

VOL. I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

S.C. Supreme Court

DONOVAN MURRAY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001267

APPENDIX

CARMEN V. GANJEHSANI
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ASHLEIGH R WILSON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
DOCKET NO. 2008-GS-10-2285 to
2289

STATE OF SOUTH CAROLINA,

TRANSCRIPT OF PROCEEDINGS

VS.

(Volume I., 1 - 207)

Charleston, South Carolina
July 7, 2008

DONOVAN TERRELL MURRAY,

Defendant.

BEFORE:

THE HONORABLE DEADRA L. JEFFERSON, Judge.

APPEARANCES:

PETER M. McCOY, JR., ESQ.
CULVER KIDD, ESQ.
ASSISTANT SOLICITORS
ATTORNEYS FOR THE STATE

DANIEL PRENNER, ESQ.
ATTORNEY FOR THE DEFENDANT

HEATHER GAYLE BURNS, RDR
OFFICIAL COURT REPORTER
9TH JUDICIAL CIRCUIT

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1 (The Judge enters the
2 courtroom at 2:30 p.m.)

3 THE COURT: Is the
4 State ready to proceed?

5 MR. MC COY: Yes, your
6 Honor.

7 THE COURT: Is the
8 defense ready to proceed?

9 MR. PRENNER: Yes, your
10 Honor.

11 THE COURT: You have
12 something to present?

13 MR. PRENNER: Yes, your
14 Honor.

15 THE COURT: Okay. And
16 we are -- are there going to
17 be any pretrial motions?

18 MR. PRENNER: Yes, your
19 Honor, there are.

20 THE COURT: Does the
21 defense have any witnesses?
22 Do we have copies of them?

23 MR. PRENNER: Your
24 Honor, may I approach?

25 THE COURT: Yes, sir.

1 (The jury panel
2 enters the courtroom at 3:27
3 p.m.)

4 THE COURT: Are there
5 any cell phones? Please turn
6 them off because if they go
7 off the deputies will
8 confiscate them and they will
9 not be returned to you.

10 Good afternoon,
11 ladies and gentlemen. I hope
12 that you all had a restful
13 lunch. We'll now proceed with
14 jury selection in the case of
15 the State of South Carolina
16 versus Donovan Terrell Murray.

17 Does the defendant
18 wish to have a formal
19 arraignment?

20 MR. PRENNER: Yes, your
21 Honor.

22 THE CLERK: The case
23 number is 2008-GS-10-2286,
24 indictment for possession with
25 intent to distribute cocaine

1 within proximity of a school.
2 At the Court of General
3 Sessions convened on March
4 third, 2008, the grand jurors
5 of Charleston County present
6 upon their oath that in
7 Charleston County, South
8 Carolina on or about December
9 twelfth, 2007 the defendant,
10 Donovan Terrell Murray, while
11 at Road
12 unlawfully did distribute,
13 sell, purchase, manufacture,
14 or possess with intent to
15 distribute cocaine, a
16 controlled substance, within
17 one-half mile radius of the
18 grounds of the E. C. P. I.
19 Technical College, all in
20 violation of section
21 24-53-445, Code of Laws, State
22 of South Carolina as amended.
23 Is your name Donovan
24 Terrell Murray?

25 DEFENDANT: Yes, sir.

1 THE CLERK: What do you
2 say, guilty or not -- guilty
3 or not guilty?

4 DEFENDANT: I plead not
5 guilty.

6 THE CLERK: Case number
7 2008-GS-10-2285, the State
8 versus Donovan Terrell Murray,
9 indictment for possession with
10 intent to distribute cocaine,
11 At the Court of General
12 Sessions convened on March the
13 third, 2008, the grand jurors
14 of Charleston County present
15 upon their oath that in
16 Charleston County, South
17 Carolina on or about December
18 twelfth, 2007 the defendant,
19 Donovan Terrell Murray,
20 unlawfully did possess with
21 intent to distribute,
22 dispense, or deliver a
23 quantity of cocaine, a
24 controlled substance under
25 provisions of section

1 44-53-110, code of laws of
2 South Carolina, 1976 as
3 amended, or did otherwise aid,
4 abet, attempt, or conspire to
5 manufacture, distribute,
6 dispense, or deliver cocaine
7 all in violation of Section
8 44-53-370, Code of Laws of
9 South Carolina 1976 as
10 amended.

11 How do you plead?
12 Guilty or not guilty?

13 DEFENDANT: I plead not
14 guilty.

15 THE CLERK: Case number
16 2008-GS-10-2289, the State of
17 South Carolina versus Donovan
18 Terrell Murray, indictment for
19 possession of a firearm during
20 the commission of a violent
21 crime.

22 At a Court of General
23 Sessions convened on March
24 third, 2008, the grand jurors
25 of Charleston County present

1 upon their oath that in
2 Charleston County, South
3 Carolina on or about December
4 twelfth, 2007 the defendant,
5 Donovan Terrell Murray, did
6 possess a handgun or visibly
7 display what appeared to be a
8 handgun during the commission
9 or attempted commission of
10 trafficking in cocaine base, a
11 violent crime. This is in
12 violation of statute 16-23-490
13 of the South Carolina Code of
14 Laws 176 as amended.

15 How do you plead?

16 Guilty or not guilty?

17 DEFENDANT: I plead not
18 guilty, sir.

19 THE CLERK: Case number
20 2008 GS-10-2288, the State of
21 South versus Donovan Terrell
22 Murray, indictment for
23 possession with intent to
24 distribute cocaine base within
25 proximity of a school.

22 How do you plead?

23 Guilty or not guilty?

24 How do you plead?

25 Guilty or not guilty?

1 DEFENDANT: I plead not
2 guilty, sir.

3 THE CLERK: Case number
4 2008-GS-10-2287, the State of
5 South Carolina versus Donovan
6 Terrell Murray, indictment for
7 trafficking cocaine base.

8 At a Court of General
9 Sessions convened on March
10 third, 2008, the grand jurors
11 of Charleston County present
12 upon their oath that in
13 Charleston County, South
14 Carolina on or about December
15 twelfth, 2007 the defendant,
16 Donovan Terrell Murray,
17 knowingly did sell,
18 manufacture, deliver,
19 purchase, or bring into this
20 state or to provide financial
21 assistance or otherwise aid,
22 abet, attempt, or conspire to
23 sell, manufacture, deliver,
24 purchase, or bring into this
25 state, or did possess or

1 attempt to possess a
2 controlled substance, or a
3 controlled substance analog,
4 to wit: Cocaine base in
5 excess of ten grams in
6 violation of 44-53-375 of the
7 State Carolina Code of Laws,
8 1976 as amended.

9 How do you plead?
10 Guilty or not guilty?

11 DEFENDANT: Not guilty.

12 THE CLERK: How will
13 you be tried?

14 DEFENDANT: By God and
15 my country, sir.

16 THE CLERK: And they
17 send you a true deliverance.
18 Are you ready for trial?

19 DEFENDANT: Yes, sir.

20 THE COURT: Ladies and
21 gentlemen, we're going to
22 select a jury for the case of
23 the State of South Carolina
24 versus Donovan Terrell Murray.
25 Before we begin with the

1 process of voir dire, which is
2 just a very, a complicated way
3 of saying that the Court is
4 going to ask you certain
5 questions in order to assist
6 the attorneys to more
7 effectively exercise their
8 peremptory challenges, and I
9 would ask counsel for the
10 State to introduce themselves
11 and who will be assisting them
12 in the trial of this case and
13 publish the names of the
14 attorneys in their office also
15 and then I would ask that the
16 attorney for the defendant to
17 introduce himself as well as
18 anyone who will be assisting
19 him, anyone in his office as
20 well as anyone additional who
21 will be assisting him.

22 You may proceed, Mr.
23 McCoy.

24 MR. McCOY: Thank you,
25 your Honor.

1 THE COURT: You're
2 welcome.

3 MR. MC COY: May it
4 please the Court. My name is
5 Peter McCoy. I'm an assistant
6 solicitor here in Charleston
7 County and trying this case
8 with me is Culver Kidd. He's
9 also an assistant solicitor
10 here in Charleston County.
11 We've a law clerk as well
12 helping us, Miss Shannon
13 Elliott.

14 THE COURT: And the
15 names of the members of your
16 office.

17 MR. McCOY: We'll see.
18 Starting with the solicitor,
19 we have Scarlett Wilson and we
20 have assistant solicitor Bruce
21 Durant. Trip Lawton. Let's
22 see. Trip Riesen. Rutledge
23 Durant. Bianchi. Kim Steele.
24 Mike Dewaay. Stephanie
25 Bianco. Chad Simpson. Greg

1 Voigt. Nathan Williams.
2 Michael Nelson. Chris Neely.
3 Kevin Hales. Jennifer Shealy.
4 Burns Wetmore. Amy Harrell.
5 Julie Cardillo. Dale Savage.
6 Tyler Schachte. Elizabeth
7 Gordon. Jim Stack. And
8 Debbie Herring Lash. And
9 Brian Byrd. Thank you.

10 THE COURT: Mr.
11 Prenner.

12 MR. PRENNER: Good
13 afternoon, ladies and
14 gentlemen. My name is Danny
15 Prenner. I practice here in
16 Charleston by myself. This is
17 Donovan Terrell Murray who is
18 my client. Also present at
19 the counsel table is John Mark
20 Shiplette (phonetic). He was
21 a night student at the
22 Charleston School of Law and
23 works in my office.

24 THE COURT: Ladies and
25 gentlemen, as I indicated

11 If a question applies
12 to you I would ask that you
13 stand and in a loud and clear
14 voice give us your name as
15 well as your juror number and
16 remain standing until the
17 Court has completed its
18 questioning.

24 (There is no
25 response.)

1 Does anyone have a
2 close personal or social
3 relationship with Donovan
4 Terrell Murray? If so, please
5 stand at this time.

6 (There is no
7 response.)

8 Following are a list
9 of potential witness in this
10 case. I would ask that you
11 listen very carefully.

12 Officer Patricia
13 Jourdan. Lieutenant William
14 Johnson. Office Cobb. Alex
15 Teachey. All of the North
16 Charleston Police Department.
17 Jill Clark of South Carolina
18 Law Enforcement Division.
19 Officer Al Hallman of the
20 North Charleston Police
21 Department. Edward Ickes.
22 And Investigator Sherry
23 Niblock.

24 Is there any member
25 of the panel related by blood

1 or marriage to any of the
2 people that I've just listed
3 or does anyone have a close
4 personal or social or social
5 relationship with any of these
6 individuals? If so, please
7 stand at this time.

8 Yes, sir. If you
9 would please stand for me at
10 this time.

11 JUROR: You mean like a
12 friend?

13 THE COURT: I mean if
14 you have any association.
15 Juror two forty-seven. My
16 best friend works for North
17 Charleston.

18 THE COURT: Well, would
19 any of these particular
20 witnesses is the question I
21 that I asked.

22 JUROR: Well, no. It
23 shouldn't be.

24 THE COURT: Okay. I'm
25 sorry. I didn't hear you.

1 JUROR: Shouldn't be.

2 THE COURT: Well, then
3 my question is, sir, are you
4 related by blood or marriage
5 to or have a close personal or
6 social relationship with
7 anyone of the individuals I
8 listed.

9 JUROR: No.

10 THE COURT: Okay. Than
11 you. You may resume your
12 seat.

13 Is there any -- has
14 any member of the panel ever
15 been represented by any of the
16 attorneys involved in this
17 case or anyone with whom they
18 practice law? If so, please
19 stand at this time. Is there
20 any member of the panel
21 related blood or marriage to
22 or have a close personal or
23 social relationship with any
24 of the attorneys involved in
25 this case or anyone with whom

1 they practice law. If so,
2 please stand at this time.

3 Yes, sir. Your juror
4 number, please.

5 JUROR: my name is
6 Claron Robertson, juror number
7 one ninety-one. Julie
8 Cardillo is, her husband Rob
9 Cardillo works in my law firm.

10 THE COURT: As a result
11 of this experience do you feel
12 that you could remain fair and
13 impartial and render a fair
14 and impartial decision in this
15 case based solely on the
16 evidence as it will be
17 presented and on the law that
18 the Court will instruct?

19 JUROR: Yes, ma'am.

20 THE COURT: Thank you,
21 sir. You may take your seat.

22 Has any member of the
23 panel formed or expressed an
24 opinion about any issue or
25 matter involved in this case?

1 If so, please stand at this
2 time.

3 (There is no
4 response.)

5 Is there any member
6 of the panel aware of any bias
7 or prejudice towards either
8 the State or the defendant in
9 this case? If so, please
10 stand.

11 Yes, sir.

12 JUROR: I'm Jake
13 Wilson, juror number two
14 sixty-one. If it please the
15 Court I think I perhaps should
16 approach the bench to mention
17 anything.

18 THE COURT: Sir, you
19 may approach.

20 JUROR: thank you.

21 (Whereupon, there was
22 a bench conference.)

23 THE COURT: Yes, sir?

24 JUROR: I'm presently
25 suing the North Charleston

1 Police Department and I've
2 lost track of how many times
3 I've sued tje North Charleston
4 Police Department.

5 THE COURT: Okay. As a
6 result this experience do you
7 feel you can remain fair and
8 impartial and render a fair
9 and impartial decision based
10 solely on the evidence as it
11 will be presented and on the
12 law the Court will instruct?

13 JUROR: The reason why I
14 came up, not knowing more of
15 the facts I'd like to say I'd
16 be able to but I have deep
17 suspicions about lots of
18 tactics of the North
19 Charleston Police Department.

20 THE COURT: So you're
21 telling me you cannot be fair
22 and impartial?

23 JUROR: I wanted to
24 give that -- be candid with
25 the Court and let counsel

1 know. I'd like to say I could
2 be fair and candid but I
3 thought I should bring that
4 the Court's attention.

5 THE COURT: I need a
6 yes or no answer. There's no
7 right or wrong. Just whether
8 you can.

9 JUROR: Okay. I think
10 I could be fair.

11 THE COURT: Okay. Is
12 that a yes?

13 JUROR: Yes.

14 THE COURT: Okay.
15 Thank you, Mr. Wilson. I
16 appreciate your candor.

17 JUROR: Thank you.

18 (Whereupon, Mr.
19 Wilson returns to the
20 audience.)

21 THE COURT: Is there
22 any member of the panel that
23 was a member of the grand jury
24 which issued the indictments
25 in this case? If so, please

1 stand at this time.

2 (There is no
3 response.)

4 Is there any member
5 of the panel who is a member
6 of or contributor to any group
7 which has as its primary
8 concern the promotion of law
9 enforcement or victims rights?
10 These groups would include but
11 certainly are not limited to
12 Mothers Against Drunk Driving,
13 Students Against Drunk
14 Driving, Citizens against
15 Violent Crime, People Against
16 Rape, or Citizens Advocating a
17 Return to Decency and Ethics?
18 If so, please stand at this
19 time.

20 (There is no
21 response.)

22 Is there any member
23 of the panel who is employed
24 by a law enforcement agency?
25 If so, please stand at this

1 time.

2 (There is no
3 response.)

4 Is there any member
5 of the panel who has a family
6 member or close friend who is
7 employed by a law enforcement
8 agency? If so, please stand
9 at this time.

10 Yes, ma'am. And,
11 sir, that would apply to you
12 also, in the striped shirt,
13 that stood up before.

14 Yes, ma'am?

15 JUROR: My husband is a
16 South Carolina State Trooper.

17 THE COURT: If you
18 would tell me your name and
19 your juror number.

20 JUROR: Number one oh
21 four. My name is Cheryl Hair.

22 THE COURT: And yes,
23 sir. Oh, I'm sorry. I'll go
24 back. Yes.

25 JUROR: Yes. Juror

1 number two sixty-nine. Police
2 chief Ronald Pauls and I are
3 good friends. We grew up
4 together.

5 THE COURT: Police
6 chief?

7 JUROR: of Isle of
8 Palms, South Carolina.

9 THE COURT: Okay.

10 JUROR: And also Mount
11 Pleasant chief. We all went
12 to school together.

13 THE COURT: Okay. If
14 you'd remain standing.

15 Yes, sir?

16 JUROR: My name is
17 Albert Quick, juror number one
18 eighty-two. My cousin is
19 Lieutenant Melvin Cumbee,
20 North Charleston Police
21 Department.

22 THE COURT: And yes,
23 ma'am.

24 JUROR: Juror one
25 seventy, Noelle Orr. My

1 brother was a former D. E. A.
2 officer.

3 THE COURT: You said
4 one eighty?

5 JUROR: One seventy.
6 I'm sorry.

7 THE COURT: One
8 seventy. I'm sorry.

9 Yes, sir?

10 JUROR: Juror number
11 two forty-seven, Robert
12 Wright. My friend was a
13 member of the North Charleston
14 Police Department, Weed and
15 Seed..

16 THE COURT: I'm sorry.
17 You said your friend was a
18 member of the North Charleston
19 Police Department.

20 JUROR: Yes.

21 THE COURT: I can't
22 hear you, sir.

23 JUROR: Yes. I said
24 weed and seed department.

25 THE COURT: Weed and

1 will be sequestered by
2 agreement with the exception
3 of the case agent.

4 There's a motion in
5 limine to determine the
6 admissibility of a prior drug
7 conviction of Edward Ickes. I
8 would imagine there's no
9 exception to that from the
10 State. Well, actually, you
11 know, prior drug offenses, the
12 State, Supreme Court has said
13 that's not probative of
14 truthfulness.

15 MR. PRENNER: Well, I
16 do have one case on that. I
17 said earlier, Judge, that I
18 wouldn't but I do. May I pass
19 up State versus Mazzell.

20 THE COURT: Just me the
21 caption.

22 MR. PRENNER: Judge, it
23 is 349 S. C. 326 and the South
24 Eastern cite is 563
25 Southeastern 2nd 315.

1 trying exert ownership or
2 control over this room and
3 therefore the drugs in the
4 room and I'd like to be able
5 to ask the witness about that.

6 THE COURT: Is that the
7 last name you provided?

8 MR. KIDD: Yes, ma'am.

9 THE COURT: Ickes?

10 MR. KIDD: Ickes.

11 THE COURT: Okay. And
12 for benefit of the court
13 reporter that's I-c-k-e-s.
14 There's a motion for
15 sequestration. Is there any
16 exception to that request from
17 the State?

18 MR. KIDD: No, your
19 Honor.

20 THE COURT: From the
21 defense? I assume none
22 because it's your motion.

23 MR. PRENNER: Yes.
24 That's correct.

25 THE COURT: Witnesses

1 which Ickes would much use in
2 testifying about.

3 MR. PRENNER: But that
4 would -- well, I agree with
5 that, Judge, but it would
6 require probably a Jackson
7 versus Denno hearing but I
8 have not submitted any written
9 formal motion on the Jackson
10 versus Denno, but I think what
11 I did submit was a motion to
12 try to preclude reference to
13 the pills and if the Court
14 precludes reference to the
15 pills in the statement I would
16 assume it stays out, too. But
17 notwithstanding the pills we
18 have this other issue of him
19 jailhouse lawyering is
20 probably a pretty good
21 description of it saying,
22 allegedly saying but you don't
23 have to let them in the door
24 and it tends to show very
25 important, you know, him

1 opened the door and the
2 officers entered the room the
3 defendant was making
4 statements to the extent of
5 don't let them in here, they
6 need a search warrant, don't
7 cooperate with them. You
8 know, basically kind of
9 jail-house lawyering as far
10 as, you know, the officers
11 need a warrant. You don't
12 have to give them anything.
13 Don't cooperate with them.
14 Don't say anything. Don't let
15 them in here. Statements of
16 that sort.

17 And in additionally
18 also, your Honor, the
19 defendant made the statement
20 as to possession, a number of,
21 just a couple of prescription
22 pills found on the defendant,
23 so credit for the ownership of
24 those pills to Officer Cobb,
25 but that's not a statement

1 testify to the exact same
2 statements and --

3 THE COURT: They were
4 made in the presence of the
5 officers and, and the
6 co-defendant?

7 MR. McCOY: Yes. Yes,
8 your Honor. In our opinion
9 Mr. Ickes doesn't offer any
10 additional insight with his
11 statements.

12 MR. PRENNER: But I
13 certainly would like to
14 ask him.

15 THE COURT: What are
16 the substance of the
17 statements?

18 MR. PRENNER: Essent-
19 ially that he doesn't need
20 to -- well, I'll let you
21 answer.

22 MR. McCOY: Your Honor,
23 the basic, basis of the
24 statement is that when the
25 officers -- when Mr. Ickes

1 (Whereupon, the Judge
2 enters the courtroom at 4:56
3 p.m.)

4 THE COURT: Are there
5 any motions?

6 MR. KIDD: Matters we
7 need to deal with?

8 MR. PRENNER: I was
9 informed today that there are
10 statements -- and I'm not
11 saying that, that the
12 solicitor waited. It's just
13 happened. That's just the way
14 it came up. But the
15 statements that my client
16 supposedly made to, to Ickes
17 and to police officers --

18 THE COURT: Do you all
19 intend to use any of them?

20 MR. KIDD: Yes, ma'am.

21 THE COURT: Are they
22 written or oral?

23 MR. KIDD: They're oral
24 statements. But, your Honor,
25 we have officers who can

1 We appreciate your
2 patience. I hope you all have
3 a great evening and we'll see
4 you at ten in the morning, and
5 if you would go with your
6 caretaker.

7 (Whereupon, the jury
8 leaves the courtroom at 3:43
9 p.m.)

10 (Whereupon, a recess
11 is called at 3:44p.m.)

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1 witnesses and the other
2 evidence that will be
3 introduced. So I would also
4 ask that you abide by those
5 instructions very strictly and
6 that you also, when you return
7 to the courthouse, would have
8 no interaction with anyone in
9 or about the courthouse. Even
10 an innocent conversation could
11 be observed by someone and
12 very easily misconstrued.

13 When you return to
14 the courthouse you're going to
15 return directly to the jury
16 room that you just came from
17 and the bailiffs are going to
18 show you how to do that
19 because you're going to come
20 to the courthouse a different
21 way. You're going to come in
22 from the hallway and gain
23 entry into the hallway and so
24 they show you how to do that
25 this afternoon.

1 read, watch, or listen to any
2 media accounts about this
3 case. That includes anything
4 that would be on radio,
5 television, newspaper,
6 internet, or otherwise.
7 Please don't do any Google
8 searches or anything like that
9 on the internet. And believe
10 me, people do it. They google
11 names and addresses and other
12 things in an effort to learn
13 about the case prior to the
14 case beginning, and that would
15 be inappropriate. As I've
16 indicated, you are the fact
17 finders in this case. It is
18 very important that you remain
19 impartial and that you have no
20 predisposition about this case
21 and that you only make your
22 findings of fact as the fact
23 finders based upon the
24 evidence that you will hear
25 from the lips of the sworn

1 ask that you return in the
2 morning at ten. At that time
3 I anticipate that we will
4 begin the trial of the case.
5 I have some other matters that
6 I need to take up in cases
7 unrelated to yours in the
8 morning and so those will take
9 me from about nine to ten, so
10 instead of having you all wait
11 in the jury room while we do
12 that I would prefer that you
13 all just arrive at ten
14 o'clock. I would ask that you
15 be punctual so that we could
16 begin the case, begin the
17 trial of the case punctually.
18 I would also ask that abide by
19 my instructions. Have no
20 discussion about this case
21 among yourselves or with
22 anyone or anyone else. Please
23 do not speculate about what
24 you think the case may or
25 could be about. Please do not

1 patience. If you would go
2 with your caretakers. They'll
3 take you to your jury room.

4 (The jury leaves the
5 courtroom at 3:35 p.m.)

6 (Whereupon, a recess
7 was called at 3:37 p.m.)

8 (Whereupon, the jury
9 enters the courtroom at 3:42
10 p.m.)

11 THE COURT: Ladies and
12 gentlemen, I am going to pick
13 a jury in another case which I
14 think will probably conserv,
15 conservatively take thirty to
16 forty minutes and then I have
17 some matters of law that I
18 need to address in the case
19 that you've been selected for
20 and I suggest -- I suspect
21 that will take up well beyond
22 five o'clock, so instead of
23 having you all wait while we
24 do that, I'm going to send you
25 all home for the afternoon and

1 home for the afternoon which
2 is what I'm thinking I may do
3 because I also have some
4 matters of law I need to deal
5 with in this case before we
6 get started, so in all
7 likelihood I'm just going to
8 send you for a short break in
9 your jury room after which I'm
10 going to send you home for the
11 afternoon with the
12 anticipation that we're going
13 to begin in the morning at
14 9:30.

15 During the break
16 please do not discuss the case
17 among yourselves. Please
18 don't speculate about what you
19 think it may or could be
20 about. That would be improper
21 at this point and it would be
22 what we would consider
23 premature deliberation.

24 If you would bear
25 with us, we appreciate you

1 has been selected and are
2 seated.

3 THE COURT: Any motions
4 regarding the selection of the
5 jury from the State?

6 MR. MC COY: None from
7 the State, your Honor.

8 THE COURT: From the
9 defense?

10 MR. PRENNER: No, your
11 Honor.

12 THE COURT: Ladies and
13 gentlemen, you've been
14 selected for the case of the
15 State of South Carolina versus
16 Donovan Terrell Murray. I am
17 going to be selecting another
18 jury. It will probably
19 take -- that one won't take
20 longer than this one. It will
21 take about thirty minutes.
22 I'm going to send you to your
23 jury room. In the interim
24 however if I should decide
25 that I'm going to send you

1 you for the defendant?

2 MR. PRENNER: Beg the
3 Court's indulgence. Please
4 excuse Miss Aikman.

5 COURT CLERK: Miss
6 Aikman, please have a seat
7 back in the audience. You've
8 been excused from the trial of
9 this case.

10 Juror number two
11 forty-seven, William Wright.

12 What say you for the
13 State?

14 MR. MC COY: Please
15 present the juror.

16 COURT CLERK: What say
17 you for the defendant?

18 MR. PRENNER: Please
19 seat Mr. Wright.

20 COURT CLERK: Mr.
21 Wright, please have a seat in
22 the jury box. You've been
23 selected as a juror in this
24 case.

25 Your Honor, the jury

1 from the trial of this case.

2 That's five strikes
3 for the State.

4 Juror number two
5 fifty, Raymond Young.

6 What say you for the
7 State?

8 MR. MC COY: No
9 challenge.

10 COURT CLERK: Any
11 challenge from the defendant?

12 MR. PRENNER: No
13 challenge.

14 COURT CLERK: Mr.
15 Young, please have a seat in
16 the jury box. You've been
17 selected as a juror in this
18 case.

19 Juror number one,
20 Sheila Aikman.

21 What say you for the
22 State?

23 MR. MC COY: Please
24 present the juror.

25 COURT CLERK: What say

1 this case.

2 That's five strikes
3 for the defendant.

4 Juror number one oh
5 five, Brandy Hamilton.

6 What say you for the
7 State?

8 MR. MC COY: Please
9 excuse the juror.

10 COURT CLERK: Miss
11 Hamilton, please have a seat
12 back in the audience. You've
13 been excused from the trial of
14 this case.

15 That's four strikes
16 for the State.

17 Juror number one
18 eighteen, Daniel Huft.

19 What say you for the
20 State?

21 MR. MC COY: Please
22 excuse the juror.

23 COURT CLERK: Mr. Huft,
24 please have a seat back in the
25 audience. You've been excused

1 COURT CLERK: Miss
2 Bell, please have a seat in
3 the jury box. You've been
4 selected as a juror in this
5 case.
6 Juror number
7 twenty-five, Curtis Boyles.
8 MR. MC COY: Could you
9 repeat that number? I'm
10 sorry.
11 COURT CLERK: Twenty-
12 five, Curtis Boyles.
13 MR. MC COY: Thank you.
14 COURT CLERK: What say
15 you for the State?
16 MR. MC COY: Please
17 seat Mr. Boyles.
18 COURT CLERK: What say
19 you for the defense?
20 MR. PRENNER: Please
21 excuse Mr. Boyles.
22 COURT CLERK: Mr.
23 Boyles, please have a seat
24 back in the audience. You've
25 been excused from the trial of

1 Juror number one
2 eighty-eight, Stephen Regan.
3 What say you for the
4 State?

5 MR. MC COY: Please
6 present the juror.

7 COURT CLERK: What say
8 you for the defendant?

9 MR. PRENNER: Please
10 seat Mr. Regan.

11 COURT CLERK: Mr.
12 Regan, please have a seat in
13 the jury box. You were
14 selected as a juror in this
15 case.

16 Juror number
17 seventeen, Elizabeth Bell.

18 What say you for the
19 State?

20 MR. MC COY: Please
21 present the juror.

22 COURT CLERK: What say
23 you for the defendant?

24 MR. PRENNER: Please
25 seat Miss Bell.

1 seat Mr. Thompson.

2 COURT CLERK: Mr.

3 Thompson, please have a seat
4 in the jury box. You've been
5 selected as a juror in the
6 trial of this case.

7 Juror number one zero
8 nine, Vallerie Hatchell.

9 What say you for the
10 State?

11 MR. MC COY: Please
12 present the juror.

13 COURT CLERK: What say
14 you for the defendant?

15 MR. PRENNER: Court's
16 indulgence.

17 Please excuse Miss
18 Hatchell.

19 COURT CLERK: Miss
20 Hatchell, please have a seat
21 back in the audience. You've
22 been excused from the trial of
23 this case.

24 That's four strikes
25 for the defendant.

1 COURT CLERK: Mr.
2 Roberston, please have a seat
3 back in the audience. You've
4 been excused from the trial of
5 this case.

6 Juror number eight,
7 Scott Baldino.
8 What say you for the
9 State?

10 MR. MC COY: Please
11 excuse the juror.

12 COURT CLERK: Mr.
13 Baldino, please have a seat
14 back in the audience. You've
15 been excused from the trial of
16 this case.

17 Juror number two
18 twenty-nine, Levonty Thompson.

19 What say you for the
20 State?

21 MR. MC COY: Please
22 present the juror.

23 COURT CLERK: What say
24 you for the defendant?

25 MR. PRENNER: Please

1 THE COURT: You may
2 proceed.

3 MR. MC COY: Please
4 present the juror.

5 COURT CLERK: What say
6 you for the defendant?

7 MR. PRENNER: Beg the
8 Court's indulgence. Please
9 seat Miss Edwards.

10 COURT CLERK: Miss
11 Edwards, please have a seat in
12 the jury box. You've been
13 selected as a juror in this
14 case.

15 Juror number one
16 ninety-two, Leighton
17 Robertson. What say you for
18 the State?

19 MR. MC COY: Please
20 present the juror.

21 COURT CLERK: What say
22 you for the defendant?

23 MR. PRENNER: Court's
24 indulgence. Please excuse Mr.
25 Robertson.

1 Two strikes for the
2 State.

3 Juror two fifty-two,
4 Allen Bellow. What say you
5 for the State?

6 MR. MC COY: Please
7 present the juror.

8 COURT CLERK: What say
9 you for the defendant?

10 COURT CLERK: Mr.
11 Bellow, please have a seat
12 back in the audience. You've
13 been excused from the trial of
14 this case.

15 Two strikes for the
16 defendant.

17 Juror number
18 sixty-seven, Kayla Edwards.
19 What say you for the State?

20 MR. MC COY: Your
21 Honor, may we approach?

22 THE COURT: You may.

23 (Whereupon, there was
24 an off-the-record bench
25 conference.)

1 case.

2 Juror number two
3 twenty-seven, Kile Taylor.
4 What say you for the State?

5 MR. MC COY: Please
6 present the juror.

7 COURT CLERK: What say
8 you for the defendant?

9 MR. PRENNER: Please
10 seat Mr. Taylor.

11 COURT CLERK: Mr.
12 Taylor, please have a seat in
13 the jury box. You've been
14 selected as a juror in this
15 case.

16 Juror number one
17 forty, Robert Ludlum. What
18 say you for the State?.

19 MR. MC COY: Please
20 excuse the juror.

21 COURT CLERK: Mr.
22 Ludlum, please have a seat
23 back in the audience. You've
24 been excused from the trial of
25 this case.

1 selected as a juror in this
2 case.

3 Juror number
4 eighty-five, Lakeshia Gathers.
5 What say you for the State?

6 MR. MC COY: Please
7 excuse the juror.

8 COURT CLERK: Miss
9 Gathers, please have a seat
10 back in the audience. You've
11 been excused from the trial of
12 this case.

13 Juror number seven,
14 Cathryn Austelle. What say
15 you for the State?

16 MR. MC COY: Please
17 present the juror.

18 COURT CLERK: What say
19 you for the defendant?

20 MR. PRENNER: Please
21 seat Miss Austelle.

22 COURT CLERK: Miss
23 Austelle, please have a seat
24 in the jury box. You've been
25 selected as a juror in this

1 McMasters. What say you for
2 the State?

3 MR. MC COY: Please
4 present the juror.

5 COURT CLERK: What say
6 you for the defendant?

7 MR. PRENNER: Please
8 seat Mr. McMasters.

9 COURT CLERK: Mr.
10 McMasters, please have a seat
11 in the jury box. You've been
12 selected as a juror in this
13 case.

14 Juror number
15 thirty-nine, James Campbell.
16 What say you for the State?

17 MR. MC COY: Please
18 present the juror.

19 COURT CLERK: What say
20 you for the defendant?

21 MR. PRENNER: Please
22 seat Mr. Campbell.

23 COURT CLERK: Mr.
24 Campbell, please have a seat
25 in the jury box. You've been

1 indulgence, your Honor.

2 Please seat Miss Smith.

3 COURT CLERK: Miss
4 Smith, please have a seat in
5 the jury box. You've been
6 selected as a juror in this
7 case.

8 Juror number one six
9 four, Trevis Mitchell.

10 What say you for the
11 State?

12 MR. MC COY: Court's
13 indulgence. Please present
14 the juror.

15 COURT CLERK: What say
16 you for the defense?

17 MR. PRENNER: Please
18 seat Miss Mitchell.

19 COURT CLERK: Miss
20 Mitchell, please have a seat
21 in the jury box. You've been
22 selected as a juror in this
23 case.

24 Juror number one
25 fifty-four, Christin

1 twenty-two, Matt Bonnie.

2 What say you for the
3 State?.

4 MR. MC COY: Please
5 present the juror.

6 COURT CLERK: What say
7 you for the defendant?.

8 MR. PRENNER: Beg the
9 Court's indulgence.

10 Please seat Mr.
11 Bonnie.

12 COURT CLERK: Mr.
13 Bonnie, please have a seat in
14 the jury box. You've been
15 selected as a member of the
16 jury in this case.

17 Juror number two
18 sixteen, Jamie Smith. What
19 say you for the State?.

20 MR. McCOY: May it
21 please the Court, please seat
22 Miss Smith, your Honor.

23 COURT CLERK: What say
24 you for the defense?

25 MR. PRENNER: Court's

1 and stand back facing the
2 panel until we have either
3 seated you or excused you from
4 the panel. Thank you for your
5 patience.

6 Mike, you may
7 proceed.

8 COURT CLERK: Yes, your
9 Honor. Juror number one
10 eighty-two, Albert Quick.

11 What say you for the
12 State?

13 MR. McCOY: Please seat
14 the juror.

15 COURT CLERK: What say
16 you for the defendant?

17 MR. PRENNER: Court's
18 indulgence. Please excuse Mr.
19 Quick.

20 COURT CLERK: Mr.
21 Quick, please have a seat back
22 in the audience. You've been
23 excused from the trial of this
24 case.

25 Juror number

1 and the defense? If so,
2 please stand.

3 (There is no
4 response.)

5 Are there any
6 additional questions from the
7 State?

8 MR. MC COY: None, your
9 Honor.

10 THE COURT: From the
11 defense?

12 MR. PRENNER: No, your
13 Honor.

14 THE COURT: Strikes are
15 five and five. Ladies and
16 gentlemen, if your name is
17 called, please bring all of
18 your personal belongings and
19 who wants to demonstrate me --
20 Mr. Major, you're going to
21 demonstrate for me? If your
22 name is called please bring
23 all of your personal
24 belongings and come just as
25 Mr. Major is coming and turn

1 Number two sixty-one?

2 JUROR: Yes, your

3 Honor.

4 THE COURT: And number
5 one forty?

6 JUROR: Yes.

7 THE COURT: Thank you.

8 You may both take your seats.

9 Is there any member
10 of the panel who has a moral,
11 philosophical, or religious
12 belief that would impair their
13 ability to pass judgment on
14 another individual? If so,
15 please stand at this time.

16 (There is no
17 response.)

18 Does any member of
19 the panel know of any reason
20 whatsoever why he or she
21 should not serve as a juror in
22 this case, with particular
23 emphasis being placed on your
24 ability to be fair and
25 impartial to both the State

1 Is there any member
2 of the panel who holds beliefs
3 that drugs should be
4 legalized? If so, please
5 stand at this time. Yes, sir.
6 Mr. Williams?

7 JUROR: Yes, ma'am.

8 THE COURT: And your
9 juror number?

10 JUROR: Two sixty-one.

11 THE COURT: If you'd
12 remain standing.

13 Yes, sir.

14 JUROR: My name is John
15 Ludlum, juror number one
16 forty.

17 THE COURT: As a result
18 of this belief that you hold
19 do you both believe you can be
20 fair and impartial and render
21 a fair and impartial in this
22 case based solely on the
23 evidence as it will be
24 presented and on the law as
25 the Court will instruct you?

1 Parsley, D-u-r-w-a-r-d,
2 P-a-r-s-l-e-y.

3 THE COURT: And yes,
4 ma'am.

5 JUROR: Two
6 seventy-five, Alexandra
7 Wright.

8 THE COURT: As a result
9 of these experiences do you
10 all feel that you can remain
11 fair and impartial and render
12 a fair and impartial in this
13 case based solely on the
14 evidence as it will be
15 presented and on the law that
16 the Court will instruct. If
17 your answer is yes, please
18 take your seats.

19 Let the record
20 reflect that all answered yes
21 with the exception of number
22 one seventy-two. Sir, you
23 will be excused from this
24 panel only. You may take your
25 seat.

1 That, that should come within
2 the, the definition of what
3 we're asking. And I
4 appreciate your candor. I
5 know that was difficult.

6 Yes, sir.

7 I need you to remain
8 standing.

9 JUROR: Number one
10 seventeen (sic), Durward
11 Parsley. I was arrested for
12 possession.

13 THE COURT: Sir, could
14 you repeat your name and
15 number for me. There are fans
16 that are blowing above me and
17 the court reporter's head so
18 it's difficult for us to hear,
19 so I'm not -- please don't
20 think I'm being difficult.
21 It's just that we have that
22 noise over us and it's hard
23 for us to hear.

24 JUROR: Yes, ma'am.
25 One seventeen (sic), Durward

1 a fair and impartial decision
2 in this case based solely on
3 the evidence as it will be
4 presented and on the law as
5 the Court will instruct?

6 JUROR: Yes, ma'am.

7 THE COURT: Thank you,
8 sir. I appreciate your
9 candor. You may be seated.

10 Is there any member
11 of the panel who has ever been
12 accused of a crime? If so,
13 please stand at this time.

14 Yes, ma'am. If you
15 would tell me your name and
16 juror number.

17 JUROR: Eighty-five. I
18 need clarification for
19 accused.

20 THE COURT: Has anybody
21 ever accused you of a crime?

22 JUROR: Well, I was
23 only arrested due to stolen
24 identity.

25 THE COURT: Okay.

1 your juror number.

2 JUROR: My name is
3 Herbert Kimbrell, juror one
4 thirty-two.

5 THE COURT: You had a
6 negative experience with law
7 enforcement?

8 JUROR: Well --

9 THE COURT: I don't
10 want you to go into any detail
11 that --

12 JUROR: I got --

13 THE COURT: I just need
14 to know whether you had a
15 negative experience.

16 JUROR: Well, it was --
17 it wasn't positive.

18 THE COURT: Okay.

19 JUROR: I don't know
20 exactly what you mean by
21 negative.

22 THE COURT: As a result
23 of this experience, sir, do
24 you feel that you can remain
25 fair and impartial and render

1 Court will instruct?

2 JUROR: I don't believe
3 I can because --

4 THE COURT: You don't
5 have to explain it, sir. We
6 understand. I appreciate your
7 candor. You'll be excused
8 from this panel only so I need
9 you to take your seat and
10 remain with us.

11 JUROR: Okay. Thank
12 you.

13 THE COURT: Thank you.
14 Number one ninety is excused
15 from this panel only.

16 Is there any member
17 of the panel who has had a
18 negative experience with law
19 enforcement? If so, please
20 stand at this time.

21 Sir, you've been
22 excused from this panel and
23 you don't have to stand.

24 Yes, sir. If you
25 would tell me your name and

1 Matthew Roberts.

2 THE COURT: That's
3 okay.

4 JUROR: Yes, sir. My
5 sister got divorced and
6 changed her name but she was
7 on crack cocaine about five or
8 six years and disappeared. We
9 had a hard time trying to
10 track her. We finally tracked
11 her down and got her clean and
12 she's been clean ever since
13 but what she went through I
14 could say piled on the family
15 and the hell we had to go
16 through. We had to move and
17 everything.

18 THE COURT: As a result
19 of this experience, sir, do
20 you think that you can remain
21 fair and impartial and render
22 a fair and impartial decision
23 in this case based solely on
24 the evidence it will be
25 presented and on the law the

1 THE COURT: -- and
2 render a fair and impartial
3 decision in this case based
4 solely on the evidence as it
5 will be presented and on the
6 law as the Court will
7 instruct?

8 JUROR: Yeah.

9 THE COURT: Thank you,
10 sir. You may take your seat.
11 We appreciate your seat. We
12 appreciate your candor.

13 Yes, sir.

14 (Whereupon, there was
15 a discussion at the bench.)

16 Your number is one
17 ninety. Is that correct?

18 JUROR: Yes, ma'am.

19 THE COURT: Tell me
20 your name.

21 JUROR: My sister
22 was --

23 THE COURT: Tell me
24 your name, sir.

25 JUROR: Oh, I did.

1 Roberts, juror number one
2 ninety.

3 THE COURT: Yes, sir.

4 JUROR: If I could
5 approach like the gentleman --

6 THE COURT: Okay. Just
7 bear with me one moment.

8 (Whereupon, there was
9 a discussion at the bench.)

10 THE COURT: Yes, sir.
11 Your number and name, sir.

12 JUROR: Eight. Scott
13 Baldino.

14 THE COURT: And your
15 number?

16 JUROR: Eight.

17 THE COURT: Yes, sir?

18 JUROR: I'm a member of
19 A. A.

20 THE COURT: Sir, as a
21 result of this experience do
22 you feel that you can remain
23 fair and impartial --

24 JUROR: yes.

25

1 fair and impartial decision in
2 this case based solely on the
3 evidence as it will be
4 presented and on the law as
5 the Court will instruct?

