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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DWAYNE CHISOLM,

APPELLANT

APPELLATE CASE NO. 2014-002327

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS
CASE NUMBERS 2010-GS-07-01251, 2010-GS-07-01252
2010-GS-07-01253, 2010-GS-07-01254

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

OCTOBER 22 & 23, 2014

TRANSCRIPT OF PRETRIAL MOTIONS & TRIAL

BEAUFORT, SOUTH CAROLINA

DWAYNE CHISOLM

DEFENDANT

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

AND A JURY

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OFFICIAL COURT REPORTER

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STATE V. CHISOLM - PRETRIAL MOTIONS

1 DAY ONE, WEDNESDAY, OCTOBER

2 22, 2014, BEGINNING 9:40 A.M.

3 BY THE COURT:

4 MS. CONCANNON: Your Honor, State calls Dwayne
5 Chisolm. He is before you on Indictment 2010-GS-07-
6 01251, trafficking cocaine, 100 grams or more; 2010-GS-
7 07-01252, possession with intent to distribute crack
8 cocaine; 2010-GS-07-01253, possession of a weapon during
9 the commission of a violent crime; as well as 2010-GS-
10 07-01254, for possession of a firearm with an
11 obliterated serial number.

12 We do have couple pretrial matters to take up this
13 morning, prior to picking the jury. Mr. Chisolm did
14 make some statements, and we would have a *Jackson v.*
15 *Denno* hearing, as well as, the Defense has filed a
16 motion to suppress evidence --

17 THE COURT: Okay.

18 MS. CONCANNON: -- obtained during the execution of
19 a search warrant.

20 THE COURT: Okay. All right. Well, why don't we
21 go ahead and hear that motion first, if that's fine.
22 Then, let's go ahead and do the *Jackson v. Denno*, but
23 I'd like to get going.

24 Jerri, when the jury arrives, are they going to be
25 in the jury assembly room?

STATE V. CHISOLM - PRETRIAL MOTIONS

1 MADAM CLERK: Yes, ma'am.

2 THE COURT: Thank you. Okay. So, we don't have to
3 worry about it.

4 MADAM CLERK: Correct.

5 THE COURT: Norman, we just need to be real careful
6 that no jurors end up wandering in here. Okay?

7 BAILIFF: Yes, ma'am. Everybody's alerted to watch
8 for them.

9 THE COURT: I appreciate it, Norman.

10 BAILIFF: No problem.

11 THE COURT: All right. Yes, Ms. Saxon. Whenever
12 you're ready.

13 PRETRIAL MOTIONS:

14 MS. SAXON: Thank you, your Honor. The motion
15 that the Defense is bringing is a motion to suppress
16 the search warrant for -- based on the incident
17 contained in the affidavit. We're basing this motion,
18 in part, on -- and I'll hand up the case law -- it's
19 *State versus Alex Robinson*, is the case, as well as --
20 as well as -- well, that's to one piece of it. The
21 other piece of the issue I have with the warrant is
22 based on a statute, and --

23 THE COURT: Do you have a copy of the warrant for
24 me?

25 MS. CONCANNON: I have an extra copy, your Honor.

STATE V. CHISOLM - PRETRIAL MOTIONS

1 THE COURT: Thank you. Thank you.

2 MS. CONCANNON: Yes, ma'am.

3 THE COURT: Okay. Ms. Saxon, I've had an
4 opportunity to go through the search warrant.

5 MS. SAXON: Thank you. And your Honor, I'm sorry,
6 before I go any further, I would make a motion to
7 sequester the State's witnesses.

8 MS. CONCANNON: I don't have an objection.

9 THE COURT: Okay. Are you a detective now, Ms.
10 Boland. Well, you've always been a detective, but what
11 is your title now?

12 MS. BOLAND: I'm a sergeant. I'm an investigator
13 with Criminal Investigations now.

14 THE COURT: Sergeant. Okay. I'll just want to
15 make sure I call you -- is Sergeant Boland the lead
16 officer?

17 MS. CONCANNON: She is the case officer, so we
18 would ask that she remain in the courtroom.

19 MS. SAXON: And we're fine with that, your Honor.

20 THE COURT: Okay. Of course. All right. Okay.

21 MS. SAXON: Thank you, your Honor. So, you had a
22 chance to review the search warrant, and I'm -- I'll go
23 into my arguments. I'm going to go one at a time and
24 try to take them slow, because it is a, I think, a
25 little bit confusing. It can get confusing, and that's

STATE V. CHISOLM - PRETRIAL MOTIONS

1 the last thing I want to do is confuse the Court or
2 myself or the State.

3 My first issue, your Honor, is overall sufficiency
4 of the affidavit. In a case where a C.I. is used, as
5 was in this case. There has to be something within the
6 four corners of the search warrant to attest to the
7 confidential informant's reliability and credibility, in
8 that there must be something to say -- to base the
9 veracity of the claim that he is credible or reliable.

10 That is what the Court has recently found in this
11 *State v. Robinson* case, that when a -- a search warrant
12 is invalid when the affidavit supporting it gave the
13 issuing judge no information as to the confidential
14 informant's reliability. Here, there is just broad
15 strokes. It is simply a rubber stamp that there is a
16 confidential, reliable informant. We know nothing else
17 about this informant. And while the State did charge my
18 client with sales and distribution charges, they're not
19 going forward on those. So, that ties my hands as an
20 inability to be able to find out more about this
21 confidential informant. I can't move forward on the
22 *State v. Diamond* motion, because the law, as it stands,
23 will not allow it.

24 I don't have anything outside of this affidavit in
25 this search warrant to challenge whether or not this

STATE V. CHISOLM - PRETRIAL MOTIONS

1 confidential source is, in fact, credible or reliable,
2 and we don't have anything in the four corners of the
3 search warrant to bolster that. We just have the
4 statement, a conclusion, that that person is, in fact,
5 confidential and reliable, with nothing else behind it.

6 At the end of the day, all we're left with is the
7 word of Sergeant Boland and the warrant, and nothing
8 more. *Robinson* says that that's not enough; that there
9 must be some extrinsic evidence given in the search
10 warrant to bolster the veracity of these claims.

11 THE COURT: Let me ask you, don't you think that it
12 bolsters the veracity that this confidential informant
13 was working under the direction and control of the
14 Beaufort/Jasper Multi-Agency Drug Task Force?

15 MS. SAXON: I don't, your Honor, because they would
16 all -- I mean, they could all be doing that. I would
17 say not they could be; they would all be working under
18 the direction and control of the Beaufort/Jasper Multi-
19 Agency Drug Task Force. They wouldn't be a confidential
20 informant on their own.

21 THE COURT: My question, though, becomes, is, they
22 go through and they -- she states in Paragraph 3 that:

23 *Under their direction, along with*
24 *undercover officers, they conducted a*
25 *surveillance and observed the reliable*

STATE V. CHISOLM - PRETRIAL MOTIONS

1 *confidential informant enter and exit the*
2 *front door, having the cocaine in their*
3 *possession after leaving the residence.*

4 It says:

5 *This transaction was monitored by the*
6 *members of the Beaufort/Jasper Multi-Agency*
7 *Drug Task Force, at the location.*

8 So, again, --

9 MS. SAXON: Right.

10 THE COURT: -- it is a controlled buy.

11 THE COURT: She has stated in the affidavit that
12 they watched the buy. They had people there. What more
13 do you want them to say in it?

14 MS. SAXON: Well, your Honor, having looked at
15 those videos and looked at that audio, they do not
16 actually watch the buy. The officers are in a car.
17 They see the confidential informant go into the
18 residence, and then come back out. They don't see what
19 occurs inside. In the audio, what occurs inside is so
20 garbled that I had trouble figuring out what's going on.
21 There are a number of people that were in the house at
22 that day. I can't tell who's talking about what, when
23 they're talking about it, or what's going on. So, that
24 becomes my problem in that, because there is nothing --
25 sure, they went in -- they're saying he went in, and he

STATE V. CHISOLM - PRETRIAL MOTIONS

1 came out and had cocaine in his pocket, but I don't know
2 what happened inside that.

3 I also don't know if the C.I. could be lying,
4 because I don't have any other information about him.
5 All I know is what is given to me in this warrant, and
6 what was given to me in the discovery on what the buys
7 were.

8 THE COURT: Okay. Do you want to answer that?

9 MS. CONCANNON: Yes. Thank you, your Honor. If I
10 may, *State v. Dupree*, and I have copies for the Court,
11 as well as the Defense, states that the controlled buy
12 was evidence of enough of the credibility of the
13 confidential informant. In this case, as your Honor
14 indicated, the buy was conducted under the control of
15 the Beaufort County Drug Task Force. They monitored the
16 buy. They watched the buy. They watched the C.I. enter
17 the residence. When he entered, he had no cocaine on
18 him. When he walked out of the residence, he had
19 cocaine on him. I think that bolsters his credibility
20 right there, along with the *State v. Dupree* case,
21 showing that a controlled buy is evidence enough, when
22 properly conducted, as this controlled buy was. That
23 gives probable cause for the search warrant. And we
24 feel that, because of that, the search warrant would be
25 valid. And I also have Sergeant Boland here if your

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1 Honor would like to hear her testimony.

2 THE COURT: I've got her affidavit, and that's the
3 only thing that I can consider. And I know she's been
4 doing this for years, so.

5 MS. SAXON: Your Honor, if I might respond briefly.

6 THE COURT: Yes, yes.

7 MS. SAXON: As far as that, what my response is
8 that, the *Robinson* case has come out since the *Dupree*
9 case. It's a 2014 case that specifically says, during a
10 controlled buy, which was controlled by members of a
11 Drug Task Force of a different county, they went back --
12 when the Appellate Court went back and looked at the
13 affidavit, and there was nothing in that affidavit that
14 included veracity or basis of knowledge of this person
15 having supplied prior information that helped the cops,
16 it wasn't enough. To just have that blanket,
17 confidential, and reliable source within the four
18 corners of the document as to the credibility of the
19 C.I. was not enough to bolster the warrant, even though
20 the buy was done properly, in a controlled circumstance.

21 THE COURT: It looks like, in this *Robinson* case,
22 that the person who was the informant wasn't the actual
23 person that bought the drugs. In looking at the facts
24 of this case, that's what it says. It says, in fact,
25 that someone else bought the drugs, and that the

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1 informant, Oliver, was down the street listening to
2 music. That's the facts of the *Robinson* case.

3 MS. SAXON: There was -- that's part of the facts,
4 your Honor, that he was in the -- he was in the vehicle
5 at the time that the purchase occurred, but he gave the
6 money to a third party.

7 THE COURT: Someone else that did.

8 MS. SAXON: Right.

9 THE COURT: Okay. Well, that's completely
10 different, and I understand, under that factual
11 scenario, possibly, why the Court said it wasn't valid.
12 But I think -- I think, in looking at this, I've read
13 the entire search warrant, I think the -- as far as that
14 as being an issue of stating that he went in, he did the
15 controlled buy; he went in and he came out; he came out
16 with the cocaine, this -- I can tell you, this search
17 warrant is adequate as to that issue. So, you need to
18 raise your second ground. And we need to go ahead and
19 make a copy of the search warrant as a court's exhibit
20 for this hearing, as well.

21 MS. CONCANNON: Yes, your Honor.

22 THE COURT: I just need an extra copy. Do you have
23 an extra copy?

24 MS. CONCANNON: I do, your Honor.

25 THE COURT: Just go ahead and mark it for Wanda.

STATE V. CHISOLM - PRETRIAL MOTIONS

1 COURT REPORTER: Yes, your Honor. Search warrant
2 marked Court's Exhibit 1.

3 DOCUMENT REFERRED TO AS COPY OF
4 SEARCH WARRANT DATED 5-16-2010 MARKED
5 COURT'S EXHIBIT NUMBER 1.

6 MS. SAXON: Thank you, your Honor. My other -- my
7 next issue about the search warrant, your Honor, are
8 that some of the probable cause relied on in here is not
9 as to my client, as is to another co-defendant, whose
10 charges have since been dismissed on trafficking. That
11 is what Paragraph 2 refers to. That is a controlled buy
12 that was done.

13 THE COURT: Little Jesus' brother.

14 MS. SAXON: Yes. Little brother. That was to a
15 controlled buy that was --

16 THE COURT: I called him Jesus' little brother,
17 sorry. I don't want to give him a name he doesn't have.

18 MS. SAXON: And then, the other is, in Paragraph 4,
19 your Honor, I felt that that was an improper
20 identification. Just as in any identification of a
21 suspect, the State is supposed to offer -- I mean, yeah,
22 the State is supposed to offer a six-pack lineup to see
23 if an informant or witness or any victim, or anyone can
24 pick that person out. They simply handed the
25 confidential informant a picture of Mr. Chisolm and

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1 said:

2 *Isn't this who you were just talking*
3 *to in there?*

4 I don't think that's a proper identification, and
5 therefore, I don't think it would pass as proper
6 probably cause to base the search warrant on. So, I
7 feel that those are two more problems.

8 THE COURT: Go ahead and answer about the search
9 warrant, Ms. Concannon.

10 MS. CONCANNON: Thank you, your Honor. The search
11 warrant was for [REDACTED]. That's where it
12 was executed. There was a sale from Cheese, as well as
13 from Cheese's little brother. The State contends Mr.
14 Chisolm is Cheese in this set of facts.

15 Again, we would look to the *Dupree* case, which says
16 that the controlled buy alone is enough to have probable
17 cause for the search warrant.

18 THE COURT: I do think it establishes enough
19 probable cause to issue the warrant. So, respectfully,
20 I'm going to deny your motion, based on those two
21 grounds. Okay.

22 MS. SAXON: Thank you, your Honor. The last issue
23 I have is with the error in the return.

24 THE COURT: I don't have the return, by the way.
25 It's not attached.

STATE V. CHISOLM - PRETRIAL MOTIONS

1 MS. CONCANNON: It's in the middle of the search
2 warrant.

3 THE COURT: Is it? Okay.

4 MS. CONCANNON: And then, it says:

5 *See attached inventory.*

6 THE COURT: Got it. Okay.

7 MS. SAXON: Your Honor, the search warrant was
8 originally issue by Judge J. Kline. The search warrant
9 return is signed by Judge Sproatt. In looking into this
10 issue, I've tried to find case law on point. It appears
11 to be something of a novel issue, though, as far as a
12 different judge actually signing the return. There has
13 been a lot of case law on the timing, saying that, if it
14 doesn't get back in the right time, then, it's not a big
15 deal, because that's just a kind of a situation that's a
16 little error. It's an administrative problem.

17 Your Honor, the Defense argues that not signing --
18 not having the issuing magistrate signed the return and
19 validate the return violates the statute and invalidates
20 the warrant. It is the Defense's position that the
21 return, in part, serves to make sure that the warrant
22 was properly served; that the items on the return are a
23 check against what was sought, so that you're not saying
24 that what was taken was outside the bounds of the search
25 warrant. Essentially, it keeps it -- it acts as a check

STATE V. CHISOLM - PRETRIAL MOTIONS

1 and a balance. And so, for a magistrate --

2 THE COURT: Why can't the judge that did the
3 return, then, just read what the original warrant said
4 and see against the inventory that is attached that it's
5 -- didn't exceed the boundaries of the search?

6 MS. SAXON: I can't speak to what a judge would or
7 wouldn't do. I'm just saying this law, the statute --
8 and I handed that up, your Honor -- requires that it be
9 returned to the issuing magistrate. And I believe the
10 State's argument would be that it's just an
11 administrative error. We feel that it is not; that it
12 is more, because of the statute clearly stating that it
13 must go to the issuing magistrate. There have been
14 cases, and I handed up one where there was a late
15 signing of the search warrant and return by a judge who
16 had actually issued it. In that case, they found that
17 the search -- and again, I say he had not signed the
18 search warrant until after it was served, as well as not
19 signing the return. And that case --

20 THE COURT: He did not sign the search warrant?

21 MS. SAXON: It's the one I handed up to you. It's
22 --

23 THE COURT: The judge did not sign the search
24 warrant before the search warrant was executed?

25 MS. SAXON: Well, he claims he did, but there was

STATE V. CHISOLM - PRETRIAL MOTIONS

1 never -- they couldn't find the original.

2 THE COURT: Okay. I can see that being
3 problematic.

4 MS. SAXON: Right.

5 THE COURT: But, okay.

6 MS. SAXON: And just -- I kind of -- it was
7 analogous to me, your Honor, in that, when there is an
8 uncompleted part of the search warrant, as per the
9 statute, especially where a judge's signature is
10 concerned, that it means that the search warrant is an
11 unfinished document, and therefore, not valid.

12 COURT REPORTER: I'm sorry. *Unfinished search*
13 *warrant?*

14 THE COURT: Unfinished document, therefore, not
15 valid, right?

16 MS. SAXON: Unfinished document. Correct.

17 THE COURT: All right. Ms. Concannon.

18 MS. CONCANNON: Thank you, your Honor.

19 Respectfully, I disagree with Ms. Saxon's view on the
20 warrants. Cases have held, and I would refer to my
21 motion that I filed with the Court that, even failure to
22 sign the return at all does not invalidate the warrant.
23 They would have to show prejudice to the defendant, and
24 we don't see any prejudice to Mr. Chisolm at all.

25 I might also refer to *State v. Wise*, which said

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1 that no signature was an administrative error. *State v.*
2 *Mollison*, that it said, no signature is ministerial in
3 nature, as well as *State v. Corns*. Failure to list the
4 marijuana in that case did not even invalidate the
5 warrant. In that case, the inventory wasn't even
6 complete, and the Court still held that that inventory
7 and return were sufficient, and that warrant was still
8 valid.

9 We feel that it was -- the return comes after the
10 fact. This warrant was issued by a neutral and detached
11 magistrate, and served in good faith by the officers of
12 the Beaufort County Sheriff's Office. In no way was Mr.
13 Chisolm prejudiced in the execution of the search
14 warrant. And we feel that failure to sign the return
15 alone does not invalidate this warrant.

16 THE COURT: All right. Well, I agree with you. I
17 have read your State argument, the State's argument, in
18 response to your return. I do think it's
19 administrative, certainly. And to hold otherwise would
20 invite, probably, a free-range shooting of magistrates
21 after there has been executed search warrants and the
22 significant amount of whatever found, and I can't
23 imagine our court endorsing that. So, I do think it's
24 purely administrative, and as a result, I am not going
25 to suppress the evidence found as a result of that.

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1 MS. SAXON: And your Honor, briefly, if I could
2 just, respect to your ruling.

3 THE COURT: Certainly.

4 MS. SAXON: Addressing the prejudice issue, it is
5 the position of the Defense that there is prejudice
6 automatically established, because he is facing
7 mandatory 25 years, minimum. That, in itself, is a
8 prejudice if things aren't done exactly and correctly as
9 prescribed by law. To say that it -- in the opinion of
10 the Defense, to say something was administrative, when
11 it is clearly laid out in the statute, and it's
12 completely -- the legislative intent behind that had to
13 be more than just putting it there, your Honor. So,
14 that's what we would feel, as that goes, and that the --

15 THE COURT: The prejudice is they found drugs in
16 the home. That's the prejudice to your client. And
17 again, that isn't a grounds to suppress the warrant.
18 So, again. If there was some way that the Court needed
19 to challenge the return, if there was some basis for
20 challenging the return as it being invalid or improper,
21 or not being within the warrant and what was searched.
22 I mean, you're not stating to me that there's anything
23 in that return that is questionable.

24 MS. SAXON: No, your Honor.

25 THE COURT: Okay. Because, I mean, I've read the

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1 return. Basically, it's the typical indicia of drug
2 dealing, and it's the typical letters, the house; it's
3 the guns; it's the scales; it's the drugs; it's U.S.
4 currency, and those types of things. So, again, I think
5 there potentially, I guess, could be cases where, when
6 you're concerned about what was found or if there were
7 an issue about the return or something that was found
8 and not found, and maybe lost in evidence, I can see
9 that being potentially prejudicial and in issue, but in
10 this case, I don't see that that is a problem here, so.

11 MS. SAXON: Certainly, your Honor. Your Honor, as
12 -- since the search warrant's allowed, the evidence is
13 not being suppressed, the Defense would merely ask that,
14 in the testimony, exclude the facts in the affidavit as
15 to the people alleged that were done against my client,
16 as those are not being pursued by the State, and would
17 essentially amount to a prior-bad-act-type issue, in my
18 opinion.

19 THE COURT: Ms. Concannon.

20 MS. CONCANNON: Your Honor, I didn't plan on
21 eliciting that testimony.

22 THE COURT: I can't imagine you would.

23 MS. SAXON: I just wanted to put it on the record.

24 THE COURT: Okay. Thank you. All right. Anything
25 else, Ms. Saxon, other than, apparently, we need to do a

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1 Denno hearing. Is that correct?

2 MS. SAXON: Correct, your Honor.

3 THE COURT: Okay. All right. Anything further?
4 We've already sequestered the witnesses. Let's go ahead
5 and do the *Jackson v. Denno*. If you'll call your first
6 witness.

7 JACKSON V. DENNO HEARING:

8 MS. CONCANNON: Thank you, your Honor. State calls
9 Corporal Squires.

10 THE COURT: Come on up, Corporal Squires.

11 MADAM CLERK: Will you please raise your right
12 hand, and place your left hand on the *Bible*.

13 WITNESS COMPLIES.

14 MADAM CLERK: Do you solemnly swear or affirm to
15 truthfully answer all the questions asked of you by this
16 Court, so help you God?

17 CORPORAL WILLIAM SQUIRES: Yes, ma'am, I do.

18 MADAM CLERK: Thank you. Please be seated, and
19 state and spell your name for the Court.

20 CORPORAL WILLIAM SQUIRES: My name is Corporal
21 William Squires with the Beaufort County Sheriff's
22 Office. That's W/i/l/l/i/a/m, S/q/u/i/r/e/s.

23 MS. CONCANNON: Thank you, your Honor.

24 CORPORAL WILLIAM SQUIRES

25 DIRECT EXAMINATION, BY MS. CONCANNON:

1 Q Corporal Squires, you mentioned you were employed
2 with the Sheriff's Office. In what capacity do you work
3 with the Sheriff's Office?

4 A I am a investigator, currently assigned to the drug
5 team.

6 Q Okay. What are some of your duties with the drug
7 team?

8 A We investigate people that sell drugs and use them,
9 also.

10 Q And were you working in that capacity on May 19,
11 2010?

12 A Yes. Yes, ma'am, I was.

13 Q And were you involved in the execution and follow-
14 up investigation of a search warrant that day?

15 A Yes, ma'am.

16 Q And did you respond to [REDACTED] in
17 Seabrook?

18 A Yes, ma'am.

19 Q And is that in Beaufort County?

20 A Yes.

21 Q Did you have an opportunity to speak with a suspect
22 by the name of Dwayne Chisolm?

23 A Yes.

24 Q Where did you speak with him?

25 A That was in the yard of the residence.

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1 Q And was this -- what date was this?

2 A It would have been on the 19th.

3 Q Do you know, roughly, what time this was?

4 A Probably shortly after 6:00, I want to say, around
5 30 in the morning.

6 Q Who was present during this questioning.

7 THE COURT: You said 6:30 in the morning?

8 CORPORAL WILLIAM SQUIRES: Yes, ma'am.

9 THE COURT: Thank you. I'm sorry.

10 BY MS. CONCANNON:

11 A It was Lieutenant Sankowski was present during the
12 questioning.

13 Q Did it appear to you that Mr. Chisolm was under the
14 influence of any alcohol or drugs at the time?

15 A No, ma'am.

16 Q Did he appear to have any mental defect that made
17 him incapable of understanding your discussions with
18 him?

19 A No, ma'am.

20 Q Was Mr. Chisolm under arrest at the time of these
21 statements?

22 A Yes.

23 Q Okay. What was he under arrest for?

24 A He had two active arrest warrants.

25 Q Were they in relation to the search of the house?

1 A They were in relation to the -- to the evidence
2 leading up to the search warrant, yes, ma'am.

3 Q Okay. But not from evidence found inside the
4 residence that day.

5 A No, ma'am.

6 Q Okay. Thank you. So, Mr. Chisolm wasn't free to
7 leave at any time during your questioning.

8 A No, ma'am.

9 THE COURT: Was this the two -- was this the two
10 warrants for the buys, the controlled buys, that were
11 done?

12 A Yes, your Honor, they were.

13 THE COURT: Thank you. Okay.

14 BY MS. CONCANNON:

15 Q Was Mr. Chisolm advised of the nature of the
16 investigation?

17 A Yes.

18 Q Okay. What did you tell him regarding your
19 speaking with him?

20 A We -- I advised Mr. Chisolm if I can talk to him in
21 regards to the incident leading up to the search warrant
22 and anything that might have been in the house during
23 the search of the residence.

24 Q And what was his response to that?

25 A After I read him his *Miranda*, he advised that he

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1 would talk to myself in regards to the incident.

2 Q Did you read him his *Miranda* from memory or from a
3 card?

4 A No, I read him a *Miranda* from a card that I keep in
5 my pocket. When we go --

6 Q Have you got it?

7 A Yes, ma'am.

8 Q Is that the card?

9 A This is not the exact card. We got new ones, but
10 it's the exact same stuff that's on the card.

11 Q Okay. Can you read, for the Court, what you read
12 Mr. Chisolm that morning.

13 STIPULATION, *MIRANDA*:

14 THE COURT: Could we just stipulate that it was
15 what it is, *Miranda* rights?

16 MS. SAXON: Yes, your Honor. We'll stipulate that
17 the *Miranda* rights are what they are.

18 THE COURT: Okay.

19 MS. CONCANNON: Thank you.

20 THE COURT: Thank you very much.

21 CORPORAL WILLIAM SQUIRES: Perfect. Thank you.

22 MS. CONCANNON: You don't read from that card.

23 BY MS. CONCANNON:

24 Q Did Mr. Chisolm acknowledge that he understood
25 those rights?

1 A Yes, ma'am.

2 Q Okay. He didn't appear to have any trouble
3 understanding those rights?

4 A No, not at all.

5 Q After reading those rights, did he agree to speak
6 with you?

7 A Yes.

8 Q Did you ever coerce Mr. Chisolm?

9 A No, not at all.

10 Q Was he ever threatened or promised anything in
11 exchange for the conversation?

12 A No.

13 Q Did he ever ask for an attorney?

14 A No.

15 Q At any point during the questioning, did he cease
16 speaking with you?

17 A Yes, at the very end.

18 Q Okay. Did you ask him any further questions after
19 he stopped speaking with you?

20 A No.

21 Q Okay. To the best of your knowledge, was Mr.
22 Chisolm's statement freely and voluntarily made?

23 A Yes.

24 Q What did Mr. Chisolm tell you that morning?

25 A In regards to the interview, Mr. Chisolm explained

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1 that everything inside the house was his. He explained
2 to me that he lives in the residence, I believe, with
3 his younger brother. He said -- there was money that
4 was found during the search warrant. He said that was
5 his. That was located in a shoe, I believe, on the left
6 side of the residence.

7 He also explained that all the property in the
8 residence is his. His name's on the lease; that he
9 rents it from the landlord. And at the end of the
10 interview, we actually walked his younger brother over
11 to him. He wanted to talk to his younger brother, and
12 he admitted that he was going to do the time for all the
13 drugs inside the residence.

14 He also admitted that there might be a small amount
15 of cocaine located in the residence, I believe, he said
16 on a chair.

17 MS. CONCANNON: Okay. Thank you. I have nothing
18 further for you right now, Corporal Squires.

19 A Thank you.

20 CORPORAL WILLIAM SQUIRES

21 CROSS-EXAMINATION, BY MS. SAXON:

22 Q Thank you, Corporal Squires. You were involved in
23 a task force, correct?

24 A At the time, yes.

25 Q And this was a no-knock search warrant.

1 A I believe so. I'm not exactly sure.

2 Q And per the search warrant, that meant that there
3 was a SWAT team that was with you, or some sort of
4 breach team, I guess, would be the right word?

5 A I believe so. Um-hmm.

6 Q Do you know how many people were there that day?

7 A No, ma'am. I sure don't.

8 Q Could you guess?

9 A The SWAT team had a lot of people on the team four
10 years ago. So, maybe, if I had to guess, 15.

11 Q Okay. So a fair number of officers in SWAT.

12 A That were there. And then, soon after the hit, a
13 lot of the members leave.

14 Q Okay.

15 A So, probably, during the time the defendant was
16 brought back, there might have been six to eight.

17 Q Okay. Okay.

18 A Um-hmm.

19 Q And you were all in -- SWAT officers that were
20 there were in their tack gear. Were you wearing
21 uniforms?

22 A No, but we have a -- we actually have a vest that
23 says *Sheriff* in yellow in front and on the back.

24 Q Okay.

25 A And we also wear our badges by our guns.

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1 Q Okay. And this interview isn't recorded, is it?

2 A No, ma'am.

3 Q And part of the reason is because you were on Drug
4 Task Force, correct?

5 A Correct.

6 Q And there are no recording devices in Drug Task
7 Force cars.

8 A No, ma'am, there's not.

9 Q Okay. And but, to your knowledge, there are
10 recording devices in other BCSO cars, correct?

11 A Yes, ma'am.

12 Q They just exempted the Drug Task Force cars,
13 correct?

14 A Yes.

15 MS. SAXON: Court's indulgence, your Honor.

16 THE COURT: Was Mr. Chisolm completely cooperative
17 with you?

18 CORPORAL WILLIAM SQUIRES: Yes, ma'am, he was.

19 BY MS. SAXON:

20 Q Corporal Squires -- and I know this was a while
21 ago, so, if you need your report, please let me know.

22 But would you say that, at some point during the
23 interview, that Mr. Chisolm indicated that the drugs in
24 the house belonged to his younger brother?

25 A He indicated partly that he admitted that he knew

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1 his younger brother was trying to sell drugs. But
2 towards the end of the interview, when we walked the
3 younger brother over to him, they kind of talked for a
4 brief second, and he told his younger brother he will do
5 the time for all the drugs in the house.

6 MS. SAXON: That's all I have, your Honor.

7 THE COURT: Okay.

8 MS. CONCANNON: I have nothing further.

9 THE COURT: All right. You may step down, sir.
10 Thank you.

11 CORPORAL WILLIAM SQUIRES: Thank you, your Honor.

12 THE COURT: You need to call anyone else?

13 MS. CONCANNON: No, your Honor. That was the
14 State's witness.

15 THE COURT: All right. Ms. Saxon.

16 MS. SAXON: Thank you, your Honor. As your Honor
17 is aware, for the statements to be admissible, they have
18 to not only -- if *Miranda* is available, they also have
19 to be voluntary. That has to be proven, as well as the
20 fact that there can't be any sort of coercion.
21 Generally, when we think of coercion, we think of overt
22 coercion. We think of, you know, maybe threats or
23 violence, or --

24 THE COURT: You're going to say that 15 people and,
25 thus, all swarming the house is coercion?

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1 MS. SAXON: Well, I was going to say that it made
2 an atmosphere, your Honor, that does lend itself to
3 coercion. You are surrounded by law enforcement
4 officers in tack gear and vests, carrying weapons, and
5 they're going to question you. You're standing in
6 handcuffs. That is a coercive environment in my -- your
7 Honor. I think that, that environment in itself
8 invalidates the voluntariness of the statement given.

9 Mr. Chisolm responded to questions asked, but I
10 don't think Mr. Chisolm felt he had a choice in that
11 situation. And I think part of the reason we can't
12 really know is because DTF doesn't have to have
13 recording devices in their cars. If they did, I think
14 this would not be as much of an issue going forward,
15 because we're left with defendants saying that's not how
16 it went down, and the DTF saying it is. And we have no
17 insight into it, since they've been exempted from the
18 recording requirement. So, your Honor, that's just our
19 stance on that.

20 THE COURT: Let me ask you, are there any recording
21 devices at the house?

22 MS. SAXON: The -- at -- you mean during the search
23 or?

24 THE COURT: I mean, did the Chisolms have any
25 recording devices on the outside of the house

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1 themselves?

2 MS. SAXON: No.

3 THE COURT: Any type of security?

4 MS. SAXON: No, your Honor. No.

5 THE COURT: Okay. Just asking.

6 MS. SAXON: No, it was just a small trailer off of
7 Seabrook Road, so.

8 THE COURT: Okay. All right.

9 MS. CONCANNON: Very briefly, your Honor. Corporal
10 Squires testified that, during the questioning of Mr.
11 Chisolm, it was himself and Sankowski who were actually
12 involved in the questioning. The search warrant was
13 actually being executed at this time, so the State would
14 contend that the majority of those people were inside
15 during the questioning. He was *Mirandized*. He was
16 properly *Mirandized* from the card that Corporal Squires
17 brought to court, and we feel that his statement was
18 freely and voluntarily given after he was advised of his
19 rights. And when he didn't want to talk anymore, he
20 stopped talking, and they didn't ask him anymore
21 questions.

22 THE COURT: Is that correct?

23 MS. SAXON: I'm sorry, your Honor, yes, that --
24 when he said he didn't want to talk anymore --

25 COURT REPORTER: I'm sorry. *When he said he didn't*

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1 *want to talk anymore, the?*

2 MS. SAXON: Conversation did end. Sorry.

3 THE COURT: Okay. We'll just keep reminding
4 everyone to finish their sentences. All right. I do
5 think that the statement was given freely and
6 voluntarily. You all shut the door back there. Norman,
7 just shut the door. Tell me, were any offers made in
8 this case?

9 MS. CONCANNON: Yes, your Honor.

10 THE COURT: To any lesser includeds or to what?

11 MS. CONCANNON: There was --

12 THE COURT: Because this carries a mandatory
13 minimum of 25 years, correct?

14 MS. CONCANNON: We are very aware of that. Yes,
15 your Honor.

16 THE COURT: And what's Mr. Chisolm's prior record?

17 MS. CONCANNON: His prior record, he does have
18 prior drug offenses on his record, your Honor, for
19 selling. I believe it's two counts of sale of cocaine.

20 THE COURT: So, are you treating this as a second
21 for him?

22 MS. CONCANNON: Not for the trafficking.

23 MS. SAXON: Not for the trafficking, your Honor.

24 MS. CONCANNON: Because it's -- there is no
25 subsequent for this level of trafficking.

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1 THE COURT: Okay.

2 MS. CONCANNON: We did offer to reduce it to the
3 lower-level trafficking, which is a -- I believe,
4 carries seven to twenty-five years.

5 THE COURT: So, that's the 100 -- I'm sorry, the 28
6 to 100.

7 MS. SAXON: Correct, your Honor.

8 THE COURT: Okay.

9 THE COURT: On a straight-up plea, or what?

10 MS. CONCANNON: Well, we had offered -- originally,
11 it was an offer for 15 years.

12 THE COURT: Okay.

13 MS. CONCANNON: And then, it came down to twelve
14 years, and Mr. Chisolm was not inclined to accept that
15 offer, and we got word from Ms. Saxon that he was
16 inclined to accept something in the range of three to
17 four years, and the State wasn't prepared to offer that.

18 THE COURT: Couldn't do that. Okay. How old is
19 Mr. Chisolm?

20 MS. SAXON: Thirty-seven, your Honor.

21 MR. BAX: Thirty-seven, your Honor.

22 THE COURT: Thirty-seven. Give me a second. And
23 he's going to do 85 percent of this, correct?

24 MS. SAXON: Correct, your Honor.

25 MR. BAX: That's correct.

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1 THE COURT: And he would do 85 percent of anything,
2 even on the trafficking, 28 to 100, correct?

3 MS. SAXON: Correct, your Honor.

4 MR. BAX: The only one he doesn't do eighty-five
5 percent on is the three to ten, which is the base level,
6 only because it doesn't carry a potential of twenty or
7 more.

8 THE COURT: Got it.

9 MR. BAX: Everything else is 85 percent.

10 THE COURT: Okay.

11 MS. CONCANNON: And your Honor, he does have a
12 prior record that extends beyond those drug convictions,
13 if you would like that, for your own information.

14 THE COURT: Sure.

15 MS. CONCANNON: In 1994, he has a shoplifting. In
16 '95, failure to stop for a blue light. 1996, possession
17 of marijuana, and driving under suspension. 2000, two
18 counts of criminal domestic violence, first offense, and
19 for possession of drug paraphernalia. 2006, simple
20 assault, improper use of vehicle, driving too fast for
21 conditions, as well as failure to stop for a blue light.
22 2007, PWID cocaine, times two. He, in fact, received a
23 three-year sentence in the Department of Corrections for
24 those two charges. And in Georgia, he has a 2002 simple
25 battery to a family member.

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1 COURT REPORTER: *Simple battery* to?

2 MS. CONCANNON: Family member.

3 THE COURT: All right. Do you need to talk to me?

4 MS. SAXON: Yeah, just briefly, your Honor.

5 THE COURT: Certainly. Come on up.

6 OFF-THE-RECORD BENCH CONFERENCE, OUT
7 OF PRESENCE OF JURORS. PRESENT: THE
8 COURT, MS. CONCANNON, MS. KEENEY,
9 MS. SAXON, MR. BAX.

10 END BENCH CONFERENCE.

11 THE COURT: Okay. Okay. Just for the record, we
12 were talking about scheduling in this case. My
13 understanding is, the State has six witnesses. The jury
14 is going to be here at 10:30. We're going to pull this
15 jury. We've already done pretrial, so we are going to
16 go straight into opening arguments. If you have a
17 witness or two here, and it's not 1:00 o'clock yet, Ms.
18 Concannon, I would love to put them up, even before
19 lunch, if that's possible. I know you're shooting an
20 email. They're expected to come around noon, but if you
21 have some right here, fine. We'll go ahead and put a
22 witness up if it's not 1:00 o'clock yet. If you don't,
23 we'll break for lunch then.

24 MS. CONCANNON: Okay.

25 THE COURT: And then, we'll come back, and that

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1 should give you an adequate amount of time to get some
2 witnesses here. Okay? And I think, Ms. Saxon, you need
3 to put on the record some issues...

4 MS. SAXON: I do, your Honor...

5 THE COURT: Yes.

6 MS. SAXON: Thank you. And we approached to talk
7 about this briefly, your Honor. There was some
8 information given to me by Mr. Chisolm about his desire
9 to possibly have David Greene, who is a co-defendant in
10 this matter, testify. Unfortunately --

11 THE COURT: Is that his brother?

12 MS. SAXON: Yes, that is his younger brother.

13 THE COURT: And you say he's a co-defendant. What
14 was he charged with?

15 MS. SAXON: He was charged with exactly the same
16 charges, your Honor, and he ended up pleading to, I
17 believe, just the PWID charge for five years, suspended
18 to time served and three years' probation.

19 THE COURT: Okay.

20 MS. SAXON: If my recollection is correct. And
21 some of the other charges were nolle prossed. All the
22 other charges were nolle prossed.

23 COURT REPORTER: I'm sorry. And charged with what
24 else?

25 MS. SAXON: The trafficking charge was nolle

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1 crossed, as were all of the other charges.

2 THE COURT: Okay.

3 MS. SAXON: My apologies.

4 THE COURT: Okay. And my understanding is, you
5 were not provided with a phone number, a location, or
6 anywhere where David Greene is. Is that correct?

