bag I would have untied and taken a small sample,
19 placed it into the test kit. I would have popped -- there's
20 like little vials in it. I would have popped them, agitated
21 the test kit where we shake it. Once you shake it it will go
22 from a clear to a green, as stated right there (indicating).
23 And then right in here (indicating) you'll see it's 6.4 grams,
24 approximately.

25 Q. And State's Exhibit 28?

1 A. Yes, sir. This is going to be the second one that was
2 recovered. This would have been out of the box. If I'm not
3 mistaken, that looks rock-like.

4 Again, you've got another test kit over here
5 (indicating). We went from a clear to a green. You can see
6 the green color down here at the bottom. Again, case number,
7 date. And then you've got the 29.6 grams. I apologize. It's
8 a little fuzzy.

9 Q. Do you know how many phones that you collected from the
10 master bedroom?

11 A. Three.

12 Q. Do you remember the -- you took those into evidence?

13 A. Yes, sir.

14 Q. Thank you.

15 MR. ZIEGLER: May I approach the witness, Your Honor?

16 THE COURT: Yes.

17 [Whereupon gloves provided to witness]

18 Q. Are you familiar with this item; that's, excuse me,
19 State's Exhibit 31?

20 A. Yes, sir, I am.

21 Q. What is that?

22 A. It's going to be the item - or I apologize - the weapon
23 that we recovered the day of the search warrant. It's a Smith
24 & Wesson M&P.

25 Q. And is it -- is it -- has it been secured?

1 A. Yes, sir, it is.

2 Q. So it's not loaded at this point?

3 A. No. No, sir. Huh-uh.

4 Q. And it's completely safe at this point?

5 A. Correct.

6 MR. ZIEGLER: Your Honor, the State moves to enter into
7 evidence State's Exhibit 31.

8 THE COURT: All right. Any objection? No? All right.
9 In evidence without objection.

10 [Whereupon, State's Exhibit Number 31 is admitted into
11 evidence by the Court]

12 MR. ZIEGLER: May I publish to the jury, Your Honor?

13 THE COURT: You may.

14 MR. ZIEGLER: Thank you. I'm now publishing to the jury
15 State's Exhibit 31.

16 Q. I'm now showing you State's Exhibit 32. It contains a
17 few different items.

18 A. Yes, sir.

19 Q. Are you familiar with that?

20 A. Yes, sir, I am.

21 Q. What are those items?

22 A. Here (indicating) you're going to have the magazine that
23 was removed from the weapon itself. Inside that magazine
24 would have been the rounds that you see here (indicating).
25 This (indicating) would have been the round that would have

1 been chambered.

2 Q. Okay. Where did those items come from?

3 A. The weapon itself.

4 Q. All of them?

5 A. Yes, sir.

6 MR. ZIEGLER: Your Honor, at this time, the State moves
7 to enter into evidence State's Exhibit 32.

8 THE COURT: Any objection?

9 MR. WARD, A/K/A MR. BEY: (Shakes head)

10 MR. ZIEGLER: May I publish to the jury?

11 THE COURT: And that is a no?

12 MR. WARD, A/K/A MR. BEY: No, ma'am.

13 THE COURT: All right.

14 You may.

15 [Whereupon, State's Exhibit Number 32 is entered into
16 evidence by the Court]

17 Q. I'm now presenting, Deputy, exhibits; 30, which is the
18 exterior bag, along with Exhibits 30-A and 30-B.

19 A. Yes, sir.

20 Q. What are these items?

21 A. 30-B is going to be the scale, and which we took the
22 photo of that was located on the dresser earlier, with the
23 white powdery residue.

24 And the box with the sandwich bags that had the narcotics
25 in it, which is 30-A, that I would have been holding in my

1 hand whenever I removed the narcotics and snapped a photo of
2 it.

3 MR. ZIEGLER: Okay. Your Honor, the State moves to admit
4 into evidence Exhibits 30, 30-A and 30-B.

5 THE COURT: Any objection?

6 MR. WARD, A/K/A MR. BEY: (Shakes head)

7 THE COURT: Very well.

8 [Whereupon, State's Exhibit Numbers 30, 30-A and 30-B are
9 admitted into evidence by the Court]

10 MR. ZIEGLER: May I publish to the jury, please?

11 THE COURT: You may.

12 Q. I am now presenting to the witness what's been pre-marked
13 as State's Exhibit 29. Do you recognize this item, Deputy?

14 A. Yes, sir, I do. It's going to be the box of ammunition
15 that would have been located in the bottom right-hand drawer
16 in the master bedroom.

17 Q. And how much ammunition is in it, do you ---

18 A. In this box there are supposed to be twenty rounds.
19 Normally whenever we -- if you would like me to explain?
20 Well ---

21 MR. ZIEGLER: First, Your Honor, I'd like to move to
22 admit into evidence State's Exhibit 29.

23 THE COURT: Any objection?

24 MR. WARD, A/K/A MR. BEY: No.

25 THE COURT: None? Very well.

1 [Whereupon, State's Exhibit Number 29 is admitted into
2 evidence by the Court]

3 Q. Go ahead. Sorry about that.

4 A. So normally whenever we come across a box of ammunition
5 we'll normally look to count to see how many rounds were in
6 it. In this case there were twelve rounds left inside of a
7 twenty-round box, which would indicate that eight rounds were
8 missing.

9 The weapon that we presented earlier today was a seven
10 and one, if I'm not mistaken, which would have accounted for
11 the other eight rounds that are missing out of the box. Seven
12 and one meaning that the magazine itself holds seven rounds,
13 one -- and then the eighth round would be in the chamber.

14 MR. ZIEGLER: May I publish to the jury, Your Honor?

15 THE COURT: You may.

16 Q. I'm now presenting to the witness what's been pre-marked
17 as State's Exhibit 33. Are you familiar with this item?

18 A. I am, sir.

19 Q. What is this?

20 A. This is going to be the shotgun in which we saw earlier
21 that was in the black case in the top of the closet. That is
22 this weapon.

23 Q. Has that been cleared and made secure?

24 A. That is correct, sir.

25 Q. Is it completely safe at this point?

1 A. It is, sir.

2 Q. Was it -- when you found it was it -- did it have any
3 ammunition in it?

4 A. Not that I recall. Not that I recall, sir.

5 Q. Thank you.

6 MR. ZIEGLER: The State now moves to admit State's
7 Exhibit 33 into evidence.

8 THE COURT: Any objection?

9 MR. WARD, A/K/A MR. BEY: No.

10 [Whereupon, State's Exhibit Number 33 is admitted into
11 evidence by the Court]

12 MR. ZIEGLER: May I publish to the jury, Your Honor?

13 THE COURT: You may.

14 Q. I'm now showing the witness State's Exhibit 34, 34-A,
15 34-B and 34-C. Are you familiar with these items?

16 A. Yes, sir, I am.

17 Q. What are -- what are those items?

18 A. What you see in here are the bags that were collected,
19 the narcotics that were collected, that day. The one that
20 indicated the 29.6, that you currently see on the screen, and
21 the other one that was located in the center of the bed.

22 Q. And can you give the item numbers for those, please?

23 A. Yes, sir. So the one that you see on the screen
24 currently, the number associated to that one is Number 152960;
25 and the smaller of the two is going to be Number 152955.

1 Q. Okay.

2 A. Over here (indicating) you can see my initials, as well
3 as the date.

4 Q. Does this item appear to be in substantially the same
5 condition as when you collected those items?

6 A. Yes, sir. As I was stating just a second ago -- and I
7 know it's kind of hard for you guys to see. However, in these
8 bags inside here -- there's two of them. Let's see if one of
9 them is better than the other.

10 So once the narcotics are placed -- we continue to leave
11 them in their original bag. Where then we will place them in
12 the small, depending on how large it is. And in this case we
13 used a smaller clear plastic one. We then heat-seal above the
14 narcotics. And then I'll put my initials in the middle of the
15 heat-seal, as well as the date, to indicate that I am the one
16 that sealed that bag and I am the one that can attest to
17 however much the weight is that I say. In this case it's 29.6
18 when I enter it into evidence.

19 And, again, I say approximate because, again, some of
20 that will be re-weighed afterwards, given that some of that
21 may be bag weight.

22 THE COURT REPORTER: And I'm sorry. That's 34; is that's
23 A, B, C?

24 THE WITNESS: This one is 34.

25 MR. ZIEGLER: Yes. The envelope is 34. The larger bag

1 is 34-A.

2 THE COURT REPORTER: Thank you.

3 MR. ZIEGLER: And then there's two bags inside. Those
4 will be 34-B and 34-C.

5 THE COURT REPORTER: Thank you.

6 MR. ZIEGLER: Your Honor, the State will now seek to
7 enter these items into evidence at this time, pending chain of
8 custody.

9 THE COURT: All right. Very well. So you want to have
10 it provisionally, conditionally admitted?

11 MR. ZIEGLER: Yes, Your Honor.

12 THE COURT: Very well.

13 [Whereupon, State's Exhibit Numbers 34, 34-A, 34-B and
14 34-C are provisionally admitted into evidence by the Court]

15 Q. So Deputy Branham, all of this evidence, once you
16 collected it and took it back to the office and processed it
17 as necessary, again, where did you put it after that?

18 A. Again, it goes in my vehicle. I then transport it over
19 to evidence. And when I say evidence, again, the evidence
20 compound in itself for forensics is not open 24-7. They're
21 subject to call-out like anyone else. If it's after hours
22 when the evidence is being submitted, or whatever the case may
23 be, in this case I'll leave it solely for Pinehaven not to
24 confuse anyone. Pinehaven, you had to have a cipher lock to
25 get in. So you had to be in law-enforcement to be able to get

1 in. Once you enter into Pinehaven, there's a set of -- an
2 abundance of lockers, all with open locks.

3 The lockers that are actually locked with the locks on
4 them is what everyone has put in at some point in time. So,
5 in other words, patrol could have placed evidence in one of
6 the lockers. We could have placed it. The narcotics unit
7 could have placed evidence into one of the lockers. So
8 everyone can place evidence into a locker. However, only
9 forensics has a key to unlock those locks.

10 Again, the duty officer sits -- so the hallway is open.
11 It's kind of hard to paint a picture. Imagine a box. You've
12 got a glass window here (indicating) that everyone would
13 normally come off and talk to the O.D., the desk. The O.D.
14 could turn around and all the lockers are directly behind him.

15 So as he sits there, it's in the hallway where he can
16 watch it, keep an eye on it, until forensics can come back in
17 the next day to take it and place it into evidence.

18 So that day I would have taken the evidence out of my
19 vehicle, used the cipher lock to get into the office. I would
20 have walked over to the lockers and I would have placed the
21 evidence into the lockers, and I would have taken that lock
22 and I would have secured it inside the lockers using that
23 lock.

24 MR. ZIEGLER: Thank you. No further questions.

25 THE COURT: All right. Cross-examination?

1 MR. WARD, A/K/A MR. BEY: No.

2 THE COURT: Very well. You may come down.

3 [Whereupon, the witness exits the witness stand]

4 THE COURT: Call your next witness, please.

5 MR. ZIEGLER: The State calls Detective James White.

6 [Whereupon, Mr. White comes forward]

7 [Whereupon, Mr. White is duly sworn by the deputy clerk
8 of court]

9 THE CLERK OF COURT: For the record, please state your
10 full name, spelling your last. And you may have a seat.

11 [Whereupon, the witness takes the witness stand]

12 THE WITNESS: James Clayton White, Jr. W-H-I-T-E.

13 MR. ZIEGLER: Good afternoon, Detective.

14 JAMES C. WHITE, JR., Having Been First Duly Sworn, was
15 Examined and Testified as Follows:

16 **DIRECT EXAMINATION BY MR. ZIEGLER OF JAMES WHITE:**

17 Q. What law-enforcement agency are you a member of?

18 A. The Charleston County Sheriff's Office.

19 Q. How long have you been in law-enforcement?

20 A. Approximately seven years.

21 Q. What assignments have you had in law-enforcement?

22 A. Patrol and narcotics.

23 Q. And what unit of the Sheriff's Office are you a part of?

24 A. I'm currently assigned to the metro major case unit,
25 narcotics and vice.

1 Q. And what about in November of 2014?

2 A. November of 2014 I was actually employed by the Hanahan
3 Police Department. I was tasked out as a task force officer
4 to the Charleston County Sheriff's Office under the metro
5 major case unit. At that time I was CFO. I was assigned to
6 metro through the Hanahan Police Department.

7 Q. Okay. What law-enforcement training have you had?

8 A. I've had several training when -- due to narcotics.
9 Jetway training, basic narcotics training. Jetway is an
10 organization that's put on nationally that has experienced
11 detectives all throughout the nation who puts on conferences,
12 weekly classes, weekend classes, what they call workshops.
13 Because of their nature they focus on is narcotics training,
14 whether it's dealing with undercover buys or using
15 confidential informant buys. I've also done training through
16 the NCEA, which is the National Criminal Enforcement Agency,
17 which works -- focuses on narcotics interdiction. Also,
18 undercover narcotics, as well. And through the INIA, the
19 International Narcotics Association, which focuses on partial
20 interdiction, also more undercover narcotics techniques. And
21 then also through EPIC, which is the El Paso Intelligence
22 Center stationed out of Texas, which focuses more on narcotics
23 trafficking.

24 Q. And how many drug investigations have you been associated
25 with?

1 A. Since my time through task force and also being part of
2 the Sheriff's Office through metro, I would assume around two
3 hundred.

4 Q. Were you involved in the -- in the case that we're here
5 for today?

6 A. Yes, sir.

7 Q. I'd like to direct you to November 6, 2014. What
8 occurred in the investigation on that date?

9 A. November 6, 2014, we were scheduled to execute a search
10 warrant at [REDACTED] Britten Court located in North Charleston.
11 Prior to us ---

12 Q. What was -- what was your -- Oh, I'm sorry. Go ahead.

13 A. Prior to executing the search warrant we give a search
14 warrant office plan which we would brief. Which the case
15 agent at this time is Detective Fink. Puts together an ops
16 plan, which everybody who's involved receives a copy of it to
17 go over. The ops plan goes over the details of the search
18 warrant. It's details of the case. It explains cautions,
19 hazards, such as if the house or whoever's inside the house
20 has any kind of weapons, children, dogs, things of that nature
21 for us to be cautious about before we make entry. It also on
22 the search warrant has everybody who is involved and has their
23 assignments listed as well.

24 Q. And what was your assignment during the search warrant?

25 A. I was assigned as the co-case agent.

1 Q. All right. And about what time of day was the search
2 warrant executed?

3 A. Between the hours of 6:00 a.m. and 7:00 a.m.

4 Q. And who was in the house when you entered?

5 A. When we made entry into the residence at [REDACTED] Britten
6 Court there was a female that was located, a male located who
7 was identified as Jontez Ward, and I believe two or three
8 children were located.

9 Q. Did you make contact with the defendant in this case,
10 Jontez Ward?

11 A. Yes, sir, I did.

12 Q. And where did that contact occur?

13 A. I made contact with Jontez Ward downstairs. When we made
14 entry into the residence I went left, which continued
15 downstairs. Mr. Ward was located upstairs in the bedroom.
16 And once he was detained and secured, as in he was patted down
17 and checked to make sure no weapons were on him or near him,
18 he was detained, brought downstairs. And when he was brought
19 downstairs was when I had contact with Mr. Ward.

20 Q. And where did you speak with him?

21 A. There was a room, which I believe was a bathroom. It was
22 a small room in the kitchen -- next to the kitchen. If you're
23 looking at the pictures you see a shot of the kitchen.
24 There's a refrigerator. There's a door to the left of the
25 refrigerator. And that door was a little room which I believe

1 may have been a restroom. And we were speaking inside of the
2 restroom.

3 Q. Was the door open?

4 A. It was open.

5 Q. And was anyone else with you?

6 A. At the time I do not believe I actually had someone with
7 me. I know Detective Howard was close by with the door
8 opened. He was stationed at the search warrant return close
9 by.

10 Q. And did you -- before you spoke to him did you advise him
11 of his Miranda rights?

12 A. I did.

13 Q. What did you use to do that?

14 A. I had a Miranda card which was in my wallet. It labels
15 out the Miranda rights, which I read verbatim on the card to
16 Mr. Ward.

17 Q. And I'm now presenting you with what will be pre-marked
18 as State's Exhibit -- State's Exhibit 35. What is that item?

19 A. It is the Miranda card that I carry in my wallet. When I
20 speak with anybody who we're investigating, before any
21 questions are asked I advise them of their Miranda rights.

22 Q. And can you please ---

23 MR. ZIEGLER: At this time, I move to admit into evidence
24 State's Exhibit 35, Your Honor.

25 THE COURT: Any objection?

1 MR. WARD, A/K/A MR. BEY: No.

2 THE COURT: Very well. So admitted.

3 [Whereupon, State's Exhibit Number 35 is admitted into
4 evidence by the Court]

5 Q. Next please read the -- read the rights on there as you
6 read them to the defendant.

7 A. It says you have the right to remain silent, anything you
8 say can and will be used against you in a court of law. You
9 have the right to have an attorney present with you while
10 you're being questioned. If you cannot afford an attorney,
11 one will be appointed to you. At any time, you can exercise
12 these rights to speak with the detectives and use your Miranda
13 rights. You can -- as in you can talk with us and then if you
14 decide you don't want to talk anymore, you can exercise your
15 Miranda rights.

16 Once the Miranda rights were read I ask if you understand
17 the rights that have been given to you. And I ask if he
18 wishes to speak with us.

19 Q. Did the -- did the defendant after you read those rights,
20 did he ask for an attorney -- or at any time did he ask for an
21 attorney when you ---

22 A. No, sir.

23 Q. Did he say he wanted to remain silent?

24 A. No, sir.

25 Q. And after you read those rights, did he agree to speak to

1 you?

2 A. Yes, sir.

3 Q. At the time, you said he didn't seem to have any
4 difficulty understanding the rights?

5 A. No, sir.

6 Q. Okay. What was his approximate age at the time?

7 A. I believe twenty-nine years old.

8 Q. And what was his -- was he coherent?

9 A. He was coherent. He was cordial. He was respectful. He
10 understands everything I had been saying to him.

11 Q. Did he seem to have any physical problems?

12 A. No, sir.

13 Q. Did he seem under the influence of alcohol or drugs?

14 A. No, sir.

15 Q. Did you make any threats to him?

16 A. No, sir.

17 Q. Was he under duress?

18 A. No, sir.

19 Q. Did you make any promises to him?

20 A. No, sir.

21 Q. Did you make any misrepresentations to him?

22 A. No, sir.

23 Q. And how long were you speaking with him for all?

24 A. I believe I spoke between about ten to fifteen minutes,
25 approximately, by myself -- well, again, in that room with the

1 door open, until Detective Fink arrived on the scene.

2 Q. To the best of your knowledge did he give his statements
3 to you freely and voluntarily?

4 A. Yes, sir.

5 Q. Did he -- what did he tell you after you advised him of
6 his Miranda rights?

7 A. Once I asked him if he would like to speak with us, a
8 slight pause, and then he stated what do you want to know.

9 Q. And did he say what his name was?

10 A. He did. I asked him his name. He advised me it was
11 Jontez Ward. I asked if he lived at this residence that we
12 were at, [REDACTED] Britten Court, or if this was just somewhere he
13 was staying the night and frequently stays. He stated that he
14 does live here.

15 MR. ZIEGLER: No further questions for this witness, Your
16 Honor.

17 THE COURT: Cross-examination?

18 MR. WARD, A/K/A MR. BEY: No.

19 THE COURT: No? You may come down.

20 [Whereupon, the witness exits the witness stand]

21 THE COURT: Call your next witness, please.

22 MR. ZIEGLER: The State calls Murray -- Detective Murray
23 Fink.

24 [Whereupon, Mr. Fink comes forward]

25 [Whereupon, Mr. Fink is duly sworn by the deputy clerk of

1 court]

2 [Whereupon, Mr. Fink takes the witness stand]

3 THE CLERK OF COURT: For the record, please state your
4 full name, spelling your last.

5 THE WITNESS: Murray Fink. F-I-N-K.

6 THE COURT: Your witness.

7 MR. ZIEGLER: Thank you, Your Honor. Good afternoon, Mr.
8 Fink.

9 MURRAY FINK, Having Been First Duly Sworn, was Examined and
10 Testified as Follows:

11 **DIRECT EXAMINATION BY MR. ZIEGLER OF MURRAY FINK:**

12 Q. What is your current occupation?

13 A. I'm a naval officer with the U.S. Navy, rank of captain
14 06. It would be the same thing as an army bird colonel.

15 Q. Is it fair to call you Captain Fink?

16 A. It's perfect -- that's fair.

17 Q. And how long have you been in the Navy?

18 A. Off and on I've been either on active duty or a reservist
19 since 1989, so a little over twenty-nine years.

20 Q. What is your educational background?

21 A. I commissioned in the Navy the day after I graduated from
22 Texas A&M University with a degree.

23 Q. And did you used to be in law-enforcement?

24 A. I was. I worked for approximately twenty-four years,
25 plus three-and-a-half years of military service that I

1 purchased. I retired two years ago this month with twenty-
2 seven-and-a-half years of service in law-enforcement.

3 Q. And where have you worked in your law-enforcement career?

4 A. When I left -- the first time I left active duty in 1993.
5 I was employed the next month with College of Charleston and
6 MUSC as a state constable while I was waiting to be hired by
7 Mount Pleasant Police Department. I was hired by Mount
8 Pleasant later that year. I worked for Mount Pleasant
9 approximately five years, when my family moved up towards the
10 Charlotte area. So I went with the family. I was employed
11 then by Rock Hill Police Department, where I worked for
12 approximately five years. But after the tragic events of
13 September 11th, 2001, I was activated with the U.S. Navy. I
14 was sent to the Charleston area. My family member no longer
15 had the job up in the Charlotte area, so we decided to move
16 back to Charleston because we missed the place down here. We
17 then -- I left active duty in February of 2003; and I was
18 employed at that time by Charleston County Sheriff's Office,
19 where I then worked until my retirement February of 2017.

20 Q. What parts of your law-enforcement career have been in
21 the investigation of illegal drugs?

22 A. Nearly half of the twenty-four years that I actively
23 worked as a law-enforcement professional were involved
24 directly in the investigation of drugs, vice, and related
25 crimes.

1 Q. And then what training have you had in drug
2 investigations over that time?

3 A. Probably between eight hundred and a thousand hours of
4 continuing education over the twenty-four years.
5 Predominately in the investigation of narcotics and vice since
6 that was the career field in law-enforcement that I had
7 chosen.

8 My educational background in law-enforcement ranges from
9 a two-week DEA task force course of instruction when I was
10 assigned through the Mount Pleasant Department to the DEA or
11 the Federal Drug Enforcement Task Force, basic narcotics
12 investigator with the state of South Carolina, numerous
13 different courses on interrogation techniques, as well as, you
14 know, other basic drug-related investigative courses.

15 Q. And were you involved in the case that we're here for
16 today?

17 A. Yes, sir, I was. I was the lead investigator. We refer
18 to it as a case agent.

19 Q. Okay. So I'd like to direct you to November 6th, 2014.
20 What occurred in this investigation on that day?

21 A. Pursuant to a lawful search warrant that I had signed for
22 a location at [REDACTED] Britten Court, this location is in North
23 Charleston. It is a townhouse community off of Dorchester
24 Road in Collins Park and immediately adjacent to Collins Park
25 itself, which is a community center and park. I had received

1 a search warrant and I had assigned several detectives who
2 executed said search warrant at that location that morning.

3 Q. And, again, where was the search warrant actually
4 executed again?

5 A. [REDACTED] Britten Court, North Charleston, South Carolina.
6 That's within Charleston County and the jurisdiction of the
7 metro major case unit of Charleston County.

8 Q. About what time was the search warrant executed?

9 A. Early-morning hours. I believe around 6:30 in the
10 morning.

11 Q. Who was in the residence when the team entered?

12 A. I was not actually at the residence when the team
13 entered. I was conducting investigations at a different
14 location. I was called to the scene shortly after entry was
15 made.

16 At that time the various law-enforcement officers that I
17 had assigned to the location were present, as well as two
18 adults and three children.

19 Q. Was the -- was the defendant located in the residence?

20 A. Yes, sir, Mr. Jontez Ward was in the residence at the
21 time.

22 Q. And who was the other adult?

23 A. I believe her name was Charika Nathaniel. My
24 understanding is that it was the girlfriend, at the time, of
25 Mr. Ward.

1 Q. And what were the ages of the children?

2 A. There was a middle-school boy thirteen years old, there
3 was a young girl I believe was five years of age, and another
4 child approximately fourteen months of age.

5 Q. What did you do when you arrived at [REDACTED] Britten Court?

6 A. I received a quick brief from Detective White on where we
7 were in the investigation. And then myself, Detective White,
8 and Mr. Ward spoke.

9 Q. Is Jontez Ward in the courtroom today?

10 A. Yes, sir, he's right there at the defendant's table in a
11 blue shirt.

12 Q. That's who you -- is that who you spoke to on November
13 6th?

14 A. Yes, sir.

15 Q. Was he advised of his Miranda rights before you spoke to
16 him?

17 A. My understanding, before I spoke to him he was advised.
18 When I arrived on scene I asked Detective White if he had been
19 Mirandized. Detective White said he had. I then asked Mr.
20 Ward if he understood his rights, and he gave me an
21 affirmative answer.

22 Q. And what was his demeanor?

23 A. His demeanor was good. He was respectful to me. He did
24 not seem to be under undue influence of anything. He was
25 clear and concise.

1 Q. And seemed to -- did he seem to understand what was
2 happening?

3 A. Yes, sir, he did.

4 Q. Did you make any threats to him?

5 A. No threats.

6 Q. Was he under duress?

7 A. No, other than at the time he was in handcuffs -- he was
8 actually under two pairs of handcuffs at that time. Because
9 when we take somebody into custody at a search warrant, we
10 obviously handcuff them per department policy. My
11 understanding is Mr. Ward had stated that the handcuffs were
12 hurting his shoulder being behind his back so Mr. -- Detective
13 White had put a second pair of handcuffs to give him more
14 space so he could have his arms farther out, to limit any
15 duress he may be under.