6 Number one?

7 JUROR: Yes, ma'am.

8 THE COURT: Number
9 seventy-nine?

10 JUROR: I'm not sure.

11 THE COURT: Okay. And
12 number eighty-five?

13 JUROR: Yes, ma'am, I
14 can.

15 THE COURT: Number
16 eighty-five, you may be
17 seated. Number one, you may
18 be seated. Number
19 seventy-nine, you will be
20 excused from this panel only.
21 You may take your seat.

22 And yes, sir. If you
23 would state your name for the
24 record.

25 JUROR: Matthew

1 all to speak up a lot louder
2 than that for us.

3 JUROR: I think it was
4 a drunk driver basically took
5 one of my cousins, put him in
6 a coma. I wasn't in the car
7 so it basically did not affect
8 me.

9 THE COURT: And your
10 number, ma'am, for the record.

11 JUROR: Lakeshia
12 Gathers.

13 THE COURT: Thank you.
14 If you could remain standing.

15 Yes, sir.

16 JUROR: May I approach
17 the bench?

18 THE COURT: Yes, sir.
19 You can.

20 While he's
21 approaching I would ask this
22 question. As a result of
23 these experiences do you all
24 feel that you can remain fair
25 and impartial and render a

1 your name, ma'am.

2 JUROR: Sheila Aikman.

3 THE COURT: Okay. And
4 just tell me who it was. You
5 you don't have to tell me
6 anything more specific than
7 that. You said it was your
8 ex-husband?

9 JUROR: Yes. Timothy
10 Aikman.

11 THE COURT: And if you
12 could remain standing for me.

13 Yes, sir, in the back
14 in the black shirt.

15 JUROR: Seventy-nine,
16 Gregg Frazier.

17 THE COURT: Was it you
18 or a member of your family?

19 JUROR: My father was
20 an alcoholic.

21 THE COURT: Yes, ma'am.

22 JUROR: I'm juror
23 number eighty-five. A drunk
24 driver basically hit --

25 THE COURT: I need you

1 media exposure to the facts
2 and circumstances of this
3 case? That would be anything
4 that could have been in the
5 media such as the newspaper or
6 television. If so, please
7 stand at this time.

8 (There is no
9 response.)

10 Is there any member
11 of the panel or any member of
12 your family ever been
13 negatively affected by the
14 affects of alcohol or drugs?
15 If so, please stand at this
16 time.

17 Yes, ma'am.

18 JUROR: My ex-husband.
19 He was on --

20 THE COURT: If you
21 would tell me your name and
22 juror number.

23 JUROR: Juror number
24 one.

25 THE COURT: Okay. And

1 seed. I'm sorry. All right.
2 As a result of these
3 experiences do you all feel
4 that you can remain fair and
5 impartial and render a fair
6 and impartial decision in this
7 case based solely on the
8 evidence as it will be
9 presented and on the law as
10 the Court will instruct? If
11 your answer is yes, please
12 take your seat. Let the
13 record reflect that all
14 answered yes.

15 Is there any member
16 of the panel who has ever
17 received any special education
18 or training in the subject of
19 drug use, sales, or
20 intervention? If so, please
21 stand at this time.

22 (There is no
23 response.)

24 Is there any member
25 of the panel that has had any

1 THE COURT: What's the
2 year of that case?

3 MR. PRENNER: It's
4 2002, your Honor.

5 MR. KIDD: Your
6 Honor --

7 THE COURT: There were
8 successor cases that more
9 recently came out, aren't
10 there?

11 MR. PRENNER: I think
12 there's another case to this
13 same issue entitled Gillium I
14 think, but this case is very
15 much on point as to whether
16 the, the --

17 THE COURT: The 2006
18 cases, however, the Supreme
19 Court precedent say that
20 narcotics offenses are
21 generally not probative on the
22 issue of truthfulness.

23 What offenses does
24 the defendant have? The
25 co-defendant.

1 MR. PRENNER: Right.

2 MR. McCOY: Okay. Your
3 Honor, a number of things.
4 His only crime was attempted
5 trafficking of marijuana in
6 Ohio almost nine and a half
7 years ago. Now trafficking in
8 marijuana in Ohio is not the
9 equivalent of trafficking in
10 marijuana in South Carolina.
11 They do a degree of felony
12 system up there. Trafficking
13 of marijuana is a fifth degree
14 felony in Ohio. Attempted
15 trafficking in marijuana,
16 which is what he pled guilty
17 to, is a misdemeanor. And as
18 a misdemeanor I don't believe
19 his conviction comes in, your
20 Honor. I have some -- a
21 misdemeanor first degree which
22 is the equivalent of attempted
23 trafficking of marijuana in
24 Ohio is a misdemeanor in the
25 first degree and punishable by

1 not more than a hundred eighty
2 days.

3 THE COURT: How much
4 time was he subject to on that
5 offense?

6 MR. McCOY: A maximum
7 of a hundred and eighty days
8 which would be six months,
9 which would be the equivalent
10 of a misdemeanor in South
11 Carolina so it's not even a
12 felony..

13 THE COURT: Mr.
14 Prenner, that wouldn't come
15 under the rule.

16 MR. PRENNER: Judge, I
17 am not seeking to admit that
18 under rule 609.

19 THE COURT: How would
20 you admit it?

21 MR. PRENNER: 608 (c),
22 Judge.. In other words what
23 they've got here is a case in
24 which two guys are in a hotel
25 room and the guy whose hotel

1 room it is is going to say
2 those are his drugs, not mine.
3 He has every motive in the
4 world, Judge, to want to push
5 those drugs on my client and
6 has even more motive and bias
7 because of the fact that he
8 has a prior conviction for
9 attempted trafficking in
10 marijuana. He's a drug
11 dealer, Judge, a convicted
12 drug dealer. He's facing
13 a conviction of --

14 THE COURT: Well,
15 technically under the law he's
16 not a convicted drug dealer.
17 He's convicted of a
18 misdemeanor.

19 MR. PRENNER: Attempted
20 trafficking.

21 THE COURT: But that
22 doesn't make him a convicted
23 drug dealer.

24 MR. PRENNER: Well,
25 your Honor, I think it clearly

1 goes to bias.

2 THE COURT: Well, I
3 don't agree. I'm not
4 convinced of that. I think
5 what they're talking about in
6 rule 608 (c) is when you have
7 a deal pending or something
8 that's offered to him that
9 would make him more disposed
10 to not tell the truth,
11 something that benefits him.
12 Have they offered him a deal?

13 MR. McCOY: No. No,
14 your Honor. We have made no
15 offers whatsoever. Obviously
16 he is hoping for some leniency
17 through cooperation but we
18 have offered him no promises.

19 THE COURT: What's he
20 charged with?

21 MR. McCOY: Exact same

22 --

23 THE COURT: Is he
24 charged with all the same
25 crimes?

1 MR. PRENNER: All the
2 same drugs my client has.
3 They're both the exact, exact
4 same things. He has a prior
5 conviction for attempted
6 trafficking marijuana. I'm
7 looking at State versus
8 Brewington, Judge. It's 226
9 S. C. 249. It's a 1996 case.
10 It says anything, anything
11 having a legitimate tendency
12 to throw light on an actor's
13 truthfulness, sincerity, of a
14 witness may be shown and
15 considered in determining the
16 credibility and importance of
17 his testimony. And that's
18 just Brewington, 608 (c).

19 I mean, I, it is my
20 understanding, Judge, that
21 just from the plain text of
22 the rule --

23 THE COURT: I don't
24 think you aver to rule 608
25 when you have a rule on point

1 that deals with prior
2 convictions for the purposes
3 of impeachment.

4 MR. PRENNER: This is
5 all --

6 THE COURT: Each of the
7 testimony is what you want to
8 jury to believe he is not
9 telling the truth. The rule
10 is very clear.

11 MR. PRENNER: Here's
12 the difference, Judge, if I
13 may. 609 going as to
14 credibility has to do with a
15 person's credibility, period.
16 Here credibility for telling,
17 you know, you're whether or
18 not you're the kind of person
19 that tells the truth, the rule
20 609 says that you have a prior
21 conviction you may not be.
22 608 doesn't have to go to
23 credibility generally. It
24 goes to his bias in this
25 particular case. And in this

1 particular case he knows that
2 he faces a conviction on a
3 second, everything on him will
4 be a second, Judge. It's a
5 mandatory minimum, Judge, of
6 five years on the cocaine
7 charge and five years on the
8 crack charge. That's why it's
9 so important --

10 THE COURT: But is he
11 charged with that?

12 MR. PRENNER: He's
13 charged with that.

14 THE COURT: Is he
15 charged with the same --

16 MR. PRENNER: Well, it
17 would be mandatory. My client
18 is not -- the charging
19 documents don't reference
20 first, second, or third. If
21 you come to court and you
22 find -- for instance if Mr.
23 Murray is convicted in this
24 case, Judge, your Honor would
25 have no choice but to sentence

1 him as a third. It's a
2 mandatory.

3 THE COURT: You're
4 saying he has a simple
5 possession of marijuana in
6 magistrate's court?

7 MR. PRENNER: This guy
8 has attempted trafficking --

9 THE COURT: That would
10 be the equivalent of a
11 magistrate court offense?

12 MR. PRENNER: Yes.

13 THE COURT: I'm not
14 sure that would be --

15 MR. PRENNER: It is,
16 and I know, I have the answer
17 to that question, Judge.

18 THE COURT: Were you
19 all charging him with this
20 section that if he was
21 convicted of this case and was
22 not going on and he has not
23 cooperated?

24 MR. McCOY: Be
25 perfectly fair and I think it

1 would be within our power to
2 do.

3 MR. PRENNER: He has to
4 be sentenced, your Honor.
5 It's mandatory. And I'll show
6 you the statute on point.

7 THE COURT: They
8 concede the point.

9 MR. PRENNER: Thank
10 you, your Honor. If you like,
11 I can pass you up the
12 definition of second or
13 subsequent offenses.

14 THE COURT: No. I am
15 very familiar with the rules'
16 definition.

17 MR. PRENNER: He's
18 definitely facing a second,
19 Judge, and the reason he's
20 facing a second and the reason
21 he's therefore facing
22 mandatory --

23 THE COURT: They
24 concede the point. It's a
25 nonissue.

1 MR. McCOY: So your
2 Honor is saying that we can
3 get into -- .

4 THE COURT: I haven't
5 decided that yet. I'm going
6 to think about it. Is there
7 any further argument regarding
8 the motion in limine to
9 determine the admissibility of
10 the prior drug conviction of
11 Mr. Ickes?

12 MR. KIDD: Yes, ma'am.
13 I believe that, that it
14 doesn't go his credibility and
15 it doesn't go to -- I mean
16 first of all I believe you're
17 right, I think that we should
18 be confined to the rules in
19 dealing with prior
20 convictions. When, when we're
21 discussing the admissibility
22 of the prior marijuana
23 convictions I don't think we
24 can just pick and choose which
25 rules to apply when there's a

1 rule on point. Furthermore we
2 haven't cut him any deals. We
3 haven't made him any offers.
4 Regardless of his testimony
5 today he is facing the exact
6 same charges, that will be
7 seconds regardless whether he
8 testifies today or not. And
9 he, you know, he's going to --
10 he has no promise from which
11 to think he's going to receive
12 some benefit from his
13 testimony today and I think
14 his testimony will be the same
15 regardless and I don't think
16 that his conviction will go to
17 his. . .

18 MR. PRENNER: Your
19 Honor --

20 MR. KIDD: He's been
21 cooperating since the outset
22 of this case. He cooperated
23 with the officers on the night
24 of the arrest, from the time
25 they knocked on the door until

1 this very moment, your Honor,
2 and his testimony hasn't
3 changed one bit and I don't
4 think his prior conviction
5 from just within the ten year
6 limit, nine and a half years
7 ago of a misdemeanor marijuana
8 conviction, an attempted.
9 Attempted marijuana conviction
10 in which there were no drugs
11 seized whatsoever would go to
12 his credibility of testifying
13 today.

14 MR. PRENNER: Your
15 Honor, if I may, very briefly.
16 The significant portion of my
17 cross-examination of his
18 client, if not all of my
19 client -- of this witness if
20 not all of my
21 cross-examination will go to
22 his bias and the reason he has
23 to lie is because he's facing
24 a whole bunch of prison time
25 and the only reason I can get

1 into that, he's facing
2 mandatory prison time, which
3 he is facing mandatory prison
4 time is because he has this
5 prior conviction for attempted
6 trafficking marijuana.

7 The bottom line is,
8 Judge, in this case, they've
9 got two guys charged with the
10 same exact things. The only
11 witness they can rely on has a
12 conviction for drugs and to
13 keep that out would be
14 completely blindfold the jury.
15 First of all, it comes in
16 under bias. It clearly comes
17 in to show why he has a motive
18 to lie. He has a motive to
19 lie because if he is found to
20 be possessing these drugs he
21 is going to be facing five
22 years mandatory time on the
23 cocaine charge and an
24 additional five years
25 mandatory time on the crack

1 charge and that's because he
2 has this prior conviction.

3 MR. McCOY: Your Honor,
4 he's facing significant time
5 whether he has this prior
6 conviction or not.

7 MR. PRENNER: Besides,
8 Judge, I think -- well, the
9 main thing here, your Honor,
10 is that he has a tremendous
11 motive to lie and the reason
12 he has this tremendous motive
13 to lie is because of all the
14 time he's facing. He's facing
15 time with or without that
16 conviction but he's facing
17 mandatory time with that
18 conviction.

19 MR. McCOY: Your Honor,
20 may I add something as well?

21 THE COURT: Uh-huh.

22 MR. McCOY: Your Honor,
23 the codefendant, Mr. Ickes,
24 has given the same story, same
25 statement as he gave the night

1 that he was arrested. He is
2 not a lawyer. He didn't know
3 what he was facing what when
4 he was charged with these
5 crimes. He didn't know that
6 his Ohio conviction would
7 magnify his South Carolina
8 charges. He didn't know that.
9 So the argument of mandatory
10 minimums that he knew that he
11 was facing mandatory minimums
12 that night doesn't seem to
13 hold a lot of water to me,
14 your Honor, just because of
15 the fact that he didn't know
16 at the time. He told the same
17 story from the moment of the
18 arrest until last week.

19 MR. PRENNER: But he's
20 represented by Charlie Whirl,
21 Judge. I guarantee you that
22 my client knows what he's
23 facing if he's convicted at
24 trial. I mean that goes to
25 the weight of it. If they

1 want to make that argument to
2 the jury, that's fine. He's
3 unsophisticated. He doesn't
4 know. But I should be able to
5 get into it.

6 I think, you know,
7 with respect, your Honor, I
8 really think it's very clearly
9 evidence of his bias and of
10 his motive and therefore comes
11 in under 608 (c) and under
12 that rule, Judge, it says
13 that --

14 THE COURT: 608 case
15 law applies. The same case
16 law applies in 608 where it
17 says narcotics are generally
18 not considered probative of
19 truthfulness.

20 MR. PRENNER: I'm not
21 offering it for its
22 truthfulness. I agree with
23 that. I agree with that, your
24 Honor. I'm offering it to
25 show that he has a motive to

1 lie in this case and in
2 Mazzell the evidence was kept
3 out and the Court was
4 reversed. That was a case
5 where it says Sixth Amendment
6 rights to notice, guarantee
7 the rights, and we would I
8 guess our argument would come
9 under the confrontation
10 clause. It says that a
11 defendant may show a violation
12 of his constitutional clause
13 by showing he was prevented
14 from engaging in otherwise
15 appropriate cross-examination
16 designed to show a
17 prototypical form of bias on
18 the part of the witness. And
19 this is completely
20 prototypical, your Honor. I
21 mean it's his room, Judge.
22 It's his night side table.
23 It's his record for attempted
24 trafficking in marijuana. And
25 he's got all fingers pointing

1 at him.

2 The only evidence in
3 this case that points at Mr.
4 Murray is an assertion of this
5 man. That's it. The only
6 evidence besides the fact that
7 he's in the room, the
8 assertion of this man who has
9 a prior conviction, he needs
10 to push these drugs off on
11 someone else. That's our
12 case, Judge. Respectfully I
13 would submit that.

14 THE COURT: I'll take
15 the matter under advisement.

16 The next motion deals
17 with motion to exclude
18 testimony of prior bad acts.
19 What prior bad acts are you
20 referring to?

21 MR. PRENNER: Your
22 Honor, there is two issues
23 there. One issue that when
24 the police officers come into
25 the hotel room, according to

1 their report, they immediately
2 observe three or two and a
3 half tablets, what look like
4 pink tablets, on the bed that
5 Mr. Murray is sitting on.
6 According to the report Mr.
7 Murray was asked if they were
8 his and he claimed possession
9 of those. And then he was
10 asked if he had a prescription
11 for Percocet and he said no, I
12 don't.

13 He was not charged
14 with any crime relating to
15 those pills. The pills did
16 not lead to the discovery of
17 any evidence that's being used
18 in this case. The pills, it
19 is my argument, are, first of
20 all, not relevant. They're
21 not relevant to anything that
22 has to do with the evidence in
23 this case. They are --

24 THE COURT: But they --
25 would they truly be within the

1 definition of what we consider
2 had a prior bad act?

3 MR. PRENNER: Well, I
4 mean --

5 THE COURT: They were
6 found at the scene. That's
7 part of the -- of everything
8 that happened. That's part of
9 res gestae. How would that be
10 a prior bad act?

11 MR. PRENNER: They have
12 to be inextricably intertwined
13 as you say, Judge, to be part
14 of the res gestae.

15 THE COURT: They are
16 inextricably intertwined.
17 It's one continuum event.
18 They walk into the room, he's
19 sitting next to the pills.
20 He's arrested for something
21 else. They chose not to
22 charge him for it. The issue
23 is whether it's relevant, not
24 whether it's a prior bad act.
25 I don't think it comes within

1 the fundamental definition of
2 prior bad act. Prior bad act
3 is something unconnected that
4 is either subject of the
5 conviction or not subject of
6 the conviction. I don't think
7 this would be a prior bad act.
8 You may, you might well want
9 to make an argument regarding
10 relevance, but I will --

11 MR. PRENNER: I would,
12 your Honor, and I agree. I
13 think it all comes down to
14 relevance. Your Honor, if I
15 may, I just have a couple
16 other notes on this matter. I
17 am just sort of jumping around
18 here, if I may.

19 Your Honor, no one is
20 charged with those pills, just
21 going as to relevance. No one
22 is charged with them. They do
23 not make in any way more
24 likely that my client
25 possessed the drugs in the

1 night side table or did not
2 possess the drugs in the night
3 side table. They furthermore
4 are extremely prejudicial and
5 so even if they have some
6 minor probative value I think
7 that they're substantially
8 outweighed by the prejudicial
9 effect. Their only useful
10 effect is to show a propensity
11 or action for performing. The
12 only possible use of those
13 pills on the table would
14 simply to say look, here's guy
15 who has pills without a
16 prescription and therefore
17 he's more likely to have these
18 drugs on the bed side table.

19 I would agree, your
20 Honor, that factually, you
21 know, they're right there at
22 the time, that they just don't
23 have any relevance and they
24 are extremely prejudicial.

25 THE COURT: Did you all

1 charge them with it?

2 MR. KIDD: No, your
3 Honor. He was not charged
4 with the possession of the
5 Percocet.

6 THE COURT: Why was
7 that?

8 MR. KIDD: They were
9 two pills. You know the
10 sentence for possession of two
11 pills of Percocet, you know,
12 they are insubstantial in
13 comparison to the charges of
14 trafficking crack cocaine and
15 possession.

16 THE COURT: Tell me why
17 it's relevant. What factual
18 consequences make it more or
19 less?

20 MR. KIDD: I think
21 it's -- first of all, your
22 Honor, we have an officer
23 who's going to testify that
24 unsolicited the defendant was
25 trying to take possession,

1 take -- was trying to -- was
2 telling the officers that the
3 pills were his and the officer
4 is going to say that, you
5 know, the defendant was doing
6 this so that he would be
7 arrested and taken out of the
8 room to hopefully avoid the
9 search continuing. These
10 pills were discovered. He was
11 saying they're mine, arrest
12 me, get me out of here. It's
13 A situation, fine. I'll take,
14 I'll take responsibility for
15 those pills. Take me to jail.
16 It was that sort of situation.
17 So I think it will be
18 good evidence of his guilt for
19 the presence of the crack and
20 the powder cocaine. I think
21 it goes to the probable cause.
22 This is as soon as the
23 officers opened the door they
24 noticed the pills sitting on
25 the foot of the bed. I think

1 it leads the officers further
2 investigation, looking further
3 into the room, questioning
4 further, and it ultimately
5 leads to the, the detaining of
6 the defendant. It's something
7 that he took credit for.
8 Started acting suspiciously.
9 Officers, officers detained
10 him.. Put him in handcuffs.
11 Sat him down. This is a huge
12 stepping stone in the
13 progression of facts which
14 lead up to the culmination of
15 the discovery, you know, of a
16 firearm and an ounce of crack
17 and an half ounce of powder
18 cocaine. I mean it's a step
19 without which it doesn't make
20 sense. The officers further
21 investigating into what was
22 going on in that room and if
23 they had not opened the door
24 and seen those pills most
25 likely they wouldn't have

1 continued questioning both the
2 defendant and the codefendant.

3 MR. PRENNER: Your
4 Honor, that's simply not true.
5 The police report indicates
6 that Mr. Ickes was the person
7 in whose name the room was
8 registered. Donovan Terrell
9 Murray was visiting Mr.
10 Edward Ickes. Mr. Edward
11 Ickes gave verbal consent to
12 myself and Lieutenant Johnson
13 to enter the room. Upon
14 entering the room I noticed
15 three two full pink tablets
16 and a half a pink tablet
17 laying on the bed. There's
18 nothing in here. It says Mr.
19 Johnson, Lieutenant Johnson
20 asked Mr. Edward Ickes for
21 consent to search the room.
22 There's no search incident to
23 arrest because there's no
24 arrest. Basically they're in
25 there because of complaints

1 about drug activity.

2 There's -- if -- if
3 you're to explain this entire
4 case without ever mentioning
5 pink pills it really wouldn't
6 make any difference at all to
7 the prosecution.

8 MR. KIDD: Your Honor,
9 like I said I think one of the
10 key points that we're trying
11 to get here is going to be the
12 statements that the defendant
13 was making and his urgency to
14 get out of the room. He was
15 in the -- he's going to be --
16 we have officers who are going
17 to testify that he was acting
18 extraordinarily nervous. He
19 was pacing. He had a flight
20 or fight sort of attitude.
21 And that one of the things
22 that he was doing which gave
23 them the impression that he
24 wanted a quick exit out of
25 that room was he, he in

1 essence, he was asking to be
2 arrested for this simple
3 possession of two Percocet set
4 pills because it would be such
5 an insubstantial charge in
6 comparison to the crack
7 cocaine charge and if he was
8 arrested, removed from the
9 room and there was no search
10 after that, then, you know, it
11 would be a success in his
12 view. And I think that is
13 more than relevant and more
14 than probative.

15 THE COURT: I don't
16 know. I'm leaning toward it
17 being entered as a part of res
18 gestae but need to hear it in
19 camera after which I'll make a
20 ruling. You need to stay away
21 from it opening.

22 MR. KIDD: Yes, your
23 Honor. We do have the
24 officers here that can testify
25 whenever.

1 THE COURT: I want to
2 hear it in the context of the
3 case. I need to hear it all.

4 MR. KIDD: Yes, your
5 Honor.

6 THE COURT: All right.
7 Now that then leaves us -- and
8 that leaves me with a proffer
9 also. That then leaves us
10 with the Jackson versus Denno.
11 Is that correct?

12 MR. PRENNER: Yes, your
13 Honor.

14 THE COURT: We dealt
15 with the motion in limine
16 regarding prior bad acts which
17 really is a motion in limine
18 regarding relevance. We dealt
19 with the sequestration issue
20 and we have dealt with the,
21 the record of the defendant --
22 of the codefendant.
23 Mr. Ickes. Ickes. However
24 it's pronounced.

25 MR. PRENNER: Did I

1 understand your Honor about
2 his -- on the ruling regarding
3 Mr. Ickes is going to take --
4 that under advisement.

5 THE COURT: Uh-huh.
6 Until I hear his testimony.
7 When we reach that point we'll
8 take it up in camera and
9 create a proffer after which
10 I'll rule on it.

11 Want to take a five
12 minute recess and I'm going to
13 deal with the Jackson versus
14 Denno issue. How many
15 witnesses does the State have
16 on that issue?

17 MR. KIDD: Just two,
18 your Honor.

19 MR. PRENNER: And one
20 of those witnesses would be
21 Mr. Ickes, your Honor.

22 THE COURT: Is it?

23 MR. KIDD: No, your
24 Honor. We would have three
25 witnesses if you included Mr.

1 Ickes.

2 THE COURT: So you all
3 do not intend to call Mr.
4 Ickes.

5 MR. PRENNER: But he's
6 a witness to those statements.

7 THE COURT: They're
8 only required to meet their
9 burden by a preponderance of
10 the evidence. They determine
11 what witnesses they call. If
12 you find they are deficient in
13 that burden you can call any
14 witnesses you like but I will
15 not dictate what witnesses the
16 State calls. The State really
17 technically only has to call
18 one.

19 MR. McCOY: Your Honor,
20 actually I think we'll just
21 call one.

22 THE COURT: If they
23 feel they can meet their
24 burden.

25 MR. PRENNER: Right.

1 Yes, sir. I mean yes, ma'am.
2 I just want the Court to know
3 that I would call Mr. Ickes
4 just in case I try to find Mr.
5 Whirl.

6 THE COURT: We've
7 already tried and not been
8 able to reach him.

9 MR. PRENNER: Thank
10 you, Judge.

11 THE COURT: And he is
12 protected so he has no reason
13 for us to reach him.

14 MR. PRENNER: Okay.

15 THE COURT: And he is
16 protected until the ninth,
17 actually.

18 MR. PRENNER: I just
19 don't know if your Honor
20 wanted to go forward with Mr.
21 Ickes' testimony this evening.

22 THE COURT: Well, I'll
23 cross that bridge when I come
24 to it. We'll be at ease for
25 five minutes.

1 MR. PRENNER: Thank
2 you, your Honor.

3 (Whereupon, a recess
4 is called at 5:14 p.m.)

5 (Whereupon, the judge
6 enters the courtroom at 5:24
7 p.m.)

8 THE COURT: Is the
9 State ready to proceed?

10 MR. McCOY: We are,
11 your Honor.

12 THE COURT: Is the
13 defense ready to proceed?

14 MR. PRENNER: We are,
15 your Honor.

16 THE COURT: You may
17 proceed.

18 MR. KIDD: The State
19 calls Lieutenant Johnson.

20 Your Honor, if I may,
21 briefly, some of this Denno
22 hearing is going to
23 incorporate testimony that's
24 kind of relevant to the ruling
25 you took under or the motion

1 you have under advisement
2 regarding the admissibility of
3 the Percocet pills --

4 THE COURT: You don't
5 need to cover it for purposes
6 of me ruling. I'm not going
7 to rule until I hear it within
8 the context of the case.

9 MR. KIDD: All right.

10 THE COURT: So if you
11 can cut to the chase and then,
12 and eliminate that, that would
13 be greatly appreciated for our
14 purposes. It's already 5:26.

15 MR. KIDD: That's what
16 I was getting at, your Honor.
17 So we don't need to address
18 all the actual statements.

19 THE COURT: I need you
20 to address everything that is
21 relevant to the statement that
22 he made and anything you plan
23 to introduce.

24 MR. KIDD: Yes, your
25 Honor.

1 WILLIAM JOHNSON,
2 having been called as a
3 witness, is duly sworn and
4 testifies as follows:

5 DIRECT EXAMINATION BY

6 MR. KIDD:

7 Q Good afternoon,
8 Lieutenant Johnson. What is your
9 occupation?

10 A I'm a police officer
11 for the City of North Charleston.
12 Rank of lieutenant. Currently
13 serve as a watch commander on day
14 shift.

15 Q And how long have you
16 worked?

17 A Twenty-three years.

18 Q Twenty-three years.

19 And can you just go over some of
20 your previous experience?

21 A Initially started off
22 in patrol. I worked narcotics. I
23 worked over fourteen years of that
24 in canine unit. Specialized in
25 narcotic dogs. I trained in

JOHNSON -- DIRECT, MOTION

1 explosive dogs. Apprehension
2 dogs. I worked traffic. I worked
3 Detective Division in the
4 twenty-three years.

5 Q In what capacity were
6 you employed on the night in
7 question, December twelfth, 2007?

8 A On that night I was
9 the watch commander for the
10 midnight shift assigned for the
11 city.

12 Q And how were you
13 brought into this case?

14 A I was patrol
15 commander answering 911 calls and
16 also assisting units in the area
17 and I heard the dispatch call and
18 responded to the area.

19 Q So you were
20 responding to an anonymous tip?
21 What?

22 A The dispatch put out
23 the call as drug activity in the
24 area and I responded with the
25 officer that was dispatched to

JOHNSON -- DIRECT, MOTION

1 assist him with the call. I was
2 in the area.

3 Q And where did you
4 respond to?

5 A I responded to Ashley
6 Phosphate Road,
7 Road and I believe that
8 was a Relax Inn. I was given by
9 dispatch the room of two two
10 three, of drug activity at that
11 room.

12 Q And as you were
13 conducting your investigation what
14 happened?

15 A I initially pulled
16 into the bar lot first. I'm in an
17 unmarked car so I went and checked
18 the area, see what was around. I
19 pulled in, cut off my headlights.
20 Checked the parking lot, see if I
21 observed any activity in the
22 parking lot. I observed none in
23 the parking lot. As the other
24 patrol officer got on the scene we
25 went to the door together and

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JOHNSON -- DIRECT, MOTION

1 knocked on the door of two
2 twenty-three.

3 Q And who answered the
4 door when you knocked as part of
5 your investigation?

6 A Mr. I believe his
7 last name was Edward Ickes or
8 Ickes.

9 Q Ickes.

10 A Ickes.

11 Q Yes, sir. And what
12 did, what happened then?

13 A As he opened the
14 door, he opened the door and he
15 looked surprised. Two uniformed
16 officers were at the door. I
17 asked him if it was his room, if
18 it was registered in his name. He
19 said it was.

20 Q When you knocked,
21 take one step back. When you
22 knocked on the door did you
23 announce yourselves as police
24 officers?

25 A I did not.

JOHNSON -- DIRECT, MOTION

1 Q You did not. They
2 didn't -- okay. And what did,
3 what did you say to Mr. Ickes when
4 you entered the room after the
5 door was opened?

6 A After he opened the
7 door he looked surprised at two
8 uniformed officers were standing
9 there. I looked. I started
10 scanning the room. I noticed
11 another subject in the room, a
12 black male subject and as I was
13 scanning the room I noticed there
14 was stuff on the bed, pill-like
15 substance. The other officer was
16 standing on the opposite side of
17 the door. I found out who had
18 access to the room, who had
19 ownership. He stated it was his
20 room, under his name.

21 Q That was the
22 co-defendant?

23 A That's correct. And
24 I asked if I had his consent to
25 enter the room. He opened the

JOHNSON -- DIRECT, MOTION

1 door wider and said you can come
2 in.

3 Q All right. And the,
4 the black male suspect you're
5 referring to is the, is the
6 defendant here, Mr. Murray?

7 A That's correct.

8 Q And what was Mr.
9 Murray doing when you entered the
10 room?

11 A As we entered the
12 room he was standing around. He
13 became very nervous. He started
14 making statements like don't let
15 them in the room. You don't have
16 to let them in the room. Don't
17 talk to them. They need a search
18 warrant. Don't let them in this
19 room.

20 Q So he was very
21 adamant not to allow you to
22 continue your search and enter the
23 room?

24 A Again I expressed, I
25 says Mr. Ickes, I said is this

JOHNSON -- DIRECT, MOTION

1 your room? Is it registered in
2 your name only? He said yes, it
3 is.

4 Q So at that point you
5 determined you had consent to
6 search and regardless of Mr.
7 Murray's objection you had the
8 right to remain in the room and,
9 and conduct your interview as you
10 felt appropriate at the time?

11 MR. PRENNER: I object
12 to the form of the question,
13 your Honor.

14 THE COURT: Would you
15 like to respond to the
16 objection?

17 MR. KIDD: I'll
18 rephrase, your Honor.

19 Q Was -- would the
20 defendant have been free to leave
21 at that point?

22 A The door was open.
23 At that time neither one of them
24 was in handcuffs. As I approached
25 them, as I entered the room then I

JOHNSON -- DIRECT, MOTION

1 got a clear look on the bed and I
2 noticed at least two pills on the
3 bed, on the first bed. They were
4 pink in color. I, at that time I
5 did not know what type of pills
6 they were.

7 Q Would you have placed
8 the defendant under arrest just
9 for the, the presence of those two
10 pills?

11 A At that time I would
12 have placed him in protective
13 custody and continue my
14 investigation.

15 Q So at the point he
16 would not have just been free to
17 walk away and say nothing?

18 MR. PRENNER: Object to
19 the form.

20 THE COURT: Would you
21 like to rephrase the question?

22 MR. KIDD: Yes, your
23 Honor.

24 Q Had you read the
25 defendant any Miranda rights at

JOHNSON -- DIRECT, MOTION

1 that point when he was making the
2 statements?

3 A At that time I did
4 not.

5 Q And who was the
6 defendant making those statements
7 to?

8 A Mr. Murraray was
9 making that to the co-defendant
10 about don't let him in the room,
11 they need a search warrant, you
12 don't have to talk to them.

13 Q And, and he was, he
14 was not in handcuffs?

15 A He was not in
16 handcuffs.

17 MR. KIDD: Nothing
18 nothing further, your Honor.

19 THE COURT: Any
20 questions of the witness, Mr.
21 Prenner?

22 MR. PRENNER: If the
23 Court would indulge me, your
24 Honor.

25 THE COURT: Uh-huh.

JOHNSON -- DIRECT, MOTION

1 MR. KIDD: Your Honor,
2 if I may ask just a couple
3 more questions.

4 THE COURT: You may
5 proceed.

6 MR. KIDD: Thank you,
7 your Honor.

8

9

10

11 CONTINUED DIRECT

12 EXAMINATION BY MR. KIDD:

13 Q How was defendant
14 acting at the time he was making
15 those statements?

16 A Very nervous. He was
17 walking around. He was upset.
18 Surprised. Acting very nervous
19 in my experience, in my
20 profession, in my professional
21 opinion it's not a normal reaction
22 the way he was acting in the room.

23 Q After --

24 A It was obvious he did
25 not want us in the room.

JOHNSON -- DIRECT, MOTION

1 Q After the defendant
2 was, made those statements and the
3 co-defendant had expressed a
4 willingness to cooperate what
5 happened next?

6 A Officer Cobb arrived
7 on the scene and came in the room
8 and the defendant started acting
9 in either more aggressive, more
10 nervous and later on Officer Cobb
11 had to detain the subject because
12 he reached into the bed and none
13 of us knew what he was reaching
14 for, at which time Officer Cobb
15 placed him in handcuffs and then
16 the co-defendant was taken outside
17 by myself and was -- we asked
18 other questions. I advised him of
19 his Miranda rights outside and I
20 where I was questioning him more
21 outside.

22 Q So why did you
23 separate the defendant from the
24 co-defendant?

25 A The defendant Mr.

JOHNSON -- DIRECT, MOTION

1 Murray was still talking inside in
2 a loud, boisterous manner and I
3 wanted to separate them at that
4 time so I could complete the.

5 Q And what did, what
6 did you obtain from Mr. Ickes once
7 you had separated them and began
8 to talk with them?

9 A I brought him outside
10 and after I read him his Miranda
11 rights, I questioned him about the
12 911 call I was dispatched to, told
13 him we was called there for drug
14 activity and I wanted to know if
15 that's true. And I wanted to know
16 if there were more drugs in the
17 room and I already observed at
18 least the pills and asked if there
19 were any other drugs in the room
20 and would he be, would he be
21 willing to give me consent to
22 search the room.

23 Q And how did he
24 respond?

25 A Initially he was

JOHNSON -- DIRECT, MOTION

1 hesitant but he did want to know
2 could I help him out, that he
3 needs help. And I said for what?
4 And he said he had a drug problem
5 and that there was other drugs in
6 the room. I says would you be
7 willing to show me where the drugs
8 are in the room and give me
9 consent to search the room. He
10 later said he would. He would
11 point them out to me. He said
12 that the co-defendant brought
13 drugs into his room and he did not
14 want them in the room any longer.
15 All he wanted was some help.

16 I told him I could
17 not help him out with the charges.
18 He'd be charged like anybody else
19 but his cooperation would go a
20 long way.

21 Q And but you didn't
22 make any promises as far as
23 reducing charges or anything of
24 that nature for his cooperation,
25 did you?

JOHNSON -- DIRECT, MOTION

1 A Not at all.

2 Q And, and you just
3 testified that he signed a consent
4 to search?

5 A He did.

6 Q And subsequent to
7 that, you searched?

8 A I brought him back to
9 the room and he pointed to a
10 drawer initially and says that's
11 where the drugs were at. I opened
12 up the drawer and found what
13 appeared to be a yellowish
14 rock-type substance later field
15 tested positive for crack cocaine.
16 And also a loaded hand gun.

17 MR. KIDD: No further
18 questions, your Honor.

19 THE COURT: Just so the
20 Court is clear, what statement
21 is the State seeking to
22 introduce against this
23 defendant?

24 MR. KIDD: Through this
25 witness, your Honor, the State

JOHNSON -- DIRECT, MOTION

1 is seeking to introduce the
2 statements the defendant was
3 making in regards to the quote
4 jailhouse lawyering we were
5 discussing earlier. The
6 statements that were made in
7 front of this officer to the
8 co-defendant about, about the
9 officers can't come in here,
10 they need a warrant, don't let
11 them in here, don't cooperate
12 with them, statements of that
13 nature.

14 THE COURT: And that is
15 the extent of what you would
16 be seeking to introduce.
17 Correct?

18 MR. KIDD: Yes, your
19 Honor, if we are avoiding the
20 statement regarding the
21 defendant taking credit for
22 the ownership of the pills.

23 THE COURT: Tell me
24 what now? I'm sorry.

25 MR. KIDD: The

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JOHNSON -- DIRECT, MOTION

1 statement by my other witness,
2 Officer Cobb, where the
3 defendant was --

4 THE COURT: You are
5 talking about this witness?

6 MR. KIDD: Yes.

7 THE COURT: Okay. I
8 only want to know this
9 witness, what you're seeking.

10 MR. KIDD: Just those
11 statements right there.

12 THE COURT: Which is
13 about not letting them in,
14 they need a warrant.

15 MR. KIDD: Yes, sir.

16 THE COURT: Mr.
17 Prenner, any questions for the
18 witness?

19 MR. PRENNER: Just
20 briefly.

21

22

23

24

25

JOHNSON -- CROSS, MOTION

1 CROSS-EXAMINATION BY

2 MR. PRENNER:

3 Q Good evening now,
4 lieutenant, lieutenant Johnson.
5 The 911 call that came in was for
6 possible drug activity. Correct?

7 A That's what our
8 dispatcher gave to me. Yes, sir.

9 Q What does that mean
10 to you?

11 A That possible drugs
12 are being used or sold from that
13 room.

14 Q Did you receive any
15 complaints directly from any
16 persons around that area or just
17 through the dispatch?

18 A From the dispatcher.

19 Q You know when the
20 complaints were received?

21 A I'm assuming --

22 Q By dispatch?

23 A I'm assuming just a
24 couple minutes from before the
25 call from dispatch.

JOHNSON -- CROSS, MOTION

1 Q Do you know when
2 according to the complaints the
3 drug activity was going on?

4 A I do not.

5 Q Do you know -- did I
6 understand you to testify that
7 when you got to the inn you didn't
8 yet know that it was room two
9 twenty-three?

10 A We was dispatched to
11 room two twenty-three.

12 Q I thought you had
13 said that, and I must have
14 misheard you, that you went to the
15 inn according to dispatch and then
16 they gave you the room at the inn
17 they gave you the room number?

18 A That's not correct.
19 We was dispatched to the address
20 to room number two twenty-three.

21 Q Okay. Had you ever
22 been to that room before?

23 A Not that I remember.

24 Q And you said that
25 Ickes had answered the door. Is

JOHNSON -- CROSS, MOTION

1 that correct?

2 A That's correct.

3 Q I understood you to
4 say that you placed Mr. Murray in
5 protective custody. What does
6 that mean?

7 A I did not say that,
8 sir.

9 Q I could tell the
10 court reporter to read it back. I
11 thought you said at that time I
12 placed him under protective
13 custody. If it, if that didn't
14 happen just tell me that never
15 happened?

16 A I did not place him
17 in protective custody.

18 Q Okay. When you saw
19 the pills on the bed, what did you
20 do?

21 A I didn't do anything,
22 sir. I observed them on the bed.

23 Q All right. Did you
24 make inquiry of Mr. Ickes as to
25 the pills on the bed?

JOHNSON -- CROSS, MOTION

1 A A question was asked
2 what type of pills are they.

3 Q Who asked that
4 question?

5 A I believe another
6 officer did, Officer Jourdan.

7 Q Did you ever read Mr.
8 Murray Miranda warnings?

9 A I did not.

10 Q Do you know whether
11 anyone else did?

12 A I don't, I'm not, I
13 did not know and I'm not sure if
14 another officer did or not, sir.

15 Q So as far as you're
16 aware no one did. Correct?

17 A I did not hear
18 another officer read Miranda
19 warnings to him.

20 Q And tell me exactly
21 what the statements are that
22 you're, that you recall that he
23 made as to, you know, you don't
24 have to open the door. Would you
25 please just repeat exactly the

JOHNSON -- CROSS, MOTION

1 statement that you recall?

2 A When we was entering
3 the room he said you don't have to
4 let them in. You don't have to
5 let them search. They need a
6 search warrant. Statements like
7 that.

8 Q Did you ever respond
9 at all to that statement?

10 A I did not. My
11 contact was with Mr. Ickes, not
12 with Mr. Murray.

13 Q What other officers
14 were there with you?

15 A Initially Officer
16 Patricia Jourdan. She's the --
17 she arrived the same time as I
18 did.

19 Q Yes, sir.

20 A And then a few
21 minutes later, Officer Darren Cobb
22 arrived on the scene.

23 Q Was Officer Cobb
24 present at the time that Mr.
25 Murray made the statements, you

JOHNSON -- CROSS, MOTION

1 don't have to let them in, they
2 need a search warrant?