7 MS. SAXON: Correct. We know he is in an area in
8 West Virginia. We had talked with Mr. Chisolm about the
9 possibility of finding someone who had that information.
10 Unfortunately, it was not something we were going to be
11 able to do in the time period we had. It is something
12 that we would ask continuance for on that matter, as it
13 could be -- as it was a witness that the Defense was
14 considering calling. But again, we haven't had a chance
15 to discuss it with Mr. Greene, because we haven't been
16 able to locate him.

17 THE COURT: And when did your client tell you that
18 he wished that he would testify?

19 MS. SAXON: He brought it up to me about -- the
20 first time a couple of weeks ago.

21 COURT REPORTER: *A couple of weeks ago?*

22 MS. SAXON: A couple weeks ago.

23 THE COURT: And again, his brother, David Greene,
24 has pled to just the possession with intent to
25 distribute charge. All the other ones were nolle

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1 crossed, based on he took responsibility for those
2 drugs. Is that correct?

3 MS. SAXON: Correct, your Honor.

4 THE COURT: And this Mr. Chisolm, Dwayne Chisolm,
5 who is on trial, by a statement through Corporal
6 Squires, stated that he took responsibility, to him, in
7 a statement, for everything else. Is that correct?

8 MS. SAXON: Correct.

9 THE COURT: Okay. All right. Well, I'm
10 respectfully denying your motion. Again, without you
11 being provided a phone number and address, or anywhere
12 to go locate this person, I don't know how you find
13 someone that is out and about. So, again, out-of-state.
14 Okay. All right. I don't think you have to say
15 anything, Ms. Concannon.

16 MS. SAXON: I was just going to hand up Defendant's
17 proposal voir dire.

18 THE COURT: Okay. And make sure you give Ms.
19 Concannon a copy.

20 MS. CONCANNON: I do have a copy, and I have no
21 objection to hers, and the State has no specific voir
22 dire.

23 THE COURT: Okay.

24 MS. CONCANNON: Your Honor, just for the Court's
25 information, the State is planning to elicit testimony

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1 from two experts: one, the chemist who tested the
2 drugs; as well as Master Sergeant Florencio, with the
3 Sheriff's Office. We're going to attempt to qualify him
4 as an expert in illicit drug trade practices. Prior to
5 his testimony in front of the jury, I believe that Ms.
6 Saxon would like to proffer his testimony outside the
7 presence of the jury.

8 THE COURT: Okay.

9 MS. CONCANNON: And we're prepared to offer that
10 this afternoon, right before he testifies.

11 THE COURT: Okay. I appreciate that. Is that
12 going to the -- or to prove the element of trafficking
13 in those drugs?

14 MS. CONCANNON: As well as the sale. He's charged
15 with distribution -- or PWID crack cocaine. It was over
16 a gram. It was 3.3 grams, but we also have to prove
17 that he intended to distribute that crack cocaine.

18 THE COURT: Okay.

19 MS. CONCANNON: And so, we were hoping to use
20 Master Sergeant Florencio's testimony to help explain to
21 the jury items that were found in the residence and how
22 they are associated with the drug trade.

23 THE COURT: Okay. So, just so I'm clear, the
24 charges we're going forward on today in front of this
25 jury are trafficking, and correct me if I'm wrong, it's

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1 in crack cocaine or cocaine?

2 MS. CONCANNON: The trafficking is cocaine.

3 THE COURT: Trafficking in cocaine, 100 to 200
4 grams; possession with intent to distribute crack
5 cocaine; possession of a weapon during the commission of
6 a violent crime, correct?

7 MS. CONCANNON: Correct, your Honor.

8 THE COURT: And possession of a firearm with an
9 obliterated serial number. Am I correct, those four
10 charges? Just so we're all were on the same page. Yes.

11 MS. CONCANNON: Correct, your Honor.

12 THE COURT: Okay.

13 MS. CONCANNON: And your Honor, I have the true
14 bill indictments I'll pass it up after we call the jury.

15 THE COURT: Okay. I think you want to go ahead and
16 just, when the jury comes in, I'm going to have you call
17 the case in front of them, and have them passed up, if
18 you would. Okay. Okay. All right. I know we're still
19 waiting on the jury panel across the hall. You all need
20 a break real quick?

21 MS. SAXON: I actually need to put something else
22 on the record, your Honor.

23 THE COURT: Certainly.

24 MS. SAXON: Co-counsel here reminded me to look at
25 my notes again. I don't expect this to happen, but just

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1 to preserve the record, your Honor, during the interview
2 with Mr. Chisolm, there were statements made by Corporal
3 Squires that he knew that he was just out of prison for
4 selling drugs and was back into it. We would just ask
5 that those comments not be elicited on testimony, as
6 well as the comments about Mr. Chisolm's history of
7 cocaine use. They're totally irrelevant to the charges.

8 MS. CONCANNON: Corporal Squires knows to not
9 mention that on the record.

10 THE COURT: Okay.

11 MS. CONCANNON: And I will not be asking questions
12 regarding that, as well.

13 THE COURT: You all, let's just go ahead and take
14 about three or four minutes. Let's make sure they're
15 getting all the jurors in, and then, we'll bring them in
16 here. And we're good to go with Mr. Chisolm. He looks
17 fine. I just want to make sure everything is good.

18 MS. CONCANNON: Your Honor?

19 THE COURT: Yes.

20 MS. CONCANNON: Briefly, if I could, regarding the
21 scheduling.

22 THE COURT: Yes.

23 MS. CONCANNON: We have Corporal Squires picking up
24 the evidence. There is a lot of evidence in this case.

25 THE COURT: Okay.

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1 MS. CONCANNON: And it has yet to be pre-marked.
2 I was hoping that we could do jury openings, put up
3 my first witness, and then maybe break for lunch and
4 mark --

5 THE COURT: To pre-mark everything?

6 MS. CONCANNON: Yes.

7 THE COURT: And that way you have a chance, Ms.
8 Saxon, to go through it, as well. I think that's a
9 fantastic idea. Thank you.

10 MS. CONCANNON: Thank you.

11 THE COURT: Okay.. Perfect. That would be
12 wonderful. Okay. So, we'll be at ease for just, you
13 all, three or four minutes. Okay?

14 MS. SAXON: Thank you, your Honor.

15 THE COURT: Thank you.

16 OFF THE RECORD 10:31 A.M.

17 BACK ON THE RECORD 10:51 A.M.

18 VOIR DIRE, BY THE COURT:

19 BAILIFF: All rise. Court is now in session, the
20 Honorable Carmen Mullen presiding.

21 THE COURT: Thank you all. Please be seated.

22 JURORS ENTER COURTROOM 10:51 A.M.

23 THE COURT: Good morning, ladies and gentlemen.

24 RESPONSES FROM JURORS.

25 THE COURT: Thank you for returning. I appreciate

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1 it. Ladies and gentlemen, at this time, we are going to
2 go ahead and pull a jury for a trial that, my
3 understanding, will be completed by tomorrow, at the
4 latest. Is that correct?

5 MS. CONCANNON: That's correct, your Honor.

6 THE COURT: All right. Do you want to go ahead and
7 call your case, Ms. Concannon?

8 MS. CONCANNON: Thank you, your Honor. State calls
9 Dwayne Chisolm on Indictment 2010-GS-07-01251,
10 trafficking cocaine; 2010-GS-07-01252, possession with
11 intent to distribute crack cocaine; 2010-GS-07-01253,
12 possession of a weapon during the commission of a
13 violent crime; and 2010-GS-07-01254, possession of a
14 firearm with an obliterated serial number.

15 THE COURT: Thank you. Ladies and gentlemen, I
16 remind you, under the oath you took on Monday, if you
17 need to respond to one of these questions, if you would
18 simply stand, give me your name and juror number, and
19 then respond to the question as is appropriate. All
20 right?

21 And as I'm sure you understand, now that the case
22 has been called, we are about to pull the jury in the
23 case entitled the State versus Dwayne Chisolm, who is
24 charged in the Bill of Indictments, as the Solicitor
25 stated, with trafficking in cocaine, 100 to 200 grams;

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1 possession with intent to distribute crack cocaine;
2 possession of a weapon during the commission of a
3 violent crime; and possession of a firearm with an
4 obliterated serial number.

5 Ladies and gentlemen, I'm going to ask the
6 attorneys in this case that are going to be here to
7 introduce themselves, and anyone that may be sitting at
8 the table with them, and also, any parties involves.
9 Ms. Concannon?

10 MS. CONCANNON: Thank you, your Honor. Good
11 morning. I'm Mary Concannon, and I work for the
12 Solicitor's Office as an assistant solicitor here in
13 Beaufort County. Seated with me for the duration of the
14 trial is Julie Kate Kenney. She's also an assistant
15 solicitor for Beaufort County, as well as Sergeant Angie
16 Boland, who is with the Beaufort County Sheriff's
17 Office. Thank you.

18 THE COURT: Thank you. Ms. Saxon?

19 MS. SAXON: Thank you. Hello, my name is Jessica
20 Saxon, and I am an assistant public defender here in
21 Beaufort County. Seated with me is Mr. Ari Bax, also
22 with the Public Defender's Office. And together, we
23 represent Mr. Dwayne Chisolm.

24 THE COURT: Thank you. Ladies and gentlemen, I'm
25 going to ask you a number of questions, much like we did

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1 in the other cases. Again, the first question is, is
2 there any member of the jury panel related by blood,
3 connected by marriage, or have a close, personal
4 friendship or relationship with the attorneys trying
5 this case?

6 Again, you've been introduced to them. We've got
7 Ms. Concannon, Ms. Kenney. We've got Ms. Saxon and Mr.
8 Bax. Is there anyone that needs to respond to this
9 question? If so, please stand.

10 Additionally, has anyone ever been prosecuted by or
11 represented by any of these attorneys, or employed at
12 any of their offices? If so, please stand.

13 Additionally, ladies and gentlemen, you have been
14 introduced to the defendant in this case, Mr. Dwayne
15 Chisolm. Is there any member of the jury panel related
16 by blood or connected by marriage with Mr. Chisolm? If
17 so, please stand.

18 Additionally, ladies and gentlemen, is there any
19 member of the jury panel that has a close, personal or
20 social relationship or professional relationship with
21 Mr. Chisolm? If so, please stand.

22 Ladies and gentlemen, the following is a list of
23 potential witnesses in this case, and if these people
24 are here, I'm going to ask, simply, that they stand and
25 face the panel. To begin, again, I know you've been

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1 introduced, we have Angie Boland, from the Beaufort
2 County Sheriff's Office. Thank you. William Squires,
3 also with the Beaufort County Sheriff's Office. John --
4 is it Keough?

5 MS. CONCANNON: Yes, your Honor.

6 THE COURT: John Keough of the Beaufort County
7 Sheriff's Office. Renita Berry of the Beaufort County
8 Sheriff's Office. Andres Florencio of the Beaufort
9 County Sheriff's Office; and Walker Michaud, also of the
10 Beaufort County Sheriff's Office.

11 Ladies and gentlemen, again, the question is, are
12 you related by blood, connected by marriage, or have a
13 close, personal relationship or special friendship with
14 any of these potential witnesses? If so, please stand.

15 Ladies and gentlemen, it is alleged in this case
16 that this occurred some time around May 19th of 2010 on
17 Seabrook, here in Beaufort County. And I apologize, I
18 am looking for an address. Do you have the address of
19 the Seabrook?

20 MS. CONCANNON: Yes, your Honor. It's [REDACTED]
[REDACTED]

22 THE COURT: Thank you. Ladies and gentlemen, is
23 there any member of the jury panel that has any
24 independent knowledge about this case, or have any
25 particular familiarity with [REDACTED] -- is it

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1 Garrett Small or Garrett Road?

2 MS. CONCANNON: Garrett Small.

3 THE COURT: Garrett Small Road, in Seabrook Island,
4 in Beaufort County? If so, please stand.

5 Ladies and gentlemen, has any member of the jury
6 panel read, seen, or heard anything about this case? If
7 so, please stand.

8 BAILIFF JONES: Your Honor, can I approach a
9 second?

10 THE COURT: Yes, sir.

11 OFF-THE-RECORD DISCUSSION. PRESENT: THE
12 COURT AND BAILIFF NORMAN JONES.

13 BACK ON THE RECORD.

14 THE COURT: Ladies and gentlemen, is any member of
15 the jury panel related by blood or connected by marriage
16 to someone who is or who has been employed by any law
17 enforcement agency, either civilian or military? If so,
18 please stand.

19 And again, ladies and gentlemen, I think we can
20 maybe open that question up a little bit. This would
21 also include yourself. If you ever, or in the past,
22 have been employed, either by a civilian or a military
23 law enforcement agency, or any member of your immediate
24 family.

25 Thank you. Sir, again, your name and juror number?

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1 JUROR NUMBER 221: 221, Bradford Knox.

2 THE COURT: Yes, sir. You, in the past were.

3 JUROR NUMBER 221: Multiple. My brother worked for
4 a law enforcement agency, Hardeeville Police Department.
5 I worked for Sea Pines Security; Jasper County Sheriff's
6 Department at one time; Hardeeville Police Department as
7 a dispatcher at one time.

8 THE COURT: Okay. All right, Mr. Knox, I
9 appreciate that. You may be seated. And again, give me
10 your number, for the record.

11 JUROR NUMBER 221: 221.

12 THE COURT: Thank you, Mr. Knox. You may be
13 seated. Sir, your name and juror number.

14 JUROR NUMBER 444: Norman Witmer, Juror Number 444.

15 THE COURT: Yes, Mr. Witmer.

16 JUROR NUMBER 444: Chief Criminal Investigator.

17 THE COURT: You were?

18 JUROR NUMBER 444: Before I retired.

19 THE COURT: You were?

20 JUROR NUMBER 444: Yes.

21 THE COURT: All right. When did you retire, sir?

22 JUROR NUMBER 444: I retired in 1991.

23 THE COURT: Where were you an investigator?

24 JUROR NUMBER 444: The Air Station, and also,
25 Parris Island.

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

3 Ma'am, your name and juror number.

4 JUROR NUMBER 66: My name is Vera Hamilton-Chapman.
5 My number is 66. My family member here is Alfredo
6 Givens, and also George Chapman. In other words --

7 THE COURT: Okay. I'm sorry. What are their
8 relation to you again? I apologize.

9 JUROR NUMBER 66: Alfredo Givens, we are first
10 cousins.

11 THE COURT: You are first cousins. And then, what
12 about George Chapman?

13 JUROR NUMBER 66: My brother-in-law.

14 THE COURT: Your brother-in-law.

15 JUROR NUMBER 66: Yes.

16 THE COURT: Okay. All right. I'm going to start
17 right here with you, sir. Your name and juror number.

18 JUROR NUMBER 292: 292.

19 THE COURT: Yes, sir.

20 JUROR NUMBER 292: Howard Mufuka.

21 THE COURT: Okay.

22 JUROR NUMBER 292: My nephew in Florida.

23 COURT REPORTER: *My nephew in Florida?*

24 THE COURT: Is in law enforcement?

25 JUROR NUMBER 292: Yes.

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1 THE COURT: Okay. What does he do for law
2 enforcement?

3 JUROR NUMBER 292: And he was in the military. He
4 was in the military.

5 THE COURT: He was in military. Okay. And he was
6 in law enforcement in the military.

7 JUROR NUMBER 292: That's correct.

8 THE COURT: Thank you, sir. You may be seated.
9 Yes, ma'am.

10 JUROR NUMBER 11: Barbara Anderson, Number 11.

11 THE COURT: Yes.

12 JUROR NUMBER 11: My husband was in the Marines.

13 THE COURT: Okay. Thank you, ma'am. You may be
14 seated. Ma'am.

15 JUROR NUMBER 225: Juror Number 225, Suzanne Lange.
16 My brother-in-law was a New York City police detective.

17 THE COURT: Thank you. You may be seated. Yes,
18 ma'am.

19 JUROR NUMBER 226: Dusty Lanning, 226. My recently
20 ex-brother-in-law, Michael Jennings, is a police officer
21 here for Beaufort.

22 THE COURT: Your ex-brother-in-law?

23 JUROR NUMBER 226: As of a year.

24 THE COURT: As of one year. Let me ask you, the
25 fact that this case was brought by the Beaufort County

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1 Sheriff's Office, can you be fair and impartial in the
2 trial of this case?

3 JUROR NUMBER 226: I believe so. Yes, ma'am.

4 THE COURT: Okay. Thank you. All right. Sir?

5 JUROR NUMBER 376: Yes, ma'am. 376, Julius
6 Sinclair. I have a cousin that's a highway patrolman..

7 THE COURT: Okay. Where is your cousin a highway
8 patrolman?

9 JUROR NUMBER 376: Hampton County.

10 THE COURT: Thank you, sir. I appreciate it. You
11 may be seated.

12 Yes, ma'am, right up here in the front.

13 JUROR NUMBER 270: Okay. I have a first cousin in
14 Screven County that's a sheriff, and my ex-husband is
15 retired Army.

16 THE COURT: Okay. And I'm sorry, in what county?

17 JUROR NUMBER 270: Screven County.

18 THE COURT: Screven County. Okay. Thank you.

19 JUROR NUMBER 270: Georgia.

20 THE COURT: Georgia.

21 JUROR NUMBER 270: And 270.

22 THE COURT: Thank you. Sir.

23 JUROR NUMBER 413: Rich Timbo, 413. My cousin is a
24 police sergeant in New York City.

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

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1 JUROR NUMBER 430: Sasha Washington, 430.

2 THE COURT: Yes, ma'am.

3 JUROR NUMBER 430: My stepmother's brother-in-law
4 works at Beaufort County Sheriff's Department. His last
5 name is Drake.

6 THE COURT: Your stepmother's brother-in-law.

7 JUROR NUMBER 430: Yeah.

8 THE COURT: All right. That's okay. I was just
9 trying to do the family tree. Ma'am?

10 JUROR NUMBER 430: Yes.

11 THE COURT: Would that affect your ability to be
12 fair and impartial in the trial of this case?

13 JUROR NUMBER 430: No, ma'am.

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

16 Ladies and gentlemen, has any member of the jury
17 panel or any member of your immediate family ever worked
18 at a Solicitor's Office or the Attorney General's
19 Office? If so, please stand.

20 Ladies and gentlemen, does any member of the jury
21 panel contribute to, or you are a member of any
22 organization whose primary purpose is the support of law
23 enforcement or victims' rights? And that would include
24 such groups as CODA, Citizens Opposed to Domestic Abuse;
25 MADD, Mothers Against Drunk Driving; or anything like

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1 CAVE. Again, ladies and gentlemen, is there any member
2 of the jury panel who is a member of or contributor to
3 any of those types of groups? If so, please stand.

4 Ladies and gentlemen, has any member of the jury
5 panel or a member of their immediate family ever been
6 accused of or a victim of a violent crime? If so,
7 please stand?

8 Ma'am, again, for the record, I apologize, are you
9 comfortable stating it there?

10 JUROR NUMBER 1: Sure.

11 THE COURT: Your name and juror number.

12 JUROR NUMBER 1: Suzanne Aaker, Juror Number 1.

13 THE COURT: Yes, ma'am.

14 JUROR NUMBER 1: I was a victim of armed robbery
15 and assault and car theft, and it was drug-related.

16 THE COURT: Okay. Thank you, ma'am. I want you to
17 come talk to me for a second, if you don't mind. So,
18 while you're walking around, I'm going to ask these two
19 other people questions.

20 Ma'am, your name and juror number.

21 JUROR NUMBER 31: Nidia Bess, Number 31. Not that
22 it's applicable, but my personal home was robbed four
23 years ago, and my weapons were stolen.

24 THE COURT: Okay. Thank you.

25 JUROR NUMBER 31: I have not retrieved one of them.

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1 THE COURT: Okay. All right. Ma'am, I'm going to
2 have you come around and talk to me, as well, if you
3 would. Mr. Knox.

4 JUROR NUMBER 221: Yes. My -- I spoke to you the
5 other day. My brother was victim of assault and
6 battery.

7 THE COURT: Yes. And I apologize. I didn't mean
8 to make you say it there, if necessary.

9 JUROR NUMBER 221: That's fine.

10 THE COURT: Sir, can you be fair and impartial in
11 the trial of this case?

12 JUROR NUMBER 221: Oh, absolutely.

13 THE COURT: All right.

14 JUROR NUMBER 221: Also, my -- my son is currently
15 incarcerated for a -- like, a sexual crime.

16 THE COURT: Okay. Okay.

17 JUROR NUMBER 221: He's mentally -- mentally
18 handicapped, and he's currently in a mental facility.

19 THE COURT: Okay.

20 JUROR NUMBER 221: I don't even know the name of
21 it.

22 THE COURT: Okay.

23 JUROR NUMBER 221: I'm sorry, but.

24 THE COURT: Okay. That's all right, Mr. Knox. I
25 want to make sure you can be fair and impartial in the

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1 trial of this case.

2 JUROR NUMBER 221: Oh, yes.

3 THE COURT: Okay.

4 JUROR NUMBER 221: It has nothing to do with this.

5 THE COURT: Okay. All right. I'm going to invite
6 the attorneys to come up.

7 ON-THE-RECORD BENCH CONFERENCE, OUT
8 OF HEARING OF JURORS. PRESENT: THE
9 COURT, JUROR NUMBER 1, MS. CONCANNON,
10 MS. KENNEY, MS. SAXON, MR. BAX:

11 THE COURT: How are you? Good to see you again. I
12 want to know from you, Ms. Aaker, you mentioned, though,
13 because of drug involvement, a drug robbery case,
14 cocaine specifically.

15 JUROR NUMBER 1: Yeah, cocaine.

16 THE COURT: You understand what the charges are in
17 this case.

18 JUROR NUMBER 1: Um-hmm.

19 THE COURT: I need to know whether or not you can
20 be fair and impartial because of the allegations and the
21 type of case this is. Because it is charges, you know,
22 is a drug case, and also charges with firearms. And do
23 you feel comfortable hearing that?

24 JUROR NUMBER 1: Honestly, no.

25 THE COURT: Okay. I just --

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1 JUROR NUMBER 1: It just brings a lot back.

2 THE COURT: I understand that, and I just was
3 worried about you. All right. Ms. Aaker, I'm going to
4 go ahead and excuse you from the trial of this case, and
5 I'm going to excuse you for the rest of the week, but I
6 appreciate you being here.

7 JUROR NUMBER 1: Again, I'm sorry.

8 THE COURT: No, you're absolutely fine. All right?

9 END BENCH CONFERENCE.

10 THE COURT: Ms. Aaker, Number 1, is excused.

11 BAILIFF: Juror Number 31, your Honor.

12 ON-THE-RECORD BENCH CONFERENCE, OUT
13 OF HEARING OF JURORS. PRESENT: THE
14 COURT, JUROR NUMBER 31, MS. CONCANNON,
15 MS. KENNEY, MS. SAXON, MR. BAX:

16 THE COURT: How are you? Good to see you.

17 JUROR NUMBER 31: Pleasure, ma'am.

18 THE COURT: All right, Ms. Best. I wanted to make
19 sure, you said that your house had been burglarized.

20 JUROR NUMBER 31: Um-hmm.

21 THE COURT: And that you had some weapons that had
22 been stolen that you never recovered.

23 JUROR NUMBER 31: That is correct, not recovered.
24 One firearm is still in the possession of the Sheriff's
25 Office.

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1 THE COURT: Okay.

2 JUROR NUMBER 31: The trial -- I don't know. They
3 just said that once --

4 THE COURT: Okay.

5 JUROR NUMBER 31: -- everything was over and done
6 with, my second weapon is returned to me.

7 THE COURT: Okay. My question is this. You
8 understand the charges in this case.

9 JUROR NUMBER 31: Um-hmm.

10 THE COURT: It's a alleged drug trafficking, along
11 with a charge of possession of a weapon, and also
12 possession of a weapon with an obliterated serial
13 number. Based on that, can you be fair and impartial in
14 the trial of this case?

15 JUROR NUMBER 31: To be honest with you, not
16 really.

17 THE COURT: And you mentioned it, which is why I
18 was concerned about you.

19 JUROR NUMBER 31: Yeah.

20 THE COURT: So, anyway.

21 JUROR NUMBER 31: My second weapon was found on a
22 school grounds in North Carolina.

23 THE COURT: Okay.

24 COURT REPORTER: Found where?

25 THE COURT: She said her second firearm was found

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1 on the school grounds in North Carolina, so.

2 JUROR NUMBER 31: So, I'm not sure I'd be
3 impartial.

4 THE COURT: Okay. Ms. Best, I'm going to excuse
5 you from the trial of this case, and I'm also going to
6 excuse you from trial this week. You're done with jury
7 duty. Okay?

8 JUROR NUMBER 31: Thank you, ma'am.

9 END BENCH CONFERENCE.

10 THE COURT: Number 31, Ms. Best, is excused. Okay?
11 Could I talk to the attorneys really quick.

12 ON-THE-RECORD BENCH CONFERENCE, OUT
13 OF HEARING OF JURORS. PRESENT: THE
14 COURT, MS. CONCANNON, MS. KENNEY, MS.
15 SAXON, MR. BAX:

16 THE COURT: Is his relation to Chapman?

17 MR. BAX: Your Honor, is that chaplain the former
18 C.O. chaplain, or is that Chapman -- because I was
19 confused about it.

20 THE COURT: I don't know. That's what I was
21 asking, I wasn't sure about. Me, too.

22 MS. CONCANNON: She's related to Givens. He's in
23 the courthouse.

24 THE COURT: Okay. Guys, I think, out of an
25 abundance of caution, I'm just going to strike her for

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1 cause, unless anyone objects.

2 MS. CONCANNON: I have no problem with that.

3 THE COURT: Okay. And I'll tell Jerri that. Okay?
4 I've got to get a number for you.

5 MR. BAX: And that's Number 66, correct?

6 THE COURT: Number 66. Okay.

7 END BENCH CONFERENCE.

8 THE COURT: Ladies and gentlemen, has any member of
9 the jury panel ever been a witness in a criminal trial?
10 If so, please stand.

11 Ladies and gentlemen, has any member of the jury
12 panel or a member of your immediate family have had any
13 involvement with illegal drugs? If so, please stand.

14 Now, ladies and gentlemen, if you would like to
15 approach on this question, you are welcome to. So, when
16 I call upon you, just give me your name and juror
17 number, and if you would like to approach, say, I would
18 like to approach. Those people that need to speak with
19 me are going to form a line right here. Okay? So, Mr.
20 Knox, I'm going to start with you. Give me your number
21 again.

22 JUROR NUMBER 221: 221.

23 THE COURT: I know your name, but not your number.

24 JUROR NUMBER 221: 221.

25 THE COURT: Okay.

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1 JUROR NUMBER 221: Another son was involved with
2 cocaine at one time.

3 THE COURT: Okay.

4 JUROR NUMBER 221: And thank God we've gotten him
5 taken care of. He's off of that.

6 THE COURT: Okay. Mr. Knox, you understand there's
7 an allegation of drugs in this case. I want to make
8 sure you can be fair and impartial in the trial of this
9 case.

10 JUROR NUMBER 221: Absolutely.

11 THE COURT: Thank you, Mr. Knox. You may be
12 seated. All right. And I know your number now, too, by
13 heart. Sir, your name and juror number.

14 JUROR NUMBER 315: Brad Peludat, 315.

15 THE COURT: Yes, sir.

16 JUROR NUMBER 315: My sister passed at 40 years old
17 from an addiction to meth and cocaine.

18 THE COURT: Okay. Sir, can you be fair and
19 impartial in the trial of this case?

20 JUROR NUMBER 315: Yeah, I can.

21 THE COURT: Thank you, sir. You may be seated.
22 Yes, ma'am.

23 JUROR NUMBER 430: Sasha Washington, 430.

24 THE COURT: Yes, ma'am.

25 JUROR NUMBER 430: My uncle just got out for

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1 distributing drugs.

2 THE COURT: Okay.

3 JUROR NUMBER 430: In 2009.

4 THE COURT: In 2009. Was it here in Beaufort
5 County or elsewhere?

6 JUROR NUMBER 430: Elsewhere.

7 THE COURT: Okay. Ma'am, can you be fair and
8 impartial in the trial of this case?

9 JUROR NUMBER 430: Yes, ma'am.

10 THE COURT: I'm sorry?

11 JUROR NUMBER 430: Yes, ma'am.

12 THE COURT: I was talking over you. I apologize.
13 Thank you, Ms. Washington. You may be seated.

14 COURT REPORTER: Is that husband? Husband?
15 Husband, did you say?

16 JUROR NUMBER 430: My uncle.

17 THE COURT: Uncle. I'm sorry. Ma'am, your name
18 and juror number.

19 JUROR NUMBER 157: 157, Joan. My son was involved
20 as a teenager, and went through drug court here.

21 THE COURT: Ma'am, do you feel that you could be
22 fair and impartial in the trial of this case? Ma'am?

23 JUROR NUMBER 157: I don't.

24 THE COURT: You don't. All right. Ma'am, I'm
25 going to go ahead and excuse you from the trial of this

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1 case, and I'm going to go ahead and excuse you for the
2 week. So, thank you for being here. If, when you
3 leave, you would just give your badge to Norman or one
4 of the bailiffs. All right?

5 JUROR NUMBER 57: Yes, ma'am.

6 THE COURT: Thank you, ma'am. I appreciate it.
7 Ma'am, your name and juror number.

8 JUROR NUMBER 12: Virginia Anderson, 12.

9 THE COURT: Yes, Ms. Anderson, would you like to
10 approach? Are you comfortable there?

11 JUROR NUMBER 12: Yeah, I should probably come up
12 there.

13 THE COURT: Okay. Why don't you come on around,
14 and I'll take care of anyone else that feels comfortable
15 where they are. Ma'am, your name and juror number.

16 JUROR NUMBER 142: Danielle Gillespie, and my
17 number is 142. On Sunday, my nephew O.D.'d on heroin.

18 THE COURT: All right, ma'am. Do you want to be
19 excused from the trial of this case?

20 JUROR NUMBER 142: (Nodded head.)

21 THE COURT: That was a yes, a head bob for the
22 record. All right. Ma'am, I'm going to go ahead and
23 excuse you. Okay? You are excused for the week. Thank
24 you. Sir, your name and juror number.

25 JUROR NUMBER 381: William Slim, 381.

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1 THE COURT: Yes, Mr. Slim.

2 JUROR NUMBER 381: May I approach?

3 THE COURT: Absolutely, sir. Come on around.

4 Ma'am, your name and juror number.

5 JUROR NUMBER 227: Janice Lawrence, 227.

6 THE COURT: Yes, ma'am.

7 JUROR NUMBER 227: I'd like to come around.

8 THE COURT: Please. Yes, ma'am.

9 JUROR NUMBER 270: Hey. Jeannie Messman, 270. I'd
10 like to approach.

11 THE COURT: Certainly. Come on around, you all.

12 Ma'am, again, your name and juror number.

13 JUROR NUMBER 66: Yes, Vera Hamilton-Chaplin,
14 Number 66. My son was charged.

15 THE COURT: Okay. You can go ahead and sit down.
16 It's Ms. Chaplan, right?

17 JUROR NUMBER 66: Yes.

18 THE COURT: You're fine. Go ahead and sit down,
19 ma'am. Okay? Would you announce their number for me,
20 again just as they're coming up?

21 BAILIFF: Yes, ma'am.

22 THE COURT: Thank you.

23 BAILIFF: Juror Number 12, your Honor.

24 ON-THE-RECORD BENCH CONFERENCE, OUT
25 OF HEARING OF JURORS. PRESENT: THE

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1 COURT, JUROR NUMBER 12, MS. CONCANNON,

2 MS. KENNEY, MS. SAXON, MR. BAX:

3 THE COURT: Okay. Come a little closer to me.

4 JUROR NUMBER 12: My brother got involved with
5 cocaine and shot himself.

6 THE COURT: Okay.

7 JUROR NUMBER 12: And killed himself.

8 THE COURT: Okay. How long ago was that?

9 JUROR NUMBER 12: 1997.

10 THE COURT: Okay. Can you be fair and impartial in
11 the trial of this case?

12 JUROR NUMBER 12: I'm not sure.

13 THE COURT: Okay. That's all right. That's all we
14 want is an honest answer, and I appreciate it. I'm
15 going to go ahead and excuse you, and I'm going to
16 excuse you for the week. Okay? Number 12.

17 END BENCH CONFERENCE.

18 THE COURT: All right. Number 12 is excused.
19 Thank you, Ms. Anderson.

20 BAILIFF: Juror Number 381, your Honor..

21 THE COURT: Mr. Slemp.

22 ON-THE-RECORD BENCH CONFERENCE, OUT
23 OF HEARING OF JURORS. PRESENT: THE
24 COURT, JUROR NUMBER 381, MS. CONCANNON,
25 MS. KENNEY, MS. SAXON, MR. BAX:

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1 THE COURT: Hi.

2 JUROR NUMBER 381: Hi. Pleasure. I was charged
3 with a misdemeanor possession of marijuana over ten
4 years ago.

5 THE COURT: Okay. My question is, can you be fair
6 and impartial in the trial of this case? It doesn't
7 excuse you from anything. Again, --

8 JUROR NUMBER 381: I think so.

9 THE COURT: You've got to be sure.

10 JUROR NUMBER 381: I can't be sure.

11 THE COURT: Okay. All right. I'll go ahead and
12 excuse you, but thank you for being here.

13 END BENCH CONFERENCE.

14 THE COURT: Number 381 is excused.

15 BAILIFF: Juror Number 227, your Honor.

16 ON-THE-RECORD BENCH CONFERENCE, OUT
17 OF HEARING OF JURORS. PRESENT: THE
18 COURT, JUROR NUMBER 227, MS. CONCANNON,
19 MS. KENNEY, MS. SAXON, MR. BAX:

20 THE COURT: How are you?

21 JUROR NUMBER 227: I'm fine. How are you?

22 THE COURT: Pleasure. Thank you, Ms. Lawrence.

23 JUROR NUMBER 227: My son was -- for simple
24 possession of marijuana charges, charged with simple
25 possession of marijuana. And two years ago -- it would

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1 be two years ago -- his best friend O.D.'d on
2 prescription drugs.

3 THE COURT: Okay. I need to know if you can be
4 fair and impartial in the trial of this case.

5 JUROR NUMBER 227: I don't think so.

6 THE COURT: You don't think so?

7 JUROR NUMBER 227: I mean, it's getting too close
8 to --

9 THE COURT: Okay.

10 JUROR NUMBER 27: I mean, they were -- he was like
11 a second son to me.

12 THE COURT: Okay. All right.

13 END BENCH CONFERENCE.

14 THE COURT: I'm going to go ahead and excuse Ms.
15 Lawrence, Number 227.

16 BAILIFF: This way, ma'am.

17 BAILIFF: Juror Number 270, your Honor.

18 ON-THE-RECORD BENCH CONFERENCE, OUT
19 OF HEARING OF JURORS. PRESENT: THE
20 COURT, JUROR NUMBER 270, MS. CONCANNON,
21 MS. KENNEY, MS. SAXON, MR. BAX:

22 THE COURT: How are you?

23 JUROR NUMBER 270: Fine.

24 THE COURT: Come on up.

25 JUROR NUMBER 270: My brother was on drugs, and he

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1 molested his daughter, and took pictures and put it on
2 the Internet, and he's in federal prison right now for
3 child pornography.

4 COURT REPORTER: I am so sorry. I cannot hear you.
5 Would you mind to start over? I'm sorry.

6 JUROR NUMBER 270: My brother, while on drugs,
7 molested his daughter and took a picture and put it on
8 the Internet, and he's in federal prison for child
9 pornography right now.

10 THE COURT: Okay. Can you be fair and impartial in
11 the trial of this case?

12 JUROR NUMBER 270: I can't say that I would.

13 THE COURT: Okay. I'll go ahead and excuse you.

14 END BENCH CONFERENCE.

15 THE COURT: I'm going to go ahead and excuse Number
16 270, Ms. Messman.

17 BAILIFF: Juror Number 155, your Honor.

18 ON-THE-RECORD BENCH CONFERENCE, OUT
19 OF HEARING OF JURORS. PRESENT: THE
20 COURT, JUROR NUMBER 155, MS. CONCANNON,
21 MS. KENNEY, MS. SAXON, MR. BAX:

22 THE COURT: Nice to meet you.

23 JUROR NUMBER 155: Pleased to meet you. When I was
24 21 years old, I was arrested at a party for possession
25 of a tiny, tiny amount of marijuana.

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1 THE COURT: Okay.

2 JUROR NUMBER 155: That arrest was expunged from my
3 record.

4 THE COURT: Okay.

5 JUROR NUMBER 155: I can be fair and impartial.

6 THE COURT: You're not concerned about that and I'm
7 not worried about it, either, as long as you're good.

8 JUROR NUMBER 155: Okay. Thank you very much.

9 END BENCH CONFERENCE.

10 THE COURT: Thank you for staying with us, sir.
11 Okay.

12 BAILIFF: Juror Number 292, your Honor.

13 ON-THE-RECORD BENCH CONFERENCE, OUT
14 OF HEARING OF JURORS. PRESENT: THE
15 COURT, JUROR NUMBER 292, MS. CONCANNON,
16 MS. KENNEY, MS. SAXON, MR. BAX:

17 THE COURT: How are you?

18 JUROR NUMBER 292: I had a tenant -- I just joined
19 the motel business.

20 THE COURT: Okay.

21 JUROR NUMBER 292: So, there was a tenant who was
22 being investigated for -- for traffic.

23 THE COURT: In drugs?

24 JUROR NUMBER 292: Yeah. So, I had to testify for
25 being the landlord.

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1 THE COURT: Okay.

2 JUROR NUMBER 292: Yeah.

3 THE COURT: Okay. Would that affect your ability
4 to be fair and impartial in the trial of this case?

5 JUROR NUMBER 292: No.

6 THE COURT: Okay. I appreciate you telling us.
7 Thank you. Mr. Mufuka, Number 292.

8 MS. SAXON: I'm sorry, I missed that.

9 THE COURT: Okay. He said he had an employee from
10 his hotel business that was being investigated for
11 trafficking.

12 MS. SAXON: Okay. Okay.

13 THE COURT: But he said he could be fair and
14 impartial.

15 MS. SAXON: Okay.

16 THE COURT: Okay? Thank you. Because he was the
17 landlord. He was the owner of the hotel. Okay.

18 END BENCH CONFERENCE.

19 BAILIFF: Juror Number 436, your Honor.

20 ON-THE-RECORD BENCH CONFERENCE, OUT

21 OF HEARING OF JURORS. PRESENT: THE

22 COURT, JUROR NUMBER 436, MS. CONCANNON,

23 MS. KENNEY, MS. SAXON, MR. BAX:

24 THE COURT: How are you? It's good to meet you.
25 Come on up.

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1 JUROR NUMBER 436: This is -- it probably doesn't
2 mean anything, but I got thinking about it.

3 THE COURT: That's okay.

4 JUROR NUMBER 436: My husband was in the Army
5 Reserves, and he was military police.

6 THE COURT: Okay.

7 JUROR NUMBER 436: And that was before we were
8 married.

9 THE COURT: Okay. We just needed to know, but I
10 appreciate it. Thank you for telling us, Ms. White.
11 Okay. It's Number 436.

