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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable Clifton Newman, Circuit Court Judge

EDDIE BLASH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001374

APPENDIX

SARAH E. SHIPE
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

DANIELLE E. DIXON
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3970

ATTORNEYS FOR RESPONDENT

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	)	00-GS-21-839
COUNTY OF FLORENCE	)	
THE STATE,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	
MICHAEL GEORGE MONFRIES and EDDIE BLASH,	)	
	)	
Defendants.	)	

August 13-16, 2001
Florence, South Carolina

B E F O R E:

THE HONORABLE B. HICKS HARWELL, JR., Judge;
and a jury.

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

PATRICIA SINGLETON-PARR, Esquire
JACK W. LAWSON, JR., Esquire
Assistant Solicitors for the Twelfth Judicial Circuit
Attorneys for the State

DEBRA O. JACKSON, Esquire
WILLIAM N. NETTLES, Esquire
Attorneys for the Defendant Monfries

HENRY M. ANDERSON, JR., Esquire
Attorney for the Defendant Blash

PATRICIA A. McDANIEL
Circuit Court Reporter

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MONDAY, AUGUST 13, 2001

(WHEREUPON, during the morning hours, this case was called for a jury trial; and the voir dire and jury selection was conducted before The Honorable James E. Brogdon, Jr., with Francis Bakis as the court reporter.)

(COURT REPORTER'S NOTE: During the entire trial, Defendant Monfries was absent from the courtroom.)

(WHEREUPON, at 3:16 p.m., court reconvened in this matter, with Defendant Blash and attorneys for all parties present in the courtroom.)

THE COURT: All right. Bring us the jury.

(WHEREUPON, at 3:16 p.m., jury entered open court.)

THE COURT: What have I got? One alternate?

MR. LAWSON: Two.

MS. PARR: Two alternates.

THE COURT: Two alterna- -- I got two alternates. Yeah, I see I do. May or may not use the alternates. But I'm assuming --.

How many witnesses for the State, approximately? Give me a guesstimate. I'm not gone hold you to it.

MS. PARR: Your Honor, we have approximately twelve (12) witnesses.

(WHEREUPON, the court whistled.)

THE COURT: And the defense cannot be compelled, is not required to take the stand, or call any witnesses;

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and, if they elect to not to do that, it's not relevant; and I would tell you at the time that they assert their constitutional right to remain silent, equal protection, due process, Fourteenth 'mendment, Sixth Amendment, all the amendments -- Those constitutional rights, once they are asserted, they can't be compelled. They may incriminate themselves.

Now, don't watch her. Look at me. I want all of you looking at me when I'm talking to you.

You can't hold it for or against them, and I don't know what the defense intends to do. They're not required to prove themselves innocent. Now, in some of the civilized areas of the world, even in some western countries, when a person is charged with -- with a -- an -- criminal offense, either by a victim or by the State, being the prosecution, they have to prove they're innocent. That never has been the law of these United States since we became a free republic when we declared our independence from England during the time of the revolution. Never has been the law of these United States. Every person charged with a crime, by law, is presumed to be innocent. They are not required, he or she or they, to prove they're innocent.

The burden of proof is a much higher and greater standard than used in civil cases. The measure or

standard of proof is they must prove it beyond a reasonable doubt; and the jury must be unanimous in their decision; and, if the State proves by that burden beyond a reasonable doubt, your duty will be to convict. If the State does not prove the guilt of the accusation contained in the indictments and every element that composes the offense, they do not discharge that burden of proof beyond a reasonable doubt. It is equally your duty to acquit.

You don't have friends to reward, and you don't have enemies to punish. You're gonna be chosen and are chosen as judges, the sole and only judges of the facts. You gone determine what those facts are and reach a verdict that speaks the truth of the evidence from those who testify from that witness stand and place their hand upon the Bible, swear before God to tell you the truth and nothing but the truth.

You gone have to observe each of those witnesses, the manner, their demeanor, and whether the evidence or testimony from a witness is straightforward or hesitate. Is it substantiated and corroborated by other evidence in the case? You gone have to listen.

That means there'll be no closing eyes. And I've had juries -- "You 'sleep?" "No, Judge, I had my eyes closed. I was meditating. I was praying." Can you imagine what it's like?

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I'm sitting up here, gone be the sole judge of the law. I'll give you the law and instruct you, at the conclusion of the testimony and the summation by the lawyers, the law in this case that'll be applicable; and, even though you do not know that law now, I promise you, in that charge, you will understand it

And each of you need to pay strict attention. You don't need to be looking at the ceiling. You don't need to be looking at Ms. McDaniel. You don't need to be looking every time that door open and closes when somebody's coming in 'cause you're being distracted.

You can't take notes. And you'll say, "But, judge, I want to take notes when we take a break and when I go home. This thing's important. I want to -- I don't want to forget it." Well, you'll be taking something out of context; and you'll be saying to your fellow jurors, to me, this is more important than anything else in the case. You're then focusing on that.

I've had jurors send me out a message. "We'd like to hear the testimony of the State's witness;" or, if the defense puts up a witness, which they don't -- can't be compelled to do, "we'd like to hear that witness on direct"; that is, the party calling them; or "we'd like to hear it on cross-examination." No. We're not gone do that.

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You're already heard -- You're already heard you -- her tell you how many witnesses she's got. Some of those witnesses might be short or brief. Some of them may take a half an hour. Some may take an hour. Some may take two hours.

But you're not gone take it out of context. And if you don't remember and you're not listening, you gone be doing -- Some of them get involved at the end of the trial, which'll be over around Thursday or Friday at the earliest; and you'll be sending out messages. "We want to hear John Doe. We want to hear Mary Roe. We want to hear that wit' on cross, or we want to hear it on direct." We not gone do that. If you can't reconcile that testimony because one or two or three of you's mind was somewhere else, I didn't let you go to sleep. You didn't yawn. You didn't close your eyes. But now you're gone be involved in the case during the period of deliberation, and now you can't remember anything, so you got to hear it again. And you're not gone hear it out of context. If that witness took two hours, then all of you are gone be subjected to come back into the courtroom. And I nei' encourage nor discourage it, but it shouldn't be necessary if you're doing your job, if you're mentally present.

But I can't assure -- There's one already got his head weaning -- leaning back up against the board back

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there. You get too comfortable -- Yes, sir. You get too comfortable, the first thing you know you gone be (made snoring noises) -- or you gone be (nodded and jerked).

Now, let me ask you, if you are judges just like me, with a tremendous responsibility -- And there's no greater duty than what you're being called upon to perform. There is nothing equivalent to serving on jury, with the exception that something approaches it; and that's service to one's country during time of war. This is an important task you're about. It involves a possible loss of liberty and freedom, the most precious thing a person has, more precious than money.

And like Patrick Henry said, "give me my liberty, give me my freedom, or give me death."

It's important work you're about. What do you think these lawyers and the witnesses and the people who work with this court looked up here and saw me doing this (nodded, jerked, made yawning and snoring noises) -- I'm not fit to be on this bench if I exhibit that kind of behavior.

Do you know then what I'm gone do if you do that? I'm gone declare a mistrial. And then I'm gone hold you in contempt, and I can fine you ten thousand ($10,000.00) dollars. And as long as I don't put you in jail over six months, you can't appeal it to another judge. You're not

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entitled to another judge. You're not entitled to a lawyer, even if you could afford one, or to be appointed one. So you see how serious it is. It's serious business.

That's when I see your head, and you're relaxing. If you've got a problem and you're tired, you stand up and you do isometrics; but you make sure you got your mind here.

And you start sending me out messages at the conclusion of this trial. "We want to hear" -- Like one told me in Marion, "judge, we want to hear all the testimony." You mean you want to try it next week. You want let's bring -- play the transcript (sic). "Send us the transcript." She's good; and she can get it for you sometime around January, this being August. And you'll say I want to hear that testimony. We can find it in the record, and we can play it back for you.

You can't take notes. I don't want you to have cellular telephones. You better not have a cellular phone in there. The Chief Justice says, if you do, take it from them and keep it. Probably didn't read that downstairs, but that's the order. If you've got cellular telephones, you got beepers, don't bring them in this courtroom tomorrow.

Now, there's one thing that jurors always -- that we

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all have in common. I have to admit to you I have to fight it too. We're impatient. Want to make a decision, and I'm ready to make it right now. Psychologists and psychiatrists -- I had one-o-one (101), an introduction to psychology. I'm not expert in this field. But they say human beings impatient, want to make a decision, just like quick concrete. Want to pour it. And then immediately starts to harden, set up. And you've already come to that decision and that conclusion. And when you pour concrete like that, you got to take a jackhammer and then try to break it back up and pour it again.

Three males, five minorities, and nine women, and two alternates. That's about as diverse a jury as could have been chosen, although I didn't go up and look at it, from age, from work, from experience. And the one thing you all have in common is common sense, and that's all that you need. That's not the weakness, the gender, the age, the background of each of you, very diverse; and that's not the weakness of this jury. That's its strength.

And a verdict has to be unanimous. All twelve have to agree, and it's no verdict. The word verdict, just like most English words, sixty (60%) per cent of them, come (sic) from Latin; and the word in Latin for verdict is veredicto; and it means to speak the truth, to speak the truth of the evidence in this case. No friends to

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reward. No enemies to punish.

Each of you have got a diverse background, both in education, in work, some married, some single, some housewives, homemakers. That's an important job. And another of you have other work.

The job that you two alternates play -- If I left to go to Sumter or Columbia to visit my grandchildren or if I was assigned to Charleston or if I was assigned to Anderson or Greenville or Rock Hill, -- And I've been all those places. -- I wouldn't leave without having a -- I hope you're not insulted by me using this as an expression. -- I wouldn't leave without knowing my spare tire was up and full of air, knowing if I break down I'm gone be able to call and say I'll be a little bit delayed but I'm gone keep on rolling, soon as I get my spare on.

Forty (40%) per cent of the time when a case lasts three or four days, there's gone be an emergency. I hope I ain't saying -- Sometime the Bible says your words will come back to haunt you. But I've had people to die. I've had people to make (sic) heart attacks. I've had people -- members of the family get sick, and hopefully that won't happen. I've had helicopter peeper out -- people out on a jury with their husbands suffering heart attacks, to Columbia, to Providence. And we've got surgeons here now that can do all of that. Had all those things happen.

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If it happens and it doesn't happen to more than two of you, I've got alternates I can put on. So you've got to listen, the two of you, too. You may won't be in the deliberation. If we don't have an emergency, it -- before you begin deliberations, I can excuse you. But you gone be a part of this jury until that deliberation; and, if somebody is ill or they have an emergency, I'm gone be able to put you right on and keep on going, provided we don't have more than two that I have to excuse. So it's a great deal of relief to me to know we've got two alternates. So we've got almost every contingency covered, at least for two of them.

You've got to be punctual. You've got to be on time. You don't come. We'll all sitting here waiting. Your jurors gone want to know, you come in here thirty minutes, forty minutes, what your situation is. Always got somebody with an excuse that's always late or have an emergency, and they don't call me; and I got to wait an hour and a half, two hours until I find out 'cause I can't put the alternate on 'til I know what your circumstances are, if you had a death or you sick or you ill; and, once I find that out, I don't have to ask these lawyers if I'm gone put an alternate on. I just put him on. But until I know your circumstance, that it was an unforeseeable event that delayed you, I can't put them on. I've got to wait

until I know your circumstances, and you've got all of us here waiting on you, so you got to be punctual.

Some of you live in Johnsonville. Some of you live in Sardis. Some of you live maybe down in Olanta. Some of you live in Lake City. Maybe some live in Timmonsville. Maybe some live over in the Sardis community, but you got to be here and be on time. If you -- You've got to communicate with me unless you want me to hold you in contempt. You've got to -- As soon as you can get to a phone, you've got to dial 9-1-1. Tell them you're on the tenth floor in a jury with Judge Harwell. Tell him I can't be there. I've had a wreck or my mama's in the hospital with a stroke. You tell me what the circumstances are. You communicate that as soon as you can. If that's the day before or at night or before you s'posed to be here at nine-thirty (9:30) in the morning, you let me know that.

Now, I've told you most people want to make a decision. "I done heard one or two witnesses. That's all I want to hear. I done made up my mind what I'm gone do in this case." Or maybe you heard some of the witnesses, and you meet each other at the grocery store or the service station, and so you decide you done bonded with one of the jurors, and you want to talk about it. "Well, what do you think about that witness? Witness was pretty

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impressive. How in the world is the defense gone be able to defend that kind of testimony?" Or you might say, "Well, one witness was very impression; but the other one didn't impress me at all." You've started deliberating the case.

You're like my mother that sometimes she's gone bake a cake, and she'd forget because she couldn't -- She didn't have a timer on the oven, and she didn't have something that said go off in the thirty (30) minutes set at three-seventy-five (375), and she was baking a cake, and she left out the baking soda, and the cake never rose. It was flat. And another time it got too hut -- hot, and she had too much baking soda in it, and the cake blew up all over the oven. Boy, was I glad. I didn't have to lick the pot. I licked the oven. Got a spoon and cleaned it up for her.

Had another friend, he'd always take it out, old fish; and it'd be frozen; and he'd let it thaw out in the stew; and it'd be bloody and messy. He'd put everything in there, the onions and the bell pepper and the sage and the seasoning, and just stir it all up and bring it up to a boil; and then it -- Boy, you talk about indigestion. I think it took me ten (10) years that I realized that's why I developed an ulcer, eating his catfish stew.

Had a friend, I asked him, "Come over and eat with

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us."

"Oh, man, I'd love to. My wife ain't coming down as -- to the lake," and you'd -- coming 'cross the lake in his little pontoon. "I'd love to. Who's cooking?"

And I told him Johnny. I ain't gone tell you his last name.

He said, "Don't misunderstand me. He's a friend of mine. I wouldn't eat nothing that nasty cook had fixed."

Well, the first thing you do is you let the fish, if it's frozen, thaw out, or if it's fresh. Then you put everything in, and you stir it around; and then the next thing you put in, you put in the onions and the bell peppers and a little more sage and a little bit of spice and have it -- And then you taste it, and you warm it up. And then, umm, that taste just about right. And then you bring it up to a boil, and the last thing you gone put in is your fish, isn't it? You men are -- could fish (sic) a stew. Maybe add a little more pepper to it or seasoning.

A lawsuit is just like that, whether it be a civil or a criminal case. You've gotta be patient. You've gotta wait until all of the ingredients -- 'til all the testimony's in there. Then you gotta hear the summation of the lawyers sum up for you their view of the case and then the charge of the law.

You can't lay concrete. You can't start cooking and

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cut the oven on. You don't even know what the law is, and you hadn't got all the ingredients in. It's gone blow up in your face because you're impatient, and yet you gone decide this case. You gone be the sole and only judges of the facts, not me, you individually and collectively, and write a verdict that speaks the truth. It's not a difficult job. It is if you decide you gone make shortcuts.

I've know some people say, "Aw, please, don't tell me to be patient. I'm -- I'm a hardheaded per'. My (sic) made my mind." I've had people tell me "I made by mind up; don't try to reason with me now." That person would not be a good juror 'cause he hadn't got an open mind. Mine closes. Snapped shut. Set in concrete. You gone have to be patient.

Now, there's something else. You've been chosen as fair and impartial jurors. You don't have any bias, any prejudice, against anybody. You'll be the truth-finders.

You start sending me messages out, after you've been charged that you're retiring for the purpose of deliberating, then it becomes obvious to me that somebody mentally was not here but somewhere else. Rather be at home or to be at work; might even like to be on vacation, fishing. You didn't listen, and you didn't pay attention. It'll become obvious to me.

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Each of you got a job to do. That's why I -- You won't be conscious of it, but I'll be watching each of you, and I'll be looking for the Irish (sic) -- That's the white part of your eyes, and I don't see them. I'm gone jerk you up. You look like you getting too relaxed. You gone to slouching. I'm gone jerk you up. I ain't gone do it but one time. Judges don't do that. If I did that, I'm not fit to be on the bench. If you do that, you ain't fit to be a judge; and that's what you are. You gone have to conduct yourselves that way.

Now, you all got friends, family, wives, somebody that's your confident. I don't want to sequester this jury. And when I mean (sic) sequester, that means when you leave here I don't want to put you in a motel and put a policeman in front of your door and take your television and your radio and your telephone and your newspaper from you.

I don't expect they'll be any publicity in this case. There may be following and afterwards, but I doubt there has been any, and all of that would have been determined before you'd been chosen.

But as you hear the evidence in this case and it hadn't all been completed, you go home and say, "Honey, you know that case I'm sitting on involves something, something, someone, so and so"; and then he's gone have

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some advice, or she or whoever your confident is gone have some advice for you. "Here is what I'd do if I was on that jury." They're not on this jury. They've not gone hear the evidence. They're not gone hear the law. And I don't care, and neither do any of these lawyers and their witnesses care what your confidant's opinion is, and you better not unless you want to go to jail. Don't you dare do that.

If I thought you were gone do that, you wouldn't go home this evening. You wouldn't sleep in your bed. I'd send you with a deputy sheriff to your home now to get your hygiene needs and your change of clothes for the rest of this week.

Don't you do that. Don't you violate that oath you gone take in the morning. Don't you tell your sweetheart, your confidant, your boyfriend, your husband, your employer, your partner. Don't you tell a living sole anything about this case until the verdict has been rendered. Then if you choose to do it, you can talk to anybody you wish to; and you can say "you gone be sorry you asked me; I'm gone tell you more than you want to know," if that's what you want to do. If you don't, you contact me.

And when you go under oath tomorrow, these lawyers and sometimes I decide I want to do it myself. I'll

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decide I'm gone test you on your oath. Have you allowed anyone to discuss this with you? Have you talked with anybody about this case? And if you have, you better tell me. And don't you think it won't out. It might be next week, next year; but, when it does, you going to jail. And it will out. So you gone have to keep your own counsel.

And you gone have to keep an open mind. And you cannot even consider your verdict and deliberating this case until I instruct you on the law and say, "Now you are retiring to your jury room for the purpose of considering your verdict." And until I give you that instruction, you will not even speak to each other about it; and neither will you cut that oven on and start cooking or analyzing.

Don't you tell me, for heaven's sake, how you gone do that and you don't even know the law -- the law that's applicable to the case. And you'll say, "Well, I done heard some of it; I got some of it in here; can't I start baking this cake."

Like a forelady said -- One of the things she told me after they decided a case down in Conway six weeks ago -- Said, "Judge, we want to give you a book." And I looked in the fly leaf of the book; and it said in there it was a recipe. We learned don't bake a cake before it's ready.

Don't do that. Please don't do that. Don't blow it

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all out the window because you're impatient. Don't cause a mistrial because you're so bored, and "I'm just a filler; I ain't got no job to play; let the other 'leven -- I'm just gone go along with it."

And let me tell you something else. Some of you may have strong feelings and emotions. You may be like me. I'm half deaf. I apologize for it. I can't help it. My wife say, "Why you raise your voice at me; just cause you deaf, I'm not deaf." And some of you are adamant. Some of you may be like my wife says I am, extremely extroverted, dominating and domineering. It gone be my way, no other way. Gone have to agree with me. Got to do it my way.

Just like the foreman three years ago over in Marion -- I hate to keep citing Marion. But this is where it seems it all occurs. Two people jumped up -- And after they came out -- And I thought they had something. They had it reduced to writing, question they had for the court; and what they wanted is just come out of the jury room; and two people jumped up and said, "Judge, can anybody have an opinion other than this forelady; she's trying to make us bend to her will; and it'll be no other way."

I don't know who's gone be the foreperson, forelady, foreman. That person is gone preside. That person is

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gone ask for discipline. Everybody's gone have the opportunity to speak, he or she, as often and as frequently as they choose to, but not all at once, not all at the same time.

But I'm gone tell you there are some on this jury that are introverted and probably like my wife; and she was valedictorian in junior high school, high school, and college; and she's got more sense that I got. I would never admit it to her, and don't you tell her if you know her. But you ask her an opinion. It's always a reasoned opinion. And that person that's introverted -- That foreperson draws that person out. -- has got something they can add, something that's extremely important and needs to be heard.

My father used to point out to me when -- And I never will forget it. When I was in my teens, he thought it was real important. He said, "You see that woman coming across the street over there." Hicks said, "Yes, sir." Says, "She's not had every opportunity that a lot of people have had. She's worked hard all her life, and she's raised a lot of children. But, you know, her manners are impeccable. She hadn't got much formal education, but she's a lady."

And sometime that day or later, he'd see some -- Say, "See that gentleman over there." Call me and say, "See

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that gentleman. His manners are impeccable. He's a gentleman."

That's the highest, my opinion, nicest compliment that could be paid to any one of you; and I expect it to be said of all of you and each of you. You gone treat each other with respect.

Well, I used to think it was funny, having practiced law for thirty-three (33) years. I would hear somebody back there hollering and shouting; and I'd say to whoever was in here, one of my par', "Boy, I hope they with us; they back there fighting my case for me; I hope they can bring the other 'leven with them."

But I don't think it's funny anymore. You know why? Because two years (sic) in the courtroom upstairs with Ms. Gregg and several others present, a little lady came out of there with tears streaming down her face, hyperventilating. (While panting and with distorted voice) "I want out of here; I want out of here; I want out."

I said, "My God, she's having a heart attack; call an ambulance; call the paramedic; call the Emergency Room."

Conyers O'Bryan was in there. Couldn't talk to him right there. He calls me back and said, "What you trying to do? Kill my patient?"

Hadn't had a panic attack in nineteen (19) years.

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Says a big fellow in there shaking his finger. "I don't agree with you." Wouldn't let her speak her part, have her say. Adamant, intimidating.

If I hear that kind of shouting, that kind of animated noise coming from that jury room, I'm gone ask the foreperson if they know; and I hope it ain't the foreperson. If it is, one of y'all gone tell me; and I'm gone send that person straight to Effingham and take them off; and I'm gone have to have a mistrial; and I'm gone charge them for that because I have already let my alternates go; and there's no way in a criminal case that you can proceed with less than twelve people on a jury; and we gone have to try it again; and you gone pay for that.

I make a pretty good salary; and you gone pay for a portion of my salary, her salary, the Clerk of Court, the witnesses that any of these people had to subpoena for you causing that mistrial.

So I'm gone demand that you be ladies and gentlemen. You'll have an opportunity to speak as often and frequently as you choose, those of you that are extroverted and got strong feeling convictions. Foreperson gone let you speak, but you're not gone just take control.

And I tell you something else. Whoever the

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foreperson is, their job is no more important or less important than the other jurors. You'll have your opportunity to express your opinion about the facts as well, but you won't be dominating. You will be giving everybody an opportunity to speak.

Now, I want to know have I got any school teachers, former school teachers on this jury.

(WHEREUPON, a jury raised a hand.)

THE COURT: I got one. You just became the forelady. Exchange positions with her, please.

(WHEREUPON, the jurors exchanged seats.)

THE COURT: Now, let me tell you why I chose you. What do you teach?

FORELADY THOMPSON: History.

THE COURT: Are you still teaching?

FORELADY THOMPSON: No.

THE COURT: You retired now?

FORELADY THOMPSON: Yes.

THE COURT: When did you retire?

FORELADY THOMPSON: Two years ago.

THE COURT: And what grade did you teach?

FORELADY THOMPSON: Seventh and eighth.

THE COURT: Seven and eight. Private school or public school?

FORELADY THOMPSON: Public.

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THE COURT: Public school. If you could teach school with seventh and eighth graders, -- And I got a granddaughter just finished the eighth grade. -- you'll have no problem with the discipline of these eleven individuals that's gone be on this jury with you. And that job is not gone be one that's gone be intimidating, and I'm gone explain your job in detail to you at the conclusion of the testimony.

FORELADY THOMPSON: Yes, sir.

THE COURT: And I'm gone swear you tomorrow, and that's gone be your seat. It's reserved for you. No one's gone sit in that seat but you.

Those two seats back there, you two can interchange those two seats; but that's your seats. Nobody's gone sit in the alternate seat.

Now, the rest of you can sit anywhere you want to, provided another juror hadn't gotten in that seat before and occupied it before you got there. Some of you down there might want to get a little closer up. Some of you on the back might want to come up on the front row. Some of you on the front row might get on the back row. I don't care, but y'all can sit anywhere you want to, but you don't have re'vered (sic) seating.

I had a little lady -- A big old fellow had set down by this attractive foreperson. And she wanted to sit

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there with the foreperson, and she stared at him, and he finally got up. And I said, "Sit back down; that seat's yours." I said, "Ma'am, you got to find a vacancy. That seat don't b'long to you."

When we take breaks, you the last one to come out. Don't come out until they all ready to come. Some may be using the facilities, and they'll come out, and they'll be as embarrassed as the lady wearing that red blouse on the back back there. "Oh, everybody knows I'm the" -- Or that red blouse or dress that lady's wearing over there. Their face will be red; and they'll say, "Well, they done went out, and I'm holding everything up, and everybody knows I've been in there using the facilities, and I'm just slow." So wait 'til everybody's ready to come, and you be the last one out of the jury room.

And if I send word and we take a break, we're ready for you. If your jury's not ready, you tell the bailiff. I'm just saying we ready, but we were working for you.

Now, I'm gone be kind to you. I don't want you to think because I'm raising my voice that I'm a terrible taskmaster and I'm just looking for a way to jump on you, but I'm not gone do that. I'm gone be as courteous to you as you gone be to me, and I know you gonna be and to each other.

But the only thing these -- probably these lawyers

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are gonna agree to is that you are the twelve and, if something happens, the alternates that they want to hear this case; and that means you got to do what I have to do every day. You've got to pay strict attention. You can't be distracted. There is nothing more important than the work that you're about. And I'm gone tell you just briefly what your job is tomorrow as the finder of the facts; and, believe it or not, it will be brief.

These lawyers will give you their view of what they hope to establish or prove, the prosecution; and the defense attorneys, if they choose to, will give you their view of this case; but they don't have to make an opening statement; and they can't be compelled and they don't have to offer any evidence; and they don't have to call any witnesses; and nobody can compel their clients to take the stand; and, if they elect to assert those constitutional rights, you're not to consider that for or against them because they're presumed to be innocent; and that places the burden on the accusers.

You'll hear an indictment, and the elements of the charges in that -- contained in that indictment we'll explain to you later at the conclusion of the trial, but that indictment is not gone be evidence. It is merely the means by which this court obtains jurisdiction. An indictment is not a trial jury (sic). They'll say, "Well,

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the grand jury found probable cause. That's enough to convict right there." No, it's not. It's not relevant because it's not evidence. Eighteen people, it's a tool of the prosecution. The lawyers, the defense, they can't even be present. It's a secret proceeding. It's an investigative body, an accusatory body, determines only probable cause. They ought to have a right to come to court and enter their plea of not guilty and have their trial. It's all it means. I never send it in to the jury room because the jury'll get to reading and say, "Well, it must have some consequences involved here." It's an indictment. It is not evidence.

After you've arrived at a verdict, whether it be not guilty or guilty, I'll give it to the forelady and say sign it, what your verdict is, on the back of this indictment. But I don't send it in there. It's of no consequence. It's not evidence.

Now, lawyers, what they say to you tomorrow in their opening and what they say to your throughout the trial and then summing up for you their view of the testimony, I want you to remember. You'll gone hear this again. It'll be in the charge. This is just an or- -- It's not evidence. Wouldn't be proper -- proper. If they were gone be witnesses, they couldn't be representing their clients or the State. They didn't place their hand on the

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Bible, and they didn't take that witness stand and subject to direct or cross-examination.

They're advocates. Prosecution advocates guilty. Defense advocates not guilty. Didn't prove it. Nothing wrong with that. None of them would be worth their salt. They've taken an oath, a sworn obligation, their duty to put the case in the light most favorable to the client's interest that they represent as an advocate. That's what the word lawyer means.

This isn't a trial between lawyers, who I like, who I dislike, which one is the better one. This is a case -- What your job is a sole and only judges of the facts. I can't invade your province and differ with you or imply and infer what the facts are in this case. I'm not entitled to that opinion, and neither should you draw from any rulings or anything I've said or say to you that I have an opinion. I tell you I've been drawn just like you to be fair and impartial, to preside over this case, and give both the State and the defense a fair trial.

And you've been chosen and to determine to make these lawyers follow the rules of procedure, the rules of evidence; and sometimes you don't understand. You're -- And somebody will object and say, "Judge, I objecting to what that lawyer just asked that witness."

"What's your objection?:

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"He's leading the witness," for examp'. "He's trying to testify through the mouth of his witness, suggesting the answer."

And I say, "You can't do that. I'll sustain the objection.

And you'll say, "One strike against that lawyer."

No, no. Any rulings I make shouldn't have anything to do with your consideration of the facts in the case.

And then on cross-examination, the lawyer on cross-examination starts leading the witness all around the courthouse and in the courtroom. And you'll say, (with distorted voice) "Don't seem fair to me. He don't let the other lawyer do it."

The leading -- It's a different rule altogether. It's not his witness. It's an opposing witness, a witness against him. He got a right.

But now you've started to cross the line. You want to do my job now. You want to be a lawyer. You want to start considering what the law is, and that's not your job. Just as it's not my job to dictate to you what the facts are in the case. That's for you and you alone. So don't meddle and cross that line.

And there'll be maybe -- something maybe hearsay. If one of the witnesses -- What someone said to him, one of the defendants, one of the accused, that an exception to

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hearsay; but, if it's something else that's hearsay and -- and these are not trained witnesses and they testify and somebody says I object, I'm gone sustain it. You know why I'm gone sustain it? Because the party doesn't have an opportunity to confront someone they're testifying from to cross-examine them on the truth of that evidence. There's good reasons for those things, but please don't you get bogged down in my job.

You listening to me?

Now, I try to tell you everything you need to know, like the C.I.A. and the security advisor tells the President. Will tell the President what he needs to know when he needs to know it. There are some things you don't need to know because there might be evidence that they'll say they want to put that I'll say it ain't admissible, and we might want to take in camera. We want to send you out of the jury room (sic) while I take it up. And I might decide, well, I'm gone let it in.

And then when you come back in here and say, "We have an objection, and now there's been a proffer on some testimony and the judge is letting it come in; now, that must be the gospel; or the judge wouldn't let them testify to it; now, we can take and run with that. That's an undisputed fact."

Oh, no. I just said under the rules of evidence it's

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admissible, but it's like any other evidence. Whether you believe it or not, that's for you, not me. I just said you could hear it. That's all I said.

Now, of every one of these witnesses -- And some of you have a habit you want to look down, or you want to look away. And you do that when I'm talking to you, and you gonna -- inclined to do that when a witness -- When I look at you, I want to see your eyes riveted on that witness because then I know you're listening because you gone have to judge the credibility to determine the truth in this case from every witness that testified. Now, how you gone do that if you don't observe the manner and demeanor, whether the speech is halting or straightforward or whether its hesitant or whether its substantiated or corroborated or whether its conflicting? How you gone judge each one of those witnesses?

And you say, "Well, judge, I don't use no works like credibility. What the heck does credibility mean?"

It means you've got to determine the believability of every witness that's swore de'fore God to tell you the truth. Credibility means nothing more than I believe that person. And you can believe a portion, part, some, all, or none; but you've got to determine the credibility of each witness that testifies.

Now, it's four (4:00) o'clock. We may have -- Later

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in the week, we may have to run late; but we won't run longer than you want to; and, if you need to have food brought in, we'll bring food in; and it might be we'll have to start taking meals in the middle of the day rather than taking hour-and-half breaks with this many witnesses.

I don't want this case to run over beyond Friday. It may go to Saturday. It may have to go into the next week. I hope it doesn't. We gone try to -- But, you know, time is not of the essence; and it -- Looking at your watches won't help you. Justice is. You're about a noble undertaking, doing justice; and it doesn't have a time clock; and you gone have to be patient; and I know that's difficult. That's not our inclination.

And you gone have to go to bed tonight at a reasonable hour; and you'll say, "Well, I ain't working." Don't nobody go to a second shift or a third shift tonight. You gone up here, and you gone fall asleep, and I'm gone send you a place where I'm gone pay the motel bill for you. Or the county is. You get a good night's rest.

And you'll say, "Well, I don't know why I got to do that. I don't need 'bout five hours sleep. I hadn't seen old Jay or -- Jay Leno; I hadn't seen David Letterman; or I hadn't watched the late, late show. I'm gone stay up two (2) or three (3:00) o'clock in the morning."

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And then you gone be up here at nine-thirty (9:30), and you gone be yawning and dozing over there on the jury, and you gone cause us a mistrial. Somebody is not gone be happy, or somebody might be happy, but they'll want to do this all over again because somebody on this jury wasn't paying attention because your verdict and finding of facts is not appealable in this state unless one of you fall asleep or so inattentive.

If I make a mistake, they've got -- either of the parties want to make, got a right to appeal it on an error of law, not on an error of fact. You see how important your job, more important than mine. More important than anyone's, other than the people involved in it.

This is important work. You judges. You gone conduct yourself as judges. 'Member that. Judges. And do respect and do honor, and I'm gone treat you that way so long as you deserve to be treated that way.

When you come back in the morning, I want you to come to your jury room. I don't want you in that -- in the courtroom. You might innocently overhear something. You outside smoking a cigarette, or you're lollygagging down there in the lobby, or you may get on the elevator and ride up with witnesses or maybe with the accused. You hear anybody say something. "Whoa, I'm on the jury. Don't say anything else." You report that to me as

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quickly as you get to the courtroom. If I'm not available, you tell Ms. Gregg or you tell one of the bailiffs. I don't anticipate that happening, but you're under a duty to do that. That's suborning. That's fixing a jury.

Anybody calls -- You get any calls, and I'm -- As to law, I have to tell you this. I don't anticipate that happening. You tell me because I can have you on your oath collectively or individually tell me. Have you allowed anyone to discuss with you? Have you talked to your friend about it? If you have, you better tell me because, as I told you, I'm not gone sequester this witness (sic). I'm gone let you go home every night and sleep in your own bed because I know you want to do that, but don't you talk to your friend or someone else about it because any one of these parties that can choose to or I can on my own motion volition examine you. Have you've allowed anybody to discuss this with you? Have you discussed it among yourselves or with a fellow juror? You better be able be able to me, no, I have not.

Don't you forget what I've told you. You keep an open mind. You cannot discuss this case with anyone, not even your fellow jurors. When you take those breaks and you go back there, you can't talk about this testimony.

Don't bring any cellular telephones now or pagers

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with you tomorrow.

Some of you got pens in your pockets. You might say, "I want to take some notes." Uh-uh-uh-uh-uh. You gone take it out of context. You've got to rely on your memory. And if you're not here and you're not listening and you're not thinking, when you do deliberate, you not gone be able to add anything. And it takes all of you, and each of you have an important role or opinion, or otherwise we could proceed with 'leven, and we wouldn't need the alternates or maybe ten or maybe nine or maybe nev- -- maybe eight.

As I told you, the strength of this jury is its diversity and twelve minds and that very background that you brought; and none of you left your common sense at home when you came here this morning; and that's what all these people agreed to, is you're the ones individually and each of you that everybody on the State's side and on the defense side want to hear this case; and that's an honor. They've expressed a lot of confidence and trust in your integrity and your honesty.

Everyone else remain in the courtroom.

I've got a number of things. They are what I call housekeeping matters, things that need to be done before we can swear and commence this trial. Some are related to this; some are not; but you don't need to be concerned

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about it; but there are things we have to do in order to put into the record before we swear and begin this trial; but there will be nothing that will interrupt. When I say it, I -- I hope there won't be; but I'm conscious that we need to try this case and that it's gone be here a while.

But we've only got one other judge here, and he's upstairs, and he's involved in taking some matters for me, but there'll be people with revocations. There'll be people who want bonds. There will be people who will want bench warrants lifted. There will be a number of people who need some administrative things and orders done and references in civil matters and foreclosures, and I got to do them. I'm sorry, but I've got to do them, but I'll do them as quickly as I can, and I'll tell the clerk, but she'll bring them, a -- a -- dozen orders up here first thing in the morning or during the day, and I got to sign them. The clerk's got to get them done. Consent orders. But they -- it requires my signature, and I've got to read some 'fore I put my name on them.

So you'll just have to bear with me. There ain't any way we gonna avoid it. I wish there was, but I'm gone tell you I'm -- I'm gone try to get Judge Brogdon to do as much of it as he can, but he probably be doing pleas and -- and a trial up there, too; and so I don't like to give him all of it, just like he don't give me all of it

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either. We just try to do the best we can. Suffer with me. Be patient.

Don't cut on that oven now. Don't start cooking. Wait until we got everything in this mix, whether it be a stew or a cake or whatever it be. Be patient. You'll get there, but there ain't no shortcuts. There's just not. Be patient.

And some of you'll say, "Well, I got some ideas. I think we -- I'd like for it to do this way, and I'd like for it to be this way." In other words, you feel like that you're gone confuse your job, that you want to bake (sic) the law, you want to be a legislator, or maybe you want to b'lieve like in some states -- There's not but about two that I know of. -- nullification. "I don't care what the facts are. I don't care what the law is. I'm a legislator."

You haven't been chosen as legislators, what you think the law ought to be or you want it to be. You have to take the law as I give it to you and apply it to the facts as you find them and reach a verdict that speaks the truth, or it -- otherwise you shouldn't be on that jury. You can't do that. Haven't been chosen as legislators. Been chosen as judges of the facts, solely and only judges of the facts, and charged with the responsibility of reaching a verdict.

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I have no doubt you'll meet my expectations now that I've explained to you what's expected, and you will exceed them.

I don't expect you'll be coming in, Ms. Forelady, and say, "We'd like to hear all the testimony again; we'd like to try it a second time after the testimony's concluded." If they're listening, that will not be necessary. You can't delegate your responsibility to someone else; and you've got a job to do, each of you.

See you in the morning at nine-thirty (9:30).

Everyone else remain in the courtroom.

You're excused 'til in the morning at nine-thirty (9:30). We'll be ready to commence then, provided you're all present. Come directly to your jury room.

(WHEREUPON, at 4:11 p.m., jury excused for the day; and the following proceedings were had outside the presence of the jury:)

THE COURT: Any objections -- Now, this jury -- They ain't gone go to sleep, and they ain't gone yawn, or I'm gone watch them like a hawk. I appreciate the fact that y'all have deferred to me. I know you like to -- to address them, and you'd like to tell them all those things, and I've usurped your time. But in doing that, I have found -- (While knocking on bench) Knock on wood. -- they pay attention; and, unless you put them to sleep,

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they gone be awake.

But I'll give you -- If you've got any objection from the State or defense counsel, it's not a charge on the law. It's an orientation of what I expect of the jury in the performance of their duties. Any exceptions to anything I have said to this jury? I have not given them any instructions, but I have -- I have told them what we expect in rudimentary what the presumption of innocent is and the duty of the State to prove it to the satisfaction of twelve people beyond a reasonable doubt.

Any exceptions, Ms. Parr?

MS. PARR: No, Your Honor.

THE COURT: Any exceptions?

MR. ANDERSON: None for Mr. Blash, Your Honor.

THE COURT: Ms. Jackson?

MS. JACKSON: None from Mr. Monfries, Your Honor.

THE COURT: Mr. Nettles?

MR. NETTLES: None, Your Honor. Thank you.

THE COURT: All right. Now, y'all want to take a minute or two, and then we'll come right back, and we'll give y'all a chance to get it together, and we'll start taking and hearing these motions.

All right. Now, your client is under bond.

MR. ANDERSON: Judge, my position is---

THE COURT: And he's a---

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MR. ANDERSON: ---the jury---

THE COURT: ---nonresident.

MR. ANDERSON: The jury has not been sworn, so I would ask -- I mean,---

THE COURT: The case has been called.

MS. PARR: Yes, Your Honor.

MR. ANDERSON: It has been called, Your Honor, but the jury hasn't been sworn.

THE COURT: Don't make no difference. Case is -- Case is up right now when we hear that motion. The case is before the bar.

MR. ANDERSON: Okay. Your Honor, well, I'd ask that he be allowed to stay out on his bond.

THE COURT: Beg your pardon?

MR. ANDERSON: Then I would ask that he be allowed to stay out on his bond.

THE COURT: I'm gone listen to that, but we -- but I understand we already got one that's run.

MS. PARR: That's right.

MR. ANDERSON: Well, we've got one that's here, Your Honor.

THE COURT: I understand that, too. You explain to him, if he ain't here and I agree to do that, we gone try him in his absence.

MR. ANDERSON: He's aware of that, Your Honor.

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THE COURT: All right, sir. All right. I'm gone take a break for a moment or two. Technically, it's returnable; and, when court's in session, whether or not the jury's sworn, they call it. Right then they in custody unless, in my discretion, I decide to leave him on bond.

All right, sir. His motion is without merit. I can do what I want to do, is what I'm telling you; but I'm inclined to listen to you. I ain't make no decision until I hear you.

MR. ANDERSON: Thank you, Judge.

THE COURT: But we'll be at ease, and give y'all a minute or two break. Give us all a break for a minute or two. We've been here since two (2:00) o'clock; or two-thirty (2:30), it was actu'; but we need a break.

(WHEREUPON, at 4:15 p.m., court stood in recess; and, at 4:25 p.m., court reconvened, with Defendant Blash and attorneys for all parties present in the courtroom.)

THE COURT: All right. Your first motion.

MS. JACKSON: Your Honor, did you say you're ready---

THE COURT: Ms. Jackson, I'll hear you.

MS. JACKSON: Yes, sir. Your Honor, I do want to make a motion for a continuance. As you know, my client, Michael Monfries, was present earlier this morning. He was here for, I'd say, at least two hours, maybe closer to

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three hours. And somewhere in -- When we went to qualify the jury, he was gone. The people -- A lot of his family was here. They were on the tenth floor. They thought he was on the eleventh floor with me. I thought he was on the tenth floor with them. Long story short, we don't know where he is. Obviously, the State can move forward and try him in his absence; but I do believe that it's within your discretion to grant a continuance; and I am, respectfully, requesting that you grant the continuance.

The reason I'm asking you to do that is because, as you know, his right to a jury trial is very important; and this is his one chance. He's obviously made -- Unless there's some unforeseen circumstances that I'm not aware of, he's obviously made a terrible mistake; and I think he has possibly panicked. And we were in intense plea negotiations at the time, and I just believe that he's panicked.

And it's such an unfortunate situation because he's been here about four times. He's come here from Florida, paid his own flight, and come every time they've asked him to come. He's come and met with me on three separate occasions. Obviously, if he was planning to run, the better plan would have been for him to have taken off a month ago while he was still out on bond. This is obviously something that was not thought out, that was

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done in a panic-stricken mood; and he has no criminal record whatsoever; and he still is presumed innocent.

And, Your Honor, I would ask you -- The State would not be burdened to call another case instead of this one, and I would ask you to consider granting my motion for a continuance.

THE COURT: I anticipated you, and I'm gone take your motion under advisement, and I'm gone rule on it in the morning at nine-thirty (9:30).

MS. JACKSON: Can I add one thing?

THE COURT: And that's gone give you an opportunity to find out why he isn't here and to get him here; and I can tell you now, unless you've got good reason or good cause for a continuance, be ready for him to be tried in his absence beginning in the morning at nine-thirty (9:30).

MS. JACKSON: Yes, sir.

THE COURT: But I'm gone -- That's the reason I excused this jury, not just to take up these matters, but not to swear this jury, but to give you an opportunity to try to locate your client.

MS. JACKSON: Thank you, Your Honor.

THE COURT: Anything further? You join in that, Mr. Nettles?

MR. NETTLES: I do, Your Honor.

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THE COURT: Is he your client, the two of you representing this defendant?

MR. NETTLES: That's true, Your Honor.

THE COURT: All right, sir. I understand your motion. Is there any other motion?

MS. PARR: Yes, Your Honor.

MR. ANDERSON: Yes, sir, Your Honor. On behalf of Eddie Blash, Your Honor, at this time, I would make a motion to suppress the evidence that was obtained against him.

THE COURT: All right, sir. But you've got to give me a reason why I need to consider that motion. I haven't heard any testimony at this point; and I don't know whether it's a violation, Third, Fourth, Fifth, or any of the amendments, that you're making reference to of an illegal search and seizure. I won't know that until I've heard some testimony.

The old expression, I got to see if the cowboy can ride; and you might buck him off. I don't know that, and I'll -- I'll know it shortly sometime tomorrow.

MR. ANDERSON: Yes, sir.

THE COURT: I'll take your motion under advisement, but it's continuous until I rule on it.

MR. ANDERSON: I understand, Your Honor.

THE COURT: Anything further?

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MR. ANDERSON: Well, you know, I'm ready to---

THE COURT: You can -- You can tell me what your basis is, and I'm gone see from that testimony whether or not it's any basis. You want to -- I don't know whether the facts are gone support you or not, but I'll let you tell me why you think there's a violation of the search and seizure.

MR. ANDERSON: Your Honor, this case---

THE COURT: That warrant is required.

MR. ANDERSON: Your Honor, this case derives from an anonymous tip, not a confidential informant, nothing like that. Just from an anonymous tip. And this anonymous tip, of course, could not be verified. It's my understanding that it was just a call to the Florence County Sheriff's Department through Crime Stoppers. That call was later relayed to one of the narcotic agents. It's my understanding that agent was Glen Kirby.

Your Honor, based upon that tip that he received, he starts looking for a certain vehicle that's supposed to be in a certain location. He goes to several places with no luck. Eventually, he goes to this vehi- -- finds a similar vehicle at the Holiday Inn Express near the Magnolia Mall, right there at I-20 and I-95.

Your Honor, he talks to one individual, searches him, lets him go. You know, "you're free to go; you can

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leave." Goes to the desk clerk. Talks with the desk clerk, and finds out that two individuals checked into a room. Or I don't know how many individuals checked into the room. But finds out that somebody just came up driving a similar vehicle and checked in a room.

Your Honor, he goes to that room, knocks on the door, tells them what he's there for, asks them if he can search them and the room. They agree. My client agrees. Your Honor, he finds no evidence of drugs, drug sales, drug trafficking, drug paraphernalia. No evidence whatsoever on my client, in his luggage, in the room. Likewise, he finds none on the co-defendant, Mr. Monfries. None on him, luggage in the room.

Your Honor, he asks who was driving the vehicle. It's my understanding, just from reading the incident report -- And, you know, obviously there's no testimony at this time that he asked who was driving the vehicle, and Mr. Monfries said he was. You know, who's vehicle is it? I believe there's going to be testimony---

THE COURT: Did he give him permission to search?

MS. PARR: Yes.

MR. ANDERSON: Your Honor, my client had no possession of the vehicle, but he did allow -- I mean, I think Mr. Monfries gave him permission -- permission to search.

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THE COURT: What's your position on that? Does that cure any -- any difficulty for the necessity for warrant? And tell me whether or not any of the drugs were in plain view.

(To Mr. Lawson) I'm gone hear from you. Your -- Just be calm. I'm gone let the State reply.

(To Mr. Nettles) Are you joining in his motion?

MR. NETTLES: I would like to join in his motion, Your Honor; and I would like to ask -- The issue that we would like to have settled from my client's standpoint is whether he was detained.

THE COURT: Whether he was what?

MR. NETTLES: Detained.

THE COURT: Whether or not he was under arrest.

MR. NETTLES: Well, whether he was detained. I mean, I'm pretty comfortable---

THE COURT: Whether he was free to leave?

MR. NETTLES: Yes, sir.

THE COURT: Well, some of these matters, I don't know. I'm gone have to wait to see what the testimony is gone be developed.

MR. NETTLES: Well, yes, sir, I mean, I believe that the arresting officer is here. And what we would like to ask is if we could have him take the witness stand and we could elicit some of his testimony. I mean, we -- we

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could cut to the chase.

At some point, I'd like to put on the record the agreement that the State and I -- And I assume Mr. Anderson will join in, in terms of the anonymous tip and how far they can go on that. So we can cut to all that.

The only time that I would -- I would be interested in is some -- some factual basis for -- from the time he went to the hotel room until the time they went down -- downstairs and found the drugs in the car, which really isn't a terrible long period of time, Your Honor. I mean, I understand it's getting late.

THE COURT: I'll let you do that.

MR. LAWSON: May it---

THE COURT: I'll let you call him.

MR. LAWSON: May it please the court?

THE COURT: All right. Now, let me get through. Y'all through?

MR. NETTLES: Yes, sir. I -- Yes, sir, Your Honor.

THE COURT: All right, sir. Then I'll hear from you, Mr. Law'.

MR. LAWSON: Your Honor, if it -- May it please the court? It's my understanding the motion was a motion to suppress under---

THE COURT: That is correct.

MR. LAWSON: ---unlawful search and seizure. But it

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appears that Mr. Nettles is now transferring that into a Miranda situation involving detention as to what may have transpired before or after detention. That's not an issue in relation to the search and seizure issue. That's a separate and distinct issue.

THE COURT: Yes, sir. We'll come to that when we get it -- to it. It -- It has to do with his motion for sup-- to suppress, and all the lawyers join in that in their respective obligation to the co-defendant charged in this case, and I'm gone let them take some testimony from the officer that did the search and what the circumstances -- the facts were surrounding the search.

I've made note that Ms. Jackson made a motion to continue, and I'm gone hear her further on that tomorrow; and Mr. Anderson and Mr. Nettles and Ms. Jackson join in a motion to suppress the illegal search and seizure, and that whatever evidence they had is a part of the evidence from the poisoned tree, if it -- there is a poisoned tree.

All right. Call -- Call the officer to the stand. Either one of you, Mr. Anderson, Mr. Nettles. He's here and available, you've told me.

MR. NETTLES: At this time, defense would call -- Tell me your rank, and I'll say it right.

WITNESS KIRBY: Glen Kirby.

MR. NETTLES: -- Glen Kirby to the witness stand,

Your Honor.

THE COURT: Come 'round, please, sir, to be sworn.

GLENWOOD "GLEN" KIRBY, being first duly sworn, testified as follows:

DEPUTY CLERK NICOLE DUDLEY: Please be seated, and state your name for the record.

MR. NETTLES: What's your -- What's your title?

WITNESS KIRBY: I'm Investigator---

IN-CAMERA DIRECT EXAMINATION BY MR. NETTLES:

Q. Investigator Kirby?

A. Yes.

Q. Is that fair enough?

A. Yes, sir. ---Glenwood---

Q. Okay. Investigator Kirby, just to kind of bring you up to speed, my understanding is, is that you received an anonymous tip about two S.U.V.s being driven by two black men; is that correct?

A. Yes.

Q. Okay. Did you receive -- receive the tip?

A. No. Dispatch received it.

Q. Okay. And then dispatch relayed it to you?

A. Yes. I was the narcotics agent on call.

Q. Okay. And how did you receive this relay from the dispatch?

A. Telephone.

Q. By telephone. They called you wherever you were and said---

A. At my residence.

Q. Okay. ---We've got this information; go check it out."

A. Yes.

Q. And as a result of that, you went -- at some point, wound up at -- at -- the hotel. Did you get information they'd be at the hotel? Or did you just drive to the hotel?

A. I got original information that they would be possibly staying at I-20 and I-95 at a motel in Florence County.

Q. Okay. And so it would be safe to say that there are a number of hotels at I-20 and I-95 in Florence County?

A. Yes.

Q. You began to drive through the parking lots looking for S.U.V.s that matched the color description?

A. Yes.

Q. Okay. Was there any evi- -- What evidence did you have to support the reliability? And I'm talking about prior to your making the stop. What evidence did you have to support the reliability of that information?

A. None.

Q. Okay. So this was a completely uncorroborated tip?

A. Yes.
Q. Okay. So based on the completely uncorroborated tip, you began to ride through the parking lot.
A. Yes.
Q. Right? And you then first stopped Clayton Brown?
A. A lot of things happened before that.
Q. Okay. But I mean, the first -- the first action -- the first police action you took, other than investigation.
A. I first went to I-95---
Q. Okay.
A. ---and Highway 52---
Q. All right.
A. ---in Florence. I checked some motels there.
Q. Right.
A. Didn't find anything fitting that description.
Q. Okay.
A. Left there and went to I-95 and Highway 52 in Florence County, which is close to the location that the -- that the tip---
Q. Right.
A. ---came in that they were supposed to be at.
Q. Right.
A. The tip came in they were at a mobile home park in Florence County with a large amount of drugs.

Q. Right.
A. I went to a mot- -- the closest motels to those sections, after I left I-95 and I-20, and didn't find anything fitting that description there.
Q. Okay.
A. En route back to my residence, I got off at I-95 and I-20 again.
Q. Uh-huh.
A. Went -- Circled the Fairfield Inn.
Q. Uh-huh.
A. Didn't see anything fitting that description of a green or a white S.U.V.
Q. Uh-huh.
A. Circled Holiday Inn Express. When I circled around, I started on the east side and went around; and, coming around the west side, I saw a white S.U.V. with Florida tags.
Q. Uh-huh.
A. It was not there approximately an hour before that, somewhere in there. It was not there.
Q. Okay. Okay. Stop there for just one second. Did the tip that you have say what tags were on the car?
A. Yes, they did.
Q. What tags did they say was on the car?
A. They said it was a Florida tag on a white S.U.V. and

a California tag on a green S.U.V.

Q. Is that written anywhere?

A. Written -- It might be in my notes. I'd have to look.

Q. Okay. Was there any -- Did anybody take any notes contemporaneous with that call coming in?

A. It was a Crime Stoppers tip that -- They come in, and they type it out on a thing, and we have a---

Q. Do you have a copy of that?

A. I don't have it with me.

Q. Okay. Does one exist?

A. Yes, it does.

Q. Would you be kind enough to bring that for us tomorrow?

A. I can bring it, but there's some kind of -- They're saying that the -- we can't use a Crime Stoppers tip because it compromises Crime Stoppers organization.

Q. Well, I'll -- I'll tell you what then. We -- We might just -- We'll ask the judge to put it under seal.

A. Okay. And then---

Q. How about that?

A. And we'll---

Q. Okay.

A. And I'll get it for you.

Q. Okay. Thank you. I appreciate it. So anyway -- So

-- So then you -- you -- you then see the -- the car with the matching color and license plate.

A. Well, I -- When I rode through, I saw a white S.U.V. with Florida tags that was not there the first---

Q. Right.

A. ---time I checked it; and only maybe an hour had past, if that long.

Q. Okay.

A. I'm---

Q. What time of year is this?

A. This is April. April the 10th of 2000.

Q. Okay.

A. I'm coming through. I look at it. I say, you know, it wasn't there a few minutes ago. But that's -- that's really -- So I started to come out of the parking lot.

Q. There's nothing unusual about a car---

A. Yeah. It's---

Q. ---Florida car.

A. You know, somebody could have came in. I start to come out of the parking lot; and I had my window down because I'd been riding, looking, because I have tinted windows---

Q. Right.

A. ---on my unmarked car. So it's hard to see at night. So I had the window down and my arm out the window. I

pulled to the parking lot, trying to exit the parking lot. Just as I'm exiting, a vehicle's coming towards me. So I'm waiting 'cause it doesn't have a blinker on. And then all of a sudden, it just darts in beside me; and I just glance back and look; and it's a -- it's a green S.U.V. with California plates.

Q. Okay.

A. It goes directly to the west side. So I immediately backed up and circled the building again.

Q. Uh-huh.

A. Came around and was looking for that green S.U.V.

Q. Right.

A. It had parked approximately three to four spaces down from the white S.U.V. I'd just seen.

Q. Right.

A. I got on the radio, called a deputy who I'd just talked to earlier, and told him what I was doing out and what I was looking for.

Q. Right.

A. I said I possibly might have one of the suspects, head toward me at I-95 and I-20. Told dispatch I would be out. And I think all this took place right at midnight, somewhere in there.

Q. Right.

A. I step out of the vehicle, and there's a guy sitting

in a green S.U.V. with California plates. Just as I'm rounding his car, he opens his door and steps out. I identified myself. I had a badge and -- and told him who I was. I told him exactly what I was doing, what I was looking for. And he turned out to be Clayton Anthony Brown.

I said, "Do you mind if I look in your vehicle?"

He said, "No, I don't mind. I don't have anything."

I said, "Well, do you mind if I check your person first for weapons or anything?"

"No, you can check me."

And he -- I checked him. Looked in his vehicle. Well, actually, I checked him; and, just as I was checking him, the deputy pulled up.

I said, "Would you mind standing over here with this deputy while I look in your vehicle?"

And he said, "No. Go right ahead. I don't have anything."

I said, "Do you mind if I look in your luggage."

He said, "I don't mind."

So I checked his car. Unpacked his luggage, neatly. Didn't see anything. It was just like a small bag. Put all his stuff back in. Looked under the hood. Looked under the car. Looked everywhere. Didn't see anything.

I said, "Well, you -- Are you here to meet anybody?"

And he said, "No, sir. I'm traveling and just trying to get a room."

I said, "All right." I said, "Do you know anybody driving that white S.U.V. right -- parked down" -- I pointed to it.

Q. Uh-huh.

A. He said, "No, I've never seen it."

I said, "All right." I said, "Well, do you mind sitting here a few minutes with me?"

He said, "No, I don't mind."

So I called for two other deputies to come. Two deputies showed up. I walked to the clerk, night clerk. And I asked, "Did anybody just check in?"

He said, "Yes. Somebody just went to room two-forty-three (243)," I think it was.

I said, "Who was it?"

