

22300

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM FLORENCE COUNTY

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NOESHEA FOLLONDOUS SAMUEL,

APPELLANT

APPELLATE CASE NO 2014-000200

RECORD ON APPEAL

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RECEIVED
No Respondent's Brief Filed
OCT 02 2014

SC Court of Appeals

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STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE) GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)
STATE,)

v.)

TRANSCRIPT OF RECORD
13-GS-21-1520

NOESHEA F. SAMUEL,)

DEFENDANT.)

Janaury 22, 2014
Florence, South Carolina

BEFORE :

THE HONORABLE D. CRAIG BROWN, JUDGE;
AND JURY

APPEARANCES:

JOHN C. JEPERTINGER, ESQ.
Assistant Solicitor

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FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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EXHIBITS

STATE'S:

No.	Description	I.D./EVD.
1	Cocaine base	23/24
2	Three cell phones, digital scale	23/24

COURT'S:

1	Note of jury	154
2	Note of jury	154

1 THE COURT: Call your case, Mr.
2 Jepertinger.

3 MR. JEPERTINGER: Yes, sir, if it please
4 the Court, Your Honor, the State would call State
5 versus Noeshea Samuel, 2013-GS-21-1520, charging him
6 with possession with intent to distribute cocaine
7 base.

8 THE COURT: All right. Ladies and
9 gentlemen, the State has called the case of the
10 State of South Carolina versus Noeshea Follonidous
11 Samuel which alleges by an indictment which I hold
12 in my hand that on or about August 1 of 2013
13 Mr. Samuel did possess with intent to distribute,
14 dispense, or deliver, or did aid, abet, attempt, or
15 conspire to distribute, dispense, or deliver a
16 quantity of cocaine base in violation of section
17 44-53-110 and 44-53-375(b) (2) of the South Carolina
18 Code of Laws. Now to this charge, ladies and
19 gentlemen, Mr. Samuel has pled not guilty. He has
20 pled not guilty; therefore, the State of South
21 Carolina bears the burden of proving his guilt
22 beyond a reasonable doubt. Again, this indictment
23 that I hold is not evidence in this case. It is
24 simply the charging document by which this case is
25 brought into this court.

1 Now before we go forward in selecting a
2 jury there are several questions that I must ask of
3 you. Please listen very carefully to these
4 questions. Is there any member of the jury panel
5 that's ever been related by blood, connected by
6 marriage, had a close personal, business, or social
7 relationship with Mr. Samuel, if so, please stand.

8 (There was no response.)

9 THE COURT: All right. The following,
10 ladies and gentlemen, is a list of potential
11 witnesses in this case. They include Andron Brown
12 of the Florence Police Department; Corporal Kendrick
13 Spears, Florence Police Department; Sergeant Joe
14 Nida of the Florence Police Department; Agent
15 Shannon McKenzie, Florence Police Department; Agent
16 Rodney Fridley, Florence Police Department;
17 Lieutenant John Lockhart, Florence Police
18 Department; Agent Alex Ussery, Florence Police
19 Department; Chris Moreau, formerly of the Florence
20 Police Department; Special Agent Lynn Black of SLED;
21 and Ms. Doris O'Hara of the Florence County Clerk of
22 Court's Office. Now are there any members of the
23 jury panel that has ever been related by blood,
24 connected by marriage, had a close personal,
25 business, or social relationship with any of the

1 potential witnesses in this case, if so, please
2 stand.

3 Yes, sir, to my left, tell me your name
4 and juror number if you know it, sir.

5 THE POTENTIAL JUROR: Gillian Frieson,
6 number 59.

7 THE COURT: Whom on that list do you know,
8 sir?

9 THE POTENTIAL JUROR: Several of the
10 officers, police officers.. When I worked in retail
11 security I worked with them on some cases that I
12 investigated.

13 THE COURT: Do you have any social
14 relationship with them?

15 THE POTENTIAL JUROR: No, sir.

16 THE COURT: The fact that you know these
17 officers, and you've indicated that you do not have
18 any social interaction with them; is that correct?

19 THE POTENTIAL JUROR: That is correct.

20 THE COURT: Would the fact that you know
21 any of those officers in any way affect your ability
22 to be fair and impartial to both the State and the
23 Defense in this case?

24 THE POTENTIAL JUROR: It will not, Your
25 Honor.

1 THE COURT: Thank you, sir. You may be
2 seated.

3 Yes, sir.

4 THE POTENTIAL JUROR: Juror number 8,
5 Louis Ashley. I know several of these officers.

6 THE COURT: Are you related by blood,
7 connected by marriage with any of them?

8 THE POTENTIAL JUROR: Officer Spears and
9 I, we attend several games that, tailgates together.

10 THE COURT: You do engage in social
11 activities together?

12 THE POTENTIAL JUROR: Yes, sir.

13 THE COURT: How often?

14 THE POTENTIAL JUROR: Maybe twice a year
15 but I know his family. His father and I used to
16 work together.

17 THE COURT: Well, the fact that you know
18 his family, would that in any way affect your
19 ability to be fair and impartial to both the State
20 and the Defense in this case?

21 THE POTENTIAL JUROR: No, sir.

22 THE COURT: All right, thank you. I'm
23 gonna let you stay with us.

24 Yes, sir, your name and number.

25 THE POTENTIAL JUROR: 139.

1 THE COURT: Whom do you know on that list?

2 THE POTENTIAL JUROR: Mr. Samuel.

3 THE COURT: In what way do you know him?

4 THE POTENTIAL JUROR: Friends, grew up
5 together.

6 THE COURT: Do you engage in any social
7 activities with him?

8 THE POTENTIAL JUROR: I know him.

9 THE COURT: You just know him? Do you
10 live in close proximity to him?

11 THE POTENTIAL JUROR: No, sir.

12 THE COURT: How often do you see him?

13 THE POTENTIAL JUROR: Once every month.

14 THE COURT: Sir?

15 THE POTENTIAL JUROR: Just passing in the
16 street maybe once every month.

17 THE COURT: The fact that you know him,
18 would that in any way affect your ability to be fair
19 and impartial to both the State and the Defense in
20 this case?

21 THE POTENTIAL JUROR: Yes, sir.

22 THE COURT: All right, tell me your name
23 and number again please.

24 THE POTENTIAL JUROR: Keith Scott, 139.

25 THE COURT: I'm gonna set you aside for

1 the trial of this case. Thank you, sir.

2 Tell me your number please.

3 THE POTENTIAL JUROR: Mark Potter, 124. I
4 know some of these officers, one in particular,
5 Officer Lockhart. My wife has worked with him
6 before.

7 THE COURT: How long ago?

8 THE POTENTIAL JUROR: I guess within the
9 last past year.

10 THE COURT: Okay. Would that affect your
11 ability in any way to be fair and impartial to both
12 the State and the Defense in this case?

13 THE POTENTIAL JUROR: No, sir.

14 THE COURT: All right, thank you. You may
15 be seated.

16 Yes, ma'am, your name and number please.

17 THE POTENTIAL JUROR: Shantorika Moses,
18 111.

19 THE COURT: Yes, ma'am, Ms. Moses.

20 THE POTENTIAL JUROR: Yes, sir. I know
21 one of the officers, worked with him a couple --
22 well, a while back.

23 THE COURT: How far back?

24 THE POTENTIAL JUROR: Probably about eight
25 years ago.

1 THE COURT: Would that in any way affect
2 your partiality to be fair and impartial to both the
3 State and the Defense?

4 THE POTENTIAL JUROR: No, sir.

5 THE COURT: Thank you, ma'am, you may be
6 seated.

7 At this time if you, Mr. Jepertinger,
8 followed by you, Mr. Jordan, would introduce
9 yourselves to the jury.

10 MR. JEPERTINGER: Good morning. My name
11 is John Jepertinger, I'm the deputy solicitor here
12 in the Twelfth Circuit. That includes Florence and
13 Marion counties.

14 MR. JORDAN: Good morning. I'm Jay
15 Jordan. I work part time in the Florence County
16 Public Defender's Office. I also have a law
17 practice here in Florence down the street on Evans
18 Street. Thank you. And I represent Mr. Noeshea
19 Samuel. Thank you.

20 Your Honor, I also have a list to present,
21 just a few names.

22 THE COURT: Has any member of the jury
23 panel ever been related by blood, connected by
24 marriage, had a close personal, business, or social
25 relationship with any of the attorneys involved in

1 this case, if so, please stand.

2 (There was no response.)

3 THE COURT: Some additional potential
4 witnesses in this case, ladies and gentlemen, might
5 include James Jackson, Angavita (ph) Samuel; is that
6 correct?

7 MR. JORDAN: That's correct.

8 THE COURT: Has any member of the jury
9 panel every been related by blood, connected by
10 marriage, had a close personal, or business, or
11 social relationship with either of those two
12 witnesses, potential witnesses, if so, please stand.

13 (There was no response.)

14 THE COURT: Has any member of the jury
15 panel formed or expressed an opinion about any issue
16 or matter involved in this case, if so, please
17 stand.

18 (There was no response.)

19 THE COURT: Is any member of the jury
20 panel aware of any bias or prejudice toward either
21 the State or of the Defendant in this case, if so,
22 please stand.

23 (There was no response.)

24 THE COURT: Does any member of the jury
25 panel know of any reason, any reason whatsoever, why

1 he or she should not serve as a juror in this case
2 with particular emphasis being placed upon your
3 ability to be fair and impartial to both the State
4 and the Defendant, if so, please stand.

5 (There was no response.)

6 THE COURT: Does the State have any
7 additional voir dire?

8 MR. JEPERTINGER: May we approach one
9 second.

10 THE COURT: Yes, sir.

11 (WHEREUPON, counsel approached the Bench
12 for an off-the-record discussion.)

13 THE COURT: Ladies and gentlemen, has any
14 member of the jury panel or their immediate family
15 ever been prosecuted by the Twelfth Circuit
16 Solicitor's Office. That's the Florence County
17 Solicitor's Office; that's the easiest way to put
18 it. If so, please stand.

19 (There was no response.)

20 THE COURT: All right. Any further
21 questions, Mr. Jepertinger?

22 MR. JEPERTINGER: None from the State,
23 Your Honor.

24 THE COURT: Defense counsel?

25 MR. JORDAN: No, sir, Your Honor.

1 THE COURT: Five and five on the strikes,
2 Mr. Jepertinger?

3 MR. JEPERTINGER: Yes, sir.

4 THE COURT: Mr. Jordan?

5 MR. JORDAN: Yes, sir, Your Honor.

6 THE COURT: One alternate sufficient?

7 MR. JEPERTINGER: I believe so, yes, sir.

8 THE COURT: All right, Madam Clerk.

9 (Pause.)

10 THE CLERK OF COURT: Number 8, Louis
11 Ashley (black male). What says the State?

12 MR. JEPERTINGER: Please present the
13 juror.

14 THE CLERK OF COURT: What say the
15 Defendant?

16 MR. JORDAN: Please excuse Mr. Ashley for
17 purposes of this trial.

18 THE CLERK OF COURT: You've been excused
19 from this trial only, sir. You may return to your
20 seat.

21 118, Stephanie Orvin (white female). What
22 say the State?

23 MR. JEPERTINGER: Please present the
24 juror.

25 THE CLERK OF COURT: What say the

1 Defendant?

2 MR. JORDAN: Please seat Ms. Orvin.

3 THE CLERK OF COURT: Please have a seat in
4 the jury box.

5 150, Cynthia White (white female). What
6 say the State?

7 MR. JEPERTINGER: Please present the
8 juror.

9 THE CLERK OF COURT: What say the
10 Defendant?

11 MR. JORDAN: Please seat Ms. White.

12 THE CLERK OF COURT: Please have a seat in
13 the jury box, ma'am.

14 25, Katherine Burris (black female). What
15 say the State?

16 MR. JEPERTINGER: Please present the
17 juror.

18 THE CLERK OF COURT: What say the
19 Defendant?

20 MR. JORDAN: Please seat Ms. Burris.

21 THE CLERK OF COURT: Please have a seat in
22 the jury box, ma'am.

23 108, Wendy Mills (black female). What say
24 the State?

25 MR. JEPERTINGER: Please present the

1 juror.

2 THE CLERK OF COURT: What say the
3 Defendant?

4 MR. JORDAN: Please seat Ms. Mills.

5 THE CLERK OF COURT: Please have a seat in
6 the jury box, ma'am.

7 49, Helen Ellis (white female). What say
8 the State?

9 MR. JEPERTINGER: Please present the
10 juror.

11 THE CLERK OF COURT: What say the
12 Defendant?

13 MR. JORDAN: Please excuse the juror for
14 purposes of this trial.

15 THE CLERK OF COURT: You've been excused
16 from this trial only, ma'am. You may return to your
17 seat.

18 55, Jaunice Floyd (white female). What
19 say the State?

20 MR. JEPERTINGER: Please present the
21 juror.

22 THE CLERK OF COURT: What say the
23 Defendant?

24 MR. JORDAN: Please seat Ms. Floyd.

25 THE CLERK OF COURT: Please have a seat in

1 the jury box, ma'am.

2 Number 3, Sheila Alexander (black female).

3 What say the State?

4 MR. JEPERTINGER: We'd excuse

5 Ms. Alexander for purposes of this trial only.

6 THE CLERK OF COURT: You've been excused
7 from this trial only, ma'am. You may return to your
8 seat.

9 152, Keri Wilkerson (white female). What
10 say the State?

11 MR. JEPERTINGER: Please present the
12 juror.

13 THE CLERK OF COURT: What say the
14 Defendant?

15 MR. JORDAN: Please seat Ms. Wilkerson.

16 THE CLERK OF COURT: Please have a seat in
17 the jury box, ma'am.

18 100, Cristel Mack (black female). What
19 say the State?

20 MR. JEPERTINGER: Please present the
21 juror.

22 THE CLERK OF COURT: What say Defendant?

23 MR. JORDAN: Please seat Ms. Mack.

24 THE CLERK OF COURT: Please have a seat in
25 the jury box.

1 141, Robert Springs (white male). What
2 say the State?

3 MR. JEPERTINGER: Please present the
4 juror.

5 THE CLERK OF COURT: What say the
6 Defendant?

7 MR. JORDAN: Please seat Mr. Springs.

8 THE COURT: Please have a seat in the jury
9 box, sir.

10 22, Gloria Brown (black female). What say
11 the State?

12 MR. JEPERTINGER: Please present the
13 juror.

14 THE CLERK OF COURT: What say the
15 Defendant?

16 MR. JORDAN: Please seat Ms. Brown.

17 THE CLERK OF COURT: Please have a seat in
18 the jury box, ma'am.

19 159, June Yarborough (white male). What
20 say the State?

21 MR. JEPERTINGER: Please present the
22 juror.

23 THE CLERK OF COURT: What say the
24 Defendant?

25 MR. JORDAN: Please seat Mr. Yarborough.

1 THE CLERK OF COURT: Please have a seat in
2 the jury box, sir.

3 46, Maxie Dunham (black male). What say
4 the State?

5 MR. JEPERTINGER: We'd excuse this juror
6 for purposes of this trial only.

7 THE CLERK OF COURT: You've been excused
8 from this trial only, sir. You may return to your
9 seat.

10 76, Anthony Hensley (white male). What
11 say the State?

12 MR. JEPERTINGER: We'd excuse this juror
13 for purposes of this trial only.

14 THE CLERK OF COURT: You've been excused
15 from this trial only. You may return to your seat.

16 112, Andrew Munn (white male). What say
17 the State?

18 MR. JEPERTINGER: Please present this
19 juror.

20 THE CLERK OF COURT: What say the
21 Defendant?

22 MR. JORDAN: Please excuse Mr. Munn for
23 purpose of this trial.

24 THE POTENTIAL JUROR: You've been excused
25 from this trial only, sir. You may return to your

1 seat.

2 27, Ahsan Chaudhry (white male). What say
3 the State?

4 MR. JEPERTINGER: Please present this
5 juror.

6 THE CLERK OF COURT: What say the
7 Defendant?

8 MR. JORDAN: Please excuse Mr. Chaudhry
9 for purposes of this trial.

10 THE CLERK OF COURT: You may return to
11 your seat.

12 57, Priscilla Frazier (black female).
13 What say the State?

14 MR. JEPERTINGER: We'd excuse this
15 individual for purposes of this trial only.

16 THE CLERK OF COURT: You've been excused
17 from this trial only, ma'am. You may return to your
18 seat.

19 93, Crystal Fairchild (white female).
20 What say the State?

21 MR. JEPERTINGER: Please present this
22 juror.

23 THE CLERK OF COURT: What say the
24 Defendant?

25 MR. JORDAN: Please seat Ms. Fairchild.

1 THE CLERK OF COURT: Please have a seat in
2 the jury box, ma'am.

3 Number 7, Regina Ard (white female). What
4 say the State?

5 MR. JEPERTINGER: We'd excuse this
6 individual for the purposes of this trial only.

7 THE CLERK OF COURT: You've been excused
8 from this trial only. You may return to your seat.

9 21, Martha Branton (white female). Does
10 the State wish to challenge juror for cause?

11 MR. JEPERTINGER: No, please present this
12 juror.

13 THE CLERK OF COURT: What say the
14 Defendant?

15 MR. JORDAN: Please excuse Ms. Branton for
16 purpose of this trial.

17 THE COURT: You've been excused from this
18 trial. You may return to your seat.

19 Number 1, Vinetha Abraham (black female).
20 Does the State wish to challenge this juror for
21 cause?

22 MR. JEPERTINGER: No, please present this
23 juror.

24 THE CLERK OF COURT: Does the Defendant
25 wish to challenge this juror for cause?

1 MR. JORDAN: No, please seat the juror.

2 THE CLERK OF COURT: Please have a seat in
3 the jury box, ma'am.

4 88, Jay Jiunnies (white male). What say
5 the State?

6 MR. JEPERTINGER: Please present the
7 juror.

8 THE CLERK OF COURT: What say the
9 Defendant?

10 MR. JORDAN: Please seat the juror.

11 THE CLERK OF COURT: Please have a seat in
12 the jury box, sir.

13 THE COURT: Are there any matters of law
14 we need to take up with regards to jury selection
15 from the State?

16 MR. JEPERTINGER: No, sir.

17 THE COURT: Defense counsel?

18 MR. JORDAN: No, Your Honor.

19 THE COURT: Ladies and gentlemen, you all
20 have been selected as fair and impartial jurors for
21 the purposes of the case of State of South Carolina
22 versus Noeshea Samuel. What I'm gonna ask you all
23 to do right now is, there are some matters I need to
24 take up outside of your presence on another case, on
25 another case. I'm gonna ask that you step to the

1 jury room. Do not, you know very little about this
2 case other than what I've already told you, but do
3 not discuss the case until you're instructed to do
4 so. What I would ask that you all do while you all
5 are back there -- Ms. Olivia?

6 THE BAILIFF: Yes, sir.

7 THE COURT: Would you provide them with
8 pen and paper while they are back there.

9 I'm gonna ask that you all select a
10 foreperson for your jury. I will tell you that Mr.
11 Jiunnies cannot be the foreperson, okay. You cannot
12 be the foreperson. But I would ask that you all
13 select a foreman while you all are back there.
14 Write it down on a on piece of paper. It will be
15 provided to you back there. Give it to the bailiff.
16 When you all come back out she'll give it to me so
17 I'll know who the foreperson is. When you all
18 return, the foreperson's seat will be where this
19 young lady is right here in the purple, in the
20 purple coat, so the person when they come back will
21 take that seat.

22 Mr. Jiunnies, that will be your assigned
23 seat throughout the trial of this case. As well as
24 the foreperson, that will be their assigned seat
25 throughout the trial of this case. Please step to

1 the jury room. Do not discuss the case. I'll get
2 you back out here quickly as possible.

3 (WHEREUPON, the jury was removed from the
4 courtroom at 10:10 a.m., and the
5 following proceedings commenced in open court.)
6 (WHEREUPON, State Exhibits Nos. 1 and 2 were marked
7 for identification only.)

8 THE COURT: Mr. Jepertinger.

9 MR. JEPERTINGER: May it please the Court,
10 Your Honor, we premarked State's Exhibit 1 which is
11 the alleged cocaine base in this case, and State's
12 Exhibit 2 which consists of three cell phones and a
13 digital scale. Your Honor, it's my understanding
14 that the Defendant has no objection to these items
15 coming into evidence at this point, not just,
16 particularly marked for identification but into
17 evidence in this case.

18 THE COURT: Mr. Jordan, is that correct?

19 MR. JORDAN: Your Honor, I don't have any
20 objection.

21 THE COURT: All right.

22 MR. JEPERTINGER: State's —

23 THE COURT: So admitted.

24 MR. JEPERTINGER: State's Exhibit 1 will
25 be cocaine base. State's Exhibit 2 will be three

1 cell phones and a digital scale.

2 (WHEREUPON, State Exhibits Nos. 1 and 2
3 were admitted into evidence.)

4 MR. JEPERTINGER: As a result of that,
5 Your Honor, we would ask that Officer Moreau be
6 released from his subpoena. His task in this
7 situation was taking the substances up to SLED for
8 analysis, Your Honor.

