

21723

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HENRY OLIVER NESBIT, JR.,

APPELLANT

APPELLATE CASE NO. 2014-001231

RECORD ON APPEAL

ROBERT M. PACHAK
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

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

Attorneys for Respondent

ANDERS
NO DEF. BRIEF
No Respondent's Brief Filed
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1 STATE OF SOUTH CAROLINA)
) Court of General Sessions
 2 COUNTY OF CHARLESTON) Case Nos. 2013-GS-10-05527
) 2013-GS-10-05634
 3 _____) 2013-GS-10-05639
)
 4 STATE OF SOUTH CAROLINA)
)
 5 vs.) Transcript of Record
)
 6 HENRY NESBIT,)
)
 7 Defendant.)
)
 8 _____) DATE: May 5 through May 7, 2014

9
10 B E F O R E:

11 The Honorable Deadra L. Jefferson

12
13 A P P E A R A N C E:

14 Lauren Mulkey and Stephanie Linder
 For the State of South Carolina

15 Melissa Gay and Michael Nelson
 For the Defendant

17
 18 Karen V. Andersen, RMR, CRR
 Circuit Court Reporter

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1 THE COURT: Does the defendant wish to have a
2 formal arraignment?

3 MS. GAY: He wants a formal arraignment, Your
4 Honor.

5 THE COURT: Ladies and gentlemen, we appreciate
6 your patience. This will be the last jury that we select
7 probably for the week, absent something really unusual
8 happening. We are going to select this jury, and then we
9 will have you call in after 6. But in all likelihood, those
10 who are not selected for this panel will be excused for the
11 week. That's why we are working a little bit later than
12 usual instead of having you go to lunch and having you come
13 back to the courthouse for jury selection, so that once we
14 are done, we will be able to give those instructions to
15 those remaining for this panel and then allow y'all to go
16 for the remainder of the day.

17 Again, we appreciate your patience. We do not take
18 your time for granted. During this time, we've selected a
19 jury and also disposed of three other cases that were
20 pending on the roster, which has significantly reduced the
21 time that you will be required to be at the courthouse this
22 week. Jury service is the only time while you are waiting
23 that you are actually working. So, again, we appreciate
24 your patience as we go through this process.

25 Sir, if you would stand, please, for the formal

1 arraignment.

2 You may proceed when you are ready.

3 THE CLERK: Case No. 2013-GS-10-5527, the State of
4 South Carolina vs. Henry Oliver Nesbit, Jr., indictment for
5 failure to stop for a blue light, in the court of general
6 sessions, convening on September 9th, 2013. The Grand
7 Jurors of Charleston County present upon their oath that in
8 Charleston County, South Carolina, on or about June 16th,
9 2013, the defendant, Henry Oliver Nesbit, Jr., while driving
10 a motor vehicle on the road, street or highway of the state,
11 knowingly, willfully, intentionally, and in absence of
12 mitigating circumstances, failed to stop for a law
13 enforcement vehicle after being signaled by a flashing light
14 and/or siren to do so, all in violation of Section 56-5-750
15 of the South Carolina Code of Laws, 1976 as amended.

16 How say you; are you guilty or not guilty?

17 THE DEFENDANT: Not guilty.

18 THE COURT: Case No. 2013-GS-10-5634, the State of
19 South Carolina vs. Henry Oliver Nesbit, Jr., indictment for
20 trafficking in cocaine, in a court of general sessions,
21 convening on September 9th, 2014, the Grand Jurors of
22 Charleston County present upon their oath that in Charleston
23 County, South Carolina, on or about June 16th, 2013, the
24 defendant, Henry Oliver Nesbit, Jr., unlawfully and
25 knowingly did sell, manufacture, cultivate, deliver,

1 purchase, or bring to this state, or did provide financial
2 assistance, or otherwise aid, abet, attempt or conspire to
3 sell, manufacture, cultivate, deliver, purchase or bring
4 into this state, or did possess or attempt to possess a
5 controlled substance or a controlled substance analog, to
6 wit, cocaine, in excess of 10 grams, in violation of
7 44-53-370 of the South Carolina Code of Laws, 1976 as
8 amended.

9 How say you; are you guilty or not guilty?

10 THE DEFENDANT: Not guilty.

11 THE COURT: Case No. 2013-GS-10-5639, the State of
12 South Carolina vs. Henry Oliver Nesbit, Jr., indictment for
13 possession with intent to distribute methyllone, bath salts,
14 at a court of general sessions, convened on September 9th,
15 2013, the grand jurors of Charleston County present upon
16 their oath that in Charleston County, South Carolina, on or
17 about June 16th, 2013, the defendant, Henry Oliver Nesbit,
18 Jr., did manufacture, distribute, dispense, deliver,
19 purchase, or did aid, abet, attempt or conspire to
20 manufacture, distribute, dispense, deliver or purchase, or
21 did possess with the intent to manufacture, distribute,
22 dispense, deliver, or purchase a controlled substance or a
23 controlled substance analog, to wit, methyllone, in violation
24 of 44-53-370 of the South Carolina Code of Laws, 1976 as
25 amended.

1 How say you; are you guilty or not guilty?

2 THE DEFENDANT: Not guilty.

3 THE COURT: How will you be tried; by God and
4 country?

5 THE DEFENDANT: Yes.

6 THE COURT: May they send you a true deliverance.
7 Are you ready for trial?

8 THE DEFENDANT: Yes, sir.

9 THE CLERK: Thank you.

10 THE COURT: Ladies and gentlemen, we are going to
11 go through a process that is called voir dire, where I'm
12 going to ask you some questions so that the attorneys can
13 more effectively exercise their preemptory challenges in
14 jury selection. If a question applies to you, please stand,
15 and in a loud and clear voice, give us your name, your juror
16 number, and an answer to the question, if applicable, and
17 remain standing until the Court has completed questioning
18 you.

19 Before we begin that process, I'm going to have
20 counsel for the State to introduce themselves, anyone who
21 will be assisting her in the trial of this case, and tell us
22 the names of the lawyers in her office. And counsel for the
23 defense will have her client stand and face the panel and
24 provide us with the same information.

25 You may proceed, Ms. Linder.

1 MS. MULKEY: My name is Lauren Mulkey. Assisting
2 me in this trial is Stephanie Linder. You will see my
3 Investigator, Jack Scarborough, coming in during the trial.

4 Also in our office we have Shannon Elliott, Debbie
5 Herring-Lash, Drew Evans, Jessica Baldwin, Chris Lietzow,
6 Emmanuel Ferguson, Tyler Whitaker, Kelley Young, Alex
7 Ziegler, Jim Stack, Richard Waring, David Osborne, Lindsey
8 Byrd, Jennifer McCoy, Jennifer Shealy, Jenna Newman, Nick
9 Lewis, Nina Savas, Ted Corvey, Amy Harrell, Timmy Finch,
10 Chad Simpson, Culver Kidd, Tod Williams, Greg Voigt, Marian
11 Askins, Ran Stoney, Kelly LaPlante, Burns Wetmore, our
12 elected official, Scarlett Wilson, and her deputy, Bruce
13 Durant.

14 THE COURT: Ms. Gay.

15 MS. GAY: Thank you, Your Honor. My name is
16 Melissa Gay. I'm from the Charleston Bar. This is my
17 client, Henry Nesbit. I will be assisted by another
18 attorney, Michael Nelson. He's not here today, but he will
19 be here tomorrow when the trial starts.

20 THE COURT: Thank you. Again, ladies and
21 gentlemen, if a question applies to you, please stand and in
22 a loud and clear voice, give us your name, juror number, and
23 answer to the question, if applicable, and remain standing
24 until the Court has completed questioning you.

25 Is there any member of the panel related by blood

1 or marriage to Henry Oliver Nesbit, Jr.? If so, please
2 stand at this time.

3 (No response from the jury.)

4 THE COURT: Does any member of the panel have a
5 close, personal, social, or business relationship with Henry
6 Oliver Nesbit, Jr.? If so, please stand.

7 (No response from the Jury.)

8 THE COURT: The following are a list of potential
9 witnesses. Please listen carefully: Gerardo Chavez, Erin
10 Meyer, Thomas Buchanan, Brian Hodge, Kathy Kjellman, Mark
11 Watson, Jason Riley, Steven Balzano, Paul McManigal, Michael
12 Gurrieri, Herman Martin, Renee Hilton, Ashley Earl, Susan
13 Payne, all of the Charleston County Sheriff's Office;
14 Officer Ambras, A-m-b-a-s, and Thomas Buckhannon, III, of
15 the Isle of Palms Police Department, and Mark Willhoft.

16 Is there any member of the panel related by blood
17 or marriage to any of the people that I've just listed, or
18 does anyone have a close, personal, or social relationship
19 with any of these individuals? If so, please stand at this
20 time.

21 (No response from the Jury.)

22 THE COURT: Has any member of the panel ever been
23 represented by any of the attorneys in this case or any of
24 the attorneys in their offices? If so, please stand at this
25 time.

1 (No response from the Jury.)

2 THE COURT: Is there any member of the panel
3 related by blood or marriage to or have a close personal or
4 social relationship with any of the attorneys involved in
5 this case or any of the lawyers who practice in their law
6 office or offices or anyone who is employed in their
7 offices? If so, please stand at this time.

8 (No response from the Jury.)

9 THE COURT: Has any member of the panel formed or
10 expressed an opinion about any issue or matter involved in
11 this case? If so, please stand at this time.

12 (No response from the Jury.)

13 THE COURT: Is there any member of the panel aware
14 of any bias or prejudice toward either the State or the
15 defense in this case? If so, please stand at this time.

16 (No response from the Jury.)

17 THE COURT: Is there any member of the panel -- is
18 there any member of the panel that was a member of the Grand
19 Jury which issued the indictments in this case? If so,
20 please stand at this time.

21 (No response from the Jury.)

22 THE COURT: Is any member of the panel a member of
23 or contributor to any group which has as its primary concern
24 the promotion of law enforcement or victims' rights? These
25 groups would include, but are not limited to, Mothers

1 Against Drunk Driving, Students Against Drunk Driving,
2 Citizens Against Violent Crime, People Against Rape,
3 Citizens Advocating the Return to Decency and Ethics,
4 Parents Empowered to Save Teens, or any type of community
5 watch group? If so, please stand at this time.

6 (No response from the jury.)

7 THE COURT: Is there any member of the panel who
8 has a moral, philosophical, or religious opposition to
9 sitting in judgment of a fellow human being? If so, please
10 stand at this time.

11 (No response from the jury.)

12 THE COURT: Is there any member of the panel who
13 has a moral, philosophical, or religious opposition to the
14 use of illegal substances, such that it impairs your ability
15 to be fair and impartial? If so, please stand at this time.

16 (No response from the jury.)

17 THE COURT: Is there any member of the panel who
18 holds the belief that certain substances should be
19 legalized? If so, please stand at this time.

20 (No response from the jury.)

21 THE COURT: Is there any member of the panel who
22 has any relatives who are employed in law enforcement? If
23 so, please stand at this time.

24 Tell me your name and juror number and which family
25 member and which agency.

1 PROSPECTIVE JUROR: John Hull, 166. My daughter is
2 a probation officer in Lakewood, Colorado. And my
3 son-in-law is a sheriff's deputy in Lakewood, Colorado.

4 THE COURT: Thank you

5 PROSPECTIVE JUROR: My son is -- you want the name?

6 THE COURT: Your name and juror number.

7 PROSPECTIVE JUROR: My name is Tammy Buehner. And
8 my number is 31.

9 THE COURT: And your son is employed with who?

10 PROSPECTIVE JUROR: He works for the Mount Pleasant
11 Police Department.

12 PROSPECTIVE JUROR: Miranda Jones, my number is
13 183. And my stepmother is a North Charleston police
14 officer.

15 PROSPECTIVE JUROR: Carol Kelly, Juror No. 190. I
16 have a stepson who is a New York State trooper, and a step
17 son-in-law who is a captain with the New York State police.

18 THE COURT: As a result of these experiences, do
19 you all feel that you can remain fair and impartial and
20 render a fair and impartial decision in this case based
21 solely on the evidence as it will be presented and on the
22 laws as the Court will instruct? If the answer is yes,
23 please take your seat.

24 The record should reflect that all answered yes
25 with the exception of No. 31 who will be excused. Ma'am,

1 did you stay standing or did you remain seated to tell me
2 yes?

3 PROSPECTIVE JUROR: I said yes when I should have
4 sat down.

5 THE COURT: Okay. Thank you. Let the record
6 reflect all jurors answered yes.

7 Is there any member of the panel who has been
8 formerly employed in any type of activities involving
9 addiction to substances? If so, please stand at this time.

10 (No response from the jury.)

11 THE COURT: Is there any member of the panel who
12 lives in the vicinity of Ocean Boulevard on the Isle of
13 Palms? If so, please stand at this time.

14 (No response from the jury.)

15 THE COURT: Does any member -- has any member of
16 the panel read, watched, or listened to any media accounts
17 about this case? That includes anything that could have
18 been on the radio, on the television, in the newspaper, or
19 on the Internet? If so, please stand at this time.

20 (No response from the jury.)

21 THE COURT: Is there any member of the panel who
22 has ever been the victim of a violent crime? If so, please
23 stand at this time.

24 (No response from the jury.)

25 THE COURT: Does any member of the panel know of

1 any reason whatsoever why he or she should not serve as
2 juror in this case, with particular emphasis being placed on
3 your ability to be fair and impartial to both the State and
4 the defense? If so, please stand at this time.

5 (No response from the jury.)

6 THE COURT: Strikes will be 5 and 5. I would ask
7 that you give the clerk your attention.

8 Ladies and gentlemen, if your name is called,
9 please come forward with all of your personal belongings.
10 You will either be seated as a juror or excused as a juror.

11 The bailiff is going to show you where you are to
12 go, bring all your personal belongings if your name is
13 called. Thank you very much for your patience and your
14 attention.

15 Mike, you may proceed when you are ready.

16 THE CLERK: If I call your name, gather your
17 belongings, come up to the podium, turn and face the
18 parties.

19 Juror No. 180, Anna Jones.

20 Strikes are?

21 THE COURT: 5 and 5.

22 THE CLERK: What say you for the State?

23 MS. MULKEY: Please seat this juror.

24 THE CLERK: What say you for the defendant?

25 MS. GAY: One moment please. Please seat the juror

1 for the trial of this case.

2 THE CLERK: Ms. Jones, please have a seat in the
3 jury box. You've been selected as a juror in this case.

4 Juror No. 64, Dale Davis.

5 MS. MULKEY: Please present this juror.

6 THE CLERK: What say you for the defendant?

7 MS. GAY: Please seat the juror for the trial of
8 this case.

9 THE CLERK: Mr. Davis, if you will make your way to
10 the jury box, you've been selected as a juror in the trial
11 of this case.

12 Juror No. 73, James Dearman.

13 What say you for the State?

14 MS. MULKEY: Beg the Court's indulgence. Please
15 present this juror.

16 THE CLERK: What say you for the defendant?

17 MS. GAY: One moment, please. Please seat the
18 juror for the trial of this case.

19 THE CLERK: If you will make your way to the jury
20 box, you've been selected as a juror in the trial of this
21 case.

22 Juror No. 254, Kyle Novak.

23 What say you for the State?

24 MS. MULKEY: Please present this juror.

25 THE CLERK: What say you for the defendant?

1 MS. GAY: Please excuse the juror for the trial of
2 this case.

3 THE CLERK: If you will make your way back to your
4 seat. You've been excused as a juror for this case.

5 Juror No. 356, Janice Underwood.

6 What say you for the State?

7 MS. MULKEY: Please present this juror.

8 THE CLERK: What say you for the defendant?

9 MS. GAY: Please seat the juror.

10 THE CLERK: If you will make your way to the jury
11 box, you've been selected as a juror in the trial of this
12 case.

13 Juror number 74, Carolyn Dent.

14 What say you for the State?

15 MS. MULKEY: Please present this juror.

16 THE CLERK: What say you for the defendant?

17 MS. GAY: Please seat the juror.

18 THE CLERK: If you will make your way to the jury
19 box, you've been selected as a juror in the trial of this
20 case.

21 Juror No. 230, Carolyn McNeal.

22 What say you for the State?

23 MS. MULKEY: Please present this juror.

24 THE CLERK: What say you for the defendant?

25 MS. GAY: Please seat the juror.

1 THE CLERK: If you will make your way to the jury
2 box, you've been selected as a juror in the trial of this
3 case.

4 Juror No. 167, Katie Hurst.

5 What say you for the State?

6 MS. MULKEY: Please present this juror.

7 THE CLERK: What say you for the defendant?

8 MS. GAY: Please seat the juror for the trial in
9 this case.

10 THE CLERK: If you will make your way to the jury
11 box, you've been selected as a juror in the trial of this
12 case.

13 Juror No. 190, Carol Kelly.

14 What say you for the State?

15 MS. MULKEY: Please present this juror.

16 THE CLERK: What say you for the defendant?

17 MS. GAY: Please excuse the juror.

18 THE CLERK: Please have a seat back in the
19 audience, you've been excused for the trial of this case.

20 Juror No. 387, Harry Williams.

21 What say you for the State?

22 MS. MULKEY: Please present this juror.

23 THE CLERK: What say you for the defendant?

24 MS. GAY: One moment please. Please seat the juror
25 for the trial of this case.

1 THE CLERK: If you will make your way to the jury
2 box, you've been selected as a juror in the trial of this
3 case.

4 Juror No. 177, Gloria Jenkins.

5 What say you for the State?

6 MS. MULKEY: Please present this juror.

7 THE CLERK: What say you for the defendant?

8 MS. GAY: Please seat the juror.

9 THE CLERK: If you will make your way to the jury
10 box, you've been selected as a juror in the trial of this
11 case.

12 THE CLERK: Juror No. 22, Daniel Brinton.

13 What say you for the State?

14 MS. MULKEY: Please present this juror.

15 THE CLERK: What say you for the defendant?

16 MS. GAY: Hold on a sec'. Please excuse the
17 juror.

18 THE CLERK: Please have a seat back in the
19 audience. You've been excused from the trial of this case.

20 Juror No. 14, Maria Becker.

21 What say you for the State?

22 MS. MULKEY: Please present this juror.

23 THE CLERK: What say you for the defendant?

24 MS. GAY: Please seat the juror for the trial of
25 this case.

1 THE CLERK: If you will make your way to the jury
2 box, you've been selected as a juror in the trial of this
3 case.

4 Juror No. 111, Darryl Geriner.

5 What say you for the State?

6 MS. MULKEY: Beg the Court's indulgence. Please
7 excuse this juror.

8 THE CLERK: If you will make your way back to your
9 seat. You've been excused as a juror for this case.

10 Juror No. 372, Jo Ward.

11 What say you for the State?

12 MS. MULKEY: Please present this juror.

13 THE CLERK: What say you for the defendant?

14 MS. GAY: One moment please. Please seat the
15 juror.

16 THE CLERK: If you will make your way to the jury
17 box, you've been selected as a juror in the trial of this
18 case.

19 174, Yolanda Jefferson.

20 What say you for the State?

21 MS. MULKEY: Please present this juror.

22 THE CLERK: What say you for the defendant?

23 MS. GAY: Please seat the juror for the trial of
24 this case.

25 THE CLERK: If you will make your way to the jury

1 box, you've been selected as a juror in the trial of this
2 case.

3 THE COURT: One alternate; strikes will be 1 and 2.

4 THE CLERK: Juror No. 282, Toni Richardson.

5 What say you for the State?

6 MS. MULKEY: Please excuse the juror.

7 THE CLERK: Ms. Richardson, please have a seat back
8 in the audience. You've been excused from the trial of this
9 case.

10 Juror No. 88, Jonathan Ellington.

11 Any challenge from the State?

12 MS. MULKEY: No, please present this juror.

13 THE CLERK: What say you for the defendant?

14 MS. GAY: One second. Please excuse the juror from
15 the trial of this case.

16 THE CLERK: Mr. Ellington, please have a seat back
17 in the audience. You've been excused from the trial of this
18 case.

19 Juror No. 323, Steven Simmons.

20 Any challenge from the State?

21 MS. MULKEY: No.

22 THE COURT: What say you for the defendant?

23 MS. GAY: Please excuse the juror.

24 THE CLERK: If you will make your way back to your
25 seat. You've been excused as a juror for this case.

1 THE CLERK: 249, Rhonda Myers.

2 Any challenge from the State?

3 MS. MULKEY: No.

4 THE COURT: Any challenge from the defendant?

5 MS. GAY: No.

6 THE CLERK: If you will make your way to the jury
7 box, you've been selected as a juror in the trial of this
8 case.

9 Your Honor, the jury has been selected and seated.

10 THE COURT: Any motions regarding the selection of
11 the jury from the State?

12 MS. MULKEY: None from the State, Your Honor.

13 THE COURT: From the defense?

14 MS. GAY: One second, please. Let me just discuss
15 it with him for just a half a second.

16 We have nothing, Your Honor, from the defense.

17 THE COURT: Ladies and gentlemen, you are excused
18 for the remainder of the day. I just need you to call the
19 jury information line after six o'clock this evening. As
20 I've already stated, this was the last criminal trial, I
21 believe, that we will have for selection on this docket for
22 the week. But, again, out of abundance of caution, we need
23 you to call back after six o'clock this evening, and we
24 might have you call back after six o'clock on Tuesday
25 evening. But in all likelihood, this will be the last case

1 that we select. But in any event, the message will let you
2 know whether we need you. And if we don't need you, you
3 will be able to go about your activities as you normally
4 would.

5 Again, we appreciate your patience. Hope you have
6 a wonderful day. You are excused for the remainder of the
7 day. Call back after six o'clock this evening for further
8 instructions.

9 (Whereupon, prospective jurors leave.)

10 THE COURT: Ladies and gentlemen, you've been
11 selected for the case of State of South Carolina vs. Henry
12 Oliver Nesbit, Jr. We are going to send you home for the
13 remainder of the day. There's a case that I'm going to try
14 this afternoon after lunch. The next 40 minutes we are
15 going to start that case.

16 We don't have what are called dates certains. We
17 try cases on a rolling basis, which means when I finish the
18 case that's ahead of you, we will call you in to the trial
19 of this case. We anticipate that case will take a day and a
20 half, two days to conclude. And then we will begin your
21 case probably on Wednesday. And we anticipate we will
22 conclude that case on Thursday. As I've already explained,
23 Friday is a state holiday. So if we run into some
24 difficulty where we will not be able to complete the case,
25 we will let you know.

1 When you return to the courthouse, you will return
2 directly to your jury room. The bailiffs are going to show
3 you how to do that. Also, before you leave, we will need
4 all of your cell phone numbers so that in the event we need
5 to contact you outside of the jury call-back system. When
6 you call into the jury line, I will need you to call each
7 evening after six o'clock. And the only recording you need
8 to listen to is for Judge Jefferson's jury. That's it. Do
9 not pay attention to any other recording, only Judge
10 Jefferson's jury. Okay? That's the only message that will
11 be applicable to you.

12 But we still need your phone numbers because I will
13 probably have the staff call you in any event as well, just
14 to make sure everybody is clear on what the instructions
15 are. So if you could, as the bailiffs show you how you are
16 going to re-enter the courtroom, I mean, the courthouse,
17 when we resume the trial of this case, they will collect
18 those numbers from you as you exit. So, again, we
19 appreciate your patience.

20 It's been a typical Monday, probably a little
21 atypical Monday because normally we try to get this done
22 about 12:30, 1:00. As I've already explained, jury service
23 is the only service where you could be waiting and be very
24 efficient for us, because we disposed of four cases this
25 morning before jury selection. So it was very helpful. So

1 I want you to know your sitting is not in vein.

2 Hope y'all have a great day. We will be in touch.

3 And, again, Judge Jefferson's jury is the only recording
4 that you need to listen to.

5 Do not watch, read or listen to any media accounts
6 about this case, if any. That includes anything in radio,
7 television, newspaper. I'm missing something. No, I got
8 all three, radio, television, newspaper, or do not do any
9 independent research of any type on the Internet. Y'all
10 have a great day. See you probably on Wednesday, possibly
11 before then, but I'm projecting Wednesday.

12 (Whereupon, the jury leaves open court at 2:09
13 p.m.)

14 THE COURT: Okay. Is there anything we need to
15 take up before we break for lunch from the State?

16 MS. MULKEY: No, Your Honor.

17 THE COURT: From the defense?

18 MS. GAY: Your Honor, Mr. Nesbit told me he wanted
19 to put stuff on the record. I don't know if he does. I
20 think he's fine with this jury. He knows the process. He's
21 obviously had a jury before, we have been at jury trial
22 before. But there was a lot of discovery in his case. And
23 throughout the course of the morning, I've actually -- I
24 don't have a copy of his warrants, the ones that were served
25 on him. So I asked them to get me those, but they were the

1 ones served on him. I've given him all the indictments.
2 I've given him all the discovery that may or may not have
3 been served. And he at one point had an offer that, as we
4 said in the beginning, is between 15 and 25 --

5 THE COURT: With a cap of 25 and a low end of 15?

6 MS. GAY: Yes. And we are just going to be talking
7 some more --

8 THE COURT: Are they all 85 percent?

9 MS. GAY: Trafficking is 85 percent.

10 MS. MULKEY: They are all 85.

11 THE COURT: Failure to stop isn't 85 percent. Bath
12 salts is not 85 percent, only trafficking. The rest of them
13 are 65 percent, right? Is the trafficking a strike?

14 MS. MULKEY: Yes.

15 THE COURT: Most serious or serious?

16 MS. MULKEY: Serious.

17 THE COURT: Does he have any other strikes?

18 MS. MULKEY: Not at this time, no, Your Honor.

19 THE COURT: Yes, sir, is there anything you want to
20 state for the record?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: Okay. Is the offer still open or has
23 it been foreclosed upon?

24 MS. MULKEY: No, it is not.

25 THE COURT: Did you all ever put that on the

1 record, the rejection of the offer?

2 MS. GAY: It was right around the time that Julie
3 was leaving, so I don't know that Henry Nesbit was ever
4 brought over and put that on the record.

5 THE COURT: Did you fully explain it to him?

6 MS. GAY: He's aware the offer was extended and it
7 was denied.

8 THE COURT: When was the offer extended?

9 MS. GAY: Been extended by Julie, and then
10 Stephanie, once she got the case.

11 THE COURT: I mean, when, what time frame are we
12 talking about, what month, what year?

13 MS. MULKEY: Your Honor, the offer -- I have an
14 e-mail back in the office. I believe it was March of last
15 year. It was not re-extended when Julie left and Ms. Linder
16 was assigned the case.

17 THE COURT: Sir, is it correct that you were
18 offered -- Ms. Gay explained to you the State offered you
19 what we call a cap, which is a minimum of 15 years, which is
20 the minimum on one of these charges, I just can't remember
21 which, probably the -- if they reduce the trafficking to a
22 7, I would guess, and a max cap of 25? Was that explained
23 to you?

24 THE DEFENDANT: Yes, ma'am, and they also -- but
25 then they also said they supposed to give me a package deal

1 for me.

2 THE COURT: That is -- that's the package. It
3 would encompass -- how many charges was that supposed to
4 encompass?

5 MS. MULKEY: That was for the -- for him to plead
6 guilty on all the charges, it was a negotiated 15 to 25
7 years.

8 THE COURT: What are all the charges?

9 MS. MULKEY: All the charges included the charges
10 from that day, the ones we are here on trial about, failure
11 to stop for blue lights, trafficking cocaine and methyldone.
12 And I believe she encompassed an additional three others
13 with that.

14 THE COURT: Three other indictments?

15 MS. MULKEY: Yes.

16 THE COURT: What do those carry?

17 Mike, do you have those other indictments? I have
18 three, but there were some others.

19 He also had 2012-5705, trafficking in cocaine;
20 2012-5706, failure to stop for a blue light; 5707,
21 possession of a firearm during the commission of a violent
22 crime; 5708, leaving the scene of the accident, unattended
23 vehicle; 5710 leaving the scene of the accident; 5528,
24 habitual traffic offender; 5529, use of vehicle without
25 permission.

1 5528 and 5529 are 2013 cases.

2 2013-1227, possession of a Schedule II controlled
3 substance, morphine; 6603, distribution of cocaine; 6604,
4 possession with the intent to distribute cocaine. So that
5 would have encompassed all of these charges?

6 MS. MULKEY: Yes, Your Honor, I believe that does.

7 THE COURT: Sir, that was your understanding, that
8 all of these charges would have been disposed of with a
9 minimum of 15 and a max of 25, with your lawyer being able
10 to argue for the lower end of it, which would be the 15?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And you were fully informed of that
13 offer?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And, sir, did you accept or reject that
16 offer?

17 THE DEFENDANT: I reject it.

18 THE COURT: And did you do that freely and
19 voluntarily and of your own will?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Do you feel anybody forced you to do
22 that?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: Were you suffering from any mental
25 disabilities or under the influence of any drug or alcohol?

1 I need you to say yes or no.

2 THE DEFENDANT: No, ma'am.

3 THE COURT: Sir, do you understand one of these
4 charges, the trafficking that you are facing, carries a
5 minimum of 25 and a maximum of 30 years, which is a most
6 serious -- no, serious strike, and that basically, it
7 will -- not basically, it would be served at 85 percent,
8 which is basically day for day?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Knowing that, do you still wish to
11 reject the offer?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: And Ms. Gay fully explained the offer
14 to you?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Ms. Gay, did you fully explain -- do
17 you understand they are going to trial on the rest of these
18 cases?

19 THE DEFENDANT: Huh?

20 THE COURT: Do you understand they are still going
21 to trial on all the rest of these cases?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And are some of those strikes?

24 MS. MULKEY: Yes, Your Honor.

25 THE COURT: Do you all intend to serve him with

1 LWOP notice if he's convicted on this?

2 MS. LINDER: Your Honor, honestly, it depends.

3 Definitely with the amount of things, the separate
4 incidents, we do have the ability to serve him life notice
5 and try him again and again depending on the results of this
6 case.

7 THE COURT: I need to know worst-case scenario.

8 MS. MULKEY: Worst-case, yes.

9 THE COURT: Sir, do you understand that you have
10 some other charges pending that are what we call serious and
11 most serious strikes?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Do you understand that if the State
14 tries those one at a time and gets convictions, you could be
15 served with life without parole notice?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Do you understand that in South
18 Carolina, a sentence of life means life until your natural
19 death?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Okay. Ms. Gay, have you fully
22 explained to your client the offer that was extended to him?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And did he accept or reject the offer?

25 MS. GAY: He has rejected. At this point, I would

1 ask for an opportunity for him to think about it before we
2 actually starts our trial the next time we get together.
3 That's the only thing I ask.

4 THE COURT: Did he do it with or without your
5 advice?

6 MS. GAY: Without.

7 THE COURT: Meaning against your advice?

8 MS. GAY: Against my advice.

9 THE COURT: Sir, how old are you?

10 THE DEFENDANT: 29.

11 THE COURT: Okay. Do you understand how long 25
12 years is in South Carolina at 85 percent at your age?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And do you think that it is in -- the
15 Court doesn't take a position one way or another. It
16 doesn't matter to me whether I try your case or another
17 case. It is just always very difficult -- I don't know if
18 the State will re-extend it, frankly.

19 MS. MULKEY: No.

20 THE COURT: You know, Ms. Gay could always go over
21 there and sort of beg and lean on them and ask for them to
22 be kind and to re-extend it to you if it would dispose of
23 all these other cases as well, but at 85 percent, 25 years
24 is 21.25 years, basically, that you will serve day for day,
25 which means -- how old are you now?

1 THE DEFENDANT: 29.

2 THE COURT: Means you would be almost 50 years old,
3 you would be right at 50 years old when you were eligible to
4 get out. I think there's a no-parole on this too. I just
5 want to make sure that you are fully informed of that.

6 Again, the Court takes no position one way or the
7 other. I've come to a point, I've been doing this 18 years,
8 if you can live with your consequences, I can live with
9 them. I don't bend over too much to help folks, because I
10 find no good deed goes unpunished. People you try to help
11 the most are the ones that appreciate it the least. So I
12 don't take a position one way or the other, because at the
13 end of the day, Ms. Linder's life is not going to be
14 affected, Ms. Mulkey's life, nor Ms. Gay, nor mine. We will
15 be back here doing what we do every day, which is trying
16 cases. So the only person that can make an assessment of
17 whether that's in your best interest is you.

18 With the offer that has been extended, your lawyer
19 still has the ability to argue for a lesser sentence. On
20 the failure to stop, you are only facing a max of three
21 years. And I don't know what you would be facing on the
22 bath salts. I don't know what the minimum -- I would
23 imagine that's a -- that's not very much exposure.

24 MS. GAY: She said it was 10 to 30, Your Honor.
25 But, of course, the sentence would have to start at 15 if he

1 took the negotiations.

2 THE COURT: Yeah. But I don't think that's served
3 at 85 percent; that's 65 percent.

4 So only you can make the assessment based on the
5 facts and circumstances as alleged whether this will be in
6 your best interest or not. If you are convicted, worst-case
7 scenario, the minimum mandatory the Court would have to
8 impose is 25 years; however, the Court could still impose
9 the maximum of 30 since it is your third drug offense.

10 And I just need to make sure that you are fully
11 apprised of that, that you are fully informed of that, that
12 you are comfortable with it. Because if you are
13 comfortable, I'm comfortable. Doesn't really matter to me
14 one way or the other whether you take it or don't take it.
15 I just find that it has been my experience over 12 years
16 that oftentimes young people reject an offer, and then if
17 they are convicted, then they want the offer back. And I
18 just need to make sure that you are fully informed and
19 rejecting the offer, or whether you want your lawyer to ask
20 the State to re-extend the offer to you and see if they are
21 willing to do that over the recess while I try this other
22 case.

23 MS. GAY: We will think about it, Your Honor, and I
24 will be back in touch.

25 THE COURT: Well, y'all need to think quick. I

1 need to know something today. Because while he's over here,
2 I want to go ahead and dispose of it, if I can, before I
3 restart this other case at three o'clock.

4 MS. GAY: Give us five minutes, if you don't mind.

5 THE COURT: Y'all go talk.

6 Y'all go call your office and see if they are
7 willing to re-extend it, and then we will go from there.

8 (Whereupon, a bench conference takes place off the
9 record.)

10 THE COURT: Did you all talk to your boss?

11 MS. LINDER: Yes, Judge, we did. And our position
12 is that the offer should not stay the same. If we are going
13 to consider an offer, it should be worse than the original
14 offer. Because Ms. Gay indicated that the defendant would
15 like a better offer, he wants a 10 to 25, which was never
16 even in the cards, so we don't get to that next step.

17 THE COURT: Okay. Is that correct?

18 MS. GAY: That's what he told me, Your Honor. And
19 I've talked to him about it. He, I think, was a little
20 confused about the offer, being that he had to plead to
21 everything in all of the cases, but I think we've discussed
22 ad nauseam that possibility. So I think --

23 Do you want to plead guilty, Mr. Nesbit? You have
24 to speak.

25 THE DEFENDANT: No.

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

2 THE DEFENDANT: No, ma'am.

3 THE COURT: Okay. We will start the trial. Make
4 sure they have clothes for your client when we get ready and
5 that they bring him early enough for him to get dressed out,
6 Ms. Gay.

7 MS. GAY: Yes, ma'am. Thank you.

8 THE COURT: We will start back.

9 (Whereupon, the proceedings adjourn for the day.)

10 (Whereupon, the trial continues on May 7, 2014.)

11 THE COURT: Does the State plan to introduce any
12 prior bad acts pursuant to Lyle? There's a motion that
13 Ms. Gay has made seeking to preclude any such evidence.

14 MS. MULKEY: Excuse me, Your Honor? I'm sorry.

15 THE COURT: Does the State plan to seek to
16 introduce any Lyle-type evidence, prior bad acts?

17 MS. MULKEY: Yes, Your Honor. We have his rap
18 sheet right here.

19 THE COURT: I'm not talking about his record to
20 impeach him. I'm talking about Lyle, prior bad acts.

21 MS. MULKEY: No, Judge. Sorry.

22 THE COURT: So that is moot then, correct?

23 MS. MULKEY: Yes, Judge.

24 THE COURT: What is his prior record? And are
25 there any statements pursuant to Jackson vs. Denno?

1 MS. MULKEY: There's no statement, Your Honor. His
2 prior record, Your Honor, 2009, DUS second and operating
3 without a license --

4 THE COURT: Just tell -- well, nevermind. Go
5 ahead.

6 MS. MULKEY: 2007, possession of cocaine base
7 first, failure to stop for blue lights, PWID cocaine first
8 times two and within proximity of a school; 2005, he had a
9 parole revocation, failure to stop for blue lights,
10 possession of a stolen motor vehicle, and assault with
11 intent to kill; and in 2002, possession of a stolen pistol,
12 B and E of a motor vehicle times two and burg' third.

13 THE COURT: You said possession of a stolen gun
14 in '02? And then what were those other ones? Can you just
15 tell me just what year was that?

16 MS. MULKEY: In 2002, he also had a B and E to a
17 motor vehicle times two and a burglary third.

18 THE COURT: 2 from 14 is 12 years. Did you give
19 them notice you were seeking to -- these are over 10 years
20 old?

21 MS. MULKEY: Yes, Your Honor.

22 THE COURT: You agree they are over 10 years old?

23 MS. MULKEY: Yes, Your Honor.

24 THE COURT: Did you give them written notice of
25 your intent to try to use those to impeach him?

1 MS. MULKEY: No, Your Honor.

2 THE COURT: Then I don't think you can use them.

3 The '09 DUS and operating without a license, those
4 are not dispositive of truthfulness. You cannot use those
5 to impeach his credibility, as well as any of the drug
6 offenses.

7 Failure to stop for a blue light is not dispositive
8 of credibility. Possession of a stolen motor vehicle,
9 unless it involved a theft, is not likewise. Assault with
10 intent to kill is not; nor is possession of a stolen gun.

11 So it looks like you wouldn't be able to use any of
12 his records to impeach him. But we will revisit that again
13 at the time that we -- if, in fact, that becomes an issue if
14 he decides he would like to testify.

15 Now, on the motion to suppress, we have a witness
16 here ready to go forward?

17 MS. MULKEY: Yes, we do, Your Honor.

18 THE COURT: How many numbers does the State have on
19 exhibits?

20 MS. MULKEY: One.

21 THE COURT: What's all that other stuff? I need to
22 know if we have other exhibits.

23 MS. LINDER: We are just trying to get items
24 pre-marked just for efficiency sake, is what we are trying
25 to get done.

1 THE COURT: So y'all haven't agreed on anything?

2 MS. MULKEY: We agree on everything for pretrial.

3 MS. GAY: There's some drugs, Your Honor. We
4 don't -- we have to lay a foundation for the drugs before
5 they could agree on that, obviously. But the pictures and
6 things, we agree on all that.