He said it was a man from Timmonsville, which is in our county.

Q. Uh-huh.

A. Lowman Rush. I recognized that name. Lowman Rush is a name that I'd heard my lieutenant say before because he was familiar with him, and we had discussed him on some other -- Nothing to do with drugs, but something else.

Q. Uh-huh.

A. I said, "Was anybody with him?"

And he said, "Not that I know of."

I said, "What room was it?" And he said two-forty-three (243).

I walked back out, back around. And Clayton Anthony Brown was still standing there with the deputy. I said, "Do you mind sitting here a little bit longer and let me go upstairs and verify something?"

He said, "No, I don't mind."

So I went up the stairs. And the stairs -- You have to see what I'm saying. A pretty good ways you have to---

Q. Right.

A. ---go to and go up, go around; and the motel room faced the front. So whoever was in that room couldn't see down where we were at. So I went up to that room and knocked on the door, and I had two deputies with me. Michael Monfries answered the door.

Q. Uh-huh.

A. Mr. Blash was laying on the bed furtherest (sic) away from the door. I told Mr. Monfries who I was, what I was doing. Asked if he had -- he mind if I looked in his room.

Q. Uh-huh.

A. He said, "No, I don't mind."

So I went in his room. I looked around in his room. Didn't see anything. Some change laying on the table.

Asked Mr. Blash and Mr. Monfries if they mind if I looked through their luggage. They said they didn't mind. I went through their luggage.

I asked Mr. Monfries if he knew anything about -- if he was driving a white Xterra parked outside.

Q. Right.

A. He said, yes, he was. I said, "Do you mind if I look in the -- in that S.U.V. or that Xterra?"

He said, "I don't mind."

I told the deputy that was there to -- to -- Mr. Monfries had to put some clothes on, put some pants on or something. I said, "Just stay right here with him. When he gets ready, come down; and I'm going to look in the vehicle."

I go down the steps. They're following behind. But I had to come from another angle now, so---

Q. Right.

A. ---they couldn't see me exactly.

Q. Right.

A. I walked out. I went down the stairs. The first thing I did -- The vehicle was locked. I looked -- I laid down and looked under the back of the vehicle, on the ground. I mean, I -- I'd already walked around it.

Q. Uh-huh.

A. I laid down and looked under it, and I could see

under the spare tire there was a -- looked like a package taped with brown-looking tape---

Q. Uh-huh.

A. ---laying inside the rim in the spare tire.

Q. Uh-huh.

A. Mr. Monfries comes down, comes -- As he's coming across the parking lot, he hits the keyless entry. The light goes on in the -- in the truck.

Q. Right.

A. The light goes on in the truck. I said, "Mr. Monfries, I'm going to put these handcuffs on you and detain you for a minute until I can verify what this package is under the car."

Q. Right.

A. He says, "I don't know anything about no package."

Q. Okay.

A. I lay down. I pull the package out.

He said, "I don't want to talk anymore."

I said -- And I read him his rights.

Q. Uh-huh.

A. He didn't want to say anything else to me. I had the package. That was it, and I told them to put handcuffs on Mr. Blash, and we put them in the car, and that was it.

Q. Okay. Let me ask you this: When you -- When you -- At least part of your conversation you had with Mr.

Monfries, he told you that he was there to meet Mr. Clayton Brown; right?

A. Yes.

Q. Okay. And -- And that was when up at the -- up at the hotel -- up at the hotel room door; right?

A. Yes.

Q. And when you went to the door, -- Okay? -- what was your purpose in going to the door?

A. To see if they -- if they were going to meet -- if they were there to meet somebody.

Q. Okay. You were there to question him about it?

A. I just asked him if he was going to meet -- if he was supposed to meet anybody.

Q. Okay. You were there to question him about it?

A. I just asked him if he was going to meet -- he was supposed to meet anybody.

Q. Okay. Right. I mean, you asked him a ques- -- the purpose of you going to the door was to ask him questions about the -- whether he was going to meet anybody; right?

A. Well,---

Q. That was the purpose---

A. ----the purpose---

Q. ---you went up---

A. ---I was going---

Q. ---there for.

A. ---there was to see if he was driving that white Xterra---

Q. Okay.

A. ---and he was gonna meet somebody.

Q. Okay. So you were going to see if he was there driving the white Xterra and if he was going to meet somebody.

A. Yes.

Q. Okay. Is there anything else, a reason, you were going up there?

A. No.

Q. Okay. At that point, he was not free to leave?

A. Yeah, he was free to leave.

Q. He could have closed the door?

A. He could have told me, hey, he didn't want to talk to me anymore and shut the door.

Q. Okay. Let me ask you this: When you came -- went downstairs, he was not free to leave then?

A. When he -- When he went downstairs and I'd already looked under that car and seen those drugs under that car, he hit that keyless entry, he wasn't free to leave because I told them to put handcuffs on him and told---

Q. Well, what---

A. ---him why I was---

Q. ---did hit---

A. ---putting handcuffs on him.
Q. What did the hitting the keyless entry have to do with him---
A. Nothing.
Q. ---not being able to leave.
A. He was just coming down, and he had brought the keys with him, and---
Q. Oh, so you're just using that as a time -- as a mark in time.
A. Yeah, well, I mean---
Q. In other words,---
A. ---I'm saying it---
Q. ---about that time.
A. ---it took enough time for me to get down there, to lay down---
Q. Just -- I think, shortcut-wise, in other words, you were just using the hitting the keyless entry as sort of a mark in time. That was about the time -- That coincided with you deciding to arrest him.
A. Yes. I---
Q. Okay.
A. I had stood up, and he did that, and -- and I walked toward him. Told him that he was going to be detained, and told the deputy to put handcuffs on him. And then I laid down and got the package. And I said, "Do you know

anything?" And he said he didn't know anything about a package.

Q. Okay. Now,---

A. Didn't want to talk to me.

Q. I'm sorry?

A. He didn't want to talk to me anymore.

Q. The package -- You took the package out without taking the tire out from underneath the car?

A. Yes.

Q. Okay. So it was just something you could do without a tool?

A. Yes.

MR. NETTLES: Okay. I don't believe I have any other questions. I'dåmike to touch base with my co-counsel. I appreciate it.

THE COURT: Mr. Anderson?

IN-CAMERA CROSS-EXAMINATION BY MR. ANDERSON:

Q. Agent Kirby, you had already, I guess, searched Clayton Brown?

A. Yes.

Q. And you didn't find any weapons on him?

A. Uh-uh.

Q. And didn't find any weapons in his car?

A. No.

Q. And then you went up to the room and found Mr.

Monfries, and you also found Eddie Blash?

A. Yes.

Q. And you searched both of them?

A. Yes.

Q. Searched their room?

A. Yes.

Q. Searched their luggage?

A. Yes.

Q. Didn't find any weapons of any sort in the room?

A. No.

Q. All right. How many officers were present with you in the room when you conducted this search?

A. Two.

Q. So it was yourself and two others?

A. Yes.

Q. And who was in there with you?

A. Dave Merritt and Mervin Thomas.

Q. Dave?

A. Merritt.

Q. And Mervin?

A. Thomas.

Q. All right. And one of those officers stayed in the room with Mr. Blash when the other officer walked downstairs with Mr. Monfries?

A. Yes.

Q. And how was Mr. Blash dressed? I mean, just shorts and a T-shirt or boxers---

A. I think he had---

Q. ---or whatever?

A. ---like a -- like a pair -- looking -- like warmups and something, like a T-shirt or something.

Q. Okay. But he looked like he was getting ready to go to bed or whatever?

A. Yeah. He was laying on the bed.

Q. Was he actually patted down and searched?

A. Yes.

Q. And when you and Monfries -- And which officer went down with Monfries?

A. Dave Merritt or either -- It might---

Q. And the---

A. Dave.

Q. ---other officer actually stayed in the room with Mr. Blash?

A. Yes.

MR. ANDERSON: Okay. That's all the questions I have, Judge.

THE COURT: Ms. Jackson, you got any questions?

MS. JACKSON: No, sir.

THE COURT: You can come down, officer.

MS. PARR: No.

THE COURT: You got questions you want to ask, Ms. Parr?

MS. PARR: May we have the court's indulgence?

(Pause.)

MR. LAWSON: May it please the court?

THE COURT: Yes, sir.

IN-CAMERA CROSS-EXAMINATION BY MR. LAWSON:

Q. Agent Kirby, as indicated, the information that you received, you did not know whether it was credible or reliable, did you?

A. No.

Q. And the purpose of your going out that night was to try and verify the information; is that correct?

A. Yes.

Q. All right. When you did initially see the white vehicle with Florida tags, you did not stop at that time, did you?

A. No.

Q. It is not unusual to see vehicles with Florida tags in South Carolina, is it?

A. No.

Q. And you work narcotics; is that correct?

A. Yes, sir.

Q. And how long have you been working narcotics?

A. Four (4) years.

Q. And are you on the road pretty regular in that capacity?
A. Yes, sir.
Q. So you see a lot of vehicles and a lot of tags?
A. Yes, sir.
Q. All right. The other vehicle that you were looking for was a green vehicle with a California tag?
A. Yes, sir.
Q. Well, does that same scenario apply to California tags?
A. No. I don't see many of those.
Q. You don't see many of those?
A. (WHEREUPON, the witness shook his head in the negative.)
Q. So as you were going along through this investigation, each piece was falling in line with the information that you had received from the anonymous tipster; is that correct?
A. Yes, sir.
Q. All right. And was there any evidence that was ultimately discovered in this case that was inconsistent with the evidence from the anonymous tip?
A. No.
Q. All right, sir. And did you ever tell either of the defendants that they're under arrest prior to seeing the

package under the car?

A. No, sir.

Q. And at any point prior to that, were they free to go?

A. Yes, sir.

Q. Had either of them indicated any problem with what you were doing?

A. No, sir. Had any of -- either of the defendants asked you to stop and leave them alone?

A. No.

Q. Did -- The package was where exactly in the car?

A. In -- Inside the spare tire rim. It's folded up under the car, and it was laying up in there. You had to---

IN-CAMERA EXAMINATION BY THE COURT:

Q. Would you clarify that just for my information? It wasn't inside the car. It was outside the car, wasn't it?

A. Yes, sir.

Q. All right. That makes sense.

MR. LAWSON: Yes, sir. And -- And that's what I was going to ask.

IN-CAMERA CROSS-EXAMINATION BY MR. LAWSON (continued):

Q. The spare tire on this vehicle is under the car; is that correct?

A. Yes, sir. You can see the spare tire from the back of the car.

Q. And it's not covered?

A. No.

Q. And you could see the package through the holes in the rim; is that---

A. Yes, sir.

Q. ---correct?

A. The holes in the rim, and then I could see it up in there and reached over and got it.

Q. All right, sir. And how long have you been working narcotics?

A. Four (4) years.

Q. In your experience as a narcotics agent, has -- is there a typical method of wrapping drugs?

A. Now, the kilos I've seen have all been packaged similar to the one I found, wrapped in like packaging tape and plastic and duck tape.

Q. And -- And that's what you observed on this particular evening?

A. Yes, sir.

Q. And at that time, you placed the defendants under arrest?

A. Yes, sir.

(WHEREUPON, Mr. Lawson conferred with Ms. Parr.)

MR. LAWSON: I don't have anything further, Your Honor.

IN-CAMERA EXAMINATION BY THE COURT:

Q. The green S.U.V. and the gentleman driving the S.U.V., you identified as the driver, was he alone?

A. Yes, sir.

Q. He denied knowing the individuals that were driving the white S.U.V. with the Florida tag?

A. Yes, sir.

Q. And you found no drugs in the green S.U.V. or any drugs on his person?

A. Yes, sir.

Q. Or his luggage?

A. Yes, sir. I didn't find anything.

THE COURT: I don't have anything further.

Do you have anything further?

MR. NETTLES: Judge, just one question, Your Honor.

(To the witness) I understand---

THE COURT: You may -- I'm gone---

MR. NETTLES: ---you said that---

THE COURT: I'm gone indulge as much time as you need.

MR. NETTLES: Well, thank you, Your Honor.

IN-CAMERA REDIRECT EXAMINATION BY MR. NETTLES:

Q. You said -- And -- And -- And the solicitor asked you if you -- Just kind of going through chronologically through your investigation, one of the questions was each

pieces (sic) was falling in line. Each piece was falling in line?

A. Yes.

Q. Do you remember that question? And you said yes; correct?

A. (WHEREUPON, the witness nodded his head in the affirmative.)

Q. My question to you is how? How was it falling in line?

A. The anonymous tip said that the people were here with a large amount of drugs, driving a green S.U.V. with California plates, a white S.U.V. with Florida plates; they're possibly going to be staying, I-20 and I-95 in Florence County. The original complaint stated they were possibly gonna be -- well, in Northside Estates, which is a mobile home park close to I-20 and 52.

Like I said, I left my residence. I went to I-95 and I-20. Didn't see anything. This was approximately probably ten-fifty-five (10:55) or eleven (11:00) o'clock, somewhere in there. Didn't see anything fitting that description. I left there and went to I-95 and I- -- I-95 and 52, which has more motels than any exit on I-95, I think, and started checking. So it took a while to check, and I talked with a deputy and told him what I was looking for 'cause I knew he was gonna be out during the night,

and I was possibly going to be heading home aft- -- if I never found anything. Told him what I was doing.

I went through Northside Estates. Didn't see anything. On the way home, I go by I-95 and 52 (sic). There's a white S.U.V. with Florida plates, which that's -- that was noth- -- not enough for me to even try to track down who was in that room at that time.

I start to leave. A green S.U.V. pulls in with California plates. They park about three spots down. As I'm approaching them, I said, "Those two are gonna -- This is gonna be the two vehicles." So I radioed the deputy to come on to me.

I start talking to Clayton Anthony Brown. He says he's not there to meet anybody. Real cooperative. Let me do -- you know, search his vehi- -- Waited there as long as I asked him to. And I asked him several times if he needed to leave.

"No, sir. I'm -- I'm, you know, right here if you need me. I don't know those people, and I don't know anybody driving that truck."

I said, "Well, do you mind waiting and let me go check some things."

I went upstairs. During the time I talked to Monfries, I said, "Are you waiting on anybody to come here?"

"Yeah. I'm waiting on Clayton Brown, driving a green Cherokee, a Jeep."

I said, "Has it got California plates?"

"Yes."

So all that fell into place. So I knew I had the right vehicles that the tip had come in, and I just needed to take it a little bit further. So -- And I just told them straight out what I was doing there. "I'm here because we had this tip that you have a large amount on you, and I work for narcotics. They called me out. I need to ask y'all some questions about it. Do you have any?"

"No."

"Do you mind if I look?"

"No, sir."

I searched them all. Mr. Blash and Mr. Monfries were real cooperative. Went downstairs. Laid down and looked under that vehicle. Saw that package. Mr. Monfries was out there, and I told him I was -- he was gonna be detained 'til I can determine what this package was under the car. Put the handcuffs on him.

While I'm getting it out, I had to reach up over a tire and kind of pull it out. It wouldn't just -- (While indicating) And slide it out like this.

"I don't know anything about a package."

I told him, I said, "You have a right to remain" -- Did the -- I had a little card in my pocket. I told him.

"I don't want to talk."

"Fine."

IN-CAMERA EXAMINATION BY THE COURT:

Q. Did that anonymous tipster tell you where that large amount of drugs was located?

A. No, sir.

Q. The individual driving, the person that identified himself and the driver of that -- it gave you his name, the driving (sic) that green S.U.V.?

A. Yes, sir.

Q. Is he in the courtroom?

A. No, sir.

Q. Is the person who was driving and identified himself as the owner or the driver or had possession of the white S.U.V. -- Is he in the courtroom?

A. No, sir.

THE COURT: All right, sir. I don't have any further questions.

MS. PARR: The State has one question.

THE COURT: Beg your pardon?

MS. PARR: The State has one question.

THE COURT: Yes, ma'am. But Mr. Lawson did the examining. Can't have but one person to the stick. Can't

two people fly an airplane very well.

IN-CAMERA RECROSS-EXAMINATION BY MR. LAWSON:

Q. The driver of the white S.U.V. or the person that identifies -- would that -- that be Mr. Nettles' and Ms. Jackson's client that was here earlier and left?

A. Monfries?

Q. Monfries?

A. Yes.

Q. And the information that you had, did -- did that information include how many individuals would be in each vehicle?

A. Yes.

Q. And what were they?

A. That there'd be two vehi- -- two people in the white S.U.V. and one in a green one.

MR. LAWSON: All right. That's all, Your Honor.

THE COURT: Who was driving the green S.U.V.?

MR. LAWSON: That was Clayton Anthony Brown, Your Honor. That was the Clayton Anthony Brown he testified about.

IN-CAMERA EXAMINATION BY THE COURT:

Q. Anything further?

A. Judge, when---

Q. Yes, sir.

A. When the tip came in, when you asked me that, I'm

pretty sure it says there would be two subjects in the -- in a vehicle and one in another one. I don't know if it distinguishes whether it was green or which one was the white. I just know that it said---

Q. Did they---

A. ---there would be three total.

Q. Did they describe -- And they said it's gone be a large amount of drugs. Did they tell you what kind of drugs?

A. No, sir.

Q. Just a large---

A. Well, the---

Q. ---amount of drugs?

A. ---actual -- The -- The tip I got from the girl, it says they had a large amount of drugs, and they were looking for a place to cook it into crack cocaine, so I assumed it was cocaine I was looking for.

THE COURT: All right, sir. You may come down.

(WHEREUPON, the witness was excused from the witness stand.)

THE COURT: Anything further or any testimony you want to adduce from the State's witnesses in reference to your motion?

MR. NETTLES: No, sir. Not in reference to that motion. But another motion came up during the course of

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that. Real quickly, I'd just like to address it.

I'd like to add -- I -- I understand the -- the con-- the concern for wanting to have the Crime Stoppers tips. I understand the -- the problems they've had. I believe during my direct I asked him if that information was available. I would just like to ask him -- He said he could bring it tomorrow. Give it to the court. I would only be interested in it if there would be any evidence that would be contrary to what was testified to today; and we'll be happy to sort of do a brief factual layout, if the court would keep it. You can put it under seal, take a look at it. If there's anything that would be useful for us in cross-examination, then I'd ask for it. If not, I'd be happy to let it stay under seal and go with the record under seal. Would the court be inclined to accommodate us on that?

THE COURT: Yes, sir.

MR. NETTLES: Thank you.

THE COURT: I'd be inclined to do that.

MR. LAWSON: Your Honor, if you could, just as a matter of record, make it an order so that Mr. Kirby can go---

THE COURT: So ordered.

MR. LAWSON: ---to his supervisors and say, "I've been"---

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THE COURT: So ordered.

MR. LAWSON: ---"ordered by"---

THE COURT: So ordered. And---

MR. LAWSON: "---the court."

THE COURT: ---then he can give it to you, and -- and -- and we'll -- we'll take a look at it in chambers, and you can all be present.

MR. NETTLES: Thank you.

MR. LAWSON: Thank you, Your Honor.

THE COURT: In the morning before the jury's sworn.

All right. Your matters are under advisement at this point.

MR. NETTLES: Well, I---

THE COURT: Any other motions?

MR. NETTLES: ---appreciate it. I'm -- I'm just gone tell the court, to save you some time, after having heard, I don't think that this qualifies under Florida v. J. L., and I would withdraw my motion. I appreciate the court's opportunity to -- to -- to -- to hear the testimony.

THE COURT: Well, I---

MR. NETTLES: Based on---

THE COURT: ---wanted to---

MR. NETTLES: ---testimony---

THE COURT: I gone give you -- I gone give you a complete record.

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MR. NETTLES: Well, I appreciate it, Your Honor. Thank you.

Could I put on the record two stipulations that I believe that the State's been kind enough to agree with us on?

THE COURT: (Whereupon, the court nodded his head in the affirmative.)

MR. NETTLES: One of them is as it relates to the -- to the -- to the tip that we just discussed. I did some -- a little bit of research last night. I believe under State v. Brown, which is a case out of Columbia, South Carolina, they're allowed to mention that there was a tip, just so they don't have to tell their story in total abstract; however, it would be our position -- I believe I've got the -- a -- a -- a brief stipulation with -- with the State that the -- that -- well, unless there is some possible cross-examination materials that we find out tomorrow, that they're just simply gonna say there was a tip; we were acting on the tip; we went to the hotel---

THE COURT: Unless y'all kick the door down, you can't---

MR. NETTLES: That---

THE COURT: ---have it both ways. You---

MR. NETTLES: I understand.

THE COURT: ---keep the door open,---

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MR. NETTLES: I understand that.

THE COURT: ---you can---

MR. NETTLES: I'm -- I'm cognizant of that.

THE COURT: The horse is out.

MR. NETTLES: I -- I appreciate it, and I will have to chase it down. I appreciate that, Your Honor. But that's the stipulation that we agreed to with the State

MR. LAWSON: As I understand it, Your Honor, the -- the -- the State can elicit that there was a tip and what was done as a result of---

MR. NETTLES: You can---

MR. LAWSON: ---that tip. And that -- that's what we intend to do, Your Honor.

THE COURT: And they gone testify to what he testify to. It was a consentual search.

MR. NETTLES: And -- And -- And I agree with that stipulation. I mean,---

THE COURT: But now I don't know if Ms. -- if your co-counsel agrees with you, and I don't know that Mr. Anderson does. Her -- Her interest is the same as yours.

MS. JACKSON: Yes, sir, Your Honor, I agree with him.

THE COURT: All right. And, Mr. Anderson?

MR. ANDERSON: Judge, I still would like to -- the court to take a look at Florida v. J. L. That's 529 U.S. 266 or 120 Supreme---

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THE COURT: We'll look at it. We'll look at it. But one of the first things I did after being on the bench a year was had one of the fellows that was dean at Harvard and Chief Justice of the New Hampshire Supreme Court, and he pr- -- He dead now; but he's probably the preeminent judge, lawyer, most versed I've ever -- I think he was in nineties then, and we went to school on search and seizure and consentual searches, and I had some reluctance to rule. I let one side rule and the other rule.

And finally he said, "Harwell, you gone have to make decisions; you gone have to rule; you hadn't ruled." I wasn't raising my hand, and he see who was and who wasn't.

But I'm not in doubt, and I'll give you a decision, and I'll rule. And if it's an error, you've got a remedy for that. And I'll be glad to hear anything further that any of you have.

MR. NETTLES: I believe we've just got one more -- one more stipulation that we've reached, which was that the only expert testimony would be -- So that we don't have to have a hearing -- a counsel hearing on expert testimony -- was that they gone have the chemist to come in and talk about it's cocaine. And -- And I don't -- You know, I'm not gonna -- I'm not questioning that.

And then another thing, has somebody else that's gonna come in that's gonna say this is how you go about

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converting cocaine to crack; and I don't -- I mean, that's been stipulated to.

But other than that, there's no -- there's not gonna be any expert testimony.

MS. PARR: That's correct, Your Honor.

THE COURT: Now, let me review this with y'all. How many witnesses is the State gone have?

MS. PARR: Approximately about twelve (12). Some---

THE COURT: And I'm---

MS. PARR: ---of them---

THE COURT: ---not suggesting---

MS. PARR: ---are very short witnesses.

THE COURT: ---you don't need---

MS. PARR: Some---

THE COURT: ---all twelve.

MS. PARR: Some of those---

THE COURT: But if you gone be just popping up and everyone's gone be testifying to the same thing, even though the defense may or may not object,---

MS. PARR: No---

THE COURT: ---I've got this old thing. I can't stand cold grits. They're lumpy, and I don't like for them -- The first time you serve them I can swallow them; but, if you keep serving me cold grits with the same witness, being cumulative over and over and over, I'm gone

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stop it.

MS. PARR: Your Honor, some of those---

THE COURT: And it ain't gone look good with this jury, and they might gaff you. So go over them twelve witnesses so that this testimony's not gone be repetitive.

MS. PARR: Okay. Your Honor, we have -- we have done that. You Honor, some of the witnesses are in the chain; and, in order to establish a chain, I have to---

THE COURT: I understand---

MS. PARR: ---use all of them,---

THE COURT: ---that.

MS. PARR: ---unless they---

THE COURT: And that's---

MS. PARR: ---stipulate to them.

THE COURT: And that's good.

MS. PARR: And so---

THE COURT: But, you know,---

MS. PARR: ---some of---

THE COURT: ---that chain is a little more liberal rule now than it used to be.

MS. PARR: Your Honor, if they stipulate to some of the things coming, we won't have---

THE COURT: That'll save---

MS. PARR: ---to show it. We can---

THE COURT: That'll save---

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MS. PARR: ---eliminate some---

THE COURT: ---a lot of time.

MS. PARR: ---of the witnesses.

THE COURT: The longer you here, the -- the worse it's gonna be probably for both sides 'cause you gone wear this jury out; and they gone get angry.

MR. ANDERSON: Judge, on be---

THE COURT: I don't know what your position might---

MR. ANDERSON: Your Honor, on behalf of---

THE COURT: ---be after the---

MR. ANDERSON: ---Mr. Blash, I---

THE COURT: ---chain of command (sic), but---

MR. ANDERSON: ---I can't stipulate to it.

THE COURT: ---if you -- or the chain of custody; but, if you look at the chain of custody, you ain't got to prove it to an absolute certainty that it went from this hand to that hand. If it went to custody and they got it and then they went there and they got it, that's about all you got to do under the new -- And I don't know whether y'all are willing to stipulate that, the chain of custody; but it's something you need to think about.

MR. ANDERSON: Your Honor, I---

THE COURT: The quicker y'all get it to the jury, I used to say from the defense side, the better off you gone be. If you let them hammer you with twelve people,

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there's some jeopardy in that. If you can make it short, without doing something that prejudices your client, I'll surely give it some thought.

MR. ANDERSON: Your Honor, if it please the court---

THE COURT: She tells me -- How many people involved with this with chain of custody?

MS. PARR: Your Honor, we actually have -- actually have two people with the chain of custody.

THE COURT: Well, there ain't a great many of them.

MS. PARR: Well,---

THE COURT: I figured it passed through a dozen hands---

MS. PARR: No, it actually---

THE COURT: ---before it got to SLED---

MS. PARR: ---didn't pass through---

THE COURT: ---and another dozen---

MS. PARR: ---that many, and some---

THE COURT: ---or so after---

MS. PARR: ---of them were---

THE COURT: ---half a dozen---

MS. PARR: ---at different---

THE COURT: ---before it got back.

MS. PARR: ---at different stages.

THE COURT: Well, I would encourage y'all to exchange what information you can.

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MR. ANDERSON: Judge, if it please the court? Mr. Blash will not stipulate to the chain.

And I would also ask that any State's witnesses be sequestered, with the exception of the lead investigator. I don't want any---

THE COURT: All right, sir. And that's a matter of discretion and not as a matter of right. But as you know, we've got a judge upstairs; and I don't know whether he's trying a case; and we got defendants up there. But we've got lawyers that are up here with approximately a hundred cases or more pending. They're using these back rooms consulting while I'm assume (sic) he's doing pleas. I'm gone be doing this trial. The logistics of this building, which I think are antiquated or obsolete and have said so and on the study committee that addresses those questions -- I don't know how in the world we can find twelve places to put them all together (sic) and make sure they don't see and don't discuss and don't talk about their testimony before or after they've testified. I don't know logistically how to accommodate that or do that.

It would cause unnecessary delay in the trial, and I'm assuming most of the witnesses -- I don't know what the defense might do. -- are law enforcement. And---

MR. ANDERSON: Your Honor, if it please the court?

THE COURT: ---if that don't corroborate or they

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don't substantiate each other -- And some of them, they -- We got one of them, maybe two of them, here today out of the twelve. I don't know how many we gone have, but I don't anticipate that -- I understand you think that it might be like Ned the first reader, and they all got a -- a system, and it's gone be rote like a D.U.I. He staggers, and his eyes is red, and his speech is slurred, and sometimes in those different circumstances of what was seen and what was heard. I don't -- I don't see that problem.

Unless you can point out to me some reason or basis for sequestration, with the problems logistically with the limited space that's available -- And if there should be one of them pass from here to yon or they're together and I can't get them sequestered or separated from each other, then I have allowed you an opportunity then, when you didn't win your case with the jury, to say that one of the witnesses should have been disqualified because he spoke to somebody out in the hall.

MR. ANDERSON: Your Honor,---

THE COURT: One of the witnesses. And that's -- There's a -- I -- I approach that with a great deal of trepidation. Unless you can give me a sound reason that you suspect that they have conspired to lie, I'm reluctant to do it. I think it questions the -- the integrity.

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MR. ANDERSON: Judge, if it please the court? What I would ask that you do, is there is a Family Court waiting room, (while indicating) right there. Your Honor, I don't care if they're all in there together. I just don't want them in here listening to the testimony as it's presented witness by witness by witness.

THE COURT: I understand what you want.

MR. ANDERSON: Now, Your Honor, they can talk all they want in that other room back there, but I don't want them in here listening to the testimony. And I don't think that's an unreasonable request. I mean, there's a waiting room right there for---

THE COURT: How many---

MR. ANDERSON: ---Family Court, and---

THE COURT: ---times have you gotten it?

MR. ANDERSON: I got it last week, Your Honor.

THE COURT: You did? Who gave it to you?

MR. ANDERSON: Paula Thomas.

THE COURT: Who?

MR. ANDERSON: Paula Thomas. Judge Thomas.

THE COURT: Well, I'm glad Judge -- the judge did it. I'm not gone be critical of Judge Thomas.

I'll hear from y'all. What you -- What you -- You want to join in this?

MR. NETTLES: Well, I do, Your Honor. And I just

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want to say this: I would ask that we not be held to the standard of having to prove that they're conspiring -- conspiring to lie. I -- I don't think that's true.

A -- A -- This is a circumstantial evidence case, and a lot of this case -- I mean, there's -- there's very little direct evidence. True, there are drugs found, but it -- There's not a whole lot of direct evidence. Now, you basically heard what they're gonna say up there. A lot of this is circumstantial evidence. A lot of this has to do with people's memory. And -- And, you know, when -- If -- If they all have the opportunity to sit here and hear what each other said, they're not lying. They just start remembering things like other people. That's---

THE COURT: They got different recall?

MR. NETTLES: Well, right, right. But, you know, there's nothing -- There's nothing---

THE COURT: Well, let me ask---

MR. NETTLES: ---nefarious about that or anything.

THE COURT: Let -- Let me ask you this: Lawyers for the State know what their witness is gone testify to. There is absolutely nothing wrong with a lawyer talking to their witness. And after a witness testifies, if they want to talk to another witness and tell -- I can't stop that.

MR. NETTLES: Well, I think you can. I -- I -- And I

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can understand, Your Honor. I will---

THE COURT: No, sir. I'm not gone -- They got a right, and the officer who is -- who made the case has got a right to be present, and the lawyers got the right to talk to their witness before they take that stand.

MR. NETTLES: And I agree with all that. I agree with every single bit of it, Your Honor. And -- And -- And I would not -- Nothing that I am proposing infringes on that. What I'm asking though is -- is that once one officer -- is that not all the other officers get to sit in here so all their stories sound exactly the same. Okay? And -- 'Cause that kind of concerns me.

The only thing that concerns me---

THE COURT: I'm sure it would. Sure it would.

MR. NETTLES: Be- -- Because is has the -- It has the false impression of -- of -- of -- of solidity, is -- is the problem.

The other concern I've just got is -- I just ask the court to consider that, after this trial's over, they can talk about it all they want to. But once one witness leaves the stand, I'd ask that they be -- that the judge -- that the court, you, ask them not to talk to any other witnesses that -- Just so we -- we're getting just their memory and not parroting because that's -- that's just not true.

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I'm also not asking that they all be put in twelve different rooms. I understand that -- that's a burden. If they can stay back in that room, the court can just say, "Look, after this case is over, y'all can talk about it all y'all want to; you can talk to the lawyers about it; but I'm gone -- I'm gonna direct you not to talk to each other about it." That's all I'm asking, Your Honor. And I really -- I mean, I don't think that's a terrible burden; and -- and I'd ask the court to consider that.

THE COURT: I'll think about it.

MR. NETTLES: Thank you. I appreciate it.

MR. LAWSON: Judge, just for a matter of -- of position by the State in relation to the motion for a continuance, we would ask Your Honor to consider the clerk's file which we understand contains a copy of the bond which the defendant was originally released on. And in that bond, there is a provision that allows that should you not appear at court you may be tried in your absence; and that -- that bond was signed and executed by the defendant; and we would offer that as a court's exhibit for the purpose of the motion---

THE COURT: Got it with you?

MR. LAWSON: ---for continuance.

MS. PARR: It's---

THE COURT: We'll take care of it.

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MS. PARR: It's---

MR. LAWSON: The clerk---

MS. PARR: Has the original

MR. LAWSON: The clerk has the original, Your Honor, as I understand it.

MS. PARR: There's a copy of it.

MR. LAWSON: It may be up---

CLERK OF COURT DORIS POULOS: The indictment?

MR. LAWSON: Is it here?

MS. PARR: The bond.

THE COURT: Is the bond in there?

MR. LAWSON: Yes, sir. It should be.

THE COURT: Find it for me, and take it out for me, and we'll make it a court's exhibit.

MR. LAWSON: And that's -- And that's all, Your Honor.

THE COURT: All right. I'll -- And if you'll remind me, I'll rule on this sequestration. My suggestion is talk to your witnesses. I'm sure you're not gone be called on cold, and -- and I'll give y'all the decision.

MR. LAWSON: Your Honor, basically, we did that today. We kept the majority of our witnesses in---

THE COURT: What's your---

MR. LAWSON: ---this room---

THE COURT: ---response to the motion of

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sequestration?

MR. LAWSON: Your Honor, we -- we don't mind. We -- We want Officer Kirby here with us. He's the lead investigator.

MR. ANDERSON: No objection to the lead investigator, Your Honor.

MR. LAWSON: And---

THE COURT: You can't object.

MR. LAWSON: ---the---

THE COURT: (To Mr. Lawson) Go ahead.

(To Mr. Anderson) You can object, but it doesn't---

MR. NETTLES: No.

THE COURT: It---

MR. LAWSON: Your Honor, as long as---

THE COURT: It has no merit.

MR. LAWSON: As long as---

THE COURT: Quit wasting my time, Mr. Anderson.

(To Mr. Lawson) Go ahead.

MR. LAWSON: As long as we can keep the other witnesses in that one waiting area---

THE COURT: You don't---

MR. LAWSON: ---back there,---

THE COURT: ---oppose it.

MR. LAWSON: ---it -- it won't cause a problem for us in getting them here, and---

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THE COURT: Well, good. I won't have to study about it overnight. I'll just grant it out of hand.

MR. NETTLES: I'd just like to say, for -- for the record, the heart this man has shown makes it clear to me that at one point he was a criminal defense lawyer.

THE COURT: He was. And the one that's got the robe was, too, for thirty-three (33) years. Never intended it to be that way. I wanted to do some more civil work, but I had to get other people the business.

We'll -- We'll begin in the morning at nine-thirty (9:30).

MS. PARR: Your Honor,---

THE COURT: Your motion for sequestration is granted.

(WHEREUPON, Bond of Michael Monfries marked for identification as Court's Exhibit Number 1.)

MS. PARR: Your Honor, we have another matter. Then that matter is in regards to the bond of Mr. Blash. The State would ask that he be taken into custody as this matter -- this case has begun. We've entertained motions before the court already, and we would ask that he be taken into custody.

THE COURT: Well, I understand. He lov- -- He does not live in South Carolina.

MS. PARR: That is correct, Your Honor.

THE COURT: Hadn't got roots in this community,

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but---

MS. PARR: And, Your Honor,---

THE COURT: ---he's been present every time that he's -- He's fulfilled the conditions of his bond. No reason for me to think, at this point, that he's not gone continue to do that; and, apparently, he's got support of family members. There's several people in the courtroom that I notice is sitting on that side of the courtroom and are here giving him morale support. Whether they's (sic) gone be witnesses or not for him, I don't know. At this point, I have no reason to b'lieve that he's a flight risk or that he represents a danger to public safety.

MS. PARR: Your Honor, for the---

THE COURT: And I don't see any reason why I ought -- Ordinarily, it's returnable when the case is called. It's my discretion. I could hold him in jail until after the jury has either found him not guilty or guilty; but I don't think it would be justified, because one of them, apparently, now is a fugitive, that I should -- should hold him. I -- I just -- I'm just not gone do that.

But if he's not here at nine-thirty (9:30) in the morning, then I'm gone try him in his absence; and, when he shows up, then I am gone take him into custody at the conclusion of everything; but---

MS. PARR: Okay. Your Honor,---

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THE COURT: ---I'm not gone do it at this point.

MS. PARR: Okay, Your Honor. Thank you. One other matter. We would ask, that if the court's not going to detain him tonight, that he would be restricted from contacting the State's witnesses, specifically---

THE COURT: You don't know -- He don't even know the State's witnesses.

MS. PARR: Yes, Your Honor, he does.

THE COURT: Oh, he does know them?

MS. PARR: Yes, Your Honor. One witness, in particular, is his---

THE COURT: Oh, that's not---

MS. PARR: ---first cousin.

THE COURT: ---a law enforcement---

MS. PARR: That's---

THE COURT: ---officer.

MS. PARR: That's correct, Your Honor.

THE COURT: All right. You cannot contact nor talk---

MS. PARR: If Your---

THE COURT: Now, that doesn't mean your lawyers can't and, when they're here, that you'll have the opportunity to talk with them; but, overnight and while we're not in session, you're not to talk to the State's witnesses; but your lawyer's got a right to talk with them; and you can

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be present when they talk to them.

MS. PARR: Okay. Your Honor,---

THE COURT: You got to make your witnesses available to him.

MS. PARR: Yes, Your Honor. And we have done that, and we would ask that either direct or indirect, not having another family member contact him.

THE COURT: That's right. Neither directly or indirectly will they be communicated with by writing or by any kind of media, telephone or otherwises (sic). If you do that, you gone be in contempt. That's separate. You be acquitted, and then you're still gone be doing jail time. So just don't do it. I'm sure your lawyer's gone warn you about that.

Anything further?

How 'bout discovery? Have you gotten everything? You've served the Brady motion. What is it? Rule 5? You've got everything.

Have you got an open file policy?

MS. PARR: Yes, Your Honor. And I have made everything available to all three defense counsel.

THE COURT: Is there anything you lawyers need that they've not furnished? You got any complaints with the prosecution not giving you statements, not giving you their -- what information is available to you under that

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Rule 5 and Brady motion? Anything you need? Any complaints by any of you?

MR. ANDERSON: No, sir, Your Honor.

MS. JACKSON: No, sir, Your Honor.

THE COURT: All right. Go to your corners in the morning, and come out fighting.

(WHEREUPON, at 5:22 p.m., court recessed for the day in this matter.)

TUESDAY, AUGUST 14, 2001

(WHEREUPON, before reconvening the case and during the court's comments, State's Exhibits Number 1 through Number 18 were marked for identification.)

(WHEREUPON, at 9:31 a.m., on Tuesday, August 14, 2001, court reconvened in this matter, with Defendant Blash and counsel for all parties present in the courtroom; and the following proceedings were had outside the presence of the jury:)

THE COURT: Counsel, if I can get y'all's attention. They've -- They've not heard any testimony. They hadn't been sworn.

Any time that y'all chose when we take a break for lunch or they go home overnight tonight or whatever and come back tomorrow, if you don't ask for this jury to be polled, unless I determine on my own initiative I'm gone do it, I don't poll them. You have waived it. However,

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I'm gone ask you that in their presence this morning, and I do that for a reason because I want to impress upon them the confidence that each of you are expressing in their integrity. I think it makes a good impression. I think it gets them back up on their toes again.

So I'll ask you now because if you want it I don't want them to hear it, that you want them polled. I'll take the responsibility because I don't want you to be prejudiced, any of you, by polling the jury; but you got a right to do that; and it might be your client decide that I want them polled. So you need to do it if -- if -- if -- you do it.

When I ask you, I'll ask that they be polled because I do that in the presence of the jury because I already know the answer to it; and then I tell them that I concur in the confidence expressed in them.

All right. Ms. Parr, there's something I think you and Mr. Lawson got to be aware of. I had this happen. You got twelve witnesses, and they gone be strolling in and out. If they come in this courtroom and you got a witness on, you gone disqualify that witness. You better make sure that they know to report, to come to that room, and not to discuss with anyone who's already testified. You don't want any of your witnesses disqualified.

MS. PARR: All right. Your Honor, we're going to

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need some assistance because they're having Family Court over there; and that's where they were talking about putting the witnesses.

THE COURT: I was afraid of that, but y'all didn't oppose it, and that is the Family Court courtroom (sic). But anyway, just make sure you don't have some because a lot of times I've had two officers come into the courtroom and set down and sitting there listening to it and didn't realize that they were told to come to court, and then they got disqualified, and they were critical witnesses to the State.

MS. PARR: Okay.

THE COURT: So we got to be careful of that, and I can't protect you from it, and neither people coming and going, and I don't know who they are. Some of them not wearing the badge displayed or wearing off-duty clothes.

MS. PARR: Your Honor, once we get this marked for identification purposes, I'll have a minute. I'll go and take care of that.

THE COURT: I don't know at this point if the defense intends to call a witness or witnesses. I'm assuming -- I might be assuming y'all gone join in this sequestration.

MS. PARR: Yes, Your Honor.

THE COURT: You better make that motion if you gone do it.

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MS. PARR: And, Your Honor, my understanding is they did not provide a witness list when the---

THE COURT: Well, they're not required to do it because they can't be compelled to call any witnesses, but I didn't do the -- the qualifications.

Do you pronounce your client's name Monfrizz (sic)?

MR. NETTLES: Yes, sir.

THE COURT: I'm not gone do anything but proceed with this case, and I want to remind y'all I have never had very good luck with cases getting to a jury on Friday afternoon or Saturday morning.

MS. PARR: Your Honor, we anticipate being finished by Wednesday morning.

THE COURT: Yeah. But I -- I don't know. But when you got twelve witnesses, you may know exactly what your wish (sic) is gone do in direct; but it's kind of hard to anticipate with three lawyers over here cross-examining. I mean, they can take a long, long time; but, if you stay with what's relevant, although you got wide range on cross-examination, if you run out all over the courtroom, we could be late getting there; and that will not be in anybody's best interest; and I've not had any luck with an Allen charge or a jury on Friday night.

Are we ready, counsel?

MS. PARR: Your Honor, one minute to make sure.

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THE COURT: Be sure and tell your officers. They'll know most of your witnesses, and don't let them enter this courtroom.

MS. PARR: Let me check and make sure.

(WHEREUPON, Ms. Parr and Mr. Lawson stepped out of courtroom.)

(Pause.)

THE COURT: (Without Ms. Parr and Mr. Lawson) And that -- this thing over here, too, that y'all better be conscious of. They can come through that side door, slide in there, and be sitting in there; and I've heard the defense say, "Well, did you hear so-and-so testify or have you did" -- And they say, yeah, they have. They don't realize when they come up here that they're being sequestered. So gone have to watch this side door. And I -- That ain't my job. That's y'all's job.

WITNESS KIRBY: Yes, Your Honor. We have a deputy that's going to handle that.

DEPUTY CLERK DUDLEY: We'll lock it.

THE COURT: That'll probably be a good idea.

(WHEREUPON, Ms. Parr and Mr. Lawson entered courtroom.)

THE COURT: Ms. Parr, you need to be aware. Now, they can come in that side door and sit there. I've had defense counsel say did you hear that witness testifying

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and they'd say, yeah, I did.

MS. PARR: You're going to lock---

THE COURT: Don't let---

MS. PARR: ---that door?

THE COURT: ---them slide in this door and sit here and listen.

MS. PARR: I know it---

THE COURT: All right. You've got a motion?

MS. PARR: Yes, Your Honor. The State would move to have any potential State -- defense witnesses sequestered as well.

THE COURT: Granted. What's fair for the goose is fair for the gander.

All right. We gone have the -- We gone have the jury. Bring us the jury. Hold just one moment before I bring them. I've got some motions that I need to consider, and I almost missed them.

On your motion to continue, it's been a lapse of sixteen (16) hours; and, as I told you yesterday, one of the reasons that I had not sworn this jury so that your client would not prejudiced -- Ms. Owens (sic), and there has been joined in by Mr. Nettles, moves for a continuance, indicating that she thought her client had panicked. Didn't give me any reason, other than that he had been here present during several terms of court; but

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they were involved in some negotiations in the plea; and they thought he got frightened. That's not a reason or a merit of the motion for continuance; and I would respectfully deny and decline the continuance. He gone be tried within his absence.

I have made a court's exhibit the -- the bond that was posted that makes that provision, and the law so provides of that.

Also, I had a motion by Mr. Nettles; and I gave him the opportunity this morning to meet with the investigator, the chief prose'torial witness for the State, concerning the confidential information of an informant or a tipster I referred to him (sic). And they've had an opportunity to review and read the information in the report, including who that individual was; and that will be protected and sealed; and I made a finding that it is both corroborated and supported by the prosecution's testimony of their witness that the defense was given the opportunity to examine in-camera yesterday.

What's your position now?

MR. NETTLES: Thank you, Your Honor. I've been provided with a -- The State has graciously provided me with a redacted portion of it; and -- and, basically, what's been redacted is information I don't really care about anyway; and the substance of what -- The content of

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what was reported, I have been provided with; and -- and I do appreciate that, Your Honor. Thank you.

THE COURT: All right, sir. Does that cure any questions---

MR. NETTLES: Yes, sir.

THE COURT: ---you got in reference to it? All right. The -- Just for the record, I will deny any motions in reference to that -- that matter or that testimony.

All right. Now, there's one outstanding motion; and, that is, suppress the evidence; and I b'lieve that's a motion joined in by Ms. Jackson and Mr. Nettles. It's Mr. Anderson's motion to suppress the evidence as a violation, an illegal search and seizure.

I find there is no violation. I deny the suppression. The evidence is undisputed. It was a consentual search. All right. So it's -- The -- It's not applicable.

We'll have the -- Oh, just a moment.

Any other matters I need to take up now? Have we taken care of all your pretrial motions for the defense?

MR. NETTLES: Yes, sir.

MS. JACKSON: Yes, sir.

MR. NETTLES: Well, on behalf of Mr. Monfries, yes, sir, Your Honor.

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MR. ANDERSON: Judge, on behalf of Mr. Blash, thank you.

THE COURT: Thank you.

All right, sir. You may bring -- bring the jury.

(WHEREUPON, at 9:52 a.m., jury returned to open court; and the following proceedings were had within the presence of the jury:)

THE COURT: Good morning, Ms. Forelady.

FORELADY THOMPSON: Good morning.

THE COURT: Everybody looks rested this morning, and I don't see anybody that looks unusually jovial. Y'all the saddest looking bunch I've ever seen.

If there's anything you want, anything you need and we hadn't got -- Sometimes you'll ask for candy bars and maybe some additional things that -- that we don't have -- And we've got two courts going. We got a lot of people tied up. But what we have, you're welcome to; and we'll try to get it for you.

If there are any diabetes on this jury, would you raise your hand for me.

(No response.)

THE COURT: Anybody taking di'retics? You know what a di'retic --?

(WHEREUPON, two jurors each raised a hand.)

THE COURT: We got two people taking di'ret- --.

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(WHEREUPON, another juror raised a hand.)

THE COURT: Three people taking di'retics. All right. That -- That means I don't like to interrupt a witness on direct or cross, but I will 'cause I don't want you to be uncomfortable. I know you're not waving. Do like we did in school. Wave. I know, and we're not gone put it to a vote. We gone -- immediately gone have a break. Everybody gone have a break. And when you've completed whatever is needed to have been done, then we'll come on back when y'all ready to come on back.

Now, some of you don't remember the old horse and mule days. I can remember that. I'm a little older than all of you. If any of you were my age, you wouldn't have to serve. You could say I've reached that age where I've paid my due. But I used to talk to a mule when I was -- just about the only thing I had to talk to when we were working. Mule got big old eyes out here on the side of his head. He can see behind him. They're -- It took me a long time to figure that out. How he knew where I was so he'd try to kick me.

It took me a long time looking at a deer, how he could see me and I'm behind him; and I finally figured it out.

But anyway, old mule, when you talk to him, he'll -- he -- And a horse can do the same thing, but I don't

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'member seeing a horse do it as often as a mule. (While indicating) If you talk to a mule, he'll bend his ears back to listen to you. If you was in front of him and you talking, he'd bend his ears forward. You could listen.

It's real important that you hear these witnesses, and some of them gone let their voice trail away. And they don't understand how important it is that you un- -- that you hearing back here, the last person on the back row. (While indicating) So I want you to do the old mule's ear trick. I ain't hearing well enough what he's saying. And I want you to cuff your ear like this. If you're not hearing at all, I want to see two hands by the ear; and then I'm gone make that witness speak up where you can hear them.

Now, I'll try not for you to have to sit over an hour and a half, but sometimes I'm watching you, and I'm listening to the lawyers, and I'm trying to pay attention to what the witness is testifying to.

And the questions are being put to the witness. They gone be projecting their voice towards the questioner, towards the lawyer; but the answers of -- of them and for the courtroom (sic) -- Their answers are really for you. The questions are put to them by the lawyers, but the answers are for the jury. If you can't hear it, then that testimony's not gone benefit anyone in the case for the

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purpose they're being called. So it's real important that you maintain your attention span and that you watch and that you observe.

I see you looking at the floor 'cause there's crawling down there maybe a spider. I doubt it. Or I see you looking when the door opens and closes back there. It'll become obvious to me when you're deliberating much later in this case because your foreperson will be sending me out questions that I want to hear that testimony again. And it's real important that you be able to contribute because you got individual responsibility and collective responsibility in this case.

And some of you, as I told you, are extroverted, just to kind of remind you of what we went over yesterday; and you've got the personality that's dominating; and you want to make sure everybody hears you; and you want to state your position more than once. And I assure you're all gone be able to express your opinions as often and as frequently as you choose to. There'll be no need to be disrespectful, to scream, yell, or shout, (while shaking finger) or shake fingers in each other's faces. And you'll all be able to speak as often and frequently as you choose, but you cannot do it all at the same time. That will accomplish nothing, and that's rude. And, frankly, there is never, ever any good reason for a juror to be

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rude to another one.

And your foreperson is gone let each of you express your opinions; and, when all of you have had your opportunity, including the foreperson, to express his or her opinion, you may speak again, but as you're recognized. Now, please abide by that.

Now, that -- All of you'll say, "Well, you know, I could do that job; I wonder why he didn't give me that job; I'm offended; I should have been the forelady; or I should have been the foreman" or as most apprep'it -- appropriate with as many women on the jury that we got a lady doing it.

And my judgment is the person who gets an undergraduate degree, even though that does not speak ill of any of you -- All of you have a great deal of experience in different walks of life. May not have had for economic social reasons or it might be you just weren't interested. That shows a discipline. You've got to go to class, and you got to study, or you don't get the degree, and that's what you need in a foreperson. Someone who has exercised discipline in their life and who've had dealing (sic) with discipline; and, as I said yesterday, anybody who can deal with the discipline in the public school this day and time, with the limitations that they've got, certainly is gone have no problems with adult

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(sic); but, if you do, all you got to do is tell me. I'll take care of it for you.

Where is my clerk?

DEPUTY CLERK DUDLEY: She ran upstairs to the eleventh floor, judge.

THE COURT: You want to swear this jury?

DEPUTY CLERK DUDLEY: Yes, sir, I can do it.

(WHEREUPON, at 10:00 a.m., the jury was duly sworn.)

THE COURT: Now, I'm sure Judge Brogdon introduced you to everybody yesterday when you were sitting out there being qualified.

Would you be so kind as to introduce our bailiffs and our security people that are with us and my law clerk and Ms. McDaniel, please. You have not met her yet?

DEPUTY CLERK DUDLEY: No, sir, I haven't.

THE COURT: That's Wendy Hardin.

DEPUTY CLERK DUDLEY: Okay. The judge's law clerk---

THE COURT: She's the court's lawyer.

DEPUTY CLERK DUDLEY: ---Wendy Hardin. Is Pat over there? Pat McDaniel is the court reporter, sitting on the other side of the judge.

And we've got -- Marianne Gregg will be sitting here. I'm Nicole Dudley. We work with the Clerk's Office.

We've got Donald Cameron, deputy at the back. And---

BAILIFF THOMPKINS: Sammy Thompkins.

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DEPUTY CLERK DUDLEY: ---Sammy Thompkins is the bailiff at that end, and---

BAILIFF TIMMONS: Joe Timmons.

DEPUTY CLERK DUDLEY: ---Joe Timmons is the bailiff back here.

Who else do you want me to introduce, Judge?

THE COURT: Beg your pardon?

DEPUTY CLERK DUDLEY: Who else do you want me to introduce?

THE COURT: You have introduced everybody you need to. I think they know the law -- the lawyers, and I'll introduce them to you. Jack Lawson with the Solicitor's Office. Ms. Pat Parr is gone be chief prosecuting solicitor. Ms. Debra Owens Jackson, representing the defense. Mr. William Nettles, call him Bill.

MR. NETTLES: Yeah.

THE COURT: And Hank Anderson. Is it junior or third?

MR. ANDERSON: I'm junior, Your Honor.

THE COURT: I keep wanting to make you the third. There is a third, though, isn't it?

MR. ANDERSON: There is a third, Your Honor, but he's at home with his mama.

THE COURT: Would you give me the indictment, please.

(WHEREUPON, the indictment was handed to the court.)

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THE COURT: Mrs. Forelady and ladies and gentlemen of the jury, the case that we are about to commence is styled -- And that's a legal word, and I try to put every thing in lay language. -- is styled or is titled this way: State of South Carolina prosecutes this case against the following defendants accused of the commission of a crime in Florence County: Michael George Monfries and Eddie Blass (sic), B-l-a-s-h, are charged in an indictment, 2000 --.

And I'll ask you, solicitor -- It looks like it could be a one or a zero. Which is it?

MS. PARR: It's 2000-21-839.

THE COURT: I got the 21-839. Is that 2000? Or is that 2001?

MS. PARR: It's 2000.

THE COURT: All right. And they can hardly see the air between it.

2000-GS-21-839, indictment for unlawful drugs. This indictment is filed in this court and give (sic) this court jurisdiction over these parties. They are charged with the crimes of trafficking in cocaine, four hundred (400) grams or greater. The elements of these crimes will be explained to you in the charge at the conclusion of the testimony and the summation by the lawyers.

You should understand distinctly that this document

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referred to as an indictment simply charges, accuses, if you will, alleges that these defendants committed this crime. It is an accusation brought in this court. It is not in any sense of the word to be considered evidence by you. It is merely the allegation. I do not intend nor will I send this in to the jury room during the time of your deliberations because, again, it is an attempt on my part to avoid any misunderstanding that you will, in considering the evidence, the facts in the case, would give any consideration to that document.

That is not a trial jury, a grand jury. It does not determine guilt or innocence. A defendant's lawyer or himself has no opportunity in a secret proceeding to examine, cross-examine, offer witnesses or evidence. Hearsay testimony is taken. It does not have the rules and procedure of evidence in a jury trial with a petit jury that determines the issue of guilt or innocence or not guilty, for example.

This is what the defendants are accused of: Michael George Monfrizz (sic) and Eddie Blass (sic) is alleged did, in Florence County on or about April 11th, last year, 2000, violate the section of our Code as is described in Section 44-53-370, Paragraph (e) of the Code of the Laws of 1976, as amended; and it is alleged that the said Michael George Monfrizz (sic) and Eddie Blass (sic) ware

becomes a court's exhibit. It becomes a part of the transcript. I'll explain that to you in detail, and it's premature for us to even give any thought to that. We're a long way from that instruction, that you're retiring to consider your verdict. Keep an open mind.

Now, to that indictment, the defendants have pled not guilty; and, because of that plea and the presumption of innocence that every accused is entitled, the State has the burden of proving each of the assump- -- essential elements of the crimes charged in the indictment, by the standard of proof in criminal cases, beyond a reasonable doubt.

As I told you yesterday, it ultimately is gonna be your decision. It's a weighty decision, your solemn duty to decide whether the State has met that burden of proof by that measure beyond a reasonable doubt; and, if the State carries or meets or has met that burden because he is presumed to be innocent and is entitled to a verdict at your hands of not guilty until, if, and when -- And you must make that determination as the sole judges of the facts in this case as whether the State's met that burden. If they have, you must convict. If they have not, you must acquit.

It's your solemn responsibility, ladies and gentlemen; it's your duty to determine the guilty or

innocence of this defendant; and your verdict must be based solely on the evidence as it is presented to you in this trial from the witnesses who take that stand and testify and any exhibits that are introduced through those witnesses. The facts come from the sworn testimony and the exhibits and no other place.

And your verdict will be based solely on the evidence as it is presented to you in this courtroom from that witness stand and on the law at the conclusion of the testimony and the summation by the lawyers at the close of the trial.

In just a moment, the solicitor is gonna make her opening statement in which she will attempt to explain to you what the State contends to be the issues in this case and what she believes or intends that she can prove or establish through those witnesses.

The attorneys for the defendants, if they choose to, if they choose to, if they wish to -- But they're not required to. -- may also make an opening statement to you; but they're not required to do that.