9 THE COURT: Any objection, Mr. Jordan?

10 MR. JORDAN: No, sir.

11 THE COURT: All right. He is excused.

12 MR. JEPERTINGER: Thank you, Your Honor.

13 THE COURT: Anything else before I bring
14 the jury back out?

15 MR. JEPERTINGER: Not from the State, Your
16 Honor.

17 MR. JORDAN: No, Your Honor.

18 THE COURT: All right. Bring me the jury
19 please, ma'am.

20 (WHEREUPON, the jury was returned to the
21 courtroom at approximately 11:14 a.m., and
22 the following proceedings commenced in
23 open court.)

24 THE COURT: Madam Clerk, would you swear
25 the jury please, ma'am.

1 THE CLERK OF COURT: Members of the jury,
2 would you please stand and raise your right hand to
3 be sworn.

4 (WHEREUPON, the jury was sworn at 11:15
5 a.m.)

6 THE CLERK OF COURT: You may be seated.

7 THE COURT: All right. Prior to the jury
8 coming back out it was -- the Court was advised that
9 Ms. Fairchild was nominated, or elected so to speak,
10 as the forelady of this jury and I'll note for the
11 record that she is seated in the foreperson's seat.
12 I hope you all didn't think we forgot about you all
13 back there, but there was a matter that ended up
14 taking a little bit longer than I had anticipated so
15 I apologize to you all for keeping you all back
16 there.

17 Now ladies and gentlemen, we are about to
18 try this, the case of State of South Carolina versus
19 Noeshea Follonidous Samuel. And before we begin the
20 trial of this case I want to tell you this trial
21 will probably be different from what you might
22 expect. Many people do not have the chance to
23 attend actual court sessions as you're doing now;
24 and you may think from watching television or movies
25 or reading books that trials are always full of high

1 drama, intense action, and rivetting circumstances.
2 Now while all of these things may be true at times,
3 this trial is not for entertainment. It is a
4 fundamental part of our democracy, a search for the
5 truth in an effort to make sure that justice is done
6 between the parties, before the Court. Searching
7 for the truth and making sure that justice is done
8 is often slow, deliberate, and repetitive, the
9 opposite of what you may have seen on television or
10 in movies or read in books. This courtroom is a
11 place of honor dedicated to the protection and
12 preservation of citizens' rights through what many
13 have called the greatest justice system ever
14 created. Now the attorneys appearing before you are
15 advocates for the parties that they represent, but
16 first and foremost they are officers of the Court
17 sworn to uphold the integrity and fairness of our
18 judicial system and to help you in the search for
19 the truth. You should expect them to be
20 professional, competent, and ethical in the
21 representation of their client's interest.

22 Now what I will now say, ladies and
23 gentlemen, is intended to serve as an introduction
24 to the trial of this case. These remarks are not a
25 charge on the law in this case. I will instruct you

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

6 The defendant, ladies and gentlemen, is
7 charged by an indictment filed in this court with
8 the crime of possession with intent to distribute
9 cocaine base, the elements of which will be
10 explained to you later. The indictment, ladies and
11 gentlemen, is simply the charging document by which
12 this case is brought into this court, and it is not
13 in any sense evidence of any of the allegations that
14 it contains. The defendant has pled not guilty to
15 this indictment; therefore, the State of South
16 Carolina has the burden of proving each of the
17 elements of the indictment beyond a reasonable
18 doubt. And it will be your duty, ladies and
19 gentlemen, to decide whether the State has met that
20 burden. Your purpose as jurors is to find and
21 determine the facts. If at any time I make any
22 comment regarding the facts you must disregard it.
23 You are to determine the facts from the testimony
24 you hear and the other evidence introduced in court.
25 It is up to you to determine the inferences which

1 you feel may properly withdrawn from the evidence.
2 It is especially important that you perform your
3 duty of determining the facts diligently and
4 conscientiously because ordinarily there is no way
5 to correct an erroneous determination of the facts
6 by a jury. On the other hand, and with equal
7 emphasis, the same law that makes you the judge of
8 the facts makes me the judge of the law. The law is
9 given by the Court is the only law that you may
10 consider. You must accept and follow it even though
11 you may disagree with it. I cannot tell you, ladies
12 and gentlemen, what the facts are and you cannot
13 disagree with me about what the law is or should be.
14 Your job is to take the law as I give it to you and
15 apply it to the facts as you find them from the
16 testimony of the witnesses and any other evidence
17 that is introduced. After doing that you will
18 render your verdict a true and just verdict under
19 the solemn oath that you just took as jurors.

20 Now until I tell you to begin your
21 deliberations you must not discuss this case with
22 anyone including your fellow jurors, friends, family
23 members, and anyone involved in this case. The
24 attorneys and parties in this case have been advised
25 that they're not to talk to you at all so if you see

1 anyone involved in the case and they do not speak to
2 you, they are not being unfriendly; but rather, they
3 are following the instructions of this Court. Now
4 during your deliberations you may only discuss the
5 case in the jury room with your fellow jurors
6 because they have seen and heard the same evidence
7 that you have; however, you must not discuss the
8 case with anyone other than your fellow jurors until
9 you have returned a verdict and the case is at an
10 end. I remind you that you must decide this case,
11 ladies and gentlemen, based solely on the evidence
12 presented here in this courtroom. This means that
13 during the trial you must not conduct any
14 independent research about the case, the facts of
15 the case, the evidence presented in the case, or the
16 people or organizations involved in any way in the
17 case. Please do not try to find out information
18 from any source outside of this courtroom. In other
19 words, you must not look at dictionaries or other
20 reference materials, search the internet, web siting
21 or blogs, or use any other electronic tools to get
22 information about this case to help you decide the
23 case. You may not use computers, telephones, cell
24 phones, smart phones, tablets, the internet, or
25 other tools of technology with communication

1 capabilities at any time while you are in the
2 courtroom or during your deliberations.

3 Now during your breaks from meals or
4 overnight, if necessary, you may use these devices
5 but you must not use these devices to communicate
6 with anyone about the case until the case is over.
7 This means you must not use phone calls, emails,
8 text messages, instant messages, Twitter or any
9 blog, chat room, or website including Facebook,
10 Google plus, My Space, Link, U-tube or any social
11 media website to send or receive information about
12 this case. This includes information about a party,
13 a witness, an attorney, or a court officer. News
14 accounts about the case, if any, research on topics
15 raised, any topics you may think would be helpful in
16 deciding the case or any testimony presented by any
17 witness. Now during the trial I don't think you're
18 gonna see anything but you're instructed not to
19 read, listen to, or watch any news reports about
20 this case. This includes anything that may be in
21 the newspapers or on the internet, radio, or
22 television. You must not consider anything that you
23 may have heard or read about the case outside of
24 this courtroom whether before or during the trial.
25 Information on television, radio, the internet, or

1 from other sources might be wrong or incomplete. In
2 our judicial system it is important that you are not
3 influenced by anything or anyone outside of this
4 courtroom. If you become aware of another juror's
5 violations of these instructions please inform the
6 Court immediately. It is important, ladies and
7 gentlemen, that you keep an open mind and not decide
8 any issue in the case until all of the other
9 evidence has been presented, the parties have made
10 closing arguments, and I have instructed you on the
11 law in this case. It is your solemn responsibility
12 to determine the guilt or innocence of the
13 defendant, and your verdict must be based solely on
14 the evidence as it is presented to you in this trial
15 and on the law as I instruct you during and at the
16 close of the trial.

17 In just a moment the solicitor or the
18 prosecutor will make what is called an opening
19 statement in which he will explain to you the issues
20 in this case or at least what he thinks the issues
21 are in this case. The attorney for the defendant
22 may also make an opening statement, although he is
23 not required to do so. What the attorneys tell you
24 during opening statements is not evidence in this
25 case. It is only their contention as to what the

1 issues are. The evidence in this case will be
2 presented to you by the testimony of sworn witnesses
3 from this witness stand and/or by exhibits that may
4 be introduced into evidence. Now from time to time
5 during the trial you may hear one of the attorneys
6 say something like, Your Honor, I believe that we
7 have a question of law or a matter of law to discuss
8 with you, or Your Honor, may we approach the Bench.
9 Or sometimes I myself might find it necessary to
10 excuse you from the courtroom for a short while so
11 the attorneys and I can discuss a matter of law.
12 The reason for this is because you are the judges of
13 the facts in this case, and sometimes when I am
14 discussing matters of law with the attorneys it may
15 be necessary for me to make some comment as to the
16 facts in connection with ruling whether or not a
17 particular law applies. I am not supposed to tell
18 you what I think the facts are so I will excuse you
19 from the courtroom while these discussions take
20 place so that in no way will you be influenced by
21 anything that I might say or do in connection with
22 the facts.

23 Now in determining what the true facts are
24 in this case you must decide whether or not the
25 testimony of the witnesses is believable. It will

1 be my responsibility to rule as a matter of law as
2 to whether certain testimony is admissible or not;
3 but once the testimony is admitted, whether or not
4 you believe it is solely for you to determine. In
5 deciding whether to believe a witness you have the
6 right to consider the interest of any witnesses, the
7 bias of any witness, the prejudice of any witness,
8 the opportunity for the witness to have seen the
9 matters and things about which the witness may
10 testify, and the way the witness acts on the witness
11 stand. You have the right to consider anything that
12 is in the record that will help you evaluate the
13 testimony of the witnesses. That means that it is
14 your duty to pay close attention to these witnesses,
15 to observe the witnesses, to listen to the
16 witnesses, and to pay close attention to the
17 attorneys and to the Court. Please don't let your
18 thoughts wander, but give strict attention to the
19 testimony in this case so that at the end of all the
20 testimony, after the arguments of counsel and the
21 charge on the law by the Court, you will then be in
22 a position to determine what the true facts are and
23 to apply the law to those facts and thus render a
24 true and just verdict.

25 Now later in the case after — well, since

1 you all have selected a foreman later during the
2 trial of this case I will go ahead and tell you,
3 Madam Forelady, that it will be your responsibility
4 to preside in the jury room, but I will give you
5 further instructions at the conclusion of this case.
6 Now in order to preserve everyone's rights I will
7 give the parties an opportunity to object to
8 anything that I have said.

9 Any exceptions or objections to anything
10 that I've said to the jury by the State?

11 MR. JEPERTINGER: No, sir.

12 THE COURT: Defense counsel?

13 MR. JORDAN: No, sir.

14 THE COURT: All right, ladies and
15 gentlemen, we will now begin the trial of this case.

16 Mr. Jepertinger, you are recognized for
17 opening statements.

18 MR. JEPERTINGER: Thank you, Your Honor.
19 Good morning, ladies and gentlemen of the jury. I
20 have two sons and frequently we talk about the old
21 days. They make me sound like I'm one of the
22 medieval kings. They cannot believe that at a time
23 there were no such thing as cell phones. We had to
24 find pay phones so on and so forth. And talk about
25 I remember the first calculator we'd get was Texas

1 instruments; and getting that, and it basically
2 added, subtracted. I mean, it had no functions on
3 it, and it just blows their mind that we once lived
4 without the technology that we had. And things were
5 different at one time in our collective lives as
6 citizens of this great country.

7 Now I'm not as old as I look or as old as
8 I feel — sometimes I feel older than I am —
9 however, when I was just a little saber growing up I
10 was on the cusp of something that you don't see much
11 anymore. When I was growing up — obviously you can
12 tell by my wonderful — I always tell people I'm
13 from the south, I'm from southeastern Wisconsin. So
14 when we were growing up we had this marvelous thing
15 called the corner grocery store. This was before
16 the big chains came into being. We always knew the
17 grocers. I mean, these things were small; they were
18 not big. They were probably as big as this arena
19 here that I'm standing in. But they cut their own
20 meat. Of course, being from Wisconsin they made
21 bratwurst and ground their hamburger, sold milk.
22 And of course, what wound up happening to them,
23 Mr. National T, Mr. A&P, Mr. Red Owl, Mr. Kroger,
24 all put them out of business. And you knew those
25 individuals. And as a kid I remember going in with

1 my mom, and if we ordered some hamburger you'd go up
2 there and you'd say, I want a pound of hamburger.
3 And it'd the same routine. He'd get the stainless
4 steel shovel, as I called it, and put it in the
5 thing and he'd wrap it up and he weighed it. And
6 folks, we never brought a scale to the store when we
7 were buying hamburger. The person that was selling
8 the product had: One, he had the product; and two,
9 he had the means to sell that product including
10 being able to weigh it. In many respects Noeshea
11 Samuel operated [REDACTED] like the old mom
12 and pop grocery store except the product that he was
13 promoting that he was trying to protect was not
14 hamburger, it wasn't milk, it was cocaine base. And
15 you'll hear later from a chemist from SLED that
16 cocaine base goes by the more common name of crack
17 cocaine.

18 At about 7:00 on August 1st of last year,
19 these agents, narcotics agents, from Florence Police
20 Department went over to [REDACTED] here in
21 the city of Florence with a search warrant in their
22 hand. And who was sitting on the porch outside the
23 house but Noeshea Samuel. And when he saw the
24 police it wasn't like the former grocer, hey,
25 Mr. Police Officer, or to that other past thing of

1 the cop on the beat, how are you guys doing? No, he
2 ran in to the house. The African American officer
3 with the beard and the blue shirt followed him in
4 there. Actually, I believe the officer in the aqua
5 shirt, the causation officer here, went in first; he
6 followed him thereafter. And there was another
7 individual in there by the name of James Jackson who
8 you'll hear was also charged and arrested for
9 cocaine and was allowed to plead in this case and
10 tendered a guilty plea. And what did they do? They
11 ran straight to the kitchen, and there was a washing
12 machine set up. You know, you got those pipes
13 coming out and the pipes where the water goes after
14 it rinses. What were they doing? They were jamming
15 things down into the pipe. Well, of course, you got
16 all these officers coming in, seeing all these
17 things. That interested them. And you will find
18 out what they had to do to retrieve what's, in this
19 case, turned out to be this cocaine base in two
20 baggies. And you'll hear about the weight and so on
21 so forth from the chemist when she gets in.

22 When they got in there what did they find?
23 They found Noeshea Samuel and the other individual
24 Jackson. Jackson had two cell phones on him and
25 slightly more than 107-dollars. Noeshea Samuel, the

1 accused in this case, had one cell phone on him and
2 245-dollars. You will hear these officers say that
3 they searched that house under the house, every nook
4 and cranny of that house, and those are the drugs
5 they found. You'll also hear from them what they
6 didn't find. They didn't find any crack pipe, what
7 -- or any instrument, drug paraphernalia that a
8 addict or user would use. What did they find? They
9 found a scale just like the mom and pop grocers used
10 to have, except smaller, to weigh things, right in
11 the general vicinity of where these drugs ultimately
12 were found.

13 In this case, ladies and gentlemen,
14 Noeshea Samuel is charged with possession with the
15 intent to distribute cocaine base. We are not
16 saying that Noeshea Samuel is the head of the meting
17 drug cartel. We're not saying that this is a
18 tremendous amount of drugs; however, these drugs
19 qualify inferentially to constitute an intent to
20 distribute. We're also saying that the evidence is
21 going to show that this individual based on conduct,
22 the running from the officers, the stuffing of the
23 drugs, the scale that was there, draw a conclusion
24 that this individual was involved with distributing
25 drugs.

1 That's all we can do, folks. That's the
2 evidence. And the evidence will point in my opinion
3 obviously to -- at the conclusion of all the
4 evidence that comes in, to the guilt of Mr. Noeshea
5 Samuel. In each and every case the State is
6 required to prove guilt beyond a reasonable doubt.
7 Let me just address that because I know Mr. Jordan
8 is a fine attorney, and he'll come up and say I'll
9 talk about reasonable doubt. In each and every
10 case, the Government, whatever you want, the
11 prosecutor -- in this case it's me -- has to prove
12 guilt beyond a reasonable doubt. However, I don't
13 want you to get hooked up on terms because when we
14 start talking about is that, I mean, I can have a
15 doubt about everything; it's a reasonable doubt.
16 It's a doubt that would leave you firmly convinced
17 of the defendant's guilt. Sometimes I describe it
18 as doubt that would cause a reasonable person
19 hesitate to act.

20 But one thing I want you to do when you
21 are considering reasonable doubt, I want you to use
22 your God given common sense to say, wait a minute
23 here, why would this guy run when he sees these
24 cops? What did he tell the cops when they got there
25 about the running? Why would he be shoving anything

1 down washing pi-- I mean, does that make sense?
2 Those are the questions you need to ask yourself
3 because these cases -- and we don't live -- these
4 cases and where we live are not in a vacuum. Use
5 your common sense. And when you do, the evidence
6 will show once again that Noeshea Samuel is guilty.
7 Thank you so much.

8 THE COURT: Mr. Jordan.

9 MR. JORDAN: Thank you, Your Honor. First
10 let me thank you. I know you got other things you
11 probably would like to be or need to be doing today
12 and jury duty is probably not high on that list. I
13 didn't used to thank juries until my wife got a jury
14 summons several months ago. I came home. She
15 showed it to me and I made mistake of joking around
16 saying it's a good character builder for you. I
17 never will do that again. I ended up with all three
18 kids for the weekend for that slight mistake. But
19 thank you for being here. I know you got other
20 things.

21 And let me also surprise you now that I
22 thanked you. There are several things
23 Mr. Jepertinger just told you that I, in fact, agree
24 with. Number one, my client Mr. Samuel sits over
25 there innocent until proven guilty; and it is the

1 Government's job to prove to you beyond a reasonable
2 doubt that he is, in fact, guilty of what he's
3 charged with, possession with intent to distribute.
4 They just have a couple of problems. He didn't
5 spend much time telling you about those problems; I
6 didn't expect him to. First off, he kind of glossed
7 over the fact that there was another individual
8 present, Mr. Jackson. And Mr. Jackson, what did he
9 do? He stood up in a courtroom -- perhaps this
10 courtroom -- but a courtroom just like this with a
11 circuit judge, and he -- he was arrested that day.
12 He was charged with the same crime Mr. Samuel was
13 charged with, same drugs, same event, same
14 everything. He was charged with it and what did he
15 do? He came to court, stood up in front of a judge,
16 he pled guilty, took responsibility for the drugs,
17 thereby pleading guilty to these drugs we're talking
18 about. Please do not get lost in that. And your
19 second question may be, well, what if there's enough
20 drugs so that everybody can be part of this? Good
21 question. And the evidence as you're gonna get a
22 chance to see, if you're like me, I'm a child of the
23 english system. Anybody starts talking about grams
24 or anything else, I start, I start doing a little
25 mental calculation -- maybe I need to borrow

1 Mr. Jepertinger's old calculator from the 50's.
2 Let's just be clear on what we're talking about.
3 1.3-grams of crack cocaine is what we're talking
4 about. And if you're like me, if you're wondering
5 how much that is, I was going to bring it up to show
6 you. And I didn't -- I didn't dadgummit. 1.3-grams
7 If you've ever put sweet and low on coffee, any of
8 y'all do that, used to do that, that's about a gram.
9 In fact, if you look on the back of it it says net
10 weight of one gram so that's what we're talking
11 about, 1.3-grams of drugs. I want you to be
12 thinking about that during the course of this as the
13 officers describe to you people stuffing things in
14 pipes. We're talking about something that would
15 easily fit in the palm of any our hands. We're not
16 talking about a large amount of things. Remember
17 those things as we go forward, the fact that someone
18 is taking responsibility for this previously. The
19 fact that we're only talking about 1.3-grams. It's
20 difficult for multiple people to stuff 1.3-grams in
21 pipes collectively. And then also I agree with Mr.
22 Jepertinger, use your common sense. There's a
23 reason we have juries. It wouldn't be good to have
24 lawyers, judges decide these things by ourselves.
25 We need people with common sense. Sometimes we're

1 short on it so that's why we have you folks here
2 because the law says that before someone's freedom
3 can be taken from them -- and that's what's at
4 stake, Mr. Samuel's freedom -- it has to pass
5 y'all's test, y'all's common sense. So all I ask
6 for you is listen to evidence, use your common
7 sense. At the end of the day I believe you'll agree
8 it's gonna be very difficult for the State to prove;
9 first, that Mr. Samuel possessed with intent to
10 distribute the 1.3-grams and the fact that he even
11 possessed it when there's another individual that
12 has said in court that he possessed the drugs.
13 Those are the things I think are most important
14 about this case. Thank you for your time.

15 THE COURT: Mr. Jepertinger.

16 MR. JEPERTINGER: May it please the Court,
17 Your Honor.

18 THE COURT: Yes, sir.

19 MR. JEPERTINGER: I would call Agent
20 Andron Brown to the stand.

21 THE COURT: All right.

22 THE CLERK OF COURT: If you will please
23 come around, place your left hand on the Bible,
24 raise your right hand.

25 WHEREUPON,

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1 **ANDRON BROWN,**
2 having been duly sworn by the Clerk of Court,
3 testified as follows:

4 THE CLERK OF COURT: Please be seated and
5 state your full name for the record.

6 THE WITNESS: My name is Andron Brown.

7 **DIRECT EXAMINATION**

8 BY MR. JEPERTINGER:

9 Q Okay. Andron Brown, can you tell the ladies and
10 gentlemen of the jury for who you work?

11 A Florence Police Department.

12 Q Okay. Are you assigned to any special unit with
13 the police department?

14 A Special investigations units narcotics division.

15 Q All right. And if you could just pull that
16 microphone a little bit closer. You're a little
17 soft spoken, just pull it -- pretend you're Johnny
18 Cash but. There you go. All right, how long have
19 you worked with the narcotics unit for the Florence
20 Police Department?