3 A He was not an
4 additional officer on the scene.

5 Q So he was not present
6 at the time of those statements?

7 A The statements were
8 given throughout the time I was
9 there. I'm not sure what Officer
10 Darren heard. We asked him later.
11 I'm not going to testify to what
12 he heard.

13 Q All right. Well,
14 let's back up for a second. You
15 come to the door, you open the
16 door, Ickes answers the door.
17 Correct?

18 A He didn't come to the
19 door, sir.

20 Q I'm sorry. He opened
21 the door. Ickes answers the door.
22 When is the first point that you
23 hear Murray saying -- what does he
24 say?

25 A When I asked him, Mr.

JOHNSON -- CROSS, MOTION

1 Ickes, if he rented the room, was
2 the room in his name, and can I
3 come in, I then started hearing
4 comments from the subject inside
5 the room later determined to be
6 Mr. Murray statements don't let
7 them in, you don't have to let
8 them in, they need a search
9 warrant.

10 Q All right. And then
11 after you entered the room where
12 was Mr. Murray when you walked in?

13 A He was behind Mr.
14 Ickes.

15 Q He was standing?

16 A He was standing, sir.

17 Q Did he ever become
18 sitting on the bed?

19 A I believe later on he
20 started, yes.

21 Q He sat and at one
22 point he started reaching for
23 something. That's when Officer
24 Darren Cobb placed him in
25 handcuffs to detain him for his

JOHNSON -- CROSS, MOTION

1 own safety.

2 Q All right. And so
3 after you come in, when -- what
4 happened while you were in the
5 room and you walked back out into
6 the breezeway with Mr. Ickes?

7 A I don't understand
8 what you're talking about, sir.

9 Q What transpired while
10 you were in the room from the time
11 that you walked into the room when
12 Mr. Murray was making statements,
13 you don't need to talk to him you
14 don't need to let them in the
15 room? What transpired from then
16 until the time when you stepped
17 back out of the room and talked to
18 Mr. Ickes in the breezeway?

19 A I believe that
20 Officer Jourdan was trying to
21 determine whose, what type of
22 pills they were and whose pills
23 they were. She was conducting the
24 investigation about the pills.

25 Q Was Murray making

JOHNSON -- CROSS, MOTION

1 statements throughout that time
2 about you don't need to talk to
3 anybody?

4 A No. I believe he was
5 talking to Officer Patricia
6 Jourdan and then he said it was
7 Percoset and they were his pills
8 and he did not have a prescription
9 for them.

10 Q So you witnessed that
11 statement as well?

12 A I heard the
13 statement.

14 Q Was that statement
15 made before or after he was
16 reaching under the bed?

17 A I believe that was
18 before.

19 Q And is it your
20 testimony that Mr. Murray like you
21 said was free to leave even after
22 you saw the pills?

23 A I didn't try to stop
24 him leaving. He didn't volunteer
25 to leave. He didn't try to walk

JOHNSON -- CROSS, MOTION

1 out the room.

2 Q Was he free to leave?

3 A He didn't try to
4 leave, sir.

5 Q Well, I'm asking you
6 if he was free to leave. If he
7 had left would you have stopped
8 him? If he had tried to leave the
9 room would you have stopped him?

10 A I would have
11 questioned him, sir.

12 Q Is that a yes you
13 would have stopped him?

14 A Probably Officer
15 Jourdan would have, sir. I was
16 talking to Mr. Ickes at the time,
17 not Mr. Murray. We had two
18 subjects, two officers. It was
19 one-on-one, sir.

20 Q Did Jourdan get there
21 before or after you noticed the
22 pills on the bed?

23 A After.

24 Q How much after?

25 A Couple minutes.

JOHNSON -- CROSS, MOTION

1 Q Couple. Beg the
2 Court's indulgence. Did you ever
3 speak to the person who called 911
4 and complained about drug activity
5 in room two twenty-three?

6 A I did not.

7 Q So you don't know
8 whether that person described the
9 person or persons who were
10 conducting this drug activity.
11 Correct?

12 A I did not call
13 anybody back, no, sir.

14 Q In other words when
15 you went to the hotel that night
16 or motel that night you didn't
17 know whether you were looking for
18 a tall drug dealer, a short drug
19 dealer, a black drug dealer, a
20 white drug dealer. You were just
21 going to room two twenty-three.
22 Right?

23 A That's correct.

24 Q And you didn't know
25 whether drugs had been being dealt

JOHNSON -- CROSS, MOTION

1 out of that room for the last
2 couple weeks or whether it was
3 just one night. Right?

4 A That's correct.

5 Q And you didn't know
6 whether it was a meth lab or
7 Oxycontin. Right?

8 A That's correct.

9 Q Did you ever take an
10 inventory of other items in the
11 room other than the drugs? For
12 instance, other possessions
13 belonging to Ickes?

14 A I started searching
15 for the drugs after he pointed out
16 the initial drawer to me and then
17 he showed me the other drugs. I
18 did not do a complete inventory of
19 the rooms. I was called to
20 another incident that required my
21 presence and I, and I left the
22 scene.

23 Q Who was there when
24 you left?

25 A Officer Cobb, Officer

JOHNSON -- CROSS, MOTION

1 Patricia Jourdan.

2 Q Was Mr. Ickes using
3 drugs when you got there?

4 A I have no idea, sir.

5 Q Okay. Did he appear
6 to be using drugs?

7 A No, sir.

8 Q Did you find any
9 paraphernalia or apparatus in the
10 room?

11 A I did not.

12 MR. PRENNER: Thank
13 you, your Honor.

14 THE WITNESS: Thank
15 you.

16 THE COURT: Any
17 redirect of the witness?

18 MR. McCOY: Very, very
19 briefly, your Honor.

20

21

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25

JOHNSON -- REDIRECT, MOTION

1 REDIRECT EXAMINATION

2 BY MR. MC COY:

3 Q Did you solicit any
4 of these statements from the
5 defendant?

6 A No, sir.

7 Q Did, did anyone ask
8 him any questions before or say
9 anything to the defendant before
10 these statements were made?

11 A No.

12 Q Did they appear to be
13 voluntarily made?

14 A Absolutely.

15 Q Did anyone make any
16 threats to the defendant would
17 have incurred these statements to
18 be made?

19 A No.

20 Q When upon entering
21 the room the pills were seen on
22 the bed. Would you have had
23 enough at that point in time to
24 make an arrest?

25 A I would have.

JOHNSON -- REDIRECT, MOTION

1 THE COURT: I'm sorry.

2 I didn't hear the answer?

3 A I would have.

4 Q Okay. And you could
5 have arrested the defendant and
6 the co-defendant for the presence
7 of those pills. Is that correct?

8 A That's correct.

9 MR. MCCOY: Nothing
10 further, your Honor.

11 THE COURT: Sir, you're
12 excused subject to being
13 recalled.

14 THE WITNESS: Thank
15 you, your Honor.

16 THE COURT: You're
17 welcome.

18 Any further
19 witnesses?

20 MR. KIDD: The State
21 would call Officer Cobb.

22

23

24

25

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COBB -- DIRECT, MOTION

1 DARREN ALBERT COBB,
2 having been called as a
3 witness, is duly sworn and
4 testifies as follows:

5 DIRECT EXAMINATION BY
6 MR. KIDD:

7 THE COURT: You may
8 proceed.

9 MR. KIDD: Thank you,
10 your Honor.

11 Q Just real quickly to
12 give us a little background. What
13 is your occupation?

14 A I'm a police officer
15 with the North Charleston Police
16 Department.

17 Q And how long have you
18 worked there?

19 A About nine years,
20 three months.

21 Q And can you sum up
22 some your previous law enforcement
23 experience for the Court?

24 A I've been a patrol
25 officer. I worked on the PAC unit

COBB DIRECT, MOTION

1 in North Charleston Police and the
2 weed and seed unit, speed team,
3 selective enforcement, street
4 level narcotics, prostitution,
5 spent another five years in the
6 canine unit and I believe it was
7 the last November or maybe
8 beginning of December I
9 transferred back to patrol.

10 Q So let me -- on the
11 night in question, December
12 twelfth, 2007, what were your
13 duties at that time?

14 A I was assigned to, to
15 the night shift patrol division on
16 the north end of the city.

17 Q Okay. And we're
18 going to try to fast forward for
19 brevity's sake and take you to
20 these statements in question. You
21 were responding to the scene to
22 back-up Officer Jourdan and
23 Lieutenant Johnson. Is that
24 correct?

25 A That's correct.

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COBB -- DIRECT, MOTION

1 Initially Officer Jourdan was
2 dispatched. I advised dispatch I
3 would be en route to assist,
4 however I believe the lieutenant
5 and Officer Jourdan arrived at the
6 same time I arrived. Probably two
7 or three minutes later.

8 Q What was the
9 situation like when you arrived
10 there?

11 A I arrived on scene.
12 I located the officers and I went
13 to room number two twenty-three.
14 The door was open. The two
15 officers were inside as well as
16 the defendant, Mr. Murray, and
17 co-defendant Mr. Ickes. As I
18 walked in I observed several pink
19 pills on the table on the right
20 and Mr. Ickes was closer to me and
21 Mr. Murray was further back
22 towards the second bed.

23 Q What was Mr. Murray's
24 demeanor at the time that you
25 arrived?

COBB -- DIRECT, MOTION

1 A Mr. Murray was
2 agitated. He was looking around.
3 Had sort of a fight or flight
4 appearance about him. His
5 behavior made me a little -- I
6 won't say nervous but concerned.

7 Q And as was your
8 concern based on your experience?

9 A Yes. Many years of
10 experience judging a person's
11 behavior just based on
12 observations you get, feelings
13 whether or not a person is a
14 threat or flight risk.

15 Q Was Mr. Murray making
16 any statements at the time that
17 you arrived?

18 A At that time Mr.
19 Ickes was still in the room and
20 Mr. Murray, while I can't give
21 exact quotes because it's been so
22 long, the gist of what he was
23 saying to Mr. Ickes was the
24 officers don't have a right to be
25 here. You should tell them to

COBB - - DIRECT, MOTION

1 leave.

2 Q And were these
3 on-going statements? Were those
4 one or two statements or were they
5 on-going statements?

6 A It was a continuous
7 statement.

8 Q Beginning from the
9 time you arrived until you left?

10 A That's correct.

11 Q At the point that
12 Lieutenant Johnson removed Ickes
13 from the room, what happened from
14 then on? Actually I believe, I
15 believe the lieutenant was still
16 in the room. Mr. Murray was very
17 agitated. I had him come closer
18 to me because at that point my
19 sole purpose in there was what we
20 refer as to cover officer. I was
21 simply to make things safe while
22 Officer Jourdan and the lieutenant
23 investigated the situation. I
24 believe Officer Jourdan was the
25 actual crime detective.

COBB -- DIRECT, MOTION

1 Due to Mr. Murray's
2 body language as well as what he
3 was verbally saying I considered
4 him to be a fight or flight risk.
5 I had him stand closer to me. At
6 one point with no apparent reason
7 he made a quick movement towards
8 the bottom of the first bed. I,
9 not knowing what he was reaching
10 for, I detained him in handcuffs.

11 Q And this was after he
12 was making the original statements
13 regarding they don't have the
14 right to be here. They need a
15 warrant.

16 A That's correct.

17 Q So you handcuffed him
18 after these statements were made?

19 A That's correct.

20 Q What did you do after
21 you handcuffed him?

22 A The lieutenant took
23 Mr. Ickes out into the breezeway
24 and spoke with him since he was
25 the actual renter of the room. I

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COBB -- DIRECT, MOTION

1 had Mr. Murray sit down in a, in a
2 chair at the table as soon as you
3 walk in the door and I sat down at
4 the chair next to him.

5 Q And so you arrested
6 him for your own or you handcuffed
7 him for your safety and you sat in
8 the chair by the door?

9 A Correct.

10 Q Did you ask him any
11 questions at that point? Were you
12 interrogating him?

13 A No. Actually I
14 didn't want to talk to him.

15 Q So you asked him no
16 questions whatsoever?

17 A That's correct. He,
18 he kept speaking to me, being
19 argumentative about police
20 officers don't have a right to be
21 here, this is all wrong, you can't
22 search, that, that type of thing.
23 He started, he looked at the pills
24 and he was like look, those are my
25 pills. Take me to jail. Take me

COBB -- DIRECT, MOTION

1 to jail. It was, it was obvious
2 to me that he just wanted to get
3 us out of the room.

4 Q So he made the
5 statement to you that the, that
6 the Percoset, the pink pills on
7 the table were his pills and that
8 he, to arrest him for those pills?

9 A That's correct. In
10 fact he was adamant about it. He,
11 he continuously told me to go
12 ahead take him to jail, take him
13 to jail, take him to jail.

14 Q Based upon his
15 demeanor and your experience, why
16 would he, why would he want to so
17 adamantly assert and take credit
18 for those, for those pills?

19 A The possession of
20 those pills is a relatively
21 minor --

22 MR. PRENNER: Objection
23 . conjecture. Question calls
24 for conjecture.

25 THE COURT: Please

COBB -- DIRECT, MOTION

1 repeat the question.

2 Q Based on your
3 experience why would the defendant
4 want to take responsibility for
5 those drugs?

6 THE COURT: Sustained.

7 Q What sort of -- what
8 happened next after he made those
9 statements to you? What happened
10 next?

11 A He was adamant that I
12 arrest him for those pills. It
13 was a relatively minor charge. He
14 just, he just was adamant that I
15 take him to jail. He wanted to go
16 right now and I explained to him
17 that no, these things work on our
18 time table not yours.

19 Q So when the
20 lieutenant came in to search the
21 room was --

22 A Actually the
23 lieutenant came back in with the
24 co-defendant, Mr. Ickes. Mr.
25 Ickes pointed at the night stand

COBB -- DIRECT, MOTION

1 on the far of the second bed and
2 indicated that's where the
3 narcotics were. I observed the
4 lieutenant walk over there, open
5 the drawer of that night stand and
6 recover a semi-automatic
7 forty-five caliber pistol as well
8 as a quantity of narcotics.

9 Q Getting back to the
10 statements, did you, did you ever
11 read Mr. Murray his Miranda?

12 A No, I did not. Nor
13 did I question him.

14 Q When he made the
15 statements to you regarding his
16 ownership of those pills, did it
17 appear that that statement was
18 voluntarily made?

19 A Absolutely.

20 Q And they weren't in
21 response to any of your questions?

22 A That's correct. He
23 was doing so much jail house
24 lawyering I just did not wish to
25 talk to him.

COBB -- DIRECT, MOTION

1 Q So he was in
2 handcuffs, sitting in a chair by
3 the door which you had put him,
4 you placed him in handcuffs for
5 his safety and voluntarily making
6 statements to you not, not in
7 response to any, any questioning
8 whatsoever?

9 A That's correct.

10 MR. KIDD: Beg the
11 Court's indulgence, your
12 Honor.

13 THE COURT: Uh-huh.

14 MR. KIDD: Nothing
15 further, your Honor.

16 THE COURT: Any
17 questions of the witness?

18 MR. PRENNER: Beg the
19 Court's indulgence.

20

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COBB -- CROSS, MOTION

1 CROSS-EXAMINATION BY

2 MR. PRENNER:

3 Q Officer Cobb, I
4 believe you testified that -- is
5 it Officer Cobb?

6 A That's correct.

7 Q I believe you
8 testified that when you first
9 noticed the pink pills they were
10 on table. Is that correct?

11 A That's correct.

12 Q Did you know whether
13 anyone else had moved the pills at
14 that point?

15 A It was my
16 understanding that Officer Jourdan
17 had moved the pills from the bed
18 and placed them on the table where
19 they could be better controlled by
20 the police.

21 Q And is it not your
22 understanding Officer Jourdan
23 engaged in a conversation with Mr.
24 Murray as to whether the pills
25 were his?

COBB -- CROSS, MOTION

1 A I can't speak for
2 what happened before I got there.
3 At the time that I actually
4 entered the door Officer Jourdan
5 was not speaking with Mr. Murray.

6 MR. PRENNER: Your
7 Honor, if I may approach the
8 witness, your Honor.

9 Q I'm going to show you
10 a copy of this document and tell
11 me if you can identify that, what
12 it is?

13 A It appears to be a
14 copy of the incident report that
15 was written by Officer Jourdan on
16 that evening in reference to the
17 incident.

18 Q All right. And would
19 you read if you would particularly
20 where it says Mr. Donald Terrell
21 Murray all the way to safety.

22 THE COURT: Did he
23 prepare that statement or did
24 someone else prepare that
25 statement?

COBB -- CROSS, MOTION

1 MR. PRENNER: Your
2 Honor, this is the subject of
3 a stipulation between the
4 parties. Officer Jourdan is
5 on leave this week and it was
6 necessary for us to stipulate
7 to the chain and I asked in
8 return that they stipulate to
9 bringing that report in. It's
10 stipulating to the
11 authenticity and admissibility
12 of that report in exchange and
13 I believe that is hers.

14 MR. KIDD: That's
15 correct, your Honor.

16 MR. PRENNER: Thank
17 you, Judge.

18 A Shall I read it?

19 THE COURT: Yes, sir.

20 A A report written by
21 Officer Jourdan states: "Mr.
22 Donovan Terrell Murray advised
23 that the pills were Percoset and
24 that they belonged to him. I
25 asked Mr. Murray if he had a

150

COBB -- CROSS, MOTION

1 prescription and he advised that
2 he did not have a prescription for
3 the Percoset. Mr. Murray
4 attempted to reach on bed and he
5 was placed in handcuffs for his
6 safety."

7 Q All right. So from
8 Officer Jourdan's or Detective
9 Jourdan's report, she, I mean I
10 think you can infer and you can
11 tell me if you agree with this
12 that, that, that Mr. Donovan
13 Terrell Murray advised and told me
14 the Percoset and they belonged to
15 him, it sounds like that's being
16 addressed to her.

17 A What you're talking
18 about is the time line and the
19 time line may not be, what is,
20 what is in there is factual but
21 you're reading it as though it
22 continued within, it was a
23 continuous thing.

24 Q All right.

25 A It's, it's simply how

COBB -- CROSS, MOTION

1 it's written. It's factually
2 correct but the time line isn't
3 specified.

4 Q Is it factually
5 correct that she's the one who
6 asked Mr. Murray if he had a
7 prescription and he, she is the
8 one to whom he advised I do not
9 have a prescription.

10 A Again that was prior
11 to my arrival.

12 Q Okay.

13 A I can't testify to
14 what I did not see or I did not
15 hear.

16 Q I guess what I'm
17 trying to clarify, though, is that
18 the statement that you're
19 referring to is a wholly different
20 statement than the one in this
21 report. Correct?

22 A I can only testify to
23 the statement made by the
24 defendant in my presence.

25 Q The statement in your

COBB -- CROSS, MOTION

1 presence occurred at the little
2 table when you were closer to the
3 door. Right?

4 A That's correct.

5 Q Would you restate
6 that statement.

7 A He explained that the
8 pills were his and he wanted me to
9 take him to jail. It was, it was
10 obvious to me that the defendant
11 wanted me and wanted the police
12 out of that room and I believe
13 that, the, if we had gone ahead
14 and charged him with those pills
15 it's a relatively minor charge and
16 he was willing to take that charge
17 just to get us out of that room.

18 Q But he was already
19 under arrest at the time that he
20 was brought over to that table.
21 Correct?

22 A Actually he was
23 detained.

24 Q You mean he was in
25 handcuffs.

COBB --- CROSS, MOTION

1 A Yes. That's correct.

2 Q Handcuffs in the
3 front or in the back?

4 A In back as per
5 policy.

6 Q So you found drugs on
7 the bed per Officer or
8 Detective Jourdan, the drugs were
9 moved on to the table, Mr. Murray
10 is handcuffed and made to sit in
11 an area that you designate.

12 A That's correct.

13 Q And --

14 A And then I sat down
15 next to him.

16 Q Okay. And he's
17 already identified to Jourdan or
18 stated to Jourdan that those are
19 his?

20 A That's my
21 understanding of what, what
22 happened but again I didn't hear
23 that.

24 Q Right. But based on
25 your understanding how is it he is

COBB -- CROSS, MOTION

1 not under arrest if you got the
2 drugs, he says they're his drugs,
3 he's got the handcuffs.

4 A Simple answer, simple
5 question, counsel. We were still
6 investigating to determine whose
7 they were and what would be the
8 appropriate charge. We didn't
9 want to charge unlawfully that a
10 prescription narcotic without an
11 actual prescription.

12 Q Tell -- well, tell me
13 how that investigation went then.

14 A Lieutenant Johnson
15 spoke with the Mr. Ickes on the
16 outside and I'm not privy to that
17 conversation.

18 Q Yes, sir.

19 A Okay. My concern
20 quite frankly was Mr. Murray's
21 behavior. He gave me all the
22 appearances of a fight or flight
23 risk. I've been doing this for a
24 long time and I would much rather
25 use the handcuffs on somebody and

COBB -- CROSS, MOTION

1 avoid a fight.

2 Q Why wasn't he just
3 free to leave then?

4 A Because at that point
5 in my view we had a prescription
6 narcotic on the table. That's
7 where I saw them initially. But
8 obviously I understand that
9 Officer Jourdan passed it over but
10 at that point as a cover officer I
11 stayed with the prescription
12 narcotic on the table. Officers
13 were still conducting an
14 investigation. At that point they
15 still had the option to arrest the
16 defendant or both defendants for
17 possession of that prescription
18 narcotic, therefore he is not free
19 to leave.

20 Q And you don't think
21 that that constitutes an arrest?

22 A That's a lawful
23 detention. We would be talking
24 about an arrest if I had removed
25 him from the scene.

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COBB -- CROSS, MOTION

1 Q Is it your position
2 that you have to be removed from
3 the scene to constitute an arrest?

4 A No, but in that
5 particular case that would apply.
6 In this case I simply detained him
7 until Officer Jourdan decided what
8 to do.

9 Q And you never wrote a
10 report in this case. Correct?

11 A I don't believe that
12 I did. I believe Officer Jourdan
13 wrote the only report. I assisted
14 with paperwork back at the station
15 as we're on the same squad by
16 helping just fill out paperwork,
17 prosecutor summary, affidavits,
18 that type of thing while she
19 actually wrote the incident
20 report.

21 Q All right. But the
22 testimony that you're offering
23 here today that the, the fact that
24 Mr. Murray stated to you those are
25 my drugs and that he was referring

COBB -- CROSS, MOTION

1 to the pills and that you inferred
2 from that statement, you know, get
3 me out of here, get me out of
4 here, none of that was ever
5 entered into an incident report or
6 supplement incident report?

7 A I don't believe.
8 See, we had plenty of work to do
9 that night.

10 Q Well, it's important,
11 though, right?

12 A Everything is
13 important, counselor.

14 Q I mean that's very
15 important to this case.

16 A Especially when you
17 have a defense attorney many, many
18 months later trying to ask you
19 about this.

20 Q Exactly. And that's
21 the purpose of the report. Right?

22 A Do you have a
23 question to ask?

24 Q I'm asking you -- I
25 mean no, that's fine -- strike

COBB -- CROSS, MOTION

1 that. Beg the Court's indulgence.

2 THE COURT: Uh-huh.

3 Q Did you all look
4 under the bed?

5 A I looked under the
6 bed when Mr. Murray had initially
7 made a quick movement with his
8 hand. I didn't see anything. I
9 don't know why he made that but it
10 was enough to cause concern to the
11 point where I hand cuffed him.

12 MR. PRENNER: Thank
13 you. Officer Cobb. Nothing
14 further, Judge.

15 THE COURT: Any
16 redirect of the witness?

17 MR. KIDD: Very, very
18 briefly, your Honor.

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COBB -- REDIRECT EXAMINATION

1 REDIRECT EXAMINATION

2 BY MR. KIDD:

3 Q So you detained Mr.
4 Murray for your safety?

5 A That's correct.

6 Q He was not under
7 arrest at that time?

8 A That's correct.

9 Q Are there occasions
10 where you might detain an
11 individual for a small amount of
12 prescription pills and not end up
13 arresting them?

14 A It can happen. Yes,
15 sir.

16 Q Did the defendant
17 ever ask for counsel or an
18 attorney while you were there?

19 A No. Just a lot of
20 jail house lawyering.

21 MR. PRENNER: Your
22 Honor, this may be the subject
23 of a motion but I don't want
24 the words jail house lawyer to
25 come up in the trial and I

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COBB -- REDIRECT EXAMINATION

1 would object to the
2 description of the statements
3 as jail house lawyering. I
4 mean --

5 THE COURT: I'll, I'll
6 contemplate that in the trial
7 but this is in camera. You
8 can't be prejudiced by that.
9 That's in common parlance what
10 they refer to and it is
11 overruled. You may proceed.

12 Q And finally
13 regardless of any statement that
14 the defendant may have made to
15 Officer Jourdan the statements
16 were made to you that the
17 defendant, the Percoset pills were
18 the defendant's, the defendant
19 wanted you to arrest him for the
20 possession of those drugs. Is
21 that correct?

22 A That's correct.

23 MR. PRENNER: Object to
24 the form.

25 THE COURT: Please

COBB -- REDIRECT EXAMINATION

1 rephrase.

2 Q What was the
3 defendant's statement that he made
4 to you?

5 A The defendant claimed
6 ownership of the pills which would
7 have been unlawful possession of a
8 prescription narcotic and he again
9 and again and again and again kept
10 telling me that I needed to take
11 him to jail right then.

12 MR. KIDD: Thank you.
13 No further questions your
14 Honor.

15 THE COURT: Sir, you
16 are dismissed subject to being
17 recalled.

18 THE WITNESS: Thank
19 you, your Honor.

20 THE COURT: Excused
21 rather subject to being
22 recalled.

23 Does the State have
24 any further witnesses?

25 MR. McCOY: No further

1 witness your Honor.

2 THE COURT: Anything
3 further from the defense?

4 MR. PRENNER: Your
5 Honor, I would like to call
6 Mr. Ickes.

7 THE COURT: I'll allow
8 you to call Mr. Ickes but I
9 can tell you in a preliminary
10 matter the State has met their
11 burden by a preponderance of
12 the evidence and there's very
13 little to be gained unless Mr.
14 Ickes is going to tell me it
15 wasn't said at all, although I
16 don't know if that would have
17 any bearing.

18 MR. PRENNER: I would
19 just like to know whether he
20 heard it. He has been --
21 since he's here.

22 THE COURT: Is Mr.
23 Ickes here?

24 MR. KIDD: He is.

25 THE COURT: Is he

1 downstairs?

2 MR. PRENNER: We can do
3 it in the morning if you
4 rather.

5 THE COURT: We can do
6 it right now. No time like
7 the present.

8 MR. PRENNER: Your
9 Honor, while we're waiting may
10 I briefly, on the issue of
11 jail house lawyering --

12 THE COURT: I'm not
13 going to argue right now.

14 MR. PRENNER: Okay.

15 THE COURT: I have
16 already overruled the
17 objection for purposes of this
18 in camera hearing. I'll deal
19 with it as regards trial.

20 MR. PRENNER: That's
21 all I meant. Not with regards
22 to trial.

23 THE COURT: I'll deal
24 with that at the time of
25 trial.

1 MR. PRENNER: Thank
2 you.

3 THE COURT: Have you
4 advised Mr. Murray that
5 trafficking third, he's
6 looking at trafficking third
7 which is twenty-five years.
8 That's a mandatory twenty-five
9 years.

10 MR. PRENNER: Yes, your
11 Honor.

12 THE COURT: With no
13 parole.

14 MR. PRENNER: That's
15 correct, Judge. Twenty years
16 and like three months.

17 THE COURT: That's what
18 I thought. It's day for day
19 almost. You know that?

20 MR. PRENNER: Yes, your
21 Honor.

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ICKES -- DIRECT, MOTION

1 EDWARD ICKES, having
2 been called as a witness, is
3 duly sworn and testifies as
4 follows:

5 DIRECT EXAMINATION BY
6 MR. PRENNER:

7 THE COURT: Mr. Ickes,
8 you're represented by Mr.
9 Whirl. Is that correct?

10 THE WITNESS: Yes,
11 ma'am.

12 THE COURT: And Mr.
13 Whirl is on vacation. He will
14 not be back from vacation
15 until Wednesday which is the
16 ninth if my math serves my
17 correctly. He is protected
18 until the eighth. He will not
19 be back. They have tried to
20 reach him by cell phone and
21 have not been able to, which
22 if I were him on vacation I
23 would not answer my phone
24 either. That would kind of
25 defeat the purpose of resting.

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ICKES -- DIRECT, MOTION

1 THE WITNESS: Yes,

2 ma'am.

3 THE COURT: So what I
4 need to know from you is do
5 you feel comfortable going
6 forward in his absence and
7 testifying in what we call an
8 in camera hearing which is a
9 hearing that is before the
10 Court only?

11 THE WITNESS: Yes,

12 ma'am.

13 THE COURT: You feel
14 comfortable doing that?

15 A

16 THE WITNESS: Yes,

17 ma'am.

18 THE COURT: Do you wish
19 to waive his presence and to
20 go forward without him?

21 THE WITNESS: Yes,

22 ma'am.

23 THE COURT: Are you
24 doing that freely and
25 voluntarily and of your own

ICKES -- DIRECT, MOTION

1 will?

2 THE WITNESS: Yes,
3 ma'am.

4 THE COURT: Are you
5 suffering from any mental
6 disabilities or are you under
7 the influence of any drugs or
8 alcohol?

9 THE WITNESS: No,
10 ma'am.

11 THE COURT: Okay. Sir,
12 if you would state your full
13 name for the record, spelling
14 your last name for the court
15 reporter.

16 THE WITNESS: Edward S.
17 Ickes, I-c-k-e-s.

18 THE COURT: Thank you.
19 You may proceed, Mr. Prenner.

20 MR. PRENNER: Thank
21 you, your Honor.

22 Q Mr. Ickes, my name is
23 Danny Prenner and I represent
24 Donovan Terrell Murray in this
25 case. I just have one or two

ICKES -- DIRECT, MOTION

1 questions for you today.

2 A Yes, sir.

3 Q Mr. Ickes, you were
4 in a hotel room at the Relax Inn
5 on December twelfth, 2007. Is
6 that right?

7 A Yes, sir.

8 Q Okay. And some time
9 on that evening law enforcement
10 officers with the North Charleston
11 Police Department arrived at the
12 room. Correct?

13 A That's correct.

14 Q And let me back up
15 just for one second. How long had
16 you been staying at that hotel?

17 A Couple months.

18 Q And law enforcement
19 ever been to that room before?

20 A No, sir.

21 Q When they got there
22 that night were you in the room
23 with the police officers and
24 Donovan?

25 A Yes, sir.

ICKES -- DIRECT, MOTION

1 Q Okay. Do you recall
2 Mr. Murray making any statements
3 at all to you, the police
4 officers, or anybody else?

5 A Yes, sir.

6 Q Would you tell us
7 please what those statements were?

8 A The statements were
9 he said that I do not have to let
10 the officers in the room, you
11 know. It's my room. It's my
12 right to not let them in. They
13 don't have the right to search.
14 He also made the reference that
15 the pills that were lying on my
16 bed were his, that he would take
17 those.

18 Q Well, let's go to the
19 second statement. He said that
20 the pills are lying on the bed
21 were his?

22 A Yes, sir.

23 Q When did he say that?

24 A It was after the
25 officers had come in and they made

ICKES -- DIRECT, MOTION

1 initial contact with myself and
2 Mr. Murray.

3 Q Where was Mr. Murray
4 when he made that statement?

5 A He was sitting in a
6 chair by the door to the room.

7 Q Who did he make that
8 statement to?

9 A To one of the
10 officers.

11 Q Where were you?

12 A I was seated at the
13 foot of the bed.

14 Q What were you doing?

15 A The officers had
16 placed me there.

17 Q Who all was in the
18 room at that exact moment?

19 A Myself, Mr. Murray,
20 and the officers.

21 Q How many officers?

22 A There was three at
23 the time.

24 Q Had you ever been out
25 in the breezeway and talked to

ICKES -- DIRECT, MOTION

1 Lieutenant Johnson?

2 A Yes, sir.

3 Q That was after the
4 statement?

5 A Yes, sir.

6 Q So the time when
7 you're sitting at the foot of the
8 bed and Mr. Murray is at the table
9 and the three officers are in the
10 room that preceded the time when
11 you go out in the breezeway with
12 the officer. Is that right? Or
13 not?

14 A Could you repeat
15 that.

16 Q What comes first, all
17 of you all being in the room
18 together and you and Mr. Murray
19 making that statement, those are
20 my pills, or you being out in the
21 hallway? Which came first?

22 A The, the statement of
23 him making the pills and the
24 officers that was the first thing
25 and then that's when the officers

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ICKES -- DIRECT, MOTION

1 had taken me out in the breezeway.

2 Q What had you all been
3 doing that night with Mr. Murray?

4 A Just hanging out.

5 Q What time did he get
6 there?

7 A It was around ten
8 thirty.

9 Q You all use any
10 drugs?

11 A I did.

12 Q Where?

13 A What was the
14 question?

15 Q Where did you use
16 drugs?

17 A In my room.

18 Q Where in your room?

19 A At the table by the
20 door.

21 Q What drugs did you
22 use?

23 A I used cocaine.

24 Q How did you ingest
25 it?

ICKES -- DIRECT, MOTION

1 A I snorted it.

2 Q What did you -- where
3 did you get the cocaine, that
4 specific cocaine that you snorted?

5 A From Mr. Murray.

6 Q How many times had
7 Mr. Murray been to your room?

8 A A few occasions.

9 Q More than two?

10 A Yes, sir.

11 Q More than three?

12 A Yes, sir.

13 Q More than five?

14 A I probably say about
15 ten times.

16 Q About ten times?

17 A Yes, sir.

18 Q When was the last
19 time he had been to your room
20 before this evening?

21 A It had been a few
22 days prior.

23 Q You understand there
24 was a complaint in this case
25 received by law enforcement about

ICKES -- DIRECT, MOTION

1 drug activity in your room?

2 A Yes. That's what
3 they said when they came to the
4 door.

5 Q Do you know who that
6 complaint was from?

7 A No, sir. I do not.

8 Q What did you do with
9 the cocaine after, when you used
10 it? Did you use it all?

11 A No, sir. I did not.
12 I placed in it my pill bottle.

13 Q What were you doing
14 when you first saw -- heard the
15 knock on the door?

16 A I was lying in my
17 bed.

18 Q What did you use to
19 snort the cocaine?

20 A A straw.

21 Q Where was the straw?

22 A That I don't know,
23 sir. They moved everything that
24 was in the room.

25 Q The straw was

ICKES -- DIRECT, MOTION

1 recovered by the police officers?

2 A I don't know.

3 Q Was Mr. Murray in
4 handcuffs when he was sitting at
5 the table?

6 A No, sir. Not at
7 first.

8 Q Was he in handcuffs
9 when he made the statement that
10 that's my Percoset?

11 A I don't recall that
12 he was at that time.

13 Q How many times have
14 you met with the prosecutors in
15 this case?

16 A Twice I believe now.
17 Twice I think now.

18 Q And tell me when they
19 first come in the room are you in
20 the room when there's just one
21 officer there or did two officers
22 come at the same time?

23 A Two officers came at
24 the same time.

25 Q And then are you in

ICKES -- DIRECT, MOTION

1 the room the whole time with those
2 two officers and Mr. Murray until
3 the third officer gets there?

4 A Yes, sir.

5 Q And after the third
6 officer gets there is when the
7 statement you say is made by Mr.
8 Murray that that's my Percoset?

9 A That's correct.

10 Q And is it -- do you
11 know who the statement was made
12 to?

13 A I'm not sure which
14 officer he was talking to.

15 Q Do you recall
16 Detective Jourdan who was the only
17 female officer there asking Mr.
18 Murray if he had a prescription
19 for Percoset?

20 A Yes, sir. I think I
21 do recall that.

22 Q Which officer was it?
23 A female, sir?

24 A Yes, sir.

25 Q And so are you --

ICKES -- DIRECT. MOTION

1 does that refresh your
2 recollection at all or are you --
3 does that remind you of where
4 everybody was at?

5 A It reminds me about
6 where everybody was at.

7 Q And where was
8 everybody?

9 A The two officers were
10 by the table. There was another
11 officer that was between myself
12 and Mr. Murray.

13 Q Where was Detective
14 Jourdan, the female officer?

15 A She was standing over
16 by the night stand.

17 MR. PRENNER: All
18 right. That's all I have.
19 Thank you.

20 THE COURT: Do you have
21 any cross-examination of the
22 witness?

23 MR. KIDD: Very
24 briefly, your Honor.

25 THE COURT: You may

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ICKES -- CROSS-EXAMINATION, MOTION

1 proceed.

2 CROSS-EXAMINATION BY

3 MR. KIDD:

4 Q Good afternoon, Mr.

5 Ickes. The room your name. Is

6 that correct?

7 A That's correct.

8 Q And you said you

9 testified that you had been

10 staying there for a few months?

11 A Yes, sir.

12 Q Just so we can try to

13 get straight on this time line.

14 You allowed the officers to enter

15 the room?

16 A Yes, sir.

17 Q There were two

18 officers at that point?

19 A Yes, sir.

20 Q The third officer

21 arrived?

22 A Yes, sir.

23 Q After the third

24 officer arrived is that when Mr.

25 Murray was put in handcuffs?

ICKES -- CROSS-EXAMINATION, MOTION

1 A Yes, sir.

2 Q And, and that's when
3 you just testified that he was
4 sitting at the table just inside
5 the door. Was he sitting in
6 handcuffs at the table just inside
7 the door?

8 A Yes, sir, he was.

9 Q And that's when he
10 made that statement regarding the
11 Percoset is his?

12 A Yes, sir.

13 Q Is that statement,
14 was, was that made to the same
15 officer that put him in the
16 handcuffs?

17 A Yes, sir.

18 Q When -- after that
19 statement was made is that when
20 Lieutenant Johnson removed you
21 from the room?

22 A Yes, sir.

23 Q And, and you gave
24 him -- did you give him consent to
25 search the room?

ICKES -- CROSS-EXAMINATION, MOTION

1 A Yes, sir.

2 Q How did you do that?

3 A Verbally and then I
4 signed a paper.

5 Q You signed a written
6 statement giving him consent to
7 search the room?

8 A Yes, sir.

9 MR. KIDD: Nothing
10 further, your Honor.

11 MR. PRENNER: Just
12 briefly, Judge.

13

14

15

16

17 REDIRECT EXAMINATION

18 BY MR. PRENNER:

19 Q In the statement Mr.
20 Murray made, that's my Percoset,
21 did you just testify that he made
22 it to the officer who put him in
23 handcuffs?

24 A Yes, sir.

25 Q And who is the

ICKES -- REDIRECT, MOTION

1 officer who put him in handcuffs?

2 A That would be

3 Officer, Officer Jourdan.

4 Q The female officer
5 put him in handcuffs?

6 A Yes, sir.

7 MR. PRENNER: Court's
8 indulgence.

9 Q You raised the issue
10 of this consent to search form.
11 When did you sign that?

12 A It was after I had
13 given verbal consent to search the
14 room.

15 Q Did you sign it in
16 the room or out in the breezeway?

17 A It was in the room.

18 Q Was it after you went
19 out in the breezeway or before?

20 A It was after.

21 Q And you came back in
22 the room and signed the consent
23 form?

24 A Yes, sir.

25 Q Had you already told

182

ICKES -- REDIRECT, MOTION

1 the officers where the drugs were
2 located in the room prior to
3 signing that form?

4 A I had told them there
5 was a blue bag and a pistol in the
6 drawer.

7 Q Prior to signing the
8 form?

9 A Yes, sir.

10 Q Did you tell them
11 that information out in the
12 breezeway?

13 A Yes, sir.

14 MR. PRENNER: Nothing
15 further.

16 THE COURT: Sir, you're
17 excused subject to being
18 recalled. I need to ask
19 another question. If you're
20 called to testify in the
21 State's case on tomorrow do
22 you still desire to waive Mr.
23 Whirl's appearance?

24 THE WITNESS: Yes,
25 ma'am.

1 THE COURT: Okay. And
2 you're doing that freely and
3 voluntarily and of your own
4 will?

5 THE WITNESS: Yes, sir.

6 THE COURT: And you're
7 not suffering from any mental
8 disabilities or under the
9 influence of any drugs or
10 alcohol.

11 THE WITNESS: No.

12 THE COURT: And you
13 understand that if you were to
14 say something or possibly have
15 the ability or potential to
16 say something to incriminate
17 yourself that you certainly
18 are entitled to have your
19 lawyer present?

20 THE WITNESS: Yes,
21 ma'am.

22 THE COURT: And knowing
23 that, you still wish to waive
24 his presence?

25 THE WITNESS: Yes,

1 ma'am.

2 THE COURT: Okay.

3 Thank you, Mr. Ickes. If you
4 would go with the officers. I
5 assume we have some closing
6 statements.

7 Do you need to let
8 them know so they can have
9 adequate time to do what they
10 need to do?

11 Any further
12 witnesses, Mr. Prenner?

13 MR. PRENNER: No, your
14 Honor.

15 THE COURT: Closing
16 arguments? Be glad to hear
17 argument.

18 MR. KIDD: Thank you,
19 your Honor. Now the testimony
20 from the officer and now Mr.
21 Edward Ickes I think it's
22 relatively clear that the
23 defendant's statements were
24 not solicited in any way. He
25 was not being interrogated.

1 While he made -- while the
2 State may concede that he was
3 most likely not free to leave,
4 he was not under arrest. It
5 was not a long duration of
6 time. It was not a situation
7 where he was being held by the
8 police department put in a,
9 you know, an interrogation
10 room for hours without food
11 and water .

12 This was, this was a
13 statement that the defendant
14 freely and voluntarily made to
15 both officers and the
16 co-defendant. They were made
17 with the intent to not only
18 hopefully escape the situation
19 with a lesser charge but, you
20 know, also in an effort to
21 keep the officers out of the
22 room. These statements
23 were -- I think, it's, it's as
24 simple as that. They were
25 voluntarily made. The

1 statements, they were not the
2 result of coercion or duress
3 or threat. They were not the
4 result of interrogation or
5 solicitation from the
6 officers. They were
7 voluntarily made and as such
8 they should be admissible.

