

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MATTHEW GUNTER,

APPELLANT

APPELLATE CASE NO. 2015-000716

RECORD ON APPEAL

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1 State of South Carolina
2 County of Lexington

Court of General Sessions

3
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5 State)
6)
7 v.)
8 Matthew Antwon Gunter)
9 Defendant.)

Transcript of Record
14-GS-32-2021

10
11 March 18 - 19, 2015
Lexington, South Carolina

12
13 B E F O R E:

14 The Honorable Ralph Keith Kelly, Judge; and a
15 jury.

16
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25 Circuit Court Reporter

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1 (The following proceedings were held on
2 March 18, 2015.)

3 **THE COURT:** Anything I can do to help you,
4 gentlemen?

5 **MR. COLLINS:** I believe there's nothing else to
6 do but go forward, Your Honor.

7 **THE COURT:** Mr. Mauldin, anything I can do to
8 help?

9 **MR. MAULDIN:** No, Your Honor. We're ready to
10 proceed with trial.

11 **THE COURT:** Okay. We got any matters to take
12 up before the jury -- the jury will be coming in at
13 2:00. I want to be ready to go if we can. Did
14 y'all resolve that expert issue?

15 **MR. COLLINS:** I presume we're going to have at
16 least the motion on the expert, Your Honor, prior to
17 and the issue on the flight.

18 **THE COURT:** Are y'all ready to take up those
19 motions now?

20 **MR. COLLINS:** We are, Your Honor.

21 **THE COURT:** Okay. I'm sure it will be the
22 State's motion -- no, it will be defense motion
23 probably on the -- well, which is it? Who's making
24 the motion?

25 **MR. MAULDIN:** Well, Your Honor, it's my

1 understanding the State intends to call Sam Gunter
2 with the Lexington County Sheriff's Office, I
3 believe he works the drug enforcement over there, to
4 testify as an expert witness, as far as I know, for,
5 I think, the dollar amount of the drugs and then
6 they said something about culture or drug culture,
7 Your Honor.

8 And, obviously, there's been some case law
9 recently -- obviously, it will be a nonscientific
10 type of a witness -- and I think there's a
11 three-prong test that most recently has been
12 discussed in State v. Chavis. It's in the Advance
13 Sheets, Your Honor, I don't think they assigned
14 numbers to it yet, but it's opinion number 27491.
15 And that one involved a -- one of the RATAC forensic
16 interviewers for a criminal sexual conduct. But,
17 basically, in interpreting State v. White, they said
18 there's a three-prong test for the expert testimony,
19 two are in 702 that the person has the credentials
20 or the qualifications to be an expert and that the
21 expert, the evidence that they intend to elicit will
22 assist the trier of fact in the determination of the
23 case.

24 The third element that's coming from the case
25 law is that the methodology that the expert uses is

1 reliable. And, obviously, he's not here yet, but
2 it's my understanding he's just going to testify
3 about what he's dealt with in his training and
4 experience, and I don't know if that would meet the
5 reliability prong and that it wouldn't be subject to
6 any kind of peer review or any kind of indication
7 that that would be reliable evidence.

8 Now, somebody can be qualified as an expert if
9 they have credentials, but the reliability prong and
10 the assist the trier of fact prong determine whether
11 or not what they testify to is admissible as the
12 Court is the gatekeeper of that. There has to be,
13 you know, a finding by the Court that, you know,
14 number one, that the methods that he uses to produce
15 the testimony is reliable and that it would assist
16 the trier of fact.

17 Mr. Gunter is obviously charged with possession
18 with intent to distribute marijuana. They are
19 basing that on the weight of the marijuana. The
20 weight of the marijuana, I believe, is between four
21 and a half to five ounces. I believe there is a
22 statute and case law about the inference that if it
23 weighs over an ounce, that there's a permissible
24 inference it's possession with intent to distribute,
25 and I don't think the dollar amount would assist the

1 trier of fact in that regard.

2 As I said, I have no idea what this marijuana
3 culture or drug culture testimony they intend to
4 elicit is, but our position is is that his
5 methodology would not be reliable and that the
6 evidence they tend to elicit would not assist the
7 trier of fact. It would only serve to confuse them.
8 And that would violate Mr. Gunter's rights to a fair
9 trial under the Sixth Amendment of the U.S.
10 Constitution and Article 1 Section 14 of the State
11 Constitution and his right to due process under the
12 Fifth and Fourteenth Amendments of the U.S.
13 Constitution and Article 1 Section 3 of the State
14 Constitution.

15 **THE COURT:** Mr. Collins.

16 **MR. COLLINS:** Thank you, Your Honor. Your
17 Honor, there are a host of cases, including the
18 Jamison case from South Carolina, including a U.S.
19 Supreme Court case Fourth Circuit and other cases
20 across the circuits, that universally agree that
21 jurors do not know a whole lot about the drug
22 culture or industry and that police experts are
23 typically allowed to testify in order to help the
24 jury to understand that.

25 This case is a intent to distribute trial.

1 Part of what our expert -- we believe that part of
2 what he would help the jury to help understand is,
3 true, the amount and that that amount typically
4 isn't used by -- or typically isn't possessed by the
5 typical user, that generally speaking possessing
6 this amount valued at hundreds of dollars or
7 whatever he would say, Your Honor, and he is here,
8 typically isn't the amount that you'd store on the
9 floor. That is amount -- the next inference would
10 be that since it's not stored on the floor, it would
11 be thrown on the floor, again, distinguishing the
12 intent to distribute versus the simple possession of
13 the drug itself.

14 Your Honor, we believe the expert is invaluable
15 in making our case with that regard because of the
16 weight alone. And there would be no other factors
17 at this point other than the weight to presume the
18 intent to distribute, which is why we would be
19 relying on the expert.

20 One moment, Your Honor.

21 (Pause.)

22 **MR. COLLINS:** And, Your Honor, with regards to
23 reliability, I anticipate that Lieutenant Gunter
24 will testify that he's been in narcotics for over
25 ten years, that he's had the occasion to encounter

1 thousands of narcotics transactions, as well as been
2 involved in the buying and/or selling of those.
3 It's our opinion that his experience and his
4 training as a supervisor certainly would make him
5 reliable as to the common street value given that
6 that is the profession with which he's in.

7 Again, he is here. We can proffer him if we
8 have to, Your Honor. We're substantially certain
9 that that is what he's going to testify to, though.

10 **THE COURT:** Well, let me ask you this because,
11 you know, even a lay witness much -- even a lay
12 witness can be offered and qualified as an expert
13 witness as long as they possess the skill,
14 knowledge, experience, training and education in a
15 particular area that would might be of assistance to
16 the trier of fact, which in this case is going to be
17 the jury. What is it that the State seeks,
18 specifically, to elicit from him? That, number one,
19 the dollar amount of the contraband and then that
20 it's typically more than a user, just a user or
21 someone who possessed it? Is that what the State is
22 seeking to elicit? How far are you going to go into
23 this culture thing?

24 **MR. COLLINS:** That -- and I'm not sure how deep
25 into the culture of marijuana use we go. It most

1 likely is limited to the area of what the typical
2 user, consumer may generally possess based on his
3 experience. And we anticipate his opinion being
4 that the typical user who has it solely for his own
5 use doesn't possess 140 grams of marijuana. That
6 would be the opinion that we would draw from him as
7 the expert.

8 **THE COURT:** Okay. But that's about as far as
9 you're going to go with that. You're not going to
10 get in -- see, when I hear drug culture here, you
11 know, the English language is not neutral. I don't
12 want to get into that this guy is, the defendant
13 what I'm talking about here, I mean, some -- that
14 he's all wrapped up in some culture. I mean, that,
15 to me, envisions; you know, he may well be living
16 out in a compound somewhere where everybody smokes
17 every day. I mean, we're not going to go there.

18 **MR. COLLINS:** No. And we don't have any
19 intention of that, Your Honor. It would be
20 surrounding the areas of street value and the amount
21 a user typically uses versus an amount a distributor
22 typically -- or may have, to separate and
23 distinguish between simple possession.

24 **THE COURT:** Right. I understand. That
25 somebody who is a user might possess an ounce or

1 less or two or whatever it might be, but certainly
2 doesn't have X amount, whatever it is in this case,
3 and then the value of that. Is that about where
4 we're going?

5 **MR. COLLINS:** That's correct, Your Honor.

6 **THE COURT:** Mr. Mauldin, is that about...

7 **MR. MAULDIN:** Well, I would still object based
8 on the grounds I'd previously stated. Obviously, he
9 had no involvement in this case, he doesn't know
10 Mr. Gunter and he's rendering an opinion about use
11 versus selling it or distribution of it.

12 And, obviously, we do have statute and case law
13 rendering that the amount, there is a permissible
14 inference of that. And I have to think that that
15 would just serve to confuse the jury and that -- I
16 don't think that there's a reliable methodology, as
17 I stated, in the Chavis case which had interpreted
18 that, and State v. White, which is an older case
19 about dog tracking, that that reliability prong,
20 that the basis for his opinion is reliable.

21 **MR. COLLINS:** And he's free to cross-examine
22 him on those issues, Your Honor.

23 **THE COURT:** Certainly. I read this case the
24 other day. Let me look at it again.

25 (Pause.)

1 **THE COURT:** Okay. I've looked at that Chavis
2 case again, and help me if I'm wrong about this,
3 Mr. Mauldin, but in that case that expert was
4 actually giving -- it was like an opinion of
5 somebody else. You can't give an opinion -- this is
6 this officer's opinion; right?

7 **MR. MAULDIN:** Yes, sir, Your Honor, but I'm
8 talking about the methodology of allowing the
9 evidence in. They found that, that the basis of
10 which used that RATAC thing, that the fact that it's
11 used -- that it wasn't a reliable method to qualify
12 it. See, a person can be an expert, but whether the
13 testimony is admissible is -- it has that extra
14 prong, the reliability prong of the basis of their
15 knowledge, and the court has to find that there is a
16 reliable basis of knowledge in order for it to be
17 admissible.

18 **THE COURT:** Yeah, I understand that, but he's
19 giving -- he's not just following a checklist of
20 some sort and then giving an opinion; he's giving an
21 opinion from his experience, right? I mean, this is
22 not -- he's not just following a checklist or
23 something as a counselor or something; right? He's
24 giving -- he would be giving his experience based on
25 his, not only his own -- based on his experience

1 actually in the field. Am I confused here? Am I
2 confusing you?

3 **MR. MAULDIN:** I'm just saying that that -- I'm
4 trying to find the word for it, but it's just, you
5 know, based on prior story -- I forgot -- anecdotal,
6 you know, it's basically based on anecdotal
7 information, and I don't think that that, you know,
8 from what he's seen and heard in the past, and I
9 don't know if that necessarily is a reliable source
10 of information for this particular case. He's not
11 involved in this particular case. He's just making
12 assumptions. It would be like having him read the
13 police report and saying, well, I've done narcotics
14 or whatever and it's my opinion that he threw it
15 down. You understand?

16 I think it would be impermissible along those
17 lines definitely. And I think for the -- the lines
18 that the Solicitor, which was introduced before, I
19 think it is equally impermissible. Like, I've been
20 an officer, I've arrested people before and based on
21 reading this other officer's report, I believe X, Y,
22 Z. I don't think that his anecdotal experience is a
23 basis for reliability for the opinion to be, and
24 that's, you know, obviously based on these new
25 interpretations of nonscientific expert testimony.

1 **THE COURT:** I understand that, but he's not
2 giving the opinion that he threw it down based on
3 the police report. He's just saying what the value
4 is based on his own personal knowledge and
5 experience from being an investigator. Right,
6 Mr. Collins?

7 **MR. COLLINS:** That's correct, just to -- based
8 on his thousands of investigations of narcotics
9 transactions and not the factually related to him
10 dropping the bag or anything like that.

11 **THE COURT:** Okay. I'm going to allow him to
12 testify to what the dollar amount is -- and, please,
13 now keep check on him, okay -- but he's going to
14 testify about what the dollar amount is. I find
15 that is reliable and it's proper under 702, that
16 he's reliable and he can testify as to the dollar
17 amount. And he can testify -- I think you said that
18 that is -- and we're going to leave out that word
19 culture, but, typically, this is more than someone
20 usually possesses; right? That's what you're
21 looking for?

22 **MR. COLLINS:** That is correct, Your Honor.

23 The only other thing I could think of is that
24 he's going to testify to his previous experience in
25 investigating drug transactions, but that's about as

1 close to culture as I think that we would possibly
2 get.

3 **THE COURT:** Right. Yeah, just kind of watch
4 that word culture. I don't want to get them hung up
5 on, the jury, on something that is not -- anyway.

6 **MR. COLLINS:** Absolutely.

7 **THE COURT:** He's conducted investigations, he's
8 experienced, but he cannot testify that this is more
9 than this person, you know, I mean, he can testify
10 what the weight is or whatever it is or whichever
11 witness you put in for that, but he can't cross that
12 line like Mr. Mauldin is talking about and say, you
13 know, based on the report, that he...

14 **MR. COLLINS:** But -- and we don't have any
15 intention of that. He very well may look at the
16 evidence of the bags, but that would be as closely
17 -- as specifically related to the facts of this case
18 as it would get.

19 **MR. MAULDIN:** Beg the Court's indulgence.

20 (Pause.)

21 **THE COURT:** Yes, sir, Mr. Mauldin.

22 **MR. MAULDIN:** Your Honor, I understand your
23 ruling, but I do take exception to that ruling and
24 will object at trial.

25 **THE COURT:** Yes, sir.

1 Flight, is that an issue in this case now? I
2 wrote down flight and an expert.

3 **MR. COLLINS:** Your Honor, more so of a
4 precautionary matter because the issue will come up.
5 One of the officers is going to testify he initiated
6 a stop, there was a flight. There's no allegation
7 that the defendant was driving the vehicle, but
8 there will be allegation that he ran from the
9 vehicle once it stopped and then that flight would
10 be connected to the reason he was running and that
11 is that there was marijuana in the car he ran from
12 and he dropped marijuana in his house. But we will
13 bring up the fact that he did run and that that may
14 be some evidence of a guilty conscience. I presume
15 that would be the inference in closing.

16 **THE COURT:** Okay. Mr. Mauldin.

17 **MR. MAULDIN:** Your Honor, we understand what
18 the State's allegations are as far as flight from
19 the vehicle. It's my understanding that some small
20 amount was found in the vehicle, but that was tested
21 by the Richland County Sheriff's Department and I
22 don't see that person on the list to be able to come
23 in and say that it was marijuana in the vehicle. So
24 I would object to them eliciting any testimony about
25 what was in the vehicle.

1 He is charged with what is found in his house,
2 which is in West Columbia on the Raleigh Street
3 address. The amount of marijuana that they're
4 talking about is in the house. They were talking
5 about some items found in the car, but that has not
6 been tested by the local Lexington authorities. It
7 was tested by Richland and I don't think that person
8 is on their list to testify about what, in fact,
9 that was.

10 **THE COURT:** Okay. Are you just eliciting that
11 he fled law enforcement or --

12 **MR. COLLINS:** Your Honor, we would intend on
13 eliciting the testimony from the officer that he did
14 see what he appeared to be was marijuana in each of
15 the seats of the car. We think that's important
16 because there was a very small amount in the
17 driver's seat and a very small amount in the
18 passenger seat of which Mr. Gunter came from and,
19 presumably, at least part of the reason why he ran.
20 We're not tying that weight into the weight of the
21 case against him today, but we do think it's part of
22 the general theory, the overall theory of the res
23 gestae of the story.

24 **THE COURT:** Okay. And he's not saying -- he's
25 not going to say that that is the marijuana. He's

1 saying that appeared to be green leafy material --

2 **MR. COLLINS:** Yes, sir.

3 **THE COURT:** -- or something of that nature. So
4 you're not saying that he had that -- that that was
5 marijuana that he had?

6 **MR. COLLINS:** That's correct. He will -- he
7 will testify to something of the nature that would
8 suggest that it was marijuana. I don't want there
9 to be any misunderstanding.

10 **THE COURT:** I understand, but he's not going to
11 say that it was his marijuana because it's not been
12 proven to be marijuana; right?

13 **MR. COLLINS:** That's correct, just that it was
14 in the passenger seat.

15 **THE COURT:** And it appeared to be, but...

16 **MR. COLLINS:** Correct.

17 **THE COURT:** Mr. Mauldin.

18 (Pause.)

19 **THE COURT:** He could testify to what he saw and
20 appeared to be. I mean, I agree with you. I'm not
21 going to let him say that it was marijuana. Even if
22 it were, if somebody's not here to testify to that,
23 but --

24 **MR. MAULDIN:** Yes, sir, I was.

25 **THE COURT:** -- but he can say what he saw. I

1 mean, you know, there was an empty beer can and I
2 was arrested for DUI, you know, it was an empty beer
3 can. I don't know if there was beer in it or not,
4 but it was empty, you know. It was a green plant
5 material. I don't know what it was. It was
6 consistent with marijuana.

7 **MR. COLLINS:** And that's the beginning and the
8 end of that, Your Honor.

9 **THE COURT:** Okay. Anything else, gentlemen?
10 Anybody need anything on the record before the jury?

11 **MR. MAULDIN:** I handed up a witness list and a
12 voir dire.

13 **THE COURT:** I have a witness list from the
14 State. I have a defendant's witness list. I have
15 voir dire from the defendant.

16 **MR. MAULDIN:** And I've given a copy to the
17 State.

18 **THE COURT:** I ask most of this anyway.

19 **MR. COLLINS:** The only thing we would have,
20 Your Honor, is if Your Honor was inclined to charge
21 number three -- or ask number three, that just on
22 the flip side of the coin, that if any member is so
23 for the use of drugs given the nationwide
24 legalization of marijuana.

25 **THE COURT:** Okay. I'll do that.

1 **MR. COLLINS:** Thank you.

2 **THE COURT:** What about if I ask, does any
3 member of the jury panel believe that drugs should
4 not be illegal?

5 **MR. COLLINS:** We would have no problem with
6 that, Your Honor.

7 **THE COURT:** Mr. Mauldin.

8 **MR. MAULDIN:** No, Your Honor, I have no
9 problem.

10 **THE COURT:** Okay. Is it just marijuana in this
11 case?

12 **MR. MAULDIN:** Yes, sir.

13 **THE COURT:** Why don't I just ask that about
14 marijuana then? Marijuana should be legal.

15 **MR. COLLINS:** Sure. Thank you, Your Honor.

16 **THE COURT:** Anything else?

17 **MR. MAULDIN:** The sequestration of witnesses.
18 I believe the State is going to have Sullivan in as
19 their chief investigator; is that right?

20 **MR. COLLINS:** That's correct, Your Honor. We
21 would ask that the Solicitor's Office investigator,
22 who in this case, in all candor, was employed by the
23 West Columbia Police Department at the time of this
24 case and is the analyst in this case, that he be the
25 chief investigating officer and allowed to remain in

1 the courtroom.

2 **THE COURT:** Any objection to that?

3 **MR. MAULDIN:** No, Your Honor.

4 **THE COURT:** I usually sequester and most of the
5 time lawyers agree. Do y'all agree on it?

6 **MR. MAULDIN:** Yes, sir.

7 **THE COURT:** All right. Everybody will be
8 sequestered then.

9 We got any documents or anything that we can
10 premark?

11 **MR. COLLINS:** Yes.

12 **THE COURT:** Okay. Is there any contention
13 about those documents as to them coming in or not
14 coming in?

15 (Pause.)

16 (State's Exhibit Numbers 1 through 10 marked
17 for identification.)

18 (Brief Recess.)

19 (The jury panel enters the courtroom.)

20 **THE COURT:** Everybody ready?

21 **MR. COLLINS:** The State is.

22 **THE COURT:** Good afternoon, ladies and
23 gentlemen. I'm Keith Kelly. I'm one of your
24 circuit court judges here in the State of South
25 Carolina. I'm based out of the Seventh Judicial

1 Circuit, which is Spartanburg and Cherokee County,
2 but as the name implies, circuit court judge means
3 that we ride the circuit, which happens to be the
4 entire state, 46 counties. So it's been my pleasure
5 and privilege to be with you here this week. I've
6 been here all week conducting some other matters
7 that did not need your attention, but this afternoon
8 we find it necessary to bring you in to handle this
9 matter that's before you.

10 I want to tell you that from those of you that
11 will be chosen here in a moment, we're going to pick
12 13. Twelve of you are necessary to deliver the case
13 and an alternate, but -- and then I'll release the
14 rest of you subject to whatever Judge Don Hocker
15 needs.

16 But I want to tell you that if you are selected
17 sitting on the jury, you will see me stand a lot. I
18 stand a lot in the courtroom. I don't like to sit
19 in that chair. It hurts my back to sit in the
20 chair, number one, or at least that's what I tell
21 folks. The truth of the matter is I can't be still.
22 It's the truth. So you will see me stand a lot, but
23 I tell you that because I don't want you to give any
24 significance whatsoever to the fact that I am
25 standing or sitting if a witness is testifying or

1 otherwise.

2 So if I sit when one witness is testifying and
3 I am standing with another, it does not mean that I
4 believe the testimony of a witness or disbelieve the
5 testimony of a witness one way or another. It just
6 simply means that Keith Kelly is just tired of
7 sitting in that chair and not going to do it.

8 Now, we're about to begin the trial of the case
9 of the State of South Carolina versus Matthew
10 Gunter. Mr. Gunter is charged by an indictment with
11 the offense of possession with intent to distribute
12 marijuana. The indictment alleges that this
13 occurred in this county and in this state on or
14 about May 11 of 2014.

15 Now, I tell you that the indictment itself is
16 nothing more than a piece of paper by which the
17 defendant, Mr. Gunter, is brought before the court.
18 This indictment is a piece of paper. It is not
19 evidence of his guilt whatsoever. It is simply a
20 document that brings him before the court to answer
21 to the indictment. And he has entered a plea of not
22 guilty to that indictment. And I tell you now he is
23 presumed to be not guilty of that indictment. He's
24 entered that plea and he is presumed under law not
25 to be guilty of that charge.

1 There are certain questions that I have to ask
2 you. You were previously placed under oath, I'm
3 assuming, by Judge Hocker. Myra, is that right?

4 **THE CLERK:** Yes, sir.

5 **THE COURT:** Judge Hocker swore everybody or the
6 clerk did. You were previously placed under oath
7 and you remain under oath, but I'm required to ask
8 some questions in this particular case. Here's the
9 first question: Has any member of the jury panel
10 ever been related by blood or marriage to Matthew
11 Gunter; if so, please stand?

12 (There was no response.)

13 **THE COURT:** Is there any member of the jury
14 panel that has a close, personal or social
15 relationship with Matthew Gunter; if so, please
16 stand?

17 (There was no response.)

18 **THE COURT:** Does any member of the jury panel
19 have a family member that has been related by blood
20 or marriage to Mr. Gunter; if so, please stand, to
21 your knowledge?

22 (There was no response.)

23 **THE COURT:** The following is a list of possible
24 witnesses in this case: Matthew Gunter, Shaneria
25 Howell, Michael Fields, Josh Newsom, Officer Walker,

1 Officer Hook, Officer Yarborough, Investigator James
2 Sullivan and Sam Gunter. Is there any member of the
3 jury panel that has ever been related by blood or
4 marriage to any of those potential witnesses; if so,
5 please stand?

6 (There was no response.)

7 **THE COURT:** Any member of the jury panel have a
8 close or a personal relationship with any of those
9 potential witnesses; if so, please stand? If you
10 know them from church, you've seen them at the
11 grocery store and know them, living in the same
12 neighborhood, anything like that.

13 (Juror stands.)

14 **THE COURT:** Yes, sir, your juror number,
15 please.

16 **JUROR:** 186.

17 **THE COURT:** Yes, sir.

18 **JUROR:** Officer Yarborough, where is he from?

19 **THE COURT:** Officer Yarborough is from West
20 Columbia Police Department.

21 **JUROR:** I know him.

22 **THE COURT:** You know him?

23 **JUROR:** Yes.

24 **THE COURT:** Sir, the fact that you know him,
25 would that interfere with your ability to give both

1 the State and the defense a fair and impartial
2 trial?

3 **JUROR:** No, sir, Your Honor.

4 **THE COURT:** Sir, you may stay with us. Thank
5 you.

6 Anybody else?

7 (There was no response.)

8 **THE COURT:** I'm going to ask the lawyers to
9 introduce themselves to you.

10 **MR. COLLINS:** My name is Rick Collins. I'm an
11 assistant solicitor here in the Eleventh Circuit.

12 **MR. BELL:** My name is Gill Bell also on behalf
13 of the State.

14 **MR. MAULDIN:** My name is David Mauldin.

15 **THE COURT:** All right. Is there any member of
16 the jury panel that is related or ever has been
17 related by blood or marriage to any of the lawyers
18 in this case; if so, please stand?

19 (There was no response.)

20 **THE COURT:** Any member of the jury panel have a
21 social or personal relationship with any of the
22 lawyers in this case; if so, please stand? Again,
23 live in the same neighborhood, know them from church
24 or something of that nature; if so, please stand.

25 (There was no response.)

1 **THE COURT:** Is there any member of the jury
2 panel, either yourself or any member of your family
3 or a close personal friend, ever been the victim of
4 or accused of a crime; if so, please stand?

5 (There was no response.)

6 **THE COURT:** Any member of the jury panel or a
7 member of your family or a close personal friend
8 ever been affected by drugs or drug abuse; if so,
9 please stand?

10 (Jurors stand.)

11 **THE COURT:** Yes, ma'am, your number.

12 **JUROR:** 95.

13 **THE COURT:** Yes, ma'am, a friend, family?

14 **JUROR:** Relative.

15 **THE COURT:** A relative?

16 **JUROR:** Yes.

17 **THE COURT:** Would that interfere with your
18 ability to be fair and impartial to both sides in
19 this trial?

20 **JUROR:** No.

21 **THE COURT:** Thank you, ma'am. You may stay.
22 Yes, ma'am, your number.

23 **JUROR:** 153. And it was a former family
24 member.

25 **THE COURT:** A former family member. Would that

1 affect your ability to be fair and impartial to both
2 sides?

3 **JUROR:** No.

4 **THE COURT:** Thank you, ma'am. You may stay.
5 Yes, ma'am.

6 **JUROR:** A family member.

7 **THE COURT:** Number, please.

8 **JUROR:** 143. I'm sorry.

9 **THE COURT:** 143. Yes, ma'am, would that
10 interfere with your ability to be fair and impartial
11 to both sides?

12 **JUROR:** No, sir.

13 **THE COURT:** Thank you, ma'am. You may stay
14 with us.

15 Yes, sir.

16 **JUROR:** 208. Family member.

17 **THE COURT:** Would that interfere with your
18 ability to be fair to both the State and the
19 defense?

20 **JUROR:** No, sir.

21 **THE COURT:** Sir, you may stay. Thank you.
22 Anybody else?

23 : (There was no response.)

24 **THE COURT:** Is there any member of the jury
25 panel, presently or in the past, a member of or a

1 financial supporter of or otherwise involved with
2 organizations that demands stricter enforcement of
3 laws, such as Mothers Against Drunk Driving,
4 Students Against Drunk Driving, Citizens Against
5 Violent Crime or other such organizations; if so,
6 please stand? Either a member or a contributor
7 financially, if so, please stand.

8 (There was no response.)

9 **THE COURT:** Any member of the jury panel,
10 either yourself or a member of your family or close
11 personal friend, currently have a law enforcement
12 officer or ever been in your family -- let's just do
13 it this way: Any member of the jury panel a former
14 law enforcement officer; if so, please stand?

15 (There was no response.)

16 **THE COURT:** Any member of the jury panel a
17 current law enforcement officer, please stand?

18 (There was no response.)

19 **THE COURT:** Any member of the jury panel have a
20 relative that is a law enforcement officer; if so,
21 please stand?

22 (Jurors stand.)

23 **THE COURT:** Yes, ma'am, starting over here.

24 **JUROR:** 143. My son.

25 **THE COURT:** And where is he employed?

1 **JUROR:** Well, he's full-time National Guard,
2 but he's employed in Pine Ridge.

3 **THE COURT:** Okay. Would that interfere --

4 **JUROR:** Part time.

5 **THE COURT:** -- would that interfere with your
6 ability to be fair to both the State and the
7 defense?

8 **JUROR:** No, sir.

9 **THE COURT:** Ma'am, you may stay.
10 Yes, sir.

11 **JUROR:** 127. My son-in-law is a deputy with
12 Richland County.

13 **THE COURT:** Would that interfere with your
14 ability to be fair to both the State and the
15 defense?

16 **JUROR:** No, sir.

17 **THE COURT:** You may stay.

18 Yes, sir.

19 **JUROR:** 208. My nephew by marriage is an
20 officer in Lexington City.

21 **THE COURT:** Okay. Would that interfere with
22 your ability to be fair to both the State and the
23 defense?

24 **JUROR:** No, sir.

25 **THE COURT:** Thank you. You may stay.

1 Yes, sir.

2 **JUROR:** My dad -- 97. My dad is DNR for the
3 State of South Carolina.

4 **THE COURT:** Would that interfere with your
5 ability to be fair to both the State and the
6 defense?

7 **JUROR:** No, sir.

8 **THE COURT:** Sir, thank you. You may stay.
9 Yes, sir.

10 **JUROR:** Number 48. My son-in-law is an ATF
11 agent based out of North Carolina.

12 **THE COURT:** Would that interfere with your
13 ability to be fair to both the State and the
14 defense?

15 **JUROR:** No, sir.

16 **THE COURT:** Sir, you may stay. Thank you.

17 Any member of the jury panel have a very close
18 personal friend, if it's not relative, very close
19 personal friend that is, besides the ones that have
20 answered, that is a law enforcement officer; if so,
21 please stand?

22 (There was no response.)

23 **THE COURT:** Is there any member of the jury
24 panel that believes that the drug marijuana should
25 be legal; if so, please stand?