21 A Right at a year. February will be a year.

22 Q All right. And prior to working with the
23 narcotics unit did you work for any other branch of
24 law enforcement?

25 A I worked with patrol for about three-and-a-half

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1 years.

2 Q Okay. So in total you've been with the
3 department for four-and-a-half years, is that ---

4 A Yes, sir.

5 Q ---a pretty good estimate?

6 A Yes, sir.

7 Q Okay. You were with the narcotics unit back in
8 August of 2013?

9 A Yes.

10 Q All right. Can you tell, just give the ladies
11 and gentlemen of the jury a little overview of how
12 you came to be involved in this particular case?

13 A I received information for -- obtained a search
14 warrant for the location of [REDACTED]

15 Q Let's stop right there. [REDACTED] where is
16 that located?

17 A That's in, actually in north Florence.

18 Q Okay, is that -- which county is that in?

19 A Here in Florence, Florence County.

20 Q Yes, sir. And you got a search warrant for that
21 property?

22 A Yes.

23 Q And once you got a search warrant for that
24 property did -- how do you, I guess, as a general
25 principal how do you execute a search warrant? How

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1 do you deliver it so on and so forth?

2 A I would go to the location and try to make entry
3 into the residence.

4 Q Okay. If you were to come to my house with a
5 search warrant what would you do, first thing you
6 would do when you got there?

7 A Knock on the door and try and make contact.

8 Q All right. And if no one answered the door what
9 would you do?

10 A We have to force our way in.

11 Q Okay. Now when you go how many officers do you
12 normally go with?

13 A At least four usually. That day I think we had
14 seven.

15 Q Okay. And would it pretty much consist of these
16 gentlemen that are seated behind the prosecution
17 table?

18 A Yes.

19 Q Okay. And were all of them at the location of

20 [REDACTED]

21 A Everybody was present.

22 Q Do you recall about what time you got to [REDACTED]

23 [REDACTED]

24 A About seven in the evening.

25 Q Seven in the evening, okay. And when you got

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1 to — since it's August was the sun still up, I
2 guess?

3 A It was still shining.

4 Q All right. And when you got there did you walk
5 there or drive there?

6 A Drove.

7 Q All right. Now how many vehicles, do you know?

8 A I think we drove two.

9 Q All right. Does — do the vehicles have police
10 emblazoned on them on the side, or are they
11 undercover vehicles?

12 A They are more so undercover.

13 Q Okay. When you pulled up did you see anyone in
14 particular on the outside of the residence?

15 A The defendant was sitting on the porch.

16 Q Okay. And that would be Noeshea Samuel, the
17 gentleman in the white shirt sitting next to
18 Mr. Jordan?

19 A Yes.

20 Q Okay. Did you have an opportunity to say
21 anything to Mr. Samuel when you drove up on that
22 location?

23 A No, as soon as we started turning into the yard
24 he jumped up and ran into the house.

25 Q He didn't walk?

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- 1 A No.
- 2 Q All right. And what did you do after he ran into
3 the house?
- 4 A Stopped the truck and gave pursuit into the house
5 behind him.
- 6 Q You chased him?
- 7 A Yes, sir.
- 8 Q Were you the first officer in?
- 9 A No, I was second.
- 10 Q Who was the first officer in?
- 11 A Sergeant Nida.
- 12 Q Okay, that's the gentleman in the aqua shirt,
13 correct?
- 14 A Yes.
- 15 Q All right. Was Nida right behind Mr. Samuel?
- 16 A Not directly behind him but he got kind of close.
- 17 Q All right. Now when we're talk-- the size of [REDACTED]
18 [REDACTED]s, is it big house, small house, medium sized
19 house?
- 20 A Yes, kind of small.
- 21 Q All right. Would you say -- square footage,
22 would you know what we're talking about?
- 23 A Maybe 1100 square feet, something like that.
- 24 Q All right.
- 25 A A thousand square feet.

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1 Q All right. Now when you got there did you know,
2 other than Mr. Samuel running into the house did you
3 know another human being was going to be inside the
4 house —

5 A No.

6 Q —when you got there?

7 A No, I didn't know that.

8 Q All right. What did you observe when you ran
9 into the house behind Nida?

10 A I ran into the house. Sergeant Nida was in the
11 kitchen before me. I was a little bit right behind
12 him. I ran in there and we ordered the two suspects
13 away from the pipes that were located in the kitchen
14 and ordered them to floor.

15 Q What were they doing by the pipes?

16 A By the time I made it in there they were standing
17 by the pipes as Sergeant Nida was instructing to get
18 away from the pipes.

19 Q Okay. Did you see them place anything into the
20 pipes?

21 A I didn't.

22 Q Very good. So when you ordered them away from
23 the pipes what did they do?

24 A They started moving back and got down on the
25 floor.

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1 Q All right. And once they got down on the floor
2 what did you do?

3 A Detained them.

4 Q Okay. When you're talking detained them, did you
5 handcuff them?

6 A They were handcuffed. Handcuff them, yes, sir.

7 Q Did you search them at that point?

8 A Yes, sir, they were searched and I located cash
9 on both subjects.

10 Q Okay. Let's -- we'll talk about that in a
11 second. Now both subjects, was one the defendant in
12 this case?

13 A One was the defendant.

14 Q And was the other one James Jackson?

15 A Yes.

16 Q All right. Can you tell the ladies and gentlemen
17 of the jury what you -- let's start off with James
18 Jackson. What did you find on James Jackson?

19 A James Jackson had a hundred something dollars in
20 cash in his pockets and two cell phones I believe.

21 Q Okay. And Mr. Samuel?

22 A Mr. Samuel had 240, 245, something like that in
23 his pocket and one cell phone.

24 Q All right. At that point what did you do after
25 you searched them and found this money and cell

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1 phones?

2 A After we searched them?

3 Q Sure.

4 A They sat them down, talked to them.

5 Q All right, okay. Let me ask -- let's approach
6 one second.

7 (WHEREUPON, counsel approached the Bench
8 for an off-the-record discussion.)

9 THE COURT: Ladies and gentlemen, I need
10 to ask you to step to the jury room just a minute.
11 Do not discuss the case. I'll get you back out here
12 as quickly as possible.

13 (WHEREUPON, the jury was removed from the
14 courtroom at 11:50 a.m., and the following
15 proceedings commenced in open court.)

16 **P R O F F E R E X A M I N A T I O N**

17 BY MR. JEPERTINGER:

18 Q All right, Officer, at this point you have them
19 handcuffed and detained, correct?

20 A Uh-huh.

21 Q And then you said you were going to sit down and
22 talk to both of them; is that correct?

23 A Uh-huh.

24 Q Specifically prior to talking to them did Ussery
25 I believe, read ---

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1 A Read him his Miranda rights, uh-huh.

2 Q Okay. And is it the standard form that he would
3 have read ---

4 A Before talking to him. He read them off a police
5 issued Miranda card.

6 Q Is it the same one that you carry with you?

7 A Yes, sir.

8 Q Could you read what Ussery would have, I guess,
9 read off the card if it's the same thing?

10 A "You have the right to remain silent. Anything
11 you say can and will be used against you in a court
12 of law. You have the right to talk to an attorney
13 and have him or her present with you while you're
14 being questioned. If you cannot afford to hire an
15 attorney one will be appointed to represent you
16 before any questioning if you want. You can decide
17 at any time to exercise these rights and not answer
18 any questions or make statements. Do you understand
19 these rights I have explained to you." And at that
20 time we wait and see if they'll answer yes or no.

21 He answered yes. And "Having these rights in mind
22 do you wish to talk to us?" And he said he would.

23 Q And you were present when Ussery read that
24 verbatim?

25 A Yes, sir.

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1 Q And did he speak to you at that point?

2 A Yes.

3 Q And he seemed to understand his rights?

4 A Yes.

5 Q Did he look like he was under the influence of
6 anything at that stage?

7 A Not at all.

8 Q Okay. What did he tell you?

9 A He told us that he ran into the house because his
10 he had some friends over and they had just left. He
11 wanted to make sure they didn't leave anything
12 behind.

13 Q All right. And did -- in terms of any inquiry
14 about putting stuff into the pipes what did he say?

15 A He said he didn't put anything into the pipe.

16 Q Okay. That would be all that I have in terms of
17 the defendant in this case. And is that all he told
18 y'all?

19 A That's all he told us.

20 Q Okay.

21 THE COURT: Mr. Jordan, anything?

22 MR. JORDAN: Your Honor, I would object to
23 the testimony as to what my client said as to any
24 friends. I don't think that qualifies under hearsay
25 exception. I think he said he denies putting

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1 anything in the pipes. I think that might qualify,
2 but I don't think referencing saying friends running
3 out the door, I think that's covered under hearsay.

4 MR. JEPERTINGER: I don't think so. It's
5 not a statement, Your Honor. He ---

6 THE COURT: All right. I'm gonna overrule
7 your objection, Mr. Jordan. I do not believe that's
8 hearsay. Based upon what I've heard here from this
9 officer, based solely upon what I've heard from the
10 officer, I believe the defendant was clearly
11 informed of his rights. Based upon the totality of
12 the circumstances I believe that any statements that
13 were given here were voluntary statements;
14 therefore, I'm gonna allow the admission of such
15 statements. Anything further?

16 MR. JEPERTINGER: That's it on terms of
17 that issue.

18 THE COURT: Mr. Jordan, anything further
19 before I bring the jury back?

20 MR. JORDAN: No, sir, Your Honor.

21 THE COURT: Bring me the jury back please,
22 ma'am.

23 (WHEREUPON, the jury was returned to the
24 courtroom at approximately 11:54 a.m., and
25 the following proceedings commenced in

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1 open court.)

2 THE COURT: Mr. Jepertinger, you may
3 continue.

4 MR. JEPERTINGER: Yes, sir. Thank you,
5 Your Honor.

6 THE COURT: Counsel.

7 BY MR. JEPERTINGER:

8 Q Officer, you said that you took both suspects
9 into an area where you began to speak with them,
10 correct?

11 A Yes.

12 Q Prior to speaking to them did one of your
13 officers go over what we call the Miranda warnings

14 ---

15 A Yes.

16 Q ---of the individual?

17 A Yes, they were advised of Miranda rights.

18 Q Do you remember which officer did that?

19 A Agent Ussery.

20 Q Agent Ussery. He's the gentleman with the blue
21 tie and kind of gray, charcoal gray shirt?

22 A Yes.

23 Q All right. And did he do it by rote memory or
24 did he read it off of a standard issued ---

25 A Card, standard issued card.

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1 Q Do you have a copy of the card?

2 A Yes.

3 Q The same card?

4 A Yes.

5 Q Would you read to the ladies and gentlemen of the
6 jury what Agent Ussery would have read to Mr. Samuel
7 in your presence?

8 A "You have the right to remain silent. Anything
9 you say can and will be used against you in a court
10 of law. You have the right to talk to an attorney
11 and have him or her present with you while you're
12 being questioned. If you cannot afford to hire an
13 attorney one will be appointed to represent you
14 before any questioning if you want. You can decide
15 at any time to exercise these rights and not answer
16 any questions or make statements. Do you understand
17 these rights I have explained to you." And we wait
18 on him to give a yes or no. He said yes. And
19 "Having these rights in mind do you wish to talk to
20 us?" And they said, yeah.

21 Q In this particular case did Noeshea Samuel
22 respond to those questions that you asked him about
23 then?

24 A He said yes.

25 Q Okay. Did — what did Noeshea Samuel tell you?

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1 A He told me that he didn't put anything into the
2 pipe, and the reasons why he ran in to the house is
3 because he had just had some friends to leave and he
4 was making sure that they didn't leave anything
5 behind.

6 Q Now let me ask you, when you first arrived did
7 you see any individuals running from [REDACTED]
8 [REDACTED] ?

9 A No.

10 Q Did you see anybody on the block coming up to the
11 resident?

12 A Not near his house.

13 Q All right. After you got that statement what did
14 you do with the money that you, the 245-dollars and
15 the cell phone that we see in State's Exhibit 2?
16 And I should say cell phones, correct?

17 A Yes, sir.

18 Q What did you do with those three cell phones that
19 you found there?

20 A Everything was taken and logged into our evidence
21 at the police department.

22 Q All right. What happened with the money? We
23 don't have the money here today. What did you do
24 with that?

25 A The money is in a safe. It's locked away in a

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1 safe.

2 Q All right. Now there is another object in
3 State's Exhibit 2. It looks like it has one battery
4 in it. Can you tell the ladies and gentlemen of the
5 jury, I'm gonna reach in there to grab it. Can you
6 tell the ladies and gentlemen of the jury what this
7 object would be that I pull out of State's Exhibit 2
8 that has one battery in the back?

9 A A digital scale.

10 Q Okay, a digital scale. What would you use a --
11 where did you find this digital scale?

12 A It was in the kitchen on the table.

13 Q What approximate distance was this digital scale
14 from the pipe where the washing machine was?

15 A Maybe 5-feet, if that.

16 Q Now you have been working with the narcotics team
17 here for about a year; is that correct?

18 A Yes.

19 Q Okay. Do digital scales have any significance in
20 terms of narcotics?

21 A They usually are used by dealers to weigh out the
22 product.

23 Q After you collected that thing did you begin
24 searching the resident or did you have other
25 officers who are present in the courtroom do that?

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1 A Other agents searched the residence.

2 Q Okay. Now you were there, you said you got there
3 at 7:00. Do you know how long you were there?

4 A I can't remember, somewhere maybe about an hour.

5 Q All right. And you said the home was about 1100
6 square feet?

7 A Something like that.

8 Q All right. After did anyone bring anything else
9 to you, any other officer bring anything to you for
10 you to collect?

11 A For me to collect?

12 Q Yes, other than what we see in Exhibit 2?

13 A Yeah. Well, we located the -- once we flushed
14 the pipes we located some cocaine base.

15 Q And would that be what we see in State's Exhibit
16 1?

17 A Yes.

18 Q All right. And as a result of that did you make
19 a decision in terms of arresting or not arresting
20 the individual there?

21 A Yes, we decided to go ahead and arrest both.

22 Q Was there anyone else at that house then?

23 A No.

24 Q Only two individuals?

25 A Just those two.

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1 Q And they were both where when you made contact
2 with them?

3 A Standing beside the pipes.

4 Q All right. Thank you. Please answer any
5 questions that the defense attorney may have for
6 you.

7 THE COURT: Cross-examination.

8 MR. JORDAN: Thank you.

9 **CROSS-EXAMINATION**

10 BY MR. JORDAN:

11 Q Agent Brown, how are you today?

12 A How are you doing, Mr. Jordan?

13 Q I apologize in advance if I cover the same ground
14 Mr. Jepertinger just did.

15 A That's okay.

16 Q Tell me again how long have you been with the
17 Florence Police Department?

18 A Four-and-a-half years.

19 Q And were you with any other branch of law
20 enforcement prior to?

21 A Prior to that I worked at the detention center,
22 Florence County Detention Center for about a year.

23 Q Okay. Now during the course of your law
24 enforcement background you, I imagine you have had
25 some training; is that fair to say?

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1 A Yes.

2 Q You had to be -- did you have to be trained to
3 work for the detention center?

4 A Yes.

5 Q And then you had to get in, I guess, the academy
6 in order to be with the Florence Police Department?

7 A Yes.

8 Q And the academy is --

9 A Nine weeks.

10 Q About how long does that take?

11 A Nine weeks.

12 Q So you're up there, you're learning I guess how
13 to be law enforcement; is that fair to say?

14 A Yes, sir.

15 Q And they teach you all kind of different things?

16 A Yes.

17 Q They teach you how to make a traffic stop, I'm
18 guessing?

19 A Yes.

20 Q How to drive the car, how to operate a firearm if
21 you're not previously or skilled in that?

22 A Yes.

23 Q They teach you lots of different things related
24 to being law enforcement?

25 A Yes.

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1 Q One of the things they teach you on is, train you
2 on, is how to write a report; is that right?

3 A Yes.

4 Q Now you prepared a report in connection with this
5 case today?

6 A Yes.

7 Q To your knowledge are you the only agent of the,
8 I think, you said seven, involved that prepared a
9 report in connection with this case?

10 A Yes.

11 Q Okay. Now I'm guessing when they train you on
12 the report they train you as to the importance of
13 that document?

14 A Yeah.

15 Q Is that right?

16 A Yes.

17 Q They train you that it is a very important
18 document, in fact?

19 A Yes.

20 Q And it's important that you be very thorough,
21 very complete?

22 A Yes.

23 Q That you be accurate?

24 A Yes.

25 Q And honest in how you prepare that report?

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1 A Yes.

2 Q If something were to happen to you and you
3 couldn't be here today, that report would be about
4 the only way that what you saw could come through;
5 is that right?

6 A Yes.

7 Q Now you prepared that report involving this. I
8 think you said testified earlier when y'all came up
9 Mr. Samuel was outside the house; is that right?

10 A Yes.

11 Q No way to know how long he'd been out there or
12 ---

13 A No.

14 Q ---at that time?

15 A No way.

16 Q And no way to know who all or what all was going
17 on inside at that time?

18 A No.

19 Q So you come up, and I think you testified by the
20 time you got into the room Mr. Samuel and
21 Mr. Jackson were on the floor; is that right?

22 A No, they were still standing up and they were
23 being ordered to the floor.

24 Q I'm sorry, that's correct. But you didn't see
25 anybody putting stuff in anything in a pipe or

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1 anything like that.

2 A No. You.

3 Q Mr. Jackson or Mr. Samuel?

4 A No.

5 Q That was other agents that you documented is what
6 they told you?

7 A Yes.

8 Q Okay. And I think specifically Agent Nida was
9 the -- Sergeant Nida was the one referenced in your
10 report that saw that activity according to him; is
11 that right?

12 A Yes.

13 Q Any other agents that you're aware that saw that
14 activity?

15 A No.

16 Q So you searched the individuals and then my
17 client you found, Mr. Samuel, you found one cell
18 phone and some cash?

19 A Yes.

20 Q And then on Mr. Jackson you found two cell phones
21 and some cash?

22 A Yes.

23 Q Okay. And then I think you went on to testify
24 that on a table approximately 5-feet away from the
25 pipe where Mr. Samuel was in that area, there was a

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1 digital scale; is that right?

2 A Yes.

3 Q Also present approximately 5-feet away was

4 Mr. Jackson in fact; is that right?

5 A 5-feet away from the pipe?

6 Q To, from the digital scale. They were

7 approximate equal distance to ---

8 A Yes.

9 Q They were approximately both equal distance to
10 that; ---

11 A Yes.

12 Q ---would it not?

13 A Yes.

14 Q So I think Mr. Jupertinger stated earlier that
15 you searched the house?

16 A Yes.

17 Q And ultimately you found it necessary to flush
18 out the pipe; is that right?

19 A Yes.

20 Q And once that pipe was flushed out you were --
21 you located, I think, you have it in front of you.
22 If I may approach, Your Honor.

23 THE COURT: Yes, sir.

24 BY MR. JORDAN:

25 Q I believe it's been marked already as State's

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1 Exhibit Number 1, but this is what you ---

2 A Yes.

3 Q ---found; is that right?

4 A Yes.

5 Q Two little baggies. Now Mr. Jackson we've
6 already covered. He was present that day?

7 A Yes.

8 Q And you found it appropriate as did the other
9 agents to arrest him?

10 A Yes.

11 Q And charge him with this crime as well?

12 A Yes.

13 Q Now are you aware that Mr. Jackson has pled
14 guilty to possession of crack cocaine?

15 A Yes.

16 Q Okay. Now in your report --- nobody's perfect. I
17 mean, we make mistakes all the time; I'm not holding
18 you to any kind of standard like that.

19 A I understand.

20 Q You did reference in your report that there was
21 also cocaine present; did you not?

22 A Yes.

23 Q It turned out there was no cocaine; is that fair
24 to say?

25 A Yes.

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1 Q That it was just the crack cocaine. There was no
2 cocaine as referenced in the report?

3 A Yes.

4 Q Okay.

5 MR. JORDAN: Your Honor, if I may just
6 have a moment.

7 THE COURT: Yes, sir.

8 BY MR. JORDAN:

9 Q Agent, is it not true that at the end of this
10 that Mr. Jackson stood up and said they were my
11 drugs, took credit and responsibility ---

12 MR. JEPERTINGER: I would object to any
13 hearsay, Judge.

14 THE COURT: Objection sustained.

15 MR. JORDAN: That's all I have, Your
16 Honor. Thank you.

17 **REDIRECT EXAMINATION**

18 BY MR. JEPERTINGER:

19 Q Now Officer, I know you put down in your report
20 that Mr. Jordan put down that you put down cocaine.
21 And we're gonna have a chemist come here. Is there
22 a difference physically that cocaine and crack have
23 in your mind when you ---

24 A One of them mix other things with it to cook it
25 up which is the cocaine base, and the cocaine is

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1 the original drug.