7 THE COURT: What numbers are those?

8 MS. MULKEY: We have pictures as State's 1, 2, 3, 4
9 through 9.

10 THE COURT: So 1 through 9 y'all agree to without
11 objection?

12 MS. GAY: Yes.

13 THE COURT: State's 1 through 9 will be admitted
14 without objection.

15 (State's Exh. 1, Map, was marked in evidence.)

16 (State's Exh. 2, Map, was marked in evidence.)

17 (State's Exh. 3, Video, was marked in evidence.)

18 (State's Exh. 4 through 9, Photographs, were
19 marked in evidence.)

20 THE COURT: Proceed.

21 MS. MULKEY: State calls Deputy Chavez.

22 GERARDO CHAVEZ,

23 having been duly sworn, testifies as follows:

24 THE CLERK: State your name and spell your last
25 name.

1 THE WITNESS: Deputy Chavez.

2 THE COURT: Your first time please.

3 THE WITNESS: Gerardo Chavez.

4 THE COURT: Please spell both your names.

5 THE WITNESS: G-e-r-a-r-d-o, last name is
6 C-h-a-v-e-z.

7 THE COURT: You may proceed.

8 MS. MULKEY: Thank you, Your Honor. May it please
9 the Court.

10 THE COURT: Yes, ma'am.

11 DIRECT EXAMINATION

12 BY MS. MULKEY:

13 Q. What is your occupation?

14 A. Deputy sheriff.

15 Q. Did you have occasion to be working on June 16th,
16 2013?

17 A. Yes, ma'am.

18 Q. And what were your duties and assignments for that
19 shift?

20 A. On that day, I was working off-duty patrol on Isle
21 of Palms to assist with traffic, additional traffic
22 enforcement and crowd control during the busy time of the
23 beach season.

24 Q. On June 16th, 2013, did you have occasion to
25 interact with the defendant?

1 A. I did.

2 Q. Please tell us how you came into contact with the
3 defendant?

4 A. On that day, ma'am, I was seated inside of my
5 cruiser in front of the Windjammer partially parked in the
6 median observing traffic for any violations, when I observed
7 the defendant approaching the intersection of JC Long and
8 Ocean Boulevard, where he proceeded to make a turn without
9 signaling.

10 Q. Was there anything about his behavior that you
11 found to be suspicious?

12 A. While he was approaching and as he made the turn,
13 all while I was in plain view of where I could be seen, he
14 would not -- he refused to look at me, which drew additional
15 suspicion.

16 Q. Based upon the defendant's failure to use his turn
17 signal, did you initiate a lawful traffic stop?

18 A. I did.

19 Q. How did you do that?

20 A. By activating my blue lights.

21 Q. Is failing to use a traffic signal a violation of
22 state law?

23 A. It is under Section 56-6-2150. A person can make a
24 turn safely when it is safe to do so, but must give signal,
25 a continuous signal 100 feet prior to making that turn.

1 Q. And how do you measure that 100 feet?

2 A. Through my experience, I can estimate the distance,
3 but for preparation for this trial, I actually went out and
4 measured it.

5 MS. MULKEY: Your Honor, may I approach?

6 THE COURT: Yes, ma'am.

7 BY MS. MULKEY:

8 Q. Deputy Chavez, I show you what has been marked as
9 State's Exhibit No. 1. This is the -- can you tell me what
10 this is?

11 A. Yes, ma'am.

12 Q. What is this?

13 A. That's the intersection where the initial violation
14 took place.

15 Q. Okay. Deputy Chavez, can you please point out
16 where you were seated in your vehicle that day?

17 A. Yes, ma'am. Right here. (Witness indicates.)
18 Facing that way.

19 Q. And you just testified that you went out and
20 measured where 100 feet is from that intersection.

21 A. Yes, ma'am.

22 Q. Can you please point out the intersection that you
23 are referring to?

24 A. This intersection here.

25 Q. And what is that intersection?

1 A. That is JC Long. This is JC Long here and this is
2 Ocean Boulevard. (Witness indicates.)

3 Q. And where is 100 feet back from that intersection?

4 A. Approximately, ma'am, it's right about here.

5 Q. Thank you. What was the defendant driving that
6 day?

7 A. A brown Harley Davidson motorcycle.

8 Q. And how far away from that intersection did you say
9 that you were?

10 A. I would say about approximately 50 feet, maybe
11 couple car lengths.

12 Q. And did this violation occur during the day or the
13 night?

14 A. It was early evening, approximately 7:45 p.m.

15 Q. Was it still light outside?

16 A. It was.

17 Q. Do you wear contacts or glasses?

18 A. No, ma'am.

19 Q. Had you worked a bunch of overtime that week or had
20 any reason to be overly exhausted or tired?

21 A. No, ma'am.

22 Q. Was your ability to see the intersection obstructed
23 by anyone or anything?

24 A. No, ma'am.

25 Q. Were you driving in an updated car, the ones with

1 the dashboard camera?

2 A. Yes, ma'am.

3 Q. Do those record everything?

4 A. Not everything.

5 Q. Do they record during your entire shift?

6 A. No, ma'am.

7 Q. What causes the camera to start recording?

8 A. If I activate my blue lights or if I manually
9 activate the camera, it will start recording.

10 Q. Does it capture everything that you are able to
11 observe?

12 A. No, ma'am.

13 Q. And why is that?

14 A. Because it's in a stationary location, permanently
15 affixed behind the windshield and the front part of my
16 vehicle facing forward. So it only observes what is
17 directly in front of the vehicle.

18 Q. Regarding this incident, you testified that your
19 camera began recording when?

20 A. When I activated -- it actually -- when I activated
21 my blue lights and the 30 seconds previous to that, which is
22 a default setting, it prerecords 30 seconds prior to the
23 activation.

24 Q. Does that -- did that pre-30-seconds record the
25 defendant's traffic violation?

1 A. Partially. You could see the defendant approaching
2 the intersection within that 100 feet prior to the
3 intersection, but -- and you can see where he did not signal
4 in that frame, but he goes outside the frame to make the
5 actual turn at the stop sign.

6 Q. So based on the defendant's failure to use his
7 turning signal, did you attempt a lawful traffic stop?

8 A. I did.

9 Q. Did you ultimately write the defendant a traffic
10 citation for this offense?

11 A. Yes, ma'am.

12 Q. After you initiated a lawful traffic stop, what did
13 the defendant do?

14 A. While catching up to him, I activated my blue
15 lights and he began to slow. He made a right-hand turn onto
16 one of the side streets, at which time I believed he was
17 going to stop. And he turned back and yelled something to
18 me, and then took off at a high rate of speed.

19 MS. MULKEY: Beg the Court's indulgence for a
20 second, Your Honor.

21 Thank you, Your Honor.

22 BY MS. MULKEY:

23 Q. You had just said that the defendant took off. Did
24 he cross through several intersections?

25 A. He did.

1 Q. Did he move in and out of oncoming traffic?

2 A. He did.

3 Q. In your training and experience, were defendant's
4 actions consistent with attempting to evade a lawful traffic
5 stop?

6 A. Yes, ma'am.

7 Q. Then what happened?

8 A. He had a collision.

9 Q. So as a result of the lawful traffic stop and the
10 defendant's subsequent flight, there was a single vehicle
11 collision?

12 A. Yes, ma'am.

13 Q. And you came upon the defendant after he had
14 wrecked, and then what happened?

15 A. Upon coming up to him, I observed him in the
16 roadway, and he appeared to be trying to get up. He was
17 still -- appeared he was still trying to get up to continue
18 fleeing on foot.

19 Q. And what happened as you approached the defendant?

20 A. I gave him verbal commands to get down and stay
21 down and turn him around, proned him out, make sure his
22 hands were out to the side, advised dispatch that I had one
23 detained at the moment, awaiting on backup.

24 Q. Why did you tell the defendant to stay on the
25 ground?

1 A. Because he was under arrest for the failing to
2 stop.

3 Q. So he was under arrest at that time?

4 A. Yes, ma'am.

5 Q. Was he handcuffed?

6 A. Not at that time, no.

7 Q. Why not?

8 A. Because upon arrival and proning him out, while
9 that situation was going on, I observed quite a bit of blood
10 coming from the defendant's head area from the injury,
11 potential injury sustained during that collision. And I
12 didn't want to cause any further injury or potential further
13 injury to him. I just wanted to remain there and stay still
14 until he could be treated.

15 Q. Did you tell the defendant he was under arrest?

16 A. Not at that time, ma'am.

17 Q. And then what happened?

18 A. Upon my backup Deputy Buchanan arriving on the
19 scene, I advised defendant, because he kept trying to push
20 off the ground, kept trying to push up, I just advised him
21 to go place his hands behind his back, at which time he did,
22 and I placed him in handcuffs and secured him.

23 Q. So you instructed the defendant to stay on the
24 ground, and he ultimately did. And then your testimony is
25 that you further instructed him to place his hands behind

1 his back, and he did comply?

2 A. He did.

3 Q. Did you mirandize the defendant?

4 A. Not at that time.

5 Q. Did you conduct an interview of the defendant?

6 A. I did not.

7 Q. And then what did you do?

8 A. I began asking him for his information, for his
9 name, date of birth, so I could identify him. I conducted a
10 search of his person incident to arrest, and located a
11 sizable amount of US currency in his right front pocket
12 along with some, what I believed to be narcotics, a large
13 amount of narcotics, or what I believed to be narcotics, in
14 his left front pocket.

15 Q. What did you do with the items you found on the
16 defendant?

17 A. They were seized on location, placed in an evidence
18 bag, and secured in the back of my vehicle.

19 MS. MULKEY: Thank you, Deputy Chavez. Please
20 answer any questions the defense may have.

21 THE COURT: You may proceed.

22 CROSS-EXAMINATION

23 BY MS. GAY:

24 Q. Deputy Chavez, I'm Melissa Gay.

25 A. Yes, ma'am.

1 Q. In your testimony, you indicated that you have one
2 of the more recent cars with a dashboard camera.

3 A. Yes, ma'am.

4 Q. And I believe that you have provided, I guess, the
5 DVD --

6 A. In-car video, yes, ma'am.

7 Q. -- to the Solicitor's Office?

8 A. Yes, ma'am.

9 Q. And you are aware that that was given to me as part
10 of my discovery material?

11 A. Yes.

12 Q. And at this time, I would like for you to
13 authenticate that.

14 MS. GAY: It's in the solicitor's possession. So,
15 do you have any objection to me having him authenticate
16 this --

17 MS. MULKEY: No objection.

18 MS. GAY: -- for this hearing?

19 BY MS. GAY:

20 Q. I'm going to give it to them because they have the
21 equipment to use it. And I want you to watch the video.
22 And then after we watch the video, I'm going to ask you some
23 questions about it. Okay, sir?

24 A. Yes, ma'am.

25 THE COURT: How long is the video?

1 MS. GAY: It's not long. There will be a point
2 where we will see -- we just want to get through the first
3 part.

4 While she's pulling it up, just a few more
5 questions.

6 BY MS. GAY:

7 Q. The voice that we hear on this DVD is yours?

8 A. Yes, ma'am. Well, primarily, yes, ma'am.

9 Q. And so, I believe your testimony was that when you
10 clicked your blue lights on, that's when the camera comes
11 on, and then you said it's the 30 seconds before also?

12 A. Yes, ma'am, pre-recorded.

13 Q. So as we are looking, for the judge, we all looked
14 at this before, but as the judge is looking at it, when we
15 see the intersection and the motorcycle is coming out,
16 that's the motorcycle that my client was driving?

17 A. Yes, ma'am.

18 THE COURT: What number is that?

19 MS. MULKEY: This is 3, I believe, Exhibit 3, Your
20 Honor.

21 (Video Playing.)

22 BY MS. GAY:

23 Q. In the very, very beginning of the video, and I've
24 watched it, and I don't know if the solicitor's got it,
25 you've obviously watched it, there's a statement that you

1 make in the very beginning. Like, somebody from dispatch
2 says, what's up, or something like that, and your comment
3 is, nothing happening.

4 MS. MULKEY: Objection, Your Honor.

5 MS. GAY: Well, it's on the video. You can
6 actually hear it.

7 THE COURT: Don't talk to each other. Talk through
8 me.

9 MS. MULKEY: I don't believe we heard "what is
10 up?".

11 THE COURT: Says what it says. She can ask the
12 question. We are in-camera.

13 BY MS. GAY:

14 Q. Have you listened to it enough?

15 A. Yes, ma'am.

16 Q. Do you hear yourself in the very beginning when we
17 listen to it on a better machine --

18 MS. MULKEY: Objection. That's argumentative.

19 THE COURT: She hasn't finished the question.

20 MS. GAY: Your Honor --

21 THE COURT: Ask the question.

22 BY MS. GAY:

23 Q. When you listen to it, do you hear yourself saying
24 something?

25 A. Yes, ma'am.

1 Q. Do you have any idea what it is that you said at
2 that point? Obviously, the video speaks for itself.

3 A. I believe it says: Why did he want Newkirk?
4 Talking about another officer. I was talking to somebody
5 else on the phone and asking him a question of them on the
6 phone at that time.

7 Q. Okay. And that's when in the video we see the
8 motorcycle coming to the intersection?

9 A. Uh-huh.

10 Q. And in your testimony that you said, the one that
11 was the picture, you said that there's part of this video
12 that we could see him coming up to the intersection, but
13 then he -- obviously, your camera is facing forward.

14 A. Correct.

15 Q. So he passes past the range of your camera?

16 A. Correct.

17 Q. And so you would agree with me that in this video,
18 there is no -- he's not at the intersection without a signal
19 in this video?

20 A. He's within the 100 feet approaching the
21 intersection, which by law you are required to have on
22 continuously.

23 Q. I understand that, sir, but that's not point.
24 Within the 100 feet of what you believed to be the law of
25 when it's supposed to have the blinker on, we don't see it.

1 But there's -- in the video, that's all we see. We don't
2 see the intersection where he's supposed -- where he would
3 have come up to the stop sign and actually turned? We don't
4 see the intersection on the video?

5 A. Correct.

6 Q. And then when you command your car, turn to follow
7 pursuit, you said that there was a point where you flipped
8 your blue light on, and Mr. Nesbit, my client, is then
9 making a right-hand turn and using a turn signal to make the
10 right-hand turn on the side street?

11 A. Onto the side street, yes, ma'am. That's obvious.
12 It's in the video.

13 Q. Right. And he uses the signal to make that
14 right-hand turn?

15 A. And I had already activated my blue lights.

16 Q. I understand. And your testimony was that one of
17 the -- when the solicitor asked you, was there anything
18 suspicious or that could cause you to think about this, you
19 said he didn't look at you when he came up to the
20 intersection.

21 A. Yes, ma'am.

22 Q. Okay. But if he were to come up -- this
23 intersection is sort of an almost -- kind of like a
24 triangular intersection of some sort. It's not a 90-degree,
25 more like 45-degree. And so -- I guess he's coming up JC

1 Long, and he's at the stop sign. Your car is facing
2 straight.

3 A. Correct.

4 Q. And he's actually -- would be coming at an angle to
5 your left? If you were facing him, he would be going to
6 your left?

7 A. No, ma'am. Is there any way we can pull the map
8 back up?

9 Q. Yes. Okay. So where is your car?

10 A. I'm sitting right here. When he came -- this is
11 approximately 100 foot. When he came down this way, you
12 have to turn back in and stop, which would put him right
13 here for me.

14 Q. I understand that, sir. So if this green line over
15 here is you, if you went straight out, which is what we see
16 in the video, we would have caught that, the corners off.
17 What I'm saying is, if you are facing him, he's coming in on
18 your left to make that right-hand turn, right?

19 A. Right.

20 Q. Like he's going this way?

21 A. Correct.

22 Q. And your field of vision is this way?

23 A. No. My field of vision is --

24 Q. Okay, this way. Do it this way.

25 A. My field of vision is all of this.

1 Q. I understand. But your camera is faced forward?

2 A. Faced this way, yes.

3 Q. Right. And so over here, in this area, off camera,
4 you are saying that my client didn't look at you during this
5 period of interaction at this stop sign to take this right?
6 That was your testimony, that he didn't look at you?

7 A. Yes, ma'am.

8 Q. And you are saying that during the time that you
9 are watching him as he's coming down toward your left-hand
10 side, he's not looking at you, instead looking straight,
11 because you said he should be looking at you?

12 A. I never said he should be looking at me. When he
13 arrived at the intersection, he would not look at me. He
14 just remained looking straight.

15 Q. I understand that. I understand. Hold on a
16 second. Last thing I would say, how long have you been a
17 police officer?

18 A. For approximately seven years.

19 Q. And you have obviously been out on Isle of Palms
20 several times in the past?

21 A. I formerly worked for Isle of Palms for
22 approximately five years.

23 Q. So in the course of your working as an officer for
24 that long, you've seen lots and lots of either car accidents
25 or made a lot of stops along the way of people who were

1 driving on the roads?

2 A. That's a good assumption, yes, ma'am.

3 Q. Isn't it preferable for them to be looking at the
4 road and looking straight, instead of looking right or
5 left?

6 A. Common behavior, ma'am, when a motorist arrives at
7 a stop sign or intersection, they look around. And,
8 generally, the general motoring public, if they see a law
9 enforcement officer, they will glance over and see what we
10 in law enforcement are doing for just a moment, yes, ma'am.

11 Q. So is it your testimony that every single person
12 you've ever seen on the road has looked at you?

13 A. I said generally, ma'am; I didn't say every.

14 Q. But in this case, you believed it to be suspicious
15 because my client was riding a Harley Davidson, didn't look
16 at you?

17 A. No, ma'am, I didn't say that.

18 MS. GAY: Okay. Thank you.

19 THE COURT: Any redirect?

20 REDIRECT EXAMINATION

21 BY MS. MULKEY:

22 Q. Deputy Chavez, your testimony is that the defendant
23 failed to make an -- or excuse me, turned, but failed to
24 signal, correct?

25 A. Yes, ma'am.

1 Q. He failed to signal within 100 feet of the
2 intersection, correct?

3 A. Yes, ma'am.

4 MS. MULKEY: Thank you.

5 THE COURT: Sir, you may step down.

6 (Whereupon the witness is excused.)

7 THE COURT: State have any further witnesses?

8 MS. MULKEY: No further witnesses, Your Honor.

9 THE COURT: Defense have any witnesses?

10 Does the defense have any witnesses?

11 MS. GAY: We are having a conversation right now
12 with my client, Your Honor.

13 THE COURT: Okay. You maybe should have had this
14 conversation before your motion. I have a jury waiting. I
15 need to know if you have anything more to present.

16 MS. GAY: Your Honor, at this time I would call
17 Mr. Nesbit.

18 HENRY OLIVER NESBIT, JR,
19 having been duly sworn, testifies as follows:

20 THE CLERK: State your name into the microphone and
21 spell your last name for the record.

22 THE DEFENDANT: Henry Nesbit, N-e-s-b-i-t.

23 THE COURT: You may proceed.

24 DIRECT EXAMINATION

25 BY MS. GAY:

1 Q. Mr. Nesbit, this is your trial today. And we are
2 going to ask you some questions about what we just saw on
3 that video and you traveling that day. Do you recall what
4 happened that day, where you were coming from on June 16th,
5 2013, on the motorcycle?

6 A. Yes, ma'am.

7 Q. Can you tell the Court where you were coming from?

8 A. I was leaving from Subway. It was off of -- oh,
9 man. It was on Isle of Palms. And I was turning onto -- at
10 the light, I made a left at the light. I believe that's JC
11 Long. And I came up JC Long. And I was going back towards,
12 like, Sullivan's Island where Isle of Palms, past the
13 Windjammer on that corner intersection.

14 Q. Now, there's been testimony from the officer that
15 you did not use a turn signal when you came upon the
16 intersection of JC Long and Carolina Boulevard. Tell the
17 Court whether or not you used a turn signal that day.

18 A. I turned on my signal, yes, ma'am.

19 Q. So it's your testimony that you did, in fact, use a
20 signal?

21 A. Yes, ma'am. And as a matter of fact, the signal
22 light was still on. It's a 2011 Harley Davidson. The
23 signal light doesn't turn off until you finish a turn and
24 hit the button.

25 Q. Now, when the officer got behind you, did you see

1 the officer behind you?

2 A. No, ma'am.

3 Q. When you came up, after he turned the blue light

4 on, did you notice that he was behind you then?

5 A. At that point in time, yes, ma'am.

6 Q. And when you went onto the side road, I believe the

7 video shows that you used a turn signal during that turn?

8 A. That was -- yes, ma'am.

9 Q. And with regard to your approach on JC Long

10 Boulevard to Carolina, did you have any occasion to see this

11 officer sitting there?

12 A. No, ma'am.

13 Q. Just didn't see him?

14 A. No, ma'am.

15 Q. Okay. And --

16 A. There were a lot of people outside, and there was

17 traffic. It was Father's Day. They had a party at the

18 blue -- the Windjammer that day. It was a bikini contest.

19 Q. Had you been there?

20 A. Not yet. I was on my way there.

21 Q. And so it's your testimony that you did, in fact,

22 use your turn signal?

23 A. Yes, ma'am.

24 MS. GAY: I have no further questions, Your Honor.

25 THE COURT: Any questions for the witness?

1 MS. LINDER: Very briefly, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. LINDER:

4 Q. Mr. Nesbit, you were here a second ago when we were
5 looking at the map and watching the video, weren't you?

6 A. Yes, ma'am.

7 Q. When we were looking at that map, do you recall
8 when Deputy Chavez pointed out where a 100 feet back from
9 that stop sign was?

10 A. Yes, ma'am.

11 Q. And were you signaling 100 feet back where he
12 motioned and marked where that was on the map?

13 A. I don't know where 100 feet is on the map exactly,
14 but I was -- I put on my signal light approximately, I would
15 say, about three car lengths before the stop sign.

16 Q. Okay. When you were in here a moment ago watching
17 the video from the dashboard cam, did you see the turn
18 signal on the Harley Davidson that you were driving?

19 A. I couldn't see anything, ma'am. It was a brief
20 quick second of the bike being in the camera. I saw it on
21 once I made the right turn.

22 Q. Is it your testimony that you were in compliance
23 with law, that 100 feet from behind the stop sign you had
24 your signal on and continuously had it on?

25 A. Yes, ma'am.

1 MS. LINDER: Thank you. Nothing further.

2 THE COURT: Any redirect?

3 MS. GAY: No, Your Honor.

4 THE COURT: Sir, you may step down.

5 (Witness is excused.)

6 THE COURT: Anything further from the defense?

7 MS. GAY: No, Your Honor.

8 THE COURT: Glad to hear arguments.

9 MS. MULKEY: Yes, Your Honor. The State argues
10 that Deputy Chavez is a well-trained law enforcement
11 officer. He has been in law enforcement. He has been
12 trained not just in traffic enforcement and gone to
13 extensive schools on it, but he testified that he observed
14 the defendant fail to use his turn signal prior to making
15 that right turn. The video demonstrates the defendant
16 approaching the intersection in the 100 feet that Deputy
17 Chavez estimated that day, but, in fact, testified he went
18 out and remeasured, and the defendant failed to use his
19 signal of intention in that 100 feet.

20 This traffic stop was based on a traffic violation
21 56-6-2150, which gave him probable cause to believe the
22 defendant violated that traffic law. The subjective
23 intentions of the officer are not playing a role here
24 because this is a probable cause analysis. And it was a
25 good faith stop based on the traffic violation. The map and

1 the video demonstrate the same. And Deputy Chavez's
2 testimony corroborates that.

3 And, finally, the defendant did testify that he
4 continuously had his signal on. And we argue that the video
5 does not show that; it shows otherwise.

6 THE COURT: Would you like to respond?

7 MS. GAY: Thank you, Your Honor. I know that you
8 are in a hurry, and I know that we --

9 THE COURT: I'm not in a hurry.

10 MS. GAY: We don't want to leave the jury waiting,
11 but if you were to take --

12 THE COURT: I generally don't correct attorneys,
13 but I'm never in a hurry. I'm probably the most patient
14 jurist in this building. And when I correct and I have the
15 quorum in my courtroom, it's my job to run this courtroom.
16 It's my job to run this system. I'm incredibly efficient,
17 and I do it well. Doesn't mean I rush. I have not rushed
18 you. We've taken the appropriate amount of time to take
19 this hearing. And I'm going to take more than ample time to
20 have argument. And I'm going to take whatever time I find
21 appropriate to make a meditative decision.

22 MS. GAY: Only thing I would ask, Your Honor, is
23 that you watch the video.

24 THE COURT: I watched it. I watched it three times
25 when y'all just replayed it for me.

1 MS. GAY: Well, it has conversations that were in
2 the beginning where he indicates different than what he
3 said.

4 THE COURT: I heard what he said on the video. I
5 listened very intently when I had them replay it and I asked
6 them to turn the volume up.

7 MS. GAY: Only thing I would say at this point,
8 Your Honor, is that his camera has got an angle that's
9 forward and straight, and doesn't have the whole entire
10 situation with the turn. Obviously, my client has testified
11 that he did, in fact, use his turn signal. This is a drug
12 case. This is not -- you know, we are not having a trial
13 for whether or not he failed to use his turn signal. This
14 is a case that had to do with drugs that were found on him
15 pursuant, long time, minutes down the road after everything
16 happened, but all of it comes back to the probable cause for
17 the stop.

18 And all of it is, we believe, fruit of the
19 poisonous tree, a stop that was unnecessary, illegal,
20 violation of his constitutional rights. We don't believe he
21 committed any kind of crime.

22 What Officer Chavez says is that he believes that
23 he didn't look at him and that that meant that there was
24 some type of suspicious activity. That in itself is not at
25 all probable cause for a stop. He went on and on about

1 how -- he actually completely contradicted himself when he
2 just spoke at the end and he said, no, I don't think that
3 people have to look at me, that's not required, or, that's
4 not necessary. And that's -- his testimony was that that
5 was what was considered suspicious in his mind. And when I
6 asked him, do you want people to be looking either right or
7 left or forward, he said, no, that's not what I'm saying.

8 And, ultimately, we believe that it was a
9 pretextual stop. We see a man on a motorcycle. He decides
10 on some level, I want to see what this guy is up to. And he
11 says because he didn't look at him that that would be the
12 reason that he wants to try to check it out, get behind him,
13 see what's going on. Mr. Nesbit uses his turn signal. He
14 testified he didn't even know the police officer was behind
15 him until such time as the blue lights put on. But he uses
16 his turn signal to make the right-hand turn; wherein, he
17 decides he doesn't want to stop.

18 That was a different moment, but, ultimately, Your
19 Honor, we believe that the initial encounter with law
20 enforcement, the initial breach occurred because of this --
21 we don't believe that he failed to use his turn signal. And
22 we believe that anything that preceded after that was in
23 violation of his constitutional rights.

24 THE COURT: Would the State like to respond?

25 MS. MULKEY: No, Your Honor.

1 THE COURT: The motion to suppress is denied. Our
2 case law is very clear. There's several legal principles or
3 concepts applicable to this situation; however, what is
4 germane to the Court's determination is whether this was a
5 valid traffic stop and whether it was initiated pursuant to
6 a valid traffic violation which created probable cause. The
7 testimony of the officer, I have no reason to question the
8 veracity of what he has stated while his camera had a view
9 of Mr. Nesbit as he approached the intersection and not at
10 the time that the actual turn was made. It is clear from
11 the video that no traffic device was used for the turn, at
12 least within the 100 feet, which it would have been when the
13 motorcycle was visible as it approached the intersection.

14 And that he is -- the officer is correct, 56-5-2150
15 does provide for the appropriate use of traffic signals and
16 devices when making certain turns from certain lanes. And
17 it covers a whole multiplicity of situations which is not
18 necessary for the Court to go into. But I have no reason to
19 doubt the veracity of what he stated, which is that at least
20 by a preponderance of the evidence, which is more likely
21 than not, that Mr. Nesbit did not use his traffic signal as
22 required within 100 feet of the intersection.

23 And Mr. Nesbit is probably a little different than
24 most people. I don't know too many people that signal 100
25 feet. Some people do; some don't. Some signal as they go

1 to the actual stop sign, but that does not negate the fact
2 that the statute requires that you use the signal within 100
3 feet of turning left or right.

4 And where there's a traffic stop that is initiated
5 pursuant to a traffic violation, that is a creation of
6 probable cause. Our case laws also is very clear that a
7 valid traffic stop initiated for a traffic violation is not
8 rendered invalid where there's an allegation of it being a
9 mere pretext for a narcotics search. This is not your
10 typical situation where it is argued that a traffic stop is
11 pretext for a narcotics search. It's not an unusual
12 circumstance, but to some extent, it is. Because, actually,
13 Mr. Nesbit became the argument of his own situation. If he
14 had merely stopped as desired -- maybe it was pretext. I
15 have no idea. I have no way of making that decision. I
16 don't know what may have happened. I only know what did
17 happen, which is that once he was alerted to stop, he
18 didn't.

19 He then engaged in an active role to evade the
20 police, which he then had a one-car accident where he
21 injured himself. He was put under arrest for failure to
22 stop, where search incident to arrest discovered these drugs
23 and cash.

24 And I don't know what would have happened if he had
25 actually stopped for the stop. It may well have been that

1 he would have been simply given a citation and he went on
2 with his life. I cannot assume that officer then would have
3 embarked upon some form of targeting him for a drug search,
4 because that's not what happened. What actually happened
5 was he was signaled for a traffic stop, he didn't stop,
6 caused a one-car accident where he injured himself, and as a
7 result of that, he was bleeding. He was told not to move.
8 And if he had not moved, he simply would have -- they would
9 have put him under arrest, eventually anyway. So I don't
10 know that it matters, because there still would have been a
11 search incident to arrest. But there was no requirement to
12 mirandize him. The search incident to arrest was
13 appropriate. There was, in fact, probable cause for the
14 stop by a preponderance of the evidence. And what is
15 dispositive, again, I don't doubt the veracity of the
16 officer's testimony, but I have a video that shows he did
17 not signal within 100 feet of the intersection. So it
18 really doesn't matter what happened once he got to the stop
19 sign before he made -- immediately before he got to the stop
20 sign and made the turn.

21 And, frankly, whether he looked or didn't look at
22 the officer is not dispositive, and I'm not giving it any
23 consideration in my decision as to whether it was a valid
24 traffic stop or not. He didn't signal and it's a valid
25 traffic stop. And then he exacerbated it by his own

1 behavior by failing to stop.

2 And I do not find it persuasive that because he
3 made a turn signal when he was getting ready to get stopped,
4 that he had a turn signal before the first time. It
5 wouldn't be unusual. Most people try to correct their
6 behavior, what we call remedial measures in civil cases,
7 where you mess up, so when you get caught, you say, let me
8 make sure I do it right this time. It's about the same sort
9 of analogy.

10 I don't find him credible that he didn't know the
11 officer was behind him. I think he was well aware that the
12 officer was behind him, and turned to signal to stop. And
13 for whatever reason, just made a very poor judgment decision
14 and didn't stop, and took off and sought to evade the police
15 and then caused his own accident, which really was the
16 trigger to the search incident to arrest, was the failure to
17 stop.

18 So it was a good traffic stop. It was -- I
19 cannot -- argument is that somehow this was pretext. If he
20 had been -- if he had stopped as he should have and then
21 there was some improper search or some -- but I can't
22 speculate as to what could have happened because it didn't
23 happen.

24 So the motion to suppress is denied.

25 Are we ready to go forward with opening argument

1 and opening instruction from the State?

2 MS. MULKEY: Yes, Your Honor.

3 THE COURT: And from the defense?

4 MS. GAY: Yes, ma'am. I need to use the restroom.

5 THE COURT: Go right ahead.

6 State's Exhibit 10, Small clear plastic baggy with
7 approximately 2 grams of what tested presumptive for
8 cocaine, was marked for identification.)

9 (State's Exhibit No. 11, Baggy that field tested
10 presumptive for cocaine, was marked for identification.)

11 (State's 12, Bag inside right front pocket that
12 field tested presumptive for methamphetamines along with the
13 cash, was marked for identification.)

14 (State's Exh. 13, Individualized bags that were in
15 the defendant's left front pocket, was marked for
16 identification.)

17 (State's Exh. 14, Drug analysis 01469 #1, was
18 marked for identification.)

19 (State's Exh. 15, Drug analysis L13-01469 #2, was
20 marked for identification.)

21 (State's Exh. 16, Chain of Custody, was marked for
22 identification.)

23 THE COURT: Are we ready to get started? Is the
24 State ready to proceed?

25 MS. MULKEY: Yes, Your Honor.

1 THE COURT: Defense ready to proceed?

2 MS. GAY: Yes, ma'am.

3 THE COURT: Please bring in the jury. And we need
4 to swear them and bring in Number 177 as the foreperson,
5 Ms. Jenkins.

6 Madam Clerk, the jury needs to be sworn.

7 THE CLERK: Yes, ma'am.

8 (Whereupon, the jury returns to open court at 12:48
9 p.m.)

10 THE COURT: Ladies and gentlemen, let me apologize
11 at the outset for the time that you had to wait for us to
12 get started. We do not have -- federal court has lot more
13 resources than we do. They get to have what we call date
14 certains, when you know exactly what time your case is going
15 to start. And even with them, though, they still have some
16 delay due to pretrial matters and otherwise. But just to
17 give you a little bit of a reference, some weeks I try four
18 cases a week. My colleagues in the federal court might try
19 six, seven, ten cases a year. So they have that the luxury
20 of having date certains.

21 We in the state system try cases on a rolling
22 basis, which means as we finish one trial, we start another
23 and another and another. And as best as we try to plan,
24 sometimes that goes extremely well, sometimes it doesn't.
25 We had -- we started -- we finished a case yesterday and had

1 what we call closing argument and instruction this morning.
2 And because of traffic delays and otherwise, we had three
3 jurors who were tardy this morning. So we had to wait for
4 them to arrive before we could get started. And then had to
5 have that closing argument and instruction process before we
6 could begin this trial.

7 So I want you to know that we do not take your time
8 for granted. And we appreciate y'all being incredibly
9 patient with us. I knew you probably drank as much coffee
10 as you could and you are in a room which doesn't have
11 windows. I'm certain even though our new paint job was
12 wonderful, it probably wasn't awe-inspiring. If you're like
13 me, I need sunshine to function. I know this room is dark
14 and can close in on you a little bit. So we appreciate you
15 being so incredibly patient with us this morning.

16 You have been selected for the case of South
17 Carolina vs. Henry Oliver Nesbit, Jr. And if you would
18 stand for me, please, and raise your right hand, the clerk
19 can administer the oath to you.

20 (Whereupon, the jury is sworn.)

21 THE COURT: Thank you, ladies and gentlemen. You
22 may be seated.

23 I'm going to give you some preliminary instructions
24 as to how we will be proceeding in the trial of this case so
25 that you may better understand how a case is processed from

1 beginning to end. I will tell you for planning purposes
2 that this is a relatively short case. We should be able to
3 finish it today. We may even have closing argument and
4 instruction today. I'm not certain, but worst-case
5 scenario, we will have closing argument and instruction in
6 the morning. Just depends on how our time flows.

7 And after I give you these instructions and the
8 attorneys give you what are called their opening arguments,
9 we are going to break for lunch. So I want you to know we
10 are not going to hold you hostage. Some people eat lunch
11 earlier than others. I know a lot of people like to eat
12 lunch between 12 and 1, so I just want you to know I'm
13 mindful of that. And once we are done with what, I think
14 will be fairly short, I will be able to let you go for
15 lunch. And then we will resume after lunch with the
16 beginning of taking the testimony of the witnesses in this
17 case.

18 As I've already said, what I'm now going to say to
19 you is intended to serve as an introduction to the trial of
20 this case. These remarks are not a charge on the law. And
21 just so that you know, charge and instructions are
22 interchangeable terms. Charge is a legal term of art that
23 means instructions. So when you hear me use the word
24 charge, it simply means instructions. And I may use those
25 terms interchangeable.

1 I will instruct you on the law applicable to this
2 case at the end of the trial, before you retire to consider
3 your verdict. This is merely an explanation of the
4 procedure that we will follow in the trial of this case so
5 that you may better understand what is happening.

6 Y'all have been given notebooks. You will be given
7 the opportunity to take notes. I will give you some
8 instructions regarding that near the end of this
9 instruction, but if you could write your juror number on the
10 white sticker that is on the front of each note pad so that
11 you will be able to identify it, and if there's not a
12 sticker, just go ahead and write your number on the first
13 page of that notebook so that you will be able to determine
14 which notebook belongs to you after the break. They will be
15 left in your seats during breaks and recesses, but if we
16 have an evening recess, you will be able to determine which
17 notebook belongs to you.

18 The defendant is charged by three indictments in
19 this case, those being 2013-GS-10-5527, 5634 and 5639, with
20 the offenses of failure to stop for a blue light,
21 trafficking cocaine, and possession with the intent to
22 distribute methyldone, which are commonly referred to as bath
23 salts. I will explain the elements of these offenses to you
24 at the conclusion of the trial before you begin to
25 deliberate and after the attorneys have made their closing

1 arguments.

2 The indictments are simply the charges by which
3 this case is brought into court. And they are not in any
4 sense evidence of the allegations they may or may not
5 contain.

6 The defendant has pled not guilty to the
7 indictments. Therefore, the State has the burden of proving
8 each and every element of the indictments beyond a
9 reasonable doubt. And it will be your duty, ladies and
10 gentlemen, to decide whether the State has met that burden
11 or not. Your purpose as jurors is to find and determine the
12 facts. You are the sole judges of the facts in this case.
13 If at any time I make any comment regarding the facts, you
14 must disregard it. The constitution of our state does not
15 allow a trial judge to have an opinion about the facts in a
16 case. You are to determine the facts from the testimony you
17 hear and the other evidence that may be introduced during
18 the trial.

19 It is up to you to determine the inferences which
20 you feel may be properly drawn from that evidence. It is
21 especially important, ladies and gentlemen, that you perform
22 your duty of determining the facts diligently and
23 conscientiously, because, ordinarily, there is no way to
24 correct an erroneous determination of facts made by a trial
25 jury.

1 On the other hand, and with equal emphasis, the
2 same law that makes you the judges of the facts makes me the
3 judge of the law. The law as given by the Court is the only
4 law you may consider. You must accept and follow it, even
5 though you may disagree with the Court about it. The Court
6 cannot tell you what the facts are, and you cannot disagree
7 with me about what the law is or what the law should be.
8 Your responsibility, ladies and gentlemen, is to take the
9 law as I instruct it, and apply it to the facts as you find
10 them from the testimony of the witnesses and the other
11 evidence that is introduced.

12 After doing that, you will render your verdict, a
13 true and just verdict under the solemn oath that you have
14 taken as jurors in this case. Until I advise you to begin
15 your deliberations, you must not discuss this case with
16 anyone, that includes among yourselves, your family members,
17 friends or otherwise. And after the case is submitted to
18 you, you must not -- you must discuss it only in your jury
19 room among your fellow jurors.

