

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

R. Knox McMahon, Circuit Court Judge

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SEP 28 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CHARLES TRAMAYNE MYERS,

APPELLANT

APPELLATE CASE NO. 2014-002392

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA) NINTH JUDICIAL CIRCUIT COURT
2 COUNTY OF CHARLESTON) CASE NO. 2013-GS-10-3396
3) 2013-GS-10-3397
4) 2013-GS-10-3398

4 STATE OF SOUTH CAROLINA,)
5 Plaintiff,) Transcript of Record
6 vs.)
7 CHARLES TRAMAYNE MYERS,) Date: October 6, 2014
8 Defendant.) October 7, 2014
9) October 8, 2014

9 * * * * *

10

11 B E F O R E:

12 The Honorable Knox McMahon

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22			
23			
24			
25			

08:54:06AM 1 call Detective Cerone, the case agent and our first
08:54:12AM 2 witness.

08:54:12AM 3 TIREKA CERONE,
08:54:12AM 4 being first duly sworn, testified as follows:

08:54:12AM 5 THE CLERK: State your name into the
08:54:36AM 6 microphone and spell your last name for the record.

08:54:38AM 7 THE WITNESS: Detective Tireka Lynn
08:54:44AM 8 Cerone. First name is spelled T-I-R-E-K-A, last
08:54:48AM 9 name is C-E-R-O-N-E.

08:54:48AM 10 DIRECT EXAMINATION

08:54:48AM 11 BY MS. MULKEY:

08:54:52AM 12 Q. Morning, Detective Cerone. For
08:54:54AM 13 clarification purposes for the Court, can you
08:54:58AM 14 please explain if there has been a change in your
08:55:00AM 15 name since this case occurred?

08:55:02AM 16 A. Yes, there has. March 2013 I got
08:55:08AM 17 married; so my last name has been changed from
08:55:12AM 18 Wright to Cerone.

08:55:14AM 19 Q. What is your current occupation?

08:55:14AM 20 A. I'm a detective for the City of North
08:55:16AM 21 Charleston.

08:55:16AM 22 Q. How long have you worked there?

08:55:18AM 23 A. I've worked there for seven years.

08:55:22AM 24 Q. What is your current assignment?

08:55:24AM 25 A. My current assignment, right now I'm a

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

08:55:28AM 1 detective. I work with a program called the STAND
08:55:30AM 2 Program right now.

08:55:30AM 3 Q. Have you worked in other units?

08:55:34AM 4 A. Yes. I worked in narcotics for
08:55:36AM 5 four-and-a-half years of my employment with North
08:55:38AM 6 Charleston.

08:55:38AM 7 Q. And what was your assignment on
08:55:42AM 8 October 26, 2012?

08:55:42AM 9 A. I was a case agent for the case, for
08:55:48AM 10 the search warrant at Saratoga.

08:55:54AM 11 MS. MULKEY: May I approach?

08:55:56AM 12 THE COURT: Yes, ma'am, certainly.

08:55:56AM 13 By MS. MULKEY:

08:56:06AM 14 Q. Detective Cerone, I would like to show
08:56:08AM 15 you what's been marked as Court's Exhibit 1. Do
08:56:10AM 16 you recognize this document?

08:56:10AM 17 A. Yes.

08:56:12AM 18 Q. And what is it?

08:56:12AM 19 A. It's the search warrant for [REDACTED]

08:56:14AM 20 [REDACTED]

08:56:18AM 21 Q. And did you obtain the search warrant?

08:56:20AM 22 A. Yes, ma'am.

08:56:20AM 23 Q. Who completed the Affidavit?

08:56:22AM 24 A. I did.

08:56:22AM 25 Q. And did you sign that document?

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

08:56:24AM 1 A. Yes, ma'am.

08:56:26AM 2 MS. MULKEY: Your Honor, at this time
08:56:26AM 3 the State would like to move to place the search
08:56:30AM 4 warrant into Court's evidence.

08:56:32AM 5 THE COURT: Any objection?

08:56:34AM 6 MR. LEWIS: Not as to the Court's
08:56:34AM 7 exhibit.

08:56:36AM 8 THE COURT: Okay. Court's Exhibit
08:56:36AM 9 Number 1 in evidence.

08:56:36AM 10 (COURT EXH. 1 in evidence.)

08:56:36AM 11 BY MS. MULKEY:

08:56:44AM 12 Q. Now, when you present a search warrant
08:56:46AM 13 to a judge for signature, do you stand there
08:56:48AM 14 silently?

08:56:48AM 15 A. No, ma'am. When you swear out a search
08:56:50AM 16 warrant, you have to give the background on your
08:56:54AM 17 case. So I gave the background on the case and
08:56:58AM 18 swore to it and the judge signed it.

08:57:00AM 19 Q. Do you recall specifically what you
08:57:02AM 20 said?

08:57:02AM 21 A. I explained trash pulls and the dates
08:57:10AM 22 and the location -- the description of the
08:57:12AM 23 location.

08:57:12AM 24 Q. And did you elaborate on the
08:57:16AM 25 information that's contained in that search warrant

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

08:57:20AM 1 in terms of the information you received?

08:57:20AM 2 A. Yes, ma'am.

08:57:22AM 3 Q. And so it was a brief elaboration of
08:57:28AM 4 what was presented here?

08:57:30AM 5 A. Yes.

08:57:30AM 6 Q. Can you please tell the Court what the
08:57:32AM 7 information was that you received?

08:57:34AM 8 A. We received an anonymous tip that a
08:57:42AM 9 suspect named Charles Myers was selling drugs in
08:57:48AM 10 the Saratoga neighborhood, that he drove a certain
08:57:50AM 11 type of vehicle, would drive through the
08:57:54AM 12 neighborhood making contact with people selling
08:57:58AM 13 drugs and go back to this location on Saratoga.

08:58:02AM 14 Q. Which community is Saratoga in?

08:58:04AM 15 A. In the Wayland community in Charleston
08:58:08AM 16 County.

08:58:08AM 17 Q. And do you typically receive anonymous
08:58:12AM 18 tips in your line of work?

08:58:14AM 19 A. Yes, ma'am.

08:58:14AM 20 Q. And how do these tips come in to you?

08:58:16AM 21 A. We have a tip hotline that people can
08:58:18AM 22 call, citizens can call that. That one is usually
08:58:24AM 23 someone -- a call-taker takes the complaint, types
08:58:26AM 24 it up, faxes it through. And there's also people
08:58:30AM 25 that call directly to the narcotics office.

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

08:58:32AM 1 Q. Do you make arrests or obtain search or
08:58:38AM 2 arrest warrants based simply on these tips?

08:58:40AM 3 A. No, ma'am.

08:58:40AM 4 Q. What you do with these tips?

08:58:42AM 5 A. We -- we confirm the facts that the
08:58:46AM 6 complainant is making by surveillance and other
08:58:50AM 7 investigation tools that we use.

08:58:50AM 8 Q. So if the tip refers to a person, do
08:58:56AM 9 you start a particular -- is there a particular
08:58:58AM 10 step that you start with?

08:59:00AM 11 A. Yeah.. We check the person's background
08:59:02AM 12 and check and see if we have prior cases with that
08:59:06AM 13 person.

08:59:06AM 14 Q. And if a tip involves a location, what
08:59:08AM 15 do you typically start by doing?

08:59:10AM 16 A. We go to that location, check to see
08:59:14AM 17 typical vehicles, foot traffic, confirm that the
08:59:18AM 18 person is actually living there, the routine, daily
08:59:22AM 19 check-ups. It could be a drive-by or we will sit
08:59:26AM 20 on the location.

08:59:26AM 21 Q. Just to be clear, the tip in this case
08:59:28AM 22 was specific as to a person and a location?

08:59:32AM 23 A. Yes, ma'am.

08:59:32AM 24 Q. Now, were you familiar with the
08:59:36AM 25 Defendant prior to receiving the tip?

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

08:59:38AM 1 A. I had heard of his name before, yes,
08:59:40AM 2 ma'am.

08:59:40AM 3 Q. Were you familiar with him by name and
08:59:42AM 4 sight?

08:59:42AM 5 A. Yes, from the DMV.

08:59:46AM 6 Q. Do you see the Defendant, Charles
08:59:46AM 7 Myers, in the courtroom today?

08:59:48AM 8 A. Yes, ma'am.

08:59:48AM 9 Q. Can you please point him out and
08:59:52AM 10 describe what he is wearing?

08:59:54AM 11 A. It is the young man with the short
08:59:56AM 12 haircut, white dress shirt and black slacks.

09:00:00AM 13 MS. MULKEY: Please let the record
09:00:02AM 14 reflect that the witness has identified the
09:00:04AM 15 Defendant, Your Honor.

09:00:06AM 16 THE COURT: So reflected.

09:00:06AM 17 BY MS. MULKEY:

09:00:08AM 18 Q. Now, going back to the process of
09:00:10AM 19 receiving anonymous tips and the investigation
09:00:12AM 20 there, what did you do with this specific tip?

09:00:14AM 21 A. With this specific tip, like I said, we
09:00:18AM 22 ran him through DMV, verified who he was. We
09:00:22AM 23 started doing drive-bys to check and see if the
09:00:26AM 24 vehicles -- the person said -- gave a typical
09:00:30AM 25 vehicle description of two vehicles. And those

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

09:00:34AM 1 vehicles were at that location.

09:00:36AM 2 Q. How long did this surveillance last?

09:00:38AM 3 A. It lasted up to two months.

09:00:42AM 4 Q. Did you personally observe the
09:00:46AM 5 Defendant coming and going from the residence?

09:00:48AM 6 A. Yes, ma'am. I observed him entering
09:00:50AM 7 and exiting the door -- front door of the
09:00:52AM 8 residence, getting into the vehicle, leaving the
09:00:56AM 9 location and returning in a matter of a couple of
09:01:00AM 10 minutes and -- returning. He entered the residence
09:01:06AM 11 like he lived there.

09:01:06AM 12 Q. Did you believe that his behavior and
09:01:10AM 13 activities were consistent with him living at that
09:01:12AM 14 residence?

09:01:12AM 15 A. Yes, ma'am.

09:01:12AM 16 Q. Did you believe that his behaviors and
09:01:14AM 17 activities were consistent with illegal drug
09:01:18AM 18 transactions?

09:01:18AM 19 A. Yes, ma'am.

09:01:18AM 20 Q. Can you please elaborate on what
09:01:20AM 21 behavior is consistent with illegal drug
09:01:24AM 22 transactions?

09:01:26AM 23 A. People -- different vehicles would stop
09:01:30AM 24 by the residence. A person would get out for a
09:01:34AM 25 short amount of time, return back to the vehicle.

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

09:01:38AM 1 There is times that Mr. Myers exited the house, got
09:01:42AM 2 into a car, which we were able to follow, and meet
09:01:46AM 3 with someone. Leave -- like a hand-to-hand
09:01:50AM 4 transaction was made, leave from that place and
09:01:54AM 5 return back to the house.

09:01:54AM 6 Q. So your testimony is the Defendant
09:01:58AM 7 would leave from Saratoga, conduct business, or
09:02:02AM 8 what you believe to be a hand-to-hand transaction,
09:02:04AM 9 and then immediately return back to the address on
09:02:06AM 10 Saratoga?

09:02:08AM 11 A. Yes, ma'am.

09:02:08AM 12 Q. Regarding these hand-to-hand
09:02:10AM 13 transactions, specifically, you believe that that
09:02:14AM 14 Defendant -- that you observed the Defendant leave
09:02:16AM 15 the residence and return immediately back to the
09:02:18AM 16 residence?

09:02:20AM 17 A. Yes, ma'am.

09:02:20AM 18 Q. Did your surveillance over the course
09:02:26AM 19 of that month-and-a-half independently corroborate
09:02:28AM 20 what that anonymous tip said?

09:02:30AM 21 A. Yes, ma'am.

09:02:30AM 22 Q. And did you conduct that surveillance
09:02:34AM 23 personally?

09:02:34AM 24 A. Yes, ma'am.

09:02:36AM 25 Q. How long did that last, again?

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

09:02:38AM 1 A. About two months.

09:02:38AM 2 Q. And did you conduct the surveillance at
09:02:46AM 3 the same time every day?

09:02:46AM 4 A. It would vary, because, with my
09:02:50AM 5 experience, people who deal drugs, they have a
09:02:56AM 6 varied system. It's not really on a routine. So
09:03:00AM 7 it could have been early in the morning when we'd
09:03:02AM 8 come in, because our shifts are different, or it
09:03:06AM 9 could have been evening or late night. So it was
09:03:10AM 10 periodically, the times that we'd do it.

09:03:14AM 11 Q. During all those times -- different
09:03:16AM 12 times of day, you were able to observe the
09:03:18AM 13 Defendant coming and going from that residence?

09:03:20AM 14 A. Yes, ma'am.

09:03:20AM 15 Q. You said earlier he went in and out.
09:03:24AM 16 Did he have a key? Did you see him use a key?

09:03:26AM 17 A. He never knocked.

09:03:28AM 18 Q. And did he come and go on foot or in a
09:03:32AM 19 vehicle?

09:03:32AM 20 A. In a vehicle.

09:03:34AM 21 Q. Did he ever leave the house and walk
09:03:38AM 22 down to the street, to return a few minutes later?

09:03:40AM 23 A. Yes, ma'am.

09:03:40AM 24 Q. What vehicles did you see the Defendant
09:03:44AM 25 driving?

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

09:03:44AM 1 A. A Monte Carlo, I believe it was like an
09:03:46AM 2 orange color, and a burgundy Crown Vic.

09:03:52AM 3 Q. Was he the driver of these vehicles or
09:03:54AM 4 a passenger?

09:03:54AM 5 A. Driver.

09:03:56AM 6 Q. Did you ever see the Defendant in a
09:03:58AM 7 work uniform of any kind?

09:04:00AM 8 A. No.

09:04:00AM 9 Q. Did you ever see the Defendant carrying
09:04:02AM 10 supplies or wearing clothing to indicate he may
09:04:06AM 11 work as a painter?

09:04:08AM 12 A. No, ma'am.

09:04:08AM 13 Q. Now, when you do this corroborative
09:04:12AM 14 surveillance after you receive this anonymous tip,
09:04:14AM 15 is that surveillance audio-recorded or
09:04:18AM 16 video-recorded?

09:04:18AM 17 A. No, ma'am, it wasn't. It was just
09:04:20AM 18 notepad, taking notes daily.

09:04:22AM 19 Q. Is that because it's a preliminary
09:04:24AM 20 information gathering?

09:04:26AM 21 A. Yes, ma'am.

09:04:26AM 22 Q. And about how far away were you during
09:04:32AM 23 some of the surveillance?

09:04:32AM 24 A. Probably about 200 feet.

09:04:38AM 25 Q. Do you keep a particular distance to

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

09:04:42AM 1 try and remain discreet?

09:04:42AM 2 A. Yes, ma'am.

09:04:44AM 3 Q. Do you wear contacts or glasses?

09:04:46AM 4 A. Yes, ma'am.

09:04:46AM 5 Q. Were you wearing them during the
09:04:48AM 6 surveillance?

09:04:50AM 7 A. Yes, ma'am.

09:04:50AM 8 Q. Was your ability to see the residence
09:04:52AM 9 or the Defendant coming and going obstructed by
09:04:56AM 10 anything or anyone?

09:04:58AM 11 A. No, ma'am. I also used binoculars.

09:05:00AM 12 Q. Based on the tip you received and your
09:05:04AM 13 independent observations during the surveillance
09:05:06AM 14 that you personally conducted, did you make any
09:05:08AM 15 conclusion as to the Defendant and that residence?

09:05:10AM 16 A. That he was definitely selling drugs
09:05:14AM 17 from that location and that was the place that he
09:05:16AM 18 was living.

09:05:16AM 19 Q. Did you conclude that the Defendant had
09:05:18AM 20 active dominion and control over that residence and
09:05:20AM 21 the things therein?

09:05:22AM 22 A. Yes.

09:05:22AM 23 Q. So based on this conclusion, what did
09:05:24AM 24 you do next?

09:05:24AM 25 A. I started conducting trash pulls from

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

09:05:28AM 1 that residence.

09:05:30AM 2 Q. Why do you do trash pulls?

09:05:32AM 3 A. To confirm the visual that -- what
09:05:36AM 4 we're seeing, the contact with different people;
09:05:38AM 5 just to confirm -- to make sure that drugs are at
09:05:40AM 6 that location.

09:05:40AM 7 Q. Could you please explain to the Court
09:05:42AM 8 what a trash pull is?

09:05:44AM 9 A. A trash pull is that we go to the
09:05:50AM 10 community at a certain time when their trash is
09:05:54AM 11 abandoned property on the curb. We take the whole
09:05:58AM 12 can or bags, and in this case we were able to take
09:06:02AM 13 individual bags from the trash. And we go through
09:06:08AM 14 it looking for paper documents and anything
09:06:12AM 15 corroborating on drug activity.

09:06:14AM 16 Q. And who was in charge of these?

09:06:18AM 17 A. Myself and my co-case agent, John Qwin.

09:06:22AM 18 Q. And how did you know that the trash
09:06:26AM 19 that you pulled from was in fact the trash from the
09:06:30AM 20 Defendant's residence?

09:06:30AM 21 A. That residence has a fence around it,
09:06:34AM 22 and during the day hours when we would do
09:06:38AM 23 surveillance, the trash can would stay close to the
09:06:42AM 24 fence. And it was the same trash can that was
09:06:44AM 25 pulled around to the curb, because there's an

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

09:06:48AM 1 actual ditch, like a little bit in front of the
09:06:48AM 2 fence line of the house, and it would be right
09:06:52AM 3 there.

09:06:52AM 4 Q. On the day that you pulled the trash,
09:06:52AM 5 what day of the week was that?

09:06:54AM 6 A. It was considered Monday morning, but
09:06:58AM 7 we did it Sunday night.

09:07:00AM 8 Q. And is Monday morning the day that the
09:07:04AM 9 trash truck comes in the Wayland community?

09:07:08AM 10 A. Yes, ma'am.

09:07:08AM 11 Q. When you went there on those two Monday
09:07:10AM 12 mornings and observed a trash can out front, was
09:07:12AM 13 there also a trash can by the residence?

09:07:14AM 14 A. No, ma'am.

09:07:14AM 15 Q. So is it your understanding that the
09:07:18AM 16 trash can that was by the residence was now by the
09:07:22AM 17 road?

09:07:22AM 18 A. Yes, ma'am.

09:07:22AM 19 Q. Did you ever see the Defendant put
09:07:24AM 20 anything in the trash can during your surveillance?

09:07:26AM 21 A. No, ma'am.

09:07:26AM 22 Q. How long does it take you to put
09:07:30AM 23 something in your trash can?

09:07:30AM 24 A. Not long.

09:07:32AM 25 Q. Did you ever see anyone else place

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

09:07:34AM 1 anything in those trash cans during your
09:07:34AM 2 surveillance?

09:07:34AM 3 A. No, ma'am.

09:07:34AM 4 Q. Was the information that you found
09:07:40AM 5 during those trash pulls contained loosely within
09:07:42AM 6 the trash bin or within a sealed bag?

09:07:46AM 7 A. It was in the sealed trash bag. There
09:07:50AM 8 was no loose trash in the can.

09:07:52AM 9 Q. In your training and experience as a
09:07:54AM 10 narcotics detective, what kind of evidence would
09:07:56AM 11 you expect to find in a trash pull where your
09:08:00AM 12 observations led you to believe that there is drugs
09:08:02AM 13 inside the house?

09:08:04AM 14 A. Multiple, clear plastic bags, residue
09:08:08AM 15 could be cocaine, marijuana, it could be heroin,
09:08:14AM 16 scales, scale boxes, types of things like that.

09:08:20AM 17 Q. Did you find -- let me back up. Would
09:08:24AM 18 you find a scale in there if it was operable?

09:08:28AM 19 A. No, it would be broken.

09:08:30AM 20 Q. So if the scale was working, somebody
09:08:30AM 21 wouldn't throw it out?

09:08:34AM 22 A. Right.

09:08:34AM 23 Q. Is it typical to find ledgers and
09:08:38AM 24 receipts of drug transactions in the trash?

09:08:40AM 25 A. Yes.

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

09:08:40AM 1 Q. Did you find evidence of receipts?

09:08:42AM 2 A. We found a digital scale box, that

09:08:48AM 3 someone just purchased a new digital scale. And we

09:08:52AM 4 later found that -- the actual digital scale that

09:08:54AM 5 matched that box.

09:08:56AM 6 Q. And going to the first trash pull on

09:08:58AM 7 August 27th, did you find evidence of illegal drugs

09:09:02AM 8 in that trash pull?

09:09:02AM 9 A. Yes.

09:09:04AM 10 Q. What did you find, Detective?

09:09:04AM 11 A. We found several clear plastic baggies,

09:09:10AM 12 the marijuana, stems and seeds, a lot of that. The

09:09:16AM 13 clear plastic bag tested positive for cocaine base.

09:09:20AM 14 Q. And that was in the August 27th trash

09:09:24AM 15 pull or the October 15th?

09:09:28AM 16 A. I believe it was the October 15th.

09:09:30AM 17 Q. So is it your testimony that on both

09:09:34AM 18 dates you found multiple bags?

09:09:38AM 19 A. Yes.

09:09:38AM 20 Q. Were they empty?

09:09:40AM 21 A. Yes, ma'am.

09:09:40AM 22 Q. Did they test positive for residue?

09:09:42AM 23 A. Yes.

09:09:42AM 24 Q. And when you say, tested positive, did

09:09:46AM 25 you perform any tests on what those items were?

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

09:09:48AM 1 A. Yes, ma'am. We used marijuana test
09:09:50AM 2 kits for the weed, that came back positive. And
09:09:54AM 3 there is a cocaine swab that we use to pretest the
09:09:58AM 4 bags. You just rub it in the bags and it comes up
09:10:00AM 5 blue.

09:10:00AM 6 Q. And those field tests that you used,
09:10:04AM 7 are those commonly used?

09:10:06AM 8 A. Yes.

09:10:08AM 9 Q. Do you use those for all of your cases?

09:10:10AM 10 A. Everyday drug test, yes, ma'am.

09:10:12AM 11 Q. And the field test that you used for
09:10:14AM 12 cocaine, is that used for any other substance?

09:10:18AM 13 A. It's also used for crack.

09:10:18AM 14 Q. Which is also known as?

09:10:20AM 15 A. Cocaine base.

09:10:20AM 16 Q. In your training and experience, would
09:10:26AM 17 the items you located in the trash pulls that day
09:10:30AM 18 and the field tests that you provided on those,
09:10:32AM 19 were those consistent with ongoing drug sales?

09:10:36AM 20 A. Yes, ma'am.

09:10:36AM 21 Q. Why is that?

09:10:36AM 22 A. When someone is packaging drugs for
09:10:42AM 23 sale, they usually have clear plastic bags that
09:10:46AM 24 they throw away after they package their drugs that
09:10:52AM 25 we are -- cocaine, cocaine base.

1 THE COURT: Yes, ma'am.

2 (Off-the-record conference held at the
3 bench.)

09:56:48AM 4 THE COURT: All right. Mr. Lewis.

09:56:48AM 5 MR. LEWIS: Thank you, Judge. As

09:56:50AM 6 you've heard from the testimony, the search warrant

09:56:52AM 7 that's before the Court today is based on two trash

09:56:58AM 8 pulls and the alleged statements of a confidential

09:57:04AM 9 informant that specifically said that, Charles

09:57:06AM 10 Myers is driving through the neighborhood selling

09:57:08AM 11 drugs and this is the car that he's in.

09:57:10AM 12 Naming a person's name and naming a car

09:57:12AM 13 doesn't prove up the liability as would be expected

09:57:16AM 14 in a traditional tip case. There are cases where

09:57:20AM 15 they say, this person is driving from this location

09:57:22AM 16 and this location and has these drugs in the car,

09:57:24AM 17 and then they hit the car and corroborate based on

09:57:26AM 18 that. That makes the CI reliable.

09:57:32AM 19 In this case the confidential informant

09:57:34AM 20 says that Charles is going through the neighborhood

09:57:36AM 21 selling drugs. But as I asked the lead Detective,

09:57:38AM 22 there wasn't one time that they could specifically

09:57:40AM 23 say that that took place. We have a bunch of

09:57:42AM 24 excuses as to why they didn't do a bust or prove up

09:57:46AM 25 any of this, or corroborate any of this, or record

09:57:50AM 1 any of this. That's -- what we got were excuses.

09:57:54AM 2 We're expected at this point to believe
09:57:54AM 3 that there was reasonable oral testimony to the
09:58:00AM 4 Magistrate on that day, when we have problems
09:58:02AM 5 remembering today, even after being able to review
09:58:06AM 6 a warrant, what actually took place.

09:58:10AM 7 When there's an actual drug
09:58:10AM 8 distribution that takes place out of a house, on
09:58:10AM 9 all of these form warrants that every jurisdiction
09:58:16AM 10 uses, they have 72 hours from a CI buy out of that
09:58:20AM 11 location to actually get a search warrant to keep
09:58:22AM 12 it from becoming as stale as this is.

09:58:26AM 13 Now, granted, they have ten days to
09:58:26AM 14 execute it, but they have to get the search warrant.
09:58:32AM 15 within 72 days because everyone is cognizant that
09:58:32AM 16 drugs move. You can't assume that, because drugs
09:58:36AM 17 were there 60 days before, that they would be there
09:58:38AM 18 this day. Or that drugs were there 11 days before,
09:58:42AM 19 that they would be there this day. Or if drugs
09:58:46AM 20 were there with the kind of baggies that were
09:58:48AM 21 present in this trash pull, that that would be
09:58:50AM 22 indicative of trafficking.

09:58:52AM 23 This search warrant isn't for marijuana
09:58:56AM 24 possession. We don't know if a magistrate would
09:58:58AM 25 have signed a search warrant for marijuana

09:59:00AM 1 possession, but they included this sort of
09:59:02AM 2 overarching, not particularized request for
09:59:10AM 3 property to be searched. That's one of the
09:59:10AM 4 problems with the search warrant.

09:59:12AM 5 In addition, there is no reason to
09:59:12AM 6 believe that all persons present were involved in
09:59:16AM 7 criminal activity to detain all parties.

09:59:20AM 8 I understand that there's the officers
09:59:22AM 9 safety exception, but there is no suggestion that
09:59:24AM 10 he was armed and dangerous or that they had to hit
09:59:28AM 11 the house with SWAT. And that references Owens v.
09:59:34AM 12 Lott, that you have in the written motion that I
09:59:36AM 13 provided.

09:59:38AM 14 In addition, when we talk about the
09:59:40AM 15 issue with the amount of time that's passed and how
09:59:44AM 16 stale this is, the highly incriminating consumable
09:59:50AM 17 items of contraband, drugs specifically, move. The
09:59:52AM 18 idea that, just because you had something 60 days
09:59:56AM 19 before, doesn't mean that it will still be there
09:59:58AM 20 when you do a search warrant later, and for that
10:00:00AM 21 reason, if the Court finds that there was probable
10:00:02AM 22 cause, we still believe that the search warrant was
10:00:04AM 23 stale -- the probable cause of the search warrant
10:00:08AM 24 would be stale at that point.

10:00:14AM 25 In addition, Judge, you've heard some

10:00:16AM 1 testimony about everything else that went along
10:00:18AM 2 with this case. We don't have any of the
10:00:20AM 3 documentation that corroborates that and that is
10:00:26AM 4 incredibly troubling. The State themselves doesn't
10:00:26AM 5 have the reports that the Detective testified
10:00:32AM 6 exist. Rule 6 would require that we're entitled to
10:00:34AM 7 those. Not that they would have sent them to SLED,
10:00:38AM 8 they said they did it inhouse, and neither side has
10:00:42AM 9 that. We just don't have that, which is definitely
10:00:44AM 10 problematic as well.

10:00:48AM 11 What I would add in regards to the it
10:00:52AM 12 takes a year to send drugs to SLED, in my
10:00:54AM 13 experience, drug cases actually turn around
10:00:56AM 14 relatively quickly, within the first roll call.
10:01:00AM 15 That is neither here nor there. The inherent issue
10:01:06AM 16 with all of this is it's not reliable. The
10:01:08AM 17 information that the Detective says that she had
10:01:08AM 18 was limited to one month, two months prior to the
10:01:16AM 19 execution of the search warrant.

10:01:16AM 20 They claim that the tip says there was
10:01:18AM 21 drug transactions taking place; they have nothing
10:01:20AM 22 that shows that. The Solicitor brought out that
10:01:22AM 23 maybe she missed one hand-to-hand, but others would
10:01:26AM 24 have occurred. They didn't act on anything. You
10:01:28AM 25 act on that, you're able to make an arrest, and

10:01:32AM 1 then you can get you a search warrant. They didn't
10:01:34AM 2 do any of that.

10:01:34AM 3 And for those reasons, Judge, I think
10:01:38AM 4 the search warrant lacks probable cause, should
10:01:40AM 5 never have been issued and that should stop all of
10:01:44AM 6 this right here.

10:01:46AM 7 Thank you, Your Honor.

10:01:46AM 8 THE COURT: Thank you very much,
10:01:48AM 9 Mr. Lewis.

10:01:52AM 10 Solicitor. Yes, ma'am.

10:02:00AM 11 MS. MULKEY: May it please the Court?

10:02:00AM 12 THE COURT: Yes, ma'am.

10:02:02AM 13 The State's position is the Magistrate
10:02:04AM 14 that issued the search warrant, beginning with
10:02:06AM 15 where that started, they have to make a practical,
10:02:08AM 16 commonsense decision based upon the facts that are
10:02:10AM 17 presented to them as well as the facts that are
10:02:14AM 18 actually contained within the body of the warrant.
10:02:16AM 19 They include in that the experience of the officer
10:02:18AM 20 and their training.

10:02:18AM 21 And here we have an experienced
10:02:20AM 22 narcotics Detective who testified that she provided
10:02:24AM 23 the basis of the search warrant in the
10:02:26AM 24 investigation up until that point, to include the
10:02:30AM 25 tip, their surveillance, and the trash pulls, to

10:09:48AM 1 will present later, after threats -- but for this
10:09:52AM 2 illegal detention. So that the statement itself
10:09:54AM 3 would be fruits of that. And that states -- the
10:09:58AM 4 statement itself would be fruits of that.

10:10:00AM 5 THE COURT: Thank you.

10:10:10AM 6 MR. LEWIS: Sorry, Judge, one other
10:10:14AM 7 thing. In addition, about the specific
10:10:16AM 8 corroboration, the tip wasn't just that Charles
10:10:18AM 9 Myers is in the Wayland. If that's all the tip is,
10:10:22AM 10 that's not a tip about anything. The tip is that
10:10:24AM 11 he's actually dealing drugs, and they don't have
10:10:26AM 12 anything that corroborates that.

10:10:28AM 13 So the fact that somebody can say
10:10:32AM 14 Charles Myers is in the Wayland community doesn't
10:10:34AM 15 substantiate and give the necessary additional
10:10:38AM 16 probable cause to make the search warrant valid..
10:10:42AM 17 Thank you.

10:10:42AM 18 THE COURT: Thank you.

10:11:56AM 19 All right. I have looked at the number
10:11:58AM 20 of cases that you've handed up and that you cited
10:12:00AM 21 in your brief, Mr. Lewis. State V Gentile, Ybarra
10:12:28AM 22 V. Illinois, Illinois V. Yates, Westin and a number
10:12:30AM 23 of others in here.

10:12:32AM 24 First, I find that there is sufficient
10:12:38AM 25 probable cause in the arrest warrant. We make

10:12:42AM 1 commonsense decisions and practical decisions and
10:12:46AM 2 it has to be submitted to a Magistrate and of
10:12:54AM 3 course whatever the officer has told the
10:12:58AM 4 Magistrate, whether it's written in the search
10:13:00AM 5 warrant or not, is admissible in my review of it.
10:13:02AM 6 And there is the anonymous tip identifying an
10:13:08AM 7 individual, identifying a car, and identifying that
10:13:12AM 8 individual is dealing drugs.

