

STATE OF SOUTH CAROLINA

In The Court of Appeals

ORIGINAL

APPEAL FROM WILLIAMSBURG COUNTY

Clifton Newman, Circuit Court Judge

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THE STATE,

SC Court of Appeals

RESPONDENT,

V.

DAVID VICE,

APPELLANT

APPELLATE CASE NO. 2012-213412

RECORD ON APPEAL

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INDEX

INDEX	i
TRIAL TRANSCRIPT (November 5-6, 2012)	1
TESTIMONY	
LIEUTENANT SHERROD TIMMONS	
Direct examination by Solicitor	2
Cross examination by Defense Counsel	13
DEPUTY LOY HAYES	
Direct examination by Solicitor	14
OBJECTION REGARDING PRIOR CRIMES TESTIMONY	16
COURT'S RULING	22
TESTIMONY	
DEPUTY LOY HAYES	
Direct examination by Solicitor	23
Cross examination by Defense Counsel	43
Redirect examination by Solicitor	49
LIEUTENANT JEFFREY SCOTT	
Direct examination by Solicitor	50
CHAIN OF CUSTODY OBEJCTION	63
COURT'S RULING	64
TESTIMONY	
LIETENANT JEFFREY SCOTT	
Direct examination by Solicitor	64
SLED AGENT LYNN BLACK	
Direct examination by Solicitor	67
SERGEANT ROBERT GLEN SHEARER II	
Direct examination by Solicitor	72

STATE RESTS.....	81
DIRECTED VERDICT MOTIONS	81
COURT’S RULING	82
CLOSING ARGUMENT BY SOLICITOR	83
CLOSING ARGUMENT BY DEFENSE COUNSEL	94
JURY CHARGE ON THE LAW	101
OBJECTION ON “ACTUAL KNOWLEDGE” DRUG CHARGE.....	112
JURY QUESTION REGARDING POLICE CHASE	115
COURT’S RULING.....	115
JURY VERDICTS	117
POLLING OF JURY	118
NEW TRIAL MOTIONS.....	119
COURT’S RULING.....	121
SENTENCING PROCEEDING	122
SENTENCING	139
INDICTMENT	141
SENTENCING SHEETS.....	143
CERTIFICATE OF COUNSEL.....	146

**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT.
STATE’S EXHIBIT # 3 (DVD)**

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG	)	CASE NO. 2012-GS-45-50

STATE OF SOUTH CAROLINA,	)
	)
Plaintiff,	)

-vs-

TRANSCRIPT OF RECORD

DAVID R. VICE,	)
	)
Defendant.	)

November 5-6,, 2012
Kingstree, South Carolina

B E F O R E:

THE HONORABLE CLIFTON NEWMAN, Judge; and a jury

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

KIMBERLY BARR, Solicitor
Attorney for the Plaintiff

MATTHEW SWILLEY, Esquire
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter

DIRECT EXAMINATION OF LT. SHERROD TIMMONS BY MS. BARR

1 THE COURT: Yes.

2 LIEUTENANT SHERROD TIMMONS, being
3 first duly sworn, testifies as follows:

4 DIRECT EXAMINATION

5 BY MS. BARR:

6 Q: Lieutenant Timmons, state your full name for the record.

7 A: Louie Timmons.

8 Q: All right and tell us where you're employed?

9 A: Williamsburg Sheriff's Office.

10 Q: And how long have you been there?

11 A: Fifteen years.

12 Q: Fifteen years and what do you do for the Sheriff's
13 Office?

14 A: Currently at this time I'm over the housing of the
15 evidence and training.

16 Q: Okay. Now, you are a certified police officer?

17 A: I am.

18 Q: And you've been in law enforcement for fifteen years?

19 A: I have.

20 Q: Okay. All right and how long have you been the evidence
21 custodian?

22 A: Just a little over a month.

23 Q: Okay. Now, what department within the Sheriff's Office
24 did you work prior to being head of the evidence vault?

25 A: I was the patrol lieutenant.

DIRECT EXAMINATION OF LT. SHERROD TIMMONS BY MS. BARR

1 Q: Okay. All right and give us an idea of what your
2 responsibilities would be as the evidence custodian?

3 A: As officers make cases, there's evidence. Once they
4 collect it, they bring it to me. I sign it into the evidence
5 vault. It stays there until trial unless there's things that
6 need to be tested. A lot of things go to SLED to be tested
7 and some can be tested in-house.

8 Q: Okay. All right. Now, you have a big green and yellow
9 bag there with you; is that correct?

10 A: Yes, ma'am.

11 Q: And at my request, did you take from the evidence vault
12 in this case that yellow and green bag?

13 A: I did.

14 Q: All right and has that bag -- except for its trip to
15 Columbia to SLED, has it remained within the custody and
16 control of Williamsburg County Sheriff's Office?

17 A: It has.

18 Q: All right and other than the SLED analysts, other than
19 Lieutenant Jeffrey Scott and yourself, has anybody else dealt
20 with that bag?

21 A: Prior to it being signed into the evidence, it was
22 recovered. So there was people that recovered it and then
23 they transferred custody to the evidence vault.

24 Q: Recovered it from the scene you mean?

25 A: The scene, yes.

DIRECT EXAMINATION OF LT. SHERROD TIMMONS BY MS. BARR

1 Q: I got you. All right. Once it was logged into the
2 Sheriff's Office into the evidence vault, other than SLED
3 looking at it ---

4 A: It's been -- it's been nowhere.

5 Q: All right. All right. Let me, if I can, have you step
6 down and let's mark the bag as an exhibit.

7 (Whereupon, the green and yellow gym bag is marked as
8 State's Exhibit Number 5.)

9 Q: All right. Let me get you to stay right here for just a
10 second for me. Now, whose name appears on that evidence bag?

11 A: Sergeant Shearer was the first -- first person that
12 received it. Deputy Hayes.

13 Q: This fellow here?

14 A: Yes.

15 Q: All right.

16 A: And Lieutenant Scott.

17 Q: Jeffrey Scott?

18 A: Jeffrey Scott.

19 Q: Okay.

20 A: And myself.

21 Q: All right. Now, this was recovered by Sergeant Robert
22 Shearer on what date?

23 A: 12/19/2011.

24 Q: And whose case? How were you able to determine that this
25 evidence is related to the case against Mr. David Vice?

DIRECT EXAMINATION OF LT. SHERROD TIMMONS BY MS. BARR

1 A: It has the case number, description of evidence, type of
2 offense, and the deputy's signature that signed it into the
3 evidence.

4 Q: All right. Let me ---

5 MS. BARR: Judge, we would move State's Exhibit Number 5
6 in at this time.

7 MR. SWILLEY: Your Honor, I don't -- I don't think the
8 chain of custody has been established through just one
9 witness.

10 THE COURT: All right. What are you seeking to
11 introduce, Ms. Barr?

12 MS. BARR: The -- the bag and I'll have the contents
13 later marked separately as exhibits, but right now I'm just
14 seeking to have the bag.

15 THE COURT: All right. Anything ---

16 MS. BARR: And I -- I'm sorry, Judge.

17 THE COURT: Anything further?

18 MR. SWILLEY: Your Honor, I don't think she's laid the
19 foundation for the actual bag to be put into evidence through
20 this witness.

21 THE COURT: All right. Ms. Barr?

22 MS. BARR: Judge, I'll be able to with other witnesses.
23 That's fine.

24 THE COURT: All right. It's admitted for identification
25 purposes ---

DIRECT EXAMINATION OF LT. SHERROD TIMMONS BY MS. BARR

1 MS. BARR: All right.

2 THE COURT: --- at this time.

3 Q: Now, let me get you to stand right there for me. If you
4 would, put the bag on the top. All right. If you could, open
5 the bag for me, but do not remove the contents.

6 (Whereupon, the witness complies by unzipping the bag
7 identified as State's Exhibit Number 5.)

8 Q: All right. Now, sir, when the bag was logged into
9 evidence with the Williamsburg County Sheriff's Office, were
10 there any items contained within that bag?

11 A: Yes, all the items that's in it at this time.

12 Q: Okay. All right and let me get some stickers. The items
13 that are contained within that bag, were any of them analyzed
14 by SLED?

15 A: Yes. There's one BEST kit.

16 Q: All right. Now, let me make sure you turn around so they
17 can hear you. When you say a BEST kit, tell me what that is?

18 A: It's an evidence kit that SLED provides to the local law
19 enforcement ---

20 Q: Yes, sir.

21 A: --- to package certain types of drugs in to be analyzed.

22 Q: All right. Would you mind handing me the specific item
23 that was labeled as with a BEST kit?

24 (Whereupon, the witness complies.)

25 Q: Okay. All right and is there anything that is particular

DIRECT EXAMINATION OF LT. SHERROD TIMMONS BY MS. BARR

1 about this exhibit that will tell you whether or not it's been
2 tampered with?

3 A: Yes. The bag ---

4 Q: Tell us about that?

5 A: The bag has been sealed by SLED and when they seal it,
6 they initial it across the actual line where it's heat sealed.

7 Q: Okay.

8 MS. BARR: We'd like to have this marked as State's
9 Exhibit 5A.

10 MR. SWILLEY: Your Honor, again, she's marking it. I
11 don't know whether she's marking the bag or whether it's the
12 contents into evidence or not. I don't think the foundation
13 has been laid or chain of custody been established for the
14 contents.

15 THE COURT: It will be marked for identification
16 purposes.

17 MS. BARR: It is.

18 Q: All right. Now -- now, all right. All right. Now, tell
19 me what the other -- is it three bags that are in there?

20 A: There's several different bags.

21 Q: Okay.

22 A: Inside.

23 Q: All right. Pull out the bags that contain green, leafy
24 substance.

25 (Whereupon, the witness complies.)

DIRECT EXAMINATION OF LT. SHERROD TIMMONS BY MS. BARR

1 Q: Any other bags containing a green, leafy substance?

2 A: Yes.

3 Q: All right. All right. So I am holding -- is it six
4 bags? You count them and you tell me if I'm right.

5 A: One second. Let me make sure that's all of them. Yes,
6 ma'am, six.

7 MS. BARR: I'll have these marked for identification
8 purposes only.

9 (Whereupon, the six bags of marijuana are marked for
10 identification as State's Exhibit Number 5B.)

11 Q: Lieutenant Timmons, is there any markings that are
12 contained within what's been marked for identification
13 purposes as State's Exhibit Number 5B that would tell us
14 whether or not these substances have been analyzed? And you
15 can take them one at a time.

16 A: It has the date and Officer Jeff Scott's initials. He
17 generally does that when he tests.

18 Q: Okay. Your voice is going down. Make sure you keep your
19 voice up. Say it again now?

20 A: It has the date of testing. It says 2/17/12 and it's got
21 JSS on it.

22 Q: Now, who is JSS?

23 A: Jeff Scott.

24 Q: All right and ---

25 A: Jeffrey Scott.

DIRECT EXAMINATION OF LT. SHERROD TIMMONS BY MS. BARR

- 1 Q: In February of this year, where was Jeff Scott employed?
- 2 A: The Sheriff's Office.
- 3 Q: And what were his responsibilities then?
- 4 A: Evidence custodian.
- 5 Q: Was he -- and if you know, fine, and if you don't, that's
- 6 fine, too. Was he ever certified to analyze marijuana?
- 7 A: He was.
- 8 Q: All right. Now, I'm going to give you the second part of
- 9 State's Exhibit 5B and tell me just is there anything
- 10 contained within that exhibit that would tell you whether or
- 11 not it's been analyzed?
- 12 A: The same thing. It has the case number, 2/17/2012 marked
- 13 on it.
- 14 Q: All right and tell us about this third packaging, please,
- 15 sir? Same question.
- 16 A: It has the case number and the date, 2/17/12, with the
- 17 initials JSS written on it.
- 18 Q: And what about the remainder of these? The others?
- 19 A: All of them. This one's not marked.
- 20 Q: Okay. Is that the smaller of the six?
- 21 A: Yes.
- 22 Q: Okay.
- 23 A: The other two are marked with the same date, 2/17/12,
- 24 with JSS and the case number written on it.
- 25 Q: Okay. All right. Now, is there anything else that is

DIRECT EXAMINATION OF LT. SHERROD TIMMONS BY MS. BARR

1 contained within the Court's -- the State's Exhibit Number 5
2 that's of any evidentiary value? Well, let me ask you this.

3 MS. BARR: I'll have this marked as C, 5C.

4 (Whereupon, a box of Glad plastic bags is marked for
5 identification as State's Exhibit Number 5C.)

6 Q: I'm going to hand you what's been marked for
7 identification purposes as State's Exhibit Number 5C and ask
8 you if you recognize that?

9 A: Yes. It's a bag of Glad fold top sandwich bags.

10 Q: Okay.

11 A: A box of them.

12 Q: All right. Now, let me ask you this, Lieutenant Timmons.
13 Prior to being assigned as the evidence custodian, did you
14 ever -- you mentioned you worked on patrol. Did you ever have
15 any occasions to be involved with the arrest of folks for
16 possession of narcotics or selling narcotics?

17 A: I did.

18 Q: All right. Now, does this packaging -- does it have any
19 value to you in terms of -- of -- as it relates to these
20 drugs?

21 MS. SWILLEY: Objection.

22 THE COURT: Yes, sir?

23 MR. SWILLEY: I think that's -- that question calls for
24 speculation.

25 THE COURT: All right. I missed the question. What was

DIRECT EXAMINATION OF LT. SHERROD TIMMONS BY MS. BARR

1 it?

2 MS. BARR: I asked, sir, have you -- did you ever have
3 occasion as a patrol officer to arrest people or be involved
4 in the investigation of people for possession or selling of
5 narcotics and I believe he ---

6 WITNESS: Yes.

7 MS. BARR: And the next question: do these bags have any
8 value to you as far as it relates to possession of drugs?

9 THE COURT: And the objection is?

10 MR. SWILLEY: Your Honor, I think that calls for
11 speculation.

12 THE COURT: As to whether they have value to this officer
13 in relation to drugs?

14 MR. SWILLEY: In relation to this case. That's correct.

15 THE COURT: I overrule the objection as it relates to
16 speculation.

17 MR. SWILLEY: Your Honor, I think relevant -- relevance
18 is also important. I don't think he has any information as to
19 this case. I mean he's talking about other cases.

20 THE COURT: Now, I sustained the objection as it relates
21 to relevance.

22 MR. SWILLEY: Thank you.

23 Q: How many bags does this particular exhibit indicate that
24 it contains?

25 A: 180.

DIRECT EXAMINATION OF LT. SHERROD TIMMONS BY MS. BARR

1 Q: All right and have you ever had occasion during your
2 experience as a patrol officer to arrest an individual charged
3 with selling drugs or intending to sell drugs?

4 A: Yes.

5 Q: All right and in terms of someone charged with selling
6 drugs or intending to sell drugs, in your experience are they
7 packaged a certain way?

8 A: Yes, they are.

9 Q: All right. Can you tell us about that based on your
10 experience?

11 A: They're packaged in sandwich bags such as those. They're
12 packaged in Ziploc bags. It depends.

13 Q: Okay. All right. Is there anything else that's
14 contained within that particular bag?

15 (Whereupon, there is a pause in the questioning as the
16 witness looks in the bag.)

17 Q: What I'll have you do, Lieutenant Timmons, is let me let
18 you put all those things back in there for me.

19 (Whereupon, the witness complies.)

20 Q: While you're doing that, let me just ask you a quick
21 question. Were you present on the scene when Mr. Vice was
22 arrested?

23 A: No, I was not.

24 Q: After those items were tested by SLED and Lieutenant
25 Jeffrey Scott, have they been within the sole custody, control

CROSS EXAMINATION OF LT. SHERROD TIMMONS BY MR. SWILLEY

1 and possession of the Williamsburg County Sheriff's Office?

2 A: They have.

3 Q: All right. I believe that's all the questions that I
4 have for you, Mr. Timmons. Please answer any questions that
5 defense counsel may have.

6 THE COURT: Yes, sir.

7 MR. SWILLEY: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MR. SWILLEY:

10 Q: Lieutenant Timmons, did you have anything whatsoever to
11 do with this particular case?

12 A: No, I did not.

13 Q: All right.

14 MR. SWILLEY: Thank you. Nothing further.

15 THE COURT: Anything further?

16 MS. BARR: Not from this witness, Judge.

17 (Whereupon, the witness leaves the stand at 3:39 p.m.)

18 THE COURT: All right. Next witness?

19 MS. BARR: We'd call Deputy Loy Hayes.

20 THE COURT: Deputy Hayes.

21 THE CLERK: Place your left hand on -- do you solemnly
22 swear that the evidence and testimony you will give this Court
23 and jury will be the truth, the whole truth, and nothing but
24 the truth, so help you God?

25 THE WITNESS: Yes, I do.

DIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

1 DEPUTY LOY HAYES, being first duly
2 sworn, testifies as follows:

3 DIRECT EXAMINATION

4 BY MS. BARR:

5 Q: Deputy Hayes, state your name for me?

6 A: Deputy Loy Hayes.

7 Q: All right and tell the ladies and gentlemen of the jury
8 where you work?

9 A: The Williamsburg County Sheriff's Department.

10 Q: All right and how long have you worked at the Sheriff's
11 Office?

12 A: Five years.

13 Q: All right and tell them what you do?

14 A: We do anything where we respond to domestic calls, we do
15 traffic, run traffic for traffic violations, just, you know,
16 your normal law enforcement duties.

17 Q: Okay. Now, sir, you were working back on December 19th of
18 2011?

19 A: Yes, I was.

20 Q: All right and you were working patrol that day?

21 A: Yes, ma'am.

22 Q: All right. Now, on that day, of course, you saw the
23 defendant, David Vice?

24 A: Yes.

25 Q: And did you know the defendant prior to that day?

DIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

- 1 A: I was familiar with him, yes.
- 2 Q: All right. Tell the jurors how the traffic stop or the
- 3 attempted traffic stop was initiated and why?
- 4 A: We had had some prior complaints in the area of Red Road.
- 5 MR. SWILLEY: Objection, Your Honor.
- 6 THE COURT: All right. Basis of the objection?
- 7 MR. SWILLEY: Your Honor, I don't think that's -- that
- 8 particular subject matter is relevant, Your Honor.
- 9 THE COURT: What he was doing that day?
- 10 MR. SWILLEY: Or the other -- the incidents for which he
- 11 -- the answer to the question that he was just asked.
- 12 THE COURT: All right. Restate the question, please.
- 13 MS. BARR: Yes, sir.
- 14 Q: Tell us the circumstances surrounding your encounter with
- 15 David Vice on December 19th of last year?
- 16 THE COURT: All right.
- 17 A: Again, I was patrolling ---
- 18 MS. BARR: Wait, wait.
- 19 THE COURT: Just a moment. And you object to ---
- 20 MR. SWILLEY: That -- that wasn't the particular question
- 21 that I -- that I was objecting to.
- 22 THE COURT: Okay. Do you object to this question?
- 23 MR. SWILLEY: No.
- 24 THE COURT: All right.
- 25 Q: You may continue.

DIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

1 A: Okay. Again, I was -- I was patrolling Red Road area and
2 I noticed a gray in color Chevy known to be driven by a David
3 Vice and he was also known to be driving under suspension.

4 MR. SWILLEY: Objection.

5 THE COURT: Objection is overruled.

6 Q: You may continue.

7 A: I noticed that as he come around a curve I noticed the
8 vehicle crossed over the center line.

9 Q: Okay.

10 A: Which was left of center. Considering knowing that -- of
11 who the suspect was and knowing he was known to run from law
12 enforcement ---

13 MR. SWILLEY: Objection, Your Honor. Your Honor, I'd
14 make a motion for a mistrial at this juncture.

15 THE COURT: Ladies and gentlemen, I'm going to have you
16 go step to the jury room. Please do not discuss the case.

17 (Whereupon, the jury exits the courtroom at 3:43 p.m.)

18 THE COURT: Yes, sir?

19 MR. SWILLEY: Your Honor, based upon what I just heard I
20 believe Deputy Hayes testified that Mr. Vice was known to run
21 from law enforcement. Your Honor, that's an introduction of
22 prior bad acts. I think that the jury now is going to be
23 prejudiced against my client. The fact that he's put into the
24 record the fact that Mr. Vice has had prior incidents with
25 police indicates that he's had prior charges not in relation

1 to this -- to this case and I would move -- I would move the
2 Court grant a mistrial in this case.

3 THE COURT: All right. Ms. Barr, what do you say about
4 that?

5 MS. BARR: Judge, I would say that when counsel got up in
6 opening statement and said that the defendant was pulled over
7 for no apparent reason, he simply got scared and had never had
8 that happen to him before, which is clearly not in fact the
9 case. I mean I think that the officer's testimony in that
10 regard, one, it formed the basis of one of the reasons why he
11 initiated -- one of the many reasons why he initiated the
12 traffic stop, and also it would rebut the statement that
13 counsel made that that had never happened before.

14 And, Judge, even if the Court would determine that that
15 particular testimony is irrelevant, we don't believe that it
16 rises to the level of warranting a mistrial and we submit that
17 if it's not appropriate and not relevant that a curative
18 instruction would suffice.

19 THE COURT: All right. Yes, sir?

20 MR. SWILLEY: Your Honor, just for the record, in my
21 opening I was referring to the fact that Mr. Vice never had an
22 officer pull in front of him in that manner, but that's -- I
23 guess that's not really relevant. But the -- the officer just
24 testified about prior bad acts of the defendant. The jury
25 heard it. I don't think you can erase that from their mind.

1 It's very prejudicial and I think it does rise to the level of
2 a mis -- of warranting a mistrial.

3 THE COURT: All right.

4 (Whereupon, there is a brief pause in the proceedings.)