2 Q Okay. Did one appear to you to be ---

3 A One appeared to be cocaine and the other appeared
4 to be cocaine base.

5 Q All right, thank you. Thank you so much.

6 THE COURT: Any recross?

7 MR. JORDAN: No, sir, Your Honor.

8 THE COURT: Sir, you may step down. Thank
9 you.

10 MR. JEPERTINGER: That's all we have. We
11 call Joe Nida to the stand.

12 WHEREUPON,

13 **WILLIAM JOSEPH NIDA,**

14 having been duly sworn by the Clerk of Court,
15 testified as follows:

16 THE CLERK OF COURT: Please be seated and
17 state your full name for the record.

18 THE WITNESS: William Joseph Nida.

19 **DIRECT EXAMINATION**

20 BY MR. JEPERTINGER:

21 Q Okay. Go back to August 1st, 2013. Can you tell
22 the ladies and gentlemen of the jury your part in
23 this execution of search warrant?

24 A Again, all of us went to Mr. Samuel's house [REDACTED]

25 [REDACTED] to ---

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1 Q Let's stop right there. How did you know that
2 being said, Mr. Samuel's house?

3 A Yes, he resides there, [REDACTED] The
4 house in question was executing search warrant.

5 Q Okay. How about Jackson?

6 A No, he does not. He lives, I believe it's
7 Stackley Street which would be a block or two away
8 from Timmons Street.

9 Q Okay. And -- go ahead, I'm sorry, I interrupted
10 you.

11 A We were there to execute a search warrant for
12 drugs. As he said we did take two vehicles. I
13 happened to be in one vehicle which was approaching
14 the front door of the residence, and we had another
15 vehicle that was coming across the side yard to come
16 up to the side of the residence where there was
17 another door, a side door to the residence.

18 Q Did you see anybody pour out of the house?

19 A Nobody ran from the house, no, sir.

20 Q Okay. Same question I asked Andron, did you see
21 anybody in the vicinity of that house when you guys
22 pulled up?

23 A Not on the property, no, sir.

24 Q All right. Obviously it's a public street, I
25 understand that.

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1 A Yes.

2 Q But was no one in the general vicinity?

3 A No one in vicinity of that property, no, sir.

4 Q Now when you got there you -- what did you see
5 again?

6 A When we pulled on to the property I saw defendant
7 Mr. Samuel was sitting on the front porch in a chair
8 right there by the front door.

9 Q Did it appear to you that he noticed you guys?

10 A Absolutely. And as soon as he saw our vehicle
11 pull into his yard he immediately jumped up and took
12 off running into his residence.

13 Q You use the word run?

14 A Very quickly.

15 Q What did you do in response to him running into
16 his residence?

17 A As we were exiting the vehicle we're announcing
18 that we have a search warrant, police search
19 warrant, and ordered him to get on the ground. And
20 that's when I took off running behind him and ran
21 into the residence after Mr. Samuel.

22 Q Would you say fair assessment that it's about
23 1000, 11 square hundred foot home?

24 A It's a small, just a two bedroom, one bath walk
25 in, had a small living room, to your right was the

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1 kitchen, and behind that would be your two bedrooms
2 and I believe bathroom is in the middle so it's a
3 small house.

4 Q All right. When you got in there did you know
5 what you were going to find?

6 A No, we did not.

7 Q Did you know who was gonna be in there?

8 A Did not know who was going to be in there.

9 Q Other than Mr. Samuel who just ran in?

10 A Yes, sir.

11 Q Did you -- were there other officers positioned
12 kind of around the perimeter of the house, I guess,
13 when you executed search warrant so nobody jump out
14 a window or run out the door?

15 A Yes, sir, absolutely. That's why we had the
16 other people come in from the side as to cover door
17 in case someone would try to flee out the door,
18 window, whatever the case may be.

19 Q All right. None of that ever happened?

20 A No, that did not happen?

21 Q When you ran into the house who was directly in
22 front of you?

23 A I was first. I was lead, first one in the door,
24 I mean, behind the defendant as he ran in to the
25 residence.

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1 Q Okay. Which way did he run?

2 A He went in and took the immediate right which was
3 going into the kitchen area of the house.

4 Q When -- were you right behind him?

5 A I come in, as he went in the door I was a little
6 bit behind him, and that's when I entered the
7 residence. I was able to look to the right and see
8 him and another gentleman was in the kitchen.

9 Q The other gentleman turned out to be the Jackson
10 guy?

11 A Jackson subject, yes, sir.

12 Q And what did you see when you ---

13 A I see both of them standing side by side. There
14 was two pipes that come up the wall to where a
15 washer and dryer unit would be, but there was not
16 the units there. The two pipes was the plumbing
17 where you would hook up to it. Both of them are
18 side by side and frantically trying to stick
19 something in the top of these pipes. One subject,
20 the Jackson, was on the pipe to the left, and
21 Mr. Samuel was on the pipe to the right and both of
22 them were steadily trying to stick something in it
23 and he was trying to get a cap back on the top of
24 the pipe in which he was actually messing with, the
25 one on the right-hand side.

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1 Q All right. At that point I take it that Andron
2 was right there?

3 A He was right behind me at that point.

4 Q Is that when y'all, either you or him gave these
5 guys orders?

6 A I gave them command, was still yelling to him
7 police search warrant and giving them orders to get
8 on the ground. At that point they backed away from
9 the pipes, and both of them did go to the ground and
10 they're detained, handcuffed.

11 Q All right. Were you there when they were
12 searched?

13 A I was concentr--- I was in the kitchen but I was
14 not actually taking part in searching them. I was
15 concentrating on the evidence and what they were
16 putting into the pipes.

17 Q Okay. And in terms of Exhibit Number 2
18 specifically this scale?

19 A Uh-huh.

20 Q Did you find it just where Andron said it was?

21 A They were in there, like I said, I did not search
22 the kitchen or any part of the area there. Again, I
23 was concentrating on the people trying to retrieve
24 the evidence that was inside of it.

25 Q Now, Joe, how long have you worked as a narcotics

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1 officer?

2 A Nine years now.

3 Q All right. And the same question I posed to
4 Andron, are digital scales used in the narcotics ---

5 A Absolutely.

6 Q ---business?

7 A The taking the product, weighing it out for
8 distribution purposes. It's a tool used to help to
9 distribute drugs.

10 Q All right. Now if I wanted -- I guess if I
11 wanted to get high, if I wanted to use what's in
12 State's Exhibit 1, how you go about smoking the
13 stuff, or shooting it, whatever you do with it?

14 A Crack most of time they utilize what they call
15 crack stems with like glass pipe, may be put some
16 mesh in the end of it, a brillo pad what have you,
17 place the rock in it and then put the lighter fire
18 to it and smoke it.

19 Q Okay. When you're dealing with these guys and
20 all your officers, did anybody there bring you a
21 piece of brillo, a glass stem, a lighter?

22 A The evidence was not brought to myself. The
23 evidence would have brought to Agent Brown. He was
24 the one handling it; it was his search warrant. But
25 no one brought nothing to me, but I did not see any

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1 of those items, the crack pipe, brillo, anything
2 that would show that an individual is actually
3 smoking or using the drugs in that residence.

4 Q When you were -- have you ever talked to anybody
5 that was high on crack in your nine years?

6 A Yes, sir.

7 Q Okay. You know, I suppose if a person is
8 drinking you can tell that they're drunk or
9 something like that, right, --

10 A Yes, sir.

11 Q --if they're drinking alcohol. Is a person on
12 crack out of, I don't know --

13 A It's different, yes, sir.

14 Q Is it different?

15 A You can definitely tell the difference if someone
16 is impaired on some type of drug and/or alcohol.

17 Q Either one of these guys, Noeshea or Jackson,
18 impaired when you're talking to them?

19 A They did not seem to be impaired at all, no, sir.

20 Q All right. Now with the information that you had
21 that or what you saw in terms of pipe to the left
22 and pipe to the right --

23 A Yes, sir.

24 Q --and pipe to the left is Jackson, right?

25 A Jackson is pipe to the left, yes, sir.

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1 Q And pipe to the right is?

2 A Mr. Samuel, the defendant.

3 Q Samuel, the defendant?

4 A Uh-huh.

5 Q All right. Did he start looking for stuff?

6 A At that point, absolutely. After they were
7 detained and removed from the area I went to the
8 first pipe, the one on the left that Jackson was at
9 and actually broke it. The pipe went down and
10 had -- it's a technical term, would be a P-trap.

11 It's the S-shape portion.

12 Q Yeah.

13 A So it did not go straight down into the floor.

14 It went down to a P-trap portion, did a S, end up
15 breaking the pipe off at that point on that one.

16 The second pipe, I addressed it the same way trying
17 to grab it and break it, and it broke off a few
18 inches above the floor. And examined the pipe, it
19 was clear, but noticed the pipe went down into the
20 floor and at that point we didn't know where it went
21 from there.

22 Q All right. Did you or another officer keep
23 check, keep on checking the plumbing?

24 A Yes. What was done, myself and Lieutenant
25 Lockhart there, he has a plumbing background.

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1 Immediately he went outside, pulled the cover to the
2 crawl space, and we crawled under the house and
3 looked where the pipe was, and we could see where it
4 was at the kitchen where it come down and it did an
5 immediate 90-degree angle would shot the pipe out
6 from under the house into the main sewer line that
7 would go outside.

8 Q All right. And Lieutenant Lockhart who has
9 plumbing experience, what did he do at that point?

10 A At that point we went ahead, we wasn't able to
11 get down in the pipe so what he done -- and he can
12 give you the technical terms for it. He took the
13 cap off the outside to the main pipe that led out to
14 the sewer. He took that cap off of it and used a
15 T-shirt and stuck his arm near elbow deep in the
16 sewer line to block off anything and secured
17 whatever may be in there with that T-shirt. And I
18 took water and was pouring water into that pipe to
19 flush out any items that was in there and continued
20 to pour water to it until eventually we did recover
21 the two items here.

22 Q And that's what's in State's Exhibit 1---

23 A Yes, sir.

24 Q ---correct? All right. And that would have come
25 from the inside of the house, correct?

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1 A Come from that particular pipe that went out
2 because that was the only one that led out from that
3 kitchen portion to that main pipe where he was at.

4 Q Would that have been from the pipe on the right
5 or the pipe on left or you couldn't tell?

6 A That's the pipe on the right. The other one did
7 not — it had that P-trap and it stopped there and
8 it did not have the direct straight down with the 90
9 that come out from the house so it was two separate
10 ones.

11 Q So the pipe on the right would have been the one
12 in your opinion and Lockhart's opinion that
13 basically contained what's in State's Exhibit 1?

14 A That come out of a pipe on the right where we
15 flushed the water out. It come out and those items
16 come out of that pipe.

17 Q And what individual once again did you see by the
18 pipe on the right?

19 A The defendant Mr. Samuel (indicating) was on the
20 pipe to the right, again, frantically trying to
21 stick something in there and was trying to put the
22 black cap back on that one while Mr. Jackson was one
23 on the — dealing with the one on the left.

24 Q All right. Now while you were doing this what
25 were your — in sticking hands and drains and all

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1 that in water, what were the other individuals
2 doing?

3 A Lieutenant John Lockhart was shoulder deep in
4 sewer and the other individuals were conducting
5 methodical search of the house searching bedrooms,
6 bathrooms. We searched outside again. We looked
7 underneath it. Anywhere that an individual could
8 possibly hide drugs, we're attempting to locate them
9 so they searched everything.

10 Q Okay. All right. Thank you. Please answer any
11 questions that defense attorney may have for you.

12 THE COURT: Cross-examination.

13 MR. JORDAN: Thank you, Judge.

14 **CROSS-EXAMINATION**

15 BY MR. JORDAN:

16 Q Sergeant Nida.

17 A Yes, sir.

18 Q You've been in law enforcement for a number of
19 years, correct?

20 A Twelve years, yes, sir.

21 Q Twelve years, okay. All right. And just like I
22 asked Agent Brown, I'm sure you've gone through
23 training, etc., and re-training I guess by this
24 point in time?

25 A Yes, sir.

SW - J. NIDA - CROSS

1 Q Okay. Now one of the things that I'm sure during
2 the course of your twelve years in law enforcement
3 you've had to write a number of reports; is that
4 fair to say?

5 A That is correct, yes, sir.

6 Q So you would agree with me, just like Agent
7 Brown, agree with me on the value and importance of
8 those reports?

9 A Yes, sir.

10 Q The need, I guess you'd say, in case something
11 happened to you how do we know in your words what
12 happened if you didn't prepare a report, that sort
13 of thing?

14 A It's documenting the incident, yes, sir.

15 Q ---correct? Also, the need to be thorough,
16 complete, accurate, truthful, all those things when
17 it comes to a report of an incident?

18 A Absolutely, yes, sir.

19 Q Now I don't believe you prepared a report in this
20 incident, did you?

21 A Not on this one, no, sir. Agent Brown was the
22 case agent. He'd be the one that did the search
23 warrant and actually did the incident report for it.

24 Q Okay. But you had the opportunity to review his
25 report; would you not?

SW - J. NIDA - CROSS

1 A Yes.

2 Q And you found it to be accurate, truthful,
3 complete, all those things?

4 A Yes, sir.

5 Q Okay. And if you wouldn't have found it to be
6 those things you would have had an opportunity to
7 deal with that prior to today, much prior to today?

8 A Yes, sir.

9 Q Now I think you testified earlier that y'all show
10 up and at that point in time Mr. Samuels was outside
11 the house; is that right?

12 A Yes, sir, on the porch by the front door.

13 Q Okay. And there's no way to know at that point
14 in time who all is inside or what all is going on
15 inside?

16 A No, sir, we did not know.

17 Q Found out that I guess until later?

18 A Once we make entry, yes, sir.

19 Q So Mr. Samuel goes in the house, and upon your
20 entry in the house I think you said you're the first
21 one in?

22 A First one in, yes, sir.

23 Q Okay. And you were able to visually, you saw
24 these gentlemen -- I think according to the
25 report -- stuffing something into the pipes; is that

SW - J. NIDA - CROSS

1 accurate?

2 A Yes, sir, they were frantically on the top of the
3 pipes as trying to put something into it, yes, sir.

4 Q Okay. And I think you described both individuals
5 being at the pipes?

6 A Side by side, one addressing one pipe and the
7 other addressing the other so there's two pipes and
8 both of them side by side.

9 Q And from there we kind of get into a plumbing
10 debate on where the pipes goes and what pipe works
11 with what and putting a towel and ---

12 A Yes.

13 Q ---all that? So you see that going on and then
14 you ask, or someone on your team, asks Mr. Samuel if
15 he put something in the pipe?

16 A I guess they would question him after he was
17 mirandized and all that, yes, sir.

18 Q So despite you seeing it, you're still asking him
19 did you put anything in the pipe?

20 A If they would ask him, like I said, I wasn't part
21 of the questioning him in reference to the incident.
22 Those agents would have to testify to what they
23 asked or...

24 Q Now you, I think you would agree with me -- well,
25 let's back up. Both individuals were present that

SW - J. NIDA - CROSS

1 day, Mr. Jackson and Mr. Samuels?

2 A Yes, sir.

3 Q And both individuals were searched?

4 A Yes, sir.

5 Q And I think we've already heard testimony that my
6 client had some cash and a cell phone; is that
7 correct?

8 A That's what they say, yes, sir.

9 Q And then Mr. Jackson had some cash and two cell
10 phones?

11 A Yes, sir.

12 Q And then there was a digital scale that we can
13 agree was in proximity to both individuals?

14 A Yes, sir.

15 Q Mr. Jackson and Mr. Samuel?

16 A Yes.

17 Q And ultimately you and your team at the end of
18 all this recovered the 1.3-grams of crack that's in
19 this bag; is that right?

20 A That is correct.

21 Q And is that how it appeared at the time?

22 A Yeah, that's the way it was the outside of the --
23 obviously there's the packaging. Just the two
24 individual bags were recovered out of the silver
25 pipe.

SW - J. NIDA - CROSS

1 Q That flowed out of the pipe?

2 A Yes, sir.

3 Q Okay. Now all this takes place and you and your
4 team found it appropriate to at that point in time
5 arrest both Mr. Jackson and Mr. Samuel?

6 A Yes, sir, both of them were charged with the same
7 offense for the drugs.

8 Q Same offense dealing with the same drugs, all
9 that?

10 A Yes, sir.

11 Q Okay. And are you aware that Mr. Jackson has
12 since that time pled guilty to possession of these
13 drugs?

14 A Yes, the State told us that he did plead guilty
15 to the charges.

16 Q Took responsibility for them; is it fair to say?

17 A He pled guilty to the charges.

18 Q Fair enough. And I think you said to
19 Mr. Jepertinger -- well, one moment please, Your
20 Honor.

21 THE COURT: Yes, sir.

22 BY MR. JORDAN:

23 Q Agent Nida.

24 A Yes, sir.

25 Q Walk me back through one more time very briefly.

SW - J. LOCKHART - DIRECT

1 When you entered residence and you described what
2 you saw, was Agent Brown already in?

3 A No, he was behind me.

4 Q He was behind you?

5 A Yes, I was the first one in the door.

6 Q Okay.

7 MR. JORDAN: I believe that's all I have,
8 Your Honor. Thank you.

9 THE COURT: Redirect?

10 MR. JEPERTINGER: No, sir, that's all I
11 have. Thank you.

12 THE COURT: Thank you. You may step down.

13 MR. JEPERTINGER: Your Honor, I would call
14 Lieutenant John Lockhart to the stand.

15 THE CLERK OF COURT: Place your left hand
16 on the Bible, raise your right hand.

17 WHEREUPON,

18 **JOHN LOCKHART,**
19 having been duly sworn by the Clerk of Court,
20 testified as follows:

21 THE CLERK OF COURT: Please be seated and
22 state your full name for the record.

23 THE WITNESS: My name is John Lockhart.

24 **DIRECT EXAMINATION**

25 BY MR. JEPERTINGER:

SW - J. LOCKHART - DIRECT

1 Q Lieutenant Lockhart, can you tell the ladies and
2 gentlemen what your responsibilities are with the
3 Florence Police Department?

4 A Since June of last year I was promoted to the
5 rank of lieutenant, and I work with the special
6 investigation unit as the commander of that unit.

7 Q Okay. Were you present on August 1st, 2013 with
8 your guys?

9 A I was. I did take part in the search warrant of
10 that residence.

11 Q Over on [REDACTED]

12 A Yes, sir.

13 Q Okay. When you got there can you tell the ladies
14 and gentlemen of the jury what you did?

15 A Yes, sir. My primary job was to watch that side
16 door to make sure that nobody came out. There was a
17 front door and side door so when we came in from
18 that side, I ran directly to that door which ended
19 up being the kitchen door and nobody came out and
20 nobody exited any of the windows at all.

21 Q All right. At that point what did you do after
22 you saw no one come out of that door?

23 A After the place was ---

24 Q Yeah.

25 A The residence was secured by other agents, and

SW - J. LOCKHART - DIRECT

1 they called it all clear, that everything was safe
2 inside, nobody had come outside, I went inside to
3 assess the situation.

4 Q Okay. Did you have opportunity to speak with
5 both Brown and Nida?

6 A I did.

7 Q Okay. And did they relay to you basically what
8 they just told the jury?

9 A Absolutely, I mean, exactly.

10 Q All right. Do you have a plumbing background?

11 A I do. My father was a plumber ever since I was
12 born, and I grew up plumbing with him. I even was a
13 plumber in college before I started with the police
14 department.

15 Q All right. And as a result, when you got that
16 information from Nida specifically I guess, what was
17 the next course of action?

18 A Well, just to back up one piece, the pipes in
19 question, the one that Mr. Samuel was at was a
20 straight pipe that went down. And the other pipe
21 had a P-trap on it so whatever was put in that pipe,
22 when Agent Nida, or Sergeant Nida broke off that
23 pipe, it couldn't have gone down the pipe because
24 the P-trap, gravity just won't let it to it. There
25 was no water going to it so anything that would have

SW - J. LOCKHART - DIRECT

1 been in that pipe would have come from the pipe that
2 Agent Nida testified that Mr. Samuel put whatever
3 the items were down it.

4 Q So once -- the one on the left, if something fell
5 in there it would, that's where it would remain ---

6 A It would go ---

7 Q ---at the P-trap?

8 A Well no, this one didn't have a P-trap. It went
9 straight down the main pipe.

10 Q No, I'm talking about the one on the left.

11 A On, the one on the left would remain in the
12 P-trap. I mean, it goes back down. Gravity won't
13 let it go unless there's force it to, either air or
14 water making it go through that P-trap.

15 Q Did you see any other force of air or water?

16 A There was not. There was nothing hooked up to
17 it. There was actual, a washer line, and there was
18 no washer hooked up or even vicinity of that.