20 The attorneys and the parties have been advised, as
21 well as the witnesses, have been advised not to speak with
22 you at all. So if you should run into them in the garage,
23 the elevator, the hallway, maybe even the restrooms, or a
24 restaurant during a lunch break or otherwise, and they don't
25 speak with you or acknowledge you, please don't think they

1 are being unfriendly or untoward or even rude. They are
2 simply strictly following the Court's instructions, because
3 we would not want an innocent conversation to be observed by
4 a third-party and misinterpreted.

5 During the trial, do not read, watch or listen to
6 any media accounts about this case. That includes anything
7 that could be on the radio, television, newspapers, or
8 Internet. And you are also strictly instructed not to do
9 any independent research regarding any issue or matter
10 involved in this case on the Internet. Under your oath, you
11 are bound to decide this case according to the testimony
12 that you hear from the lips of the sworn witnesses and the
13 other evidence that may be introduced. I would also ask
14 that you not make any comments regarding your status on any
15 social networking sites. That includes Facebook, Instagram,
16 LinkedIn. There's so many, I've lost track. But, again,
17 even an innocent comment could be so very easily
18 misinterpreted. And with screen shots and all of these
19 other things that people employ to preserve information,
20 it is just better to avoid it all together. So we
21 appreciate your cooperation in that regard.

22 It is essential that you maintain and keep an open
23 mind and not decide any issue in this case until all of the
24 evidence has been presented, the parties have made their
25 closing arguments, and I have instructed you on the law in

1 this case. It is your solemn responsibility to determine
2 the guilt or innocence of the defendant. And your verdict
3 must be based solely on the evidence as it is presented to
4 you in this trial and on the law as I will instruct you
5 during and at the close of this trial.

6 In just a moment, the solicitor will make what is
7 called an opening statement in which they will explain to
8 you what they believe the issues to be in this case. The
9 defendant may also make an opening statement, although they
10 are not required to do so. Keep in mind that what the
11 attorneys tell you during their opening statements is only
12 their contention as to what they believe the issues will be
13 in this case or what they believe the evidence will show in
14 this case. But their arguments are not evidence and should
15 not be considered as evidence and is only their contention
16 as to what they believe the evidence will show in this case.

17 The evidence will be presented to you by the
18 testimony of sworn witnesses and other evidence or exhibits
19 that may be introduced during the trial. From time to time,
20 you will hear the attorneys say, Your Honor, I object. Just
21 as in sports, business or any other structured activity,
22 there are certain rules that we must obey in the
23 presentation of evidence. These rules have a definite
24 purpose. They ensure that you receive the most trustworthy
25 and reliable evidence available. An objection is the

1 procedure that an attorney uses to call a possible violation
2 of these rules to my attention as the judge of this court.
3 And for this reason, you should never hold an attorney's
4 objection against them, nor should you conclude from the
5 Court overruling or sustaining an objection that I favor one
6 side or the other. In fact, in any good trial, there will
7 be many objections. So you should expect that to happen
8 during the course of the trial.

9 Also, from time to time, the attorneys may say,
10 Your Honor, we have a matter of law to take up, or they may
11 ask to approach the bench, or I may ask them to approach the
12 bench, or it might even be necessary for us to exclude you
13 for a short moment while we discuss matters of law. The
14 reason we do this is because you are the finders of the
15 facts. And as I've explained, I'm not allowed to have an
16 opinion about the facts in this case. And sometimes when
17 I'm discussing matters of law with the attorneys and making
18 rulings regarding those issues, it might be necessary for me
19 to comment regarding a connection with that, whether a
20 procedural rule, evidentiary rule, or statute applies. And
21 I may have to make some comment regarding the facts in
22 connection with that. And for this reason, we exclude you
23 from the courtroom so that in no way will you be influenced
24 by anything that the Court may say or do in connection with
25 the facts of this case.

1 Sometimes we will use bench conferences and you
2 will see the attorneys approach. We do that as a
3 time-saving measure, so that we don't have to send you in
4 and out of the courtroom. And you will hear white noise,
5 basically, over your heads. And it's designed to interfere
6 with your hearing, so that you are not able to hear our
7 conversation. And I tell you that because I had a juror --
8 and I chuckle every time I think about it -- he raised his
9 hand, and I said, yes, sir, and he said, we can't hear what
10 you are saying. And I said, well, that's good, that means
11 white noise is working. But I often think of that and I
12 laugh to myself. But it's in speakers directly over your
13 head, so that, again, it's a time-saving measure because it
14 takes time to send you in and out of the courtroom. So we
15 will often use bench conferences for that purpose, again, so
16 that your impartiality will not be affected by those
17 conferences.

18 In determining what the true facts are in this
19 case, ladies and gentlemen, you must decide whether or not
20 the testimony of a witness or witnesses is believable. It
21 is my responsibility to rule as a matter of law as to
22 whether certain testimony is admissible at all or not. But
23 once it is admitted, whether or not you believe it is solely
24 a matter for you to determine in your fact-finding province.

25 In deciding whether to believe a witness, you have

1 the right to consider the interest of any witness, the bias
2 of any witness, the prejudice of any witness, the
3 opportunity for the witness to have seen the matters and
4 things about which the witness may testify, and the way the
5 witness acts on the witness stand, what we commonly refer to
6 as their demeanor.

7 You have a right to consider anything that is in
8 the record that will help you evaluate the testimony of the
9 witnesses. That means that it is your duty to pay close
10 attention to the witnesses, to observe them, to listen to
11 them, and to pay close attention to the attorneys and the
12 Court.

13 Although I know it can be incredibly difficult,
14 please do not allow your thoughts to wonder, but give strict
15 attention to the testimony, so that at the end of the
16 testimony, the arguments of the attorneys and the charge on
17 the law given by the Court, you will then be in a position
18 to determine what the true facts are, and apply the law to
19 those facts and, thus, render a true and just verdict in
20 this case.

21 As I've already explained, you will be given the
22 opportunity to take notes. Notetaking is a privilege you
23 may choose to exercise or choose not to exercise. Please
24 don't feel you are required to take notes. Not everyone
25 finds notetaking helpful to them. If you should decide to

1 take notes, please don't try to record everything that is
2 said. It's physically impossible. And I'm an excellent
3 note-taker, just by virtue of what I've had to do for a
4 living. But even with that, I find that the mind processes
5 information the way we process information. So oftentimes,
6 we will put the beginning of a sentence at the end, the end
7 of a sentence at the beginning, you will substitute words
8 that are common for you versus what the witness may actually
9 have said. And sometimes you write things in summary form.

10 The court reporter is the only person that has the
11 skill to take down everything that is said, because she's
12 trained in a very specialized form of shorthand that allows
13 her to take down things phonetically with a stroke of her
14 machine. But even with that, when she has to do a
15 transcript, you will see these mics stationed around the
16 courtroom, she goes back and listens to everything that was
17 said to make sure that what she is taking down is accurate,
18 because there's always the human error factor in any
19 transcription process.

20 So I would ask that you not allow notetaking to
21 become a distraction to you and dilute your powers of
22 observations. Because as the fact finders, it's essential
23 that you rely on that in observing the witnesses and judging
24 their credibility and believability.

25 You may want to keep an outline of the main points

1 that are being made and allow those, that summary or that
2 outline, to refresh your memory as you begin the
3 deliberation process. Your notes are not to be shared with
4 anyone else. They are only for your individual purposes to
5 refresh your own memory of the general arguments and
6 witness -- general arguments that may be made by the
7 attorneys and the evidence that is presented during the
8 trial.

9 I would remind you that your notes, again, are for
10 your specific and your individual purposes. They are only
11 to be used to refresh your own memory. And you should also
12 be reminded that your notes should not be considered any
13 more reliable than someone else's memory. Their memory
14 should be considered just as reliable as notes that may have
15 been taken by a prior juror.

16 During breaks and recesses, your notes will be left
17 in your seats. We do that so that there's no premature
18 temptation to deliberate regarding something you may have
19 heard prior to a break.

20 I have appointed a foreperson. Just so that you
21 know, the foreperson is a completely random process that the
22 Court employees so a cross-section of the community is
23 represented. I wish there were a more scientific method,
24 but there is not one. The foreperson is merely an
25 administrative process. That person fills out the verdict

1 form and writes out any questions you may have during
2 deliberations. I emphasize that that person does not have
3 any greater vote or voice than you do. It is merely
4 administrative.

5 Madam Forelady, again, as I've already explained,
6 it is your responsibility to write out the verdict and any
7 questions the jury may have during deliberations. But I
8 will give you further instructions regarding that at the
9 conclusion of the case.

10 In order to preserve everyone's rights, I'm going
11 to give the attorneys the opportunity to take exception to
12 anything that the Court has said by way of opening
13 instruction.

14 Any exceptions from the State?

15 MS. MULKEY: No exceptions, Your Honor.

16 THE COURT: From the defense?

17 MS. GAY: No, ma'am.

18 THE COURT: Ladies and gentlemen, I would ask that
19 you give the attorneys your undivided attention.

20 MS. MULKEY: May it please the Court.

21 THE COURT: Yes, ma'am.

22 MS. MULKEY: Ladies and gentlemen, thank you for
23 returning. I'm Lauren Mulkey with the Solicitor's Office.

24 Society has laws. It is against the law to possess
25 drugs. It is against the law to sell drugs, distribute them

1 in any manner. It is against the law to flee from law
2 enforcement during a lawful traffic stop. As citizens
3 coexisting in society, we recognize several duties. The
4 duty of a juror to render a fair verdict based on the facts
5 and the law, a duty to abide by laws in general, and the
6 duty of someone to enforce those laws. And we give our
7 sheriff's deputies and police officers that duty of
8 enforcement.

9 I would like to take you back to June 16th, 2013, a
10 warm, sunny Sunday afternoon in the Isle of Palms where
11 Deputy Chavez was working. And he was specifically assigned
12 to an area of high traffic due to the tourists in the summer
13 months. His specific goal or responsibility, if you will,
14 his assignment was traffic enforcement. And while seated in
15 his marked cruiser and in full uniform, he observed the
16 defendant approach the intersection of JC Long Boulevard and
17 Ocean Boulevard. It's a very busy intersection on the main
18 thoroughfare of hotels, restaurants, beach accesses, parking
19 lots, parking meters and lots of people. And he observed
20 the defendant approach the intersection and make a right
21 turn, but failed to use his turn signal.

22 Deputy Chavez, as a member of our society,
23 recognized his duty to enforce the law and proceeded to get
24 behind the defendant, activate his blue lights and siren,
25 and initiated a lawful traffic stop. The defendant turned

1 onto a side street and began to slow down. All indications
2 were that this would be an opportunity for the deputy to
3 provide the citizen with a mild reminder of the law, a
4 traffic warning, a citation, we don't know, because that's
5 when everything changed.

6 Instead of stopping for Deputy Chavez, the
7 defendant slowed down, looked back at Deputy Chavez, and
8 yelled something, and took off at a high rate of speed. He
9 went through several intersection, weaving in and out of
10 oncoming traffic, around motorists, bicycles and other cars,
11 until such time that he was no longer able to control the
12 motorcycle he was operating, and slammed into a mailbox, and
13 laid out in the middle of oncoming traffic. And that is why
14 we are here today, ladies and gentlemen.

15 We spoke about duties. And my duty is to prove to
16 you that the defendant fled from Deputy Chavez during a
17 lawful traffic stop, that the defendant continued to flee
18 from Deputy Chavez on that motorcycle, on a roadway, at a
19 high rate of speed, driving recklessly, and that he
20 continued to flee even upon crashing the motorcycle. Laid
21 out in the middle of the street, injured, the defendant
22 still attempted to get up and flee.

23 I remind you that it is against the law to possess
24 drugs. It is against the law to sell drugs. And it is
25 against the law to flee from law enforcement. The defendant

1 fled that day because of the illegal drugs he had in his
2 pocket that were found on him at the time of his arrest
3 after he crashed.

4 I encourage you to listen to the facts presented to
5 you and the law as charged to you by the judge. And at the
6 conclusion of this trial, I respectfully request that you
7 find the defendant guilty of all charges.

8 Thank you, ladies and gentlemen.

9 THE COURT: You may proceed.

10 MS. GAY: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 MS. GAY: Good afternoon. It's been a long
13 afternoon, I know. I told you my name is Melissa Gay from
14 Charleston Bar. And this is Michael Nelson. He and I
15 represent Mr. Nesbit. He wasn't here on Monday, so I let
16 you know who he is.

17 I want to thank you for being here. It's not me
18 who brought you here; it's the system. But it's the best
19 system in the entire world.

20 My client is a man who is having a trial, because
21 as you saw on Monday, he said he's not guilty. And the
22 trial process, which the judge will explain in more detail
23 when she talks to you on the charges of the law, trial
24 process is something we should never, ever take
25 halfheartedly. It is an incredibly valuable right that all

1 of us as citizens of the United States have. It's not just
2 here today, while the State says this is what we believe he
3 did and you should convict him, it's a process where you 12
4 and the alternate are going to look at what's presented, and
5 you are going to determine if that's something called, you
6 know, guilt beyond a reasonable doubt.

7 And guilt beyond a reasonable doubt is what we are
8 here about. And it's something that is guaranteed, as all
9 of us have, and guaranteed to my client. One of the things
10 that is often said is that my client is clothed in
11 innocence. He comes to this court as an innocent man, just
12 as innocent as me or the solicitor or the judge or you or
13 these deputies. He's an innocent man. He's an innocent man
14 until such time as the Solicitor's Office can move that
15 cloak of innocence away and prove to you beyond a reasonable
16 doubt that he's guilty. And if they don't do that, that's
17 when you must acquit him and you must find that he's not
18 guilty.

19 And the judge will explain more of that later, but
20 that's the process we are here for today. We are here to
21 determine what evidence they have and whether or not, in
22 fact, that evidence will convict him beyond a reasonable
23 doubt. And no case is as easy as the solicitor would have
24 you believe, or we wouldn't be having a trial.

25 The solicitor would have you believe everything

1 started when there was this failure to use a signal, and
2 next thing you know, he's on the ground and all these drugs
3 are found. But you are going to find, as you listen to the
4 evidence in the case, that there are gaps in that process.
5 And those gaps become the most important thing in why we are
6 here today. And there's video of everything. There's video
7 of him making -- on his motorcycle, video of him running
8 from the police officer. Interestingly, there is absolutely
9 no video of them finding drugs on him. And that's going to
10 become very pertinent and the most important thing in this
11 case. Because, as I said, he said to you that he's not
12 guilty when we picked this jury.

13 In the process of this case, what is reasonable
14 doubt? And it's not my job to explain all the law to you,
15 it's going to be the judge's job, but I will tell you that
16 it's doubt which would cause a reasonable person to hesitate
17 to act. What that means is that as you listen to these
18 witnesses and what's presented today, you are supposed to
19 question every single thing they say in all ways possible.
20 And at the end of the trial, if a reasonable person would
21 hesitate to act to convict my client, then the judge is
22 going to instruct you that you have to find him not guilty.

23 Now, you might not like the fact that there are all
24 these drugs in the case, but if you don't find that they can
25 prove that he possessed them or had actual possession of

1 them, then you must find him not guilty.

2 And I will tell you that we all have jobs to do in
3 this courtroom. And the most important part is, this is not
4 TV. It is not nearly as entertaining as TV. If I had a
5 script and some Hollywood writer had written it, I would be
6 saying a whole lot of different things today. But it's a
7 process, a very important process. And it's the most
8 important day of Henry Nesbit's life, the most important
9 day. And in the process, what we realize, because we are
10 not TV people and we are just people here, is that we all
11 have jobs to do. And the judge is the judge of the law, as
12 she said. And she told you she's going to make legal
13 decisions that are important. We are going to do our part.
14 But you are the fact finders. And your decision as the fact
15 finders of this case will never be changed.

16 You know, legal issues may be considered in a
17 different court, but the facts and how you decide them never
18 change. And so I just want to tell you how important you
19 are, and how important you are to Henry Nesbit. And we
20 believe at the end of this day, at the end of this trial,
21 you are going to find as well that there are serious gaps in
22 this case. And we believe that you will find him not
23 guilty.

24 THE COURT: Madam Forelady, ladies and gentlemen,
25 we are going to take advantage of this break in the process

1 to take our lunch recess. We are going to break until 2:15,
2 which gives you an hour for lunch. During this break,
3 please do not discuss the case in any manner whatsoever.
4 Please leave your note pads in your seats. And please abide
5 by my previous instruction regarding media coverage or
6 having any contact with anyone in or about the courtroom.

7 You will return to your jury room. And as soon as
8 all jurors arrive, we will then continue with the
9 proceedings with the beginning of presentation of the
10 State's case. Again, we appreciate your patience. Have a
11 great lunch and we will see you at 2:15.

12 (Whereupon, the jury leaves open court at 1:15
13 p.m.)

14 THE COURT: Is there anything else we need to take
15 up before we break for lunch from the State?

16 MS. MULKEY: Nothing from the State, Your Honor.

17 THE COURT: From the defense?

18 MS. GAY: No, Your Honor.

19 THE COURT: All right. See y'all at 2:15.

20 (Luncheon recess was taken.)

21 THE COURT: State ready to proceed?

22 MS. MULKEY: Yes, Your Honor. We have one matter
23 before the Court.

24 THE COURT: Defense ready to proceed?

25 MS. GAY: Yes.

1 (Whereupon, the defendant is present.)

2 THE COURT: Yes, ma'am.

3 MS. MULKEY: We have spoken with the defense and we
4 are going to enter the Items 1 through 9 that we discussed
5 in pretrial.

6 THE COURT: I can barely hear you.

7 MS. MULKEY: We have spoken with the defense and
8 agreed to enter 1 through 9 into evidence.

9 THE COURT: I already entered those without
10 objection at the beginning of the trial.

11 MS. MULKEY: Thank you, Your Honor.

12 THE COURT: Is there anything else we need to take
13 up before we proceed from the State?

14 MS. MULKEY: The State has nothing, Your Honor.

15 THE COURT: From the defense?

16 MS. GAY: Nothing, Your Honor.

17 THE COURT: Please bring in the jury.

18 (Whereupon, the jury returns to open court at 2:23
19 p.m.)

20 THE COURT: Alternate is 249, Ms. Meyers. And then
21 the person in the back is going to need to come to the
22 front. You may be seated.

23 Ladies and gentlemen, I hope that y'all had a
24 pleasant lunch. We are now going to resume the trial of the
25 case.

1 The State may proceed.

2 MS. MULKEY: The State calls Deputy Chavez.

3 THE COURT: If you will come to the witness stand
4 and be sworn.

5 GERARDO CHAVEZ,

6 having been duly sworn, testifies as follows:

7 THE CLERK: State your name into the microphone and
8 spell your last name, first and last name for the record.

9 THE DEFENDANT: Okay. Deputy Chavez,
10 G-e-r-a-r-d-o; last name is C-h-a-v-e-z.

11 THE COURT: You may proceed.

12 MS. MULKEY: May it please the Court, Your Honor.

13 DIRECT EXAMINATION

14 BY MS. MULKEY:

15 Q. Good afternoon, Deputy Chavez.

16 A. Good afternoon.

17 Q. What is your occupation?

18 A. Deputy sheriff, ma'am.

19 Q. And who is your employer?

20 A. Charleston County Sheriff's Office.

21 Q. What are your current duties with the Sheriff's
22 Office?

23 A. Currently assigned to patrol.

24 Q. How long have you been employed with them?

25 A. Approximately three years.

1 Q. Do you have any prior law enforcement experience?

2 A. I do. I have -- prior to Sheriff's Office, I have
3 approximately five years law enforcement experience with the
4 Isle of Palms Police Department. And prior to that, I was
5 at the detention center for approximately six years.

6 Q. Can you tell us a little bit about your training
7 and experience as a deputy?

8 A. Annual training consisting of legal updates, ethics
9 training, traffic enforcement. I've had additional classes
10 in drug interdiction with advanced traffic stops and traffic
11 enforcement.

12 Q. Can you please tell the jury whether you were
13 working on June 16th, 2013?

14 A. I was.

15 Q. What were your duties and assignments for that
16 shift?

17 A. I was assigned to working off-duty patrol at the
18 Isle of Palms Police Department to assist them with extra
19 traffic enforcement and crowd control during the busy time
20 of the beach season.

21 Q. So you were working in the Isle of Palms but as a
22 Charleston County sheriff's deputy?

23 A. I was, ma'am.

24 Q. Is Isle of Palms in Charleston County?

25 A. It is.

1 Q. Were you in uniform?

2 A. Yes, ma'am.

3 Q. And were you in a marked Charleston County vehicle?

4 A. Yes, ma'am.

5 Q. And on June 16th, 2013, did you have the occasion
6 to interact with the defendant?

7 A. I did.

8 Q. Can you please tell us about how you came in
9 contact with the defendant?

10 A. Yes, ma'am. On that day, I was parked in front of
11 the Windjammer, parked in the median, partially in the
12 median observing traffic for any violations. When I
13 observed on the defendant -- I observed the defendant
14 approaching the intersection of JC Long Boulevard at Ocean
15 Boulevard, at which time he proceeded to make a turn while
16 failing to signal.

17 Q. And based on the defendant's failure to use his
18 signal, did you initiate a lawful traffic stop?

19 A. I did.

20 Q. And did you ultimately write the defendant a
21 citation for this?

22 A. I did.

23 Q. Do you know what statute he was cited under?

24 A. He was cited under 56-6-2150 for failing to use his
25 turn signal.

1 Q. And can you please tell us what that statute
2 requires a driver to do?

3 A. It requires a driver to, when safely able to make a
4 turn or to shift lanes, they have to turn on their turn
5 signal and keep it on continuously prior to 100 feet of
6 where they are going to be making a turn.

7 MS. MULKEY: May I approach, Your Honor?

8 THE COURT: Yes, ma'am.

9 BY MS. MULKEY:

10 Q. At this time I would like to show you what's
11 previously been entered into evidence as the State's Exhibit
12 1. Can you see that Deputy Chavez?

13 A. Yes, ma'am.

14 Q. Do you recognize this?

15 A. I do, ma'am.

16 Q. How do you recognize this?

17 A. I'm familiar with the intersection. That's JC Long
18 and Ocean Boulevard where the violation occurred.

19 Q. Could you please point out where you were seated
20 that day?

21 A. Yes, ma'am. Right here facing that way. (Witness
22 indicates.)

23 Q. Does this map fairly and accurately depict the
24 incident location on that date and time?

25 A. Yes, ma'am.

1 Q. So you were sitting right there where you've drawn
2 that arrow?

3 A. Yes, ma'am.

4 Q. And can you please show us what you observed of the
5 defendant using that map?

6 A. Yes, ma'am. Is there any way we can move the map
7 down a little bit? Yes, ma'am. I observed the defendant
8 traveling -- he was operating a motorcycle -- traveling on
9 JC Long Boulevard to this intersection here where he
10 proceeded to make a right-hand -- I'm sorry, where he
11 proceeded to make a right-hand turn onto Ocean Boulevard
12 without signaling.

13 Q. And because we moved the map, could you please show
14 us where you were sitting again?

15 A. I'm sorry. Right here, facing this way.

16 Q. Thank you. Now, you were driving an updated car,
17 correct?

18 A. Yes, ma'am.

19 Q. Does that car have a dashboard camera?

20 A. It does.

21 Q. Do those record everything?

22 A. Not everything.

23 Q. What causes the camera to start recording?

24 A. The activation of my blue lights or by manually
25 activating the recording system.

1 Q. Can you please tell the jury how that camera is
2 positioned, where in the vehicle it's at?

3 A. It's on the passenger's side in a fixed stationary
4 position facing forward looking out the windshield.

5 Q. Your testimony is the camera is stationary?

6 A. Yes, ma'am.

7 Q. Are you stationary?

8 A. No, I am not.

9 Q. Do you have the ability to see outside the range of
10 that camera --

11 A. I do.

12 Q. -- while you are seated in the car?

13 A. Yes, ma'am.

14 Q. The camera faces this way, to make sure I
15 understand?

16 A. It faces directly forward; whereas, I can observe
17 things around my vehicle in most directions.

18 Q. Regarding this incident, when and how did your
19 camera start recording?

20 A. Upon activating my blue lights, after he had made
21 the improper turn, when activating my blue lights, it
22 activated a recording system. Furthermore, with that being
23 said, when the blue lights were activated, it also
24 prerecords 30 seconds prior to the activation of the
25 recording system.

1 Q. And what was the defendant driving that day?

2 A. A brown Harley Davidson motorcycle.

3 Q. Is that considered a motor vehicle under South
4 Carolina law?

5 A. It is.

6 Q. Is your testimony that based on the defendant's
7 failure to use his turn signal, you attempted a lawful
8 traffic stop?

9 A. Yes.

10 Q. And then what happened?

11 A. Upon activating my blue lights, the defendant
12 pulled -- he started to slow down and made a right-hand turn
13 onto a side street, and appeared that he was going to be
14 stopping, at which time he yelled something back to me and
15 then took off at a high rate of speed.

16 Q. What did the defendant yell at you?

17 A. "I'm going to the spot."

18 Q. What or where is that?

19 A. I have no idea.

20 Q. Have you ever heard that before?

21 A. No, ma'am.

22 Q. Is there a store or gas station located nearby
23 called The Spot?

24 A. No, ma'am.

25 Q. Did you know the defendant?

1 A. No, ma'am.

2 Q. So the defendant takes off and refuses to stop for
3 you. Then what happens?

4 A. I advised dispatch that he was failing to stop and
5 requested a backup unit.

6 Q. And you just previously stated that you were not
7 familiar with this defendant?

8 A. Correct.

9 Q. What road did you pursue him on after he failed to
10 stop?

11 A. Started off on Ninth Avenue and proceeded onto Palm
12 Boulevard.

13 Q. Is that a public roadway?

14 A. It is.

15 Q. Did you ever lose sight of the defendant while
16 pursuing him?

17 A. Briefly. While pursuing him, after he made that
18 left-hand turn onto Palmetto Boulevard, he entered the
19 bicycle lane, and proceeded to pass vehicles in the bicycle
20 lane, and then would cut across in-between traffic and into
21 oncoming traffic or passing people on the proper side, where
22 he went around a curve and I lost sight of him there.

23 Q. When did you next see the defendant?

24 A. Upon catching up to him just after the curve, he
25 had just had a collision, and he was in the roadway and in

1 oncoming traffic and the motorcycle was off to the side
2 still steaming.

3 Q. What did you do next?

4 A. Upon getting up to his location, I observed him to
5 be in what appeared to be -- he was rocking forward in
6 what -- I believed he was still attempting to get up and go,
7 get up and run.

8 Q. Can you demonstrate for the Court what you saw the
9 defendant doing?

10 A. He had his right hand kind of back and had his leg
11 kind of posted, and he kind of was trying to rock forward,
12 throwing his left arm up.

13 Q. In your training and experience as a sheriff's
14 deputy, what did you believe the defendant to be doing?

15 A. Still trying to elude, still trying to get away.

16 Q. And what happened as you approached the defendant?

17 A. I gave him loud verbal commands to get on the
18 ground, stay on the ground, at which time I also observed
19 him to be bleeding pretty bad from his head. He had a head
20 wound, at which time I also asked for EMS to respond to the
21 scene.

22 Q. Why were you telling the defendant to stay on the
23 ground?

24 A. Because he was under arrest for the failing to
25 stop, the attempt to elude.

1 Q. And why specifically did you have to tell him to
2 stay on the ground?

3 A. Because he still appeared to be trying to get up to
4 go.

5 Q. And then what happened, Deputy Chavez?

6 A. I proned him out. And seeing his hands were clear,
7 I left him there, primarily because of unknown potential
8 other injuries that he may have sustained in the collision.
9 But he continuously would push up, trying to get up off the
10 ground. So as my backup Deputy Buckhannon was arriving, I
11 advised him to go ahead and place his hands behind his back,
12 at which time he complied, and I placed him into cuffs.

13 Q. If you wouldn't mind, explain to the jury what
14 proned out means.

15 A. I'm sorry. They were face down, chest to the
16 ground, and just out with his hand exposed to make sure he
17 didn't have any weapons in his hands.

18 Q. You said that after that, you advised the defendant
19 to put his hands behind his back?

20 A. Yes, ma'am, as my backup was arriving.

21 Q. And then what happened next?

22 A. I took him into custody, placed him under arrest
23 for the failing to stop, placed him in handcuffs to the
24 rear.

25 Q. And then what did you do?

1 A. I began to conduct a search incident to arrest of
2 the subject, and located -- I didn't find any weapons on
3 him, however, I did locate a large amount of US currency and
4 several bags of narcotics on his person in his front
5 pockets.

6 Q. How much cash did you locate on the defendant?

7 A. Approximately \$2,900 in cash.

8 Q. Was there anything you noticed about the
9 denominations of that money?

10 A. Majority of it was in smaller bills, 20s.

11 Q. Why is that significant to you through your
12 training and experience as a law enforcement officer?

13 A. Through my experience and through my career, I've
14 made numerous drug arrests, and I found that when you have
15 somebody that deals in narcotics, they generally have a
16 sizable amount of cash on them, a lot of it is mainly in
17 smaller denominations from individual sales. And the way it
18 was in his pocket, it was -- it wasn't in any kind of order.
19 It was more stuffed in the pocket, as opposed to organized.

20 Q. Going back to the other items that you located in
21 the defendant's pockets at the time of his arrest, you said
22 you believed them to be narcotics?

23 A. Yes, ma'am.

24 Q. Could you tell us about what they looked like?

25 A. Yes, ma'am. In his right front pocket along with

1 all the cash that he had, majority of the cash that was on
2 his person was in his right front pocket, he also had a
3 clear plastic baggy that had a sizable amount of white
4 powdery substance that I believed to be cocaine.

5 In the left front pocket, he also had a brown
6 grocery-style plastic bag, the one you get from the grocery
7 store, that had four individual freezer-style bags that had
8 an amount of a brown crystallized substance inside the
9 baggies, each one of the baggies.

10 And furthermore in the right, I believe it was in
11 the right front pocket, another freezer-style bag that had a
12 small amount of the brown crystallized substance that
13 matched what he had in his left pocket.

14 Q. How much of the white powdery substance did you
15 locate on the defendant?

16 A. It was about approximately 20 grams.

17 Q. And how much of the brown crystallized substance
18 did you locate on the defendant?

19 A. Total was approximately 450 grams, nearly a pound.

20 Q. Based on your training and experience as law
21 enforcement officer, you testified yourself you've made
22 numerous drug arrests. Are the amounts that you located in
23 the defendant's pockets characteristic of personal use?

24 A. No, ma'am. Typical dosage use for personal, from
25 through my training and experience, is approximately under a

1 gram.

2 Q. Is that for the white powdery substance or --

3 A. For the white powdery substance.

4 Q. You are testifying that you located a substantial
5 amount of cash, what you believed to be narcotics on the
6 defendant in his pockets at the time of his arrest?

7 A. Yes, ma'am.

8 Q. What did you do next?

9 A. Upon backup arriving, I advised him of what I had
10 found, advised him that we had loads of 33, which is code
11 for narcotics in law enforcement jargon.

12 Q. Why would you choose to use the code to your fellow
13 officer?

14 A. For officer's safety. Generally, it's not unheard
15 of that weapons and drugs run together. So when we see an
16 amount of either/or, we advise the other of what we've seen
17 so they are aware of what's going on.

18 Q. And is that recorded?

19 A. It was, ma'am.

20 Q. How so?

21 A. On my body mic, it was on my body mic.

22 Q. So there is a camera in the car that visually
23 records things?

24 A. Yes, ma'am.

25 Q. And there is a microphone on your body that records

1 what you say?

2 A. Yes, ma'am.

3 Q. And does that microphone stay with you during the
4 process of arrest?

5 A. Yes, ma'am.

6 Q. What did you do with the items that you located in
7 the defendant's pockets?

8 A. I seized them and placed them into an evidence bag.
9 And then shortly thereafter, secured them into my patrol
10 vehicle and locked the doors.

11 Q. Can you please explain what you mean by secured?

12 A. I placed them into an evidence bag and placed them
13 into the backseat of my patrol vehicle, placed all the items
14 that were in his pocket.

15 Q. Did you lock the doors to your patrol vehicle?

16 A. I did.

17 Q. Does anybody else have a key?

18 A. No, ma'am.

19 Q. And what is the purpose in securing them in the
20 backseat?

21 A. To make sure that we maintain the chain of
22 evidence, to make sure that it was secure while he was being
23 tended to for any medical injuries or anything while they
24 were taking him to go to the hospital.

25 Q. Do you have a standard practice yourself to sweep

1 or check the backseat of your vehicle prior to your shift?

2 A. I do.

3 Q. And did you do this prior to your shift that day?

4 A. I did.

5 Q. Did you locate any items?

6 A. No, ma'am.

7 Q. You've testified that your car has an in-car
8 camera?

9 A. Yes, ma'am.

10 Q. Did it record the pursuit of the defendant?

11 A. It did.

12 Q. Have you viewed a video of this pursuit?

13 A. I have.

14 Q. I'm going to show you now what's previously been
15 entered in as State's Exhibit No. 3. Now, this video has
16 been entered as State's Evidence No. 3.

17 MS. MULKEY: And we would like to request to
18 publish a clip of it to the jury at this time, Your Honor.

19 MS. GAY: Without objection.

20 THE COURT: Proceed.

21 (Video Playing.)

22 BY MS. MULKEY:

23 Q. I would like to show you what has been pre-entered
24 into evidence as State's Exhibit No. 2. Now, we just
25 watched the video of the pursuit that the defendant lead you

1 on. Can you please point out to the Court where on this map
2 the intersection is that you initiated the lawful traffic
3 stop.

4 A. Violation?

5 Q. The initial violation, yes, sir.

6 A. Initial violation is at that intersection right
7 there.

8 Q. Using this map -- and if Your Honor doesn't mind, I
9 will stand here because it's a little larger than the
10 screen, so I can move it -- can you please take the jury and
11 the Court on the route that you followed the defendant?

12 A. Yes, ma'am. I got behind the defendant in the area
13 of right here where I initiated my blue lights to conduct a
14 lawful traffic stop for the failing to signal. He turned
15 down Ninth Avenue right here where it appeared that he was
16 going to stop for a second, where he yelled back, I'm going
17 to the spot. And then he proceeded to drive off at a high
18 rate of speed through this intersection here at Carolina or
19 Charleston onto Palm Boulevard, took a left onto Palm
20 Boulevard and continued going down Palm Boulevard.

21 Q. Show us where you were at before I had to move it.
22 I apologize. You stated you were on Palm Boulevard?

23 A. Yes, ma'am. This is 8th Avenue, so around here.
24 And we kept on coming down Palm Boulevard where he weaved in
25 and out of traffic and we had to keep on going down.

1 Can we move it a little bit more up? There we go.

2 Yes, ma'am.

3 6th Avenue, this is the curve that I couldn't get
4 around traffic that he had already gone around. And just
5 about right here in front of the parking lot of the church
6 is where he had his collision where I caught up to him.

7 Q. Thank you.

8 A. Yes, ma'am.

9 Q. Now, the video that we just viewed concluded with
10 the defendant in the ambulance being transported by EMS?

11 A. Yes, ma'am.

12 Q. What happened after the defendant was taken by EMS?

13 A. After he left, I retrieved the suspected narcotics
14 and conducted field tests, at which time the white powdery
15 substance field tested presumptive for cocaine. And the
16 brown crystallized substance field tested presumptive for
17 methamphetamines.

18 Q. Can you please explain to the Court what field
19 tested means?

20 A. There's field test kits we carry to show
21 presumption of what a substance may be.

22 Q. And your testimony is the white powdery substance
23 tested presumptive for cocaine?

24 A. Yes, ma'am.

25 Q. And the rock-like substance tested presumptive for

1 methamphetamine?

2 A. Yes, ma'am.

3 Q. Then what did you do?

4 A. Secured them back in the rear of my vehicle, locked
5 the doors until FSU, Forensic Services Unit, arrived on the
6 scene shortly thereafter.

7 Q. Why did Forensic Services Unit respond to this
8 call?

9 A. So they can take all the evidence into their
10 custody.

11 Q. And when they come on scene, what do they generally
12 assist you with?

13 A. Dividing, accounting for all the articles that were
14 taken and placed in the evidence bag. Everything was
15 divided up, logged, photographed -- well, not identified
16 yet, but everything was separated and logged into evidence,
17 at which time they took custody of it.

18 Q. And can you take us through a brief summary of what
19 you did?

20 A. Upon retrieving the items from the rear of my
21 patrol vehicle, we took it in front of the camera of my
22 patrol vehicle where I activated my camera again. And
23 myself, along with FSU Investigator Meyer, inventoried the
24 items that were seized, photographed and documented
25 everything that was in the evidence bag.

1 Q. And was this recorded?

2 A. Yes, ma'am.

3 Q. Was this on the same CD of the clip that we
4 previously just showed?

5 A. Yes, ma'am.

6 MS. MULKEY: Your Honor, at this time I would like
7 to publish an additional clip of that CD that's been entered
8 into evidence.

9 MS. GAY: Without objection.

10 THE COURT: Proceed.

11 (Video Playing.)

12 BY MS. MULKEY:

13 Q. Just to be clear, the evidence you sorted from that
14 vehicle, those are the items you retrieved from the
15 defendant's pockets at the time of his arrest?

16 A. Yes, ma'am.

17 Q. After it was sorted and counted, then what
18 happened?

19 A. It was taken into -- Investigator Meyer took it
20 into evidence custody so it could be further analyzed and
21 placed into evidence.

22 Q. And when you left the scene, where did you go?

23 A. I went to the Medical University of South Carolina,
24 downtown.

25 Q. Why did you go there?

1 A. To relieve Deputy Buckhannon who had followed the
2 ambulance that transported the defendant to the hospital, to
3 the trauma center.

4 Q. So on the video that we watched, the first clip,
5 you see the defendant being loaded into the ambulance, and
6 then there's a marked Charleston County cruiser that follows
7 that?

8 A. Yes, ma'am.

9 Q. Is your testimony that that was Deputy Buckhannon?

10 A. Yes, ma'am.

11 Q. And what happened when you arrived at M.U.S.C.?

12 A. I met with Deputy Buckhannon. I believe it was in
13 the ICU, at which time I took custody of the defendant's
14 property that was cut off of him, his clothing that was cut
15 off of him upon arrival at the hospital by medical staff.

16 Q. If you could please tell the jury what was in the
17 bag?

18 A. His pants were in the bag. And when I did an
19 inventory of his pants, in the right coin pocket, the small
20 pocket that's next to your right front pocket, there was
21 another small baggy of white powdery substance and another
22 small baggy with green plant-like material in it.

23 Q. Why did you inventory his jeans?

24 A. Because they were cut off of him. They were part
25 of the evidence.

1 Q. And they were his property?

2 A. Yes, ma'am.

3 Q. And he was under arrest and, therefore, you had a
4 duty to maintain his property; is that correct?

5 A. Yes, ma'am.

6 Q. Did you field test that substance that you
7 recovered from the coin pocket?

8 A. I did. It field tested presumptive for cocaine as
9 well.

10 Q. And do you recall how much that bag weighed?

11 A. I believe it was approximately 2 grams.

12 Q. And what did you do with that bag?

13 A. It was later submitted into evidence for further
14 analyzation.

15 Q. I would like to hold up and show you what has been
16 marked as State's Exhibit 10, 11, 12 and 13. If you would
17 please go through each one and let me know if you recognize
18 them.

