

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM MARION COUNTY

William H. Seals, Jr., Circuit Court Judge

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SC COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

DARRELL LEE BIRCH,

APPELLANT

APPELLATE CASE NO. 2012-213215

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS  
2009-GS-33-00106

COUNTY OF MARION

STATE OF SOUTH CAROLINA,	)
	)
	)
-vs-	)
	)
	)
DARRELL LEE BIRCH,	)
	)
Defendant.	)

November 28-30, 2012

B E F O R E:

HONORABLE WILLIAM H. SEALS, JR.

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Henry P. Young  
Court Reporter

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P-R-O-C-E-E-D-I-N-G-S

(Convened at 10:55 a.m., November 28, 2011).

1 THE COURT: All right, is there anything from  
2 the defense before we pick a jury?

3 MR. MEETZE: Your Honor, at this point in  
4 time on behalf of Mr. Birch I would make a motion  
5 for a continuance of this case and I would explain  
6 why. Mr. Birch, I met for the first time earlier  
7 this month, I don't know of the exact date, a  
8 Monday, probably around the 11th or so of November.  
9 He came into the Public Defender's office in  
10 Marion, I was working here that day for whatever  
11 reason, and when he came in for the purposes of  
12 getting copies of his discovery materials he was  
13 going to go and speak with a private attorney in  
14 Florence at some point in time, not that day, and  
15 he was getting prepared for that and he didn't wish  
16 to speak to me about his case.

17 When he came in that day I did inform him,  
18 because I felt like it was important for him to  
19 know and any attorney that he would speak to, I  
20 felt like it would be important for them to know  
21 that the State, the Solicitor's office intended to  
22 call his case for trial this week on Wednesday and  
23 that was essentially the total of our conversation  
24  
25

1 that day.

2 Mr. Birch came in yesterday and I asked him  
3 the status of his having retained or not retained  
4 Mr. Booker and he indicated to me he had retained  
5 Mr. Booker, that he was supposed to meet back with  
6 him today to finalize, yesterday, excuse me, to  
7 finalize that. We talked with Mr. Jèpertinger --  
8 he again was told, he was informed the Solicitor's  
9 office intended to call his case this week. We  
10 talked to Mr. Jèpertinger in the Solicitor's  
11 office, explained to him Mr. Birch intended to  
12 solidify his hiring of Mr. Thurmond Booker and  
13 needed to be able to go over to Florence to do  
14 that. Mr. Jèpertinger indicated he could do that  
15 but he would need to be back today to proceed with  
16 his case one way or another.

17 As it turned out yesterday morning before  
18 lunch Mr. Booker came to court, I did not speak to  
19 Mr. Booker but Mr. Jèpertinger informed me later on  
20 in the day that he had spoken with him and that Mr.  
21 Booker indicated to the Solicitor's office that he  
22 would not be representing Mr. Birch on the case, so  
23 when we got here today and I began to speak with  
24 Mr. Birch with regard to his case and explained to  
25 him what the plans were with regard to selecting a

1 jury on his case today and beginning his trial  
2 tomorrow, and he didn't want to talk to me at that  
3 time because he wanted verification that Mr. Booker  
4 was not going to be representing him. In his mind  
5 they had talked, according to Mr. Birch, Mr. Birch  
6 and Mr. Booker had talked about his case, had  
7 planned the strategy and defense for his case. Mr.  
8 Birch, according to Mr. Birch, had hired him and  
9 paid him money, \$1,500, and had, I guess, signed a  
10 contract is what -- he says he had paperwork. The  
11 word contract did not come out of Mr. Birch's  
12 mouth, that may be presumption, but he did indicate  
13 he had paperwork to that effect.

14 So, my understanding is Mr. Booker is not  
15 representing him now. Mr. Birch has talked to me  
16 some but has not, he has indicated to me he does  
17 want some witnesses called. These are witnesses I  
18 haven't had an opportunity to speak to or track  
19 down or try to find or anything like that because  
20 today is the first day that I have heard about any  
21 of that.

22 THE COURT: Let me ask you this. How long  
23 have you had the file, when were you appointed to  
24 represent him, when did you open your file?

25 MR. MEETZE: This office opened the file, he

1 had initial appearance February 19, 2009, the  
2 arrest date was on December 3rd of 2008.

3 THE COURT: And did you notify him that the  
4 Public Defender's office was representing him, did  
5 you send him a letter of any kind?

6 MR. MEETZE: Your Honor, I'm sure, and let me  
7 look in the file, I'm sure there is paperwork in  
8 here from the bond hearing that indicates that,  
9 "Please be advised the Public Defender of Marion  
10 County has been appointed to represent you on your  
11 pending charges in General Sessions Court." It has  
12 got the name of Jack Lawson and Henry Anderson over  
13 the top of that, and this is paperwork different  
14 than what we have in Florence. In Florence there  
15 is a spot for them to sign that which is an  
16 indication they have received all that but this was  
17 just in our file with no signature or anything on  
18 there but it would be an indication that he was  
19 made aware of his representation by our office as  
20 well as his initial appearance date and -- well,  
21 that paperwork is for a different charge.

22 THE COURT: Okay.

23 MR. MEETZE: But in any event, I know that as  
24 early as August of this year he was aware of the  
25 Public Defender's office representing him because

1 members of our office had spoken to him at that  
2 time about his case and explained different things  
3 to him.

4 But, Your Honor, obviously he has concerns  
5 now because he has been moving forward in his mind  
6 feeling like he had different counsel and now that  
7 he's aware, I'm not sure he is aware, I'm not sure,  
8 you know, if that office has communicated that fact  
9 with him or not but in an effort to be able to  
10 adequately prepare we would ask the Court for some  
11 kind of continuance, if it is no more than  
12 continuance until next week. On his behalf we  
13 would ask for that.

14 Your Honor, with all due respect, I let the  
15 Court know he may have some motions he would like  
16 to make on his own behalf as well.

17 THE COURT: Let me go ahead and hear from the  
18 Solicitor.

19 MR. TUCKER: Thank you, Your Honor. If it  
20 please the Court, with regard to the issue as for  
21 as Mr. Booker representing the defendant, Your  
22 Honor, I was actually in my office yesterday when  
23 Mr. Jepertinger and Mr. Booker spoke. I think Mr.  
24 Booker's response to Mr. Jepertinger's question,  
25 "Do you represent him," was an emphatic no, he did

1 not represent him and would not represent him on  
2 this particular charge, as it was going to trial,  
3 jury selection today and trial for Wednesday. So  
4 respectfully we would say we don't think Mr. Booker  
5 is representing him, I think we're rather emphatic  
6 about that.

7 THE COURT: He indicated to you he was not  
8 hired by this defendant?

9 MR. TUCKER: That's correct.

10 THE COURT: That was as of yesterday?

11 MR. TUCKER: Yesterday just before lunch,  
12 Your Honor.

13 THE COURT: All right, thank you. I'm going  
14 to deny the motion to continue. Start the trial  
15 tomorrow, you will have all afternoon to get the  
16 witnesses.

17 Any other motions? Anything you want to tell  
18 me?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Mr. Birch.

21 THE DEFENDANT: Do you want me to state my  
22 name?

23 THE COURT: Go ahead and state your name.

24 THE DEFENDANT: Darrell Birch. I would like  
25 to file a motion for counsel. This counsel, I

1 don't want this counsel to represent me or the  
2 office of Public Defender due to the fact the  
3 notice he tell about the office representing me, I  
4 never knew anything about the Public Defender's  
5 office representing me because when that notice was  
6 filed I think the date on that notice right there,  
7 when is the date, I'm not sure?

8 MR. MEETZE: 2008.

9 THE DEFENDANT: December 11, 2008. I never  
10 really seen this. I was in prison, you know, for  
11 two years, these charges from 2008, I was in prison  
12 during all that time and they never notified me. I  
13 fill out for preliminary hearing, they knew where I  
14 was, I never got a chance to go to a preliminary  
15 hearing or anything like that.

16 Now, back to the lawyer situation, I had  
17 hired a lawyer, I have my paperwork where I done  
18 paid him, filled out all the forms I needed to fill  
19 out and everything. Now, I never met him until  
20 yesterday, I met him before but where he let me  
21 know he the one going to be on my case, that was  
22 yesterday, that the first time he ever mentioned  
23 something like that to me but I informed him of the  
24 only information I know, Mr. Booker representing me  
25 because I filled out the paperwork and they have my

1 money, so to my knowledge that is who representing  
2 me. So, that is the only knowledge I could give  
3 him, so I don't know what was said yesterday but,  
4 you know, they tell me he don't represent me, that  
5 he represent me, and I'm like to my understanding,  
6 you know, from the legal working knowledge, he told  
7 me yesterday he was representing me, him and his  
8 secretary, so I come in, I tell him this morning  
9 I'm like have you spoken to Mr. Thurmond Booker's  
10 office yet, so I don't really know what to do,  
11 because I paid the man my money and filled out the  
12 paperwork and he said he accept my case so that is  
13 how it went, so I was telling him that we haven't  
14 really had enough time, if we was like me and Mr.  
15 Booker --

16 THE COURT: Have you got your paperwork?

17 THE DEFENDANT: Yes, my sister bringing it  
18 now, my sister bringing it now.

19 THE COURT: Pass it on up to me.

20 THE DEFENDANT: She's at work, she's due to  
21 get off work, she up here bringing it to me right  
22 now as we speak.

23 THE COURT: Mr. Booker, I saw him yesterday,  
24 he never mentioned anything to me about this case,  
25 I spoke to him, he never mentioned anything about

1 this case. He spoke with the Solicitor, the  
2 Solicitor has represented to the Court that he does  
3 not represent you. Your lawyer has spoken with Mr.  
4 Booker and he has represented to him that he is not  
5 representing you. As far as I'm concerned your  
6 lawyer is Mr. Meetze, the Public Defender's office,  
7 they have had that file since 2008.

8 THE DEFENDANT: I'm sorry I didn't mean to  
9 cut off what you said. No doubt, I'm not saying he  
10 hadn't told Mr. Jepertinger or he hadn't told Mr.  
11 Meetze that, what I have told them, but who is to  
12 say he hasn't told me what I am saying also because  
13 I have paperwork and gave him my money, I got the  
14 receipt slips and I got --

15 THE COURT: Then show it to me.

16 MR. TUCKER: By way of point of  
17 clarification, I think Mr. Booker may in fact  
18 represent him on other charges, that may be the  
19 source of his confusion. As it relates to this  
20 particular charge he does not, as he indicated to  
21 Mr. Jepertinger yesterday.

22 THE DEFENDANT: Judge, we only need one hour,  
23 my sister was at her work, she taking off work  
24 right now. He told me when I left from his office  
25 yesterday at 1:00 o'clock, the woman said, "Mr.

1 Birch, do not worry about Wednesday," that's what  
2 she said, she said, "Mr. Birch, I have talked to  
3 Mr. Booker," she said, "Mr. Birch, do not worry  
4 about Wednesday." I gave the lady my money and  
5 left.

6 THE COURT: I understand. Right now your  
7 motion is to continue. I'm going to have my clerk  
8 call Mr. Booker to ask him, make sure. If he comes  
9 back and tells me he does represent you in  
10 reference to this trial I will call him on up here  
11 but we're going forward with this trial.

12 Anything else?

13 THE DEFENDANT: I would like the paperwork  
14 because I paid him, what about my money and all  
15 that?

16 THE COURT: I have heard that.

17 Anything from the Solicitor?

18 MR. TUCKER: Nothing further, Your Honor.

19 THE COURT: All right.

20 Anything further, Mr. Meetze?

21 THE DEFENDANT: The motion was I didn't want  
22 him to represent me.

23 THE COURT: The motion is denied at this  
24 point in time.

25 Anything further, Mr. Meetze?

1 MR. MEETZE: No, sir, Your Honor.

2 THE COURT: All right, thank you very much.  
3 We'll be back shortly and pick a jury.

4 MR. TUCKER: Thank you.

5 (Recessed at 11:00 a.m.).

6 (Resumed at 11:30 a.m.).

7 THE COURT: My clerk did call Mr. Booker's  
8 office and they told him they do not represent the  
9 defendant in this case, so I did clarify that, I  
10 just wanted to let you all know that. So, the  
11 continuance continues to be denied.

12 (Jury panel is now present).

13 THE COURT: I want everybody to know we're  
14 going to draw a jury for a particular case. I do  
15 want you to remember that you are still under oath  
16 and if any of these questions apply to you, if you  
17 need to stand or you need to respond, you need to  
18 respond truthfully. The questions are very simple  
19 and they are as follows. However, before I begin,  
20 Solicitor, call your first case.

21 MR. TUCKER: Thank you, Your Honor. If it  
22 please the Court, Your Honor, at this time the  
23 State calls indictment 2009-GS-33-0106, State of  
24 South Carolina versus Darrell Lee Birch for trial.

25 THE COURT: Thank you very much. All right,

1 members of the jury, in this particular case the  
2 State of South Carolina alleges that on or about  
3 December 3rd, 2008, a Mr. Darrell Lee Birch did  
4 knowingly and intentionally possess with intent to  
5 distribute a quantity of cocaine and that on or  
6 about December 3rd, 2008, a Mr. Darrell Lee Birch  
7 did knowingly and intentionally possess a quantity  
8 of ecstasy. To these charges the defendant has pled  
9 not guilty, therefore we're moving forward with  
10 this jury selection.

11 In that regard has any member of the jury  
12 panel seen, read, heard anything about this case or  
13 knows anything about this case from any source  
14 whatsoever? If so, please stand.

15 Let the record reflect that no one stood.

16 All right, if the defendant would please  
17 stand and turn and face the jury panel. Just state  
18 your name, please, sir.

19 THE DEFENDANT: Darrell Lee Birch.

20 THE COURT: All right, you may be seated.

21 Is any member of the jury panel related by  
22 blood or marriage or has a close personal or social  
23 relationship with Darrell Birch in this case? If  
24 so, please stand.

25 All right, let the record reflect that no one

1 stood.

2           Solicitor, if you would please stand,  
3 introduce yourself and all the lawyers in your  
4 office.

5           MR. TUCKER: Thank you, Your Honor. My name  
6 is Todd Tucker, I'm Assistant Solicitor in the  
7 Third Circuit. Working in our office trying the  
8 case tomorrow is Matthew Ozment. John Jepertinger,  
9 and Lewis Clements work in our office.

10           THE COURT: Thank you very much. Is any  
11 member of the jury panel related by blood or  
12 marriage or has a close personal or social  
13 relationship with this particular Solicitor or any  
14 member of his staff or any member in his office or  
15 have you ever been represented by them? If so,  
16 please stand.

17           All right, let the record reflect no one  
18 stood.

19           Mr. Meetze.

20           MR. MEETZE: Thank you, Your Honor. My name  
21 is Vic Meetze, I work for the Public Defender's  
22 office and I represent Darrell Birch in this case.  
23 Other attorneys in our office are Hank Anderson,  
24 Grayson Smith who are working this term of court as  
25 well.

1 THE COURT: Thank you. Is any member of the  
2 jury panel related by blood or marriage or has a  
3 close personal or social relationship with Mr.  
4 Meetze or any member of his office or have been  
5 represented by Mr. Meetze or any member of his  
6 office? If so, please stand.

7 All right, if you would give me your name  
8 and your jury number.

9 JUROR: Matt Gleason, I'm not sure my jury  
10 number.

11 THE COURT: 56. All right, how does that  
12 apply to you, Mr. Gleason?

13 JUROR: I know Grayson Smith.

14 THE COURT: Taking that into account, if you  
15 were selectd as a juror in this particular case  
16 would you be fair and impartial to not only the  
17 defense but the State as well?

18 JUROR: Yes, sir.

19 THE COURT: Would you be fair and impartial  
20 to both sides if selected on this case?

21 JUROR: Sure.

22 THE COURT: You may be seated.

23 Anybody else?

24 Let the record reflect no one else stood.

25 The witnesses in the case will be a Mr. Mark

1 Collins with the Marion County Combined Drug Unit,  
2 Aurelius Cribb, also with the Drug Unit, Ernie  
3 Grice with the Drug Unit, and Doug Robinson with  
4 South Carolina Law Enforcement Division, SLED.

5 In this regard, is any member of the jury  
6 panel related by blood or marriage or has a close  
7 personal or social relationship with any of these  
8 witnesses? If so, please stand.

9 All right, your name and number?

10 JUROR: Matt Gleason, number 55.

11 THE COURT: How does that apply to you?

12 JUROR: I know Mark Collins.

13 THE COURT: All right. Taking that into  
14 account, if you were selected to serve on the jury  
15 in this case could you be fair and impartial not  
16 only to the defense but the State as well?

17 JUROR: Yes.

18 THE COURT: All right. If you were selected  
19 to serve on this jury would you be fair and  
20 impartial to both sides of this case?

21 JUROR: Uh-huh (Affirmative).

22 THE COURT: You have to say yes or no.

23 JUROR: Yes.

24 THE COURT: All right, thank you very much.  
25 You may be seated.

1           Anybody else?

2           All right, let the record reflect that no one  
3 else stood.

4           Is any member of the jury panel related by  
5 blood or marriage to any law enforcement officer or  
6 anybody that works in any prosecutor's office? If  
7 so, please stand.

8           All right, Mr. Gleason?

9           JUROR: I'm related to, my first cousin is  
10 Danny Horton. Jerry Reynolds, Larry Moore.

11          THE COURT: If you were selected to serve as  
12 a juror in this case could you fair and impartial  
13 not only to the State but the defendant as well?

14          JUROR: Yes.

15          THE COURT: Would you be fair and impartial  
16 to both sides?

17          JUROR: Yes.

18          THE COURT: All right, thank you.

19          THE COURT: Your name and number?

20          JUROR: Horton, number 113, my husband works  
21 with the Marion Police.

22          THE COURT: Taking that into account, if you  
23 were selected to serve as a juror in this case  
24 could you be fair and impartial to both the State  
25 and defendant?

1 JUROR: Yes.

2 THE COURT: Could you be fair and impartial  
3 to both sides if you were selected to serve?

4 JUROR: Yes.

5 THE COURT: Thank you.

6 Anyone else?

7 Your name and number?

8 JUROR: Number twelve, Dwayne Washington is  
9 my nephew.

10 THE CLERK: 172.

11 THE COURT: All right. Taking that into  
12 account, if you were selected to serve on the jury  
13 in this case could you be fair and impartial to the  
14 State and the defendant?

15 JUROR: Yes.

16 THE COURT: Would you be fair and impartial  
17 to both sides?

18 JUROR: Yes, sir.

19 THE COURT: All right, thank you.

20 Anybody else?

21 All right. Let the record reflect nobody  
22 stood.

23 Is any member of the jury panel aware of or  
24 conscious of any bias or prejudice for or against  
25 the State in this case? If so, please stand.

1 All right, no one stood.

2 Has any member of the jury panel formed an  
3 opinion as to the guilt or innocence of the  
4 defendant Mr. Darrell Lee Birch in this case? If  
5 so, please stand.

6 All right, no one stood.

7 Is there any member of the jury panel who is  
8 a member of or contributor to any group which has  
9 as its primary concern the promotion of law  
10 enforcement or victims' rights? These groups would  
11 include but not certainly not be limited to MADD,  
12 SADD or CAVE, Citizens against violent crimes. If  
13 so, please stand.

14 All right, no one stood.

15 Has any member of the jury panel or any  
16 member of your immediate family ever been involved  
17 in a crime of personal violence? This could be  
18 criminal sexual conduct, assault and battery of a  
19 high and aggravated nature, assault and battery  
20 with intent to kill, murder, manslaughter,  
21 kidnapping, armed robbery, et cetera. With this, I  
22 think you understand what I'm looking for. Have  
23 you or any member of your immediate family ever  
24 been a victim of a crime such as I just mentioned?  
25 If so, please stand.

1 All right, no one stood.

2 Is there any member of the jury panel who  
3 knows of any reason whatsoever why they could not  
4 give the parties in this case a fair and impartial  
5 trial? If so, please stand.

6 All right, no one stood.

7 Does any member of the jury panel have any  
8 religious or philosophical objections to rendering  
9 judgment against their fellow man? If so, please  
10 stand.

11 All right, no one stood.

12 Has any member of the jury panel or any  
13 member of your immediate family ever been  
14 prosecuted by this Solicitor or any member of the  
15 Solicitor's staff, regardless of whether the case  
16 was dismissed or not? If so, please stand.

17 All right, no one stood.

18 Does any member of the jury panel feel that  
19 they or a member of their immediate family have  
20 ever been unjustly accused of committing a crime?  
21 If so, please stand.

22 All right, no one stood.

23 Have you or any member of your family been  
24 accused of a crime in the last two years? If so,  
25 please stand.

1 All right, no one stood.

2 Is any member of the jury panel employed by  
3 any city, county, state or federal law enforcement  
4 agency either at the present time or in the past?  
5 If so, please stand.

6 All right. No one stood.

7 Is any member of the jury panel related by  
8 blood or marriage or a close friend to any person  
9 employed by any city, county, state or federal law  
10 enforcement agency either at the present time or in  
11 the past? If so, please stand.

12 All right, your name and number?

13 JUROR: Berry. I forgot the number.

14 THE CLERK: 172.

15 JUROR: Anyway, Dwayne Rogers and Jermaine  
16 Gray and Mitchell Grace, they are on the police  
17 force.

18 THE COURT: All right. Taking that into  
19 account, if you were selected to serve on a jury in  
20 this case could you be fair and impartial to the  
21 State and the defendant?

22 JUROR: Yes, sir.

23 THE COURT: Would you be fair and impartial  
24 to both sides if you were selected?

25 JUROR: Yes, sir.

1 THE CLERK: Number 172.

2 THE COURT: What was that number?

3 THE CLERK: 172.

4 THE COURT: All right, anybody else?

5 Does any member of the jury panel volunteer  
6 with any law enforcement agency or prosecutor's  
7 office either at the present time or in the past?  
8 If so, please stand.

9 All right, no one stood.

10 Is any member of the jury panel a member of  
11 or does any member of the jury panel contribute  
12 money to any law enforcement organization such as  
13 the FOP, Fraternal Order of Police, SCLEOA, South  
14 Carolina Law Enforcement Officers Association, or  
15 the South Carolina Troopers Association? If so,  
16 please stand.

17 THE COURT: All right, no one stood.

18 Anything further from the State?

19 MR. TUCKER: Nothing, Your Honor.

20 THE COURT: Anything further from the  
21 defense?

22 MR. MEETZE: Could we approach?

23 (Unrecorded bench conference).

24 THE COURT: I have been informed that there  
25 might be two more witnesses in this case. One of

1 them being a Byron Horne and the other being Terry  
2 McCray. In that regard, is any member of the jury  
3 panel related by blood or marriage or has a close  
4 personal or social relationship with either of these  
5 two witnesses? If so, please stand.

6 All right, no one stood.

7 Anything further from the State?

8 MR. TUCKER: Nothing, Your Honor.

9 THE COURT: Anything from the defense?

10 MR. MEETZE: Nothing, Your Honor, thank you.

11 THE COURT: All right, thank you. For the  
12 record, I find the jury panel qualified for this  
13 case.

14 Madam Clerk, if you will give us a jury of  
15 twelve and one alternate.

16 We have somebody in training down here so  
17 it's going to take just a few minutes for her to  
18 get everything figured out, so if anything goes  
19 wrong we'll blame her, and she said she would buy  
20 lunch.

21 THE CLERK: Ready to go?

22 THE COURT: Ready.

23 THE CLERK: When we call your name, if you  
24 will come forward, bring your pocketbook or  
25 whatever possessions you have and stand in front of

1 this desk and fast back outward.

