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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

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1 A. Yes.

2 Q. Would you like for me to read it to the jury?

3 A. Well,---

4 Q. What you said that day.

5 MR. NETTLES: Request to publish it to the jury, Your
6 Honor.

7 (Pause.)

8 MR. NETTLES: Your Honor, may I publish it to the
9 jury?

10 THE COURT: You may.

11 MR. NETTLES: Mr. -- Question: "Explain why you gave
12 the statement to the Sheriff's Department."

13 Answer: "Really, basically, I was scared. They was
14 telling me something about jail. Being in the jailhouse
15 at that time, I was just -- it just scared me. I was just
16 ready to say something to hurry up and get out of there."

17 BY MR. NETTLES:

18 Q. So that was really coming from being afraid; right?
19 Yeah.

20 A. Yes.

21 Q. Now, you're -- Remember you're talking about that.

22 A. Yes.

23 Q. Just so we all know, you're talking about, "Look,
24 man, I was in the jail; and I was scared." And what you
25 didn't say in here but what we've talked about earlier was

1 they'd been at your house at three (3:00) o'clock in the
2 morning of that morning; right?

3 A. Uh-huh.

4 Q. Now, they also talked to you about the fact that
5 there was a tape that was made while you were -- while you
6 were being questioned at the Sheriff's Department; right?

7 A. A tape?

8 Q. A tape. There was a tape recorder.

9 A. Oh, yeah.

10 Q. Okay. And they kept cutting the tape off, didn't
11 they?

12 A. On my behalf?

13 Q. Yes.

14 A. Yes.

15 Q. They would ask you a question; and you would say, "I
16 don't know." They'd cut the tape off, and they'd talk to
17 you about what happened. And then they'd say, "Okay. We
18 can go back on the tape." Isn't that right?

19 A. I don't remember that.

20 Q. Okay. (While handing document) Well, read this for
21 me if you don't mind. Read -- (While indicating) Start
22 right there, if you don't lind (sic); and you can read
23 through to the next page.

24 A. (Looked at document.)

25 Q. Okay. Now, at least as to what you said on that day

1 in Ms. Jackson's office, ---

2 A. Uh-huh.

3 Q. ---does that refresh your recollection about what you
4 said on that day?

5 A. Yes.

6 Q. Okay. So let's talk about what you said on that day.
7 You told them that law enforcement -- They talked to you
8 before they started the tape; right?

9 A. Uh-huh.

10 Q. Okay. They started the tape, and they would ask you
11 questions. And sometimes you'd go, "I don't know." And
12 they'd shut the tape off; right?

13 A. Yes.

14 Q. And then they'd talk to you off the tape; right?

15 A. Yes.

16 Q. And then whenever, you know, they looked like they
17 were kind of happy with what you were saying, they'd cut
18 the tape back on; right?

19 A. I don't -- I don't -- I don't want to say yes on that
20 one. I don't under---

21 Q. Okay. Well, let---

22 A. ---stand that one.

23 Q. ---me ask you this: They would talk to you for a
24 little bit off the tape, and then they'd cut the tape back
25 on and then start -- ask you the question again; isn't

1 that right?

2 A. Yes.

3 Q. Okay. They asked you, "Did Michael Monfries ever
4 tell you something that he was coming here to sell drugs?"
5 You---

6 A. No.

7 Q. ---told them no, didn't you?

8 A. No.

9 Q. He never told you he was coming here to sell drugs,
10 did he?

11 A. No.

12 Q. Okay. Michael Monfries never told you that he was
13 coming there to cook crack cocaine, did he?

14 A. No.

15 Q. As a matter of fact, do you remember being asked the
16 question: "Okay. Mr. Rush, I believe that this is going
17 to do it. I want to reiterate that you know you are
18 giving this statement on your own free will with no
19 coercions, no threats, or promises made by myself or
20 others." Do you remember what your answer was to that
21 question?

22 A. Probably yes.

23 Q. What was your answer?

24 A. I'll say probably yes.

25 Q. Okay. Well, you want to read what your answer was on

1 that day? (While indicating) That'd be the last thing
2 that's underlined there.

3 A. (Looked at document.)

4 Q. What was your answer?

5 A. These words come out of my mouth---

6 Q. Your ans---

7 A. ---and my own free will. Them words---

8 Q. That them words that you had told them had come out
9 of your own -- own mouth. That's what you told them,
10 isn't it?

11 A. Yeah.

12 Q. They didn't tell you to say that, did they?

13 A. No.

14 Q. I mean, you could have said -- you could have said,
15 "Look, guys, I need to tell y'all something; your guy is
16 involved in drugs." You could have told them that,
17 couldn't you?

18 A. I mean, yes.

19 Q. I mean, you know, but you choose on that day to say,
20 "Look, what I've told y'all has come out of my own mouth."
21 That's what happened.

22 A. Yes.

23 Q. This guy didn't have any involvement in any of this;
24 right?

25 A. (No response.)

1 Q. Now, let's talk for a second. You talked to Mr.
2 Anderson. You discussed the statement. We're gone go
3 back to the statement that you gave to law enforcement.

4 All right?

5 A. Uh-huh.

6 Q. Fair enough. You with me?

7 A. Yeah.

8 Q. Okay. And in that statement, you told Mr. Anderson;
9 and I believe you said it was a -- that the statement you
10 gave to him was a complete, truthful, and accurate account
11 of what happened.

12 A. Uh-huh.

13 Q. You remember that?

14 A. (No response.)

15 Q. And you may need this. I'm gone give you a copy.
16 (While handing document) Do you recognize that as being
17 the statement you gave to law enforcement?

18 A. Yes.

19 Q. Okay. And in your complete and truthful and accurate
20 statement that you gave to law enforcement, could you tell
21 me where it mentions anything about -- in there about
22 going to the Magnolia Mall?

23 A. (Looked through document.)

24 Q. (While witness looking through document) And -- And
25 just let me -- I'll -- I'll put two questions together

1 'cause if they're in there they'll be in the same place.
2 Going to the Magnolia Mall -- On direct you said you went
3 to Magnolia Mall and you met a man there that you say my
4 client talked to, and just show me where in your com- --
5 your complete, truthful, and accurate statement that's
6 mentioned.

7 A. (Continued looking through document.) I see where it
8 say where we rode to the mall.

9 Q. Okay. But do you see anything about meeting anybody
10 there? About a conversation?

11 A. No.

12 Q. Okay. Now -- And do you say anything about the
13 bowling alley in there?

14 A. No. I ain't---

15 Q. Gonna go pick your girlfriend---

16 A. Uh-huh.

17 Q. ---up at the bowling alley.

18 A. No.

19 Q. Did you say anything -- You didn't say anything about
20 the Outback Steak House.

21 A. (Looked at document.) Not here, no.

22 Q. Now, you know, may I have that back? I mean, unless
23 you need it.

24 A. (While handing document) No.

25 Q. Thank you. Before we broke for lunch, and let's be

1 clear about this -- I'm sorry. Let me ask you this; let's
2 be clear about this: I have never -- You've never even
3 met me, have you?

4 A. No.

5 Q. Okay. And I nor Ms. Jackson have ever offered you
6 immunity; right?

7 A. No.

8 **MS. PARR:** Any -- Objection---

9 **MR. LAWSON:** Objection, Your Honor. The defense has
10 no authority to offer immunity.

11 **MR. NETTLES:** That's right. That's my point. That's
12 exactly my point.

13 **THE COURT:** Yes, sir. I'm gone sustain the
14 objection. He doesn't have the authority, but he could
15 still ask the question.

16 **BY MR. NETTLES:**

17 Q. Okay. And as you now may know from listening to him,
18 I don't have authority to offer you immunity, do I?

19 A. No.

20 Q. I mean, I can't -- I can't threaten to put you in
21 jail, can I?

22 A. No.

23 Q. I can't threaten to send somebody over there and go
24 to your house at three (3:00) o'clock in the morning, can
25 I?

1 A. I don't think so.

2 Q. Neither can Mr. Anderson, can he?

3 A. I reckon not.

4 Q. I mean, (while indicating) the only people that can
5 do that sits right there, aren't they?

6 A. I don't know.

7 Q. Well, they've done it, haven't they?

8 A. When?

9 Q. Well, you told us that at one point somebody showed
10 up at your house that was law enforcement, police officer,
11 who showed up at your house at three (3:00) o'clock in the
12 morning; right?

13 A. Uh-huh.

14 Q. Okay. You told us that they've offered you and given
15 you immunity; right?

16 A. Yes, they---

17 Q. And you've told us that immunity means that -- that
18 no matter -- that you can't be held accountable and you
19 can't be punished for anything you say today; isn't that
20 right? You told us that---

21 A. Yes.

22 Q. ---before lunch; isn't that right?

23 A. Yes.

24 Q. Now, you made this -- I'm -- I've got to hand it to
25 you. -- a very -- You also made a sort of a funny mark --

1 remark that you didn't want to test it, didn't you?

2 Right? You---

3 A. Yeah.

4 Q. ---remember that? That was kind of funny, wasn't it?

5 But you know what the bottom line is. You'll never have
6 to know whether you're testing it, will you?

7 A. (No response.)

8 Q. Huh?

9 A. I don't know.

10 Q. Because you'll never be prosecuted for anything you
11 say today; isn't that right?

12 A. Yeah.

13 MR. NETTLES: Thank you.

14 **EXAMINATION BY THE COURT:**

15 Q. Mr. Rush, the statement that you gave to the
16 defendants' lawyers and Ms. Jackson's investigator and to
17 Mr. Anderson that you had no knowledge of the defendants
18 being involved with drugs, was that a true statement? Or
19 was it false?

20 A. May I ask you to repeat -- repeat that real quick?

21 Q. The statement that you gave to the defendants'
22 lawyers -- That's Ms. Jackson's investigator, I understand
23 took the statement.

24 A. Uh-huh.

25 Q. You later came back to her office and signed it. And

1 then Mr. Anderson, he also took a statement from you; and,
2 in both those statements to the lawyers representing the
3 defendants, you indicated in those statements that you had
4 no knowledge of either Mr. Monfrizz or Mr. Blass (sic)
5 being involved with drugs. And my question is, was that
6 true? Or was it false? You know whether---

7 A. Well,---

8 Q. ---the statement you gave,---

9 A. ---to my---

10 Q. ---whether that was true or false based on every
11 thing else you've testified. Was that a true statement or
12 a false statement?

13 A. To my knowledge, it was true because I didn't witness
14 no, you know, tran- -- transactions going on. You know,
15 as fur as money changing hands.

16 Q. You're qualifying your answer. I'm gone ask you
17 again. Now, I can hold you for contempt. I want a direct
18 answer.

19 A. All right.

20 Q. When you gave that statement to the defendants'
21 lawyers, you had no knowledge of their being involved with
22 drugs. Now, you're immune from this answer.

23 A. All right.

24 Q. Was -- Did you know it was true? Or did you know
25 when you gave that statement it was false?

1 A. True.

2 Q. Beg your pardon?

3 A. True.

4 Q. Truth. You had no knowledge about them dealing in
5 drugs?

6 A. No.

7 **THE COURT:** Anything on redirect?

8 **MR. LAWSON:** May it please the court?

9 **THE COURT:** Oh, there was one question more, if you
10 cou- -- will indulge me.

11 **BY THE COURT:**

12 Q. Were you trying to help law enforcement when you gave
13 that statement so you didn't have to go to jail? And when
14 you answer that one, let's follow with the next question.
15 Were you trying to help the defendants in the statements
16 that you gave? The first question first. Was what you
17 said to the law enforcement officers when they were
18 question' you at the jail -- Was that true?

19 A. Yes.

20 Q. Were you trying to help law enforcement? Or you
21 trying -- What was your motivation?

22 A. Well, really,---

23 Q. Trying to help anyone?

24 A. I wasn't really thinking about helping no one.

25 Q. Helping anybody.

1 A. No.

2 Q. All right. And when you gave the statement to the
3 defendants' lawyer (sic), were you trying to help your
4 cousin and Mr. Monfrizz (sic)?

5 A. Not really. I just really ain't want nothing to do
6 with it.

7 Q. That doesn't answer my question. Were you trying to
8 help them in---

9 A. No,---

10 Q. --giving that---

11 A. No, sir.

12 Q. ---statement to their lawyer (sic)? You went there
13 voluntarily.

14 A. Yes. The thing---

15 Q. You trying to help them?

16 A. Well, they -- they was done call me, you know, when
17 they---

18 Q. You're skirting my question. I'm gone ask you again
19 a direct question.

20 A. All right.

21 Q. Do you understand what I'm saying to you?

22 A. Yes, sir.

23 Q. Were you trying to help them when you went to see
24 their lawyers when you gave that statement?

25 A. Well, see, yes -- yes, sir.

Lowman "Timmy" Rush III - Redirect by Mr. Lawson 514
Lowman "Timmy" Rush III - Examination by the Court
Lowman "Timmy" Rush III - Redirect by Mr. Lawson (cont'd)

1 Q. What?

2 A. Yes, sir.

3 THE COURT: Anything further? Redirect?

4 MR. LAWSON: May it please the court?

5 REDIRECT EXAMINATION BY MR. LAWSON:

6 Q. At the time that you took the stand today, Timmy,
7 were you on -- were you under immunity at that time?

8 A. Sir?

9 Q. Did you have immunity when you took the stand and
10 started testifying?

11 A. (No response.)

12 EXAMINATION BY THE COURT:

13 Q. Had the State promised not to prosecute you?

14 A. Yes, sir.

15 Q. For your -- Did they do that before you took the
16 stand?

17 A. (No response.)

18 Q. When did they tell you that? When did they grant you
19 immunity?

20 A. Before?

21 Q. Before or after you began to testify?

22 A. Before?

23 REDIRECT EXAMINATION BY MR. LAWSON (continued):

24 Q. Be- -- Sir, do you understand the question?

25 A. No, not really, I don't.

1 Q. All right. Do you remember when the issue of
2 immunity came up?

3 A. Yes.

4 Q. And when was that?

5 A. When the -- When I talked to that lawyer.

6 Q. Okay. And was that during your testimony? You had
7 already been testifying; right?

8 MR. NETTLES: Objection.

9 WITNESS RUSH: Yes.

10 MR. NETTLES: That's leading.

11 WITNESS RUSH: That was when---

12 THE COURT: But he had already been testifying.

13 WITNESS RUSH: That's when after---

14 MR. NETTLES: Well, I -- I understand that, but I'd
15 like to hear it from him, you know.

16 WITNESS RUSH: That was---

17 THE COURT: No, he ain't got a complete lapse of
18 memory.

19 WITNESS RUSH: That was after the judge stopped the
20 hearing.

21 BY MR. LAWSON:

22 Q. All right, sir. So when you first came to the stand
23 and swore to tell the truth and sat down and I started
24 questioning you,---

25 A. Uh-huh.

1 Q. ---had you -- had you heard anything about immunity
2 at that time?

3 A. Oh, no. No.

4 Q. All right. So it was during the testimony that that
5 issue came up?

6 A. Yes.

7 Q. All right. Now --.

8 **MR. LAWSON:** May I approach, Your Honor?

9 **BY MR. LAWSON:**

10 Q. (While handing document) This is the statement that
11 you gave to law enforcement on the 11th of April, 19- --
12 of 2000. And it starts on page ten (10) -- on page eight
13 (8) and goes to page nine (9). Is there some reference
14 there about the mall?

15 **MR. NETTLES:** Your Honor, he -- I -- This is improper
16 redirect at this time. I asked him that question. He
17 said, "We went to the mall." And I said, "But you didn't
18 say anything about meeting anybody?" This is improper
19 redirect. He's already answered this question on my
20 cross.

21 **MR. LAWSON:** May it please the court? On -- If I can
22 go to page nine (9), there is a response to a question
23 about meeting someone at the mall.

24 **THE COURT:** Yeah, but that -- But that was covered in
25 your -- in your cross; and, on redirect, what you cover in

1 your cross, on redirect, he could go into any -- not any
2 new matters---

3 **MR. NETTLES:** Right.

4 **THE COURT:** ---but in the information that you
5 brought out---

6 **MR. NETTLES:** Very well,---

7 **THE COURT:** ---in your---

8 **MR. NETTLES:** ---Your Honor.

9 **THE COURT:** ---examination.

10 All right, sir. You can answer the question.
11 Overruled.

12 **WITNESS RUSH:** Repeat that.

13 **BY MR. LAWSON:**

14 Q. Do you see any reference in this statement as to
15 meeting anyone at the mall?

16 A. (Looked at document.) Yes.

17 Q. You were asked if you meet someone at the mall?

18 A. Yes.

19 Q. And what was your response?

20 A. Yes.

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

22 **THE COURT:** Anything further, Mr. Lawson?

23 **MR. LAWSON:** Yes, Your Honor.

24 (WHEREUPON, Mr. Lawson continued conferring with Ms.
25 Parr.)

1 BY MR. LAWSON:

2 Q. Now, in your statement to law enforcement in response
3 to the question asked by Mr. Anderson, did you ever, in
4 your statement to law enforcement, tell them that Mr.
5 Blash was involved in selling drugs?

6 A. No, sir.

7 Q. And so when you told Mr. --.

8 MR. LAWSON: Where's the statement?

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

10 BY MR. LAWSON:

11 Q. When you were asked, "If you made a prior statement,
12 you know, one before today, to the police officer or to
13 the Sheriff's Department that Eddie was dealing drugs in
14 South Carolina, selling drugs, were you telling the truth
15 when you made that statement", you said, "I would say no."

16 The truth of the matter is you never said that---

17 MR. NETTLES: Objection. That's leading.

18 MR. LAWSON: Is it true that you---

19 MR. NETTLES: Objection. That's leading.

20 BY MR. LAWSON:

21 Q. Did you ever say that to law enforcement?

22 A. Can you repeat it now? Now you getting me confused.

23 Q. You were asked a question---

24 A. Uh-huh.

25 Q. ---that says, "If you made a prior statement, you

1 know, one before today, to the police officer or to the
2 Sheriff's Department that Eddie was dealing drugs in South
3 Carolina, selling drugs, were you telling the truth when
4 you made that statement?"

5 Your answer was, "I would say no."

6 A. Uh-huh.

7 Q. Did you ever make that statement to law enforcement?

8 A. Yes.

9 Q. You -- You did?

10 A. Yes.

11 Q. You told them that Eddie was dealing drugs?

12 A. Oh. I misunder- -- Or you misunderstood that. Did
13 I? You ax me did I tell---

14 **THE COURT:** Let me -- That's a simple question now,
15 and I want a straight answer to it.

16 **WITNESS RUSH:** All right.

17 **THE COURT:** All right. Ask him that question again.

18 **BY MR. LAWSON:**

19 Q. Did you tell law enforcement that your cousin, Eddie
20 Blash, was selling drugs in South Carolina?

21 A. Before? I---

22 **EXAMINATION BY THE COURT:**

23 Q. Yes or no. Did you ever make that statement?

24 A. I don't -- I just don't remember. I don't remember.

25 **MR. LAWSON:** So---

1 **BY THE COURT:**

2 Q. You don't deny you could have made that statement?

3 A. I ain't denying it. I just don't remember.

4 **THE COURT:** Anything further, Mr. Lawson?

5 **MR. LAWSON:** I don't have any other questions.

6 **THE COURT:** Any, Mr. Anderson, recross?

7 **MR. ANDERSON:** Nothing, Your Honor.

8 **THE COURT:** All right, sir. I just wanted to make
9 sure I extended you that courtesy. I'm kind of bad
10 sometimes.

11 All right. You can come down.

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

14 **THE COURT:** The State have further witnesses.

15 **MS. PARR:** Yes, Your Honor. We would call Melissa
16 Horne.

17 **THE COURT:** Do not discuss your testimony now, Mr.
18 Rush, with any witnesses that you see coming. Don't talk
19 to anyone about this testimony 'til this trial testimony
20 is concluded.

21 **MELISSA T. HORNE,** being
22 first duly sworn, testified as follows:

23 **CHIEF DEPUTY CLERK GREGG:** Be seated, and state your
24 name for the record.

25 **WITNESS HORNE:** My name is Melissa T. Horne.

1 **DIRECT EXAMINATION BY MS. PARR:**

2 Q. Ms. Horne, where are you employed?

3 A. I work for South Carolina Law Enforcement Division,
4 also known as SLED.

5 Q. Okay. And what is your occupation or profession?

6 A. I am a criminalist in the Drug Analysis Department at
7 SLED.

8 **THE COURT:** Let me stop you right here. You -- Are
9 you gentlemen familiar with this lady's qualifications?
10 Would you admit her qualifications as an expert, as a
11 chemical analyst for SLED?

12 **MR. NETTLES:** Well,---

13 **MR. ANDERSON:** Judge, I've never had the opportunity
14 to---

15 **THE COURT:** I'm gone let you ask her questions and
16 examine her.

17 **MR. ANDERSON:** I don't know anything about her, Your
18 Honor. I've seen her name on a report.

19 **THE COURT:** We'll let her go a little bit further.
20 Do you -- Either Ms. Jackson or Mr. Nettles---

21 **MR. NETTLES:** I'm sort on in the same boat as Mr.
22 Jackson's -- I mean, Mr. Anderson, Your Honor.

23 **THE COURT:** All right. Go ahead. You may --.

24 At the point where y'all are willing to admit her
25 qualifications, would one of you raise your hand? We

1 could go through a lot -- for quite some time, but I think
2 you -- you'll be impressed with her qualifications, but
3 we'll have to wait and see.

4 Go ahead, Ms. Parr.

5 **BY MS. PARR:**

6 Q. How long have you been employed with SLED?

7 A. Almost four (4) years.

8 Q. And what is your current position with them?

9 A. I'm a criminalist in the Drug Analysis Department.

10 Q. And how long have you worked in that position?

11 A. Almost four (4) years.

12 Q. And what is---

13 **THE COURT:** Let me ask a question to, if I may.

14 Maybe this'll expedite it, y'all's time.

15 **EXAMINATION BY THE COURT:**

16 Q. Have you ever testified in analysis in a drug case
17 before in this state or in any jurisdiction?

18 A. Yes, I have.

19 Q. How many times?

20 A. Approximately thirty-three (33) times.

21 Q. All right. And where did you go to school?

22 A. I have a bachelor of science degree from the College
23 of Charleston.

24 Q. And did you have any special training in this area or
25 field?

1 A. Yes, I did. From SLED and---

2 Q. Where was it?

3 A. From SLED and also from D.E.A.

4 **THE COURT:** Gentlemen, you willing to admit the
5 lady's qualifications?

6 **MR. NETTLES:** I don't know about that College of
7 Charleston thing. Judge, I don't know. I don't know what
8 to admit. I mean, if what they're gonna -- My concern is
9 I don't -- They haven't told us what they're gonna qualify
10 her as an expert in. If they're gonna -- If it's just
11 gonna be as a chemist to talk about, you know, the
12 molecular makeup of -- of cocaine, I don't have a problem;
13 but, I mean, I -- they haven't told us what they're gonna
14 qualify her as.

15 **THE COURT:** Is that your purpose? I'm assuming it
16 is, Ms. Parr.

17 **MS. PARR:** Your Honor, that's part of our purpose.
18 Your Honor, would you like to take this matter up---

19 **THE COURT:** I would---

20 **MS. PARR:** ---out of the presence---

21 **THE COURT:** ---because I---

22 **MS. PARR:** ---of the jury?

23 **THE COURT:** ---want to expedite this process.

24 I'm gone take -- I'll tell you before you go. There
25 are experts that are body rebuilders, and some of them

1 have limited or no formal education. There are a number
2 of areas where people are qualified or determined by the
3 court to have the qualifications as an expert in a field
4 by occupation, by training, by education, or by all three
5 of those things.

6 Expert testimony is not given for the purpose of
7 controlling your judgment. It's given for the purpose of
8 educating or 'forming or assisting you in an area or field
9 of which you have little or no knowledge, experience, or
10 education, or training; and, as I told you, you give it
11 the weight the same as you would any other testimony. I
12 just tell you that if and when I declare this lady
13 employed with SLED as a chemist as an expert in the field
14 that she's being offered by the State.

15 We're sending you out to take this in camera to
16 frankly to expedite the matter as to whether or not she
17 possesses the qualifications that she's gone testify to.

18 All right. (While jury exiting courtroom) You may
19 have a cup of coffee or whatever you chose. I'll send you
20 word in a moment or two; and, if y'all are ready to
21 return, just come on back; and we gone let both sides --
22 And we haven't -- gone give the defendants' counsel a
23 opportunity to examine this witness before we make that
24 decision.

25 Close that door.

1 (WHEREUPON, at 2:38 p.m., jury returned to jury room;
2 and the following proceedings were had outside the
3 presence of the jury:)

4 **THE COURT:** All right. Ms. Parr, for what purpose,
5 other than the analysis that was made on these matters
6 that were delivered to her, are you calling her?

7 **MS. PARR:** Your Honor, with -- with all due respect
8 to the court -- And I'm not sure how to -- how to address
9 this matter. Your Honor, I know the court is eager to
10 expedite these matters, but I would like to be given the
11 opportunity to fully examine---

12 **THE COURT:** I'm gone---

13 **MS. PARR:** ---my wit---

14 **THE COURT:** I'm gone---

15 **MS. PARR:** ---nesses---

16 **THE COURT:** I'm gone do that.

17 **MS. PARR:** The only thing is I don't want to hurt
18 anybody's feelings; but, when I'm trying to at least do my
19 direct examination, when the court comes in and says,
20 "Well, let me speed this up," it -- to me, it appears to
21 the jury that you don't think I know what I'm doing. And
22 I would like to be given the opportunity to finish
23 questioning---

24 **THE COURT:** Well, that's why I'm asking you now what
25 are you doing because they were willing to admit her

1 qualifications as a chemist who examined what was
2 delivered to them, this package.

3 **MS. PARR:** Your Honor, she did not examine the
4 package that was delivered to her. She---

5 **THE COURT:** All right.

6 **MS. PARR:** The package was never delivered to her.

7 **THE COURT:** Well, let's see -- I can find out where
8 you're going; and -- and, if -- if -- if I've given you
9 the impression I'm being impatient or questioned your
10 comp' -- I just thought maybe if -- if you gave them the
11 answer why she's being called they'd tell you whether
12 they's gonna admit it or not, but we got all afternoon.
13 You may continue your examination of the wit'.

14 Mr. Nettles, you're standing. You got some response?

15 **MR. NETTLES:** Well, I -- I might. I'm just trying to
16 add something. If -- If -- If she can tell me what it is,
17 the second thing. I understand the -- What's the second
18 thing? We -- She and I have been trying to -- It's just
19 been a lot going on.

20 (To Ms. Parr) What's the second thing?

21 **MS. PARR:** Your Honor, what I'm going to ask her: Do
22 you know how cocaine is processed into crack cocaine? And
23 how are you -- And how are -- How do you know this? And
24 please describe the steps.

25 (WHEREUPON, Mr. Anderson and Mr. Nettles conferred.)

1 **THE COURT:** They're not making any admissions.

2 Examine your witness. You can certainly go into that.

3 **MS. PARR:** All right. That's basically the nature of
4 my examination of this witness, so I'm ready to go into it
5 in front of the jury.

6 **THE COURT:** All right. And she -- she did not
7 examine or---

8 **MS. PARR:** No, she did not, Your Honor.

9 **THE COURT:** ---analyze the -- the cocaine in this
10 case then.

11 (To the bailiff) All right. Bring us the jury,
12 please.

13 **THE COURT:** Other than that, she has no knowledge
14 about this case?

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

16 **MR. ANDERSON:** Judge, just for the record, I think
17 that any testimony elicited about crack or how crack is
18 processed would be far more prejudicial than probative.
19 There's been no testimony from any witness there was any
20 crack involved in this case at all. There's been no
21 testimony that any crack has been sold in the past, and I
22 just think that any mention of crack or how crack is made
23 is far more prejudicial at this point in time. I don't
24 think it's relevant; and, if it is relevant, I think it's
25 more prejudicial than probative under 403. And I don't

1 think it falls under any exception under 404(b). I just
2 say that for the court's benefit and for the record.

3 **MR. NETTLES:** I -- I would join that as well, Your
4 Honor. I join Mr. Anderson's motion. Thank you.

5 **THE COURT:** Have you offered an analysis? While
6 we're discussing this out of the presence of the jury,
7 have you offered an expert yet that have (sic) analyzed
8 this evidence as cocaine?

9 **MS. PARR:** No, Your Honor. She will be offered next.
10 Your Honor, before the court that's already been
11 entered into evidence, we have all the items that have
12 been used; and Ms. Horne will tie it all together, what
13 these items are used for; and they have already---

14 **MR. ANDERSON:** Judge, but none of it---

15 **MS. PARR:** ---or could be used for.

16 **MR. ANDERSON:** None of those items have ever been
17 used. And -- And to take it one step further, it's my --
18 you know, it's my understanding that, if you're going to
19 make crack, you need a -- another substance. Well,
20 there's no other substance unless they were going to use
21 the cardboard that the stuff came wrapped up in.

22 I mean, yeah, you got pots and pans; and you got a
23 coke -- you got a brick of cocaine; but what else do you
24 have? Nothing.

25 **THE COURT:** Got a couple of chairs (sic). Plan on

1 doing some cooking.

2 **MR. ANDERSON:** Well, Judge, what are they going to
3 cook it with?

4 **THE COURT:** Yeah.

5 **MR. ANDERSON:** And if they're cooking it, what are
6 they going to use---

7 **THE COURT:** I'm -- I'm very familiar with Lyles.
8 That's the only reversal I've had in criminal court.

9 **MR. ANDERSON:** And, Judge, I mean---

10 **THE COURT:** More prejudicial than probative.

11 **MR. ANDERSON:** There has been no mention from anybody
12 that crack was going to be sold in this case, crack was
13 going to be bought, that anybody was going to cook crack.

14 **THE COURT:** Yeah. There's -- There's certainly the
15 effort -- the evidence and the inference of cocaine being
16 present, and these pots and all this other is certainly an
17 inference---

18 **MR. NETTLES:** Your Honor,---

19 **THE COURT:** ---of other---

20 **MR. NETTLES:** Your Honor, if I may---

21 **THE COURT:** ---of other---

22 **MR. NETTLES:** ---on behalf of Mr. Monfries, I think
23 the fact that we're struggling with this is evidence of
24 the fact that it's merely speculation. You know, she
25 could come in here and tell us how you make heroin. You

1 know. Or she could come in here and tell us, you know,
2 how you make ecstasy, methamphetamine; but it's not
3 relevant.

4 And -- And -- And, I mean, the point is -- And, I
5 mean, I'm -- I -- I agree with Mr. Anderson, is that this
6 point -- If -- If there's cocaine -- And there's no doubt
7 about that. She can come in here and talk to us about how
8 you make cocaine, what's in cocaine, how you brick
9 cocaine. She can talk about cocaine, but they're now
10 trying to extrapolate it to something that everybody
11 knows. I mean, they're not even charged with possession
12 of crack or -- or -- or -- or -- or -- or trafficking in
13 crack. They're charged with trafficking in cocaine.

14 And -- And, you know, at this point, it's just not
15 relevant. I mean, it's -- it's -- And one of the
16 reasons---

17 **THE COURT:** You make -- You make a very persuasive --
18 Both of you make a very persuasive argument.

19 (To Ms. Parr) I'm gone hear from you on that point,
20 and I understand you willing to -- you willing to take the
21 chance, and I understand solicitor in their zealousness
22 they want a conviction, and sometimes they don't look at
23 the other side of it. But our courts, more and more, Ms.
24 Parr, are looking at Lyles; and that seems to be the
25 landmark controlling case. You got to have more than

1 circumstantial evidence. You got to have some hard
2 evidence in my view that that's what they were gone do
3 with that cocaine. You got an inference, but there's
4 brand new pots and pans. No evidence in any of that of
5 any---

6 **MS. PARR:** Your Honor, we've had testimony already
7 that they were looking for a kitchen; they -- they---

8 **THE COURT:** Looking for what?

9 **MS. PARR:** They were looking for a kitchen, that they
10 needed a place to work. Your Honor, we use---

11 **THE COURT:** But you use---

12 **MS. PARR:** ---pots and pans---

13 **THE COURT:** ---a kitchen for a lot of things, Ms.
14 Parr.

15 **MR. ANDERSON:** And, Your Honor, there's nothing in
16 the kitchen. The pots and pans are in the vehicle. The
17 cocaine is under the vehicle. There's nothing in the
18 room. Nothing, except my client and Mr. Monfries and some
19 luggage, clothes, toothpaste, toiletries. No pots and
20 pans. No cocaine. Nothing in the microwave. Nothing.
21 Everything's in the car in a bag.

22 **MS. PARR:** And all of those items are in close
23 proximity to each other.

24 **THE COURT:** No, ma'am.

25 (To Mr. Anderson) I'm gone sustain your objection.

1 **MR. NETTLES:** Thank you, Your Honor.

2 **THE COURT:** I think this is exactly what Lyles
3 addresses. I'm not gone do it. Not gone take that risk,
4 not with the evidence you've got. If this case was
5 hanging with a thread -- But everything I read in the
6 recent cases in our Supreme Court in Lyles -- Not gone do
7 it. Now, you can go into any other matters about cocaine
8 and how it -- But I am not gone let that testimony in. It
9 is highly prejudicial. I find it more prejudicial than
10 probative. Not enough evidence there to support it.

11 **MS. PARR:** Your Honor, that was the only purpose of
12 this witness.

13 **THE COURT:** You may step down.

14 **MR. LAWSON:** May she be excused, Your Honor?

15 **THE COURT:** Yes, sir.

16 **MR. ANDERSON:** No objection, Your Honor.

17 (WHEREUPON, the witness was excused from the witness
18 stand and from the trial of this case.)

19 **THE COURT:** All right. Does the State have further
20 witnesses?

21 **MS. PARR:** Yes, Your Honor.

22 **THE COURT:** Bring us the jury.

23 (To the witness) Give my best to the chief.

24 (WHEREUPON, at 2:49 p.m., jury returned to open
25 court; and the following proceedings were had within the

Meredith Knox - Direct by Ms. Parr
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1 presence of the jury:)

2 **THE COURT:** Call your next witness.

3 **MS. PARR:** Your Honor, at this time, we'd call
4 Meredith Knox to the stand.