16 Q. Okay. Did you make any promises to him?

17 A. No promises. He had asked me for immunity before he
18 would speak to me. I told him we did not grant immunity.

19 Q. How long were you speaking to him?

20 A. Off and on at the location, approximately forty-five
21 minutes.

22 Q. Did you speak to him further after that?

23 A. I did. After we left the residence we went back to the
24 metro offices. And I did speak to him on and off back at
25 metro offices until he was incarcerated later that day at the

1 Charleston County Detention Center.

2 Q. And to the best of your knowledge were the statements he
3 gave you freely and voluntarily given?

4 A. Yes, sir.

5 Q. What did you -- what did you ask the defendant about what
6 was in the residence?

7 A. I asked him if there were any drugs, guns, or money in
8 the residence. He told me there were.

9 Q. And then what did he do?

10 A. I asked him where the drugs were located. He said, I'd
11 rather show you. At which time I asked him if we were going
12 upstairs or remaining downstairs. He indicated we were
13 heading upstairs.

14 I then took Mr. Ward up the stairs and he indicated into
15 the master bedroom. Once we were in the master bedroom I
16 asked him where they were at. And he kicked with his foot
17 towards the top right drawer in the bureau next to the bed in
18 the master bedroom. At that time, I turned him around, opened
19 the drawer, looked down; and I observed several items inside
20 of that drawer.

21 Q. And what items were in that drawer?

22 A. I observed a blue-in-color appeared to be a baggie -- box
23 for plastic baggies. I also observed inside the box what
24 appeared to me to be chunks of heroin. I also saw a gun, I
25 believe it was a Smith & Wesson 40 caliber handgun, black in

1 color. And there was a I think a cell phone in there as well.

2 Q. What did he say about those items to you?

3 A. He told me everything in the drawer was his.

4 Q. And did he tell you when he obtained those drugs?

5 A. He told me he'd obtained them a couple of days
6 beforehand. He told me that he had purchased roughly an ounce
7 of heroin, which would be approximately 28 grams of heroin.

8 Q. And how much did he pay for that?

9 A. He told me twenty-five, which I took to mean \$2,500,
10 which would be the approximate going rate for an ounce of
11 heroin.

12 Q. What did he say he does with the heroin?

13 A. He told me that he breaks it down and sells it. By
14 breaks it down, I mean that he breaks it down into smaller
15 quantities for sale at the street level, if you will.

16 Q. Did he say anything about Ms. Nathaniel?

17 A. He said that she doesn't know anything about it.

18 Q. Was she arrested?

19 A. She was not.

20 Q. Is there a -- is there a park near [REDACTED] Britten Court?

21 A. Yes, sir. As I stated, adjacent to the townhouse
22 community is Collins Park. Collins Park consists of a couple
23 of baseball diamonds, a couple of buildings, a parking lot.
24 I'm not sure what all else is there. But it is a county park.

25 As you turn off of Dorchester Road onto the road leading

1 to the townhouses there is a sign above the roadway, which is
2 a double-sided sign. So either direction you are coming from,
3 you can see the sign; and it says Collins Park with an arrow
4 pointed down the roadway.

5 Q. And is that -- how close is that park to the residence,
6 [REDACTED] Britten Court?

7 A. As you leave the doorway of [REDACTED] Britten Court and you
8 turn left and you walk down Britten Court, if you kept going
9 straight it's about between 700 and 800 feet down the roadway.

10 If you drive to the back parking lot, which is the
11 farthest part of the park from Britten Court, [REDACTED] Britten
12 Court, it's roughly 1,250, 1,300 feet.

13 Q. Is that less than a half a mile?

14 A. Yes, sir, it's less than a quarter mile. I believe a
15 half a mile is 2,600-and-change in feet.

16 Q. Did you ask the defendant about the park?

17 A. I did, sir. I asked him if he knows the park is there.
18 And he said he takes the kids down there sometimes to play.

19 Q. In your -- in your training and experience in illegal
20 drugs what is the typical serving size of heroin?

21 A. Typical serving size is approximately .1 grams. As
22 somebody becomes more and more involved in drugs they'll take
23 a little more. But .1 grams is the normal serving size for
24 heroin.

25 Q. And so -- and then in what -- how is heroin typically --

1 how is it packaged when it's sold?

2 A. In the old days, heroin only would come in small glassine
3 or wax-paper-type bags, small size. They were called --
4 referred to as a bindle. Usually ten of those together would
5 be sold as a bundle.

6 But nowadays most of the heroin I saw up until the time I
7 retired the last couple of years was normally in baggie
8 corners, as we call them, which is small pieces of plastic
9 with the heroin inside of it.

10 Q. In your -- in your training and experience, as well, what
11 are -- besides drugs themselves, what are some other
12 indicators of drug activity?

13 A. Numerous plastic bags outside of the kitchen, which would
14 not be normal; plastic bags that have corners cut off of them;
15 obviously weight scales, so that a drug dealer can tell how
16 much weight he is getting when he purchases, as well as how
17 much as he or she is selling at the time; firearms; and, of
18 course, U.S. currency.

19 Q. Are you aware of how much currency was seized from the
20 defendant's ---

21 A. I do not remember the exact amount. It was a couple of
22 hundred dollars I believe were seized. My understanding, it
23 was from the red pants beside the bed in the master bedroom.

24 Q. I'm now showing you what's been pre-marked as State's
25 Exhibit 36. What is that?

1 A. This is a Bing Maps depiction of [REDACTED] Britten Court,
2 North Charleston, South Carolina, 29418. It's location is
3 marked on this, as well as Collins Park which is the area in
4 green. There's also a line indicating distances on there from
5 [REDACTED]. It is 685 feet where the green color begins, which is
6 the boundary of Collins Park. Then I went on to measure out
7 to 1,294 feet, which is a building on Collins Park.

8 MR. ZIEGLER: Your Honor, at this time, the State moves
9 to admit Exhibits -- State's Exhibit 36 into evidence.

10 THE COURT: Any objection?

11 MR. WARD, A/K/A MR. BEY: No.

12 THE COURT: Very well.

13 [Whereupon, State's Exhibit Number 36 is admitted into
14 evidence by the Court]

15 Q. I'm now showing you what's been pre-marked as State's
16 Exhibit 37. What is showing on this exhibit?

17 A. This would appear to be a Google Maps overhead or
18 satellite imagery of the area, which does include Collins Park
19 and Britten Court.

20 MR. ZIEGLER: Your Honor, at this time I move to admit
21 State's Exhibit 37, please.

22 THE COURT: Any objection?

23 MR. WARD, A/K/A MR. BEY: No.

24 THE COURT: Very well. So admitted.

25 [Whereupon, State's Exhibit Number 37 is admitted into

1 evidence by the Court]

2 MR. ZIEGLER: May I publish to the jury, Your Honor?

3 THE COURT: All right.

4 Q. Captain Fink, you've already explained this; but if you
5 could just -- this is State's Exhibit 36. If you could just
6 briefly tell us what this is, please.

7 A. Again, [REDACTED] Britten Court is where I put the cursor on
8 the computer diagram to show up as [REDACTED] Britten Court and is
9 roughly here [indicates]. Then I drew the line 685 feet to
10 the beginning of Collins Park, in green, as well as continuing
11 on 1,294 to some of the buildings that are seen on Collins
12 Park itself. At the top here (indicating, I also took some
13 notes for myself on what distance is equal to. So 685 feet is
14 equal to .129734 -- 5 miles.

15 Q. And this is State's Exhibit 37.

16 A. Yes, sir.

17 Q. And if you don't mind explaining the general area that
18 this shows as well, please.

19 A. Okay. So over here [indicates], this is Dorchester Road.
20 This is in North Charleston. But it is inside of Charleston
21 County. This location is not too far from where the airport
22 is, the Charleston International Airport.

23 So as you are coming up Dorchester Road, you have
24 Fellowship Drive right here (indicating). And, again, hanging
25 above Dorchester Road is a sign that says Collins Park with a

1 turn. And this is the only way to get to the townhouse area
2 here (indicating), as well as Collins Park here (indicating).

3 If you made this turn onto Parliament, the first right is
4 Britten Court. And I believe it's about the third townhouse
5 up on Britten Court. It is [REDACTED] Britten Court, North
6 Charleston, in the county of Charleston. See here
7 (indicating), it's Collins Park Community Center. And Collins
8 Park (indicating).

9 Q. And are you familiar with this item pre-marked as State's
10 Exhibit 38?

11 A. Yes, sir, I am.

12 Q. And what is -- what is that?

13 A. This is another Google Maps depiction. This time not a
14 satellite, but the computer image of the Collins Park area in
15 the middle and some of the surrounding areas in the North
16 Charleston area.

17 MR. ZIEGLER: Your Honor, at this time, I would move to
18 admit State's Exhibit 38 into evidence.

19 THE COURT: Any objection?

20 MR. WARD, A/K/A MR. BEY: No.

21 THE COURT: Very well.

22 [Whereupon, State's Exhibit Number 38 is admitted into
23 evidence by the Court]

24 MR. ZIEGLER: May I publish to the jury?

25 THE COURT: You may.

1 MR. ZIEGLER: And, Captain, you don't need to explain
2 this one since you already have the satellite photo.

3 Q. Now I'm showing you pre-marked -- what's been pre-marked
4 as State's Exhibit 40 and 41. What do these items show?

5 A. This shows both side of the Collins Park sign I talked
6 about, which hangs above the entrance to Collins Park, and the
7 subdivision where the townhouses of Britten Court are located
8 on. One is from one side, and the other is from the side as
9 you're approaching on Dorchester Road. It shows that there's
10 no way to turn onto the road there without seeing a sign
11 depicting Collins Park.

12 MR. ZIEGLER: Your Honor, at this time the State moves to
13 enter into evidence Exhibits 41 -- 40 and 41, please.

14 THE COURT: Any objection?

15 MR. ZIEGLER: May I publish to the jury?

16 MR. WARD, A/K/A MR. BEY: No.

17 THE COURT: Very well. No objection. They are entered.

18 [Whereupon, State's Exhibit Numbers 40 and 41 are
19 admitted into evidence by the Court]

20 THE COURT: You may publish.

21 MR. ZIEGLER: Thank you, Your Honor.

22 Q. That is State's Exhibit 40 (displaying). And then I'm
23 showing you State's Exhibit 41 (displaying). And does that --
24 does that arrow point both ways or ---

25 A. It does. Depending on which way you're approaching from

1 Dorchester Road, the arrow on both sides points towards
2 Collins Park where I've previously shown.

3 Q. I'm now showing you what's been pre-marked as State's
4 Exhibit 39. Do you recognize this item?

5 A. I do, sir.

6 Q. And what is -- where is that from?

7 A. This was a picture that was seen on top of the same
8 bureau or dresser where the drugs and the guns were found in
9 the top right corner. This is a picture that appears to show
10 Mr. Ward and I believe his girlfriend at the time, Ms.
11 Nathaniel.

12 MR. ZIEGLER: At this time, the State moves to admit
13 Exhibit 39 into evidence.

14 THE COURT: All right. Any objection?

15 MR. WARD, A/K/A MR. BEY: No.

16 THE COURT: All right. So admitted.

17 [Whereupon, State's Exhibit Number 39 is admitted into
18 evidence by the Court]

19 MR. ZIEGLER: Now publishing State's Exhibit 39.

20 Q. If you could just briefly show what's in -- shown in this
21 photo.

22 A. This appears to be the defendant, Mr. Ward (indicating).
23 And this person would be known to me as Ms. Nathaniel
24 (indicating), if I get the name right. I believe this is a
25 color photo background for the picture. I'm not sure who that

1 would be.

2 Q. Where was this picture located?

3 A. It was on top of the dresser in the master bedroom, next
4 to the bed.

5 Q. I'm now showing you what's been admitted into evidence as
6 State's Exhibit 31. Are you familiar with that item?

7 A. Yes, sir. This is a Smith & Wesson M&P .40 caliber
8 Shield semiautomatic handgun. Appears to be the same handgun
9 that I observed when I opened up the drawer in the top right
10 of the dresser in the master bedroom at [REDACTED] Britten Court.

11 Q. And what did Mr. Ward tell you, the defendant, about that
12 gun?

13 A. Nothing specifically about the gun, but he told me that
14 everything in the drawer was his.

15 Q. I'm now showing you what's been pre-marked as State's
16 Exhibit 34-A, containing both Exhibits 34-B and 34-C. Do you
17 know what those items are?

18 A. This would appear to be similar in appearance to what I
19 had seen inside the drawer, the top right drawer, of that
20 bureau in the master bedroom. It later returned as positive
21 as heroin.

22 Q. Did the defendant tell you that those were his?

23 A. The defendant told me everything in the drawer was his.

24 Q. And were these located in that drawer as far as you ---
25 or ---

1 A. It appears to be the same items that I have seen --
2 observed inside of the cardboard plastic baggie container.

3 Q. That's -- but that's -- how many bags were located in
4 the -- in the baggie container as far as -- of drugs?

5 A. I do not know exactly. I did not touch them.

6 Q. Okay.

7 A. Once I observed them I called for evidence to take in the
8 evidence.

9 MR. ZIEGLER: Okay. Beg the Court's indulgence, Your
10 Honor.

11 THE COURT: Yes.

12 MR. ZIEGLER: No further questions of the witness, Your
13 Honor.

14 THE COURT: Cross-examination?

15 MR. WARD, A/K/A MR. BEY: No.

16 THE COURT: All right. You may come down. Call your
17 next witness, please.

18 THE BAILIFF: Your Honor?

19 THE COURT: Oh, break time. I heard break.

20 Ladies and gentlemen, we're going to take our afternoon
21 break. Please be mindful: Do not discuss this matter or
22 allow anyone to discuss it with you. We'll take about fifteen
23 minutes. If you'll go to your jury room.

24 [Whereupon, the jury exits the courtroom 2/6/19, 3:45
25 p.m.]

1 THE COURT: All right. We'll be at ease. Y'all take
2 your break.

3 [Whereupon, a recess is taken 2/6/19, 3:45 p.m.]

4 [Whereupon, the jury enters the courtroom 2/6/19, 3:59
5 p.m.]

6 THE BAILIFF: Your Honor, the jury is complete.

7 THE COURT: All right. Thank you.

8 THE BAILIFF: You're welcome.

9 THE COURT: All right. Ladies and gentlemen, we will
10 continue with the State's case. If you would please call your
11 next witness.

12 MR. ZIEGLER: The State calls Ms. Charika Nathaniel.

13 [Whereupon, Ms. Nathaniel comes forward]

14 THE CLERK OF COURT: Please place your left hand on the
15 Bible and raise your right.

16 [Whereupon, Ms. Nathaniel is duly sworn by the clerk of
17 court]

18 THE CLERK OF COURT: You may have a seat.

19 [Whereupon, the witness takes the witness stand]

20 THE CLERK OF COURT: Please state your full name,
21 spelling your last.

22 THE WITNESS: Charika Nathaniel. N-A-T-H-A-N-I-E-L.

23 MR. ZIEGLER: Good afternoon, Ms. Nathaniel.

24 CHARIKA NATHANIEL, Having Been First Duly Sworn, was Examined
25 and Testified as Follows:

1 **DIRECT EXAMINATION BY MR. ZIEGLER OF CHARIKA NATHANIEL:**

2 Q. Do you mind telling the jury about your background; how
3 old are you?

4 A. Thirty-six.

5 Q. Are you from Charleston?

6 A. Yes.

7 Q. Do you have children?

8 A. Yes.

9 Q. How many children do you have?

10 A. Three.

11 Q. Do you know Jontez Ward?

12 A. Yes.

13 Q. How do you know him?

14 A. Were -- we were in a relationship.

15 Q. About how long were you in a relationship?

16 A. Before jail or in total?

17 A. Excuse me?

18 A. A couple of years.

19 Q. Okay. Do you remember an incident when the police came
20 to your house on November 6th, 2014?

21 A. Uh-huh. Yes.

22 Q. Where did you live on November 6th, 2014?

23 A. █████ Britten Court, North Charleston, South Carolina.

24 Q. Did you own the residence or rent it?

25 A. Rent.

1 Q. Who was -- excuse me. How old were your children at the
2 time?

3 A. I can't recall their ages.

4 Q. Okay.

5 A. But like middle school -- my oldest was in middle school.
6 My youngest was elementary. And I had a hand baby.

7 Q. And were your children living with you then?

8 A. Yes.

9 Q. And at the time the police came to your house were you in
10 a relationship with Jontez Ward at that time?

11 A. Yes.

12 Q. Was he -- was he living with you at the time?

13 A. Yes.

14 Q. Did he sleep at your house?

15 A. Yes.

16 Q. How often?

17 A. The majority of the time.

18 THE COURT: Can you speak up just a little bit, please?

19 A. Oh, the majority of the time.

20 Q. Was he ever there at the house when you were not there?

21 A. Yes.

22 Q. And was he working?

23 A. Going to school.

24 Q. So where were you when the police came into your house?

25 A. Sleeping. In bed.

1 Q. Who else was in the bed?

2 A. Jontez.

3 Q. All right. And which side of the bed was Jontez on?

4 A. By the dresser.

5 Q. So he was on the side closer to the dresser?

6 A. Uh-huh.

7 THE COURT: Is that a ---

8 THE WITNESS: Oh.

9 A. Yes.

10 THE WITNESS: Sorry.

11 THE COURT: Thank you.

12 Q. All right. When the police came to your house, do you
13 know that they -- are you aware that they found drugs in your
14 house, heroin specifically?

15 A. I really can't recall. I know they find something. I
16 think the officer had told me some sort of that nature.

17 Q. Did you -- were those -- if there were any drugs found in
18 your house, were those yours?

19 A. No, sir.

20 THE COURT: I need you to speak up just a little. I'm
21 afraid our jurors -- can y'all hear? I'm having trouble
22 hearing. Y'all can hear? Okay.

23 Just remember to keep your voice up, please.

24 THE WITNESS: Okay.

25 Q. I asked if the drugs that may have been found in your

1 house, were any drugs yours in the house?

2 A. No, sir.

3 MR. ZIEGLER: No further questions, Your Honor.

4 THE COURT: Cross-examination?

5 MR. WARD, A/K/A MR. BEY: No.

6 THE COURT: No?

7 Thank you. You may come down. And is this witness free
8 to leave?

9 MR. ZIEGLER: Yes, Your Honor.

10 THE COURT: All right. Any objection?

11 MR. WARD, A/K/A MR. BEY: No.

12 THE COURT: Very well. You are free to go, if you wish.

13 [Whereupon, the witness exits the witness stand]

14 THE COURT: All right. Call your next witness, please.

15 MS. BROWN: The State calls Chris Hochreiter.

16 [Whereupon, Mr. Hochreiter comes forward]

17 THE CLERK OF COURT: Please place your left hand on the
18 Bible, and raise your right.

19 [Whereupon, Mr. Hochreiter is duly sworn by the clerk of
20 court]

21 THE CLERK OF COURT: You may have a seat.

22 [Whereupon, the witness takes the witness stand]

23 THE CLERK OF COURT: And for the record, please state
24 your full name, spelling your last.

25 THE WITNESS: First name is Christopher. Last name is

1 Hochreiter, H-O-C-H-R-E-I-T-E-R.

2 THE COURT: Your witness.

3 CHRISTOPHER HOCHREITER, Having Been First Duly Sworn, was
4 Examined and Testified as Follows:

5 **DIRECT EXAMINATION BY MS. BROWN OF CHRISTOPHER HOCHREITER:**

6 Q. Mr. Hochreiter, where are you presently employed?

7 A. I work for Science Applications Incorporated, a
8 corporation as a network engineer with SPAWAR.

9 Q. Okay. And have you ever been employed by the Charleston
10 County Sheriff's Office?

11 A. Yes, ma'am, I was.

12 Q. What was your position there?

13 A. I started out as a patrol deputy. And then I was
14 transferred over to the forensics services unit in around
15 October of 2014.

16 Q. Okay. And when was it that you started there?

17 A. I started with the Sheriff's Office in April of 2010.

18 Q. Okay. So what were your duties with the forensics team?

19 A. In forensics I would validate the evidence submission,
20 daily evidence submissions. Later on I started to test
21 substances for the presence of THC which is commonly found in
22 marijuana. We would do some fingerprint processing. But the
23 first few months I was there was mainly evidence validation.

24 Q. Okay. So when officers bring evidence in for the
25 forensics team, how is it received?

1 A. I can't speak about how it is nowadays, but at that time
2 we were in the old sheriff's headquarters which was on
3 Pinehaven off of Dorchester Road. And we had a -- it was
4 almost like a mailbox that was -- that was secured to the
5 floor, and that's where a lot of small things were dropped in.
6 So the deputies would come into headquarters. They could drop
7 items into that.

8 And then we had a wooden cabinet that was -- had several
9 little cabinets built in that were lockable, so you could put
10 your item in and close the door and lock it. And evidence
11 technicians were the only people that had the keys to those --
12 to those ---

13 Q. Okay. So they were like individual lockers, then?

14 A. Yes, ma'am.

15 Q. Okay. And so you said that who is the only person who
16 had access to that?

17 A. I was -- it was only the evidence -- the evidence
18 technicians or ---

19 Q. Okay.

20 A. Yes, ma'am.

21 Q. And once an officer dropped off evidence into that
22 locker, were they able to retrieve it back?

23 A. No.

24 Q. Per Charleston County procedure, Charleston County
25 Sheriff's Office procedure, at the time did you assign any

1 numbers or identifying marker to evidence?

2 A. The deputy that submits the evidence does through -- at
3 the time was through the evidence submission process. And
4 there's a -- they use the case number that is given them by
5 dispatch. And then when the record was generated there was a
6 six-digits bar code number that was assigned to that piece of
7 evidence.

8 Q. And where is evidence stored?

9 A. Evidence at this time, at the old area, was stored in a
10 separate compound that it had a large fence around. And,
11 again, evidence technicians were the only people who had
12 access to that building.

13 Q. Okay. And evidence stored in that compound were all in
14 one location, or separated out depending on the type of
15 evidence?

16 A. There was one main building, and then there were some
17 trailers outside that were secure. And then there was a
18 building on the inside of the evidence compound that was a
19 little more secure where substances like -- you know,
20 controlled substances, any kind of drugs or medicine or
21 firearms or ammunition, was stored in that -- in that room.

22 Q. Okay. And did that place have any kind of supplement ---

23 A. That was -- that was locked with a door that required a
24 separate key, versus the key ---

25 Q. Okay.

1 A. --- to get into the actual evidence compound.

2 Q. So I want to take you back to November of 2014. You said
3 you were working in the forensics unit at that point. Were
4 you involved in any part of this case, the State versus Jontez
5 Ward?

6 A. Yes. I validated the evidence that was submitted for
7 this case.

8 Q. Okay. And so you said you received evidence submissions.
9 Do you remember what the evidence was?

10 A. For this case there were -- there were lots of pieces.
11 But I do recall there being some substances that were
12 suspected to be heroin or ---

13 Q. And once you collected the evidence in this case what did
14 you do with it?

15 A. We'd take it back to the evidence compound, and then
16 that's where the validation procedure occurs.

17 Q. Okay. And where was that evidence placed once you were
18 back at the compound?

19 A. Because this was suspected to be drugs it was kept in
20 what's called the vault, which is a separate room inside the
21 evidence compound that, as I spoke earlier, is locked and sort
22 of the right -- a different key. So I believe the thought
23 process is it takes multiple keys to get into that room.

24 Q. Okay. And who has access to the vault?

25 A. That was the evidence technicians.

1 Q. Okay. So ---

2 MS. BROWN: Beg the Court's indulgence, Your Honor.

3 [Pause to retrieve document]

4 MS. BROWN: If I may, Your Honor, show the witness what's
5 been marked as State's Exhibit 34-A, B and C for
6 identification purposes -- or, yeah, it has not been admitted
7 yet. Just for identification purposes.

8 THE COURT: Yes, have you showed them to the defendant?

9 MS. BROWN: Sure, yes. They were shown previously, but I
10 can show him again.

11 THE COURT: All right. Good. So he will know what you
12 are referring to.

13 [Whereupon, Ms. Brown proffers documents to Mr. Ward]

14 THE COURT: All right. Thank you. Yes, and you may
15 certainly show it to the witness.

16 Q. So, Mr. Hochreiter, do you recognize these?

17 A. Oh, yes, those look familiar.

18 Q. Where do you recognize that -- the items from?

19 A. These are -- let's see here. The markings on this bag,
20 particularly the red number right here [indicates], I actually
21 wrote that. That's my handwriting. That's the bar code
22 for this corresponding -- this evidence right here
23 [indicating].

24 Q. Okay. And when was the first time you saw this evidence?

25 A. This would have been November 7th, I believe.

1 Q. Okay. Was this among the evidence that you took to the
2 evidence compound?

3 A. Yes. Yes, it is.

4 Q. Okay. Is this in substantially the same condition
5 appearing now as it was the day you collected it?

6 A. With the exception of some more initials that have been
7 written on this, from the drug lab lady I assume, ---

8 Q. Okay.

9 A. --- yes, it looks exactly the same.

10 Q. Can you tell who submitted this evidence?

11 A. I don't recognize the signature. But it doesn't look
12 like it's anybody that would have been in forensics at the
13 time. But EKM up here [indicating] is -- that would have been
14 Investigator Meyer that sealed this.

15 Q. Okay.

16 A. But, no, I can't -- I can't say one-hundred percent who
17 actually ---

18 Q. Okay.

19 A. --- signed that.

20 Q. Well, can you tell who received it?

21 A. Who received it as of ---

22 Q. Yeah, again, based on the markings, yeah, who would
23 have ---

24 A. Oh.

25 Q. --- received it and taken it in?

1 A. Well, I validated it. And then it looks like Erin --
2 Erin sealed this at some point. And then ACE I believe would
3 have been Ashley over at the Charleston Police forensic
4 laboratory.

5 Q. Okay. And so this evidence, specific evidence, would
6 have been placed where?

7 A. This would have -- after we validated it it would have
8 been in the vaults ---

9 Q. Okay.

10 A. --- just because it was suspected to be drugs.

11 Q. So you said that you weren't able to tell -- you couldn't
12 recollect who submitted it. Would your recollection be --
13 would your recollection be refreshed if I showed you the chain
14 of custody?