2 We'll call from the numbers on the left.

3 Number one, J. W. James, number 80.

4 Mr. James, if you will come around here,

5 please, sir, just stand in front of this desk and

6 face back outward, please, sir.

7 What say the State?

8 MR. TUCKER: Please present the juror.

9 THE CLERK: What say the defense?

10 MR. MEETZE: Please swear Mr. James.

11 THE CLERK: Mr. James, if you will have a

12 seat in the jury box, please, sir.

13 Number two, Issac G. Bell, juror number 8.

14 What say the State?

15 MR. TUCKER: Please present Mr. Bell.

16 THE CLERK: What say the defense?

17 MR. MEETZE: Please swear Mr. Bell.

18 THE CLERK: Mr. Bell, if you will have a seat

19 in the jury box, please, sir.

20 Number three, Marshall M. Brogdon, juror

21 number 18.

22 What say the state?

23 MR. TUCKER: Please present the juror.

24 THE CLERK: What say the defense?

25 MR. MEETZE: Please excuse Mr. Brogdon.

1 THE CLERK: Mr. Brogdon, you're excused from  
2 this trial. Thank you, sir.

3 Number four, Juwan E. James, juror number 81.  
4 What say the State?

5 MR. TUCKER: Please present Miss James.

6 THE CLERK: What say the defense?

7 MR. MEETZE: Please swear Miss James.

8 THE CLERK: Miss James, if you will have a  
9 seat in the jury box, please, ma'am.

10 Joan King, juror number 89.

11 What say the State?

12 MR. TUCKER: Please excuse Miss King from the  
13 trial of this case.

14 THE CLERK: Miss King, you're excused. Have  
15 a seat.

16 Marvinna P. Spears, juror number 150.

17 What says the State?

18 MR. TUCKER: Please present Miss Spears.

19 THE CLERK: What says the defense?

20 MR. MEETZE: Please swear Miss Spears.

21 THE CLERK: Miss Spears, if you will have a  
22 seat in the jury box, please.

23 Ron Fleming, juror number 49.

24 What say the State?

25 MR. TUCKER: Please present Mr. Fleming.

1 THE CLERK: What say the defense?

2 MR. MEETZE: Please swear the juror.

3 THE CLERK: Mr. Fleming, if you will have a  
4 seat in the jury box, please, sir.

5 Matthew D. Gleason, juror number 55.

6 What say the State?

7 MR. TUCKER: Please present Mr. Gleason.

8 THE CLERK: What say the defense?

9 MR. MEETZE: Please excuse Mr. Gleason.

10 THE CLERK: You're excused from this trial,  
11 Mr. Gleason. Thank you.

12 Dale Drew, juror number 41.

13 What say the State?

14 MR. TUCKER: Please present Miss Drew.

15 THE CLERK: What say the defense?

16 MR. MEETZE: Please swear this juror.

17 THE CLERK: Miss Drew, have a seat in the  
18 jury box, please, ma'am.

19 Joya Foxworth, juror number 51.

20 What say the State?

21 MR. TUCKER: Please excuse Miss Foxworth from  
22 the trial of this case, please.

23 THE CLERK: Miss Foxworth, you're excused.

24 Thelia Boatright, juror number 16.

25 What say the State?

1 MR. TUCKER: Please present Miss Boatright.

2 THE CLERK: What say the defense?

3 MR. MEETZE: Please swear Miss Boatright.

4 THE CLERK: Miss Boatright, if you will have  
5 a seat in the jury box, please.

6 Mary Hardee, juror number 63.

7 What say the State?

8 MR. TUCKER: Please present Miss Hardee.

9 THE CLERK: What say the defense?

10 MR. MEETZE: Please swear Miss Hardee.

11 THE CLERK: Miss Hardee, if you will have a  
12 seat in the jury box, please, ma'am.

13 Lula Martin, juror number 101.

14 What say the State?

15 MR. TUCKER: Please present Miss Martin.

16 THE CLERK: What say the defense?

17 MR. MEETZE: Please swear Miss Martin.

18 THE CLERK: Miss Martin, if you will have a  
19 seat in the jury box.

20 Kathleen Brown, juror number 19.

21 What say the State?

22 MR. TUCKER: Please present Miss Brown.

23 THE CLERK: What say the defense?

24 MR. MEETZE: Swear Miss Brown.

25 THE CLERK: Miss Brown, if you will have a

1 seat in the jury box.

2 Joseph Potts, juror number 118.

3 What say the State?

4 MR. TUCKER: Please excuse Mr. Potts from the  
5 trial of this particular case.

6 THE CLERK: Thank you, Mr. Potts. You're  
7 excused.

8 Marvin K. Fielder, juror number 47.

9 What say the State?

10 MR. TUCKER: Please present Mr. Fielder.

11 THE CLERK: What say the defense?

12 MR. MEETZE: Please swear Mr. Fielder.

13 THE CLERK: Mr. Fielder, if you will have a  
14 seat in the jury box, please, sir.

15 THE CLERK: Melissa L. Herrington, juror  
16 number 71.

17 What say the State?

18 MR. TUCKER: Please present Miss Herrington.

19 THE CLERK: What say the defense?

20 MR. MEETZE: Please excuse Miss Herrington.

21 THE CLERK: Thank you, Miss Herrington.

22 Marlene L. Marquads, juror number 100.

23 What say the State?

24 MR. TUCKER: Please present Miss Marquads

25 THE CLERK: What say the defense?

1 MR. MEETZE: Please swear the juror.

2 THE CLERK: If you will have a seat in the  
3 jury box, please, ma'am.

4 For alternate, Kevin R. Harold, number 66.  
5 What say the State?

6 MR. TUCKER: Please present Mr. Harold.

7 THE CLERK: What say the defense?

8 MR. MEETZE: Please swear Mr. Harold.

9 THE CLERK: Mr. Harold, if you will have a  
10 seat in the alternate jury seat right there. Thank  
11 you, sir.

12 JUROR: Here?

13 THE CLERK: Yes, sir.

14 THE COURT: Any objections to the jury or the  
15 process by which they were drawn? What says the  
16 State?

17 MR. TUCKER: Nothing from the State, Your  
18 Honor.

19 THE COURT: What says the defense?

20 MR. MEETZE: Nothing from the defense.

21 THE COURT: All right, thank you very much.

22 At this time I'm going to ask you to remain  
23 seated and the rest of the jury panel, you are  
24 excused. If you would, call back in each night  
25 after 6:00 to see if there are any further

1 instructions, but you are excused.

2 (Jury panel excused from the courtroom).

3 THE COURT: All right, members of the jury,  
4 several things I want to go over with you. The  
5 first thing I want to do is, Mr. Fielder, I'm going  
6 to appoint you the foreman of the jury, you look  
7 nice, you're clean shaven, I figure you would make  
8 a good foreman so when you come in tomorrow I want  
9 you to sit in that chair right there, front row,  
10 farthest one on the left.

11 I'm going to excuse you until 9:30 in the  
12 morning, however I want to instruct you and order  
13 you, to let you know that you don't need to  
14 investigate this case at all, don't go out on the  
15 street and talk about it, don't try to find out  
16 anything about it, do not get on the internet and  
17 try to look it up, don't try to Google the  
18 defendant's name. I don't want you to do any  
19 investigation in this case in any manner  
20 whatsoever. In fact I don't even want you to talk  
21 about this case, and I'm going to tell you I don't  
22 want you to talk about it until the case is over.  
23 When the case is over and you have done your sworn  
24 duty you can do whatever you want at that time but  
25 right now I instruct you not to talk about it, do

1 not investigate the case, and the reason I tell  
2 that is because you haven't heard anything about  
3 it. You need to get what you need to make a  
4 decision right here in this courtroom where I can  
5 make sure it's done like it should be done  
6 according to our laws, so if you would follow that  
7 instruction and be back at 9:30 in the morning we'll  
8 begin with this case.

9 If everybody else would remain seated, you  
10 are excused until 9:30. And thank all of you very  
11 much. You remember what I said.

12 (The jury was excused from the courtroom).

13 THE COURT: All right, anything further from  
14 the State in regard to this case?

15 MR. TUCKER: Nothing, Your Honor.

16 THE COURT: Anything from the defense?

17 MR. MEETZE: Not at this time, Your Honor.

18 THE COURT: Let me just ask you before we go,  
19 have there been any negotiations at all in regard  
20 to this case that you would like to put on the  
21 record?

22 MR. MEETZE: Not at this point. There have  
23 been negotiations but nothing that I would feel  
24 necessary to put on the record at this point, Your  
25 Honor.

1 THE COURT: All right. Is that correct?

2 MR. TUCKER: That's correct.

3 THE COURT: All right, very good. We'll be  
4 done until 9:30 in the morning.

5 (Recseed at 12:57 p.m., November 28, 2011).

6 (Reconvened at 9:37 a.m., November 29, 2011).

7 THE COURT: Mr. Meetze, any pretrial issues  
8 we need to take up?

9 MR. MEETZE: Your Honor, there will be one.  
10 Your Honor, at this time the defense would make a  
11 motion to suppress the drug evidence in this case  
12 based on two things. We would be questioning the  
13 search of the home as being invalid, a warrantless  
14 search. And, two, based on the patdown search for  
15 officers' safety also being in violation of his  
16 constitutional rights with regard to unlawful  
17 search and seizure.

18 THE COURT: Any response to that, Mr. Ozment?

19 MR. OZMENT: Your Honor, would you like to  
20 hear testimony and go about it that way?

21 THE COURT: Sure.

22 MR. OZMENT: Your Honor, we would call  
23 Officer Grice to the stand.

24 ERNIE GRICE, after being first duly sworn,  
25 testified as follows:

1 THE COURT: Anytime you're ready.

2 DIRECT EXAMINATION BY MR. OZMENT:

3 Q Please state your name and what you do, for  
4 the record.

5 A Ernie Grice, I'm a sergeant with the Marion  
6 Police Department.

7 Q Officer Grice, on December 3rd, 2008, I  
8 believe you were patrolling the South Main Street  
9 area of Marion. Can you tell me if you stopped  
10 anyone on that day?

11 A Yes, sir, I was patrolling in the area of  
12 South Main Street, observed a subject walking  
13 toward the IGA. I knew the subject as Byron Horne,  
14 I also knew the Marion County Drug Unit had  
15 warrants on him, I made contact with him, I  
16 notified Agent Cribb and Agent Collins to meet me  
17 down there.

18 Q When you say they had warrants on him, you're  
19 referring to arrest warrants that had not been  
20 served?

21 A Right, they had narcotic warrants on him.

22 Q All right. Do you remember the nature of  
23 what those warrants were for?

24 A Just drug warrants.

25 Q All right. They were for drug crimes?

1 A Yes, sir.

2 Q All right. You said you made contact with  
3 the subject. What happened after you made contact  
4 with him?

5 A I spoke with him, told him that we needed to  
6 talk to him, that is when I contacted Agent Cribb  
7 and Agent Collins, they came, talked with him,  
8 advised him there were warrants, he was then  
9 arrested for those warrants.

10 Q All right. After he was placed under arrest,  
11 at anytime did a search of his residence come up in  
12 conversations?

13 A To my knowledge Agent Cribb asked him who all  
14 was at his house. To my knowledge he stated his  
15 cousin, and Agent Cribb asked him if there was  
16 anything illegal in the residence, he stated no.  
17 Agent Cribb asked if we could go look in the house  
18 to make sure everything was right. He stated yes  
19 at that point.

20 Q All right.

21 MR. OZMENT: No further questions of this  
22 witness, Your Honor. I will call a second witness.

23 THE COURT: Mr. Meetze?

24 CROSS EXAMINATION BY MR. MEETZE:

25 Q You saw Mr. Horne just walking down the

1 street, something of that nature?

2 A I did.

3 Q You weren't out looking, it was sort of a  
4 meet up, as they would say?

5 A Yes, sir.

6 Q And you had knowledge of these warrants?

7 A I did.

8 Q And you contacted the folks with the Drug  
9 Unit?

10 A I did.

11 Q Okay. And they came to the scene and  
12 actually spoke to Mr. Horne with regard to  
13 searching his residence and all that. You were  
14 present but not --

15 A I was present but not --.

16 Q You were not part of that conversation, you  
17 weren't the one asking for the consent?

18 A I was not.

19 Q And if any sort of paperwork was done in that  
20 regard you weren't involved in any paperwork at  
21 that point either?

22 A No.

23 Q And with regard to the actual search, the  
24 eventual search of the residence, you were not  
25 involved in that in any way?

1 A I was present at the house.

2 Q You were there at the house?

3 A Yes.

4 Q Were you inside the house or outside the  
5 house?

6 A I was inside the house.

7 Q Okay. Were you conducting the search as well  
8 or were you --

9 A I was present in the house and I think I  
10 assisted in the search.

11 Q Okay. When Mr. Horne was seen on the street  
12 by you he was served those warrants that day, the  
13 outstanding warrants that had not been served yet  
14 and he was arrested pursuant to those warrants?

15 A He was.

16 Q Were those the only warrants he was issued on  
17 that day?

18 A To my knowledge.

19 MR.. MEETZE: I don't have any further  
20 questions.

21 THE COURT: Anything further, Mr. Ozment?

22 MR. OZMENT: One real quick.

23 REDIRECT EXAMINATION BY MR. OZMENT:

24 Q A few questions. Once you were in the house,  
25 you stated you participated in the search, did you

1 have any contact with Darrell Birch, the case we're  
2 here for today?

3 A I did.

4 Q What contact did you have with Mr. Birch?

5 A I was in the house and Mr. Birch was standing  
6 in the front room. He had a ball cap, Mr. Birch  
7 had his hand in his pocket and Agent Collins went  
8 down the hallway to make sure no one else was in  
9 the house. At that time I told Mr. Birch to remove  
10 his hand for my safety, you know. He refused to do  
11 so. I had to forcibly remove his hand from his  
12 pocket and when I did an object fell out on the  
13 floor and I removed his ball cap, and I knew that  
14 it was Mr. Birch, I had prior knowledge that the  
15 narcotics unit had narcotics warrants on this  
16 individual, he was then placed in custody and upon  
17 searching pursuant to his arrest, of his person,  
18 that's when I also found the Icebreaker can  
19 containing pills that were consistent with that.

20 Q Why did you originally approach him and ask  
21 him to remove his hand?

22 A When I approached the house he was standing  
23 against the wall and for officer safety, I didn't  
24 know if he had any kind of weapons on him, he  
25 refused to remove his hand, that was the best

1 thing, he might have had a weapon or something to  
2 use against myself or Agent Collins.

3 Q All right. And you directed him verbally --

4 A Directed him several times to remove his  
5 hand, he refused to remove his hand.

6 Q All right.

7 MR. OZMENT: I have no further questions of  
8 this witness.

9 THE COURT: Anything further, Mr. Meetze?

10 MR. MEETZE: No, sir, Your Honor.

11 THE COURT: You may step down.

12 (Witness excused).

13 THE COURT: Go ahead and call your next  
14 witness.

15 MR. OZMENT: Your Honor, we would call Deputy  
16 Cribb.

17 AURELIUS CRIBB, after being first duly sworn,  
18 testified as follows:

19 DIRECT EXAMINATION MR. OZMENT:

20 Q Please state your name and what you do, for  
21 the record.

22 A Aurelius Cribb, I'm a sergeant over the  
23 Marion County Drug Unit.

24 Q All right. Sergeant Cribb, what was your  
25 involvement with these events on December 3rd? How

1 did you originally become involved?

2 A I had signed warrants on Mr. Horne and Mr.  
3 Birch and I had notified agents, well, Officer  
4 Grice that we had warrants on them and if he saw  
5 them let us know, so he informed us that he saw  
6 Horne walking in front of IGA and we came out there  
7 to talk to Mr. Horne.

8 Q Did you serve the warrants you had on him, on  
9 Mr. Horne that day outside around the IGA?

10 A We served the warrants at the jail.

11 Q But he was placed under arrest?

12 A Yes.

13 Q Do you recall what those warrants were for?

14 A Distribution of crack.

15 Q Which is a drug crime?

16 A Yes, sir.

17 Q All right. And after he was placed under  
18 arrest, at any time did you inquire about searching  
19 his residence?

20 A Yes, sir.

21 Q How did that come about?

22 A I had, we knew that Mr. Birch lived at that  
23 location or visited that location, we asked if  
24 there was anybody else at the residence and he said  
25 his cousin. We knew who that cousin was, we

1 already had warrants on him and I asked was there  
2 anybody else there besides him and was there any  
3 drugs in the residence.

4 Q Did Mr. Horne live at that residence?

5 A Yes, sir.

6 Q Did Mr. Horne consent to search of that  
7 residence?

8 A He give verbal consent and then he signed a  
9 consent form.

10 Q All right. Now, if you will look at this  
11 piece of paper and tell me what it is.

12 A This is Marion County Combined Drug Unit  
13 consent to search form.

14 Q Is that the form that Mr. Horne signed that  
15 day?

16 A Yes, sir.

17 Q What is the address on that form?

18 A Street, Marion, South Carolina.

19 Q Is that the residence you searched that day?

20 A Yes, sir.

21 Q All right. Did Mr. Horne live at that  
22 residence?

23 A Yes, sir.

24 Q Full time that is where he stayed?

25 A Yes, sir.

1 Q All right. Did you see Mr. Horne sign that  
2 form?

3 A Yes, sir. I provided it to him.

4 Q All right. Did you actually watch him put  
5 his name on it?

6 A Yes, sir.

7 Q All right. Is your signature on that form?

8 A Yes, sir.

9 Q What is your signature on the form for?

10 A It's under witness.

11 Q All right.

12 MR. OZMENT: Your Honor, I would ask that be  
13 made a Court's exhibit. We also will probably  
14 introduce it into evidence in the trial.

15 THE COURT: Any objection, Mr. Meetze?

16 MR. MEETZE: I don't have objection to the  
17 Court exhibit.

18 THE COURT: All right.

19 (Consent formed marked as Court Exhibit  
20 Number 1).

21 BY MR. OZMENT:

22 Q Did Mr. Horne sign that himself?

23 A Yes, sir.

24 Q Did you explain the form to him?

25 A Yes, sir.

1 Q Did he read the form?

2 A Yes, sir.

3 Q All right. And you said he also verbally  
4 consented to the search?

5 A Yes, sir.

6 Q Okay. Do you remember at what time  
7 approximately he did that?

8 A Between 10:30 and 11:00. I can't remember  
9 but when we went to the residence we cleared the  
10 residence first and then we went back and searched  
11 it, so the time on that would be the time we  
12 actually searched the residence. We secured it  
13 first to make sure the residence was clear.

14 Q Did he sign a consent form for the residence  
15 to be searched before the search?

16 A I can't remember.

17 Q Had he verbally consented to the search  
18 before the residence was searched?

19 A Yes, sir.

20 Q Did you explain to him what that meant?

21 A Yes, sir.

22 Q All right. Why did you want to search the  
23 residence?

24 A Because we knew drugs was sold from that  
25 residence and we knew Mr. Birch lived at that

1 residence.

2 Q You considered the residence was a drug  
3 house?

4 A Yes, sir.

5 Q When you searched the residence you were  
6 looking for drugs or not?

7 A Looking for Birch and drugs.

8 Q And what?

9 A And drugs.

10 Q All right. Were you involved in the search  
11 of the residence?

12 A Not at the beginning but once everybody was  
13 detained I went inside the house.

14 Q Were you there when Mr. Birch was still  
15 there?

16 A Yes, sir.

17 Q Were you there when Mr. Birch was placed  
18 under arrest?

19 A Yes, sir.

20 Q All right. Did you, were you there when Mr.  
21 Birch was patted down originally?

22 A Not originally. I came afterwards.

23 Q All right.

24 MR. OZMENT: I have no further questions,  
25 Your Honor.

1 THE COURT: Mr. Meetze.

2 CROSS EXAMINATION BY MR. MEETZE:

3 Q Sergeant Cribb, you filled out the consent to  
4 search form with Mr. Horne?

5 A Yes, sir.

6 Q Is that correct?

7 A Yes, sir.

8 Q Do you have a copy of that with you?

9 A No, sir.

10 Q You do not?

11 MR. MEETZE: May I approach the witness?

12 THE COURT: Sure.

13 Q Do you have a copy of your paperwork with you  
14 with regard to this case?

15 A Not up here.

16 Q Okay. Well, then we'll manage that. Do you  
17 know what time Officer Grice approached Mr. Horne  
18 on this morning?

19 A He called approximately around 10:00 o'clock  
20 and we went over there between 10:00 and, about  
21 between 10:00 and 10:15, something like that.

22 Q So, around 10:00 is when contact was made and  
23 you all were there not too long after that. Isn't  
24 that correct?

25 A He waited until we got in the area, then he

1 made contact with him.

2 Q I understand. Well, of course nobody, this  
3 was a while ago, correct?

4 A Yes, sir.

5 Q Being off a minute or so here or there, that  
6 is understandable, I mean, but around 10:00 o'clock  
7 is what you testified to, is that correct?

8 A 10:00 o'clock is when he first saw him.

9 Q All right. Well, do you recall what time the  
10 house was searched?

11 A The house was searched, we arrived at the  
12 house about 10:30 but we didn't search the house  
13 until about 11:00.

14 Q Okay.

15 MR. MEETZE: May I approach the witness?

16 THE COURT: Sure.

17 Q Sergeant Cribb, I'm going to ask you if you  
18 recognize that document?

19 A Yes, sir.

20 Q And what is that document?

21 A Booking report.

22 Q Who is that a booking report for?

23 A Darrell Lee Birch.

24 Q What is the date on that booking report?

25 A December 3rd, 2008.

1 Q And that's the date we're talking about here?

2 A Yes, sir.

3 Q And does it indicate what time he was

4 arrested?

5 A Approximately 10:20.

6 Q And --

7 A A.M.

8 Q That is in the morning?

9 A Yes, sir.

10 Q Okay. So, these are documents that police

11 officers and booking folks at the jail fill out

12 when somebody is arrested?

13 A Yes, sir.

14 Q And arrests can happen a long time ago, like

15 this one did?

16 A Yes, sir.

17 Q And this paperwork is used to help them with

18 their memory, preserve evidence and preserve dates

19 and times and things like that?

20 A Yes, sir.

21 Q And this would have been filled out at the

22 time all this happened?

23 A After he was taken to the jail.

24 Q Right. So it would have been, if he would

25 have been taken to the jail at 10:20, it would mean

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1 he would arrive at the jail at 10:20?

2 A No, sir.

3 Q It would be safe to assume that the substance  
4 that was found at that house was found at 10:20,  
5 for him to have been arrested at 10:20?

6 A Yes, sir.

7 Q So, Officer Grice would have probably gone  
8 into the house shortly before 10:20, would be a  
9 pretty good guess?

10 A Yes, sir.

11 Q Okay. And so the search of the house started  
12 at the latest 10:20?

13 A We did a security sweep first because Mr.  
14 Horne told us there was only one person in the  
15 residence and when we got there there was four  
16 people in the residence, so we had to secure all  
17 them and we identified everybody and then once we  
18 identified everybody there was two of them had  
19 warrants on them, outstanding warrants, one was  
20 wanted in Horry County and one in the upstate, we  
21 detained them and took care of them, then we  
22 searched the house.

23 Q Okay. The consent to search form, you still  
24 have that with you?

25 A Yes, sir.

1 Q What time was that signed?

2 A It was signed 11:00 o'clock.

3 Q Okay. After Mr. Birch was arrested?

4 A Yes, sir.

5 Q Okay. So, at the time at least the crack  
6 cocaine was found in that residence that is  
7 attributed to Mr. Birch the consent to search form  
8 had not been signed?