5 **MEREDITH KNOX,** being first
6 duly sworn, testified as follows:

7 **CHIEF DEPUTY CLERK GREGG:** Be seated, and state your
8 name for the record.

9 **WITNESS KNOX:** My name is Meredith Knox.

10 **DIRECT EXAMINATION BY MS. PARR:**

11 Q. What is your occupation or profession?

12 A. I am a criminalist.

13 Q. And who are you employed with?

14 A. I work for the Charleston Police Department.

15 Q. How long have you been with the Charleston Police
16 Department?

17 A. A little over two (2) years.

18 Q. And---

19 **THE COURT:** May I -- May I interrupt you?

20 Do either of you know this lady or willing to accept
21 her? You don't know her.

22 **MR. NETTLES:** I -- I just don't know her.

23 **EXAMINATION BY THE COURT:**

24 Q. Have you ever testified in a court?

25 A. Yes, I have.

1 Q. Of jurisdiction.

2 A. Yes.

3 Q. What court? South Carolina?

4 A. I've testified in this court before.

5 Q. And what other courts?

6 A. Dorchester County.

7 Q. All right. And have you been admitted by the court
8 as an expert in the field as a chemist to analyze cocaine,
9 for example?

10 A. Yes, I have.

11 Q. Drugs. And where did you go to school?

12 A. I went to school at Wofford College.

13 Q. And what did you major in?

14 A. Chemistry. I have a bachelor of science degree.

15 Q. All right. And have you had any training in the
16 field or area that you're in now?

17 A. Yes, I have. I've had in-house training in the
18 laboratory by other criminalists, including reading
19 literature about drug analysis, shadowing other
20 criminalists, performing competency samples to I.D. drug
21 samples. And I've had additional training by the D.E.A.

22 Q. How long have you been doing this? You've been in
23 this occupation.

24 A. A little over two (2) years.

25 **THE COURT:** You want to add -- I want you to stop you

1 at that moment (sic). You want to ask her any questions?
2 Y'all in a position you can admit her qualifications as a
3 chemist?

4 **MR. ANDERSON:** Yes, Your Honor. We'll admit.

5 **MR. NETTLES:** As -- As for -- As for Mr. Monfries,
6 we'll admit as well, Your Honor.

7 **THE COURT:** Qualifications are admitted. Now, you
8 may examine your witness.

9 **DIRECT EXAMINATION BY MS. PARR (continued):**

10 Q. Ms. Knox, (while handing item) would you please
11 examine what has been marked as State's Exhibit Number 2
12 for identification?

13 A. (Looked at item.) Okay.

14 Q. Based upon your past experience and training, do you
15 have an opinion as to what this substance is?

16 A. Yes. It was found to contain cocaine.

17 Q. And first let me ask you, do you recognize that
18 package?

19 A. Yes, I do.

20 Q. And how can you identify this exhibit?

21 A. I can identify it by, first of all, (while
22 indicating) the Charleston Police Laboratory's sticker
23 that is on it. It contains the case number, a lab number,
24 my initials, and the date it was sealed. It is also
25 sealed with the evidence tape which I have initialed all

1 along the seal.

2 Q. Okay. And when did you mark this exhibit?

3 A. I marked it on the 17th of April of 2000.

4 Q. Okay. And when did you receive this exhibit?

5 A. I received it on that same day, the 17th.

6 Q. And where did you receive it?

7 A. I received it from our laboratory technician, Stacy
8 Scott. She receives all of the evidence into the
9 laboratory, and then I get the evidence from her.

10 Q. Is this exhibit in the same condition now as it was
11 when you first received it?

12 A. From when I first received it, no. When I first
13 received it, (while indicating) this evidence tape was not
14 here. This sticker was not here. It was just simply in
15 this evidence bag, which was -- had the original bottom to
16 the bag; and then this white powder was also wrapped up in
17 the tape, the plastic wrap, and the rubber sleeve that is
18 in here.

19 Q. Now, for what purpose did this exhibit come into your
20 possession?

21 A. It came into my possession to analyze the substance,
22 to determine if there was a controlled substance present.

23 Q. And had that -- When it first came to you, was that
24 original seal broken?

25 A. (While indicating) This original seal right here?

1 Q. Yes.

2 A. No. It was not broken.

3 MS. PARR: Your Honor, at this time, the State would
4 move to enter into evidence State's Exhibit Number 2 that
5 has been marked for identification.

6 (WHEREUPON, Mr. Nettles conferred with Ms. Parr.)

7 MR. ANDERSON: Your Honor, if we could have the
8 court's indulgence just for a moment.

9 (WHEREUPON, all defense attorneys conferred.)

10 MR. ANDERSON: Your Honor, we have no objections to
11 the---

12 THE COURT: Admitted without---

13 MR. ANDERSON: ---moving of---

14 THE COURT: ---objection.

15 (WHEREUPON, Package of Cocaine admitted into evidence
16 as State's Exhibit Number 2, without objection.)

17 BY MS. PARR:

18 Q. Now, you said you -- Did you analyze that State's
19 Exhibit Number 2?

20 A. Yes, I did.

21 Q. Okay. And on what occasion did you make the
22 analysis?

23 A. On what date?

24 Q. Yes.

25 A. It was the 17th of April of 2000.

1 Q. And what is the weight of State's Exhibit Number 2?

2 A. It is nine-hundred-and-ninety-seven-point-two-seven
3 (997.27) grams.

4 Q. Okay.

5 **EXAMINATION BY THE COURT:**

6 Q. Could you tell us what that is in pounds?

7 A. In pounds, it's approximately two-point-two-zero
8 (2.20) pounds.

9 **MS. PARR:** And---

10 **THE COURT:** You may proceed.

11 **DIRECT EXAMINATION BY MS. PARR (continued):**

12 Q. ---what tests were made by you?

13 A. I performed a screening color test, and I also
14 performed instrumental analysis using a C.G. Mass Spec and
15 an F.T.I.R.

16 Q. And from these tests, were you able to form an expert
17 opinion as to what this exhibit is or contained?

18 A. Yes.

19 Q. And please state your opinion?

20 A. In my opinion, it has -- was found to contain
21 cocaine.

22 Q. Okay. And what is the basis for your opinion?

23 A. The basis is the instrumental analysis that I used.

24 Q. Now, have you ever seen or tested a kilo of cocaine
25 before?

1 A. Yes, I have.

2 Q. Okay. And was the packaging of this State's Exhibit
3 Number 2 consistent with the other packages of kilos of
4 cocaine you have tested in the past or seen in the past?

5 A. Overall it is similar. Generally, what I see, they
6 are packaged pretty heavily, usually with the plastic
7 wrap; and then they can be taped; and this has a rubber
8 sleeve. I've seen different types of rubber -- rubber
9 sleeves. I've seen -- Mostly, it's plastic wrap with tape
10 and more plastic wrap and more tape, so it's pretty
11 heavily packaged. This is consistent with what I've seen
12 before.

13 MS. PARR: May I have the court's indulgence one
14 moment?

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

16 BY MS. PARR:

17 Q. Mrs. Knox -- Ms. Knox, do you know why they call that
18 powder cocaine?

19 A. Because it's in powder form.

20 MS. PARR: Would you please answer any questions the
21 defense may have for you.

22 THE COURT: Cross-examination, counsel for defense.

23 MR. NETTLES: Thank you, Your Honor.

24 CROSS-EXAMINATION BY MR. NETTLES:

25 Q. Ms. Knox?

1 A. Uh-huh?

2 Q. Based on your testing of what's been marked State's
3 Exhibit 2, you can't tell us anything about who had -- who
4 -- who possessed that, can you?

5 A. No.

6 MR. NETTLES: I have no further questions.

7 THE COURT: Mr. Anderson?

8 MR. ANDERSON: Nothing, Your Honor.

9 THE COURT: Any objection to the court excusing this
10 witness?

11 (No response.)

12 THE COURT: Any objection from counsel to excuse that
13 witness?

14 MS. JACKSON: No, sir.

15 MS. PARR: Your Honor, just to make -- to make sure,
16 this was moved into evidence---

17 MR. NETTLES: Yes.

18 MS. PARR: ---with---

19 MR. NETTLES: Yes.

20 THE COURT: It was.

21 MR. NETTLES: Without objection.

22 MS. PARR: ---without objections. Permission to---

23 THE COURT: You're -- You're excused. Thank you,
24 ma'am.

25 (WHEREUPON, the witness was excused from the witness

1 stand and from the trial of this case.)

2 THE COURT: (As witness walking out of courtroom) Do
3 you work with -- under the officers of Chief Greenburg
4 down there?

5 WITNESS KNOX: Yes, I do.

6 THE COURT: I thought -- Y'all in the four corners
7 yet?

8 WITNESS KNOX: No. I don't---

9 THE COURT: I've -- I was down---

10 WITNESS KNOX: ---think we ever---

11 THE COURT: ---there twice,---

12 WITNESS KNOX: ---will be.

13 THE COURT: ---and we were in North Charleston. I'm
14 looking to go back whenever y'all get that new courthouse.

15 WITNESS KNOX: Yeah. It's finished.

16 THE COURT: How about the parking?

17 WITNESS KNOX: How about the parking? Never
18 changing.

19 THE COURT: Nonexistence. It -- Had to go to Mt.
20 Pleasant.

21 The State have further witnesses?

22 MS. PARR: Your Honor, if we could have the court's
23 indulgence for just a moment.

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

25 THE COURT: It three (3:00) o'clock; and, while they

1 doing that, I'll just speak with y'all briefly. With the
2 -- We've not had the opportunity to go over the charge
3 with the lawyers, and their summation and the charge won't
4 give you much time to even begin deliberations.

5 We are hopeful we gone finish testimony today. We
6 may or we may not. I have no idea at this point, but I
7 think we probably will. I'll probably let you go home and
8 get a good night's rest and bring you back tomorrow, and
9 then we'll do the sum'. My intention is do summation and
10 charge tomorrow; and then you've got as much time as you
11 need, whatever that might be. I'm not suggesting to you
12 it'll be a short period or long period or moderate period
13 of time, but I know we'll probably be home early this
14 evening and -- and have supper.

15 I just want to caution you again now when we
16 concluded the testimony. Time-wise, you've gone, with the
17 exception of the time for deliberation. I'm not
18 considering that. But time for the trial, we will have
19 come probably better than way beyond halfway, probably
20 four-fifths of the way. 'Member I didn't talk about the
21 sixth, the deliberation, talking about the procedures,
22 five procedures, we go through; but, procedurally, you
23 will have gone about halfway because you've got the
24 summation and the charge yet to go; and we've not
25 concluded all the testimony yet; but, when you go home

1 this evening, in all likelihood we will have; but you're
2 still only halfway.

3 Would you eat a stew that only had half the
4 ingredients in it and was only half cooked? Would you try
5 to cook a cake and you didn't have but half the
6 ingredients in, and you cut the over on? Uh-uh. You see
7 that's just common sense. You wouldn't do that.

8 But it's real important when you go home tonight. I
9 don't want you pouring no concrete. I want you to keep
10 that open mind. I don't want you to discuss it among
11 yourselves nor allow anyone to discuss it with you or you
12 initiate any conversation with your special confident,
13 whoever that friend is. It's important you don't do that.
14 If I thought with this jury there was any temptation to do
15 that, you'd be going to a motel tonight. I'm not gone do
16 that. No need. Nothing about this jury indicates to me
17 you're not conscientious.

18 All right. Ms. Parr?

19 **MS. PARR:** Your Honor, the State would rest at this
20 time.

21 (WHEREUPON, at 3:02 p.m., the State rested its case.)

22 **THE COURT:** All right. There are certain matters,
23 housekeeping, I need to take up; and I want to give both
24 the parties an opportunity to put some things in the
25 record, things you don't need to be concerned about nor be

1 curious about; and I'll bring you back in a matter of a
2 few minutes and talk to you; and we'll proceed with the
3 trial.

4 Go -- Go to your room, Mrs. Forelady. Use the
5 facilities. Do what you need to do, and you let me know
6 when you're ready to return. We'll be ready for you in a
7 matter of minutes.

8 We gone take a little break, too.

9 (While jury leaving) Please remember what I keep
10 emphasizing now. Don't discuss anything 'bout this case.
11 Talk about your children, your grandchildren, where you'd
12 rather be rather than here today. Don't talk about the
13 case.

14 (WHEREUPON, at 3:04 p.m., jury returned to jury room;
15 and the following proceedings were had outside the
16 presence of the jury:)

17 **THE COURT:** All right. Let's be at an ease for a few
18 minutes, and then we'll come back, and we'll---

19 **CHIEF DEPUTY CLERK GREGG:** Judge, Lowman Rush, that
20 testified earlier, can he go home? He's out in the
21 hallway, and he doesn't know if he can go or not.

22 **MS. PARR:** Yes, Your Honor.

23 **THE COURT:** Any objection?

24 **MS. PARR:** No.

25 **THE COURT:** He walked right on out of here without

1 asking, so I -- I -- Nobody objected.

2 CHIEF DEPUTY CLERK GREGG: He's standing out in the
3 hall. He hasn't gone anywhere.

4 THE COURT: So I didn't -- Well, I have no -- They
5 say---

6 MS. PARR: Yes, sir.

7 MR. NETTLES: He's got immunity.

8 MS. PARR: He can do whatever he wants to.

9 THE COURT: I imagine so, but I don't know how long
10 he's been out there.

11 MR. NETTLES: He can drive fast on the way home. He
12 can do whatever he wants.

13 (WHEREUPON, the witness was excused from the trial of
14 this case; court stood in recess; and, at 3:25 p.m., court
15 reconvened, with Defendant Blash and counsel for all
16 parties present in the courtroom.)

17 THE COURT: Defense, you gone call any witnesses?

18 MR. ANDERSON: Your Honor, before we get to that, we
19 may have some motions we'd like to make.

20 THE COURT: Yeah.

21 MR. ANDERSON: You know, just for the record, Your
22 Honor.

23 THE COURT: All right, sir. I'll hear your motions.

24 MR. ANDERSON: Thank you, Your Honor. Your Honor,---

25 THE COURT: I started to defer on that and tell you I

1 -- I'd just take it under advisement, and we'd make a
2 note, and we'd do then later, but I'm gone let you do it
3 the way you want to do it.

4 **MR. NETTLES:** Why don't we do it this way? They --
5 Let them rest. That jury doesn't know. We'll do it next.

6 **MR. ANDERSON:** She's already rested.

7 **MS. PARR:** I've already rested in front of---

8 **MR. NETTLES:** Well, let's---

9 **MS. PARR:** ---the jury.

10 **MR. NETTLES:** ---let that jury go.

11 **MR. ANDERSON:** You want to go ahead and let the jury
12 go, Judge?

13 **THE COURT:** Yes, sir. No, sir. I'm not gone do that
14 yet. You ain't tell me whether or not you calling any
15 witnesses. We gone finish the testimony today.

16 **MR. NETTLES:** Oh, I see.

17 **MR. ANDERSON:** All right, Your Honor. Well, just for
18 the record, Your Honor, on behalf of my client Eddie
19 Blash, Your Honor, we'd make a motion for a directed
20 verdict. Your Honor, you, of course, know the law. I'm
21 not going to reiterate the law to you. I had a case last
22 week over in Horry County, Your Honor; and I just would
23 cite these cases. I'm not going to dictate the law to
24 Your Honor; but, Your Honor, in State--

25 **THE COURT:** Did Paula Thomas give you a directed

1 verdict?

2 **MR. ANDERSON:** Judge, she does not have near the
3 legal mind that you have, and I am perfectly comfortable
4 in saying that on the record.

5 **THE COURT:** You better not let Ms. Thomas hear you
6 say that.

7 **MR. ANDERSON:** I will say it in front of her, Your
8 Honor. This is -- This is State vs.---

9 **MR. LAWSON:** We'll send a copy of this transcript to
10 The Honorable Paula Thomas, Judge.

11 **MR. ANDERSON:** This is State v. Grippon. It's 489
12 S.E.2d 462. Your Honor, State v. Martin, 533 S.E.2d 472.
13 And, Your Honor, State v. Lollis, 541 S.E.2d 254. Your
14 Honor, this is -- Those -- All three of those cases deal
15 with circumstantial evidence.

16 Your Honor, I think that's all that the State has in
17 this case, circumstantial evidence. Your Honor, even
18 their most -- Well, let me rephrase that. Even their --
19 The only witness that the State has presented that can
20 testify against my client is, of course, Mr. Rush. He is
21 the only one that can link my client in any way, shape, or
22 form; and he, out of his own mouth, Your Honor, has said
23 on several occasions "I didn't see any drugs; I don't know
24 of any drug sales; I don't know of any drug buys."

25 Your Honor, there's absolutely no physical evidence

1 linking my client to any pots, pans, dishes, strainer,
2 Pyrex, receipts, or cocaine. Your Honor, when there's
3 clearly a circumstantial case, the evidence must be clear
4 and convincing; and, Your Honor, I would make a motion for
5 a directed motion because I do not think that the State
6 has put up enough evidence to the point of a clear and
7 convincing case against my client Eddie Blash; and I'd ask
8 that the charges be dismissed.

9 **THE COURT:** You join in that motion, Mr. Nettles?

10 **MR. NETTLES:** I don't have near the legal mind Mr.
11 Anderson does, so I would join in his motion. Yes, sir.
12 I would also just -- If I could, Ms. Jackson has got a
13 directed verdict motion that we've prepared pre-trial,
14 beforehand. She'd gone make copies of that. I'd like to
15 put that in the record as well.

16 But one of the cases that we rely on is the case of
17 State vs. Brown, and just to sort of -- If the court's not
18 familiar with the facts of that case, basically these two
19 guys are sitting on the side of the road in the country,
20 no apparent reason. A police officer pulls up, goes to
21 the driver's side window. The guy rolls the window down,
22 and he -- the police officer smells marijuana and says,
23 "All right; you guys get out of the car; I smell
24 marijuana." The two guys get out of the car.

25 The driver starts -- The -- The -- The police officer

1 starts asking questions. The driver starts answering the
2 questions.

3 The passenger says, "Look; you don't answer those
4 questions; you don't have to answer those questions; you
5 don't have to answer those questions."

6 He asks the -- the -- the -- The police officer asks
7 the driver if he can search the car. The passenger says,
8 "You don't have to let him search the car; you don't have
9 to let him search the car."

10 And so the passenger (sic) says; "Okay; you can
11 search the car." And they find a big bag of marijuana in
12 an opaque bag in the back seat. And the passenger, Mr.
13 Brown, went to trial, was convicted. And the court held
14 that it should -- a directed verdict motion should have
15 been granted as they hadn't proved custody and control of
16 -- of the evidence.

17 I'd bring the court's attention to that case, and
18 that would be -- I can give you a cite for that. I
19 believe that's 227 S.E.2d 674. That was a South Carolina
20 Supreme Court case, 1976, State vs. Brown.

21 Thank you, Your Honor. And in light of that, I would
22 ask the court grant a directed verdict motion; and the --
23 the State has failed to prove that my client, Mr. Michael
24 Monfries -- May I approach a minute, Your Honor?

25 **THE COURT:** Yeah.

1 **MR. NETTLES:** (While handing document) Thank you,
2 Your Honor. -- had custody and control of the cocaine
3 that was found in the white Xterra.

4 Thank you, Your Honor.

5 (Pause.)

6 **MR. NETTLES:** And, Your Honor, if I may, may I make a
7 copy of our brief a part of the record as well? I -- If I
8 may, Your Honor, (while handing document) the court's
9 exhibit, the motion for directed verdict and---

10 **THE COURT:** All right, sir.

11 **MR. NETTLES:** ---the brief in support of that motion.

12 **THE COURT:** Mr. Lawson and Ms. Parr, do you want to
13 address that question?

14 (WHEREUPON, Motion for Direct Verdict marked for
15 identification as Court's Exhibit Number 2.)

16 **MS. PARR:** May it please the court? Your Honor, we
17 think the State has put on sufficient evidence to get past
18 a motion for a directed verdict. We believe that this is
19 a question for the jury. The law is that the State -- the
20 court looks at the evidence in the light most favorable to
21 the nonmoving party. In this case, the moving party is
22 the defense; and we would ask that the court deny the
23 motion for a directed verdict that's been proposed to the
24 court by both defense counsels.

25 **THE COURT:** Thank you, ma'am.

1 **MR. ANDERSON:** (While handing document) Judge, those
2 are a number of cases.

3 (Pause.)

4 **THE COURT:** I have made a study and looked at the
5 information handed up to me by defense counsel and Ms.
6 Jackson's motion, State vs. Brown, which refers to the
7 jury speculating or merely conjecture, the question that
8 defense indicates in reference to the cite as being
9 conjecture or speculating. And I've looked at State vs.
10 Harry Wesley Lollis where the Court found that the State
11 did not present -- present substantial circumstantial
12 evidence. And I considered them.

13 And the argument of both counsel, while persuasive,
14 is not convincing when we study the following case law,
15 which I think is still the controlling case. The Lollis
16 case concerned arson. And these motions, of course, were
17 made at the close of the State's case in chief; and the
18 motions were made for directed verdicts on the charge of
19 trafficking in cocaine, greater than four hundred (400)
20 grams, arguing that the evidence in this case is
21 insufficient to support the charges.

22 State vs. Kelsey, general principle is that the court
23 concerns itself with the existence or nonexistence of
24 evidence, not its weight. The weight and credibility of
25 witnesses is for the jury.

1 State vs. Rowell, in our appellate court in 1997,
2 states the principle espoused by Ms. Parr. In reviewing a
3 motion for a directed verdict, the evidence must be viewed
4 in a light most favorable to the nonmoving party; and, if
5 there is any direct evidence or -- It says, or any
6 substantial circumstantial evidence reasonably tending to
7 prove the guilt of the accused, it is proper for the court
8 to submit the matter to the jury. It is a question of
9 fact for the jury, not a question of law. That's State
10 vs. Rowell.

11 In Collins vs. Bisson, which is also in our appellate
12 courts, in our South Carolina Court of Appeals, 1998, and
13 American Fire and Casualty vs. Johnson, also in our Court
14 of Appeals, 1998 -- And in that case is reference made to
15 Cock-N-Bull Steak House, Inc. vs. Generali Insurance
16 Company decided in our appellate courts in 1996.

17 And the court is aware, if there's only one inference
18 in the case and the facts and it does not yield more than
19 one inference, a directed verdict in favor of the moving
20 party should be considered as proper.

21 In reviewing -- quoting Collins, which again expounds
22 on well-established principle of directed verdicts are
23 always considered in the light most favorable to the
24 nonmoving party, in this case, the State, it sites again
25 -- As most of these cases have, a common thread, a bright

1 line, runs through all of them. It says in reviewing the
2 grant of a directed verdict, the appellate courts look to
3 the facts that are unfavorable to the opposing party and
4 determines whether a verdict for the opposing party would
5 be reasonably possible under the facts. And they use this
6 language: as liberally construed in his favor. The
7 question becomes one of law only where only one reasonable
8 inference, as I had previously stated, can be deduced from
9 the evidence.

10 Another general principle of a unanimous court, 1989,
11 Chief Justice Harwell, at that time, wrote that opinion
12 and used the word not substantial but used the word any.
13 Any. If there is any evidence -- And I think that, in
14 light of the cite which you give me, Mr. Nettles,
15 involving circumstantial evidence, it still boils down to
16 the interpretation is there substantial evidence here. My
17 view is there is overwhelming circumstantial evidence
18 here. Overwhelming. But that isn't for me except to
19 decide in this motion. That's for the jury as to whether
20 or not they share that view, which I can express out of
21 the presence of -- of the jury.

22 It's found. The vehicle was being driving by Mr.
23 Monfrizz (sic). Mr. Blass (sic) with him. He is aware of
24 these conversations, and it boils down to credibility of
25 Mr. Rush who spoke to Mr. Traft (sic) or who -- whatever

1 his name was. You need to talk to Mr. Blass (sic). You
2 need to talk to Mr. Monfrizz (sic). Whether this jury
3 believes or whether he is the conspir- -- conspirator or
4 whether he's believable with the conflict in his
5 testimony, his credibility --.

6 I look forward to hearing how -- how both the State
7 and the defense in their summation view that. There's
8 some that helps and some that hurt in both sides. I don't
9 know which has helped or hurt the most, if any; and I
10 think there is substantial evidence here; and, admittedly,
11 a lot of it is circumstantial; but some of it is direct
12 evidence.

13 And you are absolutely right in part. Where the
14 State relies upon -- But that's not the only evidence.
15 Where the State relies solely -- That's all they have that
16 you contend is circumstantial evidence. Mere suspicion is
17 not enough, and that term used. It must be proven to a
18 moral certainty and other principles involved. If there's
19 any scenario in the evidence in the case that would lead
20 reasonable people to any conclusion other than the guilt
21 of the accused, if there is a reasonable doubt, it's
22 always in favor of innocence, never of guilt.

23 But substantial circumstantial evidence has been
24 adduced; and I must and am constrained to follow the
25 principle that in considering directed verdicts it must

1 always be in the light most favorable to the nonmoving
2 party; and I, therefore, would respectfully decline and
3 deny your motion for directed verdict.

4 And I note your exception.

5 **MR. NETTLES:** Thank you, Your Honor.

6 **THE COURT:** By both counsel representing---

7 **MR. ANDERSON:** Thank you, Judge.

8 **THE COURT:** ---the defendant.

9 All right. It's -- Do you anticipate -- And I'll
10 tell this jury if you're not calling witnesses and
11 witnesses (sic).

12 And I got a reversal. I'm not gone tell you who he
13 was; but he sits on the appellate court. Just very
14 recently, the last case I tried where a comment was made
15 by a very good friend of mine in the Solicitor's Office,
16 no longer here -- But he made comment where Ms. Jackson
17 and I, if she recall, were defending. My man's walking
18 now.

19 **MS. JACKSON:** Yes, he is. On my objection.

20 **THE COURT:** Yeah. And it was one where we wanted
21 sequester, and we weren't able to work successfully. But
22 comment was made about why didn't he call witnesses. And
23 up to that time, that's a landmark case. It only applied
24 if you didn't take the stand. But if you don't put up
25 witnesses, you don't call the stand (sic), I'm gone tell

1 this jury no inference to be drawn for or against them;
2 and they can't be compelled to do that; and they better
3 not mention in their deliberations later.

4 So my question is, if you don't want me to do that, I
5 won't do that; but I'm hoping that you -- And I'm sure you
6 have, Mr. Anderson. -- advised your client of his
7 constitutional right to take or not take the stand; and he
8 can't be compelled to do that; and you can't ask him to do
9 it; I can't ask him to do it; neither can the prosecution.
10 Do you wish to offer any testimony, brough- -- call any
11 witnesses, including the defendant?

12 **MR. ANDERSON:** Your Honor, we do not.

13 (WHEREUPON, at 3:44 p.m., Defendant Blash rested his
14 case.)

15 **THE COURT:** I anticipated that would be your answer.
16 Do you want me to instruct the jury what that -- what that
17 means at this point? I'm certainly gone do it in the
18 charge, and I'll do it now when I tell them that the --
19 the testimony is concluded.

20 **MR. ANDERSON:** Judge, I just would rather you just do
21 it in your charge, Your Honor.

22 **THE COURT:** Beg your pardon?

23 **MR. ANDERSON:** I'd rather you just bring that out in
24 your charge.

25 **THE COURT:** Have it in the charge.

1 **MR. ANDERSON:** Yes, sir.

2 **THE COURT:** Won't make any comment about it.

3 **MR. NETTLES:** And -- And can I just say one thing,
4 Your Honor? I -- Notwithstanding a miracle, we don't
5 anticipate calling anybody; but I've been doing this real
6 long; but I've been doing it long enough to know that, you
7 know, my client may show up tomorrow; and so, I mean, if
8 he does, I'd like to have not been precluded from calling
9 him to the stand.

10 **THE COURT:** Now, that's a -- that's another question
11 the court has not dealt with, and I have been waiting for
12 some decision as whether or not you gone deal with it or
13 whether or not---

14 **MR. NETTLES:** We've got---

15 **THE COURT:** ---you want---

16 **MR. NETTLES:** ---a request---

17 **THE COURT:** ---the court to---

18 **MR. NETTLES:** ---to charge.

19 **THE COURT:** ---do it.

20 **MR. NETTLES:** We' got a request to charge on that
21 issue.

22 **THE COURT:** In the charge.

23 **MR. NETTLES:** Yes, sir. That we've requested, that
24 we submitted to the court.

25 **THE COURT:** All right. I'll just tell them that we

1 are gonna recess for the evening---

2 **MR. NETTLES:** Yes, sir.

3 **THE COURT:** ---and come back in the morning---

4 **MR. NETTLES:** Yes, sir. And if -- And if -- And if
5 -- And---

6 **THE COURT:** ---and finish---

7 **MR. NETTLES:** And if---

8 **THE COURT:** ---the trial.

9 **MR. NETTLES:** ---there's no miracles that happen
10 overnight, I can let the court know because, of course,
11 then---

12 **THE COURT:** That'll be---

13 **MR. NETTLES:** ---we'll be resting.

14 **THE COURT:** ---fine. That'll be fine.

15 All right. (To the bailiff) Bring us the jury.

16 (WHEREUPON, at 3:46 p.m., jury returned to open
17 court; and the following proceedings were had within the
18 presence of the jury:)

19 **THE COURT:** Mrs. Forelady and ladies and gentlemen,
20 it's obvious to us that if we had concluded all of the
21 testimony today that it would not give us the opportunity
22 without running late into the evening with the summation,
23 the time it would take in the summation and the charge of
24 the law; and these lawyers need to be prepared for that
25 charge; and, at this point -- And I won't know 'til in the

1 morning, and I -- And the defense needs the opportunity
2 now that the State has rested -- Now, that don't mean
3 they're over there fixing to take a nap. That's a legal
4 term that they have put up all of the evidence that they
5 intend to call or put up.

6 And if the defense chooses, they may; but they can't
7 be compelled to; and I don't know what -- at this point,
8 what they choose to do; but they're not compelled to do
9 anything; but I'll know that in the morning; but I'm -- At
10 this point, there's no need to -- to get into this matter.
11 We have still not concluded, until I tell you, this phase
12 of the trial; and I'll tell you in the morning.

13 But it'll give us an opportunity to go over briefly
14 some requests to charge; and that's one of the things.
15 Whenever I give you the charge, even after I've finished,
16 I'll excuse you and go to -- tell you to go to your jury
17 room. Then do not deliberate even after I've given you
18 the charge, and the reason is because the lawyers may
19 except to something. They'll say, you know, "I like most
20 of that, but there's one part in there I don't think is
21 applicable in this case, and I except to it." And we, of
22 course, give them that in the record, provid -- preserve
23 it in the transcript (sic). Or they may have an
24 exception; or they may have an objection, just saying "We
25 don't think that law is applicable at all." Or they may

1 have an additional request.

2 And it might be like my oldest child, and she's so
3 much like me. And I 'member when I used to tell her
4 little jingles and fairy tales; and she knew everybody
5 else was still sitting up, talking, reading, watching
6 television, whatever; and she didn't want to go to bed;
7 and she 'fraid she's gone miss out on something; and she'd
8 say, "Add on; add on."

9 'Member one time I was telling her about Humpty-
10 Dumpty sat on the wall, and Humpty-Dumpty had a great
11 fall, and all the king's horses and all the king's men
12 couldn't put Humpty-Dumpty back together again. And she
13 said, "Add on; add on." She knew I was fixing to pull the
14 covers up and give her a kiss on the cheek.

15 And I said, "There ain't nothing I can add on.
16 Humpty's dead."

17 Well, these lawyers might like my language, or they
18 might like theirs better. And they'll say, "How 'bout
19 substitute this language; this is the most recent case
20 just been decided here a week or two; and the one you're
21 quoting came from last year or the year before."

22 But I got the pride of authorship, and I listen to
23 them, and I might add on, or I might not. But I got to
24 protect them in the record. I got to allow them to do
25 that. And even though I'm gone go over it with them

1 because I want them to be prepared, knowing what I'm gone
2 charge -- And so, too, when I charge that, they can make
3 their exceptions, make the additional requests to charge;
4 or, if they don't like it, then they'll say, "I object to
5 it because don't think it's the law." I have to do that.

6 That's why it is so important that you cannot and you
7 will not and you must not commence your deliberations 'til
8 you are specifically given that instruction at my
9 direction from the bailiff or from me here in the
10 courtroom. And if there is an exception or objection or
11 additional request, I've got to consider that and then
12 bring you back out and accomplish that; and so you see
13 we're still a good ways; but we're a lot closer than we
14 were when we began on Monday.

15 So I ask you again -- You've been very courteous.
16 Just be patient with us. Just be a little while longer.
17 And please now, you've only heard the State; and you've
18 not heard the summation by the lawyers; and you do not
19 know whether there will be additional testimony or not.
20 So it is -- 'Member I told you we can't cut the oven on
21 yet. We can't start cooking. You gone have to be
22 patient. There's so many things yet that are required
23 procedurally, and I don't want you here late tonight, and
24 I want you fresh and with a good night's rest, and I ask
25 you please get a good night's rest tonight.

1 I don't know how long you'll be here tomorrow, and
2 I'm not implying that I know how long 'cause that's none
3 of my business.

4 Do whatever you want to at home, and go out to
5 wherever you want to go, but don't want you thinking about
6 this case tonight. I want you to keep an open mind. I
7 don't want you laying concrete.

8 The lawyers are gonna sum up for you, when we've
9 concluded all of the testimony, their view of this case;
10 and, if that's your recollection of what you heard from
11 that witness stand, you give it the weight you think it
12 ought to have. If you disagree, you will use your recall
13 because you're the sole judges of the facts in the case;
14 and I'll give you a charge; and I don't want you to be
15 concerned about it. It will be extremely comprehensive.

16 Again, I'll have to beg, when I do that, your
17 patience; and it won't be like I wouldn't let these
18 lawyers be. I indulge some cold grits, and them heating
19 it up, and sometimes I apologize to the lawyers if I seem
20 to be in a hurry because I wasn't, but I'm gone do what I
21 asked them not to do. It's gone be repetitive, and I hope
22 it ain't gone be too lumpy or too cold. I'll do it so
23 that you'll understand the law; and then, upon your
24 finding of the fact, you can apply the law to it. You
25 will understand it. I assure you of that. You don't need

1 to be concerned now, Ms. Forelady or ladies and gentlemen,
2 any of you.