And I'll tell you that what the lawyers say to you in this opening and what they say to you throughout the trial and the questions that they're asked (sic) and in their summation is their view of the evidence and what they hope has been established or proved. They will not misstate

law; but, if they do, I am the sole and only judge of the law. They will not misstate or misquote testimony to you that came from the witness stand, but you must remember that all of the lawyers are advocates. That's what the word lawyer means.

They've got a sworn duty and an obligation to their respective clients to give you the view that is most favorable to the interest that they represent. That's their sworn duty to do that. Their -- I expect them to do that. If they did not do that, they wouldn't be competent; and I tell you they are all competent. I know them. But you must remember that what they say to you is their contention, their view; but they're not the judges of the facts. You are. And neither am I. You are.

Later, during the period of your deliberation, if that substantiates or corroborates the view that they tell you, you give it the weight it ought to have. If it doesn't, you use your recall. So you see how important it is as a judge of the facts, the sole and only judge of the facts, writing the verdict of this case. You have a very distinct and a very important role, one of the most important roles in the court.

And let me elaborate again. If you gone be the sole facts -- judges of the facts, the sole judges of the facts and you never served on jury before, you need to ask

yourself some rhetorical questions. That's the best I know to teach, is ask a question and give an answer; and, if I do it repetitively, you will remember it.

Where does the evidence come from? Where am I gone find the facts? Repeat that in you mind now silently.

The evidence is gonna come from that witness stand from the witnesses who place their hand upon that book, that Holy Bible, and swear before God to tell you the truth and nothing but the truth and the exhibits introduced through those witnesses. In considering evidence, I tell you again, under our Constitution and laws of this State, you alone -- you alone, individually, separately, collectively -- are the judges of the facts in this case.

And that same law that makes you the judge of the facts makes me the sole and only judge of the law. I am prohibited. I am forbidden to imply or infer or to invade your province and dictate or imply what the facts are. I will not do that. And you can't invade my province and differ with me about what I tell you the law is.

What's your job then? Ask yourself that. What's my job? What I am doing on this jury? What's my job? Your job is gonna be take the law as I declare it to you, apply it to the facts as you the jury find it to be from the witnesses from that witness stand and the exhibits

introduced through them.

And I might tell you one of the things -- You 'member I told you I'll tell you what you need to know when you need to know it, and you're probably sitting in that room. We came on time. Thank you. We appreciate that. You're punctual. Well, why have we started (sic)? We've been sitting here fifteen, twenty minutes. Why hadn't we started?

We've been marking exhibits. No dispute about that between the parties. Trying to get as much into the evidence we could already premarked, and that took a while to do that.

We had a number of things pending before we swore this jury. There are housekeeping things, perfunctorily have to be done, have to be accomplished and ruled on. One of them, for example, I'll tell you is a motion to sequester. That means none of the witnesses are gone be in the courtroom to hear any of the other witnesses testify while they're testifying, nor will they have the opportunity to talk to another witness that hasn't testified, one that has already appeared. Those are things that necessary before we could swear you and begin this morning.

And until you've heard all of the testimony and heard the charge on the law, you see how premature it would be.

It would be like my mama baking that cake or my friend cooking a fish stew. You must be patient. You must keep an open mind.

You gone have to weigh this evidence; and, if all of you listen, you may have a different view; but you should be able to reconcile the testimony; but, in the conclusion of the trial, I start getting these notes which I don't encourage nor discourage. You can't reconcile testimony. You want to hear again this witness's testimony. You want to try the case a second time. If it's necessary, we'll comply with that wish. But it tells me somebody's mind -- The body might have been here, and you were conscious, but your mind was somewhere else. Now, during the deliberation, you begin to take an interest; but you were mentally unconscious during the trial.

You've taken a solemn oath to render a true and a just verdict. Don't forget it. No friends to reward. No enemies to punish. And you'll say, "Well, repeat this."

How am I gone weigh evidence? That's a mental -- How am I gone weigh evidence? That's a good question, but it's not a complex question. You give the most weight to that which convinces you of its truth. That's what it's all about. You are the truth finders; and you've been chosen just like I have to preside over this case, to give both the State and the defendant a fair and impartial

trial; and that's what you are sworn to do.

You're not concerned with who the lawyers are or who the parties are. You're concerned with only one thing. What is that? The truth. The truth of what? The truth of the evidence, the credibility, the believability of the witnesses.

From time to time, you're gone hear one of the lawyers or some of the lawyers say, "We want to take a matter up with you, judge, out of the presence of the jury." Because I cannot convey any impressions, I'm hearing in-camera testimony or some factual issue. I don't want you to be influenced by my consideration in some matter coming up. And I got an objection. I got to determine sometimes out of your presence, sometimes in your presence, as whether or not that is admissible or whether it complies with the Rules of Evidence. And I'll say overruled. You can hear it, and you treat it just like anything else.

And you'll say, "Well, he took it up out of our presence or while we were there; we had an objection; and he let us hear it; so since the judge let us hear it, then that must be the gospel; we'll take that and go with it; that's not a disputed fact."

No. I didn't say that. I just said, under the rules, it's permissible for you to hear it. Whether or

not you believe it is just like any other evidence. It's for you to determine whether or not you believe it.

There will be matters of law that I'll have to take up from time to time out of the presence of the jury. The -- The lawyers will say, "We want to approach the bench; can we do a sidebar?" The only sidebar I'm interested in is the soup and salad bar at a buffet. I don't do sidebars up here from the bench because I'm half deaf. We will have destroyed the purpose of having a sidebar if I step off here because, for me to hear it, y'all will all hear it, too.

And we won't be playing musical chairs that much with you, but I want you to understand don't be concerned about it. You get back there and say, "Well, we ain't talking about it now; but, in my own mind, I shore am curious." Well, now, I encourage curiosity. I think that makes a good juror.

And when the case is over and you've decided it, I'm free to talk to you; and I'll answer anything you want to know because I hope I'm gone peak your interest and that you will find it educational and informative, what you're being asked to participate in. For most of you, there is a remote possibility you'll be called again to Circuit Court; but it's doubtful for the majority of you. This is the only time in your life you'll be called to serve on

Circuit Court. You gone be called to magistrate court, city municipal court; and you may be called to federal court; but it's not likely.

I don't know how many of you have ever served on jury before. How many of you have served on Circuit Court? Would you raise your hand?

(WHEREUPON, one juror raised a hand.)

THE COURT: One person. See. That makes my point.

You gone -- gone be judges, and I'm gone treat you like judges. I can tell you that, in passing upon credibility or believability of witnesses, you have a right as a jury to take into consideration the bias or prejudice of a witness, if shown; the opportunity for a witness to observe those matters or things about which he, she, or they testify.

It's most important that you observe the manner and the demeanor of the witness on the witness stand. Anything that's in the record that'll assist you in evaluating testimony of the many witnesses in the case --.

It's your sworn obligation to pay close attention. Don't let your mind wander.

After you've heard the testimony and the arguments of counsel and the charge of the law, only then will you be in a position to determine what the facts are and apply the law in the case and reach a true and a just verdict.

And remember what I told you yesterday as a precursor to your being sworn, how important it is to keep an open mind.

Time is not of the essence. I understand it's important to you, but time is not of the essent -- essence. You're being asked to participate in the most noblest (sic) undertaking of your life. You're being asked to be a judge and to pursue truth and justice.

I gave you a verbal bouquet of roses. I have watched you yesterday. I have observed you this morning. You have been most courteous to me; and I hope that each of you will continue to show that courtesy to the lawyers and to the witnesses who testify in giving them your undivided attention and, mostly importantly, to each other.

We gone have -- I hope it's gone stay cool in this place; and we're in the dog days; and, when you're not in the courthouse and you get warn and you get home, people get intolerant and get short tempers. Please try to be tolerate of each other and what's going on in your life.

If there's anything you need or anything we can do for you, anybody you need to communicate with, we'll -- Until you -- you enter into the deliberations, we gone allow you to do that. We don't want you to be concerned or worried about anything. If there's anything we can help you with or any problem with children, any problem

with sending messages for something that you've got planned or had planned that we need to -- to do for you, any problems you've got with transportation, coming or going, you let us know; and we'll be happy to accommodate you.

Now, every time you leave this courthouse and you go home tonight and tomorrow night because I have no intention of sequestering this jury unless you make it necessary, anything if we can do to accommodate you in transportation, whatev', you let us know; and that involves your children, if you've got obligations there.

Either of State or the defendant wish to have this jury individually polled on whether or not they have spoken or allowed anyone to speak to them about this case?

MS. PARR: The State would waive, Your Honor.

MS. JACKSON: We'd waive on behalf of Mr. Monfries, Your Honor.

MR. ANDERSON: Your Honor, Mr. Blash would waive.

THE COURT: Mr. Nettles, you confer with your co-counsel?

MR. NETTLES: I do, Your Honor. Thank you.

THE COURT: I share your confidence, ladies and gentlemen. I share your confidence.

That might be the only thing that any of these lawyers will agree to, is the integrity of this jury.

I recognize the State for the opening statement.

MS. PARR: May it please the court? Counsel?

(WHEREUPON, opening statement of the State was presented to the jury as follows:)

MS. PARR: Good morning, ladies and gentlemen.

(WHEREUPON, the jurors responded.)

MS. PARR: This is a case about common sense. You all were chosen yesterday by the State and the defense, and the one thing we wanted you all to bring with you was common sense. Common sense. You hear people talk about common sense all the time. Even when children are young, we start telling them "think about what you're doing and just use your common sense." And that's what the State wishes for you to do during the pendency of this trial. To use your common sense.

Now, the judge has told you what the defendants are charged with. This really is not a very complicated case; but, mind you, it's very serious; but it won't be complicated. And from time to time, if you will, just remind yourself to use your common sense.

The defendants are charged with trafficking in cocaine more than four hundred (400) grams, and you'll get an opportunity to see what that looks like. So we're not talking about a little bit of drugs here. That's why I say this is a very serious case, but it's very simple.

You will hear testimony from that stand from several persons, numerous persons, one from the main officer, Officer Glen Kirby. And you will hear testimony from others as well. But what we would ask that you do in listening to all that testimony, as well as reviewing physical evidence that will be introduced, is to put it all together and use your common sense.

Now, Officer Kirby, on or about April 10th, 2000, roughly a little over a year ago, received a dispatch call and, pursuant to that, began an investigation. And Officer Kirby went through his procedure methodically; and he will testify to that, of everything -- every step he made during that incident. And he will tell you what he found as a result of that.

But what I want you to do is, during that testimony and the presentation of the evidence, ask yourself what does my common sense tell me. And after you have applied that through all the evidence and all the testimony you will hear, we would ask that -- After you have reviewed all the facts and applying your common sense and the law that Judge Harwell will charge you at the close of this case, we would ask that you find the defendants, both Michael George Monfries and Eddie Blash, guilty of trafficking in cocaine more than four hundred (400) grams.

Thank you.

MS. JACKSON: May it please the court?

THE COURT: Ms. Jackson, you're recognized for opening statement.

MS. JACKSON: Thank you, Your Honor.

(WHEREUPON, opening statement of Defendant Monfries was presented to the jury as follows:)

MS. JACKSON: Good morning. I'm Debbie Jackson. I represent Michael Monfries. Also, Bill Nettles, who is seated at our table, he represents Michael Monfries, also. Bill is a lawyer from Columbia. He's working with me on the case. I practice here in Florence. I have a law office right across the street. I'm not with a big firm. I'm -- I'm a small lawyer. I'm not a big-time lawyer. I represent folks that come to me when they have a problem.

As you can surmise by now, Michael Monfries has a very big problem. Do you know what it is? Michael Monfries has been wrongfully accused of trafficking in cocaine. You might be thinking "how could an innocent person get themselves wrongfully accused of trafficking." It can happen. People can be wrongfully accused of crimes.

One way it can happen is that someone can use very poor judgment and find themselves around someone who has committed a crime. Isn't that one reason we all tell our children to very careful who they hang around with?

Another way it can happen, that the wrong person can be charged for a crime, is that sometimes police officers make mistakes, even the good ones.

Well, let's just cut to the chase here. I believe, based on what's been revealed to me, that the State is going to probably be able to show you that they found a package of cocaine stuck underneath the vehicle that Michael had. Use a little common sense? Should you ago ahead and go to vote right now? No. There's more to it than that.

The judge will give you the elements of the crime later on, but listen carefully as you hear all of the elements of trafficking and all of the elements of the lesser-included offenses. What they will not be able to prove, because it is not true, is that Michael knew those drugs were there because he did not know.

You're heard already that you're the sole judges of the facts, the believability of the witnesses, and the credibility of the witnesses. It will be for you and you alone to decide who is truthfully relating what transpired. Please, as you exercise your duty as the judges of the facts, listen very carefully to the testimony of Agent Kirby. Listen to the two conversations he had at the scene.

And as you're looking for the truth, ask yourself

who, at the scene, was honest with Agent Kirby. Who told him the truth? Who was cooperative? And then in your search for the truth in this case, ask yourself who lied to Agent Kirby at the scene. Who lied? And then, of course, why? Why would they need to lie?

Now, having said all that, I'm still a bit concerned because, as Ms. Parr has indicated, this is a large amount of drugs. I'm afraid you're going to look at the evidence and say -- or look at the drugs and say, "Wow, you know, this is a big case. She's already said it's a big case. Don't we have to convict? Don't we have to convict somebody?" No. You don't.

I am not here advocating drug trafficking, drug selling, or drug using. I am here advocating Michael Monfries' right to a fair trial by a jury who has sworn to listen to the facts that's presented and to search for the truth.

Now, Bill Nettles is going to be doing a good bit of the cross-examination. You may not hear from me again, or at least maybe not for a while. But I'm going to ask you now -- When this is all said and done and you go back in the jury room and the judge tells you you can begin deliberating, I want you to ask yourself two questions. Did they prove that Michael knowingly possessed those drugs? And who told the truth at the scene? And who

lied?

Thank you.

THE COURT: All right. Mr. Anderson, opening statement.

(WHEREUPON, opening statement of Defendant Blash was presented to the jury as follows:)

MR. ANDERSON: This is a case about roughly two pounds of cocaine. Someone needs to go to jail. This is a case about roughly two pounds of cocaine. Someone deserves to go to jail. This is a case about two pounds of cocaine. And somebody must go to jail. But not Eddie Blash.

This is a case about rushing to judgment. This is a case about leaping to conclusions. This is a case about guilt-by-association mentality. This is case about two pounds of cocaine, and the State -- the State wants somebody to go to jail. But not Eddie Blash.

To understand why my client sits here today, we need to go back a little bit. And Ms. Jackson touched on it in a -- in a brief sort of way. You've all heard the phrase "I was in the wrong place at the wrong time." Well, simply put, that's why my client sits before you today. He was in the wrong place at the wrong time.

My client was in Florence back on April the 10th of last year. He was with one of his friends, Michael

Monfries. And they were staying at the Holiday Inn Express. And Officer Kirby came up there and knocked on the door. He said, "I think there's some drugs. I'd like to search you."

"Okay. Go ahead."

He searched Mr. Monfries. What did they find? Nothing. He searched his luggage. What did they find? Nothing.

He searched my client Eddie Blash and found nothing. He searched his luggage. Nothing. Searched the room, the bathroom, the closet, and under the bed, in the bed. Nothing.

He said, "Well, it must be somewhere else." Go outside and look at the car.

Now, this is a rented car, mind you. A car that my client did not rent. A car that my client did not have the keys for. A car that my client did not sign a rental slip trying to rent it.

But they did find some cocaine under there. They found no physical evidence that ties my client to that cocaine. No hair. No fingerprints. No nothing that ties Eddie Blash to that cocaine.

There are no confessions. My client didn't say, "Whew, you know, you got me; it's mine." Never happened.

Mr. Monfries, "You got me; it's mine." Never

happened.

But what you will hear about is a third individual that just drove off into the sunset, headed back to California. He isn't here. He wasn't even charged. You're going to hear about that. And use your common sense when you hear about Anthony Clayton Brown (sic).

As I told you when I stood up, this is a case about two pounds of cocaine; and the State wants somebody to be held accountable. But not Eddie Blash.

Thank you.

THE COURT: State call your first witness.

MS. PARR: Your Honor, at this time, the State would call Glen Kirby to the stand.

THE COURT: Come 'round, please, sir.

GLENWOOD "GLEN" KIRBY, being first duly sworn, testified as follows:

DEPUTY CLERK MARIANNE GREGG: Be seated, and state your name for the record.

WITNESS KIRBY: Glenwood "Glen" Kirby.

DIRECT EXAMINATION BY MS. PARR:

Q. Officer Kirby, what is your occupation?

A. Narcotics investigator with the Florence County Sheriff's Office.

Q. And how long have you been with the Florence County Sheriff's Department?

A. A total of fourteen (14) years.
Q. And have you had any previous law enforcement experience?
A. Besides the fourteen (14) years?
Q. Yes.
A. Well, I've been in law enforcement a total of fourteen (14). Six months of that is with the City of Florence Police in 1986 and '87. No other than that.
Q. And have you had any special training for your job?
A. In narcot- -- Well, I went to the Criminal Justice Academy in 1988. After that, I continued on patrol procedures and other procedures up until I became a narcotics investigator. And I've been to several schools on narcotics investigation.
Q. And when did you join the Narcotics Unit?
A. August or September of '97.
Q. Now, what are your present duties?
A. Investigator with narcotics with the Sheriff's Office.
Q. Now, Officer Kirby, did you have an occasion to become involved in an investigation on or about April 10th of 2000?
A. Yes, ma'am.
Q. And would you please tell us the nature of that investigation?

A. I was on-call for narcotics, which means you -- if they -- if you're not out and they have -- dispatch has a call or anybody has a call to talk with a narcotics officer, they'll call you at home. And I was at home on that evening and received a call in reference to possible drug activity.

Q. And who did you receive a call from?

A. Dispatcher at the Sheriff's Office.

Q. And as a result of receiving that call, what did you do?

A. I left my residence and went to I-95 and I-20 in Florence County. It's right near Magnolia Mall. And started checking some motels, looking for some vehicles that I had descriptions of.

Q. And would you please tell us specifically what did you do and what were you checking for?

A. I was looking for a white S.U.V.-type vehicle with Florida tags and a green vehicle with -- S.U.V.-type vehicle with California plates.

When I left my residence, I went down Ebenezer Road, came out to I-20. Crossed over I-20, like you were going to enter into Magnolia Mall, turned, went behind Shoney's to the Fairfield Inn and circled the Fairfield Inn, looking for any of those vehicles fitting that description. Didn't see any there. Circled the Holiday

Inn Express, which is next to it. Didn't see anything fitting that description.

The original information was given that they were in a possible location close to I-95 and Highway 52, which I was familiar with. So I said, "Well, I'll just get on 95 and go to that location and check the motels on I-95 and 52."

Q. Okay. Let me stop you there. What time did you receive this call?

A. Approximately ten-forty-five (10:45), ten-fifty (10:55), somewhere in that area.

Q. Okay. Go on.

A. At night. I got to I-95 and 52. I called for a deputy to meet me. He said he would meet me at the Texaco at I-95 and 52. So I started checking some motels at that time, just to see if I'd see anything fitting that description. I checked several of them, and I pulled into I-95 and 52 and talked with Deputy Chad Stone. Told him the information I'd received, what I was looking for. The people in these vehicles were supposed to have a large amount of drugs. If he saw anything around the motels that night, to call me at home. I also asked him if he would check the north side of 52, those motels. I was gonna continue checking the south -- south side of 52 there near the Ramada Inn, down that stretch.

I didn't see anything there, so I got back on the Interstate, went back to I-20. Decided to get off of I-20 at I-20 (sic). I went back through the Fairfield Inn parking lot, circled it. Didn't see anything. Went around to Holiday Inn Express. As I was coming around Holiday Inn Express, I noticed a white Nissan Xterra with Florida tags that was not there the first time I'd checked it, approximately an hour, or somewhere in there, before. And I thought that was kind of suspicious, but I didn't -- I just kept on going through the parking lot.

And as I was starting to turn out of the parking lot, I was sitting there. And I drive a vehicle that's got dark tinted windows on it. So I had the window down, and I had my arm out the window. And a car was coming toward me, and he didn't have a blinker on, so I was waiting to see where it would go. And it just turned in beside me all of a sudden, and I just glanced back over my left shoulder and saw it was a green Jeep Cherokee with California plates.

And I said, "Well, that's odd. It's going to the same side of the motel that this Xterra's parked with Florida tags." And I was looking for two vehicles of that type. So I backed up, and I circled the parking lot. I mean, circled the motel again.

As I'm doing this, I called Chad Stone on the radio

and told him I -- I might possibly have located the vehicles, to come to I-95 and I-20 to back me up. I was going to be approaching a subject. So I turned around. I came around the motel. And as I was passing by the Nissan Xterra, I noticed that the green Cherokee with Florida (sic) tags had pulled in approximately three to four spaces down. So I parked my vehicle. Not blocking him in, just kind of back from him where I could keep an eye on him. He had the dome light on. I noticed that it was a black male sitting in the seat.

I got my flashlight, my identification; and I got out of the truck. Told dispatch I was gonna be out. I started walking toward him. He was getting out of the truck, and I identified myself to him. Asked him if he had any I.D. He said he did. He gave it to me. It was Clayton Anthony Brown. I started talking to him; and I just basically told him what I was there for, all the information I had about a vehicle fitting that description, possibly a white vehicle with Florida tags and a green vehicle with California tags, having a large amount of drugs in them; did he mind if I checked him.

He said, "No, I don't mind."

So I patted him down, and I checked him. He let me look in his pockets. He said, "You can check me anywhere you like."

I said, "Are you meeting anybody here?"

He said, "No."

I said, "Well, do you mind just waiting? I've got a deputy coming, and I'd like to talk to you further."

He said, "I don't mind."

And the deputy showed up about this time. So I asked Clayton Anthony Brown to step to the back of the vehicle and stand with Deputy Stone. I asked him again, "Now, do you mind if I look in your vehicle, your luggage?"

He said, "I don't mind. You can look through anything I have."

So I searched his vehicle thoroughly. Looked in his luggage, unpacked it, put it back. It was a small -- like an overnight bag. Checked under the hood. Laid down, looked under the vehicle. Looked everywhere that -- that possibly I -- I thought he could have a large amount of drugs. Didn't find anything.

I went back, and I said, "Are you meeting anybody here?" I asked him again.

He said, "No. I'm just coming to get a room."

I said, "Do you know anybody driving that white Xterra with the Florida tags?"

He said, "No, sir. I don't know anybody driving it."

At this time, I called on the radio and asked to send me another deputy, if they had one free, because I wanted

to continue the investigation; and I needed somebody to stay with Anthony Brown; and I wanted to follow up who was driving that vehicle. I waited, and Dep- -- Deputy Dave Merritt and Melvin Thomas showed up. And I told them what I had so far. I said, "I'm gonna go inside. I'm going to check with the clerk and see who got a room -- if anybody just got a room," because these vehicles were not there approximately an hour ago.

So I go in. I talk with the night clerk. He says, "Yes, somebody just got a room a little while ago, and they were from Timmonsville."

I said, "Oh, that don't sound right." I said, "Who was it?"

MR. NETTLES: Objection, Your Honor. I think this is a little bit of---

THE COURT: It's hearsay.

MR. NETTLES: Yes, sir.

MS. PARR: Oh. Just---

THE COURT: Tell us what you learned.

BY MS. PARR:

Q. Just tell us what you learned, and what did you do?

A. I -- I asked him---

THE COURT: Sustained.

WITNESS KIRBY: I -- I asked him who checked -- who checked in the room. He gave me a receipt with a

photocopy I.D. of a man named Lowman Rush.

MR. NETTLES: Objection, Your Honor. Now, only -- Not only is it hearsay, but it's a violation of the Sixth Amendment, and I've got no opportunity to cross-examine that individual on that information.

THE COURT: Rephrase your question. Sustained. Rephrase your question, counsel.

BY MS. PARR:

Q. As a result of what you received, what---

MR. NETTLES: Your Honor, just -- And may I make a motion to strike the testimony of the hearsay and Sixth Amendment violated -- violative testimony? That being who it was and where he was from.

THE COURT: That's a -- That's what you call a curative, ladies and gentlemen. You've got to remember to disremember the answers that were given. Just con- -- Must totally ignore it. It does not comply with the Rules of Evidence as to admissibility of that evidence. Strike it.

You may proceed.

MS. PARR: Your Honor, may we address this matter outside the presence of the jury?

THE COURT: Yes, ma'am, you may.

You can -- It's a good time for -- for us to take break. It's five minutes to 'leven (11). You've been

sitting over an hour anyway, about an hour and -- about an hour and ten minutes or so. Have a coffee break, whatever.

You -- You raise your hand? I saw somebody looked like he was fixing to wave and then put it back down. All right.

JUROR: No, Your Honor.

THE COURT: You must be planning on going outside. You got an umbrella back there.

JUROR: I don't know what to do with it.

THE COURT: I hope you optimistic. It was just sprinkling. Let me know when y'all are ready to return. It -- This won't take but just a few moments while I take up some matters with the lawyers.

You may go to your jury room. (While jury leaving) When you ready to return, y'all come on back. I'm ready when y'all tell me you're ready.

(WHEREUPON, at 10:56 a.m., jury returned to jury room; and the following proceedings were had outside the presence of the jury:)

THE COURT: All right, Ms. Parr?

MR. NETTLES: Your Honor, can I run to the bathroom real quick before we start this?

THE COURT: Beg your pardon?

MR. NETTLES: May I run to the bathroom real quick

before we start this?

THE COURT: You -- You -- We all gone take a break.

MR. NETTLES: Thank you, Your Honor. I appreciate it.

THE COURT: Just a matter of a moment.

MS. PARR: Did -- Did you just want to break right now then, and---

MR. LAWSON: And then come back and do that?

THE COURT: Yeah. We'll come back and do your motion.

MR. LAWSON: Okay. Thank you.

WITNESS KIRBY: Can I come down from here?

THE COURT: Yeah. But don't -- You're still under oath, of course, and don't speak to anyone; but you can come down. I generally send a law enforcement officer with a witness gone, but I don't think that's necessary in your case.

WITNESS KIRBY: I won't leave out of here.

THE COURT: You can do what you please.

(WHEREUPON, at 10:57 a.m., court stood in recess; and, at 11:07 a.m., court reconvened, with Defendant Blash and counsel for all parties present in the courtroom and with the witness returning to witness stand.)

THE COURT: All right. Ms. Parr, you had a matter you wanted to take up?

MS. PARR: Yes, Your Honor. One -- Actually two matters. One matter is I'm not sure I understood what counsel's objection was. I understand the objection on the hearsay. But then he indicated---

THE COURT: He made an Sixth Amendment fair trial motion in regarding testimony.

Put it in the record, what your objection is.

MR. NETTLES: Your Honor, my -- my objection was, well, fair trial obviously also. But here's what's my understanding of what's happened. They have got an officer on the stand who was in the process of saying what someone else told him.

All right. Now, that's hearsay, and I understand there's a cute little way we can ask the questions to get around that, but the problem is then this: Then he started to testify to what the hotel clerk said. The problem with that is -- in addition to being hearsay, is it's a violation of my client's right to confront witnesses against him. That's a Sixth Amendment right that we've got that, quite frankly, they don't have; but sometimes the government, you know, fails to -- to realize that, that they're -- because they're the government, there's an increased burden put on them; and, that is, they have to -- Now, I've got constitutional protections. They don't. I've got a right to confront witnesses

against my client.

THE COURT: Absolutely.

MR. NETTLES: Thank you, Your Honor.

THE COURT: He can testify as to what he determined from his investigation, but he cannot refer to hearsay testimony, and I think the officer's -- He's been on for a number of years. He's aware of that, and I'm sure he's gone be cautious as to that as that's --.

MS. PARR: Your Honor, if he'd like to do a brief proffer -- And I can tell you where we're going there.

IN-CAMERA DIRECT EXAMINATION BY MS. PARR:

Q. Officer Kirby, as a result of going into the Holiday Inn, did you receive something?

A. Yes. Yes.

Q. And what did you received?

A. Information that someone was staying in a room.

Q. Okay. And I will show you what has been marked for State's Exhibit Number 11. (While handing document) Can you identify this document?

A. Yes. This is a receipt where someone checked into room two-forty-three (243), Holiday Inn Express.

Q. Okay. And who did you receive that document from?

A. The night clerk, Reginald Fulmore.

MS. PARR: Your Honor, a copy of this was provided to all the counsels.

BY MS. PARR:

Q. And as a result of getting this document, what did you do?

A. I went to room two-forty-three (243).

MS. PARR: Nothing further, Your Honor.

THE COURT: All right.

MR. NETTLES: Your Honor?

THE COURT: Yes, sir.

MR. NETTLES: Real quickly. I'd like to head off a problem. That -- That's fine. I -- I have no problem with that for any number of reasons, mainly because it's all legal. If they're gonna plan on moving that document in, I -- we may want to hear -- hear argument about that now because that document is hear- -- He can't move that document in. Are they planning on moving that document in through that witness?

MS. PARR: I just wanted to -- If you would stipulate to it. If not, I can -- I have a witness I can put---

MR. NETTLES: All right. No.

MS. PARR: ---that in---

MR. NETTLES: I can't---

MS. PARR: ---later on.

MR. NETTLES: ---stipulate to that document being moved in through that witness.

MR. ANDERSON: Your Honor, on behalf of Mr. Blash, I

also would object---

THE COURT: I understand.

MR. ANDERSON: ---to that document coming in through Mr.---

THE COURT: I understand.

MR. ANDERSON: ---Kirby.

THE COURT: And I -- And I sustain the objection to that document, that the -- the -- She's gone have to call the -- the individual that he's -- to be subject to cross-examination before it's introduction.

All right. Ask the jury if they're ready to return. We're ready if they are. Fine. If they're not, tell us when they are.

(WHEREUPON, at 11:11 a.m., jury returned to open court; and the following proceedings were had within the presence of the jury:)

THE COURT: You may continue your examination of your witness, Ms. Carr (sic).

DIRECT EXAMINATION BY MS. PARR (continued):

Q. Deputy -- Investigator Kirby, would you please tell us what you did once Deputy Stone arrived?

A. Deputy Stone was -- was already there. You -- You talking about when Deputy Merritt came?

Q. Yes. Oh, I'm sorry.

A. Deputy Merritt came. Melvin Thomas came. I asked

them to accompany me to the front office. I went to the front office. After a certain time of night, I think they lock the inside door. So when I stepped into the foyer, Deputy Thomas and Merritt kind of stayed right -- right outside the door. The door was kind of propped open. Had a little thing you talk to the clerk through. You can't actually get into the lobby. I talked to the clerk. I said, "Has anyone checked in in the last -- What's -- What's the last time you checked someone in?" He said,---

Q. Okay. Don't tell us what he said. But just tell us what did you do after that.

A. He said, "Yes."

I said, "What room?"

He said, "Room two-forty-three (243)."

I said, "Thank you, sir." I left Mr. -- I left the clerk, went out and said, "Let's -- Will y'all accompany me up to room two-forty-three (243)?"

The clerk gave me directions to the room.

Q. Okay.

A. Told me how---

Q. All right. And did---

A. ---which room it was.

Q. Did you receive anything else from the clerk?

A. A receipt showing that -- that he'd -- that somebody had checked into that room.

Q. Okay.
A. Now, I did not take it from him at that time.
Q. Okay.
A. It stayed with him. He just kind of showed it to me and then had a -- like these other papers attached. I -- I looked at it. I said, "Thank you." He gave me directions to the room, and I went to the room.
Q. Okay. (While handing document) Can you -- Can you identify what has been marked for identification purposes as State's Exhibit Number 11?
A. Holiday Inn Express of Florence receipt where someone had checked into a room.
Q. Okay. And was that the receipt you saw on that particular night?
A. Yes, ma'am.
Q. And was that the receipt that you later obtained that particular evening?
A. Yes, ma'am.
Q. Now, Officer Kirby, what did you do as a result of your conversation with the clerk?
A. I left out of the little foyer of Holiday Inn Express, asked the two deputies would they accompany me up to room two-forty-three (243). Which from where I was standing at the front of the main door, it would be straight above me on a -- like a little balcony-like. But

you had to go back around to the west side of the building, about midways down, and go up a set of steps. Walk that balcony-like, or walk way -- all the way around back to the front.

So we -- During this time, we walked. And I'm talking to the deputies. And I'm telling them, I said, "When we get to the door, y'all just stand back behind me. I'm gonna knock on the door and talk to the people that's in the room."

I go to the door, and I knock on the door. Michael Monfries -- I didn't know who he was at the time, later identified as Michael Monfries. -- opened---

MR. NETTLES: Objection.

WITNESS KIRBY: ---the door.

MR. NETTLES: I don't think the foundation's been laid for him saying it was Michael Monfries.

THE COURT: As to who the individual---

MR. NETTLES: Yes,---

THE COURT: ---was?

MR. NETTLES: ---sir.

MS. PARR: I can---

THE COURT: All right, sir. I sustain you.

BY MS. PARR:

Q. Officer Kirby, what did you do once you knocked on---

A. I knocked---

Q. ---on the room?

A. ---on the door. A male subject opened the door. I identified myself again. Had a badge and -- and my credentials with me, a small flashlight. I'm standing at the door, and I told him "I'm Investigator Glen Kirby with the Florence Sheriff's Office." Asked him if he was expecting anyone.

He said, "Yes."

I said, "Who is that?"

He said, "Clayton Anthony Brown."

I said, "What is he driving?

He said, "A green Jeep Cherokee with California plates."

And I said, "I received information that a green Jeep -- or a green S.U.V. vehicle (sic), with California plates would possibly carry a large amount of drugs, also a white vehicle." I said, "Are you driving a white vehicle?"

He said, "Yes. It's" -- He pointed down toward the direction I just came from.

Q. Now, the person you were talking to, did he identify himself?

A. At -- When I asked him, he did.

Q. Okay. And please tell us exactly what you asked him?

A. When I got to that -- that point, I said, "Do you have any identification on you?"

He said, "Yes, sir."

And I said, "What's your name?"

And he told me Michael Monfries. He kind of turned, and I -- The door was all the way open. I was standing in the door. He turned; and there was like a dresser there, with a mirror, and had a bunch of change and some -- like a wallet and some other stuff laying there. He opened his wallet and gave me out a driver's license. I looked at that: Michael Monfries.

I said -- I told him again about the information I had about the drugs. I said, "Do you mind if I search you and this room?"

He said, "I don't mind."

During this time I'm talking to him, there's another guy laying on the bed -- furtherest (sic) bed away from the door. He's kind of laying propped up on his shoulder, looking at me. During the time we're talking, he sits up. I ask him to identify himself, and it was -- He identified himself as Eddie Blash. I asked him if he had any I.D. He said he did. He got up and got his I.D., and I think it was on the nightstand, like between the beds. He gave me that. And I said, "Do you have any problem with us checking your room?"

He said, "No."

At this time, the two deputies came in with me. Now,

they could see the deputies there, but they came into the room at this time.

I asked Melvin Thomas to check Eddie Blash. And Eddie Blash was cooperative. Said, "Yeah, you can check me." So he checked him. Didn't see anything. Didn't -- Didn't get anything off of him.

I checked Michael Monfries myself and didn't get anything.

I asked them if I could look through their luggage. They said yes. I went through their luggage. Didn't find anything. I looked in the bathroom and didn't see anything. In the little area right off from the bathroom, didn't see anything. There was -- Just looked all over the room, like I would normally do in -- in a quick manner. I didn't stay in there too long.

I said, "Do you have the keys to that white Xterra?"

Michael Monfries says that he did.

I said, "Do you mind if I look in it?"

He said, "No, I don't mind."

I said Dave -- And Michael Monfries said, "Let me get my clothes and shoes."

I said, "All right." So I told Deputy Merritt to stay there with him, and I'm going ahead down (while indicating) because he's got to walk around this way, and I'm coming down. I went down the stairs. Had my

flashlight.

I walked around the vehicle. I looked in it. I laid down and looked under the rear where the rear bumper is, and there's a spare tire there. I laid down, and I saw a package in the spare tire. When I say in it, I'm talking about laying up in the rim. It's attached to the car where you could lower it down and put it on your car if you needed to. And there's little holes around the rim that you can see through. I saw a package taped with like brown packaging tape and plastic. And in my past experience, I've seen it before. It -- It ended up being drugs packaged in that -- that form.

So I stood up. I didn't take it out. I stood up. By this time Michael Monfries was down the steps, coming across the parking lot with the deputy. I asked Deputy Merritt -- I said, "Mr. Monfries, we're gonna detain you at this time." I asked him to put handcuffs on him. I said, "Because there's a package under that space tire, and I don't know what it is. Until I find out what it is, I'm gonna detain you."

I got down, and I wedged -- I got my arm up in there and got it. I had to pull it out. I pulled it out; and it was a square, like a rectangular-shape, what I believed to be cocaine.

I told him -- I walked over toward him. I said,

"You're under arrest for trafficking in cocaine." At this time, I read him his rights. Asked Deputy Merritt to step him to the side. I didn't need to see him anymore.

Asked -- And during that time, Gary Lewis, another narcotics agent, had went up to that room with a narcotics dog. He was already up in the room with Melvin Thomas and the dog and Eddie Blash. I went back up to the stairs. At which time I told Eddie Blash that he was under arrest for trafficking in cocaine and brought him down and placed them in separate cars and continued the investigation from there.

Q. Now, first of all, did -- do you see Eddie Blash in the courtroom today?

A. Yes.

Q. Okay. And would you point Mr. Blash out?

A. (While indicating) The gentleman right there in the khaki-colored pants.

MS. PARR: May it please the court? We'd let the record reflect that Deputy Kirby has pointed the defendant Eddie Blash out in the courtroom.

BY MS. PARR:

Q. Now, Deputy -- I mean, Investigator Kirby, what did you do after you placed the subjects under arrest?

A. At the time I placed them under arrest, I separated the -- those people. I continued to search the vehicle.

Didn't find anything -- drug -- any drugs in the vehicle. I found a set of Pyrex dishes, a strainer -- like a strainer that you'd use for cooking or something, and some little loaf pans like you would put like banana bread or something in, like there was ten (10) of those.

And I went -- When I went back up to the room when we were placing Eddie -- Eddie Blash under arrest, Mr. Monfries's wallet and other stuff, like I said, was laying on that counter that was laying there. At this time, I picked up a receipt. It was a Kmart receipt.

MR. NETTLES: Objection. Objection. Could I ask the jury be sent outside on this, Judge, 'cause---

THE COURT: Beg your pardon?

MR. NETTLES: May I ask the jury to be excused?

THE COURT: Yes. Bring you back in a matter of a moment.

(WHEREUPON, at 11:23 a.m., jury returned to jury room; and the following proceedings were had outside the presence of the jury:)

THE COURT: All right, sir, Mr. Nettles.

MR. NETTLES: Thank you, Your Honor. Your Honor, I believe that what they're prepared that -- preparing to do -- And if I'm wrong, I apologize for being an alarmist. But I believe that what they're getting ready to do is -- is he's gonna testify that he found a Kmart receipt. Now,

what was on the Kmart receipt, the items listed on the Kmart receipt, that would be -- I mean, we're back to the same thing. He can't testify -- Thank you, Your Honor. It's a violation of the Sixth Amendment, not to mention hearsay, Your Honor. Thank you.

THE COURT: All right, sir. She can --.

MR. LAWSON: Your Honor, may I be heard on that?

THE COURT: Yes, sir, you may.

MR. LAWSON: Your Honor, the -- he was given consent to search the room. If there was a receipt in that room that came from Kmart and there are items listed on that, we can admit that for the purpose of showing what was found in the room, for no other reason than the fact that he had consent to search and he obtained this from the room. You know, without making any comments as to what is contained on the document itself.

THE COURT: Yes, sir. I -- It -- Counsel for the 'sense out of the -- an abundance of precaution, anticipating things that may or may not occur -- And I can't rule or give a curative, and I understand I can't unring a bell, but counsel for the State indicates to me he doesn't intend to do that. He's just gone---

MR. NETTLES: Well, he -- he just -- My understanding -- And -- And maybe we're reading off of different sheets of music. If he's not gonna move that evi- -- that --

that receipt into evidence, I don't have a problem. If he wants to testify "we found a receipt," that's fine. It is a receipt. When he begins to testify about it's a Kmart receipt, it contained the following items on the receipt, then I've got a problem; but, if he wants to just limit it to "we found a receipt," that's right. It's a receipt, and it was found, but the contents of the receipt -- For them to get the contents of that receipt in, there are -- they -- they have to do certain evidentiary things. There's a right way to get a receipt in, and that's not it. I mean, otherwise, they'd just bring cops in here just to read stuff that was inadmissible all the time. We found this and just had it -- read it off. That's what I'm concerned about. If it's limited to just a receipt, I've got no objection. The contents of the receipt, I do have an objection.

MR. LAWSON: Your Honor, if he moves -- if we move the receipt into evidence, we're moving it into evidence as an item that he found as a result of a consentual search; and, if there is something on there that is incriminatory to the defendant, then -- and that, in and of itself, is grounds for an objection, then every consent search in which incriminating evidence is found would be subject to this type of objection.

MR. NETTLES: Your -- Your Honor, that's not true. I

-- I -- I'll -- I -- I -- I -- Allow -- I'm not saying that he -- it's untrue that anyone's mislead- -- But just what the State is making -- I am not making a Fourth Amendment search and seizure argument. I am not saying that the receipt was illegally obtained. I am saying that the prof- -- that that -- that is a Sixth Amendment and a Rule of Evidence.

In other words, that's -- that receipt is a statement. It's an unsworn, out-of-court statement that goes to the truth of the matter asserted. What they want to say is -- is that these guys went to Kmart and bought these items. That's what they want -- That receipt -- And the off- -- Let the record reflect that the officer's shaking his head, agreeing with me that that's exactly what they want to do with that receipt. That is hearsay. There is a correct way to get that hearsay in, and that officer is not it.

THE COURT: And that is subpoenaing the person at Kmart to identify the---

MR. NETTLES: Yes, sir. And 'cause then that way it would satisfy my Sixth Amendment concern and my evidentiary concern. What the State is saying is simply because the search does not violate the Fourth Amendment that it's automatically admissible to the jury, and that's not true. That just means it doesn't get suppressed as

fruit of the poisonous tree, Your Honor. Thank you.

MS. PARR: May I have the court's indulgence a moment.

(WHEREUPON, Ms. Parr conferred with Mr. Lawson.)

MR. LAWSON: Your Honor, that -- in this -- in this situation, we're talking about something happening in April of 2000. We're talking about a receipt from Kmart that was run at a register. It is -- It's printed. The document speaks for itself as to what it is. And whether or not -- Your Honor, I just -- I don't believe it calls -- it falls under the purview or the rule that Mr. Nettles is -- Basically, business records as to the exclusion and the objection to the document---

THE COURT: You've got a receipt. He's made a purchase. But what he purchased, you're getting into a contents (sic); and that -- that's a -- that's a different -- that's a different consideration. You've got contents.

MR. LAWSON: Your Honor,---

THE COURT: You've got contents in the room, and you've got the -- and you've got a receipt from Wal-Mart (sic). The inference is he had purchased it, and the inference is here are the things they purchased at the Wal-Mart (sic) Center. There's a way you can do that. I don't think that is really -- I'm -- understand you want everything you can get in there. I don't see that as a

critical point, and it continue to split hairs, and the defense is gonna make whatever objections. They got a duty to do that if they think there's anything in there that's gone be prejudicial; and I -- I -- I think you can say he's got a receipt that shows here; and you can -- you can show, you know, whatever the contents were; and it's new; and there might be an inference to be drawn from -- from that evidence; but, as far as here's the receipt itself, speaking for itself, the document speaking for itself where it goes to those contents, I think that's a -- I think his objection has merit.

The purchase -- You made a purchase at Wal-Mart (sic). It's a recent purchase, as long as it doesn't go into the contents. I'm assuming it's got date on it when the purchase was made and the contents themselves.

MR. LAWSON: It's got a date and a---

THE COURT: And where---

MR. LAWSON: ---time and---

THE COURT: ---they came from. That's what you're trying to tie up. What's the -- What does the evidence indicate, and you can argue all of that in your -- in your summation, but I don't want to set up a record in this case that may reverse whatever the decision is for either of the State or the defendant in this case. So out of -- out of a precaution, identify it; and it's a receipt; but,

as far as going to those contents, you can call somebody from Kmart; and you can ask them, "Do you sell things like this, this merchandize from Kmart." There's all kinds of ways to do it, but there's a right way and a wrong way, and this ain't the way to do it through that receipt.

All right. Anything further?

MR. LAWSON: Your Honor,---

THE COURT: It might be a little bit more label -- labory -- laborious and a little bit more effort, and I understand what -- what your difficulty---

MR. LAWSON: Your Honor,---

THE COURT: ---and problem is with the -- with the delay---

MR. LAWSON: May it please the court?

THE COURT: ---in the timing for it.

MR. LAWSON: Your Honor, we did not put a witness down from Kmart on our witness list. We will contact Kmart, and would ask the court's deference in allowing us to add a witness to establish that.

MS. PARR: Okay.

THE COURT: And I -- And I certainly will give the defense an opportunity to speak to that witness, talk to that witness about what that witness may testify to.

MR. NETTLES: And -- And -- And, Your Honor, I mean, the only thing I'd point out to save us a little bit

trouble 'cause I just finished doing this issue at length -- I would point out -- And just to save us a little bit of trouble down the road, I'd point out that Rule 803(6), which is the common purchase business records exception, it's got to be a person with knowledge.

MS. PARR: With knowledge. Right.

MR. NETTLES: And so if you'll look at the case law on that, I mean, they can bring in a clerk that can say that's a receipt; but they've got to have a person with knowledge as it relates to that document. So just so -- I mean, we just don't have to rehash this. I just---

THE COURT: I understand.

MR. NETTLES: Thank you, Your Honor.

MS. PARR: Your Honor, what we intend to do is get one of the management from Kmart.

MR. NETTLES: All right.

THE COURT: That satisfies it.

MR. NETTLES: We'll see.

THE COURT: All right, sir.

MR. LAWSON: Your Honor, I don't -- I don't believe that that's going to satisfy Mr. Nettles. He wants the person that did this receipt. He wants the State to have to bring that person in, is what he's saying, the person with knowledge as to this particular---

THE COURT: The specific---

MR. LAWSON: ---receipt.

THE COURT: ---individual.

MR. NETTLES: That -- That -- I'm -- My position is the case law makes that pretty clear.

THE COURT: Y'all gone split hairs, and we'll be here next week.

MS. PARR: Okay. We---

THE COURT: Y'all split hairs over these things that are really not critical to this prosecution---

MS. PARR: Okay. Your---

THE COURT: ---not the -- It may be to the defense, and I don't know how you can -- I don't know how you view -- I don't know how you view that, but you're gagging on gnats.

MS. PARR: Okay. Your Honor,---

THE COURT: And -- And it's nuisance. Swat them out your face, and let's get on with the trial.

MS. PARR: Okay. Your Honor, this is the last thing I want to say on that matter. Based upon the Rule 806 -- 803(6), it just says that it needs to be "shown . . . testimony of the custodian or other qualified witness, unless the"----

THE COURT: I understand.

MS. PARR: ---"source"---

THE COURT: Other qualified. We -- We in -- We'll

cross these bridges when we get to them. Everybody's got a bad set of nerves so far, and we ain't even begun or finished the first witness.

All right. Let's have -- bring the jury.

(WHEREUPON, at 11:34 a.m., jury returned to open court; and the following proceedings were had within the presence of the jury:)

THE COURT: You may proceed your examination, Ms. Parr.

BY MS. PARR:

Q. Agent Kirby, (while handing document) can you identify State's -- what's been marked as State's Exhibit Number 9 for identification purposes only?

A. Yes. It's a receipt.

Q. Okay. And where did you get that receipt?

A. From the -- I guess you'd call it the dresser drawer or chest of drawer area, laying beside Michael Monfries's personal belongings.

Q. Okay. All right. And after you obtained the receipt, what did you do?

A. We took Eddie Blash back downstairs. Went downstairs -- Gathered up some of their personal belongings out the room. Placed them inside the Nissan Xterra that was outside, after we had searched it thoroughly. Put the lug- -- Put their stuff back in there. And I kept this --

this receipt. Other items were given to Mr. Monfries, such as his wallet, some change that was on the counter.

Q. Now, Investigator Kirby, (while handing photo) can you identify what has been marked for identification purposes as State's Exhibit Number 12?

A. Yes. It's a picture of the Holiday Inn Express, the front -- the front of Holiday Inn Express.

Q. Okay. And -- And where is that picture -- Where was that picture taken?

A. In Florence County, out on I-20 and I-95.

Q. Okay. And were -- were you there when that picture was taken?

A. Yes, I was.

Q. Okay. Now, is that picture an accurate representation of the Holiday Inn as it appeared on the night of this incident?

A. Yes, it was.

Q. Has any changes or alternations been made?

A. Not that I could tell by looking at it.

MS. PARR: Your Honor, the State has several photographs and would like to go through each -- through all of them at this time.

THE COURT: Let counsel -- Let counsel look at them. Was this---

MR. ANDERSON: I have no objection, Your Honor.

MR. NETTLES: I have no---

MS. PARR: Your Honor,---

THE COURT: Beg your pardon?

MR. NETTLES: I have no objection.

THE COURT: Without objection.

MR. NETTLES: Yes, sir.

THE COURT: How about it, Mr. Anderson?

MR. ANDERSON: No objections from Mr. Blash.

THE COURT: Without objection, the photographs are admitted as an accurate depiction of the -- the layout of the motel.

(WHEREUPON, Five (5) Photographs of Holiday Inn Express and Two (2) Photographs of Nissan Xterra admitted into evidence as State's Exhibits Number 12 through Number 18, respectively, without objection.)

THE COURT: What all is depicted beside the outside picture of the motel? Parking lot? Room? What -- What -- What all is depicted in that?

MS. PARR: Your Honor,---

THE COURT: What -- That will be -- These will be with you during the time of your deliberation, ladies and gentlemen; and you will be invited by both parties to examine them for benefit it might be to you in your deliberation; and, at some point, if they ask for them to be published, I stop the examination because you can't

listen to a witness at the same time individually be viewing exhibits; but that's a thing -- a strategy for counsel as to whether they want to publish or not; but they'll be with you in your jury room with a number of exhibits that we anticipate that will be introduced in the evidence.

But just tell us briefly what are these pictures depicting.

BY MS. PARR:

Q. (While handing photos) And if you would, refer to each one of the -- the numbers on the back.

EXAMINATION BY THE COURT:

Q. And these pictures are on the night of the incident and in the investigation. That was at night, was it not?

A. These pictures here were taken during the daytime.

Q. And these pictures in the daytime. All right. That's the only difference.

A. (While indicating) This picture here is State's Exhibit 12. It's the front picture of Holiday Inn Express, I-95 and I-20 in Florence County.

(While indicating) This picture here is State's Exhibit 13. It's the side -- the west side parking lot showing the staircase going up to the second floor and the parking lot where the vehicle -- where I found the vehicles.

(While indicating) This is a wider shot. It's State's Exhibit 14, a wider shot that -- that catches the front; and it also shows where the parking lot is adjoining -- adjacent to the front there.

(While indicating) This is another photo of the west parking lot. It's State's Exhibit 15.

(While indicating) This is a close-up photo of the front doors going into the foyer of the Holiday Inn Express, also showing that the room is above it. It's State's Exhibit 16.

(While indicating) This is a photo of a white Nissan Xterra. It's -- It's not the vehicle that the drugs were taken out of it. It's one that I -- that we took photos of to show you -- the jurors what -- what a Nissan Xterra would look like, and it's State's Exhibit 17 and State's Exhibit 18.

THE COURT: All right. You may continue. Are you now seeking to publish?

MS. PARR: Yes, Your Honor. Your Honor, I---

THE COURT: Your motion is granted.

(WHEREUPON, the projector and screen were set up.)

DIRECT EXAMINATION BY MS. PARR (continued):

Q. Officer Kirby, could you, using your laser printer (sic), show us what you did on that evening? Can you---

A. I can see them.

Q. You -- You can see?

MS. PARR: Your Honor, could -- will the court grant the witness permission to come down and---

WITNESS KIRBY: I can see it---

THE COURT: You may---

WITNESS KIRBY: I can see it---

THE COURT: ---come down.

He -- But if he can't see it from where he's seeing (sic), I know the jury can't see it, Ms. Parr.

MS. PARR: Can -- Your Honor, we would ask the court to inquire as to whether the jury will be able to see.

(WHEREUPON, jurors started answering.)

WITNESS KIRBY: I -- I can---

THE COURT: Hold it just a moment. Can you see it, Ms. Forelady?

FORELADY THOMPSON: To the left, I can see it; but, to the right, it's blurry.

THE COURT: All right. Lady sitting on the back, can you see it?

A JUROR: Yes, sir.

THE COURT: Is it clear to you?

A JUROR: Yes, sir.

THE COURT: All right. I'm gone let you -- I'm gone let y'all come down on both sides. Don't block that view unless there's objection (sic).

MS. PARR: That is fine.

THE COURT: Come out of the jury box. I'm gone let you approach it. Please do not speak to each other when you come out or when you go back or have any comments about this exhibit. It's gone be shown to you, and then she's gone have some testimony.

WITNESS KIRBY: (Indicating screen) It's real good now, Judge.

MS. PARR: That's good.

THE COURT: Can everybody see it now?

(WHEREUPON, the jurors answered in the affirmative.)

THE COURT: All right. That -- That puts it in position. Now, if you choose to, you want to come down, if you've got a marker or whatever.

WITNESS KIRBY: I can see it from here, judge, and I've got a laser---

THE COURT: You're fine from there. All right. You got a -- something that you can---

WITNESS KIRBY: Yes, sir.

THE COURT: ---point at it with?

WITNESS KIRBY: Yes, sir

THE COURT: All right, sir. You may examine your witness.

WITNESS KIRBY: Oh.

BY MS. PARR:

Q. All right. Officer Kirby, would you please tell us about this photograph and where you were in relations to it?

A. I'm -- (While indicating) This is the Holiday Inn Express at I-95 and I-20 in Florence County. This over here would be the entranceway or the exit and/or entrance, whichever one you want to use it as, that I would -- that I told you -- testified to earlier that I was leaving out of to go back onto the road out in front there. This would be the front. This is where you'd pull in and park and walk into those front doors there if you were going to get a room.

(While indicating) And to where I found the two vehicles were over here in this side parking lot. You don't see it in this photo yet, but it'd be to that side.

Q. And would you explain what -- on State's Exhibit Number 13, what that depicts?

A. It -- The west side parking lot of the -- of the Holiday Inn Express. (While indicating) As I said, if you were -- if the picture was full, to the far right is where -- where I was leaving the parking lot. I turned around and came around this building, back this way. That Nissan Xterra would have been parked right in here somewhere where that black truck is at. And I drove past it; and right in this parking lot, right past where that little

burgundy van is there, would be about where the Jeep Cherokee with the California plates was -- had pulled into. And I -- I approached them here.

And I -- As I said, I talked to that subject a long while; and then, as I was going upstairs, (while indicating) the stairs are here. Located a good distance from the front. You had to come back around and go up the stairs and then follow it back around on that balcony up there to that front room, being room two-forty-three (243).

Q. Now, Investigator Kirby, where did you park your vehicle?

A. (While indicating) Right here. I did not pull in a spot. I kept it kind of long-ways, like I was driving through the parking lot, and stopped and -- and walked around his vehicle to get to him, to the door.

Q. And what were you driving?

A. A black Dodge truck. (While indicating) That one right there in the picture, with the dark-tinted windows right there with the little lights on. That truck.

Q. Okay. And would you please tell us what -- what's been marked as State's -- or admitted into evidence as State's Exhibit Number 14?

A. (While indicating) This is the front -- The front door should be right in there. It shows the west side

parking lot. It shows the -- the distance to where I was at. I should have been to where that truck -- See, that little corner right here? That's where those vehicles were parked, right in there; and my truck would have been long-ways right in here.

(While indicating) And I went to the foyer. I went inside and talked to the night clerk. And when I came out, I had to go around, down the sidewalk, all the way down to mid ways, up a flight of stairs and then come back around on this balcony here. I ended up walking right past through there, to the room right in there.

Q. Would you tell us about State's Exhibit Number 15 that's been admitted into evidence?

A. (While indicating) It's another shot of the west parking lot, a little closer up, showing the set of steps here, going up to the second floor; and, like I said, that -- their car would have been parked right in here. And from -- from the front balcony, as I was up on the front balcony, you could not see down to where I was actually talking to Clayton Anthony Brown or where my truck was at. So I couldn't see where, once I got up there -- If you were up in that room that they were in, you wouldn't be able to see down to where I'm at.

Q. And State's Exhibit Number 16?

A. (While indicating) It's the front door of the Holiday

Inn Express where I walked in, and then the other -- There would be another set of double doors right inside there that stayed locked and had to talk to the night clerk through a little -- almost like a bank teller window, kind of on the left there. I talked to him through there. Came out.

(While indicating) The room, two-forty-three (243), is directly above it. Up here.