10:13:16AM 9 It is no moment to this Court whether
10:13:24AM 10 or not that is necessary in the warrant, because
10:13:28AM 11 the officer testified to it. I know of no case
10:13:32AM 12 that says that the officer's testimony, as to
10:13:36AM 13 hearsay she advised the Magistrate of, has to be
10:13:42AM 14 corroborated. She testified she gave all of that
10:13:44AM 15 information -- also, she is an experienced
10:13:48AM 16 narcotics detective. Under State V Rutledge, 644
10:13:54AM 17 Southeast 2nd, 789, in that case out of York
10:14:00AM 18 County, they cite, based on the affiant's training
10:14:06AM 19 and experience in narcotics investigations, it is
10:14:06AM 20 believed that drug dealers keep contraband,
10:14:10AM 21 proceeds of drug sales and records of drug
10:14:12AM 22 transactions. It may include written records,
10:14:14AM 23 photographs, videotapes, audiotapes, computer hard
10:14:18AM 24 drives and disks, within secure locations of their
10:14:22AM 25 residence and out buildings within the curtilage of

10:14:22AM 1 their property.

10:14:28AM 2 And so I think that all that
10:14:30AM 3 information can come in and be searched for in a --
10:14:38AM 4 with an experienced law enforcement officer giving
10:14:42AM 5 that information to the magistrate.

10:14:44AM 6 The anonymous tip doesn't just -- it
10:14:48AM 7 kind of starts off the direction of where do we go
10:14:52AM 8 from here. Well, they investigate. And they --
10:14:56AM 9 they corroborate. They surveilled the residence,
10:15:02AM 10 they determined by visual observation that
10:15:08AM 11 Mr. Myers comes and goes from this residence, never
10:15:12AM 12 knocks, he's there very often, and then they do the
10:15:20AM 13 first trash pull. They don't go get a warrant
10:15:24AM 14 then; they're still investigating.

10:15:24AM 15 They do the trash pull on -- the first
10:15:26AM 16 one on August 27th, I believe it was, in 2012. And
10:15:32AM 17 then the second one on October 15, I believe, 2012.
10:15:40AM 18 By my count, that is 49 days difference. Quite
10:15:46AM 19 frankly, I think they go above and beyond by doing
10:15:52AM 20 two trash pulls. And within the trash pulls, they
10:15:58AM 21 find evidence of contraband, evidence of drugs,
10:16:08AM 22 cocaine, marijuana evidence, a box thrown away that
10:16:16AM 23 contained a digital scale that's commonly used by
10:16:18AM 24 drug dealers. Not by drug users, but by drug
10:16:24AM 25 dealers.

10:16:24AM 1 They do all of this independent
10:16:30AM 2 cumulative corroboration that started with the
10:16:34AM 3 anonymous tipster. It is of no moment to this
10:16:38AM 4 Court that it's 49 days. In California V Greenwood
10:16:42AM 5 and Whooten, 108 Supreme Court 1625, a 1988 case,
10:16:54AM 6 the officers had gotten a tip that Greenwood and
10:17:02AM 7 Van Whooten, I guess it is, were dealing narcotics
10:17:04AM 8 in Laguna Beach. And they did -- they did trash
10:17:10AM 9 pulls. They did two trash pulls 28 days apart.
10:17:16AM 10 And that was upheld by our Supreme Court, our
10:17:24AM 11 United States Supreme Court. So I actually think
10:17:28AM 12 -- I actually think it's pretty good police work to
10:17:32AM 13 not react to just one trash pull, but to go to a
10:17:38AM 14 second trash pull to show that there's a pattern of
10:17:40AM 15 behavior.

10:17:48AM 16 The -- it's clear that the officers, in
10:17:52AM 17 my opinion, can detain anyone on the premises for
10:17:58AM 18 the safety of those individuals and the officers.
10:18:04AM 19 And any person -- if you go -- and I know you have
10:18:10AM 20 read many times, I'm sure, Ybarra. Ybarra, he was
10:18:16AM 21 in a bar called the Aurora Tap Tavern, somewhere up
10:18:24AM 22 around Chicago. I've never been -- had the
10:18:24AM 23 pleasure to be in that particular bar; I would love
10:18:30AM 24 to go there just for the historical footnote. But
10:18:34AM 25 be that as it may, only for educational purposes I

10:18:38AM 1 would love to go. I think there's sufficient
10:18:40AM 2 probable cause in this search warrant.

10:18:44AM 3 Gentile I think is very different,
10:18:46AM 4 which is a drug case. I think it was tried here in
10:18:52AM 5 Charleston County by Judge Russo, and that it was
10:18:56AM 6 conclusive. In this case I would rely on Greenwood
10:19:02AM 7 and obviously, as Greenwood says, he has --
10:19:08AM 8 Mr. Myers has no expectation of privacy, as our
10:19:18AM 9 United States Supreme Court has said, with trash
10:19:22AM 10 pulls. We conclude that respondents expose their
10:19:26AM 11 garbage to the public sufficiently to defeat their
10:19:28AM 12 claim to 4th Amendment protection. It is common
10:19:30AM 13 knowledge that plastic garbage bags left on or at
10:19:34AM 14 the side of a public street are readily accessible
10:19:38AM 15 to animals, children, scavengers, snoops and other
10:19:42AM 16 members of the public.

10:19:44AM 17 Somewhere in there, that also includes
10:19:50AM 18 the police. So I will deny this motion and find
10:19:52AM 19 there is sufficient probable cause for the search
10:19:54AM 20 warrant.

10:19:54AM 21 You have other motions, Mr. Lewis?

10:19:56AM 22 MR. LEWIS: Yes, Your Honor. Motion to
10:20:00AM 23 suppress the statement.

10:20:02AM 24 THE COURT: So this is a Jackson v.
10:20:06AM 25 Denno hearing?

JAMELL FOSTER - CROSS EXAM BY MR. LEWIS

10:38:58AM 1 Q. Oh, no. You didn't?

10:39:00AM 2 A. No.

10:39:00AM 3 Q. I thought he was not willing to

10:39:02AM 4 communicate?

10:39:02AM 5 A. He wasn't willing to communicate with

10:39:06AM 6 the people in the house.

10:39:08AM 7 Q. So -- but you had a better rapport with

10:39:10AM 8 him so it was okay for you to go out and talk to

10:39:14AM 9 him?

10:39:14AM 10 A. My sergeant asked me, so I followed the

10:39:16AM 11 sergeant's command and went to talk to him.

10:39:16AM 12 Q. Okay. When you talked to him, did you

10:39:18AM 13 tell him to be a man?

10:39:20AM 14 A. Probably did; I don't know.

10:39:22AM 15 Q. Did you tell him -- or did you say, are

10:39:24AM 16 you going to let these girls go down for your

10:39:26AM 17 stuff?

10:39:26AM 18 A. It wasn't girls. It was one girl.

10:39:28AM 19 Q. Are you going to let this girl go down

10:39:30AM 20 for your stuff?

10:39:30AM 21 A. I never said that.

10:39:32AM 22 Q. You never said that?

10:39:34AM 23 A. No.

10:39:34AM 24 Q. You never implied that they would go to

10:39:36AM 25 jail if he didn't take this charge?

JAMELL FOSTER - CROSS EXAM BY MR. LEWIS

10:39:38AM 1 A. What I said was, everybody in the house
10:39:42AM 2 gonna go to jail, including your girlfriend.

10:39:44AM 3 Q. You said, everybody in the house gonna
10:39:44AM 4 go to jail, including your girlfriend?

10:39:44AM 5 A. Right.

10:39:44AM 6 Q. That's what you told Charles? Right?

10:39:50AM 7 A. Yes.

10:39:50AM 8 Q. Everybody gonna go to jail in the
10:39:54AM 9 house, including your girlfriend?

10:39:56AM 10 A. Right.

10:39:56AM 11 Q. And after you said that to him, he
10:40:00AM 12 said, all right, man, take me in there, I'll give
10:40:02AM 13 you a statement?

10:40:02AM 14 A. No. What he said was, Foster, you know
10:40:04AM 15 that girl ain't had nothing to do with that.

10:40:08AM 16 Q. Okay. And then he gave you the
10:40:10AM 17 statement. After that statement you made to him,
10:40:12AM 18 hey, you know everybody in the house is gonna go to
10:40:14AM 19 jail, including your girlfriend, then he gave you a
10:40:18AM 20 statement?

10:40:18AM 21 A. No. He said, Foster, you know that
10:40:20AM 22 girl didn't have anything to do with that.

10:40:22AM 23 Q. You don't perceive that as a threat?

10:40:24AM 24 A. I don't.

10:40:24AM 25 Q. Saying, your girlfriend is going to go

JAMELL FOSTER - CROSS EXAM BY MR. LEWIS

10:40:26AM 1 to jail?

10:40:26AM 2 A. That was a fact, that was true. She
10:40:28AM 3 was in the room. She was -- her stuff was in the
10:40:32AM 4 room as well too.

10:40:32AM 5 Q. Did she go to jail?

10:40:34AM 6 A. No.

10:40:34AM 7 Q. Because he gave you a statement?

10:40:36AM 8 A. Because he claimed ownership of the
10:40:38AM 9 contraband found.

10:40:38AM 10 Q. So she didn't go to jail after he gave
10:40:42AM 11 you a statement?

10:40:42AM 12 A. Correct.

10:40:42AM 13 Q. A statement that was given to you after
10:40:46AM 14 you said to him, everyone is going to jail,
10:40:50AM 15 including your girlfriend?

10:40:52AM 16 A. Correct.

10:40:58AM 17 Q. Originally, he didn't just want to
10:41:00AM 18 volunteer and say, hey, everything in this house is
10:41:02AM 19 mine, right?

10:41:02AM 20 A. I'm not sure. I wasn't in the house
10:41:04AM 21 with him when all of that was taking place. I was
10:41:08AM 22 outside at the perimeter.

10:41:10AM 23 Q. But you said your sergeant said, hey,
10:41:12AM 24 man, he's not being cooperative with us, would you
10:41:14AM 25 take a shot at him?

JAMELL FOSTER - CROSS EXAM BY MR. LEWIS

10:41:16AM 1 A. He said, see if you can talk to him.

10:41:18AM 2 Q. Okay. And at that point, he signs what

10:41:26AM 3 you put in front of him or what -- he tells you,

10:41:28AM 4 you sign -- you sign it, he signs, Tireka signed

10:41:28AM 5 it?

10:41:32AM 6 A. He was advised of his constitutional

10:41:36AM 7 rights.

10:41:36AM 8 Q. Okay. I did need to get to that as

10:41:40AM 9 well. When you're talking to him, is he free to

10:41:42AM 10 leave or is he locked up?

10:41:42AM 11 A. He's detained.

10:41:44AM 12 Q. So he can't leave?

10:41:44AM 13 A. Right.

10:41:44AM 14 Q. And you're asking him questions?

10:41:48AM 15 A. Correct.

10:41:48AM 16 Q. But he hasn't been Mirandized yet?

10:41:52AM 17 A. No. I didn't ask him no questions

10:41:56AM 18 until he was Mirandized.

10:41:58AM 19 Q. I thought you --

10:41:58AM 20 A. Pertaining to the contraband found,

10:42:00AM 21 before I asked him any questions about the

10:42:04AM 22 contraband, he was advised of his Miranda Rights,

10:42:06AM 23 he was advised of his constitutional rights, and

10:42:10AM 24 then the questions proceeded after the

10:42:12AM 25 constitutional rights.

JAMELL FOSTER - CROSS EXAM BY MR. LEWIS

10:42:12AM 1 Q. You didn't tell him, everybody is going
10:42:16AM 2 to go to jail in this house, including your
10:42:18AM 3 girlfriend, and then he responded to that?

10:42:22AM 4 A. Yeah, I said that.

10:42:22AM 5 Q. Okay. You got him to commit to giving
10:42:24AM 6 a statement and he hadn't been Mirandized?

10:42:26AM 7 A. We weren't talking about the contraband
10:42:28AM 8 found at the time.

10:42:28AM 9 Q. What were they going to go to jail for?

10:42:32AM 10 A. I wasn't talking to Charles about the
10:42:36AM 11 contraband found at the time.

10:42:36AM 12 Q. What were they going to go to jail for?

10:42:38AM 13 A. The drugs found.

10:42:40AM 14 Q. So the contraband?

10:42:42AM 15 A. Right.

10:42:42AM 16 Q. So that's what you were talking to
10:42:42AM 17 Charles about?

10:42:42AM 18 A. But we didn't get into any details
10:42:44AM 19 about the contraband found.

10:42:44AM 20 Q. You just got him to commit, and then he
10:42:46AM 21 goes into the house and gives you a statement?

10:42:48AM 22 A. Correct.

10:42:48AM 23 Q. And he hadn't been Mirandized when you
10:42:50AM 24 got him to commit?

10:42:52AM 25 A. Not at that point.

JAMELL FOSTER - CROSS EXAM BY MR. LEWIS

10:42:54AM 1 Q. Okay.

10:42:54AM 2 A. I'm not aware if he was Mirandized in

10:42:56AM 3 the house, but at that point, I didn't Mirandize

10:43:00AM 4 him.

10:43:00AM 5 Q. Okay. So you hadn't filled out the

10:43:02AM 6 form --

10:43:02AM 7 A. No.

10:43:02AM 8 Q. -- and had him initial and say,

10:43:04AM 9 everything that I'm saying -- you know, I've been

10:43:06AM 10 advised of these rights?

10:43:08AM 11 A. Right.

10:43:08AM 12 Q. He hadn't had that done yet?

10:43:10AM 13 A. Right.

10:43:18AM 14 MR. LEWIS: One moment, Judge?

10:43:18AM 15 THE COURT: Yes, sir.

10:43:18AM 16 BY MR. LEWIS:

10:43:34AM 17 Q. Did you and he talk about Leon

10:43:34AM 18 Stavrinakis?

10:43:36AM 19 A. Say again.

10:43:38AM 20 Q. Leon Stavrinakis?

10:43:38AM 21 A. What about him?

10:43:38AM 22 Q. Did you talk about him? Did you say,

10:43:40AM 23 hey, I got his number on speed dial?

10:43:44AM 24 MS. MULKEY: Object, Your Honor. Is

10:43:44AM 25 this relevant? I don't think this was brought up

JAMELL FOSTER - CROSS EXAM BY MR. LEWIS

10:43:48AM 1 on direct.

10:43:48AM 2 THE COURT: Restate the question.

10:43:48AM 3 BY MR. LEWIS:

10:43:52AM 4 Q. Did he mention he had a lawyer named
10:43:54AM 5 Leon Stavrinakis?

10:43:54AM 6 A. I don't recall. I don't recall that.

10:43:56AM 7 Q. You don't recall saying, I have his
10:43:58AM 8 number on speed dial?

10:44:00AM 9 A. I don't recall saying that. I don't.

10:44:02AM 10 MR. LEWIS: All right. No further
10:44:04AM 11 questions, Judge.

10:44:04AM 12 THE COURT: Thank you.

10:44:06AM 13 Redirect, Solicitor?

10:44:06AM 14 REDIRECT EXAMINATION

10:44:06AM 15 BY MS. MULKEY:

10:44:18AM 16 Q. Detective Foster, did you threaten the
10:44:22AM 17 Defendant?

10:44:22AM 18 A. Not at all.

10:44:24AM 19 Q. Did you encourage the Defendant to be
10:44:26AM 20 truthful?

10:44:26AM 21 A. Yes.

10:44:26AM 22 Q. Is there a distinction between those
10:44:30AM 23 two?

10:44:30AM 24 A. Yes.

10:44:30AM 25 Q. Could you please explain what that

JAMELL FOSTER - REDIRECT EXAM BY MS. MULKEY

10:44:32AM 1 distinction is?

10:44:34AM 2 A. Threat -- if I would have forced him,
10:44:38AM 3 made him write the statement to commit to
10:44:40AM 4 ownership, that's a threat. I just explained to
10:44:44AM 5 him, hey, you need to be a man and be truthful
10:44:48AM 6 about the contraband.

10:44:48AM 7 Q. So, in your words, you presented the
10:44:50AM 8 Defendant with a fact?

10:44:52AM 9 A. Correct.

10:44:52AM 10 Q. And you told him that drugs were found
10:44:56AM 11 on the premises he was in?

10:44:58AM 12 A. Yes.

10:44:58AM 13 Q. The residence he stayed in --

10:44:58AM 14 A. Yes.

10:45:00AM 15 Q. -- with his girlfriend?

10:45:00AM 16 A. Yes.

10:45:02AM 17 Q. And that you had a case for -- in your
10:45:04AM 18 experience, you could charge everyone?

10:45:06AM 19 A. Yes.

10:45:06AM 20 Q. And you weren't questioning him, you
10:45:10AM 21 were giving him what your facts were at the time?

10:45:12AM 22 A. Yes.

10:45:12AM 23 Q. And is there anything in your nine
10:45:14AM 24 years as a police officer that prohibits you from
10:45:18AM 25 encouraging a Defendant to be truthful?

JAMELL FOSTER - REDIRECT EXAM BY MS. MULKEY

10:45:20AM 1 A. Not at all.

10:45:20AM 2 Q. Is there anything wrong with asking a

10:45:22AM 3 Defendant to accept responsibility for his actions?

10:45:26AM 4 A. Not at all.

10:45:26AM 5 Q. Can you do that without questioning him

10:45:28AM 6 as to the specifics of the illegal activity?

10:45:30AM 7 A. Correct.

10:45:32AM 8 Q. Did you attribute, and when I say you,

10:45:34AM 9 the narcotics investigation here, did they

10:45:40AM 10 attribute an individual's responsibility to each

10:45:42AM 11 person that was there?

10:45:42AM 12 A. Correct.

10:45:42AM 13 Q. In fact, wasn't someone else arrested

10:45:46AM 14 for the -- Shirley was arrested for the item found

10:45:48AM 15 in her room?

10:45:52AM 16 A. I don't recall that.

10:45:54AM 17 Q. But your goal as a narcotics detective

10:45:56AM 18 and part of this investigation was to determine who

10:46:00AM 19 was responsible --

10:46:02AM 20 A. For what --

10:46:02AM 21 Q. -- for each drug?

10:46:04AM 22 A. Yes.

10:46:04AM 23 Q. And then attribute the corresponding

10:46:06AM 24 charges to that individual?

10:46:08AM 25 A. Yes, sir.

JAMELL FOSTER - REDIRECT EXAM BY MS. MULKEY

10:46:08AM 1 Q. Are you in the business of charging
10:46:10AM 2 everybody on scene?

10:46:12AM 3 A. Not at all.

10:46:12AM 4 Q. Now, when you walked up to the
10:46:16AM 5 Defendant upon the advice or the encouragement of
10:46:20AM 6 your supervisor, that was to see if the Defendant
10:46:22AM 7 would speak with you?

10:46:24AM 8 A. Right.

10:46:24AM 9 Q. And that is because you are able to
10:46:28AM 10 establish a rapport with people?

10:46:30AM 11 A.. I am.

10:46:30AM 12 Q. And is that based on your training or
10:46:34AM 13 your personality?

10:46:34AM 14 A. That's based on my personality.

10:46:38AM 15 Q. And in your experience as an officer
10:46:40AM 16 for the past nine years, have you encountered
10:46:44AM 17 situations where you aren't able to establish a
10:46:48AM 18 rapport with somebody?

10:46:48AM 19 A. I have.

10:46:48AM 20 Q. What do you do in those situations?

10:46:50AM 21 A. See if another officer can speak with
10:46:52AM 22 the person.

10:46:52AM 23 Q. Is there anything in your training and
10:46:54AM 24 experience that prohibits that?

10:46:56AM 25 A. Not at all.

JAMELL FOSTER - REDIRECT EXAM BY MS. MULKEY

10:46:56AM 1 Q. Is that called good police work?

10:46:58AM 2 A. Yes.

10:46:58AM 3 Q. Community relations?

10:47:00AM 4 A. Community relations.

10:47:00AM 5 Q. When the Defendant -- when you walked

10:47:02AM 6 up to the car and the Defendant, after having been

10:47:06AM 7 presented with the facts, as you just testified

10:47:08AM 8 that you did, he made a statement, that girl didn't

10:47:12AM 9 have anything to do with it?

10:47:14AM 10 A. Yes.

10:47:14AM 11 Q. And please reiterate what you believe

10:47:18AM 12 that statement to mean.

10:47:18AM 13 A. I believe he was claiming ownership of

10:47:22AM 14 the contraband found.

10:47:24AM 15 Q. Is that because you just explained what

10:47:26AM 16 you had?

10:47:26AM 17 A. Correct.

10:47:26AM 18 Q. Did you question him then any further?

10:47:30AM 19 A. Not at all.

10:47:30AM 20 Q. Did you physically get him out of the

10:47:32AM 21 car to get him inside?

10:47:34AM 22 A. I did.

10:47:34AM 23 Q. So you made a general statement

10:47:36AM 24 encouraging the Defendant to accept responsibility?

10:47:40AM 25 A. I did.

JAMELL FOSTER - REDIRECT EXAM BY MS. MULKEY

10:47:40AM 1 Q. At which time the Defendant
10:47:44AM 2 spontaneously uttered, that girl had nothing to do
10:47:46AM 3 with it?
10:47:46AM 4 A. Correct.
10:47:48AM 5 Q. And then you went inside?
10:47:50AM 6 A. Yes, ma'am.
10:47:50AM 7 Q. Is it common or have you ever
10:47:56AM 8 experienced a Defendant decide to name-drop after
10:48:00AM 9 they're arrested?
10:48:04AM 10 A. Yes.
10:48:04AM 11 Q. Do they name-drop friends?
10:48:08AM 12 A. Friends, relatives.
10:48:10AM 13 Q. Relatives?
10:48:10AM 14 A. Girlfriends, boyfriends.
10:48:12AM 15 Q. Perhaps people they think are in a
10:48:14AM 16 position of influence or power?
10:48:16AM 17 A. Yes.
10:48:18AM 18 Q. In your training and experience as an
10:48:22AM 19 officer, does the simple drop of a name require you
10:48:26AM 20 to stop questioning somebody?
10:48:28AM 21 A. Not at all.
10:48:28AM 22 Q. And at that point, had you been
10:48:30AM 23 questioning the Defendant?
10:48:32AM 24 A. Right, correct.
10:48:38AM 25 MS. MULKEY: Beg the Court's

JAMELL FOSTER - REDIRECT EXAM BY MS. MULKEY

10:48:38AM 1 indulgence?

10:48:38AM 2 THE COURT: Yes, ma'am.

10:48:56AM 3 MS. MULKEY: May I approach the
10:48:58AM 4 witness, Your Honor?

10:48:58AM 5 THE COURT: Yes, ma'am.

10:48:58AM 6 BY MS. MULKEY:

10:48:58AM 7 Q. I would like to show you, Officer
10:49:02AM 8 Foster, what has been marked as Court's Exhibit
10:49:08AM 9 Number 2. Do you recognize that?

10:49:10AM 10 A. Yes, ma'am.

10:49:10AM 11 Q. What is that?

10:49:12AM 12 A. It's an Advisement of Constitutional
10:49:16AM 13 Rights form.

10:49:16AM 14 Q. And how do you recognize that?

10:49:18AM 15 A. This form is the standard used by the
10:49:24AM 16 City of North Charleston Police Department.

10:49:26AM 17 Q. Did you complete that form?

10:49:26AM 18 A. I did..

10:49:28AM 19 Q. How do you know that?

10:49:28AM 20 A. It's my handwriting, for one, and you
10:49:32AM 21 can see at this beginning of the form I have the
10:49:34AM 22 Defendant's name and date of birth, age, the last
10:49:40AM 23 grade completed, his name again, and my name that
10:49:42AM 24 I'm advising him of the information.

10:49:48AM 25 MS. MULKEY: The State would like to

JAMELL FOSTER - REDIRECT EXAM BY MS. MULKEY

10:49:50AM 1 submit this into evidence as Court's Exhibit Number

10:49:58AM 2 2.

10:49:58AM 3 MR. LEWIS: No objection.

10:50:20AM 4 (Off-the-record conference.)

10:50:20AM 5 MS. MULKEY: All right. So this will
10:50:20AM 6 be Court's Exhibit Number 2.

10:50:20AM 7 (COURT EXH. 2 in evidence.)

10:50:20AM 8 BY MS. MULKEY:

10:50:22AM 9 Q. Detective Foster, I want to go through
10:50:22AM 10 this statement in its entirety. I want to start
10:50:26AM 11 off with the beginning on the first page. Can you
10:50:28AM 12 tell me what the beginning subsection is?

10:50:34AM 13 A. Statement of. You're referring to --

10:50:38AM 14 Q. On the very first page where it says
10:50:40AM 15 North Charleston Police Department form, it gives
10:50:42AM 16 you a Case Number and then it says that -- the
10:50:44AM 17 first --

10:50:44AM 18 A. Defendant's statement.

10:50:46AM 19 Q. And I believe the page right before
10:50:50AM 20 that is actually what you testified you do first,
10:50:52AM 21 the advisement of constitutional rights?

10:50:54AM 22 A. Correct.

10:50:54AM 23 Q. That's what you do first, correct?

10:50:56AM 24 A. I do.

10:50:56AM 25 Q. Per your testimony and procedure?

JAMELL FOSTER - REDIRECT EXAM BY MS. MULKEY

10:50:58AM 1 A. Yes, ma'am.

10:51:00AM 2 Q. And in there do you indicate the full

10:51:02AM 3 name of the Defendant?

10:51:02AM 4 A. Yes.

10:51:04AM 5 Q. And this is your handwriting, correct?

10:51:06AM 6 A. It is.

10:51:06AM 7 Q. And you go through and it has

10:51:08AM 8 questions, and I'm assuming you ask the Defendant

10:51:10AM 9 these questions?

10:51:12AM 10 A. Yes.

10:51:12AM 11 Q. So how would you have known his date of

10:51:14AM 12 birth?

10:51:14AM 13 A. He gave it to me.

10:51:16AM 14 Q. And his age?

10:51:16AM 15 A. Correct.

10:51:16AM 16 Q. How would you have known what grade he

10:51:20AM 17 completed in school?

10:51:20AM 18 A. He gave it to me.

10:51:22AM 19 Q. Would you have any desire to write a

10:51:24AM 20 grade other than what he told you?

10:51:26AM 21 A. Not at all.

10:51:26AM 22 Q. And that section goes through, as we

10:51:32AM 23 discussed earlier, the Miranda Warning, and that's

10:51:36AM 24 broken down, correct?

10:51:36AM 25 A. Yes.

JAMELL FOSTER - REDIRECT EXAM BY MS. MULKEY

10:51:36AM 1 Q. And next to each of those, I believe,
10:51:38AM 2 it looks like there's number 1 through 5?
10:51:42AM 3 A. It is.
10:51:42AM 4 Q. What is the notation next to each of
10:51:44AM 5 those?
10:51:44AM 6 A. C, M.
10:51:44AM 7 Q. What does that stand for?
10:51:46AM 8 A. Charles Myers.
10:51:46AM 9 Q. Is that the Defendant?
10:51:48AM 10 A. It is.
10:51:48AM 11 Q. And did he initial after each of those
10:51:50AM 12 statements being read to him?
10:51:52AM 13 A. He did.
10:51:52AM 14 Q. And now at the end of the Miranda
10:51:56AM 15 Rights, I believe it says, I fully understand each
10:51:58AM 16 of these rights explained to me. Is that correct?
10:52:00AM 17 A. Yes.
10:52:02AM 18 Q. And then it's signed by two witnesses?
10:52:04AM 19 A. It is.
10:52:06AM 20 Q. And who are they?
10:52:06AM 21 A. Myself and Detective Flemming.
10:52:10AM 22 Q. What are those numbers next to your
10:52:12AM 23 signatures on the page?
10:52:12AM 24 A. Our badge numbers.
10:52:14AM 25 Q. And is there another signature there?

JAMELL FOSTER - REDIRECT EXAM BY MS. MULKEY

10:52:16AM 1 A. Charles Myers.

10:52:18AM 2 Q. And did he actually sign that?

10:52:18AM 3 A. Correct.

10:52:20AM 4 Q. Can you please read aloud to the Court

10:52:24AM 5 what that next section says?

10:52:26AM 6 A. Having these rights in mind, I wish to

10:52:28AM 7 waive these rights and answer questions concerning

10:52:32AM 8 the charge of trafficking in cocaine. No threats,

10:52:36AM 9 force, promises of any kind have been made to me by

10:52:38AM 10 anyone to cause me to waive these rights and/or

10:52:40AM 11 answer any questions.

10:52:42AM 12 Q. And then there's a series of signatures

10:52:44AM 13 again. Can you please tell me who those are?

10:52:46AM 14 A. Myself, Detective Cerone, and

10:52:48AM 15 Mr. Myers.

10:52:50AM 16 Q. Prior to him signing that, did you

10:52:54AM 17 force him to sign that?

10:52:54AM 18 A. Not at all.

10:52:56AM 19 Q. Did you put a pen in his hand and move

10:52:58AM 20 it to sign it?

10:52:58AM 21 A. Not at all.

10:53:00AM 22 Q. Did you threaten him before he signed

10:53:04AM 23 it?

10:53:04AM 24 A. No.

10:53:04AM 25 Q. Going on to the next page that begins

JAMELL FOSTER - REDIRECT EXAM BY MS. MULKEY

10:53:08AM 1 with Defendant's Statement. Again, the information
10:53:12AM 2 that's provided up top, the biographical section,
10:53:18AM 3 where do you get that information?

10:53:18AM 4 A. From the Defendant.

10:53:20AM 5 Q. Would you have known any of that
10:53:22AM 6 information if he had not provided it?

10:53:24AM 7 A. Not at all.

10:53:24AM 8 Q. What if he provides you something
10:53:28AM 9 that's not true?

10:53:28AM 10 A. Well, we have ways of finding out
10:53:36AM 11 what's correct, but all of the information that he
10:53:40AM 12 gave me was information that I wrote down.

10:53:42AM 13 Q. For purposes of this statement, you
10:53:44AM 14 take what he says to be --

10:53:46AM 15 A. Truthful.

10:53:48AM 16 Q. -- his words?

10:53:50AM 17 A. To be truthful.

10:53:50AM 18 Q. What was the first question that you
10:53:52AM 19 asked him?

10:53:52AM 20 A. Do you often stay and/or spend the
10:53:54AM 21 night at [REDACTED]

10:53:56AM 22 Q. And going back to your procedure for
10:54:00AM 23 handling this, let me understand correctly, you
10:54:04AM 24 would have written that question down?

10:54:06AM 25 A. Yes.

JAMELL FOSTER - REDIRECT EXAM BY MS. MULKEY

10:54:06AM 1 Q. Would you have then read it to the
10:54:08AM 2 Defendant?
10:54:08AM 3 A. Yes.
10:54:08AM 4 Q. Would you have then shown it to the
10:54:10AM 5 Defendant?
10:54:10AM 6 A. Yes, ma'am.
10:54:10AM 7 Q. And then how did you obtain his answer?
10:54:12AM 8 A. He would answer.
10:54:14AM 9 Q. And at which point you would do what?
10:54:18AM 10 A. Write exactly what he answers.
10:54:20AM 11 Q. And then would you give him an
10:54:22AM 12 opportunity to review what you wrote?
10:54:24AM 13 A. Yes.
10:54:24AM 14 Q. And did he initial next to what his
10:54:28AM 15 answer was?
10:54:28AM 16 A. Right.
10:54:28AM 17 Q. What was the second question you asked?
10:54:30AM 18 A. Were you at [REDACTED] today,
10:54:38AM 19 parenthesis, 26 October 2012, when police arrived.
10:54:42AM 20 Q. What did the Defendant say?
10:54:44AM 21 A. Yes, sir.
10:54:44AM 22 Q. Is that a different answer than the
10:54:46AM 23 first question?
10:54:48AM 24 A. Yes.
10:54:50AM 25 Q. And were you so careful as to note the

JAMELL FOSTER - REDIRECT EXAM BY MS. MULKEY

10:54:54AM 1 specific words he said?