3 If you had a bar exam on that particular section of
4 the law, every one of you would pass; and I would say,
5 based on aptitudes, every one of you would pass and be
6 admitted to the bar if that was the only section you gone
7 be exam' -- You'll understand the law 'cause I'm gone
8 simplify it. I'm gone do like the forelady did when she
9 was teaching school. I'm gone teach it to you, so don't
10 be concerned about that.

11 I really -- All of us -- I'll state in a minute. --
12 really appreciate the conscientious way that all of you
13 have been so attentive and courteous to everybody. It was
14 just obvious to me, each of you; and I commend you, each
15 of you. You just been exemplary, and I look forward to
16 seeing you all in the morning, and we can start about any
17 time y'all want to, but we'll have problems with some of
18 our support personnel if we start before nine (9).

19 We will start at nine 'cause we gone be working here
20 after you gone, probably several hours, so that we won't
21 have any time wasted, so to speak, and won't have anything
22 on the deck that will distract me from this case, doing
23 other matters like we had to do several times. You won't
24 even be aware of it. Some of them you were. But we can
25 begin at nine (9). We can begin at nine-thirty (9:30).

1 We can begin at ten (10). I don't want to start later
2 than ten (10), and I'm gone start with a vote, and the
3 majority rules.

4 How many want to start at nine (9)? Raise your hand.
5 (WHEREUPON, the jurors each raised a hand.)

6 **THE COURT:** Everybody wants to start -- My good' --
7 Unanimous. Well, there ain't no need to ask you 'bout
8 nine-thirty (9:30) or ten (10:00) o'clock, if that's a
9 more appropriate time. You've voted unanimously. All
10 right. We'll start at nine (9) a.m.

11 Any of you have any difficulty tomorrow now getting
12 here, car problems, any kind of thing overnight, whatever,
13 you let me know.

14 Would any of you like to have donuts in the morning
15 seeing you gone be in here at nine (9:00) o'clock?

16 (WHEREUPON, a juror raised a hand.)

17 **THE COURT:** I'll -- I know some of you get up early
18 though and fix breakfast You and I'll share them. Nobody
19 else wants donuts but you and I.

20 Anybody else want donuts?

21 (WHEREUPON, several jurors each raised a hand.)

22 **THE COURT:** Two, three. We ain't got but three
23 people. No brain -- No need to bring three dozen 'cause
24 we can't all eat a dozen apiece.

25 Do you have any preference? Anything you want us to

1 have for you in the morning besides coffee?

2 A JUROR: Cokes.

3 THE COURT: What would you like?

4 A JUROR: Can you have---

5 A JUROR: Cokes.

6 A JUROR: ---Cokes? A lot of people don't drink
7 coffee. Excuse me. A lot of us don't drink coffee.

8 THE COURT: You'd like to have what?

9 A JUROR: Some sodas, like Cokes or something instead
10 of coffee.

11 THE COURT: Yeah. We s'posed to have that.

12 (To the bailiff) We got Cokes back there, don't we?

13 BAILIFF TIMMONS: Yes, sir.

14 A JUROR: Or Pepsis, either one.

15 BAILIFF TIMMONS: Pepsis and Cokes.

16 THE COURT: Cokes.

17 A JUROR: Yeah. Either one. I mean, it don't
18 matter.

19 A JUROR: Yeah. Either one.

20 THE COURT: What was it you wanted?

21 A JUROR: The same thing.

22 THE COURT: Coke? I think we got all them soft
23 drinks and beverages.

24 (To the bailiff) We ain't run out of nothing, have
25 we?

1 **BAILIFF TIMMONS:** No, sir. We'll have them.

2 **THE COURT:** And we'll have fresh coffee, and there's
3 not but three of you wants donuts?

4 **A JUROR:** Make it four.

5 **THE COURT:** Raise your hand again. Let me make sure
6 'cause I don't --.

7 (WHEREUPON, several jurors each raised a hand.)

8 **A JUROR:** Once I see them eating them I'll want one.

9 (WHEREUPON, several other jurors were making
10 comments.)

11 **THE COURT:** Yeah. There's some of them just
12 embarrassed. They figure they gone eat our donuts. You
13 ain't gone get none of mine. I'll share everything with
14 you except food. That's -- All right. Let's -- Let's --
15 You want plain donuts? Glazed donuts?

16 **A JUROR:** Glazed.

17 **THE COURT:** Donuts without a hole that's got lemon in
18 the middle of them? What kind of donuts?

19 (WHEREUPON, several jurors answered "glazed.")

20 **THE COURT:** Plain?

21 (WHEREUPON, several jurors again answered "glazed.")

22 **THE COURT:** Glazed. Yeah. I'm a diabetic. Y'all
23 want everything with sugar on it. All right. We'll have
24 -- We'll have --.

25 (To the bailiff) How 'bout give us a mixture.

1 Marianne always kind of looks at us with a -- with a
2 glare. That's extra work they have to do, and they have
3 to pay for it out of their pocket, and then they got to go
4 through the thing with getting paid for it.

5 Can we have a dozen and a half donuts in the morning?

6 **CHIEF DEPUTY CLERK GREGG:** I get them by the dozen.

7 So I can bring them two dozen.

8 **THE COURT:** Two dozen? That ought to cover
9 everybody.

10 All right. Have a -- Have a good evening, and we'll
11 see you all in the morning. Come directly to your jury
12 room now. Don't stop in the courtroom. Nine (9) a.m.,
13 tenth floor. Have a good evening.

14 (WHEREUPON, at 3:59 p.m., jury excused for the day;
15 and the following proceedings were had outside the
16 presence of the jury:)

17 **THE COURT:** Unless there are any other matters, we
18 are gonna recess for the evening; and we'll start again as
19 soon as y'all can get here, hopefully nine (9) a.m.

20 And -- But now y'all may want to stay here 'cause we
21 gone be working on it, and I hope we 'bout got it
22 finished. We're collating that now and trying to type --
23 'cause I pretty well follow a tight script, and I look
24 over whatever you have asked and tell you whether it's in
25 or out.

1 **MS. JACKSON:** Okay. Good.

2 **THE COURT:** Or whether I already got it in there.
3 And I'm assuming, Ms. Parr, both of you I don't think have
4 to stay; but one of y'all might want to stay. We gone do
5 the conference on this charge, on the law in this case.

6 All right, sir. Now, Mr. Blass (sic), I have tried
7 to accommodate you; and I don't know of another judge that
8 wouldn't have taken you into custody when the case was
9 called. That was before the jury was called. But you
10 would have us all in one heck of a bind if you got in an
11 accident or something tonight or something happened like
12 that. I have no reason to think you will -- you will --
13 that you wouldn't be here, and I want to tell you that.
14 But on the last day, when we conclude the trial, I always
15 do that. Generally always.

16 All right. Have a nice evening. All right.
17 Lawyers, if y'all will join me back here, we'll see where
18 we are in the charge.

19 (WHEREUPON, at 4:02 p.m., court stood in recess for
20 the day.)

21 **THURSDAY, AUGUST 16, 2001**

22 (WHEREUPON, at 9:43 a.m., on Thursday, August 16,
23 2001, court reconvened in this matter, with Defendant
24 Blash and all counsel except Mr. Lawson and Mr. Nettles
25 present in the courtroom; and the following proceedings

1 were had outside the presence of the jury:)

2 **THE COURT:** All right. Ms. Parr, they gone have the
3 last argument which procedurally they're entitled to, and
4 they've informed us that they are not putting or calling
5 any witnesses. I'm not gone make comment about that
6 'cause even -- y'all don't want to focus on that with the
7 jury, Ms. Jackson. So I'm not gone do it. I will in the
8 charge, but I'm just gone briefly speak to it in the
9 charge. I will -- I will probably add several sentences
10 in there that you can't use it for or against them, but
11 there's no -- there'll be no surprises in there. That's
12 why we collate it in -- in -- in script form although I
13 can pretty well do it by heart.

14 (WHEREUPON, at 9:45 a.m., Mr. Lawson and Mr. Nettles
15 entered courtroom.)

16 **THE COURT:** How much time you think you gone need,
17 Ms. Parr?

18 **MS. PARR:** In terms of---

19 **THE COURT:** I don't -- I don't do like most judges.
20 I'm -- I guess in a lot of things I've -- have some
21 variance. I don't like -- I never liked to look -- to be
22 looking at a clock or being pressured. I'm running out of
23 time, and that used to -- That's stressful. It's
24 stressful enough when you're making the summation not to
25 have to be working within time constraints; but, if you

1 give me a time, approximately, and then when it's expired,
2 I won't call you down or say stop. I put -- I'm been
3 interrupted before, and I -- I just think it causes a
4 mental -- a possible mental gap.

5 **MS. PARR:** Probably---

6 **THE COURT:** But I'll -- I'll have a coughing spell.
7 sometimes I have to clear my throat anyway, and that don't
8 mean anything. You gone have to look up to see the clock.
9 That's the reason that will -- clock is behind the jury,
10 to kind of make you conscience of time; but you're -- I'm
11 not gone put any time constraints on the State or the
12 defense; but I'm like for you to stay within your own
13 guesstimates.

14 How much you think you'll need?

15 **MS. PARR:** About thirty to forty minutes.

16 **THE COURT:** That's fine.

17 **MS. PARR:** Or thirty to -- Yeah, thirty-five to---

18 **THE COURT:** I'll -- I'll---

19 **MS. PARR:** ---forty, forty-five.

20 **THE COURT:** I'll mark down when you begin; and, after
21 forty minutes if you're still going, I would ask my law
22 clerk -- I need a -- my secretary -- I need a yellow pad.
23 I'll mark down the -- the time; and, at the -- at forty
24 minutes, I'll start coughing. That means you need to
25 be---

1 **MS. PARR:** Well, just change it to forty-five then.

2 **THE COURT:** Forty-five. That -- That'll kind of be a
3 reminder to you. Now, before I ask the defendants how
4 much time they need, we got two -- we got three
5 summations. This jury gone be sitting a while. We got
6 three, if you'll recall, taking di'retics. I don't like
7 to break during the -- during the summation and let the
8 jury go to the john. I like for it to keep right on
9 going; but, with that much time, it might be difficult for
10 them to sit that long.

11 Now, here's what psychologists -- I'm always quoting
12 something I don't know anything about.

13 **MS. PARR:** I probably won't take that long, but, I
14 mean, I just---

15 **THE COURT:** Beg your pardon?

16 **MS. PARR:** I probably will not take that long. I'm
17 just---

18 **THE COURT:** Okay. But you want to be on the safe
19 side. I'm quoting people that -- all the time, and I
20 don't know nothing ex- -- like Will Rogers, except what I
21 read in -- in magazines or newspapers; but the
22 psychologists and psychiatrists say that, if you got an
23 individual can listen to one individual speaking without
24 some kind of demonstrative-type evidence or showing scenes
25 or pictures or something that's some mental relief, if you

1 got a person that can keep a -- a concentrated attention
2 span beyond twenty minutes, you've got an absolute genius.
3 You got an Einstein.

4 **MR. NETTLES:** What was that you said? I'm sorry.
5 That was just---

6 **THE COURT:** If you go on after twenty minutes, they
7 stop listening; but now I always look at people in the
8 eyeball. I can tell by -- generally. They get
9 disinterested.

10 **MR. ANDERSON:** Judge, on behalf of Mr. Blash,---

11 **THE COURT:** You can have them and lose them. That's
12 what Judge Martin used to say. You had them, and then you
13 turn them lose; then you catch them again, and you turn
14 them lose again.

15 **MR. ANDERSON:** Probably twenty minutes at the most on
16 behalf of Mr. Blash.

17 **MR. NETTLES:** I can tell the court everything I know
18 about everything in twenty minutes.

19 **THE COURT:** Well, that's good. But she's being
20 double-teamed.

21 **MR. NETTLES:** I understand.

22 **THE COURT:** There's two of you, and one of her,---

23 **MR. NETTLES:** But that's---

24 **THE COURT:** ---and she may---

25 **MR. NETTLES:** ---still should---

1 **THE COURT:** ---want to keep---

2 **MR. NETTLES:** ---if you want to give her forty
3 minutes.

4 **THE COURT:** And she ain't usually -- They used to
5 coming back, and they ain't used to -- They ain't gone be
6 able to be coming back at you unless you -- I'm assuming
7 y'all are gonna exercise your procedural right, having
8 offered no witnesses and called no witnesses, that each of
9 you choose to close. Am I correct in that assumption?

10 **MR. NETTLES:** You're correct in that assumption, Your
11 Honor.

12 **THE COURT:** All right, sir. Now, which one is going
13 first, you or Mr. Anderson?

14 **MR. ANDERSON:** Your Honor, I believe Mr. Nettles is
15 going to go first.

16 **THE COURT:** You gone wrap -- You gone---

17 **MR. ANDERSON:** I'm going to wrap it up, Judge.

18 **THE COURT:** You gone -- You gone bat cleanup?

19 **MR. ANDERSON:** Yes, sir. Number three spot in the
20 order.

21 **THE COURT:** Mr. Nettles then Mr. Anderson.

22 **MR. ANDERSON:** Best hitter in the bunch. Average and
23 fowler. Like Chipper last night with a grand slam.

24 **THE COURT:** All right. (To the bailiff) We are ready
25 to go. Bring us the jury.

1 Either of you---

2 **MS. PARR:** Yeah. We -- Wait---

3 **THE COURT:** ---wish this jury polled?

4 (To the bailiff) Hold on one moment.

5 **MR. LAWSON:** Has -- Has the defense technically
6 rested on the---

7 **MR. NETTLES:** We have not.

8 **MR. LAWSON:** ---on the record?

9 **MR. NETTLES:** Yeah.

10 **MR. LAWSON:** So that---

11 **THE COURT:** We fixing---

12 **MR. LAWSON:** ---needs to be done.

13 **THE COURT:** We fixing to do all that in just a
14 minute.

15 **MS. PARR:** Okay. Do you want to take the -- You were
16 going to note the exceptions on the record for the charge.
17 You want to do that at this---

18 **THE COURT:** No, ma'am.

19 **MS. PARR:** ---time or just after---

20 **THE COURT:** No, ma'am.

21 **MS. PARR:** Okay.

22 **THE COURT:** No. We'll let you -- We'll let you do
23 that at the conclusion.

24 **MS. PARR:** Okay.

25 **THE COURT:** I just did that to give you an

1 opportunity to know what I'm gone charge; and -- and I
2 know what you have requested; and, if you -- and, if you
3 choose to make that exception, you certainly within your
4 right to do that.

5 All right. Now, are we ready? Are we ready,
6 counsel?

7 MR. ANDERSON: Yes, sir, Your Honor. The defense is.

8 MR. NETTLES: We are---

9 THE COURT: Defense is.

10 MR. NETTLES: ---ready, Your Honor.

11 MS. PARR: The State's ready.

12 THE COURT: All right. If -- Do you either or you or
13 any of you wish this juror polled (sic)?

14 MR. ANDERSON: No, sir, Your Honor.

15 MS. PARR: The State---

16 MR. NETTLES: No, sir,---

17 MS. PARR: ---will waive.

18 MR. NETTLES: ---Your Honor. No, sir, Your Honor.

19 THE COURT: I'm gone tell them in your present (sic).
20 I'm gone ask that question again just to impress upon them
21 the confidence that you express in them.

22 (To the bailiff) All right. Bring the jury, please.

23 (As jury entering) Oh. Is there gone be -- You gone
24 offer or call any witnesses through the defense counsel?
25 Mr. Nettles and Mr. -- Ms. Jackson both indicate they do

1 not intend to, Mr. Anderson.

2 **MR. ANDERSON:** No, sir, Your Honor.

3 (WHEREUPON, at 9:50 a.m., jury returned to open
4 court; and the following proceedings were had within the
5 presence of the jury:)

6 **THE COURT:** Good morning.

7 (WHEREUPON, the jurors responded.)

8 **THE COURT:** You were all on time and punctual, and I
9 appreciate that. Didn't have any difficulty everybody
10 getting here this morning, and I'm very aware of that, and
11 we thank you.

12 Does either the State or defense counsel wish this
13 jury polled?

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

15 **THE COURT:** Mr. Nettles?

16 **MR. NETTLES:** Defense would waive your honor.

17 **THE COURT:** Mr.---

18 **MR. NETTLES:** Well, on---

19 **THE COURT:** ---Anderson?

20 **MR. NETTLES:** ---behalf of Mr. Monfries.

21 **MR. ANDERSON:** We would waive, Your Honor.

22 **THE COURT:** I share the confidence that the lawyers
23 express when they selected you twelve and you two
24 alternates if we had one or two more people had an
25 emergency or got sick, and I share their confidence. Not

1 gonna examine you or ask you.

2 Now, you've heard all of the testimony you gonna
3 hear. That's closed. You'll hear the summation of the
4 lawyers summing up for you their view in just a few
5 moments of the testimony of the witnesses who testified,
6 and they may phrase or paraphrase to you of what they
7 b'lieve to be the law applicable to the facts in this
8 case, but you remember I'm the sole judge, and I'll charge
9 you following the summation of the law (sic). If there's
10 any conflict, you take the law as I declare it to you and
11 not as the lawyers tell you they believe it to be because
12 I'm the sole judge of the law and not the lawyers. You're
13 the sole judge of the facts, not the lawyers. We all have
14 three separate distinct roles that we play in this system
15 of justice.

16 You haven't been chosen as lawyers. (With distorted
17 voice) "Wonder why the lawyer didn't do that. Here's what
18 I would do, what I would have done." You haven't been
19 chosen as judges of the law. You've been chosen as the
20 sole and only judges of the facts.

21 And just as you have been courteous and attentive
22 throughout, I ask you to show that same -- that you
23 continue to show to the lawyers as they sum up for you --
24 Now, technically, we refer to this part of the trial as
25 argument. I don't think that's the appropriate way to

1 interpret it, although legally that's what they call
2 argument; and I call it summing up, summation. Nobody in
3 their right mind is gone try to argue with a juror or a
4 jury; but what they gone try to do is to persuade, to
5 convince you to accept the view that is most favorable and
6 in the light most favorable to the interest that they
7 represent of their clients, the State being represented by
8 Ms. Parr and Mr. Lawson; Mr. Nettles and Ms. Jackson, the
9 defendant, the accused, Mr. Monfries and Mr. Anderson
10 (sic).

11 But what the lawyers have said to you in the
12 beginning and throughout and at the closing is not
13 evidence. It is their view of the evidence that comes
14 from that witness stand. If you agree that's your
15 recollection of the testimony from the witnesses, you give
16 it the weight it should have. If you disagree, you take
17 your recall because you, not the lawyers, are the only
18 judges and the fact-finders in this case and not the
19 lawyers and not me, the court, but you. If you agree with
20 the lawyers' view, give it the weight you think it ought
21 to have.

22 Well, how do I weigh something? You give the most
23 weight to that which convinces you of its truth, and you
24 will reconcile if there is a dispute in your recall and
25 what the lawyers' recall is because lawyers are advocates.

1 That's their sworn duty. That's their obligation. They
2 swore to do that before they were ever allowed or admitted
3 to sign the register of the lawyer in this State.

4 And I don't generally -- As I have complimented you,
5 I don't generally do this until after a trial. These
6 lawyers are all skilled, each of them; and, just as I told
7 you how important it was to conduct yourselves as ladies
8 and gentlemen, it's extremely important that lawyers do
9 likewise, the example they set. And while they have
10 disagreed and still disagree about the evidence and their
11 view of the evidence in a light most favorable to the
12 client's interest they represent, which is their sworn
13 duty, while disagreeing they have not been disagreeable.
14 They have not only been courteous and kind to you and
15 courteous and kind to the court. More importantly, I
16 think, they have been respectful and courteous to each
17 other and while adamantly carrying out their sworn
18 obligations to their clients. I commend them to you. It
19 represents the very best of professionalism.

20 And some lawyers' strategy, well, they attack each
21 other; and that sometimes leaves a bad taste and a bitter
22 taste in the mouths of those who are not only officers of
23 the court but who are called as witnesses and those who
24 have to serve on jury. So I commend these lawyers to you,
25 just as I have commended you throughout.

1 This is not a charge on the law, but I want you to
2 understand the procedures. We gonna be sitting for a
3 while; and, once they have concluded and it might be -- I
4 remember three of you taking -- told me Monday you were
5 taking di'retics. If you need to break before the
6 summations are completed, I certainly will do that; but I
7 want you to return as swiftly as we can. You raise your
8 hands if you can't sit until you have heard of all them,
9 but we -- I'm -- I'm anticipating you probably gone be
10 sitting an hour and a half or maybe a little less; but I'm
11 anticipating that probably gone be that long. We gone
12 break then and give you a few moments; and you tell us
13 when you ready to 'turn, Mrs. -- return, Mrs. Forelady;
14 and then I'll give you the charge.

15 And I don't think the charge will be over forty
16 minutes, forty to forty-five; but I've not timed it; and I
17 want to tell you because I know you've been anxious. You
18 been here since nine (9:00) o'clock. You voted
19 unanimously yesterday you want to begin at nine (9).

20 We had to work; that is, my law clerk and I who does
21 the research in these things and pulls these things out of
22 the computers of this technology; so I told the lawyers
23 about five-forty-five (5:45) yesterday, "y'all can go on
24 home and come on back in the morning"; and we been
25 refining and re-refining the charge and collating it and

1 trying to just get down to the meat and the specifics of
2 the law and to consult with the lawyers so they could be
3 prepared to argue with you; and that took a few minutes;
4 but I'll tell you it used to -- it took hours and
5 sometimes days 'cause you had to go to the library and
6 look all these up.

7 We've cut that time considerably with these new
8 technologies, and I hope we'll be able to keep all of
9 those technologies up to date, but we're taking some
10 pretty severe cuts in the budgets of all State agencies,
11 and there ain't much fat in the Judicial Busses (sic).
12 It's less than one (1%) per cent of the entire State
13 budget, and technology sometimes -- And then we anticipate
14 that's where some of our cuts gone have to come, or
15 otherwise it comes out of not fat, but it comes out of
16 flesh and bone. We got to let people go. They talking
17 'bout letting our law clerks go next year, already made
18 that decision; and as you -- we save it in one place, it's
19 gone go up somewhere else because it's gone mean a lot
20 more delays in the times you had this morning where the
21 office of judge has got to prepare it all; and, if he's
22 still got to do all this other work with all these other
23 lawyers who keep calling in and wanting this and wanting
24 that, it's a problem; and we gone need the help of the bar
25 and the citizens if we gone maintain this high degree of

1 professionalism.

2 All right. We are ready to proceed. I appreciate
3 y'all's indulgence.

4 **MR. LAWSON:** Did y'all need to rest on the record?

5 **MR. NETTLES:** Oh, yeah. Thank you.

6 At this time, the defense on Mr. Michael Monfries
7 rests, Your Honor.

8 (WHEREUPON, at 10:00 a.m., Defendant Monfries rested
9 his case.)

10 **THE COURT:** Beg your pardon?

11 **MR. NETTLES:** On behalf of Mr. Michael Monfries, the
12 defense rests.

13 **MR. ANDERSON:** Your Honor, on behalf of Mr. Eddie
14 Blash, we rest.

15 (WHEREUPON, at 10:00 a.m., Defendant Blash rested his
16 case.)

17 **THE COURT:** Thank you. All right. We at -- We're at
18 the point of summation. Ms. Parr, I recognize you for
19 making your final and your closing argument or summation
20 to the jury about this case.

21 **MS. PARR:** May it please the court?

22 **THE COURT:** Yes, ma'am.

23 **MS. PARR:** Counsel?

24 (WHEREUPON, closing summation of the State was
25 presented to the jury as follows:)

1 **MS. PARR:** Good morning.

2 (WHEREUPON, the jurors responded.)

3 **MS. PARR:** Okay. At the beginning of the case a
4 couple of days ago, I told you this was a case really
5 based upon common sense; and the State still maintains
6 that. And as I told you before, it was a very complicated
7 -- it was not a very complicated case but yet a very
8 serious one.

9 The judge has told you, at the close of our closing
10 arguments, he will charge you on the law; and he will give
11 you numerous charges about various pieces of the law so
12 I'm not gonna go into a lot of details of that now.

13 You will hear a charge about the burden of the proof
14 -- burden of proof; and, in criminal cases, the State
15 always carries the burden of proof; and that burden of
16 proof is beyond a reasonable doubt. He will also charge
17 you about reasonable doubt.

18 In addition, he will give you a charge regarding
19 direct evidence and circumstantial evidence. And I
20 believe in this case we have both. I believe, when he
21 tells you about circumstantial evidence, he will tell you
22 that the law makes no distinction between direct evidence
23 and circumstantial evidence. There is also no greater
24 degree of certainty required for circumstantial evidence.

25 The judge will also give you a charge about the

1 credibility of the witnesses.

2 And one of the main charges, I think, he will give
3 you will be a charge on the substantive law in this
4 matter; and that's the law regarding trafficking in
5 cocaine. There are several elements that the State must
6 prove for a conviction in trafficking in cocaine, four
7 hundred (400) grams or greater.

8 The first element, that the defendant knowingly to --
9 were in possession of three -- four hundred (400) or more
10 grams of cocaine. The judge will also define possession
11 for you. The possession can be actual or constructive
12 possession. In constructive possession, the defendant was
13 aware of the presence of a drug, had the ability or intent
14 to control its disposition and use. In this particular
15 case, we had joint participates; and the judge will tell
16 about that as well.

17 The judge will also define trafficking, and
18 trafficking is really being engaged in commercial activity
19 to buy or sell. It imputes a carrying on of a business
20 nature.

21 The judge will also tell you that there's a lesser-
22 included offense of trafficking in cocaine; and that's
23 possession of cocaine with intent to distribute; and I
24 will not give you the elements of that at this time.

25 And there may be several other charges that the judge

1 gives you, but now I'd like to look at what the State has
2 proven in this matter.

3 As I said before, this all boils down a lot to common
4 sense; and that's what we would ask that you still use in
5 this matter in applying all the evidence to the law that
6 the judge gives you from the bench.

7 Now, first of all, we had the witness, the chief
8 investigator in this case, Investiter -- Investigator Glen
9 Kirby. We believe that the evidence has shown that, on or
10 about April 10th of 2000, Glen Kirby, who was on-call,
11 received a dispatch call from Central Dispatch in regards
12 to an anonymous tip of illegal drugs. We believe that the
13 evidence clearly shows that he followed all the
14 information provided to him thoroughly until he made a
15 stop at the Holiday Inn Express located near the Magnolia
16 Mall.

17 The interesting -- interesting thing is that all the
18 information he was given included a white S.U.V. with
19 Florida tags, a green S.U.V.-type vehicle with California
20 tags, headed towards the I-20 to find a place to stay, and
21 having in possession a large quantity of drugs.

22 And so what did Investigator Kirby do? He checked
23 out each piece of that; and, while he was at the Magnolia
24 Mall Holiday Inn Express, all of these pieces started
25 coming together. And when they started coming together,

1 as the information he was provided, he turned around and
2 stopped and parked behind the S.U. -- the green S.U.V.
3 vehicle (sic) that had the California tag, and encountered
4 an individual.

5 And I know the defense is going to say, "Well, you
6 know, that's where the drugs came from."

7 That individual didn't have any drugs. The officers
8 found nothing in his car, under his car, on his person.
9 Sure, the officer may have been suspicious about him; but
10 that's it.

11 Then the officer does a little more investigating and
12 finds out, lo and behold, someone has checked in recently
13 in Room 243. The officer goes there. And who does he
14 first encounter but Michael Monfries. He identifies
15 himself to Mr. Monfries, as well as Mr. Monfries
16 identifies himself; and he gives him consent to search his
17 room. And then he says, "Yes, you can search the vehicle,
18 too." And he also says, "Yes, I'm meeting someone in a --
19 driving a green S.U.V.-type vehicle with California tag, a
20 Mr. Brown." So all of these things are checking out.

21 And then the officer goes down to the vehicle, the
22 white Nissan Xterra; and he doesn't look in the car first
23 because he's a trained narcotics officer. Where does he
24 go? He looks right under the vehicle and the tire rim.
25 And lo and behold, what does he find (while indicating)

1 but this package?

2 Now, they find out some more information. And what's
3 what information? That the room is rented by a Lowman
4 Rush for the defendants. And so while Investigator Kirby
5 is looking -- completing his investigation on the scene,
6 two other investigators go and have a conversation with
7 Lowman "Timmy" Rush.

8 And while there, what do they do? They -- Mr. Rush
9 gives them a scale and gives them information and later
10 comes to the law enforcement office, later on in that
11 morning, to provide a detailed statement as to what he
12 knows about this situation.

13 Now, I'd like to talk about Lowman "Timothy" Rush
14 because the defense has tried to portray that he has given
15 three statements and that these statements are
16 inconsistent. But let's look at them.

17 He -- The statement he gives law enforcement, he was
18 not under arrest, was not threatened to be under arrest,
19 or anything of that nature. He goes back, and he tells
20 them about his trip to Miami to see his cousin, the
21 defendant Eddie Blash. Well, not to see him, but he sees
22 him while he is there in 1999. Why would he make that up?

23 Also, the one interesting thing he said when he was
24 asked from the stand -- He was not trying to help law
25 enforcement; but he did say, well, yeah, that he was kind

1 of trying to help his cousin when he gave his statement.

2 But if you really examine the three statements, they
3 are not inconsistent at all. He said -- Even in his
4 statement to law enforcement, he said he didn't see any
5 drugs. He told both defense counsels he didn't see any
6 drugs. He never saw the defendants with any drugs.
7 That's not inconsistent.

8 But his statement to law enforcement was detailed.
9 Very detailed. But his statements to the defense counsel
10 were very pointed. He answered what they asked him. They
11 didn't ask for any details. And quite frankly, they
12 weren't trying to get any details, not at all. They
13 wanted the answers that would help their client.

14 And when he went to their office, he called -- they
15 called him several times. They made a point about Mr.
16 Rush going to the Law Enforcement Center and that there
17 being the jail there and being in a small room. But when
18 he went to the defense counsel's office, especially Eddie
19 Blash, he's there with who? The defendant, his first
20 cousin, and his attorney.

21 Now, you tell me, what were they expecting him to
22 say? You think he was gonna volunteer all of this
23 information? No. Common sense does not afford that.

24 When he went to Ms. Jackson's office, attorney for
25 Monfries, the same type of situation. But none the less,

1 just because he did not tell them -- volunteer all that
2 information that he gave law enforcement does not mean it
3 did not happen because, if you look at what he told law
4 enforcement on April 11th, it's the same thing he told the
5 court on August 15th. It is also the same thing that is
6 consistent with all of the evidence that has been
7 presented in this case.

8 He had to have been in the -- riding in the S.U.V.
9 with them. He saw the pots in there. He told you about
10 all the places they went to try to find a scale. And what
11 do we have? The scale. He told you that his cousin,
12 Eddie Blash, the defendant, asked him to keep the scale.
13 And what do we do? Law enforce- -- He gave the law
14 enforcement officers that scale that his cousin asked him
15 to keep.

16 His cousin, Eddie Blash, asked him to rent a room for
17 them. And the receipt indicates that he rented that room
18 for them. But who paid for it? Eddie Blash, the
19 defendant, and Michael Monfries, the defendant, paid for
20 it together.

21 When he actually went to purchase the scale and one
22 was found at Ray's, who went in and got the scale after
23 one was found? Eddie Blash and Michael Monfries. You
24 know, the interesting thing is they didn't want just any
25 old scale. If that's the case, they would have gone to

1 Wal-Mart or Kmart. But they wanted a digital gram scale,
2 a scale that weighs grams. And that's what they got, and
3 that's what we have presented to you.

4 Mr. Blash, the defendant, also wanted some -- wanted
5 him to introduce him -- introduce them to someone so they
6 could talk about purchasing dope. Common sense. We know
7 what dope is. He may not have seen it, but we know what
8 it is.

9 And Mr. Rush also heard -- When they were outside
10 talking, that being the defendant Monfries and Trap, the
11 person he introduced them to, he heard Mr. Monfries, who
12 was the driver of the vehicle, telling Trap that he could
13 get him a half.

14 And I know the defense counsels are gonna harp on the
15 fact, say, "well, gosh, he had -- Mr. Rush has immunity."
16 And Mr. Nettles so eloquently asked him, "well, what does
17 that mean to you?" But if you'll recall, the issue of
18 immunity never came up until at the very close of the
19 direct examination of Mr. Rush because it was never even
20 an issue because no promises were made to -- to Mr. Rush
21 about testifying or helping law enforcement. And, in
22 fact, he told you he wasn't trying to help law
23 enforcement. He actually did not want to be involved in
24 this case at all. And that's understandable.

25 We're talking about a large amount of drugs here. A

1 very large amount. Serious matter for Florence, South
2 Carolina. A serious matter for any city.

3 So we would ask that you not let the defense counsels
4 put you in that mind set that, "oh, he's just out trying
5 to help himself," because that's not what it is. He
6 doesn't have a reason to try to get himself to help
7 himself.

8 Now -- And also we have the manager from Kmart, Mr.
9 Shelley. Mr. Shelley says that those pots were bought
10 from his store. Now, he couldn't say that that particular
11 pot -- set of pots of Vision Ware were bought in that
12 particular box on April 10th. But he did tell us that on
13 April 10th, at five (5) -- something in the afternoon, a
14 set of Vision Ware pots with the same U.P.S.C. (sic)
15 number were purchased from his store. Coincidence? I
16 think not.

17 **MR. NETTLES:** Objection. Her opinions are not
18 appropriate for closing arguments. She just said, "I
19 think not."

20 **THE COURT:** Beg your pardon?

21 **MR. NETTLES:** She just said, "Coincidence? I think
22 not." She nor I nor the court, for that matter, are
23 allowed to interject her opinions. She can talk about the
24 facts.

25 **MS. PARR:** Your Honor, ---

1 **THE COURT:** All right, sir.

2 **MS. PARR:** ---I'll -- I'll rephrase that.

3 **THE COURT:** That -- That's noted, and we sustain it.
4 But you -- you may -- you may argue generally any of your
5 view of the -- any of the evidence and---

6 **MS. PARR:** We would ask that you review that. Is
7 that a coincidence? Do we get back to common sense again?

8 Now, there are a number of other items found in the
9 vehicle: the strainer, the little tin loafs, the sponges.
10 We ask you to think about that. And then, again, common
11 sense.