12 END BENCH CONFERENCE.

13 THE COURT: Okay. Thank you, ma'am.

14 BAILIFF: Juror Number 413, your Honor.

15 ON-THE-RECORD BENCH CONFERENCE, OUT
16 OF HEARING OF JURORS. PRESENT: THE
17 COURT, JUROR NUMBER 413, MS. CONCANNON,
18 MS. KENNEY, MS. SAXON, MR. BAX:

19 THE COURT: I've been calling you Tebow all week,
20 and you don't even know it.

21 JUROR NUMBER 413: Timbo.

22 THE COURT: Mr. Timbo. It's a pleasure. I know, I
23 just -- I hate that you're back in there. Pleasure.

24 JUROR NUMBER 413: My cousin is part of a crime
25 family in New York City, which is the Gambino family.

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1 THE COURT: Um-hmm. Okay.

2 JUROR NUMBER 413: I just wanted to --

3 THE COURT: And I appreciate knowing that. Let me
4 ask you, does that affect your ability to be fair and
5 impartial?

6 JUROR NUMBER 413: It may.

7 THE COURT: I promise you, I was going to get to
8 your tasting tomorrow night, but if you ended up getting
9 put on this jury. But you actually think it would
10 affect you?

11 JUROR NUMBER 413: I've heard too many stories.

12 THE COURT: Okay. All right. I'm going to excuse
13 you.

14 END BENCH CONFERENCE.

15 THE COURT: I'm going to go ahead and excuse Number
16 413. Thank you.

17 ON-THE-RECORD BENCH CONFERENCE, OUT
18 OF HEARING OF JURORS. PRESENT: THE
19 COURT, MS. CONCANNON, MS. KEENEY, MS.
20 SAXON, MR. BAX:

21 THE COURT: Other than standard questions, is there
22 anything else you guys needed to ask? I'll go look and
23 see what else I have. Okay. Okay.

24 MR. BAX: There may be one or two we want to be
25 heard on the cause if they get called.

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1 THE COURT: Who is that?

2 MR. BAX: One had a massive amount of responses,
3 based on both law enforcement and stuff. That's the
4 only one I can --

5 THE COURT: He's on both sides. That's the crazy
6 thing.

7 MR. BAX: I know. He is. He is. That's true.
8 And that's the reason I don't know.

9 THE COURT: I mean, he stated, you know, repeatedly
10 that he can be fair and impartial. I think he's, you
11 know, you're just going to have to exercise a strike on
12 that one.

13 MR. BAX: The other one, your Honor, was 444. I
14 mean, he was himself law enforcement for all his career
15 in the military, and it was in this area, which would
16 have had to have been --

17 THE COURT: Which one was he again? You guys
18 remind me.

19 MS. SAXON: He was the chief criminal investigator.

20 THE COURT: That's not a reason to strike him for
21 cause, just because he's been in law enforcement. He's
22 retired, he's here, and he's not affiliated in any way
23 with local. I mean, he didn't say he was anything with
24 local, correct?

25 MS. SAXON: He retired from the military

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1 investigations, which means he would have had cases that
2 probably covered both jurisdictions.

3 MR. BAX: He was here and he worked for the
4 military while he was here.

5 MS. CONCANNON: Twenty-three years ago.

6 THE COURT: Yes, 23. Yeah, no.

7 END BENCH CONFERENCE.

8 THE COURT: Ladies and gentlemen, is there any
9 member of the panel that has formed or expressed an
10 opinion as to the guilt or innocence of the defendant in
11 this case, Mr. Chisolm? If so, please stand. Is there
12 any member of the jury panel that is aware of any
13 interest or any bias or prejudice for or against the
14 defendant in this case, Mr. Chisolm? If so, please
15 stand.

16 Ladies and gentlemen, is any member of the jury
17 panel aware of any reason whatsoever that you cannot
18 give both the State of South Carolina and the defendant,
19 Mr. Chisolm, a fair and impartial trial in this matter?
20 If so, please stand.

21 Are there any further questions requested of this
22 panel from the State?

23 MS. CONCANNON: No, your Honor.

24 THE COURT: From the Defense?

25 MS. SAXON: No, your Honor.

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1 THE COURT: Thank you. Diane, how long?

2 MADAM CLERK: Just a couple of minutes, Judge.

3 THE COURT: Ladies and gentlemen, is every --

4 MADAM CLERK: Just a couple of minutes.

5 THE COURT: Okay. Ladies and gentlemen, is
6 everyone okay? Does anyone need a break? All right.
7 As you all know, what we're doing is, we're now putting
8 your names into the computer. It's going to randomly
9 draw a list. Ladies and gentlemen, I am simply going to
10 ask that, when your name is called, you just stand in
11 place, and you are either going to be invited to take a
12 seat on this jury, or you're going to be invited to take
13 a seat right where you are. All right?

14 OFF-THE-RECORD DISCUSSION, OUT
15 OF HEARING OF JURORS. PRESENT: THE
16 COURT, MADAM CLERK.

17 THE COURT: Number 38? What's his name? Mr.
18 Bowers. Sir, it's my understanding that you don't wish
19 to serve with me this week, and you are 65 years of age.

20 JUROR NUMBER 38: Yes, ma'am.

21 THE COURT: Okay. Mr. Bowers, I will go ahead and
22 honor that exemption, and I'll excuse you. Thank you.

23 JUROR NUMBER 38: Thank you.

24 MADAM CLERK: Thank you, Judge. And five and five,
25 and two alternates.

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1 THE COURT: All right. Whenever you're ready, Ms.
2 Cade. All right. Thank you. Whenever you're ready.

3 JUROR SELECTION:

4 MADAM CLERK: As I call your name, if you'll just
5 stand up, we'll start our strikes. Juror Number 222,
6 Penny Kostylo. Juror Number 222. What says the State?

7 MS. CONCANNON: Please present the juror.

8 MADAM CLERK: What says the Defense?

9 MS. SAXON: Please excuse this juror.

10 MADAM CLERK: Juror Number 165, David Hamby. Juror
11 Number 165. What says the State?

12 MS. CONCANNON: Please present this juror.

13 MADAM CLERK: What says the Defense?

14 MS. SAXON: Please excuse the juror.

15 MADAM CLERK: Juror Number 388, Angela Spahn.
16 Juror Number 388. What says the State?

17 MS. CONCANNON: Please present the juror.

18 MADAM CLERK: What says the Defense?

19 MS. SAXON: Please present this juror.

20 MADAM CLERK: Juror Number 15, Alice Atkins. Juror
21 Number 15. What says the State?

22 MS. CONCANNON: Please present the juror.

23 MADAM CLERK: What says the Defense?

24 MS. SAXON: Please seat the juror.

25 MADAM CLERK: Juror Number 60, Margaret Carroll.

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1 Juror Number 60. What says the State?

2 MS. CONCANNON: Please present the juror.

3 MADAM CLERK: What says the Defense?

4 MS. SAXON: Please seat the juror.

5 MADAM CLERK: Juror Number 277, Frederick Miller.

6 Juror Number 277: What says the State?

7 MS. CONCANNON: Please excuse this juror.

8 BAILIFF: Sit down, sir.

9 MADAM CLERK: Juror Number 436, Marla White. Juror
10 Number 436. What says the State?

11 MS. CONCANNON: Please present this juror.

12 MADAM CLERK: What says the Defense?

13 MS. SAXON: Please seat this juror.

14 MADAM CLERK: Juror Number 91, Heather Dagle.

15 Juror Number 91. What says the State?

16 MS. CONCANNON: Please present this juror.

17 MADAM CLERK: What says the Defense?

18 MS. SAXON: Please seat the juror.

19 MADAM CLERK: Juror Number 409, Brenda Theilen-
20 Blankenship. Juror 409. What says the State?

21 MS. CONCANNON: Please present this juror.

22 MADAM CLERK: What says the Defense?

23 MS. SAXON: Please excuse this juror.

24 MADAM CLERK: Juror Number 438, Chad Williams.

25 What says the State?

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1 MS. CONCANNON: Please present the juror.

2 MADAM CLERK: What says the Defense?

3 MS. SAXON: Please seat the juror.

4 MADAM CLERK: Juror Number 201, Anthony Johnson.

5 Juror Number 201. What says the State?

6 MS. CONCANNON: Please present this juror.

7 MADAM CLERK: What says the Defense?

8 MS. SAXON: Please seat the juror.

9 MADAM CLERK: Juror Number 11, Barbara Anderson.

10 What says the State?

11 MS. CONCANNON: Please present this juror.

12 MADAM CLERK: What says the Defense?

13 MS. SAXON: Please seat the juror.

14 MADAM CLERK: Juror Number 83, Lisa Crawford.

15 Juror Number 83. What says the State?

16 MS. CONCANNON: Please present this juror.

17 MADAM CLERK: What says the Defense?

18 MS. SAXON: Please seat the juror.

19 MADAM CLERK: Juror Number 225, Suzanne Lange.

20 Juror Number 225. What says the State?

21 MS. CONCANNON: Please present this juror.

22 MADAM CLERK: What says the Defense?

23 MS. SAXON: Please excuse the juror.

24 MADAM CLERK: Juror Number 153, Thomasine

25 Goddschalk. Juror Number 153. What says the State?

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1 MS. CONCANNON: Please present this juror.

2 MADAM CLERK: What says the Defense?

3 MS. SAXON: Please seat the juror.

4 MADAM CLERK: Juror Number 364, Darrell Shannon.

5 Juror Number 364. What says the State?

6 MS. CONCANNON: Please present the juror.

7 MADAM CLERK: What says the Defense?

8 MS. SAXON: Please seat the juror.

9 MADAM CLERK: Juror Number 215, Lucy Kendall.

10 Juror Number 215. What says the State?

11 MS. CONCANNON: Please present the juror.

12 MADAM CLERK: What says the Defense?

13 MS. SAXON: Please seat the juror.

14 MADAM CLERK: Now we'll be striking for our first

15 alternate. Juror Number 226, Dusty Lanning. Juror

16 Number 226. What says the State?

17 MS. CONCANNON: Please excuse this juror.

18 MADAM CLERK: Juror Number 207, Linda Jones. Juror

19 Number 207. What says the State?

20 MS. CONCANNON: Please present this juror.

21 MADAM CLERK: And what says the Defense?

22 MS. SAXON: Please excuse this juror.

23 MADAM CLERK: Juror Number 40, Raymond Boyles.

24 Juror Number 40. What says the State?

25 MS. CONCANNON: Please present this juror.

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1 MADAM CLERK: And what says the Defense?

2 MS. SAXON: Please seat the juror.

3 THE COURT: Come around, Mr. Boyles.

4 MADAM CLERK: And now, we'll be striking for our

5 second alternate. Juror Number 292, Howard Mufuka.

6 Juror Number 292. What says the State?

7 MS. CONCANNON: Please present the juror.

8 MADAM CLERK: What says the Defense?

9 MS. SAXON: Please excuse the juror.

10 MADAM CLERK: Juror Number 155, John Granquist.

11 Juror Number 155. What says the State?

12 MS. CONCANNON: Please present the juror.

13 MADAM CLERK: And what says the Defense?

14 MS. SAXON: Please seat the juror.

15 THE COURT: Could I see the attorneys for a moment?

16 OFF-THE-RECORD BENCH CONFERENCE, OUT

17 OF HEARING OF JURORS. PRESENT: THE

18 COURT, MS. CONCANNON, MS. KENNEY, MS.

19 SAXON, MR. BAX.

20 END BENCH CONFERENCE.

21 BY THE COURT:

22 THE COURT: Are there any matters of law we need to
23 take up regarding jury selection process from the State?

24 MS. CONCANNON: No, your Honor.

25 THE COURT: From the Defense?

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1 MS. SAXON: No, your Honor.

2 BY THE COURT:

3 THE COURT: Very well. Welcome, ladies and
4 gentlemen. I appreciate your willingness to serve as
5 jurors during the trial of this case. Those of you that
6 are still out in the gallery, ladies and gentlemen, I
7 get to go ahead and excuse you for the week with my
8 thanks. You are helping us resolve not only the cases
9 that we pull juries in, but many other ones, and I want
10 to thank you for it.

11 I stated this Monday repeatedly, and I continue to
12 do it: no one in this room can do their job without you
13 and your willingness to serve as jurors, and we very
14 much appreciate it, and you know that the system does
15 not work without you here. So, again, thank you for
16 being here, and you are excused.

17 If you need a work excuse, the bailiffs will have
18 them for you at the back, and they're going to take your
19 badges from you. All right? Thank you, ladies and
20 gentlemen.

21 JURORS NOT CHOSEN LEAVE COURTROOM.

22 THE COURT: Close the doors for me. Norman, will
23 you please make sure the doors are closed? Thank you.
24 Thank you. Again, welcome, ladies and gentlemen. You
25 are the jury in the trial of this case. I will tell you

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1 that we don't expect it to go past tomorrow, so I want
2 everyone to feel comfortable. I do not believe we will
3 be here Friday. I have no reason to think that.

4 Ladies and gentlemen, I need to tell you a few just
5 brief remarks. Then, I'm going to send you back to your
6 jury room, and we're going to bring you right back out
7 here, and you are going to hear opening arguments from
8 the lawyers before we take a lunch break. All right?
9 And possibly a witness or two, depending on where our
10 time is.

11 Ladies and gentlemen, I need to remind you and tell
12 you that you are not to discuss this case, and that
13 includes with each other. You cannot discuss this case
14 with each other until after it's been sent to you, after
15 you've heard all of the evidence, you've heard the
16 arguments of the lawyers, and I have charged you on the
17 applicable law to this case.

18 Additionally, ladies and gentlemen, when we take a
19 break and over the lunch hour, if you end up talking to
20 family or friends, or run into anybody, again, you are
21 not to discuss this case. The only thing you are
22 permitted to say is, you've been chosen as a juror. Is
23 my mic on? I'm sorry. You're only allowed to say that
24 you've been chosen as a juror in a criminal trial. You
25 cannot say the charges, the parties involved, the

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1 lawyers or any of the potential witnesses.

2 Again, ladies and gentlemen, the reason is,
3 inevitably, someone is going to try to tell you
4 something about something when they know nothing about
5 this case. And I just want to remind you that you are
6 going to have everything you need to decide this case
7 right here in this courtroom, and it would be highly
8 improper for you to be influenced by any outside source.
9 So, out of an abundance of caution, I tell you not to
10 speak to anyone about it and tell them about it.

11 Additionally, ladies and gentlemen, you may, in
12 coming and going from the courthouse, over lunch hour,
13 or tonight, when we break, or in the morning, may pass
14 someone who is a potential witness in this case, or a
15 party or a lawyer. And ladies and gentlemen, if they
16 don't even smile or say hello, I want you to know that
17 they are following my orders. They have been instructed
18 not to speak with you, and the reason is, even an
19 innocent conversation out in the parking lot of, it
20 looks like it's going to rain, will be misconstrued. It
21 will be reported back. And then, I'll have to bring you
22 in and ask you about it. All right?

23 Additionally, ladies and gentlemen, if you did come
24 in today with a cell phone, I'm going to ask that, over
25 the lunch hour -- well, first I'm going to ask you, when

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1 you go into your jury room, to turn it over to your
2 bailiff, Jessica. She'll hold it for you. And again,
3 after the lunch hour, if you did get in with a phone,
4 please leave it back in your car. You can get so much
5 information off of a phone these days, and we just don't
6 want anyone to be tempted. So, out of an abundance of
7 caution, we tell you to leave it behind.

8 Ladies and gentlemen, if anyone needs to reach you
9 emergently during the trial of this case, and you're
10 concerned about them getting hold of you, tell them to
11 call the Clerk of Court's Office, and all they have to
12 do is say that they are a juror in Carmen Mullen's
13 trial. Actually, I think I'm the only judge right now
14 trying a case.

15 MADAM CLERK: Yes, ma'am.

16 THE COURT: Just tell them to call up here, tell
17 them your name, and I promise you that I will find you
18 immediately. So, I don't want anyone to worry about
19 being out of touch. All right?

20 Ladies and gentlemen, the last thing I'm going to
21 ask you to do before you come back real quick into the
22 jury room to hear the opening arguments is, I need you
23 to elect a foreperson. A foreperson doesn't have
24 anymore say than anybody else. They are simply the
25 person that I discuss scheduling with. Additionally,

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1 ladies and gentlemen, at the very end, when I send the
2 case to you for your deliberations, they are the person
3 that gets the ball rolling and making sure everyone is
4 participating in the deliberations. All right?

5 Ladies and gentlemen, when you have chosen that
6 foreperson, I'm going to ask that they take this front
7 seat and remain in this front seat here during the trial
8 of this case. For my alternates, I need you to stay in
9 the back, if you can, but you are welcome to move around
10 if you can't see from there. I don't know if we're
11 going to have anything on the board, but if we are,
12 sometimes it's a neck crane, so you're welcome to move
13 down, if you need to. The rest of you, ladies and
14 gentlemen, other than the foreperson, as you come and go
15 from the courtroom, you may move around seats. It does
16 not matter. I'll know who you all are, and I'll know if
17 anybody's missing, so I'm not concerned about it.

18 Lastly, ladies and gentlemen, I do need to tell you
19 that, when we do break, when I do send you to lunch or
20 for the evening and you come back in the morning, I will
21 tell you what time to be back here. Ladies and
22 gentlemen, I simply ask that you just be present when
23 required. I understand you may run into some problems.
24 If you ever do, you need to call up to the Clerk's
25 Office. I can't start until all 14 of you are here, so

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1 if anyone's running late, nothing is happening in here.
2 until you are all here. So, I just want you to know
3 that. All right?

4 Ladies and gentlemen, again, thank you for serving.
5 I'm going to allow you to go ahead and go back to your
6 jury room, elect your foreperson, and ladies and
7 gentlemen, I am going to bring you right back out, and
8 we'll go ahead and begin our opening arguments.

9 JURORS LEAVES COURTROOM 11:44 A.M.

10 THE COURT: All right. We're going to be at ease
11 for three minutes, you all. Again, it'll probably be
12 more like five. I know we say three, but Marvin
13 wrangled me last time, so. Again, about five minutes.
14 You all refresh yourselves. Ms. Concannon, you're doing
15 the opening for the State?

16 MS. CONCANNON: That's correct, your Honor.

17 THE COURT: Ms. Saxon, you're doing for the
18 Defense? Oh, Mr. Bax is. I'm glad I asked. It always
19 is embarrassing when I -- all right. So, we're good.

20 MR. BAX: Thank you, your Honor.

21 THE COURT: Absolutely. And you're going to be
22 calling the first witness, too?

23 MS. CONCANNON: I will. I'm going to call Corporal
24 Michaud, and we can break for lunch, if that's okay with
25 you, your Honor.

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1 THE COURT: Sure. How long or short is he?

2 MS. CONCANNON: He's short.

3 THE COURT: Okay.

4 MS. CONCANNON: Ten minutes, maybe.

5 THE COURT: Okay. Let me ask you this. How long
6 do you anticipate -- I don't want to end up, in this
7 case, at the weird point where, should we go and charge,
8 or should we not? And just based on -- you said there
9 was a lot of evidence to go through, though, so. When
10 you say a lot, I mean, how many pieces do you think
11 there are?

12 MS. CONCANNON: Thirty-five. Twenty-five, thirty.

13 MS. SAXON: Thirty-five pieces were recovered in
14 the search warrant. I don't know.

15 MS. CONCANNON: I don't plan on admitting all of
16 it, but I plan on a big chunk of that, and some of them,
17 we have to go through chain witnesses.

18 THE COURT: Okay. So, it might take awhile, then.
19 Okay. I can just tell you, we typically do a rule of
20 thumb if, you know, if it goes much after 3:30, we do
21 not argue and charge at that point. Although, this jury
22 panel, I guess, I'm looking at it, I think I only have
23 one gentleman that was on my first case. So, again, I
24 just don't like that, bringing them back and forth, so I
25 think we're fine with that. But we'll have that

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1 discussion at the appropriate time. Okay? But I just
2 want to make sure everyone's aware that there's a
3 possibility, if it goes very, very fast, that we may
4 argue and charge. I just don't want to catch anyone
5 unaware. Okay?

6 MS. SAXON: Thank you, your Honor.

7 THE COURT: I doubt it, but again, just so we're
8 all on the same page. Okay?

9 MS. CONCANNON: Thank you.

10 THE COURT: Okay. Take five minutes, and we'll be
11 back.

12 OFF THE RECORD 11:46 A.M.

13 BACK ON THE RECORD.

14 BY THE COURT:

15 THE COURT: Please be seated. Are we ready to go?
16 Is the State ready?

17 MS. CONCANNON: Yes, your Honor.

18 THE COURT: Defense ready?

19 MR. BAX: Defense is ready, your Honor.

20 MS. SAXON: Oh. Yes, your Honor. I'm sorry.

21 THE COURT: No worries. Okay. All right. Let's
22 bring the jury in.

23 OFF-THE-RECORD DISCUSSION, OUT OF
24 PRESENCE OF JURORS. PRESENT: THE
25 COURT, MADAM CLERK.

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1 BAILIFF: The jury is entering the courtroom, your
2 Honor.

3 JURORS ENTER COURTROOM 12:00 P.M.

4 JURORS SWORN, BY MADAM CLERK:

5 MADAM CLERK: Ladies and gentlemen, please stand as
6 I administer the oath, and if you accept this oath,
7 please say I do. Please raise your right hand.

8 JURORS COMPLY.

9 MADAM CLERK: Do you solemnly swear or affirm that
10 you shall well and true truly true [sic] and true
11 deliverance make between the State of South Carolina and
12 the accused at the Bar, and a true verdict give
13 according to the evidence, so help you God?

14 RESPONSES FROM JURORS.

15 GENERAL CHARGE, BY THE COURT:

16 THE COURT: You may be seated, ladies and
17 gentlemen. Thank you.

18 Ladies and gentlemen, what I am now going to say to
19 you is intended to serve as an introduction to the trial
20 of this case. These remarks are not a charge on the
21 law. I'm going to -- excuse me -- instruct you on the
22 law that's applicable to this case at the end of the
23 trial, ladies and gentlemen. This is just simply an
24 explanation of how things are going to run procedurally,
25 so you understand what's going on.

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1 Ladies and gentlemen, the defendant in this case,
2 Mr. Chisolm, has been charged by bill of indictments
3 filed in this court, with the offenses of trafficking in
4 cocaine, 100 to 200 grams; possession with intent to
5 distribute crack cocaine; possession of a weapon during
6 the commission of a violent crime; and the possession of
7 a firearm with an obliterated serial number.

8 Ladies and gentlemen, these indictments are simply
9 the charges by which the case is brought into the
10 courtroom, and they are not, in any sense, evidence of
11 any of the allegations that they contend.

12 Now, ladies and gentlemen, the defendant in this
13 case, Mr. Chisolm, has pled not guilty to these
14 indictments. The State, therefore, has the burden of
15 proving each of the elements of each of the indictments
16 beyond a reasonable doubt, and it's your duty, as
17 jurors, to decide whether the State has met that burden.

18 Now, ladies and gentlemen, your purpose as jurors
19 is to find and determine the facts. You, the jury, are
20 the sole judge of all facts in this case. If, at any
21 time, I make any comment regarding the facts of this
22 case, you must disregard it.

23 Ladies and gentlemen, you are to determine the
24 facts from the testimony that you are going to hear up
25 here on the witness stand, as well as any other evidence

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1 that's introduced into this case, and any potential
2 stipulations entered into by these attorneys. Please
3 understand that it is especially important that you
4 determine the facts of this case diligently and
5 conscientiously, because ordinarily, ladies and
6 gentlemen, there's no way to correct an erroneous
7 determination of the facts by a jury.

8 Ladies and gentlemen, on the other hand and with
9 equal emphasis, the same law that makes you, the jury,
10 the judge of the facts, makes me the judge of the law.
11 Ladies and gentlemen, the law as given by the Court is
12 the only law that you may consider. Ladies and
13 gentlemen, you must accept and follow it, even though
14 you may disagree with it. I cannot tell you what the
15 facts of this case are, and you cannot disagree with me
16 about what the law is or what you think the law ought to
17 be. Your job is to take the law as I give it to you at
18 the end of the case and apply it to the facts as you
19 find them, and from there, render a true and just
20 verdict under the oath you just took.

21 Now, ladies and gentlemen, until I advise you to
22 begin your deliberations, you must not discuss this case
23 with anyone; and that includes your fellow jurors, or
24 anyone else you may come in contact with over lunch
25 hours or breaks or over this evening.

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1 Ladies and gentlemen, please understand that you
2 are also advised that you are not to read, listen to, do
3 any independent research, or talk in any way on any
4 social sites about this trial. Again, ladies and
5 gentlemen, that would be inappropriate.

6 Again, ladies and gentlemen, please understand how
7 important it is that you keep an open mind in this case,
8 and you do not decide any issue in the case until all of
9 the evidence is presented, you've heard the parties make
10 their closing arguments, and I've charged you on the law
11 that's applicable to this case. Please understand that
12 it's your solemn responsibility to determine the guilt
13 or innocence of the defendant, and your verdict must be
14 based solely on the evidence as it's presented to you in
15 this courtroom, and I'm confident you will do that,
16 ladies and gentlemen, in following the law that instruct
17 you on.

18 Ladies and gentlemen, in just a moment, the
19 Solicitor is going to make what is called an opening
20 statement, in which they are going to explain to you
21 what the issues are in this case, or what they believe
22 the issues are in this case. And then, the attorneys
23 for the defendant are also going to make an opening
24 statement.

25 Please understand that what these attorneys tell

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1 you in opening statements, again, is not evidence. It
2 is simply argument. I remind you, again, the evidence
3 comes from the witness stand and other physical
4 evidence, or evidence that's entered into the trial of
5 this case.

6 Ladies and gentlemen, I also want you to know that,
7 from time to time, you may hear the lawyers say
8 something like, your Honor, we have a matter of law we
9 need to take up; or I may tell them to approach the
10 Bench; or we may have a conference to the side or in
11 front of the Bench, without your hearing.

12 Ladies and gentlemen, I want you to know something.
13 We're not hiding anything from you. Oftentimes, when I
14 have to rule as a matter of law, whether or not certain
15 evidence is admitted, I may make a comment on the facts
16 of the case, and because I don't want to do anything to
17 influence your determination of the facts of the case,
18 out of an abundance of caution, we just do it outside of
19 your presence.

20 Ladies and gentlemen, in determining what the true
21 facts are in this case, you must decide whether or not
22 the testimony of the witnesses is believable. It's my
23 responsibility to rule, as a matter of law, whether
24 certain testimony is admitted. But once it's admitted,
25 whether or not you believe it is for you to determine.

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1 Ladies and gentlemen, in deciding whether to
2 believe a witness, you have the right to consider the
3 interest of that witness. You can also consider whether
4 or not that witness has any bias or prejudice for or
5 against one side, ladies and gentlemen, and you can look
6 at the opportunity that witness had to have seen the
7 matters and things about which they are testifying, and
8 you can look at the way the witness acts on the witness
9 stand.

10 Ladies and gentlemen, you have the right to
11 consider anything that is in the record that will help
12 you evaluate the testimony of the witnesses. That means
13 it's your solemn duty to pay close attention to them, to
14 observe them, so at the end of the case, ladies and
15 gentlemen, you can accurately remember the testimony
16 given.

17 Additionally, ladies and gentlemen, you've
18 requested, through the bailiff, to be able to take
19 notes. And as you all know, you've been provided with
20 note pads and pencils, to that end. Ladies and
21 gentlemen, your notes are for your sole purpose and your
22 sole recollection. Some people are better note takers
23 than others, as I'm sure you all recognize. And again,
24 as you come and go from the courtroom during the trial
25 of this case, I am going to ask that you leave your

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1 notes in your seats. So, again, you will assume your
2 same seats. At the end of the night, we're going to
3 collect them all up.

4 Ladies and gentlemen, at the end of the case, when
5 you do deliberate, you will have your notes, but I want
6 to make sure you understand is that, if one juror
7 believes they heard something, and it differs from
8 someone who maybe took notes, that's not to be given
9 anymore undue weight. Your notes are for your
10 recollection and your recollection only. All right?

11 Ladies and gentlemen, at this time, we're going to
12 go ahead and begin the trial of this case. Is there
13 anything further from the State?

14 MS. CONCANNON: No, your Honor.

15 THE COURT: From the Defense?

16 MS. SAXON: No, your Honor.

17 THE COURT: Ladies and gentlemen, we'll go ahead
18 and hear opening arguments. Ms. Concannon, whenever
19 you're ready.

20 MS. CONCANNON: Thank you, your Honor. May it
21 please the Court?

22 THE COURT: Yes, ma'am.

23 OPENING STATEMENT ON BEHALF OF

24 THE STATE, BY MS. CONCANNON:

25 MS. CONCANNON: Good morning. Afternoon-ish, I

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1 guess. Dwayne Chisolm is a businessman. He understands
2 the ideas of import and export, wholesale and retail,
3 capital and security. He's not an accountant, though.
4 He doesn't help manage people's finances. He's not an
5 artist that transforms a blank canvas into a masterpiece
6 to sell. But he does share similarities with these
7 professions. He does focus on his finances. He does
8 use tools to help his business run, and he does have a
9 product that he sells. But the one problem for Mr.
10 Chisolm, the defendant, is that his business is the
11 illegal drug trade, and his product --

12 MR. BAX: Objection, your Honor. Argumentative for
13 opening.

14 THE COURT: Okay. All right. You need to keep
15 going.

16 BY MS. CONCANNON:

17 MS. CONCANNON: His product is cocaine and crack
18 cocaine.

19 On May 19, 2010, a search warrant was executed at
20 Mr. Chisolm's residence at [REDACTED] in
21 Seabrook, which is here in Beaufort County, South
22 Carolina. During the execution of the search warrant,
23 members of the Beaufort County Sheriff's Office seized
24 drugs, over \$2,000.00 in cash, a gun and extra
25 ammunition, baggies, and scales. The drugs that they

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1 seized was over 125 grams of cocaine and three -- over
2 three grams of crack cocaine.

3 Dwayne Chisolm was running a business. He had his
4 product, his drugs. He had his tools, his baggies and
5 scales, and his capital, over \$2,000.00 in cash that he
6 had. Today, Mr. Chisolm is charged with trafficking in
7 cocaine, 100 to 200 grams. He had 125 grams of cocaine
8 in his bedroom closet. He's also charged with intent to
9 distribute crack cocaine. He also had 3.3 grams of
10 crack cocaine in his residence. And in South Carolina,
11 as you will hear later on, there is a inference that, if
12 one possesses over 1 gram of crack cocaine, they intend
13 to distribute that drug.

14 Mr. Chisolm is also charged with possession of a
15 firearm during the commission of a violent crime. In
16 South Carolina, trafficking cocaine is defined as a
17 violent crime. And he's also charged with possession of
18 a firearm with an obliterated serial number. That same
19 handgun that he had, the serial number has been filed
20 off.

21 You're going to hear testimony today, and maybe in
22 the morning, from a couple of people with the Beaufort
23 County Sheriff's Office. They're going to tell you
24 about this search. They're going to tell you what they
25 found, and more importantly, they're going to tell you

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1 where they found everything. And I ask that you would
2 bring and use that common sense that you brought with
3 you this morning, and use that when you're listening to
4 all the testimony that comes off of that witness stand,
5 and you see all the evidence that is admitted through
6 trial. And I'm confident that, after you hear all of
7 that, you will not hesitate, and you will find Dwayne
8 Chisolm guilty of trafficking cocaine, possession with
9 intent to distribute crack cocaine, possession of a
10 firearm during the commission of a violent crime, as
11 well as possession of a firearm with an obliterated
12 serial number.

13 THE COURT: Thank you.

14 MR. BAX: Please the Court, your Honor.

15 THE COURT: Yes, Mr. Bax.

16 MR. BAX: Thank you.

17 OPENING STATEMENT ON BEHALF OF

18 THE DEFENSE, BY MR. BAX:

19 MR. BAX: Hello, ladies and gentlemen. I was
20 introduced by Ms. Saxon earlier. Let me introduce
21 myself again. My name is Ari Bax. I Am an attorney
22 with the Public Defender's Office here in Beaufort
23 County. I have practiced law for about ten years. I
24 was in private practice here in Beaufort before I went
25 to Mr. Hood's office. And then, I've practiced all over

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1 the State of South Carolina. I tell you that not to
2 give some background for you to assess me, because my
3 credibility is not in question. I tell you that so that
4 you can know that, when I tell you or when I speak to
5 you about the law and the possession law about what
6 constitutes constructive possession and what constitutes
7 possession that you can find someone guilty on, you can
8 know where it's coming from.

9 You've heard from the prosecutor of what they're
10 accusing him of. You have also heard from the Judge
11 that you will not begin deliberations 'til the end of
12 this case. The law that you're going to hear from the
13 Judge is -- the reason for that is, Mr. Chisolm is
14 innocent. He sits there, innocent. Under our law, you
15 are presumed innocent until you are proven guilty by the
16 State beyond a reasonable doubt. You will hear this
17 from the Judge. You will hear this from the attorneys
18 in the case. That is undisputed law, and it has
19 remained our law for the entire time this country has
20 been in existence. There's a reason why we brag that
21 our justice system is one to be looked to as an example,
22 because that standard is there to protect everyone.

23 The standard that beyond a reasonable doubt puts
24 forth is the idea that the State or the government
25 cannot take away anyone's liberties, anyone -- any

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1 individual's liberties, without passing the highest test
2 that we have in the law. It's higher than what they
3 have in civil law. It's higher than any other land has
4 for their civil or criminal law, beyond a reasonable
5 doubt. There's a reason for that.

6 When this country was founded, as you've heard in
7 your social studies classes, as you hear from your kids
8 when they come home from school, what you remember from
9 when you were in school, what you may teach to kids, is
10 that, we're proud of the fact that we rebelled against a
11 government that we thought was being overly-burdensome,
12 that was not giving us our rights, taxing us without
13 representation, doing things that we didn't have any say
14 in, telling the people what to do and not asking what it
15 did to them, not asking their opinion.

16 That's why we formed a new government, and one of
17 the most important things they put in there was this
18 justice system, to put a check on the government they
19 were creating.

20 The founders didn't trust government, and they
21 wanted all people not to trust government. They wanted
22 all common citizens to be that check. You are that
23 check today. And it's just as important for Mr. Chisolm
24 as it is for anyone else, because liberties are
25 generally not taken away en masse. That's what you see

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1 in movies. You see movies about governments taking over
2 with tanks rolling down the street. Okay? That's
3 dramatic, right? Soldiers walking down the street with
4 machine guns, you see it in movies, you see it in the
5 news of past events. That's dramatic, right? But
6 liberties can be taken away just as easily and just as
7 effectively with no tanks and no soldiers, with just one
8 person at a time, one individual at a time, and it's
9 surprising. And I think you may be surprised to know
10 how quickly those numbers add up.

11 Ladies and gentlemen, as of 2011, there was 2.26
12 million Americans incarcerated in this country. As of
13 2011, by the Statistical Bureau, funded by our
14 government, the Federal Bureau of Justice Statistics,
15 over a quarter of that 2.26 million, were incarcerated
16 on drug charges. That is over 750,000 people,
17 approaching a million itself. That is a huge statistic.

18 Now, I know that we don't all agree with about how
19 to deal with drugs. It is a problem. We're not here to
20 say that it's not a problem. But incarcerating a
21 million people for it, that's a problem, too, because
22 what is that really solving? Well, I can tell you one
23 thing. It's taking people's liberty away one at a time,
24 and those numbers are adding up. And your job today,
25 your job throughout this week, is to remember the

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1 founders, remember that burden of proof that you're
2 going to be charged with by the jury, and make sure that
3 number doesn't go up by one, unless they have absolutely
4 proven beyond a reasonable doubt.

5 MS. CONCANNON: Objection.

6 THE COURT: Basis?

7 MS. CONCANNON: Your Honor, may we approach
8 briefly?

9 THE COURT: You may.

10 OFF-THE-RECORD BENCH CONFERENCE, OUT
11 OF HEARING OF JURORS. PRESENT: THE
12 COURT, MS. CONCANNON, MS. KENNEY, MS.
13 SAXON, MR. BAX.

14 END BENCH CONFERENCE.

15 BY MR. BAX:

16 MR. BAX: As I was saying -- and I'm sorry for
17 being interrupted. As I was saying, there's a reason
18 why we have this burden, and there's a reason why you
19 are sworn to an oath, which you just took. That's the
20 best we can do. Okay? Have you swear an oath, and that
21 -- that has always meant something. That is always
22 supposed to mean something when someone comes in and
23 swears an oath. They are promising, in open court,
24 before our justice system, whatever beliefs that you
25 have, that you are going to do what you are swearing to

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1 do... That means you're going to abide by that burden of
2 proof; that you are going to require the State to meet
3 that burden of proof.

4 The Solicitor in this case has talked about the
5 fact that they're going to present these things that
6 they found, and they're going to say these are proof
7 that my client had these with the intent to distribute
8 them, to sell them, to give them away, to put them out
9 into the community. But before they can do anything,
10 before they can prove anything, they have to prove to
11 you that Mr. Chisolm had actual possession of those;
12 that those were his drugs; that those were his scales;
13 that was his gun.

14 What you will also hear, which the Solicitor did
15 not talk about in her opening, is that there was another
16 person living in that house. And, in fact, when the
17 house was searched by law enforcement, there were two
18 other individuals, not Mr. Chisolm, that were there.
19 They are going to have to tell you that these items were
20 found all around the house that was occupied by more
21 than one person.

22 Use your common sense. The reason that I think the
23 jury system works is not because, necessarily, the
24 burdens that we put on you or the law that we read to
25 you. It's the common sense that you bring to this seat,

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1 to this chamber, to this courtroom, because that's all
2 you need. The tools to be able to decide whether what
3 you're being presented proves the case or not are
4 already in your possession.

5 Every single day, out there in the community, you
6 make those decisions. You make those calls. You make
7 those judgments. You go to buy something, you evaluate
8 whether or not the salesman is telling you the truth, or
9 basically telling you what he wants you to think so that
10 you can buy the product. You evaluate that person's
11 credibility.

12 You even evaluate the credibility of people that
13 you care for. When your child comes and tells you about
14 something -- you come home, the T.V.'s broken, the
15 child's like, I didn't do it. You still love your
16 child, but you're going to evaluate whether your child's
17 telling the truth. It's the same thing.

18 You look at credibility every day. When you go to
19 work and you talk to your co-workers, underlings,
20 bosses, you evaluate credibility, whether you realize it
21 or not. If they tell you, you know, we're really sorry,
22 we really love your work product, but we're going to
23 have to give you a pay cut or let you go, you're not
24 necessarily believing that, are you? You're thinking,
25 well, did I do something? Do they not like me? What's

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1 the problem here? If you've got employees that come in
2 and say, I couldn't be at work yesterday because I was
3 sick, or I was this or that, whether you like or dislike
4 that person, you're going to judge their credibility.
5 Do they call in sick all the time? Are they usually
6 here on time, or they usually not here on time? You
7 make those calls every day.

8 That's all you need to do this job, because you are
9 going to have evidence presented from this witness
10 stand. And as you well know, evaluating credibility,
11 evaluating believability, is not just what people say --
12 it's what they don't say, and it's how they say it. Are
13 they nervous? Are they avoiding answering the question?
14 These are all part of that task, things you do on a
15 normal, everyday basis.

