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SC Court of Appeals

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DOUGLAS J. MAYES,

APPELLANT

APPELLATE CASE NO. 2012-213144

RECORD ON APPEAL

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ORIGINAL

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON)

State of South Carolina,	TRIAL
PLAINTIFF,	2011-GS-32-01300 2011-GS-32-01302 2011-GS-32-01303 2011-GS-32-01304 2011-GS-32-01305
-VS-	
Douglas James Mayes,	
DEFENDANT.	

BEFORE THE HONORABLE HOWARD P. KING, JUDGE

OCTOBER 1 AND 2, 2012

LEXINGTON, SOUTH CAROLINA

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

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For the State

Wayne Floyd, Esq.
For the Defendant

REMA K. GANTT THOMAS
CIRCUIT COURT REPORTER

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FOR THE COURT:

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MR. FLOYD: Your Honor, at this time we would move to suppress on the grounds that the search warrant was issued based upon misleading and incomplete information that was provided to the issuing judge at the time.

I think under the trial of State v. Jones we're entitled to have a hearing on that and even a suppression of the evidence if the Court deems that it was issued based upon incomplete or misleading evidence.

THE COURT: All right. Basically, then, the lack of probable cause for the issuance of the warrant?

MR. FLOYD: That would be correct, Your Honor.

THE COURT: Okay. All right, that being the case, Mr. Ross, you may call your witnesses.

MR. ROSS: The State calls Eric Kirkland to the stand.

THE COURT: All right, come around, please.

(The witness was sworn.)

CLERK OF COURT: If you'll have a seat and state your name for the record, please.

MR. ROSS: And, Your Honor, I'm going to

have a certified, true copy of the search warrant and the affidavit in support of the search warrant marked as a Court exhibit for Your Honor.

THE COURT: All right, Court Exhibit Number One would be the affidavit for the search warrant and the search warrant.

MR. KIRKLAND: My name is Detective --

COURT REPORTER: Hold on, please.

THE COURT: Wait just a minute.

(Court's Exhibit Number One, Affidavit for Search Warrant and Search Warrant, were marked for identification purposes.)

THE COURT: Thank you, sir.

All right, Mr. Ross, you may proceed.

ERIC KIRKLAND, having first been duly sworn, testified as follows:

DIRECT EXAMINATION (IN-CAMERA)

Q Agent Kirkland, do you have a copy of the search warrant that you obtained in this case?

A I do, sir.

Q Is it over here sitting at the bar?

A Yes, sir. Can you bring it to me, please? Yes, I do, yes. Thank you.

Q Agent Kirkland, how long have you been a narcotics officer?

A Approximately eight years, sir.

Q And did you obtain a search warrant in this case against Mr. Mayes?

A I did.

Q And can you tell me about the investigation that led to the issuance of that search warrant?

A I can. On or about 12/1 of 2010, I received an anonymous complaint of a possible drug activity at a location, Highway, in the Pelion area of Lexington County, South Carolina.

The call actually stated that a black male by the name of -- let me turn to it -- by the name of Dougie and gave a description, stated that a person lived there, that there was constant traffic in and out of the residence, vehicles pull in, stay a few minutes, and then leave.

There was also information given that a white female, a child, and another individual, possibly a brother, were all at that residence. On 12/20, I was contacted by a confidential and reliable informant that did verify that information to be true.

Q He verified that Douglas Mayes lived at the address?

A I did, sir. I actually verified that through the Department of Motor Vehicles.

Q Did he -- you verified that?

A Yes, sir, we did.

Q Did the confidential informant verify that, as well?

A He did. Yes, he did.

Q Did he verify the drug activity occurring at that residence?

A He did, sir.

Q Okay. You said he was reliable?

A Yes.

Q Had he worked for you in the past?

A Many times in the past.

Q And did his information and assistance lead to arrests and prosecutions in the past?

A It did.

Q Okay. What did you do next?

A Well, the next thing we did was actually orchestrate what we call a controlled purchase using a confidential informant -- the individual or the target, as we call it, sir.

Q Okay. What is a controlled purchase?

A A controlled purchase is when a narcotic investigator actually sets up a controlled purchase

with a confidential informant. We meet with the informant prior to discussion of how much before the purchase can be made, number one.

Number two, the confidential informant is searched before and after the controlled purchase. What we're looking for is drugs, weapons, and money to ensure that they don't go in and make a purchase for themselves.

The next thing that is done, they are given documented money, and they're equipped with a recording device so that we can listen and, if we're lucky, visually see the controlled purchase as it happens in real time.

Sometimes we're lucky. A phone call is made to the target, and we get to record that conversation. From there, we actually follow or we drive the confidential informant as close to the location as we can.

They go in, and we try to, if at all possible, visually watch the confidential informant go into the location. Once the controlled purchase is made, once it's made, we meet back up with the confidential informant.

Whatever he or she purchased is actually turned over to us. We immediately do another search

to make sure that they don't have any drugs, money, or weapons on them. We actually take that illegal substance, put it in what we call a Best kit and seal it.

And from there, we actually get a statement, and we actually -- if they're paid, we get them to actually sign a voucher, and we leave.

Q Okay. So you receive the drugs that are purchased, and then you search them an additional time, as well?

A Correct.

Q Okay. And when did this first controlled purchase occur in this case?

A The first controlled purchase was January 31, 2011.

Q And can you tell me the details about that?

A Sure. We met with the confidential informant at a predetermined location. In this case, the call had already been made and the deal arranged prior to. So we met with the confidential informant.

The same rules applied. We searched before the drug purchase with negative results for money and/or narcotics. He was wired up. Myself

and an assisting agent drove him to a location near the target location, being Highway.

We parked across the street, and we monitored the confidential informant walk down the dirt road to the location. I want to guesstimate somewhere around a scope of maybe five to ten minutes. I'm probably stretching it a bit.

Five or ten minutes for the controlled purchase to take place. The confidential informant leaves, meets back up. He's picked up by us later on down the road.

And we retrieved the crack cocaine or the quantity of rock-like substance, researched him with negative results for money and/or narcotics, obtained a statement. In this case, had verified the identity, so we actually had a -- I think I had a photo lineup on hand, if I'm not mistaken.

I can't be positive, but I think I had a photo lineup on hand, and I showed it to the confidential informant.

Q And who did the confidential informant identify?

A He identified Douglas James Mayes.

Q Okay. Was there a second controlled purchase in this case?

A It was, on January 9, 2011.
Q Did you document the date of that controlled purchase in your file?
A In my file?
Q Yes.
A Which file?
Q On your case file?
A Yes, it's right here.
Q And would that refresh your memory as to the date of that second controlled purchase?
A That's correct.
Q Was it January or February 9th?
A Oh, I'm sorry, February 9th -- February 9th -- February 9, 2011.
Q And can you tell me how that controlled purchase occurred?
A The very same way. We actually met with the confidential informant. In this case, the telephone call was made in our presence. I had a cell phone number of (803) . And the individual on the other end the confidential informant stated was Douglas James Mayes.
We actually asked for and -- someone asked was it okay to come over and conduct a purchase of $100 of crack cocaine, and yes. We actually

equipped him with the devices as stated earlier, searched before actually wiring him up, took him over.

In this case, he was driving, so we followed the individual to the location. And as soon as he veered off one way, we actually parked back at the same spot we were at before and monitored the vehicle go in, listened to the controlled purchase.

As soon as it was over, we followed him back out to the location, retrieved the rock-like substance, and did another search, negative results, photo lineup shown. And then we actually got a statement, got him to sign the voucher, and parted ways.

Q I'm going to show you what's been ID'd as State's Number One. I'm showing Mr. Floyd, as well. Just for situational awareness --

A Yes, sir.

Q -- you said you parked while the controlled purchase was going on.

A Yes, sir.

Q Could you point out where on State's Number One you were parked?

A Right here, right there.

Q Okay.
A Yes, sir.
Q And is this Highway right there?
A It is, sir.
Q Okay. So you were basically across the street, right?
A Yes, that's correct.
Q Okay. And you subsequently received the drugs back from the confidential informant?
A That's correct.
Q Did you place them in a Best kit?
A I did.
Q Did you send that to evidence?
A I did, sir.
Q Okay. Based on that, did you go to a magistrate to obtain a search warrant?
A I did, sir.
Q And which magistrate did you go to?
A I think I went to Judge William Shockley -- Judge Will Shockley.
Q Okay. And when you went to Judge Shockley, did he place you under oath?
A He did.
Q And did you tell the truth?

A Always, yes, sir.
Q Did you present an affidavit to Judge Shockley?
A I did.
Q And by presenting that affidavit, did you intend to swear to the truthfulness of that information?
A That's correct.
Q And do you have a copy of that --
A I do.
Q -- affidavit with you?
A I do, right here, yes, sir.
Q Before we get to the affidavit, let me ask you one question regarding the town which Highway is located in.
A That town is actually located in Pelion.
Q Okay.
A But the typo actually stated Lexington County -- Lexington, South Carolina, excuse me.
Q And is that underneath the description of premises to be searched through that typo?
A It is, sir.
Q And that only came to your attention after you had obtained the judge's signature, right?
A That's correct.

Q Okay. Is there a Highway in the Lexington area?

A No, sir. No, sir, there is another anywhere in Lexington County.

Q Okay.

A Not Highway, no, sir.

Q Let's go through the affidavit portion of the search warrant. Paragraph one on page one of the affidavit, can you tell me what's going on here in this paragraph?

A You mean the description of premises or persons?

Q No, I'm looking at the affidavit portion. It begins, "This affiant, Detective Eric Kirkland."

A Okay, yes, sir.

Q Is that a summary of your law enforcement experience?

A It is.

Q And was that true at the time that the search warrant was issued?

A It was.

Q Turning to the next page of the affidavit, paragraph one, can you go through this paragraph, please?

A Yes, sir. Would you like me to read it in

its entirety?

Q Just tell me your personal basis for this paragraph.

A It's actually a general synopsis of how this investigation began. We received an anonymous phone, the information that was given. And I actually just put that in the paragraph not to mislead the judge but to let the judge know how this investigation led or began and the person or persons described in it with description as best as possible given on that date.

Q Okay. I'd like to turn your attention to about midway through this paragraph, a sentence that begins "This agent began an investigation."

A Uh-huh.

Q Can you tell me about what investigation you did to identify who lived at Highway?

A I actually went and actually verified that through call cards from the Sheriff's Department. Law enforcement had actually had some interaction there, and the names actually matched up with the address per se.

Q Okay.

A Then from there, we went and did DL

pictures and things of that nature.

Q When you say DL, you mean driver's license?

A Driver's license, I'm sorry -- South Carolina driver's license, DMV, correct.

Q And those photographs matched Douglas Mayes?

A Yes, sir.

Q Okay. And going to paragraph number two, can you tell the judge a little bit about paragraph two?

A Yes, sir. This is actually on or about the date that the confidential informant contacted me to let me know that drug activity was taking place, corroborated that the address was , corroborated that the individual there was James Douglas Mayes.

He even went as far as to say that he had actually physically seen drugs there and the amount of drugs that was seen at that particular time prior to the controlled purchase.

Q Was the confidential and reliable informant a different person than the individual -- than the anonymous individual that called in --

A Yes.

Q -- the complaint earlier?
A Yes, correct.
Q All of these sentences that say "The informant stated that" -- for example, "The informant stated that a controlled purchase could be made with Dougie Mayes" --
A Yes.
Q -- was that a statement that the informant gave you?
A I'm stating exactly what the informant stated to me, yes.
Q Okay. And then the rest of the sentences in that paragraph that begin "The informant stated," again, he's stating that to you?
A Correct.
Q So you have personal knowledge of that?
A That's correct.
Q Okay. Turning to the next page, it says, "During the past three days, agents made at least one controlled purchase of illegal narcotics." Is that the same controlled purchase that you testified to earlier?
A It is.
Q And that's the one that occurred on February 9th?

A Yes, that's correct.

Q You searched him before and after the controlled purchase?

A I did.

Q And monitored the controlled purchase?

A Yes, sir.

Q Okay. Now going to the second paragraph. Can you please explain this second sentence, "The target answered, and the informant asked the target, 'Can I come by and see you?'" Tell the judge what's going on there?

A That is actually during the controlled purchase on February the 9th. The phone call was made in the agent's presence. And once the call was answered by the target on the other end, I actually put in there actually as best what was said, "Can I come by and see you?" And the target said to come on over. So that is actually the phone call that led up to the controlled purchase.

Q Okay. And, again, everything in paragraph two is based on your personal knowledge?

A Yes, correct. I was present.

Q He was shown a photo lineup after the controlled purchase?

A That's correct.

issued on the correct statute, is it not? It was just the affidavit that was wrong.

MR. FLOYD: I'm not sure they had a code section on the warrant.

THE COURT: Maybe it doesn't even refer to the statute.

MR. FLOYD: Yes, I don't think it refers to the statute.

THE COURT: I don't see any reference to the statute at all. But the affidavit still refers to a drug statute. It's just not the correct drug statute, okay. All right, I've heard the testimony in this matter, and I'll try to address them in the order that the defense raised them.

First, with regard to the premises to be searched, the error being that it referred to Lexington in Lexington County rather than Pelion in Lexington County, and that this error was carried forward, as the defense pointed out, seven times.

In reading the warrant and the affidavit and also the testimony of the officer there, to me there is no substantial possibility of error in the address or place to be searched.

The officer described the premises. The same officer executed the search warrant. And I

don't think that there is any substantial possibility that the place for which the search warrant was issued is not the place that was actually searched and that there can be no prejudice from that matter. So the motion on that grounds would be denied.

With regard to the wording, whether it means at least once or more than once, it really doesn't matter. Once is enough for probable cause for a search warrant. And whether that implies more than one or doesn't imply more than one, it really doesn't matter.

One of my most favorite judges in the world is former Chief Judge of the South Carolina Court of Appeals, Alex Sanders, who, in addition to being an outstanding judge was an outstanding wit and has a great sense of humor. And I can't cite the decision, but he made the statement in one of his written opinions that what doesn't make any difference doesn't matter.

And that's the way I feel about this. It doesn't make any difference, so it doesn't matter. The same reasoning would apply to the "furthermore." I think that if you took that paragraph out altogether, there is still probable cause in the

other parts of the affidavit which would justify the issuance of the search warrant.

With regard to the return, I don't think there's any question that the return -- and the way I would find that the evidence in this is -- and it's unfortunate that we got into these two different affidavits -- but I would find that what happened was the officer went to the magistrate, gave the first affidavit, obtained a search warrant based on that, then decided to make another controlled buy, which he didn't without executing the first search warrant, executed the second controlled buy, and then sought another search warrant on February the 11th.

And the only amendment that he made, of course, was to change the affidavit to that effect, and then the search warrant was issued on that. It was executed within 10 days of February the 11th, having been executed on February 17, 2011, and a return made that same day.

So all of the statutory requirements and all the legal requirements for the execution of the search warrant and the return are timely. With regard to the statement of the CI, I have found very often that statements made in the jail to other

inmates are often unreliable, for whatever reason.

The first statement made by the CI to the police was not only a statement as to what he did, but it was actually a monitored transaction by law enforcement, who had a video of him going on, had audio of him making the purchases. And his statement denouncing his previous statement has little or no credibility.

He did testify here today that that statement was not correct and the reasons why he made it at the time that he made it, that is, the recantation statement. So I don't think the recantation statement has much substance.

There has been some issue made about the fact that the magistrates do not have copies of the search warrants or the affidavits or the various documents in this case, which is a little strange. But at the same time, no challenge to the authenticity of the documents that were presented to the Court as Court's Number One and Court's Number Two has been mounted.

And so I would find that those documents are authentic and do reflect what actually occurred with regard to the search warrants. Therefore, having made those statements and making those

findings, the motion to suppress the search and the evidence seized as a result of the search is denied.

Let me give these back to the Court Reporter. These are Court's Number One through Five. All right, the next issue is the Jackson versus Denno. Are we ready to go into that?

MR. ROSS: Yes, Your Honor.

THE COURT: All right, let me ask the defense to state your motion on the record first, please, Mr. Floyd, with regard to Jackson versus Denno.

MR. FLOYD: Your Honor, we move to suppress any alleged statements made by Mr. Mayes on the grounds that if they were made -- first of all, we deny they were made. If they were made, there were made in contravention of his Miranda rights.

THE COURT: All right. So you're saying that you're denying that they were made. But if made, they did not comply with the terms of Miranda?

MR. FLOYD: That's correct.

THE COURT: Okay.

All right, Mr. Ross?

MR. ROSS: Agent Kirkland to the stand, please.

THE COURT: All right, you're still under

point is that Miranda warnings were given and that he had the opportunity at that time to indicate that he was promised something.

And he had the opportunity to present that without giving up his Fifth Amendment rights. So that kind of summarizes it as far as I'm concerned. He had the opportunity to say that he had been promised something, and he didn't testify to that effect, without giving up his Fifth Amendment rights.

I would find that the defendant was in custody at the time of the alleged statement, that the custodial situation was a custodial interrogation which required the State to warn the defendant of his rights under the decision of Miranda versus Arizona, that the State did in fact give him all Miranda warnings and the appropriate warnings that he did not have to make a statement, that any statement that he made could and would be used against him, and the other matters that are contained in Miranda, and that he voluntarily and without threat of anything after the Miranda warnings were given, did freely and voluntarily waive his right to say anything.

The statement would be admissible. It

would be up to the jury to decide whether or not he actually said that if he later denies that he said it. But I believe that the Miranda warnings were given and were appropriate, and the officer will be allowed to testify as to the statement made.

All right, that takes care of those two issues. Now, I believe there was a third issue, Mr. Floyd?

MR. FLOYD: That's correct, Your Honor. The third issue has to do with the testimony of the evidence custodian as to whether or not the drugs were actually missing at some point during her custody.

THE COURT: All right. So you're challenging the chain of custody of the drugs -- motion to suppress based on chain of custody?

MR. FLOYD: That's correct, Your Honor. But the issue right now before Your Honor was the issue that I raised with you as to whether or not I would be required to testify because of what's --

THE COURT: All right. So you're not questioning the chain of custody as to how the drugs came into the hands of the evidence custodian. What you're questioning or tending is what the evidence custodian would say she or he told you with regard

to the drugs?

MR. FLOYD: That's correct.

THE COURT: Okay. Well, let's limit the hearing to that issue, Mr. Ross.

MR. ROSS: Yes, sir.

THE COURT: You can call the evidence custodian for that purpose.

MR. ROSS: The State calls Candy Kyzer to the stand.

And, Your Honor, Ms. Kyzer is the evidence custodian.

THE COURT: Okay.

MR. ROSS: I see that she's got the rifle or a rifle that was seized in this case. And I believe the rules require us to notify the Court of that, and I think it is already locked.

THE COURT: All right, that's not really the issue here, the rifle, at least at this hearing level. The rifle can be given to the deputy to take custody of. The issue here is really a question of statements, not actually what was introduced or when it was introduced, but just to testify. If you need one of the officers to take possession of the weapon and keep custody of it till she steps down from the stand, we can do that, okay.

(The witness was sworn.)

Let the record reflect for purposes of this hearing and for purposes of all subsequent matters that the actual evidence itself may not be in the hands of the evidence custodian right now but is in the hands of the deputy, security guard for the Court so that there can be no question that it is constructively in the hands of the evidence custodian and no challenge can be made with regard to the fact that the evidence is not in her possession -- any of the evidence is not in her possession -- at the actual time of this hearing, because that's not the issue before the Court.

CANDY KYZER, having first been duly sworn, testified as follows:

DIRECT EXAMINATION (IN-CAMERA)

BY MR. ROSS:

Q Ms. Kyzer, you're one of the evidence custodians at the Sheriff's Department, is that correct?

A I am.

Q And did you receive evidence in this particular case?

A I did.

Q And can you tell me what you received?

A I received a Best kit.
Q And when did you receive that Best kit?
A When did I receive it?
Q Yes, ma'am.
A On February 17, 2011.
Q Does that Best kit have a number on it?
A It does.
Q And what's the number?
A C020453.
Q And when you received it, what did you do with that Best kit?
A I signed it in, made sure everything as far as paperwork-wise was in order, and made sure that the seals were still intact. Everything was in order, so I put the bar code labels on it and then put it in our temporary drug lab box.
Q Who has access to that room?
A Us three custodians and our supervisor.
Q Okay. And were those drugs ever checked out to the chemist in this case?
A They were.
Q And when were they checked out?
A They were checked out -- I signed the Best kit out to Emily on February 22, 2011.
Q And is Emily the chemist?

A Yes, she is.
Q And did she ever return it back to you?
A She did. On March the 29th, she returned it back.
Q And what did you do with it when she returned it back?
A I put it back in our drug room at that time. We store all of our drugs at that point into separate boxes, mutli-case boxes. So we assign it a box number, and we store it into that.
Q Okay. Did anyone subsequently check that same Best kit out after you received it back from the chemist?
A They did.
Q And who was that?
A Eric Kirkland.
Q And when did he check it out?
A He signed it out on September the 6th at 10:46.
Q Of what year?
A 2011.
Q He signed it out at 10:46 in the morning?
A Yes.
Q And when did he return it?
A He returned it September 6, 2011, at

kit?

A Yes, sir.

Q And that's when you got the chemist involved again?

A Yes, sir.

Q Turned them over to the chemist again?

A Yes, sir.

MR. FLOYD: Thank you, Your Honor. I have no further questions of the witness.

THE COURT: Anything further, Mr. Ross?

MR. ROSS: No, Your Honor.

THE COURT: All right, thank you, ma'am. You may step down.

Mr. Floyd, what part of this witness' testimony do you disagree with as to what she told you or what was done?

MR. FLOYD: Your Honor, the part that I disagree with was when I went over there, I asked specifically about the misplaced drugs. I wanted to know when those misplaced drugs were located, how they were located --

THE COURT: What made you think there were any misplaced drugs at all?

MR. FLOYD: Because that's what I had been informed by the Solicitor when the case wasn't

called for trial in October.

THE COURT: All right. So what you're saying is that you were informed by the Solicitor that the drugs had been misplaced, and you went over there and specifically asked for the drugs, and they were produced?

MR. FLOYD: That's correct, Your Honor. Well, Your Honor, basically, in October 2011, the case was called.

THE COURT: Right.

MR. FLOYD: We went through pre-trial motions.

THE COURT: I understand.

MR. FLOYD: At the conclusion of the pre-trial motions, I was informed by the Solicitor's Office of -- I think we broke for lunch, and when we came back, we were supposed to try the case. I was informed that they were not going to call the case because they couldn't locate the drugs.

THE COURT: All right.

MR. FLOYD: I stayed in touch with the Solicitor, asking, you know, "If you don't have the drugs, why don't you dismiss it?" and this type of thing. Eventually, I was informed that they had found the drugs -

that time, and you had been told by the Solicitor they didn't have the drugs, and then she comes up with them, that would have been an entirely different situation.