19 Q Okay. So, go to the other one, the one straight
20 down.

21 A I saw where it came down. I went to the crawl
22 space under the house and traced the line to where
23 it would go out to the main sewer line which it
24 probably, about 20-feet. It went from there to a
25 cleanout. A cleanout is, if a house gets a stoppage

SW - J. LOCKHART - DIRECT

1 a lot, put another pipe outside the house so a
2 plumber can come run a snake down it so they can
3 clean out the line. To do that you make another
4 connection and put a cap on it. From there it was,
5 like I said, maybe 20-feet; and then from that
6 cleanout would go into the main sewer line. So what
7 we do was took the cap off and saw there was no
8 water running, there was nothing moving. I put my
9 hand down into the pipe and saw that the pipe was
10 bigger than what my hand was, and I told Sergeant
11 Nida and Agent Ussery not to put anything down the
12 pipes until I went, I went to my car and got a
13 t-shirt so I can block anything that would come
14 through. The water could come through but not
15 anything that was put into the pipes. After they
16 put water in that one pipe that Mr. Samuel was seen
17 putting stuff in is where I recovered the cocaine
18 base.

19 Q And that would be what's in State's Exhibit 1?

20 A Yes, it is.

21 Q Is that correct?

22 A Yes, sir.

23 Q Now once you retrieved what's in State's Exhibit
24 1, what did you do with that?

25 A I turned it over to the case agent Andron Brown.

SW - J. LOCKHART - DIRECT

1 Q And what is your, as lieutenant of the narcotic
2 unit, what is your standard operating procedure when
3 you retrieve drugs like in this little baggie? What
4 is the first thing you guys do?

5 A We weigh it.

6 Q Okay.

7 A We weigh it.

8 Q You didn't weigh it on this digital scale, did
9 you?

10 A No, sir, we have our own scale that we bring. We
11 know ours is accurate. We weigh what we see is at
12 the scene in its packaging, how we got it. And one
13 weighed 1.3-grams and one weighed 1.2-grams at the
14 time.

15 Q Right, but you ---

16 A But the packaging and all that other junk, that
17 was ---

18 Q So if you take away the packaging it may weigh
19 less, correct?

20 A Absolutely.

21 Q All right. Now at this stage, once you retrieved
22 that and turned it over to Brown, what other
23 responsibilities did you take care of?

24 A Well, typically we -- I take care of the
25 security, make sure nobody comes in on the scene

SW - J. LOCKHART - CROSS

1 while they're searching. I didn't do any searching
2 on this search warrant.

3 Q Is that typical, though, if you got a location
4 you ask the guys to search the whole?

5 A Absolutely. Every nook and cranny in the house,
6 outside of the house, under the house. I searched
7 under the house when I was looking for the access
8 points but how the piping ran so, yeah, there's not
9 much left unturned when we do a search warrant.

10 It's very methodical.

11 Q Now let me ask you this, during the -- being a
12 lieutenant did anybody bring you a brillo pad, glass
13 stem, anything of that, any drug paraphernalia?

14 A I saw nothing in the house, outside the house, or
15 under the house that was indicative of drug usage.
16 The only thing I saw was that scale which is
17 indicative of drug sales.

18 Q All right. Please answer any questions that the
19 defense may have for you.

20 A Yes, sir.

21 THE COURT: Cross-examination.

22 **CROSS-EXAMINATION**

23 BY MR. JORDAN:

24 Q Lieutenant Lockhart.

25 A Yes, sir.

SW - J. LOCKHART - CROSS

1 Q You didn't see anyone stuff anything in any
2 pipes?

3 A I did not.

4 Q You came in later?

5 A I never made entry into the house.

6 Q Okay. And you testified as to all these P-traps
7 and plumbing terms and all this kind of stuff?

8 A Yes, sir.

9 Q Did you take any pictures of any of the pipes or
10 plumbing or anything like that?

11 A No, sir.

12 Q So that the jury could see how this P-trap and
13 all this that you explained works?

14 A No, sir.

15 Q Didn't feel the need for any photographs or
16 anything like that?

17 A Not at that time, no, sir.

18 Q How about any other parts of the scene or
19 anything?

20 A Any photographs taken?

21 Q None?

22 A No, sir.

23 Q Thank you.

24 THE COURT: Any redirect?

25 MR. JEPERTINGER: No, sir.

SW - K. SPEARS - DIRECT

1 THE COURT: Sir, you may step down. Thank
2 you.

3 THE WITNESS: Thank you, sir.

4 MR. JEPERTINGER: We call Kendrick, Spears
5 to the stand Your Honor.

6 WHEREUPON,

7 **KENDRICK SPEARS,**
8 having been duly sworn by the Clerk of Court,
9 testified as follows:

10 THE CLERK OF COURT: Please state your
11 name for the record.

12 THE WITNESS: Kendrick Spears.

13 **DIRECT EXAMINATION**

14 BY MR. JEPERTINGER:

15 Q Okay. Corporal Spears, how long have you been a
16 narcotics agent?

17 A Eight years.

18 Q All with the Florence Police Department?

19 A Yes.

20 Q All right. Were you part of this team that went
21 over to [REDACTED]?

22 A Yes, I was.

23 Q Okay. What were your responsibilities when you
24 got over to the [REDACTED] address?

25 A Once I arrived at the location I followed the

SW - K. SPEARS - DIRECT

1 other agents in, and my job was to conduct
2 protective sweep of the house that began.

3 Q What does that mean, protective sweep?

4 A A protective sweep is pretty much checking all
5 the rooms of the residence to make sure no one is
6 inside these rooms for our safety. If they are,
7 they're handcuffed and brought back to one main
8 location and make them aware of what's going on.

9 Q Did you find any, did you find anyone other than
10 Jackson and Noeshea Samuel, the defendant in this
11 case?

12 A Those were the only two individuals.

13 Q Okay. When you were conducting your protective
14 sweep did you see any drug paraphernalia in plain
15 view?

16 A No, I didn't.

17 Q All right. And that would be inclusive of brillo
18 pads, glass stems, lighters, anything of that
19 nature?

20 A Nothing of that nature.

21 Q All right, did you conduct any further search of
22 the house?

23 A Yes, after the protective sweep we conducted a
24 search of all the rooms at the location which was
25 two bedrooms, the living room, bathroom, and the

SW - K. SPEARS - CROSS

1 kitchen area.

2 Q Did you find any other narcotics in there?

3 A None, no other narcotics.

4 Q And none of the other things I just mentioned,
5 correct?

6 A No, sir.

7 Q After you did that what did you do?

8 A After searching the residence and we didn't have
9 anything to turn over to the case agent, pretty much
10 that was it on my part.

11 Q All right. Did anybody aid you in the search of
12 the individual bedrooms?

13 A Yes.

14 Q Which agents would that have been?

15 A Agent Ussery and Agent McKenzie and Agent
16 Fridley.

17 Q All right. Thank you very much. Please answer
18 any questions that the defense attorney has for you?

19 THE COURT: Cross-examination.

20 **CROSS-EXAMINATION**

21 BY MR. JORDAN:

22 Q Is it fair to say you showed up after the
23 excitement I guess?

24 A I came in, I was the third person there I would
25 say so.

SW - K. SPEARS - CROSS

1 Q Searched the house, didn't find anything and
2 left?

3 A Yes.

4 Q That's all I have, Your Honor.

5 THE COURT: Mr. Jepertinger.

6 MR. JORDAN: One other if I may, Your
7 Honor.

8 THE COURT: Yes, sir.

9 BY MR. JORDAN:

10 Q Did you feel the need, or were you --
11 understanding protocol would you have prepared a
12 report in connection with this case?

13 A Yes, I would have.

14 Q Do you have that report with you?

15 A Would I?

16 Q Yes.

17 A Oh, no, no, I wasn't the case agent so there was
18 no need for me.

19 Q So you didn't prepare a report?

20 A No, I didn't.

21 Q To your knowledge there was a report or incident
22 report prepared and that was done by Agent Brown?

23 A That's correct.

24 Q And I think there was, it's been testified
25 earlier, there were seven of you, seven law

1 enforcement officers present?

2 A Yes, it was.

3 Q And other than Agent Brown did anyone else
4 document, take pictures, anything like that,
5 anything else?

6 A No.

7 Q Okay. Thank you.

8 THE COURT: Mr. Jepertinger, anything
9 else?

10 MR. JEPERTINGER: Not for this witness.

11 THE COURT: Sir, you may step down. Thank
12 you.

13 MR. JEPERTINGER: May we approach one
14 second.

15 (WHEREUPON, counsel approached the Bench
16 for an off-the-record discussion.)

17 THE COURT: Ladies and gentlemen, what
18 we're going to do now based on my discussion with
19 the lawyers, I am going to cut you loose for lunch.
20 I'm gonna cut you loose for lunch at this time. I'm
21 gonna ask you be back in your jury room at 2:00.
22 That will give you about an hour 20 minutes for
23 lunch. Please be back up here at 2:00, and we will
24 resume the trial of this case at that time. Do not,
25 do not discuss the case. Do not do any independent

1 investigation at all. You're to decide this case as
2 I told you from the outset based upon the testimony
3 of this witness stand and evidence presented in this
4 courtroom and nowhere else. Anything before I
5 release the jury, Mr. Jepertinger?

6 MR. JEPERTINGER: Not for the jury, Your
7 Honor.

8 THE COURT: Mr. Jordan?

9 MR. JORDAN: No, sir.

10 THE COURT: Please be back at 2:00.

11 (WHEREUPON, the jury was removed from the
12 courtroom at 12:42 p.m., and the following
13 proceedings commenced in open court.)

14 THE COURT: Anythings else, Mr.
15 Jepertinger?

16 MR. JEPERTINGER: Judge, the defendant's
17 been out on bond and I'll leave this to your sound
18 discretion. We picked the jury, we're in the middle
19 of testimony. I just do that, so sound discretion.

20 THE COURT: I'm gonna retain custody right
21 now over lunch break. He's to remain in custody.
22 Whoever was on his bond is off his bond at this
23 point so I'm gonna detain him over lunch. All
24 right, we'll resume at 2:00.

25 (WHEREUPON, a lunch break was taken.)

1 THE COURT: Anything from the State before
2 I bring the jury back in?

3 MR. JEPERTINGER: No, sir.

4 THE COURT: Defense counsel?

5 MR. JORDAN: No, Your Honor. Bring me the
6 jury.

7 (WHEREUPON, the jury was returned to the
8 courtroom at approximately 2:00 p.m., and
9 the following proceedings commenced in
10 open court.)

11 THE COURT: We are now going to continue
12 the trial of this case. Mr. Jepertinger, you're
13 recognized. Call your next witness please.

14 MR. JEPERTINGER: We call Lynn Black to
15 the stand.

16 THE CLERK OF COURT: Ma'am, please walk
17 around. Place your left hand on the Bible and raise
18 your right hand.

19 WHEREUPON,

20 **LYNN BLACK,**
21 having been duly sworn by the Clerk of Court,
22 testified as follows:

23 THE CLERK OF COURT: Please be seated and
24 state your full name for the record.

25 **DIRECT EXAMINATION**

SW - L. BLACK - DIRECT

1 BY MR. JEPERTINGER:

2 Q Ms. Black, for whom do you work?

3 A I work for the South Carolina Law Enforcement
4 Division commonly known as SLED.

5 Q And how long have you worked for SLED?

6 A I've worked there a little over five-and-a-half
7 years.

8 Q Okay. And what are your responsibilities at
9 SLED?

10 A My duties includes receiving and analyzing
11 evidence brought in by law enforcement personnel and
12 then determining whether it's a controlled substance
13 or not.

14 Q Have you had any specialized training in order to
15 do that?

16 A Yes, sir. My educational background is I have a
17 bachelor of science degree in chemistry from
18 Kentucky Wesleyan College, a certificate of medical
19 technology from the University of Louisville, and I
20 have a master of forensic science -- excuse me, yea,
21 masters in forensic science from Marshal University.

22 Q And have you ever been qualified as an expert
23 before in the State of South Carolina?

24 A Yes, I have.

25 Q In which field?

SW - L. BLACK - DIRECT

1 A In drug chemistry.

2 Q And have you been qualified as an expert in drug
3 chemistry each time you've testified?

4 A Yes, I have.

5 MR. JEPERTINGER: At this time I would
6 move to have Ms. black qualified as an expert in the
7 filed of drug chemistry.

8 THE COURT: Mr. Jordan?

9 MR. JORDAN: No objection.

10 BY THE COURT:

11 THE COURT: All right, let me give this
12 instruction to the jury. Ladies and gentlemen,
13 normally a person cannot give opinion testimony.
14 Normally when a person testifies they must testify
15 as to what they either saw, heard, or sensed by
16 smell or something of that nature. However, there
17 is an exception when someone is qualified because of
18 education or experience. They are permitted to give
19 their opinion in certain areas if the Court
20 qualifies them that way. This witness will be
21 qualified in the area of drug chemistry to give
22 opinion testimony in that area. That does not mean
23 that you must accept the opinion, but it is evidence
24 for you to use in any way you see fit and give it
25 the weight and credibility that you believe is

SW - L. BLACK - DIRECT

1 proper.

2 Mr. Jepertinger.

3 MR. JEPERTINGER: Okay.

4 BY MR. JEPERTINGER:

5 Q Ms. Black, could you tell the ladies and
6 gentlemen of the jury what's the difference between
7 cocaine and crack cocaine or cocaine base.

8 A Cocaine and cocaine base, usually the cocaine we
9 call it cocaine salt or cocaine hydrochloride. It's
10 just -- usually it comes in a powder form. It's
11 kind of the main form that when folks who are
12 manufacturing it. That's the form that they
13 actually make, and you make crack cocaine from
14 cocaine salt or cocaine hydrochloride. Generally
15 crack cocaine is a harder substance. Usually it
16 looks like a rock or something; it's commonly called
17 rock. But the difference is, how it's made it's
18 combined with some other chemicals to actually make
19 it into a smokeable form. The hardness of the
20 cocaine makes it so that you couldn't dissolve in
21 water per se 'cause cocaine. The other cocaine salt
22 is usually dissolved in something. Either people
23 inject it, sometimes they snort it, so cocaine base
24 is the smokeable form of it.

25 Q All right. Can you tell the difference between

SW - L. BLACK - DIRECT

1 the two just through visible, I mean, visual
2 inspection?

3 A Sometimes you can. I mean, generally if I get a
4 powder and it, you know, the officer has placed on
5 their form that they suspect that it's cocaine, just
6 regular cocaine, then you know, I might think that's
7 probably true but. And usually crack comes in a
8 rock form, as I said, before. It looks more, it's
9 more solid, the other is more powdery. But I have
10 been fooled also just visually because of you know,
11 depending on they could ground up the rock and it
12 might look like powder. Or they might have
13 compressed the powder to make it look like a rock so
14 you can't just go by visual cues. You have to also
15 do chemical tests and also do instrumental test to
16 prove that one is cocaine and one is cocaine base.

17 Q Okay. Now you said that there are chemical tests
18 that you do ---

19 A Correct.

20 Q ---to determine whether something is cocaine or
21 crack, correct?

22 A It gives an indication. It doesn't actually
23 prove it. I'm sorry if I misspoke. You have to
24 have both of those tests together. The instrumental
25 test is a confirmatory test. The chemical test is

SW - L. BLACK - DIRECT

1 more preliminary.

2 Q Okay. In your responsibilities for testing for
3 substances, is it your standard operating procedure
4 when you think you're dealing with cocaine or crack
5 to do the chemical test first?

6 A Yes, it is.

7 Q And in this particular case did you do a chemical
8 test first?

9 A Yes, I did.

10 Q All right. And could you tell -- when we talk
11 about chemical test, in layman's terms how, what
12 chemicals do you use to?

13 A If I suspect that something is cocaine or cocaine
14 base I generally use a specific combination of
15 chemicals that gives me a color change. That's what
16 I'm looking for when you add a small amount of the
17 substance that you're testing, and then you add some
18 of the chemical and you look for a color change.
19 And then in this particular one it's a two part
20 thing. So you add another chemical and you look for
21 another chemical change. So if it happens to turn
22 the right colors, then you know, you know that
23 you're kind of on the right track. That's probably
24 gonna be cocaine or at least in the family of
25 cocaine so...

SW - L. BLACK - DIRECT

1 Q Okay, I'm gonna show you State's Exhibit 1 that's
2 already in evidence on these two little baggies in
3 there. You receive those, correct?

4 A Yes, I did.

5 Q And you did that for lack of better term chemical
6 color change test?

7 A Yes.

8 Q On each baggie or just one little portion or how
9 did you operate with two little baggies?

10 A A small portion of inside each bag, yes.

11 Q All right.

12 A I treated each bag as a separate item.

13 Q Okay. And when you did that you had a change in
14 color to, I guess, peak your interest that there
15 might be something else there, correct, or ---

16 A Correct. Yes, they turn the colors that would go
17 with cocaine base. That would give me an indication
18 that it's possible that it's cocaine base.

19 Q Okay. And so after you get that test done you
20 want to do what you call, I guess, a confirmatory
21 test, instrumental test?

22 A Correct.

23 Q Now tell the ladies and gentlemen a little bit
24 about this instrumental test that you do on the
25 substances?

SW - L. BLACK - DIRECT

1 A Well, at SLED where I work we have a choice. We
2 have two instruments that we can choose from to do
3 this confirmatory test. We have what's called,
4 what's a sort way to say it, GCMS, which is short
5 for gas chromatography mass spectrometry. Now you
6 see why we shorten it to GCMS. The other technique
7 is FTIR, which is Fourier Transform Infrared
8 Spectroscopy and that is the one that I chose. The
9 FTIR is the instrumental test that I chose to do. I
10 could have chosen the other, but I decided to go
11 with the FTIR for both of these items.

12 Q Okay. And when you did the FTIR test on the
13 substances you see in State's Exhibit 1 what were
14 your results within a reasonable degree of, I guess,
15 a chemist's opinion of what the substances were?

16 A Each of them were positive for cocaine base also
17 known as crack.

18 Q Okay. Now you not only did a chemical test and
19 an FTIR test, but you have as part of your
20 responsibilities will determine weight on things,
21 correct?

22 A That's correct.

23 Q Now can you tell the ladies and gentlemen how you
24 know about weighing things there?

25 A Weighing is the first thing that I actually did

SW - L. BLACK - DIRECT

1 before I did those other tests. In this exhibit
2 there's two bags of rock -- or, yeah, rock-type
3 substance. What I do is take out the substance out
4 of the bag and weigh only that substance. I didn't
5 weigh it with the bag so it's what we call a net
6 weight. So I took the net weight of each of those
7 substances.

8 Q All right. And the net weight in terms of one of
9 the bags was what?

10 A One of the bags was 0.6-grams.

11 Q 0.6 grams, okay. And the other one?

12 A 0.7-grams.

13 Q 0.7-grams. And my mathematics, I've come up with
14 a sum. What sum would that be in total?

15 A That would be 1.3-grams.

16 Q All right. After you did the test, after the
17 weighing, do you -- what do you do with the drugs
18 after you do the analysis.

19 A After analysis I placed it back into the bags as
20 they originally came in. And then I use a piece of
21 tape to -- I think I actually used it to actually
22 close the bags, and then I write the SLED case
23 number on that with my initials.

24 Q When these drugs came to you they didn't come
25 loose in these packaging of these little packets

SW - L. BLACK - DIRECT

1 that the crack was found in, correct?

2 A Correct, yes. I did not receive it as you have
3 it right there.

4 Q Okay. Is there a bag on the inside of this outer
5 bag?

6 A Yes. Generally the way we receive items at SLED,
7 or at least for drugs, we give out this kit. We
8 call it BEST kit and BEST stands for Best Evidence
9 Sample Testing. And it's a Manila envelope that has
10 a tamper evident bag which is what this bag in the
11 inside of this plastic bag is with the blue around
12 it, and the paperwork that law enforcement can fill
13 out and then they bring all that. They put their
14 evidence in their bag, take off the seal and seal it
15 up and bring it back to SLED for testing. And then
16 when I get it I get -- they usually send it back in
17 the Manila envelope. I get this bag out and open
18 it; and then when I'm finished with my analysis, I
19 place it in this outer bag which we call -- it's
20 called a K-pack. That's why the manufacturer calls
21 it that. So I received it in this bag but I'm
22 returning it in my own bag.

23 Q All right. Everything is sealed up again,
24 correct?

25 A That's correct.

SW - L. BLACK - DIRECT

1 Q All right. And then other than testifying that's
2 it, correct?

3 A Correct.

4 Q Now you do prepare a written report, correct?

5 A I do.

6 Q And would you would list the weight?

7 A Yes. These items were listed separately because
8 they were slightly different colors so I have item
9 1.1 and 1.2 so they're listed separately so the
10 weights are listed separately.

11 Q Okay. And also your conclusion as to what the
12 substances are ---

13 A Correct.

14 Q ---on your report?

15 A Yes.

16 Q And once again, within a reasonable degree of
17 chemical certainty you say that substance that was
18 submitted to you and that you testified is what?

19 A Both of them were cocaine base, also known as
20 crack.

21 Q Thank you. Please answer any questions that
22 Mr. Jordan may have for you.

23 THE COURT: Cross-examination.

24 **CROSS-EXAMINATION**

25 BY MR. JORDAN:

SW - L. BLACK - CROSS

1 Q Just a few questions, Ms. Black. You test the
2 substances, the substances that are sent to you from
3 law enforcement across the state, right?