10:54:56AM 2 A. Yes.

10:54:56AM 3 Q. So on the first answer he said, yeah.

10:55:00AM 4 On the second he says, yes, sir?

10:55:02AM 5 A. Correct.

10:55:02AM 6 Q. Those were his exact words?

10:55:04AM 7 A. Yes.

10:55:04AM 8 Q. Which is why you wrote them down?

10:55:06AM 9 A. Yes.

10:55:06AM 10 Q. Now, what's the third question you

10:55:06AM 11 asked?

10:55:08AM 12 A. Do you have any illegal contraband in

10:55:10AM 13 the residence at [REDACTED]

10:55:12AM 14 Q. What was the Defendant's response?

10:55:14AM 15 A. Yes.

10:55:14AM 16 Q. Again, is that different from the first

10:55:16AM 17 two?

10:55:16AM 18 A. Yes.

10:55:16AM 19 Q. But that's what he said to you?

10:55:20AM 20 A. Correct.

10:55:20AM 21 Q. And did he initial next to that?

10:55:24AM 22 A. He did.

10:55:24AM 23 Q. What was the next question you asked

10:55:26AM 24 him?

10:55:28AM 25 A. What type of illegal contraband did you

JAMELL FOSTER - REDIRECT EXAM BY MS. MULKEY

10:55:30AM 1 have in the residence.

10:55:32AM 2 Q. And his response?

10:55:32AM 3 A. Cocaine and weed.

10:55:38AM 4 Q. At that point, Officer Foster, had he

10:55:42AM 5 been advised what substances were in the residence

10:55:44AM 6 or just that illegal drugs had been found?

10:55:48AM 7 A. Drugs had been found.

10:55:50AM 8 Q. So he would have had to have intimate

10:55:52AM 9 knowledge to know that much?

10:55:54AM 10 A. Correct.

10:55:54AM 11 Q. But he knew he was charged with

10:55:56AM 12 trafficking cocaine at that point?

10:55:58AM 13 A. Yes.

10:55:58AM 14 Q. What was the next question you asked

10:56:00AM 15 him?

10:56:00AM 16 A. How much cocaine and weed did you have

10:56:02AM 17 in the residence.

10:56:04AM 18 Q. And his answer?

10:56:06AM 19 A. Umm, about 35 grams of cocaine and

10:56:08AM 20 about 200 grams of weed.

10:56:12AM 21 Q. Officer Foster, why did you start that

10:56:14AM 22 with umm?

10:56:14AM 23 A. Because that's the way he responded.

10:56:16AM 24 Q. And when you advised him that there

10:56:20AM 25 were drugs that were located in the house and he

JAMELL FOSTER - REDIRECT EXAM BY MS. MULKEY

10:56:22AM 1 was being arrested for trafficking in cocaine, at
10:56:24AM 2 any point did you tell him the amount of drugs that
10:56:28AM 3 were inside the house?

10:56:28AM 4 A. Not at all.

10:56:28AM 5 Q. How would the Defendant have had
10:56:30AM 6 knowledge on the specific amounts?

10:56:32AM 7 A. He knew how much drugs he had.

10:56:34AM 8 Q. And did the Defendant initial next to
10:56:34AM 9 that answer?

10:56:38AM 10 A. He did.

10:56:38AM 11 Q. What was your next question to the
10:56:40AM 12 Defendant?

10:56:40AM 13 A. Where did you have it.

10:56:42AM 14 Q. And what was his answer?

10:56:42AM 15 A. I put it in her pink box under the bed
10:56:46AM 16 where the gun was.

10:56:48AM 17 Q. Did he initial next to that?

10:56:50AM 18 A. He did.

10:56:50AM 19 Q. And in your understanding, as well as
10:56:58AM 20 your training and experience as a narcotics
10:57:00AM 21 detective, did that -- did his response to that
10:57:02AM 22 question, was that an intentional act on his part
10:57:06AM 23 to place the narcotics into a box where a gun was?

10:57:10AM 24 A. Correct.

10:57:10AM 25 Q. And he acknowledged that he did that

JAMELL FOSTER - REDIRECT EXAM BY MS. MULKEY

10:57:12AM 1 through that answer?

10:57:12AM 2 A. Yes.

10:57:14AM 3 Q. What is the next question that you
10:57:16AM 4 asked him?

10:57:16AM 5 A. Are you saying that all the cocaine and
10:57:18AM 6 weed found in the pink box under the bed was yours
10:57:24AM 7 and only yours.

10:57:24AM 8 Q. And what was his response?

10:57:26AM 9 A. Yes, sir.

10:57:26AM 10 Q. Now, what would be the point of asking
10:57:28AM 11 him a clarification question like that?

10:57:30AM 12 A. The point would be claiming sole
10:57:34AM 13 ownership of the contraband and eliminating anybody
10:57:38AM 14 else from the contraband.

10:57:40AM 15 Q. And please read to the Court the last
10:57:46AM 16 question that you asked the Defendant.

10:57:48AM 17 A. Was this statement given under your own
10:57:52AM 18 free will and no threats or promises made.

10:57:56AM 19 Q. How did the Defendant respond?

10:57:58AM 20 A. Yes.

10:57:58AM 21 Q. Did he initial next to that?

10:58:00AM 22 A. He did.

10:58:00AM 23 Q. Was the Defendant shaking when he
10:58:02AM 24 answered these questions?

10:58:04AM 25 A. No.

CHARLES MYERS - DIRECT EXAM BY MR. LEWIS

11:40:28AM 1 A. Yes, sir.

11:40:28AM 2 Q. What did you say?

11:40:28AM 3 A. I said, whatever in that house don't

11:40:32AM 4 have nothing to do with me, because I don't stay

11:40:34AM 5 here. I don't live here.

11:40:36AM 6 Q. And then what happened?

11:40:36AM 7 A. Then they closed the door, slammed the

11:40:38AM 8 door, walked off again.

11:40:40AM 9 Q. What happened next?

11:40:42AM 10 A. Next Detective Foster came by himself.

11:40:46AM 11 Q. What did he say?

11:40:48AM 12 A. He stated to me, man, are you going to

11:40:50AM 13 let your girlfriend and her mom go down for your

11:40:54AM 14 drugs.

11:40:54AM 15 Q. How did you respond?

11:40:56AM 16 A. That it ain't got nothing to do with

11:41:00AM 17 me, that's their house, I don't live there.

11:41:02AM 18 Q. Then what?

11:41:02AM 19 A. He slammed the door, go on and he left.

11:41:06AM 20 Waited for a little while, he came back. You know,

11:41:10AM 21 he said, man, a real man wouldn't let his

11:41:14AM 22 girlfriend and mother-in-law go to jail like that

11:41:16AM 23 over drugs in the house.

11:41:18AM 24 Q. What did you say?

11:41:20AM 25 A. I said, well, to be honest with you, I

CHARLES MYERS - DIRECT EXAM BY MR. LEWIS

11:41:22AM 1 don't want her mom to go to jail, so I'll own up to
11:41:26AM 2 the drugs.

11:41:26AM 3 Q. Okay. What did you think would happen
11:41:30AM 4 to them if you hadn't given a statement?

11:41:32AM 5 A. They was going to jail.

11:41:34AM 6 Q. Your girlfriend?

11:41:34AM 7 A. Yes, sir.

11:41:34AM 8 Q. And her mom?

11:41:36AM 9 A. Yes, sir.

11:41:36AM 10 Q. What does Crystal Nelson mean to you?

11:41:40AM 11 A. A lot. We've been together for 18
11:41:44AM 12 years.

11:41:44AM 13 Q. Okay. A lot happen in that 18 years?

11:41:48AM 14 A. Yes, sir.

11:41:48AM 15 Q. Do you have any kids together?

11:41:48AM 16 A. We lost -- we lost two, I think. I
11:41:54AM 17 want to say we lost two.

11:41:56AM 18 Q. So miscarriages?

11:42:00AM 19 A. Yes, sir.

11:42:00AM 20 Q. I know it's -- different people have
11:42:06AM 21 different beliefs about mother-in-laws, but how did
11:42:08AM 22 you feel about Shirley Nelson?

11:42:12AM 23 A. She was like a second mother to me.

11:42:14AM 24 Q. Would you want her to go to jail?

11:42:16AM 25 A. No, sir.

CHARLES MYERS - DIRECT EXAM BY MR. LEWIS

11:42:16AM 1 Q. What would have happened if you had not
11:42:20AM 2 given a statement to Foster that day?

11:42:20AM 3 A. They was going to lock her and her mom
11:42:24AM 4 up.

11:42:24AM 5 Q. Did you believe that?

11:42:26AM 6 A. Yes, sir.

11:42:26AM 7 Q. Did he tell you that?

11:42:26AM 8 A. Yes, sir.

11:42:28AM 9 Q. And that's what you thought would
11:42:30AM 10 happen?

11:42:30AM 11 A. Yes, sir.

11:42:30AM 12 Q. If you had been there by yourself and
11:42:34AM 13 they hadn't been there, would you have given the
11:42:36AM 14 police a statement?

11:42:38AM 15 A. No, sir.

11:42:38AM 16 Q. So why did you give them a statement?

11:42:40AM 17 A. Because they threatened me, saying they
11:42:44AM 18 were going to lock her and her momma up.

11:42:46AM 19 Q. Okay. Now, you said the word threaten?

11:42:48AM 20 A. Yes, sir.

11:42:50AM 21 Q. Did you feel that was threatening to
11:42:52AM 22 you?

11:42:52AM 23 A. Yes, sir.

11:42:52AM 24 Q. Did you think it was the truth; that if
11:42:54AM 25 you didn't give a statement, they would lock up

CHARLES MYERS - DIRECT EXAM BY MR. LEWIS

11:42:58AM 1 everybody in the house?

11:42:58AM 2 A. Yes, sir.

11:42:58AM 3 Q. What was your -- what were your
11:43:02AM 4 choices? What could you decide between?

11:43:04AM 5 A. They go to jail or I go to jail. Take
11:43:10AM 6 the charge --

11:43:12AM 7 Q. Okay.

11:43:12AM 8 A. -- so they wouldn't go to jail.

11:43:14AM 9 Q. That's why you did what you did?

11:43:16AM 10 A. That's why I did what I did.

11:43:22AM 11 MR. LEWIS: Okay. One second, Judge?

11:43:24AM 12 THE COURT: Yes, sir.

11:43:24AM 13 MR. LEWIS: No further questions.

11:43:36AM 14 THE COURT: Solicitor?

11:43:36AM 15 CROSS-EXAMINATION

11:43:36AM 16 BY MS. MULKEY:

11:43:42AM 17 Q. Afternoon, Mr. Myers.

11:43:42AM 18 A. Afternoon.

11:43:46AM 19 Q. You said you don't live at [REDACTED]

11:43:48AM 20 [REDACTED] Road?

11:43:48AM 21 A. No, ma'am.

11:43:50AM 22 Q. Do you stay there with Crystal?

11:43:52AM 23 A. I spend the night from time to time.

11:43:54AM 24 Q. I mean, you guys have been together

11:43:56AM 25 18 years; you probably stay over pretty regularly.

12:43:52PM 1 concern.

12:43:54PM 2 But the heart of this is that threat.

12:43:58PM 3 I can't tell you how I would have responded in that

12:44:00PM 4 situation, but I know that I would do whatever I

12:44:04PM 5 could to protect my family and I think that's what

12:44:06PM 6 Charles was doing, and would not have, but for the

12:44:10PM 7 threat being made. And because of that, his

12:44:12PM 8 statement is not voluntary, it was the product of

12:44:16PM 9 this threat. That's why he made the statement.

12:44:18PM 10 But for the threat, no statement; and that's the

12:44:22PM 11 problem, Judge.

12:44:24PM 12 THE COURT: Thank you.

12:44:30PM 13 Anything in response, Solicitor?

12:44:32PM 14 MS. MULKEY: Your Honor, the only thing

12:44:34PM 15 that the State would like to mention is that one of

12:44:38PM 16 the factors that we did not address when you were

12:44:40PM 17 taking the totality of circumstances approach,

12:44:42PM 18 there's some case law that the Defendant's

12:44:46PM 19 background and experience with the criminal justice

12:44:52PM 20 system is relevant and to that the State submits

12:44:56PM 21 that was not the Defendant's first rodeo.

12:44:58PM 22 THE COURT: Thank you. Thank you very

12:45:00PM 23 much.

12:46:20PM 24 Corns is kind of an interesting case.

12:46:24PM 25 I can't quite wrap my mind around how they end up

12:46:28PM 1 investigating him for armed robberies and when they
12:46:30PM 2 execute the search warrant in Savannah, I think in
12:46:36PM 3 Savannah, they find dark clothing, a ski mask,
12:46:40PM 4 gloves, weapons, ammunition, a diamond ring, a
12:46:42PM 5 watch, two bank bags, a wallet and purse and yellow
12:46:44PM 6 tape.

12:46:46PM 7 They also found marijuana in two
12:46:50PM 8 places, inside the house and in the car. So he
12:46:54PM 9 ended up appealing his possession of marijuana with
12:46:58PM 10 an intent to distribute. I don't know what
12:47:00PM 11 happened to these other charges, but you would kind
12:47:04PM 12 of think that would be the least of Mr. Corns'
12:47:06PM 13 issues in that regard.

12:47:12PM 14 It was -- he was under arrest at the
12:47:16PM 15 time. Of course Mr. Myers was detained at the
12:47:20PM 16 time. The Detective testified he advised Corns of
12:47:26PM 17 his Miranda rights and then Corns stated he
12:47:30PM 18 understood those rights. The Detective testified
12:47:32PM 19 that he did not threaten or intimidate Corns. He
12:47:38PM 20 admitted, and that's the Court's words. During the
12:47:42PM 21 interview he informed Corns he had a warrant for
12:47:46PM 22 Corns' wife and that his wife could be arrested and
12:47:50PM 23 that Department of Social Services could take his
12:47:52PM 24 children.

12:47:54PM 25 He further stated that after he advised

12:47:56PM 1 Corns of this, that Corns was very uneasy and then
12:48:00PM 2 stated something to the effect of, quote, I will
12:48:02PM 3 plead guilty to the marijuana, just don't mess with
12:48:06PM 4 my wife and kids, unquote.

12:48:10PM 5 Another Detective corroborated these
12:48:16PM 6 facts. Corns was -- Corns was told that his wife
12:48:22PM 7 would be involved in the marijuana, at which point
12:48:26PM 8 Corns indicated his wife had nothing to do with the
12:48:28PM 9 marijuana and he would claim it. They also had
12:48:34PM 10 informed him that they had a warrant for his wife,
12:48:36PM 11 so I couldn't quite track that.

12:48:42PM 12 And, then, November 28th, a month
12:48:46PM 13 later, they went back to Corns at Corns' request;
12:48:52PM 14 he said on that visit that the marijuana was his.
12:49:04PM 15 And then later -- they went back three or four days
12:49:10PM 16 later and reminded him that they had a warrant for
12:49:16PM 17 his wife's arrest and that DSS could take his
12:49:20PM 18 children. At that point he told them that he would
12:49:22PM 19 plead guilty to the marijuana and leave his wife
12:49:26PM 20 and children alone.

12:49:28PM 21 Justice Davy wrote this I believe --
12:49:34PM 22 no. I apologize, it was Judge Shaw from the Court
12:49:40PM 23 of Appeals.

12:49:46PM 24 Corns, of course, argued that these
12:49:48PM 25 statements were involuntarily made in response to

12:49:50PM 1 the threats that his wife could be arrested and his
12:49:54PM 2 children taken by DSS. According to Judge Shaw,
12:50:08PM 3 the reading of the record as a whole, with special
12:50:12PM 4 consideration of the testimony of the officers who
12:50:14PM 5 witnessed the oral statements, led to the
12:50:16PM 6 conclusion, at the very least, the officers coerced
12:50:22PM 7 Corns' confession on the marijuana by means of
12:50:26PM 8 veiled threats against his family.

12:50:30PM 9 I agree with the Solicitor that I have
12:50:38PM 10 to look at the totality of the circumstances, and
12:50:42PM 11 further, that the statements prove that his rights
12:50:48PM 12 were voluntarily waived, by a preponderance of the
12:50:54PM 13 evidence. The confession may not be extracted by
12:50:56PM 14 any sort of threats or violence, obtained by any
12:50:56PM 15 direct or implied promises, however slight, or by
12:51:00PM 16 the exertion of improper influence.

12:51:24PM 17 I think, given the totality of the
12:51:26PM 18 facts and circumstances and the officers'
12:51:28PM 19 testimony, which I find to be creditable, and I
12:51:30PM 20 further find that you cannot -- you can encourage
12:51:34PM 21 people to be truthful, to tell the truth -- you
12:51:36PM 22 cited that case, I think, Rochester, which puts up
12:51:42PM 23 that proposition. I believe it was Rochester where
12:51:46PM 24 a polygraph examiner said, help yourself, tell the
12:51:48PM 25 truth. I don't -- that's not coercion; however, I

12:51:56PM 1 cannot find -- I cannot find -- I do not find that
12:52:06PM 2 -- that the State has met its burden by the
12:52:10PM 3 preponderance of the evidence that the statement
12:52:14PM 4 was given voluntarily.

12:52:16PM 5 I think, given the fact that his wife
12:52:18PM 6 and mother-in-law could have been arrested, leads
12:52:26PM 7 me to conclude that the statement is not
12:52:32PM 8 admissible.

12:52:34PM 9 All right. Any other motions, Ms.
12:52:38PM 10 Solicitor?

12:52:40PM 11 MS. MULKEY: The State does not have
12:52:40PM 12 any.

12:52:42PM 13 MR. LEWIS: No, Judge.

12:52:42PM 14 THE COURT: Is that a no, sir?

12:52:44PM 15 MR. LEWIS: No, sir.

12:52:44PM 16 THE COURT: Thank you. Thank you very
12:52:48PM 17 much. 2:30, is that what we said? Will you be
12:52:50PM 18 ready to start?

12:52:52PM 19 MR. LEWIS: Yes, Your Honor.

12:52:54PM 20 THE COURT: All right. Thank you very
12:52:56PM 21 much. Court will be in recess until 2:30.

02:19:12PM 22 (A luncheon recess transpired.)

02:19:12PM 23 THE COURT: Anything from the State
02:35:18PM 24 before we bring in the jury?

02:35:22PM 25 MS. MULKEY: No, Your Honor.

02:48:40PM 1 Thank you very much. Solicitor, you may address
02:48:42PM 2 the jury.

02:49:02PM 3 MS. MULKEY: Good afternoon, ladies and
02:49:04PM 4 gentlemen. It is illegal to possess drugs.
02:49:10PM 5 Further, it is illegal to sell or distribute them
02:49:14PM 6 in any manner. Drugs are illegal. It is also
02:49:16PM 7 against the law to possess a firearm while
02:49:20PM 8 possessing certain quantities of drugs.

02:49:24PM 9 This is [REDACTED] Road. It's a
02:49:28PM 10 two-bedroom residence in the Wayland community of
02:49:32PM 11 North Charleston. On October 26, 2012, North
02:49:36PM 12 Charleston police detectives executed a lawful
02:49:40PM 13 search warrant at this residence and located inside
02:49:42PM 14 a trafficking weight of cocaine. They located
02:49:48PM 15 approximately 170 grams of marijuana, a loaded
02:49:50PM 16 firearm and some other contraband.

02:49:54PM 17 When detectives arrived that day, they
02:49:56PM 18 also located several people on scene, to include
02:50:00PM 19 the Defendant, his girlfriend, and her mother, who
02:50:02PM 20 live in this house. This is the front door to [REDACTED]
02:50:06PM 21 [REDACTED] Road. And throughout this trial you will
02:50:10PM 22 hear a variety of testimony. You will hear from
02:50:12PM 23 detectives who executed that lawful search warrant
02:50:16PM 24 that day, and that they located substances inside
02:50:18PM 25 that they believed to be illegal drugs.

02:50:22PM 1 You will hear that these drugs were
02:50:24PM 2 located in areas that the Defendant had access to
02:50:28PM 3 and control over. You will hear from the
02:50:32PM 4 Defendant's girlfriend who will say she stayed
02:50:36PM 5 there and shared a room with the Defendant, and you
02:50:38PM 6 will hear testimony that the substances found on
02:50:42PM 7 scene were in fact cocaine and marijuana.

02:50:46PM 8 Now, in South Carolina there are
02:50:50PM 9 classifications of crimes that we just go by. And
02:50:52PM 10 some of the classifications are such that crimes
02:50:56PM 11 are considered violent or nonviolent. Trafficking
02:51:02PM 12 cocaine is considered a violent crime.

02:51:06PM 13 At the end of this trial, I believe you
02:51:08PM 14 will be firmly convinced of the Defendant's guilt
02:51:10PM 15 and you will find him guilty on all three counts.
02:51:14PM 16 As I said in the beginning, drugs are illegal; and
02:51:16PM 17 on October 26, 2012, the Defendant was in
02:51:20PM 18 possession.

02:51:30PM 19 THE COURT: Thank you. Thank you very
02:51:38PM 20 much, Ms. Solicitor.

02:51:40PM 21 Mr. Lewis?

02:51:40PM 22 MR. LEWIS: Thank you, Judge.

02:51:40PM 23 Good afternoon, ladies and gentlemen.
02:51:42PM 24 My name is Ben Lewis. As I introduced myself to
02:51:46PM 25 you, I'm from the Public Defenders Office and I

02:51:48PM 1 represent Charles Myers.

02:51:50PM 2 I want to start a little bit where you
02:51:50PM 3 all started at the beginning of this week, which
02:51:54PM 4 was at voir dire. One of the questions that always
02:51:56PM 5 sticks out for me in my head is the question, have
02:52:00PM 6 any of you formed an opinion about the guilt or
02:52:02PM 7 innocence of Charles Myers, when you came in.

02:52:04PM 8 I know that before I was a lawyer,
02:52:06PM 9 human nature would be, I wonder what that guy did?
02:52:10PM 10 You come in and look at him and say, oh, what did
02:52:14PM 11 he do? The Judge asked you-all if you had formed
02:52:16PM 12 an opinion yet, and nobody raised their hand, but
02:52:20PM 13 everybody should have raised their hands. As he
02:52:24PM 14 sits here right now, Charles is innocent. He's an
02:52:26PM 15 innocent man. Your opinion is supposed to be that
02:52:28PM 16 he's an innocent man until they prove beyond a
02:52:32PM 17 reasonable doubt that he trafficked drugs and he
02:52:34PM 18 had a gun and they were under his control. You
02:52:38PM 19 haven't heard anything yet, so he has to be
02:52:40PM 20 innocent.

02:52:40PM 21 What I want you to consider is the same
02:52:44PM 22 things that any of us would think about to prove
02:52:46PM 23 possession. Do I possess these car keys?
02:52:50PM 24 (Indicating) Yes, I do. They're on me. Do I
02:52:56PM 25 possess those car keys? (Indicating) Yes, I do;

02:52:58PM 1 they still belong to me. How would we prove that
02:53:02PM 2 in a court of law? Well, you might be able to
02:53:04PM 3 track them back to my car. You might be able to
02:53:08PM 4 find out -- you know, they have to be mine, I saw
02:53:10PM 5 him put them down; the sort of evidence that we
02:53:14PM 6 would all look to know possession.

02:53:16PM 7 You will not have that in this case.
02:53:18PM 8 What you will have is a pink box with a gun in it
02:53:22PM 9 and some drugs in it under a bed. And that's it.
02:53:30PM 10 Is it Charles's? Is it Crystal's? Is it
02:53:36PM 11 Dorshea's? Is it Shirley's? Is it someone else's
02:53:38PM 12 that we don't know? Ask for proof, because right
02:53:44PM 13 now that man is innocent and he has to stay that
02:53:46PM 14 way until they can prove to you there is a reason
02:53:48PM 15 he did it.

02:53:50PM 16 Thank you, ladies and gentlemen.

02:53:52PM 17 THE COURT: Thank you. Thank you, Mr.
02:53:52PM 18 Lewis.

02:53:54PM 19 Solicitor, call your first witness.

02:53:56PM 20 MS. MULKEY: The State calls Crystal
02:54:00PM 21 Nelson.

02:54:00PM 22 THE COURT: All right. Ms. Nelson,
02:54:24PM 23 come to my front right and be sworn in, please.

02:54:42PM 24 CRYSTAL NELSON,
02:54:48PM 25 being first duly sworn, testified as follows:

CRYSTAL NELSON - DIRECT EXAM BY MS. MULKEY

02:55:26PM 1 A. In North Charleston.

02:55:28PM 2 Q. And what's your address?

02:55:30PM 3 A. [REDACTED] Road.

02:55:30PM 4 Q. About how long have you lived there?

02:55:34PM 5 A. Approximately -- I think it's two

02:55:38PM 6 years.

02:55:38PM 7 Q. And who do you live there with?

02:55:40PM 8 A. My mom.

02:55:42PM 9 Q. Did anyone else live there with you in

02:55:46PM 10 the past?

02:55:46PM 11 A. Can -- I don't know.

02:55:50PM 12 Q. Has anyone else stayed with you

02:55:52PM 13 overnight on a regular basis in the past?

02:55:52PM 14 A. Yes, ma'am.

02:55:54PM 15 Q. Do you know the Defendant, Charles

02:55:58PM 16 Myers?

02:55:58PM 17 A. Yes, ma'am.

02:55:58PM 18 Q. How do you know the Defendant?

02:56:00PM 19 A. Boyfriend.

02:56:02PM 20 Q. Do you see the Defendant in the

02:56:04PM 21 courtroom today?

02:56:06PM 22 A. Yes, ma'am.

02:56:06PM 23 Q. Could you please point the Defendant

02:56:08PM 24 out and tell the Court what he's wearing?

02:56:10PM 25 A. White shirt, black pants.

CRYSTAL NELSON - DIRECT EXAM BY MS. MULKEY

02:56:12PM 1 MS. MULKEY: I would like the record to
02:56:14PM 2 reflect the witness has identified the Defendant.
02:56:16PM 3 THE COURT: So reflected.
02:56:16PM 4 BY MS. MULKEY:
02:56:18PM 5 Q. And how long have you and Mr. Myers
02:56:20PM 6 dated?
02:56:20PM 7 A. On and off for like 13, 14 years.
02:56:24PM 8 Q. During that time, was he working?
02:56:28PM 9 A. Yes, ma'am, on and off.
02:56:30PM 10 Q. And at the time when he was arrested,
02:56:32PM 11 was he working?
02:56:34PM 12 A. I believe he was.
02:56:38PM 13 Q. Do you know what he was doing?
02:56:40PM 14 A. He was moving. He was working at a
02:56:46PM 15 moving and storage company.
02:56:46PM 16 Q. During your relationship, did you ever
02:56:52PM 17 spend the night together?
02:56:52PM 18 A. Yes.
02:56:54PM 19 Q. And where did you spend the night
02:56:56PM 20 together?
02:56:56PM 21 A. At my mom's house on Saratoga.
02:57:00PM 22 Q. Is that [REDACTED]
02:57:02PM 23 A. [REDACTED] Road.
02:57:02PM 24 Q. Did he stay there quite regularly when
02:57:06PM 25 you were dating?

CRYSTAL NELSON - DIRECT EXAM BY MS. MULKEY

02:57:08PM 1 A. Yes.

02:57:08PM 2 Q. Did he keep personal items at your

02:57:10PM 3 house?

02:57:12PM 4 A. Yes, ma'am.

02:57:12PM 5 Q. Like clothes?

02:57:14PM 6 A. Yes.

02:57:14PM 7 Q. Did he keep toiletries, toothbrushes

02:57:20PM 8 and things like that?

02:57:20PM 9 A. Yes, ma'am.

02:57:20PM 10 Q. Did he live there quite regularly?

02:57:24PM 11 A. On and off, yes.

02:57:26PM 12 Q. And where did he keep these items?

02:57:30PM 13 A. In my room.

02:57:32PM 14 Q. Did he keep them in an overnight bag?

02:57:36PM 15 A. No, ma'am.

02:57:38PM 16 Q. Did he ever help out around the house?

02:57:42PM 17 A. Yes, ma'am.

02:57:42PM 18 Q. Doing common chores?

02:57:44PM 19 A. Well, not really chores. Like -- he

02:57:48PM 20 helped out.

02:57:50PM 21 Q. And did he ever give you money towards

02:57:52PM 22 bills or groceries?

02:57:54PM 23 A. Yes, ma'am.

02:57:54PM 24 Q. And when he stayed overnight there on

02:58:00PM 25 Saratoga, where would he sleep?

CRYSTAL NELSON - DIRECT EXAM BY MS. MULKEY

02:58:02PM 1 A. In my room.

02:58:02PM 2 Q. How many bedrooms are in that home?

02:58:04PM 3 A. Two bedrooms.

02:58:06PM 4 Q. And who else stays there?

02:58:08PM 5 A. My mom.

02:58:10PM 6 Q. Do you remember on October 26th of

02:58:16PM 7 2012, when the North Charleston Police Department

02:58:18PM 8 served a search warrant at your house?

02:58:22PM 9 A. Yes.

02:58:22PM 10 Q. Were you home?

02:58:24PM 11 A. Yes, ma'am.

02:58:24PM 12 Q. Was the Defendant home?

02:58:26PM 13 A. Yes, ma'am. We'd just pulled up a few

02:58:28PM 14 minutes before they came.

02:58:30PM 15 Q. And did he stay with you the night

02:58:32PM 16 before that?

02:58:32PM 17 A. Yes, ma'am.

02:58:32PM 18 Q. And just to be clear, the night before

02:58:36PM 19 they served the search warrant, who stayed at the

02:58:38PM 20 house?

02:58:38PM 21 A. Me, Charles, and my mom.

02:58:42PM 22 Q. And do you know where he would stay

02:58:46PM 23 when he wasn't staying with you?

02:58:48PM 24 A. At his mom's.

02:58:50PM 25 Q. Do you know where that is?

CRYSTAL NELSON - DIRECT EXAM BY MS. MULKEY

02:58:52PM 1 A. On Albert Street.

02:58:54PM 2 Q. When he wasn't there, he was staying at

02:58:56PM 3 your house?

02:58:58PM 4 A. Yes, ma'am.

02:58:58PM 5 Q. Did he ever receive mail there?

02:59:00PM 6 A. Not at my address.

02:59:04PM 7 Q. Did he have a key to the residence?

02:59:06PM 8 A. Yes. He would have my key or my mom

02:59:10PM 9 would keep the door open for him or open the door

02:59:16PM 10 for him.

02:59:16PM 11 Q. Were there times when he would come and

02:59:18PM 12 go if you weren't there?

02:59:20PM 13 A. Yes, ma'am.

02:59:22PM 14 Q. Back to the search warrant that day.

02:59:22PM 15 Did the police locate any drugs that day?

02:59:24PM 16 A. Yes.

02:59:24PM 17 Q. Are you aware of what kinds of drugs

02:59:28PM 18 they located?

02:59:28PM 19 A. From what the search warrant said, I

02:59:32PM 20 think -- I can't remember what it was.

02:59:32PM 21 Q. Okay. That's fine. Do you know where

02:59:36PM 22 they located the drugs?

02:59:38PM 23 A. Yes, ma'am, I believe so.

02:59:40PM 24 Q. Sorry?

02:59:42PM 25 A. Yes, ma'am.

CRYSTAL NELSON - DIRECT EXAM BY MS. MULKEY

02:59:42PM 1 Q. Which bedroom was that?

02:59:44PM 2 A. In my room.