12 And one interesting thing is that there was the
13 request -- The defendants asked Mr. Rush for a room with a
14 kitchen. And what does this room have? Mr. Fulmore told
15 you it had a little kitchenette with a microwave oven. So
16 for the purpose of -- we submit to you, for the use of
17 those items.

18 (While indicating) And then let's look at this
19 particular item here. Lieutenant McFadden came before us,
20 and he told us that in his experience this packet here was
21 worth a hundred thousand (\$100,000.00) dollars. That's a
22 lot of money. A hundred thousand (\$100,000.00) dollars.
23 And this packet was in the tire rim -- the spare tire of
24 that S.U.V., that Xterra, that Mr. Monfries rented.

25 Now, the defense will have you believe that, oh, that

1 was not his package that -- because it was rental car it
2 just happened to be left in that spare tire. And I submit
3 to you we would ask that -- Or I will ask you to use your
4 common sense. Who would leave a hundred thousand
5 (\$100,000.00) dollars in a tire rim? A hundred thousand
6 (\$100,000.00) dollars.

7 Ladies and gentlemen, Lieutenant McFadden also told
8 you that narcotics are often measured or weighed in grams,
9 and that's why that digital gram scale was so very
10 important, that that's why they wanted that one. We
11 submit to you that all of this evidence taken together
12 show beyond a reasonable doubt that these defendants were,
13 in fact, trafficking in cocaine more than four hundred
14 (400) grams.

15 But sometimes we don't know what a gram is. You all
16 -- Everybody's usually familiar with a packet of Equal.
17 (While indicating) This is one gram. One gram. One gram.
18 (While indicating) Almost a thousand grams. In Florence,
19 most of the cases that we deal with, a couple of these
20 little Equal packets. But this time we have roughly a
21 hundred (sic) Equal packets.

22 We would ask that you send a message that this type
23 of activity will not be tolerated in this community. And
24 we would ask that you find the defendants, Eddie Blash and
25 Michael Monfries, guilty of trafficking in cocaine, four

1 hundred (400) grams or more.

2 Thank you.

3 **THE COURT:** Mr. Nettles,---

4 **MR. NETTLES:** Thank you, Your Honor.

5 **THE COURT:** ---your final closing summation.

6 **MR. NETTLES:** Thank you, Your Honor.

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

9 **MR. NETTLES:** Got any chalk? Is there any chalk?
10 Chalk?

11 **THE COURT:** We need---

12 **MR. NETTLES:** Chalk.

13 **THE COURT:** ---some chalk.

14 **MR. NETTLES:** Before I get started -- Or while
15 they're getting that, (while indicating) this is a lot of
16 cocaine. Now, whether all the -- most of the cases they
17 have in Florence are a gram or not, I don't know; and you
18 don't know. You know why? Because nobody's pre- --
19 presented you any of that evidence. All right? So that
20 just goes to show you what we're dealing with here.

21 One of the last things they tried to leave in your
22 mind was, oh, most of the cases we get here are just this
23 little itty bit of cocaine -- a gram of cocaine that we've
24 got here; and this is a lot; so somebody's got to go to
25 jail regardless of whether it's the right person. Okay?

1 Send a message. Send a message.

2 How 'bout let's send a message to Eric? Have we
3 forgotten about Eric? Have we forgotten that whenever
4 that police officer took the stand and said that his tip
5 said a guy named Eric was involved with a lot of drugs --
6 Do y'all remember him saying that? Eric. Nobody here is
7 named Eric. Nobody here is named Eric. So if you're gone
8 send a message to Eric, send a message to Eric.

9 But by convicting these two guys, Eric isn't gonna
10 go, "oh, man, boy I better quit dealing in drugs 'cause
11 they sent those other two dudes to jail." You -- What
12 kind of message is that gonna send to Eric.

13 Or Clayton Brown? Do you think Clayton Brown is
14 going, "whew, boy oh boy, I better quit dealing in drugs;
15 they sent those other two guys to jail."

16 You -- You -- Is that -- So whenever they start
17 talking about sending a message, let's talk about what
18 we're dealing with here. Okay? Just send a message to
19 the right person.

20 I mean, where would our mail system be if every time
21 you were sending a message to somebody it went to the
22 wrong person? You don't get anywhere doing that.

23 So when the question gets asked, use your common
24 sense. How many times did y'all hear that? You know what
25 that's code for? The evidence doesn't fit. If we tell

1 you enough, it's just common sense. We can't explain it.
2 It's just common sense. That means it's not fitting.

3 Instead of just -- You know, if you ask somebody how
4 to do something -- "Hey, man, how are you doing that?"
5 And they go, "Well, look, you know, it's kind of like
6 this: You take this, and you put it here, and you build
7 this, and this is how you build an engine. Or this is how
8 you, you know, tie a knot. You do it this way. This is
9 how you do it. These are the steps."

10 Have you ever asked somebody how to do something they
11 really don't know how to do? You know what they say?
12 That's common sense. That's common sense.

13 Well, no, it's not 'cause what we've got is this:
14 We've got a lot of drugs, and we've never tried to hide
15 from that. The only question we asked of the lady that
16 came in here with the drugs was, "Ma'am, is there anything
17 about these drugs that puts them in the possession of --
18 of -- of anybody at this table"; and the answer was, "No,
19 all I can tell you is that's drugs."

20 Were there any fingerprints on those drugs? Boy,
21 what kind of case would it have been if there had been one
22 fingerprint on the drug that matched anybody that had been
23 talked to? Now, there's another -- You know, they tried
24 to say they sent them off to be fingerprinted; but where's
25 the report? We got a report for everything else that was

1 ever done in this case. Everybody that touched these
2 drugs had to fill out a she- -- a -- a -- a -- a slip.

3 There's a report done on the amount of drugs.

4 There's a 'port done on the -- what kind of drugs they
5 are. There was a three-page report done on the activities
6 that took place because somebody called in and Eric had a
7 bunch of drugs. There was a three-page report. Not --.

8 (WHEREUPON, Mr. Anderson handed chalk to Mr.
9 Nettles.)

10 **MR. NETTLES:** Thank you, Hank.

11 Not once in that three-page report is there any
12 mention of it being sent for fingerprints. The day that
13 -- that -- that -- that the officer went to the Holiday
14 Inn -- Okay? The -- That there were drugs found in a
15 white Xterra.

16 And let's -- You know, when we're talking about
17 common sense, that was one of the things I discussed with
18 the Officer Kirby, was, you know, when this whole thing
19 went down, there was a guy named Clayton Brown that
20 admittedly been there. Admittedly the Xterra has not been
21 surveyed for any hour. Nobody had been watching it for an
22 hour. Clayton Brown was going there.

23 Michael Monfries assisted in every possible way. He
24 told them who he was meeting. He told them what he was
25 driving. He -- You know, and when they talk about for

1 just a second that they went and where did they go to
2 look. They went and looked under the car 'cause that's
3 where a trained law enforcement officer looks.

4 Well, you know what else, talking about contents. He
5 didn't have the keys. He could only look underneath the
6 car until Michael Monfries got dressed and came down there
7 with the keys. So when we talk about common sense, they
8 want you to believe that because this guy looked
9 underneath the car first that's some sort of training. He
10 didn't have the keys. When Michael Monfries came down the
11 steps, he hit the keys and unlocked the car.

12 Here's what else is very important. You know,
13 there's a Sherlock Holmes story that goes something like
14 this: I can't remember the name of it, but the gist of it
15 is something like this: There was a large mansion on the
16 outskirts of one of the big towns in England, and this guy
17 had a lot of art in the house, and he had a group of dogs
18 that were trained to protect this mansion of his. And,
19 sure enough, during the night, somebody goes in there and
20 steals just about everything he's got, art work. So they
21 called in Sherlock Holmes to solve it.

22 And Watson gets there before Sherlock Holmes, and
23 Watson says -- Starts running around, you know. Oh, my
24 gosh, all the stuffs gone; all the stuffs gone. Oh, oh,
25 stick with me, I'm almost done. All the stuffs gone; all

1 the stuffs gone. And he says -- And Sherlock Holmes says
2 -- Sherlock Holmes says, what about the dogs? Did the
3 dogs bark?

4 And he goes, but look, look, this is -- Watson goes,
5 look, this is moved around over here; and we've got some
6 pots and pans, and we got this and got that.

7 Sherlock Holmes goes, but wait a minute. Did the
8 dogs bark? And Watson's still running around talking
9 about all this little stuff, tearing open, you know,
10 packages of Sweet 'N Low and running around. And Sherlock
11 Holmes goes, wait a minute. Did the dogs bark? Because
12 what you need to understand is the -- And -- And Sherlock
13 -- And Watson goes, why does it matter what the dogs did?
14 He goes, if the dogs didn't bark, it means it was someone
15 who lived here.

16 So the reason I tell you that story, not just to let
17 you know I know a little bit about Sherlock Holmes, very
18 little, but -- But the reason I tell you that story is
19 because sometimes you have to look at what -- what
20 evidence there isn't in a case. And I know that's hard to
21 do, but please allow me to discuss that with you. Okay?

22 What we don't have is this: When the dog went to hit
23 on the Xterra, do you remember the police officer said,
24 "We ran the dog around the car, and we ran the dog through
25 the car." He didn't hit inside the car. Michael Monfries

1 had been in the car. Michael Monfries -- It was Michael
2 Monfries' car, but the drug dog did not hit inside the
3 car.

4 (While indicating) Nobody said anything about these
5 drugs looking like they had been riding around. Don't you
6 think, if -- if this officer could have honestly said it,
7 he would have told you, "And I got those drugs out of
8 there; and, to me, it appeared like those drugs had been
9 riding in a spare tire area for some time."

10 Because if you believe Lowman Rush -- And we'll talk
11 about that later. Even if you believe Lowman Rush, this
12 car had been riding around town all day long. Now, just
13 for a second, using your common sense, (while indicating)
14 don't you think that if this had been riding around in a
15 wheel well, outside of a car, that officer, telling the
16 truth, could have said, "And I pulled it out; they were
17 covered with dirt and grime and road dirt debris"?

18 But he couldn't say that. That's because that wasn't
19 there. There was no hit by the dog inside the car. There
20 was no hit by the dog inside the apartment (sic). There
21 was no hit on any of the people.

22 Talking about common sense, talk -- Think about this.
23 Were there any guns involved in this? I mean, you know,
24 we hear all the time -- One of the things you'd bring
25 common sense was drug dealers got guns. And, you know, I

1 guess a lot of them do. I don't know. But, you know,
2 it's certainly sort of common sense. There weren't any
3 guns found in this case.

4 There certainly weren't any scales found on our
5 client.

6 When you start thinking about this evidence, they
7 talk about they needed a kitchen to cook; and you're
8 talking about common sense. If you haven't heard about
9 it, (while indicating) take that home and put it in a
10 microwave and see what happens.

11 What we've got is -- is a number of items that are
12 found. Some of them are illegal, and some of them aren't.
13 But in order to connect them together, they need one
14 person. When you look at this, you've got -- you've got
15 my client. You've got some arguably relevant evidence,
16 and the only thing that's connecting them is Lowman Rush.
17 That's the only thing that connects this.

18 Now, you know, one thing the government conveniently
19 let out of their account of what happened with the
20 questioning of Lowman Rush is the police went in his house
21 at three (3:00) o'clock in the morning while he was in bed
22 with his girlfriend and his -- and his child. He's asleep
23 at three (3:00) o'clock in the morning, and the police
24 show up.

25 You know, it's not like they do it on T.V. You know,

1 (while knocking) "sir, could you step out here; we'd like
2 to ask you a couple of questions; we've got a couple of
3 questions we'd like to ask you."

4 They want you to believe that's what happened. But,
5 you know, that's not what Lowman Rush said. Lowman Rush
6 says, "I'm laying in my bed; and the next thing I know, I
7 roll over, you know, like looking for my alarm clock; and
8 there's a police officer."

9 And they want you to believe that Lowman Rush didn't
10 feel compelled to assist them. That Lowman Rush didn't
11 feel just the smallest amount of pressure, being who
12 Lowman Rush is. That at some point the police weren't
13 just gonna, (while knocking) show up at his door at three
14 (3:00) o'clock in the morning and be standing by his bed.

15 And you talk about common sense. You talk about
16 common sense.

17 He also said -- Lowman Rush said, during our cross-
18 examination, that when he was being questioned that
19 sometimes they'd ask him questions and he'd go "I don't
20 know." And they'd cut the tape recorder off, and they'd
21 talk to him. The people that had visited him at three
22 (3:00) o'clock in the morning at his house -- not just
23 visited him; come into his bedroom -- would cut off the
24 tape recorder and discuss things with him. And then when
25 they thought he had it right, they'd cut the tape recorder

1 back on.

2 Now, you know what? Maybe Lowman Rush will just tell
3 whoever is questioning him whatever he thinks they want to
4 hear. And maybe that -- You know, and it's not that he's
5 lying. It's not that he's not telling the truth. I mean,
6 maybe he's just somebody that doesn't -- that -- that
7 wants to tell people what they want to hear, and that's
8 okay. But you have to take that into account when you're
9 trying to link up that stuff to my client 'cause that's
10 all there is. That's all there is.

11 So when they ask the question, who's got a hundred
12 thousand (\$100,000.00) dollars worth of stuff to leave in
13 a -- in a -- in an Xterra, well, Eric, Clayton Brown,
14 Lowman Rush. 'Cause don't forget, without Lowman Rush'
15 testimony, this just doesn't fit. I mean, what if Lowman
16 Rush's account is all true, except our clients weren't
17 there. I mean, what if -- what if, just for a minute,
18 Lowman Rush told the truth about that whole day, except
19 our clients weren't there.

20 **MR. LAWSON:** Objection, Your Honor. He's arguing
21 facts not in evidence.

22 **MR. NETTLES:** I can certainly argue his credi- -- I
23 can certainly argue his credibility, Your Honor. I think
24 there's enough evidence---

25 **THE COURT:** Just stay wid -- Just stay within the

1 evidence.

2 **MR. NETTLES:** And evidence of that is this---

3 **THE COURT:** Sustained.

4 **MR. NETTLES:** Where's Trap? I asked Lowman Rush --
5 Now, this guy named Trap that these guys were supposedly
6 talking to about this big drug deal -- 'Member Lowman
7 says, "I walked by, and they were talking to a guy about a
8 drug deal." Where's -- I said, "So Trap -- Like you still
9 know where it is." He said, "Oh, yeah." And he doesn't
10 live in that apartment -- I mean, that place, but he comes
11 by there all the time. "He still there." "Yeah." Where
12 is Trap?

13 I mean, if we've got this well -- finely tuned
14 investigation, where's Trap? Why didn't Lowman Rush say,
15 "Oh, yeah, and if you want to talk to Trap, Trap heard
16 it"? Well, I don't know. One explanation is -- is maybe
17 Trap didn't help their story.

18 I ask you this: When you're considering Lowman Rush,
19 consider for a second you're looking for a utility
20 trailer; and, you know, your spouse, you, and your oldest
21 child are all going down and talk to Lowman Rush about a
22 trailer. He's got one trailer left, and you all come
23 back. You know, you all go to see -- You know, you can't
24 go see it at the same time. You're busy that day, but
25 y'all make plans. One of you goes at eleven (11), and he

1 shows you the trailer and talks to you about the trailer.
2 One of you goes at one (1), and he shows you the trailer
3 and talks about the trailer. The other one goes at three
4 (3), and he shows you a trailer and talks to the trailer
5 (sic).

6 And you come back, and you're sitting around supper
7 that night. And you say, "Well, did y'all go look at the
8 trailer?" "Yeah." And y'all can start talking trailer.
9 And each one of you, he's told you something completely
10 different about the trailer. I mean, I -- I -- You know,
11 to me, that's not out to lunch.

12 Are you gonna buy a trailer from that guy? Well,
13 that's what they're asking you to do, is buy a story. And
14 it's the story that was told three different times to
15 three different people. Now, maybe he just wants to tell
16 people what they want to hear, but what we were asking for
17 was the truth, and he couldn't seem to tell the same story
18 twice.

19 You know, recently we had some trouble in the Middle
20 East, and we sent a bunch of our men over there to go
21 fight, and the -- in -- in Saudi Arabia. And one of the
22 things that happened that was, you know, we would be
23 fighting; then and sometimes the -- And any time anybody
24 dies in a war, it's tragic, regardless of which side
25 you're on. But some of the most tragic is -- is when they

1 have what's called friendly causalities. In other words,
2 when people fire on their own people by mistake.

3 Well, there's a war on drugs; (while indicating) and
4 these kind of drugs, they're bad; and I think Ms. Jackson
5 talked about it at the very beginning. Nobody here is to
6 say this is not about whether cocaine is good or bad
7 'cause cocaine's bad. This is not about whether community
8 needs cocaine or not 'cause communities don't need
9 cocaine. It's not about that.

10 This is about whether Michael Monfries is guilty of
11 trafficking in cocaine. To convict Michael Monfries in
12 this war on drugs would be like friendly fire. You don't
13 -- You don't -- You know, there's plenty of ways that we
14 can make it clear to people that drugs are bad without
15 convicting innocent people. Now, whether you'd call it
16 common sense or whether you'd call it following the law or
17 whether you'd just call it doing the right thing, Michael
18 Monfries is not guilty of trafficking cocaine.

19 Thank you very much.

20 **THE COURT:** Mr. Anderson, your final closing
21 summation.

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

24 **MR. ANDERSON:** There's no physical evidence -- none
25 -- that Eddie Blash had anything to do with these drugs.

1 There are no credible witnesses that Eddie Blash had
2 anything do with those drugs. There's nothing that the
3 State has shown you, you good people, that would lead
4 y'all to convict him of any drug involvement.

5 We've heard from several different witnesses today.
6 Well, not today. Excuse me. This week. And I'd like to
7 just briefly run over those for you.

8 First of all, we heard from Glen Kirby. And what did
9 Glen tell you? No physical evidence about my client Eddie
10 Blash's involvement in drugs. "Did you find any
11 fingerprints, Glen?" "No." "Did you find any hair?"
12 "No." "Did you find any D.N.A.?" "No." "Did you find
13 any drugs on him?" "No." "Did you find any drug
14 paraphernalia?" "No." "Did you find anything on him or
15 on Michael Monfries in the room?" "No." "Well, did the
16 dog go up to the room?" "Yeah, the dog was up there."
17 "Did the dog hit on anything?" "No."

18 All right. The first common sense question I want to
19 ask you: A hundred thousand (\$100,000.00) dollars and
20 you've got it. If it is yours, if that is your hundred
21 grand, are you going to leave it outside? Are you going
22 to leave it on a rental car? Not taped up under a rental
23 car, not inside the rental car. But just a hundred grand
24 up there where you can just reach up there and grab it.
25 Are you going to do that? That's the first common sense

1 question I want to ask you.

2 Also, on Detective Kirby. "Glen, did you call to
3 find out who rented the car before?" "No." "Why not?"
4 "Well, I didn't think it was important." "Well, did you
5 even bother to find out if the person that rented it
6 before had a criminal record?" "No." "Why?" "Well, I
7 didn't think it was important."

8 We've heard from Reginald Fulmore. What can Reginald
9 tell us? "I rented a room." That's all he told us. I
10 don't have a problem with that.

11 Then we heard from Chad Stone. "Chad, what did you
12 do?" "Well, I was watching Clayton Anthony Brown while
13 Glen was talking." "Do you know anything about my client
14 Eddie Blash?" "No." "Do you know anything about Michael
15 Monfries?" "No." "Do you know anything about any drugs?"
16 "No."

17 All right. So out of those three witnesses, what has
18 the State shown you concerning his involvement in drugs?
19 Nothing. Not a thing. Did he have the key to the car?
20 No. Did he rent the car? No. What have they shown you
21 of his involvement? Nothing. What have they shown you of
22 any credible testimony so far? Nothing, because they
23 haven't shown you anything.

24 All right. Who did we hear from after that? Timmy
25 McFadden. What did Timmy do? Well, Timmy's got a gun.

1 Timmy's got a badge. Timmy can go knock on people's house
2 at three (3) in the morning and talk to them. He can tell
3 people "You need to be at the Law Enforcement Center this
4 afternoon, and you need to talk to Glen Kirby."

5 Folks, ask yourself a question. Law enforcement
6 comes in my house and comes to my bed, (while knocking)
7 "Mr. Anderson, hey, Mr. Anderson, I want you at the Law
8 Enforcement Center this afternoon; do you understand me?"
9 "Yes, sir. I -- I -- I got that. I got that message.
10 I'm gone by there. I gonna be there early. You want me
11 there at four (4). I'll be there at three (3). I don't
12 need directions. I can find it. Matter of fact, I'll
13 start looking for it now. I mean, I'm not going to have a
14 problem getting there, and I'm going to tell you what you
15 want to know. I can promise you that."

16 All right. Gary Lewis. Well, Gary Lewis is kind of
17 an interesting point at this point in time. Now, he's --
18 he's got some interesting testimony. Gary Lewis, "Well,
19 you know, I took the car around -- I took the dog around
20 the car, and -- and it hit on kind of the tire well, and I
21 took it up to the room, and it didn't hit on anything, and
22 I went through the car, and I didn't hit on anything.
23 Took it over to the green Jeep, and it didn't hit on
24 anything."

25 Did you hear any testimony about him putting the dog

1 inside the green Jeep? Why wouldn't you check the inside
2 of a man that's lied to you? A man that said, "Man, I'm
3 just trying to get a room; I don't know no white Xterra; I
4 don't know nobody in no white Xterra; I don't know
5 nothing; I'm just catching a room."

6 So Glen Kirby, the thorough, complete, accurate
7 investigator, goes up there and says, "Hey, you expecting
8 anybody?" "Yeah, I'm expecting a Clayton Anthony Brown."
9 "Well, is he coming by to see you?" "Yeah; he's going to
10 be driving a green Jeep; I think it's got California
11 plates on it."

12 Common sense, people. Would you check the inside of
13 his car? A man that's lied to you. Bald-face lie. Why
14 not? Why wouldn't you?

15 **MR. LAWSON:** Your Honor, may it please the court? I
16 hate to object during closing arguments, but there's
17 testimony in the record that not only Officer Kirby but
18 that the dog both searched the interior---

19 **THE COURT:** But -- But then---

20 **MR. LAWSON:** ---of the green vehicle.

21 **THE COURT:** There's a -- There is a different view in
22 the minds of all the lawyers as to the evidence testimony.
23 As long as the lawyers confine themselves within the
24 general parameter of the evidence produced by the
25 witnesses, it is appropriate argument; and they may

1 comment on the law as well. I understand the objection
2 made by counsel, but the jury heard the evidence. I'm
3 gone overrule the objection.

4 You may continue.

5 **MR. ANDERSON:** Thank you, judge.

6 **THE COURT:** But everybody stay within the evidence.

7 **MR. ANDERSON:** I believe I'm doing that, Your Honor;
8 but I'm sure the jury will use their recollection and not
9 mine.

10 **THE COURT:** Well, they got a different view.

11 **MR. ANDERSON:** Kmart---

12 **THE COURT:** Obviously,---

13 **MR. ANDERSON:** What did the Kmart guy tell us? You
14 can buy these pots and pans at Kmart. Okay? "Was there
15 any residue of powder in any of these pots and pans."
16 "No." "Was there anything of those pots and pans that
17 would indicate that my client or Mr. Monfries was doing
18 anything?" "No."

19 All right. And then we heard from Kelly Morgan. And
20 what did Kelly say? "I'm in the chain." All right. I'll
21 move on.

22 Then we heard from Marvin Lunn. What did Marvin say?
23 "I'm in the chain. I -- I transported stuff." Okay.

24 Then we heard from Lowman Rush, and I'd like to stop
25 here for a second. Lowman Rush. One night at the Holiday

1 Inn Express, about seventy-six (\$76.00) dollars. Being
2 awoken -- Or being awoken, any way you want to pronounce
3 it, by the police at three (3) in the morning. I'm going
4 to be scared, and I'm going to be sleepless. Immunity is
5 priceless. Priceless. Everything else you can buy on a
6 MasterCard. But immunity is priceless. Immunity is
7 better than cash money. Immunity is better than gold.

8 And while I'm talking about Lowman, you know, we
9 talked about the jail. Me and Lowman did. And Lowman
10 knew more about it than I did.

11 (While writing) Three hundred and sixty-five (365)
12 days in a year, and let's just say fifty (\$50.00) dollars.
13 I'm going to use good round figures because I'm not a math
14 major. That's about eighteen thousand (\$18,000.00)
15 dollars. One year, eighteen thousand (18,000). Five
16 years, ninety thousand (90,000).

17 If I called a witness on behalf of Mr. Blash and he
18 testified that my client had nothing to do with it and
19 then the State asked him, "How much did Mr. Anderson pay
20 you to come testify today," "ninety thousand (\$90,000.00)
21 dollars," would you believe my client? Would you believe
22 the man that I put on the stand, knowing that he had
23 ninety thousand (\$90,000.00) dollars to come testify?
24 Would you believe that?

25 Well, let's go on. I'm going to come back to Lowman.

1 Meredith Knox. She tells us it's cocaine, and I
2 don't have a problem with that. Never objected to that.

3 But Lowman Rush. "Lowman, why did you hide the
4 scales?" "I didn't want my boy to get them." "Well, do
5 you have any knives under there, Lowman? Do you have
6 anything else in the house that you don't want your three-
7 year-old son to bother?" "Well, no; just these scales."

8 All right. Let's go back for a second. Ask another
9 common sense question. If I've got a hundred thousand
10 (\$100,000.00) dollars and I'm riding around buying stuff,
11 why would I give some of it to somebody else to keep? Why
12 would I do that? If I've got pots in the back of my car
13 and I've got cocaine under my car, why in the world would
14 I give the scales to somebody else? Why? Why would I
15 give them to him?

16 Bought them at Ray's. Has anybody come from Ray's to
17 testify? Do we know when -- where the scales came from?
18 Do we know who bought the scales? We don't know where
19 Trap is. We don't have anybody from Ray's.

20 I don't have the burden of proof in this case.
21 Michael Monfries doesn't have the burden of proof in this
22 case. The State does.

23 Ask yourself some more common sense questions. When
24 did he get immunity granted to him? When did he get
25 immunity granted to him? When he got in trouble. When he

1 got in trouble on that witness stand, he got immunity. I
2 can't grant a client immunity. I can't grant a witness
3 immunity.

4 The State wants you to believe, "Well, we never
5 granted him immunity until he started testifying." He was
6 never charged. He wasn't charged with anything. Why
7 would he need immunity? When he gets in trouble, (while
8 knocking) right here. That's when he needs immunity.
9 That's when he needs it.

10 Another common sense question. In Florence, South
11 Carolina, we deal with these little tiny drug cases.
12 Little tiny drug cases. Folks, ask yourself this: When
13 you think of Miami, Florida, do you think of drugs? I --
14 Sometimes I do. It comes to my mind.

15 (While indicating) Why would you bring this, if you
16 want to sell, why would you bring it from Miami? Why not
17 sell it in Miami? Why would you come to South Carolina
18 where you don't know anybody? You'd have to hire somebody
19 to rent you a room. If I've got a hundred thousand
20 (\$100,000.00) dollars, I can rent my own room. If I've
21 got a hundred thousand (\$100,000.00) dollars, I don't need
22 a rental car. I can buy a car.

23 I just -- Use your -- Use your common sense, folks.
24 I ask you to. Please, use them.

25 When I was a little boy -- This is the best way I can

1 describe Lowman Rush's testimony. When I was a little boy
2 -- My mama is one of those people that she stays up at
3 night worrying that they're going to have a worldwide
4 chocolate shortage. I mean, things like that bother my
5 mama. You know, she wants to make sure she's got her
6 Hershey bar anytime she needs one. I mean, she's got one
7 in her room; she's got one in the kitchen; she's got one
8 in the car. I mean, she's not going to be caught without
9 a Hershey bar. That's the way my mama is.

10 And one year for Christmas I bought her a Hershey
11 bar. I mean, I was a little tiny fellow about four or
12 five; and I, you know, saved my quarters and stuff; and I
13 bought Mama one of them big old giant Hershey bars,
14 chocolate with almonds in it. And I was tickled to death,
15 you know. Got Mama a birth- -- a Christmas present. Man,
16 I was excited about that thing. I couldn't let Mama find
17 it beforehand, so I had to hide it. Well, I was, you
18 know, a little tiny boy. I didn't know where to hide it,
19 so I kind of hid it outside. And I was -- Mama won't look
20 out there. I hid it outside. And unbeknownst to me, some
21 bugs had gotten in it.

22 And -- And Mama got that thing and unwrapped it, and
23 she took a bite, and she spit it out, and she -- You know,
24 "Son, this thing's got bugs in it." And I -- I mean, I
25 felt bad about it. You know, Mama did not pick up the

1 rest of that candy bar looking for a good piece. Mama
2 didn't brush the bugs off and cut it in little tiny pieces
3 until she found a good piece. Mama threw it away, and I
4 don't blame Mama.

5 Now, Lowman Rush's testimony, you don't have to brush
6 it off. You don't have to look for the good parts. You
7 can throw it away. And other than that, the State doesn't
8 have anything against my client Eddie Blash.

9 You listen to the charge. You use your common sense.
10 I think, if you do, my client is found not guilty.

11 Thank y'all.

12 **THE COURT:** Ladies and gentlemen, it's 'leven (11:00)
13 o'clock now. I'm gone let you take a break, and you let
14 me know when you ready to return. The charge is -- is
15 ready, and the verdict form is ready, and I'm gone review
16 that for just a moment, and you got a chance to refresh
17 yourself.

18 I will have concluded the charge before the noon
19 hour, twelve (12:00) o'clock. It's two minutes to 'leven
20 (11). It takes approximately forty (40) to forty-five
21 (45) minutes to prepare your meal. I'd like to know
22 before I charge you, when you come back, so that Ms.
23 Gregg'll know when to call them so we'll make sure when it
24 gets here that it's gonna be warm, maybe hot, because we
25 got warmers they carry them in, transport them -- And if

1 you'd like to have your food here at twelve-thirty
2 (12:30), we can accomplish that. If you'd like to have it
3 at twelve-forty-five (12:45), within a minute or two, we'd
4 have it at twelve-forty-five (12:45). Or we can have your
5 lunch here at one (1:00) o'clock. But make that decision.

6 But I do not want you now, at this point, -- We've
7 come this far. -- to talk about the summation by the
8 lawyers or anything about the evidence nor even after I've
9 given you the charge until I specifically tell you you're
10 retiring for that purpose, to consider your verdict. Do
11 not do that. Remain to be patient. (While indicating) We
12 getting 'bout this close to that point, but we're not
13 there yet.

14 You don't know what the law is. There is a reason
15 and a logic to law. It's not something convoluted and
16 complex. There are reasons tested for over two hundred
17 (200) years, the envy of the rest of the world. Just be
18 patient as you have continued to exhibit that.

19 Enjoy your break, and you tell me when you're ready
20 to return for the charge, and tell me now. One thing --
21 And this is not the charge; but we're at that point, soon
22 will be.

23 Mrs. Forelady, now, y'all will stay together and be
24 together until you reach a verdict. You won't have the
25 opportunity now. If you want to use the telephone, you

1 need messages delivered or whatever, let's do it now
2 'cause you won't have that opportunity. If you get a
3 message, we'll tell you the message while you're here.

4 When someone and during those deliberations, that's a
5 good ways off yet. Somebody needs to use the facilities,
6 you got to stop because they'll miss something that you --
7 the rest of you discussing. They may be able to add or
8 have a view they want to express. So if they use the
9 facilities during deliberations, you got to stop your
10 deliberations and wait until you all return and you're all
11 together again.

12 And none of you have cellular telephones or beepers,
13 do you? If you do, leave them with the -- with the
14 bailiff. Now, I told you about that earlier, but
15 sometimes someone'll bring them. You can't have them.

16 If there's anything you need or you want during your
17 deliberations, Mrs. Forelady, don't you hesitate. Don't
18 be shy in asking. We'll get it for you.

19 All right. We gone be at ease; and, when you tell us
20 when you're ready to return, you're ready for the charge.

21 Keep an open mind. Let's not go shutting this mind
22 now, closing this mind down. Wait.

23 Have a nice break.

24 Oh, one other thing I want to say to you is this:
25 Your meals may come, depending on what you tell me, about

1 the time we get through with this charge. Do you want to
2 start your -- your deliberations after I've instructed you
3 on your deliberations, before your meals comes, fine. Or
4 if you haven't begun your deliberations before your meals
5 come, my -- I just say this for your own benefit.

6 When I was practicing law and business relationship
7 that I had with my brothers and my sister, I never liked
8 this. They'd say, (with distorted voice) "Let's have a
9 business lunch, my partner." I'd say, "We'll have lunch,
10 but we won't have no business."

11 My mother told me -- And I think someone has probably
12 told you. -- it ain't nice to talk with your mouth full
13 at the table.

14 So I would say, if your meal is here, stop and enjoy
15 your meal; and, when you finish, then you go back; but, if
16 you think it's just a rush, this ain't Wendy's,
17 McDonald's, Hardee's. This isn't the kind of justice you
18 get at the fast food restaurant. But if you want to do
19 it, that's your business. You do it, and you'll have an
20 ulcer like I developed. I suggest you take the time and
21 enjoy your meal; and, when you finish, then wherever you
22 are, whether you've begun or you in the middle of it,
23 begin again; but do as you please. I ain't trying to tell
24 you what or how -- what you ought to do. That's your
25 business, but your food's gone be here at some juncture or

1 some point while you're back there deliberating.

2 Enjoy your break, and I'll -- send me word when
3 you're ready.

4 (WHEREUPON, at 11:05 a.m., jury returned to jury
5 room.)

6 **THE COURT:** We'll be ease for a few moments, waiting
7 the -- the advice from the forelady. It's a good time for
8 everybody to use the facilities.

9 (WHEREUPON, at 11:05 a.m., court stood in recess;
10 and, at 11:19 a.m., court reconvened, with Defendant Blash
11 and counsel for all parties present in the courtroom; and
12 the following proceedings were had outside the presence of
13 the jury:)

14 **THE COURT:** We got a bag that the court reporter says
15 that this cocaine's in that's leaking. We got to have a
16 plain plastic bag or something to put that evidence within
17 that to keep it from---

18 **MS. PARR:** The cocaine's leaking.

19 **THE COURT:** ---leaking.