4 A That's correct..

5 Q And in this particular case you held up a packet
6 earlier, these are the substances that you received?

7 A That's correct.

8 Q And it totaled 1.3-grams total of crack cocaine?

9 A Yes, it did.

10 Q And I can't remember if you testified to this
11 earlier or not, but this was roughly the form in
12 which it came when you received it, these two little
13 baggies.

14 A That's correct. I did not place them in any
15 other kind of bag. That's how I got them.

16 Q Both of which you would agree would fit pretty
17 easily in the palm of my hand; is that fair enough.

18 A Yes, sir.

19 Q Okay. Now when it comes to investigation about
20 how these drugs were obtained from law enforcement
21 and that discussion, you don't have any knowledge or
22 involvement in that aspect of the case?

23 A No, I do not.

24 Q How the drugs were required by law enforcement or
25 whose drugs they were before acquired by law

SW - L. BLACK - CROSS

1 enforcement has nothing to do with you?

2 A That's correct. I have no prior knowledge.

3 Q You simply receive the drugs, test the drugs, and
4 sent it back with your report with a value of what
5 the drugs are?

6 A That's correct.

7 Q And in this case I think you referenced 1.1 and
8 1.2 in your report, found both things to be as you
9 testified earlier as you did; is that right?

10 A That's correct.

11 Q Thank you.

12 MR. JORDAN: No further questions, Your
13 Honor.

14 MR. JEPERTINGER: I have no further
15 questions either. And I ask if she can be released
16 from any further responsibilities in this case.

17 THE COURT: Any objection?

18 MR. JORDAN: None, Your Honor.

19 THE COURT: Ma'am, you may step down and
20 you're free to go. You have no further
21 responsibilities under your subpoena. Thank you for
22 being here.

23 MR. JEPERTINGER: Your Honor, we call
24 Doris O'Hara to the stand.

25 WHEREUPON,

SW - D. O'HARA - DIRECT

1 **DORIS POULOS O'HARA,**
2 having been duly sworn by the Clerk of Court,
3 testified as follows:

4 THE CLERK OF COURT: Please be seated and
5 state your full name for the record.

6 THE WITNESS: Doris Poulos O'Hara.

7 **DIRECT EXAMINATION**

8 BY MR. JEPERTINGER:

9 Q Ms. O'Hara, can you let us know what you do for a
10 living?

11 A My title is deputy clerk of court.

12 Q And you ---

13 A I supervise general sessions.

14 Q Which is also known as criminal court?

15 A Also known as criminal court.

16 Q All right. Did I ask you to bring a few files
17 with you today?

18 A You did.

19 Q Okay. In terms of this present case, 2013-1520,
20 State versus Noeshea Samuel, is there information in
21 terms of bond paperwork of a listed address for
22 Mr. Noeshea Samuel?

23 A There is. We have a bond form in here.

24 Q Okay. And could you tell us where Mr. Noeshea
25 Samuel says he lives?

SW - D. O'HARA - CROSS

1 A Address [REDACTED] Florence, South
2 Carolina 29501.

3 Q And is a signature right near there in terms of
4 that address?

5 A There is.

6 Q And whose signature would that be?

7 A It looks like Noeshea Samuel.

8 Q All right. Now I inform you that there was a
9 codefendant in this case that has been mentioned by
10 the name of Jackson, and did you bring up
11 2013-GS-21-1519?

12 A I did.

13 Q Okay. And did Mr. Jackson plead guilty back on
14 December 2nd, 2013?

15 A He did.

16 Q And he pled to possession of cocaine base?

17 A That is correct in front of Judge Seals.

18 Q All right. Thank you so much. That's all the
19 questions I have for Madam Clerk.

20 THE COURT: Mr. Jordan.

21 **CROSS-EXAMINATION**

22 BY MR. JORDAN:

23 Q Just a few questions, Madam Clerk. You testified
24 that Mr. Jepertinger asked you to bring two files
25 with you today, one of Mr. Samuels and one of Mr.

SW - D. O'HARA - CROSS

1 Jackson; is that correct?

2 A That's correct.

3 Q And it's been stated and I think you've been
4 present, Mr. Jackson is the co-defendant in this
5 particular case?

6 A That's what they said, yes.

7 Q Mr. Jackson, you have his file, he was charged
8 with a crime, possession?

9 A Correct.

10 Q He ultimately pled guilty to possession of crack
11 cocaine; did he not?

12 A He did on December the 2nd, 2013.

13 Q So just recently?

14 A Yes, sir.

15 Q And he received a term of incarceration for that
16 plea; did he not?

17 A He did.

18 Q Okay. That's all I have. Thank you.

19 THE COURT: Any redirect?

20 MR. JEPERTINGER: No, sir.

21 THE COURT: Ma'am, you may step down.

22 Thank you.

23 MR. JEPERTINGER: That would be the
24 State's case, Your Honor.

25 THE COURT: All right. Ladies and.

1 gentlemen of the jury, I am going to have to ask you
2 to step to the jury room just a few minutes.
3 There's some matters of law we need to take up with
4 regards to this case. Do not discuss the case. Do
5 not discuss the case. I'll get you back out here as
6 quickly as possible.

7 (WHEREUPON, the jury was removed from the
8 courtroom at 2:20 p.m., and the following
9 proceedings commenced in open court.)

10 THE COURT: Anything from — any motions
11 at this time?

12 MR. JORDAN: Your Honor, I would make a
13 motion for directed verdict. The State has failed
14 under the idea that the State's failed to meet the
15 burden which they're required to meet in order for
16 the case to continue on to put it in the hands of
17 the jury.

18 THE COURT: Anything else in reply?

19 MR. JEPERTINGER: Yes, Your Honor. Based
20 on a constructive possession theory that Madam Clerk
21 said that this was his address where he lived, Your
22 Honor, obviously under finding premises under
23 defendant's control this alone gives rise to
24 inference of knowledge and possession which may be
25 enough to carry the case to the jury, Your Honor.

1 Also, Your Honor, in terms of these permissive
2 inference, Your Honor, I think the State has proven
3 through Ms. Black that there was 1.3-grams of
4 cocaine base which is in excess of the statutory
5 inference, Your Honor. And I think those facts
6 based on the possession aspect of it and the
7 statutory inference amount should be enough to
8 defeat a directed verdict motion considering a light
9 most favorable to the State, Your Honor.

10 MR. JORDAN: Your Honor, I meant to
11 include one other thing if I may be so inclined, I
12 would also make under that directed verdict motion
13 grounds of judicial estoppel. I believe the State
14 should be estopped from asserting in this courtroom
15 as they've done that the drugs belong to Mr. Samuel.
16 They've already appeared in one courtroom previously
17 back in December taking the position that the drugs
18 belonged to Mr. Jackson, the co-defendant. I didn't
19 include that in my prior verbiage so I put it
20 forward now.

21 MR. JEPERTINGER: Your Honor, one of the
22 joys that we have in this State is something called
23 joint possession, Your Honor. I'm sure the Court
24 will charge that at the appropriate time.

25 THE COURT: All right. Based upon what

1 I've heard throughout the trial of this case the
2 Court will respectfully deny the defendant's motion
3 for a directed verdict. The trial court on a
4 directed verdict motion is concerned with the
5 existence of evidence, not its weight. The Court
6 based upon what I have heard here today believes
7 that there is sufficient evidence for this case to
8 go to the jury based upon the testimony that's been
9 elicited from this stand. Anything further at this
10 time, Mr. Jepertinger?

11 MR. JEPERTINGER: Not from the State, Your
12 Honor.

13 THE COURT: What I am going to do at this
14 time is I am going to advise the defendant of his
15 rights. If you'll swear the defendant please.

16 THE CLERK OF COURT: Sir, please raise
17 your right hand.

18 WHEREUPON,

19 **NOESHEA SAMUEL,**
20 having been duly sworn by the Clerk of Court,
21 testified as follows:

22 THE COURT: Sir, you are Noeshea Samuel?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: At this time I'm going to
25 explain to you certain of your rights. If you do

1 not understand anything I say please let me know.
2 If you want me to explain anything in more detail
3 please let me know as well. You understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now we have reached the stage
6 of the trial where you may present your defense.
7 You have the right to claim the protections given to
8 you by the Fifth Amendment to the Constitution of
9 the United States. This amendment states in part
10 that no person, no person shall be compelled in any
11 criminal case to be a witness against himself. This
12 means that you cannot be required to testify in this
13 case. You have the right to testify on your own
14 behalf; however, no one can make you testify. This
15 is a personal right and no one can waive this right
16 except you. If you decide to testify you will be
17 subject to the same rules that govern other
18 witnesses, and you may be examined and
19 cross-examined on any relevant issue in this case.
20 In addition, if you have any convictions involving
21 dishonesty or false statement or for crimes
22 punishable by imprisonment for more than a year and
23 this Court determines that the probative value of
24 admitting this evidence outweighs its prejudicial
25 effect to you, the Solicitor will be able to

1 introduce your record to attack your credibility.

2 If you decide to testify, this decision on
3 your part must be freely, voluntarily, knowingly and
4 intelligently made with the knowledge of the
5 protections given to you by the Fifth Amendment and
6 the consequences of your decision to testify. If
7 you decide not to testify I will instruct the jurors
8 that they cannot give the fact that you did not
9 testify any consideration whatsoever and that there
10 is to be absolutely no prejudice to you because you
11 did not testify. It is left entirely up to you
12 whether or not you testify. You may talk with your
13 attorney, your family, your friends, or anyone else;
14 but the final decision will be left entirely up to
15 you. Do you explain -- excuse me, do you
16 understand, Mr. Samuel, what I've explained to you?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you have any questions
19 about what I have explained to you?

20 THE DEFENDANT: No, sir.

21 THE COURT: Have you discussed with your
22 attorney whether or not you should testify?

23 THE DEFENDANT: A little, yes.

24 THE COURT: Do you wish to talk to your
25 lawyer anymore at this time about that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. I'll give you a
3 few minutes to talk to him.

4 MR. JORDAN: Your Honor, we're a little
5 ahead. Could I have about ten minutes to go back
6 and 'cause that's gonna determine whether or not we
7 go forward or not so I'd like to -- we are going to
8 get a couple of other things ---

9 THE COURT: We'll stand down about ten
10 minutes. I need to go through the charge as well.
11 When I come back we'll go through the charge. All
12 right.

13 (WHEREUPON, a recess was taken from the
14 proceedings.)

15 THE COURT: Mr. Samuel, have you had a
16 chance to talk to your lawyer about whether or not
17 you testify?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You need anymore time to talk
20 to him?

21 THE DEFENDANT: No, sir.

22 THE COURT: Is it your desire to testify
23 or not testify?

24 THE DEFENDANT: Not testify.

25 THE COURT: And this is your decision

1 freely and voluntarily made after consultation with
2 your lawyer?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right, sir. You may be
5 seated, thank you.

6 Mr. Jordan, I notice that you had called
7 or named two additional potential witnesses. Is it
8 your intention to call either one of those?

9 MR. JORDAN: It is not, Your Honor.
10 Defense has elected not to go forward with a case at
11 this time.

12 THE COURT: So when I bring the jury back
13 out it is your intention to rest at that point in
14 time as well?

15 MR. JORDAN: That is correct.

16 THE COURT: Are you all prepared to go
17 forward with closing arguments?

18 MR. JORDAN: I am, Your Honor.

19 THE COURT: All right. My -- Truk is
20 finishing up the charge. As soon as she gets up
21 here we'll kind of run through that before I bring
22 the jury back out. There is within the charge
23 possession with intent to distribute as well as
24 simple possession. It's a lesser included. All
25 right, charge, arrest, and indictment not evidence,

1 presumption of innocence, direct and circumstantial
2 evidence.

3 MR. JEPERTINGER: Your Honor, in terms of
4 the circumstantial is it inclusive of the new law on
5 it?

6 THE COURT: Yes, sir.

7 MR. JEPERTINGER: Thank you, Your Honor.

8 THE COURT: Duties of judge and jury,
9 police officer charge, expert witnesses, failure of
10 the defendant to testify, statement of a defendant,
11 intent, possession with intent to distribute cocaine
12 base. Within that it says two or more persons may
13 have joint possession of a drug; that's the law.
14 And simple possession. In conclusion, any other
15 that you all can think of? I mean, I'll certainly
16 give you an opportunity to object or whatever after
17 I've argued to the jury but any specific?

18 MR. JEPERTINGER: Well, inclusive I hope
19 in the intent to distribute cocaine base is the
20 permissive inference language of the statutory
21 amount of more than one gram?

22 THE COURT: Yeah, I mean it says here that
23 possession of one or more grams, possession of more
24 than one -- should be possession of one or more
25 grams of crack cocaine creates an inference, that

1 the defendant possessed the cocaine base with the
2 intent to distribute it. This inference does not
3 relieve the State from proving beyond a reasonable
4 doubt that the defendant had the intent to
5 distribute it. It is simply an evidentiary fact to
6 be taken into consideration by you, along with the
7 other evidence in the case and to be given the
8 weight you decide it should have. Is that what
9 you're asking about?

10 MR. JEPERTINGER: Yes, sir. The other
11 matter, I don't -- did you ask, did you say you were
12 going to charge actual versus constructive
13 possession or constructive possession in this case?
14 It was -- obviously there's evidence of because of
15 his address -- that being his premises.

16 THE COURT: Within the possession with
17 intent to distribute charge I define actual
18 possession and constructive possession. Actual
19 possession means that the cocaine base was in the
20 actual physical custody of the defendant.
21 Constructive possession means that the defendant had
22 dominion and control of the right to exercise
23 dominion or control over either the cocaine base
24 itself or the property on which the cocaine base was
25 found. Mere presence at the scene where the drugs

1 were found is not enough to prove possession.
2 Defendant's knowledge and possession may be inferred
3 while the substance is found on property under the
4 defendant's control. However, this inference is
5 simply evidentiary fact to be taken in consideration
6 by you along with the other evidence in the case and
7 give it whatever weight you should decide it should
8 have.

9 MR. JEPERTINGER: Very good, thank you.

10 THE COURT: All right. Anything else?
11 Mr. Jordan, anything?

12 MR. JORDAN: No, sir, not at this time.

13 THE COURT: All right. Thank you. If you
14 all will approach and look at the verdict form real
15 quick.

16 (WHEREUPON, counsel approached the Bench
17 for an off-the-record discussion.)

18 THE COURT: If you will bring me the jury
19 please.

20 (WHEREUPON, the jury was returned to the
21 courtroom at approximately 2:52 p.m., and
22 the following proceedings commenced in
23 open court.)

24 THE COURT: Madam Forelady, ladies and
25 gentlemen of the jury, we are now going to continue

1 the trial of this case.

2 Mr. Jordan, you're recognized, sir.

3 MR. JORDAN: Your Honor, is that correct?

4 THE COURT: Sir?

5 MR. JORDAN: I did not -- oh, I'm sorry,
6 that is correct. Your Honor, at this time the
7 Defense would rest.

8 THE COURT: All right. Ladies and
9 gentlemen of the jury, you have heard all the
10 testimony that you are going to hear in this case.
11 That which remains now are closing arguments by the
12 attorneys and my charge on the law to you. At this
13 time I'm gonna recognize Mr. Jepertinger for closing
14 arguments; but I will remind you all, ladies and
15 gentlemen, arguments of counsel is not evidence in
16 this case. It's not evidence in this case.

17 Mr. Jepertinger.

18 MR. JEPERTINGER: Okay. Madam Forelady,
19 ladies and gentlemen of the jury, it's about 11:00 I
20 guess. I asked you in your consideration of this
21 evidence to use your common sense. Certain things
22 that would not make sense other than pointing to the
23 guilt of the accused in this case. Remember when
24 Detective Brown, the first individual, African
25 American gentleman, came up. He said when they got

1 there, I mean, he saw the gentlemen run inside.
2 Question why would you do that when police are
3 pulling up into your yard without saying, guys, why
4 are you here. That didn't happen. And when they
5 gave the Miranda warnings to him, you know, you have
6 the right to remain silent. After they had
7 gotten -- what did he say? I ran inside because
8 some friends had just left and he wanted to make
9 sure that they didn't leave anything behind. How
10 strange is that? I mean, you know what it sounds
11 like, it sounds like an excuse made up on the spot.
12 When you got to say something and you don't know
13 what to say other than I just shoved crack cocaine
14 down this pipe, it sounded very concocted and made
15 up. First of all, remember one of the questions I
16 asked him from that area, no, not around that area.
17 There was no one there other than Mr. Samuel and Mr.
18 Jackson. That did not make sense. And of course, I
19 didn't put anything into the pipes. Well, folks,
20 you know, it would have been easy to say Jackson is
21 here and Samuel was here or we didn't see it; but I
22 mean, this officer is right behind him and saw
23 exactly who went to which pipe, okay. The pipe on
24 the left, Jackson. There was a P-trap there. It
25 couldn't have been State's Exhibit 1 because there

1 was no water or air going through there like
2 Lieutenant Lockhart said so it had been caught in
3 that P-trap. Well, Samuel was not at that pipe. He
4 was at pipe number 2, the one that went straight
5 down, the one had to be under the house. And you
6 know, kept the T-shirt and the fellas put a little
7 water through there. And what came out? 1.3-grams
8 of cocaine base. He was shoving this stuff into
9 that pipe. And why did he do that? Not, not for
10 any other reason that he was trying to protect a
11 product. Not only to protect a product but not to
12 be caught with this illegal product, get rid of it,
13 we got to get rid of it. We got to get -- if we're
14 running this store here we got to get rid of it and
15 quickly and quickly. I don't know what would have
16 happened if he would have ingested this stuff,
17 probably nothing good. But you know, you got to
18 make -- and you don't have time to sit there and
19 contemplate while Andron Brown and Joe Nida are
20 chasing in your own house, [REDACTED] And by the
21 way, of the two whose house was that? You heard
22 from Officer Nida at [REDACTED] was Noeshea, and
23 the other guy lived on Stackley Street about a block
24 away right there on that camera -- the one thing
25 couldn't get rid of, couldn't you know, they

1 couldn't get rid of this digital scale. The digital
2 scale ain't gonna put you in jail. The significance
3 of the digital scale is you use it to weigh rocks to
4 sell, just like that meat market that I went to
5 years ago. You weigh the drugs to sell. You don't
6 take it to buy. And there was nothing there to show
7 that these guys were addicts or any of this business
8 or they were smoking dope or any of that. This was
9 just a business; and not only did they have the
10 product, but they also had the prop. One had 245
11 bucks and had 107-dollars. What were in the rolls?
12 Who knows. But the fact of the matter, His Honor is
13 going to tell you, that you can have -- when you're
14 talking about the issue of drugs you can have joint
15 possession, joint possession.

16 Everyone understands -- I've been married
17 a long time. My wife lets me know we've been
18 married a long time, okay. And there are things
19 that we have in common. Whose book is this? It
20 belongs to both of us. You know, the lamp that's in
21 the living room, it belongs to both of us. It's
22 jointly possessed; it's our house. We own it.
23 Could it be that, you know -- and I know Mr. Jordan
24 is gonna say, well the other guy pled guilty back in
25 December to this? Yes, he pled guilty because I

1 feel -- not I feel, but the evidence showed that he
2 was guilty of possession of cocaine base; but that
3 does not negate Mr. Samuels' guilt. It's his home,
4 his pipe, his action.

5 In this case as in all cases the State
6 must prove guilt beyond a reasonable doubt. And we
7 are charging this gentleman with possession with
8 intent to distribute cocaine base, and I think we're
9 basing it on two viable reasons. One, I think the
10 circumstantial evidence of the scale being a
11 mechanism where you use that to weigh out drugs to
12 distribute it, just like Nida and Brown and Lockhart
13 said. Also, His Honor is going to tell you that
14 possession of one gram or more -- and in this case
15 we have one gram or more. We have 1.3-grams creates
16 under the law a permissive inference that you, the
17 jury, can take that information based on weight
18 alone that the individual charged had an intent to
19 distribute. You might look at me and say, well
20 Mr. Jupertinger, I understand that, you know, people
21 buy things in bulk. You go to Sams Club, you buy
22 things in bulk. You know, you go to cigarette
23 stores you buy boxes. Why? 'Cause it's probably
24 less expensive; you don't have to keep going to the
25 store. I agree with you; but there is no indicia of

1 evidence, not one crack stem, not one brillo pad,
2 not one lighter to show that these guys were using
3 the drugs. What -- you remember the question I
4 asked him, what was their sobriety like? Both
5 seemed to be aware of what's going on. They didn't
6 seem high. The crack addict, the crack addict
7 would -- you dealt with them? Yeah, you can tell
8 they are different. There was nothing there to show
9 that they were using their product. Cause the old
10 lesson to that vendor at that market is, you don't
11 eat your produce, you sell your produce; it's a
12 business.

13 You can take into consideration, His Honor
14 is going to tell you, that if a person has control
15 of premises which Noeshea Samuel would at his own
16 house, that also gives rise to an inference of
17 knowledge and possession. You got to know what's
18 going on in your own house. And just from the facts
19 and circumstances of this case the running
20 immediately when he saw the cops, the going to --
21 who goes to pipes, who goes to pipes to an
22 unconnected, there's no washing -- you know, even if
23 it was connected who goes to it? The only time
24 anybody goes to it, common sense wise, when
25 something breaks down. It just doesn't make sense.