Q. And, Officer Kirby, can you identify State's Exhibit Number 17?

A. It's a white Nissan Xterra, (while indicating) showing that the -- the rear view and the spare tire is right -- You can see the edge of the spare tire. You -- It's -- Kind of drops down below where the license plate would be, and that's where I found the package up in a Xterra similar to this one.

Q. And would you please tell us specifically where you found the package?

A. (While indicating) Inside the spare tire rim. The tire lays flat and is kind of bolted up under the car. And if you -- if you're -- if you were lying on your back and look up, you can see the -- the rims have holes in them, big holes around on this side, and then the actual bolt to the -- to the axle on the -- with the lug nuts here. But you could see through, and I could see the

package through one of those holes right there, looking up into it.

Q. And how were you situated in relations to that vehicle?

A. You mean when I saw it?

Q. Yes.

A. I was lying on my back, looking up with a flashlight.

Q. And State's Exhibit Number 18.

A. (While indicating) It's the side view of a Nissan Xterra, showing what one would look like.

Q. Now, Investigator Kirby, is this the same vehicle you saw that particular night?

A. No. It's the same make and model of one, but it's not the actual one that I found the package in.

THE COURT: Just move that screen now so my view of the lawyers -- so if they want to be recognized, I can see them.

(WHEREUPON, the screen was moved.)

BY MS. PARR:

Q. (While handing item) Now, Officer Kirby or Agent Kirby, would you please identify what has been marked as State's Exhibit Number 2?

A. This is a -- a package of cocaine.

Q. Well, first of all,---

MR. NETTLES: Objection, Your Honor. Foundation's

not been laid for---

THE COURT: Yes, sir.

MR. NETTLES: ---what it is.

THE COURT: The foundation's not been laid of what that substance is. Rephrase---

MS. PARR: Yes. I'll rephrase---

THE COURT: ---your question.

MS. PARR: ---the question.

THE COURT: Sustained.

BY MS. PARR:

Q. (While indicating) Agent Kirby, I show you what has been marked for the purpose of identification as State's Exhibit Number 2. Would you please explain---

A. It is---

Q. Would you please examine it first?

A. It's nine hundred and ninety-seven-point-two (997.2) grams---

MR. NETTLES: Objection.

MS. PARR: But -- Okay.

WITNESS KIRBY: ---of compressed powder substance.

BY MS. PARR:

Q. Do you recognize it?

A. I recognize it.

THE COURT: Sustained, counsel.

MR. LAWSON: He said a white powder substance.

MS. PARR: Substance. Yes. In---

MR. NETTLES: Well, that part I would object to.

BY MS. PARR:

Q. Do you recognize it?

A. Yes, I do.

Q. Okay. And how are you able to recognize it?

A. Because it's the package that I found under the Nissan, (while indicating) and I can recognize it by this tape that was originally around it, that's now in the package. That was what's lying in that spare tire.

Q. Okay. And how did it first come into your possession?

A. After I was lying on my back looking up with a flashlight, I saw the package taped with this brown tape up in there; and I reached up over the spare tire and pulled it out.

Q. And where did you obtain it from?

A. The spare tire -- Inside the rim of a spare tire on a Nissan Xterra parked in the parking lot at Holiday Inn Express.

Q. And when did you obtain it?

A. On -- Probably would have been April the 11th by then. It was after midnight, some time after midnight. Around one (1:00) o'clock, somewhere in that area. I don't know exactly.

Q. And when you took possession of that package, what did you do with it?

A. I put it in my vehicle at that time.

Q. And -- And then what did you do with it?

A. I took a -- my -- my pocketknife that I have, and I cut a little slit. I don't know which side it's on 'cause I can't tell now. And pulled out a little -- what appeared to be a white powder substance.

Q. Now, is this item in substantially the same condition now as when you first saw it?

A. Yes. Other than being unwrapped, yes, it's in the same condition.

Q. If there are any changes, could you please tell us again what the charges are?

A. It's not wrapped in the -- in the wrapping that I found it in. It's opened up now, completely. Of course, it's broke on the corner here. It wasn't broke at that time.

MS. PARR: May I have the court's indulgence for a moment.

(WHEREUPON, Ms. Parr conferred with Mr. Lawson.)

THE COURT: (While Ms. Parr and Mr. Lawson conferring) If I ask a question, ladies and gentlemen, sometimes it's to expedite; but it's always for clarification and information for you; and you're not to

re- -- get the impression that I have -- because I tell you I do not -- that I have any opinion or that I'm commenting on the facts. That would be inappropriate. That would be improper. That would be error. That would be a basis and grounds for a mistrial. I do it. It's for information.

MS. PARR: Your -- Your Honor, I'll---

EXAMINATION BY THE COURT:

Q. You took it in your possession.

MS. PARR: Your Honor,---

BY THE COURT:

Q. How long did you keep it in your possession? What did you do with it?

A. I kept it in my truck until we finished on the scene that night, and I drove it to Effingham and locked it in a safe.

DIRECT EXAMINATION BY MS. PARR (continued):

Q. And where -- And you locked it in a safe. Would you please tell us what safe you locked it in?

A. In the safe in the Narcotics Division.

Q. Okay.

A. The Sheriff's Office in Florence County.

Q. All right. And do you know what happened to it after that?

A. Yes. I came back out the next morning, sometime in

the morning, mid-day, and met with Lieutenant McFadden who is one of only two people that know the combination to that safe; and he opened it and gave it back to me; and I logged it into evidence at that time.

Q. Okay. And after it was logged into evidence, what happened to it?

A. It was sent to Charleston Police Lab who analyzes the drugs for us, for Florence County Sheriff's Office.

Q. Okay. And did you have an occasion to pick that evidence up?

A. From Charleston?

Q. Yes.

A. I don't know if I went to get it or not. I can't remember. I go -- We go to pick up evidence, depending on when you're on-call. If you're on-call that week, when you come off of call, your job is to go to Charleston to get evidence. I'd have to look at the date and see if I'm the one that went 'cause you pick up a large number of packages.

Q. (While indicating) Let's go through this one at a time. Would you identify what's been marked as State's Exhibit Number 4? Number 4.

A. Let me find Number 4.

Q. Yeah.

A. Is it this one? (While indicating) That's a set of

Corning dishes, glass dishes, Pyrex dishes.

Q. And do you recognize that?

A. Yes, I do.

Q. All right. And how are you able to recognize it?

A. These were found in the rear compartment of the Nissan Xterra.

Q. Okay. And how did it first come in your possession?

A. After gaining consent to search the vehicle, I -- After we'd opened it, I found these in the back.

Q. Okay. And what did you do with it after you found it?

A. I placed it into evidence at Florence -- at the Sheriff's Office.

Q. Okay. And had -- Is it still in the same condition as it was when you got it on that particular evening?

A. Yes. It was open like this.

EXAMINATION BY THE COURT:

Q. What's in that box, officer.

A. Dishes. You want me to take them all out?

Q. Yes, sir. The jury's just looking at a box.

A. (While taking dishes from box) I'm familiar with how to use them. My wife thinks so.

Q. Was that the contents of the box?

A. Yes, sir.

Q. All right, sir.

A. The packing---

Q. Place them---

A. ---stuff---

Q. ---now back in the box.

A. (Complied.)

THE COURT: All right, sir. Continue examining your witness.

MS. PARR: Your Honor, the State moves to enter what's been marked as State's Exhibit Number 4 into evidence -- for admission into evidence.

MR. NETTLES: Without objection, Your Honor.

THE COURT: Without objection, admitted.

(WHEREUPON, Corning Saucepan Set admitted into evidence as State's Exhibit Number 4, without objection.)

DIRECT EXAMINATION BY MS. PARR (continued):

Q. Now, Officer or Investigator Kirby, would you please -- Can you identify what's been marked as State's Number -- State's Exhibit Number 6 for identification?

A. Yes. That's foil -- tinfoil loaf pans. It says mini loaf pans inside it.

Q. Okay. And do you recognize it?

A. Yes.

Q. And how are you able to recognize it?

A. (While indicating) It was sitting inside this box, kind of like this, when it was in the back of the truck.

Q. And when -- And how did you first come into possession of it?

A. After searching the vehicle.

Q. And what vehicle was that?

A. Nissan Xterra.

Q. Okay. And where did you obtain it?

A. From the rear compartment of the -- of the vehicle.

Q. And when did you obtain it?

A. Early morning hours of April the 11th, 2000.

Q. And what did you do with it once you took possession of it?

A. I put it in my vehicle and transported it to Effingham Sheriff's Office or the Florence County Sheriff's Office in Effingham and logged it into evidence.

Q. Now, is State's Exhibit Number 6, the ten (10) tin loaf pans, in substantially the same condition now as when you first saw it?

A. Yes.

MS. PARR: Your Honor, the State would move to enter State's Exhibit Number 6 that's been marked for identification into evidence.

MR. ANDERSON: No objection, Your Honor.

THE COURT: Without objection by either -- either counsel.

(WHEREUPON, Ten (10) Tinfoil Loan Pans admitted into

evidence as State's Exhibit Number 6, without objection.)

BY MS. PARR:

Q. Would you please identify what's been marked as State's Exhibit 7 for identification?

A. Yes. That's a strainer, five-inch strainer, stainless steel.

Q. And do you recognize it?

A. Yes.

Q. Okay. And how are you able to recognize it?

A. It was found in a -- in the Nissan Xterra in the rear compartment with these other items.

Q. And did you take possession of it on that evening?

A. Yes, I did.

Q. And what did you do with it once---

A. Placed it---

Q. ---you took possession of it?

A. Placed it into evidence with the Sheriff's -- at the Sheriff's Office.

Q. Now, is this exhibit in substantially the same condition as it was on the night you obtained it?

A. Yes, it is.

MS. PARR: Your Honor, the State would move to enter it into evidence.

MR. NETTLES: Without objection.

THE COURT: Without objection from either counsel,

admitted.

(WHEREUPON, Five-Inch Strainer admitted into evidence as State's Exhibit Number 7, without objection.)

BY MS. PARR:

Q. And, Investigator Kirby, would you take a look at what's been marked as State's Exhibit Number 5 for identification?

A. It's two sponges.

Q. And do you recognize it?

A. Yes.

Q. And how are you able to recognize it?

A. It was found in the Nissan Xterra in the rear compartment with these other items.

Q. And did you take possession of it---

A. Yes, ma'am.

Q. ---on that particular evening?

A. Yes, ma'am.

Q. And what did you do upon taking possession of it?

A. I placed them in my vehicle and took them to the Sheriff's Office, logged into evidence.

Q. And is it in substantially the same condition as it was on the evening you took possession of it?

A. Yes, ma'am.

MS. PARR: Your Honor, the State would move to introduce State's Exhibit Number 5 into evidence.

MR. ANDERSON: No objection.

THE COURT: Without objection.

(WHEREUPON, Pack of O-Cel-O Sponges admitted into evidence as State's Exhibit Number 5, without objection.)

BY MS. PARR:

Q. Now, Officer -- Investigator Kirby, are you familiar with the Miranda warnings?

A. Yes.

Q. And did you have an occasion to administer---

MR. NETTLES: Objection, Your Honor. I think this is commenting on a constitutional right my client has, and I believe that it would be a violation of Doyle v. Ohio to go any further with this.

COURT REPORTER: Excuse me?

MR. NETTLES: I just ask for the jury to be sent out, if you don't mind.

THE COURT: We gone excuse you for a moment or two while we take up a matter of law. Won't be long, and I'll be sending you word.

(WHEREUPON, at 12:06 p.m., jury returned to jury room; and the following proceedings were had outside the presence of the jury:)

THE COURT: Let me recap some of the testimony for just a moment. I stand to be corrected, and I make reference to the transcript.

IN-CAMERA EXAMINATION BY THE COURT:

Q. This took place after you found it and after you placed him under arrest, and you'd already Miranderized (sic) him, had you not?

A. Yes. When I -- When I---

Q. All right.

A. ---took possession---

THE COURT: That attaches, and he does not have to do that at -- any more throughout and even later the next day, the day after while he's in custody.

MR. NETTLES: Thank -- I mean, thank you. 'Cause that's -- Thank you. That -- That's what I wanted. That's all I wanted. I -- I didn't -- I think that comments on my client's right to remain silent. Thank you, Your Honor.

THE COURT: All right, sir.

MS. PARR: Your Honor, to make sure I understand -- I understand it,---

THE COURT: Now, gentlemen, I don't mind you making objections when they got some merit; but now it's getting to the point where it's getting frivolous.

I notice someone out there is taking notes, and you're not gonna insult this court. She is the official court stenog- -- court reporter stenographer. You'll have a transcript available to you. Are you a registered court

reporter?

FEMALE IN AUDIENCE: No. I'm just like not wanting to talk to them, so I'm just writing it out.

THE COURT: All right. And there's one other thing I want to indicate to you. Through your body English (sic), your language, and moving from here over to that side, back to this side, nodding, or in any way making any expression, agreeing or disagreeing, I'll send you out of here. I'll hold you in contempt, and I'll put you in jail. I want no body English (sic) from anyone, and you tell me if there's anyone else coming. It's obvious to me you here in support of these people. Nothing wrong with that. I don't want any body English (sic) or language, and you be very careful. They see you writing, and you're doing that. That's an insult to the -- to the system and the court reporter, but I'm gone let you do it, but you---

MR. ANDERSON: Your Honor,---

THE COURT: ---but you do it in such way as you don't attract the attention of this jury. They'll just -- They'll be distracted by any expressions that you make. Don't do that.

MR. ANDERSON: Your Honor, if it please the court? I think she moved over so that she could see the---

THE COURT: I understand, but it looks like she's counsel, and she's got some official capacity with this

court, and she's taking notes as well, and I'm not gone have that.

All right. We gone be at ease for a moment or two, and that -- and we've had a matter on that with our Supreme Court, too. It's an insult to the court reporter. Lawyers and secretaries up here with law', that's perfectly permissible and maybe for somebody who represents the media.

We're gone be at ease for a moment.

(WHEREUPON, at 12:09 p.m., court stood in recess; and, at 12:12 p.m., court reconvened, with Defendant Blash and counsel for all parties present in the courtroom and with the witness in the witness stand.)

THE COURT: All right. All right. We're -- We're ready. Bring the jury.

Anything further?

MR. NETTLES: Well, I -- I believe at this point we may have come to a agreement; and, that is, this: My understanding is that the next question was gonna be to this officer was did you give him his Miranda warnings, and he was gonna say yes.

All right. My objection was I believe that the logical inference is he got given the Miranda warnings; he got given the chance to make a statement; and he chose to exercise his right to remain silent. To avoid this whole

issue on behalf of Michael Monfries, we will not agree -- And after discussing it with the State, their concern was that, at some point during the closing, I would argue he never got given his Miranda warnings. We are not gonna argue that. In exchange for that, they're not gonna pursue that line of questioning.

MS. PARR: All right. But we do not have a response from---

THE COURT: Mr. Anderson.

MS. PARR: ---Mr. Anderson.

THE COURT: Speak up now.

MS. PARR: We do not have a response from Mr. Anderson.

MR. ANDERSON: I'll stipulate to that, Your Honor.

THE COURT: All right. Thank you.

MS. PARR: Your Honor,---

THE COURT: All right. Just a moment.

MS. PARR: Your Honor, at some point though, all the evidence that the State has presented in terms of identification may have been marked numerically from one (1) through eighteen (18). At some point, we may -- Once they've been entered into evidence, we need to re-number them because there may be a gap in -- in number.

THE COURT: All right. That'll be permitted.

MS. PARR: Do you want to do that---

THE COURT: All right.

MS. PARR: ---now at---

THE COURT: Now, everybody outside of that rail, I want to make sure this jury's not intimidated. You're moving around in this courtroom. They don't know whether you're a court reporter. They don't know whether you're a lawyer. I don't want any intimidation of this jury, at all. I can see it. I'm aware of it. They can see it. They become aware it. I don't want them distracted. I'm gone see that this -- nothing is gonna interfere with the State and the defendant getting a fair trial with this jury. That's the reason for it. So you cannot be attrusive (sic); nor can you impinge on the court stenographer as if you disagree or distrust the -- the court reporter, the person who's charged with the responsibility of preserving this record for the protection of the defendant as well as the prosecution.

All right. We're ready. Bring us the jury.

(WHEREUPON, at 12:15 p.m., jury returned to open court; and the following proceedings were had within the presence of the jury:)

THE COURT: We will -- We will proceed. You may continue your examination of the State's witness.

DIRECT EXAMINATION BY MS. PARR (continued):

Q. Investigator Kirby, once you placed the defendants

under arrest, what did you do with the vehicle?

A. I -- I had the vehicle towed to -- to the impound at the Sheriff's Office.

Q. Okay. And did you have an occasion to make a record of the impound?

A. Yes. Have an impound sheet that we fill out.

Q. Okay. (While indicating document) And can you iden-- Can you identify State's Exhibit Number 2?

A. Yes. It's a Florence County Impound Sheet for a Nissan Xterra SE, 1999 model, with Florida tags, E as in Echo, C as in Charlie, one, one, five, Q as in Quebec (EC 115 Q), white in color.

Q. And did you prepare that vehicle impound record form?

A. I prepared part of it. Someone else started -- started it when I was busy with putting them in different cars to be taken to Effingham. I came back over, (while indicating) and I started on this part here.

Q. Okay. And then did you complete it and sign it?

A. Yes, I did.

Q. And is that the way it was on the night that it was prepared?

A. Yes, ma'am.

Q. And when was it prepared?

A. It would have been on the 11th, I'm sure. Yeah, 4-11 of 2000, three (3) a.m. in the morning.

Q. Okay. And has this been altered in any way?
A. Other than that State's Exhibit Number 10 stuck on it, that's it.
MS. PARR: All right. Your Honor, the State would move it entered into evidence.
MR. ANDERSON: No objection, Your Honor.
MR. NETTLES: Without objection, Your Honor.
THE COURT: Without objection by either counsel for the defense, admitted.
(WHEREUPON, Vehicle Impound Record admitted into evidence as State's Exhibit Number 10, without objection.)
MS. PARR: May I have the court's indulgence one moment?
(WHEREUPON, Ms. Parr conferred with Mr. Lawson.)
BY MS. PARR:
Q. Now, you called Gary Lewis with the Narcotics Unit to the scene; is that correct?
A. Yes, ma'am.
Q. Okay. And were you there when he arrived?
A. Yes, I was.
Q. Okay. And did he come alone?
A. No. He brought his -- the canine, the narcotics dog that we have.
Q. Okay. And were you there when the dog was used?
A. Yes, ma'am.

Q. Okay. And would you please tell us what you observed?

A. I explained to Gary what -- what I had found, what I thought it was -- what I thought it was. Asked him if he would run the dog -- When I say run the dog, that means walk him around with a lease. -- around the vehicle, into the vehicle to see if he would alert on any possible drug odor, what the dog has been trained to alert on. He did so around the vehicle as I'd asked him to.

I also asked him to go up into the room where Mr. Blash was up in the room with Melvin Thomas, to check that room and see if any -- if he detected any odor of illegal drugs in that room. He did that also.

Q. Okay. And did you observe the dog?

A. Yes.

Q. Okay.

A. I -- I observed him around the vehicle. I didn't observe him up in the room.

Q. Okay. And when you observed the dog around the vehicle, what was the dog's response? What did you observe?

A. He had made an alert around the rear of the vehicle of the tire, like the tire well of the vehicle, on the tire well of the vehicle.

Q. Okay. And was that where the cocaine was found? Or

the substance found? The package?
A. It was found in close proximity of that. It was up under the -- in the spare tire, which would be between the two rear tires, with -- And -- And you could -- I don't know if you could actually reach it from where the dog alerted, but air flow would go through there.
Q. Okay. And was that package still in place at the time the dog---
A. No.
Q. ---was---
A. It was not in place. It was in my truck at the time.
Q. Okay. Now, did that complete your investigation that particular evening?
A. On -- I -- I then went up -- Aft- -- After Gary did that, I was doing some other things down in the parking lot. I asked him to go to the room, at which time I went up to the room with him; and we placed Mr. Blash under arrest and brought him out of the room; and then he searched the room with the dog; but I did not see him do the -- do the search with the dog. I was taking Mr. Blash back down at the time.
Q. Now, did you call for other officers on the scene? Or did any other officers arrive on the scene?
A. Yes. Once I'd -- I'd found what I -- what I thought was a package of drugs, I called my lieutenant, Timothy

McFadden. Notified him. He was -- told me he'd be on the way to the location. I also called a -- a -- other investigator who I worked with a lot at the time, was Allen Rhodes; and he responded to the location.

Q. Okay. And then what happened once they responded to the location?

A. We took the investigation a little further with some other information that I'd had, and -- and Lieutenant McFadden was -- was familiar with some names that I'd gotten. He followed -- He stated he would take Allen Rhodes with him, and they would follow up on that information, and they left the scene at that time.

Q. Okay. And -- And after Lieutenant McFadden went to follow-up on the investigation, what did you do?

A. Well,---

Q. As a result of that?

A. We started finishing up with our investigation on the scene. And like I say, like we're doing this tow sheet. Had to call for wrecker. And that took a while for the wrecker to get there. We were still on the scene at that time. I asked the two deputies that had the two suspects with them to transport them to Effingham for me, and I'd be following shortly. The wrecker hooked to the vehicle and took it to the impound. And Lieutenant McFadden and Allen Rhodes returned during -- all this was going on,

that the wrecker was hooking up and taking it; and we talked to them further.

Lieutenant McFadden said he would follow me to Effingham since he and one other guy's the only one that knows the combination to the safe to let me put everything in there because it was getting in such an early morning hour, and we'd been up since early the morning before. Told me -- I told him I would meet him down there the next day.

He stated he had made contact with the subject that I'd asked him to look for and had him coming to Effingham the next day to talk to me.

Q. Okay. And who was that subject?

A. Lowman Rush or Timothy Lowman Rush.

Q. Okay.

A. And he was gonna meet me at Effingham the next day to give me some information.

Q. All right.

A. I told him I'd meet him -- meet him at a certain time.

Q. And did you meet him that morning?

A. Yes, I did. Or I met him in the evening.

Q. Now, this was -- This -- Was this the same day, just later on in the morning?

A. Yeah. It would have been -- It would have been April

the 11th, during the daylight hours. It was in the afternoon. It was after lunch when I met him.

MS. PARR: Investigator Kirby, would you please answer any questions the defense counselors may have for you.

THE COURT: Cross-examination.

WITNESS KIRBY: Yes.

THE COURT: Witness with you. Who wishes to proceed first? Mr. Nettles?

MR. NETTLES: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. NETTLES:

Q. (While moving Corning set) Can I put this down here?

A. Sure.

THE COURT: You want a glass of water?

WITNESS KIRBY: No, sir. Thank you, though.

BY MR. NETTLES:

Q. Investigator, let's talk about a couple ways that crimes are solved. Okay?

A. Okay.

Q. Is that fair enough? Because that's what this is. I mean, as an investigator what you do is you're investigating a crime, the crime being cocaine; right?

A. Yes, sir.

Q. All right. Now, one way you can solve a crime is that you find something at the scene that belongs to the

suspect; right? I mean,---
A. Yes.
Q. ---you solve cases like that; right? You found a fingerprint, or you found blood. You've heard of crimes being solved like that, haven't you?
A. Yeah. On television, yes.
Q. Okay. So you're telling me in the real world nobody ever solves a crime with evidence found at the scene?
A. Yes. I understand. I never found -- I've never -- I've never worked criminal investigation. I've never done one personally---
Q. Okay.
A. ---with fingerprints or blood and never had any involvement in one, other than being a responding deputy---
Q. Okay.
A. ---to a call. That's all, you know.
Q. But you're aware that evidence exists; right?
A. Yes.
Q. Okay. The other way that sometimes cred- -- crimes are solved is there's evidence found on the person that was taken from the crime scene; right? That links them to the crime scene. You've heard of that; right?
A. Yes.
Q. Okay. And you've probably utilized that in drug

transactions, haven't you?
A. Yes.
Q. I mean, sometimes you get marked money, whatnot, and so forth; right?
A. Yes, sir.
Q. Marked money, so the jury knows, is like sometimes you'll do a drug transaction and you'll give an undercover person some marked money. You have a little -- You mark the serial number; right?
A. You just write the serial number down or take photocopies of it.
Q. And they do a drug transactions; right? And---
A. Yes.
Q. ---then you apprehend the person a little bit later; and you say, "Look, here's the money that we gave the person that came back with the drugs"; right?
A. Yes.
Q. So that's one way that crimes are sometimes solved; isn't that right?
A. Yes, sir.
Q. Okay. Now, as an investigator, sometimes you have to make judgments about who's telling the truth, don't you?
A. Yes, sir.
Q. Okay. And that's one of the things that you have to do; and I realize it's tough; you're in the fields;

sometimes you're tired; but you have to make an assessment about who's telling the truth and who's not; right?
A. Yes, sir.
Q. Now -- And the -- One of the reasons you do that is 'cause sus- -- untruthfulness is certainly an indication of guilt. It's not the only indication, but it is an indication of guilt; isn't that right?
A. Yes.
Q. And the reason that is is because untruthfulness is sometimes someone's way of hiding the truth.
A. Yes.
Q. Right?
A. Yes, sir.
Q. All right. Sort of like hiding behind a lie; right?
A. (No response.)
Q. Right?
A. Yes, sir.
Q. Okay. Now, in this particular case -- Well, let me -- Let's talk about one other thing. One way that sometimes as an investigator you can tell who's telling the truth and who isn't -- You've got two people. -- is you talk to both people; right?
A. Separately.
Q. Sep- -- That's exactly right. That's what I was gone get to. You kind of beat me to the punch. It's important

to talk to them separately, isn't it?
A. Yes.
Q. And just so the jury knows, the reason it's important to talk to them separately is 'cause, if you talk to them together, they'll tell the same story; right? Likely?
A. Sometime.
Q. Right?
A. If they're lying, they probably will.
Q. Okay.
A. If they're telling the truth, they won't---
Q. Okay.
A. ---tell---
Q. What if one of them's lying? Because one of them's telling the -- Right?
A. Yes.
Q. But if you separate them and two people tell two totally different stories, that's evidence that one of them is not -- or maybe both of them aren't telling the truth.
A. Yes.
Q. Isn't that right?
A. (WHEREUPON, the witness nodded his head in the affirmative.)
Q. Now, so in other words, if person X says -- And they're both at the same scene. Person X says A, B, and C

happened, and Person Y says D, E, and F happened. Those are inconsistent stories; right?

A. I don't know what story you're talking about.

Q. They're different.

A. Yeah.

Q. They're inconsistent; right?

A. I'm assuming.

Q. Well, if they're different.

A. Yeah. A, B, C is different from---

Q. Okay.

A. ---from---

Q. All right. Now, in this particular case, you spoke to -- At the Holiday Inn, you spoke to three different people; correct? You---

A. Yes.

Q. ---talked to Clayton Brown; you talked to Michael Monfries; and you talked to Mr. Blash; right?

A. And the clerk.

Q. And the clerk. Four people. Okay. And you spoke to -- Prior to -- You -- You spoke to Clayton Brown first. And as you told the jury, Clayton Brown -- You asked him -- You stopped him. You asked to search his car. And you said, "Do you know anything 'bout anybody driving an S.U.V., a white S.U.V."; isn't that right?

A. Well, I asked him straight out "do you know anything

about that white"---

Q. About that---

A. ---"X---

Q. ---S.U.---

A. ---terra?"

Q. ---V.

COURT REPORTER: Excuse me.

BY MR. NETTLES:

Q. About that S.U.V., (while indicating) the S.U.V. in this picture, or one like this picture.

A. Yes.

Q. Okay. And he said, "I don't know anything about that."

A. That's what he said.

Q. And you said, "Well, what are you doing here?" Right?

A. I -- I asked him -- Yes. What---

Q. Why he---

A. ---he was---

Q. --was there?

A. ---doing -- Yes.

Q. And he said, "I'm there because I want to check into a room."

A. Yes.

Q. Right. Didn't say anything 'bout meeting anybody.

Right?

A. No.

Q. Didn't say anything 'bout meeting the guy in the white S.U.V.

A. No.

Q. Right. So he said, "Okay." Left him with a deputy; right?

A. Yes, sir.

Q. Went to the clerk. I mean, to the -- checked to the night clerk's office; right?

A. Yes, sir.

Q. And then you went upstairs and talked to Michael Monfries.

A. Uh-huh.

Q. You said to him, "What are you doing here?" Essentially. And one of his responses was "I'm meeting Clayton Brown."

A. Well, I asked him what he was doing there, and he said they were in town meeting some friends, meeting---

Q. Okay.

A. ---relatives.

Q. And he said he was meeting Clayton Brown at one point, didn't he?

A. Later on he did.

Q. Right. So at one point, he said, "I'm meeting

Clayton Brown."
A. Yes.
Q. And as a matter of fact, he told you he was driving a green Jeep;---
A. Yes.
Q. ---right?
A. Yes.
Q. And I believe you testified on direct that, from where Michael Monfries' room was, you couldn't see where Mr. Brown and the green Jeep were being held by the deputy; right?
A. No. You couldn't see them.
Q. Okay. So, in other words, from that, as an investigator you could assume that that was information that Mr. Monfries had without coming to the door.
A. What are you saying? That he -- he knew I was gonna talk to Clayton Brown?
Q. Well, no. What I'm saying is -- I -- I guess my point is just this: You would agree with me that, from where he was standing, he couldn't look down and say, "Oh, yeah, I'm meeting that guy, and he's driving a green"---
A. No.
Q. ---"a green Jeep."
A. He couldn't---
Q. He didn't say that?

A. No.
Q. He had to have known that information independent of standing at the door?
A. Yes.
Q. Okay. Now -- So at that point in your investigation, you've got one individual who's told you "I don't know anything about that white S.U.V., and I'm here to check into a room." Right?
A. Yes.
Q. And that would be Mr. Brown?
A. Yes.
Q. Okay. You've got Mr. -- Mr. Monfries who's saying "I'm here -- One of the people I'm gonna be meeting at some point is Mr. Brown, and he's driving a green -- a green Jeep."
A. Yes.
Q. Right. Those are conflicting stories, aren't they?
A. Yes.
Q. Okay. Now, Michael Monfries did not lie about -- He -- He told you "I'm driving that white S.U.V.," didn't he?
A. Yes, he did.
Q. And he admit -- He admitted it was his car?
A. He admitted it. Yes.
Q. He admitted he knew Clayton Brown?
A. Yes.

Q. And he admitted Clayton Brown was driving a green Jeep?

A. Yes.

Q. I mean, as an investigator, it kind of looks like Mr. Brown wasn't telling you the truth, doesn't it?

A. Nope. He wasn't telling the truth.

Q. Now, maybe he -- he was hiding something.

A. I don't know that. Maybe he was nervous.

Q. Let me ask you this: You know what forensic evidence is; right?

A. Yes. I guess.

Q. Well, you---

A. Or your definition---

Q. I mean---

A. ---and mine might not---

Q. Okay. That's fair enough. That's fair enough. That's fair. Tell me what your definition of forensic evidence is.

A. Evidence that you gather at the scene of a crime.

Q. Okay. How about if we say that forensic evidence is sort of -- of -- of -- scientific evidence?

A. Okay.

Q. Okay. 'Cause, I mean, you know, like D.N.A., fiber, hair, fingerprints. There's none of that that connects (while indicating) these drugs to my client; right? I

mean, there's nothing you found on this item that you can link to Mr. Monfries.
A. No.
Q. Okay. Tell me a little bit about when you found this -- (while indicating) this brick of cocaine. Okay. Tell me a little bit -- I see there's a number of different things in there. I don't want to open this up. I don't want to, but I see in there a white -- a -- a clear plastic. I see sort of a brownish -- Is that plastic there?
A. Yeah.
Q. That brown plastic.
A. That's -- That's not plastic in there.
Q. Okay.
A. That's more---
Q. (While indicating) What's that right underneath that?
A. (While indicating) That's more tape on -- That's on that one side of it---
Q. Okay.
A. ---there. And then there's a brown -- like a little thin piece like rubber almost. It's like -- I don't know. It's kind of like -- (While indicating) See it right there.
Q. Okay. I gotcha.
A. (While indicating) See. It's more like a balloon---

Q. I gotcha.
A. ---like stuff.
Q. I gotcha. Just -- Just 'cause it's hard for me to tell based on that. Tell me what -- I mean, obviously, the cocaine was on the inside.
A. Yes.
Q. And then do you remember -- And I know you didn't take it all apart.
A. Yeah.
Q. But do you remember what was next to the cocaine?
A. I -- I really can't---
Q. That's---
A. ---tell you because I just cut a little slit---
Q. I understand.
A. ---into this brown paper that was on the outside.
Q. Okay. That's what I wanted to know.
A. And I couldn't---
Q. So the brown paper---
A. I didn't---
Q. ---was on the outside.
A. I didn't layer it or nothing, so I---
Q. That's fine.
A. ---just---
Q. That's fine. But the brown paper was on the outside?
A. Yes.

Q. (While indicating) And that's this brown paper right here?
A. Yes.
Q. (While indicating) Right there?
A. Uh-huh.
Q. Okay. And is that what it looked like?
A. Well, it was -- Yeah, it was -- It had little wrinkles in it like that. It'd been taped pretty good, tight; and the plastic was there. I mean, the plastic was on the inside, I'm assuming.
Q. Okay. (While indicating) But -- But this -- this -- this brown stuff right here is---
A. Is what I seen.
Q. I understand.
A. Yes, sir.
Q. But it was paper?
A. It's packaging tape.
Q. Packaging tape. Okay.
A. That's what it looks like to me now. Like you package a box up with or something.
Q. Sort of like -- (While indicating) Well, not on this box.
A. No.
Q. But sometimes you get boxes---
A. It's -- It's more plastic---

Q. ---and you got the tape.

A. ---looking, you know.

Q. Right.

A. It doesn't have -- It look like it doesn't have the little fibers in it like you -- like you're talking about.

Q. I understand. It did or didn't have the little fibers?

A. I don't think it had those in it. It just more looks like plastic-looking tape.

Q. Okay. I'm with you. I understand. And tell me -- I mean, is there anything else you noticed the least bit remarkably about the outside of that container?

A. No. Other than it was taped.

Q. Okay. Okay. Nothing else that you noticed or --?

A. No.

Q. Okay. (While indicating) Now, when you found this taped item here, this -- this -- this brick here, you didn't take any steps to preserve that item for fingerprinting, did you?

A. Other than me touching it, nobody else touched it.

Q. Okay. But, I mean, when you took it out, you put it in your car.

A. Yes.

Q. What did you put it in in your car?

A. Laid it in the front seat.

Q. Okay. So you laid it -- You didn't put it in a bag or -- or anything like that?

A. No.

Q. Okay. Did -- Did you ask -- And -- And you didn't ask that this tape be tested for fingerprints.

A. Yes, I did.

Q. You did?

A. Yes, I did.

Q. And what were the results of that?

A. They said it was too wrinkled up to get a straight finger print off of it. You know how---

Q. But---

A. ---it's kind of crunched up looking when you tape---

Q. Right.

A. ---something.

Q. But there weren't even any partial prints that matched Michael Monfries, were there?

A. I can't testify to that. I just asked them to fingerprint it down at our office.

Q. Uh-huh.

A. They brought it back to me during the chain of -- Well, when I went down there with it, they said, "We couldn't get anything because of that." And I didn't---

Q. Okay.

A. I just---

Q. But---
A. Didn't lift anything or anything.
Q. Right. So -- But there -- But there's nothing -- (While indicating) There's nothing on that container that you can point to and say "this came from Michael Monfries."
A. No.
Q. (While indicating) Now, you talked a little bit about the item which is State's Exhibit 9. Okay. Which -- Which I believe you testified you found among Michael Monfries' receipts. Michael Monfries' belongings.
A. It was laying with some change, folded up.
Q. The change was folded -- The change---
A. No, this---
Q. Or there was change in that?
A. (While indicating) This was folded. You can see how the prints are in it.
Q. Right.
A. Because I straightened it out. I can't do it because that's -- It was folded up in a little square like, laying with some change.
Q. And -- And where in the hotel room did you find that?
A. Next to Michael Monfries's wallet and with some change, like you would -- And where he picked up the keys to that Xterra. When he -- When he come -- When he picked

those up, it was laying right there.

Q. Okay. As a matter of fact, whenever you went to go search the Xterra, went downstairs to search the Xterra, Michael followed you down there, didn't he?

A. He was running a little bit behind me. Like I said, it was a good distance 'cause---

Q. Right.

A. ---he had to put -- He had like -- like sleeping attire.

Q. Right. Right.

A. But he put on something and some shoes. And I told the deputy, as soon as he got ready, to bring him on down.

Q. That's fine. So he came down. As a matter of fact, he had one of those little punch button things, and he went and opened the doors for you so you could search it; right?

A. He did just as I was -- As I was approaching him, he did it.

Q. Okay. So -- But, I mean -- But -- But my point is, at that point, he could have said, "I don't want you searching my car."

A. Yes.

Q. Isn't that ri- -- I mean, he was free to do that.

A. Yeah.

Q. And he was free to say "You go get a warrant or you

don't go in my car."
A. Yes. He was free to leave if he wanted to.
Q. And he didn't do that.
A. Uh-huh.
Q. That's right. I mean, right -- He was free to leave. He could have just said, "Look, y'all"---
A. At that -- At that point that you're talking about,---
Q. Right.
A. ---that he was walking toward me,---
Q. Right.
A. ---no, he would not have been free to leave because I was walking toward him with the intentions of putting handcuffs on him.
Q. Okay. But my point is, when he unlocked the car, that is not something he had to do for you.
A. No. He didn't have to do it because I hadn't talked to him. As I was walking, he was walking with the deputy. (While indicating) And he went like this, and---
Q. Right.
A. ---all that took place in a -- by the time I could walk to you---
Q. Uh-huh.
A. ---and say "I'm placing you under -- I'm detaining you at this time until I can determine what this package

is under your car."
Q. I understand. Let me ask you this: When you were upstairs in his room and you were searching his room or the room that he and Mr. Blash were in,---
A. Yes.
Q. ---he didn't have to let you come in there and search his room, did he?
A. No.
Q. I mean, you could have knocked on the door, held up your badge; and he'd said, "Look, I'm an American; and I am choosing to exercise my rights not to let you come in here."
A. That's right.
Q. And you'd of had to go get a search warrant.
A. Yes.
Q. Okay. And you didn't have to do that.
A. No.
Q. 'Cause he let you in.
A. Yes.
Q. All right. Now, one of the things you did in preparation for this -- for -- for -- during the course of this investigation is you did a, I -- I must say, a very well typed report; isn't that right?
A. Yes.
Q. Even the words are all spelled right.

A. I didn't type it.
Q. Okay. Well, but you -- But a -- a -- a typed report was done.
A. Yes.
Q. Correct?
A. (WHEREUPON, the witness nodded his head in the affirmative.)
Q. And you looked over that report.
A. Yes.
Q. And pre- -- And -- And this was to memorialize what happened; right? I mean, the---
A. Yes.
Q. ---purpose of a report---
A. Yes.
Q. ---is to memorialize what happened; is that right?
A. Yes. I didn't -- Now, when you say looked over it, when -- when it's typed and given to me, I probably didn't actually read over the whole thing.
Q. Okay.
A. No use for me to sit here and say I read everything down---
Q. Okay.
A. ---to a T because I have -- I knew what I had said, and I knew how -- how it comes out. So I kind of scanned over it, and I put it in a file.

Q. Okay. But the fact is is that in this report that you did, at the time soon thereafter, it says that the -- that the receipt came from Mr. Blash, doesn't it?
A. I have another receipt that came from him.
Q. Okay.
A. But it -- it has nothing to do with anything.
Q. Okay. You---
A. He just bought some Chapstick and a magazine, I think, or something like that.
Q. Where -- So that the -- the receipt that said it had Chapstick on it, that came from Mr.---
A. I think---
Q. ---Blash.
A. ---it had Chapstick. I've got it if you want to see it.
Q. Okay. All right. (While indicating) Well, is there any place in here where you referenced the receipt -- any other receipt? I mean, it may be there. I just didn't see it.
A. I think I put it -- I think I wrote it in here at the bottom. Let me see. (Looked at document.) Evidence of vehicle --. Here it is. A Corning saucepan and a Kmart receipt were taken as evidence. At that -- That was evidence there.
Q. But that doesn't say it was taken from Michael

Monfries.
A. No, it doesn't say -- Everything I took -- Everything I have in evidence was taken from Michael Monfries. I don't think I took anything of Mr. Blash's personal belongings. It says I took some currency from him.
Q. Right.
A. Excuse me. Three---
Q. You took---
A. ---hundred and---
Q. ---some from---
A. ---seventy-four ($374.00) dollars from Blash.
Q. You took some currency from?
A. Blash.
Q. Mr. Blash. So you did take some things from him?
A. Yes. That's right. Like I say, I just forgot I took the money from him. He's the only one had any money.
Q. Sort of back to the cocaine. That item that was found then, that cocaine, that was something that could have been -- (While indicating) You didn't need the keys to get to this.
A. No. I---
Q. Right?
A. (WHEREUPON, the witness nodded his head in the affirmative.)
Q. I mean, you didn't need a tool. I mean, this was

something---

THE COURT: He's -- Wait a minute. He's -- He's nodding, and we can't put that in the record. I need to have his answer.

MR. NETTLES: I appreciate it.

WITNESS KIRBY: No, I did not -- I did not---

THE COURT: Go ahead.

WITNESS KIRBY: ---need the keys, or I did not need a tool.

BY MR. NETTLES:

Q. Okay. I mean, this was something that you extracted with your hand.

A. Yes, sir. I had to wedge it now. I had to pull hard.

Q. Right.

A. It wouldn't have just fell out.

Q. Right.

A. I had to reach up in there and get it.

Q. Right. I understand. But, I mean, it's not like you had to take the tire---

A. No.

Q. We've got the picture here. (While indicating) You didn't need to take that tire down to get it.

A. No, sir.

THE COURT: Clarification information, if you'll

indulge me, cross-examina'. Any time any of you object to this, I'll con- -- reconsider my question.

EXAMINATION BY THE COURT:

Q. Is there any way from the interior to have access to that spare tire where you found this cocaine?

A. Like if you're riding in the vehicle or anything?

Q. If you were in the vehicle,---

A. No, sir.

Q. ---couldn't do it?

A. Not without tools. You'd have to take everything apart to drop---

Q. Is there---

A. ---all the way down---

Q. ---anything that you can push or engage, a lever or anything inside, to drop that down?

A. Not that I'm aware of.

Q. The only way you can remove the spare tire from that vehicle is from the exterior outside of the vehicle.

A. Yes, sir.

THE COURT: All right. You may proceed.

MR. NETTLES: Thank you, Your Honor.

THE COURT: Just for clarification information for the jury.

MR. NETTLES: That's fine. I have a great set of questions, Your Honor. I have no further questions.

Thank you.

THE COURT: No further questions.

Mr. Anderson?

MR. ANDERSON: Thank you, Judge.

CROSS-EXAMINATION BY MR. ANDERSON:

Q. Officer Kirby, you, I think, indicated in your remarks to Ms. Parr that you had entered the Criminal Justice Academy?

A. Yes, sir.

Q. And I think you said you went back in the '80s?

A. That would have been eighty- -- '88, I think.

Q. And since then, you've been back for refresher courses?

A. Yes. I've been several -- Training classes. Yes.

Q. And one of the reasons for that is I think y'all have to take forty (40) hours every three (3) years?

A. No. I'm no sure how many hours it is.

Q. You have to take certain---

A. Well, you have to take---

Q. ---continuing---

A. ---so many classes.

Q. ---education classes?

A. Yes.

Q. And, I mean, like any other course or profession or business, you go to take these classes to learn new

techniques or learn new developments in the area of your profession?

A. Yes, sir.

Q. And one of the things they teach you at the Academy is how to investigate cases?

A. Yes.

Q. And one of the things they teach you to -- Now, you became a narcotics agent in, I think, '97, you said?

A. I think it was August or September the 1st of '97.

Q. Late summer or fall of '97?

A. Yes.

Q. And since then, you have investigated hundreds of narcotic cases?

A. Yeah. Probably hundreds.

Q. And maybe even thousands or more?

A. If you call every complaint, yeah, we'll get into the thousands.

Q. That's right. And part of the things that they tell you at the Academy -- Or you've been back to the Academy since you became a narcotic investigator?

A. Yes.

Q. And one of the things they do is tell you what to look for, who to talk to, things like that?

A. Yes.

Q. Now, you want to do a complete job, accurate job,

thorough job when you're investigating a case?
A. Yes.
Q. And you want to make the best case that you can make?
A. Yes.
Q. Now, on this case, I think you got a tip from someone.
A. Yes.
Q. (While handing document) I'm just going to hand you this to refresh your memory. And the tip that you would have gotten, they would have relayed certain information to you?
A. Yes.
Q. Now, you wouldn't have had any written material with you, would you have?
A. That night?
Q. That night.
A. I probably jotted down some notes they told me.
Q. All right. But the notes that you would have had to have jotted down would have come from the notes that had been relayed through the tip?
A. Yes. When I first started, yes.
Q. Now,---
A. When I first left the house, you talking about?
Q. Yes, sir.
A. Yeah. That -- That's all I had to go on to start

with.
Q. All right. Well, you didn't pick up any additional information that night, did you?
A. No.
Q. I mean, when you left the house, you had everything that I've just handed you?
A. I didn't have it in writing, but I had it. Yes.
Q. You had it in your head?
A. Yes. And I think I -- I might have jotted it down on a piece of paper when I got in the truck.
Q. All right. Now, in your report that we've already talked about -- And this is a report that you wanted to be thorough, accurate, and complete; right?
A. As best I could, yes.
Q. Right. And you referenced three males in your report? Three black males?
A. Yes.
Q. But on the tip that you got, there was reference to one male?
A. Yes. It says one subject. Yes.
Q. One black male named Eric?
A. Yes.
Q. All right. And my client is Eddie Blash, no nicknames of Eric. No aliases?
A. Not that I know of.

Q. And Michael George Monfries, no nicknames or aliases of Eric---

MR. LAWSON: Objection, Your Honor.

WITNESS KIRBY: Not that I know of.

MR. LAWSON: I think that---

THE COURT: Hold up just a moment,---

MR. LAWSON: ---defense may be---

THE COURT: ---gentlemen.

MR. LAWSON: ---going into---

THE COURT: Get an objection---

MR. LAWSON: ---an area that's---

THE COURT: ---wait until---

MR. LAWSON: ---going to---

THE COURT: Quit for a minute, and let me -- for just a moment, and then I'm gone listen to you. Whenever I get an objection, just wait and let me rule on the objection.

All right. The objection, Mr. Lawson?

MR. LAWSON: May it please the court? It probably should -- better taken outside the presence of the jury.

THE COURT: All right. I'll excuse the jury for just a moment. Bring you back in just a few moments.

(WHEREUPON, at 12:48 p.m., jury returned to jury room; and the following proceedings were had outside the presence of the jury:)

THE COURT: All right, sir. Now, I'll hear from you,

Mr. Lawson.

MR. LAWSON: May it please the court?

THE COURT: Yes, sir.

MR. LAWSON: Defense has asked now a number of questions involving the State's information as it relates to his client and any nicknames or other names that he may go by. We may have a list of names that he has gone by. He's also now asked about the other defendant, who's not present. I think he is getting very close to opening a door. I object to this line of questioning unless he's willing to allow -- It's a char- -- It goes into the defendant's character and reputation; and, if he opens that door, then we can step through it, Your Honor.

THE COURT: I understand. Y'all anticipating. You warn him. I don't know why you telegraphing your punches to him.

MR. LAWSON: Well,---

THE COURT: But it's -- I -- I can't tell either one of you your strategy. Yes, sir. He's talking about nicknames.

All right. Bring us the jury.

(Pause.)

THE COURT: Mr. Lawson, I -- you'll have -- Mr. Lawson?

MR. LAWSON: Yes, sir.

THE COURT: Ms. Parr, on redirect, but you won't have the opportunity on redirect. Ms. Parr is gone have to conduct it.

MR. LAWSON: Correct, Your Honor.

THE COURT: All right. Just want to make sure you understand.

MR. LAWSON: We understand.

THE COURT: One person to a stick.

MS. PARR: We know.

MR. LAWSON: We know where we are.

MS. PARR: Yeah. We know where we are.

THE COURT: And I got no problem with either of you at any time arguing on your motions or objections.

MR. LAWSON: I think they're taking a break.

MR. NETTLES: Either that or they've left.

THE COURT: They use -- We've got three people using di'retics, so we gone be taking breaks a little more frequently or often than we would ordinarily.

MR. LAWSON: May we also, Your Honor.

THE COURT: Yeah. You might as well. If you need to, go ahead.

WITNESS KIRBY: They're knocking now, I think.

MR. NETTLES: They've gone to lunch with Monfries.

THE COURT: I want y'all to be conscious. We want to eat dinner as close to one (1) as we can get it. The

jury's ready to come back.

MR. LAWSON: Oh, okay.

THE COURT: If you need to, y'all can wave, too; and I'll give you a break.

All right. Bring us the jury.

(WHEREUPON, at 12:51 p.m., jury returned to open court; and the following proceedings were had within the presence of the jury:)

THE COURT: I'm assuming it won't be -- it won't be much longer with this witness.

WITNESS KIRBY: Let's hope not.

THE COURT: You may continue your cross-examination, Mr. Anderson.

MR. ANDERSON: Thank you, Judge.

BY MR. ANDERSON:

Q. The tip that you got, it never referenced three males, did it?

A. No.

Q. It never referenced three black males?

A. No.

Q. Never referenced I-95 in that tip that you got?

A. Let me see. (Looked at document.) No. Just I-20.

Q. And it never referenced -- I think in the tip you got it said somebody was -- was actually cooking something at the trailer?

A. That's what this -- this says.
Q. But the evidence that you've testified to that's been admitted, there's -- there was no residue or no evidence of anything that anything had been used in there?
A. Not yet. No.
Q. Now, the---
A. (While indicating) This piece? You looking for this?
Q. No. I'll take that back, though.
(WHEREUPON, after receiving the document, Mr. Anderson handed it to Ms. Parr.)
BY MR. ANDERSON:
Q. The evidence log, you've indicated that -- (While handing document) I ask you if you recognize this document.
A. (Looked at document.) Three hundred and sixteen ($316.00) dollars. Yes.
Q. Is that yours?
A. Yes, it is.
Q. Is that your handwriting?
A. Yes.
Q. And what does that indicate?
A. That we took three hundred and sixteen ($316.00) dollars in U.S. currency.
Q. From?
A. Michael Monfries.

Q. Okay. Now, earlier you stated that you didn't seize any money from Mr. Monfries?
A. No. I -- I put it on Michael Monfries's name because all the evidence was under the case heading of his name.
Q. All right.

THE COURT: Don't make comments now to whether you 'gree or disagree, all right or uh-huh, or whatever. That -- You keep that for your argument later. You are arguing to the jury when you making comments on the answers given to you on cross-examination; and that's not proper, Mr. Anderson. If you do that, I'm gone stop you. When he answers it, that it. Don't make a comment like all right or whatever.

MR. ANDERSON: (While handing document) I hand you your report again.

THE COURT: You can make notes of that and argue that to the jury.

MR. ANDERSON: And ask you if you---

THE COURT: You question, and he'll answer.

BY MR. ANDERSON:

Q. Just review those last, I guess, eight (8) or ten (10) lines.
A. Yes.
Q. All right. I think you got some money from two individuals?

A. Yes.
Q. All right. And one of those was Eddie Blash?
A. Yes.
Q. And one of those was---
A. Michael Monfries.
Q. Okay. So you got -- actually seized money from both of them?
A. Yes.
Q. Okay. Now, the keys that you obtained, Mr. Kirby, you got those from Michael Monfries?
A. Yes.
Q. The keys to the S.U.V.?
A. Yes.
Q. And he indicated to you that the S.U.V. was his?
A. Yeah. He indicated he had rented it.
Q. And did you review the rental agreement?
A. Yes.
Q. And nowhere on there did it say anything about Eddie Blash?
A. No.
Q. Nowhere on there did it say "I'm going to have a co-driver or a co-owner that's going to be also driving this vehicle"?
A. No.
Q. The impound that you've already talked about that

you've logged in there, nowhere on there is Eddie Blash's name mentioned?

A. No.

Q. No one ever told you that Eddie Blash was driving around in a white S.U.V.?

A. No.

Q. No one ever told you that Eddie Blash had control or dominion over that S.U.V.?

A. No. Could you -- Could you rephrase that a minute?

Q. No, I'm asking questions here, Agent. I'm not going to rephrase anything.

A. Well, somebody did tell me he was in it.

Q. Now, this -- the rental car, the white Xterra, did you call the rental company in Florida?

A. I don't think I did it personally.

Q. All right.

A. I think impound did it.

Q. Do you know who was driving that rental car before Mr. Monfries or Mr. Blash sat in that car?

A. No, I didn't. No, I don't.

Q. Did you ask whose name the paperwork is in -- was in prior to renting that car?

A. No. I didn't have any need to.

Q. Did you -- You didn't have any need to? Let me ask you this, Agent Kirby: Did you call anybody to say "Did

you investigate this white Xterra after it was turned in to you before Mr. Monfries rented it"?

A. When you say investigate, you mean as in---

Q. Did they check it out?

A. I don't know.

Q. Well, wouldn't that be important to this case?

A. No.

Q. Did you call the rental company and say, "Hey, what procedures do y'all use when someone brings a car back; do you look under the car; do you check it out; do you go in the spare compartment"? Did you ask them any of those questions?

A. No.

Q. So you didn't bother to find out who had rented it or run any kind of investigation on them?

A. No, sir.

Q. And you didn't bother to find out what Avis or whoever had rented this car -- what they do when they get a car back?

A. Budget. No, I did not.

Q. Is it safe to say that, after you completed your work on the morning of April the 11th, you were pretty much done with this case in your opinion?

A. Not on the morning, no. That evening -- After that evening.

Q. When -- I think you indicated that you made several trips back and forth between I-20 and I-20 and the I-95?
A. I made one trip.
Q. All right. And how long did that trip take you?
A. It didn't take too long to get there, but I did some work at I-95 and 52 before I came back.
Q. As a matter of fact, you talked with Chad Stone, didn't you?
A. Yes.
Q. And you told Chad Stone what you were looking for?
A. Yes.
Q. And he was going to call you if anything came up?
A. If he located anything during the night, if I hadn't found anything, yes.
Q. So it would be safe to say that forty-five minutes to an hour passed?
A. I -- Somewhere in there. I'm assum- -- 'Cause I got to the Holiday Inn Express the first time around ten-fifty-five (10:55). And I think I got back there around midnight, somewhere around midnight. So around an hour took place.
Q. And during this hour's time, there was not surveillance on the white S.U.V., was there?
A. I don't know 'cause I didn't -- It wasn't there the first time I went through.

Q. All right. But for all you know, it could have come up five minutes after you left?
A. Yes. It could have came up any time.
Q. And you did not maintain surveillance on it after it came up?
A. I don't know how I could do that. I didn't know it was there.
Q. My point is, Agent Kirby, no one was watching this white S.U.V., were they?
A. Not until I found it that last time.
Q. And you don't know who came and went as far walking around that white S.U.V., do you?
A. No, I don't.
Q. You don't know if Clayton Anthony Brown had come by earlier, do you?
A. I don't know. I don't know. If they were, I don't know where they were.

MR. ANDERSON: Judge, that's all the questions I have for Mr. Kirby.

THE COURT: Fine. Redirect, briefly.

REDIRECT EXAMINATION BY MS. PARR:

Q. Investigator Kirby, why did you let Clayton Brown go?
A. I didn't have any -- any evidence that he was involved in any drugs.
Q. Now, do you know whether the form that Mr. Anderson

asked you about contained all the information that was given to dispatch in regards to this tip?

A. No, I don't.

Q. Do you know -- Or in your experience, do you know whether or not they generally type every word for word that's said?

A. I -- I can't say how they do it. We receive numerous -- numerous tips like that, and I don't -- And when you get off the phone with somebody, I can't say whether they type exactly what those people say or -- or what they -- what they want to type to make it brief for their-self. I don't know.

MS. PARR: May I have the court's indulgence for a moment.

(WHEREUPON, Ms. Parr conferred with Mr. Lawson.)

BY MS. PARR:

Q. Now, in your report, when you put information in your report as to the information you received from dispatch, would that have been accurate?

A. In my report?

Q. Yes. That you received from dispatch?

A. I -- I put in there -- Yeah, what they tell me.

MS. PARR: Okay. Nothing further, Your Honor.

THE COURT: If you have any objection, either of you, to this question for clarification information --.

EXAMINATION BY THE COURT:

Q. Was the information furnished to you through the dispatch, as I recall the testimony, of an informant and tipster? Was it correct? In your investigation, was that correct information given to you?

A. As far as the description of the vehicles and large amount of drugs, yes.

THE COURT: Nothing further. You can step down.

(WHEREUPON, the witness was excused from the witness stand.)

THE COURT: All right. Ladies and gentlemen, it's lunchtime. That's one of the most important things that we've got to do. I didn't get this big by missing too many meals. I ain't on no diet presently.

