

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM MARION COUNTY

William H. Seals, Jr., Circuit Court Judge

RECEIVED
MAY - 4 2015
S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

DARRELL LEE BIRCH,

APPELLANT

APPELLATE CASE NO. 2012-213215

RECORD ON APPEAL

CARMEN V. GANJEHSANI
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Attorneys for Respondent

INDEX

INDEX.....	i
TRIAL TRANSCRIPT (dated November 28-30, 2011)	1
MOTION FOR CONTINUANCE BY MR. MEETZE.....	4
MOTION FOR SUBSTITUTION OF COUNSEL BY DEFENDANT	9
JURY SELECTION	15
COURT REMARKS.....	31
MOTION TO SUPPRESS EVIDENCE BY MR. MEETZE.....	34
TESTIMONY	
ERNIE GRICE	
Direct examination by Mr. Ozment.....	35
Cross-examination by Mr. Meetze	36
Redirect examination by Mr. Ozment	38
AURELIUS CRIBB	
Direct examination by Mr. Ozment.....	40
Cross-examination by Mr. Meetze	46
Redirect examination by Mr. Ozment	54
Recross examination by Mr. Meetze	55
ARGUMENT ON MOTION TO SUPPRESS EVIDENCE.....	56
COURT'S DENIAL OF MOTION TO SUPPRESS EVIDENCE	59
REMARKS OF THE COURT TO THE JURY	64
OPENING STATEMENT BY MR. OZMENT	69
MOTION FOR A MISTRIAL BY MR. MEETZE	73
COURT'S DENIAL OF MOTION FOR MISTRIAL.....	74
OPENING STATEMENT BY MR. MEETZE	76

TESTIMONY

ERNIE GRICE

Direct examination by Mr. Ozment 82

MOTION FOR A MISTRIAL BY MR. MEETZE 89

COURT'S DENIAL OF MOTION FOR MISTRIAL 90

TESTIMONY (CONT.)

ERNIE BRICE

Direct examination by Mr. Ozment 91

Cross-examination by Mr. Meetze 93

AURELIUS CRIBB

Direct examination by Mr. Ozment 103

Cross-examination by Mr. Meetze 115

Redirect examination by Mr. Ozment 120

DOUGLAS ROBINSON

Direct examination by Mr. Ozment 121

Cross-examination by Mr. Meetze 141

AURELIUS CRIBB

Direct examination by Mr. Ozment 145

Cross-examination by Mr. Meetze 147

RENEWAL OF ALL MOTIONS AND MOTION FOR A DIRECTED VERDICT BY MR. MEETZE.....148

CLOSING ARGUMENT BY MR. OZMENT.....151

CLOSING ARGUMENT BY MR. MEETZE.....158

CHARGE ON THE LAW.....166

VERDICT 182

RENEWAL OF ALL MOTIONS AND MOTION FOR A NEW TRIAL BY MR. MEETZE.....183

SENTENCING HEARING TRANSCRIPT (dated October 17, 2012).....186

MOTION TO RECONSIDER SENTENCE AND MOTION FOR A NEW TRIAL BY MR. MEETZE.....	188
INDICTMENTS	192
SENTENCE SHEETS.....	194
CERTIFICATE OF COUNSEL.....	196

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS
2009-GS-33-00106

COUNTY OF MARION

STATE OF SOUTH CAROLINA,

-vs-

DARRELL LEE BIRCH,

Defendant.

November 28-30, 2012

B E F O R E:

HONORABLE WILLIAM H. SEALS, JR.

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

TODD S. TUCKER, Esquire
MATTHEY R. OZMENT, Esquire
Attorney for the State

WILLIAM VICKERY MEETZE, Esq
Attorney for the Defendant

Henry P. Young
Court Reporter

I-N-D-E-X

PAGE:

1	Jury Voir Dire	14
2	Jury Selection	26
3	Opening Statement by Mr. Ozment	68
4	Opening Statement by Mr. Meetze	75
5	Defense Motion for Directed Verdict	148
6	Closing Argument by Mr. Ozment	151
7	Closing Argument by Mr. Meetze	158
8	Jury Instructions	165
9	Jury Verdict	182

STATE'S EXHIBITS:

1	(Chain of Custody Form)	111
2	(Drug Analysis Request)	112
3	(Chain of Custody Form)	140
4	(Chemist's Report)	141
5	(K-Bag)	141

COURT EXHIBITS:

1	(Consent Form)	42
2	(Bond)	60

1	WITNESSES:	
2		
3	ERNIE GRICE	
4	Direct Examination by Mr. Ozment:	35
5	Cross Examination by Mr. Meetze:	36
6	Redirect Examination by Mr. Ozment:	38
7		
8	Direct Examination by Mr. Ozment:	81
9	Cross Examination by Mr. Meetze:	92
10	AURELIUS CRIBB:	
11	Direct Examination by Mr. Ozment:	40
12	Cross Examination by Mr. Meetze:	46
13	Redirect Examination by Mr. Ozment:	53
14	Recross Examination by Mr. Meetze:	54
15		
16	Direct Examination by Mr. Ozment:	102
17	Cross Examination by Mr. Meetze:	114
18	Redirect Examination by Mr. Ozment:	119
19		
20	Direct Examination by Mr. Ozment:	145
21	Cross Examination by Mr. Meetze:	147
22		
23	SHERRY RHODES:	58
24		
25	CLEVELAND WHITE:	
	Direct Examination by Mr. Ozment:	60
	DOUG ROBINSON:	
	Direct Examination by Mr. Ozment:	121
	Cross Examination by Mr. Meetze:	142

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

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

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

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

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

1 that day.

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

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

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

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

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

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

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

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

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

22 THE COURT: Okay.

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

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

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

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

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

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

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

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

9 MR. TUCKER: That's correct.

10 THE COURT: That was as of yesterday?

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

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

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

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Mr. Birch.

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

23 THE COURT: Go ahead and state your name.

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

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

8 MR. MEETZE: 2008.

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

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

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

16 THE COURT: Have you got your paperwork?

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

19 THE COURT: Pass it on up to me.

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

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

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

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

15 THE COURT: Then show it to me.

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

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

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

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

12 Anything else?

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

16 THE COURT: I have heard that.

17 Anything from the Solicitor?

18 MR. TUCKER: Nothing further, Your Honor.

19 THE COURT: All right.

20 Anything further, Mr. Meetze?

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

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

25 Anything further, Mr. Meetze?

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

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

3 We'll be back shortly and pick a jury.

4 MR. TUCKER: Thank you.

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

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

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

12 (Jury panel is now present).

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

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

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

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

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

15 Let the record reflect that no one stood.

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

19 THE DEFENDANT: Darrell Lee Birch.

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

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

25 All right, let the record reflect that no one

1 stood.

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

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

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

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

19 Mr. Meetze.

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

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

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

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

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

13 JUROR: I know Grayson Smith.

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

18 JUROR: Yes, sir.

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

21 JUROR: Sure.

22 THE COURT: You may be seated.

23 Anybody else?

24 Let the record reflect no one else stood.

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

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

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

9 All right, your name and number?

10 JUROR: Matt Gleason, number 55.

11 THE COURT: How does that apply to you?

12 JUROR: I know Mark Collins.

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

17 JUROR: Yes.

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

21 JUROR: Uh-huh (Affirmative).

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

23 JUROR: Yes.

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

1 Anybody else?

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

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

8 All right, Mr. Gleason?

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

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

14 JUROR: Yes.

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

17 JUROR: Yes.

18 THE COURT: All right, thank you.

19 THE COURT: Your name and number?

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

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

1 JUROR: Yes.

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

4 JUROR: Yes.

5 THE COURT: Thank you.

6 Anyone else?

7 Your name and number?

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

10 THE CLERK: 172.

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

15 JUROR: Yes.

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

18 JUROR: Yes, sir.

19 THE COURT: All right, thank you.

20 Anybody else?

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

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

1 All right, no one stood.

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

6 All right, no one stood.

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

14 All right, no one stood.

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

1 All right, no one stood.

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

6 All right, no one stood.

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

11 All right, no one stood.

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

17 All right, no one stood.

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

22 All right, no one stood.

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

1 All right, no one stood.

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

6 All right. No one stood.

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

12 All right, your name and number?

13 JUROR: Berry. I forgot the number.

14 THE CLERK: 172.

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

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

22 JUROR: Yes, sir.

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

25 JUROR: Yes, sir.

1 THE CLERK: Number 172.

2 THE COURT: What was that number?

3 THE CLERK: 172.

4 THE COURT: All right, anybody else?

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

9 All right, no one stood.

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

17 THE COURT: All right, no one stood.

18 Anything further from the State?

19 MR. TUCKER: Nothing, Your Honor.

20 THE COURT: Anything further from the
21 defense?

22 MR. MEETZE: Could we approach?

23 (Unrecorded bench conference).

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

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

6 All right, no one stood.

7 Anything further from the State?

8 MR. TUCKER: Nothing, Your Honor.

9 THE COURT: Anything from the defense?

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

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

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

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

21 THE CLERK: Ready to go?

22 THE COURT: Ready.

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

1 this desk and fast back outward.

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

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

4 Mr. James, if you will come around here,
5 please, sir, just stand in front of this desk and
6 face back outward, please, sir.

7 What say the State?

8 MR. TUCKER: Please present the juror.

9 THE CLERK: What say the defense?

10 MR. MEETZE: Please swear Mr. James.

11 THE CLERK: Mr. James, if you will have a
12 seat in the jury box, please, sir.

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

14 What say the State?

15 MR. TUCKER: Please present Mr. Bell.

16 THE CLERK: What say the defense?

17 MR. MEETZE: Please swear Mr. Bell.

18 THE CLERK: Mr. Bell, if you will have a seat
19 in the jury box, please, sir.

20 Number three, Marshall M. Brogdon, juror
21 number 18.

22 What say the state?

23 MR. TUCKER: Please present the juror.

24 THE CLERK: What say the defense?

25 MR. MEETZE: Please excuse Mr. Brogdon.

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

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

5 MR. TUCKER: Please present Miss James.

6 THE CLERK: What say the defense?

7 MR. MEETZE: Please swear Miss James.

8 THE CLERK: Miss James, if you will have a
9 seat in the jury box, please, ma'am.
10 Joan King, juror number 89.

11 What say the State?

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

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

16 Marvinna P. Spears, juror number 150.

17 What says the State?

18 MR. TUCKER: Please present Miss Spears.

19 THE CLERK: What says the defense?

20 MR. MEETZE: Please swear Miss Spears.

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

23 Ron Fleming, juror number 49.

24 What say the State?

25 MR. TUCKER: Please present Mr. Fleming.

1 THE CLERK: What say the defense?

2 MR. MEETZE: Please swear the juror.

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

5 Matthew D. Gleason, juror number 55.

6 What say the State?

7 MR. TUCKER: Please present Mr. Gleason.

8 THE CLERK: What say the defense?

9 MR. MEETZE: Please excuse Mr. Gleason.

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

12 Dale Drew, juror number 41.

13 What say the State?

14 MR. TUCKER: Please present Miss Drew.

15 THE CLERK: What say the defense?

16 MR. MEETZE: Please swear this juror.

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

19 Joya Foxworth, juror number 51.

20 What say the State?

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

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

24 Thelia Boatright, juror number 16.

25 What say the State?

1 MR. TUCKER: Please present Miss Boatright.
2 THE CLERK: What say the defense?
3 MR. MEETZE: Please swear Miss Boatright.
4 THE CLERK: Miss Boatright, if you will have
5 a seat in the jury box, please.
6 Mary Hardee, juror number 63.
7 What say the State?
8 MR. TUCKER: Please present Miss Hardee.
9 THE CLERK: What say the defense?
10 MR. MEETZE: Please swear Miss Hardee.
11 THE CLERK: Miss Hardee, if you will have a
12 seat in the jury box, please, ma'am.
13 Lula Martin, juror number 101.
14 What say the State?
15 MR. TUCKER: Please present Miss Martin.
16 THE CLERK: What say the defense?
17 MR. MEETZE: Please swear Miss Martin.
18 THE CLERK: Miss Martin, if you will have a
19 seat in the jury box.
20 Kathleen Brown, juror number 19.
21 What say the State?
22 MR. TUCKER: Please present Miss Brown.
23 THE CLERK: What say the defense?
24 MR. MEETZE: Swear Miss Brown.
25 THE CLERK: Miss Brown, if you will have a

1 seat in the jury box.