02:59:46PM 3 Q. And was that the room you shared with

02:59:48PM 4 the Defendant?

02:59:48PM 5 A. Yes, sir.

02:59:48PM 6 Q. And were they your drugs?

02:59:52PM 7 A. No.

02:59:52PM 8 Q. Had you brought them into the room?

02:59:54PM 9 A. No, ma'am.

02:59:54PM 10 Q. In your opinion, who did the drugs

02:59:58PM 11 belong to?

02:59:58PM 12 MR. LEWIS: Objection; calls for

03:00:00PM 13 speculation.

03:00:02PM 14 THE COURT: Rephrase the question,

03:00:04PM 15 Solicitor.

03:00:04PM 16 BY MS. MULKEY:

03:00:06PM 17 Q. Did those drugs belong to you?

03:00:06PM 18 A. No.

03:00:10PM 19 Q. And the only other person that shared

03:00:10PM 20 the room with you was the Defendant?

03:00:12PM 21 A. Yes, ma'am.

03:00:14PM 22 Q. And on the evening before they served

03:00:16PM 23 the search warrant, who was in that bedroom? Who

03:00:20PM 24 slept in that bedroom?

03:00:20PM 25 A. He did.

CRYSTAL NELSON - DIRECT EXAM BY MS. MULKEY

03:00:22PM 1 Q. With you?

03:00:22PM 2 A. Yes, ma'am.

03:00:22PM 3 Q. Okay. Did the police seize those

03:00:26PM 4 drugs?

03:00:28PM 5 A. Yes, sir.

03:00:28PM 6 Q. And did they seize any other items?

03:00:30PM 7 A. I think it was my handgun also.

03:00:36PM 8 Q. And your handgun, what kind of firearm

03:00:38PM 9 was that?

03:00:40PM 10 A. A 9-millimeter.

03:00:42PM 11 Q. Had you purchased that firearm?

03:00:44PM 12 A. Yes, ma'am.

03:00:46PM 13 Q. Where did you keep that firearm?

03:00:48PM 14 A. Under my bed.

03:00:50PM 15 Q. Where specifically under your bed did

03:00:54PM 16 you keep that firearm?

03:00:54PM 17 A. Inside a box that I got for a gift. I

03:00:58PM 18 kept it away from my nephews, because they came

03:01:02PM 19 over a lot, so I kept it away from them.

03:01:04PM 20 Q. So when was the last time that you had

03:01:06PM 21 seen that firearm?

03:01:08PM 22 A. The night before.

03:01:12PM 23 Q. The night before the search warrant was

03:01:14PM 24 the last time you saw the firearm?

03:01:16PM 25 A. Yes.

CRYSTAL NELSON - DIRECT EXAM BY MS. MULKEY

03:01:16PM 1 Q. And when you saw the firearm, please
03:01:22PM 2 reiterate what you did with it.

03:01:24PM 3 A. I put it inside the box and under my
03:01:30PM 4 bed, at the end of the bed.

03:01:30PM 5 Q. And you did that why?

03:01:34PM 6 A. To keep it away from my nephews so they
03:01:40PM 7 wouldn't try to get contact with the gun.

03:01:42PM 8 Q. Would you have been able to see that
03:01:44PM 9 box if you walked into the room?

03:01:46PM 10 A. No, ma'am.

03:01:46PM 11 Q. Was the Defendant in the room when you
03:01:48PM 12 put that gun away?

03:01:50PM 13 A. Not that I recall.

03:01:52PM 14 Q. Is it your testimony today that the
03:01:56PM 15 Defendant was not in the room when you put the gun
03:01:58PM 16 away?

03:01:58PM 17 A. No, ma'am.

03:02:00PM 18 Q. Just for clarification, did we meet
03:02:02PM 19 prior to this -- to you coming to court today?

03:02:06PM 20 A. Yes, ma'am.

03:02:06PM 21 Q. And at that point in time, did you tell
03:02:10PM 22 me that the Defendant was in the room when you put
03:02:14PM 23 the gun away?

03:02:14PM 24 A. Not when I put it inside, like to put
03:02:20PM 25 it away, but he was in the room.

CRYSTAL NELSON - DIRECT EXAM BY MS. MULKEY

03:02:22PM 1 Q. And was anybody else in the room with
03:02:26PM 2 you?

03:02:26PM 3 A. No, ma'am.

03:02:26PM 4 Q. And you put it into that box?

03:02:28PM 5 A. Yes, ma'am.

03:02:30PM 6 Q. Was anything else in the box when you
03:02:32PM 7 put the gun in there?

03:02:32PM 8 A. No, ma'am.

03:02:34PM 9 Q. Do you -- is that -- is that where the
03:02:40PM 10 police located that firearm when they came for the
03:02:44PM 11 search warrant?

03:02:44PM 12 A. I know they found it under the bed. I
03:02:48PM 13 don't know where -- if it was moved or anything, I
03:02:50PM 14 can't tell you because I wasn't in there.

03:02:52PM 15 Q. Did the police locate the firearm in
03:02:56PM 16 the box that you had put it in?

03:02:58PM 17 A. Yes.

03:02:58PM 18 Q. Is that the same box they located the
03:03:00PM 19 drugs in?

03:03:02PM 20 A. Yes.

03:03:02PM 21 Q. And did you put the drugs into that
03:03:04PM 22 box?

03:03:04PM 23 A. No, ma'am.

03:03:04PM 24 Q. Would it have been possible for the
03:03:08PM 25 Defendant to access that box that you put the

CRYSTAL NELSON - DIRECT EXAM BY MS. MULKEY

03:03:12PM 1 firearm in?

03:03:12PM 2 MR. LEWIS: Objection; calls for

03:03:14PM 3 speculation.

03:03:16PM 4 THE COURT: I haven't even heard the

03:03:18PM 5 question.

03:03:18PM 6 MS. MULKEY: For the Defendant to have

03:03:20PM 7 access to the box without her knowledge.

03:03:24PM 8 THE COURT: I'll overrule that

03:03:28PM 9 objection. You may answer the question.

03:03:30PM 10 THE WITNESS: Yes, ma'am.

03:03:30PM 11 BY MS. MULKEY:

03:03:32PM 12 Q. And were you surprised that the

03:03:34PM 13 detectives found drugs in the box where you put the

03:03:36PM 14 gun?

03:03:36PM 15 A. Yes, ma'am.

03:03:38PM 16 Q. Did the detectives ever ask you about

03:03:40PM 17 the drugs?

03:03:40PM 18 A. I can't recall.

03:03:40PM 19 Q. Were you ever concerned that the

03:03:42PM 20 detectives were there that day for you?

03:03:46PM 21 A. No, ma'am.

03:03:46PM 22 Q. Did they ever tell you that you were

03:03:48PM 23 under arrest?

03:03:48PM 24 A. No, ma'am.

03:03:48PM 25 Q. Were the detectives generally easy to

CRYSTAL NELSON - DIRECT EXAM BY MS. MULKEY

03:03:54PM 1 deal with that day?

03:03:56PM 2 A. Yes, ma'am; some of them were, some of
03:04:00PM 3 them weren't.

03:04:00PM 4 Q. Did they ever threaten you?

03:04:02PM 5 A. No.

03:04:02PM 6 Q. Did you hear the detectives threatening
03:04:06PM 7 anybody?

03:04:06PM 8 A. No, ma'am.

03:04:12PM 9 MS. MULKEY: Beg the Court's
03:04:12PM 10 indulgence?

03:04:12PM 11 THE COURT: Certainly.

03:04:12PM 12 BY MS. MULKEY:

03:04:38PM 13 Q. I just want to hit on a few points real
03:04:40PM 14 quick to make sure I understand, Ms. Nelson. You
03:04:46PM 15 testified that the Defendant and you shared that
03:04:48PM 16 room, correct?

03:04:50PM 17 A. Yes, ma'am.

03:04:50PM 18 Q. And who else shared that room with you?

03:04:52PM 19 A. Just me and him.

03:04:54PM 20 Q. Did anyone else have access to the
03:04:58PM 21 room, that you're aware of?

03:05:00PM 22 A. No, ma'am.

03:05:02PM 23 Q. And the night before the detectives
03:05:06PM 24 came, you placed that gun in the box?

03:05:10PM 25 A. Yes, ma'am.

CRYSTAL NELSON - CROSS EXAM BY MR. LEWIS

03:07:22PM 1 A. Yes.

03:07:24PM 2 Q. Charles?

03:07:24PM 3 A. Yes.

03:07:24PM 4 Q. Dorshea. I don't think she likes me

03:07:28PM 5 much, but she was there?

03:07:28PM 6 A. She pulled up like five minutes after.

03:07:32PM 7 Q. I mean, she was also detained with

03:07:34PM 8 everybody else? She was put in -- something on her

03:07:38PM 9 hands?

03:07:38PM 10 A. Yes.

03:07:38PM 11 Q. They did the same thing to you?

03:07:40PM 12 A. Yes.

03:07:40PM 13 Q. They did the same thing to your mom?

03:07:44PM 14 A. Yes.

03:07:44PM 15 Q. Everybody was locked up -- detained?

03:07:46PM 16 A. Yes.

03:07:46PM 17 Q. Let's talk briefly about the box

03:07:54PM 18 itself. What color was it?

03:07:56PM 19 A. Pink.

03:07:56PM 20 Q. Where was it from?

03:07:58PM 21 A. I think it was from Victoria's Secret.

03:08:02PM 22 Q. Is it a hatbox?

03:08:04PM 23 A. No.

03:08:04PM 24 Q. What came in it, do you remember?

03:08:06PM 25 A. Lotion, perfume, and a body wash.

CRYSTAL NELSON - REDIRECT EXAM BY MS. MULKEY

03:10:54PM 1 MR. LEWIS: Calls for speculation
03:10:56PM 2 again, Judge.
03:10:56PM 3 MS. MULKEY: I'll rephrase it.
03:11:00PM 4 THE COURT: I agree and I'll sustain
03:11:00PM 5 that objection.
03:11:02PM 6 MS. MULKEY: May I rephrase?
03:11:02PM 7 THE COURT: Ma'am?
03:11:04PM 8 MS. MULKEY: May I rephrase?
03:11:06PM 9 THE COURT: You can ask another
03:11:08PM 10 question.
03:11:08PM 11 MS. MULKEY: Yes, Your Honor.
03:11:08PM 12 BY MS. MULKEY:
03:11:10PM 13 Q. Did you tell either your mother or
03:11:14PM 14 Dorshea that you hid that gun in the box under the
03:11:16PM 15 bed?
03:11:16PM 16 A. No.
03:11:16PM 17 Q. Now, the Defendant knew you had a gun?
03:11:22PM 18 A. Yes, ma'am.
03:11:22PM 19 Q. Did he ever ask to borrow that gun?
03:11:26PM 20 A. No.
03:11:26PM 21 Q. After being together for about
03:11:30PM 22 14 years, did you both frequently share items
03:11:34PM 23 without asking to borrow them?
03:11:36PM 24 A. No.
03:11:36PM 25 Q. No. Okay. Did he ever touch that gun?

CRYSTAL NELSON - REDIRECT EXAM BY MS. MULKEY

03:11:42PM 1 A. He helped me put the bullets inside of
03:11:48PM 2 it.

03:11:48PM 3 Q. So he had had access to the gun
03:11:50PM 4 previously?

03:11:50PM 5 A. Yes, ma'am.

03:11:50PM 6 Q. And he helped you load bullets?

03:11:54PM 7 A. Yes.

03:11:54PM 8 Q. Okay. And he was aware that you had
03:11:56PM 9 it?

03:11:56PM 10 A. Yes, ma'am.

03:11:56PM 11 Q. And at some point previously he had --
03:12:00PM 12 he had handled the gun?

03:12:00PM 13 A. Yes, ma'am.

03:12:06PM 14 MS. MULKEY: The State has no further
03:12:08PM 15 questions.

03:12:08PM 16 THE COURT: Thank you, Ms. Solicitor.
03:12:10PM 17 Mr. Lewis, any recross?

03:12:12PM 18 MR. LEWIS: I don't know yet, one
03:12:14PM 19 second.

03:12:16PM 20 THE COURT: Certainly.

03:12:16PM 21 MR. LEWIS: No further questions.

03:12:18PM 22 THE COURT: Thank you. Thank you very
03:12:20PM 23 much, Ms. Nelson. You may step down.

03:12:40PM 24 All right. You may call your next
03:12:42PM 25 witness.

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

03:12:42PM 1 MS. MULKEY: Your Honor, the State
03:12:44PM 2 calls Detective Cerone.

03:12:46PM 3 THE COURT: All right. If you would
03:12:46PM 4 come around and be sworn for us, please.

03:13:08PM 5 TIREKA CERONE,
03:13:08PM 6 being first duly sworn, testified as follows:

03:13:12PM 7 THE CLERK: Take a seat, state your
03:13:14PM 8 first and last name and spell your last name.

03:13:20PM 9 THE WITNESS: I'm Detective Tireka Lynn
03:13:28PM 10 Cerone. First name is T-I-R-E-K-A, last name
03:13:32PM 11 C-E-R-O-N-E.

03:13:32PM 12 DIRECT EXAMINATION

03:13:32PM 13 BY MS. MULKEY:

03:13:36PM 14 Q. Thank you, Detective Cerone. Just for
03:13:38PM 15 clarification, the documentation in this case
03:13:42PM 16 refers to Detective Wright. Can you explain the
03:13:44PM 17 difference in names?

03:13:44PM 18 A. Yes, ma'am. The following year after
03:13:46PM 19 this case I got married and my name has changed.

03:13:50PM 20 Q. Where are you presently employed?

03:13:52PM 21 A. I'm currently employed with the City of
03:13:54PM 22 North Charleston.

03:13:56PM 23 Q. And how long have you worked there?

03:13:58PM 24 A. Four and a half years. I mean, I'm
03:14:00PM 25 sorry, seven.

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

03:14:02PM 1 Q. What type of training and education is
03:14:06PM 2 required to become a police officer?

03:14:06PM 3 A. High school diploma, some college, and
03:14:14PM 4 you go to the South Carolina Criminal Justice
03:14:16PM 5 Academy.

03:14:16PM 6 Q. And do you have any advanced training
03:14:20PM 7 as it would relate to a case involving drugs?

03:14:22PM 8 A. Yes, ma'am. I went to the South
03:14:28PM 9 Carolina Criminal Justice Academy narcotics tech
03:14:30PM 10 school and I also went to the DEA narcotics school
03:14:34PM 11 also.

03:14:34PM 12 Q. Does your department conduct annual
03:14:40PM 13 training?

03:14:40PM 14 A. Yes, ma'am.

03:14:40PM 15 Q. And in that training, is there -- are
03:14:44PM 16 there topics to include ethics?

03:14:46PM 17 A. Yes, ma'am.

03:14:46PM 18 Q. Topics to include changes to the law?

03:14:50PM 19 A. Yes, sir.

03:14:50PM 20 Q. And what is your current assignment
03:14:52PM 21 with North Charleston?

03:14:54PM 22 A. Still considered a detective, but I'm
03:14:58PM 23 -- I'm on special assignment working with a program
03:15:00PM 24 called the STAND Program.

03:15:02PM 25 Q. Have you worked in any other units?

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

03:15:06PM 1 A. Just on the road and narcotics.

03:15:08PM 2 Q. And how long were you assigned to

03:15:10PM 3 narcotics?

03:15:10PM 4 A. Four and a half years.

03:15:12PM 5 Q. Was that your assignment on

03:15:16PM 6 October 26th of 2012?

03:15:16PM 7 A. Yes, ma'am.

03:15:16PM 8 Q. And did you have the occasion to become

03:15:20PM 9 involved in this case?

03:15:22PM 10 A. Yes, ma'am.

03:15:22PM 11 Q. Is [REDACTED] Road located in the

03:15:32PM 12 County of Charleston?

03:15:32PM 13 A. Yes, ma'am, it is.

03:15:34PM 14 Q. October 26, 2012, can you please tell

03:15:38PM 15 the jury what you did at [REDACTED] Road?

03:15:44PM 16 A. We executed a search warrant with our

03:15:46PM 17 ILP team, which is considered a SWAT team. They

03:15:52PM 18 entered the residence and we detained the residents

03:15:56PM 19 outside.

03:15:56PM 20 Q. And do you know approximately what time

03:16:00PM 21 that was?

03:16:00PM 22 A. It was around maybe 2ish in the

03:16:06PM 23 afternoon.

03:16:06PM 24 Q. Would it help if I provided you with

03:16:14PM 25 the report to help refresh your recollection?

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

03:16:18PM 1 A. Yes.

03:16:18PM 2 MR. LEWIS: She answered the question.

03:16:20PM 3 She said it was at two.

03:16:22PM 4 THE WITNESS: I said around 2ish.

03:16:22PM 5 MR. LEWIS: Around 2ish.

03:16:24PM 6 THE COURT: She can still refresh your

03:16:26PM 7 witness's memory under 8035, I believe, according

03:16:42PM 8 to the Court's recollection.

03:16:44PM 9 You may refresh her memory, Solicitor.

03:16:46PM 10 MS. MULKEY: May I approach the

03:16:48PM 11 witness, Your Honor?

03:16:52PM 12 THE COURT: Yes, ma'am.

03:16:52PM 13 BY MS. MULKEY:

03:16:52PM 14 Q. Detective Cerone, I'm showing you the

03:16:56PM 15 incident report in this case. Are you familiar

03:16:58PM 16 with that?

03:17:00PM 17 A. Yes, ma'am.

03:17:02PM 18 Q. And what time, approximately, was the

03:17:06PM 19 search warrant executed?

03:17:06PM 20 A. 5:45.

03:17:10PM 21 Q. And when you executed the search

03:17:12PM 22 warrant that day, did you locate anybody at the

03:17:14PM 23 residence?

03:17:16PM 24 A. Yes, ma'am, the Defendant, Charles

03:17:18PM 25 Myers, was there, Crystal Nelson, Crystal Nelson's

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

03:17:22PM 1 mother, and I believe her sister.

03:17:24PM 2 Q. Do you see the Defendant in the
03:17:26PM 3 courtroom today?

03:17:28PM 4 A. Yes, ma'am.

03:17:28PM 5 Q. Could you please point him out to the
03:17:30PM 6 jury and let us know what he's wearing?

03:17:34PM 7 A. He's the suspect right there with the
03:17:36PM 8 white shirt, black pants and low haircut.

03:17:40PM 9 MS. MULKEY: Please let the record
03:17:42PM 10 reflect that the witness has identified the
03:17:46PM 11 Defendant?

03:17:46PM 12 THE COURT: So reflected.

03:17:46PM 13 BY MS. MULKEY:

03:17:50PM 14 Q. Now, when you arrived, where was the
03:17:50PM 15 Defendant that day?

03:17:52PM 16 A. He was located in a vehicle in the
03:17:54PM 17 driveway, in the passenger seat, with his
03:17:56PM 18 girlfriend in the driver's seat.

03:17:58PM 19 Q. And did he happen to be wearing a work
03:18:02PM 20 uniform of any kind?

03:18:04PM 21 A. No.

03:18:04PM 22 Q. Did you complete a search of the
03:18:08PM 23 vehicle?

03:18:08PM 24 A. Yes, ma'am.

03:18:08PM 25 Q. Did you locate any items in that

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

03:18:10PM 1 vehicle?

03:18:10PM 2 MR. LEWIS: Judge, I just need to renew
03:18:14PM 3 my pretrial objection.

03:18:16PM 4 THE COURT: All right. Yes, sir. And
03:18:18PM 5 I would renew my previous ruling.

03:18:20PM 6 MR. LEWIS: Okay.

03:18:22PM 7 BY MS. MULKEY:

03:18:22PM 8 Q. Detective Cerone, pursuant to the
03:18:28PM 9 search warrant they executed, did you locate any
03:18:30PM 10 items in the vehicle that day?

03:18:34PM 11 A. Yes, ma'am. There was marijuana in the
03:18:34PM 12 glove box, baggies in a sandwich bag in the center
03:18:40PM 13 console, a digital scale under the passenger seat,
03:18:44PM 14 and also some weed on the seat of the passenger
03:18:48PM 15 seat.

03:18:50PM 16 MS. MULKEY: Your Honor, may I approach
03:18:50PM 17 the witness?

03:18:52PM 18 THE COURT: Yes, ma'am.

03:18:52PM 19 BY MS. MULKEY:

03:18:52PM 20 Q. I would like to show you, Detective
03:18:54PM 21 Cerone, what has been premarked as State's Exhibits
03:18:56PM 22 1, 2, and 3. Detective Cerone, if you could please
03:19:22PM 23 go through these items, there is 1, 2, and 3, and
03:19:26PM 24 advise the Court and the jury what these items are.

03:19:30PM 25 A. This is the box of the plastic baggies

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

03:22:18PM 1 MR. LEWIS: Objection, Your Honor.

03:22:20PM 2 She's going to give an opinion.

03:22:20PM 3 THE COURT: Let me hear the question,

03:22:22PM 4 Solicitor.

03:22:22PM 5 MS. MULKEY: My question, Your Honor,

03:22:24PM 6 would be, in her training and experience as a

03:22:28PM 7 narcotics detective, why would someone not only

03:22:30PM 8 carry but conceal these items under the -- within

03:22:36PM 9 the vehicle, the clear plastic baggies and a scale?

03:22:36PM 10 THE COURT: I think, based on her

03:22:38PM 11 training, both as an officer and her specific

03:22:44PM 12 training in narcotics, and her experience, I

03:22:46PM 13 believe she can give that opinion, Mr. Lewis, if

03:22:52PM 14 she has an opinion.

03:22:56PM 15 You may answer the question.

03:22:58PM 16 THE WITNESS: My experience is that

03:23:00PM 17 when those items are in the car, that's -- the

03:23:04PM 18 scale is for breaking down whatever product; put it

03:23:08PM 19 on the scale and sell it. So my opinion is that he

03:23:12PM 20 was selling it from the vehicle.

03:23:12PM 21 BY MS. MULKEY:

03:23:14PM 22 Q. And what did the baggies indicate to

03:23:16PM 23 you?

03:23:16PM 24 A. That's just packaging.

03:23:18PM 25 Q. Did you locate any marijuana in the

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

03:23:22PM 1 passenger's seat under the Defendant?

03:23:26PM 2 A. Yes, ma'am.

03:23:30PM 3 Q. Did Ms. Nelson have any drugs on her?

03:23:34PM 4 A. No, ma'am.

03:23:34PM 5 Q. In the search, did you locate any
03:23:36PM 6 supplies or clothing to indicate that someone may
03:23:40PM 7 be employed as a painter?

03:23:42PM 8 A. No, ma'am.

03:23:42PM 9 Q. Now, going into the residence, you were
03:23:46PM 10 executing that lawful search warrant that day,
03:23:48PM 11 correct?

03:23:48PM 12 A. Yes, ma'am.

03:23:48PM 13 Q. Does your report distinguish between
03:23:50PM 14 the two bedrooms?

03:23:52PM 15 A. Yes, ma'am. I marked one as bedroom 1
03:23:54PM 16 and one as bedroom 2.

03:23:56PM 17 Q. Were you able to determine through your
03:24:00PM 18 investigation who stayed in bedroom 1?

03:24:02PM 19 A. Yes, ma'am.

03:24:04PM 20 MR. LEWIS: Objection; calls for
03:24:04PM 21 hearsay.

03:24:06PM 22 THE COURT: I think you have to lay a
03:24:08PM 23 foundation.

03:24:10PM 24 BY MS. MULKEY:

03:24:10PM 25 Q. In your investigation that day, you

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

03:24:14PM 1 determined there to be two bedrooms in the home?

03:24:14PM 2 A. Yes, ma'am.

03:24:18PM 3 Q. And when you walked into the one
03:24:20PM 4 bedroom, let's say bedroom number 1, did you find
03:24:26PM 5 clothing?

03:24:26PM 6 A. Yes, ma'am. In bedroom number 1 we
03:24:30PM 7 found male clothing and female clothing.

03:24:32PM 8 Q. Was the clothing inside consistent as
03:24:36PM 9 to the Defendant?

03:24:36PM 10 MR. LEWIS: I guess an objection to
03:24:38PM 11 speculation on that. I don't think he's been
03:24:40PM 12 measured.

03:24:44PM 13 THE COURT: Well, her question is, was
03:24:48PM 14 that consistent, as opposed to -- I won't say as
03:24:54PM 15 what it's opposed to. You may ask that question.
03:24:54PM 16 BY MS. MULKEY:

03:25:04PM 17 Q. During the course of your investigation
03:25:06PM 18 that day, did you locate clothing in bedroom number
03:25:10PM 19 1 consistent in size to the Defendant?

03:25:12PM 20 A. Yes, ma'am.

03:25:12PM 21 Q. Was your investigation as to who stayed
03:25:16PM 22 in each room confirmed by the statements of the
03:25:18PM 23 other residents?

03:25:20PM 24 MR. LEWIS: Objection: Hearsay.

03:25:22PM 25 THE COURT: That would be hearsay if

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

03:25:24PM 1 it's not asserted to the truth.

03:25:26PM 2 MS. MULKEY: I'm not asking for the
03:25:28PM 3 statement, just if her investigation was confirmed.

03:25:36PM 4 THE COURT: Well, I'm going to sustain
03:25:38PM 5 that objection.

03:25:40PM 6 MR. LEWIS: Thank you.

03:25:40PM 7 MS. MULKEY: Thank you, Your Honor.

03:25:42PM 8 BY MS. MULKEY:

03:25:42PM 9 Q. What did you locate inside bedroom 1?

03:25:46PM 10 A. We located 34 grams of a white powdery
03:25:50PM 11 substance that tested positive for cocaine. We
03:25:54PM 12 also located some marijuana, 50 grams, and a
03:26:00PM 13 handgun. And some mail documents bearing Crystal
03:26:08PM 14 Nelson's name and Charles Myers' name.

03:26:10PM 15 Q. Did you find ammunition?

03:26:14PM 16 A. We also found some rounds, yes.

03:26:18PM 17 Q. And did you locate anything in the
03:26:22PM 18 bedroom you identified as bedroom number 2?

03:26:24PM 19 A. Yes, ma'am. Found some marijuana,
03:26:28PM 20 personal use, in Ms. Nelson's mother's nightstand.

03:26:32PM 21 Q. So you determined bedroom number 2 to
03:26:36PM 22 belong to whom?

03:26:36PM 23 A. Ms. Nelson's mother.

03:26:42PM 24 Q. Did you field-test the substances on
03:26:44PM 25 scene that day?

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

03:26:44PM 1 A. Yes, ma'am.

03:26:44PM 2 Q. Could you please explain to the jury
03:26:48PM 3 what a field test is?

03:26:48PM 4 A. It's a portable test kit that officers
03:26:52PM 5 use. You can just put a small amount of the drugs
03:26:54PM 6 in it and do whatever the instruction says on the
03:27:00PM 7 package, and it shows you that it comes back
03:27:02PM 8 positive or negative to the substance you put in
03:27:06PM 9 it.

03:27:06PM 10 Q. And just to clarify for the jury, what
03:27:10PM 11 were the results of your field test that day?

03:27:12PM 12 A. For the marijuana, it came back
03:27:16PM 13 positive for THC, which means it's marijuana. For
03:27:20PM 14 the cocaine, it came back positive for cocaine.

03:27:40PM 15 MS. MULKEY: May I approach?

03:27:42PM 16 THE COURT: Yes, ma'am.

03:27:42PM 17 BY MS. MULKEY:

03:27:42PM 18 Q. Detective Cerone, I'm now going to hand
03:27:44PM 19 you what has been marked as State's Exhibit Number
03:27:52PM 20 4. Have you see this before?

03:27:52PM 21 A. Yes, ma'am.

03:27:54PM 22 Q. What is that a picture of?

03:27:56PM 23 A. This is the box containing the drugs
03:27:58PM 24 that were found and the gun that was found in
03:28:02PM 25 Crystal Nelson's and Charles Myers' room.

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

03:38:42PM 1 MS. MULKEY: I'll withdraw that.

03:38:42PM 2 BY MS. MULKEY:

03:38:46PM 3 Q. I would like to talk a little bit about
03:38:48PM 4 the quantities of the drugs you located. Start
03:38:52PM 5 with the white powdery substance that you
03:38:56PM 6 determined to be cocaine. Now, you've been a
03:38:58PM 7 narcotics officer for how long?

03:39:00PM 8 A. Four and a half years.

03:39:00PM 9 Q. During that time you received advanced
03:39:02PM 10 training?

03:39:04PM 11 A. Yes, ma'am.

03:39:04PM 12 Q. And that was at a federal drug school?

03:39:08PM 13 A. Yes, ma'am.

03:39:08PM 14 Q. And in your experience as a narcotics
03:39:12PM 15 detective, do you deal with drugs daily?

03:39:14PM 16 A. On a regular basis.

03:39:16PM 17 Q. And are you familiar, based on that
03:39:20PM 18 experience, with quantities of personal use?

03:39:24PM 19 A. Yes, ma'am.

03:39:24PM 20 Q. And how much of that white powdery
03:39:30PM 21 substance that you believe to be cocaine, that
03:39:32PM 22 field-tested positive, how much did you locate that
03:39:36PM 23 day?

03:39:36PM 24 A. 34 grams.

03:39:36PM 25 Q. And in your training and experience as

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

03:39:40PM 1 a narcotics detective, is 35 grams consistent with
03:39:42PM 2 personal use?

03:39:44PM 3 A. Yes, ma'am.

03:39:44PM 4 MR. LEWIS: Objection, Judge; calls for
03:39:46PM 5 speculation or hearsay.

03:39:48PM 6 THE COURT: I'll overrule the
03:39:48PM 7 objection. You may answer the question if you know
03:39:52PM 8 the answer.

03:39:54PM 9 THE WITNESS: Yes, ma'am.

03:39:54PM 10 BY MS. MULKEY:

03:39:56PM 11 Q. Generally, in your training and
03:39:58PM 12 experience, what is one serving or dose?

03:40:00PM 13 A. One gram.

03:40:02PM 14 Q. And how much would that cost on the
03:40:06PM 15 street?

03:40:06PM 16 A. \$20.

03:40:08PM 17 Q. So what would be the street value, for
03:40:10PM 18 the amount of this white powdery substance that
03:40:14PM 19 field-tested positive for cocaine, be here?

03:40:18PM 20 A. Around 400.

03:40:22PM 21 Q. And moving on to the green plant
03:40:26PM 22 material, you said that field-tested positive for
03:40:28PM 23 THC?

03:40:28PM 24 A. Yes, ma'am.

03:40:30PM 25 Q. And what is THC a derivative of?

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

03:40:34PM 1 A. GPM. It's marijuana. It's just a
03:40:36PM 2 scientific term for it.

03:40:38PM 3 Q. And how much of that did you locate on
03:40:42PM 4 the scene that day?

03:40:42PM 5 A. Around 200 grams; a little bit under.

03:40:46PM 6 Q. And, again, in your training and
03:40:48PM 7 experience as a narcotics detective, do you deal
03:40:50PM 8 with marijuana on a regular basis?

03:40:52PM 9 A. Yes, ma'am.

03:40:54PM 10 Q. And do you deal with -- let me rephrase
03:41:00PM 11 it. Is 170 grams -- approximately 200 is what you
03:41:04PM 12 located. Is that consistent with personal use?

03:41:08PM 13 A. No, ma'am.

03:41:08PM 14 Q. Generally, how much is one serving or
03:41:12PM 15 one dose of marijuana?

03:41:12PM 16 A. About ten.

03:41:16PM 17 Q. Ten?

03:41:16PM 18 A. Ten grams, sorry.

03:41:18PM 19 Q. Ten grams. So how much would what you
03:41:24PM 20 found cost on the street?

03:41:26PM 21 A. Around 200.

03:41:34PM 22 Q. Now, in your training and experience,
03:41:38PM 23 were the amounts that you located consistent with
03:41:40PM 24 mere personal use?