9 THE COURT: Anything,
10 Mr. Prenner?

11 MR. PRENNER: Yes, your
12 Honor. I would just note had
13 the it is my understanding
14 that one of the factors that
15 the Court can consider in
16 determining whether a
17 statement is voluntary is
18 whether or not the defendant
19 was apprised of his right to
20 remain silent. There's no
21 question in this case that he
22 was not advised of his right
23 to remain silent, while at the
24 same time as being handcuffed
25 in the presence of drugs. So

1 the drugs there on the bed,
2 and they put him in handcuffs,
3 they did not advise him of his
4 right to remain silent.
5 Subsequently you have the
6 statement and it is our
7 position that the statement
8 should be thrown out for that
9 reason, for the failure of, of
10 the law enforcement officers
11 to comply with Miranda and
12 also, Judge, you know, at the
13 appropriate time I would still
14 renew my objection to all of
15 this on relevance and then the
16 upshot of his testimony,
17 whether or not it was
18 voluntary --

19 THE COURT: I'm going
20 to deal with that separately.
21 I've already told you I've
22 taken that under advisement.

23 MR. PRENNER: Thank
24 you.

25 THE COURT: I'll rule

1 on that at the appropriate
2 time. I'm researching
3 whether, researching things on
4 that so I can be ready to deal
5 with that, rule on that.

6 Yes, sir?

7 MR. KIDD: If I can
8 just address Miranda, the
9 State concedes that Miranda
10 wasn't given prior to the
11 statements but Miranda is a,
12 is, is a protection designed
13 to advise the defendant of his
14 rights prior to interrogation
15 and prior to questioning.
16 None of these statements were
17 made in response to any
18 questions by the officers.
19 They were all voluntarily
20 made. Just -- and, and, and
21 more over the, the first
22 statements in which we were
23 arguing over here were made
24 prior to him being handcuffed.
25 The second statements

1 regarding the pills were, were
2 the at the time of the
3 defendant being placed in
4 handcuffs for the officers'
5 safety. To thinking that
6 anything the defendant says in
7 the second the handcuffs are
8 clasped to maybe ten seconds
9 later to his Miranda rights
10 being read is inadmissible is,
11 is not the law of this state.

12 The statements that
13 were was voluntarily made
14 without the result of improper
15 duress or threat or coercion
16 or interrogation and are
17 admissible and that is the
18 sort of statement we have.

19 MR. PRENNER: Your
20 Honor, briefly. There is a
21 question asked of Mr. Murray,
22 do you have a prescription for
23 Percoset? It doesn't become
24 illegal until you have it
25 without a prescription. There

1 definitely is a question asked
2 of him after he admits that
3 this is his drug while he's
4 handcuffed without the benefit
5 of --

6 THE COURT: Actually,
7 actually there's some dispute
8 about that. The officers'
9 testimony that I heard is not
10 consist with that version.
11 Now if you want to argue what
12 is inapposite to Officer
13 Jourdan's statement certainly
14 you can do that but the
15 testimony that I have before
16 me does not corroborate that
17 because this officer says he's
18 the one that handcuffed him
19 and that he didn't Mirandize
20 him and he did not interrogate
21 him and he had no intention of
22 speaking with him or any
23 desire to and the statements
24 were spontaneous.

25 So if you want to

1 argue that and whether that's
2 in fact what happened you're
3 certainly entitled to do that
4 but I don't have Officer
5 Jourdan here to testify. What
6 I have before me however and
7 being the Judge, the
8 credibility and veracity of
9 this officer who says he
10 handcuffed the defendant.

11 MR. PRENNER: I would
12 just note, your Honor, that
13 the report is admissible.

14 THE COURT: It is.

15 MR. PRENNER: Therefore
16 you have before you, Judge,
17 the testimony of Jourdan.
18 That's why I asked him this
19 question.

20 THE COURT: It is, but
21 I'm going to allow in the
22 testimony which is what I
23 heard here.

24 MR. PRENNER: Thank
25 you, your Honor. Our

1 objection is noted for the
2 record.

3 THE COURT: Actually,
4 though, wouldn't you rather
5 find -- actually what was read
6 from in there was what she
7 asked whether, who the drugs
8 belonged to and actually under
9 the prevailing case law she
10 would be entitled to ask that
11 in some investigatory
12 capacity.

13 MR. PRENNER: She asked
14 him whether he had a
15 prescription. I asked Mr.
16 Murray if he had a
17 prescription.

18 THE COURT: Well, same
19 thing. Same difference. She
20 asked him a question
21 irregardless of what the
22 question was, entitled to
23 elicit some response from him,
24 but I think there's case law
25 that would support her ability

1 to ask that in an
2 investigatory capacity without
3 him being Mirandized.

4 But I don't -- the
5 testimony that I have before
6 me that I'm giving credibility
7 to is the officer who
8 testified he's the one that
9 actually handcuffed him
10 because at that point in the
11 statement there is no
12 indication that he had been
13 detained at least as I
14 understand the time line from
15 that statement and the
16 officer's testimony which was
17 that that statement was not
18 really -- basically that was
19 not exactly how the time line
20 went.

21 MR. KIDD: Further
22 more, your Honor, I think
23 you're on a point but I
24 believe the question about
25 whether he had a prescription

1 was a follow up question to
2 him taking ownership to them,
3 to the drugs. Furthermore I
4 think this interaction with
5 Jourdan is a separate
6 interaction than the one with
7 Cobb which we're seeking to
8 admit.

9 MR. PRENNER: Your
10 Honor, just for the record I
11 understand the Court's ruling.

12 THE COURT: I haven't
13 ruled yet but I --

14 MR. PRENNER: I'm
15 sorry. I thought your Honor
16 had already ruled.

17 THE COURT: I had not
18 ruled.

19 MR. PRENNER: Well, in
20 that case, Judge, I don't
21 think that the law allows
22 police officers to ask follow
23 up questions regarding
24 criminal activity.

25 THE COURT: I think the

1 law was there and when you
2 spontaneously say something I
3 think they can follow it up
4 with questions. They can
5 talk, they can talk to you
6 within an investigative
7 capacity.

8 MR. PRENNER: Well, I

9 --

10 THE COURT: When they
11 just arrived on the scene on
12 an events but based on the
13 officer's testimony, I'm
14 referring to Officer Cobb's
15 testimony, you're taking the
16 time line out of its natural
17 sequence and that is not
18 exactly how it took place. He
19 said that the statement by
20 Officer Jourdan was prior to
21 his arrival. The defendant
22 wasn't detained until he
23 handcuffed him and he, he did
24 it for his safety.

25 MR. PRENNER: Jourdan

1 and Ickes, their testimony is
2 consistent.

3 THE COURT: Actually
4 Mr. Ickes' testimony is
5 consistent with both officers
6 which would seem to me to
7 verify the time line as relied
8 by Detective or Investigator
9 Cobb.

10 MR. PRENNER: Under any
11 circumstances, Judge, I think
12 all the witnesses who
13 testified that there's drugs
14 on the bed the drugs are
15 collected, the question is
16 asked and then after the drugs
17 are collected and Mr. Murray
18 is handcuffed, that he is
19 never read Miranda, and there,
20 testimony from two witnesses
21 that said in addition to that
22 he's asked the question about
23 whether he had a prescription
24 and I think that any response
25 to that question or that

1 question itself should not
2 have been asked without
3 advising him of his rights to
4 remain silent. He was under
5 arrest. I think that there's
6 illegal activity afoot and
7 he's entitled to be advised of
8 his right to remain silent.
9 And I guess, Judge, that would
10 mean that the statement that's
11 my Percoset comes in but the
12 statement I don't have a
13 prescription doesn't. But,
14 you know, that's our position
15 that the question did violate
16 Miranda.

17 THE COURT: And
18 actually Mr. Ickes' testimony,
19 he doesn't recall if the
20 defendant was in handcuffs
21 when he said that is my
22 Percoset.

23 MR. PRENNER: He didn't
24 recall until the State asked
25 him a couple of questions and

1 then recalled.

2 THE COURT: His direct
3 testimony was that he not
4 recall.

5 MR. PRENNER: Right.
6 And on cross he made a
7 statement to the effect
8 that --

9 MR. KIDD: Your Honor,
10 I may.

11 THE COURT: He says --
12 don't interrupt, please. Then
13 on redirect he said that a
14 female officer put him in
15 handcuffs and he said these
16 are my drugs and that was
17 after the, actually she
18 identified the verbal. He
19 made a verbal consent for them
20 to search and then he signed
21 the written consent and then
22 he told them about the
23 narcotic items and pistol in
24 the drawer and he did that in
25 the breezeway prior to signing

1 the written consent regarding
2 the search of the room.

3 MR. PRENNER: Right,
4 Judge. He said the statement
5 was made to the officer who
6 put him in the handcuffs, and
7 according to him that was
8 Detective Jourdan.

9 THE COURT: The
10 statements made by the
11 defendant are both admissible.
12 They are not precluded by
13 Miranda. Miranda has -- is
14 only implicated or triggered
15 when a person is in a
16 situation where they have of
17 they are they are in custodial
18 interrogation. That of course
19 we know is when a person is
20 not free to leave and when
21 they are being questioned
22 either expressly or
23 functionally equivalent and
24 when that interrogation or the
25 express or functional

1 questioning is designed to
2 elicit illicit inculpatory
3 remarks from a defendant. The
4 purpose of course as we know
5 of Miranda is to prevent a
6 person or to advise him that
7 any incriminating statement or
8 remarks that they make will be
9 used against them for the
10 purposes of prosecuting them.
11 Custodial interrogation is
12 questioning initiated by law
13 enforcement officer or
14 officers after a person has
15 been taken into custody or
16 otherwise deprived of his
17 freedom of action in any
18 significant way.

19 Now, there're two
20 separate sets of statements,
21 one of which where clearly
22 Miranda is not implicated.
23 Any spontaneous statement the
24 defendant made when police
25 came to the door and knocked

1 and he said don't let them in,
2 they don't have the right,
3 don't let them in, to search
4 they need a warrant, those are
5 all spontaneous statements,
6 none of which are covered by
7 Miranda and are clearly
8 admissible. The police had
9 absolutely no obligation to
10 Mirandize him when he made
11 those spontaneous statements.
12 He certainly made those of his
13 own volition.

14 Now as it regards and
15 in addition to that they were
16 not elicited by the police nor
17 was there any express or the
18 functional equivalent of
19 express questioning at that
20 time nor was he in custody at
21 that time nor was his freedom
22 at least at that moment, nor
23 was he deprived of his freedom
24 in any way, significant way at
25 that time. He certainly made

1 those statements of his own
2 volition. They were
3 spontaneous and they are
4 admissible.

5 As regards the other
6 statement and I'm referring to
7 Officer Cobb's testimony which
8 is that he felt the defendant
9 was a flight risk because of
10 his furtive movements and
11 otherwise and he handcuffed
12 the defendant and he had him
13 sit at the table, that he
14 detained him for safety, he
15 was not under arrest, he was
16 still investigating the
17 matter, I think clearly
18 whether he was handcuffed
19 because he was a flight risk
20 or otherwise, his freedom was
21 deprived in a significant way.
22 However there are two parts of
23 the Miranda trigger, one being
24 him being deprived of his
25 ability to. or being deprived

1 of his freedom but the other
2 is questioning initiated by
3 the law enforcement officer
4 after that person has been
5 taken into custody. The
6 testimony reflects at least
7 that of Officer Cobb that he
8 did not ask him any questions,
9 he did not want to talk to him
10 at any time regarding that,
11 and that the statement made by
12 the defendant was spontaneous,
13 being those are my pills, take
14 me to jail, and him being
15 adamant about it. So
16 certainly if and my opinion
17 would be absolutely the
18 complete opposite if Officer
19 Cobb said take him into
20 custody, place him in
21 handcuffs, I think clearly
22 Miranda would have been
23 triggered. But where you are
24 handcuffed and you make a
25 spontaneous statement to the

1 police, prior to them
2 Mirandizing you I don't think
3 that there is any obligation
4 on the part of the police to
5 give Miranda warnings where
6 they are not in any way
7 questioning or initiating any
8 questioning or the functional
9 equivalent of any questioning
10 of the defendant. Those again
11 would be spontaneous
12 statements that would have
13 been made by the defendant.

14 Now there is, and I'm
15 going to have to read the
16 statement in its entirety,
17 that being the statement
18 Officer Jourdan because I've
19 not had -- while there's been
20 references made to it I don't
21 think it was admitted into the
22 record. It was submitted by
23 stipulation. I guess it will
24 be a Court exhibit or State or
25 defendant or joint exhibit, I

1 need to read that statement in
2 its entirety to put it in its,
3 its context in terms of the
4 continuum of how these events
5 took place. But at best as I
6 understand the testimony of
7 Mr. Ickes, and I, if I
8 mispronounce his name I
9 apologize, and Officer Cobb
10 that he was, the defendant was
11 placed in handcuffs and then
12 he made the statement about it
13 being his drugs and then
14 Officer Jourdan asked him a
15 follow up question regarding
16 that. That might well be
17 questionable. If her
18 questioning was designed to
19 elicit him saying something
20 that would inculcate him in
21 this sense. But I need to
22 read the statement.

23 In any event his
24 secondary statements regarding
25 the pills being his are not --

1 I've not ruled on the
2 admissibility of that, of the
3 drugs or, actually of those
4 statements or that portion of
5 the event, so to some extent
6 it's a knot and so I won't
7 make a make a decision
8 regarding that until I've
9 heard that, the entirety of
10 that testimony in camera to
11 determine one, as a primary
12 function whether it is what we
13 would consider a prior bad act
14 that is not the subject of a
15 conviction, whether it would
16 be admissible under the
17 exceptions and/or whether it's
18 simply an issue of relevance
19 and I need to think about that
20 a little bit because due to
21 the late hour, it's 6:56, my
22 brain is a little dim to be
23 quite honest, frankly, and I
24 would like the time to reflect
25 on that. I think you all are

1 tired, too. And I appreciate
2 you all giving me the
3 opportunity to do that.

4 So we will stand in
5 recess and we will resume the
6 trial in the morning -- well,
7 actually at ten. I have
8 status conferences I have to
9 hold in the morning and I
10 should conclude those by ten.

11 MR. McCOY: Thank you,
12 Judge.

13 THE COURT: You're
14 welcome.

15 (Whereupon, this
16 matter was adjourned at 6:57
17 p.m.)

18
19
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25

CERTIFICATION

I, the undersigned HEATHER GAYLE BURNS, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the proceedings in the captioned case, relative to appeal, heard in the Court of General Sessions for Charleston County, South Carolina on the 7th day of July, 2008.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

DATED: August 24, 2009

Heather Gayle Burns RDR
HEATHER GAYLE BURNS, R. D. R.
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
DOCKET NO. 2008-GS-10-2285 to
2289

STATE OF SOUTH CAROLINA,

TRANSCRIPT OF PROCEEDINGS

VS.

(Volume II., 208-641)

Charleston, South Carolina
July 8, 2008

DONOVAN TERRELL MURRAY,
Defendant.

BEFORE:

THE HONORABLE DEADRA L. JEFFERSON, Judge.

APPEARANCES:

PETER M. McCOY, JR., ESQ.
CULVER KIDD, ESQ.
ASSISTANT SOLICITORS
ATTORNEYS FOR THE STATE

DANIEL PRENNER, ESQ.
ATTORNEY FOR THE DEFENDANT

HEATHER GAYLE BURNS, RDR
OFFICIAL COURT REPORTER
9TH JUDICIAL CIRCUIT

I N D E X, July 8 2008

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Mr. Kidd's opening	Pages 231 to 246
Mr. Prenner's opening	Pages 247 to 257
Motions	Pages 458 to 475
Motions	Pages 589 to 635

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EXHIBITS

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1 (Whereupon, the Judge
2 enters the courtroom at 10:34
3 a. m.

4 THE COURT: Okay.
5 We're back on the record on
6 State of South Carolina versus
7 Donovan Terrell Murray,
8 2008-GS-10-2285 through 2289.
9 The Court heard several
10 motions on yesterday and I've
11 already ruled on the Jackson
12 versus Denno motion. I
13 reserved the right to read the
14 statement of Officer Jourdan
15 but it has come to my
16 attention this morning that
17 you -- that that statement was
18 never entered into evidence,
19 therefore the Court would not
20 use that statement as the
21 basis for its decision and
22 will, and relies completely on
23 the ruling articulated on last
24 evening, that the -- relied on
25 the testimony of Officer

1 Darren Cobb as the basis for
2 the Court's ruling.

3 Regarding the pills,
4 that matter remains under
5 advisement. The Court will
6 hear that testimony in camera
7 and rule at that time. And
8 the same for the admissibility
9 of Mr. Ickes's prior offense
10 in the State of Ohio. The
11 Court will hear that in camera
12 as well and create a proper
13 rule on that at the
14 appropriate time. And at that
15 time we'll put any
16 representations on the record.
17 I'll question Mr. Ickes again
18 regarding waiving the right to
19 Mr. Whirl being present, who
20 is his counsel, and any
21 conversations that the State
22 has with Mr. Whirl will then
23 be put on the record at that
24 time.

25 Now on last night I

1 promised that I would follow
2 up and determine the status of
3 Mr. Murray's probation. His
4 agent is John Fortez, Fontez.
5 I'm sorry. We've not been
6 able to reach him however I
7 did speak with the supervisor
8 in charge for the office and
9 what they have advised the
10 Court that Mr. Murray was not
11 in violation, that there's no
12 legal process currently
13 against him. The Court stands
14 corrected. I thought that
15 there was. That in order
16 for -- that they will not
17 issue a citation unless he is
18 convicted and that the
19 Y. O. A. parol likewise they
20 will not issue an
21 administrative hearing unless
22 he is convicted on this
23 offense.

24 However, there is a
25 caveat, one of which in the

1 interests of which I cannot
2 obtain because I've not been
3 able to speak to Mr. Fontez,
4 that being whether Mr. Murray
5 reported his interaction with
6 law enforcement to his agent.
7 If he did not, they would
8 issue a warrant for that, and
9 again I do not have an answer
10 to that and I am led to
11 believe that since they have
12 not up to this point, that,
13 that, that maybe he report
14 that to his agent. But again
15 I have not be able to
16 corroborate that.

17 Also the other caveat
18 or exception is where a weapon
19 is involved, that they will
20 issue a community safety legal
21 process where a weapon is
22 involved. However, I did have
23 the supervisor check the
24 computer or his file and what
25 they've indicated is because

1 the room was not in Mr.
2 Murray's name that they will
3 not be issuing a community
4 safety legal process regarding
5 the weapon.

6 So I just wanted to
7 make sure that I was true to
8 my word and that I did check
9 on the status of his probation
10 so they could be fully advised
11 of any of his decision-making
12 process, and also to make sure
13 Mr. Prenner had some concerns
14 about whether he had
15 accurately advised his client
16 and I told him I would follow
17 up on that to make sure, and
18 also to the extent that the
19 Court gave any misapprehension
20 to Mr. Murray, I apologize. I
21 think that we all stand
22 corrected.

23 Is the State ready to
24 proceed?

25 MR. KIDD: Yes, your

1 Honor.

2 THE COURT: Is the
3 defense ready to proceed?

4 MR. PRENNER: Yes,
5 Judge.

6 THE COURT: Okay.
7 Please bring in the jury.

8 MR. KIDD: Your Honor,
9 may I approach for one minute?

10 THE COURT: Yes, sir.

11 (Whereupon, there was
12 an off-the-record bench
13 conference.)

14 THE COURT: Bring in
15 the jury, please.

16 (Whereupon, the jury
17 enters the courtroom at 10:41
18 a.m.)

19 THE COURT: You may be
20 seated.

21 Would the jury remain
22 standing so that the clerk
23 might swear you.

24 (Whereupon, the jury
25 is sworn.)

1 THE COURT: This is
2 the State of South Carolina
3 versus Donovan Terrell Murray.
4 What I'm now saying to you is
5 intended to serve and an
6 introduction to the trial of
7 this case. These remarks are
8 not and instruction on the law
9 of this case. I will instruct
10 you on the law applicable to
11 the case at the end of the
12 trial, before you retire to
13 consider your verdict. This
14 is merely an explanation of
15 the procedure that we will
16 follow in the trial of this
17 case so that you may better
18 understand what may be
19 happening.

20 During the course of
21 the trial you will be given
22 the opportunity to take notes,
23 and the bailiffs are going to
24 pass out to you note pads and
25 pens, and there is a white

1 sticker that is on the front
2 of your note book. Please
3 write your number on that
4 sticker so that you will
5 readily be able to identify
6 which note book belongs to
7 you. I'm going to give you
8 some additional instructions
9 regarding note-taking at the
10 conclusion of this
11 instruction.

12 The defendant in this
13 case has been charged by
14 several indictments filed in
15 this Court with the crimes of
16 possession with the intent to
17 distribute cocaine within the
18 proximity of a school,
19 possession with the intent to
20 distribute cocaine, possession
21 of a firearm during the
22 commission of a violent crime,
23 possession with the intent to
24 distribute cocaine base within
25 the proximity of a school, and

1 trafficking in cocaine base,
2 the elements of which I will
3 explain to you later at the
4 conclusion of the trial. The
5 indictments are simply the
6 charge by which the cases are
7 brought into court and they
8 are not in any sense evidence
9 of any of the allegations they
10 contain.

11 The defendant has
12 pled not guilty to the
13 indictments. The State
14 therefore has the burden of
15 proving each of the elements
16 of the indictments beyond a
17 reasonable doubt and it will
18 be your duty, ladies and
19 gentlemen, to decide whether
20 the State has met that burden
21 or not.

22 Your purpose as
23 jurors is to find and
24 determine the facts. You are
25 the sole judges of the facts.

1 If at any time I make any
2 comment regarding the facts
3 you must disregard it. You
4 are to determine the facts
5 from the testimony you hear
6 and the other evidence
7 introduced in court. It is up
8 to you to determine the
9 inferences which you feel may
10 be properly drawn from the
11 evidence.

12 It is especially
13 important that you perform
14 your duty of determining the
15 facts diligently and
16 conscientiously because
17 ordinarily there is no way to
18 correct an erroneous
19 determination of the facts
20 made by a trial jury. On the
21 other hand and with equal
22 emphasis, the same law that
23 makes you the judges of the
24 facts makes me the judge of
25 the law. The law as given by

1 the Court is the only law you
2 may consider. You must accept
3 and follow it even though you
4 may disagree with it. I
5 cannot tell you what the facts
6 are and you cannot disagree
7 with the Court about what the
8 law is or what the law should
9 be..

10 Your responsibility
11 is to take the law as it is
12 instructed and to apply it to
13 the facts as you find them
14 from the testimony of the
15 witnesses and any other
16 evidence that is introduced.
17 After doing that you will
18 render your verdict, a true
19 and just verdict under the
20 solemn oath that you have just
21 taken as jurors in this case.

22 Until I advise you to
23 begin your deliberations, you
24 must not discuss this case
25 with anyone, including your

1 fellow jurors, friends, family
2 members, and any one involved
3 in the case. After the case
4 is submitted to you, you must
5 discuss it only in the jury
6 room with your fellow jurors.

7 The attorneys and the
8 parties in this case have been
9 advised that they are not
10 speak with you at all, so if
11 you should see anyone involved
12 in the case and they don't
13 speak to you, please don't
14 think they're being
15 unfriendly. Please know that
16 they are simply adhering to
17 the Court's instructions.

18 During the course of
19 this trial you're instructed
20 that you're not to read,
21 listen to, or watch any news
22 reports about this case. That
23 includes anything that may be
24 in the newspapers, on the
25 Internet, radio, or

1 television. In addition,
2 you're not to do any
3 independent research or any
4 type of Google searches or Ask
5 dot com searches on your own
6 eliciting any information
7 outside the trial testimony
8 and evidence in this case.

9 You must not consider
10 anything you may have heard or
11 read outside -- about this
12 case outside of this courtroom
13 whether before or during the
14 trial. It is important and
15 essential that you keep an
16 open mind and not decide any
17 issue in the case until all of
18 the evidence has been
19 presented, the parties have
20 made their closing arguments,
21 and I've instructed you on the
22 law applicable to this case.
23 It is your solemn
24 responsibility to determine
25 the guilt or innocence of the

1 defendant and your verdict
2 must be based solely on the
3 evidence as it is presented to
4 you in this trial and on the
5 law as I will instruct you
6 during and at the close of
7 this trial.

8 In just a moment the
9 solicitor will make what is
10 called an opening statement in
11 which he will explain to you
12 the issues in this case or at
13 least what he perceives the
14 issues to be in this case.
15 The attorney for the defendant
16 may also make an opening
17 statement, although he is not
18 required to do so. What the
19 attorneys tell you during
20 their opening statements is
21 not evidence in this case. It
22 is only their contention as to
23 what they believe the issues
24 to be. The evidence in this
25 case will be presented to you

1 by the testimony of sworn
2 witnesses from the witness
3 stand and/or by exhibits that
4 may be introduced into
5 evidence.

6 From time to time
7 during the trial you may hear
8 one attorney say something
9 like "your Honor, I believe we
10 have a question of law or a
11 matter of law to discuss with
12 you" or "your Honor, may we
13 approach the bench?" Or
14 sometimes I may ask the
15 attorneys to approach the
16 bench or I may excuse you from
17 the courtroom for a short
18 while, while we discuss
19 matters of law. The reason we
20 do this is because you are the
21 judges of the facts in this
22 case and sometimes when I'm
23 discussing matters of law with
24 the attorneys it may be
25 necessary for me to comment in

1 some way about the facts and
2 ruling whether a particular
3 evidentiary rule or statute or
4 procedural rule applies. For
5 this reason we exclude you
6 from the courtroom so that in
7 no way will you be influenced
8 by anything that the Court may
9 say or do in connection with
10 the facts of this case.

11 Also from time to
12 time you may hear one of
13 attorneys say something like
14 "your Honor, I object." Just
15 as in sports, business, or any
16 other structured activity
17 there are certain rules that
18 we must obey in the
19 presentation of evidence.
20 These rules insure that you
21 receive the most trustworthy
22 and reliable evidence
23 available. An objection is a
24 procedure that an attorney may
25 use to call a possible

1 violation these rules to my
2 attention as the judge of this
3 court and for this reason you
4 should not hold an attorney's
5 objection against them, nor
6 should you conclude from the
7 Court's sustaining or
8 overruling an objection that I
9 favor one side or the other.

10 In determining what
11 the true facts are in this
12 case, you must decide whether
13 or not the testimony of a
14 witness or witnesses is
15 believable. It will be my
16 responsibility to rule as a
17 matter of law whether certain
18 testimony is admissible at all
19 or not, but once the testimony
20 is admitted or not you believe
21 it is solely for you to
22 determine.

23 In deciding whether
24 to believe a witness's, a
25 witness you have the right to

1 consider the interest of any
2 witness, the bias of any
3 witness, the prejudice of any
4 witness. The opportunity for
5 the witness to have seen the
6 matters and things about which
7 the witness may testify, and
8 the way the witness acts on
9 the witness stand, what we
10 commonly refer to as demeanor.

11 You have a right to
12 consider anything that is in
13 the record that will help you
14 evaluate the testimony of the
15 witness. That means that it
16 is your duty to pay close
17 attention to the witnesses, to
18 observe them, to listen to
19 them, and to pay close
20 attention to the attorneys and
21 the Court. Although I know it
22 is difficult, please do not
23 allow your thoughts to wander,
24 but give strict attention to
25 the testimony so that at the

1 end of all the testimony, the
2 arguments of counsel, and the
3 charge on the law as given by
4 the Court, you will then be in
5 a position to determine what
6 the true facts are and to
7 apply the law to those facts
8 and thus render a true and
9 just verdict in this case.

10 It is your added
11 duty, Mr. Foreman, to preside
12 in the jury room and to be the
13 jury spokesperson here in
14 court. It will also be your
15 responsibility to write the
16 verdict, but I'll give you
17 additional instruction
18 regarding that at the
19 conclusion of the case.

20 I emphasize to the
21 panel that the foreperson is
22 simply and administrative
23 function and the foreperson
24 does not have any greater vote
25 or voice than any individual

1 member of the panel. Again,
2 it is simply an administrative
3 function. That person fills
4 out the verdict form and if
5 the jury has questions during
6 deliberations it will be the
7 foreperson's responsibility to
8 write those questions out for
9 the Court.

10 As I've indicated
11 during the course of this
12 trial you will be given the
13 opportunity to take notes.
14 Note-taking is a privilege
15 that you may choose to
16 exercise or choose not to
17 exercise. Please do not feel
18 compelled to take notes. Not
19 everyone finds note-taking
20 helpful to them. If you
21 should decide to take notes,
22 please don't try to record
23 everything that is said. It's
24 physically impossible. And
25 in addition to that, you must

1 rely on your powers of
2 observation and so if you
3 become overly involved in
4 taking notes, trying to record
5 everything verbatim, it will
6 dilute your powers of
7 observation in watching the
8 witnesses and determining
9 their credibility and
10 believability. You may want
11 to keep an outline of the main
12 points that are being made and
13 once you're sent to your jury
14 room to deliberate you may
15 want to take a few minutes to
16 allow your notes to refresh
17 your memory or your
18 recollection of the general
19 trial evidence and general
20 arguments that have been
21 presented to you. During
22 breaks and recesses your notes
23 will have to be left in your
24 seats, but please be assured
25 that we will secure them and

1 no one will invade your
2 privacy by reading them. They
3 will also be secured during
4 any evening recesses. I would
5 remind you that your notes are
6 for your specific and your
7 individual purposes. They are
8 not to be shared with anyone
9 else. They are only to be
10 used for the purpose of
11 refreshing your own
12 recollection. I would remind
13 you that juror notes should
14 not be of any greater weight
15 than the recollection of other
16 jurors. The recollections of
17 individual jurors should be
18 considered just as reliable as
19 notes taken by other jurors.

20 In order to preserve
21 everyone's rights I will give
22 the parties an opportunity to
23 take exception to anything
24 that the Court has said by way
25 of opening instruction. Are

1 there any exceptions from the
2 State?

3 MR. KIDD: No, your
4 Honor.

5 THE COURT: Any from
6 the defense?

7 MR. PRENNER: No, your
8 Honor.

9 THE COURT: We will
10 proceed with arguments. You
11 may proceed.

12 Ladies and gentlemen,
13 I would ask that you give the
14 attorneys your undivided
15 attention.

16 MR. KIDD: Thank you,
17 your Honor.

18 THE COURT: You're
19 welcome.

20 MR. KIDD: May it
21 please the Court.

22 THE COURT: Yes, sir.

23 MR. KIDD: Good
24 morning, ladies and gentlemen.
25 My name is Culver Kidd with

1 Peter McCoy of the Ninth
2 Circuit Solicitor's Office.
3 It is our job to prosecute
4 people who have been charged
5 with a crime in Charleston
6 County.

7 You've been selected
8 as jurors to pass judgment on
9 Donovan Murray. As the judge
10 just instructed you, it's your
11 job to take the facts that
12 come out in the trial and
13 apply them to the law that the
14 Judge is going to charge you
15 at the end of the trial and
16 then you will see if those
17 facts that come forth when
18 applied to those laws, whether
19 the defendant is actually
20 guilty of the crimes that he's
21 been charged with.

22 Now the case that's
23 going to be presented to you
24 is not going to be a case full
25 of emotion. I don't have

1 witnesses that are going to
2 come forward and who are going
3 to be -- have a loved one who
4 was killed or who's been
5 injured or wronged by the
6 defendant in any way. This is
7 a case about drugs. This is a
8 case about drug dealing. It's
9 what a lot of people call a
10 victimless crime. I think
11 that's a misnomer. You as
12 citizens of Charleston County,
13 as members of our society are
14 the victims of these type of
15 crimes. It's a crime we take
16 very seriously in the
17 Solicitor Office. It's an
18 amount of drugs worth, you'll
19 hear testimony that it's worth
20 over three thousand dollars.
21 It's not a personal use case.
22 It's, it's a case that
23 impacts, its impact goes, goes
24 far and wide. It's not just
25 about a person in this

1 courtroom. It's not just
2 about the defendant.

3 You're going to hear
4 from a man named Edward Ickes.
5 He's from Ohio. He moved down
6 to Charleston. He got a job,
7 welder-building the armored
8 vehicles that are sent over to
9 Iraq. He was staying in a. A
10 relax Inn, an extended stay
11 hotel in North Charleston, and
12 he met the defendant through
13 another resident at that
14 hotel, and you're going to
15 hear also from Lieutenant
16 Johnson who's going to tell
17 you that these hotels are kind
18 of a hot bed for criminal
19 activity, an extended stay,
20 low income hotels, he responds
21 there often.

22 So Mr. Ickes meets
23 the defendant and the
24 defendant uses Mr. Ickes's sic
25 room as a place to kind of

1 hang out, lay low around the
2 hotel, and in exchange he
3 gives Mr. Ickes a small
4 quantity of cocaine and he
5 kind of does his business
6 around the hotel. You're
7 going to hear about the night
8 in question, which is December
9 twelfth, 2007, the same sort
10 of situation was going on.
11 The defendant had come to Mr.
12 Ickes's hotel room which was
13 in his name. He'd been
14 staying there for about a
15 month. The defendant comes
16 over to Mr. Ickes's hotel room
17 around 10:30, eleven o'clock
18 at night, and comes in, asks
19 if he can hang out a while,
20 while he's waiting for a ride.
21 He gives Mr. Ickes
22 approximately a gram of
23 cocaine, and, and they're
24 waiting.

25 There was evidently

1 an anonymous phone call to 911
2 reporting some suspicious drug
3 activity from this hotel room.
4 Officer responded to
5 investigate and you're going
6 to hear from Lieutenant
7 Johnson, you're going to hear
8 from Officer Cobb that they
9 responded to the hotel room,
10 they knocked on the door. Mr.
11 Ickes answered the door, and
12 you're going to hear them
13 describe the defendant's
14 actions from the time they
15 entered that hotel room as
16 being of a very agitated
17 state, very defensive. He was
18 making statements to the
19 extent of don't let the
20 officers in the room. They
21 need a warrant to be here.
22 Don't let them search. Don't
23 cooperate with them. Don't
24 talk to them. These are
25 statements coming from Mr.

1 Murray instructing Mr. Ickes
2 now to handle the police when
3 they knocked on the door.
4 When Mr. Ickes was opening the
5 door he saw Mr. Murray stuff a
6 blue bag and a loaded firearm
7 into a bedside night stand in
8 the hotel room.

9 Now Mr. Ickes is
10 going to tell you how this
11 unnerved him considerably,
12 understandably so, and that as
13 soon as he saw that he began
14 cooperating with the police.
15 He wanted nothing to do with
16 what was going on just then.

17 So officers
18 investigated. Officer Cobb
19 arrived. There were three
20 police officers in the hotel
21 room. We have Mr. Ickes and
22 we have Mr. Murray. Mr. Ickes
23 is cooperating, Mr. Murray is
24 acting very agitated. You're
25 going to hear from Officer

1 Johnson that he was acting in
2 what he's going to call a
3 fight or flight sort of
4 demeanor. You know, he was
5 pacing around. Lieutenant
6 Johnson -- excuse me. Officer
7 Cobb is going to tell you
8 that, you know, he was, he was
9 scared for his safety. Mr.
10 Murray made a sudden movement
11 towards the bed, Officer,
12 Officer Cobb put him in
13 handcuffs and sat him down for
14 his own safety. At that point
15 they separated the two
16 defendants. Mr. Ickes gave
17 consent to search the hotel
18 room. We have written consent
19 to search the hotel room. He
20 pointed the officers to where
21 he witnessed Mr. Murray tuck
22 the drugs in a blue bag -- I
23 mean the gun in a blue bag in
24 the nightstand, and
25 Lieutenant Johnson is going to

1 testify that he searched the
2 hotel room and he found
3 approximately twenty-five
4 grams of crack cocaine, seven,
5 approximately seven grams of
6 powder cocaine, and a loaded
7 forty-five caliber firearm.
8 And he's also going to testify
9 that in the other night stand
10 he's, he found a pill bottle
11 full of little over a gram of
12 powder cocaine which Mr. Ickes
13 will, will take responsibility
14 for.

15 Now, when you, when
16 you listen to all these facts
17 come forth and you apply them
18 to the law charged by the
19 judge, I'm, I'm going to talk
20 to you a little bit about the
21 law in a, in a moment, but I
22 defer to the judge on all the
23 opening charge. She is the
24 final word when it comes to
25 the law you need to apply to

1 the facts that come out during
2 this case. But when you apply
3 the law charged to the facts
4 that you're going to hear, I'm
5 confident that you will return
6 a verdict of guilty in all
7 these counts.

8 Now Mr. Murray is
9 charged with trafficking crack
10 cocaine between ten and
11 twenty-eight grams. In order
12 for the State to meet its
13 burden to prove beyond a
14 reasonable doubt that the
15 defendant is guilty of
16 trafficking crack cocaine we
17 must only prove that he was in
18 possession of at least ten
19 grams of crack cocaine. So as
20 long as he was in possession
21 of at least ten grams of crack
22 cocaine then he was dealing
23 and trafficking in crack
24 cocaine.

25 Not what possession

1 can either be actual or
2 constructive. And to give you
3 an example, this pen of mine,
4 I'm in actual possession of
5 this pen. It's in my pocket,
6 it's my hand. It's in actual
7 possession. If I set it on
8 the table I'm in constructive
9 possession of that pen. I
10 know it's there. I know it's
11 mine. I can grab it. I'm in
12 constructive possession of
13 this pen. And in sort of more
14 legal terms I have dominion
15 and control over that pen or
16 at least a right to have
17 dominion and control over that
18 pen. To relate that to the
19 drugs, if you find that the
20 defendant constructive, actual
21 or constructive possession of
22 those drugs, meaning that he
23 knew they were there, he had
24 the right and dominion and
25 control over those drugs, then

1 he was in possession of those
2 drugs, and if you find as I
3 think we will prove, that
4 there was at least ten grams
5 of crack cocaine in those
6 drugs, then he is guilty of
7 trafficking in crack cocaine.

8 The next charge he is
9 facing is called possession
10 with intent to distribute
11 powder cocaine. Now it's a
12 little more complicated.
13 Possession with intent to
14 distribute, we must prove
15 possession again of powder
16 cocaine, which can be actual
17 or constructive like I've just
18 explained, and also we must
19 prove that he had an intent to
20 distribute. Now that intent
21 can be proved through direct
22 or circumstantial evidence,
23 and it can be, you can infer
24 intent through a number of
25 facts. You can infer intent

1 through the amount of drugs
2 present, the packaging, the,
3 the area, whether he had, you
4 know, money on him, there a
5 variety of aspects you can
6 consider in whether you think
7 that his possession of those,
8 of that powder cocaine was
9 such that it was accompanied
10 by an intent to distribute
11 that cocaine. And, as I said,
12 I think that the facts that
13 come out will more than
14 adequately meet the burden to
15 show that the defendant was in
16 possession of that powder
17 cocaine and that the
18 surrounding circumstances was
19 such that you could infer that
20 his possession was coupled
21 with an intent to distribute
22 that cocaine.

23 The other two charges
24 that defendant is facing is
25 possession with intent to

1 distribute crack cocaine and
2 powder cocaine within the
3 proximity of a school. This
4 is a charge created by our
5 legislature that increase the
6 penalties of offenses when
7 drugs are being dealt within a
8 certain proximity of schools
9 within our area. As long as
10 you find that he was in
11 possession with intent to
12 distribute those two drugs,
13 crack and powder cocaine,
14 within a half a mile of a
15 school, the defendant is
16 guilty of those two charges.

17 The final charge the
18 defendant is facing is the
19 unlawful possession of a fire
20 arm during the commission of a
21 violent crime. Now a little
22 bit -- it's not necessarily
23 intuitive to think that, of a,
24 a drug offense as a violent
25 crime, but our legislature has

1 advised that trafficking crack
2 cocaine is a violent crime.
3 This is due to the fact that
4 large quantity of drugs are
5 often, are often accompanied
6 with, with violence. They,
7 they, you know, violence seems
8 to always show up when there's
9 drugs around and for that
10 reason our legislature has
11 defined that trafficking crack
12 cocaine is a violent crime.
13 So if you find the defendant
14 is guilty of trafficking crack
15 cocaine, a violent crime, and
16 you find that he was in
17 possession, actual or
18 constructive, of a firearm
19 during the commission of that
20 crime, then you can find that
21 he is guilty of the unlawful
22 possession of a firearm during
23 the commission of a violent
24 crime.

25 I know there's a lot

1 of places you all would rather
2 be today and this week than
3 jury duty, but I want to tell
4 you, you're serving a very
5 important role in our
6 community, our society, and I
7 can't thank you enough and I
8 know the judge and everyone
9 else in the courtroom and our
10 system appreciates your
11 attention and hard, and hard
12 work, taking time out of your
13 schedules, and I assure you
14 that we're going to maybe
15 short-lived and as efficient
16 as possible, and if you could
17 just bear with us and give us
18 your attention for the next
19 day or so, that's all we can
20 ask and if you can just listen
21 to the facts, apply the law to
22 the best of your ability,
23 that's all that we can ask and
24 that justice is done. Thank
25 you very much.

1 THE COURT: Mr.

2 Prenner.

3 MR. PRENNER: Thank
4 you, your Honor.

5 THE COURT: You're
6 welcome, sir. You may
7 proceed.

8 MR. PRENNER: Ladies
9 and gentlemen of the jury, I
10 am extremely grateful for your
11 time. I know that you've been
12 here all day yesterday and I
13 know you're going to be here
14 all day today, and I tell you
15 how grateful I am for your
16 time because I know, I know
17 when you leave here you will
18 tend to believe that you
19 shouldn't have been here so
20 long.

21 See in this case the
22 ninth circuit solicitor's
23 office, that is our
24 solicitor's office, is
25 attempting to prove that Mr.

1 Donovan Terrell Murray, my
2 client, was in possession of
3 crack cocaine and powder
4 cocaine and a gun. And the
5 facts of the case are that Mr.
6 Murray was visiting Mr. Ickes
7 at this hotel room on December
8 twelve, 2007. Officers from
9 the North Charleston Police
10 Department did receive a
11 complaint regarding drug
12 activity. There's no idea of
13 any specifics as to a
14 complaint. No idea who called
15 in the complaint, no idea
16 whether the person calling in
17 the complaint described a
18 black man as Mr. Murray is, or
19 a white man as Mr. Ickes is.
20 No idea whether it was a meth
21 lab or an Oxycontin, a place
22 to buy, you know, prescription
23 pills. And when the officers
24 arrived at the room, Ickes
25 answered the door and the

1 officers, doing their job,
2 they separated these two men
3 and they took Ickes out into
4 the hallway, and the testimony
5 will be that Johnson, the
6 lieutenant in this case, tells
7 Ickes we had some complaints
8 about drug activity and Ickes
9 says can you help me. Can you
10 help me. And then Johnson, to
11 his credit, says I don't make
12 those decisions, but can you
13 tell me where the drugs are?

14 And so they walk back
15 into the room and Ickes says
16 the drugs are in the night
17 stand, the night stand in my
18 hotel room, registered in my
19 name, in my night stand over
20 by my bathroom. And that's
21 it. That's the whole case.