9 A No, sir, but he already give us consent and  
10 we already had warrants for Mr. Birch.

11 Q And you testified a little bit earlier you  
12 weren't sure when all that happened?

13 A I was outside the back door but --

14 Q Go ahead, I'm sorry, I didn't mean to  
15 interrupt you.

16 A I was outside the back door, Officer Grice  
17 called me around front, he had Mr. Birch and he had  
18 found the drugs on him.

19 Q But you testified here this morning just a  
20 little bit ago as far as with regard to when Mr.  
21 Horne was seen, when Mr. Horne was arrested, all  
22 that kind of stuff, you weren't sure when that  
23 happened?

24 A No, sir.

25 Q Okay. So you're not sure exactly when he

1 gave consent to search?

2 A Yes -- no, sir. I was there, he gave me the  
3 consent when I got to the residence, when I got to  
4 IGA he told me I could search the residence, he  
5 signed the form --

6 Q But you weren't sure when that was, is what  
7 I'm getting at?

8 A I'm saying the times, I didn't know the exact  
9 times but when I met up with Mr. Horne he gave me  
10 the consent to search the residence and he said  
11 there was nobody in the residence but his cousin,  
12 so we went around there, he also said the residence  
13 was unsecure, he wanted to secure his residence  
14 before we left to take him to the Marion County  
15 Jail, so we went around there.

16 Q And the only thing we know from what we have  
17 heard this morning with regard to times is that Mr.  
18 Birch was arrested at 10:20. Correct?

19 A Yes, sir.

20 Q Which would mean that the drugs were found at  
21 or before 10:20 in the morning. Correct?

22 A Yes, sir.

23 Q And that the consent to search form was done  
24 and signed by yourself and Mr. Horne at 11:00  
25 o'clock. Correct?

1 A Yes, sir.

2 Q After Mr. Birch was arrested?

3 A After we searched the residence. All we did  
4 was secure the residence first.

5 Q I understand. And did you do the paperwork  
6 in the case with regard to the incident report and  
7 all that?

8 A I done the drug incident report but Mr. Grice  
9 done the initial report.

10 Q You did the drug incident report?

11 A Yes.

12 Q And your Drug Unit report is based on the  
13 report Mr. Grice did?

14 A Yes, sir.

15 MR. MEETZE: May I approach the witness, Your  
16 Honor?

17 THE COURT: Yes.

18 Q Sergeant Cribb, I'm going to show you  
19 something and ask you if you recognize that?

20 A Yes, sir.

21 Q Is that what you refer to as your Drug Unit  
22 report?

23 A Yes, sir.

24 Q Okay. And in that report -- you typed that  
25 up?

1 A Yes, sir.

2 Q And that indicates that the search of Mr.

3 Birch where the crack cocaine or the cocaine base

4 was found was a search done pursuant to officer

5 safety?

6 A Yes, sir.

7 Q Is that correct?

8 A Yes, sir.

9 Q And that is your understanding from Officer

10 Grice?

11 A Yes, sir.

12 Q And what Officer Grice testified to just a

13 little bit ago?

14 A Yes, sir.

15 MR. MEETZE: I don't have any further

16 questions, Your Honor.

17 THE COURT: Mr. Ozment, anything further?

18 MR. OZMENT: Yes, sir.

19 REDIRECT EXAMINATION BY MR. OZMENT:

20 Q When you say you're not sure of the times,

21 you mean you can't remember if it was 10:08 or

22 10:12. Correct?

23 A Yes, sir.

24 Q When you were with Mr. Horne at the IGA you

25 had not been to his residence yet?

1 A No, sir.

2 Q At the IGA, before you went to his residence,  
3 did he consent to search?

4 A Yes, sir.

5 MR. OZMENT: All right. No further  
6 questions, Your Honor.

7 THE COURT: Anything further?

8 MR. MEETZE: Just one quick.

9 RECROSS EXAMINATION BY MR. MEETZE:

10 Q Mr. Horne was arrested that day on the  
11 outstanding warrants?

12 A Yes, sir.

13 Q Those were the only warrants served on him  
14 that day?

15 A Yes, sir.

16 Q He didn't have any drugs on him when he was  
17 found at IGA?

18 A He had a crack pipe.

19 Q A what?

20 A A crack pipe.

21 MR. MEETZE: I don't have any other  
22 questions.

23 (Witness excused).

24 THE COURT: Any other witnesses?

25 MR. OZMENT: No further witnesses, Your.

1 Honor.

2 THE COURT: Anything further, Mr. Meetze?

3 MR. MEETZE: No, sir.

4 THE COURT: I'm going to deny the motion.  
5 Anything further before we begin?

6 MR. MEETZE: If I could put my argument on  
7 the record I would appreciate that.

8 THE COURT: Go ahead.

9 MR. MEETZE: Your Honor, based on what we  
10 have heard today, and I think Sergeant Cribb  
11 narrowed things down for us, he indicated in his  
12 testimony the drugs were not found pursuant to the  
13 consent to search, that they were found pursuant to  
14 the officer safety patdown. The patdown was done  
15 as Officer Grice went in. He indicated that Mr.  
16 Birch had his hand in his pocket and he asked him  
17 to remove his hand and he would not, so it was  
18 forcibly removed and in doing so a pill bottle came  
19 out, which is where the substances were located.

20 The cases that I handed up, and I have given  
21 Mr. Ozment a copy as well, indicate that an officer  
22 is not entitled, first of all I would argue consent  
23 to search would be a consent to search of the  
24 residence but not necessarily individuals inside  
25 the residence, and the State versus Butler case I

1 handed up indicates that an officer is not entitled  
2 to seize and search every person on the street.  
3 Mere knowledge of the subject being a known  
4 narcotics dealer who put his hand or her hand into  
5 a pocket as the police approached does not provide  
6 justification and I think that is on point with  
7 what we have here.

8 Knowledge Mr. Horne was involved in drugs or  
9 knowledge Mr. Birch was involved in drugs at  
10 sometime in the past doesn't rise to the level of a  
11 reasonable suspicion or probable cause or whatever  
12 standard it takes to amount to have a right to do  
13 an officer safety search or a Terry patdown or  
14 whatever you want to call it. In this case he had  
15 his hand in his pocket, there weren't drugs found  
16 on Mr. Horne when he was stopped, they didn't have  
17 any knowledge of drugs in the house at the time,  
18 they were searching and they were going to see if  
19 they found any. There is no testimony that any was  
20 found.

21 I feel like the Butler case is on point with  
22 the testimony we have here today. His hand was in  
23 his pocket and the individuals had been known to  
24 have dealings with drugs in the past but I think  
25 the Butler case says that's not sufficient for the

1 patdown search that was done, which would mean that  
2 the search was in violation of the Fourth Amendment  
3 and we would ask that the drugs be suppressed on  
4 that basis.

5 THE COURT: All right.

6 Would you like to place your argument on the  
7 record?

8 MR. OZMENT: Briefly, Your Honor. The first  
9 point of clarification, the ecstasy was found after  
10 he was under arrest, under a search incident to  
11 arrest, so at most the suppression hearing, from my  
12 understanding, would only be for the crack.

13 MR. MEETZE: I think he was arrested pursuant  
14 to finding the crack. I think anything found as a  
15 result of the unlawful search and seizure would be  
16 fruit of the poisonous tree and therefore  
17 inadmissible, so my motion would pertain to  
18 everything.

19 MR. OZMENT: He was arrested for distribution  
20 warrants that were issued previously. But I would  
21 point the Court to State versus Bailey, I provided  
22 Mr. Meetze with a copy. State versus Bailey says  
23 when a homeowner or someone with an interest in a  
24 home gives consent to search the home any guests in  
25 that home assume the risk by being in the home, so

1 that concept may open them up to a search.

2 As far as the patdown, the case Mr. Meetze  
3 cites, in fact in that case a car was pulled over;  
4 for a taillight out, the officer said he smelled  
5 alcohol, so the crime of the taillight and maybe a  
6 DUI and a passenger was called out. In this case  
7 this was someone, the owner of the home was  
8 arrested on drug warrants, a known drug location  
9 and a drug house, they knew that Mr. Birch might be  
10 at the house, another known drug dealer. Mr. Birch  
11 wasn't immediately patted down; was asked to take  
12 his hand out of his pocket, he refused to comply  
13 with police instruction several times before his  
14 hand was removed from his pocket. I think that is  
15 distinguishable from that case and that is what the  
16 State relies on.

17 THE COURT: I agree, I don't find there has  
18 been any violation of the Fourth Amendment right, I  
19 deny the motion.

20 MR. MEETZE: Thank you, Your Honor..

21 THE COURT: Is your client here, by chance?

22 MR. MEETZE: I do not know.

23 THE COURT: Do you mind checking?

24 BAILIFF: He's not here at this time.

25 THE COURT: The family member is here, could

1 they help you find them?

2 MR. OZMENT: Your Honor, could we take a very  
3 short recess?

4 THE COURT: All right.

5 MR. MEETZE: I'm going to walk down to see if  
6 I can find him.

7 (Recessed at 9:51 a.m.)..

8 (Resumed at 10:05 a.m.)..

9 THE COURT: Is the State ready to proceed?

10 MR. OZMENT: Yes, Your Honor.

11 THE COURT: Is the defense ready to proceed?

12 MR. MEETZE: Yes, Your Honor.

13 THE COURT: Anything you need to place on the  
14 record before we begin, Mr. Ozment?

15 MR. OZMENT: Your Honor, the defendant  
16 apparently has not been located so we would call  
17 the Clerk of Court to the stand to go over the  
18 defendant's bond paperwork.

19 THE COURT: All right, Madam Clerk, you may  
20 come on around.

21 SHERRY R. RHODES, after being first duly sworn,  
22 testified as follows:

23 THE COURT: Mr. Ozment, you have handed me  
24 the defendant's bond, correct?

25 MR. OZMENT: The Clerk of

1 Court handed you the defendant's bond.

2 THE COURT: I have examined the bond and it  
3 states under that section called acknowledgement by  
4 the defendant, "I understand and have been informed  
5 that I have a right and obligation to be present at  
6 trial and should I fail to attend the court the  
7 trial will proceed in my absence."

8 All right. He has signed it Darrell Birch,  
9 dated December 4th, 2008. We'll make that a Court  
10 exhibit.

11 (Bond marked as Court Exhibit Number 2).

12 THE CLERK: It was clocked in.

13 THE COURT: She already has it in the file.

14 THE CLERK: Clocked in December 10th.

15 (Witness excused).

16 THE COURT: If we could, have a bailiff go  
17 outside the courthouse and call this case three  
18 times.

19 Come around and be sworn in.

20 CLEVELAND WHITE, after being first duly sworn,  
21 testified as follows:

22 THE WITNESS: Your Honor, I called his name  
23 front and back.

24 THE COURT: Come on around and take that  
25 seat, if you would.

1 EXAMINATION BY MR. OZMENT:  
2 Q Would you please state your name and what you  
3 do for the court.  
4 A Cleveland White, Bailiff, Marion County  
5 Courthouse.  
6 Q Would you tell me what you just did outside  
7 the Marion County Courthouse?  
8 A I went outside at the front and called Mr.  
9 Birch and read the indictment number also twice at  
10 the front, twice at the back.  
11 Q All right. So, a total of four times?  
12 A Yes, sir.  
13 MR. OZMENT: I have no further questions.  
14 THE COURT: All right. Did the defendant  
15 show up, did Mr. Birch show up and answer you?  
16 THE WITNESS: No, sir.  
17 THE COURT: All right, Mr. Meetze, anything?  
18 MR. MEETZE: No, sir, Your Honor.  
19 THE COURT: All right, you may step down.  
20 (Witness excused).  
21 THE COURT: Anything further you need to put  
22 on the record, Mr. Ozment?  
23 MR. OZMENT: Yes, Your Honor. For the  
24 record, Mr. Meetze and I have discussed it but he  
25 was also instructed by you yesterday specifically

1 to be here today, certainly by 9:30.

2 THE COURT: Mr. Meetze?

3 MR. MEETZE: That's correct, Your Honor. I  
4 was not able to get in touch with Mr. Birch last  
5 night, we actually called his sister who gave us  
6 some contact information, we called that number.  
7 Actually when I called that it went to a voice mail  
8 but it was within a minute or two that he actually  
9 called us. I was able to speak to him and I did  
10 inform him he was to be here this morning at 9:00  
11 o'clock.

12 THE COURT: He was here yesterday at the call  
13 of the jury.

14 MR. MEETZE: That's correct.

15 THE COURT: He knew this trial was going to  
16 start today at 9:30, is that correct?

17 MR. MEETZE: He did, and I told him yesterday  
18 that we were picking a jury, the trial would start  
19 today, he has been aware for a number of weeks the  
20 trial was scheduled to start on Wednesday of this  
21 week.

22 THE COURT: Okay, thank you very much. The  
23 Court finds that the defendant had notice of  
24 hearing and he knew that he would be tried in his  
25 absence if he did not show up and he is not here.

1           If you would, go ahead and bring out the  
2 jury.

3           MR. OZMENT: Your Honor, we would also move  
4 for bench warrant.

5           THE COURT: Granted.

6           MR. OZMENT: Thank you, Your Honor.

7           THE COURT: Bring out the jury.

8           (The jury returned to the courtroom).

9           THE COURT: All right, it's good to have you,  
10 good to have all of you.

11           Madam Clerk, if you would, go ahead and swear  
12 in the jury.

13           (Jury sworn).

14           THE CLERK: Thank you. You may be seated.

15           THE COURT: All right, ladies and gentlemen  
16 of the jury, we're getting ready to start a trial  
17 but before we do so I just want to informally go  
18 over a few things with you just to give you a  
19 little working knowledge about what you can expect  
20 and what your role is and what my role is and so  
21 forth.

22           Now, I do want to tell you at the very end of  
23 this trial I'm going to give you my instructions in  
24 detail. You have to accept those instructions.  
25 These are just preliminary instructions that are

1 meant to give you a little bit of working knowledge  
2 before we start.

3         The first thing I want to tell you is that  
4 the defendant in this case has nothing to prove.  
5 The burden of proof is on the State of South  
6 Carolina to prove the defendant guilty beyond a  
7 reasonable doubt. I will explain that to you in  
8 greater detail at the end of this trial.

9         The next thing I want to explain to you is  
10 that you are the judge of the facts in this case, I  
11 am the judge of the law. You ask yourselves, "What  
12 does that mean, how do I distinguish between the  
13 two?" What it means is you determine what the  
14 facts of this case are, not me, not my clerk, not  
15 the lawyers, nobody in the audience, just you. You  
16 ask yourself, "How do I do that?" Two things.

17         You just listen to the witnesses that come up  
18 here and sit down in this chair right here and are  
19 sworn in under oath and they testify. You listen  
20 to them, you can believe whichever witness you  
21 want, you can believe all of what a witness tells  
22 you, nothing they tell you, you can believe one  
23 witness against many or many against one.

24         You wonder, "How do I do that?" The same way  
25 you do it when you listen to your husband, your

1 wife, your children, you just use your common sense  
2 and you judge the credibility and believability of  
3 the witnesses that testify. So, you will take the  
4 testimony and you will take any exhibits that are  
5 admitted into the record as evidence and that is  
6 where you will determine what the facts of this  
7 case are.

8 Exhibits may be photographs, they may be  
9 pieces of paper, they may be a weapon, anything  
10 like that. So, you have the testimony and exhibits  
11 that are admitted into the record as evidence.  
12 That is how you determine what the facts are.

13 In turn, I'm the judge of the law. I'm here  
14 to make sure these lawyers get a fair trial, make  
15 sure these parties get a fair trial and I'm here to  
16 instruct you on the law applicable to this case and  
17 I will do that to you in great detail at the end of  
18 this case.

19 I want you to understand when I instruct you  
20 on the law you have to accept the law as I give it  
21 to you. If you have any preconceived ideas as to  
22 what the law is or what you think the law ought to  
23 be and it doesn't agree with what I tell you the  
24 law is you have to abandon those preconceptions and  
25 accept the law as I give it to you. And then at

1 the very end when I tell you to begin your  
2 deliberations your job will be to take the facts as  
3 you find them, take the laws as I give it to you,  
4 put the two together and make a decision therefrom.

5 Another thing I want to tell you is what the  
6 lawyers tell you is not evidence. They are  
7 advocates for their clients. They are  
8 spokespersons for their clients. Evidence comes  
9 from those two things, the witnesses that testify  
10 and any matters admitted into the record as  
11 evidence. That is where you determine what the  
12 facts of the case are.

13 Furthermore, I want you to understand that at  
14 no point in time during this whole process, until  
15 this case is over, should you even start talking  
16 about this case, and it is very, very important  
17 because you need to hear from everybody, including  
18 me at the very end, before you start trying to make  
19 a decision. So, if we take a break and you go back  
20 into the jury room or if we take a break at lunch  
21 and you go home and then you come back do not talk  
22 about the case with anybody, do not talk about the  
23 case among yourselves. You ask yourselves, "What  
24 can we talk about?" You can talk about the  
25 Gamecocks if you want, the lawyer over here might

1 say you can talk about the Georgia Bulldogs, the  
2 other one might say the World Series, anything,  
3 sports, politics, it doesn't matter, but not this  
4 case.

5 Furthermore, I do not want you to get on the  
6 internet and reserach this case, do not read the  
7 newspaper, do not watch the news, just stay away  
8 from all independent research regarding this case.  
9 It is real important that you get everything you  
10 need right here in this courthouse. If you will do  
11 that I will appreciate it and if you will make sure  
12 nobody discusses this case I will appreciate it,  
13 Mr. Foreman.

14 I want you to sit back right now, I want you  
15 just to relax. If you have any problems at all, if  
16 you need water, if you need a coke or if somebody  
17 needs a break or an emergency pops up, if you just  
18 kind of wave your finger at me, when we come to an  
19 appropriate stopping point I will make sure you're  
20 taken care of.

21 So, if you would just relax right now, the  
22 parties are going to give you their opening  
23 statements, they are going to introduce themselves,  
24 they are going introduce the case, then we'll move  
25 forward into the testimony.

1 All right, Solicitor.

2 MR. OZMENT: May it please the Court?

3 THE COURT: Sure.

4 MR. OZMENT: I didn't get a chance to meet  
5 you all yesterday, my name is Matt Ozment, Mr.  
6 Tucker was serving in my place yesterday. I'm an  
7 Assistant Solicitor here for Marion and Florence  
8 and I appreciate you being here today.

9 What brings us here today is something that  
10 happened way back in December of 2008. On that  
11 day, you all will hear all this testimony from law  
12 enforcement, an officer with the Marion P.D. was  
13 driving just right up here by the IGA on the other  
14 side, on Main Street right up here and saw an  
15 individual he knew. He knew him because he had  
16 pending drug warrants on him and they were looking  
17 for him to arrest him.

18 Now, that is not the defendant in the case, a  
19 different guy. So they stop him, he calls the Drug  
20 Unit, "I have Mr. Horne here," they come, they  
21 start to arrest Mr. Horne, they know where Mr.  
22 Horne lives because Mr. Horne was a known drug  
23 dealer, they knew his house had a lot of drug  
24 transactions in and out of it, they thought there  
25 might be drugs there.

1 MR. MEETZE: Objection, Your Honor.

2 THE COURT: Excuse me?

3 MR. MEETZE: I would object to all of that.

4 THE COURT: Anything you need to put on the  
5 record?

6 MR. MEETZE: Approach?

7 THE COURT: All right.

8 (Unrecorded bench conference).

9 MR. OZMENT: The officers proceeded to Mr.  
10 Horne's house, after he said they could search it  
11 they went in Mr. Horne's house. There were several  
12 individuals in the house. One of those individuals  
13 was the defendant in this case. The defendant had  
14 his hand in his jacket pocket and one of the  
15 officers said, "Hey, take your hand out of your  
16 pocket." He asked him one, two, three times, "Take  
17 your hand out of your pocket, please take your hand  
18 out of your pocket." The defendant wouldn't do it,  
19 so the officer took his hand out of his pocket.  
20 When that happened a little canister fell on the  
21 ground. He didn't touch the canister yet, he took  
22 off the defendant's hat, he recognized him as an  
23 individual that they were looking for and at that  
24 time --

25 MR. MEETZE: Objection, Your Honor.

1 THE COURT: Sustained.

2 MR. OZMENT: At that time he was placed under  
3 arrest.

4 Now, that canister was taken, it's a little  
5 thing of Icebreakers, little mints, it was taken  
6 from him, law enforcement opened the canister and  
7 saw what they believed to be a quantity of crack  
8 cocaine in there. Law enforcement weighed it,  
9 packaged it, you will hear this, packaged it in a  
10 bag, sealed it, sent it off to SLED to be tested.

11 When they opened the Icebreakers there were  
12 some pills in there that they thought looked like  
13 ecstasy, they sealed it the same way, sent it off to  
14 SLED to be tested. You will hear from a chemist  
15 from SLED that tested all these items, he will tell  
16 you that the material that they thought was crack  
17 turned out to be crack, 6.2 grams. He will tell  
18 you that the pills they thought were ecstasy turned  
19 out to be ecstasy and some of the pills had  
20 different markings, different colors. He will  
21 explain all that to you.

22 He will explain how they tested it, they will  
23 explain their process to make sure that nothing is  
24 interfered with, to make sure that nothing is  
25 contaminated or polluted or any of that and how

1 they take every precaution to make sure that what  
2 they test is not tainted in any way.

3           You will also hear from law enforcement when  
4 he was arrested and they took these what turned out  
5 to be drugs into possession, that he had over \$500  
6 on him and that he consented to give that to law  
7 enforcement. But at the time he was arrested he  
8 not only had the drugs, he also had the money, and  
9 all that will be testified to here under oath, as  
10 simple as that.

11           I thank you for being here, I appreciate you  
12 taking time. I know you all are busy, I appreciate  
13 you coming to listen to us today. I would ask that  
14 you give us a fair trial and give the defendant a  
15 fair trial and just use your common sense and do  
16 what is right, that is all I'm asking for.

17           I appreciate it and thank you.

18           THE COURT: Mr. Meetze.

19           MR. MEETZE: I would like to be heard on a  
20 motion.

21           THE COURT: All right. Members of the jury,  
22 if you would step back into the jury room just for  
23 a moment. Like I said earlier, do not discuss the  
24 case.

25           (The jury was excused from the courtroom).

1 THE COURT: All right, Mr. Meetze.

2 MR. MEETZE: Thank you, Your Honor. If it  
3 please the Court, I just feel like I needed for  
4 purposes of the record and everything, I need to  
5 make a motion for a mistrial at this time based on  
6 the opening statement that was just given.

7 Statements were made to the jury with regard  
8 to Mr. Horne, that he had outstanding drug  
9 warrants, that his house was a known drug house,  
10 that my client was at that house, and subsequently  
11 after you sustained the objection to that it was  
12 made mention during the opening statement that when  
13 Mr. Birch's hat was removed he was recognized as  
14 somebody that they were looking for, which gives  
15 clear implication they weren't looking for him to  
16 ask him to lunch or anything like that, and I just  
17 feel like, I understand the Court just told the  
18 jury that what attorneys say is not evidence and I  
19 understand all that but it is out there, whether it  
20 is evidence in actuality or not, it is a bell that  
21 can't be unrung and I do believe that it prejudices  
22 my client and because it is out there it is going  
23 to deprive Mr. Birch of the ability to have a fair  
24 trial.