16 All we ask -- all we can ask, and all I will ask is
17 that you do this here today, possibly into tomorrow.
18 And remember, they must prove their case beyond a
19 reasonable doubt before you can take the liberty away
20 from an individual that is a fellow citizen of this
21 country. I am sure that that's what you'll do, and
22 after you hear the evidence in this case, I'm sure you
23 will see they have not met that burden. Thank you.

24 THE COURT: Thank you. State will call their first
25 witness.

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DIRECT - MICHAUD

1. MS. CONCANNON: Thank you, your Honor. The State
2. calls Sergeant Walker Michaud with the Beaufort County
3. Sheriff's Office.

4. BAILIFF: Right this way.

5. MADAM CLERK: All right. Please raise your right
6. hand and place your left hand on the Bible.

7. WITNESS COMPLIES.

8. MADAM CLERK: Do you solemnly swear or affirm to
9. truthfully answer all the questions asked of you by this
10. court, so help you God?

11. SERGEANT WALKER MICHAUD: I do.

12. MADAM CLERK: Thank you. Please be seated. State
13. your name, and spell your name for the Court.

14. SERGEANT WALKER MICHAUD: I'm Sergeant Michaud,
15. Beaufort County Sheriff's Office, M/i/c/h/a/u/d..

16. THE COURT: Thank you, Sergeant Michaud.

17. SERGEANT WALKER MICHAUD

18. DIRECT EXAMINATION, BY MARY CONCANNON:

19. Q You mentioned you worked with the Sheriff's Office.
20. In what capacity do you work with the Sheriff's Office?

21. A I work for the Drug Investigations Section.

22. Q And what are some of your duties with Drug
23. Investigations?

24. A I work long-term drug investigations.

25. Q All right.

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DIRECT - MICHAUD

1 A That's --

2 Q Are you involved in the execution of search
3 warrants?

4 A Yes, ma'am.

5 Q Okay. Were you working -- how long have you been
6 with the Sheriff's Office?

7 A Nine years.

8 Q Nine years?

9 A Yes, ma'am.

10 Q Have you been in Drug Investigations that whole
11 nine years?

12 A About five years.

13 Q Okay. What did you do prior to that?

14 A I worked road patrol and traffic enforcement.

15 Q Okay. Were you working with Drug Investigations on
16 May 19th of 2010?

17 A I was.

18 Q Okay. And were you involved in an investigation of
19 a residence at [REDACTED]

20 A Yes, ma'am.

21 Q Where is [REDACTED]

22 A It's in the County of Beaufort, Seabrook.

23 Q Okay. What did you do during the execution of that
24 search warrant?

25 A Prior to the search warrant, I conducted pre-

1 surveillance, and subsequently conducted a traffic stop.

2 Q When you say *pre-surveillance*, can you explain that
3 a little bit, please.

4 A Giving updates to other units, in this -- in this
5 occasion, the SWAT Team that was preparing to execute a
6 search warrant.

7 Q Were you watching the residence?

8 A I was.

9 Q Okay. All right. And then, you mentioned you
10 initiated a traffic stop?

11 A Yes, ma'am.

12 Q Who was this traffic stop on?

13 A The defendant.

14 Q Okay. What's his name?

15 A Dwayne Chisolm.

16 Q Do you see him in the courtroom today?

17 A I do.

18 Q Can you please identify him to the Court.

19 A The gentleman in the brown sweater.

20 MS. CONCANNON: Okay. Let the record reflect that
21 the witness did identify the defendant.

22 BY MS. CONCANNON:

23 Q And after you initiated the traffic stop, what did
24 you do?

25 A After I initiated the traffic stop on the suspect,

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CROSS - MICHAUD

1 who was the sole occupant of his vehicle. He was
2 detained, and then transported back to his residence.

3 Q Okay. And after you brought him back to [REDACTED]
4 [REDACTED], was that the extent of your participation in this
5 case?

6 A I assisted with the search.

7 MS. CONCANNON: I have nothing further for you right
8 now. If you could answer any questions the Defense may
9 have.

10 A Yes, ma'am.

11 MS. SAXON: Thank you.

12 SERGEANT WALKER MICHAUD

13 CROSS-EXAMINATION, BY MS. SAXON:

14 Q Good afternoon, Sergeant Michaud.

15 A Hi.

16 Q You said, prior to your involvement with the Drug
17 Task Force, you were a road officer?

18 A Yes, ma'am.

19 Q And you drove a BCSO-dispatched car, correct?

20 A I did.

21 Q That car -- was that car equipped with a video
22 recording system?

23 A It was.

24 Q And when you switched to Drug Task Force, was your
25 car still equipped with the video recording system?

1 A It was not.

2 Q You said you helped, also, with the search itself.

3 A Yes, ma'am.

4 Q And collected evidence that was found in the
5 residence, correct?

6 A I didn't collect any evidence.

7 Q No. Okay. So, you just looked where -- you just
8 went through it and found it?

9 A Yes, ma'am.

10 Q Okay. Other people then came back and collected
11 it.

12 A The case officer, yes.

13 Q Okay.

14 COURT REPORTER: I'm sorry, *other people came back*
15 *and collected it*, and what?

16 A The case agent or case officer.

17 THE COURT: And Sergeant Michaud, could you speak a
18 little bit louder.

19 A Oh, I'm sorry.

20 THE COURT: I'm even having a hard time hearing
21 you. Thank you, and I see my jurors are, too.

22 A No problem.

23 THE COURT: Okay. Thank you.

24 MS. SAXON: Thank you.

25 BY MS. SAXON:

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1 Q Are you aware of any forensic measures that were
2 taken on any of the evidence found, such as fingerprints
3 or DNA or any of that?

4 A No, I have no knowledge of that.

5 THE COURT: Is that on?

6 A I don't think so.

7 THE COURT: It is? It says it's on.

8 BAILIFF: It says it is.

9 A Can you hear me?

10 BAILIFF: Let's try and put that thing back on and
11 let me see.

12 COURT REPORTER: I don't think it'll stay on.

13 BAILIFF: Maybe that'll help.

14 A Can you hear me? Better.

15 MS. SAXON: I'll re-start it, your Honor. I'm
16 sorry.

17 THE COURT: That's all right.

18 BAILIFF: Is that better?

19 BY MS. SAXON:

20 Q So, you did indicate that you located certain items
21 during the search warrant, correct?

22 A Yes, ma'am.

23 Q Do you remember which items? I mean, if I ask you
24 about some of them, do you think you would recall them?

25 A Not without looking at the inventory.

1 Q Okay.

2 A If you have a copy of that.

3 MS. SAXON: May I approach, your Honor?

4 THE COURT: You may.

5 BY MS. SAXON:

6 Q Do you remember locating a large bag of cocaine?

7 A Do you know which item you're referring to?

8 They're numbered to the left.

9 To your last question, yes, I do.

10 Q Okay. Do you remember where you located that?

11 A It was in a bedroom closet.

12 Q Bedroom closet. Do you remember if it was in a
13 shoe?

14 A I believe it was.

15 Q Okay. Do you remember if you also located a sum of
16 money, some U.S. currency, in that same closet, in
17 another shoe?

18 A Yes, ma'am.

19 Q Okay. You also found some things out about in the
20 rest of the house, correct?

21 A Yes, ma'am.

22 Q Do you recall finding sandwich baggies and digital
23 scales in the kitchen?

24 A Yes, ma'am.

25 Q Okay. Do you -- when -- I'm sorry. Going back to

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RE-DIRECT - MICHAUD

1 the items that you found in the closet, when you -- were
2 they visible? I mean, at first glance, if you opened --
3 did you open the closet?

4 A I -- I don't believe so.

5 Q You don't believe so?

6 A The shoe itself was.

7 Q The shoe was not visible?

8 A It was.

9 Q It was.

10 A Um-hmm.

11 Q And were the items stuffed down into the shoe?

12 A I believe so.

13 Q Okay. So, they were concealed.

14 A Yes, ma'am.

15 MS. SAXON: That's all I have, your Honor.

16 THE COURT: Anything further?

17 MS. CONCANNON: Briefly, your Honor.

18 SERGEANT WALKER MICHAUD

19 RE-DIRECT EXAMINATION, BY MS. CONCANNON:

20 Q Sergeant Michaud, you stated that you were doing
21 surveillance.

22 A Yes, ma'am.

23 Q Were you able to see Mr. Chisolm, prior to your
24 traffic stop, at the residence?

25 A In his vehicle, leaving the residence.

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1 Q Okay.

2 A Not within --

3 Q Okay. Roughly how long did he leave, prior to the
4 execution of the search warrant?

5 A On my report, I have 5:57, roughly, was when the
6 traffic stop occurred. So, I would say probably about
7 ten minutes.

8 MS. CONCANNON: Okay. I have no questions for you.

9 BY THE COURT:

10 THE COURT: Anything further?

11 MS. SAXON: No, your Honor.

12 THE COURT: All right, sir. You may step down.

13 Ladies and gentlemen of the jury, there are some
14 matters I need to take up with the attorneys to be able
15 to move this case along a little bit, so we're going
16 ahead and breaking for lunch so we can do that.

17 Ladies and gentlemen, I need to remind you, you are
18 not to discuss this case, not only with each other, but
19 with anyone else you may come in contact with.

20 Additionally, you are not to do any independent
21 research over the lunch hour. Go get a bite to eat,
22 ladies and gentlemen. I am going to ask that you be
23 back in your jury room at 1:45, where we're going to go
24 ahead and continue with the trial of this case. All
25 right? Again, thank you, and the bailiffs will show you

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1 how to come in and out. Thank you.

2 JURORS LEAVE COURTROOM 12:31 P.M.

3 BAILIFF: The jury's clear, your Honor.

4 THE COURT: Thank you. All right. I know you all
5 have some evidence to go through, to mark with Wanda. I
6 have a 1:00 o'clock hearing in here, so I need you to
7 either do it before then or after then, if that's all
8 right. Because there's going to be some attorneys in
9 here, if that works, and Wanda's going to be busy during
10 that time, so. I don't know how long it's going to
11 take. Do you have the evidence here right now?

12 MS. CONCANNON: We have the evidence. We can do it
13 right now.

14 THE COURT: I suggest you all do it right now, and
15 be done with it. Okay?

16 MS. CONCANNON: Yes.

17 THE COURT: I appreciate it.

18 MS. SAXON: I missed how long your Honor said to
19 the --

20 THE COURT: I told them to be back at 1:45, and the
21 reason why is, I actually have a 1:00 summary judgment.

22 MS. SAXON: Well, okay. Yeah, that's --

23 THE COURT: And I figured it wouldn't, hopefully,
24 take longer than 45 minutes, but I may be wrong. But
25 again, that was my hope, so. Okay?

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1 MS. SAXON: Thank you, your Honor.

2 THE COURT: Okay. Well, I'll see you all back
3 then. And Rick, when all the lawyers are here on that
4 motion, and I'll tell you, just come back and get me.
5 I'm going to go eat a bite. Okay? Thank you.

6 OFF THE RECORD 12:33 P.M.

7 BACK ON THE RECORD 1:02 P.M.

8 BY THE COURT:

9 BAILIFF: All rise. Court is now back in session.

10 THE COURT: Thank you. Please be seated. All
11 right. Yes? You all, I understand that you need
12 something, Ms. Saxon?

13 MS. SAXON: Well, when we reviewed the evidence and
14 what the State plans to introduce, there are some
15 objections that the Defense has. I don't know if you
16 want to hear those now.

17 THE COURT: Okay. Sure.

18 MS. SAXON: As to certain specific items. The
19 items that we are objecting to -- these are -- this --

20 THE COURT: Okay. So, what's your objection to --
21 these are State's Exhibits?

22 MS. SAXON: 3 and 4.

23 THE COURT: 3 and 4. And what are they?

24 MS. CONCANNON: They are bullets. One was found in
25 the residence, in the defendant's -- they were found in

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1 the defendant's bedroom, under the defendant's bed.

2 COURT REPORTER: Ari?

3 THE COURT: Okay. You need to be loud enough for
4 Wanda.

5 COURT REPORTER: Ari? I'm sorry, I just --

6 THE COURT: Stop talking is what she's saying so
7 she can hear, so.

8 COURT REPORTER: Yes. I'm sorry.

9 THE COURT: Go ahead.

10 MS. CONCANNON: They were found on -- one of those
11 was found underneath the defendant's bed, the other in
12 the residence. They're bullets. They don't match the
13 gun that was found. We would be admitting them to show
14 that he did have ammunition in the house, along with
15 another gun.

16 MS. SAXON: And our problem, your Honor, it's not
17 illegal for him to have ammunition in the house. Those
18 bullets don't go to any elements of the crime. They're
19 just simply there to prejudice and make Mr. Chisolm just
20 kind of look like this bad guy. It's a 403 issue. What
21 probative value do they have to the jury? What does
22 that bring to the State's case? What element does it
23 prove? None. We don't think it's irrelevant -- we
24 don't think it's relevant in any way.

25 MS. CONCANNON: It also comes into play with the

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1 fact that he's charged with trafficking and PWID, and we
2 will elicit testimony after Sergeant Boland, regarding
3 what is typically found in drug dealers' residences, and
4 one of those things would be extra ammunition.

5 MS. SAXON: Again, I think that's making a leap.
6 It's not an element that has to be proved of the crime.
7 I mean, I have extra ammunition in my house. Does that
8 mean that if -- that that can be used against me in a
9 court of law, just because it may tend to prove
10 something? Either -- I think for evidence to be
11 entered, it has to be relevant. It has to pertain to
12 403, and I don't think it does. It doesn't here..

13 THE COURT: Well, I'm assuming Boland's testimony
14 would be is that, in a drug trafficking trade or in the
15 drug trafficking trade, that people would have weapons,
16 and even though there was only one weapon recovered from
17 his house, correct?

18 MS. SAXON: Correct.

19 THE COURT: That there could potentially have been
20 other weapons, you know. And again, I know it's
21 potential, but there is further ammunition found. I --

22 MS. SAXON: But then, I would also --

23 THE COURT: Go ahead.

24 MS. SAXON: Sorry. I would also object to the
25 testimony that there could have been something else

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1 there. We're dealing with what was, not what could be.

2 THE COURT: Well, I understand that, and I don't
3 think she can make that leap. But she can just say
4 that, you know, when she talks about people in the
5 trafficking trade. Part of her problem is -- or when I
6 say *her problem*, part of their problem is, they have to
7 prove trafficking, which is an element of this offense.
8 So, again, which has to prove that it either has to be
9 bought, distributed, on and on and on.

10 So, again, I don't think there is any prejudice,
11 because there is other ammunition found in the house.
12 There is a gun found at the house. And I don't think
13 this prejudice outweighs any probative value. I think
14 it goes to show what was found at the time, so I am
15 going to deny that motion as to State's 3 and 4.

16 MS. SAXON: The next is State's 11. This is a
17 bottle of supplements from GNC. I don't even know what
18 Inositol does, but it's sold at the GNC. These pills
19 are not something that my client is charged with having.
20 I don't understand what this bottle represents or
21 provides in any way, shape or form.

22 MS. CONCANNON: And again, it is relevant because
23 he's charged with distribution, as well trafficking.
24 The State would contend that Mr. Chisolm used what was
25 in that bottle as a cutting agent to make his quantity

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1 of cocaine grow in order to sell it, to duplicate or
2 triple his quantity. They cut it with these type of
3 products, and I have --

4 THE COURT: What is Inositol?

5 MS. CONCANNON: It's like a supplement.

6 MS. SAXON: It's a vitamin.

7 MS. CONCANNON: Body builders use it.

8 THE COURT: How do they use that?

9 SERGEANT BOLAND: When they cook the crack cocaine,
10 using the process, they use that to mix with the cocaine
11 in the cooking process, and you develop the crack. It's
12 actually kind of a binding agent.

13 THE COURT: Okay.

14 MS. CONCANNON: Or it can act as a binding agent.

15 SERGEANT BOLAND: It can act as a binding agent.
16 I'm sorry.

17 MS. CONCANNON: It can.

18 SERGEANT BOLAND: It's commonly found in houses
19 where we do drug warrants.

20 MS. SAXON: And so, the State's position is that
21 that would have been used in the cooking of --

22 SERGEANT BOLAND: It can be used in both the
23 cooking, and used with exactly what Ms. Concannon said,
24 to cut their agent, because you're not going to have any
25 local dealer that's going to have a hundred percent

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1 cocaine when you're selling it. Chances are, what
2 they're selling isn't even one hundred percent. They're
3 cutting it to increase their profits.

4 MR. BAX: Not to break in, but my understanding is
5 they have no evidence of that, though.

6 MS. SAXON: Yeah, they're --

7 MR. BAX: Unless they can produce a chemical test
8 that says we tested the crack, and it has Inositol in
9 it, they can't actually not prove that that was used
10 that way.

11 MS. CONCANNON: But he's not -- he's not on trial
12 for possessing Inositol. He's on trial for selling --
13 for possession with intent to distribute crack cocaine
14 --

15 MR. BAX: Right.

16 MS. CONCANNON: -- and trafficking crack
17 trafficking cocaine. This, when combined with all the
18 other evidence that we have, leads weight to that he did
19 intend to traffic and distribute these drugs, and he
20 used that to increase the quantity of drugs he had to
21 increase his money.

22 MR. BAX: Well, you're saying that, but you --
23 you're saying that, but you have no proof of it.

24 MS. CONCANNON: Well, that's for them to believe.

25 THE COURT: It's circumstantial evidence, is what

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1 it is. So, again, I'm allowing it to come in. That's
2 State's Number 11. I think it's appropriate. Anything
3 else?

4 MS. SAXON: Yes, your Honor. We would object to
5 the sandwich baggies, State's 12. Sandwich baggies are
6 a common household item. I don't think that there is --
7 again, you're asking a jury to make a connection that
8 the State is approving. They're just throwing out
9 possibilities. It's a possibility these baggies were
10 used --

11 THE COURT: There's also a possibility that the
12 scales are being used to weigh, you know, Lean Cuisine,
13 but anyway. I think it's -- also, it's not just in and
14 of itself, but it's the totality of all the evidence
15 that's found. It's more than one scale. There were
16 drugs found out the house. There were guns found in the
17 house. There was ammunition found at the house.

18 MS. SAXON: Well, I mean --

19 THE COURT: And as a result of it. And they're in
20 nice proximity to each other. On State's 29, you see
21 the Inositol and the baggies and the money.

22 MS. CONCANNON: And the scales.

23 THE COURT: And what's that right there?

24 MS. CONCANNON: That's a digital scale.

25 THE COURT: And a digital scale, all right

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1 together. So, again, I think it's relevant as to,
2 again, they have to prove trafficking, so I think that's
3 allowed.

4 MS. SAXON: And my last objection is to the radio
5 scanner. Again, your Honor, it's the same issue that we
6 have with all of these other items. It's a 403 issue.
7 This radio scanner doesn't prove an element of any
8 offense that he's charged with. You know, trafficking
9 offenses, the actual elements deal with knowledge,
10 quantity, things of that nature. They don't deal with
11 whether or not a person has a scanner, which was not
12 illegal for him to own. Anyone can own a radio scanner.
13 The State's going to allege that that was used to police
14 the police. That's the argument that's going to be made
15 with it. But again, where is other evidence of that?
16 There's not. There's nothing in it, and it doesn't give
17 anything to this case. It doesn't make any -- it
18 doesn't make any link to the necessary elements that are
19 required to prove -- that the State's required to prove.
20 It's just an extra. It's additive, and it's just to
21 show that maybe he's a bad guy.

22 THE COURT: Just because he has a scanner?

23 MR. BAX: They're going to allege that he was
24 monitoring the police in order to avoid detection.

25 MS. SAXON: Right.

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1 MR. BAX: The problem is, they can't prove that,
2 just like with all the rest of it.

3 THE COURT: Again, but it's all circumstantial
4 evidence that, taken together, would prove, or attempt
5 to prove or attempt to convince a jury that there is.

6 MR. BAX: Well, obviously, our position, as your
7 Honor knows, -- and this is just for the record --
8 that's why they 403 and put it in, was to block them
9 from using things that are just an inference with no
10 substance behind it.

11 THE COURT: Okay.

12 MR. BAX: You know, the totality of the evidence, I
13 have never seen where that's used as an argument to make
14 evidence admissible. That's an argument on D.V. That's
15 an argument on, you know, charges, as far as whether a
16 charge is called for or not. I've never seen it used as
17 an argument for admissibility.

18 THE COURT: I think the probative value outweighs
19 any prejudice, under a 403 argument. Again, I think the
20 State is charged with proving the possession with intent
21 to distribute charge and the trafficking charge. And
22 again, I think all of it, in its entirety, goes to that
23 issue that they're going to have to prove. And again,
24 the burden's on them, but I do find it relevant, and
25 again, I think the probative value outweighs any

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1 prejudice. Did you get that? Sorry. You know what I'm
2 going to say, so.

3 All right. Anything else?

4 MS. SAXON: No, your Honor, I would just go ahead
5 and say that, just to preserve the record, I'll make the
6 objections as the items come up.

7 THE COURT: Absolutely.

8 COURT REPORTER: Jessica, that's 3, 4, 11, and
9 what's the scanner? You didn't say what the scanner
10 was.

11 MS. SAXON: 3, 4, 11, 12 and 17.

12 COURT REPORTER: Oh, okay.

13 MS. SAXON: 12 was the sandwich baggies.

14 COURT REPORTER: Yes. Got it. Thanks.

15 THE COURT: Okay. Let's bring the jury in. Who is
16 the first witness you're going to call?

17 MS. CONCANNON: Sergeant Boland.

18 THE COURT: Perfect. Thank you.

19 MS. CONCANNON: And everybody else is waiting in
20 the hallway.

21 THE COURT: I see Lorraine back there. No one's
22 quicker than you, Lorraine, getting the witnesses in and
23 out. You're good.

24 MS. LORRAINE MOSS: Thank you, your Honor.

25 BAILIFF: The jury is entering the courtroom, your

1 Honor.

2 JURORS ENTER COURTROOM 2:31 P.M.

3 THE COURT: Thank you. Welcome back, ladies and
4 gentlemen. I apologize for you all having to wait on
5 us. I will tell you that, over lunch hour, I had a
6 separate hearing that I needed to take care of. And
7 then, also, we took up a couple of matters here, to make
8 sure that the evidence comes to you more quickly in this
9 case. So, with that said, ladies and gentlemen, if the
10 State will call their next witness.

11 MS. CONCANNON: Thank you, your Honor. State calls
12 Sergeant Angie Boland.

13 MADAM CLERK: Do you solemnly swear or affirm to
14 truthfully answer all questions asked of you by this
15 court, so help you God?

16 SERGEANT ANGELA BOLAND: I do.

17 MADAM CLERK: Thank you. Please be seated, and
18 state and spell your name for the Court.

19 COURT REPORTER: I have the spelling. Thank you.

20 SERGEANT ANGELA BOLAND: My name is Angela Boland.
21 I am a sergeant with the Beaufort County Sheriff's
22 Office, currently assigned to the Northern
23 Investigations section.

24 SERGEANT ANGELA BOLAND

25 DIRECT EXAMINATION, BY MS. CONCANNON:

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DIRECT - BOLAND

1 Q Sergeant Boland, how long have you been employed by
2 the Beaufort County Sheriff's Office?

3 A With the Beaufort County Sheriff's Office, just
4 over five years.

5 Q Okay. Where did you work prior to the Beaufort
6 County Sheriff's Office?

7 A I worked in Sumter, South Carolina, and prior to
8 that, I worked in New Mexico. I've been a law
9 enforcement officer since 1998.

10 Q Okay. What do you currently -- what's your current
11 position with the Sheriff's Office.

12 A I'm in Criminal Investigations for crimes that are
13 committed north of the Broad River.

14 Q Back in 2010, were you working in that capacity for
15 the Sheriff's Office?

16 A No. In 2010, I was assigned with the Drug
17 Investigations Section, also with the Beaufort County
18 Sheriff's Office.

19 Q And what were some of your duties with Drug
20 Investigations?

21 A A variety of administrative duties, investigating
22 drug complaints, drug activity, which would include
23 arrest warrants, interviews, search warrants, et cetera.

24 Q You mentioned search warrant. Were you involved
25 with a search warrant on May 19th of 2010?

1 A I was.

2 Q And where was that search warrant executed?

3 A At [REDACTED] which is in Seabrook
4 portion of Beaufort County.

5 Q Who resides at [REDACTED]

6 A At that time, it was the defendant, Mr. Chisolm,
7 Dwayne Chisolm.

8 MS. CONCANNON: Okay. I'll have the record reflect
9 that the witness did point to Mr. Chisolm.

10 BY MS. CONCANNON:

11 Q Did anybody else live there?

12 A There was another individual by the name of David
13 Greene that resided there, I believe, as well.

14 Q How many bedrooms were in this residence?

15 A Two.

16 Q Okay. To your knowledge, did Mr. Greene and Mr.
17 Chisolm share a bedroom?

18 A No. They had individual bedrooms.

19 Q How were you able to ascertain that Mr. Chisolm
20 lived at [REDACTED]

21 A As part of the investigation, prior to getting the
22 search warrant, I would review different things to
23 include the Department of Motor Vehicles. And Mr.
24 Chisolm, Mr. Dwayne Chisolm, had his address listed to
25 the Department of Motor Vehicles as being [REDACTED]

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DIRECT - BOLAND

1 [REDACTED]

2 Q Did you find anything else in the residence
3 identifying Mr. Chisolm?

4 A Yes. There was mail that was addressed to Mr.
5 Dwayne Chisolm to that address. His passport was
6 located, as well as, I believe, a credit card and the
7 title to his vehicle were all located in the residence.

8 MS. CONCANNON: Permission to approach, your Honor.

9 THE COURT: You may.

10 BY MS. CONCANNON:

11 Q Sergeant Boland, I want to show you what's been
12 previously marked as State's Exhibit Number 5. Can you
13 identify that?

14 A Yes, ma'am. This is a Belk credit card with the
15 name of Dwayne Chisolm on it, and this was located in
16 the bedroom belonging to Mr. Chisolm within the
17 residence.

18 Q Okay. Did you -- were you all -- did you all call
19 these bedrooms something different? Bedroom 1 or
20 Bedroom 2, or A, B?

21 A For the purposes of keeping the evidence separated
22 and understandable when you're reading the report, I
23 indicated -- assigned that to be Bedroom 2. And that
24 was simply based upon how the flow of the house and just
25 the number I picked. So, that would have been indicated

1 as Bedroom Number 2.

2 Q Okay. And how do you know this was, in fact, the
3 credit card that you collected that day?

4 A Because I photographed it, I collected it, and I
5 submitted it into evidence.

6 MS. CONCANNON: At this point, State moves State's
7 Exhibit 5 into evidence.

8 MS. SAXON: No objection.

9 THE COURT: Without objection.

10 ITEM IDENTIFIED AS BELK CREDIT CARD
11 WITH THE NAME OF DWAYNE CHISOLM MARKED
12 STATE'S EXHIBIT NUMBER 5, ADMITTED AS
13 EVIDENCE.

14 MS. CONCANNON: Permission to publish.

15 THE COURT: You may.

16 BY MS. CONCANNON:

17 Q Sergeant Boland, I'm going to hand you what's been
18 marked State's Exhibit 9 and State's Exhibit 10. Can
19 you identify those for the Court, please.

20 A Number 9 is mail that is addressed to Dwayne
21 Chisolm at [REDACTED] Seabrook. This was
22 collected out of the living room area.

23 Q Okay.

24 A Number 10 has some envelopes, one of which was
25 addressed to Mr. Dwayne Chisolm, at [REDACTED]

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DIRECT - BOLAND

1 Road, and that was collected out of the kitchen area.

2 Q And how do you know these were, in fact, the pieces
3 of mail you collected that day?

4 A Because, again, I photographed, as with every piece
5 of evidence, I photographed and collected those items,
6 and I put them into the bags, which I then signed over
7 to evidence.

8 MS. CONCANNON: At this time, State moves State's
9 Exhibit 9 and 10 into evidence.

10 MS. SAXON: No objection.

11 THE COURT: Without objection.

12 ITEMS IDENTIFIED AS MAIL ADDRESSED

13 TO DWAYNE CHISOLM, AT [REDACTED]
14 [REDACTED], SEABROOK, COLLECTED

15 OUT OF LIVING ROOM AREA, MARKED STATE'S
16 EXHIBIT NUMBER 9, ADMITTED AS EVIDENCE.

17 ADMITTED AS EVIDENCE.

18 ITEMS IDENTIFIED AS ENVELOPES, ONE
19 ADDRESSED TO DWAYNE CHISOLM AT

20 [REDACTED] COLLECTED
21 OUT OF KITCHEN AREA, MARKED STATE'S
22 EXHIBIT NUMBER 10, ADMITTED AS EVIDENCE.

23 MS. CONCANNON: Permission to publish, your Honor.

24 THE COURT: You may. Solicitor, is there any way
25 we can take the light down on that?

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1 MS. CONCANNON: I'm not very familiar with this
2 machine. Oh, that makes it better.

3 THE COURT: Very good.

4 MS. CONCANNON: There we go.

5 THE COURT: Okay. Except that it's upside down.

6 MS. CONCANNON: It's upside down. I've got to
7 learn this technology.

8 THE COURT: Okay. There we go.

9 MS. CONCANNON: Thank you.

10 THE COURT: There we go. Okay.

11 BY MS. CONCANNON:

12 Q Okay. And Sergeant Boland, I'm handing you what
13 has been marked State's Exhibit Number 6. Can you
14 identify that for the record, please.

15 A Yes. This is a title to -- this is Mr. Chisolm's
16 passport and the title to his vehicle, which is an SUV.
17 And these -- this also shows [REDACTED] or Small,
18 Road as his address, and these were found in the
19 bedroom, his bedroom, which was Bedroom 2 at the house,
20 or what I indicated as Bedroom 2 at that house.

21 Q Okay. Thank you.

22 MS. CONCANNON: At this point, State moves State's
23 Exhibit 6 into evidence.

24 MS. SAXON: No objection.

25 ITEMS IDENTIFIED AS TITLE TO DWAYNE

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1 CHISOLM'S VEHICLE, AN SUV; AND
2 DWAYNE CHISOLM'S PASSPORT MARKED STATE'S
3 EXHIBIT NUMBER 6, ADMITTED AS EVIDENCE.

4 MS. CONCANNON: Permission to publish.

5 THE COURT: Um-hmm.

6 BY MS. CONCANNON:

7 Q So, it was after finding those identifying factors,
8 you determined Mr. Chisolm's residence.

9 A Correct.

10 Q Okay. During this execution of the search warrant,
11 what time of day was this?

12 A This was early morning, approximately 6:00 A.M.

13 Q Where was everyone located who resided in the
14 residence?

15 A Mr. Chisolm, Mr. Dwayne Chisolm, had been observed
16 leaving the residence, and he was stopped and brought
17 back to the residence within a few moments or a few
18 minutes. Mr. Greene and a female companion were located
19 in a bedroom that my report indicates as being Bedroom
20 1.

21 Q Okay. Is that the bedroom where these items were
22 found?

23 A No, ma'am.

24 Q Okay. Was anybody in the bedroom where these items
25 were found?

1 A No.

2 Q How many sheriff's deputies responded for the
3 search warrant, roughly?

4 A It would have been the Drug Investigations Section
5 team, which is listed. I'd have to refer to my report.
6 And then, the SWAT team, initially. SWAT team, the
7 majority of them left after the residence was secured,
8 and the remainder of us stayed to process the scene.

9 Q Okay.

10 A Roughly ten or so.

11 Q And what is the protocol for searching a residence
12 when a search warrant is in place?

13 COURT REPORTER: *Searching the residence?*

14 Q When a search warrant is in place.

15 A Once a search warrant is obtained through the --
16 through the magistrate, in this case, it was a no-knock
17 search warrant, so the SWAT team went in first. A no-
18 knock is obtained for varying factors. So, the SWAT
19 team goes in to secure the residence, to make sure that
20 everybody is safe and secured. And then, the
21 individuals that are in the house, if there's somebody
22 in the house, they're secured and removed. Then, the
23 residence would be videotaped. Then, the officers will
24 go in and search, with the case officer, in this case,
25 was myself.

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1 I would do all the photographing and collecting of
2 all of the evidence. They would come and get me, and
3 tell me if something was found. And then, we would
4 possibly have another individual doing -- another
5 officer would do interviews at the same time in another
6 location of the yard or the residence.

7 And then, after we are done with everything, we
8 would, at some point, the resident or homeowner or
9 somebody would be advised of the search warrant.

10 Afterwards, we'd go back through and videotape
11 everything again, and then turn the residence over to
12 somebody. And if applicable, the people would then be
13 transported to the jail, at some point.

14 Q This residence that was at [REDACTED]
15 how is it set up? How many bedrooms were in it, living
16 room, den, whatnot?

17 A There was a porch area. Then, you go in, there's a
18 kitchen, living room, dining room area. There's two
19 bedrooms. There's a bathroom, and I believe, another
20 bathroom off of what was indicated as Bedroom 2.

21 Q How many stories is this residence?

22 A One story, I'm sorry.

23 Q Was every room of that residence searched?

24 A Yes.

25 Q Okay. Let's walk room by room. Starting in Mr.

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1 Chisolm's room, you identified Bedroom Number 2, what
2 did you locate in that room?

3 A There was a variety of items located, and we seized
4 out of there the items that we've already discussed
5 here. There was, in the closet, a shoe that contained
6 U.S. currency. There was a shoe that contained a bag of
7 suspected cocaine, a larger bag of cocaine, and --

8 Q I'm going to stop you right there for one second.

9 A Okay.

10 MS. CONCANNON: Permission to approach, your Honor.

11 THE COURT: You may.

12 BY MS. CONCANNON:

13 Q Sergeant Boland, I'm handing you what has been
14 previously marked State's Exhibits 25, 26 and 28. Can
15 you please identify those.

16 A Okay. 25 is an overall picture of the closet from
17 that bedroom that I took, and it shows -- this one shows
18 the shoe, specifically, the shoe where the cocaine is.
19 Excuse me, it's down there.

20 26 is a photograph of the shoe where the U.S.
21 currency was located. I just took a picture of it,
22 prior to removing the currency. And then, 28 is just a
23 closer picture of the shoe that contained the cocaine --
24 suspected cocaine.

25 Q And Sergeant Boland, do these pictures fairly and

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1 accurately depict the inside of this closet during
2 execution of the search warrant?

3 A Yes.

4 Q Okay.

5 MS. CONCANNON: At this point, the State moves
6 Exhibit 25, 26, and 28 into evidence.

7 MS. SAXON: Without objection.

8 THE COURT: Without objection.

9 ITEM IDENTIFIED AS PHOTOGRAPH OF
10 OVERALL PICTURE OF CLOSET MARKED
11 STATE'S EXHIBIT NUMBER 25,
12 ADMITTED AS EVIDENCE.

13 ITEM IDENTIFIED AS PHOTOGRAPH OF
14 SHOE WHERE U.S. CURRENCY WAS
15 LOCATED MARKED STATE'S EXHIBIT
16 NUMBER 26, ADMITTED AS EVIDENCE..

17 ITEM IDENTIFIED AS CLOSER PICTURE
18 OF SHOE THAT CONTAINED COCAINE,
19 SUSPECTED COCAINE, MARKED STATE'S
20 EXHIBIT NUMBER 28, ADMITTED AS EVIDENCE.

21 MS. CONCANNON: Permission to publish.

22 THE COURT: You may.

23 BY MS. CONCANNON:

24 Q And Sergeant Boland, again, what was this?

25 A This was the shoe where the U.S. currency was

1 located, inside of the closet.

2 Q Okay. And I'm now going to show you State's
3 Exhibit 25.

4 A And that's an overview shot of the closet. You
5 just happen to catch the shoe in the -- the corner.
6 Right there.

7 Q That right there?

8 A Correct. That's where the cocaine's located.

9 Q And State's Exhibit 28.

10 A And that's just a closer shot of the specific shoe
11 with the cocaine.

12 Q Okay. And was this -- was the shoe with the money
13 found in the same closet as the shoe with the cocaine?

14 A Yes. It's just --

15 Q Suspected cocaine.

16 A -- under the -- all those other shoes.

17 Q Okay. Sergeant Boland, I'm going to hand you what
18 has been previously marked State's Exhibit 7. Can you
19 please tell the Court what that is.

20 A This is -- it's stapled together. This is the
21 shoe. It's a dark blue, looks black in the picture.
22 This is the shoe in which the cocaine was located in the
23 closet.

24 Q And how are you certain that is the actual shoe you
25 collected?

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1 A Again, because I photographed, collected, and I
2 signed the bags.

3 Q Okay.

4 A And submitted it into evidence.

5 Q Thank you.

6 MS. CONCANNON: At this point, State moves State's
7 Exhibit 7 into evidence.

8 MS. SAXON: No objection.

9 THE COURT: Without objection.

10 ITEM IDENTIFIED AS PHOTOGRAPH OF
11 SHOE IN WHICH COCAINE WAS LOCATED
12 IN THE CLOSET MARKED STATE'S EXHIBIT
13 NUMBER 7, ADMITTED AS EVIDENCE.

14 MS. CONCANNON: Permission to publish.

15 THE COURT: You may.

16 BY MS. CONCANNON:

17 Q Do you know how much cash was in that shoe?

18 A I would have to look at the report to tell you
19 specifically. There was a little over \$2,000.00 seized.

20 Q Okay.

21 A My report would indicate the specific dollar amount
22 within the shoe.

23 Q Okay. And you mentioned that there was cocaine
24 found in that darker shoe. Was there any other
25 suspected drugs found in Bedroom Number 2?

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1 A Yes, there was a plastic baggie that had what I
2 believe was crack cocaine in a bowl.

3 Q Okay.

4 MS. CONCANNON: Permission to approach.

5 THE COURT: You may.

6 BY MS. CONCANNON:

7 Q Sergeant Boland, I'm handing you what's been marked
8 as State's Exhibit 24. And can you identify that for
9 the Court, please.

10 A Yes. It's a little dish, a little plastic bowl,
11 that was, I believe, on the defendant's dress -- or the
12 dresser in Bedroom 2, belonging to Mr. Chisolm. The --
13 you'll see when the picture comes up, this is suspected
14 to be -- which was later identified as crack cocaine, in
15 this baggie here. And this baggie has a little Batman,
16 small baggie inside of it that also had, I believe,
17 crack cocaine in it.

18 Q Thank you. And does this fairly and accurately
19 depict the picture of this bowl on the date of the
20 search warrant?

21 A Yes.

22 Q Okay.

23 MS. CONCANNON: Permission -- at this point, the
24 State moves State's Exhibit 24 into evidence.

25 MS. SAXON: No objection.

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1 THE COURT: Without objection.

2 ITEM IDENTIFIED AS PHOTOGRAPH OF
3 A LITTLE DISH/BOWL, FOUND ON
4 DRESSER IN BEDROOM 2, MARKED STATE'S
5 EXHIBIT NUMBER 24, ADMITTED AS EVIDENCE.

6 MS. CONCANNON: Permission to publish.

7 BY MS. CONCANNON:

8 Q So, just, again, briefly, so everyone can see --
9 I've got to figure this thing out.

10 A There we go.

11 Q Okay. So, can you explain this again.

12 A The baggie that has the Batman symbol --

13 Q Um-hmm.

14 A -- the Batman is -- or smaller bag, there's a
15 smaller plastic bag inside of it -- inside of like, a
16 sandwich-bag-type of plastic bag. The other one, you
17 can see the crack cocaine is visible through the baggie
18 there.