22 Everything that Mr.
23 Kidd said applies to a lot of
24 different cases but if you cut
25 down a lot of the verbiage in

1 there about beyond a
2 reasonable doubt and
3 trafficking and, you know,
4 what the -- what you can
5 infer, what he said was that
6 these drugs and this gun were
7 found Mr. Ickes's night stand
8 in Mr. Ickes's hotel room and
9 the only evidence pointing the
10 finger at Mr. Murray is coming
11 from the guy who has to point
12 the finger. The guy who asked
13 for help in the breezeway.
14 There is no evidence
15 corroborating Mr. Ickes's
16 statement that Mr. Murray put
17 the drugs and the gun into Mr.
18 Ickes's night stand.

19 If you would like to
20 know, ladies and gentlemen,
21 whether there are fingerprints
22 on the plastic bags in which
23 the drugs were contained, you
24 will not find that out because
25 the bags were not

1 fingerprinted. If you would
2 like to know whether Mr.
3 Murray's fingerprints are on
4 the drawer, which presumably
5 you would have to open with
6 your hand to place the drugs
7 in there, you will not know
8 whether there were
9 fingerprints belonging to
10 anyone on that night stand
11 because the night stand was
12 never checked for
13 fingerprints. The only thing
14 that was sent for fingerprints
15 was this gun and we did get
16 one fingerprint on it, and the
17 report says insufficient
18 detail, so it doesn't tell us
19 anything.

20 If you would like to
21 see a single photograph of the
22 room that we're talking about
23 or the drawer or the night
24 stand table or how the drugs
25 and the gun looked when the

1 drawer was opened, you won't
2 see a single photograph
3 because not a single
4 photograph was taken.

5 The evidence in this
6 case is the statement of
7 Ickes. It's Ickes's room,
8 it's Ickes's night stand and
9 there is no physical evidence
10 or any evidence and there was
11 no attempt made to find it.

12 And here's a very,
13 very important thing to
14 remember. Right now, today,
15 Ickes is charged with all the
16 same crimes that Murray is
17 charged with. He's charged
18 with trafficking in crack, or
19 as they call it cocaine base.
20 He's charged with trafficking,
21 you know, trafficking near the
22 school. He's charged with
23 possession with intent to
24 distribute cocaine. And he's
25 charged with possession with

1 intent to distribute cocaine
2 near a school. And he's
3 charged with the gun charge,
4 too. He's facing eighty years
5 in prison. They charged Ickes
6 with everything they charged
7 Murray with and he's still
8 charged with all these crimes,
9 and he's going to testify at
10 this trial and you will see
11 another disparate plea, just
12 like in the hallway except
13 these gentlemen here do make
14 that decision. Lieutenant
15 Johnson was right. That's not
16 up to him. It's up to these
17 guys. And you better believe
18 that when Mr. Ickes takes the
19 stand he wants to get an A
20 plus. He has every reason to
21 lie. He has every possible
22 motive, every possible bias.
23 It's his night stand in his
24 room and he's facing all the
25 time. So I do think that when

1 this is all done you will be
2 scratching your heads a little
3 bit and wondering what was I
4 doing there all week long?

5 And I will
6 specifically ask you to ask
7 yourself three questions at
8 the close of this case and
9 I'll remind you of those three
10 questions in my closing
11 argument. First, what
12 evidence supports Ickes's
13 assertion or is this case just
14 based upon an assertion? What
15 evidence other than this man
16 who has every reason to lie
17 incriminates Mr. Murray?
18 That's the first question.
19 What else, what else is there
20 besides Ickes?

21 Number two. Second
22 question. If they didn't
23 believe Ickes why should you?
24 Ickes gave the statement that
25 night which we'll talk about

1 in this trial saying all those
2 drugs were all Mr. Murray's.
3 Mr. Murray put all those drugs
4 in the, in the drawer. And
5 then the police officers
6 charge Mr. Ickes with all
7 these crimes and took him to
8 jail and he's still in jail.
9 So if they didn't believe him,
10 why should you?

11 Third question.
12 What -- and you should ask
13 yourself this and I'm going to
14 ask you to ask yourselves this
15 as well. What has changed
16 since December twelfth, 2007?
17 On that night when these
18 officers went out there, did
19 their job, made these arrests,
20 put these guys jail, what has
21 changed since then? Nothing.
22 And on that night they found
23 Ickes. Even though he said
24 all these things, they found
25 him to be not believable.

1 Since then we haven't had any
2 investigation at all. No
3 fingerprints. No C. S. I.
4 kind of work. And I don't
5 mean as a T. V. show. I mean
6 just crime scene work. Go out
7 there with, you know, some
8 fingerprint -- a fingerprint
9 kit. Put the bags from --
10 with holding the drugs in the
11 little fish tank and, you
12 know, do -- get the
13 fingerprints off the bags. I
14 mean this is not a, a very
15 complicated science. And
16 there is, it is a very, very
17 big case here with such --
18 relative to how little
19 investigation has been done.
20 It's just Ickes's assertion.
21 Nothing has changed since that
22 night. They don't know whose
23 drugs they were and there
24 dumping it on him.

25 And so I get back to

1 where I started, saying how
2 grateful I am to you all.
3 Very, very grateful. There is
4 no question that this is the
5 greatest country in the
6 history of the world and if
7 you look on the Web, I found
8 this quote, that jury, that
9 the jury is the spinal cord of
10 our democracy, and I like that
11 quote. And I just want to
12 thank you in advance for your
13 careful attention to the facts
14 of this case. You're all
15 we've got. In this country
16 you are -- have the final say.
17 And so I just want you to
18 please understand how
19 important this is. How much
20 is on the line and how much
21 we're relying on you all to
22 hold the State to the burden
23 that they need to meet.

24 Thank you very much.

25 THE COURT: The State

1 may proceed.

2 MR. KIDD: Thank you,
3 your Honor.

4 THE COURT: You're
5 welcome.

6 MR. KIDD: State calls
7 Lieutenant Johnson.

8

9

10

11

12

13 WILLIAM CHRISTOPHER

14 JOHNSON, having been called as
15 a witness, is duly sworn and
16 testifies as follows:

17 DIRECT EXAMINATION BY

18 MR. KIDD:

19 Q Good morning,

20 Lieutenant Johnson. How are you?

21 A Good morning. Good,

22 sir.

23 Q Lieutenant Johnson,

24 what, what is your occupation?

25 A I'm a police officer

JOHNSON -- DIRECT

1 for the City of North Charleston.

2 I've been employed there for

3 twenty-three years, sir.

4 Q And what, what are
5 your present duties with the City
6 of North Charleston?

7 A Presently I'm a watch
8 commander for the City of North
9 Charleston. Been there be
10 twenty-three years. Currently I'm
11 assigned to the day shift, north
12 bureau for the city. My duties
13 are to assist, to supervise the
14 sergeants and the patrol officers
15 in the north bureau for the entire
16 city.

17 Q All right.
18 Twenty-three years is a long time.
19 Let's kind of -- where did you
20 start out?

21 A Sergeant in the
22 patrol division. I worked in the
23 patrol for a couple years. Then I
24 went to traffic. I worked in the
25 detective division. I worked

JOHNSON -- DIRECT

1 narcotics. I worked in the
2 training bureau for a couple years
3 where I attained fourteen
4 instructor certifications. I
5 worked fourteen years in the
6 canine division. My specialty
7 there was training and the
8 certifying and the judging
9 throughout the state of South
10 Carolina, explosive dogs, narcotic
11 dogs, and patrol dogs. I reached
12 the master canine level
13 certification there, where I
14 trained and certified dogs not
15 only locally, but throughout State
16 of South Carolina. Again, I have
17 fourteen instructor
18 certifications. I have numerous
19 of hours of training in narcotics,
20 little over fifteen hundred hours
21 of advanced narcotics
22 certifications to include local,
23 South Carolina Criminal Justice
24 Academy schools --

25 Q Let's, let's

JOHNSON -- DIRECT

1 concentrate on some of your, your
2 narcotics training. What, what
3 sort of -- did you get
4 certifications or --

5 A My certification at
6 the South Carolina Criminal
7 Justice Academy from a local
8 narcotics school. More than forty
9 hours of training. Also attended
10 a D. E. A. school of over eighty
11 hours of certification there. I
12 am cross-trained as a U. S. custom
13 officer. I attended the blue
14 lightening school and was
15 cross-trained there with over
16 forty hours certification there.

17 Q Have you ever been
18 admitted in -- well, have you ever
19 testified in criminal trials
20 before in the area of narcotics?

21 A I've testified in the
22 state and federal court in
23 narcotics trials.

24 Q And, well, and let me
25 back up for a minute. Give me --

JOHNSON -- DIRECT

1 can, can you give me a ball park
2 figure about how many narcotics
3 arrests you've made throughout
4 your twenty-three year career?

5 A Hundreds.

6 Q Hundreds. Have you
7 ever been admitted in any trial as
8 an expert witness in the area of
9 narcotics?

10 A In both state and
11 federal court.

12 Q Both state and
13 federal court.

14 MR. KIDD: At this
15 time, your Honor, we would
16 like to offer Lieutenant
17 Johnson as an expert in the
18 area of narcotics.

19 THE COURT: Any
20 questions or objections?

21 MR. PRENNER: May I
22 approach?

23 THE COURT: You may.

24 (Whereupon, there was
25 an off-the-record bench

JOHNSON -- DIRECT

1 conference.)

2 THE COURT: Are you
3 withdrawing your request?

4 MR. KIDD: I am.

5 THE COURT: Withdrawn.

6 You may continue.

7 Q In those hundred plus
8 drug arrests you've made, have you
9 encountered the situation to
10 attain the knowledge of how much
11 drugs cost on like a per gram
12 basis?

13 A Yes, I have.

14 Q Is that the sort of
15 information you've obtained
16 through some of your training and
17 through some of your experience as
18 a law enforcement officer?

19 A Both in the classroom
20 and street mode.

21 Q And for crack cocaine
22 on a, on a street level basis, how
23 much per gram is that worth?

24 A A hundred dollars a
25 gram.

JOHNSON -- DIRECT

1 Q A hundred dollars a
2 gram. All right.

3 I'm going to try to
4 jump forward to the, to the
5 incident date in question. How
6 did you become involved in the
7 case against Mr. Murray?

8 A I was currently
9 working the midnight shift as a
10 watch commander on the date and
11 time in question. I heard the
12 dispatch call to the location. I
13 was in the area. And I responded
14 as the back-up officer to assist
15 the initial dispatch officer, to
16 assist him in the activity, the
17 drug activity call.

18 Q So, and correct me if
19 I'm wrong, you were a lieutenant
20 at the time. Is that correct?

21 A That's correct.

22 Q And as -- and you
23 were -- you were watch commander.
24 Is that --

25 A Watch commander.

JOHNSON -- DIRECT

1 That's correct.

2 Q So your duties as
3 watch commander --

4 MR. PRENNER: Object to
5 the form, your Honor.

6 THE COURT: Rephrase.

7 Q What were your duties
8 as watch commander?

9 A My duty is to
10 supervise all patrol officers and
11 sergeants, oversee the city, and
12 also to assist in any 911 calls
13 when I'm in the area.

14 Q And is that what you
15 were doing on this evening?

16 A That's correct. I
17 was in the area when the call was
18 dispatched and I responded to
19 assist the officer.

20 Q So you responded to
21 the Relax Inn on Ashley Phosphate
22 to assist officers?

23 A I did.

24 Q And what did you do
25 when you arrived at the Relax Inn

JOHNSON - - - DIRECT

1 on Ashley Phosphate?

2 A The call came out as
3 drug activity from the room, two
4 twenty-three, and I responded to
5 the area. I drive an unmarked
6 car. I pulled in the parking lot
7 and initially turned off my lights
8 and patrolled the parking lot of
9 the Relax Inn to see if I noticed
10 any other suspicious persons
11 walking in and out of the room or
12 that area.

13 Q Did that, did that
14 activity, did that produce any
15 results?

16 A It did not. I did
17 not notice anybody else in the
18 parking lot or any other vehicles
19 in the parking lot at that time of
20 the morning. I then proceeded
21 around the hotel towards that room
22 number. At the same time the
23 dispatch unit, Officer Jourdan,
24 was pulling up the same time I
25 did, towards that room.

JOHNSON -- DIRECT

1 Q And, and then what
2 did you do as you investigated
3 further?

4 A We both initially
5 went to the door and we knocked on
6 the room.

7 Q And who opened the
8 door?

9 A Mr. Edward Ickes.

10 Q Mr. Ickes. And if
11 you could take me through the, the
12 next few sequence of events.
13 What, what was said as the door
14 was opened?

15 A We knocked on the
16 door. He opened up the door and
17 he looked surprised that two
18 uniformed officers were there.
19 Advised him that there was drug
20 activity coming from this room. I
21 asked him if it was his room, was
22 he registered to the room? He
23 advised that it was his room. He
24 was registered to the room. I
25 asked him if we could come in. He

JOHNSON -- DIRECT

1 said yes. He opened the door
2 wider and we noticed another
3 individual there. Black male
4 subject later determined to be Mr.
5 Murray was inside the room.

6 MR. KIDD: Your Honor,
7 at this point we would have a
8 matter of law we'd like to
9 take up.

10 THE COURT: Mr.
11 Foreman, ladies and gentlemen,
12 I have a matter of law to take
13 up with the attorneys. It
14 should be fairly brief.
15 During this break please do
16 not discuss the case in any
17 way and actually this is
18 probably a good mid-morning
19 break for you. If you need
20 anything, please let the
21 bailiffs know, and please
22 leave your note pads in your
23 seats.

24 (Whereupon, the jury
25 leaves the courtroom at 11:27

JOHNSON -- DIRECT

1 a. m.)

2 THE COURT: You may be
3 seated.

4 You may proceed with
5 questioning.

6 MR. KIDD: Thank you,
7 your Honor.

8 THE COURT: You're
9 welcome.

10 Q Upon being let
11 further into the room did you
12 notice anything else?

13 A I did. On the bed I
14 noticed two pills, pink in color,
15 located on the bed.

16 Q And at that point
17 what did you do next?

18 A I was still talking
19 to Mr. Ickes and Officer Jourdan
20 asked --

21 THE COURT: I need
22 that -- yeah. I need you to
23 close that door.

24 You may continue.

25 A Officer Jourdan asked

JOHNSON -- DIRECT

1 about the pills in question which
2 he was talking -- her question was
3 directed to Mr. Murray and asked
4 about the pills and I believe her
5 questions were about the pills,
6 whose pills were they, what type
7 of pills were they and did you
8 have a prescription for them.

9 Q And what was said in
10 response?

11 A He stated the pills
12 were Percocet and he did not have
13 a prescriptions. The pills
14 were --

15 Q Is that -- Mr. Murray
16 made that statement?

17 A Mr. Murray made the
18 statement, directed to her.

19 Q What, what else was
20 Mr. Murray's demeanor like at that
21 point?

22 A He was making
23 statements in general and you
24 don't have to let them in the
25 room, they need a search warrant,

JOHNSON -- DIRECT

1 don't let them search the room,
2 you don't need them in the room.
3 Remarks like that.

4 Q And, and all these
5 statements were unsolicited?

6 A They were.

7 MR. PRENNER: Object at
8 this point.

9 THE COURT: Sustained.
10 Rephrase.

11 Q Were, were there
12 questions being asked of the
13 defendant?

14 A Other than the pills,
15 no. He was making statements as
16 we walked in the room to, you
17 know, you don't have to let them
18 in the room. Don't let them
19 search. They need a search
20 warrant. Those questions coming
21 out from Mr. Murray as we entered
22 the room. I never talked to him
23 at all or questioned him about
24 that. It was obvious he did not
25 want us in the room and he wanted

JOHNSON -- DIRECT

1 us to leave the room.

2 Q Could you have
3 arrested Mr. Murray at that, at
4 that time?

5 A Yes.

6 MR. KIDD: Your Honor,
7 nothing further with regard to
8 the pills.

9 THE COURT: Give me one
10 moment, please.

11 Any further argument
12 on the admissibility from the
13 State? From the State?

14 MR. KIDD: On the
15 statement or --

16 THE COURT: On the
17 evidence that you would be
18 offering for us regarding the
19 pills?

20 MR. KIDD: That the
21 pills --

22 THE COURT: I stated it
23 incorrectly. I apologize.
24 The officers' statements,
25 which is, which is the

JOHNSON -- DIRECT

1 testimony that you just
2 elicited --

3 MR. KIDD: Yes, ma'am.

4 THE COURT: -- which
5 involves the pills -- well,
6 actually it involves the
7 statements. I've already
8 ruled on the statements.

9 MR. KIDD: Right.

10 THE COURT: That those
11 were spontaneous utterances
12 and that Miranda would kick
13 in, that those were
14 admissible. But I assumed
15 that the reason that we are
16 now taking this up in camera
17 deals with the pills.

18 MR. KIDD: Correct.

19 THE COURT: And his
20 testimony that when they
21 walked into the room, if I
22 understand the testimony, is
23 that someone asked whose pills
24 are these. Correct?

25 MR. KIDD: Correct.

JOHNSON -- DIRECT

1 THE COURT: And that
2 Mr. Murray's alleged response
3 was they're mine. They're
4 Percocet. And I don't have a
5 prescription for them.

6 MR. KIDD: Correct.

7 THE COURT: And that
8 would be the testimony that
9 you would elicit today?

10 MR. KIDD: From this
11 officer.

12 THE COURT: From this
13 officer.

14 MR. KIDD: Yes, your
15 Honor. And the pills
16 themselves.

17 THE COURT: Is there
18 any further argument? You
19 want to admit the pills
20 themselves? You didn't tell
21 me that yesterday.

22 MR. KIDD: Oh -- we
23 don't need -- no.

24 MR. McCOY: Your Honor,
25 these are the -- the pills are

JOHNSON DIRECT

1 part of the same
2 investigation. It's all
3 drugs. We need to open those
4 up and cut those out and we
5 don't have a problem doing
6 that since he's not charged
7 with those.

8 THE COURT: Okay. Now
9 you all at the bench, Mr.
10 Prenner indicated that his
11 client would consent to the
12 admissibility of
13 this testimony, that being the
14 statements and the pills,
15 correct, if you all would
16 allow Mr. Ickes's record from,
17 from Ohio, and I wanted to
18 give you all an opportunity
19 also to mull that over since
20 he did that at the bench and
21 you all have not had an
22 opportunity to discuss that.

23 MR. PRENNER: Of course
24 I need to talk to Mr. Murray
25 about it.

JOHNSON -- DIRECT

1 THE COURT: Well, I
2 thought you had when you made
3 that representation.

4 MR. PRENNER: No. I
5 was saying, your Honor, that I
6 would advise him to do that.

7 THE COURT: Yes.

8 MR. PRENNER: I was
9 saying that I would advise him
10 to do that.

11 THE COURT: That's not
12 what you said. You said we
13 would consent to the
14 admissibility of those things
15 if you all would consent to
16 Mr. Ickes's record. That's
17 what you said and I told them
18 they should consider it. I
19 thought it was a --

20 MR. PRENNER: It sounds
21 to me like it is on the table.

22 MR. KIDD: With all due
23 respect, I don't think we're
24 going to get -- I think we
25 would like the opportunity to

JOHNSON -- DIRECT

1 argue both motions. I think
2 we're right on both points of
3 law.

4 (Whereupon, a gun is
5 received and marked as State's
6 Exhibit No. 1 for
7 identification.)

8 (Whereupon, a
9 photograph is received and
10 marked as State's Exhibit No.
11 2 for identification.)

12 (Whereupon, a Best
13 Kit is received and marked as
14 State's Exhibit No. 3 for
15 identification.)

16 THE COURT: I'm going
17 to allow the testimony
18 regarding the pills. They are
19 relevant. They provide the
20 context of the crime. And I'm
21 getting a little ahead of
22 myself. First basis of the
23 Court's ruling is that they
24 would fall within res gestae.
25 The uncharged offense is, is

JOHNSON --- DIRECT ---

1 linked together in point in
2 time and circumstances with
3 the crime charged, that the
4 crime charged cannot be fully
5 shown without proving the
6 other and it's thus part of
7 the res gestae with the crime
8 charged.
9 I -- Court would find
10 that the evidence is
11 admissible to provide the full
12 presentation of the offense
13 and there is no reason to
14 defragmentize the event under
15 inquiry by suppressing parts
16 of the event as it took place.
17 Of course that theory
18 recognizes that evidence of
19 other bad acts may be an
20 integral part of the crime
21 with which the defendant is
22 charged or may be needed to
23 aid the fact-finder in
24 understanding the context in
25 which the crime occurred. And

JOHNSON DIRECT

1 it would also meet the
2 requirement that the temporal
3 proximity of the prior bad act
4 was closely related to the
5 crime charged in order for it
6 to be admissible. Also it
7 would fall under Lyle to show
8 the existence of the absence
9 of mistake or accident. In
10 other words I don't think he's
11 contesting that the pills were
12 not his or the existence of
13 the common scheme or plan or
14 intent. There is also logical
15 relevance between the acts in
16 question and the purpose for
17 the introduction of the
18 evidence.

19 And relying on rule
20 401, this evidence is
21 relevant. It has a direct
22 bearing upon intent to
23 establish or make more or less
24 probable the matter in
25 controversy. And I don't

JOHNSON -- DIRECT

1 think there's any question
2 that that has been shown by
3 clear and convincing evidence
4 that in fact I don't think
5 there's any contentions that
6 the pills were not his. I
7 think that that has ever been
8 represented to the Court. The
9 argument has been that it's
10 not relevant and that it's,
11 has more prejudicial value
12 than probative value. The
13 Court would find for the
14 record that its probative
15 value outweighs any
16 prejudicial effect to the
17 defendant in that the Court
18 would give the appropriate
19 instruction that it is not to
20 be considered against him as
21 evidence of guilt of the crime
22 that he's been charged of but
23 only under those criteria,
24 that being motive, intent,
25 common scheme, or plan, the

JOHNSON -- DIRECT

1 criteria that would be
2 relevant under Lyle.

3 MR. PRENNER: Now, we,
4 we would --

5 THE COURT: I'm sorry.

6 MR. PRENNER: I was
7 just going to say that we
8 would not need that curative
9 instruction.

10 THE COURT: Okay. I
11 would give you the option, but
12 I just you need to know for
13 the record that the Court
14 would give that, yet I believe
15 that it inure to Mr. Murray's
16 benefit and that the jury
17 would clearly understand that
18 while these pills were found,
19 it is only being given to show
20 the context of the crime but
21 that he is not, it is not to
22 be used for purposes of
23 determining his guilt of this
24 offense. So you might want to
25 think through that some more.

JOHNSON -- DIRECT

1 MR. PRENNER: I just
2 would agree with the Lyle
3 exceptions.

4 THE COURT: Well, I'll
5 give you the option but I just
6 want you to know that for
7 purposes of the Court's
8 finding that when I make a
9 more probative and prejudicial
10 analysis, I feel that any
11 prejudicial -- any prejudice
12 to him can be cured by the
13 jury being given the
14 appropriate instruction as to
15 how they are to use the
16 evidence.

17 But in any event I
18 still feel it is more
19 probative than prejudicial to
20 him because it provides the
21 context of the crime without
22 it to be able to say that I
23 was merely there, and I just
24 don't think that that is
25 accurate, and accurate

JOHNSON -- DIRECT

1 presentation of what actually
2 happened. It was a continuum
3 of events and it goes to show
4 that he was not there
5 accidentally. He was not
6 there by mistake. He was
7 there for the purpose of some
8 type of drug transaction of
9 some sort.

10 Now to what extent
11 the jury believes he was there
12 with these drugs that were
13 found or not, that becomes a
14 credibility issue to Mr. Ickes
15 which now you all will deal
16 with. So I just wanted to let
17 you know far enough in advance
18 for you to think through. I
19 will give you the option of that
20 instruction. If you feel it
21 inures to your client's
22 benefit I certainly will give
23 it. I will let you know what
24 it says in advance during
25 charge conference. If you

JOHNSON -- DIRECT

1 feel that it does not, I will
2 accommodate your preference.

3 Now as it regards the
4 credibility issues, I'll give
5 you all some time to think
6 about it. I told you all on
7 yesterday and we appreciate
8 your indulging us, sitting
9 there, and I apologize.

10 THE WITNESS: No
11 problem.

12 THE COURT: There's a
13 difference between rule 608
14 and 609, and I actually just
15 actually brought that to your
16 attention last night. There
17 is a vast difference. Clearly
18 rule 608 excludes -- rule 608
19 deals with things outside of
20 rule 609. They're two
21 separate rules. One clearly
22 deals with convictions and the
23 Court is guided by that and I
24 indicated to you all at the
25 bench that I was inclined to

JOHNSON -- DIRECT

1 allow in Mr. Ickes's Ohio
2 conviction because credibility
3 is always an issue in a case
4 like this, and I did not want
5 to gave you a misapprehension
6 because you aren't in my head.
7 You don't really know what I'm
8 thinking. My, I, I, my
9 thinking at this point is
10 that -- I don't know how I'm
11 going to allow Mr. Prenner to
12 do it, but he is entitled to
13 inquire as to Mr. Ickes's
14 motivation in testifying. I
15 think clearly under 608 it
16 doesn't come in because the
17 rule clearly says, it excludes
18 convictions and relies on 609.
19 Clearly Mr. Ickes's conviction
20 does not come in under 609
21 because it is not one of those
22 irregardless of punishment
23 crimes and clearly it is under
24 a year, so it clearly would
25 not come in under 609.

JOHNSON -- DIRECT

1 However I am debating how to
2 allow Mr. Prenner to approach
3 any sort of bias or motivation
4 that Mr. Ickes would have in
5 testifying because clearly you
6 have indicated and conceded
7 that if you were to proceed
8 against him you would charge
9 him with a third and that this
10 conviction in Ohio would count
11 against him and while in
12 theory Mr. Prenner is not
13 allowed to ask him
14 specifically about that
15 conviction, in theory he is
16 entitled to go into Mr.
17 Ickes's motivation for
18 testifying and I got to figure
19 out how I'm going to let him
20 do that without mentioning the
21 conviction and I hadn't quite
22 thought through that
23 completely yet, but I'm not
24 going to allow the jury to be
25 left with the impression that

JOHNSON --- DIRECT

1 he doesn't have any motivation
2 in testifying in this case
3 because he does.

4 MR. KIDD: Absolutely,
5 your Honor. And if I --

6 THE COURT: But I
7 haven't figured that out yet
8 and so I'm just giving you all
9 the benefit of my thought in
10 advance.

11 MR. KIDD: May I offer
12 a suggestion?

13 THE COURT: Sure. I'm
14 always open to suggestions.

15 MR. KIDD: I, I agree
16 with you a hundred per cent
17 and Mr. Prenner is capable of
18 cross-examining him on his
19 bias and his bias is the
20 exposure and if he wants to
21 cross-examine him on the
22 exposure which he is facing on
23 these charges, he can do that.

24 THE COURT: Oh, I think
25 so. And I think he's entitled

JOHNSON -- DIRECT

1 to, to include in that any
2 enhancement he may face and I
3 think he can do that without
4 mentioning the Ohio
5 conviction.

6 MR. KIDD: And I think
7 he can even do without even
8 mentioning the enhancement.
9 He can just mention --

10 THE COURT: That he's
11 got to face an enhancement and
12 he does know that.

13 MR. KIDD: Right. But
14 he's facing these charges as
15 seconds and I think he can
16 mention the sentencing range
17 for these charges --

18 THE COURT: But he's
19 facing them actually as -- are
20 you charging, are you using
21 the Ohio conviction as a
22 second or third?

23 MR. PRENNER: It would
24 be a second.

25 MR. KIDD: Well, I'm

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1 not saying we have to use it
2 for anything. We haven't made
3 any offers.

4 THE COURT: I know and
5 that's deliberate in my nature
6 so that when he's
7 cross-examined he can honestly
8 say he doesn't have a deal on
9 the table.

10 MR. KIDD: Okay.

11 THE COURT: But he did
12 have motivation or he wouldn't
13 be here.

14 MR. KIDD: Absolutely.
15 I think that potentially we
16 could charge him with seconds.

17 THE COURT: Okay So do
18 you all maybe just want to
19 stipulate to that and that
20 will eliminate the issue and
21 allow Mr. Prenner the ability
22 to question him regarding any
23 bias or prejudice on the issue
24 of enhancement of a sentence
25 and his exposure?

JOHNSON -- DIRECT

1 MR. PRENNER: How would
2 your Honor, what kind of
3 phrasing am I allowed to use?

4 THE COURT: I think you
5 would simply be able to ask
6 him don't you -- in fact
7 you're facing your charges
8 being enhanced and that you
9 are facing, you know, these
10 things as seconds and that
11 they enhance your time in the
12 Department of Corrections? I
13 mean I think that I'll leave
14 you all to craft how you can
15 do that but I think there's a
16 way to do it without
17 mentioning the Ohio
18 conviction. I don't think
19 you're entitled to mention the
20 Ohio conviction, but I think
21 you're entitled to go into any
22 bias or prejudice he may have
23 in testifying, any motivation
24 that is beneficial to him in
25 coming forward and I think

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1 clearly the goes to his
2 credibility and is something
3 that you should be able to
4 explore and I think you can do
5 it without mentioning the Ohio
6 conviction.

7 MR. PRENNER: And so I
8 can mention, without
9 specifically mentioning do you
10 have of a guilty plea in Ohio
11 in nineteen --

12 THE COURT: No. You
13 can't mention that at all.

14 MR. PRENNER: Right.
15 Right.

16 THE COURT: And under
17 either rule.

18 MR. PRENNER: Right.
19 But I do have -- and I, and I
20 object to that for the record.

21 THE COURT: Well, the
22 rule, the case law is very
23 clear and the case that, that
24 I'm so used to calling Culver,
25 Culver. I apologize. That

JOHNSON -- DIRECT

1 Mr. Kidd has passed up to the
2 Court is exactly on point and
3 the Supreme Court seems to
4 agree and they denied cert on
5 it.

6 MR. PRENNER: Judge,
7 this case, your Honor, deals
8 with 608 (e), conclusions and
9 specific instances of conduct.
10 I'm under 608 (c).

11 THE COURT: It doesn't
12 matter. 608 still excludes --
13 it really begs the question.
14 Why would we have two separate
15 rules if they were not
16 intended to deal with two
17 separate things? We have a
18 rule that clearly deals with
19 conviction and there
20 requirements for those
21 convictions to be admissible
22 for the purposes of
23 impeachment. Rule 608 is a,
24 is a separate rule that deals
25 with a separate instance. But

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1 I'm not, I'm not going to
2 belabor it. I just want to
3 let you all know what my
4 thinking was at this point so
5 you all can start to figure
6 out how you want to craft
7 those questions. I think very
8 clearly you're entitled to go
9 into his credibility.
10 Credibility is always an issue
11 when you have a witness, and
12 that is your only witness.
13 The defense is always
14 entitled to fully explore that
15 person's credibility and to
16 impeach that person's
17 credibility so that the jury
18 can appropriately weight
19 how -- what weight they're to
20 give that testimony. But I'm
21 going to study it some more
22 and, and you all can start
23 thinking about how to figure
24 it out, but we think -- I need
25 to go ahead with this witness

JOHNSON -- DIRECT

1 and we've already ruled on
2 that and don't want to take
3 more of our time.

4 MR. PRENNER: Your
5 Honor, for the record --

6 THE COURT: Hum. Oh.
7 I'm sorry.

8 MR. PRENNER: I'm
9 sorry, Judge.

10 THE COURT: No.

11 MR. PRENNER: Just our
12 objection on the pills is
13 exactly as the Court stated it
14 under --

15 THE COURT: I've
16 already noted that. I've
17 already had argument on it.
18 it's preserved for the record.

19 MR. PRENNER: Thank
20 you.

21 THE COURT: Bear with
22 me one moment, please. Thank
23 you.

24 (Whereupon, a recess
25 is called at 11:57 a.m.)

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1 (Whereupon, the Judge
2 enters the courtroom at 12:04
3 p.m.)

4 THE COURT: All right.
5 Is the State ready to proceed?

6 MR. KIDD: Yes, your
7 Honor.

8 THE COURT: Defense
9 ready to proceed?

10 MR. PRENNER: Yes,
11 ma'am.

12 THE COURT: Please
13 bring in the jury.

14 (Whereupon, the jury
15 enters the courtroom at 12:07
16 p. m.)

17 THE COURT: Ladies and
18 gentlemen, we appreciate your
19 patience. We'll now resume
20 with the witness's testimony.

21 Mr. Kidd, you may
22 proceed.

23 MR. KIDD: Thank you,
24 your Honor.

25 THE COURT: You're

JOHNSON --- DIRECT

1 welcome.

2

3

4

5

6

7

CONTINUED DIRECT

8

EXAMINATION BY MR. KIDD:

9

Q Lieutenant Johnson,

10 let's just back up for a moment.

11 Trying to get back up to speed,

12 we -- you received a, a call from

13 dispatch. Where did, where did

14 you get dispatched to?

15

A The exact address was

16 on Ashley Phosphate Road, at the

17 Relax Inn. I believe that was

18 Road. She

19 gave us a room number of two two

20 three of drug activity from that

21 room.

22

Q And is that address

23 located in Charleston County?

24

A Located in the city

25 of North Charleston, located in

JOHNSON - - DIRECT

1 Charleston County.

2 Q Okay. Let's get back
3 to Mr. Ickes opening the door,
4 lets you in. What happens then?

5 A He told me we could
6 come in. It's his room. He gave
7 us consent to come in and when we
8 come in the room we noticed
9 another defendant in there, the
10 defendant here. Mr. Murray was
11 also in the room. We also noticed
12 things on the bed. Two pink
13 colored tablets that was located
14 on the bed.

15 Q What was Mr. Murray's
16 demeanor when you all entered the
17 room?

18 A As we entered the
19 room Mr. Murray was very agitated.
20 Made statements that don't let him
21 in the room. You don't have to
22 let him in the room. They need a
23 search warrant. You don't have to
24 talk to them. His testimony was
25 very -- he was upset. Clearly he

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1 did not want us in the room. He
2 wanted us out of the room as
3 quickly as possible. He was
4 trying to convey that to the
5 co-defendant, that we do not have
6 to be in that room and that we
7 need a search warrant to be in
8 that room.

9 Q What happened -- go
10 ahead.

11 A We observed the pills
12 on the bed. My officer with me,
13 Officer Jourdan, were making
14 comments to him about the pills,
15 the nature, whose pills were they,
16 what type of pills were they? Mr.
17 Murray was talking with her, said
18 that it was his pills, it was
19 Percocet, they were his, and he
20 did not have a prescription for
21 them.

22 Q At that point would
23 you have had enough to arrest Mr.
24 Murray?

25 A We would have.

JOHNSON DIRECT

1 Q And Ickes?

2 A Both.

3 Q At that point what
4 transpired next?

5 A We then, within a
6 couple minutes another officer
7 arrived as back up, Officer Darren
8 Cobb arrived. He came in the room
9 with us. Mr. Murray was still
10 agitated, still making the same
11 comments to Mr. Ickes about us
12 leaving, don't make any comments
13 to us, don't talk to us, we need a
14 search warrant, don't let us
15 search the room, we need a search
16 warrant in order to search the
17 room.

18 He at one point made
19 a swift movement towards one of
20 the beds, underneath the bed. I
21 didn't know if there was weapons
22 in the room or not. Officer
23 Darren Cobb placed some handcuffs
24 on him for his protection, at
25 which time me and Mr. Ickes

JOHNSON -- DIRECT

1 decided we would step out of the
2 room. The subject was detained at
3 that time. I took him outside the
4 room just to continue my
5 investigation with Mr. Ickes. I
6 took him outside of the room then.

7 Q So you were in the
8 breezeway talking with Mr. Ickes.

9 A I took him outside
10 the room. That's correct.

11 Q What was, what was
12 Mr. Ickes's demeanor throughout
13 this?

14 A He was scared. He
15 was nervous. But he was very
16 cooperative with us.

17 Q By being very
18 cooperative he was forthright.
19 Can you expand on that?

20 MR. PRENNER: Object to
21 the form.

22 THE COURT: Sustained.
23 Rephrase.

24 MR. KIDD: I'll, I'll
25 move on.

JOHNSON -- DIRECT

1 Q What, what the
2 context of your conversation with
3 Mr. Ickes about?

4 A Once we came outside,
5 I read him his Miranda rights.
6 Once we came outside I told him
7 why we was there again. Dispatch
8 call was there was drug activity
9 in the room. I told him we had
10 pills on the bed. We had probable
11 cause there, for the prescription
12 drugs on the bed. I asked if he'd
13 give us verbal and written consent
14 to search the room because he was
15 the one renting the room. He said
16 he was. He was very cooperative.
17 He never changed from that. He
18 gave me verbal and he also gave me
19 written consent. Told me there
20 were drugs in the room. He told
21 me he'd point out the drugs and
22 where they were located at. I
23 attained the verbal. I got the
24 piece of paper with the consent.
25 He signed it. Took me back in the

JOHNSON --- DIRECT

1 room and pointed to the drawer,
2 one of the drawers located on the
3 far side of the bed. Said there's
4 drugs in that drawer there. I
5 opened the door at which time I
6 retrieved a weapon and drugs
7 located in that drawer.

8 MR. KIDD: Your Honor,
9 may I approach the witness?

10 THE COURT: You may.

11 Q Lieutenant Johnson,
12 I'm showing you now what's marked
13 as a State's exhibit, exhibit
14 number one. Would you take a look
15 at that for me. Do you, do you
16 recognize that firearm?

17 A I do.

18 Q How do you recognize
19 that firearm?

20 A That's a Colt comb
21 forty-five that I retrieved from
22 the night stand and that gun had a
23 magazine the had approximately
24 seven in the magazine and one in
25 the chamber. I dropped the

JOHNSON -- DIRECT

1 magazine with the one out of the
2 chamber at that time and it was in
3 the box up in evidence in the
4 room.

5 Q Thank you. And where
6 in the hotel room exactly was the
7 night stand that contained the
8 firearm located?

9 A There's two night
10 stands and that was the one
11 closest to the bathroom. It was
12 where the weapon and the larger
13 amount of crack cocaine was found.

14 Q Where was the night
15 stand located in proximity to the,
16 to the, to the door?

17 A It was the furthest
18 one away.

19 Q Furthest from the
20 door?

21 A Yes.

22 Q When you, when you
23 entered the room, where was Mr.
24 Murray located in relation to that
25 night stand?

JOHNSON -- DIRECT

1 A He was the one
2 closest to the night stand because
3 he was behind Mr. Ickes, standing.

4 MR. KIDD: Your Honor,
5 may I approach the witness one
6 more time?

7 THE COURT: You may.

8 MR. PRENNER: I didn't
9 hear that answer, Judge.

10 THE COURT: Sir, could
11 you repeat your answer?

12 A He'd be the one
13 closest to it. He was standing
14 behind Mr. Ickes. Mr. Ickes was
15 at the door so he -- Mr. Murray
16 would be closest to the night
17 stand.

18 Q Was, was he
19 immediately behind Mr. Ickes as --
20 what was his distance in relation
21 to Mr. Ickes?

22 A He was a few feet
23 behind him.

24 Q I would now like to
25 show you what's --

JOHNSON -- DIRECT

1 THE COURT: Let me
2 interrupt you one second. I
3 have a juror that needs to go
4 to the rest room.

5 THE WITNESS: Who --
6 does everybody need to go or
7 just one? Okay, sir. We'll
8 just wait on you for a moment.
9 Go right ahead, Mr. Bingley.

10 (Whereupon, one juror
11 leaves the courtroom at 12:19
12 p.m.)

13 (Whereupon, the juror
14 returns to the courtroom at
15 12:34 p.m.)

16 THE COURT: You may
17 continue.

18 MR. KIDD: If I may
19 approach the witness, your
20 Honor.

21 THE COURT: Uh-huh.

22 Q What I'm handing you
23 now is marked as State's exhibit
24 number three. Can, can you please
25 describe what that is?

JOHNSON -- DIRECT

1 A This is the, part of
2 the Best Kit that was submitted to
3 the State Law Enforcement Division
4 for analysis and inside is one --
5 the dark colored bags that were
6 retrieved from one of the night
7 stands.

8 Q Can you describe to
9 the jury what a Best Kit is.

10 A It is the kit that we
11 put all the drugs in to be sent to
12 S. L. E. D. S. L. E. D. is where
13 we send all of our drugs.
14 Cocaine, crack cocaine, heroin,
15 for them to give us a complete
16 analysis of what it is. When we
17 have a field test kit what it does
18 is allow us to field test on the
19 site, a quick analysis to
20 determine whether or not it is
21 cocaine, crack cocaine, or
22 marijuana. S. L. E. D. has the
23 more sophisticated equipment and
24 of course your chemists on site to
25 determine exactly what type of

JOHNSON -- DIRECT

1 drugs it is and the exact weight.
2 What we do is the approximate
3 weight and we can only do a quick
4 testing on site to determine if we
5 have enough probable cause to
6 determine what it is.

7 We put all in this in
8 a sealed Best Kit. It's part of
9 the chain of evidence and then
10 submit it to S. L. E. D.

11 Q Did you have the
12 opportunity to field test those
13 drugs?

14 A I personally did not
15 field test it. The officers on
16 the scene did, at the time.

17 Q You were the one who
18 retrieved the drugs out of the
19 night stand?

20 A I did.

21 Q How were they
22 packaged that night?

23 A The largest bulk was
24 the crack cocaine and I believe,
25 if I refer to my notes correctly,

JOHNSON -- DIRECT

1 approximately like twenty-five
2 point five grams of approximate
3 weight was crack cocaine with the
4 weapon in one large bulk.

5 Q Can you show the jury
6 which bag of cocaine that would
7 be?

8 A I believe it would
9 have been this bag here, what we
10 consider, in a street terms, right
11 off of a cookie. That's usually a
12 round object. It is shaped in a
13 round, looked like a cookies,
14 sugar cookie is what the dealers
15 usually cook it up in, and they
16 actually will take -- some of them
17 will take a cup or a glass when
18 they make the crack cocaine and
19 cut it in a cookie-type shape, in
20 a sh round circular motion. This
21 was more of a cookie-shape before
22 S. L. E. D. started analysis and a
23 lot of times it will get broken up
24 that way. But it's a big part of
25 a cookie-shape when we retrieved

JOHNSON -- DIRECT

1 it from that bag.

2 Q What other drugs did
3 you find in your search?

4 A In our search we also
5 found powder cocaine in a
6 different bag in the same area and
7 that was in the dark blue or
8 black-colored bag in the same
9 area, and S. L. E. D. had mixed it
10 up so I cannot be exact on which
11 bag came out of which because they
12 put them together, but it was more
13 of a powdery cocaine that we found
14 in the bag.