03:41:42PM 25 A. No, ma'am.

TIREKA CERONE - DIRECT EXAM BY MS. MULKEY

03:41:44PM 1 Q. Were the amounts consistent with
03:41:48PM 2 someone in the business of dealing drugs?

03:41:50PM 3 A. Yes, ma'am.

03:41:50PM 4 Q. Do you recall if the green plant
03:41:54PM 5 material that was located near the Defendant in the
03:41:58PM 6 vehicle was similar to the --

03:42:00PM 7 MR. LEWIS: Objection, Your Honor. May
03:42:02PM 8 we approach?

03:42:04PM 9 THE COURT: Sure.

03:43:26PM 10 (Off-the-record conference.)

03:43:26PM 11 THE COURT: Thank you, Solicitor, and
03:43:28PM 12 thank you, Mr. Lewis.

03:43:28PM 13 BY MS. MULKEY:

03:43:30PM 14 Q. I would like to ask you a few questions
03:43:32PM 15 about the firearm. When Evidence receives it, what
03:43:42PM 16 do they do?

03:43:42PM 17 A. They run a swab test on it for
03:43:46PM 18 fingerprints and DNA.

03:43:48PM 19 Q. And do they have the option to perform
03:43:50PM 20 these tests?

03:43:52PM 21 A. No, ma'am; they always do it to
03:43:54PM 22 firearms.

03:43:54PM 23 Q. And what would be the reason for them
03:44:00PM 24 to do this?

03:44:00PM 25 A. Just in case it's stolen or it could be

TIREKA CERONE - CROSS EXAM BY MR. LEWIS

03:45:06PM 1 THE COURT: Certainly.

03:45:22PM 2 MS. MULKEY: Nothing further.

03:45:22PM 3 CROSS-EXAMINATION

03:45:22PM 4 BY MR. LEWIS:

03:45:24PM 5 Q. Detective Cerone, you're the case agent

03:45:26PM 6 on this case, right?

03:45:26PM 7 A. Yes, sir.

03:45:26PM 8 Q. That means the buck stops with you,

03:45:28PM 9 right?

03:45:28PM 10 A. Yes, sir.

03:45:30PM 11 Q. You do your job or you don't do it.

03:45:32PM 12 It's up to you whether to do a specific test?

03:45:36PM 13 A. Yes, ma'am.

03:45:36PM 14 Q. To have a witness interviewed?

03:45:38PM 15 A. Yes, sir.

03:45:38PM 16 Q. To have drugs forwarded to a different

03:45:42PM 17 lab for analysis?

03:45:44PM 18 A. Yes, sir.

03:45:44PM 19 Q. All of those decisions rest on your

03:45:48PM 20 shoulders?

03:45:48PM 21 A. Yes, sir.

03:45:48PM 22 Q. So if something is not done, that's on

03:45:52PM 23 you as well?

03:45:54PM 24 A. Yes, sir.

03:45:54PM 25 Q. Something that should have been done

TIREKA CERONE - CROSS EXAM BY MR. LEWIS

03:45:56PM 1 and it wasn't?

03:45:56PM 2 A. Yes, sir.

03:45:58PM 3 Q. Okay. What were the results of the

03:46:02PM 4 fingerprint or DNA analysis of that baggie of

03:46:06PM 5 cocaine that you found?

03:46:08PM 6 A. It didn't come back to anyone.

03:46:12PM 7 Q. Oh, so you actually tested it?

03:46:14PM 8 A. Yeah.

03:46:14PM 9 Q. You did?

03:46:16PM 10 A. Yeah.

03:46:16PM 11 Q. Do you have the report where you can

03:46:18PM 12 show that was tested?

03:46:20PM 13 A. Case file is back there. Oh, I have it

03:46:24PM 14 right here.

03:46:34PM 15 Q. I may be confused. Did you run DNA

03:46:38PM 16 tests on the bag of cocaine?

03:46:40PM 17 A. No.

03:46:40PM 18 Q. You didn't test to see who touched it?

03:46:44PM 19 A. No.

03:46:44PM 20 Q. Did you run fingerprint testing on the

03:46:46PM 21 bag of cocaine?

03:46:48PM 22 A. No.

03:46:48PM 23 Q. So you didn't run a test to see who had

03:46:50PM 24 touched it?

03:46:50PM 25 A. No.

TIREKA CERONE - CROSS EXAM BY MR. LEWIS

03:46:50PM 1 Q. Okay. You did run DNA testing on the
03:46:54PM 2 gun?

03:46:56PM 3 A. Yes.

03:46:56PM 4 Q. Because someone else said, that's what
03:46:58PM 5 we always do?

03:47:00PM 6 A. Yes.

03:47:00PM 7 Q. Did you run DNA testing on the bag of
03:47:04PM 8 marijuana?

03:47:04PM 9 A. No.

03:47:04PM 10 Q. Did you run fingerprint testing on the
03:47:06PM 11 bag of marijuana?

03:47:08PM 12 A. No.

03:47:08PM 13 Q. Okay. So, forensically, in this case
03:47:12PM 14 we have absolutely no evidence of what anything
03:47:14PM 15 belongs to? None, no fingerprints, no DNA, no
03:47:20PM 16 cameras, no eyewitnesses, nothing, right?

03:47:26PM 17 A. Yes, sir.

03:47:28PM 18 Q. This photo doesn't necessarily do this
03:47:32PM 19 justice. What color was that, the box it's in?

03:47:36PM 20 A. Pink and white.

03:47:36PM 21 Q. Pink? Pink and white?

03:47:40PM 22 A. Yes, ma'am.

03:47:40PM 23 Q. Okay. And it was under a bed that you
03:47:50PM 24 identified as bedroom I guess 2?

03:47:52PM 25 A. No.

TIREKA CERONE - CROSS EXAM BY MR. LEWIS

03:47:52PM 1 Q. One?

03:47:54PM 2 A. Yes, sir.

03:47:54PM 3 Q. Okay. So at this point you don't have

03:48:00PM 4 any eyewitnesses or any way of saying who put those

03:48:04PM 5 items in the box; you don't know?

03:48:06PM 6 A. No, sir.

03:48:10PM 7 MR. LEWIS: One moment, Judge.

03:48:12PM 8 THE COURT: Certainly.

03:48:12PM 9 BY MR. LEWIS:

03:48:48PM 10 Q. Just briefly about the car itself and

03:48:54PM 11 the drugs found in the car. That was 18 grams of

03:49:00PM 12 marijuana, right? 17 plus one?

03:49:00PM 13 A. Yes.

03:49:06PM 14 Q. So given your dosage units that you

03:49:06PM 15 provided to the jury, ten grams is one. Eighteen

03:49:10PM 16 would be two, right?

03:49:12PM 17 A. Uh-huh.

03:49:12PM 18 Q. And there were two people in that car?

03:49:14PM 19 A. Yes, sir.

03:49:14PM 20 Q. Okay. And only one of them got

03:49:22PM 21 arrested?

03:49:22PM 22 A. Yes, sir.

03:49:22PM 23 MR. LEWIS: Thank you.

03:49:26PM 24 THE COURT: Redirect, Solicitor?

03:49:26PM 25 MS. MULKEY: Yes, Your Honor.

SHIRLEY NELSON - DIRECT EXAM BY MS. MULKEY

10:32:40AM 1 A. No. I go to dialysis. I've been
10:32:44AM 2 unemployed for awhile. I had about four strokes,
10:32:46AM 3 but I'm living and I'm making it so far.

10:32:48AM 4 Q. And where do you live, Ms. Nelson?

10:32:52AM 5 A. [REDACTED] Road.

10:32:56AM 6 Q. And how long have you lived there?

10:32:58AM 7 A. About two and a half years.

10:33:02AM 8 Q. And who do you live there with?

10:33:04AM 9 A. Me and my daughter, Crystal Nelson.

10:33:06AM 10 Q. Has anyone else lived with you?

10:33:08AM 11 A. No. Just me and her.

10:33:12AM 12 Q. Do you know the Defendant, Charles

10:33:16AM 13 Myers?

10:33:16AM 14 A. Yeah.

10:33:16AM 15 Q. Do you see him here in the courtroom
10:33:20AM 16 today?

10:33:20AM 17 A. Yeah. Yeah. Uh-huh, yes, I see him.

10:33:28AM 18 Q. Could you please point to him and
10:33:30AM 19 describe to the Court what he's wearing?

10:33:32AM 20 A. A blue shirt, sitting right there.

10:33:34AM 21 (Indicating)

10:33:36AM 22 MS. MULKEY: Please let the record
10:33:38AM 23 reflect that the witness has identified the
10:33:38AM 24 Defendant, Your Honor?

10:33:38AM 25 THE COURT: So reflected.

SHIRLEY NELSON - DIRECT EXAM BY MS. MULKEY

10:33:38AM 1 BY MS. MULKEY:

10:33:40AM 2 Q. Ms. Nelson, how do you know the
10:33:42AM 3 Defendant?

10:33:42AM 4 A. That's my daughter's -- he was my
10:33:46AM 5 daughter's boyfriend.

10:33:46AM 6 Q. And did he ever stay overnight with
10:33:48AM 7 Crystal at your house?

10:33:52AM 8 A. He might have, yes. That was her
10:33:54AM 9 boyfriend.

10:33:54AM 10 Q. And where did he sleep when he stayed
10:33:58AM 11 there?

10:33:58AM 12 A. In her room.

10:33:58AM 13 Q. Did he ever sleep in your room?

10:34:00AM 14 A. No, ain't no way.

10:34:02AM 15 Q. Do you remember when North Charleston
10:34:08AM 16 Police Department served a search warrant at your
10:34:10AM 17 house, ma'am?

10:34:10AM 18 A. How could I forget it? They bust the
10:34:12AM 19 door open and I was putting on makeup, supposed to
10:34:16AM 20 go out, and that was that.

10:34:16AM 21 Q. So when they showed up, what were you
10:34:18AM 22 doing?

10:34:18AM 23 A. Putting on makeup.

10:34:20AM 24 Q. Had you been home all day?

10:34:22AM 25 A. Been nowhere else.

SHIRLEY NELSON - DIRECT EXAM BY MS. MULKEY

10:34:24AM 1 Q. And do you recall if the Defendant had
10:34:26AM 2 stayed with Crystal the night before?

10:34:28AM 3 A. He might have.

10:34:30AM 4 Q. And would he have stayed in Crystal's
10:34:32AM 5 room?

10:34:32AM 6 A. That's the only place.

10:34:34AM 7 Q. Did anybody else stay in Crystal's
10:34:36AM 8 room?

10:34:38AM 9 A. No.

10:34:38AM 10 Q. And you said you had been home all day
10:34:42AM 11 before the police arrived?

10:34:44AM 12 A. Yeah. No, I had been to dialysis, I
10:34:46AM 13 think. If it's a good day, I had been to dialysis.

10:34:50AM 14 Q. And do you generally go into Crystal's
10:34:54AM 15 room?

10:34:54AM 16 A. No.

10:34:54AM 17 Q. When North Charleston came that day and
10:35:00AM 18 served the search warrant, did they issue you a
10:35:04AM 19 ticket?

10:35:04AM 20 A. Yes.

10:35:04AM 21 Q. What was the ticket for?

10:35:04AM 22 A. For the pipe they found and they said
10:35:10AM 23 they find some reefer in the house, in my room.

10:35:12AM 24 Q. And they found that where did you say?

10:35:16AM 25 A. On the floor.

SHIRLEY NELSON - DIRECT EXAM BY MS. MULKEY

10:35:18AM 1 Q. In your room?

10:35:20AM 2 A. Yeah.

10:35:20AM 3 Q. Okay. And did you pay the ticket?

10:35:22AM 4 A. Yes. Yes, I did.

10:35:24AM 5 Q. So did you accept responsibility for

10:35:26AM 6 what they found in your room?

10:35:28AM 7 A. Yeah, because it's my room.

10:35:30AM 8 Q. And, Ms. Nelson, did the police find

10:35:34AM 9 any cocaine in your bedroom?

10:35:36AM 10 A. No.

10:35:36AM 11 Q. Do you use cocaine?

10:35:38AM 12 A. Oh, no.

10:35:38AM 13 Q. And just to make sure I'm clear, they

10:35:42AM 14 found a pipe and paraphernalia in your bedroom and

10:35:46AM 15 gave you a ticket?

10:35:48AM 16 A. Yeah.

10:35:48AM 17 Q. And you paid that ticket?

10:35:48AM 18 A. Yes.

10:35:48AM 19 Q. How many people have keys to your

10:35:52AM 20 house?

10:35:52AM 21 A. Only two people.

10:35:54AM 22 Q. Has anyone ever broken into your home?

10:35:56AM 23 A. No.

10:35:56AM 24 Q. Did anyone break into your house the

10:36:00AM 25 night before North Charleston served that search

SHIRLEY NELSON - DIRECT EXAM BY MS. MULKEY

10:39:32AM 1 THE COURT: Well, ask her those
10:39:32AM 2 questions.

10:39:34AM 3 BY MS. MULKEY:

10:39:34AM 4 Q. Were you present when North Charleston
10:39:36AM 5 Police Department served a search warrant?

10:39:38AM 6 A. When they -- after they bust the door,
10:39:42AM 7 then they went to searching everything in the
10:39:44AM 8 house, throwing up this and that and that and this.
10:39:46AM 9 And they did -- I found out later while I was
10:39:52AM 10 outside that they did find drugs in the house.

10:39:56AM 11 Q. And did you find out that information
10:39:58AM 12 as a result of being on scene that day?

10:40:00AM 13 A. Yes.

10:40:00AM 14 Q. And somebody told you they found drugs?

10:40:04AM 15 A. Yeah; the policeman.

10:40:04AM 16 Q. The police officers told you they found
10:40:08AM 17 drugs that day?

10:40:08AM 18 A. Yes.

10:40:10AM 19 Q. And to your knowledge, did they recover
10:40:12AM 20 drugs in your house?

10:40:12AM 21 A. Yeah. They said they did.

10:40:14AM 22 Q. And, to your knowledge, where did they
10:40:18AM 23 recover those items?

10:40:18AM 24 A. That was in Crystal's room.

10:40:20AM 25 MR. LEWIS: And that's my issue, Judge.

SHIRLEY NELSON - DIRECT EXAM BY MS. MULKEY

10:40:24AM 1 THE COURT: What's the foundation of
10:40:28AM 2 the knowledge? Just because -- is it just the
10:40:32AM 3 officer told her that?

10:40:32AM 4 BY MS. MULKEY:

10:40:34AM 5 Q. Did you receive a copy of the search
10:40:36AM 6 warrant? Did they leave a copy afterwards?

10:40:38AM 7 A. They put it down there, but they never
10:40:42AM 8 -- they showed it to each other. They put it in
10:40:42AM 9 the house somewhere.

10:40:44AM 10 Q. So they left a copy at the house?

10:40:46AM 11 A. Yeah.

10:40:46AM 12 Q. Did you ever have a chance to read
10:40:48AM 13 that, look it over?

10:40:52AM 14 A. Yeah.

10:40:52AM 15 Q. Did you see in that return what items
10:40:56AM 16 they recovered?

10:40:56AM 17 A. Crack cocaine and reefer, something
10:41:00AM 18 like that. I was very shocked. I didn't even
10:41:00AM 19 know.

10:41:06AM 20 MS. MULKEY: And, Your Honor, the State
10:41:06AM 21 would submit that if she read the return, that she
10:41:10AM 22 had knowledge that they had recovered drugs.

10:41:12AM 23 MR. LEWIS: That would also be hearsay,
10:41:14AM 24 Judge. That would be hearsay within hearsay,
10:41:16AM 25 but...

SHIRLEY NELSON - DIRECT EXAM. BY MS. MULKEY

11:08:00AM 1 A. No.

11:08:00AM 2 Q. Other than the marijuana that was

11:08:02AM 3 recovered and the pipe from your room, did you ever

11:08:06AM 4 put any drugs in Crystal's room?

11:08:08AM 5 A. No.

11:08:08AM 6 Q. Did you put any marijuana in a box with

11:08:16AM 7 a gun?

11:08:16AM 8 A. No.

11:08:16AM 9 Q. Did you put any cocaine in a box with a

11:08:20AM 10 gun?

11:08:20AM 11 A. No.

11:08:20AM 12 Q. Did Crystal ever tell you she hid her

11:08:24AM 13 gun?

11:08:24AM 14 A. I know she had it, but I didn't know

11:08:26AM 15 where it was.

11:08:26AM 16 Q. Did she ever tell you that she hid it?

11:08:30AM 17 A. No.

11:08:30AM 18 Q. Did she ever indicate where she would

11:08:34AM 19 hide it?

11:08:36AM 20 A. No.

11:08:36AM 21 Q. Ms. Nelson, has anyone promised you

11:08:40AM 22 anything in exchange for your testimony today?

11:08:40AM 23 A. No.

11:08:42AM 24 MS. MULKEY: Thank you. Please answer

11:08:44AM 25 any questions the defense may have.

SHIRLEY NELSON - REDIRECT/RECROSS EXAM BY MS. MULKEY/MR. LEWIS

11:14:00AM 1 THE COURT: Ms. Nelson, you may step
11:14:00AM 2 down.

11:14:00AM 3 THE WITNESS: Okay.

11:14:14AM 4 THE COURT: All right. Solicitor, you
11:14:16AM 5 may call your next witness.

11:14:16AM 6 MS. MULKEY: At this time, Your Honor,
11:14:18AM 7 the State rests.

11:14:18AM 8 THE COURT: Thank you. Thank you very
11:14:18AM 9 much.

11:14:24AM 10 Madame Forelady, and ladies and
11:14:26AM 11 gentlemen of the jury, if you would please step to
11:14:26AM 12 the jury room and take about a 15-minute recess.
11:14:30AM 13 Thank you.

11:14:34AM 14 (Jury out, 11:13 a.m.)

11:14:56AM 15 THE COURT: Any motions, Mr. Lewis?

11:14:58AM 16 MR. LEWIS: Yes, Your Honor.

11:15:00AM 17 THE COURT: All right.

11:15:02AM 18 MR. LEWIS: At this time, the defense
11:15:02AM 19 moves for a directed verdict on the case.

11:15:08AM 20 Specifically, at this point, there has to be more
11:15:10AM 21 than just mere suspicion that Charles is the person
11:15:14AM 22 responsible for the drugs, gun -- or cocaine, gun,
11:15:16AM 23 and marijuana found in the home.

11:15:20AM 24 At this stage, the evidence that's
11:15:20AM 25 before the Court is that several adults had access

11:15:26AM 1 to it. Two of them have testified and said they
11:15:28AM 2 didn't put that there, but to call any attention to
11:15:30AM 3 the fact that Charles hasn't testified would be
11:15:32AM 4 basically calling into question his right to remain
11:15:36AM 5 silent.

11:15:36AM 6 At this point, there is as much
11:15:38AM 7 evidence in the record that Crystal had control and
11:15:42AM 8 dominion over the gun and drugs as Charles did.
11:15:44AM 9 And, given that, we're moving for a directed
11:15:48AM 10 verdict at this point because there's no other
11:15:50AM 11 evidence that could lead to his guilt.

11:15:52AM 12 THE COURT: Thank you. Thank you very
11:15:54AM 13 much.

11:15:54AM 14 Ms. Solicitor?

11:15:54AM 15 MS. MULKEY: Thank you, Your Honor.
11:15:56AM 16 May it please the Court?

11:15:56AM 17 As Your Honor is well aware, at this
11:16:00AM 18 stage you are to consider the existence or
11:16:04AM 19 nonexistence of evidence and not the weight. The
11:16:04AM 20 State believes that there's been substantial
11:16:06AM 21 circumstantial evidence presented which, taken in
11:16:08AM 22 the light most favorable to the State, reasonably
11:16:12AM 23 tends to prove the guilt of the Defendant.

11:16:14AM 24 Evidence at this point is not required
11:16:14AM 25 conclusively to point to the Defendant's guilt to

11:16:18AM 1 the exclusion of every other reasonable hypothesis;
11:16:24AM 2 and, therefore, the State believes we have
11:16:24AM 3 presented evidence that displays genuine issues of
11:16:26AM 4 fact, which are proper for presenting to a jury.

11:16:28AM 5 If Your Honor is so inclined, I can
11:16:30AM 6 elaborate on that.

11:16:32AM 7 THE COURT: No, that's fine, Solicitor.

11:16:36AM 8 MS. MULKEY: Thank you.

11:16:50AM 9 THE COURT: All right. I deny the
11:23:40AM 10 motion for a directed verdict as to the trafficking
11:23:46AM 11 in cocaine, to possession with intent to distribute
11:23:46AM 12 marijuana, and as to possession of a firearm during
11:23:48AM 13 the commission of a violent crime.

11:23:50AM 14 MR. LEWIS: Yes, Your Honor.

11:23:52AM 15 THE COURT: The testimony is such that
11:23:56AM 16 Ms. Crystal Nelson claimed ownership of the gun,
11:24:02AM 17 but not of the drugs, and that they were not there
11:24:08AM 18 -- I think she actually testified that she had seen
11:24:10AM 19 the gun the day before. It was in the box the day
11:24:18AM 20 before the execution of the search warrant, and
11:24:20AM 21 there were no drugs in the pink box at that time.

11:24:30AM 22 The testimony from the officers is,
11:24:34AM 23 there was cocaine, marijuana and the firearm all in
11:24:40AM 24 the same box. So she denied ownership of the
11:24:46AM 25 drugs. The jury could or could not believe her on

11:24:50AM 1 that issue or could or could not believe her on the
11:24:56AM 2 issue of the ownership of the gun. And even if
11:25:00AM 3 they believed she was the owner, I don't think the
11:25:04AM 4 person that commits a violent crime, or is
11:25:06AM 5 attempting to commit a violent crime, would have to
11:25:08AM 6 own the gun or own the knife which he or she was
11:25:14AM 7 using, or attempting to use, in the commission of a
11:25:16AM 8 violent crime.

11:25:16AM 9 So I think there is -- the testimony is
11:25:20AM 10 such that it wasn't her drugs. And I guess the
11:25:28AM 11 testimony from Ms. Nelson is she didn't know
11:25:32AM 12 anything about any drugs except the pipe that they
11:25:36AM 13 found in her bedroom. So that would be
11:25:40AM 14 circumstantial evidence that she had no knowledge
11:25:44AM 15 of any drugs in the house.

11:25:48AM 16 And she also testified she didn't even
11:25:50AM 17 know where the gun -- where her daughter Crystal
11:25:56AM 18 kept the gun. She knew she had a gun, but didn't
11:26:00AM 19 know where she kept it. The weight is certainly
11:26:02AM 20 present for both the trafficking in cocaine if you
11:26:06AM 21 believe the testimony of the -- the evidence
11:26:14AM 22 custodian, Ms. Mouzan -- that's on the possession
11:26:16AM 23 with intent to distribute marijuana -- Ms. Mouzan
11:26:24AM 24 and Ms. Black, I believe it was, the forensic drug
11:26:26AM 25 analysis, there's evidence that that weight was

11:26:34AM 1 present.

11:26:34AM 2 So I think there is substantial
11:26:40AM 3 circumstantial evidence in the record. And there
11:26:44AM 4 is also -- it's only speculative, but anyone else
11:26:48AM 5 who was ever in that room -- that's -- whether
11:26:54AM 6 someone is sleeping on the floor in that house or
11:26:58AM 7 not -- is speculative. That's not any -- that's
11:27:04AM 8 some kind of theory of third-party guilt. That
11:27:10AM 9 doesn't apply to Holmes, or Gay, or Parker, or
11:27:12AM 10 Williams, or any of the cases that I'm familiar
11:27:14AM 11 with. It's not inconsistent with Mr. Myers's
11:27:24AM 12 guilt.

11:27:26AM 13 So with that being said, I respectfully
11:27:30AM 14 deny those motions. I think if you're looking at
11:27:32AM 15 it in the light most favorable to the State, there
11:27:36AM 16 is sufficient circumstantial evidence as to each
11:27:42AM 17 charge.

11:27:44AM 18 Further, as the Defendant had requested
11:27:46AM 19 a charge on mere presence, I always do and intend
11:27:50AM 20 then to charge the hand of one, hand of all and
11:27:54AM 21 mere presence, because you -- they say in a lot of
11:27:58AM 22 cases it's mere presence: I wasn't an aider,
11:28:00AM 23 abetter, or accessory. The theory here of hand of
11:28:04AM 24 one, hand of all is going to apply also. You have
11:28:10AM 25 -- you have the evidence to where he was seated --

11:28:14AM 1 sitting in the vehicle, that marijuana was on that
11:28:18AM 2 seat, baggies in the console, and the other
11:28:24AM 3 marijuana I believe in the -- in the glove box.

11:28:30AM 4 All right. Does the Defendant intend
11:28:32AM 5 -- do you want me to question the Defendant about
11:28:34AM 6 his intentions to testify or not to testify,
11:28:36AM 7 Mr. Lewis?

11:28:36AM 8 MR. LEWIS: I do, Your Honor, but may I
11:28:38AM 9 address the hand of one charge briefly?

11:28:42AM 10 THE COURT: No, sir. You can put
11:28:44AM 11 something in the record, but I've ruled.

11:28:46AM 12 MR. LEWIS: I just want to put
11:28:48AM 13 something on the record.

11:28:48AM 14 THE COURT: Certainly, you can do that.

11:28:50AM 15 MR. LEWIS: Judge, at this point, I
11:28:50AM 16 don't think there's been any evidence in the record
11:28:52AM 17 to suggest that he would be working with anyone
11:28:56AM 18 else or that there was some sort of conspiracy
11:28:58AM 19 taking place. It's either his or someone else
11:29:02AM 20 that's present in the home. Nothing that would
11:29:02AM 21 suggest they were working together in this drug
11:29:08AM 22 distribution ring.

11:29:08AM 23 Ms. Nelson was never charged, they
11:29:10AM 24 didn't arrest her. They didn't arrest anybody but
11:29:12AM 25 Charles. So I think hand of one would be

11:29:14AM 1 inappropriate because the State hasn't argued that
11:29:18AM 2 Crystal was doing it and Charles was helping her.
11:29:22AM 3 There's no evidence in the record to suggest that
11:29:22AM 4 this was a conspiracy rather than one person
11:29:24AM 5 working alone.

11:29:26AM 6 THE COURT: When you take the fact that
11:29:28AM 7 he is sleeping in the bed with his number-one girl,
11:29:30AM 8 and in her pink and white box there is a
11:29:38AM 9 nine-millimeter weapon that is owned by her, and
11:29:40AM 10 there is cocaine that is in there, and she says,
11:29:46AM 11 that ain't my cocaine, but that's my gun, I think
11:29:50AM 12 there is sufficient evidence in the record -- when
11:29:52AM 13 you request a mere presence charge -- I mean, he's
11:29:58AM 14 -- you know, he's -- I don't know if it's a drug
11:30:02AM 15 house or not, but it's a drug bedroom.

11:30:06AM 16 MR. LEWIS: Yes, Your Honor. I just
11:30:06AM 17 needed to put that on the record.

11:30:08AM 18 In regards to questioning Charles, I've
11:30:10AM 19 told him that we would have this conference. I
11:30:14AM 20 believe that it is his intention not to testify,
11:30:16AM 21 but I think we need to go through the normal
11:30:18AM 22 procedure as to the Court questioning him about
11:30:20AM 23 that right that he would be relinquishing.

11:30:26AM 24 THE COURT: Please stand up, Mr. Myers.
11:30:28AM 25 Madame Clerk, would you place Mr. Myers under oath?

CHARLES MYERS - EXAM BY THE COURT

11:36:30AM 1 Q. Not to testify?

11:36:30AM 2 A. Yes, sir.

11:36:30AM 3 Q. That's your choice, your decision?

11:36:32AM 4 A. Yes, sir.

11:36:32AM 5 Q. Freely and voluntarily made?

11:36:34AM 6 A. Yes, sir.

11:36:34AM 7 Q. Thank you. Thank you very much,

11:36:38AM 8 Mr. Myers.

11:36:40AM 9 THE COURT: I find that the Defendant
11:36:44AM 10 has made his decision, he understands his right to
11:36:46AM 11 testify or not to testify, and he has chosen not to
11:36:52AM 12 testify, and his decision has been made freely,
11:36:56AM 13 knowingly and voluntarily.

11:36:58AM 14 All right. Does the State intend to
11:37:00AM 15 present any evidence or testimony in the case,
11:37:04AM 16 Mr. Lewis? Excuse me, the defense.

11:37:06AM 17 MR. LEWIS: No, Your Honor.

11:37:06AM 18 THE COURT: So are you ready to close?

11:37:10AM 19 MR. LEWIS: We would want to rest in
11:37:10AM 20 front of the jury.

11:37:12AM 21 THE COURT: I understand.

11:37:12AM 22 MR. LEWIS: I would have to renew my
11:37:16AM 23 motion. And then if the Court's -- if I can, maybe
11:37:20AM 24 have ten minutes to get ready for closing or maybe
11:37:24AM 25 we could have the lunch break and then close

11:37:26AM 1 afterwards? Either one is fine for me.

11:37:26AM 2 THE COURT: Either one is fine with me;
11:37:26AM 3 whatever you-all prefer.

11:37:28AM 4 MS. MULKEY: Your Honor, we're fine
11:37:30AM 5 with letting the jury have a lunch and being
11:37:32AM 6 prepared to come back for closing.

11:37:34AM 7 THE CLERK: Lunch is here at 12:30.

11:37:38AM 8 THE COURT: 12:30?

11:37:40AM 9 THE CLERK: Yes, sir.

11:37:40AM 10 THE COURT: Okay. Bring us our jury,
11:37:46AM 11 please. Anything further from the State or defense
11:37:48AM 12 before we bring in the jury?

11:37:50AM 13 MS. MULKEY: No, Your Honor.

11:37:50AM 14 MR. LEWIS: No, Your Honor.

11:37:52AM 15 THE COURT: Thank you.

11:39:06AM 16 (Jury in 11:38 a.m.)

11:39:22AM 17 THE BAILIFF: All jurors present and
11:39:24AM 18 seated.

11:39:24AM 19 THE COURT: Thank you. Thank you.

11:39:24AM 20 Madame Forelady, ladies and gentlemen
11:39:26AM 21 of the jury, welcome back. You have now heard all
11:39:32AM 22 of the evidence and all of the testimony you're
11:39:32AM 23 going to hear in the trial of this case from the
11:39:36AM 24 State in its case in chief.

11:39:38AM 25 As I told you before, the State has the

11:39:40AM 1 burden of proving its case, each and every element
11:39:44AM 2 of the indictments, beyond a reasonable doubt. The
11:39:48AM 3 Defendant is presumed to be innocent, regardless of
11:39:52AM 4 the serious matter -- what the seriousness of the
11:39:54AM 5 offence may be. The Defendant has no burden of
11:39:58AM 6 proving himself or herself innocent; however, a
11:40:02AM 7 criminal Defendant may present evidence and
11:40:04AM 8 testimony if he chooses to do so.

11:40:08AM 9 So we will now turn our attention to
11:40:14AM 10 Mr. Lewis, and ask Mr. Lewis, does the defense
11:40:18AM 11 intend to present evidence or testimony?

11:40:22AM 12 MR. LEWIS: No, Your Honor. The
11:40:24AM 13 defense rests.

11:40:24AM 14 THE COURT: Thank you. Thank you, Mr.
11:40:26AM 15 Lewis. With that being said, your motions are
11:40:28AM 16 noted and I will revisit those momentarily, Mr.
11:40:32AM 17 Lewis. With that being said, the stage of the
11:40:38AM 18 proceedings where we're at now is closing -- has
11:40:42AM 19 come to closing arguments. You will first hear
11:40:44AM 20 from the Solicitor, the party bearing the burden of
11:40:46AM 21 proof in the case, and thereafter you would hear
11:40:50AM 22 from Mr. Lewis on behalf of his client, Mr. Myers.