19 Q Okay. Thank you. Did you find anything else in
20 Mr. Chisolm's bedroom?

21 A Yes. There was some ammunition located. One, I
22 believe, was under the bed, and the other was on a
23 dresser.

24 Q Okay. Sergeant Boland, I'm handing you what's been
25 marked State's Exhibit 3 and State's Exhibit 4. Can you

1 identify those for the Court, please.

2 A Yes, ma'am. Number 3 was a -- one round of
3 ammunition that was located under the bed in Bedroom 2,
4 in Mr. Chisolm's room. And Number 4 is one round of
5 ammunition which was found on the dresser in Bedroom 2,
6 Mr. Chisolm's room.

7 Q And how are you certain these are the rounds of
8 ammunition you found in Mr. Chisolm's bedroom?

9 A Because I'm the one that photographed, collected,
10 put them into the bag, signed them and turned them over
11 into evidence.

12 MS. CONCANNON: At this point, State moves State's
13 Exhibit 3 and State's Exhibit 4.

14 MS. SAXON: Noting prior objections, your Honor.

15 THE COURT: Yes. Noted, for the record. Thank
16 you.

17 ITEM IDENTIFIED AS ONE ROUND OF
18 AMMUNITION LOCATED UNDER BED IN
19 BEDROOM 2 MARKED STATE'S EXHIBIT
20 NUMBER 3, ADMITTED AS EVIDENCE.

21 ITEM IDENTIFIED AS ONE ROUND OF
22 AMMUNITION FOUND ON DRESSER IN
23 BEDROOM 2, MARKED STATE'S EXHIBIT
24 NUMBER 4, ADMITTED AS EVIDENCE.

25 MS. CONCANNON: And permission to publish.

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1 THE COURT: You may.

2 BY MS. CONCANNON:

3 Q Was anything else located in Mr. Chisolm's bedroom?

4 A I don't believe that we seized anything else from
5 the bedroom.

6 Q Okay. How about moving on to the living room?

7 A Okay. In the living room area, on a chair, love
8 seat-type of piece of furniture, there was a gun, a
9 little, small straw, and a small bag of cocaine located.

10 Q Sergeant Boland, I'm going to hand you what's been
11 marked State's Exhibit 31 and State's Exhibit 32. Could
12 you please identify those for the Court?

13 A Yes. This is the -- it's more of a love seat-type
14 of couch or seat, large seat area, and it shows the gun
15 with the straw. The second picture's a close-up
16 picture. It also shows the cocaine, which was up under
17 one of the pictures in the original picture. And those
18 were all in the living room area.

19 Q And do these fairly and accurately depict the couch
20 and the items on top of it the day of the search
21 warrant?

22 A Yes.

23 Q Okay.

24 MS. CONCANNON: At this point, State moves State's
25 Exhibit 31 and 32 into evidence.

1 MS. SAXON: No objection.

2 THE COURT: Without objection.

3 ITEM IDENTIFIED AS PHOTOGRAPH

4 MARKED STATE'S EXHIBIT NUMBER 31,

5 ADMITTED AS EVIDENCE.

6 ITEM IDENTIFIED AS PHOTOGRAPH

7 MARKED STATE'S EXHIBIT NUMBER 32,

8 ADMITTED AS EVIDENCE..

9 MS. CONCANNON: Permission to publish, your Honor.

10 THE COURT: You may.

11 BY MS. CONCANNON:

12 Q What type of handgun was that, that was located on
13 that couch?

14 A It was a Highpoint.

15 Q Did anything significant stick out about that gun
16 to you?

17 A The serial number plate on the weapon itself had
18 been filed off, so the serial number was removed or
19 obliterated, and you were unable to read it.

20 MS. CONCANNON: Permission to approach, your Honor.

21 THE COURT: You may.

22 BY MS. CONCANNON:

23 Q Sergeant Boland, I'm going to hand you what has
24 been marked as State's Exhibit 1. Can you please
25 identify that for the Court.

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1 A This is the box, which was sealed until today,
2 which contains the handgun. The lock was put on today.
3 This is not how it was found. It was originally found
4 loaded, with a magazine and ammunition. It was removed
5 for safety purposes, secured into this box, and then,
6 because we were going to have it out for court, we put
7 the lock on it today.

8 Q Okay. You mentioned a magazine. I'm handing you
9 what's been marked State's Exhibit 2. Can you please
10 identify that for the Court.

11 A This is the magazine which contained nine rounds,
12 which was originally loaded, inside the weapon, at the
13 time we collected the weapon.

14 Q Okay. The handgun, where is the serial number on
15 that handgun?

16 A The serial number would have been right here, on
17 the plate, which is, again, you can't read it. It's
18 been completely removed.

19 Q Okay. And how are you certain that is the handgun,
20 as well as the bag of ammunition, you collected that
21 day?

22 A Because I photographed, I collected, I secured it,
23 made it safe, and secured it to this box, which was then
24 signed and submitted into evidence by myself.

25 MS. CONCANNON: At this point, State moves State's

1 Exhibit 1 and State's Exhibit 2 into evidence.

2 MS. SAXON: Without objection.

3 ITEM IDENTIFIED AS HANDGUN IN

4 BOX MARKED STATE'S EXHIBIT NUMBER 1,

5 ADMITTED AS EVIDENCE.

6 ITEM IDENTIFIED AS MAGAZINE CONTAINING

7 NINE ROUNDS MARKED STATE'S EXHIBIT

8 NUMBER 2, ADMITTED AS EVIDENCE.

9 MS. CONCANNON: Permission to publish, your Honor.

10 THE COURT: You may.

11 BY MS. CONCANNON:

12 Q So, this was the handgun found on Mr. Chisolm's
13 couch.

14 A Correct.

15 Q Did you find anything else in the living room area?

16 A I don't recall. I would need to review my report.

17 Q How about, let's move to the kitchen?

18 A Okay.

19 Q Okay. What did you find in the kitchen?

20 A In the kitchen, we found -- there was two kitchen
21 or commercial scales -- not commercial, necessarily,
22 just, I guess what people would consider old-fashioned
23 now, but the older-type scales. Those were in a kitchen
24 cabinet.

25 Q Sergeant Boland, I'm going to hand you what's been

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1 marked State's Exhibit 15 -- 14 and 15. Are these the
2 scales you found?

3 A Yes.

4 Q And how do you know they are the scales you found?

5 A Because I photographed them, collected them, tagged
6 them. Let me show you right here.

7 Q Okay.

8 A And signed them and submitted them into evidence.

9 Q Where, in the kitchen, were these located?

10 A Those were in the kitchen cabinet together, side-
11 by-side.

12 Q Okay. How big is this kitchen?

13 A Not huge. It's just your typical, small kitchen
14 area.

15 Q Okay.

16 MS. CONCANNON: At this point, State moves State's
17 Exhibit 14 and 15 into evidence.

18 MS. SAXON: Without objection.

19 THE COURT: Without objection.

20 ITEM IDENTIFIED AS SCALES MARKED

21 STATE'S EXHIBIT NUMBER 14, ADMITTED
22 AS EVIDENCE.

23 ITEM IDENTIFIED AS SCALES MARKED

24 STATE'S EXHIBIT NUMBER 15, ADMITTED
25 AS EVIDENCE

1 BY MS. CONCANNON:

2 Q What else did you locate in the kitchen?

3 A In another cabinet, we found a digital scale, a
4 smaller digital scale.

5 Q Did you find anything else in that cabinet with the
6 digital scale?

7 A Yes. We found a -- right with the digital scale,
8 there was a box of sandwich baggies. There was a bottle
9 of -- and I know I'm going to say this wrong --
10 Inositol. It's a supplement product from GNC, in a
11 little gray bottle. And we also found a bag with U.S.
12 currency in it.

13 Q Sergeant Boland, I'm going to hand you what's been
14 previously marked State's Exhibit 29 and 30. Can you
15 please tell the Court what those pictures depict.

16 A 29 is the overview shot of the kitchen, inside the
17 cupboard, and it shows a scale, the baggies, the
18 supplement, and the bag with the money rolls. Picture
19 30 is just a closer shot of the money rolls, but it also
20 has the other items in it, as well.

21 Q Thank you. And do these fairly and accurately
22 depict these items on the day of the search warrant?

23 A They do.

24 MS. CONCANNON: At this point, State would like to
25 move State 29 and State's 30 into evidence.

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1 MS. SAXON: Prior objections noted, your Honor.

2 THE COURT: Subject to prior objections.

3 ITEM IDENTIFIED AS PHOTOGRAPH MARKED
4 STATE'S EXHIBIT NUMBER 29, ADMITTED
5 AS EVIDENCE.

6 ITEM IDENTIFIED AS PHOTOGRAPH MARKED
7 STATE'S EXHIBIT NUMBER 30, ADMITTED
8 AS EVIDENCE.

9 MS. CONCANNON: Permission to publish, your Honor.

10 THE COURT: You may.

11 BY MS. CONCANNON:

12 Q So, we are looking -- if I can get it right, this
13 is one cabinet.

14 A Correct.

15 Q Where, in relation to the other scales in the
16 kitchen, is this?

17 A The other side. How you have two cabinets, you'll
18 have one side, then the other side.

19 Q Okay. So, what -- I'm going to use my pen to
20 point. What is this?

21 A This is a supplement Inositol, and I'm sorry, I
22 cannot pronounce it. It's a supplement through GNC.

23 Q And how about this, under the sandwich baggies?

24 A That is the digital scale.

25 Q And these are?

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1 A The sandwich baggies.

2 Q And behind the gray bottle.

3 A Is money, rolls of money.

4 Q What is that?

5 A And that is just a closer view. We moved the money
6 out so you could see it. We have the rolls of money,
7 the digital scale, up top, by the sandwich bags, and the
8 bottle of supplement.

9 Q Okay. Sergeant Boland, I'm now going to hand you
10 what's been marked as State's Exhibit 11, 12 and 13.
11 And can you identify these for the Court, please.

12 A Yes. Number 11 is the gray bottle of supplement,
13 the Inositol, that was seen in the picture, in the
14 cupboard.

15 Q And how do you know this is the bottle you
16 collected?

17 A I photographed, collected, put it into the bag,
18 signed it, and I sealed the bag.

19 Q Okay.

20 MS. CONCANNON: At this point, the State moves
21 State's 11 into evidence.

22 A And, for the record --

23 THE COURT: Subject to prior objections.

24 MS. SAXON: Thank you.

25 ITEM IDENTIFIED AS BOTTLE OF INOSITOL

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1 MARKED STATE'S EXHIBIT NUMBER 11,
2 ADMITTED AS EVIDENCE.

3 BY MS. CONCANNON:

4 A -- those are my initials on the bag, on the top,
5 red tape, showing that I sealed that.

6 Q Right here?

7 A Correct. Number 12 is the box of -- open box of
8 sandwich baggies that you see in the picture, that was
9 there with these other items and collected. Do you want
10 me to open it?

11 Q And again, how do you know these are the sandwich
12 baggies you collected?

13 A I photographed, collected, put them into the bag,
14 signed the bag, and submitted them into evidence.

15 Q Okay.

16 MS. CONCANNON: At this point, State moves State's
17 12 into evidence.

18 THE COURT: Subject to your prior objection.

19 ITEM IDENTIFIED AS OPEN BOX OF
20 SANDWICH BAGGIES MARKED STATE'S
21 EXHIBIT NUMBER 12, ADMITTED AS EVIDENCE.

22 BY MS. CONCANNON:

23 A And Number 13 is the digital scale that was also
24 located in that picture.

25 Q And how do you know that is the actual digital

1 scale you collected?

2 A Again, you can see the same that was taken in the
3 picture, and it was the one I photographed, collected, I
4 signed the bag and submitted it into evidence.

5 MS. CONCANNON: At this point, State moves State's
6 13 into evidence.

7 MS. SAXON: No objection.

8 THE COURT: Without objection.

9 ITEM IDENTIFIED AS DIGITAL SCALE
10 MARKED STATE'S EXHIBIT NUMBER 13,
11 ADMITTED AS EVIDENCE.

12 BY MS. CONCANNON:

13 Q Did you find anything else in the kitchen?

14 A We did. There were -- there was a business card
15 found that indicated the nickname of Cheese and Mister
16 -- I'm sorry -- Mr. Chisolm's name, that was located in
17 the kitchen area. There was a digital scanner that was
18 located in the kitchen area.

19 Q Sergeant Boland, I'm going to show you what's been
20 marked State's 16 and State's 17.

21 A That's it.

22 Q And can you please identify those for the Court.
23 I'm sorry.

24 A That's okay. Number 16, this is the business card
25 with Mr. Chisolm's name on it, and it is -- was located

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1 in the kitchen cabinet.

2 Q Thank you. And how are you sure this is the
3 business card you collected?

4 A I photographed, collected, put it in the bag,
5 signed it, submitted it into evidence.

6 Q Okay.

7 MS. CONCANNON: At this point, State moves State's
8 16 into evidence.

9 MS. SAXON: No objection.

10 ITEM IDENTIFIED AS BUSINESS CARD
11 WITH MR. CHISOLM'S NAME ON IT MARKED
12 STATE'S EXHIBIT NUMBER 16, ADMITTED
13 AS EVIDENCE.

14 BY MS. CONCANNON:

15 A And Number 17 is a Radio Shack scanner that was
16 located on the kitchen counter, which I photographed,
17 collected, put in the bag, signed the bag and submitted
18 into evidence.

19 MS. CONCANNON: And at this point, State moves
20 State's 17 into evidence.

21 MS. SAXON: Note prior objections.

22 THE COURT: Subject to your prior objection.

23 ITEM IDENTIFIED AS RADIO SHACK
24 SCANNER MARKED STATE'S EXHIBIT
25 NUMBER 17, ADMITTED AS EVIDENCE.

1 BY MS. CONCANNON:

2 Q Sergeant Boland, what does this scanner do?

3 A That scanner enables a person, or did, at that
4 point, enable a person to listen to radio transmissions,
5 such as law enforcement, fire, EMS, those type of
6 transmissions.

7 Q Is it live feed?

8 A Yes.

9 Q Thank you.

10 MS. CONCANNON: Permission to publish State's 16,
11 your Honor.

12 BY MS. CONCANNON:

13 Q Sergeant Boland, I'm handing you what's been
14 previously marked as State's 8. Can you please identify
15 that for the Court.

16 A Yes. This is a small, plastic straw that was
17 located in the kitchen cabinet, with a cut end.

18 Q And how do you know that is the straw you
19 collected?

20 A Because it would have been photographed. I
21 collected it, placed it in the bag, signed my name, and
22 put it into evidence.

23 Q How close in proximity was the straw located to the
24 cabinets where the scales, as well as the cabinet with
25 the baggies, digital scale, and money was?

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1 A They were all in the same general area.

2 Q Okay. And what was significant in collecting that
3 straw?

4 A The straw was collected because of the potential
5 of possibly having residue, but we decided not to submit
6 it --

7 Q Okay.

8 A -- with all the other stuff.

9 Q When you say *residue*, what do you mean?

10 A Cocaine residue.

11 Q Okay.

12 MS. CONCANNON: At this point, State moves State's
13 8 into evidence.

14 MS. SAXON: No objection.

15 THE COURT: Without objection.

16 ITEM IDENTIFIED AS STRAW WITH CUT
17 END MARKED STATE'S EXHIBIT NUMBER 8,
18 ADMITTED AS EVIDENCE.

19 BY MS. CONCANNON:

20 Q Was there anything else located in the kitchen at
21 this residence that was collected?

22 A Not that I can recall. Actually, I do remember,
23 because I can see it, and I apologize. There was a lot
24 of evidence, and it was four years ago. This was a
25 MoneyGram.

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DIRECT - BOLAND

1 MS. CONCANNON: Permission to approach.

2 THE COURT: You may.

3 BY MS. CONCANNON:

4 Q Sergeant Boland, I'm handing you State's 18. Can
5 you identify that for the Court, please.

6 A Yes. This was a MoneyGram receipt that was found
7 on the refrigerator in the kitchen, and it was showing
8 \$1,000.00 being sent out-of-state, to Atlanta.

9 Q Does it show who sent the money?

10 A It shows that Mr. Chisolm, at [REDACTED]
11 in Seabrook, was the sender of the money.

12 Q Thank you.

13 MS. CONCANNON: At this point, State moves State's
14 18 into evidence.

15 MS. SAXON: What was the number again? I'm sorry.

16 MS. CONCANNON: 18. It's the MoneyGram receipt.

17 OFF-THE-RECORD DISCUSSION BETWEEN

18 ATTORNEYS.

19 THE COURT: Without objection? Without objection?

20 MS. SAXON: Yes, your Honor.

21 ITEM IDENTIFIED AS MONEYGRAM RECEIPT

22 IN THE AMOUNT OF \$1,000.00 MARKED

23 STATE'S EXHIBIT 18, ADMITTED AS EVIDENCE.

24 THE COURT: Thank you.

25 MS. CONCANNON: Permission to publish.

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DIRECT - BOLAND

1 THE COURT: You may.

2 MS. CONCANNON: I don't know if this is going to
3 show up on here.

4 BY MS. CONCANNON:

5 Q Okay. Sergeant Boland, you mentioned suspected
6 cocaine and suspected crack cocaine.

7 A Yes.

8 Q Where, again, was the shoe with the bag of cocaine?

9 A The shoe was located in the bedroom.

10 Q What bedroom?

11 A In the closet of Bedroom 2, which was believed to
12 be Mr. Chisolm's bedroom. It had all of his personal
13 belongings, passport, et cetera.

14 Q Okay. And I'm going to show you now what has been
15 previously marked State's Exhibit 20. Sergeant Boland,
16 this is State's 20. Can you please tell the Court what
17 that is.

18 A This is actually a heat-sealed bag that the lab,
19 our laboratory does, our chemical laboratory does.
20 Inside of it is the BEST bag right here, this portion.

21 Q What is a BEST bag?

22 A The BEST bag is what we used for any type of drugs
23 that we want to be chemically analyzed. At that -- at
24 that time, we were not also including marijuana. This
25 was simply our -- our pills, crack, cocaine, those type

1 of drugs. And they would be submitted into this and
2 sealed. Which I would have sealed this bag -- or I did
3 seal this bag, and I've signed, saying that I've sealed
4 this bag. It then got submitted into evidence. The lab
5 pulled it, and then tested the items that are in it.
6 And then, they put it back in this sealed bag here, and
7 they signed. So.

8 Q Where did you collect these items from?

9 A These items would have been from the shoe, the
10 cocaine in the shoe; the crack that was found in the
11 bowl, with the Batman and the other plastic bag; as well
12 as the cocaine that was on the couch in the living room.
13 The bowl was in the bedroom, Bedroom 2, Mr. Chisolm's
14 bedroom, along with the shoe with the bag of cocaine,
15 which is going to be the larger one. And the small
16 baggie of coke -- cocaine was from the living room couch
17 or love seat chair.

18 Q And I see all that's in one bag together. Are they
19 individually packaged in there?

20 A Inside, they would be individually packaged. When
21 Lieutenant Berry talks about how she tests it, she'll be
22 able to pull it apart and show what she did to each
23 thing, the testing that she did to each one.

24 Q Okay. Did you alter or tamper with these suspected
25 drugs in any way before you put them in these best bags?

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DIRECT - BOLAND

1 A No. The only thing that would have done is, I
2 weighed them, and I field tested a little bit with a
3 KNICK kit, which is just a presumptive test that I would
4 have done at the office. And it just gives a color
5 change if it's indicating -- if it indicates that it has
6 the presence of a cocaine-based substance, which I did
7 to these items. And then, they were submitted in for
8 analysis through the lab.

9 Q What do the presumptive testings show?

10 A It showed that they -- there's a possibility or
11 strong probability that a cocaine-based substance was
12 present, which would be in both coke -- cocaine and
13 crack cocaine.

14 Q Okay. And after you collected those drugs,
15 suspected drugs, what did you do with them?

16 A After I collected them, we weighed them and field
17 tested them. They were submitted into this -- this
18 larger bag right here with the blue writing, and it says
19 *Control Number*. That's the BEST bag. It was put in
20 there and sealed. I sealed it. I then signed it, and
21 then I submitted that BEST bag into evidence.

22 Q Sergeant Boland, as you indicated, that bag has
23 other baggies in it, correct?

24 A Correct.

25 Q Okay. At this point, if you could open that

1 outside package. Can I please see State's Exhibit 20.

2 Thank you. So after you -- after you collected these
3 drugs, suspected drugs, you submitted them where?

4 A I submitted them into -- I put them into a BEST
5 bag. They were submitted into evidence, which, in turn,
6 I submitted a request for the lab to do an analysis.
7 The lab would then pick up the BEST bag from evidence,
8 and then they would do the testing. They would open my
9 BEST bag, do the testing on the individual baggies.
10 Then, they put it into that sealed bag.

11 So, Lieutenant Berry is the one that sealed that
12 outside bag, the heat sealed, and she's the one that
13 opened the BEST bag that's inside, which I sealed.

14 Q Who, at Evidence, did you hand these drugs over to?

15 A I turned it -- all the evidence over to Captain
16 Keough at the Evidence Division.

17 Q Okay. When was that?

18 A That was the same day, the 19th, May 19, 2010.

19 Q Okay.

20 MS. CONCANNON: Begging the Court's indulgence.

21 BY MS. CONCANNON:

22 Q Would there be anything in this bag but the drugs
23 you put in there?

24 A Because I generally have -- I have never opened up
25 the bag from the lab. There may be a separate bag that

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DIRECT - BOLAND

1 she put in there --

2 Q Okay.

3 A -- depending how she packaged the drugs after they
4 were tested. So, I really couldn't answer that. There
5 would be nothing in the -- I placed nothing in the BEST
6 bag except for the drugs and the bags holding the drugs.

7 Q Okay. So, anything you placed in the BEST bag came
8 from [REDACTED]

9 A That is correct.

10 Q Okay.

11 MS. CONCANNON: Beg the Court's indulgence.

12 BY MS. CONCANNON:

13 Q How long did it take for the search warrant to be
14 executed and this house to be searched?

15 A I'd have to look at the time to give you an exact
16 time. It was a couple hours.

17 Q After the execution of the search warrant, what
18 happened?

19 A After the execution of the search warrant, we then
20 clear everything out. Again, we do the videotaping. We
21 close out -- what we call close out the search warrant,
22 secure the house. If any charges are going to be made,
23 the tickets are written, the warrants are written. And
24 then, they're sent to be -- to be drawn up.. We then go
25 into our office, which is a secured -- or, excuse me --

1 it's not my office anymore; it was my office. It's a
2 secured building. And then, at that point, I then
3 process -- finish filling out the bags, do the weighing,
4 the field testing, typing up my evidence submittal, and
5 packaging the evidence for submission. I then carried
6 it over to the evidence building --

7 Q And how did you --

8 A -- in Beaufort.

9 Q I'm sorry to interrupt you.

10 A That's okay.

11 Q Packaging it for submission, is that all these
12 extra bags that we see?

13 A Correct.

14 Q This with the writing?

15 A That is correct.

16 Q Okay.

17 A Either writing tags or a box, depending on the type
18 of --

19 Q Okay. Back to the suspected drugs briefly. When
20 you had the drugs in your possession, did you change or
21 substantially alter the suspected drugs?

22 A No.

23 Q Did you tamper with them?

24 A No.

25 Q Did you maintain the integrity of the item?

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CROSS - BOLAND

1 A Yes.

2 Q And were you the only one who collected these drugs
3 from the residence?

4 A Yes, I'm the only one that collected, touched,
5 field tested, or weighed the drugs.

6 Q And after they were in your hands, whose hands did
7 they go into?

8 A My hands, they went into the BEST bag. And after
9 that, they were then -- the sealed BEST bag was handed
10 over to Captain Keough at the evidence division.

11 MS. CONCANNON: Okay. I have no further questions
12 for you at this time. If you could answer any the
13 Defense may have.

14 A Yes, ma'am.

15 MS. SAXON: Thank you.

16 SERGEANT ANGELA BOLAND

17 CROSS-EXAMINATION, BY MS. SAXON:

18 Q Good afternoon, Sergeant Boland. How are you
19 doing?

20 A I'm doing well. How are you?

21 Q Good. We went through a lot, so I'm going to ask
22 some specific questions. I'm going to take it slow and
23 try and be in order the best I can.

24 A Okay.

25 Q But before I get to the evidence that's been put

1 in, I'd like to talk to you about the conditions at 39
2 Garrett Road.

3 A Okay.

4 Q Or Garrett Small Road, excuse me. Situated at this
5 address, there was a mobile home, correct?

6 A Correct.

7 Q And that mobile home, there was some missing
8 siding. Is that correct?

9 A I'd have to look back at the pictures to tell you
10 on the outside of the house, but.

11 Q Do you remember exposed plywood anywhere?

12 A Not without reviewing the video.

13 Q Do you remember if there was a --

14 COURT REPORTER: I'm sorry, *not without* what?

15 A Reviewing the video. I apologize.

16 Q Do you remember that there was a sort of run-down
17 metal shed on the property to one side?

18 A There was an outbuilding, yes.

19 Q And also, a sort of run-down, camper-type trailer
20 on the -- like you go camping in. I can't think of what
21 those are called. R.V.'s, maybe, but not an R.V. I
22 think it's a camper trailer. We'll go with that. Do
23 you remember that there?

24 A I remember the outbuilding being present. I'm not
25 sure if the camper shell or the camper R.V. item you're

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1 talking about was actually on that curtilage or on the
2 adjacent property.

3 Q Okay. Now, talking about the various things that
4 we have gone through so far, you recovered -- or were
5 told, and then came and recovered various pieces of mail
6 at this address, correct?

7 A That is correct.

8 Q Included in these pieces of mail were items that
9 were addressed to David Greene. Is that correct, as
10 well?

11 A That is correct.

12 Q And included in those items was like, a utility
13 bill. Is that correct?

14 A I'd have to look to see which -- specific with Mr.
15 Greene. Thank you. Yes. There is a -- and SCE&G bill
16 from a previous year, from 2009, for Mr. David Greene,
17 at [REDACTED]

18 Q Thank you. Now, as to the -- let's talk about the
19 pistol briefly. You mentioned that this handgun here,
20 that this is a Highpoint.

21 A Correct.

22 Q A Highpoint what?

23 A Nine-millimeter Highpoint.

24 Q And that nine-millimeter, that's the type of
25 ammunition that fits in that? Is that correct?

1 A That is correct.

2 Q So, this is a nine-millimeter. And the magazine,
3 these bullets that you found, these were nine-millimeter
4 bullets, correct?

5 A Um-hmm.

6 COURT REPORTER: Yes or no?

7 A Yes.

8 Q In State's -- here we go. State's Exhibit 2 -- or,
9 excuse me -- 3 and 4, I'm going to hand these back to
10 you. You testified that those were live ammo rounds
11 found in the bedroom that the State is attributing to
12 Mr. Chisolm. Is that correct?

13 A That is correct.

14 Q And can you tell the caliber of those bullets.

15 A Yes. Number 3 is a .22-caliber, and Number 4 is a
16 .38-caliber.

17 Q Thank you. When you collected these items, you
18 were the case officer, correct?

19 A Correct.

20 Q So, everything came through you.

21 A Correct.

22 Q Were you the officer that decided what got tested,
23 what was sent off for testing?

24 A It's collaborative between myself and the lab, but
25 yes.

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CROSS - BOLAND

1 Q Okay. So, things like these scales were not
2 swabbed or tested, were they?

3 A No.

4 Q And you stated that you decided not to test the
5 straw, correct?

6 A That is correct.

7 Q Okay. Did you test the gun for DNA or
8 fingerprints?

9 A No.

10 Q And with these drugs that were recovered in this
11 BEST bag, in fact, those are the exact same drugs that
12 Mr. Greene was also charged with. Is that correct?

13 A A portion of them, yes.

14 MS. SAXON: A moment's indulgence. I'm sorry, one
15 last question.

16 BY MS. SAXON:

17 Q So, the other officers were doing the search,
18 correct? And they would call you when they found
19 evidence?

20 A That is correct.

21 Q So, when you were called to photograph this shoe
22 and the other shoe with the money in it, it was after it
23 had been discovered, correct?

24 A Correct.

25 Q You weren't there at the time of discovery.

1 A That is correct.

2 Q Okay. So, you couldn't say that that shoe was
3 underneath the other shoes that had to be moved, could
4 you?

5 A No.

6 MS. SAXON: Okay. That's all I have. Thank you.

7 THE COURT: Anything further?

8 MS. CONCANNON: I have no further questions for
9 Sergeant Boland, your Honor.

10 THE COURT: You may step down.

11 SERGEANT ANGELA BOLAND: Okay. Thank you.

12 THE COURT: Ladies and gentlemen, do you all need a
13 break? Anyone need a break? You okay? Okay? All
14 right. You want to call your next witness?

15 MS. CONCANNON: State calls John Keough.

16 BAILIFF: This way, sir, please. Go forward and be
17 sworn.

18 MADAM CLERK: All right. Please raise your right
19 hand. Thank you. Do you solemnly swear or affirm to
20 truthfully answer all the questions asked of you by this
21 court, so help you God?

22 CAPTAIN JOHN KEOUGH: Absolutely.

23 MADAM CLERK: Thank you. Please be seated, and
24 state and spell your name for the court, please.

25 COURT REPORTER: Spell your name, please. Spell

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DIRECT - KEOUGH

1 your name, please.

2 CAPTAIN JOHN KEOUGH: My name is John Keough,
3 K/e/o/u/g/h.

4 CAPTAIN JOHN KEOUGH

5 DIRECT EXAMINATION, BY MS. CONCANNON:

6 Q Thank you, Captain Keough. You introduced yourself
7 as John Keough. What are you doing these days?

8 A I'm spending a lot of time with my grandkids. I'm
9 retired and a private citizen.

10 Q Prior to retiring, where did you work?

11 A I worked for the Beaufort County Sheriff's
12 Department for almost 22 years.

13 Q And were you a captain when you retired?

14 A Yes, ma'am, I was.

15 Q In May of 2010, in what capacity did you work with
16 the Sheriff's Office?

17 A I was a supervisor of the property room, the
18 evidence section, and also, the latent prints section.

19 Q What were some of your duties as a supervisor
20 there?

21 A Basically, preservation, safe-keeping and
22 accountability of all items that officers turned in for
23 presentation in court. And sometimes, we'd have other
24 property that was found, that type of thing.

25 Q Can you explain a little bit about this evidence

1 building, room, whatever it is.

2 A Sure. What it is, is it's a warehouse. It's
3 actually the old county records management center. And
4 inside there, it's a concrete building of eighteen
5 square hundred feet inside a steel building. There's
6 two levels, and we had certain areas where we put
7 certain types of evidence. We kind of layered the
8 protection in there, especially for items such as guns,
9 drugs, and money.

10 The only people that had access to that vault in
11 that room were myself and anybody else who was assigned
12 to the Evidence Section at that time.

13 Q Would anybody else be able to obtain access to that
14 room?

15 A We've had different people come in. We've given
16 tours, but nobody was ever allowed into evidence, unless
17 you signed an access log and were always accompanied by
18 an evidence person that worked in that facility.

19 Q How long did you work in Evidence?

20 A I worked in the evidence section for 16 years.

21 Q Thank you. Captain Keough, --

22 MS. CONCANNON: Permission to approach, your Honor.

23 THE COURT: You may.

24 BY MS. CONCANNON:

25 Q I'm going to show you what's been previously marked

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1 as State's Exhibit 20, for identification purposes only.

2 Can you please tell the Court what that is.

3 A I recognize it as a BEST bag that has been
4 processed by our lab, and is now here in Court.

5 Q Okay. How do you recognize that?

6 A Well, I recognize it primarily as -- by this
7 control number right here that you see on the back,
8 C006313.

9 Q Describe a control number. What is a control
10 number?

11 A It's a stand-alone number that identifies this bag.
12 What's in the bag, I can't verify, because it's always
13 sealed when we get it from the officers. So, what we
14 do, as custodians of the evidence, we sign for this bag,
15 utilizing that number as its identification.

16 Q Are there any BEST bags have duplicate numbers?

17 A No, ma'am. No, ma'am.

18 Q So, that number is unique to that particular BEST
19 bag.

20 A As I said, it's a stand-alone number. There is no
21 other number like this BEST bag.

22 Q Who did you receive this package from?

23 A This particular BEST bag I received was from
24 Officer Boland.

25 Q When did you receive that from her?

1 A It was on the 19th of May, 2010.

2 Q And where did you receive this item?

3 A The evidence section.

4 Q Okay. Does this package appear to be altered or
5 tampered with?

6 A Well, this is not the condition that I get it in.
7 This is the condition that we get it back. Once the lab
8 has processed it, the chemist puts it in a sealed bag
9 like this, and if the seal's not broken, it hasn't been
10 tampered with since she's had it -- he or she, whoever
11 the chemist is.

12 Q While this item was under your control, did you
13 change or substantially alter the item?

14 A No, I couldn't, because it's -- this -- this red
15 line that you see right here is actually a glue, and
16 when they remove that safety strip and the officers take
17 their fingers like that, it seals it. And if there was
18 any tampering of that, the chemist would immediately
19 tell us, and have us either re-package it, or have the
20 officer come in and re-package it. She doesn't analyze
21 it if it appears that it's not packaged right.

22 Q So, while you were -- you had control over this
23 item, did you maintain the integrity of it?

24 A Yes, ma'am. If the integrity wasn't maintained,
25 like I said, the chemist would immediately let us know.

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1 Q So, absent that outside bag, that is how you
2 received this from Investigator Boland?

3 A I got it without this outside protective bag. I
4 received this inside blue bag, sealed, but it was also
5 in an envelope that had the same corresponding number.

6 Q Okay.

7 A That's just the way the manufacturer sends the bags
8 to us to utilize.

9 Q And is that how you all keep track of all items
10 that are going to the lab?

11 A We do it -- we log in this control number, but we
12 would also place, as you can see, bar-coded stickers on
13 it, also. So, that's how we do it. So, there's really,
14 in this particular case, two things that identify this
15 item -- the control number and the bar code label.

16 Q And both of those are specific to this case alone.

17 A Yes, ma'am.

18 MS. CONCANNON: Thank you. I have no further
19 questions for you, Captain Keough. If you could answer
20 any that Defense may have.

21 A Yes, ma'am.

22 MS. SAXON: We have no questions for this witness,
23 your Honor. Thank you.

24 BY THE COURT:

25 THE COURT: All right. Thank you. Any objections?

1 to him being excused?

2 MS. CONCANNON: No, your Honor.

3 THE COURT: Thank you, sir. You are excused.

4 JOHN KEOUGH: I can go home now?

5 THE COURT: You may.

6 JOHN KEOUGH: Thank you, your Honor.

7 THE COURT: Ladies and gentlemen of the jury, we
8 are going to take a brief recess. You are free to go
9 back to your jury room, get some coffee or a Coke.
10 Ladies and gentlemen, I need to tell you, do not discuss
11 this case. You have not heard all of the evidence,
12 ladies and gentlemen, and it would be inappropriate to
13 do so. We'll be right back with you. Thank you.

14 JURORS LEAVE COURTROOM 3:29 P.M.

15 BAILIFF: The jury is clear, your Honor.

16 THE COURT: All right. Anything we need to do
17 right now, other than -- or take up on the record? You
18 have three more witnesses, I understand. Is that
19 correct?

20 MS. CONCANNON: Correct.

21 THE COURT: How quickly do you think they're going
22 to go?

23 MS. CONCANNON: Renita Berry will be pretty quick.
24 She'll be just about as long as Captain Keough was.
25 Squires will be quick. I think Florencio could be a

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1 little lengthy.

2 THE COURT: That's fine. I mean, where it's only,
3 you know, 3:26, 3:27. So, I think we're great, as far
4 as time-wise is concerned, so. Okay? All right. We'll
5 take a quick ten-minute break, and we'll be back.

6 MS. CONCANNON: Thank you, your Honor.

7 MS. SAXON: Thank you, your Honor.

8 OFF THE RECORD 3:29 P.M.

9 END 10-22-14-V42 BEGIN 10-22-14-V43

10 BACK ON THE RECORD 3:43 P.M.

11 BY THE COURT:

12 BAILIFF: All rise. Court is now back in session.

13 THE COURT: State ready to go?

14 MS. CONCANNON: Yes, your Honor.

15 THE COURT: Defense ready to go?

16 MS. SAXON: Yes, your Honor.

17 THE COURT: Let's bring the jury out.

18 BAILIFF: The jury is entering the courtroom, your
19 Honor.

20 JURORS ENTER COURTROOM 3:44 P.M.

21 BAILIFF: The jury is seated, your Honor.

22 THE COURT: Thank you. Welcome back, ladies and
23 gentlemen. The State will call their next witness.

24 MS. CONCANNON: Thank you, your Honor. The State
25 calls Lieutenant Renita Berry.

1 THE COURT: Come on forward.

2 MADAM CLERK: Do you solemnly swear or affirm to
3 truthfully answer all the questions asked of you by this
4 court, so help you God?

5 LIEUTENANT RENITA L. BERRY: Yes, I do.

6 MADAM CLERK: Thank you. Please be seated. State
7 and spell your name for the Court.

8 LIEUTENANT RENITA L. BERRY: Renita L. Berry,
9 R/e/n/i/t/a B/e/r/r/y.

10 LIEUTENANT RENITA L. BERRY

11 DIRECT EXAMINATION, BY MS. CONCANNON:

12 Q Lieutenant Berry, where are you currently employed?

13 A Beaufort County Sheriff's Office.

14 Q In what capacity do you work with the Sheriff's
15 Office?

16 A I am a drug chemist or forensic chemist, and also,
17 the laboratory supervisor.

18 Q Did you have to receive special education and
19 training to become a forensic chemist?

20 A Yes, I did.

21 Q Can you explain a little bit of that.

22 A I have a bachelor's of science degree in chemistry
23 from the University of South Carolina. I also have a
24 master's in management from Western University. I first
25 received my initial training through South Carolina Law

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1 Enforcement Division, which is commonly known as SLED.
2 It was there that I received the majority of my training
3 as a forensic drug chemist. I've also been certified by
4 the Drug Enforcement Administration, and I've also
5 attended various courses and training throughout the
6 last several years.

7 Q How long have you been a forensic chemist?

8 A Since February of 1998. I don't know how many
9 years.

10 Q Okay. Thank you. Have you ever been qualified as
11 an expert in court before?

12 A Yes, I have.

13 Q Roughly how many times?

14 A It's been over 80 times.

15 Q And have you testified in General Sessions before?

16 A Yes, I have.

17 MS. CONCANNON: At this point, the State requests
18 that Lieutenant Berry be admitted as an expert in the
19 area of forensic chemistry.

20 MS. SAXON: No objection.

21 THE COURT: Ladies and gentlemen, at this time,
22 Lieutenant Berry is being qualified in the area of
23 forensic chemistry. Ladies and gentlemen, that allows
24 her to give her opinion to you. And again, that's for
25 you to use as you see appropriate, as compared to other

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1 evidence in the case. You may continue, Ms. Concannon.