2 Joseph Potts, juror number 118.

3 What say the State?

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

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

8 Marvin K. Fielder, juror number 47.

9 What say the State?

10 MR. TUCKER: Please present Mr. Fielder.

11 THE CLERK: What say the defense?

12 MR. MEETZE: Please swear Mr. Fielder.

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

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

17 What say the State?

18 MR. TUCKER: Please present Miss Herrington.

19 THE CLERK: What say the defense?

20 MR. MEETZE: Please excuse Miss Herrington.

21 THE CLERK: Thank you, Miss Herrington.

22 Marlene L. Marquads, juror number 100.

23 What say the State?

24 MR. TUCKER: Please present Miss Marquads

25 THE CLERK: What say the defense?

1 MR. MEETZE: Please swear the juror.

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

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

6 MR. TUCKER: Please present Mr. Harold.

7 THE CLERK: What say the defense?

8 MR. MEETZE: Please swear Mr. Harold.

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

12 JUROR: Here?

13 THE CLERK: Yes, sir.

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

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

19 THE COURT: What says the defense?

20 MR. MEETZE: Nothing from the defense.

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

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

1 instructions, but you are excused.

2 (Jury panel excused from the courtroom).

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

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

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

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

12 (The jury was excused from the courtroom).

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

15 MR. TUCKER: Nothing, Your Honor.

16 THE COURT: Anything from the defense?

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

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

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

1 THE COURT: All right. Is that correct?

2 MR. TUCKER: That's correct.

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

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

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

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

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

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

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

21 THE COURT: Sure.

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

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

1 THE COURT: Anytime you're ready.

2 DIRECT EXAMINATION BY MR. OZMENT:

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

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

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

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

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

21 A Right, they had narcotic warrants on him.

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

24 A Just drug warrants.

25 Q All right. They were for drug crimes?

1 A Yes, sir.

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

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

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

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

20 Q All right.

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

23 THE COURT: Mr. Meetze?

24 CROSS EXAMINATION BY MR. MEETZE:

25 Q You saw Mr. Horne just walking down the

1 street, something of that nature?

2 A I did.

3 Q You weren't out looking, it was sort of a

4 meet up, as they would say?

5 A Yes, sir.

6 Q And you had knowledge of these warrants?

7 A I did.

8 Q And you contacted the folks with the Drug

9 Unit?

10 A I did.

11 Q Okay. And they came to the scene and

12 actually spoke to Mr. Horne with regard to

13 searching his residence and all that. You were

14 present but not --

15 A I was present but not ---.

16 Q You were not part of that conversation, you

17 weren't the one asking for the consent?

18 A I was not.

19 Q And if any sort of paperwork was done in that

20 regard you weren't involved in any paperwork at

21 that point either?

22 A No.

23 Q And with regard to the actual search, the

24 eventual search of the residence, you were not

25 involved in that in any way?

1 A I was present at the house.

2 Q You were there at the house?

3 A Yes.

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

6 A I was inside the house.

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

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

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

15 A He was.

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

18 A To my knowledge.

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

21 THE COURT: Anything further, Mr. Ozment?

22 MR. OZMENT: One real quick.

23 REDIRECT EXAMINATION BY MR. OZMENT:

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

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

3 A I did.

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

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

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

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

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

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

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

6 Q All right.

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

9 THE COURT: Anything further, Mr. Meetze?

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

11 THE COURT: You may step down.

12 (Witness excused).

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

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

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

19 DIRECT EXAMINATION MR. OZMENT:

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

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

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

1 did you originally become involved?

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

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

10 A We served the warrants at the jail.

11 Q But he was placed under arrest?

12 A Yes.

13 Q Do you recall what those warrants were for?

14 A Distribution of crack.

15 Q Which is a drug crime?

16 A Yes, sir.

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

20 A Yes, sir.

21 Q How did that come about?

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

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

4 Q Did Mr. Horne live at that residence?

5 A Yes, sir.

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

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

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

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

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

16 A Yes, sir.

17 Q What is the address on that form?

18 A Street, Marion, South Carolina.

19 Q Is that the residence you searched that day?

20 A Yes, sir.

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

23 A Yes, sir.

24 Q Full time that is where he stayed?

25 A Yes, sir.

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

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

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

6 A Yes, sir.

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

8 A Yes, sir.

9 Q What is your signature on the form for?

10 A It's under witness.

11 Q All right.

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

15 THE COURT: Any objection,, Mr. Meetze?

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

18 THE COURT: All right.

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

21 BY MR. OZMENT:

22 Q Did Mr. Horne sign that himself?

23 A Yes, sir.

24 Q Did you explain the form to him?

25 A Yes, sir.

1 Q Did he read the form?

2 A Yes, sir.

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

5 A Yes, sir.

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

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

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

16 A I can't remember.

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

19 A Yes, sir.

20 Q Did you explain to him what that meant?

21 A Yes, sir.

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

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

1 residence.

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

4 A Yes, sir.

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

7 A Looking for Birch and drugs.

8 Q And what?

9 A And drugs.

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

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

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

16 A Yes, sir.

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

19 A Yes, sir.

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

22 A Not originally. I came afterwards.

23 Q All right.

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

1 THE COURT: Mr. Meetze.

2 CROSS EXAMINATION BY MR. MEETZE:

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

5 A Yes, sir.

6 Q Is that correct?

7 A Yes, sir.

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

9 A No, sir.

10 Q You do not?

11 MR. MEETZE: May I approach the witness?

12 THE COURT: Sure.

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

15 A Not up here.

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

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

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

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

1 made contact with him.

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

4 A Yes, sir.

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

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

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

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

14 Q Okay.

15 MR. MEETZE: May I approach the witness?

16 THE COURT: Sure.

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

19 A Yes, sir.

20 Q And what is that document?

21 A Booking report.

22 Q Who is that a booking report for?

23 A Darrell Lee Birch.

24 Q What is the date on that booking report?

25 A December 3rd, 2008.

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

2 A Yes, sir.

3 Q And does it indicate what time he was
4 arrested?

5 A Approximately 10:20.

6 Q And --

7 A A.M.

8 Q That is in the morning?

9 A Yes, sir.

10 Q Okay. So, these are documents that police
11 officers and booking folks at the jail fill out
12 when somebody is arrested?

13 A Yes, sir.

14 Q And arrests can happen a long time ago, like
15 this one did?

16 A Yes, sir.

17 Q And this paperwork is used to help them with
18 their memory, preserve evidence and preserve dates
19 and times and things like that?

20 A Yes, sir.

21 Q And this would have been filled out at the
22 time all this happened?

23 A After he was taken to the jail.

24 Q Right. So it would have been, if he would
25 have been taken to the jail at 10:20, it would mean

**THIS PAGE INTENTIONALLY
LEFT BLANK**

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

2 A No, sir.

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

6 A Yes, sir.

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

10 A Yes, sir.

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

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

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

25 A Yes, sir.

1 Q What time was that signed?

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

3 Q Okay. After Mr. Birch was arrested?

4 A Yes, sir.

5 Q Okay. So, at the time at least the crack

6 cocaine was found in that residence that is

7 attributed to Mr. Birch the consent to search form

8 had not been signed?

9 A No, sir, but he already give us consent and

10 we already had warrants for Mr. Birch.

11 Q And you testified a little bit earlier you

12 weren't sure when all that happened?

13 A I was outside the back door but --

14 Q Go ahead, I'm sorry, I didn't mean to

15 interrupt you.

16 A I was outside the back door, Officer Grice

17 called me around front, he had Mr. Birch and he had

18 found the drugs on him.

19 Q But you testified here this morning just a

20 little bit ago as far as with regard to when Mr.

21 Horne was seen, when Mr. Horne was arrested, all

22 that kind of stuff, you weren't sure when that

23 happened?

24 A No, sir.

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

1 gave consent to search?

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

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

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

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

19 A Yes, sir.

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

22 A Yes, sir.

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

1 A Yes, sir.

2 Q After Mr. Birch was arrested?

3 A After we searched the residence. All we did

4 was secure the residence first.

5 Q I understand. And did you do the paperwork

6 in the case with regard to the incident report and

7 all that?

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

9 done the initial report.

10 Q You did the drug incident report?

11 A Yes.

12 Q And your Drug Unit report is based on the

13 report Mr. Grice did?

14 A Yes, sir.

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

16 Honor?

17 THE COURT: Yes.

18 Q Sergeant Cribb, I'm going to show you

19 something and ask you if you recognize that?

20 A Yes, sir.

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

22 report?

23 A Yes, sir.

24 Q Okay. And in that report -- you typed that

25 up?

1 A Yes, sir.

2 Q And that indicates that the search of Mr.
3 Birch where the crack cocaine or the cocaine base
4 was found was a search done pursuant to officer
5 safety?

6 A Yes, sir.

7 Q Is that correct?

8 A Yes, sir.

9 Q And that is your understanding from Officer
10 Grice?

11 A Yes, sir.

12 Q And what Officer Grice testified to just a
13 little bit ago?

14 A Yes, sir.

15 MR. MEETZE: I don't have any further
16 questions, Your Honor.

17 THE COURT: Mr. Ozment, anything further?

18 MR. OZMENT: Yes, sir.

19 REDIRECT EXAMINATION BY MR. OZMENT:

20 Q When you say you're not sure of the times,
21 you mean you can't remember if it was 10:08 or
22 10:12. Correct?

23 A Yes, sir.

24 Q When you were with Mr. Horne at the IGA you
25 had not been to his residence yet?

1 A No, sir.

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

4 A Yes, sir.

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

7 THE COURT: Anything further?

8 MR. MEETZE: Just one quick.

9 RECROSS EXAMINATION BY MR. MEETZE:

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

12 A Yes, sir.

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

15 A Yes, sir.

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

18 A He had a crack pipe.

19 Q A what?

20 A A crack pipe

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

23 (Witness excused).

24 THE COURT: Any other witnesses?

25 MR. OZMENT: No further witnesses, Your

1 Honor.

2 THE COURT: Anything further, Mr. Meetze?

3 MR. MEETZE: No, sir.

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

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

8 THE COURT: Go ahead.

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

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

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

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

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

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

5 THE COURT: All right.

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

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

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

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

1 that concept may open them up to a search.

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

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

20 MR. MEETZE: Thank you, Your Honor.

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

22 MR. MEETZE: I do not know.

23 THE COURT: Do you mind checking?

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

25 THE COURT: The family member is here, could

1 they help you find them?

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

4 THE COURT: All right.

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

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

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

9 THE COURT: Is the State ready to proceed?

10 MR. OZMENT: Yes, Your Honor.

11 THE COURT: Is the defense ready to proceed?

12 MR. MEETZE: Yes, Your Honor.

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

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

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

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

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

25 MR. OZMENT: The Clerk of

1 Court handed you the defendant's bond.

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

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

11 (Bond marked as Court Exhibit Number 2).

12 THE CLERK: It was clocked in.

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

14 THE CLERK: Clocked in December 10th.

15 (Witness excused).

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

19 Come around and be sworn in.

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

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

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

1 EXAMINATION BY MR. OZMENT:

2 Q Would you please state your name and what you
3 do for the court.

4 A Cleveland White, Bailiff, Marion County
5 Courthouse.

6 Q Would you tell me what you just did outside
7 the Marion County Courthouse?

8 A I went outside at the front and called Mr.
9 Birch and read the indictment number also twice at
10 the front, twice at the back.