19 A. Yes, ma'am. This is the small clear plastic baggy,
20 inside with approximately field weight of 2 grams of what
21 tested presumptive for cocaine.

22 Q. How do you recognize that?

23 A. I placed it in here.

24 Q. And how can you tell?

25 A. It's my handwriting on the bag.

1 Q. Could you please point that out to the Court.

2 A. (Witness indicates.)

3 Q. And where was that located in?

4 A. The right front coin pocket of the defendant's
5 jeans.

6 Q. Okay. This is State's Exhibit 11.

7 A. This is the baggy of, I believe, the cocaine that
8 field tested presumptive for cocaine that was in the right
9 pocket of the defendant's pants at the time of arrest, along
10 with the money.

11 Q. And how do you recognize that?

12 A. I'm the one that secured it and turned it over to
13 evidence.

14 Q. Are your initials on that bag?

15 A. Not at this time, no.

16 Q. But that was the bag that you gave to Crime Scene
17 Tech Meyer?

18 A. Yes, ma'am.

19 Q. On the hood of your vehicle?

20 A. Yes, ma'am.

21 Q. On the video that we just watched?

22 A. Yes, ma'am.

23 Q. Now I hand you State's Exhibit 12.

24 A. This is the first bag that was inside the right
25 front pocket along with the cash and the baggy of

1 presumptive cocaine that field tested presumptive for
2 methamphetamines.

3 Q. And how do you recognize that?

4 A. I turned it over to Investigator Meyer on scene.

5 Q. And was that on the video recording we just
6 watched?

7 A. It was.

8 Q. Last is State's Exhibit No. 13.

9 A. These were the other individualized bags that were
10 in the defendant's left front pocket.

11 Q. How do you recognize those?

12 A. I turned them over to Investigator Meyer.

13 Q. And is that on the video that we just watched?

14 A. It was.

15 Q. Are all of these exhibits that I just showed you,
16 are they in substantially the same condition as the night
17 that you found them on the defendant?

18 A. Yes, ma'am.

19 Q. The same items that you found in the defendant's
20 pockets?

21 A. Yes, ma'am, still in the freezer bag.

22 Q. One more thing, Deputy Chavez. The person that
23 fled from you that initiated a lawful traffic stop on that
24 evening and the person that you have testified you located
25 these items in his pockets with at the time of his

1 collision, do you see that individual in the courtroom
2 today?

3 A. I do, ma'am.

4 Q. Could you please point him out for the Court?

5 A. The defendant sitting right over here.

6 MS. MULKEY: Beg the Court's indulgence.

7 THE COURT: Yes, ma'am.

8 MS. MULKEY: Your Honor, I would like to let the
9 record reflect that Deputy Chavez, who was there present
10 that evening, pointed out the defendant in the courtroom.

11 THE COURT: You may proceed.

12 MS. MULKEY: I have nothing further. Please answer
13 any questions of the defense.

14 THE COURT: Madam Forelady, ladies and gentlemen,
15 we need to take advantage of this break. As I indicated to
16 you, I'm basically trying two cases at the same time, and I
17 have a question from my other jury that I need to address.
18 So it will take about maybe ten minutes.

19 During this break, please do not discuss the case
20 in any manner whatsoever. And if you could set your note
21 pads on the ledge for me, because I'm going to have to bring
22 that other panel in and I don't want to have to disturb your
23 note pads. Thank you for your patience and understanding.

24 (Whereupon, the jury leaves open court at 3:41
25 p.m.)

1 THE COURT: Please get the jury.

2 (Whereupon, the jury returns to open court at 4:02
3 a.m.)

4 THE COURT: Thank you, ladies and gentlemen, for
5 your patience. You may be seated. We will now resume the
6 cross-examination of the witness.

7 CROSS-EXAMINATION

8 BY MR. NELSON:

9 Q. Good afternoon, deputy. How are you?

10 A. Fine. Yourself?

11 Q. I just want to go over your background a little
12 bit. You spent three years with the Sheriff's Office,
13 correct?

14 A. Correct, yes.

15 Q. And you are doing patrol now? And patrol basically
16 means you do traffic stops and general answering calls?

17 A. Answering calls for service, traffic enforcement.

18 Q. By traffic enforcement, you mean pulling people
19 over for speeding, waiting for people to run red lights,
20 stop signs, et cetera?

21 A. Violation of state laws, correct.

22 Q. Did you do that for Isle of Palms also?

23 A. I did.

24 Q. You did that for about eight years, you would say?

25 A. Yeah.

1 Q. Let's talk about June 16th of 2013. And you said
2 you were off-duty patrol?

3 A. I was.

4 Q. And that means basically -- who was paying you that
5 day, Isle of Palms?

6 A. Isle of Palms.

7 Q. You work for the county, you are a deputy for the
8 county, but you worked for Isle of Palms that day because --
9 it was a Sunday, if I remember correctly?

10 A. Because during the beach season, they need
11 additional help because of traffic, because of population,
12 because of the tourism.

13 Q. And where you were parked, you were parked looking
14 away from most of the bars, correct?

15 A. Correct.

16 Q. But don't you think most of the trouble would be
17 coming from the bars?

18 MS. MULKEY: Objection, Your Honor. Relevance.

19 THE COURT: I will give him a little latitude. You
20 may answer the question.

21 THE WITNESS: No, sir.

22 BY MR. NELSON:

23 Q. Now, you are parked right -- you are parked right
24 here?

25 A. Yes, sir.

1 Q. And you are looking towards JC Long, which is this
2 road right here, correct?

3 A. Yes, sir.

4 Q. Why are you parked there?

5 A. Just in the median, just in the median observing
6 everything.

7 Q. And how long were you there?

8 A. 30 minutes or so.

9 Q. And 30 minutes, pretty much observing JC Long,
10 whatever else in front of you?

11 A. I was in that intersection. We were in the
12 intersection approximately 30 minutes. I was -- previously
13 I was on this side, and my partner was on this side. But it
14 was coming close to the end of shift and my partner decided
15 to do another lap around the front beach just to patrol, and
16 I moved from here to here.

17 Q. Right. Okay. And you were there for 30 minutes.
18 How many cars came up and down JC Long, would you say?

19 A. I can't recall that.

20 Q. Do you have a ballpark, more than one?

21 A. Probably, yes, sir.

22 Q. More than five?

23 A. Not sure.

24 Q. But definitely more than one?

25 A. I would assume so.

1 Q. And you mentioned that you initially came in
2 contact with Mr. Nesbit because you said he failed to use a
3 turn signal?

4 A. Correct.

5 Q. And we saw on the video that you obviously see him
6 drive by, but you don't see what happened off the camera,
7 correct?

8 A. When he went out of frame, no, you do not see it.

9 Q. You also mentioned that it's illegal for somebody
10 to turn on the turn signal inside of 100 feet? You have to
11 turn your signal on outside of 100 feet?

12 A. Before making a turn, yes, sir.

13 Q. And did you ever measure 100 feet on this?

14 A. I did.

15 Q. And could you approximately mark it on there?

16 A. Can we slide the map down?

17 Q. Oh.

18 A. Other way. Yes, sir, approximately 100 foot is
19 right here from the stop sign.

20 Q. And how do you know that?

21 A. Because I measured it out with a measuring tape.

22 MS. MULKEY: Objection, Your Honor. Pretrial
23 matter.

24 THE COURT: Overruled.

25 BY MR. NELSON:

1 Q. How do you know that?

2 A. I measured it out with a measuring tape.

3 Q. For what reason?

4 A. In preparation for this trial.

5 Q. But you said he never turned on the turn signal,
6 correct?

7 A. I did not see a turn signal.

8 Q. So why would you go measure 100 feet if there was
9 never a turn signal?

10 A. Because the law states it has to be 100 feet.

11 Q. You said he never turned on the turn signal?

12 A. Yes.

13 Q. Even if -- 100 feet was really irrelevant according
14 to you in this?

15 A. Okay. Yes, sir.

16 Q. While you were watching JC Long, you observed
17 Mr. Nesbit drive by?

18 A. He approached the intersection to make that turn.

19 Q. What did you observe when you saw him?

20 A. Observed him operating the motorcycle on JC Long
21 heading to the intersection and he proceeded -- he stopped
22 at the intersection and proceeded to make a right-hand turn.

23 Q. Was there anything strange about his driving?

24 A. He failed to signal.

25 Q. Anything suspicious about him?

1 A. Initially, yes, sir, he failed to make any kind of
2 eye contact or any -- he failed to notice that I was there
3 in plain view.

4 Q. You are saying he didn't make eye contact with you?

5 A. Yes.

6 Q. You thought that was suspicious?

7 A. After not signaling, yes, that was another tell
8 sign, yes, sir.

9 Q. But he didn't make eye contact previous to him
10 turning?

11 MS. MULKEY: Objection, Your Honor. Asked and
12 answered.

13 THE COURT: Overruled.

14 BY MR. NELSON:

15 Q. You said it was suspicious that he did not make eye
16 contact?

17 A. When he reached the stop sign, sir, he stopped, and
18 he did not even look at my direction. That is not common
19 behavior of the general motoring public. If you see a cop
20 car in what is absolutely plain view, generally, the general
21 motoring public would at least look over and see that it was
22 a cop car, one; two, if there was anybody in it.

23 Q. But you never met him, so you don't know what he
24 thinks?

25 A. No, sir.

1 Q. And you are actually taught to keep your eyes on
2 the road, not look the opposite direction when you turn; is
3 that correct?

4 A. Correct, but he was at the stop sign.

5 Q. Right, and turned right?

6 A. Stopped.

7 Q. And he turned right, correct?

8 A. Yes, sir.

9 Q. And your car was to the left?

10 A. Yes, sir.

11 Q. So that's suspicious that he was looking in the
12 direction of the road he was turning at instead of looking
13 at you?

14 A. Yes, sir. If you are going to make a right-hand
15 turn, you would look left generally.

16 Q. Right, you look at the road?

17 A. Just to see if there was anything coming or --
18 right.

19 Q. You glance in the direction to see if there's
20 oncoming traffic?

21 A. Right.

22 Q. You don't necessarily have to lock eyes on anything
23 to your left?

24 A. Correct.

25 Q. But that's very suspicious?

1 A. In addition, yes.

2 Q. Now, if I could just play you the initial part of
3 this, your in-car video briefly.

4 (Audio playing.)

5 BY MR. NEWMAN:

6 Q. Now, it's very faint, but you were talking to
7 somebody else.

8 A. I believe so, yes, sir, on the phone.

9 Q. I'm sorry, who?

10 A. I believe I was on the phone.

11 Q. Who were you talking to?

12 A. I'm not sure, sir.

13 Q. Police? Doesn't really matter?

14 A. No, it doesn't. It was a year ago, or right at a
15 year ago.

16 Q. Understandable. But you were talking to somebody
17 on the phone. And do you know how long you were on that
18 phone for?

19 A. No, sir.

20 Q. But there had to have been a reason why you were
21 talking to whoever it was?

22 A. Safe to assume, sir.

23 Q. And you were obviously part of that conversation?

24 A. Yes, sir.

25 Q. And you were listening to whatever was going along

1 trying to have a conversation with that person?

2 A. Yes, sir.

3 Q. So your attention was somewhat divided during this
4 incident?

5 A. Yes, sir.

6 Q. So while you are talking on the phone, it is
7 possible that he actually did turn on the turn signal last
8 second?

9 A. No, sir.

10 Q. No? 100 percent?

11 A. Positive.

12 Q. You have to look through his vehicle, because you
13 are looking at the left side of his vehicle, correct?

14 A. Harley Davidson motorcycle, yes, sir. I'm looking
15 at him completely as he's approaching the intersection, yes,
16 sir.

17 Q. But you have to somewhat look through the vehicle,
18 right?

19 A. No, sir.

20 Q. But your attention was divided, but you know 100
21 percent because you were involved in conversation, but you
22 were doing multiple things?

23 A. Sir, I generally wear a blue tooth and I just pay
24 attention to what's going on around me more than generally
25 having a conversation on the phone.

1 Q. So after, as you stated there was no turn signal, A
2 motorcycle chase ensues, then Mr. Nesbit gets into a wreck?

3 A. I initiated a lawful traffic stop for that failing
4 to use a turn signal, and which time your client fled, yes,
5 sir.

6 Q. I mean, there was a chase?

7 A. Yes.

8 Q. And Mr. Nesbit got in a single-car accident or
9 single-motorcycle accident?

10 A. Collision.

11 Q. Whatever you want to call it. Once you caught up
12 to Mr. Nesbit, you were in fear for your safety?

13 A. Could you clarify that, sir?

14 Q. Were you in fear for your safety?

15 A. Can you be more specific? I mean, fear for my
16 safety?

17 Q. Did he pull a gun on you?

18 A. No.

19 Q. You weren't in fear of him attacking you at that
20 point?

21 A. At that point, I assumed that he was still trying
22 to flee since he was trying to rock forward to what appeared
23 to be get up and keep on fleeing, because that's what he was
24 just doing.

25 Q. But you weren't scared at that point because you

1 didn't pull out your firearm?

2 A. I didn't see any weapons.

3 Q. Okay. Now, at that point we saw the video,
4 Mr. Nesbit was screaming. Did he seem to be in pain?

5 A. Yes, sir.

6 Q. And you admit you saw blood all over him and he was
7 injured?

8 A. As I was making the initial contact, yes, sir.

9 Q. Now, you kept asking him if he has a license,
10 correct?

11 A. Yes, sir, ID.

12 Q. Did he?

13 A. No, sir.

14 Q. Who owned the motorcycle?

15 A. He said his homeboy.

16 Q. Not him?

17 A. Not him.

18 Q. Were you able to verify it wasn't his motorcycle?

19 A. Yes, sir.

20 Q. Now, let's talk about -- at that point, you had
21 already called in backup?

22 A. Yes, sir.

23 Q. And I think you said Deputy Buckhannon was the
24 first one there?

25 A. That was my backup, yes, sir.

- 1 Q. Was he the partner you were talking about earlier?
- 2 A. Yes.
- 3 Q. So he came very quickly thereafter?
- 4 A. Shortly thereafter, yes, sir.
- 5 Q. Matter of probably minute and a half, if that?
- 6 A. I didn't time it on video, sir.
- 7 Q. But shortly --
- 8 A. Relatively short time, yes, sir.
- 9 Q. And at that point, your car -- did Deputy
- 10 Buckhannon have a camera in his car?
- 11 A. Yes.
- 12 Q. I think all county cars have cameras in it?
- 13 A. Not all county cars.
- 14 Q. But most of them?
- 15 A. Yes.
- 16 Q. And Buckhannon had a camera in his car, correct?
- 17 A. I believe he does. I'm not sure, sir.
- 18 Q. Okay. So when Buckhannon got there, that's when
- 19 you searched Mr. Nesbit?
- 20 A. That's when I secured Mr. Nesbit.
- 21 Q. Okay. He was secured at that point when you
- 22 searched him out?
- 23 A. Yes, sir.
- 24 Q. Now, at that point you had cover?
- 25 A. He's under arrest, yes, sir.

1 Q. And he's obviously yelling, I believe, about his
2 leg; he was yelling because he was in pain?

3 A. Uh-huh, yes.

4 Q. At that point, you weren't concerned about him
5 going anywhere?

6 A. What do you mean, sir?

7 Q. Well, you got him in handcuffs and he just got in a
8 motorcycle accident, he's bleeding.

9 A. Yes, sir.

10 Q. Did you think he was going to run away at that
11 point?

12 A. Not run, sir, but he was going to be transported.

13 Q. Oh, no, I understand that. I understand that. But
14 you weren't scared of Mr. Nesbit fleeing by himself without
15 you at that point?

16 A. No, sir, not at that point.

17 Q. You had enough time, you could have -- in
18 hindsight, you could have done a couple things different, as
19 you always can in any situation, right?

20 A. In hindsight, sir.

21 Q. You had Deputy Buckhannon there as your backup.
22 You had yourself there. And I can't remember the timing of
23 this, and we just watched the video, but then EMS came?

24 A. Yes.

25 Q. Did you search Mr. Nesbit before or after EMS came?

1 A. Before, sir.

2 Q. So it was just you and Buckhannon then?

3 A. I believe so, yes, sir.

4 Q. And you had your car there with the camera?

5 A. Yes, sir.

6 Q. And like we just talked about, you had enough time,
7 you could have done a couple of things different in
8 hindsight?

9 A. I did what I had to do at the moment that this
10 incident occurred, sir.

11 Q. I'm not disputing anything you did. We talked, and
12 you are a good policeman. But Mr. Nesbit was secured?

13 A. Yes, sir.

14 Q. He wasn't going anywhere at that point. You have
15 two deputies there and he's handcuffed. You have a camera
16 in your car, but you didn't take the time to turn the camera
17 to actually see what happened when you searched him?

18 A. I searched him as soon as I secured him, sir.

19 Q. Right. But you just said at that point you weren't
20 scared of him going anywhere, you had backup, so you could
21 have taken the time to adjust your camera and see what
22 happened when you searched him?

23 A. Potentially, in hindsight.

24 Q. Because it would have been easier, I mean --

25 A. It wasn't top on my list to redo my camera at that

1 time.

2 Q. Wasn't top of your list? You said you weren't in
3 fear your safety. You also said Mr. Nesbit wasn't going
4 anywhere at that point. What was on the top of your list?

5 A. Search him and secure the contraband on his person.

6 Q. At that point, you didn't know there was contraband
7 on his person?

8 A. When I secured him, sir, I did a search of his
9 person incident to arrest.

10 Q. Right. But that was after he was already
11 handcuffed and after Deputy Buckhannon was there.

12 A. That was at that moment, sir, when Deputy
13 Buckhannon pulled up, is when I secured him.

14 Q. Right. But at that point when you searched him --

15 A. Yes.

16 Q. -- Deputy Buckhannon was there, correct?

17 A. He just pulled up, yes, sir.

18 Q. Mr. Nesbit was handcuffed?

19 A. Yes, sir.

20 Q. And you could have gone to your car and put the
21 camera on Mr. Nesbit so everybody can see what actually
22 happened?

23 A. I can't speculate to what the camera could have
24 picked up.

25 Q. Well, I mean, you've seen the camera. It picks up

1 the straight ahead of you.

2 A. Right. He was to the front left of my vehicle,
3 right at the quarter panel. I don't know if it would have
4 picked him up even there. I'm not sure.

5 Q. Are you telling me a digital camera that we just
6 saw a car chase on, and then a 35-minute video of you
7 counting money, could not pick up something right in front
8 of you?

9 A. It's fixed to the windshield, sir. It's adhered to
10 the windshield in a fixed position. All you could do is
11 rotate it side to side or up and down. And he was in the
12 position he was in, to the front left of my patrol vehicle,
13 I don't even know if it would have picked him up on the
14 video.

15 Q. The car moves. You could have adjusted your car to
16 place it right on the defendant, correct?

17 A. In hindsight, yes, sir.

18 Q. But you didn't do that?

19 A. No, sir.

20 Q. Because at that point, the priority wasn't to make
21 sure everybody in the future knows what happens; it was to
22 make sure the man that's handcuffed, is not going anywhere,
23 has to be searched right then?

24 A. He was searched and secured for transport and EMS.

25 Q. Now, you testified that you found a lot of stuff in

1 Mr. Nesbit's pockets?

2 A. Yes, sir.

3 Q. And I believe you said approximately \$3,000? You
4 said \$2,900, but let's round it up for sake of argument
5 approximately 3,000.

6 A. 2,918 and some change, sir.

7 Q. How many bills were there?

8 A. I'm not sure, sir.

9 Q. You counted it for a good 25 minutes?

10 A. Yes, sir.

11 Q. So there were a lot?

12 A. There was approximately \$108 in 5's, 10's and 1's.
13 There was approximately 7- to \$750 in 100's and 50's. And
14 the rest was in 20's. And I believe that was approximately
15 100 or 103, 102, \$20 bills stuffed, crushed, shoved inside
16 his pocket.

17 Q. Wadded up?

18 A. Sir?

19 Q. I mean, the bills on the video, they didn't look to
20 come out like bank bills, just flat and crisp.

21 A. Yes. They were shoved, wadded, pushed in.

22 Q. By your count, I think you said 108, something 102,
23 and several other bills, at least 210 actual bills?

24 A. I guess, sir.

25 Q. And you said he had all that money wadded up in his

1 pocket?

2 A. Yes, sir.

3 Q. Along with, I believe --

4 MR. NELSON: May I approach, Your Honor?

5 THE COURT: Yes.

6 BY MR. NELSON:

7 Q. Along with all this other stuff?

8 A. Yes.

9 Q. What kind of pants was he wearing? Were they huge
10 pants?

11 A. They were jeans with deep pockets, sir.

12 Q. He was wearing jeans, and he's got \$3,000, at least
13 210 bills wadded up in his pockets? He had cigarettes too,
14 didn't he?

15 A. I can't recall if he had cigarettes on him or
16 not.

17 Q. But you wouldn't be surprised if he had cigarettes
18 in his pocket also?

19 A. I don't recall if he had cigarettes or not, sir.

20 Q. Got 210 dollars -- and those are all on one side
21 pocket or one front pocket?

22 A. Yes, sir.

23 Q. The money was all in the pockets?

24 A. Majority of it.

25 Q. And 210 --

1 A. You keep saying 200, but I'm not sure that it's
2 200.

3 Q. You said 1 --

4 A. 100 in 20s; 700 to 750 in the 100's and 50's, which
5 is seven, eight, nine bills maybe, nine, ten bills maybe.
6 And then 108 in 5's, 10's and 1's. Most of it was 10's,
7 some 5's, eight 1's.

8 Q. You said 100 bills in 20s, 108 by --

9 A. Excuse me, sir?

10 Q. You said 102 in 5's, 10's and 1's?

11 A. \$108 in 5's, 10's and 1's.

12 Q. I'm sorry. I misunderstood you. I thought you
13 said 108 bills.

14 A. No, sir.

15 Q. He had over 100 actual bills; is that fair to say?

16 A. Yes, that is fair to say.

17 Q. That's not all crisp and folded over, that's wadded
18 up?

19 A. Any form or fashion you could probably stuff bills
20 in your pocket, yes, sir.

21 Q. And that was all in one pocket? Was that a right
22 pocket or left pocket?

23 A. Right.

24 Q. And you also found, according to you, a lot of
25 drugs in his right pocket also?

1 A. The bag, the clear plastic baggy containing sizable
2 amount of cocaine, yes, sir.

3 Q. So did you notice that when you walked up on him?
4 That sounds huge.

5 A. Yeah, he had large bulging pockets.

6 Q. Then you found a lot of stuff in his left pocket
7 you say too, right?

8 A. Grocery bags, sir, brown grocery bag that had four
9 individual freezer-style bags containing a brown
10 crystallized substance inside the brown bag, inside the left
11 pocket.

12 Q. And how many police officers ended up showing up to
13 that scene?

14 A. I'm not sure, sir.

15 Q. How many squad cars?

16 A. I'm not sure, sir.

17 Q. It was you, Deputy Buckhannon, and that's just the
18 Sheriff's Office?

19 A. Yes, sir.

20 Q. And then this happened on Isle of Palms, so Isle of
21 Palms police would have showed up there too, correct?

22 A. Yes, sir, they would have showed up. I believe
23 there was two.

24 Q. Total of four police vehicles, maybe more?

25 A. And supervisor from Isle of Palms arrived.

1 Q. That would be five?

2 A. No, that would be part of the two from Isle of
3 Palms, and another officer. But she ended up leaving and
4 assisting with traffic control, redirecting traffic in the
5 area.

6 Q. So at least at any point there's four police
7 vehicles?

8 A. Three.

9 Q. Okay. Three? And do you know if they were
10 equipped with video capabilities?

11 A. I'm not sure, sir.

12 Q. Did you ever check?

13 A. No, sir.

14 Q. You are the lead officer in this case, correct?

15 A. Yes, yes.

16 Q. So it is your job to make sure all the evidence is
17 collected?

18 A. Yes, sir.

19 Q. Now, if there was another, say, video of the scene
20 from another police car, that would be potential evidence
21 that needed to be collected, correct?

22 A. If they were able to catch anything.

23 Q. Did they?

24 A. I imagine so. The vehicles that arrived on scene
25 later on parked behind me, so I would imagine so.

1 Q. You said you would imagine, but you don't know?

2 A. No, I don't know. There was also a fire truck
3 parked behind me and Deputy Buckhannon came around the right
4 side of me, and your client was on the left front side of
5 the me, so --

6 Q. You don't know?

7 A. I don't know.

8 Q. So potentially there could be another video out
9 there that maybe not shows the whole thing, but part of what
10 happened since you didn't move your camera to see, show us
11 what happened?

12 A. I can't say that there would be.

13 Q. But you don't know?

14 A. But I don't know, sir.

15 Q. Did you take the time to check?

16 A. No, sir.

17 Q. In hindsight, would you have taken the time to
18 check?

19 A. Like I said, sir, the vehicles that showed up after
20 I did parked behind me. And the odds of them -- the angles
21 that they were in, I doubt very seriously they would have
22 gotten anything from the scene.

23 Q. You doubt, but you are not sure?

24 A. Correct. And Deputy Buckhannon came around my
25 right side, and your client was on the left front quarter

1 panel of -- my left front quarter panel of my vehicle, so...

2 Q. But you don't know?

3 A. No, sir.

4 Q. Because you didn't check?

5 A. Correct.

6 Q. Now, after you searched, supposedly searched

7 Mr. Nesbit --

8 A. I did search Mr. Nesbit.

9 Q. But it's not on video, I just have to take that for
10 your word for it.

11 A. Okay.

12 THE COURT: No editorial comment. Please ask a
13 question.

14 BY MR. NELSON:

15 Q. Sorry. You went to M.U.S.C -- actually, let me
16 back up. Back to the scene, you found all the stuff in his
17 pockets, according to you?

18 A. Yes.

19 Q. That's a decent search, right?

20 A. Fairly quick, yes, sir.

21 Q. But your job at that point when you search
22 somebody, you want to make sure you get everything?

23 A. Or try to, yes, sir.

24 Q. And in actuality, you went, according to you, you
25 went through his pockets?

1 A. Yes.

2 Q. Then you go to M.U.S.C. and you check his -- you
3 take his belongings? You get his belongings?

4 A. Get his belongings.

5 Q. Who collected the clothes?

6 A. Deputy Buckhannon.

7 Q. Why did Buckhannon search the clothes?

8 A. He just held onto the clothes. Once the medical
9 staff cut the clothes off, he collected them and held them
10 there for me, because I'm primary.

11 Q. Do you know if he watched them cut the clothes off?

12 A. I can't say. I don't know if he did or not. I
13 wasn't at the hospital when he arrived at the hospital. I
14 was still on scene.

15 Q. I understand that. So you can't tell me those are
16 definitely the clothes that came off of Mr. Nesbit because
17 you didn't see it being cut off?

18 A. No.

19 Q. Now, once you --

20 A. Stilled covered in blood.

21 Q. But you didn't see it?

22 A. No, I can't say that I saw them cut it off.

23 Q. Then you searched the clothes again?

24 A. Uh-huh.

25 Q. And you say that you found --

1 MR. NELSON: May I approach, Your Honor?

2 THE COURT: Uh-huh.

3 BY MR. NELSON:

4 Q. This is State's 10?

5 A. Yes, sir.

6 Q. And that is what you said you found in Mr. Nesbit
7 pocket; is that correct?

8 A. Yes, sir, in right front coin pocket at the
9 hospital. And what triggered that search was when I walked
10 in the room, I could still smell a strong odor of marijuana,
11 raw marijuana in the room.

12 Q. Now, did you -- you didn't initial that bag?

13 A. That bag?

14 Q. Yeah.

15 A. No, that's my handwriting on it.

16 Q. You initialed all the other bags?

17 A. No, sir. I turned them over straight to evidence
18 on scene.

19 Q. Now, part of your job as lead officer in this case
20 is, like we talked about before, is to collect all the
21 evidence and do everything you can to get evidence,
22 potential evidence, correct?

23 A. Yes, sir.

24 Q. And you say that all of this stuff was found in
25 Mr. Nesbit' pockets?

1 A. We already went over there, sir, yes.

2 Q. And a lot of bills? We went over that, I
3 understand.

4 A. Yes.

5 Q. As a police officer, when you are the lead officer
6 in a case, can you turn things over to, say, crime scene
7 tech to investigate it more, further?

8 A. Yes, sir.

9 Q. And what's crime scene?

10 A. Forensics.

11 Q. Just explain that.

12 A. Evidence custodians, they maintain, they keep and
13 maintain all of our evidence that we obtain from crime
14 scenes.

15 Q. And they also do tests on potential pieces of
16 evidence?

17 A. On certain ones, yes.

18 Q. On things like dollar bills, can you get
19 fingerprints off those?

20 A. I would imagine you could, sir.

21 Q. Did you?

22 A. No, sir.

23 Q. Why not? Did you turn it in to get
24 fingerprinted?

25 A. No, turned it in to evidence.

1 Q. But you could have requested it get fingerprinted?

2 A. I could have, yes, sir.

3 Q. And you didn't?

4 A. No.

5 Q. Is that one of the things --

6 A. It came straight from his pocket, so --

7 Q. But in hindsight, you could have done that?

8 A. In hindsight, you can do a lot of things, sir.

9 Q. And you also say there's a lot of bags, various --

10 I believe you said white powder material or brown

11 crystalline --

12 A. Substances, yes, sir.

13 Q. Thank you. And were those fingerprinted?

14 A. No, sir.

15 Q. Could you have?

16 A. Yes, sir, but they came out of his pocket.

17 MR. NELSON: Court's indulgence.

18 THE COURT: Uh-huh.

19 BY MR. NELSON:

20 Q. I'm sorry to take so long ago. Just to make sure I
21 understand this, you are the one that collected the
22 approximately two grams from the hospital?

23 A. Yes, sir.

24 Q. And just one other question. We talked about
25 earlier, in addition to everything else you say you found,

1 there were cigarettes in his pocket too?

2 A. No, I said I don't recall.

3 Q. Yeah, that's right, you said you don't recall.

4 A. Correct.

5 Q. Would it refresh your recollection if I showed you
6 the evidence sheet?

7 A. Sure.

8 MR. NELSON: May I approach, Your Honor?

9 THE COURT: Yes, sir.

10 THE WITNESS: Okay.

11 BY MR. NELSON:

12 Q. He also had a pack of cigarettes in his pocket?

13 A. Along with other items.

14 MR. NELSON: Court's indulgence.

15 THE COURT: Yes, sir.

16 BY MR. NELSON:

17 Q. You've done patrol and traffic enforcement for
18 awhile?

19 A. Yes.

20 Q. Do you pull everybody over that doesn't just stop
21 at a traffic light or turn signal outside --

22 A. The only thing we are talking about at this time,
23 sir, is this case right here.

24 Q. Right. But, in general, do you pull everybody over
25 who doesn't do a turn signal outside of a --

1 MS. MULKEY: Objection. Relevance, Your Honor.

2 THE COURT: I will give him some latitude. Sir, I
3 need you to answer the question yes or no and then you may
4 explain your answer.

5 THE WITNESS: Can you repeat the question, please.

6 BY MR. NELSON:

7 Q. You say that you pulled over Mr. Nesbit because he
8 did not use a turn signal outside of 100 feet?

9 A. Correct. He did not use a turn signal, period.

10 Q. But you kept on bringing up 100 feet.

11 A. Because that's what the law stipulates.

12 Q. Do you pull everybody that doesn't use a turn
13 signal outside of 100 feet?

14 A. No, sir.

15 Q. Why not?

16 A. Because of situational issues. If I'm going to a
17 call and somebody doesn't use a turn signal, I can't pull
18 them over. If I'm headed to a call or if I'm dealing with
19 something else and the infraction is done, I can't stop what
20 I'm doing at the time.

21 Q. Short about having other things to do, which I do
22 agree that's probably more important than pulling somebody
23 over for a turn signal, short of that, do you pull over
24 everybody that doesn't use a turn signal within 100 feet?

25 A. I can't say everybody, but I do pull over people

1 for failing to use their turn signal.

2 Q. The reason you did that in this case is because he
3 didn't make eye contact with you?

4 A. No, sir.

5 Q. In addition to him not using a turn signal?

6 A. No, sir. No, sir. The initial reason why I
7 initiated the traffic stop was because he failed to use a
8 turn signal.

9 Q. But you also said one of the things that you
10 thought was suspicious was he didn't make eye contact?

11 A. Yes.

12 Q. And if he would have made eye contact, would you
13 have 100 percent pulled him over?

14 A. I would have probably pulled him over, yes, sir.

15 MR. NELSON: Nothing further. Thank you.

16 THE COURT: Any redirect of the witness?

17 MS. MULKEY: Yes, Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. MULKEY:

20 Q. Just so we are clear, Deputy Chavez, why did you
21 pull the defendant over on June 16th, 2013?

22 A. Because he failed to use his turn signal.

23 Q. And can you please remind the Court of your
24 specific assignment in Isle of Palms that day?

25 A. To be a support for extra traffic enforcement and

1 to assist in traffic crowd control on the beach during that
2 time of the year and tourist time, beach season.

3 Q. Can you pull someone over -- is it legal to pull
4 somebody over just because they are acting suspicious?

5 A. Reasonably.

6 Q. But did you pull the defendant over because he was
7 acting suspicious?

8 A. No, ma'am.

9 Q. Now, the traffic stop you said was based on the
10 defendant's failure to signal?

11 A. Correct.

12 Q. And please remind the Court what that statute
13 requires.

14 A. That you must use -- the driver can make a turn any
15 time they see that it's safe to do so, but they must turn on
16 their turn signal prior to 100 foot, and have it come on
17 continuously until they make that turn.

18 Q. And did the defendant signal within 100 feet of the
19 stop sign?

20 A. No, ma'am.

21 Q. Did the defendant signal within 100 feet of making
22 that right turn?

23 A. No, ma'am.

24 Q. Did he signal within 50 feet?

25 A. No, ma'am.

1 Q. Did he signal immediately before turning while he
2 was stopped?

3 A. No, ma'am.

4 Q. Changing gears for a minute, I wanted to go back to
5 the pursuit. You were involved in a vehicle pursuit?

6 A. Yes, ma'am.

7 Q. And does your department have a policy regarding an
8 outside agency investigating that pursuit?

9 A. Yes, ma'am.

10 Q. Who is that outside agency?

11 A. The highway patrol.

12 Q. And does that require you to keep your vehicle
13 stationary until they arrive?

14 A. Yes, ma'am.

15 Q. Was South Carolina Highway Patrol on there during
16 the time that you were searching the defendant's pockets
17 incident to his arrest?

18 A. No, ma'am.

19 Q. And switching gears once again, let's go to
20 M.U.S.C., the clothes in the bag that Deputy Buckhannon
21 handed to you.

22 A. Yes, ma'am.

23 Q. You testified that he pulled out jeans?

24 A. Yes, ma'am.

25 Q. Correct?

1 A. Yes, ma'am.

2 Q. Were those jeans similar to the ones that the
3 defendant was wearing on scene?

4 A. Yes, ma'am.

5 Q. Did they look like the same clothes that he was
6 wearing when you arrived, when you came up to him after he
7 had been in a collision?

8 A. Yes, ma'am.

9 Q. And did those jeans appear to be the same ones that
10 you pulled the drugs and the currency from on scene?

11 A. Yes, ma'am.

12 Q. Did you find any drugs in the street?

13 A. No, ma'am.

14 Q. Did you find any drugs that day anywhere else other
15 than on the defendant?

16 A. In his jeans.

17 Q. And those jeans at M.U.S.C. appeared to be the same
18 ones that that the defendant was wearing at the time that
19 you pulled drugs and currency from him?

20 A. Yes, ma'am.

21 Q. Were they skinny jeans?

22 A. No, ma'am.

23 MS. MULKEY: Beg the Court's indulgence. I have
24 nothing further, Your Honor.

25 THE COURT: Any objection to the witness being

1 excused from the State?

2 MS. MULKEY: No.

3 THE COURT: From the defense?

4 MS. GAY: No, Your Honor.

5 THE COURT: Sir, you are excused.

6 (Whereupon the witness is excused.)

7 THE COURT: The State will call its next witness.

8 MS. MULKEY: The State calls Deputy Buckhannon.

9 THOMAS BUCKHANNON,

10 having been duly sworn, testifies as follows:

11 THE CLERK: State your name into the microphone and
12 spell your last name for the record.

13 THE WITNESS: Thomas B-u-c-k-h-a-n-n-o-n, I'm the
14 fourth.

15 THE COURT: If you would speak directly into the
16 microphone for us, please, because we can't move the
17 microphone. You may proceed.

18 MS. MULKEY: May it please the Court, Your Honor.

19 DIRECT EXAMINATION

20 BY MS. MULKEY:

21 Q. What is your occupation?

22 A. Charleston County deputy sheriff.

23 Q. And so you are employed by the Sheriff's
24 Department?

25 A. Yes, ma'am.

1 Q. What are your duties with the Charleston County
2 Sheriff's Department?

3 A. Currently assigned to the judicial enforcement
4 division amongst courtroom and inmates, protect employees of
5 the courthouse.

6 Q. If you could, please tell the jury how long you've
7 been employed by the Charleston County Sheriff's Office?

8 A. About four years.

9 Q. Do you have any prior law enforcement experience?

10 A. Yes. I worked for Berkeley County Sheriff's Office
11 for about four years, and Folly Beach public safety
12 department prior to that for about two years.

13 Q. And did you have the occasion to be working on June
14 16th, 2013?

15 A. Yes, I did.

16 Q. What were your assignments and duties for that
17 shift?

18 A. We were working an off-duty assignment on the Isle
19 of Palms where we helped out crowd control, traffic
20 enforcement, investigation of traffic collisions.

21 Q. You were working in Isle of Palms but as a
22 Charleston County deputy?

23 A. Yes.

24 Q. Is the Isle of Palms in Charleston County?

25 A. Yes, it is.

1 Q. And did you have the occasion to become involved in
2 the investigation in this case on that date?

3 A. Yes.

4 Q. How were you brought into this case?

5 A. I heard Deputy Chavez was involved in a vehicle
6 pursuit, and I responded to his location to provide backup.

7 Q. What did you do when you arrived on the scene?

8 A. As I entered my vehicle, I was approaching Deputy
9 Chavez and realized that he was searching the defendant. I
10 went back to my patrol car, got some evidence bags, went
11 back to Deputy Chavez.

12 Q. And what did Deputy Chavez locate on the defendant?

13 A. He was pulling things out of his pockets, putting
14 them into the bags, and he located some cash and what
15 appeared to be narcotics.