1 (Jurors stand.)

2 **THE COURT:** All right. Yes, sir, your number.

3 **JUROR:** 119.

4 **THE COURT:** Would that interfere with your
5 ability to be fair to both the State and the defense
6 in this case?

7 **JUROR:** I don't think so, but you would
8 probably disagree with me.

9 **THE COURT:** Disagree how? I'm sorry?

10 **JUROR:** I said, I don't think so, but you would
11 probably disagree. I couldn't, in good conscience,
12 render a guilty verdict for someone --

13 **THE COURT:** That's what I'm asking. I don't
14 have an opinion. State law, and I'm going to tell
15 the jury this in a minute, state law does not allow
16 me to have an opinion. I don't know anything about
17 this case other than the two or three pieces of
18 paper I'm holding. I'm not allowed to know and I
19 don't have an opinion, but if you cannot be fair,
20 you cannot serve. So if that interferes with your
21 ability, and you have the right to believe that, you
22 just can't serve. So would it interfere with your
23 ability?

24 **JUROR:** I can say that I would render a verdict
25 to acquit either way if that's the only crime he's

1 charged with.

2 **THE COURT:** Okay. My question again is, can
3 you be fair -- can you listen to it and follow the
4 law setting aside your personal belief? Can you do
5 that?

6 **JUROR:** No.

7 **THE COURT:** Okay. Sir, you are excused from
8 the trial of this case. Thank you. Your number is?

9 **JUROR:** 119.

10 **THE COURT:** 119 is excused. Just have a seat.
11 Yes, ma'am.

12 **JUROR:** 95.

13 **THE COURT:** Yes, ma'am. Would that interfere
14 with your ability to be fair to both sides?

15 **JUROR:** No.

16 **THE COURT:** It would not. You may stay. Thank
17 you.

18 You can have an opinion; you just have to
19 follow the law, okay.

20 Is there any member -- is there any member of
21 the jury panel that knows of any reason whatsoever
22 why he or she should not serve as a juror in this
23 case with emphasis being placed on the ability to be
24 fair and impartial to both the State and the
25 defense; if so, please stand? Any reason why you

1 cannot sit in this case?

2 (There was no response.)

3 **THE COURT:** Additional questions from the
4 State?

5 **MR. COLLINS:** None, Your Honor.

6 **THE COURT:** Thank you.

7 From the defense?

8 **MR. MAULDIN:** Number three, Your Honor.

9 **THE COURT:** I got you. Thank you.
10 Is there any member of the jury panel so
11 morally opposed, this is the opposite of the
12 question I asked earlier, is there any member of the
13 jury panel so morally opposed to drugs, to
14 marijuana, or marijuana use that you could not be
15 fair and render a fair and impartial decision in
16 this case? Any person so opposed that you cannot
17 render a fair and impartial decision; if so, please
18 stand?

19 (There was no response.)

20 **THE COURT:** Thank you, Mr. Mauldin. Anything
21 else, Mr. Mauldin?

22 **MR. MAULDIN:** No, Your Honor.

23 **THE COURT:** Okay. Anything else from the
24 State?

25 **MR. COLLINS:** No, Your Honor.

1 **THE COURT:** We're ready?

2 **MR. COLLINS:** Yes.

3 **THE COURT:** Okay. Madame Clerk.

4 **THE CLERK:** When I call your name, if you'll
5 bring your belongings up front, stand out here and
6 face the back.

7 Juror number 116, Samantha Lawson.

8 (Whereupon, Samantha K. Lawson, a white
9 female, was called forward.)

10 **THE CLERK:** What say you for the State?

11 **MR. COLLINS:** Please present the juror.

12 **THE CLERK:** What say you for the defense?

13 **MR. MAULDIN:** Please seat Ms. Lawson.

14 **THE CLERK:** If you'll have a seat in the jury
15 box, ma'am.

16 Juror number 48, Ronald Cromer.

17 (Whereupon, Ronald P. Cromer, Jr., a white
18 male, was called forward.)

19 **THE CLERK:** What say you for the State?

20 **MR. COLLINS:** Please present the juror.

21 **THE CLERK:** What say you for the defense?

22 **MR. MAULDIN:** Please excuse Mr. Cromer.

23 **THE CLERK:** If you'll return to your seat, sir.

24 Juror number 17, Tina Becker-Blankenship.

25 (Whereupon, Tina I. Becker-Blankenship, a

1 white female, was called forward.)

2 **THE CLERK:** What say you for the State?

3 **MR. COLLINS:** Please present the juror.

4 **THE CLERK:** What say you for the defense?

5 **MR. MAULDIN:** Please seat

6 Ms. Becker-Blankenship.

7 **THE CLERK:** If you'll have a seat in the jury
8 box, ma'am.

9 Juror number 20, Angela Bell.

10 (Whereupon, Angela M. Bell, a white female,
11 was called forward.)

12 **THE CLERK:** What say you for the State?

13 **MR. COLLINS:** Please present the juror.

14 **THE CLERK:** What say you for the defense?

15 **MR. MAULDIN:** Please seat Ms. Bell.

16 **THE CLERK:** If you'll have a seat in the jury
17 box, ma'am.

18 Juror number 13, Michael Bailey.

19 (Whereupon, Michael L. Bailey, a white male,
20 was called forward.)

21 **THE CLERK:** What say you for the State?

22 **MR. COLLINS:** Please present the juror.

23 **THE CLERK:** What say you for the defense?

24 **MR. MAULDIN:** Please seat Mr. Bailey.

25 **THE CLERK:** If you'll have a seat in the jury

1 box, please.

2 Juror number 170, Robert Ruple.

3 (Whereupon, Robert E. Ruple, Jr., a white
4 male, was called forward.)

5 **THE CLERK:** What say you for the State?

6 **MR. COLLINS:** Please excuse the juror.

7 **THE CLERK:** If you'll return to your seat, sir.

8 Juror number 153, Patricia Patterson.

9 (Whereupon, Patricia D. Patterson, a white
10 female, was called forward.)

11 **THE CLERK:** What say you for the State?

12 **MR. COLLINS:** Please present the juror.

13 **THE CLERK:** What say you for the defense?

14 **MR. MAULDIN:** Please excuse Ms. Patterson.

15 **THE CLERK:** If you'll return to your seat,
16 ma'am.

17 Juror number 173, Barry Schroeder.

18 (Whereupon, Barry D. Schroeder, a white
19 male, was called forward.)

20 **THE CLERK:** What say you for the State?

21 **MR. COLLINS:** Please present the juror.

22 **THE CLERK:** What say you for the defense?

23 **MR. MAULDIN:** Please seat Mr. Schroeder.

24 **THE CLERK:** If you'll have a seat in the jury
25 box, sir.

1 Juror number 108, Donald Johnson.

2 (Whereupon, Donald J. Johnson, II, a white
3 male, was called forward.)

4 **THE CLERK:** What say you for the State?

5 **MR. COLLINS:** Please excuse the juror.

6 **THE CLERK:** If you'll return to your seat, sir.
7 Juror number 203, Evelyn Varn.

8 (Whereupon, Evelyn S. Varn, a white female,
9 was called forward.)

10 **THE CLERK:** What say you for the State?

11 **MR. COLLINS:** Please present the juror.

12 **THE CLERK:** What say you for the defense?

13 **MR. MAULDIN:** Please seat Ms. Varn.

14 **THE CLERK:** If you'll have a seat in the jury
15 box, ma'am.

16 Juror number 132, Duncan McClive.

17 (Whereupon, Duncan B. McClive, a white male,
18 was called forward.)

19 **THE CLERK:** What say you for the State?

20 **MR. COLLINS:** Please present the juror.

21 **THE CLERK:** What say you for the defense?

22 **MR. MAULDIN:** Please seat Mr. McClive.

23 **THE CLERK:** If you'll have a seat in the jury
24 box, sir.

25 Juror number 175, Sharon Scruggs.

1 (Whereupon, Sharon E. Scruggs, a white
2 female, was called forward.)

3 **THE CLERK:** What say you for the State?

4 **MR. COLLINS:** Please present the juror.

5 **THE CLERK:** What say you for the defense?

6 **MR. MAULDIN:** Please seat Ms. Scruggs.

7 **THE CLERK:** If you'll have a seat in the jury
8 box, ma'am.

9 Juror number 79, Mindy Gialanella.

10 (Whereupon, Mindy L. Gialanella, a Asian
11 female, was called forward.)

12 **THE CLERK:** What say you for the State?

13 **MR. COLLINS:** Please present the juror.

14 **THE CLERK:** What say you for the defense?

15 **MR. MAULDIN:** Please seat Ms. Gialanella.

16 **THE CLERK:** If you'll have a seat in the jury
17 box, ma'am.

18 Juror number 126, Jeffrey Martin.

19 (Whereupon, Jeffrey J. Martin, a white male,
20 was called forward.)

21 **THE CLERK:** What say you for the State?

22 **MR. COLLINS:** Please present the juror.

23 **THE CLERK:** What say you for the defense?

24 **MR. MAULDIN:** Please seat Mr. Martin.

25 **THE CLERK:** Thank you.

1 If you'll have a seat in the jury box, sir.

2 Juror number 77, David George.

3 (Whereupon, David G. George, a white male,
4 was called forward.)

5 **THE CLERK:** What say you for the State?

6 **MR. COLLINS:** Please present the juror.

7 **THE CLERK:** What say you for the defense?

8 **MR. MAULDIN:** Please excuse Mr. George.

9 **THE CLERK:** If you'll return to your seat, sir.
10 Juror number 136, Jennifer McMillan.

11 (Whereupon, Jennifer Z. McMillan, a white
12 female, was called forward.)

13 **THE CLERK:** What say you for the State?

14 **MR. COLLINS:** Please present the juror.

15 **THE CLERK:** What say you for the defense?

16 **MR. MAULDIN:** I'm sorry, I didn't hear the
17 number.

18 **THE CLERK:** 136.

19 **MR. MAULDIN:** Please seat Ms. McMillan.

20 **THE CLERK:** If you'll have a seat in the jury
21 box, ma'am.

22 Juror number 210, Erica Whetstone.

23 (Whereupon, Erica L. Whetstone, a white
24 female, was called forward.)

25 **THE CLERK:** What say you for the State?

1 **MR. COLLINS:** Please present the juror.

2 **THE CLERK:** What say you for the defense?

3 **MR. MAULDIN:** Please excuse Ms. Whetstone.

4 **THE CLERK:** If you'll return to your seat,
5 ma'am.

6 Juror number 156, Lisa Pierce.

7 (Whereupon, Lisa J. Pierce, a white female,
8 was called forward.)

9 **THE CLERK:** What say you for the State?

10 **MR. COLLINS:** Please present the juror.

11 **THE CLERK:** What say you for the defense?

12 **MR. MAULDIN:** Please seat Ms. Pierce.

13 **THE CLERK:** If you'll have a seat in the jury
14 box, ma'am.

15 Alternates, Your Honor?

16 **THE COURT:** Will be one and two; just one.

17 **THE CLERK:** One alternate.

18 Juror number 49, Pamela Crossland.

19 (Whereupon, Pamela S. Crossland, a white
20 female, was called forward.)

21 **THE CLERK:** What say you for the State?

22 **MR. COLLINS:** Please present the juror.

23 **THE CLERK:** What say you for the defense?

24 **MR. MAULDIN:** Please seat Ms. Crossland.

25 **THE CLERK:** If you'll have a seat in the jury

1 box, ma'am.

2 **THE COURT:** Any matters, gentlemen?

3 **MR. MAULDIN:** No, Your Honor.

4 **MR. COLLINS:** None from the State.

5 **THE COURT:** Does Judge Hocker need the jury
6 panel?

7 **THE CLERK:** I don't think we have any other
8 trials.

9 **THE COURT:** Ladies and gentlemen who were not
10 selected, I don't know if you're happy or sad about
11 that, but nonetheless you were not selected for this
12 trial. We are going to begin this trial in just a
13 few minutes. Judge Hocker is in the other case and
14 he already has a jury that's out at this point,
15 don't know what's up after that. But it is already
16 2:30 in the afternoon, so I'm going to release you
17 for the rest of the day.

18 I'm going to ask you to call that magic number
19 that the clerk's office gave you earlier this week
20 after 6:00 P.M. There will be further instructions.
21 It may be to report tomorrow morning, it may be
22 report tomorrow afternoon or it may well be that
23 you're done for the week. I've got some other
24 things -- I'm going to try this case and I've got
25 some things to do that do not require your

1 attention, so I don't think I will need another jury
2 the rest of this week, but I don't know about Judge
3 Hocker. But thank you so very much for being here
4 today.

5 Do they go to a jury assembly room and be
6 released from there or what do you want, Mr.
7 Bailiff?

8 **OFFICER:** There's no assembly room, Your Honor.
9 They're free to leave.

10 **THE COURT:** Okay. No assembly room, so you'll
11 be released from here at this point. So call back
12 after 6:00. Thank you. You're welcome to stay,
13 too. Anybody who wants to stay, you're welcome to
14 stay. I need the juror who was late to stay.

15 (The remaining jury panel was excused.)

16 **THE COURT:** Madame Clerk, swear this jury to
17 try this case, please.

18 (The jury was duly sworn by the Clerk of
19 Court at 2:36 P.M.)

20 **THE COURT:** Ladies and gentlemen of the jury,
21 the case we're about to try is the case of the State
22 of South Carolina versus Matthew Antwon Gunter.
23 Mr. Gunter is charged by indictment with possession
24 with intent to distribute marijuana. And as I
25 previously told you, the indictment itself is no

1 evidence whatsoever of his guilt. The indictment is
2 merely a charging instrument or a piece of paper
3 that brings Mr. Gunter to the court to -- for trial.
4 It is alleged that this occurred in Lexington
5 County, South Carolina, on or about May 11 of 2014.

6 Now, ladies and gentlemen, I tell you that what
7 you -- many people do not have a chance to sit in a
8 trial such as the one you're about to be in
9 because -- and because we have watched TV and movies
10 and read books, we think that trials are full of
11 intense action and high drama. And while some of
12 these things may be true at certain times, it is not
13 always true in this courtroom. But this courtroom
14 is a place and part of our fundamental -- part of
15 our democracy to ensure a search for the truth and
16 not for entertainment purposes.

17 I tell you that this courtroom is a place of
18 honor dedicated to the protection and preservation
19 of citizen's rights to what many folks have called
20 the greatest justice system ever created. The
21 lawyers appearing before you are advocates for the
22 party they represent, but first and foremost, they
23 are officers of this court and they are sworn to
24 uphold the integrity and the fairness of our
25 judicial system.

1 Thank you again for being here and being a part
2 of your -- as part of your jury service and being a
3 part of your community.

4 Now, ladies and gentlemen, what I tell you and
5 what I say now are -- comments are intended to serve
6 as an introduction to the trial, but my remarks are
7 not a charge on the law in this case. I will
8 instruct you on the law in this case at the end of
9 the trial before you retire to consider your
10 verdict. My remarks are merely an explanation of
11 the procedure that we will follow in this trial so
12 that you may better understand what is happening.

13 Ladies and gentlemen, I tell you that you are
14 not to take any notes whatsoever. And I further
15 tell you that you're not to have any cell phones or
16 tablets or other forms of communication, I'll go
17 over that more fully in a moment, in the courthouse
18 period and certainly not in the jury box or in the
19 jury assembly room. So if you have those devices
20 with you today, please take a minute and turn those
21 off, disable those and do not use those or look at
22 those during the trial or certainly when you're
23 deliberating.

24 Now, as I told you in the charge of the case --
25 the elements of which will be explained to you

1 later, and, again, the indictment is simply a
2 charging instrument which brings him here before the
3 court -- he has entered a plea of not guilty to the
4 indictment. And the State has the burden of proving
5 each of the elements of the indictment beyond a
6 reasonable doubt. It will then be your duty, ladies
7 and gentlemen, to decide whether the State has met
8 the burden of proof.

9 Your purpose as jurors is to find and determine
10 facts. You are the sole judge of the facts in this
11 case. If, at any time, I make a comment regarding a
12 fact, you must disregard it. You are to determine
13 the facts from the testimony you hear and the other
14 evidence introduced in this court. It is up to you
15 to determine the inferences which you think may be
16 properly drawn from the evidence presented in this
17 case.

18 Ladies and gentlemen, it is especially
19 important that you perform your duty of determining
20 the facts diligently and conscientiously because
21 ordinarily there is no way to correct an erroneous
22 determination of facts by a jury.

23 On the other hand, I tell you, with equal
24 emphasis, the same law that makes you the sole judge
25 of the facts makes me the judge of the law. The law

1 as given by the Court is the only law that you may
2 consider and you must accept it and follow it even
3 if you disagree with it. I cannot tell you what the
4 facts are and you cannot disagree with me about what
5 the law is or ought to be or should be.

6 Your job is to take the law as I give it to you
7 at the end of this case, apply it to the facts as
8 you find them to be from the testimony of the
9 witnesses and other evidence that is properly
10 introduced during the trial and after doing that,
11 render a verdict, a verdict under your oath that you
12 just took as jurors.

13 Until I tell you that you may begin to
14 deliberate, you must not discuss the case with
15 anyone, including fellow jurors, friends and family
16 members and anyone involved in this case. The
17 lawyers in this case have been instructed by me that
18 they are not to speak to you. If you see anyone in
19 this case and you know some of those lawyers and
20 they do not speak to you in the hallway and even if
21 you know them, they are not being rude, they are
22 merely following my instructions. You are very
23 special people anyway, but you are very special with
24 that juror button on, that tells everyone not to
25 speak to you, not to talk to you.

1 You should not be influenced by anything
2 outside of this courtroom in deciding this case.
3 Again, you must decide the case based solely on the
4 evidence presented here.

5 And during the trial, you must not conduct any
6 independent research about the case or the facts or
7 the evidence presented or the people or
8 organizations involved in this case. Please do not
9 try to learn information from any source outside of
10 this courtroom. You must not look at dictionaries
11 or other reference materials, search the Internet,
12 web sites or blogs or use other electronic tools to
13 discover or receive information about the case or to
14 help you decide the case. You may not use
15 computers, telephones, cell phones, smart phones,
16 tablets, the Internet or other tools of technology
17 with communication capabilities at any time while
18 you are in the courtroom or during deliberations.

19 During your breaks for meals and overnight, if
20 necessary, you may use those devices, but you must
21 not use those devices to communicate with anyone
22 about the case until the case is ended. This means
23 you must not use phone calls, e-mails, text
24 messages, instant messages, Twitter, blog rooms,
25 chat rooms, web sites including Facebook, Google

1 Plus, My Space, LinkedIn, YouTube, or any social
2 media to send or receive information about this
3 case.

4 This information includes any information about
5 a party to the case, a witness, a lawyer, a court
6 officer, news accounts about the case, research on
7 any topic or any topic you think would be helpful in
8 deciding the case or any testimony presented by any
9 witness.

10 During the trial, do not read, listen to or
11 watch any news reports about this case. This
12 includes anything that may be in a newspaper or on
13 the Internet, radio or television. You must not
14 consider anything you have read or heard about the
15 case outside of this courtroom whether before or
16 during the trial. Information on television, radio
17 or the Internet or other sources might be wrong or
18 certainly incomplete. And, again, in our judicial
19 system, it is important that you are not influenced
20 by anything or anyone outside of the courtroom.

21 If you become aware of another juror's
22 violation of my instructions, please inform me
23 immediately.

24 It is important that you keep an open mind and
25 not decide any issue until all evidence has been

1 presented, the parties have made their closing
2 arguments and I have instructed you on the law in
3 this case. It is your solemn responsibility, ladies
4 and gentlemen, to determine the guilt or innocence
5 of the defendant and your verdict must be based
6 solely on the evidence as it is presented to you in
7 this trial and on the law as I instruct you during
8 and at the close of the trial.

9 Now, ladies and gentlemen, in just a moment,
10 the Solicitor will make what is called an opening
11 statement in which the Solicitor will explain to you
12 the issues in the case or at least what he believes
13 the issues to be. The attorney for the defendant
14 may also make an opening statement, but he is not
15 required to do so. What the lawyers tell you during
16 opening statements is not evidence. It is only
17 their contention as to what the issues are. The
18 evidence in the case will be presented to you by the
19 testimony of sworn witnesses from the witness stand
20 and/or by the exhibits that may be introduced.

21 Now, ladies and gentlemen, I tell you, from
22 time to time during a trial, you may hear one of the
23 lawyers say, Your Honor, I believe we have a matter
24 or a question of law, or I, myself, might excuse you
25 from the courtroom for a short while while I discuss

1 the matter with the lawyers. The reason for this is
2 because, again, you are the sole judges of the facts
3 in the case and sometimes when I discuss a matter of
4 law with the lawyers, it may be necessary for me to
5 comment as to a fact in connection with ruling on
6 whether or not that law applies. I cannot tell you
7 what I think the facts are, so I will excuse you
8 from the courtroom during my discussions so that you
9 will not be influenced by anything that I might say
10 or do.

11 In determining what the true facts are, you
12 must decide whether or not the testimony of a
13 witness is believable. It is my responsibility to
14 rule as a matter of law as to whether certain
15 testimony is admissible, but once the testimony is
16 admitted, whether or not you believe it is solely
17 for you to determine.

18 In deciding whether to believe a witness, you
19 have the right to consider the interest of the
20 witness or any bias or prejudice of that witness,
21 the opportunity for him or her to have seen the
22 matters and things about which they may testify and
23 the way the witness acts on the witness stand. You
24 have the right to consider anything that is in the
25 record that will help you evaluate the testimony of

1 the witness, and that means it is your duty to pay
2 close attention, to observe the witness, to listen
3 to them and pay close attention to the lawyers so
4 that at the end of the trial, you may render a
5 verdict.

6 Now, ladies and gentlemen, we ask that you
7 please be prompt in your jury service. I tell you
8 that I'm at the courthouse slightly after 8:00 A.M.
9 every morning and I take the bench promptly at 9:00.
10 I would ask you to be here, and I'll discuss this
11 more later, but I would ask you to always be here
12 about 8:45, no later than that, and be ready to get
13 that last drink of water, make that last phone call
14 and be ready to go promptly at 9:00.

15 I also will tell you that, as a housekeeping
16 matter, I generally run about an hour and 20
17 minutes, hour and 15 minutes, something like that,
18 and take a break for a few minutes so that you don't
19 have to sit for long periods of time and that we
20 will adjourn every day somewhere around 5:30, 5:40,
21 something like that. I will not keep you past 5:45
22 every day.

23 At this point, I need to appoint a spokesperson
24 for the jury. It is my custom to alternate between
25 male and female jury forepeople -- forepersons. How

1 about that? Juror 175, Sharon Scruggs. Ma'am,
2 where will you be sitting?

3 Ms. Scruggs, you are hereby appointed the
4 foreperson of this jury. It will be your duty,
5 ma'am, to be the spokesperson for this jury. It
6 will also be your duty to write the verdict of the
7 jury at the close, but I will give you more
8 instructions about that as we get through the trial.

9 Ma'am, I would ask you and my alternate --
10 ma'am, you're the alternate -- I would ask the two
11 of you to sit in assigned seats. If you don't mind,
12 please, when you return after a break next time,
13 ma'am, if you would be kind enough to sit on the
14 very first seat on the front row. And, ma'am, if
15 you would always sit where you are sitting. Those
16 will be the two assigned seats.

17 Now, I've been a Rotarian for almost 30 years
18 now, over 25 years, so the rest of you are hereby
19 now made Rotarians. You know, when you go to a
20 rotary club, you rotate seats. You can sit on the
21 front, you can sit on the back, you can sit left to
22 right of where you are now. It does not matter to
23 me. So the rest of you are now Rotarians and you
24 can move around.

25 But, ma'am, Madame Forelady and Madame

1 Alternate, if you would always sit there, I will
2 know where to look when I need you.

3 Anything from the State?

4 **MR. COLLINS:** Nothing, Your Honor.

5 **THE COURT:** From the defense?

6 **MR. MAULDIN:** No, sir.

7 **THE COURT:** Okay. Ready to go.

8 **MR. COLLINS:** We are.

9 **THE COURT:** Okay. Solicitor.

10 OPENING STATEMENT

11 **MR. COLLINS:** Your Honor, thank you.

12 Counsel. Madame Foreperson. I don't intend on
13 taking a whole lot of your time. We're getting
14 little bit of a late start today, but as far as jury
15 duty goes, you got pretty lucky. We don't
16 anticipate this going much further into tomorrow,
17 but don't misunderstand the brevity of the trial,
18 equate it with the seriousness. It is a very
19 serious case. It's a serious case to the State of
20 South Carolina. It's a very serious case to
21 Mr. Gunter.

22 I was listening to His Honor's instructions as
23 we were beginning today and he mentioned TV. And
24 I'm of the age where I remember years ago that you
25 could turn on the TV to National Geographic and you

1 might see some giraffes or lions or something of
2 that nature. These days you turn on the same
3 channel and you're introduced to a whole new world,
4 a world in which one of -- we see nearly every day.
5 Most aren't newsworthy, some are. And I used to
6 watch some of these shows and think, wow, it must
7 take them at least six months to get one episode
8 because it's really not that exciting. It just
9 doesn't happen that often.

10 This one is pretty interesting. It's short,
11 but it is pretty interesting and you may get to see
12 some things that you've never seen before.

13 And I tell you what I'm going to do is we only
14 have a few witnesses, but I'm going to basically
15 tell you what I think they're going to testify to,
16 and very -- very briefly, the officers are going to
17 testify that on the evening of May 11th, 2014, he
18 attempted to stop a vehicle in which Mr. Gunter was
19 the passenger. That vehicle decided -- the driver
20 of that vehicle, who we do not know who it is,
21 decided not to stop, ran from the officer. The
22 vehicle which Mr. Gunter and the driver were in
23 ultimately stopped, both of them got out and ran
24 from the scene.

25 Now, the officer who initiated this pursuit is

1 also a K-9 officer, he had a dog with him, comes
2 back to his car, gets the dog, tracks a track to a
3 residence where he knocks on the door. Mr. Gunter
4 along with a couple of other people are in the
5 house. These officers ask if they can come in and
6 search for anyone else who may have ran from that
7 vehicle because we know there were two that ran.

8 They let the officers in. The officers coming
9 through the house behind Mr. Gunter. Officer Walker
10 will testify that as they're coming out of the
11 house, Mr. Gunter shoulders into or leans into a
12 bathroom door at that point, which he sees him drop
13 a bag of marijuana. He immediately recognizes the
14 bag to be marijuana and informs another officer, who
15 is there on the scene, what just happened. Officer
16 goes back, retrieves that bag along with another bag
17 of marijuana and he's subsequently arrested.

18 Now, the amount of marijuana that was retrieved
19 is, you're going to hear, about 140 grams. And
20 we'll put that in perspective for you, but just to
21 understand, simple possession is 28 grams or less.
22 The trial that we're here for today is possession
23 with intent to distribute. It's over 28 grams, be
24 precisely, about five times as much.

25 Now, once Mr. Gunter's placed under arrest,

1 he's transported back to the detention center. Yes,
2 he's handcuffed. Yes, he's booked as is everyone
3 who is typically arrested for any crime and
4 transported to the detention center.

5 There -- you will hear that the officer will
6 testify that one of the people that ran had on white
7 T-shirts {sic} and black shorts. He answered the
8 door with black shorts on and they picked up a
9 T-shirt that is wet to the touch. And I believe the
10 officer will testify, presumably, it was wet because
11 it was sweaty.

12 Now, those are basically the facts. There are
13 some other points that we may emphasize, but those
14 are the facts. And we want you to understand or I
15 want you to understand that our oath as prosecutors
16 isn't an oath to convict, it's an oath to seek
17 justice, and that's exactly why we're here and
18 that's exactly why you're here.

19 You're going to hear some legal terminology,
20 one of which being, that you already heard, that
21 we've got to prove each and every element beyond a
22 reasonable doubt. You're going to hear from me what
23 reasonable doubt is. You'll hear from Mr. Mauldin
24 what it is. You've already heard from the Judge
25 what it is, and I'm sure you'll hear it again.

1 A reasonable doubt is a doubt which would cause
2 a reasonable person to hesitate to act or one of
3 which leaves you firmly convinced of the defendant's
4 guilt. It's not beyond all doubt. It's not beyond
5 any doubt. It's not beyond all possible doubt.
6 It's not beyond some doubt. It's beyond a
7 reasonable doubt. Absolute certainty isn't a
8 standard by which the criminal justice system
9 operates. It's only a reasonable doubt.

10 Now, these opening statements are only one of
11 two opportunities I'll have to directly address you.
12 The only other opportunity will be during the
13 closing arguments. And, at that time, once you have
14 been presented with the evidence, once you've heard
15 from the witnesses, at the closing arguments, I will
16 confidently ask you to deliver a verdict of guilty.
17 Thank you.

18 **THE COURT:** Thank you.

19 Yes, sir.

20 **MR. MAULDIN:** Thank you, Your Honor.

21 Ladies and gentlemen of the jury, when you come
22 in here and you're on a jury, you don't leave your
23 common sense at the door. And on May 11th, 2014,
24 which happens to be Mr. Gunter's birthday, when you
25 listen to the testimony, you're going to find a lot

1 of things don't quite add up, don't make sense.

2 You're going to hear about his interaction with
3 the police and when they investigated and how they
4 investigated and it's not going to add up. He
5 didn't have anything to do with the car. He didn't
6 have anything to do with that marijuana.

7 Now, Mr. Gunter is presumed to be innocent, and
8 that means that your attitude here should be that
9 he's an innocent man right now, why on earth are we
10 even here, he's innocent? And when you listen to
11 the testimony and the witnesses on the stand, you
12 need to kind of do it with a sharp eye, you keep an
13 open mind because he is presumed innocent, and the
14 attitude is, he's innocent, why are we even here,
15 when you're listening to these witnesses. And after
16 you hear all the testimony, you'll find that
17 Mr. Gunter is not guilty of these charges. Thank
18 you.