But the fact of the matter is the case was continued. So what the Solicitor said or did not say is really immaterial. You were told that everything was there, you could go look at it. You did go look at it.

All right, Mr. Ross, is there anything you'd like to add?

MR. ROSS: Your Honor, I would just take the State's interest in trying this case. The case was called for trial this time last year. It was delayed. We've already gone through the pre-trial motions once again.

And I think the relevance of any inconsistent statement by Ms. Kyzer or Ms. Dixon, who was the prior Solicitor on the case, when you weigh that against our interest in having a speedy trial, a timely trial, I just don't see how what Mr. Floyd is talking about is even relevant to the ultimate issue of guilt or innocence on the case. Therefore, I would think it would be --

THE COURT: I think that's a collateral

issue. I really don't think that it has anything to do from a relevance standpoint to the issues that are before the Court, and that is whether or not the chain of custody was kept with the things.

The conversation between defense counsel and prosecutors, many statements are made from time to time that later prove to be not exactly accurate for whatever reason. But as soon as the Solicitor's Office discovers the inaccuracy and they make it available, then what difference does it make?

Again, I don't see that there's any prejudice from the fact, and I don't think that what was told you by the Solicitor, if in fact that was told to you by the Solicitor, at this point makes any difference at all.

And I would not allow you to testify to that fact, Mr. Floyd, because I don't think it makes any difference. And if it doesn't make any difference and you're not allowed to testify to that fact, then I don't think that you should be disqualified from trying this case because I would not allow that testimony anyhow.

So I would respectfully deny your motion to withdraw in order to testify as to that issue, because I don't think it's a material issue in this

case.

MR. FLOYD: And, Your Honor, would that be the same ruling you'd make on the testimony of the conversation with the evidence technician?

THE COURT: What are you saying that she told you that's inaccurate?

MR. FLOYD: About the drugs being missing.

THE COURT: About them being missing? I don't believe she testified to that. I think she testified that they were in the wrong box, but we've got them. She didn't ever testify that they were missing at any point, I don't think.

MR. FLOYD: What I would testify is I asked her about the drugs missing and when they were found.

THE COURT: And she said, "Here they are. We have them." And I don't think she ever said that they were missing, did she? I don't believe she did.

MR. FLOYD: She didn't deny it when I asked her.

THE COURT: Sir?

MR. FLOYD: She didn't deny when I asked her.

THE COURT: Well, the same ruling.

remarks on behalf of the State, Mr. Ross?

MR. ROSS: No, Your Honor.

THE COURT: On behalf of the defense, Mr. Floyd?

MR. FLOYD: No, Your Honor.

THE COURT: All right, the first order of business, ladies and gentlemen, is for the lawyers to make their opening statements to you. Again, I would tell you that the statements of the attorneys are not evidence in this case.

But the lawyers do have the right to make a brief opening statement to you at this time to outline what they think the evidence will show. You will hear first from the Assistant Solicitor on behalf of the State and then from Mr. Floyd on behalf of the defense, after which we will get into the testimony and evidence in this case.

Mr. Ross?

MR. ROSS: May it please the Court, Your Honor?

THE COURT: Yes, sir.

OPENING STATEMENT

BY THE STATE

MR. ROSS: If it walks like a duck, it quacks like a duck, ladies and gentlemen, what do

you have? You've got yourself a duck. Sometimes things really are that simple. Well, the case you're about to hear against the defendant on trial today, Douglas Mayes, really is that simple.

The facts are simple. The law is simple. On February 17, 2011, narcotics officers executed a search warrant at his single-wide trailer down in Pelion. They knocked and announced their presence. Then they went in the front door. That front door is on the far right-hand side of the single-wide.

So when they entered, they took a left and went all the way down that single-wide trailer till they got to the master bedroom. And they saw a female in bed with a toddler, and they kept going. They went to the back bathroom that's attached to the master bedroom.

They looked in the door. They found Douglas Mayes standing there in that bathroom. And right beside him was a 24-pack of Angel Soft toilet paper. So they gathered everybody up. They put them in the den, and then they began to search that house. And it didn't take them long to find 70 grams of crack cocaine and three grams of powder cocaine.

They found it in that Angel Soft 24-pack

that was sitting right beside Douglas Mayes. But that's not all they found. They also found a rifle in the kitchen. They found a set of digital scales on the kitchen counter. These used to weigh drugs before they're sold on the streets.

Finally, in the kitchen cabinet, they found a box with a bunch of small little plastic baggies -- not the kind that you put your lunch in but the kind you put drugs in before you sell them on the streets. So Agent Eric Kirkland, he approaches the defendant. He gives him his Miranda rights, his Miranda warnings.

And he asked him about what was found in that back bathroom. And the defendant said, "Everything you found back there is mine" -- "Everything you found back there is mine."

So all this evidence was packaged up. The drugs were placed in what's called a Best kit. This is a sealed plastic bag, and it's got a unique number on the plastic portion.

And that number is designed to make sure what you seize on Monday is what you test over on Friday. They put that number on it so you don't get drugs mixed up from one case to the next. And these drugs were sent to the chemist, and they tested

positive -- 70 grams of crack cocaine, almost three grams of powder cocaine.

Now, based on that test result, he's facing the three charges that Judge King read to you today -- trafficking crack cocaine, possession with intent to distribute powder cocaine, and possession of a weapon during the commission of a violent crime.

Now, that term "trafficking crack cocaine," "trafficking" is simply a legal term. It refers to the amount of drugs in any particular case. If you have nine grams of crack cocaine in your possession, you are guilty of simple possession of crack cocaine.

If you have over 10 grams of crack cocaine in your possession, you're guilty of trafficking crack cocaine. So what the State is going to prove is nothing other than the defendant was in possession of all that crack cocaine that was found.

That's all we're going to prove, possession. Now, the powder cocaine charge adds to it. We're going to prove not only did he possess the powder cocaine but that he intended to distribute the powder cocaine.

And the evidence you're going to have to

come to that conclusion is going to be the scales, you're going to have the plastic bags, and, finally, you're going to have the weight of that powder cocaine.

And Judge King is going to explain to you at the end of the trial the significance of the weight of the powder cocaine. He will explain to you that if somebody has over one gram of powder cocaine in their possession, you, the jury, can conclude based on weight alone that he intended to distribute that powder cocaine.

Now, the evidence you'll hear is that he had three times that amount -- three times that amount. The final charge is possession of a weapon during the commission of a violent crime. This also is very simple.

Trafficking crack cocaine is considered a violent crime under the law. And if you possess a firearm while you commit that crime, that's a crime in and of itself.

So he's guilty of possessing that rifle while he was possessing the crack cocaine and then the trafficking crack cocaine charge. Now, the main issue in this case is going to be possession. And, again, Judge King will explain to you the two types

of possession that exist under the law.

This is going to be very important. You have actual possession when something is in your hands or in your pockets. Then you have constructive possession.

That's where drugs are not on your person, but you exercise dominion and control over the drugs, or you exercise dominion and control over the place where the drugs were found.

For example, down in my office I've got a ton of law books. Right now, I'm exercising constructive possession over those books. All the stuff at my house, miles away from here, I'm exercising constructive possession over those items.

The pen on my desk here, I'm just as guilty of possessing that pen now as I am now. The point of me telling you that on the front end is to let you know that the State does not have to put those drugs in his hands. You do not have to put the drugs in his pockets.

The evidence would show he's guilty of constructive possession of all those drugs that were found. This is going to be a short trial, but it's an important trial. These are very serious charges. You're going to hear from the officers that entered

the residence.

You're going to hear about what he told those officers. You're going to hear from the chemist that tested the drugs. You're going to see the drugs. You'll see photographs of when they were taken, and you'll see them as they are now.

And when you see the Best kit now, it's going to be very clear to you that the drugs as they exist now are not in the same physical form as when they were seized. And the chemist is going to explain that after those drugs were tested, they were put in a storage room that does not have air conditioning.

And in Lexington, South Carolina, a room without air conditioning can get pretty hot. And crack cocaine can respond in the same way a candy bar will respond to a very hot room in Lexington, South Carolina, without air conditioning. So they're going to be partially liquefied.

You're also going to hear from the evidence custodians on this case. And they're going to be very candid with you about what they did in this case, about the handling procedures of the drugs, the scales, and the bags. They'll be very candid that at one time they tried to put their

hands on the scales and the bags.

The scales and the bags were placed in a second storage room, in boxes. And the evidence will show that there were 10,000 -- almost 10,000 other pieces of evidence from other cases stored in that room.

At one time, they were asked to find them. They couldn't find them. But they looked for them. They found them in the wrong box. And you're going to see the same digital scales, the same plastic bags that were found in Douglas Mayes' trailer in Pelion.

After you hear all this evidence -- and, again, it's going to be a short trial. After you hear all this evidence, you will be firmly convinced that Douglas Mayes is guilty. And that's why at the end of this trial, I'm going to look you in the eye and I'm going to ask you to find him guilty as charged.

THE COURT: Mr. Floyd, does the defendant care to make an opening statement?

MR. FLOYD: Yes, Your Honor.

THE COURT: You may.

OPENING STATEMENT

BY THE DEFENSE

MR. FLOYD: Ladies and gentlemen of the jury, this young man's name is Douglas Mayes. He's the defendant in this case. He's a man about whom you're going to make one of the most important decisions you ever make about anybody -- and you just now met him -- because you're going to decide whether or not based upon the evidence you hear in this room over the next couple of days, whether or not he should be found guilty of what the State has already told you are very serious crimes, which will also create very serious consequences.

Now, if you've never served on a criminal jury before, you almost have to set aside human nature, because some of you may have the thought in your mind that because Douglas was arrested -- he was -- handcuffed and carried to jail -- which he was -- because he now sits there before you to be judged -- which he does.

Well, you may have the thought in your mind, "Wow, he must be guilty." Well, if you've got that kind of thought, you've got to erase it. You've got to put it out of your mind completely. Because, you see, Doug has the same rights each and every one of us have.

One of those most important rights is what

we call the presumption of innocence. So you must look at Douglas Mayes, and you must say in your heart and in your mind Douglas Mayes is innocent, and Douglas Mayes remains innocent unless the State proves his guilt beyond a reasonable doubt to each and every one of you.

And that's all we ask. When you listen to the evidence that's presented, we ask that you hold the State to their standard of proof beyond a reasonable doubt, because there's going to be some problems with the case.

And we think when it's all over with, you'll conclude that the only fair and just verdict is one of not guilty. Thank you very much for your attention. I look forward to speaking with you again in what we call closing statements at the conclusion of the case. Thank you very much.

THE COURT: All right, Mr. Ross, you may call your first witness.

MR. ROSS: The State calls Sgt. Billy Laney to the stand.

THE COURT: All right, Mr. Laney, come up, please.

(The witness was sworn.)

CLERK OF COURT: If you'll have a seat

over here, state your name, and spell your last for the record, please.

MR. LANEY: Billy Ray Laney -- L-A-N-E-Y.

BILLY RAY LANEY, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ROSS:

Q Sgt. Laney, I saw you walking with a limp up to the stand. Did you recently have surgery?

A Yes, sir.

Q When did you have that surgery?

A Friday morning, the 28th of September.

Q On what?

A Friday -- this past Friday.

Q What was operated on?

A My left knee.

Q Okay. You were the first man to enter the defendant's residence on February 17, 2011, is that correct?

A Yes, sir.

Q Before we get to what you did that day, could you please tell me what your law enforcement experience is?

A I've been with Lexington County Sheriff's Department since 1994. I've served in the patrol

division, traffic division, went to narcotics. And in July of 2011, I was promoted to patrol sergeant, South Region.

Q So at the time the search warrant was executed, you were in the narcotics division?

A Yes, sir.

Q What type of cases would you investigate?

A All narcotics cases, vice cases, prostitution, gun cases.

Q How many years were you a narcotics officer?

A Six -- right at six.

Q Okay. Tell me what role was on February 17, 2011.

A My role on that day, I was the shield man. The shield man is the first person through the door with a ballistics shield to cover the other agents approaching the house and once we make entry.

Q So you were the first one to enter?

A Yes, sir.

Q What sort of tactical gear were you wearing?

A Tactical greens, had a ballistic helmet on, ballistic vest -- big, thick vest, 4A vest with a ballistic shield.

Q Okay. And did you knock on the door?
A I did not knock.
Q Did somebody knock on the door?
A Yes, sir.
Q And what happened after somebody knocked on the door?
A They knock. Sheriff's Department is announced, search warrant, and we enter. And when we enter, I'm screaming "Sheriff's Department, Sheriff's Department, police search warrant."
Q Okay. And when you entered, what did you do?
A Based on the diagram of the house, as I entered the house I went left to the deep part of the house, which is the most dangerous part. We push deep with the shield to cover the other agents coming in.
Q Okay. And did you find anybody?
A Not in the den area or the kitchen, no, sir.
Q So you went in the den and then the kitchen?
A Yes, sir.
Q And then where did you go after that?
A Once we got to the kitchen, we entered the

bedroom door. To the left, there was a bed. We located a female and a toddler on the bed. Once she was taken care of and secured, I proceeded to the master bedroom -- master bathroom, excuse me -- where I encountered a subject who was later identified as Mr. Mayes.

Q You said you saw a female and a toddler on the bed. Were they sitting on the bed like this?

A They were laying in bed. They were in the bed.

Q And then you went to the bathroom?

A Yes, sir.

Q And you found the defendant?

A A male who was later identified as Douglas Mayes, which is the defendant here, yes, sir.

Q How did he appear when you first found him?

A He was awake, clothed. He was walking from the left side of the bathroom towards me.

Q Okay. Was there any steam coming out of the bathroom?

A No, sir, not that I remember.

Q Did his hair appear to be wet from coming out of the shower?

A No, sir.

Q Did he have all of his clothes on?
A He had clothes on. I can't tell you if it was a T-shirt and shorts or complete clothing.
Q But he wasn't walking around without his pants?
A No, sir, he was not naked.
Q Okay. Were his hands wet from washing his hands?
A Not that I recall. I didn't go hands-on with him.
Q Okay. Was the faucet in that bathroom turned on?
A No, sir.
Q Was the commode running?
A No, sir.
Q Okay. And what did you do with him after you found him?
A He was detained, taken out of the bathroom. And once the female and Mr. Mayes were in the den, a more in-depth search of the house was made for other persons. And once it was deemed clear, we started to search.
Q What county is Highway in?
A It's in Lexington County, South Carolina.
Q Okay. And that's where this search

occurred?

A Yes, sir.

Q So once y'all got everybody rounded up, what did you do?

A Again, we searched to make sure it was safe -- the house was safe. And then we proceeded to search our designated areas.

Q What was your designated area?

A I was searching the master bathroom.

Q Is that the same place where you found the defendant?

A Yes, sir.

Q Okay. What did you find pursuant to that search?

A After searching the bathroom, got across the countertop from the sink area over to where the bathroom area is, the toilet area, lifted up the commode, sink, did not find anything, looked down.

I decided to look through the toilet paper rolls. I tore the bag apart, and a large piece of off-white rock-like substance in a baggie fell along with a pill bottle.

Q During your career as a narcotics officer, have you seen crack cocaine before?

A Several times, sir.

Q And what fell out, did that appear to be crack cocaine?

A Yes, sir, it appeared to be a half cookie of crack cocaine to me.

Q Now, what is a cookie?

A They make crack cocaine into round shapes, and it looks like a cookie.

Q Okay. And this was a half a cookie?

A Yes, sir.

Q What else did you find?

A There was a pill bottle that fell out also. When that fell out, I notified, said, "Hey, I found something," came back. We started to peel apart the wrapping on the toilet paper.

We found two more baggies of crack cocaine laying on top, and we started photographing those. We started pulling the paper out, and we found a small baggie of powdery substance behind some of it inside the rolls beside each other.

Q Now, during your experience as a narcotics officer, have you seen powder cocaine before?

A Yes, sir.

Q Did that powdery substance appear to be powder cocaine?

A It did to me. It was packaged as a white

powdery substance.

Q Okay. So if I'm tracking correctly, you found a pill bottle. What was inside that pill bottle?

A Small white off-white rock-like substance that appeared to be crack cocaine, little pieces.

Q Okay. And you found a baggie of powder substance?

A Yes, sir, a small plastic bag.

Q And then you found three bags of rock substances?

A Two small baggies of off-white rock-like substance and one big baggie that had large pieces of it -- large pieces of it.

Q Did it appear to be crack cocaine?

A Yes, sir.

Q Okay. And what did you do with those items?

A I called for a photographer who was photographing everything. He came in and photographed it. Once it was photographed, I delivered it to our scribe, who was Agent Tucker.

Q Did the photographer handle those items in any way?

A No, sir.

Q Did he ever take custody of them?
A No, sir.
Q Okay. Did he add anything that wasn't there?
A No, sir.
Q Okay. You said you gave all those items to whom?
A Agent Barnes Tucker, the scribe for the search warrant.
Q Okay.
A She was separating stuff.
Q Has Agent Barnes recently gotten married?
A No.
Q She used to go by Tucker, though, right?
A Yes.
Q Now she goes by Agent Barnes?
A Yes.
Q Okay. You gave the three baggies of rock substance, the pill bottle, and the baggie of powder to her?
A Correct, sir.
Q And when you gave them to her, were they in the same condition as when you found them?
A Yes, sir, they were.
Q Did you alter or manipulate them in any

Q And what is this right here? What does that indicate?

A That's the bathroom sink area, the countertop.

Q Okay. And between commode and sink was what?

A Toilet tissue.

Q Okay. And, again, this is where the defendant was?

A Yes, sir.

Q Okay. That giant "x" that you put on there?

A Yes, sir.

Q If you could, please return to your seat. Sgt. Laney, I'm going to show you what's been marked as State's Number Four through Nine. If you could, please take a look at these photographs.

A Yes, sir.

Q Have you had a chance to look at them?

A Yes, sir.

Q Do they accurately reflect the drugs that you seized that day?

A Yes, sir, they do.

MR. MOSS: Your Honor, at this time I'd move for four through nine be admitted into

A That's pieces of off-white rock-like substance that were located within the pill bottle.

Q What does that appear to you to be, those off-white rock-like substance?

A Crack cocaine.

Q Now we've got State's Number Nine. Can you tell me what's in the corner there?

A That is a small plastic baggie of powdery white substance believed to be cocaine at the time, powder cocaine.

Q Now, all the baggies that are in State's Numbers Four through Nine and the pill bottle, who did you give these to?

A They were photographed, and I gave them to Agent Barnes.

Q Okay. And when you gave them to Agent Barnes, were they in the same condition as when you found them?

A Yes, sir, they were.

Q And that's the three bags?

A Three bags of crack cocaine, a plastic baggie filled with a white powdery substance, and a pill bottle filled with off-white rock-like substance.

Q These items were in your possession from

A Yes, sir.

Q Before we get into what you did on this case, can you please tell me what your present job duties are?

A I'm a narcotics officer with the State Law Enforcement Division.

Q Where do you investigate cases?

A All over the state.

Q On February 17, 2011, where were you employed?

A I was employed with SLED, but I was assigned to the Narcotics Enforcement Team with Lexington County.

Q Okay. What types of cases would you investigate?

A Any illegal narcotics cases, alcohol cases.

Q How many total years in narcotics do you have?

A Almost six years.

Q Tell me what happened on February 17, 2011.

A I was assigned to the entry team of the search warrant that we were there serving. I'm not sure exactly where I was in the stack. Stack means

THE COURT: All right, Mr. Ross, you may call your next witness.

MR. ROSS: The State calls Agent Dennis Tracy to the stand.

THE COURT: All right.

(The witness was sworn.)

CLERK OF COURT: If you'll have a seat and state your name, please, for the record.

MR. TRACY: Agent Dennis Tracy -- T-R-A-C-Y.

DENNIS TRACY, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ROSS:

Q Agent Tracy, you were on the entry team in this case, weren't you?

A Yes, sir.

Q Before we get to what you did in this case, can you tell me about your experience in law enforcement?

A I've been in law enforcement for 15 years. I've been assigned to narcotics for the past 12 years. I'm currently employed with Lexington County Sheriff's Department as a narcotics investigator.

Q Okay. And during those 12 years of

narcotics experience, what type of cases do you investigate?

A Narcotics cases, vice cases, that's basically what we work, anything that has a narcotics nexus to it.

Q Okay. Do you have any other formal training in narcotics, specialized training?

A At last count, I have about 435 hours of advanced narcotics investigation training.

Q Okay. Who did you get that training with?

A Different state and federal agencies, different federal and state training facilities.

Q Such as?

A Such as the Drug Enforcement Administration classes. We take classed down in Meridian, Mississippi, which are put on by the National Guard down there. There's a whole bunch of avenues of training for law enforcement.

Q Are you an instructor, as well?

A I am an instructor, as well.

Q And what do you teach?

A I teach a DEA-approved block of instruction in parcel interdiction.

Q What is DEA?

A Drug Enforcement Administration.

Q And what is that?

A That's the legal branch of the Department of Justice that enforces drug laws.

Q Okay. Tell me what you did on February 17, 2011.

A On that day, I was assigned as an entry team member. I participated in the entry of the residence. After the research was secured, I was also the assigned photographer for the case.

Q Okay. And what did you take pictures of?

A Anytime anybody would locate anything of evidentiary value, they would call me. I would take a picture of it before it was turned over to the scribe for logging it into the evidence.

Q So all these pictures that we've just through, State's One through Eleven, you took these pictures?

A Yes, sir.

Q Did you personally seize anything that day?

A I did.

Q And tell me what that was.

A In between taking pictures, I helped searching of the kitchen area. I located a set of digital scales in the kitchen area, which I did

seize.

Q Now, what are digital scales?

A Small electronic scales used primarily in our field for weighing out narcotics for distribution.

Q Okay. So is that relevant to what you do as a narcotics officer?

A It is.

Q And can you elaborate upon that?

A Digital scales -- narcotics are sold obviously in increments that people are ordering or whatever facilitates the distribution. So crack cocaine is usually broken into smaller pieces.

Those pieces are weighed so that a .2 gram piece of crack cocaine would sell for $20, or larger amounts would sell for larger quantities of cash. But the digital scales would be an important part of that transaction.

Q Were these particular digital scales -- did they have any other legitimate use to them?

A They're sold for jewelers primarily, but that's about the only other thing I've ever seen these small-weight digital scales used for. They're not used for anything like cooking or anything like that.

Q When you say jewelers, you mean like --
A A professional jeweler.
Q Okay.
A Like at a jewelry store weighing out dram weight of -- dram weight or gram weight of gold or jewels.
Q Did y'all find any diamonds in the house?
A Not that I'm aware of.
Q Did you find any jewels in the house?
A Not that I'm aware of.
Q Did you take a photograph of the digital scales?
A I did not. It was an oversight on my part.
Q Okay. Did you find anything else in that trailer?
A We found some Pyrex dishes by the kitchen.
Q Okay. I'm going to show you State's Number Twelve. If you would, please take a look at this.
A Yes, sir.
Q Does that accurately reflect the Pyrex dishes that you found?
A It does.
Q Okay.