16 Q. Do you recall where exactly on the defendant he was
17 pulling these items from?

18 A. In the area of his pockets.

19 Q. And what, if anything, did you do with the
20 defendant?

21 A. I accompanied the defendant to the hospital. He
22 was transported by EMS.

23 Q. Did you ride in the EMS wagon?

24 A. No, I did not.

25 Q. Then how did you accompany him?

1 A. I followed the ambulance to the Medical University
2 hospital.

3 Q. Was the defendant handcuffed during his transport
4 to M.U.S.C.?

5 A. Yes, he was.

6 Q. Is that normal practice?

7 A. It is.

8 Q. And when you got to M.U.S.C., what happened next?

9 A. They took him out of the ambulance, wheeled him
10 into the emergency room. They proceeded to cut all of his
11 clothes off.

12 Q. Were you present for this?

13 A. Yes, I was standing right there witnessing them do
14 it.

15 Q. And what happened next?

16 A. I gathered his clothes off of the ground and put
17 them into an evidence bag.

18 Q. Did you go through them at that time?

19 A. No, I did not.

20 Q. What did you do with that bag?

21 A. I kept it with me until Deputy Chavez came to
22 relieve me at the hospital.

23 Q. Was that bag in your sole care, custody and control
24 from the time that you placed the clothing into it to the
25 time that you handed it to Deputy Chavez?

1 A. Yes, it was.

2 Q. And when Deputy Chavez arrived at M.U.S.C., what
3 did you do with that bag?

4 A. I turned it over to Deputy Chavez and he proceeded
5 to inventory it.

6 Q. Do you recall what, if anything, Deputy Chavez
7 found?

8 A. He located a clear, small plastic baggy with a
9 white powdery substance in the coin pocket of the pants.

10 Q. And the person that we've been speaking of, the
11 person who you saw Deputy Chavez out with in the Isle of
12 Palms in the lane of traffic, and the same person that you
13 then testified you collected his clothes, do you see that
14 individual in the courtroom tonight?

15 A. Yes, I do, he's right there.

16 MS. MULKEY: Please let the record reflect Deputy
17 Buckhannon has identified the defendant.

18 THE COURT: You may proceed.

19 MS. MULKEY: I beg the Court's indulgence. We have
20 nothing further.

21 THE COURT: Any questions for the witness?

22 MR. NELSON: Briefly, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. NELSON:

25 Q. You were the second one on the scene?

1 A. Yes, I was.

2 Q. And part of being a police officer, or deputy in
3 this case, is to see things, watch things, observe things,
4 correct?

5 A. Correct.

6 Q. And this happened about a year ago, give or take?

7 A. Yes.

8 Q. And part of -- another thing part of police --
9 excuse me, being a police officer, is you write police
10 reports?

11 A. What was the question?

12 Q. You write police reports, don't you?

13 A. Yes, I do.

14 Q. Did you write a police report in this case?

15 A. I believe I did.

16 Q. Now, when Deputy Chavez supposedly observed
17 Mr. Nesbit make a turn without a signal, you weren't
18 there?

19 A. No, I wasn't.

20 Q. So you don't know what happened there?

21 A. No, I have no clue what happened.

22 Q. Only thing, you came upon after he got in an
23 accident?

24 A. Correct.

25 Q. And I just want to see if I'm clear on this. When

1 you got there, Deputy Chavez was already searching him?

2 A. When I got out of my patrol car, was walking
3 towards Deputy Chavez, he was with the defendant searching
4 him.

5 Q. Okay. Now, do you have video capabilities for your
6 car?

7 A. I do.

8 Q. And in addition to recording video, it also records
9 audio, correct?

10 A. Correct.

11 Q. Now, another thing about being a police officer is
12 you want to obtain evidence at the scene, correct?

13 A. Correct.

14 Q. At this point, Deputy Chavez already has Mr. Nesbit
15 secured?

16 A. Yes, he was in handcuffs.

17 Q. And you could have positioned your car to actually
18 show what was going on, correct?

19 A. I could have, yes.

20 Q. You didn't?

21 A. I did not.

22 Q. In fact, I just want to be somewhat clear on this.
23 I'm a little confused. You said when you were walking up to
24 Deputy Chavez, you saw he was already searching him, and
25 then you went back to the car?

1 A. Yes.

2 Q. Your car?

3 A. I did, yes.

4 Q. Was your back turned to him?

5 A. Yes.

6 Q. So you didn't actually see him go through the
7 pockets and pull out everything?

8 A. When I came back up to him, he was going through
9 the pockets, when I handed Deputy Chavez the bags.

10 Q. And then you went to M.U.S.C.?

11 A. Correct.

12 Q. And you didn't collect any evidence? I'm sorry.
13 You collected the clothes, but you didn't go through the
14 clothes?

15 A. I did not go through the clothing.

16 MR. NELSON: Court's indulgence.

17 BY MR. NELSON:

18 Q. Now, I just want to go back to the video, or excuse
19 me, lack of video, because you didn't put any video from the
20 location into evidence?

21 A. No.

22 Q. Because according to you, you didn't position your
23 car so you could see what was going on?

24 A. No, I did not.

25 Q. But you were around Mr. Nesbit, you were around

1 Deputy Chavez?

2 A. Yes.

3 Q. And you have a mic on?

4 A. My lights?

5 Q. A mic.

6 A. I don't remember.

7 Q. Most of the time police officers when they have
8 in-car videos have mics?

9 A. Correct.

10 Q. To pick up what you say and, in turn, if a
11 defendant says something, correct?

12 A. Correct.

13 Q. Is it more than likely you had a mic on that day?

14 A. Yes.

15 Q. And I'm not trying to fool you or anything here.
16 So even if you didn't see anything on the video, it would
17 have recorded what you said, what was being said all around
18 you while you were around Deputy Chavez and Mr. Nesbit?

19 A. Right.

20 Q. Did you preserve that?

21 A. I downloaded the video, which is the protocol.

22 Q. Did you turn it into evidence?

23 A. It's downloaded into a system. It's already in
24 evidence.

25 Q. Did you ever review it?

1 A. No, I did not.

2 Q. Do you know if it has any evidentiary value?

3 A. I do not.

4 Q. Could it?

5 A. Possibly.

6 MR. NELSON: Nothing further.

7 THE COURT: Any redirect?

8 MS. MULKEY: We have no redirect.

9 THE COURT: Any objection to the witness being
10 excused from the State?

11 MS. MULKEY: No, Your Honor.

12 THE COURT: From the defense?

13 MS. GAY: Nothing, Your Honor.

14 THE COURT: Sir, you are excused.

15 (Whereupon the witness is excused.)

16 THE COURT: Call your next witness.

17 MS. MULKEY: The State calls Crime Scene
18 Investigator Meyer.

19 ERIN MEYER,

20 having been duly sworn, testifies As follows:

21 THE CLERK: State your name and spell your last
22 name for the record.

23 THE WITNESS: My name is Erin Meyer. My last name
24 is M-e-y-e-r.

25 THE COURT: You may proceed.

1 MS. MULKEY: May it please the Court, Your Honor.

2 THE COURT: Yes, ma'am.

3 DIRECT EXAMINATION

4 BY MS. MULKEY:

5 Q. Investigator Meyer, what is your current
6 occupation?

7 A. I'm a forensics investigator with the Charleston
8 County Sheriff's Office. I'm assigned to the criminal
9 investigations unit.

10 Q. And how long have you been a deputy there?

11 A. I've been a certified deputy for 14 years. And
12 I've been assigned to the forensics division for the last
13 six and a half.

14 Q. If you could, please tell the Court what your
15 duties are as a forensics investigator?

16 A. We have a lot of duties. Primarily, our two main
17 duties, we respond to scenes and we identify and collect
18 evidence. And then our other duty is to process and
19 maintain, preserve evidence. Again, that's compounded at
20 the facility.

21 Q. And did you have the occasion to be working on June
22 16th, 2013?

23 A. Yes, ma'am.

24 Q. In what capacity?

25 A. I was the on-call investigator for that week.

1 Q. And could you please tell the Court how you became
2 involved in this particular case?

3 A. I was advised by Sergeant McManigal to respond to a
4 pursuit involving a motorcycle with Deputy Chavez on Isle of
5 Palms.

6 Q. And what did you do when you arrived on scene?

7 A. Traditionally, when we arrive on scene, we briefly
8 speak to the officers involved, basically kind of find out
9 what happened. And then we go into processing the scene and
10 taking and collecting evidence and photographing and
11 documenting everything.

12 Q. And what were the items that Deputy Chavez told you
13 he had collected?

14 A. Deputy Chavez told that -- he briefly told me about
15 what had happened in the incident, and indicated that he had
16 collected some cash and some drugs from subject Nesbit after
17 pursuit had occurred. He had come up on the crash site. He
18 collected those things that happened in his possession.

19 Q. And once you were done processing those items which
20 you had come on site to do, did you meet with Deputy Chavez
21 again?

22 A. Yeah, I spoke with him and I explained to him to go
23 ahead and hold onto them and I'll process the scene, take
24 photographs and do what I need to do, and then I would go
25 back and meet with him again and collect those items, and I

1 did.

2 Q. And can you please explain for the Court the steps
3 you took to inventory and to physically take custody of
4 those items?

5 A. Once I was at the scene, I met with him and he --
6 took evidence paper bag out, put it on the trunk of his car,
7 and we both went through the items as he pulled them out of
8 the bag. I photographed them. I examined them,
9 photographed them, and then put them in evidence bags of
10 mine, and took them into my possession and put them --
11 secured them in my vehicle.

12 Q. And was this recorded on Deputy Chavez's video?

13 A. Yes, ma'am.

14 Q. Then what did you do with those items of evidence?

15 A. Secured them in my vehicle.

16 Q. And from there, where did they go?

17 A. When I cleared from the scene, I transported them
18 to the Charleston County Sheriff's Office evidence compound,
19 a secure facility where we house all of our evidence and
20 maintain all of our evidence.

21 Q. Can you please let the Court know about your
22 procedures for securing things into evidence, what exactly
23 that entails?

24 A. Our facility is locked either by deadbolt,
25 combination lock, keypad or keys. We have gated wire and

1 constantine wire around several facilities. Once you enter
2 those premises, you have to have a key or keypad to get into
3 the building. We secure the evidence. It stays there until
4 we begin the tracking period, enter it into evidence system,
5 and then it gets to get tracked. If it ever leaves that
6 facility, it gets tracked, it gets signed out, somebody
7 signs for it. For instance, if it were to go -- drugs would
8 have gone for drug analysis, they would be signed out from
9 our facility and then come back.

10 MS. MULKEY: May I approach, Your Honor?

11 THE COURT: You may.

12 BY MS. MULKEY:

13 Q. I would like to direct your attention to the
14 monitor and show you some photos that have been previously
15 entered into evidence. The first of which is going to be
16 State's Exhibit No. 4. Can you please tell the Court what
17 this is a picture of?

18 A. This is Deputy Chavez. He has pulled the brown
19 paper bag that contained all the evidence that he collected
20 when he got on the scene. He's got it on the hood of his
21 car and we are beginning to go through it.

22 Q. Now I would like to show you what's previously been
23 entered into evidence as State's Exhibit No. 5. If you
24 could please tell the Court what this is.

25 A. This is the same bag. He's now got it open and

1 pulling out individually. These are the items inside. You
2 can see the money and the white powder inside the clear
3 plastic bag.

4 Q. I would like to show you State's Exhibit No. 6, if
5 you could tell the Court what this is.

6 A. He's pulling items out of the bag, as you could
7 see, and I'm photographing them.

8 Q. And just to be clear, Deputy Meyer, these
9 photographs that we are showing previously entered into
10 evidence are your photographs?

11 A. Yes, ma'am.

12 Q. And these are the ones taken on scene?

13 A. Yes.

14 Q. Please draw your attention to State's Exhibit No.
15 7. Can you tell the Court what that is?

16 A. It's white powder, what we believe to be cocaine.

17 Q. This is State's Exhibit No. 8, if you could please
18 tell the Court what that is.

19 A. He's pulling all the bags out, but the bags on the
20 hood is, again, the drugs. And he's pulling out the
21 remaining bags out of the evidence bag and then the money.
22 I mean, it's just the procedure he's going through. I'm
23 photographing as he's pulling them out.

24 Q. And this procedure is your procedure for
25 documenting and inventorying evidence?

1 A. Yeah, it's -- I'm -- we are verifying what he's
2 giving me, documentation.

3 Q. And last, if you could please tell me what is
4 State's Exhibit No. 9?

5 A. Those are all -- that's -- those are all the bags
6 of drugs that he had collected prior to me getting there.
7 And they were all -- he's got his hand on the hood now.
8 That's while I'm photographing it.

9 MS. MULKEY: Thank you. Beg the Court's
10 indulgence.

11 THE COURT: Uh-huh.

12 BY MS. MULKEY:

13 Q. Just a few more things, Deputy Meyer.

14 MS. MULKEY: May I approach?

15 THE COURT: You may.

16 BY MS. MULKEY:

17 Q. I would like to show you what's been pre-marked for
18 evidence State's Exhibit 11. If you could open this and
19 tell me if you know what it is.

20 A. This is the bag of white powder that he was showing
21 in the exhibits that I took custody of on scene he indicated
22 he got from subject Nesbit. My initial's at the top.

23 Q. And is that in substantially the same condition
24 that you saw that evening?

25 A. Yes, ma'am.

1 Q. Thank you.

2 Next I would like to show you State's Exhibit No.
3 12 and have you look at that as well, and advise the Court
4 if you recognize what that is?

5 A. This is one of the five bags of the crystal, kind
6 of like rock substance, that he indicated he had also
7 collected from subject Nesbit. He had given me on the --
8 Deputy Chavez gave me on the scene. This is a smaller of
9 the five bags, and this is my initial.

10 Q. Is that substantially the same condition you saw it
11 that evening?

12 A. Yes, ma'am.

13 Q. Thank you.

14 Finally, I have for you State's Exhibit No. 13. If
15 you could look at that and please let the Court know if you
16 recognize those items?

17 A. Yes. These are the four larger bags of the same
18 brown crystal-like substance. It's the smaller one that I
19 just pulled out. These are the same four bags that I got
20 from Deputy Chavez that night, indicated he got off subject
21 Nesbit. And you can see it's signed. I have sealed my
22 initials. I'm the one that put the red markings on each
23 bag.

24 Q. And is that in substantially the same condition as
25 that evening?

Mark Watson - Direct by Ms. Linder

1 A. Yes.

2 MS. MULKEY: Thank you. I have no further
3 questions. Please answer any the defense may have.

4 THE COURT: Any questions for the witness?

5 MR. NEWMAN: None, Your Honor.

6 THE COURT: Any objection to the witness being
7 excused from the State?

8 MS. MULKEY: No, Your Honor.

9 THE COURT: From the defense?

10 MR. NELSON: No, Your Honor.

11 THE COURT: Ma'am, you are excused.

12 Who is the State's next witness?

13 MS. MULKEY: State calls Mark Watson.

14 THE COURT: Ladies and gentlemen, if you could bear
15 with us, I know it is 5:01, it is my understanding this next
16 witness is fairly short, so we could dispose of that witness
17 before breaking for the evening. We appreciate your
18 indulgence. You may proceed.

19 MARK WATSON,
20 having been duly sworn, testifies as follows:

21 THE CLERK: Please state your full name and spell
22 your last name for the record.

23 THE WITNESS: Mark Edward Watson, W-a-t-s-o-n.

24 DIRECT EXAMINATION

25 BY MS. LINDER:

1 Q. Where are you presently employed?

2 A. Charleston County Sheriff's Office.

3 Q. How long have you been with the Sheriff's Office.

4 12 years.

5 Q. And what's your current position there?

6 A. I'm a forensics investigator.

7 Q. Was that your position back in June of 2013?

8 A. It was.

9 Q. And what do your general duties include?

10 A. I process crime scenes, maintain evidence, log
11 stuff, log in evidence, keep track of it, transport items to
12 SLED, transport items to be tested.

13 Q. Did you handle any evidence in this case, the State
14 vs. Henry Nesbit?

15 A. I did.

16 MS. LINDER: Your Honor, may I approach?

17 THE COURT: Uh-huh.

18 BY MS. LINDER:

19 Q. At this time, I show you what's been marked as
20 State's Exhibit 10 for identification purposes. Do you
21 recognize that?

22 A. Yes, ma'am.

23 Q. How do you recognize it?

24 A. These are -- this was actually transported out to
25 be tested.

1 Q. I'm going to show you also what's been marked
2 State's Exhibit 11 and 12. Can you look at those two items,
3 please?

4 A. Yes, ma'am.

5 Q. Do you recognize those?

6 A. I do.

7 Q. How do you recognize those?

8 A. These are the other two items. I remember carrying
9 three items down there. And when the city does it, they put
10 letters there, up here, 1 of 3, and the other says 1, and
11 this says 2 and 3. I know I transported two items
12 associated with this case. I also picked them up and
13 brought them back when it was completed.

14 Q. And when you took those items from the compound at
15 the Sheriff's Office, where did you take them?

16 A. The city actually has a forensics lab inside of
17 M.U.S.C. It's in the eye tower down there on the second
18 floor, and that's where they do all their drug testing.

19 Q. Do you recall who you gave this -- these items to?

20 A. I wish my memory was that great, but, no, I don't
21 recall. They have three or four different girls working
22 there. And which one that particular day took it out, I
23 don't know.

24 Q. Would it refresh your recollection if I showed you
25 a chain of custody?

1 A. Yes, ma'am, it would.

2 Q. Are you familiar with chains of custody that are
3 kept?

4 A. I am.

5 Q. And what's the purpose of a chain of custody?

6 A. Chain of custody is to say who all came in contact
7 with that evidence in order for you to be able to track for
8 court purposes.

9 Q. At this time I show you what's going to be marked
10 as State's Exhibit 15 for identification purposes. Does
11 that help refresh your recollection as to who you gave the
12 three items to?

13 A. Yes, ma'am, it does.

14 Q. And who did you give those three items to?

15 A. I gave it to Susan Payne.

16 MS. GAY: Your Honor, may we see that item please?

17 THE COURT: Uh-huh.

18 BY MS. LINDER:

19 Q. After you left it with Susan Payne at the city lab,
20 did you then, more or less, go about your business that
21 day?

22 A. I did. When we go to take the items to the city,
23 they actually have an electronic keypad that we have to
24 sign, kind of like you do your credit card. And each of our
25 items has a bar code. And when we pre-log it into the

1 sheet. That's how they get their little label. But we have
2 to pre-log it to forensic's advantage. And each thing is
3 itemized. And that's how they know what we do. When we put
4 it into the system, we use OCA and an item number, which is
5 located up here, and then a brief description of what it is.
6 And we go there, they actually scan their paperwork, and
7 then generate their labels, and we put their labels on it
8 and also puts it into the chain of custody, and then I sign
9 for it. And it keeps electronic chain, as opposed to having
10 paper. But, of course, you have to print it up.

11 MS. LINDER: Thank you. I have no further
12 questions. Please answer any questions the defense may
13 have.

14 THE COURT: Any questions of the witness?

15 MS. GAY: One moment, please.

16 MR. NELSON: No questions, Your Honor.

17 THE COURT: Any objection to the witness being
18 excused from the State?

19 MS. MULKEY: None from the State, Your Honor.

20 THE COURT: From the defense?

21 MS. GAY: No, Your Honor.

22 THE COURT: Call your next witness.

23 MS. LINDER: The State calls Jason Riley.

24 JASON RILEY,

25 having been duly sworn, testifies as follows:

1 THE CLERK: State your full name and spell your
2 last name for the record.

3 THE WITNESS: Jason Harold Riley. Last name is
4 R-i-l-e-y.

5 MS. LINDER: Thank you, Your Honor. May it please
6 the Court.

7 THE COURT: You may proceed.

8 DIRECT EXAMINATION

9 BY MS. LINDER:

10 Q. Where are you presently employed?

11 A. Charleston County Sheriff's Office.

12 Q. And how long have you been with the Sheriff's
13 Office?

14 A. Eleven and a half years.

15 Q. What's your position there?

16 A. I work in the forensics service unit as a forensics
17 investigator.

18 Q. And were you working in that capacity in June of
19 2013?

20 A. I was.

21 Q. And did you handle any evidence involved with this
22 case, the State vs. Henry Nesbit?

23 A. I did, yes, ma'am.

24 MS. LINDER: May I approach?

25 THE COURT: You may.

1 BY MS. LINDER:

2 Q. At this time, I show you what's been pre-marked as
3 State's Exhibit 13 for identification purposes. Do you
4 recognize that item?

5 A. I do.

6 Q. How do you recognize it?

7 A. I recognize it by the label with the evidence tag
8 that's listed on it and also by the top right label from the
9 forensics analysis of the city lab.

10 Q. And does that appear to be substantially the same
11 condition it was when you handled it?

12 A. Yes, ma'am.

13 Q. And when you handled that item, where did you take
14 it from and where did you take it to?

15 A. I took it from our forensics service evidence
16 compound and I transported that in my vehicle to M.U.S.C. to
17 the City of Charleston drug lab.

18 Q. And do you recall who you gave that to at the city
19 drug lab?

20 A. I don't recall specifically; usually it's Susan.

21 Q. Would it help refresh your recollection if you saw
22 a chain of custody?

23 A. Yes, ma'am, it would.

24 Q. I misspoke last time. I'm going to be showing
25 these State's exhibits for identification purposes only,

1 State's Exhibit 16. Do you recognize this?

2 A. I do.

3 Q. And is it typical to have a chain of custody form
4 with the Sheriff's Office when you deal with evidence?

5 A. Yes, ma'am.

6 Q. And does seeing that paper, State's Exhibit 16,
7 does that help refresh your recollection?

8 A. It does.

9 Q. And who did you give that item to?

10 A. Ms. Susan Payne.

11 MS. LINDER: At this time I have no further
12 questions for this witness. Please answer any questions the
13 defense may have.

14 THE COURT: Any questions for the witness?

15 MS. GAY: May I see the document you showed him,
16 which was number 16 please?

17 I have no questions.

18 THE COURT: Any objection to the witness being
19 excused from the State?

20 MS. LINDER: None from the State.

21 THE COURT: From the defense?

22 MS. GAY: No.

23 THE COURT: You are excused. Is that the last?

24 MS. LINDER: It is, Your Honor.

25 Madam Forelady, ladies and gentlemen, we are going

1 to take advantage of this break in testimony to take our
2 evening recess. Again, we appreciate you allowing us to go
3 beyond five o'clock. We will resume in the morning at
4 10:30. I anticipate that we will finish this case tomorrow
5 for your planning purposes.

6 During the break, please do not discuss the case in
7 any manner whatsoever. Please don't allow yourselves to be
8 exposed to any media coverage about this case. That
9 includes anything on the radio, newspapers, television or
10 Internet, and don't do any independent research on the
11 Internet. Do not have any contact with anyone in or about
12 the courthouse.

13 When you return in the morning, you will come
14 directly to your jury room. And as soon as y'all arrive,
15 again, we will resume testimony at 9:30.

16 If you would leave your note pads on the banister
17 as you leave, that would be helpful to the bailiffs. They
18 will collect them and will secure them for the evening
19 recess.

20 Have a wonderful evening. We will see you in the
21 morning at 9:30. If you would follow the bailiffs for me.

22 (Whereupon, the jury leaves open court at 5:11
23 p.m.)

24 THE COURT: Y'all can take your seats. Is there
25 anything before we break for the evening from the State?

1 MS. LINDER: No, Your Honor.

2 THE COURT: From the defense?

3 MS. GAY: No, Your Honor.

4 THE COURT: And you have two witnesses left; is
5 that correct, that being Ms. Payne, who is a chain witness
6 from the city lab, and Ms. Hilton, who is the analyst?

7 MS. LINDER: Yes.

8 THE COURT: How long do you think that testimony
9 will take?

10 MS. LINDER: Five minutes maybe.

11 THE COURT: I would imagine the analyst might be a
12 little longer?

13 MS. LINDER: Analyst will be about 15, since we are
14 going to attempt to qualify her as an expert.

15 THE COURT: So that would be your last witness then
16 and the State would rest?

17 MS. LINDER: Yes.

18 THE COURT: Does the defense anticipate calling any
19 witnesses?

20 MS. GAY: Probably not, but we do have to speak to
21 Mr. Nesbit.

22 THE COURT: I'm going to question him about that,
23 but I'm asking for scheduling purposes.

24 MS. GAY: Probably not.

25 THE COURT: If you all have any request to

1 instruct, you need to tell me now because I'm going to do my
2 charges before I leave.

3 MS. GAY: I don't think we are going to get a mere
4 presence to talk about that, Your Honor.

5 THE COURT: I don't think there's any support for a
6 mere presence. Yeah, oh, are you being facetious? That was
7 funny. Okay.

8 MS. GAY: That's the only one I could think of.

9 THE COURT: Any request from the State?

10 MS. MULKEY: No, Your Honor.

11 THE COURT: Okay. Are there any -- other than the
12 ordinary, usual stuff, any requests from the defense?

13 MS. GAY: I don't believe so.

14 THE COURT: Okay, guys, then I will see y'all in
15 the morning at 9:30. Have a good evening.

16 (Whereupon, the trial continues on June 8th, 2014
17 under a separate transcript.)

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1 CERTIFICATE OF REPORTER.

2

3 I, Karen V. Andersen, Registered Merit Reporter
4 certified Realtime Reporter, and Notary Public for the State
5 of South Carolina at Large, do hereby certify that the
6 foregoing transcript is a true, accurate and complete
7 Transcript of Record of the proceedings.

8 I further certify that I am neither related to nor
9 counsel for any party to the cause pending or interested in
10 the events thereof.

11 Witness my hand, I have hereunto affixed my official
12 seal this 12th day of October, 2014, at Charleston,
13 Charleston County, South Carolina.

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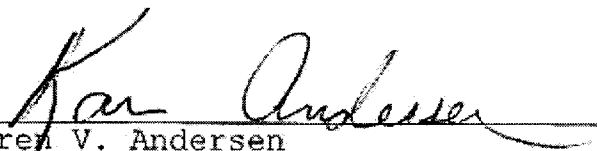
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Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

1 STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
2 COUNTY OF CHARLESTON 2013-GS-10-05527
3 2013-GS-10-05634
4 2013-GS-10-05639

4 STATE OF SOUTH CAROLINA)
5 VS.) TRANSCRIPT OF RECORD
6) VOLUME II
7 HENRY OLIVER NESBIT, JR.)
8) MAY 8, 2014
9) CHARLESTON, SC
10)
11)
12)

10 B E F O R E:

11 HONORABLE DEADRA L. JEFFERSON, JUDGE, AND A JURY.
12

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

14 STEPHANIE LINDER, ESQUIRE
15 LAUREN MULKEY, ESQUIRE
16 Attorneys for the State

17 MELISSA GAY, ESQUIRE
18 MICHAEL NELSON, ESQUIRE
19 Attorneys for the Defendant

20 Ruth L. Mott, RPR, CRR
21 Official Court Reporter
22
23
24
25

1 I N D E X

2

3 WITNESS DIRECT CROSS REDIRECT RECROSS

4 HENRY OLIVER NESBIT, JR.
THE COURT

4

5

SUSAN MARIE PAYNE

6

MS. LINDER

12

MS. GAY

14

7

RENE HILTON

8

MS. LINDER

15

9 CLOSING ARGUMENTS

MS. LINDER

40

10

MS. GAY

54

11

CHARGE OF THE COURT

67

VERDICT OF THE JURY

94

12

SENTENCE OF THE COURT

108

CERTIFICATE OF REPORTER

110

13

14 E X H I B I T S

15 NO. DESCRIPTION ID EVD

16 S-10 DRUGS 138992 3 22

S-11 DRUGS 139026 3 22

17 S-12 DRUGS 139028 3 22

S-13 DRUGS - 4 ZIPLOCKS - 139029 3 22

18 S-14 DRUG ANALYSIS 01469 #1 3 19

S-15 DRUG ANALYSIS L13-01469 #2 3 19

19 S-16 CHAIN OF CUSTODY REPORT 3

20 C-1 JURY NOTE 86

C-2 JURY NOTE 92

21 C-3 JURY NOTE 93

C-4 SENTENCING SHEET 109

22

23 - - -

24

25

1 (State's Exhibits 10-16 premarked for identification.)

2 THE COURT: Another form of plea offer has been
3 extended, and you're accepting it at this point?

4 MR. NELSON: He's rejected it, Your Honor.

5 THE COURT: And what was the substance of that plea
6 offer?

7 MS. LINDER: The substance of that plea offer, Your
8 Honor, was a plea to a negotiated 18, and ultimately it would
9 wrap up, out of all the pending charges, I do not have the
10 actual number pending in front of me, I would end up
11 dismissing about a quarter of them of my choice and -- yes.

12 THE COURT: Okay. Is that the substance of the plea
13 offer, Ms. Gay?

14 MS. GAY: Yes, ma'am.

15 THE COURT: And did you fully explain that to your
16 client?

17 MS. GAY: Yes. Mr. Nelson and I both did, and we
18 allowed his mother to talk too for a period of time.

19 THE COURT: And did he accept or reject the offer?

20 THE DEFENDANT: Reject.

21 MS. GAY: He rejected the offer.

22 THE COURT: Sir, if you'd stand for me please and raise
23 your right hand to be sworn.

24 HENRY OLIVER NESBIT, JR.,
25 being first duly sworn, testified as follows:

1 THE COURT: You can put your right hand down. State
2 your full name for the record.

3 THE DEFENDANT: Henry Nesbit.

4 THE COURT: And, Mr. Nesbit, is it correct that the
5 State offered you an additional extended plea offer to you
6 this morning?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: What is your understanding of that deal?

9 THE DEFENDANT: 18 years.

10 THE COURT: Okay. And did you accept or reject that
11 offer?

12 THE DEFENDANT: Reject.

13 THE COURT: Did you fully discuss it with your
14 attorneys?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Are you suffering from any mental
17 disabilities, or are you under the influence of any drugs or
18 alcohol?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: Did you do that freely and voluntarily and
21 of your own will?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Do you feel anyone forced you to do it?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: And you do understand that if convicted

1 you're facing a minimum mandatory of 25 years, which is
2 served day for day and is a no parole offense.

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Knowing all of that, do you still wish to
5 reject the plea offer?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Okay. Thank you, sir. You may take a seat.
8 Are you ready to get started?

9 MS. LINDER: Ready to go, Judge.

10 THE COURT: Are you folks ready to get started?

11 MS. GAY: Yes, ma'am.

12 THE COURT: Are your witnesses here?

13 MS. LINDER: Yes, witnesses are here.

14 THE COURT: Where are they at?

15 MS. LINDER: Out in the hallway.

16 THE COURT: Get your first one so we don't have to wait
17 for them.

18 MS. GAY: Should we resolve the jury issue?

19 THE COURT: I've got to figure out which juror it is.
20 Describe her again for me.

21 MR. NELSON: She is 50's, early 60's, blond hair.

22 THE COURT: Does she have glasses on?

23 MR. NELSON: I don't know, Your Honor.

24 THE COURT: Does that sound familiar?

25 THE BAILIFF: Doesn't sound like one of ours. There was

1 a lady with a juror badge on out there, but she had on a
2 yellow top, but she wasn't with us.

3 THE COURT: Yellow top?

4 MR. NELSON: I would be a horrible witness, Your Honor.

5 THE COURT: So there's another jury or there's a juror
6 here.

7 THE BAILIFF: She was at one of the other courts, had a
8 juror badge on, and she went downstairs.

9 THE COURT: So maybe this person wasn't even on our
10 jury.

11 THE BAILIFF: It's possible.

12 THE COURT: Let's bring in the jury, and if you
13 recognize the person, approach, tell me who it is. We'll
14 deal with it from there. May well not even have been -- I'm
15 trying to figure out what other jury is going on in this
16 building.

17 THE BAILIFF: Had a plea or something in one of the
18 other courts, and I asked her about it.

19 THE COURT: I guess it is possible probate court could
20 have had a jury trial. We'll figure it out. Go ahead and
21 bring them in.

22 (The jury enters the courtroom.)

23 THE BAILIFF: All present, Your Honor.

24 THE COURT: Thank you. You may be seated.

25 (A bench conference was held off the record in the

1 presence of the jury but out of the hearing of the jury.)

2 THE COURT: Madam Forelady, ladies and gentlemen, it's
3 good to see you all this morning. I'm glad everyone arrived
4 safely. We apologize for the delay. Our court reporter was
5 delayed due to an accident on the interstate this morning, so
6 we appreciate your patience. I have a brief matter of law I
7 need to take up with the attorneys. I'm going to turn you
8 over to the hands of the bailiff, and if you would follow his
9 instructions for me, please. And leave your notepads in your
10 seats for me, please.

11 (Jury exits the courtroom.)

12 THE COURT: The lady in the white shirt that was sitting
13 right here on the front row, bob and glasses, if you'd bring
14 her back in for me.

15 (Requested juror enters the courtroom.)

16 THE COURT: Ma'am, how are you this morning?

17 THE JUROR: Good, thank you.

18 THE COURT: I need you all to close that door for me,
19 please. Thank you.

20 Ma'am, what is your name and your juror number?

21 THE JUROR: Joanne Ward, 372.

22 THE COURT: Ms. Ward, were you in the elevator this
23 morning with some attorneys?

24 THE JUROR: Yes, ma'am.

25 THE COURT: Yes. Just out of an abundance of caution

1 and not to make you feel compromised in any way, the
2 attorneys have agreed to excuse you from this panel just
3 because of the nature of the comment that the attorney made
4 unwittingly. We appreciate your service. We don't question
5 your impartiality at all, but just out of an abundance of
6 caution, we're going to excuse you from this panel. We
7 apologize for any inconvenience to you. Sometimes people
8 unwittingly just say things and they don't realize until it's
9 already out of their mouth, and so you've been diligent.

10 THE JUROR: Yes, I just -- I said to the attorney that I
11 was a juror.

12 THE COURT: Exactly, and that's what made them all --
13 the bells and whistles then went off because then they
14 realized -- well, the attorney that made the comment then
15 realized that they probably -- it probably was not a good
16 idea to have made that comment; but nevertheless, again, we
17 don't question your impartiality or your ability to serve as
18 a juror, but just out of an abundance of caution and to not
19 make you feel uncomfortable, which I don't think you do, but
20 just again out of an abundance of caution, we're going to
21 excuse you from this panel, but we appreciate your time and
22 your attention to this case. You've been timely, and we
23 appreciate, again, your attentiveness and your willingness to
24 participate in the process. You will be excused for the
25 remainder of the week. You can discuss your jury service,

1 but I ask that you not do it until after Friday when the
2 entire panel is excused; and, again, we thank you so very
3 much, and you're excused with the Court's thanks.

4 (Juror exits the courtroom.)

5 MS. GAY: Your Honor, before they move the jury panel
6 back --

7 THE COURT: Wait one second. Is there any exception to
8 the dismissal of Juror No. 372 from the State?

9 MS. LINDER: No, Your Honor.

10 THE COURT: From the Defense?

11 MS. GAY: No, ma'am. I just wanted to get the record
12 clear that it wasn't any of the attorneys in this trial, it
13 was a different attorney.

14 THE COURT: Yes, I thought I made that clear.

15 MS. GAY: I was confused. It doesn't matter, just for
16 purposes of the record.

17 THE COURT: Yes, I thought that was clear, but that's
18 fine.

19 Now, Mr. Nesbit, I was sitting here thinking, I need
20 to -- tell me why you rejected the plea offer, without
21 compromising yourself or saying anything that's privileged.
22 I guess I'm trying to figure out the rationale. Again, there
23 are no consequences to me. I'm getting older now. I've been
24 doing this 18 years, and I figure if folk can live with their
25 consequences, I can live with their consequences. I don't

1 really bother myself very much because I learned a long time
2 ago no good deed goes unpunished, so I really don't try to
3 help folk anymore, but I'm just -- I think of your age, and
4 you're so very young, and I always have to look at the worst
5 case scenario, as a judge, and I think people think that
6 judges have to get worked up to sentence people. We don't.
7 We recognize somebody has to do it. And so I'm just curious,
8 is it that you think you can get a better plea deal out of
9 the State or that -- it just -- I'm at a little bit of a
10 loss. I'm just a little confused as to why you would run the
11 substantial risk you're facing at such a young age.

12 THE DEFENDANT: Because I'm not guilty, Your Honor.

13 THE COURT: Okay. I can live with that. I'm a believer
14 in the jury system, a great believer in the jury system, so
15 if you -- I would never discourage you from exercising that
16 right.

17 You can get the jury panel for me, please.

18 And I don't want my remarks to be interpreted at all
19 that I took a position one way or the other because I don't.

20 How long does the State think it will take to finish
21 their case?

22 MS. LINDER: 30 minutes, total, both witnesses.

23 THE COURT: Okay. That's, worst case scenario, 11:00.
24 How long do you think -- are you all going waive opening on
25 the law or are you going to open and close?

1 MS. LINDER: Just close.

2 THE COURT: How long do you anticipate closing
3 arguments?

4 MS. GAY: 20 minutes maybe.

5 THE COURT: Okay. How long do you think you're going to
6 be?

7 MS. LINDER: 15 minutes, 15, 20 minutes.

8 THE COURT: I'm going to have the jury's lunches ordered
9 by noon. I think that's probably a safe bet.

10 (The jury enters the courtroom.)

11 THE COURT: You may be seated. Ladies and gentlemen, we
12 appreciate your patience. As a result of those matters of
13 law the alternate is now seated with the remainder of the
14 panel. We are now going to resume testimony. I ask that you
15 give the attorneys your undivided attention.

16 You may proceed.

17 MS. LINDER: Thank you, Your Honor. May it please the
18 Court, the State calls Susan Payne.

19 SUSAN MARIE PAYNE,
20 being first duly sworn, testified as follows:

21 THE CLERK: State your name.

22 THE WITNESS: My name is Susan Marie Payne, P-A-Y-N-E.

23 THE COURT: Ma'am, if you could speak directly into the
24 microphone for me and speak up just a little bit more, ma'am.

25 THE WITNESS: Yes, ma'am.

1 DIRECT EXAMINATION BY MS. LINDER:

2 Q. Where are you presently employed?

3 A. The City of Charleston Police Department.

4 Q. And how long have you been there?

5 A. Almost nine years.

6 Q. What is your position there?

7 A. Currently I'm the LIMS administrator.

8 Q. And what was your position in the summer of 2013?

9 A. I was the LIMS administrator, and I'm also responsible
10 for the evidence for the forensic services division.

11 Q. And what are your responsibilities and duties as being
12 in charge of the evidence of the forensics?

13 A. I'm responsible for picking evidence up from the station
14 and bringing it to the drug lab at MUSC and returning
15 evidence and accepting evidence from outside agencies into
16 the lab.

17 Q. And when an outside agency submits something to the lab,
18 how do they go about doing that?

19 A. They come to the lab, and they bring it to us in a
20 sealed evidence container along with all of the coordinating
21 paperwork.