19 **THE COURT:** Thank you, sir.
20 Solicitor.

21 **MR. COLLINS:** Your Honor, the State calls
22 Deputy Josh Newsom.

23 JOSH NEWSOM,
24 having been duly sworn, testified as follows:

25 **THE CLERK:** If you'll have a seat over here and

1 state your name, please, spelling your last for the
2 record.

3 **THE WITNESS:** My name is Josh Newsom,
4 N-E-W-S-O-M.

5 DIRECT EXAMINATION

6 BY MR. COLLINS:

7 **Q** Thank you, Mr. Newsom. I see you have a
8 uniform on today. Would you please tell the jury
9 where you're currently employed?

10 **A** I work for the Richland County Sheriff's
11 Department.

12 **Q** How long have you worked there?

13 **A** Coming up on seven years now, I believe.

14 **Q** So you were employed there on May 11th, 2014.

15 **A** Yes, sir.

16 **Q** What are your duties at the sheriff's
17 department?

18 **A** Currently, I'm assigned to the K-9 team. I
19 work a patrol and narcotics dog. I've been doing
20 that for about three and a half years now.

21 **Q** Okay. And is there any special training that
22 you specifically have?

23 **A** As far as being on K-9?

24 **Q** Correct.

25 **A** Yes, sir. Any time somebody comes onto K-9 at

1 the sheriff's department, they've got to --- we do at
2 least a 16-week initial training. Any time you come
3 on or you take a new dog, you've got to -- every
4 dog's different. To learn that dog, it takes about
5 16 weeks to bring the dog through all the different
6 specialties the dog learns, whether it be tracking,
7 apprehension, bite work, building search, narcotics
8 detection or odor detection.

9 I've gone through those 16 weeks with Basco.
10 And in addition to that, I've done several seminars
11 and classes, narcotics apprehension, just things
12 that have been offered throughout the years,
13 building clearing, work shops, stuff like that.

14 **Q** Where did you work prior to the sheriff's
15 department?

16 **A** I started off at the University of South
17 Carolina Police Department after I graduated
18 college.

19 **Q** Okay. And your duties there were?

20 **A** At USC, I was a patrol officer at USC.

21 **Q** How long have you been a K-9 officer?

22 **A** Yes, sir.

23 **Q** How long have you been doing that?

24 **A** A little over three and a half years now.

25 **Q** And we'll get into some of the specifics about

1 Basco, the dog, a little bit later on. Were you on
2 duty the night of May 11th, 2014?

3 **A** Yes, sir.

4 **Q** Were you driving a marked patrol vehicle?

5 **A** Yes, sir. I was driving a marked Tahoe with
6 360 markings. It's got an overhead light bar. It's
7 obviously a police car.

8 **Q** Like one of those that say K-9 on it?

9 **A** Yes, sir, Deputy Sheriff, K-9, Keep Away.

10 **Q** Did you have occasion to come into contact with
11 a gray GMC Yukon with a license plate IYW447?

12 **A** Yes, sir.

13 **Q** Please tell the jury about that occasion.

14 **A** I was traveling north on Huger Street and came
15 up to the intersection of Huger and Taylor Street
16 and there was a solid red light, came up and
17 stopped. I was the first car in my lane. I was in
18 the number two lane, the right-hand lane.

19 As I got to that -- got to the light, stopped
20 behind the stop line and looked over, and the
21 light's been red for a second, traffic is actually
22 coming the opposite way, and the vehicle beside me,
23 which is already at the stop, just accelerates
24 slowly, but goes through the red light. There's
25 still traffic coming. People have to stop. There's

1 people coming the opposite way. Everyone staring at
2 me at this point in time.

3 So once he makes it through and manages not to
4 get struck by anybody, I turn my lights on and, you
5 know, make sure it's clear, I didn't want to get hit
6 either, and went through in order to perform a
7 traffic stop for running the red light. Kept going
8 -- he pulls into the -- there's a motel right there
9 on the corner -- or hotel. He pulls into it and
10 loops the parking lot.

11 Q Pause just for a second. I don't want to
12 interrupt your answer. At this point, had you
13 activated your emergency equipment?

14 A Just my lights at this point in time.

15 Q Okay. Continue.

16 A He pulls into the -- he changes into my lane
17 slowly. And he's going pretty slow at this point in
18 time. I'm pretty sure he's just going to pull over.
19 And when he turns into the motel parking lot, he --
20 there's a good place to stop where we can be out of
21 the traffic, plenty of place for a reasonable person
22 to pull over. He just keeps rolling slowly through.
23 And I can look, I can see the driver of the vehicle
24 is looking over his shoulder. He's got the window
25 down and he's looking at me in the side view mirror.

1 About that time, I started to get the feeling
2 that maybe this is going to end up being a little
3 bit more than just a basic traffic stop. At this
4 time, my dog starts barking. And once the dog
5 started barking, he accelerates a little bit and
6 comes back onto -- back on the road. And once he
7 makes that right-hand turn, he goes ahead and
8 punches it, and we run through the light and we
9 start going towards Jarvis Klapman.

10 He runs at -- the minute he comes back onto the
11 roadway, I go ahead and turn my siren on because I
12 know, at this point in time, we're going to be in a
13 chase. I tell dispatch that I've got one that's not
14 going to stop. And he comes on, makes that big turn
15 going towards Jarvis Klapman, gets on the bridge.
16 On the bridge, he's doing about 90 to 100. Fastest
17 I ever saw on my GPS was about 105. He keeps that
18 speed all the way up. We go into West Columbia. I
19 tell dispatch we're going across county lines,
20 notify West Columbia and Lexington County we've got
21 a car chase.

22 He comes across and goes, makes a right onto
23 9th Street. And when he comes off of 9th Street, he
24 makes this immediate left. When he makes that left
25 -- give me a second, let me consult my report for

1 that road -- I believe it's Jackson Street that he
2 turns left onto, makes a left onto Jackson. And he
3 slows up a little bit. We're probably down to about
4 70 at this point in time, but still, you know,
5 pretty good speed. Lights are on, the siren's on,
6 obviously knows I'm law enforcement officer at this
7 point in time.

8 The driver actually blows the stop sign at two
9 blocks into Jackson Street. I slow up at that point
10 in time to make sure, because I can't see if anybody
11 is coming left or right of me at that point in time,
12 I don't want to run through and hit somebody else
13 who's got the right of way. So I slow up and he
14 keeps going. And we come through that light and he
15 makes a right onto, I believe, Koon -- what is that
16 street? One second -- Yeah, makes a right onto Koon
17 Road. And now he's got a pretty good gap on me at
18 this point in time because he just ran right through
19 the stop sign without looking and I wanted to slow
20 up, make sure nobody was coming. So he gets that
21 gap on me and he goes about almost to the end of
22 Koon and the vehicle pulls over.

23 The passenger gets out and the driver gets out,
24 and they leave behind an address. I believe, 500
25 block of Koon Street was where he goes. And at this

1 point in time, the only one I have charges on is the
2 driver because he's the one who's failed to stop at
3 this point. So I stick with the driver. One goes
4 on the right side of the house, the other one goes
5 on the left side, but they're both running towards
6 the backyard. So I loop my patrol car around and
7 try to go after the driver. He jumps a fence. I
8 attempt to jump the fence. The fence holds his
9 weight --

10 Q Let me pause you right there.

11 A Okay.

12 Q And you may have to come down. Do you
13 recognize this aerial picture?

14 A Yes, sir.

15 Q What is this?

16 A That's going to be the intersection of Jarvis
17 Klapman and 9th Street, and then back into the
18 neighborhood where the vehicle pursuit ended.

19 Q Does it fairly and accurately represent the
20 path of the pursuit?

21 A The ending of the path, yes, sir.

22 MR. COLLINS: Your Honor, we'd move to admit
23 State's 1.

24 THE COURT: Any objection?

25 MR. MAULDIN: No objection, Your Honor.

1 **THE COURT:** It's admitted without objection.

2 (State's Exhibit Number 1, aerial
3 photograph, admitted into evidence.)

4 **MR. COLLINS:** Move to publish.

5 **THE COURT:** You may publish.

6 BY MR. COLLINS:

7 **Q** Now, Deputy Newsom, you described the path of
8 the pursuit here recently. Would you mind coming
9 down and showing the jury exactly what we have here,
10 what the picture is and the route that you had just
11 described?

12 **A** (Witness leaves the witness stand.)

13 To orient you to this, back this way is going
14 to be Columbia and the Congaree River. We came down
15 Jarvis Klapman. He makes this -- gets off right
16 here on the get-off ramp onto 9th Street. When he
17 comes onto 9th Street, he immediately makes that
18 left right here onto Jackson. We keep coming down
19 Jackson Street. North Line Street is going to be
20 where the stop sign was that he blew. There's a big
21 hump in the road right there. When he runs that,
22 this is where he gets that little bit of a lead on
23 me.

24 He kept coming down Jackson Street and came to
25 Koon Street and made this right and came all the way

1 back up here and then actually exited the vehicle
2 and ran behind these houses in this area. And
3 that's where I pulled my car into going after him.

4 Q Okay. Thank you. And stay down just for a
5 moment and let's make sure we're oriented here.
6 What's back in this direction?

7 A Back over here is going to be the Congaree
8 River and then Columbia and Richland County.

9 Q Okay. And can you identify this road right
10 here {indicating}?

11 A Yes, sir. That's Sunset Boulevard and 378.

12 Q Okay. And these -- can you see on here where
13 you described the pursuit as approaching 100, 96,
14 100 miles an area?

15 A I can't see it on here. That part of Jarvis
16 Klapman would be here if the map was longer, but the
17 entire route from Richland County where I attempted
18 to make the stop all the way onto Jarvis Klapman to
19 when he got off on 9th Street, once he hit -- about
20 once he hit the -- came out of that big turn, he was
21 in the floor after that. And I don't think we ever
22 really slowed down until he had to slow down to get
23 off on Jarvis Klapman.

24 Q Okay. And if you would, just step back just a
25 little bit. Do you recall where the stop signs

1 were?

2 **A** Yes, sir. Right here at North Line and Jackson
3 is the only one that -- that's the one that I saw
4 that he blatantly ran.

5 **Q** Okay. And the area in which the driver and the
6 passenger ran, can you point to that?

7 **A** Yes, sir. It's going to be right here on this
8 block of Koon Street. The passenger came out, then
9 the driver came out and they both fled back going
10 towards North Line Street.

11 **Q** Okay. And picking up from where you had left
12 off testifying, continue to tell the jury about what
13 happened next. They -- pick up from the point where
14 you say that they had ran from the vehicle.

15 **A** Okay. The passenger bails out first and then
16 the driver bails out. I tried to stay with the
17 driver, and I turn actually off of Koon Street back
18 into the yard. The driver jumps the fence, about a
19 four-foot cyclone fence, just the wire fences that
20 everybody has in their backyard. I attempted to
21 jump it also. Apparently, my weight was too much.
22 Whenever I went to post up, I actually fall over the
23 fence. I still kept eyes on him.

24 He's jumping the fences and he's moving back
25 this way, back towards the intersection of Raleigh

1 and North Line Street, cutting back through the
2 fences. Where these trees are through here is a lot
3 of, like, sheds, smaller areas, so it's not like
4 there's a long, you know, you can't really see for
5 too long before somebody makes a turn, they're going
6 to be back behind another building. So once we get
7 about three fences in, I realized that me falling
8 over the fence, the driver's got enough distance on
9 me.

10 The driver pulls in on this side and runs on
11 this side. The passenger runs on this side, but
12 they're both running. So this backyard right here,
13 whenever we cut across, was the first place that
14 both of them came through. So I get about in here
15 {indicating}. At this point in time, I realize that
16 the driver's gone. I can't see him anymore. So I
17 go back to my car at this point and I actually get
18 my dog to track.

19 Q Okay. You can have a seat for the time being.

20 A (Witness resumes the witness stand.)

21 MR. COLLINS: I'll take this down. We may
22 refer to it again.

23 Q You got into a little bit earlier, but could
24 you describe Basco? What kind of dog is he?

25 A Basco is a Belgian Malinois, which is a breed

1 that's very similar to a German Shepherd. It's, in
2 the Southeast at least, also the military, tends to
3 be the breed that we're going to for using as
4 opposed to the German Shepherd.

5 As opposed to the German Shepherd having the
6 sloped back that's so common in that breed, Belgian
7 Malinois has a very squared-off, athletic breed --
8 athletic back end. He's short haired. My
9 particular dog is short hair. They actually come in
10 long hair, short haired, some of them are big, some
11 of them are small, but one thing they have -- each
12 dog has, they'll have the black mask on the front,
13 the front part of their snout, and the muzzle is
14 black and they have the pointed ears.

15 Basco he's a male. He'll be seven in April. I
16 believe April 14th he'll be seven. He was actually
17 born and trained initially in Holland and we
18 purchased our dog through -- we've actually got an
19 agreement with the head of the Royal Dutch Police in
20 Holland and they go out and they scout the dogs for
21 us over there as they train them. They're actually
22 trained for sport in Holland. And after they've
23 trained the dogs up and they test out, those dogs
24 come up for sale. And people do it as a side job.

25 And we have a guy who goes over there and

1 prospect's our dogs for us. And once he finds a dog
2 that he thinks matches what we want at the sheriff's
3 department, we'll pay for the dog or he'll purchase
4 the dog and it goes down to Custom Canine Unlimited
5 in Georgia, which is a place they also train and
6 sell dogs, but they also import K-9s from other
7 places. Basco went down there.

8 And any time a dog comes from out of the
9 country, he has to get quarantined, make sure all
10 the paperwork's in order. The dog actually has a
11 passport in order to come over here. And once all
12 the paperwork's in order, we go down and we test the
13 dogs. And if the dog matches what we're looking
14 for, because some dogs won't perform the same
15 without their original handler or in different
16 places, if the dog tests out appropriately and we
17 feel like it's a good use of the tax payer money,
18 then we'll purchase the dog. We'll bring them back
19 up to Richland County and we will actually begin our
20 training there.

21 So most of the dogs that we buy, they've
22 already done most of their apprehension, their
23 obedience training, but it still takes us another 16
24 weeks to make sure that their odor detection
25 training, whether it be bomb or narcotic, because to

1 a dog, odor is odor. It's just what you train them
2 to alert on. You just can't train a dog to alert to
3 both. And their tracking, we do all of that
4 training inhouse.

5 And after they're certified on that and then
6 they're certified together as a team also, then
7 they're allowed to go out and actually work on the
8 streets. That's normally at least 16 weeks if
9 there's no issues with the dog.

10 **Q** Is Basco certified in tracking?

11 **A** At this point in time, Basco is certified in
12 tracking. Basco was trained in tracking. My dog
13 actually has hip dysplasia. He suffered a spinal
14 injury last year. Not too long, actually, after
15 this track, he suffered a spinal injury. After
16 that, he was bit by a rattlesnake.

17 And during those x-rays, we found after he --
18 we were looking to see if there was any long-lasting
19 damage. We actually found that he had -- we knew he
20 had moderate hip dysplasia whenever we bought him,
21 but as -- as he's gotten older, that hip dysplasia
22 has gotten worse and worse and the socket has
23 started to kind of round out. And he's been on
24 Adequan injections for almost two years, which is
25 the only thing that really keeps him working.

1 And so we decided, at this point in time, not
2 to allow Basco to track anymore because if he runs
3 100, 200 yards, the pain is so bad, he'll work for
4 you, but whenever you get home, you put him in the
5 kennel, he'll actually chew his hips raw from the
6 pain. So, at this point in time, Basco is only a
7 narcotics and patrol detection dog, but at the point
8 in time that this happened, Basco was still a
9 tracking dog.

10 **Q** Thank you for that very detailed explanation.
11 I don't know that I'll get that image of a dog
12 chewing his own hips out of my head soon.

13 Has your dog proven reliable? Had he proven
14 reliable up to the night of May 11th?

15 **A** Yes, sir, especially in tracking. The first
16 year that Basco and I actually worked together in
17 tracking, the first year that we were cut loose
18 together to work, the previous number of tracking
19 captures for one handler and one dog in one year was
20 16, and we came up with 31 our first year. And
21 since then, we did -- caught 16 the next year after
22 that. Basco's an excellent tracking dog and he's
23 shown that time and time again.

24 **Q** Do you know how many -- can you estimate the
25 number of tracking calls that you and he have been

1 on together?

2 **A** I wouldn't even want to pick a number. You can
3 go two, three months without getting a call and then
4 you'll have some months when, you know, you'll run
5 three or four a week.

6 The year -- I think the last year that Basco
7 worked, we ran nine tracks and caught five. And
8 that's actually hands on to the suspect, that's not
9 finding evidence at the end of a track, that's not
10 tracking to a house or a vehicle, that's actually
11 tracking to the person. So everybody who got into a
12 car and drove away, you can't count those as
13 captures. That's actually tracking and finding the
14 person.

15 **Q** And we're just referring to tracking calls not
16 other calls to service where a K-9 may be utilized?

17 **A** That's correct, yes, sir. We also go to
18 building search. We also do narcotics calls,
19 missing children.

20 **Q** Now, I think we made it to the point in your
21 direct where the driver and the passenger had got
22 out and you had given chase on foot?

23 **A** Yes, sir, unsuccessfully.

24 **Q** And then what?

25 **A** At that point in time, went back to the vehicle

1 -- first, what I'm looking for when I get back to
2 the car is to make sure that it's not stolen. Often
3 times -- whenever the pursuit first started, I asked
4 dispatch to check the tag to see if it had already
5 been reported stolen, already had a record of it and
6 that hadn't come back yet. So --

7 **Q** How much time, and pardon the interruption, how
8 much time had passed in between them running from
9 the vehicle and you coming back to retrieve your
10 dog?

11 **A** A minute or so. It wasn't much time at all.
12 Before I get back to the vehicle? Yeah, a minute
13 maybe.

14 **Q** Right. Just a minute or so. And then once you
15 come back to the vehicle, what happens there?

16 **A** At this point in time, we know the vehicle is
17 going to get towed. I also want to make sure, you
18 know, the vehicle is abandoned at this point in
19 time, I want to make sure that there's nothing
20 drastic involved. We have had vehicle pursuits
21 whenever you come back to the car, there has been a
22 person in the back who's been murdered. Just go
23 back, make sure there's nothing like that in the
24 vehicle.

25 I can look and see that there's, you know, no

1 guns in plain view. There's no, obviously, stolen
2 property that I can see. The ignition hasn't been
3 punched, hasn't been tampered. I'm trying to make
4 sure the vehicle is not stolen, make sure that it's
5 something not more than just a normal traffic stop.

6 And I'm also waiting to get somebody else to
7 run with me because if you're tracking, you don't
8 want it to be just you and the dog because my focus
9 is on the dog at that point in time. You want to
10 have somebody who's going to be along there with you
11 to watch everything around to actually transmit over
12 the radio.

13 **Q** When you put down Basco, did he immediately
14 pick up a scent?

15 **A** Yes, sir. Basco has been working for long
16 enough now that he goes to work based off of what
17 equipment is on him. Some dogs whenever they're
18 young, you take them out and they actually have a
19 command to track, they'll have a command to search
20 for drugs, command to search for people. Basco's
21 been working long enough whenever I went and got a
22 15-foot tracking line, he knows the only thing that
23 we use that for is tracking.

24 Whenever you -- if he sees that leash in your
25 hand and you hook it up to a flat collar, which is

1 what I track off of, just a wide enough collar so
2 whenever he's pulling, it doesn't cut into his neck,
3 he knows at this point in time that we're tracking
4 for somebody.

5 I took him to the side of the house where we'd
6 run before. He immediately, the nose goes down,
7 he's pulling, he's digging, which is how Basco shows
8 he's on the track, and then, again, part of it, you
9 know, he'll keep the nose real low. We end up going
10 over the fence. We end up -- we started in the
11 backyard where I've already seen him, because at
12 this point in time, I'm hoping -- what I'm looking
13 to see is that Basco picks up a trail where I know
14 the person's already gone, that way I know that what
15 we're tracking on is the people that we're looking
16 for at this point in time.

17 So Basco immediately picks up in the backyard
18 behind the house that both the passenger and the
19 driver bailed out and ran behind and starts tracking
20 over the fences going towards North Line Street, at
21 this point in time, North Line and Raleigh in that
22 intersection, in the direction that both people
23 fléd.

24 Q As he picked up that scent or as you're
25 tracking him, you don't know whether that's the

1 driver or the passenger; is that correct?

2 **A** No, sir. Our dogs are not scent discrimination
3 dogs. They track based off of human odor and
4 ecological disturbance, which is actual ground
5 disturbance. What the dog is looking for whenever
6 you take him out to track is he's going to look for
7 the freshest and the strongest odor and that's what
8 he's going to get onto and that's what he's going to
9 stick with. But he's not going to be able to tell
10 you, you know, he can't go back to the car and tell
11 you this came from the driver, this came from the
12 passenger.

13 If you're putting him in the place that you
14 know the person ran to and once you put the dog down
15 and once you allow him to start tracking, he's going
16 to track, he's going to stay with that freshest odor
17 and he's going to stick with that until either the
18 track ends or until he finds somebody.

19 **Q** Okay. And you and Basco are certified; is that
20 correct?

21 **A** Yes, sir.

22 **Q** By whom?

23 **A** Right now we certify through the Criminal
24 Justice Academy. The Criminal Justice Academy came
25 out with standards to unify all K-9 certifications a

1 couple years back. And Custom Canine Unlimited
2 actually administers our certification and we
3 certify under them. And we were actually certifying
4 under them through the Criminal Justice Academy
5 before it became mandatory for the last few years or
6 so.

7 And what they've actually gone for with the
8 Criminal Justice standards whenever they decided to
9 certify all dogs underneath the same program, was
10 they took almost 95 percent of what we had been
11 certifying with before and that's what they use as
12 their standard to certify all police dogs in South
13 Carolina.

14 Q Okay. All dogs in South Carolina go through
15 Custom?

16 A No, sir, not all dogs go through Custom Canine,
17 but everything has to certify under what the
18 Criminal Justice Academy has set forth. You know,
19 for narcotics, it has to be so many heights of
20 weight {phonetic}, you know, how long it stays in
21 there before the dog is allowed to search, how long
22 the track has to be, how many turns, how many
23 surface crossings, what are the commands the dog has
24 to be able to listen to for apprehension work or
25 handler defense. All of that was actually set down

1 to have one standard that everyone has to test to.

2 But because the Criminal Justice Academy
3 doesn't have anyone who actually test out dogs, it
4 would be a nightmare to have every dog have to come
5 to Columbia and test out every year. What they've
6 done is they have different places who are certified
7 through the Criminal Justice Academy and they're
8 allowed to administer the certification, and Custom
9 Canine Unlimited is one of those places.

10 **MR. COLLINS:** Your Honor, we'd move to have
11 Mr. Newsom declared as a K-9 tracking expert.

12 **THE COURT:** K-9 tracking...

13 **MR. COLLINS:** Expert.

14 **THE COURT:** Expert. Anything?

15 **MR. MAULDIN:** No objection, Your Honor.

16 **THE COURT:** All right. Madame Forelady, ladies
17 and gentlemen of the jury, a person cannot give
18 opinion testimony, but when a person testifies, they
19 must testify as to what they either see -- have seen
20 or heard or sensed by smell or something of that
21 nature. There is an exception when someone is
22 qualified because of their education, experience,
23 knowledge, skill or training, they are permitted to
24 give opinion testimony in those areas. This witness
25 has now been offered and is now qualified as a

1 expert in -- K-9 tracking?

2 **MR. COLLINS:** Yes, sir.

3 **THE COURT:** That does not mean that you have to
4 accept his opinion, you can give it whatever weight
5 you see fit to give, if any. Thank you.

6 Yes, sir, Solicitor.

7 **MR. COLLINS:** Thank you, Your Honor.

8 BY MR. COLLINGS:

9 **Q** Going back to the dog's on the ground, where
10 does he take you?

11 **A** We started tracking towards the intersection of
12 North Line and Raleigh Street. We're cutting
13 backyards, which is what, you know, the last place I
14 saw the driver run. You could hear the fences as
15 the passenger also went so you know that they're
16 jumping fences at this point in time. We track out
17 to the intersection and make visual contact. There
18 was a Hispanic male who was off to our left that we
19 spoke to briefly. We basically just asked him to
20 get back in the house.

21 What we tend to see is the more contamination
22 you can keep away from a track like that, the easier
23 it is for the dog. If people start walking through
24 it, you end up having to push past that
25 contamination. We were trying to get the gentleman

1 to go back inside in order to keep him, one, away
2 from the dog to make sure that nobody gets bit at
3 this point in time that doesn't need to be and also
4 to keep him from contaminating the track. He didn't
5 appear to speak English, so it took us a little bit
6 to get him back inside. Once we did, we continued
7 back on the track and we got a hard pull, went down
8 to North Line and Raleigh Street and we came up to a
9 house at that point in time.

10 The dog makes a hard left in that we don't
11 appear to blow the turn at all. A lot of times what
12 will happen if the track goes straight and makes a
13 hard turn, you'll actually see the dog loop out and
14 then circle back in because as he pushes past, he'll
15 lose that odor or he'll get into, like, a weaker
16 odor and he'll throw his head back and loop back in
17 and find where the track goes, put the head back
18 down and track.

19 We refer to it as being on the rails whenever
20 the dog keeps his nose down the entire time and
21 makes that hard turn and never loops at all, that's
22 usually when the track is that strong or whenever
23 you're starting to get close to where the person is.
24 And Basco made that turn towards the house on
25 Raleigh Street, what we --

1 **Q** Deputy Newsom, if you would, again --

2 **A** -- refer to as on rails.

3 **Q** -- I don't mean to cut you short, if you could,
4 step down and show the jury where you're referring
5 to, where you put the dog on the ground and the
6 pattern of travel the track took.

7 **A** (Witness leaves the witness stand.)

8 The track starts here off of Koon Street. We
9 end up winding through these yards. I can't tell
10 you exactly which house we came out into between
11 here, but in this area is where we actually
12 encountered the gentleman and spoke back to him. I
13 want to say he went back towards this house, came
14 back and stayed up here, across hard surface and
15 made the turn right here, went up towards his front
16 porch.

17 This turn right here from Raleigh Street going
18 back up towards this house is the one where the dog
19 kept the head on the ground the whole time and made
20 that hard pull, that hard turn. There wasn't any
21 looping out at this point in time. He made that
22 turn --

23 **THE COURT:** I'm told that a juror can't see.
24 They've raised their hand. So you're going to have
25 to use a pointer or something.

1 BY MR. COLLINS:

2 Q Can you identify this?

3 A Yes, sir. That's going to be the intersection
4 of Raleigh, 900 block of Raleigh Street.

5 Q And that says State's 3?

6 A Yes, sir.

7 MR. COLLINS: Your Honor, we'd move to admit
8 State's 3.

9 THE COURT: Any objection?

10 MR. MAULDIN: No objection.

11 THE COURT: It's without objection.

12 (State's Exhibit Number 3, blowup
13 photograph, admitted into evidence.)

14 MR. COLLINS: Thank you, Your Honor. Publish?

15 THE COURT: You may publish.

16 BY MR. COLLINS:

17 Q Show the jury the path of the -- where the dog
18 tracked.

19 A We're coming out from right here and -- the
20 direction of the track is coming from this area
21 {indicating}. I can't tell you exactly which one of
22 these houses we came out in between right here.
23 Basco is a rather quickly tracking dog, which means
24 I'm mostly concerned on watching him and making sure
25 we're not running into any fences at this point in

1 time.

2 We come out. We come down this road. In this
3 turn right here, we actually come off the hard ball,
4 which is harder for a dog to track on because all
5 you have at this point in time is maybe some sand
6 disturbance and human odor. Grass is easier to
7 track on. He makes this hard turn and comes up this
8 driveway right here up onto this porch.

9 What you have right here is the roof hanging
10 over and the bush, which is going to hold odor in,
11 but all of this track right here, for it to be so
12 strong, shows that it was laid recently. It wasn't
13 going to be -- wasn't really any age to it.

14 Once we come up onto here, the dog actually
15 starts to go into an alert. When a dog gets close
16 to someone, we call it prox alerting. What happens
17 is there's a large amount of odor, whether it be
18 from someone who sat there and waited for a while
19 and has allowed all that odor to come off their body
20 or it's where somebody actually that's located, the
21 dog hits that sudden brush of odor.

22 Each dog is going to react differently. What
23 my dog would do is you'll see his tail come up, we
24 call it flagging, tail comes up and stays straight
25 and you'll see it almost vibrate. You can see all

1 of it -- he'll bring his chest up. He gets a bunch
2 of white around his eyes, they call it crazy eyes,
3 and you'll see -- a lot of times the dog is hot and
4 he has his mouth open while he's tracking. You'll
5 see the mouth snap shut and he starts breathing in
6 through his nose to confirm that sudden change or
7 that sudden increase in odor. What that normally
8 means is that you are really close -- either you're
9 really close to someone or you're in a large odor
10 pool where someone stayed for a while.

11 The way Basco acted whenever we came up on that
12 porch was enough to make me actually tighten up the
13 tracking line. Normally, I give him about eight or
14 ten feet so he can work both sides of the trail. I
15 actually picked him all the way back to about a foot
16 and a half. Whenever -- it comes around and there's
17 an actual corner that goes right here and you can
18 actually walk back out to the backyard. Whenever we
19 made the turn on the corner right here, the odor was
20 strong enough that I thought someone was going to be
21 around the corner and I thought they were going to
22 get bit.

23 What the dogs are trained to do is if they
24 encounter somebody on a track and if they locate
25 them before we do, the dogs are trained to bite and

1 hold. And the charges we had at this point in time
2 with it being a failure to stop for a blue light
3 case was not what we considered to be biteable, not
4 dangerous enough to actually send the dog on. So I
5 tighten him up because I'm worried that they'll be
6 coming around the corner, the odor being so strong,
7 the person is actually going to be right there.