15 A. I believe so.

16 Q. Okay.

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

18 THE COURT: You may.

19 A. This was submitted by Investigator Branham, Lisa
20 Branham, ---

21 Q. Okay.

22 A. --- the night before I took it out.

23 Q. Okay. So then you -- you received it after ---

24 A. Yes.

25 Q. Thank you.

1 MS. BROWN: No further questions, Your Honor.

2 THE COURT: All right. Cross-examination?

3 MR. WARD, A/K/A MR. BEY: No.

4 THE COURT: All right. You may come down.

5 [Whereupon, the witness exits the witness stand]

6 THE COURT: Call your next witness, please.

7 MR. ZIEGLER: We call Deputy Jason Riley.

8 [Whereupon, Mr. Riley comes forward]

9 [Whereupon, Mr. Riley is duly sworn by the deputy clerk
10 of court]

11 THE CLERK OF COURT: You may be seated.

12 [Whereupon, the witness takes the witness stand]

13 THE CLERK OF COURT: And for the record, please state
14 your full name, spelling your last.

15 THE WITNESS: Jason H. Riley. R-I-L-E-Y.

16 THE COURT: Your witness.

17 MR. ZIEGLER: Good afternoon, Deputy.

18 JASON RILEY, Having Been First Duly Sworn, was Examined and
19 Testified as Follows:

20 **DIRECT EXAMINATION BY MR. ZIEGLER OF DEPUTY JASON RILEY:**

21 Q. Where are you employed?

22 A. I work for the Charleston County Sheriff's Office.

23 Q. How long have you been involved with them?

24 A. Nineteen years.

25 Q. And what's your current position?

1 A. Currently I work for the forensic services unit.

2 Q. What was your position in November of 2014?

3 A. I was with the forensic services unit then.

4 Q. What training have you received in your -- for forensic
5 services?

6 A. Well, prior to forensics I was a patrol deputy. And you
7 get a little background in forensic work when you're a patrol
8 deputy. You get a little background with the Criminal Justice
9 Academy as well. And once you go to forensics it's pretty
10 much on-the-job training. About ten weeks of constant
11 on-call. You go to everything that there's a crimes
12 investigator needed for, 24-7, for about ten weeks.

13 You can also further your training. We have the
14 University of West Virginia online program for some forensic
15 training. We do stuff through the Academy. Local agencies
16 sometimes in the southeast will also put on training counsels
17 for classes involving evidence on crime scene processing.

18 Q. And as a forensic services investigator for the Sheriff's
19 Office what are your duties?

20 A. Well, we have a multitude of duties. Not only do you
21 deal with all the evidence that comes into the Sheriff's
22 Office evidence compound from patrol deputies, detectives,
23 warrant deputies, all that evidence we are the caretaker for
24 that evidence.

25 We also deal with crime scene investigations, going out

1 into the field, processing scenes, search warrant, in the
2 field search warrant on things that come back to the crime
3 scene unit.

4 We deal with taking evidence that may go to a separate
5 lab from our agency to that lab. Typically, that would be the
6 state laboratory in Columbia. There's also some localized
7 labs that we use.

8 So, again, it's a lot of different tasks you do each day.
9 You do some of one, more of the other, some of all, or none of
10 some.

11 Q. You mentioned outside labs. How often do you transport
12 drug evidence to outside labs?

13 A. Drug evidence, since I've been in the forensics services
14 unit, a large bulk of it would go to the City of Charleston's
15 drug lab at MUSC. That's typically every Monday, unless
16 Monday is a holiday, you would take those drugs or suspected
17 narcotics to the City's drug lab.

18 Q. Is it common to take drug evidence to the Charleston
19 Police Department lab?

20 A. I do. Like I just stated, typically that's the lab we
21 use for most of our suspected narcotics is the City drug lab.
22 And in the past there was in-house testing for certain things
23 like marijuana. Occasionally, some things may go to the State
24 lab. But typically the bulk of our stuff goes to the City
25 drug lab.

1 Q. What procedure do you follow when you take drugs to a
2 lab?

3 A. Sure. When I'm notified, I guess, when somebody else
4 within my office, say I have some work requests for some
5 narcotics that need to be tested, there is a process where I
6 take our evidence, I get onto a web-based program that the
7 City of Charleston has for our forensic advantage and I
8 pre-log those cases with the case information from the
9 Sheriff's Office, who the case agent is, who the submitting
10 person is going to be me, which would be me, if there's any
11 people who need to carbon copy with the Solicitor's Office or
12 anybody else within the Sheriff's Office.

13 And you list all of the information from that case; you
14 know, what the pieces of evidence are, the description of
15 those evidence items, who the parties of interest are that are
16 involved in that case. And then that pre-log is then printed
17 and it goes in a folder with those pieces of evidence to get
18 ready to go on Monday.

19 Q. All right. Are you familiar with the case that we're
20 here for for today?

21 A. Yes, sir, I am.

22 Q. Did you handle any evidence in this case?

23 A. I did.

24 Q. What evidence was that?

25 A. In this case there was a couple of items of narcotics,

1 suspected narcotics that needed to be tested, to determine,
2 you know, weight and analysis of those items.

3 Q. So how many pieces?

4 A. There was two in particular from this case.

5 Q. And how are those pieces of evidence identified?

6 A. Every piece of evidence that comes to the Sheriff's
7 Office, when it's pre-logged into the evidence system the
8 evidence system will give it a barcode label, identifying
9 number that goes with that piece of evidence which has not
10 only the case number - the case number can have multitudes of
11 evidence items for that case - but each one gets a specific
12 items number called a barcode.

13 And when that evidence is put into the system by any
14 deputy working for the Sheriff's Office the computer system
15 generates that number on a piece of paper. It prints off.
16 And that paper goes with that piece of evidence and it's put
17 into the locker and secured.

18 When it comes out of that locker that barcode is entered
19 into the computer system, and that pulls up the information
20 that the deputy had pre-logged for that piece of evidence.
21 And then that label is affixed to that piece of evidence.

22 And that's how you track the description, the case
23 number, and that barcode.

24 Q. Where did you -- where did you pick up the evidence that
25 you handled in this case?

1 A. Well, from this case, because all the suspected narcotics
2 that are needed to be tested by the City go into a storage
3 location, 635. That's where I go to get the next ten cases
4 that I am going to take and prepare and pre-log, and they come
5 out of 635.

6 Q. Who handled -- who handled this evidence directly before
7 you?

8 A. In this particular case the deputy who was validating, or
9 the compound manager that day, was Deputy Hochreiter.

10 Q. And what did you do with the evidence once you took
11 custody of it?

12 A. Once I took custody of it, I make sure that it's matching
13 what the label on the bag is, make sure that it is sealed
14 properly, that it's -- that the custody is the same way that
15 Deputy Hochreiter received it and that I am receiving it from
16 the evidence locker location and that everything is still
17 matching. I put it with my paperwork, and I transport it to
18 the City drug lab.

19 Q. And do you make any stops in transit?

20 A. I do not.

21 Q. On the way to the lab I mean.

22 A. I do not.

23 Q. And did you tamper with or manipulate that evidence in
24 any way?

25 A. No, I did not.

1 Q. How did you deliver it?

2 A. Well, it's hand delivered. It's hand delivered through
3 the intake evidence custodian from the City of Charleston.

4 Q. And where is -- where is that?

5 A. That's second floor, MUSC Children's Hospital.

6 Q. And in this case who did you -- who did you deliver the
7 evidence to?

8 A. To Susan Payne.

9 Q. What is -- what is her role?

10 A. Susan Payne's role for the City of Charleston, she's an
11 evidence technician. She's the one that receives that
12 evidence on Mondays. She will take my paperwork, which is the
13 pre-log, to the City of Charleston drug lab.

14 The piece of evidence, she would scan that barcode in and
15 it pulls up -- and like our system pulls up our information,
16 it pulls up my pre-log in their system.

17 And then she will verify that my paperwork matches the
18 item that I'm bringing to her. She'll make sure that it is
19 sealed prior to her accepting it. And then she will do her
20 coding into their system to take custody of that piece of
21 evidence.

22 Q. And did you pick the evidence up at some point?

23 A. I did. Seven days later I picked these items back up
24 from the City of Charleston drug lab.

25 Q. And what did you do with the evidence then?

1 A. Then it's brought back. And I change the storage
2 location of where it's going to go. Instead of it being in
3 storage location 635, now I'm going to place it into the drug
4 evidence vault. So in the computer system I'll type in a
5 notation, evidence returned by me from the City of Charleston
6 drug lab; and then I'll place it into a new storage location,
7 put a new sticker with the new storage location on it, and put
8 it up.

9 Q. I'll now show you what has been pre-marked as State's
10 Exhibit 34, 34-A, and will be 34-B and 34-C. Can you explain
11 what this is?

12 A. This envelope is going to be the outer-envelope packaging
13 for two items of evidence, which these labels here indicate
14 there's two separate pieces of items of evidence inside this
15 packaging. This other label here, which is a different
16 connotation, this is the City of Charleston laboratory's label
17 sticker.

18 Q. And if you can tell us what's inside.

19 A. Sure. Inside, there's a couple of things. First of all,
20 you're going to actually have -- two separate pieces of paper.
21 There are multiple pieces of paper. But one is going to be
22 the pre-log that I printed off when I was getting the evidence
23 ready to go to the City. This is the sheet that prints off
24 with the City of Charleston's barcode to their lab entry.

25 This item here (indicating) is going to be the two pieces

1 of evidence that were submitted to the City. This inner bag
2 here is going to be how it was packaged at the Sheriff's
3 Office by the deputy who dropped it off.

4 And, as you can see, these items inside these bags --
5 it's kind of hard to see when they are in the same bag. They
6 have a red number on them. This red number is added by
7 evidence technicians at the lab to indicate there's two
8 separate pieces of items that are individually packaged and
9 sealed, and these correspond with these barcode labels on the
10 outer envelope package. And then at the drug lab they
11 apparently needed to add this outer bag. This is a bag that
12 is sealed by -- not by the initial submitting deputy.

13 So when I drop this off, it will be these two
14 individually sealed bags. And when I picked it up seven days
15 later it had this extra bag on the outside of it. And then a
16 copy of the results from the City of Charleston also went in
17 with the bag.

18 So this is kind of step one, pre-log in; step two, here's
19 the physical evidence; step three, here's the results.

20 Q. And what are the item numbers for the two items of drugs?

21 A. The item numbers are listed as 152955 and then 152960.

22 Q. Thank you. And Deputy Riley, are those -- do those
23 appear to be the same two items that you delivered to Susan
24 Payne at the Charleston Police Department lab?

25 A. Yes, they do.

1 Q. And do they appear in substantially the same condition as
2 when you had custody of them initially?

3 A. That's correct.

4 MR. ZIEGLER: No further questions, Your Honor.

5 THE COURT: Cross-examination?

6 MR. WARD, A/K/A MR. BEY: No.

7 THE COURT: Very well. You may come down.

8 THE WITNESS: Thank you, Your Honor.

9 [Whereupon, the witness exits the witness stand]

10 THE COURT: Call your next witness, please.

11 MR. ZIEGLER: Your Honor, may we -- may we approach?

12 THE COURT: Well, ladies and gentlemen, we are going to
13 take about a five-minute -- well, hold on one second.

14 Yes, y'all can come up.

15 [Whereupon, an off-the-record bench conference is held]

16 THE COURT: All right. Ladies and gentlemen, that's
17 going to be what we're going to do today. There's a matter
18 that I must take up outside of your presence. But you all
19 don't need to wait on that. Y'all go be about your business.

20 But we do have a couple of things I wanted to speak with
21 you about before we leave each other. And we're going to
22 begin in the morning at 9:30. So let me begin with that.

23 Does anybody think they're going to work tonight or
24 usually work at night?

25 JUROR: Nods head.

1 THE COURT: Not tonight. Not tonight. But let me tell
2 you why. You can't possibly work at night and give your
3 attention to these matters. It's not fair to you. It's not
4 fair to these litigants either. And so I don't want you to
5 work, so I want you to rest. Did y'all work last night? Yes?
6 You worked last night? So you're feeling kind of funky.
7 Little tired.

8 JUROR: It's not overnight. It's just a few hours after
9 I get home from the day.

10 THE COURT: Gotcha. Gotcha. And, well, I don't --
11 you -- I don't want you getting tired. I want you to rest.
12 And if anybody registers any concern, upset, or even
13 complaints, I want you to get their name and number and I'll
14 talk to them in the morning and tell them it's okay. Yeah.
15 So you just let me know in the morning if you need me to do
16 that and I'll be happy to do that and explain that it's not
17 you, it's me.

18 And don't you let anybody get upset with you. You put it
19 on the judge, and that's Goodstein. Put it on Judge
20 Goodstein's head. And if they have any concern, I'll back it
21 up in the morning. I've got that. Just give me a phone
22 number and a name. Make a phone call.

23 Now, let's talk about going home this evening. Because
24 I've already told you do not discuss this matter or allow
25 anyone to discuss it with you. Right? We've already talked

1 about that.

2 But there's that -- that would be that odd moment when
3 you would go home and whoever's curious would say, where have
4 you been, what have you been doing today, and you say I can't
5 talk to you.

6 You know, that could be odd. That could -- that could
7 cease there from being peace in the valley. So it is
8 perfectly fine to say that you did report back for your jury
9 call and you were selected to serve on the jury. And then it
10 seems the next question, in my experience, is is it a civil
11 matter or a criminal matter. It's perfectly fine to say it is
12 a criminal matter. But there you have to stop.

13 I don't want anybody upset with y'all. Remember, put it
14 on the judge and tell them that the judge has said you cannot
15 discuss this matter or allow anyone to discuss it with you.
16 Put it on me. Because I'm ordering you not to do that.

17 I don't mind sharing with you that when you have been
18 discharged from your service on this jury - and I promise
19 there will be no question in your mind when that time has
20 come, because we will talk about it specifically - you will be
21 at liberty to talk about this case. But not until then. Not
22 until then. So please, please be mindful of that. Do not
23 discuss this matter or allow anyone to discuss it with you.

24 Remember cell phones. No cell phones with you while
25 you're serving on the jury. And the admonition says that if

1 you need to use a communication device or go to the internet,
2 do not do any -- some of you -- ah, maybe nobody is -- no, I
3 don't know that anybody is my age. I was going to say no
4 Columbo. Because there's no longer a show Columbo, so I can't
5 use Columbo. No -- I meant CS- -- no CSI. That one's still
6 on, right? Yes? I'm looking for a nod. Thank you.

7 No investigation at all. Not even what was that word
8 they used. You can't even go to the internet for a
9 definition. You must receive all of the information from
10 which you make up your minds here in court while court is in
11 session. So no Columbo.

12 Don't read anything, don't listen to anything with
13 regards to this matter. And that's the radio, the television,
14 the newspaper, and the internet. Do not blog, do not tweet,
15 do not go -- I don't do social media. I'm not allowed. So
16 like I really -- no My Space, Facebook, no huh-uh-huh-uh-huh-
17 uh-uh-uh. And I don't know how you spell that. Phyllis, I'm
18 sorry.

19 THE COURT REPORTER: I will figure it out.

20 THE COURT: No social media. That I know. You must
21 receive all of the information from which you make up your
22 mind here in court while court is in session.

23 Now, ladies and gentlemen, have a wonderful evening. I
24 can't wait to see you in the morning at 9:30. And get some
25 sleep. You, too. Although you look pretty bright-eyed and

1 bushy-tailed. In any event, I'll see y'all in the morning.

2 They don't get biscuits, do they? See, if you were in
3 Dorchester County you would get biscuits.

4 [Whereupon, the jury exits the courtroom 2/6/19, 4:34
5 p.m.]

6 THE COURT: Okay. Yes? There was something else.

7 MR. ZIEGLER: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. ZIEGLER: Let's see. I mean, Rule 6 of the form that
10 I was intending to enter into evidence -- but I -- I think I
11 will withdraw that request at this time.

12 THE COURT: Okay. Very well.

13 MR. ZIEGLER: But we only have one more witness.

14 THE COURT: One more witness, okay.

15 MR. ZIEGLER: I may -- I may still attempt to enter the
16 chain of custody form.

17 THE COURT: But you want to get one more look at it
18 before you do it?

19 MR. ZIEGLER: Yes, if ---

20 THE COURT: No worries.

21 MR. ZIEGLER: Take some time to look at it.

22 THE COURT: That is absolutely fine. Now, do you have
23 any requests to charge?

24 MR. ZIEGLER: I haven't had time ---

25 THE COURT: No worries.

1 MR. ZIEGLER: --- to produce those.

2 THE COURT: No worries. We'll have -- we'll have time to
3 go over it. I would like to -- after the evidence is in, of
4 course at that point, then, Mr. Bey, you'll have an
5 opportunity to present evidence, should you wish. And then
6 we'll perhaps have an informal charge conference. We may --
7 just depending on how far we get or I get with the charge.
8 And then it appears that hopefully tomorrow we'll get into the
9 argument and the charge. Very well.

10 MR. ZIEGLER: Yes.

11 THE COURT: Thank you. Y'all have a good evening.
12 There's nothing else; right? Nothing from anyone?

13 MS. BROWN: You said 9:30 in the morning, Judge?

14 THE COURT: Uh-huh.

15 MS. BROWN: Perfect.

16 [Whereupon, the jury trial adjourns 2/6/19, 4:36 p.m.]

17 [Whereupon, trial resumes 2/7/19, 9:51 a.m.]

18 THE COURT: Mr. Bey, are you ready?

19 MR. WARD, A/K/A MR. BEY: I am.

20 THE COURT: Good. Let's have the jury.

21 [Whereupon, the jury enters the courtroom 2/7/19, 9:52
22 a.m.]

23 THE BAILIFF: Your Honor, the jury is complete.

24 THE COURT: Thank you so much.

25 And good morning.

1 THE JURY: Good morning.

2 THE COURT: Ladies and gentlemen, we are at this time we
3 are going to continue with the State's case.

4 You may call your next witness.

5 MR. ZIEGLER: Thank you, Your Honor. The State calls Ms.
6 Ashley Earl.

7 THE COURT: Very well. Come along, please, to be sworn.

8 [Whereupon, Ms. Earl comes forward]

9 THE CLERK OF COURT: Place your left hand on the Bible,
10 and raise your right hand.

11 [Whereupon, Ms. Earl is duly sworn by the clerk of court]

12 THE CLERK OF COURT: Please take a seat.

13 [Whereupon, the witness takes the witness stand]

14 THE CLERK OF COURT: Please state your full name, and
15 spell your last name for the record.

16 THE WITNESS: Ashley Carr Earl, and it's E-A-R-L.

17 THE COURT: Your witness.

18 MR. ZIEGLER: Thank you, Your Honor.

19 Good morning, Ms. Earl.

20 ASHLEY EARL, Having Been First Duly Sworn, was Examined and
21 Testified as Follows:

22 **DIRECT EXAMINATION BY MR. ZIEGLER OF ASHLEY EARL:**

23 Q. Where were you employed in 2014?

24 A. I was employed at the City of Charleston forensics
25 laboratory.

1 Q. And what was your position there?

2 A. I was an associate criminalist.

3 Q. And what are the -- what are the duties associated with
4 that?

5 A. So we act as a chemist. Evidence comes in. We do
6 laboratory testing and give our results based on what we find.

7 Q. Okay. So, in its entirety, how long were you employed by
8 Charleston Police Department?

9 A. I was there from November of 2012 to the very end of
10 December of 2016.

11 Q. Okay. Do you still work there?

12 A. No. I decided to stay home with my kids. I was having
13 my fourth child. So I am home now.

14 Q. Okay. What is your educational background?

15 A. I have a B.S. in biology, and I also worked as an
16 environmental chemist before coming over to the forensics
17 laboratory.

18 Q. Okay. And do you have formal training as a drug analyst?

19 A. I do. Our lab, or the City of Charleston's crime lab, is
20 a nationally accredited lab. We go through their training
21 process which entails reading, comprehension, job shadowing,
22 and a comprehension exam afterwards. So you do a lot of
23 course work and shadowing before you are able to do any cases
24 on your own.

25 Q. How long does that last?

1 A. About six months. At least three to six months.

2 Q. Okay. And do you have any outside training in drug
3 analysis?

4 A. Yes. During my time there I would take any opportunity I
5 could to do outside training courses or conferences or
6 anything to just help further my job experience there.

7 Q. What were some of those?

8 A. I did a SLED class, which we did a marijuana testing
9 class. I also did a week long at West Virginia University
10 where we did lots of different coursework and everything
11 pertaining to laboratory testing.

12 Q. Okay. While you were working at CPD did you belong to
13 any professional organizations?

14 A. Yes. I was a member of CLIC, which is the Clandestine
15 Laboratory Investigating Chemists, which is an illicit chemist
16 sharing group where we kind of talk about what we find, what
17 we're seeing, different trends, and also attended conferences
18 with them as well.

19 Q. Okay. When you were at the -- at the laboratory working
20 there at the Charleston Police Department, can you explain a
21 little bit more about that lab; what did the lab do; what
22 agencies did the lab serve? You have already said it was
23 accredited?

24 A. Yes, it was accredited. We served -- City of Charleston,
25 we also did a lot of the surrounding areas. We did Charleston

1 County, Mount Pleasant, Hanahan, Goose Creek, some Berkeley
2 County. And any of their cases that would come in, we did
3 those as well. I was trained in controlled substances and
4 fire degree analysis. So cases that would come in, I would be
5 assigned and work them and deliver my results, my findings.

6 Q. In your time at the Charleston Police Department
7 approximately -- excuse me, how many substance drug analyses
8 have you personally conducted?

9 A. I have done 2,691 cases during my time there. Some cases
10 have one sample, some cases have two. There's no way to say
11 how many exact items. But the cases have been 2,691.

12 Q. Have you ever been declared an expert in the field of
13 drug analysis by a court before?

14 A. Yes, I have.

15 Q. And how many times?

16 A. Twice before.

17 MR. ZIEGLER: Your Honor, at this time the State moves to
18 declare Ms. Earl an expert in the field of drug analysis.

19 THE COURT: Very well. Mr. Bey, do you have any
20 questions that you want to ask of this witness with regards to
21 her expertise?

22 MR. WARD, A/K/A MR. BEY: No, ma'am, I don't. However,
23 is it possible that I could ask Detective Fink a few
24 questions?

25 THE COURT: Oh, Detective Fink is not on the stand. This

1 witness is on the stand.

2 MR. WARD, A/K/A MR. BEY: I decline to ---

3 THE COURT: So you don't need ---

4 MR. WARD, A/K/A MR. BEY: No.

5 THE COURT: You can -- ask -- ask that a little later,
6 okay?

7 MR. WARD, A/K/A MR. BEY: Okay.

8 THE COURT: Okay. All right. Now, very well. And so do
9 you have an objection to this witness' qualifications as an
10 expert?

11 MR. WARD, A/K/A MR. BEY: No, I do not.

12 THE COURT: Very well.

13 Ladies and gentlemen, so let me explain to you what has
14 occurred. Ordinarily under our rules of evidence individuals,
15 witnesses, are not allowed to testify regarding their opinions
16 and the reasons for those opinions. There is an exception.
17 And that is when by virtue of someone's knowledge or
18 experience they have become an expert in some field, it may be
19 art, it may be science, or profession, and those witnesses are
20 allowed to testify with regards to their opinions and the
21 reasons for those opinions within their field of articulated
22 expertise.

23 So when I give you the concluding instruction I am going
24 to talk to you a little more about expert testimony. But I am
25 going to declare that this witness is an expert in the field

1 of drug analysis, and that means that this witness will be
2 allowed to testify with regards to her opinions and the
3 reasons for those opinions.

4 Thank you, Mr. Ziegler. You may continue.

5 MR. ZIEGLER: Thank you, Your Honor.

6 Q. So, Ms. Earl, can you please explain to the jury the
7 process for analyzing controlled substances, drugs?

8 A. Yes. Cases come into our laboratory. And they are
9 accepted by our -- by our lab. They are checked to make sure
10 that they are sealed, they haven't been tampered with, they're
11 in the exact type of packaging that we will accept. From
12 there, they are placed into a safe. And then our director
13 assigns them to us.

14 Once we are assigned a case, we take it into our
15 possession. I run different tests based on what it is that
16 I've received. Different items have -- require different
17 testing. From that, I give my results. Once those are
18 concluded, I have the case in my possession at all times.
19 Once the results are concluded and the -- my case has been
20 reviewed, peer reviewed, then I send out my report. From
21 there, I package everything back up, put it in the safe, and
22 return it to whatever agency brought it to us.

23 Q. Thank you. And what are the -- can you explain the
24 actual testing that you do and the equipment that you use,
25 please?

1 A. Yes. We have lots of different equipment in the
2 laboratory. The first thing I do is I weigh the substance. I
3 put it on a weigh boat, balance it out, and then actually dump
4 out the substance from whatever container it was coming in.
5 So the weight will be the item, not like the item in its
6 packaging. It's just the actual item.

7 From there, I use usually perform a color test. That's a
8 presumptive test that kind of leads me in the direction of
9 where I want to go with my analysis. From there I either
10 will go do a FTIR, which is a Fourier transform infrared
11 spectrum-- spectroscopy. That instrument sends an infrared
12 light to the substance. With that, it either absorbs -- it
13 absorbs different wavelengths. It lets light pass through
14 different wavelengths. It gives me kind of a fingerprint
15 picture based on item -- every item has a different thing that
16 is shown.

17 From that, I also go and do a GCMS, which is a gas
18 chromatography mass spectroscopy. That separates the items
19 and gives me another separate fingerprint to help further
20 solidify what my result is.

21 Q. And what are you -- what is your end -- what are you
22 attempting to do in that process?

23 A. To determine what the potential substance is that was
24 brought into the laboratory.

25 Q. Okay.

1 A. From those answers, I'm able to make a result.

2 Q. Okay. And you mentioned the weigh boat. When you weigh
3 the drugs ---

4 A. Uh-huh.

5 Q. --- can you clarify? You said that it wasn't -- it's
6 just the item?

7 A. Just the item. So if it comes to us in a plastic bag, or
8 any kind of thing, I empty it out onto the weigh boat and
9 weigh just the item, just the powder, just whatever it is,
10 would be the item the weight that is listed on my report.

11 Q. Okay. Are you familiar with the case that we're here in
12 court for today?

13 A. Yes.

14 Q. So I want to direct you to November 10th, 2014. Did you
15 handle evidence in the case on that day?

16 A. I received the evidence from the safe after it had been
17 placed in there.

18 Q. Okay. And who placed it in there?

19 A. Susan Payne. She was the evidence courier at the time.

20 Q. Okay. Does she still work at the CPD lab?

21 A. No. She moved.

22 Q. Where did she move?

23 A. She's in New York State now.

24 Q. Okay. And what were her duties?

25 A. Her duties were to receive all the evidence. Like I

1 said, it would come in and she would inspect it, make sure
2 that it met the standard for her lab in order to be able to
3 take it in and test it.