11 Q All right. So, a total of four times?

12 A Yes, sir.

13 MR. OZMENT: I have no further questions.

14 THE COURT: All right. Did the defendant
15 show up, did Mr. Birch show up and answer you?

16 THE WITNESS: No, sir.

17 THE COURT: All right, Mr. Meetze, anything?

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

19 THE COURT: All right, you may step down.

20 (Witness excused).

21 THE COURT: Anything further you need to put
22 on the record, Mr. Ozment?

23 MR. OZMENT: Yes, Your Honor. For the
24 record, Mr. Meetze and I have discussed it but he
25 was also instructed by you yesterday specifically

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

2 THE COURT: Mr. Meetze?

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

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

14 MR. MEETZE: That's correct.

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

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

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

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

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

5 THE COURT: Granted.

6 MR. OZMENT: Thank you, Your Honor.

7 THE COURT: Bring out the jury.

8 (The jury returned to the courtroom).

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

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

13 (Jury sworn).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 All right, Solicitor.

2 MR. OZMENT: May it please the Court?

3 THE COURT: Sure.

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

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

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

1 MR. MEETZE: Objection, Your Honor.

2 THE COURT: Excuse me?

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

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

6 MR. MEETZE: Approach?

7 THE COURT: All right.

8 (Unrecorded bench conference).

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

25 MR. MEETZE: Objection, Your Honor.

1 THE COURT: Sustained.

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

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

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

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

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

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

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

17 I appreciate it and thank you.

18 THE COURT: Mr. Meetze.

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

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

25 (The jury was excused from the courtroom).

1 THE COURT: All right, Mr. Meetze.

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

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

25 Clearly saying the police were already

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

8 THE COURT: Mr. Ozment?

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

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

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

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

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

15 MR. MEETZE: Thank you, Your Honor.

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

18 (The jury returned to the courtroom).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 In a criminal case it is much different, the

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

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

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

3 THE COURT: Thank you.

4 Mr. Ozment, call your first witness.

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

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 ERNIE GRICE, after being first duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION BY MR. OZMENT:

4 Q How are you today, Officer Grice?

5 A All right.

6 Q Can you please state your name and what do
7 you for the record?

8 A Ernie Grice, I'm a sergeant with the Marion
9 Police Department.

10 Q How long have you been with the Marion Police
11 Department?

12 A I've been in law enforcement ten years.

13 Q All here in Marion?

14 A In Marion and Marion County.

15 THE COURT: If you all can't hear just let me
16 know, raise your hand.

17 Be sure and speak up.

18 THE WITNESS: Okay.

19 BY MR. OZMENT:

20 Q On December 3rd, 2008, did you work that day?

21 A I did.

22 Q Here in Marion?

23 A Yes.

24 Q Did you come in contact with an individual
25 around the IGA that day?

1 A I did.

2 Q Who was that individual?

3 A It was Byron Horne.

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

5 A No, he's not.

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

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

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

14 THE COURT: Sure.

15 (Unrecorded bench conference).

16 BY MR. OZMENT:

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

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

23 MR. MEETZE: Your Honor, I object.

24 THE COURT: Overruled.

25 Q All right. Do you know what those warrants

1 were for?

2 A All I know, narcotic warrants.

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

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

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

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

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

14 A He was.

15 Q At that time?

16 A He was.

17 Q Why was he placed under arrest?

18 A Because of narcotic warrants.

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

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

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

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

1 THE COURT: Sustained.

2 BY MR. OZMENT:

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

6 A Yes.

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

9 A It was.

10 Q All right. And whose house was it?

11 A That was Mr. Horne's house.

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

14 A I was.

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

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

19 Q Is that here in Marion?

20 A Yes.

21 Q Marion County?

22 A Yes.

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

25 A I assisted Agent Collins in clearing the

1 house out.

2 Q Did you enter the house?

3 A I did.

4 Q When you entered the house did you have
5 occasion to have any contact with Darrell Birch?

6 A I did.

7 Q Was he in the house?

8 A He was.

9 Q Tell me about your interaction with Mr.
10 Birch.

11 A Myself and Agent Collins entered the
12 residence, there was an individual in the front
13 room had a ball cap and coat and jeans on. The
14 individual had his left hand in his pocket. Agent
15 Collins went down the hall and continued to clear
16 the house out. I told this individual several
17 times to remove his hand. He refused at all times.
18 I did not know if the individual had a weapon on
19 him to hurt me, Agent Collins or anyone else.

20 Q Excuse me. Do you remember how many times
21 you asked him to remove his hand?

22 A I know at least three or more.

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

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

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

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

9 Q Can you describe that object for me?

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

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

14 A I can.

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

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

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

22 A I do.

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

25 A This black bottle.

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

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

9 MR. MEETZE: Objection, Your Honor.

10 THE COURT: Sustained.

11 MR. MEETZE: Approach.

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

13 MR. MEETZE: Yes, Your Honor.

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

16 (The jury was excused from the courtroom).

17 THE COURT: Mr. Meetze.

18 MR. MEETZE: Thank you, Your Honor.

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

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

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

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

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

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

24 MR. OZMENT: Essentially.

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

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

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

5 You can go ahead add bring out the jury.

6 (The jury returned to the courtroom).

7 MR. MEETZE: May we approach?

8 (Unrecorded bench conference).

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

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

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

24 THE COURT: All right. Objection overruled.

25 MR. MEETZE: Thank you, Your Honor.

1 BY MR. OZMENT:

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

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

6 Q Did you perform that search?

7 A Yes, I did.

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

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

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

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

19 A The Icebreaker canister.

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

22 A I do. It was different colored pills.

23 Q Thank you, officer.

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

1 A I did.

2 Q What did you do with it?

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

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

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

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

11 A I do. It's behind this.

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

16 A I give them to Agent Cribb.

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

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

22 Q Was he at the scene at that time?

23 A Yes, he was.

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

1 A Agent Collins.

2 Q And Agent Cribb?

3 A Yes.

4 Q All right. Sir, did you find any currency on

5 Mr. Birch when he was searched?

6 A I did.

7 Q Do you recall the amount of that currency?

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

9 Q All right. What did you do with that

10 currency?

11 A It was also transferred over to Agent Cribb.

12 Q All right. My final question is when Mr.

13 Birch was placed under arrest and you finished

14 searching him did you know that was the defendant

15 in this case Mr. Birch?

16 A I did.

17 MR. OZMENT: No further questions, Your

18 Honor.

19 THE COURT: Mr. Meetze.

20 CROSS EXAMINATION BY MR. MEETZE:

21 Q Officer Grice, you were on duty in Marion on

22 December the 3rd, 2008, sometime around 10:00

23 o'clock?

24 A I was.

25 Q And you saw Mr. Horne?

1 A I did.

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

5 A I did.

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

8 A He was.

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

11 A No, sir.

12 Q But you were present?

13 A Yes, sir.

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

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

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

21 A No, sir.

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

24 A Not me personally, no, sir.

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

1 residence?

2 A I did.

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

4 A Like I said, it was all mid morning, I don't

5 know exactly what time.

6 Q All right. You did enter -- when you got

7 there were you the only officer there?

8 A No, I was not.

9 Q How many other officers were there?

10 A There were three.

11 Q Okay. Were they in plain clothes, were they

12 uniformed officers like yourself, like you're here

13 today?

14 A No, sir.

15 Q Okay. You did enter the house?

16 A I did.

17 Q You did not have a search warrant with you or

18 anything like that?

19 A Not in my hand.

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

21 A Agent Collins knocked on the door.

22 Q Okay. Did entry have to be forceful?

23 A No, sir.

24 Q So you all were allowed into the house?

25 A Yes.

1 Q You identified yourself as law enforcement?

2 A We did.

3 Q The individual that let you into the house
4 was the individual that you had described earlier?

5 A It was Mr. Horne.

6 Q Mr. Horne was with you all?

7 A He was in my car.

8 Q At your car, okay. When you entered the
9 house you saw an individual you described as
10 wearing a jacket, I think jeans and a ball cap?

11 A Yes.

12 Q And you indicated that he had his hand in his
13 pocket?

14 A He did.

15 Q You were questioned with regard to whether or
16 not you recalled whether it was his pants pocket or
17 his jacket pocket. Your testimony was that you
18 believed it was his pants pocket?

19 A Yes, sir.

20 Q Is that correct?

21 A Yes, I believe so.

22 Q When you say, I don't want to put words in
23 your mouth but just trying to get to the bottom of
24 things, when you say you believe, does that mean
25 that you're not certain, it could have been either

1 one?

2 A It could have been.

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

5 A Yes, sir.

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

8 A I did.

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

11 A I did.

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

14 A Ten years.

15 Q You go through training?

16 A Yes, sir.

17 Q Training at the academy?

18 A Yes.

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

21 A Yes.

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

24 A Right.

25 Q As you proceed throughout your career as a

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

3 A I do.

4 Q Correct?

5 A Yes.

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

9 A Yes.

10 Q And becoming better at your job, correct?

11 A Yes.

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

15 A Yes.

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

18 A Yes.

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

21 A Yes.

22 Q Paperwork helps your memory, correct?

23 A Correct.

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

1 Correct?

2 A Correct.

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

5 A Correct.

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

9 A Correct.

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

13 A Correct.

14 Q Correct?

15 A Yes.

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

19 A Correct.

20 Q You've got supervisors. Correct?

21 A Correct.

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

24 A Correct.

25 Q Also other law enforcement officers are going

1 to be involved. Correct?

2 A Correct.

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

7 A Correct.

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

10 A Correct.

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

15 A Yes.

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

19 A Correct.

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

22 A Can I --

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

24 A Can I look at it?

25 Q Sure you can.

1 A Can I read it verbatim? It says the male
2 subject had his left hand in his front pocket.
3 Q Front pocket?
4 A Yes.
5 Q So, it doesn't say whether it's his pants or
6 jacket or whatever, just says front?
7 A No.
8 Q Okay. Once his hand was taken out of his
9 pocket and the canister was located and searched,
10 it was after that happened, right, pretty much
11 right as you entered the house, is that correct?
12 A Say --
13 Q Mr. Birch is the first person you saw?
14 A Correct.
15 Q When you say you asked him, you're not sure
16 how many times you asked him to remove his hand but
17 you say it was at least three or more, correct?
18 A Correct.
19 Q Asking him three times to remove his hand
20 doesn't take very long so it wasn't very long after
21 you got into the house that you found yourself
22 removing his hand and discovering that canister.
23 Correct?
24 A Correct.
25 Q All right. And do you recall at that point

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

3 A No, sir, I do not.

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

6 THE COURT: Redirect?

7 MR. OZMENT: No redirect, Your Honor.

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

10 THE COURT: Call your next witness.

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

13

14

15

16

17

18

19

20

21

22

23

24

25

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

3 DIRECT EXAMINATION BY MR. OZMENT:

4 Q How are you today, Sergeant Cribb?

5 A Fine, sir.

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

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

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

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

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

16 A Marion and military police officer.

17 Q How long were you in the military?

18 A Twenty-one years.

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

21 A Thirteen as a military police officer.

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

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

1 Officer Grice to talk to Mr. Horne.

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

4 A We had warrants for his arrest.

5 Q What were those warrants for?

6 A Distribution of crack.

7 MR. MEETZE: Objection, Your Honor.

8 THE COURT: Overruled.

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

11 A I think it was one.

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

14 A Yes, sir.

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

17 A Yes, sir.

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

21 A Yes, sir, I did.

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

24 A Yes, I did.

25 Q Did you receive his consent?

1 MR. MEETZE: Objection, Your Honor.

2 THE COURT: Overruled.

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

5 A Yes, sir.

6 Q All right.

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

9 THE COURT: Yes.

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

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

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

16 A For Street, Marion, South
17 Carolina.

18 Q Whose residence is that?

19 A Byron Horne.

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

22 A Yes, sir.

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

24 A Yes, sir.

25 Q Whose signature is on that form?

1 A My signature and also Mark Collins.

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

4 A Yes, sir, I did.

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

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

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

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

13 A Yes, sir.

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

16 A Yes, sir.

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

20 A Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 A No, sir.

25 Q All right. But you were at the residence

1 when it occurred?