8 So we make it around the corner of the porch
9 right here and we go up to the side and there's a
10 door on this side of the porch. Basco goes up to it
11 and you get a big head turn. Normally track, he's
12 going to keep going straight forward. And there's a
13 fence on one side -- on this side, it would normally
14 funnel him straight out the back. So when you see
15 that big head turn, what he's telling you is that
16 he's come out of odor.

17 He comes out of odor and comes back and
18 actually hits the door seam, works down the door
19 seam, then comes up and starts barking. At that
20 point in time, you can see him working his head
21 trying to figure out a way to get into the door. At
22 that point in time, I turned around and told the
23 guys who are tracking with me that, you know,
24 whoever we tracked is going to be in this house.

25 Q Okay. Very good. Who was with you?

1 **A** At this point in time, I had a officer from
2 West Columbia and also an officer from Columbia --
3 actually had two from Columbia with me, one --
4 Fields, Walker and I can't recall the name of the
5 West Columbia officer at this point in time.

6 **Q** Very well. Very well.. In your opinion, did
7 any track come out of the house and away from the
8 house once you tracked to the front?

9 **A** No, sir. Once I come up the driveway, walk
10 around the porch, go underneath this covered porch
11 right through here and the dog goes to alert, I tell
12 them that we need to do a knock and talk at this
13 house, that somebody's made contact with whoever's
14 in this house. This is where the track ends at.

15 I don't want the dog to be barking and
16 agitating whoever answers the door, so I took him
17 out the back. And also the only place for someone
18 to keep going forward would be out this back through
19 here.

20 I take him out the back, we call it cutting, to
21 make sure that there's not a track or a trail that
22 leads from there. You give the dog the entire free
23 rein of the leash, so he's got 15 feet, and you kind
24 of sweep him in a circular pattern back and forth
25 across through here. And if the dog picks up a

1 trail that leads out of that, you'll see the head
2 drop down, you'll see him start pulling and he'll
3 track his way out of it.

4 I actually cut all the way to the back of the
5 house to here, cut all the way around the side. And
6 we just continued to cut in farther widening
7 circles, actually cut through here {indicating} and
8 even back around this house. At no point in time
9 during that, did we ever pick up another trail. The
10 track that we were on ended right here at [REDACTED]
11 Raleigh Street.

12 Q Thank you very much. You can be seated.

13 A (Witness resumes the witness stand.)

14 Q You didn't charge anybody with failure to stop
15 for a blue light?

16 A No, sir. We didn't believe that we located the
17 driver and so you can't charge a passenger for that.

18 Q And did you have an opportunity to look inside
19 the vehicle that the two ran from?

20 A Yes, sir.

21 Q And could you, very generally, describe what
22 you saw in -- did you see, at that point, a green,
23 leafy substance?

24 A Yes, sir. There was a bud of what appeared to
25 be marijuana and also a partially smoked, like, a

1 hand-rolled cigarette that smelled of marijuana.

2 Q Thank you. So those were in two separate
3 locations?

4 A Yes, sir. The bud of marijuana was in the
5 passenger seat. And then the -- what we refer to as
6 a roach, just a partially smoked cigarette, I want
7 to say it was in the ashtray or it was in the
8 driver's seat possibly, but I remember they were on
9 separate sides of the vehicle.

10 Q Once you made it to the house, do you remember
11 the address of the house that you tracked to?

12 A [REDACTED] block of Raleigh Street.

13 Q Did you go to the front door of that house?

14 A I came up initially to the front door and then
15 the dog took me around the corner of the house to
16 the side door. And then after they were going to --
17 the officers with me said they were going to knock
18 on the door, I took Basco off the porch to make sure
19 if somebody did come outside, that we didn't have a
20 dog barking or attempting to bite anybody who didn't
21 need to be.

22 Q You didn't knock on the door and make contact
23 with anyone?

24 A No, sir.

25 Q That evening was your vehicle equipped with a

1 video camera?

2 **A** Yes, sir.

3 **Q** Did you record the incident as it unfolded?

4 **A** Yes, sir. Any time you turn the blue lights on
5 in the vehicle, it actually automatically starts
6 recording.

7 **Q** I'm showing you what's marked as State's 4.
8 Can you identify this?

9 **A** Yes, sir. That's a CD with my initials on it.

10 **Q** What do the initials mean?

11 **A** That I have seen this tape and that's a copy of
12 the tape that came out of my vehicle on the night of
13 this incident.

14 **Q** So you've reviewed this?

15 **A** Yes, sir.

16 **Q** And it substantially and accurately reflects
17 the events as they unfolded that evening?

18 **A** Yes, sir, that's correct.

19 **MR. COLLINS:** Your Honor, I move to admit
20 State's 4.

21 **THE COURT:** Any objection?

22 **MR. MAULDIN:** No objection at this time, Your
23 Honor.

24 **THE COURT:** It's admitted without objection.

25 (State's Exhibit Number 4, DVD, admitted

1 into evidence.)

2 **MR. COLLINS:** And, Your Honor, we would move to
3 publish.

4 **THE COURT:** All right, sir. How long is that
5 video?

6 **MR. COLLINS:** Six minutes.

7 **THE COURT:** Okay. Let's do this: This will be
8 a good time to take a break. We've been running a
9 good hour and 35 minutes.

10 Madame Forelady and ladies and gentlemen of the
11 jury, we are going to take about a 15-minute break
12 at this time. You've been sitting for an hour and
13 35 minutes or so counting the time that you
14 qualified. And, actually, we were here before that
15 taking care of getting things set up, so we've been
16 going for some period of time.

17 Madame Forelady, ladies and gentlemen, I
18 instruct you and charge you you are not to begin.
19 deliberating this case, don't talk about it with
20 each other, don't talk about it even to yourself
21 within your own mind. People say, how in the world
22 do I not think about this? Well, this is work,
23 okay. You're taking a break. Don't think about
24 work. Go back there and think about the ball game
25 or something or something else, but don't be

1 thinking about work. Do not begin to deliberate.

2 If you will go -- the bailiffs will now take
3 you back to the jury room. And, ladies and
4 gentlemen, when you return, Madame Forelady, if you
5 and my alternate will be in the assigned seats.
6 Everybody can sit anywhere else. There are restroom
7 facilities back there, water, whatever you need.
8 Thank you.

9 (The jury retires to the jury room.)

10 **THE COURT:** We're going to take about 15
11 minutes right quick. Everybody can use the
12 facilities.

13 Officer, I'm going to allow you to leave the
14 stand. You cannot -- you're on direct examination,
15 you cannot discuss anything with anyone.

16 **THE WITNESS:** Yes, sir.

17 **THE COURT:** I'll let you leave the stand, go to
18 the restroom if you like, get something to drink,
19 but don't talk about the case with anyone
20 whatsoever. When we come back, if you'd please be
21 seated right there when I bring the jury back in.

22 **THE WITNESS:** Yes, sir.

23 **THE COURT:** Thank you.

24 (Brief Recess.)

25 (Court's Exhibit Number 1, jury note, marked

1 for identification.)

2 **THE COURT:** Ready for the jury?

3 **MR. COLLINS:** Yes, sir.

4 **THE COURT:** Okay. We're ready.

5 (The jury returns to the courtroom.)

6 **THE COURT:** Madame Forelady, any matters for
7 the jury?

8 **FORELADY:** No.

9 **THE COURT:** Okay. We're on the record here. A
10 note was handed up. I have shared that note with
11 the lawyers and it's been made a part of the court's
12 exhibit and that has no affect. So thank you very
13 much for letting everyone know.

14 Okay. Solicitor.

15 **MR. COLLINS:** Thank you, Your Honor.

16 (Whereupon, State's Exhibit Number 4 was
17 played for the jury and the following occurred.)

18 BY MR. COLLINS:

19 **Q** Deputy Newsom, what road are you on right
20 there?

21 **A** That's Jarvis Klapman.

22 **Q** And about what speeds are you --

23 **A** At that point in time, I just advised dispatch
24 that our speeds were at 99 miles an hour.

25 (State's Exhibit Number 4 was continued.)

1 **Q** What happened right here?

2 **A** He blows the stop sign. I slowed down a little
3 bit to make sure nobody was coming. And whenever I
4 go through -- you can see the hump in the road.
5 Whenever the Tahoe actually jumps off of that,
6 because of our speeds, we have an old VHS system,
7 and it quits recording for a little bit any time you
8 have like a really hard bump like that.

9 **Q** So it was the road that knocked the camera off?

10 **A** Yes, sir.

11 **Q** You didn't reach up and turn it off?

12 **A** No, sir.

13 (State's Exhibit Number 4 was continued.)

14 **Q** Now, we just saw someone jump that fence.
15 You're not here today saying that that person that
16 jumped that fence is Mr. Gunter; is that correct?

17 **A** No, sir.

18 **Q** Was there also someone else who ran from the
19 passenger side of that vehicle?

20 **A** Yes, sir.

21 **Q** In relation to the screen now, in which
22 direction did they run?

23 **A** The vehicle is pointing towards the back of the
24 house as you -- so the driver ran on the left side
25 of the house if you're facing it and the passenger

1 ran on the right side of the house as you're facing
2 it. And both of them would have gone to this
3 backyard right here.

4 **Q** Very good.

5 (State's Exhibit Number 4 was continued and
6 completed.)

7 **Q** The fence was a lot easier to get to coming
8 back than going over, wasn't it?

9 **A** Different part of the fence, sir.

10 **Q** What happened after that, after I cut the video
11 off?

12 **A** I cut my siren off at that point in time so not
13 to wake up the entire neighborhood, went back and
14 checked the vehicle, make sure there's no signs like
15 an obvious major crime in it, and shortly
16 thereafter, hooked Basco up on a tracking lead, and
17 we proceeded to track at that point in time starting
18 in that backyard.

19 **Q** And aside from what you've testified to today,
20 does that complete your involvement in this matter?

21 **A** Yes, sir.

22 **MR. COLLINS:** Nothing further, Your Honor.

23 **THE COURT:** All right. Mr. Mauldin.

24 **MR. MAULDIN:** Thank you, Your Honor.

25 *****

1 CROSS-EXAMINATION

2 BY MR. MAULDIN:

3 Q Deputy Newsom, we just viewed the video here.
4 In the video, you really can't see the passenger
5 jump out of the car and run. You saw the driver
6 jump out and run; is that correct?

7 A That's correct.

8 Q And you couldn't really see the passenger's
9 face or anything like that in the video; is that
10 correct?

11 A That's correct.

12 Q At any point in time during this case while
13 you're at that location, did you review the video
14 and tell West Columbia police officers that you
15 identified Mr. Gunter as being in that video?

16 A After we -- after they made contact with
17 Mr. Gunter, we went back to make sure that he wasn't
18 the driver. And the driver was -- two people came
19 out of the vehicle in the beginning. The driver was
20 taller and dark skinned and the passenger was
21 shorter, brown skinned. And they wanted to see if
22 it was going to be the driver. And I went back and
23 confirmed, at that point in time, that it was not
24 going to be the driver.

25 Q But you didn't say, I reviewed the video and

1 Mr. Gunter was the passenger in the car by looking
2 at the video?

3 **A** He matches the description of the passenger in
4 the vehicle that I saw, but you can't see him on the
5 video.

6 **Q** But you didn't identify him from the video is
7 what I'm saying? You didn't tell them, I looked at
8 the video and Mr. Gunter was the passenger?

9 **A** By process of elimination, he was the
10 passenger.

11 **Q** And you testified that the passenger got out of
12 the vehicle first and then the driver got out; is
13 that correct?

14 **A** No, sir. They both get out at the same time.
15 What you see is the driver, because the field of
16 view on the camera is so narrow so that it can
17 actually get -- it's mostly for traffic stops. So
18 even though the camera doesn't show the passenger
19 get out, even in a patrol car, you can see all the
20 way to the right-hand side and can still see that.

21 **Q** And you brought the -- when you brought the
22 dog, the dog would pick the freshest and strongest
23 odor at that point in time; is that correct?

24 **A** The first one it gets to, yes, sir.

25 **Q** And you had -- you had eyes on and were

1 following the driver when you left the vehicle
2 initially; is that correct?

3 **A** Yes, that's correct.

4 **Q** And you had lost sight of the passenger because
5 you were following the driver?

6 **A** At that point in time, the driver was the only
7 person who had charges on him, that's who we were
8 interested in.

9 **Q** Yes, sir.

10 **MR. MAULDIN:** Beg the Court's indulgence.

11 (Pause.)

12 **MR. MAULDIN:** No further questions, Your Honor.

13 **THE COURT:** Thank you.

14 REDIRECT EXAMINATION

15 BY MR. COLLINS:

16 **Q** Did you give the other officers a description
17 of the passenger?

18 **A** Yes, sir.

19 **Q** What was that description?

20 **A** It was a black male with black shorts, a white
21 T-shirt on who was shorter and brown skinned, as
22 opposed to the driver who was wearing the same
23 clothing, black shorts and a white T-shirt, but the
24 driver was taller and darker skinned.

25 **MR. COLLINS:** Thank you. Nothing further.

1 **THE COURT:** Thank you.

2 Anything, Mr. Mauldin?

3 **MR. MAULDIN:** No, Your Honor.

4 **THE COURT:** All right. Sir, you may step down.

5 Is this witness excused?

6 **MR. COLLINS:** He is, Your Honor, subject to

7 reply. We're done with him for now.

8 **THE COURT:** I'm just asking. It's up to you.

9 **MR. COLLINS:** He's excused.

10 **THE COURT:** Any objection to him being excused?

11 **MR. MAULDIN:** No, Your Honor.

12 **THE COURT:** Okay, sir, you're excused.

13 **THE WITNESS:** Thank you.

14 **MR. COLLINS:** State calls Officer Walker.

15 **THE COURT:** Officer, come up and be sworn,

16 please.

17 ERIC WALKER,

18 having been duly sworn, testified as follows:

19 **THE CLERK:** If you'll have a seat over here,
20 please. State your name and spell your last for the
21 record.

22 **THE WITNESS:** Good afternoon, Your Honor. I'm
23 Officer Eric Walker with Columbia Police Department,
24 K-9 Unit.

25 **THE COURT:** All right, sir. Solicitor.

1 **MR. COLLINS:** Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. COLLINS:

4 **Q** I'm sorry, I didn't catch that. Who do you
5 currently work for?

6 **A** Columbia Police Department.

7 **Q** How long have you been there?

8 **A** Nine years, sir.

9 **Q** All nine years with the City of Columbia Police
10 Department?

11 **A** Yes, sir.

12 **Q** Any experience prior to that?

13 **A** I had three years military police experience in
14 the Navy.

15 **Q** And your general duties as an officer at the
16 Columbia City Police Department?

17 **A** Right now K-9 handler and also patrol.

18 **Q** And you have special training too regarding K-9
19 training?

20 **A** Yes, sir.

21 **Q** What is some of that training?

22 **A** I was taught basic K-9 through our department
23 with my first dog. Then this summer I was sent to
24 Georgia for K-9 trainer's school to train the dogs
25 and the handlers.

1 **Q** Okay. How long have you been with the K-9
2 unit?

3 **A** It's going to be six years this July.

4 **Q** Okay. On May 11th, 2014, about 8:30 P.M.,
5 where were you?

6 **A** I -- in the Vista, downtown Columbia.

7 **Q** Did you have an opportunity to come into
8 contact with a Yukon with a sheriff deputy behind
9 it?

10 **A** Yes, sir. It came across our radio, Richland
11 County K-9 unit was ten zero -- in our terms, a
12 police chase -- with a subject in the city limits of
13 Columbia; he's by himself. At which time, myself
14 and another officer tried to get up behind the K-9
15 deputy for officer assistance, officer safety.

16 **Q** And did you get with him?

17 **A** We finally were able to catch up just after,
18 what we call, a bush bond, when the suspects jump
19 from the vehicle and run. That's when we finally
20 were able to catch up.

21 **Q** So your very first point of contact was when?

22 **A** Officer Newsom walking back to his Tahoe.

23 **Q** Okay. Do you remember the approximate address
24 of that location?

25 **A** No. I had no clue where I was at.

1 **Q** Now, did Officer Newsom request your assistance
2 or is this just something you undertook on your own?

3 **A** We undertake our own. We heard he was by
4 himself in a police chase in the city limits of
5 Columbia, officer safety main concern, back up that
6 officer, get to him.

7 **Q** Did you lose sight of the pursuit and catch up
8 later?

9 **A** No. We caught up after. We pretty much --
10 they were going that fast, and then we had to figure
11 out GPS and stuff like that and listen to roads he
12 was calling out.

13 **Q** And tell us about -- did you have a
14 conversation with Deputy Newsom once you arrived at
15 his location?

16 **A** Arrived on scene, he said he had two people run
17 from the vehicle and point in the general direction
18 as he was getting out his K-9.

19 **Q** Did he give you a description of the individual
20 as he ran from the car?

21 **A** He said -- he gave a brief description.

22 **Q** What was it?

23 **A** I remember two black males, one dressed in
24 black and I can't remember what the other...

25 **Q** Now, you didn't take your dog out; is that

1 correct?

2 **A** No, sir.

3 **Q** What was your role in --

4 **A** A backup officer.

5 **Q** And as a backup officer, what did you do?

6 **A** Right. We work -- we train with the county.
7 We get the dogs the same place the county does. My
8 training comes from the same place where the county
9 does their training, so we pretty much know each
10 other and how we work. And you'd rather have
11 another K-9 officer with you instead of an officer
12 that really don't know what to do, you know, when
13 some officers get ahead of the dog, you know, stuff
14 like that, don't really know what to do. So we try
15 to help each other out, understanding of what we got
16 to do for the dog's safety and for the officer's
17 safety.

18 **Q** And were there any other officers out there
19 besides you and Deputy Newsom at this point?

20 **A** Officer Fields.

21 **Q** Okay. Was he in your vehicle or was he in a --

22 **A** Separate vehicle. He was also K-9 for the
23 City.

24 **Q** And what role, if any, did you play in the
25 tracking of the suspect?

1 **A** Just the backup officer.

2 **Q** Did you get out of your car and --

3 **A** Oh, yes, sir. I got out of my car, followed
4 behind Newsom and K-9 Basco.

5 **Q** Do you remember where that track led you or
6 where Deputy Newsom led you?

7 **A** We went through backyards, over fences. I
8 can't remember the address top of my head.

9 **Q** Tell us about the running of the dog. Where
10 did it lead to? What happened once the dog stopped
11 tracking?

12 **A** The dog, like I said, went through the
13 backyards, went to a house on the corner, a white
14 house, porch. It had a front door. Then it was, I
15 don't want to say, wraparound porch, but the porch
16 went around to the back and it had another side
17 door. And the dog started, I don't want to say
18 aggressively, but he started pulling a lot stronger,
19 like the scent was there, and he went towards the
20 side door at that location.

21 **Q** At this point -- are you familiar with a
22 Officer Hook?

23 **A** Yes, sir, at West Columbia.

24 **Q** At what point did you come into contact with
25 him?

1 **A** I want to say -- I can't remember when he
2 actually made contact with us, but he was at the
3 house with us.

4 **Q** At the white house with the porch that you just
5 described?

6 **A** Yes, sir.

7 **Q** Did you go onto the porch of that house?

8 **A** Yes, sir.

9 **Q** You and who else?

10 **A** When the dog went up there, myself, Newsom and
11 Officer Fields.

12 **Q** Did you knock on the door?

13 **A** Officer Hook did. Corporal Hook from West
14 Columbia did.

15 **Q** Okay. What happened then?

16 **A** Made contact. I believe an older gentleman
17 answered. I can't -- it's kind of a long time ago,
18 but I believe an older gentleman made contact first,
19 talked to him. Come to find out he said he was the
20 father of Mr. Gunter. West Columbia Officer Hook
21 requested permission to search the house for the
22 suspect only. You know, we made it perfectly clear
23 we were there to look for another suspect.

24 **Q** And did you come into contact with anyone else
25 at that residence other than the older gentleman you

1 described?

2 A Mr. Gunter was in there, and I believe he said
3 his girlfriend was in the back room.

4 Q Do you see the occupant of that house in the
5 courtroom today?

6 A Yes, Mr. Gunter.

7 Q Could you describe the shirt that he's got on?

8 A He's got on -- black, plaid shirt on.

9 Q Okay. And based on that conversation, what did
10 you and Officer Hook do then?

11 A We requested permission to go in the house.

12 Q Then what?

13 A It was granted. Hook went to the left, checked
14 -- and when you go in a house, you're checking
15 underneath the bed, closet, some place that a human
16 being can hide; you don't, you know, go there. We
17 finished up, I believe it was Mr. Gunter's room in
18 the back, straight back, coming back, and that's
19 when he threw a package in the bathroom.

20 Q Let's describe that. As you're -- you're
21 walking with him in the house?

22 A Yes, sir.

23 Q And let's get into a little bit more detail on
24 that. Why are you in the house again?

25 A We're looking for the suspects because the dog

1 tracked to the house. Newsom said the dog didn't
2 want to leave from the house property.

3 **Q** Okay. Did you find anyone?

4 **A** Other than the three there, no.

5 **Q** Okay. And as you were looking through the
6 house, did he accompany you?

7 **A** Yes, he was there.

8 **Q** Okay. And describe that journey, I think you
9 said, coming back out of the house.

10 **A** We were in the back. As we were walking -- you
11 can walk straight through the house and you're
12 coming back, there's going to be a bathroom door on
13 your right when you're going back towards the front
14 door.

15 **Q** Okay. And then what?

16 **A** He made a quick motion with his hand, you know,
17 caught me off guard, we were just about done, and
18 threw a bag, you know, like a grocery bag, gray bag,
19 in the bathroom, one quick movement, which time, I
20 grabbed ahold of him.

21 **Q** Could you describe the bag, the contents of the
22 bag, what you observed?

23 **A** At the time -- it was a grocery bag, a gray
24 plastic like you maybe get at Wal-Mart.

25 **Q** Where did this bag come from that you saw?

1 **A** It came from the front of him. I don't know if
2 he got it from his crotch or his pocket. I'm
3 assuming the crotch because I didn't see no bulges
4 in his actual shorts pocket.

5 **Q** Were you standing -- in relation to him, where
6 were you standing?

7 **A** Kind of like his -- seven o'clock, back behind.

8 **Q** I tell you what, if you don't mind, Officer
9 Walker, would you mind standing up and helping us
10 put this in perspective? First of all, show us
11 where you were in relation to Mr. Gunter? Where was
12 he standing in relation --

13 **A** (Witness leaves the witness stand.)

14 Mr. Gunter would have been right here.

15 **Q** Okay. And then show the jury where the
16 bathroom door may have been.

17 **A** The bathroom door is going to be right here.
18 And we're walking, you know, just -- I'm thinking
19 we're done; we didn't find anybody else; see what
20 West Columbia and Newsom wanted to do. And he makes
21 a quick movement and he throws me -- caught me off
22 guard. I grabbed ahold of him and I called for
23 Hook, who was closer to the front door. I don't
24 know if he was exactly outside, but he was right
25 there at the front door of the residence.

1 **Q** Thank you very much. And what did you tell
2 Officer Hook?

3 **A** (Witness resumes the witness stand.)

4 I called Hook there and said, He just threw
5 something in the bathroom. He just threw...

6 **Q** What did it appear to be to you?

7 **A** My training and experience, it was going to be
8 marijuana just the way it was -- there was another
9 bag that fell right next to his foot. It didn't
10 make it completely in the bathroom, and that was
11 clear that it had a green, leafy, plant-like
12 substance. The other bag went flying out too.

13 **Q** What did the other bag look like that you
14 recall?

15 **A** I want to say it was a smaller bag. It wasn't
16 like the grocery bag.

17 **Q** And once you told Officer Hook about the bag,
18 what did he do?

19 **A** Hook came. I grabbed ahold of Mr. Gunter's
20 hands behind his back. Hook handcuffed him.. Then
21 Hook went in the bathroom and retrieved the bag.

22 **Q** Okay. He retrieved the bag that you had
23 indicated that he had drugs?

24 **A** Yes. And he said there was marijuana in it,
25 what appeared to be marijuana.

1 Q And did Officer Hook go back for another bag or
2 did he bring you -- what did he do?

3 A I'm -- he definitely grabbed the bag. I'm
4 assuming he grabbed both bags. And we escorted
5 Mr. Gunter out to the vehicle.

6 Q Do you remember what Mr. Gunter was wearing?

7 A Black basketball shorts and no T-shirt.

8 Q Now, did you ever touch or grab or do
9 anything with the --

10 A I don't recall touching the shirt. He
11 requested a shirt --

12 Q Did you ever touch the bags?

13 A Right. No, the bags. No, I let -- it wasn't
14 my scene. It wasn't my jurisdiction. I let them
15 handle -- I let West Columbia handle that part of
16 it.

17 Q And what did you observe them or Officer Hook
18 do with Mr. Gunter at that point?

19 A Bring in a patrol car.

20 Q Do you recall him asking for a shirt?

21 A I can't remember if I specifically remember him
22 asking for a shirt. I remember someone saying,
23 Bring Gunter a shirt, or something to do with a
24 shirt for Gunter.

25 Q And was he able to get a shirt?

1 **A** Yes, he got a shirt.

2 **Q** Did you ever come into contact with that shirt?

3 **A** I don't believe I made contact with it. I
4 remember someone stating -- asking him why the --

5 **MR. MAULDIN:** Objection, Your Honor; hearsay.

6 **THE COURT:** Sustained.

7 BY MR. COLLINS:

8 **Q** Before he was transported, did you ever see
9 Mr. Gunter with a T-shirt?

10 **A** I believe, if I recall properly, they gave him
11 a T-shirt before he went to the -- I don't know if
12 they took him to jail or West Columbia headquarters.

13 **MR. COLLINS:** Beg the Court's indulgence, Your
14 Honor.

15 **THE COURT:** Yes, sir.

16 (Pause.)

17 BY MR. COLLINS:

18 **Q** When you encountered Mr. Gunter, could you
19 describe his appearance, other than his clothing?
20 Was there anything remarkable about --

21 **A** Yes, he was sweaty.

22 **Q** As you were leading him down the hallway --
23 were you walking with him or leading him? Did you
24 have your hands on him at that point?

25 **A** Before the --

1 Q Before the bathroom?

2 A Before the bathroom, no, sir. We were just --
3 I had no reason to be hands on with him.

4 Q Okay. Are you 100 percent positive that you
5 saw that bag come from him?

6 A Yes, sir.

7 Q And are you positive that bag contained a
8 green, leafy substance?

9 A Yes, sir.

10 Q Did you have any further involvement in this
11 case?

12 A No, they took him.

13 MR. COLLINS: Nothing further, Your Honor.

14 THE COURT: All right. Yes, sir.

15 MR. MAULDIN: Thank you.

16 CROSS-EXAMINATION

17 BY MR. MAULDIN:

18 Q Officer Walker, you, Deputy Newsom and Officer
19 Fields are at this house and, at some time, Corporal
20 Hook joins you; is that correct?

21 A Yes, sir.

22 Q And Corporal Hook initiates contact; is that
23 right?

24 A Yes, sir.

25 Q And he sees the older gentleman comes to the

1 door first; right? And then the older gentleman
2 calls for the son to come out and the son comes to
3 the door; is that correct?

4 **A** I can't be a hundred percent sure. I was back
5 from -- but Mr. Gunter did come.

6 **Q** He did come to the door?

7 **A** He was with -- either behind his father or he
8 was...

9 **Q** Okay. And did you and Corporal Hook and -- did
10 any other officer besides you two go in the house?

11 **A** Myself and Corporal Hook.

12 **Q** Okay. And you had Mr. Gunter lead you through
13 the house, through the rooms; is that what happened?

14 **A** Yeah, he led to the rooms, just --

15 **Q** And you were following behind him the entire
16 time. And then you said you were coming from the
17 back of the house back toward the front of the
18 house --

19 **A** Yes, sir.

20 **Q** -- when you say you saw this throwing motion;
21 is that correct?

22 **A** Yes, sir.

23 **Q** And I think you demonstrated to the jury it was
24 something like this {indicating}?

25 **A** Similar, yes, sir.

1 Q With the left hand going across the body
2 towards the right?

3 A Yes, sir, into the bathroom.

4 Q Into the bathroom. And you say you saw him
5 throw a gray bag; is that correct?

6 A It was like a shopping plastic bag, yes, sir.

7 Q And you did not see him throw a clear bag, did
8 you?

9 A No, I didn't specifically see that leave his
10 hand, no, sir..

11 Q And when Corporal Hook showed you a clear bag
12 that he retrieved from the bathroom, you said that
13 that's not the bag he threw; isn't that correct?

14 A I want to say, if I recall correctly, the clear
15 bag was next to the bathroom. I said, There's a bag
16 in the bathroom that he threw.

17 Q And you say he threw a gray bag; is that
18 correct?

19 A Yes, sir.

20 MR. MAULDIN: No further questions, Your Honor.

21 THE COURT: All right. Anything?

22 MR. COLLINS: Nothing.

23 THE COURT: Officer, you may step down.

24 MR. COLLINS: Your Honor, may we approach?

25 THE COURT: Yes, sir..

1 (Whereupon, a bench conference was held off
2 the record, in the presence of the jury, but out of
3 the hearing of the jury.)

4 **THE COURT:** Madame Forelady and ladies and
5 gentlemen of the jury, I'm told, mechanically, that
6 the next witness would be a little bit longer, but
7 more importantly -- we have to try to schedule
8 witnesses to be here when they -- around their
9 schedules, too. It's like putting a jigsaw puzzle
10 together sometimes, and sometimes the lawyers are
11 real good at it and sometimes we all miss it by just
12 a little bit. And I practiced law for many years
13 before coming to the bench, so I completely
14 understand that.