4 Q. And how did she handle the evidence in this case?

5 A. She received it from County. She inspected the
6 packaging, making sure it was sealed and initialed and
7 everything so you could prove that it hadn't been -- that it
8 hadn't been tampered with. She entered the items into our
9 computer system and then placed it in the safe.

10 Q. And who has access to that case?

11 A. Susan, the laboratory director, and the other associate
12 criminalists.

13 Q. And then so that safe is where you picked it up from, did
14 you say?

15 A. Yes.

16 Q. What did you do with the evidence when you took custody
17 of it?

18 A. When I take custody I also do a verification, making sure
19 that it is sealed in every possible way so it could not have
20 been tampered with or anything else. I take it into my
21 custody. I do a visual inspection to help determine what kind
22 of process I'm going to start and do with the evidence. And
23 from there, I start building my worksheets and doing my tests.

24 Q. And when you picked up this evidence did it appear to
25 have been tampered with at all?

1 A. No. If it was, I wouldn't have proceeded on with the
2 analysis.

3 Q. And just to back up a little bit about the equipment, can
4 you explain your procedures for maintaining the equipment?

5 A. Yes. Our equipment is maintained on a daily, weekly, and
6 monthly basis. So performance checks are performed every day
7 before we begin analysis to make sure that they are in proper
8 working order. We also have weekly checks to make sure, and
9 then again monthly things that we do. So every day before we
10 start work it's verified that everything is working properly.

11 Q. And in this case how many items did you receive?

12 A. Two case -- two items.

13 Q. And can you please describe those items?

14 A. They came in a plastic bag and were a tan powder
15 substance.

16 Q. And did you -- what did you do with those substances?

17 A. Initially, I weighed those substances. Then I performed
18 a color test. A lot of times with our tan powders that first
19 color test I will do is a marquis, color re-agent. That color
20 test turned purple, which led me to believe that this item was
21 a heroin item.

22 From there, I performed my FTIR, which gave me a -- which
23 matched against library, that fingerprint I was talking about
24 with the absorption. Gave me a heroin match. That also shows
25 me which kind of process I'm going to do on my GCMS. So I put

1 it on the GCMS and got a heroin match on that as well.

2 So with the color test, the FTIR, the GCMS, which I also
3 performed the retention time -- certain items come out at
4 certain time periods. Did a comparison of that, as well. And
5 all of that was a positive result for heroin.

6 Q. Did you complete a report reflecting your findings?

7 A. Yes.

8 MR. ZIEGLER: Your Honor, may I approach the witness?

9 THE COURT: You may.

10 Q. I'm now showing you what's been pre-marked as State's
11 Exhibit 34. If you can just take a look at that item and let
12 me know if you recognize it.

13 A. Yes. These are the items from the case.

14 Q. Okay. And the -- what does the -- is there a report
15 there?

16 A. Yes, there is a report in here as well.

17 Q. And what report is that?

18 A. This is my report that I put out after I finished my
19 analysis.

20 MR. ZIEGLER: I pre-marked the report as State's Exhibit
21 42. At this time I would seek to enter into evidence State's
22 Exhibit 42.

23 THE COURT: Any objection?

24 MR. WARD, A/K/A MR. BEY: No, I do not.

25 THE COURT: Very well.

1 [Whereupon, State's Exhibit Number 42 is admitted into
2 evidence by the Court]

3 MR. ZIEGLER: May I publish it to the jury?

4 THE COURT: You may.

5 MR. ZIEGLER: Now publishing State's Exhibit 42.

6 Q. Ms. Earl, can you please explain the elements of this
7 report, please?

8 A. Yes. So this is the report that we send out with all of
9 our items. And the top left number is our lab number.
10 Everything that is sent to our lab is given a unique number.
11 On the right-hand side is the case number that we received
12 from Charleston County. It has Charleston County Sheriff's
13 Office address, the date submitted, the suspect's name, and
14 then underneath it has the evidence which is broken up by the
15 item numbers. Those item numbers have a weight, the result,
16 and the method I used in order to determine that result.

17 Q. Okay. And who is the -- who is the -- listed as the
18 suspect in this report?

19 A. Jontez Ward.

20 Q. And what are the item numbers that you -- that you
21 analyzed?

22 A. Item Number 152955 and 152960.

23 Q. And what were your -- what are your results?

24 A. My results are based on the color test, FTIR and GCMS
25 that these items were both heroin.

1 Q. And can you list the weight of each item, please?

2 A. Yes. The first item, Item 152955, had a weight of 5.98
3 grams; and Item 152960 had a weight of 28.36 grams.

4 Q. Thank you.

5 A. Uh-huh.

6 Q. And I'm now showing you State's Exhibit 34. Can you just
7 explain the items on that?

8 A. Yes. So these were the items that actually came into our
9 laboratory, the ones that I performed. On the bags I have
10 listed the lab number, the weight, the item number, the ones I
11 found in my initial, as well as a sticker on here that has the
12 case number, the lab number, my initials, the date sealed.
13 And then I again heat-sealed them with my initials to prove
14 that they were.

15 Q. Could you open that bag up for us, please?

16 A. [Witness complies]

17 Q. I'll show you State's Exhibit 34-B and 34-C.

18 A. Uh-huh.

19 Q. Are those the -- are those -- you said those were the
20 items that you analyzed?

21 A. Yes.

22 Q. Do they appear to be in substantially the same condition
23 as when you analyzed them?

24 A. Yes.

25 Q. Do they appear to have been tampered with?

1 A. No. They are heat-sealed at the bottom. And, again,
2 they were in this package, heat-sealed, with initials.

3 MR. ZIEGLER: Your Honor, at this time the State moves to
4 admit into evidence State's Exhibits 34 and 34-B and 34-C.

5 THE COURT: Any objection, Mr. Bey?

6 MR. WARD, A/K/A MR. BEY: No, I do not.

7 THE COURT: Very well. They're in evidence.

8 THE COURT REPORTER: Can I clarify? Because we have 34
9 is the C envelope, and then 34-A is the plastic, and then B
10 and C. So are you asking for 34-A as well?

11 MR. ZIEGLER: Yes. I'm seeking to introduce 34-A as
12 well, please.

13 THE COURT: So just so our record is absolutely crystal
14 clear, ---

15 MR. ZIEGLER: Yes.

16 THE COURT: --- you are moving in 34-A ---

17 MR. ZIEGLER: 34, 34-A, 34-B and 34-C.

18 THE COURT: All right. With that clarification, Mr. Bey,
19 any objection?

20 MR. WARD, A/K/A MR. BEY: No, ma'am.

21 THE COURT: Very well.

22 [Whereupon, State's Exhibit Numbers 34, 34-A, 34-B and
23 34-C are admitted into evidence by the Court]

24 MR. ZIEGLER: May I approach the jury, Your Honor?

25 THE COURT: You may.

1 MR. ZIEGLER: This is Exhibit 34-A that I'll publish.

2 Q. What is this bag?

3 A. This was the outer bag that held the other two separate
4 items.

5 Q. And who created this bag?

6 A. I did. That was -- we received the items in two separate
7 bags. At the end, we always like to join everything and so I
8 just have one bag. So I created this bag.

9 Q. This bag didn't come to you with the drugs?

10 A. No. This was from the lab.

11 Q. I'm now showing you State's Exhibit 34-B. Can you
12 explain this item, please?

13 A. This is the plastic bag that came to us from Charleston
14 County, the Item 152955.

15 Q. And what are the notations on the bag?

16 A. That is the lab number, the item number, the weight, and
17 my initials.

18 Q. What is the weight of this -- of this substance?

19 A. 5.98 grams.

20 Q. I'm now showing you State's Exhibit 34-C. Are you able
21 to tell what's on this bag?

22 A. I can tell a little bit. The glare is kind of hard to
23 see it.

24 Q. Okay. See if I can fix that.

25 A. Okay. All right. I can see that now.

1 Q. Okay.

2 A. All right. That, again, has the lab number, the item
3 number of 152960, has a weight of 28.36 grams, and my
4 initials.

5 Q. And, again, what are both of these substances?

6 A. They are heroin.

7 Q. And is that your expert opinion?

8 A. Yes.

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

10 THE COURT: All right. Cross-examination, Mr. Bey?

11 MR. WARD, A/K/A MR. BEY: No, ma'am.

12 THE COURT: Very well. And is this witness free to
13 leave?

14 MR. ZIEGLER: Yes, Your Honor.

15 THE COURT: Any objection, Mr. Bey?

16 MR. WARD, A/K/A MR. BEY: No, ma'am.

17 THE COURT: Very well.

18 THE WITNESS: Thank you.

19 [Whereupon, the witness exits the witness stand]

20 THE COURT: Call your next witness, please.

21 MR. ZIEGLER: Your Honor, at this time, the State rests.

22 THE COURT: Very well. All right.

23 Ladies and gentlemen, you have now received the evidence
24 and heard the witness -- witnesses which you will hear from
25 the State in the State's case in chief. That signifies to me

1 that there are matters that I must take up outside your
2 presence. So if you will please step to your jury room,
3 remembering do not discuss this matter and do not allow anyone
4 to discuss it with you.

5 [Whereupon, the jury exits the courtroom 2/7/19, 10:30
6 a.m.]

7 THE COURT: Thank you. All right. Now, Mr. Bey, I
8 wanted to go over some things with you; because we have now
9 reached the end of the State's case, and so I'm going to go
10 over some things with you. Okay?

11 DEFENDANT'S RIGHTS

12 THE COURT: So would you raise your right for me?

13 [Whereupon, Mr. Jontez Ward, a/k/a as Mr. Bey, is duly
14 sworn by the Court]

15 THE COURT: Now, Mr. Bey, how are you feeling this
16 morning; are you still a little woozy?

17 MR. WARD, A/K/A MR. BEY: I'm okay.

18 THE COURT: You're okay?

19 MR. WARD, A/K/A MR. BEY: I'm all right.

20 THE COURT: Would it make you woozy if I ask you to
21 stand, just so that it's easier to hear you? You're a little
22 bit soft-spoken. That's the only reason why. If you don't
23 mind for me. If you get woozy, I want you to sit though.
24 Okay?

25 MR. WARD, A/K/A MR. BEY: Okay.

1 THE COURT: All right. Thank you, Mr. Bey.

2 Now, Mr. Bey, I want to explain to you certain of your
3 rights. And if you don't understand anything I say, I want
4 you to let me know. There are many ways to explain any one
5 thing. Okay?

6 MR. WARD, A/K/A MR. BEY: Okay.

7 THE COURT: All right. Now, we've reached the stage of
8 the trial where you may present your defense. And in
9 presenting your defense, Mr. Bey, because you are representing
10 yourself, you can call witnesses or you have the right to
11 testify as a witness.

12 Now, you also have the right to claim the protections
13 given to you by the Fifth Amendment to the Constitution of the
14 United States. And this amendment states in part that no
15 person shall be compelled in any criminal case to be a witness
16 against themselves. Now, this means that you cannot be
17 required to testify in this case. You have the right to
18 testify on your own behalf; however, no one can make you
19 testify.

20 This is a personal right and no one can waive this right
21 except you. And if you decide to testify, you will be subject
22 to the same rules that govern other witnesses and you may be
23 examined and cross-examined on any relevant issue in this
24 case.

25 In addition, if you have any convictions involving

1 dishonesty or false statements, or for crimes punishable by
2 imprisonment for more than one year, and this Court determines
3 that the probative value of admitting this evidence outweighs
4 its prejudicial effect to you, the solicitor will be able to
5 introduce your record for the purpose of attacking your
6 credibility or believability.

7 If you decide to testify, this decision on your part must
8 be freely, voluntarily, and intelligently made, with knowledge
9 of the protections given to you by the Fifth Amendment and the
10 consequences of your decision to testify.

11 If you decide not to testify I will instruct the jurors
12 that they cannot give the fact that you did not testify any
13 consideration whatsoever and that there is to be absolutely no
14 prejudice to you because you did not testify.

15 It is left entirely up to you whether or not you testify.
16 It's appropriate to talk to family or friends or folks that
17 you trust. Obviously, if you had an attorney, that would be
18 someone that you could speak with. But it's important that
19 you understand that the final decision is left entirely up to
20 you.

21 Now, do you understand what I've just talked to you
22 about, your Fifth ---

23 MR. WARD, A/K/A MR. BEY: Correct.

24 THE COURT: --- Amendment right? All right.

25 Now, I want to be really clear because I don't want to

1 confuse you, Mr. Bey. When you are acting as your lawyer you
2 can call witnesses, you can ask those witnesses questions.
3 Your Fifth Amendment right to testify still applies to you.
4 But if -- your Fifth Amendment right doesn't keep you from
5 acting as your own lawyer, asking questions, calling
6 witnesses. Of course, you have the right to cross-examine
7 witnesses called by the State.

8 Does that make sense to you, what I'm saying?

9 MR. WARD, A/K/A MR. BEY: Yes.

10 THE COURT: Now, let me just -- there is a limit, Mr.
11 Bey; because in asking questions, you have to let the witness
12 testify rather than you testifying. But you can certainly ask
13 questions. But what you can't do in asking questions is you
14 can't testify. You've got to let the witness testify. But
15 you get to ask the questions, and if they are allowed -- you
16 know, if they're admissible questions, you get to ask those.

17 Does that make sense what I'm saying?

18 MR. WARD, A/K/A MR. BEY: It does.

19 THE COURT: Okay. In other words, I want to be real
20 clear that in me explaining to you your Fifth Amendment
21 rights, that I am not telling you that you can't call
22 witnesses and you can't act as your own lawyer. Okay?

23 MR. WARD, A/K/A MR. BEY: Okay.

24 THE COURT: All right. Now -- now, are you prepared to
25 tell me if you want to testify or not?

1 MR. WARD, A/K/A MR. BEY: I don't.

2 THE COURT: You do not wish to testify. Well, I will
3 give that instruction to the jury.

4 Now, do you wish to call witnesses?

5 MR. WARD, A/K/A MR. BEY: I would like to question
6 Detective Fink.

7 THE COURT: Okay. So you want to call Detective Fink
8 back to the stand?

9 MR. WARD, A/K/A MR. BEY: Correct.

10 THE COURT: Okay. Very well. Any other witnesses that
11 you wish to call, you just call them. I'm not going to ask
12 you to tell me who they are. But what I will say is call your
13 next witness. If you have witnesses that you want to call,
14 you'll call them; all right?

15 MR. WARD, A/K/A MR. BEY: Okay.

16 THE COURT: All right?

17 MR. WARD, A/K/A MR. BEY: Correct.

18 THE COURT: Very well.

19 All right. Now, and I think he's here, Detective Fink.

20 MR. ZIEGLER: Yes.

21 THE COURT: He's here.

22 MR. ZIEGLER: He's here.

23 THE COURT: I'm sorry.

24 MR. ZIEGLER: He's here.

25 THE COURT: Let me look in the right place. Perfect.

1 Very well.

2 All right. Now, anything, Mr. Bey, before we bring our
3 jury back out? Do you need to take a little short break?

4 MR. WARD, A/K/A MR. BEY: No. I'm fine.

5 THE COURT: You're ready to go? Okay. And how about
6 y'all? Y'all okay? Are y'all ready to go?

7 MR. ZIEGLER: Yes, Your Honor.

8 THE COURT: No comfort breaks needed? All right. Very
9 well.

10 So what I'm going to do when the jury comes back in, I'm
11 going to say, okay, ladies and gentlemen, you've now heard
12 from the State. We're going to turn to Mr. Bey. And then you
13 will -- I'm going to say call your first witness. And then
14 you will say I call Detective Fink. Okay? Very well. Thank
15 you.

16 Let's have our jury.

17 You know, assuming that's your first witness, Mr. Bey.
18 But you know what I'm saying? Assuming Detective Fink is your
19 first witness. I don't mean to tell you you have got to call
20 him first.

21 MR. WARD, A/K/A MR. BEY: I have a question. If I have
22 any evidence that I would like to admit into the Court do I
23 just hand it to one of the marshals?

24 THE COURT: Well, now, somebody is going to have to
25 authenticate it.

1 MR. WARD, A/K/A MR. BEY: Okay.

2 THE COURT: So you would give it to the witness and let
3 the witness authenticate ---

4 MR. WARD, A/K/A MR. BEY: Okay.

5 THE COURT: --- the document.

6 MR. WARD, A/K/A MR. BEY: There is just basically some
7 affidavits from the Rule 5 discovery.

8 THE COURT: Oh, affidavits from the Rule 5?

9 MR. WARD, A/K/A MR. BEY: Yes.

10 THE COURT: Okay. Show them to the State. They may not
11 have an objection to it, those affidavits. And if they do,
12 you're going to need to have those folks authenticate them.

13 [Whereupon, the jury enters the courtroom 2/7/19, 10:29
14 a.m.]

15 THE BAILIFF: The jury is complete.

16 THE COURT: All right. Ladies and gentlemen, as I told
17 you before our short break, you've heard the witnesses and
18 received the evidence which you will from the State in the
19 State's case in chief. At this time, we're going to turn to
20 the defense.

21 Mr. Bey, call your first witness.

22 MR. ZIEGLER: Your Honor, may we -- may we approach?

23 THE COURT: Sure.

24 Going to the bench.

25 [Whereupon, an off-the-record bench conference is held]

1 THE COURT: Okay. Back from the beach.

2 All right. Call your first witness.

3 MR. WARD, A/K/A MR. BEY: I would like to call Detective
4 Fink to the stand.

5 THE COURT: All right. Come on, Detective Fink.
6 Remember, now, you've already been sworn in this case. Okay?

7 [Whereupon, Detective Fink comes forward]

8 MR. FINK: Yes, Your Honor. I understand.

9 THE CLERK: Do you want me to swear him again?

10 THE COURT: Do you want him sworn again? Because we will
11 swear him again if you want.

12 MR. WARD, A/K/A MR. BEY: You can.

13 THE COURT: Yeah. We will do it again.

14 [Whereupon, Mr. Fink takes the witness stand]

15 [Whereupon, Mr. Fink is duly sworn by the clerk of court]

16 THE CLERK OF COURT: Please state your name, and spell
17 your last name again for the record, please.

18 THE WITNESS: Murray Fink. F-I-N-K.

19 MURRAY FINK, Having Been First Duly Sworn, was Examined and
20 Testified as Follows:

21 **DIRECT EXAMINATION BY MR. WARD, A/K/A MR. BEY, OF DETECTIVE**
22 **MURRAY FINK:**

23 Q. Okay, Detective Fink, I only have a few yes or no
24 questions. You don't have to elaborate. They are just
25 self-explanatory.

1 But did you execute a warrant at [REDACTED] Britten Court on
2 November 6th, 2014?

3 A. A search warrant was executed at that location under my
4 direction.

5 Q. Okay. Did you charge direct possession of contraband
6 found in the top-right dresser drawer; correct?

7 A. I'm sorry. Could you repeat?

8 Q. I said did you charge direct possession of contraband
9 found in the top-right dresser drawer, correct, in the master
10 bedroom? The top-right dresser drawer in the master bedroom?

11 A. Did I charge?

12 Q. Did you charge ---

13 A. I made charges later for contraband that was located in
14 the top-right dresser drawer.

15 Q. Okay, I have two affidavits for you if you want to kind
16 of jog your memory.

17 THE COURT: You can -- you can show them --- you can just
18 walk up and hand those to him, let him review them, see if
19 they refresh his recollection.

20 [Whereupon, Mr. Ward, a/k/a Mr. Bey proffers documents to
21 the witness]

22 A. Yes, sir.

23 Q. Okay. Thank you.

24 MR. WARD, A/K/A MR. BEY: Okay. Judge Goodstein, if you
25 would, can you please hand Detective Fink the definition for

1 direct possession?

2 THE COURT: I'm going to charge the jury on the law. Now
3 if you have a question that you want to ask him, you go right
4 ahead and ask him.

5 MR. WARD, A/K/A MR. BEY: Yes, that's what I want him to
6 do. I wanted -- I was trying to get him to give a definition
7 so he could read direct possession to the jury.

8 THE COURT: Well, you want -- so you want to ask him do
9 you understand that direct possession means "x"?

10 MR. WARD, A/K/A MR. BEY: Yeah, ---

11 THE COURT: Okay.

12 MR. WARD, A/K/A MR. BEY: --- I wanted him to ---

13 THE COURT: Do you want me to ---

14 MR. ZIEGLER: Objection, Your Honor. This is a fact
15 witness, not a witness ---

16 THE COURT: I understand. I understand. But I am going
17 to let him ask that question.

18 Now, do I have the -- do you need -- you need this back?

19 MR. WARD, A/K/A MR. BEY: No, I don't need it.

20 THE COURT: Oh, you don't need it back?

21 MR. WARD, A/K/A MR. BEY: No.

22 THE COURT: So you can just ask him.

23 MR. WARD, A/K/A MR. BEY: Okay, -- no, I wanted him to
24 read it off of the paper verbatim, direct possession.

25 THE COURT: Oh ---

1 MR. WARD, A/K/A MR. BEY: That's why I gave you the
2 definitions.

3 THE COURT: Okay. Y'all come here for a second.

4 [Whereupon, an off-the-record bench conference is held]

5 THE COURT: All right. Back from the beach.

6 Q. Okay. Detective Fink, can you explain what direct
7 possession means?

8 A. To me, direct possession would be somebody who maintains
9 or has about his or her person an item, whether it's in their
10 hand or whether it's then being strictly on top of a baggie in
11 a bed, or whether it is then being a foot-and-a-half away from
12 a drawer containing the item, I consider all of that, in my
13 opinion, to be direct possession.

14 Q. But that's an opinion. We're trying to focus on the
15 facts, because direct possession ---

16 MR. ZIEGLER: Objection, Your Honor. That's not a
17 question.

18 THE COURT: Yes, just ask him the question.

19 MR. WARD, A/K/A MR. BEY: Yeah, but he gave his opinion.

20 THE COURT: He did.

21 MR. WARD, A/K/A MR. BEY: I asked what direct possession
22 actually was.

23 THE COURT: He answered your question in that way. He
24 sure did. So if you want to ask him another question.

25 Q. Okay. Can you explain what constructive possession is?

1 A. Constructive possession is another way of saying to be
2 under your control, it's in your proximity.

3 Q. Okay. Was any substance or contraband directly removed
4 from the defendant's person?

5 A. My understanding, not directly from the person. But
6 there was a baggie containing approximately five grams of
7 heroin found directly underneath the location the defendant
8 was removed from, that being the bed.

9 Q. But you didn't find any contraband or any substance
10 directly removed from the defendant's person?

11 A. I did not. I did not remove any drugs.

12 Q. Okay.

13 MR. WARD, A/K/A MR. BEY: Thank you, Detective Fink.
14 That's all I have for questions.

15 THE COURT: All right. Any cross-examination?

16 MR. ZIEGLER: No, Your Honor.

17 THE COURT: Very well. All right.

18 Now, Mr. Bey, call your next witness.

19 MR. WARD, A/K/A MR. BEY: That's it. I don't have anyone
20 else.

21 THE COURT: All right. Very well.

22 Now, will there be any reply, rebuttal reply?

23 MR. ZIEGLER: No, Your Honor.

24 THE COURT: Very well.

25 Ladies and gentlemen, you have now heard the witnesses

1 and received the evidence which you will in this case. What
2 remains for us are the arguments and then my charge or
3 instruction on the law.

4 Ladies and gentlemen, that also signifies to me that
5 there are matters that I must take up outside of your
6 presence. I don't know that we will be particularly long.

7 So at this time I'm going to ask you -- well, in just a
8 moment, I'm going to ask you to step to your jury room.
9 Remember, you have not heard the arguments of counsel and Mr.
10 Bey. You have not heard my instruction on the law. You are
11 not supposed to deliberate. And so please be mindful, do not
12 discuss this matter or allow anyone to discuss it with you.
13 Please step to your jury room.

14 [Whereupon, the jury exits the courtroom 2/7/19, 10:48
15 a.m.]

16 THE COURT: All right. Now, hold on one second. Let me
17 get this together.

18 [Whereupon, the Court reviews documents]

19 THE COURT: Now, are there -- are there any matters that
20 we need -- that -- any motions, any matters, before we go over
21 the charge? And I'm going to go over -- I'm going to have an
22 informal charge conference. From the State?

23 MR. ZIEGLER: Not from the State, Your Honor.

24 THE COURT: All right. Mr. Bey?

25 MR. WARD, A/K/A MR. BEY: No, ma'am.

1 CHARGE CONFERENCE

2 THE COURT: All right. Now, very well. So let me -- let
3 me go over with you where I am with regards to the charge.
4 Y'all were a little faster than I thought you were going to
5 be, so I've got a little bit more that I may need to work out
6 for the statutes. So let's -- let me talk to you about what
7 my intention is to charge. All right. Here we go.

8 All right. I'm going to define again for the jury what
9 an indictment is and what it is not. Because there are
10 multiple charges I'm going to charge that the State must prove
11 each element of each indictment before Mr. Bey could be found
12 guilty of that indictment - and this charge tells the jury
13 that they have to consider each indictment separate and
14 distinct - and the law applicable to this, and they must
15 consider each indictment independently and uninfluenced by
16 their decision as to any other indictment.

17 I am going to go through the presumption of innocence. I
18 am going to go to through reasonable doubt. I'm going to -- I
19 have two charges on reasonable doubt. I'm going to talk about
20 the duties of the jury and duties of the judge. I'm going to
21 talk about what is direct and what is circumstantial evidence.
22 And we'll talk about the credibility of witnesses. I'm going
23 to talk about expert witnesses. I'm going to talk about --
24 Mr. Bey, I'm going to give the jury the instruction about your
25 decision not to testify. I'm going to talk about intent, that

1 the State must prove intent beyond a reasonable doubt.

2 And then I'm going to talk about statement of the
3 defendant. In other words, it's -- it allows the -- I need to
4 tell the jury that the -- that law-enforcement talked about
5 your statements and that how they are to assess whether they
6 were voluntary or not and if they determine they were not
7 voluntary, they're not to be considered by them. So that is
8 that charge.