2 MS. CONCANNON: Thank you, your Honor.

3 BY MS. CONCANNON:

4 Q Lieutenant Berry, were you working as a forensic
5 chemist with the Sheriff's Office in May of 2010?

6 A Yes, I was.

7 Q Thank you.

8 MS. CONCANNON: Permission to approach.

9 THE COURT: You may.

10 BY MS. CONCANNON:

11 Q Lieutenant Berry, I'm going to hand you what has
12 been marked as State's Exhibit 20.

13 A Thank you.

14 Q Can you please identify that for the Court.

15 A It's a sealed envelope containing what we call a
16 control bag or BEST bag, also with other packaging in
17 it, other evidence bags. It was a bag that I analyzed.

18 Q And how do you know that is the bag you analyzed?

19 A Various locations, you will see my initials here,
20 across the seal. Also, on the different packaging
21 that's inside. Also, I can tell from the laboratory
22 number that's listed, along with a control number that's
23 also listed.

24 Q When did you receive this item?

25 A I received this item on May 25, 2010.

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1 Q From where did you receive this item?

2 A From our evidence section.

3 Q Okay. Did a particular person in evidence transfer
4 it to you?

5 A At the time, it was Ramona Cooper.

6 Q Okay. Would she have altered this evidence in any
7 way, or tampered with it?

8 MS. SAXON: Objection, your Honor. She doesn't
9 have knowledge of what that person knew.

10 THE COURT: Okay. I don't think she can answer
11 that, but.

12 BY MS. CONCANNON:

13 Q Lieutenant Berry, if this bag had been altered or
14 tampered with, would you be able to tell?

15 A Yes.

16 Q And how would you be able to tell that?

17 A This bag you see inside, there was a blue bag, has
18 blue trimming, along with a red seal here. It's what we
19 call a tamper-evident bag, meaning it's -- you can
20 tamper with it, but you can tell if it's been tampered
21 with it -- tampered with. You can tell by whether or
22 not the glue is coming apart, or whether there are any
23 holes or anything in the bag, and the bag was intact.

24 Q Had this bag been tampered with when you picked it
25 up from evidence?

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1 A No, it was not.

2 Q And from evidence, where did you take this bag?

3 A I then took the bag back to the laboratory for
4 safekeeping.

5 Q Okay. And what did you do with this bag at the
6 laboratory?

7 A Initially, evidence is brought to the lab; it's
8 logged in; and it's placed in a secure location until
9 we're ready to analyze it. And upon analyzing it, you
10 retrieve the samples that you need, and then, you secure
11 the package in the bag, and place it back into a secure
12 area.

13 Q Who has access to this secure location?

14 A Only the people or the personnel that work in the
15 drug -- drug analysis section.

16 Q Okay. So, you were given this item to analyze
17 suspected drugs?

18 A Yes.

19 Q And did you perform an analysis on this?

20 A Yes, I did.

21 Q Okay. At this point, Lieutenant Berry, I'm going
22 to ask you to open the seal.

23 WITNESS COMPLIES.

24 Q Thank you. While this bag was in your custody,
25 aside from you just cutting it open today in Court, was

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1 it altered or tampered with?

2 A No, it has not been.

3 Q Okay. Lieutenant Berry, I'm going to show you a
4 couple bags that were located inside State's Exhibit
5 Number 20. Can you please identify that.

6 A Yes.

7 Q And what is that?

8 A This is an evidence bag containing a small Ziplock
9 bag, and there's also a small, partial straw included.
10 And the small Ziplock bag is containing a white powder
11 substance.

12 Q Did you analyze that white powder substance?

13 A Yes, I did.

14 Q And what were your findings as to what that white
15 powder substance was?

16 A Evidence bag marked December 5, containing a
17 plastic Ziplock bag containing powder substance, cocaine
18 found, 0.23 grams.

19 Q Okay. Does that bag indicate where that particular
20 cocaine was located?

21 A If I read the location, there's a -- there's a spot
22 on here that says *location*. Do you want me to read
23 that?

24 Q Please.

25 A Couch, living room, and it has an address.

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1 Q Thank you.

2 A Do you want me to read the address?

3 Q You can.

4 A Okay. [REDACTED] Seabrook, South Carolina.

5 Q Thank you, Lieutenant Berry. Next, I'm handing you
6 another bag that came out of State's Exhibit 20. For
7 the record purposes, the bag that Lieutenant Berry just
8 identified, I'm going to mark State's Exhibit 20-A.

9 A Okay. 20-A. This bag contains Item 2 and 3. Item
10 2, evidence bag marked as Bag Number 2, containing a
11 sandwich bag, containing pieces of compressed substance.
12 The results, cocaine base found, 3.33 grams.

13 Q Does cocaine -- I'm sorry to interrupt you. Does
14 cocaine have a base -- have another name for it?

15 A It's also known as cocaine crack.

16 Q Thank you.

17 A Item 3, which is also inside of this bag, the
18 description is:

19 *Sandwich bag, also from bag marked*
20 *as Bag Number 2, containing three Ziplock*
21 *bags containing powder substance. Cocaine*
22 *found, combined weight of 1.40 grams.*

23 Q Thank you. And my apologies, you may have
24 testified to this, what was the weight on the cocaine
25 base?

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1 A 3.33 grams.

2 Q Thank you. And for the record, that was State's
3 20-B. And Lieutenant Berry, I'm finally going to hand
4 you what has been marked as State's Exhibit 20-C. And
5 can you please tell the Court what that is.

6 A Evidence bag marked as Bag Number 6, containing a
7 Ziplock bag, containing sandwich bag containing powder
8 substance. The results, cocaine found, 125.84 grams.

9 Q When you weigh the suspected drugs, which, these
10 drugs, do you weigh them in packaging, or are they
11 loose? How are they weighed?

12 A The substance itself is weighed, without the
13 packaging.

14 Q Okay. Thank you.

15 MS. CONCANNON: Beg the Court's indulgence.
16 Permission to approach again, your Honor. My apologies,
17 Lieutenant Berry.

18 BY MS. CONCANNON:

19 Q Back to State's B and State's 20-C, could you
20 please tell the Court where those substances were
21 located? Where that cocaine and crack cocaine was
22 located.

23 A Well, this bag, again, the description says:
24 *Bedroom 2. Same address.*

25 And for this bag, it says: *Bedroom 2, closet and*

1 shoe box. Same address.

2 Q Thank you very much. Thank you. After you tested
3 these drugs, what did you do with them?

4 A It was placed in a secure location until it was
5 ready to be returned to the evidence section.

6 Q And was it ultimately returned to evidence?

7 A Yes, it was.

8 Q Okay.

9 A On January 19, 2011, it was returned to Ramona
10 Cooper, who worked in that section at that time.

11 Q When it was returned to Ramona Cooper in evidence,
12 how was it packaged?

13 A All the different pieces of evidence that I held up
14 were inside of that bag, sealed.

15 Q Okay. Sealed, so nobody could tamper with it?

16 A Yes.

17 Q Okay. And was this bag tampered with, prior to
18 opening it today?

19 A No, it was not.

20 MS. CONCANNON: At this point, your Honor, State
21 moves 20-A, B, and C into evidence.

22 MS. SAXON: No objection.

23 THE COURT: Without objection.

24 ITEMS IDENTIFIED AS HEAT-SEALED

25 EVIDENCE BAG, BEST BAG, AND

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1 INDIVIDUALLY PACKAGED BAGGIES
2 MARKED STATE'S EXHIBIT NUMBER 20-A,
3 20-B, AND 20-C, ADMITTED AS EVIDENCE.

4 MS. CONCANNON: And permission to publish to the
5 jury, your Honor.

6 THE COURT: You may.

7 MS. CONCANNON: 20-A, 20-B, and 20-C.

8 I have no further questions for you at this time,
9 Lieutenant Berry. If you could answer any Defense may
10 have for you.

11 A Thank you.

12 LIEUTENANT RENITA BERRY

13 CROSS-EXAMINATION BY MS. SAXON:

14 Q Good afternoon, Lieutenant Berry.

15 A Good afternoon.

16 Q When you test these drugs, how, exactly, do you
17 test them?

18 A How, exactly? The evidence is open, each package
19 separately. A small sample is taken from each of the
20 pieces of evidence. We first do a series of preliminary
21 tests, where we use various color tests, or chemical
22 tests. A small amount of the substance is put into what
23 we call a spot place. Various chemicals were added, and
24 we watch for certain chemical changes or color changes.
25 If you see a particular color change, then that gives

1 you a good idea of the substance you may have. It
2 pretty much gives you the classification of that
3 particular substance.

4 After you've conducted your preliminary testing,
5 then we do a testing -- a series of confirmatory
6 testing. With the confirmatory testing, I use an
7 instrument called a gas chromatograph mass spectrometer.
8 And again, a small amount of the substance is taken, and
9 it's ran on the -- it's -- it's -- an examination is
10 performed on what we call the G.C. Mass Spec.

11 Q The G.C. Mass Spec, that is a machine that allows
12 you to look down into the base element of what you're
13 testing. Is that correct?

14 A Allows you to --

15 Q It allows you to look down at kind of like a base
16 elemental level what you're looking it.

17 Q The G.C. Mass Spec, it's actually two different
18 instruments that work together. With the G.C. -- the
19 G.C. Mass Spec, or the gas chromatograph, the sample is
20 first introduced into the gas chromatograph. And what
21 it does there, it allows for, let's say, you have maybe
22 five different substances in that one -- in that powder.
23 Let's say caffeine, cocaine, and three other things.
24 Well, what it's going to do is separate that substance
25 out, you know. It'll come out at a different time,

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1 depending on the molecular weight.

2 So, once it comes out, separating those different
3 substances out, one at a time, it's then introduced to
4 the mass spectrometer. When it goes into the mass
5 spectrometer one at a time, it's then bombarded with
6 electrons, and it separates it out, based on the ions.
7 And then, you get what we call a spectra. And that
8 spectra gives you somewhat of a fingerprint of that
9 substance. And based on those ions and that
10 fingerprint, then you're able to then determine what it
11 is.

12 We also use what we call standards, to make sure
13 that certain things match up. For instance, retention
14 time, I mentioned that, when it comes out of the gas
15 chromatograph, it comes out at a different rate. So,
16 you match that time that it comes out of the G.C. Mass
17 Spec, along with the time, based on the standard, and on
18 the actual sample. Then, again, you match the spectra,
19 based on published literature, again, with your
20 standard.

21 Q Okay. So, if you're given a sample, and there are
22 multiple things that comprise that sample, say, there's
23 dirt or there's caffeine or there's fish, would you be
24 able to see that on the mass spectrometer readout?

25 A No. Only certain things are going to show up. Of

1 course, the fish and the dirt will not, not on our
2 instrument. All instruments are different, depending on
3 the analysis that you're running on it. We're going to
4 see a series of drugs or different types of substances.
5 For instance, you will see the caffeine, but you will
6 not see the fish or the sand.

7 Q So, does the lab have a way to detect any of those
8 foreign -- other foreign substances that aren't
9 necessarily drugs?

10 A If they're carbon-based.

11 Q Okay. Now, if you were given -- if you're given a
12 swab, you can also test for something called trace
13 levels. Is that correct?

14 A A swab?

15 Q Trace levels of a drug? Like a swab of an item,
16 say of a scale, or.

17 Q If I received a scale, and I were to swab it, yes,
18 there was possible residue on that scale.

19 Q Okay. And you have that ability in the lab to test
20 for it.

21 A It depends on the amount of the residue, along with
22 the quality of the residue.

23 Q And so, the same would be said for the possibility
24 of, say, something like State's Exhibit 8, where there's
25 a straw with possible residue, you would -- there's a

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1 possibility you could test this and get something off of
2 it?

3 A Yes, there is.

4 Q Okay. The lab that Beaufort County has, is that
5 lab equipped to handle a variety of forensic testing?

6 A We specialize in controlled substances, DNA and
7 liquid ignitables.

8 Q So, if DNA swabs were taken, they could have been
9 tested.

10 A Yes, they could have been.

11 Q Okay. If, say, latent fingerprints were gathered,
12 they wouldn't be tested at our lab.

13 A Not at our location.

14 Q They would go to SLED's lab? Would that be
15 correct? For analysis?

16 A For the actual packaging, for the print to be
17 lifted?

18 Q Um-hmm.

19 A Not necessarily.

20 Q No.

21 A We could do that ourselves.

22 Q Okay. So, and I just want to clarify, for the
23 print to be analyzed, it has to go to SLED. Is that
24 correct?

25 A We have an AFIS machine at Beaufort County

1 Sheriff's Office.

2 MS. SAXON: A moment's indulgence, your Honor.

3 That's all I have, your Honor.

4 MS. CONCANNON: I have no further questions for you
5 at this time.

6 THE COURT: Any objection to Lieutenant Berry being
7 excused from anyone?

8 MS. CONCANNON: Not from the State.

9 THE COURT: You are excused. Thank you.

10 A Thank you, your Honor.

11 THE COURT: The State will call their next witness.

12 MS. CONCANNON: Thank you, your Honor. The State
13 would call Corporal William Squires.

14 BAILIFF: Right this way, sir. Go forward to be
15 sworn, please.

16 MADAM CLERK: Do you solemnly swear or affirm to
17 truthfully answer all the questions asked of you by this
18 court, so help you God?

19 CORPORAL WILLIAM SQUIRES: Yes, ma'am, I do.

20 MADAM CLERK: Thank you. Please be seated, and
21 state and spell your name for the Court.

22 CORPORAL WILLIAM SQUIRES: My name is Corporal
23 William Squires. I work for the Beaufort County
24 Sheriff's Office. First name's W/i/l/l/i/a/m; last
25 name, S/q/u/i/r/e/s.

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1 CORPORAL WILLIAM SQUIRES

2 DIRECT EXAMINATION BY MS. CONCANNON:

3 Q Corporal Squires, how long have you been employed
4 with the Beaufort County Sheriff's Office?

5 A Eight years.

6 Q And in what capacity do you work for the Sheriff's
7 Office?

8 A I am a investigator on the Drug Team.

9 Q What are some of your duties as an investigator on
10 the Drug Team?

11 A My main duty is to investigate people that sell
12 drugs and use drugs.

13 Q Okay. Were you involved and working in your
14 capacity with the Drug Team on May 19th of 2010?

15 A Yes.

16 Q And did you respond to an incident where a search
17 warrant was being executed?

18 A Yes, ma'am.

19 Q Where was this location?

20 A If I could refer to the address here. It was 39 --
21 I want to say Garrett Small Road, Seabrook, South
22 Carolina.

23 Q Do you know, roughly, what time you were at this
24 residence?

25 A About 6:30 in the morning.

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1 Q Did you have any opportunity to speak with Dwayne
2 Chisolm, the defendant in this case?

3 A Yes.

4 Q Okay. When was this statement made?

5 A It would have been shortly after.

6 Q Was it at the residence of [REDACTED]

7 A Yeah. It was actually in the yard of the
8 residence.

9 Q Okay. Who was present during this questioning?

10 A Myself and Lieutenant Sankowski was there.

11 Q Okay. Was anybody else around?

12 A No, ma'am. We actually -- we actually interviewed
13 him all by himself. So, it was us two and Mr. Chisolm.

14 Q Did Mr. Chisolm appear to be under the influence of
15 alcohol or drugs at the time of your interview?

16 A No.

17 Q Did he appear to have any physical or mental
18 disability that would have impaired his capabilities of
19 understanding your conversation?

20 A No, not at all.

21 Q Approximately how long did this interview last?

22 A Probably ten to twenty minutes.

23 Q Did you read Mr. Chisolm his *Miranda* rights?

24 A Yes, I did.

25 Q Okay. Did you do that from memory?

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1 A No. We actually have an issued card that we read
2 from when we execute search warrants.

3 Q Do you have that card on you today?

4 A Yes, I do.

5 Q Can you please read to the Court what the *Miranda*
6 warnings you gave Mr. Chisolm that morning.

7 A Yes. The card states: *Miranda Warning* on top:

8 *You have the right to remain silent.*

9 *Anything you say can and will be used against*
10 *you in a court of law. You have the right to*
11 *talk to a lawyer and have him present with you*
12 *while you are being questioned.*

13 *If you cannot afford to hire a lawyer,*
14 *one will be appointed to represent you before*
15 *any questioning, if you wish. If you decide*
16 *at any time to exercise these rights and not*
17 *answer any questions or make any statements.*
18 *And then, at the end:*

19 *Do you understand each of these rights*
20 *I've explained to you? Having these rights*
21 *in mind, do you wish to talk to us about the*
22 *incident?*

23 Q The incident. Was Mr. Chisolm aware of what you
24 all were going to speak about?

25 A Yes, ma'am.

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1 Q Did he appear to have any trouble understanding the
2 rights as you read them?

3 A No. Not at all.

4 Q Did he acknowledge that he understood them?

5 A Yes.

6 Q Did he agree to speak with you?

7 A Yes.

8 Q Did he appear rational and responsive in his
9 answers to your questions?

10 A Yes.

11 Q Did he ever ask for an attorney at any point during
12 these questions?

13 A No.

14 Q To the best of your knowledge, was Mr. Chisolm's
15 statement freely and voluntarily given?

16 A Yes.

17 Q Thank you. What did Mr. Chisolm say to you?

18 A Kind of the highlights of the interview here. Mr.
19 Chisolm, I explained, we were talking to him in the yard
20 at the residence. Mr. Chisolm explained that he resides
21 in the residence; he owns the residence; and he rents it
22 from a landlord. He says himself and, I believe, his
23 younger brother live in the residence. They don't have
24 any assigned rooms inside the residence.

25 Mr. Chisolm did explain all the property in the

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1 residence was his. I asked him about if there was any
2 money inside the residence, and he said any money inside
3 the residence was his.

4 Mr. Chisolm also explained there was probably a
5 little bit of cocaine on a chair, located inside the
6 residence.

7 Towards the end of the interview, Mr. Chisolm
8 explained he was at the residence earlier that night,
9 into the morning, when we were there.

10 I asked Mr. Chisolm about the handgun that was
11 found inside the residence, and asked him if he would
12 have any fingerprints on the handgun. And Mr. Chisolm
13 explained, yes, that he actually has handled the gun.

14 And towards the end of the interview, we walked Mr.
15 Chisolm's younger brother over to him. He wanted to
16 talk to his younger brother, and he told his younger
17 brother that he was going to do the time for all the
18 drugs inside the residence.

19 Q Did he make any reference to the cash money that
20 was found at the residence?

21 A Yes. In reference to the money found in the shoe
22 inside the closet, he said the money was his.

23 Q And this was the shoe that was located right in the
24 same closet with the shoe with the bag of cocaine?

25 A Yes, ma'am.

1 Q After that conversation, did Mr. Chisolm tell you
2 anything else?

3 A After we walked his younger brother over and he
4 noticed his younger brother was upset, he advised us he
5 did not want to talk about the incident anymore. So, we
6 didn't ask him anything else about the incident.

7 Q So, when Mr. Chisolm wished to quit speaking with
8 you, the conversation ended?

9 A Yes, ma'am.

10 Q Thank you.

11 MS. CONCANNON: Beg the Court's indulgence.

12 BY MS. CONCANNON:

13 Q Corporal Squires, this conversation, was it
14 recorded?

15 A No, it was not.

16 Q Why was not -- why wasn't it recorded?

17 A It's just -- it's not common practice on the Drug
18 Team. We haven't recorded audio or video during
19 executing a search warrant. It's just not common
20 practice of what we do.

21 Q Is your car equipped with audio and video recording
22 devices?

23 A No, ma'am. Sometimes, usually, we don't even have
24 our vehicles there.

25 MS. CONCANNON: Okay. I have no further questions

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1 for you at this time.

2 CORPORAL WILLIAM SQUIRES

3 CROSS-EXAMINATION BY MS. SAXON:

4 Q Good afternoon, Corporal Squires.

5 A Afternoon.

6 Q When you first became an officer, you went to the
7 academy, correct?

8 A Yes.

9 Q And at the academy, you were trained to do reports,
10 correct?

11 A Yes.

12 Q And they trained you that you should do reports
13 relatively quickly after an incident, because your
14 memory is fresh, correct?

15 A Yes.

16 Q And that would insure accuracy at a later date,
17 such as four years later in court, correct?

18 A Right. Yes, ma'am.

19 Q Okay. So. So, when you're doing these reports,
20 it's as quickly after an incident as you can get to your
21 computer.

22 A Um-hmm.

23 Q Would you say?

24 A Yes, ma'am.

25 Q Okay. Great. Mr. Chisolm wasn't the only person

1 you interviewed that day, was he?

2 A No, ma'am.

3 Q Okay. You did also interview David Greene, his
4 younger brother, correct?

5 A Yes. David Greene, Jr., I believe.

6 Q Okay. When you spoke to Mr. Chisolm, you said it
7 lasted, roughly how long, again?

8 A Ten to twenty minutes.

9 Q Okay. And this was in the residence -- in the yard
10 of the residence, correct?

11 A Yes.

12 Q Okay. Is there a reason that Mr. Chisolm wasn't
13 taken to a substation investigation room, where there
14 would have been a recording?

15 A No, not during the execution of a search warrant.
16 That's not common practice of what we do. There was
17 three people, I think, we had in the yard, so we have to
18 interview them one at a time, while the other team
19 members are actually inside, executing the search
20 warrant.

21 Q So, at the time that you're interviewing Mr.
22 Chisolm, the search warrant is being executed?

23 A Yes.

24 Q Correct? Okay. So, at that time, Mr. Chisolm has
25 no idea if anything is found or where anything is found

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1 in that house, correct?

2 A Sometimes, during while we're actually giving the
3 interviews, an officer will come outside and let us know
4 what they see inside the residence, and we just ask them
5 about it.

6 Q Okay.

7 A So, sometimes we do let them know that there might
8 be something inside.

9 Q Okay. But if you're -- so, if that had happened,
10 would you have said that in your report? Would you have
11 said, we asked him specifically --

12 A No, ma'am.

13 Q -- about Item A?

14 A Yeah, I think I mentioned earlier, I asked him
15 about the money found in the residence, and he said it
16 was his, the one that was found in the shoe.

17 Q Okay.

18 A That --

19 Q I do want to talk to you about that.

20 A Okay.

21 Q Now that you brought it up. And do you have a copy
22 of your report?

23 A Yes.

24 Q Okay. So, we're looking at the same thing, then?

25 A Okay.

1 Q Per the report, there's nothing in there that
2 specifically says that he knew about money in a shoe,
3 correct? He just says a general, the money in the house
4 is mine, a very general statement.

5 A Excuse me while I look real quick. I got:

6 *Chisolm was asked about any money in*
7 *the residence, and replied any money found*
8 *in the residence was his.*

9 And then, later on:

10 *Chisolm also admitted to possessing the*
11 *currency found in the residence, which was*
12 *found in a shoe in the closet, in the same*
13 *fashion as a large amount of cocaine found*
14 *in a shoe in the same closet.*

15 So, an instance like that, an officer would have
16 came out, told me what they found, so I can ask them
17 about it.

18 Q Okay. As far as other things that defendant said,
19 isn't it true that he told you that he does not sell
20 anything out of his residence?

21 A Yes, ma'am. I got -- do you want me to read
22 exactly?

23 Q Sure.

24 A Okay. Let me find it.

25 *After Chisolm reviewed the search*

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1 warrant, he immediately --

2 or excuse me, not immediately -- but

3 -- he stated several times that he does not

4 sell anything out of the residence.

5 Q At that time, he also told you that his younger
6 brother lived there with him. Is that correct?

7 A Yes.

8 Q And you had, again, spoken with Mr. Greene
9 yourself. And your subsequent interview with Mr.
10 Chisolm led you to feel that some of the things Mr.
11 Greene said were not truthful. Is that correct?

12 A Yes.

13 Q And that the statements that Mr. Chisolm was giving
14 you were conflicting with what Mr. Greene had given you.
15 Is that correct?

16 A Yes.

17 Q And that the statements that Mr. Chisolm had given
18 you were more truthful. Is that correct?

19 A I believe so, yes.

20 Q Okay. He also stated, at one point, that he could
21 not believe that his brother, Greene, was selling drugs.
22 Is that correct?

23 A Yeah, I wrote:

24 Chisolm then stated, people need to be
25 21 to conduct business inside his residence.

1 Chisolm stated he could not believe -- believe
2 his brother, Greene, is selling dope.

3 Q And as to -- excuse me -- as to conduct business
4 inside his residence, had you been made aware that they
5 had found a business card of Mr. Chisolm's, about a
6 seafood business that he was in?

7 A During the interview, no, ma'am.

8 Q Okay. So, you didn't know that.

9 A No.

10 Q Okay. When you said that Mr. Chisolm asked to be
11 able to speak to his brother, and you allowed that,
12 correct?

13 A Yes.

14 Q So, you allowed him to speak to Mr. Greene himself.

15 A Um-hmm.

16 Q If you could, read for me, verbatim, from your
17 report, what happened after Mr. Greene -- or after he
18 asked you that.

19 A Sure. It would have been right after the currency.

20 Chisolm then asked for his brother to
21 be brought over to him, so that he could talk
22 to him. Chisolm told his brother he was
23 taking all the drugs in the house. David
24 Greene became physically upset, putting his
25 head down and tried to walk away. Chisolm

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1 told him he had too much going for him, and
2 he would do the time for the drugs.

3 Chisolm, at the time, stated he did
4 not want to talk about the incident anymore,
5 but will contact investigators at a later
6 date for another interview.

7 Q You also stated that it's not common practice for
8 Drug Task Force cars to have audio/visual equipment in
9 them. Is that correct? To be equipped with recording
10 devices?

11 A Right.

12 Q But it is standard practice for BCSO deputy
13 vehicles, in general, to have those recording devices,
14 correct?

15 A In 2010, I don't have the exact -- I don't have the
16 exact policy in hand. I don't know if it was a policy
17 in 2010.

18 MS. SAXON: Your Honor, may I approach?

19 THE COURT: You may.

20 BY MS. SAXON:

21 Q I'm going to hand up to you a *Beaufort County*
22 *Sheriff's Office General Orders Manual*. Can you tell
23 the jury what that is?

24 A Yeah. I've got *General Orders Manual, Subject:*
25 *Digital Imaging/In-Car -- In-Car Video*.

1 Q And can you tell me the effective date of that
2 policy.

3 A April 24, 2009. Evaluation date, July 25, 2013.

4 Q Okay. So, it would have been in effect at the time
5 of --

6 A This general order?

7 Q Um-hmm.

8 A Would have been in effect at the time of the search
9 warrant.

10 Q Okay. So, with the General Order, talking --
11 sorry, if you need this back -- talks about how BCSO,
12 the policy is that BCSO will attempt to equip its
13 vehicles with audio and visual recording starting in
14 2009.

15 A I'm going to have to look over it for a minute.

16 Q Okay. Yeah.

17 A There's a lot here.

18 Q Just the first page will probably give you what you
19 need.

20 A So, what you've got here, I guess your question is
21 in regards to handheld cameras and the audio equipment,
22 not the actual installed in the vehicles. Because
23 there's vehicles that have cameras actually mounted to
24 the vehicles --

25 Q Right.

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RE-DIRECT - SQUIRES

1 A -- with video and audio.

2 Q Right. And those are usually the deputy traffic
3 videos.

4 A Yes, ma'am.

5 Q Correct?

6 A Um-hmm.

7 Q But not a Drug Task Force car.

8 A Correct.

9 Q That's first.

10 A Okay.

11 MS. SAXON: That's all I have, your Honor. Thank
12 you.

13 THE COURT: Anything further?

14 MS. CONCANNON: Very briefly, your Honor.

15 CORPORAL WILLIAM SQUIRES

16 RE-DIRECT EXAMINATION, BY MS. CONCANNON:

17 Q Corporal Squires, I'm going to refer to what Ms.
18 Saxon just showed you.

19 A Okay.

20 Q The *General Orders Manual*. If you flip to Page 9.

21 A I don't have my copy.

22 Q You don't have it?

23 A No, ma'am.

24 Q Sorry. You can borrow my copy. What does Page 9
25 talk to you about?

1 A *Digital Imaging/In-Car Video, Number 9, Image*
2 *Output. Images will be printed on available -- looks*
3 *like available -- printer model and settings will be*
4 *noted on page. Two copies of each print will be made;*
5 *one for the agency and one for the case notes.*

6 Q Does it specify what sort of vehicles are supposed
7 to have that in-car camera?

8 A No, ma'am.

9 Q Okay. Are you required to have an in-car camera?

10 A No. We go through vehicles all the time, so we
11 don't mount stuff in our vehicles.

12 Q Okay. In the beginning of that manual that Ms.
13 Saxon handed to you, is it referencing just cameras that
14 you would take photographs with? Not in-car cameras,
15 correct?

16 A Correct.

17 Q Thank you. And that's what each -- it's an actual
18 digital camera to take photographs with, that each
19 person is required to have.

20 A Yes.

21 MS. CONCANNON: Thank you. I have no further
22 questions for you.

23 THE COURT: Anything further?

24 MS. SAXON: Just briefly, your Honor.

25 CORPORAL WILLIAM SQUIRES

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1 RE-CROSS-EXAMINATION BY MS. SAXON:

2 Q You were outside the entire time that search was
3 happening, correct? You weren't involved with anything
4 that happened inside the house.

5 A Not that I can recall. No, ma'am. I think I was
6 outside the whole time, with the interviews.

7 Q Okay. And are you aware of the fact that Mr.
8 Greene was charged with these same set of charges that
9 Mr. Chisolm is currently facing?

10 A I have no idea, to be honest with you.

11 Q Thank you.

12 MS. SAXON: Nothing further.

13 THE COURT: You may step down.

14 A Thank you.

15 BY THE COURT:

16 THE COURT: State will call their next witness.

17 MS. CONCANNON: Your Honor, can we approach.

18 THE COURT: Sure.

19 OFF-THE-RECORD BENCH CONFERENCE, OUT OF
20 HEARING OF JURORS. PRESENT: THE COURT,
21 MS. CONCANNON, MS. KENNEY, MS. SAXON,
22 MR. BAX.

23 END BENCH CONFERENCE.

24 THE COURT: Ladies and gentlemen of the jury, at
25 this time, there is a matter of law that I need to take

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1 up with the attorneys, and rather than have you sit back
2 there and wait on us all, I think what I'm going to do,
3 ladies and gentlemen, is, we're going to break for the
4 evening. I am going to ask that you return to your jury
5 room at 10:00 a.m. tomorrow morning, where we're going
6 to go ahead and continue and finish up the trial of this
7 case.

8 Ladies and gentlemen, I need to remind you again,
9 you are not to discuss this case with anyone over the
10 evening. You are not to do any of your own independent
11 research. Again, I don't know if there's going to be
12 anything in the newspaper or on the news or on the
13 radio, but again, you are not to read if there is
14 anything. If there happens to be some type of article
15 or any type of coverage, I will ask you about it.

16 Ladies and gentlemen, I simply ask, go home, get a
17 good night's sleep, have breakfast, come in the morning,
18 and we look forward to seeing you back at 10:00 o'clock,
19 and we will finish up this trial tomorrow. All right?
20 Thank you, ladies and gentlemen.

21 BAILIFF: I'm going to take them up. Just put your
22 number on the outside of your note pad, your juror
23 number, and then them to me when you walk out the door.

24 JURORS LEAVE COURTROOM 4:27 P.M.

25 BAILIFF: Jury is clear. Door is closed, your

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1 Honor.

2 THE COURT: Thanks, Norman. You all, let's just
3 take a quick five minutes. And then, my understanding
4 is, we're going to go ahead and proffer this next
5 witness. And then, maybe we'll talk to your client
6 about whether or not he wishes to testify, and we'll get
7 him overnight to decide that, obviously. And of course,
8 he's going to have to base it, also, on the testimony he
9 hears from this last witness. And you know, maybe we'll
10 just come on back and cover that tomorrow. I think it's
11 safer. Have you talked to him some?

12 MR. BAX: I have, your Honor. The only thing we
13 would ask, if your Honor is inclined to do this, is, at
14 least explore the area of what convictions of his prior
15 record would be admissible if he testified, so that he
16 knows about that overnight to think about.

17 THE COURT: Okay. On this quick break, will you
18 guys go ahead and pull and look at it, to see what you
19 are looking to introduce? Okay? And let's just go
20 ahead, and like I said, take about five-minute break or
21 so. Okay?

22 MS. CONCANNON: Thank you, your Honor.

23 THE COURT: Thank you.

24 OFF THE RECORD 4:27 P.M.

25 BACK ON THE RECORD 4:32 P.M.

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1 BY THE COURT:

2 MS. CONCANNON: Your Honor, Master Sergeant
3 Florencio ran downstairs to get copies of the case.

4 THE COURT: Okay.

5 MS. CONCANNON: He should be back any second with
6 that.

7 THE COURT: Okay. If you could get a copy of that
8 and send it to us.

9 MS. CONCANNON: Certainly, your Honor.

10 THE COURT: And one to Ms. Saxon or a cite to Ms.
11 Saxon, either one is good.

12 So, Ms. Concannon, your basing this on the one line
13 here that says:

14 *During the trial, the State presented*
15 *expert testimony from police officers.*

16 MS. CONCANNON: Yes, your Honor. It looks like, in
17 that case, they testified what a dealer, as opposed to
18 what a non-dealer, would possess on them. And that's
19 one of the things I have to prove in this case, is
20 whether Mr. Chisolm intended to distribute these drugs.
21 And in that case, they were able to testify how the
22 drugs were packaged, and Mr. Robinson inferred that he
23 was there to deal them, not for personal use.

24 THE COURT: I'm okay with the officers testifying
25 to that. My problem, I guess, is, is that an opinion?

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1 And my real problem is qualifying them as an expert in
2 something. That's where my concern is. I mean, I think
3 they can state that, you know, in their experience. And
4 go on and say, you know, in her 15 years of doing this,
5 you know, they have scales, they have baggies, they have
6 a cutting agent, they have such and such and such and
7 such. My concern is the qualifying them as an expert.

8 MS. CONCANNON: And your Honor, I would just argue
9 that the drug trade, it's a -- it's not common knowledge
10 to the general public. They may see it on T.V.; they
11 may think they know what it's about; but they cannot
12 necessarily put this chain of evidence together as a map
13 that's --

14 THE COURT: I get all that. Do we allow people --
15 and I'm just trying to find a parallel. Do we allow
16 people under the mob statute or under the gang statute
17 to argue as an expert that someone's in a gang?

18 MR. BAX: The only thing I can tell you --

19 THE COURT: Are there gang experts?

20 MR. BAX: They've tried. I've had cases --

21 THE COURT: Right.

22 MR. BAX: -- where that's been tried, and there's
23 been different decisions by different judges. I've had
24 judges exclude that as not a proper avenue for someone
25 to be qualified as an expert in. I know that came up

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1 several times in Columbia, when they were trying
2 Treetop Piru case. And I believe most of those cases
3 were held in front of either Judge Cooper, G.T. Cooper,
4 or Judge Manning. And Judge Manning's ruling in the
5 trial, that I recall, was that they're not -- they can't
6 testify as an expert. I don't recall what Judge Cooper
7 decided, and whether that was in line.

8 THE COURT: Just give me a second. We've found
9 nothing, as far as that being an appeal that's gone up,
10 and --

11 MR. BAX: And your Honor, not to take over for
12 Counsel, she's doing an excellent job, the case that I
13 can -- the case law I'm aware of talks about the fact
14 that, you were talking about the expert and whether or
15 not the officer should be qualified as an expert, I
16 certainly see where you're going with the idea they talk
17 about what's in their experience. I think the position
18 of the Defense would be, if they're not an expert, they
19 might be able to testify to that; they just can't draw
20 that line to the evidence in this particular case.

21 THE COURT: Right.

22 MR. BAX: In other words, they can't say, it is my
23 opinion --

24 THE COURT: Right.

25 MR. BAX: -- that the evidence in this case is such

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1 evidence.

2 THE COURT: I mean, they can -- my understanding,
3 in just a reading of *Rule 701* of the *Rules of Evidence*,
4 if they're not an expert, then any inferences or
5 opinions are limited to those which are rationally based
6 on the perception of the witness or helpful to a clear
7 understanding of the witness's testimony or the
8 determination of a fact in issue.

9 MR. BAX: And to that point, your Honor, I think
10 that's one of the areas that is really our sticking
11 point is. The Court has said that the, you know, the
12 use of expert is only in situations where their
13 expertise and their opinion about the evidence can aid
14 the trier of fact in understanding evidence that goes to
15 the ultimate issue in the case.

16 *State v. Jamison* talks about that, and it
17 specifically talks about a case where officers were only
18 -- an officer was only allowed to testify in an opinion
19 level because they were talking about the street values
20 of narcotics, something that they believed that the jury
21 would not know of themselves. That the jury would not
22 necessarily know what the value of the drugs were,
23 because, in that case, at that time, the value was in
24 question.

25 In this case, the value is not in question. The

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1 statute doesn't go into value. The statute only goes
2 into weight, and of course, we've got the possession
3 with intent to distribute, so there's the intent. But
4 the amount of money or the value of it is completely
5 immaterial and unnecessary for the State to prove.

6 So, it's the State's position that the evidence
7 that they have before them is all common-sense evidence.
8 The jury doesn't need any aid in understanding what they
9 think scales are for. That's clear to the jury. They
10 know that the allegation is the scales were used to
11 measure drugs. They know the allegation is that the
12 baggies were used to package the drugs. They know the
13 allegation is the scanner was used to scan for police
14 and emergency and fire. They also know exactly what the
15 allegation is, as to the gun, in relation to having a
16 bunch of drugs in your house. None of that is in need
17 of aid, as far as expert testimony, for the jury to
18 understand the evidence.

19 MS. CONCANNON: And your Honor, if I may, briefly.
20 I'm also looking at *State v. Jamison*, and for your Honor
21 and Megan, it's 372 S.C. 649. And a footnote references
22 *U.S. v. --* and I'm going to butcher this --
23 *G/a/s/t/i/a/b/u/r/o*. It's Footnote 2. It states that:

24 *Noting that this court has repeatedly*
25 *upheld the admission of law enforcement*

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1 officers' expert opinion testimony in drug
2 trafficking cases.

3 It's a Fourth Circuit case, and we have a drug
4 trafficking case here before your Honor.

5 THE COURT: We need to pull up the case and see in
6 what areas.

7 MS. CONCANNON: It is 16 F3d 582. And I think
8 that, personally, we don't know what this jury is
9 capable of assuming. We have a cutting agent up there
10 that, I didn't know what that was for until it was
11 explained to me what that could possibly be used for.
12 It's easy to talk about the baggies and the scales, but
13 when you take into consideration items like that, it's
14 not common knowledge, and you need an expert to be able
15 to explain the combination of these items is what is
16 found in drug trafficking and the drug trade.

17 THE COURT: Okay. Have you all had a chance to
18 read?

19 MS. SAXON: I'm looking at the *Gastiaburo* case,
20 your Honor.

21 THE COURT: Yes, that's what I just read.

22 MR. BAX: Your Honor, the one thing that stands out
23 to me is that, I see Mr. Gastiaburo's attorney did not
24 object to the testimony of the expert. And as a result,
25 they only reviewed it for plain error, and there was no

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1 discussion at the trial level about the specific facts
2 of what that officer was qualified in, and any specific
3 objections about his trial counsel as to why or why not
4 that expert testimony would be admissible. I think that
5 kind of changes the tenor when it's looked at from a
6 standpoint of not having a specific objection by a
7 defendant's counsel to that testimony coming in.