Barnes, were they in the same condition as when you found them?

A Yes, sir.

Q Did you alter or manipulate them in any way?

A No, sir.

Q Did anyone else take possession of them?

A No, sir.

MR. ROSS: No further questions, Your Honor.

THE COURT: Cross-examination, Mr. Floyd?

MR. FLOYD: Just a few questions, Your Honor.

CROSS-EXAMINATION

BY MR. FLOYD:

Q So your job is to take photographs of everything that might be relevant in the case or important to the case?

A Yes, sir.

Q But you didn't take any photographs of the digital scales?

A That was an oversight on my part, yes, sir.

Q These digital scales, they can be used in the kitchen, can they not?

A Yes.
Q And who did you give it to?
A Agent Kirkland.
Q Was it in the same condition when you gave it to him as when you first received it from Agent Tracy?
A Yes.
Q Did anybody else come into possession of those digital scales?
A No.
Q Let me ask you about the numerous plastic bags. Who did you receive those from?
A Agent Hinson.
Q And how did you receive them?
A He actually handed them to me in a cardboard box.
Q Okay. And did you remove the bags from that box?
A I did.
Q And what did you do with those bags?
A I labeled them. I placed them in another bag, labeled them, who located them, where they were located, and then gave it to Agent Kirkland.
Q Were they in the same condition when you gave them to Eric Kirkland as when you received them

A Yes, sir.

Q Did anyone else take possession of that item from the point Agent Laney gave them to you to the point you gave them to Agent Kirkland?

A No, sir.

Q All of these items that we've talked about, were they in the same condition when you received them to the point that you turned them in to Agent Kirkland?

A Yes, sir.

Q Did you alter or manipulate them in any way?

A No, sir.

Q Nothing further. If you would, please answer anything Mr. Floyd has for you.

THE COURT: Cross-examination, Mr. Floyd?

MR. FLOYD: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. FLOYD:

Q Agent Barnes, did you make a list of the items in some fashion, or did you just use the return on the warrant?

A I wrote them on the return.

Q You wrote them on the return?

A Yes, sir.

Tuesday, October 2, 2012

(The defendant, together with counsel, was personally present in the courtroom.)

THE COURT: All right, back on the record with regard to the matter of the State versus Mayes. Mr. Mayes is present in the courtroom with his counsel. Let's tend to a couple of housekeeping matters before we get started.

I have been given a note by the bailiff that the jury has selected juror number 124 as the foreperson of this jury, and he will be allowed to serve. That's Mr. Steven McConnell. I'll make sure he's in the right seat when they come in.

Now, just so that the record accurately reflects the Court's ruling of yesterday, I want to make sure that I have put into the record exactly what my feeling was and what my ruling was with regard to the Jackson versus Denno motion to suppress the statement.

It is axiomatic (PH) that a defendant in a criminal case is entitled to an independent evidentiary hearing to determine the voluntariness of a statement made by him or allegedly made by him prior to the submission of such statement to the

jury. And, of course, we did have an evidentiary hearing.

Where there is conflicting evidence about a statement, the Court must first make a finding as to the validity of the statement. If the statement is found to be valid by the Court, it should be submitted to the jury.

In making such a determination, the trial judge should examine the totality of the circumstances, including the background, experience, and conduct of the accused surrounding the utterance to determine whether the State has met its burden of proof so as to warrant the admission of the confession.

The test of admissibility of a statement is whether it was knowingly, intelligently, and voluntarily made. A confession may not be extracted by any sort of threats or violence or obtained by any direct or implied promises, however slight, or by the exertion of improper influence.

Part of the State's burden during a hearing is to prove by a preponderance of the evidence that the statement was voluntarily made and taken in compliance with the requirements of Miranda versus Arizona.

The State bears the burden of proof, even where the defendant has signed a waiver of rights form. Although custody is a factor to be considered in determining voluntariness, the defendant need not show that he was in custody at the time the statement was made in order to request a Jackson versus Denno hearing on the voluntariness of the statement.

The Court has reviewed all of the evidence in the case and did review prior to my ruling, and the Court finds that the statement was knowingly, intelligently, and voluntarily made, that the defendant was in custody at the time the statement was given, and that it was in accordance with the requirements of Miranda versus Arizona and confirms the ruling earlier made that the statement is therefore valid and admissible into evidence.

Now let's address the matter with regard to the weapon that was offered into evidence. Did you get me a copy of that statute?

MR. ROSS: Yes, Your Honor.

THE COURT: The updated statute. All right, Mr. Floyd, I believe your objection was that there was no showing that it was an operable weapon?

MR. FLOYD: That's correct, Your Honor.

CLERK OF COURT: If you'll have a seat and state your name for the record, please.

MR. KIRKLAND: Agent Eric Kirkland -- K-I-R-K-L-A-N-D.

ERIC KIRKLAND, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ROSS:

Q Agent Kirkland, you were the lead investigator on this case, is this right?

A That's correct, sir.

Q Before we get into your investigation and the execution of this search warrant, can you please tell the jury about your years of experience in law enforcement?

A Certainly. I started law enforcement and corrections in 1992. I actually started working at Barnwell Detention Center. From there, I went to the Orangeburg Department of Public Safety in '94. From '96 until 2003, I was an Orangeburg County Sheriff's Deputy.

I left in 2003 with the rank of lieutenant. I came here to Lexington County in '03. In '04, I actually got promoted to the rank I currently am now.

Q And what is that rank?
A Narcotics investigator.
Q And so you've been in narcotics since '04?
A Yes, sir, a total of eight years.
Q What type of cases do you investigate?
A All narcotic drug investigations, vice, are just some of the stuff that warrants us getting into.
Q Now, were you involved in the search warrant in this case?
A I was, sir.
Q And where was that search warrant executed?
A Highway.
Q And what county is that in?
A Lexington County.
Q South Carolina?
A Correct, South Carolina.
Q And whose residence is Highway?
A Douglas James Mayes.
Q Who else lives there?
A Kaylie Tharp.
Q And what is the relationship between those two?

A They actually share a child in common.

Q Okay. Tell me what happened on February 17, 2011.

A We arrived at the residence that morning somewhere between eight and nine. The execution of the search warrant was an entry team, seven-man entry team. They made entry into the residence. I, myself, was on perimeter. I was outside in the yard.

They penetrated, made entry into the residence. I, of course, stayed outside doing a 360-degree radius to make sure everything outside was okay, along with about three or four other agents. Once they gave the okay to come inside, I ventured inside when I heard the all-clear.

Q So why were you on the outside while the agents on the entry team went in?

A The case agent is actually something like a supervisor. He acts like a supervisor and makes sure everything goes as planned. Since you're the operational planning guy, you actually don't put yourself in the middle of the raid, because you can't very well supervise and see what's going on if you are right smack dab in the middle. So you have

to take yourself out of it.

Q Okay. And you heard the all-clear, and then what did you do?

A I actually ventured inside and went to the living room area.

Q Okay. And what happened next?

A In the living room area, I stay stagnated for about maybe three to five minutes. At that point in time, Mr. Mayes came out in handcuffs along with Ms. Tharp and the little child, who was not handcuffed. But all three came out into the living room area.

Q Now, this little child, was that the child that they have in common?

A That's correct, sir.

Q Okay. And what happened at that point?

A At that point in time, I actually introduced myself to Mr. Mayes, told him who I was and why we were there. And then I proceeded to give him his Miranda warnings.

Q How did you give him his Miranda warnings?

A Off a card that I had.

Q What type of card is that?

A It's right here. It's the one I've had for the last 10 or so years.

Q Is that issued to you by the Sheriff's Department?

A No, sir, I bought this.

Q Okay. Can you read the rights that you read to Mr. Mayes?

A Sure. "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to an attorney and have him or her present with you while you are being questioned.

"If you cannot afford to hire an attorney, one will be appointed to represent you before any questioning, if you wish. You can decide at any time to exercise these rights and not answer any questions or make any statements.

"Do you understand each of the rights I've just explained to you? Having these rights in mind, do you wish to talk to us now?"

Q Okay. Now, when you introduced yourself to Mr. Mayes, did you tell him why y'all were there?

A Yes, sir.

Q And what did you tell him?

A Execution of a search warrant.

Q For what reason?

A Narcotics.

Q Okay. So after you introduced yourself, you read him his rights, what did you do at that point?

A Basically, I stayed there about two or three minutes more. And I heard one of the agents from the back side of the living room call out they needed a camera, they had found something.

Q Which agent was that?

A That was Agent Laney.

Q And he testified yesterday?

A That's correct, sir.

Q And why did he need the camera?

A He had found some narcotics.

Q Okay. And then what happened?

A The camera guy went back to the back, took the photographs, and pretty soon they actually came back out. I can't remember who came out and told me that they had found some drugs, what appeared to be narcotics, in the tissue paper in the bathroom.

Q Okay. And what did you do next?

A I asked Mr. Mayes did he know anything about what was back there. And his reply was, "It's mine. Everything back there is mine."

Q Okay.

THE COURT: All right, let me introduce

Q And what did you do with those items?

A They were actually placed in what's called a Best kit and later delivered to the Lexington County Sheriff's Department evidence room.

Q Okay. And did this Best kit come with a number?

A It does.

Q And what was the number of this particular Best kit?

A It was C020453.

Q Did you personally put those drugs in the Best kit?

A I did.

Q And did you seal the Best kit?

A I did.

Q And did you personally deliver it to the evidence room at the Sheriff's Department?

A I did.

Q And how did you do that?

A I did that in my vehicle and actually walked in the evidence room and strategically placed it in the locker.

Q And when you placed it in that locker, was the evidence -- was the Best kit sealed?

A Yes, correct.

A Evidence.

Q Okay. And when you turned them in to evidence, were they in the same condition as when Agent Barnes gave them to you?

A They were.

Q Did anyone else take possession of these items in any way?

A No, sir.

Q Now, when you received them from Agent Barnes, had she labeled on the plastic bags exactly what she was giving to you?

A Yes, sir.

Q And she did that with these plastic baggies and the digital scales?

A Yes, sir.

Q Okay. After you took possession or after you delivered the Best kit, and the baggies, and the digital scales to the evidence room, did you subsequently check that evidence out?

A I did again.

Q And when was that?

A I checked that evidence out again on -- let me refer to my date -- 9/6/2011.

Q And why did you check them out?

A I needed to discuss this case with the

Solicitor before you.

Q Okay. So you were checking them out to go over the case with the Solicitor?

A That's correct.

Q Okay. So you were checking them out to go over the case with the Solicitor?

A That's correct.

Q Okay. And at that point, had the drugs already been tested?

A That's correct.

Q All right. And did you notice anything out of the ordinary with respect to the drugs in the Best kit?

A No, sir.

Q Did they appear to be in rock form at that point?

A They were.

Q What did you do with the Best kit after you checked it out to go to talk to the Solicitor?

A I returned it.

Q And when did you return it?

A Probably about two hours later. I think our meeting lasted about two hours or so, and I returned it directly after.

Q And when you returned it, where did you

return it to?

A Back to the evidence room.

Q And when you returned it, was it in the same condition as when you checked it out?

A It was.

Q Did you alter or manipulate those items in any way?

A No, sir.

Q Did anyone else come into possession of those items outside your presence?

A No, sir.

Q Did anyone else alter or manipulate those items?

A No, sir.

Q Tell me about the digital scales and the bags. When you checked them out to go talk to the Solicitor, did you alter or manipulate those in any way?

A No, sir.

Q Did the Solicitor alter or manipulate those in any way?

A No, sir.

Q Were they in the same condition when you turned them back in to the evidence room as when you checked them out that day?

A Yes, sir, they were.

Q Were photographs taken of the drugs seized that day?

A Yes, photographs were taken.

Q Can you see Exhibit Seven from where you're sitting?

A Yes, sir.

Q And what is this?

A Turn it around.

Q If you want to step down, it may be easier.

THE COURT: Identify it by exhibit number each time you ask him.

Q We're looking at Exhibit Number Seven. Can you tell the jury what's in that photograph?

A That appears to be a half cookie of crack cocaine as well as another little small piece of crack cocaine, and a pill bottle with a green top.

Q Okay. I'm showing you State's Number Eight.

A That is the pill bottle with the contents inside of off-white rock-like substance consistent with crack inside.

Q Now, during your years of experience as a narcotics officer, have you seen crack cocaine

THE COURT: Any objection, Mr. Floyd?

MR. FLOYD: No, Your Honor.

THE COURT: All right, you are excused. Thank you for coming.

All right, you may call your next witness.

MR. ROSS: The State calls Candy Kyzer to the stand.

THE COURT: All right, Ms. Kyzer, come around, please.

(The witness was sworn.)

CLERK OF COURT: If you'll have a seat and state your name, please, spelling your last for the record.

MS. KYZER: Candy Kyzer -- K-Y-Z-E-R.

CANDY KYZER, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ROSS:

Q Ms. Kyzer, you're an evidence custodian at Lexington County, is that right?

A Yes, I am.

Q How long have you been working there?

A I've been at the Sheriff's Department for 17 years.

Q And did you receive the evidence in this

particular case?

A Yes, I did.

Q Before we get to what you did in this particular case, can you tell me about the generalized procedures that y'all have with regards to drugs being turned in to evidence?

A Whenever a deputy comes in, any kind of items, whether it's drugs or not, it's usually either in a gray box or in a locker that they put it in. And then they have to push a button that locks it from their side. So that means the only -- the evidence custodians can actually get into the locker from the other side.

And then when we come in in the morning, we check the lockers and proceed to get the evidence out and check the paperwork, make sure everything is in order, and proceed to sign it in.

Q So when an officer turns drugs in to a locker and locks that locker, who else can open it at that point?

A The only people that have access to the other side, which is in the office, is the three evidence custodians and our supervisor.

Q Okay. Now, once y'all receive the evidence out of that locker, what do you usually do

with the drugs in that case?

A We go ahead and we make sure everything is in order. In this case, in our Best kit, we make sure that the seals are still intact in the Best kit. Then we go ahead and sign it in, print out bar-code labels, put it in -- and with the Best kit, it's waiting to go to the chemist. We put in what we call our drug lab temp box.

Q Okay. Now, if you were to receive other items with that case, say drug paraphernalia, would you store those in the same room as the drugs themselves?

A No, we would not.

Q Okay. Now, once you store the drugs in a temporary storage room, what happens next?

A Whenever the chemist is ready to actually get the Best kit, we end up doing paperwork and calling her over to come pick them up. At that time, I sign it out to the chemist for her to test.

Q Okay. And you document that when you sign it out?

A Yes, we do.

Q And do you receive it back from the chemist after she does her testing?

A We do.

Q And do you document that?
A Yes, we do.
Q And do you check the seals, as well?
A We do.
Q Okay. Did you receive a Best kit in this particular case?
A I did.
Q And what was the Best kit number?
A It's Best kit number C020453.
Q And when did you receive that Best kit?
A I received it on February 17, 2011.
Q Who turned it in?
A Eric Kirkland.
Q And where did you receive it from?
A From a locker.
Q And what did you do with it after you received it?
A I signed it in, made sure all the seals and everything were intact, and then I stored it in the temporary drug lab box.
Q Were the seals intact?
A Yes, they were.
Q And what happened after you stored it in the temporary drug room?
A A couple of days later, we ended up

signing out Best kits to the chemist. This one was particularly signed and given to her.

Q When was it signed out?

A On February 22, 2011.

Q And did you personally sign that out?

A I did.

Q And when you signed it out, was it in the same condition as when you received it on February 17, 2011?

A It was.

Q Had it been altered or manipulated in any way?

A No.

Q Did anyone else come into possession of it between February 17, 2011, and February 22, 2011?

A No, they didn't.

Q All right. And who is the chemist that you signed it out to?

A It's Emily Homer.

Q And did Ms. Homer bring it back to you?

A She did.

Q And when did she do that?

A On March 29, 2011.

Q And what did you do with the item at that point?

A At that point, since it had been tested, we automatically go ahead and sign it in to a regular drug box that we put miscellaneous drug cases in. So then I signed it in and put it in a particular drug box.

Q Okay. Did anyone else sign it out after you placed it in that particular drug box?

A Yes, they did.

Q And who was that?

A Eric Kirkland.

Q When did he sign that out?

A He signed it out on September 6, 2011.

Q What time did he sign it out?

A He signed it out at 10:46 in the morning.

Q And did he return it back to you?

A Yes, he did.

Q And when did he return it back to you?

A September 6, 2011, at 12:37.

Q Why did he check it out?

A I believe he had a meeting with the Solicitor for getting ready, preparing for court.

Q Okay. Did anyone else check that item out?

A It was signed out again.

Q And when was that?

A On May 15, 2012.
Q And who signed it out at that point?
A It was signed out to Emily Homer again.
Q And can you tell me some of the circumstances surrounding that?
A At the time the Solicitor, Colleen Dixon, came over to view the evidence before we went to trial, she at that time noticed that there was liquid inside the Best kit.
Q Okay. Where does Ms. Dixon work right now?
A She is going to another Solicitor's Office. I believe it's Berkeley County.
Q So she moved down to Berkeley?
A Yes.
Q Okay. So she noticed that there was liquid in the Best kit. What happened at that point?
A At that point, I called Emily to come over and for her to look at it and let her and the Solicitor see what they wanted to do.
Q So what happened? You signed it out to Ms. Homer?
A I did.
Q And that was on what date, again?

A It's a thicker bag type substance thing --
Q Okay.
A -- that you can put -- usually, it's for like fire debris and stuff like that.
Q Okay. And what appears to be the date on those beside the initials?
A August 3, 2012.
Q Were there any baggies and digital scales turned in to evidence in this case, as well?
A It was.
Q And when were those turned in?
A They were turned in February 17, 2011.
Q And who received them?
A I signed them in.
Q Okay. And you documented that?
A Yes, I did.
Q And what did you do with them at that point?
A We have -- they're like banker boxes that we put miscellaneous items in for cases that we know are not going to be big cases. Instead of taking up a shelf with a big box with just small items, we put cases in these banker boxes. And at that time, that's where I placed it.
Q When you say "big cases," are you

referring to the amount of evidence received?

A Yes.

Q Is this a different storage room than where you place drugs?

A It is.

Q Okay. Who has access to that storage room?

A The evidence custodians and my boss.

Q Okay. Did anyone subsequently check out the digital scales and the plastic bags?

A Yes, they did.

Q And who is that?

A It was Eric Kirkland.

Q And when did he check those out?

A On September 6, 2011, at 10:46.

Q Is that the same time as he checked out the Best kit C020453?

A It was.

Q And when did he return the baggies and the digital scales?

A On September 6, 2011, at 12:37.

Q And what did you do with them at that point?

A Placed them back in the box that they should have been in.

Q Okay. Did you bring those baggies and the digital scales to court?

A I did.

Q May I see them, please? And it appears that the baggies and the digital scales are stapled together?

A They were -- they are.

Q And I'll remove the staples.

I'm going to have this one marked as the next number.

THE COURT: Number seventeen, Ms. Thomas?

COURT REPORTER: I've marked State's Seventeen, Your Honor.

THE COURT: All right.

MR. ROSS: And then I'd ask that this one be marked as eighteen.

COURT REPORTER: State's Number Eighteen.

Q I'm showing Ms. Kyzer State's Number Seventeen. Are those the plastic bags that were turned in that we were talking about?

A Yes.

Q And State's Number Eighteen, are these the digital scales we were talking about?

A Yes.

Q Now, were you previously asked to bring

these items to court --

A Yes.

Q -- the digital scales and the plastic bags?

A Yes, I was.

Q And were you able to find them?

A No, I was not.

Q Can you tell me about that, please?

A Back October of 2011, I had been notified that this case was getting ready to go to court and had gotten a phone call stating that I needed to come on over to testify. At that time, I went ahead and pulled all the evidence that we had, pulled the drugs and found them and the gun.

And at that time, I went to go outside to pull the plastic baggies and the scale and everything and could not locate it in the box that it was supposed to be in.

Q Okay. And what did you do at that point?

A I ended up looking around in the other boxes beside it, on top of it, anywhere that I could look, and still could not locate it.

Q Were these items ever located?

A Yes, they were.

Q When were they located, and by whom?

A A couple of weeks later, my sergeant, Barbara McMullen, and Deputy Joe Hart had went outside. At that time, I thought it was to rebar-code label packages because we had started a new computer system at that time and returned --

MR. FLOYD: I'm going to object to any hearsay, if she's going to testify as to what they said.

THE COURT: All right. I don't think this part is being offered for the truth of what was offered. So at this point, it's not hearsay.

You can't tell him what anybody told you, but you can tell what you saw or observed, okay? Go ahead.

A I was -- they went outside and then was looking for the packages. And it ended up Deputy Joe Hart found it.

Q And why was Deputy Joe Hart --

MR. FLOYD: Your Honor, I object. The only way she would know that is by hearsay, which you just ruled she couldn't do.

THE COURT: All right. Ask her if she has any personal knowledge of him finding it, and if so, how, other than what he told her.

Q What is your personal knowledge of how he

found that?

A He came back in the office and had the bags in his hand.

Q Okay. Did you see that?

THE COURT: All right, that's admissible.

A I did see whenever he came back in the office with them, yes.

Q And did he subsequently place those items in the correct box?

A Yes.

Q How many pieces of items do y'all have stored out there in that storage room?

A In that one storage room, we have approximately 9,600 cases or items, and our total is like 35,000.

Q Now, these two pieces of evidence which are seventeen and eighteen, these have been -- once Eric Kirkland turned them back in, have they been within the custody of the Lexington County evidence room?

A Yes, they have.

Q Okay. The whole time?

A Yes.

Q Okay.

MR. ROSS: Your Honor, at this point we

would offer seventeen and eighteen into evidence.

THE COURT: Mr. Floyd?

MR. FLOYD: Your Honor, we object. I don't think the chain has been properly -- a foundation has been properly established.

THE COURT: Where is the gap?

MR. FLOYD: They admit they lost both of the items at some point in time. They were in the wrong boxes.

THE COURT: That's right. Is there any evidence that they were not in the custody of the evidence department the entire time?

MR. FLOYD: There's no evidence that they were either, Your Honor. It's just speculation that we don't think it was anywhere else. But both of these items --

THE COURT: Well, you've got a different rule as to fungible goods as opposed to non-fungible goods, and these are non-fungible goods where identity is not an issue like the possibility of drugs or things that can be mixed up.

But if this witness can testify that these are the same ones that she had originally and they're the same now as they were then, and they were brought back to her from this individual, where

is the gap in the custody?

MR. FLOYD: The gap is nobody can say where they were when they were missing.

THE COURT: All right, I'm going to overrule the objection. The missing is not missing from the evidence room but missing from being able to locate it within the evidence room.