2 A Yes, sir.

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

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

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

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

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

15 A Yes, sir.

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

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

20 Q Could you explain what a Best Bag is?

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

25 Q And you received all that directly from

1 Officer Grice?

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

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

6 A It was transported to SLED to be tested.

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

9 A Yes, sir, I did.

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

12 A To forensics at the SLED lab.

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

15 A No, sir.

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

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

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

23 A The form is already in the Best Kit.

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

1 A Yes.

2 Q What does that form say?

3 A Chain of custody form.

4 Q Does it describe the items that are in the

5 bag?

6 A Yes, sir.

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

8 Honor?

9 THE COURT: Yes.

10 Q I'm going to back you up just a minute. I

11 just handed you a piece of paper. Could you

12 identify that paper for me?

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

14 Q And what does that, don't read it to me, just

15 kind of tell me what that paper indicates.

16 A It indicates me dropping the drugs off at the

17 SLED lab.

18 Q All right. Do you see your signature on

19 that?

20 A Yes, sir.

21 Q All right.

22 MR. OZMENT: Your Honor, we would move this

23 form into evidence.

24 THE COURT: Any objection?

25 MR. MEETZE: No, Your Honor.

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

3 MR. OZMENT: All right.

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

6 BY MR. OZMENT:

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

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

11 Q Okay.

12 MR. OZMENT: May I approach the witness?

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

15 A SLED drug analysis request norm.

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

18 A To submit the drugs to SLED.

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

21 A Yes, sir, it is.

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

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

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

1 form be entered into evidence.

2 THE COURT: Any objection?

3 MR. MEETZE: No, sir.

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

6 MR. OZMENT: Yes, sir.

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

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

11 (Unrecorded bench conference).

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

14 THE COURT: Sure.

15 BY MR. OZMENT:

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

18 A Yes, sir.

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

21 A South Carolina Law Enforcement Division,
22 SLED.

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

24 A It's a chain of custody.

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

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

3 A Yes, sir.

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

6 A Yes, sir.

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

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

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

13 MR. OZMENT: All right.

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

16 BY MR. OZMENT:

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

19 A Yes, sir.

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

22 A Yes, sir.

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

25 A To court.

1 Q When did that happened?

2 A Today.

3 Q All right.

4 MR. OZMENT: I have no further questions of

5 this witness, Your Honor.

6 THE COURT: Mr. Meetze.

7 CROSS EXAMINATION BY MR. MEETZE:

8 Q Sergeant Cribb, you just testified that after

9 going to the IGA, after Grice called, that you and

10 Officer Grice and Agent Collins all went to Byron

11 Horne's house?

12 A Yes, I did.

13 Q And it was at some point at that time you had

14 Byron Horne sign a consent to search form?

15 A Yes, sir.

16 Q And you indicated it wasn't until after that

17 form was signed that the house was entered?

18 A Yes, sir.

19 Q And Officer Grice went in the front, you went

20 around to the back, is that correct?

21 A Yes, sir.

22 Q But you were there for all that?

23 A Yes, sir.

24 Q And none of that happened until after the

25 consent to search form was signed?

1 A Yes, sir.

2 Q Okay.

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

4 Honor?

5 THE COURT: Sure.

6 Q You may still have a copy of that.

7 A Yes.

8 Q Is that the consent to search form?

9 A Yes.

10 Q You have what has previously been marked as

11 an exhibit or something that was handed to you

12 during your earlier testimony?

13 A Yes, sir.

14 Q But you already testified in regards to it,

15 that is the consent to search form?

16 A Yes, sir.

17 Q Now, what time does it indicate that that

18 form was completed?

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

20 Q Sir?

21 A 11:00 a.m.

22 Q Is when it was done?

23 A That is when the actual search occurred.

24 Q And not when it started, correct?

25 A That is when the search occurred.

1 Q Will, is there an indication on the form as
2 to what time the search started?
3 A Yes, sir. It says time search started 11:00
4 a.m.
5 Q And it ended 11:50?
6 A Yes, sir.
7 Q Okay. And you all didn't, nobody went into
8 the house until after this form was completed?
9 A The form was signed but the times wasn't put
10 in until we actually did the search. We did a
11 sweep of the residence first.
12 Q Well, I mean, it says time, 11:00 a.m., and a
13 signature. It says 11:00 a.m. on two different
14 spots on this form. Is that not correct?
15 A That's the time we did the actual search.
16 Q Okay. Now, you also did an incident report
17 in this case, correct?
18 A Yes, sir.
19 Q Okay. And that incident report indicates
20 that, and you got a lot, some of the information
21 for your report you got from Officer Grice's
22 report, correct?
23 A Yes, sir.
24 Q Okay. But nonetheless, you did a separate
25 report in this case?

1 A Yes, sir.

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

4 A Yes, sir.

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

10 A He was eventually arrested.

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

18 A Yes, sir.

19 Q Okay.

20 A Mr. Birch.

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

23 A Yes, sir.

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

1 A Yes, sir.

2 Q And this all happened on December the 3rd of

3 2008. Correct?

4 A Yes, sir.

5 Q Okay.

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

7 Honor?

8 THE COURT: Sure.

9 Q I'm going to hand you a document and ask if

10 you recognize what that document is?

11 A Yes, sir, I do.

12 Q And what that document is is a booking report

13 in regard to Darrell Birch's arrest in this case?

14 A Yes, sir.

15 Q And it indicates that he was arrested at

16 10:20 in the morning?

17 A Yes, sir.

18 Q And as you testified a little bit ago, you

19 were on the back side of this house when Officer

20 Grice went inside?

21 A Yes, sir.

22 Q You were stationed there to make sure nobody

23 left out the back of the house?

24 A Yes, sir.

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

1 going on at that time in the house?

2 A No, sir.

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

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

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

9 A No, sir.

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

12 THE COURT: Any redirect?

13 MR. OZMENT: One question, Your Honor.

14 REDIRECT EXAMINATION BY MR. OZMENT:

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

17 A Yes, sir.

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

20 THE COURT: You may step down.

21 (witness excused).

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

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

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

3 DIRECT EXAMINATION BY MR. OZMENT:

4 Q How are you today, Mr. Robinson?

5 A Doing well.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 basis to stay informed of current trends.

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

4 A Just over three and a half years.

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

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

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

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

13 Q And have you testified in court before?

14 A Yes, sir.

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

18 A Yes, sir. Seven.

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

21 A Yes, I have.

22 Q In all seven or --

23 A Correct, yes.

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

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

3 THE COURT: Any objection?

4 MR. MEETZE: No, Your Honor.

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

6 BY MR. OZMENT:

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

10 A May I refer to my notes?

11 Q Of course.

12 A Yes, I did.

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

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

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

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

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

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

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

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

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

18 Q What did the confirmatory test indicate?

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

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

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

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

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

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

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

14 A Crack cocaine.

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

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

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

5 MR. MEETZE: Objection.

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

8 MR. MEETZE: Speculation.

9 THE COURT: Sustained.

10 BY MR. OZMENT:

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

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

19 Q All right. Did you test those tablets?

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

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

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

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

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

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

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

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

25 Round orange tablet 3,4

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

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

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

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

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

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

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

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

1 methylenedioxy-methamphetamine is the chemical term
2 for what most people would call ecstasy, so those
3 two are just synonymous, the 3,4

4 methylenedioxy-methamphetamine is just a long
5 chemical name. The common name would be ecstasy.

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

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

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

14 A Eleven whole tablets and one partial tablet.

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

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

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

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

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

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

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

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

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

22 Q All right.

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

25 THE COURT: Sure.

1 BY MR. OZMENT:

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

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

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

11 A Yes, it does.

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

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

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

1 tell when the drugs were dropped off at SLED?

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

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

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

18 Q All right. Who has access to that?

19 A Just the evidence control department.

20 Q That's it?

21 A Supervisors, I'm sure.

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

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

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

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

5 A Yes, I did.

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

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

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

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

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

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

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

19 A Correct.

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

21 A Yes, I did.

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

25 A No, there was nothing unusual about the

1 package.

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

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

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

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

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

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

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

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

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

1 there.

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

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

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

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

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

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

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

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

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

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

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

25 Q All right.

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

5 THE COURT: And it is marked as what?

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

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

10 MR. MEETZE: No objection to the document.

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

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

15 BY MR. OZMENT:

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

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

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

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

24 Q All right.

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

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

3 THE COURT: Any objection?

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

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

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

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

13 THE COURT: Any objection?

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

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

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

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

24 CROSS EXAMINATION BY MR. MEETZE:

25 Q You just testified with regard to your role

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

5 A Yes.

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

8 A That's correct.

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

10 A Yes, sir.

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

13 A No, sir.

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

16 A No, sir.

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

21 A That's correct.

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

24 A Yes, sir.

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

1 questions.

2 THE COURT: Redirect?

3 MR. OZMENT: No, Your Honor. I have one more
4 witness but could we take a short recess?

5 THE COURT: Is this a good time to take a
6 lunch break?

7 MR. OZMENT: Yes, sir.

8 THE COURT: Do you all want to do one more
9 witness and then take a lunch break, or take a
10 break now, it's up to the jury?

11 JUROR: One more witness.

12 THE COURT: All right, let's take a 15 minute
13 break, that way you can use the restroom. If
14 anybody needs to smoke just let the bailiff know.
15 Do not discuss the case at all.

16 MR. OZMENT: I have no further questions for
17 Mr. Robinson.

18 THE COURT: You may step down.

19 (Witness excused).

20 (The jury was excused from the courtroom).

21 (Recessed at 11:52 a.m.).

22 (Resumed at 12:10 p.m.).

23 THE COURT: Is the State ready to go?

24 MR. OZMENT: Yes, Your Honor.

25 THE COURT: Is the defense ready to go?

1 MR. MEETZE: Yes, Your Honor.

2 THE COURT: All right, bring in the jury.

3 (The jury returned to the courtroom).

4 THE COURT: Solicitor, go ahead and call your
5 next witness.

6 MR. OZMENT: The State would recall Aurelius
7 Cribb.

8 THE COURT: All right. You're still under
9 oath, Mr. Cribb.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 AYREKUYS CRIBB, having been previously sworn,
2 testified as follows:

3 DIRECT EXAMINATION BY MR. OZMENT:

4 Q Welcome back, Mr. Cribb. you stated you had
5 been how long with the Marion County Combined Drug
6 Unit?

7 A Since 2001, but two and a half years I had to
8 go with the National Guard.

9 THE COURT: You have to speak up.

10 A I had a two and a half year break with the
11 National Guard, then I came back.

12 Q Since 2001 with a two and a half year break?

13 A Yes.

14 Q In the course of your employment with the
15 Marion County Drug Unit, Marion County Combined
16 Drug Unit are you involved with buys of crack
17 cocaine with undercover officers and confidential
18 informants and things of that activity?

19 A Yes.

20 Q Estimating, how many of those have you been
21 involved in?

22 A Approximately 900.

23 Q 900?

24 A Cases, yes, sir.

25 Q All right. When you're conducting an

1 undercover buy of cocaine what is the typical
2 amount of money that is given to someone to buy a
3 user amount of crack cocaine?

4 A Between \$20 to \$40.

5 Q All right. And just, you know, approximately
6 how much crack cocaine would that buy?

7 A \$20 will get two-tenths of a gram and \$40
8 will get you about four-tenths of a gram.

9 Q All right. And just give me an idea, how
10 much is two-tenths of a gram?

11 A About like that.

12 Q Sort of like a pebble is what you're saying?

13 A Yes, sir.

14 Q All right.

15 MR. OZMENT: Your HONor, may I approach?

16 THE COURT: Yes.

17 Q Looking at State's Exhibit 5, the crack is
18 back in there and behind those pills. Compared to
19 that little pebble, how much crack is there?