20 **MS. PARR:** We got to get a---

21 **THE COURT:** We don't want the jury back there, too.

22 **MR. LAWSON:** I told you there'd be plenty of Coke
23 back there today, judge.

24 **MS. PARR:** Your Honor,---

25 **THE COURT:** One of them asked something yesterday,

1 that wanted some Coke.

2 **MS. PARR:** Your Honor, I can call upstairs and see if
3 they --.

4 (To Investigator Kirby) Do you all have any bags?

5 **THE COURT:** If -- If---

6 **INVESTIGATOR KIRBY:** I can get another---

7 **THE COURT:** I told them---

8 **COURT REPORTER:** Excuse me.

9 **INVESTIGATOR KIRBY:** It will be---

10 **THE COURT:** ---I thought we had some.

11 **INVESTIGATOR KIRBY:** ---just like that one.

12 **THE COURT:** And now I know what they talking about.

13 **MS. PARR:** Do you have objection with getting another
14 bag?

15 **MR. NETTLES:** I really don't care what y'all put it
16 in. I don't care.

17 **INVESTIGATOR KIRBY:** I can go look in my truck and
18 see---

19 **MR. NETTLES:** As long as it doesn't have my client's
20 fingerprints on it, I don't care what you put it in.

21 **INVESTIGATOR KIRBY:** It will. I'll drop it when I
22 walk by him and let him pick it up and hand it back to me.

23 **MS. PARR:** Well, you've got to find him first.

24 **INVESTIGATOR KIRBY:** Can I go get it?

25 **MS. JACKSON:** If you see him, tell him---

1 **INVESTIGATOR KIRBY:** Okay. When the jury comes out,
2 I'll ask them if anybody's seen him.

3 (WHEREUPON, Investigator Kirby stepped out of
4 courtroom.)

5 **MR. NETTLES:** I don't -- I really don't care.

6 **THE COURT:** It just a matter of saving time, if -- if
7 all you -- you defense lawyers -- The State has looked at
8 it. Have y'all looked at the -- We didn't have the jury
9 verdict form. We have it now, Mr. Anderson.

10 **MR. NETTLES:** May I approach? May I approach?

11 (WHEREUPON, Mr. Nettles and Mr. Lawson looked at
12 document.)

13 **THE COURT:** Just save time. We'll --.

14 **MR. NETTLES:** I have no problem with that. Thank you
15 very much, Your Honor.

16 **THE COURT:** Let Mr. Anderson---

17 **MR. NETTLES:** Oh.

18 **THE COURT:** ---look at it.

19 **MR. ANDERSON:** I've already look at it, judge.

20 **THE COURT:** Oh, good. Thank you.

21 **MR. ANDERSON:** It's fine with me. Thank you.

22 **MR. NETTLES:** He's always one step ahead of me.

23 **THE COURT:** All right, sir. All right. If everyone
24 is ready, I'm gone ask the jury to return.

25 **MS. PARR:** Okay. Well, the investigator went

1 downstairs, so I guess they'll just need to lock him
2 outside. He went downstairs to get a bag to put---

3 **THE COURT:** We can handle -- We can handle that 'fore
4 we send the exhibits back. We just won't pick it up from
5 there until he's got that taken care of; but, at the
6 moment, I won't be concerned about that.

7 (To the bailiff) Bring us the jury, please.

8 (WHEREUPON, at 11:21 a.m., jury returned to open
9 court; and the following proceedings were had within the
10 presence of the jury:)

11 **THE COURT:** What have y'all decided about lunch?
12 When would you like lunch?

13 **FORELADY THOMPSON:** We voted twelve-thirty (12:30).

14 **THE COURT:** You want it at twelve (12). Boy, y'all
15 are hungry. All right. We manage that for you. It
16 probably a good idea.

17 We can go ahead and order it any time, Ms. Gregg,
18 that you ready to order; and tell them to have it here at
19 twelve-thirty (12:30).

20 Now, if y'all want to have what we call a business or
21 working lunch 'cause---

22 **A JUROR:** We'd like to relax.

23 **THE COURT:** I'm glad y'all have come to that
24 conclusion.

25 All right. Now, this is of no importance to you; and

1 you'll say, "Oh, yes, it is, too." Because I don't --
2 When I say this, it implies that the court's telling you
3 or sometime you think, uh-huh, when we get through this
4 case we'll do like Grant going through Richmond or Sherman
5 coming through Atlanta across the river, Broad River, over
6 there in Columbia.

7 I'm not implying that it'll be a short period,
8 moderate period of time, or a long period of time; but
9 this is the last case being tried. The jury came in this
10 morning and is being excused. We can't find a case that
11 we can try in a day or a half a day on the roster. We've
12 disposed of most of those cases, so the jury's being
13 excused. I tell you that just to tell you that, when you
14 have completed your responsibilities in this case, you'll
15 be excused; and that will satisfy your service for jury
16 for the rest of this week and for the next two years but
17 only if you're called to state court with twelve-person
18 jury.

19 And I've had jurors tell magistrates and a city
20 judge; and that didn't bother me so much; but, when a
21 federal judge called and said, "Did you tell them they
22 didn't have to serve on federal jury within the next two
23 years 'cause they served in your court?" And I say, "You
24 know I didn't tell them that, Judge." But jurors,
25 sometimes they won't want to do it.

1 I hope -- And I don't know what your verdict's gone
2 be. That's not my business. I hope that if you're ever
3 called again within that two years you won't exercise or
4 assert that right to be excused. But if you're called to
5 any other court, don't you tell them (with distorted
6 voice) "judge said I don't have to serve on your jury; I'm
7 on that neither; you've got to excuse me." That's true in
8 state court; but it's not true in federal court,
9 magistrate court, nor city court.

10 And I tell you this, too: The ten (\$10.00) dollars
11 plus the mileage is a symbolic sum; and it does not
12 express to you the value of your services; nor does it
13 express to you the appreciation of the litigates in this
14 case, people of Florence County or this court, myself, and
15 the officers who work with us, and our State Judiciary and
16 the State of South Carolina. There's no way to express to
17 you the appreciation for the sacrifice for your service,
18 and I want you to realize that, and we'll understand that.
19 It's symbolic, not intended to compensate you for the loss
20 of a week's salary.

21 Some of you work with a corporation or a large
22 employer doing business of contracting with the state or
23 federal or some governmental sovereign. If you give them
24 that small check you gone receive about next Wednesday,
25 they may pay you all of it.

1 And I had one said, tell me, "Judge, I got car
2 payments; I got house payments; I got groceries to buy; I
3 got utilities to pay; and I can't make it; I've lost a
4 week; and I went and told my employer you said pay me my
5 salary; I've been on jury."

6 I said, "No, I didn't tell you that." I said, "Ask
7 them if they'd consider it, and they may."

8 But then there might be some self-employed and other
9 -- I realize, too, some of you make a greater sacrifice
10 financially than some of the others; but that does not
11 diminish the service or the value of the services of any
12 of you; and it's -- as I said, it's symbolic.

13 But that money comes out of monies appropriated in
14 Florence County that you pay on car taxes, house taxes,
15 sales taxes, taxes, taxes, taxes, business licenses, and
16 whatever the source of those revenues are; and it is
17 pretty uniform all over the state, not as generous as in
18 the federal system; but we can't spend beyond the budget.
19 They've got to have a balanced budget. Can't write a note
20 and say, "We'll pay something on the interest; can't pay
21 nothing on the principle this year; or we'll pay no
22 interest and principle; and next year we'll try to catch
23 up and pay a little bit of something." We don't do that
24 in South Carolina. Our Constitution -- The law does not
25 allow state, county, or city to do that. Some states,

1 they do. It has to be a balanced budget resolution.

2 So if you don't like the amounts, you have to address
3 county council. We don't have anything to do with that.
4 That's their responsibility, but -- but it is about the
5 equivalent of any other, and that's one of the reasons why
6 we try to be as kind to you as we can. We know it's a
7 sacrifice.

8 Again, I appreciate very much the courtesy and
9 kindness shown to the witnesses and to the lawyers and to
10 the court.

11 (WHEREUPON, the jury was duly charged as follows:)

12 **THE COURT:** Now, Mrs. Forelady and members of the
13 jury, the State of South Carolina charges the defendants,
14 Michael George Monfries and Eddie Blash, with the
15 following criminal offense:

16 You remember I read the charge to you, specifically,
17 in the indictment; and you'll remember I told you that is
18 the means by which this court obtained jurisdiction over
19 these two individuals.

20 They are charged with trafficking in cocaine greater
21 than four hundred (400) grams. You should distinctly
22 understand, as I told you at the beginning of the case
23 after you were sworn, that the indictment contains the
24 allegations made by the State of South Carolina; and the
25 indictment is not and should not and shall not be

1 considered as evidence; and I will not send it in with the
2 exhibits or the traffic -- or excuse me -- or with the
3 verdict form.

4 The only evidence in this case is the testimony from
5 the witnesses who were sworn and who took that witness
6 stand and these exhibits introduced through those
7 witnesses that will be with you in the jury room during
8 the time of your deliberations, and you are invited to
9 view those exhibits for what benefit they may be to you in
10 your deliberation.

11 Now, to this indictment that I referred to, both
12 these defendants have entered a plea and have pled not
13 guilty; and, by that plea, that places upon the State, the
14 prosecution, the burden of proving this defendant,
15 Monfrizz (sic) and Blass (sic), individually or
16 collectively -- that places that burden on the State of
17 proving the defendants guilty; and I'll tell you the
18 measure of proof required further in the charge.

19 A person in this state who is charged with committing
20 a criminal offense is never, ever, since the separation or
21 Revolution declaring our independence -- And some would
22 call the Mother Country, and some don't consider England
23 their mother. No person charged with any criminal offense
24 -- And I'll go further. -- within these United States nor
25 the states that compose this Union is required to prove

1 himself or themselves innocent.

2 I charge you that it is a vital, basic, fundamental,
3 important rule of law that a defendant or defendants,
4 plural, in a criminal matter, no matter how great or
5 serious may be the offense which -- which he or they are
6 charge, must always be presumed innocent until his or
7 their guilt has been proved by this standard: beyond a
8 reasonable doubt. And you must determine in your joint
9 deliberation if the State has proved evidence that meets
10 or has met that burden.

11 This presumption of innocence remains with each
12 defendant at all times throughout the trial and is only
13 removed when and if the State has proved the guilt. And I
14 ask the measure. What's the measure of proof? Beyond a
15 reasonable doubt.

16 There are two defendants who are charged in this
17 indictment. These are separate and distinct charges
18 against each defendant, and you should consider each
19 defendant separately. For it is your solemn duty, ladies
20 and gentlemen, if not clearly convinced of guilt beyond
21 every reasonable doubt to the contrary, as to each
22 defendant, to find a defendant or defendants not guilty,
23 if you are not clearly convinced by that measure of proof
24 beyond a reasonable doubt.

25 It is equally your duty, if they have met their

1 burden, -- That is a judgment call. That is a factual
2 issue for the jury. -- to find them guilty if they have
3 met that standard of proof.

4 So the burden of proof is upon the State, and remains
5 throughout the trial upon the State, to establish by
6 evidence to your satisfaction the guilt beyond a
7 reasonable doubt of these two defendants here on trial;
8 and it is the burden of the State to meet that burden,
9 establish that guilt, beyond a reasonable doubt as to each
10 and every element of the crime charged.

11 Now, let's review this standard, this burden that the
12 State has. I am not going to nor do I intend to define
13 for each of you or for this jury what is a reasonable
14 doubt in your mind or what constitutes a reasonable doubt
15 in your mind. A reasonable doubt can be said to be simply
16 a doubt for which you can find or assign a reason.

17 A reasonable doubt can arise from the evidence
18 presented or from the like (sic) of evidence. However, it
19 is your duty to find the defendant or defendants not
20 guilty if -- after you've considered all the evidence, if
21 you are left with a reasonable doubt after considering the
22 evidence presented as to each defendant.

23 Now, Mrs. Forelady and ladies and gentlemen, you will
24 recall I had emphasized this to you at the beginning,
25 before you were sworn and after you were sworn, explaining

1 to you your duties but not a charge on the law; and you
2 will recall and I told you, under the laws of this State
3 and under the Constitution of this State and this nation,
4 you and you alone, individually and collectively, are the
5 only and the sole truth-finders, fact-finders, judges.

6 I do not have the right to pass upon the facts of
7 this case, to infer, to imply, to suggest, or in any way
8 express to you any opinion I may have as to the facts; nor
9 may I suggest in any way to you the jury what I may think
10 about the guilt or the innocence of each of these
11 defendants. You should form no opinion in that regard
12 from any ruling I have made or anything I may have said or
13 any question I may have asked, and I always gave you a
14 curative before I asked them, and it is for information
15 clarification for the jury only.

16 My intention has been to give to the State and the
17 defendants in this case a fair and an impartial trial,
18 chosen to preside over this case that they follow the
19 rules of procedure, the Rules of Evidence, and to observe
20 the honor and the decorum and the good order of this
21 trial, chosen just like each of you to be fair and to be
22 impartial.

23 The demographics and the makeup of this jury by
24 gender, by nationality, by origin of birth, by work, by
25 education, and by experience, that diversity and that

1 common sense of each of you is the strength of this jury.
2 These twelve minds, a genius of those authors of the
3 Constitution, is reflected and exhibited by this jury. It
4 is the strength of our system; and it is the strength of
5 this jury, not its weakness.

6 You are, I remind you, the judges, the sole judges,
7 the only judges, of the credibility. Another way of
8 saying that, an interchangeable word, the believability of
9 the witnesses who have testified in this case.

10 Now, I can give you some guidance in this regard; and
11 I remember there was one of you that had served or had
12 prior service on a jury before; and, so if you're having
13 to hear this the second time -- But for those of you that
14 never served on jury before and the word, the term,
15 credibility -- You'll say, "Well, how do I determine
16 credibility or the believability of a witness? Can you
17 give me some guidance there?"

18 Yes, I can; and that's an excellent question I just
19 posed for you rhetorically; and you remember I told you
20 how important it was; and I saw each of you sitting there
21 riveted in your seats throughout the trial, looking and
22 listening; and don't be distracted and looking down and
23 look away; focus on the witnesses and listen; and you
24 'member I told you use the old mule's ear trick if you
25 can't hear. Put your hand to your ear.

1 The demeanor, that means the appearance, the manner,
2 and demeanor of the witnesses testifying.

3 Were they forthright? Were they straightforward?
4 Were they hesitant?

5 Was their testimony substantiated? Was it
6 corroborated? Or was it conflicting or disputed?

7 What was the witnesses opportunity for the
8 observation and the knowledge of the matters of which they
9 spoke, that they testified to?

10 You ladies and gentlemen, you decide the credibility
11 or believability of each witness who testified, and you
12 don't do that by counting the number of witnesses in the
13 case.

14 You may b'lieve a small portion of a witness's
15 testimony and disregard the larger part of the testimony,
16 or vice-versa. In otherwise (sic), you the jury, you
17 reconcile that testimony if there is any conflict in a
18 witness's testimony or other witnesses.

19 You may b'lieve one witness against many, many
20 against one, some, none, all, part, or none of a witness's
21 testimony, for an example.

22 All of these things you consider, bearing in mind you
23 give the defendant, if there exists in the evidence, the
24 benefit of any reasonable doubt. All reasonable doubt
25 (sic) are in favor of innocence, never of guilt, and if

1 such doubt exists after you have considered all of the
2 evidence in this case.

3 Now, one of the witnesses for the State was granted
4 immunity. The credibility of all witnesses, as I told you
5 a moment ago, is a matter for you the jury to determine.
6 In making that determination, you may consider whether a
7 particular witness had or has a motive to testify
8 favorably for one party versus the other. You may
9 consider whether a particular witness is -- is testifying
10 under a grant of immunity; that is, with a promise from
11 the government that he will not be prosecuted. After any
12 such consideration, you may give the testimony of any
13 immunized witnesses such weight, if any, as you the jury
14 feel it deserves.

15 Now, to reiterate again for you, the Constitution and
16 the law of this State, as I told you earlier, makes you
17 the finders of the facts; and, as you are the sole and
18 only judges of the facts, I, this court, am the sole --
19 That's s-o-l-e. -- sole and only instructor in the law.

20 You've not been chosen as legislators. You must
21 accept as correct the law that I charge you. That was the
22 law at the time these charges were made, the law since,
23 and the law presently; and you must take that law as I
24 declare it to you. You're sworn under oath to do that.
25 And apply that law to the evidence as you -- you find it

1 in reaching your verdict.

2 Put aside, now, any conceptions that you may have had
3 as to the law before coming here this week and sitting in
4 -- on this jury, and accept the law as I instruct it to
5 you to be as you have sworn to do. In other words, you
6 may not ignore it nor nullify it.

7 You ladies and gentlemen, for the purpose of your
8 duty as jurors today, should not be concerned about what
9 you think the law ought to be but what I charge you is the
10 law presently in this state.

11 Mrs. Forelady and members of the jury, as I told you
12 at the beginning of the trial and told you in the
13 beginning of the charge, the evidence from which you are
14 to decide the facts of this case consists of three things.

15 Now, I want you to repeat in your mind, not out loud.
16 Let's not verbalize it. Repeat in your minds this
17 question: Where do I find the evidence? What are the
18 three things to be considered that the evidence consists
19 of? I'm gone tell you, and I'm gone do it several times,
20 and then I'm gone ask you again that question, (while
21 snapping fingers) and you ought to be able to do it fast.

22 What does the evidence consist of?

23 The sworn witnesses (sic). The testimony of those
24 persons placed their hand on the book, raised their hand
25 to God, said "I swear or affirm I tell the truth and the

1 whole truth." And sat down. Sworn testimony both on
2 direct and on cross-examination.

3 The exhibits. These things that will be with you
4 that were introduced into the evidence. Has those little
5 red numbers on it in the chronological order of their
6 introduction.

7 And stipulations. That means a stipulation is an
8 undisputed fact.

9 After some testimony from the chemist, you'll
10 remember you admit the qualifications of this chemist or
11 do the analysis (sic). That's an example of stipulation.

12 All right. Where Erin (sic) -- What does the
13 evidence consist of? Oh, judge, you must think I wasn't
14 listening. I know the answer to that. You're getting
15 bored. I'm giving you cold grits, and I'm heating them up
16 and stirring them up, and they getting a little lumpy, but
17 just be patience with me.

18 What does the evidence consist of? You ought to be
19 able to tell me, and you ought to be able to tell me this
20 fast. Sworn testimony, exhibits, stipulations. What does
21 the evidence consist of? Sworn testimony, exhibits,
22 stipulations. Now, you ought to have it. You ought to be
23 ready to make that hundred on that bar exam now. You know
24 what evidence is and what it consists of.

25 So we know what the evidence consists of. How about

1 tell us, judge, what kinds of evidence is there in a case.
2 Now, that's a good question, too.

3 Two kinds. Now, let's review that again. Let's warm
4 these grits up again before we talk about there are two
5 kind (sic).

6 What does the evidence consist of? Sworn testimony,
7 exhibits, stipulations.

8 Two kinds of evidence. What are they? They exist in
9 every case, civil and criminal. We're not concerned with
10 civil. This is a criminal case. Two kinds. Sometimes
11 you may have all of one kind and none of the other, and
12 sometimes you may have the two kinds and have a
13 combination of them. What are those two kinds of
14 evidence? Direct evidence and circumstantial.

15 There are two types of evidence from which a jury may
16 properly find the truth as to the facts of a case. One is
17 direct evidence, such as the testimony of a witness who
18 perceived certain things by means of their senses; and
19 I'll give you an example of that.

20 (While smacking) Taste, umm. Ate something this
21 morning. It was sour. Wonder if maybe my wife had put
22 some lemon juice on that, or I wonder if it's spoiled.
23 I'm feeling a little nauseous. I'm thinking maybe it was
24 spoiled, and that's an example. I heard something.
25 (While hitting counter) I touched something. I saw it.

1 (While sniffing) You know, I think about that thing, what
2 I tasted. Didn't smell right. I smelled it; I tasted; I
3 touched it; I heard it; and I saw it.

4 The other type of evidence is circumstantial
5 evidence, and some times we interchange the word indirect.
6 Both of those mean the same thing.

7 Two kinds of evidence. What are they? Direct
8 evidence. What's the other one? Circumstantial evidence.
9 And circumstantial evidence can be said the same thing,
10 indirect evidence. Now, you ought to have it.

11 What's the evidence consist of? Sworn testimony,
12 exhibits, stipulations. What two kinds? Direct and
13 circumstantial. You ought to have it. You'd pass the
14 next section of the bar exam.

15 Circumstantial evidence can be said to be the
16 following: What is it? You told us about direct
17 evidence. What's circumstantial evidence? Can you define
18 that? The proof of a chain of circumstances that points
19 to the existence or nonexistence of certain facts.

20 All right. Now, let's re- -- review it again. The
21 term direct evidence, what's that? It means it's the
22 testimony of a person who perceived its existence by means
23 of their senses, as in the instant (sic) where a person
24 sees a crime committed, comes into court to testify as
25 what he or she saw.

1 Now, circumstantial evidence, on the other, is the
2 proof of some fact or facts, when you take them singly or
3 collectively, the existence of the particular fact in
4 question may be inferred as a necessary consequence.

5 Circumstantial evidence is proof of a chain of facts and
6 circumstances indicating the existence of a fact. It is
7 both reasonable and logical.

8 The law makes absolutely no distinction between the
9 weight or value to be given to these two kinds of eve --
10 evidence, either direct or circumstantial. Nor is a
11 greater degree of certainty required of circumstantial
12 evidence than of direct evidence. You weigh all the
13 evidence in the case.

14 Violations of law may be proved by circumstantial
15 evidence as well as by direct testimony. On a contested
16 factual issue, you may have some direct evidence; and you
17 may have some circumstantial evidence; and, that is, you
18 may have a combination of these two types of evidence on a
19 disputed fact.

20 Before and if you are considering a defendant on
21 circumstantial evidence alone, the circumstantial evidence
22 must measure up to the requirements of the law. Where the
23 State undertakes in a criminal case to prove the guilt of
24 the defendant by circumstantial evidence, the
25 circumstances must be proved; and they should point

1 conclusively to the guilt of an accused. They must be
2 perfectly inconsistent -- or perfectly -- excuse me. I
3 misspoke. They must be perfectly consistent with each
4 other in every particular respect, and they must also be
5 absolutely inconsistent with any other theory than that
6 the guilt of the co- -- 'cused.

7 The courts of this state have ruled that
8 circumstantial evidence, if relied upon, where it relies
9 upon circumstantial evidence, it should be brought to
10 strict proof. All the facts should be consistent and,
11 taken together, should be of a conclusive nature,
12 producing a reasonable and a moral certainty that the
13 defendant or defendants and no one else committed the
14 orfen-- offense of which they're charged. It's not facts
15 created by a probability, though a strong one; and,
16 assuming all the facts which the evidence tends to be or
17 established to be true, if there may yet be accounted for
18 any theory which would not include the guilt of the
19 defendant, then the proof would fail.

20 The reason for these principle (sic) is that all
21 presumption of law, without evidence, independent of
22 evidence, are in favor of innocent; and in our state and
23 our country, every person is presumed to be innocent until
24 and if he is proved guilty by what measure or standard of
25 proof: Beyond a reasonable doubt. 'Member that? One is

1 not convicted on suspicion, however suspicious strong it
2 may be (sic).

3 But a verdict of guilty can and may be based not only
4 upon direct evidence but also upon circumstantial evidence
5 as safely as upon direct evidence, provided the
6 circumstantial evidence relied upon to prove guilt
7 measures up to the requirements of the law that I've just
8 stated to you.

9 All right. Now, let's just briefly run over it and
10 put it in a capsule right quick. Presumption of innocence
11 requires the burden of proof by what measure? Beyond a
12 reasonable doubt. I charge you that I wasn't gone tell
13 you in your own mind what constituted a reasonable doubt.
14 That is for you. You didn't leave your common sense at
15 home.

16 Too, I told you the evidence consists of three things
17 when you are considering and deliberating. What is that?
18 Sworn testimony, exhibits, stipulations. What two kinds?
19 Direct and circumstantial. You ready to take the bar if
20 you'd gone to law school on these principles of evidence.

21 A verdict of guilty may be based upon circumstantial
22 evidence as safely as upon direct evidence, provided, as
23 I've told you, it measures up to the requirements that I
24 stated to you.

25 You are entitled as a jury to consider both kinds of

1 evidence. The law permits you to give equal weight to bow
2 -- both; but it's up to you the jury to decide how much
3 weight that you give to any evidence.

4 It's also up to you the jury to decide whether a fact
5 has been proven by direct or by circumstantial evidence or
6 by a combination of them. In making your decision, you
7 consider all of the evidence in the light of your reason,
8 common sense, and experience.

9 Now, during the trial, a number of matters have been
10 received and marked. We call it exhibits, and they'll be
11 with you in your jury room. Examine them if you think
12 they'll be beneficial or helpful to you.

13 And, of course, while we were hearing the evidence,
14 you were told on occasion that the defendants stipulated
15 to certain facts. That just meant the parties accepted
16 those facts and no disagreement as to those. No need for
17 the parties to introduce any evidence to prove it. You
18 accept stipulation, even though nothing more was said
19 about it one way or the other.

20 All right. Now, we've talked about what evidence is,
21 haven't we? And we've talked about there are two kinds of
22 evidence, and we've talked about what consists -- what the
23 evidence in this case consists of that you're gone be
24 considering in your deliberations in this case.

25 Now, the next question I ask you to ask yourself

1 rhetorically is this: What's not evidence? What is not
2 evidence? That is an excellent question. What is not
3 evidence?

4 In reaching your verdict, of course, you consider
5 only the testimony and the exhibits. Other words, what
6 you heard from that witness stand and these exhibits. In
7 reaching your verdict, you consider only the testimony and
8 exhibits. Certain things are not evidence, and you must
9 not consider it in determining what the cacks (sic) of the
10 case are. I'm gone tell you what is not evidence.

11 (1) Opening statements, closing arguments,
12 summations, questions by the lawyers, everything the
13 lawyers on both the State and the defense have said to you
14 is not evidence. What they said to you in their opening,
15 their closing, and throughout this trial and other times
16 is intended to assist or aid you in interpreting the
17 evidence; but it is not evidence.

18 None of these lawyers would willfully, intentionally,
19 deliberately misstate, misquote testimony or the law in
20 this case; but it's obvious, even from the objections and
21 their summation, they have different views. Don't they?

22 It's for you to determine what weight you will give
23 to the testimony. If you agree or concur with the lawyers
24 that that is the testimony in your view, you give it the
25 weight you think it ought to have. You disagree, you

1 totally ignore it. Use your recall. Why? You the sole
2 judges of the facts in this case. You heard them. And
3 they come from only one place.

4 What does the evidence consist of? Ask yourself that
5 question. Now, give me the answer. Testimony, sworn
6 testimony, exhibits, stipulations. What two kinds?
7 Direct and circumstantial. You ought to clearly
8 understand that now, each and every one of you; and that's
9 important.

10 Questions and objections by lawyers are not evidence.
11 Attorneys have a duty to object when they beblieve (sic) a
12 question or exhibit under our -- is improper under our
13 Rules of Evidence. You should not be influenced by either
14 the objection or my ruling upon it. If an objection is
15 sustained, you disregard the question; and, if there was
16 any answer, you disregard it. If the objection was
17 overruled, you treat that answer. In other words, you
18 determine the credibility, believability. You treat the
19 answer just like you do any other testimony you heard in
20 this case.

21 Testimony that is excluded or stricken or that you've
22 been instructed to disregard is not evidence. Such
23 testimony wouldn't be considered. If any testimony
24 received or any exhibit for a limited purpose, you would
25 have followed the limiting instruction I gave at the time.

1 Now, you will recall I placed you under oath; and I
2 asked the lawyers and I asked them up -- when you came out
3 this morning, although they waive it if I don't ask it;
4 but I always ask them when you leave the courtroom. You
5 want this jury polled individually or collectively on
6 their oath, whether or not they have discussed or allowed
7 anyone to discuss this case with them; that is, strangers,
8 family members, or even among themselves prior to being
9 told they're to retiring (sic) for the purpose of
10 considering their verdict.

11 And so I tell you anything, opinions that you had
12 before you got on this jury, anything you've seen or heard
13 when this court was not in session, any opinions that you
14 might bear, it's not evidence. You are to decide this
15 case solely on the evidence received in this courtroom at
16 this trial from that witness stand.

17 Now, expert testimony. We had some expert testimony.
18 I -- Only one as I recall, but I'm not commenting on the
19 evidence. You make that decision. That was the chemist
20 in Charleston employed by Chief Greenburg.

21 In considering the opinion of an expert witness which
22 was admitted in this case, you look at the factual
23 evidence in the case first. An expert is a person that
24 can be said to possess by their occupation, by their
25 profession, by their knowledge, by their education, by

1 their experience in a field of endeavor of which you have
2 little or no knowledge -- May be an exception to that, but
3 generally the -- the jury has no expertise in that area,
4 and it's done for the fact of assisting in understanding,
5 being educated. It's not given for the purpose of
6 controlling your judgment. You consider expert testimony
7 just like you do any other witness. You give it the
8 weight that you think it ought to have.

9 Alternatively, the expert may base her opinion on
10 facts and data not in the evidence. You may consider an
11 expert's opinion if you find that the testimony's based on
12 facts that are reasonably relied upon by the experts in
13 that particular field.

14 You must consider expert testimony in the same
15 manner, as I told you a moment ago, as you do any other
16 testimony; and you give to it the weight that you believe
17 it to be entitled when you've considered it with all the
18 other evidence in the case. Such ex- -- evidence or
19 testimony is given of the -- for the purpose, as I told
20 you, to assist you in understanding the evidence but not
21 for the purpose of controlling your judgment.

22 The value of that testimony by an ax- -- expert does
23 not depend upon the skill and knowledge professed by the
24 excerpt (sic) but rather upon the skill and knowledge that
25 she actually possesses. It's up to you the jury to

1 determine whether she has such knowledge. In this regard,
2 you may consider her training, her experience, her ability
3 to communicate her ideas, the logic of her opinion, the
4 factual support of her opinion, and all the other factors
5 you would judge and weigh when considering the testimony
6 of other witnesses.

7 The value and effect of expert testimony is a matter
8 solely to be determined or estimated by you the jury. No
9 mere opinion of an expert can be accepted as, in and of
10 itself, truthful or reliable but must be weighed by you
11 and convince your judgment beyond a reasonable doubt and
12 with the same force and effect as any other fact in the
13 case before you can rely upon it as the basis of a
14 conviction.

15 You've heard the testimony of an expert witness who
16 has special knowledge, skill, experience, training, and
17 education in a particular field of drug analysis and who
18 has given her opinion as an expert. In determining the
19 weight to be given to her opinion, you should consider
20 those qualifications and credibility of the expert and the
21 reason given for her opinion. You're not bound by the
22 opinion. You give it the weight, if any, to which you
23 deem it should be entitled.

24 Now, the State -- that is, South Carolina -- And
25 we're almost finished. -- has charged these defendants

1 with a violation of trafficking in a controlled substance.
2 You the jury must decide whether or not these defendants,
3 individually or collectively, were guilty of trafficking
4 in crocaine (sic); or whether or not these defendants,
5 individually or collectively, were guilty of possession
6 with intent to distribute cocaine, which is a lesser
7 charge; or whether or not the defendants, after
8 considering all this evidence, are individually or
9 collectively not guilty of either trafficking in cocaine
10 or possession of cocaine with intent to distribute.

11 There are three possible verdicts. Guilty of
12 trafficking. You consider each of them. Or guilty of
13 possession with the intent to distribute cocaine. Or,
14 three, not guilty. No significance at all. I must, as a
15 practical matter, list those possible verdicts in some
16 order. They will be on the jury verdict form, Ms.
17 Forelady; and the jury unanimously must agree before you
18 have reached a verdict. You mark it in the appropriate
19 place. It can be one and only one of three against the
20 Defendant Monfrizz (sic). It can be one only of the
21 possible three verdicts listed on the jury verdict form as
22 to Mr. Blass (sic).

23 Now, if you have to after you've considered the
24 evidence in this case, the jury have a reasonable doubt as
25 to whether the State has proved the greater offense --

1 that is, trafficking in cocaine -- If you have a
2 reasonable doubt as to whether the State has proved the
3 greater charge versus the lesser offense with intent to
4 distribute, as I told you, you resolve doubt in favor of
5 defendants.

6 Now, the elements of those charges, which include
7 trafficking in cocaine and possession with intent to
8 distribute cocaine, are as follows: Now listen to me
9 close. I'm gone define them for you.

10 For trafficking, the State must prove that the
11 defendants did possess with intent to distribute, at the
12 time and place and in the manner alleged in the
13 indictment, a controlled substance. Distribute, -- I'm
14 gone interpret that for you. -- as defined by the act or
15 the statute, means to deliver a controlled substance. It
16 means the actual or constructive transfer of the
17 controlled substance. Second, the State must prove beyond
18 a reasonable doubt that the substance was a controlled
19 substance under our law. Third, the State must prove
20 beyond a reasonable doubt that the defendant or defendants
21 did possess the controlled substance.

22 Under Section 44-53-370, paragraph (e), find in our
23 Code of Laws, 1976, as amended, you would find the
24 following language: Any person or persons who knowingly
25 in actual or constructive possession of ten (10) grams or

1 more of cocaine shall be guilty of trafficking in cocaine.

2 Now, this statute is divided into divisions,
3 depending on the amount of cocaine. The reason I explain
4 this is that it is necessary, Mrs. Forelady and ladies and
5 gentlemen, and essential, if you consider trafficking in
6 cocaine, should you find the defendants guilty beyond a
7 reasonable doubt, you must write in, in the jury verdict
8 form, the amount of grams that you the jury find has been
9 established by the State by what measure of proof. Beyond
10 a reasonable doubt.

11 You cannot find the defendants guilty of trafficking
12 unless there are ten (10) grams or more. In terms of your
13 findings, I would like for you to specifically determine
14 and list on the verdict form the number of grams you find,
15 if you determine the defendants are guilty of trafficking.

16 I simply give this to you by way of charge.
17 Obviously, I am not commenting on the evidence. I leave
18 it to you the jury to make the determination as to guilt
19 or innocence. It is a division of the statute and
20 necessary and essential for you to write in the amount,
21 the weight, the grams, if you, in fact, find the defendant
22 or defendants guilty of trafficking.