I want you to come back at two-thirty (2:30), but I don't want you to come back before two-thirty (2:30). And if we hadn't concluded what I'm doing, it begins at two-fifteen (2:15), which I tell you has nothing to do whatsoever with this case. I'll tell you what it is because you curious when I tell you it ain't got nothing to do with this case. "Well, what's he doing?" Well, I can tell you.

It's a case where two people are out on bond, who were charged with the criminal offense of death by child abuse; and it was a curfew; and there's evidence that the

State says they have that that curfew has not been kept and that this court's not done it; but some way or another they know about it; and nothing wrong with the solicitor if he discloses that. There's gone be television cameras in here; and others, in the audio, the sound, they could be video.

You gone be coming in here, and you gone be seeing cameras, and you come back. "Oh, my goodness, I'm gone be a television star." You gone be on television. Well, you gone be if you walk in this -- in this courtroom.

So I'm not gone let you back in. Not any specific reason for it. Other people come when they're going or whatever; and I'm gone try to get that done, if they're here, at two-fifteen (2:15); but I wanted you to be aware of that. That's why I'm asking you to come at two-thirty (2:30).

And sometimes juror'll come back a little bit early; and I always appreciate that; but, in this instance, don't come back early. Don't come -- Don't come back 'til two-fifteen (2:15) (sic); and then, when we get through with that, I'm gone let y'all all get in the jury room; and, when y'all there, then we'll start back up again with the State's case.

And I'm -- we're making excellent process, but you don't need to concern yourself with that. We're doing

well.

MR. LAWSON: Your Honor, I---

THE COURT: Yes, Mr. Lawson?

MR. LAWSON: It's my understanding that hearing starts at two-fifteen (2:15).

THE COURT: It does, and it ain't gone take more than fifteen (15) minutes.

MR. LAWSON: Okay. Well -- All right. I just---

THE COURT: I mean, it shouldn't. If it does, then I'll make some arrangements that -- that we'll stop and let the jury come in and go back there. They can refresh themselves, but it shouldn't take more than fifteen (15) minutes, but all this is depending on folks being here and being present, but I don't want y'all to be inconvenienced, but I have to do these things.

'Member I told you, and I apologize for them. I'm not gone let it interrupt. Your time's important, and I'm aware of that, but time is not of the essence when you're about what you're about.

Enjoy your lunch. See you at two-thirty (2:30) or shortly thereafter.

(While jury leaving) Now, don't lollygag downstairs and on the elevators. Y'all come directly on, and don't talk about this case among yourselves or allow anyone to speak with you about it.

(WHEREUPON, at 1:05 p.m., jury excused for lunch; and the following proceedings were had outside the presence of the jury:)

THE COURT: If you'll -- We'll be at recess, and I'll need you at two-fifteen (2:15). The rest of you don't have to be back here 'til two-thirty (2:30).

MR. LAWSON: I apologize to the court. I -- I thought you were telling them to be back at two-fifteen (2:15).

THE COURT: No. I told them two-thirty (2:30).

MR. LAWSON: I -- But---

THE COURT: I hope they gone be able to get this done in fifteen (15) minutes.

(WHEREUPON, the court continued addressing Mr. Lawson in regards to the 2:15 hearing.)

THE COURT: Have a nice lunch.

(WHEREUPON, at 1:08 p.m., court stood in recess for lunch; and, after hearing another matter, at 2:52 p.m., court reconvened in this matter, with Defendant Blash and counsel for all parties present in the courtroom.)

THE COURT: All right. Gentlemen, they've all -- If you don't ask, it's been waived; and I'm not gone ask it again; but they've all been out to lunch; and they've heard one witness in the case. If you want them polled, I'll assume the responsibility.

All right. We gone -- We're ready to proceed.

MS. PARR: Yes, Your Honor. The State has one matter.

THE COURT: Beg your pardon?

MS. PARR: The State has one matter that we need to ask about.

THE COURT: Got one matter you want to take up out of the presence of the jury. I'll hear you.

MS. PARR: May it please the court? Your Honor, unless the defense counsel wants to stipulate, the State would like to recall Glen Kirby for the purpose of putting one piece of evidence into the record that he -- that was already marked for identification purposes only, and it's just the Kmart bag that all the stuff was in.

Do you have any objection to that?

MR. NETTLES: I don't have any. They -- They -- They can move -- As far as I'm concerned, they can move it in. I mean, I don't mind them moving the Kmart -- I will stipulate that the Kmart evidence bag is in evidence. I don't know about Mr. Anderson.

MR. ANDERSON: I'll stipulate to that, Judge.

MS. PARR: All right. So we can -- So---

THE COURT: Both counsel stipulate.

MS. PARR: Okay. So we can have her mark it---

THE COURT: Yes, ma'am.

MR. LAWSON: It's already marked.

MS. PARR: It's already---

THE COURT: And you can tell the jury.

MS. PARR: We need to tell the jury? Do you have the bag down there?

MR. LAWSON: You need to move it into evidence.

MR. ANDERSON: Without objection.

MS. PARR: I move it---

THE COURT: Without objection through the defense.

(WHEREUPON, One Kmart Bag admitted into evidence as State's Exhibit Number 8, without objection.)

THE COURT: Let's bring the jury.

MS. JACKSON: Your Honor,---

THE COURT: Bring the jury.

MS. JACKSON: Your Honor, I have a matter.

THE COURT: Ho. Got another matter.

Yes, ma'am.

MS. JACKSON: Your Honor, when I was getting on the elevator, one of the bailiffs -- And I don't even know if I can tell you which one it was. This happened really fast.

THE COURT: I can bring them all in, and you can---

MS. JACKSON: Well, I don't want---

THE COURT: ---tell me which one.

MS. JACKSON: I really -- I don't know if it's of any

significance. I felt like I should share it with the court. They said, "Have you found your client yet?" And I was like no. And then I kind of looked, and there was a juror in the back of the elevator. And I just -- I wanted to bring that to the court's attention. I mean, they already know he's not here, but I -- I---

THE COURT: I'm not gone comment on that; and, any way y'all want to handle that, that -- that these others, they don't have to be here; don't have to be present. You can leave it at that. If you want to make a comment about it, fine. If you don't, that's fine. Any -- Any way you want to handle that.

MS. JACKSON: In view of that response, if I could just ask for one moment to talk with co-counsel.

(WHEREUPON, Ms. Jackson conferred with Mr. Nettles.)

THE COURT: (While Ms. Jackson and Mr. Nettles conferring) It's gone become obvious at some point and some time. That's gone be obvious. There's only one person sitting at counsel table, and that's not Mr. Monfries.

MS. JACKSON: Your Honor, we'd ask you maybe just to encourage everyone not to discuss the fact that he's not here outside of the courtroom, but we -- we don't have any other motions or anything in regard to that matter.

THE COURT: All right. Bring me my bailiff so I can

maybe give them some instructions that this -- this won't happen because there might be somebody or some juror be present, and no one'll be well-served by a mistrial or certainly don't want any of you prejudiced.

(WHEREUPON, Ms. Jackson approached bench and had an off-the-record conference with the court regarding the bailiffs; and then the court address the deputy clerk regarding instructions to bailiffs in other courtroom.)

THE COURT: All right. Now, bailiffs, that involves our security people; and the clerk is gone take care of this with the other court officers. Under no circumstances -- no circumstances are you to have any conversation with State witness, defense, defendants, or defense lawyers, or make any comments in reference to the case. I'm -- I'm hopeful that we gonna have a system here shortly where we ride separate elevators. We don't get on the jur- -- on the -- the elevators with jurors or with witnesses or with defendants or with the attorneys because things can happen in discussions and what you think is an innocent comment or inquiry that can impugn or prejudice either party with the jury and with mandate declared a mistrial (sic).

If you do that, now that you've been warned, then you gone subject yourself to possible contempt. Now, don't do it. Don't discuss anything that's going on in this

courtroom in the presence of jurors, the presence of witnesses, or other lawyers. Just don't do it.

No accusation is being made against any of you, and no one has been identified, and the thought is that it was probably someone else that knew that somebody -- that one of these defendants is not here. I don't think it's -- So I'm not admonishing you. I'm just telling you. I'm giving you a warning. Be awful cautious and careful of that.

All right. Very good. And there are no motions to be considered at this time, and so any objections they've got is waived.

All right. You may -- (Motioned to bailiff to bring jury.)

(WHEREUPON, at 2:59 p.m., jury returned to open court; and the following proceedings were had within the presence of the jury:)

THE COURT: Mrs. Forelady and ladies and gentlemen, the task which we had has been accomplished. I'm sorry that it took us a few minutes or any inconvenience it may have been to you.

Now, I'm not a physician, and I'm not entitled to state opinions about medical science, but 'member I asked you there's reasons if any of you are diabetics, and some of you may be not insulin dependent, but you might be an

Adult II noninsulin dependent and probably don't even know that you're a diabetic or borderline diabetic, but you just eaten. Hadn't been but forty-five (45) minutes or an hour ago. And just like me holding a match to the bottom of a thermometer the gluglose (sic) levels, the sugar levels, and with your endocrinology being different, your digestion, it's going up. Just like the temperature outside as it gets warmer out there, your gluglose (sic) level's going up. And just as dramatically in about fifteen (15), thirty (30) minutes or an hour, it's going back down. And when it does, I'm gone be looking; and some of you are gonna be (yawned and snored).

And I can tell you when atheletes (sic) had an old football coach. Later decided he wanted to be a lawyer. Fellow named Rotan Shelley (phonetic). And because I was the biggest fellow on the line, he played me on offense guard so he couldn't get to the quarterback; and he played me tackle on defense; and I was so big, 'cause I bigger then than I am now, I could block a hole; and sometimes they double-teamed me. A guard and a tackle on the other side and hit me; and then they'd have a blocking fullback; and then, if those two didn't knock me down, he'd come through and hit me when both of them had me stood up; and it'd hurt awful bad; and he'd say, "Get up and get back in the game."

You start getting groggy, I want you to get up. Do a side-straddle-hop (jumped and jerked). (While demonstrating) Do isometrics. Wiggle your arms. Wiggle your shoulders. Move your head. Run in place, and hold your feet up. Get that blood circulating. Get it out from around your stomach, and let's get it back up here at your head because you're doing a good job. I want you to be alert, and just be aware in thirty (30) minutes to an hour.

And if you feel like, like I do, you want a cup of coffee, raise your hand; and we gone take a break; and we'll drink -- let you coffee-up.

Please, do what you've been doing. Stay alert. Keep your mind here. Don't let it wander off somewhere. Just do what you've been doing. You've been very courteous. You've been very attentive. You're doing what a judge is required to do. Please continue to give that attention to the witnesses and to the lawyers.

Call your next witness.

MS. PARR: Your Honor, at this time, we would call Reginald Fulmore.

(To the deputy) Would you ask Reginald Fulmore? He's in the room.

THE COURT: Bring the next witness.

REGINALD LAMONT FULMORE,

being first duly sworn, testified as follows:

DEPUTY CLERK DUDLEY: Please be seated, and state your full name for the record.

WITNESS FULMORE: My name is Reginald Lamont Fulmore.

DIRECT EXAMINATION BY MS. PARR:

Q. Mr. Fulmore, where do you live?

A. [redacted] West Harmony Street.

Q. Is that here in Florence?

A. That's here in Florence.

Q. And how old are you?

A. Twenty-nine (29).

Q. And are you employed?

A. Yes, ma'am.

Q. And who are you employed with?

A. Holiday Inn Express Hotel.

Q. Okay. And what do you do with Holiday Inn Express?

A. I'm the night auditor.

Q. Okay. And where is the Holiday Express Hotel located?

A. 150 Dunbarton Drive, which is over near the Magnolia Mall.

Q. Okay.

THE COURT: Hold it. Can you hear.

A JUROR: Yes.

THE COURT: You can't now, (while indicating) you

give me this.

EXAMINATION BY THE COURT:

Q. You got to speak a little louder than you ordinarily are accustomed to speaking.

A. Okay.

Q. (While indicating) That will magnify your voice to some extent; but we can't rely on that; and it's real important everybody in the courtroom, particular that lady on the furtherest (sic) away from you, hear you.

A. Okay.

Q. And your answers really are not only for the court and for the lawyers, but they're really for the jury.

Picture in your mind's eye that that fellow sitting in the back back there with her (sic) coat that's with the Sheriff's Department,---

A. Okay.

Q. ---you want him to hear your answers.

A. Okay.

Q. And if you speaking loud enough for him to hear it, we'll all hear it.

A. Okay.

THE COURT: All right. You may examine your witness.

DIRECT EXAMINATION BY MS. PARR (continued):

Q. Mr. Fulmore, what's your position with the Holiday Inn?

A. I'm the night auditor.
Q. And what are your duties as the night auditor?
A. To made sure the reports are balanced and make sure everything is correct, like the credit cards and everything else.
Q. And do you also rent rooms to persons that come in?
A. Yes, ma'am, I do.
Q. And what time do you normally go to work?
A. About ten-fifty (10:50).
Q. And how long have you been with the Holiday Inn Express?
A. Two and a half (2-1/2) years.
Q. Now, let's go back to April 10th of 2000. Were you working on that particular evening?
A. Yes, ma'am.
Q. Okay. And -- And what was your position at that time?
A. The night auditor.
Q. And do you recall what time you went to work that night?
A. Yes, ma'am. About ten-fifty (10:50).
Q. Now, what is your shift normally.
A. From eleven (11) p.m. to seven (7) a.m.
Q. And how many people work with you on a shift?
A. It was just me, alone.

Q. Okay. Now, on that particular evening, do you recall renting a room?

A. Yes, ma'am.

Q. Okay. And do you recall what time that was?

A. It was about ten-fifty-three (10:53).

Q. And tell me exactly what happened when you rented that room and what you did.

A. Okay. There was a gentleman who came to the room, and he asked to rent a room, and so I gave him the room. He paid for it with cash. I took in -- I asked him for -- Since he's paying for cash (with), we need to have a copy of his driver's license or military I.D. He gave me his driver's license.

Q. Mr. Fulmore, (while handing document) I show you what's been marked as State's Exhibit Number 11 for identification purposes. Can you recognize -- Do you recognize that?

A. Yes, ma'am.

Q. Okay. And how are you able to recognize it?

A. I recognize the person's name and the room number and as well as my initials and the time that I rented the room.

Q. Okay. And what is it?

A. It is -- You want me to describe the room type?

Q. Yeah. Yeah. Well, what is that for?

A. Oh. This is the receipt that we give him.
Q. Okay. And how did it become -- How did it first come into your possession?
A. After I copy the information, I punch in the computer; and it prints up and gives the receipt so I can -- We have a copy and as well as he have one himself.
Q. Okay. And is that receipt in substantially the same condition as it was when you printed it on that particular evening?
A. Yes, ma'am.

MS. PARR: Your Honor, the State would move to enter what's been marked as State's Exhibit Number---

MR. NETTLES: Without---

MS. PARR: ---11---

MR. NETTLES: ---objection from the defense, Your Honor.

THE COURT: Without objection from either lawyers from the defense, admitted.

(WHEREUPON, Holiday Inn Receipt admitted into evidence as State's Exhibit Number 11, without objection.)

BY MS. PARR:

Q. Now, would you please tell who rented that room?
A. Mr. Lowman Rush.
Q. Okay. And did you get Mr. Rush's address?
A. Yes, ma'am, we did get his address off of his

driver's license.
Q. Okay.
A. Off his driver's license.
Q. Okay. And what was that address?
A. It was out of Timmonsville.
Q. All right. And which room did Mr. Rush rent?
A. He rented room two-forty-three (243).
Q. And when -- when he rented that room, what did you do?
A. I gave him directions to the room, how to get there.
Q. Okay. And -- And where is that room located?
A. It's located just right above the lobby, right on top of the canopy.
Q. Now, would you please describe the room that Mr. Rush -- room two-forty-three (243)?
A. Yes, ma'am. It's two queen-sized beds, with the kitchenette, which it contains a microwave, refrigerators, coffee makers, and hair dryers, and iron and ironing boards.
EXAMINATION BY THE COURT:
Q. Refrigerator and what else?
A. Coffee makers and hair dryers, iron and ironing boards, and---
Q. Oven, hot plates.
A. No. No, sir. Not an oven, neither a hot plate.

Television and microwave and V.C.R.s.

DIRECT EXAMINATION BY MS. PARR (continued):

Q. You said a microwave and V.C.R.?

A. Yes, ma'am.

Q. Okay. Now, on that particular evening, did you have an occasion to see Investigator Glen Kirby from the Florence County Sheriff's Office?

A. Yes, ma'am.

Q. Okay. And do you recall what time that was?

A. It was about twelve (12) midnight.

Q. Okay. And -- And where did you see him?

A. He came up to the window.

Q. Now, was he alone at the time?

A. Yes, ma'am.

Q. And what happened once he came up to your window?

A. He asked me did I rented the room between the hours of eleven (11) to twelve (12) midnight and asked -- And I confirmed. I said yes.

Q. Okay. And -- And what else did you do?

A. I -- I gave him directions to the room, hows to get to it.

MS. PARR: May I have the court's indulgence for a moment?

(WHEREUPON, Ms. Parr conferred with Mr. Lawson.)

MS. PARR: Please answer any questions the defense

counsels may have for you.

THE COURT: Cross-examination. Witness with you, Mr. Nettles.

CROSS-EXAMINATION BY MR. NETTLES:

Q. Mr. Fulmore, did the individual who rented this room say anything about a gentlemen, the first name of Eric, coming to meet him?

A. No, sir.

MR. NETTLES: Okay. Thank you.

THE COURT: Mr. Anderson?

MR. ANDERSON: I don't have any questions, Your Honor.

THE COURT: Come down.

Next witness for the---

MS. PARR: Your Honor, we'd ask if this -- asked that this witness be excused.

THE COURT: Beg your pardon.

MS. PARR: We would ask that this witness be allowed to be excused.

THE COURT: Any objection to this witness being excused?

(To the witness) You working today?

WITNESS FULMORE: Tonight.

THE COURT: You still on the graveyard?

WITNESS FULMORE: Yes, sir.

THE COURT: All right, sir. You may be excused. Probably gone go home and get some rest. Stay if you want, but there's no need, you have been released from your subpoena.

WITNESS FULMORE: Thank you.

(WHEREUPON, the witness was excused from the witness stand and from the trial of this case.)

THE COURT: The State have further witnesses.

MS. PARR: Yes, Your Honor. Your Honor, at this time, the State would move to enter into evidence without objection what's been marked as State's Exhibit Number 8. The counsel---

THE COURT: Without objection.

MS. PARR: And that's---

THE COURT: Sometimes we do matters in camera and with -- And that's one of them. It's a stipulation. Evidence is complosed (sic) of three things: sworn testimony of the witnesses; exhibits; and, third, stipulations. Those are facts that are undisputed as to the admissibility and that -- those no objection.

All right. By stipulation, admitted.

(WHEREUPON, in the presence of the jury, One Kmart Bag admitted into evidence as State's Exhibit Number 8, without objection.)

MS. PARR: Your Honor, at this time, we would call

David Talon.

Your Honor, we may need to take up this matter outside the presence of the jury.

THE COURT: You may use the facilities, whatever you want to do. I'm gone send you word in a matter of just moments that we are ready; but, if you're not ready, you tell the bailiff when you are.

(WHEREUPON, at 3:15 p.m., jury returned to jury room; and the following proceedings were had outside the presence of the jury:)

THE COURT: All right. Ms. Parr?

MS. PARR: Your Honor, if you recall, early there was the question of the Kmart receipt. We do have someone here from Kmart. Actually, Mr. Kendall Shelley, the manager, was supposed to be coming; but Mr. David Talon has come instead. But when I just -- He was not aware that he was going to be testifying, and he's in shorts. He is calling Mr. Shelley at this moment to see if he can come on over to go ahead and testify, but we thought we needed to go ahead and advise the court. This matter came up earlier. Because they were not originally on our witness list.

THE COURT: I'm assuming the defense is gone want the person that checked that matter out and that that was the contents reflected in that receipt. Now, common sense

tells me that these matters from Kmart -- You've established this thing from Kmart. I'm assuming these people can say that we sell that merchandize that's already in the evidence, and I'm not suggesting how you try it, but you gone have an objection unless that was the individual that can say that's the contents reflected in that -- in that receipt.

And you're concentrating on that; and it might be smuch (sic) a small minute -- because you've got some circumstantial evidence in this case; but you've got the vehicle; you've got the drugs in the vehicle; and it was either rented or being operated by this defendant. You've got all of these things at -- into the evidence. You're concentrating, and you're missing the big picture in this thing.

But now, if you think it's crucial to it, you can do it; but we're taking time; and I don't know that any of these persons gone be able to do that that you have. You've wasted your time in doing it because you're gone have an objection; and all you're doing, if you're successful in your prosecution, is just setting up a little peg from them to hang an appeal on; but now that's -- You want to do it. I can't stop you from doing what you want to do; and, if you feel like that's necessary, it's critical to you, we'll do it; but we're not ready to

call that witness because, apparently, I don't know if you've talked to that witness that they gone be able to establish that; and I think you -- I think, at this point, you need to go to your next witness 'cause you're not ready to go forward with that witness.

MS. PARR: I can---

THE COURT: Unless you need a break in order to talk with him to see if he can do it. Maybe he can. He probably can identify these products.

MS. PARR: Your Honor, actually, the receipt now -- the receipts have the U.P.S. code numbers on there that have the saucepan; and that code number would actually be on the box with the -- the saucepan, that all you have to do is compare that receipt to that item.

THE COURT: If you can tie it all in, you can tie it up. We'll do it at -- We'll do it in camera right now so we -- so maybe we won't be losing some time. We'll just do it in camera with him; and, if he can do all of that and you can set them up and I can rule on the objection and we can proceed.

MS. PARR: Your Honor, I've just been advised that Mr. Shelley will be here in fifteen or twenty minutes, so we can go on to the next witness.

THE COURT: So why -- So whenever -- whenever you determined that, you let me know; and we'll -- we'll take

that up in camera and see if you can tie that up.

All right. Bring us --.

MS. PARR: I need Chad Stone.

BAILIFF JOE TIMMONS: Bring them out, Judge?

THE COURT: Yes, sir.

(WHEREUPON, at 3:19 p.m., jury returned to open court; and the following proceedings were had within the presence of the jury:)

CHAD STONE, being first duly sworn, testified as follows:

DEPUTY CLERK DUDLEY: Please be seated, and state your full name for the record.

WITNESS STONE: Chad Stone.

DIRECT EXAMINATION BY MS. PARR:

Q. Mr. Stone, what is your occupation?

A. I'm a mechanic.

Q. And what was your occupation back in April of 2000?

A. I was a sheriff's deputy with the Florence County Sheriff's Office.

Q. And how long were you a deputy with the Florence County Sheriff's Office?

A. At that time, two years, probably. Close.

Q. Okay. And what were your duties with the Sheriff's Department at that time?

A. Just to respond to 9-1-1 calls, emergency calls, and

that sort of stuff.
Q. Now, did you have an occasion to become involved in an investigation on April 10th, 2000?
A. Yes, ma'am.
Q. And what was the nature of your involvement in this matter?
A. It was a -- a narcotics call to help look for two vehicle that were possibly involved in narcotics.
Q. Okay. And how were you notified?
A. I got a call from Investigator Kirby, and we met and talked, and he told me about it.
Q. And what were you told at that time?
A. I was told that he had information that there were two vehi- -- two S.U.V.s -- sports-utility vehicles, a green one and a white one, somewhere in the area of fifty- -- of 95 -- 52 and I-95 or I-20 at 95; and I helped him look for them.
Q. Okay. And were you given any more information in regards to the -- the vehicles?
A. The tags, the license tags, one would be -- The green S.U.V. had a California tag, and the white one had a Florida tag.
Q. Okay. Now, were you provided any information as to the occupants of those vehicles?
A. No, ma'am.

Q. And as a result of that information, what did you do?
A. I helped look at 52 and 95, the -- the north side of the 52; and, after I finished there, I was -- That's where I looked, was there
Q. Okay. Now, how long did it take you to get out to 95-52?
A. I don't understand what you're asking me.
Q. How long did it take you to respond to that particular area?
A. I was in that area when I talked to him, at 52 and 95.
Q. Okay. And when you left that area, where did you go?
A. To -- I was heading to I-20 and I-95.
Q. Okay. And where did you go once you headed that way?
A. As I was getting on the ramp, I got a call from Investigator Kirby to meet him at the -- at I-95 and I-20.
Q. Okay. And what did you do once you got there?
A. Once I got there, he -- he told me on the radio he'd found -- possibly found the vehicle; and I got there and just watched the guy that he was out with while Investigator Kirby searched the vehicle.
Q. Okay.
A. The -- The first person's vehicle.
Q. Okay. And where was this vehicle located?
A. On the side of the motel at the Holiday Inn.

MS. PARR: Okay. Would you please answer any questions defense may have.

THE COURT: Cross-examination. Witness with you.

MR. NETTLES: Thank you very much.

CROSS-EXAMINATION BY MR. NETTLES:

Q. Did you see Michael Monfries with any drugs that night?

A. I don't even know who Michael Monfries is, sir.

Q. Right. I mean, but -- But, I mean, you didn't see -- Did -- Did -- You didn't see my client with any drugs that night, did you?

A. No, sir.

MR. NETTLES: Thank you very much. I have no questions.

EXAMINATION BY THE COURT:

Q. Could you identify any of the persons were there, the drivers or the passengers of any of those vehicles?

A. The first vehicle that I -- that I initially got out with, with Investigator Kirby, was a -- is -- is not here today. He was Mr. Clayton Holmes (sic), was the person. And that's the person that was my biggest interest because I was supposed to watch him while Mr. Kirby was searching his vehicle. That was my only job, was just to watch that one person and make sure he didn't run or -- or do anything to harm Investigator Kirby.

THE COURT: All right, sir. Anything on cross-examination, Mr. Anderson?

MR. ANDERSON: Yes, sir.

CROSS-EXAMINATION BY MR. ANDERSON:

Q. You didn't find any drugs on Eddie Blash, did you?

A. No, sir.

Q. You didn't find any physical evidence that would relate to Mr. Blash and any drugs?

A. No, sir. My job was not to look for any drugs.

MR. ANDERSON: Thank you. That's all the questions I have.

EXAMINATION BY THE COURT:

Q. You didn't even know the gentleman, did you?

A. No, sir.

Q. You didn't know what his name was at that time, I assume.

A. No, sir. The only person that I had any dealings---

Q. You didn't know---

A. ---with was---

Q. ---the names of any of them.

A. Well, I knew the name of---

Q. Except that---

A. ---the man I was---

Q. ---one individual.

A. Mr. Holmes (sic). Yes, sir.

THE COURT: All right, sir. Any objections to this witness being excused by the court? He's no longer in law enforcement.

BY THE COURT:

Q. What are you doing now?

A. Work for my dad in the truck business, mechanic work.

Q. Mechanic work in the trucking business?

A. Yes, sir.

Q. That's pretty tough business with gasoline going up and down right now. We gone excuse you to go back to work.

A. All right, sir. Thank you.

(WHEREUPON, the witness was excused from the witness stand and from the trial of this case.)

MS. PARR: Your Honor,---

THE COURT: Further witnesses.

MS. PARR: Your Honor, at this time, we'd call Lieutenant Timmy -- Timothy McFadden.

TIMOTHY McFADDEN, being first duly sworn, testified as follows:

DEPUTY CLERK DUDLEY: Please have a seat, and state your full name for the record.

WITNESS McFADDEN: Timothy McFadden.

DIRECT EXAMINATION BY MS. PARR:

Q. Lieutenant McFadden, where are you employed?

A. Florence County Sheriff's Office.
Q. And what do you do for the Florence County Sheriff's Office?
A. I'm the lieu- -- lieutenant over the Narcotics Division.
Q. And how long have you been with the Florence County Sheriff's Department?
A. Fifteen (15) years.
Q. And have you had prior law enforcement experience prior to going to the Florence County Sheriff's Office?
A. No, ma'am.
Q. Now, have you had any special training for your job?
A. I graduated from the Criminal Justice Academy in Columbia. Had numerous trainings throughout South Carolina. Also attended drug training classes in Florida.
Q. Now, did you have an occasion to become involved in an investigation back in April -- or, specifically, April 10th, 2000?
A. Yes, I did.
Q. Okay. And would you please tell us how you became involved in this matter?
A. I received a call from Agent Glen Kirby stating that he had found a quantity of cocaine at one of the motels and wanted me to meet him out at that location.
Q. And do you recall what time you arrived?

A. It was -- I don't remember the exact time, but it was late at night because I was -- I was at home in bed.

Q. Okay. And---

EXAMINATION BY THE COURT:

Q. What time you generally go to bed?

A. Around eleven (11) or twelve (12).

Q. All right. At -- Well, were you trying -- falling asleep?

A. No, sir, I wasn't asleep.

Q. You weren't asleep?

A. No, sir.

MS. PARR: And---

BY THE COURT:

Q. You don't know approximately what time it was?

A. 'Round eleven (11:00) o'clock or twelve (12). Around eleven (11) or twelve (12).

THE COURT: All right. You may proceed. Clarification information for the jury.

DIRECT EXAMINATION BY MS. PARR (continued):

Q. And where did you respond to?

A. Oh, the Holiday Inn at I-20 and 95 -- I-95.

Q. Okay. And when you got there, what did you find?

A. To start with Agent Kirby, he stated what happened out there; and he showed me what he had found.

Q. Okay. And -- and as a result of that, what did you

do?

A. When he advised me of who the room was rented into and I recognized the name, then at that time, myself and Agent Allen Rhodes went out and located him at Fairfield -- on Fairfield Circle which is out there at Northside Estates, a trailer park.

Q. Okay. And who -- Well, who were you looking for?

A. Lowman Rush.

Q. Okay. And is he also called Timmy Rush?

A. Yes. Yes, ma'am.

Q. Okay. And were you and Allen Rhodes riding together?

A. Yes, ma'am.

Q. Okay. Tell us what happened when you got to Northside Estates?

A. When we were -- we arrived, we talked with him, explained that we knew that he had rented a room out there at Holiday Inn and asked him did he rent a room; and he stated yes.

Q. Okay.

A. That he said he rented it for his cousin.

Q. Okay.

A. And some other guy.

Q. All right. And -- And did he indi- -- Did he indicate who his cousin was?

A. Yes, ma'am. He was Mr.---

MR. ANDERSON: Your Honor, I'm going to object at this time to hearsay.

MS. PARR: Your Honor, that witness is available.

THE COURT: It don't make any difference. He's objected. Sustained. It's hearsay. Rephrase the question.

BY MS. PARR:

Q. From your investigation, what did you find?

MR. ANDERSON: Judge, I would object again. I think this has already been covered earlier. I mean, I think we're getting to the Sixth---

THE COURT: Think it's cumulative.

MR. ANDERSON: No. A Sixth Amendment issue here, Your Honor. I think, if that witness is available, Ms. Parr should ask him those questions.

THE COURT: Rephrase your question, counsel.

MS. PARR: Your Honor, he can -- the officer can testify to what he found once he went there during his---

THE COURT: Just---

MS. PARR: ---investigation.

THE COURT: Just -- Just phrase your question. Lay your foundation.

BY MS. PARR:

Q. Lieutenant McFadden, you went to Lowman Rush's house; is that correct?

A. Yes, ma'am.
Q. What, if anything, did you do once you got there?
A. We spoke with him about what we had found, and we -- Also, we received a set of scales from him, from his house.
Q. Okay. And as a result of that, what did you do?
A. We took the scales, and they was given to Agent Kirby.
Q. And were the scales put into evidence?
A. Yes, ma'am. They were.
Q. (While handing item) Would you examine that, please?
A. (Looked at item.) Yes, ma'am.
Q. Can you recognize what has been marked as State's Exhibit Number 3?
A. Yes, ma'am. The scales that was -- we retrieved from the house that night.
Q. Okay. And where did you retrieve it from?
A. Under his bedroom mattress.
Q. And how did you come into possession to it?
A. He told us they was there.
Q. Now, is this scale in substantially the same condition now as it was the night that you obtained it?
A. Yes, ma'am. It appears to be.
MS. PARR: Your Honor, the State would move to introduce it into evidence.

MR. NETTLES: Could we take a look at it?

THE COURT: Want to look at it?

MR. NETTLES: Yes, sir. If you don't mind.

THE COURT: You want to look at it, Mr. Anderson?

(WHEREUPON, the attorneys looked at scales.)

MR. NETTLES: I'm sorry, Your Honor. Did they -- They can go ahead, and I'll just be putting this back together. That's what I'll do.

THE COURT: All right. Just---

MR. NETTLES: Thank you.

MR. ANDERSON: Without objection, Your Honor.

THE COURT: Preserved then.

MR. NETTLES: Without objection, Your Honor.

THE COURT: Admitted, without objection.

(WHEREUPON, Tanita Digital Scale admitted into evidence as State's Exhibit Number 3, without objection.)

THE COURT: Let's get all this evidence back over here, and you give Ms. McDaniel a heart attack when this evidence moves to y'all's desk.

We had one that lawyer came in, and it got over to that desk and then picked it up. The jury was out and couldn't deliberate because we couldn't account for all the exhibits, and we had to stop him on the interstate between Camden and Columbia. And that ain't gone happen no more.

You -- And nothing goes over to them counsel tables. They remain right there when you get through with them.

She's -- She's responsible for them, and she---

MR. NETTLES: I understand.

THE COURT: ---reminds me that she's got to account for them, and I don't want her jumping on me, and you don't want us jumping on you.

MR. NETTLES: No, sir.

THE COURT: All right. You may continue.

BY MS. PARR:

Q. Lieutenant McFadden, would you please describe the scales?

A. It's -- They are a set of digital scales, with -- freshly minted. It appears to be -- They appear to still be brand new. And we -- A lot of times we -- we find these---

MR. ANDERSON: I object, Your Honor. And I think the witness is speculating now. "A lot of times we find." I think he's getting into---

THE COURT: His experience,---

MR. ANDERSON: ---some things they---

THE COURT: ---with whatever he knows, I think that comes within the parameters. He can express that opinion; and you can call somebody else to 'press a different opinion. But I think he's got a right to express whatever

opinion he's got about it.

EXAMINATION BY THE COURT:

Q. What is it customarily used for? What's it made for? What does the manufacturer say you use it for? Clarification information. I always give the curative before and sometimes afterwards.

A. It is used -- A lot of times in my job we find a lot associated with drugs, to weigh drugs with, these type scale.

Q. What's it -- What's the manufacturer say it's to -- used for? Do -- How does it weigh? Ounces? Grams? What---

A. This---

Q. What is the measurements?

A. These here -- This set of scales here is measured in grams.

Q. Measured in grams.

A. Yes, sir.

Q. All right. Does it have a measuring for pounds or ounces?

A. This set---

Q. It's all in grams.

A. This size here. I think so. Yes, sir. Grams.

THE COURT: All right. You may continue your examination.

DIRECT EXAMINATION BY MS. PARR (continued):

Q. Now, Lieutenant McFadden, now you are an experienced law enforcement officer, specializing in narcotics; is that correct?

A. Yes, ma'am.

Q. And how many years you say you have been in narcotics?

A. Around thirteen (13) years.

Q. Now, have you had any special training in valuing narcotics?

A. I have made numerous undercover drug buys. Also, I have been the case agent on numerous drug buys.

Q. Okay. About how many -- Can you estimate the number of drug buys you have made?

A. Myself, I'll say over a hundred (100) in my -- in my thirteen (13) years 'cause we make drug buys here in Florence County, also in other counties.

Q. Okay. And what is the value of a kilo or one thousand (1,000) grams of cocaine?

A. Around a hundred thousand ($100,000.00) dollars.

(WHEREUPON, Ms. Parr conferred with Mr. Lawson and Investigator Kirby.)

EXAMINATION BY THE COURT:

Q. You know what the weight was of this evidence in this case?

A. It was about a kilo.

Q. Do you have an opinion as to the value of that amount?

A. The street value, I'd say about a hundred thousand ($100,000.00) dollars.

THE COURT: All right. Anything further?

(WHEREUPON, Ms. Parr continued conferring with Mr. Lawson and Investigator Kirby.)

DIRECT EXAMINATION BY MS. PARR (continued):

Q. Now, would that be in gram weight?

A. Yes, ma'am. That would be in gram weight. That -- On the formula of a hundred ($100.00) dollars a gram.

MS. PARR: Okay. Nothing further for this---

THE COURT: Cross---

MS. PARR: ---witness.

THE COURT: ---examination. Witness with you.

CROSS-EXAMINATION BY MR. NETTLES:

Q. Now, you're surely not here to tell this jury that that scale is like one designed just for drug use, are you?

A. No. That -- That's one of the purposes. No, not---

Q. Now, do---

A. ---the only---

Q. ---you see---

A. ---purpose.

Q. ---the -- Included in this scale, which as you've said, was still wrapped up; right? I mean, this is -- Now, you had to kind of break open the seal. I mean, this came right out of this little plastic bag; right?

A. Yes.

EXAMINATION BY THE COURT:

Q. Was it open? Or did you break the seal?

A. I didn't break the seal.

Q. You did not?

A. No, I did not.

MR. NETTLES: (While indicating) But it---

THE COURT: All right.

CROSS-EXAMINATION BY MR. NETTLES (continued):

Q. ---was still in this little plastic bag; right?

A. Yes, it was.

Q. And in the instructions -- Matter of fact, there's instructions in here; isn't there?

A. Yes, sir.

Q. Instructions come with?

A. They're in there somewhere.

Q. (While indicating) And -- And did you look through these instructions?

A. No, sir, I haven't.

Q. Okay. Is there any -- Well, why don't you take a look at that and see in there where it tells you how to

weigh -- you know, where this is used for drug dealers, is there? Is that in the instructions anywhere?
A. It's not in the instructions, but I have seen drug dealers use these type scales.
Q. All right. But I mean -- I mean, you're certainly not here telling this jury that, (while indicating) because you have this, this means you're a drug dealer, are you?
A. No, sir.
Q. Okay. As a matter of fact, you didn't find any drugs in Timothy Lowman's (sic) house; right?
A. No, sir.
Q. You didn't find any excess money.
A. No, sir.
Q. I mean, so what, other than this scale, leads you to believe that the purpose for that scale in Timothy Lowman's (sic) house was drugs?
A. I didn't say that purpose was -- those scales in his house being for drugs. I said that they are connected with drugs in---
Q. Sometimes---
A. ---when I see it sometimes.
Q. Right.
A. Yes, sir.
Q. Sometimes it's not.

A. And sometimes it's not.
Q. Right. As a matter of fact, you know, whenever that there are -- There are people that use these scales for a number of different purposes; right?
A. Yes.
Q. Okay. I mean, just so we're clear on that. Right?
A. Yes.
Q. All right. And -- And as you said, you know, one of the other things, you -- you've sometimes been involved in drug cases where, for instance, you found -- I know sometimes I've seen in case where people have a -- a -- crack cans they've used to smoke crack cocaine out of.
A. Yes, sir.
Q. Right. And -- And -- And y'all have sent -- have those cans off to SLED and checked for residue; right?
A. Yes, sir.
Q. I mean, there's not any residue on that -- on that scale, is there?
A. Not that I can see. I don't know if it was sent off or not.
Q. Well, if you -- if you had of thought there was any residue on it, you know there's a place at Broad River Road in Columbia where they can send and test that, didn't you? SLED.
A. Yes.

Q. Okay. So if you had of thought there was any residue, you'd of said, "Hey, put this in a bag; send it to somebody," whether it was SLED or Charleston or whatever, "and let's test this for residue." Right?
A. Yes, sir.
Q. So that would have made your case stronger if there had been drugs on it; right?
A. Stronger in---
Q. Well, 'cause then you could have said this scale was used -- had drugs in contact with it. Right?
A. Yes, sir.
Q. Okay. But you can't say that in this case, can you?
A. No, sir.

MR. NETTLES: Now, the other thing is this: I've got nothing further. Thank you.

THE COURT: Anything, Mr. Anderson?

MR. ANDERSON: Just one or two, Your Honor.

CROSS-EXAMINATION BY MR. ANDERSON:

Q. Lieutenant McFadden, you didn't find any receipts with that scale, did you?
A. Not that I can recall.
Q. I mean, you don't know if that scale was purchased on April the 10th or on January the 10th?
A. Umm.
Q. You didn't find any receipts or anything---

A. I didn't find a receipt, but I was told by Mr. Rush when it was purchased.
Q. But you didn't find anything---
A. No. No, sir.
Q. ---anything of when it was purchased?
A. No, sir.

MR. ANDERSON: I think that's all I have, Your Honor.

THE COURT: Come down.

MS. PARR: Your Honor, I have one question---

THE COURT: Redirect?

MS. PARR: Yes, Your Honor.

REDIRECT EXAMINATION BY MS. PARR:

Q. Were you able to determine when that scale was purchased?
A. Me personally, no. Agent Kirby may have. Mr. Rush told us it was purchased---

MR. ANDERSON: I'm going to object to anything---

MS. PARR: Your Honor, they---

THE COURT: It's hearsay.

MS. PARR: Your Honor, they opened the door to it when---

THE COURT: They op- -- They opened the door, and -- and -- and he didn't -- And you didn't object when he first asked that question, but he's objecting now. It's hearsay, and hearsay is hearsay, and there's no exception

to it because he did once, and he can do it a second time, but rephrase your question. I sustain the objection.

BY MS. PARR:

Q. From -- From your investigation, were you able to determine when the scales were purchased?

A. Yes, ma'am.

MR. ANDERSON: Your Honor, I'm going to object to that. Your Honor, there's been no foundation laid. There's been nothing -- I mean, all she's doing is asking another question to get around it.

THE COURT: I'll---

MR. ANDERSON: I mean, an experienced officer---

THE COURT: (To Ms. Parr) Repeat that question.

(To Mr. Anderson) I -- I got your objection. I'm gone take it under --.

(To Ms. Parr) What's your question you asked?

BY MS. PARR:

Q. From your investigation, were you able to determine when that scale was purchased?

A. Yes, ma'am.

THE COURT: That's perfectly permissible. Overruled.

MS. PARR: And when was that---

MR. ANDERSON: Your Honor, I would object---

THE COURT: Objection noted. Go ahead.

BY MS. PARR:

Q. And when was that scale purchased?
A. I believe it was April the 10th.
Q. Of what year?
A. Two thousand (2000).
MS. PARR: Nothing further, Your Honor.
THE COURT: You, come down.
Either of you wish this officer be excused? Unless you gone -- want to keep him or recall him, I'm gonna excuse him.
(To the witness) Don't discuss your testimony with any of the other State's witnesses, either now or later.
WITNESS McFADDEN: Okay.
THE COURT: You may be recalled at some point by either side. I can't anticipate what they might be.
MR. NETTLES: Your Honor,---
THE COURT: Can he be excused? He's always subject to call.
(To the witness) You working today?
WITNESS McFADDEN: Yes, sir.
THE COURT: They got a radio. We can find him if we need them.
(To the witness) You can stay or leave, depending on what your other responsibilities are.
WITNESS McFADDEN: Thank you.
(WHEREUPON, the witness was excused from the witness

stand and from the trial of this case.)

THE COURT: Next witness.

MR. NETTLES: Your Honor,---

MR. ANDERSON: Your Honor,---

MR. NETTLES: ---may I -- may I join in Mr. Anderson's objection to that last interchange?

THE COURT: You may.

MR. NETTLES: Thank you.

MR. ANDERSON: Also, Your Honor, one other matter; and I'd appreciate it if maybe Ms. Parr and Mr. Nettles and Mr. Lawson and Ms. Jackson and I could just approach. We could probably clear it up without having the jury to go out. Or if you want to send them out, that's fine, Judge.

THE COURT: You got a matter you want to take up with me?

MR. ANDERSON: Yes, sir, I do.

THE COURT: All right. Then I'm gone excuse the jury.

(WHEREUPON, at 3:44 p.m., jury returned to jury room; and the following proceedings were had outside the presence of the jury:)

THE COURT: All right, sir. We'll take that matter up.

MR. ANDERSON: Judge, if it please the court? A lot

of times the State will ask questions on redirect and you are not allowing the defense to ask questions on recross, and I would ask for that opportunity. You are---

THE COURT: You've got that opportunity.

MR. ANDERSON: Well, Judge,---

THE COURT: You can do it.

MR. ANDERSON: ---before I can say anything, you're dismissing the witness.

THE COURT: Well, I'll put him right back up there.

MR. ANDERSON: I just wanted to make that---

THE COURT: You can---

MR. ANDERSON: ---a part of the record.

THE COURT: ---put him right back up there. Recall that witness.

MR. ANDERSON: Thank you, Judge.

THE COURT: All you got to do is ask. If you don't ask, you waive. And when you open the door and you ask a question and you get it and they come right back with the same question and you object to something when you've already opened the door to it, that's a little bit late, Mr. Anderson.

MR. ANDERSON: Well, Judge, that wasn't my objection. My objection was I would like---

THE COURT: I understand.

MR. ANDERSON: ---to have had an---

THE COURT: I understand.

MR. ANDERSON: ---opportunity to recross.

THE COURT: All you got to do is tell me, Mr. Anderson.

MR. ANDERSON: Thank you.

(WHEREUPON, Witness McFadden entered courtroom and returned to witness stand.)

MR. LAWSON: Your Honor,---

THE COURT: I'm try- -- I'm -- We got a -- a number of witnesses the State intends to call still under oath; and, if you'll notice before, when they get through and I'll give them redirect, I'll -- I'll say excuse the witness; and she'll ask me immediately -- I've got something on redirect. That's all you got to do, is I want---

MR. LAWSON: May it---

THE COURT: ---I got a question I want to ask on recross; and I'm certainly gonna allow you that opportunity.

MR. LAWSON: Before we bring the jury back, we may be able -- And I'm looking to try and cut the need for witnesses. Allen Rhodes is a witness that we listed, Your Honor. Allen Rhodes was with Officer McFadden when he went to Lowman Rush's house. His testimony would be basically cumulative. We offer him for cross-examination

purposes if the defense wishes to cross-examine or if they would like to take a minute and go talk to him, and we will do this on the record when the jury comes back in at the conclusion of Officer McFadden's testimony.

THE COURT: What's -- What's your will, Ms. Jackson, Mr. Nettles, Mr. Anderson? What's your will in regard -- He offers it. It's cumulative. He -- He'll call the witness if you insist, if you will like you can't stipulate it.

MR. NETTLES: That -- Yeah. If -- If -- I will take Mr. Lawson and Ms. Parr at their word. And -- And based on my reading discovery, I would agree that he is probably cumulative; and, you know, if -- if the only stipulation on the record --.

(To the solicitors) Are you anticipating putting a stipulation on the record as well?

MS. PARR: We can put the stipulation on the record that you---

MR. NETTLES: I mean, I -- I don't have -- I don't have any need to. I mean, if -- if -- Based on what Mr. Lawson said, I got the sense that that might be where you were headed; and, if that was the case, I just wanted to make sure we went ahead and agreed on the stipulation now.

THE COURT: Write the stipulation out so they look at it and read it, so---

MR. NETTLES: If it---

THE COURT: ---there'll be no questions about it,---

MR. NETTLES: If it's just---

THE COURT: ---and that's how it'll be done.

MR. NETTLES: I need to---

THE COURT: Write the stipulation out between counsel as to what that witness would testify to, that it would be cumulative of the other---

MR. NETTLES: I mean, it---

THE COURT: ---and want it -- want it scripture and verse.

MR. NETTLES: If -- If it's just so-and-so was available for cross-examination, the defense agreed it would be cumulative.

THE COURT: It ain't gone be perfect,---

MS. PARR: That's all right. That's all there is.

MR. NETTLES: I'm fine.

THE COURT: ---this transcript;---

MS. PARR: And if you want to call---

MR. NETTLES: I'm fine. That's not---

THE COURT: ---but it is gone---

MS. PARR: ---him, he's available.

THE COURT: ---be near perfect---

MR. NETTLES: ---my job. I don't want to talk to him.

THE COURT: ---as we can get it.

MR. NETTLES: Okay.

THE COURT: Mr. Anderson, you gone concur in that?

MR. ANDERSON: Yes, sir, Your Honor.

THE COURT: All right, sir. All right. Let's write it out. I don't see anybody writing.

MR. LAWSON: I think we've already agreed---

THE COURT: And let her look at it;---

MS. PARR: We -- We -- I think we---

THE COURT: ---and then, when I call the jury back, we can stipulate.

MS. PARR: Yeah. I think we've resolved it already. Do we -- Do we still need to write it?

THE COURT: Well, it's resolved; but, yeah, I think you need to have it in writing so there ain't any question about calling that witness; and, of course, we won't use it until such time as this witness steps off the witness stand.

All right. Bring us the jury.

MS. PARR: Okay. I was writing it out then.

THE COURT: Yes, ma'am. No problem.

(WHEREUPON, at 3:50 p.m., jury returned to open court; and the following proceedings were had within the presence of the jury:)

MR. ANDERSON: (While jury entering) Judge,---

THE COURT: It's gone be -- It's gone be recross by Mr. Anderson.

MR. ANDERSON: ---I don't have any questions for him. I just want that right before you summarily dismiss---

THE COURT: Oh, okay. Okay. Well, I thought there was something you didn't have. You've got it.

MR. ANDERSON: Thank you.

THE COURT: You can be excused.

WITNESS McFADDEN: Okay.

THE COURT: Wait just a minute though, and let the jury come from by there. You might push them.

(After jury was seated) All right, sir.

(WHEREUPON, the witness was again excused from the witness stand and from the trial of this case.)

THE COURT: The State and defense, while you were in the next room, addressed the issue that -- 'Member I told you about, you know, I love grits for breakfast; and, when I was first married, my wife used to add water and heat them up again; and she never could beat the lumps out of them; and it gets kind of cumulative; and so that's what we've been discussing. It's -- It's apparent there's some cumulative evidence being produced here, and the State is aware of that, and the defense has indicated that they will stipulate that some of the testimony that is being produced by the State is cumulative.

It'd be the same thing, but they still have the right to cross-examine because they -- In the discovery -- And you wouldn't know what it would mean, but I would. Rule 5 and the Brady motion, they prepared; and they want to know what the witnesses are for the State. They've got an open file, the State, to review their files in the Solicitor's Office. Some do that, and some don't. That's policy of this solicitor, and it becomes obvious to everybody and the defense that some of this testimony is cumulative, and so they've got a right. These witness lists that are furnished to the defense that the prosecution intends to call, that some of this testimony is cumulative. They were there. They all saw and testifying the same thing; but that still gives the defense the right, if they choose, to examine or cross-examine those witnesses; and they have graciously, without any prejudice to either side, have agreed to a stipulation.

You remember I told you from the facts there are three things that you make that determination, the facts, sworn testimony and the exhibits, the stipulations. Well, we've got a stipulation, and I've asked Ms. Parr to reduce it to writing.

(To Ms. Parr) Share it with the lawyers, and let them look at it, so that we'll make certain that that's the stipulation of counsel.

That means neither side has got to call witness as to that testimony to prove or disprove.

(WHEREUPON, Ms. Parr conferred with all defense counsel.)

THE COURT: How many more witnesses we got for the State, Mr. Lawson? We're moving. And any other -- others that---

MS. PARR: Your Honor, we---

THE COURT: ---are gone be---

MS. PARR: ---have five (5)---

THE COURT: ---gone be cumulative.

MS. PARR: ---more witnesses.

THE COURT: Beg your pardon?

MS. PARR: Five (5).

THE COURT: Five (5)?

MS. PARR: Yes, sir.

THE COURT: Making good progress. We'll probably finish this testimony tomorrow. Probably have summation and charge Thursday. Probably have dinner on the county; and you'll probably, by Thursday afternoon, early afternoon, be considering your verdict. Now, I just tell you that, and don't hold me to it. That's what you call a guesstimate, an edutate (sic) -- an educated guess. How informed it is, I don't know. I thought when we beginning it, it might be Saturday; and it 'till may be. I don't

know.

I don't know how long it'll take in your deliberations. I'm not inclined. It could be a moderate period of time, short period of time, long period of time. 'Member I keep telling you don't stick your nose and come across the line and want to -- to determine what the law is and meddle in my business when I'm ruling on issues and questions of law. I ain't crossing that line to try to dictate to you to tell you how long it may take when you ultimate do deliberate.

I'm just trying to give you a handle of how long you gone be here on this case; but, in all probability, this being Tuesday, you won't be put into the next jury pool. This is be the -- discharge your duty for this week to jury week (sic). Once you have concluded this case, you won't -- Whenever we concluded, you won't be put in. I don't intend to put you in a pool to be drawn in another case; and I don't know what they're doing upstairs.

I just share that with you because I think that's a courtesy.

MS. PARR: Your Honor, at this time, the State's ready to call Gary Lewis.

(Pause.)

MS. PARR: The State's ready to call the next witness, Gary Lewis?

THE COURT: All right. Did you -- you did -- You did -- You're not going to put in the stipulation?

MS. PARR: Your Honor, I have the stipulation.

THE COURT: All right. Well, let's put it in, and then let's do that. Let's don't put the carts before the horse, so to speak. Would you read that stipulation to the jury?

MS. PARR: The State versus Monfries and Blash, Indictment 2000-839, the State and the defense stipulate that the testimony of Allen Rhodes will be cumulative.

THE COURT: All right. We don't need to make that a court's exhibit. I'm not gone put it in the evidence. I just wanted them to be able to look at it in writing and see if they agreed or disagreed 'cause then they'd be entitled for you to call that witness 'cause they've the right to cross-examine.

All right. Now, we'll call our next witness.

MS. PARR: Your Honor, at this time, we'd call Gary Lewis to the stand.

THE COURT: Come 'round. Come 'round and be sworn, please.

WITNESS LEWIS: Yes, sir.

GARY ALBERT LEWIS, being first duly sworn, testified as follows:

DEPUTY CLERK DUDLEY: Please be seated, and state

your full name for the record.

WITNESS LEWIS: Gary Albert Lewis.

THE COURT: You may examine your witness.

DIRECT EXAMINATION BY MS. PARR:

Q. Investigator Lewis, where are you employed?

A. Florence County Sheriff's Office.

Q. And what do you do for the Florence County Sheriff's Office?

A. I work narcotics and specifically a narcotic canine.

Q. Okay. And how long have you been with the Florence County Sheriff's Office?

A. Fifteen (15) years.

Q. And what are your present duties?

A. I work cases involving narcotics. I work the drug dog on search warrants, middle schools, high schools, searching vehicles, keeping the drug dog up to -- up to standards.

Q. Okay. And have you had any special training for your job?

A. I have been to numerous seminars and training courses involving canine proficiency. I have trained six drug dogs for other agencies inside of South Carolina.

EXAMINATION BY THE COURT:

Q. You dog trainer, too?

A. Yes, sir.

DIRECT EXAMINATION BY MS PARR (continued):

Q. And, Investigator Lewis, were you working on April 10th of 2000?

A. Yes, ma'am, I was.

Q. And where were you working on that particular day?

A. I was working in the Florence area. If I recall correctly, I received a page from Investigator Glen Kirby; and I called him; and he advised me he had need of the narcotic dog to do a search.

Q. Okay. And as a result of receiving that page, what did you do?

A. I took the dog and proceeded to the location that Investigator Kirby was at?

Q. And where was that?

A. That was at a motel on I-20.

Q. And what did you do upon arriving?

A. I informed Investigator Kirby that I was there and had the dog with me and asked him what he wanted me to do from there.

Q. Okay.

A. He -- He exclaimed (sic) that he had already found the package from underneath one of the vehicles.

Q. Okay. And as a result of that, what did you do?

A. I asked him if he wanted me to let the dog sniff the vehicles that he had in question, and he exclaimed (sic)

if I wanted to, and I stated that I would run them and see if there was anything anywhere else on the vehicles.

Q. Okay.

A. We then -- Or I took the canine out, ran an Xterra and got an alert on the right rear side, right at the rear tire well. The dog -- There was a cross-wind coming from the driver's side over to the passenger side. The dog caught the wind and went up under the vehicle and came out and gave me his final alert, which is a sit; and he was rewarded.

Q. Okay. And then what did you do after the dog searched that -- the Xter- -- the Xterra and alerted on it?

A. There was another vehicle that Investigator Kirby had, and we did an exterior search on that vehicle and got no alert.

We then went up to the room where the person who was driving the Xterra was staying at. They spoke with the occupant in the room, and I took the dog in and searched the room and got no alert inside the room.

MS. PARR: Thank you, Investigator Lewis. Would you please---

THE COURT: Cross---

MS. PARR: ---answer---

THE COURT: ---examination. Witness with you, Mr.

Nettles. Ms. Jackson. Mr. Anderson.

MR. ANDERSON: I'm waiting on them, Your Honor. If they don't,---

THE COURT: All right,---

MR. ANDERSON: ---I have---

THE COURT: ---sir. I -- I don't -- I don't want---

MR. NETTLES: I have no---

THE COURT: ---to get you---

MR. NETTLES: ---questions, Your Honor.

THE COURT: ---excited. I'm gone give you an opportunity to cross-examine.

MR. NETTLES: I have no questions, Your Honor.

THE COURT: Any questions? Cross-examination?

CROSS-EXAMINATION BY MR. ANDERSON:

Q. Mr. Lewis, you said there was no alert in the upstairs or in the room?

A. That's correct.

Q. All right. There was no alert when your canine, I guess, approached my client, Mr. Blash?

A. I did not let him approach the -- the people.

Q. All right. Did---

A. Most---

Q. Did he search the room? Or did he -- did he run around the room?

A. He did sniff the room. He sniffed the dresser

drawers in the room. He searched -- sniffed the T.V., the bathroom, the beds, the luggage that was in the room with no alert.