22 Q. And did you handle any evidence in this case, State
23 versus Henry Nesbit?

24 A. Yes, ma'am.

25 Q. And how many items did you handle?

1 A. I handled, I believe it was three pieces for one
2 submission and I think four for the next.

3 Q. And who did you receive those items from?

4 A. The first submission I received them from Deputy Watson
5 and the second submission I received them from Deputy Riley.

6 Q. And when you received those submissions, and
7 specifically the submissions in this case, from Riley and
8 Watson, what did you do with them?

9 A. I make sure they are sealed with initials half on and
10 half off the seal and that the description on the paperwork
11 also matches what's actually in the evidence bag.

12 Q. And then where do you physically place them?

13 A. After they've been received and entered into the system,
14 I place them into the safe.

15 MS. LINDER: Your Honor, may I approach?

16 THE COURT: Yes, ma'am.

17 MS. LINDER: Thank you, Judge.

18 THE COURT: You're welcome.

19 Q. At this time I'm going to hand you what's been premarked
20 for identification purposes as State's Exhibit 10, 11, 12 and
21 13. If you could please take a look at those.

22 Do you recognize those items?

23 A. Yes, ma'am.

24 Q. How do you recognize them?

25 A. Each evidence bag has a sticker from the lab on it with

1 the analyst's initials, lab number, case number and the date
2 it was sealed.

3 Q. And are these the items that you received in relation to
4 this case, State versus Henry Nesbit?

5 A. Yes, ma'am.

6 Q. And do they appear to be in substantially the same
7 condition as when you first received them?

8 A. Yes, ma'am.

9 MS. LINDER: Thank you. I have no further questions for
10 this witness. Please answer anything the Defense may have.

11 THE COURT: You may proceed.

12 MS. GAY: Thank you, Your Honor.

13 THE COURT: You're welcome.

14 CROSS-EXAMINATION BY MS. GAY:

15 Q. Hey, how are you?

16 A. Good.

17 Q. I just have one question. Today your testimony is all
18 about the analysis of these drugs, do you have any
19 information or you don't have any information to help the
20 jury determine what went on on June 16th, 2013?

21 A. No, ma'am.

22 MS. GAY: I have no further questions, Your Honor?

23 THE COURT: Any redirect of the witness?

24 MS. LINDER: No redirect, Your Honor.

25 THE COURT: Any objection to the witness being excused

1 from the State.

2 MS. LINDER: No objection from the State.

3 THE COURT: From the Defense?

4 MS. GAY: Nor the Defense.

5 THE COURT: Ma'am, you're excused.

6 THE WITNESS: Thank you.

7 THE COURT: Call your next witness you may.

8 MS. LINDER: State calls Rene Hilton.

9 RENE HILTON,

10 being first duly sworn, testified as follows:

11 THE CLERK: State your name and spell your last name for
12 the record.

13 THE WITNESS: Rene Hilton, H-I-L-T-O-N.

14 THE COURT: You may proceed.

15 DIRECT EXAMINATION BY MS. LINDER - VOIR DIRE:

16 Q. What's your occupation?

17 A. I am laboratory manager.

18 Q. And where did you work in the summer of 2013?

19 A. The City of Charleston Police Department.

20 Q. And what position did you hold at that time?

21 A. I was an associate criminalist.

22 Q. And what do your duties include being an associate
23 criminalist?

24 A. I perform drug analysis on evidence submitted by
25 agencies, whether it be CPD or any outer agency within the

1 area. I perform quality checks on our instruments, and at
2 the time I assisted the current laboratory manager with any
3 other duties that she requested of me.

4 Q. Can you please tell the jury what type of training and
5 education you have?

6 A. Yes. I have a chemistry -- a bachelor's of chemistry
7 from the University of South Carolina. I completed the
8 city's inhouse training, which consisted of shadowing an
9 examiner, reading tests and actually performing competency
10 tests, and then I also performed training that was inhouse,
11 excuse me, online or in-person training.

12 Q. And have you had the occasion to chemically analyze
13 substances in your career to determine whether or not the
14 substance contains a narcotic or a narcotic type drug?

15 A. Yes.

16 Q. And approximately how many times have you conducted
17 those tests?

18 A. I have completed almost 3,000 cases.

19 Q. And do you conduct those analyses as a part of your
20 everyday work?

21 A. Yes.

22 Q. And what type of equipment do you use in the laboratory
23 for testing?

24 A. We have an FTIR, which that's a short term for Fourier
25 transform infrared spectrometer we also have a GC-MS, which

1 stands for gas chromatograph mass spectrometer.

2 Q. And this equipment that you use, is it precise and
3 accurate in its testing ability?

4 A. Yes.

5 Q. And are there standards that you have to hold up to in
6 order for your lab?

7 A. Yes.

8 Q. Have you previously ever been admitted as an expert in
9 trial to testify?

10 A. Yes.

11 Q. And did you actually testify --

12 A. Yes.

13 Q. -- in those cases?

14 A. Yes.

15 MS. LINDER: Your Honor, at this time I would ask that
16 Rene Hilton be declared an expert in the field of drug
17 analysis.

18 THE COURT: Any objections or questions?

19 MS. GAY: No, Your Honor, no objections or questions.

20 THE COURT: Admitted without objection. You may
21 proceed.

22 MS. LINDER: Thank you, Judge.

23 THE COURT: You're welcome.

24 Q. In this case, the State versus Henry Nesbit, did you
25 complete any drug analyses?

1 A. Yes.

2 Q. And as a result of those drug analyses did you create a
3 report?

4 A. Yes.

5 MS. LINDER: If I may approach?

6 THE COURT: Yes, ma'am.

7 Q. At this time I show you what's been marked as State's
8 Exhibits 14 and 15 for identification purposes only, if you
9 could look at these, please. Do you recognize those?

10 A. Yes.

11 Q. How do you recognize it?

12 A. My signature's on them.

13 Q. And who prepared that?

14 A. I did.

15 Q. When did you prepare the report?

16 A. The first report was done on July 2nd of 2013, and the
17 second one was August 13 of 2013.

18 Q. And who was the subject of this drug report?

19 A. Henry Nesbit.

20 MS. LINDER: Your Honor, at this time I'd like to admit
21 State's Exhibit 14 and 15 into evidence.

22 THE COURT: Any objection?

23 MS. GAY: One moment, please.

24 Your Honor, there was a previous motion filed in
25 pretrial motions, but I understand the ruling, and so we are

1 agreeing they can go in.

2 THE COURT: Marked and admitted without objection.

3 (State's Exhibits 14-15 admitted into evidence.)

4 Q. Ms. Hilton, at this time I'm going to show you -- we're
5 first going to go over State's Exhibit 14. I'm going to put
6 it on this screen, and it will actually show up in front of
7 you.

8 A. Okay.

9 Q. Can you tell the jury what State's Exhibit 14 is?

10 A. It's my lab report for the first submission that was
11 submitted to me on July 1st, 2013.

12 Q. And what is this up here (indicating)?

13 A. It is our laboratory number.

14 Q. And this (indicating)?

15 A. It's the case number associated with this case.

16 Q. And what is this information (indicating)?

17 A. The suspect's name.

18 Q. And what is this down here (indicating)?

19 A. It's my signature.

20 Q. And this is the report that you generated?

21 A. Yes, ma'am.

22 Q. And can you please tell the jury what were your findings
23 on this case for this report?

24 A. For the first two items that were the plastic bag with
25 white powder, I determined them to be cocaine, and then the

1 final bag with the crystalline substance I determined to be
2 Methylone.

3 Q. And can you tell me the weight of cocaine?

4 A. The individual or the total?

5 Q. The individual.

6 A. The first bag, item 138992, was 1.72 grams. The second
7 item, 139026, was 19.53 grams.

8 Q. And then for those can you explain what this column over
9 here says (indicating)?

10 A. That column is the methods that I used to determine the
11 result of cocaine, so for those particular items I used a wet
12 color test, and the FTIR, which was or Fourier transform
13 infrared spectrometer.

14 Q. And on this report what was the third substance, what
15 did you determine that third substance to be?

16 A. Methylone.

17 Q. And what was the weight of that?

18 A. 14.39 grams.

19 Q. At this time I'm going to show you what's already been
20 admitted into evidence as State's Exhibit 15. What is this
21 (indicating)?

22 A. The laboratory number.

23 Q. And what is this (indicating)?

24 A. The case number.

25 Q. And again what is down here (indicating)?

1 A. My signature.

2 Q. And can you please tell the jury in your expert opinion
3 what your findings were after completing tests on these
4 submissions?

5 A. For four -- all four items I determined them to be
6 Methylone.

7 Q. And what were the weights of each individual submission?

8 A. Item 139029, which was a plastic bag of crystalline
9 substance, was 95.18 grams. The second item, the same
10 plastic bag with crystalline substance, Item 139029-3, was
11 94.85. Item 3 -- excuse me, Item 13909 -- 29-4 was the
12 weight of 95.31 grams, and then the final item, 139029-5 was
13 94.93 grams.

14 Q. And both of the reports that we just went through for
15 the jury, State's Exhibit 14 and 15, these both were
16 submissions from the same case, correct?

17 A. The same case number, yes.

18 Q. The same case number.

19 A. Yes.

20 Q. And can you tell the jury the total weight of all of the
21 cocaine in this case?

22 A. 21.25 grams.

23 Q. And can you tell the jury the total weight of all the
24 Methylone in this case?

25 A. 394.66 grams.

1 Q. And is Methylone a Schedule I substance?

2 A. Yes.

3 Q. At this time I show you what's been marked for
4 identification purposes as State's Exhibit 10, 11, 12 and 13,
5 if you can please look at those.

6 A. Okay.

7 Q. And do you recognize those items?

8 A. Yes.

9 Q. How do you recognize them?

10 A. My initials are on them as well as a City of Charleston
11 Police sticker that I put on there while analyzing the
12 evidence.

13 Q. And do they appear to be in substantially the same
14 condition as when you first received them?

15 A. Yes.

16 MS. LINDER: Your Honor, at this time the State would
17 seek to admit State's Exhibits 10, 11, 12 and 13 into
18 evidence.

19 THE COURT: Any objection?

20 MS. GAY: Over previous objection, Your Honor.

21 THE COURT: Marked and admitted.

22 (State's Exhibits 10-13 admitted into evidence.)

23 Q. All right. First I want to talk about State's Exhibit
24 10. Can you explain what State's Exhibit 10 is?

25 A. It's a plastic bag with a white powdery substance.

1 Q. And it appears there's a little blue in here. What's
2 that blue, do you have any idea?

3 A. The officer color tested the substance before submitting
4 it.

5 Q. And what was your -- in your expert opinion what was
6 this white substance?

7 A. Cocaine.

8 Q. All right. And then I'll take from you State's Exhibit
9 11, and can you tell the jury what this item is?

10 A. A plastic bag with white powder.

11 Q. And in your expert opinion what is the substance?

12 A. Cocaine.

13 Q. And what are all these -- it looks like Sharpie, for
14 lack of a better word -- what are all these markings and
15 writings on that little bag inside?

16 A. Our policies state that, when we get evidence, we have
17 to mark it with the laboratory number, the weight and our
18 initials to prove that we actually touched that evidence and
19 there was no tampering once we -- excuse me, after we put it
20 back in the bag and sealed it.

21 Q. And what are these initials up here (indicating)?

22 A. Those are my initials.

23 Q. And is there a significance to the location of where
24 those initials are?

25 A. It's just half on and half off the seal so we know it's

1 not broken.

2 Q. And is this the same procedure that you go through with
3 all items of narcotics that you receive?

4 A. Yes, ma'am.

5 Q. And is that true that you did that in all of your
6 cases -- all of the submissions in this case?

7 A. Yes, ma'am.

8 Q. All right. Next I'm going to look at State's Exhibit
9 12, if you can tell the jury what this is.

10 A. It's a plastic bag with crystalline substance.

11 Q. And in your expert opinion what was this?

12 A. Methylone.

13 Q. And then finally I'd like to look at State's Exhibit 13.
14 What is this substance?

15 A. It's four individual bags with plastic -- excuse me,
16 with plastic bags with crystalline substance.

17 Q. And what was that crystalline substance?

18 A. Methylone.

19 MS. LINDER: Your Honor, I don't have any other
20 questions for this witness.

21 If you can please answer any questions that the
22 defendants may have.

23 THE COURT: Any questions for the witness?

24 MS. GAY: No questions for this witness, Your Honor.

25 THE COURT: Any objection to the witness being excused,

1 from the State?

2 MS. LINDER: None from the State.

3 THE COURT: From the Defense?

4 MS. GAY: No, ma'am.

5 THE COURT: Ma'am, you're excused.

6 State may proceed.

7 MS. LINDER: State rests.

8 THE COURT: Madam forelady, ladies and gentlemen, the
9 State has rested their case. I have some matters of law to
10 take up with the attorneys. During this break please do not
11 discuss the case among yourselves, and leave your notepads in
12 your seats. We do appreciate your patience.

13 (Jury exits the courtroom.)

14 THE COURT: You may be seated. You can take your seat,
15 Ms. Gay. I'll deal with motions in just a minute.

16 Okay. Are there any motions? The State has rested
17 their case.

18 MS. GAY: Yes, ma'am. At this time I make a motion for
19 directed verdict on behalf of my client, Mr. Nesbit. Even in
20 the light most favorable to the State this evidence that has
21 been presented does not rise to the level of the elements of
22 the case, and I'll of course leave that to the Court's
23 discretion.

24 THE COURT: Would the state like to respond?

25 MS. LINDER: Briefly, Your Honor, we believe that when

1 looking at it in the light most favorable to the state it
2 does pass that. The State has put up witnesses and gotten
3 exhibits admitted to show Mr. Nesbit was in possession of the
4 weights of the drugs. There's been testimony about the
5 intent to distribute. There's been testimony about the
6 weight which would get us to the trafficking. There's also
7 been testimony, coupled with the video, of the eluding the
8 police themselves for the failure to stop, so we believe that
9 in the light most favorable to the State that the directed
10 verdict motion should be denied and this case should go to
11 the jury.

12 THE COURT: Anything further, Ms. Gay?

13 MS. GAY: No, ma'am.

14 THE COURT: Considering the evidence in the light most
15 favorable to the State, the Court is concerned with the
16 existence or nonexistence of evidence, not its weight. If
17 there is direct or substantial circumstantial evidence
18 reasonably tending to prove the defendant's guilt, it is
19 appropriate that the matter be submitted to the jury. The
20 State is not required to prove the defendant's guilt to the
21 exclusion of every other reasonable hypothesis. There is
22 direct testimony as well as substantial circumstantial
23 evidence in this case reasonably tending to prove the
24 defendant's guilt. There's already been testimony from a
25 chemist regarding the weight of the cocaine which is

1 presumptive for the 10 to 28 gram range, and as well as the
2 Methylone does not have to have a weight inference. Its
3 packaging in and of itself is sufficient to rise to the level
4 of possession with the intent to distribute. And there's
5 more than ample evidence on the failure to stop. There's a
6 video of the actual pursuit after the defendant was put on
7 notice of a lawful traffic stop, and therefore the motion for
8 directed verdict is denied.

9 Sir, if you would stand, please, and raise your right
10 hand to be sworn -- actually, I'll remind you you're still
11 under oath, as I already swore you in earlier. You can put
12 your right hand down.

13 Sir, I'm now going to explain to you certain of your
14 rights. If you don't understand something that I say, please
15 let me know. If you need me to repeat something, please let
16 me know. Do you understand?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: We have now reached the stage of the trial
19 where you may present your defense. You have the right to
20 claim the protections given to you by the Fifth Amendment to
21 the Constitution, and that amendment states in part that no
22 person shall be compelled in any criminal case to be a
23 witness against himself. In other words, you have no burden
24 of proof in this case. You do not have to testify, and you
25 do not have to say anything that would incriminate you in the

1 prosecution of this case. This means that you cannot be
2 required to testify. You have the right to testify, however,
3 no one can make you testify. This is a personal right, and
4 no one can waive that right except you. If you decide to
5 testify, you will be subject to the same rules that govern
6 other witnesses, and you may be examined and cross-examined
7 on any relevant issue in this case. In addition, if you have
8 any convictions involving dishonesty or false statement or
9 for crimes punishable by imprisonment for more than one year
10 and this Court determines that the probative value of
11 admitting this evidence outweighs its prejudicial effect to
12 you, the solicitor will be allowed to use that record to
13 attack your credibility.

14 If you decide not to -- if you decide to testify, this
15 decision on your part must be made freely, voluntary and
16 intelligently with knowledge of the protections given to you
17 by the Fifth Amendment to the Constitution of the United
18 States. If you decide not to testify, I will instruct the
19 jury that they're not to give that fact any consideration
20 whatsoever, that there is to be no prejudice to you nor any
21 inferences drawn from you not testifying, that you have no
22 burden of proof in this case, that the burden remains on the
23 State to prove each and every element of the offenses you're
24 charged with beyond a reasonable doubt, and that you have no
25 burden to prove yourself innocent and the fact that you did

1 not testify should not be discussed in any manner whatsoever
2 in the jury room.

3 You may talk with your family members, your friends,
4 your attorneys or anyone else, but the decision whether to
5 testify or not to testify is left entirely up to you. Do you
6 understand your rights as I've explained them to you?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Do you have any questions about what I've
9 just explained to you?

10 THE DEFENDANT: No, ma'am.

11 THE COURT: Have you discussed with your attorneys
12 whether you should or should not testify?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Do you wish to speak with them any more at
15 this time?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: And you all gave me his record earlier. It
18 was a 2005 parole revocation, a failure to stop for a blue
19 light, possession of a stolen motor vehicle, assault with
20 intent to kill, possession of a stolen gun in 2002, '09 DUS
21 2nd, operating without a driver's license, '07 crack 1st,
22 failure to stop for a blue light, PWID cocaine 1st and a
23 proximity, and there are two counts of the PWID; is that
24 accurate?

25 MS. LINDER: Yes, Judge.

1 THE COURT: Is there any of this that the State would be
2 seeking to use to impeach his credibility?

3 MS. LINDER: Nothing to impeach his credibility.

4 THE COURT: Oh, there's an '02 B&E motor vehicle, two
5 counts, and a burglary 3rd; but those would be beyond the ten
6 years, and no notice was given to the Defense of the intent
7 to use those.

8 Okay. Sir, do you wish to testify.

9 THE DEFENDANT: No, ma'am.

10 THE COURT: All right. You can take your seat.

11 Does the Defense have any other witnesses or any
12 evidence that they would be seeking to introduce, as Mr.
13 Nesbit does not desire to testify?

14 MS. GAY: No, Your Honor.

15 THE COURT: So does the Defense rest as well?

16 MS. GAY: Defense rests, and we renew our motion, Your
17 Honor.

18 THE COURT: Would the State like to respond?

19 MS. LINDER: Your Honor, I believe we stated our
20 position previously.

21 THE COURT: The Court would deny the motion based on its
22 previous ruling and incorporates that -- those findings into
23 this portion of the record.

24 If you all will give me a few minutes, we'll have charge
25 conference. I just need to print a couple things. Are there

1 any requests for any lesser included offenses?

2 MS. GAY: I think, based on the weight, we would like to
3 ask for possession with intent to distribute, think it
4 actually fits.

5 THE COURT: I just need to print a couple things and
6 we'll go over it, and we'll see if it's supported by the
7 facts; and then what I'll do is we'll bring back in the jury,
8 you'll be able to rest in their presence, and then we'll go
9 forward with the charge and instructions.

10 MS. GAY: In furtherance of that argument, there are two
11 packets of drugs. One of them is a smaller amount, and one
12 was a larger amount, the cocaine, and both of those there's a
13 smaller amount.

14 THE COURT: I can't hear you.

15 MS. GAY: There's smaller amounts. It's not just one
16 baggy. And so if we -- I mean, the jury may want to pick an
17 option of having him be convicted of one baggy and not the
18 other baggy.

19 THE COURT: I don't think you can. I think, the way the
20 law is structured, the packaging works against your client
21 because that supports the fact that he intended to distribute
22 it, sell it.

23 MS. GAY: Well, I understand, but that's my argument for
24 possibly getting a lesser included offense.

25 THE COURT: I'll think about it. Give me about ten

1 minutes, and then we'll have a charge conference.

2 (Recess held.)

3 THE COURT: State ready?

4 MS. LINDER: State's ready.

5 THE COURT: Defense ready?

6 MS. GAY: Yes, ma'am.

7 THE COURT: I will give the jury a general instruction
8 regarding their responsibility and my responsibility. I'll
9 give the judge witness credibility and believability. I'll
10 give them a general instruction regarding expert witness
11 testimony. I'll give them a general instruction on direct
12 and circumstantial evidence from State versus Grippon. I'll
13 then give general instruction that the charges, the arrest
14 and the indictment are not evidence or create any
15 presumptions, as well as on the presumption of innocence.
16 I'll charge Victor versus Nebraska on reasonable doubt. I'll
17 then instruct on the elements of failure to stop for a blue
18 light, which is 56-5-750; and then the elements of
19 trafficking in cocaine, which are the usual elements, without
20 me belaboring it at this time, which deals with the proof of
21 any mixture containing cocaine pursuant to
22 44-53-370(e)(2)(a), 10 grams or more but less than 28 grams,
23 as the testimony has been it was 21.25 grams of cocaine. And
24 then on the elements of possession with the intent to
25 distribute Methyllone, which I may say commonly referred to as

1 bath salts, but I may not, just say Methylone. Now, I have
2 searched the statute. Is there any presumptive amount of
3 Methylone in the statute?

4 MS. LINDER: Not that I'm aware of, Your Honor.

5 THE COURT: I'm not either. I'll then instruct on
6 multiple charges. He's charged with several things. The
7 jury can acquit or convict him on any or all of them and that
8 they are to consider each and every element of these offenses
9 separately and independently based on the evidence that has
10 been presented, and then I will instruct on the form of the
11 verdict. Are there any exceptions to the charge as proposed
12 from the State?

13 MS. LINDER: None from the State.

14 THE COURT: From the Defense?

15 MS. GAY: Your Honor, in light of the fact that there is
16 no presumptive weight on the Methylone, I would ask you to
17 also charge possession as a lesser included, possession with
18 intent. We have multiple packages, but we have no deal. We
19 have no actual hand to hand. We have no information that's
20 been put into evidence that there was any kind of
21 distribution or sale going down or any type of -- so I would
22 just ask that you charge also possession.

23 THE COURT: Any exception from the State?

24 MS. LINDER: Judge, I believe that there was testimony
25 about the packaging, the overall weight, that it was not

1 personal use and about the -- what the cash on him indicates.
2 I don't believe possession charged as a lesser included is
3 warranted in this case.

4 THE COURT: And you can't get a valid prescription for
5 Methylone, I would imagine, correct?

6 MS. LINDER: No, Judge.

7 THE COURT: I'm going to instruct the lesser included
8 just because I don't really see any prejudice to the State in
9 instructing it. I will, however, note that the record is
10 void of any testimony that it was for his personal use or
11 that he simply possessed it, but I don't see any harm or foul
12 in instructing.

13 MS. LINDER: Thank you, Judge.

14 THE COURT: You're welcome. Is there anything further
15 from the Defense regarding any exceptions to the charge as
16 proposed?

17 MS. GAY: No, ma'am.

18 THE COURT: Now, PWID is a lesser included of
19 trafficking. Is there any request to instruct the lesser
20 included of PWID on the cocaine --

21 MS. GAY: Yes.

22 THE COURT: -- from the State or the Defense?

23 MS. GAY: I asked that right before you took the break,
24 to consider that. You said you would look into that. On
25 behalf of the defendant I would ask you to please charge

1 that.

2 THE COURT: What's the State's position?

3 MS. LINDER: Your Honor, I do not think that a
4 possession with intent to distribute cocaine charge should be
5 instructed to the jury, kind of exactly what Ms. Gay just
6 talked about the Methylone, there's been no evidence, no
7 testimony that there was a deal, that there was anything of
8 the sort, so in kind of her using her argument why possession
9 of Methylone should be charged, I would say that is why
10 possession with intent to distribute cocaine should not be
11 charged. It is possession of a weight, and that is what the
12 testimony has been.

13 MS. GAY: Just because I felt the need to have to do
14 this, it is a possession of a weight, but often in many cases
15 when there's possession with intent to distribute when there
16 isn't actual testimony of a sale that was set up or whatever,
17 this is up to the jury to determine the weight of the
18 packaging and those types of things to determine whether or
19 not they believe the person possessed with intent to
20 distribute or not, and I believe that we should give the jury
21 that option.

22 MS. LINDER: I'm sorry, Your Honor, in my response to
23 that, in the trafficking statute itself, even if you take
24 apart the end where it's just about the possession, it does
25 encompass, in the trafficking, possession with intent to

1 distribute, deliver, dispense, all of that is within the
2 trafficking statute itself, so I think it covers it.

3 THE COURT: Again, I don't see any prejudice to the
4 State in instructing PWID. PWID deals more -- less with
5 weight, State doesn't have a duty to prove weight,
6 responsibility to prove weight or the element of weight, but
7 it can be proven by the way it was packaged, the
8 circumstances surrounding it. In this instance the amount of
9 money he had on him, the way the drugs were packaged,
10 otherwise could conceivably support a PWID charge. However,
11 I would -- what concerns me a little is the State did not
12 present any testimony regarding -- usually when you testify
13 about the amount of cocaine, you also have the chemist
14 convert it to grains, and you all did not, and I was just
15 curious. Usually the chemist talks about the amount of grams
16 and grains of cocaine, and they didn't in this instance, so
17 I'm not going to instruct anything about the presumption of
18 the weight in the PWID under the statute because we don't
19 have any testimony regarding the conversion of the cocaine to
20 grains, so I'm not going to instruct that portion of it.

21 Okay. Anything further regarding requests for
22 instruction or exceptions to the Court's instructions from
23 the State?

24 MS. LINDER: Beg the Court's indulgence. I could
25 absolutely be wrong, but I thought in the statute it does

1 talk about anything over 1 gram of cocaine is the presumptive
2 weight.

3 THE COURT: I think it says one gram of marijuana. I
4 might need to look back to make sure.

5 MS. LINDER: Give me one second. I have the statute
6 right here.

7 THE COURT: I may have overlooked it. Give me one
8 second, Ms. Linder. You might be accurate, and I may have
9 deleted a portion of what I printed inadvertently.

10 MS. LINDER: Your Honor, in 44-53-370, if you look for
11 (b)(4), it's possession of more than one gram of cocaine, and
12 then it talks about other things, is prima facie evidence of
13 being guilty of violation of subsection (a), and subsection
14 (a) is the PWID.

15 THE COURT: Then I'll insert the one gram in the PWID
16 lesser included on the trafficking. Any exception from the
17 Defense?

18 MS. GAY: No, ma'am.

19 THE COURT: How does it read exactly, is it one gram or
20 more?

21 MS. LINDER: Judge, it says, possession of more than one
22 gram of cocaine. Yes, Judge.

23 THE COURT: Okay. Is there anything else we need to
24 take up before we proceed with closing arguments and
25 instructions, from the State?

1 MS. LINDER: Nothing from the State.

2 THE COURT: From the Defense?

3 MS. GAY: No, ma'am.

4 THE COURT: Can you all make sure all the evidence is in
5 place because I'm not going to stop. I might stop for a
6 restroom break, but let's just make sure.

7 (Brief pause.)

8 THE COURT: Okay. Is all the evidence in place?

9 MS. LINDER: It is, Your Honor.

10 THE COURT: Please bring in the jury. And I'll give you
11 the chance to rest in the presence of the jury, Ms. Gay, and
12 then we'll go into closing argument.

13 MS. GAY: Judge, I was wondering, I'd have to ask you if
14 it's even possible, but the packaging that they have, the
15 large package, I had wanted to cut the package open and hold
16 individual bags. She says I can't do that without talking to
17 you. And, I mean, I realize it's been put into evidence.

18 THE COURT: Let me see what you're talking about.

19 MS. LINDER: Your Honor, I believe she wants to cut open
20 the clear plastic sealed evidence bag to pull out all the
21 different bags of drugs, and I just said that's nothing I've
22 ever seen done, and it's certainly not up to me to do that
23 because if by chance there were a conviction or PCR, it was
24 retried, then the seal would be broken.

25 THE COURT: I guess I'm trying to figure out why you

1 need to.

2 Wait one second for me, please.

3 MS. GAY: I have my reason, but in the scheme of
4 things --

5 THE COURT: In the scheme of things, I can see how it's
6 packaged.

7 MS. LINDER: I guess the jury wouldn't be allowed --

8 THE COURT: No. It's a security issue, really, more
9 than anything else because these can be unsealed because
10 they're in just, basically, Ziploc bags. They're not even
11 Ziploc bags.

12 MS. GAY: So your concern is that they --

13 THE COURT: My concern is more of a safety issue, but I
14 don't see any prejudice to your client because it's clearly
15 visible from this large baggy how each individual one is
16 packaged and how many are inside. I mean, literally, you can
17 move it around to see how they're individually packaged, and
18 you can feel how they're individually packaged.

19 MS. GAY: I understand.

20 THE COURT: If it were different than that, I might let
21 you open it, but I just don't see anything could be
22 accomplished by that; and I have to balance that with the
23 security issues and the preservation issues, but I mean, it's
24 very clear -- and also from each baggy it's clear how each is
25 individually marked, and you can move it around, and you

1 can -- they can feel it, they can feel the contents, and they
2 can see, if you move it around, you can see each individual
3 bag that's in here and how much is in each individual bag.

4 MS. GAY: I understand.

5 THE COURT: So I think you can accomplish what you need
6 to in its current state.

7 All right. Tell them to bring in the jury.

8 (The jury enters the courtroom.)

9 THE BAILIFF: All present, Your Honor.

10 THE COURT: Thank you. You may be seated. The Defense
11 may proceed.

12 MS. GAY: Your Honor, at this time the Defense would
13 rest.

14 THE COURT: Madam forelady, ladies and gentlemen, both
15 the State and the Defense have rested their cases. The next
16 part of the process is closing arguments and the Court's
17 instructions. I would ask that you give the attorneys your
18 undivided attention. State may proceed.

19 MS. LINDER: Thank you, Your Honor, may it please the
20 Court.

21 THE COURT: Yes, ma'am.

22 MS. LINDER: In the beginning of this case yesterday Ms.
23 Mulkey told you that we live in a society of laws. In a
24 society of laws we, as citizens, have been afforded many
25 freedoms; and with those freedoms come a lot of

1 responsibilities, including obeying the laws. Deputies,
2 police officers are all sworn to uphold and enforce those
3 laws. In this case there are traffic laws, specifically
4 52-2-2150. That is that you must use your turn signal for
5 the continuous 100 feet leading up to and through making your
6 turn. There is also another law in this case that if law
7 enforcement signals to you, via blue lights or sirens, then
8 you must yield to law enforcement and stop for them.

9 This case also involves drug laws. It involves
10 possession, possession with intent to distribute, and it
11 involves trafficking. And the drugs that are involved in
12 this case are cocaine and Methylone, which are also bath
13 salts, which is a Schedule I. At the beginning of the trial
14 Ms. Gay told you that this is a very important day, very
15 important day for Mr. Nesbit, and I agree. I agree it's a
16 very important day. But for Mr. Nesbit and his choices and
17 his actions, we wouldn't all be here. I urge you to focus on
18 Mr. Nesbit when you go back there and deliberate.

19 I'd like to take a second and go through a little bit of
20 the testimony that you've heard over the past day or so. You
21 heard from Deputy Chavez. Eight years he's been with law
22 enforcement. Eight years he has done traffic violations. It
23 was June 16th of 2013. It was a normal patrol day. There
24 was extra law enforcement for traffic laws, speeding, running
25 a red light, running a stop sign, not using signals, just any

1 traffic violations. A lot of people around. It was summer
2 on Isle of Palms. It was a regular day for him. He and his
3 partner were sitting on opposite ends of a median in that
4 main drag of IOP, and then it was getting close to the end of
5 the shift, so he scooted around; and then he was just there
6 by himself, waiting out the rest of his shift, just having a
7 normal day. And in that normal day for Deputy Chavez he saw
8 somebody violate 56-5-2150 that all of us, when we go around
9 and are driving vehicles, we have to abide by those laws for
10 the safety of that driver and the safety of all other people
11 walking, riding, anything, on the rode. He attempted to make
12 a traffic stop. He saw somebody he didn't know not use a
13 turn signal. They didn't signal at all, and then they turned
14 right. You're here for the defendant's actions, Mr. Nesbit.
15 He did not signal 100 feet out as required by law, or 50 feet
16 out as required by law, or 45 or 40 or 35 or 30. He did not
17 signal all the way to the stop sign. He did not signal as he
18 was turning. He didn't signal at all. So Deputy Chavez did
19 what he's charged to do, did what we ask him to do, and he
20 activated his blue lights and sirens to initiate a traffic
21 stop.

22 You know, it could have all been over right then. Could
23 have pulled over, gotten a ticket, a warning, "There's a lot
24 of people. Make sure you use those signals." Could have
25 been a ticket. I don't even know how much that fine is. Who

1 knows? But Mr. Nesbit's actions made it to where we'll never
2 know. Mr. Nesbit saw those blue lights. You watched the
3 video. You saw him and then, oh, hey, now he's using that
4 turn signal, he's getting pulled over. He pulls over, after
5 not doing it at the stop sign at J.C. Long and Ocean
6 Boulevard. He goes onto Ninth, then he looks back, "I'm
7 going to the spot." It looks like he's turning over to slow
8 down for just an average everyday traffic stop that Deputy
9 Chavez has been doing for eight years, but then Mr. Nesbit's
10 actions, Mr. Nesbit's decision, Mr. Nesbit's choices changed
11 that moment, changed that day, and brought all of us here
12 together today. He took off. I mean, he took off. You
13 watched that video. The video is in evidence, if you want to
14 watch it again, feel free.

15 Deputy Chavez took you through the map, and he showed
16 you the intersection. He showed you 100 feet back. He
17 showed you the area that he could have put the light on and
18 he didn't. He showed you how he turned, and then he turned,
19 and then he turned, and then he took off. We even had to
20 move the map because it was such a long chase. He was
21 fleeing from Deputy Chavez. He was fleeing from the blue
22 lights and the sirens. Deputy Chavez told you he activated
23 his blue lights and sirens. You know he activated his blue
24 lights and sirens because that's what turned on his camera,
25 and when you watch that video, you hear the sirens, and you

1 see the reflections. And Mr. Nesbit's obviously knew that
2 was going on because he started pulling over, and he turned
3 around and said something about it before taking off and all
4 of that.

5 So let's talk about that. Went through the map. You
6 know, Judge Jefferson in her jury qualifications on Monday
7 morning talks a lot about Court TV and how it's really
8 exciting and entertaining, and it is not like that. She's
9 right. It's not like that, but, oh, my gosh, in this case
10 you actually have a video. I mean, very typically cars are
11 not equipped with cameras. Very typically there's no --
12 nothing for us to press play for you to watch for you to see
13 yourself the laws being broken, but in this case we saw it.
14 86 miles an hour he was going. He was weaving around, in the
15 bike lane, out of the bike lane, in the other traffic, all
16 over. He was failing to stop for a blue light. And the only
17 reason that that pursuit stopped was not for the hard work of
18 Deputy Chavez, unfortunately, was the defendant's actions.
19 He lost control of the vehicle because he was crazily,
20 recklessly driving it all over, and he ran into something.
21 His actions. His driving at the high rate of speed. His
22 wreck.

23 You know, when that wreck happened, it is a shame for
24 anyone ever to be injured, absolutely, and Deputy Chavez
25 pulled his cruiser up, did his duty. Because not only does

1 he have a duty to worry about traffic violations, he has the
2 duty for people's safety, including the safety of somebody
3 who was just running from him. He got out. He jumped out of
4 the car. He was there enforcing those laws. He jumped out
5 of the car. His duty was to preserve the scene. He had to
6 preserve the scene. He couldn't be moving stuff all over.
7 He also couldn't be moving his car all over. Whenever
8 there's a pursuit and then an accident, even though Deputy
9 Chavez was not involved in the accident, it's like, ooh,
10 hands off, you need an impartial other party, in this case
11 South Carolina Highway Patrol, who had to come and
12 investigate it. He couldn't move his car because of those
13 laws, those set of laws that we have. Those checks and
14 balances that give us so many amazing freedoms. Pulled up,
15 stopped his car, as he had to, and he was trying to -- he ran
16 around, trying to make sure he wasn't moving, trying to make
17 sure Mr. Nesbit wasn't trying to run. But, again, we're here
18 today because of the defendant, the defendant's actions, and
19 Mr. Nesbit tried to run. I think Deputy Chavez showed you he
20 was rocking and trying to get up. I mean, you just were in a
21 wreck, and you're trying to get up and run. So you heard him
22 on the video, Deputy Chavez is giving him -- stay on the
23 ground, stay on the ground, get on the ground, stay on the
24 ground. Yes, part of that is because he just ran from him.
25 He needed to place him under arrest, but part of that is

1 because, holy cow, this wreck just happened. You need to
2 stay still. Don't hurt yourself anymore. Are you hurt?
3 Don't hurt any more. So he went over there. He got him to
4 stay on the ground. He then cuffed him and just kind of
5 stayed there with him. Mr. Nesbit was covered in blood. He
6 just was in a horrible motorcycle accident, so he's just
7 standing with him, watching him, making sure he doesn't run
8 because earlier the defendant shows him that he was trying to
9 run, so Deputy Chavez had to stay and stand and watch and
10 make sure and wait for his back up.

11 Backup arrived. Deputy Buckhannon arrived on scene. As
12 soon as Deputy Buckhannon came up on scene. Chavez knew he
13 wasn't alone anymore. He doesn't have to stand guard over
14 Mr. Nesbit and just stand and watch and make sure that no
15 other cars are coming on scene. Because he's looking to
16 protect himself, Mr. Nesbit, everybody else in the community.
17 He doesn't want another car ramming in, driving. He doesn't
18 want any of that, so he's just standing, looking around,
19 keeping eyes on him, keeping eyes on him. As soon as
20 Buckhannon comes, Buckhannon's taking over that duty, so he's
21 able to continue the arrest process that he already started;
22 and part of that that goes along, as prescribed by law, is a
23 search incident to arrest. Pulling stuff out of your
24 pockets. I got an ID. I got nothing else. All right.
25 Let's go. If that was the case, he just would have gone to

1 the hospital and things would be fine. But, again, it's the
2 defendant's actions that bring us here today, which is why
3 that's where it didn't end.

4 When Deputy Chavez did the search of the defendant
5 instant to arrest, he looked in his pockets, similar to how I
6 just did, and he used kind of a lingo or code, saying loads
7 of 33, loads of 33. 33 means drugs. You know, so he did
8 that to let his backup, Deputy Buckhannon, know what was
9 going on, know the kind of situation there was. Then he also
10 talked about there was lots of cash. So as soon as hearing
11 that, Deputy Buckhannon, who arrived on scene kind of started
12 looking around at other traffic. Heard that, 33. Went to
13 his car. Got an evidence bag. Brought it over to him. It's
14 all on the video. You see Buckhannon bringing over the
15 evidence bag after Deputy Chavez indicates, loads of 33. So
16 everything that was taken off the defendant's person from his
17 pockets were put in the bag, and then Deputy Chavez testified
18 that he locked it in the back seat of his car. He was the
19 only one with the key. He'd checked the area before. There
20 was nothing in there. It's all the stuff off of his person.