25 Clearly saying the police were already

1 looking for him for something indicates they were  
2 looking for him for prior wrongdoing. He is not  
3 here today to be tried for any prior wrongdoing, he  
4 is being tried for what happened on that day in  
5 that house and I think having that information and  
6 that knowledge is overly prejudicial and deprives  
7 my client of the ability to get a fair trial.

8 THE COURT: Mr. Ozment?

9 MR. OZMENT: Your Honor, any information  
10 regarding Mr. Horne I don't think prejudices his  
11 client. I think it is fair for the jury to have a  
12 complete picture who is Mr. Horne, why did the  
13 police stop him, why was he under arrest, why would  
14 they want to search his house. I mean, that is  
15 just giving a complete picture of the facts. That  
16 has nothing to do with Mr. Birch. Mr. Birch lived  
17 in the house, but anything regarding Mr. Horne, I  
18 don't see that prejudices Mr. Birch.

19 THE COURT: I think what I'm going to do, I'm  
20 going to deny your motion but I'm going to pull  
21 them out here and remind them again that what the  
22 lawyers say is not evidence, opening statements are  
23 not evidence, they are just simply introduction to  
24 the case itself and we're going to give Mr. Meetze  
25 that right as well and they are to consider, like I

1 say, only the evidence before them, testimony from  
2 the stand and whatever exhibits are admitted into  
3 the record. I don't have a whole lot of trouble  
4 with a lot of it. Known drug house, in the future  
5 you might want to just refer to it as a house, then  
6 we'll let the facts flesh it out as time goes by.

7 MR. OZMENT: I don't know if this is the  
8 appropriate time, we may need to talk about how  
9 much I can go into that, how much I can't.

10 THE COURT: Will, once you get somebody on  
11 the stand and it becomes an issue at that time, an  
12 opening statement is simply an introduction to the  
13 case itself. I think that is where Mr. Meetze is  
14 coming from.

15 MR. MEETZE: Thank you, Your Honor.

16 THE COURT: Let's go ahead and bring the jury  
17 back out.

18 (The jury returned to the courtroom).

19 THE COURT: All right, members of the jury, I  
20 want to emphasize to you again at this time, like I  
21 did a few minutes ago, that what the lawyers tell  
22 you is not evidence. Evidence comes from this  
23 witness stand right here, the witnesses that  
24 testify to you and any documents that may be  
25 admitted into the record as evidence, not what the

1 lawyers tell you. It is very, very important. I  
2 want you to understand also that opening statements  
3 are simply opening statements. They are meant to  
4 be introductions to the case itself. Opening  
5 statements are also not evidence, so what you need  
6 to be concerned with is the testimony and the  
7 documents admitted into the record.

8 All right, with that being said, I will call  
9 on Mr. Meetze to give his opening statement.

10 MR. MEETZE: Thank you, Your Honor, if it  
11 please the Court.

12 I had an opportunity to introduce myself  
13 yesterday but I will do that again. My name is Vic  
14 Meetze and I work here in the Marion Public  
15 Defender's office, I'm happy to be here today to  
16 represent Darrell Birch.

17 You have heard a number of times and I will  
18 say it again, what I tell you now is not evidence,  
19 what Mr. Ozment told you just a little bit ago is  
20 not evidence, we're just here to sort of give you a  
21 road map, just explain certain things to you. The  
22 evidence in the case will come from testimony,  
23 possibly exhibits, primarily testimony that comes  
24 from this witness stand and that is how it happens  
25 in most cases, okay?

1           We are a society of drama and television and  
2 different things like that and we get, I know  
3 before I got into this profession I didn't know a  
4 lot of stuff about our laws and different things  
5 like that and you see what is on TV, you just sort  
6 of get it in your led that is how it is everywhere  
7 all the time but that is really not the case.

8           Cases aren't, you know, your average everyday  
9 typical kind of case, if they tried to televise it  
10 they wouldn't have many watchers because a lot of  
11 time it is not the dramatic effect that TV puts on  
12 a lot of cases. Most cases don't have things like  
13 DNA, blood and hair, fingerprints, all that kind of  
14 stuff. Most evidence in cases is testimony.  
15 Testimony is what most cases have as evidence.  
16 There is some that aren't but that is usually the  
17 primary form of evidence in a case and I would  
18 expect that would be the primary evidence here  
19 today.

20           I will tell you that Mr. Birch is presumed  
21 innocent in this case. Everybody in this country  
22 charged with any kind of criminal case, they're  
23 presumed innocent until such time as they can be  
24 proven guilty beyond a reasonable doubt. That  
25 presumption of innocence is an important

1 fundamental part of our laws, something that we all  
2 know and respect as just that, our law.

3 The presumption of innocence, it is  
4 important, as important as anything else we have in  
5 our lives, because our rights, our rights are taken  
6 for granted a lot of times. You can't under  
7 estimate how important they are and that is a  
8 fundamental right in any criminal case, is that Mr.  
9 Birch is presumed innocent and that innocence, that  
10 presumption of innocence will remain with him until  
11 such time as the State can convince each of you  
12 beyond a reasonable doubt that Mr. Birch is guilty.

13 Which brings up another fundamental principle  
14 of our criminal law, which is the burden of proof  
15 is beyond a reasonable doubt. You may have heard  
16 that phrase or term before. Different kinds of  
17 jury trials in Circuit Court, that is where we are,  
18 we're in Circuit Court, we're in Marion County,  
19 there is two different divisions of Circuit Court.  
20 One is the Court of Common Pleas, also known as  
21 civil court. Civil court is where a lot of times  
22 they deal with, you know, accident cases, wreck  
23 cases, somebody might have been injured either on  
24 the job or some kind of a car accident or something  
25 like that where a lawsuit may have taken place and

1 normally in a case like that the issue at hand is  
2 money damages, somebody is injured in some way or  
3 another and it cost them some money and they are  
4 trying to get their money back. And that is  
5 important, obviously that is important to all of  
6 us.

7 But in a criminal case it's just, in a  
8 criminal case it's not somebody's financial  
9 wellbeing. They are taking their very liberty in a  
10 criminal case and that is much, much more  
11 important, and because of that the burden of proof  
12 is much higher. In a civil case I referred to just  
13 a little bit ago the burden of proof is called by  
14 preponderance of the evidence or more likely than  
15 not, sort of a 51 percent to 49 percent deal. If  
16 it is just enough to believe one side over  
17 another, then a jury in a civil case will find for  
18 that person.

19 You think of the scales of justice, in a  
20 civil case once all the evidence is presented and  
21 put into play if the evidence for each side is put  
22 there and it tilts ever so slightly in one  
23 direction, then that is the side the jury would  
24 find in favor of.

25 In a criminal case it is much different, the

1 burden of proof is much higher because in a  
2 criminal court we're not dealing with money  
3 damages, we're dealing with somebody's liberty.  
4 There is nothing more important than that, that is  
5 why the burden of proof in a criminal case is so  
6 high, beyond a reasonable doubt. The proof does  
7 not have to overcome any and all doubt but a  
8 standard that does come further than that, the  
9 State has to present evidence, pile on evidence and  
10 pile on evidence until such time as each of you are  
11 convinced beyond a reasonable doubt that someone is  
12 guilty before they can be convicted, and it is  
13 because in this court we are dealing with people's  
14 very lives and their very liberty and there is  
15 nothing more important than that. It doesn't  
16 matter how long a case lasts, it doesn't matter the  
17 charges, all those principles are in play and it  
18 makes this cases extremely serious and extremely  
19 important.

20 I appreciate your attention in the case, we  
21 don't anticipate the case will last very long, we  
22 certainly appreciate your attention. I will get an  
23 opportunity to speak before you again at the close  
24 of all the evidence. At that time I will be asking  
25 that you find a verdict in this case which we

1 believe speaks the truth, and that would be a  
2 verdict of not guilty.

3 THE COURT: Thank you.

4 Mr. Ozment, call your first witness.

5 MR. OZMENT: Your Honor, the State would call  
6 Officer Grice to the stand.

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1 ERNIE GRICE, after being first duly sworn,  
2 testified as follows:  
3 DIRECT EXAMINATION BY MR. OZMENT:  
4 Q How are you today, Officer Grice?  
5 A All right.  
6 Q Can you please state your name and what do  
7 you for the record?  
8 A Ernie Grice, I'm a sergeant with the Marion  
9 Police Department.  
10 Q How long have you been with the Marion Police  
11 Department?  
12 A I've been in law enforcement ten years.  
13 Q All here in Marion?  
14 A In Marion and Marion County.  
15 THE COURT: If you all can't hear just let me  
16 know, raise your hand.  
17 Be sure and speak up.  
18 THE WITNESS: Okay.  
19 BY MR. OZMENT:  
20 Q On December 3rd, 2008, did you work that day?  
21 A I did.  
22 Q Here in Marion?  
23 A Yes.  
24 Q Did you come in contact with an individual  
25 around the IGA that day?

1 A I did.

2 Q Who was that individual?

3 A It was Byron Horne.

4 Q All right. Is he the defendant in this case?

5 A No, he's not.

6 Q All right. What drew your attention to Mr.  
7 Horne?

8 A I was traveling south on Main Street and  
9 observed an individual that I knew was Byron Horne.  
10 I also knew that the Marion County Combine Drug  
11 Unit had --

12 MR. MEETZE: Object, Your Honor. May we  
13 approach?

14 THE COURT: Sure.

15 (Unrecorded bench conference).

16 BY MR. OZMENT:

17 Q You were saying you approached Mr. Horne and  
18 you recognized him. Why did you say you recognized  
19 him?

20 A I recognized Mr. Horne because I had prior  
21 knowledge that the Marion County Drug Unit had  
22 warrants for this individual.

23 MR. MEETZE: Your Honor, I object.

24 THE COURT: Overruled.

25 Q All right. Do you know what those warrants

1 were for?

2 A All I know, narcotic warrants.

3 Q All right. After you recognized him what did  
4 you do next?

5 A I notified Agent Cribb and Agent Collins of  
6 the Marion County Drug Unit, told them that I saw  
7 Mr. Horne, where he was at, they came and met me  
8 with Mr. Horne.

9 Q At what point did you approach Mr. Horne?

10 A I approached him when, after I notified them  
11 and we all went up together and met him.

12 Q All right. Was Mr. Horne placed under  
13 arrest?

14 A He was.

15 Q At that time?

16 A He was.

17 Q Why was he placed under arrest?

18 A Because of narcotic warrants.

19 Q All right. After he was placed under arrest  
20 do you know if any question about searching his  
21 house came up?

22 A Agent Cribb asked Mr. Horne who was at his  
23 house, he stated his cousin.

24 MR. MEETZE: Objection, Your Honor, hearsay.

25 MR. OZMENT: I will rephrase, Your Honor.

1 THE COURT: Sustained.

2 BY MR. OZMENT:

3 Q Don't tell me what Agent Cribb or Mr. Horne  
4 said but in your presence at anytime did consent to  
5 search the house come up?

6 A Yes.

7 Q All right. Following that was a search of  
8 the house done?

9 A It was.

10 Q All right. And whose house was it?

11 A That was Mr. Horne's house.

12 Q All right. Were you present for the search  
13 of the house?

14 A I was.

15 Q All right. Do you recall where the house  
16 was?

17 A It was , I think , Apartment ,  
18 Street.

19 Q Is that here in Marion?

20 A Yes.

21 Q Marion County?

22 A Yes.

23 Q What was your involvement in the search of  
24 the house?

25 A I assisted Agent Collins in clearing the

1 house out.

2 Q Did you enter the house?

3 A I did.

4 Q When you entered the house did you have

5 occasion to have any contact with Darrell Birch?

6 A I did.

7 Q Was he in the house?

8 A He was.

9 Q Tell me about your interaction with Mr.

10 Birch.

11 A Myself and Agent Collins entered the

12 residence, there was an individual in the front

13 room had a ball cap and coat and jeans on. The

14 individual had his left hand in his pocket. Agent

15 Collins went down the hall and continued to clear

16 the house out. I told this individual several

17 times to remove his hand. He refused at all times.

18 I did not know if the individual had a weapon on

19 him to hurt me, Agent Collins or anyone else.

20 Q Excuse me. Do you remember how many times

21 you asked him to remove his hand?

22 A I know at least three or more.

23 Q All right. And what pocket was it in, pants

24 pocket, coat pocket?

25 A To my knowledge it was in his pants pocket.

1 Q Okay. Sorry, continue. You asked him three  
2 times to remove his hand?

3 A I asked him more than three times to remove  
4 his hand, he refused, and for my safety as well as  
5 everybody in the house, I didn't know if he had a  
6 weapon or anything on him, I forcibly removed his  
7 hand and when I did an object fell out on the  
8 floor.

9 Q Can you describe that object for me?

10 A The object was, appeared to be a medicine  
11 bottle wrapped in black tape, electric tape.

12 Q If you saw that object could you recognize  
13 it?

14 A I can.

15 MR. OZMENT: Your Honor, may I approach the  
16 witness?

17 THE COURT: Sure. Show it to Mr. Meetze  
18 first.

19 Q I'm handing you a sealed bag, I don't want  
20 you to unseal that bag, I'm just going to ask you,  
21 do you see the object in that bag?

22 A I do.

23 Q Can you identify it? You can pick up the  
24 bag.

25 A This black bottle.

1 Q All right. So, after the black container  
2 fell out of his pocket what did you do next?

3 A After the container fell out of his pocket,  
4 like I said, he had a ball cap on, pulled down like  
5 he may be concealing his identity, I removed the  
6 ball cap, I knew him as Darrell Birch and I also  
7 knew that the Marion County Combined Drug Unit was  
8 also looking for him as well.

9 MR. MEETZE: Objection, Your Honor.

10 THE COURT: Sustained.

11 MR. MEETZE: Approach.

12 THE COURT: Do you want to make a motion?

13 MR. MEETZE: Yes, Your Honor.

14 THE COURT: Members of the jury, if you  
15 would, step into the jury room for just a moment.

16 (The jury was excused from the courtroom).

17 THE COURT: Mr. Meetze.

18 MR. MEETZE: Thank you, Your Honor.

19 Your Honor, again now it is actually in  
20 evidence that the Drug Unit was looking for him,  
21 that he had prior knowledge the Drug Unit was  
22 looking for Mr. Birch, all before any drugs were  
23 found but now the jury knows that he had some kind  
24 of past in regards to drugs because the Drug Unit  
25 was looking for him. I obviously ask the Court to

1 strike that... You could give the jury instruction  
2 but I don't feel like a curative instruction can do  
3 what needs to be done. You can't unring that bell,  
4 it is out there and you can't tell them to unhear  
5 something and I just feel like that based on that,  
6 again, that I think it compromises Mr. Birch's  
7 ability to receive a fair and impartial trial in  
8 the case. We move for mistrial.

9 THE COURT: Why don't we go ahead and give  
10 them a curative instruction. What specific  
11 language do you want me to tell them, to completely  
12 ignore it in this regard?

13 MR. MEETZE: I think if the Court would  
14 instruct them that there could be times during the  
15 trial where testimony may be elicited that is not  
16 appropriate.

17 THE COURT: I understand that. Specifically  
18 what testimony are you talking about?

19 MR. MEETZE: The testimony that his hat was  
20 removed and he was recognized as Darrell Birch and  
21 that Officer Grice had prior knowledge that the  
22 Combined Drug Unit was looking for him. I think  
23 that was essentially it.

24 MR. OZMENT: Essentially.

25 MR. MEETZE: I think that that is what I

1 would ask them to disregard but again I would --

2 THE COURT: I'm going to deny your motion but  
3 I will give them a curative instruction in that  
4 regard.

5 You can go ahead and bring out the jury.

6 (The jury returned to the courtroom).

7 MR. MEETZE: May we approach?

8 (Unrecorded bench conference).

9 THE COURT: All right, ladies and gentlemen  
10 of the jury, I want to instruct you that the  
11 testimony this officer gave when he said that when  
12 the individual's hat was removed he recognized him  
13 as Darrell Birch and that the officer had knowledge  
14 that the Marion County Drug Unit was looking for  
15 him, I want to instruct you that that is improper  
16 and is not evidence and is irrelevant, thus you  
17 should not consider that portion of this testimony  
18 for any purpose whatsoever during this trial and in  
19 your deliberations at the end of this case.

20 All right, with that being said, Solicitor,  
21 if you would continue.

22 MR. MEETZE: For purposes of the record I  
23 would object.

24 THE COURT: All right. Objection overruled.

25 MR. MEETZE: Thank you, Your Honor.

1 BY MR. OZMENT:

2 Q Officer, after you removed his hat did you  
3 have a chance to search Mr. Birch's person?

4 A Mr. Birch was not searched until after he was  
5 arrested.

6 Q Did you perform that search?

7 A Yes, I did.

8 Q What did you find? Did you find anything in  
9 that search?

10 A Mr. Birch had on his person an Icebreakers  
11 canister containing several pills, different  
12 colored pills.

13 Q All right. Going back to the sealed plastic  
14 pack in front of you, could you identify any of  
15 that, if the items you just described were in that  
16 pack?

17 Can you indicate to us what you're pointing  
18 to?

19 A The Icebreaker canister.

20 Q Do you see any of the pills that were in the  
21 Icebreakers canister?

22 A I do. It was different colored pills.

23 Q Thank you, officer.

24 Did you at any point then retrieve the little  
25 black container that had fallen?

1 A I did.

2 Q What did you do with it?

3 A I picked it up, opened it up to see what it  
4 contained.

5 Q What did -- just describe what you saw, just  
6 describe what you saw in it.

7 A Several off white rock like substances that  
8 was consistent with crack cocaine.

9 Q Do you see any of that rock like substance in  
10 that plastic bag?

11 A I do. It's behind this.

12 Q All right. So, after you had collected the  
13 Icebreakers and the pills, the black container with  
14 the off white rock like substance, what did you do  
15 with those items?

16 A I give them to Agent Cribb.

17 Q Did you put them in a bag or anything like  
18 that or did you just -- what did you do with it  
19 exactly?

20 A To my knowledge, I think I just transferred  
21 them over to the agent.

22 Q Was he at the scene at that time?

23 A Yes, he was.

24 Q All right. Who else was at the scene when  
25 the house was searched?

1 A Agent Collins.

2 Q And Agent Cribb?

3 A Yes.

4 Q All right. Sir, did you find any currency on  
5 Mr. Birch when he was searched?

6 A I did.

7 Q Do you recall the amount of that currency?

8 A I want to say it was a little over \$500.

9 Q All right. What did you do with that  
10 currency?

11 A It was also transferred over to Agent Cribb.

12 Q All right. My final question is when Mr.  
13 Birch was placed under arrest and you finished  
14 searching him did you know that was the defendant  
15 in this case Mr. Birch?

16 A I did.

17 MR. OZMENT: No further questions, Your  
18 Honor.

19 THE COURT: Mr. Meetze.

20 CROSS EXAMINATION BY MR. MEETZE:

21 Q Officer Grice, you were on duty in Marion on  
22 December the 3rd, 2008, sometime around 10:00  
23 o'clock?

24 A I was.

25 Q And you saw Mr. Horne?

1 A I did.

2 Q And you approached him and you contacted  
3 other law enforcement officials to come to the  
4 scene?

5 A I did.

6 Q They came to the scene and Mr. Horne was  
7 arrested there?

8 A He was.

9 Q Okay. And did you arrest Mr. Horne  
10 personally?

11 A No, sir.

12 Q But you were present?

13 A Yes, sir.

14 Q Okay. And we have talked about times and  
15 approximate times. Do you know exactly what time  
16 you saw him and and what time you called --

17 A I cannot say the exact time. I know it was  
18 mid morning.

19 Q You did not discuss with Mr. Horne any kind  
20 of consent to search his residence personally?

21 A No, sir.

22 Q Okay. You weren't involved in anything in  
23 that regard?

24 A Not me personally, no, sir.

25 Q You did end up going to Mr. Horne's

1 residence?

2 A I did.

3 Q You do not recall, exactly what time that was?

4 A Like I said, it was all mid morning, I don't  
5 know exactly what time.

6 Q All right. You did enter -- when you got  
7 there were you the only officer there?

8 A No, I was not.

9 Q How many other officers were there?

10 A There were three.

11 Q Okay. Were they in plain clothes, were they  
12 uniformed officers like yourself, like you're here  
13 today?

14 A No, sir.

15 Q Okay. You did enter the house?

16 A I did.

17 Q You did not have a search warrant with you or  
18 anything like that?

19 A Not in my hand.

20 Q You knocked on the door to enter the house?

21 A Agent Collins knocked on the door.

22 Q Okay. Did entry have to be forceful?

23 A No, sir.

24 Q So you all were allowed into the house?

25 A Yes.

1 Q You identified yourself as law enforcement?  
2 A We did.  
3 Q The individual that let you into the house  
4 was the individual that you had described earlier?  
5 A It was Mr. Horne.  
6 Q Mr. Horne was with you all?  
7 A He was in my car.  
8 Q At your car, okay. When you entered the  
9 house you saw an individual you described as  
10 wearing a jacket, I think jeans and a ball cap?  
11 A Yes.  
12 Q And you indicated that he had his hand in his  
13 pocket?  
14 A He did.  
15 Q You were questioned with regard to whether or  
16 not you recalled whether it was his pants pocket or  
17 his jacket pocket. Your testimony was that you  
18 believed it was his pants pocket?  
19 A Yes, sir.  
20 Q Is that correct?  
21 A Yes, I believe so.  
22 Q When you say, I don't want to put words in  
23 your mouth but just trying to get to the bottom of  
24 things, when you say you believe, does that mean  
25 that you're not certain, it could have been either

1 one?

2 A It could have been.

3 Q So you think it was his pants pocket but  
4 you're not sure?

5 A Yes, sir.

6 Q Okay. But your testimony is that you did ask  
7 him to remove his hand from whatever pocket it was?

8 A I did.

9 Q And you did an incident report in this case,  
10 correct?

11 A I did.

12 Q And anytime -- how long have you been a law  
13 enforcement officer?

14 A Ten years.

15 Q You go through training?

16 A Yes, sir.

17 Q Training at the academy?

18 A Yes.

19 Q And all law enforcement officers go through  
20 that kind of training?

21 A Yes.

22 Q But that is not where your training ends,  
23 correct?

24 A Right.

25 Q As you proceed throughout your career as a

1 law enforcement officer you receive training during  
2 all different stages?

3 A I do.

4 Q Correct?

5 A Yes.

6 Q Law enforcement, like a lot of jobs, is a job  
7 you are really always training, you are always  
8 learning new things?

9 A Yes.

10 Q And becoming better at your job, correct?

11 A Yes.

12 Q One of the things that you are trained to do  
13 and one of the things that is a necessary part of  
14 your job is to do paperwork?

15 A Yes.

16 Q Anytime you're involved in a case there is  
17 going to be paperwork involved. Correct?

18 A Yes.

19 Q And there is a lot of reasons for why that's  
20 done. Correct?

21 A Yes.

22 Q Paperwork helps your memory, correct?

23 A Correct.

24 Q A lot of times it's sometimes years down the  
25 road before a case actually comes to trial.

1 Correct?

2 A Correct.

3 Q As time goes on our memories get a little  
4 fuzzy sometimes, correct?

5 A Correct.

6 Q So the paperwork that you do as a law  
7 enforcement officer, one of the reasons why you do  
8 that is to preserve your memory of what happened?

9 A Correct.

10 Q Correct. And so it's important for that  
11 reason and that reason alone when you do paperwork  
12 that it be as complete and as detailed as possible?

13 A Correct.

14 Q Correct?

15 A Yes.

16 Q Also you want it to be as complete and  
17 detailed as possible because you're not going to be  
18 the only person reading that paperwork. Correct?