9 And then I'm going to charge them with regards to the law
10 of trafficking heroin, 28 grams or more. I'm going -- that's
11 when I'm going to start talking about possession. And I'm
12 going to work on my actual -- or I'm going to call it actual
13 or direct possession. I'm going to charge constructive
14 possession. And given the weight that was testified to by the
15 expert, Ashley Earl, she testified to a weight in excess of 28
16 grams. But based on the case law I would only charge
17 trafficking and not a lesser included offense with regards to
18 the trafficking.

19 And I printed -- I didn't know what would happen with the
20 weight this morning, so of course I printed all the lesser
21 included's. That is what I am having to go through at this
22 point. So, you know, I thought if I don't print it then
23 clearly I am going to need it. So I printed everything I
24 thought I might need, last night. So I'm now having to wade
25 through that. But what I'm looking for is my park. Let's

1 see. But suffice to say I am going to charge distribution
2 within the setting of the park. And then I am going to charge
3 the statute of possession of a weapon during the commission of
4 a violent crime; I am going to just charge the statute on
5 that. And I am going to charge possession with intent to
6 distribute a controlled substance within the proximity of a
7 park. So that is my intention at this point.

8 MR. ZIEGLER: Your Honor, could we put the request
9 that -- a charge that possession with intent to distribute is
10 a lesser included of trafficking for purposes of that
11 proximity charge?

12 THE COURT: Uh-huh. That's right. Yes. All right.

13 Now -- all right, let's all take a short comfort break.
14 And when we return we will have the arguments.

15 Oh, and, Mr. Bey, let me talk to you just a moment about
16 the arguments. There is a new case called State versus
17 Beatty. And what State versus Beatty says is that the way
18 that closing arguments now work in court is that the State
19 will argue fully and then you can respond to their argument
20 and you will make your argument to the jury and then they will
21 respond to your argument. And the State, because they have
22 the burden of proof, they will have the last argument. Okay?

23 MR. WARD, A/K/A MR. BEY: I understand.

24 THE COURT: All right. Very well. And I'll be listening
25 but - because I'm sure they're going to be listening - to make

1 sure that what you do is you talk about the evidence that has
2 been presented and your arguments with regards to that, your
3 arguments with regards to the burden of proof, and those kinds
4 of things.

5 But just remember that our law doesn't allow you in your
6 closing argument to testify, because you're not under oath.
7 You can make an argument.

8 MR. WARD, A/K/A MR. BEY: Okay.

9 THE COURT: Okay?

10 MR. WARD, A/K/A MR. BEY: I understand.

11 THE COURT: All right. Wonderful.

12 Well, let's take a break. Okay?

13 [Whereupon, a recess is taken 2/7/19, 10:58 a.m.]

14 [Whereupon, resume 2/7/19, 11:26 a.m.]

15 THE COURT: All right. Let's invite our jury in.

16 [Whereupon, the jury enters the courtroom 2/7/19, 11:27
17 a.m.]

18 THE BAILIFF: Your Honor, the jury is complete.

19 THE COURT: Wonderful. Wonderful.

20 All right. Ladies and gentlemen, let me tell you how
21 we're going to be proceeding. You are first going to hear
22 from Mr. Ziegler. I saw him standing up. So you will hear
23 from him and his closing argument on behalf of the State. You
24 are then going to hear from Mr. Bey and his closing argument.
25 And then you will hear reply argument from the State.

1 Once the arguments are finished there's going to be a
2 really short break. And it's going to be self-explanatory
3 when we reach that point. And then I'm going to deliver the
4 instruction or the charge to you. We'll then take another
5 very short break, which I'll explain to you when we reach that
6 point. And then, ladies and gentlemen, you are going to
7 receive this case for your deliberations.

8 So at this time I ask that you please draw close as we
9 listen to the closing arguments.

10 Mr. Ziegler?

11 MR. ZIEGLER: Your Honor, may it please the Court?

12 THE COURT: Yes, sir.

13 CLOSING ARGUMENT

14 MR. ZIEGLER: Thank you, ladies and gentlemen. At the
15 outset of this case I told you that this case was about 28
16 grams. It's about 28 grams and the simple equation. Here it
17 is again: 28 plus P equals T. Twenty-eight. Twenty-eight
18 grams of heroin or more is what we're dealing with in this
19 case.

20 In fact, in this case we have 28.36 grams of heroin found
21 in the dresser drawer in the master bedroom and we have 5.98
22 grams of heroin found in the bed in the master bedroom.

23 This (indicating) is the 5.98 grams found in the bed.
24 And here's (indicating) the 28.36 grams found in the dresser
25 drawer. Again a closer shot of the 28.36 grams (indicating).

1 If you add that up, that equals 34.34 grams, total, of heroin.

2 And Detective Fink told us what a serving size of heroin
3 is. I actually have it wrong on there. It's actually .1, not
4 .01. It is about 34 grams at .1 grams equals about 340
5 servings, a significant amount of heroin. In addition -- and
6 this is not required for the crime of trafficking. It's
7 simply the amount and the possession of it.

8 But we have other items, as well, that are indicative of
9 drug activity. We have a gun there in the drawer. We have
10 some plastic baggies underneath of the 28.36 grams. And the
11 scale (indicating). In addition, there's cash located in a
12 pair of red pants that belonged to the defendant. Scales,
13 baggies, gun, cash, 34.34 grams of heroin.

14 And you heard from Ms. Earl, the analyst from the
15 Charleston Police Department, who analyzed the drugs. She
16 gave you her expert opinion that these substances were indeed
17 heroin, and gave the weights. And that weight, she testified,
18 is the weight of the actual drugs; not the packaging, just the
19 drugs themselves. So that takes care of our 28, 28 grams or
20 more.

21 So let's move on to the second part of the equation, P.
22 As we know, P stands for possession. Let's think about, let's
23 discuss, what possession is. Possession can be actual or
24 constructive. Actual possession means that the drug is in the
25 actual physical custody of the defendant. So it could be on

1 the person, in the clothes. It's in the actual physical
2 custody of the defendant. But to show possession, we do not
3 have to show actual possession.

4 Another thing that qualifies for possession is what we
5 call constructive possession. And constructive possession
6 means that an individual had dominion or control, or the right
7 to exercise dominion or control. And this is important.
8 Actual knowledge of the presence of drugs is strong evidence
9 of the defendant's intent to control its disposition or use.
10 That's constructive possession. One does not have to have the
11 drugs on ones person. One is in constructive possession if
12 that person had dominion and control.

13 So how do we know the defendant had dominion and control
14 of these drugs? I'll show you. Where is the defendant when
15 the police arrived to execute their search warrant?

16 He's in the master bedroom. He's in the bed. He's on
17 this side of the bed (indicating) closest to the dresser.
18 When Detective Howard entered the residence and went to the
19 master bedroom, that's where he found the defendant. And as
20 he testified, the defendant was reaching around the pillow
21 area, reaching around in the headboard area. That would seem
22 to be an opportunity for dominion or control over this
23 [indicates].

24 In addition, the red pants. The red pants are laying
25 between the bed and the dresser; and in the red pants is an

1 identification card that belongs to the defendant, Jontez
2 Ward. The defendant's photo is on the dresser.

3 So it's clear that he is within arm's reach of the drugs
4 on the bed, he's within arm's reach of the drugs in the
5 dresser. They are within his dominion and control.

6 And the drugs are not Ms. Nathaniel's, and they're not
7 the -- they don't belong to the three children who were
8 located in the apartment.

9 But if that's not enough evidence of dominion and control
10 for you, you can also look to the defendant's own words. The
11 defendant's own words. When the detectives arrived and
12 secured the defendant, they began to speak to him. They
13 provided him with his Miranda rights.

14 Detective White told you he read the Miranda rights to
15 the defendant from this card. So being fully advised of his
16 Miranda rights, the defendant agreed to speak with detectives.
17 He told Detective White that he lived here at [REDACTED] Britten
18 Court.

19 He then spoke with Detective Fink, the case agent; and
20 Detective Fink asked him do you have any guns, drugs, or money
21 in the house. And he said he did. And Detective Fink asked
22 where. And the defendant said, I'll take you -- I'll show
23 you. He indicated he would take Detective Fink to the drugs.

24 So he did. He led Detective Fink up the stairs to the
25 master bedroom. And he walked over to the dresser. And he

1 took his foot and he pointed, pointed to where the drugs and
2 the guns were, in the top-right dresser drawer.

3 So Detective Fink opened that drawer and found inside,
4 these items, this phone, this gun, and the box of baggies
5 containing 28.36 grams of heroin. So it's clear that the
6 defendant had knowledge of where the drugs were. He knew
7 exactly where they were and took Detective Fink right to them.
8 So if those circumstances aren't enough to show that the
9 defendant had dominion or control of these drugs, then
10 certainly the defendant's own words are.

11 So if you add these two things up, 28 plus P, 28 grams of
12 heroin plus possession, and T, trafficking, is when one
13 knowingly is in actual or constructive possession of 28 grams
14 or more of heroin.

15 And the defendant made this decision. The defendant did
16 this. The defendant committed trafficking while doing two
17 other things. One, he did it while being in the possession of
18 a gun. This (indicating) is the gun found in the dresser
19 drawer. And in the closet in the master bedroom, a shotgun
20 (indicating). And the law says that this crime is possessing
21 a gun while committing a violent crime.

22 And trafficking may not seem to you -- trafficking drugs
23 may not seem to you to be a violent crime like some sort of
24 assault, but our -- the law in South Carolina provides that
25 trafficking in drugs is a violent crime under the statute.

1 And that's what the crime of possession of a weapon during the
2 commission of a violent crime points to. It points to the
3 statute that lists the violent crimes in this state.
4 Trafficking is one.

5 And he did this while being in close proximity of a park.
6 You'll hear that possession with intent to distribute -- this
7 charge will be called possession with intent to distribute
8 while in proximity of a park. You'll hear that possession
9 with intent to distribute is actually a lesser included crime
10 of trafficking. So trafficking includes possession with
11 intent to distribute.

12 And this must occur, for this crime, within a half mile
13 of a park. And as we went through with Detective Fink, [REDACTED]
14 Britten Court is actually, as the crow flies, less than a
15 quarter mile from Collins Park. And if you walk on the
16 streets, it's still less than a half mile from Collins Park.

17 And the defendant knew this. When you pull into this
18 apartment complex, you'll go right under this sign
19 (indicating) which points down the street to Collins Park.
20 And the defendant himself said that he knows the park because
21 he's taken his kids there to play.

22 I want to remind you that the defendant has the right to
23 represent himself. He has exercised that right. And the
24 State takes this case extremely seriously.

25 I want to explain a little bit about beyond a reasonable

1 doubt. Beyond a reasonable doubt does not require you to be
2 convinced beyond all doubt. It doesn't require absolute
3 certainty. Rather, you must be firmly convinced beyond a
4 reasonable doubt.

5 So we have our simple equation, 28 plus P equals T; 28
6 grams of heroin, plus possession, equals trafficking. Ladies
7 and gentlemen, you have the evidence to complete this simple
8 equation beyond a reasonable doubt.

9 The defendant in this case, Jontez Ward, or Jontez Ward
10 Bey, made a decision to have more than 28 grams of heroin in
11 his bedroom within arm's reach; plus the defendant was in
12 constructive possession of all of that heroin. That equals
13 trafficking.

14 And the State implores you to find the defendant guilty
15 of trafficking heroin, 28 grams or more, possession of a
16 weapon during the commission of a violent crime, and
17 possession with intent to distribute heroin within proximity
18 of a park. Thank you for your attention.

19 THE COURT: Thank you.

20 Mr. Bey?

21 CLOSING ARGUMENT:

22 MR. WARD, A/K/A MR. BEY: Good evening everyone.

23 Before I give my closing statement I would like to share
24 this affidavit with the jury. Can I put it on there?

25 MR. ZIEGLER: Objection, Your Honor.

1 THE COURT: If it's not in evidence, you cannot.

2 MR. WARD, A/K/A MR. BEY: You said it is not in evidence?

3 THE COURT: Yes, sir, if it is not in evidence you
4 cannot.

5 THE JURY PANEL MEMBER: But these were what I asked you
6 were I able to put in evidence, earlier. And you said, no, I
7 couldn't?

8 THE COURT: Yes, sir, they are not in evidence.

9 MR. WARD, A/K/A MR. BEY: That's fine. But as I was
10 going to show, inside of the affidavits it says that ---

11 MR. ZIEGLER: Objection, Your Honor.

12 MR. WARD, A/K/A MR. BEY: Is it alright for me to speak
13 about them? This is my closing statement.

14 THE COURT: You can -- you can talk about what was
15 testified to.

16 MR. WARD, A/K/A MR. BEY: Okay. So what he testified ---

17 THE COURT: Yes, sir. Yes.

18 MR. WARD, A/K/A MR. BEY: All right. Excuse me.

19 What was testified was that I had possession of heroin
20 and my firearm in my direct possession, which means physically
21 on me. Okay, now that we have that part together I am ready
22 to proceed.

23 Ladies and gentlemen of the jury, first and foremost, I
24 apologize for the events over the last two days. I assure you
25 that I had no intentions of going to trial without an

1 attorney. And I am certain that my lack of knowledge of not
2 only the procedure, but the entire system, has been very
3 apparent to you. For this, again, I apologize.

4 As a fellow person, I hope to make you understand that
5 what has been -- what has been shown in the court is nothing
6 more than the system failing to protect me. I have faith that
7 the true facts will prevail. I have faith that what is right
8 shall be right and what is wrong is wrong.

9 You have spent two days hearing technical terms such as
10 actual or direct possession, constructive possession, and
11 several others. The facts, however, are much clearer than the
12 legalese presented. They are simple, in fact.

13 No contraband of any kind was removed from my person,
14 none at all. Yet I was charged with actual or direct
15 possession. This clearly violates the definition entirely,
16 and the State cannot offer evidence otherwise. I can only
17 wish that I could have been able to present my side of the
18 story during this event to explore the situation at hand.

19 As each one of you know, in life there's black, white,
20 and a gray middle to each and every situation. I recognize my
21 errors in the course of my life, big and small, just as many
22 of you likely have in your own lives. But I ask of you here
23 today, with what very little you know of this situation, is
24 this worth the twenty-five to forty years of my life that they
25 intend to give me and only because I was not able ---

1 MR. ZIEGLER: Objection, Your Honor.

2 MR. WARD, A/K/A MR. BEY: And only because I was not able
3 to have my story told?

4 THE COURT: Hold on one second.

5 Yes, sir. Talking about the punishment is for the Court,
6 Mr. Bey. But you can -- you can proceed.

7 MR. WARD, A/K/A MR. BEY: As I was saying, what I ask of
8 you here today, with what very little you know of this
9 situation, is this worth the twenty-five to forty years of my
10 life ---

11 MR. ZIEGLER: Objection.

12 THE COURT: No, sir, Mr. Bey, you can't discuss ---

13 MR. WARD, A/K/A MR. BEY: Well, I'll finish ---

14 THE COURT: --- any penalty.

15 MR. WARD, A/K/A MR. BEY: Excuse me. I'll finish ---

16 THE COURT: Okay. Very well.

17 Ladies and gentlemen, you must disregard that. That's
18 for the Court. That's not your concern. That's for the
19 Court.

20 MR. WARD, A/K/A MR. BEY: Basically because I was not
21 able to have my story told. Please do not allow my own lack
22 of knowledge to sway your decisions. I believe the truth will
23 prevail. Do you?

24 Thank you.

25 THE COURT: Thank you, Mr. Bey.

1 Yes, sir, Mr. Ziegler.

2 REPLY - CLOSING ARGUMENT

3 MR. ZIEGLER: Ladies and gentlemen, the law and the
4 charges in this case, the indictment for trafficking, does not
5 require what the defendant has referred to as direct
6 possession. They don't -- that's not what the indictment
7 charges.

8 The indictment charges trafficking, which is to be in
9 actual or constructive possession of the heroin. And it's
10 been shown through the evidence that the defendant was in
11 constructive possession, had dominion and control, of the
12 drugs in the bed and the drugs in the dresser drawer. And
13 that is all that's required.

14 As the Court said, any sentencing issues are left to the
15 judge. That's within the Court's purview. The defendant has
16 exercised his rights to represent himself.

17 So I ask you to focus on ---

18 MR. WARD, A/K/A MR. BEY: Objection, Your Honor.

19 MR. ZIEGLER: --- the evidence.

20 THE COURT: Overruled. You may proceed.

21 MR. ZIEGLER: I ask you to focus on the 34.34 grams of
22 heroin, about 340 servings of heroin, that was inside the
23 residence where the defendant lived. It was within arm's
24 reach of the defendant, that he knew where it was. I ask you
25 to focus on the facts, focus on the evidence. And when you do

1 so, I believe you will find the defendant guilty of
2 trafficking heroin, possession with intent to distribute,
3 proximity of a park, possession of a weapon during the
4 commission of a violent crime.

5 Thank you.

6 THE COURT: Thank you so much.

7 All right. Ladies and gentlemen, that first little break
8 I was telling you about, just stand up a minute. I just need
9 to get your oxygen going a minute so you all will be able to
10 listen to me deliver the charge on the law to you.

11 And when you have stretched a minute -- you don't want to
12 stand up? Come on. All right. And when you've had an
13 opportunity to stretch a moment and you're ready to be seated,
14 be seated.

15 JURY CHARGE

16 THE COURT: Now, ladies and gentlemen, you have heard the
17 evidence and you have heard the arguments of both sides. It
18 is now my duty to deliver the charge on the law or the
19 instruction on the law to you, and it is the law applicable to
20 this matter.

21 Now, ladies and gentlemen, the indictments in this case -
22 and there are three of them - they charge the defendant, Mr.
23 Bey. And if I say defendant, I mean Mr. Bey. Sometimes I'll
24 say Mr. Bey and sometimes I'll say the defendant.

25 But the indictments charge Mr. Bey. And there are three

JURY CHARGE

1 of them. One of them is for trafficking in heroin. Another
2 is for possession with intent to distribute a controlled
3 substance within the proximity of a park. And the third
4 indictment is for possession of a weapon during the commission
5 of a violent crime.

6 Now, ladies and gentlemen, I remind you that the fact
7 that the defendant, Mr. Bey, was arrested, charged, and
8 indicted in this case, is not evidence in this case; and it
9 cannot be considered by you as evidence of guilt in this case,
10 nor does it create any presumption or inference of guilt.

11 These documents are simply the formal written instruments
12 which contain the charges made against Mr. Bey, the defendant.
13 They are the formal documents by which this case is brought
14 into this court.

15 And I'm going to go over with you, ladies and gentlemen,
16 the allegations of the indictments, of each of them. And
17 remember, the State must prove each and every allegation of
18 each indictment beyond a reasonable doubt. The State has that
19 burden, ladies and gentlemen, and it will be your duty to
20 determine whether the State has met its burden of proof.

21 Now, ladies and gentlemen, first I'm going to go over the
22 allegations in Indictment 2018-GS-10-04100; and this is the
23 indictment for trafficking in heroin. And it alleges that the
24 defendant, Jontez Myrelle Ward, did on or about November the
25 6th, 2014, in Charleston County, South Carolina, knowingly

1 sell, manufacture, cultivate, deliver, purchase, or bring into
2 this state, or did provide financial assistance or otherwise
3 aid, abet, attempt, or conspire to sell, manufacture,
4 cultivate, deliver, purchase, or bring into this state, or was
5 knowingly in actual constructive possession, or knowingly
6 attempted to become in actual constructive possession, of 28
7 grams or more of any morphine, opium, salt, isomer, or salt of
8 an isomer, thereof, namely heroin, as described in Section 44-
9 53-190 or 44-53-210, or 28 grams or more of any mixture
10 containing any of these, all in violation of statutory
11 provision of 44-53-0370(e)(3)(c) of the South Carolina Code of
12 Laws as Amended.

13 Ladies and gentlemen, Indictment Number 2016-GS-10-00903
14 alleges that in Charleston County, South Carolina, on or about
15 November the 6th, 2014, the defendant, Jontez Myrelle Ward,
16 did possess a firearm or did visibly display what appeared to
17 be a firearm, or did visibly display a knife, during the
18 commission of or attempted commission of a violent crime, to
19 wit, trafficking heroin, in violation of Section 16-23-490 of
20 the South Carolina Code of Laws as Amended.

21 Now, ladies and gentlemen, Indictment Number 2016-GS-10-
22 00904 alleges that the defendant, Jontez Myrelle Ward, did on
23 or about November the 6th, 2014, in Charleston County, South
24 Carolina, with the knowledge that he was within a one-half
25 mile radius of the grounds of Collins Park, a public or

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1 private elementary or secondary school, a public playground or
2 park, a public vocational or trade school or technical
3 education center, or a public or private college or
4 university, distribute, sell, manufacture, or unlawfully
5 possess with intent to distribute heroin, a controlled
6 substance, under provisions of Section 44-53-110 at Sect
7 South Carolina Code of Laws 1976 as Amended, all in violation
8 of 44-53-0445(a) of the South Carolina Code of Laws 1976 as
9 Amended.

10 Ladies and gentlemen, Mr. Ward is the name in these
11 indictments; and Mr. Bey and Mr. Ward are the same person.
12 Previously, Mr. Ward has asked that I refer to him as Mr. Bey.
13 I have been happy to do that. That's why I refer to him as
14 Mr. Bey. That's why the name in the indictments is Mr. Ward.

15 Now, ladies and gentlemen, the indictments in this case
16 each allege an offense. There are three indictments. We've
17 talked about those charges. It's trafficking heroin,
18 distribution -- or excuse me, possession with intent to
19 distribute a controlled substance within the proximity of a
20 park, and possession of a weapon during the commission of a
21 violent crime.

22 Each indictment, each indictment, charges a separate and
23 distinct offense. You must decide each indictment separately
24 on the evidence and the law applicable to it, uninfluenced by
25 your decision as to any other indictment. Mr. Bey may be

1 convicted or acquitted on any or all of the offenses charged.
2 You will be asked to write a separate verdict of guilty or not
3 guilty for each indictment.

4 Now, ladies and gentlemen, Mr. Bey has pled not guilty to
5 each of these indictments; and that plea places the burden on
6 the State. And I charge you that it is an important rule of
7 the law that the defendant in a criminal trial, no matter what
8 the seriousness of the charge may be, that defendant will
9 always be presumed to be innocent of the crimes for which the
10 indictments were issued unless guilt has been proven by
11 evidence satisfying you of that guilt beyond a reasonable
12 doubt.

13 Ladies and gentlemen, the presumption of innocence exists
14 independently for each indictment. And this presumption of
15 innocence does not end when you begin your deliberations, but
16 it accompanies the defendant throughout the trial until you
17 reach a verdict of guilt based on evidence satisfying you of
18 that guilt beyond a reasonable doubt.

19 The presumption of innocence is like a robe of
20 righteousness placed about the shoulders of the defendant
21 which remains with him, with Mr. Bey, until it has been
22 stripped from the defendant by evidence satisfying you of Mr.
23 Bey's guilt beyond a reasonable doubt.

24 The presumption of innocence is not a mere legal theory.
25 It is not just a legal phrase. It is a substantial right to

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1 which every defendant is entitled unless you, the jury, are
2 satisfied from the evidence of the defendant's guilt beyond a
3 reasonable doubt.

4 And keep in mind, ladies and gentlemen, that this
5 presumption of innocence and the State's burden to prove guilt
6 beyond a reasonable doubt exists for each of the three
7 indictments independently.

8 What, then, is reasonable doubt in the law? A reasonable
9 doubt is the kind of doubt that would cause a reasonable
10 person to hesitate to act.

11 The State has the burden of proving the defendant guilty
12 beyond a reasonable doubt. Some of you may have served as
13 jurors in civil cases where you were told that it is only
14 necessary to prove that a fact is more likely true than not
15 true, such as by the greater weight of the preponderance of
16 the evidence.

17 In criminal cases the State's proof must be more powerful
18 than that. It must be beyond a reasonable doubt. Proof
19 beyond a reasonable doubt is proof that leaves you firmly
20 convinced of the defendant's guilt. There are very few things
21 in this world that we know with absolute certainty, and in
22 criminal cases the law does not require proof that overcomes
23 every possible doubt.

24 If, based on your consideration of the evidence you are
25 firmly convinced that the defendant is guilty of the crime

1 charged - and you are going to do this for each indictment -
2 you must find the defendant guilty.

3 If, on the other hand, you think there is a real
4 possibility that the defendant is not guilty you must give the
5 defendant the benefit of the doubt and find him not guilty.
6 Again, you do this for each of the three indictments.

7 I remind you that during this trial you and I have had
8 certain duties to perform. As the trial judge it is my
9 responsibility to preside over the trial of this case, and I
10 also have the duty to rule on the admissibility of the
11 evidence offered during the trial.

12 You are to consider only the competent evidence before
13 you. If there was any matters ordered stricken from the
14 record, ladies and gentlemen, you must disregard that. You
15 are to consider only the testimony that has been presented
16 from this witness stand and any exhibits which have been made
17 a part of the record in this case.

18 I, ladies and gentlemen, have the additional duty to
19 charge you regarding the law applicable to this case. As the
20 presiding judge I am the sole judge of the law of this case,
21 and it is your duty as jurors to accept and apply the law as I
22 now state it to you.

23 If you already have any idea as to what the law is or
24 what the law ought to be and it does not agree with what I now
25 tell you the law is, you must abandon your preconceived idea

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1 because you are sworn to accept the law and to apply the law
2 exactly as I state it to you.

3 In every case tried in this court before a jury, the jury
4 becomes the sole, the exclusive, the only, judge of the facts.
5 A trial judge cannot intimate, state, comment on, or make any
6 statement, to a trial jury about the facts in the case.

7 Since you, the jury, are the sole judge of the facts in
8 this case, you are not to infer from what I have said during
9 the progress of this trial in perhaps ruling on the
10 admissibility of evidence, or otherwise, or anything that I
11 say now during the course of this instruction to you, that I
12 have any opinion about the facts in this case. The law does
13 not allow me to have an opinion about the facts in this case.
14 This is a matter solely for you, the jury, to determine.

15 As jurors, it is your duty to determine the effect, the
16 value, the weight, of the evidence presented during this
17 trial.

18 Now, ladies and gentlemen, there are typically two types
19 of evidence which are generally presented during a trial. One
20 is called direct evidence, the other circumstantial evidence.
21 Direct evidence is the testimony of a person who claims to
22 have actual knowledge of a fact, such as an eyewitness. It is
23 evidence which immediately establishes the main fact to be
24 proved.