20 A A lot more than a pebble.

21 Q All right. And do you recall when Mr.
22 Robinson was in here he said there were 6.2 grams
23 of crack in this case, so if you can do math, I
24 know I can't, how many user amounts would that be?

25 A It's about \$600 worth of crack.

1 Q About \$600 worth of crack is how much that
2 was?

3 A Yes, sir.

4 Q Okay. So that is a fair amount of \$20 rocks?

5 A Yes, sir.

6 Q All right.

7 MR. OZMENT: No further questions, Your
8 Honor.

9 THE COURT: Mr. Meetze?

10 CROSS EXAMINATION BY MR. MEETZE:

11 Q Sergeant Cribb, the case we're here on today,
12 Mr. Birch is charged with possession with intent to
13 distribute cocaine base. Correct?

14 A Yes, sir.

15 Q Also possession of ecstasy, correct?

16 A Yes, sir.

17 Q He's not charged in this case with selling
18 any drugs of any kind?

19 A No, sir.

20 Q And what you're relying on in your testimony
21 is weight?

22 A Yes, sir.

23 MR. MEETZE: I have no further questions.

24 THE COURT: All right, anything further,
25 Solicitor?

1 MR. OZMENT: No further questions, Your
2 Honor.

3 THE COURT: You may step down.

4 (Witness excused).

5 THE COURT: Do you have any more witnesses?

6 MR. OZMENT: Your Honor, that concludes the
7 State's case.

8 THE COURT: All right. Members of the jury,
9 just for a few minutes, if you will step into the
10 jury room I'm going to take up some matters of law,
11 we'll try to do a couple more things, then I will
12 send you to lunch.

13 (The jury was excused from the courtroom).

14 THE COURT: Any motions, Mr. Meetze?

15 MR. MEETZE: Your Honor, at this point in
16 time we would renew previous objections to
17 testimony as well as other motions. We also for
18 purposes of the record make a motion for a directed
19 verdict and the basis for that would be the
20 evidence presented would be insufficient to sustain
21 a guilty verdict on these charges.

22 THE COURT: The motions are denied.

23 Anything from the Solicitor?

24 MR. OZMENT: Nothing from the State, Your
25 Honor.

1 THE COURT: Why don't we go ahead and bring
2 the jury back out and I will I ask you to call your
3 first witness and you can rest and we'll send them
4 on to lunch.

5 Bring them back out if they are not in the
6 bathroom.

7 (The jury returned to the courtroom).

8 THE COURT: Any witnesss for the defendant?

9 MR. MEETZE: No, Your Honor, the defense
10 would rest.

11 THE COURT: All right, members of the jury,
12 we're going to take a lunch break at this time but
13 I'm going to instruct you that when you leave this
14 courthouse do not talk about the case with anybody,
15 not among yourselves. If you go home or to work or
16 wherever, somebody is going to ask you what is
17 going on, you just tell them you can't talk about
18 it. When it's over with you can but not now.

19 With that being said you are excused until
20 2:30 and we'll come back and wrap this case up.
21 Everybody else remain seated while the jury is
22 excused.

23 (The jury was excused from the courtroom).

24 THE COURT: We have a copy of the charge if
25 you all want to look at it. Go ahead and pass it

1 out, and a copy of the verdict form. Just look at
2 it and let us know if we need to change anything
3 and over the lunch hour we'll do that.

4 (Recessed at 12:25 p.m.).

5 (Resumed at 2:31 p.m.).

6 THE COURT: Is the State ready to proceed?

7 MR. OZMENT: Yes, Your Honor.

8 THE COURT: Mr. Meetze, ready to proceed?

9 MR. MEETZE: Yes, Your Honor.

10 THE COURT: I added that charge you were
11 looking for, if you want to look at it.

12 MR. MEETZE: Thank you, Your Honor.

13 THE COURT: Did you all look at the verdict
14 form as well?

15 MR. OZMENT: Yes, sir.

16 THE COURT: Mr. Meetze?

17 MR. MEETZE: Yes, sir.

18 THE COURT: Go ahead and bring in the jury.

19 (The jury returned to the courtroom).

20 THE COURT: All right, ladies and gentlemen
21 of the jury, we're going to proceed forward with
22 the closing arguments. I want you to understand
23 that the closing arguments are not evidence, they
24 are simply the lawyers' perspective on the case.
25 We're going to begin with the Solicitor and finish

1 with Mr. Meetze, then I'm going to charge on the
2 law and after I check and see if everything is done
3 properly I will tell you to begin your
4 deliberations but not until that time.

5 Solicitor, you're recognized.

6 MR. OZMENT: Thank you, Your Honor.

7 I want to thank you all not for being here
8 because you have to be here, but I do want to thank
9 you, because sitting in this courtroom I have seen
10 people nodding off to sleep, doing all kind of
11 stuff, but you have been attentive and I do
12 appreciate that. Everyone involved in this
13 appreciates your attentiveness.

14 What I want to briefly do is go through some
15 facts, go through a few points of law and then kind
16 of tell you my thoughts on it. The thoughts that I
17 think have been important in these are it is
18 basically a simple case, it is alleged crack and
19 ecstasy. In this case both came off the defendant,
20 the crack fell out of the pocket, they arrested
21 him, searched him and then found the Icebreaker
22 canister.

23 The law enforcement doing their job, they
24 took it, they put it in the Best Pack, kept up with
25 it, took it to SLED, Mr. Robinson came up from SLED

1 and told you how SLED takes care to make sure
2 nobody can tamper with it. They test it, and I
3 didn't exactly understand everything but from what
4 I understand they test it two ways and both ways it
5 came back what they thought it was.

6 From there they still take care of it until
7 it gets back to Marion County and came to court
8 today. I don't think there is any question that
9 the drugs that came off the defendant that day are
10 the drugs that we see here today and they were
11 tested to show what they were.

12 The other thing I want to point out is that
13 he had \$500 on him when this happened. You will
14 remember that Officer Grice from the Marion Police
15 Department said when they searched him a little
16 over \$500, he wasn't sure of the exact dollar
17 amount but that was on him when they searched him.
18 I will come back at the end and tell you why I
19 think that is important also.

20 The other kind of factual evidence I want
21 you to think about is what we developed with
22 Sergeant Cribb, and that is related to the amount
23 of the drugs. I'm also going to come back to that
24 in a minute. But think about how many drugs it was
25 in the case, over \$600 worth. You will see it when

1 it goes back in the jury room, it almost looks like
2 a small rice cake of crack. You remember he said
3 the user amount is like a small pebble. This
4 wasn't a small pebble, this was an amount that, you
5 know, a dealer for crack would have, not a user.
6 I'm going to come back to that at the end.

7 As far as the law in this case, the State has
8 the burden in every criminal case to prove the
9 defendant guilty beyond a reasonable doubt, you
10 have heard that phrase. Mr. Meetze talked about
11 that phrase some in his opening, beyond a
12 reasonable doubt, and the judge is going to charge
13 you on the law.

14 The judge tells you the law but I'm telling
15 you just my opinion, it is not evidence, it's not
16 the law, but beyond reasonable doubt doesn't mean
17 beyond any feasible doubt, does not mean beyond all
18 doubt at all, it is any doubt that is reasonable.
19 It can't be anything that makes you say, "I don't
20 know, that seems questionable." It would have to
21 be, we have to prove to you that, you know, it's
22 reasonable, this couldn't have happened any other
23 way, that these are not his drugs or whatever. And
24 in this case we have met that burden, these
25 substances are what we said they are, ecstasy and

1 crack, he had them, they came off him. That is
2 simple, that is my opinion on it.

3 That is one thing the judge is going to
4 charge you on the law, as I said, but this is what
5 he is going to tell you, that the State must prove
6 beyond a reasonable doubt that the defendant
7 intended to distribute the cocaine base.
8 Distribute means deliver or otherwise administer,
9 dispense the drugs. That's the possession with
10 intent to distribute. We're not saying he
11 distributed it but we have to prove that he
12 intended to, so what can you look at to see if he
13 intended to distribute it? Intent may be shown by
14 acts and conduct of the defendant and other
15 circumstances from which you may naturally and
16 reasonably infer intent. What I'm asking you to do
17 in this case is reasonably infer.

18 I went to the pharmacy for lunch, I didn't
19 buy anything other than my lunch. If I went to the
20 pharmacy to get a greeting card, they don't have
21 one greeting card, they have a rack of greeting
22 cards, if I had a headache and wanted to get
23 Tylenol, they don't have one bottle of Tylenol for
24 sale, they have a bunch of different bottles of
25 Tylenol, different sizes, if I bought one bottle of

1 Tylenol and I had gone to the cash register, taken
2 out, whatever Tylenol is, \$9.00, \$10.00, give them
3 a twenty, they would give me change. Well, in this
4 case I would say the defendant is, like that
5 pharmacy, I can walk in that pharmacy, I don't have
6 to see them sell something to know that everything
7 in that pharmacy is for sale, they are intending to
8 sell everything in that pharmacy to anybody who
9 will buy it. The same thing. When he was in that
10 house he had not just a little, you know, little
11 amount of crack for him to use that night, not just
12 a little bit. Remember, he had over six grams.
13 Sergeant Cribb said .2 is the user amount. That is
14 over thirty doses or amounts, user amounts of that
15 crack. Man, that will last you a long time, over
16 thirty.

17 Then he had \$500 in his pocket. You know, I
18 don't walk around with \$500 in my pocket, lots of
19 people might, my grandfather never had a checkbook,
20 still doesn't have a credit card, he might be
21 walking around with \$500 in his pocket.

22 But that's the cash register, that is what I
23 say. You know, if I want a \$20 crack, he cuts it
24 off that rice cake or whatever you want to call it
25 of crack and then he can make change for me, if all

1 I have is a fifty he can make change. That was the
2 cash register and the crack was the, you know, the
3 Tylenol, greeting card, whatever you say, it was a
4 business like anything else.

5 You know, drug dealers are interested in
6 making money, they are not in it to provide a
7 service to the community, they are not in it for
8 anything else but to make money. It's a business.

9 One other thing with regard to his intent to
10 sell. The judge is going tell you this, too.
11 Possession of more, one or more grams of cocaine
12 base creates an inference that the defendant
13 possessed the cocaine base with intent to
14 distribute it. That inference doesn't mean that I
15 still don't have to prove it, because I do have to
16 prove it, that's my burden, but that does mean
17 there is an inference.

18 The State, the Legislature said if you buy
19 drugs more than a gram we can infer they are going
20 to deal. That is more than usually you would have.
21 So I would argue in this case he had not, he didn't
22 have barely over a gram, he didn't have two grams,
23 he didn't have three grams, it is over six grams,
24 over six times what the law says you can infer
25 someone is intending to distribute cocaine, cocaine

1 base in this case.

2 Now, it is for you to decide whether I have,
3 the State, I have met my burden that he intended to
4 distribute the crack that fell out of his pocket
5 that day in that black tube. I think I have met
6 that burden. This wasn't for him to use that
7 night, it wasn't for just personal use, he was a
8 drug dealer making money off, you know, people who
9 were addicted to crack. That is what it is.

10 Secondly, there was the ecstasy. He just had
11 thirteen pills, we're not saying he was trying to
12 distribute that, a small amount. What we're saying
13 on that, he had it on him, that is all I'm saying.
14 If you find he had the ecstasy on him and he had the
15 crack on him and if you find the State met its
16 burden that he intended to distribute it I ask you
17 to find him guilty on both counts. If you find
18 that he had the crack on him and he had the ecstasy
19 on him and he wasn't going to distribute it there
20 is an option for that, too.

21 You will see on the verdict form, the first
22 question is did he possess, was he in possession to
23 distribute cocaine base? There is a second option.
24 Did he just possess it with no intent to distribute
25 it? I would ask that, you know, you all will have

1 a chance to talk about this, I ask you to use your
2 common sense. I believe in this case we have
3 carried our burden beyond a reasonable doubt that
4 he possessed the crack and he intended to
5 distribute the crack. We also met our burden he
6 possessed the ecstasy.