8 THE COURT: I think he did raise that. I think he
9 did object to it. What he didn't object to is down
10 here, the judge's questioning the witnesses. Tell me
11 where, in this opinion, it states that he didn't object
12 to it.

13 MR. BAX: Your Honor, it says --

14 THE COURT: Where are you?

15 MR. BAX: I'm hopefully going to give you the right
16 page, but it's a paragraph staring with a. It says:

17 *Johnson's testimony on intent to*
18 *distribute,*

19 and it goes through --

20 THE COURT: I'm right where you are.

21 MR. BAX: Okay.

22 *Prosecutor asked Johnson, would you*
23 *have an opinion, based on your training and*
24 *experience, what the crack cocaine --*

25 THE COURT: I see.

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1 MR. BAX: Yeah.

2 THE COURT: It says:

3 *Gastiaburo's trial attorney did not*
4 *object.*

5 MR. BAX: Yes. And underneath, in the next? --

6 THE COURT: Okay. I'm reading it right there.

7 MR. BAX: Yes, ma'am.

8 THE COURT: And it goes on, though, to say that
9 most appellate panels have refused to find error in the
10 admission of expert testimony on the intent to
11 distribute controlled substances. Apparently, there is
12 one case, though, in D.C.

13 Again, I understand your argument as to this case,
14 and that it wasn't raised, and it had to be plain error.
15 They go on to talk about a lot of different circuits in
16 federal court upholding expert testimony in drug
17 trafficking cases.

18 MR. BAX: One thing I'm seeing, your Honor --

19 THE COURT: Yeah.

20 MR. BAX: -- is -- and this is in that same case --
21 they talk about the expert, or the officer who is
22 qualified, being limited to a testimony specifically
23 about quantities and purity of heroin. So, you look at
24 that, and you look at what's also talked about in the
25 *Jamison* case and some of the other cases that are cited

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1 for the federal case as far as the different circuits,
2 all of them seem to be talking about the fact that the
3 testimony needs to be specifically tailored and limited
4 to an area that the jury wouldn't necessarily have any
5 knowledge of itself, i.e. heroin's purity, street
6 values.

7 THE COURT: The cutting of cocaine with --

8 MR. BAX: Right.

9 THE COURT: -- different agents.

10 MS. CONCANNON: And your Honor, I don't want to
11 interrupt Mr. Bax.

12 THE COURT: I mean, it does go on with one. It
13 says that they do say, based on that, they allow them to
14 give the opinion that, based on the amount, a typical
15 user versus a trafficker or something else, or someone
16 with possession with intent to distribute, it's a kind
17 of an amount. I mean, I don't think we have very much
18 of a close line here, because we're talking about over
19 100 grams, I mean, as far as the trafficking charge is
20 concerned. And the possession with intent to
21 distribute, is, correct me if I'm wrong, is three grams.

22 MS. CONCANNON: It's close. It's 3.3 grams.

23 THE COURT: It's 3.3 grams.

24 MS. CONCANNON: And your Honor, it looks like --

25 THE COURT: Yes.

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1 MS. CONCANNON: -- right underneath where Mr. Bax
2 directed you, it's (b), Johnson's other testimony, over
3 Defense counsel's objection, they were allowed to
4 testify; the expert was allowed to testify to tools of
5 the trade.

6 THE COURT: Right.

7 MS. CONCANNON: I.e., beepers, address books,
8 quantity of drug possession, and so on and so on. And
9 that would be the main testimony elicited by the State
10 from Master Sergeant Florencio.

11 THE COURT: Right here, it talks about the Eighth
12 Circuit, said:

13 *They found no abuse of discretion*
14 *admitting the agent's testimony.*

15 It said:

16 *Such testimony aids the jury by putting*
17 *the drug dealer in context with the drug world.*
18 *It is a reasonable assumption that a jury is*
19 *not well versed in the behavior and average*
20 *consumption of drug users.*

21 I mean, you have a Fourth Circuit case upholding
22 the admission of expert testimony on the size of an
23 average dose of heroin, because:

24 *While not usurping --*
25 *it goes on to say:*

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1 While not usurping the function of
2 the jury, this testimony aided the jury
3 during its deliberations for most laypersons --
4 they say laymen --
5 -- are not familiar with the quantity, purity,
6 and dosage units of heroin.

7 MR. BAX: Here's one thought that came to me, your
8 Honor, that I think I want to put on the record, and I
9 think it's kind of what causes me a lot of consternation
10 about this particular area of the law. I'm looking at
11 the dates on all these cases, and it looks like late
12 eighties, early nineties for a lot of these cases.

13 Your Honor, you know, as your Honor knows, the law
14 has to kind of change along with the times. It may be
15 that the Courts believed that the average juror didn't
16 have this kind of knowledge in the late eighties, early
17 nineties, you know. I wasn't really thinking about that
18 back then, but -- seeing as how I was in grade school.
19 But you know, nowadays, you've got shows like *Breaking*
20 *Bad* and *The Wire*, and it just seems to me like that kind
21 of stuff is more common knowledge. It's part of the --
22 it's part of the ethos of our entertainment industry.
23 It's part of what everybody talks about. It just, to
24 me, it seems like the idea of using bags and having guns
25 and doing all this stuff is part of common

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1 entertainment, common shows that they put on Showtime
2 now. It's not outside the purview of a normal juror's
3 common-sense experience in the world anymore. The
4 world's changed.

5 MS. CONCANNON: Your Honor, I don't ever want my
6 juries to think that this courtroom is like it is on
7 T.V., because it is not. I also would like to say that
8 *State v. Jamison* was a 2007 case from here that our --
9 specifically cites South Carolina Court of Appeals,
10 specifically cites that *Gastiaburo* case in 2007
11 specifically about drug trafficking, and that it was
12 proper to admit the testimony of the experts in that
13 case.

14 So, it is still good law. Granted, it was -- it
15 came down a while ago. It still is being used, as of
16 2007.

17 THE COURT: Well, obviously, I've got, as the trial
18 judge, broad discretion under Rule 702, to admit or
19 exclude evidence. And I think, in this case,
20 particularly because we're talking about trafficking,
21 which, again, the definition of trafficking, just in the
22 statute, is, I think, so difficult for people to wrap
23 their head around when instructing them on the law, when
24 it's to possess, dispense or conspire to, and it goes on
25 and on and on. And it gives about 25 different things

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1 that you possibly could be doing with the drugs, which
2 would make it trafficking. I think an expert opinion
3 could aid the jury in understanding.

4 I will say this, though, to the point that, even
5 subject to your objection, if you think this officer has
6 gone too far, I think there are certain things that I
7 would not permit him to say. Like, he could say, you
8 know, indicia of someone who would be trafficking drugs
9 is this, this, this, and this. I don't think I would
10 let him, at the very end, as the ultimate, say, you
11 know, in fact, this defendant is a drug trafficker. I
12 think he just gives his information. Again, unless you
13 can show me something that effectively allows him to
14 make that final leap, which I have a problem with.

15 MS. CONCANNON: No, your Honor, I don't plan on
16 asking him that --

17 THE COURT: Okay.

18 MS. CONCANNON: -- end-all question. I just --

19 THE COURT: Okay.

20 MS. CONCANNON: I'm hoping the jury will make that
21 leap on their own.

22 THE COURT: Okay. All right. Well, I will tell
23 you this, I'm going to actually sleep on it. But do we
24 need to have a proffer? Because I don't think we
25 necessarily do in this case.

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1 MS. SAXON: And your Honor, it was more to get to
2 the issue of whether or not he would be allowed to be an
3 expert. And based on, kind of, what's come up during
4 this motion, I think I am aware enough of what the State
5 plans to do with his testimony, if I'm not mistaken,
6 which is to say something to the effect of, is it --
7 it's my experience that people who traffic drugs have
8 large amounts of cocaine, and they have money, and they
9 have --

10 THE COURT: Scales.

11 MS. SAXON: -- protection, and they have scales.
12 Is that what --

13 MS. CONCANNON: That's right. The tools used to
14 implement this --

15 THE COURT: Pursue the drug trade.

16 MS. CONCANNON: Exact. This business, as I've been
17 calling it, is what I'm hoping he can wrap up the
18 testimony with.

19 THE COURT: Okay. Okay. So, I don't think we need
20 to do a proffer. Have you had an opportunity to look at
21 Mr. Chisolm's rap sheet, to see what you would intend on
22 trying to use against him?

23 MS. CONCANNON: I have, and I have certified copies
24 of two distribution of cocaine charges from 2007.
25 Separate incident dates. The conviction date was the

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1 same date.

2 MR. BAX: And your Honor, I've discussed it with my
3 client. He is aware of the fact that those are the two
4 convictions that they would seek to introduce against
5 him, in the event that he testifies.

6 THE COURT: Okay. Okay. And that's it? Okay.
7 All right. And Mr. Chisolm, I'm not going to swear you
8 in right now. I'm just going to, for the record, speak
9 with you.

10 You have a *Fifth Amendment* right to remain silent.
11 You're never required, sir, to be a witness against
12 yourself in a trial. Sir, if you choose not to testify,
13 in my jury charge to the jury, I'm going to tell them
14 that the fact that you didn't testify, if you choose not
15 to, can't even be discussed in the courtroom -- or, I'm
16 sorry, back in the deliberation room. And the reason
17 why is, you're not required to prove yourself innocent.
18 The burden is the State to prove you guilty of these
19 charges and on the evidence of them.

20 However, I do want you to know, as we've just
21 discussed on the open record, if you do choose to
22 testify, you are going to be subject to cross-
23 examination by the State, and they can ask you anything
24 that the Court, which is me, deems relevant, as to your
25 charges in this case. And they would be allowed to

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1 examine you and question you on the prior convictions.

2 Do you understand that, sir?

3 MR. DWAYNE CHISOLM: Yes, ma'am.

4 THE COURT: Okay. I just want to make sure. And
5 I'm going to ask you tomorrow when we go forward is, I'm
6 going to say, have you had an opportunity -- and again,
7 I'm not asking you this because, I think, for you, it's
8 important to certainly see the remaining witness on
9 behalf of the State, what his testimony is going to be,
10 before you could make a decision as to whether or not
11 you wish to testify. But I do expect you to talk about
12 it with your attorneys. I do expect you to get their
13 counsel, but I want to make sure you understand that
14 choosing to testify or not testify is your decision. It
15 is a personal decision. It's a constitutional right
16 that you have.

17 And again, while I expect you to talk to your
18 lawyers, and they, of course, are experienced, and
19 they've been to court more than you have, and they've
20 seen whether or not it helps or hurts, and it can be
21 different in different cases. Again, this is a personal
22 decision I'm going to ask you about. I am going to
23 swear you in tomorrow, and ask you whether or not you
24 want to testify, and I'm going to ask you if that
25 decision of yours has been made freely, voluntarily, and

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1 knowingly, with the protections that are afforded you
2 under the *Constitution*. Okay?

3 MR. DWAYNE CHISOLM: Yes, ma'am.

4 THE COURT: So, I just want to let you know that's
5 coming, just so you know, and you've had an opportunity
6 to think about it. Okay? I appreciate it, sir. Okay.

7 I would like to, because it's my understanding,
8 when we come in, likely that you will rest. Your client
9 will decide what motions -- your client will decide
10 whether or not he wants to testify, and then go into the
11 charges -- or to the arguments and charging. Is there
12 any specific request to charge, anything special? I
13 don't see, and correct me if I'm wrong, I don't see any
14 argument for a lesser included, other than -- or is
15 there any lesser included argument?

16 MS. SAXON: Your Honor, not for the trafficking
17 charge.

18 MR. BAX: One moment.

19 THE COURT: Okay.

20 MS. SAXON: Well, I guess -- and Mr. Bax brought up
21 a good point -- there -- as to the PWID, I would say
22 there is the lesser included of just simple possession
23 on the 3.3 grams of crack. As to the cocaine, I would
24 say that, if the jury found that the small amount of
25 cocaine was Mr. Chisolm's, but the large amount of

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1 cocaine he was not guilty for trafficking for, they
2 would not be able to make a determination on those two
3 separate pieces of evidence that there was a lesser
4 included charge for that simple -- for that possession.

5 MS. CONCANNON: That's separating -- that would be
6 creating a new charge, that those drugs were not
7 separate when he was indicted.

8 MS. SAXON: Yeah, but, they're separated in the
9 evidence. I mean, they were presented as cocaine here
10 that was small, and a small quantity in the living room,
11 and then cocaine here, which is a large quantity that's
12 in the closet.

13 THE COURT: And if they determine that the larger
14 quantity was not his and it was trafficking, they would
15 have to come back as not guilty on that charge.

16 MS. SAXON: Right. But then, are we -- I mean,
17 does that -- how does that -- I guess --

18 THE COURT: I mean, you're saying, how do they
19 decide on a smaller amount. But again, that wouldn't be
20 for their consideration.

21 MS. SAXON: Okay.

22 THE COURT: I mean, it wouldn't even be a charge,
23 so.

24 MS. SAXON: Yeah, I mean, because -- and it's --

25 THE COURT: And if they decided a larger amount and

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1 the trafficking charge was not his, he would be found
2 not guilty on that charge.

3 MS. SAXON: And that would include -- that's --

4 THE COURT: Well, it's a separate charge, but I
5 don't think we're going to give -- I mean, we can't give
6 them that option. I mean, that doesn't make any sense.

7 MS. CONCANNON: No, that would be having --

8 THE COURT: Particularly in a case where we're
9 talking about, it's constructive possession, because
10 none of it's found on his person. It's all found in the
11 house, correct?

12 MS. CONCANNON: Correct.

13 MS. SAXON: Correct.

14 THE COURT: So, again, it would be a constructive
15 possession argument. You wouldn't do a lesser included
16 under the trafficking and simple possession on a smaller
17 amount that was separated from a larger amount. So, no,
18 my answer would be that -- I understand your argument,
19 Mr. Bax, but that wouldn't make sense to do it that way.
20 It would have to be if -- it would have to be -- what
21 was the way that it was separated? How much --

22 MR. BAX: Well, my concern is, and I was just
23 asking this, if the indictment lists all of the --
24 because my understanding was, it was charged -- all the
25 cocaine was combined together, and the trafficking was

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1 based on 130-something grams. And that was a
2 combination of both the 125 and all the lesser pieces.
3 So, the overall charge of trafficking is through a
4 combination. Now, obviously, the 125 by itself --

5 THE COURT: But the 125 was already over the
6 threshold anyway.

7 MR. BAX: That's true. However, that's the charge
8 that they have, is 133 or whatever it is when you add
9 all those other little bits of cocaine in together. So,
10 they added it together, so we have to be concerned
11 about, what if the jury wants to separate it, because
12 not all of it was found in one place. Now, granted, --

13 THE COURT: We want to separate it, though, then he
14 becomes -- they would have to answer not guilty. But
15 there is no way, because one of them that is found
16 altogether is over the hundred-gram threshold.-

17 MR. BAX: That's true.

18 THE COURT: So, it's not possible under the facts.

19 MR. BAX: And that's fine. If they find that that
20 wasn't his, then I think that we would just have to ask
21 for an instruction that that means he's entitled to a
22 not guilty, regardless of what they think about the
23 other smaller amounts. Because you've got a jury back
24 there that might ask --

25 THE COURT: That doesn't make sense, because he has

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1 to meet the elements of trafficking in the amounts for
2 that trafficking charge, so I don't need to ask them
3 about the other ones. It doesn't even matter, because
4 if he doesn't meet the elements of trafficking, that's
5 the only consideration before them. I mean, they can
6 only answer the questions that are before them. So, I
7 mean, I understand what you're argument is, but it
8 doesn't make sense. You wouldn't have to. There would
9 be no lesser included. They would have to find -- to
10 be able to find him guilty of trafficking, they would
11 have to find that he did one of those things and in
12 excess of 100 grams. So, I don't think that's an issue.
13 What else, other than -- any other?

14 MS. SAXON: We would suggest mere presence, your
15 Honor.

16 THE COURT: I would assume that you were going to
17 argue and wanted a mere presence charge. That doesn't
18 surprise me. So, what else? Anything else? I don't
19 see anything else that's -- do you have the charge on
20 the obliterated serial number?

21 LAW CLERK MEGAN WHITE: I am still looking for it.

22 THE COURT: I can tell you that I don't think I
23 have had one of those cases since I've been on the Bench
24 in nine years. So, if anyone has seen or can lay their
25 hands on that charge, I mean, chances are, we're just

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1 going to charge the statute, and I'll just read the
2 statute. But I want to know if there's one in
3 Anderson's or not. I haven't looked.

4 MR. BAX: I'll check it, your Honor.

5 THE COURT: We'll look. Well, we've got
6 Anderson's, just like everybody else, so. But anything
7 else? I don't think --

8 MS. SAXON: I can't think of anything else special.
9 And your Honor, it might be one of those things that we
10 come up with something overnight.

11 THE COURT: Certainly.

12 MS. SAXON: If you could maybe address it once
13 again in the morning.

14 THE COURT: All I can say is, if you find a charge,
15 don't make it come from your own language.

16 MS. SAXON: No.

17 THE COURT: Make sure it comes from, you know, a
18 version that's good. Okay. Anything else, you all? I
19 told the jury to come back at 10:00? Okay.

20 MS. CONCANNON: I think so.

21 LAW CLERK MEGAN WHITE: 10:00.

22 THE COURT: It was 10:00. Just making sure it's
23 10:00. It's 10:00.

24 COURT REPORTER: It was 10:00, your Honor.

25 THE COURT: Thank you. Wanda. I hate to say this,

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1 I'm going with Wanda and Megan. Sorry. Just
2 experience. Anyway. Okay. You all, how about we all
3 be back here -- I'm not going to get here until about
4 9:45, so I'll tell you all that right now. So, 9:45 is
5 when I'll be here.

6 The one thing I do want to make sure, Wanda, what
7 are you doing with all this evidence tonight?

8 COURT REPORTER: We'll lock it up in that room
9 right there.

10 THE COURT: Okay. Okay. You may want to bring it
11 back out again. You all may want to be here a little
12 bit earlier to kind of lay it out and get ready for, you
13 know, because you said you were going to go through all
14 of it with Florencio, right?

15 MS. CONCANNON: I plan on it.

16 THE COURT: Okay. Well, then, you better be here
17 earlier than that to make sure it's all lined up and in
18 the order you want it so you can show it.

19 MS. CONCANNON: I will be here.

20 THE COURT: Okay. All right. Anything else, you
21 all? And if you do have any requests of charge
22 overnight and you find something, email it to Megan,
23 cmullenlc@sccourts.org. Okay?

24 MS. CONCANNON: Certainly, your Honor.

25 THE COURT: Make sure you carbon it to the other

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1 side, as well. Okay? All right. Thank you, you all.
2 Goodnight.

3 MS. CONCANNON: Thank you, your Honor.

4 THE COURT: Thank you.

5 END DAY ONE, WEDNESDAY,
6 OCTOBER 22, 2014, 5:10 P.M.

7 BEGIN DAY TWO, THURSDAY,
8 OCTOBER 23, 2014, 10:09 A.M.

9 BY THE COURT:

10 BAILIFF: All rise. Court is now in session, the
11 Honorable Carmen Mullen presiding.

12 THE COURT: Good morning. Is the State ready?

13 MS. CONCANNON: We are, your Honor. I've got a --
14 the State found another case relevant to the
15 admissibility of expert testimony in drug trafficking
16 cases. Here's a copy for you and Megan.

17 And I also wanted to put on the record, based on
18 our conversation yesterday about Master Sergeant
19 Florencio's testimony, if allowed, the only questions I
20 would be eliciting would be very generalized questions,
21 nothing linked to the facts in this case. I originally
22 said I was going to show the evidence. I'm not even
23 going to go that far. The case that I just handed you,
24 they did go that far. However, if he's allowed to
25 testify, I'm going to keep it just to his experience,

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1 what he has experienced in the past, working in
2 narcotics cases.

3 THE COURT: Okay. All right. Anything from the
4 Defense, or are we ready to go? Good morning.

5 MR. BAX: Your Honor, nothing further. Obviously,
6 hopefully, we made our position clear on the record
7 yesterday. We're staying with what we've already
8 stated. Thank you.

9 THE COURT: Okay. And this case you just passed up
10 to me, obviously, I'll be able to take a look at, well,
11 when we start testimony. But it's *United States versus*
12 *Sean Jervitt Hopkins*.

13 Okay. All right. Well, let's go ahead and bring
14 the jury in, if you would, Norman.

15 BAILIFF: Yes, your Honor.

16 MR. BAX: And just from a scheduling standpoint,
17 I've discussed with Ms. Concannon, that's their last
18 witness. And so, you know, after this is done, if they
19 can go back out so we can do motions and colloquy.

20 THE COURT: Sounds good.

21 MR. BAX: All right.

22 THE COURT: Okay.

23 BAILIFF: The jury is entering the courtroom, your
24 Honor.

25 THE COURT: Thank you.

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1 JURORS ENTER COURTROOM 10:13 A.M.

2 BAILIFF: The jury is seated, your Honor.

3 THE COURT: Good morning, ladies and gentlemen.

4 RESPONSES FROM JURORS.

5 THE COURT: So good to see you all here. I know we
6 had a few traffic problems this morning, but they say
7 you were all on time, so I appreciate that, ladies and
8 gentlemen.

9 At this time, we're going to go ahead and continue
10 with the trial of this case. The State will call their
11 next witness.

12 MS. CONCANNON: Thank you, your Honor. The State
13 calls Master Sergeant Andres Florencio.

14 MADAM CLERK: Do you solemnly swear or affirm to
15 truthfully answer all the questions asked of you by this
16 court, so help you God?

17 MASTER SERGEANT ANDRES F. FLORENCIO: I do.

18 MADAM CLERK: Thank you. Please be seated. State
19 and spell your name for the Court.

20 MASTER SERGEANT ANDRES F. FLORENCIO: Good morning.
21 My first name is Andres, A/n/d/r/e/s; middle initial F;
22 last name, Florencio, F/l/o/r/e/n/c/i/o.

23 MASTER SERGEANT ANDRES F. FLORENCIO

24 DIRECT EXAMINATION BY MS. CONCANNON:

25 Q Good morning, Master Sergeant Florencio.

1 A Good morning.

2 Q Where are you currently employed?

3 A I'm employed with Beaufort County Sheriff's Office.

4 Q And in what capacity do you work with the Sheriff's
5 Office?

6 A I am the master sergeant in charge of the Southern
7 Investigative Section.

8 Q What are some of your duties as Master Sergeant
9 over Southern Investigations?

10 A I oversee all the criminal investigations that are
11 in southern Beaufort County -- Hilton Head, Bluffton,
12 Daufuskie Island. And I'm in charge of case management,
13 oversee all of the investigations. Pretty much in
14 charge of the section.

15 Q Prior to being the Master Sergeant over Southern
16 Investigations, what positions did you hold in the
17 Sheriff's Office?

18 A I was the staff sergeant over the Drug
19 Investigations Section.

20 Q And how long were you the staff sergeant over Drug
21 Investigations?

22 A Well, I was on the Drug Team for almost ten years.
23 I was promoted to Sergeant in March of 2005, and then to
24 staff sergeant in November of 2007.

25 Q So, ten years, solely working in narcotics?

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1 A Yes.

2 Q Okay. What were some of your duties when you were
3 on the Drug Team?

4 A Well, I started off as a corporal, as an
5 investigator, where I just work, you know, common drug
6 investigations. Like I said, I was promoted as sergeant
7 in March of 2005, so I became a supervisor. And then,
8 in -- when I got promoted to staff sergeant, I was the
9 equivalent of a shift supervisor, so I ran all the daily
10 operations for the Drug Team.

11 Q What were some of the tasks you had when you were
12 on the Drug Team?

13 A Well, as an investigator and as a supervisor, I
14 investigated short-term and long-term drug
15 investigations. We did controlled buys, traffic stops,
16 search warrants.

17 Q What is a controlled buy?

18 A A controlled buy is a -- as a drug investigator,
19 it's kind of unique, because, while most other parts of
20 law enforcement are more reactive, we're more pro-
21 active, and we're actually out there -- actually buying
22 drugs from people that we're investigating as narcotics
23 dealers or drug dealers. And we're actually either with
24 an undercover officer or with what we call C.I.s, or
25 confidential informants. We actually -- it's

1 controlled. It is definitely controlled, the search
2 before and after.

3 Q When you say *they*, who is *they*?

4 A The confidential informants, or the undercover
5 officers, or whatever vehicles they used, search before
6 and after a buy, to insure that --

7 MR. BAX: Your Honor, I have to object, and ask if
8 we can approach the Bench, please.

9 THE COURT: You may.

10 OFF-THE-RECORD BENCH CONFERENCE, OUT

11 OF HEARING OF JURORS. PRESENT: THE

12 COURT, MS. CONCANNON, MS. KENNEY,

13 MS. SAXON, MR. BAX.

14 END BENCH CONFERENCE.

15 BY MS. CONCANNON:

16 Q Moving on to other tasks when you were involved in
17 the Drug Team, could you explain search warrants. How
18 many search warrants were you a part of?

19 A Well, I cannot give you an exact number, but I can
20 tell you that, like I said, I was on the Drug Team for
21 almost ten years. During that time, we averaged
22 anywhere between 60 to 70 search warrants a year. So,
23 just a safe number would be anywhere between six and
24 seven hundred search warrants.

25 Q And what was your role in these search warrants?

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1 A I was an investigator. I was the lead investigator
2 in many of the search warrants. And then, as a
3 supervisor, I supervised the operation, to make sure
4 everything went well, planned the search warrants.

5 Q So, you can roughly say you were involved in
6 between six and seven hundred search warrants?

7 A Yes. That's just in my -- during the time I was in
8 the Drug Task Force. I assisted with certain criminal
9 investigations and drug investigations before I was
10 assigned to the Drug Team. And then, since I've left,
11 I've continued to help them with search warrants.

12 Q But that 600 to 700 number was solely based on drug
13 investigation search warrants.

14 A Yes, correct.

15 Q Thank you. Do you have any specialized training or
16 licenses?

17 A Well, I, besides being a graduate of the South
18 Carolina Criminal Justice Academy, I've been to Basic
19 Detective, Basic Narcotics Investigation, Advanced
20 Narcotics Investigation, Drug Task Force Commander
21 School. My certification has expired, but I was
22 certified in testing marijuana. I've been to marijuana
23 spotter school. I've been to numerous classes involving
24 meth -- methamphetamine, prescription drugs, and I've
25 attended numerous seminars that have to do with drug

1 investigations and the practices..

2 Q What is the Drug -- I'm sorry if I get this wrong
3 -- the Drug Task Force Commander School?

4 A It's a class that teaches supervisors how to run
5 and supervise drug task forces. We -- right now, we
6 don't have a task force. We're a -- they are a Drug
7 Investigations Section. During the time I was on the
8 Drug Team, we were a multi-agency drug task force. We
9 had not only deputies in Beaufort County, but Jasper
10 County, Hardeeville, Bluffton, and Beaufort City and
11 Ridgeland P.D., that worked altogether. So, I got a
12 chance to supervise officers from all those agencies.
13 And not only do we work in Beaufort County, but we also
14 work in Jasper County.

15 Q Okay. Have you ever been qualified as an expert in
16 court before?

17 A Yes, I have.

18 Q Okay. Where was that?

19 A Here in Beaufort County.

20 Q In this courthouse?

21 A Yes, ma'am.

22 Q Thank you.

23 MS. CONCANNON: At this time, your Honor, the State
24 would request that Master Sergeant Florencio be admitted
25 as an expert in elicit drug trade practices.

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VOIR DIRE - FLORENZIO

1 MR. BAX: Voir dire, your Honor?

2 THE COURT: You may, sir.

3 MR. BAX: Thank you.

4 MASTER SERGEANT ANDRES F. FLORENCIO

5 VOIR DIRE, BY MR. BAX:

6 Q Good morning, Sergeant Florencio. How are you
7 doing?

8 A Good morning.

9 Q Good. A couple of brief questions for you on your
10 training. I've been provided with a list of some of the
11 trainings that you've been to. I just want to make --

12 A That is correct.

13 Q That's correct? Okay. And I count that there's
14 approximately around 40 different seminars listed here.
15 Does that sound about right to you?

16 A Yeah. I didn't count them, but.

17 Q You didn't count them? Okay.

18 A It's ten -- I've been here 18 years, so it's all
19 the training I've been in.

20 Q Right. Okay. But out of these -- well, there's
21 quite a wide range of seminars on a lot of things that
22 aren't related to drugs, correct?

23 A That is correct.

24 Q Domestic violence and juvenile procedures, crime
25 scene investigation. I see all these on the list. Is

1 that right?

2 A Yes. Besides being on the Drug Task Force, prior
3 to that, I was a criminal investigator for five years,
4 and I'm a criminal investigator now.

5 Q Okay. All right. And so, out of these, what I'm
6 looking at, if I'm looking at this correctly, I count,
7 roughly, about 13 out of the 40 that are actually drug-
8 related. Does that sound accurate to you? Am I reading
9 that correctly?

10 A That sounds accurate.

11 Q Okay. All right. And you've testified that you've
12 been qualified as an expert in this court before. How
13 many times before?

14 A One time before.

15 Q One time. So, this would be your second time. Is
16 that correct?

17 A That would be correct.

18 Q Okay. Thank you.

19 MR. BAX: No further questions, your Honor. Of
20 course, subject to prior objection.

21 THE COURT: Thank you.

22 MR. BAX: Thank you.

23 THE COURT: Ladies and gentlemen, in this case,
24 Master Sergeant Florencio is being qualified in the area
25 of illicit drug trade practices. He is allowed to give

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1 his opinion in that area as an expert witness. Again,
2 ladies and gentlemen, that is for you to use as you see
3 appropriate, as to other witnesses in this case and
4 other evidence that's been presented in this case.

5 MS. CONCANNON: Thank you.

6 THE COURT: You may continue, Ms. Concannon.

7 CONTINUE DIRECT EXAMINATION,

8 BY MS. CONCANNON:

9 Q Master Sergeant Florencio, in your experience
10 working in narcotics, are you familiar with -- are you
11 familiar with drug valuation and the value of drugs?

12 A Yes, I am.

13 Q Can you explain that.

14 A Well, I know a lot of people, they always hear on
15 T.V. like street value, and I'm sure people want me to
16 explain street value. I can tell you that, personally,
17 in the Sheriff's Office, we don't assign street value to
18 illegal drugs, because, in our opinion, it's -- it's
19 illegal, its worthless, and we don't assign a street
20 value to it. But in working in narcotics for ten years,
21 I can, from my training and experience, I can tell you
22 how much we paid for drugs when we did controlled buys.
23 And after interviewing numerous people, they would tell
24 us how much they would pay for it or how much they would
25 sell it for. Do you want me to go into that?

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1 Q Yes, please.

2 A Okay. Well, normally, let's say, for instance,
3 let's say I was a drug user, and I wanted to go buy some
4 cocaine. Normally, typical weights for users would be
5 maybe about a gram, and a gram can go anywhere from,
6 depending on the quality, 50 bucks to a 120 bucks. Most
7 of the time, it's easy to say that a gram is about
8 \$100.00. Whether it be a gram of crack or a gram of
9 cocaine, it's about \$100.00.

10 Let's say I want to -- the weekend's coming up, and
11 I want to party a little bit, I've got a couple of
12 friends coming over, I might buy what's called an eight-
13 ball, which is about three-and-a-half grams. Obviously,
14 the drug sale, it's just like any business, kind of like
15 going shopping at Walmart, going shopping at Sam's Club.
16 The more you buy and the better customer you are, the
17 better deals you get.

18 So, if I'm going to go buy three-and-a-half grams,
19 I'm not going to pay \$350.00 for it, because I'm buying
20 a bigger quantities. And let's say I go every weekend
21 and get a large amount, so the person I'm buying the
22 cocaine from might give me a little bit of a break,
23 because I'm a good customer.

24 So, instead of maybe \$350.00, I can get it for
25 \$275.00 or \$250.00, if I'm a really good customer. But

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1 three-and-a-half grams, even though it doesn't sound
2 like that, that's a lot of cocaine. Normally, that
3 would -- if we arrested someone with three-and-a-half
4 grams, we would charge them with possession with intent.
5 That's not normally for personal use.

6 And if you're wondering about how much a gram of
7 cocaine is, if you -- I'm sure everyone here's used
8 Sweet'N Low, or if it's just a small little package of
9 sugar. If you open one of those up dump it on this
10 table, that's approximately a gram, just so you have
11 kind of a sense of how much a gram of cocaine is.

12 Q So, in your opinion, in your experience with the
13 drug team, one gram is typical of personal use.

14 A Yes. When we go do controlled buys for users, they
15 buy anywhere between half a gram to a gram. And if
16 they're going to buy anything more than that, it
17 usually is, you know, they usually tell the people
18 they're going to have a party, or it's -- they want to
19 buy it, maybe, to give to some friends.

20 Q Okay. In your experience, what are the types of
21 things commonly found in the homes of those suspected of
22 selling narcotics?

23 A Well, a lot of things we find are actually things
24 that probably everyone has in their house, that, if you
25 look at each item individually, it's not illegal. For

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1 instance, from my training and experience, when I've
2 done search warrants, a lot of times you'll find -- you
3 find scales. Is it illegal to have a scale? Absolutely
4 not. You go to my house, my wife and I are on a diet;
5 we bought a scale. We weigh our food, and I've got it
6 sitting in my kitchen, and I'm not a drug dealer or a
7 drug user.

8 I have kids. I go to Sam's Club. I buy -- you
9 look in my kitchen right now in my closet, my pantry,
10 I've got boxes of sandwich bags. I make my son lunch
11 pretty much every morning, and use it to save food.
12 I've got, you know, I've got a lot, probably about ten
13 or fifteen boxes. We go through them pretty quickly.
14 And I've found those in the search warrants. Does that
15 make you a drug dealer? Absolutely not.

16 You also find -- when you find the little baggies,
17 a lot of times, you find them with the corners ripped
18 out, because what they do is, they use the corners to
19 package the drugs for sale and distribution.

20 A lot of times, you also buy what we call little
21 dime bags. You can get them at plenty of stores. You
22 can order them online. They come with different
23 designs. You have Batman on it, Pac-Man, or whatever.
24 Whatever. They have different designs, and you can
25 package drugs in them. If you have -- if you find those

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1 in the house, that doesn't mean that the person is a
2 drug dealer. Anyone can purchase that.

3 A lot of times, you find large sums of money, and
4 having large sums of money in your house is, again, not
5 illegal. But most of the time nowadays, if you were to
6 check my wallet, I might have seven bucks in it, because
7 I don't carry cash, because I use my debit card or I do
8 most of my banking electronically. So, most of the time
9 now, most people, at least in my experience, don't carry
10 large sums of money, or hide large sums of money in
11 their houses. Most people use banks.

12 A lot of times, also, besides those things, you
13 find different cutting agents. And what a cutting agent
14 is, like I explained, drugs is a business, and it's
15 actually probably better than most Fortune 500
16 businesses, the ones that are run right, and you want to
17 make a profit. So, if I'm a drug dealer, let's say I
18 buy an ounce of cocaine, which is 28 grams, and I want
19 to sell it. I'm probably not just going to sell it.
20 What I'm probably going to do is, I'm going to --
21 depending on the purity, I'm going to buy a cutting
22 agent. It could be baby formula; I've seen baking
23 powder; I've seen Inositol, which you can buy in a GNC
24 or Walgreen's or Walmart, and use those things to cut
25 it.

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1 What you do is, you dilute it, but you make more
2 product. So, you can take an ounce, which is 28 grams,
3 add some of that stuff, and you can make an ounce and a
4 half. So, theoretically, if you're going to, let's say
5 you paid \$1,000.00 for that ounce, and you sold that
6 ounce for \$100.00 a gram, all right? That's \$2,800.00.
7 Right off the bat, that's \$1,800.00 profit. But if you
8 cut it and double it or make it an ounce and a half, you
9 can make a lot more money, and that's what a lot of
10 people use to -- to cut and make a big -- bigger profit.

11 You also find, a lot of times, you know, most
12 people that deal drugs, they just don't deal
13 specifically in cocaine or specifically crack or
14 specifically marijuana. They might have one that maybe
15 they do more of, but usually they do more than one. You
16 know, a lot of people sell cocaine. They also sell
17 crack. They sell marijuana, might sell pills. So,
18 you're going to find, sometimes, other drugs.

19 Q In your experience, what about security in these
20 homes?

21 A Well, like I said, if you're in the drug business,
22 a lot of times, you know, you're making a lot of money.
23 You have a lot of other people that become jealous.
24 Other drug dealers don't want me to succeed. They want
25 drug business. There's a lot of competition, and it's a

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1 very dangerous business. So, a lot of times, in my
2 training and experience, whenever we've done search
3 warrants or traffic stops and arrested people, we
4 usually find weapons, either for protection against
5 other drug dealers.

6 And sometimes, even some of the customers that come
7 in there, they see that they have a large amount of
8 drugs or a large amount of cash, and those people might
9 decide they want to rob them, too. So, it's a very
10 dangerous business.

11 Q Thank you.

12 MS. CONCANNON: Beg the Court's indulgence.

13 BY MS. CONCANNON:

14 Q In your experience, Master Sergeant Florencio, you
15 mentioned all these products that are commonly found in
16 everyone's home. What is significant about that, in
17 your opinion, based on your experience, in the homes of
18 those suspected selling narcotics?

19 A Well, in my training and experience, it's not only
20 that; it's just common sense. Like I explained, you go
21 to my house, I have scales. I have a scale in my
22 kitchen. I have bags in my kitchen. I have -- I don't
23 have anymore, because my kids are bigger, but I used to
24 have a lot of baby formula. I've got a lot of those
25 things. I don't have any of cash. I have guns. I'm a

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1 police officer. I have a lot of guns in my house, but
2 that doesn't make me a drug dealer.

3 It's -- it's common sense. If you're a normal
4 person, those things are going to be where you would
5 expect them to be, such as in my food pantry and stuff
6 like that. From my training and experience, when I've
7 done search warrants, I find a lot of these baggies and
8 stuff underneath the bathroom sink. There should be no
9 reason a normal person would put that underneath their
10 bathroom sink. Or money hidden inside a couch, or in
11 between your mattresses, or inside, where you've seen
12 where you take out the poles where the drapes hang out,
13 they've got it -- money stuck in there, or drugs stuck
14 in there. It's all common sense, where you place these
15 things.

16 Or, normal people, they're going to have a gun and
17 they're responsible, it's either going to be in their
18 gun safe; it's either going to be on them; in their
19 vehicle, you know; in the glove box, or it could be
20 carried legally. Or somewhere secure in their house,
21 not maybe laying on the kitchen table, you know, amidst
22 a bunch of drugs, or, you know, hidden in between the
23 cushions of a couch, where anyone can get it, or where
24 you can sit down and you accidentally shoot yourself.
25 It's --

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1 Like I say, it's common sense. If you find the
2 stuff where it's supposed to be and what it is meant to
3 be used for, then, it's understandable. But when it's
4 -- like I said, we've found scales hidden in the
5 bathroom and underneath the trash bag. We find stuff
6 hidden in numerous places throughout the house that it
7 normally wouldn't be put if you're, you know, using it
8 for what it's supposed to be doing.