EXAMINATION BY THE COURT:

Q. Clarification information, the only thing I heard you testify to -- Tell me if that's correct. -- was he alerted on the spare tire of the white S.U.V.

A. Yes, sir.

Q. He didn't alert on anything else.

A. That's correct, sir.

THE COURT: All right. We don't have to choke down on them grits any longer.

MR. ANDERSON: That's all the questions I have, Your Honor.

THE COURT: Come down.

WITNESS LEWIS: Thank you, sir.

(WHEREUPON, the witness was excused from the witness stand.)

THE COURT: Any objection to the court excusing this officer? He's in---

BY THE COURT:

Q. You on work duty today?

A. Yes, sir.

Q. Subject to call?

A. Yes, sir.

Q. Be available the next two or three days.
A. Yes, sir.
THE COURT: All right, sir. You can leave.
WITNESS LEWIS: Thank you, sir.
THE COURT: Or you can stay. Whatever you wish to do. Please don't at any time you may see officers --.
WITNESS LEWIS: Sir?
THE COURT: You may see some of these other witnesses that hadn't been called. We're not gone finish them probably. If you see them, please do not discuss any of your testimony with anyone.
WITNESS LEWIS: Yes, sir.
THE COURT: If the lawyers representing the State, Ms. Parr -- Carr -- Parr, Mr. Lawson -- Mr. Lawson, if they want to discuss anything with you, that's fine regarding testimony. It may help them in their presentation with those, but don't you discuss it, other than outside those individuals, with anyone, please, sir, because you then might disqualify these witnesses. I don't know. I'm sure you've been told. Are sequestered.
WITNESS LEWIS: Yes, sir.
THE COURT: And then a number of them that -- that yet to be called.
WITNESS LEWIS: Yes, sir.
THE COURT: Thank you, sir.

WITNESS LEWIS: Thank you, sir.

(WHEREUPON, the witness was excused from the trial of this case.)

THE COURT: Call your next witness, Ms. Parr.

MS. PARR: Your Honor, at this time, the State is ready to proceed with the matter that you wanted to take out of the presence of the jury.

THE COURT: All right. We gone do an in camera now, and you gone be saying (with distorted voice), "Well, wonder what they doing out there now."

Well, I'll tell you what we doing. We deciding whether or not it's testimony that we want to burden anybody with, that we want to hear it -- to hear it, or whether it's admissible or not admissible or whether it might be cold grits again being heated up.

So we gone take up -- That's a matter of my business. Don't stick your nose in my business. When you get back there in your room, enjoy your break. Don't discuss anything we're doing out here. It's a issue or question of law. You and I play a separate role from each other, and I think you understand that. Just like these lawyers play a separate role from me and from you.

Enjoy your break. It ain't gone be but a few minutes. I'll be sending you word.

Have I got any smokers on this jury?

(No response.)

THE COURT: That's wonderful. I'm glad of that. Generally, always got somebody that wants to smoke, and they'll drive everybody crazy. We'll send them outside if that -- in that situation.

Have a -- Have a nice break. You been sitting a while. Been very, very attentive.

(WHEREUPON, at 4:05 p.m., jury returned to jury room; and the following proceedings were had outside the presence of the jury:)

THE COURT: I want to take a break, and I know Ms. McDaniel does. We'll come back, and we'll take up those matters in camera, and that'll give y'all a chance to -- to take a little break, too.

Mr. Anderson, I'm sorry if I'm so quick. But getting -- trying to get these people off the -- off this witness stand. But you stop me. I ain't -- I would not deprive you of the right to examine the witness. I might get a little impatient sometimes with maybe we're plowing the same grounds that somebody else has already plowed, and that always happens.

MR. ANDERSON: Yes, sir.

THE COURT: Did y'all ever make a motion to severe these cases? Sometimes it's -- it's helpful, and sometimes it isn't.

MR. ANDERSON: Judge, I argued---

THE COURT: It's tough.

MR. ANDERSON: ---last week---

THE COURT: It's tough, but you got to, ordinarily, if you got a conflict with a co-defendant.

MR. ANDERSON: I argued for half a day last Monday on a severance.

THE COURT: You did?

MR. ANDERSON: And---

THE COURT: I didn't know whether you did.

(WHEREUPON, the court continued addressing Mr. Anderson as they exited courtroom; at 4:07 p.m. court stood in recess; and, at 4:12 p.m., court reconvened, with the defendant and counsel for all parties present in the courtroom, except for Ms. Jackson.)

(WHEREUPON, at this time, the witness approached witness stand.)

DEPUTY CLERK DUDLEY: Please place your left hand on the Bible and---

MS. PARR: I don't think---

DEPUTY CLERK DUDLEY: Am I supposed to be swearing him? What am I supposed to be doing?

MS. PARR: I don't think everybody's---

THE COURT: Wait a minute.

MS. PARR: ---back here yet.

THE COURT: And let's call him. I want him to be sworn before this jury.

MS. PARR: Yeah. He's just going to look at this.

(WHEREUPON, Ms. Parr and the witness conferred while looking at some of the evidence; and the court conferred with the deputy clerk.)

THE COURT: Everybody's present except Ms. Jackson. See if you can locate, Ms. Jackson, for me, please. She's probably on the phone. Don't interrupt her. Let her finish and conclude her telephone conversation.

(WHEREUPON, the court conferred with the deputy clerk.)

(WHEREUPON, at 4:16 p.m., Ms. Jackson entered courtroom; and Mr. Anderson conferred with his client.)

THE COURT: Counsel, y'all give me your attention, and I'm gone tell the jury what I'm telling you now. I anticipate that we may finish this testimony tomorrow, and I am gone be in no rush because I'm confident we'll finish the testimony tomorrow, but I'm gone tell you about a concern that I've had for forty-one (41) years. And for almost thirty-four (34), I couldn't do anything 'bout it; but I can now. I do not like the summation to come and a jury go home overnight and they hadn't heard the charge of the law but they've heard the 'tumma'. I do not think it's fair to the State or the defense, and I look at it

from a defendant's perspective.

I think, if you gone do some deliberation, there ought to be time to do it; and a jury shouldn't feel the constraints that I want to go home at five (5:00) o'clock; I want to go home at six (6:00) o'clock. It doesn't give enough time if you put it in there, and they hadn't got enough time to deliberate, and it certainly isn't fair you do the summation one day and then the next day you do the charge on the law. I think they both should come together. It ought not to be bifurcated. It ought to come together at the same time. Not all judges share that, but not all judges have practiced law either for thirty-four (34) years. So I don't do it.

So anticipating that we'll run and have some time, you can't do that. You might not be able to do it later. We gone try to stay with banker's hours because you and the court officials -- They having a life other than being in the courtroom all the time. But, unfortunately, I developed some habits before I went on the bench that I can attribute to other judges, one down just below; and that's not being critical of him 'cause he used to say, if a -- if the jury wants to work, doesn't make any difference what anybody else want to do, he's staying with the jury. That means everybody else got to stay, too.

But unless it does violence to you, I don't care if

we have a recess tomorrow afternoon, three or four hours, because I want you to have the opportunity that another one of my pet peeves. I'll let you look and read. I don't give you copies of it because then I'm taking advantage of the extra money that the court reporter -- You got a transcript gone be available to you. But I will do a presentencing charge (sic). You can ask, well, you gone charge this; you gone charge that; and I'll tell you yes or I'll tell you no; and I'll even go a step further (sic) with you. I'll let you read what my charge is gone be, and I'm gone follow that script.

Listen to me, Mr. Anderson. Mr. Anderson, I'm talking.

MR. ANDERSON: I'm sorry. I'm sorry.

THE COURT: Y'all got to listen to me.

I anticipate tomorrow afternoon we'll have that precharge conference to let you look at it. That means overnight you can prepare. You'll know and won't be wasting time arguing something you know I'm not gone charge, and maybe you can put greater emphasize on you knowing what I am gone charge, and so I intend now to get through with the testimony tomorrow fairly early.

But if we do a summation, I'm anticipating the two of you'll take at least a half an hour apiece. That's an hour. I'm assuming twenty minutes, a half an hour, the

State's gone -- That's an hour and a half. My charge, I know that's gone be at least forty-five minutes to an hour; and some say I won't be able to do it in that period of time. I don't know. I got no idea yet 'cause I hadn't read it. Nor is it all prepared yet.

But I would hope tomorrow that, if there's any specific things not included -- Just wait and look at it and read it and don't jump the gun on me, Mr. Anderson. If it ain't in there, you request it; and I'll take a look at it. Now, I'm -- got a habit that I like the pride of authorship. If it's the same language, yours varies a little bit; but you got a case that you could cite me that the language a little bit different I generally would love to take a cite because you'll find everything that I'm gone do is gonna have case law, statutory law, or something to back up with.

(While knocking) And knock on wood. Had one reversal in a jury trial, a murder case; and it was Lyles. And any time a judge wants to say it's more prejudicial than probative, he can find reason to do it.

MR. NETTLES: That's right.

THE COURT: And that's been my one reversal. And none in civil. And I don't intend -- I tell you now I ain't boasting. I don't intend that this to be the second one (knocked); and I'm gone give you every opportunity to

know exactly what I'm gone do; and I tell you now, unless we got time that they can at least com- -- and sufficient time to commence their deliberation, we'll go home before we do -- before we do that. So I -- The summation and the charge is gone come together at the same time, and there'll be adequate time to deliberate. And if they tell me they tired and they want to go home, I'm gone send them home; and then I'll bring them back when they fresh.

This jury -- (While knocking) And knock on wood. -- so far has been exemplary. I think they gone give you all a fair trial. What they gone do, who knows. A lot of it's gone depend on the summation and how persuasive or con- -- maybe not persuasive but how convincing you gonna be. I understand that, and I'm sho' gone give y'all a chance to do that because that's the one thing I enjoy, and I just regret I can't get out there and, whew, put a dog in the fight with somebody.

MR. NETTLES: You're welcome to.

THE COURT: But I---

MR. NETTLES: You come ahead and argue for us if you'd like to.

THE COURT: Yeah. Bubba Ness used to do it with me; but I used to say, "Judge, I"---

MR. NETTLES: He started---

THE COURT: ---"don't mind you"---

MR. NETTLES: ---out impartial---

THE COURT: ---"trying my case,"---

MR. NETTLES: Yeah. I know.

THE COURT: ---"but not if they gone lose it." So I ain't got a dog in y'all's fight either, though sometimes you might get a little contentious with me. I don't want to appear to be biased. If you see I am, you call it to my attention.

All right. Now, I'm gone tell the jury the same thing just about I told you, that I don't like the summation to be separate from the charge and that tomorrow we may anticipate we'll go home tomorrow afternoon 'cause we want to talk about legal questions and the charge of the law so y'all can prepare to argue possibly on Thursday. And that -- I may be wrong. We may finish this here this afternoon, but I doubt it.

And I don't know and don't mean to imply I don't know what the defense may or may not choose to do, and I don't know whether Mr. Anderson is gonna put Mr. Blass (sic) up or not. I know he has no criminal record, and that's gone be -- that's gone be a decision that he and his counsel gone have to make, and I don't mean to imply I'm giving anybody any advice along those lines, but it's something probably you need to be thinking about it 'cause it probably gone come tomorrow, Mr. Anderson. There'll be a

decision that'll have to be made, and I think you probably want to be thinking about it overnight.

MR. ANDERSON: Yes, sir, judge. Thank you.

THE COURT: (To the bailiff) All right. We're ready.

MR. NETTLES: Wait a minute. Are we gonna do---

MS. PARR: Your Honor, we have to do the in-camera hearing.

THE COURT: You want to do a proffer?

MS. PARR: Yes, Your Honor.

THE COURT: All right. Call your witness.

MS. PARR: Your Honor, we'd call Mr. Kendall Shelley to the stand.

KENDALL SHELLEY, being first duly sworn, testified as follows:

DEPUTY CLERK DUDLEY: Please be seated, and state your name for the record.

WITNESS SHELLEY: Kendall Shelley.

IN-CAMERA DIRECT EXAMINATION BY MS. PARR:

Q. Mr. Shelley, where are you employed?

A. With Kmart.

Q. And how long have you been employed with Kmart?

A. Twenty-seven (27) years.

Q. Okay. In which Kmart do you work?

A. This one here in Florence.

Q. Okay. And how long have you been at that Kmart?

A. Eight (8) years.

Q. Now, Mr. Shelley, (while handing document) I show you what has been marked as State's Exhibit Number 9. Can -- Do you recognize that exhibit?

A. It's a Kmart receipt from our store here in Florence.

Q. Okay. And how are you able to tell that it's from your store?

A. It's got our store number on it, 4317.

Q. Okay. And are you able to identify the items on that receipt?

A. Yes, ma'am. It's got a U.P.C. number here.

IN-CAMERA EXAMINATION BY THE COURT:

Q. Explain what you mean by U.P.C.

A. It's like a -- It's a nine- -- nine- or eleven-digit -- I can't remember if it's nine- or eleven-digit number that the bar code scans that the printer picks up; and it prints it out on the receipt, along with the description of the merchandise.

Q. What does -- What does those initials or that synonym (sic) U.P.C. mean?

A. I can't tell you truthfully right now, Judge.

IN-CAMERA DIRECT EXAMINATION BY MS. PARR (continued):

Q. And does that -- Is there a number or U.P.C. number on the item?

A. Yes. I think this, Judge, stands for unit pricing

item. It distinguishes each item different from another.

Q. And -- And if you view an item, can you tell whether that item came from your store and if -- when based upon the receipt?

A. I -- I can tell if it's -- if it's listed on here, and sometimes it has a warehouse label that shows that it came to our store, and it should have our store number on it.

Q. Okay. Mr. Shelley, (while indicating) I show you this item. Would you please take a look at it.

A. (Looked at item.)

Q. Okay. And do you recognize that item?

A. Yes, ma'am.

Q. And how are you able to recognize it?

A. It has our -- (While indicating) This is a warehouse label here where it came from our warehouse; and it's got our store number on it right there, 4317. It also has this U.P.C. number that matches this (indicated document) and also matches the one on the side.

Q. Okay. And so is it your testimony that that item, what has been marked as State's Exhibit Number 4, was purchased from your store?

A. Yes, ma'am.

Q. Okay. And is that reflected on the receipt that you have?

A. Yes, ma'am. It's the -- got the U.P.C. number on it.
Q. Now, is that an official receipt from your store?
A. Yes, ma'am.
Q. Okay. And does that -- Is that receipt in substantially the same condition as it would have been printed on the date that is---
A. Yes, ma'am.
Q. Have there been alterations to it?
A. The only thing I see is just this little -- I guess State's exhibit number.
Q. And -- And when was the receipt issued?
A. That was on 4-10-2000. It was at five-thirty-eight (5:38) p.m., in the afternoon.

MS. PARR: Your Honor, I will move to enter into evidence after we hear arguments and---

THE COURT: I'll let them cross-examine.

IN-CAMERA EXAMINATION BY THE COURT:

Q. There are pictures displayed on that box. There are a number of matters in that box, and I want you to review them. That one of the witness testified to was in the box when they took it into the evidence. I want you to look in that box and tell me if there's anything in that box that's not displayed on that box or with its contents on that box. Would you look in the box and see if there are other items in that box, other than those displayed or

showing on that box?

A. (Started taking items out of box.)

Q. (While witness viewing items) Something in there that's not s'posed to be in that box.

A. (Continued checking items.) It's just like---

Q. The only items in the box that are things that are s'posed to be in the box?

A. Yes, sir.

THE COURT: All right, sir. All right. Cross-examination.

IN-CAMERA CROSS-EXAMINATION BY MR. NETTLES:

Q. Please tell me your name again.

A. Kendall Shelley.

Q. Mr. Shelley. Mr. Shelley, this -- Do you know anything about -- (While indicating) Were you working on the day that this was made?

A. I'd have to look back and see. I didn't---

Q. Well, I mean,---

A. I don't know.

Q. ---at this point as you sit here, you can't tell us you were working on that day?

A. No, sir. I -- No, sir.

Q. Do you know who was given this receipt?

A. No, sir.

Q. Okay. Do you know who gave this receipt to the

person who got it?

A. No, sir. I---

Q. Okay. Do you know which register it was? I mean,---

A. Yes, sir.

Q. Do you know which register it was?

A. Yes,---

Q. Which---

A. ---sir.

Q. ---register was it?

A. Number four (4), I believe---

Q. Okay.

A. ---it was. Yes,---

Q. Do you know---

A. ---sir, number four (4).

Q. Do you know who was working number four (4) register on this day?

A. Not at this time, I sure don't.

Q. Do you know -- Now, my understanding -- May I see that box, please?

A. Yes, sir. (Handed box.)

Q. Thank you. I appreciate it. (While indicating) Is this the shipping label?

A. Yes, sir.

Q. Right. And this says -- Where's the U.P.C. code? (While indicating) Right here.

A. (While indicating) Right here, uh-huh.
Q. Now, what -- what we can take from this is -- is that this is not saying -- You can't tell this court that this receipt is for this box, can you?
A. (While indicating) The only thing I can say is that receipt was purchased -- whoever did it purchased one of those.
Q. (While indicating) One of these. That's right.
A. Yes. Cannot say that---
Q. (While indicating) This box.
A. Right. I can't say that.
Q. That whenever the person went in with this box and went to your cash register number --?
A. Four (4).
Q. -- four (4) and said "I'd like to buy this," that they said, "Okay, here's your receipt for this box."
A. No, sir.
Q. Okay. That's right. Because, I mean, the other thing, let's be clear about this number here; and I'm referring to State's Exhibit Number 4; and there is a U.P.C. code on the side of it. (While indicating) This number, every single box of these pots -- these pots that comes through your place has got that code number on it?
A. Yes, sir.
Q. So, I mean,---

A. Of that -- of that particular unit.
Q. Okay. Of this particular unit. Now,---
A. Yes, sir.
Q. ---sir, it -- And so -- And that's all the Kmarts all across the country.
A. That's nationwide.
Q. Nationwide.
A. Every retailer.
Q. Okay. So ev- -- (While indicting) Not only just Kmart but every retailer, this is the U.P.C. code.
A. (WHEREUPON, the witness nodded his head in the affirmative.)
Q. If I went to those horrible people, Wal-Mart, and wanted to -- to buy these pots and pans, it would have the same numbers as this.
A. Yes, sir.
Q. Okay. (While indicating) And as a matter of fact, these pots right here, you can say that -- that they appear to you to be similar to this box; but you can't tell me for a fact that these pots came out of this box.
A. No, sir.
Q. Okay.
A. That's what comes in -- in the box.
MR. NETTLES: Right. So then in terms of -- I believe I have no further questions. Just a second.

(WHEREUPON, Mr. Nettles conferred with Ms. Jackson.)

THE COURT: (While Mr. Nettles conferring) Anything further on cross-examination of this witness?

MR. NETTLES: I have no further questions, but Mr. Anderson may.

THE COURT: Mr. Anderson?

MR. ANDERSON: No, sir, Your Honor.

IN-CAMERA EXAMINATION BY THE COURT:

Q. Can you tell me that that box you identified as merchandise that you sell that you sold that box from your inventory at Kmart?

A. That particular box did come from our store.

Q. You can.

A. That I can.

Q. You can testify to that?

A. Yes, sir.

THE COURT: But as to the receipt, I'm not gone allow it.

MR. LAWSON: Your Honor, may it please the court? At this point, I would have to interject that not only the receipt at this point is merely cumulative evidence---

THE COURT: Yes, sir.

MR. LAWSON: ---and should be admitted into evidence because they have admitted without objection the box, the contents thereof without objection, and we have now gone

and gotten an individual from the store who can identify merchandise of this type and that receipt as being one issued by his store. It was found in the room of the defendant during a consent search and therefore is within -- And all of -- With all that, there is no grounds to suppress or to keep out of evidence the receipt that is the customer's receipt.

And, Mr. Shelley,---

THE COURT: He can't---

MR. LAWSON: ---tell me---

THE COURT: He can't---

MR. LAWSON: ---if I'm wrong.

THE COURT: ---say that receipt is for that box.

MR. LAWSON: He can say it's for that merchandise.

THE COURT: For that type merchandise.

MR. LAWSON: Nobody can say it's for that box, Judge.

THE COURT: Oh, yes, there is. The person that sold it.

MR. LAWSON: No, sir. No, sir. Because---

THE COURT: Why?

MR. LAWSON: ---every box has the same number on it, and they would then argue, "ma'am, you can't tell us that that's the box that was purchased; it could have been the one behind them that was buying the next box because every box has the same number; isn't that correct?" And we're

right back in the same situation, regardless of who the witness is. And, I mean, at this point, Judge, we've -- the State has gone and done everything possible to establish a reasonable connection between the receipt and what was found in the car. And remember also that this receipt was found in the room. It wasn't -- We didn't go to Kmart and obtain this receipt from their business records.

It'd be like taking somebody's driver's license in a consentual search and having to---

THE COURT: You got---

MR. LAWSON: ---go call---

THE COURT: ---a picture?

MR. LAWSON: ---the Highway---

THE COURT: You got---

MR. LAWSON: ---Department---

THE COURT: ---a picture displayed there, and a person that there isn't any question that's his driving's (sic) license. You've got a receipt in a room that's found with the individual present from Kmart (sic), that you say that receipt was found among his possessions so it's his receipt. He made the purchase.

MR. LAWSON: It's a reasonable inference, Your Honor; and it's also on the very day---

THE COURT: Wouldn't it be stronger if you had the

individual? That person came to our store; that person made the purchase; I ran it through my cash register; and he bought a product similar to the one in that box. Wouldn't that -- Wouldn't that be the best evidence, rather than say, "Yeah, I can recognize that this is a receipt, reportedly receipt of one of the defendants; it's found among his possession"?

MR. LAWSON: We're not---

THE COURT: Not on his person, but in the room. Go ahead. I'll hear you.

MR. LAWSON: Your Honor, we're not saying that it -- We're saying that this receipt was found in the room and that this receipt is a Kmart receipt, which he can testify to, and that the receipt as for -- is for merchandise that comes in a box like this. I mean, it'd be -- The best evidence is not always available, but this is the best evidence in this case that we have.

THE COURT: I don't think it's a critical point to you, but I'm gone listen to you. If you want to take that chance or that risk which is an otherwise is a perfect record to this point, the possibility of being reversed on something that I don't think is critical, he's gone testify as to what is sold and where it came from and like this; but, if you want to hang your hat on that -- But you ain't the one that gets reversed on appeal. And no

reflection on the -- on the -- on any of us, but that happens from time to time. I just think it's an unnecessary risk for the State to take in an -- in an otherwise -- Well, I ain't gone make any comment about the evidence, about your case; but I'm gone listen to it. I'll take -- I've taken it in -- in a proffer, and I'm gone let you see where you go with it.

You want to take this witness?

MR. LAWSON: It's Ms. Parr's witness.

THE COURT: You hadn't gone -- You hadn't started with it -- with it yet.

MR. LAWSON: But I -- But, I mean, it -- I guess if there's a motion that -- that it---

THE COURT: They gone---

MR. LAWSON: ---not be admitted---

THE COURT: All right. They gonna make the motion, I'm sure, to object to the introduction of the -- of the receipt; and I'll rule on it at that time; but it's obvious to me there's no difficulty or problem with the merchandise and the -- or its introduction, like they did not object to that. He can testify that's not the exact thing that they bought, but they got one, and that's their merchandise, and whoever's in possession of it would of had to bought it from Kmart, and I think that accomplishes your purpo'; but, if you want to go a little further with

it, that's up to y'all. I ain't -- I ain't got a dog in this fight.

MR. NETTLES: I'll tell you what. I'll tell you what. I mean, I'm speaking for me. I believe the box and that guy can say that number's our store and what that tells me is that this box was from our store. I don't think I can object to that. I don't think there's any way I can object to that. And I just -- I mean, I've got no problem with that. I will tell you that I will continue to fight the receipt only because -- only because your guy -- And I think it's pretty weak. -- tried to put that receipt as being my guy's receipt and that just being a receipt in the room. Okay.

THE COURT: I'm trying to foreclose any possibility you got to try this case a second time, if you're successful; and you may not be; but, if you are, I don't want you to have to try it a second time because on -- on some piece of evidence that -- that I feel is not critical to the prosecution; but you may view that differently; and, like I say, you've got a different view from -- from this---

MS. PARR: Your Honor, may---

THE COURT: ---than I---

MS. PARR: ---we have the---

THE COURT: ---would have.

MS. PARR: ---court's indulgence for one moment?

THE COURT: Yes, ma'am.

(WHEREUPON, Ms. Parr conferred with Mr. Lawson.)

MS. PARR: Your Honor, the State's ready.

THE COURT: Beg your pardon?

MS. PARR: The State is ready.

THE COURT: All right. But -- But the old -- I'm not trying to persuade you to accept my reasoning; but I always say, if you've got three-quarters of a ham, you gone eat ham; but you want all the ham; and I'm gone give you a chance to have all the ham.

(To the bailiff) Bring us the -- Bring us the jury.

BAILIFF TIMMONS: They ready for them, Judge? Ready for them?

THE COURT: Yeah. We're ready.

(WHEREUPON, at 4:41 p.m., jury returned to open court; the witness remained in the witness stand; and the following proceedings were had within the presence of the jury:)

THE COURT: You may examine your witness. You may continue, Ms. Parr.

DIRECT EXAMINATION BY MS. PARR:

Q. Would you please state your name for the record?

A. Kendall Shelley.

Q. And, Mr. Shelley, where are you employed?

A. With Kmart.
Q. And what do you do for Kmart?
A. I'm the store manager.
Q. And how long have you been with Kmart?
A. Twenty-seven (27) years.
Q. In which store are you employed?
A. The one here in Florence.
Q. And how long have you been in the Florence store?
A. Eight (8) years.
Q. (While indicating) Now, would you please look at what has been marked as State's Exhibit Number 9 for identification purposes only?
A. (Looked at document.)
Q. Do you recognize that?
A. It's a Kmart receipt.
Q. And where is that receipt from?
A. It's from my store here, 4317.
Q. Okay. And how are you able to tell that it was from your store?
A. It's got our store number on it.
Q. Okay. And when is that receipt dated?
MR. NETTLES: Objection, Your Honor.
THE COURT: Your objection noted. He may testify.
MR. NETTLES: May I just put on the record why, Your Honor? I believe that it's -- it's a violation of 803(6).

THE COURT: You may.

MR. NETTLES: Thank you, Your Honor. That -- I'm sorry, that it doesn't meet the requirements of 803(6) is what I meant to say. I apologize.

THE COURT: In what regard?

MR. NETTLES: Well, in regards to -- As -- As we set out the proffer, he's not a person of knowledge as it relates to this individual receipt and, therefore,---

THE COURT: Note your objection. Subject to tying it up.

MR. NETTLES: Thank you, Your Honor.

WITNESS SHELLEY: It's dated 4-10 of 2000.

BY MS. PARR:

Q. Okay. Now, how are you able to identify that receipt?

A. It's got the date on it; and, like I said, it has our store number, 4317, on it.

Q. Now, what are your duties as a store manager?

A. I'm in total -- of the whole store operations.

Q. Okay. And are you aware of the record keeping in the store?

A. Yes, ma'am.

Q. Okay. Are you also familiar with the process receipts go through in order to be issued?

A. Yes, ma'am.

Q. Okay. And would that receipt be -- in your knowledge, in terms of your handling of the store,---

A. Yes, ma'am.

Q. ---would that be one of the receipts your store would issue?

A. Yes, ma'am.

Q. Now, would you please explain to us what information is contained on your receipt?

A. Every receipt has a -- a U. -- When the item comes through, it has a bar code; and the item is scanned; and that bar code is printed out, plus a description of the merchandise, and also the price.

Q. Okay. (While indicating) Now, would you take a look at what has been admitted into -- into evidence as State's Exhibit Number 4.

A. (Looked at item.) Yes, ma'am.

Q. Do you recognize that item?

A. Yes, ma'am. (While indicating) This label here shows that it -- it came to our particular store here in Florence, 4317, because this is a -- a D.C. warehouse label.

Q. Okay. And---

EXAMINATION BY THE COURT:

Q. Can you testify with absolute certainty that that is merchandise formerly belonging to Kmart?

A. Yes, sir.

THE COURT: All right. You may continue.

DIRECT EXAMINATION BY MS. PARR (continued):

Q. And can you tell whether an item such as that was purchased from your store on April 10th of 2000?

A. I can testify that, you know, this particular item is on this particular receipt because it's got the same U.P.C. number.

Q. Now, Mr. Shelley, could that receipt be for a different box?

A. Not -- Not a different item. (While indicating) It's for this particular item here because this particular item nationwide has the same U.P.C. number.

Q. Okay. And is that item reflected on that receipt?

A. The U.P.C. number is on this receipt describing---

EXAMINATION BY THE COURT:

Q. Can you testify with certainty that that is the item sold reflected on that receipt?

A. That the U.P.C. number---

Q. Yeah.

A. ---matches this particular -- (While indicating) It is this -- this item. I don't---

Q. An item like that or that specific item?

A. (While indicating) An item like this. I can't testify that it's---

Q. You can't say that.
A. (While indicating) That it's this particular---
THE COURT: The box, the merchandise in the possession of the defendant, that is, I rule, admissible. The receipt is not. Your objection is sustained.
MR. NETTLES: Thank you, Your Honor.
MS. PARR: Nothing further, Your Honor, from this witness.
THE COURT: You finished?
MS. PARR: Yes, sir.
THE COURT: Cross-examination. Witness with you.
MR. NETTLES: Thank you. Just so I can be clear, I -- I don't mean to cry over---
THE COURT: You admit you've now offered this box in evidence and the contents.
MS. PARR: It's already been---
THE COURT: All right.
MS. PARR: It's already been admitted in---
THE COURT: It's been admitted; and it's been admitted without objection, as I understand it.
MS. PARR: Yes.
THE COURT: You may proceed.
MR. NETTLES: Thank you, Your Honor.
CROSS-EXAMINATION BY MR. NETTLES:
Q. (While indicating) This box and it's contents---

A. Yes, sir.
Q. ---you don't know what day it was sold from your store.
A. No, sir.
Q. And -- And you certainly can't tell us when it was sold from your store.
A. No, sir. Not---
Q. Right. (While indicating) And you can't tell us the -- the -- the sex to the person who bought this box.
A. No, sir.
Q. (While indicating) And you can't tell us the race of the person who bought this box.
A. No, sir.
Q. (While indicating) You can't even tell whether the person that bought this paid cash or with a credit card.
A. By -- By the -- By the receipt, I could -- I can tell---
Q. (While indicating) For this box?
A. Well, for---
Q. (While indicating) Or for the box like this that was bought on that day?
A. For the box like that that---
Q. Right.
A. All right.
Q. Because let's be clear, (while indicating) what

you're saying is -- is you're saying that this number that's on this box is the same number as -- as on there.

A. Yes, sir.

Q. Right?

A. Yes, sir.

Q. (While indicating) But every single box of this Corning Visions cook-ware in the whole United States has got this number on it?

A. Yes, sir.

Q. Okay. (While indicating) So all that number tells you is -- is that a box of this Corning Ware was sold?

A. Yes, sir.

Q. Okay. So in other words, (while indicating) if I had a room full of -- of this, they would all have this number on this?

A. Yes, sir.

Q. Okay. I have no further questions. Thank you, Your Honor. That'll be all.

MR. ANDERSON: Your Honor, Mr. Blash has no questions.

THE COURT: You may come down. Thank you, sir.

MS. PARR: Your Honor, I have one question.

THE COURT: All right. Redirect.

REDIRECT EXAMINATION BY MS. PARR:

Q. (While indicating) Now, Mr. Shelley, are you able to

tell whether that box would have come from---

MR. NETTLES: Objection,---

MS. PARR: ---your store?

MR. NETTLES: ---Your Honor. That's already been asked and answered. That's improper---

THE COURT: It is cumulative, and you can ask only that question on cross-examination (sic) concerning those matters. You can't go into the same matter on direct (sic), counsel. You're violating the rule.

MS. PARR: Your Honor,---

THE COURT: Sustained.

MS. PARR: Your Honor, may I be heard on that issue, please? Your Honor, he asked him that -- that it had the same U.P.S. number on all boxes similar to that nationwide, and what the number's on it; but those on it---

THE COURT: He identified it and said that box and its contents was the merchandise of Kmart and that he said it with certainty. What else do you want to go into there?

MS. PARR: That he said that that particular box came from his store, though.

MR. NETTLES: He said that.

MS. PARR: And I---

MR. NETTLES: And that's my objection. I mean, we've

all heard that one time before.

MS. PARR: Okay. Maybe I---

MR. NETTLES: And just because---

MS. PARR: ---need to---

MR. NETTLES: ---she wants to try to make another point again---

THE COURT: I understand, Mr. Nettles. I've ruled.

MR. NETTLES: I'm sorry. I'm sorry.

THE COURT: Yeah, no problem.

MS. PARR: But if you brought that up---

THE COURT: You may continue redirect.

MS. PARR: That was the only question that I had, Your Honor.

THE COURT: You may come down. Does the State have fur---

Do -- Do y'all -- This gentlemen, I'm sure --.

EXAMINATION BY THE COURT:

Q. You working 'day?

A. Yes, sir.

Q. We gone let you go back to work.

A. All right. Thank you.

Q. You gone be working the rest of the week?

A. Yes, sir.

Q. I don't expect you to be recalled. Thank you for coming. Apologize---

A. Thank you.

Q. ---to you if you've been any inconvenience to you (sic).

(WHEREUPON, the witness was excused from the witness stand and from the trial of this case.)

MS. PARR: Your Honor, at this time, we would call Kelly Morgan to the stand.

THE COURT: All right. Call your next witness.

Would you bring us two cups of ice and a Diet Coke, please, Mr. Bailiff.

Some of the rest of you getting thirsty, close to five (5:00) o'clock, you let me know; you raise your hand. I'll give you a break any time you want it. I can't let y'all drink over there, and I'll tell you why. We had a problem not in this circuit with a hot drink and spilled on some -- somebody's clothes, and it wound up we were liable for letting used something hot (sic). And we can -- You see me up, but you won't -- you won't catch me eating, though.

(WHEREUPON, during the above statement, the witness stepped into witness stand.)

THE COURT: I'm a diabetic. Sometimes I'll take a little sweet candy or something like that, and I'm drinking coffee and dri- -- And you'll say, (with distorted voice), "Well, we'd just like -- he told us we

was a judge; we just like you; you sho' don't treat us like you treat yourselves." But I will. You just better -- You might spill something on one another; and then we all in trouble, particularly with these fancy fashionable clothes the ladies are wearing and some of these men got these custom-made shirts; and I don't want y'all to have to pay fur (sic) it.

But if you need a break at any time, I'll be glad to give you a break.

All right. You may examine your witness.

MS. PARR: Would you please -- Has she been sworn?

MR. LAWSON: She hasn't been sworn yet.

MS. PARR: Your Honor, we need to have her sworn.

THE COURT: Beg your pardon?

MS. PARR: She has not been sworn yet.

THE COURT: Hadn't been sworn. Well, everybody's gone off and left me.

Would you stand and place your left hand on the Bible? And raise your right.

KELLY MORGAN, being first duly sworn, testified as follows:

THE COURT: Would you have a seat, please, ma'am. And tell us your name in full and spell your last name because I don't spell very well,---

WITNESS MORGAN: Okay.

THE COURT: ---but she may not be able to spell your name either. Tell us your last name.

WITNESS MORGAN: My last name is Morgan, M-o-r-g-a-n. First name, Kelly.

THE COURT: Thank you, ma'am.

You may examine your witness.

DIRECT EXAMINATION BY MS. PARR:

Q. Investigator Kelly, where are you employed?

A. Florence County Sheriff's Office.

Q. And how long have you been employed with the Florence County Sheriff's Office?

A. Five (5) years.

Q. And what are your duties with the Florence County Sheriff's Office?

A. I work in the Narcotics Unit.

Q. And what are your present duties?

A. Investigating drug information and implementing drug cases in the Florence area.

Q. On or about April of 2000, did you have an occasion to become involved in this matter?

A. Yes, ma'am, I did.

Q. Okay. And would you please tell the court the nature of your involvement?

A. My involvement in this case was I became involved in the chain of custody of the drug evidence; and our policy

is, once the drugs are taken and placed in the evidence, one of the agents removes the evidence from the drug bin and signs it out and takes it to Charleston for analysis; and that's what I did.

Q. Okay. (While handing item) Now, I show you what has been marked as State's Exhibit Number 2 for identification purposes. Do you recognize that?

A. Yes, ma'am.

Q. Okay. And how are you able to recognize it?

A. It's sealed -- When an agent seizes any types of drugs, it's sealed in a plastic bag with a heat sealer and initialed by the agent that is on the case; and it also has a case number, the date, and the -- the defendant's name. My -- The custodial agent then takes it out of the drug bin and makes sure the packet is sealed, heat sealed, and initialed by the agent that seized the drugs. And then I sign for it and take it to Charleston for analysis.

Q. Okay. And did you sign for those drugs?

A. Yes, ma'am.

Q. And do you recall when you signed for them?

A. I believe it was April 17th, 2000.

Q. Okay. And when you got those drugs, what did you with it?

A. I -- Like I said, I got them out of the evidence bin, which is a locked bin in our office. Did the proper

custodial sheet, signing off where I removed them from the drug bin. Then I took them to Charleston. Well, I made sure that it was heat sealed and everything, initialed. Then I took it to Charleston, signed it over to the people in Charleston that analyzed the drugs, and left it there with them for analysis.

MS. PARR: Would you please answer any questions the defense---

THE COURT: Cross---

MS. PARR: ---counsels may---

THE COURT: ---examination.

MS. PARR: ---have for you.

WITNESS MORGAN: Yes, ma'am.

MR. NETTLES: I don't have any questions, Your Honor.

THE COURT: Mr. Anderson?

CROSS-EXAMINATION BY MR. ANDERSON:

Q. Agent Morgan, does it have anywhere on there where the drugs may have been submitted for fingerprints or anything like that?

A. Not on this particular packet.

Q. Is there anything on there that indicates that it may have gone to be fingerprinted by someone else in the Sheriff's Department's Office?

A. No, sir. Not that I -- Not that I can see.

Q. If you wanted to have it analyzed by someone else in

your office and fingerprints, who would you take -- who would you take it to if you had some drugs?

A. For fingerprints?

Q. Yes, ma'am.

A. I would ask one of the forensics people to fingerprint the bag.

Q. And that would be somebody like---

A. That---

Q. ---Keith Lutcken?

A. Yeah.

Q. Or---

A. Yes.

Q. ---Chris Neal?

A. Correct.

Q. And are their -- Are their initials anywhere on that bag?

A. No. I don't -- Well. (Looked at bag.)

EXAMINATION BY THE COURT:

Q. Do you know whether it's been checked or any attempt was made to lift---

A. No, sir.

Q. ---fingerprints?

A. I -- I don't know if the---

Q. You don't have any knowledge of that.

A. I have no knowledge of that, sir.

THE COURT: All right, sir. Anything further?

CROSS-EXAMINATION BY MR. ANDERSON (continued):

Q. Now, it's important for everyone to be on the chain of custody when they're handling drugs or any type of evidence?

A. Uh-huh.

Q. Because you don't want that evidence tampered with?

A. Correct.

Q. And you don't want it lost; you don't want part of the evidence to get misplaced; right?

A. Correct.

Q. So it's important that anyone who touches that evidence sign a, I guess, evidence log sheet?

A. Correct.

Q. And if anyone did touch the evidence, they would -- they would have to sign an evidence log sheet?

A. Well, I don't necessarily know about touching the evidence.

Q. Well, if they were going to run finger---

THE COURT: Don't interrupt her. Now, let her answer the question. Then you can ask the question. I understand, but you get -- Defense counsel wants to get there fast, but just slow it down.

(To the witness) Finish your answer.

WITNESS MORGAN: All I can tell you is I removed the

evidence from the drug bin; signed a sheet for the custodial, showing that I was in the chain of custodial; and took it to Charleston. Now, where -- Who touched it before it came in contact with the drug bin, I don't know anything about that.

BY MR. ANDERSON:

Q. If someone had analyzed it for fingerprints, that should be on an evidence sheet or a log somewhere, shouldn't it?

A. I don't know if it would be on an evidence sheet. It may be in the officer's report.

MR. ANDERSON: Thank you. That's all the questions I have.

THE COURT: You may come down. You may be excused.

(WHEREUPON, the witness was excused from the witness stand and from the trial of this case.)

THE COURT: It's five (5:00) o'clock.

MS. PARR: Your Honor -- Your Honor, we have one short witness in the chain that's not available tomorrow, if we can just take him.

THE COURT: Okay. You're sure he's short?

MS. PARR: Real short.

THE COURT: All right. We'll take him. Call your next witness.

(See Volume II.)

VOLUME II

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	)))	IN THE COURT OF GENERAL SESSIONS 00-GS-21-839
THE STATE, -vs- MICHAEL GEORGE MONFRIES and EDDIE BLASH, Defendants.	))))))))	TRANSCRIPT OF RECORD

August 13-16, 2001
Florence, South Carolina

B E F O R E:

THE HONORABLE B. HICKS HARWELL, JR., Judge;
and a jury.

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

PATRICIA SINGLETON-PARR, Esquire
JACK W. LAWSON, JR., Esquire
Assistant Solicitors for the Twelfth Judicial Circuit
Attorneys for the State

DEBRA O. JACKSON, Esquire
WILLIAM N. NETTLES, Esquire
Attorneys for the Defendant Monfries

HENRY M. ANDERSON, JR., Esquire
Attorney for the Defendant Blash

PATRICIA A. McDANIEL
Circuit Court Reporter

MS. PARR: Marvin Lunn.

THE COURT: How many witnesses will that leave you for the State? Three?

MS. PARR: Three, Your Honor.

THE COURT: While we waiting on that witness, ladies and gentlemen, I already talked with the lawyers; and I really anticipate we've used all day tomorrow (sic), finish all the testimony; and my reason for that is -- And that would give us tomorrow 'cause I've not had the opportunity to work on the -- the charge; and it's gone be a charge that'll probably take an hour. The summation of the lawyers probably gone take sharing the time allotted, and I don't put a time on the lawyers summation. I anticipate the lawyers could take an hour and a half, two hours. So that's three hours right there.

We've got three more witnesses tomorrow. Now, if we did that, took those witnesses and did that summation, that means you'd go home tomorrow night; and you'd come back overnight. You got half the ingredients in; but, in the process, there are about five different parts: opening, plaintiff's case, defense if he chooses -- And he may elect not to offer any evidence or testimony, and I don't comment on that because no inference to be drawn for or against him if they elect to do that or assert that constitutional right. Then there's a fifth part, the

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summation; and then a sixth part, I -- I don't concern myself with, because that's your deliberating. Those are the procedures.

Time-wise, we are -- come a long ways, way beyond the halfway point; but, in fixing or baking the cake or fixing this stew, you have only heard two-fifths. See what I'm saying. You've only had the opening, what their view is; and you've only heard the State's testimony.

If we start the summation, we'd have the witnesses tomorrow. We do the summation. You go home overnight, and you don't know what the law is. Hadn't charged the law. Now, I'm not being critical of other judges. Many of them do that. I -- That was my pet peeve thirty-three (33) years practicing both civil and criminal, on both sides in criminal, prosecuting and defending. You could do it then. Our solicitors for a long time were just part-time. I didn't think it was fair. I still don't think it's fair. So now I got a chance to do something 'bout it 'cause I'm a judge. So I don't do it.

If we get through early tomorrow, you'll have tomorrow afternoon to go to Wal-Mart or the Super Store or Kmart or go home or go fishing; and I'll go over with these lawyers and give them a chance to prepare their summation and their view of this testimony and what -- And they'll know what the law is I'm gone charge so they won't

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waste their time talking about something I'm not gone charge, and they'll be prepared Thursday morning to do the summation and the charge, and you'll have enough time to deliberate or consider your verdict. If you reach a verdict, fine. If you don't, you're tired and you want to go home and get a good night's rest 'cause you been here all day Thursday and come back Friday morning, we can do that, too; but I want you to have insight into why I'm doing it.

And we're making a lot more progress than I had -- am -- anticipated. Mr. Kirby was their longest witness. All the other witnesses been fairly briefly; but, of course, I think that's good strategy both for the State and the defense. Get it to the jury, although time is not of the essence; and we're not trying to run through the South like Sherman did; or Grant through Richmond. Time is not of the essence, but I also know your time is valuable too. I want you to have the insight into my thinking, and I've already shared that with the attorneys.

We'll have three more witnesses tomorrow, and the defense may or may not call some witnesses. As I told you, they have no respond -- duty or obligation. They can't be compelled to do that. If they assert that constitutional right, you can't even consider it 'cause it's not relevant because they don't have to prove

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anything.

The burden in this case is upon the State throughout. If and when they prove it, met the burden of proof, you know what your duty is. If they don't you know what your duty is. I won't comment any further on that. I'll emphasize that to you, these principles of law, in the charge. This is not a charge, and I wanted you to be aware of that.

For that reason, I ain't gone be in no hurry to bring you here in the morning. We have anybody that lives down there in Sardis, Timmonsville, Olanta, Johnsonville? Raise your hand.

(No response.)

THE COURT: Ev- -- Everybody must be living close by. Everybody live within nine (9) or ten (10) miles from Florence. I'm assuming that you do.

(WHEREUPON, one person raised a hand.)

THE COURT: You don't. Where you live?

JUROR: Lake City.

THE COURT: Yeah, well, and I mentioned everything but Lake City. You can sleep a little later in the morning and miss all this traffic coming into town. Everybody else lives right around the area, I guess.

I'm not gone bring y'all in 'til ten (10) a.m. in the morning. My -- I may bring your lunch in tomorrow. I may

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let you have a nice long lunch, or I don't know what I'm gone do, but we'll decide that tomorrow.

We making good progress, but we ain't -- we ain't got but two-fifths of the recipe in this cake, and you go home tonight now I don't want you cooking. Do anything you want to do but think about this case. Just keep your open mind when you come back here tomorrow.

Don't talk about it. Don't let your husband now (with distorted voice), "Aw, go on, sugar, you can tell me; I won't tell nobody; tell me; tell me; tell me." Don't do it.

I'll tell you now, when you went for lunch today, I asked them -- Now, I'll take the responsibility for it because I don't want them to be mad with you. You want this jury individually collectively polled on the oath they took today as to whether or not they've discussed or talked about this case in that jury room when we took these breaks or whether or not they've talked to anybody during the lunch break? And I can tell you, and I wouldn't tell if they said they wanted you examined. Every one of them said no. We've never seen or observed a more conscientious jury. That's up -- That's a wonderful compliment. Nobody says nothing nice 'bout me that I know 'bout. That's a nice compliment, and you all observing (sic) of it. They're expressing -- And I concur in it.

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-- their confidence in your integrity.

So when you go home tonight you tell them "you better hush or I'm gone tell the judge you trying to get me to break my oath. I'll tell you 'bout it when the case is over," if you want to do that; but you ain't got to do that. So please -- I don't want to send you to no motel. I want you to go home and get a good night's rest.

All right. I'm gone let you call that short witness.

MS. PARR: We call Marvin Lunn to the stand.

THE COURT: 'Member what I told you. When you leave here, I don't want you back 'til ten (10) a.m. in the morning; and you can come on through the courtroom. We not gone be doing anything else. We just gone be waiting on you.

Mrs. Forelady, as soon as all of them are in there, you tell the bailiff. I promise you we'll commence with this train gone leave on time 'less some of you can't get here, and y'all have already called me, and I will know that, and we'll -- If need be, we'll be waiting on you; and, if you've need -- got problems, we'll send somebody; but now, when that fellow pulls up there with that blue light, you gone be explaining to your neighbors you ain't being arresting. I'm just trying to accommodate you to get you to the courtroom 'cause you car's broke down.

All right, sir. Come 'round, please.

MARVIN LUNN, being first duly sworn, testified as follows:

CHIEF DEPUTY CLERK GREGG: Be seated, and state your name for the record.

WITNESS LUNN: My name is Marvin Lunn.

DIRECT EXAMINATION BY MS. PARR:

Q. Officer Lunn, where are you employed?

A. By the South Carolina Highway Patrol, Department of Public Safety.

Q. And how long have you been with the Highway Patrol?

A. For about eight -- eight (8) months.

Q. Okay. Where were you prior to going with the Highway Department?

A. With the Florence County---

Q. I mean,---

A. ---Sheriff's Office.

Q. Okay. And how long were you with the Sheriff's Department?

A. For about eight (8) months.

Q. All right. And were you -- Did you have any prior law enforcement experience?

A. Yes, I did. With the Florence City.

Q. Florence City?

A. Police Department.

Q. Okay. And which unit -- Or what were your duties

with the Florence County Sheriff's Office?

A. I was assigned to the Criminal Investigation Unit with the -- with the Sheriff's Office.

Q. Okay. And in that position, what were your duties?

A. We worked interdiction on I-95, I-20, and Florence County in the rural areas, rural roads.

Q. Okay. Now, did you -- Have you had any special training for your job?

A. Yes, I have.

Q. And what was the nature of your training?

A. I had basic law enforcement training at the Criminal Justice Academy in Columbia.

Q. And did you ever work narcotics?

A. Yes, I did. With Florence City Narcotics Unit.

Q. Now, did you have an occasion to pick up some drugs from the Charleston Police Department?

A. Yes, I did.

Q. Okay. And was it in relations to this particular case?

A. Yes.

Q. Okay. And do you recall when you picked up drugs from there?

A. Other than looking at the -- my date on the sheet that I picked it up, I can't recall exactly what date.

Q. Okay. But did you have an opportunity to review your

log sheet?

A. Yes.

Q. Okay. And when did you pick the -- the narcotics up from Charleston?

A. (No response.)

MS. PARR: Your Honor, we would ask for permission to show the officer the -- his log---

THE COURT: You may.

MS. PARR: ---where he signed for the drugs.

THE COURT: You may---

MR. NETTLES: Yes, ma'am.

THE COURT: ---for purposes of refreshing his memory.

(WHEREUPON, a document was handed to the witness.)

THE COURT: Have you had an opportunity to look at this, counsel?

MR. NETTLES: Yes, sir, I have.

MR. ANDERSON: I did, too, Your Honor, for the first time today.

WITNESS LUNN: It's April the 24th of 2000 at eleven-fifty (11:50) a.m.

BY MS. PARR:

Q. (While handing item) Trooper Lunn, would you examine what's been marked as State's Exhibit Number 2 for exam-- for identity -- identification?

A. (Looked at item.) Okay. You got -- It's a package-

wise, be a package of cressed -- compressed white powder.

Q. Okay. And was that the package that you picked up and transported back to the Florence County Sheriff's Department?

A. Yes, it was.

Q. Okay. And what did you do with it once you transported it back?

A. Once I -- Once I -- Once I got to Charleston, they were -- I received it from one of the analysts -- one of the analysts, and I put it in my patrol car and brought it back to Florence.

Q. Okay. And was it placed back in the evidence?

A. Yes, it was.

MS. PARR: Please answer any questions---

THE COURT: Cross-examination, counsel.

MR. NETTLES: Thank you.

CROSS-EXAMINATION BY MR. NETTLES:

Q. Trooper, (while indicting) this thing that you referred to here, this is -- May I see it?

A. (While handing item) Yes.

Q. It's called a chain of custody -- Would you look at the chain -- Do you have a chain?

A. That's -- That's---

Q. (While indicating) Oh, right here. That's the chain of custody at the bottom.

A. Yes.
Q. Right?
A. Uh-huh.
Q. And if we can talk about that for a little bit, if you don't mind.
A. Uh-huh.
Q. One of the reasons the chain of custody is important is so -- And you've probably testified as a chain witness in the past, haven't you?
A. Yes.
Q. Okay. In other words, (while indicating) what that means is we know where this was at all times.
A. Uh-huh.
Q. Right?
A. Yes.
Q. And so, you know, 'cause -- Especially with something like drugs, I mean, you put them in a locked place; right?
A. Yes.
Q. And then ever- -- any time those drugs come out, somebody has to sign for them.
A. Sign for them. Yes.
Q. That's right.
A. Yes.
Q. So that is to allow us to know who's looked at that, who's been exposed to that, who's---

A. Yes.

Q. ---had access to it.

A. Yes.

MR. NETTLES: Thank you very much. I have no further questions.

THE COURT: You may come down.

Anybody have any objection to this witness being excused by the court?

EXAMINATION BY THE COURT:

Q. You working next two or three days?

A. Yes, Your Honor.

Q. Good. Working day shift?

A. Yes, Your Honor.

Q. Very good. I see you wearing that vest, too.

A. Yes, sir.

Q. That's standard issue, isn't it?

A. Yes, sir.

THE COURT: Well, don't take it off.

(WHEREUPON, the witness was excused from the witness stand and from the trial of this case.)

THE COURT: All right. It's five-sixteen (5:16), and we're all going about our business. Hope y'all going home. But tonight, tomorrow may or may not be a long or a short day. I think it's gone be a short day for you, but I can't say then after that because I don't know.

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It's none of my business, but I still want you all -- I didn't see -- You know, other -- When y'all -- We first started, and I looked at a couple of you, and one of you had your head back up against that wall, and another one was looking at the floor when I was talking, and I knew he was gone do that when that witness got on that witness stand, and probably somebody'll do like the fellow told me when he was snoring. Said, I was just a little bit asleep. And I had another one tell I closed my eyes because I was praying.

I've heard -- I don't know -- I mean, some tales you would not believe; and I've not seen any of y'all, since you were sworn, do any yawning. I haven't seen you close your eyes. You've been sitting there riveted in your seat, looking and observing these witnesses; and I am so pleased to be associated with each of you; and I have never had the pleasure of working with a more conscientious jury; and we all appreciate that very, very much.

Have a good night, and please go to bed at reasonable hour, and get a good night's rest. Be here tomorrow at ten (10:00) o'clock. Ten (10) a.m.

Everyone else remain in the courtroom while the jury's getting on the elevator.

(WHEREUPON, at 5:18 p.m., jury was excused for the

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day; and the following proceedings were had outside the presence of the jury:)

THE COURT: Y'all might want to work on that -- I'm gone have this charge, I think. I've got a clerk, but she's very proficient, and I think she knows where to find and access these informations. And if she doesn't, I got a bench book in there that'll cover this matter; and I'm gone work on that charge. I want y'all to be looking at it if you think there's something unusual. Now, circumstantial evidence, a lot of it in this case, circumstantial evidence, direct evidence. Nothing unusual about that. The statutory violation, noth- -- nothing unusual about that. If there's something in this thing that is unusual and if you think it's novel, have it ready and prepared for me tomorrow.

I anticipate tomorrow afternoon I'm gone be meeting with y'all and that we'll have the charge for you then to review it so that on Thursday morning y'all be ready to come out fighting.

And I appreciate so much the fact that, even though y'all are zealously representing your clients, you've not been disagreeable with each other. Maybe with me but not with each other. But that -- that's very important, and I'll see you all in the morning. No need to come before ten (10) a.m.

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All right. Now, we are in recess 'til tomorrow---

MS. PARR: Your Honor, we do have one matter.

THE COURT: All right. We'll take care of it.

MS. PARR: The defendant -- We have begat -- be -- We have begun the case now, and the jury's been sworn, and we'd ask that he be taken into custody.

THE COURT: I'm not gone do that. I don't -- I -- I don't think there's any reason that would justify that. As an old defense lawyer, I can see a number of defenses in this case where particularly he's involved; and he would be crazy to leave at this juncture, that point; and he doesn't look like he's crazy to me. He's been listening and observing. I don't see---

MR. ANDERSON: His lawyer might be a little crazy, but not him.

THE COURT: Yeah. The late -- The lawyer might be a little bit nuts, but I don't think he represent a -- a risk.

MS. PARR: Well, Your Honor, we would ask that he be under the same restrictive conditions that was last night. No contact---

THE COURT: He will be.

MS. PARR: ---directly or indirectly.

THE COURT: He got to be here at ten (10) a.m. in the morning. If he's not, then he -- a bench warrant'll be

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issued; and we'll con- -- we'll continue his case in his absence.

Ms. Parr, I understand; and I understand why you want to get that receipt in, Mr. Lawson. But I thought it was -- It was very persuasive, and it was almost convincing, and I think in a retrospect you're probably right, but I thought it was overkill, and I just didn't want to run that risk of so far what I consider is a pristine case to even create a possibility, but y'all willing to take that risk. I understood that, but I thought it was overkill. You've got it in there that was there and he had it, and he was in possession.

MR. LAWSON: Your Honor, not only that, but I was going to say that Mr. Nettles in cross-examining the witness asked him if -- he couldn't even tell how he paid; and the guy said, if I look at that receipt, I can tell how he paid.

THE COURT: I know.

MR. LAWSON: And, you know, it does indicate---

THE COURT: But I've got to get y'all's focus back on what I call---

MR. NETTLES: This receipt -- I'm sorry. What I asked was -- I know where -- What I said was, when this box was purchased from your store, you can't tell how it was paid for. That's what I said. When that box was

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purchased, he can't tell us how it was paid for.