7 It was brief, it was a short trial, I
8 appreciate all your attention and I hope to see you
9 again but it will be at least three years from now,
10 you all have an exemption from jury duty for the
11 next three years.

12 Thank you, have a good day.

13 THE COURT: Mr. Meetze.

14 MR. MEETZE: If it please the Court.

15 I have talked to you earlier, I talked a lot
16 about reasonable doubt. Whether you knew then or
17 not, you probably know now that is a key thing in
18 this case. The Solicitor talked about it now and
19 you will hear more about it because that is one of
20 the most important actions of our law, and that is
21 the burden of proof the State has in a criminal
22 case, proof beyond a reasonable doubt. And the
23 judge, as you hear, is going to charge you on the
24 law and part of his charge on the law is going to
25 be in regard to what beyond a reasonable doubt

1 means. Whatever the judge charges in that regard
2 is the law you follow in this case but I will tell
3 you that proof beyond a reasonable doubt, you can
4 find reasonable doubt from all kind of things. You
5 can find it from the evidence that was presented to
6 you and you can find it from the evidence that
7 wasn't presented to you. All that goes into
8 determining whether or not the State met its burden
9 of proof to you beyond a reasonable doubt whether
10 someone is guilty or not guilty.

11 In this case you can find also reasonable
12 doubt from confusion and I submit to you there was
13 a lot of confusion in this case with regard to what
14 happened and when it happened and how it happened
15 and different things like that. And all of that
16 can create a reasonable doubt when you have facts
17 that create confusion.

18 In this case you have got confusion about
19 whether or not his hand was in his pocket or his
20 pants pocket or his jacket pocket, you've got
21 confusion about when the law enforcement officers
22 even entered the house. They didn't preserve that
23 well enough in their incident report, they didn't
24 document when they did what. Mr. Birch was
25 arrested 10:20 in the morning but the testimony is

1 they didn't search the house, he wasn't arrested
2 until after they entered the house, the testimony
3 is they didn't enter the house until after the
4 consent to search form was done. The consent to
5 search form indicates it was done at 11:00. Not
6 consistent. When you've got inconsistencies you've
7 got confusion. When you've got confusion you've
8 got reasonable doubt and if that is enough
9 reasonable doubt in your mind then it will be your
10 duty to find Darrell Birch not guilty in this case.

11 Now, the Solicitor also indicated that when
12 you receive the verdict form there will also be,
13 you will have several different options. Mr. Birch
14 is charged with two offenses, possession with
15 intent to distribute cocaine base or crack cocaine,
16 and possession of ecstasy.

17 There will also be a lesser included offense
18 on the verdict form which will be if you do not
19 believe the State has met their burden of proving
20 Mr. Birch guilty beyond a reasonable doubt of
21 possession with intent to distribute cocaine base
22 there will be a second option for a lesser included
23 offense of simple possession of cocaine base.

24 The only evidence in this case that Mr. Birch
25 had any intent to distribute anything is the

1 weight. Agent Cribb said as much on the stand.
2 The weight came back at 6.2 and you can see the
3 pills. It is hard to maneuver this around to be
4 able to see everything there is but it is in here
5 and they can get up and they can talk about how
6 much it is and, you know, that is not an
7 astronomical amount of stuff but there it is, you
8 can see for yourself how much it is and it is not
9 that much.

10 When I go to the drugstore to buy Tylenol I
11 buy Tylenol in a package that comes in thirty or
12 so, sometimes more, I'm not going to take all
13 thirty at one time, I will take one or two hoping
14 my headache will go away, may take one or may not.
15 That is not anything, you know, it is not an
16 alarming amount, not alarming that he had that
17 amount in his possession.

18 There is nothing else in this case that would
19 indicate that he had an intent to distribute
20 anything. He had, if you believe the testimony, he
21 had the stuff in his pocket, he had an amount of
22 money in his pocket. We don't know, we were told
23 through the testimony that the normal drug
24 transaction is a drug transaction that would be for
25 two-tenths of a gram or .2, which would cost \$20.

1 There is no evidence as to what denomination
2 the bills were in, there is no evidence of what the
3 bills were in, no evidence of at that at all. All
4 I heard was \$500. Was it a bunch of twenties? I
5 don't know, that is not before you. That is not
6 evidence. So we don't know. The State hasn't met
7 their burden in that regard. Would that be good
8 evidence, is that something you might like to know
9 in determining this case? Probably so but it is
10 not in front of you because they didn't present it
11 and when they don't present that kind of evidence
12 that is denying you the opportunity, that is giving
13 you an opportunity to find reasonable doubt in this
14 case. I would submit to you that if they would do
15 that and if you found out he had a whole bunch of
16 twenties in his pocket that would be some evidence
17 that would indicate maybe he intended to
18 distribute. It's not here.

19 Also as Mr. Ozment indicated, the amount,
20 there is a level in the law when it comes to this
21 kind of charge, possession with intent to
22 distribute, that is more than one gram, anybody
23 found in possession of one gram or more of cocaine
24 base there can be an inference that that individual
25 had an intent to distribute but that inference is

1 just that. It doesn't mean if they have this much
2 you have to find them guilty of this charge. It
3 just means that, coupled with the other evidence,
4 from that you can infer that there was intent to
5 distribute.

6 And the amount of money, I will also submit
7 to you there is any number of reasons why Mr. Birch
8 would have had that money on him. You know, I grew
9 up in a home, my father worked at a bank all my
10 life, so I always grew up with a bank account and
11 most of my friends did as I grew up. When I got
12 into high school I started working during the
13 summer, worked on golf courses and different things
14 like that and I got to know and meet people and
15 become friends with folks from a different
16 background from me. When you start learning, you
17 grow up thinking everybody does things the way you
18 do, it is sort of natural. But as you grow up and
19 you have life experiences and you meet new people
20 from different backgrounds from you, you realize,
21 you know, everybody isn't the same, people do
22 things different. It is not wrong, it is just
23 different, and there is plenty of people out there
24 for whatever reason don't have bank accounts, don't
25 trust them or for whatever, any other reason and

1 they carry money on them. It is not unusual and it
2 happens all the time.

3 The fact he had that much money should not
4 raise any kind of question in your mind in that
5 regard because we just don't know anything else
6 about it other than saying he had it. And again it
7 is not unusual for somebody to not have a bank
8 account and carry their money. Is that a lot of
9 money? It depends on the circumstances. If that
10 is everything he has got to his name it is not very
11 much money at all. And how do we know any
12 different from that? We don't. The evidence is
13 what it is and in this case the evidence of intent
14 to distribute I submit to you is just not there.
15 At best this case is a possession only case.

16 We ask that you find him not guilty of
17 anything but if you do find him guilty of anything
18 possession only would be the appropriate verdict
19 and I will also say the law doesn't say somebody is
20 in possession of under an entrance level has to be
21 charged with possession with intent, you can have
22 somebody charged with possession with intent to
23 distribute even if they have under the entrance
24 level if you take all the other factors into
25 evidence.

1 A lot of times I have people who were found
2 with a certain amount of drugs on them that was
3 packaged in individual little packets, you might
4 have it with twelve separate little baggies
5 packaged and that can be considered packaged for
6 sale and that can be evidence of intent to
7 distribute, along with money, along with scales and
8 things like that, scales used to weigh drugs, a
9 bunch of plastic baggies in the house without
10 anything in them but, again, evidence of drug trade
11 happening in that particular location but none of
12 that is present here, none of that is present here
13 and if the \$500 alone wasn't enough to charge him
14 with possession with intent to distribute it, but
15 they didn't do that, they just charged possession.
16 It's just another indication that the money is not
17 nearly as significant as they would want you to
18 believe.

19 Again, we would ask that you find him not
20 guilty of anything but the absolute worst you have
21 here as far as a verdict is concerned is I would
22 submit is guilty of possession and possession only
23 and if you do find him guilty of anything we would
24 ask that you only find him guilty of possession.

25 Thank you.

1 THE COURT: All right, members of the jury it
2 is now my duty as the trial judge to instruct you
3 on the law applicable to this case and in that
4 regard it is your duty as jurors to accept and
5 apply the law as I now state it to you.
6 Furthermore, it is your exclusive duty to decide
7 all the issues of fact in this case and to
8 determine the effect, value, weight and truth of
9 the evidence. Both the State of South Carolina and
10 the defendant have the right to expect that you
11 will carefully consider and evaluate and apply the
12 law in this case to it so that in the end both the
13 State of South Carolina and this defendant will
14 have received a fair and impartial trial.

15 Furthermore I want you to understand that
16 when I use the word defendant I refer to Mr.
17 Darrell Lee Birch. Also it is important to
18 understand that the State of South Carolina charges
19 the defendant with the offenses known as possession
20 with intent to distribute cocaine base and
21 possession of ecstasy. To these charges the
22 defendant has entered a plea of not guilty. This
23 plea of not guilty places the burden of proof on
24 the State of South Carolina to prove the guilt of
25 the defendant to you beyond a reasonable doubt.

1 It is vital to understand that a defendant is
2 presumed under the law of this state to be innocent
3 of these charges. It is a fundamental rule of our
4 law that a defendant, regardless of the seriousness
5 of the charges against him, is always presumed
6 innocent of the crime for which he is charged
7 unless and until his guilt has been proved by
8 evidence that satisfies you beyond a reasonable
9 doubt.

10 The presumption of innocence is not a mere
11 legal theory or legal phrase. The presumption of
12 innocence is very important and you need to
13 understand that this presumption accompanies the
14 defendant from the time of his arrest and
15 appearance in this Court, and continues with the
16 defendant even after you retire to the jury room.
17 In other words, a defendant receives the benefit of
18 the presumption of innocence until the very end of
19 this trial when you will deliberate upon the
20 evidence and decide whether the State has proved
21 his guilt beyond a reasonable doubt.

22 Proof beyond a reasonable doubt is proof that
23 leaves you firmly convinced of the defendant's
24 guilt. There are few things in this world that we
25 know with absolute certainty so even in criminal

1 cases the law does not require proof that overcomes
2 every possible doubt. However, if based upon your
3 consideration of the evidence you are firmly
4 convinced that a defendant is guilty of the crime
5 charged you must find him guilty. If on the other
6 hand you think there is a real possibility that he
7 is not guilty you must give him the benefit of the
8 doubt and find him not guilty.

9 Please understand that reasonable doubt may
10 arise from evidence which has been presented in the
11 case or from the lack of evidence in the case. It
12 is your responsibility to determine whether or not
13 reasonable doubt exists as to the guilt of this
14 defendant. I charge you that a defendant is
15 entitled to every reasonable doubt arising in the
16 whole case. If upon any issue of fact essential to
17 conviction and a verdict of guilty you have a
18 reasonable doubt as to how that issue should be
19 resolved it would be your duty to resolve that
20 reasonable doubt in favor of the defendant.

21 Thus, in summary, it is important to
22 understand that a defendant is not required to
23 prove his innocence. Instead, the State is
24 required by law to prove each and every essential
25 element of the offense charged against the

1 defendant by evidence which satisfies you of his
2 guilt beyond a reasonable doubt. Only then can you
3 convict the defendant and find him guilty.

4 Furthermore, evidence may be either direct or
5 circumstantial. Direct evidence is testimony by a
6 witness about what the witness personally saw or
7 heard or did. Circumstantial evidence is indirect
8 evidence. In other words, it is proof of one or
9 more fact from which one can find another fact.
10 You may consider both direct and circumstantial
11 evidence equally.

12 During this trial you and I have separate
13 duties to perform. As the judge it is my
14 responsibility to preside over this trial.
15 Furthermore, I have the duty to rule upon the
16 admissibility of the evidence offered during the
17 trial. In that regard you are to consider only the
18 evidence before you. Thus, you are to consider
19 only the testimony which has been presented from
20 this witness stand, together with any exhibits
21 admitted into the record of this case.