15 The point of all of that is to say that we're
16 going to break at this point in time, which is
17 unusual for me, but I understand the situation. So
18 you're going to get off a little bit early today.

19 Once again, when you leave here, I'm charging
20 you you are not to discuss this case with anyone. I
21 don't have a clue in the world whether or not there
22 will be anything about it in the paper or in the
23 radio or on TV, I don't know, don't know anything
24 about the case other than what I've heard here today
25 like you have, but if there is something, please do

1 not read that. Ask your loved one to save that for
2 you and you can read it after the trial is ended or
3 don't listen to it and you can listen to it later or
4 they can tell you about it later. But you cannot
5 discuss this case with anyone, you cannot discuss it
6 with each other, you cannot deliberate within your
7 own mind, okay.

8 So you're going home, you're getting off work
9 and surely you don't go home and think about work
10 when you get home every day. Think about something
11 else. It's getting to be springtime of the year and
12 it's too pretty outside to be thinking about work.

13 With that, Madame Forelady and ladies and
14 gentlemen, we're going to let you go for the
15 evening. I am going to ask that you be back in the
16 morning -- the courthouse opens at eight o'clock.
17 We are all adults here. I'm not going to tell you
18 to be here at a particular time, but I would hope
19 that you would be assembled no later than about
20 8:45. I get here about 8:10, something like that,
21 every morning and take care of any mechanical things
22 that we need to take care of. I never knew that
23 judges had so many little administrative things to
24 take care of in the mornings, but we do. But,
25 anyway, if you'll be here no later than 8:45. The

1 courthouse opens at 8:00, be here no later than
2 8:45.

3 Please, once again, leave your cell phones
4 either at home or in your vehicle. They're not
5 permitted in the court -- I don't permit them in my
6 courtroom period to tell you the truth. I think the
7 Chief Justice's order says they're not in the,
8 certainly, in the jury room. I don't allow them to
9 be in the courtroom, and the reason for that is
10 security to be quite honest. Don't, again,
11 communicate with anyone about the case, leave your
12 cell phones at home or in your car, whatever you
13 feel comfortable doing. You certainly may use those
14 tonight, but don't try to learn anything about the
15 case. And with that, I'm going to quit talking and
16 let you be excused.

17 Do you need them to go to the jury room and
18 collect their badges before?

19 **BAILIFF:** They retain their badges so they can
20 wear them when they come in the door in the morning.

21 **THE COURT:** Okay. Retain your badge and please
22 wear that in the morning when you come through the
23 door.

24 And you want them to report to this jury room?

25 **BAILIFF:** Yes, Your Honor. We'll show them

1 exactly where to report when they leave this
2 afternoon.

3 **THE COURT:** Okay. They're going to show you
4 where to report. And that badge is your ticket of
5 admission tomorrow and they know where you will be,
6 that's a free ticket right there, and they'll know
7 where to take you and they'll escort you there. And
8 there'll be some snacks, maybe some bottled water.
9 And they make good coffee around here, I'll tell you
10 that, so if you want a good cup of coffee in the
11 morning, you can find one here at the courthouse.

12 With that, Madame Forelady, if you'll take your
13 jury out.

14 (The jury was excused for the day.)

15 **THE COURT:** Do I have anything from the lawyers
16 as to the jury, from the State?

17 **MR. COLLINGS:** Nothing, Your Honor.

18 **THE COURT:** From the defense?

19 **MR. MAULDIN:** No, Your Honor.

20 **THE COURT:** Okay. Let's do this: Now, sir,
21 Mr. Gunter.

22 **DEFENDANT:** Yes, sir.

23 **THE COURT:** If you don't mind standing.

24 **DEFENDANT:** Yes, sir.

25 **THE COURT:** Now, Mr. Gunter, technically, your

1 bond is revoked, okay. I'm going to keep you on
2 bond. But when a case is called for trial, your
3 bond is revoked and I can take you in custody, and
4 many times I do, okay. But your lawyer is a good
5 lawyer.

6 **DEFENDANT:** Yes, sir.

7 **THE COURT:** We've known each other. And he has
8 told me that you have always been present.

9 **DEFENDANT:** Yes, sir.

10 **THE COURT:** Okay. So with that, I'm going to
11 allow you to go home and spend the night tonight.
12 But tomorrow morning at 9:00 A.M., I'm going to come
13 through this door and we're going to resume the
14 trial of this case whether you are here or not.

15 **DEFENDANT:** Yes, sir.

16 **THE COURT:** You understand?

17 **DEFENDANT:** Yes, sir, I understand.

18 **THE COURT:** Okay. I need you to be here. You
19 be here at whatever time your lawyer tells you to be.
20 here or if he wants you to be at his office. You
21 follow his instructions. He's an officer of the
22 court, sworn, and so you follow his instructions.
23 But now if you're not where he tells you to be in
24 the morning, he's going to tell me that, because he
25 has to, all right, and when he does, I'm going to

1 issue a bench warrant for your arrest.

2 **DEFENDANT:** Yes, sir.

3 **THE COURT:** But I'm not going to wait on you to
4 be here. This is going to be an empty chair and
5 we're going to start this trial at nine o'clock.

6 **DEFENDANT:** I'll be right here.

7 **THE COURT:** Okay. You be wherever your lawyer
8 tells you to be.

9 **DEFENDANT:** Yes, sir.

10 **THE COURT:** All right, sir.

11 Now, we're going to be in recess on that
12 matter, so y'all can stay or leave.

13 (The proceedings were concluded for March
14 18, 2015.)

15 (The following proceedings were held on
16 March 19, 2015.)

17 **THE COURT:** Do we have any issues? I
18 understand our jurors are here. Do we have any
19 matters before we bring the jury in?

20 **MR. COLLINS:** None from the State.

21 **THE COURT:** Ready to go?

22 **MR. COLLINS:** Yes, sir.

23 **THE COURT:** Okay. Let's have the jury.

24 (The jury enters the courtroom at 9:00 A.M.)

25 **THE COURT:** Good morning, ladies and gentlemen.

1 Madame Forelady, any matters for the jury?

2 **MADAME FORELADY:** No, Your Honor.

3 **THE COURT:** We're ready to proceed. All right,
4 Solicitor.

5 **MR. COLLINS:** Thank you, Your Honor. The State
6 calls Officer Hook.

7 DOUG HOOK,
8 having been duly sworn, testified as follows:

9 **THE CLERK:** If you'll have a seat over here,
10 please, and state your name for the record.

11 **THE WITNESS:** My name is Doug Hook.

12 DIRECT EXAMINATION

13 BY MR. COLLINS:

14 **Q** Morning, Officer Hook.

15 **A** Good morning.

16 **Q** Where are you currently employed?

17 **A** City of West Columbia.

18 **Q** How long have you been there?

19 **A** Approximately 13 years.

20 **Q** And could you describe some of your duties as a
21 West Columbia police officer?

22 **A** When I started off, I was, you know, a regular
23 patrol officer, then I went up through the ranks to
24 corporal to patrol sergeant. I transferred over to
25 sergeant over narcotics. I did approximately three

1 years in narcotics, then came back to the road as a
2 corporal.

3 Q On May 11th, 2014, in what capacity were you
4 serving in that department?

5 A I was a corporal on the patrol division.

6 Q And on that same evening, did you have an
7 occasion to come into contact with Deputy Newsom and
8 Matthew Gunter?

9 A I did.

10 Q Please explain to the jury how that occasion
11 came about.

12 A During that night, I was on patrol through the
13 city of West Columbia. My dispatch notified me via
14 radio that the Richland County Sheriff's Department
15 was involved in a car chase through our city and
16 requested assistance. I was going to where they
17 were stopped, met with a Columbia police officer to
18 show him where the Richland County deputy was at
19 because he was a K-9 officer. And we met with the
20 Richland County deputy where he had stopped the
21 vehicle and the passengers inside the vehicle had
22 fled on foot.

23 Q At what point exactly did you come into contact
24 with Officer Walker?

25 A I believe Officer Walker was the Columbia K-9

1 officer that I led to the scene where the Richland
2 County deputy was and showed him where that deputy
3 was at.

4 **Q** And with whom did you speak? Was it Officer
5 Walker or Deputy Newsom?

6 **A** When I arrived on the scene, it was both
7 Officer Walker and Newsom. I think they were both
8 on the scene when I arrived or I -- I showed Walker
9 to where Newsom was at. I think Newsom was the
10 Richland County deputy that was involved in the
11 chase.

12 **Q** Did officer -- or Deputy Newsom or Officer
13 Walker give you a description of the individuals
14 that had ran from the vehicle?

15 **A** Said it was two black males that had ran from
16 the vehicle.

17 **Q** Did they happen to say what they were wearing
18 or what each of them was wearing at the time?

19 **A** Newsom, I know he described one of them as
20 wearing a white T-shirt and that's about as much as
21 I remember.

22 **Q** Now, were you involved in the K-9 tracking
23 aspect of this?

24 **A** I was -- I ran with the K-9 because it was in
25 the city of West Columbia and I knew the streets and

1 the locations where we would be going, so -- it's
2 always good to have somebody from that jurisdiction
3 to run with the dogs so if something does happen, I
4 know where we're at and I can notify my fellow
5 officers for assistance, if needed.

6 Q So you were staged up with them before the dog
7 started running. It's not like you met them as they
8 were tracking?

9 A Right. Once I showed Officer Walker to where
10 Newsom was at, they -- Newsom deployed his K-9, and
11 he was the lead track because he had the dog. And
12 then Walker and I just -- was following them. So I
13 went where the other guys were going with the dog.

14 Q And where did that tracking eventually take
15 you?

16 A It ended up on Raleigh Street at a house.

17 Q Do you remember the address?

18 A I don't. Not off the top of my head, I don't.

19 Q The Raleigh Street address, is that in West
20 Columbia?

21 A It is.

22 Q Is that in Lexington County?

23 A Yes, sir.

24 Q Tell the jury what happened as y'all were
25 approaching this house.

1 **A** I noticed that the dog tracked to the house and
2 went to the side of the house on the porch. It's
3 pretty much a wraparound porch. So the dog went up
4 the front steps, went around the side of the house
5 on the porch and, according to Newsom, was showing
6 an alert. So we made contact with the residents
7 inside the house.

8 **Q** Who knocked on the door?

9 **A** I did.

10 **Q** Okay. And who answered?

11 **A** It was an older gentleman identifying himself
12 as Mr. Gunter's father.

13 **Q** Okay. Was anyone else there that you could
14 see?

15 **A** It was Mr. Gunter. After we had made contact
16 with the older gentleman, Mr. Gunter came out and he
17 stated that his girlfriend was there also.

18 **Q** Did you see what Mr. Gunter was wearing at that
19 point?

20 **A** When he came out the back bedroom, I recall him
21 -- I don't think he was wearing a shirt at all. I
22 think he had shorts on or something.

23 **Q** Okay. And then pick it up from there. What
24 happened next?

25 **A** We made contact with the older gentleman. Then

1 Matthew came out of the bedroom, told him we were
2 looking for somebody that fled from a car. We asked
3 if we could come in and search the residence for
4 someone fitting that description that ran from the
5 vehicle. They allowed us to come in and search for
6 that person.

7 Myself and Officer Walker and I believe another
8 officer went in and did a protective sweep of the
9 residence to see if somebody had gone in the house
10 and hid. We did the sweep. I was coming out of the
11 back room. Officer Walker was still in the bedroom.
12 I heard him ask for me to come back.

13 I came back into the bedroom and observed
14 Officer Walker had Matthew Gunter detained with his
15 hands behind his back. I asked him what was going
16 on. He said that Matthew had thrown something in
17 the bathroom. So I placed handcuffs on him to
18 detain him at that time.

19 I looked down on the floor next to the bathroom
20 door and noticed a clear bag that contained a green,
21 leafy substance consistent with marijuana. I
22 retrieved that, showed it to Officer Walker. He
23 said, No, that was not the bag that he had thrown;
24 it was a larger bag inside the bathroom. So I
25 pushed the bathroom door open, saw a gray bag inside

1 the bathroom that contained a larger amount of
2 green, leafy substance consistent with marijuana and
3 retrieved that bag.

4 Q So there were two bags altogether?

5 A That's correct.

6 Q And, at this point, did you still have visual
7 contact with the defendant, Mr. Gunter?

8 A I did.

9 Q And what, if anything, did you notice about his
10 demeanor?

11 A He was sweating and just confrontational.

12 Q What did you do with the -- you said there were
13 two bags. How did you retrieve those bags?

14 A I just picked them up off the ground and I
15 secured them in my patrol car trunk.

16 Q Okay. Were you wearing gloves at the time?

17 A No, I was not.

18 Q Is it routine practice to retrieve evidence
19 without wearing gloves?

20 A It goes both ways. If it was a gun or
21 something I thought you could get fingerprints off
22 of, I would wear gloves.

23 Q Is that the reason you didn't wear the gloves?

24 A No. I just -- we were in there and saw the
25 bags. I just picked them up, secured them to get

1 them out of the house.

2 **Q** Now, at the time, was it your opinion that you
3 could get fingerprints off the bag or what was in
4 the bag?

5 **A** No, I'm not a --

6 **MR. MAULDIN:** Objection, Your Honor. He's not
7 an expert in that field.

8 **MR. COLLINS:** It doesn't go to the truth. It
9 goes to why he didn't have on gloves.

10 **THE COURT:** Okay. Rephrase your question.

11 BY MR. COLLINS:

12 **Q** Why didn't -- was it your belief that
13 fingerprints could be lifted off of that?

14 **MR. MAULDIN:** Same objection, Your Honor.

15 BY MR. COLLINS:

16 **Q** In your training and experience, are you
17 trained to wear gloves during the -- during the
18 perception of evidence?

19 **A** I would say both ways. In the heat of the
20 moment, you sometimes forget to put your gloves on.
21 You're trained more, you know, if you have a firearm
22 or something that would -- you know you can get
23 prints off of, you would put your gloves on so your
24 prints are not transferred to that object.

25 **Q** So once you retrieved the items, exactly what

1 did you do with them?

2 **A** I placed them in my patrol car so nobody would
3 have access to it other than me. I'm the only one
4 that has a key to my patrol car so nobody could get
5 to it. We secured Mr. Gunter in another patrol car.
6 He was transported to the Lexington County Detention
7 Center.

8 We finished our investigation on the scene and
9 then we went back to headquarters. And I started my
10 report for the incident and logging the marijuana,
11 or the green, leafy substance at that time, into
12 evidence which takes a period of time. And I was
13 able to secure it in a locked evidence room where
14 nobody has access to it other than the evidence
15 custodian.

16 **Q** Did anyone else have access to your vehicle at
17 the time it was being transported?

18 **A** No.

19 **Q** Were there any stops made on the way from the
20 incident scene to the detention center?

21 **A** I was not the one that transported Mr. Gunter.
22 I was the supervisor --, one of the assistant
23 supervisors on the road. So one of my patrol
24 officers transported Mr. Gunter to the jail while I
25 took the evidence to headquarters and logged it in

1 so it would not have a chance to be destroyed or
2 lost or anything like that and I could keep the
3 chain of custody on that marijuana.

4 **Q** So you didn't make any stops?

5 **A** No, I did not.

6 **Q** How was it secured in your vehicle?

7 **A** I put the two bags inside of another evidence
8 bag so I could keep it together. And then once I
9 got to headquarters, I entered it or I wrote on the
10 evidence bag what it was, sealed it where it's
11 tamperproof so if it was tampered with, you would
12 know it. And we have a -- it's kind of like a metal
13 drop box where it's only one way in so you can't
14 reach your hand in there and pull something out. So
15 I put the evidence in that box, shut it, and only
16 the evidence custodian has access to that once I
17 drop it.

18 **Q** So from the point it was retrieved to the point
19 you say you dropped it in the box, was it in your
20 sole care, custody and control?

21 **A** Yes, only in my custody.

22 **Q** You're talking about filling out the evidence
23 paperwork. Exactly what does that mean?

24 **A** I do the report. And then in the report, you
25 have an evidence section, you describe what it is,

1 who you got it from, who's the officer that
2 retrieved it, the date, the time and the date and
3 time when you dropped it. And it's a clear bag with
4 the -- the front of it is where you fill it out and
5 then you take a piece of tape off the seal and you
6 seal it. It's like a sticky pad. You just push the
7 two pieces of plastic together and you seal it. So
8 you cannot actually pull it apart to open it.

9 **Q** Can you identify this?

10 **A** Yes. That's the evidence bag that I filled
11 out.

12 (State's Exhibit Number 11, evidence bag,
13 marked for identification.)

14 **Q** Okay. Before you show it to the jury, Officer,
15 could you tell us a little bit about what's written
16 at the top of that?

17 **A** It has the agency, which is West Columbia PD,
18 and it has our case number, which is assigned to all
19 our calls for service. It has an item number, which
20 means whatever items you put in here, you mark them
21 A, B, C, D or whatever. The offense is what I
22 charged Mr. Gunter with was possession with intent
23 to distribute marijuana. The suspect is Matthew
24 Gunter. The victim is the City of West Columbia,
25 date and time of recovery was 5/11/2014 at 2200

1 hours, recovered by me, description and/or location
2 is two bags of a green, leafy substance --

3 **Q** Let me ask you this, and pardon the
4 interruption: Based on the information on the front
5 of that bag, is that the bag that's associated with
6 Mr. Gunter in this case?

7 **A** It is.

8 **Q** How many items appear to be in that bag?

9 **A** There are two items.

10 **MR. COLLINS:** Your Honor, we'd move to admit
11 State's 11.

12 **THE COURT:** Any objection?

13 **MR. MAULDIN:** No objection, Your Honor.

14 **THE COURT:** It's admitted without objection.

15 (State's Exhibit Number 11, evidence bag,
16 admitted into evidence.)

17 **MR. COLLINS:** And publish?

18 **THE COURT:** You may publish.

19 BY MR. COLLINS:

20 **Q** Which of the -- did you retrieve both these
21 bags?

22 **A** I did.

23 **Q** And you mentioned a clear bag?

24 **A** Yes.

25 **Q** And the other bag that Officer Walker

1 described?

2 **A** Yes.

3 **Q** How did he describe that?

4 **A** He said it was a larger bag inside the
5 bathroom.

6 **Q** Did he say what color?

7 **A** A gray bag.

8 **Q** And what makes this bag tamper evident?

9 **A** It's the seal. What I was talking about was
10 this flap is open, so the bag is flat. When I fill
11 this front side out, there's a piece of plastic that
12 goes across here. And I take it and I pull it apart
13 and it exposes a very sticky film on this side of
14 the plastic. And then you just fold it and it seals
15 pretty much where that dotted line is at so I cannot
16 pull it apart. And if I was to pull it apart or cut
17 it, then our evidence custodian would know it was
18 tampered with.

19 **Q** So we're up to the point where you mentioned
20 the evidence box. Is that where you placed that
21 bag?

22 **A** Yes, it is.

23 **Q** And who has access to that evidence box?

24 **A** There's two evidence custodians, one of them is
25 Investigator Bramlett and now it's Investigator

1 Poore, but at the time of this, it was Investigator
2 Sullivan.

3 **Q** Do you have access to that box?

4 **A** No, I do not. Nobody else has access to it.

5 **MR. COLLINGS:** Your Honor, nothing further for
6 this witness.

7 **THE COURT:** All right. Yes, sir.

8 **MR. MAULDIN:** Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. MAULDIN:

11 **Q** So you testified that when you went to the
12 house, you knocked on the door, an older man came to
13 the door first; right?

14 **A** Yes, an older gentleman, yes.

15 **Q** Okay. And then Matthew came out of another
16 room and came up to the door?

17 **A** Correct. He came out the back room. As you go
18 in the front door, you go straight through the house
19 and there's a room in the back and that's where
20 Mr. Gunter was coming from.

21 **Q** He came out and came to the door to meet with
22 you?

23 **A** That's correct.

24 **Q** Okay. And after some discussion, he allowed
25 you to come into his house and look for somebody

1 that ran from the car; is that correct?

2 **A** That's correct.

3 **Q** Okay. Now, when you're talking, I guess, with
4 Investigator Walker, he said that Matt had kicked
5 the bathroom door open and threw the bag of
6 marijuana down; is that right?

7 **A** That's correct.

8 **Q** And you retrieved a clear bag and he said, No,
9 that's not the bag he threw?

10 **A** That's correct.

11 **Q** He threw another bag?

12 **A** Yes.

13 **Q** And you found a second bag in the bathroom?

14 **A** That's correct.

15 **Q** And at some point after this, you discussed the
16 case with the Richland County Sheriff's Department
17 K-9 officer and he said that he had reviewed his
18 video and was able to identify Mr. Gunter from the
19 video; is that correct?

20 **A** I don't remember if he was able to identify him
21 through the video. I don't recall --

22 **Q** You prepared a report for this case, didn't
23 you?

24 **A** I did. I don't have a copy in front of me.

25 **Q** Would looking at a copy of it refresh your

1 memory?

2 **A** Yes.

3 **Q** (Mr. Mauldin hands document to witness.)

4 **A** Thank you.

5 Yes. That's correct. The Richland County
6 deputy reviewed his video and identified Mr. Gunter
7 as the passenger in the vehicle that ran.

8 **MR. MAULDIN:** I have no further questions, Your
9 Honor.

10 **THE COURT:** Okay. Anything?

11 **MR. COLLINS:** Nothing, Your Honor.

12 **THE COURT:** Okay. Sir, you may step down.
13 Please be careful.

14 **THE WITNESS:** Thank you, sir.

15 **MR. COLLINS:** Your Honor, may this witness be
16 excused?

17 **THE COURT:** Any objection?

18 **MR. MAULDIN:** No objection, Your Honor.

19 **THE COURT:** Sir, you may stay or go, whichever
20 you choose.

21 **MR. COLLINS:** The State calls Officer
22 Yarborough.

23 CHRIS YARBOROUGH,
24 having been duly sworn, testified as follows:

25 **THE CLERK:** If you'll have a seat over here,

1 please. State your name, please, and spell your
2 last for the record.

3 **THE WITNESS:** Chris Yarborough,
4 Y-A-R-B-O-R-O-U-G-H.

5 DIRECT EXAMINATION

6 BY MR. COLLINS:

7 **Q** Officer Yarborough, where are you currently
8 employed?

9 **A** I'm currently employed at West Columbia Police
10 Department.

11 **Q** How long have you been there?

12 **A** A little over seven years now.

13 **Q** And in what capacity do you serve?

14 **A** Police officer.

15 **Q** On May 11th, 2014, what were your general
16 duties at that time?

17 **A** Patrol officer. I was working the road.

18 **Q** What does working the road mean?

19 **A** Initiating traffic stops, monitoring the
20 traffic, writing reports.

21 **Q** And what type of training do you have or is
22 required to become a police officer?

23 **A** The South Carolina Criminal Justice Academy.

24 **Q** And how long is that?

25 **A** The time was nine weeks. It's currently 12

1 weeks now.

2 Q Do you have any specialized training?

3 A I don't.

4 Q Did you have an occasion to respond to [REDACTED]
5 Raleigh Street in the West Columbia area of
6 Lexington County on May 11th?

7 A I was called to assist, I believe it was
8 Richland County, in a case that they were working.

9 Q Just tell the jury what you did out there.

10 A My initial job was just to transport the
11 defendant.

12 Q And were you called out there for that specific
13 purpose?

14 A I was. I was actually called out there just to
15 assist in any kind of way.

16 Q And did you assist? Did you make contact with
17 anybody in the house?

18 A Not personally. I just went in after I heard a
19 radio transmission that an arrest had been made, so
20 I went inside to see if I could help.

21 Q Okay. And who transported Mr. Gunter to the
22 detention center?

23 A I did.

24 Q During the transport, did you ask him any
25 questions? Did he tell you anything? Were any

1 statements exchanged?

2 **A** He did not.

3 **Q** Once you released him to the detention center,
4 what was your involvement in this case?

5 **A** Once I left the detention center, I just made
6 my way back to the city and continued work until the
7 end of shift.

8 **Q** Did you prepare your own separate report?

9 **A** I did not.

10 **Q** Okay.

11 **MR. COLLINS:** Nothing further, Your Honor.

12 **THE COURT:** All right. Yes, sir.

13 **MR. MAULDIN:** I have no questions for this
14 witness.

15 **THE COURT:** Sir, you may step down. Please be
16 careful.

17 **MR. COLLINS:** Your Honor, we'd ask that he be
18 excused as well.

19 **MR. MAULDIN:** I have no objection to that, Your
20 Honor.

21 **THE COURT:** Sir, you may stay or go, whichever
22 you choose.

23 **THE WITNESS:** I think I'll go. Thank you, Your
24 Honor.

25 **MR. COLLINS:** Your Honor, the State calls

1 Investigator Sullivan.

2 JAMES SULLIVAN,

3 having been duly sworn, testified as follows:

4 **THE CLERK:** If you'll have a seat over here,
5 please. State your name for the record.

6 **THE WITNESS:** James Sullivan.

7 **THE COURT:** Solicitor, let me see the lawyers,
8 please.

9 (Whereupon, a bench conference was held off
10 the record, in the presence of the jury, but out of
11 the hearing of the jury.)

12 **THE COURT:** Solicitor, go ahead.

13 **MR. COLLINS:** Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. COLLINS:

16 **Q** Investigator Sullivan, in a nutshell, very
17 briefly, why are you here today?

18 **A** I'm here because -- the evidence custodian and
19 marijuana analysis for this case.

20 **Q** Now, where are you currently employed?

21 **A** I work for the Eleventh Circuit as an
22 investigator.

23 **Q** What are your general duties as an investigator
24 for the Eleventh Circuit?

25 **A** I help prepare cases, do research. I subpoena

1 individuals, track down victims. Whatever the
2 Solicitors need to, you know, take care of, I make
3 sure it happens.

4 **Q** And is Eleventh Circuit synonymous with the
5 Solicitor's Office?

6 **A** It is.

7 **Q** And do you remember your start date at the
8 Solicitor's Office?

9 **A** It was July of last year.

10 **Q** And on -- on or about May 11th, May 12th, 2014,
11 where were you employed?

12 **A** I was employed at the City of West Columbia as
13 a police officer.

14 **Q** At that time, how long had you been there?

15 **A** Approximately eight years.

16 **Q** And during those eight years, in what capacity
17 did you serve the police department?

18 **A** The first year is patrolman. I later became a
19 supervisor, a corporal, and then I went to
20 investigations and worked as a crime scene
21 investigator, but my primary responsibility was
22 evidence custodian.

23 **Q** Did you have any other duties as evidence
24 custodian or crime scene investigator?

25 **A** Yes, sir. Part of our initial tasks was -- as

1 evidence custodians, we're trained in marijuana
2 analysis. It made more sense to test in-house as
3 opposed to send it to SLED since it's something we
4 could do here.

5 Q As the evidence custodian for the police
6 department, are you familiar with their practices
7 and procedures?

8 A Yes, sir, I am.

9 Q Could you explain the evidence submission
10 process to the jury?

11 A Yes, sir. When an officer takes an item into
12 evidence, he logs -- or he or she logs it into the
13 computer system saying what they collected, what
14 time they collected it, all that. It's put into a
15 database. They also fill out and properly package
16 whatever evidence is being dropped into the, you
17 know, into the evidence repository. Once that's all
18 done and the evidence is packaged properly, it is
19 logged in correctly, they drop it into the evidence
20 repository, which is a mailbox-type slot in a steel,
21 reinforced, concrete room. There's -- only two
22 people have access to that room.

23 Once they put it in the slot, only the evidence
24 custodians can get the items of evidence out. Once
25 it's in there, we will go in there, remove that item

1 of evidence from the drop box where it went into the
2 mail slot, ensure that the evidence is properly
3 tagged, that the bag is sealed so the integrity is
4 maintained. We check the computer system, make sure
5 that that's the item that was supposed to be there
6 and then I would log in officially taking possession
7 of that property.

8 Part of the login process is the machine prints
9 out a sticker saying that, okay, you officially
10 logged me into evidence. And we attach that sticker
11 to the evidence bag and we find where it needs to
12 go.

13 **Q** Investigator, I'm showing you what's marked as
14 State's 11. You mentioned a sticker. Would you
15 show the jury what sticker you're referring to?

16 **A** Yes, sir. On the back here, when you look at
17 it, you'll notice the sticker. It's got the case
18 number, a tag number affixed to it. You also see a
19 check-in officer, and it's got my name, and the
20 property officer, which also has my name, which
21 denotes that I'm the one that checked this in, I
22 logged it in. It has the case date and it has the
23 initial officer, which is going to be Officer Hook
24 as the one that dropped it. And I'm the one that
25 affixed this sticker. The location is where we put

1 it, which is D-34, which is in the evidence drug
2 vault. This is where the permanent location for
3 this evidence was housed.

4 **Q** Once you retrieved that bag, was it intact?

5 **A** Yes, sir, it was. It was not tampered with.

6 **Q** The seal was maintained?

7 **A** Yes, sir.

8 **Q** At that point, once you retrieved it, what did
9 you do with it?

10 **A** Later I had took it to the lab and performed a
11 marijuana analysis on it.

12 **Q** And during that time, were you the only one
13 that had possession of it?

14 **A** Yes, sir. I maintain care, custody and control
15 of this once it's in the evidence room.

16 **Q** And there is a case number written on that bag?

17 **A** Yes, sir.

18 **Q** And that bag -- is that bag associated with
19 this case?

20 **A** It is.

21 **Q** How do you know?

22 **A** Officer Hook wrote the case number, 1409824.
23 And on the evidence tag, it's case number 1409824.
24 So the track is the case number by the officer and
25 the correlation to the tag number, which is entered

1 into the computer. So I know it came from Officer
2 Hook, it was logged in properly and we have a
3 continuous tracking on it.

4 **Q** What type of training is required to become a
5 marijuana analyst?