1 The only thing that makes sense folks is that this
2 young man unfortunately has decided he's gonna make
3 money distributing these drugs, and he had his
4 product there, the means to sell it, and we have
5 cash. And folks, we don't base decisions on
6 sympathy or like him, like her, believe the cops,
7 disbelieve the cops. The bottom line is the
8 evidence dictates whether a person is innocent or
9 guilty, and the evidence in this case shows that
10 Noeshea Samuel is guilty of possession with intent
11 to distribute cocaine. Thank you.

12 THE COURT: Mr. Jordan.

13 MR. JORDAN: Thank you, Your Honor, may it
14 please the Court. What did law enforcement tell us
15 when they drove up? They drive up in a hurry.
16 Where was Mr. Samuel? Sitting outside. He does run
17 inside. But even law enforcement admitted he had
18 no, no way he could know exactly what was going on
19 inside until he gets inside. He was sitting
20 outside. He goes inside and then what else did law
21 enforcement tell us? Seven agents, they took one
22 report. And I asked the agents about the reports
23 and they all agree with me of the value the
24 importance of that report and how it needed to be
25 thorough and accurate and truthful. And then what

1 happened? We found out about plumbing issues and
2 pipe issues that were mentioned nowhere in that
3 report. Why does that come up today of and never
4 before now? Why aren't there pictures of these
5 pipes for you to look at with your own eyes as the
6 jury and the finders of fact to determine does that,
7 does that make sense, does that add up, can I see
8 that with my own eyes? Just a few questions.

9 But ultimately I'll jump right to the
10 point. This case isn't up to me. It's not up to
11 me; it's up to y'all. But it revolves around one
12 critical overwhelming issue, and that is that the
13 government basically -- it's an old cliché but it
14 works in this case -- wants to have its cake and eat
15 it too. You've heard testimony from multiple
16 individuals, law enforcement, and Mr. Jepertinger
17 has pled his case to you. And they all seem very
18 convinced that Mr. Samuel, those were his drugs. If
19 they're so convinced that those are his drugs, then
20 how can they arrest, prosecute, and have another man
21 plead guilty and subject to a term of incarceration
22 for possession of those drugs? What kind of
23 government would do that? If they're so convinced
24 they're his drugs why didn't they just turn
25 Mr. Jackson loose? But they didn't do that. They

1 brought him up into court and he, what did he do,
2 did he ask for a trial? No. He held his hand up
3 and said, you got me, I'm guilty, I'll plead guilty,
4 they're my drugs, I know I'm subject to a term of
5 incarceration going to jail for it, but what am I
6 gonna do, they're my drugs, I'm pleading guilty to
7 it. And that's what he did.

8 We can look at the amount of drugs.
9 Perhaps if it was a lot of drugs the State could
10 say, make the argument with a little bit more
11 voracity about the joint possession. We're not
12 talking about large amounts of drugs that they could
13 both move around. We're talking about 1.3-grams. I
14 go back to see if I remember. I did remember it.
15 Yeah, this afternoon, my Sweet and Low packet will
16 have a gram. Just a little bit more than a Sweet
17 and Low packet of drugs is what we're talking about.
18 This fits easily in the palm of my hand or yours or
19 anyone else in this courtroom. We're not talking
20 about exchanging large amounts of drugs that could
21 be easily -- that would be possessed by everyone in
22 the room or everyone present. We're talking about
23 1.3-grams. 1.3-grams of drugs that Mr. Jackson took
24 responsibility for and said was his. That is the
25 thing in this case that we cannot get away from.

1 The judge is going to talk to you. Mr.
2 Jepertinger has talked to you. I've talked to you a
3 little bit about reasonable doubt. If there's ever
4 such a thing as reasonable doubt it's got to be
5 another individual standing up in a court of law
6 under oath and saying, my drugs, I'll plead guilty
7 to it, I know I'm subject to jail but so be it. If
8 that doesn't raise reasonable doubt that the drugs
9 were not Mr. Samuel's, I don't know what else does
10 with any more effect. Thankfully for everyone I
11 guess, for y'all especially, this has been a quick
12 trial. But like I said before, it's an important
13 trial, important for everybody. But most
14 importantly, more than anybody else is Mr. Samuel.
15 His freedom is at stake. We'll all go home, get on
16 with life, but he cares more about that than
17 anybody.

18 So I ask you to do this, so go back in the
19 jury room, to talk it over amongst yourselves and go
20 over the evidence that's been presented to you and
21 make a determination. But please do, please go over
22 how one man can say they're my drugs, I plead guilty
23 in a court of law, and yet the Government still
24 insists on prosecuting another individual. Thank
25 you.

1 THE COURT: All right, ladies and
2 gentlemen, it is now my duty as the trial judge
3 under the constitution of the State to charge and
4 instruct you on the law applicable to this case. It
5 is your duty as jurors to accept and apply the law
6 as I will now state it to you. Furthermore, it is
7 your exclusive duty to decide all the issues of fact
8 in this case and to determine the effect, value,
9 weight, and truth of the evidence. Both the State
10 and the Defendant have a right to expect that you
11 will carefully consider and evaluate the evidence
12 and apply the law of this case to it so that in the
13 end both the State of South Carolina and the
14 Defendant will receive a fair and impartial trial.
15 I want you to understand that when I use the word
16 defendant I refer to Mr. Noeshea Follonidous Samuel.

17 The charge alleged in the indictment is
18 possession with intent to distribute cocaine base.
19 Now to this charge the defendant has entered a plea
20 of not guilty. This plea of not guilty places the
21 burden of proof on the State to prove the guilt of
22 the defendant to you, the jury, beyond a reasonable
23 doubt. I remind you, ladies and gentlemen, that the
24 fact that the defendant was arrested, charged, and
25 indicted in this case is not evidence in this case

1 and cannot be considered by you as evidence of guilt
2 in this case, nor does it create any presumption or
3 inference of guilt. The indictment is simply the
4 formal written instrument which contains the charges
5 made against the defendant. It is the formal
6 document by which this case is brought into this
7 court. It is vital to understand that the defendant
8 is presumed under the law to be innocent of these
9 charges. The defendant has no obligation to prove
10 his innocence. It is a fundamental rule of our law
11 that a defendant irrespective of the seriousness of
12 the charge against him is always presumed innocent
13 of the crimes for which he is charged unless and
14 until his guilt has been proven by evidence that
15 satisfies you, the jury, beyond a reasonable doubt.
16 The presumption of innocence is not a mere legal
17 theory or a legal phrase. The presumption of
18 innocence is very important, and you need to
19 understand that Mr. Brown accompanies the defendant
20 from the time of his arrest and appearance in this
21 court and continues with a defendant even after you
22 retire to the jury room to deliberate. In other
23 words, the defendant receives the benefit of the
24 presumption of innocence until the very end of this
25 trial when you, the jury, will deliberate upon the

1 evidence and decide whether the State has proven his
2 guilt beyond a reasonable doubt.

3 Now there are two types of evidence which
4 are generally presented during a trial, direct
5 evidence and circumstantial evidence. Direct
6 evidence directly proves the existence of a fact and
7 does not require deduction. Circumstantial evidence
8 is proof of a chain of facts and circumstances
9 indicating the existence of a fact. Crimes may be
10 proven by circumstantial evidence. The law makes
11 absolutely no distinction between the weight or
12 value to be given to either direct or circumstantial
13 evidence. However, to the extent the State relies
14 on circumstantial evidence, all of the circumstances
15 must be consistent with each other and when taken
16 together point conclusively to the guilt of the
17 accused beyond a reasonable doubt. If these
18 circumstances merely portray the defendant's
19 behavior as suspicious, the proof has failed. The
20 State has the burden of proving the defendant guilty
21 beyond a reasonable doubt. The burden rests with
22 the State regardless of whether the State relies on
23 direct evidence, circumstantial evidence, or some
24 combination of the two.

25 Now during this trial you and I have had

1 separate duties to perform. As the trial judge it
2 is my responsibility to preside over this trial, and
3 I also have the duty to rule upon the admissibility
4 of the evidence offered during the process of this
5 trial. In that regard you are to consider only the
6 competent evidence before you and you are to
7 disregard from your mind any testimony ordered
8 stricken from the record of this case during the
9 progress of the trial if there was any. And you are
10 to consider only the testimony which has been
11 presented from this witness stand together with any
12 exhibits admitted into the record of this case and
13 any stipulations of counsel made into the record.
14 Furthermore, I have the additional duty to charge
15 you on the applicable law in this case, and in that
16 regard I am the sole judge of the law of this case.
17 It is your duty to accept and apply the law as I
18 state it to you. If you have any preconceived ideas
19 as to what the law is or what the law ought to be
20 and it does not agree with what I tell you the law
21 is, you are obligated under your oath to abandon
22 these preconceptions because you are sworn to accept
23 the law precisely as I state it to you.

24 Now in this trial you are the sole and
25 exclusive judge of the facts and I am the judge of

1 the law. Do not infer that I have any opinion about
2 the fact in this case from anything I have said
3 during the course of this trial in ruling upon the
4 admissibility of evidence or otherwise or from
5 anything that I say during the course of this charge
6 to you. In this regard, the law simply does not
7 permit me to have an opinion about the facts. As
8 jurors, it is your duty alone to determine the
9 effect, value, weight, and truth of the evidence
10 presented during the course of this trial. In
11 determining what the facts in this case are, you
12 must judge the credibility which simply means the
13 believability of the witnesses and the value of
14 weight to be given to their testimony. You alone
15 must decide the force, effect, and truth of the
16 testimony. When making this decision there are many
17 things you may and should take into consideration
18 such as: The appearance and manner of the witness
19 on the stand, a characteristic often referred to as
20 the demeanor of the witness; was the witness
21 forthright or hesitant; was the witness' testimony
22 consistent or did it contain discrepancies, what was
23 the ability of the witness to know the facts about
24 which he or she testified; did the witness have a
25 cause or reason to be biased and prejudiced in favor

1 of the testimony he or she gave; was the testimony
2 of the witness corroborated or made stronger by
3 other testimony and evidence, or was it made weaker
4 or impeached by such other testimony and evidence.
5 As jurors please understand you have the right to
6 believe a small portion of a witness' testimony and
7 discard the larger portion or vice versa. You may
8 believe all of a witness' testimony or none. You
9 may believe the testimony of a single witness
10 against that of many witnesses, or the other way
11 around. In exercising your mental processes and
12 attempting to decide the truth, the law simply
13 requires that you exercise your good judgment, your
14 common sense, your sense of logic and reason, and
15 your experiences in life. You then apply these
16 attributes to the evidence and apply the law as I
17 state it to you and thus arrive at a verdict.

18 Now ladies and gentlemen, during the
19 course of this trial you heard the testimony of
20 police officers. Please understand that the
21 testimony of a police officer is not entitled to
22 more weight than that of any other witness. You are
23 the sole judges of the credibility of a witness and
24 you are not to give more weight to a police
25 officer's testimony solely because he or she is a

1 police officer. Rather, you should judge an
2 officer's testimony by the same standards that you
3 apply to all other witnesses. Now in this case you
4 also heard the testimony of someone who was
5 qualified as an expert. The rules of evidence
6 ordinarily do not permit witnesses to testify to
7 opinions or conclusions. An exception to this rule
8 exists for witnesses we call expert witnesses. A
9 witness who by education and experience has become
10 an expert in some art, science, profession, or
11 calling may state an opinion as to a relevant and
12 material matter in which the witness claims to be an
13 expert and may also state the reasons for the
14 opinion. You should consider any expert opinion
15 received in evidence in this case and like any other
16 evidence give it the weight you think it deserves.
17 If you decide that the opinion of an expert witness
18 is not based on sufficient education and experience
19 or if you conclude that the reasons given in support
20 of the opinion are not sound or that the opinion is
21 outweighed by other evidence, you may disregard the
22 opinion entirely.

23 Furthermore, an expert witness' testimony
24 is to be given no greater weight than that of other
25 witnesses simply because the witness is an expert.

1 Further, you are not required to accept an expert's
2 opinion even though it is not contradicted. Now I
3 instruct you, ladies and gentlemen, and I emphasize
4 that the fact the defendant did not testify is not a
5 factor to be considered by you in any way in your
6 deliberation and in your consideration on the
7 question of the guilt or the innocence of the
8 defendant. It must not be considered by you in any
9 manner whatsoever. I repeat, under your oath you
10 are to draw no conclusion whatsoever from the fact
11 that the defendant in this case did not testify.
12 The fact that this defendant did not testify should
13 not even be discussed in the jury room. The burden
14 of proof, as I have stated to you, is on the State.
15 The Defendant is not required to prove his
16 innocence. The burden of proof remains on the State
17 to prove guilt beyond a reasonable doubt.

18 Now a statement, ladies and gentlemen, was
19 alleged to have been made by the defendant, and it
20 was admitted into evidence in this case. And while
21 the Court has determined that the statement is
22 admissible, I instruct you that you make the
23 ultimate decision of whether or not the defendant
24 made the statement. If the defendant did make the
25 statement, you must determine whether the statement

1 was made by the defendant voluntarily and of his own
2 free will. This means that the statement was not
3 caused by pressure, force, fear, threat, coercion,
4 or intimidation, or by hope or a promise of leniency
5 or a reward of any kind. In determining whether the
6 statement was voluntary you should consider both the
7 characteristics of the defendant and the details of
8 the questioning. Some of the factors that you must
9 consider are the age of the defendant, the
10 defendant's education or lack of education, the
11 defendant's mental ability or capacity, the
12 defendant's IQ or intelligence, the defendant's
13 background and environment, the place and length of
14 the detention, the nature of the questioning, and
15 the advice or lack thereof to the defendant of his
16 constitutional rights including, but not limited to,
17 the right to remain silent, that any statement could
18 be used against him in a court of law; the right to
19 have a lawyer present, that if he could not afford a
20 lawyer a lawyer would be appointed to represent him
21 without any cost and that he could stop making a
22 statement at any time. You must carefully consider
23 all of the surrounding circumstances before you give
24 any weight to an alleged statement. The State has
25 the burden of proving beyond a reasonable doubt that

1 the alleged statement was voluntary. If you
2 determine it was, you may give the statement any
3 further consideration that you deem proper. You
4 must decide what weight, if any, should be given to
5 the alleged statement. If you determine the alleged
6 statement was not the free and voluntary statement
7 of the defendant, you should not consider the
8 statement at all.

9 Now in order to establish criminal
10 liability criminal intent is required. For example,
11 the mental state required to be proven by the State
12 for a particular crime might be purpose, intent,
13 knowledge, recklessness, or criminal negligence.
14 Criminal intent must be proven by the State beyond a
15 reasonable doubt. Criminal intent is always a
16 matter that must be determined by the jury from the
17 circumstances surrounding the situation. There is
18 no way to prove intent, ladies and gentlemen, to a
19 mathematical certainty. There is no way that
20 medical science can dissect a person's brain and
21 determine what the person had in mind so the law
22 says that criminal intent may be inferred from the
23 circumstances shown to have existed. This is how
24 you make a determination of whether or not the
25 element requiring intent was present.

1 It is not necessary to establish intent by
2 direct and positive evidence, but intent may be
3 established by inference in the same way as any
4 other fact by taking into consideration the acts of
5 the parties and all the facts and circumstances of
6 the case. Criminal intent is a mental state, a
7 conscious wrongdoing. It is up to you to determine
8 what the defendant intended to do based on the
9 circumstances shown to have existed. Criminal
10 intent can arise from action or a failure to act.
11 It may arise from negligence, recklessness, or an
12 indifference to duty or to consequences. That is
13 considered by the law to be the equivalent of
14 criminal intent.

15 Now the defendant is charged with
16 possession with intent to distribute cocaine base.
17 The State must prove beyond a reasonable doubt that
18 the defendant possessed cocaine base with the intent
19 to distribute. There are three elements to this
20 offense that the State must prove beyond a
21 reasonable doubt. One, that the substance involved
22 was, in fact, cocaine base. Two, that the defendant
23 had possession of that cocaine base either actual
24 possession or constructive possession. And three,
25 that the defendant possessed the cocaine base with

1 the intent to distribute.

2 Under Section 44-53-210(b)(4) of the South
3 Carolina Code of Laws cocaine in any form is a
4 controlled substance. Cocaine base means an
5 alkaloidal cocaine or free base form of cocaine
6 which is the end product of a chemical alteration
7 whereby the cocaine base in salt form is converted
8 to a form suitable for smoking. Cocaine base is
9 commonly referred to as a rock or crack cocaine.
10 The State must prove that the substance involved is,
11 in fact, cocaine base. To prove possession the
12 State must prove beyond a reasonable doubt that the
13 defendant had both the power and the intent to
14 control the disposition or use of the cocaine base.
15 There must be knowing possession. The State must
16 prove possession of the cocaine base by the
17 defendant and the further fact that the defendant
18 knew he had cocaine base in his possession.

19 Possession may be either actual or
20 constructive. Actual possession means that the
21 cocaine base was in the actual physical custody of
22 the defendant. Constructive possession means that
23 the defendant had dominion and control or the right
24 to exercise dominion or control over either the
25 cocaine base itself or the property on which the

1 cocaine base was found. Mere presence at the scene
2 where the drugs were found is not enough to prove
3 possession. The defendant's knowledge and
4 possession may be inferred when a substance is found
5 on the property under the defendant's control.
6 However, this inference is simply an evidentiary
7 fact to be taken into consideration by you along
8 with the other evidence in the case and to be given
9 the weight you decide it should have. Two or more
10 persons may have joint possession of a drug.

11 Finally, the State must prove beyond a
12 reasonable doubt that the defendant intended to
13 distribute the cocaine base. Distribute means to
14 deliver other than by administering or dispensing a
15 controlled substance. It means the actual or
16 constructive transfer of a controlled substance with
17 or without payment. Intent may be shown by acts and
18 conduct of the defendant and other circumstances
19 from which you may naturally and reasonably infer
20 intent.

21 In determining whether the defendant had
22 the intent to distribute the cocaine base you may
23 consider the circumstances surrounding the
24 defendant's alleged possession. You may consider
25 the amount of the substance alleged to have been

1 possessed, the manner in which it was allegedly
2 possessed, the place where it was allegedly
3 possessed, and other factors which you consider to
4 be important. You must find that defendant did not
5 intend to have the cocaine base solely for his own
6 use. Possession of one or more grams of crack
7 cocaine creates an inference that the defendant
8 possessed the cocaine base with intent to distribute
9 it. This inference does not relieve the State from
10 proving beyond a reasonable doubt that the defendant
11 had the intent to distribute it. It is simply an
12 evidentiary fact to be taken into consideration by
13 you along with the other evidence in the case and to
14 be given the weight you decide it should have.

15 Now, if you find that the State has failed
16 to prove beyond a reasonable doubt that the
17 defendant is guilty of possession with intent to
18 distribute cocaine base, you may consider whether
19 the State has proved beyond a reasonable doubt that
20 the defendant is guilty of simple possession of
21 cocaine base. Simple possession does not require an
22 intent to distribute the cocaine base. The State
23 must prove beyond a reasonable doubt that the
24 defendant knowingly or intentionally possessed
25 cocaine base. Knowingly means with knowledge,

1 consciously, not accidentally. Intentionally means
2 willfully, intending the result which actually
3 occurs, not accidentally or involuntarily. Intent
4 may be shown by acts and conduct of the defendant
5 and other circumstances from which you may naturally
6 and reasonably infer intent. The terms possession
7 and cocaine base have the same meanings as I
8 previously mentioned.

9 Now ladies and gentlemen, I am now drawing
10 near the end of my charge and I want you to clearly
11 understand that you are not partisans or advocates
12 for the State of South Carolina or the defendant.
13 It is your duty by your joint deliberations to
14 determine the truth in this case giving to the
15 defendant the benefit of every reasonable doubt on
16 each and every issue. Then to the facts which you
17 determine to be true, you should take and apply the
18 law which has been given to you by this Court and
19 thus arrive at a verdict which speaks the truth. In
20 fact, the word verdict, which has a Latin
21 derivative, means a true saying. Thus, when you
22 have accomplished these responsibilities you will
23 have satisfied your oath as jurors and you will have
24 discharged your duty to this court. Once you retire
25 to the jury room the bailiff will give the verdict

1 form to the forelady. When you, the jury, arrive at
2 a verdict as to the offense charged in this case the
3 forelady will select the verdict as to each charge
4 as to the particular charge on the verdict form. If
5 the State has failed to prove the guilt of the
6 defendant beyond a reasonable doubt your verdict
7 will be not guilty. Likewise, if the State has
8 proven the guilt of the Defendant beyond a
9 reasonable doubt your verdict will be guilty.

10 Now once a decision has been made the
11 forelady will check whichever choice is the verdict
12 of the jury. The verdict that you render in this
13 case, ladies and gentlemen, must be the verdict of
14 each and every juror. It must be your unanimous
15 verdict. All 12 jurors must agree on the verdict
16 which you authorize the forelady to write for the
17 jury.