15 Q What was the, the
16 weight of the powder cocaine?

17 A Refer to my notes.
18 Approximately eight point seven
19 grams of a white powdery
20 substance.

21 Q Now do -- searching
22 the room elsewhere did you find
23 any other drugs?

24 A We did. In the other
25 night stand we found a, a bottle,

JOHNSON --- DIRECT

1 and this was a prescription bottle
2 from the Veterans Administration.
3 We found two clear baggies and
4 again S. L. E. D. has taken it out
5 to put them all together. In
6 doing a field test analysis,
7 approximately one point two grams
8 of powdery substance which field
9 tested positive for cocaine.

10 Q Okay. To try to
11 paint for the jury a clearer
12 picture, can, can you describe the
13 layout of the hotel room for the
14 jury, please.

15 A Come in the room and
16 immediately to right there is a
17 small table in the hotel. Then
18 there's a bed, a night stand,
19 another bed, and then to the right
20 of that is another night stand,
21 and in the portion in the back
22 there is a bathroom.

23 Q So correct me I'm
24 wrong, the large quantity of drugs
25 was found in the night stand

JOHNSON -- DIRECT

1 furthest from the door?

2 A Closest to the
3 bathroom. That is correct.

4 Q And where was the
5 smaller quantity of drugs in the
6 pill bottle found?

7 A That was -- closer to
8 the night stand to the -- closest
9 to the door in the pill bottle.

10 Q And that would have
11 been between the two beds?

12 A I believe so. That's
13 correct.

14 Q Through your
15 experience on the numerous drug
16 cases that you've been involved
17 with, how often do you see results
18 through fingerprint analysis?

19 A Not often. People
20 watch C. S. I. a lot on T. V. and
21 that's exactly what it is.
22 Hollywood. Very seldom do you see
23 fingerprints off of a clear
24 plastic baggie at all. Drugs are
25 exchanged multiple times to one

JOHNSON -- DIRECT

1 dealer to another. A lot of times
2 there are multiple fingerprints on
3 the bags or from clear -- or not
4 on bags like this that
5 fingerprints cannot be taken from.
6 In my many years of experience
7 like that, it's hard to get
8 fingerprint evidence from baggies
9 or from prescription bottles also
10 that are passed from one dealer to
11 another. It's hard to obtain
12 prints like that.

13 Q In your experience
14 would fingerprinting the night
15 stand drawer in a hotel room be of
16 any benefit?

17 A Not at all. It's not
18 uncommon for people that are using
19 narcotics and stuff like that to
20 use the cheaper hotels, go from
21 one hotel to another. Multiple
22 people use these hotels. The
23 cleaning staff are of poor
24 quality. They don't do a thorough
25 cleaning in these hotels and we

JOHNSON -- DIRECT

1 have repeat customers in these
2 hotels. I personally made a
3 arrest in hotels like the Relax
4 Inn and other hotels in the area
5 multiple times and we have repeat
6 offenders in these hotels often.
7 Drug dealers use them because they
8 are low income hotels and they use
9 them often and they change hands
10 with their, with the drug dealers
11 back and forth. They, they use
12 the same hotels over and over and
13 trying to get fingerprints off of
14 them is almost impossible.

15 Q So there would be too
16 many fingerprints within the room
17 to, to be of any assistance?

18 MR. KIDD: Object to
19 the form.

20 THE COURT: Sustained.
21 Rephrase.

22 Q Would fingerprinting
23 a surface in a hotel room be of
24 much assistance?

25 A No.

JOHNSON -- DIRECT

1 Q So after you
2 discovered -- well, let me back
3 up.

4 MR. KIDD: At this
5 time, your Honor, I would like
6 to move State's exhibit number
7 one and three into evidence.

8 THE COURT: Any
9 objection?

10 MR. PRENNER: None,
11 your Honor.

12 THE COURT: Marked and
13 admitted without objection.

14 (Whereupon, the gun
15 is received and marked as
16 State's Exhibit No. 1 in
17 evidence.)

18 (Whereupon, the Best
19 Kit is received and marked as
20 State's Exhibit No. 3 in
21 evidence.)

22 Q Would you take us to
23 the events that transpired after
24 discovering the, the drugs and
25 gun.

JOHNSON - - DIRECT

1 A Once we located the,
2 the guns and drugs, Mr. Ickes was
3 also placed in handcuffs. Mr.
4 Murray continued with the same
5 statements as when I first walked
6 in the door. He continues making
7 the same comments. You
8 shouldn't - - at this time the
9 statements were you shouldn't let
10 them search. They need a search
11 warrant. Don't say any more.
12 Don't point anything out to them.
13 The same comments.

14 He was escorted out
15 of the room I believe by Officer
16 Cobb, down to his car, where
17 Officer Cobb started the booking
18 form to be lodged in the county
19 jail.

20 Mr. Ickes stayed in
21 the room while Officer Patricia
22 Jourdan continued processing the
23 evidence and marking it and
24 bagging it for evidence and
25 continuing the booking form on Mr.

JOHNSON -- DIRECT

1 Ickes.

2 I -- at that time I
3 received a priority call down
4 south of a shooting and I had to
5 leave the scene in order to go to
6 the shooting scene.

7 Q And just to back up
8 and, and get some -- what, what
9 day, what was the date of this,
10 this event?

11 A This was December the
12 twelfth.

13 Q Approximately what
14 time did you respond to the hotel
15 room?

16 A Dispatch call was at
17 zero one twenty-two, approximately
18 and I arrived at approximately
19 one -- probably one thirty, two I
20 believe.

21 Q In the morning?

22 A That's correct.

23 MR. KIDD: I bet the
24 Court's indulgence.

25 THE COURT: Uh-huh.

JOHNSON DIRECT

1 Q And based on your
2 experience as a law enforcement
3 officer who often deals in
4 narcotics, what is the approximate
5 street value of the drugs you
6 recovered from that room?

7 A Probably got
8 thirty-two hundred dollars.

9 MR. KIDD: If I may
10 approach the witness one more
11 time, please, your Honor.

12 THE COURT: You may.

13 Q What I'm going to t
14 show you now is premarked as --
15 for identification purposes as
16 State's exhibit number two. Do
17 you recognize this picture?

18 A I do.

19 Q What, what does this
20 depict?

21 A That is the picture
22 of the hotel, Ashley Phosphate
23 Road, and of course I-26.

24 Q Could you point out
25 the hotel to us.

JOHNSON -- DIRECT

1 A Here is the hotel.

2 This is Ashley Phosphate Road.

3 And of course the main avenue is

4 I-26.

5 Q And so the, the green

6 pin on the far left indicates

7 where the hotel is?

8 A That's correct.

9 Q And what does the

10 other pin indicate?

11 A This is the, the

12 college. Technical college which

13 is off North Side Boulevard.

14 Q Did you have an

15 opportunity to drive off the

16 distance between those two

17 locations?

18 A I have.

19 Q And what did you find

20 from that experience?

21 A The distance from

22 driving it to North Side Boulevard

23 to the hotel, to the back of room

24 two two three was point two.

25 Q Point two miles. Can

JOHNSON -- DIRECT

1 you give an estimation of the
2 distance as the crow flies?

3 A Six to seven hundred
4 feet.

5 Q So significantly
6 under half a mile?

7 A Yes.

8 Q Thank you. Do you
9 know what technical college it is?

10 A I believe it's E. C.
11 P. I Technical College.

12 Q And do they, do they
13 hold classes there?

14 A As far as I know,
15 they do.

16 Q And, and once again
17 just for clarification purposes,
18 what, what year did this occur in?

19 A 2007.

20 Q So it was December of
21 last year?

22 A That's correct.

23 MR. KIDD: Nothing
24 further, your Honor.

25 THE COURT: Any

JOHNSON -- DIRECT

1 questions for the witness?

2 MR. PRENNER: Yes, your
3 Honor.

4 THE COURT: Yes. You
5 may proceed.
6
7
8
9

10

11

12

13 CROSS-EXAMINATION BY

14 MR. PRENNER:

15 Q Lieutenant, you heard
16 the call over the radio from
17 dispatch. Correct?

18 A Yes, sir.

19 Q And the call referred
20 to C-12 activity. Is that right?

21 A Code twelve. That's
22 correct.

23 Q What does that mean,
24 code twelve?

25 A Code twelve is the,

JOHNSON -- CROSS

1 is our codes for the police
2 department which means drug
3 activity. Dispatch was C twelve,
4 which is short for code.

5 Q Okay. So C twelve
6 activity means drug activity?

7 A Yes, sir.

8 Q Code twelve. Do you
9 know when dispatch received the
10 call, Lieutenant?

11 A Just, just from the
12 report is all I have, and I'm
13 estimating. My report says zero
14 one twenty-two. I've not looked
15 at anything else.

16 Q One twenty-two a. m?

17 A Yeah. Zero one
18 twenty-two.

19 Q Do you know,
20 Lieutenant Johnson, when according
21 to the complaint this drug
22 activity was occurring at room two
23 twenty-three?

24 A I do not.

25 Q The caller described

JOHNSON -- CROSS

1 room twenty-three. Is that
2 correct?

3 A I don't have the
4 dispatch tapes of what, what went
5 on between the dispatcher and the
6 caller.

7 Q But you, you knew
8 from the dispatch that it was room
9 two twenty-three. Right?

10 A Yes.

11 Q And, so the caller
12 knew the room number. Correct?

13 A I'm assuming.

14 Q So the caller must
15 have been in a position to know
16 the room number, maybe even had
17 been close by the room?

18 A I can not speculate.

19 Q Did the caller say as
20 far as you're aware whether it was
21 a black man or a white man in the
22 room involved in drug activity?

23 A I did not get that
24 information over my radio.

25 Q So you have no

JOHNSON -- CROSS

1 description whatsoever from the
2 caller, who knew the room number,
3 of any of the persons involved in
4 this drug activity?

5 A I do not.

6 Q And then just as an
7 aside, there was a statement made
8 in opening that you respond to
9 this hotel often. That was -- you
10 have not responded to this hotel
11 before. Isn't that correct?

12 A I responded to that
13 hotel before. Not that room
14 number.

15 Q Well, you don't
16 remember indicating on prior
17 testimony in this matter that you
18 did not go -- that you had not
19 been to this particular hotel
20 before?

21 A When was that, sir?

22 Q Yesterday.

23 A I believe the
24 question was have I been to that
25 room before.

JOHNSON -- CROSS

1 Q Well, how often did
2 you go to that hotel?

3 A I've been a police
4 officer twenty-four years. That
5 hotel changes room names a lot.
6 I've been to that hotel a few
7 times.

8 Q Okay.

9 A On dispatch calls.

10 Q Okay. All right.

11 Would you agree that the
12 information about what the caller
13 supposedly observed in terms of
14 drug activity, would you agree
15 that that information would be
16 helpful?

17 A I'm not a dispatcher,
18 sir. I don't take their calls. I
19 just try to answer the ones that
20 we get, sir.

21 Q I mean Mr. Murray is
22 black. Mr. Ickes is white.
23 Right?

24 A Yes, sir.

25 Q And if you had known

JOHNSON -- CROSS

1 whether the activity was going
2 over months or if it had just
3 begun, don't you think that would
4 have been helpful, too?

5 A The dispatcher
6 doesn't always give us all the
7 helpful information. They
8 sometimes are limited to the
9 information they give from a nine
10 one one call.

11 Q Right. But that
12 information would have been
13 helpful to either support or
14 contradict what Ickes told you
15 later on. Correct?

16 A I just try to answer
17 calls as I get them, sir.

18 Q I mean if the caller
19 said there's a man in room two
20 twenty-three dealing drugs, white
21 guy about five foot ten, and then
22 Ickes tells you in the hotel room
23 those are all his drugs, you would
24 have been equipped with some
25 information that would have made

JOHNSON -- CROSS

1 you not believe him... Right?

2 A Well, when the
3 dispatcher is putting out a call,
4 it's my twenty-four years'
5 experience it is to help me
6 investigate and determine what's
7 going on, sir.

8 Q All right. Well, did
9 you ever contact the caller?

10 A No, sir.

11 Q Do you have his name?

12 A No, sir.

13 Q Do you have his
14 telephone number?

15 A No, sir. I have two
16 people under arrest.

17 Q You know what a cad
18 report is?

19 A Yes, sir.

20 Q Well, let me -- may I
21 approach the witness?

22 THE COURT: Uh-huh.

23 Q Take a look at this
24 document and tell me if you can
25 identify what it is.

JOHNSON --- CROSS

1 A Fed cad operation
2 report, City of North Charleston.

3 Q All right. And does
4 that cad report apply to the
5 specific time and the specific
6 call that we're talking about in
7 this case?

8 A It appears to be.

9 MR. PRENNER: May I
10 approach the witness?

11 THE COURT: You may.

12 Q I'm just going to
13 point to this one little area
14 here, right there. What does that
15 say and then what does it say
16 underneath it?

17 A It says caller name,
18 C. C. Derrick, and it's got a
19 number.

20 Q A phone number.
21 Right?

22 A It appears to be a
23 phone number.

24 Q Did you ever call
25 Derrick?

JOHNSON -- CROSS

1 A No, sir.

2 Q Did you ever speak
3 with -- and, by the way, it's not
4 an anonymous call then apparently.
5 Right? That was another statement
6 that was made in opening.

7 A If there was a call
8 made, apparently not.

9 Q All right. And did
10 you ever speak with the front desk
11 or management at the Relax Inn?

12 A I personally did not.
13 I believe another officer did.

14 Q Okay. Which officer
15 would that have been, Lieutenant?

16 A Officer Jourdan.

17 Q The folks at the
18 front desk might have told Jourdan
19 or could have told you how long
20 Ickes had been living there.
21 Correct?

22 A We determined who
23 rented the room to verify that he
24 was the one renting the room.

25 Q The folks at the

JOHNSON CROSS

1 front desk could have told you
2 whether they'd seen any drug
3 activity or any suspicious
4 activity in that room. Is that
5 correct?

6 A They could have.

7 Q Did you ever go the
8 front desk and show them a picture
9 of Mr. Murray and say have you
10 soon this guy around?

11 A No, sir.

12 Q Mr. Ickes told you he
13 was just a user and the drugs were
14 all Mr. Murray's. Right?

15 A I don't believe he
16 told me that.

17 Q That's the statement
18 he gave that night. Right?

19 A I didn't read his
20 statement.

21 Q You didn't read his
22 statement?

23 A No, sir.

24 Q Well, it's very
25 short.

JOHNSON -- CROSS

1 May I approach the
2 witness, your Honor?

3 THE COURT: You may.

4 Q Take a look at that
5 for a minute if you would, sir.
6 Lieutenant, Mr. Ickes said that he
7 was just a user and the drugs were
8 all Mr. Murray's. Correct?

9 A That's what the
10 statement reads. Yes, sir.

11 Q There's nowhere in
12 that statement that he claims
13 possession of any drugs in the
14 room. Correct?

15 A Well, it says he gave
16 him a dime bag once or twice a
17 week.

18 Q But he doesn't claim
19 possession of any drugs in that
20 room, does he?

21 A Not by the statement.
22 No, sir.

23 Q And have you had a
24 chance to read Detective Jourdan's
25 report in this matter?

JOHNSON -- CROSS

1 A Yes. I have it with
2 me.

3 Q All right. Do you
4 see anywhere in that report where
5 Mr. Ickes claims any drugs in that
6 room, in either night stand?

7 A No, sir.

8 Q All right. And
9 Detective Jourdan is on vacation
10 this week. Is that correct?

11 A Yes, sir.

12 Q And this was Mr.
13 Ickes's room. Correct?

14 A Yes, sir.

15 Q Mr. Murray was just
16 visiting. Correct?

17 A Yes, sir.

18 Q Did Mr. Ickes have
19 all his clothes and personal
20 belongings there?

21 A I did not inventory
22 the room but there were clothes in
23 the room.

24 Q Would there have been
25 anything to prohibit you or

JOHNSON -- CROSS

1 inhibit you from speaking, from
2 December twelfth, 2007 to today,
3 July eighth, 2008, would there
4 have been anything to inhibit you
5 or any other representative of the
6 North Charleston Police Department
7 or the solicitor's office from
8 speaking to this caller that's
9 identified in that cad report?

10 A No, sir.

11 Q And would there have
12 been anything to inhibit you or
13 any other law enforcement agent
14 from going over to that hotel and
15 showing them some pictures of
16 Murray and asking them what kind
17 of suspicious activity they ever
18 heard of?

19 A No, sir.

20 Q And after you got to
21 the room, Lieutenant, you
22 separated Ickes and Murray. Is
23 that correct?

24 A Yes, sir.

25 Q And you and Ickes had

JOHNSON - - CROSS

1 a conversation outside Murray's
2 presence. Correct?

3 A Yes, sir.

4 Q And you asked Ickes
5 if there were any drugs in the
6 room and to let you know that,
7 whether there were. Correct?

8 A Yes.

9 Q And Ickes asked you
10 for some help. Right?

11 A He asked me for help?

12 Q That was your
13 testimony under oath yesterday,
14 sir.

15 A Yes.

16 Q And you asked him if
17 he'd be willing to show you where
18 the drugs were. Correct?

19 A Yes.

20 Q And he was scared,
21 nervous, and very cooperative.
22 Right?

23 A He was very
24 cooperative.

25 Q And he was able to

JOHNSON -- CROSS

1 describe the, the color of the bag
2 that Murray supposedly placed in
3 drawer. Correct?

4 A Yes, he was.

5 Q He told you it was a
6 blue bag. Right?

7 A Dark colored bag.

8 Q So he happened to be
9 paying attention to that?

10 A Yes, he was.

11 Q Now, you are
12 extremely experienced about drugs
13 and drug use on the street.
14 Right?

15 A Yes, sir.

16 Q In your experience,
17 sir, would it be unusual for a
18 drug dealer to keep his personal
19 away from his stash that he'd be
20 selling to people?

21 A It's not unusual.

22 Q It's not unusual for
23 a drug dealer to keep their
24 personal stash in a separate
25 place?

JOHNSON - - - CROSS

1 A No, sir.

2 Q And are you aware,
3 sir, that Mr. Ickes faces a
4 potential sentence of eighty years
5 in these cases?

6 A I don't know what the
7 potential sentence is. It doesn't
8 concern me what our people in
9 jail, what their sentence is.

10 Q Do you sometimes
11 feel, sir, that physical evidence
12 is more trustworthy than witness
13 statements? I mean physical
14 evidence has no motive to lie.
15 Correct?

16 A They're both
17 important.

18 Q Physical evidence has
19 no bias. Physical evidence can't
20 go to jail. And Mr. Ickes said
21 Mr. Murray placed the drugs in the
22 night side table. Right?

23 A Yes, sir. Yes, sir.

24 Q And would you agree,
25 sir, that in order to place the

JOHNSON --- CROSS

1 drugs in the night side table he
2 would have to open the drawer?

3 A Yes, sir. Unless the
4 drawer was already open.

5 Q Well, that's true.
6 Do you think that it would be
7 worth investigating whether or not
8 there was a fingerprint on that
9 night side table?

10 A In order to attain
11 the prints from that type of
12 material that is same as the
13 podium where you're speaking from,
14 sir, trying to obtain a print from
15 that, it would be almost
16 impossible, sir. From my
17 twenty-four years' experience and
18 in burglaries that I have
19 investigated, people are not
20 likely to lift a print from places
21 that are impossible, and I believe
22 that comes from watching too much
23 television and since most time
24 it's just impossible to lift
25 prints.

JOHNSON -- CROSS

1 Q Sir, my fingerprints
2 are all over this podium. You're
3 saying that you can't get a
4 fingerprint off of -- first of all
5 there's no picture of a table
6 anywhere. Right? We don't know
7 what kind of surface it was. I
8 just didn't want to approach.

9 THE COURT: Is that a
10 question?

11 MR. PRENNER: My
12 question, your Honor -- yes,
13 your Honor.

14 Q Lieutenant, did you
15 take a picture of the table?

16 A I did not.

17 Q You referred to the
18 type of surface, surface that the
19 table was. What type of surface
20 was it?

21 A It was a very shiny
22 surface.

23 Q You don't think a --
24 go ahead, sir.

25 A Clear surface like

JOHNSON -- CROSS

1 that is harder to attain prints
2 off. I went through fingerprint
3 school. I've lifted many prints
4 in my twenty-four years's
5 experience and I know what can and
6 cannot a print can be lifted.

7 Q How many years do you
8 have?

9 A In lifting prints, so
10 I know what I can get a print
11 from.

12 Q How do you know
13 unless you try?

14 A Years of experience,
15 sir.

16 Q So your years of
17 experience lead you to believe
18 that obtaining a fingerprint from
19 a shiny flat surface is so futile
20 that it's not even worth trying.
21 Is that correct?

22 A Depending on the
23 surface and depending on the, the
24 material.

25 Q And this particular

JOHNSON - - CROSS

1 surface, we don't know what it
2 looked like and we don't have a
3 picture of it?

4 A But you have my
5 expert testimony in my twenty-four
6 years' experience, and from that
7 drawer I could not get a print.

8 Q Sir, would you have
9 been the one to actually handle
10 the taking of the prints?

11 A I lifted many prints
12 in my time, sir.

13 Q Normally you would
14 just call crime scene to come out
15 and take picture and lift the
16 prints. Correct?

17 A No, sir. Not in that
18 type of crime.

19 Q What type of crime is
20 it?

21 A On a drug charge like
22 this, our officers have
23 fingerprint kits. You know, we
24 can take our own prints. We don't
25 have to call crime scene for that.

JOHNSON - - - CROSS

1 Q You had a fingerprint
2 kit with you that night?

3 A Did I have one?

4 Q Yes, sir.

5 A Yes, sir. I had it
6 in the trunk of the car.

7 Q Did you ever go down
8 to the car and get it?

9 A No, sir.

10 Q You got called away
11 on a shooting. Right?

12 A Later on I did. And
13 all the other officers had
14 fingerprint kits in their car.

15 Q But you're not an
16 expert in fingerprinting, are you?

17 A Expert? No, sir.

18 Q Uh-huh. Have you
19 ever been qualified as an expert
20 by any judge in any state anywhere
21 as an expert in fingerprinting?

22 A Not an expert.

23 Q And crime scene was
24 never called out at the scene.

25 Correct?

JOHNSON -- CROSS

1 A No, sir.

2 Q And there's actually
3 two tables here. Correct?

4 There's a night side, night table
5 closest to the door and a night
6 table furthest away from the door?
7 Right?

8 A Actually three table
9 if you consider the round one by
10 the front door.

11 Q Yes, sir. Well,
12 let's just talk for a second about
13 the night tables, the one that's
14 bed side. One of these tables,
15 the one closest to the door is
16 supposed to be the table that
17 Ickes had his little purse on.
18 Right?

19 A That's the one we
20 found the prescription bottle in,
21 containing two clear plastic bags
22 in.

23 Q And the other table
24 is supposed to be the table where
25 Mr. Murray put these drugs.

JOHNSON -- CROSS

1 Right?

2 A Yes, sir.

3 Q I'm going to move

4 away from this fingerprint point,

5 but don't you think that at least

6 some comparison of the two

7 surfaces, the one over here is the

8 table with only Mr. Ickes's prints

9 and over here is the table with

10 Ickes's and Murray's prints. Do

11 you not think that that would be

12 extremely informative in a trial

13 like this where people are facing

14 years and years of time?

15 A In your case like

16 this, sir, on the surface, it is

17 routinely you don't pull

18 fingerprints off a drawer. This

19 room is used over and over and

20 over again and there would be

21 multiple prints on your surfaces.

22 Q Well, whose prints do

23 you really think would be on those

24 bed side tables? Ickes's. Right?

25 A I'm sure there would

JOHNSON -- CROSS

1 be hundreds of prints on that
2 drawer.

3 Q Well, if there are
4 hundreds of prints on the
5 drawers -- all right. Now I'm
6 confused. I thought you said
7 there were no prints to lift on
8 the surface.

9 A I said retaining the
10 print, trying to pull them.

11 Q Dusting the surface?

12 A Yes, sir.

13 Q But you didn't try?

14 A No, sir.

15 Q And how about dusting
16 the bags, the plastic bags,
17 those -- you grab a plastic bag. I
18 believe you said that -- well, let
19 me ask you this. If you grab a
20 plastic bag, that doesn't leave a
21 fingerprint?

22 A I did not dust any
23 bags, sir.

24 Q But somebody did
25 submit the gun for fingerprinting.

JOHNSON -- CROSS

1 Right?

2 A Yes, sir.

3 Q Then you can see,

4 Lieutenant, I'm going to hand you

5 this. You can see on the firearm

6 there, sir, where there's dust.

7 A Yes, sir.

8 Q That's from the

9 fingerprinting process. Right?

10 A Yes, sir.

11 Q That is cytomacrolate

12 fume. Correct? And black powder.

13 A I'm not sure what it

14 is, sir.

15 Q I didn't think you

16 would be, sir. Do you have an

17 opinion as to whether these bags

18 or the table would make just as

19 good a candidate for

20 fingerprinting as that gun?

21 A I don't believe the

22 bags would make a good candidate.

23 No, sir.

24 Q In any event, Mr.

25 Murray's fingerprint is not

JOHNSON - - - CROSS

1 anywhere on anything, on any of
2 these illegal items. Correct?

3 A I did not dust any of
4 the bags for prints, sir.

5 Q Did you have your dog
6 there that night?

7 A I'm no longer a
8 cocaine dog officer. I didn't
9 have the dog there, sir.

10 Q Did Ickes tell you
11 how Mr. Murray put the items in
12 the drawer?

13 A He did not tell me
14 that. No, sir.

15 Q Did he tell when he
16 put the items in the drawer?

17 A He did not tell me
18 that, sir.

19 Q Did he tell that you
20 it was just as he was opening the
21 door and you and Detective Jourdan
22 were there, that it was just then
23 that he saw Mr. Murray over at the
24 table putting the drugs in the
25 drawer because I believe that was

JOHNSON -- CROSS

1 what was represented in opening.

2 Did he tell you that?

3 A No, sir.

4 Q Did you find anything

5 else belonging to Ickes in either

6 drawer? A ski mask?

7 A I did not.

8 Q Are all North

9 Charleston Police Department

10 officers equipped with a camera in

11 their cruisers?

12 A Some are, some not.

13 Q Are you equipped with

14 a camera?

15 A I am not.

16 Q Do you know if anyone

17 else there was equipped with a

18 camera?

19 A Officer Jourdan and

20 Officer Cobb are. As far as I did

21 not have a camera issued to me.

22 Q So CSI -- what do you

23 all call your CSI? Do you call it

24 CSI?

25 A Crime scene unit.

JOHNSON -- CROSS

1 Q Crime scene unity,
2 but they were never called out to
3 take pictures either. Correct?

4 A No, sir.

5 Q No pictures of the
6 night side table and no pictures
7 of the drugs in the drawer as they
8 were found. Correct?

9 A No, sir.

10 Q Really what we have
11 now, if I may, sir, is just this
12 bag with all these drugs just
13 jumbled together here, right, and
14 you just pull them out. I mean
15 basically it's just the Best Kit
16 with all the bags just jumbled up
17 inside of it right. Right?

18 A Correct, sir.

19 Q Did you find a cell
20 phone, anything like that?

21 A I did not place any
22 cell phones in evidence.

23 Q Isn't that something
24 that drug dealers often have?

25 A Normally they do.

JOHNSON -- CROSS

1 Q Now, sir, you've been
2 a police officer for twenty-three
3 years. Is that right?

4 A Yes, sir.

5 Q And obviously you
6 attended the academy. Correct?

7 A I'm a certified
8 officer.

9 Q And you are obviously
10 with a twenty-three year
11 experience, lieutenant, veteran
12 police officer, you are familiar
13 with the importance of report
14 writing in law enforcement.
15 Correct?

16 A Yes, sir.

17 Q And in fact you went
18 to the academy, or however you're
19 educated, I would imagine that the
20 report writing is a curricula of
21 it's, in and of itself. I mean
22 you take a class on report
23 writing, don't you?

24 A They do teach that at
25 the academy.

JOHNSON -- CROSS

1 Q Take any primers on
2 report writing over the years?

3 A Yes, sir.

4 Q And you handle a lot
5 of cases in your job. Isn't that
6 correct?

7 A I do a lot of
8 management.

9 Q And every single
10 shift you are running from place
11 to place. I mean in this case you
12 left this crime in the middle of
13 the crime to go to a shooting.
14 Right?

15 A Yes, sir.

16 Q Isn't the primary
17 purpose, Lieutenant, of report
18 writing to allow you to refresh
19 your recollection in a contested
20 proceeding like this?

21 A Yes, sir.

22 Q And the reason for
23 that, the benefit of that is that
24 you all handle so much work and
25 situations that you can't be

JOHNSON -- CROSS

1 expected to remember when you're
2 called away to a shooting in the
3 middle of a drug case, you write a
4 report so that you can recall
5 accurately what happened in the
6 drug case. Right?

7 A A report is very
8 important.

9 Q And reports have been
10 written close in time to the
11 events they describe though.
12 Right?

13 A Reports are written
14 so that officers can recall.

15 Q Recall accurately?

16 A Yes, sir.

17 Q People generally
18 remember recent events more
19 accurately and remote events less
20 accurately. Correct?

21 A Some individuals are
22 different.

23 Q Well, you're right.
24 That's a generalization. But for
25 instance in this case I believe

JOHNSON - - CROSS

1 it's your testimony that you all
2 didn't knock on the door?

3 A I did knock on the
4 door.

5 Q Well, for instance in
6 this case you testified that there
7 were two beds. Correct?

8 A I believe so.

9 Q If I was to explain
10 to you that there is only one bed,
11 would you believe that?

12 A I recall two.

13 Q But there was only
14 one. Do you believe that?

15 A I'm going by my
16 memory, sir.

17 Q Okay. In your
18 twenty-three year career, how many
19 reports have you written?
20 Hundreds? Thousands?

21 A I don't have a count,
22 sir.

23 Q In this case you
24 wrote no report. Correct?

25 A There was no report

JOHNSON - - - CROSS

1 by me, no. There was a report
2 written.

3 Q Detective Jourdan
4 wrote a report.

5 A She wrote the report.

6 Q This report, sir, you
7 have copy of this?

8 A Yes.

9 Q It's a two-page
10 report. It doesn't mention
11 anything about Murray, my client,
12 telling Ickes, you don't have to
13 talk to them. They need to have a
14 warrant. They can't search the
15 area.

16 There's nothing in
17 here about that. Correct?

18 A That's correct.

19 Q And these statements
20 that you're testifying to, that
21 Murray was telling Ickes you don't
22 have to let them in here, those
23 are very important. Those are
24 very significant, aren't they, in
25 this case?

JOHNSON -- CROSS

1 A Yes, sir.

2 Q You made a rather
3 huge point of it during your
4 direct. I think you might have
5 testified as to different ways it
6 was said because you said
7 initially, you tell me if this is
8 right, you talked about him making
9 that statement and then you said
10 sort of like the whole time that
11 you all were in there he kept on
12 making those statements. Is that
13 right?

14 A Yes, sir.

15 Q And yet it is not
16 documented in any of reports.

17 What's a supplemental
18 report, Lieutenant?

19 A That's a report that
20 detectives or the officers can add
21 to an incident report.

22 Q And this significant
23 information that you all are
24 offering here at trial is not
25 documented in any supplemental

JOHNSON -- CROSS

1 report either, is it?

2 A No, sir.

3 Q All of this

4 information we're hearing for the
5 first time at trial. Correct?

6 A Yes, sir.

7 Q Ickes told you he was
8 a user, right? Did he seem messed
9 up on drugs?

10 A He did not seem
11 messed up when I was talking to
12 him, sir.

13 Q Did you find any
14 paraphernalia of any sort in the
15 room?

16 A I found the drugs. I
17 did not find paraphernalia that
18 normally goes along with drugs.

19 Q Was there any
20 evidence other than his statement
21 to make him look like a user?

22 A Besides the drugs? I
23 did not find paraphernalia in the
24 room.

25 Q And you charged Ickes

JOHNSON -- CROSS

1 with everything that you charged
2 Murray with. Correct?

3 A Correct.

4 Q Even though in his
5 statement, you may still have it.
6 Perhaps I took it back from you.

7 A It's right here.

8 Q Even though in the
9 statement, Lieutenant, he doesn't
10 claim any of the drugs in the
11 whole room.

12 A That's correct.

13 Q You charged him with
14 everything. He was taken to jail
15 that night on the exact same
16 charges my client was taken to
17 jail on? That's right, isn't it?
18 Let's look at those charges now.
19 Trafficking in cocaine base.
20 That's between twenty-three or
21 twenty-five grams of crack inside
22 a plastic bag, inside a blue cloth
23 bag, inside the night stand
24 drawer. Right? Is that right,
25 sir?

JOHNSON -- CROSS

1 A The crack cocaine was
2 not inside the blue bag.

3 Q It was not inside the
4 blue bag? Do you got the report
5 or, excuse me, Officer Jourdan's
6 report? If you look on page two,
7 if you would, sir, where there's a
8 listing of items found on the
9 night stand next to the rest room
10 door?

11 A Uh-huh.

12 Q It says a dark
13 colored cloth bag. Would you look
14 right there?

15 A Yeah.

16 Q Do you still believe
17 that?

18 A Eight point seven
19 grams of white powdery substance.

20 Q So that blue bag
21 contained powder cocaine?

22 A Uh-huh.

23 Q All right. So the
24 crack charge, it's just a bag
25 inside the drawer then?

JOHNSON - - CROSS

1 A This was inside the
2 drawer along with the forty-five
3 Colt hand gun.

4 Q Okay. And also
5 inside the drawer was a blue bag
6 then?

7 A Yes.

8 Q And inside the blue
9 bag was the powder?

10 A Yes, sir.

11 Q Do you have a copy of
12 the arrest warrants in this case?

13 A I do not have them
14 with me, sir.

15 Q Let me show you the
16 arrest warrant on the powder
17 cocaine charge. If you would,
18 sir, tell me how much powder
19 cocaine that that warrant referred
20 to and where was that powder
21 cocaine found?

22 A Nine point - -
23 approximately nine point nine
24 grams of white powdery substance
25 and it states it was the night

JOHNSON -- CROSS

1 stand closest to the door.

2 Q Closest to the door.

3 But the report says eight point
4 seven grams is found in the night
5 stand by the, quote, farthest away
6 from the door and one point two
7 was found in the night stand next
8 to the, closest to the door.

9 Right? Eight point seven plus one
10 point two is nine point nine. You
11 all took the drugs from one table,
12 added them to the drugs from the
13 other table, and made a possession
14 with intent to distribute cocaine
15 charge, and charged them both with
16 that. Correct?

17 A I did not, sir.

18 Q Who did?

19 A Officer Jourdan may
20 have combined the weights. I
21 didn't know the weights were
22 combined.

23 Q They're combined in
24 that affidavit. Correct?

25 A I did not type that

-- JOHNSON --

CROSS

1 affidavit, sir.

2 Q But were they
3 combined in that?

4 A I don't know, sir.

5 Q Well, here it is
6 right here. Did you type that
7 affidavit, sir?

8 A No, sir. I just read
9 it.

10 Q Well, I mean are they
11 combined in this affidavit?

12 A I don't know, sir. I
13 didn't type it.

14 Q All right. Well
15 would you agree with me that this
16 affidavit is the document that
17 leads to the arrest of these
18 individuals on this charge? This
19 is a document that gets signed by
20 the judge.

21 A Yes, sir.

22 Q In any event, all the
23 drugs, the gun, everything is
24 found in Ickes's room in his night
25 side table. Correct?

JOHNSON -- CROSS

1 A Yes, sir.

2 Q Is there anything
3 that you or any other officer in
4 this case has done to try to test
5 the veracity of Mr. Ickes's
6 assertion that these drugs were
7 Murray's, my client?

8 A Could you repeat your
9 question?

10 Q Yes, sir. Is there
11 anything that you or any other
12 officer in this case has done to
13 try to test the veracity, to see
14 whether it's something that you
15 could say well, let's see if this
16 adds up? Is there anything that
17 you've done to try to say is Ickes
18 telling the truth?

19 A I believe the
20 officers did their investigation
21 that night. In talking with them
22 and with the witness statements.

23 Q And what was their
24 investigation?

25 A Talking with the

JOHNSON -- CROSS

1 individuals.

2 Q Talking with Mr.
3 Ickes?

4 A Yes.

5 Q Taking the statement.
6 He was cooperative that night.
7 Mr. Murray was not cooperative
8 that night. And they concluded
9 their investigation. None the
10 less, you didn't believe Mr. Ickes
11 because you charged him with the
12 same crime. Correct? Is that
13 right?

14 A He's still charged
15 with it. Yes, sir.

16 Q And I think you
17 referred in your direct to Mr.
18 Murray's reaching furtively under
19 the bed? Did you all look under
20 the bed?

21 A Officer Cobb did,
22 sir.

23 Q There was nothing
24 under the bed?

25 A No, sir.

JOHNSON -- CROSS

1 MR. PRENNER: Beg the
2 Court's indulgence. That's
3 all the questions I have right
4 now. Thank you.

5 THE COURT: Any
6 redirect of the witness?

7 MR. KIDD: Briefly,
8 your Honor.

9 THE COURT: You may
10 proceed.

11

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REDIRECT EXAMINATION

19

BY MR. KIDD:

20

21

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25

Q There's been a lot of
questioning that Mr. Prenner was
just asking you. Did you believe
Mr. Ickes?

A Yes, I did.

Q You believed his

JOHNSON - REDIRECT

1 statement that the drugs were not
2 his?

3 A In my twenty-four
4 years' experience I meet a lot of
5 people in the street, and not only
6 in my experience but it was
7 something I believed. I believed
8 he was telling the truth. He was
9 cooperative from, from start to
10 finish, and again I've a lot of
11 experience out there from people
12 and hundreds of arrests and I
13 believe him. I deal with people
14 from all sorts and walks in life
15 and, and I can, I have a pretty
16 good feeling for people and I
17 believed him. He was very
18 cooperative from start to finish
19 and he never waivered from that.

20 Mr. Murray was
21 totally uncooperative. And a lot
22 of times people who are totally
23 uncooperative, they have things to
24 hide.

25 Q Despite your belief

JOHNSON -- REDIRECT

1 in Mr. Ickes, you still have
2 enough to charge him with these
3 crimes?

4 A Sure.

5 Q Switch gears a little
6 bit. Is it -- a police report,
7 it's impossible to include
8 everything in a police report?

9 MR. PRENNER: Object to
10 the form.

11 THE COURT: Please
12 rephrase.

13 Q How was the police
14 report prepared?

15 A Police reports were
16 prepared, usually the who, what,
17 when, where, and why. You cannot
18 put everything in a police report
19 or a police officer would never be
20 on the street, he's stay at the
21 station typing all week -- all day
22 and all night. Unfortunately we
23 have calls to answer and sometimes
24 things are left out of a police
25 report. We don't have days and

JOHNSON --- REDIRECT

1 days to sit there and type and
2 prepare for a trial like most
3 attorneys wish we could.
4 Unfortunately we have calls to
5 handle. We have to worry about
6 protecting the citizens in the
7 city of North Charleston and not
8 worry about all the details in a
9 report. We try our best to get
10 most details in there, and we have
11 to recall on our memory a lot, but
12 we try to get as many facts in the
13 report as we can. We do the best
14 we can. Sometimes facts are left
15 out.

16 Q So it's possible that
17 not every single statement made
18 makes it into the report?

19 A That happens a lot
20 and happens every day.

21 Q What type of crime
22 typically is C. S. I. the crime
23 scene unit called to process at
24 the scene?

25 A Crimes that we cannot

JOHNSON -- REDIRECT

1 handle as far as on the street
2 such as a, a murder, where there
3 is body fluids there that they're
4 to have to process, handle, take
5 video photographs, and parts of
6 the, the remains have to be
7 processed. They respond to stuff
8 like that. Armed rape robberies
9 where there's multiple videos and
10 stuff that's going to have to be
11 pulled there out of the processing
12 of the, the normal operation of
13 the, the patrol officer or the
14 sergeant on the street that cannot
15 handle it. Or a large area where
16 multiple fingerprints will have to
17 be attained from a, from a crime
18 crime. Everyday processing of
19 normal B. and E. autos, burglaries
20 of a house and stuff like that,
21 are community service officers and
22 our patrol officers on the street
23 will process this type of scene.

24 Q And in your
25 twenty-three years, how often do

JOHNSON -- REDIRECT

1 you estimate the C. S. I. would be
2 called to drug scenes?

3 A Very few. Where we
4 talking high time, high profile
5 dealers, or we're talking probably
6 kilos on top of kilos and
7 thousands upon thousands of
8 dollars seized. Or a lot of
9 damage to a residential house and
10 multiple amounts of dollars seized
11 or where a crime scene unit will
12 be called in to photograph the
13 evidence.

14 Q How often do you take
15 pictures of a scene when you make
16 a drug arrest?

17 A Normally we don't.
18 The time we do take it is when the
19 responding officer happens to have
20 a camera that was assigned to him.
21 Not every officer has that camera.
22 That is a luxury to have to have
23 that assigned camera issued to
24 him.

25 Q Could you -- would

JOHNSON -- REDIRECT

1 there have been any reason for you
2 to, to follow up on the informant
3 who, who made the call to 911?

4 A No. We got the 911
5 call, we followed up on it, and my
6 investigation led to our two
7 arrests. I did not need to talk
8 to him on the phone.

9 Q And at that point
10 would there have been any benefit
11 to talk to that informant?

12 A Most of the time when
13 I answer drug activity calls, more
14 likely someone was given a bad
15 wrap on a, a drug, they was not
16 given the right amount of drugs
17 and they were aggravated and they
18 want to tip off the police on the
19 dealer. More likely that's what
20 usually occurs. There's no
21 benefit for me to do that.

22 Q And you had
23 sufficient evidence to arrest and
24 charge both Mr. Ickes and
25 Mr. Murray with the drugs at this,

JOHNSON -- REDIRECT

1 at this point in time?

2 A I did.

3 MR. KIDD: Beg the

4 Court's indulgence.

5 Q So you, you responded
6 to a dispatch call?

7 A I did.

8 Q And did that, what,
9 what was the context of that
10 dispatch call?

11 A She sent an officer
12 to the address and location
13 described in this report of a code
14 twelve activity. Code twelve
15 meaning drug activity.

16 Q And so you responded
17 to the room?

18 A I did.

19 Q And you discovered
20 the drugs?

21 A In both night stands.

22 Q And was the case
23 closed to you?

24 MR. PRENNER: I object
25 to leading questions.

JOHNSON -- REDIRECT

1 THE COURT: Sustained/1
2 eading.

3 Q And then?

4 A Both, both the night
5 stands contained drugs. One, one
6 of the night stands contained a
7 larger quantity than the other.
8 The case was pretty much closed at
9 that time.