21 You know, the Defense brought up a bunch of points about
22 prints. Why didn't you print the bags, why didn't you print
23 the bags, why didn't you print the bags. Well, you know, if
24 there was a wreck here, and then way over here something was
25 found that seemed out of place, you know, I don't know if

1 they belong to that guy or they don't, so maybe in those
2 situations you may try to print the bag to figure out who it
3 belonged -- who they belonged to. But in this case that
4 didn't happen because it was in his pockets, in his right and
5 his left pockets in his pants that he was wearing, pants that
6 he was wearing when he was driving the motorcycle, pants that
7 he was wearing when he wrecked the motorcycle, pants that he
8 had on him when Deputy Chavez searched him.

9 A lot of issues also are brought up about cameras. You
10 know, I was tickled that there was a video at all in this
11 case, honestly. You know what, sure, Deputy Buckhannon could
12 have said, I'm here to for backup oh, wait, am I in the shot
13 (indicating)? I mean, sure, I guess so, but both of them are
14 more concerned with a fellow citizen who is on the ground,
15 bleeding. Both of them were more concerned that other people
16 on the Isle of Palms, visiting, live there, whatever, were
17 going to come up on it and maybe get in the middle of
18 something. You know, that's what their focus was. Their
19 focus was the community's safety and the defendant's safety
20 and the defendant's injuries and health.

21 So, again, after all the defendant's choices there was
22 that wreck, and he was under arrest, and he got taken by EMS
23 to MUSC for medical attention. Deputy Buckhannon, as they
24 always do, again, prescribed by law, these society of laws we
25 live in, followed the evidence. At the very end of that very

1 long video -- seemed kind of boring for big chunks of it --
2 of the first clip, you see the ambulance take off, and then
3 you see Buckhannon's car drive off after it. That's what
4 happened. They both testified, Deputy Chavez and Deputy
5 Buckhannon testified that's what happened. That's procedure.
6 That's what we do.

7 Then crime scene came out. Erin Meyer, she testified
8 for you yesterday afternoon. There was video also when crime
9 scene went out, and that was that second clip that you all
10 watched. She took pictures. The pictures are here. They're
11 in evidence. You can check them out. You can look at them.
12 You'll have all this stuff back there with you. You know,
13 you can look at the pictures, and the evidence bag things are
14 being brought out of, you can look at all this stuff. All of
15 this is going to be back there with you. She took pictures.
16 That's her job. The law makes her do it. She then packaged
17 everything.

18 And then they had to count the money, so that was a very
19 long time on the video, and you saw them pulling out all this
20 money. Wads of money. Bills and bills and bills and bills
21 and bills. It was \$2,918. Out of that 103 bills were \$20
22 bills, so there were over 100 \$20 bills in that wad of cash
23 in his pocket. And as Deputy Chavez testified to you, that's
24 an indicator of sales. \$20 bills are common denominations
25 for drug transactions. So at the hospital Buckhannon was

1 with the defendant. He went in for medical attention. He
2 had his clothing cut off. Buckhannon stood there, watched
3 his clothes being cut off. Took the clothes as property, as
4 evidence, and then after Chavez finished with everything on
5 the scene, he then followed through, as he has to by law.
6 Went to the hospital. He got the bag from Buckhannon. All
7 right. Let's make sure nothing was amiss. I mean, he's
8 covered in blood on the street, so you weren't digging in
9 every nook and cranny, so he went through it, and in the
10 little coin pocket, that I still don't understand why they
11 put on jeans to this day, they found more drugs. They were
12 field tested. All of those drugs Deputy Chavez ended up
13 taking into evidence, as he has to as prescribed by law. He
14 has them all bagged. He takes them into evidence. He
15 submits them.

16 You heard a bunch of people -- kind of boring -- the
17 chain witnesses, little bit yesterday and first thing this
18 morning; and they're more or less saying, I took it, it
19 wasn't tampered here, I checked it here, I wrote this down, I
20 did this, and I put it back. That's what that is. We have
21 to go through that to show you that everything's above board
22 with how things are handled because this is a serious case.
23 Because every case, no matter how big or small, is serious.

24 You heard from the chemical analyst, Rene Hilton. She
25 talked to you. The weight of the total cocaine was 21.25

1 grams and the Methylone was 394., I believe, 66 grams. My
2 math is not good, so you feel free to add it up, tally it up
3 yourself. You're going to have these back there with you.
4 These were the lab reports that you saw up on the screen that
5 have which bag, what's the amount, what is it. You can add
6 them all up. And you're going to have these back there with
7 you. You'll have the drugs. You've got some Methylone,
8 looks like little -- she called them crystalline substances,
9 I think. You'll have those. You'll have this back there.
10 This is some cocaine, really big written right there so
11 you'll know what that is. You'll have this big bag of
12 cocaine, and you'll have this, all this Methylone. And
13 you'll see in this, you can move it around and do whatever
14 you want to the bag, check it out, touch it. It's all
15 sealed -- pardon me. It's all sealed, so you can go through
16 all that back there.

17 We're in a society of laws, and with those laws come
18 many freedoms and many duties. The Judge will talk to you
19 about what the law is in this case, and I urge you to listen
20 to her. She's a Judge for a reason. You need to listen to
21 everything, when it comes to the law, from her. But I just
22 want to briefly talk to you about it so you kind of know what
23 you're going to be looking for. Mr. Nesbit's charged with
24 failure to stop for a blue light. What that means is he was
25 operating a motor vehicle. Deputy Chavez testified a

1 motorcycle is a motor vehicle. And upon being signaled to
2 stop by blue lights and/or sirens he did not stop, and the
3 video I believe shows that.

4 Next he is charged with possession with intent to
5 distribute Methylone. Possession with intent to distribute
6 Methylone means that he possessed it, in this case in his
7 pockets. The with intent to distribute, when you think about
8 that, it's kind of a weird concept. More or less, all the
9 cash on him I would submit to you means he was selling. He
10 was dealing. I don't walk around with three grand in cash on
11 me. But if you don't think that, then you can look
12 (indicating). Four packages, all about the same weight,
13 multiple packaging, all measured out. You're allowed to
14 infer items into that if you believe it shows you that he had
15 the intent to distribute that. Distribute could be for
16 money. Distribute could be to share with a friend. It could
17 mean whatever.

18 He's also charged with trafficking in cocaine.
19 Trafficking cocaine is ultimately possessing cocaine of a
20 specific weight, and in this case I would submit to you that
21 he possessed cocaine. He had this in a pocket, and he had
22 this in his little coin pocket (indicating). He possessed
23 it. And the weight, it has to be over 10 grams and less than
24 28. So you heard testimony from the expert -- and like I
25 said, you're going to have these back there. You can read

1 the reports. You can read that she wrote on here, this one
2 alone is 19.53. I submit 19.53 is over 10 and under 28.

3 Back on June 16th of 2011 Mr. Nesbit made a lot of
4 choices, and his actions all have consequences, and that's
5 why we're here. On June 16th of 2011 Mr. Nesbit was driving
6 down J.C. Long. Didn't use his signal. Didn't use his
7 signal 100, 50 feet out, or at the stop sign when he turned.
8 Deputy Chavez did his job, which is to pull him over.
9 Mr. Nesbit continued on Ocean, decided to turn down Ninth,
10 looked like he was pulling over, then he took off, going down
11 Ninth and then down Palm Boulevard for a long time. He
12 failed to stop for blue lights, and then when he was being
13 arrested for failing to stop for blue lights, a search
14 incident to arrest occurs. It is what happens. And that's
15 when they found all of those drugs on him. He had all of
16 those drugs on him when he was fleeing from police, and he
17 had all of those drugs on him when he was ultimately, I'd say
18 caught by police, but, I mean, he was the architect of his
19 own life there. I mean, he fled, he wrecked, and we're here
20 today.

21 I ask that you go back, you consider all the evidence.
22 Like I said, you'll have all this for you. You'll also have
23 the video if you'd like to watch that. Consider everything,
24 please give it a lot of thought, and I'm confident that at
25 the end of the day you'll come back with a verdict of guilty

1 on all three counts, to trafficking cocaine, 10 to 28 grams,
2 guilty of possession with intent to distribute Methylone and
3 guilty of failure to stop for a blue light. Thank you.

4 THE COURT: You may proceed.

5 MS. GAY: Thank you, Your Honor, may it please the
6 Court.

7 THE COURT: You're welcome, yes, ma'am.

8 MS. GAY: We started this trial yesterday. We all met
9 on Monday. One of the things I told you all is how important
10 this is, how important it is to Mr. Nesbit, because it's
11 about his life and his future, and he's pled not guilty. But
12 he's guilty of failure to stop for a blue light, and that's a
13 fact. We've all -- he's seen the video. He did that. There
14 is no question whatsoever that he rode his motorcycle away
15 from law enforcement in an evasive manner, and he's guilty.
16 Now, he disputed, and you saw us cross-examine the officer
17 about the fact that he didn't use a turn signal in the
18 beginning, and that's -- you know, that's in dispute at this
19 point because, I mean, obviously the officer testified
20 eventually that -- well, he testified he was 100 percent
21 positive that he did. But, you know, on the video you can't
22 see it, and there's always question when things are not --
23 you know, when you don't have a movie of something. So
24 Mr. Nesbit says that he used his turn signal, or the
25 inference is that there was a turn signal used; but he did

1 fail to stop for the blue light, and so he's traveling away,
2 minding his own business. He's an African-American male on a
3 really nice Harley-Davidson on a beautiful Sunday afternoon
4 on the Isle of Palms, and he comes, and there's inference
5 that he did in fact use his signal; but then the officer gets
6 behind him, and we have testimony that he did not have a
7 driver's license, we have testimony that the car -- the
8 motorcycle belonged to someone else, not him, and so there's
9 all kinds of evidence that's in the record about why he may
10 have chosen to fail to stop for the blue light. Obviously,
11 the solicitor's, you know, position is, well, he had drugs on
12 him, and that's ultimately what's going on; but the officer
13 testified this was just going to be a standard stop, you
14 know, possibly a warning, possibly a ticket for failing to
15 use his turn signal, but with a man with no driver's license
16 and driving someone else's bike, you know, he chose not to.

17 So when we look at all that and when we talk about what
18 happened and the evidence in the case, we're totally aware
19 that he failed to stop for a blue light. The dispute becomes
20 later on what isn't on the videos, and that's what I told you
21 when we started this. We have two videos in this case. We
22 have a video of a camera facing forward with a man who's
23 outside of the view of the camera, where all the activity and
24 all the stuff that they claim is the incriminating facts in
25 this case, facts beyond change are that he's outside of that

1 camera view, and we don't have a picture of that; and so this
2 isn't as open and shut of a case as the solicitor would have
3 you believe because there's all kinds of possibility what
4 might have been going on there that we don't see. And what
5 we also know is that the officer testified that -- she says
6 that he could not have moved his vehicle. However, this is a
7 significant situation where he's coming up. Easily --
8 because he knows what's being filmed. Easily there could
9 have been a manipulation of the camera movement of the --
10 just tweak the car just so that it could be on video.
11 Because if that had happened, we may not be here. If we had
12 had everything on video so that we couldn't dispute -- you
13 know, so we could see what was transpiring, we may all not be
14 here; but we don't, and that's the fact.

15 The other video that we have is the video of the crime
16 scene, and with the video of the crime scene people coming
17 and weighing everything and taking all these bags out, we
18 don't have any video of the drug testing where they're doing
19 the field tests and they're making it turn blue or not. And
20 you see in these pictures that you'll get back in the jury
21 room that some of the stuff and even in the bags is blue,
22 area that is blue. We don't see any of that on video. So
23 here we have all this technology and all these trained
24 officers for eight years doing all these things, and this
25 most important stuff is not on camera. The most important

1 stuff about where and if he found the drugs on Mr. Nesbit,
2 whether or not the drugs tested presumptively -- you know,
3 turned blue on video, you don't have any of that on video.

4 But I think what's most interesting about the evidence
5 that was presented is that Detective Chavez and Detective
6 Buckhannon -- Deputy Chavez and Deputy Buckhannon have
7 different views of what happened. They have conflicting
8 testimony about what happened it. Chavez said that he did
9 not search Mr. Nesbit until Buckhannon came. Buckhannon says
10 that he had already searched Mr. Nesbit by the time he came.
11 So there's things that we -- things that witnesses said that
12 were inconsistent, and that's very important. You need to
13 think about that when you're back in the jury room.

14 The other thing that was interesting about Buckhannon is
15 that he had a car with a camera in it. He had a car that
16 could have come up and placed it -- placed his vehicle in a
17 situation that could have seen all of this, and he would
18 have -- we would have known so much more about this day and
19 what happened if he'd been able -- if he'd chosen to use his
20 camera and if he'd chosen -- he also said that he -- all of
21 them have little collar mikes, and we don't have any of that.
22 There's no evidence that was presented. He also testified
23 that he believed he put his video in evidence. We don't have
24 that. That video is not in evidence. We have no audio, no
25 video of what his car -- what he saw or said. And, you know,

1 his comment was, well, I believe I did put that in evidence.

2 Where is it?

3 You know, in any case what you have to consider is the
4 actual stuff they present and admit into evidence, and then
5 you have to consider the stuff that they don't have and the
6 lack of what they bring to the table because that is, as the
7 Judge charges you about the credibility of the witnesses and
8 the evidence, that's what they talk about, is what is not
9 here and also what is here. And what is not in this case is
10 what we're all about. We're all about whether or not there
11 may have been a much more effective way to show what was
12 going on. The officer admitted that he would have done
13 things differently, in hindsight knew that he should have
14 done things differently. Both of these officers were
15 testifying that there was a possibility that they could have
16 done it differently, and we would have a different set of
17 evidence today.

18 I think that what's interesting about the substances --
19 like I said, totally guilty of failure to stop for a blue
20 light. He crashes his car. He's on the ground. He's
21 obviously in need of medical assistance. One of the things
22 that they talk about is that -- Deputy Chavez talks about is
23 that there's blood everywhere. That's what he said. The
24 place is covered in blood. He doesn't want him to move
25 because there's blood everywhere. There's absolutely no

1 blood on any of these drug packages. Never was there any
2 blood on the drug packages. That's something to consider.
3 What I think that we sat around and discussed, as we were
4 discussing this closing argument, is where are the pants?
5 Where are they? These giant pants that are supposed to be
6 like a magic hat with rabbits and scarves and all kinds of
7 things popping out. Things this big in this -- you know in
8 these pictures -- that much stuff are supposed to be in these
9 magic pants somewhere, and the magic pants aren't in
10 evidence. She asked him, well, were they skinny jeans.
11 Well, obviously they weren't skinny jeans, but they are
12 alleging that -- I would have loved to have been able to cut
13 this open, which was not -- we can't do that because it's
14 packaged this way -- and taken each one of these and balled
15 them all up because these are all laying in here real nice
16 and neat, but balled up they're going to be about this big
17 (indicating). And then there's \$3,000 worth of --
18 100-and-something 20s, okay, balled up. If you watch the
19 video, they're laying each bill out. Okay. You take \$3,000
20 and ball it up, and it's like this big too (indicating). So
21 we've got, what, this much room in somebody's pocket, and
22 they're trying to ride a motorcycle. It was almost
23 impossible. And, you know, these magic pants are not in
24 evidence, and the reality and the possibility of that is how
25 could that be? You know, where are these pants? How could

1 we -- I mean, if they had brought the pants in, we could --
2 you, as the jury, could take it back and try to imagine
3 stuffing it in these pants to see whether or not it's even
4 possible. Is it even possible for all this stuff to be in
5 these pants? And, you know, this is someone else's bike.
6 There's containers and things and, you know, maybe the seat
7 lifts up or there's storage packs or something like that. I
8 mean, all kinds of possibilities on someone else's bike that
9 a gigantic package of drugs, you know, could have been in
10 that.

11 These drugs that they found in his pocket, okay, I
12 understand, they found some drugs in his pants that they
13 claimed he was wearing, the little money packet. That's
14 obviously a completely different situation. The officer
15 testified that he saw them get cut off of him and they handed
16 the pants over to Chavez, and I understand that, but these
17 other larger packages of drugs that are alleged to have been
18 taken off his person, how do we know they weren't taken out
19 of some other -- it's not on video. How do we know that they
20 weren't taken off of some other part of that motorcycle or
21 other place. And the concept that fingerprints don't matter
22 and -- well, why would they fingerprint them? Well, they do
23 matter, and they could have been fingerprinted. These are
24 plastic bags. Especially these (indicating). You know, if
25 we're having a conversation just about these is one thing,

1 but to have this much stuff that they're alleging belonged to
2 my client, there could have been so many opportunities to see
3 whether or not Mr. Nesbit's fingerprints were on these bags.
4 Plus there could have been so many opportunities to
5 fingerprint the larger grocery bag which was referred to,
6 which is also not in evidence. There would have been
7 opportunity to fingerprint that. It's plastic. So prints
8 would have been easy.

9 You know, as far as the drugs go, with the weights of
10 the drugs, the drugs, the Judge is going to instruct you
11 about drug weights and drug weights are not the only piece of
12 evidence that goes into a charge. It has to do with other
13 things as well. And there's going to be some -- the bigger
14 charges, the possession with intent to distribute Methylone,
15 and there's the even bigger charge of the trafficking
16 cocaine. She's also going to charge you on some lesser
17 included offenses that have to do with other factors and
18 things. We call them lesser included because they're the
19 same charge but maybe they don't rise to the level of the
20 next charge. If this is the big pot, and you're making
21 chilli, and it's a big pot of chilli, here's the beans. The
22 beans don't just make the chilli. You add in other stuff,
23 but you can also pull the beans out and that's a separate --
24 that's a separate charge. That's like a lesser included
25 charge. So again, you, the jury, are going to have to decide

1 what you believe, if any, of what's going on with these drugs
2 in terms of the evidence and the elements of the charge
3 but -- and like I said, we understand the pants thing. You
4 know, in many ways we understand that they claim they came
5 out of the coin pocket of his pants; but these other drugs
6 and the fact that it's not on video at all and there's this
7 motorcycle that belongs to someone else that we don't have
8 any idea -- we did not see -- we heard testimony that it was
9 taken off this person, but we don't see that. And in this
10 case with the type of technology that they have and the type
11 of police officers' training and the amount of time they've
12 been officers, we should be seeing more. We should be seeing
13 the fact that this search is on video. We should have this
14 today for this jury. These guys know what has to be shown to
15 a jury to prove something, and that's the point is that
16 today, and when I started this case with you all, I told you
17 there's video of a lot of stuff, but there's not video of
18 what we need. There's not video of the things that matter.
19 There's things out of the scope of this camera, and the
20 credibility and/or the possibility of them not coming from
21 where these officers say -- this officer says. I'm not
22 calling him -- you know, saying he's not telling the truth.
23 I'm just saying, you've seen, he's stressed; he's busy.
24 There's a point in the video where he just becomes silent and
25 you think the guy's just going to go whoa. It's obviously a

1 very, very stressful event. And, you know, somehow that
2 stuff made it into the second video on top of the car,
3 turning blue already and all that, but we don't see the in
4 between. We don't see what really happened. We don't have a
5 record of that. And then they're piling all these drugs out
6 and claiming that they came out of his pockets, without
7 seeing the pants. How do we even know if that's possible or
8 not?

9 You know, it's like one of those things they say, hey,
10 in horseshoes it's one of the things that you can be close
11 and still get points. This isn't horseshoes. This is life,
12 Henry Nesbit's life. He's got family. He's a person. He's
13 a man. He's got a future. He's got things in his world that
14 are important. As we said in the beginning, this is the most
15 important day of his life. We can't just be close here. We
16 can't be close. And the Judge is going to instruct you about
17 what reasonable doubt is. As I said in the beginning, it's a
18 doubt which would cause a reasonable person to hesitate to
19 act. And I firmly believe you're going to find some doubts
20 when you go back there. I firmly believe you're going to
21 have them in your head and in your heart, and you're going to
22 go, you know, this isn't enough. It's just not enough. Why?
23 Why do we not have the rest of the stuff. These questions
24 that it leaves us with, how can we then choose to convict
25 somebody on this, and how can we choose to take somebody's

1 freedom away based on this.

2 You know, America has the greatest system in the world,
3 and all the jury process that we have is because we have a
4 right, as citizens, to have members of the community, our
5 peers, make decisions. Not the police, not the solicitor's
6 office but members of the community can come in and say, you
7 know, we don't see this as being enough to convict. And you
8 know, the last thing I'd like to tell you is that -- it's
9 goofy, and I want to tell you that ahead of time, it's goofy,
10 but many people have said in the course of a criminal case a
11 person charged with a crime gets called a lot of things. He
12 gets called inmate. He gets called defendant. He gets
13 called a lot of things. He gets called the guilty dude,
14 whatever. But in the long run Mr. Nesbit wants you to call
15 him Henry Nesbit, the innocent man. That's his name. He's
16 not a defendant. He's not -- you know, he's not an inmate.
17 He's a man, and his name is Henry Nesbit, and he would ask
18 you when you go back to the jury room to please go through
19 all this evidence and figure out could that stuff have been
20 in a pocket or not. Is there some other possible way that it
21 could have been in some other situation that has to do with
22 that motorcycle that doesn't even belong to him and please
23 find him not guilty.

24 THE COURT: Would you all move that podium for me,
25 please.

1 Does anyone need to use the restroom, or is everyone
2 comfortable?

3 MS. GAY: I'd like to use the restroom. Can I make it
4 quick?

5 THE COURT: Yes. Ladies and gentlemen, we're going to
6 take a very brief restroom break. This should be less than
7 five minutes. Please do not discuss the case and please
8 leave your notepads in your seats.

9 (Jury exits the courtroom.)

10 (Recess held.)

11 THE COURT: State ready to proceed?

12 MS. LINDER: State's ready to proceed.

13 THE COURT: Defense ready to proceed?

14 MS. GAY: Yes, ma'am. Your Honor, may I approach?

15 THE COURT: Mm-hmm.

16 (A bench conference was held off the record.)

17 THE COURT: Mr. Nesbit, I did not hear anything improper
18 or inappropriate that your counsel argued. She argued within
19 the ambit of the evidence that was presented, and that's what
20 I just told her.

21 THE DEFENDANT: I didn't say improper, I was just --
22 never mind.

23 MS. LINDER: Judge, I don't know if it's necessary for
24 the trafficking --

25 THE COURT: Let me ask one quick question. Is there any

1 exception to the form of the verdict from the State?

2 MS. LINDER: Yes, Judge. That's what we're saying for
3 the trafficking I didn't know if we needed it to say 10 to 28
4 grams, since that's an element of it.

5 THE COURT: No.

6 MS. LINDER: Okay. I just wanted to make sure.

7 THE COURT: No. I've never done it that way.

8 MS. GAY: Can I see it one second?

9 THE COURT: Because I'm going to instruct them that
10 that's -- because there are different categories of weight in
11 that statute.

12 MS. LINDER: Yes.

13 THE COURT: That's not the only category. If it was the
14 only category, I might.

15 MS. LINDER: Thank you, Judge.

16 THE COURT: You're welcome. Any exceptions to the form
17 of the verdict from the State?

18 MS. LINDER: None from the State, Your Honor.

19 THE COURT: From the Defense?

20 MS. GAY: No, ma'am.

21 THE COURT: Are we ready to proceed with instruction,
22 from the State?

23 MS. LINDER: Yes, Judge.

24 THE COURT: From the Defense.

25 MS. GAY: None, Your Honor.

1 THE COURT: Okay. Please bring in the jury.

2 (The jury enters the courtroom.)

3 THE BAILIFF: All present, Your Honor.

4 THE COURT: Thank you. Ladies and gentlemen, you may be
5 seated. During this trial, ladies and gentlemen, you and I
6 have certain duties to perform. As the trial judge, it is my
7 responsibility to provide over the trial of this case. I
8 also have the duty to rule upon or pass upon the
9 admissibility of evidence offered during this trial. You are
10 to consider only the competent evidence before you, and you
11 are to disregard and disabuse from your mind any testimony
12 ordered stricken from the record in this case during the
13 progress of this trial if there has been any. You are to
14 consider only the testimony which has been presented from the
15 witness stand, together with any exhibits which have been
16 made a part of the record in this case. I have the
17 additional duty to charge or instruct you on the law
18 applicable to this case. As the presiding judge, I'm the
19 sole judge of the law of this case, and it is your duty as
20 jurors to accept and apply the law as I now state it to you.
21 If you have a preconceived idea as to what you believe the
22 law should be or what the lawsuit ought to be in a case or in
23 this case and it should not agree with what I now tell you
24 the law is, you are obligated under your oath to abandon this
25 preconception on your part because you are sworn to accept

1 the law and apply the law precisely as I now state it to you.

2 In every case tried in this Court before a jury the jury
3 becomes the sole and exclusive judges of the facts. You, the
4 jury, are the judges of the facts in this case. This Court
5 is the judge of the law. The constitution of our state has
6 declared that a trial judge shall not intimate, state,
7 comment upon or make any statement to a trial jury about the
8 facts in a case. Since you, the jury, are the sole judges of
9 the facts in this case, you are not to infer anything from
10 what I've said during the progress of this trial in ruling
11 upon the admissibility of evidence or otherwise or anything
12 that I say now to you during the course of this instruction
13 that I have any opinion about the facts. The law does not
14 allow me to have an opinion about the facts. This is a
15 matter solely for you, the jury, to determine.

16 As jurors then it is your duty, as I've instructed you,
17 to determine the effect, the value, the weight and the truth
18 of the evidence presented during this trial. Necessarily,
19 you must assess the credibility of the witnesses who have
20 testified in this case. Credibility is simply a legalistic
21 term meaning the believability of each witness who has
22 testified. It becomes your duty, as jurors, to analyze and
23 evaluate the evidence and determine that evidence which
24 convinces you of its truth. Some of the things you may
25 consider as you decide whether or not to believe a witness's

1 testimony about a particular matter include what was the
2 manner and appearance of the witness who testified, was he or
3 she straightforward or hesitant in answering, was the
4 testimony of a witness consistent or inconsistent, how did
5 the witness come to know the facts that he or she testified
6 to, or what was his or her ability to know these facts, is
7 there some reason a witness would want to give testimony
8 which would help or hurt one side or the other, in other
9 words, was the witness biased or prejudiced, and was the
10 testimony of a witness strengthened or weakened by other
11 testimony or evidence.

12 I further instruct you that in determining the question
13 of the credibility or believability of witnesses who have
14 testified you may believe one witness as against several
15 witnesses or several witnesses as against one witness. You
16 may believe a part of the testimony of a witness and reject
17 the remaining part of the testimony of that same witness. If
18 you have a good and sound reason, you may believe the
19 testimony of a witness in its entirety or reject the
20 testimony of a witness in its entirety. You may consider the
21 demeanor of the witness, that is, the manner and appearance
22 of the witness from the witness stand. Of course, ladies and
23 gentlemen, throughout this process you have but one
24 objective, to seek the truth regardless of its source.

25 I further instruct you that our rules of evidence

1 ordinarily do not permit witnesses to testify to opinions or
2 conclusions. An exception to this rule exists for witnesses
3 we call expert witnesses. A witness, who by their education,
4 training and experience has become an expert in some art,
5 science or profession or calling may state an opinion as to
6 relevant and material matters in which the witness claims to
7 be an expert and may also state the reasons for that opinion.
8 You should consider any expert opinion received in this case
9 like any other evidence. Give it the weight you think it
10 deserves. If you decide that the opinion of an expert
11 witness is not based on sufficient education and experience
12 or if you conclude that the reasons given in support of the
13 opinion are not sound or that the opinion is outweighed by
14 other evidence, you may disregard the opinion entirely. An
15 expert witness's testimony is to be given no greater weight
16 than that of other witnesses simply because the witness is an
17 expert, and you are not required to accept an expert's
18 opinion even though it is not contradicted.

19 Ladies and gentlemen, there are two types of evidence
20 which are presented during a trial, direct evidence and
21 circumstantial evidence. Direct evidence is the testimony of
22 a person who asserts or claims to have actual knowledge of a
23 fact such as an eye witness. Circumstantial evidence is
24 proof of a chain of facts and circumstances indicating the
25 existence of a fact. The law makes absolutely no distinction

1 between the weight or value to be given to either direct or
2 circumstantial evidence, nor is a greater degree of certainty
3 required of circumstantial evidence than of direct evidence.
4 You should weigh all of the evidence in this case. After
5 weighing all the evidence, if you are not convinced of the
6 guilt of the defendant beyond a reasonable doubt, you must
7 find the defendant not guilty. Conversely, if you are
8 convinced of the guilt of the defendant beyond a reasonable
9 doubt, then you must find him guilty. I instruct you, ladies
10 and gentlemen, that the fact that the defendant was arrested,
11 charged and indicted is not evidence in this case and cannot
12 be considered by you as evidence of guilt in this case, nor
13 does it create any presumption or inference of guilt. This
14 documentation, ladies and gentlemen, are simply the formal
15 written instruments which contain the charge or charges made
16 against a defendant. They serve as the formal documentation
17 by which the case is processed or brought into this court.

18 The defendant has pled not guilty to the indictments,
19 and that plea casts the burden on the State to prove the
20 defendant guilty because a person charged with committing a
21 criminal offense in South Carolina is never required to prove
22 themselves innocent. I charge you, madam forelady, ladies
23 and gentlemen, that it is a cardinal and important rule of
24 the law and evidence that the defendant in a criminal trial,
25 no matter what the seriousness of the charge or charges made

1 against him may be, will always be presumed to be innocent of
2 the crime or crimes for which he is indicted unless his guilt
3 has been proven by evidence satisfying you of that guilt
4 beyond a reasonable doubt. This presumption of innocence
5 does not cease when you retire to deliberate, but it
6 accompanies the defendant from the time of his appearance or
7 arraignment throughout the trial until you reach a verdict in
8 this case. Our Supreme Court has said that the presumption
9 of innocence is like a robe of righteousness placed about the
10 shoulders of the defendant, and it remains with him and
11 assigns him to that class, the innocent, until that
12 presumptive robe of righteousness has been stripped from his
13 person by evidence satisfying you of that guilt beyond a
14 reasonable doubt. The presumption of innocence is not mere
15 legal theory. It is not just a legal phrase. It is a
16 substantial right to which every defendant is entitled unless
17 you, the jury, are satisfied from the evidence of his guilt
18 beyond a reasonable doubt.

19 The State has the burden of proving the defendant guilty
20 beyond a reasonable doubt. Some of you may have served as
21 jurors in civil cases where you were told that it is only
22 necessary to prove that a fact is more likely true than not
23 true, such as by the greater weight or the preponderance of
24 the evidence. In criminal cases the State's proof must be
25 more powerful than that, it must be beyond a reasonable

1 doubt. Proof beyond a reasonable doubt is proof that leaves
2 you firmly convinced of the defendant's guilt. There are
3 very few things in this world that we know with absolute
4 certainty, and in criminal cases the law does not require
5 proof that overcomes every possible doubt. If, based on your
6 consideration of the evidence, you are firmly convinced that
7 the defendant is guilty of the crimes charged, you must find
8 the defendant guilty. If, on the other hand, you think there
9 is a real possibility that the defendant is not guilty, you
10 must give him the benefit of that doubt and find him not
11 guilty.

12 If you could bear with me just one moment, ladies and
13 gentlemen.

14 I further instruct you, ladies and gentlemen, and
15 emphasize that the fact that the defendant did not testify is
16 not a factor to be considered by you in any way in your
17 deliberation and in your consideration on the question of the
18 guilt or innocence of the defendant. It must not be
19 considered by you in any manner whatsoever. A defendant has
20 the constitutional right to remain silent, and the assertion
21 of this right must not be considered by you in your
22 deliberations. I repeat, under your oath you are to draw no
23 conclusion whatsoever from the fact that the defendant in
24 this case did not testify. The fact that this defendant did
25 not testify should not be discussed in any manner whatsoever

1 in the jury room. The defendant does not have a burden of
2 proof in this case. The burden of proof, as I've stated to
3 you, is on the State. The defendant is not required to prove
4 his innocence. The burden of proof remains on the State to
5 prove guilt beyond a reasonable doubt.

6 The defendant is charged with failing to stop for a blue
7 light. In order to prove this crime the State must prove
8 beyond a reasonable doubt that the defendant was driving a
9 motor vehicle, that the defendant was driving the motor
10 vehicle on a road, street or highway of this state, that the
11 defendant was signaled to stop by a law enforcement vehicle
12 by means of a siren or flashing light and that the defendant
13 did not stop. In determining whether or not there are
14 mitigating circumstances which would justify the defendant's
15 failure to stop for the blue light you may consider actual
16 road conditions, actual roadside conditions, other conditions
17 such as lighting and weather, officer, driver and/or
18 passenger safety, and any other circumstances you believe to
19 reasonably mitigate the alleged violation. An official
20 signal requiring a motorist to stop may be a siren or
21 flashing lights, but both are not required. An attempt to
22 increase the speed of a vehicle or in some other manner avoid
23 the pursuing law enforcement vehicle when signaled by a siren
24 or flashing light may be considered as evidence of failure to
25 stop for a blue light; however, it is merely an evidentiary

1 fact to be taken into consideration by you along with all the
2 other evidence in the case and to be given the weight, value
3 and effect you decide it should receive.

4 The defendant is charged with trafficking in cocaine.
5 The State must prove beyond a reasonable doubt that the
6 defendant knowingly sold, manufactured, cultivated,
7 delivered, purchased, brought into the State, provided
8 financial assistance, or otherwise aided, abetted, attempted
9 or conspired to sell, manufacture, cultivate, deliver,
10 purchase or bring into this state, was knowingly in actual or
11 constructive possession, knowingly attempted to become in
12 actual possession of cocaine. The State must also prove
13 beyond a reasonable doubt that the amount of cocaine, or any
14 mixture containing cocaine, was 10 grams or more but less
15 than 28 grams. To prove possession the State must prove
16 beyond a reasonable doubt that the defendant had both the
17 power and intent to control the disposition or use of the
18 cocaine.

19 Possession may either be actual or constructive. Actual
20 possession means that the cocaine was in the actual, physical
21 custody of the defendant. Constructive possession means that
22 the defendant had dominion and control or the right to
23 exercise dominion or control over either the cocaine itself
24 or the property on which the cocaine was found. Mere
25 presence at the scene where the drugs were found is not

1 enough to prove possession. Actual knowledge of the presence
2 of the cocaine is strong evidence of the defendant's intent
3 to control its disposition or use. The defendant's knowledge
4 and possession may be inferred when a substance is found on
5 the property under the defendant's control; however, this
6 inference is simply an evidentiary fact to be taken into
7 consideration by you along with the other evidence in the
8 case and to be given the weight, value and effect you decide
9 it should have. Two or more persons may have joint
10 possession of a drug. To deliver means to actually
11 constructively or attempt to transfer the drug. Distribute
12 means to deliver other than by administering or dispensing a
13 drug. Manufacture means to produce, prepare, convert,
14 process, plant, cultivate, grow or harvest a drug naturally
15 or chemically. Manufacturing includes any packaging or
16 repackaging of the drug or labeling or relabeling of the
17 drug's container.

18 Included within the offense of trafficking is the lesser
19 offense of possession with intent to distribute. Possession
20 with intent to distribute contains all of the elements of
21 trafficking except the amount of the cocaine. In addition,
22 the State must prove beyond a reasonable doubt that the
23 defendant had the intent to distribute the cocaine. In order
24 to prove possession with intent to distribute the State must
25 prove beyond a reasonable doubt that the defendant possessed

1 cocaine with the intent to distribute it. To prove, as I've
2 previously instructed, to prove possession the State must
3 prove beyond a reasonable doubt that the defendant had both
4 the power and intent to control the disposition or use of the
5 cocaine. Possession may either be actual or constructive.
6 Actual possession means that the cocaine was in the actual
7 physical custody of the defendant. Constructive possession
8 means that the defendant had dominion and control or the
9 right to exercise dominion or control over either the cocaine
10 itself or the property on which the cocaine was found. Mere
11 presence at the scene where the drugs were found is not
12 enough to prove possession. Actual knowledge of the presence
13 of the cocaine is strong evidence of the defendant's intent
14 to control its disposition or use.

15 The defendant's knowledge and possession may be inferred
16 when a substance is found on the property under the
17 defendant's control; however, this inference is simply an
18 evidentiary fact to be taken into consideration by you along
19 with the other evidence in the case and to be given the
20 weight, value and effect you decide it should receive. Two
21 or more persons may have joint possession of a drug. The
22 State must also prove beyond a reasonable doubt that the
23 intent -- that the defendant intended to distribute the
24 cocaine. Distribute means to deliver other than by
25 administering or dispensing a drug. Intent may be shown by

1 acts and conduct of the defendant and other circumstances
2 from which you may naturally and reasonably infer intent. In
3 determining whether the defendant had the intent to
4 distribute the cocaine you may consider the circumstances
5 surrounding the defendant's alleged possession, you may
6 consider the amount of the substance alleged to have been
7 possessed, the manner in which it was allegedly possessed,
8 the place where it was allegedly possessed and other factors
9 which you consider to be important. You must find that the
10 defendant did not intend to have the cocaine solely for his
11 own use.

12 I instruct you the possession of more than one gram of
13 cocaine creates an inference that the defendant possessed the
14 cocaine with the intent to distribute it. I further instruct
15 you that this inference does not relieve the State from
16 proving beyond a reasonable doubt that the defendant had the
17 intent to distribute it. It is simply an evidentiary fact to
18 be taken into consideration by you along with the other
19 evidence in the case and to be given the value, the weight
20 and effect you decide it should have.

21 The defendant is also charged with possession with
22 intent to distribute Methyldone, or as it is referred to in
23 the indictment, Methyldone (bath salts). The State must prove
24 beyond a reasonable doubt that the defendant possessed
25 Methyldone with the intent to distribute it. To prove

1 possession the State must prove beyond a reasonable doubt
2 that the defendant had both the power and intent to control
3 the disposition or use of the Methylone. Possession may
4 either be actual or constructive. Actual possession means
5 that the Methylone was in the actual, physical custody of the
6 defendant. Constructive possession means that the defendant
7 had the dominion or control or the right to exercise dominion
8 or control over either the Methylone itself or the property
9 on which the Methylone was found. Mere presence at the scene
10 where the drugs were found is not enough to prove possession.
11 Actual knowledge of the presence of the Methylone is strong
12 evidence of the defendant's intent to control its disposition
13 or use. The defendant's knowledge and possession may be
14 inferred when a substance is found on the property under the
15 defendant's control; however, this inference is simply an
16 evidentiary fact to be taken into consideration by you along
17 with the other evidence in the case and to be given the
18 weight, value and effect you decide it should have. Two or
19 more persons may have joint possession of a drug.