11:40:54AM 23 After the parties have made their
11:40:56AM 24 closing arguments to you, I will then instruct you
11:40:58AM 25 on the law as to the three charges in the

11:41:02AM 1 indictment and the case will be presented to you
11:41:06AM 2 and you will be instructed to begin your
11:41:08AM 3 deliberations and reach your true and just
11:41:14AM 4 verdicts.

11:41:18AM 5 The clerk said lunch would be here at
11:41:24AM 6 12:30. I think she has credibility with you-all
11:41:28AM 7 perhaps on her timing so I'm selling it like I
11:41:30AM 8 bought it. Okay? That's not what I said, but the
11:41:32AM 9 clerk, and I have great confidence in her. So I
11:41:36AM 10 think what I'm going to do is allow you to take a
11:41:40AM 11 recess and lunch will be here at 12:30. We will
11:41:50AM 12 start back at 1:15.

11:41:58AM 13 Does that give you enough time to start
11:42:00AM 14 back at 1:15?

11:42:00AM 15 THE JURY: (Nodding)

11:42:02AM 16 THE COURT: If you want to go out and
11:42:06AM 17 get fresh air or something, you're certainly
11:42:10AM 18 welcome to do so. I don't want them to have to
11:42:12AM 19 stay back there if they want to go out. Okay? But
11:42:18AM 20 if you would, have your lunch and then at 1:15 we
11:42:22AM 21 will start back. All right?

11:42:24AM 22 Thank you. Thank you very much. You
11:42:26AM 23 may go with the bailiff to the jury room.

11:42:28AM 24 (Jury out 11:41 a.m.)

11:42:54AM 25 THE COURT: All right. Motions, Mr.

11:42:56AM 1 Lewis?

11:42:56AM 2 MR. LEWIS: Judge, I would just renew
11:42:58AM 3 my motion for a directed verdict on the same
11:43:00AM 4 arguments that I previously presented.

11:43:02AM 5 THE COURT: All right. Thank you, Mr.
11:43:04AM 6 Lewis. And I would renew my previous rulings in
11:43:10AM 7 that regard.

11:43:12AM 8 You handed up two requested charges.
11:43:14AM 9 Solicitor, do you-all have any specific requested
11:43:16AM 10 charge?

11:43:18AM 11 MS. MULKEY: At this point, no, Your
11:43:18AM 12 Honor, we do not.

11:43:20AM 13 THE COURT: Okay.

11:43:20AM 14 MS. MULKEY: We would ask for
11:43:20AM 15 clarification on the one. We understand there are
11:43:24AM 16 two requests for a charge and the defense handed us
11:43:28AM 17 another case. Is this another request to charge?
11:43:34AM 18 Okay.

11:43:34AM 19 MR. LEWIS: That's because it's a newer
11:43:36AM 20 charge.

11:43:36AM 21 MS. MULKEY: Okay. We have nothing
11:43:38AM 22 further.

11:43:38AM 23 THE COURT: All right. You don't have
11:43:42AM 24 any objection to his requested charge?

11:43:42AM 25 MS. MULKEY: No, Your Honor, we do not.

01:28:42PM 1 ask you, ladies and gentlemen of the jury, to
01:28:44PM 2 please give the parties your complete and undivided
01:28:46PM 3 attention, as you have throughout the trial of this
01:28:48PM 4 case.

01:28:50PM 5 With that being said, Solicitor, you
01:28:54PM 6 may address the jury.

01:28:56PM 7 MS. MULKEY: Thank you, Your Honor.

01:29:06PM 8 Good afternoon, ladies and gentlemen.

01:29:08PM 9 As you've probably deduced by now, this is an
01:29:12PM 10 ordinary case. There aren't any exciting CSI
01:29:18PM 11 presentations. There's no who-done-it moments. We
01:29:18PM 12 have a Defendant charged with three crimes. Okay?

01:29:22PM 13 What we also have is a lawful search
01:29:24PM 14 warrant that initiated this case. It was based on
01:29:28PM 15 a narcotics investigation. It was served at [REDACTED]
01:29:32PM 16 [REDACTED] Road, where detectives located the
01:29:34PM 17 Defendant on-scene. They also located the
01:29:40PM 18 Defendant in a vehicle with a box, not one, but a
01:29:44PM 19 box of clear plastic baggies, a small scale, and
01:29:48PM 20 marijuana not just on his seat, but in his
01:29:52PM 21 immediate control in that glove box.

01:29:54PM 22 Inside the residence that he shared
01:29:56PM 23 with his girlfriend and her mother, they found a
01:30:02PM 24 trafficking weight of cocaine under the bed that he
01:30:04PM 25 slept in quite regularly. They also found

01:30:06PM 1 additional marijuana and right next to those drugs
01:30:10PM 2 they found a loaded handgun.

01:30:12PM 3 You've heard from the defense that
01:30:14PM 4 there are possible holes in our case, that there
01:30:18PM 5 were things that an officer should have done, that
01:30:20PM 6 they failed to do, and this is simply not true
01:30:22PM 7 under the circumstances of this case. And while
01:30:24PM 8 the State has a burden to prove the Defendant
01:30:28PM 9 guilty beyond a reasonable doubt, we argue that we
01:30:30PM 10 have done that.

01:30:32PM 11 And what is reasonable doubt? The
01:30:32PM 12 Judge will instruct you on the law, and if anything
01:30:36PM 13 I say conflicts with the law, please only follow
01:30:40PM 14 what the Judge says. But reasonable doubt is with
01:30:40PM 15 a certainty. It's not 100 percent certainty. And
01:30:46PM 16 beyond reasonable doubt is not beyond all doubt.

01:30:48PM 17 Mr. Lewis mentioned in his opening that
01:30:50PM 18 there were other people there that day, and I
01:30:54PM 19 submit to you that perhaps it's not unreasonable to
01:30:56PM 20 believe that they were involved in some way. But I
01:31:00PM 21 also submit to you, ladies and gentlemen, that it
01:31:02PM 22 is unreasonable to believe the Defendant did not
01:31:04PM 23 know anything about what was going on.

01:31:08PM 24 Now, one of the many things that you
01:31:10PM 25 get to do as a jury is to weigh the credibility of

01:31:14PM 1 the witnesses that you have heard from. And you
01:31:16PM 2 may find it totally reasonable to believe that
01:31:20PM 3 Ms. Shirley did not know anything about the drugs
01:31:22PM 4 in the room that Crystal and the Defendant shared.
01:31:24PM 5 Likewise, you may find it unreasonable to believe
01:31:28PM 6 that the Defendant didn't know anything. And that
01:31:30PM 7 decision is entirely up to you whether you think
01:31:34PM 8 any of the witnesses' hesitation in answering
01:31:36PM 9 questions or discrepancies are because they were
01:31:38PM 10 lying or because they literally did not know.

01:31:40PM 11 I would submit to you that if the two
01:31:42PM 12 ladies are conspiring against the Defendant, they
01:31:46PM 13 probably would have gotten their stories straight.
01:31:48PM 14 Ms. Shirley said the Defendant didn't live there,
01:31:50PM 15 but that he helped pay the water bill. Crystal
01:31:54PM 16 said the Defendant stayed there pretty regularly
01:31:58PM 17 and helped pay the grocery bills. So they have
01:32:00PM 18 different interpretations of what living there
01:32:02PM 19 means. I don't think these are lies, it's just
01:32:04PM 20 their different perspectives.

01:32:06PM 21 And I want to talk a little bit about
01:32:10PM 22 possession. It's a very big part of a drug case.
01:32:14PM 23 There are different kinds of possession. We have
01:32:16PM 24 actual possession, you have constructive
01:32:20PM 25 possession. There's also joint possession. Actual

01:32:24PM 1 possession -- and Mr. Lewis showed you at the
01:32:26PM 2 beginning, if you find something in your pockets --
01:32:26PM 3 you have your keys in your pockets.

01:32:30PM 4 Constructive possession addresses when
01:32:34PM 5 someone has dominion of power and control over
01:32:38PM 6 something, the right to exercise power and control
01:32:42PM 7 over something, something in your residence. I
01:32:44PM 8 argue that constructive knowledge can also be
01:32:48PM 9 inferred when someone -- when items are found on
01:32:50PM 10 property that somebody has power and control over.

01:32:54PM 11 Joint possession is a little bit
01:32:58PM 12 simpler, kind of self-explanatory. More than one
01:33:02PM 13 person can possess an item, and just because they
01:33:06PM 14 can jointly possess it, that's not always the
01:33:08PM 15 ownership. Like -- show you an example with a pen.
01:33:10PM 16 If I had a little pocket protector here and this
01:33:14PM 17 was in my pocket, I have actual possession.
01:33:16PM 18 Throughout this week you have seen me and my
01:33:20PM 19 co-counsel Ms. Byrd at this table and we have
01:33:22PM 20 shared pens. We both have access and power and
01:33:26PM 21 dominion over this table, and these pens we both
01:33:30PM 22 have -- both have constructive possession over. We
01:33:32PM 23 arguably also have joint possession over these pens
01:33:34PM 24 because we both have used them. It doesn't matter
01:33:38PM 25 if it's my pen; we both had possession over it.

01:33:42PM 1 You may disagree with the law
01:33:44PM 2 enforcement's investigation on this case, but this
01:33:46PM 3 is the Defendant's day in Court and that's why we
01:33:48PM 4 are here. And we submit to you that this testimony
01:33:52PM 5 that we've provided is that of a thorough
01:33:54PM 6 investigation.

01:33:56PM 7 So now I think is a good time to kind
01:33:58PM 8 of recap some of that testimony that we've had.
01:34:02PM 9 First, you heard from Crystal. Crystal is the
01:34:06PM 10 Defendant's girlfriend. They've been together 13
01:34:10PM 11 or 14 years. She said the Defendant regularly
01:34:12PM 12 stays with her, stays with her in her bedroom at
01:34:16PM 13 [REDACTED] She also told you she purchased the
01:34:20PM 14 firearm and that the night before the search
01:34:24PM 15 warrant, she made a conscious decision to hide this
01:34:28PM 16 firearm from her nephew that was coming over.

01:34:28PM 17 And when she placed this gun into a
01:34:32PM 18 box, her box, because she wanted to hide it from
01:34:36PM 19 her nephew for safety reasons, the Defendant was
01:34:38PM 20 the only person in the bedroom that night with her.
01:34:40PM 21 And she placed that gun in that box and only the
01:34:44PM 22 gun in that box, and that she proceeded to shove it
01:34:48PM 23 so far up under her bed, the bed that she shared
01:34:50PM 24 with the Defendant, because she didn't want her
01:34:54PM 25 nephew to wander into the room and see it.

01:34:56PM 1 Kids can be curious and she made a
01:35:00PM 2 point to put it so far under that bed to protect
01:35:04PM 3 her nephew. The Defendant was the only other
01:35:06PM 4 person present for that, and she told you that she
01:35:08PM 5 didn't tell anybody else that she did it. In fact,
01:35:12PM 6 her mom confirmed that.

01:35:14PM 7 She also told you that this gun had
01:35:16PM 8 been handled by the Defendant; he helped her load
01:35:18PM 9 the magazine. He knew she had it and he knew she
01:35:22PM 10 put it in that box the night before the search
01:35:24PM 11 warrant was served, way up under that bed. She
01:35:26PM 12 also told you she was surprised to learn that there
01:35:30PM 13 were drugs in that box with that gun she hid the
01:35:32PM 14 night before. She had no problem accepting
01:35:36PM 15 responsibility for that firearm. She owned it; it
01:35:40PM 16 was her gun. She had put it there. She had not
01:35:42PM 17 gone back in and put the drugs there.

01:35:48PM 18 And Ms. Nelson, the other Ms. Nelson
01:35:50PM 19 you heard from today, Shirley, she also said the
01:35:54PM 20 Defendant stayed overnight. She told you that he
01:35:56PM 21 didn't stay there as regularly, but again that's a
01:36:00PM 22 decision you can make as to her credibility,
01:36:02PM 23 whether she knew, whether she didn't care, or
01:36:04PM 24 whether she doesn't recall.

01:36:06PM 25 She also told you she was home all day

01:36:10PM 1 until they served that search warrant and that no
01:36:12PM 2 one but the Defendant and her and Crystal were at
01:36:16PM 3 the house that day. No one broke into her house.
01:36:20PM 4 Only her and Crystal have keys to that house. She
01:36:22PM 5 told you she didn't know Crystal had hid the gun
01:36:26PM 6 the night before. She didn't know that she hid it,
01:36:28PM 7 let alone where she hid it.

01:36:30PM 8 She also told you that she received a
01:36:34PM 9 citation. In fact, somebody else was charged that
01:36:36PM 10 day and it was Ms. Shirley Nelson. She received a
01:36:40PM 11 citation for the drugs that were found in her room
01:36:42PM 12 and she accepted responsibility for that and she
01:36:44PM 13 paid the ticket for that because those items
01:36:48PM 14 belonged to her. She also told you that she does
01:36:52PM 15 not go into her adult daughter's room, that she did
01:36:54PM 16 not put those drugs in there and that she does not
01:36:56PM 17 use cocaine, and that no one but Crystal and the
01:37:02PM 18 Defendant stayed in that other room.

01:37:04PM 19 You also heard from Detective Cerone.
01:37:08PM 20 Detective Cerone is a seasoned and veteran
01:37:10PM 21 detective in the narcotics unit. She led this
01:37:12PM 22 investigation and she told you that narcotics
01:37:14PM 23 investigations are different. In charge of the
01:37:18PM 24 search warrant that day, that was Detective Cerone.
01:37:22PM 25 She -- the defense wants you to focus on the fact

01:37:24PM 1 that their investigation led only to his client,
01:37:28PM 2 the Defendant, being arrested and that's not true.
01:37:30PM 3 Shirley got a ticket too. It wasn't -- the ticket
01:37:34PM 4 was consistent with what they found in her room.
01:37:38PM 5 They were all about giving responsibility to those
01:37:42PM 6 who deserved it. Their investigation led to the
01:37:44PM 7 arrest of the Defendant that day.

01:37:48PM 8 You heard her explain that their
01:37:52PM 9 investigation determined that Crystal and the
01:37:54PM 10 Defendant shared that bedroom, that there were
01:37:56PM 11 clothes in that room and they weren't children's
01:38:00PM 12 clothes. They were men's clothes and they were
01:38:02PM 13 consistent in size with the Defendant. She told
01:38:04PM 14 you that based on that and the fact that the drugs
01:38:08PM 15 were found in that room, their investigation
01:38:10PM 16 determined the drugs to be the Defendant's.

01:38:14PM 17 They did not randomly pick the
01:38:16PM 18 Defendant's house that day. They went that day
01:38:18PM 19 with a lawful search warrant signed off on by a
01:38:20PM 20 Judge. And when they showed up, they found the
01:38:24PM 21 Defendant. The Defendant was in a vehicle with
01:38:28PM 22 marijuana on his seat. There was a scale that she
01:38:32PM 23 said was not just lying on the ground; in fact, it
01:38:38PM 24 was concealed under his feet. There was an entire
01:38:40PM 25 box of plastic baggies just to the left of his arm

01:38:44PM 1 in the console. Not a baggie, but a box of
01:38:50PM 2 baggies. Not to mention the marijuana that was
01:38:52PM 3 located in the glove compartment directly in his
01:38:56PM 4 immediate control in that glove -- inches away from
01:39:00PM 5 his hands.

01:39:02PM 6 She testified that, in her training and
01:39:04PM 7 experience, that was consistent of something of a
01:39:08PM 8 narcotics operation and that it's not uncommon for
01:39:12PM 9 drugs to be sold out of a car. You also heard her
01:39:16PM 10 tell you that she made a conscious decision as a
01:39:22PM 11 seasoned veteran police officer not to have the
01:39:24PM 12 bags or that firearm tested. Not only is there no
01:39:28PM 13 North Charleston Police Department policy that
01:39:30PM 14 requires that, but based on her knowledge and her
01:39:34PM 15 understanding of that information and their
01:39:40PM 16 investigation thus far where they learned that the
01:39:42PM 17 Defendant had touched that firearm, there was no
01:39:44PM 18 need to process it further.

01:39:48PM 19 His prints may or may not be on there,
01:39:52PM 20 but there was an indication that he touched it.
01:39:54PM 21 And we had Crystal saying, I put it there, he knew
01:39:58PM 22 it was there, and I hadn't moved it. How would
01:40:06PM 23 that further testing help us know he touched it?

01:40:08PM 24 You heard from two chemical analysts
01:40:12PM 25 who confirmed that the substances located during

01:40:14PM 1 that search warrant were in fact marijuana and
01:40:14PM 2 cocaine.

01:40:16PM 3 I wanted to address the DNA analyst
01:40:18PM 4 that we had come in from SLED. Perhaps it seemed
01:40:24PM 5 odd to have someone come in when she did not
01:40:26PM 6 perform a test or any analysis in this case. And
01:40:28PM 7 that was actually our whole point in bringing her
01:40:32PM 8 here. She advised that while the science of DNA is
01:40:36PM 9 reliable, the results in touch DNA cases,
01:40:40PM 10 particularly those involving plastic baggies, can
01:40:42PM 11 lead to uninterpretable -- she's the analyst, not
01:40:48PM 12 me -- uninterpretable mixtures. Those results can
01:40:52PM 13 be inconclusive.

01:40:54PM 14 She said that they don't even receive a
01:40:56PM 15 lot of samples like this because that's something
01:40:58PM 16 that not only they know as analysts, but trained
01:41:02PM 17 and veteran police detectives are going to
01:41:04PM 18 understand that. She talked about the possibility
01:41:06PM 19 of being able to retrieve any DNA from a plastic
01:41:10PM 20 baggie. And, you know, unfortunately, ladies and
01:41:14PM 21 gentlemen, if you learn anything from the trial,
01:41:16PM 22 it's just not CSI. There is no magic computer
01:41:20PM 23 system that they can place this bag on and after a
01:41:22PM 24 few minutes and a couple of lights bleeping and
01:41:28PM 25 beeping, they tell you who's there and it shows you

01:41:28PM 1 a picture of them and where to find them. It just
01:41:30PM 2 doesn't work that way and Dr. Hash was here to
01:41:34PM 3 confirm that it doesn't work that way.

01:41:36PM 4 Before I conclude, I think it's
01:41:38PM 5 important to address some of these elements of the
01:41:42PM 6 crimes here, and I want to start with trafficking
01:41:46PM 7 in cocaine. And, again, as I told you, the Judge
01:41:48PM 8 is going to instruct you on the law, but, in
01:41:50PM 9 general, what I believe I have to prove to you is
01:41:54PM 10 that the Defendant had to have possession of -- and
01:41:58PM 11 I believe that's evidenced through not only -- his
01:42:02PM 12 presence on-scene on that day, but not --not just
01:42:06PM 13 that.

01:42:06PM 14 He lived, depending on your
01:42:12PM 15 interpretation of lived, at that house. He stayed
01:42:14PM 16 there overnight. He was there the night before
01:42:16PM 17 this search warrant was served. He had access to
01:42:20PM 18 that house; he had power, dominion, control. He
01:42:26PM 19 could come and go out of Crystal's room at any time
01:42:30PM 20 he wanted to. And Crystal and Shirley let him.
01:42:32PM 21 And he, in fact, was there the night before the
01:42:34PM 22 search warrant and one of only three people that
01:42:38PM 23 was there prior to them serving that search
01:42:38PM 24 warrant.

01:42:40PM 25 We have to prove that that substance is

01:42:42PM 1 cocaine. And I submit to you that the SLED analyst
01:42:46PM 2 Lynn Black did just that. She went through her
01:42:48PM 3 scientific testing and testified that this was
01:42:50PM 4 cocaine. And in order to be trafficking, the
01:42:54PM 5 weight is important. The weight of cocaine she
01:42:58PM 6 testified to, 31.9, is in excess of 28 grams, which
01:43:04PM 7 is what makes it trafficking.

01:43:06PM 8 Now, as to the possession with intent
01:43:10PM 9 to distribute marijuana charge, we have to prove
01:43:12PM 10 possession, and the State submits to you that we
01:43:14PM 11 have proven that by the Defendant's presence
01:43:16PM 12 on-scene and his ability to have access to, control
01:43:20PM 13 over, dominion of the power to go in and out of
01:43:26PM 14 that bedroom and that car and that glove
01:43:28PM 15 compartment right in front of him and that little
01:43:32PM 16 bag that we found on the seat right next to him.

01:43:34PM 17 That substance has to also be
01:43:36PM 18 determined to be marijuana, and we had Monique
01:43:40PM 19 Mouzon come in and tell you that she did in fact
01:43:42PM 20 test to prove this was marijuana. Now, the statute
01:43:44PM 21 also requires a weight on that which is greater
01:43:48PM 22 than one ounce and here we have 170 grams, and if
01:43:52PM 23 my math serves me correctly, 28 grams is an ounce.
01:43:54PM 24 So, therefore, we have certainly more than that one
01:43:58PM 25 ounce, but more importantly perhaps is that we have

01:44:02PM 1 the indicia of distribution. What I mean by that,
01:44:06PM 2 we have a box of baggies -- not one, a box of
01:44:14PM 3 plastic baggies -- found next to the Defendant. We
01:44:16PM 4 have the grinder found in the car right near the
01:44:20PM 5 Defendant, and we have a scale, to break it down on
01:44:22PM 6 and put it in those baggies, right under the
01:44:26PM 7 Defendant in the car.

01:44:26PM 8 And, finally, the charge of possession
01:44:28PM 9 of a firearm during a violent crime. This --
01:44:32PM 10 ladies and gentlemen, as I told you in the
01:44:34PM 11 beginning, there are classifications of crimes in
01:44:36PM 12 South Carolina that we just go by. And certain
01:44:40PM 13 crimes are classified as violent and others are
01:44:44PM 14 non-violent. Trafficking in cocaine is considered
01:44:52PM 15 a violent crime. And the possession of that
01:44:52PM 16 firearm during the violent crime is evidenced by
01:44:52PM 17 the fact that it was right there, loaded, ready to
01:44:56PM 18 go, right next to the cocaine and the marijuana.
01:44:58PM 19 And the cocaine itself, the weight alone is such
01:45:00PM 20 that it is trafficking cocaine and it's a violent
01:45:06PM 21 crime.

01:45:06PM 22 I truly appreciate your presence and
01:45:10PM 23 your participation in this process, and I believe
01:45:12PM 24 that after you go back and deliberate and review
01:45:16PM 25 the evidence, that you would be firmly convinced of

01:45:18PM 1 the Defendant's guilt and return a verdict of
01:45:20PM 2 guilty for each charge.

01:45:22PM 3 Thank you, ladies and gentlemen.

01:45:24PM 4 THE COURT: Thank you, Solicitor.

01:45:28PM 5 All right. Yes, sir.

01:45:30PM 6 MR. LEWIS: Thank you, Judge. May it
01:45:32PM 7 please the Court?

01:45:32PM 8 THE COURT: Yes, sir.

01:45:34PM 9 MR. LEWIS: Counselor. Good afternoon,
01:45:36PM 10 ladies and gentlemen. Charles came into Court an
01:45:46PM 11 innocent man. That's what I told you yesterday.

01:45:46PM 12 He sits there right now still an innocent man.

01:45:50PM 13 There has not been any proof that has been

01:45:52PM 14 provided, nothing has changed that from when he

01:45:54PM 15 came in in front of you on Monday. There is no one

01:45:58PM 16 that puts those drugs in his possession. They want

01:46:02PM 17 you to believe that, because he might have known,

01:46:06PM 18 he might have had access to, he could have done

01:46:08PM 19 something. Well, by those standards, I'm just as

01:46:12PM 20 guilty as Charles is. That's ridiculous.

01:46:16PM 21 This is not a Court of what could be or

01:46:18PM 22 what might be or what should be or what we would

01:46:22PM 23 like it to be. This is a Court of beyond a

01:46:26PM 24 reasonable doubt. This is as serious as it gets.

01:46:26PM 25 It doesn't get any more important than this,

01:46:28PM 1 especially not for Charles and not for me, and it
01:46:32PM 2 shouldn't get any more important than this for you
01:46:34PM 3 guys, because your duty is incredibly important.

01:46:38PM 4 I want to ask you-all, and this may rub
01:46:42PM 5 some people the wrong way, what does a drug dealer
01:46:46PM 6 look like? It's a black guy, right? That's what
01:46:48PM 7 they look like. No. No, of course not, that's not
01:46:54PM 8 what drug dealers look like. They look like me
01:47:00PM 9 and, no offence, the Judge, and everybody else,
01:47:02PM 10 because anyone can make those actions.

01:47:08PM 11 But what happens here? Three people
01:47:08PM 12 are present, one whose testimony you heard that
01:47:12PM 13 claims that pink box; pink box -- Victoria's Secret
01:47:16PM 14 or Bed, Bath & Beyond; most guys don't shop there.
01:47:22PM 15 I don't think Charles shops there. So we know that
01:47:24PM 16 was her box that contained her gun. And it's just
01:47:26PM 17 as likely, if not more likely, that those were her
01:47:30PM 18 drugs in her possession. Not Charles'.

01:47:34PM 19 Drug dealers come in all skin tones:
01:47:38PM 20 Black, white, Middle Eastern, Hispanic, Asian.
01:47:42PM 21 They come in all ages. Over the last seven years
01:47:44PM 22 as a public defender I have represented every
01:47:46PM 23 possible type of person. I've represented fathers
01:47:50PM 24 and mothers and sons and daughters, and there is no
01:47:54PM 25 one person that you can look at and say, that's a

01:47:56PM 1 drug dealer, that's what they look at. It's
01:48:00PM 2 improper to make that conclusion.

01:48:00PM 3 That's what the North Charleston Police
01:48:02PM 4 Department decided to do. We're not going to lock
01:48:06PM 5 up anybody else; we're going to lock up the black
01:48:10PM 6 guy. That's what we've got to do because we don't
01:48:12PM 7 know whose drugs they are. Let's lock him up.
01:48:16PM 8 We'll let her go because she's a woman; she
01:48:18PM 9 couldn't have sold drugs. We'll let her go because
01:48:20PM 10 she's older; she couldn't have sold drugs. Let's
01:48:24PM 11 lock him up.

01:48:24PM 12 They make fun of me for saying, hey,
01:48:24PM 13 let's have some proof here. I'm scared that
01:48:28PM 14 someday I'll be sitting in that chair and I'll get
01:48:32PM 15 the same explanation: It's hard to do that. We
01:48:36PM 16 don't normally have a policy for testing drugs.
01:48:38PM 17 That would make it complicated; SLED has too much
01:48:42PM 18 work to do. Just believe us. That's terrifying,
01:48:46PM 19 to be sitting there without any evidence of guilt,
01:48:52PM 20 but being accused of committing a crime that you
01:48:52PM 21 didn't commit.

01:48:58PM 22 As I said, Charles was the only black
01:49:00PM 23 male there, so that's why they locked him up. No
01:49:02PM 24 other evidence has been presented to you other
01:49:04PM 25 than, well, maybe he did this. Maybe. Even the

01:49:10PM 1 State didn't call witnesses to say that those drugs
01:49:12PM 2 were Charles's. They called two people to say,
01:49:16PM 3 they weren't mine. Well, would any of us honestly
01:49:24PM 4 expect Crystal to get up here, and I'd get to have
01:49:24PM 5 my Matlock moment that's never happened in my
01:49:26PM 6 entire career, and say, those were your drugs,
01:49:28PM 7 weren't they? And she'd say, oh, yeah, I'm sorry.

01:49:32PM 8 No, she's not going to do that. It
01:49:32PM 9 doesn't mean it's not true. It just means that
01:49:36PM 10 anybody has a right to say that. That doesn't make
01:49:38PM 11 it true. That's why we have to look at the
01:49:38PM 12 evidence to make our decision. That's why we have
01:49:40PM 13 to look for fingerprints and DNA. Those aren't
01:49:44PM 14 buzzwords. That's evidence. That's what we have
01:49:48PM 15 to make our decision in this court, in the
01:49:52PM 16 beyond-a-reasonable-doubt court.

01:49:52PM 17 So I know it sounds like I'm beating a
01:49:56PM 18 dead horse here, and that may be the way they look
01:49:58PM 19 at it, but what should they have done? They had
01:50:00PM 20 many opportunities to do good police work and they
01:50:02PM 21 chose not to do that. They could have tested -- I
01:50:06PM 22 know, maybe not the box -- the baggies. They say
01:50:08PM 23 that's difficult. Okay.

01:50:10PM 24 How about the pink box that's closed?
01:50:12PM 25 How about the lid of the pink box where all the

01:50:16PM 1 stuff is? Maybe you don't want to do a DNA test,
01:50:20PM 2 that gets expensive. How about a little bit of
01:50:24PM 3 black powder, fingerprint-test that. It would have
01:50:28PM 4 taken you five minutes. But, no, you don't want to
01:50:28PM 5 do that, that's too hard, and North Charleston just
01:50:32PM 6 wants to hang it up.

01:50:34PM 7 That's scary. That is terrifying to
01:50:36PM 8 me. In regards to that, there's this sort of
01:50:42PM 9 psuedo-timeline that's been created. In order for
01:50:46PM 10 any of us to believe that, you have to believe that
01:50:48PM 11 Crystal is telling the 100 percent truth about when
01:50:50PM 12 those drugs were put there. The drugs don't have a
01:50:54PM 13 stamp on them saying, hey, placed here this time on
01:50:56PM 14 this day. We don't know when they were put there.

01:50:58PM 15 Crystal says they weren't there when
01:51:00PM 16 she put her gun there, because she's not going to
01:51:04PM 17 take that hot potato. She's not going to be caught
01:51:04PM 18 holding that. She's going to -- not want anything
01:51:08PM 19 to do with that. Don't just blame him or follow
01:51:10PM 20 them in blaming him because he's the guy that they
01:51:14PM 21 arrested, who North Charleston decided to arrest.

01:51:18PM 22 We know that the drugs were found under
01:51:20PM 23 Crystal Nelson's bed. The State asked if anyone
01:51:24PM 24 else lived there. Ms. Shirley Nelson, the owner,
01:51:26PM 25 said no. I'm not going to argue semantics about

01:51:32PM 1 what lived there means or does not mean. They were
01:51:34PM 2 boyfriend and girlfriend. We're all adults here.
01:51:34PM 3 We can talk about what that means, they had slept
01:51:36PM 4 together. Okay. That doesn't mean the items found
01:51:40PM 5 under her bed belonged to him. We have personal
01:51:44PM 6 space as adults. Many of us do.

01:51:50PM 7 This counsel table right here,
01:51:52PM 8 throughout the last few days, this has been my
01:51:54PM 9 personal space. This pink bag right here is not
01:51:58PM 10 mine. It's not in my personal space. I don't know
01:52:04PM 11 what my co-counsel may have in her bag, but it's
01:52:06PM 12 not imputed to me just because we shared this
01:52:08PM 13 table. Her stuff is not my stuff. They may share
01:52:12PM 14 stuff. That doesn't mean that we do.

01:52:14PM 15 And the problem is, that's the evidence
01:52:16PM 16 they're asking you to rely on in order to convict
01:52:20PM 17 my client, is that he was there. The Judge will
01:52:24PM 18 instruct you on the law, specifically on something
01:52:26PM 19 called mere presence. What that means is, just
01:52:28PM 20 because you're there when a crime goes down doesn't
01:52:32PM 21 mean that you're the one that did it. Just because
01:52:34PM 22 drugs were found in that house doesn't mean that
01:52:36PM 23 Charles did it. Doesn't mean that Shirley did it.
01:52:38PM 24 Doesn't mean that Crystal did it. Because they
01:52:40PM 25 can't prove that anyone did it. That's the

01:52:42PM 1 problem. They want you to guess and you can't do
01:52:44PM 2 that.