6 **A** In Lexington County, there's multiple ways.
7 You can go to Lexington County and be trained by
8 their chemist, which allows you to test marijuana in
9 Lexington County, or you can go to SLED and take
10 their marijuana analysis course.

11 **Q** What did you do?

12 **A** Initially, I went to, in 2009, I believe it was
13 January 2009, to Lexington County and was trained by
14 Emily Homer, who was the Lexington County chemist in
15 marijuana analysis. I later recertified with SLED
16 in February 2013 through their course.

17 **Q** Is -- are those the only two ways to become a
18 certified marijuana analyst?

19 **A** Those are the only two ways I'm aware of. I'm
20 sure that other counties might have their own ways.

21 **Q** You said you were certified. Is there a test
22 that's required?

23 **A** Yes. You must pass a series of tests in order
24 to make sure you can process marijuana properly.

25 **Q** Did you pass them?

1 **A** Yes, sir.

2 **Q** First time?

3 **A** Yes, sir.

4 **Q** And how long were you a marijuana analyst?

5 **A** Approximately five years.

6 **Q** What is the process used to determine if a
7 substance is marijuana?

8 **A** There's two. There's optical and there's
9 chemical. And both those process {sic} have to be
10 positive in both respects. You can have a positive
11 chemical, but negative on the optical and it's not
12 marijuana; both have to be perfect. And I can take
13 you through the whole process.

14 **MR. MAULDIN:** Your Honor, I have no objection
15 to him being qualified as an expert in chemical
16 analysis for marijuana.

17 **THE COURT:** Is the State moving?

18 **MR. COLLINS:** Yes, sir, Your Honor. We would
19 move to have him declared as an expert in the field
20 of marijuana analysis.

21 **THE COURT:** Marijuana analysis. Ladies and
22 gentlemen, this witness, as I've told you before, is
23 now qualified -- as another expert, is now qualified
24 as an expert in marijuana analysis. That does not
25 mean that you have to believe the testimony, but it

1 is there for your consideration. All right.

2 BY MR. COLLINS:

3 **Q** Once you got this particular kit from the drop
4 box, what did you do to go about testing this
5 sample?

6 **A** The process we use first is we have to remove
7 it from the evidence bag. So we cut it on the
8 bottom seal. I remove the two bags. You'll note
9 here that I have A and B written on this sheet. The
10 first process is to weigh it. We have a digital
11 scale in the West Columbia evidence room. It is
12 first zeroed, so the only weight we're getting is
13 the weight of the substance.

14 I remove any stem seeds from each sample and
15 then I weigh each sample separately. So, in this
16 case, I had the gray in color bag and I had a clear
17 bag. I weighed each different one. A was denoted
18 as the gray bag which measured out at 96.6 grams and
19 the clear bag was 40.8 grams.

20 After each item is weighed, I looked at it
21 through a microscope. What I look for is three
22 different thing -- there's three different hairs I'm
23 looking for specifically: There's a systolic hair
24 which looks like a bear claw that you can easily see
25 it through the microscope. There's a unicellular

1 hair, which is -- looks like a simple hair, just
2 what you'd see every day. And the last hair is
3 called a multicellular hair, which is kind of
4 globular. It's kind of brown and sticky looking.
5 All three of those things were present on these two
6 samples.

7 After the microscopic test, then we go over to
8 the hood and then we do a chemical analysis. A
9 little portion of each of these bags was placed in a
10 dish and then we do what's called a Duquenois-Levine
11 test. We take a Duquenois reagent, which is a
12 little dropper, you know, we drop a little bit on
13 the sample, and then we add hydrochloric acid.

14 After the hydrochloric acid is applied, it
15 turns kind of purplish in color or it should. If it
16 doesn't, then, well, there might be something else.
17 But, in this case, both samples turned kind of a
18 purplish-bluish in color. Then we add chloroform to
19 it and an eye presented itself, that let me know
20 that both of these samples were marijuana.

21 Q Investigator, I'm showing you a document
22 identified as State's 9. Whose signature is that?

23 A That is mine, sir.

24 Q And what does that say at the top?

25 A West Columbia Police Department Marijuana

1 Analysis.

2 **Q** Is this a report that you generated?

3 **A** Yes, sir.

4 **MR. COLLINS:** Your Honor, we'd move to have the
5 analysis admitted and published.

6 **THE COURT:** Any objection?

7 **MR. MAULDIN:** No objection, Your Honor.

8 **THE COURT:** It's admitted without objection.

9 (State's Exhibit Number 9, drug analysis
10 page 1, admitted into evidence.)

11 BY MR. COLLINS:

12 **Q** Is that the report you generated?

13 **A** Yes, sir, it is.

14 **Q** Based on your findings of whether or not that
15 substance is marijuana?

16 **A** Yes, sir.

17 **Q** What were your findings?

18 **A** My findings were that both bags contained
19 marijuana with a total combined weight of 137.4
20 grams. And we converted it to ounces of just 4.8
21 ounces, but tested positive.

22 **Q** Is that type of report routinely generated?

23 **A** Yes, sir.

24 **Q** And, Investigator Sullivan, how certain are you
25 in the results of those tests?

1 **A** Very certain. I've tested thousands of samples
2 and it's positive.

3 **MR. COLLINS:** Very good.

4 Nothing further, Your Honor.

5 **THE COURT:** Yes, sir.

6 **MR. MAULDIN:** Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. MAULDIN:

9 **Q** Investigator Sullivan, I notice on the
10 document, you have a total weight of the bags of
11 marijuana, but you didn't put down what the
12 individual weights are. How did you keep that in
13 your mind or remember that for here today?

14 **A** On the bag, I wrote A and B. A is denoted as
15 the gray bag, which was 96.6 grams, and B is 40.8.
16 I simply added the two weights and that's what I put
17 on my report.

18 **MR. MAULDIN:** No further questions, Your Honor.

19 **THE COURT:** Anything?

20 **MR. COLLINS:** Nothing, Your Honor.

21 **THE COURT:** All right. Sir, you may step down.
22 Please be careful.

23 **MR. COLLINS:** Your Honor, the State calls
24 Lieutenant Sam Gunter.

25 **THE COURT:** All right.

1 **MR. MAULDIN:** And, Your Honor, at this point, I
2 would renew my objection made at pretrial motions.

3 **THE COURT:** Yes, sir.

4 **MR. COLLINS:** And, Your Honor, if I may have a
5 just a very, very brief moment to speak with
6 Mr. Gunter.

7 **THE COURT:** Speak to him before he's sworn,
8 Solicitor.

9 (Pause.)

10 SAM GUNTER,
11 having been duly sworn, testified as follows:

12 **THE CLERK:** If you'll have a seat, please.
13 State your name and spell your last for the record.

14 **THE WITNESS:** Sam Gunter, G-U-N-T-E-R.

15 DIRECT EXAMINATION .

16 BY MR. COLLINS:

17 **Q** Good morning, Mr. Gunter. And it's lieutenant,
18 isn't it?

19 **A** It is.

20 **Q** Thank you. Where do you work?

21 **A** Lexington County Sheriff's Department.

22 **Q** How long have you been there?

23 **A** Twenty-three years.

24 **Q** In what capacity do you currently serve?

25 **A** I'm the lieutenant over the narcotics

1 enforcement team.

2 Q How long have you been the lieutenant over the
3 narcotics team?

4 A Two years.

5 Q Is this a supervisory role?

6 A It is.

7 Q And how many other agents are under your
8 command?

9 A Fifteen.

10 Q What type of -- what type of training have you
11 gone through to become a narcotics agent?

12 A I've attended basic narcotic schools. I've
13 attended the commanders -- Narcotics Commander
14 School put on by the Justice Department. Prior in
15 my career, I've been a narcotics agent for ten years
16 prior to the supervisory role; meth lab technician
17 school.

18 Q As a narcotics lieutenant, have you had the
19 occasion to investigate the use and distribution or
20 purchase of illegal drugs, specifically marijuana?

21 A I oversee the investigations. I personally
22 don't do investigations any longer.

23 Q During the course of your career, have you had
24 the opportunity --

25 A I have, yes, sir.

1 **Q** Could you estimate the number of investigations
2 you conducted in your 23-year career?

3 **A** Over a thousand.

4 **Q** These investigations include conversations
5 regarding the exchanging of drugs for money?

6 **A** They do.

7 **Q** And during the course of those investigations
8 or conversations, have you been able to or are you
9 able to determine a value, a value typically put on
10 street drugs?

11 **A** I am.

12 **MR. COLLINS:** Your Honor, we would move to
13 declare the lieutenant as an expert in the field of
14 distribution and street valuation of narcotics,
15 including marijuana.

16 **THE COURT:** That's over the objection of
17 defense counsel?

18 **MR. MAULDIN:** Yes, sir.

19 **THE COURT:** Yes, sir.

20 BY MR. COLLINS:

21 **Q** Lieutenant, has your training and your
22 experience led you to be able to form an opinion as
23 to what a typical marijuana user, the amount they
24 typically use, if it's for personal use?

25 **A** Yes, sir.

1 Q And what is that amount typically?

2 A At one time?

3 Q Correct.

4 A It's typically going to be somewhere between a
5 half a gram and a gram.

6 Q How many grams is the typical marijuana
7 cigarette?

8 A If you're talking about the typical marijuana
9 cigarette that would be rolled in rolling papers
10 that you buy at your convenience store, that's
11 probably going to be somewhere, like I said,
12 somewhere between three quarters to a gram of
13 marijuana.

14 Q And based on your experience, is that typically
15 how this marijuana is ingested, by a cigarette?

16 A It ranges anywhere from cigarettes to pipes to
17 blunts, any of those manners.

18 Q Would there -- and regarding pipes or blunts,
19 is there any difference in the amount that would be
20 used for personal use?

21 A Typically, no, other than you can pack as much
22 as you want to in the bowl of a pipe, whereas you're
23 pretty much limited by the rolling papers that you
24 use as to how much you can put into that rolling
25 paper before it's going to break.

1 **Q** Okay. How are -- how is marijuana typically
2 distributed, in what measurements?

3 **A** Anywhere from -- anywhere from, what we call,
4 dime bags, nickel bags, up to ounces, quarter ounces
5 -- they call that a quarter -- up to quarter pounds,
6 pounds.

7 **Q** Now, what exactly does a dime bag mean?

8 **A** Dime bag is ten dollars worth of marijuana,
9 hence the term dime. Typically, it's going to be
10 about a gram of marijuana. The best way to describe
11 it for you is it's typically sold in postage stamps,
12 the envelopes that postage stamps collectors put in,
13 and so that's about the size of it.

14 **Q** So a postage stamp is about the size of how
15 many grams?

16 **A** One.

17 **Q** One gram. And a nickel bag, what is that?

18 **A** Half a gram, five dollars worth.

19 **Q** So how much does an ounce typically go for,
20 street-value wise?

21 **A** Depends on whether we're talking high grade or
22 regular -- we call it ditch weed marijuana, depends
23 on which one you're talking about.

24 **Q** Would a proper question be just the average?

25 **A** Well, okay, if we're talking your typical

1 normal scene marijuana, it's about a hundred dollars
2 an ounce.

3 Q And based on your training and experience, is
4 there an amount that you would typically see that
5 would differentiate personal use from distribution?

6 A Typically, that line's drawn at an ounce.

7 Q How many grams is that?

8 A Twenty-eight.

9 Q Lieutenant, I'm going to show you a bag marked
10 as State's 11. Investigator Sullivan has testified
11 to two different weights on that sticker on the
12 front. Can you read those weights?

13 A 96.6 grams and 40 point, I believe it says,
14 eight nine or 40 point something grams.

15 Q Roughly. So one's about 40 and one's about a
16 hundred?

17 A Right -- no, one -- yes, yes, sir.

18 Q What would, the one that's about a hundred, the
19 96.6, what would that be worth on the street,
20 value-wise?

21 A Roughly \$300.

22 Q And 40 -- the 40 bag, what would it be worth?

23 A A little over a hundred dollars.

24 Q The amounts, about a hundred, about 40, is that
25 amount the typical amount that you would see for

1 personal use?

2 **A** No, sir.

3 **Q** What would you equate that amount with?

4 **A** Distribution.

5 **MR. COLLINS:** Your Honor, nothing further.

6 **THE COURT:** All right. Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. MAULDIN:

9 **Q** Now, you're with the sheriff's department; is
10 that right?

11 **A** Correct.

12 **Q** And this is a West Columbia case that we're
13 dealing with today; is that right?

14 **A** It's my understanding, yes, sir.

15 **Q** And you have no involvement with this case
16 other than your coming here --

17 **A** No, sir --

18 **Q** -- to testify today?

19 **A** -- that's all.

20 **Q** And I believe you testified before that amounts
21 of marijuana could be distributed -- distributed to
22 be from a half ounce -- well, a half a gram to a
23 gram, these nickel and dime bags, that they could be
24 distributed in an ounce and a quarter ounce, a
25 quarter pound up to a pound, and that's when

1 somebody is distributing it to somebody else; is
2 that right? You're talking about somebody is
3 selling it to somebody else in those amounts?

4 **A** Correct.

5 **Q** Okay. Now, you talked about the one time use
6 or the personal use about being about half a gram or
7 half a -- or one gram, depending on how much they
8 put in the cigarette or the blunt or the pipe or the
9 bong or whatever it is they're using; is that right?

10 **A** Yes, sir.

11 **Q** But it is conceivable that somebody could have
12 a stash or something like an amount of marijuana and
13 they just go into that stash and take out a little
14 bit at a time to use?

15 **A** That's typically not the case because it'll dry
16 out over time.

17 **Q** How long would it take it to dry out?

18 **A** It depends on many variables, including weather
19 conditions, how you have it packaged.

20 **Q** Now, you testified that, you know, you've
21 investigated over a thousand cases involving
22 possession, distribution, trafficking, those kind of
23 things. And you talked about weight as being an
24 indicator of distribution?

25 **A** It can be, yes, sir.

1 **Q** It can be. And there are other things that
2 could be -- indicate distribution, like the way the
3 drugs are packaged?

4 **A** Correct.

5 **Q** If they're packaged in those little dime bags
6 or quarter bags for sale, that if somebody has large
7 amounts of money, that it's an indicator that they
8 distribute drugs if they're found with drugs and a
9 bunch of money?

10 **A** Can be, yes, sir.

11 **Q** And also if they have guns, that could be an
12 indicator of an intent to distribute as well?

13 **A** It can be.

14 **Q** And if they find ledgers where they've written
15 down who owes them what money, that that's been
16 found in the past --

17 **A** It has.

18 **Q** -- and can be an indicator of distribution.
19 Also people, like, look at people's cell phones and
20 they look and they see texts from people going back
21 and forth about the sell or distribution of
22 narcotics, that can be an indicator of distribution
23 as well; is that correct?

24 **A** If you get to the cell phone and can get a
25 search warrant for it, yes, sir.

1 **MR. MAULDIN:** I have no further questions, Your
2 Honor.

3 **THE COURT:** All right. Anything?

4 **MR. COLLINS:** Nothing, Your Honor.

5 **THE COURT:** Thank you, sir. You may step down.

6 **MR. COLLINS:** Your Honor, we'd ask that this
7 witness be excused as well.

8 **THE COURT:** Any objection?

9 **MR. MAULDIN:** No objection, Your Honor.

10 **THE COURT:** Sir, you may stay or leave,
11 whichever you choose.

12 **THE WITNESS:** Thank you, sir.

13 **MR. COLLINS:** The State rests, Your Honor.

14 **THE COURT:** The State rests, all right.

15 Madame Forelady and ladies and gentlemen of the
16 jury, the State has now rested its case which means
17 they don't intend to call any other witnesses at
18 this time. There are some matters now that require
19 my attention. As I previously told you when we met
20 yesterday, there's some -- sometimes I'll need to
21 talk with the lawyers without your presence. And
22 we're not far off of a break anyway. We've been
23 running here for almost an hour or so. We're going
24 to take a break here while we continue to talk just
25 for a few minutes, so expect to be back here in

1 about 20 minutes, so about 10:15. Again, this case
2 has not ended, so do not begin deliberating not even
3 within your own mind.

4 Madame Forelady, if you'll take your jury out.

5 (The jury retires to the jury room.)

6 **THE COURT:** Okay. Anything from the State?

7 **MR. COLLINS:** Nothing from the State, Your
8 Honor.

9 **THE COURT:** Okay. From the defense?

10 **MR. MAULDIN:** Yes, Your Honor. At this time, I
11 would like to make a directed verdict motion on
12 behalf of Mr. Gunter that taking the evidence in the
13 light most favorable to the State, that they haven't
14 put forth a case to submit to the trier of fact
15 possession with intent to distribute marijuana. I
16 also incorporate any prior motions and objections
17 made.

18 **THE COURT:** Yes, sir.

19 Anything from the State? Any response from the
20 State?

21 **MR. COLLINS:** No response, Your Honor.

22 **THE COURT:** Okay. That motion is denied for
23 the defense. At this point, the Court does not
24 weigh the evidence, that is for the jury. This
25 Court has to look to see if there's any evidence

1 whatsoever, called a scintilla of evidence. And we
2 have to view that in the light most favorable to the
3 nonmoving party, which is the State. So that motion
4 is denied, but you're protected, Mr. Mauldin.

5 **MR. MAULDIN:** Yes, sir.

6 **THE COURT:** Anything else?

7 **MR. MAULDIN:** No, Your Honor.

8 **THE COURT:** Okay. At the break -- well, let me
9 ask you this: Does the defense intend to put up,
10 you don't have to tell me right now, if you don't
11 choose to, but if you do, are you going to have your
12 client testify?

13 **MR. MAULDIN:** I believe so, Your Honor.

14 **THE COURT:** Okay. I didn't know if you needed
15 me to do a colloquy with him, so you can talk with
16 him over the break about that. How about that?

17 **MR. MAULDIN:** Yes, sir, Your Honor.

18 **THE COURT:** Okay. Anything else?

19 **MR. MAULDIN:** No, Your Honor.

20 **THE COURT:** Okay. All right. We'll take --
21 let's break till 15 after the hour, 15 after.

22 (Brief recess.)

23 **THE COURT:** Ready for the jury?

24 **MR. COLLINS:** State's ready, Your Honor.

25 **THE COURT:** All right. We'll have the jury.

1 (The jury returns to the courtroom.)

2 **THE COURT:** Madame Forelady, any matters for
3 the jury?

4 **MADAME FORELADY:** No, Your Honor.

5 **THE COURT:** Thank you.

6 All right.

7 **MR. MAULDIN:** Your Honor, may we approach for a
8 second?

9 **THE COURT:** Sure.

10 (Whereupon, a bench conference was held off
11 the record, in the presence of the jury, but out of
12 the hearing of the jury.)

13 **MR. MAULDIN:** Thank you, Your Honor. At this
14 time, the defense would call Michael Fields.

15 **THE COURT:** Mr. Fields, come up and be sworn,
16 please.

17 MICHAEL L. FIELDS,
18 having been duly sworn, testified as follows:

19 **THE CLERK:** If you'll have a seat over here,
20 please, and state your name for the record.

21 **THE WITNESS:** Michael L. Fields.

22 DIRECT EXAMINATION

23 BY MR. MAULDIN:

24 **Q** Mr. Fields, how do you know Matthew Gunter?

25 **A** That's my stepson.

1 Q Okay. So you're married to his mom?

2 A We are common law.

3 Q Oh, you're common law. How long have you been
4 with her?

5 A Four and a half years.

6 Q Okay. Now, this day of May 11th of 2014, how
7 is that an occasion for Matthew other than the fact
8 that he got arrested that day?

9 A It was a birthday party.

10 Q Okay. So it was his birthday that day?

11 A Yes.

12 Q Okay. And there was a party there?

13 A Yes. I got there about 3:00.

14 Q Okay. And how many people were at that party?

15 A When I got there, I want to say about 15, 20.

16 Q Was Matthew there?

17 A Yes.

18 Q And when did you leave that party?

19 A About 8:45, maybe 9:00.

20 Q Okay. Was Matthew there when you left?

21 A Yes.

22 Q Okay. And where did you go when you left that
23 party?

24 A I was headed -- I backed out the driveway,
25 headed 378 towards Columbia.

1 **Q** Okay. And you didn't -- did you ever come back.
2 to the house that night?

3 **A** No.

4 **MR. MAULDIN:** No further questions, Your Honor.

5 **THE COURT:** Anything?

6 **MR. COLLINS:** Beg the Court's indulgence, Your
7 Honor.

8 (Pause.)

9 CROSS-EXAMINATION

10 BY MR. COLLINS:

11 **Q** Mr. Fields, were you present when the police
12 arrived?

13 **A** No, sir.

14 **Q** Do you know about how long this birthday party
15 lasted?

16 **A** Well, it started before I got there. You know,
17 I got there, like I say, around 3:00, somewhere
18 around there.

19 **Q** Do you know what time it was scheduled to
20 begin?

21 **A** Maybe about 1:00, somewhere along there, you
22 know.

23 **Q** Was this just a word of mouth or was it by
24 invitation or how did you know there was a party
25 going on there that day?

1 **A** He's my stepson; he had told me earlier.

2 **Q** Do you live at this location as well?

3 **A** No, sir.

4 **MR. COLLINS:** Your Honor, nothing further.

5 **THE COURT:** Okay. Anything?

6 **MR. MAULDIN:** No, Your Honor.

7 **THE COURT:** Sir, you may step down. Please be
8 careful.

9 **THE WITNESS:** Okay. Thank you.

10 **MR. MAULDIN:** Your Honor, at this time, the
11 defense would call Shaneria Howell.

12 SHANERIA HOWELL,
13 having been duly sworn, testified as follows:

14 **THE CLERK:** If you'll have a seat over here,
15 please. State your name for the record.

16 **THE WITNESS:** My name is Shaneria Howell.

17 DIRECT EXAMINATION

18 BY MR. MAULDIN:

19 **Q** Ms. Howell, how do you know Matthew Gunter?

20 **A** I knew -- I know Matthew Gunter for three
21 years.

22 **Q** Are you his girlfriend?

23 **A** Yes, sir.

24 **Q** Okay. And on May 11th of 2014, were you in the
25 house on Raleigh Street that night?

1 **A** Yes, sir.

2 **Q** And what is significant about May 11th?

3 **A** May 11th, can I start like --

4 **Q** Well, particular to Matthew, what's significant
5 about that?

6 **A** Oh, he was in bed with me the whole time.

7 **Q** But that day in particular, what went on that
8 day?

9 **A** What went on that day, the police came and
10 knock on the door and asked us did -- was anybody
11 was there. And we told them, No, it was just
12 nothing but me, my boyfriend, his daddy. And so
13 they had came in the house, was like, Is anybody
14 else in here? So I was in the room, watching TV in
15 the room, one of the police had came inside the
16 room, was like, Anybody else in here? So I told
17 them, No. And so he was like, Do you know why the
18 dogs led us here? So I was like, No. And so he was
19 like, Well, we're looking for a bad guy.

20 So he told us to -- no, he told me to come out
21 and sit on my pop's bed. And they had my boyfriend
22 in handcuffs in the living room.

23 **Q** Okay. What had happened earlier that day
24 before the police came?

25 **A** Oh, we was having a party.

1 Q And why were you having a party?

2 A It was his birthday.

3 Q Okay. And was he there at the party?

4 A Yeah, he was there.

5 Q And was he there the whole time?

6 A The whole time. The whole time.

7 MR. MAULDIN: No further questions, Your Honor.

8 THE COURT: All right. Solicitor.

9 MR. BELL: Thank you, Your Honor. Gill Bell on
10 behalf of the State.

11 CROSS-EXAMINATION

12 BY MR. BELL:

13 Q How are you doing, Ms. Howell?

14 A I'm doing good. You?

15 Q Good. I appreciate that. Ms. Howell, how long
16 did you say you knew Mr. Gunter?

17 A Three.

18 Q Okay. How did y'all meet?

19 A We met when I was coming up the street. We
20 happen to became friends and started talking and it
21 led on from there.

22 Q Okay. And so y'all have been dating for about
23 three years?

24 A Yes, sir.

25 Q Okay. Y'all live in that same neighborhood

1 together?

2 **A** Yes, sir.

3 **Q** Now, prior to meeting, where were you living?

4 **A** Me?

5 **Q** Yeah.

6 **A** Staying with him.

7 **Q** Okay. So you've always been living with him?

8 **A** Yeah.

9 **Q** Even before you were dating?

10 **A** No. I was staying with my mama about that time

11 before we even think about messing around with each

12 other, but I was staying with my mama at that time

13 till I decided to move on with him.

14 **Q** And you have no problem saying y'all are still

15 dating today?

16 **A** Yeah, we're still dating today.

17 **Q** You love him?

18 **A** Yes, I love him dearly.

19 **Q** All right. You do anything for him?

20 **A** Anything.

21 **Q** Okay. Now, you mentioned that on May 11th, it

22 was Mr. Gunter's birthday?

23 **A** Yes, sir.

24 **Q** And y'all were having a party?

25 **A** Yes, sir.

1 Q Okay. Now, you've been to some birthday
2 parties before?

3 A Been to his birthday party before?

4 Q Any birthday party?

5 A No, I been with him --

6 Q Not that day, just in general in your life,
7 have you been to birthday parties?

8 A No, that's my first time.

9 Q That's your first birthday party, okay. Did
10 y'all have any refreshments at that birthday party?

11 A What you mean by that?

12 Q Any drinks, Coca-Cola?

13 A Yeah, everything, yeah. It was just --

14 Q A little bit of everything?

15 A -- it was just nothing but a party.

16 Q Did you have some alcohol?

17 A Just usual, the same usual.

18 Q Okay. All right. Now, you said you hadn't
19 been to any other birthday parties ever in your
20 life. How old are you, Ms. Howell?

21 A I'm 18.

22 Q Eighteen years old, okay. Now, you said
23 Mr. Gunter was with you all day in bed. Is that
24 where he was?

25 A Yes, sir.

- 1 **Q** Okay. Now, do you recall Mr. Gunter sweating
2 that day?
- 3 **A** No, sir. No.
- 4 **Q** No sweat at all?
- 5 **A** No. He was just straight clean.
- 6 **Q** Straight clean. And y'all were watching TV?
- 7 **A** Yep. We was in the bed watching TV just
8 getting ready to turn off the TV and go straight to
9 sleep.
- 10 **Q** What time of day was that?
- 11 **A** That was at least at 10:00.
- 12 **Q** 10:00 at night?
- 13 **A** 10:00 at night.
- 14 **Q** Okay. And this was after the party?
- 15 **A** After the party.
- 16 **Q** Okay. Now, Ms. Howell, what was Mr. Gunter
17 wearing when the police showed up?
- 18 **A** Mr. Gunter was wearing his black basketball
19 shorts. He ain't had on no shirt. He had on my
20 flappers {sic}, which is Nike Flappers. And that's
21 all he had on.
- 22 **Q** Okay. So one more time, you said it was black
23 shorts and no shirt?
- 24 **A** No shirt.
- 25 **Q** Okay. Now, how many rooms are in that house?

1 **A** Two.

2 **Q** Two. And which room were y'all in?

3 **A** We was in the room, like as soon as you walk in

4 the house, it's like a room right there, which is

5 his pop's room, but you got to walk through pop's

6 room to get to his room. So we're right there in

7 the far back.

8 **Q** Okay. How many bathrooms are in this house?

9 **A** One.

10 **Q** One. Okay. Y'all all share that bathroom?

11 **A** Yes.

12 **Q** Okay. Mr. Gunter use that bathroom?

13 **A** Yeah.

14 **Q** Okay. And you said you have to walk through

15 pop's room --

16 **A** To get to his room.

17 **Q** -- to get to his room. So if you're in

18 Mr. Gunter's room and you're trying to go back out

19 towards the front of the house, where do you have to

20 cross through?

21 **A** To get to the front of the house?

22 **Q** If you are in Matthew's room and you want to

23 get back to the front door, where do you have to go

24 through?

25 **A** Oh, it's like a door inside our room, so we can

1 leave out that door to go outside or we can just
2 walk through pop's room to go outside the front
3 door.

4 **Q** Okay. So the police show up, Mr. Gunter's
5 wearing black basketball shorts, no shirt and he's
6 not the least bit sweaty; right?

7 **A** No, sir.

8 **Q** Okay. Now, isn't it true when police show up,
9 he's going to have to walk through pop's room by the
10 one bathroom in the house and go up to the front
11 door where those police are?

12 **A** No. He have to walk through his room to get to
13 pop's room into the front living room where the
14 police at.

15 **Q** Right. And during that path is where that one
16 bathroom is located; right?

17 **A** That bathroom is in the kitchen.

18 **Q** In the kitchen. Where is the kitchen located?

19 **A** The kitchen is right there, like, straight
20 ahead to the living room. Like, as soon as you walk
21 in the house, it's the living room. You go straight
22 to that little open door right there --

23 **Q** Sure.

24 **A** -- is the kitchen and then right there on your
25 left is the bathroom.

1 **Q** Okay. So if you're in either of the bedrooms,
2 you actually have to come out of the bedroom to go
3 to the bathroom?

4 **A** Say that one more time.

5 **Q** If you are in one of those -- let's say you're
6 sleeping at night and you wake up, have to use the
7 restroom, you have to leave those bedrooms, go out
8 into the main area of the house?

9 **A** Yes, sir.

10 **Q** So when the police put Mr. Gunter in handcuffs,
11 as you said, they never would have walked him by a
12 bathroom?

13 **A** No.

14 **Q** No.

15 **A** No.

16 **Q** Okay. And where did you see him handcuffed at?

17 **A** In the living room. When I was sitting in
18 pop's room on the bed, he was right there in the
19 living room in handcuffs.

20 **Q** Okay. Ms. Howell, you said you're 18 years
21 old?

22 **A** Yes, sir.

23 **Q** What's your birthday?

24 **A** 3/10/97.

25 **Q** 3/10/97. Okay. Ms. Howell, I sure hope you

1 have a birthday party some day.