23 Trafficking is defined, in addition to the statutory
24 mandate finding of a certain quantity, by way of general
25 information, as engaging in commercial activity to buy and

1 sell regularly." Trafficking imputes the carrying on or
2 the engaging in a business. The word traffic has a
3 popular meaning of an exchange or passing of goods or
4 commodities for other goods or money.

5 For possession with intent to distribute, the State
6 must prove beyond a reasonable doubt three elements of
7 possession with intent to distribute. Let's review it
8 again. One, that it is a controlled substance under the
9 law. Two, the defendants had possession, knowingly and
10 intentionally. And, three, the State must prove they
11 intended to distribute.

12 Under Sections 44-353-370 (sic), paragraph (a), of
13 our Code of Laws, 1976, as it is amended, it is unlawful
14 for any person to possess with intent to distribute a
15 controlled substance.

16 And under Sections 44-53-210, paragraph (b), section
17 (4) underneath that paragraph, Schedule II, our Code of
18 Laws, 1976, as amended, cocaine is a controlled substance.

19 Our law says, that if it is shown beyond a reasonable
20 doubt that someone is found in possession of more than ten
21 (10) grains -- That's not grams now. -- grains, ten (10)
22 grains -- g-r-a-i-n-s -- of cocaine, that raises a
23 permissive inference which only permits, rather than
24 requires, you to infer a violation of possession with
25 intent to distribute. A grain is approximately one-

1 fifteenth (1/15) of a gram; therefore, ten (10) grains of
2 cocaine would equal two-thirds (2/3) grams of cocaine.

3 This is another piece of evidence for you to consider
4 and evaluate. This permissive inference is of an
5 evidentiary nature. This inference does not require the
6 jury to infer a violation of the section. In other words,
7 the inference of a violation of the law from the
8 possession of this quantity or more of the controlled
9 substance is simply an evidentiary fact to be taken into
10 consideration by the jury, along with the other evidence
11 in the case, and to be given such weight as the jury
12 determines it should receive. You are, as jurors, free to
13 accept or reject this permissive inference.

14 Now, proof of possession requires more than proof of
15 mere present (sic) at the place where the thing allegedly
16 possessed is found. The State must prove beyond a
17 reasonable doubt that the accused had both the power --
18 that is, actual or constructive control -- and, two, the
19 intent to control its disposition or use.

20 Actual control occurs when the object is found to be
21 in the actual physical custody of the person charged.
22 Constructive control occurs when the person charged with
23 possession has dominion and control over either the object
24 or the premises upon which it is found. It is enough for
25 constructive control that the accused had the right to

1 exercise dominion and control over the thing allegedly
2 possessed. Constructive control may be established by
3 circumstantial, as well as direct, evidence and may be
4 jointly shared by two or more individuals.

5 Actual knowledge of the presence of the particular
6 thing allegedly possessed is strong evidence of intent to
7 control its disposition or use so that it can often be
8 equated with or substituted for the intent element.
9 However, actual knowledge of the presence of the
10 particular object is not the only circumstance from which
11 this intent can be inferred.

12 To possess and to have possession, as these words are
13 used in my instruction, do not necessarily mean physical
14 possession or physical control but do mean actual and
15 immediate dominion or control over the object alleged to
16 be possessed. It is also essential that the person
17 charged with the unlawful possession of a controlled
18 substance know of the presence of the object alleged to be
19 possessed. Finally, it is essential that the person
20 charged with the unlawful possession of the controlled
21 substance know that the object allegedly possessed is a
22 controlled substance.

23 Mere presence of person in an area where an object is
24 found is not enough, in and of itself, to give rise to the
25 necessary inference of possession; and the State must

1 prove dominion or control over the controlled substance
2 beyond a reasonable doubt.

3 Control defined as power or authority to guide or
4 manage; directing or restraining domination; subject to
5 authority, direct, regulate, govern or dominate; power,
6 authority, manage, direct, superintend, restrict,
7 regulate, govern, administer or oversee; to ex- --
8 exercise restraining or directing influence over.

9 Dominion is defined as a supremacy (sic) in
10 determining -- excuse me -- and directing the actions of
11 others or in governing personally; preponderance or
12 overriding influence; perfect or complete property or
13 ownership in a thing; complete ownership; the rights in a
14 thing that arise from the power of disposition and the
15 right of claiming it.

16 The mere presence of a person in an area where a
17 controlled substance is found is not enough, in and of
18 itself, to give rise to the necessary inference of
19 possession. The State has the burden of proof to show
20 that the defendants (sic) or defendants had dominion or
21 control over the illegal drugs allegedly possessed or that
22 the defendant or defendants had the right to exercise or
23 had control over the controlled substance.

24 Now, ladies and gentlemen, the Defendant Montrees's
25 (sic) failure to appear may not be construed by you as an

1 admission of guilt.

2 Now, ladies and gentlemen, the fact that the
3 defendants and Mr. Blass (sic) did not take the stand and
4 testify in his or their behalf does not create -- Listen
5 to me closely. -- It does not create any presumption
6 against him. The defendants have a constitutional right
7 asserted under the Fifth Amendment and all of the other
8 amendments to our Constitution, including the Sixth, a
9 fair trial; Fourteenth, due process; all of those
10 amendments that I referred to as the civil rights. They
11 have that right to determine or decide and cannot be
12 compelled by anyone to testify.

13 They make that choice as to decide whether or not to
14 testify, and you cannot hold it either for or against
15 them, and you must not consider it, and it is not relevant
16 when you assert a constitutional right, and you must not
17 discuss it. If you did so, you immediately caused a
18 mistrial. It is not to be considered. You must afford
19 the defendants the full use of this right.

20 I tell you again, you the jury -- You must not permit
21 that fact that they have chosen not to take the stand and
22 testify to weigh in the slightest against them. And again
23 I tell you, this factor must not enter into your
24 discussions or deliberations in this case. It must not be
25 mentioned because, as I told you, it is not relevant. It

1 cannot be considered either for or against these
2 defendants.

3 Now, ladies and gentlemen, you have been selected as
4 fair and impartial jurors. You are sworn to impartially
5 try and determine the facts of this case; and, when you
6 have complied with the oath to do so, no one will have the
7 right to criticize your verdict. And when I say I mean no
8 one, including this court, the lawyers, the parties, the
9 general public, or the litigates, and no one will have
10 that right.

11 It is your deter- -- duty to determine the truth in
12 this case by your joint deliberations to the facts which
13 you determine to be the truth. Take the law as I've given
14 it to you. You apply it to the facts as you find them,
15 and you will reach a verdict which speaks the truth of the
16 evidence in this case.

17 And the word verdict, as I told you early on,
18 literally means it comes from veredicto in Latin. The
19 interpretation or translation is to literally speak the
20 truth. When you've accomplished your responsibilities,
21 you will have satisfied your oath, discharged your duty to
22 this court, with the gratitude of the court.

23 There is no significance in the order that I stated
24 to you the possible verdicts. Look at it so that you'll
25 know the possible verdicts, Mrs. Forelady. You mark them

1 in the appropriate place. It must be unanimous. You date
2 it, and you sign it. It must be a unanimous verdict, and
3 all of you must agree.

4 I'm gone speak to the lawyers and review the exhibits
5 and the jury verdict form. Give them an opportunity if
6 they have any objections, exceptions, or additional
7 requests. Do not deliberate until I give you
8 instructions, bring you back out, or tell the bailiff that
9 you may consider your verdict when you are ready.

10 Your food's probably here by now.

11 (To the deputy clerk) Is it?

12 **DEPUTY CLERK DUDLEY:** It is, judge.

13 **THE COURT:** Very good. I've got to talk with the
14 lawyers to see if there are any additional requests,
15 exceptions, or additional -- or objections.

16 I certainly don't encourage or discourage it. If you
17 cannot reconcile testimony, I can't -- You want to hear --
18 I can't send you in a transcript. Won't be one available
19 'til this time next year, maybe. I think she's 'bout five
20 months -- And that's a pretty -- She's three months.
21 Great goodness alive. They're catching up fast. So I
22 can't have a transcript for you for three months, and I
23 don't think you want to be here that long. But if you
24 want to hear additional (sic) testimony because you can't
25 reconcile it because there's a dispute among you, you

1 should be able to do that. As I told you, that's the
2 strength of twelve minds. If you can't, I'll find it; and
3 we'll bring you back out; and we'll play it for you. I
4 hope that's not necessary.

5 If there's some question about the law and the
6 applicability of that law in this case, you write --
7 Everything in communication with me has to be writing.
8 It's signed, your name, your title, and date it. And if
9 you leave out any of those things, don't worry about that,
10 Mrs. Forelady. I know you've never done this before.
11 I'll correct it. But it becomes a court's exhibit.
12 That's the reason we have to follow that procedure. Don't
13 send me something out from the other 'leven. You're the
14 spokesperson. The law will not allow me to accept
15 communications from the other 'leven, only from the
16 foreperson.

17 And when you've arrived at a verdict, please don't
18 give that verdict form to the bailiff. You keep in it
19 your presence. When you come back, I'll ask you, "Have
20 you arrived at a verdict." You'll say, "Yes, we have,
21 Your Honor." I'll ask Ms. Gregg, if she's here, or one of
22 the clerks or one of the bailiffs, "Would you receive it
23 for me?"

24 My only interest is to look at it to see that you
25 have signed it; it is dated; and it's marked properly for

1 both defendants, considered separately. Then I will hand
2 it back and say, "Publish it." You heard they wanted to
3 publish some testimony. That means, in this open court
4 room, in this public place, tell this -- tell these folks
5 what the verdict of this jury is. That's my only reason
6 for even looking at the jury verdict form.

7 Now, if you've got a communication with me
8 considering evidence, you want to hear it again. I can
9 accomplish that should it be necessary. It should not be;
10 but, if it is, you ask; and I'll play it in its entirety.
11 Not on direct. Not on cross. But entirely. If that
12 witness took an hour, then it's gone be an hour you
13 listening to that witness, if it be necessary.

14 You send out a question, you say, "Well, we'd like to
15 talk to the lawyers; we've got a question for the lawyers;
16 or we'd like to have a witness recalled." Uh-uh. You've
17 assumed the role of a lawyer. There's no more testimony.
18 There's only that testimony in the record.

19 You send out a question, you say, "Well, judge, we'd
20 like to know what about so-and-so." If you're asking me
21 to comment on a factual question, you need to be
22 considerate (sic) because you gone say, "Well, he's been
23 con- -- he's been telling us all along please don't be
24 rude, be nice to everybody; and he ain't being nice to us;
25 we just asked him a question; and he won't answer it."

1 The law won't let me do it. That's your job, just like
2 each of you can't delegate your job to another juror.

3 All of you gone have an opportunity to express your
4 opinion as often and as frequently as you'd like, if you
5 choose, but not all at the same time, not interrupting
6 other jurors who may share your opinion, have a view.

7 Enjoy your lunch, and I'm gone -- That don't mean you
8 got to do it right then, Mrs. Forelad'. Enjoy your lunch;
9 and, before you start or open them, though, wait just a
10 minute or two. I might have to bring you back to give you
11 something else; but I'm gone send it in as quickly as I
12 can, the exhibits and the verdict form that they need to
13 look at, with the instruction that you can commence your
14 deliberation; or if I need to bring you back, I'll bring
15 you back immediately; but I'm gone bring your food in to
16 you right now. Just don't start eating until I tell you
17 you can deliberate, but that's not -- but that's not
18 implying I want you to go ahead and 'lib' -- Enjoy your
19 food. I thought it would be here about the time we got
20 through. We pretty well got that.

21 Whew. Thank you. Go to your jury room, please.

22 (While jury leaving) Y'all have been very patient
23 with all of us.

24 (WHEREUPON, at 12:40 p.m., jury retired to the jury
25 room; and the following proceedings were had outside the

1 presence of the jury:)

2 **MR. LAWSON:** May it please the court? We've got the
3 bag---

4 **THE COURT:** All right. (To the bailiff) Keep that
5 door closed for just a moment before we bring their food
6 in.

7 (WHEREUPON, Mr. Lawson put the bag of cocaine into
8 another plastic bag; and Mr. Nettles stepped out of
9 courtroom.)

10 **THE COURT:** All right. Ms. Parr, do you have any
11 exceptions, additional requests, or objections in the
12 charge?

13 **MS. PARR:** Yes, Your Honor. We'd note the same
14 objections I mentioned earlier with the circumstantial
15 charge. I think it's marked on there. I do not have it
16 in front of me, the -- all of the language; but---

17 **THE COURT:** Yes, ma'am. I -- I marked that in the --
18 in the charge that you would except to it, and I've used
19 the language specifically that you excepting to.

20 Before you can convict a defendant or (sic)
21 circumstantial evidence alone, the circumstantial evidence
22 measure up to the requirements of the law. Where the
23 State undertakes in a criminal case to prove the guilt of
24 the defendant by circumstantial evidence only not only
25 must the circumstances be proved but they must point

1 conclusively to guilty of the accused. They must be whole
2 -- perfectly, wholly, perfectly consistent with each other
3 in every particular respect; and they must be absolutely
4 inconsistent with any other theory than that the guilt of
5 the accused.

6 That is the portion she objects to, and I have
7 declined to omit it or redact it, and I charged it, and my
8 rul- -- my -- and I have done that prior or previous to
9 the charge and gave all the lawyers for the State and the
10 defense the opportunity to object or call to my attention
11 or any additional requests they wanted, and I have
12 accommodated both the State and the defendant in their
13 requests for charge with this one exception, and I note
14 your objection, and it -- and it runs throughout.

15 Any objection from the defense, Mr. Nettles?

16 **MS. JACKSON:** Your Honor, he stepped out; but I can
17 tell you we have no objections to the charge---

18 **THE COURT:** No objection---

19 **MS. JACKSON:** ---on behalf---

20 **THE COURT:** ---by the---

21 **MS. JACKSON:** ---of Mr. Monfries.

22 **THE COURT:** ---defendant.

23 Mr. Anderson?

24 **MR. ANDERSON:** No, sir, Your Honor.

25 **THE COURT:** No exceptions by the defendants.

1 All right. If you will---

2 MR. LAWSON: May it please the court?

3 THE COURT: Yes, sir.

4 (WHEREUPON, Mr. Nettles entered court room.)

5 MR. LAWSON: I'd like on---

6 MS. PARR: You have to take the---

7 MR. LAWSON: ---the record---

8 MS. PARR: ---evidence first.

9 MR. LAWSON: ---that I think everybody has agreed
10 that State's Exhibit Number 2, the cocaine, was leaking.
11 We have obtained a separate bag and have inserted it. I
12 don't know if you want the bailiff---

13 THE COURT: Mr. Anderson, stand back. You been
14 sniffing it.

15 MR. LAWSON: Well, judge, he's trying to shake it, is
16 what he's trying to do, judge.

17 But I don't know if the bailiff should tell them that
18 that's why we put it in this bag. That this bag is
19 leaking; and, if they take---

20 THE COURT: I don't think---

21 MR. LAWSON: ---it out---

22 THE COURT: ---that's necessary unless y'all want to.
23 I don't think that's---

24 MR. NETTLES: We should put a sticky on it that says
25 don't open the bag.

1 **MR. LAWSON:** Well -- Well, they---

2 **THE COURT:** It might be from what Mr. Kirby said when
3 he stuck it---

4 **MR. LAWSON:** They have a right to open it.

5 **THE COURT:** ---when he stuck it to see what it was.

6 **MR. LAWSON:** There may be -- They may want to test
7 it, judge.

8 **MR. NETTLES:** Now that, they do not have a right to
9 do.

10 (WHEREUPON, Mr. Nettles continued making comments
11 while the court was making following statements.)

12 **THE COURT:** All right. Send it all in, and tell them
13 they can deliberate, and tell -- when they choose, and
14 send the food in.

15 **MS. PARR:** Now, we have the alternates back there.

16 **THE COURT:** (To the bailiff) Send the alternates
17 back, please.

18 Thank you, Ms. Parr.

19 (To the bailiff) Send the alternates out.

20 **BAILIFF TIMMONS:** You want them out now, judge,
21 before---

22 **THE COURT:** Yeah. Send the alternates out. They can
23 eat out here with us. Two alternates.

24 (As door to jury room opened) I'm sending in your
25 food, and you may deliberate.

1 (WHEREUPON, at 12:44 p.m., alternates returned to
2 open court.)

3 MS. PARR: Do we need to check to make sure -- Have
4 we checked all of the exhibits?

5 THE COURT: (To the jury through open door) I'm
6 sending in your exhibits, and your jury verdict form.

7 (To the bailiff) You tell them that too. I'm sure
8 they can hear me. Did you tell them that, Mr. Bailiff?

9 BAILIFF TIMMONS: Yes, sir.

10 THE COURT: Good. I couldn't hear you. I know they
11 can hear me.

12 All right. If y'all gather up these exhibits, y'all
13 stand up here and look with Ms. McDaniel and make sure we
14 got the exhibits and jury verdict form. All of that's
15 going in.

16 (WHEREUPON, the attorneys checked the exhibits.)

17 MS. PARR: You just want to put them in this box,
18 Your Honor?

19 (WHEREUPON, lunch was served to the jury.)

20 THE COURT: (To the alternates while lunch is being
21 served) Y'all can take your food and join me in the --
22 You're invited to join me in my -- in my chambers. You
23 can take your food and be about your affairs. If you need
24 something to show where you've been this week to your
25 employers or your husband or who -- or wife or whoever,

1 you can get that from the -- from the bailiff. If you
2 don't get your check, we've got the wrong address for you.
3 Call us up on Wednesday at the Clerk's Office. She'll
4 stop payment and mail you another one at a better address,
5 and you can come by and get it. It ain't gone amount to a
6 whole lot of money, but we want you to have your meal, and
7 you can eat it here with us or in the courtroom, and you
8 -- We'll let you use these desks, or you can join me in
9 our -- in our chambers.

10 But I want -- I want to tell you --

11 (To the bailiff and clerk while lunch is continuing
12 to be served) Close that door now.

13 (WHEREUPON, the jury room door was closed without
14 having served all the jurors.)

15 **THE COURT:** I want to tell you how much I appreciate
16 again -- You probably feel like, well, I've been here, and
17 I hadn't made a great contribution to this, and I'm not
18 even in there, and I'm not deliberating. You served your
19 purpose, and you don't know how assuring it is. I
20 probably would have only chosen -- I probably would've
21 only chosen one alternate, but I'm not gone question Judge
22 Brogdon's judgment or whether or not these officers and
23 all -- Because of the importance of this case, we're gonna
24 have to break down and then have to wait and recess; or,
25 if it was an unusual period of time, we'd probably have to

1 declare a mistrial 'cause you would want people out here;
2 and they -- and they've been going through the trial; and
3 it -- and it must mick -- makes you feel real comfortable,
4 like you in your automobile and you fixing to go to
5 California and you -- And if it's gone be a very long
6 trial from Monday through Thursday, you really get antsy
7 'cause I'm gone tell you something. Forty (40%) per cent
8 of the cases I've tried like this wind up we have to use
9 an alternate. Something always happens that's
10 unpredictable that you can't foresee.

11 So you've given us -- all of us a level of comfort,
12 just seeing you there. And I appreciate the fact that --
13 I looked at you, and I don't know if y'all caught me doing
14 it. I try to do it unobtrusively, but I looked at you. I
15 watched you, just like I watched the original twelve, and
16 you all were just as retentive (sic). Your mind was here.
17 It wasn't somewhere else.

18 And a lot of judges have problems with, you know,
19 jurors going to sleep and yawning. I had that problem for
20 a year; and then, after that, I decide I don't care if it
21 takes two hours, three hours, I ain't gone tolerate that
22 'cause justice is too important for jurors or a judge to
23 be sitting in a jury 'sleep. It's like if when---

24 **COURT REPORTER:** They need to get the rest of the
25 lunch and the exhibits in there.

1 **THE COURT:** All right. Food coming.

2 (To the alternates) Y'all can do what you want to do.

3 (To the clerk and bailiff) And make sure they get
4 their food.

5 **BAILIFF TIMMONS:** We will, judge.

6 **THE COURT:** Okay. Bring it on.

7 **MR. NETTLES:** Judge,---

8 **THE COURT:** Got the exhibits and everything in there?

9 **COURT REPORTER:** They're just doing it now.

10 **THE COURT:** Okay. Very good. Meals coming.

11 **MS. PARR:** So we can leave?

12 **MR. NETTLES:** Judge, may we be excused?

13 **THE COURT:** (To the alternates) This completes
14 y'all's service, too, for the week.

15 **ALTERNATE HUGGINS:** Okay. Thank you, sir.

16 (WHEREUPON, at 12:48 p.m., the alternates were
17 excused from the trial of the case and for the week; lunch
18 to the other jurors was served; the exhibits and verdict
19 forms were taken to jury for them to begin deliberations;
20 and court stood in recess for lunch.)

21 (WHEREUPON, at 2:04 p.m., the jury handed out a note
22 with two questions; and, at 2:10 p.m., court reconvened,
23 with Defendant Blash and counsel for all parties present
24 in the courtroom and with counsel conferring regarding
25 jury questions.)

1 **MR. LAWSON:** The defense---

2 **MS. PARR:** I just don't---

3 **MS. JACKSON:** Well, let me give it to him, and then
4 y'all can tell him.

5 **MR. LAWSON:** The defense may not like this, Your
6 Honor, but the reason the second option's there is because
7 they requested it.

8 **MS. JACKSON:** Number one, we all agree on, where I
9 wrote down -- or what Pat wrote down. Number two, about
10 why the lesser-included is in there, Pat wrote a sentence;
11 and then we wrote a sentence that we think it should be;
12 and so that's kind of both of our answers on number two.
13 The first one's hers; the second one is ours. It's close,
14 but not exactly the same.

15 **THE COURT:** Any problem with any of you as to this?

16 **MS. PARR:** To the second one. We have not agreed to
17 the second one.

18 **THE COURT:** You got to speak up.

19 **MS. PARR:** We have not agreed to the second -- the
20 second option -- the second answer, Your Honor.

21 **THE COURT:** What is it, the language that you
22 suggest? The second one obviously is a lesser-included
23 offense of the first, should they find.

24 **MS. PARR:** Yeah. Okay. That's fine.

25 **THE COURT:** All right. Without objection.

1 (To the bailiff) Bring us the jury.

2 (WHEREUPON, at 2:15 p.m., jury returned to open court
3 with questions; and the following proceedings were had
4 within the presence of the jury:)

5 **THE COURT:** Mr. Bailiffs.

6 **BAILIFF TIMMONS:** Yes, sir.

7 **THE COURT:** Erase that board. Erase that board.

8 I've received a communication from you, Ms. Forelady,
9 on behalf of your jury. It's signed DeLoris L. Thompson;
10 and it's dated August the 16th, 2001; and you address
11 yourself as foreperson; and that's appropriate; and that
12 is the correct form.

13 Now, you -- I use the pre- -- addressing you as
14 forelady, but I have no problem with foreperson. That is
15 more correct probably, foreperson. Just a question of
16 choice.

17 Your question -- The first question -- There're two
18 separate questions here. May we use any of the three
19 options?

20 As to each defendant, there are three possible
21 verdicts for each of the defendants; and, of course, you
22 understand from my charge you are to consider each
23 defendant separately.

24 And the answer is may we use any of the three options
25 is yes, but you may use only one of those three options

1 for each of the defendants. Not two. Only one verdict,
2 considering each of them as they are listed.

3 Now, you asked a second question. Why is the second
4 option on the paper?

5 Now, the -- to more correctly address that, I'm
6 assuming what you're saying is that you're not defining
7 paper; but what you're referring to is the verdict form;
8 and so I'll rephrase it, although I'm gonna place it in
9 the record---

10 **FORELADY THOMPSON:** All right.

11 **THE COURT:** ---as a court's exhibit. Why is the
12 second option on the paper? Now, as I understand that,
13 your question really should be this: Why is the second
14 option on the verdict form?

15 **FORELADY THOMPSON:** All right.

16 **THE COURT:** That's what you intended?

17 **FORELADY THOMPSON:** (WHEREUPON, the forelady nodded
18 her head in the affirmative.)

19 **THE COURT:** All right. I'm gone answer that for you.
20 The second option listed for both defendants is that
21 should you find -- if it is your verdict and been proven
22 beyond a reasonable doubt that it is not trafficking
23 because of the amount or question or whatever it is, not
24 proven beyond a reasonable doubt to you, the second option
25 is a lesser-included offense of the charge trafficking;

1 and based on the facts presented there are three.

2 I'll reiterate them again for you. Three separate
3 and de-strength (sic) possible verdicts. One -- And
4 considering the verdict form, if each of these defendants,
5 one, guilty of trafficking; or, two, guilty of possession
6 with intent to distribute cocaine; or, three, not guilty.

7 Does that answer your questions?

8 (WHEREUPON, several jurors shook head in the
9 negative.)

10 **FORELADY THOMPSON:** No, sir.

11 **THE COURT:** Then you need to go back to your room,
12 and you need to write out again your question.

13 And I'll make this a court's exhibit.

14 (While jury leaving) And I'll bring you back whenever
15 you've written out what that inquiry is.

16 (WHEREUPON, at 2:20 p.m., jury again retired to the
17 jury room to continue deliberations; and the following
18 proceedings were had outside the presence of the jury:)

19 **MS. PARR:** Can't we just ask what the question is?

20 (WHEREUPON, Questions from Jury with Attached
21 Response marked for identification as Court's Exhibit
22 Number 3.)

23 **THE COURT:** We all understood it, the lawyers and
24 you; and I don't know what that is.

25 **MR. LAWSON:** I don't know what the question -- We did

1 -- Apparently, we didn't understand their question.

2 **MS. JACKSON:** They need to rephrase it.

3 **THE COURT:** Apparently. But the way it's written, I
4 don't think there's any interpretation that we could give
5 to it.

6 **MS. PARR:** What is their question?

7 **MS. JACKSON:** We tried to answer it.

8 **THE COURT:** There's no objection to the instruction
9 given to the jury and answer to their question either by
10 the State and by the defendant. They both concurred.
11 They both looked at the language that the court was going
12 to charge the jury, and there was no objection. I used
13 the language written and agreed to by the lawyers in
14 answering the question, and now we'll wait the next
15 question from this jury.

16 (Pause; and then, at 2:26, the jury knocked and spoke
17 with the bailiff; and, then the following proceedings were
18 had:)

19 **THE COURT:** All right. The bailiff tells me, and
20 they didn't put it in writing. You 'member we told them,
21 and she said they no -- don't have to send it but that
22 clarified it, the question they had among themselves.
23 That was a verbal communication. Should have been in
24 writing. If you want it in writing, I'll get it in
25 writing; but that was the -- communicated to the bailiff,

1 that they won't be sending out the question, that that
2 clarified it.

3 Any objection to that, I'll bring them back and tell
4 them put it in writing.

5 **MR. LAWSON:** None from the State.

6 **MS. PARR:** Not for the State.

7 **MR. NETTLES:** None from the defense, Your Honor.

8 **MR. ANDERSON:** No, sir, Your Honor.

9 **MR. NETTLES:** I was standing here.

10 **MS. PARR:** That's all right.

11 (WHEREUPON, at 2:27 p.m., court stood at ease; at
12 3:48 p.m., the jury knocked, stating they had a verdict;
13 and, court reconvened, with Defendant Blash and, with the
14 exception of Mr. Lawson, counsel for all parties present
15 in the courtroom; and the following proceedings were had:)

16 **THE COURT:** All right. We've got a verdict.

17 (To the bailiff) Bring us the jury.

18 Where's Mr. Lawson?

19 **MS. PARR:** He's not going to be here. He's coming
20 back later.

21 **THE COURT:** He doesn't -- All right.

22 (WHEREUPON, at 3:49 p.m., jury returned to open court
23 with a verdict; and the following proceedings were had
24 within the presence of the jury:)

25 **THE COURT:** All right. Mrs. Forelady, the bailiff

1 informs me that you have reached a verdict. Have you
2 arrived at a verdict?

3 **FORELADY THOMPSON:** Yes, sir.

4 **THE COURT:** Would you accept it for me, Ms. Gregg?

5 (WHEREUPON, the verdict forms were handed to the
6 court.)

7 **THE COURT:** It's in the appropriate proper form as to
8 both defendants. It is signed by the foreperson and
9 dated. You've got August 16th, the year 2000. It is
10 2001.

11 **FORELADY THOMPSON:** It should say one (1). My left
12 hand---

13 **THE COURT:** You make that correction. Other than
14 that, it's in the appropriate form.

15 (WHEREUPON, the verdict forms were handed to the
16 forelady.)

17 **FORELADY THOMPSON:** Your Honor, there's a misspelled
18 word on it.

19 **THE COURT:** All right. I'm not too concerned about a
20 misspelled word.

21 **FORELADY THOMPSON:** I just wanted to make sure it was
22 legal.

23 **THE COURT:** Whatever needs to be corrected, you may
24 correct that.

25 (WHEREUPON, after a short pause, the verdict forms

1 were handed back to the court.)

2 **THE COURT:** It is now correct.

3 (To the deputy clerk) Would you publish the verdict
4 of the jury?

5 (To Mr. Anderson) And would you have the defendant
6 stand?

7 (WHEREUPON, Defendant Blash stood.)

8 **THE COURT:** You may publish the verdict.

9 **DEPUTY CLERK DUDLEY:** State of South Carolina, County
10 of Florence, In the Court of General Sessions, Twelfth
11 Judicial Circuit, Case Number 2000-GS-21-839. State of
12 South Carolina versus Michael George Monfries and Eddie
13 Blash, defendants.

14 Verdict: We the jury find the Defendant Michael
15 George Monfries guilty of trafficking in cocaine in the
16 amount of nine-hundred-ninety-seven-point-twenty-seven
17 (997.27) grams.

18 We the jury find the Defendant Eddie Blash guilty of
19 trafficking in cocaine in the amount of nine-hundred-
20 ninety-seven-point-twenty-seven (997.27) grams.

21 August 16th, 2001, DeLoris Hanson -- Thompson --
22 excuse me -- foreperson.

23 **THE COURT:** (To the defendant) You may be seated.

24 (WHEREUPON, the defendant was seated.)

25 **CHIEF DEPUTY CLERK GREGG:** Madam Forelady and members

1 of the jury, if this is your verdict, so say you now.

2 (WHEREUPON, the jurors all answered in the
3 affirmative.)

4 **THE COURT:** (To the defendant) You may -- You may be
5 seated.

6 Anything from defense counsel? Do you wish polling
7 of this jury before I excuse them?

8 **MR. ANDERSON:** Your Honor, on behalf of Mr. Blash, I
9 would.

10 **MR. NETTLES:** We concur in that, Your Honor.

11 **THE COURT:** Beg your pardon?

12 **MR. NETTLES:** We concur in that, Your Honor.

13 **THE COURT:** Concur?

14 **MR. NETTLES:** Yes, sir.

15 **THE COURT:** Poll the jury, individually, if that was
16 their verdict in the jury room; and is that their verdict
17 now.

18 **CHIEF DEPUTY CLERK GREGG:** As I call your name, I'll
19 ask you to stand. I'll ask you if this is your verdict,
20 answer, and if it's still your verdict.

21 Demetra Moore, is this your verdict?

22 **JUROR MOORE:** Yes, it is.

23 **CHIEF DEPUTY CLERK GREGG:** Is it still your verdict?

24 **JUROR MOORE:** Yes, it is.

25 **CHIEF DEPUTY CLERK GREGG:** Harriett Briggs, is this

1 your verdict?

2 JUROR BRIGGS: Yes, it is.

3 CHIEF DEPUTY CLERK GREGG: Is it still your verdict?

4 JUROR BRIGGS: Yes, it is.

5 CHIEF DEPUTY CLERK GREGG: Malik Livingston, is this
6 your verdict?

7 JUROR LIVINGSTON: Yes, it is.

8 CHIEF DEPUTY CLERK GREGG: Is it still your verdict?

9 JUROR LIVINGSTON: Yes, it is.

10 CHIEF DEPUTY CLERK GREGG: Alan Lane, is this your
11 verdict?

12 JUROR LANE: Yes, it is.

13 CHIEF DEPUTY CLERK GREGG: Is it still your verdict?

14 JUROR LANE: Yes, it is.

15 CHIEF DEPUTY CLERK GREGG: Diana Layne, is this your
16 verdict?

17 JUROR LAYNE: Yes, it is.

18 CHIEF DEPUTY CLERK GREGG: Is it still your verdict?

19 JUROR LAYNE: Yes, it is.

20 CHIEF DEPUTY CLERK GREGG: Candice Ford, is this your
21 verdict?

22 JUROR FORD: Yes, it is.

23 CHIEF DEPUTY CLERK GREGG: Is it still your verdict?

24 JUROR FORD: Yes, it is.

25 CHIEF DEPUTY CLERK GREGG: Katrina Eaddy, is this

1 your verdict?

2 JUROR K. EADDY: Yes.

3 CHIEF DEPUTY CLERK GREGG: Is it still your verdict?

4 JUROR K. EADDY: Yes.

5 CHIEF DEPUTY CLERK GREGG: Wendy Hubbard, is this
6 your verdict?

7 JUROR HUBBARD: Yes.

8 CHIEF DEPUTY CLERK GREGG: Is it still your verdict?

9 JUROR HUBBARD: Yes.

10 CHIEF DEPUTY CLERK GREGG: Ronald Eaddy, is this your
11 verdict?

12 JUROR R. EADDY: Yes, it is.

13 CHIEF DEPUTY CLERK GREGG: Is it still your verdict?

14 JUROR R. EADDY: Yes, it is.

15 CHIEF DEPUTY CLERK GREGG: Laurie Crosswell, is this
16 your verdict?

17 JUROR CROSSWELL: Yes, it is.

18 CHIEF DEPUTY CLERK GREGG: Is it still your verdict?

19 JUROR CROSSWELL: Yes, it is.

20 CHIEF DEPUTY CLERK GREGG: Annie Windham, is this
21 your verdict?

22 JUROR WINDHAM: Yes, it is.

23 CHIEF DEPUTY CLERK GREGG: Is it still your verdict?

24 JUROR WINDHAM: Yes, it is.

25 CHIEF DEPUTY CLERK GREGG: DeLoris Thompson, is this

1 your verdict?