There is no evidence that they ever left the evidence department, if there was any evidence whatsoever that they left the evidence department. It was simply the testimony is they could not be found within the Lexington County evidence department, and they were misplaced there and found still within the department.

And that's the way I understood the testimony, and I don't think that that is a gap in the chain of custody. The objection is overruled. The evidence will be admitted subject to the objection of the defendant.

MR. ROSS: Thank you, Your Honor.

Seventeen and eighteen.

THE COURT: Seventeen and eighteen.

(State's Exhibit Number Seventeen, Plastic Bag of Plastic Bags; and State's Exhibit Number Eighteen, Plastic Bag, Scales, were

entered in evidence.)

Q Was there a rifle turned in in this case, as well?

A Yes, it was.

Q And did you document that?

A Yes.

MR. ROSS: No further questions for this witness, Your Honor.

THE COURT: Cross-examination?

MR. FLOYD: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. FLOYD:

Q Officer Kyzer, when this case was to be called to trial back in October 2011, you couldn't find some of the evidence, is that correct?

A That's correct.

Q And what couldn't you find?

A The plastic baggies, the digital scales, and the miscellaneous paperwork.

Q And what kind of room was that evidence stored in -- or supposed to be stored in?

A It's now a climate-controlled room that we store all of our multi-case boxes and computers in.

Q Now, I believe you testified that the items had been checked out to Agent Kirkland on

stored in in the evidence?

A The drug room is a room that is in our office. It is not air-conditioned. It has a fan that pulls the air through the room and circulates it back out.

And in our drug room, we have lots of multi-case boxes where we store Best kits like this instead of taking up a space with a big box that has just a little package in it.

Q So this Best kit would have been stored in a box with other Best kits?

A That's correct.

Q Any idea how many other Best kits would have been in that box?

A Approximately 30 to 40 Best kits.

Q Okay. And in that room, the climate control in that room is by way of a fan, is that correct?

A That's correct.

Q That's in the same building as the Sheriff's Department?

A It's actually located outside of the Sheriff's Department in our evidence office.

Q Is it connected to the evidence office?

A Yes, it is.

MR. ROSS: The State calls Beth Harmon to the stand.

THE COURT: All right, come around, please.

(The witness was sworn.)

CLERK OF COURT: If you'll have a seat and state your name, please, for the record.

MS. HARMON: Margaret Elizabeth Harmon -- H-A-R-M-O-N.

MARGARET ELIZABETH HARMON, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ROSS:

Q Ms. Harmon, you're an evidence custodian at the Sheriff's Department, right?

A I am.

Q And you work with Ms. Kyzer, is that right?

A I do.

Q And did you handle the Best kit in this case?

A Yes, I did.

Q And just to make sure we're talking about the same thing, let me show you State's Number Sixteen.

A Yes.
Q Is that the Best kit you handled?
A It is.
Q Now, I see you looking at the top of that Best kit. And does it have the Best kit number documented on this white bar code here?
A It does. I was looking at the control number, though.
Q Okay. What is the Best kit number right here?
A The Best kit number is Best kit number C020453.
Q Can you tell me how you came to handle this Best kit?
A This Best kit was returned back from Emily Homer on July 31, 2012, at 10:11 in the morning, and I received it then. I placed it in a bag. However, I did misfile it. Our drug room temp box is in a drug lab or, I'm sorry, a drug room.

That drug room has several different multi-case boxes, approximately a hundred or more. Each one of those boxes can contain 30 to 60 different cases, and I accidentally misfiled it. They're all filed by numerical order.

Q And is this a different room than where

drug paraphernalia such as scales and bags would be stored?

A It is.

Q Okay. So you filed it in the drug room. Did you ever come into contact after that?

A Yes, I did. That Friday, on August -- yes, August the 3rd, I was placing other items into Best kit boxes -- multi-case boxes in the drug room. And while I was placing those items, I noticed that this one was misfiled.

Q Okay. And what did you do with it at that point?

A I took it out and went to file it in its correct location.

Q And what happened?

A It leaked on me.

Q Okay. How did it leak on you?

A The Best kit itself inside the K-pack bag that I placed it in is in another plastic bag. That bag is then placed into an envelope. The seal on that when it was examined by myself, my supervisor, and the narcotics lieutenant, it was noted that it had a crease in the seal. That crease allowed the liquid to seep out.

Q And the seal that you're talking about, is

that the seal that the original narcotics officer places on it or the chemist?

A The chemist.

Q So you said there was a little bit of a crease?

A Yes.

Q Can you describe that?

A As you know, when you're sealing any type of plastic, when you're heat-sealing it, if there's any type of crease in it, that heat seal is made over that crease, which will allow a slight air pocket to form.

Q So there was an air pocket?

A Yes.

Q Okay. And that's from where the liquid seeped onto you?

A Yes.

Q Okay. And what did you with it at that point?

A Once it seeped on me, I called my supervisor. She was in our warehouse. I called her. She then called the lieutenant of the narcotics division. Both of them came over, examined the package, examined me, and we heat-sealed it in a K-pack bag. And I was sent to get a

new uniform --

Q Okay.

A -- because I couldn't wear that one anymore.

Q Now, what is a K-pack bag?

A A K-pack bag is just a bag similar -- K-pack is the brand, I believe. It's just a plastic bag that allows us to seal stuff.

Q So this is another type of heat-sealed bag?

A It is.

Q And we're looking at State's Sixteen, this outer plastic bag containing contents. The outer plastic bag is the K-pack bag you're referring to?

A That's correct.

Q And did you initial the heat seal?

A I did. I initialed my seal in red.

Q Okay. Are these your initials right here?

A They are.

Q And is the date that you initialed them?

A It is.

Q And why did you do that?

A We initial all of our seals so that we know who sealed it and so that we can identify if that seal has been broken.

Q Okay. Has the seal been broken?
A It has not.
Q Is State's Number Sixteen in the same condition now as when you sealed it?
A It is.
Q And how do you know that?
A Because the seal is still intact, my initials are still there.
Q Okay. Now, inside State's Number Sixteen, what is this manila envelope here?
A That's just a packaging envelope that we place the items in when we store them.
Q Okay. Now, is there another plastic bag inside of it?
A There is.
Q I'm going to ask you about the drug storage room. Is it air-conditioned?
A It is not. It has a vent fan in that pulls air from the outside, circulates it in that small room, and it goes out of an exhaust fan.
Q Have you had other cases within the past several months where it's been discovered that crack cocaine has melted?
A I know of one personally.
Q And that's personally in addition to this

case?

A That is correct.

Q And was it stored in that same storage room?

A It was in the same storage room. It was not in the same box.

Q Okay. So different -- it depends on the case. Sometimes it may melt, sometimes it may not?

A Yes.

Q This wasn't the only time or the only case of crack cocaine melting out there in that storage room?

A No, sir.

MR. ROSS: Nothing further for this witness, Your Honor.

THE COURT: Cross-examination, Mr. Floyd?

MR. FLOYD: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. FLOYD:

Q Officer Harmon, how many different bags, Best kits, of drugs do you have in the drug room?

A There are thousands in there.

Q Thousands?

A Yes, sir.

Q And you say you know of one other time

MS. HOMER: Emily Homer Conrad -- H-O-M-E-R C-O-N-R-A-D.

EMILY HOMER CONRAD, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ROSS:

Q Ms. Homer, you're the chemist at the Sheriff's Department, is that right?

A Yes.

Q Can you tell me about your qualifications to hold this job?

A I have a bachelor's in chemistry from University of South Carolina and a master's in organic chemistry from USC.

Q Do you have any training at any law enforcement agencies?

A Yes, I trained at SLED and with the DEA to do forensic drug analysis.

Q What is forensic drug analysis?

A Drug analysis for the purposes of criminal court.

Q Okay. How long have you been the chemist with the Sheriff's Department?

A This coming November will be seven years.

Q Okay. And how many cases have you tested

in those seven years, approximately?

A Over 2,000 cases.

Q Okay. Have you ever been qualified as an expert in State Circuit Court before?

A I have.

Q How many times?

A In state court, 18 times, once federal.

Q Okay.

Your Honor, at this point we would offer Ms. Homer as an expert in drug analysis.

THE COURT: All right, Mr. Floyd, any voir dire with regard to qualifications?

MR. FLOYD: No voir dire, Your Honor.

THE COURT: All right, any objection to qualification of the witness as an expert?

MR. FLOYD: No, Your Honor.

THE COURT: All right, the Court will qualify Ms. Homer as an expert in the field of chemistry and drug analysis.

And, ladies and gentlemen of the jury, let me tell you what that means. Ordinarily, a witness who is not testifying as an expert is limited in their testimony to opinions or inferences that are rationally based on the perception of a witness, that is, one of the five senses, and are helpful to

a clear understanding of the witness' testimony and do not require special knowledge, skill, experience, or training.

However, if scientific, technical, or other specialized knowledge will assist the trier of fact -- and that's you in this case -- to understand the evidence or to determine a fact in issue, then a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion.

So basically the difference between an expert witness and a non-expert witness is that an expert witness is allowed to give opinion in their qualified field, whereas a non-expert witness would not be allowed to give an opinion. And I have qualified this witness as an expert in the field of chemistry and drug analysis.

All right, you may proceed.

Q Ms. Homer, did you test the drugs in this particular case?

A I did.

Q Before we get to the testing that you ran, can you tell me about the general handling procedures that you have in place over at the Sheriff's Department as far as handling drugs from

the evidence custodian to the point you test them, to the point you turn them back in?

A Well, I let the evidence room know when I'm ready to accept cases. I have a safe within the lab that I store evidence that I'm working on.

Then when it's time for me to pick, I actually take the cases by hand from the evidence custodian's and carry it back to the lab. The evidence never leaves the lab at that point till I finish analyzing it. It stays -- either I'm working on it at the bench, or I keep it in a safe when I'm not working on it.

Q Who has access to that safe?

A Only I do.

Q Okay. Did you receive the Best kit in this case?

A I did.

Q And did you open that Best kit up?

A It's C020453, right?

Q Yes. Is that the one you opened up in this case?

A Yes.

Q What tests did you run on it when you opened the bag?

A I did two separate confirmatory tests on

the evidence and presumption screening.

Q Okay. And what were the results of those tests?

A Item 1.1 was 64.06 grams of cocaine base crack; 1.2 was 1.89 grams of cocaine base crack; Item 1.3 was cocaine, 2.96 grams; 1.4 was 4.29 grams of cocaine base crack. Keep going?

Q Yes, please.

A Item 1.5 was .14 grams of cocaine base crack, and that's it.

Q Okay. From the point you received the Best kit to the point you did these tests, were these drugs within your care, custody, and control the whole time?

A Yes.

Q Did anyone else come into possession of them?

A No.

Q Did you alter or manipulate these drugs in any way?

A Only in taking samples that I needed to test.

Q Only for the tests themselves?

A Uh-huh.

Q And what physical form were these drugs

in? Were they liquid, solid, or gas?

A Some of them were in rock substance, solid, they were all solid. There's powder substance, it was a solid, and another rock substance that was solid.

Q So did you notice any liquid at that time?

A No, I did not.

Q Okay. Did you reduce your tests to a report?

A Yes.

Q Is it your regular business practice to write a report when you test drugs?

A Yes, it is.

Q And do you keep a copy of this report in your records?

A Yes.

Q Did you bring a copy to court today?

A Yes.

Q May I see it, please?

I'm going to ask that this be marked as the next number.

COURT REPORTER: State's Number Nineteen, Your Honor.

Q I'm showing you State's Number Nineteen. Is this the report that you completed in this

particular case?

A Yes, it is.

Q And you are the custodian of that record, is that right?

A Yes.

MR. ROSS: Your Honor, at this time I'd ask for State's Number Nineteen to be introduced into evidence.

THE COURT: Mr. Floyd?

MR. FLOYD: Your Honor, we object to the introduction at this point until we get through the testimony --

THE COURT: I'm sorry, I can't hear you.

MR. FLOYD: Your Honor, we object to the introduction of the report at this stage. It's our position that that should be considered once the Court rules on whether or not the substances themselves can be placed into evidence.

THE COURT: All right, I'll withhold ruling at this time.

Q What did you do with the Best kit after you ran --

THE COURT: You can, of course, excuse the witness and recall her if that becomes necessary after I get to that stage.

MR. ROSS: Yes, sir.

THE COURT: Okay.

Q What did you do with the drugs after you tested them?

A After I test them, the drugs go back into my safe until a report is handed out to the officers and Solicitors. And then I have to coordinate a time with the evidence room where they can accept the evidence back from me.

Q And did you coordinate a time to do that?

A Uh-huh.

Q And did you return the Best kit to the evidence room at that point?

A I did.

Q Prior to returning that best kit, what do you do to the Best kit as far as sealing it to give it back to them?

A I take the original Best kit, and I fold it so that you can see the seal through -- I put the original Best kit and my drugs and separate them, and I put them into what's called a K-pack bag. And then I seal that, and then it gets sent back over to the evidence room.

Q And did you do that in this case?

A Yes.

Q From the point that you first received the Best kit from the evidence custodian prior to testing it to the point that you returned the sealed -- resealed Best kit in a K-pack, was it within your care, custody, and control the whole time?

A Yes.

Q Did anyone else come into possession of these items?

A No.

Q Other than the testing that you ran to figure out whether or not the substances were positive, did you alter or manipulate those drugs in any way?

A No.

Q Okay. Did you subsequently -- after you turned that Best kit in to evidence, did you subsequently come into possession of it again?

A I did. I didn't mark down the date. I think the evidence room has that on record. Colleen Dixon called me over to the evidence room to look at the evidence.

Q And who is that?

A That was -- she at the time was the Assistant Solicitor handling the case.

Q Okay. And is that unusual for you to

discuss a case with a Solicitor prior to trial?

A No.

Q Okay. What did you do when you got there?

A I looked at the K-pack bag, the evidence that was inside the K-pack bag that I turned in.

Q And how did it appear?

A It looked like there was liquid inside of it.

Q Okay. Is that --

A Some of it was slurry, like part of it was still solid, but other parts of it were liquid.

Q Okay. Is that how it appeared when you ran your tests?

A No.

Q Okay. Have you had other cases where drugs have melted out in the storage room?

A I have.

Q So did you take possession of the Best kit at that point?

A I did.

Q And what did you do with it?

A I took it back to the lab and placed it into my safe.

Q All right. And you're the only person that has access to that safe?

A I am.

Q Did you ever return it to the evidence room?

A I did. Colleen had asked me to take the evidence from the evidence room and keep it in the safe until which time she would contact me and tell me what to do with it at that point.

Q Okay.

A So I didn't hear anything. And as a general practice, I don't store evidence in the safe.

Q Okay. And you subsequently gave it back to the evidence room?

A I did.

Q And when you gave it back to the evidence room, was it in the same condition as when you first -- when you received it?

A It was in the same condition as when I received it the second time.

Q Okay. Did anyone else come into possession of that item?

A No.

MR. ROSS: Your Honor, at this point I'd move for State's Sixteen into evidence, the Best kit.

THE COURT: Mr. Floyd?

MR. FLOYD: Your Honor, we still have the same objection.

THE COURT: All right, I'll withhold it at this time. We'll rule on it in a few minutes, and I'll hear your full objection on it. Do you want to ask the witness about some things in the Best kit? All right, it's been offered, and I'm assuming let's at least narrow down the objection.

What is your objection to number sixteen, Mr. Floyd, just legal objection without an argument on the record?

MR. FLOYD: Your Honor, the alleged drugs are obviously not in the same form as they were at the time they came into the custody of the Lexington County Sheriff's Office.

THE COURT: All right.

MR. FLOYD: They have been altered in some fashion.

THE COURT: All right.

MR. FLOYD: That would be tampering, whatever the reason would be.

THE COURT: I'm saying that I don't need an argument. But you're saying it's not admissible because they're not in the same form. Any other

objections?

MR. FLOYD: Not at this point, Your Honor.

THE COURT: Well, at what point will there be any other objections? He's offering them into evidence, and I want to know what your objections are -- your legal objections are.

MR. FLOYD: Well, my legal objections are the drugs are not in the same form they were in at the time they came into the custody of the Lexington County Sheriff's Department.

THE COURT: All right.

MR. FLOYD: They have been altered.

THE COURT: I understand that objection. Any other objections?

MR. FLOYD: No other objections.

THE COURT: All right. Okay, we'll take that up in a little bit.

Mr. Ross?

Q So you went and you looked at the Best kit with the evidence custodian and the other Solicitor on the case, and you saw that it was partially liquefied, is that correct?

A Yes. There was liquid in the bag.

Q Okay. What is your expert opinion as to how that occurred?

A Well, again, you know, this is --

MR. FLOYD: Your Honor, I'm going to object. She's an expert. She's been qualified as an expert on analyzing drugs.

THE COURT: No, sir, she's been qualified as an expert as a chemist, as well.

A Well, drugs are an organic substances. A characteristic of organic substances is that they don't withstand heat very well. And depending on how impure that substance is will actually lower what are called the physical property of a fixed point at which it will melt.

There's states of matter. We have gas, liquid, and solid. So unfortunately I wasn't always in possession. It was stored in another location which was not climate-controlled, or, as my understanding, at some point in time it also, you know, went through other people and left the evidence room to come to the Solicitor's Office and go back to the evidence room. Any time that -- there's certain points of temperatures at which a substance can melt. And the less pure a substance is, the lower that temperature will be required for it to melt.

Q Let me interrupt you. What do you mean by

the less pure the substance is? What are you referring to?

A The more adulterants that are added to it, the more -- it's a principle of the solute principle. You know, when you're -- the more of a solute participles are added to a pure substance, the lower the melting point, the lower the point at which, the temperature at which it will melt or the temperature which something could boil.

Just like when you're making pasta, you want your water to boil quickly so you add little bit of salt to your water. That lowers the boiling point temperature to water so you can get the water to boil faster.

Q So what type of adulterants could be added to cocaine or crack cocaine that would lower that melting point?

A Examples of adulterants are lidocaine, benzocaine. Those are frequently used because it's still in cocaine -- it's still in the cain family, but it's not really a cocaine -- and other things such as baking soda.

Q Would the percentage of adulterants -- would you say that that would lower -- the higher the percentage of adulterants, the lower the melting

point would be?

A Yes, yes.

Q So if you have two substances in the same room and they both have a different amount of adulterants, whether or not one melts or the other would depend on the amount of adulterants?

A Yes.

Q And the amount of adulterants you have in crack cocaine, that's not visible upon plain sight, right?

A Right. No, you can't, and more I wouldn't have a job.

Q Now, you saw the Best kit, and you saw the fact that it's partially slushy or liquefied. Does that affect your report and your conclusion in any way?

A No.

MR. ROSS: I have no further questions for this witness, Your Honor.

THE COURT: Cross-examination?

MR. FLOYD: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. FLOYD:

Q Ms. Homer --

A Yes, sir.

unit of weight.

Q Can you tell them in a way that they could put a handle on it?

A A gram is about 15.42 grains. I mean, a gram is less than kilogram. A kilogram is a thousand grams.

Q All right, let's --

A It's about .0353 ounces.

Q All right, it's how much ounces? How did you refer to that?

A One gram is .0353 ounces.

Q So a gram is less than three one-hundredths of an ounce, would that be right?

A Yes, one gram is .03, so about three-hundredths of an ounce, uh-huh.

Q We're talking a very small quantity. A gram is a very small quantity, isn't it?

A I don't really think of things in terms of small.

Q I've got you.

A A gram is a gram.

Q And the amount that you test is what part of a gram?

A Well, I take -- it depends on how many tests. Some of these have three and four tests, so

it's about, you know, about .03 grams, but, you know. And then some of them have several color tests at about a tenth of a gram each color test.

Q So you're testing a very small sample of what you're testing?

A I take a random sample of the actual material.

Q I understand. But overall it's a very small portion of the substance?

A It's an adequate portion, according to SLED and DEA.

Q But is it a small portion?

A No, I don't classify things as small.

Q You don't classify it as small. Is it a very small ratio to the whole?

A I don't classify things as small. I mean, it's a part of the whole. As long as the entire whole substance is the same type of mixture, I take a tenth of a gram per test. You know, sometimes it can be I can use .5 grams, a total of a half a gram, depending on how many tests that I run.

Q Okay. For example, you said that one of the samples -- and I believe you said 64 grams or something to that effect?

A 64.06.

Q And you would have taken how much of that to test?
A I actually used close to a gram.
Q You used close to a gram --
A Uh-huh.
Q -- so one sixty-fourth of it?
A Uh-huh.
Q Okay. Would that be about the same ratio as to the other samples?
A The other samples, I did -- let's see -- I used three-tenths of a gram and 1.2 again. I used a tenth of a gram, 1.4.
Q How about the 4.29?
A There is no 4.29.
Q Do you have one that's in the fours?
THE COURT: I can't hear you, Mr. Floyd.
MR. FLOYD: I'm sorry.
Q Did you have one that was four something? Did I write that down wrong when you said it?
A Well, 4.29 grams and 1.4, and there I used close to a tenth of a gram.
Q Okay. Now, when you came back in contact with the substances on May 15th, did you do any testing then?
A Colleen asked me to pull it to take the

evidence at that time.

Q Did you do testing then?

A No, huh-uh.

Q Okay. And so you don't know what type of adulterants were in the substance, do you?

A I never test for what type of adulterants.

Q Okay, I understand. But you're testified that adulterants could contribute to the melting temperature?

A Yes, they do.

Q But you didn't test this substance to see what adulterants or what percentage of adulterants there were?

A No. The State of South Carolina does not test for percentage of adulterants because we're quantitative, not qualitative analysts.

Q The more adulterants that there would be, the less the purity of the substance, is that correct?

A Yes.

Q Well, have you ever brought it to the attention of the Sheriff's Department that they should air-condition or climate-control the evidence room?

MR. ROSS: Objection to relevance, Your

Honor.

THE COURT: All right, I don't see the relevance, but I'll allow him to ask it. I don't think there's any harm.

And the question was, have you ever brought it to anybody's attention that there should be climate control in the evidence room.

A Yes, I have.

Q And was that before this incident?

A Yes -- well, I'm a little confused. It was before the last court hearing where we had another evidence that had melted. But it was after this evidence.

Q So it's happened twice, to your knowledge?

A Yes, it has happened twice.

Q Now, if the drugs at some point in time had been placed in a different environment that was even less climate-controlled than the fan, could that have contributed to them melting?

A Well, I mean, if you place it in an environment that has gotten warmer than that area, yes.

Q Exhibit Sixteen, is it in the same form now as it was when you first examined it back in 2011?

THE COURT: Yes, sir.

All right, ladies and gentlemen, there is again another legal matter that I need to take up with the lawyers. First of all, I'm going to ask this witness to step down.

You are not excused yet, though, Ms. Homer, but if you would step down. Give the exhibit back to the Court Reporter and step down.