THE COURT: I've got -- I want all of you to stay focused on the big picture. We get up running out here on these tangents, we'll be here a while.

All right. We adjourned, in the morning at ten (10:00) o'clock. Have a good evening.

(WHEREUPON, at 5:30 p.m., court stood in recess for the day.)

WEDNESDAY, AUGUST 15, 2001

(WHEREUPON, at 10:09 a.m., on Wednesday, August 15, 2001, court reconvened in this matter, with Defendant Blash and counsel for all parties present in the courtroom; and the following proceedings were had outside the presence of the jury:)

THE COURT: All right. We're called to order, and Ms. Parr you've got a matter you wish for us to take up before we bring the jury in?

MS. PARR: Yes, Your Honor. The State would like to recall Glen Kirby to the stand.

THE COURT: We'll allow you to do that.

MS. PARR: Okay.

THE COURT: You want to do that in camera?

MS. PARR: No. We can just do it in front---

THE COURT: All right.

MS. PARR: ---of the jury.

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THE COURT: 'Cause I thought maybe you had motion or something.

MR. LAWSON: Your Honor, may it please---

MS. PARR: No.

MR. LAWSON: One other matter, Your Honor. There's a witness, Lowman Rush, who has given a statement to the Police Department, to Mr. Anderson, and also I understand to an investigator for Ms. Jackson. Your Honor, I -- I know that -- And I've always been on the other side, the defense, that the -- is that we have to give them the statement at the conclusion of the testimony of the direct of the individual, which we have already provided them with a copy of the statement given by Mr. Rush to law enforcement; and Mr. Anderson has provided us a copy of the statement that he has.

Your Honor, since we are calling him on direct, I believe that we are entitled to a copy of the statement that he gave to the defense, prior to his direct, so that if there's something in that statement that I need to address on direct that I can do that on direct. But it's -- it's just the opposite of being able to address it on cross because I don't have the opportunity to address it on cross since I will be directing. I would ask that we be provided with a copy of that statement that---

THE COURT: All right, sir.

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MR. NETTLES: (To Mr. Lawson) Well, do you not remember a conversation we had on Monday when I offered it to you and you told me you didn't want it?

MR. LAWSON: Your Honor,---

MR. NETTLES: (To Mr. Lawson) I mean, I offered it to you. We had this discus- -- I mean, I don't mind---

THE COURT: He's changed -- He's changed his mind.

MR. NETTLES: Well, that's fine. All he had to do was ask me.

(To Mr. Lawson) I -- You know, I offered to give it to you before. I'll give it to you again (sic).

THE COURT: Lawyer -- Lawyer -- Lawyer---

MR. NETTLES: (To Ms. Jackson) Well, why don't you---

THE COURT: ---has his---

MR. NETTLES: ---give him one that's not highlighted.

MS. JACKSON: Well, I don't know if I had an extra copy Monday, but I may have.

MR. NETTLES: Well, they can make a copy, you know.

THE COURT: Lawyers -- Lawyers kind of like a wom- -- like a married lady. They always have a ri- -- a right to change their mind.

MR. NETTLES: Okay.

MS. JACKSON: Let me just state, Your Honor, I'm giving him my only copy.

MR. LAWSON: Well, I think this is the appropriate

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time. I didn't think Monday was the appropriate time, Your Honor.

MR. NETTLES: Well, I mean,---

THE COURT: You want a moment -- You want a moment here? You fixing to call Mr. Rush?

MR. LAWSON: Yes, sir.

MS. PARR: Yes, Your Honor.

THE COURT: You want a moment or two to review that statement?

MR. LAWSON: Yes, sir.

THE COURT: All right. Go ahead and do that.

MR. NETTLES: I would just like to point out that -- I mean, that we offered to do that on Monday.

THE COURT: You complied fully.

MR. NETTLES: Well, and secondly, I -- I don't believe under the rules we have to because the rule says I have to give a statement of witnesses I'm gonna call. I'm not calling Mr. Rush. Okay.

THE COURT: All right. We appreciate---

MR. NETTLES: I appreciate it.

THE COURT: ---the generosity.

MR. NETTLES: Thank you, Your Honor.

THE COURT: We at ease while you read that statement.

MS. JACKSON: All right. Give me second, Judge. I'm getting ready to give it to him.

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THE COURT: Do you want an opportunity to talk with your witness after you've read your (sic) statement?

MS. PARR: If we could, Your Honor. It won't---

THE COURT: All right. Now, I'm gone -- I'm gone give you a few minutes.

MS. PARR: Okay.

THE COURT: If you need more than that few minutes, you let me know. Tell me when y'all ready to begin. It's 'bout ten-fifteen (10:15), and we got a jury waiting.

MS. PARR: Okay.

(WHEREUPON, at 10:12 a.m., court stood at ease, with all parties remaining in courtroom, except for Mr. Jackson; lunch orders were taken for the jury and for the staff; and, at 10:31 a.m., court reconvened, without Mr. Jackson.)

THE COURT: Either of wish to have the jury polled? They've been out overnight.

MS. PARR: The State doesn't. The State would waive.

THE COURT: Mr. Nettles?

MR. NETTLES: Defense waives, Your Honor.

THE COURT: Mr. Anderson?

MR. ANDERSON: We waive, Your Honor.

THE COURT: All right.

MR. NETTLES: Thank you.

THE COURT: Let's---

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MR. NETTLES: Have y'all got a copy, too?

MS. PARR: Uh-huh.

(WHEREUPON, Mr. Nettles conferred with Ms. Parr; and, at 10:34 a.m., Mr. Lawson entered courtroom.)

THE COURT: All right. Bring us the jury.

(WHEREUPON, at 10:34 a.m., jury returned to open court; and the following proceedings were had within the presence of the jury:)

THE COURT: Good morning.

(WHEREUPON, the jurors responded.)

THE COURT: I've asked the lawyers whether or not they want you polled individually or collectively as to whether or not you've spoken to anyone in your household or anybody or with each other, and they said they don't feel like it's necessary, and my wife would say the only thing predictable about me is my unpredictability. Sometimes I do it, but I share the confidence expressed to you by these lawyers in your integrity. I'm not gone do it either 'cause I know you have followed my admonitions. And how can I be so confident of that? Because everything I told you before we began this case, before I swore you, and after I swore you, you've met those expectations. You've exceeded them. You 'member I compliment you 'bout that yesterday. So we're not gonna ask you whether or not you've done that because, if you had, I'm sure you would

have told me.

All right. State have further witnesses?

MS. PARR: Yes, Your Honor. At this time, the State would recall Glen Kirby.

CHIEF DEPUTY CLERK GREGG: Judge, is he going to remain under oath? We swore him Monday.

THE COURT: He's still under oath.

CHIEF DEPUTY CLERK GREGG: Thank you.

GLENWOOD "GLEN" KIRBY,

having been sworn previously, returned to the witness stand and testified as follows:

THE COURT: All right. The State recalls Mr. Kirby. You may question your witness.

REDIRECT EXAMINATION BY MS. PARR:

Q. Mr. Kirby, what did you do with the powder substance prior to sealing the package?

A. Had it fingerprinted by forensics officer, Eric Grice.

Q. Would you please tell us the steps you took in -- to accomplish this?

A. On the -- On the 11th, that afternoon, Lieutenant McFadden opened the safe. I took the package in the -- in the bag that I'd put it in. Took it down to the lab in forensics in the Sheriff's Office. Had Eric Grice fingerprint it. Put it back in the bag. I brought it

back to the Sheriff's Office. Took it out of that bag that I'd placed it in and wrote up the bag that needed to be sent to Charleston and heat sealed it, where no one else could get into the bag, and placed it back into the evidence locker.

Q. Now, when you took that powder substance or package down to Eric Grice, did you ever leave it?

A. No.

Q. Okay. So it was in your custody the whole time?

A. Yes.

Q. Okay. Were any prints lifted?

A. No.

MS. PARR: Would you please answer any questions the defense may have for you.

THE COURT: Cross-examination.

RECROSS-EXAMINATION BY MR. NETTLES:

Q. You -- For instance, when you got finished with this arrest,---

A. Yes.

Q. Okay? ---you did a report; isn't that right?

A. Yes, sir.

Q. Okay. I mean, that's the incident report that you did.

A. Yes, sir.

Q. Right. And then, as a matter of fact, you did like a

three- or four-page -- You didn't type it. We went through this on Monday, I believe; but there was a -- a -- At your direction, there was a three- or four-page typed report done.

A. Yes.

Q. Okay. And in that three- or four-page -- Can I have a copy of that typed report again? -- that three- or four-page typed report that you did, you included such details as the information that you got from the tip; isn't that right? Let's kind of start at the beginning.

A. I'd have to look at it and see.

Q. Okay. (While handing document) Do you recognize that?

A. Yes. A copy of---

Q. Do you recognize that as being the typed report that was done at your direction about the investigation of this case?

A. Yes.

Q. Okay. And that was done like a -- a day after this event took place.

A. Let me make sure. (Looked at document.) I don't see the date on it. It could have been the day or the next day.

Q. You would agree with me that it was done in close proximity to this event?

A. Yes.
Q. Okay. And did -- The report that was done in close proximity to the event -- One of the reasons you do reports is because sometimes it takes a while for a case to get to trial, doesn't it?
A. Yes, sir.
Q. Okay. And so one of the reasons for there to be a report is because, if it takes a while for a case to get to trial, you want to have some notes you can look at to refresh your recollection about what exactly happened; right?
A. Yes.
Q I mean, 'cause you would want to give this jury an accurate description of what happened; isn't that right?
A. To the best of my recollection, yes.
Q. Uh-huh. And you -- Well -- And because you realize that all of our recollections are maybe a little bit flawed, you do a report; isn't that right?
A. Yes, sir.
Q. So you can point and say, "no, sir, Mr. Defense Lawyer, it's right here in the report"; isn't that right?
A. Yes, sir.
Q. Okay. And because you want to give this jury an -- an accurate account of what happened; right? You want to give them a precise account of what happened; isn't that

right?
A. Yes, sir.
Q. Okay. You'd like to really give them a detailed account of what happened.
A. Yes, sir.
Q. Okay. So, so that you can do that, you do a report.
A. Yes, sir.
Q. Okay. Now, is there any other accurate, precise, detailed report, other than the one you've got right there, that you did?
A. No.
Q. Okay. So that is the closest thing to an accurate, precise, and detailed report we have in this case.
A. Yes, sir.
Q. Okay. And, you know, sort of like when you were in school when the -- when you knew there was gonna be a test and you noticed that the smarter students took a lot of notes -- Right? -- about what the teacher was saying before the test. Did you ever notice that?
A. No.
Q. Okay. So you never noticed that there were students in class when you were in, like, high school and elementary school that actually wrote down notes when the teacher was talking. You never noticed that?
A. Yes. Not---

Q. Okay.
A. I just thought you said right before she gave a test. No. I---
Q. No. Not---
A. ---took notes.
Q. ---right before---
A. Okay.
Q. ---but sometime when she was actually teaching.
A. Yes.
Q. Right. So that's so that whenever the test got ready, like the night before, they could look over the notes that they had taken, and those students usually did a little bit better on the test, didn't they?
A. Yes.
Q. Okay. And you did extensive notes in preparation for this test, that being me cross-examining you; isn't that right?
A. Notes for you to cross---
Q. No.
A. ---examine me?
Q. No. But you did them so that, whenever you knew that somebody like me was gone come up and ask you questions, you could refer to your notes so you would know the answers better.
A. Yes. I -- I hadn't read this report but once, I---

Q. Okay.
A. ---think, a while back.
Q. Okay. But you're not denying you did it?
A. No, I'm not denying that.
Q. And you're not denying that -- that -- that -- that it was done in preparation for the investigation of this case?
A. Yes.
Q. And you're not denying that -- that -- that that is the closest thing to an accurate, precise, and detailed report we have about what transpired during this investigation?
A. Yes, sir.
Q. Okay. Nowhere in that accurate, precise, and detailed report is there any mention of these items being taken to anyone to be fingerprinted, is there?
A. I didn't -- I'd have to look and see.
Q. Well, take your time.
A. (Looked at document.) Not that I see.
Q. Not that you see?
A. I didn't read the whole thing. I didn't read the front page.
Q. Well, please do. 'Cause, I mean, this is a very important issue. That's the closest thing that we've -- You and I have agreed---

THE COURT: Whope, whope. Now, you arguing to the jury.

MR. NETTLES: I under---

THE COURT: You can---

MR. NETTLES: ---stand.

THE COURT: ---do that later, but---

MR. NETTLES: I apologize.

THE COURT: ---that's not proper. You didn't ask---

MR. NETTLES: I apologize,---

THE COURT: ---him a question.

MR. NETTLES: ---Your Honor.

THE COURT: All right, sir.

WITNESS KIRBY: No, it doesn't.

BY MR. NETTLES:

Q. Okay. But let's -- let's talk a little bit about the details it does include. You go into great detail. I mean, this -- this is not a short report that you're referring to. It's what? Single-spaced, how many pages?

A. Two.

Q. Two pages.

A. Yes.

Q. Pretty small print, isn't it?

A. Yes.

Q. Okay. I mean, it's not the normal big print. It's a small print, single-spaced report.

A. Yes, sir.
Q. And it includes such details as the detail of where all you drove, that you went to one hotel parking lot, wasn't anything there. It details who you called and said, look, come over here and watch this report (sic); right? Included that detail.
A. Yes, sir.
Q. It's got details like dates and times; right?
A. Yes.
Q. It's got details like what -- whenever you left the apartment -- the -- the -- the -- the hotel the first time and went to the other place. And I think you said Route 51 or the other highway.
A. Highway 52.
Q. Highway 52? It includes that detail; right?
A. Yes, sir.
Q. It includes the detail of about how long it was 'fore you came back; right?
A. Yes, sir.
Q. And those are all details, aren't they?
A. Yes, sir.
Q. And -- And you included those; right?
A. Yes, sir.

MR. NETTLES: No further questions, Your Honor.

THE COURT: (To Ms. Parr) Anything on redirect?

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MR. ANDERSON: Your Honor, I don't have anything on cross.

THE COURT: Thank you, Mr. Anderson.

MS. PARR: Nothing, Your Honor.

THE COURT: You may come down.

(WHEREUPON, the witness was excused from the witness stand.)

MR. LAWSON: The State would call---

THE COURT: State have further witnesses?

MR. LAWSON: ---Lowman Rush.

THE COURT: Whoo, I let -- I'm gone let y'all -- That was a recall, and she apparently were (sic) just interested in the chain of custody issue raised, but you got wide range on cross-examination, and I'm not gone limit y'all that. I thought you was gone ask him whether he was an A, B, or C student.

(WHEREUPON, during the above-statement, the witness stepped into the witness stand.)

MR. NETTLES: I was afraid of the answer.

THE COURT: But we did get into some cumulative evidence; and, even though we don't get an objection, I -- When we start replowing it -- this -- this ground, a good bit of it, I might interrupt y'all; but I don't want to do that.

All right, sir.

MR. LAWSON: We need a---

THE COURT: I understand. They've -- They've taken a break on me.

Would you stand and place your left hand on the Bible, and raise your right hand, please.

LOWMAN "TIMMY" RUSH III,

being first duly sworn, testified as follows:

THE COURT: Tell us your name, and spell your last name for us.

WITNESS RUSH: Lowman---

THE COURT: And have a seat.

WITNESS RUSH: Lowman Rush III. R-u-s-h.

THE COURT: Thank you, and you may have a seat.

(To Mr. Lawson) And you may examine your witness.

EXAMINATION BY THE COURT:

Q. Now, you got a real quiet voice. It doesn't carry well in this -- in this room, (while indicating) and that's acoustic tile up there, but it still doesn't help much, and that thing there -- It'll -- It'll reverberate, and you'll -- We got an echo from it. So you're comfortable right where you are.

A. All right.

Q. But I want you to speak up, and I want you in your mind's eye -- Your answers are important to the -- to the lawyers and to the court; but, specifically, the questions

of you -- But your answers are for the jury. They've got to hear you. One sitting a pretty good ways away from you. I want you to imagine in your mind's eye that gentleman back there wearing the uniform, police officer, holding his hand up. I want you to imagine that you want him to hear what you're saying.

If I get an objection, I want you to stop 'cause I can't unring a bell. If I get an objection, I want you to stop so I can rule on the objection as to whether or not that evidence that they're asking -- that answer, whether it should be admitted or not, so you got to stop if I get an objection. You think you understand?

A. I don't understand that objection part, but I understand---

Q. If I get an objection, you just stop whatever you're saying.

A. All right.

Q. Now, you got to answer the questions on direct; then you got to answer the questions of two lawyers over here on cross-examination; and you can't answer a question by asking another question 'cause sometimes people'll get angry. If the opposing counsel starts working on you pretty good, or maybe the -- the -- direct, you get angry; and you've got to be ab' to keep your emotions in check. If you get angry, then you'll say (distorted voice),

"Well, what you'd of done under the circumstances; or what would you do"; and then you'll go, "Well, have you ever done that." You -- That's not your job.

I don't want to hold you in contempt; and I'm not telling you that I'm going to; but, if you don't answer, you start asking questions, I'm gone stop you; and I'm gonna admonish you. That's not your job, to ask these lawyers questions. Your job is to answer.

If you don't -- I'm not gone let anybody abuse you. I'm not gone do that. You don't have to be nervous; but, if you don't understand the question, you just tell the lawyer "I don't understand the question"; and I'll make him rephrase the question and put it in language you can understand.

You feel comfortable? Or you nervous?

A. I'm comfortable. I'm not nervous.

Q. You're not nervous.

A. No. I'm---

Q. Well, that's good. I figure if you was, --.

THE COURT: Give him some water if he gets nervous.

BY THE COURT:

Q. I would say take a drink of water. Your vocal cords then will relax. They gone stretch like a rubber band. Your voice will get real high; and you'll start hyperventilating; and, when you do, just take a memer'ive

-- minute or two and take a deep breath.

That seat's gone get hot. I know it's gone get hot.

THE COURT: I think he understands. You may examine your witness.

MR. LAWSON: May it please the court?

DIRECT EXAMINATION BY MR. LAWSON:

Q. Mr. Rush, I'm Jack Lawson. I'm with the Solicitor's Office, and I think we've talked before; is that correct?

A. Yes, sir.

Q. All right. Now, I'm going to stand back here because it's important that the jury hears what you have to say. So I want you to talk, as the judge told you, loud enough so that you -- so that I can hear you. Okay?

A. All right.

Q. So it's like you and I are talking. Okay?

A. Yes, sir.

Q. All right. You said your name is Lowman Rush III?

A. Yes, sir.

Q. And what do you go by, normally?

A. Timmy.

Q. Timmy?

A. Yes, sir.

Q. Is it Lowman Timothy Rush? Is---

A. No.

Q. The Third?

A. It just Lowman Rush III.
Q. All right.
A. But I named myself Timmy.
Q. All right. So would you prefer me to call you Timmy or Lowman? What -- Or Mr. Rush?
A. I don't like Lowman, so I'll go with Timmy.
Q. Okay. Timmy, where do you live?
A. [redacted] Cale Yarborough Highway.
Q. And is that here in---
A. Timmonsville.
Q. That's here in Florence County?
A. Yes, sir.
Q. And how long have you lived in Florence County?
A. All my life.
Q. All right. And are you presently employed?
A. For myself?
Q. Yes, sir.
A. Yes, sir.
Q. And what do you do?
A. Build and sell utility trailers.
Q. All right. And is that -- You do that on your own? Or do you work for a company?
A. On my own.
Q. All right. So you're self-employed?
A. Yes.

Q. Now, how long have you been doing that?
A. Five (5) years.
Q. All right. And let me ask you, do you know Eddie Blash?
A. Yes, sir.
Q. And how do you know Eddie?
A. That's my cousin.
Q. He's your cousin?
A. Uh-huh.
Q. Do you see him today?
A. Yes, sir.
Q. And where is he?
A. (While indicating) Right there.
Q. And what color shirt does he have on?
A. Blue and white---
Q. All right. And---
A. ---striped shirt.

MR. LAWSON: Let the record indicate he's identified the defendant Eddie Blash.

THE COURT: Noted.

BY MR. LAWSON:

Q. Do you know Michael Monfries?
A. Not really.
Q. All right. And have you seen him before?
A. Yes, sir.

Q. All right, sir. Now, in -- How are you and Mr. Blash related? What---

A. His mother and my mother are sisters.

Q. All right, sir. And did you have occasion in December of 1999 to see Mr. Blash?

A. Yes, sir.

Q. Well, what -- How did that come about?

A. He came to my -- my mom's house where I was working at.

Q. All right. Now, I'm talking about -- Are you talking in December around Christmastime? Or are you talking about later?

A. Well, that's when I -- I -- I'm gone have to say 'round 'bout December. That's when I saw him.

Q. Okay. And was that here in Florence or in Miami?

A. Oh. I -- I didn't understand that. Yes. I saw him in December. That was two days before Christmas.

Q. All right. And where was that?

A. That was in Miami.

Q. All right. And how was it that you were in Miami?

A. His mom came down, and I was going -- I was gone take a trip for Christmas, and I was going to Wilmington, Delaware, and she was going back to Miami, and she axed me why don't I come down to Miami. So I changed my schedule to go from Wilmington to Miami, and plus she -- then she

got an opportunity to ride with me back.

Q. All right.

A. So that's how she -- you know, I ended up down there.

Q. All right. So you gave her a ride---

A. Yes, sir.

Q. ---back? She rode with you?

A. Yes, sir.

Q. And that's your aunt?

A. Yes, sir.

Q. And how long did you stay?

A. A week.

Q. All right. And during that time, did you see Mr. Blash at all?

A. Yeah. Yes, sir.

Q. You did?

A. Yes, sir.

Q. And did you have any conversations with him during that time?

A. Nothing -- Like I say, I -- I spoke to him probably three times since I was down there. I didn't see him that much.

Q. Okay.

A. I took -- I spoke to him three times though.

Q. All right. And what was the subject of those conversations?

A. Mainly just talk, you know. He axed me -- When I first saw him, he came -- That was about a day after -- Or a day after I been in town, he came to his mama house; and he just said, "What's up; what's going on; and how's everything; and how's everybody?"

And I said, "Fine," you know.

And then he just asked me, "Well, you know, what's -- what's going on down there -- down there?"

So I said, "Same old thing."

Then, you know, he just mainly axed me what the -- what the guys were doing, and that was it, you know. When I -- I told him, you know, that's -- they doing the same old thing. You know, everybody still up to the same thing. Then, you know, just mainly just axing like do they -- all the guys just hustle down there. And I -- Then I just -- I -- I say yeah. Then, you know, I took it as when he axed me that, so I just said, you know, the guys -- You know, I knew a lot of guys that hustle. Other words, you know, sell drugs.

Q. All right.

A. And -- And that was it. You know, like I told you, somebody came up; and he left. He left.

Q. All right.

A. So, you know, that was a short conversation.

Q. Did you see him anymore during that visit in Miami?

A. Yeah. In and out. In and out. I didn't -- You know, like I say, I didn't get a really chance to talk to him 'cause he was in and out. You know, he'd come to see his mama, and then that was it.

Q. All right. And did -- When was -- Did you see him again later on?

A. While I was down there?

Q. No. After you left Miami? Well, did -- You stayed in Miami a week. What did you do after you left Miami?

A. I went -- I went back home and, you know, started my regular routine.

Q. All right.

THE COURT: Let me interrupt you.

EXAMINATION BY THE COURT:

Q. When you say "I went back home," where did -- where is home? Where did you go back to?

A. To back here, to Timmonsville, Florence.

Q. Where? Where in Florence County?

A. Some -- My parents' house.

Q. Where is that?

A. Timmonsville. Ten---

Q. All right.

A. ---twenty-five (1025)---

Q. Clarification---

A. Sandspur---

Q. ---information only.

THE COURT: Go ahead, Mr. Lawson. Just trying to expedite it.

DIRECT EXAMINATION BY MR. LAWSON (continued):

Q. All right. And you came back home?

A. Yes, sir.

Q. All right. And did you see Mr. Blash anymore?

A. No, sir.

Q. All right. You haven't seen him since that time?

A. Since I came back home?

Q. Yeah.

A. When he came down.

Q. Okay. And would you tell the jury approximately when that was?

A. I don't remember exactly what date -- date that was now. You know, I'm -- I just remember I was there; and, you know, we got a phone call; and I was outside working; and my mom and my sister came to the door and told me I had a phone call. And I didn't know who it was, so I didn't get the phone. Then later on, you know, he pulled up in the yard.

Q. Okay. And was anybody with him?

A. Yes, sir.

Q. Who was with him?

A. The guy named Michael.

Q. And would that be Michael Monfries?
A. Yes, sir.
Q. And -- And this would have been after De- -- December, after you got back; is that correct?
A. Yes, sir.
Q. All right. And what happened on that occurrence -- on that visit?
A. He -- He went in the house and talked to my mama; and I -- I was still outside, me and my brother-in-law. And I -- You know, I just continued working. And later on he came outside, and he talked to me and -- me and my brother-in-law. And then he axed me to get him a room, a motel room; and I had to run an errand. I had to go to Agri-South. That's on Palmetto Highway. So I -- I -- I told him, "Sure; I got to go to Florence anyway." So, other words, that's -- that's how it happened. I got him -- I went by there, and I got the room.
Q. All right. And do remember where you got the room on that occurrence?
A. I -- I don't remember the name of the motel. I mean, you know, it was off of the interstate.
Q. All right. Off of which interstate; do you remember?
A. I got off of 95. That's ninety- -- 95 and 20. Twenty (20) -- You know, 95 go 'cross, and 20 come under; and I got over by the mall. So I don't know really if

they call that 20 or 95. I don't -- You know, both interstates are right there at the same spot.

Q. All right. But it was around -- It was close to Magnolia Mall?

A. Yes, sir.

Q. All right. And did you see Mr. Blash anymore on that visit?

A. Yes, sir.

Q. All right. And when was that?

A. That was after I got the room. After I got the room, we was -- Let's see. They was eating. They was eating some place. We went by a couple of stores.

Q. All right. Now, are you talking about the time when he got arrested?

A. Yes, sir.

Q. That time?

A. Yes, sir.

Q. All right. Did you see him down here before he got arrested? I mean, before -- on a day prior to his arrest?

A. Oh. Yeah. He was -- He was on his way back home.

Q. All right. And how -- Do you know how long that was before this visit that you were just talking about?

A. 'Bout a week.

Q. All right. And did anything take place at that time?

A. Not that I know of. He was -- Like I say, he was on

-- He stopped by. That was when I was at my mom's house, and he stopped by on the way back. On the way out. And just spoke to say hello. And then, you know, he left.

Q. All right. Now -- And that was about a week before or -- you say, the---

A. Before the arrest?

Q. Before you saw him again?

A. Yes, sir.

Q. All right. Now, you -- So you saw him again about a week later?

A. Yes, sir.

Q. And how did that come about?

A. Like I -- You know, he -- Every time was -- You know, he came to my mom's house. And I was out there doing the same old thing, working. And I don't -- My brother-in-law wasn't with me this time. But I was working, and I -- He axed me to get him a room, and they didn't know whether they would have somewhere to stay. So I -- I had got them a room.

Q. All right. Now, when -- when you got him a room, was that in the daytime? Or was that at nighttime?

A. That night.

Q. All right. Had you seen him in the daytime that day?

A. Yes, sir.

Q. All right. And do you know approximately what time

it was when you first saw him?

A. I don't know exactly what time it was. I knew it was after lunch.

Q. All right. But it was still daylight?

A. Yes, ma'am. Yes, sir.

Q. All right. Was anyone with him?

A. Yes, sir.

Q. Who was with him?

A. The guy named Michael.

Q. And do you remember what kind of vehicle they were in?

A. Yes. A white truck.

Q. All right. Was it a pickup truck or a---

A. They called it a jeep.

Q. Okay. And do you remember what kind of tags it had on it?

A. Florida tag.

Q. All right. And did you have occasion to go for a ride with them?

A. Yes, sir.

Q All right. And where -- Where did y'all go?

A. To Florence. From Timmonsville to Florence. And you mean the stores we went to or something?

Q. Yeah. Well, whatever? Where---

A. Oh. We rode.

Q. Where did you go?

A. We left the house. We left the house, and we stopped at Rick's -- Rick's Pawn Shop on '76.

Q. All right. Who went in to Rick's---

A. Me.

Q. ---Pawn Shop? What did you go in for?

A. I -- I axed them did they had a -- did they had a scale.

Q. And why did you want a scale?

A. 'Cause that's what they axed me that they wanted.

Q. "They" who?

A. My cousin and Mich- -- Michael.

Q. All right. So Eddie and Michael asked you to go in and see if they had a scale?

A. Yes. Yes, sir.

Q. All right. Did they?

A. No, sir.

Q. All right. And where did you go from there?

A. We -- We stopped at a health food store over there beside Palmetto Nissan. I don't know that name of that street, but it's right off of Palmetto.

Q. All right. And did you go into the health food store?

A. Yes, sir.

Q. For what purpose?

A. I ax them do they had a scale. Do they sell scales. They don't sell no scales.

Q. All right. And did you go anywhere else?

A. To Darlington.

Q. You went to Darlington?

A. (WHEREUPON, the witness nodded his head in the affirmative.)

Q. And what did you go to Darlington for?

A. To a rim store. We went to a rim store, a guy that I know.

Q. And what were you looking for?

A. I figure I'd -- I would -- he would know where you buy a scale from. So I axed him, and he told me.

Q. All right. And as a result of that, where did y'all go?

A. To a store called Ray -- Rick's -- Rex. R-a-y-s.

Q. Okay. You know -- R-a-y?

A. Rick's (sic).

Q. And do you know where that is?

A. Yes, sir.

Q. Where is it?

A. On Irby Street.

Q. All right. In Florence?

A. Yes, sir.

Q. All right. And who went in?

A. Me.

Q. All right. And what did you do when you went in?

A. I axed the two people that were working in there -- I axed them did they sell scales; and they say, yeah, right in front of me. And I looked, and I -- I -- You know, they axed me, "What kind you want?"

And I told them, "I don't know. I -- I'll go and get the person who wanted it." So I went back to the truck; and I told them, "Yeah, they sell scales." And they went in. I -- I sta- -- Then I just went on and stayed outside.

Q. All right. Who went in?

A. My cousin and Michael.

Q. When you refer to your cousin, who are---

A. Eddie.

Q. ---you referring to?

A. Eddie.

Q. And has that been the case throughout your testimony?

A. Yes, sir.

Q. When you say "my cousin," you mean Eddie---

A. Eddie.

Q. ---Blash?

A. Yeah.

Q. All right. And do you know whether or not they purchased a scale?

A. Yes, sir.
Q. How do you know that?
A. 'Cause I had it.
Q. You had it?
A. (WHEREUPON, the witness nodded his head in the affirmative.)
Q. How did you have it?
A. 'Cause they axed me to keep it.
Q. They asked you to keep it?
A. (WHEREUPON, the witness nodded his head in the affirmative.)
Q. How did that take place?
A. Oh, it was just a simple case of "keep this for me."
Q. All right. I guess that was when you got back in the car?
A. Back in the car and back -- We was at my house.
Q. Okay. This is marked as State's Exhibit 3. (While handing item) I ask you to look at it and see if you recognize that?
A. (Looked at item.)
Q. You can open the box.
A. (Opened box.) Yeah. That's the one.
Q. What's that?
A. That's the one. It's digital.
Q. That's -- And that was given to you in the vehicle?

A. Out the vehicle.
Q. Huh?
A. Out the vehicle.
Q. Out the vehicle?
A. Yeah.
Q. Okay. Tell me how that happened.
A. We was at my house, and I got out the truck and was going in the house, and my cousin axed me would -- to keep it.
Q. All right.
A. And that's when I---
Q. And that's Eddie---
A. ---turned around.
Q. Instead of saying my cousin, say Eddie or Mr. Blash.
A. Okay. All right. Well, Mr. Blash.
Q. Okay. (While indicating) Asked you to keep this?
A. (WHEREUPON, the witness nodded his head in the affirmative.)
Q. And when he asked you to keep it, was it in the box?
A. Yeah. It was in the box.
Q. All right. Did you take it out and look at it?
A. Uh-huh. When I got in the house.
Q. You did?
A. Uh-huh.
Q. And is that how you recognize it?

A. Yeah. 'Cause I -- I -- I ain't never seen one before, so I gone more like jer- -- jerk (sic) with it. I, you know, look at it.

Q. All right. And what did you do with it after you looked at it?

A. I put it under my bed.

Q. All right. And did you ever give it to anybody later on?

A. Yeah.

Q. Who did you give it to?

A. The police.

Q. And do you know specifically who it was that you gave it to?

A. (While indicating) That officer sitting right there and Lieutenant McFadden.

Q. Lieutenant McFad---

THE COURT: Let me interrupt you just a moment.

EXAMINATION BY THE COURT:

Q. You put it -- You say you put it under your bed. Where did you put it under your bed? You put it under the mattress. You put it in a box. Where did you put it?

A. Oh. I put it under my mattress.

Q. Why did you do that?

A. 'Cause I got a little kid, and I ain't wanted him to get 'hold to it and me -- and it come up missing.

Q. All right. You didn't suspect there was something about the scales why you putting it under the mattress, did you?

A. Huh?

Q. You didn't suspect anything about the uses the scales were gonna be put to by putting it under the mattress, did you? Was---

A. No. I---

Q. ---that your reason?

A. 'Cause -- No.

Q. What was your reason for hiding it?

A. From my little kid. I didn't---

Q. Okay.

A. ---want my little kid to get 'hold to it.

THE COURT: Okay. Okay. All right. Just wondered why he didn't put it in the closet or somewhere else high.

BY THE COURT:

Q. How old is your young'un? Your child?

A. He's three (3) now.

Q. Sixteen (16)?

A. Three (3).

Q. Three (3)---

MR. LAWSON: Three (3).

BY THE COURT:

Q. ---years old?

A. (WHEREUPON, the witness nodded his head in the affirmative.)

THE COURT: Okay. Go ahead, Mr. Lawson.

DIRECT EXAMINATION BY MR. LAWSON (continued):

Q. Now, when you went into the store and they told you they had scales, did -- did you notice the price that was on the -- that particular merchandise?

A. No. 'Cause I -- Like I say, when they told me, yeah, they sell scales and it was right in front of me, I just looked down through the little glass thing; and I saw a bunch of scales on the shelf. So, you know, I -- I didn't really pay it no attention. I -- That's when I went out to get them.

Q. All right. And when -- when you gave it to the officers, this was -- do you know what time it was?

A. Yeah. It was after -- after three (3). Three (3) in the morning.

Q. Okay. And where were you when you gave it to the officers?

A. At home.

Q. And what -- Where -- At mom's house?

A. At my house.

Q. At your house?

A. Yes, sir.

Q. And where is your house?

A. That -- Well, at that time, my house was on -- I don't know the address now, but it was in Florence County. I was living right off of 52.

Q. All right.

A. Northside Estate.

Q. Northside Estates?

A. Yes, sir.

Q. Is that a mobile home park?

A. Yes, sir.

Q. All right. And -- Now, let's -- After -- After you stopped at the store and the scales were bought, what did you do after that?

A. Oh, I -- I went back home. I went back to my mom's house.

Q. All right. And you -- you were riding with Mr. Blash---

A. No.

Q. ---and Mr. Monfries?

A. We went by Wal-Mart. Went by Wal-Mart.

Q. All right. And what happened at Wal-Mart?

A. I took some bags -- a bag back in Wal-Mart that -- to customer service.

Q. And was that your bag that you went in with?

A. No. They's -- They axed me to take it back and return it.

Q. All right. "They" who?

A. I'm sorry. My -- Mr. Blash and Monk -- Mr. Monfree (sic).

Q. All right. And when they asked you that, did -- to exchange it, did -- Where was the bag that they wanted you to ex- -- or not exchange or return, whatever?

A. In the back of the truck.

Q. In the back of whose truck?

A. The little white jeep.

Q. All right. And did you go to the back of that vehicle?

A. Yes, sir.

Q. Did you see anything else in there?

A. Just a few more bags and a -- a pot box.

Q. Okay. And would that -- (While indicating) This is State's Exhibit 4. Did that pot box look like that?

A. Yes, sir.

Q. It did?

A. (WHEREUPON, the witness nodded his head in the affirmative.)

Q. And that was in the back of the vehicle?

A. Yes, sir.

Q. And what did you do with the item from Wal-Mart?

A. I took it back to customer service.

Q. All right. And what -- Did you exchange it? Or did

you get a refund?

A. A refund.

Q. And what did you do with the money?

A. I gave it back to Mr. Blash and Mr. Monfree (sic).

Q All right. And when -- At that time, were you riding in the same vehicle? Or were you in separate vehicles?

A. In the same vehicle. It was in the same vehicle.

Q. Okay. And from Wal-Mart, where did you go?

A. That's when we went back to my house in the Northside Estate.

Q. All right. So you went to your house, not to your mother's house?

A. No, sir. My house.

Q. All right. And what happened at your moth- -- at your house?

A. We got -- We got out the car -- out the little truck, and I walked in the house and came back out, and he -- When I came -- When I -- That's when I had put the -- That's when I had put the scale under my mattress; and then I came back out the door, outside where they was; and I remember walking -- I walked by the -- walked by the truck, and I went and talked to another guy out there in the trailer park.

Q. All right. Who was that that you talked to?

A. I can't say really my friend, but it was a guy I knew

by the name of Trap.

Q. And why did you go talk with him?

A. And then let him talk to my -- Mr. Blash and Mr. Monfree (sic).

Q. Well, why did you -- why did you that?

A. Well, they wanted to meet him.

Q. All right. And how do you know they wanted to meet?

A. Oh. 'Cause they asked me to find out was he interested in talking to them about something, and I -- I went over there, and I told him he might would want -- I don't know. He might -- "You might would want to speak with them." And he walked over there.

Q. Wanted to talk to him about doing what?

A. Was he interested in purchasing some dope.

Q. All right. And they asked you if you knew anybody that would be interested in that?

A. Yes.

Q. And so you introduced -- Or you went to this guy named Trap?

A. Yeah.

Q. And told him to go talk with them?

A. Yes, sir.

Q. And do you know if they had a conversation or not?

A. Well, I didn't -- I didn't really stick around. You know, stand there. I was -- At that time, I stayed there

and talked to another guy out there; and then I walked back in the house. I went back in the house, and they stayed outside.

Q. All right. And did you come back out at any point?

A. Yes. I came back out -- out the door, and I was walking -- walked by -- I walked straight on by. You know, how you just walk by and not -- you know, really don't want to get in nobody conversations. You just walk. I was walking on by the truck.

Q. All right. Did you hear anything?

A. Well, I heard somebody say they can get a half.

MR. ANDERSON: Your Honor, I'm going to object at this time to hearsay. I don't know---

THE COURT: Yes, sir. It's hearsay.

MR. LAWSON: Do you---

THE COURT: That -- Whoop. You got to hold. That -- That's hearsay. You can't testify what somebody else said. That denies the defense right to cross-examine the witness.

MR. LAWSON: Depends on who says it, Your Honor.

THE COURT: Yeah. That depend. That would be an exception, but he's gone have to identify that. I got to sustain that objection at this point. You got to lay your foundation 'fore I can tell you whether or not that's an exception to hearsay. He said he heard something. I

don't know who. There was a bunch of them. I don't know whether it's these -- either one of these defendants. Ac-- -- Rephrase your question, and lay your foundation.

BY MR. LAWSON:

Q. All right. When you walked by, who was involved in conversation?

A. The guy, Trap; and my cousin, Mr. Blash; and Mr. Monfree (sic).

Q. All right. And did you hear Mr. Blash or Mr. Monfries say anything?

A. I heard -- I heard Mr. -- Mr. Monfree (sic) saying 'bout -- saying something 'bout a half. He can -- He can get him a half; and, you know -- and I heard Mr. -- Mr. -- What's his name? -- Trap, heard him---

THE COURT: You can't tell---

WITNESS RUSH: ---how much---

THE COURT: ---us -- Oop. Got to be -- Can't tell us what Mr. Craft (sic) says.

WITNESS RUSH: Oh.

THE COURT: You only tell us what Mr. Blash -- We heard -- Or what Mr. Monfries says.

BY MR. LAWSON:

Q. All right. And how long would you say the conversation took place between Mr. Trap and Mr. Monfries and Mr. Blash?

A. A few minutes. I'll -- I'll have to say at least 'bout probably five minutes. Five, ten minutes. It wasn't long.

Q. All right. And when -- when they finished that conversation, I assume Mr. Trap walked off; is that correct?

A. Yes, sir.

Q. Were you outside at that time?

A. Yeah. I was still -- I was still down the screet (sic), right on 'cross the screet (sic).

Q. All right. And what did you do at that point?

A. I got back in the -- in the truck. They took me back to my mom's house to get my own -- my car.

Q. All right. And did you have any conversation on the way back to your mom's house?

A. No, sir.

Q. All right. And what happened at that time when you got to your mom's house?

A. They left. They left, and -- and that -- that was when 'posed to had got the room.

Q. All right.

A. 'Cause it was -- it was close to eleven (11), and I had to pick my -- pick up my girlfriend from work.

Q. And---

A. And so I picked up my little son, and they left, and

then I went to get the room 'cause she was getting off at eleven (11), and I got the room -- It was close -- It was close to eleven (11) when I got the room 'cause I was late picking her up.

Q. And where did she work?

A. At Southgate Bowling Alley.

Q. And where is that located?

A. That's Irby. Irby Street on South Florence.

Q. All right. And so you were on the opposite side of town?

A. Yes, sir.

Q. All right. And did -- When you got -- When you went to get the room, did you get the room the first time you went to the hotel?

A. No. 'Cause the one I went to, they didn't have a double bed; and they didn't have -- It was too high, and so I went back and I told them that it was too -- what the price was, and they said they didn't want -- Mr. Blash and Mr. Monfries say that they didn't want it. And so I went to the -- I don't know the name of this one, but I went to the next one, and that's the one I had got.

Q. All right. Now, where were they at this point in time? Where were Mr. Monfries and Mr. Blash?

A. Sitting in the parking lot.

Q. The parking lot of---

THE COURT: Clarification information, (while indicating) let me -- let me look at this exhibit right here. He doesn't know the name. Exhibit Number 12, see if he can identify that.

BY MR. LAWSON:

Q. Can -- This is State's Exhibit 12. (While handing document) Can you identify that?

A. Yes, sir.

Q. What is that?

A. Holiday Inn. Holiday Inn Express.

Q. And is that where you got the room?

A. Yes, sir.

Q. It is?

A. (WHEREUPON, the witness nodded his head in the affirmative.)

Q. All right.

THE COURT: Clarification information.

BY MR. LAWSON:

Q. And they were in, you say, a parking lot?

A. Yes, sir.

Q. What parking lot were they in?

A. The -- Well, really, they was in the parking lot of the motel; and then they drove off; and, when I -- when I got the room, they weren't still in the parking lot. They was at the parking lot next door to the restaurant.

Q. What restaurant?
A. Outback.
Q. Outback?
A. Yes, sir.
Q. All right. So did you pay for the room?
A. Yes, sir.
Q. All right. And where did you get the money to pay for the room?
A. From Mr. Monfree (sic) and Mr. Blash.
Q. All right. They both gave you money on the room?
A. Yes, sir.
Q. And what did you do after you got the room?
A. I -- I purchased the room, and I drove over there to Outback Steak House, and I walked in. I walked in. They was already in there, sitting at the table; and I walked in; and I gave -- I slide the card over to them. It wasn't a key. It was card. And the receipt of the -- The change -- The change and the receipt and the card, and I gave it to them.
Q. And who did you give it to?
A. I don't remember which one I actually gave it to. I just, you know, gave the -- gave -- They was both at the table, and I don't remember which one---
THE COURT: Let me---
WITNESS RUSH: ---I gave it to.

THE COURT: ---interrupt you just to maybe expedite, clarify information. And when I ask a question, there no comment about the facts but only to clarify or information for the jury.

EXAMINATION BY THE COURT:

Q. You registered a room in your name?

A. Yes, sir.

THE COURT: All right, sir. Thank you for all counsel deferring to me.

You may proceed.

MR. LAWSON: I'm sorry, Your Honor.

DIRECT EXAMINATION BY MR. LAWSON (continued);

Q. Now, did Mr. Blash and Mr. Monfries indicate to you what kind of room they wanted?

A. They wanted one with two beds -- two beds and see if -- find out did they have any rooms with a -- a kitchen or something. A kitchen.

Q. All right. And what -- Did you have any response to them when they asked you that?

A. I -- I don't think so because I don't know nothing about no motels. So I ain't -- I don't know whether them rooms had kitchens or not, but I axed the clerk.

Q. All right. And -- And did the -- Did the room have a kitchen, as far as you know?

A. I don't know. I never saw it.

Q. All right. You never went to the room?

A. No, sir.

Q. And -- But they did want a kitchen?

A. Yes, sir.

Q. All right. And did -- did you last see them that night at Outback Steak House?

A. Yeah. That was the last night I saw them. Yes, sir.

Q. Do you know whether or not someone else was going to meet them or supposed to meet them?

A. No. Not at that time.

Q. All right. And did you later find out that someone was supposed to meet them, or---

A. Later. Later on.

Q. How did you find that out?

A. When -- Okay. After I -- After I gave them the card at the restaurant, I left. I left to go pick up my girlfriend. And when we got -- When we got -- I picked her up, and we came back -- When we got to the house, they was there at my house. Northside Estate. And they axed -- Then that when Mr. Blash and Mr. Monfree (sic) axed me to -- They didn't know how to get back over there to the mall, so I -- I got back -- I got in the truck with them, and I went -- showed them how to get back to the mall.

Q. And -- And how did you find out someone was supposed to meet them?

A. Before we left, Mr. Blash axed me -- told me that he was 'posed to had meet his friend, and his friend was over that way. And he didn't know how to get back where they was. So it was, you know, meeting up with him.

Q. All right. And do you know if the friend ever showed up?

A. Yes.

Q. How do you know that?

A. 'Cause we -- Mr. -- Mr. Monfree (sic) was driving, and he parked in front of the mall -- in front of the mall entrance, like. You know, right in front of the door. And I remember telling him he can't park here because the mall has security guards that ride by in the little truck with the flashing lights and he needed to move. And quick as he was fixing to move, the guy walked up.

Q. All right. How do you know that was somebody that they were expecting?

A. 'Cause I heard him -- I heard him say, "There he go right there." And he walked on up to the -- to the window.

Q. All right. And did you hear any other conversation?

A. No. 'Cause he got out the truck.

Q. All right. "He"?

A. My -- Mr. Monfree (sic) got out the truck.

Q. All right. And where did Mr. Blash -- What did Mr.

Blash do?

A. He was sitting in the -- in the truck with me.

Q. All right. And what happened then?

A. When -- When Mr. Monfree (sic) got back in the truck, the -- the guy -- I heard the guy -- The third guy told -- told him that---

MR. ANDERSON: Objection, Your Honor.

WITNESS RUSH: ---told---

MR. ANDERSON: Hearsay.

THE COURT: Yes, sir.

MR. LAWSON: Okay.

THE COURT: Got to be Mr. Monfree (sic) or Mr. Blass (sic). Can't be the other person.

WITNESS RUSH: All right, sir.

THE COURT: They got a right to cross-examine the person that he could be. Any accused, that's an exception to hearsay.

But I sustain your objection, Mr. Anderson.

MR. LAWSON: Okay.

THE COURT: And while we're -- While I'm speaking to the witness --.

EXAMINATION BY THE COURT:

Q. Did Mr. Monfrizz (sic) or Mr. Blass (sic) tell you why they wanted you to rent the room? Or do you know why they wanted you to rent the room?

A. No. I just assumed they ain't had no I.D. or no license 'cause they axed me to get the room, so I just went and---

Q. And this---

A. ---got the room.

Q. ---wasn't the first now. This is the second time, isn't it?

A. Yeah.

Q. Any other times?

A. No.

THE COURT: All right. Continue your examination.

DIRECT EXAMINATION BY MR. LAWSON (continued):

Q. All right. Now, after -- You're in the mall parking lot?

A. Uh-huh.

Q. Correct?

A. Yes, sir.

Q. And this is sometime after eleven (11:00) o'clock?

A. Yeah. It was after eleven (11:00) o'clock 'cause I done had picked up my girlfriend from work.

Q. All right. And did they then take you home?

A. Yes, sir.

Q. All right. And do you know where they went when they let you out?

A. Say they was going -- going on to the room.

Q. All right.

A. Yeah. Going on to the room. I -- But he say I can't say nothing 'bout he say she say something he said.

MR. NETTLES: We'd like to enter a hearsay objection, Your Honor.

BY MR. LAWSON:

Q. Did Mr. Blash or Mr. Monfries say they were going back to the room?

A. Yes.

Q. And was there anybody else in the vehicle at that time?

A. No, sir.

Q. Just the three of you?

A. Yes, sir.

Q. And did you get out of the vehicle?

A. Yes, sir. When I got home.

Q. All right. And did you see them anymore that evening?

A. No more that night.

Q. All right. Who was the next person you saw that evening, besides your girlfriend, I assume?

A. The police.

Q. The police. And the -- And was that Lieutenant McFadden, Timmy McFadden?

A. Yes, sir.

Q. (While indicating) And you -- you'd indicated earlier it was this officer. Was this officer with him? Or was it someone else?

A. I -- I thought it was that one -- that officer, but I -- I couldn't really tell you exactly because I didn't know him. That was the first time I ever saw that officer anyway.

Q. All right. And now isn't it true the next day or the next afternoon, on that -- This is after midnight, so the next afternoon didn't Mr. Kirby take a statement from you?

A. Yeah. Yes, sir.

Q. And -- And when you talked with him, did he -- he talked -- You had already talked with Lieutenant McFadden and whoever was with him; is that correct?

MR. ANDERSON: Your Honor, I'm going to object to leading the witness.

THE COURT: Yes, sir. You -- You are leading your wisk- -- your witness; and I know the difficulty with -- in examining on direct, particular this witness; but you can't lead him. He's your witness.

BY MR. LAWSON:

Q. Had -- Had you given---

THE COURT: Sustained.

BY MR. LAWSON:

Q. ---any statements or had any conversations with any

law enforcement officers prior to talking to Mr. Kirby?
A. Yes, sir.
Q. And who was that?
A. Lieutenant McFadden, and I don't know the other officer.
Q. All right. And that was where?
A. At my house that night -- that night of the arrest.
Q. All right. And -- And did you tell them basically what you've told this jury today?
A. Yes, sir.
Q. And how -- how did you know that Officer Kirby wanted to speak with you?
A. When I got there that morning -- Well, that night of the arrest, they told me I needed to come down to the Effingham Detention Center and give a statement; and so that's when I -- That next morning I went there.
Q. All right. And Effingham, that's the Sheriff's Department; correct?
A. Yes, sir.
Q. And that's also the jail?
A. Yes, sir.
Q. Did the place make you nervous?
A. Yes, sir.
Q. And when -- when you talked with Officer Kirby, did you talk with him before you gave a -- a formal statement

to him?

A. I talked to Lieutenant McFadden when I first got there 'cause that's who I axed for when I got there, and I talked to him. And later on, (while indicating) the officer there came in the room; and he's the one who did the statement.

Q. All right. And did Lieutenant McFadden stay? Or did he leave?

A. He left.

Q. Okay. And so this statement was taken the very next -- or -- or the very day---

A. The day after the arrest.

Q. All right.

A. That morning.

Q. Well, the arrest was in the evening; and it was in the morning that you---

A. Oh, yeah. It was, you know,---

Q. The daytime?

A. It was in day -- the same day, being that the arrest happened on -- I reckon after twelve (12); so that's another day, so the same day; but it was just daylight when the statement was taken.

Q. Now, this all took place on the day or around -- All the things that you've testified to -- As far as buying the scale and riding around and getting the room, that all

happened on the same -- at the same time that Mr. Blash and Mr. Monfries were arrested; is that correct?

A. Yes, sir.

Q. Now, did -- did you or have you seen Mr. Monfries or Mr. Blash since?

A. Since the arrest?

Q. Yeah.

A. I saw Mr. Monfree (sic) since.

Q. And how -- how did you come to see Mr. Monfries?

A. 'Cause my mom -- my mom's sister called her and told her -- told her that my -- Mr. Blash was getting out and he needed a ride. And so when I went to pick Mr. Blash up from the jailhouse, when I got there and I was waiting out in the lobby for him, it turned out he wasn't being released; but Mr. Monfree (sic) got released; and he axed me to get him a ride to the airport.

Q. All right. And did you do that?

A. Yes, sir.

Q. All right. And -- Now, you gave a statement to the police officers. Have you given statements to anybody else?

A. To Mr. Monfries' lawyer and Mr. Blash lawyer.

Q. All right. And was that the very next day? Or was that some time later?

A. That was some time later after the arrest.

Q. All right. And when you gave Mr. Blash's lawyer a statement, was Mr. Blash there?

A. Yes, sir.

Q. Your cousin was there?

A. Yes, sir.

Q. And I believe that you told him basically that you didn't know anything, you didn't see anything, and that---

MR. ANDERSON: Your Honor, I object to leading at this time.

THE COURT: Yes, sir. It is leading. Lay your foundation, counsel. I gone sustain the objection.

BY MR. LAWSON:

Q. And in your statement to Mr. Blash's attorney, do you recall what you said?

A. Yes.

Q. And what, basically, did you say?

A. I told him I didn't see no drugs or that I didn't -- You know, they didn't tell me they had any drugs; so, you know, I didn't -- really didn't know nothing about the drugs. I didn't know nothing. You know, they didn't -- I didn't see it. I didn't see it, and I believe I probably -- I said that they ain't had it 'round me.

Q. All right. And did you ever tell the police that you saw any drugs?

A. No.

Q. Did you ever tell the police that they showed you any drugs?
A. No.
Q. But you told the police what you have testified to today,---
A. Yes, sir.
Q. ---primarily?
A. Yes, sir.
Q. And that there were conversations concerning drugs; is that correct?
A. Yes, sir.
Q. All right. And when you gave the statement to Mr. Blash's attorney, were you nervous or afraid or in any way upset at that time?
A. Well, I was just a little nervous. You know, I was nervous.
Q. All right. That was your cousin; correct?
A. Yes, sir.
Q. Mr. Blash?
A. His lawyer. Mr. Blash lawyer?
Q. Yeah.
A. Yes, sir.
Q. And -- And he was -- he was there during the time the testi- -- the statement was taken?
A. Yes, sir.

Q. All right. And when you gave the statement to Mr. Monfries' investigator, that would have been some time later; is that correct?

A. Yes, sir.

Q. Do you remember when that was?

A. I don't remember when it was.

Q. All right. Would it have been after you gave the statement to Mr. Blash's attorney?

A. I couldn't answer that question, but it just -- I got to picture the lawyer and where their office located at. That's how I can remember who I gave a statement to first.

Q. Okay.

A. The lawyer that I gave a statement to first office was right across from the Federal Building.

Q. All right. That was Mr. Anderson. He represents Mr. Blash.

A. All right.

MR. ANDERSON: Your Honor, is the State asking him a question, or telling him the answer?

THE COURT: Yes, sir. Yes, sir. It's leading. It's -- It's -- No question about that. He's pointing it out.

You can't testify, Mr. Lawson, as to whether or not you wish; but you're leading; and I'm getting objection; and if it -- It is leading. You can't do that, and I sustain that.

He -- He knows where he went. I think he knows where he went or whose office he knows where he went. I don't know. But he got to testify. You can't testify for him.

Sustain, Mr. Anderson.

You may proceed, Mr. Lawson.

BY MR. LAWSON:

Q. All right. And you say that office was across from the Federal Building?

A. Yes, sir.

Q. On Evans Street?

A. Yes, sir.

Q. All right.

EXAMINATION BY THE COURT:

Q. Which one of the Federal Buildings? There's two on Irby (sic) Street. You know which one it was?

A. I don't know them apart. I just know one of them got -- One of them being used for a Post Office, too; and that's the Social Security building.

THE COURT: Proceed, Mr. Lawson.

DIRECT EXAMINATION BY MR. LAWSON (continued):

Q. Does it have a fence around it?

A. Yes, sir.

Q. All right. The whole building?

A. All the way 'round from the front to the back of the parking lot.

Q. All right. And then -- And then you gave a statement where? Where did you give the second statement to the attorney?

A. Next -- The next place I gave a statement to was the lawyer's office right across the street from here, by the front door. To get into her office, you got to ring the little buzzer. Her office is upstairs with a stairway at the front door with a little butt- -- speaker phone. You got to mash the button, and somebody from up there ax who are you and hit a button and open a door to let you up.

Q. All right. And did you talk to the lawyer? Or did you talk to somebody else? Do you know?

A. When I first went in there, I -- the -- I went there twice, so I can't really say what -- was this gone be the first time I ever went or the second, but I went -- I went up there, and the investigator -- The investigator wasn't there when I first got there. I got there before him, and he came shortly after I got there.

Q. All right. And did he take a statement from you?

A. Yes, sir.

Q. All right. And what did you tell him, if you recall?

A. Well, I can't remember his question by question, but I answer questions he axed me. And like I told everybody else, I didn't see -- I ain't see no drugs. I mean, they didn't tell me they had done, and I didn't see none.