18 Now ladies and gentlemen, I want you to
19 further understand that the order in which the
20 choices of verdict appear on the verdict form are
21 not suggestive of any verdict on the part of this
22 Court. The verdict in this case is to be determined
23 by you, the jury, not the Court. Furthermore,
24 please understand that even though I will give the
25 verdict form to the forelady, it is not her verdict

1 alone; it is the verdict of all twelve of you. And
2 I emphasize again, it must be unanimous. I am also
3 going to give you all a copy of these instructions
4 in written form. Now during your deliberations you
5 may refer to the instructions to guide your decision
6 making. You must consider the instructions as a
7 whole and not follow some and ignore others. Please
8 return these instructions, Madam Forelady, to the
9 court at the time that your verdict is rendered.

10 I now ask you all to please retire to the
11 jury room but do not, do not begin your
12 deliberations until you're told to do so. The law
13 requires that I consult with the attorneys to make
14 sure that I have not left anything out of these
15 instructions. After I have checked with the
16 attorneys the bailiff will bring in a copy of these
17 instructions and the verdict form and instruct you
18 to begin your deliberations. Also, should you have
19 any questions during your deliberations, you Madam
20 Forelady, if there are any questions of the jury, it
21 will be your responsibility to reduce those
22 questions to writing, knock on the door. Let the
23 bailiff know that you have a question, give it to
24 him or her, they'll get it to me, and I will answer
25 it however the Court deems proper. Once you all

1 have reached a verdict please complete the verdict
2 form, knock on the door, let the bailiff notify that
3 you have reached a verdict and I will get you back
4 into the courtroom as quickly as possible.

5 Now on this verdict form, first question,
6 as to the charge of possession with intent to
7 distribute cocaine base: We, the jury, unanimously
8 find the defendant Noeshea Follonidous Samuel either
9 not guilty or guilty. If your determination, if the
10 jury's determination is that he is guilty of this
11 charge, then you sign and date the verdict form and
12 mark guilty. If it is not guilty as to question
13 one -- and there are instructions here regarding
14 this -- if your verdict as to count, as to question
15 one, excuse me, is not guilty then you proceed to
16 question two. You proceed to question two only if
17 your determination as to question one is not guilty.
18 If it is guilty, then you sign and date the verdict
19 form, let the bailiff know you've reached a verdict,
20 and we will get you back into the courtroom as
21 quickly as possible.

22 Again, please step to the jury room. Do
23 not, do not begin your deliberations until you've
24 been instructed to do so. Before -- one more thing.
25 Everybody on the jury feel okay?

1 (There was no response.)

2 THE COURT: Anybody not feeling well?

3 (There was no response.)

4 THE COURT: All right. Everybody step to
5 the jury room for me. Do not begin your
6 deliberations.

7 (WHEREUPON, the jury was removed from the
8 courtroom at 3:34 p.m., and the following
9 proceedings commenced in open court.)

10 THE COURT: Any objection or exemption to
11 the charge by the State?

12 MR. JEPERTINGER: No, sir.

13 THE COURT: Defense counsel?

14 MR. JORDAN: No, sir, Your Honor.

15 THE COURT: Bear with me just -- there's a
16 couple of things in this conclusion that I need to
17 get changed. Can you all come up here and just make
18 sure that the...

19 (Attorneys review exhibits.)

20 MR. JEPERTINGER: I've looked at State's
21 Exhibit 1 and State's Exhibit 2 and everything is in
22 evidence in these two items.

23 MR. JORDAN: I viewed them as well, Your
24 Honor, and they appear be as Mr. Jepertinger says.

25 THE COURT: Here's a couple of changes

1 that need to be made.

2 (WHEREUPON, counsel approached the Bench
3 for an off-the-record discussion.)

4 MR. JEPERTINGER: Now the State would have
5 no objection to the changes made, Your Honor, as
6 they're just ---

7 MR. JORDAN: Grammatical.

8 MR. JEPERTINGER: ---grammatical changes
9 and will not change the substance.

10 THE COURT: Well, and I read it to the
11 jury in the fashion that I've changed it here.
12 Okay?

13 MR. JORDAN: Yes, sir.

14 THE COURT: Get Mr. Jiunnies out.

15 THE BAILIFF: All right, sir.

16 THE COURT: I'm gonna make this a Court
17 exhibit. This was the selection of the forelady.
18 I'm gonna make that a Court exhibit.

19 (Court's Exhibit Number 1 was marked
20 and made a part of the record.)

21 (Alternate was returned to the courtroom and
22 excused.)

23 (Court was in recess with deliberations beginning at
24 3:42 p.m.)

25 (Court's Exhibit Number 2 was marked

1 and made a part of the record.)

2 THE COURT: All right, we've got the
3 defendant back in the courtroom with his lawyer. A
4 note -- three questions were asked of the jury. I
5 have shown this document which has been marked as
6 Court's Exhibit Number 2 to Mr. Jepertinger and
7 Mr. Jordan. Three questions that the jury has asked
8 here, all of which, all of these questions of which
9 they asked is not evidence in this case. None of it
10 was presented as evidence in this case, and what I
11 intend to do is bring the jury back out and inform
12 them that the questions that they have asked are not
13 evidence in this case and they're not to consider it
14 in determining guilt or innocence of this defendant.
15 Any objection to that, Mr. Jepertinger?

16 MR. JEPERTINGER: I think that's an
17 accurate statement, Judge.

18 THE COURT: Mr. Jordan?

19 MR. JORDAN: No objection.

20 THE COURT: Bring me the jury please,
21 ma'am.

22 (WHEREUPON, the jury was returned to the
23 courtroom at approximately 4:05 p.m., and
24 the following proceedings commenced in
25 open court.)

1 THE COURT: Madam Forelady and ladies and
2 gentlemen of the jury, I have received questions
3 that you sent out. Let me advise you that what you
4 have asked here is not evidence in this case. It's
5 not evidence in this case, is not to be considered
6 by you at all in your determination of the guilt or
7 innocence of this defendant.

8 Anything further from the State with
9 regard to these questions?

10 MR. JEPERTINGER: No, sir.

11 THE COURT: Defense counsel?

12 MR. JORDAN: No, Your Honor.

13 THE COURT: Madam Forelady, ladies and
14 gentlemen of the jury, please return to the jury
15 room and continue your deliberations. Thank you.

16 (WHEREUPON, the jury was removed from the
17 courtroom at 4:07 p.m., and the following
18 proceedings commenced in open court.)

19 THE COURT: I think I said this, just for
20 the record to make sure, that was marked as Court
21 Exhibit Number 2, okay.

22 (WHEREUPON, a recess was taken from the
23 proceedings.)

24 THE COURT: It's my understanding that the
25 jury has reached a verdict. Anything from the State

1 before I bring the jury in?

2 MR. JEPERTINGER: No, sir.

3 THE COURT: Defense counsel?

4 MR. JORDAN: No, sir, Your Honor.

5 THE COURT: Will remind everybody in the
6 courtroom to keep your emotions in check whatever
7 the direct is. Failure to do so could result in
8 being held in contempt of court. Bring me the jury
9 please, ma'am.

10 (WHEREUPON, the jury was returned to the
11 courtroom at approximately 5:09 p.m., and
12 the following proceedings commenced in
13 open court.)

14 THE COURT: All right, Madam Clerk.

15 THE CLERK OF COURT: Have you reached a
16 verdict?

17 THE FORELADY: Yes, ma'am.

18 (Verdict form tendered to the Court..

19 THE COURT: The verdict appears to be in
20 order. Please publish the verdict.

21 THE CLERK OF COURT: State South Carolina,
22 County of Florence, Court of General Sessions,
23 indictment number 2013-GS-21-1520. State of South
24 Carolina versus Noeshea Follonidous Samuel, as to
25 the charge of possession with intent to distribute

1 cocaine base: We, the jury, unanimously find the
2 defendant not guilty. As to the charge of simple
3 possession of cocaine base: We, the jury,
4 unanimously find the defendant guilty. Dated
5 January 22nd, 2014, signed Crystal Fairchild,
6 foreperson. Members of the jury, if this is your
7 verdict please raise your right hand.

8 (All jurors complied by raising their hand.)

9 THE COURT: Anything from defense counsel
10 at this time?

11 MR. JORDAN: Judge, I would make the
12 standard motion for a new trial at this time and
13 that's it, Your Honor.

14 THE COURT: I will allow you to make those
15 motions. Anything further while the jury is still
16 here?

17 MR. JORDAN: No, sir.

18 THE COURT: Ladies and gentlemen, you all
19 have done your -- fulfilled your responsibilities as
20 jurors. What is going to happen at this point is
21 sentencing by the Court. I want to thank you for
22 your service today. I appreciate your attentiveness
23 throughout the trial of this case. You will get a
24 check in the mail. Along with that check will be a
25 work excuse. Let me go ahead and tell you, that

1 that check will in no way shape or form compensate
2 you for what your service is worth. I want to thank
3 you all for your service. You all are free to go.
4 I will tell you this, you can talk about the case
5 now if you so desire; however, you don't have to
6 talk about the case. If somebody asks you about the
7 case and you tell them you don't want to talk about
8 it, and they don't leave you alone, you let the
9 Court know, the Clerk's Office know, and the Court
10 will handle it, okay.

11 Now after having completed and fulfilled
12 your responsibilities as jurors, as I told you a
13 minute ago it is now the Court's responsibility to
14 impose sentence. I will as I always do give you all
15 an opportunity to leave at this time if you so
16 desire to leave; however, if you do desire to stay
17 for sentencing you can certainly do that as well.
18 If you do want to leave now is the time to go. If
19 you want to stay for sentencing you can stay right
20 there and we'll conclude this case in sentencing.
21 But if you want to go now is the time for you to go.

22 (WHEREUPON, the jurors were excused at
23 5:13 p.m., and the following
24 proceedings commenced in open court.)

25 THE COURT: All right, Mr. Jepertinger.

1 Sir, if you'd come around for sentencing.

2 Mr. Jordan, if you'd come around to the
3 podium with your client.

4 MR. JEPERTINGER: If it please the Court
5 Your Honor, this defendant is currently on probation
6 for distribution of cocaine base second offense,
7 your Honor. He was placed on probation for
8 distribution cocaine base the day before this crime,
9 Your Honor. He was placed on probation on
10 July 31st, 2013, and this happened the next day,
11 Your Honor. His other record is he had a simple
12 possession of marijuana, another two offenses for
13 simple possession of marijuana, driving under
14 suspension, simple possession of marijuana. And the
15 same time that he pled to the manufacturing
16 distribution or possession with intent to distribute
17 of cocaine base, Your Honor, he had an obtaining
18 metals, Your Honor. He has on the probation
19 violation eight years suspended to thirty months
20 probation. He has eight years hanging over his head
21 on that charge, and he has five years suspended to
22 30 months probation on the obtaining metals, Your
23 Honor.

24 THE COURT: Obtaining nonferrous metals?

25 MR. JEPERTINGER: Yes, sir, it just says

1 obtaining metals. I assume it's nonferrous metals.

2 THE COURT: And those two sentences were
3 concurrent?

4 MR. JEPERTINGER: It looks like they were
5 concurrent, yes, sir.

6 THE COURT: All right.

7 MR. JEPERTINGER: And I don't know if
8 maybe he has anything else. Is that it?

9 PROBATION OFFICER: That's it. That's it,
10 Your Honor.

11 THE COURT: All right. Eight years, he
12 did 30 months? Did you say 30 months probation?

13 MR. JEPERTINGER: It was 30 months
14 probation, uh-huh.

15 THE COURT: Okay. He did not do any
16 active time on that or what kind of credit did he
17 get, if any?

18 MR. JEPERTINGER: All I have on the NC is
19 five years suspended to 30 months motion and eight
20 years suspended to 30 months probation.

21 THE COURT: Yes, ma'am, Miss Mamie.

22 PROBATION OFFICER: Your Honor, he
23 received four days credit on the drug distribution
24 charge and one day credit on the property damage.

25 THE COURT: And he was placed on probation

1 on July 31st and this offense occurred August 1st of
2 2013?

3 MR. JEPERTINGER: Yes, sir.

4 THE COURT: Okay, all right. Anything
5 else from the State at this time?

6 MR. JEPERTINGER: No, sir.

7 THE COURT: All right, Mr. Jordan, I'll be
8 happy to hear from you, sir.

9 MR. JORDAN: Judge, as I did I did want to
10 renew those motions for new trial in judgment
11 notwithstanding the verdict, but I won't re-litigate
12 the case. Judge, Your Honor's been sitting here. I
13 think Your Honor has had a ring side seat as it were
14 for the case. I just would ask you to be lenient to
15 consider a sentence that since you -- we're doing
16 these at the same time it would be a concurrent
17 instead of consecutive.

18 THE COURT: Has he been served with a
19 citation?

20 PROBATION OFFICER: No, sir, not --

21 THE COURT: His conviction here today is a
22 violation of that probation?

23 PROBATION OFFICER: Yes, it is, Your
24 Honor.

25 THE COURT: All right. Well, I do find

1 he's willfully violated the terms and conditions of
2 his probation by virtue of his conviction today of
3 this offense for possession of cocaine base, which
4 was just handed down by this jury. That in and of
5 itself, that in and of itself is a conviction --
6 excuse me, is a violation. Anything else probation
7 would like to tell me with regards to? I mean, he's
8 been on probation since July of last year, how much
9 time did he do in jail before he bonded out on this
10 charge?

11 MR. JORDAN: One day, Your Honor.

12 THE COURT: One day?

13 MR. JORDAN: Correct.

14 THE COURT: What has he done on probation
15 over the last six months?

16 PROBATION OFFICER: Your Honor, he has not
17 met any of his financial responsibilities.

18 THE COURT: Anything else? Reported like
19 he was supposed to?

20 PROBATION OFFICER: According to this he
21 has been reporting. I need to get back to the
22 financial. He paid 100-dollars on supervisors fees,
23 10-dollars on public service fees, and that's it
24 with his financial responsibility. But he has been
25 reporting according to this.

1 THE COURT: Mr. Jepertinger, on the charge
2 for which he's on probation of distribution cocaine
3 base, that was second offense?

4 MR. JEPERTINGER: That would have been a
5 first offense, Judge, that he pled guilty.

6 THE COURT: Okay, you said second earlier.

7 MR. JEPERTINGER: This would be a second
8 offense, Your Honor.

9 THE COURT: The one he is convicted of now
10 is a second offense?

11 MR. JEPERTINGER: That is correct.

12 THE COURT: Which carries 0 to 5?

13 MR. JEPERTINGER: That is correct.

14 THE COURT: And on the distribution which
15 he was initially placed on probation was 0 to 15?

16 MR. JEPERTINGER: That is correct. If I
17 misspoke, I apologize.

18 THE COURT: And I may have misunderstood
19 you.

20 Mr. Jordan, anything else, sir?

21 MR. JORDAN: Judge, I just ask you be as
22 lenient as you can. I would ask that you consider
23 concurrent sentence. Certainly he's got a little
24 greater exposure on probation than he does on
25 current. His wife, mother, his brother are all here

1 today. They're certainly going to hopefully keep
2 him on the straight and narrow when he gets out and
3 gets this behind him. Judge, we just ask you to be
4 as merciful and lenient as you can. I don't know if
5 Mr. Samuel wishes to address the Court. He's always
6 shown up when he's supposed to, been very
7 cooperative with me and my office, hadn't been a
8 problem client or anything like that for sure.

9 THE COURT: Well, thank you, Mr. Jordan.

10 Mr. Samuel, anything you wish to tell me,
11 sir? If so, I will be happy to hear from you but
12 certainly don't want you to say anything that could
13 affect any appellate rights that you may have, okay.
14 Anything you want to tell me, sir?

15 THE DEFENDANT: I just -- all I want to
16 say is that I'm getting the bad end of the stick
17 this time, Your Honor. It wasn't me this time. I
18 had nothing to do with it. I need to talk to my
19 brother 'cause my mom asked me and they pulled up,
20 and that what all went down but. It wasn't me. I
21 pled to what I did the day before like I told but...

22 I'm sorry, baby, I'm sorry.

23 THE COURT: All right, on indictment --
24 anything further from the State?

25 MR. JEPERTINGER: No, sir.

1 THE COURT: Defense counsel?

2 MR. JORDAN: No, Your Honor.

3 THE COURT: Mr. Samuel, how far did you go
4 in school, sir?

5 THE DEFENDANT: Twelfth grade.

6 THE COURT: Where?

7 THE DEFENDANT: Wilson High, but I
8 received my diploma from adult ed in Bishopville.

9 THE COURT: Mr. Jordan, does any of his
10 family wish to speak?

11 MR. JORDAN: Your Honor, I had talked to
12 his wife earlier. I don't know if she wishes to
13 address the Court. I certainly told her that was a
14 possibility if she wished to.

15 THE COURT: Yes, ma'am, I'll be happy to
16 hear from you ---

17 MS. SAMUEL: My name is ---

18 THE COURT: Please tell me your name for
19 the record.

20 MS. SAMUEL: My name is Gavietta (ph)
21 Samuel. I am married to Noeshea Samuel. We have
22 two kids, a 17 year old and 11 year old. And I feel
23 like I'm in the twilight zone, like this day, you
24 know isn't happening, and I just wish you could at
25 least give him some time where we still can be a

1 family some kind of way, you know.

2 THE COURT: All right, thank you, ma'am.

3 All right, on indictment 2013-GS-21-1520,
4 the offense for which he was convicted of today, the
5 Court hereby sentences the defendant to the
6 Department of Corrections for a period of five
7 years. Give him credit for one day. On the
8 probation matters, on the distribution of cocaine
9 base -- give me the indictment number on that
10 please.

11 PROBATION OFFICER: Your Honor, indictment
12 number 13-GS-21-0983.

13 THE COURT: 13-21, excuse me, 13-21-00983.

14 PROBATION OFFICER: Yes, sir.

15 THE COURT: That's on the distribution for
16 which he received the eight year sentence?

17 PROBATION OFFICER: Yes, sir, it is.

18 THE COURT: All right. With regards to
19 that particular probation matter I'm revoking eight
20 years. It's to run consecutive to the five years I
21 just gave him. On the other five year case
22 terminate that case because it was running
23 concurrent anyway. Just revoke a day and terminate
24 it. Anything further?

25 PROBATION OFFICER: Fees?

1 THE COURT: Convert them to civil
2 judgment, no monitoring.

3 PROBATION OFFICER: Thank you, Your Honor.

4 THE COURT: Anything else from the State?

5 MR. JEPERTINGER: No, sir, thank you so
6 much.

7 MR. JORDAN: Your Honor, can I just get
8 ruling on my?

9 THE COURT: Yeah. Please, for the record
10 please note that defense counsel has made all,
11 renewed all pre-existing motions as previously made
12 at the close of the State's case. The Court's
13 rulings remain the same. The court's rulings remain
14 the same as previously stated on the record,
15 previously stated. Thank you.

16 (WHEREUPON, the proceedings were concluded
17 at 5:24 p.m.)

18

19 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

20

21

22

23

24

25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 2nd day of April, 2014.

Frances B. Ray

FRANCES BAKIS-RAY, RPR

WITNESSES

Andron Brown Florence Police Department

John C Jupertinger

ARREST WARRANT NUMBER

2013A2120201332 2013A2120201334

ACTION OF GRAND JURY

TRUE BILL

Courtney Murphy
Foreperson of Grand Jury

Date: 11-21-13

VERDICT

0
1
Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-21-01520

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

DECEMBER TERM 2013

THE STATE

vs.

NOESHEA FOLLONDOUS SAMUEL

Indictment for

**POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE BASE
AND
POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE**

CERTIFIED: A TRUE COPY
Courtney Murphy
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED

2013 NOV 21 PM 12:54

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT FOR
POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE BASE
AND
POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE

At a Court of General Sessions, convened on NOVEMBER 21, 2013 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE

That NOESHEA FOLLONDOUS SAMUEL did in Florence County on or about August 1, 2013, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Cocaine Base, a controlled substance under the provisions of Section 44-53-110, et.seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-375(B)(2), S. C. Code of Laws, 1976, as amended.

COUNT TWO- POSSESSION WITH INTENT TO DISTRIBUTE COCAINE

That NOESHEA FOLLONDOUS SAMUEL did in Florence County on or about August 1, 2013, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Cocaine, a controlled substance under the provisions of Section 44-53-110, et.seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-370(B)(1), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

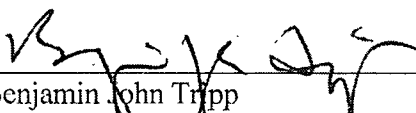


E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

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 2, 2014



Benjamin John Tripp
Appellate Defender

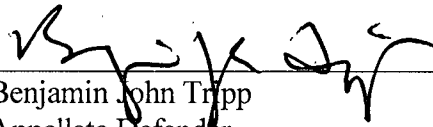
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 2, 2014



Benjamin John Tripp
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Florence County

D. Craig Brown, Circuit Court Judge

RECEIVED

OCT 02 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

NOESHEA FOLLONDOUS SAMUEL,

APPELLANT

APPELLATE CASE NO 2014-000200

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 2nd day of October, 2014.

Brandon Hall
Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 2nd day of October, 2014

T. A. McKey (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022