And then, ladies and gentlemen, as soon as Ms. Homer gets down, I'm going to excuse you for just a few minutes while we take up this question of evidence, this legal question that we need to take up at this time. And I'm going to do that, and I have to do it on the record and outside of your presence.

Please do not discuss the case among yourselves. Go to your jury room, relax, and I'll send for you just as quickly as I can get this issue resolved.

(The jury left the courtroom at 12:27 p.m.)

THE COURT: All right, I believe, Mr. Ross, your position at this time is that you are offering Exhibit Number Sixteen, which is the Best kit containing the alleged drugs, into evidence and

offering number nineteen, which is the chemist's report, into evidence, isn't that correct?

MR. ROSS: Yes, Your Honor.

THE COURT: Okay.

All right, let's address those matters, Mr. Floyd, and I'll hear from you in just a minute. But first of all, let's go to Exhibit Number Nineteen, which is the report. Let me hear from you with regard to what your objection is about that.

MR. FLOYD: Your Honor, it's our position that the report cannot come in unless the drugs themselves come in.

THE COURT: What's the basis for that?

MR. FLOYD: Because the drugs themselves are the best evidence. They are the substances --

THE COURT: But isn't her testimony and isn't her test on those drugs made before there was any change in the chemical composition of the drugs? In other words, they were checked out to her when they were still in cookie form or rock form, and her test was based on that.

So what difference does it make whether the Best kit comes in at this point at all if her test was made and there's no question in the testimony that her analysis was made on the basis

that they were in the correct form at the time that she made the test?

MR. FLOYD: Your Honor, it is our position that the drugs themselves must come into evidence in order to make the case. And if the drugs themselves can't come into evidence, then the test of them would be irrelevant.

THE COURT: Are you telling me that if there had been a fire in the Sheriff's Department and the evidence had been destroyed that her test results couldn't come in?

MR. FLOYD: I would argue that, Judge.

THE COURT: Okay.

Mr. Ross, let me hear from you on that.

MR. ROSS: Your Honor, I think that the only thing we have to show is what was seized was properly handled from the point of seizure to the point they were tested and the results of that test.

He said the drugs are the best evidence in this case, but we've heard that the drugs have since melted. The best evidence is the drugs as they were before when they were seized and when they were tested shortly thereafter. So I think the best evidence actually is the report itself.

THE COURT: All right. I would look at

another further analysis on this, Mr. Floyd, is that without objection, even without the report, the witness testified as to what she found without objection. So that evidence is really already before the jury as to what she found when she ran her test.

The written report simply supplements or corroborates her earlier testimony. So it's my view that the report is admissible for two reasons. Number one, she's already testified as to the results of her test and given her verbal testimony as to the results of her test without objection.

There has been no objection made to the chain of custody before she testified as to the results of the test, and that she took possession and tested the drugs before they were misplaced and also before there was any change in the chemical analysis.

So the ruling would be that Exhibit Number Nineteen is admissible into evidence, being the chemist's report and will be so admitted. All right, now let me hear from you with regard to Exhibit Number Sixteen, which is the Best kit, Mr. Floyd.

MR. FLOYD: Thank you, Your Honor. We

object to the introduction of Exhibit Sixteen, the Best kit, for the obvious reason that it is in a different form than it was at the time it came into the custody of the Lexington County Sheriff's Department. It was in a solid form.

According to the testimony, it is now in a liquid or a slurry form, which by their own testimony is a different form, a different nature than it was at the time it was seized. And accordingly we would move that it not be allowed into evidence because there has been a change in its condition.

THE COURT: Well, let me just ask you a couple of hypotheticals, and this is one I think about that comes off-hand, and I'm going to ask you another one. Suppose that, for whatever reason, salt or sugar was obtained as evidence in a case, taken to the evidence room, and because of moisture, that salt or sugar which was in granular form became solid because of moisture. Does that make it inadmissible?

MR. FLOYD: Well, I think granular form is also solid, Your Honor.

THE COURT: Sir?

MR. FLOYD: Granular form is also solid,

Your Honor, so there wouldn't be a change in the physical nature of it.

THE COURT: All right, suppose it was heated to the point where it became liquid. Does that make it inadmissible?

MR. FLOYD: That would be a change, and I think it would be inadmissible. You know, they're custodians of the evidence. They have to -- you know, they have to protect it, they have to take care of it.

THE COURT: Well, agreed if they tampered with it. But what if it was a spontaneous chemical reaction? Isn't that what we have here, a spontaneous chemical reaction without anybody's fault?

MR. FLOYD: Well, that's the question. Whose control was it? Who had the responsibility of protecting it and maintaining its physical condition? That would be the Sheriff's Department.

Now, there's a speculation on their part that it had to be melted by heat, but that's pure speculation. They didn't do any testing on it to see what was the reason for the change in nature of the substance. They just speculated.

THE COURT: Well, I think the witness has

testified basically it was a change in environment.

Mr. Ross?

MR. ROSS: Your Honor, I think it should come in. I think we have the right to tell the jury what happened in the case. And this is a matter really of evidence preservation, and I think the precedent that's helpful in determining this is State versus Cheeseborough and a recent case, State versus Bland.

And both of these cases involve handling of the evidence and the defense objections to the handling of the evidence. Really the rule in place here is that the defense has to show that the evidence was -- in the Cheeseborough case, it was a weapon that was destroyed pending trial.

It was a murder weapon destroyed pending trial. And the Court -- the Supreme Court -- says you have to show that the State acted in bad faith or that the evidence possessed an exculpatory value apparent before the evidence was destroyed.

Your Honor, in this case, (a) the evidence hasn't been destroyed. It's still there. It's changed in form. So I really don't see a legal precedent for allowing what Mr. Floyd is arguing.

I think we've explained how it got from

point A to point B and everything in between. And the jury is going to want to take a look at it and see for themselves, and I think they've got a right to do so.

THE COURT: Okay.

All right, Mr. Floyd, do you want to be heard from any further?

MR. FLOYD: Your Honor, there's no way around the fact that it's in a different form. I mean, that's --

THE COURT: But is there anything in the law that you can point to me that makes it inadmissible because it's in a different form?

MR. FLOYD: Your Honor, I think --

THE COURT: Through no tampering with the evidence. And I won't say "fault," but no tampering with the evidence by anyone with the State. I think you've got an entirely different situation if you could show there was some tampering of the evidence.

MR. FLOYD: Well, everybody in the chain -- the case law is clear. Everybody in the chain has to say the drugs, the substance, whatever type of evidence they're attempting to introduce, is the same.

"The substance is the same as when I got

it. When I got it back, it was the same. It had not been tampered with in any way." That's the law on the whole chain. Nobody can say it here, although what they can say is it was the same up until May 15th or sometime discovered on May 15th.

THE COURT: But haven't they explained, uncontradictedly explained, the reason for the change and not being in bad faith or fault on the part of the State?

MR. FLOYD: No, Your Honor. They've speculated that it could have melted because of adulterants. That's a speculation.

THE COURT: Well, that's the opinion of the expert, and her testimony is unchallenged on that point.

MR. FLOYD: Well, I think it was challenged. I asked if she tested it for any adulterants, and she didn't. So it's pure speculation on her part.

THE COURT: Okay, all right. Well, first of all, I would note for the record that the objection of the defense in this case to the introduction of Exhibit Number Sixteen, which is the Best kit containing the drugs, is not on the basis of the chain of custody.

There has been no objection made to the chain of custody of this particular exhibit. And so the issue is that they are not in the same form, and that's the reason or the basis for the objection.

To me, it's very clear that the drugs that were left in the evidence room were accounted for at all times, and they left the custody of the evidence custodian only when they were properly signed out.

It's also very clear that while they were in the custody of the evidence custodian, they were internally misplaced but never left the custody and control of the evidence custodian except those instances where they were properly signed out. And therefore that's why I make my ruling.

And then, of course, there was no objection made with regard to the chain of custody. But that's the way that I see that. But the objection is now that they're not in the same form, and therefore Exhibit Sixteen is not admissible.

The evidence is that there was a spontaneous chemical change, not that there was any wrongdoing on the part of anybody in tampering with the evidence to effect that change, not that they were tampered with.

As I say, I can equate this to sugar or

salt or any substance that temper or moisture or anything intangible makes a change in its physical composition the longer you have it or that it might have just as a result of time.

It's also been explained by the chemist that the reason for this would be that some of them would do this way and some of them would not. Some of them would melt -- cookies or crack would melt, and others would not because of the amount of adulterants, which they have no way of measuring the amount of adulterants, and that different amounts of adulterants could cause a physical change in the substance in some of them and not in others.

So that's we had here, was a chemical change that was not caused by any person or object but simply a change in the environment. In my view, along with the evidence in this case as to the way that the drugs were handled, the way that the change came about, not as a result of any misfeasance or malfeasance on the part of the evidence personnel but simply as a result of a change in environment that was really uncontrollable that there is no question that the evidence is appropriate and this is the same evidence simply in a different form that came about as a result of time or environment and

without fault of the State. Exhibit Sixteen is admitted subject to the objection of the defendant.

All right, now, having said that, Mr. Ross, do you want to recall the witnesses?

MR. ROSS: Just to do some redirect with Ms. Homer. That's the only witness I intend to call.

THE COURT: Okay, all right.

Bring the jury back in, then, please.

Ms. Homer, you can come back around.

(The jury returned to the courtroom at 12:43 p.m. after which the following proceedings were had:)

THE COURT: All right, thank you, ladies and gentlemen. We are ready to proceed with redirect examination by the State.

MR. ROSS: Thank you, Your Honor. Your Honor, at this time I'd move for the --

THE COURT: Exhibits Fifteen and Sixteen have been admitted into evidence.

MR. ROSS: Sixteen and nineteen, Your Honor.

THE COURT: You're right, sixteen and nineteen.

(State's Exhibit Number

please come back to your jury room at 2:30. We should have all of those matters taken care of by that time.

When you're reassembling in the jury room, do not discuss the case among yourselves. It's still premature for you to begin any discussion of this matter. Also while you're away from the courthouse, do not talk with anyone else about the case and do not allow anyone to discuss it with you.

Simply forget about the case for the next hour and a half or so and come back at 2:30. And we'll be ready to go forward this afternoon. With those admonitions and instructions, I'll excuse you now and allow you to get your lunch. Thank you. You may go with the bailiff.

(The jury left the courtroom at 12:53 p.m. for lunch recess.)

THE COURT: All right, Mr. Floyd, I'll be glad to hear from you by way of motions.

MR. FLOYD: Thank you, Your Honor. Your Honor, at this time we would move for a directed verdict of acquittal. It's our position the evidence, even taken in a light most favorable to the State, fails to establish the proof of the guilt of this defendant, Mr. Douglas Mayes, beyond a

reasonable doubt.

Your Honor, at this time we would also renew all the motions we made during the presentation of the State's case and our objection to evidence coming into play. It's our position, one, that the charge of possession of a weapon during the commission of a violent crime --

THE COURT: Mr. Ross, move this thing. It's right in front of Mr. Floyd here. I like to look at people when they're talking.

All right, go ahead.

MR. FLOYD: As to the charge of possession of a firearm in connection with a violent crime, it is our position that the State must prove that the weapon was capable of being fired or capable of expelling a projectile I think would be the wording in the statute.

And they have failed to do so. So we'd move that that charge be dismissed. And, of course, we would also renew our objection --

THE COURT: Doesn't the statute just say "is designed to"? It doesn't require it to be capable of. The statute just says a firearm means any rifle, which this is, it says, which will or is designed to. And is there any question that this

exhibit -- I don't remember the number -- is designed to expel a projectile?

MR. FLOYD: Well, it depends on what they mean by design. We would say at this current time, no, it's not designed to do it, because there is something in there -- there's something happened to that weapon that has changed the design that makes it inoperable.

THE COURT: Okay. I don't think that changes the design. That may change the composition, but it doesn't change the design. I understand.

All right, let me hear from you, Mr. Ross, first with regard to the drugs.

MR. ROSS: Your Honor, with regard to the drugs, we've established that the drugs were found in his house, undisputed that it was his house, right beside him in a box of toilet paper. And when questioned about it, he admitted that they were his. So I think we have established the burden of proof that's required under the directed verdict standard. And I'll be happy to --

THE COURT: Mr. Floyd, let me ask a couple of questions. Is it your position for your directed verdict motion that there's no evidence of

possession or no evidence that they were drugs?

MR. FLOYD: Your Honor, it's our position that the State's proof falls on the question of, first, possession, whether or not it's actually the drugs of this defendant, Mr. Douglas Mayes. All they have is the fact they say that's his address. That's all they have.

THE COURT: Okay. Well, how about his statement?

MR. FLOYD: And his statement, which we contest is questionable, the manner in which it was provided.

THE COURT: But that's a fact question, isn't it, for the jury to determine?

MR. FLOYD: Yes, that's for the jury. That's for the jury. I agree with you there, Your Honor.

THE COURT: So there is evidence in the record, then, and which under a Rule 19 motion for directed verdict is what I have to look at, because the rule provides that the Court shall direct a verdict of the defendant's failure of any offense charged in the indictment after the evidence on either side is closed if there is a failure of competent evidence tending to prove the charge in

the indictment.

In ruling on this motion, the trial judge shall consider only the existence or non-existence of the evidence and not its weight. I have long contended that the use of the term "competent evidence" in the record, as used in the rule, is unfortunate, because it implies a weighing of the evidence, which the second sentence there goes on to show that's exactly what the trial judge should not do.

He considers only the existence or non-existence of the evidence. Several years ago, I headed a task force for revision of the criminal rules. We have submitted our proposed revisions to the Supreme Court, and they are pending before the Supreme Court.

And one of the things that we did change was in the use of the word "competent," because it does lead to an argument that we hear many times about the sufficiency of the evidence and not its existence. But it's clear that the rule only requires that I evaluate the existence or non-existence of the evidence.

And in this case, there is evidence in the record of the possession by virtue of where it was

found, that it was his residence, that he made a statement. Some of it is circumstantial. Some of it is direct.

But I would deny the motion on the basis of the failure to prove the possession of the substance at this point, because there is evidence in the record regarding that. Now I'll hear from you with regard to the substance itself.

MR. FLOYD: Your Honor, in that regard, there are two motions that I make. First of all, we renew our objection to the Court's introduction into evidence of the plastic bags and the scales. I think the evidence clearly established there was a break in the chain of custody of those two items since they went missing for a certain amount of time.

THE COURT: Well, let's assume that they were missing for a certain amount of time, completely missing. And I disagree with you that that's what the evidence says. The evidence says they were misplaced. There's no evidence that they were missing.

There's no evidence that they ever left the evidence room. But let's assume that they did. With non-fungible goods, with that make any

difference?

In other words, let's say that my house is broken into, and they steal my gun. And I go to the pawnshop, and I find that gun, three months later. Three months later I find it.

And I come into court, and I say, "That's my gun," but I can't say where it's been in those last three months. It's non-fungible. I can identify that as being the item that was taken from my house.

And this witness in this case said, "These scales were the ones that we took possession of. These scales are the same one today." When they're non-fungible, what difference does it make where they've been in the meantime?

MR. FLOYD: Well, Your Honor, the only way they can say that is by looking at the container they're in and saying "Yes, that's got to be the same."

THE COURT: That's one way.

MR. FLOYD: There's no way -- the items themselves are not serial-numbered, so they're non-identifiable on their own.

THE COURT: Are you saying there's not a different rule with regard to fungible and

non-fungible goods?

MR. FLOYD: No, no, I think there's a different rule.

THE COURT: Okay.

MR. FLOYD: But I think for many fungible goods or non-fungible goods, you have ways to identify them. But whether like in your illustration, you know, it's your gun, you know it, so you can identify it, or there's something that's a serial number or something that you have a picture of or whatever.

THE COURT: But the witnesses in this case testified "These are the same scales that I took from the house," or "These are the same baggies that I took." They were unchallenged on that. All right, let me hear from you on --

MR. FLOYD: And the last point, Your Honor, as to --

THE COURT: That's regarding the plastic bags and the scales. What about the drugs themselves?

MR. FLOYD: Your Honor, of course, we object to the drugs themselves because -- and it's clear they're in a different form now. They have changed from when they were seized.

THE COURT: But that's only with regard to the admission of Exhibit Sixteen.

MR. FLOYD: That's correct.

THE COURT: What about the fact that the chemist testified, regardless of the admissibility of Exhibit Sixteen, that she testified that when they were in the rock form, it was crack cocaine, and it was cocaine, and there was "x" number of grams of each substance? I don't see how that affects the directed verdict motion.

MR. FLOYD: Well, it's our position, Your Honor, that they still have to introduce the drugs themselves. They have to get them into evidence, or the case fails. It doesn't matter what the chemist said earlier, Your Honor. They still have to get the drugs in.

THE COURT: So you're saying again -- I'm playing the devil's advocate here. So you're saying that the drugs were turned in to the evidence custodian, who documents them all the way up to a certain point.

They're signed out to the chemist. The chemist tests them, brings them back to the evidence custodian. And Lexington County has a disastrous fire, and the drugs are destroyed. The case has to

be thrown out? Are they not admissible? The results are not admissible because they are no longer available?

MR. FLOYD: Oh, I agree. I think they have to be available for trial, Your Honor, because the defense has a right to test them if they so choose.

THE COURT: Okay, all right. The Court finds that, again, on the motion for directed verdict, the test is the existence or non-existence of the evidence, not its weight or its believability. That is a matter for the jury to determine.

I think there is evidence in the record for both the drugs themselves as well as the paraphernalia, which is the scales and the baggies, and I would respectfully deny the motion for a directed verdict. Now, counsel, let's talk about a couple more things.

Mr. Floyd, immediately after lunch -- we're going to break for lunch at this time, but I'm going to come back before the jury comes back. I'm going to need a decision from your client regarding whether or not he does or not does not wish to testify in this matter. And I will go through that

room and apply that law to the facts as you may find those facts to be and arrive at a verdict in this case.

You will hear first from the Solicitor, Mr. Ross, on behalf of the State and then from Mr. Floyd on behalf of the defendant.

Mr. Ross?

CLOSING ARGUMENT

FOR THE STATE

MR. ROSS: Thank you, Your Honor, may it please the Court?

THE COURT: Yes, sir.

MR. ROSS: I go down the street to the BP station, and I go to the candy aisle, pick up a candy bar, put it in my pocket, and I walk out the door without paying for it. I have just stolen that candy bar.

And if I go to my car, put that candy bar down on the front seat, drive home, park the car in the driveway, and get out and leave the candy bar sitting there, what do you think is going to happen to that candy bar?

A sunny day like today, a sunny day like you get in the summertime in Lexington County, South Carolina, that candy bar is going to melt. When

that candy bar melts, does that mean I am no longer guilty of stealing that candy bar?

Does that give me a get-out-of-jail-free card for stealing a candy bar if it melts in my car? Mr. Floyd wants to sell y'all that. He wants to sell y'all a get-out-of-jail-free card. What do y'all think about that?

I told you when this case started that the facts are simple, the law is simple. The law that he is accused of violating is trafficking crack cocaine. And I'm a little bit old-fashioned, but I want to figure out, if somebody has violated the law, I'd like to take a look at it.

So this is the actual statute that he's accused of violating, and Judge King is going to explain this to you as well. But you'll recall all we're going to prove is that the defendant, Douglas Mayes, was in actual or constructive possession of 10 grams or more -- in this case, 28 grams or more -- of cocaine base, crack cocaine -- possession.

That's all trafficking crack cocaine is, is possession. And the judge is also going to explain constructive possession. I talked about this in my opening statement as well. You don't have to have drugs on you to be guilty of

possession.

If you exercise dominion and control over those drugs or dominion and control over the area where the drugs are found, you're guilty of possession of those drugs, which makes sense, because we all have stuff -- we can't carry everything we own on our person.

That doesn't mean you're not in possession of those items. So consider the evidence in this case. Is he guilty of possession of those drugs? Well, number one, it is his house. That is unquestioned. It is his house.

Without a doubt, this is the man right over there that lives at Highway in Pelion. How often do you have drugs in your house and you not know about it? Is that common experience?

"Oops, some drugs in my house." Not only in his house, right there in his bathroom -- right here. Right here, look where they're found -- right beside where he does his business in the morning. That's where the drugs were found, right beside this little baby's potty where the drugs are found.

He's going to say they're not his, in the most intimate area of our home? That's where

they're found. They're not his? How about where was he when the police officers rushed in?

You remember Sgt. Laney came in. He was the first guy to enter. He limped up. He had surgery last week, and he came to court to testify. He entered this room right here, this door, knocked and announced, said "Police," and then he went in.

He came all the way down here. This is where he finds Douglas Mayes. This is where he finds the drugs. He's right there caught red-handed. There's no space in between here. There's no way to get out of that. He is caught red-handed right beside where the drugs are found.

Sgt. Laney testified as to how long it took him to get back in there. He knocked, and he went in. He didn't wait for somebody to come answer the door. And there's a reason why they do that, because you can flush them down that commode.

If you wait on somebody to answer the door, they're going to flush them down the commode. Douglas Mayes didn't have time to do that. They were up in there. They were back in that bedroom in no time. He didn't have time to flush them down the commode.

Take a look at this pill bottle. He had

three bags of crack, one bag of powder, and he's got this pill bottle. He doesn't have the time to open this pill bottle up, shake out the drugs, before the police came back there.

It's easy to figure out what happened in this case. He heard "Sheriff's Department, search warrant," "Sheriff's Department, search warrant." He grabbed his stuff, and he stashed it. Well, why else would he not flush those down the commode?

That's $7,000. All these little rocks, all these little rocks in here, that's as good as gold on the street, $100 a gram. Now, I didn't major in math. I was never good in math. But $100 a gram at 70 grams, $7,000.

So that's why he didn't flush them. And you can also take the value of the drugs in consideration to figure out whose drugs they were, who was in possession of them. If someone else wee in possession of these drugs, if this is some sort of conspiracy or somebody else put them there, is that really a good practice for a drug dealer?

I don't know much about business. I'd probably starve if I had to get a real job. But do you think that is a smart business practice to stash $7,000 of your product in somebody else's bathroom?

Do you think that's what's going on here, that there's some other guy that stashed those drugs in that bathroom without him knowing about it?

They snuck into his single-wide, went into his bathroom, and stashed them there? How else do you know that he was in possession of these drugs? Well, there's the elephant in the room. He confessed to them. And it makes you think, "Well, duh. Of course he was in possession of them."

Well, duh, they asked him about these drugs, and he knows he's caught red-handed, and he can't talk his way out of it. So he says, "Yes, everything back there was mine."

Now, they're going to try and say there's some confusion in that statement, that you really can't tell what he was talking about when he says, "Everything back there is mine." But when narcotics officers enter your house with a search warrant for drugs, and they said they found drugs, do you think they're talking about the mouthwash in his bathroom?