5 THE COURT: All right.

6 MS. BARR: And, Judge, we would also argue under *State v.*
7 *Council*, 515 S.E.2d 508. It's a 1999 case where the appellate
8 court determined that vague references to the defendant's
9 prior record where there is no attempt by the State to
10 introduce evidence of a conviction of other crimes did not
11 warrant a mistrial.

12 THE COURT: Well, you know the case of *State v.*
13 *Laterrance Dunlap*. In that case, the defendant was charged
14 with distribution of crack cocaine and the question was
15 whether or not the counsel had opened the door to evidence
16 rebutting the defendant's contention that the defendant was
17 merely an addict -- an addict and thus evidence of defendant's
18 prior drug record was admissible and that case joined the
19 opening statements of defense counsel acknowledged that
20 petitioner had been in trouble with the law from time to time
21 from the time he was 15 years old and a young man addicted to
22 drugs and we could convict him right now because he was a
23 young man when he was hooked on crack and had a problem with
24 it. He never sold it; he used it. And the question then
25 became whether or not that opened the door for this evidence

1 being admitted as his prior drug record.

2 That case is not directly on point, not on all squares,
3 except that in the pre-trial hearing in this case the State
4 admitted as a Court's exhibit the defendant's prior driving
5 record -- can I see that Court's exhibit again, please? --
6 which I reviewed and it showed two DUI suspensions and one DUS
7 suspensions -- one DUS suspension. There appears to be a
8 controlled substance violation on 8/6/2011, which would have
9 been a few months prior to this. A driving under suspension
10 in 2010 and controlled substance violation 8/4/2010. There
11 appears to be one from 2005. So the question is whether or
12 not the -- of course, a number of failure to pay traffic
13 ticket violations appear.

14 Whether or not the officer has a right to explain why he
15 did what he did and whether or not that's appropriate evidence
16 to rebut counsel's assertion in opening statement that -- that
17 the defendant was driving casually down the road and was
18 driving his girlfriend's car when all of a sudden the officer
19 blocked the road in front of him, that he was shocked and
20 scared and never had that happen to him before. I think on
21 balance that the -- that the evidence is proffered to explain
22 why the officer did what he did on that day, particularly in
23 regard to explaining why he stopped him, that is that he knew
24 him.

25 There was no stipulation in this case that he -- or some

1 dispute. It appears based on arguments before whether the
2 officer knew or had reason to believe that the defendant was
3 driving under suspension, he testified that he knew that he
4 was under suspension so that would have given him probable
5 cause to stop him which is an issue in the case.

6 The question is whether or not his reputation of running
7 from the police whether or not that improperly then brings in
8 some prior bad acts and whether or not those prior bad acts
9 which -- which -- which might not amount to any allegation of
10 any criminal violation or specific criminal violation, but
11 behavioral violation, whether or not all of that would deprive
12 the defendant's right to a fair trial.

13 Anything -- any -- anything else you all want to say on
14 that with regard to that?

15 MR. SWILLEY: Your Honor, just in my opinion that the
16 fact that a person is alleged to have run from law enforcement
17 it's axiomatic that you think that there is a -- that a
18 reasonable person would think that there is a reason for that,
19 that there was another crime involved. I mean you don't --
20 police just don't chase people and ---

21 THE COURT: He's explaining why he blocked the road.

22 MR. SWILLEY: I understand, but there was no reason to
23 talk about any kind of prior bad act, any kind of prior flight
24 on behalf of Mr. Vice. I think it was unduly prejudicial.

25 THE COURT: All right. Ms. Barr?

1 MS. BARR: Judge, I think when -- when counsel got up and
2 made the comment that the defendant was scared because he'd
3 never had that happen to him before -- and I don't think the
4 officer did it intentionally. I just think he was explaining
5 what he was doing that day. But I think it's proper testimony
6 in light of the opening statement that was made.

7 THE COURT: Okay.

8 MS. BARR: Because he doesn't want -- he doesn't want the
9 prosecution to make the defendant to appear that he's just
10 this -- this criminal, but at the same time I don't think it's
11 fair to represent to the -- to the jury that he's just this --
12 this innocent person and had never gotten in any trouble with
13 the law, which is the impression that he gave to the jury, and
14 so if we -- we're going to balance that, I think we need to --
15 to balance in -- in all respects. But certainly, Judge, we
16 don't think that a mistrial is warranted based on that lone
17 isolated reference to the defendant having run from the police
18 before.

19 THE COURT: Just a moment.

20 MS. BARR: And, Judge, I don't know whether or not -- I
21 don't have his driving record. Can I?

22 THE COURT: What did you say?

23 MS. BARR: I was -- may I see his driving record, Your
24 Honor? Thank you, Judge. Judge, that's all we would add.

25 THE COURT: All right. You know, quite often during a

1 trial you have the lawyers get up and tell the jury various
2 things as if they're testifying and then -- and then there's
3 no testimony later given because the defendant has a right to
4 remain silent and the jury is only left with the impressions
5 of what the lawyer had stated and though I generally tell the
6 jury to -- that what the lawyers say is not -- not evidence.

7 (I think on balance I'm going to sustain the objection and
8 give a curative instruction and deny the motion for a mistrial
9 even though it's a very thin line as to whether or not the
10 testimony was appropriate or not.

11 MS. BARR: Thank you, Your Honor.

12 THE COURT: Let's bring -- let's take a two minute
13 stretch and then we'll bring them back in.

14 (Whereupon, there is a break in the proceedings from 3:57
15 p.m. until 3:59 p.m.)

16 THE COURT: All right. Let's bring the jury and press
17 on.

18 (Whereupon, the jury enters the courtroom at 4:00 p.m.)

19 MS. BARR: May it please the Court.

20 THE COURT: Ladies and gentlemen, I -- I sustained the
21 objection to the last portion of the testimony given by the
22 officer and you are to disregard that testimony. In fact,
23 we'll have you disregard the entire question and response to
24 the last -- the last question and response and have the State
25 restate.

DIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

1 MS. SWILLEY: Your Honor, I just renew my previous motion
2 to protect the record.

3 THE COURT: All right.

4 CONTINUED DIRECT EXAMINATION

5 BY MS. BARR:

6 Q: Deputy Hayes, you indicated that you observed the
7 defendant driving a vehicle?

8 A: Yes.

9 Q: Okay. All right. Now, was he approaching you or was he
10 in front of you or how did that work?

11 A: Approaching me.

12 Q: Okay. All right and tell us about the -- just so we can
13 pick up where we left off, about the traffic violation that
14 you observed?

15 A: When he come around the curve, I noticed he was driving
16 left of center or driving basically in the middle of the road.

17 Q: Okay. All right and after he came around the curve,
18 what, if anything, did you do to try to initiate a traffic
19 stop on his vehicle?

20 A: Well, I activated my blue lights and in this particular
21 incident I kind of pulled sideways in the road there to ---

22 Q: Okay.

23 A: --- to stop him.

24 Q: Okay. All right and what happened next?

25 A: He went to go around me and I yelled for him to stop and

DIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

1 he proceeded to go around me and then accelerated.

2 Q: All right. Now, when you told him to stop, I'm assuming
3 you were at that point face to face, eye to eye with him?

4 A: Basically, yes.

5 Q: Okay and when we talk about the individual who was
6 driving that car, we're talking about the defendant, David
7 Vice?

8 A: Yes.

9 Q: All right and tell us what happened after he proceeded to
10 go around you?

11 A: I turned around. I still had my -- my blue lights on. I
12 proceeded to go after him and then I activated my siren.

13 Q: Okay.

14 A: The subject was still -- he wouldn't stop ---

15 Q: Okay.

16 A: --- or pull over.

17 Q: Now, was his -- did he maintain a normal speed or did his
18 speed increase or decrease in any manner?

19 A: It increased.

20 Q: Okay. All right. What -- how long did the chase last?

21 A: Several minutes, a few miles.

22 Q: Okay. Now, were you ever close enough behind him whereby
23 he could have seen your blue lights or heard your sirens?

24 A: Yes.

25 MR. SWILLEY: Objection. Calls for speculation.

DIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

1 THE COURT: Restate the question, please.

2 MS. BARR: Yes, sir.

3 Q: Was there ever a point in time that you were close enough
4 behind Mr. Vice where he could have either, one, seen your
5 blue lights or, two, heard your sirens?

6 A: Yes.

7 THE COURT: He's answered the question; hasn't he?

8 MS. BARR: He -- he did. Mr. Swilley had an objection.

9 THE COURT: The objection is overruled.

10 Q: Now, sir, were you -- do you know -- do you have any
11 reason to believe that Mr. Vice had any problems seeing or
12 hearing?

13 A: No, he didn't.

14 Q: All right. Now, did other law enforcement vehicles
15 participate at all in the pursuit?

16 A: Yes.

17 Q: Okay. How many miles to you think you went?

18 A: Four -- four to five miles maybe.

19 Q: All right and what time of day was this?

20 A: This was around noon, twelve o'clock.

21 Q: Okay and the point where you initially tried to initiate
22 a traffic stop and ultimately where the vehicles ended up, was
23 that area within Williamsburg County?

24 A: Yes, it was.

25 Q: And what other law enforcement officers were available or

DIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

- 1 assisted you during that -- during that time?
- 2 A: Sergeant Shearer.
- 3 Q: Robert Shearer?
- 4 A: Robert Shearer with the Sheriff's Office.
- 5 Q: Yes, sir.
- 6 A: Let's see. There was Corporal Jenkins, Johnny Jenkins
- 7 ---
- 8 Q: Okay.
- 9 A: --- with the Sheriff's Office.
- 10 Q: Okay.
- 11 A: We had Sheriff Johnson ---
- 12 Q: Okay.
- 13 A: --- of Williamsburg County and our chief deputy, Dudley
- 14 Mesier, and I think there was some city units that called and
- 15 come out and assisted.
- 16 Q: All right. Now, at the point in time when it is
- 17 appropriate, I may ask you to identify those officers if they
- 18 are on the videotape.
- 19 A: Okay.
- 20 Q: Now, aside from the defendant not stopping when you
- 21 activated your blue lights and siren, did anything else
- 22 unusual occur from the time you initiated the chase until the
- 23 time he ultimately came to a stop?
- 24 A: I observed him throw a bag out of the vehicle.
- 25 Q: Okay and can you describe the bag for us?

DIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

1 A: It was a green and yellow ---

2 Q: Okay.

3 A: --- bag.

4 Q: I'm going to hand you what's been marked for
5 identification purposes as State's Exhibit Number 5, which
6 includes 5A, B, and C. Do you recognize that particular
7 exhibit?

8 A: Yes, I do.

9 Q: And tell the ladies and gentlemen of the jury how it is
10 that you recognize this exhibit?

11 A: That's the bag David Vice threw out the window out of his
12 vehicle.

13 Q: All right and when he threw it out, was this at a point
14 where you were still engaged in the chase?

15 A: Yes, we were.

16 Q: All right. When he threw it out, what area of town were
17 you all in at that time?

18 A: It's called the Holywoods area.

19 Q: Okay. Were there any other individuals around?

20 A: There was.

21 Q: Okay. How -- what, if anything, did they do? The other
22 individuals I mean.

23 A: Well, when the bag was throwed out, they started running
24 towards the bag.

25 Q: Okay.

DIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

1 A: And the officer behind me stopped and retrieved the bag.

2 Q: Now, which officer did that?

3 A: Sergeant Shearer.

4 Q: Robert Shearer?

5 A: Yes.

6 Q: All right and when he retrieved the bag, did he ever

7 bring it to you?

8 A: He did.

9 Q: Okay and when did he do that? When did he bring it to

10 you?

11 A: Immediately. It just -- it was right after we got him

12 stopped and he was able to retrieve the bag and then just come

13 to where I'm at.

14 Q: Okay. Now, the bag that Officer Shearer brought to you,

15 that was the same bag that you saw being thrown out the

16 window?

17 A: Yes, it was.

18 Q: And is that the same bag that's been identified as

19 State's Exhibit Number 5?

20 A: It is.

21 Q: All right and where was this bag taken once Deputy

22 Shearer brought it to you?

23 A: It was taken to the Sheriff's Office.

24 Q: Okay. By whom?

25 A: By me.

DIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

- 1 Q: Okay and you took it to the Sheriff's Office and you gave
2 it to who?
- 3 A: After we logged it in and it was given to Jeff Scott.
- 4 Q: Logged it into the evidence room?
- 5 A: Evidence.
- 6 Q: All right. Now, while you were at the scene, did you
7 have an opportunity to look inside the bag?
- 8 A: I did.
- 9 Q: All right and I'll have you do that while you're on the
10 witness stand and tell me if the items that you observed
11 inside this bag on that day are the same items that are
12 contained within that bag today? Do you need any napkins or
13 anything? We're running out of gloves, but I'll give you a
14 napkin if you need it.
- 15 A: Well, I mean it's all bagged up.
- 16 Q: Okay.
- 17 A: It appears to be all there.
- 18 Q: Okay. Is there anything that's in that bag now that was
19 not in that bag on December 19th of last year?
- 20 A: Maybe just a little evidence thing.
- 21 Q: Okay.
- 22 A: Okay. That's just -- it was just packaged different, but
23 it's showing where it was I guess tested, yeah. No, okay,
24 that's the whole thing there that was in it.
- 25 Q: All right.

DIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

1 A: But everything else I believe.

2 Q: Okay. All right.

3 MS. BARR: Now, Judge, we would move State's Exhibit
4 Number 5, inclusive of 5A, 5B, and 5C, into evidence at this
5 time.

6 MR. SWILLEY: Your Honor, as to the green and yellow bag,
7 I would have no objection, but to -- to its contents, I don't
8 think the chain of custody has been established. There's been
9 no analysis -- no analyst has testified. So to the bag no
10 objections, to everything inside of it I would object on those
11 grounds.

12 THE COURT: Well ---

13 MS. BARR: And, Judge ---

14 THE COURT: Yes?

15 MS. BARR: Judge, we would submit that I think a chain of
16 custody has been established. Now, as to what those
17 particular contents are, of course, we'll have witnesses to
18 testify to that, but clearly the bag and the contents that are
19 contained within the bag, the chain of custody has been
20 established as to those items.

21 THE COURT: All right. The bag is admitted only at this
22 time.

23 (Whereupon, State's Exhibit Number 5, the green and
24 yellow gym bag, is admitted into evidence.)

25 Q: Now, Deputy Hayes, you had a camera inside your patrol

DIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

1 car; is that correct?

2 A: Yes, it is.

3 Q: And did you have a marked vehicle or did you have one of
4 those under -- under ---

5 A: Marked.

6 Q: I call them undercover vehicles.

7 A: It was marked.

8 Q: Okay. All right. Blue lights and sirens were working
9 appropriately?

10 A: Yes, ma'am.

11 Q: All right. Now, you reported the pursuit on that date?

12 A: Yes, I did.

13 Q: All right. I'm going to show you what's been marked for
14 identification purposes as State's Exhibit Number 3 and tell
15 me if you recognize this particular exhibit?

16 A: Yes.

17 Q: All right and tell the ladies and gentlemen of the jury
18 how it is that you recognize it?

19 A: It is the CD that was made.

20 Q: Okay. From the ---

21 A: From the dash cam.

22 Q: Okay. Involving Mr. Vice?

23 A: Yes.

24 Q: All right.

25 MS. BARR: Judge, we would move State's Exhibit Number 3

DIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

1 in at this time.

2 MR. SWILLEY: No objection.

3 THE COURT: It's admitted without objection.

4 (Whereupon, State's Exhibit Number 3, the DVD containing
5 the dash cam video, is admitted into evidence.)

6 MS. BARR: And we would request permission to publish.

7 THE COURT: You may.

8 Q: Deputy Hayes, let me get you to step down for just a
9 moment to help me with the projector?

10 (Whereupon, there is a pause in the proceedings as the
11 video is readied for playing.)

12 Q: All right, Deputy Hayes, what I'll do is I'll simply play
13 the -- the videotape, but I won't ask you any questions until
14 after the ---

15 A: Yeah.

16 Q: --- playing concludes. Okay?

17 A: Okay.

18 (Whereupon, the dash cam video is played in the
19 courtroom. NOT TRANSCRIBED HEREIN.)

20 Q: Just point when you can identify the defendant's vehicle
21 for us?

22 (Whereupon, the witness complies, indicating. The
23 videotape continues to play for a few minutes and is then
24 stopped.)

25 Q: Deputy Hayes, let me pause it for just a moment. I'm

DIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

1 going to go back just a little bit way -- a little bit. Were
2 you able to see the point in time wherein the defendant
3 discarded the green and yellow bag we talked about?

4 A: Yes.

5 Q: Okay. All right. I'm going to rewind it just a wee bit
6 and can you make sure to point that part out ---

7 A: Okay.

8 Q: --- to the jury ---

9 A: Yes.

10 Q: --- when it's replayed? Thank you, sir.

11 (Whereupon, the videotape resumes playing and the witness
12 complies, indicating. The tape is then stopped.)

13 A: All right. If you notice, he's holding it out the window
14 right here.

15 (Whereupon, the videotape resumes playing briefly and is
16 then stopped again.)

17 A: And that's where he throws it and it landed. It hits
18 here.

19 Q: All right.

20 (Whereupon, the videotape resumes playing briefly and is
21 then stopped.)

22 Q: Another quick question. The point where you indicated
23 that he threw the bag, was there another individual ---

24 A: There was.

25 Q: --- near that bag?

DIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

1 A: There was. There was an officer behind me.

2 (Whereupon, the videotape resumes playing briefly and is

3 then stopped.)

4 Q: Do you have any idea what that part was that flew off the

5 vehicle?

6 A: No, I don't.

7 (Whereupon, the videotape resumes playing and continues

8 playing through the next question and answer.)

9 Q: Whose vehicle is that?

10 A: That's Sheriff Michael Johnson.

11 (Whereupon, the witness makes a statement which is not

12 heard over the sound of the videotape. The tape is then

13 stopped.)

14 Q: I'm sorry, sir. Say that again, please?

15 A: That was actually -- that was a taser. That was not a

16 gun that I had pointed at him. That was a taser out, not a --

17 not a gun.

18 Q: All right. So you did not point a ---

19 A: No, I did not point ---

20 Q: --- gun at his head?

21 A: No, I did not.

22 (Whereupon, the videotape resumes playing briefly and is

23 then stopped.)

24 Q: And if you will, identify these individuals in that

25 screen?

DIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

1 A: This is me, Deputy Hayes. This is our sheriff, Michael
2 Johnson. This is Corporal Johnny Jenkins.

3 Q: Yes, sir.

4 A: And Investigator Alex Wood.

5 Q: Alex?

6 A: I'm sorry, Alex.

7 Q: Edwards?

8 A: Yes.

9 Q: Yes, sir. I think it is.

10 (Whereupon, the videotape resumes playing briefly and is
11 then stopped at the point in time on the tape when the
12 defendant is handcuffed.)

13 Q: All right and the individual who was taken out of the
14 driver's seat was who?

15 A: David Vice.

16 Q: All right. You want to hand me that stuff?

17 (Whereupon, the witness returns to the witness stand.)

18 Q: Sir, when you opened that bag after Sergeant Robert
19 Shearer brought it back to you, what was -- what was in the
20 bag?

21 A: There was a large quantity of green leafy-like substance
22 believed to be marijuana.

23 Q: Okay.

24 A: And there was several bags of white powder believed to be
25 cocaine. There was a red scale. There was ---

DIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

1 Q: A red scale?

2 A: Yes, ma'am.

3 Q: Is that contained within the bag now?

4 A: Yes, it is.

5 Q: All right. Can you please take that out for me?

6 A: There was sandwich bags, little small what they call -- I
7 guess they call it jewelry bags.

8 Q: Okay.

9 A: There's a -- there's the scale.

10 Q: All right. Hold -- hold on for a second. Now, I'm going
11 to hand you what's been marked for identification purposes as
12 State's Exhibit Number 5D. Is this the scale that you talked
13 about?

14 A: Yes.

15 Q: All right and is that the first time you've ever seen
16 something like that?

17 A: No, ma'am, it's not.

18 Q: Okay. In what other context have you seen a scale that
19 resembles that?

20 A: In other incidents.

21 Q: Okay. Other -- what type of other ---

22 A: For drug arrests, other drug arrests.

23 Q: All right and do you know what that is used for?

24 A: It's for weighing drugs.

25 Q: For weighing drugs?

DIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

1 A: Yeah, whether it be cocaine or marijuana or crack,
2 whatever it may be.

3 Q: All right.

4 MS. BARR: Judge, we would move State's Exhibit Number 5D
5 in at this time.

6 THE COURT: Any objection?

7 MR. SWILLEY: Your Honor, I just object as to -- under
8 relevance. There's no -- there's no -- nothing in the record
9 that would suggest that that was used in conjunction with
10 anything the defendant is charged with.

11 THE COURT: All right. It's admitted over objection.

12 MS. BARR: All right.

13 (Whereupon, State's Exhibit Number 5D, the red scale, is
14 admitted into evidence.)

15 Q: Okay. You indicated that you saw a -- bags of green
16 leafy substance that you believed to be marijuana?

17 A: Right.

18 Q: You saw a white powdery substance that you believed to be
19 cocaine?

20 A: Right.

21 Q: You saw baggies?

22 A: Yes.

23 Q: And you saw a scale?

24 A: Right.

25 Q: All right and you said something about jewelry bags.

DIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

1 Tell me what you were talking about?

2 A: Well, they're called -- I think that's what they're
3 originally called.

4 Q: Okay.

5 A: I call them dope bags and that's what most people ---

6 MR. SWILLEY: Objection, Your Honor. I -- I'd move to
7 strike.

8 THE COURT: To strike what?

9 MR. SWILLEY: What he -- he just said in reference to his
10 term for those particular bags.

11 THE COURT: All right. Ms. Barr?

12 MS. BARR: Judge, he -- I asked him about the what he
13 called jewelry bags or what some people would call jewelry
14 bags and I just asked him to explain it what he meant by it.