20 The State must also prove beyond a reasonable doubt that
21 the defendant intended to distribute the Methylone.
22 Distribute means to deliver other than by administering or
23 dispensing a drug. Intent may be shown by acts and conduct
24 of the defendant and other circumstances from which you may
25 naturally and reasonably infer intent. In determining

1 whether the defendant had the intent to distribute the
2 Methydone you may consider the circumstances surrounding the
3 defendant's alleged possession. You may consider the amount
4 of the substance alleged to have been possessed, the manner
5 in which it was allegedly possessed, the place where it was
6 allegedly possessed and other facts which you consider to be
7 important. You must find that the defendant did not intend
8 to have the Methydone solely for his own use.

9 Included within the offense of possession with intent to
10 distribute is the lesser offense of simple possession.

11 Simple possession does not require an intent to distribute
12 the Methydone. The defendant -- in order to prove possession
13 of Methydone the State must prove beyond a reasonable doubt
14 that the defendant knowingly or intentionally possessed
15 Methydone. Knowingly means with knowledge, consciously, not
16 accidentally. Intentionally means willfully intending the
17 result which actually occurs, not accidentally or
18 involuntarily. Intent may be shown by acts and conduct of
19 the defendant and other circumstances from which you may
20 naturally and reasonably infer intent. To prove possession
21 the State must prove beyond a reasonable doubt that the
22 defendant had both the power and intent to control the
23 disposition or use of the Methydone. Possession may either
24 be actual or constructive. Actual possession means that the
25 Methydone was in the actual physical custody of the

1 defendant. Constructive possession means that the defendant
2 had dominion and control or the right to exercise dominion or
3 control over either the Methyldone itself or the property on
4 which the Methyldone was found. Mere presence at the scene
5 where the drugs were found is not enough to prove possession.
6 Actual knowledge of the presence of the Methyldone is strong
7 evidence of the defendant's intent to control its disposition
8 or use. The defendant's knowledge and possession may be
9 inferred when a substance is found on the property under the
10 defendant's control; however, this inference is simply an
11 evidentiary fact to be taken into consideration by you along
12 with the other evidence in the case and to be given the
13 weight, value and effect you decide it should have. Two or
14 more persons may have joint possession of a drug.

15 Ladies and gentlemen, the indictments in this case
16 allege several different offenses against the defendant.
17 Those charges are Indictment 2013-5527, failure to stop for a
18 blue light; 2013-5634, trafficking in cocaine; and 2013-5639,
19 possession with the intent to distribute Methyldone. Each
20 indictment alleges -- charges a separate and distinct
21 offense. You must decide each indictment separately on the
22 evidence and the law applicable to it, uninfluenced by your
23 decision as to any other indictment. The defendant may be
24 convicted or acquitted on any or all of the offenses charged.
25 You will be asked to write a separate verdict of guilty or

1 not guilty for each indictment. There are several possible
2 verdicts for each of the indictments. I will read each of
3 those to you. You don't have to try to write it down. The
4 verdict form will go into the jury room with you, and there's
5 absolutely no significance whatsoever to the order in which I
6 state these potential verdicts. It is simply that one must
7 be stated first. As to Indictment 2013-GS-10-5527, we, the
8 jury, by unanimous consent find the defendant guilty of
9 failure to stop for a blue light, or not guilty. As to
10 Indictment 2013-5634, we, the jury, by unanimous consent find
11 the defendant guilty of trafficking in cocaine, or as to the
12 lesser included offense, guilty of possession with intent to
13 distribute cocaine, or not guilty. And Indictment 2013-5639,
14 we, the jury, by unanimous consent find the defendant guilty
15 of possession with the intent to distribute Methylone, or as
16 to the lesser included offense, guilty of possession of
17 Methylone, or not guilty. Again, there's no significance
18 whatsoever to the order in which I state these potential
19 verdicts. It is simply that one must be stated first.

20 Ladies and gentlemen, in order for you to reach a
21 verdict your decision must be unanimous, which means all 12
22 of you must agree in order to reach a verdict on each and
23 every indictment. Again, your verdict must be unanimous,
24 which means that all 12 of you must agree in order to reach a
25 verdict. Madam forelady, when the jury has reached a

1 unanimous verdict on each indictment, it is your
2 responsibility to fill out each verdict form and to sign and
3 date each form and to knock on the door and advise the
4 bailiffs that the jury has reached a verdict. Ladies and
5 gentlemen, if you have any questions during deliberations,
6 please know that there will be a delay in our response and
7 that is because there's a procedure that I must follow in
8 answering your questions, so know that if you have a
9 question, that there will be a delay because we are following
10 that process. Again, your verdict must be a unanimous one,
11 and just as a reminder, your foreperson does not have any
12 greater vote or voice than you do. It is purely an
13 administrative function. They fill out the verdict form and
14 write out any questions during the deliberations. Madam
15 forelady, if the jury has any questions, it will be your
16 responsibility to write those questions out, and then, again,
17 knock on the door and advise the bailiffs that the jury has a
18 question.

19 Ladies and gentlemen, I'm going to ask that you return
20 to your jury room, but do not yet begin your deliberations.
21 I have some matters of law that I need to take up with the
22 attorneys that may require further instruction or
23 clarification of an instruction. However, if there's no
24 further instruction, we will send in your notepads, the
25 evidence and the verdict form, and at that time you will be

1 allowed to begin your deliberations. Your lunch has also
2 arrived. It is in the jury room, and so I just wanted you to
3 know that so that if we don't need you any further, you'll be
4 allowed to go ahead and start eating and begin your
5 deliberations. If you'll go with the bailiffs, please.

6 (Jury exits the courtroom at 12:44 p.m.)

7 THE COURT: You may be seated. Are there any exceptions
8 to the charge from the State?

9 MS. LINDER: No, Your Honor.

10 THE COURT: From the Defense?

11 MS. GAY: No, Your Honor.

12 THE COURT: All right. Could you all make sure for me
13 one more time that all the evidence is in place so the
14 bailiffs can take that in?

15 Is all the evidence in place?

16 MR. NELSON: Yes, Your Honor.

17 THE COURT: The record should reflect that the jury
18 began delineations at 12:45. Their lunch is already here.
19 It came as we were getting ready to charge, and I already had
20 the bailiffs put it in there with their drinks, so they will
21 be eating. I would suggest you all go take about 30 minutes
22 to go get something to eat as well because that's about how
23 long it will take them, if anybody wants to smoke, to go
24 outside; and then if we have any questions, it will probably
25 be soon after that. So you'll all have a chance to eat, and

1 if you all could leave your cell phone numbers with my clerk
2 in the event we need to contact you short of that timeframe.

3 (Recess held.)

4 THE COURT: The jury has sent a note, would like to view
5 video. Do you have a password for that laptop that's in the
6 jury room that hooks up to the monitor?

7 THE CLERK: We do. They have a laptop in there.

8 THE COURT: Let's go figure that out because I don't
9 think they should have to come back in here to watch it.
10 They should be able to watch it like they want to watch it.
11 In one of the other jury rooms we have a clean laptop and it
12 goes to a TV monitor, so I've just got to get the password
13 and make sure that it's working as it should, and we've got
14 to test drive it right quick. Is there any exception to that
15 from the State?

16 MS. LINDER: None from the State.

17 THE COURT: From the Defense?

18 MR. NELSON: No. Is there any mention which video they
19 want to watch.

20 MS. LINDER: It's one video; there are two clips.

21 THE COURT: They just said video, so I assumed we'll put
22 it in and they can -- they'll watch whatever they determine
23 they want to watch. It will be marked as a Court's Exhibit,
24 let me go see how this works and make sure it does work.

25 (Brief pause.)

1 THE COURT: For whatever reason we can't get a signal
2 for the monitor in the other jury room, so we just took the
3 laptop, the clerk's laptop, and we tested out the DVD to make
4 sure it worked, and it does, and so they have it, and I told
5 the clerk to let them know that if they wanted to see it on a
6 bigger screen than the computer to let us know and we'd bring
7 them back into the courtroom for that. Is there an exception
8 from the State?

9 MS. LINDER: None from the State.

10 THE COURT: From the Defense?

11 MS. GAY: None, Your Honor.

12 THE COURT: Okay. We'll keep you posted.

13 (The Court's Exhibit 1 marked for identification.)

14 (Recess held.)

15 THE COURT: Okay. The jury sent a note out to me, and
16 the first note was can't decide on 2013-GS-10-5634, question
17 for Judge.

18 MR. NELSON: Which indictment is that, Judge?

19 THE COURT: That's the trafficking in cocaine.

20 MR. NELSON: Thank you.

21 THE COURT: So I sent the note back -- as you can tell,
22 they balled it up and put it in the garbage can -- and told
23 them that they had to write out what their question was.
24 They sent this note out: Can we select the lesser charge for
25 cocaine possession even though the law says greater than 10

1 grams is trafficking. And I think the simple answer is yes.

2 It's a lesser included offense.

3 Oh, you know what -- I just read this note again -- I'm
4 thinking PWID, not possession.

5 MS. LINDER: Correct.

6 THE COURT: I think I need more clarity on this note
7 because I need to figure out what they're asking. Can we
8 select the lesser charge for cocaine possession. Well, the
9 only thing they could be talking about is PWID because those
10 are the only two that are on the verdict form. They may have
11 used different terminology, but those are the only two
12 options.

13 MR. NELSON: They might also be thinking about the
14 charge you gave for the possession with intent of Methylone.

15 THE COURT: No.

16 MR. NELSON: Even though you didn't charge it for the
17 trafficking, they might, I don't know, I'm just --

18 THE COURT: I don't think so. Juries are very direct
19 when they ask questions. If that was the case, they would
20 have said possession of Methylone. They only have two
21 options on that verdict form, which is trafficking and PWID.
22 And when I charge possession with intent, possession is one
23 of the elements that you instruct, and you instruct actual
24 and constructive possession, so that is my thought process of
25 what they're asking, but I could also always ask the

1 foreperson to come in and clarify for me, but the problem is
2 I don't want them getting into their internal deliberations,
3 and I don't want her to tell me too much.

4 MS. LINDER: One option is just to read both of the
5 statutes to them.

6 THE COURT: Why would I do that? Why would I take 15
7 minutes to reinstruct something they've already listened to
8 when they haven't indicated to me they want me to do that? I
9 know exactly what they're asking. When you instruct on
10 trafficking, it says one of the elements the State has to
11 prove is that it was more than 10 grams but less than 28.
12 When you instruct PWID cocaine it says that --

13 MR. NELSON: It refers to the grams.

14 THE COURT: Exactly, and I think what the -- I don't
15 want to say confusion, and I don't want to anticipate what
16 they're doing in there because their internal deliberations
17 are private, but there might be -- I don't know whether
18 they -- the PWID is included in the trafficking, and so they
19 have the option. They can pick the less -- in other words,
20 they're not required to find trafficking, even if the State
21 proved up to 28 grams, if they feel the PWID is proven as
22 well. I think the simple answer is yes. I don't want to
23 make it overly complicated.

24 MS. LINDER: Judge, I think if they're asking if they
25 can choose --

1 THE COURT: I'm not going tell them they can only pick
2 trafficking because that's not correct.

3 MS. LINDER: No, no, no, Judge, what I'm saying is if
4 they're saying can they pick possession, I think our position
5 is the response should be you can pick trafficking or you can
6 pick the lesser included, which is possession with intent to
7 distribute.

8 THE COURT: Well, that's a fair answer.

9 MS. GAY: And then the other question on his behalf,
10 Your Honor, is we would ask maybe for a King charge because I
11 think that is exactly what they're saying.

12 THE COURT: It's a little late at this point for a King
13 charge because it would draw undue attention to it at this
14 point. It would almost, in my estimation, be almost a charge
15 on the facts at this stage in the game.

16 MS. GAY: I understand.

17 THE COURT: Because then I basically would be telling
18 them that you don't have any choice, but the way that is
19 worded, outside of the context of an entire instruction,
20 would almost be an instruction on the facts at this point.
21 And I don't know that it's prejudicial to your client. I
22 think it -- I don't know that it's necessary. They're
23 asking, do we have the option to pick between the greater and
24 the lesser, and the answer is, yes, it's always their option.
25 So I think I could simply write on this note, you can

1 select trafficking in cocaine, or you can select possession
2 with the intent to distribute cocaine. How did you word
3 that, Ms. Linder? I can't remember what you said.

4 MS. LINDER: I believe I said something like, you can
5 select trafficking in cocaine or you can select the lesser
6 included offense of possession with intent to distribute
7 cocaine.

8 MR. NELSON: Or, Judge, you can go another route and say
9 the only options you have are what are on the verdict form,
10 trafficking or possession with intent.

11 THE COURT: I think the confusion is with the amounts
12 and they don't -- should not be left with the misapprehension
13 that's their only option because it's not.

14 MR. NELSON: Yes, Your Honor.

15 THE COURT: And they said possession, and I don't think
16 that is any indication that they're confused because it's
17 possession with the intent to distribute cocaine, I just
18 think they didn't write out PWID.

19 Is there any exception to me writing on the note, you
20 can select trafficking in cocaine or the lesser included
21 offense of possession with the intent to distribute cocaine.

22 MR. NELSON: Or not guilty.

23 THE COURT: They didn't ask me that question. That's
24 already on the form. They already know with that.

25 MS. LINDER: I agree with that response, Your Honor.

1 THE COURT: Is there any exception from the Defense to
2 that response?

3 MS. GAY: One moment, please.

4 One thing that we could add, Your Honor, is the weight
5 of the drugs is just a factor for your consideration.

6 THE COURT: I've already instructed that. It is not
7 just a factor because in the trafficking it's mandatory that
8 the State prove one of those quantities in their elements.
9 In PWID it is not mandatory, it is only an evidentiary fact
10 to consider, and I instructed both of those, and I think for
11 me to state that is misleading. That's not a correct
12 statement of the law. Then it gets overly complicated.

13 MS. GAY: I understand, but you're telling them they
14 don't have to --

15 THE COURT: They can pick either one, that's their
16 choice. I don't want them leaving with the impression that
17 they have to do one or the other, and I have already
18 instructed them on the full elements of trafficking and the
19 full elements of PWID, and I saw them writing down the
20 elements as I was instructing. You may have some people in
21 there who were feeling like, well, they proved -- we have to
22 pick this one because you have a chemist that came in and
23 testified and they don't.

24 MS. GAY: Right, I understand.

25 THE COURT: And I don't want them left with that

1 misapprehension.

2 Is there any exception from the Defense to the Court
3 responding as I've already stated for the record?

4 MS. GAY: No, Your Honor.

5 (The Court's Exhibit 2 marked for identification.)

6 MS. GAY: Your Honor, Mr. Nesbit would like for you to
7 consider the possibility in your note of stating,
8 trafficking, PWID or not guilty. He's asked me to ask you
9 that.

10 THE COURT: I've already addressed that. It is already
11 on the form. I've already instructed them as to that. And I
12 have already instructed you that there is no hybrid
13 representation. You either represent Mr. Nesbit or you
14 don't. If he tells you something, you can articulate that
15 for the Court.

16 MS. GAY: I understand.

17 THE COURT: I think they're clear they can select not
18 guilty, and if that was their consternation, they would have
19 said that in the note. And they still might find not guilty.
20 Who knows. Their internal deliberations are secret, and I'm
21 not going to go but so far into the question because I'm not
22 going to have them disclosing exactly what they're
23 discussing.

24 Okay. You all can approach to look at what I wrote on
25 the note.

1 MR. NELSON: Yes, Your Honor.

2 MS. LINDER: Yes, Your Honor.

3 THE COURT: Any exception from the State?

4 MS. LINDER: No exception from the State.

5 THE COURT: Any exception from the Defense?

6 MR. NELSON: No.

7 THE COURT: We'll mark that as a Court's Exhibit and
8 then give it to the bailiff.

9 (The Court's Exhibit 3 premarked for identification.)

10 THE COURT: And then you all need to instruct the jury
11 to make sure they don't discard any notes.

12 (Recess held.)

13 THE COURT: The jury has reached a verdict. Is there
14 anything before we bring in the jury from the State?

15 MS. LINDER: Nothing from the State.

16 THE COURT: From the Defense?

17 MS. GAY: No, Your Honor.

18 THE COURT: Please bring in the jury.

19 (The jury enters the courtroom at 4:53 p.m.)

20 THE BAILIFF: All present, Your Honor.

21 THE COURT: You may be seated. Madam forelady, is it
22 correct that the jury has reached a verdict?

23 THE FOREPERSON: Yes.

24 THE COURT: If you would give the verdict forms to the
25 bailiff for me, please.

1 Madam clerk (indicating).

2 Sir, if you would stand for publication of the verdict.

3 THE CLERK: In the Court of General Sessions for the
4 Ninth Judicial Circuit, Indictment No. 2013-GS-10-5527, State
5 of South Carolina, County of Charleston, versus Henry Oliver
6 Nesbit, Jr., the defendant, as to the indictment we, the
7 jury, by unanimous consent find the defendant guilty of
8 failure to stop for a blue light, signed, Forelady Gloria
9 Jenkins, May 8, 2014. As to the Indictment No.
10 2013-GS-10-5634, we, the jury, by the unanimous consent find
11 the defendant guilty of possession with intent to distribute
12 cocaine, signed, Forelady Gloria Jenkins, May 8, 2014. As to
13 Indictment No. 2013-GS-10-5639, we, the jury, by unanimous
14 consent find the defendant guilty of possession of Methylone
15 (bath salts), signed Gloria Jenkins, foreperson, May 8, 2014.

16 Ladies and gentlemen of the jury, if this is your
17 verdict, please raise your right hand.

18 (All members of the jury raised their right hand.)

19 THE CLERK: Thank you.

20 THE COURT: Is there any request to poll the jury from
21 the State?

22 MS. LINDER: None from the State, Your Honor.

23 THE COURT: From the Defense?

24 MS. GAY: One moment, please.

25 No, Your Honor.

1 THE COURT: Ladies and gentlemen, we thank you for your
2 time and your attention to this case. We know that jury
3 service is thankless, based on what we pay you, and we
4 apologize in advance, but it is absolutely no indication of
5 how very much we value your service to us. We try cases with
6 juries probably -- we usually have four trial courts
7 operating every week with the exception of only a few weeks,
8 and we hold court every week with the exception of holidays.
9 We have one of the busiest trial circuits in the state.
10 Richland County, which is Columbia, the capital, and
11 Greenville probably are the only two counties or circuits
12 that have as many cases on the trial rosters and work in
13 terms of trial work as much as Charleston County does. We
14 would not be able to do what we do without you all being
15 willing to come and sit as the fact finders in cases. While
16 there are cases where the Court acts as the fact finder, the
17 majority of what we do involves the need of citizens to act
18 as the fact finders in the cases. South Carolina has one of
19 the largest case filings per capita per judge in the nation
20 at 5,000 cases per judge. We have 49 circuit judges -- well,
21 46, who hear cases throughout the state. For those of you
22 who do not know, our constitution requires that circuit
23 judges rotate throughout the state. Before we had our great
24 budget crisis, generally, circuit judges live outside of
25 their circuit for the months of January through June, and

1 then they come home during the months of July through
2 December, which means we literally live someplace else for
3 six months and then we come home for six months, only home on
4 weekends. Because of the budget crisis our travel was
5 suspended for a good while, but we have resumed limited
6 travel, where we travel about a week a month throughout the
7 state. Our system is very unusual. It is one of the rare
8 systems in the country where judges rotate throughout the
9 state and have statewide jurisdiction to hear and dispose of
10 cases.

11 Just so that you have a point of reference, the City of
12 Philadelphia has nine judges that only hear murder cases.
13 The State of South Carolina, with our retired judges, has 51
14 judges who hear every type of case, civil and criminal,
15 throughout the entire state. And even with that we still
16 dispose of cases more quickly than most states, in about 18
17 months, which is almost unheard of because most states take
18 four to five years to dispose of litigation. So even with
19 our limited resources we still do what is a tremendous job in
20 terms of being able to handle our overwhelming dockets.

21 And just so that you know, in this building we don't
22 only hold circuit court, which is both civil and criminal,
23 but on the second floor we have four to five family courts
24 that operate on a daily basis as well as the Master-in-Equity
25 that holds court on the second floor, and the Probate Court

1 is also located in this building that often has two to three
2 judges hearing cases as well. So I just give you that
3 anecdotal information so that you can know just how very much
4 we appreciate your service to us. Our system is the only
5 kind where individual citizens determine what the facts are
6 in a case, apply the law to those facts and then render
7 verdicts.

8 We are going to move to post-trial motions and
9 sentencing. If any of you would like to remain for that
10 process, please let the bailiffs know, you can actually just
11 raise your hand, and we'll allow you to remain in the
12 courtroom. Those who wish to be excused certainly can be at
13 this time, and you all are excused for the remainder of the
14 week. If you need a work excuse today, we can provide those
15 for you, since it is already 5:00, and the deputy clerks at
16 the windows downstairs have probably already left for the
17 evening. Otherwise they will be mailed to you along with
18 your checks.

19 You are welcome to discuss this case if you would like.
20 By the name token, you don't have to discuss the case.
21 Lawyers will often contact you to get feedback on their
22 performance. That's why we call it the practice of law
23 because you never quite perfect it, so people always want to
24 get feedback on how they performed, how they could do things
25 better, and just to have a layperson's perspective on the

1 process and the fact finding part of that process because it
2 is often helpful to lawyers as they try new cases that come
3 through the system.

4 Again, if you would like to remain for sentencing -- is
5 there anyone who would like to remain for the sentencing, if
6 so if you'd raise your hand for me. Okay, since there's no
7 one --

8 JUROR: I would like to.

9 THE COURT: Okay. You're welcome, and any of you are
10 welcome to remain. Otherwise, if you do not wish to remain,
11 you are excused with the Court's profound thanks.

12 I'll hear post-trial motions, and then if you all can
13 get sentencing sheets for me. Thanks.

14 (Brief pause.)

15 THE COURT: Are there any post-trial motions?

16 MS. GAY: Your Honor, there's motion to set aside the
17 verdict. Notwithstanding the fact that, even though they
18 convicted him, we don't believe the evidence would have been
19 sufficient in follow-up of our motion for directed verdict
20 and our renewed motion at the end of my case.

21 THE COURT: Would the State like to respond?

22 MS. LINDER: Your Honor --

23 MS. GAY: And reiterating my prior objections with
24 regard to the motion to suppress and such.

25 THE COURT: Yes, ma'am.

1 MS. LINDER: Your Honor, I believe that regards to Ms.
2 Gay's previous objections or motions, I believe that I've
3 already argued enough on the record. I don't believe
4 anything has changed. With her motion to set aside the
5 verdict, I would ask that you deny that motion. I believe
6 that there is ample testimony and exhibits to support the
7 jury finding this verdict, and I believe that the jury showed
8 that they absolutely took this very seriously. They took a
9 lot of time deliberating over this. They reviewed the video.
10 They asked multiple questions. I think that they did give
11 this careful thought and attention, and we would ask that you
12 deny that motion.

13 THE COURT: The record reflects that the jury gave this
14 great deliberation. They deliberated from 12:45 until 4:50,
15 which -- and that they gave careful consideration to the
16 facts as well as to the law, applying the law to those facts.
17 There is no basis to set aside the verdict. There is more
18 than ample factual support in the record for, even if he had
19 been found culpable on the greater offenses, there's more
20 than ample evidence to support the findings on the lesser
21 included offenses of PWID cocaine as well as possession of
22 Methyldone, and certainly there's more than adequate evidence
23 in the record regarding the failure to stop with the video
24 that is a contemporaneous record of the entire process of him
25 being notified that law enforcement was -- had commanded him

1 to stop and that he then took evasive action to evade them
2 and failed to stop. Therefore, the motion to set aside the
3 verdict is denied, and the Court incorporates its previous
4 rulings on the previous motions as well as the motion for
5 directed verdict in these findings.

6 Now, that then leaves us -- to make sure that I'm clear,
7 his prior record, he had an '05 parole revocation for failure
8 to stop for a blue light and possession of stolen -- and he
9 had a possession of a stolen motor vehicle in '05, is that
10 correct, and an assault with intent to kill; in '02,
11 possession of stolen gun; in '02, two counts of breaking
12 entering a motor vehicle and burglary in the 3rd degree;
13 2009, DUS, which is driving under suspension, 2nd, and
14 operating a car without a South Carolina driver's license;
15 2007, possession of crack cocaine 1st and a failure to stop
16 for a blue light, and possession with the intent to
17 distribute cocaine 1st, two counts, and also a proximity
18 charge. Is that his accurate record?

19 MS. LINDER: I believe so. I just went through it
20 again. I don't know if you have, in 2007 he also has a
21 possession of marijuana conviction.

22 THE COURT: I'm sorry. I didn't hear you.

23 MS. LINDER: 2007 possession marijuana conviction. I
24 don't know if you had that down.

25 THE COURT: I did not.

1 MS. LINDER: Yes, Judge, I believe that covers
2 everything that he has.

3 THE COURT: With these convictions what enhancement
4 would they be?

5 MS. LINDER: These are third or subsequent.

6 THE COURT: On both the possession of the Methyldone and
7 the PWID, correct?

8 MS. LINDER: Yes, Judge.

9 THE COURT: And also the failure to stop. There's an
10 enhancement. He has a previous failure to stop, doesn't he?

11 MS. LINDER: He does.

12 MS. GAY: He does.

13 THE COURT: So this would be his second failure to stop.

14 MS. LINDER: He has a failure to stop in 2006 and
15 failure to stop in 2008. This is the third. And, Your
16 Honor, Ms. Mulkey went back to our office to get -- we have
17 two sentencing sheets but don't have a third, so she went
18 back to the office to get those.

19 THE COURT: I just wanted to make sure I have the range
20 of penalty correct. On failure to stop that would be a
21 maximum of five years and a minimum of 90 days or \$500 and
22 his license has to be suspended, correct?

23 MS. LINDER: Correct.

24 THE COURT: On PWID cocaine, third or subsequent,
25 minimum of ten years, maximum of 30 years and/or \$50,000

1 fine, and that's a serious with no suspension and no
2 probation but is not classified as violent, correct?

3 MS. LINDER: Correct.

4 THE COURT: And on possession of Methylone, third or
5 subsequent, zero to one and/or 2,000.

6 MS. LINDER: Yes, that is what I have.

7 THE COURT: All right. How long's he been in jail, Ms.
8 Gay?

9 MS. GAY: He's been in jail --

10 THE COURT: Has he been in jail since the date of this
11 incident?

12 MS. GAY: No. I think it's July 26th.

13 THE COURT: July 26th of what year?

14 MS. GAY: 2013.

15 THE COURT: Was that because his bond was revoked
16 because he has other charges?

17 MS. GAY: No. He got re-arrested on a different charge,
18 Your Honor.

19 THE COURT: Which also begs the question, does he want
20 to dispose of some of these other charges and is the State
21 amenable to that?

22 MS. GAY: Maybe if you gave us some time, Your Honor.

23 THE COURT: No time like the present. You all have been
24 discussing it for a while. I don't think the State's going
25 to be amenable to doing anything. They're not going to bring

1 him back from the Department of Corrections to plea. If
2 anything, they're going to do an enhancement and serve him
3 with an LWOP notice.

4 MS. GAY: That's what I was about ready to try to
5 explain to him.

6 THE COURT: What's he still have outstanding?

7 MS. LINDER: Your Honor, he still has outstanding
8 multiple other arrests: Temporary use of a vehicle, two
9 failure to stop for blue lights, two habitual traffic
10 offenders, possession of stolen motor vehicle, possession of
11 controlled substance, trafficking cocaine.

12 THE COURT: I need you to slow down. Trafficking
13 cocaine.

14 MS. LINDER: Trafficking cocaine, possession of a weapon
15 during the commission of a violent crime, two counts of hit
16 and run and possession with intent to distribute cocaine.
17 Those are from multiple separate arrests.

18 THE COURT: What were you willing to nolle pros
19 previously?

20 MS. LINDER: Your Honor, honestly, I hadn't really
21 gotten to which charges I was willing to nolle pros because
22 Mr. Nesbit said he was not interested in any sort of plea
23 offer.

24 THE COURT: What you need to explain to him, Ms. Gay, is
25 that he will not get anything, once he goes to the Department

1 of Corrections, he's not going get any more time on these
2 things that are outstanding.

3 MS. GAY: I understand that.

4 THE COURT: So the clock's going to be ticking. Now, I
5 don't want him to plead guilty if he doesn't feel he's
6 guilty. If he wants a trial on these other things, he needs
7 to avail himself of this process. As I told him before, I'm
8 a great believer in the trial system. I've never vacated a
9 verdict. I've never questioned what a jury has done. I have
10 great confidence in their ability to make the right decision.

11 MS. GAY: Hold on. Can we just have a minute?

12 THE COURT: Mm-hmm. Is there any restitution that's due
13 on any of these hit and runs?

14 MS. LINDER: No, Your Honor, the State's not seeking any
15 restitution on any of the hit and runs.

16 THE COURT: Is there any restitution on the possession
17 of a stolen motor vehicle?

18 MS. LINDER: Your Honor, to be candid with the Court,
19 due to Mr. Nesbit's prior record and the volume of charges he
20 had, there's really no point for us to try to get money out
21 of him. I mean, all of these things have mandatory minimums
22 along with his record making him have mandatory minimums, so
23 we were not seeking any restitution on any of his outstanding
24 charges.

25 THE COURT: The only one that was going to have a

1 mandatory minimum at this point is the PWID and the
2 trafficking. Possession of a stolen motor vehicle is not,
3 nor the habitual traffic offender or the -- well, the failure
4 to stop doesn't have mandatory time either.

5 MS. LINDER: Correct, Judge, but how the arrests were
6 broken up, the trafficking has the mandatory time, the weapon
7 has an automatic five, and then the other drug charge, and
8 those were kind of spread out through his arrests, and we
9 just didn't feel it necessary or appropriate to be going
10 after money.

11 THE COURT: I agree with what you're saying.

12 (Brief recess.)

13 THE COURT: All right. Are we ready to proceed?

14 MS. LINDER: State's ready.

15 THE COURT: Defense ready to proceed? Be glad to hear
16 any argument.

17 MS. GAY: From me?

18 THE COURT: State goes first, usually.

19 MS. LINDER: Your Honor is very aware of the facts of
20 the case, as you were sitting here throughout, and you're
21 also aware of the defendant's prior record and the numerous
22 pending charges that he still has in our office. We believe
23 that Mr. Nesbit is a danger to our society. We believe that
24 his criminal history spans a variety of different agencies in
25 this area, and we believe at this point a very substantial

1 sentence for the upper end would be appropriate, and
2 depending on the sentence, we may be able to just dispose of
3 the other charges without serving him life notice.

4 THE COURT: Ms. Gay?

5 MS. GAY: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 MS. GAY: Mr. Nesbit is 29 years old. His mother has
8 been with him in the courtroom throughout this trial, Your
9 Honor. Her name is Rebecca Nesbit. She's the woman that's
10 been sitting behind him in the black jacket, Your Honor. He
11 has two children which he, before his arrest and during the
12 course of his time, has worked to support. His family owns
13 an upholstery business, and so he's done some of that on his
14 own, plus he's done other work. As a group I think they do a
15 lot of upholstery. He is --

16 THE COURT: How old are the children?

17 MS. GAY: Two and three, Your Honor. There's been a lot
18 of facts that came out in this trial about the -- you know,
19 he admitted to certain things that he did, and then he said
20 that he wasn't in possession or control of the drugs, but
21 obviously the jury has spoken at this point, and he's aware
22 of that. He would ask you to please consider a sentence on
23 the lower end of the range, just so that he can begin to take
24 care of his children as much as possible, and in the process,
25 Your Honor, we would ask you to give him credit for the time

1 served since July of last year. He's been -- there was a
2 point where his bonds were revoked also, so we would just ask
3 that -- it's the date of arrest. What was the date of arrest
4 for the July arrest?

5 26th of July, I believe it's the 26th of July, but I can
6 look at my file on that, Your Honor, but he's been in jail
7 continuously since then.

8 How many days did you spend in jail when you were first
9 arrested?

10 THE DEFENDANT: Eight, nine days.

11 MS. GAY: Eight extra days, and I'll get that date, Your
12 Honor.

13 THE COURT: They'll calculate it. They'll get a report
14 from the jail. I don't calculate time. The statute requires
15 the Department of Corrections to calculate time. If I put 20
16 days on there, that's all he's going to get, even if he has
17 40. They'll get a report of how many days he's served and
18 they'll give him his pre-detention time.

19 MS. GAY: Thank you, Your Honor. We would just ask you
20 to please be as lenient as possible.

21 THE COURT: Ma'am, is there anything you would like to
22 state for the record on your son's behalf?

23 MS. NESBIT: Just like for, if you can just be a little
24 bit more lenient on him so he can help with raising those
25 children.

1 THE COURT: Ma'am, could you state your name for the
2 record?

3 MS. NESBIT: My name is Rebecca.

4 THE COURT: Nesbit?

5 MS. NESBIT: Nesbit.

6 THE COURT: Is there anything else you'd like to tell
7 me, ma'am?

8 MS. NESBIT: I know he may have made some poor choices,
9 but he's really a good person, and he's not really a harm to
10 society. I think everything he did he did it to himself. He
11 didn't hurt nobody.

12 THE COURT: Thank you, ma'am.

13 Sir, is there anything you'd like to state for the
14 record on your own behalf?

15 (No audible response.)

16 THE COURT: Record should indicate that the defendant's
17 indicated he did not want to speak on his own behalf. Is
18 there anything further from the State?

19 MS. LINDER: Nothing further, Your Honor.

20 THE COURT: Does your client need any alcohol or drug
21 treatment Ms. Gay?

22 MS. GAY: He says no, Your Honor.

23 THE COURT: How old is your client, Ms. Gay?

24 MS. GAY: 29, Your Honor.

25 THE COURT: Sir, if you would stand for sentencing. On

1 failure to stop for a blue light, sir, you're sentenced to
2 the State Department of Corrections for a period of five
3 years. On the possession of Methylone you're sentenced to
4 one year. On the PWID cocaine you're sentenced to the State
5 Department of Corrections for a period of 15 years. You will
6 get credit for the time that you have served, and these
7 sentences will run concurrently with one another. That time
8 will be calculated by the Department of Corrections pursuant
9 to 24-13-40. Thank you all very much.

10 MS. LINDER: If I may approach, I have the certified
11 convictions for the drug priors to make a Court's Exhibit.

12 THE COURT: That's fine. Just give it to the court
13 reporter.

14 MS. LINDER: Thank you.

15 (The Court's Exhibit 4 marked for identification.)

16 --- END OF TRANSCRIPT OF RECORD ---

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1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF CHARLESTON
4

5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the First Judicial Circuit Court for Charleston County,
11 South Carolina, on the 8th of May, 2014.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 October 6, 2014
16

17 /s/ *Ruth L. Mott*
18 Official Court Reporter
19
20
21
22
23
24
25

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2013008740B

ARREST WARRANT NUMBER

2013A1010203901

DATE OF ARREST

July 27, 2013

ACTION OF GRAND JURY

TRUE BILLForeperson of Grand Jury
Date:

SEP 09 2013

VERDICT

Foreperson of Petit Jury

Date:

INDICT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2013

THE STATE

vs.

HENRY OLIVER NESBIT JR

DOB: [REDACTED]

B/M

Indictment for

Trafficking in Cocaine

FILED9/24/2013 9:01:00 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

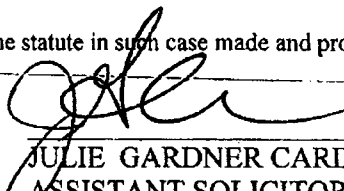
INDICTMENT

At a Court of General Sessions, convened on September 9, 2013 the Grand Jurors of Charleston County present upon their oath:

Trafficking in Cocaine

That in Charleston County, South Carolina, on or about June 16, 2013, the Defendant, HENRY OLIVER NESBIT JR, unlawfully and knowingly did sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did possess or attempt to possess a controlled substance or a controlled substance analogue, to wit: cocaine, in excess of 10 grams; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JULIE GARDNER CARDILLO
ASSISTANT SOLICITOR

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2013008740B

ARREST WARRANT NUMBER

2013A1010203902

DATE OF ARREST

July 27, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

SEP 09 2013

VERDICT

Foreperson of Petit Jury

Date:

INDICT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2013

THE STATE

vs.

HENRY OLIVER NESBIT JR

DOB: [REDACTED]

B/M

Indictment for

Possession With Intent to Distribute
Methylone (Bath Salts)

FILED

9/24/2013 9:01:00 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

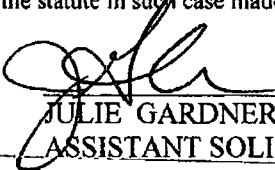
INDICTMENT

At a Court of General Sessions, convened on September 9, 2013 the Grand Jurors of Charleston County present upon their oath:

Possession With Intent to Distribute Methylnone (Bath Salts)

That in Charleston County, South Carolina, on or about June 16, 2013, the Defendant, HENRY OLIVER NESBIT JR, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue, to wit: methylnone; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JULIE GARDNER CARDILLO
ASSISTANT SOLICITOR

JPG20130604613

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2013008740B

ARREST WARRANT NUMBER

51804GF

DATE OF ARREST

June 17, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

SEP 09 2013

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1005527

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2013

THE STATE

vs.

HENRY OLIVER NESBIT JR

DOB: [REDACTED]

B/M

Indictment for

Failure to Stop for Blue Light

FILED

9/24/2013 9:01:00 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

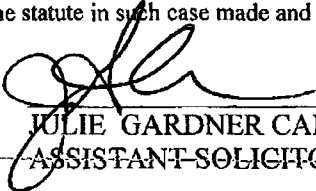
INDICTMENT

At a Court of General Sessions, convened on September 9, 2013 the Grand Jurors of Charleston County present upon their oath:

Failure to Stop for Blue Light

That in Charleston County, South Carolina, on or about June 16, 2013, the Defendant, HENRY OLIVER NESBIT JR, while driving a motor vehicle on a road, street, or highway of the State, did knowingly, willfully, intentionally, and in the absence of mitigating circumstances, fail to stop for a law enforcement vehicle after being signaled by a flashing light and/or a siren to do so; all in violation of Section 56-5-750 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JULIE GARDNER CARDILLO
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

December 9, 2014



Robert M. Pachak
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

RECEIVED

DEC 09 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

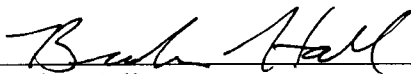
HENRY NESBIT,

APPELLANT

APPELLATE CASE NO. 2014-001231

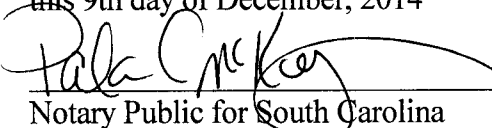
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of December, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 9th day of December, 2014



(L.S.)
Notary Public for South Carolina

My Commission Expires: July 24, 2022 .