19 A Correct.

20 Q You've got supervisors. Correct?

21 A Correct.

22 Q And sometimes they will go over paperwork.  
23 Correct?

24 A Correct.

25 Q Also other law enforcement officers are going

1 to be involved. Correct?

2 A Correct.

3 Q And sometimes the initial officer on a  
4 particular scene makes the initial report, gathers  
5 initial evidence but is not ultimately the lead  
6 case agent. Correct?

7 A Correct.

8 Q Somebody is going to be appointed and made a  
9 lead case agent in a particular case, correct?

10 A Correct.

11 Q That individual is going to need a detailed  
12 account of what happened so that that person can  
13 move forward with the investigation with the full  
14 knowledge of everything. Correct?

15 A Yes.

16 Q And so it's important for a number of reasons  
17 and paperwork is one of the things that you all are  
18 trained in regards to?

19 A Correct.

20 Q Now, does your paper, does your incident  
21 report in this case indicate what pocket --

22 A Can I --

23 Q -- Mr. Birch had his hand in?

24 A Can I look at it?

25 Q Sure you can.

1 A Can I read it verbatim? It says the male  
2 subject had his left hand in his front pocket.

3 Q Front pocket?

4 A Yes.

5 Q So, it doesn't say whether it's his pants or  
6 jacket or whatever, just says front?

7 A No.

8 Q Okay. Once his hand was taken out of his  
9 pocket and the canister was located and searched,  
10 it was after that happened, right, pretty much  
11 right as you entered the house, is that correct?

12 A Say --

13 Q Mr. Birch is the first person you saw?

14 A Correct.

15 Q When you say you asked him, you're not sure  
16 how many times you asked him to remove his hand but  
17 you say it was at least three or more, correct?

18 A Correct.

19 Q Asking him three times to remove his hand  
20 doesn't take very long so it wasn't very long after  
21 you got into the house that you found yourself  
22 removing his hand and discovering that canister.  
23 Correct?

24 A Correct.

25 Q All right. And do you recall at that point

1 in time when, do you recall how long you had been  
2 there before other officers got there?

3 A No, sir, I do not.

4 MR. MEETZE: I don't have any further  
5 questions, Your Honor.

6 THE COURT: Redirect?

7 MR. OZMENT: No redirect, Your Honor.

8 THE COURT: You may step down. Thank you.  
9 (Witness excused).

10 THE COURT: Call your next witness.

11 MR. OZMENT: Your Honor, the State calls  
12 Sergeant Aurelius Cribb to the stand.

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1 AURELIUS CRIBB, after being first duly sworn,  
2 testified as follows:

3 DIRECT EXAMINATION BY MR. OZMENT:

4 Q How are you today, Sergeant Cribb?

5 A Fine, sir.

6 Q Would you state your name and what you do,  
7 for the record?

8 A I'm Aurelius Cribb, I work for Marion Police  
9 Department as a lieutenant and I'm assigned to the  
10 Marion County Combined Drug Unit as a sergeant.

11 Q Can you -- how long have you been with the  
12 Drug Unit?

13 A I've been with the Drug Unit for ten years.

14 Q All right. Has all your law enforcement  
15 experience been here in Marion?

16 A Marion and military police officer.

17 Q How long were you in the military?

18 A Twenty-one years.

19 Q And all 21 years as a military police  
20 officer?

21 A Thirteen as a military police officer.

22 Q All right. On January 3rd, 2008, how did you  
23 become involved in this case?

24 A Officer Grice had called, informed us he had  
25 saw Mr. Horne at IGA. We went out to meet up with

1 Officer Grice to talk to Mr. Horne.

2 Q All right. Why would you be interested in  
3 Mr. Horne?

4 A We had warrants for his arrest.

5 Q What were those warrants for?

6 A Distribution of crack.

7 MR. MEETZE: Objection, Your Honor.

8 THE COURT: Overruled.

9 Q All right. Do you remember how many warrants  
10 you had on Mr. Horne?

11 A I think it was one.

12 Q All right. Did you serve that warrant on  
13 him?

14 A Yes, sir.

15 Q Was he placed under arrest at the IGA at that  
16 time?

17 A Yes, sir.

18 Q All right. After you placed Mr. Horne under  
19 arrest did you have a conversation with him about  
20 searching his residence?

21 A Yes, sir, I did.

22 Q Did you verbally ask him if you could search  
23 his residence?

24 A Yes, I did.

25 Q Did you receive his consent?

1 MR. MEETZE: Objection, Your Honor.

2 THE COURT: Overruled.

3 Q Did you also have him sign a consent to  
4 search form at anytime?

5 A Yes, sir.

6 Q All right.

7 MR. OZMENT: May I approach the witness, Your  
8 Honor?

9 THE COURT: Yes.

10 Q Would you identify the piece of paper I just  
11 handed you, for the jury?

12 A It's a Marion County Combined Drug Unit  
13 consent to search form.

14 Q What residence or car, whatever was being  
15 consented to search on that form?

16 A For Street, Marion, South  
17 Carolina.

18 Q Whose residence is that?

19 A Byron Horne.

20 Q All right. Did Mr. Horne receive this form  
21 after he was arrested?

22 A Yes, sir.

23 Q Is there anyone's signatures on that form?

24 A Yes, sir.

25 Q Whose signature is on that form?

1 A My signature and also Mark Collins.

2 Q All right. Did you explain what that form is  
3 and what it means to Mr. Horne?

4 A Yes, sir, I did.

5 Q You can read it if you want to. What does  
6 that form say and what does it do?

7 A It has the subject's name, location, where he  
8 lives at, says, "I, we, Byron Horne, having been  
9 informed of my, our constitutional rights not to  
10 have a search made of my premises, vehicle or  
11 person herein thereafter described without a search  
12 warrant and being fully aware of that I, we, may  
13 refuse to consent to such a search, do hereby  
14 voluntarily waive my, our, constitutional rights as  
15 such and consent to a search. I hereby authorize  
16 the officer, officers, Mark Collins, E. Grice, A.  
17 Cribb, Walters, E., Marion P.D., of the Marion  
18 County Combined Drug Unit to search the following  
19 prescribed premises, vehicle or person without a  
20 search warrant. Describe the property or person to  
21 be searched. Street, Marion, South  
22 Carolina. The above said officers further have my  
23 permission to take from my premises and property  
24 any papers, materials, contraband or any other  
25 property or things that they desire as evidence for

1 criminal prosecution in any cases under  
2 investigation. This written permission is being  
3 given by me to the above mentioned officers  
4 voluntarily and without threats or promises of any  
5 kind." Signed Byron R. Horne, witness Ernest  
6 Grice, witness Mark Collins, time search started  
7 11:00 a.m., time search completed 11:50 a.m. I,  
8 we, received a copy of this consent to search as  
9 well as a list of any items taken, signed Byron R.  
10 Horne, 12/3/08)."

11 Q And you saw Mr. Horne sign that sheet of  
12 paper?

13 A Yes, sir.

14 Q All right. Did he sign that sheet of paper  
15 before the house was searched?

16 A Yes, sir.

17 Q when you say he gave verbal consent to  
18 search, was that done before the house was  
19 searched?

20 A Yes, sir.

21 Q All right. After, after he gave consent and  
22 when you were at the IGA, at what point did you  
23 proceed to the residence?

24 A After he give consent we went to the  
25 residence and Officer Grice and Agent Collins went

1 inside the residence, apartment, I went to the rear  
2 of the residence.

3 Q All right. How many people were you  
4 expecting to be in the residence or were any people  
5 expected to be in the residence?

6 A Horne told us there would only be one person  
7 at the residence.

8 Q All right. Was the residence supposed to be  
9 locked or unlocked?

10 A He said it was not locked, it was unsecured.

11 Q All right. When you, when the residence was  
12 approached how was entry made?

13 A They knocked on the door and then they were  
14 let into the residence.

15 Q Do you recall how many people were in the  
16 residence?

17 A Once we got in, there were four people in the  
18 residence.

19 Q All right. Were you present when Officer  
20 Grice searched the defendant in this case?

21 A I was at the back door when he searched him.

22 Q Did you actually see the defendant get  
23 searched in this case?

24 A No, sir.

25 Q All right. But you were at the residence

1 when it occurred?

2 A Yes, sir.

3 Q All right. What were you doing during that  
4 time?

5 A Making sure no one went out the back door.

6 Q All right. After the defendant was searched  
7 Officer Grice testified that he gave you the  
8 contraband that was taken off the defendant. Could  
9 you describe what you received from Officer Grice?

10 A I received the black bottle with a white rock  
11 like substance that was in it, and this Icebreaker  
12 can with some different color pills in it.

13 Q All right. Do you see the rock like  
14 substance and the pills in that pack?

15 A Yes, sir.

16 Q All right. When you received the contraband  
17 or what was taken what did you do with it?

18 A I put it in a Best Bag, wrote the defendant's  
19 name on it and sent it off to SLED.

20 Q Could you explain what a Best Bag is?

21 A A Best Bag is a bag for evidence provided by  
22 SLED that has a tamper proof seal on it so you  
23 can't open it, if it is opened there is evidence it  
24 has been tampered with.

25 Q And you received all that directly from

1 Officer Grice?

2 A I received the pills, these two bottles and  
3 then I put it into the Best Bag.

4 Q All right. Once you placed it in the Best  
5 Bag what did you do with it?

6 A It was transported to SLED to be tested.

7 Q All right. Did you personally take it to  
8 SLED?

9 A Yes, sir, I did.

10 Q Where do you take it when you take it to  
11 SLED?

12 A To forensics at the SLED lab.

13 Q Do you recall what day you took it to the  
14 SLED lab?

15 A No, sir.

16 Q All right. What is the process when you get  
17 to SLED, what do you do to pass the drugs off to  
18 them?

19 A Sit down with the intake person and I sign  
20 chain of custody over to them and they process it  
21 in the computer and that is what I did here.

22 Q Do you fill out a form where you do that?

23 A The form is already in the Best Kit.

24 Q The form is already in the Best Kit and you  
25 signed that form?

1 A Yes.

2 Q What does that form say?

3 A Chain of custody form.

4 Q Does it describe the items that are in the  
5 bag?

6 A Yes, sir.

7 MR. OZMENT: May I approach the witness, Your  
8 Honor?

9 THE COURT: Yes.

10 Q I'm going to back you up just a minute. I  
11 just handed you a piece of paper. Could you  
12 identify that paper for me?

13 A This is a form, says chain of custody form.

14 Q And what does that, don't read it to me, just  
15 kind of tell me what that paper indicates.

16 A It indicates me dropping the drugs off at the  
17 SLED lab.

18 Q All right. Do you see your signature on  
19 that?

20 A Yes, sir.

21 Q All right.

22 MR. OZMENT: Your Honor, we would move this  
23 form into evidence.

24 THE COURT: Any objection?

25 MR. MEETZE: No, Your Honor.

1 THE COURT: All right, State's Exhibit Number  
2 1 without objection.

3 MR. OZMENT: All right.

4 (Drug delivery formed marked and received  
5 in evidence as State's Exhibit Number 1).

6 BY MR. OZMENT:

7 Q When you send something over to SLED do you  
8 fill out a form that requests that they test it?

9 A The items we have and what we believe the  
10 items are.

11 Q Okay.

12 MR. OZMENT: May I approach the witness?

13 Q Could you identify the two sheets of paper  
14 there, could you identify what that is?

15 A SLED drug analysis request norm.

16 Q What does that, what do you use that form  
17 for?

18 A To submit the drugs to SLED.

19 Q All right. Is there a signature on that  
20 form?

21 A Yes, sir, it is.

22 Q Is that form how you remember it looking when  
23 you submitted the drugs to SLED?

24 A Yes, sir. They added this sticker to it.

25 MR. OZMENT: Your Honor, we would move that

1 form be entered into evidence.

2 THE COURT: Any objection?

3 MR. MEETZE: No, sir.

4 THE COURT: State's Number -- mark it as  
5 Number 2, Mr. Ozment.

6 MR. OZMENT: Yes, sir.

7 THE COURT: State's Number 2 is in evidence  
8 without objection.

9 (Drug analysis request marked and received  
10 in evidence as State's Exhibit Number 2).

11 (Unrecorded bench conference).

12 MR. OZMENT: May I approach the witness, Your  
13 Honor?

14 THE COURT: Sure.

15 BY MR. OZMENT:

16 Q One final piece of paper. Do you see your  
17 signature on that piece of paper?

18 A Yes, sir.

19 Q What seal is at the top of that piece of  
20 paper?

21 A South Carolina Law Enforcement Division,  
22 SLED.

23 Q All right. And what is that piece of paper?

24 A It's a chain of custody.

25 Q All right. So, after you dropped off those

1 items in the Best Pack to SLED did you have a  
2 chance to retrieve those items from SLED?

3 A Yes, sir.

4 Q All right. And that was after they had been  
5 tested?

6 A Yes, sir.

7 Q What did you do with the items at that time?

8 A They were placed into the drug vault at the  
9 Drug Unit.

10 THE COURT: Please go ahead and mark that  
11 form for identification purposes so we can have it  
12 in the record.

13 MR. OZMENT: All right.

14 (Chain of custody form marked as State's  
15 Exhibit 3 for Identification).

16 BY MR. OZMENT:

17 Q When you got the drugs back from SLED did  
18 they look like they look now?

19 A Yes, sir.

20 Q Were they in that plastic sealed, heat sealed  
21 bag?

22 A Yes, sir.

23 Q All right. Where did they go from the vault,  
24 after that?

25 A To court.

1 Q When did that happened?

2 A Today.

3 Q All right.

4 MR. OZMENT: I have no further questions of  
5 this witness, Your Honor.

6 THE COURT: Mr. Meetze.

7 CROSS EXAMINATION BY MR. MEETZE:

8 Q Sergeant Cribb, you just testified that after  
9 going to the IGA, after Grice called, that you and  
10 Officer Grice and Agent Collins all went to Byron  
11 Horne's house?

12 A Yes, I did.

13 Q And it was at some point at that time you had  
14 Byron Horne sign a consent to search form?

15 A Yes, sir.

16 Q And you indicated it wasn't until after that  
17 form was signed that the house was entered?

18 A Yes, sir.

19 Q And Officer Grice went in the front, you went  
20 around to the back, is that correct?

21 A Yes, sir.

22 Q But you were there for all that?

23 A Yes, sir.

24 Q And none of that happened until after the  
25 consent to search form was signed?

1 A Yes, sir.

2 Q Okay.

3 MR. MEETZE: May I approach the witness, Your  
4 Honor?

5 THE COURT: Sure.

6 Q You may still have a copy of that.

7 A Yes.

8 Q Is that the consent to search form?

9 A Yes.

10 Q You have what has previously been marked as  
11 an exhibit or something that was handed to you  
12 during your earlier testimony?

13 A Yes, sir.

14 Q But you already testified in regards to it,  
15 that is the consent to search form?

16 A Yes, sir.

17 Q Now, what time does it indicate that that  
18 form was completed?

19 A It's got 11:00 o'clock on it.

20 Q Sir?

21 A 11:00 a.m.

22 Q Is when it was done?

23 A That is when the actual search occurred.

24 Q And not when it started, correct?

25 A That is when the search occurred.

1 Q Will, is there an indication on the form as  
2 to what time the search started?

3 A Yes, sir. It says time search started 11:00  
4 a.m.

5 Q And it ended 11:50?

6 A Yes, sir.

7 Q Okay. And you all didn't, nobody went into  
8 the house until after this form was completed?

9 A The form was signed but the times wasn't put  
10 in until we actually did the search. We did a  
11 sweep of the residence first.

12 Q Well, I mean, it says time, 11:00 a.m., and a  
13 signature. It says 11:00 a.m. on two different  
14 spots on this form. Is that not correct?

15 A That's the time we did the actual search.

16 Q Okay. Now, you also did an incident report  
17 in this case, correct?

18 A Yes, sir.

19 Q Okay. And that incident report indicates  
20 that, and you got a lot, some of the information  
21 for your report you got from Officer Grice's  
22 report, correct?

23 A Yes, sir.

24 Q Okay. But nonetheless, you did a separate  
25 report in this case?

1 A Yes, sir.

2 Q Okay. And that report, do you have a copy of  
3 that report with you?

4 A Yes, sir.

5 Q That report indicates that Mr. Birch was  
6 arrested after his hand was removed and the  
7 canister fell out and the canister was opened and  
8 they found all that. It was after that that he was  
9 arrested. Correct?

10 A He was eventually arrested.

11 Q I'm asking you after that happened he was  
12 arrested, if we were going to create a time line  
13 and the time line had two points on it, when  
14 Officer Grice found that canister and when Mr.  
15 Birch was arrested in this case, the finding of  
16 that canister would have happened before he was  
17 arrested, correct?

18 A Yes, sir.

19 Q Okay.

20 A Mr. Birch.

21 Q And whenever somebody is arrested there is  
22 paperwork done in regard to that, correct?

23 A Yes, sir.

24 Q And that paperwork would indicate the time  
25 that someone was arrested. Correct?

1 A Yes, sir.

2 Q And this all happened on December the 3rd of  
3 2008. Correct?

4 A Yes, sir.

5 Q Okay.

6 MR. MEETZE: May I approach the witness, Your  
7 Honor?

8 THE COURT: Sure.

9 Q I'm going to hand you a document and ask if  
10 you recognize what that document is?

11 A Yes, sir, I do.

12 Q And what that document is is a booking report  
13 in regard to Darrell Birch's arrest in this case?

14 A Yes, sir.

15 Q And it indicates that he was arrested at  
16 10:20 in the morning?

17 A Yes, sir.

18 Q And as you testified a little bit ago, you  
19 were on the back side of this house when Officer  
20 Grice went inside?

21 A Yes, sir.

22 Q You were stationed there to make sure nobody  
23 left out the back of the house?

24 A Yes, sir.

25 Q And in doing so you did not see what was

1 going on at that time in the house?

2 A No, sir.

3 Q So you weren't a witness to what Officer  
4 Grice testified to earlier in regards to what he  
5 did?

6 A Yes, sir -- no, I'm not.

7 Q You were not there for that and cannot  
8 testify as to what happened in that regard?

9 A No, sir.

10 MR. MEETZE: Okay, I don't have any further  
11 questions.

12 THE COURT: Any redirect?

13 MR. OZMENT: One question, Your Honor.

14 REDIRECT EXAMINATION BY MR. OZMENT:

15 Q The consent to search happened before the  
16 house was searched?

17 A Yes, sir.

18 MR. OZMENT: No further questions, Your  
19 Honor.

20 THE COURT: You may step down.

21 (witness excused).

22 THE COURT: If you would, call your next  
23 witness.

24 MR. OZMENT: Your Honor the State would call  
25 Doug Robinson to the stand.

1 DOUGLAS ROBINSON, after being first duly sworn,  
2 testified as follows:

3 DIRECT EXAMINATION BY MR. OZMENT:

4 Q How are you today, Mr. Robinson?

5 A Doing well.

6 Q Good. Could you state your name and what you  
7 do, for the record?

8 A My name is Douglas Robinson, I'm assigned,  
9 I'm a forensic chemist assigned to the drug  
10 analysis department of the South Carolina Law  
11 Enforcement Division, commonly known as SLED.

12 Q What do you do, what do you actually do at  
13 SLED?

14 A My primary duties is to test submissions of  
15 suspected controlled substances, to identify  
16 compounds, what is in the submissions.

17 Q Do you have to go to school to do that?

18 A Yes, sir. I received my Bachelor of Science  
19 in chemistry from the University of South Carolina.

20 Q All right. Then do you have additional  
21 training after, after going to Carolina, that you  
22 have to go to before you can start testing  
23 suspected drugs?

24 A After graduation I spent approximately three  
25 years doing chemical analyses in the environmental

1 chemistry field. I then was hired at SLED. Upon  
2 coming to SLED I received job specific training in  
3 the analysis of controlled substances as well as  
4 legal training from the South Carolina Criminal  
5 Justice Academy. I have also attended the drug  
6 Enforcement Administration forensic chemist  
7 seminar.

8 Q Do you have any sort of certification or  
9 anything that involves your work as a chemist  
10 testing controlled substances?

11 A I'm certified through SLED to do the  
12 analysis.

13 Q All right. Do they give you a piece of paper  
14 to put on your wall that says that?

15 A I don't have anything that I carry with me.  
16 We go through routine proficiency testing each year  
17 to show that we're still competent in the analysis  
18 of controlled substances.

19 Q Do you go to any continuing education or  
20 classes or anything ongoing to kind of keep up your  
21 skills?

22 A Obviously we're very hands on every day in  
23 doing these analyses. We also, as budget and time  
24 allows we go to various training seminars. We also  
25 have various publications we read on a regular

1 basis to stay informed of current trends.

2 Q How long have you been in your current  
3 position?

4 A Just over three and a half years.

5 Q In that time do you have any idea, ballpark  
6 obviously, how many cases you have worked on?

7 A It's been well over a thousand or more items.

8 Q And when you say items, would those be  
9 suspected controlled substances?

10 A Some are controlled, some are noncontrolled  
11 substances but cases can have single items or  
12 multiple items.

13 Q And have you testified in court before?

14 A Yes, sir.

15 Q Do you remember how many times, in relation  
16 to controlled substances do you know how many times  
17 you have testified in court before?

18 A Yes, sir. Seven.

19 Q In those seven times have you been declared  
20 an expert witness by the courts?

21 A Yes, I have.

22 Q In all seven or --

23 A Correct, yes.

24 MR. OZMENT: At this time, Your Honor, we  
25 move to have Mr. Doug Robinson qualified as an

1 expert in testing of control substances as a SLED  
2 chemist doing that.

3 THE COURT: Any objection?

4 MR. MEETZE: No, Your Honor.

5 THE COURT: All right, he's qualified.

6 BY MR. OZMENT:

7 Q All right, Mr. Robinson, did you have  
8 opportunity to test any controlled substances in  
9 this case?

10 A May I refer to my notes?

11 Q Of course.

12 A Yes, I did.

13 Q Do you recall what those substances --  
14 describe physically what those substances were, not  
15 what your testing revealed but just kind of what  
16 they were?

17 A The main two submissions were a plastic  
18 bottle containing a rock like substance as well as  
19 a plastic Icebreakers container that contained  
20 several different color and imprinted tablets.

21 Q All right. Let's start with the rock like  
22 substance. What did you do when you got the  
23 container of with the rock like substance in it?

24 A Our standard protocol would be to removed the  
25 suspected controlled substance out of any packaging

1 and take a weight of that substance. At that time  
2 we would also do a preliminary and confirmatory  
3 test. The preliminary test in this case was a  
4 chemical spot test that gives a color reaction that  
5 will indicate what type of compound we may be  
6 looking at. We follow that up with a confirmatory  
7 test to identify this compound to the exclusion of  
8 all other compounds.

9 Q All right. So, what was the weight in the  
10 case when you weighed it?

11 A After packaging removed the weight was 6.20  
12 grams, 95.67 grains.

13 Q Okay. And what did the preliminary test  
14 indicate?

15 A The preliminary test gave a result of a blue  
16 color change which is indicative of cocaine or  
17 cocaine base.

18 Q What did the confirmatory test indicate?

19 A Confirmatory was performed by gas  
20 chromatography-mass spectrometry or GCMS for short  
21 and it identified cocaine base or crack cocaine.

22 Q How accurate are these tests? I mean, what  
23 are the chances of an error?

24 A The confirmatory test again gives us an  
25 indication, I'm sorry, the indicative test, the

1 preliminary test does not give us a confirmatory  
2 result. However, the GCMS identifies it to the  
3 exclusion of all other compounds. It is very  
4 similar to fingerprints, if you will, it gives a  
5 very distinct fragment pattern that we can identify  
6 this compound to the exclusion of all others.