25 Let me give you an example. Normally when I give this

1 example, ladies and gentlemen, I use the month of February.
2 We're in the month of February. It's supposed to be eighty
3 degrees this afternoon. So I'm going to use March. It's
4 March. It's really cold. Snow is forecast. You walk
5 outside. You look up and you get hit in the eye with snow.
6 You really are an eyewitness to the fact that it's snowing
7 when you go back in and you say it's snowing outside. You're
8 an eyewitness. You say what you have just experienced with
9 your vision and your feeling. You saw it snow and you walk in
10 and you say it's snowing outside. You're an eyewitness. That
11 is direct evidence. That is testimony that is evidence that
12 immediately establishes the main fact to be proved that it is
13 snowing outside.

14 Let's talk about circumstantial evidence. Still March.
15 Still really cold. Snow is forecast. Before you go to bed
16 you take one more look outside, because you are hoping for a
17 snow day. When you look outside, all you see is your poor,
18 pitiful, brown, crunchy grass. When you wake up in the
19 morning, the sun is shining. However, snow covers everything
20 as far as the eye can see. People on TV talking about
21 everything that's being cancelled.

22 So here's what you know. You know it's March, it's real
23 cold, snow is forecast, when you went to bed all you saw was
24 your poor old pitiful grass, and in the morning the sun was
25 shining but snow covered everything.

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1 Here's what you know by inference. You can prove by the
2 things that you do know that it snowed overnight. You didn't
3 see it snow overnight. But because of the things that you do
4 know, by inference you know it snowed overnight. So when you
5 say it snowed overnight, you know that by circumstantial
6 evidence, through inference.

7 Circumstantial evidence. Now I'm going to define it for
8 you. Circumstantial evidence is proof of a chain of facts and
9 circumstances indicating the existence of a fact. It is
10 evidence which immediately establishes collateral facts from
11 which the main fact may be inferred. Circumstantial evidence
12 is based on inference, and not on personal knowledge or
13 observation.

14 The law makes absolutely no distinction between the
15 weight or value to be -- to be given either direct or
16 circumstantial evidence, nor is a greater degree of certainty
17 required to circumstantial evidence than of direct evidence.
18 You should weigh all the evidence in the case, and after
19 weighing all the evidence if you are not convinced of the
20 guilt of the defendant beyond a reasonable doubt you must find
21 the defendant not guilty.

22 Now, ladies and gentlemen, necessarily you must determine
23 the credibility of the witnesses who have testified in this
24 case. Ladies and gentlemen, credibility simply means
25 believability. It becomes your duty as jurors to analyze and

1 to evaluate the evidence and determine which evidence
2 convinces you of its truth.

3 In determining the believability of witnesses who have
4 testified in this case -- and these are -- this is just
5 examples. You are not limited to these. These are just
6 examples. You may believe one witness over several witnesses
7 or several witnesses over one witness. You may believe a part
8 of the testimony of a witness and reject the remaining part of
9 the testimony of that same witness. You may believe the
10 testimony of a witness in its entirety or you may reject the
11 testimony of a witness in its entirety. You may consider
12 whether any witness has exhibited to you any interest, bias,
13 prejudice, or other motive in this case. You may also
14 consider the appearance and the manner of a witness while on
15 the witness stand.

16 Now, ladies and gentlemen, in this case you have heard
17 testimony by a witness deemed to be an expert witness. And I
18 promised you -- during the trial when we talked about I would
19 give you further instruction, here it is: The rules of
20 evidence ordinarily do not permit witnesses to testify
21 regarding opinions or conclusions. An exception to this rule
22 exists for witnesses we call expert witnesses, a witness who
23 by education and experience has become an expert in some art,
24 or science, profession, or calling. And those witnesses may
25 state an opinion as to relevant and material matter in which

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1 the witness claims to be an expert, and may also state the
2 reasons for the opinion.

3 You should consider any expert opinion received in
4 evidence in this case and, like any other evidence, give it
5 the weight you think it deserves. If you decide that the
6 opinion of an expert witness is not based on sufficient
7 education and experience, or if you conclude that the reasons
8 given in support of the opinion are not sound, or that the
9 opinion is outweighed by other evidence, you may disregard the
10 opinion entirely. An expert witness' testimony is to be given
11 no greater weight than that of other witnesses simply because
12 the witness is an expert. Further, you are not required to
13 accept an expert's opinion, even though it is not
14 contradicted.

15 Now, ladies and gentlemen, I instruct you and I emphasize
16 that the fact that the defendant, Mr. Bey, did not testify in
17 this case, is not, is not, a factor to be considered by you in
18 any way in your deliberation and in your consideration on the
19 question of whether he is guilty or not guilty of each of
20 these three indictments.

21 Ladies and gentlemen, the fact that Mr. Bey chose not to
22 testify, must not, 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 your deliberations. I repeat, under your oath, you
2 are to draw no conclusion whatsoever from the fact that the
3 defendant in this case did not testify. The fact that this
4 defendant did not testify, should not, should not, even be
5 discussed in the jury room.

6 The burden of proof, as I have stated to you, is on the
7 State and the State alone. The defendant is not required to
8 prove himself not guilty. The burden of proof is and remains
9 on the State to prove guilt beyond a reasonable doubt.

10 Now, ladies and gentlemen, in order to establish criminal
11 liability, criminal intent is required. For example, the
12 mental state required to be proven by the State for a
13 particular crime might be purpose, or intent, or knowledge,
14 recklessness, and the like.

15 Criminal intent must be proven by the State beyond a
16 reasonable doubt. Criminal intent is always a matter that
17 must be determined by the jury from the circumstances
18 surrounding the situation.

19 There is no way to prove intent to a mathematical
20 certainty. There is no way that medical science can dissect a
21 person's brain and determine what the person has in mind. So
22 the law says that criminal intent may be inferred from the
23 circumstances shown to have existed. This is how you make a
24 determination of whether or not the element requiring intent
25 was present. (Sneeze), excuse me.

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1 It is not necessary to establish intent by direct and
2 positive evidence, but intent may be established by inference
3 in the same way as any other fact by taking into consideration
4 the acts of the parties - (sneeze) excuse me - and all of the
5 facts and circumstances of the case.

6 Criminal intent is a mental state, a conscious
7 wrongdoing. It is up to you to determine what the defendant
8 intended to do based on the circumstances shown to have
9 existed. Criminal intent can arise from action or failure to
10 act. It may arise from consequences or circumstances
11 considered by the law to be the equivalent of criminal intent.

12 Now, ladies and gentlemen, in this case there has been
13 evidence admitted of an alleged statement to have been made by
14 the defendant, by Mr. Bey. While the Court has determined
15 that the statement is admissible, I instruct you that you make
16 the ultimate decision of whether or not the defendant made the
17 statement.

18 If the defendant did make the statement, you must
19 determine whether the statement was made by the defendant
20 voluntarily and of his own free will. This means that the
21 statement was not caused by pressure, force, fear, threats,
22 coercion, or intimidation, or by hope or a promise of
23 leniency, or a reward of any kind.

24 In determining whether the statement was voluntary, you
25 should consider both the characteristics of the defendant and

1 the details of the questioning.

2 Some of the factors that you must consider are the age of
3 the defendant, the defendant's education or lack of education,
4 the defendant's mental ability or capacity, the defendant's
5 I.Q. or intelligence, the defendant's background and
6 environment, the place and the length of detention, the nature
7 of the questioning, and the advice or lack thereof to the
8 defendant of his constitutional rights including but not
9 limited to the right to remain silent, that any statement
10 could be used against him in a court of law, the right to have
11 a lawyer present, that if he could not afford a lawyer a
12 lawyer would be appointed to represent him without any cost,
13 and that he could stop making a statement at any time.

14 You must carefully consider all of the surrounding
15 circumstances before you give any weight to an alleged
16 statement. The State has the burden of proving beyond a
17 reasonable doubt that the alleged statement was voluntary. If
18 you determine it was, you may give the statement any further
19 consideration that you deem proper. You must decide what
20 weight, if any, should be given to the alleged statement. If
21 you determine the alleged statement was not the free and
22 voluntary statement of the defendant, you should not consider
23 the statement at all.

24 Now, ladies and gentlemen, I'm getting ready now to
25 define for you these three offenses and the elements that the

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1 State must prove beyond a reasonable doubt. I'm going to
2 start with trafficking.

3 The defendant, Mr. Bey, is charged with trafficking in
4 heroin, 28 grams or more. The State must prove beyond a
5 reasonable doubt that the defendant knowingly sold,
6 manufactured, cultivated, delivered, purchased, brought into
7 this state, provided financial assistance or otherwise aided,
8 abetted, attempted, or conspired to sell, manufacture,
9 cultivate, deliver, purchase, or bring into this state, was
10 knowingly in actual or constructive possession - another word
11 for actual possession is direct possession - knowingly
12 attempted to become an actual or direct or constructive
13 possession of heroin.

14 The State must also prove beyond a reasonable doubt that
15 the amount of the heroin or any mixture containing heroin was
16 28 grams or more. To prove possession, the State must prove
17 beyond a reasonable doubt that the defendant had both the
18 power and the intent to control the disposition or use of the
19 heroin. Possession may be either actual - and another word
20 for actual is direct - or constructive.

21 Now, actual or direct possession means that the heroin
22 was in the actual physical, physical, custody of the
23 defendant. Constructive possession means that the defendant
24 had dominion and control, or the right to exercise dominion or
25 control, over either the heroin itself or the property on

1 which the heroin was found.

2 Now, mere presence at the scene where the drugs were
3 found is not enough to prove possession. Actual knowledge of
4 the presence of the heroin is strong evidence of the
5 defendant's intent to control its disposition or use.

6 The defendant's knowledge and possession may be inferred
7 when a substance is found on the property under the
8 defendant's control. However, this inference is simply an
9 evidentiary fact to be taken into consideration by you, along
10 with all the other evidence in the case, and to be given the
11 weight you decide it to have. Two or more persons may have
12 joint possession of a drug. Now, I am finished with
13 trafficking.

14 I'm now going to talk to you about distribution -- excuse
15 me, possession with intent to distribute within the proximity
16 of a park. And the statute is Section 44-53-445 of the South
17 Carolina Code of Laws 1976 as Amended.

18 Ladies and gentlemen, included within the offense of
19 trafficking, which I just charged you or just told you about,
20 included within the offense of trafficking is the lesser
21 included offense of possession with intent to distribute.
22 Possession with intent to distribute contains all of the
23 elements of trafficking except the amount of heroin. And
24 the -- in addition, the State must prove beyond a reasonable
25 doubt that the defendant had the intent to distribute the

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1 heroin.

2 Now, the State must prove beyond a reasonable doubt that
3 the defendant unlawfully possessed, with the intent to
4 distribute, heroin.

5 Ladies and gentlemen, with regards to the elements of
6 possession, the same elements and the same proof that we
7 discussed earlier with regards to possession, applies to
8 possession with intent to distribute. In other words, to
9 prove possession the State must prove beyond a reasonable
10 doubt that the defendant had both the power and intent to
11 control the disposition or use of the heroin. Possession may
12 be either actual - another word, direct - or constructive.

13 Actual possession means that the heroin was in the actual
14 physical custody of the defendant or -- and constructive
15 possession, just as I instructed you earlier, means the
16 defendant had dominion and control or the right to exercise
17 dominion or control over either the heroin itself or the
18 property on which the heroin was found. Mere presence at the
19 scene where the drugs were found is not enough to prove
20 possession. Actual knowledge of the presence of the heroin is
21 strong evidence of the defendant's intent to control its
22 disposition or use. The defendant's knowledge and possession
23 may be inferred when a substance is found on the property
24 under the defendant's control. However, this is -- this
25 inference is simply an evidentiary fact to be taken into

1 consideration by you, along with the other evidence in the
2 case, and be given the weight you decide it should have.

3 Ladies and gentlemen, the State must also prove beyond a
4 reasonable doubt that the possession with intent to distribute
5 occurred on or within one-half mile radius of the grounds of a
6 park.

7 Now, ladies and gentlemen, possession of a weapon during
8 the commission of a violent crime. Ladies and gentlemen, the
9 defendant is charged with 16-23-49. And that is an indictment
10 for possession of a weapon during the commission of a violent
11 crime. In order to prove this offense, the State must prove
12 beyond a reasonable doubt that the defendant was in possession
13 of a weapon or visibly displayed what appeared to be a weapon
14 during the commission of a violent crime.

15 Ladies and gentlemen, I'm going to define firearm for you
16 and knife for you. Those are the allegations of the State.
17 That the allegations are that those are the weapons to which
18 the State must sustain its burden of proof.

19 Ladies and gentlemen, a firearm means any machine gun,
20 automatic rifle, revolver, pistol, or any weapon which will or
21 is designed to or may be readily converted to expel a
22 projectile.

23 A knife means an instrument or a tool with a sharp
24 cutting blade, whether or not fastened to a handle, which can
25 be used to inflict a cut, a slash, or a wound.

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1 In order to find the defendant guilty of possession of a
2 weapon during the commission of a violent crime you must first
3 find the defendant guilty of committing a violent crime.
4 Trafficking heroin, 28 grams or more, ladies and gentlemen, is
5 a violent crime.

6 Now, ladies and gentlemen, the State has the burden of
7 proving each element of each offense beyond a reasonable
8 doubt. And it is your duty to determine whether the State has
9 met its burden. And, again, you consider each indictment
10 individually and independently, one from the other.

11 Ladies and gentlemen, I'm going to go over with you the
12 verdict form. I have prepared a verdict form for each
13 indictment. And before we go over them, however, there are
14 two things I want to tell you.

15 First of all, I want to tell you that your verdict must
16 be unanimous. What does that mean? That means that this must
17 be the verdict of each and every one of you. Majority doesn't
18 rule. And no one of you rules. No one controls. This is to
19 be the verdict of each and every one of you, of the twelve of
20 you. That should be a hint.

21 Now, when my jury leaves me this next time, Mr. Garcia
22 and Mr. Thomas, I want y'all stay to here with me. Okay? You
23 are our alternates.

24 So your verdict must be unanimous.

25 The second thing I want to tell you before I go over the

1 verdict forms with you is with regards to each of these
2 charges and each of these verdict forms, there are two
3 possible verdicts. And one of them is first, and one of them
4 is second. Because, you know, if you put something on a piece
5 of paper and there are two things, one has got to be first and
6 one has got to be second. And y'all are like, yeah.

7 The reason that I'm going over this with you is that
8 obviously I have put the two possible verdicts on this piece
9 of paper. I need to tell you that there's no hidden meaning
10 in the order in which these possible verdicts have been put on
11 this piece of paper. I could have just as easily put the
12 second one first and the first one second. Please don't take
13 any hidden meaning from the order in which the two possible
14 verdicts have been put of this -- the piece of paper.

15 Ladies and gentlemen, I'm going to go over with you,
16 first of all, the verdict form for Indictment 2018-GS-10-
17 04100. And it states, we -- I'm going to just hold it up for
18 you: We, the jury, by unanimous consent - sometimes it'll say
19 unanimously - find the defendant, Jontez Myrelle Ward - that's
20 Mr. Bey, but I have stayed with the language in the
21 indictment; but it is Jontez Myrelle Ward is Mr. Bey - on the
22 charge of trafficking in heroin, 28 grams or more, and there
23 are two possible verdicts.

24 When you have made your determination, it will be your
25 duty, Madam Presiding Juror, to -- you can check, you can

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1 circle, you can check and circle; whatever is clear. But
2 whichever of these two possible verdicts is the unanimous
3 verdict of this jury, I want you to make it really clear.
4 Check it, X it, circle it, do all of it if you wish.

5 Now, with regards to 2016-GS-10-00904, this verdict form
6 reads: We the jury, by unanimous consent, find the defendant,
7 Jontez Myrelle Ward, on the charge of possession with the
8 intent to distribute a controlled substance within the
9 proximity of a park -- and, again, whichever is the unanimous
10 verdict of this jury, you will indicate. And there are two
11 possible verdicts, guilty and not guilty.

12 And then the last and third verdict form I'm going to go
13 over with you is 2016-GS-10-903. It says: We, the jury, by
14 unanimous consent, find the defendant, Jontez Myrelle Ward, on
15 the charge of possession of a weapon during the commission of
16 a violent crime, two possible verdicts. Whichever is the
17 unanimous verdict of the jury, just make it very clear. There
18 are two possible. One is guilty, one is not guilty.

19 Now, when you have completed your deliberations, when you
20 have filled out your verdict forms -- and I need you to sign
21 the verdict form. And you know who you are, Madam Presiding
22 Juror. And date it today. Just for your informational
23 purposes, today is the 7th of February. So I need you to also
24 please just date the verdict form.

25 Now, ladies and gentlemen, in a moment I'm going to be

1 asking you to step back to your jury room. This was that
2 second break that I told you I would take. I'm going to give
3 you this instruction: Do not discuss this matter and do not
4 allow anyone to discuss it with you. And you may say, wait a
5 minute, this is when you told us it was going to be time to
6 deliberate, what is going on. I'm going to tell you.

7 Ladies and gentlemen, when you step back to your jury
8 room on this next occasion, I'm simply going to ask these
9 parties have I given the jury all the laws that they may need
10 for their deliberations and have I stated it for them
11 correctly. And we will have a discussion.

12 I may need to bring you back out, ladies and gentlemen,
13 because I have failed to give you all of the law that you may
14 need for your deliberation. And in the event that I need to
15 bring you back out for that reason, I'm going to ask you in
16 advance please don't consider that instruction with any
17 emphasis. It's just that I need to give it to you.

18 Ladies and gentlemen, sometimes something comes out wrong
19 and I make a mistake when delivering the instruction to you,
20 and folks help me know that. In the event that I need to
21 bring you back out because I have stated something
22 incorrectly, I'm going to ask you in advance to please allow
23 me to correct my error in your minds.

24 Now, in the event that I do not need to bring you back
25 out, you will be brought the evidence in this case and the

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1 verdict form and an instruction to begin your deliberations.

2 And that will be your signal to begin your deliberations.

3 Now, we've been doing this for -- we've been doing this a
4 long time, and I am confident that my bailiffs are going to
5 specifically tell you to begin your deliberations; however,
6 you will not have the verdict form and the -- and the exhibits
7 unless it's time to begin your deliberations.

8 So, now, please keep in mind that all twelve of you must
9 be present for you to deliberate. So if you need to take a
10 comfort break, stop your deliberations, take your comfort
11 break, and then reconvene the deliberations when all twelve of
12 you are together again.

13 And I mean to say, in other words, if somebody is out of
14 the room and something important gets said that should have
15 been or needed to have been heard, there's no assurance that
16 that juror will hear what got said. So that's the reason that
17 all twelve of you must be together to deliberate. And if you
18 need to take a break, fine, take your break, and then begin
19 your deliberations when all twelve of you are together again.

20 Ladies and gentlemen, at this time I am going to ask you
21 to please step to your jury room, except for my alternates.
22 Do not discuss this matter or allow anyone to discuss it with
23 you.

24 [Whereupon, the jury exits the courtroom 2/7/19, 12:48
25 p.m.]

State versus Jontez Myrelle Ward, AKA Bey

1 THE COURT: All right. Any exception or additions from
2 the State?

3 MR. ZIEGLER: Your Honor, I did not hear -- first, I did
4 not hear that -- the instruction that possession with intent
5 to distribute is a lesser included on the trafficking for the
6 purposes of the proximity.

7 THE COURT: Yeah, I gave it.

8 MR. ZIEGLER: Okay.

9 THE COURT: Let me tell you what I said now. Let me ---

10 MR. ZIEGLER: Okay.

11 THE COURT: What I said was -- let me get there.

12 [Whereupon, the Court reviews documents]

13 THE COURT: Here's what I said: Including -- included
14 within the offense of trafficking is the lesser offense of
15 possession with intent to distribute.

16 MR. ZIEGLER: Okay.

17 THE COURT: Possess- -- is that good?

18 MR. ZIEGLER: Yes.

19 THE COURT: Okay.

20 MR. ZIEGLER: And, second, I wonder if there's an
21 instruction that you can provide to the jury that they should
22 not consider anything said by the defendant in his closing
23 that are not in evidence, that were -- that are actually
24 matters of laws that we've already decided, namely that he did
25 not wish to go forward with the trial without a lawyer and the

State versus Jontez Myrelle Ward, AKA Bey

1 sentencing.

2 THE COURT: Here's what I said. I think I've instructed
3 them on that. And I said -- let me tell you where I think it
4 got addressed. Hold on.

5 [Whereupon, the Court reviews documents]

6 THE COURT: You are to consider only the competent
7 evidence before you. If there was any testimony ordered
8 stricken, you must disregard that. And I did that. So I
9 think I've addressed that.

10 MR. ZIEGLER: Okay.

11 THE COURT: Okay? Anything else?

12 MR. ZIEGLER: No, Your Honor.

13 THE COURT: All right. Very well.

14 Mr. Bey, as to direct, anything?

15 MR. WARD, A/K/A MR. BEY: No, ma'am.

16 THE COURT: Thank you. All right. Very well.

17 Here's what I want you all to do is take one more look at
18 the verdict form. Just take a look at that.

19 [Whereupon, break awaiting alternates to appear]

20 [Whereupon, alternates enter courtroom]

21 THE COURT: All right. What I am going to ask you,
22 gentlemen, to do for me is I am going to ask you to give you
23 15 minutes of your time and our bailiffs will take you to a
24 separate location. And the reason is is that should something
25 happen to one of our jurors as they begin deliberations - and

State versus Jontez Myrelle Ward, AKA Bey

1 that has happened - then what I can do is stop the
2 deliberations, seat one of you, and save the trial. You have
3 given us so much time. I'm going to ask for fifteen minutes
4 more.

5 But when you find your other place away from the
6 deliberating jury, y'all can start your own clocks going.
7 Because I don't want to ask for any more than fifteen minutes.
8 And I just thank you so much. If you'll go with our bailiff,
9 they'll find you a spot.

10 [Whereupon, the alternates exit the courtroom at 2/7/19,
11 12:53 p.m.]

12 THE COURT: And then we will be in recess until we hear
13 from the jury.

14 [Whereupon, pause to review evidence before it goes to
15 the jury]

16 [Whereupon, evidence goes to the jury 2/7/19, 12:58 p.m.]

17 [Whereupon, resume when the jury enters the courtroom
18 2/7/19, 2:01 p.m.]

19 VERDICT

20 THE COURT: It's my understanding the jury has reached
21 its verdict. Is that correct?

22 THE FOREPERSON: Yes.

23 THE COURT: If you'll pass it to the bailiff, he will
24 bring it to me.

25 [Whereupon, the bailiff proffers documents to the Court]

State versus Jontez Myrelle Ward, AKA Bey

1 [Whereupon, the Court reviews documents]

2 THE COURT: Thank you. All right. I find that the
3 verdict forms are in proper form. Thank you.

4 [Whereupon, the Court proffers documents to the deputy
5 clerk of court]

6 THE CLERK OF COURT: In the Court of General Sessions,
7 Indictment Number 2018-GS-10-0400 -- I'm sorry, 04100, the
8 State of South Carolina versus Jontez Myrelle Ward, we, the
9 jury, by unanimous consent, find the defendant, Jontez Myrelle
10 Ward, on the charge of trafficking in heroin, 28 grams or
11 more, guilty. Dated February 7th. Signed by the foreperson.

12 Indictment Number 2016-GS-10-00904, we, the jury, by
13 unanimous consent, find the defendant, Jontez Myrelle Ward, on
14 the charge of possession with the intent to distribute a
15 controlled substance within the proximity of a park, guilty.
16 Dated February 7th. Signed by the foreperson.

17 Indictment Number 2016-GS-10-00903, we, the jury, by
18 unanimous consent, find the defendant, Jontez Myrelle Ward, on
19 the charge of possession of a weapon during the commission of
20 a violent crime, guilty. Dated February 7th. Signed by the
21 foreperson.

22 THE COURT: All right. Ladies and gentlemen, if this was
23 your verdict in your jury room and it continues to be your
24 verdict here in the courtroom, please indicate by raising your
25 right hand.

State versus Jontez Myrelle Ward, AKA Bey

1 Okay. It's the other right hand.

2 [Whereupon, jurors comply]

3 THE COURT: Very well. Let me observe for the record
4 that all of our jurors have their right hands raised. And you
5 can put your hand down now. Thank you very much.

6 All right. Anything before we dismiss the jury, from the
7 State?

8 MR. ZIEGLER: No, Your Honor.

9 THE COURT: From the defense?

10 MR. WARD, A/K/A MR. BEY: No.

11 THE COURT: Very well.

12 Ladies and gentlemen, I want to thank you for your
13 service on this jury and on this jury panel. As we began our
14 time together this week I told you that we are a citizen-based
15 judicial system and that we needed you to come into court and
16 help resolve disputes. I am so grateful to you for all that
17 you have given to us. You have given us your dear and
18 precious time, and I'm so grateful for that.

19 Now, are y'all ready to go back downstairs and be
20 selected for the next jury? I'm just teasing. I'm also
21 about -- your faces, like what. I am about to also dismiss
22 you from your service this week. And, again, I'm just so
23 grateful for all of your time that you have given to us.

24 Let me tell you that you are now at liberty to talk about
25 this case, should you wish. Should someone contact you about

State versus Jontez Myrelle Ward, AKA Bey

1 this case and you don't want to talk about it, just tell them
2 you don't want to talk about it. I'm sure that it won't be an
3 issue. However, if someone persists and makes you the least
4 bit uncomfortable all you have to do is call the clerk's
5 office. They will contact me and I will intercede on your
6 behalf. Although I'm not concerned that that will occur.

7 Now, those of you that work at night, you know you're
8 working today and it is not unreasonable for you to wish to
9 rest this evening. I'm going to leave that up to you. But
10 you're not under now a court order not to go to work; however,
11 it's -- it is appropriate for you to rest this evening. But
12 I'm going to leave that up to your good discretion. And,
13 again, if anybody is upset or concerned, all you've got to do
14 is contact the clerk's office; they'll contact me, and I'll
15 intercede on your behalf happily.