2 **A** Thank you.

3 **MR. MAULDIN:** No questions, Your Honor.

4 **THE COURT:** Ma'am, you may step down. Please
5 be careful.

6 **THE WITNESS:** Thank you.

7 **THE COURT:** Yes, ma'am.

8 **MR. BELL:** Thank you, Ms. Howell.

9 **THE WITNESS:** You're welcome.

10 **MR. MAULDIN:** Your Honor, at this time, the
11 defense would call Matthew Gunter to the stand.

12 MATTHEW ANTWON GUNTER,

13 having been duly sworn, testified as follows:

14 **THE CLERK:** If you'll have a seat over here.
15 State your name for the record, please.

16 **DEFENDANT:** My name is Matthew Gunter. And I'm
17 the defendant and I plead not --

18 DIRECT EXAMINATION

19 BY MR. MAULDIN:

20 **Q** Matthew, how you doing?

21 **A** I'm sorry.

22 **Q** We understand you plead not guilty. May 11th,
23 what day is that for you?

24 **A** That's my birthday.

25 **Q** Okay. And May 11th of last year, where were

1 you?

2 **A** I was at the birthday party.

3 **Q** Okay. And that's that house on Raleigh Street?

4 **A** That's the house on Raleigh Street. My sister
5 threw the birthday for us together because my
6 birthday is in May and her birthday is May 24th,
7 that's why she threw the party for us together.

8 **Q** Okay. Now, you're not living at that house
9 anymore?

10 **A** No, sir.

11 **Q** You moved out of the house?

12 **A** Yes, sir. It was my father's.

13 **Q** And didn't you move next door to your sister's
14 place?

15 **A** No. I moved with my sister.

16 **Q** And how many people were at this party earlier
17 that day?

18 **A** When I was there, it was more like 15, 20
19 people. All of my cousins was there. They had
20 their girls. You know, pretty much everybody was
21 there.

22 **Q** Okay. And what time did the party kind of
23 finish up?

24 **A** The party finished up around about 8:30 because
25 it was dark. And West Columbia Police, they came by

1 and they flashed the light, because it was too dark,
2 to let us know that the party need to end. So we
3 end it from there.

4 Q Okay. And about half hour to an hour after
5 that, the police came by your house again; is that
6 right?

7 A Yes, sir. Matter of fact, polices {sic}
8 swarmed the neighborhood.

9 Q So there were a number of cars there in the
10 neighborhood?

11 A When we looked -- when they arrested me and
12 when I came out of there, it was like, God, about 20
13 cars out there, different counties.

14 Q All right. And tell us what happened when the
15 police came to the door.

16 A When they came to my door, right, they asked
17 for my father. My father came -- well, my father
18 screamed my name and I came from the back room. I
19 think Officer Doug Hook was to the door and another
20 officer. They stepped me outside on the front
21 porch. As you can tell, the porch is like this
22 {indicating}. This is the side porch they came on.

23 Q Let's look at one of these exhibits, shall we?

24 A Yeah.

25 Q Here is State's Exhibit 3. You can stay there.

1 I'll just hold it up like this.

2 **A** All right. You see this, this is the back and
3 this is my sister's yard, right. All this here be
4 our yard. This is where we throw the party.
5 Polices' came from this way. They came from here
6 through the back door. And this the front door
7 right here where they answer at.

8 Now, this is my room right here. This whole
9 big part right here, this is my bedroom. The
10 bathroom is all the way back here where the kitchen
11 at.

12 **Q** So the bathroom is kind of where this cut is in
13 the house?

14 **A** Yeah. And I got pictures in my phone, too.
15 This is the front door where the officers came.

16 **Q** Okay.

17 **A** And they called me out here. One --

18 **Q** So this would be your room here?

19 **A** Yeah.

20 **Q** That would be your dad's room right there?

21 **A** Yeah.

22 **Q** And then this would be the living room?

23 **A** The living room right here, yeah.

24 **Q** So you would have come out from your room --

25 **A** Yeah.

1 **Q** -- right here --

2 **A** Right here to the front door.

3 **Q** -- and circle around here to the front door?

4 **A** Yeah.

5 **Q** And you knew the police were there when you
6 came out?

7 **A** Yes, sir, I did. So when I came out, one of
8 the officers said, Let me see him. And I came out
9 in my sleeping shorts, no shirt. I wasn't sweaty.
10 I swear my life to God I wasn't sweaty.

11 **Q** Okay.

12 **A** No shirt. Officer shining the light, I think
13 it was Newsom, Officer Newsom shine the light in my
14 face, told me to turn around, do all that and said,
15 No, that's not him. So they said, Is the suspect in
16 the house? I said, No. They said, Can we check? I
17 said, My girl might be half naked; let me go in
18 there and see if she decent enough. And I think one
19 of the officers said they'll walk with me. Two or
20 three officers came with me.

21 While they was doing their little search or
22 whatever, one of the officers grabbed me, said that,
23 I'm placing you under arrest. And as I know, he
24 opened the bathroom door, marijuana sitting right
25 there.

1 Q Did you throw that marijuana in --

2 A No, sir, I didn't, because as I said before,
3 when they came on the porch -- I mean, regular
4 shorts, shorts have no pockets, sleeping shorts,
5 like basketball shorts, they have no pockets, they
6 sags off me. And why they didn't see nothing on me
7 then from there to throw something, and as the
8 officer said, I was right beside him.

9 Q So you didn't throw any marijuana?

10 A I didn't throw nothing.

11 MR. MAULDIN: No further questions.

12 CROSS-EXAMINATION

13 BY MR. COLLINS:

14 Q Mr. Gunter, at the time, you were living at [REDACTED]
15 Raleigh?

16 A Yes, sir.

17 Q And is that street?

18 A That's street, yes, sir.

19 Q And that is in West Columbia?

20 A Yes, sir.

21 Q That's in Lexington County?

22 A Lexington County, yes, sir.

23 Q On May 11th, 2014, how long had you lived
24 there?

25 A My pops just had randomly moved there, like, I

1 say about a year ago, because with the help of my
2 stepdad, I think, he got him into the house, you
3 know.

4 Q So he had been there about how long?

5 A About a year, I think.

6 Q You had been there about a year as well?

7 A Yeah.

8 Q And the birthday party, when did it start?

9 A The birthday party started around about 1:00 in
10 the afternoon, something like that. Everybody was
11 there, my family, they brung some of their, you
12 know, everybody was there. My sister had gave
13 fliers out, said we was having our party together.
14 That's what we did all day.

15 Q Okay. And was there any drinking going on at
16 the party, alcohol?

17 A I mean, they had beer, you know.

18 Q It's a birthday party?

19 A Yeah.

20 Q How old were you turning?

21 A Huh?

22 Q How old were you turning?

23 A At the same time, I was turning 28, I think.

24 Q Turning what?

25 A Twenty-eight.

1 **Q** Twenty-eight. Was there anything else going on
2 at the party that you were aware of?

3 **A** No, just everybody was in the yard. Like I
4 showed you the description on the board, we got a
5 big backyard. My sister set up a tent under there,
6 a big tent. Everybody was under the tent playing
7 cards, you know, having fun, listening to music,
8 having fun. We even brung the TV out there -- the
9 TV outside just to play the game system because we
10 had a little game tournament under there.

11 **Q** At that party, nobody was using marijuana?

12 **A** No lie, yeah.

13 **Q** One person or more than one person?

14 **A** More than one person.

15 **Q** How did the party end?

16 **A** The party end just as I said. Everybody was,
17 you know, partying at night. It had done turned
18 nighttime, you know, when the party end. I think I
19 went in first before everybody did, though, because
20 I was kind of hanged over and I went laying on my
21 bed because I'm not too much a drinker. I go to
22 sleep and try to sleep it off.

23 But the party end when I seen the lights from
24 the police car. And when they flashed it twice,
25 that's how I know what's up. I went out there and I

1 see if my sister -- I told her, Y'all need to end it
2 because it's too late, they're flashing lights now.
3 And I guess she end it from there. After that, laid
4 in my bed for a couple of minute -- or about 30
5 minutes or an hour. Next thing I know that
6 happened. I get arrested for my birthday.

7 **Q** Did you ever walk past the bathroom?

8 **A** I never walked past the bathroom. Like they
9 said, the bathroom is in the kitchen, you know what
10 I mean. At the same time, when the officers came in
11 my house, I never walked past no bathroom.

12 **Q** Did an officer walk with you back to the
13 bedroom where your girlfriend was?

14 **A** You said it. So how you going to see that I
15 tossed something in the bathroom?

16 **Q** Do you recall the officers looking for someone
17 else in the house?

18 **A** That's what they said because -- they had to be
19 looking for someone. The whole neighborhood was
20 surrounded with different kind of police. I know
21 they was looking for someone. And so happened they
22 probably ain't got them, that's why I think they got
23 me.

24 **Q** When the police arrived -- and I think you said
25 the police came twice?

1 **A** No. When they rode -- they rode by to shut
2 down the party. You know the white spotlight on
3 their car, they just rolled by and, like, shined the
4 light. They didn't got out, they didn't, you know,
5 they just rolled by and shine the light to tell us
6 that's a sign y'all need to shut it down, it's too
7 late in the night, everybody go home, people got to
8 go to work in the morning, see what I'm saying.

9 **Q** So that was about around eight o'clock?

10 **A** That was about, I'd say, yeah, around about
11 8:00 or 9:00.

12 **Q** About 8:30 is when they knocked on the door?

13 **A** Yeah, around about that time. I know it be
14 nighttime. I know me and my girl we was fixing to
15 get ready to lay down.

16 **Q** Who all was in the house whenever the police
17 came by and knocked on the door?

18 **A** Me, my girl and my pops.

19 **Q** Now, you've heard the allegation that marijuana
20 was laying on the floor?

21 **A** Yeah, on the bathroom floor. How it got there,
22 I don't know.

23 **Q** Would it be normal for, in your opinion, for
24 someone to leave \$300 just laying on the floor?

25 **MR. MAULDIN:** Objection, Your Honor;

1 speculation, calls for speculation.

2 **THE COURT:** Yes, sir.

3 BY MR. COLLINS:

4 **Q** Did anybody ever come back to claim possession
5 of that marijuana?

6 **A** Before anybody came back, the cops came.

7 **Q** Right. And took the marijuana?

8 **A** I guess so. I ain't seen no marijuana.

9 **Q** Where you stay, it was -- it was in the house.
10 People were -- or at least one person was using
11 marijuana at the party?

12 **A** Yeah.

13 **Q** After the party was over with, did anyone ever
14 come back and say, hey, I'm missing a bag of
15 marijuana?

16 **A** No, not on my terms, they didn't.

17 **Q** As they had handcuffed you and put you in the
18 back of the car, were you wearing a shirt at that
19 point?

20 **A** Nope.

21 **Q** Did they ask you if you wanted a shirt?

22 **A** Well, after they handcuffed me and was fixing
23 to take me outside, that's when I told them I needed
24 a shirt to put on. And my girl went in the closet
25 and gave them a random shirt, a -- it wasn't sweaty

1 or nothing, a regular T-shirt. I went to jail in
2 flip-flops with no socks, plain basketball shorts
3 and a white T-shirt.

4 Q White, okay. So you've had an opportunity to
5 discuss this case with your stepfather and your
6 girlfriend?

7 A Excuse me?

8 Q Have you had an opportunity to discuss this
9 case with your stepfather and the girlfriend?

10 A My stepfather -- they know what's going on
11 because like -- well, he can't discuss what went on
12 in the house because he had left, but my girl, she
13 was there the whole time, including my father. But
14 my father is not here today because he's -- I think
15 he got old timers {sic}. He's old, and he don't
16 like doing this kind of stuff.

17 Q Do you know why they arrested you and not the
18 other people in the house?

19 MR. MAULDIN: Objection, Your Honor; calls for
20 speculation.

21 MR. COLLINS: Withdrawn. Nothing further, Your
22 Honor.

23 THE COURT: Anything?

24 MR. MAULDIN: Yes, sir.

25 ****

1 REDIRECT EXAMINATION

2 BY MR. MAULDIN:

3 Q All right. They talked again about this
4 bathroom, okay. I'll pull up State's 3 again. Now,
5 where is the bathroom located in the house?

6 A All right. This here {indicating} is my room.

7 THE COURT: You're blocking the jury. Turn --
8 there you go. Thank you.

9 DEFENDANT: All this right here is the room.
10 This is my bedroom. When you go through this door
11 here, it leads to my father room. When you go out
12 that door there, it leads to the living room. All
13 this section here is the living room. So when you
14 walk through this section, it's the bathroom in the
15 kitchen.

16 BY MR. MAULDIN:

17 Q So the bathroom is on this side right here?

18 A Yes, sir.

19 Q All right. I'm going to show you what's been
20 marked Defense Exhibits 1 through 3, okay. Do you
21 recognize these, yes or no?

22 A Yes, I recognize them as well.

23 Q Okay. Do they correctly and accurately reflect
24 the window from the bathroom of your house?

25 A Yes, sir.

1 **Q** Okay. When did you take these pictures?

2 **A** I took them like -- I took these pictures,
3 like, a week ago.

4 **Q** Okay. Now, you weren't living at the house at
5 the time you took these pictures?

6 **A** No.

7 **Q** Is there anything different about the pictures
8 than from the day -- as far as the window's
9 concerned?

10 **A** They done put screen on the windows. They done
11 painted, and that's about it from what I seen. And
12 it looked like someone been trying to fix the water
13 thing, too, because --

14 **Q** But it accurately reflects the location of the
15 window of that bathroom in the house; is that
16 correct?

17 **A** Yes, sir.

18 **MR. MAULDIN:** Defense would move Defense 1
19 through 3 in evidence.

20 **MR. COLLINS:** No objection.

21 **THE COURT:** Without objection, they're
22 admitted.

23 (Defendant's Exhibit Numbers 1 through 3,
24 photographs, admitted into evidence.)

25 BY MR. MAULDIN:

1 **Q** Now, you say that the screens weren't there; is
2 that correct?

3 **A** (No response.)

4 **Q** Okay. So there was just the window?

5 **A** She -- when we rented it, it was kind of
6 rundown. And I guess since the incident that
7 happened, she was fixing to re-rent her house out
8 and I guess that's why she's -- try to redo it up,
9 you know.

10 **Q** I notice the window is cracked open. Why is
11 that?

12 **A** Yeah. This window never goes down. No matter
13 how much you push it down, it never goes down.

14 **Q** So what do you do in the winter time?

15 **A** It have to stays up.

16 **Q** Do you cover it or anything like that?

17 **A** Yeah, with the curtains that we used to use.

18 **Q** Okay.

19 **A** And we used -- we had plastic over it. My pops
20 put plastic over it, but she took it down, the
21 landlord.

22 **Q** All right. And how far open do you say that's
23 cracked?

24 **A** Well, right now she got it up a little bit. It
25 probably stay cracked about right here.

1 **Q** Would you say that's about six inches, eight
2 inches, something like that?

3 **A** Yeah, about right here.

4 **Q** Can you do it with your hands?

5 **A** About this far high {indicating}. It never
6 fall down. You can shut it, it'll come right back
7 up to this crack.

8 **MR. MAULDIN:** No further questions, Your Honor.

9 **THE COURT:** Yes, sir. Anything?

10 **MR. COLLINS:** Very briefly, Your Honor.

11 RECROSS-EXAMINATION

12 BY MR. COLLINS:

13 **Q** Mr. Gunter, I'm looking at Defense Number 3.

14 **A** Uh-huh.

15 **Q** And how is this house situated in relation to
16 this picture?

17 **A** All right. This side of the house right here
18 {indicating} is pointed to the road. This here
19 would be this side right here. You see how you got
20 the two windows right here and the two windows. And
21 this here would be the bathroom, which is on the
22 opposite side right there. Y'all see how I got it?

23 **Q** Okay. So this --

24 **A** This is the road right here.

25 **Q** The picture would have been taken from over

1 here?

2 **A** Yeah, from right here, from this angle right
3 here.

4 **Q** Very well. Thank you. Did you bring any
5 pictures of the interior of the house?

6 **A** I have them in my phone, but I don't have them
7 on me right now. I got pictures of the inside of
8 the house and you can tell she done remodel --

9 **Q** But you didn't bring it?

10 **A** It's in my phone. I brung them. My girl got
11 my phone. If you can request it, she'll bring it.

12 **Q** So, basically, we're left with the way you
13 describe the house being situated and where the
14 bathroom is in relation to the other bedrooms?

15 **A** Yeah. It's like the house is built for, like,
16 a apartment or a bachelor like. It's not made to be
17 a two bedroom, because you've got a room right here
18 and you've got to walk in another room before you
19 get to the living room. Then you got the -- the
20 bathroom is in the kitchen like, you see what I'm
21 saying.

22 **Q** Again, we're left with your description; is
23 that correct, not the -- because we don't have the
24 pictures of the interior?

25 **A** I have them in my -- what, the inside of the

1 house?

2 **Q** The pictures of the interior of the house, yes,
3 sir. You didn't bring those pictures?

4 **A** I got them in my phone. If you can request for
5 her to bring my phone, I can show them images out my
6 phone.

7 **MR. COLLINS:** Nothing further, Your Honor.

8 **THE COURT:** Anything?

9 **MR. MAULDIN:** No, Your Honor.

10 **THE COURT:** Thank you.

11 Sir, you may step down. Please be careful.

12 **DEFENDANT:** All right. Thank you, sir.

13 **THE COURT:** Yes, sir.

14 **MR. MAULDIN:** Your Honor, at this time, the
15 defense would rest.

16 **THE COURT:** All right. Madame Forelady and
17 ladies and gentlemen of the jury, the defense has
18 now presented all the case that it intends to
19 present. Once again, this is going to require me to
20 take up a couple of matters outside of your
21 presence. I know it's been quick, but I'm going to
22 have to ask you to go back to your jury room at this
23 time. Please do not deliberate even amongst your
24 own self, in your own mind. Be calling for you
25 shortly.

1 (The jury retires to the jury room.)

2 **THE COURT:** Anything from the State?

3 **MR. COLLINS:** Nothing, Your Honor.

4 **THE COURT:** From the defense.

5 **MR. MAULDIN:** Your Honor, at this time, we
6 would renew our motion for a directed verdict.
7 Taking the evidence in the light most favorable to
8 the State, there's not a case to present to the
9 trier of fact. And, again, I also base that on all
10 of my prior motions and objections.

11 **THE COURT:** Yes, sir. And that's denied at
12 this point in time for the same reasons already
13 stated in the record. Anything further from the
14 defense?

15 **MR. MAULDIN:** No, Your Honor.

16 **THE COURT:** From the State?

17 **MR. COLLINS:** Nothing, Your Honor.

18 **THE COURT:** Does the State intend to call any
19 rebuttal?

20 **MR. COLLINS:** We do not, Your Honor.

21 **THE COURT:** Okay. All right. So we're at an
22 end with the testimony; right?

23 All right. Let's -- we can get off the record
24 now.

25 (Brief Recess.)

1 **THE COURT:** Before we bring the jury in, any
2 exceptions to the proposed jury charge?

3 **MR. MAULDIN:** No, Your Honor.

4 **MR. COLLINS:** Not from the State.

5 **THE COURT:** Not from the State, not from the
6 defense. Any exceptions from the proposed jury
7 verdict form?

8 **MR. COLLINS:** No, Your Honor.

9 **MR. MAULDIN:** No, Your Honor.

10 **THE COURT:** Not from the State, not from the
11 defense.

12 We're ready for our jury.

13 (The jury returns to the courtroom.)

14 **THE COURT:** Madame Forelady, any matters from
15 the jury?

16 **MADAME FORELADY:** No, Your Honor.

17 **THE COURT:** Okay. At this time, both sides
18 have rested. It is now time for what we call
19 closing arguments. So the lawyers, if you'll give
20 your attention to them, please.

21 **MR. MAULDIN:** Thank you, Your Honor.

22 CLOSING ARGUMENT

23 **MR. MAULDIN:** May 11th, 2014, somebody's going
24 to jail that night. Got a hundred mile an hour
25 police chase, you've got three different

1 jurisdictions out there, Richland County, Columbia,
2 West Columbia, they're wanting to catch somebody.
3 And, unfortunately, that somebody ended up being
4 Matthew Gunter on his birthday.

5 Now, I told you not to leave your common sense
6 at the door when you came in here. And you've heard
7 all the testimony and the evidence. And the police
8 would have you believe that Matthew bailed, bush
9 bonded out of the car up here on King Street, here's
10 the house right there on Raleigh Street, ran one
11 block. Have you believe he bailed out of the car
12 and ran to the house.

13 Officer Newsom has a video. You can't see the
14 passenger on the video. I asked him whether or not
15 he told Hook that he ID'd Mr. Gunter from the video;
16 he said, Well, no, I didn't. But Officer Hook said
17 he did. He looked at the video and said he ID'd
18 Mr. Gunter. You can't see who the passenger is on
19 that video.

20 They believe that he bailed out of his car. He
21 ran one block to his house. The police went back to
22 their car. They got the dog. They did whatever the
23 training. He went into his room. He ditched his
24 white shirt, but he didn't ditch his marijuana, he
25 kept that on him, went through his dad's room into

1 his room, ditched his shirt, but didn't ditch this
2 gray bag of marijuana he had on him. He must have
3 ditched the clear bag, too. He just went and put it
4 on the bathroom floor.

5 Officer Walker testified he didn't see him
6 throw any kind of clear bag. So he must have
7 ditched his shirt, ditched the clear bag of
8 marijuana and put it on the bathroom floor.

9 When the police come to the house, he walks out
10 of his room through his dad's room up to the front
11 door with a bag of marijuana on him when he knows
12 the police are there. Not only that, when he meets
13 with the police, he's like, yeah, come on through my
14 house, when he's got a bag of marijuana on him.

15 They'd have you believe that he's walking
16 through the house with the police, there's an
17 officer right behind him the whole time following
18 through the house to look for this other guy, he
19 goes through the bathroom, their -- the police
20 getting ready to go, they didn't find the other guy,
21 and that's the time he decides just to go into his
22 pocket and whip something out across his body in to
23 the bathroom floor, this gray bag.

24 Now, Hook said that Officer Walker said he
25 kicked the door. Officer Walker didn't testify to

1 anything about him kicking the door. So the cop
2 right behind him, he's going to kick the door to the
3 bathroom, throw the marijuana in. That doesn't make
4 any sense. It doesn't follow any kind of common
5 sense rule that he would do that.

6 They made a little bit about, oh, they only had
7 Matthew's word or his girlfriend's word about the
8 layout of the house. The police were there. They
9 could have testified about the layout of the house,
10 they didn't. They could have taken pictures of the
11 house, they didn't.

12 What else didn't they find at the house? They
13 got him charged with possession with intent to
14 distribute and they're going off the weight of this
15 stuff. And they want to prove not only possession,
16 but possession with intent to distribute. Did they
17 find any kind of things packaged in little baggies
18 for sale like dime bags, quarter bags or anything
19 like that? No. Did they find a bunch of money?
20 No. Did they find any scales so it could be weighed
21 out and put in these little bags? No. Did they
22 find any of these postage stamp bags that they're
23 talking about? No. Guns? No. Any kind of
24 ledgers? No. Any kind of cell phone with texts on
25 it with people, like, I want to buy a dime bag? No.

1 None of that.

2 Doesn't make any sense that it would have
3 happened the way they said it happened, none
4 whatsoever. He would ditch his shirt, but not ditch
5 his marijuana somewhere in the house where they
6 couldn't find it, in a drawer, under his pillow,
7 anything like that.

8 Now, he and his family testified that they had
9 a party that day. He was there all that day, didn't
10 have anything to do with a car, didn't run from a
11 car into the house. There's a party with a bunch of
12 people there, got a bathroom window that stays open.
13 You've got people running from the police through
14 the neighborhood, maybe they don't want to get
15 caught with marijuana. You got the idea that
16 somebody's going to jail that night.

17 Those are all real possibilities as to how that
18 marijuana got there. Because it's the State's
19 burden of proof. They have to prove beyond a
20 reasonable doubt that he possessed that marijuana
21 and that he possessed it with intent to distribute
22 and they haven't done either and that's why you
23 should find Mr. Gunter not guilty.

24 **THE COURT:** Thank you, sir.

25 Solicitor.

1 **MR. COLLINS:** Ladies and gentlemen, we don't
2 disagree that you should very well bring your common
3 sense to this case. And I hadn't never heard of it,
4 but my co-counsel, Mr. Bell, had explained this to
5 me prior to this case beginning, and there's a
6 theorem called Occam's Razor. And, basically, what
7 that means is it's a problem solving theory in logic
8 where the less assumptions that you have to make
9 make it more probable that that's most likely to be
10 absolute. This case isn't any different. The less
11 assumptions you have to make, the more probable the
12 outcome.

13 What do we know? We heard Officer Walker tell
14 us that he was walking through the house with
15 Mr. Gunter, that he saw him pull out a gray bag of
16 marijuana, shoulder into the door or opened the door
17 in some fashion, and throw the bag of marijuana into
18 the bathroom. That hadn't been refuted. Officer
19 Walker tells Officer Hook there's a bag of
20 marijuana. He goes and picks it up, and there's
21 another bag of marijuana just sitting on the floor.

22 So what we end up with are two bags, one's
23 approximately a hundred grams, one's approximately
24 40 grams. The weight which Officer Gunter testified
25 that you could infer distribution is 28 grams.

1 We're nearly at five times the amount that Officer
2 Gunter would have testified to that would be
3 basically for personal use.

4 What else do we know? We know there was a car
5 chase involving two people. That chase reached
6 speeds of 105 miles an hour coming from Richland
7 County over into West Columbia. We know from the
8 video that two people ran from that car. We're not
9 claiming Mr. Gunter was the driver. We're claiming
10 that that K-9 tracked from that car to that house.

11 You heard more than one officer testify that
12 once they arrived to the house and knocked on the
13 door, that Mr. Gunter was there in black shorts and
14 he was sweating. These officers weren't in here to
15 hear each other's testimony, that's what each of
16 them testified to.

17 Yes, they did give them permission to come into
18 the house because why? Because we knew there was
19 one other person out there, so they went in there to
20 check. Why he had that on him, I don't know, and
21 that's not the issue. The issue is that Mr. Walk --
22 Officer Walker saw him pull it out of his pants and
23 throw it in the bathroom, only to go back and find a
24 second bag.

25 Mr. Gunter and Ms. Howell and his stepfather

1 all testified that there was a birthday party going
2 on this evening, on the evening of May 11th, and
3 that there were other people there, other people in
4 the house, up to 15 people, at the very least, three
5 or four when the police arrived. Nobody else saw
6 the marijuana laying --

7 **MR. MAULDIN:** Objection; burden shifting, Your
8 Honor.

9 **THE COURT:** Let me see the lawyers.

10 (Whereupon, a bench conference was held off
11 the record, in the presence of the jury, but out of
12 the hearing of the jury.)

13 **THE COURT:** Thank you, gentlemen.
14 Solicitor.

15 **MR. COLLINS:** Thank you, Your Honor.

16 The fact is the marijuana was still laying on
17 the floor by the time the police come through. It
18 was at least -- it was thrown at that point, picked
19 up by the officer. Another officer goes back, picks
20 up the bag that he was just told was thrown in the
21 bathroom, not only that bag, picks up the other bag.

22 Yes, based on the weight, based on the value
23 that Lieutenant Gunter told you that this marijuana
24 was worth, and this isn't normally the amount of
25 marijuana that a person who has marijuana would

1 typically use for their own personal use, that is
2 why we're asking you to find a verdict of guilty for
3 possession with intent to distribute based on the
4 140 grams, the five times the amount here that we
5 have. We feel like we can confidently ask you for
6 that verdict.

7 At the beginning, I told you a little bit about
8 reasonable doubt. Are there other possibilities?
9 Of course, there are. There always are. But,
10 again, we're not dealing with all doubt, any doubt,
11 some doubt, just beyond a reasonable doubt, the kind
12 of doubt that would cause a reasonable person to
13 hesitate to act.

14 And you do go with your common sense. What
15 this amount says, we would argue, would leave you
16 firmly convinced that the defendant is guilty with
17 possession with intent to distribute based on the
18 amount, based on the value he told you was 3- or
19 \$400. Most people don't leave that just laying on
20 the ground in two separate bags and potentially in
21 the vehicle that they just ran from. We're asking
22 you for a verdict of guilty today. Thank you.

23 **THE COURT:** Thank you, Solicitor.

24 CHARGE OF THE COURT

25 **THE COURT:** Madame Forelady and ladies and

1 gentlemen of the jury, you have seen and heard the
2 evidence presented, as well as the arguments of
3 counsel, and it is now my duty and obligation to
4 instruct you on the law in this case. It will then
5 be your solemn duty and obligation to begin your
6 deliberations, through which process you will decide
7 the facts, apply the law as I instruct it and render
8 a fair and impartial decision.

9 It is your exclusive duty to determine what the
10 facts are in this case. You do that based on your
11 own common sense examination and evaluation of the
12 testimony and other evidence received during the
13 trial of this case. You 12 jurors alone will decide
14 what effect, value and weight is to be given to any
15 particular testimony or other evidence received.

16 Quite simply, ladies and gentlemen, your
17 ultimate goal is to find the truth in this case, and
18 by doing so, you will have fulfilled your
19 obligations as jurors in giving both the State and
20 the defendant a fair and impartial trial based on
21 the evidence presented and the law applicable to
22 this case.

23 The indictment charges the defendant with the
24 offense of possession of marijuana with intent to
25 distribute. I remind you that the fact the

1 defendant was arrested, charged and indicted is not
2 evidence in this case and cannot be considered by
3 you as evidence of guilt in this case, nor does it
4 create any presumption or inference of guilt. The
5 document simply is a formal, written instrument
6 which contains the charges made against the
7 defendant. It is the formal document by which the
8 case is brought before the court.