7 Q And so in your opinion, based on your test,  
8 what is that white rock like substance?

9 A The item 1.1 in this test, which is a plastic  
10 bottle containing rock like substance had a result  
11 of cocaine base, crack, 6.20 grams, 95.67 grains.

12 Q So you kind of said this but cocaine base,  
13 what is another word for cocaine base?

14 A Crack cocaine.

15 Q Okay. And just so I can understand, when you  
16 have crack, you weighed it 6.2 grams, does crack,  
17 does the weight of crack ever vary kind of based on  
18 when it is weighed or anything like that?

19 A Well, as in almost any compound, whether it  
20 is wet or dry or even to some degree moist that of  
21 course is going to affect the weight. Crack also  
22 by the way it is made can be more porous, can have  
23 more air holes in it or it can be more dense, more  
24 solid, and of course that is going to affect the  
25 weight based on the size and looks.

1 Q Okay. And in your training as a SLED chemist  
2 and the Law Enforcement Academy and all that, do  
3 you have any idea what a user amount of crack  
4 cocaine is?

5 MR. MEETZE: Objection.

6 THE COURT: I need to hear the basis on the  
7 record.

8 MR. MEETZE: Speculation.

9 THE COURT: Sustained.

10 BY MR. OZMENT:

11 Q Explain to me, let's move to the other  
12 controlled -- well, the pills, let's move to the  
13 pills in this case. How were the pills when you  
14 first got them?

15 A Again, that would be item 1.2 in this case  
16 and that was a plastic Icebreakers container  
17 containing several different, an assortment of  
18 colors of tablets.

19 Q All right. Did you test those tablets?

20 A I took a representative sample from each  
21 color and logo that was printed on them.

22 Q All right. Explain to me how that testing  
23 works.

24 A It's the same general process. In a case  
25 like this, the Icebreaker container, like I said,

1 had various colors, these were separated out by  
2 color and then again by varying logos if there were  
3 two different logos of the same color. Once all  
4 these were separated out into the different  
5 representative categories each category was tested  
6 individually so a weight was taken and then  
7 indicative testing and then confirmatory testing  
8 for each grouping of tablets.

9 Q All right. And what did those tests reveal  
10 in this case?

11 A The same type of preliminary test was used, a  
12 color test. This gave a preliminary result, an  
13 indication that there could be methamphetamine  
14 which is commonly called ice. That test shows if  
15 that compound could be present. The samples were  
16 extracted and run on the same instrumentation as  
17 item 1.1, on the GCMS, and the results were as  
18 follows.

19 Item 1.2.1 was a round pink tablet 3,4  
20 methylenedioxy-methamphetamine C and  
21 methamphetamine C2 were found, one tablet.

22 Item 1.2.2, round blue tablets 3,4  
23 methylenedioxy-methamphetamine C1 and  
24 methamphetamine C2 found, four tablets.

25 Round orange tablet 3,4

1 methylenedioxy-methamphetamine C1 and  
2 methamphetamine C2 found, one tablet.

3 Round green tablet 3,4  
4 methylenedioxy-methamphetamine C1 and  
5 methamphetamine C2 found, one tablet.

6 Round green tablet as a separate item 3,4  
7 methylenedioxy-methamphetamine C1 and  
8 methamphetamine C2 found, one tablet.

9 And round orange tablet 3,4.  
10 methylenedioxy-methamphetamine C1 and  
11 methamphetamine C2 found, three whole and one  
12 partial tablets.

13 Q All right. There were a lot of big words in  
14 there. Are all these tablets essentially the same  
15 makeup of compounds?

16 A Once testing was done it confirmed that  
17 although the color and imprint might be different,  
18 all these tablets contained the same mixture of  
19 compounds, yes.

20 Q Now, those long chemical words, what are  
21 those, what is that makeup of chemicals known as?

22 A Well, there is two different compounds,  
23 methamphetamine stands alone, methamphetamine is a  
24 very common controlled substance we see in law  
25 enforcement today. The 3,4

1 methylenedioxy-methamphetamine is the chemical term  
2 for what most people would call ecstasy, so those  
3 two are just synonymous, the 3,4  
4 methylenedioxy-methamphetamine is just a long  
5 chemical name. The common name would be ecstasy.

6 Q How many total of these ecstasy pills did you  
7 test?

8 A One tablet would have been tested from each  
9 section, so representative sample was taken from  
10 every color and every logo within the colors if  
11 there were various logos.

12 Q All right. So how many total tablets were  
13 there that were given to you?

14 A Eleven whole tablets and one partial tablet.

15 Q All right. When you say one sample tablet,  
16 explain to me what exactly that means.

17 A I don't -- I'm not sure I understand the  
18 question.

19 Q You said there were eleven total but you  
20 didn't test all eleven and a half. Explain to me  
21 what you exactly did test.

22 A Okay. Again, once all the tablets were  
23 emptied out of the container they were separated  
24 out first into different colors and then each color  
25 was inspected to see if all of them had the exact

1 same logo. Basically we were trying to see exactly  
2 what the sample indicates. Once we know what the  
3 sample indicates we take a representative sample.  
4 In this case once everything was separated out by  
5 color and then by logo there were six different  
6 groupings. You had a grouping of one tablet, four  
7 tablets, one tablet, one tablet, one tablet and  
8 then three and a partial tablet. So out of this,  
9 six total tablets were tested.

10 Q And everything you tested in regard to the  
11 tablets did turn out to be ecstasy?

12 A Correct, everything tested had the same  
13 mixture of compounds and all the tablets that were  
14 submitted were weighed, so the weight, which is not  
15 reported in this case, this situation, would have  
16 reflected the entire amount but in this case it was  
17 reported out as tablets rather than weight.

18 Q All right. Are you familiar with how these  
19 controlled substances you work with are taken in  
20 and processed by SLED?

21 A I'm familiar with the policy, yes.

22 Q All right.

23 MR. OZMENT: May I approach the witness, Your  
24 Honor?

25 THE COURT: Sure.

1 BY MR. OZMENT:

2 Q I'm handing you a group of papers that were  
3 shown to Sergeant Cribb earlier. Can you identify  
4 what that, those papers are?

5 A The top page is a certified chain of custody,  
6 certified chain of custody from SLED, as well as  
7 page 2, a total of six pages and all of them are  
8 certified chain of custody from SLED.

9 Q All right. And can you look at this and tell  
10 me does your name appear on these pages?

11 A Yes, it does.

12 Q Explain to me what does it show where I see a  
13 name on this paper and title next to it and the  
14 date and time?

15 A This chain of custody starts when evidence is  
16 brought to our evidence control department or our  
17 intake department. The chain of custody generated  
18 at that point follows all evidence throughout the  
19 time that it is at SLED, so anytime it is moved or  
20 transferred from person to person it is  
21 electronically documented in our chain of custody.  
22 My name appears, it is documented when I received  
23 it and also when I relinquished custody back to the  
24 evidence control department.

25 Q All right. And in looking at this can you

1 tell when the drugs were dropped off at SLED?

2 A Yes. According to this document they were  
3 received by our intake department from Sergeant  
4 Cribb of the Marion County Combined Drug Unit on  
5 February 5th, 2009.

6 Q All right. And when drugs come in to SLED  
7 what is the process once SLED receives them from a  
8 law enforcement agency?

9 A Our evidence control department would handle  
10 all intake of evidence. Whoever the submitting  
11 officer would be would work directly with them to  
12 file all the correct paperwork and follow the chain  
13 of custody and get everything logged in. At that  
14 time it is standard protocol for the evidence  
15 control technician that received the evidence to  
16 store it in their secured vault in their  
17 department.

18 Q All right. Who has access to that?

19 A Just the evidence control department.

20 Q That's it?

21 A Supervisors, I'm sure.

22 Q Where does it go from the evidence control  
23 vault?

24 A Once it is secured in that vault it stays in  
25 that vault until I or whoever the forensic chemist

1 is that is assigned that case goes to retrieve the  
2 evidence.

3 Q All right. Did you retrieve the evidence in  
4 this case?

5 A Yes, I did.

6 Q All right. Now, I see the name Niki Perry.  
7 Looking at this, it looks like she had it at one  
8 point between the intake storage and your name.  
9 What would that indicate to you that she did?

10 A Well, again, her name is the first on the  
11 chain and also signifies she was the technician  
12 that received the evidence from Sergeant Cribb on  
13 February 5th and, just following the chain of  
14 custody, on that same day she transferred the  
15 evidence to the vault, it stayed in the vault until  
16 she took custody of it again on February 20, at  
17 which time I enter the chain, I went and received  
18 the evidence on February 20.

19 Q All right. And is that when you tested the  
20 evidence in this case?

21 A February 20 is the date that I went down to  
22 pick up the evidence and take custody of it. At  
23 that time I brought it up to our department and  
24 stored it in our secured vault. The analysis was  
25 actually done on February 23rd.

1 Q All right. And at that time when you got it  
2 to receive, was the evidence, how was it packaged  
3 or how did you receive the evidence?

4 A The evidence was first and foremost packaged  
5 in a large manila envelope. It is part of our Best  
6 Kit, short for Best Evidence Sample Kit. Inside  
7 that is a sealed plastic pouch. This pouch is, has  
8 colors and markings around all the perimeter of it  
9 and when the officers sealed this there is a blue  
10 strip that is removed, it is folded over and at  
11 this point if anyone was to try to tamper with it  
12 or get into it for any reason it would be very  
13 obvious and very evident that the plastic had been  
14 stretched out and had been tampered with. It was  
15 received in that, all the evidence was sealed in  
16 that pouch.

17 Q All right. So all the evidence was in the  
18 Best Kit which is the tamper proof thing?

19 A Correct.

20 Q All right. Did you unseal the Best Pack?

21 A Yes, I did.

22 Q Did it have any evidence that it had been  
23 opened, tampering or anything before you unsealed  
24 it to test the drugs?

25 A No, there was nothing unusual about the

1 package.

2 Q All right. So, at that time you tested it.  
3 Now, when I look at this certified chain of custody  
4 the first one starts with the intake and then leads  
5 down to you and then goes from there, we'll get  
6 into that in a minute. All the other chains appear  
7 to start with you. Could you explain to me why  
8 you're the first name on the other chains?

9 A Yes. The initial chain of custody which on  
10 this document, at the top of page 1 it is item  
11 number one, that is a reference to the Best Kit.  
12 That encompasses all the evidence that was  
13 submitted in that one package. The rest of the  
14 chains of custody, subsequent chains are items 1.1,  
15 1.2 and subsequent items from there. Those were  
16 created when I sub-itemed the evidence after I did  
17 the analysis. These chains of custody actually  
18 start on the day that the report was written  
19 because that is when we electronically sub-item all  
20 of the evidence so that we can report it separately  
21 instead of just as one lump item.

22 Q All right. And so like in this case, for  
23 instance, it all came in as one item but then you  
24 broke it down, is that what you're saying?

25 A Yes. The Best Kit is item one, the two

1 plastic containers were items 1.1 and 1.2. And  
2 then because there were multiple items in that  
3 second, multiple tablets, then you had the 1.2.1,  
4 1.2.2 and so on. It just helps us distinguish what  
5 the evidence was.

6 Q After you tested the drugs what did you do  
7 with all these items?

8 A Once the preliminary spot tests were done and  
9 the weight was taken and the items were sampled for  
10 that GCMS analysis, everything was resealed in a  
11 plastic bag that we refer to as a K Pack, basically  
12 a heat sealed plastic bag that again is not tamper  
13 proof but would be very obvious if it was tampered  
14 with.

15 Q Is that bag laying right there on the front  
16 of the witness stand, is that the K Pack you're  
17 talking about?

18 A Yes. There is actually a few things here.  
19 This outer clear package is what I just referred to  
20 as the K Pack, the heat sealed bag that I added to  
21 the case, if you will, to repackage everything. I  
22 know it is a little hard to see but at the bottom  
23 in green writing are my initials and February 23rd,  
24 '09. That is the date that this heat seal across  
25 the bottom was made to repackage everything in

1 there.

2           Inside of this large plastic bag, it is  
3 folded over but you have your Best Bag and you can  
4 see the green across the top as well as the swirl  
5 marks going across the other three sides. That is  
6 the tamper evidence mark. Those swirls and that  
7 color will distort if there is any attempt to get  
8 into the bag. When my analysis is done I actually  
9 take a scalpel and cut a seam right right across  
10 the bottom which would be very hard to see now but  
11 it is standard practice, right across the bottom.  
12 There is not a tear, it is not a pull, it is a  
13 clean cut across the bottom.

14           And then obviously the other items are the  
15 two plastic containers and the controlled  
16 substances that were also submitted in the case.  
17 All of these controlled substances are in ziplock  
18 bags that I added to the case during the analysis,  
19 for secure storage within the bag and that is also  
20 noted on all the ziplocks, the word bag added just  
21 so I know those were things I added to the case  
22 personally.

23 Q           Looking at that K Pack, is that how you left  
24 it when it left your hands?

25 A           Yes, it is, it is still sealed and the seal,

1 the heat seal I made with my initials is still  
2 intact.

3 Q All right. What happened to the K Pack once  
4 you sealed it, where did it go next?

5 A The analysis was done on February 23rd. At  
6 this time once the K Pack was resealed it would  
7 have gone directly back into our secured vault for  
8 storage until I took it back down to evidence  
9 control, which in this case was on March 20.

10 Q I see the name Amy Stevens there. Who would  
11 she be?

12 A She is another member of the evidence control  
13 department, she's a technician assigned to the  
14 evidence control department.

15 Q All right. And then following her name,  
16 returned to file cabinet and returned to agency,  
17 what does that indicate?

18 A Patricia Truss is also assigned to the  
19 evidence control department. She mainly handles  
20 returning evidence to agencies or assisting  
21 forensic chemists in picking up their evidence.  
22 According to this chain she would be the one that  
23 handled the evidence from the secured vault to the  
24 officer that picked up the evidence.

25 Q All right.

1 MR. OZMENT: Your Honor, at this time the  
2 State would move to make the chain of custody which  
3 I believe has already been marked evidence in this  
4 case.

5 THE COURT: And it is marked as what?

6 MR. OZMENT: It may actually incorrectly be  
7 marked.

8 THE COURT: Marked as Exhibit 3. Any  
9 objection?

10 MR. MEETZE: No objection to the document.

11 THE COURT: States number three into in  
12 evidence without objection.

13 (Chain of custody document marked and  
14 received in evidence as State's Exhibit 3).

15 BY MR. OZMENT:

16 Q Could you identify these two sheets of paper  
17 for me?

18 A This is a copy of the report I issued in this  
19 case.

20 Q You said the report you issued, so that is  
21 the results of the testing in this case?

22 A Correct, this is the report associated with  
23 the results that I just read.

24 Q All right.

25 MR. OZMENT: Your Honor, at this time the

1 State would move for those results to be made  
2 evidence in this case.

3 THE COURT: Any objection?

4 MR. MEETZE: I don't have any objection to  
5 the document.

6 THE COURT: State's Number 4 is in evidence  
7 without objection.

8 (Chemist's report marked and received in  
9 evidence as State's Exhibit Number 4).

10 MR. OZMENT: Finally, Your Honor, the State  
11 would move for the K Bag and its contents to be  
12 made evidence.

13 THE COURT: Any objection?

14 MR. MEETZE: Your Honor, I would object to  
15 that based on the previous motion. I would object  
16 to it also based on the break in the chain with  
17 regard to --

18 THE COURT: Overruled, State's Number 5 in  
19 evidence.

20 (K Bag marked and received in evidence as  
21 State's Exhibit Number 5).

22 MR. OZMENT: I have no further questions of  
23 this witness, Your Honor.

24 CROSS EXAMINATION BY MR. MEETZE:

25 Q You just testified with regard to your role

1 in this case. Your role in this case was to test  
2 substances in this case to determine whether or not  
3 those substances were controlled substances or not.  
4 Correct?

5 A Yes.

6 Q And if they are controlled substances, what  
7 kind of controlled substances they are?

8 A That's correct.

9 Q And that is what you did in the case?

10 A Yes, sir.

11 Q You don't have any independent knowledge of  
12 what happened in this case?

13 A No, sir.

14 Q You don't know anything about Mr. Birch or  
15 the investigation that led to Mr. Birch's arrest?

16 A No, sir.

17 Q You just work for SLED as a chemist and you  
18 do chemical analyses on substances submitted to you  
19 to be tested to determine whether they are  
20 controlled substances or not?

21 A That's correct.

22 Q And that is the extent of your involvement in  
23 this case?

24 A Yes, sir.

25 MR. MEETZE: I don't have any further

1 questions.

2 THE COURT: Redirect?

3 MR. OZMENT: No, Your Honor. I have one more  
4 witness but could we take a short recess?

5 THE COURT: Is this a good time to take a  
6 lunch break?

7 MR. OZMENT: Yes, sir.

8 THE COURT: Do you all want to do one more  
9 witness and then take a lunch break, or take a  
10 break now, it's up to the jury?

11 JUROR: One more witness.

12 THE COURT: All right, let's take a 15 minute  
13 break, that way you can use the restroom. If  
14 anybody needs to smoke just let the bailiff know.  
15 Do not discuss the case at all.

16 MR. OZMENT: I have no further questions for  
17 Mr. Robinson.

18 THE COURT: You may step down.

19 (Witness excused).

20 (The jury was excused from the courtroom).

21 (Recessed at 11:52 a.m.).

22 (Resumed at 12:10 p.m.).

23 THE COURT: Is the State ready to go?

24 MR. OZMENT: Yes, Your Honor.

25 THE COURT: Is the defense ready to go?

1 MR. MEETZE: Yes, Your Honor.

2 THE COURT: All right, bring in the jury.

3 (The jury returned to the courtroom).

4 THE COURT: Solicitor, go ahead and call your  
5 next witness.

6 MR. OZMENT: The State would recall Aurelius  
7 Cribb.

8 THE COURT: All right. You're still under  
9 oath, Mr. Cribb.

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1 AYREKUYS CRIBB, having been previously sworn,  
2 testified as follows:

3 DIRECT EXAMINATION BY MR. OZMENT:

4 Q Welcome back, Mr. Cribb. you stated you had  
5 been how long with the Marion County Combined Drug  
6 Unit?

7 A Since 2001, but two and a half years I had to  
8 go with the National Guard:

9 THE COURT: You have to speak up.

10 A I had a two and a half year break with the  
11 National Guard, then I came back.

12 Q Since 2001 with a two and a half year break?

13 A Yes.

14 Q In the course of your employment with the  
15 Marion County Drug Unit, Marion County Combined  
16 Drug Unit are you involved with buys of crack  
17 cocaine with undercover officers and confidential  
18 informants and things of that activity?

19 A Yes.

20 Q Estimating, how many of those have you been  
21 involved in?

22 A Approximately 900.

23 Q 900?

24 A Cases, yes, sir.

25 Q All right. When you're conducting an

1 undercover buy of cocaine what is the typical  
2 amount of money that is given to someone to buy a  
3 user amount of crack cocaine?  
4 A Between \$20 to \$40.  
5 Q All right. And just, you know, approximately  
6 how much crack cocaine would that buy?  
7 A \$20 will get two-tenths of a gram and \$40  
8 will get you about four-tenths of a gram.  
9 Q All right. And just give me an idea, how  
10 much is two-tenths of a gram?  
11 A About like that.  
12 Q Sort of like a pebble is what you're saying?  
13 A Yes, sir.  
14 Q All right.  
15 MR. OZMENT: Your HONor, may I approach?  
16 THE COURT: Yes.  
17 Q Looking at State's Exhibit 5, the crack is  
18 back in there and behind those pills. Compared to  
19 that little pebble, how much crack is there?  
20 A A lot more than a pebble.  
21 Q All right. And do you recall when Mr.  
22 Robinson was in here he said there were 6.2 grams  
23 of crack in this case, so if you can do math, I  
24 know I can't, how many user amounts would that be?  
25 A It's about \$600 worth of crack.

1 Q About \$600 worth of crack is how much that  
2 was?

3 A Yes, sir.

4 Q Okay. So that is a fair amount of \$20 rocks?

5 A Yes, sir.

6 Q All right.

7 MR. OZMENT: No further questions, Your  
8 Honor.

9 THE COURT: Mr. Meetze?

10 CROSS EXAMINATION BY MR. MEETZE:

11 Q Sergeant Cribb, the case we're here on today,  
12 Mr. Birch is charged with possession with intent to  
13 distribute cocaine base. Correct?

14 A Yes, sir.

15 Q Also possession of ecstasy, correct?

16 A Yes, sir.

17 Q He's not charged in this case with selling  
18 any drugs of any kind?

19 A No, sir.

20 Q And what you're relying on in your testimony  
21 is weight?

22 A Yes, sir.

23 MR. MEETZE: I have no further questions.

24 THE COURT: All right, anything further,  
25 Solicitor?

1 MR. OZMENT: No further questions, Your  
2 Honor.

3 THE COURT: You may step down.  
4 (Witness excused).

5 THE COURT: Do you have any more witnesses?

6 MR. OZMENT: Your Honor, that concludes the  
7 State's case.

8 THE COURT: All right. Members of the jury,  
9 just for a few minutes, if you will step into the  
10 jury room I'm going to take up some matters of law,  
11 we'll try to do a couple more things, then I will  
12 send you to lunch.

13 (The jury was excused from the courtroom).

14 THE COURT: Any motions, Mr. Meetze?

15 MR. MEETZE: Your Honor, at this point in  
16 time we would renew previous objections to  
17 testimony as well as other motions. We also for  
18 purposes of the record make a motion for a directed  
19 verdict and the basis for that would be the  
20 evidence presented would be insufficient to sustain  
21 a guilty verdict on these charges.

22 THE COURT: The motions are denied.

23 Anything from the Solicitor?

24 MR. OZMENT: Nothing from the State, Your  
25 Honor.

1 THE COURT: Why don't we go ahead and bring  
2 the jury back out and I will I ask you to call your  
3 first witness and you can rest and we'll send them  
4 on to lunch.

5 Bring them back out if they are not in the  
6 bathroom.

7 (The jury returned to the courtroom).

8 THE COURT: Any witnesss for the defendant?

9 MR. MEETZE: No, Your Honor, the defense  
10 would rest.

11 THE COURT: All right, members of the jury,  
12 we're going to take a lunch break at this time but  
13 I'm going to instruct you that when you leave this  
14 courthouse do not talk about the case with anybody,  
15 not among yourselves. If you go home or to work or  
16 wherever, somebody is going to ask you what is  
17 going on, you just tell them you can't talk about  
18 it. When it's over with you can but not now.

19 With that being said you are excused until  
20 2:30 and we'll come back and wrap this case up.  
21 Everybody else remain seated while the jury is  
22 excused.

23 (The jury was excused from the courtroom).

24 THE COURT: We have a copy of the charge if  
25 you all want to look at it. Go ahead and pass it

1 out, and a copy of the verdict form. Just look at  
2 it and let us know if we need to change anything  
3 and over the lunch hour we'll do that.

4 (Recessed at 12:25 p.m.).

5 (Resumed at 2:31 p.m.).

6 THE COURT: Is the State ready to proceed?

7 MR. OZMENT: Yes, Your Honor.

8 THE COURT: Mr. Meetze, ready to proceed?

9 MR. MEETZE: Yes, Your Honor.

10 THE COURT: I added that charge you were  
11 looking for, if you want to look at it.

12 MR. MEETZE: Thank you, Your Honor.

13 THE COURT: Did you all look at the verdict  
14 form as well?

15 MR. OZMENT: Yes, sir.

16 THE COURT: Mr. Meetze?

17 MR. MEETZE: Yes, sir.

18 THE COURT: Go ahead and bring in the jury.

19 (The jury returned to the courtroom).

20 THE COURT: All right, ladies and gentlemen  
21 of the jury, we're going to proceed forward with  
22 the closing arguments. I want you to understand  
23 that the closing arguments are not evidence, they  
24 are simply the lawyers' perspective on the case.  
25 We're going to begin with the Solicitor and finish

1 with Mr. Meetze; then I'm going to charge on the  
2 law and after I check and see if everything is done  
3 properly I will tell you to begin your  
4 deliberations but not until that time.

5 Solicitor, you're recognized.

6 MR. OZMENT: Thank you, Your Honor.

7 I want to thank you all not for being here  
8 because you have to be here, but I do want to thank  
9 you, because sitting in this courtroom I have seen  
10 people nodding off to sleep, doing all kind of  
11 stuff, but you have been attentive and I do  
12 appreciate that. Everyone involved in this  
13 appreciates your attentiveness.

14 What I want to briefly do is go through some  
15 facts, go through a few points of law and then kind  
16 of tell you my thoughts on it. The thoughts that I  
17 think have been important in these are it is  
18 basically a simple case, it is alleged crack and  
19 ecstasy. In this case both came off the defendant,  
20 the crack fell out of the pocket, they arrested  
21 him, searched him and then found the Icebreaker  
22 canister.

23 The law enforcement doing their job, they  
24 took it, they put it in the Best Pack, kept up with  
25 it, took it to SLED, Mr. Robinson came up from SLED

1 and told you how SLED takes care to make sure  
2 nobody can tamper with it. They test it, and I  
3 didn't exactly understand everything but from what  
4 I understand they test it two ways and both ways it  
5 came back what they thought it was.

6 From there they still take care of it until  
7 it gets back to Marion County and came to court  
8 today. I don't think there is any question that  
9 the drugs that came off the defendant that day are  
10 the drugs that we see here today and they were  
11 tested to show what they were.

12 The other thing I want to point out is that  
13 he had \$500 on him when this happened. You will  
14 remember that Officer Grice from the Marion Police  
15 Department said when they searched him a little  
16 over \$500, he wasn't sure of the exact dollar  
17 amount but that was on him when they searched him.  
18 I will come back at the end and tell you why I  
19 think that is important also.

20 The other kind of factual evidence I want  
21 you to think about is what we developed with  
22 Sergeant Cribb, and that is related to the amount  
23 of the drugs. I'm also going to come back to that  
24 in a minute. But think about how many drugs it was  
25 in the case, over \$600 worth. You will see it when

1 it goes back in the jury room, it almost looks like  
2 a small rice cake of crack. You remember he said  
3 the user amount is like a small pebble. This  
4 wasn't a small pebble, this was an amount that, you  
5 know, a dealer for crack would have, not a user.  
6 I'm going to come back to that at the end.

7 As far as the law in this case, the State has  
8 the burden in every criminal case to prove the  
9 defendant guilty beyond a reasonable doubt, you  
10 have heard that phrase. Mr. Meetze talked about  
11 that phrase some in his opening, beyond a  
12 reasonable doubt, and the judge is going to charge  
13 you on the law.

14 The judge tells you the law but I'm telling  
15 you just my opinion, it is not evidence, it's not  
16 the law, but beyond reasonable doubt doesn't mean  
17 beyond any feasible doubt, does not mean beyond all  
18 doubt at all, it is any doubt that is reasonable.  
19 It can't be anything that makes you say, "I don't  
20 know, that seems questionable." It would have to  
21 be, we have to prove to you that, you know, it's  
22 reasonable, this couldn't have happened any other  
23 way, that these are not his drugs or whatever. And  
24 in this case we have met that burden, these  
25 substances are what we said they are, ecstasy and

1 crack, he had them, they came off him. That is  
2 simple, that is my opinion on it.

3 That is one thing the judge is going to  
4 charge you on the law, as I said, but this is what  
5 he is going to tell you, that the State must prove  
6 beyond a reasonable doubt that the defendant  
7 intended to distribute the cocaine base.  
8 Distribute means deliver or otherwise administer,  
9 dispense the drugs. That's the possession with  
10 intent to distribute. We're not saying he  
11 distributed it but we have to prove that he  
12 intended to, so what can you look at to see if he  
13 intended to distribute it? Intent may be shown by  
14 acts and conduct of the defendant and other  
15 circumstances from which you may naturally and  
16 reasonably infer intent. What I'm asking you to do  
17 in this case is reasonably infer.

18 I went to the pharmacy for lunch, I didn't  
19 buy anything other than my lunch. If I went to the  
20 pharmacy to get a greeting card, they don't have  
21 one greeting card, they have a rack of greeting  
22 cards, if I had a headache and wanted to get  
23 Tylenol, they don't have one bottle of Tylenol for  
24 sale, they have a bunch of different bottles of  
25 Tylenol, different sizes, if I bought one bottle of

1 Tylenol and I had gone to the cash register, taken  
2 out, whatever Tylenol is, \$9.00, \$10.00, give them  
3 a twenty, they would give me change. Well, in this  
4 case I would say the defendant is, like that  
5 pharmacy; I can walk in that pharmacy, I don't have  
6 to see them sell something to know that everything  
7 in that pharmacy is for sale, they are intending to  
8 sell everything in that pharmacy to anybody who  
9 will buy it. The same thing. When he was in that  
10 house he had not just a little, you know, little  
11 amount of crack for him to use that night, not just  
12 a little bit. Remember, he had over six grams.  
13 Sergeant Cribb said .2 is the user amount. That is  
14 over thirty doses or amounts, user amounts of that  
15 crack. Man, that will last you a long time, over  
16 thirty.

17 Then he had \$500 in his pocket. You know, I  
18 don't walk around with \$500 in my pocket, lots of  
19 people might, my grandfather never had a checkbook,  
20 still doesn't have a credit card, he might be  
21 walking around with \$500 in his pocket.

22 But that's the cash register, that is what I  
23 say. You know, if I want a \$20 crack, he cuts it  
24 off that rice cake or whatever you want to call it  
25 of crack and then he can make change for me, if all

1 I have is a fifty he can make change. That was the  
2 cash register and the crack was the, you know, the  
3 Tylenol, greeting card, whatever you say, it was a  
4 business like anything else.

5 You know, drug dealers are interested in  
6 making money, they are not in it to provide a  
7 service to the community, they are not in it for  
8 anything else but to make money. It's a business.

9 One other thing with regard to his intent to  
10 sell. The judge is going tell you this, too.

11 Possession of more, one or more grams of cocaine  
12 base creates an inference that the defendant  
13 possessed the cocaine base with intent to  
14 distribute it. That inference doesn't mean that I  
15 still don't have to prove it, because I do have to  
16 prove it, that's my burden, but that does mean  
17 there is an inference.

18 The State, the Legislature said if you buy  
19 drugs more than a gram we can infer they are going  
20 to deal. That is more than usually you would have.  
21 So I would argue in this case he had not, he didn't  
22 have barely over a gram, he didn't have two grams,  
23 he didn't have three grams, it is over six grams,  
24 over six times what the law says you can infer  
25 someone is intending to distribute cocaine, cocaine

1 base in this case.

2 Now, it is for you to decide whether I have,  
3 the State, I have met my burden that he intended to  
4 distribute the crack that fell out of his pocket  
5 that day in that black tube. I think I have met  
6 that burden. This wasn't for him to use that  
7 night, it wasn't for just personal use, he was a  
8 drug dealer making money off, you know, people who  
9 were addicted to crack. That is what it is.

10 Secondly, there was the ecstasy. He just had  
11 thirteen pills, we're not saying he was trying to  
12 distribute that, a small amount. What we're saying  
13 on that, he had it on him, that is all I'm saying.  
14 If you find he had the ecstasy on him and he had the  
15 crack on him and if you find the State met its  
16 burden that he intended to distribute it I ask you  
17 to find him guilty on both counts. If you find  
18 that he had the crack on him and he had the ecstasy  
19 on him and he wasn't going to distribute it there  
20 is an option for that, too.

21 You will see on the verdict form, the first  
22 question is did he possess, was he in possession to  
23 distribute cocaine base? There is a second option.  
24 Did he just possess it with no intent to distribute  
25 it? I would ask that, you know, you all will have

1 a chance to talk about this, I ask you to use your  
2 common sense. I believe in this case we have  
3 carried our burden beyond a reasonable doubt that  
4 he possessed the crack and he intended to  
5 distribute the crack. We also met our burden he  
6 possessed the ecstasy.

7 It was brief, it was a short trial, I  
8 appreciate all your attention and I hope to see you  
9 again but it will be at least three years from now,  
10 you all have an exemption from jury duty for the  
11 next three years.

12 Thank you, have a good day.

13 THE COURT: Mr. Meetze.

14 MR. MEETZE: If it please the Court.

15 I have talked to you earlier, I talked a lot  
16 about reasonable doubt. Whether you knew then or  
17 not, you probably know now that is a key thing in  
18 this case. The Solicitor talked about it now and  
19 you will hear more about it because that is one of  
20 the most important actions of our law, and that is  
21 the burden of proof the State has in a criminal  
22 case, proof beyond a reasonable doubt. And the  
23 judge, as you hear, is going to charge you on the  
24 law and part of his charge on the law is going to  
25 be in regard to what beyond a reasonable doubt

1 means. Whatever the judge charges in that regard  
2 is the law you follow in this case but I will tell  
3 you that proof beyond a reasonable doubt, you can  
4 find reasonable doubt from all kind of things. You  
5 can find it from the evidence that was presented to  
6 you and you can find it from the evidence that  
7 wasn't presented to you. All that goes into  
8 determining whether or not the State met its burden  
9 of proof to you beyond a reasonable doubt whether  
10 someone is guilty or not guilty.

11 In this case you can find also reasonable  
12 doubt from confusion and I submit to you there was  
13 a lot of confusion in this case with regard to what  
14 happened and when it happened and how it happened  
15 and different things like that. And all of that  
16 can create a reasonable doubt when you have facts  
17 that create confusion.

18 In this case you have got confusion about  
19 whether or not his hand was in his pocket or his  
20 pants pocket or his jacket pocket, you've got  
21 confusion about when the law enforcement officers  
22 even entered the house. They didn't preserve that  
23 well enough in their incident report, they didn't  
24 document when they did what. Mr. Birch was  
25 arrested 10:20 in the morning but the testimony is

1 they didn't search the house, he wasn't arrested  
2 until after they entered the house, the testimony  
3 is they didn't enter the house until after the  
4 consent to search form was done. The consent to  
5 search form indicates it was done at 11:00. Not  
6 consistent. When you've got inconsistencies you've  
7 got confusion. When you've got confusion you've  
8 got reasonable doubt and if that is enough  
9 reasonable doubt in your mind then it will be your  
10 duty to find Darrell Birch not guilty in this case.

11 Now, the Solicitor also indicated that when  
12 you receive the verdict form there will also be,  
13 you will have several different options. Mr. Birch  
14 is charged with two offenses, possession with  
15 intent to distribute cocaine base or crack cocaine,  
16 and possession of ecstasy.

17 There will also be a lesser included offense  
18 on the verdict form which will be if you do not  
19 believe the State has met their burden of proving  
20 Mr. Birch guilty beyond a reasonable doubt of  
21 possession with intent to distribute cocaine base  
22 there will be a second option for a lesser included  
23 offense of simple possession of cocaine base.

24 The only evidence in this case that Mr. Birch  
25 had any intent to distribute anything is the

1 weight. Agent Cribb said as much on the stand.  
2 The weight came back at 6.2 and you can see the  
3 pills. It is hard to maneuver this around to be  
4 able to see everything there is but it is in here  
5 and they can get up and they can talk about how  
6 much it is and, you know, that is not an  
7 astronomical amount of stuff but there it is, you  
8 can see for yourself how much it is and it is not  
9 that much.

10 When I go to the drugstore to buy Tylenol I  
11 buy Tylenol in a package that comes in thirty or  
12 so, sometimes more, I'm not going to take all  
13 thirty at one time, I will take one or two hoping  
14 my headache will go away, may take one or may not.  
15 That is not anything, you know, it is not an  
16 alarming amount, not alarming that he had that  
17 amount in his possession.

18 There is nothing else in this case that would  
19 indicate that he had an intent to distribute  
20 anything. He had, if you believe the testimony, he  
21 had the stuff in his pocket, he had an amount of  
22 money in his pocket. We don't know, we were told  
23 through the testimony that the normal drug  
24 transaction is a drug transaction that would be for  
25 two-tenths of a gram or .2, which would cost \$20.

1           There is no evidence as to what denomination  
2 the bills were in, there is no evidence of what the  
3 bills were in, no evidence of at that at all. All  
4 I heard was \$500. Was it a bunch of twenties? I  
5 don't know, that is not before you. That is not  
6 evidence. So we don't know. The State hasn't met  
7 their burden in that regard. Would that be good  
8 evidence, is that something you might like to know  
9 in determining this case? Probably so but it is  
10 not in front of you because they didn't present it  
11 and when they don't present that kind of evidence  
12 that is denying you the opportunity, that is giving  
13 you an opportunity to find reasonable doubt in this  
14 case. I would submit to you that if they would do  
15 that and if you found out he had a whole bunch of  
16 twenties in his pocket that would be some evidence  
17 that would indicate maybe he intended to  
18 distribute. It's not here.

19           Also as Mr. Ozment indicated, the amount,  
20 there is a level in the law when it comes to this  
21 kind of charge, possession with intent to  
22 distribute, that is more than one gram, anybody  
23 found in possession of one gram or more of cocaine  
24 base there can be an inference that that individual  
25 had an intent to distribute but that inference is

1 just that. It doesn't mean if they have this much  
2 you have to find them guilty of this charge. It  
3 just means that, coupled with the other evidence,  
4 from that you can infer that there was intent to  
5 distribute.

6 And the amount of money, I will also submit  
7 to you there is any number of reasons why Mr. Birch  
8 would have had that money on him. You know, I grew  
9 up in a home, my father worked at a bank all my  
10 life, so I always grew up with a bank account and  
11 most of my friends did as I grew up. When I got  
12 into high school I started working during the  
13 summer, worked on golf courses and different things  
14 like that and I got to know and meet people and  
15 become friends with folks from a different  
16 background from me. When you start learning, you  
17 grow up thinking everybody does things the way you  
18 do, it is sort of natural. But as you grow up and  
19 you have life experiences and you meet new people  
20 from different backgrounds from you, you realize,  
21 you know, everybody isn't the same, people do  
22 things different. It is not wrong, it is just  
23 different, and there is plenty of people out there  
24 for whatever reason don't have bank accounts, don't  
25 trust them or for whatever, any other reason and

1 they carry money on them. It is not unusual and it  
2 happens all the time.

3 The fact he had that much money should not  
4 raise any kind of question in your mind in that  
5 regard because we just don't know anything else  
6 about it other than saying he had it. And again it  
7 is not unusual for somebody to not have a bank  
8 account and carry their money. Is that a lot of  
9 money? It depends on the circumstances. If that  
10 is everything he has got to his name it is not very  
11 much money at all. And how do we know any  
12 different from that? We don't. The evidence is  
13 what it is and in this case the evidence of intent  
14 to distribute I submit to you is just not there.  
15 At best this case is a possession only case.

16 We ask that you find him not guilty of  
17 anything but if you do find him guilty of anything  
18 possession only would be the appropriate verdict  
19 and I will also say the law doesn't say somebody is  
20 in possession of under an entrance level has to be  
21 charged with possession with intent, you can have  
22 somebody charged with possession with intent to  
23 distribute even if they have under the entrance  
24 level if you take all the other factors into  
25 evidence.

1           A lot of times I have people who were found  
2 with a certain amount of drugs on them that was  
3 packaged in individual little packets, you might  
4 have it with twelve separate little baggies  
5 packaged and that can be considered packaged for  
6 sale and that can be evidence of intent to  
7 distribute, along with money, along with scales and  
8 things like that, scales used to weigh drugs, a  
9 bunch of plastic baggies in the house without  
10 anything in them but, again, evidence of drug trade  
11 happening in that particular location but none of  
12 that is present here, none of that is present here  
13 and if the \$500 alone wasn't enough to charge him  
14 with possession with intent to distribute it, but  
15 they didn't do that, they just charged possession.  
16 It's just another indication that the money is not  
17 nearly as significant as they would want you to  
18 believe.

19           Again, we would ask that you find him not  
20 guilty of anything but the absolute worst you have  
21 here as far as a verdict is concerned is I would  
22 submit is guilty of possession and possession only  
23 and if you do find him guilty of anything we would  
24 ask that you only find him guilty of possession.

25           Thank you.

1 THE COURT: All right, members of the jury it  
2 is now my duty as the trial judge to instruct you  
3 on the law applicable to this case and in that  
4 regard it is your duty as jurors to accept and  
5 apply the law as I now state it to you.  
6 Furthermore, it is your exclusive duty to decide  
7 all the issues of fact in this case and to  
8 determine the effect, value, weight and truth of  
9 the evidence. Both the State of South Carolina and  
10 the defendant have the right to expect that you  
11 will carefully consider and evaluate and apply the  
12 law in this case to it so that in the end both the  
13 State of South Carolina and this defendant will  
14 have received a fair and impartial trial.

15 Furthermore I want you to understand that  
16 when I use the word defendant I refer to Mr.  
17 Darrell Lee Birch. Also it is important to  
18 understand that the State of South Carolina charges  
19 the defendant with the offenses known as possession  
20 with intent to distribute cocaine base and  
21 possession of ecstasy. To these charges the  
22 defendant has entered a plea of not guilty. This  
23 plea of not guilty places the burden of proof on  
24 the State of South Carolina to prove the guilt of  
25 the defendant to you beyond a reasonable doubt.

1           It is vital to understand that a defendant is  
2 presumed under the law of this state to be innocent  
3 of these charges. It is a fundamental rule of our  
4 law that a defendant, regardless of the seriousness  
5 of the charges against him, is always presumed  
6 innocent of the crime for which he is charged  
7 unless and until his guilt has been proved by  
8 evidence that satisfies you beyond a reasonable  
9 doubt.

10           The presumption of innocence is not a mere  
11 legal theory or legal phrase. The presumption of  
12 innocence is very important and you need to  
13 understand that this presumption accompanies the  
14 defendant from the time of his arrest and  
15 appearance in this Court, and continues with the  
16 defendant even after you retire to the jury room.  
17 In other words, a defendant receives the benefit of  
18 the presumption of innocence until the very end of  
19 this trial when you will deliberate upon the  
20 evidence and decide whether the State has proved  
21 his guilt beyond a reasonable doubt.

22           Proof beyond a reasonable doubt is proof that  
23 leaves you firmly convinced of the defendant's  
24 guilt. There are few things in this world that we  
25 know with absolute certainty so even in criminal

1 cases the law does not require proof that overcomes  
2 every possible doubt. However, if based upon your  
3 consideration of the evidence you are firmly  
4 convinced that a defendant is guilty of the crime  
5 charged you must find him guilty. If on the other  
6 hand you think there is a real possibility that he  
7 is not guilty you must give him the benefit of the  
8 doubt and find him not guilty.

9 Please understand that reasonable doubt may  
10 arise from evidence which has been presented in the  
11 case or from the lack of evidence in the case. It  
12 is your responsibility to determine whether or not  
13 reasonable doubt exists as to the guilt of this  
14 defendant. I charge you that a defendant is  
15 entitled to every reasonable doubt arising in the  
16 whole case. If upon any issue of fact essential to  
17 conviction and a verdict of guilty you have a  
18 reasonable doubt as to how that issue should be  
19 resolved it would be your duty to resolve that  
20 reasonable doubt in favor of the defendant.

21 Thus, in summary, it is important to  
22 understand that a defendant is not required to  
23 prove his innocence. Instead, the State is  
24 required by law to prove each and every essential  
25 element of the offense charged against the

1 defendant by evidence which satisfies you of his  
2 guilt beyond a reasonable doubt. Only then can you  
3 convict the defendant and find him guilty.

4 Furthermore, evidence may be either direct or  
5 circumstantial. Direct evidence is testimony by a  
6 witness about what the witness personally saw or  
7 heard or did. Circumstantial evidence is indirect  
8 evidence. In other words, it is proof of one or  
9 more fact from which one can find another fact.  
10 You may consider both direct and circumstantial  
11 evidence equally.

12 During this trial you and I have separate  
13 duties to perform. As the judge it is my  
14 responsibility to preside over this trial.  
15 Furthermore, I have the duty to rule upon the  
16 admissibility of the evidence offered during the  
17 trial. In that regard you are to consider only the  
18 evidence before you. Thus, you are to consider  
19 only the testimony which has been presented from  
20 this witness stand, together with any exhibits  
21 admitted into the record of this case.

22 Also I have the additional duty to charge you  
23 on the applicable law to this case and in that  
24 regard it is your duty to accept and apply the law  
25 as I now state it to you. If you have any

1 preconceived ideas as to what the law is or what  
2 the law ought to be and it does not agree with what  
3 I tell you the law is, then you are obligated under  
4 your oath to abandon these preconceptions and  
5 accept the law as I now state it to you.

6           In this trial you are the sole and exclusive  
7 judge of the facts and I am the judge of the law.  
8 Do not infer that I have any opinion about the  
9 facts in this case from anything I have said during  
10 the course of this trial. In that regard, the law  
11 simply does not permit me to have an opinion about  
12 the facts. As jurors it is your duty alone to  
13 determine the effect, value, weight and truth of  
14 the evidence presented during the course of this  
15 trial.

16           Furthermore, it is your job as jurors to  
17 determine the credibility or believability of the  
18 witnesses who have testified in this case. In  
19 determining the believability of witnesses who have  
20 testified in this trial you may believe one witness  
21 over many or many over one, you may believe a part  
22 of the testimony of a witness and reject the  
23 remaining part, you may believe the testimony of a  
24 witness in its entirety or reject it in full, you  
25 may consider whether the witness has an interest in

1 the result of the trial, whether the witness is  
2 prejudiced toward either party, the opportunity for  
3 the witness to have seen the matters and things  
4 about which the witness may testify and the way the  
5 witness acts on the witness stand.

6 Under the laws of this state a defendant may  
7 be tried even if the defendant does not attend the  
8 trial but the fact that the defendant is not  
9 present may not be considered against the defendant  
10 in any manner whatsoever by you. I further  
11 instruct you that the fact the defendant in this  
12 trial did not testify on his own behalf is not a  
13 factor to be considered by you in any way in your  
14 deliberations and in your consideration on the  
15 question of guilt or innocence. In this regard a  
16 defendant has the constitutional right to remain  
17 silent and the exercise of this right must not be  
18 considered by you in your deliberations. The fact  
19 that the defendant did not testify should not even  
20 be discussed in the jury room.

21 The burden of proof, as I have stated to you,  
22 is on the State. The defendant has no obligation  
23 to prove his innocence. The burden of proof  
24 remains with the State to prove the defendant's  
25 guilt beyond a reasonable doubt and the fact a

1 defendant did not testify is not a factor to be  
2 considered by you in deciding the guilt or the  
3 innocence of the defendant. When you consider the  
4 whole case, if you have a reasonable doubt as to  
5 the guilt or the innocence of the defendant, then  
6 he is entitled to that reasonable doubt and would  
7 be entitled to a verdict of not guilty.

8           However, if upon considering the whole case  
9 you find that the State has proved by evidence  
10 which satisfies you of the guilt of the defendant  
11 beyond a reasonable doubt, then in such  
12 circumstance it would equally be your duty to  
13 convict the defendant and find him guilty.