16 I want to tell you that you may wish to remember that you
17 have earned an exemption now for your jury service in a court
18 of record for 2020 and 2021, should you choose to exercise that
19 exemption; and you are now not eligible to serve on jury duty
20 in a court of record for the balance of 2019. I feel your
21 pain. But there's hope in magistrate's court and municipal
22 court. Perhaps you'll be serving there. But you cannot serve
23 in a court of record for the rest of 2019.

24 Now, ladies and gentlemen, I used to tell jurors that the
25 check was in the mail. The check is not in the mail for your

1 jury service, but it will be shortly. But our trip to, you
2 know, like Tahiti that I would like to commission someday --
3 it will get you to Awendaw, maybe? Maybe Georgetown. Could
4 be. If you have a really good car with really good gas
5 mileage it might get you to like Georgetown. Otherwise,
6 you're looking at Awendaw. It really is a small token of all
7 that you have given to us, which is your dear and precious
8 time.

9 Now, ladies and gentlemen, a couple of other additional
10 things. Two things, really. In just a moment we are going to
11 be going into sentencing. If you wish to remain, that's
12 perfectly fine. Just stay where you are. And if you don't,
13 that's perfectly fine. You're about to -- in just a moment,
14 you're about to -- free to go about your business.

15 Those of you that have questions about our process, our
16 procedure, I am happy to give you some of my time. Goodness
17 knows you've given us enough of yours. Just as soon as I have
18 able to attend these matters, I certainly will visit you in
19 your jury room. If you have questions, I'm very happy to
20 answer those for you.

21 So those of you that wish to go about your business in
22 your world, or wish to retire to the jury room and I'll join
23 you shortly, you can do that now. Otherwise, those of you
24 that wish to remain for sentencing, just stay where you are.

25 Now, and thank you again so very, very much.

State versus Jontez Myrelle Ward, AKA Bey

1 [Whereupon, jurors exit the courtroom 2/7/19, 2:10 p.m.]

2 THE COURT: All right. Any further motions at this time?

3 None on behalf of the State, I am confident.

4 MR. ZIEGLER: None from the State, Your Honor.

5 THE COURT: Yes, sir, Mr. Bey, any additional motions at
6 this time?

7 MR. WARD, A/K/A MR. BEY: No, ma'am.

8 THE COURT: All right. Very well. Do you have your
9 sentencing sheets?

10 MR. ZIEGLER: Yes, Your Honor?

11 THE COURT: Okay.

12 MR. ZIEGLER: May I approach, Your Honor.

13 THE COURT: Yes.

14 [Whereupon, document presented to the Court]

15 THE COURT: All right. Very well. Okay.

16 SENTENCING

17 THE COURT: And could you share with me, please, Mr.
18 Bey's record?

19 MR. ZIEGLER: Yes, Your Honor.

20 A 2007 unlawful carrying of a pistol. 2007, unlawful
21 possession of a pistol; that's the five-year stolen pistol
22 felony. Possession of co- -- also in 2007, possession of
23 cocaine first offense. 2007, possession of cocaine base or
24 meth first offense. And 2009, possession with intent to
25 distribute cocaine, two counts.

State versus Jontez Myrelle Ward, AKA Bey

1 THE COURT: All right. And was -- and what was the
2 sentence on possession with intent to distribute cocaine?

3 MR. ZIEGLER: Five years in the Department of
4 Corrections, concurrent.

5 THE COURT: All right.

6 Mr. Bey, I'm listening to you. What do you want to tell
7 me?

8 MR. WARD, A/K/A MR. BEY: The only thing I wanted to
9 know, would you be able to put in I think it is a motion for
10 an appeal?

11 THE COURT: That is not my job. That is not ---

12 MR. WARD, A/K/A MR. BEY: That is not your job?

13 THE COURT: --- something that I do. But you can
14 certainly do that.

15 MR. WARD, A/K/A MR. BEY: Okay.

16 THE COURT: Okay?

17 MR. WARD, A/K/A MR. BEY: Yes.

18 THE COURT: Very well. All right. Well, anything else
19 you want to tell me about?

20 MR. WARD, A/K/A MR. BEY: No. That's it.

21 THE COURT: All right. Does anyone wish to make any
22 statements or comments before I pass sentence on Mr. Bey, also
23 known as Jontez M. Ward?

24 [Whereupon, there is no response]

25 SENTENCE OF THE COURT

State versus Jontez Myrelle Ward, AKA Bey

1 THE COURT: All right. Mr. Bey, as you know, trafficking
2 heroin when the amount is 28 grams or more carries a mandatory
3 minimum of twenty-five years in prison and a 200,000-dollar
4 fine, and it can go up to forty years in prison, as you are
5 well aware.

6 And with regards to trafficking heroin 28 grams or more,
7 I am going to commit you to the State Department of
8 Corrections for a period of 25 five years. With regards to --
9 and that, of course, is Indictment Number 2018-GS-10-04100.

10 And with regards to 2016-GS-10-00903, which is the
11 possession of a weapon during the commission of a violent
12 crime, Mr. Bey, I am going to commit you to the State
13 Department of Corrections for a period of five years.

14 With regards to 2016-GS-10-00904, I am going to commit
15 you to the State Department of Corrections for a period of ten
16 years.

17 These sentences, Mr. Bey, will run concurrent and you'll
18 be given credit for all the time that you have served. All
19 right?

20 Good luck to you, Mr. Bey.

21 [Whereupon, Court's Exhibit 4, definition of immediate
22 possession from the defendant, marked for identification]

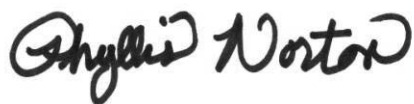
23 [Whereupon, the jury trial concludes 2/7/19, 2:18 p.m.]

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on February 5, 2019 to February 7, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

A handwritten signature in black ink that reads "Phyllis Norton". The signature is written in a cursive, flowing style.

Date: April 7, 2020

Transcript Provided For: S.C. Atty. Gen. Office
Certification Reference #2020-0407 Original

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

STATE VS.

IONTEZ MYRELLE WARDAKA: Jontez Ward, Jontez M Ward aka "Bo"Race: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: North Charleston, SCDL# [REDACTED]SID# SC01.600884*CDL Ycs ☐ No ☐ CMV Ycs ☐ No ☐ Hazmat Ycs ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Trafficking Heroin, 28g or MoreIn violation of § 44-53-0370(e)(3)(c) of the S.C. Code of Laws, bearing CDR Code # 0149☐ NON-VIOLENT☒ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State,

ATTEST:

Alex J. Ziegler

101014

Alexander J. Ziegler, Assistant Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 25 years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2-7-2019☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____ plus 20% fec: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$ 100

§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$ _____

§56-5-2995 (DUI Assessment)

\$12

\$ _____

§56-1-286 (DUI Breath Test)

\$25

\$ _____

Proviso (Public Def/Probation)

\$500

\$ _____

§14-1-212 (Law Enforce. Funding)

\$25

\$ 25

§14-1-213 (Drug Court Surcharge)

\$150

\$ 150

§50-21-114 (BUI Breath Test Fee)

\$50

\$ _____

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$ _____

3% to County (if paid in installments)

\$

\$ 8.25

TOTAL

\$ 283.25

Clerk of Court/Deputy Clerk: _____

Court Reporter: Phyllis NorthPresiding Judge: James L. HodgesJudge Code: 2112Sentence Date: 2-7-2019

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

JONTEZ MYRELLE WARDAKA: Jontez Ward, Jontez M Ward AKA BejRace: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: North Charleston, SCDL# [REDACTED]SID# SC01600884*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Possession Of A Weapon During The Commission Of A Violent CrimeIn violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Alexander J. Ziegler 101014
Alexander J. Ziegler, Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2-7-2019☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso (Public Def/Probation) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: [Signature]Court Reporter: [Signature]Presiding Judge: [Signature]Judge Code: 2112Sentence Date: 2-7-2019

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

JONTEZ MYRELLE WARD

AKA: Jontez Ward, Jontez M Ward

Race: Black/African American

Sex: M

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: North Charleston, SC [REDACTED]

DL# [REDACTED]

SID# SC01600884

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADS

TO: PWID Controlled Substance in Proximity

In violation of § 44-53-0445(A) of the S.C. Code of Laws, bearing CDR Code # 0107

☒ NON-VIOLENT☐ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Alex J. Ziegler

101014

Alexander J. Ziegler, Assistant Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$_____; provided that upon the service of _____ days/months/years and or payment of \$_____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2-7-2019☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$_____ plus 20% fee: \$_____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$_____ Beginning _____

\$_____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

§14-1-211 (A)(2)(DUI Surcharge)

\$100

§56-5-2995 (DUI Assessment)

\$12

§56-1-286 (DUI Breath Test)

\$25

Proviso (Public Def/Probation)

\$500

§14-1-212 (Law Enforce. Funding)

\$25

§14-1-213 (Drug Court Surcharge)

\$150

§50-21-114 (BUI Breath Test Fee)

\$50

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

3% to County (if paid in installments)

\$

TOTAL

\$283.25

Clerk of Court/Deputy Clerk:

Court Reporter:

Presiding Judge:

Judge Code:

Sentence Date:

FORM 5

STATE OF SOUTH CAROLINA)

County of Charleston)Jonte Myrelle Ward)

Full name and prison number (if any) of Applicant)

#320975)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2019-CP-10-4507

APPLICATION FOR

POST-CONVICTION RELIEF

JUL 27 2019
CLERK OF COURT
2019 AUG 27 PM 4:29

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber C.I. P.O. Box 205
Ridgeway, S.C. 29472
2. Name and location of Court which imposed sentence Charleston County
Court of General Sessions
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2018-GS-10-04100
 - (b) 2016-GS-10-00903 Poss. of Weapon Dur. Violent Crime

"Attachment (A)"

ISSUE 1.) The Applicant due-process rights were violated at Trial, by the prosecution's Failure to disclose and produce Full "Discovery Doctrine" which was relevant and material, "Exculpatory" to his defense in preparing for Trial. Therefore resulted in a Brady Violation pursuant to Brady vs. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 315 (1963) by the prosecutor withholding the Buy-Bust Audio/Video via snapshots of the drug-transaction, introduced as evidence at Trial. Which was not provided for inspection to the Applicant within the (10-day requirement) before Trial. Furthermore the Applicant raised the issue as aforementioned at Trial on the record proceeding Pro-se that his previous lawyer requested in his motion to compel for Full discovery, but was not provided which hindered him from being able to fight his case and prepare for Trial.

State vs. Cole, 403 S.E.2d 117 (1991); Kelle vs. State, 368 S.C. 578, 690 S.E.2d 73 S.C. (2010) U.S vs Kotteakos, 328 U.S. at 776, 66 S.Ct. at 1253 Gibson vs. State, 343 S.C. 515, 514 S.E.2d 320 S.C. (1999) Collins V. City of N.Y., U.S D.C. (Ed NY) Case No. 111-ev-00766-FB-RML;

Dennis vs. Wetzel, 966 F.Supp.2d 489 (E.D.P.A. 2013)
Connick vs. Thompson, 131, S.Ct. 1350 (2011)

"Attachment (B)"

ISSUE 2.) The Trial Court abused its discretion by allowing the State to present altered and Fabricated "Not authentic Evidence" of pictures of snapshots used in the Buy-Bust Operation portrayed at Trial as the actual Video presented to the Jury as real evidence of the Applicants alleged drug-transaction. Which was inadmissible at trial, because it did not definitively show the Facts and Events ^{What} happened pertaining to the drug-transaction. From point (A) (B) (C). Therefore the Video was not authentic and the person hand seen in the video could have been anyones not the Applicants. Neither a "Time and date" on the video regarding the Facts and Events of that day of the transaction. Inasmuch violated the Applicants due-process rights, and Best Evidence Rule under S.C. Rules of Evidence requirement under "Article IX (Rule 901) of Authentication or Identification." U.S. Vs. Baguley 838 F.2d 468 (Table) C.A.4 (N.C.) (1987). Inasmuch the State used this Fabricated Video to bolster their case to defraud the Jury and misrepresent the Facts of the case at Trial. Furthermore by this egregious act of Fraud aforementioned tainted, compromised the ^{What} Trial proceedings and affected the Foundation of the case. Thus a conviction obtained through Fraud is Null and Void "Fraud Vitiates Everything..." Nudd Vs. Burrows, 91 US 677-683 (US 1875)

Elliott Vs Piersol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828) U.S. V. Throckmorton 98 U.S. 61-67 (1871) MDC Innovators, LLC V. Northern - Fed Appx - 2018 WL 1129667 (4th Cir 2018); Hay Group Management Inc Vs. Schneider - F. Supp 3d. -- 2018 W.L. 655595 (ED PA 2018) Furthermore All Courts of Record, and all orders can be "Collaterally-Attacked" For fraud upon the court..

" Attachment (C) "

ISSUE 3) The Applicant due-process rights were violated at Trial. The Applicant Objected on the Record that he was being denied his constitutional right to cross-examine "Face his Accuser" at Trial, The Confidential Informant. Furthermore the Applicant raised the Issue For the State to produce him at Trial, which was material in establishing the Informant's Credibility the Reliability of the Informant^{to Jury}, because the video and evidence obtained through Search Warrant resulted from this person therefore the Applicant had his right to attack his credibility in front of the Jury. Which was a crucial Element^{Exculpatory} and material to his defense on the Jury rendering their verdict, because the Informant was the key factor in his case from its foundation and the crux of the Search Warrants probable-cause to obtain the warrant..

Crawford V. Washington, 541 U.S. at 68 Bruton V. U.S., 391 U.S. 123, 126 (1968)

(c) 2016-93-10-00904 PWID Controlled Substance
 Prox.

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) 2-7-2019
 (b) _____
 (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
 (b) after a plea of not guilty Trial
 (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

- i. S.C. Court of Appeals Feb 22, 2019
 ii. Rehearing March 7, 2019
 iii. _____

(b) the result in each such Court to which you appealed:

- i. Affirmed
 ii. Affirmed
 iii. _____

(c) the date of each such result:

- i. _____
 ii. Petition For Rehearing denied May 13, 2019
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. Order Feb 22 2019
 ii. Order May 13, 2019
 iii. Remittitur SENT down May 13, 2019

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) _____
 (b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) 4th, 5th, 6th, 13th, 14th U.S. Const.

(b) I give "Judicial Notice" I do not waive

(c) my right to amend any issues once Appointed

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) SEE Attachments (A) (B) (C) herein

(b) the Application on grounds.

(c) "Fraud upon the Court"

COUNSEL
Through
AMENDED
PCR
Application
my amek
PCR will
Follow..

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? NO Pro-Se
 (c) your sentencing? _____
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Alexander Ziegler
A. J. Z. Law Firm, LLC
 ii. 101 Meeting Street Chr, SC 29401
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. ON Appeal
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

SENTENCE "Vacated," and or REVERSED
For New-Trial. Further the Applicant
will accept time SERVED...

20. Are you now under sentence from any other court that you have not challenged?

STATE OF SOUTH CAROLINA)

County of CHARLESTON)

VERIFICATION

I, Jontez Myrelle Ward, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jontez Myrelle Ward

SWORN to and subscribed before me this 22nd
 day of August, 2019.

Ludrean Bryant (L.S.)
 Notary Public

My Commission Expires: May 26, 2020

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Jontez Myrelle Ward, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Jontez Myrelle Ward
Applicant

SWORN or affirmed to and subscribed before me this
22nd day of August, 2019.

Ludrean Bryant
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Jontez Myrelle Ward #320975,	)	Case No.: 2019-CP-10-4507
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The State (Respondent), making its Return to the application for Post-Conviction Relief (PCR) filed on August 27, 2018, would respectfully show this Court:

I. Procedural History

Jontez Ward (Applicant) is presently confined pursuant to orders of the Charleston County Clerk of Court. In April 2016, the Charleston County Grand Jury indicted Applicant for Possession with Intent to Distribute a Controlled Substance within Proximity of a Park (2016-GS-10-00904) and Possession of a Weapon During the Commission of a Violent Crime (2016-GS-10-00903). In July 2018, the Charleston County Grand Jury indicted Applicant for Trafficking in Heroin, 28G or More (2018-GS-10-04100).

Applicant proceeded pro se at trial. Assistant Solicitor's Alexander Ziegler and Ashley Brown prosecuted the case. On February 5, 2019, Applicant proceeded to trial before the Honorable Diane Goodstein and a jury. The jury found Applicant guilty as indicted. Judge Goodstein sentenced Applicant to twenty-five years for trafficking in heroin, 28G or more, five years for possession of a weapon during the commission of a violent crime, and ten years for possession with intent to distribute a controlled substance within proximity of a park. The

sentences were to run concurrently.

Applicant failed to file a timely notice of appeal. Aime Zmroczek, Esquire, filed a notice of appeal on February 22, 2019. The South Carolina dismissed Applicant's appeal on February 27, 2019 for failing to timely serve his pro se notice of appeal. Aime Zmroczek filed a Motion for Reconsideration on March 8, 2019. The South Carolina Supreme Court denied the motion and issued the Remittitur on June 19, 2019.

II. Current Application

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Brady Violation
2. Prosecutorial Misconduct
3. Due Process Violation

In relief sought, Applicant is seeking "sentence vacated and or reversed for new trial. Further the Applicant will accept time served."

Attached to this Return and incorporated by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. Response to Allegations of Prosecutorial Misconduct

Applicant also alleges prosecutorial misconduct. Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known

to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

The requirements of Rule 5, as opposed to the constitutional dictates of Brady, are judicially created discovery mechanisms for use in criminal proceedings. State v. Gullledge, 326 S.C. 220, 487 S.E.2d 590 (1997). Rule 5(a)(1)(C) requires:

Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

Id. The definition of “material” for purposes of Rule 5 is the same as the definition used in the Brady context. See Fradella v. Town of Mount Pleasant, 325 S.C. 469, 482 S.E.2d 53 (Ct.App.1997) (per curiam). In order for Applicant to prevail on a Rule 5 claim, he must show not only an actual violation, but also that he suffered prejudice as a result. State v. Wilkins, 310 S.C. 81, 425 S.E.2d 68 (Ct.App.1992); State v. Trotter, 322 S.C. 537, 473 S.E.2d 452 (1996).

Respondent submits that this ground for relief is without merit. Furthermore, Respondent hereby moves for a more definite statement as to this ground. While Respondent acknowledges the allegation of prosecutorial misconduct probably raises questions of fact that the record does not conclusively refute, Applicant has failed to set forth any facts to support this ground or to explain with any specificity whatsoever the facts upon which this claim is based. The Uniform Post-Conviction Procedure Act requires Applicant to “*specifically set forth the grounds upon*

which the application is based.” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which this allegation is based so Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests Applicant be required to amend his application to set forth specifically the grounds on which his claims are based. Respondent reserves the right to move for dismissal of this allegation should Applicant fail to amend the application.

V. Due Process Violations

Applicant alleges a denial of due process of law. Applicant’s allegation claims infringement of his rights as afforded to him under the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that Applicant must “...specifically set forth the grounds upon which the application is based.” S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon Applicant to make a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Because Applicant has failed to make a prima facie showing that his constitutional right to due process was violated, Respondent submits this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the application is based and relief is sought.

VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the

State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

VII.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VIII.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

IX.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

X.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BENJAMIN H. LIMBAUGH
Assistant Attorney General

By: /s Benjamin H. Limbaugh
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 30, 2020

STATE 326 SOUTH CAROLINA)

COURT OF COMMON PLEAS)

County of ☒ Charleston ☐ Berkeley)

Case No. 2019-CP-10-04507)

Jontez M. Ward, 320975)

Applicant / Petitioner)

vs.)

State of South Carolina,)

Respondent.)

ORDER

FILED
CLERK OF COURT
J. ARISTONE

2023 FEB -7 AM 11:27

FILED

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

1. The application for post-conviction relief is hereby: _____ denied _____ granted _____ under advisement; a formal order will be filed (see below - No.6)

2. Motion(s) was/were heard in this case and the court orders:
The motion to dismiss and/or for summary judgment is hereby _____ granted _____ denied _____ under advisement, based upon the _____ statute of limitations and/or _____ the successive nature of the application or _____ other reason as follows:

3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:

_____ Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.
_____ The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or _____ no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.

4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed _____ with prejudice _____ without prejudice.

X 5. Other: Applicant's attorney, Christopher Murphy, moved to be renewed as common, at the request of applicant and with his consent. granted.

X 6. The court further orders:
_____ The _____ Attorney General _____ Applicant's counsel is directed to submit to the court a proposed order and to serve the order on opposing counsel within _____ days.

_____ Both sides are directed to submit proposed orders to the court and to serve the orders on each other within _____ days.

X _____ The court does not request proposed orders.

IT IS SO ORDERED.

Date: 02 / 06 / 2023

Charleston, S.C.

Court Reporter: Caressa Johnson DCRP

Attorney for State: D. Russell Barlow II & T.

Cruise Mitchell

Attorney for Defendant: Christopher Murphy

Presiding Judge

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Jontez Myrelle Ward #320975,

Case No.: 2019-CP-10-4507

Applicant,

v.

State of South Carolina,

Respondent.

**AMENDED RETURN
AND MOTION TO DISMISS**

2023 JUN 16 AM 11:58
FILED
CLERK OF COURT
JP

In response to the application for post-conviction relief (PCR) filed by Jontez Myrelle Ward (Applicant) on August 27, 2018. Respondent makes the following amended return and motion to dismiss.¹

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a twenty-five-year sentence. In April 2016, the Charleston County Grand Jury indicted Applicant for possession with intent to distribute (PWID) a controlled substance within proximity of a park (2016-GS-10-00904) and possession of a weapon during the commission of a violent crime (2016-GS-10-00903). In July 2018, the Charleston County Grand Jury indicted Applicant for trafficking in heroin, 28G or more (2018-GS-10-04100).

On February 5-7, 2019, Applicant proceeded to a jury trial, pro se, before the Honorable Diane Goodstein. Assistant Solicitor's Alexander Ziegler and Ashley Brown prosecuted the case. The jury found Applicant guilty as indicted. Judge Goodstein sentenced Applicant to concurrent terms of twenty-five years for trafficking heroin, ten years for the PWID proximity charge, and

¹ Respondent incorporates by reference herein all its arguments from its original return.

five years for the weapon charge.

On February 22, 2019, Applicant filed an untimely notice of appeal. He was represented by Aimee Zmroczek, Esquire. On February 27, 2019, the South Carolina Court of Appeals dismissed the appeal as untimely. Applicant filed a motion to reconsider, which was denied. The remittitur was sent June 19, 2019.

CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Brady Violation: his due process rights were violated by the prosecutor's failure to disclose and produce a buy-bust audio and video that was used to support probable cause for his warrant;
2. Prosecutorial Misconduct: "the trial court abused its discretion in allowing the State to present altered and fabricated 'not authentic evidence' of pictures" from the buy-bust video rather than the actual video";
3. Due Process Violation: Applicant was unable to cross examine the confidential informant, which he objected to on the record.

Respondent incorporates by reference the records attached to its return, including the Charleston County Clerk of Court records of the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the PCR application. Respondent reserves the right to amend this return upon receipt of any additional relevant materials.

MOTION TO DISMISS

The State moves to dismiss Applicant's claims because they are not proper PCR claims and are barred by res judicata.

Failure to State Cognizable Claim

Applicant's claims should be dismissed for failure to state a cognizable claim under the PCR Act. The PCR Act provides:

Any person who has been convicted of, or sentenced for, a crime and who claims:

(1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

(2) That the court was without jurisdiction to impose sentence;

(3) That the sentence exceeds the maximum authorized by law;

(4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

(5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

(6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

S.C. Code Ann. § 17-27-20. Importantly, PCR is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A PCR application cannot assert issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). “[T]he post-conviction relief procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.” Id.

In support of his allegations, Applicant contends (1) his due process rights were violated

by the prosecutor's failure to disclose and produce a buy-bust audio and video that was used to support probable cause for his warrant, (2) "the trial court abused its discretion in allowing the State to present altered and fabricated 'not authentic evidence' of pictures" from the buy-bust video rather than the actual video, and (3) his due process rights were violated by his inability to cross examine the confidential informant, which he objected to on the record. These are all claims that either were raised to the trial court or could have been raised at trial.

Prior to trial, Applicant (proceeding pro se) asked why he kept "receiving bits and pieces of discovery instead of the full discovery." He stated he had still-shots from videos but had never seen the videos. (Tr. 49). The solicitor explained that law enforcement had made three controlled purchases from Applicant but had only charged him with two of those purchases. He averred,

The State believes he has received all of the discovery he is entitled to. There are videos from the controlled purchases that he has not seen. The State believes that we have the right to protect the identity of the confidential informant still.

We're not—we're not trying those cases. We're not trying the distributions. We are strictly limiting this to the search warrant case. So we believe the defendant himself doesn't have the right to view the videos that reveal the C.I.

I have provided still shots from the buys to allow him to get the understanding of what's in those. But we're not introducing them into evidence. We're not going to be referring to them in the case-in-chief. And don't believe he has the right to view them.

(Tr. 49-50). However, the solicitor acknowledged one of the controlled purchases (for which Applicant had not been charged) furnished the probable cause for the search warrant. (Tr. 50-51). The prosecutor further stated he had previously provided everything—including the videos—to Applicant's attorney, who had been relieved prior to trial. (Tr. 53-54).

The Court questioned the solicitor about whether any of the videos contained exculpatory material; the solicitor relayed they did not. (Tr. 51-52). Thereafter, the Court ruled:

[W]hile I understand that the State has an interest in nondisclosure of confidential informants, I am unaware of an opinion from the Supreme Court from the United States or the South Carolina Supreme Courts that allows discovery to be excluded for that reason.

Having said that, if I set that aside, if the State maintains that there is no exculpatory evidence contained and there is no intention on behalf of the State to introduce that evidence, and that the one buy that was used for probable cause to obtain the search warrant that there have been still-photographs of relevant portions of that buy that was used to obtain the search warrants, then I think probable cause has been established and discovery has been shared.

So, [Applicant], first of all, the tapes are not going to be shown to the jury. And secondly, the State certainly has an obligation to Brady to share in discovery any exculpatory evidence. The State has made a recommendation—or has made a representation on the record that there is no Brady material contained within the videos, that it does—the State does not intend to admit, and that the still photographs that were shared with you were shared for the purpose of establishing probable cause. So that's—that would be the explanation.