2 **FORELADY THOMPSON:** Yes, it is.

3 **CHIEF DEPUTY CLERK GREGG:** Is it still your verdict?

4 **FORELADY THOMPSON:** Yes, it is.

5 **CHIEF DEPUTY CLERK GREGG:** That's it, judge.

6 **THE COURT:** Anything further before I excuse the
7 jury?

8 **MR. NETTLES:** Yes, sir, Your Honor, if we could take
9 it up out of the presence of the jury, if you don't mind.

10 **THE COURT:** Well, that's what I'm saying, before I
11 excuse them. I will take up any other matters. But
12 anything further that I need for the jury? And I can---

13 **MR. NETTLES:** Yes, sir. I -- I -- We -- We've got
14 something we'd like to take up out of the presence of the
15 jury before you release them.

16 **THE COURT:** But I'm gone excuse the jury though.
17 Unless there's something that comes up with the jury, I'm
18 not gone -- I'm not gone keep the jury here.

19 **MR. NETTLES:** Well, I -- I -- I -- May -- Maybe I'm
20 not communicating very clearly with you. We've got
21 something we'd like to take up that may involve the jury
22 coming back.

23 **THE COURT:** All right. I'll -- Then I will excuse --
24 ask them if you'll step into the jury room, please.

25 (WHEREUPON, at 3:55 p.m., jury returned to jury room;

1 and the following proceedings were had outside the
2 presence of the jury:)

3 **THE COURT:** All right, sir. Mr. Nettles?

4 **MR. NETTLES:** Thank you very much, Your Honor. From
5 where I was sitting, it became very obvious to me that the
6 young woman, Katrina Eaddy, was crying and was clearly
7 very upset.

8 **THE COURT:** Not unusual, Mr. Nettles.

9 **MR. NETTLES:** Well,---

10 **THE COURT:** Emotional -- It's a -- It's a very tough
11 thing to serve on jury. It's not a pleasant task. When
12 you realize that somebody's being convicted of a felony or
13 serious offense in trafficking, it's not unusual for
14 jurors to be impacted and affected emotionally by that
15 distress (sic) and that decision. It's not an easy task.
16 The authors of the Constitution never intended that it be,
17 but that's why we don't have bureaucrats or judges making
18 the decision. That's why we have lay persons. It's a
19 tough task. That alone and that of -- in and of upset --
20 of itself does not give rise to any violation of any
21 constitutional---

22 **MR. NETTLES:** Well,---

23 **THE COURT:** ---rights.

24 **MR. NETTLES:** ---Your Honor, what I'd ask the court
25 to consider is -- I mean, and I've seen jurors upset, you

1 know. It's been a long time since---

2 **THE COURT:** Granted. Obvious. I'll accept that's an
3 undisputed fact. I saw it as well.

4 **MR. NETTLES:** And -- Well, thank you, Your Honor.
5 And so the record reflecting that, I would ask the court
6 to consider -- if you would consider bringing her back out
7 and asking her -- As you said very well and -- and -- and
8 at great length on Monday, that it's not right and it's
9 not fair. You -- You gave an example of one particular
10 juror coming out, being very upset, being very -- very --
11 and -- and -- and -- and how unfair that was.

12 **THE COURT:** That was---

13 **MR. NETTLES:** I would simply ask the court---

14 **THE COURT:** That juror had to be excused. No, sir.
15 I will not.

16 **MR. NETTLES:** Thank you, Your Honor. If you would
17 just---

18 **THE COURT:** No need to respond to that.

19 **MR. NETTLES:** If you would---

20 **THE COURT:** I will not.

21 **MR. NETTLES:** What---

22 **THE COURT:** That places an unnecessary burden of
23 stress on a juror, and she was asked that question and was
24 polled. The verdict was guilty with both of them, and she
25 was polled, and she has responded, and I will go no

1 further into that deep morass to try to substitute. That
2 would be extremely arrogant and an imposition and a
3 usurpation of the jury, which I have too much respect to
4 enter that inner sanctum of begin to question them about
5 how they reached the decision or their decision. I will
6 not. I never have; and I hope to God I will never, ever
7 do that; but I appreciate the fact in your zealously in
8 representing your client---

9 **MR. NETTLES:** If you -- So---

10 **THE COURT:** But I am very much aware -- I have
11 learned, in forty-one (41) years being a member of the
12 Bar, to observe and look at jurors and look at witnesses
13 and observe people; and I get an awful lot of body English
14 (sic) and feedback from them; and you're very observant;
15 and it's apparent to me an excellent trial lawyer; and you
16 picked it up as I did.

17 **MR. NETTLES:** Well,---

18 **THE COURT:** She was the only person, and she -- she
19 seemed to be that she did what she had to do (sic), and it
20 was not an easy task. Some people are real tender-
21 hearted. Real tender-hearted. And I -- And that's the
22 way she im- -- impressed me, is that, you know, it was --
23 it was a hard thing for her.

24 **MR. NETTLES:** I understand, Your Honor. If you'd
25 just allow me to perfect my record.

1 THE COURT: I will.

2 MR. NETTLES: I -- I would just like to ask that it
3 be done. I understand you've ruled; but, for purposes of
4 the record, that -- that in the interest of fundamental
5 fairness and equal protection, I believe those two---

6 THE COURT: I understand.

7 MR. NETTLES: ---both under State and Federal
8 Constitution.

9 THE COURT: Our chief has used that numerous times.
10 Fundamental fairness. Used it in the Toyota case, a civil
11 case. I do not think it's applicable here in this
12 situation under these circumstances.

13 Anything further before I excuse this jury?

14 Of course, if the -- if the State -- And I'll get --
15 You know, I'll be glad to hear from you if you -- if you
16 don't -- if you---

17 MS. PARR: No. I don't have---

18 THE COURT: ---consent,---

19 MS. PARR: ---anything to say.

20 THE COURT: ---I'd---

21 MS. PARR: No---

22 THE COURT: ---I would---

23 MS. PARR: I'm fine with what---

24 THE COURT: ---then revisit it.

25 MS. PARR: I'm fine which ever way.

1 **THE COURT:** All right, sir. Thank you very much.
2 And I -- And I -- I understand -- I understand the
3 defense; and you always look at things what if; and you
4 still looking what if; but I tell you I always appreciate
5 good lawyers in the court and lawyers that prepare; and
6 you have done your homework, your very best; and you gave
7 me the recent cases and the cites; and I ruled with you;
8 but it -- cause it was very persuasive; but I'm still not
9 sure or convinced.

10 I'm gone -- You gone put me back into the books; and
11 I know your clients, of course, are disappointed; but they
12 certainly can't assign to their counsel that they didn't
13 have excellent representation and well-prepared.

14 **MR. NETTLES:** Thank you, Your Honor.

15 **THE COURT:** But where it rests is with that jury; and
16 the facts in the case, I'll have to say, support the
17 verdict; and it was both direct and in -- indirect or
18 circumstantial evidence; and the evidence in this case was
19 overwhelming.

20 All right. (To the bailiff) Bring -- Bring the jury.

21 **CHIEF DEPUTY CLERK GREGG:** Judge, you want her to
22 write on the indictment---

23 **THE COURT:** Yes, ma'am. I do.

24 **CHIEF DEPUTY CLERK GREGG:** What -- What do you want
25 her to write?

1 **THE COURT:** I want her to write under that verdict
2 guilty of trafficking in cocaine greater than four --
3 greater than four hundred (400) grams. That's what they
4 state.

5 **CHIEF DEPUTY CLERK GREGG:** As to both defendants?

6 **THE COURT:** As to both defendants.

7 (To the bailiff) Bring the jury.

8 (WHEREUPON, at 4:02 p.m., jury returned to open
9 court; and the following proceedings were had within the
10 presence of the jury:)

11 **THE COURT:** I'm gone excuse the jury shortly but not
12 just yet.

13 (To chief deputy clerk) If you would, have the
14 forelady sign on the back of the indictment the verdicts
15 of the two defendants. Sign it under the -- and date it.

16 **CHIEF DEPUTY CLERK GREGG:** Do I need to---

17 **THE COURT:** Write out -- Write out the -- the
18 verdict.

19 (WHEREUPON, chief deputy clerk conferred with
20 forelady.)

21 **THE COURT:** It will be the two -- the two separate
22 guilty of trafficking in more than four hundred (400)
23 grams of cocaine. And by each of them, the individual's
24 name.

25 I need a sentencing sheet in order to seal it as to

1 Mr. Monfrizz.

2 MS. PARR: Your Honor, I can get that done right
3 quick.

4 THE COURT: (To the chief deputy clerk) May I see it
5 to make sure it's in the appropriate form?

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

7 THE COURT: It's not clear to me. She's written it
8 out, but write that four hundred (400) a little bit
9 clearer with bigger 0's.

10 CHIEF DEPUTY CLERK: Me?

11 THE COURT: No, ma'am. The forelady. So it can be
12 seen. It looks like it's very small, and I want to see
13 air between those zeros.

14 (WHEREUPON, the indictment was handed back to the
15 forelady.)

16 THE COURT: It's got it in the form; but, when it's
17 filed, I want it to be clear in the record.

18 (WHEREUPON, the indictment was handed back to the
19 court.)

20 THE COURT: All right. Mr. Anderson, bring your
21 client around.

22 (WHEREUPON, Defendant Blash and Mr. Anderson
23 approached.)

24 THE COURT: Mrs. Parr, before I impose sentence, I
25 want to know if he has any prior criminal history or

1 record.

2 MS. PARR: Yes, Your Honor.

3 THE COURT: Of any kind. And particularly as to
4 dealing or involved in drugs and sales of drugs and
5 possession of drugs. Anything in that record I'd want to
6 consider; and, ordinarily, I would be restricted in a
7 trial if he had taken the stand. Could not go beyond ten
8 (10) years. I want to know what it is, and you can take
9 it all the way back. Except minor matters that occurred
10 when he was a minor or in Family Court or juvenile court,
11 I would not wish to hear. Not relevant. But if he's got
12 any adult record, I want to know it.

13 MS. PARR: Okay. Your Honor, yes, he does. It looks
14 like March 16th. I have a certified copy of disposition
15 from the State of Florida, Miami, Dade County.

16 THE COURT: What year?

17 MS. PARR: Okay. The first one -- You said you want
18 since -- past ten (10) years or as an adult record?

19 THE COURT: I want the whole record; and, if you go
20 back, except I do not want a juvenile record.

21 MS. PARR: Okay. All right. Your Honor, I'm just
22 going to---

23 THE COURT: You can go beyond the ten (10) years.

24 MS. PARR: I'm just going to tell you the ones where
25 we have an adjudication on.

1 **THE COURT:** All right.

2 **MS. PARR:** Okay. March 16th, 1989, possession of
3 cocaine; and it looks like he has a probationary sentence
4 on there. The conviction date was March 17th, 1989. And
5 then he has a conviction---

6 **THE COURT:** Possession of cocaine.

7 **MS. PARR:** Possession of cocaine.

8 **THE COURT:** All right. Now, wait. I want to look at
9 all these. Next.

10 **MS. PARR:** The next one that I'm showing adjudication
11 is April 23rd, 1998. He has a conviction for trafficking
12 in cocaine, twenty (20) grams -- twenty-eight (28)---

13 **THE COURT:** Nineteen-eighty-eight (1988).

14 **MS. PARR:** Nineteen-ninety-eight (1998).

15 **THE COURT:** Nineteen-ninety-eight (1998). April the
16 23rd. The conviction was what?

17 **MS. PARR:** For trafficking in cocaine, twenty---

18 **THE COURT:** Is it---

19 **MS. PARR:** ---eight (28) grams to a hundred and fifty
20 (150) grams. And then -- And those are the two
21 convictions that are showing on his record.

22 **THE COURT:** Mr. Anderson, there's no provision in the
23 statute.

24 **MR. ANDERSON:** Judge, I was only aware---

25 **THE COURT:** Providing for an enhancement of

1 penalties.

2 MR. ANDERSON: Yes, sir, Judge. That's---

3 THE COURT: Your---

4 MR. ANDERSON: ---right.

5 THE COURT: ---client's got a prior history not only
6 of possession but of trafficking.

7 MR. ANDERSON: Judge, I was unaware of any possession
8 that he had. I -- What year did she say that was?

9 MS. PARR: That is on that certified sheet. It's on
10 -- It's March 16th, 1989.

11 MR. ANDERSON: Your Honor, that's -- the sheet I have
12 says withhold adjudication.

13 MS. PARR: Then it says probation.

14 THE COURT: It wouldn't be -- They wouldn't be
15 imposing probation---

16 MS. PARR: Your Honor, I -- I will pass---

17 THE COURT: ---unless he had an appeal (sic) and
18 was --.

19 MS. PARR: Okay. (While handing document) I'll pass
20 it to the court, and the court can---

21 THE COURT: And the reversal on appeal on the thing.

22 MR. ANDERSON: Well, Judge, in Florida, there's a lot
23 of adjudications withheld. It's kind of like P.T.I. or
24 conditional discharge.

25 THE COURT: All right, sir. I'll hear from you. Any

1 mitigating circumstances you think is applicable -- But as
2 you know, the statute does not give me the little
3 discretion.

4 **MR. ANDERSON:** I'm aware of that, Your Honor.
5 That's---

6 **THE COURT:** It is a felony. Give me the -- Look it
7 up.

8 **MR. ANDERSON:** That's---

9 **THE COURT:** As I'm sure you have told him,
10 trafficking in cocaine is a --.

11 **MR. ANDERSON:** Judge, I've told him that if you give
12 him the bare minimum, which is what the statute requires,
13 he'll do at least twenty-two (22) years in jail. That's
14 what I told him.

15 **THE COURT:** He'll do eighty-five (85). Here's what
16 it is: Twenty-five (25) to thirty (30) years, a mandatory
17 two-hundred-thousand-dollar (\$200,000.00) fine. Tells you
18 the seriousness, the General Assembly, a felony, no
19 suspended sentence. Can't, other words, give him a
20 sentence and serve so much and suspend it.

21 **MR. ANDERSON:** He's aware of that.

22 **THE COURT:** Can't do that. No probation. No
23 eligibil' for that. It's considered violent. It is also
24 classified as a serious offense. This is one strike of
25 three (3), which means two (2) more. And I don't know how

1 this traffic -- this other trafficking is also -- He's had
2 two strikes now under our law, apparently, considering the
3 violation in another state, Florida. One more, he's in
4 for life. He dies in prison. Life now means life, and no
5 parole, no work release, no youthful offenders.

6 How old is your client?

7 **MR. ANDERSON:** Judge, from my understanding, Mr.
8 Blash is, I think, either thirty (30) or thirty-one (31).

9 (WHEREUPON, Mr. Anderson conferred with the
10 defendant.)

11 **MR. ANDERSON:** Thirty-two (32), Your Honor.

12 **THE COURT:** I'll hear from you now. I'm gone want to
13 hear from your client before I impose sentence.

14 **MR. ANDERSON:** Judge, this is one of those
15 unfortunate cases where the minimum sentence is twenty-
16 five (25) years. If you walk up to the stand and you say
17 "I plead guilty," you're going to get twenty-five (25)
18 years. Now,---

19 **THE COURT:** That's true.

20 **MR. ANDERSON:** ---my client has never admitted to me
21 his guilt. But I can tell you personally how I feel. I'm
22 not going to plead guilty to twenty-five (25) years of
23 anything. If I was as guilty as the day is long, I'm not
24 going to admit to it. I'll take my chances at trial.
25 That's me personally saying that. My client has never

1 told me that. My client has always maintained his
2 innocence. But you walk up to the door---

3 **THE COURT:** Yes, sir. And I see he's had the benefit
4 numerous times to cocaine and many other things, and he
5 was successful in his defenses. He was acquitted. He may
6 have taken the same position you would take. He had a
7 good defense, and he took the chance, and I'm not gone
8 consider these -- I -- I -- But I can't ignore they handed
9 up the sheet.

10 **MR. ANDERSON:** Well, I mean, Judge,---

11 **THE COURT:** I looked at it.

12 **MR. ANDERSON:** ---you're either not going to consider
13 them, or you're going to consider them

14 **THE COURT:** No. I'm not gone consider them, but I'm
15 -- I'm -- But I'm telling you I understand why he would go
16 to trial.

17 **MR. ANDERSON:** Yes, sir. And, of course, the maximum
18 penalty, Your Honor, is thirty (30) years. So if you
19 plead guilty, you get twenty-five (25); and---

20 **THE COURT:** Yes, sir.

21 **MR. ANDERSON:** ---and the most you can get is thirty
22 (30).

23 **THE COURT:** I want to know what redeeming virtue that
24 a dealer, a trafficker, in cocaine has that why he
25 shouldn't get thirty (30) years. That's what I want to

1 know, not the fact that he decided he wanted to put the --
2 the State to strict proof. That doesn't carry any
3 argument at all with the court. What I want to know --
4 What redeeming virtue can you tell me about this man who's
5 been convicted by a jury of trafficking in cocaine who is
6 a resident of Florida and who comes to South Carolina?

7 And it wasn't in the record; but I can't ignore the
8 circumstantial evidence; and it could have been
9 speculative that that one hundred thousand (100,000) would
10 be doubled or tripled if it was cooked and made into crack
11 cocaine; and then we would have dozens pyramiding who are
12 also gone be dealing in crack not for money but probably
13 just to satisfy that compulsion, that addiction, to crack
14 that we would have had people here then robbing, breaking
15 into houses, stealing, doing anything in order to satisfy
16 this addiction to cocaine.

17 Tell me what redeeming virtue -- You've been with him
18 and talked with him. You said he never admitted his
19 guilt. What redeeming virtue does he have that I ought to
20 consider he's entitled to mercy and a twenty-five-year
21 (25) sentence rather than a thirty-year (30) sentence?

22 The Legislature said that's the reason we set it. We
23 gone take the discretion away. You can't give a split
24 sentence. You can't put them on probation; and,---

25 (WHEREUPON, the defendant started conferring with Mr.

1 Anderson.)

2 **THE COURT:** ---if you do -- Wait just a moment.

3 You'll have a talk -- He needs to listen to me right now.

4 The Legislature said, if you can't do it, you take that

5 robe off because we gone have truth in sentencing. People

6 not gone be eligible for trafficking or dealing in dope or

7 the fourth or a third (sic). Now, I didn't (sic)

8 particularly pleased with that; but I don't have to be

9 pleased, if I know what the intent of the jury is, because

10 I would rather give a sentence and split it and say you

11 don't get any probation or parole; and you'll serve X

12 number of days, fifteen (15) years, twenty (20) years,

13 suspend to five (5) years, put you on probation for five

14 (5) years 'cause you certainly ought to learn a lesson

15 after you've done that much time; but the General Assembly

16 says, oh, they debated on -- uh-uh, we're not gone give

17 judges discretion, no parole, no split sentence, no pro-

18 -- probation, and do eighty-five (85%) per cent; and, if

19 they have an infraction, that fifteen (15%) per cent for

20 good time is gone; you do a hundred (100%) per cent.

21 If he has any problems at all in Department of

22 Corrections, that's not a correct statement. He's gone do

23 twenty-two (22) years if I gave twenty-five (25). He'll

24 go twenty-five (25) years, so that's what the General

25 Assembly dictates. That's not discretionary. That's not

1 a choice.

2 The only discretion I have is between twenty-five
3 (25) and thirty (30). Twenty-five (25), twenty-six (26),
4 twenty-seven (27), twenty-six (26), twenty-seven (27),
5 twenty-eight (28), twenty-nine (29).

6 **MR. ANDERSON:** Judge, if it please the court? My
7 client and I are aware of that. Your Honor, Mr. Blash has
8 always been gainfully employed. He works for a
9 pharmaceutical company in the State of Florida. When he
10 came up here, he come up here to see family and friends.
11 Your Honor, he is not married, does not have any children.

12 Judge, to my knowledge, every time I've ever needed
13 him, he's come to see me. Any time the State ever needed
14 him, he's come up here. He's never---

15 **THE COURT:** Well, I---

16 **MR. ANDERSON:** ---run---

17 **THE COURT:** ---think it's commendable. He came; and
18 he was man enough to stay here, face the jury, have his
19 day in court; and we can tell it now. The other man ran.
20 He came and was here, and he's not here. He ran.

21 **MR. ANDERSON:** That's right, Judge.

22 **THE COURT:** And couldn't -- They couldn't consider
23 that.

24 **MR. ANDERSON:** Your Honor,---

25 **THE COURT:** We don't know where he is now. We get

1 his bond, and we'll start hunting him, and when (sic) one
2 day we'll find him.

3 **MR. ANDERSON:** Your Honor, you know, you asked for
4 redeeming qualities. My client's always been gainfully
5 employed. He has always met his obligations to this
6 court.

7 **THE COURT:** And I'm gone -- And I -- And I appreciate
8 that, Mr. Anderson; and you did him an exemplary job; and
9 I hope he understands and appreciates that. When you lose
10 though, they say, "Oh, my lawyer and he could of just done
11 this or done that."

12 **DEFENDANT BLASH:** I ain't---

13 **THE COURT:** I don't know that he has ever assumed or
14 accepted the responsibility for his criminal behavior; and
15 I'm gone see if he's gone accept it here today; and, if he
16 doesn't tell me and if he chooses not to tell me or if he
17 wants to tell me something and he wants to consult with
18 you, we gone give him every right to do that; and it might
19 be he can say something to me that maybe for the first
20 time shows he's accepting some responsibilities for
21 criminal behavior. That's what the jury's convicted him
22 of; and, if he does that, I'm gone consider it; but, if he
23 does not, I don't see anything redeeming.

24 The first step towards rehabilitation of any person
25 is acknowledgment of the behavior. He didn't do that, and

1 he had a right not to do that. He choose to go to trial,
2 and he's been convicted.

3 And I must say to the jury I agree. I could not tell
4 you that previously because I'm not entitled to an
5 opinion, but the evidence was overwhelming. Direct and
6 circumstantial. Overwhelming.

7 Now, I'll hear from him.

8 (To the defendant) I understand you went -- You told
9 your lawyer. The jury didn't buy it, and I tell you now
10 neither do I.

11 **DEFENDANT BLASH:** Judge, Your Honor, the reason why I
12 came here to support my obligation is because I felt like
13 I never could figure it to anything to come up here to
14 make any money off of nothing. So I got caught up in it,
15 and I -- I had to stand up for it. That was my reason.

16 **THE COURT:** You got caught up in it. Are you
17 admitting to me you were caught up in it, and you knew
18 what was going down?

19 **DEFENDANT BLASH:** No. I was with---

20 **THE COURT:** You were a party to it.

21 **DEFENDANT BLASH:** I was with the guy that they --
22 that they accused me---

23 **THE COURT:** You knew---

24 **DEFENDANT BLASH:** ---was---

25 **THE COURT:** ---what was going down, didn't you?

1 **DEFENDANT BLASH:** No. I say I was caught with the
2 guy that they---

3 **THE COURT:** You didn't---

4 **DEFENDANT BLASH:** ---were accusing---

5 **THE COURT:** ---know there was any drugs there.

6 **MR. ANDERSON:** Your Honor,---

7 **THE COURT:** You didn't know there was any pots or any
8 of it. You might want to talk with your lawyer.

9 (WHEREUPON, Mr. Anderson conferred with the Defendant
10 Blash.)

11 **THE COURT:** (While Mr. Anderson and the defendant
12 were conferring) Denial. I'm not -- I'm deaf as to
13 denial. (While pounding on counter) The jury has
14 convicted you.

15 (WHEREUPON, Mr. Anderson continued conferring with
16 Defendant Blash.)

17 **MR. ANDERSON:** Judge, if it please the court?

18 **THE COURT:** Are you telling me you're not guilty, in
19 spite of---

20 **MR. ANDERSON:** Judge,---

21 **THE COURT:** ---the jury verdict?

22 (To Mr. Anderson) Is that what he's telling me?

23 **MR. ANDERSON:** No, sir. And may I please be heard?

24 **THE COURT:** Yes, sir.

25 **MR. ANDERSON:** If it please the court? It's my

1 understanding of the law, Your Honor -- And I'm not
2 questioning what's happened in this case; but, if this
3 case is appealed and if this case is reversed, then
4 anything my client says---

5 **THE COURT:** Every objection you had was sustained. I
6 don't know where you gone find anything basis for appeal.

7 **MR. ANDERSON:** Judge, it is my under---

8 **THE COURT:** But you're -- certainly---

9 **MR. ANDERSON:** ---standing---

10 **THE COURT:** ---could do that.

11 **MR. ANDERSON:** ---of the law---

12 **THE COURT:** Beg your pardon?

13 **MR. ANDERSON:** It is my understanding of the law that
14 anything he says now can be used against him if this case
15 is reversed; and, based upon that, I have to ask my client
16 to refrain from speaking to the court.

17 **THE COURT:** All right.

18 **MR. ANDERSON:** I think that's the---

19 **THE COURT:** I understand that. All right. Ask him
20 if he wants to answer this question: You're satisfied
21 with the services that your lawyer has rendered in this
22 case. Do you have any complaints with him?

23 **DEFENDANT BLASH:** No.

24 **THE COURT:** None. All right, sir. Sentence -- You
25 finished?

1 **MR. ANDERSON:** Yes, sir.

2 **THE COURT:** Sentence of the court is you be confined
3 to Department of Corrections for a period of thirty (30)
4 years and that you pay a fine of two hundred thousand
5 (\$200,000.00) dollars.

6 (To the deputy sheriffs) Remove Mr. Blass (sic) from
7 the courtroom.

8 (WHEREUPON, at 4:22 p.m., the deputies escorted
9 Defendant Blash from the courtroom; and the following
10 proceedings were had outside his presence:)

11 **THE COURT:** Transport him forthwith to Department of
12 Corrections to begin serving his sentence.

13 (To the deputy clerk) Hand me the derdict -- the
14 verdict form for Mr. Monfree (sic). No. I don't want the
15 verdict form. Excuse me. That's -- That goes in the
16 file. I want the -- the form from Ms. Parr.

17 Ladies and gentlemen, this is a sealed sentence; and
18 it will not be announced publicly until Mr. Monfrizz (sic)
19 is before the court. At that time, the sentence will be
20 opened. It'll be sealed in the Clerk's Office and will be
21 read to Mr. Monfrizz (sic) at the time. The only person
22 knows this sentence is myself.

23 **MR. NETTLES:** Your Honor, prior to giving that, could
24 I tell you a few things about Mr. Monfries?

25 **THE COURT:** Yes, sir. And I'll be glad to hear from

1 you.

2 **MR. NETTLES:** As---

3 **THE COURT:** I'm fixing to let them go though since
4 this is sealed and they won't hear that, Mr. Nettles; but
5 I'll -- I'm gone -- I'm -- There's a number of things I
6 know that you want to -- And I'll -- And we'll discuss
7 that.

8 **MR. NETTLES:** No, I want---

9 **THE COURT:** Ladies and gentlemen, I tell you again
10 how much I appreciate your service on this case. I had no
11 idea how long it would take or what conclusion or decision
12 you would come to.

13 Your checks that -- You know, I heard that old
14 expression the check is in the mail. It's in the mail,
15 but that's not assuring that you gone receive it. If you
16 -- If -- 'Cause I can't vouch for the U.S. Postal
17 Department; but, if you don't receive it by Wednesday,
18 call or come by the basement downstairs, the Clerk's
19 Office; they'll issue a new check and give it to you right
20 there and stop payment; or, if you call, they'll stop
21 payment and mail you (sic); but it means you didn't give
22 them the proper address. The one where you got your
23 summons, you've moved; or you've gone somewhere else.

24 If you need something to show where you have been up
25 until today, we will have something from the Clerk's

1 Office in the hallway that you can give your employers;
2 and, if there's anything that -- that we can ever do for
3 any of you, I -- the -- your public officials in this
4 place is always to you (sic).

5 You may be called again within two years, but you can
6 tell the judge "I paid -- had my day in court with circuit
7 court." Can't tell federal judge. You can't tell
8 magistrate or city judge that. You could be excused.

9 It's not an easy task. I know it's not an easy task.
10 It was never intended to me.

11 And those same rights that the defendants had in this
12 case, they're not only for a citizen but anyone, even an
13 illegal immigrant. Anybody who finds themselves within
14 the jurisdiction of any of the courts of these United
15 States or the United States (sic) is entitled to the same
16 benefits that you heard me describe in this case. We take
17 a lot for granted. Aren't we so fortunate to live in a
18 country where everybody's presumed innocent and that
19 burden is upon the accuser to prove the guilt beyond a
20 reasonable doubt?

21 But it's not an easy task. I know it isn't. It
22 wasn't intended to be.

23 Could have excused you earlier, but I didn't know
24 what the situation was in this case. I didn't know if
25 we'd had prior criminal history of record here because

1 that's not relevant to the case at bar. The only way it
2 would have become relevant had he taken the witness stand,
3 and then it's not as to the guilt of the crime in this
4 case. It's as to his credibility, whether or not you can
5 b'lieve somebody that has a record of an offense, a felony
6 or a crime involving moral turpitude.

7 You have done your duty, and I have done mine, and
8 it's not an easy task. There's no joy in putting people
9 in prison; but, when people deal in drugs, you don't have
10 any alternative unless you want to put them back out there
11 and give them a chance to do and harm or injure some
12 others. They're predators.

13 Thank you for your service, and you're excused; and
14 this -- You don't have to come back tomorrow. The jury's
15 already been excused for the week, and we'll be doing
16 revocations for people we put on probation and who are
17 violating it, and there are over two thousand (2,000) now
18 in Florence County on probation. There are more than that
19 who are in prison. There are more than that -- five times
20 as many who've got criminal records for the county with a
21 little more than a hundred and twelve thousand (112,000)
22 people. Lock your doors. Lock your car. There ain't
23 enough rooms or enough jails.

24 You say why don't we put them all in jail, why we
25 want to even put them on probation. The State now is

1 spending as much money on prisons, with nineteen thousand
2 (19,000) in prison, a quarter of a million on probation,
3 as we spend on our school system at nineteen thousand
4 (\$19,000.00) dollars apiece, averaging annually.
5 Something to chew on.

6 Good night, and thank you.

7 (WHEREUPON, at 4:27 p.m., the jury was dismissed from
8 the trial of this case and for the week; and the following
9 proceedings were had outside the presence of the jury:)

10 **THE COURT:** Let's take a break for a minute or two.
11 I know as this as been stressful for lawyers.

12 **MR. NETTLES:** All I wanted to point out to you, he
13 didn't have any record. That's all I wanted to point out
14 and ask you---

15 **THE COURT:** I was---

16 **MR. NETTLES:** ---to consider that.

17 **THE COURT:** I was aware of that. And, frankly, Mr.
18 Nettles, I was gonna give that a great deal of
19 consideration and would have---

20 **CHIEF DEPUTY CLERK GREGG:** I have a juror that's left
21 something in the jury room.

22 **THE COURT:** Come on back and get it.

23 (WHEREUPON, the juror entered jury room.)

24 **THE COURT:** But I consider him a fugitive. Kind of
25 like Shakespeare, he who runs is like a confession of

1 guilt.

2 (WHEREUPON, the juror exited jury room and
3 courtroom.)

4 **THE COURT:** He knew the consequences. He could see
5 it coming. The thing that puzzled me -- And I guess he
6 thought maybe to the last he could get a lesser offense or
7 charge or plead it down, that there were negotiations; or,
8 if he kept showing, he could kept (sic) putting it off;
9 and people sometimes, they think just put it off, put it
10 off, put it off; tomorrow will never come; and then, when
11 he realized this jury was drawn, it was right after that
12 he got the feet -- got itchy and took flight.

13 Again, I commend you lawyers; and I -- and I know how
14 you put your heart and your soul into these cases; but,
15 with the evidence in this case, you didn't have a chance;
16 but you shore did---

17 **MR. NETTLES:** But nobody told me.

18 **THE COURT:** You -- But you shore did -- You ought to
19 -- But if you're not optimistic, you'll quit practicing
20 it.

21 **MR. NETTLES:** Okay.

22 **THE COURT:** You've got to feel like, you know, I'm
23 gone -- I'm gone -- I'm gone -- I'm gonna win it. You got
24 to take that positive attitude; but you both did as well
25 as you could do under the circumstances.

1 **MR. NETTLES:** Thank you.

2 **THE COURT:** And I enjoyed seeing you. All of you.
3 Makes me miss having to sit down there where y'all
4 sitting.

5 **MR. NETTLES:** It's fun. Thank you.

6 **THE COURT:** Yes, sir.

7 **MR. NETTLES:** Appreciate it, Your Honor.

8 **THE COURT:** Yes, sir. Enjoyed seeing you, Mr.
9 Nettles.

10 Ms. Parr, read Learned-Hand (phonetic). Never
11 underestimate the common sense of the jury. And now
12 they've got nothing to appeal.

13

14 (WHEREUPON, at 4:29 p.m., this matter was concluded.)

15

16 *****END OF REQUESTED TRANSCRIPT OF RECORD*****

17

18

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

CERTIFICATE

I, the undersigned Patricia A. McDaniel, Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Criminal Court for Florence County, South Carolina, on the 13th, 14th, 15th, and 16th days of August, 2001.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Patricia A. McDaniel

Court Reporter

Florence, South Carolina

June 2, 2003.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Eddie Blash, Jr., Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-001839

Appeal From Florence County
Thomas A. Russo, Resentencing Judge
Paul M. Burch, Post-Conviction Relief Judge

Unpublished Opinion No. 2020-UP-281
Submitted September 1, 2020 – Filed October 7, 2020

APPEAL DISMISSED

Appellate Defender Joanna Katherine Delany, of
Columbia, and Eddie Blash, Jr., pro se, for Petitioner.

Assistant Attorney General Lindsey Ann McCallister, of
Columbia, for Respondent.

PER CURIAM: Petitioner seeks a writ of certiorari from the denial of his
application for post-conviction relief (PCR).

Because evidence supports the PCR court's finding Petitioner did not knowingly and intelligently waive his right to a direct appeal, we grant certiorari on this issue and proceed with a review of his direct appeal issue pursuant to *Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986).