14           Furthermore, the rules of evidence ordinarily  
15 do not permit witnesses to testify regarding  
16 opinions or conclusions. An exception to this rule  
17 exists for witnesses we call expert witnesses. A  
18 witness who by education and experience has become  
19 an expert in some art, science or profession may  
20 give an opinion as to the subject the witness  
21 claims to be an expert in and may also give the  
22 reasons for the opinion. You should consider an  
23 expert opinion given by a witness and like any  
24 other evidence give it the weight you think it  
25 deserves. If you decide that an expert witness'

1 opinion is not based on sufficient evidence,  
2 education and experience or if you decide that the  
3 reasons given in support of the opinion are not  
4 sound or that the opinion is outweighed by other  
5 evidence you may disregard the opinion entirely.  
6 An expert witness' testimony is to be given no  
7 greater weight than that of any other witness  
8 simply because the witness is an expert and you do  
9 not have to accept an expert's opinion even though  
10 it is uncontradicted.

11 In exercising your mental processes and  
12 attempting to decide the truth the law simply  
13 requires that you exercise your good judgment, your  
14 common sense, your sense of logic and reason and  
15 your experiences of life. You then apply all these  
16 attributes to the evidence and apply the law as I  
17 now state it to you and thus arrive at a verdict.

18 The defendant in this case is charged with  
19 possession with intent to distribute cocaine base.  
20 The State must prove beyond a reasonable doubt that  
21 a defendant possessed cocaine base with the intent  
22 to distribute it. To prove possession the State  
23 must prove beyond a reasonable doubt that a  
24 defendant had both the power and the intent to  
25 control the disposition or use of the cocaine base.

1 Possession may be either actual or constructive.

2 Actual possession means that the cocaine base  
3 was in the actual physical custody of the  
4 defendant. Constructive possession means that the  
5 defendant had dominion and control or the right to  
6 exercise dominion or control over either the  
7 cocaine base itself or the property on which the  
8 cocaine base was found.

9 Mere presence at the scene where the drugs  
10 were found is not enough to prove possession.  
11 Actual knowledge of the presence of the cocaine  
12 base is strong evidence of the defendant's intent  
13 to control it's deposition or use. The defendant's  
14 knowledge and possession may be inferred when a  
15 substance is found on a property under the  
16 defendant's control. However, this inference is  
17 simply an evidentiary fact to be taken into  
18 consideration by you along with the other evidence  
19 in the case and to be given the weight you think it  
20 should have. Two or more persons may have joint  
21 possession of a drug.

22 The State must also prove beyond a reasonable  
23 doubt that the defendant intended to distribute the  
24 cocaine base. Distribute means to deliver other  
25 than by administering or dispensing a drug. Intent

1 may be shown by acts and conduct of the defendant  
2 and other circumstances from which you may  
3 naturally or reasonably infer intent.

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

15 Possession of more than one or more grams of  
16 cocaine base creates an inference that the  
17 defendant possessed the cocaine base with the  
18 intent to distribute it. This inference does not  
19 relieve the State from proving beyond a reasonable  
20 doubt that the defendant had the intent to  
21 distribute it. It is simply an evidentiary fact to  
22 be taken into consideration by you along with the  
23 other evidence in the case and to be given the  
24 weight you think it should have.

25 If you find that the State has failed to

1 prove beyond a reasonable doubt that the defendant  
2 is guilty of possession with intent to distribute  
3 cocaine base you may consider whether the State has  
4 proved beyond a reasonable doubt that the defendant  
5 is guilty of simple possession of cocaine base.  
6 Simple possession does not require an intent to  
7 distribute the cocaine base.

8 The defendant is also charged with possession  
9 of ecstasy. The State must prove beyond a  
10 reasonable doubt that the defendant knowingly or  
11 intentionally possessed ecstasy. Knowingly means  
12 with knowledge, consciously, not accidentally.  
13 Intentionally means willfully, intending the result  
14 which actually occurs, not accidentally or  
15 involuntarily. Intent may be shown by acts and  
16 conduct of the defendant and other circumstances  
17 from which you may naturally and reasonably infer  
18 intent.

19 To prove possession the State must prove  
20 beyond a reasonable doubt that the defendant had  
21 the power and the intent to control the disposition  
22 or use of the ecstasy. Possession may be either  
23 actual or constructive. Actual possession means  
24 that the ecstasy was in the actual physical custody  
25 of the defendant. Constructive possession means

1 that the defendant had dominion and control or the  
2 right to exercise dominion or control over the  
3 ecstasy itself or the property on which the ecstasy  
4 was found.

5       Mere presence at the scene where the drugs  
6 were found is not enough to prove possession.  
7 Actual knowledge of the presence of the ecstasy is  
8 strong evidence of the defendant's intent to  
9 control its disposition or use. The defendant's  
10 knowledge and possession may be inferred when a  
11 substance is found on a property under the  
12 defendant's control. However, this inference is  
13 simply an evidentiary fact to be taken into  
14 consideration by you along with the other evidence  
15 in the case and to be given the weight you think it  
16 deserves.

17       Two or more persons may have joint possession  
18 of a drug. Possession of ecstasy is a crime unless  
19 the ecstasy was obtained directly from or through a  
20 valid prescription or order of a practitioner acting  
21 in the course of professional practice. A  
22 practitioner is a physician, dentist, veterinarian,  
23 podiatrist, scientific investigator, pharmacy,  
24 hospital or other person or institution licensed,  
25 registered or otherwise permitted to distribute,

1 dispense, conduct research with respect to or  
2 administer a controlled substance in the course of  
3 professional practice or research in this state.

4 Ladies and gentlemen, I'm now drawing near  
5 the end of my charge and I want you to clearly  
6 understand you are not partisans or advocates for  
7 the State or this defendant. You do not serve as  
8 jurors to reward your friends or punish your  
9 enemies. In this regard you have been selected by  
10 both the State and this defendant to be fair and  
11 impartial jurors. It is your duty by your joint  
12 deliberations to determine the truth in this case,  
13 giving to this defendant the benefit of every  
14 reasonable doubt on each and every issue. Then to  
15 the facts which you determine to be true you should  
16 take and apply the law which has been given to you  
17 by this Court and thus arrive at a verdict which  
18 speaks the truth in this case. In fact the word  
19 verdict, which has a Latin derivative, means a true  
20 saying. When you have accomplished this  
21 responsibility you will have satisfied your oath as  
22 jurors and you will have discharged your duty to  
23 this Court.

24 Mr. Bailiff, would you hand the foreman this  
25 verdict form, please, sir.

1           Now, Mr. Foreman, I have handed you the  
2 verdict form. When you arrive at a verdict in this  
3 case you will write your verdict on the verdict  
4 form for the charges. If the State has failed to  
5 prove the guilt of this defendant beyond a  
6 reasonable doubt your verdict of course will be two  
7 words, not guilty. However, should the State have  
8 proved their case against the defendant beyond a  
9 reasonable doubt then your verdict would be one  
10 word, guilty.

11           Mr. Foreman, once a decision has been made  
12 check whichever choice is your verdict. Also  
13 please understand that the verdict that you render  
14 in this case must be the verdict of each and every  
15 juror, it must be your unanimous verdict, all  
16 twelve jurors must agree on the verdict which you  
17 as the foreman are to write for the jury.

18           Mr. Foreman and members of the jury I want  
19 you to further understand that the order in which  
20 the choices of verdict appear on the verdict form  
21 are not suggestive of any verdict on the part of  
22 this Court. The verdict in this case is to be  
23 determined by you and not the Court. Furthermore,  
24 ladies and gentlemen, please understand that even  
25 though I have given the verdict form to the

1 foreman, it is not his verdict alone. It is the  
2 verdict of all twelve of you and I emphasize again  
3 it must be unanimous.

4 In a moment you will retire to the jury room.  
5 However, I would ask that you do not begin your  
6 deliberations until you are told to do so. The law  
7 requires that I now consult with the attorneys  
8 about this charge. After I have done so the  
9 bailiff will bring in the items of evidence and  
10 instruct you to begin your deliberations.

11 Also, should you have any questions during  
12 your deliberations you must put them in writing and  
13 send them to me by the bailiff. A court bailiff  
14 will be placed immediately outside the jury room  
15 door to provide security and assistance for you  
16 during your deliberations. Once you have reached  
17 your verdict please knock on the jury room door and  
18 ask the bailiff to advise the Court that you have  
19 reached a verdict and we will return you to the  
20 courtroom as promptly as possible.

21 Thank you and you may retire to the jury room  
22 but, again, do not begin your deliberations until  
23 you have been advised to do so.

24 All right.

25 (The jury was excused from the courtroom at

1 3:10 p.m.).

2 THE COURT: All right, did I mess it up,  
3 Solicitor?

4 MR. OZMENT: No problem from the State, Your  
5 Honor.

6 THE COURT: Any objection from the State?

7 MR. OZMENT: No.

8 THE COURT: How about you, Mr. Meetze?

9 MR. MEETZE: None, Your Honor.

10 THE COURT: Do you all want to take a look, I  
11 think there are five items in evidence, and see if  
12 they are in order?

13 All right, Solicitor, is everything proper?

14 MR. OZMENT: It looks fine to me.

15 THE COURT: How about you, Mr. Meetze?

16 MR. MEETZE: It all looks in order.

17 THE COURT: All right, Mr. Bailiff, if you  
18 will send everything back, bring the alternate out  
19 and tell them to begin.

20 (The evidence and verdictor form were  
21 delivered to the jury at 3:11 p.m.).

22 (Alternate juror excused).

23 THE COURT: Let's take a little break.

24 (Recessed at 3:12 p.m.).

25 (Resumed at 4:35 p.m.).

1 THE COURT: You can bring in the jury.

2 (The jury returned to the courtroom).

3 THE COURT: Mr. Foreman, have you reached a  
4 verdict?

5 JUROR: Yes, sir.

6 THE COURT: If you will, hand the verdict  
7 form to the bailiff.

8 Madam Clerk, publish the verdict.

9 THE CLERK: Indictment 2009-GS-33-106, State  
10 of South Carolina, County of Marion versus Darrell  
11 Lee Birch, defendant. As to the charge of  
12 possession with intent to distribute cocaine base  
13 we the jury unanimously find the defendant Darrell  
14 Lee Birch guilty.

15 As to the charge of possession of ecstasy we  
16 the jury unanimously find the defendant Darrell Lee  
17 Birch guilty.

18 Dated 11/30/2011, Marvin K. Fielder,  
19 foreperson.

20 Is that your verdict, say you all?

21 JURORS: Yes.

22 THE CLERK: Thank you.

23 THE COURT: Any need for further polling, Mr.  
24 Meetze?

25 MR. MEETZE: No, Your Honor.

1 THE COURT: Members of the jury I want to  
2 thank you for doing your job. You have completed  
3 your job, you have been on time, you have been  
4 attentive, you have done what you're supposed to  
5 do. You have earned a three year exemption from  
6 further jury service and we're going to excuse you  
7 for today. You will need to call back after 6:00  
8 just to see if by chance there is anything further  
9 we need to do this week. I want you to understand  
10 later on maybe this week or next week you're going  
11 to get a check from Marion County.

12 JUROR: Wow.

13 THE COURT: You're saying that now.. Wait  
14 until you see it. I want you to be assured that I  
15 did not set the amount of money that is on your  
16 check but I thank all of you all and you're  
17 excused. If everybody else would remain seated,  
18 the jury is excused.

19 (The jury was excused from the courtroom).

20 THE COURT: Any motions from the defense?

21 MR. MEETZE: Your Honor, at this point I  
22 renew all my previous motions and make a motion for  
23 new trial based on the evidence not being  
24 sufficient to sustain a verdict..

25 THE COURT: Thank you very much. I deny

1 those motions.

2 MR. MEETZE: Thank you, Your Honor.

3 (Hearing concluded at 4:45 p.m.).

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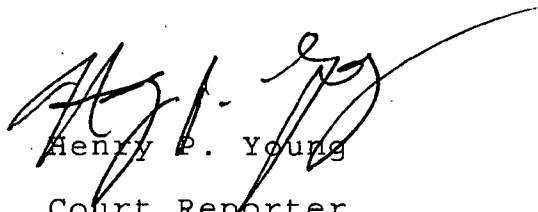
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4 I, the undersigned Henry P. Young, Official  
5 Court Reporter for the Eighth Judicial Circuit of  
6 the State of South Carolina, do hereby certify that  
7 the foregoing is a true, accurate, and complete  
8 transcript of record of all the proceedings had and  
9 evidence introduced in the trial of the captioned  
10 case in the Circuit Court for Marion County, South  
11 Carolina, on the 28th, 29th and 30th days of  
12 November, 2011.

13 I do further certify that I am neither of kin,  
14 counsel, nor interest to any party hereto.

15 December 17, 2012

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18  
19   
20 Henry P. Young  
21 Court Reporter  
22  
23  
24  
25

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE	)	2009-GS-33-0106
	)	
	)	
	)	
State of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Darrell Lee Birch	)	)
<u>DEFENDANT</u>	)	October 17, 2012
	)	Florence, South Carolina

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE.

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

JOHN JEPERTINGER, DEPUTY SOLICITOR  
Attorney for the State

VICK MEETZE, ASSISTANT PUBLIC DEFENDER  
Attorney for the Defendant

KESHIA REED  
Official Court Reporter

I N D E X

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(WHEREUPON, there were no witnesses called.)

1 MR. JEPERTINGER: If it please the Court, Your  
2 Honor, on November 30th 2011, Mr. Darrell Lee Birch was  
3 found guilty at trial in Marion County on indictment  
4 number 2009-GS-33-106. Your Honor, you were the trial  
5 judge. Mr. Meetze was the defense attorney. And the  
6 defendant is here present today, Your Honor. We are in  
7 Florence County. The defendant did execute a waiver of  
8 venues and so did Mr. Meetze with today's appropriate  
9 dates, Your Honor. And we're ready to receive the Court's  
10 reading of the sentence. And I believe the clerk of court  
11 for Marion is present, Your Honor.

12 THE COURT: In reference to indictment, case  
13 number 09-33-106, Darrell Lee Birch, the sentence of the  
14 Court is that the defendant is committed to the state  
15 department of corrections for a term of 30 days. And in  
16 reference to 09-GS-33-106, the defendant is committed to  
17 the state department of corrections for a term of one year  
18 and those both will run consecutive.

19 MR. JEPERTINGER: Was it 30 days, Your Honor?

20 THE COURT: Thirty years, I'm sorry, big  
21 difference and one year and they are consecutive.

22 MR. MEETZE: Your Honor, at this time we would  
23 make a motion and I believe is the first we ask to be  
24 heard as well. We would ask the Court to reconsider that  
25 sentence. And I think Mr. Birch again wish to address the

1 Court with regards to that.

2 THE COURT: All right, Mr. Birch.

3 THE DEFENDANT: I would like for the sentence to  
4 be postponed and the conviction overturn due to the fact  
5 that I was deprived of my right to be present at important  
6 stages of my trial. I was deprived of my right to  
7 represent myself. I was deprived of my right of adequate  
8 assistance by counselor. I was deprived of my right under  
9 the Fifth Amendment of a fair and fundamental trial. I  
10 was deprived of my rights of a preliminary hearing within  
11 the due process of fundamental fairness at trial within  
12 the Fourteenth Amendment also. And I was deprived of my  
13 right to my retain lawyer being present at the time. I  
14 was deprived of a continuance rights to present due  
15 diligent evidence that I tried to present to the Court  
16 that I had a retained lawyer. And I would ask for the  
17 conviction to be overturned and the sentence set aside  
18 after that, Your Honor.

19 THE COURT: All right, those motions are denied.

20 MR. MEETZE: Your Honor, lastly with regards to  
21 the trial, we would make a motion at this time for a new  
22 trial pursuant to the evidence submitted not being  
23 sufficient to support the verdict.

24 THE COURT: Thank you very much the motion is  
25 denied.

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MR. JEPERTINGER: Thank you so much.

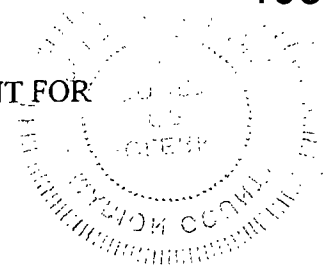




## INDICTMENT FOR

STATE OF SOUTH CAROLINA )  
 COUNTY OF MARION )

UNLAWFUL DRUGS



At a Court of General Sessions, convened on MAY 14, 2009, the Grand Jurors of MARION

County present upon their oath:

✓ **COUNT ONE - POSSESSION OF COCAINE BASE WITH INTENT TO DISTRIBUTE 2ND**

That DARRELL LEE BIRCH did in MARION County on or about December 03, 2008, violate Section 44-53-0375(B)(2) of the Code of Laws of South Carolina (1976), as amended, in that he did knowingly and intentionally possess with intent to distribute a quantity of cocaine base, a controlled substance; such possession not having been authorized by law.

**COUNT TWO - DISTRIBUTION OF COCAINE BASE, 2ND**

That DARRELL LEE BIRCH did in MARION County on or about November 24, 2008, violate Section 44-53-0375(B)(2) of the Code of Laws of South Carolina (1976), as amended, in that he did distribute to a confidential informant of the Marion County Combined Drug Unit, a quantity of cocaine base, a controlled substance; such distribution not having been authorized by law.

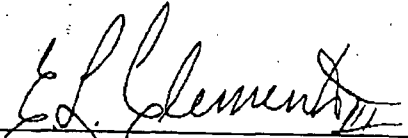
✓ **COUNT THREE - POSSESSION OF ECSTASY 2ND**

That DARRELL LEE BIRCH did in MARION County on or about December 03, 2008, violate Section 44-53-0370(d)(2) of the Code of Laws of South Carolina (1976), as amended, in that he did knowingly and intentionally possess a quantity of methylenedioxymethamphetamine, a.k.a. ecstasy, a controlled substance; such possession not having been authorized by law.

**COUNT FOUR - DISTRIBUTION OF COCAINE BASE  
 WITHIN PROXIMITY OF A SCHOOL OR PARK**

That DARRELL LEE BIRCH did in MARION County on or about November 24, 2008, violate Section 44-53-445(B)(2) of the Code of Laws of South Carolina (1976), as amended, in that he did distribute to a confidential informant of the Marion County Combined Drug Unit, a quantity of cocaine base, a controlled substance; such distribution having occurred within one-half mile of a school or park, to-wit: Johnakin Middle School.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
 \_\_\_\_\_  
 SOLICITOR

194  
 STATE OF SOUTH CAROLINA )  
 COUNTY OF Marion )  
 STATE VS. )  
 DARRELL LEE BIRCH )  
 AKA: )  
 Race: 2 Sex: Age: 26 )  
 DOB: SS#: )  
 Address: )  
 City, State, Zip: FLORENCE, SC 29506 )  
 DL#: SID#: )

IN THE COURT OF GENERAL SESSIONS  
 INDICTMENT/CASE#: 65-33  
09-106  
 A/W#: J965846  
 Date of Offense: 12/3/2008  
 S.C. Code § : 44-53-0375(B)(2)  
 CDR Code #: 3015

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
 In disposition of the said indictment comes now the Defendant who was  
 TO: Drugs / Manufacture, distribution, etc. cocaine base, 2nd offense  CONVICTED OF or  PLEADS

in violation of § 44-53-0375(B)(2) of the S.C. Code of Laws, bearing CDR Code # 3015  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17-25-45 w/minor 1st or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: [Signature] SC Bar# 80072 Defendant [Signature] Attorney for Defendant 15971 SC Bar#  
 Reporting Officer: John C. Bennett

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 30 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
 of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.  
 CONCURRENT or  CONSECUTIVE to sentence on: today  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:  
 RESTITUTION:  Deferred  Def. Waives Hearing  Ordered  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
 Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_  
 PTUP \_\_\_\_\_ days/hours Public Service Employment  
 Obtain GED   
 Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
 May serve W/E beginning \_\_\_\_\_  
 Substance Abuse Counseling   
 Random Drug/Alcohol testing   
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
 \$ \_\_\_\_\_ paid to Public Defender Fund  
 Other: \_\_\_\_\_  
 BOOK \_\_\_\_\_ PAGE \_\_\_\_\_

Recipient: _____	*Fine: _____	\$ _____
§ 14-1-206 (Assessments 107.5 %)		\$ _____
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ _____
§ 56-5-2995 (DUI Assessment)	\$12	\$ _____
§ 56-1-286 (DUI Breath Test)	\$25	\$ _____
Proviso 47.9 (Public Def/Prob)	\$500	\$ _____
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§ 50-21-114(BUI Breath Test Fee)	\$50	\$ _____
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
Proviso 90.5 (SCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ _____
TOTAL		\$ <u>123.90</u>

A CERTIFIED COPY OF THIS ORIGINAL FILED IN THIS OFFICE  
 Other: \_\_\_\_\_  
 BOOK \_\_\_\_\_ PAGE \_\_\_\_\_  
[Signature]  
 CLERK OF COURT, MARION COUNTY  
 Appointed PD or appointed on \_\_\_\_\_  
 § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: [Signature]  
 Court Reporter: [Signature]  
 Presiding Judge: [Signature]  
 Judge Code: 2157  
 Sentence Date: 11-30-2011

STATE OF SOUTH CAROLINA )
COUNTY OF Marion )
STATE VS. )
DARRELL LEE BIRCH )
AKA: )
Race: 2 Sex: Age: 26 )
DOB: SS#: )
Address: )
City, State, Zip: FLORENCE, SC 29506 )
DL#: SID#: )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: GS-33 09-106
A/W#: J965847
Date of Offense: 12/3/2008
S.C. Code § : 44-53-0370(d)(2)
CDR Code #: 0180

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Drugs / Poss. of other controlled sub. in Sched. I to V - 2nd or sub. offense

CONVICTED OF or PLEADS

in violation of § 44-53-0370(d)(2) of the S.C. Code of Laws, bearing CDR Code # 0180
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Reporter, John C. Ozmert Matthew SC Bar# 80072 Defendant
Lock Motu 15871 Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 1 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment
of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: today
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS
Obtain GED
Attend Voc. Rehab. or Job Corp.

Recipient:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments), TOTAL \$133.90

May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender
Other: BOOK PAGE

CERTIFIED COPY OF THE ORIGINAL FILED IN THIS OFFICE

Sherry R. Rhodes
CLERK OF COURT, MARION COUNTY SOUTH CAROLINA

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

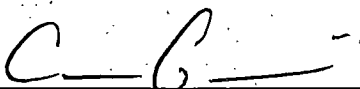
Clerk of Court/ Deputy Clerk Sherry R. Rhodes
Court Reporter: Kerlia Reed

Presiding Judge Judge Code: Sentence Date: 11-30-2011

## 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."

February 20th, 2014



Carmen V. Ganjehsani  
Appellate Defender

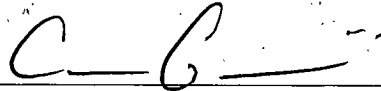
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

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February 20th, 2014



Carmen V. Ganjehsani  
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

RECEIVED

Appeal from Marion County

FEB 20 2014

William H. Seals, Jr., Circuit Court Judge

Court of Appeals

THE STATE,

RESPONDENT,

V.

DARRELL LEE BIRCH,

APPELLANT

APPELLATE CASE NO. 2012-213215

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon William M. Blicht, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of February, 2014.

*Brandon Hall*

Brandon Hall  
Administrative Specialist

SUBSCRIBED AND SWORN TO before me  
this 20th day of February, 2014.

*Walter J. Jurek* (L.S.)

Notary Public for South Carolina  
My Commission Expires: July 3, 2023.