15 THE COURT: I overrule the objection.

16 MS. BARR: All right.

17 Q: Now, can you -- do you see those still within there?

18 A: Yes.

19 Q: All right. Can you pull those out for me, please?

20 (Whereupon, the witness complies.)

21 A: They're actually -- they're small bags in a bag. That
22 would be one bag.

23 Q: All right.

24 MS. BARR: Let me have this as 5E. Thank you.

25 (Whereupon, the bag of jewelry bags is marked for

DIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

1 identification as State's Exhibit Number 5E.)

2 MS. BARR: Judge, we would move 5E into evidence. We'd
3 move to admit State's Exhibit 5E.

4 MR. SWILLEY: Again, Your Honor, I'd object under the
5 fact that's irrelevant to the -- to the allegations against
6 the defendant.

7 THE COURT: May I see the exhibit?

8 MS. BARR: And, Judge, if I may ask one more question to
9 lay a proper foundation?

10 THE COURT: All right.

11 Q: Sir, the -- what's been marked as State's Exhibit Number
12 5E, you indicated that you call them dope bags. Why do you
13 call them that?

14 A: Because that's what they package marijuana, cocaine,
15 crack in. Most of the time when we catch people with
16 narcotics, they are usually in those bags.

17 Q: In those type bags?

18 A: Those type bags.

19 MS. BARR: Judge, we would renew the motion to admit
20 State's 5E.

21 THE COURT: I admit the exhibit over objection.

22 (Whereupon, State's Exhibit Number 5E, the bag of jewelry
23 bags, is admitted into evidence.)

24 MS. BARR: Well, we'll leave them out. We'll leave them
25 out here. All right.

DIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

1 Q: The defendant -- you may -- you can have a seat, sir. Do
2 you want me to put that bag down there? Are you good?

3 A: Yeah. You can put it down there.

4 Q: The defendant was arrested and taken down to the
5 Williamsburg County Detention Center?

6 A: Yes, he was.

7 Q: All right and he was charged with resisting arrest?

8 MR. SWILLEY: Objection, Your Honor. She's -- she's
9 leading the witness.

10 THE COURT: All right. Don't lead the witness.

11 Q: What was the defendant charged with?

12 A: He was charged with possession with intent -- with the
13 intent to distribute marijuana, trafficking in cocaine,
14 failure to stop for a blue light, and ---

15 THE COURT: Ms. Barr, and those -- you're asking in
16 relation to what he's on trial for now?

17 MS. BARR: Yes, sir.

18 THE COURT: All right.

19 MS. BARR: Yes, sir.

20 Q: All right. That's all I have for him.

21 MS. BARR: Now, Judge, I have one follow-up question.
22 May counsel and I approach?

23 THE COURT: Yes. Ladies and gentlemen, let's stand up
24 and get a little -- a little stretch in.

25 (Whereupon, a bench conference is held off the record.)

DIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

1 Q: Deputy Hayes, just a couple of follow-up questions and
2 then I'll be done. In addition to the charges that you
3 brought against him for the drugs and obviously the failure to
4 stop for a blue light, was he also charged with driving under
5 suspension?

6 A: Yes, he was.

7 Q: All right and the initial traffic violation that you
8 observed, did you charge him in connection with that traffic
9 violation as well?

10 A: Yes, I did.

11 Q: Do you know what the disposition or the outcome ---

12 MR. SWILLEY: Objection.

13 Q: --- of those charges were?

14 THE COURT: All right.

15 MR. SWILLEY: Objection, Your Honor. That's -- that's
16 irrelevant.

17 THE COURT: The objection is sustained.

18 Q: In addition to all of the items that we see in State's
19 Exhibit Number 5, was there any money confiscated from the
20 defendant at that time?

21 A: Yes, there was.

22 Q: And where was the money taken from and what was the
23 amount of the money?

24 A: \$282 was in Mr. Vice's front pocket.

25 Q: Okay.

DIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

- 1 A: And \$3,195 was in his back pocket.
- 2 Q: Okay.
- 3 A: And that was seized.
- 4 Q: So that was about roughly \$3,400 in cash?
- 5 A: Yes, ma'am.
- 6 Q: Okay. All right and is it normal or standard protocol
- 7 from the Sheriff's Office to seize money taken when arrests
- 8 for drugs are made?
- 9 A: Yes, it is.
- 10 Q: All right and what do you all do with the money after
- 11 it's been seized from a defendant?
- 12 A: Normally, as patrol deputies we normally just log it in
- 13 our evidence and turn it in in our evidence.
- 14 Q: Okay.
- 15 A: And they take over from there.
- 16 Q: Okay and that would be Lieutenant Jeff Scott?
- 17 A: It was at the time, yes.
- 18 Q: Okay. Do you know where the money is now?
- 19 A: No, I do not.
- 20 Q: Do we need to ask Jeff Scott that question?
- 21 A: Yes, you do.
- 22 Q: Okay. Fair enough. Sir, I believe that is all the
- 23 questions I have for you. If you will, please answer any
- 24 questions that opposing counsel or the Court may have.
- 25 THE COURT: Mr. Swilley?

CROSS EXAMINATION OF DEPUTY LOY HAYES BY MR. SWILLEYCROSS EXAMINATION

1
2 BY MR. SWILLEY:

3 Q: Deputy Hayes, why were you driving so slowly initially
4 before you encountered Mr. Vice?

5 A: I was patrolling the area.

6 Q: Okay. About how fast were you going?

7 A: I wasn't going that fast. I had just turned off of a
8 side road there.

9 Q: Okay.

10 A: So I wasn't going that fast.

11 Q: Okay. What side road had you turned off of?

12 A: Canary.

13 Q: Okay. What were you doing down Canary? Just patrolling?

14 A: Patrolling.

15 Q: Okay. When you -- when you first encountered the -- the
16 gray car, can you -- can you tell me about what point you saw
17 it -- you think you saw it cross the center line?

18 A: As it come around the curve, it appeared to me it was
19 across the center line.

20 Q: And about how far away from you was that car at that
21 point?

22 A: I really can't say. I -- I can't -- I don't know how far
23 away it was. I can't say.

24 Q: You can't give me an estimate?

25 A: I'd be scared to.

CROSS EXAMINATION OF DEPUTY LOY HAYES BY MR. SWILLEY

1 Q: Okay. So when you saw Mr. Vice approach, you whipped
2 your car in front of him; right? To block the other lane;
3 correct?

4 A: The roadway, yes.

5 Q: Yeah, okay. Now, is that -- is that the way you usually
6 pull people over?

7 A: No, it's not.

8 Q: Okay. That's not standard procedure?

9 A: It's not the way we normally do it.

10 Q: Okay. How -- how is -- how do you normally do it?

11 A: Normally, I turn around on them and get behind them and
12 activate my blue light.

13 Q: Okay and for what reason is it done that way usually?

14 A: Well, he was known to run from law enforcement.

15 Q: That's not what I asked you. I said why is it ---

16 A: Yes, it is what you asked me.

17 Q: Why -- why did you -- so you -- so you put yourself in
18 danger? You swerved into the other lane?

19 A: I didn't swerve into the other lane. I pulled into the
20 center of the road because I know Mr. David ---

21 Q: All right. That's enough. And you didn't -- you didn't
22 run his license to see if it was suspended at that time; did
23 you?

24 A: No.

25 Q: Okay.

CROSS EXAMINATION OF DEPUTY LOY HAYES BY MR. SWILLEY

1 A: Not before that.

2 Q: Okay. Now, what -- what's your department's policy on
3 police pursuits? Do you -- I mean is there certain guidelines
4 that you follow?

5 A: We have -- I mean we -- we pursue them until our --
6 unless our supervisor cancels or unless we see that it's too
7 dangerous to pursue.

8 Q: And what would dictate that it's too dangerous to pursue?

9 A: Well, in this situation I didn't find where it was too
10 dangerous to pursue. I mean he wasn't driving ---

11 Q: But ordinarily what -- what would dictate that?

12 A: If he was driving recklessly and there's a lot of traffic
13 on the road, if we're near a school, something to that nature.

14 Q: Okay and for any offense? For any -- for any traffic
15 offense?

16 A: It's up to -- it's officer's discretion.

17 Q: Okay and your supervisor is the one that will tell you to
18 terminate the pursuit?

19 A: Unless we feel that we're -- unless we feel ourselves
20 that we're in danger.

21 Q: Okay and when the car finally pulled over, you pointed
22 out to Ms. Barr you had the taser out; right?

23 A: Yes.

24 Q: Okay and you're running towards him with a taser?

25 A: Yes.

CROSS EXAMINATION OF DEPUTY LOY HAYES BY MR. SWILLEY

1 Q: Okay and was it the sheriff that pushed you out of the
2 way?
3 A: Yes.
4 Q: Okay. Why did he do that?
5 A: You'll have to ask him that.
6 Q: Okay. Did -- he didn't tell you why?
7 A: No.
8 Q: Okay and you were the one that actually took -- took the
9 money off from Mr. Vice; correct?
10 A: Yes.
11 Q: All right. You found it when y'all searched him and took
12 it out of his pocket?
13 A: Right.
14 Q: All right and did you count all that money on the camera?
15 A: I don't think so.
16 Q: Okay. Any reason for that?
17 A: No.
18 Q: Okay and you said you were on Canary Street and is that
19 the street Mr. Vice -- before you encountered Mr. Vice. Is
20 that the street Mr. Vice lives on?
21 A: I believe so.
22 Q: Or at the time?
23 A: At the time, yes.
24 Q: Okay. When you said that you saw the bag get thrown out
25 and you said you saw other individuals in the area run towards

CROSS EXAMINATION OF DEPUTY LOY HAYES BY MR. SWILLEY

- 1 it?
- 2 A: Yes, I did.
- 3 Q: Okay and who were those individuals?
- 4 A: I have no idea.
- 5 Q: Okay. You didn't try to do any investigation or find out
- 6 later?
- 7 A: Uh-uh.
- 8 Q: Okay. Any reason for that?
- 9 A: No.
- 10 Q: Okay. Based upon your knowledge of the situation, any
- 11 other deputy try to find out who any of those other
- 12 individuals were?
- 13 A: No.
- 14 Q: Okay and do you know of any reason for that?
- 15 A: For what? What reason?
- 16 Q: For that nobody had followed up on that.
- 17 A: I mean they was just running towards the bag. I mean
- 18 they didn't have anything to do with the case.
- 19 Q: Okay. Now, did you do any investigation as far -- or I
- 20 won't say investigation. Did you do any -- anything else in
- 21 relation to the bag when it was brought to the scene where you
- 22 had Mr. Vice pull over? Did you -- did you try to lift any
- 23 prints off any of the bags inside of it?
- 24 A: You can't lift prints off of that type of material.
- 25 Q: You can't or you don't?

CROSS EXAMINATION OF DEPUTY LOY HAYES BY MR. SWILLEY

1 A: You can't.

2 Q: Okay. Did you do any DNA swabs on any of the ---

3 A: No, I didn't.

4 Q: --- things inside? Okay. So there's nothing -- no
5 forensic evidence that links to anybody; correct?

6 A: No.

7 Q: Okay. All right. Now, when you took the money off of
8 him, can you be more specific about what -- what you did with
9 that money right after you took it. Did you put it in an
10 envelope or anything like that?

11 A: Yes, I did.

12 Q: Okay and then where did you take it?

13 A: To the Sheriff's Office.

14 Q: Okay and who did you give it to?

15 A: Jeff Scott.

16 Q: Okay and you haven't seen it since then; right?

17 A: No, sir.

18 Q: Okay.

19 MR. SWILLEY: I beg the Court's indulgence.

20 Q: Were you able to see anybody in the passenger seat with
21 Mr. Vice when you initially approached him?

22 A: No.

23 MR. SWILLEY: I beg the Court's indulgence.

24 Q: Mr. Hayes, had you ever -- had you ever met Mr. Vice
25 before?

REDIRECT EXAMINATION OF DEPUTY LOY HAYES BY MS. BARR

1 A: No, I had not.

2 Q: Okay. Not before that day?

3 A: No.

4 Q: Okay.

5 MR. SWILLEY: Nothing further.

6 THE COURT: Redirect?

7 MS. BARR: Just a couple questions, Your Honor, if I may.

8 REDIRECT EXAMINATION

9 BY MS. BARR:

10 Q: Deputy Hayes, the individuals that you saw approach the
11 bag as you were in pursuit of Mr. Vice, do you know whether or
12 not they stuck around after he was ultimately arrested and
13 taken into custody?

14 A: No. I don't think so.

15 Q: At that point, if the only thing they did was to walk up
16 to the bag, had they committed a crime at that point in your
17 views?

18 A: No.

19 Q: Okay. Could you have arrested them if that's all they
20 did was walk to the bag?

21 A: No.

22 Q: Okay.

23 MS. BARR: That's all the questions that I have.

24 THE COURT: Anything further?

25 MR. SWILLEY: No recross, Your Honor.

DIRECT EXAMINATION OF LT. JEFFREY SCOTT BY MS. BARR

1 the stand.

2 THE COURT: Okay. Mr. Scott.

3 THE CLERK: Let me find my Bible. Okay. Do you solemnly
4 swear that the evidence and testimony you will give this Court
5 and jury will be the truth, the whole truth, and nothing but
6 the truth, so help you God?

7 THE WITNESS: I do.

8 THE CLERK: Okay. Have a seat.

9 LIEUTENANT JEFFREY SCOTT, being first
10 duly sworn, testifies as follows:

11 DIRECT EXAMINATION

12 BY MS. BARR:

13 Q: Sir, let me get you to state your full name for the
14 record?

15 A: Jeffrey Scott.

16 Q: And, Mr. Scott, tell the ladies and gentlemen of the jury
17 where you work now?

18 A: I am an associate professor at Horry Georgetown Technical
19 College in the Criminal Justice Department.

20 Q: Okay and how long have you been there?

21 A: As an adjunct, since 2009, but I currently came on full-
22 time as of August of this year.

23 Q: All right and where did you work before then, Mr. Scott?

24 A: With the Williamsburg County Sheriff's Office.

25 Q: Okay and what did you do for the Sheriff's Office?

DIRECT EXAMINATION OF LT. JEFFREY SCOTT BY MS. BARR

1 A: At the time, I was a crime scene investigator, evidence
2 technician, and a training officer.

3 Q: Okay and how long had you been employed with the
4 Sheriff's Office?

5 A: With the Sheriff's Office, twelve -- thirteen years.

6 Q: Okay and you were a certified police officer?

7 A: Yes.

8 Q: All right and tell us a little bit about your educational
9 background and what your responsibilities would have been with
10 the Sheriff's Office as a crime scene tech and evidence
11 custodian?

12 A: I have an associate's degree of science in criminal
13 justice, I have a bachelor's degree of liberal arts, and I
14 have a master's degree in criminal justice, a master's degree
15 of science.

16 Q: Okay. What would have been your day to day
17 responsibilities with a -- with the Sheriff's Office when you
18 worked as a crime scene technician and as an evidence
19 custodian?

20 A: Basically, what I would do is as far as -- as far as the
21 evidence custodian as cases came in, whether it be ones that I
22 processed or others that deputies brought in, we would collect
23 evidence, package it, store it, or send it to SLED for
24 analysis. As a crime scene investigator, I would go out to
25 scenes -- it could be major cases or minor cases -- and

DIRECT EXAMINATION OF LT. JEFFREY SCOTT BY MS. BARR

1 analyze, photograph, collect, process scenes for evidence that
2 could be brought back, stored, do a further processing, or
3 sent to such labs as SLED for analyzation.

4 Q: Okay. Now, in terms of evidence that's taken off to
5 SLED, we're talking about the South Carolina Law Enforcement
6 Division?

7 A: That is correct.

8 Q: In terms of those items and items in general being
9 analyzed, have you been certified to analyze certain types of
10 illegal drugs in South Carolina?

11 A: That is correct.

12 Q: All right. Tell us about your training and your
13 experience to become certified and what particular type of
14 narcotic you've been certified to test?

15 A: I'm certified to test and analyze marijuana.

16 Q: Okay.

17 A: We have to go through a specific training criteria at
18 SLED.

19 Q: Yes, sir.

20 A: We go up there where we have to be tested on knowledge of
21 marijuana analysis or the plants and certain things such as
22 chemicals and microscopic examinations. We have to pass with
23 a certain percentage in the written category and then we have
24 to do analyzation on the plant material.

25 Q: Okay.

DIRECT EXAMINATION OF LT. JEFFREY SCOTT BY MS. BARR

1 A: And have to pass it with a certain percentage category.

2 Q: All right and how long have you been certified by SLED to
3 analyze marijuana?

4 A: Well, right now my current certification goes through
5 2014.

6 Q: Okay. All right. Do you remember when you first became
7 certified?

8 A: Back in 2000 -- I would say '03 or '04.

9 Q: Okay.

10 A: It's been a while.

11 Q: All right and your certification was valid in -- after --
12 certainly during the time that you analyzed the -- the drugs
13 associated with this case?

14 A: That is correct. My current certification is from 2011
15 to 2014.

16 Q: Okay. All right. Now, so -- or kind of educate us a
17 little bit and tell us how -- well, before we do that, let me
18 -- let me ask you this question. Have you had occasion as a
19 police officer to testify in court regarding your analysis of
20 marijuana in the past?

21 A: Yes, I have.

22 Q: All right and have you been certified or qualified by the
23 Court to be an expert witness in that area?

24 A: Yes, I have.

25 Q: All right.

DIRECT EXAMINATION OF LT. JEFFREY SCOTT BY MS. BARR

1 MS. BARR: Judge, at this time we would tender Mr. Scott
2 as an expert in the field of marijuana ID and analysis.

3 MR. SWILLEY: No objection to that, Your Honor.

4 THE COURT: He is so admitted and, ladies and gentlemen,
5 when a person is qualified as an expert in a field, they can
6 offer opinions whereas others cannot.

7 MS. BARR: Thank you, Your Honor.

8 Q: Now, sir, as part of your duties as an evidence custodian
9 and as part of being certified to test what we believe to be
10 marijuana, you had occasion to become involved in the
11 investigation of this particular case, David ---

12 A: Yes, I did.

13 Q: --- Vice?

14 A: Yes, I did.

15 Q: Okay. Tell me what were your duties as it relates to
16 this case?

17 A: Basically, the collection of the evidence once the -- the
18 deputies brought it in.

19 Q: Okay.

20 A: And then the further analyzation of the plant materials.

21 Q: All right and when we talk about evidence that the
22 deputies brought in, who would have brought in evidence to you
23 on this case?

24 A: Deputy Hayes.

25 Q: All right and I'm going to hand you what's previously

DIRECT EXAMINATION OF LT. JEFFREY SCOTT BY MS. BARR

1 been admitted as State's Exhibit Number 5, this yellow and
2 green gym bag. Was this one of the items that was brought to
3 you by Deputy Hayes?

4 A: Yes, that's correct.

5 Q: All right and tell me what all was contained within that
6 particular exhibit as it was brought into you by Mr. Hayes and
7 how did you log it into evidence?

8 A: Basically, it was the gym bag itself.

9 Q: Yes, sir.

10 A: There was 14 bags, you know, plastic bags of plant
11 material.

12 Q: Okay.

13 A: And it had a dollar bill that had some plant material in
14 it.

15 Q: Okay.

16 A: And there was a few other items such as baggies and -- in
17 another bag.

18 Q: Okay. All right. Now, what type of measures do you
19 implement as the evidence custodian to maintain the chain of
20 custody of items that are brought to you and also to make sure
21 that nobody tampers with them?

22 A: Once it's turned over to me, I have complete control of
23 the storage of it so ---

24 Q: Okay.

25 A: --- nobody else gets the information -- the material back

DIRECT EXAMINATION OF LT. JEFFREY SCOTT BY MS. BARR

1 out. I do the analysis. It stays in storage.

2 Q: Okay.

3 A: So it doesn't go anywhere else. As far as anything else
4 that might have to go to SLED, I would be the one that
5 transports it to SLED for their analysis.

6 Q: Okay. Now, after you left your duties with the Sheriff's
7 Office in August of this year, do you know who succeeded you
8 ---

9 A: I do.

10 Q: --- in that role as evidence custodian?

11 A: That would be Lieutenant Timmons.

12 Q: Lieutenant Sherrod Timmons?

13 A: That's correct.

14 Q: All right. Now, I'm going to hand you what's been marked
15 for identification purposes as -- I think it's State's 5A.

16 I'm sorry, 5B. Do you recognize these items?

17 A: This one and this one.

18 Q: Tell us how it is that you recognize those particular
19 items?

20 A: It has my name and the case number and the date on it.

21 Q: All right. These are all a part of State's Exhibit 5B.

22 A: Okay. Yes.

23 Q: All right. Now, I'm going to pick up where I left off a
24 couple of seconds ago. Tell me how you go about identifying a
25 substance that you believe is marijuana and confirming that it

DIRECT EXAMINATION OF LT. JEFFREY SCOTT BY MS. BARR

1 is, in fact, marijuana or excluding the possibility that it's
2 marijuana?

3 A: We -- what we have to do is we do what we call a
4 microscopic test.

5 Q: Okay. Tell -- what is that?

6 A: Basically, we take the sample of the plant material ---

7 Q: Okay.

8 A: --- each piece ---

9 Q: Okay.

10 A: --- and look at it under a microscope and we're looking
11 for specific characteristics of the plant material.

12 Q: Okay.

13 A: Specifically, types of hairs that are found on the plant
14 material.

15 Q: Okay.

16 A: We're looking for such things as systolic hairs,
17 unicellular hairs, and multicellular hairs.

18 Q: All right and that's called the microscopic test?

19 A: That -- that is correct.

20 Q: All right and based upon your experience and your
21 training what, if anything, did the microscopic test of those
22 particular items indicate to you?