Q. All right. And -- And did they -- they ask you about whether or not Eddie Blash ever told you he was involved in drugs or selling drugs?

A. Can you re- -- repeat that again?

Q. Did they ask you if Eddie Blash or Michael Monfries ever told you that they were involved in selling drugs?

A. Yeah.

Q. And what did you tell them?

A. No.

Q. And---

THE COURT: Stop right here.

EXAMINATION BY THE COURT:

Q. I'm -- Let me ask you a quest- -- Let me for clarification information. Did you not state previously under oath that you mentioned to this fellow you knew, Mr. Craft (sic), you might want to speak to Mr. Muntrees (sic); you might want to speak to Mr. Blass (sic) about some dope? Didn't you testify to that earlier?

A. Yes.

Q. Uh-huh. You rented a room; and you wondered to whether or not they driving around, whether they had an identification or insurance. You saw this thing with pots in it. You saw the scales.

A. I didn't---

Q. And you don't know and they didn't tell you what they

were doing?

A. I just didn't made it my business to be axing.

Q. You had no knowledge about it. Well, who told you they had dope? Or how -- You told Mr. Craft (sic) you might want to talk to them.

A. Who told me they had dope?

Q. Yeah. Who told you that? How did you tell---

A. I didn't---

Q. ---Mr. Craft (sic)---

A. ---know nothing 'bout---

Q. ---you might want to talk to them?

A. I didn't know nothing 'bout the dope, that there was actually dope until---

Q. What kind---

A. ---they got---

Q. ---of dope?

A. ---caught.

Q. Do you know what kind of dope?

A. They said cocaine.

Q. Who -- Where did you learn that?

A. When they got busted.

Q. Didn't know it before.

THE COURT: All right. You may continue

MR. LAWSON: Did---

THE COURT: Got -- Wait a minute.

BY THE COURT:

Q. I'm gone give you a warning now. We've already -- You've test- -- You've made -- You've testified, "Mr. Craft (sic), you may want to talk to him about some dope."

A. Uh-huh.

Q. Now, you telling me you don't know about them -- them having no dope.

A. Well, I didn't never---

Q. Them two---

A. ---see none.

Q. ---things don't jive. I'm just telling you now. I'm warning you.

A. All right.

Q. You're under oath.

MR. LAWSON: May it please the---

THE COURT: You may go ahead.

MR. LAWSON: May it please the court? Your Honor, what I'm doing is going through the statements taken by the defense and asking him what his responses to the defense was. I'm not asking him what his testimony today is. I'm asking him what his statement (while indicating) on these---

THE COURT: I understand.

MR. LAWSON: ---were.

THE COURT: That's a -- That's separate, but I---

MR. LAWSON: If -- If---

THE COURT: You may proceed.

DIRECT EXAMINATION BY MR. LAWSON (continued):

Q. Now, I guess the question is, and what the judge is getting to, you know, you've given three statements?

A. Uh-huh.

Q. You gave one to the police and said, basically, that -- that you -- that there was a drug situation?

A. Uh-huh.

Q. You gave a statement to Mr. Blash's attorney and Mr. Monfries' attorney where you said you didn't know nothing about it?

A. (WHEREUPON, the witness nodded his head in the affirmative.)

Q. The question is when -- when did you tell the truth?

A. When -- When I went up there to the police department, that was the day after -- after the arrest. The day of the arrest. The arrest happened that night. That -- Early in that morning. And earlier -- And later on during the morning when I went to the police department.

Q. All right. And what about your testimony today?

A. Today, it's the same thing, the same thing that I gave -- the statement I gave to the officer before.

Q. All right. Did any -- Did anybody ask you about a

place to cook?

A. Well, they axed -- They -- When they axed me for a room -- a room with a kitchen, they -- that's when they axed me they needed a room with a kitchen to work.

Q. A kitchen to work?

A. Yeah.

Q. And you had seen the pots?

A. Yes.

Q. And you had seen the scales?

A. I -- Yes.

Q. And---

THE COURT: Let me interrupt you again.

EXAMINATION BY THE COURT:

Q. They wanted a room with a stove.

A. Uh-huh.

Q. But now is it your testimony you don't know why they wanted scales; you don't know why they needed a room in your name or why they needed a room with a stove; or you didn't know why they were buying scales or pots. You had no idea what they were planning on doing---

A. I---

Q. ---'cause you ain't seen no dope; don't know nothing 'bout no dope. Is that your answer?

A. No. That's not how I would answer that. I -- You -- Like I believe I have told -- When I gave the statement to

the police, I---

Q. That ain't what I'm asking you. I'm asking you if you knew why they wanted a room, wanted it in your name. And I want an answer to it. They wanted a kitchen, and they wanted scales. You told Mr. Craft (sic) you might want to talk to them; but you don't know why they wanted a room with a kitchen,---

A. I---

Q. ---or why they wanted scales, while (sic) they wanted a pots (sic). You don't know,---

A. I---

Q. ---and they never told you, and you don't know.

A. They ain't never came out and told me in their words. But I'm saying me, myself, I can figure out. I figured it out. I mean, you ain't got to be deaf, dump, and stupid. I mean, you can figure it out.

Q. Well, tell us.

A. I figured it out.

Q. All right. Answer the question I just asked you.

MR. LAWSON: Well, what did you---

BY THE COURT:

Q. You knew, didn't you?

MR. LAWSON: Your Honor,---

MR. NETTLES: Judge -- Judge, at this point, I'm gonna have to ask that somebody -- We get a lawyer to come

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in and advise this man of his rights 'cause at this point I think he's bordering on committing perjury.

MS. PARR: I don't---

THE COURT: I think you're right. I think you're right.

MS. PARR: Are you -- Your Honor, may we be heard on that issue outside---

MR. NETTLES: Outside the---

MS. PARR: --the presence---

MR. NETTLES: ---presence of the jury.

THE COURT: Yeah. Go to your -- Go to your jury room.

(To the deputy clerk) Go ahead and order lunch.

(WHEREUPON, at 11:51 a.m., jury returned to jury room; and the following proceedings were had outside the presence of the jury:)

THE COURT: Send for the public defender.

MR. LAWSON: Your Honor,---

THE COURT: It's obvious to me -- Just a moment. It's obvious to me this witness is testifying, and he's incriminating himself. It's also obvious to me he's committed perjury.

MR. LAWSON: Your Honor, in -- I -- And I disagree with Your Honor. He was ready to answer the question, but I never asked him that question because the defense would

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have objected to what he assumed they wanted all this -- all this stuff for, why they wanted this, why they wanted that; but the questioning has gone according to his statements; and that is what I have asked him: is what he told law enforcement and what he told the defense.

It is not perjury to -- None of the statements taken by anybody is a sworn statement signed by the defendant. Not one of them is a sworn statement signed by the defendant.

MR. ANDERSON: He signed mine, and it was notarized.

MR. LAWSON: And you've got the signed -- Because mine -- my copy is not signed.

MS. JACKSON: You didn't give him---

MR. NETTLES: Your Honor, additionally, I would point out that at this point, based on the court's questioning, it -- The ans- -- The question that's being posed to him makes him a party conspiracy (sic). I mean, I think that's kind of the basis of what the judge -- The -- The court -- It seems to me -- And I don't mean to put words in the cour' mou'; but the court is concerned, it seems to me, that either this person is misrepresenting about his activities prior to his arrest (sic) -- In other words, his statement to the -- to law enforcement---

MS. PARR: He was never---

MR. NETTLES: (To Ms. Parr) Hang on---

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MS. PARR: ---arrested.

MR. NETTLES: ---a second, and I promise I'll give you a chance.

If -- If -- If -- If the -- If the statements that were given to law enforcement are true, then he's part of the conspiracy; and, if he answers the question that the court just asked him, he is admitting to being involved in the conspiracy; and, in addition, to the perjury charge, he's also, just as a criminal defense lawyer, on the verge of making a statement in open court that makes him part of the conspiracy; and, for that, I think he needs a lawyer.

THE COURT: I do, too. I agree, counsel. I think he's getting -- He's at the point and place -- And I'm sure the solicitor would not do that intentionally in that situation, but I think -- I think he needs to talk to a lawyer, and then he needs -- he can do then whatever the lawyer tells him or doesn't tell him, but -- but he is in a -- He -- He may be getting himself in a situation where he would find it perilous, and I -- and I don't feel comfortable with that; and I -- And -- And once a lawyer advise him, and I think y'all can't do. Once a lawyer advises him and he will -- and he continues to testify, he -- he -- he has -- he has been advised; but I think we need to do that; and I'm gone wait 'til we get the public defender here so the public defender then can -- can talk

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to him. We -- We can't continue with this until he's had the advice of a lawyer

MR. ANDERSON: Your Honor, will we be at ease?

THE COURT: (While judge stepping off bench) We gone be at ease for a few moments. We gone be at ease.

MR. LAWSON: The witness, where should he---

THE COURT: He may---

MR. LAWSON: ---stay?

THE COURT: ---or may not incriminate himself, but I -- I think he's -- he certainly should have the advice.

(WHEREUPON, at 11:56 p.m., court stood in recess; and, 12:15 p.m., Mr. Stephen L. Hill, Assistant Public Defender, started conferring with the witness; and, at 12:17 p.m., court reconvened in this matter, with Defendant Blash and Ms. Parr and Ms. Jackson present in the courtroom.)

THE COURT: Let's get all our lawyers.

MS. PARR: Jack said you told him he could run down and get something.

THE COURT: Beg your pardon?

MS. PARR: Mr. Lawson said you told him he could run down and get something.

THE COURT: Yeah. He went to get him a---

MS. PARR: Okay. He's not back yet.

THE COURT: ---Pepsi-Cola.

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MS. PARR: He just left.

(WHEREUPON, at 12:18 p.m., Mr. Anderson and Mr. Nettles entered courtroom.)

THE COURT: All right. We just gone -- We've got everybody here. I can do this.

(To the bailiff) Ask Mr. Hill and Mr. Rush to step here for just a moment.

BAILIFF TIMMONS: (While indicating) They just stepped out that way.

THE COURT: Okay. How 'bout just ask them to step here just a moment.

(Pause; at 12:20 p.m., Mr. Hill and the witness entered courtroom; and, during the following colloquy, the court was eating crackers, drinking Coke, and talking at the same time:)

MR. HILL: Yes, Your Honor?

THE COURT: Mr. Hill, I didn't learn until after we recessed for just a moment to talk in chambers. Ms. Parr and Mr. Lawson have advised me we were not told that and we didn't know that -- that Mr. Rush has been granted immunity for his testimony and for any involvement he might have in this case, so he is in no peril and no jeopardy.

MR. HILL: All right, sir.

THE COURT: And as a result of being advised of that,

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though I've just learned at the break, he is in no peril.

MR. HILL: All right, sir.

THE COURT: And my reason for asking you was to advise him because I was afraid he was gone do something that's gone incriminate himself in his testimony---

MR. HILL: Yes, sir.

THE COURT: ---that he was giving. I'm satisfied now he is in no peril.

MR. HILL: All right, sir.

THE COURT: And no jeopardy. He may -- He may testify without any consequence.

MR. HILL: All right, sir.

THE COURT: What it amounts to. And I wanted him to understand that and wanted you to understand that.

Have you advised him and told him -- advised him, and has he indicated to you now that he knows that? Have you communicated that to him?

MR. HILL: We were in the process of doing that when I was asked to come back in the courtroom because Ms. Parr was explaining to me the immunity agreement, and so I had just begun my discussion---

THE COURT: All right.

MR. HILL: ---with him. If you'd like for me to follow that up, I just need a few minutes to do so.

THE COURT: That -- That's why I called you back

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because he is in no peril.

MR. HILL: All right. Can he come with me?

THE COURT: Of any prosecution pending from the testimony or---

MR. HILL: Thank you, Your Honor.

THE COURT: ---testifying.

(WHEREUPON, Mr. Hill and the witness stepped out of courtroom.)

MS. PARR: Your Honor, I wanted to put on the record that the State had not -- had not intended to grant any immunity. This just came up after we went back in your chamber.

THE COURT: All right.

MS. PARR: So, I mean, I don't want the court to think that this is what we had in mind---

THE COURT: All right.

MS. PARR: ---because we did not know this was coming up.

THE COURT: All right. Thank you, ma'am. That cures that problem.

(Pause; then, at 12:25 p.m., the judge stepped off bench; court stood in recess; and at 12:27 p.m., court reconvened, with the defendant and counsel for all parties present in the courtroom.)

THE COURT: Has Mr. Lawson got back?

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MS. PARR: But Mr. Hill is still talking to him.

(Pause.)

THE COURT: (To the deputy clerk) Ask Mr. Hill if he's ready to return.

(Pause; and, at 12:29 p.m., Mr. Hill and the witness entered courtroom, with the witness returning to witness stand.)

THE COURT: All right. We're back in session. The court's concerned that this point has been rendered moot in that the solicitor's indicated to me as a result of testimony of the State's witness, Mr. Rush, that they are granted (sic) him immunity. They had not granted it to him previously, but they do now, so he is in no jeopardy.

And that you have now advised him of that fact.

MR. HILL: I have.

THE COURT: I would instruct him now he's in no jeopardy. He must testify. All right, sir.

MR. HILL: Anything else---

THE COURT: Do you understand?

MR. HILL: ---the court -- He does. Anything else you desire?

THE COURT: Beg your pardon?

MR. HILL: Do you desire anything of me? Or may I---

THE COURT: No, sir. And---

MR. HILL: ---be excused?

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THE COURT: ---I appreciate so very much your accommodating the court, Mr. Hill, on such short notice.

MR. HILL: You've welcome.

THE COURT: All right. Bring us the jury.

MR. ANDERSON: Judge, before---

THE COURT: Hold just a moment.

MR. ANDERSON: Was there any written agreement between the witness and the State? Or was it just oral? If it's written, we'd like a copy of it.

MS. PARR: We have not written anything.

THE COURT: All right, sir. They've not written anything.

(To the bailiff) Bring us the jury.

(WHEREUPON, at 12:30 p.m., jury returned to open court; and the following proceedings were had within the presence of the jury:)

THE COURT: (While jury entering) Of course, you may ask him those questions, Mr. Anderson.

Mr. Lawson, I think you had almost completed your direct examination of Mr. Rush. Do you have anything further?

MR. LAWSON: Your Honor, I think Your Honor had posed a question and -- which Mr. Rush was about to answer when there was an objection; and I -- I believe that my direct examination is almost complete, Your Honor, with just a

couple more questions.

Mr. Rush,---

THE COURT: Let me ru- -- Let me rule on the objection.

MR. NETTLES: Yes, sir.

THE COURT: Yes, sir. Is your objection -- You still have your objection?

MR. NETTLES: Excuse me, sir?

THE COURT: Still have the objection?

MR. NETTLES: I do have objection. I may have a second objection to him asking it, which would be that it calls for speculation.

THE COURT: All right, sir.

MR. LAWSON: I'm not -- That's not the question I'm going to ask him, Mr. Nettles.

MR. NETTLES: Okay. All right. Okay.

THE COURT: Let me rule on his object'. I'm gone sustain the objection. I'm not gone ask him now.

MR. NETTLES: Thank you.

THE COURT: You may -- You may proceed.

MR. LAWSON: May it please the court?

DIRECT EXAMINATION BY MR. LAWSON (continued):

Q. Mr. Rush, now did -- Since -- During this break, you have conferred with an attorney; is that correct?

A. Uh-huh.

Q. The State has offered you immunity for your testimony?
A. Yes, sir.
Q. Okay. And have you told us the truth today as best you can recall?
A. Yes, sir.

MR. LAWSON: All right. Answer any questions the defense has.

THE COURT: Cross-examination. Which one of you want to begin? Mr. Anderson.

CROSS-EXAMINATION BY MR. ANDERSON:

Q. Mr. Rush, you gave a total of three statements?
A. Yes, sir.
Q. One to law enforcement?
A. Yes, sir.
Q. And one to myself?
A. Yes, sir.
Q. And then one to Ms. Jackson?
A. Yes, sir.
Q. Now, I can't help but notice you've got a pager and cell phone?
A. Uh-huh.
Q. Do you need that in your line of work?
A. From what I'm doing.
Q. And what exactly are you doing?

A. I build utility trailers.
Q. Build utility trailers?
A. Yes.
Q. When was the last time you built a utility trailer?
A. When the last time I built a utility trailer?
Q. Yes, sir.
A. It was Friday.
Q. How many did you -- How many have you built this year?
A. I couldn't really tell you.
Q. How many did you build last year?
A. The number wouldn't be right, but I probably -- I'll -- I will say I probably built forty (40) or fifty (50) of them.
Q. And did you declare this on your income taxes?
A. No. Just a hobby I do.
Q. All right.
A. It's -- It's like a hobby.
Q. Do you give them -- give them away?
A. Huh?
Q. Do you give them away after you build them?
A. No.
Q. Well, you sell them, don't you?
A. I don't -- Yeah. I get my money I -- I put in them. I get my money back.

Q. You don't make any profit?
A. Yeah. I make a little profit, too.
Q. Okay. Now, you also collect disability, don't you?
A. Yes, sir.
Q. And when you were in Family Court, you indicated that that was your sole income, was just disability; isn't that right?
A. Yeah. And that's all---
Q. When you filled out---
A. That's -- That's all I get, the disability.
Q. When you filled out that financial declaration and swore to it in front of a notary?
A. I don't -- I don't recall that.
Q. Okay. Three-page financial declaration, the first page your income, second page is your expenses, third page is where you sign it?
A. On Family Court thing?
Q. Yes, sir.
A. I remember that -- I remember that fin' (sic) report. Whatever that was you just said. Financial thing.
Q. And you signed it in front of -- You swore that that was your income?
A. My disability?
Q. Yes, sir.
A. Yes, sir.

Q. And you didn't list any hobbies on there?
A. No. It didn't ax for the hobbies.
Q. Okay. Now, let's talk about who you are, what you are, and why you're here. Okay?
A. Uh-huh.
Q. All right. Now, on the night of April the 10th, 2000, Timothy McFadden came to see you?
A. Uh-huh.
Q. And that was about three (3) a.m. in the morning?
A. Yes, sir.
Q. And you were probably asleep at that time?
A. Yes, sir.
Q. How did he come into your house? Did he knock on the door?
A. Yeah.
Q. And he showed you a badge?
A. Yes, sir.
Q. Was he wearing a gun?
A. I don't remember. I wasn't looking at that.
Q. Did he read you your rights at that time?
A. No, sir.
Q. He wanted to ask you questions?
A. Yes, sir.
Q. And he had Allen Rhodes with him?
A. I don't know the officer.

Q. Did they have---
A. There was another---
Q. ---handcuffs on---
A. ---officer with him.
Q. Did they have handcuffs on their belts?
A. I didn't really pay them -- pay that much attention to them. You know, I -- I knew Timmy. I knew he a cop.
Q. Right.
A. And, you know, I figured the other guy was with -- Well, he's a cop; but both of them showed me their badge.
Q. Right. And when a cop knocks on your door at three (3) in the morning, that's normally not a good sign, is it?
A. Normally not.
Q. Usually make you a little nervous?
A. Well, I didn't hear the knock. I was 'sleep.
Q. All right. But when you saw who it was, you got a little bit nervous?
A. Yes, sir.
Q. Got a little anxious?
A. I wouldn't say ancient (sic). I -- You know,---
Q. They started questioning you?
A. Yes, sir.
Q. Started throwing out some words to you like conspiracy?

A. No.

Q. Drugs?

A. No.

Q. Trafficking?

A. They didn't -- I don't remember that.

Q. You don't remember that?

A. No.

Q. Well, what do you remember about that night? Tell me about that three (3) a.m. conversation.

A. I remember sleeping. I remember being woken up, and my son was hollering, and -- 'Cause my girlfriend got up and opened the door.

Q. All right.

A. And so when they woke me up, I remember turning over; and my son was holding on to my shoulder 'cause he was in the bed with us also. And when I turnt over, I saw the -- the other officer beside -- It wasn't -- Timmy wasn't the first one I saw. I saw the other officer, and I got up; and they introduced their-self, the Sheriff Department, and showed me their badge. And they axed me did I -- I don't know if I can get into the exact words that they use in the same order. But they introduced their-self, showed their badge. I knew Timmy anyway when he came in the room. He was behind the next guy. So I knew -- When I spot Timmy, I notice -- I knew who he was.

So, you know -- And then they said that they had just made a bust in a -- at a hotel and that the hotel was registered in my name.

Q. And they told you that they wanted to ask you some questions about that?

A. Yes.

Q. All right. And they started talking to you?

A. Yes.

Q. And they asked you if you had any drug items or drug paraphernalia at your house, didn't they?

A. Yes.

Q. And they asked if you had anything that might be used for drugs or associated with drugs?

A. I don't remember that.

Q. Well, for some reason or another, you took them under your mattress, didn't you?

A. He -- They axed me -- I remember Timmy -- I remember telling Timmy that -- Well, when he axed me did I knew the guys at the motel---

Q. Yes, sir.

A. ---and I told him yeah, one of them was my cousin; and I didn't know the other one. So he told me that I have -- They found out that I had got the room in my name, and I say, "Yeah, they axed me to get the room in -- get them a room." So I -- I told him yeah; that's why the

room was in my name; I registered; I -- I showed them I.D. and got the room.

Q. Let me -- Let me stop you a second then. I want to talk about the scales. All right? Let's -- Let's get to the scales.

A. All right.

Q. All right. How do we talk -- How do we get to the scales?

A. They axed me did they give me anything to hold, and I say yeah. And he axed me what was it, and I told him. And he axed me where was it, and I went and got it.

Q. All right. Now, you said you hid it under your bed?

A. Under the mattress.

Q. Under the mattress?

A. Uh-huh.

Q. And the reason you did that was because you didn't want your son to bother it?

A. Well, mainly it wasn't mine; and I didn't want it to come up missing, being that it wasn't mine. And then I saw the price on it. I wasn't 'bout to pay that much for no scale.

Q. Right. But on direct -- And I think also you told the judge that the reason you put it there was because you didn't want your son to bother it?

A. Yeah. My -- I got a little son.

Q. Right.
A. Yeah.
Q. And you were scared he might bother it?
A. I didn't want him fooling with it.
Q. Right. So, I mean, what else do you have under there? Like kitchen table knifes and guns---
A. Under the---
Q. ---and sharp---
A. ---mattress?
Q. ---objects and -- I mean, you don't want him bothering with those, do you?
A. No.
Q. So have you got all of those under your mattress, too?
A. No.
Q. Well, certainly there's something in your house that you don't want him bothering, so it's got to be under your mattress?
A. (WHEREUPON, the witness shook his head in the negative.)
Q. No?
A. No.
Q. Just the scales?
A. Well, I was -- No. Yes.
Q. Just the scales?

A. That was the only thing that was under there.
Q. The only thing in the house you didn't want him to bother?
A. They are -- You're talking about the scales. I -- I -- The scale was the only thing under the mattress.
Q. Okay. All right. Now, Timmy McFadden told you he wanted -- he wanted you to come give a statement?
A. Uh-huh.
Q. And he told you to go out to Effingham?
A. The Sheriff Department.
Q. Did someone come pick you up? Or did you drive out there?
A. I drove.
Q. All right. When you were driving past, did you see those -- that big fence with that bob wire on top?
A. When I drove past?
Q. Yes, sir.
A. Past what?
Q. The jail.
A. I didn't really pay it no attention. I -- I just -- I knew where I was s'posed to had go.
Q. Okay. You ever been there before?
A. Like -- No.
Q. Okay.
A. Beside -- No. I -- I'd rode by there sometime.

Q. When you drive by there, has it got that bob wire on top of those big like eighteen-, twenty-foot fences?

A. Yeah.

Q. Okay. Now, when you -- when you got there, you said, "I want to speak with Timothy McFadden"?

A. That's who I axed for.

Q. And then they have to come out of a locked door to come talk to you?

A. Uh-huh.

Q. And then they actually get you and take you back there behind those locked doors, don't they?

A. Yes, sir.

Q. And then they take you back in there with a little room?

A. Uh-huh.

Q. A room probably not a whole lot bigger than where you're sitting right now, is it?

A. About the size of the room in the hallway out there.

Q. Okay. And maybe -- what? -- two, three cops in there with you?

A. No, sir.

Q. No. Just Timmy?

A. We wasn't in the room when he was talking to me.

Q. Okay. Where were y'all when he was talking to you?

A. Standing out there in the -- He was talking to

somebody else in another office, and I was standing in the hallway waiting on him to finish communicating with that person.

Q. All right. And then who did you talk to?

A. After Timmy McFadden?

Q. Yes, sir.

A. (While indicating) That officer right there.

Q. The officer wearing that white shirt?

A. Yes, sir.

Q. The coat?

A. The -- (While indicating) On the end---

Q. Coat and tie?

A. ---on the table right there with the---

Q. With a purple tie?

A. Yes.

MR. ANDERSON: All right. Let the record reflect, Your Honor, he identified Glen Kirby.

THE COURT: Noted.

BY MR. ANDERSON:

Q. And who else was in the room with Glen?

A. Just me.

Q. Just you? Timothy wasn't in there? Timmy McFadden?

A. (While indicating) He -- When Glen -- When that officer came in, Timmy said he was gonna be doing the report.

Q. Okay.
A. And then he walked off.
Q. All right.
A. He left.
Q. And y'all sat down at a little table?
A. Uh-huh.
Q. (While indicating) A table about like this one right here?
A. Yeah.
Q. Now, this is after you'd gone behind those locked doors; right?
A. Yeah.
Q. All right. And they've shut the door while you were talking?
A. Yes.
Q. And Agent Kirby had his gun on, didn't he?
A. I don't remember.
Q. Had his badge with him?
A. I don't remember that.
Q. Okay. But he wanted you to give him a statement?
A. Yes.
Q. Now, when -- He told you, he said, "Timothy, I want you to give me a complete statement."
A. I don't remember him ever---
Q. Well, he---

A. ---saying that.
Q. ---didn't tell you, "Timothy, tell me a little bit about what happened, but don't tell me everything"? He didn't say that, did he?
A. I don't believe he did.
Q. Okay. So he wanted you to give him a complete statement of what you knew about that night?
A. Yes.
Q. And he wanted you to give him a truthful statement about what happened that night?
A. Yes.
Q. And he wanted it to be as accurate as you could make it, complete, truthful,---
A. Yeah.
Q. ---and accurate?
A. Yeah.
Q. And just as thorough as you could be?
A. (WHEREUPON, the witness nodded his head in the affirmative.)
Q. Now, when he was talking to you, he was making notes, wasn't he?
A. Yes.
Q. And he was also talking to you; and he was throwing out some words you didn't understand, kind of like conspiracy? Were y'all talking about conspiracy?

A. I don't remember that.
Q. Did he talk to you about trafficking cocaine?
A. I don't remember that.
Q. Did he talk to you about how much time you could get in jail?
A. Not that I know of.
Q. Okay. Now, while you were in that room, did he ever tell you, "Timmy, you can get up and leave any time you want to"?
A. Yeah.
Q. He never told you that, did he?
A. Yeah.
Q. He did?
A. (WHEREUPON, the witness nodded his head in the affirmative.)
Q. How you going to get out that locked door?
A. He was gone let me out, I reckon, if I wanted to leave.
Q. Did he ever Mirandize you?
A. (No response.)
Q. Read you your Miranda rights?
A. Yeah.
Q. Did he ever tell you you could stop answering questions---
A. Yes.

Q. ---if you wanted to?

A. (WHEREUPON, the witness nodded his head in the affirmative.)

Q. Did he ever ask you to make this statement under oath? Did he put you under oath before you made the statement?

A. I don't remember -- I don't remember that. I don't remember.

Q. Well, you remember coming to my office and giving me a statement?

A. Yes.

Q. And -- And no law enforcement picked you up and brought you to my office, did they?

A. No.

Q. I mean, you just came after hours, I believe? I think you came around six (6), six-thirty (6:30) one night, didn't you?

A. Six-thirty (6:30) one night?

Q. Yes, sir.

A. I don't remember what time it was.

Q. It was July the 31st, six-thirty (6:30), 2000, the year 2000.

A. I don't remember.

Q. But you remember coming to my office and giving me a statement?

A. Yes, sir.
Q. All right. And I told you to tell me the truth?
A. (No response.)
Q. Sir?
A. Sir?
Q. I wanted -- I told you to tell me the truth?
A. Oh. Yes, sir.
Q. And I asked you to tell me everything that you knew about what happened?
A. Yes, sir.
Q. And I told you I was going to ask you certain questions?
A. Yes, sir.
Q. And I told you, you know, you could answer them if you wanted to; didn't have to answer them?
A. Yes.
Q. And asked you if you were un- -- been drinking or under the influence of any alcohol or drugs?
A. Yes, sir.
Q. And you told me you weren't?
A. Uh-huh.
Q. Okay. And I asked you what your relationship was to Eddie?
A. Yes, sir.
Q. And you told me he was your first cousin?

A. Yes, sir.
Q. And then I said, "Was he involved in any drug activities earlier this year?"
A. Yes, sir.
Q. And you told me, no, he wasn't?
A. Yes, sir.
Q. All right. And I also asked you if he had ever told you he was coming to South Carolina to sell drugs?
A. Yes, sir.
Q. And you told me not to your knowledge?
A. Yes, sir.
Q. And I asked you, "Did he ever tell you he was coming here to buy drugs?"
A. Yes, sir.
Q. And you said, "Not to my knowledge"?
A. Yes, sir.
Q. Then I asked you if you had given a statement to the law enforcement?
A. Yes, sir.
Q. I asked you if you made a statement to Glen Kirby?
A. Well, you -- I don't remember you saying his name.
Q. Okay. I asked you if you'd made a prior statement to law enforcement, though?
A. Yes, sir.
Q. And that you'd mentioned in that statement that Eddie

was coming to South Carolina to sell drugs; that's what you had told him?

A. I don't remember.

Q. And I asked you why had you said that. Do you remember what you told me?

A. I don't remember saying that part.

MR. ANDERSON: All right. Your Honor, may I approach the witness?

THE COURT: You may. You gone question him on the statement?

MR. ANDERSON: Yes, sir.

EXAMINATION BY THE COURT:

Q. Well, how much education do you have?

A. I've finish the eleventh grade.

THE COURT: He can read. Let him read it, and then you question him.

CROSS-EXAMINATION BY MR. ANDERSON (continued):

Q. (While handing document) That's a three-page statement. How about refer to the last page, and tell me if that's your signature.

A. (Looked at document.) Yes, sir.

Q. All right. Now, I'm now going to refer you to page two (2). (While indicating) Read that first -- Well, you don't have to read it out loud. Just let me see if you can refresh your memory. If you would, read those first

five or six lines.

A. (Complied.)

THE COURT: You gone question him on the statement. Do you intend to introduce it?

MR. ANDERSON: No, sir. Not at this time. Just refreshing his recollection, Your Honor.

BY MR. ANDERSON:

Q. Have you had a chance to read it?

A. (While indicating) You wanted me to read that section; right?

Q. Yes, sir. (While indicating) And then these next three or four lines after that.

A. (Complied.)

Q. I asked you if you'd made a statement to law enforcement?

A. Yes, sir.

Q. And you told me you had?

A. Yes, sir.

Q. And then I asked you why you said that?

A. Yes, sir.

Q. What did you tell me?

A. I was scared.

Q. You were scared when you were talking to law enforcement, weren't you?

A. I was -- Yes.

Q. You were nervous? You were scared?
A. Yes.
Q. 'Cause you were out there in Effingham where the Law Enforcement Center is?
A. That may be it too. Yes, sir.
Q. Yeah. Now, you've seen a jail cell before, hadn't you?
A. Yes, sir.
Q. They're not very big, are they?
A. No, sir.
Q. Maybe eight by eight (8x8), eight by ten (8x10), something like that?
A. Somewhere around there.
Q. Probably aren't even as big as those utility trailers you build, are they?
A. Not -- Not very much.
Q. And you definitely don't want to spend any time in a jail cell, do you?
A. Uh-uh.
Q. I mean, over on one side is you've got your little stainless steel bathroom, you know, your little potty?
A. Yeah.
Q. And over here on the other side you've got your little stainless steel sink?
A. Yeah.

Q. And right there in the middle you've got a bed that's got a little tiny thin mattress on it, (while indicating) about like that big; right?

A. I -- I don't know the -- what -- I don't know the jail cell you describing. The one I know the toilet and the sink are in together.

Q. Okay. The toilet and the sink are together? So that's even worse. And that bed's even worse, isn't it?

A. Yeah.

Q. Give you like a little sheet and a -- and a little tiny flat pillow?

A. (WHEREUPON, the witness nodded his head in the affirmative.)

Q. And while you're in jail, you've got somebody telling you when you can come out, don't you?

A. Uh-huh.

Q. And when you got to go to your room?

A. Uh-huh.

Q. And they've got people telling you what you can eat?

A. Yeah.

Q. And they got to tell them when you can eat?

A. Yes, sir.

Q. And you got people telling you who you can see?

A. Yes, sir.

Q. Who you can call?

A. Yes, sir.
Q. And what you've got to wear?
A. Yes, sir.
Q. You've got somebody telling you what to do all the time?
A. Yes, sir.
Q. You don't have much freedom in jail?
A. No, sir.
Q. And you definitely don't want to go to jail?
A. Yes, sir.
Q. Now, the State, in exchange for your testimony here today, they've offered you immunity, haven't they?
A. Yes, sir.
Q. And basically what that means is, no matter what you say, you're not going to be prosecuted for it, are you?
A. Yes, sir.
Q. That means you won't have to go to jail, will you?
A. No, sir.

MR. ANDERSON: Your Honor, that's all the questions I have of this witness.

THE COURT: Mr. Nettles?

MR. NETTLES: Thank you very much, Your Honor.

THE COURT: You know an awful lot about the jail, Mr. Anderson.

MR. NETTLES: It was kinda concerning me sitting over

here.

MR. ANDERSON: Just don't tell my mama and daddy, Your Honor.

THE COURT: I'm gone talk to your mama and your daddy.

CROSS-EXAMINATION BY MR. NETTLES:

Q. How you, Mr. Lowman?

A. I'm doing.

Q. Probably the last words to the question. All right?

A. Okay.

Q. Let me ask you a couple of questions. All right? Here's the deal. Tell me what -- You've been granted immunity?

A. Yes, sir.

Q. Tell me what that means to you?

A. I really don't know.

Q. You don't know what it means?

A. I just know what the little -- the -- the lawyer explained to me.

Q. Based on what the lawyer told you -- All right?

A. Uh-huh.

Q. What does---

THE COURT: Let's clarify that lawyer, that that's not the---

MR. NETTLES: Right.

THE COURT: ---solicitor. What lawyer? Ask him that.

BY MR. NETTLES:

Q. What -- What lawyer?

A. I---

Q. Was there another lawyer I -- When you say you talked to a lawyer, you're not talking about me; right?

A. No.

Q. Okay.

A. Neither one of y'all.

Q. (While indicating) And you're not talking about them?

A. No.

Q. Right. Yeah. Another lawyer came in here---

A. Yes, sir.

Q. ---and talked to you?

A. Yes, sir.

Q. Okay. And that lawyer and -- And you said that you discussed immunity with him. Right?

A. Yes, sir.

Q. Okay. After you discussed that with him, you formed an opinion or you have in your mind what immunity means to you; isn't that right?

A. Yes, sir.

Q. Okay. Share with us what that means to you.

A. Whatever I say today here can't be held against me.

Q. Can't be held against you.
A. Uh-huh.
Q. Right? And it also means you understand immunity to mean that no matter what you do nobody's gone charge you with perjury; isn't that right?
A. Yes, sir.
Q. Now, you know what perjury is, don't you?
A. I do now.
Q. You do now 'cause you know perjury is when you put your hand on the Bible and you tell these people that you're gonna tell the truth and you don't.
A. Uh-huh.
Q. Okay. Now, so if you didn't have a grant of immunity and you committed perjury, you could go to that little jail cell you and Mr. Anderson just discussed; isn't that right?
A. Uh-huh.
Q. Okay. But you don't have to worry about that now, do you?
A. No.
Q. 'Cause you've got what?
A. Immunity.
Q. Immunity. Not only that -- So you can pretty much get up there, and you can talk, and you can pretty much say anything you want to, can't you?

A. Oh, I doubt that.
Q. Well, nobody's gone put you in jail for it, are they?
A. (No response.)
Q. Huh?
A. I don't know.
Q. Well, you've got what?
A. Well, immunity. That don't mean I want to test it.
Q. That's right. But you know you don't have to worry about it, do you?
A. No, sir.
Q. I mean, it's got to feel a little bit better that no one -- that -- that -- that you're not going to jail after this, are you?
A. Yes, sir.
Q. Now, let's talk for a little bit about what -- whenever the police came to discuss this with you the first time. Okay? The first time they came to talk to you you were taken -- They didn't come to the -- They didn't ask you to come to the door, did they?
A. Of my home?
Q. Yes. At that three (3:00) o'clock in the morning visit you got.
A. No.
Q. Okay. As a matter of fact, what happened was they came to your bed.

A. Yes.
Q. You were in bed when the police came.
A. Yes, sir.
Q. Okay. That sort of thing doesn't happen very often, does it?
A. The first time it happened to me.
Q. Right. Okay. So I mean -- I mean, it -- it -- it's sort of a -- Would you agree with me that that's a little bit intimidating?
A. (No response.)
Q. Would you agree with me that's a little bit scary?
A. Yeah.
Q. Okay. And now so they came to you, and that sort of -- What you took from that experience or what you learned from that experience was that the police, if they wanted to, could come and appear beside your bed while you're in bed with your kid. You kind of realized that after that experience, didn't you?
A. Yes.
Q. And that's sort of a -- a scary experience, isn't it?
A. Yes.
Q. Okay. 'Cause certainly it's never happened to you before?
A. No, sir.
Q. And you don't want it to happen again, do you?

A. No, sir.
Q. Okay. Now, so they said, "We've made a drug deal. Well, we've not made a drug deal. We made a drug bust."
A. Uh-huh.
Q. And the room was in your name.
A. Yes, sir.
Q. And they told you who they'd arrested.
A. Yes, sir.
Q. Okay. And they told you they'd found some cocaine.
A. Yes, sir.
Q. Right. So they told you they'd found some items in the back of the car.
A. Yes, sir.
Q. Okay. They told you that they believed these people were guilty.
A. I don't remember that part.
Q. They told you they thought you may have some information they wanted.
A. Yes, sir.
Q. Okay. So in order to get that information they may want from you, they told you you need to come down to Effingham tomorrow.
A. Yes, sir.
Q. All right. So knowing that if you didn't go there's a good chance that the next morning you're gonna get

awaken again, you went to Effingham; right?

A. Now, I wasn't thinking that way now.

Q. Okay. But you now know that that could have happened.

A. I reckon, yes, sir.

Q. Yeah. Okay. So you go to Effingham; right?

A. Yes, sir.

Q. You get to Effingham; and, when you get to Effingham, the individual who had appeared beside your bed the night before discuss it. Talks to you.

A. Yes, sir.

Q. Okay. And after you talk to him, you leave and you go in the little room that you and Mr. Anderson discussed.

A. Yes, sir.

Q. Okay. And at that time, you gave them a statement?

A. Yes, sir.

Q. Okay. Now, you knew -- Because of the conversation you'd had at your bedside earlier that morning, about three (3:00) o'clock that morning, you knew that they had busted some people for some drugs; right?

A. Yes, sir.

Q. You knew that they had arrested some people for some drugs.

A. Yes, sir.

Q. Okay. You knew that they would -- that -- that you

could help them. You---
A. Yes, sir.
Q. ---had information that could help them.
A. Yes,---
Q. Right?
A. ---sir. Uh-huh.
Q. And you knew that if you said, "Look, man, those guys didn't have -- you know, that I didn't see nothing back there; I'm telling you I don't know anything; they didn't know anything about drugs," that that wasn't going to help them; isn't that right?
A. Well, could you repeat that again.
Q. Okay. Well, let's put it this way: You and I previously discussed just a second ago -- And I realize it may have -- it's my fault it may have gotten a little confusing, and I apologize. But you -- you discussed that you knew when you went in there that you -- that -- that -- that you -- that you could help them, help the police.
A. Uh-huh.
Q. Right?
A. Uh-huh. Yes.
Q. You knew that; right?
A. Yes, sir.
Q. Okay. And one of the ways you could help them is by telling them -- by -- by your account of what happened.

A. Uh-huh.
Q. Making it look like my client was involved in drug activity. That helps them; right?
A. Well, I don't think so.
Q. You don't think so. Okay. So you're under the impression that when you went in to talk to the police officers about this case that it -- that it did not help them to say that my client was involved in drugs?
A. I'm -- I really wasn't thinking about that.
Q. Okay. Well, let's talk about this then: When you went and gave a statement to Mr. Anderson -- All right. And I think you and Ander- -- Mr. Anderson talked about it and realized that it was some point in July; right?
A. Uh-huh.
Q. And Mr. Anderson didn't go get and stand beside your bed at three (3:00) o'clock in the morning, did he?
A. Mr. Anderson?
Q. (While indicating) This -- This gentleman right here.
A. No.
Q. Okay. And he didn't flash a badge at you.
A. No.
Q. Right. You know, as a matter of fact, that Mr. Anderson cannot arrest you, don't you?
A. Can not own me?
Q. No. Mr. Anderson -- I'm sorry. -- cannot arrest

you. I mean, he's not a police officer.
A. No. And I -- I don't think so.
Q. No. Well -- Okay. Trust me. He's not a police officer. All right. He doesn't wear a uniform; right?
A. Umm.
Q. You've never seen him with a gun?
A. No.
Q. Okay. Never seen him with a badge?
A. No.
Q. Okay. Never seen him driving a police car with the little -- you know, whatever police cars look like; right?
A. No.
Q. Okay. So you went to his office, and he just called you; right?
A. Yeah. He called me several times.
Q. Okay. But that's how he got in touch with you.
A. Uh-huh.
Q. Okay. Not by standing beside your bed at three (3:00) o'clock in the morning.
A. Uh-huh.
Q. Okay. And he asked you, as a matter of fact, am I threatening you, forcing you to say anything.
A. (WHEREUPON, the witness nodded his head in the affirmative.)
Q. And you said, "No, sir."

A. (WHEREUPON, the witness nodded his head in the affirmative.)

Q. Isn't that right?

A. Yes, sir.

Q. And he asked you "if you made a prior statement, you know, one before today, to police officers or to the Sheriff's Department that Eddie was dealing drugs in South Carolina, selling drugs, were you telling the truth when you made that statement?"

A. Yes, sir.

Q. And you said, "I would say no." Isn't that right? (While handing document) See right there.

A. Which one you at?

Q. (While indicating) Right here.

A. All right.

Q. Right. Okay. Now, let's talk for a second about this question. Okay. Let me read this question to you again, if you don't mind. "If you made a prior statement, you know, one before today, to police officers or to the Sheriff's Department that Eddie was dealing drugs in South Carolina, selling drugs, were you telling the truth when you made that statement?"

And you said, "I would say no." That's what you said; right?

A. I see it on there, but I---

Q. Huh?

A. ---don't remember saying it. I see it on there.

Q. Okay. So then what you're saying is --.

MR. NETTLES: (To Mr. Anderson) Do you have that signed statement?

THE COURT: Let me make a -- ask a question, and the reason I'm asking it is I just got a note that the jury's lunch is here, and I don't---

MR. NETTLES: This is gone---

THE COURT: ---want to---

MR. NETTLES: ---be pretty long.

THE COURT: Beg your pardon?

MR. NETTLES: This is gone be pretty long. I -- I'll be happy to cut in the middle of it.

THE COURT: Well, I don't want to limit you at all.

MR. NETTLES: You're not limiting me. I'm getting hungry, too.

THE COURT: All right, sir.

MR. NETTLES: Okay.

THE COURT: All right. I wonder if -- wonder if you might in- -- indulge me the question; and, if y'all have an objection, ask it (sic).

EXAMINATION BY THE COURT:

Q. Mr. Rush, what I want to know -- He was asking about to where you were being questioned and then being

questioned and by the -- Were you in any time attempting to help or assist the law enforcement officers in their investigation. And were you attempting at any time in giving these statements to -- to attempting or motivated to help Mr. Blass (sic) or Mr. Monfrizz. Tell us about your motivation. Did you want to help law enforcement?

A. Well,---

Q. Did you want to help the pe- -- the people that'd been charged?

MR. NETTLES: Judge,---

THE COURT: What was your motivation?

MR. NETTLES: Judge, could I ask if I could get into that after lunch?

THE COURT: Beg your pardon?

MR. NETTLES: Could I ask if I could get into that after lunch?

THE COURT: Yes, sir.

MR. NETTLES: I promise that, if -- if -- as I well know, if I hadn't clear it up, you'll ask it.

THE COURT: All right, sir.

MR. NETTLES: Thank you. I appreciate it.

THE COURT: All right, sir.

Clarification information only time I ask question. I don't want y'all's lunch to get cold.

(To the witness) And you on the witness stand, and

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you'll have to stay in the courtroom. You can't talk to the lawyer. You can't talk to anybody. You mentioned earlier when they were in there that you wanted to speak with your brother. I can't do that for you.

(To the jury) And I want to say to you, you know, it's kind of like I told you the National Security Advisor to the President and the C.I.A. I'll tell you what you need to know when you need to know it. The developments you saw as to the immunity that was granted, he was getting into a situation caused me some concern. It was my initiative to call the public defender and have him come down and talk to him and advise him of his rights; and, of course, with immunity, he was in no jeopardy or peril, any at all; and he then can be commanded to testify; and I didn't have to do that. He -- He -- He indicated he understood it, and he wished to continue his testimony. I could have ordered him to do it. He had not done it. I could have held him in contempt, but that doesn't prejudice anybody, but I thought you'd seen those things. You -- You should be aware of it. This satisfies your curiosity.

Now, please don't discuss this case among yourselves. Keep an open mind. Don't give any thought to this yet. You hadn't heard all the testimony. The State's got further witnesses. We don't know at this point what the

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defense strategy is or may not (sic); and they may assert certain constitutional rights; and, if they do, it not relevant. They can't be compelled to do anything.

But enjoy your lunch; and, when you have finished your lunch, take your time. Don't want you to have heartburn. Digest your food; and, when you are ready to come, don't want you to feel like, you know, you are being pressured to come back out here immediately; but, when you are ready to return, then we'll continue the cross-examination of Mr. Rush; and we'll continue to take the rest of the testimony in the case; and we'll -- I'll -- I don't think there's any question today we gone -- we'll -- we'll finish the testimony.

I've not made a decision as to this point yet whether we'll have summation or charge of the law today, but I'd like to do both of them at the same time. I don't want to separate them. I told you about that yesterday.

Enjoy your lunch.

Bring the food. We'll be at ease.

(WHEREUPON, at 1:06 p.m., jury returned to jury room; and the following proceedings were had outside the presence of the jury:)

THE COURT: We'll make some arrangements to get Mr. Rush something to eat? And I would say we'll be at least a half an hour or longer, and I hate to recommend these

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fast food places to you. I'll share whatever I've got with you. I don't know what I have.

We'll be at ease. If you gone be gone over half an hour, tell us where you gone be or what office you gone be.

DEPUTY SHERIFF: Judge, can I ask him if he wants me to bring him something?

THE COURT: Yes, sir. If you would, we'd appreciate that.

(WHEREUPON, the deputy sheriff conferred with the witness regarding lunch; and the deputy clerk started serving lunch to jurors.)

THE COURT: Hamburger, cheeseburger.

MS. PARR: Your Honor, may be ask that he be able to step down?

THE COURT: Yeah. He can -- He can step down and sit down there as long as he doesn't leave the courtroom.

I need another -- I need a bailiff or another -- He is under the -- under no custody, but I need to --.

(To the deputy clerk) Close that door for just a moment. We can't do that.

MS. PARR: The door is---

THE COURT: I just -- He's on the witness stand.

MS. PARR: The door is open.

THE COURT: And he's -- he's---

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MS. PARR: The door is open.

THE COURT: He's -- This gentleman -- That's all right.

(To the deputy sheriff) If he needs to go to the men's room or anything like that, accompany (sic) because no one can speak to him or talk to him while he's on the stand.

(WHEREUPON, the court and attorneys conferred regarding attorneys leaving for lunch.)

THE COURT: (To the witness) No telephone if you need to make call.

All right. We at -- We at ease to eat lunch.

(WHEREUPON, at 1:08 p.m., court stood in recess for lunch; and at 1:59 p.m., court reconvened, with Defendant Blash and counsel for all parties present in the courtroom and with the witness returning to witness stand.)

THE COURT: We'll have the jury.

(WHEREUPON, at 2:00 p.m., jury returned to open court; and the following proceedings were had within the presence of the jury:)

THE COURT: Tomorrow we might have seafood dinner or seafood platter, and they give you enough to feed three people. Whoo. We got three places, and it depends on where we are. It'll either be that or the Town House that they'll bring the food. This place where we ate today,

though, has had a reputation of having the best chicken. That's how they got on the list.

Like I told you yesterday about your glucrose (sic) levels, just be aware of that. It ain't gone bother me if I see you jumping up and down over there, and I don't want you to not to doze off on me (sic).

All right. We're ready to proceed. Cross-examination being conducted when we took a break, Mr. Nettles.

MR. NETTLES: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. NETTLES (continued):

Q. I believe that when we left, Mr. Rush, I had asked you a question about a statement that you had given to Mr. Hank Anderson. Do you remember that?

A. Uh-huh.

Q. And I had -- I was getting ready to ask you -- I -- I think the question I had asked you was you remember being called -- Rath', do you recall or do you remember being asked, "If -- if you made a prior statement, you know, one before today, to the police officer or to the Sheriff's Department that Eddie was dealing drugs in South Carolina, selling drugs, were you telling the truth when you made that statement?"

And you said -- Or -- Even before lunch, you said that you agreed that you'd said "I would say no."

A. Right.

Q. Right. And I think I was getting ready to ask you if this was your signature here. (While indicating) Is that your signature?

A. Uh.

Q. Is that right?

A. Yeah.

Q. Good. And -- And you signed this after you read this; right? You read over this and then signed it; right?

A. I don't remember it, but maybe.

Q. Well, I mean, you know, Mr. Rush, I mean, now maybe you are. Are you in the habit of signing documents that you haven't read?

A. No. I just don't remember.

Q. Right. Okay. But -- But the fact that you signed that,---

A. Uh-huh.

Q. ---(while indicating) while you may not remember reading this, you would agree with me---

A. That---

Q. ---that the fact that you signed it---

A. Yeah. That's my signature.

Q. That's your signature. And the fact that -- that you agreed this is your signature and (while indicating)

you're not denying it's attached to this---
A. No.
Q. ---and you're not denying that you gave this statement---
A. Yeah.
Q. ---is pretty good evidence, while you may not actually remem' do' it, but that you did read it before you signed it.
A. I'm pretty sure I did.
Q. Okay. So now that statement was given to Mr. Blash's lawyer.
A. Right.
Q. Right?
A. Yeah.
Q. And he -- That's your cousin's lawyer.
A. Right.
Q. Right?
A. Yes.
Q. Now, in this statement, you said that your relationship to -- that your relationship to Mr. Monfries was that he was basically a stranger to you. You didn't know him.
A. No. I don't know him.
Q. Oh -- You don't know him; right?
A. No.

Q. Okay. Now, so that this statement -- (While indicating) Certainly the fact that -- that you said in here in this statement that he -- that -- that -- that Mr. Blash didn't have anything to do with drugs, that you didn't see any drugs, and that, if -- if you had said in the past that he did have anything to do with drugs, that that was not true. Well, I mean,---

A. Yeah.

Q. ---that's what -- I mean, I just read you that; right?

A. All right.

Q. That's what you said; right?

A. Yeah.

MR. LAWSON: Objection, Your Honor. That's not what it says. That's not what the question was.

MR. NETTLES: Fine. I'll rephrase it.

MR. LAWSON: The question was---

MR. NETTLES: I'll rephrase it. I'll rephrase it.

THE COURT: He -- All right. He's withdrawn it.

BY MR. NETTLES:

Q. You (sic) said, "if you made a prior statement, you know, one before today, to the police officers or to the Sheriff's Department that Eddie was dealing drugs in South Carolina, selling drugs, were you telling the truth when you made that statement?"

And you said, "I would say no." Right?

A. Uh.

Q. Okay.

A. Right.

Q. That statement. I mean, that statement. I kind of took that to mean and you took that to mean, at that time when you answered that question, that if you had said in the past that if he was involved in drugs that that wasn't true; right?

A. Yes.

Q. Okay. Now, that helped -- You understand that that statement that you made helped Mr. Blash's case; isn't that right?

A. I don't know.

Q. Okay. You can't -- You can't conceptualize or you can't figure out or you can't---

A. I can't -- I don't know who it helped.

Q. I understand. But -- But would you agree with me that that probably helped Mr. Blash?

A. Yeah, if you say so. I don't know.

Q. Well, I'm not saying so. I'm asking you.

A. I don't know.

Q. Okay. Now, the third statement that you gave was you came to -- You couldn't remember exactly whose office it was; but you said it was an office across the street here;

and you had to go up the steps, push the little button, and talk.

A. Yeah.

Q. Okay. And you went up there, and you gave another statement, a third statement.

A. Yes.

Q. Okay. In that statement, you said you -- you were giving it to Michael Monfries' lawyers.

A. Uh-huh.

Q. Right?

A. Yes, sir.

Q. Now, you didn't -- you didn't give it to his lawyer. You gave it to an investigator, a -- a---

A. Yeah.

Q. ---male.

A. Yes.

Q. Right. Okay. And -- And -- And in that statement, you -- they typed it up; and they brought it back.

(WHEREUPON, Mr. Nettles conferred with Ms. Jackson.)

BY MR. NETTLES:

Q. And you went back to her office on a later date, and you signed that statement. You read it over, and you signed it.

A. Uh-huh.

Q. Okay. Now -- And in that statement, you said -- the

one given to Mr. Monfries' lawyers -- I'm sorry. In that statement, you said you remem' -- you were asked, "Have you been forced to give this statement that you are giving here today?"

And you said, "No, I'm not being forced." Right. So---

A. Uh-huh.

Q. ---certainly nobody from Ms. Jackson's office came to your house at three (3:00) o'clock in the morning; right?

A. No.

Q. With -- While you were in bed with your girlfriend and you -- and your son and said "be at my office in the morning to give a statement," nobody from her office did that, did they?

A. No.

Q. Okay. Her investigator didn't do that.

A. No.

Q. Okay. So, as a matter of fact, Ms. Jackson has never been in your house, has she?

A. No.

Q. I mean, she doesn't have the ability to just march into your house, does she?

A. No.

Q. Okay. So, I mean, you -- you were asked, "Do you know of any drug activity that Eddie Blash was involved

in?"

And you said, "No." Right?

A. Uh-huh.

Q. And you were asked, "Do you know of any drug activity that Michael Monfries was involved in?" Right?

A. Uh-huh.

Q. Isn't that right you were asked that?

A. Yes.

Q. Okay. And you didn't say -- At that time, you didn't say, "Well, look, I got to be honest with you." Okay. There's this thing about this guy named Trap. Was that his name?

A. Yeah.

Q. Trap.

A. Uh-huh.

Q. That lives over there in the -- in the park where you lived.

A. I -- He -- I -- He don't live out there.

Q. But he -- You've seen him out there.

A. I see him out there.

Q. And you know that if you went out there, within a certain amount of time, you could probably bump into him.

A. Uh-huh.

Q. Right. And you didn't say to them, "Look, guys, I promise to tell you the truth; so what you need to do is

-- is go out there and talk to Trap because I think he was talking to them." You didn't say anything about that, did you?

A. No.

Q. Okay. And you didn't say -- You (sic) said, "Do you know of any drug activity?"

And you said, "No." Right?

A. Uh-huh.

Q. Now, they also talked to you about -- They also talked to you. Whenever you came to Mr. -- When you came to Ms. Jackson's office, they talked to you about what happened when the statement was taken by (while indicating) that man, didn't they?

A. Uh-huh.

Q. Okay. And one of the things they said was explain why you gave the statement to the Sheriff's Department; right?

A. Uh-huh.

Q. They asked you that question. You 'member that?

A. Yes.

Q. Okay. And your answer was this: "Really, basically, I was scared."

MR. LAWSON: Objection, Your Honor. That's improper foundation. I think he needs to ask -- to lay the proper foundation for the statement as to whether or not the --

the witness recalls having made the statement and then give him the opportunity to review it.

MR. NETTLES: That's fine.

BY MR. NETTLES:

Q. Do you remember what you said to that question?

THE COURT: Sustained.

WITNESS RUSH: I done forgot the question now.

BY MR. NETTLES:

Q. Okay. (While handing document) If you'll look at that, will that help you any?

A. (Looked at document.)

Q. Okay.

A. All right.

Q. That's what you said, isn't it?

A. It's down there. I don't remember it.

Q. You don't remember, but---

A. I don't remember.

Q. But certainly, whenever you went to go sign it, you didn't say "I didn't say that." Are you denying you said it?

A. No. I ain't -- I ain't said that.

Q. Okay. So you would agree with me that what you said was -- Read to the jury what you said on that day.

A. I -- I see it.

Q. Okay.