22 Also I have the additional duty to charge you
23 on the applicable law to this case and in that
24 regard it is your duty to accept and apply the law
25 as I now state it to you. If you have any

1 preconceived ideas as to what the law is or what
2 the law ought to be and it does not agree with what
3 I tell you the law is, then you are obligated under
4 your oath to abandon these preconceptions and
5 accept the law as I now state it to you.

6 In this trial you are the sole and exclusive
7 judge of the facts and I am the judge of the law.
8 Do not infer that I have any opinion about the
9 facts in this case from anything I have said during
10 the course of this trial. In that regard, the law
11 simply does not permit me to have an opinion about
12 the facts. As jurors it is your duty alone to
13 determine the effect, value, weight and truth of
14 the evidence presented during the course of this
15 trial.

16 Furthermore, it is your job as jurors to
17 determine the credibility or believability of the
18 witnesses who have testified in this case. In
19 determining the believability of witnesses who have
20 testified in this trial you may believe one witness
21 over many or many over one, you may believe a part
22 of the testimony of a witness and reject the
23 remaining part, you may believe the testimony of a
24 witness in its entirety or reject it in full, you
25 may consider whether the witness has an interest in

1 the result of the trial, whether the witness is
2 prejudiced toward either party, the opportunity for
3 the witness to have seen the matters and things
4 about which the witness may testify and the way the
5 witness acts on the witness stand.

6 Under the laws of this state a defendant may
7 be tried even if the defendant does not attend the
8 trial but the fact that the defendant is not
9 present may not be considered against the defendant
10 in any manner whatsoever by you. I further
11 instruct you that the fact the defendant in this
12 trial did not testify on his own behalf is not a
13 factor to be considered by you in any way in your
14 deliberations and in your consideration on the
15 question of guilt or innocence. In this regard a
16 defendant has the constitutional right to remain
17 silent and the exercise of this right must not be
18 considered by you in your deliberations. The fact
19 that the defendant did not testify should not even
20 be discussed in the jury room.

21 The burden of proof, as I have stated to you,
22 is on the State. The defendant has no obligation
23 to prove his innocence. The burden of proof
24 remains with the State to prove the defendant's
25 guilt beyond a reasonable doubt and the fact a

1 defendant did not testify is not a factor to be
2 considered by you in deciding the guilt or the
3 innocence of the defendant. When you consider the
4 whole case, if you have a reasonable doubt as to
5 the guilt or the innocence of the defendant, then
6 he is entitled to that reasonable doubt and would
7 be entitled to a verdict of not guilty.

8 However, if upon considering the whole case
9 you find that the State has proved by evidence
10 which satisfies you of the guilt of the defendant
11 beyond a reasonable doubt, then in such
12 circumstance it would equally be your duty to
13 convict the defendant and find him guilty.

14 Furthermore, the rules of evidence ordinarily
15 do not permit witnesses to testify regarding
16 opinions or conclusions. An exception to this rule
17 exists for witnesses we call expert witnesses. A
18 witness who by education and experience has become
19 an expert in some art, science or profession may
20 give an opinion as to the subject the witness
21 claims to be an expert in and may also give the
22 reasons for the opinion. You should consider an
23 expert opinion given by a witness and like any
24 other evidence give it the weight you think it
25 deserves. If you decide that an expert witness'

1 opinion is not based on sufficient evidence,
2 education and experience or if you decide that the
3 reasons given in support of the opinion are not
4 sound or that the opinion is outweighed by other
5 evidence you may disregard the opinion entirely.
6 An expert witness' testimony is to be given no
7 greater weight than that of any other witness
8 simply because the witness is an expert and you do
9 not have to accept an expert's opinion even though
10 it is uncontradicted.

11 In exercising your mental processes and
12 attempting to decide the truth the law simply
13 requires that you exercise your good judgment, your
14 common sense, your sense of logic and reason and
15 your experiences of life. You then apply all these
16 attributes to the evidence and apply the law as I
17 now state it to you and thus arrive at a verdict.

18 The defendant in this case is charged with
19 possession with intent to distribute cocaine base.
20 The State must prove beyond a reasonable doubt that
21 a defendant possessed cocaine base with the intent
22 to distribute it. To prove possession the State
23 must prove beyond a reasonable doubt that a
24 defendant had both the power and the intent to
25 control the disposition or use of the cocaine base.

1 Possession may be either actual or constructive.

2 Actual possession means that the cocaine base
3 was in the actual physical custody of the
4 defendant. Constructive possession means that the
5 defendant had dominion and control or the right to
6 exercise dominion or control over either the
7 cocaine base itself or the property on which the
8 cocaine base was found.

9 Mere presence at the scene where the drugs
10 were found is not enough to prove possession.
11 Actual knowledge of the presence of the cocaine
12 base is strong evidence of the defendant's intent
13 to control it's deposition or use. The defendant's
14 knowledge and possession may be inferred when a
15 substance is found on a property under the
16 defendant's control. However, this inference is
17 simply an evidentiary fact to be taken into
18 consideration by you along with the other evidence
19 in the case and to be given the weight you think it
20 should have. Two or more persons may have joint
21 possession of a drug.

22 The State must also prove beyond a reasonable
23 doubt that the defendant intended to distribute the
24 cocaine base. Distribute means to deliver other
25 than by administering or dispensing a drug. Intent

1 may be shown by acts and conduct of the defendant
2 and other circumstances from which you may
3 naturally or reasonably infer intent.

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

15 Possession of more than one or more grams of
16 cocaine base creates an inference that the
17 defendant possessed the cocaine base with the
18 intent to distribute it. This inference does not
19 relieve the State from proving beyond a reasonable
20 doubt that the defendant had the intent to
21 distribute it. It is simply an evidentiary fact to
22 be taken into consideration by you along with the
23 other evidence in the case and to be given the
24 weight you think it should have.

25 If you find that the State has failed to

1 prove beyond a reasonable doubt that the defendant
2 is guilty of possession with intent to distribute
3 cocaine base you may consider whether the State has
4 proved beyond a reasonable doubt that the defendant
5 is guilty of simple possession of cocaine base.
6 Simple possession does not require an intent to
7 distribute the cocaine base.

8 The defendant is also charged with possession
9 of ecstasy. The State must prove beyond a
10 reasonable doubt that the defendant knowingly or
11 intentionally possessed ecstasy. Knowingly means
12 with knowledge, consciously, not accidentally.
13 Intentionally means willfully, intending the result
14 which actually occurs, not accidentally or
15 involuntarily. Intent may be shown by acts and
16 conduct of the defendant and other circumstances
17 from which you may naturally and reasonably infer
18 intent.

19 To prove possession the State must prove
20 beyond a reasonable doubt that the defendant had
21 the power and the intent to control the disposition
22 or use of the ecstasy. Possession may be either
23 actual or constructive. Actual possession means
24 that the ecstasy was in the actual physical custody
25 of the defendant. Constructive possession means

1 that the defendant had dominion and control or the
2 right to exercise dominion or control over the
3 ecstasy itself or the property on which the ecstasy
4 was found.

5 Mere presence at the scene where the drugs
6 were found is not enough to prove possession.
7 Actual knowledge of the presence of the ecstasy is
8 strong evidence of the defendant's intent to
9 control its disposition or use. The defendant's
10 knowledge and possession may be inferred when a
11 substance is found on a property under the
12 defendant's control. However, this inference is
13 simply an evidentiary fact to be taken into
14 consideration by you along with the other evidence
15 in the case and to be given the weight you think it
16 deserves.

17 Two or more persons may have joint possession
18 of a drug. Possession of ecstasy is a crime unless
19 the ecstasy was obtained directly from or through a
20 valid prescription or order of a practitioner acting
21 in the course of professional practice. A
22 practitioner is a physician, dentist, veterinarian,
23 podiatrist, scientific investigator, pharmacy,
24 hospital or other person or institution licensed,
25 registered or otherwise permitted to distribute,

1 dispense, conduct research with respect to or
2 administer a controlled substance in the course of
3 professional practice or research in this state.

4 Ladies and gentlemen, I'm now drawing near
5 the end of my charge and I want you to clearly
6 understand you are not partisans or advocates for
7 the State or this defendant. You do not serve as
8 jurors to reward your friends or punish your
9 enemies. In this regard you have been selected by
10 both the State and this defendant to be fair and
11 impartial jurors. It is your duty by your joint
12 deliberations to determine the truth in this case,
13 giving to this defendant the benefit of every
14 reasonable doubt on each and every issue. Then to
15 the facts which you determine to be true you should
16 take and apply the law which has been given to you
17 by this Court and thus arrive at a verdict which
18 speaks the truth in this case. In fact the word
19 verdict, which has a Latin derivative, means a true
20 saying. When you have accomplished this
21 responsibility you will have satisfied your oath as
22 jurors and you will have discharged your duty to
23 this Court.

24 Mr. Bailiff, would you hand the foreman this
25 verdict form, please, sir.

1 Now, Mr. Foreman, I have handed you the
2 verdict form. When you arrive at a verdict in this
3 case you will write your verdict on the verdict
4 form for the charges. If the State has failed to
5 prove the guilt of this defendant beyond a
6 reasonable doubt your verdict of course will be two
7 words, not guilty. However, should the State have
8 proved their case against the defendant beyond a
9 reasonable doubt then your verdict would be one
10 word, guilty.

11 Mr. Foreman, once a decision has been made
12 check whichever choice is your verdict. Also
13 please understand that the verdict that you render
14 in this case must be the verdict of each and every
15 juror, it must be your unanimous verdict, all
16 twelve jurors must agree on the verdict which you
17 as the foreman are to write for the jury.

18 Mr. Foreman and members of the jury I want
19 you to further understand that the order in which
20 the choices of verdict appear on the verdict form
21 are not suggestive of any verdict on the part of
22 this Court. The verdict in this case is to be
23 determined by you and not the Court. Furthermore,
24 ladies and gentlemen, please understand that even
25 though I have given the verdict form to the

1 foreman, it is not his verdict alone. It is the
2 verdict of all twelve of you and I emphasize again
3 it must be unanimous.

4 In a moment you will retire to the jury room.
5 However, I would ask that you do not begin your
6 deliberations until you are told to do so. The law
7 requires that I now consult with the attorneys
8 about this charge. After I have done so the
9 bailiff will bring in the items of evidence and
10 instruct you to begin your deliberations.

11 Also, should you have any questions during
12 your deliberations you must put them in writing and
13 send them to me by the bailiff. A court bailiff
14 will be placed immediately outside the jury room
15 door to provide security and assistance for you
16 during your deliberations. Once you have reached
17 your verdict please knock on the jury room door and
18 ask the bailiff to advise the Court that you have
19 reached a verdict and we will return you to the
20 courtroom as promptly as possible.

21 Thank you and you may retire to the jury room
22 but, again, do not begin your deliberations until
23 you have been advised to do so.

24 All right.

25 (The jury was excused from the courtroom at

1 3:10 p.m.).

2 THE COURT: All right, did I mess it up,

3 Solicitor?

4 MR. OZMENT: No problem from the State, Your

5 Honor.

6 THE COURT: Any objection from the State?

7 MR. OZMENT: No.

8 THE COURT: How about you, Mr. Meetze?

9 MR. MEETZE: None, Your HOnor.

10 THE COURT: Do you all want to take a look, I

11 think there are five items in evidence, and see if

12 they are in order?

13 All right, Solicitor, is everything proper?

14 MR. OZMENT: It looks fine to me.

15 THE COURT: How about you, Mr. Meetze?

16 MR. MEETZE: It all looks in order.

17 THE COURT: All right, Mr. Bailiff, if you

18 will send everything back, bring the alternate out

19 and tell them to begin.

20 (The evidence and verdictor form were

21 delivered to the jury at 3:11 p.m.).

22 (Alternate juror excused).

23 THE COURT: Let's take a little break.

24 (Recessed at 3:12 p.m.).