9 The defendant has pled not guilty to the
10 indictment and that plea puts the burden on the
11 State of South Carolina to prove the defendant
12 guilty. A person charged with committing a criminal
13 offense in this state is never required to prove
14 himself innocent.

15 I charge you that it is a cardinal, important
16 and vital rule of law that in all criminal trials,
17 no matter what the seriousness of the charge may be
18 for which he stands charged, the defendant is always
19 presumed to be innocent of the crime for which the
20 indictment was issued unless guilt has been proven
21 by evidence satisfying you of his guilt beyond a
22 reasonable doubt. This presumption of innocence
23 does not end when you begin your deliberations, but
24 it accompanies him throughout the trial until you
25 reach a verdict of guilt based on evidence

1 satisfying you of that guilt beyond a reasonable
2 doubt.

3 The presumption of innocence is like a robe of
4 innocence placed about the shoulders of the
5 defendant which remain with him from the moment of
6 his arrest and continues until it has been stripped
7 from his shoulders by evidence satisfying you of his
8 guilt beyond a reasonable doubt. The presumption of
9 innocence is not mere legal theory nor is it a legal
10 phrase. It is a substantial right to which every
11 defendant is entitled unless you 12 jurors are
12 satisfied from the evidence that he is guilty beyond
13 a reasonable doubt.

14 I remind you that during this trial, you and I
15 have certain duties to perform. As the trial judge,
16 it is my responsibility to preside over this trial,
17 and I also have the duty to rule on admissibility of
18 evidence offered during the trial. You are to
19 consider only the evidence before you. You are to
20 consider only the testimony which has been presented
21 from the witness stand, any exhibits which have been
22 made a part of the record and any stipulations of
23 counsel.

24 I have the additional duty to charge you the
25 law in this case. As presiding judge, I am the sole

1 judge of the law in this case, and it is your duty
2 as jurors to accept it and apply it as I now state
3 it to you. If you have any idea as to what the law
4 is or what the law ought to be or what the law
5 should be and it does not agree with what I now tell
6 you the law of this state is, you must abandon your
7 idea because you are sworn to accept the law and
8 apply it exactly as I state it to you.

9 In every case tried in a courtroom before a
10 jury, you 12 jurors alone become the sole and
11 exclusive judge of the facts in a case. A trial
12 judge cannot intimate, state, comment on or make any
13 statement to a trial jury about a fact in a case.

14 You, the jury, are the sole judges of the
15 facts. You are not to infer from what I have said
16 during the progress of this trial in ruling upon the
17 admissibility of evidence or otherwise or anything
18 that I now say during the course of my instructions,
19 that I have an opinion about the facts in this case.
20 The law of South Carolina does not allow me to have
21 an opinion about the facts in this case.

22 Ladies and gentlemen, this is a matter solely
23 for you, the jury, to determine. And as jurors, it
24 is your duty to determine the effect, value, weight
25 and truth of the evidence presented during a trial.

1 The State has the burden of proving the
2 defendant guilty beyond a reasonable doubt. In
3 criminal cases, it must be beyond a reasonable
4 doubt.

5 Ladies and gentlemen, proof beyond a reasonable
6 doubt is proof that leaves you firmly convinced of
7 the defendant's guilt. There are very few things in
8 this world that we know with absolute certainty, and
9 in criminal cases, the law does not require proof
10 that overcomes every possible doubt.

11 A reasonable doubt may also be described as the
12 kind of doubt that would cause a reasonable person
13 to hesitate to act. If you have such a doubt as to
14 the guilt of the defendant, then he is entitled to a
15 verdict of not guilty.

16 Reasonable doubt may arise from evidence which
17 is in the case or from the absence or lack of
18 evidence in a case. Based on your consideration of
19 the evidence, if you are firmly convinced that the
20 defendant is guilty of the crime charged, you must
21 find him guilty. On the other hand, if you think
22 there is a real possibility he is not guilty, you
23 must give him the benefit of the doubt and find him
24 not guilty. You 12 alone must make the
25 determination of whether or not reasonable doubt

1 exists as to the guilt of the defendant.

2 There are two types of evidence which are
3 generally presented during a trial, direct evidence
4 and circumstantial evidence. Direct evidence is the
5 testimony of a person who claims to have actual
6 knowledge of a fact, such as an eyewitness. It is
7 evidence which immediately establishes the main fact
8 to be proved.

9 Circumstantial evidence is proof of a chain of
10 facts and circumstances indicating the existence of
11 a fact. It is evidence which immediately
12 establishes collateral facts from which the main
13 fact may be inferred. Circumstantial evidence is
14 based on inference and not on personal knowledge or
15 observation.

16 The law makes absolutely no distinction between
17 the weight or value to be given to either direct or
18 circumstantial evidence, nor is a greater degree of
19 certainty required of circumstantial evidence than
20 of direct evidence. You should weigh all of the
21 evidence in this case and after weighing all of the
22 evidence, if you are not convinced of the guilt of
23 the defendant beyond a reasonable doubt, you must
24 find him not guilty.

25 Under the constitution of this state, you alone

1 are the finders of the fact in this case and
2 necessarily you must determine the credibility of
3 witnesses who have testified. Credibility simply
4 means believability. It becomes your duty as jurors
5 to analyze and to evaluate the evidence and
6 determine which evidence convinces you of its truth.

7 In determining believability of a witness who
8 may have testified, you may believe one witness over
9 several or several over one; you may believe a part
10 of a testimony of a witness and reject the remaining
11 part of the testimony of that same witness; you may
12 believe the testimony of a witness in its entirety
13 or reject the testimony of a witness in its
14 entirety; you may consider whether any witness has
15 exhibited to you any interest, bias, prejudice or
16 other motive; you may also consider the appearance
17 and manner of the witness while on the witness
18 stand; you may consider how the witness came to know
19 the facts about what he or she testified and whether
20 or not they had an opportunity to hear, observe or
21 perceive a fact by means of their senses.

22 Ladies and gentlemen, whatever your good
23 judgment and common sense tells you is the most
24 believable testimony is the testimony that you
25 should accept and reject that testimony which you

1 find not to be credible or believable.

2 The rules of evidence ordinarily do not permit
3 witnesses to testify to opinions or conclusions. An
4 exception to this rule exists for a witness we call
5 an expert witness. A witness who by education and
6 experience has become an expert in some art,
7 science, profession or calling may state an opinion
8 as to relevant and material matter in which the
9 witness claims to be an expert and may also state
10 the reasons for the opinion.

11 You should consider any expert opinion received
12 in evidence in this case like any other evidence,
13 give it the weight you believe it deserves. If you
14 decide that the opinion of an expert is not based on
15 sufficient education and experience or if you
16 conclude that the reasons given in support of the
17 opinion are not sound or that the opinion is
18 outweighed by other evidence, you may disregard the
19 opinion in its entirety.

20 An expert witness' testimony is to be given no
21 greater weight than that of other witnesses simply
22 because the witness is an expert. Further, you are
23 not required to accept that person's opinion even if
24 it is not contradicted.

25 Criminal intent is a necessary element of each

1 crime that must be proved by the State beyond a
2 reasonable doubt. Criminal intent is always a
3 matter that must be determined by the jury from the
4 circumstances surrounding the situation.

5 There is no way to prove intent to a
6 mathematical certainty. There is no way medical
7 science can dissect a person's brain and determine
8 what he or she had in mind. The law says that
9 criminal intent may be inferred from the
10 circumstances shown to have existed. This is how a
11 jury makes a determination whether or not the
12 element requiring intent was present.

13 Criminal intent is a state of mind which
14 operated jointly with an act is the commission of a
15 crime. Criminal intent is a state of mind, a
16 conscious wrongdoing. So it is up to you, the jury,
17 to determine what the defendant intended to do based
18 on the circumstances shown to have existed.

19 I tell you that the State must prove criminal
20 intent beyond a reasonable doubt just as the State
21 must prove every element beyond a reasonable doubt
22 as I've previously explained. It is not necessary
23 to establish intent by direct and positive evidence,
24 but intent may be established by inference in the
25 same way as any other fact by taking into

1 consideration the acts of the parties and all of the
2 facts and circumstances of the case. While the
3 State may prove motive, it is unnecessary for the
4 State to do so, but the State must prove criminal
5 intent.

6 I have instructed you that the defendant is
7 charged with the offense of possession of marijuana
8 with intent to distribute, specifically that Matthew
9 Antwon Gunter did, in Lexington County, South
10 Carolina, on or about May 11, 2014, knowingly,
11 intentionally, willfully and unlawfully possess with
12 intent to distribute marijuana as defined by law.

13 There are two elements to the offense of
14 possession of marijuana that the State must prove
15 beyond a reasonable doubt: That the substance
16 involved was in fact marijuana, that the defendant
17 had possession of that marijuana, either actual
18 possession or constructive possession.

19 The State must first prove that the substance
20 was marijuana. Marijuana means all species or
21 variety of the marijuana plant and all parts
22 thereof, whether growing or not; the seeds of the
23 marijuana plant; the resin extracted from any part
24 of the marijuana plant; every compound, manufacture,
25 salt, derivative, mixture or preparation of the

1 marijuana plant, marijuana seeds or marijuana resin.

2 Marijuana does not mean the mature stalks of
3 the marijuana plant or fibers produced from the
4 stalks, oil or cake made from the seeds of the
5 marijuana plant, any other compound, manufacture,
6 salt, derivatives, mixture or preparation of the
7 mature stalks, except for the resin extracted
8 therefrom, the sterilized seed of the marijuana
9 plant which is incapable of germination.

10 The State must prove beyond -- must prove the
11 defendant had actual or constructive possession of
12 the marijuana. Possession means more than simply
13 having a controlled substance in one's possession.
14 There must be knowing possession. The State must
15 prove possession of the marijuana by the defendant
16 and, further, the fact that the defendant knew he
17 had the marijuana in his possession.

18 By way of illustration, something may be found
19 in possession of a person and if that person did not
20 know that he had possession of the item and had not
21 exercised any affirmative act to get possession of
22 the item, but by some accident, it came into his
23 possession without his knowledge, there would be no
24 violation of the law. However, if one knowingly has
25 in his possession a controlled substance, then he is

1 unlawfully in possession of that item.

2 There are two kinds of possession recognized in
3 the law of this state, actual possession and
4 constructive possession. Actual possession occurs
5 when the controlled substance was found to be in the
6 actual physical custody of the person charged with
7 possession. Constructive possession is when a
8 person has dominion or control or the right to
9 exercise dominion or control over either the object
10 or the premises upon which the object is located.

11 Possession may be inferred from the
12 circumstances and may be imputed to anyone who has
13 the power and intent to control the disposition and
14 use of the object. In other words, possession of an
15 object or premises give rise to an inference that
16 the person charged has both the power and intent to
17 control the use and disposition of the object.

18 Actual knowledge of the presence of a
19 controlled substance is evidence of intent to
20 control its disposition or use. Mere presence of a
21 person in an area where the object is found is not
22 enough and in and of itself to give rise to the
23 necessary inference.

24 Proof of possession requires more than proof of
25 mere presence at the place where the controlled

1 substance was found. The State must prove the
2 defendant had both the power, that is actual or
3 constructive control, and the intent to control its
4 disposition or use. Actual control occurs when the
5 controlled substance is found to be in its actual
6 physical custody of the person. Constructive
7 control occurs when the person charged with
8 possession has dominion and control over either the
9 substance or the premises upon which the substance
10 was found.

11 The mere presence of a defendant where the
12 controlled substance was found or the mere
13 association by a defendant with people who possessed
14 the controlled substance is insufficient proof that
15 the defendant himself possessed a controlled
16 substance. Possession requires more than mere
17 presence.

18 If you find from the evidence or the lack of
19 evidence that the defendant was merely present at
20 the scene where the marijuana was found or merely
21 associated with persons who possess marijuana and do
22 not find beyond a reasonable doubt that the
23 defendant had dominion or control or the right to
24 exercise dominion and control of the marijuana, then
25 the defendant would be entitled to be not guilty.

1 There are three elements of the offense of
2 possession with intent to distribute that the State
3 must prove beyond a reasonable doubt: That the
4 controlled substance involved was in fact marijuana;
5 that the defendant had possession of the marijuana,
6 either actual or constructive possession; and that
7 the defendant possessed the marijuana with the
8 intent to distribute. Under this third element, the
9 State is not required to prove a distribution or
10 sale; the State is only required to show an intent
11 to distribute.

12 Section 45-53-110 {sic} of the South Carolina
13 Code of Laws provides: Distribution means to
14 deliver, other than by administering or dispensing,
15 a controlled substance. It means the actual or
16 constructive transfer of the controlled substance
17 with or without payment. Section 44-53-110 further
18 states: Deliver or delivery means the actual,
19 constructive or attempted transfer of a controlled
20 drug or paraphernalia whether or not there exists an
21 agency relationship.

22 There is a further provision in the law in
23 regard to possession with intent to distribute
24 marijuana under 44-53-370(d)(4) of the South
25 Carolina Code of Laws, creates a permissive

1 inference that possession of more than 28 grams or
2 one ounce of marijuana constitutes possession of
3 marijuana with the intent to distribute. Thus, this
4 code section provides that possession of more than
5 28 grams or one ounce of marijuana gives rise to a
6 permissive inference that the defendant possessed
7 the marijuana with intent to distribute.

8 The inference of a violation of the law by
9 possession of more than 28 grams or one ounce of
10 marijuana may be drawn from proof of the quantity of
11 the drug. The resulting implication only permits
12 rather than requires the jury to infer a violation
13 of the law. This is another piece of evidence for
14 you to consider and evaluate.

15 This permissive inference does not relieve the
16 State from actually proving beyond a reasonable
17 doubt the element of intent to distribute. This
18 permissive inference is of an ordinary nature. And
19 the permissive inference does not require the jury
20 to infer a violation of the law.

21 In other words, the permissive inference of a
22 violation of the law from possession of this
23 quantity of marijuana is simply an evidentiary fact
24 to be taken into consideration by you, the jury,
25 along with other evidence in the case and is to be

1 given such weight as you, the jury, determines it
2 should receive. You are free to accept or reject
3 the permissive inference depending on your view of
4 the evidence.

5 Now, ladies and gentlemen, you have been
6 selected as fair and impartial jurors sworn to
7 impartially try and determine the facts of this
8 case, and when you comply with your oath to do so,
9 no one will have a right to criticize your verdict
10 and you will have fully discharged your duty as
11 jurors. You are to decide this case according to
12 the testimony that you have heard from the sworn
13 witnesses along with other evidence introduced.

14 Now, Madame Forelady and ladies and gentlemen,
15 during your deliberations, you may only discuss the
16 case in the jury room with your fellow jurors
17 because they have seen and heard the same evidence
18 you have seen and heard. However, you must not
19 discuss the case with anyone else until you have
20 returned a verdict and the case is at an end.

21 Ladies and gentlemen, your verdict must be a
22 unanimous one.

23 Madame Forelady, when the jury agrees on the
24 verdict, you will indicate your verdict in the space
25 provided on the verdict form and sign your name as

1 the Forelady, then knock on the jury room door and
2 inform the bailiff that you have reached a verdict.
3 At that time, we will receive you into the courtroom
4 for that verdict.

5 During your deliberations, I remind you you may
6 only discuss them in the jury room with your fellow
7 jurors because they have seen the same evidence you
8 have seen and heard. However, you must not discuss
9 the case with anyone else until the case is at an
10 end. That means, ladies and gentlemen, in the event
11 that someone has to break up from the table to go to
12 a restroom break or otherwise, you must stop your
13 deliberations, Madame Forelady, until that juror
14 returns. All 12 must be together at all times
15 during the deliberation process.

16 Madame Forelady, the verdict form of which I
17 speak, I'm holding in my hand, and this is a form
18 that I use in every case. It has the caption of the
19 case on it, The State of South Carolina versus the
20 County of Lexington {sic}, then it says the case
21 number here. And it says, We, the jury, unanimously
22 find the defendant, Matthew Gunter, on the charge of
23 possession with intent to distribute, not guilty or
24 guilty. If you answer not guilty, proceed to
25 question two. And question two is, We, the jury,

1 unanimously find the defendant, Matthew Gunter, on
2 the charge of possession of marijuana, not guilty or
3 guilty.

4 It tells you, In the event that you find him
5 not guilty, you proceed to question two. If you
6 find him guilty on number one, you do not proceed to
7 question two.

8 On the second page, Madame Forelady, you
9 certify that this decision is the unanimous decision
10 of the verdict and you will sign your name on this
11 form.

12 There is no significance to the word not guilty
13 or guilty being first on the form, one being over
14 the other. It simply means that I have to put one
15 over the other. This is a form I created and I
16 continue to use it and it's the same every time.

17 Now, Madame Forelady and ladies and gentlemen,
18 all of the exhibits that have been put into evidence
19 belong to you. In just about two or three seconds
20 here, I'm going to send you from here back to your
21 jury room with instructions not to begin your
22 deliberations. I'm going to ask the lawyers to come
23 forward to Madame Court Reporter. All of the
24 exhibits that have been put in have a sticker on
25 them with a number and she has a record of them.

1 I'm going to ask the lawyers to confirm that we are
2 not missing anything.

3 Lawyers are terrible, and I used to do it
4 myself, about keeping a form, don't mean to do it,
5 walk back to the table and put it in your file. We
6 need to make sure that those are all accounted for.
7 The reason is they belong to you. They are your
8 exhibits to see in the jury room. So I need to make
9 sure, I'm going to ask the lawyers to help me with
10 that, that all exhibits are present.

11 When everybody is satisfied that all are
12 present, I'm going to give those exhibits to one of
13 my bailiffs along with this form. When the bailiff
14 knocks on the door and opens the door and gives you
15 those exhibits with this form on top, that is your
16 cue to begin your deliberations. You take as long
17 as you need, but that is your cue to then begin.

18 Madame Alternate, you will go to the jury room
19 with the jury. When the bailiff brings the exhibits
20 and this form, you must leave at that point. They
21 will have a place to segregate you. You are not
22 allowed to be in there during their deliberations,
23 but I cannot release you until they reach a verdict.
24 You will be in a separate location. The very good
25 news for you is earlier today we ordered your lunch

1 and it will be here at 12:30.

2 Anything before I send -- let me send them out
3 first. Madame Forelady, if you'll take all 13
4 jurors to the jury room, please.

5 (The jury retires to the jury room.)

6 **THE COURT:** From the State?

7 **MR. COLLINS:** Nothing.

8 **THE COURT:** From the defense?

9 **MR. MAULDIN:** No, Your Honor, we're fine.

10 **THE COURT:** Gentlemen, if you will kindly come
11 up and make sure that you have all of your exhibits.

12 (Pause.)

13 **THE COURT:** Everything there?

14 **MR. COLLINS:** It is, Your Honor.

15 **THE COURT:** Okay. We'll be at ease.

16 (Whereupon, the jury commenced its
17 deliberations at 12:10 P.M.)

18 (A recess transpired.)

19 (Court's Exhibit Number 2, jury note, and
20 Court's Exhibit Number 3, jury charge, marked for
21 identification.)

22 (The following occurred during jury
23 deliberations at 12:45 P.M.)

24 **THE COURT:** They have a question. Any
25 exception on the record?

1 **MR. MAULDIN:** No, Your Honor.

2 **MR. COLLINS:** None.

3 (A recess transpired.)

4 **THE COURT:** I understand we have a verdict.

5 Let me say this while we're waiting before I bring
6 our jury in: Now, this is not the time for reward,
7 it's not a time for showing out or anybody's got any
8 problem by holding their emotions when the jury
9 comes in, whichever way it is, needs to leave
10 quietly now, please, because the Court will not
11 tolerate outbursts. Anybody unclear about that?

12 All right. Then I'm assuming everybody can
13 control their emotions.

14 We're ready for the jury. Everybody ready?

15 **MR. COLLINS:** We are, Your Honor.

16 **MR. MAULDIN:** Yes.

17 **THE COURT:** Okay. We'll have our jury.

18 (The jury enters the courtroom to report its
19 verdict at 2:00 P.M.)

20 **THE COURT:** Madame Forelady, has the jury
21 reached a verdict?

22 **FORELADY:** Yes.

23 **THE COURT:** Please hand it to the bailiff.

24 (Bailiff hands the verdict to the Judge.)

25 **THE COURT:** Madame Clerk, publish the verdict.

1 VERDICT OF THE JURY

2 **THE CLERK:** Indictment 2014-GS-32-2021, State
3 versus Matthew Antwon Gunter, we, the jury,
4 unanimously find the defendant, Matthew Antwon
5 Gunter, on the charge of possession of marijuana
6 with intent to distribute, not guilty.

7 We, the jury, unanimously find defendant,
8 Matthew Antwon Gunter, on the charge of possession
9 of marijuana, guilty. It is so signed by the
10 Foreperson and dated March the 19th, 2015.

11 Madame Forelady and ladies and gentlemen of the
12 jury, if this is your verdict, please indicate by
13 raising your right hand.

14 (All jurors so indicate.)

15 **THE CLERK:** Thank you.

16 **THE COURT:** Polling of the jury by the State?

17 **MR. COLLINS:** No, Your Honor.

18 **THE COURT:** Okay. By the defense?

19 **MR. MAULDIN:** No, Your Honor.

20 **THE COURT:** Okay, thank you.

21 Madame Forelady and ladies and gentlemen of the
22 jury, thank you so very much for your assistance in
23 this matter. We could not conduct the State's
24 business without you. You are an integral part of
25 this. Not only is it a right to serve on the jury,

1 but it's also a constitutional obligation to serve
2 on the juries, and we appreciate you so very much.

3 With that, we're going to excuse you. And you
4 can remain in the courtroom if you like, if you want
5 to have a seat in the back as you wind down.

6 Madame Forelady, before I forget, please come
7 up to Madame Clerk and sign the indictment before we
8 do anything further. If you'll just come right up
9 here and sign the indictment for the Madame Clerk.

10 (Pause.)

11 **THE COURT:** As I was saying, you are welcome to
12 remain in the courtroom. That concludes your
13 business and thank you again so very much for
14 serving. If you'll drop your badges in this box
15 right here. And you can go into the galley right
16 here and have a seat if you want to stay. We're
17 going to proceed to sentencing.

18 If you don't care to stay, you're welcome to
19 leave out the back door, unless you have things in
20 there, you can get them. If you want to stay, you
21 can get them in a few minutes. If you want to
22 leave, you can go get them that way and they'll show
23 you out somehow or another. I'm not sure how that
24 goes back there. If you will excuse yourself,
25 please, whichever way you want to go.

1 (The jury was excused.)

2 **THE COURT:** Do we have a sentencing sheet,
3 Solicitor?

4 **MR. COLLINS:** Your Honor, we have one. We'll
5 print it right now.

6 **THE COURT:** Okay. You got a CDR code for us?

7 **MR. COLLINS:** For the simple possession? 0182.

8 (Pause.)

9 **THE COURT:** Sir, if you and your lawyer will
10 please stand.

11 Mr. Mauldin, I'll be happy to hear from you.

12 **MR. MAULDIN:** Thank you, Your Honor.

13 Mr. Gunter is 29. He's from the Columbia area. He
14 has an 11th grade education. He's done work before
15 at Columbia Farms at the chicken plant doing food
16 preparation. He is single. He has no children,
17 Your Honor.

18 About four years ago, he had an operation
19 because he had pneumonia and they put a tube through
20 his lung and apparently it caused some back issues.
21 And he's currently in the process of getting
22 disability.

23 I've talked with him. My paralegal's talked
24 with his dad. I've talked with his stepdad and his
25 mom. And they all love him very much.

1 I believe he was in jail five days before
2 posting bond on this charge. And we ask Your Honor
3 for whatever leniency you could allow.

4 In addition, we would move for a new trial on
5 the charge of possession of marijuana based on our
6 prior motions and objections and that a reasonable
7 jury would not have come to that conclusion.

8 **THE COURT:** Yes, sir. I was going to give you
9 a chance to do that momentarily. Those motions are
10 denied at this time. And anything else from defense
11 before I get -- from the Solicitor?

12 **MR. MAULDIN:** No, Your Honor.

13 **THE COURT:** Okay. Yes, sir, prior record.

14 **MR. COLLINS:** Thank you, Your Honor. 2003,
15 simple possession of marijuana first, a distribution
16 of crack or coke first; 2005, PWID marijuana over a
17 parole revocation; 2009, DUS second; 2010,
18 distribution of crack cocaine; 2013, simple
19 possession of marijuana. And we do have the cert --
20 the enhancing is from 2013. And we do have a
21 certified conviction on that from the Hopkins
22 Magistrate's Court, Your Honor.

23 **THE COURT:** All right, sir. That's the zero --
24 it's zero to one; right?

25 **MR. COLLINS:** That's correct, Your Honor.

1 **THE COURT:** Mr. Gunter, I saved you for last.
2 Anything you would like to say?

3 **DEFENDANT:** Yes, sir. I'm not guilty.

4 **THE COURT:** No, sir. The jury's already done
5 that. You're welcome to say anything in mitigation.

6 **DEFENDANT:** Yes, sir. I'm trying to figure
7 out, like, how I got -- like, on my bondsman sheet
8 right here, they convict me as ten pounds of
9 marijuana, you know. And on this here, they convict
10 me as simple possession, which I have a ticket that
11 showed it. And I'm trying to figure out, I ain't
12 even have no weed, why they convict me of all these
13 charges when they ain't never caught me with nothing
14 on me or I don't even know anything about ten pounds
15 of marijuana?

16 And they held me in the jail cell for five
17 days, and I didn't even know about the blue ticket
18 that they served me until I came out of jail. So I
19 had to sit in jail for five days to wait on for a
20 bond court because somebody accidentally hide the
21 ticket in my property and I couldn't come in my
22 property to get the ticket. And that's how I sit in
23 jail for five days to wait on for a bond. You know,
24 you can't go to bond court unless you have a
25 perimeter {phonetic} charge to go to bond court

1 with. I sit in jail for five days for nothing with
2 no charges or nothing ahead of me until I
3 got this --

4 **THE COURT:** Mr. Gunter, I can't help you with
5 that. You've got a lawyer. You can talk to him
6 about that. I'm asking, do you have anything in
7 mitigation?

8 **DEFENDANT:** Excuse me, what that mean?

9 **THE COURT:** Talk to your lawyer real quick.

10 (Pause.)

11 **DEFENDANT:** Yeah. I'm on disability. I
12 already done filled my paperwork. I cannot go to
13 prison because I can't sleep on nothing hard. And
14 like I said, I wasn't even intending to go to prison
15 because I'm an innocent man, Your Honor. They got
16 videos and all that and they didn't even see me in
17 it. They claim they got drugs; they didn't even got
18 it off me. They can't charge me with nothing that I
19 don't even know nothing about.

20 **THE COURT:** Okay. Anything further?

21 **DEFENDANT:** That's it.

22 SENTENCE OF THE COURT

23 **THE COURT:** Okay. On 2014-2021, you're
24 confined to the State Department of Corrections for
25 a period of one year. I will give you credit for

1 your five days service. Sir, you have a 12-year
2 drug record. Good luck to you.

3 **MR. COLLINS:** Thank you, Your Honor.

4 **MR. BELL:** Thank you, Judge.

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END OF PROCEEDINGS

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1 C E R T I F I C A T E

2

3 STATE OF SOUTH CAROLINA

4 COUNTY OF LEXINGTON

5

6 I, the undersigned, Stacy L. Sheppard, Circuit
7 Court Reporter for the Eleventh Judicial Circuit of
8 the State of South Carolina, do hereby certify that
9 the foregoing is a true, accurate and complete
10 transcript of record of all the proceedings had and
11 the evidence introduced in the trial of the
12 captioned cause, relative to appeal in the Criminal
13 Court for Lexington County, South Carolina, on the
14 18 - 19 of March, 2015.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.

17

18

April 27, 2015

19

20

s/Stacy L. Sheppard

21

22

Stacy L. Sheppard, RPR
Circuit Court Reporter

23

24

25

WITNESSES

West Columbia Police Department

Douglas Marnie Hook

Law Enforcement Case #: 1409824

RCC

ARREST WARRANT NUMBER

2014A3221101342

ACTION OF GRAND JURY

TRUE COPY
JUL 24 11 11 AM '14

Michael D. Brantley
Foreperson of Grand Jury

Date: 8-11-14

VERDICT

guilty of possession of
Marijuana

Sharon Scruggs
Foreperson of Petit Jury

Date: 3-19-2015

DOCKET NO. 2014GS3202021

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2014

THE STATE

vs.

Matthew Antwon Gunter

CDR #: 0187

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA

§ 44-53-0370(b)(2)

DONALD V. MYERS, SOLICITOR

A TRUE COPY

Lex. Co. C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

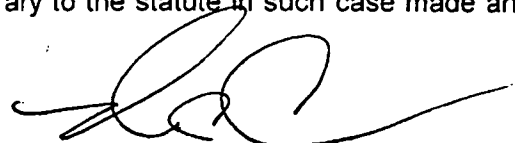
INDICTMENT FOR
POSSESSION OF MARIJUANA WITH INTENT
TO DISTRIBUTE

§ 44-53-0370(b)(2)

At a Court of General Sessions, convened on AUGUST 2014, the Grand Jurors of Lexington County present upon their oath:

That **Matthew Antwon Gunter** did in Lexington County, South Carolina on or about May 11, 2014, knowingly, intentionally, willfully, and unlawfully possess with intent to distribute Marijuana, a Schedule I(d) controlled substance under the provisions of § 44-53-190 et. Seq. and, in violation of § 44-53-370(b)(2), Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

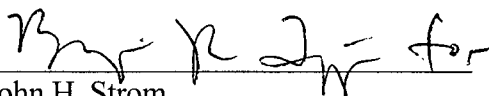


ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 26, 2015


John H. Strom
Appellate Defender

RECEIVED
OCT 26 2015
SC Court of Appeals

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

ATTORNEY FOR APPELLANT