You think they're talking about the soap? You think those narcotics officers were there to talk about building codes? Of course not. They were there for one reason. You know it, and he knows it. They were there for drugs, and he flat-

out confessed to it.

The second charge is PWID, possession with intent to distribute, cocaine. That's for the powder cocaine. So in addition to the possession element that we're going to prove and we have proven, you've got intent to distribute.

How can you figure this one out? You can just look at the drug paraphernalia that was found in the home. Look at all these little suckers. What do you think these things are for? There are a lot of them in here.

What do you think these are for in his kitchen cabinet? And he didn't know about what was found in the bathroom? You think -- there was a toddler there. You think this was for the toddler's lunch? Can you fit a little small sandwich in here? Can you fit lunch in here?

What can you fit in here? What can you fit in here? Something about that size. That's not the only drug paraphernalia that was found in that house. Right here, right on the kitchen counter, this little sucker, these little digital scales here.

Those were found on the kitchen counter in his house, right in plain view, right for everybody

to see. They didn't really have to look for them. You walk in the door, they're right there like it's a can of mustard. If you walk in my house, you're probably going to find some mayonnaise that's spoiled sitting out on the kitchen counter.

If you walk into Douglas Mayes' house, you find digital scales. Now, Mr. Floyd cross-examined the narcotics officers that seized these items on what could this thing be used for. They talked about maybe putting some beef on here, maybe a small hamburger to weigh it.

My mama, bless her heart, she's on Weight Watchers, and she does those little Weight Watchers points. And she's always got some sort of scale. She will weigh out a dadgum rice cake. You think he was weighing out his Weight Watchers points? You think he was trimming up for bathing suit season?

You think he was weighing something like this? You think he used this to weigh his product out before he packaged them in this for his customers? How else can you figure out intent to distribute? That's pretty damning.

But the weight of the actual powder, like I said, is going to come into play. And listen to Judge King when he tells you, when he instructs you

on the law, about the weight of the substance is an element to determining whether or not he intended to distribute the powder cocaine.

He's going to be very clear if you have in your possession over a gram of powder cocaine, you, the jury, based on just the weight alone, without even taking this into consideration, or this into consideration, or all this other stuff, based on the weight of that powder alone, you can conclude he intended to distribute it.

Well, here he had three grams, three times that one-gram inference weight, three times that threshold, three times, not just barely over. He crushed it. He crushed that ceiling, three times the ceiling.

Also consider the crack cocaine there, $7,000 worth of crack cocaine. Do you think that's all for him? Even without even looking at all that evidence over there, $7,000 worth, is that all his? He was going to sell that.

Was he going to cook that powder cocaine to sell it, to put into those bags, put it out on the streets? The last charge is the easiest one of all, the weapons charge. He's guilty of trafficking crack cocaine, and he was in possession of this

weapon.

Trafficking crack cocaine is considered a violent offense under the law. He had this weapon in his possession, sitting out in his kitchen, while he's committing that offense. Now, Mr. Floyd talked about -- asked the officers on cross-examination whether or not this is operational.

And, again, listen to what the actual law is on this point. And Judge King will tell you about this. The standard is, is this a weapon that is designed to fire? Mr. Floyd wants to take this sucker out and do a little target practicing in the middle of the trial, but we don't really do that in the middle of a trial, because it's designed, capable to be fired.

I'm not a weapons expert, don't claim to be. I don't think you need to be. Just take a look at it. So what does one do when confronted with a mountain of evidence like we have in this case? What is the card you can play?

You've only got one option out. You've got to attack the police. You've got to put the police on trial. That's really what they did in this case. That's his only way out. He thinks that's his get-out-of-jail-free card.

How did they attack the police? Well, they talked about that melted crack cocaine. They think that that's a get-out-of-jail-free card. But do you really need to be an expert to know what that is? Did you need to bring in the chemist to explain this?

I think one look at it and you can figure out what this substance is. And the chemist was clear. She did her report not long after these drugs were seized. They were in rock form. They hadn't melted -- an absolute ton of cocaine in that house.

And we asked her, "Well, how can it go from rock to liquidized in essence?" It's the same way that candy bar goes from Hershey's milk chocolate candy bar to liquid chocolate right there in your hands. You add a little heat, a little temperature, something's going to melt.

That doesn't mean it's no longer crack cocaine or it wasn't cocaine in the first place. It just means that it physically changed forms. We flat asked her how that happened, and it's because of the adulterants, the adulterants that are placed in the crack cocaine, what you cut it with.

Different people cut it with different

stuff. So if you have different levels of adulterants in your crack cocaine, and you put in the same storage area, some can melt, and others won't. That's just the laws of physics. It's the laws of chemistry.

Different adulterants in crack cocaine seized from Pelion, South Carolina, versus crack cocaine seized from somewhere else, pure versus impure, one's going to melt, and one's not going to melt. So that's why you have some cases melt out there in that storage room and most of them don't.

And, again, the bottom line, when that chemist got up on the stand, did it alter this in any way? Did it alter her final report? No. Should it alter your decision? No.

How else did they attack the police? Well, they jumped on the evidence custodians. They attacked -- little Candy Kyzer came up and testified on the stand. They lit into her. Really? They handle 10,000 pieces of evidence in that storage room.

They put these two items in that storage room, these two needles in a haystack. And one time they were called to court, to come bring these to court and couldn't put hands on them. They went out

there and looked in another box, there they were. Does that mean these were never in that box? Does it mean that these somehow grow legs and walk out the door?

What it means is we're all human. Those evidence custodians are human. It's amazing that something like this doesn't happen more often when you've got 10,000 needles sitting out there in that haystack. So all this talk about what the police did wrong, let's talk about what the police did right.

They took some initiative in this case. They busted a drug den, and they seized $7,000 of crack cocaine, took it off the streets. That's what they did right, and they should be commended for that. They shouldn't be attacked.

They caught this man red-handed, and they gave him a chance to explain himself. And he explained himself, "Everything back there is mine." They gave him the opportunity. He knew he was caught. He still knows he's caught.

Finally, ladies and gentlemen, I want to talk to you about the presumption of innocence and reasonable doubt. Judge King and Mr. Floyd have already gotten in that a little bit, but I'll talk

to you a little bit about it as well.

The presumption of innocence, that really is nothing new. That's been the law in this country for as long as we've been a country. That's the American way. The State wouldn't have it any other way. And it's simple.

It means everybody that walks through those courthouse doors -- everybody -- when you walk in to start a case, you're presumed innocent. At the start of the trial, you are presumed innocent. Everybody gets their day in court.

Mr. Mayes has had his day in court. He's had a few days in court. And the evidence is in. And that presumption of innocence is gone. He can't get around all this evidence. He can't get around that.

The trial is over. That presumption of innocence has left the building. You're also going to hear about reasonable doubt from the judge. And reasonable doubt, that's not really -- those aren't magical words, reasonable doubt.

Judge King is going to explain to you reasonable doubt simply means, are you firmly convinced that Douglas Mayes is guilty? Are you firmly convinced that Douglas Mayes is guilty?

That's it.

It's not guilt beyond all doubt. It's not guilt beyond every doubt, because nothing in this world is beyond all doubt. Nothing in this world is beyond all doubt. It's are you firmly convinced. After all this evidence, are you firmly convinced that he's guilty?

So if I were to tell you that somebody -- that the narcotics officers found $7,000 of crack cocaine in somebody's bathroom, would you start to get firmly convinced that he's guilty? If I were to tell you that there was open drug paraphernalia throughout that house, are you starting to get firmly convinced yet?

If I were to tell you he was found right beside where the drugs were, are you firmly convinced that he's guilty? If I were to tell you that he admitted to this officer that he was guilty, are you starting to get firmly convinced yet?

Now, before I sit down and give the floor to Mr. Floyd, I do want to thank you for coming in to serve on this jury panel. Yesterday when we came in, there was a lot of people here for jury duty. And I know all of y'all had something you could have been doing.

You could have been out with your family, could have been with your friends, could have been working to put some food on the table. You took time out of your schedule that you didn't have to.

You should be commended for that, because nothing the police ever do could ever come to fruition without 12 honest citizens standing in judgment of somebody else. And that ain't an easy thing to do. It is never easy to sit in judgment of somebody else.

But it's necessary. It is necessary to do so. It is necessary to hold people accountable for their actions. So there's only one thing left to do. Let's hold Douglas Mayes accountable for his actions. Hold him accountable for what he is, a drug trafficker. Find him guilty as charged.

THE COURT: Mr. Floyd?

CLOSING ARGUMENT

FOR THE DEFENSE

MR. FLOYD: Thank you, Your Honor.

Mr. Foreman and ladies and gentlemen of the jury, before I get into my closing argument, I'd like to thank each of you for the attention you have given to this matter. It's the most important day in the life of Douglas Mayes. The decision that you

make about him, well, it's going to affect him for a long time. So we appreciate the attention that you have given to us.

Now, I'm going to repeat something that's been said to you, and it's not that I think you forgot it. It's just that it's the most important thing for you to hear. And that is what we call the presumption of innocence, because, you see, Douglas Mayes come into court with the same rights each of us have.

One of those most important rights is what we call the presumption of innocence. So you must look at Douglas Mayes, and you must say in your heart and in your mind, "Douglas Mayes is innocent." And he remains innocent unless the State proves his guilt to each one of your satisfaction beyond a reasonable doubt.

And what do we mean by that? Now, when we lawyers quit talking to you -- I'm going to be the last one to talk to you -- Judge King will read to you the law. He'll explain to you the law. And if I say something to you about the law -- I'm about to say something about it -- you listen to what he says, and you make sure you go by the way he tells you the law is, because he's the judge of the law.

Ladies and gentlemen, one way to define proof beyond a reasonable doubt is reasonable doubt is that doubt which would cause a reasonable person to hesitate to act -- that doubt which would cause a reasonable person to hesitate to act.

So if you could somehow take all the evidence you've heard in this case and put it in the shape of this piece of paper, because of one piece of that evidence or the lack of one piece of that evidence, you would hesitate before you would vote to find him guilty, well, your objection as a juror is to return a verdict of not guilty, even if there's other evidence in the case that makes you suspicious of the guilt.

Because when you vote guilty or not guilty, you're not voting on whether or not you think he did it. What you're voting on is whether the State has proven his guilt beyond a reasonable doubt. Now, why should you have some doubt in this case?

Let's talk about the evidence a moment. The State says you should convict him because he lived there, because he said everything in the bathroom was his [inaudible]. Let's talk about that a minute. Let's analyze that just a moment.

First, the judge will tell you about a statement, when someone gives a statement. And you must first, when you consider that statement, consider whether or not you think it was given freely and voluntarily or whether or not there may have been some coercive factor involved in that statement before you give it any weight.

What were the circumstances of the statement? What do we know? Douglas Mayes was sitting in the living room handcuffed. Kaylie Tharp, the mother of his child, was sitting in the room handcuffed with a small baby next to her. Ladies and gentlemen, what do you think was said?

What do you think was said? Does it sound reasonable what was said was, "If you don't admit it, if you don't take responsibility, y'all are both going to jail"? Otherwise, they both wouldn't have been handcuffed. You know that's probably what happened, because what happened next?

He gave them what they wanted. Oh, the handcuffs come off of Kaylie Tharp. The baby stays there. It's not a situation where both go to jail, what's going to happen to the baby? Is he going to get DSS involved with it? Or does he go ahead and claim responsibility so that that won't happen?

So can you use the basis of that to convict somebody on, or does it make you hesitate a little bit? Now, what else is there? His driver's license has his address. Let me ask you this. Does anybody else live there? Is there anybody else other than Kaylie Tharp? Does Kaylie Tharp live there?

Or is there anybody else in addition to Kaylie Tharp that lives there? Have you heard any evidence on that point? Did anybody prove to you that there's nobody else that lives there? Have you heard anything on that? Not a thing, have you?

Now, then they say, "Wow, he's got to be guilty because he's in the bathroom, and that's where the drugs are." Ladies and gentlemen, let me tell you something. The way we see that the way I think is logical is that more goes to prove he's not guilty. That's more proof that he's not guilty. You know why?

What you've here, you add it all up, you have all those drugs. You've got maybe 70 grams of product. You know what that is? Less than three ounces, 28 grams in an ounce. Less than three ounces of product. Now, you're not allowed to see it, you see, because something has happened here,

and, you know, it's now liquid. So you can't really see the exact size.

That's not our fault. But you can't the exact size of what you're dealing with, less than three ounces. Now, what does that mean? That means if it was Douglas Mayes' drugs, if Douglas Mayes knew that those drugs were in the bathroom, don't you think he would have flushed them down the toilet when he heard them bust down his door, saying "Police, police, police"?

One flush, three ounces of product, because they didn't find any other drugs anywhere, did they? Doesn't it make you hesitate, because isn't that a more logical explanation? One flush, if he'd have known they were there, that's all he had to do, was reach in there and throw them in the toilet and flush them.

The police are out there, breaking in the door, yelling "Police, police," running through the house. In fact, when they confronted Mr. Mayes, he wasn't doing anything suspicious, was he? He didn't seem nervous, did he? Have you heard anybody say anything about that?

He didn't seem like he was trying to hide anything. Are they seeing a normal person? Have

you heard anything unusual about his appearance, about his manner, about his demeanor? No, there wasn't any, was there? Doesn't that stay more in line with the fact he didn't know what was in there?

And even if he said, "Whatever is in there is mine," he didn't know. There's been no evidence that anybody ever confronted him before he went into the living room and said, "Hey, look what's here. Look what's here." He had no idea what they were talking about.

And now I'm going to shut up and sit down. I see you suppressing those sighs of relief. It's been a long two days. I've been up here talking a long time, too. See, there's a reason for that, because once I sit down, I don't get to say anything before you on behalf of Douglas Mayes.

The system we have doesn't allow us to communicate with each other. I'm not allowed to ask you what part of this evidence do you need me to discuss. You're not allowed to ask me, "Well, Wayne, what about this piece of evidence? What about this piece of evidence? What do you have to say about that?"

There's no dialogue like that permitted in our rules. So we lawyers end up standing up here

trying to talk about every possible thing we can, in hopes that we don't overlook something that may be of importance to you. All we can ask is when you get back in that room, if something comes up, think how we could have responded to it.

When you go to make that question of guilty or not guilty, remember what you've heard in here. Does the evidence prove the guilt beyond a reasonable doubt? And when you go to consider that point, you think about that. You think about what makes more sense.

Did he know the drugs were there, or he didn't know the drugs were there? Because, see, that's part of the question. It's not enough -- his mere presence and at the scene where the scene where the drugs were found is not enough for guilt. If you listen to the judge, he'll tell you that.

His mere presence there is not enough. They must prove he had knowledge of it and the intent to control it. So the question on whether he had knowledge of it goes to what happened when the police came in that house, because if he had knowledge of it, if he knew it was there, it wouldn't have been there by the time the police got back there.

And he would still have been looking furtive, he would still have been looking guilty. There would have been something about what was going on as he's rushing out of the bathroom that would make you think he just tried to hide the drugs or get rid of them. Thank you for your attention here. We feel comfortable placing Mr. Mayes in your hands. Thank you very much.

THE COURT: All right, counsel, let me see you sidebar for just a moment before I start talking with the jury.

(Conference at the bar.)

CHARGE OF THE COURT

All right, Mr. Foreman and ladies and gentlemen of the jury, please give me your attention. You have followed very patiently and attentively to the presentation of the evidence and the able arguments made by the Solicitor, Mr. Ross, on behalf of the State and Mr. Floyd on behalf of the defendant, and I thank you for that.

It now becomes the duty of the trial judge under the constitution of this state to charge and instruct you in the law applicable to this case. And it is your duty as jurors to accept and apply the law as the Court will now state it to you. And

as jurors, it is your exclusive duty to determine and decide all issues of fact in this case and for that purpose to determine the effect, the value, the weight, and the truth of the evidence.

Both the State and the defendant have the right to expect that you will conscientiously consider and evaluate the evidence and apply the law of the case thereto, to the end that both the State of South Carolina and the defendant will receive and obtain a fair and impartial trial.

Now, when I use the word "defendant" in these instructions, I refer, of course, to Mr. Douglas James Mayes. The State of South Carolina by the three bills of indictment in this case charge the defendant with three different offenses. Indictment Number 1303 charges the defendant with possession with intent to distribute powder cocaine on February 17, 2011.

Indictment Number 2011-GS-32-1304 charges the defendant with trafficking in crack cocaine, and Indictment Number 1305 charges the defendant with possession of a weapon during the commission of a violent crime. To these charges and to these indictments, the defendant has entered a plea of not guilty.

This plea of not guilty by the defendant places the burden of proof on the State to prove by evidence the guilt of the defendant beyond a reasonable doubt before you can find the defendant guilty. The defendant, Mr. Mayes, is presumed in the law innocent of the charges contained in these indictments.

It is a cardinal and fundamental rule of the law of evidence that a defendant, irrespective of the enormity of the charges against him, will always be presumed innocent of the crime for which he is indicted unless and until the guilt of the defendant has been proven by evidence which satisfies you, the jury of his guilt beyond a reasonable doubt.

The presumption of innocence is not a mere legal theory. It is not just a legal phrase. The presumption of innocence is a substantial right to which every accused is entitled. Our Supreme Court has declared that the presumption of innocence is like a robe of righteousness placed about the shoulders of this defendant, and it remains with him and assigns to him that class, the innocent, until that presumptive robe of righteousness has been stripped from his person by evidence satisfying you,

the jury, of the guilt of the defendant beyond a reasonable doubt.

The presumption of innocence accompanies the defendant from the time of his arraignment and appearance in this Court and continues with the defendant after you retire to the jury room to deliberate your verdict. The presumption of innocence continues in existence to the benefit of the defendant until you, the jury, reach the conclusion that the State has proven the guilt of the defendant beyond a reasonable doubt.

Now, the State is not required to prove the guilt of the defendant beyond all doubt or beyond every doubt but beyond a reasonable doubt. What is a reasonable doubt? It is not an imaginary or fanciful doubt or a weak doubt. It is a substantial doubt.

It is a doubt for which you can give or assign a reason based on the testimony and the evidence in this case. A reasonable doubt is not any sort of a doubt. You and I know from everyday life experiences that you may have a sort of a doubt about any matter that arises, no matter how trivial it may be or how serious it may be.

A reasonable doubt is a doubt which makes

an honest, sincere, conscientious juror in search of the truth hesitate to act. Proof beyond a reasonable doubt is proof which leaves you firmly convinced of the defendant's guilt.

If you have a doubt for which you can give or assign a reason as to the guilt of the defendant, then he is entitled to a verdict of not guilty. Reasonable doubt may arise from evidence which is in the case or from the lack of evidence in the case.

You, the jury, must make the determination of whether or not reasonable doubt exists as to the guilt of this defendant. The very fact, however, that the jury engages in a full and free discussion of the issue of guilt or non-guilt in a case with a normal conversational ebb and flow on these issues do not automatically mean that reasonable doubt exists in this case or in any other case.

I charge you that the defendant is entitled to every reasonable doubt arising in the whole case or arising in any defenses asserted by the defense. If upon any issue of fact essential to conviction and a verdict of guilty you have a reasonable doubt as to how that issue should be resolved, it would be your duty to resolve that doubt in favor of the defendant.

A defendant, ladies and gentlemen, is not required to prove his innocence, but the State is required by law to prove every essential element of the offense charged against the defendant by evidence which satisfies you, the jury, of his guilt beyond a reasonable doubt before you can convict the defendant and find him guilty.

If then upon the whole case you have a reasonable doubt as to the guilt or innocence of the defendant, he is entitled to that reasonable doubt and would be entitled to an acquittal and a verdict of not guilty. But on the other hand, if upon the whole case you find the State has proven by evidence which satisfies you, the jury, of the guilt of the defendant beyond a reasonable doubt, then in such circumstances it would equally be your duty to convict the defendant and find him guilty.

Now, if you find the defendant guilty but you have a reasonable doubt as to whether the defendant be guilty of the greater crime charged or the lesser crime charged, then you would resolve that reasonable doubt in favor of the defendant and write a verdict of guilty only as to the lesser charge.

But, of course, you could not write a

verdict of guilty to any charge unless you find that all elements of the charge have been proven by the State beyond a reasonable doubt. Now, as I said at the first of this case, I instruct you that the indictments in this case which I hold in my hand are not evidence.

They are simply the formal written instruments which contain the charges against the defendant, and they serve as the formal document by which this case is brought to trial. During this trial, each of us, you and I, have certain duties to perform. As the trial judge, it is my responsibility to preside over the trial of this case, and I also have the duty to rule upon or pass upon the admissibility of evidence offered during the progress of this trial.

You are to consider only the competent evidence before you, and you are to disregard and disabuse from your mind any testimony ordered stricken from the record of this case during the progress of the trial, if there be any. And you are to consider only the testimony which has been presented from the witness stand, together with any exhibits admitted into the record of this case and any stipulations of counsel made in the record, if

there be any.

I have the additional duty to charge you the applicable law in this case. As the presiding judge, I am the sole judge of the law in this case. And it is your duty to accept and apply the law as I now state it to you. If you have a preconceived idea as to what the law is or what the law ought to be, and it does not agree with what I tell you the law is, you are obligated under your oath to abandon this preconception on your part because you are sworn to accept the law precisely as I give it to you.

In every case tried in this Court before a jury, the jury becomes the sole and exclusive judge of the facts of the case. You, the jury, are the judge of the facts in this case. The Court is the judge of the law. The constitution of this state has declared that the trial judge shall not intimate, state, comment upon, or make any statement to a trial jury about the facts in the case.

Since you are the sole judge of the facts, you are not to infer from anything that I have said during the progress of this trial in ruling upon the admissibility of evidence of otherwise, or anything that I say to you now during the course of these

instructions to you, that I have any opinion about the facts of this case. I do not.

The law does not permit me to have an opinion about the facts of the case. That is a matter solely for you to determine. You, the jury, must determine the facts, as I have stated that to you, and you, the jury, must give and determine what effect, what value, what weight, and what truth should be attributed to the evidence presented during the course of this trial.

Necessarily then, you must assess the credibility of the witnesses who have testified in this case. Credibility is simply a legalistic term which means believability. It becomes your duty to analyze and evaluate the evidence and to determine that evidence which convinces you of its truth.

I charge you that in determining the question of credibility or believability of the witnesses, you may believe one witness as against several witnesses, or you may believe a part of the testimony of a witness and reject the remaining part of the testimony of the same witness.

You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety. You may consider whether any

witness has exhibited any interest, any bias, or any prejudice in the case. And you may consider the demeanor a witness, that is, the appearance of a witness from the witness stand.

And you may consider the opportunity for knowledge concerning those things about which the witness testified. These considerations you do not exercise arbitrarily but if in your good judgment there is sound reason in the record for so doing, because your objective, ladies and gentlemen, is to find the truth, whether it comes from one or more witnesses.