On direct appeal, Petitioner argues the plea court erred by admitting his criminal record from Florida into evidence. However, because this issue was not raised to the resentencing court, this issue is not preserved for appellate review. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal."). Accordingly, after consideration of Appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967), we dismiss Petitioner's direct appeal. Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

THOMAS, HILL, and HEWITT, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

20 20 CP 21 2592

STATE OF SOUTH CAROLINA

County of FLORENCEEDDIE BLASH #277603

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION REVIEWDORIS JULIOS O'HARA
CCP & GS
CRENSHAW COUNTY, SC

2020 NOV 12 PM 2:01

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention KERSHAW CORRECTIONAL INST. HB/276
4848 Goldmine Hwy. KERSHAW, SC 29067
2. Name and location of Court which imposed sentence FLORENCE GENERAL SESSION COURT
180 N. IRBY STREET MSC-E FLORENCE, SC 29501
3. Name(s) of co-defendant(s) (if any) Michael Monfries
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2000 - GS - 21-839
 - (b) TRAFFICKING IN COCAINE

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) _____
- (b) ON MAY 8, 2012 RESENTENCING TO 28yrs.
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA SUPREME COURT
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. REMANDED BY SUPREME COURT
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. HEARD March 6, 2012 - Filed March 28, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Memorandum Opinion No. 2012-MO-005
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION
- (b) OF THE 6th AMENDMENT OF THE U.S. CONSTITUTION.
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO THE STATE'S ADMITTING INTO EVIDENCE TO THE COURT PETITIONER'S PRIOR FLORIDA CONVICTIONS
- (b) WHERE THERE WAS NO EVIDENCE OF THOSE CONVICTIONS AT RESENTENCING.
- (c) COUNSEL FAILURE TO OBJECT AT RESENTENCING COURT, PETITIONER ISSUES WERE NOT PRESERVED FOR APPELLATE REVIEW.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? YES
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? YES
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. PCR APPLICATION
- ii. SUPREME COURT OF SOUTH CAROLINA
- iii. COURT OF APPEALS
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. FLORENCE COUNTY GENERAL SESSION COURT 180N. TRIST ST. MSC-E FLORENCE, SC 29501
- ii. SC SUPREME COURT P.O. Box 11330 Columbia, SC 29211
- iii. SC COURT OF APPEALS P.O. Box 11629 Columbia, SC 29211
- iv. _____

(c) the disposition thereof:

- i. GRANTED BELATED APPEAL
- ii. REVERSED AND REMANDED FOR RESENTENCING
- iii. APPEAL DISMISSED SC
- iv. _____

(d) the date of each such disposition:

- i. JULY 18, 2017 PCR
- ii. MARCH 6, 2012 SUPREME COURT
- iii. SEPT. 1, 2020 COURT OF APPEALS
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. PCR No. # 2014-CP-21-0850
- ii. MEMORANDUM OPINION No. # 2012-MO-005 SUPREME COURT
- iii. UNPUBLISHED OPINION No. # 2020-UT-281 COURT OF APPEALS
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) THIS IS DELAYED P.C.R BECAUSE OF COURT PROCEEDINGS.
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
YES RESENTENCING HEARING

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. 1ST HENRY M. ANDERSON 265 WEST EVANS STREET FLORENCE, SC 29501
3RD JOHNATHAN D. WALLER WALLER LAW GROUP 1116 BLANDING STREET SUITE B COLUMBIA, SC 29201
 ii. 2ND KATHRINE H. HUDGINS APPELLATE DEFENSE P.O. BOX 11589 COLUMBIA, SC 29211-1589
4TH JOANNA K. DELANY APPELLATE DEFENSE P.O. BOX COLUMBIA, SC 29211
 iii. _____

- (b) the proceedings at which each such attorney represented you:

i. 1ST TRIAL AND SENTENCE
 ii. 2ND P.C.R HEARING
 iii. 3RD SUPREME COURT APPEAL
4TH COURT OF APPEALS

19. State clearly the relief you seek in filing this application:

TO BE RESENTENCE

20. Are you now under sentence from any other court that you have not challenged? NO

* PETITIONER BELIEVES HE HAS ADDITIONAL CLAIMS FOR POST-CONVICTION RELIEF, BUT DOES NOT YET HAVE COLLATERAL COUNSEL, ACCESS TO THE DISCOVERY PROCESS, OR FINANCIAL FUNDS FOR EXPERT SERVICES TO INVESTIGATE THESE CLAIMS, AS SUCH, THE PETITIONER, WOULD RESPECTFULLY RESERVE THE RIGHT TO AMEND APPLICATION FOR FURTHER ISSUES.

STATE OF SOUTH CAROLINA)

County of FLORENCE)

VERIFICATION

I, EDDIE BLASH, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Eddie Blash

SWORN to and subscribed before me this 6th day of November, 2020.

Catherine A. Amos (L.S.)
Notary Public

2020 NOV 12 PM 2:01
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

My Commission Expires: Dec 22 2029

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, EDDIE BLASH, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Eddie Blash
Applicant

SWORN or affirmed to and subscribed before me this
6th day of November, 2020.

Caroline A. Amos
Notary Public

My Commission Expires: Dec. 22, 2029

2020 NOV 12 PM 2:01
DORIS FIELDS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Eddie Blash, Jr., Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-001839

Appeal From Florence County
Thomas A. Russo, Resentencing Judge
Paul M. Burch, Post-Conviction Relief Judge

Unpublished Opinion No. 2020-UP-281
Submitted September 1, 2020 – Filed October 7, 2020

APPEAL DISMISSED

Appellate Defender Joanna Katherine Delany, of
Columbia, and Eddie Blash, Jr., pro se, for Petitioner.

Assistant Attorney General Lindsey Ann McCallister, of
Columbia, for Respondent.

PER CURIAM: Petitioner seeks a writ of certiorari from the denial of his
application for post-conviction relief (PCR).

Because evidence supports the PCR court's finding Petitioner did not knowingly and intelligently waive his right to a direct appeal, we grant certiorari on this issue and proceed with a review of his direct appeal issue pursuant to *Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986).

On direct appeal, Petitioner argues the plea court erred by admitting his criminal record from Florida into evidence. However, because this issue was not raised to the resentencing court, this issue is not preserved for appellate review. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal."). Accordingly, after consideration of Appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967), we dismiss Petitioner's direct appeal. Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

THOMAS, HILL, and HEWITT, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE) FOR THE TWELFTH JUDICIAL CIRCUIT

2021 03 25 PM 4:31

Eddie Blash, #277603,

Case No.: 2020-CP-21-2592

Applicant

v.

RETURN & MOTION TO DISMISS

State of South Carolina,

Respondent.

In response to an application for post-conviction relief (PCR) filed by Eddie Blash (Applicant) on November 12, 2020, the State makes this return and motion to dismiss.

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the June 2000 term of the Florence County Grand Jury for trafficking cocaine—more than four-hundred grams (2000-GS-21-0839). Applicant was represented by Hank Anderson, Esquire.

Applicant proceeded to trial on August 13, 2001, before the Honorable B. Hicks Harwell. The jury found Applicant guilty and Judge Harwell sentenced Applicant to thirty years imprisonment. Applicant did not appeal.

i. First PCR (2002-CP-21-1473)

Applicant commenced his first PCR action on August 16, 2002, alleging:

1. Ineffective assistance of counsel.
 - a. Counsel failed to file a timely notice of appeal.

An evidentiary hearing into the matter convened on October 14, 2004, before the Honorable James E. Brogdon, Jr.. On December 15, 2004, Judge Brogdon issued an order granting

Applicant a belated appeal. Applicant filed an amended PGR after the PGR judge gave him thirty days to file an amended PCR application. In this amended PCR application, Applicant again alleged trial counsel's failure to file a notice of appeal. Applicant also alleged ineffective assistance of counsel for failing to object to the testimony of a witness.

An evidentiary hearing was held on December 12, 2007, before the Honorable Thomas Russo. Judge Russo denied the application with prejudice except granted Applicant's right to a belated appeal. The appeal was perfected by the Division of Appellate Defense. On March 28, 2012, the Supreme Court reversed Applicant's case and remanded for resentencing. On May 8, 2012, Applicant appeared before the Honorable Thomas Russo for a re-sentencing hearing. Applicant was represented again by his trial counsel, Hank Anderson. The State was represented by Patricia S. Parr. Judge Russo sentenced Applicant to twenty-eight years imprisonment. Counsel did not file a notice of appeal. Applicant attempted to file a notice of appeal, but it was ultimately dismissed by the Court of Appeals in April of 2013 for being untimely. Applicant then filed a federal habeas petition on July 12, 2013, which was eventually dismissed.

ii. Second PCR (2014-CP-21-0850)

On April 3, 2014, Blash then filed a second PCR application. The State filed a return and partial motion to dismiss all claims as successive except the belated appeal issue. On March 14, 2017, an evidentiary hearing was held before the Honorable Paul M. Burch. Applicant was represented by Johnathan D. Waller, and the State was represented by Lindsey A. McCallister. Judge Burch granted the State's motion and dismissed the allegations, except the belated appeal. Applicant testified on his own behalf, and trial counsel, Hank Anderson, testified on behalf of the State. Judge Burch issued an order on August 17, 2017 denying Applicant's PCR application and dismissing it with prejudice. However, Judge Burch did find that Applicant was entitled to a

belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974), because Applicant did not knowingly and voluntarily waive his appellate rights. Applicant appealed.

On July 12, 2018, Appellate Defender Lanelle C. Durant perfected Applicant's appeal and presented the following issues:

The PCR court correctly granted a belated direct appeal review pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974) because Petitioner Blash did not knowingly and voluntarily waive his appellate right to a direct appeal because his trial counsel failed to file a notice of appeal.

Appellate counsel also filed an Anders brief pursuant to *White v. State* arguing the following issue:

The resentencing court erred in allowing Blash's criminal history from Florida into evidence which was prejudicial to Blash because the history contained one conviction which was tried in Blash's absence for the same offense for which he was being resentenced and also contained numerous drug offenses which did not indicate convictions.

On August 14, 2018, the case was transferred to the South Carolina Court of Appeals. On October 7, 2020, by written order the Court of Appeals denied the petition. The case was remitted back to the circuit court on October 29, 2020.

II. Current Application

Applicant *untimely* commenced this PCR action on November 12, 2020. In his application, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Ineffective assistance of counsel
 - a. Counsel was ineffective for failing to object to the State's admitting into evidence to the court Petitioner's prior Florida convictions where there was no evidence of those convictions at resentencing.
 - b. Counsel failure to object at resentencing court, Petitioner issues were not reserved for appellate review.

As relief, Applicant seeks to be resentenced. Attached to this return and incorporated herein are the Florence County Clerk of Court records, Applicant's SCDC records, the records of Applicant's prior PCR actions, Applicant's appellate records, and the records of this PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

III. Motion to Dismiss

The State moves for summary dismissal pursuant to section 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing. Because there is no question of law or fact to necessitate a hearing, the State requests the Court issue a conditional order of dismissal indicating the Court's intent to dismiss the application and its reasons for so doing.¹ See S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief); Re: Appointment of Counsel in Post-Conviction Relief Cases Before the Circuit Court, S.C. Sup. Ct. Order filed October 6, 2008; Rule 71.1(d), SCRCP (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). The State moves for summary dismissal for the following reasons:

i. Statute of Limitations

Applicant's allegations should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act² (the Act). Specifically, the Act requires:

¹ A proposed Conditional Order of Dismissal consistent with this return and motion to dismiss is concurrently submitted for the Court's consideration.

² S.C. Code Ann. § 17-27-10 to -160.

An application for relief filed pursuant to this chapter **must** be filed within **one year after the entry of a judgment . . . or within one year after the sending of the remittitur . . .**

S.C. Code Ann. § 17-27-45(A) (emphasis added).

The South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consol. Sch. Dist. of Aiken*, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). Further, section 17-27-70(c) authorizes this Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Here, Applicant proceeded to trial on August 13, 2001, and he did not pursue a direct appeal. The application was, therefore, due on or before August 14, 2001. This application was filed on November 12, 2020, *well after* the requisite filing period expired. Accordingly, Applicant’s allegations should be summarily dismissed because the action is untimely.

ii. Successive

Applicant’s allegations should be summarily dismissed because this action is successive to Applicant’s prior PCR actions. Courts disfavor successive applications and place the burden on applicants to establish any new ground raised in a subsequent application could not have been raised in a prior PCR action. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which

for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Pursuant to section 17-27-90, successive PCR actions are barred unless an applicant can indicate a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raise . . . in the previous application.” *Id.* at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. *Id.* Applicant bears the burden of showing the allegations could not have been previously raised. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

In the present case, Applicant’s allegations, except for newly discovered evidence and subject matter jurisdiction, were or could have been raised in Applicant’s prior PCR actions; thus, these allegations are successive. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous PCR actions. Therefore, he has failed to meet his burden, and the allegations should be summarily dismissed as successive.

iii. *Res Judicata*

Additionally, the application barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. *Bell v. Bennett*, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. *Foran v. USAA Casualty Ins. Co.*, 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. *Id.*; *see also Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981).

Applicant had a full opportunity to litigate all his allegations in his prior actions. Applicant’s present allegations are indistinguishable from those offered in his prior applications

for post-conviction relief. The prior PCR Court issued a final judgement on the merits on very same issues that Applicant now raises in his present action. The finality of the previous Court rulings should be respected, and the application should be summarily dismissed as barred by the doctrine of *res judicata*.

IV. Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

V. Conclusion

WHEREFORE, the State moves to summarily dismiss the application because it is untimely, successive, and barred by the doctrine of *res judicata*.

Respectfully submitted,

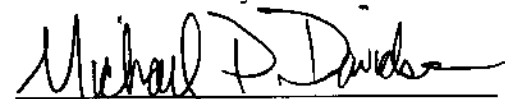
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

MICHAEL D. DAVIDSON
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

10/15, 2021

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2020-CP-21-02592
	)	
	)	
	)	
Eddie Blash,	)	
	)	
Applicant,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

October 19, 2022
Florence, South Carolina

B E F O R E:

The Honorable Clifton Newman, Judge

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

Michael H. Lifsey, Esquire
Attorney for the Applicant

Danielle Dixon, Esquire (Via WebEx)
Attorney for the Respondent State

Krystal J. Smith
Official Circuit Court Reporter III

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption
		or change in thought
ellipses	. . .	trailing off
[ph]		phonetically written
[sic]		written as said

1 OCTOBER 19, 2022

2 (WHEREUPON, the proceedings began at 2:42 p.m.)

3 THE COURT: All right. Ready for the next matter.

4 Ms. Dixon?

5 MS. DIXON: May it please the Court.

6 THE COURT: Yes.

7 MS. DIXON: This is Danielle Dixon for the State of South
8 Carolina. This is the case of Eddie Blash v. State, Docket
9 Number 2020-CP-21-2592.

10 Mr. Blash is currently serving a 28-year sentence. He
11 was indicted by the Florence County Grand Jury in June of 2000
12 for unlawful drugs.

13 The indictment arose after an incident on April 11th,
14 2000, when police found 997 grams of cocaine taped under a
15 rental car that he and his co-defendant, Michael George
16 Monfries, were using. The rental car was in the co-
17 defendant's name. The State also had evidence that they were
18 planning to cook the cocaine into crack cocaine.

19 He proceeded to a jury trial with his co-defendant August
20 13th, 2001, before the Honorable B. Hicks Harwell. Hank
21 Anderson represented Mr. Blash, and his co-defendant was tried
22 in his absence. Mr. Blash was at the trial -- was at the
23 trial. His co-defendant was not.

24 The jury convicted Blash of trafficking more than 400
25 grams of cocaine powder, and he was sentenced to the maximum

1 sentence of 30 years' imprisonment. He didn't file a notice
2 of appeal.

3 He filed his first PCR application August 16th, 2002,
4 raising the issue that he was entitled to a belated direct
5 appeal. He was ultimately granted that belated direct appeal,
6 and that was perfected by appellate defense.

7 And on March 28th, 2012, the Supreme Court issued an
8 order remanding this for a resentencing hearing. So the
9 resentencing hearing is really the underlying thing that we're
10 here on today.

11 Mr. Blash was resentenced on May 28th, 2012, by the
12 Honorable Thomas Russo. He sentenced him at that time to 28
13 years' imprisonment. Hank Anderson represented applicant
14 again at that hearing, and Patricia Parr represented the
15 State.

16 He attempted to file a pro se notice of appeal, but it
17 was dismissed by the Court of Appeals as untimely. The
18 remittitur was sent March 20th, 2013. Thereafter, Mr. Blash
19 filed a federal habeas petition that was dismissed May 22nd,
20 2014.

21 On April 3rd, 2014, he filed his second PCR application.
22 The State filed a return and a motion to dismiss all claims as
23 successive except for the belated appeal issue. He had an
24 evidentiary hearing on that case, and on August 17th, 2017,
25 the PCR judge issued an order granting him a belated appeal of

1 the sentencing hearing but denying the other allegations of
2 the PCR application.

3 Thereafter, he filed a notice of appeal. It was
4 perfected by appellate defender LaNelle Durant. She filed a
5 petition asserting the Court properly granted a belated review
6 of resentencing hearing, and she also filed an Anders brief
7 appealing the sentencing hearing. And an Anders is, of
8 course, an appeal where the lawyer believes there's no
9 meritorious issues, and the Court reviews it to see if there
10 are any.

11 Mr. Blash did file a pro se response to that on July
12 14th, 2020. On October 7th, 2020, the Court of Appeals issued
13 an order finding the PCR court properly granted the belated
14 appeal but dismissing the direct appeal of the sentencing
15 hearing pursuant to Anders. It was remitted October 29th,
16 2020.

17 Thereafter, Mr. Blash filed his current and third PCR
18 application November 12th, 2020. His allegations are that
19 counsel at the sentencing hearing was ineffective for not
20 objecting to his prior Florida convictions coming in at the
21 resentencing hearing and not objecting at the resentencing
22 hearing to preserve issues for appeal.

23 We have filed a return for the motion to dismiss, Your
24 Honor. We contend that this is first barred by the statute of
25 limitations, but in addition, we contend that this is

1 successive to the second PCR application which was a PCR of
2 the sentencing hearing. It's also barred by res judicata.
3 These are the same issues he raised in his -- let's see -- 20
4 -- was it -- his second PCR application, which was the first
5 one from the sentencing hearing.

6 THE COURT: All right.

7 MS. DIXON: Okay.

8 MR. LIFSEY: Thank you, Judge.

9 THE COURT: Yes, sir, Mr. Lifsey.

10 MR. LIFSEY: You may already have it, but I would like --
11 if the Court doesn't, I'd like to hand up just for your
12 attention the unpublished opinion dismissing his appeal, if I
13 could.

14 THE COURT: All right. Yes, sir.

15 MR. LIFSEY: Your Honor, here -- here's the situation. I
16 would direct your -- the Court's attention to paragraph -- the
17 paragraph first of page 2 of the opinion when they address the
18 admission of criminal record from Florida into evidence.

19 However, because -- and I'm quoting now. However,
20 because this issue was not raised to the resentencing court,
21 the issue is not preserved for appellate review.

22 So Mr. Blash's position is --

23 THE COURT: Are you looking at page 2 of what?

24 MR. LIFSEY: I'm looking at page 2 of the unpublished
25 opinion, Eddie Blash versus State of South Carolina, Appellate

1 Case Number 2017-001839.

2 THE COURT: All right. And which paragraph here?

3 MR. LIFSEY: I am -- I guess it would be the second or
4 the first full paragraph of page 2 that begins, on direct
5 appeal, petitioner argues.

6 THE COURT: All right. Yes, sir.

7 MR. LIFSEY: After that, it says, however, because this
8 issue was not raised to the resentencing court, this issue is
9 not preserved for appellate review.

10 So what has happened here is that an appellate court did
11 not consider the issue because his counsel did not properly
12 raise it at the court below. And if the Court accepts the
13 State's position on this case, the client is left without any
14 remedy at all because at some point it just seems to me at
15 least to be an injustice that a court is saying we're not even
16 going to consider your argument because your lawyer didn't
17 raise it properly and preserve the error, and now it's too
18 late for him to raise it.

19 THE COURT: He's complaining that the PCR counsel or --
20 and he's complaining of the lawyer at sentencing?

21 MR. LIFSEY: Correct.

22 THE COURT: And this is the PCR of the sentencing
23 hearing?

24 MR. LIFSEY: That is our position, Judge, yes.

25 THE COURT: And the State's position is?

1 MS. DIXON: This is his second PCR of the sentencing
2 hearing. His first one was 2014, which was the proper time to
3 raise all allegations regarding sentencing counsel's
4 representation at the sentencing hearing.

5 THE COURT: Okay. I understand.

6 All right. Mr. Lifsey?

7 MR. LIFSEY: Thank you, Judge. I would -- I would just
8 -- and it is factually confusing and it's procedurally
9 confusing, at least to me. I mean, maybe not to everyone, but
10 my understanding is he was granted the resentencing. He then
11 files a PCR, which we're calling the second, but I think in
12 some ways we ought to call it the first. And -- and he
13 addresses this issue that the Court then rules in 2020 is not
14 preserved for review.

15 So, I mean, we're --

16 MS. DIXON: And --

17 MR. LIFSEY: I don't see -- I mean, it's a -- it's a
18 terrible Catch-22. The court has not even considered the
19 merits of it, said it wasn't preserved, and I don't know how
20 you review that issue absent PCR.

21 MS. DIXON: And, Your Honor, may we clarify? And I know
22 I called it second. It was his second related to this
23 underlying conviction, but he has filed this -- this -- a 2014
24 PCR application as to the sentencing hearing itself, which was
25 the proper time to raise ineffective assistance of sentencing

1 counsel. This 2020 PCR application would be his second PCR
2 application following the resentencing hearing, his third
3 total in the life of this case.

4 THE COURT: All right. Thank you.

5 MR. LIFSEY: Judge, I would just say I don't disagree
6 with her, but I -- with the attorney general. I would just
7 say, however, he got a new resentencing hearing in -- out of
8 the 2014 action. So --

9 THE COURT: Yeah, but he's --

10 MR. LIFSEY: -- I mean, what he's PCRing --

11 THE COURT: He's not -- he's complaining about trial.

12 MR. LIFSEY: He's complaining about the sentencing
13 hearing that he got as a result of the 2014 sentencing
14 hearing.

15 THE COURT: All right. But the conduct of counsel in not
16 objecting to the Florida conviction --

17 MS. DIXON: And just to clarify, we believe, you know, he
18 filed a PCR in 2014 right after that resentencing hearing.
19 That was the time to raise the claims related to sentencing
20 counsel.

21 THE COURT: All right. First witness?

22 MS. DIXON: We don't have a --

23 MR. LIFSEY: It's the State's motion, but I don't know if
24 they intend to call witnesses.

25 THE COURT: All right.

1 MR. LIFSEY: Although it is their motion.

2 MS. DIXON: No, we don't have a witness. I think this is
3 just a legal argument.

4 THE COURT: All right. Argument. All right. Well, the
5 State has made its argument in effect.

6 MR. LIFSEY: Yes, sir.

7 THE COURT: And you've made your response.

8 MR. LIFSEY: Yes, sir.

9 THE COURT: I'll -- so Mr. Blash is here, and there --
10 the State has no witnesses. The defense has no witnesses.

11 MR. LIFSEY: I don't believe there's any -- as I
12 understand the -- the procedural posture of this hearing, this
13 is just a -- the State's legal motion to dismiss. So I don't
14 believe testimony would be --

15 THE COURT: All right.

16 MR. LIFSEY: -- relevant at this time.

17 THE COURT: Okay. So let me hear the State's argument
18 once again, please.

19 MS. DIXON: Yes, Your Honor. So we have the original
20 conviction and then, of course, following I believe an appeal,
21 the Supreme Court remanded it for a sentencing hearing. So
22 the sentencing hearing I think everyone agrees is the court
23 proceeding that is at issue today.

24 He did file a PCR after his sentencing -- resentencing
25 hearing in 2014. That PCR was heard. The Court granted him a

1 belated appeal of the resentencing hearing but denied all
2 other allegations. He did file an appeal of that, and the
3 State submits that was his chance to raise -- that first PCR
4 application after the resentencing hearing was his time to
5 raise any and all allegations about sentencing counsel being
6 ineffective.

7 This we now have a new second after the sentencing --
8 resentencing hearing, but third total PCR application. We
9 argue that it is successive to the one he filed in 2014 after
10 the resentencing hearing. Also, these are the same claims.
11 So it's barred by res judicata.

12 THE COURT: All right. And Mr. Lifsey?

13 MR. LIFSEY: Your Honor, our position is the resentencing
14 is at issue. He files a PCR of his counsel's performance at
15 the resentencing, and in the opinion that I handed up, the
16 2017-1839, the Court says, however, this issue was not raised
17 to the resentencing court. This issue is not preserved for
18 appellate review.

19 And our position is he has no other mechanism. The Court
20 of Appeals did not make a substantive ruling. The Court of
21 Appeals said his lawyer did not raise it for review, and so he
22 has no other mechanism than the PCR action he has filed in
23 this case to get review of that issue.

24 THE COURT: All right. Any -- any reply?

25 MS. DIXON: Just real quickly, we would reiterate that

1 the time to seek all of that review was back in 2014 when he
2 filed the PCR action after his resentencing hearing. That was
3 the time to raise all of the claims. You know, the PCR Act
4 prohibits successive claims, and that's effectively what this
5 is. He's coming back and trying to raise claims now that he
6 could have raised following the resentencing hearing in 2014
7 when he filed that PCR application.

8 THE COURT: All right. Very well. I've heard the
9 arguments. I will review the file once again and issue a
10 written order.

11 MR. LIFSEY: Thank you, Judge.

12 MS. DIXON: Thank you.

13 THE APPLICANT: Thank you, Your Honor.

14 (WHEREUPON, the proceedings ended at 2:56 a.m.)

15

16 --- END REQUESTED TRANSCRIPT ---

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STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Eddie Blash, #277603,

Applicant

v.

State of South Carolina,

Respondent.

Case No.: 2020-CP-21-2592

ORDER OF DISMISSAL

2024 AUG -9 AM 11:59

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Eddie Blash (Applicant) on November 12, 2020. The State filed a return and motion to dismiss, asserting this action was untimely and successive. On October 19, 2022, a hearing on the State's motion to dismiss convened before me. Applicant was present and represented by Michael Lifsey, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. After reviewing the records in this case and hearing argument, this Court grants Respondent's motion to dismiss and dismisses this application with prejudice.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections serving a twenty-eight-year sentence. In June 2000, the Florence County Grand Jury indicted Applicant for trafficking cocaine, more than four-hundred grams (2000-GS-21-0839). On August 13, 2001, Applicant proceeded to a jury trial before the Honorable B. Hicks Harwell. Hank Anderson, Esquire, represented Applicant. The jury convicted Applicant as indicted, and Judge Harwell sentenced him to thirty years imprisonment. Applicant did not appeal.

i. First PCR (2002-CP-21-1473)

On August 16, 2002, Applicant filed his first PCR application alleging counsel was

ineffective for failing to timely file a notice of appeal. Thereafter he amended it to also allege counsel was ineffective for failing to object to the testimony of a witness. On December 12, 2007, an evidentiary hearing convened before the Honorable Thomas Russo. Judge Russo granted Applicant a belated direct appeal and denied the remaining allegations with prejudice.

Applicant filed a notice of appeal, which was perfected by Appellate Defender Kathrine Hudgins. On March 28, 2012, the Supreme Court reversed Applicant's sentence and remanded for resentencing.

On May 8, 2012, Applicant appeared before the Honorable Thomas Russo for resentencing. Hank Anderson, Esquire, represented Applicant, and Assistant Solicitor Patricia S. Parr represented the State. Judge Russo sentenced Applicant to twenty-eight years imprisonment. Applicant filed an untimely appeal, which was dismissed. The remittitur was sent March 21, 2013.

ii. Second PCR (2014-CP-21-0850)

On April 3, 2014, Applicant filed a second PCR application. The State filed a return and partial motion to dismiss all claims as successive except the belated appeal issue. On March 14, 2017, an evidentiary hearing convened before the Honorable Paul M. Burch. Jonathan D. Waller, Esquire, represented Applicant, and Assistant Deputy Attorney General Lindsey A. McCallister represented Respondent. On August 17, 2017, Judge Burch issued an order granting Respondent a belated appeal of his resentencing hearing and dismissing his remaining claims with prejudice.

Applicant filed a notice of appeal, which was perfected by Appellate Defender Lanelle C. Durant through the filing of an Anders brief raising the following issue:

The resentencing court erred in allowing Blash's criminal history from Florida into evidence which was prejudicial to Blash because the history contained one conviction which was tried in Blash's absence for the same offense for which he was being resentenced and also contained numerous drug offenses which did not indicate convictions.

On October 7, 2020, the Court of Appeals dismissed the appeal pursuant to Anders. The remittitur was sent October 29, 2020.

Current Application

On November 12, 2020, Applicant *untimely* commenced this third PCR application alleging he is being held in custody unlawfully on the following grounds:

1. Ineffective assistance of counsel
 - a. Counsel was ineffective for failing to object to the State's admitting into evidence to the court Petitioner's prior Florida convictions where there was no evidence of those convictions at resentencing.
 - b. Counsel failure to object at resentencing court, Petitioner issues were not preserved for appellate review.

As relief, Applicant seeks to be resentenced. Before this Court are the Florence County Clerk of Court records of the underlying conviction, Applicant's records from the Department of Corrections, the records of Applicant's prior PCR actions, Applicant's appellate records, and the records of this PCR action.

Motion to Dismiss

The State moved for dismissal arguing no genuine issue of fact necessitated an evidentiary hearing. After reviewing the records in this case and hearing argument, this Court GRANTS Respondent's motion and dismisses this application with prejudice. Set forth below are this Court's findings of fact and conclusions of law:

i. Statute of Limitations

This Court finds this application is barred by the statute of limitations. Section 17-27-45(A) of the South Carolina Code requires a PCR application to be filed "within one year after the entry of a judgment . . . or within one year after the sending of the remittitur"

Here, Applicant was resentenced on May 8, 2012. Applicant filed an untimely notice of appeal from his resentencing hearing that was dismissed, and the remittitur was sent March 20, 2013. Any PCR application related to the resentencing hearing was thus due by March 20, 2014. This application was filed November 12, 2020—more than seven years after the filing period expired. Applicant has not set forth a valid reason why the statute of limitations should be tolled. Accordingly, this application shall be dismissed as untimely.

ii. Successive

Applicant's allegations shall be dismissed as successive to his 2014 PCR application. Courts disfavor successive applications and place the burden on applicants to establish any new ground raised in a subsequent application could not have been raised in a prior PCR action. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Successive PCR actions are barred unless an applicant can indicate a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” Id. at 450, 409 S.E.2d at 394. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

In his application, Applicant alleges counsel was ineffective at the resentencing hearing for not objecting to the use of Florida convictions. Applicant has failed to establish any sufficient reason why he could not have raised this allegation in his 2014 PCR action. Therefore, he has failed to meet his burden, and this application shall be summarily dismissed as successive.

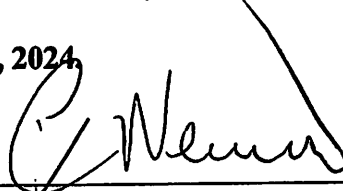
Conclusion

Based on the foregoing, this Court GRANTS Respondent's motion to dismiss, and dismisses this application with prejudice. Should Applicant wish to appeal, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 29th day of July, 2024.


 CLIFTON NEWMAN
 Presiding Judge
 Twelfth Judicial Circuit

Columbia, South Carolina

2024 AUG -9 AM 11:59

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

FILED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2020CP2102592

Eddie Blash

2024 AUG 12 PM 3:21 South Carolina State Of

DORIS POLICE CHAIRA

CCCP DEFENDANT(S)

PLAINTIFF(S)

FLORENCE COUNTY

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

Submitted by:

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

8/12/2024

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **August 9, 2024**, and a copy mailed first class or placed in the appropriate attorney's box on **August 13, 2024**, to attorneys of record or to parties (when appearing pro se) as follows:

Michael H. Lifsey PO Box 548 Chester, SC 29706

D. Russell Barlow II PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

WITNESSES

LT. J. LEE FCSO

Kirby

PROS: PSP

D/O: 4/11/00

ARREST WARRANT NO. G-355640 (1)

G-355641 (1)

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreman of Grand Jury

VERDICT

*more than
guilty as to 4th grade
trafficking in cocaine*

[Signature]
Foreman of Petit Jury Date: 8/16/01

DOCKET NO. 2000-GS-21-839
PARR

The State of South Carolina,

County of FLORENCE

COURT OF GENERAL SESSIONS

JUNE TERM 2000

THE STATE

vs.

MICHAEL GEORGE MONFRIES *D Jackson*

EDDIE BLASH *H. Anderson*

Indictment for

UNLAWFUL DRUGS

FORM 32 (12/83)

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT FOR
UNLAWFUL DRUGS

At a Court of General Sessions, convened on June 1, 2000,
the Grand Jurors of FLORENCE County present upon their oath:

That MICHAEL GEORGE MONFRIES and EDDIE BLASH did in FLORENCE County on or about April 11, 2000, violate Section 44-53-370(E) of the Code of Laws of South Carolina (1976), as amended, in that the said MICHAEL GEORGE MONFRIES AND EDDIE BLASH was knowingly in actual or constructive possession of more than 400 grams to wit: 997.27 grams of Cocaine.

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


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Florence

VS.

Eddie Blash

AKA:

Race: B

Sex: M

Age: 43

DOB: 1969

SS#: [REDACTED]

Address:

City, State, Zip: MIAMI, FL

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: TRAFFICKING IN COCAINE, 400 G OR MORE

INDICTMENT/CASE#: 00- 839

A/W#: G355641

Date of Offense: 4/11/2000

S.C. Code § : 44-53-0370(e)(2)(e)

CDR Code #: 0281

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

25 yr - 30 yrs

in violation of § 44-53-0370(e)(2)(e) of the S.C. Code of Laws, bearing CDR Code # 0281

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☒ § 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Parr, Patricia S

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 28 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ 200,000.00, provided that upon the service of _____ days/months/years and/or payment
of \$ _____, plus costs and assessments as applicable*, the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Pardon and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$100

\$100

\$12

\$25

\$500

\$25

\$150

\$50

\$40/ea

\$5

\$

\$

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\$200,000.00

\$215,000.00

\$100.00

\$10,000.00

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\$25.00

\$100.00

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\$5.00

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_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2141

Sentence Date: 5/2/2012

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (03/2011)