23 A: They were positive. They indicated that all three hairs
24 were present on the material.

25 Q: Okay. All right and tell us about the second test that

DIRECT EXAMINATION OF LT. JEFFREY SCOTT BY MS. BARR

- 1 you performed?
- 2 A: The second test is the chemical test.
- 3 Q: All right.
- 4 A: And it's called the Duquenois-Levine test.
- 5 Q: Okay.
- 6 A: And it's a chemical process that is a two-fold process.
- 7 Basically, we take the sample of the material and test it with
- 8 chemicals of solution A, which would be for looking for the
- 9 specifics of marijuana.
- 10 Q: Okay.
- 11 A: That would test for marijuana. Then we would add another
- 12 chemical, which is chloroform, to look for a highly specific
- 13 -- for THC, which is the Levine part.
- 14 Q: Okay.
- 15 A: So one looks for marijuana, which is -- which is
- 16 marijuana is present ---
- 17 Q: Okay.
- 18 A: --- and then one is highly specific for the Levine.
- 19 Q: All right. Now, tell us what, if anything, did your
- 20 chemical test of those particular items reveal to you?
- 21 A: The chemical test came back positive ---
- 22 Q: Okay.
- 23 A: --- for marijuana, as well as highly specific for the
- 24 presence of THC.
- 25 Q: All right. Now, we have individual bags that are marked.

DIRECT EXAMINATION OF LT. JEFFREY SCOTT BY MS. BARR

1 We're going to have this as 5F. Thank you.

2 (Whereupon, a plastic bag containing a dollar bill is
3 marked for identification as State's Exhibit Number 5F.)

4 Q: All right, sir, I'm going to hand you what's been marked
5 for identification purposes as State's Exhibit Number 5F.

6 Tell me if you recognize that?

7 A: Yes.

8 Q: All right. How is it that you recognize it?

9 A: My initials, the case number, and the date is on it.

10 Q: Okay and what is it?

11 A: It's a dollar bill.

12 Q: Okay.

13 A: It's part of this case.

14 Q: All right and did that have any significance to you in
15 connection with this case?

16 A: Yes. That is correct.

17 Q: All right. Tell us about that, please, sir?

18 A: This one was part of the case in which the dollar bill
19 was recovered from the subject.

20 Q: Okay and was there anything that was contained on that
21 particular dollar bill that had any significance to your part
22 of the investigation?

23 A: That was the -- the marijuana was contained in the dollar
24 bill.

25 Q: Okay. All right.

DIRECT EXAMINATION OF LT. JEFFREY SCOTT BY MS. BARR

1 MS. BARR: Judge, we would move State's Exhibit Number 5F
2 in at this time.

3 MR. SWILLEY: Your Honor, I don't think the chain of
4 custody has been established as far as practicable. I don't
5 think this -- this witness has testified as to who had it
6 precedent to whom he had it from.

7 THE COURT: All right. Ms. Barr?

8 MS. BARR: Your Honor, I believe the testimony by Deputy
9 Hayes was that he brought the packet -- the gym bag into the
10 evidence custodian, who was at that time Lieutenant Scott.
11 Lieutenant Scott just testified that he maintained custody and
12 control of that particular exhibit until he left. We've
13 already had Lieutenant Sherrod Timmons to testify that he has
14 taken over his responsibilities from Lieutenant Scott and the
15 witness has also testified that he performed the analysis on
16 those particular items. So I believe the chain of custody has
17 properly been -- properly been established.

18 THE COURT: All right. Mr. Swilley?

19 MR. SWILLEY: Your Honor, I don't think there's been any
20 testimony as to who had the material precedent to Deputy
21 Hayes, whether through Deputy Hayes or any other witness. So
22 I don't -- based upon my view of the evidence presented thus
23 far, I don't think the chain of custody has been established
24 as far as practicable.

25 THE COURT: Ms. Barr?

DIRECT EXAMINATION OF LT. JEFFREY SCOTT BY MS. BARR

1 MS. BARR: Judge, I would just add that I recollect that
2 Deputy Hayes testified that Sergeant Robert Shearer was the
3 one who brought the bag to him and he took it to the -- to the
4 evidence custodian at the time.

5 THE COURT: Have we -- have we heard from him?

6 MS. BARR: Not yet, Your Honor.

7 THE COURT: All right. The objection is sustained.

8 Q: All right, sir, tell us what has been identified as
9 State's Exhibit Number 5 -- is it 5G? Tell us what that is?

10 A: These are the bags that the material was contained in.

11 Q: Okay and you said the material was contained in. What
12 materials are you specifically talking about?

13 A: Which would have been the green plant material, the
14 marijuana.

15 Q: Okay.

16 A: It's the original bags.

17 Q: All right and in terms of the particular items that
18 relate to what you tested for marijuana, how many total items
19 were there that you tested?

20 A: Fourteen bags plus one dollar bill.

21 Q: Okay and the results of all of those fourteen tests
22 revealed what?

23 A: That they were positive for both microscopically and
24 chemically for marijuana.

25 Q: All right.

DIRECT EXAMINATION OF LT. JEFFREY SCOTT BY MS. BARR

1 A: Seed one.

2 Q: Okay. Now, there was some testimony on yesterday
3 regarding money that was confiscated in this case. Could you
4 tell us whether or not you had any involvement with actually
5 taking money in the case?

6 A: That is correct.

7 Q: All right. Tell us about that, please?

8 A: As part of the case when it's turned over, if there is
9 any monies turned over, the deputies will fill out a money
10 sheet ---

11 Q: Okay.

12 A: --- actually indicating all, like the denominations, how
13 many there are in quantity, and then they would write down
14 total and then I would come back and look at it. I would
15 recount it and make sure that their total was correct ---

16 Q: Okay.

17 A: --- and then it gets deposited into our holding account.

18 Q: And did you do that on this case?

19 A: Yes.

20 Q: All right. I'm going to hand you this particular
21 exhibit. I'm not going to make it a Court's exhibit, but did
22 you -- at -- did -- you took money in connection with this
23 case from whom?

24 A: It was submitted by Loy Hayes.

25 Q: Okay.

DIRECT EXAMINATION OF LT. JEFFREY SCOTT BY MS. BARR

1 MR. SWILLEY: Your Honor, I -- I haven't seen this --
2 this particular piece of paper.

3 (Whereupon, the paper is provided to counsel for the
4 defendant for review.)

5 MR. SWILLEY: Your Honor, that -- that hasn't been
6 provided to me during discovery. I -- I just move the Court
7 that the Court not allow this to be discussed or in testimony
8 (---

9 THE COURT: All right.

10 MR. SWILLEY: --- or entered into evidence.

11 THE COURT: Ms. Barr?

12 MS. BARR: Judge, I don't believe that it's required
13 under Rule 5, but it's just simply a document stating that he
14 -- the amount of money that he got from Deputy Loy Hayes and I
15 -- and that's all that's in the incident report which was
16 provided to counsel.

17 THE COURT: All right. I'm going to have the jury go to
18 the jury room for a moment. Please do not discuss the case.

19 (Whereupon, the jury exits the courtroom at 11:01 a.m.)

20 THE COURT: All right. Tell me about it again, Ms. Barr?

21 MS. BARR: Yes, sir, Judge, and I'll -- I'll hand it to
22 the Court. It's simply a property form indicating that
23 approximately \$3,400 was turned over to the witness from
24 Deputy Loy Hayes and it has the defendant's name on it and all
25 of that information is contained within the incident report

DIRECT EXAMINATION OF LT. JEFFREY SCOTT BY MS. BARR

1 Vice signed a consent order of forfeiture of -- of the money
2 and that simply is, if you would, a chain of custody just
3 establishing that the \$3,400 was taken from Deputy Hayes and
4 given to Lieutenant Scott. So I'm kind of at a loss as to how
5 the defense can maintain that it wasn't provided in discovery.
6 We're not seeking to have the document itself admitted into
7 evidence. We're just seeking to have the witness testify that
8 he received that evidence.

9 THE COURT: Well, is the objection to the document?

10 MR. SWILLEY: Or just -- just any -- any testimony
11 proffered in reference to it and the document.

12 THE COURT: Okay. According to the solicitor, she's not
13 offering the document. I overrule the objection regarding the
14 testimony since it was provided in the incident report. All
15 right. You can bring the jury back.

16 THE BAILIFF: Your Honor, may I approach the bench?

17 THE COURT: Yes, sir.

18 (Whereupon, the jury enters the courtroom at 11:05 a.m.
19 While waiting for the jury, the bailiff has a bench
20 conference with the judge.)

21 THE COURT: The objection is overruled.

22 CONTINUED DIRECT EXAMINATION

23 BY MS. BARR:

24 Q: Mr. Scott, I'm going to hand you again this exhibit and
25 as it relates to money, did you take any or did you have

DIRECT EXAMINATION OF LT. JEFFREY SCOTT BY MS. BARR

1 Deputy Hayes to turn over any money to you in connection with
2 this case?

3 A: That is correct.

4 Q: All right and tell us what your process is when a -- an
5 investigator or a deputy brings you money related to a
6 particular case?

7 A: What they do is they fill out this form. It gives case
8 number, date, who it's going to come from, and what they do is
9 they break down the currency into denominations.

10 Q: Okay.

11 A: And then they total it up, currency and coin.

12 Q: Okay.

13 A: And once they sign off on it that they have counted it,
14 I'll come back behind them and verify that the count is
15 correct.

16 Q: Okay.

17 A: I'll recount the -- the entire lump sum and make sure
18 it's correct and then we deposit it into our drug seizure
19 account until a case is referred or disposed of.

20 Q: Okay. So the money would have been deposited and
21 remained with the Sheriff's Office?

22 A: That -- that is correct.

23 Q: And I'm sorry ---

24 A: In their drug seizure account.

25 Q: Okay and the total amount of money that was seized in

DIRECT EXAMINATION OF LT. JEFFREY SCOTT BY MS. BARR

1 this case?

2 A: \$3,477.50.

3 Q: Okay. All right. Now, I'm going to hand you what's been

4 marked for identification purposes as State's Exhibit Number

5 5A. Tell us if you recognize that particular exhibit?

6 A: Yes. That is correct.

7 Q: Okay. How is it that you recognize it?

8 A: It has the information where Deputy Hayes sealed it ---

9 Q: Okay.

10 A: --- on the front. It also has the matching case number

11 to the information as far as the incident report.

12 Q: Okay.

13 A: And it has a B number, which indicates the bag and the B

14 number is all the same.

15 Q: Okay. All right. Now, when you received that particular

16 item in from Deputy Hayes, what did you do with it?

17 A: These are put into what they call BEST -- BEST kits or

18 BEST evidence kits.

19 Q: Okay.

20 A: It comes in a package like this. It basically has

21 paperwork indicating who it came from and everything is turned

22 over and it is kept in storage in the evidence room until it

23 is time to take it to SLED ---

24 Q: Okay.

25 A: --- for it to be analyzed.

DIRECT EXAMINATION OF AGENT LYNN BLACK BY MS. BARR

1 THE WITNESS: Yeah.

2 MS. BARR: And Mr. Scott, if you would, just put that on
3 the floor right there, that would be great. Thank you.

4 THE WITNESS: All right.

5 (Whereupon, the witness leaves the stand at 11:11 a.m.)

6 MS. BARR: Your Honor, at this time we would call Ms.
7 Lynn Black.

8 THE COURT: Ms. Black.

9 THE CLERK: Do you solemnly swear that the evidence and
10 testimony you will give this Court and the jury will be the
11 truth, the whole truth, and nothing but the truth, so help you
12 God?

13 THE WITNESS: I do.

14 MS. BARR: May it please the Court.

15 THE COURT: Yes.

16 AGENT LYNN BLACK, being first duly
17 sworn, testifies as follows:

18 DIRECT EXAMINATION

19 BY MS. BARR:

20 Q: Good morning, Ms. Black. How are you doing?

21 A: Good morning. Just fine.

22 Q: Great. State your full name for the record and tell the
23 ladies and gentlemen of the jury where you work and what you
24 do?

25 A: My name is Lynn Black.

DIRECT EXAMINATION OF AGENT LYNN BLACK BY MS. BARR

1 Q: Yes.

2 A: I work for the South Carolina Law Enforcement Division,
3 commonly known as SLED, in the drug analysis department in the
4 forensic services laboratory.

5 Q: All right. You were subpoenaed to testify in this case?

6 A: Yes, ma'am.

7 Q: All right and tell us what it is that you do for SLED and
8 give us a little information about your background?

9 A: My duties include receiving and analyzing of substances
10 brought in by law enforcement personnel and then I analyze
11 them to determine if they're controlled substances or not. My
12 educational background is I have a bachelor of science degree
13 in chemistry from Kentucky Wesleyan College, a certificate of
14 medical technology from the University of Louisville, and a
15 master of science in forensic science from Marshall
16 University. Prior to my job with SLED, I worked for eight
17 years at the Georgia Bureau of Investigation crime lab as a
18 drug chemist as well and I've been with SLED for approximately
19 four years.

20 Q: Okay. Now, Ms. Black, you've I imagine had an
21 opportunity to testify in state courts within South Carolina
22 since you've been with SLED?

23 A: Yes, I have.

24 Q: All right and have you previously been qualified as an
25 expert witness?

DIRECT EXAMINATION OF AGENT LYNN BLACK BY MS. BARR

1 Q: --- and one appears to be a pure white color.

2 A: Correct.

3 Q: Was there a difference in those two items?

4 A: Yes.

5 Q: Okay. Tell us about that?

6 A: The -- the two bags that are off-white, those are the two
7 that were positive for cocaine.

8 Q: Okay.

9 A: The other two were negative for controlled substances.

10 Q: Okay. Tell us what a controlled substance is?

11 A: A controlled substance is a -- a substance that is
12 regulated by the government. In our particular case, you
13 know, it's drugs and -- and other -- for this case, all of
14 this they're referring to drugs, but controlled substances can
15 be things that are regulated. Well, let me back up. They can
16 be things like prescription drugs.

17 Those are controlled substances, but these -- there is
18 also higher degrees of controlled substances. The way the --
19 the federal government and the state government put them
20 together is they'll put them in different classes or actually
21 they call them schedules and we have Schedule I all the way to
22 IV.

23 Q: Okay.

24 A: I think IV. Well, V for the federals and I think just
25 here in the state is IV, but the higher the number, the -- the

DIRECT EXAMINATION OF AGENT LYNN BLACK BY MS. BARR

1 lesser -- the lesser degree of addiction possibilities.

2 Q: Okay.

3 A: So Class I is a very high possibility of addiction and
4 actually -- excuse me, Schedule I is a higher possibility of
5 addiction and it currently does not have any medicinal value.

6 Q: What would be an example of a Schedule I controlled
7 substance?

8 A: That would be LSD, psilocin, heroin.

9 Q: Okay.

10 A: Cocaine is a -- is a Schedule II so it has some medicinal
11 value. It is used in I think some surgeries and stuff so it,
12 you know, does have a current use, but it does have very high
13 addiction possibilities and that's why they -- they classify
14 it as a Schedule II and then they go on down and you have III,
15 IV and, like I said, V for federal cases and some federal
16 regulations.

17 Q: Okay and in terms of your analysis for the portion of
18 that particular exhibit that you determined to be cocaine,
19 what was the weight connected with just what you determined to
20 be cocaine?

21 A: I'd have to refer to my report.

22 Q: Please.

23 A: I don't have it ---

24 Q: Please do.

25 A: --- in memory.

DIRECT EXAMINATION OF AGENT LYNN BLACK BY MS. BARR

1 Q: Yes, ma'am.

2 A: The total net weight was 52.8 grams of the two plastic
3 bags.

4 Q: 52.8 grams of cocaine?

5 A: Correct.

6 Q: All right and let me ask you in terms of how this
7 particular exhibit looks now versus when it left your
8 possession at SLED, do you notice any changes to it?

9 A: No. It's -- it's in the same condition as I saw it.
10 It's still sealed.

11 Q: Okay. All right. You can take a seat. Thank you,
12 ma'am.

13 (Whereupon, the witness returns to the witness stand.)

14 MS. BARR: Judge, we would move State's Exhibit Number 5A
15 in at this time.

16 MR. SWILLEY: Your Honor, I would object under the -- for
17 the previous reasons as to the last witness. I don't think
18 that the chain of custody has been established as far as
19 practicable.

20 THE COURT: All right. Ms. Barr?

21 MS. BARR: Judge, we'll just continue with -- with this
22 witness.

23 THE COURT: Are you withdrawing the request or do you
24 want me to rule?

25 MS. BARR: I'm sorry, Judge?

DIRECT EXAMINATION OF SERGEANT ROBERT SHEARER BY MS. BARR

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: All right.

3 MS. BARR: We'd call Sergeant Robert Shearer.

4 THE CLERK: Do you solemnly swear that the evidence and
5 testimony you will give this Court and jury will be the truth,
6 the whole truth, and nothing but the truth, so help you God?

7 THE WITNESS: So help me God.

8 SERGEANT ROBERT SHEARER, being first
9 duly sworn, testifies as follows:

10 DIRECT EXAMINATION

11 BY MR. BARR:

12 Q: Sergeant Shearer.

13 A: Good morning, Ms. Barr.

14 Q: How are you doing?

15 A: I'm -- I'm okay.

16 Q: You had a long night last night?

17 A: Yes, ma'am.

18 Q: Okay. All right. Duty calls?

19 A: Yes, ma'am.

20 Q: Okay. I'll -- we'll go ahead and -- and be very quick
21 with you. State your full name for me?

22 A: It's Robert Glen Shearer II.

23 Q: All right and tell me where you work?

24 A: I work for the Williamsburg County Sheriff's Office.

25 Q: And -- and how long have you worked at the Sheriff's

DIRECT EXAMINATION OF SERGEANT ROBERT SHEARER BY MS. BARR

1 Office?

2 A: Since 2004, eight years this month.

3 Q: All right and tell us what you do?

4 A: I'm the shift supervisor on -- Deputy Hayes was on my
5 shift at the time. I -- I'm responsible for taking calls on
6 the radio, backing all the officers up. Anytime we got a bad
7 or violent call, I usually take primary on that call.
8 Discipline with the deputies and all that on my shift and
9 everything else.

10 Q: All right. Did you work last night?

11 A: I did and I work tonight also.

12 Q: Okay. What time did you get off this morning?

13 A: At six thirty.

14 Q: Oh, goodness. Okay. All right. You were involved in
15 this case in -- with David Vice back on December the 19th of
16 2011?

17 MR. SWILLEY: Objection, Your Honor. She's leading the
18 witness.

19 THE COURT: Objection is overruled.

20 A: I was involved with the case on Case Number 12995 back in
21 December.

22 Q: Okay and what was your involvement in the case?

23 A: I was the supervisor so I was monitoring the radio when
24 Deputy Hayes initiated a chase in progress on Red Road.

25 Q: Okay.

DIRECT EXAMINATION OF SERGEANT ROBERT SHEARER BY MS. BARR

1 A: I actually got -- I was either the second or the third
2 vehicle on -- in the chase when they actually turned onto
3 Highway 377.

4 Q: Okay.

5 A: It was my responsibility to monitor the radio, monitor
6 different things like traffic congestion, weather conditions,
7 stuff like that to know if the risk was worth the reward. A
8 lot of times as a supervisor, if a chase gets too dangerous, I
9 have to make them what we call 10-22, the chase disregard,
10 which is stop the chase depending on the violation and what's
11 going on. I monitored the radio. I actually got behind them
12 when they were turning onto I think it's called Holywoods Road
13 off of 377 when they made the left turn.

14 Q: Yes, sir.

15 A: And I actually seen Mr. Vice holding a bag out the window
16 that when he dropped, I retrieved.

17 Q: All right. Speaking of that bag, I'm going to hand you
18 what's been admitted as State's Exhibit Number 5.

19 A: It's a green and white bag that looks like a -- I call it
20 a Green Bay Packers bag, but -- I mean it's a green and yellow
21 bag.

22 Q: Okay. Is this the item that you're talking about?

23 A: It is.

24 Q: All right and you indicated that you saw the defendant
25 throw that from the vehicle?

DIRECT EXAMINATION OF SERGEANT ROBERT SHEARER BY MS. BARR

1 A: I did. He held it out the window with his left hand
2 while he was driving when he made that left onto Hollywoods
3 Road. There was about four or five people standing at the
4 intersection. I think that's Hollywoods Road and McAllister.
5 It's the first -- when you make a left on Hollywoods Road, it's
6 the first intersection. When he got to that intersection, he
7 threw it out on the road and all five of those subjects run
8 towards the bag.

9 So I was the second or third vehicle. I think I was the
10 third vehicle, but I was either the second or third vehicle.
11 I knew the first vehicle was going to continue to chase Mr.
12 Vice so I pulled right up to that bag before the subjects
13 could get to it, jumped out my car, grabbed the bag, threw it
14 in the passenger seat. I opened the bag real quick to make
15 sure there was nothing in there that could hurt me ---

16 Q: Okay.

17 A: --- while I was continuing in the car pursuit in case
18 there was an accident or anything like that and when I say
19 that, I'm talking about like weapons that aren't on safety,
20 anything like that.