And in doing so, in exercising your mental processes and in determining what you consider to be true, the law simply requires that you exercise your good judgment, your common sense, your sense of logic and reason, and your experiences in life.

You then apply these attributes of ability to the evidence and determine what you consider to be the truthful evidence. And to these true state of facts, you take and apply the law as I now state it to you and thus arrive at a true verdict in this case.

Now, as I said, there are three indictments in this case, and the defendant is

charged in one indictment with trafficking in crack, in another indictment with possession with intent to distribute powder cocaine, and the other with possession of a weapon during the violent crime. I now want to define these offenses for you.

First, trafficking in crack cocaine. Section 44-53-375(c) of the South Carolina Law reads as follows: "A person who knowingly sells, manufactures, delivers, purchases, or brings into this state or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this state or who is knowingly or in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of 10 grams or more of cocaine base is guilty of a crime known as trafficking in cocaine base."

There are three elements to the offense of trafficking in crack cocaine that the State must prove beyond a reasonable doubt. First, that the substance involved was in fact crack cocaine. Second, that the defendant had possession of that crack cocaine, either actual possession or constructive possession. And, third, that there were in fact 10 grams or more of crack cocaine

involved.

Section 44-53-210(b)(4) of the code provides that cocaine in any form is a controlled substance under the law of South Carolina. Section 44-53-110 states -- and I quote -- "Cocaine base means an alkaloidal cocaine or free base form of cocaine which is the end product of chemical alteration whereby the cocaine in salt form is converted to a form suitable for smoking. Cocaine base is commonly referred to as rock or crack cocaine."

The substance must be crack cocaine. The defendant must have actual or constructive possession of the crack cocaine, and the amount involved must be 10 grams or more of crack cocaine. The State must prove that the substance involved is in fact crack cocaine.

The State must further prove the defendant had actual or constructive possession of the crack cocaine. What does possession of crack cocaine mean under the law? The law says cocaine in any form is a controlled substance. Possession means more than simply having a controlled substance in one's possession.

There must be knowing possession. The

State must prove possession of crack cocaine by the defendant and the further fact that the defendant knew he had the crack cocaine in his possession. The State must demonstrate beyond a reasonable doubt that the defendant was in possession of crack cocaine, that he knew he had it in his possession, and that he knew the item was a controlled substance under the law of this state.

The State is not required to show the purpose for which the defendant may have had possession of the crack cocaine. This is not a part of the State's required degree of proof. The State must show beyond a reasonable doubt that there was possession of the crack cocaine and that the defendant knew he had crack cocaine in his possession.

Now, there are two kinds of possession recognized in the law, actual possession and constructive possession. Actual possession occurs when the controlled substance is found to be in the actual physical control of the person charged with the possession.

Constructive possession is when a person has dominion or control or the right to exercise dominion and control over either the object or the

premises upon which the object is located. Possession may be inferred from the circumstances, and it may be imputed to anyone who has the power and intent to control and use the object.

In other words, possession of an object or premises gives rise to an inference that the person charged has both the power and intent to control the use and disposition of the object. Actual knowledge of the presence of the controlled substance is strong evidence of intent to control the disposition or use.

Mere presence of a person in an area where an object is found is not enough in and of itself to give rise to the necessary inference. Proof of possession requires more than proof of mere presence in the place where the controlled substance is found.

The State must prove the defendant had both, one, the power, that is, either actual or constructive control; and, two, the intent to control its disposition or use. Now, actual control occurs when the controlled substance is found to be in the actual physical custody of the person charged.

Constructive control occurs when the

person charged with possession has dominion and control over either the controlled substance or the premises upon which the controlled substance is found. Constructive control means the defendant's knowledge and possession may be inferred if the controlled substance was found on premises under the defendant's control.

This is a permissive inference. The jury is free to accept or reject this permissive inference of knowledge and possession depending upon your view of the evidence. Constructive control may be established by circumstantial evidence as well as by direct evidence.

And constructive control may be jointly shared by two or more individuals. Where the actual knowledge of the presence of a controlled substance is such strong evidence of intent to control its disposition or use, that knowledge may be equated with or substituted for the initial element.

So in summary, before you can find the defendant guilty of trafficking in crack cocaine, the State must prove the following elements beyond a reasonable. First, the substance was in fact crack cocaine, a controlled substance under the law of this state.

Secondly, the defendant had possession of the controlled substance. That would be possession either or constructive possession of the controlled substance. And, third, the amount of controlled substance was 10 grams or more of crack cocaine.

Now, the next indictment that you must consider is the indictment for possession of cocaine with intent to distribute. Section 44-53-370(a)(1) of the South Carolina Code of Laws provides that "Except as authorized by this article, it shall be unlawful for any person to possess with intent to distribute a controlled substance."

There are three elements of that offense of possession of cocaine with intent to distribute that the State must prove beyond a reasonable doubt. First, that the substance was in fact cocaine. Second, that the defendant had possession of that cocaine, either actual possession or constructive possession. And, third, that the defendant possessed the cocaine with intent to distribute.

Of course, the State has first got to prove the fact that the substance was cocaine. And, second, the State must prove beyond a reasonable doubt that the defendant had actual or constructive possession of the cocaine. And, again, I'm not

going to go through the entire colloquy as to what actual and constructive possession is.

I charged you that in connection with the trafficking charge. But the two kinds of possession recognized in the law are actual possession and constructive possession. And possession may be inferred from the circumstances and may be imputed to anyone who has the power and intent to control the disposition and use of the object.

In other words, possession of an object or premises gives rise to an inference that the person charged has both the power and intent to control the use and disposition of the object. Actual presence of the controlled substance is strong evidence of intent to control the disposition.

And, again, I would tell you, as I did in connection with the trafficking charge, that mere presence by the defendant where the controlled substance is found is insufficient in and of itself to give rise to possession of the controlled substance. Possession requires more than mere presence.

Now, the State must prove the defendant possessed the cocaine with intent to distribute. Under this charge, the State is not required to

prove a distribution or sale. The State is only required to show an intent to distribute. What is intent within the law?

Criminal intent is a state of mind which operates jointly with an act of omission in the commission of a crime, and criminal intent is a mental state of conscious wrongdoing. So I will tell you that, in summary, before you can find a defendant guilty of possession of cocaine with intent to distribute, the State must prove the following elements beyond a reasonable doubt.

First, that the substance was cocaine, a controlled substance. Second, that the defendant had actual or constructive possession of the cocaine. And, third, that the defendant possessed the cocaine with intent to distribute.

However, I would further charge you that there's a provision in the law with regard to possession with intent to distribute, and that is Section 44-53-370(d)(4), which creates a permissive inference that possession of more than one gram of cocaine constitutes possession of cocaine with intent to distribute.

Thus, this code section provides that possession of more than one gram of cocaine gives

rise to a permissive inference that the defendant possessed the cocaine with intent to distribute. The inference is a violation of the law by possession of more than one gram of cocaine and may be drawn from proof of the quantity of the drugs.

The resulting implication only permits rather than requires the jury to infer a violation of the law. This is another piece of evidence for you to consider and evaluate. The permissive inference does not relieve the State from actually proving beyond a reasonable doubt the element of intent to distribute cocaine.

Now, on the theory that the greater offense includes a lesser offense, another option that you will have on that charge will be the offense of simple possession of cocaine. And, again, South Carolina law provides that it is unlawful to possess a controlled substance or what is known as cocaine. And if you conclude that he did not possess the cocaine with intent to distribute the cocaine, then your verdict would be one of simple possession of cocaine.

Now, the final charge in this case is the charge of possession of a weapon during the commission of a violent crime. Let's go back to the

simple possession for just a minute. The code section does provide that it is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from or pursuant to a valid prescription of a practitioner while acting in the course of the practice.

And, of course, there the State would have to prove two elements, that is, that the controlled substance was in fact cocaine and that the defendant had actual or constructive possession of the cocaine. Now, let's talk for just about the charge of possession of a weapon during the commission of a violent crime.

Our law provides that if a person is in possession of a firearm or visibly displays what appears to be a firearm during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime, then he is guilty of the crime of possession of a firearm during the commission of a violent crime.

Firearm is defined as any machine gun, automatic rifle, revolver, pistol, or any weapon that will or is designed to or may readily be converted to expel a projectile. Section 16-1 of

the Code of Laws of South Carolina provides that the crime of trafficking in crack cocaine is a violent crime.

For you to find the defendant guilty of the separate offense of possession of a firearm during the commission of a violent crime, you must first find the defendant guilty of committing the violent crime, which in this case is trafficking in crack cocaine.

If you find the defendant guilty of trafficking in cocaine, you must then determine whether the State has proven beyond a reasonable doubt that the defendant was in possession of a firearm or visibly displayed what appeared to be a firearm during the commission of a violent crime.

Now, those are the charges for which the defendant has been charged in this case. But there are two or three other principles of law that I want to state to you. First of all, that there are generally two types of evidence that are presented during a trial, direct evidence and circumstantial evidence.

Direct evidence is testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial

evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

You should weigh all the evidence in this case. And after weighing all of the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you would find the defendant not guilty. Also, the Court has admitted into evidence in this case the testimony of an expert witness.

Although lay witnesses are limited to testifying about facts within their knowledge and are not allowed to give opinions, certain witnesses who by their training, education, or experience are considered experts in a particular field may give their opinions in that field based on the facts of a matter and their conclusions.

These opinions constitute evidence to be considered by you in connection with all of the evidence and testimony in this case. You may consider the expert's opinion just as you do all

other evidence in this case. It is for you, the jury, to give it such weight as you in your experience and discretion may determine.

You must weigh such evidence and accept or reject it in the same manner that you treat all other evidence in this case. Now, I want to state to you now and I want to emphasize to you now this principle of law with regard to the defendant not testifying.

The defendant in this case has not testified. This is his constitutional right. It is not a circumstance you can take into consideration or even allow to enter into your discussions in the jury room. Under the Constitution of South Carolina and the United States, it is the defendant's constitutional right not to testify.

The burden of proof is on the State of South Carolina to establish the guilt by competent evidence beyond a reasonable doubt. The fact that the defendant did not take the witness stand and testify in his own behalf does not create any inference against him. And you, the jury, must not permit this fact to weigh in the slightest degree against the defendant, nor should that fact enter into your discussions or deliberations in the jury

room.

Now, ladies and gentlemen, I have about finished my instructions to you. But I would tell you that you are not partisans or advocates for the State of South Carolina or for this defendant. It has been said that when you serve on the jury, you have no friends to reward and no enemies to punish.

Obviously, such a perverted system of justice would be intolerable. You have been selected by both the State and this defendant as fair and impartial jurors. It is your duty, then, by your joint deliberations to determine the truth in this case, giving to the defendant the benefit of each and every reasonable doubt on each and every issue. And then to the facts that you determine to be true, you then take and apply the law which has been given you by this Court and thus arrive at a verdict which does speak the truth.

The word "verdict," ladies and gentlemen, has a Latin derivative. It comes from the Latin verb "veredicto," meaning to speak the truth or truth saying. And when you have accomplished these responsibilities, you will have satisfied your oath as jurors, and you will have discharged your duty to this Court.

Now I want to instruct you on the forms of verdict in this case. And, of course, there will be a separate verdict for each of the three charges. If the State has failed to prove the guilt of the defendant beyond a reasonable doubt, your verdict would be two words, not guilty.

If the State has proven the guilt of the defendant beyond a reasonable doubt, your verdict would be one word, guilty. The verdict that you render in this case must be the verdict of each and every juror. It must be your unanimous verdict. All 12 jurors must agree on the verdict which you authorize the foreperson to write.

Now, Mr. Foreman, I have prepared verdict forms on two sheets of paper that will go with you to the jury room. The sequence in which I have stated the possible verdicts on this case is not suggestive of any verdict on your part. You should not infer from the sequence or the order in which I have put the possible verdicts on this verdict form that I have any opinion as to what your verdict should be. I do not.

The law does not allow me to have an opinion. But, obviously, when setting something up on a piece of paper, I had to put something first

and put something second. But the verdict in this case is to be determined by you, the jury, and not by this Court.

Now, on the two drug charges, they are contained in one verdict form. And across the top, we simply have the State of South Carolina, the County of Lexington, in the Court of General Sessions, the State of South Carolina versus Douglas James Mayes, the defendant, and the two indictment numbers, 1303 and 1304.

Verdict on 1303, "We the jury by unanimous agreement find the defendant, Douglas James Mayes, on the charge contained in Indictment Number 2011-GS-32-1303 guilty of possession with intent to distribute cocaine or guilty of simple possession of cocaine or not guilty." So there are three possible verdicts on that particular one -- guilty of PWID cocaine, guilty of possession of cocaine, or not guilty.

Now, on Indictment Number 2011-GS-32-1304, which is the one that deals with the crack cocaine, trafficking in crack cocaine in that indictment, "We find the defendant guilty or not guilty." And then you would find one of the three on the first charge and one of the two on the second charge and then

sign your name and date it.

Now, the other form that you would only consider this charge if you find the defendant guilty of trafficking in crack cocaine. In fact, the instructions say across the top, "If you find the defendant guilty of trafficking in crack cocaine pursuant to Indictment Number 1304, you may consider the charge of possession of a weapon during the commission of a violent crime. If you find the defendant not guilty of trafficking in crack cocaine, do not consider this charge and notify the bailiff that you have concluded your deliberations."

But if you find that he is guilty of trafficking, you consider this. And on the charge of possession of a weapon during the commission of a violent crime, "We, the jury, by unanimous agreement, find the defendant guilty or not guilty." Again, sign your name and date it.

And when you have reached a verdict, if you will knock on the door, we will return you to the courtroom as quickly as possible. The bailiff will be outside your jury room door to provide security during the course of your deliberations.

In just a few minutes, I'm going to send you to the jury room. I will have the bailiffs

bring you the evidence in this case. I will also have them bring you the verdict forms. But I'm going to ask that you go to your jury room now, with the exception of the alternate. I'm going to ask that she stay with me.

But if you'll go to your jury room, but do not begin your deliberations just yet. If it's not necessary for me to bring you back into the courtroom for additional instructions, then the bailiff will bring you the verdict forms and the evidence and tell you to begin your deliberations. But do not begin your deliberations until he tells you to do so.

So with the exception of the alternate, if the 12 members of the principal jury will go with the bailiff to the jury room. But do not begin your deliberations just yet. Thank you.

(The jury left the courtroom at 4:06 p.m. to deliberate their verdicts.)

THE COURT: Are there any additions or exceptions on behalf of the State, Mr. Ross?

MR. ROSS: No, sir.

THE COURT: On behalf of the defense, Mr. Floyd?

MR. FLOYD: Your Honor, the only exception that I take to the charge is we object to the use of the word "inference," that if there's an inference created by the mere fact that he possessed the premises or owned the premises. We think that's a burden-shifting kind of charge.

THE COURT: Well, it used to be when it was presumption that the Supreme Court has changed that basically to make it an inference, a permissive inference. And I told the jury, of course, that they could disregard it as a permissive inference, and I think that is the law. But your exception is noted.

MR. FLOYD: Thank you, Your Honor.

THE COURT: All right, counsel, come up and check the exhibits to make sure that -- I don't think there was anything that was excluded. I think it's one through nineteen?

COURT REPORTER: Yes, sir.

THE COURT: One through nineteen, and that should be all the exhibits.

MR. ROSS: And, Judge, you're not sending the indictments back?

THE COURT: I do not send the indictments back. I send the verdict forms and the exhibits.

And if you will assemble the exhibits and take them back to the jury and tell them to begin their deliberations. All right, give those to the bailiff and the verdict forms and tell the jury to begin their deliberations.

MR. ROSS: And, Your Honor, thirteen is good to go back with them?

THE COURT: Yes, sir. It's safe. It's been marked as safe, and it can go back as well.

Madam Alternate, the law does not permit me to have more than 12 jurors. I can only have the 12 jurors. We draw an alternate in the event that somebody becomes ill or is unable to conclude their service and so that we would not have a mistrial.

But, fortunately, everyone has remained healthy and is prepared to make the decision in this case. So you've heard all the evidence, but you're not going to participate in the decision.

So I'm going to excuse you from any further service on this case. I will tell you that once you've been discharged as a juror, it is not illegal for you to talk with anyone about your service on this case.

It is not illegal for anyone to talk to you about your service on this case. It is a

practice of which I strongly disapprove and I strongly discourage, but it's not illegal. You have a right to talk with anyone or not talk with anyone.

But if anyone should want to talk to you and you don't want to talk about it and they continue to harass you or bother you, you let the court personnel know, and we'll deal with them.

I would ask that you not discuss it with anyone until after this jury has returned a verdict, which will be sometime later on this evening. So I would ask that you not talk with anyone about it until at least tomorrow. But other than that, it would be your call as to whether you wish to do so.

Now, the rest of your fellow jurors have been asked to report back in the courtroom tomorrow morning at 9:30. And I'm going to excuse you now and ask you to come back to the courtroom tomorrow morning at 9:30. But you are free to go on this case.

MS. CANNON: I come back in the morning?

THE COURT: Yes, ma'am, come to the courtroom.

MS. CANNON: Okay.

THE COURT: Not to your jury room, to the courtroom. Before you go, hold on just a minute.

Let me ask the Solicitor something.

Come up, please.

MR. ROSS: Yes, sir.

THE COURT: And, Ms. Counts, come up just a moment.

I'm going to cut you loose for the rest of the week. You don't need to come back.

MS. CANNON: Okay.

THE COURT: You're done. Next week sometime you will receive a small check from the Clerk's Office. It won't compensate you for the time that you've been up here this week. It will be a small token of appreciation on behalf of the county for your services this week.

We've got enough jurors that are coming back tomorrow to try the next case, so I'm going to excuse you from any further service this week. Thanks for your service.

MS. CANNON: Okay.

THE COURT: Okay, thank you.

All right, we'll be at ease till we hear from the jury.

(Court in recess.)

THE COURT: Back on the record in the matter of the State versus Mayes. Mr. Mayes is

present and in court. We have a note from the jury which I'm going to give to the Court Reporter and have her mark it as the next Court's exhibit.

I have shared this note with the attorneys involved. And the note is, "What does the law state about the possession of a firearm pursuant to trafficking crack cocaine," and signed by the foreman.

I propose, counsel, to reinstruct the jury on that one charge only of possession of a weapon during the commission of a violet crime. I think that's what the law says about it, and I think that's what would be the appropriate charge.

Is that agreeable with the State?

MR. ROSS: Yes, sir.

THE COURT: With the defense?

MR. FLOYD: Yes, Your Honor. Does that charge include they have to find him guilty of the crack in order to find him guilty of it?

THE COURT: Yes, sir, it does.

MR. FLOYD: Thank you.

THE COURT: All right, bring the jury in.

(Court's Exhibit Number Six, Jury Note, was marked for identification.)

COURT REPORTER: It's Court Exhibit Number

Six, Your Honor.

THE COURT: Okay, thank you.

The verdict form also contained that same statement in the way of instructions.

(Jury in at 5:27 p.m. for recharge.)

THE COURT: All right, ladies and gentlemen, I have your note, and the note being "What does the law state about the possession of a firearm pursuant to trafficking crack cocaine?" And in that connection, I will try to give you the law on possession of a firearm during the commission of a violent crime.

As I have previously said, the defendant is charged with possession of a firearm during the commission of a violent crime, and the South Carolina Code of Law provides as follows.

If a person is in possession of a firearm or visibly displays what appears to be a firearm during the commission of a violent crime and is convicted of committing the violent crime, then he is guilty of this crime of possession of a firearm during the commission of a violent crime.

Firearm is defined as any machine gun, automatic rifle, revolver, pistol, or any weapon which will or is designed to or may readily be

converted to expel a projectile. Section 16-1-60, which is a different code section, provides that the offense of trafficking in crack cocaine is a violent crime.

For you to find the defendant guilty of the separate offense of possession of a firearm during the commission of a violent crime, you must first find the defendant guilty of either committing a violent crime or attempting to commit a violent crime, in this case trafficking in crack cocaine.

If you find the defendant guilty of trafficking in crack cocaine, you must then determine whether the State has proven beyond a reasonable doubt that the defendant was in possession of a firearm or visibly displayed what appeared to be a firearm during the commission of the violent crime.

Possession means more than simply having an object in one's possession. Conviction of possession requires proof of possession, either actual or constructive, coupled with knowledge of the firearm's presence.

Possession can be shown by either actual possession or constructive possession. As I have said before, actual possession occurs when the

firearm is in the actual physical custody of the person charged with possession.

Proof of constructive possession, along with knowledge of the presence of the firearm, is sufficient to support a conviction for possession of a firearm. To prove constructive possession, the State must show the defendant had dominion or control or the right to exercise dominion or control over the firearm.

Constructive possession may be established through direct or circumstantial evidence, and possession may be shared. Possession requires more than mere presence. Possession may be inferred from the circumstances and may be imputed to anyone who has the power and intent to control the disposition and use of the firearm.

That's what the law says about the possession of a weapon during the commission of a violent crime. And I hope that that is helpful to you, and I will ask you to return to your jury room and deliberate further. Thank you very much.

(Jury out at 5:32 p.m. to deliberate.)

THE COURT: Any objection to the additional instructions on behalf of the State, Mr. Ross?

have reached a verdict, is that correct?

MR. McCONNELL: Yes, sir.

THE COURT: Would you hand it up to the bailiff, please?

All right, from the standpoint of the form, the verdict appears to be correct.

Madam Clerk, you may now publish the verdicts.

Mr. Floyd, if you and your client would stand, please.

MR. FLOYD: Yes, Your Honor.

(Counsel and the Defendant complied.)

VERDICTS OF THE JURY

CLERK OF COURT: The State of South Carolina versus Douglas James Mayes, "We, the jury, by unanimous agreement, find the defendant, Douglas James Mayes, on the charge contained in Indictment 2011-GS-32-1303, guilty of simple possession of cocaine."

As to the charge of trafficking crack cocaine on Indictment 2011-GS-32-1304, "We, the jury, find the defendant guilty." On the charge of possession of a weapon during the commission of a violent crime, "We, the jury, by unanimous

agreement, find the defendant, Douglas James Mayes, not guilty." It is so signed.

Ladies and gentlemen, if these were your verdicts, please indicate by raising your right hand.

THE COURT: Thank you. You may be seated.

Anything before the jury is excused, Mr. Floyd?

MR. FLOYD: Your Honor, we request polling.

THE COURT: All right, if you would poll the jury, please, ma'am.

POLLING OF THE JURY

CLERK OF COURT: When I call your name, I'll ask you if these were your verdicts, and are they still your verdicts. If you would, just indicate by responding yes and raising your hand.

THE COURT: If you would, stand so that we know which juror is responding.

Okay.

CLERK OF COURT: Juror number 25, Benjamin Brooks, were these your verdicts, and are they still your verdicts?

MR. BROOKS: Yes, ma'am.

CLERK OF COURT: Thank you.

like to, but you don't have to. Thank you. You are excused.