10 MR. KIDD: Nothing
11 further, your Honor.

12

13

14

15

16

17

18 RECROSS-EXAMINATION

19 BY MR. PRENNER:

20 Q So the case was
21 pretty much closed?

22 A Closed on our end.

23 THE COURT: Any
24 objection to the witness being
25 excused from the State?

RECROSS-EXAMINATION BY MR. PRENNER:

1 MR. PRENNER: I just
2 have a brief follow-up. Very
3 brief.

4 THE COURT: Very brief.

5 MR. PRENNER: Thank
6 you, your Honor.

7 Q Lieutenant, you talk
8 about leaving some details out of
9 a report writing. These are not
10 just minor details that Mr. Murray
11 allegedly kept saying don't let
12 him in here, don't let him in
13 here. Correct? It's not a minor
14 detail, is it?

15 A That's your opinion,
16 sir.

17 Q Well, I'm asking for
18 your opinion. Do you believe it's
19 a minor detail?

20 A In my opinion.

21 Q I'm sorry.

22 A In my opinion.

23 Q In your opinion it's
24 a minor detail that he was saying
25 don't let them in here, don't let

RE CROSS-EXAMINATION BY MR. PRENNER:

1 them in here?

2 A That's my opinion it
3 is.

4 Q That's -- well, if
5 it's such a minor detail why are
6 you testifying on and on about it
7 here in Court in a trial where his
8 liberty is at issue?

9 A That's the facts of
10 the case, sir. I'm telling, I'm
11 telling you exactly what happened
12 that night.

13 Q I'm asking you why
14 important, important, very
15 important matters are not in your
16 report but yet you're testifying
17 to them here today?

18 A I did not prepare
19 that report, sir.

20 Q Or any other report?

21 A That's correct.

22 Q And on the
23 fingerprints how long or did you
24 ever call C. S. I. to say are you
25 all busy tonight, what you got

RECROSS-EXAMINATION BY MR. PRENNER:

1 going on?

2 A I believe I already
3 answered that. No, I did not call
4 them.

5 Q And how long would it
6 have taken you to go down to your
7 car or one of the other officers
8 to go down to your car, get the
9 little kit, come back up and dust
10 it and look for prints? How long
11 would that have taken,
12 approximately?

13 A Twenty minutes,
14 twenty-five minutes to try to take
15 the prints from a surface that
16 would not be able to lift a print.

17 Q And you've stated in
18 response to the last question Mr.
19 Kidd asked you that there was
20 sufficient evidence to arrest both
21 Ickes and Murray and charge them
22 both with these crimes. Correct?

23 A Yes, sir.

24 Q But you're also
25 saying in here today that you

RE CROSS-EXAMINATION BY MR. PRENNER:

1 believe his statement that he --

2 that these were not his drugs.

3 Right?

4 A Yes, sir.

5 Q Well, if you believe

6 his statement then how's there

7 sufficient evidence to charge him

8 with a crime?

9 A Both of them still
10 had possession of the drugs.

11 Q Not according to his
12 statement?

13 A Well, I believe,
14 believe exactly what he told me,
15 that they both still had
16 possession of the drugs, both of
17 them, both of them was in the room
18 together, and I believed it.

19 Q Did you believe him
20 that night when you took him to
21 jail?

22 A Yes, sir. He was
23 still in the wrong.

24 Q For trafficking
25 crack?

RECROSS-EXAMINATION BY MR. PRENNER:

1 A Yes, sir.

2 Q This case is closed
3 by arrest. Isn't that right?

4 A On our end it was
5 closed by arrest.

6 Q Right. So you all's
7 case is closed. Correct?

8 A Yes, sir.

9 Q So you don't have to
10 worry about it any more, do you?

11 A I would not say that.

12 Q You don't have to
13 worry about that room as it was
14 that night?

15 A That's correct.

16 Q And that's why
17 there's no reason to follow up
18 with the informant. Right?

19 A Yes, sir.

20 MR. PRENNER: Thank
21 you, sir.

22 THE COURT: Any further
23 questions from the State?

24 MR. KIDD: None, your
25 Honor.

1 THE COURT: Any
2 objection to the witness being
3 excused from the State?

4 MR. KIDD: No, your
5 Honor.

6 THE COURT: From the
7 defense?

8 MR. PRENNER: No, your
9 Honor.

10 THE COURT: Sir, you're
11 excused.

12 THE WITNESS: Thank
13 you, your Honor.

14 THE COURT: You're
15 welcome.

16 The podium needs to
17 be moved. Please put it back
18 in its position.

19 THE COURT: Mr.
20 Foreman, ladies and gentlemen,
21 we're going to take advantage
22 of this break in testimony to
23 take our luncheon recess. We
24 will -- it is ten after one
25 and we will break until 2:30

1 which gives you about an hour
2 and twenty minutes for lunch
3 and you will need just about
4 that time with the tourists as
5 well as your having to regain
6 entry into the building.

7 During this break
8 please do not discuss the case
9 in any manner among yourselves
10 or with anyone else. Please
11 don't allow yourself to be
12 exposed to any media accounts,
13 and please again don't have
14 any contact with anyone in or
15 about the building.

16 Please leave your
17 notepads in your seats. If
18 you will return directly to
19 your jury room and I would ask
20 that you be prompt. I
21 anticipate us beginning
22 promptly at and did: 30.
23 Have a good lunch and we'll
24 see you then.

25 (Whereupon, the jury

1 leaves the courtroom at 1:11
2 p.m.)

3 THE COURT: Is there
4 anything before we break for
5 the luncheon recess, from the
6 State?

7 MR. KIDD: No, your
8 Honor.

9 THE COURT: From the
10 defense?

11 MR. PRENNER: No, your
12 Honor.

13 THE COURT: And I
14 understand the next witness
15 will be who?

16 MR. KIDD: Officer Cobb
17 will be our next witness, your
18 Honor. Teachey after that,
19 and then Jill Clark.

20 THE COURT: And we
21 won't have to take up anything
22 in camera because I've already
23 ruled on the admissibility of
24 the drugs, of the pills
25 evidence, as well as I've

1 already ruled on the
2 statements. Correct?

3 MR. KIDD: That's
4 correct, your Honor.

5 THE COURT: You have
6 all the rest of your witnesses
7 here today.

8 MR. McCOY: They're all
9 outside right now, your Honor.

10 THE COURT: Perfect.

11 MR. KIDD: I believe
12 Ickes will be our last
13 witness.

14 THE COURT: Pardon me?

15 MR. KIDD: I believe
16 Mr. Ickes will be our last
17 witness, if you would like to
18 take up the issue about his
19 prior record.

20 THE COURT: You all
21 have my instructions regarding
22 Mr. Ickes's prior record. Mr.
23 Prenner is going to be allowed
24 to question him about it.
25 He's not going to be able to

1 question him about his actual
2 Ohio record. The rules
3 preclude it. But he may
4 inquire into any motivation he
5 may have. The whole purpose
6 as I understand it of Mr.
7 Prenner's argument is he wants
8 to be able to argue to the
9 jury that Mr. Ickes has
10 enhanced exposure and as a
11 result of that enhanced
12 exposure he has some motive in
13 testifying or prejudice or
14 bias. He can get into that
15 without mentioning Mr. Ickes's
16 Ohio record.

17 MR. PRENNER: Your
18 Honor, may it please the
19 Court. That is only part of
20 my argument. The other part
21 of the argument is that
22 anybody with a prior
23 conviction for drugs is not
24 going to want --

25 THE COURT: Well, your,

1 the case law doesn't support
2 that argument. It says that
3 narcotics convictions are not
4 probative on the issue of
5 truthfulness, so --

6 MR. PRENNER: I'm
7 saying on bias.

8 THE COURT: The case
9 law doesn't support that
10 argument.

11 MR. PRENNER: So, yes,
12 so if I understand the Court's
13 ruling, so I can, what kind
14 of -- I'm trying to still
15 figure out what I can say
16 without --

17 THE COURT: You can ask
18 him that he's, he is subject
19 to whatever his exposure is.

20 MR. PRENNER: May I use
21 the word enhanced?

22 THE COURT: No, because
23 it doesn't matter, because the
24 issue is whether he's biased
25 or prejudiced based on the

1 time in jail that he is
2 exposed to --

3 MR. PRENNER: So I can
4 ask him --

5 THE COURT: -- which is
6 the amount of years.

7 MR. PRENNER: So I can
8 ask him about the matter,
9 about whether he's biased or
10 prejudiced based on the time
11 in jail?

12 THE COURT: Uh-huh.
13 And apparently the issue is
14 his bias or prejudice based on
15 the enhancement, the enhanced
16 time that he is exposed to, so
17 really to some extent this
18 whole matter is irrelevant.
19 The issue is the amount of
20 time he faces and whether that
21 causes him to be a biased or
22 prejudiced witness, whether
23 that then entices him to give
24 more favorable testimony that
25 inculcates someone else and

1 exculpates himself.

2 MR. PRENNER: But he's
3 a convicted drug dealer.

4 THE COURT: That has no
5 bearing on the law that --

6 MR. PRENNER: If you're
7 a convicted drug dealer --

8 THE COURT: The issue
9 becomes his bias and whether
10 he's giving more preferable
11 testimony based on the amount
12 of time that he is exposed to.
13 Being a drug dealer, there is
14 no case law that supports that
15 argument and I've researched
16 that.

17 So you have your
18 instructions and we'll deal
19 with it when he gets ready to
20 testify.

21 MR. KIDD: Thank you,
22 your Honor.

23 MR. McCOY: Your Honor,
24 I left out one other witness,
25 he's outside as well, before

1 Ickes is called.

2 THE COURT: You have
3 all these people listed.
4 Correct?

5 MR. McCOY: Correct.

6 THE COURT: I just
7 wanted to make sure that they
8 were all here and ready to go.

9 MR. McCOY: They're all
10 ready.

11 THE COURT: All right.
12 Have a good lunch. See you at
13 2:30.

14 MR. KIDD: Thanks,
15 Judge.

16 (Whereupon, a
17 luncheon recess is called at
18 1:15 p.m.)

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1
2 A F T E R N O O N S E S S I O N

3 (Whereupon, the judge
4 enters the courtroom at 2:39
5 p.m.)

6 THE COURT: Is the
7 State ready to proceed?

8 MR. KIDD: We are, your
9 Honor.

10 THE COURT: Is the
11 defense ready to proceed?

12 MR. PRENNER: Yes, your
13 Honor.

14 THE COURT: Please
15 bring in the jury.

16 (Whereupon, the jury
17 enters the courtroom at 2:41
18 p.m.)

19 THE COURT: Thank you.
20 You may be seated.

21 Ladies and gentlemen.
22 I hope that you all had an
23 enjoyable lunch. We will
24 continue with the State's
25 case.

COBB -- DIRECT

1 You may proceed.

2 MR. KIDD: Thank you,
3 your Honor. The State calls
4 Officer Cobb.

5 THE COURT: Officer, if
6 you would come to the witness
7 stand and be sworn.

8
9
10
11
12 DARREN ALBERT COBB,
13 having been called as a
14 witness is duly sworn and
15 testifies as follows:

16 DIRECT EXAMINATION BY

17 MR. KIDD:

18 Q Mr. Cobb, what, what
19 is your occupation?

20 A I's a police officer
21 with the North Charleston Police
22 Department.

23 Q And how long have you
24 worked there?

25 A Roughly nine years

COBB -- DIRECT

1 and three months.

2 Q And do you work for a
3 specific agency within the police
4 department?

5 A Currently I'm
6 assigned to the uniformed patrol
7 division.

8 Q Uniformed patrol
9 division. Can you briefly kind of
10 break down your previous law
11 enforcement experience?

12 A With the North
13 Charleston Police Department I
14 started in union patrol. I moved
15 on to what we call pack and seed.
16 Pack and seed are units which are
17 primary the street vice units
18 dealing with street level
19 narcotics and narcotics and
20 prostitution and that spent
21 another five. I spent another
22 five years in the canine unit.
23 And roughly around November or
24 December of last year I
25 transferred back to patrol when my

COBB -- DIRECT

1 canine died due to age.

2 Q I'm going to fast
3 forward to the night in question.
4 How did you become involved with
5 this case?

6 A I heard Officer
7 Jourdan dispatched to the Relax
8 Inn on Ashley Phosphate Road with
9 reference to drug activity. I
10 advised the dispatcher that I
11 would be also responding as the
12 back-up officer.

13 Q What was your, what
14 was your purpose in getting there
15 that evening?

16 A Primarily as cover
17 officer to make sure that the
18 investigating officer or officers
19 were safe.

20 Q And what was the
21 situation when you arrived on
22 scene?

23 A Upon my arrival I
24 made contact with Lieutenant
25 Johnson and Officer Jourdan. They

COBB. --- DIRECT

1 were inside room number two
2 twenty-three. The door was
3 already open. Both officers were
4 inside speaking with Mr. Ickes and
5 the defendant, Mr. Murray.

6 Q And what was, what
7 was, what was going, what was the
8 demeanor of Mr. Murray when you,
9 when you entered the room?

10 A Mr. Murray was
11 agitated. Appeared to be nervous.

12 Q Was he making any
13 statements at the time?

14 A Yes, sir. While I
15 was there he was trying to talk to
16 Mr. Ickes about did not have to
17 let the officers search the room,
18 the officers needed to leave, we
19 needed a warrant, those kind of
20 general statements. He had the
21 appearance of fight or flight.
22 After doing this for many years I
23 learned to watch for the behavior
24 and his behavior made me concerned
25 as to what he may or may not do.

COBB --- DIRECT

1 Q What about his
2 behavior concerned you?

3 A Looking around at one
4 point he was being very vocal as
5 far as Mr. Ickes, or telling him
6 to not allow the police to search
7 the room. At one point I had Mr.
8 Murray walk over to my location
9 closer to the door. At one point
10 Mr. Murray made a quick movement
11 towards the bottom of the first
12 bed in the room. I didn't know
13 what he was reaching for so I went
14 ahead and retained him in
15 handcuffs for safety.

16 Q And what did you,
17 what did you with him at that
18 point?

19 A At that point I
20 placed him in a, in a chair. As
21 soon as you enter the hotel room
22 there's a round table on the right
23 and there were several chairs. I
24 had him, I had him sit in the one
25 chair and then I sat down next to

COBB - - DIRECT

1 him.

2 Q And, and what was he
3 saying from the time you put him
4 in handcuffs?

5 A Well, it was around
6 this time that, that Lieutenant
7 Johnson and Officer Jourdan walked
8 outside with Mr. Ickes and I
9 stayed inside with Mr. Murray.
10 And Mr. Murray was giving me a lot
11 of -- he was trying to advocate
12 improperly, that we didn't have a
13 right to be there and so forth.
14 He was trying to give me his legal
15 opinions, which were incorrect.

16 Q Did, when you entered
17 the room did you -- what did you
18 see? Was there any contraband
19 visible?

20 A At the time I entered
21 the room there were two or two and
22 a half small pills on the table,
23 on the round table which appeared
24 to be a controlled substance, some
25 type of prescription narcotic and

COBB -- DIRECT

1 that, these were there when I
2 walked in and at the time I was
3 sitting down with Mr. Murray and
4 the lieutenant and Officer Jourdan
5 were outside with Mr. Ickes, Mr.
6 Murray made voluntary statements
7 to me that those were his pills.
8 He would take that charge and he
9 needed to go to jail right now.

10 Q In your opinion why
11 would he have made that statement?

12 A In hindsight,
13 considering the other narcotics
14 which were found in the room, I
15 believe he wanted us to get out of
16 the room before we conducted a
17 search. He did not want -- --
18 he, he, he wanted us and him out
19 of that room.

20 Q From that point what
21 happened? After, you know, after
22 had you detained him and he'd been
23 in handcuffs.

24 A Well, mostly I tried
25 not talk with him. He kept

COBB -- DIRECT

1 talking with me.

2 Q Why didn't you want
3 to talk to him?

4 A To be perfectly
5 honest, I found him annoying
6 because of all of his legal
7 arguments, which were improper. I
8 had no desire to him. My sole
9 purpose was the cover officer,
10 just to make sure that things
11 stayed safe. Any way at some
12 point the lieutenant walked back
13 in with Mr. Ickes and Mr. Ickes
14 pointed at the, I guess it's a
15 night stand on the far side of the
16 room, and inside that night stand
17 I observed the lieutenant pull out
18 a forty-five caliber pistol and I
19 believe it had eight bullets in
20 it, and a quantity of narcotic
21 which I believe was crack cocaine
22 and cocaine.

23 MR. KIDD: If I may
24 approach the witness, your
25 Honor.

COBB -- DIRECT

1 THE COURT: You may.

2 Q Is this, if you could
3 look at this firearm. Do you
4 recognize that?

5 A This appears to be
6 the same weapon that was recovered
7 from the night stand on that
8 night.

9 Q And then can you tell
10 me what this is?

11 A This appears to be
12 the cocaine and crack cocaine
13 which we recovered in that night
14 stand.

15 Q After the discovery
16 of the firearm and drugs were made
17 then, then what happened?

18 A Mr. Murray was
19 unhappy with the situation, still
20 continuing to voice his arguments.
21 I, I wound up walking Mr. Murray
22 down to my patrol car and having
23 him sit there as he was being
24 uncooperative with the
25 investigation. Eventually,

COBB - - - DIRECT

1 eventually I transported Mr.
2 Murray to the Charleston County
3 jail.

4 Q Just to help try to
5 paint the picture for the jury a
6 little better, can you try to
7 describe the layout of the hotel
8 room?

9 A When you first walk
10 into the room there is a round
11 table with a couple of chairs.
12 Just beyond that is a small single
13 bed with a space in between and
14 another single bed. And if I
15 remember correctly there was a
16 night stand at the end of each one
17 on the back wall. On the left
18 side of the room I believe there
19 was a dresser and then of course
20 the bathroom was in the back of
21 the room.

22 Q Thank you. What was
23 Mr. Ickes's demeanor like
24 throughout the process?

25 A Nervous. Based on

COBB --- DIRECT

1 body language and his verbal
2 arguments as far as why we were
3 there and we had to leave --

4 Q Mr. Mr. Ickes.

5 A Oh, I'm sorry. Mr.
6 Ickes.

7 Q Yes, sir.

8 A I'm sorry. Mr.
9 Ickes. Actually cooperative. Mr.
10 Ickes was of no great concern to
11 me because he didn't appear to be
12 a threat to me in any way. Mr.
13 Murray drew my attention because
14 of the way he was acting and then
15 at the point where he made a reach
16 under the bed or towards, towards
17 the bottom of the bed, I didn't
18 know what he was reaching for. I,
19 I chose at that point to put him
20 in handcuffs.

21 Q Did you overhear or
22 hear any statements that Mr. Ickes
23 may have made during that process?

24 A The only thing that I
25 heard from Mr. Ickes, because

COBB DIRECT

1 they, he walked outside with
2 Officer Jourdan and Lieutenant
3 Johnson. When they re-entered the
4 room Mr. Ickes pointed at the
5 night stand where the large
6 quantity of narcotic was located.
7 I could actually hear what they
8 were talking about outside on the
9 breezeway.

10 Q And which night stand
11 was that?

12 A That was on the, it
13 was the one past the second bed,
14 far right corner.

15 MR. KIDD: No further
16 questions, your Honor.

17 THE COURT: Any
18 questions for the witness?

19 MR. PRENNER: Yes,
20 ma'am, your Honor.

21 THE COURT: You may
22 proceed.

23 MR. PRENNER: Thank
24 you.

25 CROSS-EXAMINATION BY

COBB -- CROSS

1 MR. PRENNER:

2 Q Officer Cobb, you've
3 been a police officer for nine
4 years and three months. Is that
5 right?

6 A With the North
7 Charleston Police Department. I
8 had prior experience with the
9 Dorchester County
10 Sheriff's Office.

11 Q All right. And so in
12 the -- you've been over this, I'm
13 not going to belabor the point,
14 but you have been to the academy
15 and you were obviously familiar
16 with the importance of writing
17 reports in the law enforcement.
18 Correct?

19 A That's correct.

20 Q And in fact you
21 handled so many cases ever week
22 and every shift that it's
23 impossible to remember everything
24 that happens in every case.
25 Right?

COBB -- CROSS

1 A Some cases stick out
2 more than others.

3 Q All right.

4 A But can I remember
5 everything, everything that I do
6 every night I work, no.

7 Q Well, in your
8 testimony today you've testified
9 to there being two beds in this
10 hotel room. Right?

11 A That's correct.

12 Q And if I were to tell
13 you that in a fact there's just
14 one bed in the hotel room, you
15 would be representing that
16 incorrectly?

17 A I believe there were
18 two beds.

19 Q Well, if I'm telling
20 you today that there's one bed in
21 this hotel room, are you telling
22 me that I'm wrong?

23 A There could possibly
24 be one bed in that hotel room
25 today, but on that night there

COBB -- CROSS

1 were two beds.

2 Q No. I'm talking
3 about that night.

4 A No. Then I would
5 believe that you're wrong.

6 Q You're not
7 remembering that incorrectly?

8 A No. I don't believe
9 I am.

10 Q All right. And no
11 pictures taken to depict that in
12 any event. Correct?

13 A No. I don't believe
14 that we took any pictures.

15 Q And in your nine year
16 three month career with North
17 Charleston and your career before
18 that with the Dorchester County
19 Sheriff's Office, would you say
20 that you've written hundreds and
21 hundreds of reports on cases?

22 A Yes, I would.

23 Q And you didn't write
24 any report at all in this case.
25 Correct?

COBB - - - CROSS

1 A No. I don't recall
2 writing any report on this. I
3 assisted with paperwork in regards
4 to affidavits prosecutors sign,
5 others filling out chain of
6 custody form for Officer Jourdan,
7 things of that nature. As she was
8 the primary officer on the case it
9 was her responsibility to write
10 the report.

11 Q Who's that?

12 A Officer Jourdan.

13 Q And Officer Jourdan
14 did write a report?

15 A Yes.

16 Q And Officer Jourdan's
17 report doesn't say anything at all
18 about him acting nervous or
19 agitated or trying to tell anybody
20 you don't have the right to be in
21 this room. Isn't that right?

22 A I don't believe that
23 she did write it in her report.

24 Q It doesn't say
25 anything about you all concluding

COBB -- CROSS

1 that he was saying take me to jail
2 with this Percocet either. It
3 doesn't say anything about that,
4 does it?

5 A That's not a
6 conclusion. He said that.

7 Q No. But you -- well,
8 tell me if this is right. Are you
9 offering that as evidence of his
10 guilt here today?

11 A I believe it applies
12 towards the total, validates the
13 circumstances. Yes.

14 Q It's very important,
15 though, isn't it?

16 A Yes, it is.

17 Q You all are trying to
18 read his mind. You're saying to
19 the jury that I know what he was
20 thinking. Right?

21 A No. I'm telling you
22 what he said.

23 Q You're telling us
24 what he said and you're saying
25 that what he said was that's my

COBB -- CROSS

1 Percocet. Take me to jail. But
2 the reason you're offering that
3 information, tell me if this is
4 right, is that you want to offer
5 evidence that he knew there were
6 drugs in that room. Right?

7 A Yes. I believe he
8 did, did know there were drugs in
9 that room.

10 Q And that's a very,
11 very important fact in this case,
12 isn't it?

13 A Yes, it is.

14 Q And it's one that's
15 not documented in any report by
16 any officer nor any supplemental
17 report in this case. Correct?

18 A I don't believe it is
19 documented.

20 Q Has there been
21 anything to inhibit you from
22 drafting a supplemental report,
23 putting into this report your
24 police officer instincts that this
25 guy wanted out of that room and

COBB -- CROSS

1 that leads me to believe that he
2 knew something was in that room.

3 A In fact had I written
4 the report I probably would have
5 put something in that, put you're
6 dealing with an officer who had
7 considerably less experience. An
8 officer who has not had the
9 experience to be cross-examined by
10 attorneys in General Sessions and
11 not to anticipate what questions
12 they may or may not be asked.

13 Q But you were there
14 too, so why couldn't you write the
15 report?

16 A Because it was not my
17 call.

18 Q Okay. It is
19 extremely common, is it not, for a
20 report to have supplements put in
21 by all of the officers who
22 responded?

23 A That's correct.

24 Q And you read those
25 reports and it will say Jourdan at

COBB -- CROSS

1 the bottom and then it will say
2 supplement by Officer Cobb, and it
3 will very impressions. Correct?

4 A That is correct.

5 Q But that did not
6 happen in this case?

7 A No, it did not.

8 Q How many police
9 reports have you seen in which the
10 author documents "a particular
11 subject seemed nervous or
12 agitated, or moving furtively"?

13 A I couldn't give you a
14 number. I can tell you I've, I've
15 written plenty and I've read
16 plenty.

17 Q It's very common.
18 Right?

19 A (There is no
20 response.)

21 Q And you were not
22 really the investigating officer
23 in this case. Is that correct?

24 A That's correct.

25 Q What about Officer

COBB -- CROSS

1 Rydell? Who is he? Was he there?

2 A I actually don't know
3 who Officer Rydell is.

4 Q Well, let me show
5 you --

6 A He could, he could be
7 a patrol officer with North
8 Charleston, but we have over three
9 hundred officers.

10 MR. PRENNER: May I
11 approach the witness?

12 THE COURT: You may.

13 Q I want you to take a
14 look at this, sir. That one I
15 believe is on the firearm. Is
16 that correct? Oh. It's Officer
17 Reil.

18 A Reno.

19 Q Officer Reno.

20 A That's correct.

21 Q What does it say down
22 at the bottom there? It says --

23 A It says Officer
24 Jourdan, Cobb, and Reno were at
25 the scene.

COBB - - CROSS

1 Q What was Reno's part?

2 A I believe he, I
3 believe may have showed up, he
4 showed up toward the end. I don't
5 remember what all he did there
6 because I was primarily focused on
7 Mr. Murray.

8 Q But he's a witness to
9 prove this case. Right?

10 A He can be.

11 Q Is he on vacation?

12 A I don't know. I
13 don't work with him.

14 MR. PRENNER: Beg the
15 Court's indulgence.

16 THE COURT: Yes, sir.

17 Q You all had drawn
18 these deductions and conclusions
19 about Mr. Murray and his behavior
20 and they're not documented in any
21 report. But from those, from the
22 information that gathered it
23 certainly appears that you're all
24 sure those are Mr. Murray's drugs.

25 A Are you asking me if

COBB -- CROSS

1 I believe they're his drugs?

2 Q Yes, sir.

3 A Yes, I do.

4 Q Did you believe that
5 that night?

6 A Yes, I did.

7 Q Well, why did you all
8 charge Mr. Ickes with the same
9 exact crime?

10 A Very simple. No one
11 claimed the drugs. They both had
12 access. That's why we have a
13 trial system.

14 Q Mr. Ickes
15 specifically told you those
16 weren't his drugs. Right?

17 A Well, actually Mr.
18 Ickes was talking to the
19 lieutenant and Officer Jourdan.

20 Q He specifically told
21 them?

22 A That's right.

23 Q They weren't his
24 drugs.

25 A That's my

COBB -- CROSS

1 understanding. I believe he
2 claimed the other small quantity
3 of cocaine which was located in
4 the, the smaller night stand or
5 the night stand closer to the
6 first bed.

7 Q Well, he didn't claim
8 it that night. Want to see his
9 written statement?

10 A I have never seen his
11 written statement but I'll look at
12 it. The handwriting isn't that
13 good. Okay.

14 Q Very short statement.
15 The handwriting may not be good
16 but it's very short, isn't it?

17 A Yes.

18 Q Two sentences I
19 believe. Three. Those -- and
20 basically just tells you all those
21 aren't my drugs. I saw him put
22 the drugs in that night side
23 table. He doesn't say anything
24 about the other drugs are mine in
25 here, does he?

COBB -- CROSS

1 A No.

2 Q You all didn't
3 believe him that night, did you?

4 A I've already answered
5 that question, counsel.

6 Q Did you look under
7 the bed where Mr. Murray was
8 furtively moving?

9 A Yes, I did.

10 Q Did you find
11 anything?

12 A No, I did not. I
13 have no idea why he did that but
14 it was enough, it was enough for
15 me to cause concern to the point
16 where I thought I needed to detain
17 him.

18 MR. PRENNER: Thank
19 you, sir.

20 Nothing further.

21 THE COURT: Anything
22 further of the witness?

23 MR. KIDD: Very, very
24 briefly, your Honor.

25 REDIRECT EXAMINATION

COBB -- REDIRECT

1 BY MR. KIDD:

2 Q So you believed the
3 drugs were Mr. Murray's?

4 A Yes.

5 MR. PRENNER: Objection
6 to form.

7 THE COURT: Sustained.
8 Rephrase.

9 MR. KIDD: Nothing
10 further, your Honor.

11 THE COURT: Any
12 objection to the witness being
13 excused from the State?

14 MR. KIDD: None from
15 the State.

16 THE COURT: From the
17 defense?

18 MR. PRENNER: No, your
19 Honor.

20 THE COURT: Sir, you're
21 excused.

22 You may call your
23 next witness.

24 MR. KIDD: Your Honor,
25 may we approach?

TEACHEY -- DIRECT

1 THE COURT: You may.

2 (Whereupon, there was
3 an off-the-record bench
4 conference.)

5 MR. KIDD: State calls
6 Alex Teachey.

7

8

9

10

11 ALEXANDRA TEACHEY,
12 having been called as a
13 witness, is duly sworn and
14 testifies as follows:

15 DIRECT EXAMINATION BY

16 MR. KIDD:

17 Q Good afternoon, Miss
18 Teachey. How are you?

19 A Good.

20 Q What is, what is your
21 occupation?

22 A Evidence technician
23 for North Charleston Police
24 Department.

25 Q And what are your

TEACHEY - - DIRECT

1 duties as an evidence technician?

2 A To process all
3 evidence that comes in.

4 THE COURT: Ma'am, I'm
5 going to need you to speak
6 directly into the microphone.
7 I'm having some difficulty --

8 THE WITNESS: I'm
9 sorry.

10 THE COURT: -- hearing
11 you and I suspect that -- we
12 can't move it either, so
13 you'll have to speak directly
14 into it.

15 THE WITNESS: Yes,
16 ma'am.

17 THE COURT: You may
18 continue.

19 A I process all
20 evidence coming in.

21 Q Do you have any
22 specific training or experience
23 that qualifies you for that job?

24 A I am certified to
25 test marijuana and I was trained

TEACHEY -- DIRECT

1 to properly store evidence coming
2 in.

3 Q Did you receive any
4 evidence relating to this case?

5 A Yes, sir.

6 Q I'm handing you now
7 as State's exhibit number three,
8 do you recognize this?

9 A Yes, sir.

10 Q How do you recognize
11 that?

12 A I recognize the
13 contents. When the Best Kit comes
14 in I have to make sure that the
15 Best Kit bag is signed, all the
16 paperwork is correct, and then I
17 put my paperwork within it stating
18 that I was -- on the chain it was
19 me.

20 Q So did you take
21 custody of that piece of evidence?

22 A I did.

23 Q And where was that
24 evidence kept?

25 A In a drop box. I

TEACHEY -- DIRECT

1 retrieved it on December twelfth.

2 Q And what did you do
3 with it from there?

4 A Like I said, to make
5 sure the paperwork was correct,
6 the Best Kit bag was signed, and I
7 also included my paperwork stating
8 that I processed it and placed it
9 in a box ready for S. L. E. D.

10 Q Did you transport the
11 evidence to S. L. E. D?

12 A I did.

13 Q How did you do that?

14 A I just take it to
15 Columbia on a specific day. I'm
16 not sure what day it was for this
17 one, but it would either be
18 Thursday or Friday.

19 Q Do you, do you hand
20 it to someone, do you drop it off
21 at a drop box, how, how is it
22 transitioned?

23 A I hand it over to a
24 S. L. E. D. evidence technician.

25 Q Is that evidence in

TEACHEY -- DIRECT

1 substantially the same condition
2 it was on the day that you
3 received it?

4 A Yes, sir.

5 Q And to the best of
6 your knowledge has that evidence
7 been tampered with in any way
8 since you received it?

9 A No, sir.

10 MR. KIDD: No further
11 questions, your Honor.

12 THE COURT: Any
13 questions for the witness?

14 MR. PRENNER: No, your
15 Honor.

16 THE COURT: Any
17 objection to witness being
18 excused from the State?

19 MR. KIDD: No, your
20 Honor.

21 THE COURT: From the
22 defense?

23 MR. PRENNER: No, your
24 Honor.

25 THE COURT: Ma'am,

1 you're excused.

2 THE WITNESS: Thank
3 you.

4 THE COURT: You may
5 call your next witness.

6 MR. KIDD: Thank you,
7 your Honor.

8 MR. McCOY: Judge, may
9 I approach?

10 THE COURT: You may.
11 (Whereupon, there was
12 an off-the-record bench
13 conference.)

14 (Whereupon, Jill
15 Clark's report is received and
16 marked as State's Exhibit No.
17 4 for identification.)

18

19

20

21

22

23

24

25 JILL CLARK, having

CLARK -- DIRECT

1 been called as a witness, is
2 duly sworn and testifies as
3 follows:

4 DIRECT EXAMINATION BY

5 MR. KIDD:

6 Q Good afternoon, Miss
7 Clark.

8 A Good afternoon.

9 Q Can you state for the
10 jury what your occupation is,
11 please?

12 A I'm a forensic
13 scientist employed by the South
14 Carolina Law Enforcement Division
15 and I'm assigned to the drug
16 analysis department.

17 Q What is, what is your
18 title there?

19 A Forensic scientist.

20 Q And how long have you
21 worked at S. L. E. D?

22 A I worked at
23 S. L. E. D. since December of '99.

24 Q So that's
25 approximately nine years?

CLARK -- DIRECT

1 A Eight and a half.

2 Q Eight and a half.

3 What are your duties there?

4 A My primary duty is to
5 analyze any substances that are
6 submitted through the State for
7 the presence of controlled
8 substances.

9 Q And what kind of
10 training do you have or
11 experience?

12 A I have a bachelors
13 degree in chemistry and I also
14 have some graduate school working
15 in chemistry. I've completed the
16 training at S. L. E. D. in the
17 drug analysis department. I've
18 also been to the South Carolina
19 Criminal Justice Academy and I've
20 received training from the D. E.
21 A.

22 Q Have you testified in
23 court before as a drug analyst?

24 A Yes, I have.

25 Q Approximately how

CLARK -- DIRECT

1 many times?

2 A I've testified
3 thirty-two times now.

4 Q What, what sort of
5 equipment do you have at
6 S. L. E. D. to test drugs?

7 A We have chemical
8 tests that we do and we also use
9 instrumentation.

10 Q Can you describe that
11 process for us a little bit?

12 A Sure. Chemical test
13 is a preliminary test that we do
14 on the drugs and using chemicals
15 it gives us a color change which
16 indicates to us what the drug
17 might possibly be. And then the
18 instrumental test is a
19 confirmatory test that identifies
20 what the actual controlled
21 substance is.

22 Q Is this process
23 accurate?

24 A Yes, it is.

25 Q Do you know if it has

CLARK DIRECT

1 a false positive rate?

2 A No, because we do run
3 standards, we run light in between
4 each sample so that we know we're
5 not getting any carry-over or
6 anything like that.

7 Q Okay. I'm going to
8 show you what's be marked State's
9 exhibit number -- I believe you
10 have it in front of you.

11 A Number three.

12 Q Do you recognize
13 that?

14 A Yes. This is the
15 Best Kit that I tested.

16 Q So you, so you
17 prepared that?

18 A Yes, I did.

19 Q When did --

20 MR. KIDD: Your Honor,
21 if I may approach the witness
22 one more time.

23 Q If I could show you
24 State's exhibit number four for
25 identification purposes only. Do

CLARK --- DIRECT

1. you recognize that?

2. A Yes. This is the
3. report I prepared for this case.

4. Q When did you prepare
5. that report?

6. A The report was typed
7. on January thirty-first, 2008.

8. Q Is it signed by you?

9. A Yes. It has my
10. electronic signature on it.

11. Q And who the subject,
12. the defendant of which that report
13. pertains to?

14. A There's two. Do you
15. what both names?

16. Q Please.

17. A Mr. Edward -- is that
18. Ice or --

19. Q Ickes.

20. A Ickes, and Donovan
21. Murray.

22. MR. KIDD: Your Honor,
23. at this time I'd like to offer
24. State's exhibit number four
25. into evidence .

CLARK -- DIRECT

1 THE COURT: Any
2 objection?

3 MR. PRENNER: No
4 objection, your Honor.

5 THE COURT: Marked and
6 admitted without objection.

7 MR. KIDD: Thank you,
8 your Honor.

9 THE COURT: You're
10 welcome.

11 (Whereupon, the
12 report of Jill Clark
13 previously referred to, is
14 received and marked as State's
15 Exhibit No. 4 in evidence.)

16 Q What's the, what's
17 the content of your or what were
18 your findings?

19 A Okay. Well, in this
20 Best Kit there were multiple
21 items. The first item, which is
22 labeled one point one was two
23 plastic bags containing a powder
24 substance, and that was, cocaine
25 was found with a combined weight

CLARK -- DIRECT

1 of seven point seven six grams
2 which converts to say one hundred
3 and nineteen point seven five
4 grains and it's a C-2 controlled
5 substance. Then the next item,
6 one point two, was a rock
7 substance and it was cocaine base
8 which is crack was found
9 twenty-three point one four grams,
10 which converts to say three
11 hundred and fifty-seven point zero
12 nine grains, and it's a C-2
13 controlled substance. And then
14 there was a prescription bottle,
15 one point three, and it contained
16 two different items. One three
17 one was a rock substance and it
18 was cocaine base which is crack
19 found, zero point one seven grams
20 which converts to two point six
21 two grains and it was a C-2
22 controlled substance. And it also
23 contained item one three two which
24 was compressed powder substance
25 and it was cocaine found, zero

CLARK -- DIRECT

1 point four two grams, which
2 converts to six point four eight
3 grains, and it's a C-2 drug. And
4 then one point four was an
5 evidence bag containing two items,
6 one four one, which was pink
7 tablet and it was Naproxen which
8 indicated one tablet and it's just
9 an RA prescription drugs, and then
10 one four two was a pink tablet and
11 it was Oxycodone found, one and
12 one-half tablets, and it was a C-2
13 controlled substance.

14 Q Just to kind of take
15 it one step back. From whom did
16 you receive the, the Best Kit, the
17 bag of drugs?

18 A Actually picked up
19 the Best Kit from Amy Stevens down
20 in our log-in evidence room.

21 Q And what does she do?

22 A She works in
23 evidence. She logged in evidence,
24 in this case North Charleston
25 Police Department brought in.

CLARK -- DIRECT

1 Q Did you personally
2 seal the outer bag in which the
3 Best Kit was contained?

4 A Yes. I did seal the
5 outer bag after I finished testing
6 the drugs.

7 Q How do you know you
8 sealed it?

9 A Because on the bottom
10 of it I wrote sealed, the date,
11 and my initials, then I heat
12 sealed it.

13 Q On what date did you
14 seal the bag?

15 A January twenty-fifth,
16 2008.

17 Q Are the drugs that
18 are in that bag the drugs that you
19 tested?

20 A Yes, they are.

21 Q And are -- how are
22 you able to determine that?

23 A Because on each of
24 the drugs I have the lab number
25 which is specific for each

CLARK -- DIRECT

1 individual case, the item number
2 and my initials.

3 Q Are the drugs in
4 substantially the same condition
5 as when you received them?

6 A Yes, other than the
7 heat sealed bag being opened.

8 Q Is there any, any
9 difference in the drugs, is there
10 any impact on them from testing?

11 A Yes, because I used a
12 portion of the drugs in testing so
13 it would be a little less than
14 what was reported out.

15 MR. KIDD: No further
16 questions, your Honor.

17 THE COURT: Any
18 questions for the witness?

19 MR. PRENNER: Very,
20 very briefly.

21 THE COURT: You may
22 proceed.

23

24

25

CROSS-EXAMINATION BY

CLARK -- CROSS

1 MR. PRENNER:

2 Q Miss Clark, Oxycodone
3 found, item one point four point
4 two, would that be consistent with
5 a Percocet tablet?

6 A Percocet I believe,
7 I'd have to look it up to be -- I
8 think it also has acetaminophen in
9 it, so this was just straight
10 Oxycodone.

11 Q So are you saying
12 that that could not have been a
13 Percocet tablet or you don't know?

14 A I don't --

15 Q If you don't know,
16 that's okay.

17 A I don't believe that
18 would be called Percocet. I'm
19 pretty sure Percocet has
20 acetaminophen in it, not just
21 Oxycodone by itself. There was no
22 acetaminophen.

23 Q Miss Clark, you have
24 no idea whose drugs any of these
25 drugs were. Right?

CLARK - - CROSS

1 A Right.

2 MR. PRENNER: Thank
3 you.

4 THE COURT: Any
5 redirect?

6 MR. KIDD: No, your
7 Honor.

8 THE COURT: Any
9 objection to the witness being
10 excused from the State?

11 MR. KIDD: No, your
12 Honor.

13 THE COURT: From the
14 defense?

15 MR. PRENNER: No, your
16 Honor.

17 THE COURT: Ma'am,
18 you're excused.

19 You may call your
20 next witness.

21 MR. McCOY: Thank you,
22 your Honor.

23 THE COURT: You're
24 welcome.

25 MR. McCOY: State calls

HALLMAN -- DIRECT

1 Al Hallman.

2 (Whereupon, two
3 forensic reports are received
4 and marked as State's Exhibit
5 No. 5 for identification.)

6

7

8

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10

11

12 AL HALLMAN, having
13 been called as a witness, is
14 duly sworn and testifies as
15 follows:

16 DIRECT EXAMINATION BY

17 MR. McCOY:

18 Q Good afternoon,

19 Officer Hallman.

20 A How are you?

21 Q Doing just fine.

22 Where are you employed?

23 A City of North

24 Charleston Police Department.

25 Q And how long have you

HALLMAN -- DIRECT

1 been with the city of North
2 Charleston?

3 A Approximately
4 twenty-one years.

5 Q Twenty-one years?

6 A Yes, sir.

7 Q In your twenty-one
8 years at the city of North
9 Charleston what have been your
10 duties?

11 A Well, currently I'm
12 the supervisor of the forensic
13 investigations unit. I have been
14 in that position for approximately
15 four years. I've been a crime
16 scene investigator for fifteen
17 years of the twenty-one years that
18 I've been employed there.

19 Q In all of your years
20 in crime scene and forensic
21 investigations, approximately how
22 many crime scenes have you had
23 the opportunity to show up and
24 actually analyze crime scenes?