25 (Resumed at 4:35 p.m.).

1 THE COURT: You can bring in the jury.

2 (The jury returned to the courtroom).

3 THE COURT: Mr. Foreman, have you reached a
4 verdict?

5 JUROR: Yes, sir.

6 THE COURT: If you will, hand the verdict
7 form to the bailiff.

8 Madam Clerk, publish the verdict.

9 THE CLERK: Indictment 2009-GS-33-106, State
10 of South Carolina, County of Marion versus Darrell
11 Lee Birch, defendant. As to the charge of
12 possession with intent to distribute cocaine base
13 we the jury unanimously find the defendant Darrell
14 Lee Birch guilty.

15 As to the charge of possession of ecstasy we
16 the jury unanimously find the defendant Darrell Lee
17 Birch guilty.

18 Dated 11/30/2011, Marvin K. Fielder,
19 foreperson.

20 Is that your verdict, say you all?

21 JURORS: Yes.

22 THE CLERK: Thank you.

23 THE COURT: Any need for further polling, Mr.
24 Meetze?

25 MR. MEETZE: No, Your Honor.

1 THE COURT: Members of the jury I want to
2 thank you for doing your job. You have completed
3 your job, you have been on time, you have been
4 attentive, you have done what you're supposed to
5 do. You have earned a three year exemption from
6 further jury service and we're going to excuse you
7 for today. You will need to call back after 6:00
8 just to see if by chance there is anything further
9 we need to do this week. I want you to understand
10 later on maybe this week or next week you're going
11 to get a check from Marion County.

12 JUROR: Wow.

13 THE COURT: You're saying that now. Wait
14 until you see it. I want you to be assured that I
15 did not set the amount of money that is on your
16 check but I thank all of you all and you're
17 excused. If everybody else would remain seated,
18 the jury is excused.

19 (The jury was excused from the courtroom).

20 THE COURT: Any motions from the defense?

21 MR. MEETZE: Your Honor, at this point I
22 renew all my previous motions and make a motion for
23 new trial based on the evidence not being
24 sufficient to sustain a verdict.

25 THE COURT: Thank you very much. I deny

1 those motions.

2 MR. MEETZE: Thank you, Your Honor.

3 (Hearing concluded at 4:45 p.m.).

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

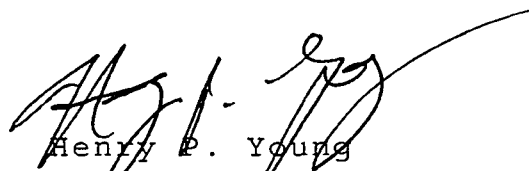
24

25

1
2
3
4 I, the undersigned Henry P. Young, Official
5 Court Reporter for the Eighth Judicial Circuit of
6 the State of South Carolina, do hereby certify that
7 the foregoing is a true, accurate, and complete
8 transcript of record of all the proceedings had and
9 evidence introduced in the trial of the captioned
10 case in the Circuit Court for Marion County, South
11 Carolina, on the 28th, 29th and 30th days of
12 November, 2011.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

15 December 17, 2012
16
17

18 
19 Henry P. Young
20 Court Reporter
21
22
23
24
25

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE	)	2009-GS-33-0106
	)	
	)	
	)	
State of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Darrell Lee Birch	)	)
DEFENDANT	)	October 17, 2012
		Florence, South Carolina

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE.

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

JOHN JEPERTINGER, DEPUTY SOLICITOR
Attorney for the State

VICK MEETZE, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KESHIA REED

Official Court Reporter

I N D E X

(WHEREUPON, there were no witnesses called.)

1 MR. JEPERTINGER: If it please the Court, Your
2 Honor, on November 30th 2011, Mr. Darrell Lee Birch was
3 found guilty at trial in Marion County on indictment
4 number 2009-GS-33-106. Your Honor, you were the trial
5 judge. Mr. Meetze was the defense attorney. And the
6 defendant is here present today, Your Honor. We are in
7 Florence County. The defendant did execute a waiver of
8 venues and so did Mr. Meetze with today's appropriate
9 dates, Your Honor. And we're ready to receive the Court's
10 reading of the sentence. And I believe the clerk of court
11 for Marion is present, Your Honor.

12 THE COURT: In reference to indictment, case
13 number 09-33-106, Darrell Lee Birch, the sentence of the
14 Court is that the defendant is committed to the state
15 department of corrections for a term of 30 days. And in
16 reference to 09-GS-33-106, the defendant is committed to
17 the state department of corrections for a term of one year
18 and those both will run consecutive.

19 MR. JEPERTINGER: Was it 30 days, Your Honor?

20 THE COURT: Thirty years, I'm sorry, big
21 difference and one year and they are consecutive.

22 MR. MEETZE: Your Honor, at this time we would
23 make a motion and I believe is the first we ask to be
24 heard as well. We would ask the Court to reconsider that
25 sentence. And I think Mr. Birch again wish to address the

1 Court with regards to that.

2 THE COURT: All right, Mr. Birch.

3 THE DEFENDANT: I would like for the sentence to
4 be postponed and the conviction overturn due to the fact
5 that I was deprived of my right to be present at important
6 stages of my trial. I was deprived of my right to
7 represent myself. I was deprived of my right of adequate
8 assistance by counselor. I was deprived of my right under
9 the Fifth Amendment of a fair and fundamental trial. I
10 was deprived of my rights of a preliminary hearing within
11 the due process of fundamental fairness at trial within
12 the Fourteenth Amendment also. And I was deprived of my
13 right to my retain lawyer being present at the time. I
14 was deprived of a continuance rights to present due
15 diligent evidence that I tried to present to the Court
16 that I had a retained lawyer. And I would ask for the
17 conviction to be overturned and the sentence set aside
18 after that, Your Honor.

19 THE COURT: All right, those motions are denied.

20 MR. MEETZE: Your Honor, lastly with regards to
21 the trial, we would make a motion at this time for a new
22 trial pursuant to the evidence submitted not being
23 sufficient to support the verdict.

24 THE COURT: Thank you very much the motion is
25 denied.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. JEPERTINGER: Thank you so much.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

I, Keshia Reed, Court Reporter and Notary Public in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed pages, numbered 1 through 6, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of General Sessions for Florence County, South Carolina, on the 17th day of October, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 5th day of January 2013.

Keshia Reed
Keshia Reed, Court Reporter

MCDU

D/O: 11-24-2008;12-03-2008

J965846 (1); J965844 (2); J965847 (3);

J965845 (4).

True Bill

Brida M. Hawn 5/14/09
Foreman of Grand Jury

Foreman of Petit Jury

Date:

COURT OF GENERAL SESSIONS

MAY TERM 2009

THE STATE
vs.

DARRELL LEE BIRCH

Indictment for UNLAWFUL DRUGS

A CERTIFIED COPY OF THE
ORIGINAL FILED IN THE OFFICE

7003	PAGE
------	------

BOOK _____ PAGE _____

FILED

2009 MAY 15 A 9:18

CLERK OF COURT
STERRY R. RHODES
HAYWARD COUNTY SUPERIOR COURT

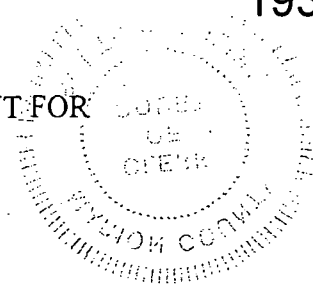
192
Shelby R. Rhodes
CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

192

INDICTMENT FOR

STATE OF SOUTH CAROLINA)
COUNTY OF MARION)

UNLAWFUL DRUGS



At a Court of General Sessions, convened on MAY 14, 2009, the Grand Jurors of MARION

County present upon their oath:

✓ **COUNT ONE - POSSESSION OF COCAINE BASE WITH INTENT TO DISTRIBUTE 2ND**

That DARRELL LEE BIRCH did in MARION County on or about December 03, 2008, violate Section 44-53-0375(B)(2) of the Code of Laws of South Carolina (1976), as amended, in that he did knowingly and intentionally possess with intent to distribute a quantity of cocaine base, a controlled substance; such possession not having been authorized by law.

COUNT TWO - DISTRIBUTION OF COCAINE BASE, 2ND

That DARRELL LEE BIRCH did in MARION County on or about November 24, 2008, violate Section 44-53-0375(B)(2) of the Code of Laws of South Carolina (1976), as amended, in that he did distribute to a confidential informant of the Marion County Combined Drug Unit, a quantity of cocaine base, a controlled substance; such distribution not having been authorized by law.

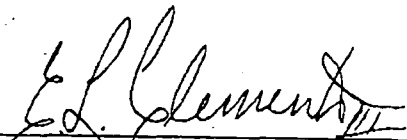
✓ **COUNT THREE - POSSESSION OF ECSTASY 2ND**

That DARRELL LEE BIRCH did in MARION County on or about December 03, 2008, violate Section 44-53-0370(d)(2) of the Code of Laws of South Carolina (1976), as amended, in that he did knowingly and intentionally possess a quantity of methylenedioxymethamphetamine, a.k.a ecstasy, a controlled substance; such possession not having been authorized by law.

**COUNT FOUR - DISTRIBUTION OF COCAINE BASE
WITHIN PROXIMITY OF A SCHOOL OR PARK**

That DARRELL LEE BIRCH did in MARION County on or about November 24, 2008, violate Section 44-53-445(B)(2) of the Code of Laws of South Carolina (1976), as amended, in that he did distribute to a confidential informant of the Marion County Combined Drug Unit, a quantity of cocaine base, a controlled substance; such distribution having occurred within one-half mile of a school or park, to-wit: Johnakin Middle School.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

194
STATE OF SOUTH CAROLINA)
COUNTY OF Marion)
STATE VS.)
DARRELL LEE BIRCH)
AKA:)
Race: 2 Sex: Age: 26)
DOB: SS#:)
Address:)
City, State, Zip: FLORENCE, SC 29506)
DL#: SID#:)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Drugs / Manufacture, distribution, etc. cocaine base, 2nd offense

IN THE COURT OF GENERAL SESSIONS
65-33
INDICTMENT/CASE#: 09- 106
A/W#: J965846
Date of Offense: 12/3/2008
S.C. Code § : 44-53-0375(B)(2)
CDR Code #: 3015

SENTENCE SHEET

in violation of § 44-53-0375(B)(2) of the S.C. Code of Laws, bearing CDR Code # 3015
☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Mya 80072 Lee Ma Ta 15771
Reporting Officer, John C. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: today
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$
TOTAL		\$ <u>123.90</u>

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____
BOOK _____ PAGE _____
Sherry R. Rhodes
CLERK OF COURT, MARION COUNTY
☐ Appointed PD or appointed on South Carolina
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Sherry R. Rhodes
Court Reporter: Krista Reed
Presiding Judge 2157
Judge Code: 2157
Sentence Date: 11-30-2011

STATE OF SOUTH CAROLINA

COUNTY OF Marion
STATE VS.DARRELL LEE BIRCH

AKA: _____

Race: 2 Sex: _____ Age: 26

DOB: _____ SS#: _____

Address: _____

City, State, Zip: FLORENCE, SC 29506

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Drugs / Poss. of other controlled sub. in Sched. I to V - 2nd or sub. offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: GS-33
09- 106A/W#: J965847Date of Offense: 12/3/2008S.C. Code § : 44-53-0370(d)(2)CDR Code #: 0180

SENTENCE SHEET

in violation of § 44-53-0370(d)(2) of the S.C. Code of Laws, bearing CDR Code # 0180☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: John C. Jeppertinger SC Bar# 80072 Defendant Look Mota SC Bar# 15871
Ozment M. HattenWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: today
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine: _____

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Keshia Reed

SCCA 217 (02/2011)

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: BOOK PAGECLERK OF COURT, MARION COUNTY
SOUTH CAROLINA☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2157Sentence Date: 11-30-2011

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 20th, 2014



Carmen V. Ganjehsani
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT