

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Spartanburg County
Honorable Roger L. Couch, Circuit Court Judge

Appellate Case No: 2012-212700

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SC Court of Appeals

THE STATE,

Respondent,

vs.

KENNETH ODELL JACKSON,

Appellant.

SUPPLEMENTAL RECORD ON APPEAL

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Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense

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1 that have been accused of crimes.

2 THE COURT: All right. Would that fact affect your
3 ability to be fair and impartial in this trial?

4 JUROR NO. 192: No, it will not.

5 THE COURT: Thank you. You can be seated.

6 Name and number, please, ma'am.

7 JUROR NO. 188: Katie Wood, 188.

8 THE COURT: Yes, ma'am.

9 JUROR NO. 188: My two older brothers were convicted.

10 THE COURT: would that affect your impartiality if you
11 were selected in the case?

12 JUROR NO. 188: No, not at all.

13 THE COURT: Thank you. You can be seated.

14 Name and number, please.

15 JUROR NO. 69: Kim Gray, 69.

16 THE COURT: Yes, ma'am.

17 JUROR NO. 69: I have cousins, and it will not affect
18 my decision.

19 THE COURT: Thank you.

20 Name and number, please.

21 JUROR NO. 132: Roy Parker, 132.

22 THE COURT: Yes, sir.

23 JUROR NO. 132: My brother was convicted.

24 THE COURT: would that affect your impartiality if you
25 were selected in this trial?

Angela Nelson - Direct examination
by Solicitor Spivey

1 THE COURT: The State may call its next witness.

2 SOLICITOR SPIVEY: Your Honor, we call Angela Nelson.

3 THE COURT: Come forward please.

4 ANGELA NELSON, having been first
5 duly sworn, testified as follows:

6 THE COURT: Have a seat please, ma'am, and once you're
7 seated, state your name.

8 WITNESS: Angela Faulkner Nelson.

9 THE COURT: Mr. Spivey, your witness.

10 SOLICITOR SPIVEY: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY SOLICITOR SPIVEY:

13 Q Hey. Please tell us how long you've worked with the
14 Spartanburg County Sheriff's Office.

15 A I have been there just shy of four years.

16 Q Okay. What's your role there?

17 A Currently I am the evidence officer. I work back in
18 the evidence department at the Sheriff's Office.

19 Q Tell us what that means.

20 A Basically the -- I take care of the intake and out
21 pulling of evidence for any Sheriff's Office deputies.
22 Anything that comes in I sign for it, I date it, I inventory
23 it, put it where it needs to go, and then when someone needs
24 it for court I also go put my hands on it, give them the
25 property, property and evidence sheet, let them sign for it,

Angela Nelson - Direct examination
by Solicitor Spivey

1 take it out of the computer, and file it.

2 Q All right. Is there anything special that occurs when
3 you have controlled substances come in?

4 A There are.

5 Q Okay. Describe those procedures.

6 A On marijuana or B.E.S.T. Bags, which are, B.E.S.T. bags
7 are specifically for controlled substances, we open an
8 envelope. It comes in a standard brown envelope with a
9 letter and a sequence of numbers. That number matches to
10 the B.E.S.T. Bag itself.

11 what I do from there is I look to see who's on the Form
12 B. I put that name as to who I received it from, the date,
13 and put just B.E.S.T. Bag. The letter and the sequence of
14 numbers because I have no way to know what the item is. So,
15 I just write B.E.S.T. Bag.

16 Once I do that I sign my name to it, slide it back in.
17 Also on the actual B.E.S.T. Bag itself I will put the case
18 number and suspect's name on there. If they're more than
19 one I put more than one, and then I will also inventory it
20 into the computer and then show that it's going to the lab
21 because it goes for processing after it goes for me.

22 Q Okay. Tell me about the drop box.

23 A The drop box, it is a blue box. It looks like a
24 mailbox as previously stated. It sits in front of the door
25 of the Sheriff's office to the evidence room. It is locked

Angela Nelson - Direct examination
by Solicitor Spivey

1 with two padlocks. The only two people who have possession
2 of that key are the three evidence officers who work back in
3 evidence, and it is locked up with a secured security system
4 at night.

5 Q Okay. Is there something called a drug room?

6 A There is.

7 Q what is that?

8 A It's a separate room outside of standard traditional
9 evidence that is secured with a key.

10 Q Okay. who has a key to that room?

11 A That would also be the three people who work back
12 there, myself included.

13 Q Okay. I'll have you take a look at that and see if you
14 can identify that.

15 A I can identify the whole thing. It's a B.E.S.T. Bag.

16 Q Okay. Tell me how you can identify that B.E.S.T. Bag.

17 A It's -- the blue seal on the inside of the bag is what
18 comes into my possession to begin with. The outside part
19 where it has case number and Kenneth Jackson is my
20 handwriting, and that is also the name and case number where
21 I referenced that I write it on there, and then the plastic
22 bag on the outside is what I receive it back from the lab
23 in.

24 Q Okay. where did you receive that particular bag?

25 A This one particularly came out of the evidence drop

Angela Nelson - Direct examination
by Solicitor Spivey

1 box.

2 Q Okay. What day did you receive it on?

3 A Without having the actual tape for it, I have to go off
4 of the day it was placed in here. So, it would of been
5 November 30th when I received it.

6 SOLICITOR SPIVEY: Okay. Your Honor, may I?

7 THE COURT: You may approach the witness.

8 Q Try to refresh your memory with this piece of paper.

9 A I received it on November 30th of 2011. Indicate
10 also that Officer Swab is who I received it from and signed
11 it.

12 Q Okay. Is it in the same or substantially same
13 condition as when you received it?

14 A With the exception of the lab's work that they do on
15 it, which I see every day.

16 Q Okay. So, what are -- what do you mean by that lab's
17 work?

18 A Typically when we receive it it's concealed in the
19 thick plastic bag.

20 Q Okay.

21 A And currently it is not. It's been opened because the
22 items are all contained in this bag, the outer bag. But
23 typically the way it comes is inside of the thick bag and
24 it's usually just put in there the way that an officer
25 receives it. It could of been wrapped in foil, bag,

Angela Nelson - Direct examination
by Solicitor Spivey

1 anything. Just whatever way they receive it is the way it
2 goes in.

3 Q Okay. After you received it, what did you do with it?

4 A I put it back in the brown envelope as the numbers that
5 matched. This also goes along with it along with another
6 documentation that's got the rest of the details on it also,
7 which is nothing more than mere paperwork. It all goes in
8 together. It's sealed back in. It sits in a little pile
9 until the lab comes and picks it up. It stays back in
10 evidence with -- typically it's in my desk and my desk is
11 the one that sits right in front of the window.

12 Q Okay. Do you remember who came and picked it up in the
13 lab?

14 A It would of either been Beth Stuart or Ashley Harris,
15 which are the two chemists we have.

16 Q Okay. Does that refresh your memory as to who picked
17 it up?

18 A It would be Beth Stuart.

19 Q Okay. When you, when they picked it up, was it the
20 same or substantially the same condition as when you
21 received it?

22 A It was.

23 SOLICITOR SPIVEY: Okay. Your Honor, I have no further
24 questions of this witness.

25 THE COURT: Mr. Harris.

Angela Nelson - Cross-examination
by Mr. Harris

1 CROSS-EXAMINATION

2 BY MR. HARRIS:

3 Q Ma'am, do I understand your testimony to be that when
4 you received the, the so called B.E.S.T. Bag that you didn't
5 know what was in it?

6 A That is correct.

7 Q You have no way to know what's in it, right?

8 A That's correct. I'm not trained in that profession.

9 Q I mean you -- could you even see in it?

10 A You can see through it. You can tell there was pill
11 bottles in there, but as far as me reading it, I don't take
12 the time to do that.

13 Q But I mean as far as like yourself saying okay, here's
14 what's in here, and this is the condition it's in, you don't
15 do that, do you?

16 A Again, I'm not a chemist. So, no, sir, I do not.

17 Q So, when you're asked the question just now is this in
18 the, the same or substantially the same condition as when
19 you received it, you really can't answer that question cause
20 you don't know what condition it was in when you received
21 it, do you?

22 A I see them on a regular basis and based off I've seen
23 them every single day it's pretty much the standard way it
24 came in, the same way it came back to me.

25 Q It's pretty much -- so, you believe it's in the same

Angela Nelson - Cross-examination
by Mr. Harris

1 condition?

2 A Correct.

3 MR. HARRIS: Okay. Thank you. No further questions.

4 THE COURT: Anything further, Mr. Spivey?

5 SOLICITOR SPIVEY: Yes, Your Honor. Just one question.

6 THE COURT: Yes, sir.

7 REDIRECT EXAMINATION

8 BY SOLICITOR SPIVEY:

9 Q In the time it was in your custody and control, did
10 anybody tamper with it?

11 A No.

12 SOLICITOR SPIVEY: Okay. No further questions, Your
13 Honor.

14 MR. HARRIS: Nothing else, Your Honor.

15 THE COURT: All right, ma'am. You may step down.
16 Thank you very much.

17 All right. Ladies and gentlemen of the jury, we're
18 gonna stop at this time for lunch. I'm gonna give you the
19 same cautions I gave when you left the courthouse yesterday.
20 That is not to attempt to gather any information about this
21 case on your own. Don't listen to, watch, or read media
22 reports. Don't discuss the case with anyone, even among
23 yourselves. Don't allow anyone to discuss the case with
24 you, and should someone attempt to discuss the case with you
25 please report that upon your return to the courthouse.

Beth Stuart - Direct examination
by Solicitor Spivey

1 THE COURT: Mr. Spivey, your witness.

2 SOLICITOR SPIVEY: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 DIRECT EXAMINATION

5 BY SOLICITOR SPIVEY:

6 Q Please state for the jury your experience and training.

7 A Yes, I am a forensic chemist with the Spartanburg
8 County Sheriff's Office. I have been there about ten years.
9 I have a Bachelor's of Science in Chemistry from the College
10 of Charleston, a Bachelor's of Science in Chemistry, in
11 Biochemistry from the College of Charleston, and a Master's
12 Degree in Chemistry from the University of South Carolina.
13 I have been to the State Police Academy. I've been to the
14 DEA Forensic Chemist School. I've been to the DEA
15 Clandestine Lab School. I've been to numerous instrumental
16 courses with Agilent.

17 I a member of CLICK, which is the International
18 Clandestine Lab Investigating Chemist Association. I'm also
19 certified as a fellow with the American Board of
20 Criminalistics.

21 Q What's your current job?

22 A Forensic chemist.

23 Q And where are you a chemist at?

24 A Spartanburg County Sheriff's Office.

25 Q Okay. What is your day-to-day role as a chemist?

Beth Stuart - Direct examination
by Solicitor Spivey

1 A Drug analysis, poison, poison analysis, and clandestine
2 labs.

3 Q when you say drug analysis, what does that mean?

4 A The testing of controlled substances for purposes of
5 Court.

6 Q Okay. What do you test?

7 A All different -- anything that comes in. Any
8 controlled substance, whether it be white powder, you know,
9 cocaine, meth, tablets.

10 Q What are you testing the substances for?

11 A Controlled substances.

12 Q Okay. Do you weigh them?

13 A Yes, we do.

14 SOLICITOR SPIVEY: Okay. Your Honor, at this time I'd
15 move to declare Mrs. Mary Elizabeth Stuart as an expert in
16 the field of chemical analysis of controlled substances.

17 THE COURT: Any objection to her designation as an
18 expert within that field?

19 MR. HARRIS: No, Your Honor, reserving the right, of
20 course, to cross-examine.

21 THE COURT: Oh, absolutely. You'll have that right.

22 MR. HARRIS: Thank you.

23 THE COURT: Ladies and gentlemen, let me explain to you
24 what we're doing at this point in time and the significance
25 of this.

Beth Stuart - Direct examination
by Solicitor Spivey

1 Generally, under the rules of evidence, witnesses who
2 testify in a Court of law are not allowed to state opinions
3 concerning matters. They are allowed to testify concerning
4 facts within their knowledge and their impressions
5 concerning those facts. However, an exception to that
6 general rule is made for witnesses who have been designated
7 as an expert within some field or, of calling or science or
8 profession, and for those witnesses who are declared to be
9 experts within a field or profession, those witnesses are
10 allowed to state their opinions within that field or within
11 that profession and also state the reasons why they hold the
12 opinions that they hold.

13 Later on I will give you instructions during my charge
14 as to how you can take or treat the statements or evidence,
15 testimony of witnesses who have been designated as experts.
16 But at this time, suffice it to say, without objection, I am
17 designating this witness as an expert within the field of
18 testing substances or controlled substances or chemical
19 analysis of those substances. Therefore, she'll be allowed
20 to state her opinion within that field of expertise and also
21 state the reasons or the basis for her holding those
22 opinions.

23 So, at this time I've declared her to be an expert.

24 You may proceed.

25 SOLICITOR SPIVEY: Thank you, Your Honor.

Beth Stuart - Direct examination
by Solicitor Spivey

1 THE COURT: Yes, sir.

2 Q Ms. Stuart, please tell me a little bit about your
3 control and procedures when you get a, just a generic matter
4 into your office.

5 A If it comes from the Sheriff's Office, we go to the
6 evidence room and pick it up. At that point we would look
7 at the packaging and make sure it's sealed, and then take it
8 back to the lab with us. Once in the lab it's secured and
9 then when we are able to test it when we get to that case in
10 our line of cases, then we, once again, double-check the
11 packaging and I would sign the outside of the packaging with
12 my initials and the letters okay and this date so that, when
13 I'm in Court, I can say this definitely was sealed before I
14 ever cut it open.

15 Q Okay. Let me ask you to take a look at that.

16 would you look at that inner bag and just describe to
17 me what you see there.

18 A Yes, this inner bag is called a B.E.S.T. Bag. It
19 stands for Best Evidence Sample Testing and it's basically
20 just a uniform way for all agencies to submit drugs to us.
21 We not only take from the Sheriff's Office, but all agencies
22 in Spartanburg County. So, we needed a uniform way for them
23 all to be submitted.

24 The B.E.S.T. Bag is -- it's not tamper proof. It's
25 tamper evident. Once it's sealed, in order to get into it,

Beth Stuart - Direct examination
by Solicitor Spivey

1 you'd have to cut it and there's lines down the side that if
2 you were to try to rip it, those lines would be distorted
3 and such.

4 Q Okay. When you received that bag, did you notice any,
5 that it, that it had been tampered with?

6 A No, and as I stated before, on the outside of the
7 B.E.S.T. Bag, my initials, the date, and the letters okay
8 are written on it as an indication it was not unsealed when
9 I opened it.

10 Q Okay. How do you know which particular case that went
11 with?

12 Is there any markings on it?

13 A Yes, it has what we call a controlled number at the top
14 of it, 156705. It also has the case number of the case, but
15 it also has a unique lab number that I would assign to it
16 once it got into the lab.

17 Q Okay. Does that lab number match up with this
18 particular case from the incident on November 29th, 2011?

19 A Yes, it does.

20 Q And that matches up with the defendant?

21 A Yes, it does.

22 Q Okay. Tell me about the test you performed on the
23 methamphetamine tablets and the cocaine.

24 A Okay. On powder substances or even pressed tablet
25 substances, we would perform a presumptive and what's called

Beth Stuart - Direct examination
by Solicitor Spivey

1 a confirmatory test. So, it's a two stage process.

2 The presumptive test, it could be anything. It could
3 be based off smell. It could be based off color change in a
4 chemical. It could be based off visual inspection. Any
5 numerous amounts of test. In particular, on these, I would
6 perform a visual inspection, of course, based on the color
7 and texture of the item, and I'd also perform a control
8 change test where I would put a chemical on there, and based
9 on the color change it gives me an idea, a presumption of
10 what this substance is.

11 After that I would run a confirmatory test on the item.
12 This is an instrumental test. It's done on an instrument
13 with the acronym GCMS.

14 Q Okay. Did you perform those tests in, in this
15 particular case?

16 A Yes, I did.

17 Q Okay. Tell me about the methamphetamine.

18 What is -- first of all, which one of those substances
19 inside of that bag is the methamphetamine?

20 A Well, it's kind of hidden behind here, but there's a
21 Ziploc in here that contains green pressed tablets. They're
22 various shades of green and the methamphetamine was actually
23 found in the tablets.

24 Q The methamphetamine was found there, and you confirmed
25 that to be methamphetamine?

Beth Stuart - Direct examination
by Solicitor Spivey

1 A Yes, I did.

2 Q How many tablets were there?

3 A There were 47 tablets.

4 Q How many grams of methamphetamine were there?

5 A 8.39 grams.

6 Q Okay. Tell me about the cocaine.

7 Did you perform those tests on the cocaine?

8 A I did, yes, sir.

9 Q And what did those tests tell you?

10 A That it was cocaine at 1.59 grams.

11 Q Okay. Are there any medically accepted uses for the
12 drug methamphetamine?

13 A No, sir.

14 SOLICITOR SPIVEY: Your Honor, at this point I have --
15 excuse me.

16 One last question.

17 From the time in which you received that bag and the
18 time in which you tested that bag, did anybody tamper with
19 it or come into contact with it even?

20 A The lab is a secure environment. There is only three
21 keys to the lab, mine, the other chemist, and the sheriff,
22 and then we also, within the lab, have a safe where our
23 drugs are stored.

24 Q So, from the time you received it until the time you
25 tested it, did they stay in the same, substantially the same

Beth Stuart - Direct examination
by Solicitor Spivey

1 condition?

2 A Yes, and we verify that, once again, like I said, by
3 when we pick it up to make sure it's sealed, and then before
4 we open it to test it we look at it again to make sure it's
5 still sealed, not that it wouldn't, but that it is, and then
6 we put our initials and letters okay and the date we're
7 opening it on it.

8 Q Okay. After you got done testing, what did you do to
9 it?

10 A I would fold everything, fold it up like you see it
11 here and I would actually put it inside this plastic bag,
12 put my initials, the date I sealed it, and the lab number in
13 the top, and seal over my initials and the date.

14 Q So, what date did you test it?

15 A I tested it on 11/30 of 2011.

16 SOLICITOR SPIVEY: Okay. Your Honor, at this point I'd
17 move State's Exhibit, move that into evidence, into evidence
18 as an exhibit.

19 THE COURT: Objections?

20 MR. HARRIS: Yes, sir.

21 THE COURT: All right.

22 MR. HARRIS: I believe that it, if the State intends to
23 move the entire bag that the witness is holding, I believe
24 there would be items in there that, that are no longer at
25 issue in this case.

Beth Stuart - Direct examination
by Solicitor Spivey

1 THE COURT: Are you asking that the bag be opened and
2 those items removed?

3 MR. HARRIS: Well, I -- Your Honor, I wouldn't, I
4 wouldn't presume to tell the State how to proceed, but I
5 have to object since they do---

6 THE COURT: Well, the testimony is that this was a bag
7 that she tested and sealed herself. And, so, she's
8 confirmed those items are authentic, and that they are items
9 that she did seal back into the bag.

10 Now, whether or not they're relevant in this case, if
11 you are saying that there's items in the bag, and I haven't
12 seen the bag, I don't know what's in it, but if there are
13 items in there that you say, are saying are not relevant to
14 the current case, you need to identify those to me and then
15 I'll be happy, if you'd like for us to, we can open the bag
16 if front of the jury, remove those items, and reseal the
17 bag.

18 So, if you want to take a look at the bag, you
19 certainly can, and then identify that items that you're
20 objecting to.

21 MR. HARRIS: Well, Your Honor, I might suggest this.
22 This may be a matter that we could take up outside the
23 presence of the jury.

24 THE COURT: Well, sure. We can take it up outside the
25 presence of the jury.

Beth Stuart - Direct examination
by Solicitor Spivey

1 Ladies and gentlemen, at this time I'll ask you to step
2 back into the jury room. Don't begin any discussions until
3 such time as I've asked you to do so.

4 You may retire to the jury room.

5 (WHEREUPON, the following takes place outside the
6 presence of the jury.)

7 THE COURT: All right. Mr. Harris, yes, sir.

8 MR. HARRIS: Your Honor, all I'm, all I'm getting at is
9 it's my -- I've looked at the bag, and the bag has the
10 methamphetamine evidence and the cocaine evidence, but it
11 also has the pill evidence in it.

12 THE COURT: Can I see the bag?

13 WITNESS: Yes, sir.

14 THE COURT: Thank you.

15 So you'd like -- if you -- see you said blue tablets.

16 I assume that's what she's testifying about, these blue
17 tablets. There appears to be some -- see, I don't know what
18 she---

19 MR. HARRIS: well, Your Honor---

20 THE COURT: ---said was cocaine---

21 MR. HARRIS: That's all right. I'll withdraw the
22 objection.

23 THE COURT: Then I'll---

24 MR. HARRIS: I'll withdraw it.

25 THE COURT: No, if you have an objection---

Beth Stuart - Direct examination
by Solicitor Spivey

1 MR. HARRIS: No, sir.

2 THE COURT: ---I'll be glad to go through it.

3 MR. HARRIS: No, I -- if the State wants to put the
4 whole bag in, and they're gonna -- I withdraw the objection.

5 THE COURT: All right. Then I'll allow it in.

6 SOLICITOR SPIVEY: Thank you, Your Honor.

7 THE COURT: I don't intend the bag opened even for the
8 jury unless they request it.

9 MR. HARRIS: I don't raise an issue about it and I
10 don't -- and I'll withdraw the objection to the exhibits.

11 THE COURT: Okay. All right. Let's bring the jury in.

12 SOLICITOR SPIVEY: Before we do that---

13 THE COURT: Wait a second, Mr. Hipp.

14 SOLICITOR SPIVEY: Do you have any other objections to
15 these being entered into evidence?

16 MR. HARRIS: Answering the solicitor's question, I've
17 stated I have no objection.

18 THE COURT: I heard you say that.

19 SOLICITOR SPIVEY: Okay.

20 MR. HARRIS: All right.

21 THE COURT: All right. Bring the jury in.

22 I understand where we are, Mr. Harris.

23 (WHEREUPON, the following takes place within the
24 presence of the jury.)

25 THE COURT: The record will reflect the jury has

1 completes the offering of evidence by the State. At this
2 point in time I have some matters I have to take up with
3 the, the attorneys before we go further into the case. And,
4 so, when that happens, I ask you to step back to the jury
5 room and, again, not to begin any discussions until I've
6 asked you to do so.

7 You may retire to the jury room at this time.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: All right. Anything from the State at this
11 time?

12 SOLICITOR SPIVEY: Nothing, Your Honor.

13 THE COURT: Any from the defense?

14 MR. HARRIS: Your Honor, at, at this time, and mindful
15 of the Court's standard of review, the State having rested,
16 we move for a directed verdict of acquittal.

17 Your Honor, the -- this is a completely constructive
18 possession case. It is, by virtue of that, in our view, a
19 completely circumstantial case. Your Honor, the defendant
20 that the evidence shows was present in a car as the driver
21 of the vehicle denied knowledge of drugs being in the car.
22 The car was subsequently searched and drugs were found in,
23 not in plain sight. It's alleged that some drugs were found
24 in a closed console, between the front driver and passenger
25 seat, and that a quantity of cocaine was found in an eye

1 glasses holder that was pressed open I believe by
2 Investigator Ferris.

3 Your Honor, it would, although there can be an
4 inference of knowledge and intent to exercise dominion and
5 control from the presence of the defendant, that inference,
6 standing alone, is insufficient to, to support proof beyond
7 a reasonable doubt, and because the State has only
8 inferences to go on at this point, we take the position that
9 those inferences, standing alone, are not sufficient to
10 carry the State's burden of proof beyond the directed
11 verdict of acquittal of the State. So, on that ground we
12 move for a directed verdict of acquittal.

13 Your Honor, I do also want to reiterate the defendant's
14 continuing assertion that the initial stop of his vehicle
15 and the subsequent detention and search were violative of the
16 Fourth Amendment of the Constitution, and for, for purposes
17 of clarity and the record, and at this juncture of the
18 trial, we would reassert that, based on the entirety of the
19 evidence that has been presented now during the trial, that
20 there was no probable cause, reasonable articulable
21 suspicion to stop the defendant's vehicle or to detain him
22 for purposes of searching him as the vehicle he was driving.

23 THE COURT: Hear from the State.

24 SOLICITOR SPIVEY: Yes, Your Honor.

25 As to the directed verdict, I think the facts bear out

1 that not only was he in a car, but he had a large sum of
2 cash in his pocket. There's no other person present in the
3 car. He had been known to drive this car on previous
4 occasions.

5 Your Honor, the -- his wallet with his name inside of
6 the wallet was found in the console right beside the
7 majority of the drugs and the ledger. I think, based on
8 that evidence, there is enough evidence to support sending
9 this case to the jury.

10 As to the, opening up the case again and looking at
11 whether or not there's reasonable suspicion, I think that's
12 already been determined previously, and to limit it to just
13 those facts that came into the trial I think is unfair. I
14 think we also have to include the fact that these officers
15 had knowledge of this defendant in this car and sold drugs
16 previously. Other than that we would rest on the evidence
17 that came in at the trial.

18 THE COURT: All right. My ruling on the reasonable
19 suspicion and the appropriateness of the stop would remain
20 the same based on the evidence that I heard both at the
21 pretrial hearings and during the actual trial of the case.

22 Also, the motion concerning the insufficiency of
23 evidence, I do find that there is sufficient evidence to
24 justify the case moving forward with the jury and I'll deny
25 that motion.

1 decision alone.

2 Now, do you understand the rights I've explained, Mr.
3 Jackson?

4 DEFENDANT: Yes, sir, I do.

5 THE COURT: Do you have any questions about those
6 rights?

7 DEFENDANT: No, sir.

8 THE COURT: Have you had an opportunity to discuss your
9 decision with the people you'd like to discuss that decision
10 with?

11 DEFENDANT: Yes, sir.

12 THE COURT: Do you wish any additional time in which to
13 discuss this decision with anyone?

14 DEFENDANT: No, sir.

15 THE COURT: Do you intend to testify in this case?

16 DEFENDANT: No, sir.

17 THE COURT: All right. Anything further, Mr. Harris,
18 concerning this matter?

19 MR. HARRIS: Your Honor, I might just state that I have
20 had previous discussions with Mr. Jackson concerning his
21 right to testify and the right not to testify. Almost
22 identically the same things as the Court is inquired about,
23 and he had given me the same indication.

24 THE COURT: All right. One other thing I do want to go
25 over while the jury is out, earlier this morning I was told

1 THE COURT: Ladies and gentlemen, that concludes the
2 closing arguments by counsel, and I told you that when I
3 reached this stage of the proceedings it would be my
4 responsibility to charge you concerning the law to be
5 applied in this case.

6 When we started this case back when the jury selection
7 took place I went over the indictments in this case, and
8 I'll remind you that the fact that a defendant has been
9 arrested, charged, and indicted in the case does not
10 constitute evidence in a case. It can not be considered by
11 you as evidence of guilt in this case nor does the fact that
12 those things have occurred create any presumption or
13 inference of guilt.

14 The documents that I'm going to go over with you are
15 simply the documents that bring the case before the court.
16 They contain the charges that have been levied in this case.
17 It's the formal document that's brought the case into the
18 court.

19 There's two indictments that will be presented to you
20 for a decision in this matter, and I'm going to go over
21 those indictments with you again, and you will have an
22 opportunity to have these indictments with you in your jury
23 room during deliberations for your review.

24 The indictments in this case are in Case Number
25 2012-GS-42-0824. That indictment is for the charge of

1 possession with intent to distribute.

2 The indictment states, in its body, that Kenneth Odell
3 Jackson, did, in Spartanburg County, on or about November 29
4 of 2011, manufacturing, distribute, dispense, deliver,
5 purchase, or otherwise did aid, abet, or attempt, or
6 conspire to manufacture, distribute, dispense, deliver, or
7 purchase, or possess with the intent to manufacture,
8 distribute, dispense, deliver, or purchase a quantity of
9 cocaine, a Schedule II controlled substance, or controlled
10 substance analogue in violation of Code Section 44-53-370 of
11 the Code of Laws of South Carolina, 1976 as amended, against
12 the peace and dignity of the state and contrary to the
13 statute in such case made and provided.

14 The other indictment is in Case Number 2012-GS-42-0827.
15 That indictment is also for the offense of possession with
16 the intent to distribute.

17 The indictment, in its body, states that Kenneth Odell
18 Jackson did, in Spartanburg County, on or about November 29,
19 2011, manufacture, distribute, dispense, deliver, purchase,
20 or otherwise aid, abet, attempt, or conspire to manufacture,
21 distribute, dispense, deliver, or purchase, or possess with
22 the intent to manufacture, distribute, dispense, deliver, or
23 purchase a quantity of methamphetamine, a Scheduled II
24 controlled substance, under the provisions of Code Section
25 44-53-375 of the Code of Laws of South Carolina, 1976 as

1 amended, against the peace and dignity of the State and
2 contrary to the statute in such case made and provided.

3 Those are the two indictments that are before you in
4 this Court, this case. Each indictment contains a separate
5 and distinct offense. You, as the jury, will be required to
6 decide each indictment separately based on the evidence
7 that's been presented to you uninfluenced by your decision
8 as to any other indictment in the case. Therefore, a
9 defendant may be convicted or acquitted on either or both of
10 the charges that are before you, and you will be asked to
11 write a separate verdict as to each of the indictments that
12 are before the Court in this case.

13 I told you earlier, and the, and it remains the case,
14 that the defendant has pled not guilty to the indictments.
15 That plea places the burden upon the State to prove the
16 defendant guilty.

17 A person charged with the commission of a criminal
18 offense in South Carolina is never required to prove himself
19 innocent of those charges. I charge you it's an important
20 rule of law that a defendant, in a criminal case, no matter
21 what the seriousness of the crime might be, will always be
22 presumed to be innocent of the crime for which the
23 indictment has been issued until and unless guilt has been
24 proven to you, the jury, by evidence that satisfies you of
25 that guilt beyond a reasonable doubt.

1 Now, the presumption of innocence doesn't end when you
2 begin your deliberations. It accompanies the defendant
3 throughout these proceedings and into your deliberations.
4 Some people have described the presumption of innocence that
5 a defendant has in a criminal trial somewhat like the robe
6 that I wear into the courtroom. It -- that presumption of
7 innocence or robe remains about the defendant's shoulders
8 into the trial and throughout the trial. It continues to
9 remain about the defendant's shoulders into your
10 deliberations. It remains about his shoulders until such
11 time as it has been stripped from him by evidence that
12 satisfies you of the defendant's guilt beyond a reasonable
13 doubt.

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

19 Now, you've already heard me refer to proof beyond a
20 reasonable doubt about three or four times in my charge on
21 the law, and obviously you understand that's an important
22 concept under the law. That is that the State has to prove
23 its case beyond a reasonable doubt, and you may be asking
24 yourself well, just what do they mean by a reasonable doubt
25 or what is a reasonable doubt, and I will tell you that

1 Courts have defined a reasonable doubt as that kind of doubt
2 that would cause a reasonable person to hesitate to act, and
3 the state has the burden of proving the defendant guilty
4 beyond a reasonable doubt.

5 Now, I'm going to caution you, because some of you may
6 of been involved in civil cases, civil court cases before,
7 and those are cases where people are seeking monetary
8 damages. That can be because of an accident or an injury or
9 a breach of contract or a failure to pay a debt or something
10 of that nature. That's where someone's seeking monetary
11 damages from someone else in a Court of law. That's a civil
12 case, and in those cases the standard of proof that our
13 Courts use is different than, than a criminal case such as
14 this.

15 In a civil case the standard of proof is by the greater
16 weight or the preponderance of the evidence. This is
17 described as the scales of justice tilting ever so slightly
18 in favor of a plaintiff, in which case the plaintiff would
19 be entitled to a verdict, or ever so slightly in favor of a
20 defendant, in which case a defendant would be entitled to a
21 verdict. That's the standard of proof in a civil case.

22 That's not the standard of proof that we use here. Our
23 standard of proof is higher or more powerful than that. I
24 will tell you that proof beyond a reasonable doubt would be
25 that kind of proof that would leave you firmly convinced of

1 the defendant's guilt.

2 I'm going to tell you there's very few things that go
3 on in this world that can be proven beyond any doubt
4 whatsoever, and that's not the standard of proof to which
5 the state is held in this case. They do not have to present
6 proof that overcomes every possible doubt.

7 what I'll tell you is if, after you've considered all
8 of the evidence in this case, if you're firmly convinced of
9 the defendant's guilt, again, beyond a reasonable doubt, you
10 must find the defendant guilty. However, on the other hand,
11 if you think there's a real possibility that the defendant
12 is not guilty, then you must give the defendant the benefit
13 of that doubt and find the defendant not guilty.

14 I will remind you that during the trial we've had
15 different duties to perform. As the trial judge it's been
16 my responsibility to preside over the trial and to make
17 rulings concerning the admissibility of evidence or the
18 appropriateness of questions that have been asked or
19 statements that have been made in the courtroom. And if
20 there's been any matter that I have ordered stricken from
21 the record of the case, you must disregard that information
22 in its entirety. You are to consider only the testimony and
23 the evidence which is been presented from the witness stand
24 and has been placed in the record of the case in reaching a
25 verdict in this matter.

1 I have the additional duty of charging you concerning
2 the law that's applicable to this case. I'll remind you
3 that I told you at the beginning of the trial, I am the sole
4 judge of the law in this case. It's your duty, under your
5 oath as jurors, to accept the law as I give it to you, and
6 apply it to the facts as you determine those facts to be in
7 the case.

8 If you came into the courtroom, again, with an idea or
9 notion as to what the law is or what it ought to be, those
10 notions should be left outside of the jury room. You should
11 take the law as I give it to you now, apply it to the facts
12 as you determine those facts to be. That should put you in
13 a position to render a just, a true, and a fair verdict in
14 this case.

15 I will remind you also that, in every case tried in
16 this courtroom before a jury, the jury is the sole and
17 exclusive judge of the facts in this case. Please don't
18 take from anything that I have said during the trial or even
19 during my charge concerning the law to indicate to you that
20 I have an opinion as to how you determine the facts in this
21 case. I've explained to you the law doesn't allow me an
22 opinion on the facts. I have no opinion as to how you
23 determine the facts in this case. You are the sole judges
24 of the facts in this case. It's your duty, as jurors, to
25 determine the effect, the value, the weight, and the truth

1 of the evidence that's been presented during this trial.

2 Now, in doing that, you have the right to consider two
3 types of evidence. You may ask yourself well, what do you
4 mean by two types of evidence. Well, the two types that, of
5 evidence that you have the right to consider or the types
6 are described as direct evidence and circumstantial
7 evidence.

8 Now, direct evidence is testimony from a witness who
9 claims to have direct knowledge of the facts about which
10 that person testifies. In other words, someone who claims
11 to have actually experienced the events about which they
12 testified. They claim to have heard, seen it, watched it,
13 smelled it, felt it. Direct experience on the facts about
14 which they're testifying. That's what we mean by direct
15 evidence.

16 Circumstantial evidence, on the other hand, is proof of
17 a set of or a chain of facts or circumstances that indicate
18 the existence of a fact. It's been described under the law
19 as proof that immediately establishes collateral facts from
20 which a main fact can be reasonably inferred.

21 Now, that's a lot of legal language and I like to use a
22 very simply concept or example to explain to you what is
23 meant by proof of a fact by circumstantial evidence. Let's
24 say last night, before you went to bed, you looked outside
25 the window in your bedroom, stars were shining, shining. It

1 was beautiful. You went to bed and you slept well all
2 night, didn't wake up at all, and the next morning you got
3 up and walked to the same window that you'd been in, at, at
4 the night before. You looked outside, and while the sun was
5 shining, you noticed that from all the trees that you could
6 see there's water dripping. You notice that the drive in
7 your home is got puddles in it. The grass outside the
8 house, if there is any, is wet. The road's wet out in front
9 of the house.

10 Now, during the night, you slept well all night. You
11 didn't see it rain and you didn't hear it rain. But from
12 those collateral facts that you know to be true, you could
13 reasonably infer another main fact, and that is that at some
14 time during the night it, in fact, did rain. So, that's
15 what we mean by proof of collateral facts from which a main
16 fact can be reasonably inferred or proof of a chain of facts
17 from which some other fact might be reasonably inferred.
18 That's what is meant by proof of facts by circumstantial
19 evidence.

20 Now, the law doesn't make any distinction between the
21 weight you can give to either direct or circumstantial
22 evidence because, in circumstantial evidence, is based upon
23 inference. It's not based upon personal knowledge or
24 observation.

25 Now, there also is not a greater degree of certainty

1 required in the case of circumstantial evidence than that of
2 direct evidence. You, the jury, should weigh all of the
3 evidence, both direct and circumstantial, and if, after
4 weighing all of the evidence, if you're not firmly convinced
5 of the defendant's guilt beyond a reasonable doubt, you must
6 find the defendant not guilty. On the other hand, if you
7 are firmly convinced of the defendant's guilt beyond a
8 reasonable doubt, you must find the defendant guilty.

9 Now, necessarily, as a, the finders of fact, I told you
10 earlier on that you're going to have to determine the
11 credibility or the believability of the testimony that
12 you've heard from the witnesses. It's your duty, as jurors,
13 to analyze the evidence and decide what convinced you of its
14 truth. In determining believability of witnesses who've
15 testified in a case, you have the right to believe one
16 witness against all the others, all the others against one.
17 You have the right to believe all of, part of, or none of
18 what a witness has told you during the trial.

19 You may consider such factors as whether or not a
20 witness has expressed, has expressed or exhibited an
21 interest, a bias, or a prejudice, or other motive in
22 testifying. You may also consider the appearance and the
23 manner in which a witness has delivered their testimony.
24 Again, I've told you earlier use your own good common sense
25 in making determinations as to the credibility or

1 believability of the testimony that you've heard in this
2 case.

3 Now, at a point in time during the trial we had a
4 witness that was qualified as an expert witness, and I told
5 you I would come back to that during my charge on the law,
6 that I would discuss that with you further.

7 In the rules of evidence, as I told you then,
8 ordinarily don't allow witnesses to give opinions or
9 conclusions during their testimony. An exception to that
10 rule exists, again, with witnesses who have been declared to
11 be expert witnesses. That's a witness who, because of their
12 education, experience, or training, has become an expert in
13 some field, science, or profession, or calling, and those
14 witnesses, when they're so qualified, have the right to
15 state an opinion as to any relevant matter or material
16 within their area of expertise, and may also state
17 the reasons for those opinions.

18 Now, you, the jury, should consider the testimony of a
19 expert witness or an expert's opinion like any other
20 evidence you've received in this case. You, the jury, can
21 give it the weight you think it deserves. If you decide
22 that the opinion of an expert witness is not based on
23 sufficient education or experience or if you decide or
24 conclude that the reasons given by the witness in support of
25 that opinion are not sound or if you decide that the opinion

1 is been outweighed by other evidence, you, the jury, can
2 disregard the opinion in its entirety if you choose to do
3 so. Again, you can accept all of, part of, or none of what
4 a witness has told you.

5 An expert witness' testimony is to be given no greater
6 weight simply because that person's been declared to be an
7 expert. You're not required to accept an expert's opinion
8 even though it's not been contradicted by other testimony.
9 In other words, you're the sole judges of the facts and you
10 give it the weight or the value you think it deserves based
11 on your evaluation of that testimony.

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

22 I repeat, under your oath as jurors, you are to draw no
23 conclusion whatsoever from the fact that the defendant did
24 not testify in this case. The fact that the defendant did
25 not testify should not even be discussed by you in the jury

1 room during your deliberations. The fact that the defendant
2 did -- excuse me.

3 The defendant is not required to prove his innocence.
4 I've already explained that to you. The burden of proof is
5 upon the State and only upon the State to prove the
6 defendant's guilt, again, beyond a reasonable doubt.

7 Now, as we go, as I go through my charge concerning the
8 offenses in this case, you're going to hear, and I'll just
9 explain to you, that the charges are possession with the
10 intent to distribute, and I'm going to discuss with you
11 criminal intent.

12 In order to establish criminal liability, criminal
13 intent is required. For example, that's the mental state
14 required to be proven by the State in order for a particular
15 crime to exist, and as I charge you concerning these crimes,
16 listen for the element of intent that's required to be
17 proven in order for these to be, be established.

18 Criminal intent must be proven beyond a reasonable
19 doubt. Criminal intent is always a matter, however, that
20 has to be determined from the facts and circumstances that
21 surround the situation. The reason for that is we have no
22 means by which to cut open somebody's head and look at their
23 brain and see what they're intending to do at any given time
24 or moment. We're not scientifically able to prove or show
25 intent by direct evidence.

1 So, therefore, intent is always proven by inference or
2 by circumstantial evidence. That's how you make a
3 determination as to whether or not the element requiring
4 intent is present in a particular situation. So, again,
5 it's not necessary to establish the intent element of a
6 crime by direct or positive evidence. It may be established
7 by inference the same way as any other fact is established
8 taking into consideration the acts of the parties, and all
9 of the facts and circumstances in the case as you determine
10 those facts and circumstances to be.

11 Criminal intent is a mental state. It's a conscious
12 wrongdoing. It's up to you to decide what the defendant
13 intended to do based on the circumstances shown to have
14 existed in the case that's before you.

15 Now, the charge in this case is possession with the
16 intent to distribute, and the two charges, the two
17 indictments are separate because there are two different
18 drugs involved. In the case of Case Number 827, that drug
19 is methamphetamine. In the case of 824, that drug is
20 cocaine. But I'm gonna to, go over these charges with you
21 together up to a point because they're both charges of
22 possession of those drugs with intent to distribute.

23 So, in this case, the defendant is charged with
24 possession with intent to distribute two different drugs in
25 the remaining indictments. Those drugs again are cocaine

1 and methamphetamine. The State must prove, beyond a
2 reasonable doubt, that the defendant possessed those drugs
3 with the intent to distribute them.

4 Now, to prove possession, the State must prove, beyond
5 a reasonable doubt, and listen carefully to this cause I'm
6 gonna come back to this in just a minute, and you'll
7 understand what I mean by that in just a minute. To prove
8 possession, the State must prove, beyond a reasonable doubt,
9 that the defendant had both the power and the intent to
10 control the disposition and use of the drugs involved in
11 this case, either cocaine in one charge or methamphetamine
12 in another.

13 Possession can be either actual or it can be
14 constructive. By actual possession we mean that the drug in
15 question was in the actual physical custody of a defendant.
16 That means it was in their possession, on their person.

17 Constructive possession, on the other hand, means that
18 the defendant had dominion and control or the right to
19 exercise dominion or control over either the drug in
20 question itself or the property on which the particular drug
21 was found.

22 Now, mere presence at a scene where drugs are found is
23 not enough to prove possession. The defendant's knowledge
24 and possession may be inferred when a substance is found on
25 property that's under a defendant's control. However, this

1 inference is simply an evidentiary fact it, to be taken into
2 consideration by you along with the other evidence in the
3 case, and you give it the weight you decide it should have.

4 The State must also prove, beyond a reasonable doubt,
5 that the defendant intended to distribute the drug.

6 Distribution means to deliver other than by administering or
7 dispensing of drug. Intent may be shown by acts and conduct
8 of the defendant or other circumstances from which you might
9 naturally or reasonably infer intent.

10 The determination whether a defendant had the intent to
11 distribute the drugs in question, in determining that, you
12 may consider the circumstances surrounding the defendant's
13 alleged possession. You may consider the amount of the
14 substances alleged to have been possessed, the manner in
15 which it was allegedly possessed, the place in which it was
16 allegedly possessed, and other factors which you consider to
17 be important concerning that question. You must find that
18 the defendant did not have the intent to have the drugs
19 solely for his own use.

20 Now, the law in these, these, concerning these two
21 drugs, there is a presumption or a presumptive weight and
22 let me explain to you what it means by that. Possession of
23 more than one gram of cocaine, and possession of more than
24 one gram of methamphetamine creates an inference that the
25 defendant possessed those drugs with the intent to

1 distribute them. It's up to you to determine if this
2 inference warrants a finding of fact. This inference does
3 not relieve the State from proving, beyond a reasonable
4 doubt, that the defendant had the intent to distribute. It
5 is simply an evidentiary fact that you can take into
6 consideration that, by you, it can be taken into
7 consideration along with the other evidence in the case, and
8 you give it the weight that you decide that that fact should
9 have.

10 Now, in this case, Mr. Haydock, raise your hand please.
11 (Juror complies.)

12 THE COURT: You're going to be the foreperson of the
13 jury. That means you will be the person who will be
14 responsible to conduct the deliberations of the jury.
15 Should the jury have questions during the process of
16 deliberating, you should write those questions down on a
17 piece of paper, knock on the door of the jury room, hand the
18 questions to the bailiff. He'll deliver the question to me.

19 Now, I can't answer every question you might have
20 during your deliberations because I've explained I can't get
21 involved in your decisions concerning the facts of the case.
22 I can answer questions concerning the law that I've charged
23 you or the procedure that we followed, and, in some cases,
24 questions that you might have concerning the evidence. But
25 I'm going to ask you not to edit any question the jury has.

1 whatever the question is, once they've agreed on the form of
2 the question, write it on a piece of paper and submit it to
3 the Court and I'll decide the appropriate method by which I
4 should answer that question.

5 Also, it will be your responsibility to record the
6 verdict of the jury once the verdict's been reached, and I'm
7 going to give you a form to do that on, and I'll do that in
8 just a few minutes and go over the form with you so that I'm
9 sure you understand it, and the verdict must be unanimous.

10 Now, there's -- in explaining that verdict form to you,
11 there's one other thing that I need to make clear to you.
12 I've gone over the indictments for the charges that are
13 before the Court, and that is possession with the intent to
14 distribute cocaine and also possession with the intent to
15 distribute methamphetamine. I'm also going to give you an
16 additional choice concerning this case, and that is that you
17 have the right to decide whether or not the defendant might
18 be guilty of a lesser included offense should you find the
19 defendant is not guilty of these charges. By lesser
20 included offense, those lesser included offense would be
21 simple possession of cocaine or simple possession of
22 methamphetamine.

23 Now, in deciding simple possession, I told you I was
24 gonna come back to something in my charge a little later,
25 and to prove simple possession, the element of the intent to

1 distribute is not required. To prove possession, the State
2 must prove, beyond a reasonable doubt, that the defendant
3 had both the power and the intent to control the disposition
4 of the cocaine or the meth. Possession can be either actual
5 or constructive and I explained that actual possession means
6 that the drugs were on the person's person, under their
7 actual physical control. Constructive possession means the
8 defendant had dominion and control or the right to exercise
9 dominion and control either of the drug in question itself
10 or the property on which the drug was found.

11 Mere presence at a scene where drugs are found is not
12 enough to prove possession. The defense, defendant's
13 knowledge and possession may be inferred when a substance is
14 found on property under the defendant's control. However,
15 this inference is simply an evidentiary fact to be taken
16 into consideration by you along with the other evidence in
17 the case, and you give it the weight that you think it
18 should have.

19 So, that's simple possession is that the, the defendant
20 was either in actual or constructive possession under the
21 law of the drugs. That will be a choice that you will have
22 should you find the defendant not guilty of the main charges
23 in the indictment, and I'll explain that to you further when
24 I go over the form of the verdict and show you how that will
25 work.

1 Your verdict must be unanimous. Each and every one of
2 you must agree upon the verdict in the case before it is the
3 verdict of the jury, and as I've told you, that means that
4 none of you has any greater say than the other in the
5 outcome of the case. All of you must agree upon a verdict
6 before it is the verdict of the jury.

7 Now, I've gone over a lot of things with you. I want
8 to be sure that I haven't misspoken in my charge or left
9 something out. So, we're going to take a short break and
10 I'll let you go back to the jury room.

11 Mr. Foreman, don't let any discussions begin until I
12 bring you back into the courtroom for final instructions.
13 But at this time you may retire to the jury room.

14 Thank you very much.

15 (WHEREUPON, the following takes place outside the
16 presence of the jury.)

17 THE COURT: Objections to the charge from the State?

18 SOLICITOR SPIVEY: None, Your Honor.

19 THE COURT: Any from the defense?

20 MR. HARRIS: None, Your Honor.

21 THE COURT: All right. I'm gonna ask you to step
22 forward and go over the exhibits. Be sure that we have
23 those segregated and you agree on what ought to go back to
24 the jury room. Once you've finished that I have the verdict
25 form. If you'll step up and take a look at that. Let's see

1 if you agree on the form.

2 (Pause.)

3 MR. HARRIS: Your Honor, on behalf of the defendant, it
4 appears to be nine separately marked exhibits, and we agree
5 that those are the exhibits and they're in order.

6 THE COURT: All right. And you agree that the exhibits
7 that have been segregated are correct?

8 SOLICITOR SPIVEY: Yes, Your Honor.

9 THE COURT: And the ones that should be submitted to
10 the jury?

11 SOLICITOR SPIVEY: Yes, Your Honor.

12 THE COURT: Defense also?

13 MR. HARRIS: Yes, Your Honor.

14 THE COURT: All right. If you'll take a look at the
15 verdict form. Let me know if you have any objections to
16 that form.

17 (WHEREUPON, a bench conference was held at this time.)

18 THE COURT: Any objection once we fix that?

19 MR. HARRIS: No, Your Honor.

20 THE COURT: Any objection?

21 SOLICITOR SPIVEY: No, Your Honor.

22 THE COURT: All right. He's going to pick it up in the
23 office and then we'll be ready to go.

24 (Pause.)

25 THE COURT: All right. Let's bring the jury back in.

1 Order please.

2 (WHEREUPON, the following takes place within the
3 presence of the jury.)

4 THE COURT: Now, Mr. Ruth, if you'll wait right there
5 cause we have some things.

6 All right. Ladies and gentlemen of the jury, I am
7 going to pass a couple of things over to the foreperson.
8 The first thing I'm passing over are the two indictments
9 that are to be considered in this case. The next document
10 that I'll pass over is the verdict form.

11 And, Mr. Foreman, let me go over that with you briefly.
12 If you'll look at the top it will indicate the State and
13 county in which we are handling this. It has the caption,
14 the name of the case, the State versus Mr. Jackson. It
15 indicates it is a verdict form.

16 Below that it says that you, the jury, unanimously
17 find, question one, has to do with the cocaine charge, the
18 possession with intent to distribute cocaine. They're two
19 choices under that, either not guilty or guilty.

20 Let me caution the jury before you even look at that
21 form, please don't take from the fact that I put those
22 choices in any order that that indicates some preference on
23 my part. I can assure you I've been doing these jury trials
24 for about eight years, and every one I've ever done are in
25 the same order. So, it's no preference. That's the way it

1 is on my computer. So, that's, that's just the way it
2 comes.

3 So, the choices are not guilty or guilty, and you, once
4 a verdict has been reached on that charge, you'll either
5 check one or the other of verdicts. Either put an X in the
6 line there beside it or a check mark. So, mark that
7 appropriate verdict.

8 Now, if you find the defendant not guilty of that
9 charge, then you must consider the lesser included charge of
10 simple possession of cocaine, and, again, the choices on
11 that are guilty or not guilty or guilty. But you won't even
12 answer that question if you have found him guilty of the
13 original, the main charge.

14 Do you understand that, Mr. Foreman?

15 FOREMAN: Yes, sir.

16 THE COURT: All right. The second choice is the same
17 as to the methamphetamine. It will be the question -- the
18 first question is whether or not the defendant is guilty or
19 not guilty of possession with intent to distribute
20 methamphetamine. If you'll check the appropriate verdict.
21 If the jury finds him not guilty of that charge, then you
22 must determine whether or not he would be guilty of the
23 lesser included charge and that is simple possession of that
24 drug.

25 Again, the choice is guilty or not guilty. Once the

1 form has been completed, then you would sign the form, I
2 think it's already dated, but if it needs to be dated, date
3 it and then knock on the door, inform the bailiff that a
4 verdict been's reached, and we'll ask you to step back into
5 the courtroom to receive the verdict.

6 Now, the exhibits that have been placed into the record
7 will be sent back with you into the jury room. I will
8 caution you concerning the drugs that are in a sealed
9 envelope. Don't break the seal on that envelope unless you
10 find it necessary in your deliberations. If you do, knock
11 on the door, inform the bailiff, I'll bring you back into
12 the courtroom for instructions on how we will handle that.

13 So, if you feel that it's necessary to open that bag,
14 let, let the bailiff know before you do that. Don't try
15 self-help on that one.

16 Okay. Now, I'm going to ask that you retire to the
17 jury room to begin your deliberations. When your lunch is
18 delivered, don't continue deliberations until that's been
19 delivered, and the clerk's officer or the bailiff leave the
20 room, then resume your deliberations if you choose to do so.
21 Don't discuss the case, in other words, with people other
22 than just the jury in the room. So, suspend deliberations
23 if that were to occur.

24 I do know that there are some smokers in your group.
25 If, if you can agree on a smoke break, if that becomes

1 MR. HARRIS: No objections.

2 THE COURT: All right. We'll remain in recess until
3 such time as a verdict is reached.

4 Thank you very much.

5 (WHEREUPON, the jury began deliberations at 1:05PM and
6 returned with a verdict at 2:41PM.)

7 THE COURT: I've been informed a verdict has been
8 reached.

9 Is the State ready to receive the verdict?

10 SOLICITOR SPIVEY: Yes, Your Honor.

11 THE COURT: Defense ready?

12 MR. HARRIS: Yes, Your Honor.

13 THE COURT: Bring the jury in.

14 (WHEREUPON, the following takes place within the
15 presence of the jury.)

16 THE COURT: All right. The record will reflect the
17 jury's returned to the courtroom.

18 Mr. Foreman, I've been informed by the bailiff that a
19 verdict's been reached.

20 Is that true?

21 FOREMAN: Yes, sir.

22 THE COURT: Pass the form to the bailiff.


23 (Foreman complies.)

24 THE COURT: Thank you, sir.

25 (Pause.)

CERTIFICATE OF COUNSEL

Counsel for Appellant certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

BY: 
J. Benjamin Aplin
S.C. Bar No: 8729

December 23, 2013

CERTIFICATE OF COUNSEL

Counsel for Appellant certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

BY: Jennifer Ellen Kelen for
J. Benjamin Aplin
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December 23, 2013