25 A Thousands. I

HALLMAN -- DIRECT

1 couldn't tell you. A good number.

2 Thousands literally.

3 Q Did you happen to
4 send out a crime scene unit to the
5 Relax Inn for the State -- well,
6 the case of the State V. Donovan
7 Murray?

8 A I do not recall.

9 Q I'm going to show you
10 what's been marked for I. D.
11 purposes as State's exhibit number
12 five. Do you recognize that?

13 A Yes, I do.

14 Q What is that?

15 A Well, these are two
16 of our forensic reports. One was
17 prepared by crime scene technician
18 Kelly Murphy and the other one is
19 a fingerprint analysis report
20 prepared by myself.

21 Q In looking at Kelly
22 Murray's report were any
23 photographs taken at the crime
24 scene?

25 A No.

HALLMAN -- DIRECT

1 Q Were -- what was the,
2 the entirety of the crime scene
3 investigation that was done?

4 A The way this all came
5 to be was there was apparently a
6 pistol recovered at a crime scene
7 on December twelfth of 2007.
8 Uniformed patrol took possession
9 of the pistol at the scene and
10 secured it into our property room
11 and for whatever reason they
12 neglected to send a report to my
13 unit which is a laboratory
14 analysis request report. It is
15 what uniformed patrol gives us to
16 let us know that there's evidence
17 in the property room that needs
18 our processing, fingerprint
19 analysis, things of that nature.
20 We did not get that request until
21 June of this year when crime scene
22 technician Murphy received the
23 request and went down to the
24 property room and retrieved a Colt
25 forty-five caliber pistol from the

HALLMAN -- DIRECT

1 evidence property room, then
2 processed it for latent prints and
3 submitted the, submitted one
4 latent print lift to me for
5 analysis.

6 MR. McCOY: Your Honor,
7 may I approach?

8 THE COURT: You may.

9 Q I'm going to show you
10 what's already in evidence as
11 State's exhibit number one. Do
12 you recognize that?

13 A No, I do not.

14 Q Was that a, is that a
15 handgun, a forty-five caliber
16 handgun?

17 A Yes, it is.

18 Q And do the markings
19 on that handgun indicate that it
20 was dusted for prints?

21 A Yes, it does. It was
22 processed -- the process was
23 two-fold. First it was fumed with
24 ascyomaculate fuming which is
25 Super Glue fuming which turns any

HALLMAN -- DIRECT

1 substrate or any substance that is
2 placed on a gun by a hand or some
3 other means. It turns into a
4 white residue. The white residue
5 is affixed to the gun permanently
6 and will not come off without an
7 acid removal system. Once the gun
8 is fumed and the white impressions
9 are developed on the gun then the
10 second process is the use of black
11 fingerprint powder is applied on
12 top of the white impressions and
13 then the tape actually lifts the
14 impressions from the gun and the
15 lifts are then affixed to a white
16 backer card so they can be seen and
17 analyzed.

18 Q In looking at State's
19 I. D. number five which you just
20 reviewed, was a latent print
21 pulled off that gun?

22 A Yes. There was one
23 lift pulled off the gun.

24 Q What sort of process
25 of a standard procedure do you

HALLMAN -- DIRECT

1 follow once you have a latent
2 print or how is it lifted off the
3 gun?

4 A The first thing I do
5 is to take the latent print and
6 view it through a magnify lense to
7 see if there's any identifiable
8 ridge detail. And what ridge
9 detail is, is if you look at your
10 fingers you'll actually see that
11 the fingerprints on the tips of
12 your fingers is made up of
13 hundreds of ridges, different
14 ridges, and within those ridges
15 are breaks in the ridges or where
16 ridges actually go from one ridge
17 and bifurcate into two ridges or
18 they're stopped, or enclosures,
19 things like that. Those are
20 identifying characteristics within
21 a fingerprint. When a lift is
22 submitted to me, like I said I
23 view it through a magnifying lense
24 to see if there's any identifiable
25 characteristics within that print.

HALLMAN -- DIRECT

1 If there are, and we have any
2 suspect named in the case, then
3 what I'll do is I'll do a
4 side-by-side comparison where I've
5 got the latent print on the left,
6 the inked fingerprints from the
7 suspect or from any person that's
8 in question in the incident on the
9 right, and then I'll go from left
10 to right, back and forth to see if
11 I can identify that latent print
12 within the ten fingerprints of
13 that individual.

14 Q What were the results
15 of your examination?

16 A Once I looked at the
17 latent lift that C. S. C. Murphy
18 submitted to me through the
19 magnifier lense, I noted that
20 there was absolutely no
21 identifiable detail present
22 whatsoever.

23 Q Explain to the jury
24 what that means.

25 A That there was no

HALLMAN -- DIRECT

1 ridges. There were -- there was
2 nothing to identify within that
3 latent lift. Basically if there
4 was a fingerprint there it did not
5 have identifiable characteristics
6 or ridge detail present within
7 that lift to affect any kind of
8 identification whatsoever.

9 Q Now in your fourteen
10 years and in your hundreds of
11 crime scenes analyzed, is it, is
12 it a common occurrence to send a
13 crime scene unit to a hotel room
14 for a narcotics crime?

15 A No. It's not.

16 Q And explain to the
17 jury why that's not a common
18 practice.

19 A Well, two-fold.
20 Number one, there's really not
21 much that we can do that uniformed
22 can't do, and that when a
23 uniformed officer goes to a scene
24 like that, they're going to take
25 photographs of the narcotics

HALLMAN -- DIRECT

1 that's in question in the incident
2 and those photographs will be
3 up-loaded into our, our R. M. S.
4 system which is a system which
5 houses our incident reports. That
6 way they can be viewed by
7 investigators, solicitors, or what
8 not. Second of all, hotel rooms
9 are so frequently visited, for
10 lack of a better term, by, by
11 people on a daily basis, different
12 people on a daily basis that when
13 you start dealing with
14 fingerprints within a motel room,
15 you're talking about fingerprints
16 that have been, could have been
17 put there a week ago, a day ago, a
18 month ago, and it could be any
19 hundreds of people, so we just as
20 a, as a rule unless it's a major
21 crime involving D. N. A. and
22 things like that, then that's,
23 that's the only times that we'll
24 respond.

25 Q So in a hotel room

HALLMAN DIRECT

1 there was no, there was no way to
2 tell if a fingerprint was put
3 there a year ago, a fingerprint
4 was put there a month ago, there
5 was no way for you to tell that?

6 MR. PRENNER: Asked and
7 answered.

8 THE COURT: Sustained.
9 Rephrase.

10 Q Is there any way for
11 you to put a time stamp on when a
12 fingerprint was placed in a hotel
13 room?

14 A No.

15 MR. McCOY: Your Honor,
16 may I approach the witness
17 again?

18 THE COURT: You may.

19 Q I'm also going to
20 show you what's already in front
21 of you and this is State's exhibit
22 or already into evidence as
23 State's exhibit number three.
24 First of all I'm going to show you
25 a black bag. In your experience

HALLMAN -- DIRECT

1 is this the type of bag that a
2 print or a dusting should be done?

3 A On the bag itself?

4 Q Yes.

5 A No.

6 Q And explain to the
7 jury why is that?

8 A On material such as
9 this we would use a chemical
10 process called ninhydrin for, to,
11 to actually accentuate any latent
12 prints that might be on the bag
13 and ninhydrin causes a latent
14 print that you can't see to turn a
15 dark purple. Dark purple print on
16 a dark blue bag is not going to be
17 found so, no, we would not process
18 this bag individually for
19 fingerprints whatsoever.

20 Q Is this type of
21 material subject to leaving a
22 fingerprint?

23 A It could. But the
24 only way you would be able to
25 determine if there was a print on

HALLMAN -- DIRECT

1 this bag would be to use ninhydrin
2 on it and it being dark blue you'd
3 never see a print if it was there
4 or not.

5 Q Okay. And I'm going
6 to show you what's also part of
7 State's exhibit number three.
8 It's a plastic bag that was found
9 within that, that brown bag. I'm
10 also going to show you another
11 part of what's involved in a
12 State's exhibit number three,
13 another plastic bag that was found
14 inside of this, this brown, this
15 black bag. Now is it common
16 practice for you to actually print
17 a plastic baggie?

18 A Yes.

19 Q It is?

20 A Yes.

21 Q How easy is it to
22 pull a print of a plastic bag?

23 A Well again in order
24 to process plastic, things like
25 this nature here, we would again

HALLMAN----- DIRECT

1 use the cytoacronoid, the Super
2 Glue, fuming to try to turn
3 whatever latent prints were on the
4 bag white, and then we would dust
5 them and lift them and put them on
6 a, a black backer card so that we
7 could it and analyze it. There
8 are several reasons why we would
9 not process bags like this. One
10 would be if you've got bags of
11 this nature stuffed into cloth
12 sacks or cloth gloves or something
13 to that effect where a, a surface
14 is going to be into contact with
15 the surface of the plastic bag and
16 if there is the friction of the
17 availability of that surface to
18 move back and forth against the
19 plastic bag which would
20 subsequently erase any latent
21 detail that would have been on the
22 bag then we would not bother.

23 Q How does the affect
24 of somebody handling a bag, let's
25 say if your handling something,

HALLMAN --- DIRECT

1 how does that affect leaving a
2 fingerprint?

3 A Fingerprints are
4 basically an impression from the
5 ridges on your hand placed on the
6 surface. The palms of your hand
7 and fingers and soles of your feet
8 and your toes emit amino acids or
9 sweat from a sweat gland which is
10 salty as if you've ever tasted
11 your fingers when you're sweating,
12 maybe tasted a tear, it's salty.
13 And once that impression is placed
14 on surface it's there as a latent
15 print which is latent, the word
16 latent means invisible to the
17 naked eye. And basically then
18 it's our job to make it a patent
19 print, patent meaning visible to
20 the naked eye.

21 Certain chemical
22 processes react differently with
23 certain kind of substrates left on
24 the surface. Oils, where if you
25 had oil on your hands and you left

HALLMAN --- DIRECT

1 an impression, we would dust it
2 with powder. Amino acids, we've
3 got several processes. We can use
4 black fingerprint powder, we can
5 use ninhydrin, we can use amino
6 black which works with the amino
7 acids and also works with blood.
8 It just depends on what substrate,
9 what condition or substance is on
10 the palms and fingers of your
11 hands when that print is placed on
12 a given object as to what kind of
13 process we use.

14 Q Will sweat or oils on
15 a hand affect the print ever?

16 A In what way?

17 Q Can a fingerprint
18 make a latent print not as real or
19 make a print slide, or make a
20 print not be there?

21 A Sure. Any, any
22 movement, once your hand or your
23 fingers come in contact with the
24 surface, any movement whatsoever
25 will distort or alter that print.

HALLMAN -- DIRECT

1 Slippage we call it when your
2 hand is placed on a surface and it
3 actually moves, that's called
4 slippage. It can destroy any
5 latent detail whatsoever. What we
6 call double and triple tests where
7 if you touch a surface three
8 times, two times, whatever, we
9 call that double tap, triple tap,
10 and it just makes it look like a
11 crossword puzzle so to speak and
12 it really makes it hard or
13 sometimes impossible to identify a
14 print that way. But yeah, it, it
15 does have certain adverse
16 reactions.

17 Q So there are several
18 characteristics that are out there
19 such as your double tap and your
20 triple tapping, your oils and your
21 sweats that tend to make prints
22 not be there, or tend to make
23 prints distorted?

24 A Correct.

25 Q I'm also going to

HALLMAN -- DIRECT

1 show you what you've already
2 looked at, it's in evidence,
3 State's exhibit one, which is the
4 forty-five caliber handgun which
5 you've already testified it's
6 already been dusted for
7 fingerprints. How common is it to
8 pull a print off of a handgun?
9 A It depends on the
10 gun. A gun in good condition
11 especially such as a nickel-plated
12 gun that does not have any marring
13 or marks or abrasions on the gun
14 itself, very easy to pull a print
15 off of that. Super Glue tends to
16 really affix to the print on a
17 nickel plated gun or a chrome gun
18 better than it does on blue steel
19 guns. But if you get a blue steel
20 gun such as this one, I'm sorry,
21 and it's in very good condition
22 again with not too much rust or
23 marring or anything like that then
24 yes, prints can be very easily
25 gotten from these guns. This gun

HALLMAN -- DIRECT

1 here has a lot of marring, a lot
2 of rust, a lot of surface
3 abrasions to the gun and really,
4 really makes it hard and sometimes
5 impossible to get a print off of a
6 gun such as that.

7 Q So with your markings
8 and that being a, a darker model
9 gun, it's, it's hard to pull one
10 off a gun like that?

11 A In this condition,
12 yes, sir.

13 MR. McCOY: If the
14 Court will bear with me.

15 THE COURT: Uh-huh.

16 MR. McCOY: Please
17 answer any questions Mr.
18 Prenner may have for you.

19 A Sure.

20 THE COURT: Sir, you
21 may proceed.

22 MR. PRENNER: Thank
23 you, your Honor.

24

25

HALLMAN -- CROSS

1

2

3

CROSS-EXAMINATION BY

4

MR. PRENNER:

5

Q Sir, I, I want to

6

make sure I address you correctly.

7

Are you investigator, detector,

8

or --

9

A Sergeant.

10

Q Sergeant?

11

A Yes, sir.

12

Q Sergeant Hallman,

13

fingerprint science is pretty good

14

science, isn't it?

15

A I, I truly believe in

16

it. Yes, sir.

17

Q It's admitted into --

18

it's recognized in our courts in

19

this state and every state,

20

federal courts, as reliable.

21

Isn't that right?

22

A Yes. It also termed

23

as an exact science in some areas

24

and some fields.

25

Q All right. And I

HALLMAN -- CROSS

1 wanted to ask you about it. You
2 said that there's a -- I want
3 to -- you tell me if this is right
4 I thought you said that there's
5 not much that you all could have
6 done that the police officers at
7 the scene would not have already
8 done because they would have taken
9 pictures or photographs of
10 something. What did you say then?
11 You said they would have taken
12 photographs of something.

13 A Of the scene itself.
14 There was narcotics.

15 Q Okay. Tell me about
16 that. What would, what would the
17 normal course of investigative
18 conduct there be? What do they
19 take pictures of?

20 A Well, they -- going
21 into a motel room where they
22 discovered narcotics of any amount
23 whatsoever, they have, now they
24 have the ability to have their
25 sergeant who is equipped with a

HALLMAN -- CROSS

1 digital camera actually respond to
2 the scene and photograph the
3 evidence in the room or whatever
4 the, the crime scene may appear at
5 that time. And then those
6 photographs can uploaded into our
7 R. M. S. system which is our
8 system that houses our incident
9 reports themselves, which makes
10 the, it basically attaches those
11 photographs to that incident
12 report so that investigators can
13 view them when they're looking at
14 the incident reports, and you can,
15 and the solicitors can, and stuff
16 of that nature.

17 Q All right. And
18 that's -- in your experience
19 that's been normal?

20 A Yes, sir.

21 Q And how many times in
22 your career have you had occasion
23 to take or attempt to take a print
24 off of a table such as a night
25 stand?

HALLMAN -- CROSS

1 A I've had that
2 opportunity hundreds of times.

3 Q So you try the night
4 stand?

5 A Depends on the scene.

6 Q I'm sorry. It
7 depends on what?

8 A It depends on the
9 type of scene, crime scene.

10 Q Right. And in this
11 case there's been some testimony
12 today that the night stand that we
13 don't have a picture of was I
14 believe shiny and flat. What kind
15 of surface are you looking for on
16 a table?

17 A Shiny and flat.

18 Q Right. And with
19 these bags did I understand --

20 MR. PRENNER: May I
21 approach the witness, your
22 Honor?

23 THE COURT: You may.

24 A These here?

25 Q Yes, sir. Now this

HALLMAN -- CROSS

1 bag here, this might be pretty
2 hard to get a print.

3 A That would be tough
4 because it's been so basically
5 used and crinkled and stuff like
6 that.

7 Q But these ones we
8 might get somewhere with.

9 A These we could
10 possibly have pretty good luck
11 with. Yes. Depending on, you
12 know, where they were found, what
13 they were in, and, you know, like
14 I said how much friction, what
15 could have been caused. It's,
16 it's hard to say with a bag like
17 that, regardless we would have at
18 least attempted to see if we could
19 get a fingerprint off of it, yes.

20 Q You think I just left
21 a print on that bag just now?

22 A I know you did.

23 Q And you would do that
24 in ninhydrin --

25 A No, sir.

HALLMAN -- CROSS

1 Q -- Super Glue?

2 A We would use Super
3 Glue on that. Yes.

4 Q You would have but it
5 in like a terrarium kind of thing?

6 A Uh-huh. It's a
7 sealed container that the, we put
8 the fuming accelerator in and it
9 actually, and the, and the chamber
10 is, like I said, air tight and the
11 fumes just rotate around that
12 chamber and they affix to anything
13 that might be present on that
14 item.

15 Q None of those items
16 there, though, were submitted to
17 your department. Is that correct?

18 A No.

19 Q Other than the
20 firearm?

21 A The firearm was not
22 even submitted. We, we received
23 an analysis request in early June
24 of this year and then until that
25 time we were unaware that any of

HALLMAN -- CROSS

1 this was even in evidence.

2 Q And tell me about
3 that again now. You're saying
4 that someone sort of just dumped
5 it in a box somewhere or --

6 A No. No. No. No.
7 It was secured by the arresting
8 officer or officers --

9 Q Right. Right.

10 A And it was secured
11 into our property room as
12 evidence.

13 Q Okay.

14 A Evidence for trial.
15 But no analysis request form,
16 which is a standard form used by
17 our department to allow or to let
18 the forensic investigations unit
19 know that there was evidence down
20 there that needed processing. No
21 lab analysis form was submitted to
22 my unit until early June of this
23 year, requesting that the gun be
24 processed.

25 Q Do you know who

HALLMAN -- CROSS

1 submitted it?

2 A I do not.

3 MR. PRENNER: Beg the
4 Court's indulgence.

5 THE COURT: Uh-huh.

6 MR. PRENNER: Thank you
7 very much, Sergeant.

8 A Sure.

9 THE COURT: Any
10 redirect of the witness?

11 MR. McCOY: Briefly,
12 your Honor. May I approach
13 the witness?

14 THE COURT: You may.

15

16

17

18

19 REDIRECT EXAMINATION

20 BY MR. McCOY:

21 Q On the different type
22 of little baggies that you've
23 examined, Officer Hallman, is
24 there writing on those baggies?

25 A Yes, there is.

HALLMAN -- REDIRECT

1 Q Is there a J. L. C?

2 A Yes, there is.

3 Q On those baggies?

4 A Yes.

5 Q Is there any way for
6 you to tell if those were the
7 baggies that were in the actual
8 hotel room?

9 A No, sir, because
10 today is the first time I've seen
11 any of these.

12 Q Are there also
13 several little, little baggies
14 that were in there that appear to
15 contain some type of residue?

16 A Yes, there are. One,
17 two, three -- at least four.

18 Q And not much in those
19 other little baggies?

20 A Well, there's a
21 pretty good stuff that's in there,
22 but --

23 Q Of these, of these
24 little baggies?

25 A Oh, no. They're just

1 light residue.

2 MR. McCOY: No further
3 questions.

4 THE COURT: Any
5 objection to the witness being
6 excused from the State?

7 MR. McCOY: None from
8 the State, your Honor.

9 THE COURT: From the
10 defense?

11 MR. PRENNER: No, your
12 Honor.

13 THE COURT: Sir, you're
14 excused.

15 THE WITNESS: Thank
16 you, your Honor.

17 THE COURT: You may
18 call your next witness.

19 MR. McCOY: Your Honor,
20 can we take a brief break
21 before we call our next
22 witness? It will be our last
23 witness.

24 THE COURT: Please
25 approach.

1 (Whereupon, there was
2 an off-the-record bench
3 conference.)

4 THE COURT: Mr.
5 Foreman, ladies and gentlemen,
6 we're going to take a very
7 brief rest room break after
8 which we'll resume the trial.
9 Please leave your notepads in
10 your seats. Please don't
11 discuss the case and if you
12 need anything please let the
13 bailiffs know. I anticipate
14 that we will be out in about
15 five to ten minutes.

16 (Whereupon, the jury
17 leaves the courtroom at 3:40
18 p. m.)

19 THE COURT: You may be
20 seated. I'm thinking, Mr.
21 Prenner, Mr. Ickes will be the
22 State's last witness. Do you
23 intend to call any witnesses?

24 MR. PRENNER: Not, not
25 that I'm -- it's our

1 understanding that we're not
2 going -- he's not going to
3 testify, Judge.

4 THE COURT: Okay. I
5 will --

6 MR. PRENNER: We hadn't
7 talked about it --

8 THE COURT: I think
9 that what we will do is just
10 to make better use of our time
11 is that we'll go ahead and
12 take a restroom break and when
13 we come back I'll go ahead and
14 question, advise your clients
15 of his rights so that when we
16 have that break in testimony
17 you can have a meaningful
18 discussion with him as to
19 whether he wants to testify or
20 doesn't want to testify. Does
21 he have any record that the
22 State would be seeking to
23 introduce to impeach his
24 credibility?

25 MR. McCOY: Your Honor,

1 he does. We have two breaking
2 and entering motor vehicle
3 convictions in 2003. We have
4 two malicious injury to
5 personal properties, 2003.

6 THE COURT: What, would
7 those be magistrate level?

8 MR. McCOY: No, ma'am.
9 Those are General Sessions
10 and, your Honor, he has, as
11 discussed before, several drug
12 convictions.

13 THE COURT: Those would
14 be admissible. They're not
15 probative on truthfulness and
16 frankly their probative value
17 would be outweighed by the
18 prejudicial effect.

19 MR. McCOY: Sure.

20 THE COURT: Entering
21 motor vehicles would come in
22 because they involve
23 dishonesty, regardless of
24 punishment.

25 MR. McCOY: Sure.

1 THE COURT: So those
2 would come into impeaching his
3 credibility.

4 MR. McCOY: Yes, ma'am,
5 your Honor.

6 THE COURT: I'm, I'm
7 really on the fence about the
8 malicious injury to personal
9 property.

10 MR. McCOY: Okay.

11 THE COURT: I'm not --
12 how much time does that carry?

13 MR. McCOY: Malicious
14 injury to personal property?

15 THE COURT: Zero to
16 five? What was the value of
17 the property? Does it say?

18 MR. McCOY: It does
19 not, but we can find it?

20 THE COURT: You're sure
21 it says general sessions?

22 MR. McCOY: Yes, ma'am,
23 because it was handled in the
24 same instance as the B. E.
25 motor vehicle.

1 THE COURT: That
2 doesn't mean it was a general
3 sessions charge. You all
4 plead magistrate level cases
5 all the time.

6 MR. McCOY: Your Honor
7 --

8 THE COURT: General
9 sessions --

10 MR. McCOY: I find out
11 for you. From looking at this
12 it's hard to tell.

13 THE COURT: Yeah. You
14 might want to find out for me.

15 MR. McCOY: Your Honor,
16 we, we do concede, we
17 understand that the drug
18 convictions would be too
19 prejudicial as opposed to
20 probative.

21 THE COURT: Well,
22 beside that, the Supreme Court
23 has said they're not probative
24 on the issue of truthfulness.

25 MR. McCOY: Okay.

1 Would we be allowed to mention
2 a conviction of charges on
3 certain dates?

4 THE COURT: No. You
5 wouldn't be able to mention
6 drug convictions at all.
7 Questions about B and E motor
8 vehicle --

9 MR. McCOY: Okay.

10 THE COURT: And if you
11 tell me the malicious injuries
12 are general sessions, I'll
13 think about that.

14 MR. McCOY: Sure.
15 I'll, I'll, I'll find that out
16 as soon as possible. For
17 right now that's it, your
18 Honor.

19 THE COURT: Okay.
20 We'll take a break and then
21 when we come back I'll
22 question you about it. I
23 might be a little more than
24 five minutes because I want to
25 print the portion of my charge

1 and for some reason my
2 computer is not working over
3 here, so if you all could bear
4 with me I would greatly
5 appreciate it.

6 MR. McCOY: And, your
7 Honor, on that note if we have
8 requested jury charges would
9 you like those now?

10 THE COURT: Yes,
11 because I'm pretty much ready
12 with my charge.

13 MR. McCOY: Okay.

14 THE COURT: I'm
15 prepared.

16 MR. PRENNER: Your
17 Honor, are you --

18 THE COURT: You might
19 have -- and I should have told
20 you that earlier so that you
21 wouldn't have gone to extra
22 work. I'm going to
23 probably -- I mean I will
24 consider anything you submit,
25 however. That doesn't mean I

1 won't, I won't consider it. I
2 will, but I like to do things
3 ahead of time. I don't like
4 being caught behind the eight
5 ball, so I generally, I can
6 kind of anticipate how things
7 are going and so I've pretty
8 much done my charge. But if
9 you have any charges, submit
10 them, because I will look at
11 them and I will review them.

12 MR. McCOY: Okay.

13 THE COURT: Most times
14 charges are just a reflection
15 of the court standard charges.

16 MR. McCOY: Would you
17 rather these be submitted or
18 argued orally?

19 THE COURT: I want you
20 to submit them to me.

21 MR. McCOY: Okay.

22 Thank you, your Honor.

23 THE COURT: If you have
24 them.

25 MR. McCOY: Okay.

24 (Whereupon, the Judge
25 enters the courtroom at 4:09

1 p.m.)

2 THE COURT: Bear with
3 us. We're having some
4 technical issues.

5 MR. KIDD: Yes, ma'am.

6 MR. PRENNER: Judge,
7 may it please the Court, I do
8 not have any written requests
9 to charge but I did have a
10 question about the, for the
11 Court on three different
12 matters.

13 THE COURT: We'll take
14 that up during the charge
15 conference. Right now if you
16 have anything written you want
17 me to consider prior to
18 charge.

19 MR. PRENNER: No.

20 MR. KIDD: Your Honor,
21 may I approach?

22 THE COURT: Uh-huh.

23 MR. KIDD: Your Honor,
24 we would just request the hand
25 of one charge.

1 THE COURT: Okay.

2 MR. PRENNER: Your
3 Honor, I would at the
4 appropriate time I would like
5 to be heard on that issue.

6 THE COURT: Yes. I'm
7 not having a charge
8 conference.

9 MR. PRENNER: Okay.

10 THE COURT: I'm just
11 giving you the opportunity to
12 hand up anything you may have
13 had in writing so that I could
14 consider it prior to the
15 charge conference. I'm going
16 to go over the charge and I'm
17 going to give you an
18 opportunity to make these
19 arguments that you would like
20 or take any exception to the
21 charge.

22 MR. PRENNER: Thank
23 you, your Honor.

24 THE COURT: You're
25 welcome.

1 Sir, if you would
2 stand for me, please, and
3 raise your right hand to be
4 sworn.

5 (Whereupon, Donovan
6 Terrell Murray is sworn.)

7 THE COURT: And, Mr.
8 Murray, at this time I'm going
9 to explain to you certain of
10 your rights. If you do not
11 understand anything that I say
12 to you, just let me know. If
13 you need me to repeat anything
14 that I said to, please let me
15 know, or if you do not
16 understand, please let me
17 know. Do you understand?

18 DEFENDANT: Yes, ma'am.

19 THE COURT: Sir, we
20 have now reached the stage of
21 the trial where you may
22 present your defense. You
23 have the right to claim the
24 protections given to you by
25 the Fifth Amendment to the

1 Constitution of the United
2 State. This amendment reads
3 in pertinent part that no
4 person shall no person shall
5 be compelled in any criminal
6 case to be a witness against
7 himself. This means that you
8 cannot be required to testify
9 in this case. You have the
10 right, of course, to testify
11 on your behalf, however no one
12 can make you testify. This is
13 a personal right and no one
14 can waive this right except
15 you.

16 If you decide to
17 testify you will be subject to
18 the same rules that govern
19 other witnesses and you may be
20 examined and cross-examined on
21 any relevant issue in this
22 case. In addition, if you
23 have any convictions involving
24 dishonesty or false statements
25 or for crimes punishable by

1 imprisonment for more than one
2 year and this Court determines
3 that that the probative value
4 of admitting this evidence
5 outweighs its prejudicial
6 affect to you, the solicitor
7 will be able to introduce your
8 record to attack your
9 credibility. If you decide to
10 testify this decision on your
11 part must be made freely,
12 voluntarily, and intelligently
13 with knowledge of the
14 protections given to you by
15 the fifth amendment and the
16 consequences of your decision
17 to testify.

18 If you decide not to
19 testify I will instruct the
20 jury that they cannot give the
21 fact that you did not testify
22 any consideration whatsoever
23 and that there's to be
24 absolutely no prejudice to you
25 because you did not testify.

1 It is left entirely up to you
2 whether or not you testify.
3 You may talk with your
4 attorney, your family members,
5 your friends, or anyone else,
6 but the final decision will be
7 left entirely up to you.

8 Sir, do you
9 understand your rights as I've
10 explained them to you?

11 DEFENDANT: Yes, ma'am.

12 THE COURT: I'm going
13 to give you an additional
14 opportunity to discuss this
15 matter with counsel. I will
16 advise you, however, that in
17 terms of the solicitor being
18 able to impeach your
19 credibility, they will be able
20 to ask you about both of your
21 breaking and entering motor
22 vehicle, motor vehicle
23 convictions which took place
24 in 2003 because the rules
25 provide that irregardless of

1 punishment, that those go to
2 your veracity or your honesty,
3 and they're allowed to ask you
4 about that.

5 I suspect that the
6 malicious injuries to personal
7 property are magistrate level
8 offenses and they would not be
9 admissible, and your drug
10 convictions, I doubt I would
11 let them ask about because the
12 Supreme Court has said those
13 do not, are not probative on
14 this issue of truthfulness.

15 We will come back to
16 this discussion after we've
17 completed the State's case and
18 heard motion, and I will give
19 you an additional time to
20 discuss that with Mr. Prenner.

21 Do you understand?

22 DEFENDANT: Yes, ma'am.

23 THE COURT: You may
24 take your seat.

25 Is the State ready to

1 proceed?

2 MR. McCOY: We are,
3 your Honor. I'd also like to
4 add before we bring in our
5 final witness, that I did
6 speak to Mr. Whirl --

7 THE COURT: I want to
8 do that when Mr. Ickes is
9 present --

10 MR. McCOY: Okay.

11 THE COURT: -- so that
12 I can question him again.

13 MR. McCOY: Okay.

14 THE COURT: Please
15 bring in Mr. Ickes.

16 (Whereupon, Mr. Ickes
17 enters the courtroom.)

18 THE COURT: Mr. Ickes,
19 if you could go ahead and have
20 a seat. Yeah. I'm going to
21 need you to swear him again in
22 the presence of the jury.

23

24

25

ICKES -- DIRECT

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2

3

EDWARD S. ICKES,

4

having been called as a

5

witness, is duly sworn outside

6

the presence of the jury, and

7

testifies as follows:

8

CLERK: If you'll speak

9

in this microphone. State

10

your full name and spell your

11

last name.

12

THE WITNESS: Edward S.

13

Ickes, I. C. K. E. S.

14

THE COURT: Mr. Ickes,

15

I apologize for mispronouncing

16

your name. Sir, you are here

17

to testify as a witness in the

18

state's case in chief. Is

19

that correct?

20

THE WITNESS: That's

21

correct, ma'am.

22

THE COURT: And, sir,

23

you are represented by Charlie

24

Whirl of the Charleston County

25

bar. Is that also correct?

ICKES -- DIRECT

1 THE WITNESS: Yes,
2 ma'am.

3 THE COURT: You
4 indicated to the Court on
5 yesterday that you understood
6 that Mr. Whirl is on vacation.

7 THE WITNESS: Yes.

8 THE COURT: And you
9 have -- you do not object to
10 going forward in his absence.
11 In other words, testifying in
12 his absence. Is that correct?

13 THE WITNESS: That's
14 correct, ma'am.

15 THE COURT: And you
16 understand that you have the
17 right to have him here present
18 with you?

19 THE WITNESS: Yes,
20 ma'am.

21 THE COURT: You
22 understand that the Court
23 would delay these proceedings
24 in order to give you an
25 opportunity to have him

ICKES -- DIRECT

1 present.

2 THE WITNESS: Yes,
3 ma'am.

4 THE COURT: And knowing
5 that, you still wish to waive
6 his presence?

7 THE WITNESS: Yes,
8 ma'am.

9 THE COURT: Sir, are
10 you suffering from any mental
11 disabilities or under the
12 influence of any drugs or
13 alcohol?

14 THE WITNESS: No,
15 ma'am.

16 THE COURT: Are you
17 aware of any physical,
18 emotional, or nervous problem
19 that might keep you from
20 understanding where you are
21 right now or what you're
22 doing?

23 THE WITNESS: No,
24 ma'am.

25 THE COURT: And you

ICKES -- DIRECT

1 have fully discussed your
2 legal situation with Mr.
3 Whirl. Is that correct?

4 THE WITNESS: Yes,
5 ma'am.

6 THE COURT: And I would
7 imagine that he has explained
8 to you what an incriminating
9 statement is?

10 THE WITNESS: Yes,
11 ma'am.

12 THE COURT: And I would
13 imagine that you all have
14 fully discussed that matter in
15 the context of your testimony.
16 Is that also correct?

17 THE WITNESS: Yes,
18 ma'am.

19 THE COURT: And you
20 feel comfortable going forward
21 in his absence?

22 THE WITNESS: Yes,
23 ma'am.

24 THE COURT: Yes, sir?

25 MR. MCCOY: Your Honor,

ICKES --- DIRECT

1 I would like to add for the
2 record and for Mr. Ickes's
3 benefit as well that I spoke
4 to Mr. Whirl this morning on
5 the telephone, by cell phone.
6 He is still out of state and
7 will be back tomorrow.
8 Pursuant to our conversation,
9 he has no problem with Mr.
10 Ickes going forward and
11 testifying without him here.
12 He has had no problem with me
13 visiting Mr. Ickes nor
14 speaking to Mr. Ickes, which
15 I've done several times.

16 THE COURT: And, Mr.
17 Ickes, how old are you?

18 THE WITNESS: I'm
19 thirty-three, ma'am.

20 THE COURT: And how far
21 have you gone in school?

22 THE WITNESS: I have
23 some college, ma'am.

24 THE COURT: What did
25 you do for a living before you

ICKES -- DIRECT

1 were incarcerated?

2 THE WITNESS: I was
3 working at the Naval Weapons
4 Station. I was an electronics
5 technician.

6 THE COURT: Please
7 bring in the panel. And, Mr.
8 Ickes, if you could for me,
9 when the clerk approaches you
10 again if you stand for me,
11 please, so that he can swear
12 you in the presence of the
13 jury.

14 THE WITNESS: Yes,
15 ma'am.

16 THE COURT: Do you plan
17 to bring up his, any sort of
18 enhancements?

19 MR. McCOY: Yes, ma'am.

20 THE COURT: In what
21 context do you plan to bring
22 them up?

23 MR. McCOY: To ask
24 him --

25 THE COURT: Wait one

ICKES -- DIRECT

1 second for me. Tell them to
2 close that door. Sorry.

3 MR. McCOY: To, to, for
4 me to on direct testimony to
5 make sure he is aware of what
6 he is facing today.

7 THE COURT: Okay.

8 MR. McCOY: And in
9 terms of potential penalty --

10 THE COURT: Mr.
11 Prenner, have you figured out
12 how you're going to couch your
13 questions?

14 MR. PRENNER: Yes,
15 ma'am.

16 THE COURT: Okay. If
17 you want to create a proffer,
18 we'll do that at the end of
19 cross.

20 MR. PRENNER: Yes,
21 ma'am.

22 THE COURT: Just make
23 me aware of it. Okay? And
24 that way we'd have time to --
25 and after, in the interests of

ICKES -- DIRECT

1 time, I'll fully articulate
2 the Court's ruling regarding
3 it at the conclusion of Mr.
4 Ickes's testimony.

5 MR. McCOY: Thank you,
6 your Honor.

7 THE COURT: You can
8 bring them in. I'm sorry.

9 (Whereupon, the jury
10 enters the courtroom at 4:22
11 p.m.)

12 THE COURT: Thank you.
13 Ladies and gentlemen, you may
14 be seated. We hope that you
15 enjoyed your break. We'll now
16 resume with the trial.

17 Mr. McCoy, you may
18 proceed.

19 MR. McCOY: Thank you,
20 your Honor.

21 THE COURT: And
22 actually the witness is at the
23 stand to be sworn.

24

25

ICKES -- DIRECT

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2

3

EDWARD S. ICKES,

4

having been called as a

5

witness, is duly sworn and

6

testifies as follows:

7

THE COURT: You may

8

proceed.

9

MR. McCOY: Thank you,

10

your Honor.

11

THE COURT: You're

12

welcome.

13

MR. McCOY: May it

14

please the Court.

15

THE COURT: Yes, sir.

16

17

18

19

DIRECT EXAMINATION BY

20

MR. McCOY:

21

Q Mr. Ickes, how you

22

doing today?

23

A Just fine, sir.

24

Q Mr. Ickes, can you

25

tell the jury where you're

ICKES -- DIRECT

1 originally from?

2 A I'm from Ohio.

3 Q And tell the jury
4 what brought you to South
5 Carolina.

6 A I had started a job
7 done here. I moved down here to
8 transfer. I got a job working at
9 the Navel Weapon Station as an
10 electronics technician, putting
11 electronics into new armored
12 vehicles that are, currently are
13 going to Iraq.

14 Q How did you get this
15 job?

16 A I had an offer last
17 year to come down to work on the
18 Humvee project but I put it off
19 because I didn't want to leave my
20 children at the time.

21 Q How many children do
22 you have back in Ohio?

23 A I have three, sir.

24 Q Mr. Ickes, can you
25 roughly remember the day or the

ICKES -- DIRECT

1 month when you did come to
2 Charleston?

3 A Yes. It was August
4 twentieth.

5 THE COURT: Of what
6 year?

7 A Of 2007.

8 Q When you came down to
9 start your new job?

10 A That's correct.

11 Q Mr. Ickes, where did
12 live once you moved to down to
13 Charleston, South Carolina?

14 A At first we were
15 staying with my fiancée's
16 relatives but then things got
17 hectic with so many people there
18 so then I stayed at the hotel and
19 then she went back home.

20 Q She would have been
21 who?

22 A Is my fiancée Ashley.

23 Q And she went back to
24 where?

25 A She went back to

ICKES -- DIRECT

1 Ohio.

2 Q And you remained in
3 Charleston?

4 A That's correct.

5 Q And where did you
6 live after she left and went back
7 to Charleston (sic)?

8 A I was staying at the
9 Relax Inn on Ashley Phosphate.

10 Q Now, Mr. Ickes, I can
11 tell, the Court can tell, the jury
12 can tell you're obviously
13 addressed in Leeds Avenue attire?

14 A Yes, sir.

15 Q Why are you, why are
16 you currently at Leeds Avenue?

17 A I was, I was, I've
18 been incarcerated since December
19 twelfth, since the day of my
20 arrest.

21 Q And what are you
22 incarcerated for?

23 A I'm charged with
24 having a pistol, a firearm during
25 the commission of a violent crime,

ICKES -- DIRECT

1 trafficking crack cocaine,
2 possession with the intent to
3 distribute cocaine, and the -- two
4 other possessions within, within
5 proximity of a school zone.

6 Q Now, Mr. Ickes, are
7 you aware of the penalties that
8 these serious charges have?

9 A Yes, sir.

10 Q Do you realize that
11 for trafficking crack cocaine you
12 were facing five to thirty years?

13 A Yes, sir.

14 Q Do you realize for
15 the proximity charge of the crack
16 cocaine, you're facing ten to
17 fifteen years?

18 A Yes, sir.

19 Q Do you realize for
20 PWID cocaine you are facing five
21 to thirty years?

22 A Yes, sir.

23 Q And for proximity of
24 the cocaine you're facing zero to
25 ten years?

ICKES -- DIRECT

1 A Yes, sir.

2 Q And for possession of
3 a firearm with a crime of violence
4 you're facing an additional five
5 years?

6 A Yes, sir.

7 Q That's a lot of time,
8 Mr. Ickes.

9 A Yes, sir.

10 Q And, Mr. Ickes, you
11 also have an attorney on this case
12 as well. Is that correct?

13 A Yes, sir.

14 Q And what is his name?

15 A It's Charlie Whirl,
16 sir.

17 Q Mr. Ickes, has it
18 been your position from day one
19 that you wished to cooperate with
20 the State?

21 A Yes, sir.

22 Q And you wished to
23 cooperate with the police?

24 A Yes, sir.

25 Q Now, Mr. Ickes, I've

ICKES -- DIRECT

1 spoken to you several times and
2 I've been to see you in the jail
3 approximately two times.

4 A Yes, sir.

5 Q And I've spoken with
6 you here as well.

7 A Yes, sir.

8 Q Mr. Ickes, any time
9 that I've talked to you and I mean
10 any time have I made you any
11 promises?

12 A No, sir.

13 Q Have I threatened you
14 for your testimony at all?

15 A No, sir.

16 Q Have I coerced you to
17 come and in tell a story?

18 A No, sir.

19 Q Well, Mr. Ickes, with
20 these serious charges why are you
21 here today?

22 A To tell the truth,
23 sir.

24 Q Why do you want to
25 tell the truth?

ICKES -- DIRECT

1 A Because it's not fair
2 for someone like in my position to
3 go to jail, you know, for a long
4 time for something that isn't
5 mine.

6 Q So, Mr. Ickes, it's
7 your testimony today that I have
8 offered you have no promises?

9 A Yes, sir.

10 Q No threats?

11 A No, sir.

12 Q No coercion?

13 A No, sir.

14 Q And that you are here
15 today simply to tell the truth?

16 A Yes, sir.

17 Q Mr. Ickes, are all of
18 your charges currently still
19 pending?

20 A Yes, sir.

21 Q Have any deals been
22 cut for your testimony today?

23 A No, sir.

24 Q Now, Mr. Ickes, you
25 just testified that once your

ICKES -- DIRECT

1 fiancée left you moved into the
2 Relax Inn on Ashley Phosphate?

3 A Yes, sir.

4 Q Do you remember
5 roughly what time of year or what
6 month you moved into, into the
7 Relax Inn?

8 A I think it was late
9 September.

10 Q Late September?

11 A Yes, sir.

12 Q The event that we are
13 here for today happened on 12/12
14 of 2007?

15 A Yes, sir.

16 Q So you were there for
17 roughly three months?

18 A Yes, sir.

19 Q During those three
20 months that you were living at the
21 Relax Inn did you have an occasion
22 or the occurrence to meet Mr.
23 Terrell, Donovan Terrell Murray?

24 A Yes, sir.

25 Q And who introduced