Mr. Foreman, you stay with us. You need to sign the indictments, if you would, please, for just a moment.

(The jury was dismissed from the trial of this case and left the courtroom at at 6:04 p.m.)

THE COURT: All right, Mr. Floyd, motions of behalf of the defendant?

MR. FLOYD: At this time, Your Honor, we would move for a new trial in connection with that motion. We will renew all the motions we made during both pre-trial and the trial of the case, to include our objection to the -- our motion to suppress the drugs pursuant to the defects of the search warrant process, our motion to suppress the drugs pursuant to the change in the form of the drugs during the time they were in the custody of the Lexington County Sheriff's Department, the denial of our motion for a directed verdict at the conclusion of the State's case, the initial motion for a continuance -- not a continuance but to allow me to withdraw from the case to testify because of the various questions concerning the chain of the

drugs, the denial of that motion, our objection to the --

THE COURT: Let me stop you right there just a minute. Okay, that's right. What you're saying is it was a defect in the chain of the drugs because they were lost, but the State's position was that it was not the drugs that were ever misplaced. It was the paraphernalia, so to speak.

MR. FLOYD: That's correct, Your Honor.

THE COURT: Okay.

MR. FLOYD: Your Honor, my objection, of course, to Your Honor's charge saying that there was an inference from control of the premises that could be held against the defendant, Your Honor's refusal to charge the lesser included of possession of crack to the trafficking charge, and also Your Honor's decision to allow the State to impeach the defendant to preclude three prior drug offenses if he had chosen to testify. For all these reasons, we move for a new trial.

THE COURT: All right. One question I have, do you have any authority for the inference issue that you're raising?

MR. FLOYD: Your Honor, I can't give you a case off the top of my head. There are -- I think

there's been a movement over the last decade or so. Years ago, we used to have the presumption.

THE COURT: Right.

MR. FLOYD: And they moved away from the presumption --

THE COURT: Right.

MR. FLOYD: -- to the inference. And I think there's been a movement away from the inference. A lot of the proposed charges any more -- for example, in your charge books -- don't carry the inference in them any more. I think there's some authority that's kind of a comment on the evidence.

THE COURT: Do you know of a South Carolina case that says that an inference is not permissible?

MR. FLOYD: I don't know one that says it definitely is not, no, sir.

THE COURT: Okay.

All right, Mr. Ross?

MR. FLOYD: And, Your Honor, also --

THE COURT: I'm sorry.

MR. FLOYD: -- in connection with all of this, in connection with the sentencing also, we would ask Your Honor to vacate the bench warrant

that was issued, because that's going to hold him up in SCDC.

THE COURT: Oh, yes, sure, we'll take care of that.

All right, any comment on the motions, response on behalf of the State, Mr. Solicitor?

MR. ROSS: Your Honor, regarding the inference --

THE COURT: Yes, sir, any of them.

MR. ROSS: -- the only thing I would say is I believe the case law is pretty clear that the language the Appellate Courts use is that a jury can infer based on weight alone that they intended to distribute.

And I think that's kind of the line of cases that Mr. Floyd is referring to. So we've got the Appellate Court saying the jury can infer something. That's the same thing as an inference.

THE COURT: Well, I think that it has been an inference always at least, I'm sure.

MR. FLOYD: Of course, that's a statute.

THE COURT: I'm sure that that's the law up until 2007 or later, because that's what my good friend Judge Ralph King Anderson has in his charge book and has had in his charge book.

I'm just wondering if there have been any cases that either of you are aware of in the last two or three years, i.e. the South Carolina Supreme Court or the South Carolina Court of Appeals, which says that's no longer the law. And I don't know of any cases.

MR. ROSS: I'm not aware of any case, Your Honor.

THE COURT: All right, I appreciate the motions, and I understand the grounds for all the motions. The Court is of the view that the initial ruling by the Court of all of those issues was the correct ruling.

I feel that I gave them a lot of thought with regard to the search warrant, the drugs, everything that was involved. And I do feel that the rulings of the Court were correct.

I also feel that the charges of the Court were correct as well. I believe the matter was a jury issue. It's evident from the verdict that the jury gave careful thought to the charges that were involved, because it was not a rubber stamp.

They did not find him guilty of all three charges that the State had charged him with. In fact, they found him guilty of the lesser include

offense of possession of powder cocaine and did not find him guilty of the possession of a weapon during the commission of a violent crime.

So it is clear that the jury gave very careful consideration to the instructions given by the Court as well as the evidence in the case and the fact that it was a jury issue. And so the Court would respectfully deny all motions for a new trial or a motion in arrest of judgment.

All right, now let's talk about the sentencing and the maximum sentences for just a moment, Mr. Solicitor. I understand these are not first offenses and that you take the position that there's some enhancements?

MR. ROSS: Yes, Your Honor. These are both third offenses. And I will read his prior record because that's obviously the most relevant thing to sentencing.

THE COURT: All right, let me ask Mr. Floyd to start with. Maybe we don't need to go into that before we go into the record. But let me ask you, Mr. Floyd, do you take issue with the fact that both the possession of cocaine as found by the jury and the trafficking in crack as found by the jury are enhanced third offenses?

MR. FLOYD: Your Honor, I agree that the record that I have been furnished says that.

THE COURT: You do what, now?

MR. FLOYD: The record, the criminal record, that I have been furnished says that. I have not seen certified copies of the convictions. The record certainly shows it.

THE COURT: All right, well, take a look at them. I need to know if you've got any issue as to whether sentencing is -- I know you don't agree with the sentence -- but at this phase, whether the sentence is or is not appropriate as third offenses on both of those charges.

MR. FLOYD: Yes, sir.

MR. ROSS: And, Judge, I'll read these indictments on these prior offenses. I've got 2008-GS-2-1610, this is out of Aiken County, trafficking in crack cocaine. He was convicted of that in April of 2009.

According to his sentencing sheet, he was represented by Tommy Thomas. I'm showing this to Mr. Floyd. His second previous drug conviction is 2007-GS-32-2210. That was here in Lexington County. That was possession with intent to distribute crack cocaine.

He was represented by an attorney. I cannot read the attorney's name on this sheet, but it's S.C. Bar Number 73595. I'm showing this to Mr. Floyd. I've also got a certified conviction for manufacturing marijuana, but my reading of the statute is marijuana can no longer be used to enhance a non-marijuana charge.

THE COURT: I agree.

MR. ROSS: I would like to introduce these prior certified convictions, indictments, and sentencing sheets to the Court as a Court's exhibit.

THE COURT: All right, allow Mr. Floyd to look at them.

MR. FLOYD: I've looked at them, Your Honor.

THE COURT: All right, they would be prior convictions for the crack cocaine. Those are the ones you want to introduce? The ones you want to use for enhancements are which two?

MR. ROSS: They are trafficking crack cocaine and PWID crack cocaine, two separate dates from two separate counties.

THE COURT: All right. The trafficking is Indictment Number --

MR. ROSS: 2008-GS-2-1610.

THE COURT: Okay. And that's what county?

MR. ROSS: That's Aiken County. It's GS-2-1610, county number two.

THE COURT: Oh, two, Aiken County. You're right, okay. And that's the trafficking?

MR. ROSS: Trafficking out of Aiken.

THE COURT: Okay.

MR. ROSS: Then the other one is out of Lexington, 2007-GS-32-2210, PWID crack cocaine. That was a conviction from May 2009.

THE COURT: All right. I'm not asking you to tell me any more, Mr. Floyd, except that the question I would ask you is, do you would agree that those are properly before the Court as enhancement of the present charges?

MR. FLOYD: Yes, Your Honor.

THE COURT: Okay, all right. That being the case, then, referring to it as far as your sentencing sheet is concerned, Mr. Ross, you're going to I assume use the trafficking CDR code of 3039?

MR. ROSS: On mine, I've got 0349, trafficking crack cocaine.

THE COURT: Well, that's 28 to 100.

MR. ROSS: Yes, Your Honor.

THE COURT: 3039 is 10 to 28 grams. And that's all right, because as I read the code section, 3039 is 25 to 30 years and $50,000 as is 0349 is also 25 to 30 and $50,000. The punishment is the same either way, whether it's 10 or 28.

Do you agree with that, Mr. Floyd?

MR. FLOYD: Yes, Your Honor.

THE COURT: Okay.

MR. FLOYD: And I think we all agree that the jury did not reach a verdict as to the amount --

THE COURT: Right.

MR. FLOYD: -- just that it was trafficking.

THE COURT: Yes. And we've discussed this in chambers that all it needed to show was 10 or more than 10. It may make some difference down the line somewhere, but it would be my view that since your indictment, if I recall -- I think I gave the indictment back to the Clerk -- says plus 10, 10 plus and not 28 plus.

MR. ROSS: I think it was 28 plus, Your Honor.

CLERK OF COURT: Twenty-eight to 100.

THE COURT: It does say 28 to 100?

CLERK OF COURT: Right.

THE COURT: Okay, all right. So you show 0349, all right, minimum of 25, maximum of 30 and $50,000.

You agree with that, Mr. Floyd?

MR. FLOYD: Are we going under the 28 to 100 or the 10 to 28?

THE COURT: It doesn't matter, does it?

MR. FLOYD: Well, I don't know if it --

THE COURT: From a punishment standpoint.

MR. FLOYD: I don't know whether it matters in the Department of Corrections or not. But I think since the jury did not find a particular weight, we would have to go under the 10 to 28.

THE COURT: Do you have any objection to using a CDR code of 3039 rather than 0349, 3039 being 10 to 28 as opposed to 0349 being 28 to 100?

MR. ROSS: Do I, sir?

THE COURT: Yes, sir.

MR. ROSS: You say you're going under 0147 or --

THE COURT: I'm using the crack trafficking now.

MR. ROSS: And that would be -- the 10 to 28 is 0452 CDR code?

THE COURT: No, the trafficking that I

have for 3039, third offense, 10 to 28 grams, is 25 to 30 years and $50,000.

MR. ROSS: Your Honor, it doesn't matter to me.

THE COURT: Okay, that's what I'm saying.

MR. ROSS: He's getting the same punishment regardless.

THE COURT: Same punishment. So you don't have any objection to using the CDR of 3039?

MR. ROSS: Negative, sir. I can hand you up the sentencing sheets I've done and --

THE COURT: I can change the CDR code if you don't have any objection.

MR. ROSS: However you see fit, sir.

THE COURT: And rather than 0349, you would request that it be use CDR code 3039, Mr. Floyd?

MR. FLOYD: Yes, the lesser.

THE COURT: And the State has no objection?

MR. ROSS: No objection, Your Honor.

THE COURT: All right, the CDR code for the offense that was actually found will show as 3039, the punishment being the same thing.

MR. ROSS: Your Honor, I'm looking at my

drug sheet, and it's got CDR code 3039 as PWID crack third. So that's why --

THE COURT: Okay. I'm looking at trafficking.

MR. ROSS: Yes, I know. I'm looking at the -- my CDR codes say trafficking crack, 10 to 28 grams, third offense, is 0452, and this is just a handout that has been floating around in the Solicitor's Office.

THE COURT: I'm looking at CDR codes for common drug offenses, 3039, crack cocaine, 10 to 28, third, is 25 to 30 years, and the same thing is for 28 to 100 grams. You don't show it as being the same thing?

MR. ROSS: No, I'm showing 3039 as PWID crack, third offense.

THE COURT: What are showing, 3039?

MR. ROSS: 3039 is PWID crack, third offense, according to my sheet.

CLERK OF COURT: Judge, that's what the Court Administration website has also.

THE COURT: Okay. Then my little sheet is not correct, doesn't look like. What do you have as the punishment for trafficking crack, 10 to 28, Mr. Ross?

MR. ROSS: That's 25 to 30 under the statute and what I'm showing.

THE COURT: Okay. And so is 28 to 100. So the punishment is the same.

MR. ROSS: Yes, the punishment is going to be the same.

THE COURT: So it's just a question of what is the correct CDR code for 10 to 28.

MR. ROSS: Roger that, sir. I'm showing 0452.

THE COURT: All right, Madam Clerk, have you got the CDR codes?

CLERK OF COURT: Yes, sir. It's 0452 for trafficking 10 to 28 grams, third offense.

THE COURT: All right, so 0452, then, would be the same punishment but showing 10 to 20.

Is that what you're saying, Mr. Ross?

MR. ROSS: Yes, sir.

THE COURT: Are you agreeable to going with the 0452, then?

MR. ROSS: I am, sir.

THE COURT: Okay. All right, that takes care of it.

Do you agree with that, Mr. Floyd? The same thing, we're talking about 10 to 28 rather than

28 plus.

MR. FLOYD: That's correct, Your Honor.

THE COURT: All right, third offense, and that will be CDR code 0452. Have you introduced the two previous offenses? Has the Court Reporter marked those?

MR. ROSS: They've been marked, and I will hand --

THE COURT: Hand them to me.

(Court's Exhibit Number Seven, Aiken Indictment; and Court's Exhibit Number Eight, Lexington Indictment, were marked for identification.)

COURT REPORTER: Court's Number Seven is the Aiken indictment, and number eight is the Lexington indictment.

THE COURT: All right, thank you.

MR. ROSS: Let's go ahead and staple those, because there's an indictment and a sentencing sheet.

THE COURT: And then the simple possession, third offense, of powder cocaine carries zero to 10 and up to zero to $12,500 under CDR code 3013.

You agree with that, Mr. Floyd?

MR. FLOYD: Yes, Your Honor.

THE COURT: All right, okay. So the balance before the Court, then, would be the imposition of sentence with the understanding, unless there's some disagreement, that Indictment Number 2011-GS-32-1304 carries a mandatory minimum of 25 to 30 years and a fine of $50,000; and the indictment for simple possession of cocaine, third offense, carries zero to 10 years and/or a fine of zero to $12,500.

You agree with that, Mr. Floyd?

MR. FLOYD: Yes, Your Honor.

THE COURT: And you agree that the minimum sentence that I can impose is 25 years?

MR. FLOYD: Yes, Your Honor.

THE COURT: All right.

MR. FLOYD: I disagree with the statute, but I understand what it says.

THE COURT: Well, I agree with you, I don't agree with the statute. But that's what the legislature in their wisdom have decided is the appropriate punishment and something that I have no control over.

All right, Mr. Ross, I know you've introduced the two enhancement matters. They are in

the record and before the Court. Is there anything else on behalf of the State?

MR. ROSS: Your Honor, I would like to read his full rap sheet into the record. He's got a '99 DUI second; 2006 failure to comply with a police directive, DUS, reckless driving, habitual traffic offender; 2009 PWID, possession with intent to distribute crack cocaine which is the sentencing sheet I provided to you, sir. He got three years for that.

In 2008, he's got another failure to comply with a police directive; 2009, he's got a failure to stop for a blue light. He's got the trafficking crack cocaine conviction from down in Aiken, and he's got a manufacturing marijuana as well, Your Honor. And I believe that was -- I can tell you which county that was in right now. That was Aiken County too, Your Honor, 2008-GS-2-1608, manufacturing marijuana.

THE COURT: All right, anything else on behalf of the State?

MR. ROSS: Your Honor, the mandatory minimum is 25 years. We think that's appropriate, the appropriate sentencing range 25 to 30, simply because he's a repeat offender. He's been given

every opportunity, and he continues to go back and to deal drugs.

And he appears to be a repeat drug dealer. He had a large amount in his possession this time, $7,000, as the record reflects. That's what he does. He's a drug dealer. He's a repeat offender, and he should be punished according to the law, Your Honor.

THE COURT: Okay.

All right, Mr. Floyd, would you have client come around?

MR. FLOYD: Yes, Your Honor.

THE COURT: All right, Mr. Floyd, I'll be glad to hear from you.

MR. FLOYD: Thank you. Your Honor, Doug is 25 years of age. He does have a GED. He has a 4-year-old son that he had been supporting. He does have an electrical license, so he has done legitimate work also. He has been in jail now for 430 days in connection with these incidents. Your Honor, I guess I --

THE COURT: Four hundred and how many?

MR. ROSS: Four hundred and thirty.

THE COURT: Thirty, okay.

MR. FLOYD: Your Honor, I guess I can't

argue with the statute except that to me it's a harsh statute. It does provide for a minimum of 25 years.

We, of course, ask you to suspend it, but I know the statute says you can't. So we certainly ask for the minimum, and we would ask for a concurrent sentence on the cocaine.

THE COURT: All right, Mr. Floyd, there's something I was going to ask you, but it slipped my mind. It's too late in the day. Maybe I will think of it.

MR. FLOYD: Of course, this is, you know, 85 percent time.

THE COURT: Yes, that's what. Have you advised him?

MR. FLOYD: He understands that it's non-parolable. It's 85 percent.

THE COURT: Okay.

MR. FLOYD: So he's looking at 22 years or something in that range before he can get out.

THE COURT: All right, I'll be glad to hear from Mr. Mayes, but I will tell you, and you can talk with him, Mr. Floyd, that if he does not want to say anything, he does not have to, keeping in mind that this matter will likely be appealed,

and anything that he could say might affect his appeal.

But I will be glad to hear from him if there's anything. But you may want to talk to him before that. I'm not going to hold it against him if he has nothing to say.

MR. FLOYD: Your Honor, he chooses not to speak at this time.

THE COURT: Okay, thank you.

MR. ROSS: Your Honor, if I may add one thing to the record. He's got pending distribution cases, and he's also got a pending intimidation of a witness, Your Honor. That was on the CI who testified earlier.

I think some of his family members also have charges regarding intimidating that witness. If Your Honor sees fit, I would ask that you somehow craft a no-contact order with that CI.

THE COURT: Okay, I can put that on there. He's going to have a hard time contacting him where he's going to be.

MR. FLOYD: I don't know how he would do that where he's going to be, Judge.

THE COURT: I can't order somebody that's not a party to this proceeding.

MR. ROSS: Yes, Your Honor.

THE COURT: Today is the second, is it not?

CLERK OF COURT: Correct.

MR. FLOYD: Yes, it is.

THE COURT: Okay.

All right, as I'm sure you have explained to Mr. Mayes in this case, Mr. Floyd, this is something that the Court has very limited discretion in, that it's a mandatory minimum of 25 years when it's a third or subsequent offense.

The record is clear that this is a third or subsequent offense, and the punishment is enhanced. And my hands are tied as far as what I can do as far as a minimum sentence is concerned. You know that.

SENTENCE OF THE COURT

Therefore, on the Indictment Number 2011-GS-32-1304, the sentence of the Court is that the defendant is committed to the State Department of Corrections for a determinate term of 25 years, given credit for the time that he has served, 432 years. The bench warrant will be lifted. No contact with the confidential informant.

On Indictment Number 2011-GS-32-1303, the

sentence of the Court is the defendant is committed to the State Department of Corrections for a term of 10 years, concurrent with the trafficking in Indictment 1304, again given credit, bench warrant lifted, and no contact with the confidential informant.

Good luck to you, sir. I, like Mr. Floyd, may not agree with the law, but that's the law that is written that I have to follow.

MR. FLOYD: Your Honor, one other matter. Since he was found not guilty of the weapon, do we also need to lift the bench warrant as to that charge also, because it was one of the charges he got lifted up?

THE COURT: I will put it on the record that the bench warrant is lifted on that charge. I don't know what the effect is going to be on the other pending charges that you've got. Was the bench warrant issued on those for not appearing? Was there a bench warrant?

MR. FLOYD: No, just on these three charges, Judge.

THE COURT: Just on these three, all right. Well, the bench warrant will be lifted on the charges that are before the Court now. And then

it will be up to the State to decide what they want to do with the pending charges.

MR. ROSS: Yes, sir.

THE COURT: Okay.

MR. FLOYD: Thank you, Your Honor.

THE COURT: All right.

MR. ROSS: Thank you, Judge.

-- End of Transcript --

WITNESSES

Lexington County Sheriffs Department

Eric V. Kirkland

Law Enforcement Case #: 11008476

CED

ARREST WARRANT NUMBER

J830870

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 8/8/11

VERDICT

Guilty

Foreperson of Petit Jury
Date: 20 October 2012

DOCKET NO. 2011GS3201304

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2011

THE STATE
vs.

Douglas James Mayes

CDR #: 0349

Indictment for

TRAFFICKING IN CRACK COCAINE - 28 GRAMS OR MORE BUT LESS THAN 100 GRAMS – 3RD OR SUBSEQUENT OFFENSE

§ 44-53-0375(C)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	TRAFFICKING IN CRACK COCAINE - 28
COUNTY OF LEXINGTON	)	GRAMS OR MORE BUT LESS THAN 100
	)	GRAMS –

At a Court of General Sessions, convened on AUGUST 2011, the Grand Jurors of Lexington County present upon their oath:

That **Douglas James Mayes** did in Lexington County, South Carolina on or about February 17, 2011, knowingly and intentionally, willfully and unlawfully sell, cultivate, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise, aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly and intentionally in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession of Crack Cocaine, a controlled substance by definition under provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, in a quantity of twenty eight (28) grams or more but less than one hundred (100) grams, in violation of § 44-53-375 (C), Code of Laws of South Carolina, 1976, as amended, se.

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

ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

Eric V. Kirkland

Law Enforcement Case #: 11008476

CED

ARREST WARRANT NUMBER

J830871

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 8/8/11

VERDICT

Guilty of Simple Possession of Cocaine

20 Oct 2012
Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS3201303

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2011

THE STATE
vs.

Douglas James Mayes

CDR #: 0185

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE COCAINE 3RD OR SUBSEQUENT OFFENSE

§ 44-53-0370(b)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	
COUNTY OF LEXINGTON	)	POSSESSION WITH INTENT TO DISTRIBUTE
	)	COCAINE

At a Court of General Sessions, convened on AUGUST 2011, the Grand Jurors of Lexington County present upon their oath:

That **Douglas James Mayes** did in Lexington County, South Carolina, on or about February 17, 2011 knowingly and intentionally, willfully and unlawfully sell, distribute, cultivate, manufacture, 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, possess with intent to distribute or was knowingly and intentionally in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession of a control substance, to wit : Cocaine, a controlled substance under provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, in violation of § 44-53-370(b)(1), Code of Laws of South Carolina, 1976, as amended.

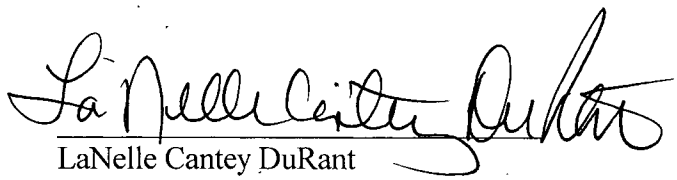
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

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 10th, 2013



LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1330

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
OCT 10 2013
SC Court of Appeals

Appeal from Lexington County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DOUGLAS J. MAYES,

APPELLANT

APPELLATE CASE NO. 2012-213144

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 10th day of October, 2013.

Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 10th day of October, 2013.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.