01:52:48PM 3 Ladies and gentlemen, this part may
01:52:50PM 4 seem a little bit silly, but if you will, will you
01:52:54PM 5 all please close your eyes for a couple of seconds?
01:52:58PM 6 And my eyesight is horrible so I'm going to get a
01:53:00PM 7 little bit closer just to see whose eyes are
01:53:02PM 8 closed, and I will tell you when you can open them.
01:53:06PM 9 All right. Keep them closed. Keep them closed,
01:53:10PM 10 please. All right. You can open them.

01:53:16PM 11 Remember how I started the trial? I
01:53:18PM 12 had some keys, right? I'm still here. There are
01:53:22PM 13 some keys here. Are those my keys? I'm the guy
01:53:28PM 14 that had the keys at the beginning of the trial.
01:53:30PM 15 Are those mine? I don't know. Did I put them
01:53:34PM 16 there? I'm closest in proximity to them. Does
01:53:38PM 17 that mean that they're mine? Well, they're pink.
01:53:42PM 18 I mean, I live in the South. I think I probably
01:53:44PM 19 could pull off some pink. We have three women
01:53:48PM 20 here. Maybe they have pink keys. Maybe they're
01:53:52PM 21 theirs. We have a clerk back there. He's wearing
01:53:54PM 22 a pink shirt. Maybe it's his. That's kind of
01:54:00PM 23 pink.

01:54:00PM 24 None of you had your eyes open. None
01:54:02PM 25 of you had the evidence that you would have needed

01:54:04PM 1 to say definitively whom these keys belong to.

01:54:06PM 2 Let's test them. You could test these.

01:54:10PM 3 Now, granted, this isn't a big deal to

01:54:12PM 4 us because it's just me talking. But if that

01:54:18PM 5 connects to something that has far-reaching

01:54:22PM 6 consequences, it's a hugely big deal. If I get

01:54:26PM 7 killed and the only evidence they have is a set of

01:54:30PM 8 keys sitting next to my body, please, North

01:54:30PM 9 Charleston, please test that DNA. It would be a

01:54:34PM 10 really nice thing to do. Please fingerprint-test

01:54:36PM 11 that. That would be good too. They didn't do that

01:54:40PM 12 here. And maybe it's because they don't want to be

01:54:42PM 13 fair to Charles, or to you, but it's offensive.

01:54:48PM 14 Ladies and gentlemen, the last part I

01:54:50PM 15 want to talk to you about is a little bit legalese,

01:54:52PM 16 but it's important. It's what beyond a reasonable

01:54:56PM 17 doubt actually means. And they touched on it as

01:54:58PM 18 well. We have different standards in the law as to

01:55:00PM 19 what sort of evidence you need to make a decision.

01:55:04PM 20 So the lowest level I'm going to talk

01:55:06PM 21 about is preponderance of the evidence. That's

01:55:08PM 22 down here, about 51 percent. If you're that

01:55:14PM 23 convinced, 51 percent. Civil court, how convinced

01:55:16PM 24 you need to be to take your money and give it to

01:55:18PM 25 you, in a suit. You know, I get injured in a car

01:55:22PM 1 wreck, that's what you need, preponderance of the
01:55:22PM 2 evidence.

01:55:22PM 3 Above that is the next standard up. We
01:55:26PM 4 come up to clear and convincing evidence. That's
01:55:30PM 5 if you're so convinced, that you're going to take
01:55:34PM 6 somebody against their will and put them in a
01:55:36PM 7 mental hospital. Let that sink in. That would
01:55:38PM 8 have to be a pretty high level, to convince you to
01:55:40PM 9 take someone and put them there.

01:55:42PM 10 Or even better, now that I have a
01:55:44PM 11 four-month-old myself, take your kids from you.
01:55:48PM 12 That's a pretty high standard. That's not even as
01:55:52PM 13 high as we're here today. This standard is beyond
01:55:54PM 14 a reasonable doubt.

01:55:54PM 15 This is big-boy-court, or
01:55:58PM 16 big-girl-court, no offense. This is where you've
01:56:00PM 17 got to be the highest. This is the most important
01:56:02PM 18 level that we have in the law. You'd have to be
01:56:06PM 19 more convinced that those were Charles's drugs than
01:56:08PM 20 you would to take someone else's kids from them, or
01:56:10PM 21 take their money, because this is the most serious
01:56:14PM 22 level of court that exists. It's
01:56:18PM 23 beyond-a-reasonable-doubt-court.

01:56:18PM 24 And the maybes that they provide to us,
01:56:20PM 25 or the possibly, or it could be, or maybe it's him,

01:56:24PM 1 or it should be or -- I don't know. That doesn't
01:56:28PM 2 fly here. This is beyond-a-reasonable-doubt-court,
01:56:30PM 3 like I said.

01:56:32PM 4 Ladies and gentlemen, I ask that you
01:56:32PM 5 return to the jury room in the next few minutes
01:56:36PM 6 after the Judge provides the law to you. Think
01:56:38PM 7 about what evidence you do have; you have some
01:56:42PM 8 drugs. Think about evidence you don't have;
01:56:44PM 9 everything else. And return the only verdict
01:56:48PM 10 that's consistent with that lack of evidence, not
01:56:52PM 11 guilty on all charges. I'll give her back her
01:56:56PM 12 keys. Thank you - --

01:57:12PM 13 THE COURT: Ladies and gentlemen,
01:57:14PM 14 please give me your complete and undivided
01:57:18PM 15 attention. This instruction to you is rather
01:57:24PM 16 lengthy. The way I instruct the jury is I charge
01:57:28PM 17 the general criminal law that applies to all cases
01:57:30PM 18 in South Carolina. I will then charge the specific
01:57:34PM 19 statutes that Mr. Myers is charged with violating
01:57:42PM 20 and finally I will charge the hand of one, hand of
01:57:46PM 21 all, and I will charge the form of the verdict.

01:57:48PM 22 I usually will give a caption of the
01:57:52PM 23 section I'm fixing to cover, and when I change from
01:57:56PM 24 one section to another, I will give you that
01:57:58PM 25 caption.

01:57:58PM 1 Charge, arrest, indictment, not
01:58:00PM 2 evidence. The indictments charge the Defendant
01:58:04PM 3 with trafficking in cocaine, possession with intent
01:58:08PM 4 to distribute marijuana, and possession of a
01:58:10PM 5 firearm during the commission of a violent crime.
01:58:16PM 6 I remind you that the fact the Defendant was
01:58:18PM 7 arrested, charged and indicted in these cases is
01:58:24PM 8 not evidence in this case and cannot be considered
01:58:26PM 9 by you as evidence of guilt in this case nor does
01:58:30PM 10 it create any presumption or inference of guilt.

01:58:32PM 11 These documents are simply the formal
01:58:34PM 12 written document which contain the charges made
01:58:38PM 13 against the Defendant. They are the formal
01:58:40PM 14 documents by which the case has been brought into
01:58:44PM 15 this court.

01:58:44PM 16 Multiple charges. As I said, the
01:58:48PM 17 indictments charge three separate offenses:
01:58:52PM 18 Trafficking in cocaine, possession with intent to
01:58:54PM 19 distribute marijuana, possession of a firearm
01:58:56PM 20 during the commission of a violent crime. Each
01:59:00PM 21 indictment charges a separate and distinct offense.
01:59:04PM 22 You must decide each indictment separately on the
01:59:08PM 23 evidence and the law applicable to it, uninfluenced
01:59:12PM 24 by your decision as to any other indictment.

01:59:16PM 25 The Defendant may be convicted or

01:59:18PM 1 acquitted on any or all of the offenses charged.

01:59:22PM 2 You will be asked to write a separate verdict of

01:59:26PM 3 guilty or not guilty for each indictment.

01:59:32PM 4 Presumption of innocence. The

01:59:32PM 5 Defendant has pled not guilty to these indictments

01:59:38PM 6 and that plea puts the burden on the State to prove

01:59:42PM 7 the Defendant guilty. A person charged with a

01:59:46PM 8 criminal offense in South Carolina is never

01:59:48PM 9 required to prove himself innocent.

01:59:50PM 10 I charge you that it is an important

01:59:52PM 11 rule of the law that the Defendant in a criminal

01:59:56PM 12 trial, no matter what the seriousness of the charge

01:59:58PM 13 may be, will always be presumed to be innocent of

02:00:04PM 14 the crime for which the indictment was issued

02:00:06PM 15 unless guilt has been proven by evidence satisfying

02:00:10PM 16 you of that guilt beyond a reasonable doubt.

02:00:14PM 17 This presumption of innocence does not

02:00:16PM 18 end when you begin your deliberations, but it

02:00:20PM 19 accompanies the Defendant throughout trial until

02:00:22PM 20 you reach a verdict of guilt based on evidence

02:00:26PM 21 satisfying you of that guilt beyond a reasonable

02:00:30PM 22 doubt. The presumption of innocence has been said

02:00:32PM 23 to be like a robe of righteousness placed about the

02:00:36PM 24 shoulders of the Defendant which remains with the

02:00:40PM 25 Defendant until it has been stripped from the

02:00:42PM 1 Defendant by evidence satisfying you of the
02:00:46PM 2 Defendant's guilt beyond a reasonable doubt.

02:00:48PM 3 The presumption of innocence is not a
02:00:50PM 4 mere legal theory. It is not just a legal phrase.
02:00:54PM 5 It is a substantial right to which every Defendant
02:01:00PM 6 is entitled, unless you the jury are satisfied from
02:01:02PM 7 the evidence of the Defendant's guilt beyond a
02:01:08PM 8 reasonable doubt.

02:01:10PM 9 What is a reasonable doubt in the law?
02:01:12PM 10 A reasonable doubt in the law is said to be the
02:01:16PM 11 kind of doubt that would cause a reasonable person
02:01:20PM 12 to hesitate to act. The State has the burden of
02:01:26PM 13 proving the Defendant guilty beyond a reasonable
02:01:28PM 14 doubt. Some of you perhaps in the past have served
02:01:30PM 15 as jurors in civil cases where you would told that
02:01:34PM 16 it is only necessary to prove that fact is more
02:01:38PM 17 likely true than not true, which is known as the
02:01:42PM 18 greater weight or the preponderance of the
02:01:44PM 19 evidence.

02:01:44PM 20 In criminal cases, the State's proof
02:01:48PM 21 must be more powerful than that. It must be beyond
02:01:52PM 22 a reasonable doubt. Proof beyond a reasonable
02:01:56PM 23 doubt is proof that leaves you firmly convinced of
02:02:02PM 24 the Defendant's guilt. There are very few things
02:02:04PM 25 in this world that we know with absolute certainty.

02:02:08PM 1 And in criminal cases, the law does not require
02:02:10PM 2 proof that overcomes every possible doubt.

02:02:14PM 3 If, based on your consideration of the
02:02:16PM 4 evidence, you are firmly convinced that the
02:02:18PM 5 Defendant is guilty of the crime charged, you must
02:02:20PM 6 find the Defendant guilty. If, on the other hand,
02:02:24PM 7 you think there is a real possibility that the
02:02:28PM 8 Defendant is not guilty, you must give the
02:02:32PM 9 Defendant the benefit of that reasonable doubt and
02:02:34PM 10 find him not guilty.

02:02:38PM 11 Duties of trial jury and Judge. I've
02:02:42PM 12 reminded you that during this trial you and I have
02:02:44PM 13 certain separate and distinct duties to perform.
02:02:48PM 14 As the trial Judge, it is my responsibility to
02:02:52PM 15 preside over the trial of the case, and I also have
02:02:54PM 16 the duty to rule on the admissibility of the
02:02:58PM 17 evidence offered during the trial.

02:03:00PM 18 You are to consider only the competent
02:03:02PM 19 evidence before you. If there is any testimony
02:03:04PM 20 ordered stricken from the record of this case
02:03:08PM 21 during the trial, you must disregard that
02:03:10PM 22 testimony. You are to consider only the testimony
02:03:14PM 23 which has been presented from the witness stand,
02:03:16PM 24 any exhibits which have been made a part of the
02:03:18PM 25 record in this case, and any stipulations of the

02:03:22PM 1 attorneys.

02:03:36PM 2 I have the additional duty to charge
02:03:38PM 3 you the law applicable to this case. As the
02:03:42PM 4 presiding Judge, I am the sole judge of the law in
02:03:46PM 5 this case and it is your duty as jurors to accept
02:03:50PM 6 that and apply it as I now state it to you. If you
02:03:52PM 7 already have any idea as to what the law is or what
02:03:56PM 8 the law ought to be and it does not agree with what
02:04:00PM 9 I now tell you the law is, you must abandon your
02:04:06PM 10 idea because you are sworn to accept the law and
02:04:08PM 11 apply the law exactly as I state it to you.

02:04:14PM 12 In every case tried in this court
02:04:16PM 13 before a jury, the jury becomes the sole and the
02:04:20PM 14 exclusive judge of the fact in the case. A trial
02:04:24PM 15 Judge cannot intimate, state, comment on, or make
02:04:26PM 16 any statement to a trial jury about the facts in
02:04:32PM 17 the case. Since you the jury are the sole judge of
02:04:34PM 18 the facts in this case, you are not to infer from
02:04:38PM 19 what I have said during the progress of this trial
02:04:42PM 20 in ruling upon the admissibility of evidence or
02:04:44PM 21 otherwise, or anything that I now say during the
02:04:48PM 22 course of these instructions to you, that I have
02:04:50PM 23 any opinion about the facts of this case. The law
02:04:52PM 24 does not allow me to have an opinion about the
02:04:56PM 25 facts of this case. That is a matter solely for

02:04:58PM 1 you, the jury, to determine.

02:05:00PM 2 As jurors, it is your duty to determine
02:05:04PM 3 the effect, the value, the weight and the truth of
02:05:10PM 4 the evidence presented during this trial. I
02:05:14PM 5 instruct you and emphasize that the fact that the
02:05:16PM 6 Defendant did not testify is not a factor to be
02:05:20PM 7 considered by you in any way in your deliberations
02:05:24PM 8 and in your consideration on the question of the
02:05:28PM 9 guilt or innocence of the Defendant. It must not
02:05:32PM 10 be considered by you in any manner whatsoever. A
02:05:36PM 11 Defendant has a Constitutional right to remain
02:05:40PM 12 silent, and the assertion of this right must not be
02:05:42PM 13 considered by you in your deliberations.

02:05:46PM 14 I repeat, under your oath, you are to
02:05:48PM 15 draw no conclusions whatsoever from the fact that
02:05:50PM 16 this Defendant in this case did not testify.

02:05:58PM 17 Madame Forelady, the fact that this
02:06:00PM 18 Defendant did not testify should not even be
02:06:04PM 19 discussed in the jury room. The burden of proof,
02:06:06PM 20 as I have stated to you, is on the State. The
02:06:10PM 21 Defendant is not required to prove his innocence.
02:06:12PM 22 The burden of proof remains on the State to prove
02:06:16PM 23 guilt beyond a reasonable doubt.

02:06:20PM 24 Direct and circumstantial evidence.
02:06:28PM 25 There are two types of evidence which are generally

02:06:30PM 1 presented during a trial, direct evidence,
02:06:34PM 2 circumstantial evidence. Direct evidence and
02:06:38PM 3 circumstantial evidence -- direct evidence directly
02:06:44PM 4 proves the existence of a fact and does not require
02:06:48PM 5 deductions. Circumstantial evidence is proof of a
02:06:52PM 6 chain of facts and circumstances indicating the
02:06:54PM 7 existence of a fact.

02:06:56PM 8 A crime may be proven by circumstantial
02:07:00PM 9 evidence. The law makes no distinction between the
02:07:02PM 10 weight or the value to be given to either direct or
02:07:06PM 11 circumstantial evidence; however, to the extent the
02:07:10PM 12 State relies on circumstantial evidence, all of the
02:07:12PM 13 circumstances must be consistent with each other,
02:07:14PM 14 and when taken together, point conclusively to the
02:07:20PM 15 guilt of the accused beyond a reasonable doubt.

02:07:22PM 16 If these circumstances merely portray
02:07:26PM 17 the Defendant's behavior as suspicious, the proof
02:07:30PM 18 has failed. The State has the burden of proving
02:07:34PM 19 the Defendant guilty beyond a reasonable doubt.
02:07:36PM 20 This burden rests with the State regardless of
02:07:38PM 21 whether the State relies on direct evidence,
02:07:40PM 22 circumstantial evidence, or some combination of the
02:07:44PM 23 two.

02:07:46PM 24 Credibility of witnesses. Necessarily
02:07:48PM 25 you must determine the credibility of the witnesses

02:07:50PM 1 who have testified in this case. Credibility
02:07:54PM 2 simply means believability. It becomes your duty
02:07:58PM 3 as jurors to analyze and to evaluate the evidence
02:08:00PM 4 and determine which evidence satisfies you or
02:08:04PM 5 convinces you of its truth.

02:08:08PM 6 In determining the believability of the
02:08:10PM 7 witnesses who have testified in this case, you may
02:08:12PM 8 believe one over several, several over one, you may
02:08:16PM 9 believe a part of the testimony of a witness and
02:08:18PM 10 reject the remaining part of the testimony of that
02:08:22PM 11 same witness. You may believe the testimony of a
02:08:26PM 12 witness in its entirety or reject the testimony of
02:08:30PM 13 a witness in its entirety.

02:08:32PM 14 You may consider whether any witness
02:08:34PM 15 has exhibited to you any interest, bias, prejudice,
02:08:38PM 16 or other motive in this case. You may also
02:08:42PM 17 consider the appearance, the manner, the demeanor
02:08:46PM 18 of the witness while on the witness stand.

02:08:48PM 19 You may take into account any testimony
02:08:58PM 20 given by the witnesses, as you are the finders of
02:09:02PM 21 fact. A person who has a past criminal record is
02:09:10PM 22 competent to testify during a trial. A past record
02:09:12PM 23 does not affect the ability of that witness to
02:09:14PM 24 testify. The past record may only be considered by
02:09:18PM 25 you, if at all, in determining the witness's

02:09:22PM 1 believability. Remember, you are the sole judges
02:09:24PM 2 of the facts in the case and of the believability
02:09:26PM 3 of any or all of the witnesses.

02:09:30PM 4 You've heard this charge before during
02:09:34PM 5 the course of the trial on expert witnesses.
02:09:36PM 6 Again, normally, a person cannot give opinion
02:09:38PM 7 testimony. Normally, when a person testifies, they
02:09:42PM 8 must testify as to either what they saw, heard,
02:09:48PM 9 sensed by smell, or something of that nature;
02:09:50PM 10 however, there is an exception when someone is
02:09:52PM 11 qualified because of education or experience.

02:09:56PM 12 They are permitted to give their
02:09:58PM 13 opinion in certain areas, as the Court qualifies
02:10:00PM 14 them that way, to give opinion testimony in that
02:10:04PM 15 area. That does not mean that you must accept the
02:10:08PM 16 opinion, but it is evidence for you the jury to use
02:10:10PM 17 in any way you deem fit and give it the weight you
02:10:14PM 18 value and the credibility as you deem appropriate.

02:10:20PM 19 Intent. In order to establish criminal
02:10:24PM 20 liability, criminal intent is required. For
02:10:28PM 21 example, the mental state required to be proven by
02:10:30PM 22 the State for a particular crime might be purpose,
02:10:36PM 23 intent, knowledge, knowingly reckless,
02:10:40PM 24 recklessness, or criminal negligence. Criminal
02:10:42PM 25 intent must be proven by the State beyond a

02:10:46PM 1 reasonable doubt. Criminal intent is always the
02:10:48PM 2 matter that must be determined by the jury from the
02:10:52PM 3 circumstances surrounding the situation.

02:10:56PM 4 There is no way to prove intent to a
02:10:58PM 5 mathematical certainty. There is no way medical
02:11:04PM 6 science can dissect a person's brain and determine
02:11:06PM 7 what the person had in mind. So the law -- our law
02:11:10PM 8 says criminal intent may be inferred from the
02:11:14PM 9 circumstances shown to have existed. This is how
02:11:18PM 10 you make your determination of whether or not the
02:11:20PM 11 element requiring intent is present. It is not
02:11:24PM 12 necessary to establish intent by direct and
02:11:28PM 13 positive evidence, but intent may be established by
02:11:32PM 14 inference of the same weight as any other facts
02:11:36PM 15 taken into consideration, the acts of the parties,
02:11:40PM 16 and all the facts and circumstances of the case.

02:11:42PM 17 Criminal intent is a mental state, a
02:11:46PM 18 conscious wrongdoing. It is up to you to determine
02:11:50PM 19 what the Defendant intended to do, based on the
02:11:52PM 20 circumstances shown to have existed.

02:11:56PM 21 Ladies and gentlemen, that is the
02:11:58PM 22 charge on the general criminal law in South
02:12:02PM 23 Carolina that would apply to all cases. I'm going
02:12:06PM 24 to first charge you now on the trafficking in
02:12:10PM 25 cocaine and then possession with intent to

02:12:12PM 1 distribute marijuana, and then the third charge,
02:12:16PM 2 possession of a firearm during the commission of a
02:12:18PM 3 violent crime.

02:12:18PM 4 During the trafficking in cocaine
02:12:22PM 5 charge, I will refer to certain types of
02:12:24PM 6 possession, but I will define those when I get to
02:12:28PM 7 the end of the possession with intent to distribute
02:12:32PM 8 marijuana. If you would please continue to give me
02:12:34PM 9 your complete and undivided attention.

02:12:36PM 10 The Defendant is charged with
02:12:38PM 11 trafficking in cocaine. The State must prove
02:12:42PM 12 beyond a reasonable doubt that the Defendant
02:12:48PM 13 knowingly sold, manufactured, cultivated,
02:12:52PM 14 delivered, purchased, brought into this state,
02:12:54PM 15 provided financial assistance or otherwise aided,
02:12:58PM 16 abetted, attempted or conspired to sell,
02:13:02PM 17 manufacture, cultivate, deliver, purchase, or bring
02:13:06PM 18 into this state, or was knowingly in actual or
02:13:12PM 19 constructive possession of cocaine.

02:13:14PM 20 The State must also prove beyond a
02:13:20PM 21 reasonable doubt that the amount of the cocaine, or
02:13:20PM 22 any mixture containing cocaine, was 28 grams or
02:13:24PM 23 more, but less than 100 grams. Now, I'm going to
02:13:30PM 24 define, as I said, those terms, actual and
02:13:32PM 25 constructive possession, in greater detail in the

02:13:36PM 1 next charge, possession with intent to distribute
02:13:42PM 2 marijuana.

02:13:42PM 3 The Defendant is charged with
02:13:44PM 4 possession with intent to distribute marijuana.
02:13:46PM 5 The State must prove beyond a reasonable doubt that
02:13:50PM 6 the Defendant possessed marijuana with the intent
02:13:52PM 7 to distribute. To prove possession, the State must
02:13:56PM 8 prove beyond a reasonable doubt that the Defendant
02:13:58PM 9 had both the power and the intent to control the
02:14:00PM 10 disposition or use of the marijuana.

02:14:06PM 11 Possession may be either actual or
02:14:08PM 12 constructive, just as it could be with trafficking
02:14:10PM 13 in cocaine. Actual possession means that the
02:14:14PM 14 marijuana was in the actual physical custody of the
02:14:20PM 15 Defendant. It will be the same for the cocaine.
02:14:26PM 16 Constructive possession means that the Defendant
02:14:30PM 17 had dominion and control or the right to exercise
02:14:34PM 18 dominion and control over either the marijuana
02:14:38PM 19 itself or cocaine itself, or the property on which
02:14:42PM 20 the marijuana or cocaine was found.

02:14:46PM 21 Mere presence at the scene where drugs
02:14:48PM 22 are found is not enough to prove possession. The
02:14:54PM 23 Defendant's knowledge and possession may be
02:14:56PM 24 inferred when a substance is found on the property
02:15:00PM 25 under the Defendant's control; however, this

02:15:02PM 1 inference is simply an evidentiary fact to be taken
02:15:10PM 2 into consideration by you, along with the other
02:15:10PM 3 evidence in the case, and to be given the weight
02:15:14PM 4 and value you decide it should have. Two or more
02:15:18PM 5 persons may have joint possession of a drug.

02:15:22PM 6 The State must also prove beyond a
02:15:26PM 7 reasonable doubt that the Defendant intended to
02:15:28PM 8 distribute the marijuana. Distribution means to
02:15:32PM 9 deliver other than by administering or dispensing a
02:15:38PM 10 drug.

02:15:40PM 11 Intent may be shown by the acts and
02:15:42PM 12 conduct of the Defendant and other circumstances,
02:15:46PM 13 from which you may naturally and reasonably infer
02:15:50PM 14 intent. In determining whether the Defendant had
02:15:52PM 15 the intent to distribute the marijuana, you may
02:15:56PM 16 consider the circumstances surrounding the
02:16:00PM 17 Defendant's alleged possession. You may consider
02:16:00PM 18 the amount of the substance alleged to have been
02:16:06PM 19 possessed, the manner in which it was allegedly
02:16:08PM 20 possessed, the place where it was allegedly
02:16:10PM 21 possessed, and other factors which you consider to
02:16:14PM 22 be important.

02:16:16PM 23 You must find that the Defendant did
02:16:18PM 24 not intend to have the marijuana solely for his own
02:16:24PM 25 use. Possession of more than 28 grams, or 1 ounce,

02:16:30PM 1 of marijuana creates an inference that the
02:16:32PM 2 Defendant possessed the marijuana with the intent
02:16:34PM 3 to distribute. This inference does not relieve the
02:16:38PM 4 State from proving beyond a reasonable doubt that
02:16:40PM 5 the Defendant had the intent to distribute. It is
02:16:44PM 6 simply an evidentiary fact to be taken into
02:16:48PM 7 consideration by you, along with other evidence in
02:16:52PM 8 the case, and to be given the weight and value you
02:16:54PM 9 decide it should be given.

02:16:58PM 10 Finally, possession of a firearm during
02:17:02PM 11 the commission or intent to commit a violent crime.
02:17:06PM 12 The Defendant is charged with possession of a
02:17:12PM 13 firearm during the commission of or attempt to
02:17:14PM 14 commit a violent crime. The State must prove
02:17:16PM 15 beyond a reasonable doubt that the Defendant was in
02:17:18PM 16 possession of a firearm or visibly displayed what
02:17:24PM 17 appeared to be a firearm during the commission of a
02:17:28PM 18 violent crime or an attempt to commit a violent
02:17:32PM 19 crime.

02:17:32PM 20 A firearm means any machine gun,
02:17:34PM 21 automatic rifle, revolver, pistol or any weapon
02:17:38PM 22 which will or is designed to or may be readily
02:17:42PM 23 converted to expel a projectile. In order to find
02:17:46PM 24 the Defendant guilty of possession of a firearm,
02:17:50PM 25 which can be actual or constructive, during the

02:17:52PM 1 commission of a violent crime, you must first find
02:17:56PM 2 the Defendant guilty of either committing a violent
02:18:00PM 3 crime or attempting to commit a violent crime.

02:18:04PM 4 Under South Carolina statute,
02:18:06PM 5 trafficking in cocaine is a violent crime. The
02:18:12PM 6 State must prove beyond a reasonable doubt that the
02:18:14PM 7 weapon further advanced or helped in the commission
02:18:18PM 8 of the crime.

02:18:20PM 9 And I assure you, ladies and gentlemen,
02:18:20PM 10 the end is in sight. If you would just bear with
02:18:24PM 11 me a few more moments.

02:18:28PM 12 Hand of one hand, hand of all. If a
02:18:30PM 13 crime is committed by two or more people who are
02:18:34PM 14 acting together in committing the crime, the act of
02:18:36PM 15 one is the act of all. A person who joins with
02:18:40PM 16 another to commit an unlawful act is criminally
02:18:42PM 17 responsible for everything done by the other person
02:18:46PM 18 which happens as a probable and natural consequence
02:18:50PM 19 of the acts done in carrying out the common plan
02:18:54PM 20 and purpose.

02:18:56PM 21 For example, two people can be guilty
02:18:58PM 22 of killing another person when only one of the two
02:19:02PM 23 had a gun; there was only one bullet and only one
02:19:08PM 24 of the two fired the shot that caused the death.
02:19:12PM 25 If two or more people are together, acting

02:19:14PM 1 together, assisting each other in committing the
02:19:20PM 2 offense, the act of one is the act of all, or as it
02:19:22PM 3 is sometimes said, the hand of one is the hand of
02:19:24PM 4 all.

02:19:26PM 5 Prior knowledge that a crime is going
02:19:28PM 6 to be committed, without more, is not sufficient to
02:19:32PM 7 make a person guilty of that crime. Mere knowledge
02:19:36PM 8 that another person is going to commit a crime,
02:19:40PM 9 even if the Defendant is present when the crime is
02:19:44PM 10 committed, is not sufficient to convict the
02:19:46PM 11 Defendant as a principal.

02:19:48PM 12 Guilt as a principal is shown by actual
02:19:50PM 13 or constructive presence at the scene as a result
02:19:54PM 14 of a prior arrangement; therefore, the finding of a
02:20:02PM 15 prior arranged plan or confidence scheme is
02:20:04PM 16 necessary for a finding of guilt as a principal.
02:20:06PM 17 The State must prove beyond a reasonable doubt, by
02:20:10PM 18 competent evidence, the theory that the hand of one
02:20:12PM 19 is the hand of all.

02:20:14PM 20 A principal in a crime is one who
02:20:16PM 21 either actually commits the crime or who is
02:20:18PM 22 present, aiding, abetting, or assisting in the
02:20:22PM 23 commission of the crime. When a person does an act
02:20:26PM 24 in the presence of and with the assistance of
02:20:30PM 25 another, the act was done by both. Where two or

02:20:34PM 1 more acting with a common plan or intent are
02:20:36PM 2 present at the commission of a crime, it does not
02:20:38PM 3 matter who actually commits the crime, all are
02:20:42PM 4 guilty; the hand of one is the hand of all.

02:20:46PM 5 Present at the commission of a crime
02:20:50PM 6 means to be sufficiently near to pay and abet and
02:20:54PM 7 assist in the commission of the crime; however,
02:20:58PM 8 mere presence at the scene of the crime is not
02:21:02PM 9 sufficient to convict one as the principal on the
02:21:04PM 10 theory of aiding and abetting. Intent is also a
02:21:08PM 11 necessary element, where there must have been a
02:21:10PM 12 common design or intent to commit the crime, and
02:21:14PM 13 the crime must have been committed pursuant
02:21:16PM 14 thereto, with the person aiding and abetting by
02:21:22PM 15 some overt act.

02:21:24PM 16 Intent means intending the result which
02:21:26PM 17 actually occurred, not accidentally or
02:21:28PM 18 involuntarily. Intent may be shown by acts and
02:21:32PM 19 conduct of the Defendant and other circumstances,
02:21:34PM 20 from which you may naturally and reasonably infer
02:21:40PM 21 intent.

02:21:42PM 22 Mere presence at the scene of the crime
02:21:44PM 23 is not sufficient to prove someone guilty of a
02:21:50PM 24 crime. A Defendant's presence where a crime is
02:21:52PM 25 being committed, or a mere association with a

02:21:52PM 1 person who commits a crime, does not make a
02:21:56PM 2 Defendant an accomplice or an aider or abetter of
02:22:00PM 3 the person committing the crime.

02:22:08PM 4 The burden is on the State to prove
02:22:10PM 5 every element of the crimes charged. If you find
02:22:14PM 6 after reviewing all of the evidence that the State
02:22:16PM 7 has proved that the Defendant was only or merely
02:22:20PM 8 present at the scene of the crime and that they
02:22:22PM 9 have not proved beyond a reasonable doubt any other
02:22:26PM 10 participation in the crime, then you must find the
02:22:28PM 11 Defendant not guilty.

02:22:32PM 12 On the other hand, if the State has
02:22:32PM 13 proved to you beyond a reasonable doubt a principal
02:22:36PM 14 or participant in the crime, then you must find the
02:22:40PM 15 Defendant guilty. The law is that proof at the --
02:22:52PM 16 at the scene of the crime is not sufficient to find
02:22:54PM 17 someone guilty.