(Tr. 52-53). The Court clarified that the State's desire to protect a confidential informant did not trump the requirements of Brady or Rule 5, and the State must disclose any exculpatory evidence to Applicant. (Tr. 54). However, it determined the State had shared all the discovery with the defense through Applicant's lawyer, and based on the State's representation that there was no exculpatory evidence, it did not require the State to disclose the video to Applicant. (Tr. 54-55).

In addition to raising an issue with the videos, Applicant questioned why he had not had an opportunity to question the confidential informant. (Tr. 53). The Court explained that he would have a right to cross-examine any witness called by the State, including the confidential informant if the State called that person as a witness.² (Tr. 54).

² The State did not call the confidential informant as a witness during trial.

The prosecutorial misconduct alleged here—a Brady violation—was raised at trial when Applicant questioned the Court about the videos he had not seen. To the extent Applicant disagreed with the trial court’s ruling, Applicant could have pursued that issue through a timely appeal. Because Applicant’s claims related to prosecutorial misconduct could have been—and were actually—addressed at trial, they are not proper claims for PCR. See Dravton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (“[T]he [PCR] procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.”).

Likewise, Applicant’s due process claims relate to perceived trial court errors. In fact, Applicant acknowledges he raised his first issue related to video to the trial court; he frames his second issue (the admission of photographs from the video) as trial court error; and he avers he raised his third issue on the record and objected to not being able to cross-examine the confidential informant. As noted, Applicant *did* raise the first issue to the trial court. Likewise, he raised the third issue to the trial court. (Tr. 53-54, 56). Applicant could have raised these issues on appeal, making them inappropriate for PCR. Further, this Court lacks the authority to consider whether a different circuit court judge erred in its decisions. Cf. Enoree Baptist Church v. Fletcher, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986) (“One Circuit Court Judge does not have the authority to set aside the order of another.”).

Finally, although Applicant did not object to the admission of any photographs (and thus did not preserve any issue related to them for direct appeal), any evidentiary concerns about the pictures should have been raised to the trial court and are not a proper basis for PCR here where Applicant proceeded pro se.³ See § 17-27-20(b) (providing the PCR act “is not a substitute for nor

³ Applicant complains about the admission of still-shots from a buy-bust video. Notably, however, these were not introduced at trial. (Tr. 4-6). The photographs entered into evidence consisted of photographs of the home police searched pursuant to a warrant (Ex. 1-2, Tr. 128; Ex. 3-28, Tr.

does it affect any remedy incident to the proceedings in the trial court”); see Faretta v. California, 422 U.S. 806, 834 n. 46 (1975) (“The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law). Because Applicant has failed to set forth a cognizable PCR claim, his application should be dismissed.

Res judicata

Respondent moves to dismiss allegations one and three as barred by the doctrine of res judicata. Pursuant to the PCR Act, a person may institute a PCR action if “there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.” S.C. Code Ann. § 17-27-20(A)(4). “Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties.” Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). “Under the doctrine of res judicata, “[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.”” Id. (quoting Hilton Head Center of SC, Inc. v. Pub. Serv. Comm’n of SC, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)). “To establish res judicata, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit.” Id.

In support of allegations one and three, Applicant contends (1) his due process rights were violated by the prosecutor’s failure to disclose and produce a buy-bust audio and video that was used to support probable cause for his warrant, and (3) his due process rights were violated by his

144); photographs of the townhouse subdivision where the home was located (Ex. 40-41, Tr. 181); and a photograph of Applicant and his girlfriend recovered from the home (Ex. 39, Tr. 182).

inability to cross-examine the confidential informant, which he objected to on the record. These issues were before the trial court and decided by the trial court. Applicant cannot now ask this Court to redetermine an issue that has previously been determined. See § 17-27-20(A)(4) (providing the PCR Act permits an applicant to institute a PCR action if “there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice” (emphasis added)); Plum Creek, 334 S.C. at 34, 512 S.E.2d at 109 (“Under the doctrine of res judicata, “[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.” (quoting Hilton Head Center, 294 S.C. at 11, 362 S.E.2d at 177)); see also Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (providing PCR “is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal”). Thus, these claims are barred by res judicata.

[Conclusion and signature page follows]

CONCLUSION

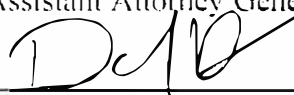
WHEREFORE, Respondent requests the Court dismiss Applicant's claims as barred by res judicata and because they fail to set forth cognizable PCR claims.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

DANIELLE DIXON
Assistant Attorney General



Danielle Dixon
ATTORNEYS FOR RESPONDENT

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June 14, 2023

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Jontez Myrelle Ward #320975,

Case No.: 2019-CP-10-4507

Applicant,

**ORDER APPOINTING COUNSEL
(Christopher L. Murphy)**

v.

State of South Carolina,

Respondent.

FILED
2024 FEB -6 AM 10:34
JULIE J. AMOS
CLERK OF COURT

This matter is before the Court by way of an application for post-conviction relief filed by Jontez Myrelle Ward (Applicant) on August 27, 2019. On October 18, 2023, a hearing convened before the Honorable Maité Murphy on Applicant's Motion to Appoint Counsel.¹ Based on the following, I find good cause to reappoint Christopher L. Murphy, Esquire, as counsel for Applicant.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections serving a twenty-five-year sentence. In April 2016, the Charleston County Grand Jury indicted Applicant for possession with intent to distribute (PWID) a controlled substance within proximity of a park (2016-GS-10-00904) and possession of a weapon during the commission of a violent crime (2016-GS-10-00903). In July 2018, the Charleston County Grand Jury indicted Applicant for trafficking in heroin, 28G or more (2018-GS-10-04100).

On February 5-7, 2019, Applicant proceeded to a jury trial, pro se, before the Honorable Diane Goodstein. Assistant Solicitors Alexander Ziegler and Ashley Brown prosecuted the case. The jury convicted Applicant as indicted, and Judge Goodstein sentenced him to concurrent terms

¹ Applicant had previously been appointed Christopher L. Murphy, Esquire, but had moved to have him relieved.

of twenty-five years for trafficking heroin, ten years for the PWID proximity charge, and five years for the weapon charge.

On February 22, 2019, Applicant filed an untimely notice of appeal. He was represented by Aimee Zmroczek, Esquire. On February 27, 2019, the South Carolina Court of Appeals dismissed the appeal as untimely. Applicant filed a Motion to Reconsider, which was denied. The remittitur was sent June 19, 2019.

Current Application

On August 27, 2019, Applicant filed a PCR application alleging he was being held in custody unlawfully for the following reasons:

1. Brady Violation: his due process rights were violated by the prosecutor's failure to disclose and produce a buy-bust audio and video that was used to support probable cause for his warrant;
2. Prosecutorial Misconduct: "the trial court abused its discretion in allowing the State to present altered and fabricated 'not authentic evidence' of pictures" from the buy-bust video rather than the actual video";
3. Due Process Violation: Applicant was unable to cross examine the confidential informant, which he objected to on the record.

On October 18, 2019, Christopher L. Murphy was appointed to represent Applicant. On July 6, 2020, Respondent filed a Return and Motion for More Definite Statement.

On February 7, 2023, the Court issued an Order relieving Mr. Murphy. According to the order, Mr. Murphy moved to be relieved at the request of Applicant and with his consent.

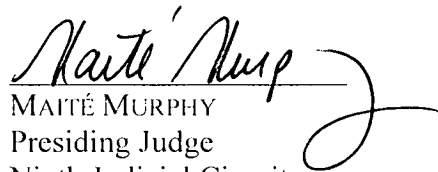
On June 16, 2023, Respondent filed an Amended Return and Motion to Dismiss, contending Applicant had failed to set forth a cognizable claim, and his allegations were barred by res judicata. On June 27, 2023, a hearing convened; however, that hearing was continued at Applicant's request.

On August 1, 2023, and September 10, 2023, Applicant sent Respondent letters requesting counsel. On October 18, 2023, a hearing convened before this Court on Applicant's Motion to Appoint Counsel. Applicant stated the Court had previously advised him of the dangers of proceeding pro se when Mr. Murphy was relieved. Applicant explained he never fired Mr. Murphy. According to Applicant, his son had spoken to private counsel about Applicant's case, and Mr. Murphy asked to be relieved upon learning Applicant intended to hire private counsel. However, Applicant stated he was never able to retain private counsel, and he requested the appointment of counsel.

Based on the foregoing, this Court finds good cause to reappoint Christopher L. Murphy as counsel for Applicant. Cf. State v. Boykin, 324 S.C. 552, 555, 478 S.E.2d 689, 690 (Ct. App. 1996) ("The right of an accused to effective assistance of counsel, however, does not extend to the appointment of counsel of choice" (citing Morris v. Slappy, 461 U.S. 1, 13–14 (1983))).

IT IS THEREFORE ORDERED that Christopher L. Murphy is appointed as counsel for Applicant.

IT IS SO ORDERED this 1 day of Feb, 2024.


 MAITÉ MURPHY
 Presiding Judge
 Ninth Judicial Circuit

St. George, South Carolina

State of South Carolina	)	
	)	In the Circuit Court
County of Charleston	)	
	)	
Jontez M. Ward,	)	
	)	
	)	2019-CP-10-04507
Plaintiff,	)	
	)	
vs.	)	
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
_____	)	

Charleston County Courthouse
March 12 2024

TRANSCRIPT OF HEARING

B E F O R E

The Honorable Walton J. McLeod, IV

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

Christopher Murphy, Esquire
Attorney for Jontez M. Ward

Danielle Dixon, Esquire
Assistant Attorney General
For the State of South Carolina

FOR COPIES CONTACT: Melissa R. Singletary
Certified Verbatim Court Reporter
msingletary@sccourts.org

I N D E X**WITNESS (ES)****PAGE**

Certificate of Service

7

E X H I B I T S

(There were no exhibits marked during this hearing)

Jontez M. Ward vs. The State of South Carolina

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1 THE COURT: All right, are we ready for the next case?
2 Proceed.

3 MS. DIXON: Danielle Dixon, Assistant Attorney General
4 for the State of South Carolina. This is the case of Jontez
5 Ward v. State docket number 2019-CP-10-04507. Mr. Ward is
6 currently serving an active 25 year sentence. In April
7 2016, he was indicted for possession with intent to
8 distribute a controlled substance within the proximity of a
9 park, possession of a weapon during the commission of a
10 violent crime. Those are indictment numbers 2016-GS-10-904
11 and 903. And then in July 2018, he was indicted for
12 trafficking heroin, 28 grams or more. Indictment number
13 2018-GS-10-4100. On February 5th through 7th, 2019 he
14 proceeded to a jury trial before the Honorable Diane
15 Goodstein. At that time he was pro se at his trial. He was
16 found guilty as indicted and sentenced to concurrent terms
17 of 25 years for trafficking heroin, 10 years for the PWID
18 charge and five years for the weapon charge. He did file an
19 untimely notice of appeal on February 22, 2019 and it was
20 dismissed as untimely by the Court of Appeals. The
21 remittitur was sent June 19th, 2019. And Your Honor, this
22 application was timely filed but we are moving to dismiss
23 it on the basis that he has not set forth a cognizable
24 claim for post conviction relief, and also on the basis
25 that two of his three claims are barred by res judicata.

Jontez M. Ward vs. The State of South Carolina

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1 The claims he has set forth at this time is a Brady
2 violation. He alleges his due process rights were violated
3 by the prosecutor's failure to disclose and produce a buy
4 bus audio and video that was used to support probable cause
5 for his warrant. He's alleging prosecutorial misconduct in
6 that, quote, the trial court abused its discretion in
7 allowing the state to present altered and fabricated, not
8 authentic evidence of pictures from the buy bus video
9 rather than the actual video. And then he's alleging a due
10 process violation in that he was unable to cross examine
11 the confidential informant which he objected to on the
12 record.

13 Again, Your Honor, he was pro se at trial. As to
14 allegations one and three, the Brady violation and the due
15 process violation those were all raised to the trial court
16 to be addressed on the record by the trial court. They have
17 been fully considered. They don't set forth a claim for PCR
18 at this time and we would assert they are barred by res
19 judicata. And then his other claim about the court allowing
20 the state to present altered and fabricated evidence, Your
21 Honor, the proper time to object to that would have been at
22 trial, during trial. He chose to waive his right to counsel
23 which --- and elected to go pro se, so any error on that
24 part is on himself and we would contend that he cannot
25 bring a PCR claim against himself.

Jontez M. Ward vs. The State of South Carolina

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1 THE COURT: Mr. Murphy?

2 MR. MURPHY: Thank you, Your Honor. By way of
3 background, Mr. Ward had counsel originally in this case.
4 At some point, prior to trial, he had a hearing with Judge
5 Dennis and asked that he be allowed to represent himself.
6 At those hearings, I know the judges always question folks
7 about making sure that that's what they really want to do.
8 But he indicated that he wanted to relieve counsel and
9 represent himself pro se. At trial, before Judge Goodstein,
10 he asked for a continuance so he could get counsel and
11 Judge Goodstein entertained him and talked to him a lot
12 about this and eventually denied it because he had
13 previously made a knowingly, intelligent waiver of counsel
14 so he proceeded pro se. I have been --- I was appointed to
15 represent Mr. Ward originally in this PCR. I got dismissed
16 the last time or relieved as counsel the last time the
17 state brought up a motion to dismiss, and then I was
18 appointed --- reappointed again.

19 THE COURT: For the same case?

20 MR. MURPHY: Same case. Yes, sir. And so I don't
21 disagree with everything Ms. Dixon has said about him
22 representing himself and not having, not being able to PCR
23 himself. I will say that the pictures that he's talking
24 about, he never actually got a full video of the undercover
25 buy. He got snapshots of it. However, the witness, the

Jontez M. Ward vs. The State of South Carolina

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1 informant, the undercover buy led to a search warrant which
2 they found drugs in his house and that was the issue at
3 trial. So the informant never actually testified and they
4 never gave him the information about the informant, and
5 that was his major issue at trial here. So the only thing
6 that we would ask, and I've explained him the law and how
7 that works, but for the record, Judge, we would just state
8 that he did not have the benefit of the full video when he
9 went to trial.

10 THE COURT: Anything else from the state?

11 MS. DIXON: Just briefly, the two things I heard them
12 mention was the video. Is that correct?

13 MR. MURPHY: Yes.

14 MS. DIXON: And him not being able to cross examine
15 the confidential informant. And Your Honor, those issues
16 were both raised to the trial court during the trial. I
17 believe if you look at transcript pages 49-54 you will see
18 those issues in the transcript. So we would contend they've
19 already been litigated and they are not part of res
20 judicata.

21 THE COURT: All right, let me look it over. I'll make
22 a decision.

23 MR. MURPHY: Thank you, Judge.
24
25

Jontez M. Ward vs. The State of South Carolina

7

STATE OF SOUTH CAROLINA)

CERTIFICATE

COUNTY OF CHARLESTON)

Be it known that I, the undersigned Melissa R. Singletary, Certified Verbatim Reporter, for the State of South Carolina, do hereby certify that the foregoing transcript represents a true, accurate and complete transcript of record of the testimony and evidence introduced in during this testimony of the captioned case, before the Circuit Court for Charleston County, South Carolina, so given on March 12, 2024, to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

IN WITNESS WHEREOF I have here unto set my hand this 16th day of July 2024.

Melissa R. Singletary

Melissa R. Singletary, CVR
Certified Verbatim Reporter

ATT
GS
SOL
AG

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Jontez Myrelle Ward #320975,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2019-CP-10-4507

ORDER OF DISMISSAL

JULIE J. ARMSTRONG
CLERK OF COURT

2024 APR 25 AM 11:03

FILED

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Jontez Myrelle Ward (Applicant) on August 27, 2018. On July 6, 2020, Respondent made its return and moved for a more definite statement. Thereafter, on June 16, 2023, Respondent filed an amended return and motion to dismiss. On March 12, 2024, a hearing on the State's motion to dismiss convened. Applicant was present and represented by Christopher L. Murphy, Esq. Assistant Attorney General Danielle Dixon represented Respondent. After reviewing the evidence and argument at the hearing and the records in this case, this Court grants Respondent's motion to dismiss, and dismisses this PCR action with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a twenty-five-year sentence. In April 2016, the Charleston County Grand Jury indicted Applicant for possession with intent to distribute (PWID) a controlled substance within proximity of a park (2016-GS-10-00904) and possession of a weapon during the commission of a violent crime (2016-GS-10-00903). In July 2018, the Charleston County Grand Jury indicted Applicant for trafficking in heroin, 28G or more (2018-GS-10-04100).

On February 5-7, 2019, Applicant proceeded to a jury trial, *pro se*, before the Honorable
2018-GS-10-04100 ; 2016-GS-10-00903 ; 2016-GS-10-00904

Diane Goodstein. Assistant Solicitors Alexander Ziegler and Ashley Brown prosecuted the case. The jury found Applicant guilty as indicted. Judge Goodstein sentenced Applicant to concurrent terms of twenty-five years for trafficking heroin, ten years for the PWID-proximity charge, and five years for the weapon charge.

On February 22, 2019, Applicant filed an untimely notice of appeal. He was represented by Aimee Zmroczek, Esq. On February 27, 2019, the South Carolina Court of Appeals dismissed the appeal as untimely. Applicant filed a motion to reconsider, which was denied. The remittitur was sent June 19, 2019.

SUMMARY OF TRIAL

At trial, the State's evidence against Applicant consisted primarily of evidence recovered during the execution of a search warrant; probable cause for the warrant was developed through controlled purchases made by a confidential informant (CI). Prior to trial, Applicant (proceeding *pro se*) asked why he kept "receiving bits and pieces of discovery instead of the full discovery." He stated he had still still-shots from videos but had never seen the videos. The solicitor explained that law enforcement had made three controlled purchases from Applicant but had only charged him with two of those purchases. The solicitor asserted,

The State believes he has received all of the discovery he is entitled to. There are videos from the controlled purchases that he has not seen. The State believes that we have the right to protect the identity of the confidential informant still.

We're not—we're not trying those cases. We're not trying the distributions. We are strictly limiting this to the search warrant case. So we believe the Defendant himself doesn't have the right to view the videos that reveal the C.I.

I have provided still shots from the buys to allow him to get the understanding of what's in those. But we're not introducing them into evidence. We're not going to be referring to them in the case-in-chief. And don't believe he has the right to view them.

(Tr. 49-50, emphasis added). However, the solicitor acknowledged one of the controlled purchases (for which Applicant had not been charged) furnished the probable cause for the search warrant. The prosecutor further stated he had previously provided everything—including the videos—to Applicant's attorney, who had been relieved prior to trial.

The Court questioned the solicitor about whether any of the videos contained exculpatory material; the solicitor relayed they did not. Thereafter, the Court ruled:

[W]hile I understand that the State has an interest in nondisclosure of confidential informants, I am unaware of an opinion from the Supreme Court from the United States or the South Carolina Supreme Courts that allows discovery to be excluded for that reason.

Having said that, if I set that aside, if the State maintains that there is no exculpatory evidence contained and there is no intention on behalf of the State to introduce that evidence, and that the one buy that was used for probable cause to obtain the search warrant that there have been still-photographs of relevant portions of that buy that was used to obtain the search warrants, then I think probable cause has been established and discovery has been shared.

....

So, [Applicant], first of all, the tapes are not going to be shown to the jury. And secondly, the State certainly has an obligation to Brady to share in discovery any exculpatory evidence.

The State has made a recommendation—or has made a representation on the record that there is no Brady material contained within the videos, that it does—the State does not intend to admit, and that the still photographs that were shared with you were shared for the purpose of establishing probable cause. So that's—that would be the explanation.

(Tr. 52-53). The Court clarified that the State's desire to protect a CI did not trump the requirements of *Brady* or Rule 5, and the State must disclose any exculpatory evidence to Applicant. However, it determined the State had shared all the discovery with the defense through Applicant's lawyer, and based on the State's representation that there was no exculpatory evidence,

it did not require the State to disclose the video to Applicant.

In addition to raising an issue with the videos, Applicant questioned why he had not had an opportunity to question the CI. The Court explained that he would have a right to cross-examine any witness called by the State, including the CI if the State called that person as a witness. The State, however, did not call the CI as a witness during trial.

CURRENT APPLICATION

In his PCR application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. *Brady* Violation: his due process rights were violated by the prosecutor's failure to disclose and produce a buy-bust audio and video that was used to support probable cause for his warrant;
2. Prosecutorial Misconduct: "the trial court abused its discretion in allowing the State to present altered and fabricated 'not authentic evidence' of pictures" from the buy-bust video rather than the actual video";
3. Due Process Violation: Applicant was unable to cross examine the confidential informant, which he objected to on the record.

At the PCR hearing, Applicant asserted he received still shots from a video of a controlled purchase but did not receive the video itself. He likewise asserted the CI did not testify at his trial or provide any additional information. Applicant did not raise any additional allegations at the hearing. Respondent asserted Applicant's application should be dismissed for failure to state a claim and on the basis of res judicata.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds this action should be dismissed based on Applicant's failure to set forth a cognizable claim. Specifically, this Court finds allegations one and three are barred by res judicata, and allegation two fails to set forth a cognizable claim.

The PCR Act provides:

Any person who has been convicted of, or sentenced for, a crime and who claims:

- (1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- (2) That the court was without jurisdiction to impose sentence;
- (3) That the sentence exceeds the maximum authorized by law;
- (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
- (5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
- (6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

S.C. Code Ann. § 17-27-20. Importantly, PCR is not a substitute for an appeal. *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A PCR application cannot assert issues that could have been raised at trial or on appeal. *Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). “[T]he post-conviction relief procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.” *Id.*

“Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties.” *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). “Under the

doctrine of res judicata, “[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.” *Id.* (quoting *Hilton Head Center of SC, Inc. v. Pub. Serv. Comm’n of SC*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)). “To establish res judicata, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit.” *Id.*

a) Allegations one and three

This Court finds allegations one and three are barred by the doctrine of res judicata. In support of these allegations, Applicant contends (1) his due process rights were violated by the prosecutor’s failure to disclose and produce a buy-bust audio and video that was used to support probable cause for his warrant, and (3) his due process rights were violated by his inability to cross examine the confidential informant, which he objected to on the record.¹ However, as Applicant himself acknowledges, these issues were before the trial court and decided by the trial court. Applicant cannot now ask this Court to redetermine an issue that has previously been determined. *See* § 17-27-20(A)(4) (providing the PCR Act permits an applicant to institute a PCR action if “there exists evidence or material facts, *not previously presented and heard*, that requires vacation of the conviction or sentence in the interest of justice” (emphasis added)); *Plum Creek*, 334 S.C. at 34, 512 S.E.2d at 109 (“Under the doctrine of res judicata, “[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.”” (quoting *Hilton Head Center*, 294 S.C. at 11, 362 S.E.2d at 177)); *see also Drayton*, 312 S.C. at 8, 430 S.E.2d at 520 (providing PCR “is not a substitute for appeal or a place

¹ Applicant’s allegation that he was denied the right to cross-examine the CI is patently without merit here when the CI did not even testify at trial. Applicant’s charges in this trial did not stem from a controlled purchase but rather from a search warrant executed by law enforcement.

for asserting errors for the first time which could have been reviewed on direct appeal”).

Allegation one—a *Brady* violation—was raised at trial when Applicant questioned the Court about the videos he had not seen. Likewise, allegation three was also raised to the trial court. To the extent Applicant disagreed with the court’s ruling, Applicant could have pursued that issue through a timely appeal.² Because these allegations could have been (and were) addressed at trial, they are not proper PCR claims. *See Drayton*, 312 S.C. at 8, 430 S.E.2d at 520 (“[T]he [PCR] procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.”). Further, because these allegations were previously raised to (and ruled upon by) the trial court, they are barred by res judicata. Finally, this Court lacks the authority to consider whether a different circuit court judge erred in its decisions. *Cf. Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986) (“One Circuit Court Judge does not have the authority to set aside the order of another.”). Thus, these claims are denied and dismissed with prejudice.

b) Allegation Two

In allegation two, Applicant alleges “the trial court abused its discretion in allowing the State to present altered and fabricated ‘not authentic evidence’ of pictures” from the buy-bust video rather than the video. Although framed as an allegation of prosecutorial misconduct, this Court finds this is actually an allegation of trial court error that is not cognizable under the PCR Act.³

Here, although Applicant did not object to the admission of any photographs (and thus did not preserve any issue related to them for appeal), any evidentiary concerns about the pictures should have been raised to the trial court and are not a proper basis for PCR here where Applicant

² Applicant did not raise any claims related to his direct appeal in his PCR application or at the PCR hearing.

³ To the extent this can be construed as a claim of prosecutorial misconduct based on fabricated evidence, Applicant did not present any credible evidence that the evidence was in fact fabricated.

proceeded pro se.⁴ *see* S.C. Code Ann. § 17-27-20 (providing the PCR act “is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court”); *Faretta v. California*, 422 U.S. 806, 834 n. 46 (1975) (“The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law). Although the Sixth Amendment guarantees a criminal defendant the right to effective assistance of counsel, Applicant waived that right when he elected to proceed pro se, and this Court finds he cannot now assert a Sixth Amendment Violation related to his own trial conduct. Because allegation two is not a cognizable PCR claim, this Court finds it should be dismissed.

CONCLUSION

Based on the foregoing, this Court finds Respondent’s Motion to Dismiss allegations one, two, and three should be granted, and those allegations are denied and dismissed with prejudice. This Court further finds Applicant has not set forth any additional, cognizable allegations, either in his application, in an amended application, or at the PCR hearing; thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. *See* Rule 203, SCACR. Applicant has the right to an appellate counsel’s assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant’s behalf. Rule

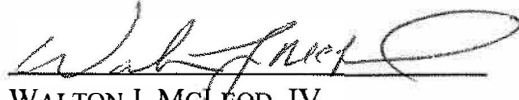
⁴ Applicant complains about the admission of still-shots from a buy-bust video. Notably, however, these were not introduced at trial. (Tr. 4-6). The photographs entered into evidence consisted of photographs of the home police searched pursuant to a warrant (Ex. 1-2, Tr. 128; Ex. 3-28, Tr. 144); photographs of the townhouse subdivision where the home was located (Ex. 40-41, Tr. 181); and a photograph of Applicant and his girlfriend recovered from the home (Ex. 39, Tr. 182).

71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

IT IS SO ORDERED.


WALTON J. MCLEOD, IV
Presiding Judge
Ninth Judicial Circuit

THIS 8 day of APRIL, 2024.

Lexington, South Carolina