21 Q: Okay.

22 A: I opened it and I seen there was a large quantity of
23 narcotics. I relayed that information on the radio so
24 deputies would know to continue the pursuit because now we had
25 a felony and then I went to where the chase ended, which I

DIRECT EXAMINATION OF SERGEANT ROBERT SHEARER BY MS. BARR

- 1 believe was on -- it -- it was on Red Road.
- 2 Q: Okay. Now, at the time of this ---
- 3 A: At the intersection of Red Road and Sand Ridge Road is
- 4 where the chase ended.
- 5 Q: Okay. At the time of this particular incident, did --
- 6 was your vehicle equipped with a camera?
- 7 A: It was not.
- 8 Q: It was not? Okay. All right. Now, once the chase
- 9 ended, did you then at that point join Deputy Hayes?
- 10 A: I went straight to where the chase had ended at the
- 11 intersection of Sand Ridge and Red Road and proceeded to give
- 12 the evidence to Deputy Hayes.
- 13 Q: All right. Now, you indicated that when you initially
- 14 put the bag into your vehicle, you had to check to make sure
- 15 there was nothing in there that could harm you?
- 16 A: Correct.
- 17 Q: All right. You -- you said you observed ---
- 18 A: I unzipped it. I observed the narcotics. I looked in
- 19 there to make sure there wasn't anything that would hurt me.
- 20 I zipped it back up. It stayed on my passenger seat. I went
- 21 straight to where the chase had ended. By this time, they
- 22 already had Mr. Vice in custody and I handed it directly to
- 23 Deputy Hayes, who was the initiating officer.
- 24 Q: All right. I'm going to hand you what's been marked for
- 25 identification purposes as State's Exhibit Number 5A. Do you

DIRECT EXAMINATION OF SERGEANT ROBERT SHEARER BY MS. BARR

1 recognize anything that's contained within that particular
2 exhibit?

3 A: Correct, the cocaine that's in the bag.

4 Q: And you said the cocaine that was in the bag?

5 A: In this bag right here.

6 Q: And you observed it in there that day?

7 A: Correct.

8 Q: All right.

9 MS. BARR: Judge, we ---

10 A: Along with sandwich bags and large bags of marijuana and
11 medium sized bags of marijuana.

12 Q: All right.

13 MS. BARR: Your Honor, we would move State's Exhibit
14 Number 5 in -- 5A in at this time.

15 THE COURT: All right. Anything from the defense?

16 MR. SWILLEY: Your Honor, I -- I object. I don't think
17 the chain of custody has been established. I don't think
18 since from Deputy Hayes until -- until it was taken to the --
19 another member of the Sheriff's Office. I don't think that's
20 been attested to.

21 THE COURT: All right. Ms. Barr?

22 MS. BARR: Judge, the witness has testified that he
23 picked it up off of the ground, he took it to Deputy Hayes.
24 Deputy Hayes has previously testified that he took it to the
25 Sheriff's Office. Deputy Hayes testified that he gave it to

DIRECT EXAMINATION OF SERGEANT ROBERT SHEARER BY MS. BARR

1 Lieutenant Scott, who has also testified that he maintained
2 custody and control of it and, Your Honor, we would submit
3 that we've established the chain since the time the bag was on
4 the ground until it got here today.

5 THE COURT: All right. Mr. Swilley?

6 MR. SWILLEY: Your Honor, I believe the video showed a
7 couple individuals handle the bag and I don't think that's
8 been attested to as well based upon my recollection. I don't
9 think those individuals have been named. There were several
10 individuals there that ---

11 THE COURT: I'll overrule the objection and admit --
12 admit the item into evidence.

13 (Whereupon, State's Exhibit Number 5A, the bag of
14 cocaine, is admitted into evidence.)

15 MS. BARR: Your Honor, permission to publish?

16 THE COURT: You may.

17 (Whereupon, State's Exhibit Number 5A is published to the
18 jury.)

19 Q: All right. You indicated that there was cocaine and also
20 marijuana?

21 A: Marijuana, a scale, and I think there was a cell phone in
22 there.

23 Q: Okay. All right. Now, I know you've been up all day so
24 I'm going to ---

25 A: And a bag of sandwich bags.

DIRECT EXAMINATION OF SERGEANT ROBERT SHEARER BY MS. BARR

1 MS. BARR: Judge, we would move to publish a portion of
2 State's Number 3.

3 THE COURT: It's in evidence.

4 MR. SWILLEY: Your Honor, I'd object to publication. I
5 think it's already been published to the jury and frozen in
6 certain frames. I just -- I think it would be cumulative, you
7 know, under Rule 403.

8 THE COURT: All right. The objection is overruled.

9 (Whereupon, there is a pause in the proceedings as the
10 videotape is prepared for playing.)

11 Q: Sergeant Shearer, can I get you to step over here?

12 A: Correct. I mean yes, ma'am.

13 Q: You can stand on this side for me, please. I don't want
14 you to block ---

15 A: I got you.

16 Q: Yes, sir. And, sir, if you will, don't testify, but just
17 point to the part of the video where you see the defendant
18 throw the bag through the window.

19 A: Okay.

20 (Whereupon, there is a pause in the questioning as the
21 videotape is played.)

22 A: That's me talking on the radio.

23 Q: Okay.

24 A: As Deputy Hayes continues to chase, he's giving out his
25 location at all times. He's ---

DIRECT EXAMINATION OF SERGEANT ROBERT SHEARER BY MS. BARR

1 MR. SWILLEY: Your Honor, I would object to that. He's
2 not responding to ---
3 A: --- trying to ---
4 MR. SWILLEY: --- any questions. He's just talking.
5 THE COURT: All right. Objection sustained.
6 MR. SWILLEY: I move to strike that as well, Your Honor.
7 THE COURT: It's struck.
8 (Whereupon, the video continues playing.)
9 A: All right. I'm behind him now.
10 MR. SWILLEY: Your Honor, I -- I'd object to that as
11 well.
12 THE COURT: Objection is overruled.
13 A: I was the first brown car. There's the bag hanging out
14 the window. There's where he throws the bag and I stop
15 directly behind him and pick it up.
16 Q: All right. What I'll do is I'll stop it and fast forward
17 it. ---
18 (Whereupon, the video stops.)
19 Q: --- to the point where Mr. Vice is placed in cuffs.
20 (Whereupon, the video is fast forwarded and played
21 again.)
22 Q: Do you recognize that fellow right there?
23 A: Corporal Jenkins is standing right there.
24 Q: All right.
25 A: He was on my shift, too, at the time.

1 p.m.)

2 THE COURT: Mr. -- Mr. McKnight, I want you to go back to
3 the jury room, but do not discuss with any of the jurors --
4 have you mentioned anything to them about being related to
5 anyone?

6 MR. MCKNIGHT: No, sir.

7 THE COURT: All right. If you -- if you will, do not
8 discuss any of that with any juror.

9 MR. MCKNIGHT: Yes, sir.

10 THE COURT: I'm going to have you go back with the jury.
11 Thank you, sir.

12 (Whereupon, the juror exits the courtroom at 12:13 p.m.)

13 THE COURT: All right. The State has rested. Anything
14 by the defense?

15 MR. SWILLEY: Yes, Your Honor. I'd make a motion for a
16 directed verdict. Under Rule 19, the State has to establish
17 competent evidence that all the elements of the indictments
18 along with whether or not they occurred in the county or the
19 venue of the county and jurisdiction as well as the date and,
20 Your Honor, also the defendant has to be identified.
21 Throughout the course of the trial, Your Honor, I don't
22 believe there was a single witness that identified Mr. Vice at
23 all.

24 THE COURT: The last witness said that when he was
25 apprehended, they counted the money out in front of him.

1 MR. SWILLEY: What I was referring to is identify Mr.
2 Vice here in court. I don't think there was an in-court
3 identification at all.

4 THE COURT: An in-court identification?

5 MR. SWILLEY: That's correct, Your Honor.

6 THE COURT: All right. Ms. Barr?

7 MS. BARR: Judge, my recollection of the testimony of
8 Deputy Hayes was that he knew the defendant, David Vice, and
9 when I asked him who the driver of the vehicle was and who was
10 placed in handcuffs, my recollection is that he stated the
11 defendant, David Vice, and I think he may have -- obviously
12 the record may not reflect this, but he may have pointed to
13 the defendant and I'm not sure if there's a legitimate
14 question as to whether or not the defendant on trial is
15 actually David Vice. Judge, I would submit that that's --
16 that's not an issue.

17 THE COURT: All right. I deny the motion. I think the
18 record is sufficiently -- has sufficiently established -- to
19 survive this motion has sufficiently established the
20 apprehension of the defendant, Mr. Vice, as being the
21 perpetrator of the offenses for which he is on trial. All
22 right. Anything else?

23 MR. SWILLEY: Not from the defense, Your Honor.

24 THE COURT: All right.

25 MR. SWILLEY: We're not going to put up a case.

1 Court.

2 THE COURT: Ms. Barr will open. Mr. Swilley will close.

3 MS. BARR: Thank you, Your Honor.

4 CLOSING ARGUMENTS

5 MS. BARR: Mr. Swilley, Deputy Hayes, Mr. Foreman, ladies
6 and gentlemen of the jury, good afternoon.

7 (Whereupon, the members of the jury reply: Good
8 afternoon.)

9 MS. BARR: I made a promise to you all earlier that we
10 would try to conclude the case by lunchtime on today and I'm
11 relieved that I was able to -- to keep that promise. I think
12 that it is interesting and appropriate that you all are here
13 to decide this case on Election Day because I think that it
14 actually says a lot about our system of government and how it
15 works and I don't think that there was probably a better day
16 that I could pick to make the arguments to you that I'm going
17 to make.

18 I started off this case by telling you about the three
19 charges. I'm going to try to briefly explain to you what I
20 believe the judge is going to tell you about the law in the
21 case. I'm going to talk about the facts and then I'll have a
22 seat and Mr. Swilley will follow me.

23 The way that our court rules work and I actually don't
24 like this part about it, but in these type cases the State
25 goes first in closing argument and then the defense lawyer

1 will have an opportunity to stand before you and tell you his
2 version of the case and I always kind of like to be the last
3 person to make an argument to the jury because the rule of
4 thumb is people remember what they hear last. But the rules
5 permit the defense lawyer to go first so I'm sure -- or to go
6 last so I'm sure that he's sitting there writing down as I
7 speak all the reasons why you should disregard everything that
8 I say.

9 But in any event, let's start about the charges. You all
10 have heard the evidence in the case. You've listened to
11 witnesses. You've seen videotapes. You've seen the drugs
12 that are involved in this case. So you know all about the
13 case. It's not complicated.

14 The defendant is charged with three offenses, the first
15 being failure to stop for a blue light and sirens. That law
16 can be found in Section 15 -- 56-5-750 of the South Carolina
17 Code of Laws and essentially that law says that it's illegal
18 -- unlawful for a person to fail to stop when signaled by a
19 law enforcement vehicle by means of flashing blue lights or
20 sirens.

21 That's the law and, folks, when you all heard the
22 testimony of Deputy Hayes and Sergeant Shearer and you saw the
23 videotape, it is clear and it's apparent that the defendant is
24 guilty for failure to stop for a blue light. It's not just
25 what you heard from the officers; you actually had the benefit

1 of being able to see that crime being committed firsthand.

2 The second charge that is before you is possession with
3 intent to distribute marijuana. Now, the law as it relates to
4 the two drug charges requires that the State prove three
5 things: essentially, one, that the defendant was in possession
6 of the drugs; two, that he knew he was in possession of the
7 drugs; and three, as it relates to the marijuana charge that
8 he possessed it with the intent to distribute.

9 Ms. Barr, what do you mean he possessed it with the
10 intent to distribute? What does that mean? Well, when
11 somebody possesses something with the intent to distribute,
12 distribute just simply means they have an intent to pass it
13 from one person to another, whether you're selling it or
14 whether you're giving it away, whatever you're doing. You
15 don't have the intent to just keep it for yourself; you have
16 the intent to give it to another person.

17 As it relates to the cocaine charge, the defendant is
18 charged with trafficking in cocaine. That's under Section 44-
19 53-370 and what I think the judge will tell you about the
20 trafficking cocaine is that if an individual has possession of
21 more than 28 grams of cocaine, but less than 100 grams of
22 cocaine, then that person is guilty of trafficking in cocaine.

23 Now, what's the evidence before you that the defendant is
24 guilty of trafficking in cocaine? You heard the analyst's
25 testimony, the young lady who came from SLED, and she talked

1 about the weight that's associated with the cocaine that she
2 analyzed and that weight was 52 grams.

3 Now, one of the things that I believe was sort of
4 interesting about her testimony, Mr. Swilley asked her on
5 cross examination, well, how do you know that that was all
6 pure cocaine as opposed to some mixture. Well, the law
7 actually has an answer for that. Under the law, it doesn't
8 matter whether it's pure cocaine, whether it's some
9 combination of cocaine or something else, or it's a mixture of
10 something else. If it's 52 grams of cocaine, whether it's in
11 its purest form or in a mixture, it's considered cocaine.

12 (Whereupon, counsel retrieves State's Exhibit Number 5A,
13 the bag of cocaine, from inside State's Exhibit Number
14 5.)

15 And the interesting thing about that is when the analyst
16 talked about there being two different types of substances
17 that were contained within that bag, one was pure white and
18 one -- two were pure white and two were sort of an off-white
19 color and you can actually see that and there is a distinct
20 difference in the colors of those particular items.

21 What I would suggest to you, just kind of based on common
22 sense -- I mean we all heard just how these type things are
23 manufactured. Oftentimes, you hear about cocaine being mixed
24 with baking soda or something along those lines to make it
25 last longer. So there's no controlled substance detected

1 within this pure white form and we would suggest to you that
2 it's reasonable to infer that that pure white substance that
3 was not a controlled substance was probably some form of
4 baking soda or baking powder.

5 What I would suggest to you that the defense is going to
6 argue is something that's called a lesser included offense.
7 We don't have in South Carolina different degrees of murder.
8 Sometimes you may hear on TV that somebody is charged with
9 murder in the first degree or murder in the second degree and
10 sometimes you may hear that maybe murder in the second degree
11 is a lesser included offense of murder in the first degree.

12 What I suspect the defense may argue is that, well, the
13 defendant is not guilty of anything and if he's guilty of
14 something, then, you know, perhaps he's only guilty of simple
15 possession of marijuana and, folks, when you have to determine
16 whether or not an individual is guilty of a crime, you have to
17 obviously listen to the evidence and listen to the law, but
18 you all have the benefit of being able to take your good old-
19 fashioned common sense back there with you. You don't have to
20 leave that at the door. You can take it right there back with
21 you in that jury room when you deliberate.

22 (Whereupon, counsel retrieves State's Exhibit Number 5B,
23 the six bags of marijuana, from inside State's Exhibit
24 Number 5.)

25 And when you take your good old-fashioned common sense

1 back there with you and you take the law that the judge will
2 give to you and you take the evidence, you have to ask
3 yourself a question. Is this really a situation where I
4 believe that somebody had this amount of marijuana for their
5 own personal use such that it's really a lesser included
6 offense of simple possession of marijuana?

7 Do we really believe that this person did not -- and when
8 I say this person, I mean the defendant, David Vice, did not
9 have an intent to sell marijuana and sell cocaine based on all
10 that we know? I suppose it's possible somebody could have
11 this for their own personal use. I suppose if they were on a
12 suicide mission, perhaps it's possible.

13 But, folks, for you to buy that story that I suspect the
14 defense is going to tell you, it really is going to have you
15 suspend all your notions of reason to buy that story and it's
16 not just this amount of marijuana, this amount of marijuana,
17 this amount of marijuana, this amount of marijuana.

18 (Whereupon, counsel retrieves State's Exhibit Number 5C,
19 the box of Glad plastic baggies, from inside State's
20 Exhibit Number 5.)

21 Ms. Barr, how else do we know he's trying to sell it?
22 Well, one really good indication, these baggies. It makes it
23 a whole lot easier when you're trying to sell dope if you put
24 it in these little small baggies. Now, folks, this wasn't
25 little Halloween candy that he had in this bag and he was

1 putting it in little baggies to send to the kids. This is the
2 real deal.

3 (Whereupon, counsel retrieves State's Exhibit Number 5D,
4 the red scales, from inside of State's Exhibit Number 5.)

5 Now, if that's enough evidence for you, how about the
6 scales? Why would these scales be found with all this dope?
7 Because he wants to make sure that he is giving away what he's
8 selling and he's getting his money's worth. That's why you
9 have these.

10 (Whereupon, counsel retrieves State's Exhibit Number 5E,
11 the jewelry bags, from inside State's Exhibit Number 5.)

12 And on top of that, you heard the officer testify and
13 I've actually never seen them in a plastic bag before, but
14 testify about these little baggies. I don't know if you've
15 all heard street terminology about a dime bag of weed or
16 whatever, but I would suggest to you that this is what that's
17 used for.

18 And if we have any other concerns as to whether or not he
19 had already sold some that day, then all you have to do is
20 look at State's Exhibit Number 6. Folks, on the day David
21 Vice was arrested, he had over \$3,400 in cash in his pockets.
22 Now, I don't know many folks that make that kind of money in a
23 month let alone have it in a -- in a day. So it was
24 profitable for him.

25 One of the things that I just could not understand, you

1 all saw the videotape where he's driving and all of a sudden
2 he throws the bag out. I remember that part. He wasn't
3 counting on that to be on videotape. He was not aware that
4 Officer Hayes had a video camera in his car because what I
5 expect that he thought was that, well, listen, all right, they
6 put the blue lights on me. I'm caught. Now, I've got to
7 lessen what I'm facing so I've got to get the drugs off me.

8 I did not understand though for the life of me how it was
9 that this person happened to slow his car down long enough to
10 throw the drugs outside the car and somebody just happened to
11 walk up to where the drugs were. I mean how would that person
12 even know that he was going to do that and most people if
13 you're seeing a police chase with an individual running from
14 the cops and three and four patrol cars behind him with blue
15 lights and sirens, they're going to stay out of that. They're
16 not going to come into it and I could not understand why --
17 you know, how did that person even know to be there at that
18 time and when I saw the cell phone in that bag, the first
19 thing that occurred to me, well, he had to get the drugs off
20 of him because, quite frankly, if he was able to get the drugs
21 and the officers never got it, the only thing he was looking
22 at was failure to stop for a blue light. That's it. That's
23 it.

24 I suspect and I would submit to you that that cell phone
25 is in that bag for a reason. I suspect that during the entire

1 time when he's running from the police he managed to make a
2 phone call and he told somebody. Because, you know, this
3 stuff has some money value. This evidence is valuable. You
4 don't just throw that out the window. I suspect that he
5 called somebody and said, listen, the police are chasing me.
6 I need you to come pick up the stuff.

7 And it became even more clear to me because if you watch
8 that tape -- and you'll be permitted to if you want to to
9 watch it again -- but if you watch that tape, it appears -- I
10 remember seeing a Cadillac vehicle on -- in one slice of the
11 videotape and it appeared that the defendant had come across
12 that vehicle on two occasions, almost as if he had circled
13 around in the block right before he discarded the drugs. I
14 don't think that that was simply by coincidence. I would
15 submit to you that it's not.

16 Mr. Swilley said in his opening statement that the State
17 will not be able to convince you of the defendant's guilt
18 beyond a reasonable doubt. What I think is probably what you
19 will hear is that they'll argue to you that we have not
20 established the defendant's guilt, that there are no
21 fingerprints, no DNA, so therefore the defendant must be not
22 guilty.

23 Folks, the law requires that the State prove a case
24 beyond a -- a reasonable doubt, not an unreasonable one. See,
25 the defense don't want you to believe your own lying eyes.

1 They want you to believe what they want you to believe. I
2 always get a little nervous in this part of the trial because
3 sometimes, you know, I think as a prosecutor that I have a
4 good case or a so-so case or a bad case as a prosecutor and I
5 always worry because jurors who are members of our community,
6 they sit in, they listen to a case, and they feel like, oh, I
7 have to judge this person. I don't feel comfortable judging
8 this person and they worry about, well, what if. What if I
9 find this person guilty?

10 First of all, let me tell you that in your deliberations
11 you're not judging an individual. You're not judging a man.
12 You're judging the conduct of that man, the defendant's
13 conduct, not him, not him, and I would ask you all to remember
14 that David Vice made a decision to be named the defendant in
15 the State of South Carolina versus David Vice. He made a
16 choice. Mr. Vice has no one to blame for the position that he
17 sits in right now other than himself.

18 When you are in the trade of dealing and selling dope --
19 I'm not talking about somebody who is a casual user or
20 somebody who may smoke a blunt every once in a blue moon or
21 whatever. When you make a decision that you are going to sell
22 drugs for a living, you have made a benefit versus risk
23 analysis. The benefits, you know, if I get away with this, I
24 get a whole bunch of money, maybe thousands of dollars. I can
25 put all kind of sub-woofers in my car. I don't have to work a

1 nine to five like the average person. I'm going to make easy
2 money. Those are the benefits.

3 When you weigh the risk, gosh, if I get caught, I might
4 get arrested. He had that balancing scale and you know what?
5 He made the decision that the benefits outweigh the risk.

6 So I would caution you. I would implore you not to view
7 this case with an eye toward sympathy, but to view this case
8 with an eye toward justice. When I look at that tape, I look
9 at and I think about all the decisions that David Vice made
10 back on December the 19th of 2011. He made a decision to run.
11 He almost got away, almost. I was wondering what kind of
12 vehicle Deputy Hayes had because he caught up to him and you
13 could almost feel the speed of his vehicle. I mean he was
14 flooring it and he caught up to him. He made a decision not
15 to stop, he made a decision to toss the drugs, and he made a
16 decision to keep on going. Well, you make those decisions,
17 that's fine, but you have accepted the consequences of those
18 decisions.

19 Folks, on this Election Day, we would ask that you hold
20 the defendant accountable for the decisions that he made.
21 Don't buy into the smoke screen or the red herrings that I
22 suspect that the defendant's attorney will throw at you. You
23 know, DNA and fingerprints, those are wonderful forensic tools
24 -- I'll concede that point -- and those kinds of things are
25 crucial when you don't have a suspect, when you don't have

1 eyewitness testimony, when you don't have video. Those things
2 are absolutely crucial, but when you have a videotape that you
3 all have personally had the opportunity to view that shows the
4 defendant throwing away the drugs -- the drugs, I would submit
5 to you that the State has established guilt beyond a
6 reasonable doubt. Yes, it's true you can believe what you
7 see.

8 On this Election Day, I ask that you render justice in
9 this case. I ask that you do what the law has asked you to do
10 and that is to do justice and honor the oath that you've taken
11 to listen to the evidence and apply the law and render a
12 verdict. Folks, the only just verdict in this case, the only
13 true verdict in this case is a verdict of guilty against the
14 defendant on each and every count of the indictment. We ask
15 you all, we implore you all to do just that. Thank you all so
16 much for your time. Thank you more importantly for your
17 attention.

18 THE COURT: Mr. Swilley?

19 MR. SWILLEY: Thank you, Your Honor, if it please the
20 Court. Ms. Barr. Good afternoon, ladies and gentlemen.

21 (Whereupon, the jurors reply: Good afternoon.)

22 MS. BARR: Let me get this out of your way.

23 (Whereupon, there is a pause in the proceedings as the
24 evidence is returned to the bag marked as State's Exhibit
25 Number 5.)

1 MR. SWILLEY: Ladies and gentlemen, you have a choice to
2 make. You probably made a choice this morning, like Ms. Barr
3 talked about, when you went to the polls. You have a choice
4 to make this afternoon. Ladies and gentlemen, it's up to you
5 to make the right choice, okay, the right choice. Now, who
6 decides what is the right choice? Y'all do.

7 If you remember during my opening statement I told you
8 there were going to be some questions that are left
9 unanswered, questions that are left unanswered that aren't
10 going to leave you comfortable with doing what the State wants
11 you to do, what the government wants you to do, which is in
12 this case convict my client of the crimes for which he is
13 charged.

14 Ladies and gentlemen, it's important in a case like this
15 that you see all the questions that are going to be left
16 unanswered. First and foremost, at the beginning, you know,
17 you heard from -- you heard from three factual witnesses from
18 Williamsburg County, the county that you all live in. They
19 gave their version of the story and I'm going to show you a
20 piece of the video that's in evidence and I want to ask you --
21 now that that video is in evidence, when you go back in the
22 jury room to decide the right decision, I'm going to ask that
23 you watch it and I want you to ask yourself is what was said
24 during trial does it match up with what you see on the video.
25 Okay?

1 When Deputy Hayes said that he was out patrolling the
2 area over in the Holywoods community, just patrolling it and
3 he just happened to run into Mr. Vice, okay, during the video
4 while he's driving about 20 miles an hour and he's just turned
5 off Mr. Vice's street, does that make sense? Does that add
6 up? The fact that he was on his street patrolling the area
7 and he says he sees Mr. Vice, the car, recognizes him, and
8 then says later on that he had never seen it before. He whips
9 his car in front of him because he says he was driving left of
10 center. Now, let me show you real quick. Thank you for
11 bearing with me for one second.

12 (Whereupon, a portion of the video marked as State's
13 Exhibit Number 3 is played in the courtroom.)

14 MR. SWILLEY: The question you have to ask yourself from
15 that jury room is did he drive left of center and if not --
16 and you just saw that he didn't -- what else do you not
17 believe? It's up to you.

18 But, ladies and gentlemen, there's a very important thing
19 called credibility that you all have to gauge. Credibility,
20 believability. Okay? If one thing proves not to be true,
21 what else is not true? All right.

22 Now, later on, after the chase ensued, you see a bag fly
23 out the window, okay, and you know people ran up to it, but
24 nobody was interviewed. Nobody around that area was
25 interviewed. Law enforcement was very adamant in saying that

1 he rushed the bag before anybody touched it, but they left out
2 any and all names of anybody else who was around and no other
3 reports except for the one Deputy Hayes came out with even
4 though there were several other deputies involved.

5 When you get to the point where Mr. Vice is, they were --
6 they were very adamant in throwing the bag on top of the car
7 in front of the camera showing all the drugs, counting the
8 money out they had taken out of Mr. Vice in front of the
9 camera, but somehow not counting up all the money he had in
10 his back pocket, the thousands of dollars.

11 Well, why did they do that? I don't know, but what it
12 creates is a series of things and questions that have been
13 left unanswered. Questions that had Mr. Vice really been
14 guilty of the things for which he was accused would have been
15 answered.

16 Ladies and gentlemen, I'm going to stress again you watch
17 that tape and try to recall the things that you've heard and
18 you've got to make a decision. Am I okay with this? Am I
19 going to do what the government is asking me to do? Am I
20 going to give it my stamp of approval? Do I like this? Am I
21 going to sign off and say okay?

22 Because, ladies and gentlemen, at the end of the day you
23 guys live in Williamsburg County. I go back to the beach.
24 This is your county. You have to decide what you want to do,
25 what's right for your county, whether or not you give this the

1 okay, the thumbs up, or you're going to give it the thumbs
2 down and say no, you haven't been completely truthful with me.
3 So you know what? I'm not going to do what you ask me to do.
4 You know what? That's not right. Answer the questions. Be
5 truthful with me, a citizen of this county, and answer the
6 questions that I have.

7 Now, if you go into your favorite restaurant and you
8 order your favorite -- your favorite soup -- let's just say
9 you like soup and you get soup and the waiter brings it over
10 and you start eating soup. Somehow the soup doesn't taste
11 right. I don't like it. I don't like it today. Something is
12 wrong with this soup. Are you going to keep eating that soup?
13 Are you going to keep eating until it's empty or are you going
14 to call the waiter back over and say there's something wrong
15 with this soup, please take it back? Fix it. That's what
16 you're going to do and that's what you have to do today.

17 The right decision is to say you know what? I don't like
18 what you did. I don't like the way you did it and I'm not
19 going to approve of it and that's final and that's your
20 decision. It doesn't reach the point of beyond a reasonable
21 doubt, the evidence that you saw, because he's not guilty.

22 You know, Ms. Barr came out in her closing and said, you
23 know, you have to -- Mr. Vice is responsible for his conduct.
24 You know what else? Everybody else is responsible for their
25 conduct, too. Proper -- proper measures could have been taken

1 to assure that these unanswered questions were answered had
2 they wanted to. Something just doesn't taste right. There's
3 something wrong with this soup.

4 If you recall, during my opening statement, there's three
5 things -- there's three hard line principles mandated by our
6 constitution that exist in a criminal case. Number one, the
7 defendant is presumed innocent. Mr. Vice sits over there and
8 he's innocent. The State has to -- has the burden of proof.
9 The burden is on them to prove whatever they want to prove.
10 Third, the burden lies at beyond a reasonable doubt and that's
11 the most important. Not more likely than not, but beyond a
12 reasonable doubt.

13 The judge -- our judge here is going to charge you all on
14 what a reasonable doubt is. You can't equate any kind of
15 number to it, but you can say it's a doubt that would cause a
16 reasonable person to hesitate. I don't know how helpful that
17 is, but I'll tell you beyond a reasonable doubt would be if
18 tonight when you go home to Kingstree, Greeleyville, wherever
19 you live, and you lay your head on a pillow and you can go to
20 sleep and be happy with doing what the government wanted you
21 to do and fall asleep easily. Because if you don't, if you're
22 laying there -- if you lay there awake and you think, well, he
23 acted like -- he said he was on patrol, but he acted like he
24 was looking for him on the video. He never interviewed
25 anybody else. I never heard from anybody else other than law

1 enforcement.

2 There's no fingerprints on any of that bag, which there
3 had to have been if David Vice would have ever touched it.
4 There was no DNA that was taken off anything, which there
5 would have been had David Vice ever touched it. What about
6 that money? There's questions that need to be answered.

7 I know you've been here paying very good attention all
8 day and I -- I think that everybody is very appreciative, but
9 to be honest it's not over. You have to make the right
10 decision. Let me tell you something. The right decision
11 might not be the most popular decision, but it's still the
12 right decision. If it was the most popular decision, it
13 wouldn't be the right decision. It would be the easiest
14 decision. But it's up to you all to decide what you're going
15 to tolerate, what you want, what you're okay with in your
16 county.

17 Now, this is the most powerful -- this is the most power
18 you're ever going to have, especially today because you did
19 something this morning to exercise your power, your choice
20 over what the government does and right now you have the same
21 thing, but it's not just who's going to -- who's going to get
22 that job in Washington, D.C. It's who's going to get their
23 freedom kept or taken away and there's not a whole lot more
24 power you could have. So the choice is yours. Are you going
25 to make the right decision?

1 Ladies and gentlemen, if there's been anything that I've
2 done or said that's -- that you found offensive or obnoxious,
3 let me go ahead and apologize right now, but that's -- if
4 that's the case, put that on me. Don't take that out on my
5 client. It's my fault. I'll take the blame. Let me
6 apologize for what happened. Thank you for listening so
7 patiently.

8 THE COURT: Ladies and gentlemen, let's stand for just a
9 moment and stretch.

10 (Whereupon, the jurors comply.)

11 THE COURT: All right. Mr. Foreman and members of the
12 jury, you've heard the testimony, the evidence, and the
13 arguments of the State and the defendant. I will now explain
14 to you the law that applies to this case.

15 Under the Constitution and laws of South Carolina, you
16 are the finders of the facts in this case. I do not have the
17 right to pass upon the facts or to even express any opinion
18 that I might have as to them because this is a matter solely
19 for you the jury to determine. As jurors then, it is your
20 duty to determine the effect, the value, the weight, and the
21 truth of the evidence presented during this trial.

22 You are also the judges, the sole judges of the
23 credibility, that is the believability, of the witnesses who
24 have testified and of the evidence which has been presented
25 during this trial. In passing upon credibility, you may take

1 into consideration many things, such as the demeanor or the
2 manner of testifying, whether the witness had reason to be
3 biased or prejudiced, or whether a witness's testimony was
4 contradicted on the one hand or supported and corroborated on
5 the other hand.

6 All these things you will consider, bearing in mind that
7 you should give the defendant the benefit of any reasonable
8 doubt. It becomes your duty as jurors to analyze and to
9 evaluate the evidence and determine that evidence which
10 convinces you of its truth.

11 Now, as the trial judge, it is my responsibility to
12 preside over the trial of this case and to rule upon the
13 admissibility of the evidence offered during the trial. You
14 are to consider only the testimony which has been presented
15 from this witness stand, together with any exhibits which have
16 been made a part of the record.

17 I have the additional duty to charge you the law
18 applicable to this case and, as the presiding judge, I am the
19 sole judge of the law of this case. It is your duty as jurors
20 to accept as correct the law which I apply -- which I state to
21 you and apply the law to the facts as you find them and then
22 reach your verdict. And finally, I charge you in this regard,
23 that you should not be concerned with what you think the law
24 ought to be, but rather what I charge you the law is.

25 Now, the fact that the defendant was arrested and charged

1 and indicted is not evidence in this case and cannot be
2 considered by you as evidence of guilt in this case, nor does
3 it create any presumption or inference of guilt. The
4 indictment is simply the formal written instrument which
5 contains the charges made against the defendant. An
6 indictment is a formal document by which a case is brought
7 into court.

8 The indictment in this case alleges three different
9 offenses against the defendant. The charges are failure to
10 stop for a blue light, possession with intent to distribute
11 marijuana, and trafficking more than 28 grams but less than
12 100 grams of cocaine.

13 The charges are separate and distinct offenses. You must
14 decide each charge separately on the evidence and the law
15 applicable to it uninfluenced by your decision as to any other
16 charge. The defendant may be convicted or acquitted on any or
17 all of the charges the defense is charged and you will be
18 asked to write on the -- the verdict form a separate verdict
19 of guilty or not guilty for each charge.

20 The defendant has pled not guilty to the charges in the
21 indictment and that plea places the burden on the State to
22 prove the defendant guilty. A person charged with committing
23 a criminal offense in South Carolina is never required to
24 prove himself innocent and I charge you that it is an
25 important rule of the law that the defendant in a criminal

1 trial, no matter what the seriousness of the charges may be,
2 will always be presumed to be not guilty of the crimes for
3 which the indictment was issued unless guilt has been proven
4 by evidence satisfying you of that guilt beyond a reasonable
5 doubt.

6 The presumption of innocence does not end when you begin
7 your deliberations, but it accompanies the defendant
8 throughout the trial until you reach a verdict of guilt based
9 on evidence satisfying you of that guilt beyond a reasonable
10 doubt. The presumption of innocence is like a robe of
11 righteousness placed about the shoulders of the defendant
12 which remains with the defendant until it has been stripped
13 from the defendant by evidence satisfying you of the
14 defendant's guilt beyond a reasonable doubt.

15 Now, the presumption of innocence is not a mere legal
16 theory. It's not just a legal phrase. It is a substantial
17 right to which every defendant is entitled unless you, the
18 jury, are satisfied from the evidence of the defendant's guilt
19 beyond a reasonable doubt.

20 The State must prove the defendant guilty beyond a
21 reasonable doubt. So what is a reasonable doubt in the law?
22 A reasonable doubt is a doubt which makes an honest, sincere,
23 conscientious juror in search of the truth to hesitate to act.
24 Proof beyond a reasonable doubt must therefore be proof of
25 such a convincing character that a reasonable person would not

1 hesitate to rely and act upon it in the most important of his
2 or her own affairs.

3 Proof beyond a reasonable doubt can also be described as
4 proof that leaves you firmly convinced of the defendant's
5 guilt. Now, there are very few things in this world that we
6 know with absolute certainty and in criminal cases the law
7 does not require that proof overcomes every possible doubt.

8 If based on your consideration of the evidence you are
9 firmly convinced that the defendant is guilty, then you must
10 find him guilty. If on the other hand you think that there is
11 a real possibility that he is not guilty, you must then give
12 him the benefit of the doubt and find him not guilty.

13 Now, I instruct you and emphasize that the fact that the
14 defendant did not testify is not a factor to be considered by
15 you in any way in your deliberations and in your consideration
16 of the question of guilt or innocence of the defendant. It
17 must not be considered by you in any manner whatsoever. A
18 defendant has the constitutional right to remain silent and
19 the assertion of this right must not be considered by you in
20 your deliberations.

21 I repeat, under your oath, you are to draw no conclusions
22 whatsoever from the fact that the defendant in this case did
23 not testify. The fact that the defendant did not testify
24 should not even be discussed in the jury room. The burden of
25 proof, as I stated to you, is on the State. The defendant is

1 not required to prove his innocence. The burden of proof
2 remains on the State to prove guilt beyond a reasonable doubt.

3 The defendant is charged with failing to stop for a blue
4 light. In order to prove this crime, the State must prove
5 beyond a reasonable doubt that the defendant was driving a
6 motor vehicle, that the defendant was driving the motor
7 vehicle on a road, street or highway of this state, that the
8 defendant was signaled to stop by a law enforcement vehicle by
9 a means -- by means of a siren or flashing light, and that the
10 defendant did not stop.

11 In determining whether or not there are mitigating
12 circumstances which would justify the defendant's failure to
13 stop for the blue light, you may consider actual road
14 conditions, actual road conditions, other conditions such as
15 lighting and weather, officer, driver and/or passenger safety,
16 and any other circumstances you believe to reasonably mitigate
17 the alleged violation. An official signal requiring a --
18 requiring a motorist -- motorist to stop may be a siren or
19 flashing lights, but both are not required.

20 An attempt to increase the speed of a vehicle or in some
21 other manner avoid the pursuing law enforcement vehicle when
22 signaled by a siren or flashing light may be considered as
23 evidence of failure to stop for a blue light. However, it is
24 merely an evidentiary fact to be taken into consideration by
25 you along with all the other evidence in the case and to be

1 given the weight that you decide it should receive.

2 The defendant is charged with possession with intent to
3 distribute marijuana. The State must prove beyond a
4 reasonable doubt that the defendant possessed marijuana with
5 the intent to distribute it. To prove possession, the State
6 must prove beyond a reasonable doubt that the defendant had
7 both the power and the intent to control the disposition or
8 use of the marijuana.

9 Possession may be either actual or constructive. Actual
10 possession means that the defendant was in the actual physical
11 custody. It means that the marijuana was in the actual
12 physical custody of the defendant. Constructive possession
13 means that the defendant had dominion and control or the right
14 to exercise dominion or control over either the marijuana
15 itself or the property on which the marijuana was found.

16 Mere presence at the scene where the drugs were found is
17 not enough to prove possession. Actual knowledge of the
18 presence of the marijuana is strong evidence of the
19 defendant's intent to control its disposition or use. The
20 defendant's knowledge and possession may be inferred when a
21 substance is found on the property under which the defendant
22 -- found on the property under the defendant's control.
23 However, this inference is simply an evidentiary fact to be
24 taken into consideration by you along with the other evidence
25 in this case and to be given the weight you decide it should

1 have.

2 Distribute means to deliver rather than administering or
3 dispensing a -- or dispensing a drug. Intent may be shown by
4 acts and conduct of the defendant and other circumstances from
5 which you may naturally and reasonably infer intent.

6 In determining whether the defendant had the intent to
7 distribute the marijuana, you may consider the circumstances
8 surrounding the defendant's alleged possession. You may
9 consider the amount of the substance alleged to have been
10 possessed, the manner in which it was allegedly possessed, the
11 place where it was allegedly possessed, and other factors
12 which you consider to be important. You must find that the
13 defendant did not intend to have the marijuana solely for his
14 own use.

15 If you find that the State has failed to prove beyond a
16 reasonable doubt that the defendant is guilty of possession
17 with intent to distribute marijuana, you may consider whether
18 the State has proved beyond a reasonable doubt that the
19 defendant is guilty of simple possession of marijuana. Simple
20 possession does not require an intent to distribute the
21 marijuana.

22 The defendant is charged with trafficking in cocaine.
23 The State must prove beyond a reasonable doubt that the
24 defendant was knowingly in actual or constructive possession
25 of cocaine. The State must also prove beyond a reasonable

1, doubt that the amount of the cocaine or any mixture containing
2 cocaine was 28 grams or more, but less than 100 grams.

3 Knowingly means with knowledge, consciousness, not
4 accidentally. Intentionally means willfully, intending the
5 result which actually occurs, not accidentally or involuntary.
6 Actual possession means that the cocaine was in the actual
7 physical custody of the defendant. Constructive possession
8 means that the defendant had dominion and control or the right
9 to exercise dominion or control over either the cocaine itself
10 or the property on which the cocaine was located.

11 Now, Mr. Foreman and members of the jury, I'm required to
12 charge you the law as I have done through these instructions
13 now being given to help guide you to a just and lawful
14 verdict. Whether some of these instructions will apply will
15 depend upon what you find to be the facts. The fact that I
16 have instructed you on various subjects on this case must not
17 be taken as indicating an opinion of this Court as to what you
18 should find to be the facts or what your verdict should be.

19 In conclusion, you've been selected by both the State and
20 the defendant to be fair and impartial jurors. It is your
21 duty then in your joint deliberations to determine the truth
22 in this case, giving the defendant the benefit of every
23 reasonable doubt on each and every charge and from the facts
24 which you determine to be true, you take and apply the law
25 which I have just given you and thus arrive at a verdict which

1 speaks the truth in this case.

2 I've told you the standards you have to apply to the
3 charge of failure to stop for a blue light, possession with
4 intent to distribute marijuana, and trafficking in cocaine 28
5 grams or more, but less than 100 grams. I will give you a
6 copy of these instructions in written form. During your
7 deliberations, you may refer to the instructions to guide your
8 decision making. You must consider the instructions as a
9 whole and not follow some and ignore others.

10 You've heard the evidence and now you've heard the law.
11 Whatever your verdict as to the respective charges, Mr.
12 Foreman, you will indicate it on the verdict form by writing
13 guilty or not guilty as it relates to each particular charge.

14 For failure to stop for a blue light, guilty or not
15 guilty. Possession with intent to distribute marijuana,
16 guilty of possession with intent to distribute marijuana or
17 guilty of simple possession of marijuana or not guilty. And
18 trafficking in cocaine more than 28 grams, but less than 100
19 grams, either guilty or not guilty.

20 Now, certainly there's -- there is no significance in
21 which -- in the order in which I stated the possible verdicts.
22 Simply one must be stated before the other and, Mr. Foreman,
23 you will check the appropriate box representing the verdict of
24 the jury as to each charge. You will then sign and date the
25 verdict form.

1 Remember that all -- although the foreperson is the only
2 juror who writes the verdict, it is not his alone. The
3 verdict has to be a unanimous verdict and, Mr. Foreperson, Mr.
4 Foreman, you're not authorized to write the verdict until all
5 of you have agreed as to what the verdict should be.

6 Now, ladies and gentlemen, I'm going to send you to your
7 jury room, all of you except our remaining alternate, but do
8 not begin to discuss the case until you have received a copy
9 of this jury charge, the exhibits, and the verdict form. Once
10 you receive these things, that would be your signal to begin
11 your deliberations.

12 Once you begin your deliberations, you will deliberate
13 until you have reached a verdict and at which time you will
14 knock on the door, advise the bailiffs, and we will bring you
15 out to receive your verdict and, Mr. Foreperson, it will be
16 your responsibility to preside over the jury deliberations. I
17 ask that all of you now return to the jury room except for Ms.
18 Whitaker and we will send those things in so that you can
19 begin your deliberations.

20 (Whereupon, the jury exits the courtroom at 2:55 p.m.)

21 THE COURT: And, Ms. Whitaker, I'll get with you in just
22 a moment. If you could, stay right there. Any additions or
23 exceptions to the jury charge?

24 MS. BARR: No, Your Honor.

25 MR. SWILLEY: Your Honor, just to protect the record on

1 appeal, I would -- I would just -- I have an objection to
2 where you mentioned -- you used the term inferred for property
3 under which the defendant controls as far as possession. Your
4 Honor, I just -- just for the record on appeal, I just object
5 and say that's a comment on the facts, as well as comments
6 about a verdict that speaks the truth. I think that would
7 undermine the objective of the jury to determine if there's
8 proof beyond a reasonable doubt.

9 THE COURT: I guess you're leaning on that most recent
10 opinion that ---

11 MR. SWILLEY: I am.

12 THE COURT: --- came out and commented on Judge Russo's
13 colloquy with everyone, but I don't think that -- I don't
14 think it reaches to every word a judge says. That -- I follow
15 a script pretty closely.

16 MR. SWILLEY: Yes, sir.

17 THE COURT: That's what I followed in this case. All
18 right. If you all will, review the matters to be submitted to
19 the jury.

20 (Whereupon, counsel examines the exhibits to be sent back
21 to the jury and confirms the admitted exhibits.)

22 MR. SWILLEY: Your Honor, do you want us to take a TV
23 back in there as well? Is there a television back there? Is
24 there one that they could use?

25 MS. BARR: Well ---

1 viewed by the jury through some stipulation or get some court
2 ruling or otherwise the -- those -- the exhibit itself goes
3 in, but you didn't put any TVs and VCRs and other things in
4 evidence.

5 So if requested, then the jury will be brought out and it
6 showed and played on whatever you want played in open court.
7 But I know of no other means of resolving this other than
8 arranging it to send things back to the jury room to play
9 exhibits on.

10 All right. All right. Here are the instructions and the
11 verdict form and then the exhibits and they can have that.
12 All right. All right.

13 (Whereupon, the evidence and verdict form are delivered
14 to the jury room at 3:03 p.m. and the deliberations
15 begin. There is a break in the proceedings until 4:00
16 p.m.)

17 MR. SWILLEY: Your Honor, as to the note, did it say they
18 wanted to see the whole thing or just the video?

19 THE COURT: It says may we see the video please.

20 MR. SWILLEY: Your Honor, all -- I don't have a problem
21 with them seeing the whole video as long as the sound it cut
22 off at 19 minutes. That's -- the whole thing is fine with me.

23 THE COURT: All right. Well, we're going to take a three
24 minute break and then we're going to play the video and, Ms.
25 Barr, you need to cut it off at 19 -- or cut the sound down at

1 19 on it I guess.

2 MS. BARR: I went ahead and muted it, Judge.

3 THE COURT: Okay and you muted it at 19?

4 MS. BARR: I muted it from the start unless you want to
5 hear ---

6 THE COURT: No. They want to know whether or not there
7 -- they want to -- they want to see it. They want to hear it
8 as well up to 19 minutes.

9 (Whereupon, there is a pause in the proceedings as the
10 video is prepared for viewing.)

11 THE COURT: All right. You can bring them on.

12 (Whereupon, the jury enters the courtroom at 4:04 p.m.)

13 THE COURT: All right, Mr. Foreman and members of the
14 jury, you said you wanted to see the video. We will play the
15 video. Now, ladies and gentlemen, listen. You can only
16 discuss it in the jury room. So don't talk about this here.

17 (Whereupon, State's Exhibit Number 3, the dash cam video,
18 is played in open court. NOT TRANSCRIBED HEREIN.)

19 THE COURT: Is that sufficient? Mr. Foreman, is that
20 sufficient?

21 THE JURY FOREMAN: Yes, sir. Can I ask one question?

22 THE COURT: You can write your questions down if you need
23 to pose any. All right. Thank you. If you all will, go back
24 to the jury room. Thank you very much.

25 (Whereupon, the jury exits the courtroom at 4:15 p.m.)

1 THE COURT: All right.

2 (Whereupon, there is a break in the proceedings from 4:16
3 p.m. until 4:21 p.m.)

4 THE COURT: And you can bring the jury in. The question
5 is was the blue light on at the start of the chase. That's
6 the jury's question. Hold them just for a second, Mr.
7 Frazier. Hold them just for a moment, just for a second.

8 I usually confer with the lawyers before I bring the jury
9 in. The question: was the blue light on from the beginning
10 from the start of the chase? That's the jury question. What
11 do you say? What says the State?

12 MS. BARR: Your Honor, I think that's obviously a
13 question of fact and what I've seen you do when similar
14 questions are asked in other trials is explain to the jury
15 that they're the finders of fact and they'd have to I guess
16 answer that question during the course of their deliberations.

17 MR. SWILLEY: I'd be in concurrence with that, Your
18 Honor. I think any -- any answer to that would be a comment
19 on the facts.

20 THE COURT: All right. Let's bring them out.

21 (Whereupon, the jury enters the courtroom at 4:23 p.m.)

22 THE COURT: All right, Mr. Foreman, members of the jury,
23 you sent out a question. Was the blue light on at the begin
24 -- on at the beginning from the start of the chase?

25 Now, I'm not a member of the jury; I'm the judge. You

1 all are on the jury. As I stated to you at the beginning of
2 the trial and at the end of the trial, your job is to listen
3 to the facts and listen to the evidence and then to deliberate
4 and decide the case based on the evidence presented during the
5 course of the trial. The witnesses have testified.

6 They're -- it's improper for me to comment upon the fact
7 -- facts that were expressed and any opinion that I might have
8 as to them because it is solely a matter for you, the jury, to
9 determine based on the facts presented during the trial. You
10 can't ask me questions as to who said what and who testified
11 to what and so forth and so on. Your role as a juror is to
12 listen, to pay attention during the trial, then to deliberate
13 after you have heard it -- heard the testimony, the evidence,
14 and the law. So with that, I ask that you go back and
15 continue your deliberations.

16 (Whereupon, the jury exits the courtroom at 4:25 p.m.)

17 THE COURT: Any additional exceptions to the charge by
18 the State?

19 MS. BARR: No, sir, Your Honor.

20 MR. SWILLEY: Not from the defense, Your Honor.

21 THE COURT: All right. We're back at ease and we'll
22 continue on with the last person if he can be found.

23 (Whereupon, there is a break in the proceedings until
24 4:30 p.m. at which time the jury indicates that a verdict
25 has been reached.)

VERDICT

1
2 THE COURT: All right. I understand that there -- the
3 jury has a verdict so you can bring them out.

4 (Whereupon, the jury enters the courtroom at 4:30 p.m.)

5 THE COURT: Mr. Foreman, if you would, stand only. Mr.
6 Foreman only. Okay.

7 THE CLERK: Mr. Foreman, have you reached a verdict?

8 THE JURY FOREMAN: Yes.

9 THE CLERK: Is it unanimous?

10 THE JURY FOREMAN: Yes.

11 THE CLERK: Please hand it to the bailiff.

12 THE JURY FOREMAN: All right.

13 THE CLERK: Please hand it to me.

14 (Whereupon, the Clerk passes the verdict form to the
15 Court for review.)

16 THE COURT: All right. The defendant will stand. You
17 may be seated, Mr. Foreman. Madam Clerk, you may publish the
18 verdict.

19 THE CLERK: State versus David Romonte Vice. We, the
20 jury, by unanimous consent as to the offense of failure to
21 stop for blue light ---

22 THE COURT: To the charge of?

23 THE CLERK: As ---

24 THE COURT: That's what the offense. I'm sorry.

25 THE CLERK: As to the offense of failure to stop for a

1 blue light, we, the jury, find the defendant guilty.

2 As to the offense of possession of marijuana, we, the
3 jury, find the defendant guilty of possession with intent to
4 distribute marijuana.

5 As to the offense of trafficking more than 28 grams, but
6 less than 100 grams of cocaine, we find the defendant guilty.

7 If these are your verdicts, so say you all and please let
8 it be known by raising your right hands.

9 (Whereupon, all jurors raise their right hand.)

10 THE CLERK: Thank you.

11 THE COURT: Any additional polling requested?

12 MR. SWILLEY: I request to poll the jury, Your Honor.

13 THE COURT: All right. If you will, poll the jurors
14 individually, Madam Clerk.

15 THE CLERK: Okay. Janice Barr.

16 THE COURT: Madam Clerk, the -- the verdict form that
17 says as to the offense of marijuana, the offense charge was
18 possession with intent to distribute marijuana so, if you
19 will, have the jury respond reading it as to the offense of
20 possession with intent to distribute marijuana instead of the
21 offense of possession of marijuana.

22 THE CLERK: With intent.

23 THE COURT: Possession with intent to distribute
24 marijuana. You can read it from the indictment if you want
25 to.

1 THE CLERK: Frankie Fisher, were those your verdicts and
2 are those still your verdicts?

3 JUROR FISHER: Yes.

4 THE CLERK: Clementine Weaver Franklin, were those your
5 verdicts and are those still your verdicts?

6 JUROR FRANKLIN: Yes.

7 THE CLERK: Carlia McFadden, were those your verdicts and
8 are those still your verdicts?

9 JUROR MCFADDEN: Yes.

10 THE CLERK: Sandy Williams, were those your verdicts and
11 are those still your verdicts?

12 JUROR WILLIAMS: Yes.

13 THE CLERK: Dantrell Harrison, were those your verdicts
14 and are those still your verdicts?

15 JUROR HARRISON: Yes.

16 THE CLERK: That completes the polling.

17 THE COURT: All right. The jury has been polled and the
18 verdict is a unanimous verdict of each and every juror. Mr.
19 Swilley, are there any post-trial motions?

20 MR. SWILLEY: Yes, Your Honor, but you may -- you may
21 want to hear these outside of the presence of the jury. I
22 don't know if you want to dismiss them before that.

23 THE COURT: I'll retain the jury. The jury can hear --
24 be here to hear those motions.

25 MR. SWILLEY: Your Honor, I just make a motion for a new

1 trial pursuant to several of the objections I had, the
2 instance of testimony to prior bad acts, as well as the not
3 having a witness identify the defendant in court. I would
4 just make a motion for a new trial as to that.

5 THE COURT: All right. Ms. Barr?

6 MS. BARR: Your Honor, as it relates to evidence of prior
7 bad acts, I believe that that was excluded during a pre-trial
8 motion and I don't believe any evidence of any prior bad acts
9 actually came before this jury and, Judge, we would submit
10 that the witnesses have properly identified the defendant,
11 David Vice, as the individual who threw the bag from the
12 vehicle back on December 19th of last year and, Judge, we would
13 respectfully request that the motion for a new trial be
14 denied.

15 THE COURT: He's referring to prior bad acts with the
16 officer saying that he blocked the road because he -- he knew
17 that he would run or he's been known to run. I think that's
18 what he said.

19 MR. SWILLEY: That's correct, Your Honor.

20 MS. BARR: And -- and, Your Honor, to the extent that the
21 Court may have held that that was improper, Your Honor, you
22 gave a curative instruction for the -- for the jury to
23 disregard that portion of the witness's testimony and we would
24 submit that that was sufficient.

25 THE COURT: All right. I think that both during the --

1 the defense counsel's opening statement as well as the defense
2 counselor's questioning of the witness, the -- the responses
3 were solicited to the extent that the officer has a right to
4 explain why -- why he did what he did and he elected to block
5 the road to prevent Mr. Vice from getting by.

6 Of course, when that testimony was given during the
7 trial, out of an abundance of caution I sustained the
8 objection and gave a curative instruction having the jury
9 disregard that testimony. I think that that fairly -- fairly
10 addressed that issue in addition to that to the extent that
11 that might have been something that should not have been
12 introduced, the evidence is otherwise overwhelming that the --
13 the defendant is guilty.

14 Of course, the proof is in the pudding and despite the
15 officer's best efforts, he didn't stop anyway. He whipped it
16 around and went back another direction. So the officer
17 demonstrated some wisdom in doing what he did, particularly in
18 light of Mr. Vice's actions subsequent thereto.

19 So I respectfully deny the motion. Anything else before
20 sentencing?

21 MR. SWILLEY: By way of mitigation, Your Honor?

22 THE COURT: No, before we proceed to sentencing.

23 MR. SWILLEY: There is not.

24 THE COURT: All right. Ladies and gentlemen, your job is
25 done. Thank you very much. Now, whenever a jury finds a

1 THE COURT: Madam Clerk, these moments are so precious,
2 as you well know.

3 THE CLERK: Yes, they are and I cherish each one of them.
4 It's a bittersweet moment, but I solicit your blessings.

5 (Whereupon, the jury is released at 4:39 p.m. All jurors
6 remain in the courtroom.)

7 SENTENCING HEARING

8 THE COURT: All right, very good. Ms. Barr?

9 MS. BARR: Your Honor, I'll hand you the sentencing
10 sheets.

11 THE COURT: Prior record?

12 MS. BARR: Your Honor, the defendant was convicted in
13 2003 for simple possession of marijuana. In 2004, he was
14 convicted of assault and battery of a high and aggravated
15 nature. He was sentenced to 7 years. He was convicted in
16 2005 of unlawful carrying of a pistol where he also -- he
17 received a one year sentence.

18 It looks like he picked up another possession of
19 marijuana charge and that was what it looks like may have
20 violated his probation on the aggravated assault charge. Your
21 Honor, in addition, Mr. Vice had several DUI and driving under
22 suspension offenses which resulted in his driver's license
23 being suspended -- it looks like consistently since 2005.

24 Judge, he has a pending charge with our county for
25 possession with intent to distribute cocaine, unlawful

1 carrying of a pistol, resisting arrest, and failure to stop
2 for a blue light. That incident actually happened in April of
3 2011, so about eight months before his arrest in this case,
4 and during one of the pre-trial motions when Deputy Hayes
5 talked about him being -- the defendant being known to run
6 from law enforcement, it was related to that prior charge of
7 failure to stop for a blue light and siren and resisting
8 arrest. But, Judge, that's essentially the extent of his
9 record.

10 THE COURT: All right. Mr. Swilley?

11 MR. SWILLEY: Your Honor, I'm not -- just -- before I
12 begin mitigation, just in response to Ms. Barr, I don't see --
13 based upon my understanding, I don't think Mr. Vice has ever
14 been on probation. I don't see a conviction for possession of
15 marijuana, just for the unlawful carrying of a pistol.

16 THE COURT: You say he's never been on probation?

17 MR. SWILLEY: Not -- not -- not to my understanding.

18 THE COURT: All right. We have Mr. Smith and is that Mr.
19 Wilson back there?

20 MR. SMITH: Yes, sir.

21 MR. WILSON: Yes, sir.

22 THE COURT: Head man? They'll -- they'll -- they'll
23 confirm all of that.

24 MR. SWILLEY: Okay. Just as to his convictions, all I'm
25 seeing is an ABHAN in '04 and the carrying of a pistol. Your

1 Honor, David came into my office -- excuse me.

2 THE COURT: I'm listening to you.

3 MR. SWILLEY: David came into my office on Friday, last
4 Friday. I had never met him before. He hired me and then, of
5 course, I had to be in court on Monday. So I haven't gotten
6 to know him as well as I'd like, as well as I try to get to
7 know some of my other clients.

8 Your Honor, he just -- he's very concerned about his
9 family. He has three small children. He has a child, Jaylah,
10 who is six, Tamao, who is four, and Kamaya, who is seven
11 months. They all live with him. He also -- he supports them
12 all. He lives with his fiancée, Latoya Cooper.

13 He's just -- in my interactions with him, he's been very
14 polite. He's been very courteous. He's been very mild-
15 mannered. We haven't shared a terse word. He's maintained a
16 very, very friendly demeanor.

17 Your Honor, I would just ask that you not punish him for
18 exercising his right to a trial. Of course, that's one of his
19 constitutional rights and -- and try to sentence him with --
20 with a sense of mercy and leniency. He's only 27 years old.
21 He has a lot of life ahead of him. I'm sure he's very
22 apologetic for his actions. There wasn't a lot of time in
23 this matter to discuss any kind of alternative route other
24 than a trial. So I just ask the Court to keep that in mind as
25 well.

1 He's a lifetime resident of Kingstree. He graduated from
2 Wil Lou Gray School. His past employment has been plant work,
3 manual labor. He's worked in restaurants. He doesn't have
4 any kind of formal education subsequent to high school, which
5 I think explains some of the activity he's been involved in
6 since he was -- since he was young.

7 Judge, just in summation, I don't think David is a
8 malicious person or an angry person. He's just made some
9 serious mistakes and I just ask the Court to give him some
10 mercy.

11 THE COURT: All right. Anyone else want to say anything
12 on his behalf?

13 MR. SWILLEY: Your Honor, I believe his father wishes to
14 address the Court.

15 THE COURT: All right. Yes, sir?

16 MR. VICE: Right here? Okay. I am David's father.

17 THE COURT: What's your name?

18 MR. VICE: David.

19 THE COURT: David?

20 MR. VICE: I am David R. Vice, Jr.

21 THE COURT: All right.

22 MR. VICE: And my father was named David. He's the third
23 and back I think maybe about a year or two ago, I had an
24 arrest. I had an accident, automobile.

25 THE COURT: All right.

1 MR. VICE: I hit a car in the back and I would like to
2 maybe have the record straight because I don't ever remember
3 him having a DUI, but I was charged with a DUI when I had the
4 accident.

5 THE COURT: All right. I think those DUIs were -- they
6 weren't last year. What years were they, Ms. Barr?

7 MS. BARR: There was a DUI from -- I'm showing a
8 conviction in July of 2011.

9 THE COURT: The other driving offenses, maybe they were
10 DUSs.

11 MR. VICE: 2011?

12 MS. BARR: Your Honor, according to the South Carolina
13 Department of Motor Vehicles driving record for David Romonte
14 Vice III, he was convicted of driving under the influence on
15 June 28th of 2011 and it related to the date of offense as
16 April 29th, 2011, which would have been the same date that he
17 had the prior drug charge with -- with the county.

18 THE COURT: The other driving offenses ---

19 MS. BARR: He ---

20 THE COURT: --- were what years?

21 MS. BARR: He had a driving under suspension cause date
22 of August the 4th, 2010. He was convicted on February 7th of
23 2012. I'm sorry. That's when that suspension started. He
24 was arrested for driving under suspension August 4, 2010. He
25 was convicted September 16th, 2010. He had a controlled

1 substance violation at the same time, August 4, 2010, and a re
2 ---
3 THE COURT: That wasn't you; was it?
4 MR. VICE: No.
5 THE COURT: Okay.
6 MS. BARR: He was convicted ---
7 MR. VICE: No, sir.
8 MS. BARR: He was convicted at the same time for the
9 controlled substance violation.
10 THE COURT: And he had other offenses in 2005, 2006, and
11 thereabouts?
12 MS. BARR: Yes, sir. He had another controlled substance
13 violation on August 29th of 2005 and another controlled
14 substance violation on January 3rd, 2003.
15 THE COURT: None of those are yours?
16 MR. VICE: (No audible response.)
17 THE COURT: All right. Okay. Mr. Vice, what else do you
18 want to tell me on behalf of your son?
19 MR. VICE: Well, I can understand the charges against him
20 and I'd like for the Court to go as lightly as possible
21 because -- simply because he's young. He's made a mistake.
22 THE COURT: All right. Thank you, sir.
23 MR. VICE: Thank you.
24 THE COURT: All right. Mr. Vice, anything you'd like to
25 say?

1 THE DEFENDANT: Um ---

2 THE COURT: By the way, if you all would, come around and
3 stand in front of me here.

4 (Whereupon, the defendant and his counsel comply.)

5 THE COURT: While you're thinking, Mr. Wilson or Keels or
6 Smith ---

7 MR. WILSON: Never on probation before, Judge.

8 THE COURT: Never on probation, okay.

9 THE DEFENDANT: I'd just like to say I have kids, you
10 know, and whatever this county or community feel that I did
11 wrong or whatever that nobody else did or nothing -- I mean
12 just take it as lenient and light as possible. I got kids.
13 That's all I got to say. I ain't got nothing to say.

14 (Whereupon, the defendant turns and walks away from the
15 bench.)

16 THE COURT: Where are you going? Stand right there.

17 THE DEFENDANT: I ain't got nothing to say.

18 THE COURT: You may not have anything to say, but I have
19 a lot to say. Where are you going?

20 THE DEFENDANT: Prison.

21 THE COURT: You're about to go someplace. You turned
22 your back as if you were walking away. It's an interesting
23 comment you made that whatever this community says that you
24 did that other people didn't do. I think that's the gist. Is
25 that the gist of what you got from that, Mr. Swilley?

1 MR. SWILLEY: I -- I believe that's what I heard.

2 THE COURT: And I guess I can take it from that that
3 because other people are involved in drugs, maybe they're drug
4 dealers or drug traffickers or drug users or otherwise
5 involved in drugs, that you should not be punished. Is that
6 what you are saying?

7 THE DEFENDANT: No, sir. I mean if I did anything wrong
8 to this community or county, I apologize for it. That what I
9 say all right and that's it. That's all. I ain't -- I could
10 say I don't want to go to prison because I don't need to
11 because I got kids, but I mean it all done. It don't matter
12 now I mean.

13 THE COURT: Well, you know, the -- the last excuse that I
14 accept when I sentence people is the excuse that because I
15 have kids and it's probably for the reason for the length of
16 time that I have been here involved in court in Kingstree, you
17 know, I've seen generations of people. I've seen the
18 grandfather to the son to the grandson and in most instances
19 the people who I see here, the thing that I see them teaching
20 their children are to follow in their footsteps and those same
21 children of people end up coming before me.

22 I don't accept the notion that, well, I have three
23 children, four children, five children and so therefore I
24 shouldn't be punished. Because those children, they see what
25 you do. They learn from the parents and they try to follow

1 their parents' footsteps, be it a drug dealer or otherwise.

2 Go ahead, sir.

3 THE DEFENDANT: Well, I don't mean just that I have three
4 children. I mean, well, I have three children that I love,
5 that I care for, that I should be there for that no one else
6 is going to be there for them like I will. You know, I don't
7 do wrong things around my children. That's all I got to say,
8 sir.

9 THE COURT: Now, your mother was here a little earlier.
10 She decided to leave?

11 THE DEFENDANT: Maybe so, sir.

12 THE COURT: Do you know where she went to?

13 THE DEFENDANT: I didn't get to speak with her. They was
14 all over me. I mean I couldn't look at nobody because they
15 kept on me.

16 THE COURT: Mr. Vice, you're going to say something?

17 MR. VICE: She had to go back to work.

18 THE COURT: She had to go back to work?

19 MR. VICE: Yes, sir.

20 THE COURT: Well, you're facing a lot. Failure to stop
21 for a blue light carries a minimum of 90 days, a maximum of
22 three years. Possession with intent to distribute marijuana
23 carries up to five years in prison and the big one is
24 trafficking in cocaine. Trafficking in cocaine carries a
25 minimum of seven years, a maximum of 25 years in prison and a

1 fine of \$50,000.

2 Whatever sentence you receive cannot be suspended and
3 that's the time that you have to do. So I'll hear anything
4 else anyone else wants to say about that.

5 MS. BARR: Judge, if I just may say, Mr. Swilley
6 indicated that he was just retained I believe not last Friday,
7 but the Friday before last. Is that correct?

8 MR. SWILLEY: Yes, ma'am.

9 MS. BARR: And Mr. Vice had had the services of attorney
10 Shaun Kent on the April 2011 case since December of last year
11 and he had Mr. Kent representing him on this particular case
12 in January of -- of this year and, Judge, I -- you probably
13 couldn't see the tape because while it was playing the
14 television set was facing the jury, but one of the things that
15 just -- kind of just ---

16 THE COURT: That's why I have in my rules of court that
17 the counsel is to submit a copy of all exhibits to the Court
18 so that I can follow what's being presented to the jury, but I
19 -- I viewed it prior during the pre-trial hearing. But go
20 ahead.

21 MS. BARR: Judge, one of the things that just kind of
22 concerned me -- I mean we prosecute -- I prosecute failure to
23 stop for a blue light cases all the time and I don't think it
24 was until I saw the video in this case when I really kind of
25 appreciated the danger that's posed not just to a defendant or

1 to law enforcement, but to people who have absolutely no
2 connection with the case.

3 In this videotape, you see children walking, pedestrians
4 walking, vehicles. To their credit, the drivers of those
5 vehicles are pulling over trying to get out of the way and we
6 know that those type situations where somebody is running from
7 the police when they have drugs in their -- their vehicle can
8 -- can go south really bad and it can end up being a very
9 tragic situation. I'm just grateful that nobody was hurt
10 during all this.

11 THE COURT: I've heard -- I've heard many cases where
12 people running from the police crash into innocent people,
13 paralyze them, kill them. Of course, we had the case here
14 with the trooper some years ago. Back in Jack McCrea's
15 heyday, Jack -- when the trooper was following this guy down
16 in toward Hemingway, was it -- was that trooper -- was his
17 name Perry?

18 THE CLERK: Mm-hmm, it was Perry.

19 THE COURT: Was it Perry?

20 THE CLERK: Mm-hmm.

21 THE COURT: Yeah, Trooper Perry chased this guy trying to
22 get him to stop and lost control of his patrol car and killed
23 him -- was killed and then here comes the same defendant
24 sympathetic claiming, you know, asking for mercy and all and
25 through his reckless driving he's killed -- he's caused the

1 death of a trooper.

2 Of course, he wasn't driving the trooper's car, but the
3 trooper was trying to stop him just like these troopers were
4 trying to stop you on that day, those deputies were, and it --
5 it is a -- it is one of the most serious offenses. Fortunate
6 for you, you didn't hit someone and -- and end up facing life
7 or death based on -- through no good fault of your own and no
8 good driving of your own. Of course, you're lucky you didn't
9 kill yourself as well and we've seen a lot of that happen.

10 But more significant than anything else is this
11 trafficking in cocaine and all of this marijuana which wasn't
12 weighed, but it -- it wasn't weighed, but it looked about
13 several pounds I'm sure.

14 MS. BARR: It was 800 -- over -- a little over 800 grams.

15 THE COURT: All right. So ---

16 MS. BARR: Almost two pounds.

17 THE COURT: Almost two pounds and then all of this
18 cocaine. I imagine that was to supply all the drug users or
19 dealers or whatever if you're packaging and plan to traffic it
20 and so we -- and I see all of those people, too. They end up
21 in the orange jumpsuits because they're hooked on it, stealing
22 from people, stealing from family, friends, stores, all kinds
23 of things they do to try to get it.

24 So when we -- when the laws are reserved -- the toughest
25 laws are reserved for the drug dealers. Mr. Vice, that would

1 be you because that's your role in the process. You know,
2 this wasn't -- you aren't a user. You're a trafficker.
3 You're one of the big boys. I mean the statute even includes
4 a person who brings it into the state through whatever means
5 or who finances it, all of those things, and -- and all of
6 that includes trafficking and that's exactly what you were
7 doing on that day.

8 And fortunately for Williamsburg County, for those same
9 citizens you were talking about, fortunately you were caught
10 because someone else would be suffering the consequences if
11 you weren't caught, if you had distributed everything that you
12 had to distribute, and so now the day of reckoning is here for
13 you and what more can you say, what more can anyone do.
14 You've made your choices as Ms. Barr stated in her closing and
15 no one else put you in that spot but yourself. Those are
16 choices that you made. You decided that that's the life you
17 want to live. Obviously, an intelligent young man from a good
18 family.

19 You know, the difficulty I have in being a judge here is
20 I end up knowing your people and I know your mother from -- we
21 had her on jury duty when some years ago. She was one of our
22 good jurors, a fine lady, but nevertheless I have a job to do
23 and I have to disregard all of that. So anything else you
24 would like to say before sentencing, Mr. Vice?

25 THE DEFENDANT: Well, one more thing. I didn't have any

1 intentions to hit any kids or any citizens or any pedestrians
2 and I didn't hit any.

3 THE COURT: I understand. No, that would be murder if
4 you did.

5 THE DEFENDANT: I didn't.

6 THE COURT: I mean recklessness is a -- is the element.

7 THE DEFENDANT: Yes, sir. I know. I didn't.

8 THE COURT: Yeah.

9 THE DEFENDANT: I didn't.

10 THE COURT: You know, you passed Ms. Williams' house
11 there on the Red Road. What if she was -- decided to come out
12 of her ---

13 THE DEFENDANT: No, but I didn't -- I didn't pass her
14 house, sir. I stopped. When they arrested me, I mean I
15 stopped. I didn't -- I didn't like -- I stopped, like they
16 didn't have to keep chasing me. As you can see when the tape
17 stopped, it wasn't no like where they had to block me off or
18 stop me. I hit the brakes and stopped and got out of the car.
19 No one -- you know, I stopped.

20 THE COURT: All right. I'll give you that. You did.
21 You didn't -- of course, they didn't have to shoot out your
22 tire or they were going to stop you one way or the other.
23 They had a plan for you. You weren't getting away. You had
24 the high sheriff and you even had Dudley Mesier behind you.
25 You know he wasn't going to let you get away, among others.

1 You know, he used to patrol this territory for years himself
2 on the highway patrol. He wasn't going to let you get away,
3 nor were the other officers. You had Jenkins there in
4 pursuit, too. They weren't going to let you get away. Go
5 ahead.

6 THE DEFENDANT: That's it, sir. I just ask for the
7 lenientest [verbatim] sentence as possible. That's it.

8 THE COURT: I mean what's the point of leniency though?
9 That's the thing. That's -- I'm not here to just issue out
10 candy and Baby Ruths. I'm here to enforce the law and to
11 protect the citizens of this community. Yes, ma'am? Is this
12 the girlfriend? Ms. Cooper?

13 MS. COOPER: Yes. I'm Latonya Cooper. I'm his fiancée.

14 THE COURT: Fiancée? When are y'all getting married or
15 plan to get married?

16 MS. COOPER: Well, I guess the plan is off now.

17 THE COURT: Well, when were the plans?

18 MS. COOPER: Didn't have any at the moment. We were just

19 ---

20 THE COURT: Okay. I mean when people use the word
21 fiancée, it usually means you've proposed and got a date.

22 Otherwise ---

23 MS. COOPER: No date was set yet.

24 THE COURT: All right. Okay. Go ahead.

25 MS. COOPER: I just wanted to say that I understand the

1 severity of the charges and everything, you know, put upon
2 him, but we do have kids and to my knowledge this is his first
3 offense for this. I don't know exactly what is going on with
4 everything placed before him because I've never known him to
5 do anything like that. If he did, he hide it pretty well. So
6 I don't know exactly ---

7 THE COURT: Well, you didn't know, but apparently all the
8 law enforcement knew.

9 MS. COOPER: Yeah and I know a lot of law enforcements to
10 be very unjust and dirty also.

11 THE COURT: All right.

12 MS. COOPER: So I mean you have to take all that into
13 considation.

14 THE COURT: And if they -- if they -- if they're charged,
15 then they -- they'll have their day in court, too.

16 MS. COOPER: Absolutely.

17 THE COURT: But today is his day. It's not none of
18 theirs regardless.

19 MS. COOPER: I know today is his day and I'm just begging
20 and pleading that you be as lenient as possible with him. We
21 have a little baby that just was born. She's seven months and
22 I really just want -- but she's still -- she loves him to
23 death, sometimes don't even go to sleep until he's home.

24 THE COURT: Yeah.

25 MS. COOPER: And I need him there, too, also.

1 THE COURT: I understand, but he can't -- you know, he's
2 facing a mandatory minimum sentence. He won't be home for a
3 long time and those are the choices that he made. No one else
4 made those choices, but him.

5 MS. COOPER: I understand those are choices that he made.
6 We all make mistakes in life.

7 THE COURT: I understand.

8 MS. COOPER: That doesn't mean, you know, something can
9 be put forth so serious to where he has to get maybe, you
10 know, a long time away from someone he loves a lot.

11 THE COURT: He's facing seven to twenty-five on that one
12 charge, five years on another, and three years on another.

13 MS. COOPER: I understand now, but I beg please that you
14 just be as lenient as possible with him please.

15 THE COURT: All right, Ms. Cooper, thank you. I
16 understand.

17 MS. COOPER: Thank you.

18 THE COURT: All right. Anything else, Mr. Vice? Mr.
19 Swilley?

20 MR. SWILLEY: Nothing else, Your Honor. I just -- just
21 reiterate to the Court what I've already said. Please don't
22 punish him for exercising his ---

23 THE COURT: All right. I just want to say for the record
24 though you haven't been on the case a long time, you've been
25 an excellent -- you did an excellent job and you fought

1 vigorously for him. You raised a lot of issues that many
2 lawyers miss and you've challenged the State at every turn.
3 You didn't let -- you kept your eyes open. My clerk even
4 passed me a note as to how on the ball you were during the
5 trial. So you've done a good job of representing him as best
6 as you could.

7 MR. SWILLEY: Thank you, Your Honor.

8 SENTENCE OF THE COURT

9 THE COURT: Mr. Vice, on the charge of failure to stop
10 for a blue light, the sentence is three years.

11 On the offense of possession with intent to distribute
12 marijuana, the sentence is five years.

13 On the offense of trafficking in cocaine, the sentence is
14 ten years.

15 All sentences are to run concurrent. You're given credit
16 for time served. I wish you the best. Hopefully, your life
17 can go upwards from here.

18 THE DEFENDANT: One more question.

19 THE COURT: Yes, sir.

20 THE DEFENDANT: I can get a hug from my family before
21 they cuff me?

22 THE COURT: Yes. Let him get a hug. Let him get one hug
23 for Christmas, New Year's, Thanksgiving.

24 (Whereupon, the defendant makes a statement in a low
25 voice as he walks away from deputies in the courtroom.).

1 FEMALE DEPUTY: First of all, we're in charge.

2 MALE DEPUTY: Okay, fella, come here. Turn around.

3 THE DEFENDANT: I didn't say anything.

4 MALE DEPUTY: Put your hands behind your back.

5 THE DEFENDANT: I said the judge gave me permission to
6 get a hug. You keep talking under your breath ---

7 FEMALE DEPUTY: Yeah, but you have to listen to what the
8 officers say they're going to let you do. You can't do what
9 you ---

10 THE DEFENDANT: I didn't say anything wrong.

11 FEMALE DEPUTY: --- want to do.

12 MALE DEPUTY: You don't do what you want to do in here.

13 THE DEFENDANT: I just said I wanted a hug. I didn't --
14 I didn't say anything. I just said the judge ---

15 THE COURT: All right. Well, you get no hug. You've --
16 you've blown that opportunity, Mr. Vice.

17 In addition, the statute requires a -- before he leaves
18 out ----

19 FEMALE DEPUTY: Hold up.

20 THE COURT: Before he leaves, the statute also mandates a
21 fine of \$50,000. So on the trafficking, it's ten years and
22 pay a fine of \$50,000. All right, ladies and gentlemen, thank
23 you all very much.

24 (Whereupon, the proceedings end at 5:06 p.m.)

25 --- END REQUESTED TRANSCRIPT ---

141

WITNESSES

Loy Hayes
Williamsburg County Sheriff

ARREST WARRANT NUMBER

M686755 M686759 M686756

ACTION OF GRAND JURY
TRUE BILL

Date: 3-1-12

Foreperson of Grand Jury

Date: 3-1-12

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012-GS-45-0050

The State of South Carolina

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

MARCH TERM 2012

THE STATE

vs.

DAVID ROMONTE VICE

Indictment for

Failure to Stop for a Blue Light, Possession
with Intent to Distribute Marijuana, and
Trafficking in cocaine, 28 g or more, but less
than 100 g

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

FILED

12 FEB 30 AM 11:56

CAROLYN F. WILLIAMS
CLERK OF COURT
KINGSTREE, S.C.

A CERTIFIED TRUE COPY

Sharon W. Staggars

SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

INDICTMENT FOR

Failure to Stop for a Blue Light, Possession with
Intent to Distribute Marijuana, and Trafficking in
cocaine, 28 g or more, but less than 100 g

At a Court of General Sessions, convened on March 1, 2012 the Grand Jurors of WILLIAMSBURG County present upon their oath:

COUNT ONE - FAILURE TO STOP FOR A BLUE LIGHT

That in Williamsburg County, South Carolina, on or about December 19, 2011, the Defendant, David Romonte Vice, while driving a motor vehicle on a road, street, or highway of the State, did fail to stop for a law enforcement vehicle after being signaled by a flashing light or a siren to do so; all in violation of Section 56-5-750, Code of Laws of South Carolina (1976), as amended.

COUNT TWO - POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA

That David Romonte Vice did in Williamsburg County on or about December 19, 2011, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Marijuana, a controlled substance under the provisions of Section 44-53-110, et seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-370, S. C. Code of Laws, 1976, as amended.

COUNT THREE - TRAFFICKING MORE THAN 28 GRAMS, BUT LESS THAN 100 GRAMS OF COCAINE

That David Romonte Vice did in Williamsburg County on or about December 19, 2011, unlawfully and knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did possess or attempt to possess more than 28 grams but less than 100 grams of Cocaine, a controlled substance under the provisions of Section 44-53-110, et seq., Code of Laws of South Carolina, 1976, as amended, being in violation of Section 44-53-370, S. C. Code of Laws, 1976, as amended.

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

A CERTIFIED TRUE COPY

Sharon W. Staggars
SHARON W. STAGGARS
CLERK OF COURT
WILLIAMSBURG COUNTY

CLERK OF COURT
WILLIAMSBURG COUNTY
12 FEB 30 AM 11:56

FILED

Solicitor

Ernest A. Fin

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

143

COUNTY OF Williamsburg
STATE VS.
David Romonte ViceAKA:
Race: 2 Sex: M Age: 27

DOB: SS#: DL#: SID#:

Address:

City, State, Zip: Kingstree, SC 29556

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Traffic / Failure to stop for a blue light, no injury or death - 1st offense

INDICTMENT/CASE#: 2012-GS-45-0050

A/W#: M-680753

Date of Offense: 12/19/2011

S.C. Code §: 56-05-0750(B)(1)

CDR Code #: 0065

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 56-05-0750(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0065

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)The 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: Kimberly V Barr 8443 SC Bar# Matt Swilley 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 3 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$ provided that upon the service of days/months/years and/or payment

of \$ plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 11/10/12 2012-GS-45-0050 (COUNT 3)
☒ 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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100

§ 14-1-211(A)(2) (DUI Surcharge) \$100

§ 56-5-2995 (DUI Assessment) \$12

§ 56-1-286 (DUI Breath Test) \$25

Proviso 47.9 (Public Def/Prob) \$500

§ 14-1-212 (Law Enforce. Funding) \$25

§ 14-1-213 (Drug Court Surcharge) \$150

§ 50-21-114 (BUI Breath Test Fee) \$50

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea

Proviso 90.5 (SCCJA Surcharge) \$5

3% to County (if paid in installments)

TOTAL

PTUP

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:

SHARON W. STAGGERS

CLERK OF COURT

WILLIAMSBURG COUNTY

☐ Appointed PD or appointed other counsel

§ 47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge

Judge Code:

Sentence Date: Nov 19, 2012

Clerk of Court/Deputy Clerk:

Court Reporter:

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA

COUNTY OF

Williamsburg

STATE

VS.

David Romonte Vice

AKA:

Race: 2

Sex: M

Age: 26

DOB: [REDACTED]

SS#: [REDACTED]

Address:

City, State, Zip: Kingstree, SC 29556

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 (More than 28 but less than 100 grams)

in violation of § 44-53-370(e)(2) of the S.C. Code of Laws, bearing CDR Code # 2359

☐ NON-VIOLENT

☒ VIOLENT

☒ SERIOUS

☐ MOST SERIOUS

☐ Mandatory GPS (CSC w/minor 1st or Lewd Act)

☐ §17-25-45

The 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: Samuel V. Barr
Barr, Kimberly V

8443
SC Bar#

Defendant

Matt Swilley
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,

☐ County Detention Center,

for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ 50,000.00; 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, Parole 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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$ 50,000.00
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 53,750.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 100.00
§ 56-5-2995 (DUI Assessment)	\$12	\$ —
§ 56-1-286 (DUI Breath Test)	\$25	\$ —
Proviso 47.9 (Public Def/Prob)	\$500	\$ —
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$ —
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$ —
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3120.90
TOTAL		\$ 107,150.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012-GS-45-0050

A/W#: M686756

Date of Offense: 12/19/2011

S.C. Code § : 44-53-0370(e)(2)(b)1

CDR Code #: 2359

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

The 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: Samuel V. Barr
Barr, Kimberly V

8443
SC Bar#

Defendant

Matt Swilley
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,

☐ County Detention Center,

for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ 50,000.00; 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, Parole 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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$ 50,000.00
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 53,750.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 100.00
§ 56-5-2995 (DUI Assessment)	\$12	\$ —
§ 56-1-286 (DUI Breath Test)	\$25	\$ —
Proviso 47.9 (Public Def/Prob)	\$500	\$ —
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$ —
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$ —
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3120.90
TOTAL		\$ 107,150.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

PTUP

_____ 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: _____

A CERTIFIED TRUE COPY

Sharon W. Staggers

SHARON W. STAGGERS

CLERK OF COURT

WILLIAMSBURG COUNTY

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

2127

Nov. 6, 2012

STATE OF SOUTH CAROLINA

COUNTY OF Williamsburg

STATE VS.
David Roinonte Vice

AKA:

Race: 2 Sex: M Age: 27

DOB: SS#: [REDACTED]

Address: [REDACTED]

City/State/Zip: Kingstree, SC 29556

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Possession with Intent to Distribute Marijuana

in violation of § 44-53 of the S.C. Code of Laws, bearing CDR Code #

☒ 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: [Signature] 8443

Barr, Kimberly V

SC Bar#

Defendant

Matt Swilley

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 11/6/12 2012-GS-45-0050 (count 3)☒ 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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(I) (Vehicle Assessment) \$40/ca \$

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00 280-

3% to County (if paid in installments) \$ 8.40

TOTAL \$ 288.40

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

145

INDICTMENT/CASE#: 2012-GS-45-0050

A/W#: M686759

Date of Offense: 12/19/2011

S.C. Code § : 44-53-0370(b)(2)

CDR Code #: 0186

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSThe 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: [Signature] 8443

Matt Swilley

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(I) (Vehicle Assessment) \$40/ca \$

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00 280-

3% to County (if paid in installments) \$ 8.40

TOTAL \$ 288.40

Presiding Judge

Judge Code:

Sentence Date:

A CERTIFIED TRUE COPY

SHARON W. STAGGERS
CLERK OF COURT☐ Appointed PD or appointed where counsel § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

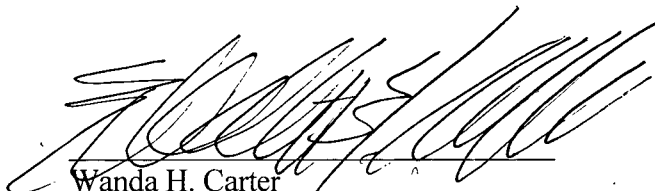
Judge Code:

Sentence Date:

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 7th, 2013



Wanda H. Carter
Deputy Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED
OCT 07 2013
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Williamsburg County
Clifton Newman, Circuit Court Judge

ORIGINAL
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OCT 07 2013
SC Court of Appeals

THE STATE,

RESPONDENT,

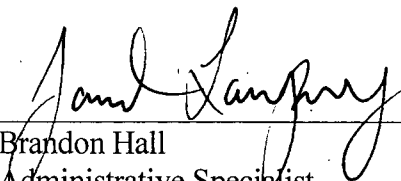
V.

DAVID VICE,

APPELLANT

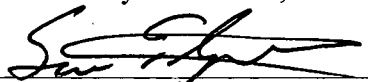
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon William M. Blich, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 7th day of October, 2013.

 for Brandon Hall

Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 7th day of October, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022