02:22:56PM 18 And, finally, ladies and gentlemen, as
02:23:06PM 19 to the jury verdict as to the charge of trafficking
02:23:06PM 20 in cocaine, there are two possible verdicts you may
02:23:10PM 21 find in the case, guilty of trafficking in cocaine
02:23:14PM 22 or not guilty. As to possession with intent to
02:23:18PM 23 distribute marijuana, there are two possible
02:23:20PM 24 verdicts you may find in this case, guilty of
02:23:24PM 25 possession with intent to distribute marijuana or

02:23:24PM 1 not guilty. And as to the charge of possession of
02:23:26PM 2 a firearm during the commission of a violent crime,
02:23:30PM 3 there are two possible verdicts which you may find
02:23:34PM 4 in that case, guilty of possession of a firearm
02:23:38PM 5 during the commission of a violent crime or not
02:23:38PM 6 guilty.

02:23:46PM 7 The Defendant may not be found guilty
02:23:48PM 8 of possession of a firearm during the commission of
02:23:54PM 9 a violent crime unless he is found guilty of
02:23:56PM 10 committing the violent crime of trafficking in
02:24:00PM 11 cocaine.

02:24:00PM 12 There is no significance whatsoever in
02:24:02PM 13 the order in which I stated these possible
02:24:04PM 14 verdicts. It's simply that one must be stated
02:24:08PM 15 first.

02:24:08PM 16 Ladies and gentlemen, your verdicts
02:24:10PM 17 must be unanimous. All 12 of you must agree. It
02:24:14PM 18 must not be based on compassion, prejudice, bias,
02:24:20PM 19 or any other emotion not in the record in this
02:24:24PM 20 case.

02:24:26PM 21 Madame Forelady, when the jury agrees
02:24:28PM 22 on the verdicts, when they are unanimous and record
02:24:34PM 23 it, you are to write the verdict -- and you'll have
02:24:36PM 24 this form in there with you. It's the verdict
02:24:38PM 25 form. And it just lists the three indictments, the

02:24:44PM 1 trafficking in cocaine, possession with intent to
02:24:44PM 2 distribute marijuana, possession of a firearm. And
02:24:48PM 3 if you find the State has met its burden of proving
02:24:52PM 4 the Defendant guilty beyond a reasonable doubt to
02:24:54PM 5 trafficking in cocaine, I would ask you to please
02:24:56PM 6 check to the left of the word, guilty of
02:25:00PM 7 trafficking in cocaine, and circle both the
02:25:02PM 8 checkmark and those words.

02:25:04PM 9 If you find the State has failed to
02:25:06PM 10 meet its burden of proof beyond a reasonable doubt
02:25:08PM 11 as to trafficking in cocaine, check to the left and
02:25:12PM 12 circle the checkmark and not guilty.

02:25:16PM 13 The form is very self-explanatory. The
02:25:18PM 14 next one is possession with intent to distribute,
02:25:20PM 15 and the next one I have is possession of a firearm
02:25:26PM 16 during the commission of a violent crime.

02:25:28PM 17 Once you have reached those unanimous
02:25:30PM 18 verdicts, if you would sign, Madame Forelady, as
02:25:34PM 19 the presiding juror, date the form, knock on the
02:25:36PM 20 jury room door and advise the bailiff that you have
02:25:40PM 21 reached unanimous verdicts and we will receive you
02:25:44PM 22 back into the courtroom.

02:25:46PM 23 As to the evidence, you will have all
02:25:48PM 24 of the items of evidence in the jury room with you;
02:25:52PM 25 however, the firearm and the ammunition may not be

02:26:00PM 1 in the jury room at the same time. So if you want
02:26:06PM 2 to see -- I'll send the weapon in. It's secured
02:26:10PM 3 and safe, and then if you want to see the
02:26:12PM 4 ammunition, just let the bailiff know, and I will
02:26:18PM 5 have the firearm brought out and then the
02:26:22PM 6 ammunition brought in.

02:26:24PM 7 If you have any questions during the
02:26:26PM 8 course of your deliberations, if you would write me
02:26:28PM 9 a note and give it to the bailiff and he will
02:26:32PM 10 deliver it to me in a timely manner.

02:26:36PM 11 Do not begin your deliberations. The
02:26:38PM 12 law requires that I meet with the attorneys one
02:26:40PM 13 final time outside of your presence in case I have
02:26:44PM 14 not instructed you on the issues that I needed to
02:26:48PM 15 instruct you on. I do not have to bring you back
02:26:52PM 16 out if everything was great. Our two alternates
02:26:56PM 17 will come out, the items will be presented to you
02:27:00PM 18 and you would then be instructed by the clerk to
02:27:02PM 19 begin your deliberations.

02:27:04PM 20 Thank you. Thank you very much. You
02:27:06PM 21 may now go to deliberate.

02:27:08PM 22 (Jury out 2:26 p.m.)

02:27:40PM 23 THE COURT: Any exceptions, Solicitor?

02:27:40PM 24 MS. MULKEY: Yes, sir. The State does
02:27:44PM 25 take exception to the instruction regarding the

02:27:44PM 1 criminal history or record of a witness, as we
02:27:48PM 2 don't believe that's relevant as to the witnesses
02:27:52PM 3 the State presented.

02:27:52PM 4 THE COURT: I thought -- I thought -- I
02:27:56PM 5 thought -- I thought Mr. -- maybe he didn't testify
02:28:00PM 6 in front of the jury. I was thinking about his
02:28:04PM 7 nephew.

02:28:04PM 8 MS. MULKEY: He didn't testify in front
02:28:06PM 9 of the jury, Your Honor.

02:28:06PM 10 THE COURT: So what are you asking me
02:28:10PM 11 to do?

02:28:12PM 12 MS. MULKEY: I believe the appropriate
02:28:14PM 13 response may be to correct them, that that was --
02:28:18PM 14 that the instruction was given; however, it's not
02:28:22PM 15 applicable to the witnesses that were presented in
02:28:24PM 16 this case.

02:28:24PM 17 THE COURT: Okay.

02:28:26PM 18 MR. LEWIS: And I don't have an
02:28:26PM 19 objection to that remedy. And maybe a way to do it
02:28:30PM 20 is simply that it was included in a standard charge
02:28:32PM 21 and isn't applicable to this case. I think it
02:28:36PM 22 would be fine.

02:28:36PM 23 MS. MULKEY: State would be fine with
02:28:38PM 24 that.

02:28:38PM 25 MR. LEWIS: My only other exception is

02:28:42PM 1 to the one I made previously, as to the hand of
02:28:44PM 2 one, and I would like that noted for the record.

02:28:46PM 3 MS. MULKEY: If I may, I just want a
02:28:48PM 4 clarification. Was mere presence charged twice?

02:28:52PM 5 THE COURT: Yes.

02:28:52PM 6 MS. MULKEY: It was?

02:28:54PM 7 THE COURT: It was charged in the hand
02:28:56PM 8 of one and the hand of all, and then he had
02:28:58PM 9 presented just two paragraphs that are generally
02:29:04PM 10 extrapolated from some of -- if that's even a word
02:29:12PM 11 -- from that law and I did charge that request
02:29:18PM 12 specifically from the defense.

02:29:20PM 13 MS. MULKEY: Okay.

02:29:20PM 14 THE COURT: And I'm trying to figure
02:29:22PM 15 out a way to blame my law clerk. You know those
02:29:38PM 16 Southern guys. You know what I'm saying?

02:29:38PM 17 Bring us our jury. I will correct
02:29:42PM 18 that.

02:29:42PM 19 MS. MULKEY: Thank you, Your Honor.

02:29:50PM 20 What about mom-in-law, she had a
02:29:52PM 21 criminal record?

02:29:52PM 22 MR. LEWIS: That's true. That is fair.
02:30:00PM 23 Never mind. Don't bring them back.

02:30:02PM 24 THE COURT: We debated which witness it
02:30:06PM 25 was in the back and --

03:52:28PM 1 Okay. That's all.

03:52:30PM 2 (Jury out 3:51 p.m.)

03:53:00PM 3 THE COURT: Any exception, Solicitor?

03:53:02PM 4 MS. MULKEY: No, Your Honor.

03:53:02PM 5 THE COURT: Mr. Lewis?

03:53:02PM 6 MR. LEWIS: No, Your Honor.

03:53:02PM 7 THE COURT: Thank you. Thank you, very

03:53:02PM 8 much.

03:53:02PM 9 (COURT. EXH. 4, Jury note, was marked

10 for identification.)

11 (A recess transpired.)

04:15:58PM 12 (Jury in 4:14 p.m.)

04:15:58PM 13 THE BAILIFF: All seated.

04:16:00PM 14 THE COURT: Thank you. Thank you very

04:16:00PM 15 much.

04:16:02PM 16 Madame Clerk.

04:16:28PM 17 All right. The verdict appears to be

04:16:30PM 18 in the proper form and was signed by the presiding

04:16:34PM 19 juror and dated today's date.

04:16:36PM 20 Please publish the verdict to the jury.

04:16:38PM 21 THE CLERK: Yes, sir. In the Court of

04:16:44PM 22 General Sessions for the Ninth Judicial Circuit,

04:16:46PM 23 State of South Carolina, County of Charleston, The

04:16:48PM 24 State of South Carolina V Charles Tramayne Myers,

04:16:52PM 25 indictment number 2013-GS-10-3396. As to the

04:17:00PM 1 charge of trafficking in cocaine, we, the jury,
04:17:02PM 2 unanimously find the Defendant guilty of
04:17:02PM 3 trafficking cocaine.

04:17:08PM 4 Indictment number 2013-GS-10-3397, as
04:17:12PM 5 to the charge of possession with intent to
04:17:16PM 6 distribute marijuana, we, the jury, unanimously
04:17:16PM 7 find the Defendant guilty of possession with intent
04:17:16PM 8 to distribute marijuana.

04:17:22PM 9 Indictment number 2013-GS-10-3398, as
04:17:26PM 10 to the charge of possession of a firearm during the
04:17:32PM 11 commission of a violent crime, we, the jury,
04:17:32PM 12 unanimously find the Defendant not guilty.

04:17:36PM 13 Signed, Forelady Laurie Watson, dated
04:17:40PM 14 October 8, 2014.

04:17:42PM 15 Ladies and gentlemen of the jury, if
04:17:44PM 16 this is your verdict, please raise your right hand.

04:17:48PM 17 THE JURY: (Raised hands.)

04:17:48PM 18 THE COURT: Thank you. Thank you,
04:17:48PM 19 Madame Clerk.

04:17:50PM 20 Anything further for the jury from the
04:17:54PM 21 State?

04:17:54PM 22 MS. MULKEY: No, Your Honor.

04:17:54PM 23 THE COURT: From the defense?

04:17:56PM 24 MR. LEWIS: That the jury be polled,
04:18:00PM 25 Judge.

04:22:10PM 1 teachers protect our children and many times giving
04:22:14PM 2 the ultimate sacrifice to protect children.

04:22:18PM 3 I trust the American people. And this
04:22:20PM 4 is a very important service that you provide.
04:22:26PM 5 Thank you. Thank you very much.

04:22:28PM 6 I will say this, I'm going to excuse
04:22:30PM 7 you from your jury service for the remainder of the
04:22:34PM 8 day and the remainder of the week. You don't have
04:22:36PM 9 to call back, you do not have to come back. It's
04:22:40PM 10 been my pleasure to be with you all in Charleston
04:22:42PM 11 County. That being said --

04:22:44PM 12 Anything else, Madame Clerk?

04:22:48PM 13 THE CLERK: No, sir. No, sir. Just
04:22:50PM 14 that I want to say thank you on behalf of Ms.
04:22:56PM 15 Armstrong, and enjoy the rest of your week.

04:22:58PM 16 (Jury out 4:22 p.m.)

04:23:26PM 17 THE COURT: All right. Motions --
04:23:28PM 18 please be seated. Motions, Mr. Lewis?

04:23:30PM 19 MR. LEWIS: Yes, Your Honor. A motion
04:23:30PM 20 for a new trial to set aside the jury verdict.
04:23:36PM 21 Based primarily on the issues that we had in the
04:23:40PM 22 case, I think at this point it has gone through and
04:23:42PM 23 the jury -- I understand the verdict has been
04:23:44PM 24 rendered. I find it hard pressed with the evidence
04:23:48PM 25 that was actually admitted in that they could reach

04:23:50PM 1 that conclusion and I would ask for a new trial.

04:23:52PM 2 THE COURT: All right. Well, I think
04:23:54PM 3 -- well, I think the jury verdict will stand. I
04:23:58PM 4 think it was reasonable, that it was -- and clearly
04:24:06PM 5 based on thoughtful deliberation of the jurors
04:24:12PM 6 considering that one of the charges they found him
04:24:16PM 7 not guilty; and, of course, the witness that was
04:24:16PM 8 presented who said that was my gun, Ms. Crystal
04:24:16PM 9 Nelson.

04:24:28PM 10 So I would respectfully deny your
04:24:30PM 11 motion and stand by it at this time and reaffirm
04:24:36PM 12 all of my previous rulings, including my previous
04:24:40PM 13 trial rulings as far as the search warrant, as far
04:24:46PM 14 as the statement, and my evidentiary rulings
04:24:50PM 15 throughout the course of the trial.

04:24:50PM 16 MR. LEWIS: And, Judge, I may have done
04:24:52PM 17 that somewhat backwards. I know that you have
04:24:54PM 18 spoken as to my -- the objection that should have
04:24:58PM 19 been included as well as part of the record. I
04:25:00PM 20 will add it now in response to that, that I would
04:25:04PM 21 renew all previous objections made. Thank you,
04:25:06PM 22 Your Honor.

04:25:06PM 23 THE COURT: Yes, sir. Yes, sir.

04:25:08PM 24 All right. Anything -- any reason I
04:25:14PM 25 should not impose sentence at this time?

04:25:16PM 1 MR. LEWIS: None that I know of, Judge.

04:25:18PM 2 His family is present.

04:25:20PM 3 THE COURT: Does the State know of any
04:25:24PM 4 reason why I should not impose sentence at this
04:25:26PM 5 time?

04:25:26PM 6 MS. MULKEY: No, Your Honor.

04:25:28PM 7 THE COURT: Anything further from the
04:25:30PM 8 State?

04:25:30PM 9 MS. MULKEY: Unless Your Honor is ready
04:25:34PM 10 for his record.

04:25:34PM 11 THE COURT: Yes, ma'am.

04:25:36PM 12 MS. MULKEY: Would you like a copy,
04:25:38PM 13 Your Honor?

04:25:38PM 14 THE COURT: No, you can just tell me,
04:25:38PM 15 Solicitor.

04:25:40PM 16 MS. MULKEY: 1996, obstruction of
04:25:44PM 17 highway, giving false information, misprison of a
04:25:46PM 18 felon; 1998, littering and trespassing, driving
04:25:50PM 19 without a driver's license; 1999, possession of
04:25:52PM 20 marijuana, DUI, possession of stolen motor
04:25:56PM 21 vehicle, two breaking and entering into a motor
04:26:00PM 22 vehicle; 2000, disorderly conduct and resisting
04:26:04PM 23 arrest; 2011, possession of cocaine and giving
04:26:08PM 24 false information, possession of marijuana; 2002
04:26:14PM 25 possession of crack, first, possession of stolen

04:26:16PM 1 motor vehicle and trespassing -- excuse me, 2003,
04:26:20PM 2 was the trespassing; 2008, trafficking cocaine and
04:26:24PM 3 unlawful carrying.

04:26:26PM 4 THE COURT: All right. And you have a
04:26:30PM 5 sentencing sheet, Solicitor?

04:26:32PM 6 MS. MULKEY: Yes, Your Honor.

04:26:34PM 7 THE COURT: Can you tell me what
04:26:38PM 8 offense then it would be, trafficking in cocaine?

04:26:46PM 9 MS. MULKEY: I'm sorry, Your Honor,
04:26:46PM 10 could you please repeat that?

04:26:48PM 11 THE COURT: Ma'am?

04:26:48PM 12 MS. MULKEY: I'm sorry, were you asking
04:26:50PM 13 me a question?

04:26:50PM 14 THE COURT: Can you give me the
04:26:54PM 15 sentence range on trafficking in cocaine?

04:26:58PM 16 MS. MULKEY: It's 25 to 30.

04:27:00PM 17 THE COURT: 25 minimum?

04:27:04PM 18 MS. MULKEY: 25 minimum to 30, yes,
04:27:06PM 19 Your Honor.

04:27:06PM 20 THE COURT: So this is trafficking in
04:27:10PM 21 cocaine. What offense?

04:27:12PM 22 MS. MULKEY: It's third, 28 grams or
04:27:14PM 23 more. And specifically it's 25 to 30 years and
04:27:18PM 24 \$50,000.

04:27:18PM 25 THE COURT: And that's a mandatory

04:27:20PM 1 fine?

04:27:22PM 2 MS. MULKEY: No suspended sentence,
04:27:24PM 3 yes, Your Honor. I'm sorry, the fine is and, yes.

04:27:28PM 4 THE COURT: Is mandatory?

04:27:28PM 5 MS. MULKEY: Yes, Your Honor.

04:27:30PM 6 THE COURT: Okay. And then the
04:27:34PM 7 possession with intent to distribute marijuana?

04:27:36PM 8 MS. MULKEY: Not more than five years
04:27:38PM 9 and/or not more than \$5,000.

04:27:44PM 10 THE COURT: And that's what offense?

04:27:46PM 11 MS. MULKEY: That is a possession of
04:27:48PM 12 marijuana, first. I'm sorry, possession with
04:27:54PM 13 intent to distribute marijuana, first.

04:27:58PM 14 THE COURT: And why is it first?

04:28:00PM 15 MS. MULKEY: Because all of his prior
04:28:04PM 16 drug convictions are further back than the ten
04:28:08PM 17 years. The one that is most recent, he served time
04:28:10PM 18 for as opposed to paying a fine and was
04:28:14PM 19 unrepresented.

04:28:14PM 20 THE COURT: All right. Anything
04:28:18PM 21 further from the State?

04:28:20PM 22 MS. MULKEY: No, Your Honor.

04:28:20PM 23 THE COURT: And you would hand up the
04:28:22PM 24 sentencing sheet?

04:28:36PM 25 MR. LEWIS: Your Honor, may I approach

04:28:36PM 1 briefly? I just need to see the certified copies
04:28:38PM 2 of the priors.

04:28:40PM 3 THE COURT: (Indicating)

04:28:40PM 4 MR. LEWIS: May I show them to --

04:28:48PM 5 THE COURT: Sure, yes, sir.

04:29:28PM 6 MR. LEWIS: Your Honor, may I approach?

04:29:30PM 7 THE COURT: Yes, sir.

04:29:30PM 8 MR. LEWIS: I may have gotten those out
04:29:32PM 9 of order. They're all still there.

04:29:38PM 10 THE COURT: Thank you. And does the
04:29:38PM 11 defense agree that these are certified convictions
04:29:44PM 12 and they are certified convictions as to Charles
04:29:50PM 13 Tramayne Myers and are appropriate to enhance the
04:29:54PM 14 trafficking in cocaine 28 to 100 grams?

04:29:58PM 15 MR. LEWIS: Yes, sir.

04:29:58PM 16 THE COURT: And let me ask you,
04:30:00PM 17 Solicitor. The trafficking in cocaine charge has a
04:30:06PM 18 CDR code up top, 2359. And then a CDR code when
04:30:16PM 19 you come down below convicted of, of 0148.

04:30:20PM 20 MS. MULKEY: The correct CDR code is
04:30:22PM 21 0148. That's a clerical error.

04:30:24PM 22 THE COURT: So the CDR code 2359 is not
04:30:28PM 23 correct.

04:30:28PM 24 MS. MULKEY: Yes, Your Honor. That's
04:30:30PM 25 only for a first offense. The 0148 where it says

04:30:34PM 1 convicted, on that is for the third offense.

04:30:38PM 2 THE COURT: So I should then amend 2359

04:30:44PM 3 to 0148?

04:30:46PM 4 MS. MULKEY: Yes, Your Honor.

04:30:48PM 5 THE COURT: Thank you.

04:31:06PM 6 All right. Mr. Lewis, glad to hear

04:31:08PM 7 from you.

04:31:08PM 8 MR. LEWIS: Judge, you have heard the

04:31:16PM 9 facts of the case. What I will ask, that Charles

04:31:18PM 10 is 35 years old. He's lived his entire life in the

04:31:22PM 11 Charleston area along with his immediate family who

04:31:26PM 12 have been present throughout the week. His

04:31:28PM 13 brother, mother and aunt are here.

04:31:30PM 14 He has served 772 days in jail. If

04:31:36PM 15 this Court considers the minimum sentence and

04:31:38PM 16 imposing that, he will still have to serve another

04:31:42PM 17 22 years and 323 days. He would be a 58-year-old

04:31:46PM 18 man when he was released from prison going in at

04:31:50PM 19 35.

04:31:50PM 20 His record, although he has repeated

04:31:54PM 21 offenses, don't show the kind of person that cannot

04:31:58PM 22 be rehabilitated. I would ask that you consider

04:32:00PM 23 that 25 years sufficient. It's an incredibly

04:32:04PM 24 powerful sentence and it certainly sends a message.

04:32:08PM 25 I wish we could have found a different

04:32:10PM 1 result, but we did not. I would ask that you
04:32:12PM 2 consider that substantial sentence is sufficient in
04:32:16PM 3 the case.

04:32:16PM 4 THE COURT: All right. Thank you. I
04:32:18PM 5 would be glad to hear from anyone you want me to
04:32:20PM 6 hear from, Mr. Lewis. Or from Mr. Myers himself.

04:32:34PM 7 MR. LEWIS: His mother would like to
04:32:36PM 8 address you.

04:32:36PM 9 THE COURT: Yes, ma'am. Tell me your
04:32:36PM 10 name, please.

04:32:36PM 11 THE WITNESS: Carolyn...

04:32:38PM 12 THE COURT: I can't quite hear you.
04:32:46PM 13 Step around here for me please. Tell me your name
04:32:54PM 14 again.

04:32:54PM 15 THE WITNESS: Carolyn Myers.

04:32:56PM 16 THE COURT: All right. I would be glad
04:32:56PM 17 to hear from you.

04:32:58PM 18 THE WITNESS: Charles -- Charles'
04:33:02PM 19 father started doing a life sentence when he was
04:33:04PM 20 two years old. So all of Charles --

04:33:06PM 21 THE COURT: I can't hear you. You're
04:33:08PM 22 very soft spoken.

04:33:12PM 23 THE WITNESS: Charles' father started
04:33:14PM 24 doing a life sentence when he was two years old.
04:33:16PM 25 I'm all that he's got. I don't condone the things

04:33:20PM 1 that people do, but I'm asking you, please, not to
04:33:26PM 2 put him in jail. I'm all he's got. All he's got.

04:33:26PM 3 MR. LEWIS: He didn't hear you.

04:33:30PM 4 THE WITNESS: I said, Charles' father
04:33:32PM 5 started doing a life sentence when he was two years
04:33:36PM 6 old and I'm all that Charles has got. I don't
04:33:40PM 7 condone nothing when somebody do something wrong,
04:33:44PM 8 but please don't put him in jail for the rest of
04:33:48PM 9 his life. Please.

04:33:50PM 10 THE COURT: Thank you very much, ma'am.
04:33:56PM 11 Anything further, Mr. Lewis?

04:33:56PM 12 MR. LEWIS: No, Judge.

04:33:58PM 13 THE COURT: All right.

04:38:22PM 14 2013-GS-10-03396, Charles Tramayne Myers, having
04:38:28PM 15 been found guilty of trafficking in cocaine, 28
04:38:32PM 16 grams -- greater than 28 grams and less than 100
04:38:36PM 17 grams, I have reviewed the documents placed before
04:38:40PM 18 me, making this a third offense convicted by the
04:38:44PM 19 jury, Defendant is committed to the State
04:38:46PM 20 Department of Corrections for a determinate term of
04:38:50PM 21 25 years and shall pay a \$50,000 fine. He is to be
04:38:54PM 22 given credit for 772 days served.

04:39:00PM 23 2013-GS-10-03397, Charles Tramayne
04:39:06PM 24 Myers, having been found guilty of possession with
04:39:10PM 25 intent to distribute marijuana, first offense, the

04:39:16PM 1 Defendant is committed to the State Department of
04:39:18PM 2 Corrections for a determinat term of five years.
04:39:20PM 3 Those sentences are concurrent one with the other.

04:39:26PM 4 Good luck to you, Mr. Myers.

04:39:28PM 5 MR. LEWIS: Thank you, Judge.

04:39:32PM 6 THE COURT: Thank you, Mr. Lewis.

04:39:38PM 7 Thank you, Solicitor.

8 (COURT. EXH. 4 in evidence.)

9 (These proceedings were concluded at
10 4:39 p.m., October 8, 2014.)

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IMC178 10/2007934

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2012024819

ARREST WARRANT NUMBER

2012A1010202122

DATE OF ARREST

October 26, 2012

ACTION OF GRAND JURY

TRUE BILL

Southville
Foreperson of Grand Jury
Date:

JUN 4 2013

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1003391

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2013

THE STATE

vs.

CHARLES TRAMAYNE MYERS

B/M

Indictment for

Trafficking Cocaine Base

FILED

6/13/2013 3:29:27 PM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

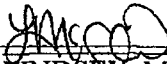
INDICTMENT

At a Court of General Sessions, convened on June 3, 2013 the Grand Jurors of Charleston County present upon their oath:

Trafficking Cocaine Base

That in Charleston County, South Carolina, on or about July 10, 2012, the Defendant, CHARLES TRAMAYNE MYERS, knowingly did sell, manufacture, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, 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 Base, in excess of ten grams but less than twenty-eight grams; in violation of 44-53-375 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.


LINDSEY MCCLAIN
ASSISTANT SOLICITOR

180
LMC1000007934

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2012024819

ARREST WARRANT NUMBER

2012A1010202123

DATE OF ARREST

October 26, 2012

ACTION OF GRAND JURY

TRUE BILL

Scott B. [Signature]
Foreperson of Grand Jury
Date:

JUN 4 2013

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1003392

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2013

THE STATE

vs.

CHARLES TRAMAYNE MYERS

B/M

Indictment for

Trafficking Cocaine

FILED

6/13/2013 3:29:27 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

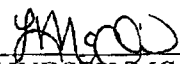
INDICTMENT

At a Court of General Sessions, convened on June 3, 2013 the Grand Jurors of Charleston County present upon their oath:

Trafficking Cocaine

That in Charleston County, South Carolina, on or about July 10, 2012, the Defendant, CHARLES TRAMAYNE MYERS, 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 ten grams but less than twenty-eight 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.


LINDSEY MCCLAIN
ASSISTANT SOLICITOR

LMC10022007938

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2012031012

ARREST WARRANT NUMBER

2012A1010202165

DATE OF ARREST

October 27, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

JUN 4 2013

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1003396

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2013

THE STATE

vs.

CHARLES TRAMAYNE MYERS

B/M

Indictment for

Trafficking Cocaine

FILED

6/13/2013 3:29:27 PM

JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on June 3, 2013 the Grand Jurors of Charleston County present upon their oath:

Trafficking Cocaine

That in Charleston County, South Carolina, on or about October 26, 2012, the Defendant, CHARLES TRAMAYNE MYERS, 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 twenty-eight grams but less than one hundred 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.


LINDSEY MCCLAIN
ASSISTANT SOLICITOR

LMC1004007938

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2012031012

ARREST WARRANT NUMBER.

2012A1010202166

DATE OF ARREST

October 27, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

JUN 4 2013

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1003397

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2013

THE STATE

vs.

CHARLES TRAMAYNE MYERS

B/M

Indictment for

Possession With Intent To Distribute
Marijuana

FILED

6/13/2013 3:29:27 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

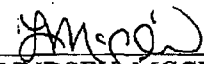
INDICTMENT

At a Court of General Sessions, convened on June 3, 2013 the Grand Jurors of Charleston County present upon their oath:

Possession With Intent To Distribute Marijuana

That in Charleston County, South Carolina, on or about October 26, 2012, the Defendant, CHARLES TRAMAYNE MYERS, 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: Marijuana; 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.



LINDSEY MCCLAIN
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.
Charles Tramayne Myers

AKA: _____
Race: BLACK Sex: M Age: 35
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL#: _____ SID#: SC01066268

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Trafficking in cocaine, 28--100 g, 3rd Offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS1003396
A/W#: 2012A1010202165
Date of Offense: 10/26/2012
S.C. Code §: 44-53-0370(e)(2)(b)1
CDR Code #: 2259 RKM 0148

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0370(e)(2)(b)3 of the S.C. Code of Laws, bearing CDR Code # 0148
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST: Lauren B. Mulkey 77023
Mulkey, Lauren B SC Bar# _____ Defendant Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ 50,000; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: with 2013 GS 1003397
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 772 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient:

*Fine: \$1 \$ 50,000
§ 14-1-206 (Assessments 107.5 %) \$ 53,750
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
§ 56-5-2995 (DUI Assessment) \$12 \$ _____
§ 56-1-286 (DUI Breath Test) \$25 \$ _____
Proviso 47.9 (Public Def/Prob) \$500 \$ _____
§ 14-1-212 (Law Enforce. Funding) \$25 \$ _____
§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00
§ 50-21-114 (DUI Breath Test Fee) \$50 \$ _____
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
Proviso 90.3 (SCCA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$ 3120.15
TOTAL \$ 107125.15

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

RECEIVED

OCT 16 2014

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

SC Court of Appeals

Clerk of Court/ Deputy Clerk

Court Reporter: Denise

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2145

Sentence Date: 8 OCT 14

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)

By: [Signature]
DEPUTY CLERK

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.Charles Tramayne Myers

AKA:

Race: BLACK Sex: M Age: 35DOB: SS#:

Address:

City, State, Zip:

DL#: SC01066268*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: PWID/Dist. of Marijuana or other Sch. I, II, III drug, 1st OffenseINDICTMENT/CASE#: 2013GS1003397A/W#: 2012A1010202166Date of Offense: 10/26/2012S.C. Code §: 44-53-0370(b)(2)CDR Code #: 0186

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0186
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Mulkey, Lauren B77023

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2013 GS 10 - 03396
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>8.40</u>
TOTAL	\$	\$ <u>288.40</u>

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defense Other:

OCT 16 2014

SC Court of Appeals

☐ Appointed PD or appointed other counsel,
§ 47-12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

ATTEST: A TRUE COPY

JULIE L ARMSTRONG (SEAL)

CLERK OF COURT

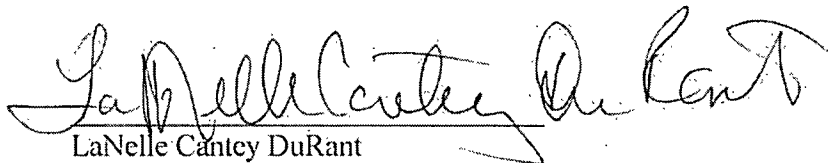
By

DEPUTY CLERK

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."

September 28th, 2015



LaNelle Cantey DuRant
Appellate Defender

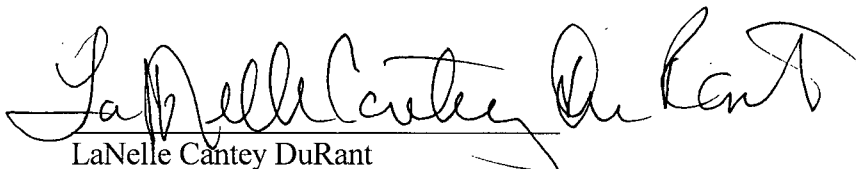
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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."

September 28th, 2015


LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
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ATTORNEY FOR APPELLANT

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SC Court of Appeals

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SC Court of Appeals