9 MS. CONCANNON: Thank you. I have no further
10 questions for you at this time. Thank you.

11 MR. BAX: Thank you, your Honor.

12 MASTER SERGEANT ANDRES F. FLORENCIO

13 CROSS-EXAMINATION BY MR. BAX:

14 Q Sergeant, I just want to ask you a few questions
15 about your testimony. You've testified that a lot of
16 these items are items that you commonly see in anyone's
17 household, including your own, correct?

18 A That is absolutely right. Yes, sir.

19 Q And you testified that sandwich baggies, or
20 sandwich bags or Ziplock bags, are commonly found in
21 law-abiding citizens' houses, correct?

22 A Absolutely, sir.

23 Q Including your own.

24 A Yes, sir.

25 Q And yours are in your kitchen. Is that right?

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1 A Yes, sir.

2 Q Okay. And you would find it odd if it was found
3 underneath the bathroom sink, is what your testimony
4 was, correct?

5 A Yeah, or somewhere where it usually wouldn't be.

6 Q But a place that you would think is a usual place
7 for it is the kitchen, just like you have in your home,
8 correct?

9 A Correct.

10 Q Okay. And I believe you testified you had a scale,
11 and that's in your kitchen, as well, correct?

12 A Absolutely right. Yes, sir.

13 Q And that's a smaller scale for weighing things that
14 you would have in a kitchen, correct?

15 A Yes, it's a food scale.

16 Q It's a food scale, so it's not a scale that I step
17 on to weigh my weight, right?

18 A No.

19 Q Okay. All right. Something that can go on a
20 counter top, correct?

21 A Absolutely, sir.

22 Q Okay. All right. Additionally, you've talked
23 about -- what you've talked to the jury about is cutting
24 agents, correct?

25 A Yes.

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1 Q Now, I want to ask you about that a little bit.
2 You've testified, in your training and experience, that
3 these are used to dilute the purity of the narcotic,
4 correct?

5 A Yes.

6 Q And things like baby powder or other cutting agents
7 are added to, say, a powder cocaine sample in order to
8 spread it out.

9 A Yes.

10 Q All right. It's like pouring water into a Coca-
11 Cola bottle, right?

12 A Yes.

13 Q And obviously, you testified that, a lot of the
14 times, the price can be affected by the quality of the
15 product, correct?

16 A Yeah, the quality, the amount, how much you buy.
17 If you buy in grams, it would be more expensive than if
18 you buy --

19 Q Right.

20 A -- a bigger quantity.

21 COURT REPORTER: A *bigger* what?

22 A Quantity.

23 Q And Sergeant, isn't it true that that price
24 fluctuation based on the quality is because the person
25 seeking to use the drugs, the part of that that he wants

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1 is the actual pure drug, correct?

2 A Yes.

3 Q Obviously, if someone is in, you know, taking this
4 drug in, the baby powder isn't doing anything for them.
5 Is that right?

6 A That is correct.

7 Q So, if he's buying from somebody that dilutes it
8 quite a bit, that's why he's paying a lesser price,
9 because he's getting a lesser high. Is that correct?

10 A Yes. From my training and experience, that's what
11 I've been told, and that's what I've learned, yes.

12 Q Okay. Now, I noticed in your training that you've
13 had some trainings with federal law enforcement agency.
14 Is that correct?

15 A Yes, and I've also worked with federal law
16 enforcement agencies before on cases.

17 Q Okay. Have you ever worked with either the FBI or
18 the DEA?

19 A I've worked with the FBI, the DEA, ICE.

20 Q Okay. And in those trainings and working with
21 those officers, are you familiar with the fact that when
22 the DEA tests drugs, they test not only whether it's the
23 drug, but how much of it is actually the drug, versus
24 whatever the cut is? Are you familiar with that?

25 A I don't -- I don't test drugs. I'm not a lab. I

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1 know I've heard that before, but I can tell you that I
2 know that our lab doesn't do that.

3 Q Your lab doesn't do that.

4 A Yes.

5 Q Okay. But you've at least heard that the federal
6 DEA lab does do that, correct?

7 A Yes. I also know that South Carolina laws states
8 that it doesn't matter --

9 MR. BAX: Objection, your Honor. He's -- he's --

10 THE COURT: Okay.

11 MR. BAX: -- not qualified to state legal opinions.

12 THE COURT: I understand. Okay. Yeah. You can't
13 testify as to the law, sir. Go ahead and ask another
14 question.

15 BY MR. BAX:

16 Q The other items that you've talked about, you
17 talked about scales; you talked about baggies; and you
18 even talked about firearms. But these all items are, in
19 and of themselves, legal, outside of any other
20 circumstances. Obviously, we know that some people or
21 some circumstances can make a gun illegal, but you have
22 to have those circumstances, correct?

23 A Yes, sir.

24 Q Okay. Additionally, is it your experience that, in
25 your other cases that you've dealt with, that there can

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1 be people living in a home that are not charged, or not
2 believed, by the police, to be involved with the
3 narcotics sales?

4 A Yes. There's been plenty of search warrants where
5 I've been in charge of, or even an investigation, there
6 are multiple people there, and not everyone gets
7 charged, yes.

8 Q Okay.

9 MR. BAX: A moment's indulgence, your Honor.

10 BY MR. BAX:

11 Q Thank you, Officer.

12 MR. BAX: No further questions, your Honor.

13 BY THE COURT:

14 THE COURT: Anything further?

15 MS. CONCANNON: Nothing further, your Honor.

16 THE COURT: All right. You may step down, Master
17 Sergeant.

18 A Thank you.

19 THE COURT: Thank you.

20 MS. CONCANNON: Your Honor, at this point, the
21 State rests.

22 STATE RESTS.

23 THE COURT: Ladies and gentlemen of the jury, at
24 this point, the State has rested their case. There is a
25 matter of law that I need to take up with the attorneys.

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1 I am going to send you back to your jury room, ladies
2 and gentlemen. I remind you again, do not discuss this
3 case. It would not be appropriate to do so at this
4 time, and we'll be back with you shortly. Thank you.

5 JURORS LEAVE COURTROOM 10:40 A.M.

6 BAILIFF: The jury is clear, your Honor.

7 THE COURT: Thank you. Give me one second, you
8 all.

9 OFF-THE-RECORD BENCH CONFERENCE, OUT
10 OF PRESENCE OF JURORS. PRESENT: THE
11 COURT, MS. CONCANNON, MS. KEENEY, MS.
12 SAXON, MR. BAX.

13 END BENCH CONFERENCE.

14 THE COURT: All right. Any motions at this time?

15 DEFENSE MOTIONS:

16 MS. SAXON: Yes, your Honor. At this time, the
17 Defense would make its motion for a directed verdict. I
18 have some case law I'm passing over to the State, as
19 well as to your Honor.

20 COURT REPORTER: I'm sorry, I can't hear you.

21 MS. SAXON: Oh, case law.

22 COURT REPORTER: *Motion for directed verdict, what?*

23 MS. SAXON: Case law I'm passing to the State, as
24 well as to your Honor.

25 THE COURT: Okay. It's the *State versus Hernandez*.

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1 Supreme Court of South Carolina, May 26, 2009. Give me
2 just a second.

3 MS. SAXON: Certainly.

4 THE COURT: Okay. Whenever you're ready, Ms.
5 Saxon.

6 MS. SAXON: Thank you, your Honor. As your Honor
7 is aware, for a case to pass a directed verdict stage,
8 there must either be direct or substantial
9 circumstantial evidence as to each element of the crimes
10 that are charged. In this case at hand, your Honor, I
11 find that there is nothing but circumstantial evidence,
12 and that it is not substantial circumstantial evidence
13 as to each element of the crime that the State must
14 prove.

15 In relying on this, I've looked at cases such as
16 *State v. Lane* and its progeny, as well as the cases I've
17 handed up, *State v. Pearson* and *State v. Hernandez*.
18 Now, a trafficking charge requires knowledge, as well as
19 proof of quantity. Proof in this case -- it's
20 constructive possession, which not only requires the
21 State make a showing of dominion or control of the drugs
22 on the premises, but also knowledge of the drugs in
23 control -- knowledge of the drugs. That has not
24 happened in this case. They have shown that the
25 quantity of suspected cocaine was found in a closet.

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1 That does not prove, in any way, that that quantity of
2 cocaine was Mr. Chisolm's, or it does not prove that --

3 THE COURT: Ms. Saxon, how do you get past he said
4 it was all his?

5 MS. SAXON: Well, your Honor, he said -- he never
6 admitted to the drugs being his. He said he would take
7 them for his brother, was his statement.

8 *I will take these; I will do this time;*

9 *I will protect you.*

10 Those are what he was saying. He never said once
11 to anyone in this case, to Corporal Squires, these are
12 my drugs. He never said it. His statements to Corporal
13 Squires, as you saw, he said he couldn't believe his
14 brother was doing this. He -- they clearly showed a
15 lack of knowledge. He didn't believe -- he couldn't
16 believe his brother was selling drugs out of his house.
17 He didn't know that there were large quantities of drugs
18 in this house, and there was no proof given to that,
19 your Honor.

20 As you saw in *State v. Hernandez*, there was
21 testimony that defendants in the three-part caravan,
22 driving drugs down the highway was suspicious, and it
23 may be suspicious there are drugs in his house. You
24 know, there was testimony that there might support an
25 inference that defendant had knowledge of the drugs.

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1 Well, I don't even think we have testimony that supports
2 inference. We just had him taking a stand for his
3 brother.

4 Your Honor, in that case, that was not enough
5 circumstantial evidence of knowledge, and that is a
6 direct element required for trafficking.

7 As to the weight, your Honor, here, we have this
8 bag of cocaine that the State is alleging is 133.3 grams
9 of cocaine. But again, we don't know how much of that
10 is filler, how much of that is cut. And the State has
11 made it a point in their case to show that drugs are
12 cut, and that fillers are not illegal. The GNC
13 supplement, it's not illegal to possess that. If there
14 was baby powder, it wouldn't be illegal to possess that.

15 Now, the State has the capability to test. The
16 mass spec would tell you how much of that is cocaine,
17 how much of that is supplement, how much of that is baby
18 powder, but they didn't do it. They asserted they found
19 133 grams of cocaine, but for all we know, that is 20
20 grams of cocaine and 106 grams of filler. We don't have
21 that information. There's been no testimony, no
22 scientific evidence or anything of that nature.

23 THE COURT: Correct me if that's wrong, the statute
24 requires that it be cocaine or some mixture of cocaine.
25 That's what the statute reads.

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1 MS. SAXON: Your Honor, it's -- I mean --

2 THE COURT: I don't have it right in front of me,
3 but I am sure it says that.

4 MS. SAXON: Your Honor, it's, you know, the federal
5 courts treat this a certain way, and it is our -- excuse
6 me -- the federal courts treat this a certain way, and
7 the State courts should give a defendant the same due;
8 that, when looking at the amount of drugs, it is the
9 amount of drugs. It is not the amount of something else
10 it is not legal [sic] for that person to possess or give
11 to somebody else. I think, too, when you -- well,
12 that's -- I'm sorry.

13 You know, the weight of the drugs is what triggers
14 the trafficking statute. That's what triggers these
15 very severe mandatory minimums. And that is one of --
16 probably the most important reason to know actual -- how
17 much actual drugs there is, because you're looking at a
18 very long prison term if you're convicted of something.
19 And it's a very -- it's a violent crime, so you're
20 looking at 85 percent of that term, and --

21 THE COURT: Twenty-five-year sentence.

22 MS. SAXON: And you're not even going to consider
23 whether or not some of that isn't even cocaine. So, I
24 think -- I would say to not know, your Honor, is
25 speculation. So, I would base my directed verdict on

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1 that, your Honor. I believe that, when you look at the
2 evidence in the light most favorable to the State, it
3 raises merely a suspicion of guilt, and a suspicion is
4 not enough to send to the jury.

5 I would also base my directed verdict on all the
6 other previous motions and objections that the Defense
7 has made, and we reiterate those, at this point, for the
8 record.

9 THE COURT: Thank you, Ms. Saxon. Ms. Concannon.

10 MS. CONCANNON: Thank you, your Honor. As you
11 indicated, in South Carolina, weight is measured by the
12 entire substance, the cocaine, as well as any cut
13 mixture and whatnot that makes the quantity as large as
14 it is. We actually have the statute pulled up right
15 now, your Honor, but you are accurate in that statement.

16 I also would like to -- respectfully, I disagree
17 with Ms. Saxon's interpretation of the direct evidence.
18 I feel there is direct evidence. Mr. Chisolm said:

19 *Everything in the left bedroom is mine,*
20 *all the property inside.*

21 That's where that -- the bulk of cocaine was found.
22 When speaking with Deputy Squires, he indicated that
23 cocaine could be found in the residence. He also
24 indicated that his fingerprints would likely be on the
25 handgun. The obliterated serial number is very visible.

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1 It's on top of the handgun. You can't miss it. If he
2 indicated his fingerprints were on it, the State
3 believes that there is evidence that he knew that it
4 also had an obliterated serial number.

5 Circumstantial evidence would also be everything
6 found in the kitchen, the baggies, the scales, the cash,
7 the cutting agent, various bags of cocaine strewn about
8 the residence. Mr. Chisolm had knowledge there was
9 cocaine in that residence. He had knowledge that it was
10 there to sell. He, in fact, said it was his. And that
11 would be our response to Ms. Saxon's motion.

12 THE COURT: Okay. All right. Well, again,
13 obviously -- yes? Ms. Saxon, go ahead.

14 MS. SAXON: I just wanted to respond briefly, your
15 Honor, in that, as to the issue of the weight. As an
16 attorney, we are allowed to make constitutional
17 arguments at any time during the trial, and I feel this
18 is one of those points I need to stand up on and say
19 that, constitutionally, there is an issue here, because
20 Mr. Chisolm is exposed to more punishment, more danger,
21 in a state court than he would in a federal court,
22 because of the way the law is treated, and because of
23 the way the drugs are treated. And I believe that is a
24 violation of the *Equal Protection Clause*.

25 THE COURT: Because of the way the law is written.

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1 MS. SAXON: Correct. The way the law is written.
2 Excuse me. That is a violation of equal protection, in
3 that the *United States Constitution* trumps our state
4 legislature laws when it comes to protection of an
5 individual's rights. The way that the federal courts
6 treat the drugs is to only allow exposure for actual
7 narcotic, not to allow exposure to narcotic, plus. I
8 think that is important to consider in these instances,
9 what you'd be punishing someone for if you don't
10 consider what all's in that bag.

11 THE COURT: You don't need to respond anymore or
12 anything else you need to add. All right. Well,
13 obviously, taking -- looking at this in the light most
14 favorable to the State, certainly, what I'm concerned
15 with is the existence of evidence, and I do think there
16 is direct evidence and substantial circumstantial
17 evidence in this case, that this should go to the jury
18 for their decision.

19 Quite frankly, if this case can't go to a jury, I
20 don't know what can, as far as being able to execute a
21 search warrant and on a property. I mean, this is what
22 constructive possession is written for. So, with that
23 said, I am going to send it to the jury.

24 All right. Do you want me to go over Mr. Chisolm's
25 constitutional rights?

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1 MR. BAX: Your Honor, I would ask that, prior to
2 that, I do think that, for protection of our client, I
3 need to put something on the record. I was unaware of
4 this. Ms. Saxon was unaware of this. But we learned --
5 actually, Ms. Saxon learned yesterday evening that Ms.
6 Campbell originally represented David Greene. And I
7 think that it's been at least two, or maybe three years,
8 since Mr. Greene pled. I'm not sure of the exact court
9 date for that.

10 MS. CONCANNON: January, 2011.

11 MR. BAX: So, January, 2011. I do not believe
12 there's any kind of conflict. I've had no contact. I
13 wasn't even working at the office at that time; neither
14 was Ms. Saxon. We've never discussed Mr. Greene's case
15 with Ms. Campbell. We were unaware of the fact that she
16 represented him. I did ask Ms. Dovell to check with Ms.
17 Campbell, if she had even any memory of the case, and I
18 think she's trying to do that.

19 But just out of an abundance of caution, your
20 Honor, I wanted to make sure it's on the record that
21 we've just discovered that. I don't see a conflict at
22 this point, because my understanding is, there's nothing
23 that we've been provided that shows us that Mr. Greene
24 made any statements against Mr. Chisolm.

25 And as you have seen, you've seen the statements

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1 that they attribute to my client, and, in fact, they
2 actually help Mr. Greene more than they hurt Mr. Greene.
3 So, I don't see a conflict, but I did want to put it on
4 the record.

5 THE COURT: You mean, they help Mr. Chisolm more
6 than they hurt Mr. Chisolm.

7 MR. BAX: Well, they help Mr. -- his statements
8 probably help Mr. Greene.

9 THE COURT: Okay.

10 MR. BAX: And hurt himself more than the opposite.
11 You know, I mean, obviously, he makes statements that, *I*
12 *can't believe that my brother was doing this;* but then,
13 he turns around and says, *I'll take it for you.* And we
14 don't know how the jury is going to interpret that, but
15 I kind of see it as a neutral statement when it comes to
16 that.

17 THE COURT: Okay. And apparently, you all weren't
18 even aware that Ms. Campbell had represented him until,
19 you said, last night. Is that correct?

20 MS. SAXON: Correct, your Honor. I was reviewing
21 Mr. Greene's convictions, and -- or, his charges and
22 convictions, and came across the fact that Ms. Campbell
23 was listed as his attorney --

24 THE COURT: Okay.

25 MS. SAXON: -- for the plea that he did. So, I

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1 think, in 2010, if both cases had come into the office
2 at the same time, there might have been an issue. But
3 at that time, Mr. Chisolm hired private counsel, so it
4 wasn't ever a problem. But again, out of an abundance
5 of caution, we just wanted to make a record.

6 THE COURT: Okay. Well, I appreciate that. Okay.
7 Anything further, other than Mr. Chisolm's rights?

8 MR. BAX: And I, your Honor, I don't believe so.
9 You know, I don't know if you want to examine Mr.
10 Chisolm. I don't -- I'm not aware that Mr. Chisolm has
11 a problem with it. He may have been aware of who
12 represented his brother before we did today. Outside of
13 that, your Honor, I would just ask the Court to have a
14 colloquy with Mr. Chisolm about his right to testify.

15 THE COURT: Okay.

16 MR. BAX: It's my understanding, as of right now,
17 Mr. Chisolm is not going to testify, but I leave that to
18 him. If he changes his mind before we get to that
19 point, he certainly has the right to do so.

20 DEFENDANT'S RIGHTS, BY THE COURT:

21 THE COURT: Certainly. Mr. Chisolm, will you
22 please stand and raise your right hand. I'm going to
23 administer the oath. Sir, do you swear or affirm the
24 testimony you give will be the truth, so help you God?

25 DWAYNE CHISOLM: Yes, ma'am.

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1 THE COURT: Thank you, Mr. Chisolm. Sir, at this
2 time -- we spoke yesterday. You have the right to
3 testify or not testify on your own behalf. The State
4 has rested their case. It is now the time, if you so
5 choose, to put up evidence. Again, I just remind you,
6 sir, that this choice to testify or not testify is a
7 personal choice. It's one that you and only you can
8 make. As we talked about before, I expected you to talk
9 to your lawyers about it, but again, it is a personal
10 decision.

11 What I want you to know is this. If you decide to
12 testify in this case, your two prior convictions can be
13 used and cross-examined, and you can be questioned about
14 it while on the witness stand, sir. Or, sir, any other
15 relevant question to this case that I deem relevant,
16 they can ask you about, the State can. Just as any
17 other witness, you would be subject to cross-
18 examination.

19 Sir, also, if you choose not to testify, I'm going
20 to tell the jury in my jury charge that they can't even
21 consider that. Again, as we talked about before, you
22 are not required to prove yourself innocent. The burden
23 is on the State to prove yourself guilty, and you can
24 never be compelled to be a witness against yourself in a
25 criminal case. Do you understand that, sir?

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1 DWAYNE CHISOLM: Yes, ma'am.

2 THE COURT: Have you had an opportunity to speak
3 with your lawyers about whether or not you wish to
4 testify?

5 DWAYNE CHISOLM: Yes, ma'am.

6 THE COURT: Sir, do you want to testify in this
7 case?

8 DWAYNE CHISOLM: No, ma'am.

9 THE COURT: All right, sir. And is that your
10 decision?

11 DWAYNE CHISOLM: Yes, ma'am.

12 THE COURT: All right. Sir, I appreciate that, and
13 you may go ahead and be seated. Is the Defense going to
14 put up any other evidence?

15 MR. BAX: No, your Honor. The Defense will rest
16 when we bring the jury back out. And then, we can go to
17 closings and charge.

18 THE COURT: Okay. I will tell you that we are just
19 finishing up working on the charge right now. Would you
20 all rather take a little break right now, or would you
21 rather -- I mean, my intent would be is that, we'll come
22 back, you can rest for them, and I'll just note for the
23 record to renew your previous motions. And then, we'll
24 just go ahead and go into opening [sic] statements.
25 Obviously, you didn't put anything in, so you get the

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1 closing argument.

2 Who is going to do it for the two of you? Ms.
3 Saxon? Okay. And Ms. Concannon, you're doing it for
4 the State?

5 MS. CONCANNON: Yes, your Honor.

6 THE COURT: Okay. Anything else we need to do?
7 Anything else you all are concerned about, as far as the
8 charges are concerned?

9 MR. BAX: Yes, your Honor, and I want to make sure
10 I put this out before you go any further with the
11 charge. Just in looking at the case over the evening
12 hours, the case law does say -- we talked about
13 possession as a lesser included, and that's not listed
14 as a lesser included for trafficking. We made an
15 argument on that. We respect the Court's ruling.

16 In looking at the case law and the statute,
17 possession with intent to distribute is a lesser
18 included offense of trafficking that, from my research
19 -- and I'm looking at the *Drug Litigation Book*, the most
20 recent edition of that -- both the statute, as well as
21 *Matthews versus State*, and I believe, your Honor, that
22 could be found at 387 *Southeast 2nd* 258. It's a 1990
23 case. They were looking at the issue of double jeopardy
24 in that case, whether you could charge both trafficking
25 and PWID, based on the same amount of drugs. And the

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1 end result, based on the summary given by the author in
2 this book, is that, they decided that, because those
3 were both put in the same section, it was the
4 legislature's intent not to create double jeopardy. And
5 so, we can't charge PWID and trafficking from the same
6 amount. However, they also ruled that PWID can be and
7 should be a lesser included offense if the facts support
8 it.

9 We would argue that the facts do support it in this
10 case, based on similar argument to the what we made the
11 other day. There are separate amounts of cocaine in
12 this case that are attributed, through the testimony of
13 the State's witnesses, to Mr. Chisolm. There is
14 evidence that a jury could infer that, while they may
15 decide he doesn't have possession, or that the element
16 of possession hasn't been proven for some of the drugs,
17 they may find that the element of possession has been
18 proven for other amounts of the drugs.

19 I specifically reference the amount of cocaine that
20 was found in the living room on the love seat or couch,
21 depending on how you interpret that chair.

22 THE COURT: Let me ask you, Mr. Bax, the drugs that
23 Mr. Greene pled guilty to, he pled guilty to PWID. Was
24 it crack or cocaine?

25 MS. SAXON: Crack.

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1 MS. CONCANNON: It was the cocaine located in his
2 bedroom.

3 THE COURT: The cocaine located in his bedroom.

4 MS. CONCANNON: Which was not admitted in evidence
5 in this case.

6 THE COURT: And so, he is not charged -- Mr.
7 Chisolm is not charged with any of that, correct?

8 MR. BAX: That's correct, your Honor.

9 THE COURT: Okay. Okay. I'm sorry. I didn't mean
10 to interrupt you, but go ahead.

11 MR. BAX: Thank you, your Honor. No problem.
12 There is, as I was stating, there's a couple of
13 different amounts here that he's being charged with, of
14 the cocaine. I'm excluding this argument as to the
15 crack, because his charge is only the possession with
16 intent to distribute crack or cocaine.

17 THE COURT: Right.

18 MR. BAX: But I think that, under the facts,
19 especially when you take into consideration the other
20 evidence that's been introduced by the State, such as
21 the scales and the baggies and the other items that
22 Master Sergeant Florencio has testified about, in his
23 experience, these things can be indicia of sales. If
24 you combine that, even with the smallest amount of
25 cocaine found in this case that's attributed to Mr.

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1 Chisolm was .23 grams, which would be under the
2 inferential weight. However, as your Honor knows, in
3 PWID cases, they don't always have to get the weight.
4 It can be a totality of the evidence, with baggies and
5 scales and cash. So, I think that those things taken
6 together means there's evidence that would necessitate a
7 lesser include charge of a PWID cocaine on the
8 trafficking charge.

9 THE COURT: Go ahead.

10 MS. CONCANNON: Your Honor, I would defer to my
11 argument yesterday regarding the possession, the PWID,
12 the trafficking. Here, we don't have a problem of
13 weight. That one bag found in Mr. Chisolm's shoe was
14 125 grams of cocaine, well above trafficking. It is
15 actually not even close to PWID amount, far exceeds the
16 first level of trafficking and goes into the second
17 level of trafficking. We feel that charging a lesser
18 included would be creating new charges that he wasn't
19 indicted on. If you separated the drugs.

20 THE COURT: The State would get to choose. If you
21 wanted to, you could have. You could have charged him
22 with each separate set, I guess, if you wanted to.

23 MS. CONCANNON: We could have.

24 THE COURT: And you didn't.

25 MS. CONCANNON: We could've separated the drugs and

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1 charged him with trafficking, as well as PWID for the
2 cocaine that was found in the bowl, along with the
3 crack, as well as possession for the cocaine that was
4 found on the couch, based on the weights. However, he
5 only has the one indictment for the drugs, because of
6 the weight, mainly, of that big bag of cocaine that's
7 125 grams, and we feel like trafficking encompasses it
8 all. And if you would charge lesser included, it's,
9 again, creating charges he wasn't indicted for.

10 THE COURT: Mr. Bax, I understand what you're
11 trying to say, but I think, in this case, other than the
12 one set of cocaine found in Mr. Greene's bedroom, your
13 client took responsibility for all of this.

14 MR. BAX: Well, and obviously, your Honor, from a
15 factual standpoint, your Honor, I think that, based on
16 the nature of my client's statement, the jury could
17 decide that his taking possession was a noble gesture of
18 an older brother.

19 THE COURT: But that would be possession of all of
20 it, though. That would be all of it.

21 MR. BAX: Your Honor, not necessarily, because the
22 problem is, the law requires you to prove it's actual
23 possession, regardless of one noble gesture to take
24 possession of it while the police are standing around
25 you, to keep your brother out of jail. The jury might

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1 find that that doesn't constitute possession.

2 THE COURT: But the problem is, two people can
3 constructively possess the same drugs, as long as they
4 both have domain and control over it.

5 MR. BAX: If the jury decides that they do, yes.
6 But I think that they could also decide that they don't.

7 THE COURT: I think it would be a straight up or
8 down, then. I think if they decide that it isn't, then
9 he would get a not guilty on the trafficking.

10 MS. KENNEY: Your Honor, could I just add --

11 THE COURT: Sure.

12 MS. KENNEY: I'm sorry to interrupt. *Matthews*
13 *versus State*, the case which Mr. Bax relies upon, the
14 case does say that, when there's conflicting evidence
15 as to what the amount of -- in that case, it was
16 marijuana involved -- is sufficient to invoke the
17 trafficking statute, then you charge both PWID and
18 trafficking. There's not conflicting evidence. In
19 this case, the statute says, cocaine trafficking
20 statute, says that it's cocaine or any mixture. So,
21 there's absolutely no conflicting evidence that the 130
22 -- 25 grams is below the trafficking amount. And so, we
23 would respectfully --

24 THE COURT: I would be more concerned in this case
25 if you were finding different pieces of cocaine over the

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1 house, and none of it rose to the level of it being over
2 the 100 grams that is charged in the trafficking, over
3 100 grams. But we know that, in the one bag, is 125
4 grams of cocaine. So, that already goes up higher than
5 the threshold. I don't think it's appropriate in this
6 case to charge PWID on a cocaine. I think that is so
7 confusing for a jury. I'm not going to charge that.

8 Anything else, Mr. Bax and Ms. Saxon?

9 MS. SAXON: Your Honor, just before we take a brief
10 break, I would ask that you -- just so I can make notes
11 of the charges that you plan to give. I know we talked
12 about a couple of extra things yesterday. I wanted to
13 confirm that mere presence would be among the charges.

14 THE COURT: Actually, mere presence is within every
15 single one of these charges. I mean, it's actually --
16 it's going to be beaten like a dead horse, but I think
17 it needs to appropriately be, because they have to
18 decide each one of these separately. So, it speaks
19 about mere presence within the trafficking, within the
20 PWID, within that possession of a weapon, and then
21 possession of a handgun, you know, with an obliterated
22 serial number. So, yes, it is there.

23 MS. SAXON: Thank you.

24 THE COURT: Yes.

25 MS. CONCANNON: Your Honor, briefly, and I'm sure

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1 this already is in there, your constructive possession
2 charge, we just need to mention that two people can
3 possess -- can constructively possess the same quantity
4 of drugs. Is that within your jury charge?

5 THE COURT: I think it's -- I think it's within --
6 I think I explained that. What I did end up -- what I
7 did in the charge is, the first charge that I've
8 explained to them is the trafficking. And I went
9 through and added some of *Anderson's* language, because I
10 just think charging the statute is just -- people don't
11 understand what in the world that means by the time
12 you're done, when you say aid and abet and everything
13 else. So, it is within that portion of the charge.

14 MS. CONCANNON: Okay.

15 THE COURT: So, yes, it is in there, pursuant to
16 what I've added. What you're going to hear is the
17 general and basic PWID charge, but the trafficking
18 explains a little more in-depth actual and constructive
19 possession in what I call the *Anderson* way, which is
20 just very verbose, in making sure they actually
21 understand it.

22 MS. CONCANNON: Yes. Okay. Thank you.

23 THE COURT: So, I think that's helpful. Okay?
24 Anything else?

25 MR. BAX: No, your Honor.

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1 THE COURT: No? Okay. All right. You all, let's
2 take maybe ten minutes or so, fifteen minutes, and you
3 all kind of collect yourselves.

4 MR. BAX: Okay.

5 THE COURT: And I'll go through -- and do you have
6 the verdict form yet? Okay. The verdict form is
7 printing, and when we get that done, I want you both to
8 take a look at it. And let's just take a little break.

9 MS. SAXON: Thank you.

10 OFF THE RECORD 11:10 A.M.

11 BACK ON THE RECORD 11:10 A.M.

12 BY THE COURT:

13 THE COURT: Thank you all. Please be seated. Any
14 objections to the verdict form from the State?

15 MS. CONCANNON: No, your Honor.

16 THE COURT: From the Defense?

17 MR. BAX: No, your Honor.

18 THE COURT: Okay.

19 MS. SAXON: Your Honor, the only thing, just to
20 make the Court aware, after Ms. Concannon finishes, I
21 will probably take a minute to organize the evidence, so
22 I can get my hands on what I need.

23 THE COURT: Certainly.

24 MS. SAXON: It might just take me a couple seconds.

25 THE COURT: Certainly. And I know that lady in the

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1 back knows that she can't bring a child into the
2 courtroom. Is that correct?

3 MR. BAX: Yes, your Honor. I already instructed.
4 That's why she's taking him out.

5 THE COURT: Beautiful child. Beautiful child.
6 Okay. But, so, anyway. Appreciate it. State ready to
7 go?

8 MS. CONCANNON: Yes, your Honor.

9 THE COURT: Is the Defense ready to go?

10 MS. SAXON: Yes, your Honor.

11 THE COURT: All right. Let's bring the jury in.

12 BAILIFF: The jury is entering the courtroom, your
13 Honor.

14 THE COURT: Thank you.

15 JURORS ENTER COURTROOM 11:38 A.M.

16 BAILIFF: The jury is seated, your Honor.

17 THE COURT: Thank you. Welcome back, ladies and
18 gentlemen. Ms. Saxon.

19 DEFENSE RESTS, RENEWS ALL PRIOR

20 OBJECTIONS AND MOTIONS:

21 MS. SAXON: Thank you, your Honor. The Defense
22 rests at this time, and renews all prior objections and
23 motions for the record.

24 THE COURT: Thank you. I appreciate it, and it's
25 noted, for the record. I'm going to deny your directed

1 verdict again, and based on the same arguments and
2 rulings.

3 Ladies and gentlemen, at this time, you are now
4 going to hear the closing arguments from the attorneys.
5 The Defense has rested their case. Again, if you would
6 give these attorneys your attention. After they argue,
7 I will then charge you on the law that's applicable to
8 this case, and we're going to send the case to you for
9 your deliberations. All right? So, if you would give
10 Ms. Concannon your attention.

11 MS. CONCANNON: Thank you, your Honor, and may it
12 please the Court?

13 THE COURT: Thank you.

14 CLOSING ARGUMENT ON BEHALF OF

15 THE STATE, BY MS. CONCANNON.

16 MS. CONCANNON: Dwayne Chisolm, seated at that
17 table, is a businessman. His business is drugs. More
18 specifically, cocaine and crack cocaine. And we know
19 that from the testimony and the evidence you heard from
20 that witness stand yesterday and this morning.

21 So, what do we know? We know that, back in May of
22 2010, Beaufort County Sheriff's Office executed a search
23 warrant at [REDACTED] We know that 39
24 Garrett Small Road is a small residence, with two
25 bedrooms, a kitchen, and a living room.

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CLOSING - BY THE STATE

1 About those rooms, we know that Bedroom 1, which
2 was identified by law enforcement as Bedroom 1, was
3 David Greene's bedroom. How do we know this? He was in
4 there with a woman. When the Sheriff's Office responded
5 with that no-knock search warrant, he was in that
6 bedroom. Who was in Bedroom Number 2? Nobody. Why?
7 Because the Sheriff's Office had just seen Dwayne
8 Chisolm leave that residence. Bedroom 2 was his
9 bedroom. There was nobody in there, because he was in
10 his car, driving away. He had to be brought back to the
11 residence.

12 How else do we know that Bedroom 2 is Dwayne
13 Chisolm's bedroom? A couple different ways. We know
14 it's his bedroom because inside his bedroom, in a
15 dresser drawer, was his Belk credit card with his name
16 on it. We also know it's his bedroom, because inside is
17 Dwayne Chisolm's passport, a very important government
18 document, in his bedroom. We also know it's his
19 bedroom, because his car title was in there. Dwayne
20 Chisolm, with the address of [REDACTED] the
21 same residence where the search warrant was executed.

22 We also know that, during the search warrant, the
23 Sheriff's Office collected numerous items, and you saw
24 all those items yesterday, and I'm going to show them to
25 you again, here, this morning. But what I asked you

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CLOSING - BY THE STATE

1 yesterday, when I first spoke to you all, is that, I
2 wanted you all to pay attention to where everything was
3 located in this residence during the execution of the
4 search warrant, and more importantly, where it wasn't
5 located. Nothing in evidence yesterday or today was
6 located in David Greene's room. Everything that was
7 located and that is on the evidence bar today was found
8 in Dwayne Chisolm's bedroom, the kitchen or the living
9 room, not David Greene's room.

10 So, what did they find? I'm going to take you,
11 room by room, through that residence. Let's start in
12 the kitchen. I'm going to refer to the kitchen as
13 Dwayne Chisolm's office. That's where he kept his
14 office supplies, his tools of the trade, if you would.
15 He had his scales. He needed to weigh his product to
16 see how much his customers could get. He had one, two,
17 three scales, all different sizes for all different
18 weights, all different customers.

19 What else did he have in his kitchen? Well, he
20 needed to put his product in something. He has plastic
21 baggies. His customers needed to be able to take their
22 product out of that house, so what is he going to put it
23 in? He's going to put it in these plastic baggies.
24 What else did he have in his kitchen?

25 He had a police scanner from Radio Shack, a typical

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CLOSING - BY THE STATE

1 scanner. He needed to know what was going on. He
2 needed to protect his business. He needed to know what
3 law enforcement was doing.

4 He also had his cutting agent, and you heard
5 testimony from Master Sergeant Florencio about what a
6 cutting agent does. Here it is, the Inositol. He
7 specifically stated this is something that's commonly
8 found in drug dealers' homes. They use this to increase
9 their product. They cut their cocaine with this powder
10 to make it multiply. They increase their profit with
11 this. You can buy it at Walgreen's, GNC, Walmart. He
12 had this in his kitchen, in his office.

13 He also had a straw that Sergeant Boland said that
14 she collected, to check to see if there was residue.
15 Again, his clients had to see what they were getting.

16 What else did he have in his kitchen? Well, he had
17 more mail addressed to him. Why? Because it's his
18 kitchen. It's his house; it's his kitchen.

19 He also had a MoneyGram receipt on the top of the
20 refrigerator. He went to every part of that kitchen,
21 including top to bottom. Top of the refrigerator,
22 MoneyGram receipt. He sent \$1,000.00 from himself,
23 Dwayne Chisolm, at [REDACTED]

24 And lastly, in the kitchen, they found a business
25 card for Dwayne Chisolm's business, seafood business,

1 but we know today that that's not his only business.
2 His business is drug trafficking. We also know that all
3 of these items found in the kitchen were found in very
4 close proximity to one another. We have the cutting
5 agent, the plastic baggies, and the scale, all right
6 there. You need your tools at your hand, handy. You
7 need to be able to grab that stuff in the heat of the
8 moment to fulfill your customers' needs.

9 And what does he have behind all that stuff? He
10 has his capital. He has his profits, or his change when
11 his customers needed change for what they buy. Five
12 rolls of cash in a kitchen cabinet, behind plastic
13 baggies to store his product, the scale to weigh his
14 product, and the cutting agent to increase his product.

15 Next, we're going to go into the living room.
16 Living room, one of the first rooms you get into when
17 you walk into Dwayne Chisolm's residence. And what do
18 you see? You see a handgun and another bag of cocaine,
19 the bag of cocaine Dwayne Chisolm said would be there.
20 A handgun he said would have his fingerprints on it.

21 Here's a closer picture of the cocaine and a straw.
22 This bag is one of the bags that Florencio talked to you
23 about a dime bag, personal use bag, one gram or so.
24 Next to it is this nine-millimeter handgun, his
25 security. He had to protect his business. His house

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CLOSING - BY THE STATE

1 was full of drugs and cash. He had to protect all of
2 that. And on this serial gun -- on this gun, right
3 here, you will take it back there with you all in
4 evidence, but you can see there's no serial number on
5 this handgun. Nothing. It looks like maybe it's been
6 scratched or burned off, but it's obvious to the naked
7 eye that it's not there. Why is it not there? Because
8 Dwayne Chisolm wanted this gun untraceable. That gun
9 was loaded when the Sheriff's Office responded. It had
10 a full magazine. He was there to protect his business.

11 And here is that personal use bag of cocaine, tiny,
12 tiny amount of cocaine. That is what a customer comes
13 to Dwayne Chisolm's house to get. Where does he get
14 this small amount of cocaine from? For that, I'm going
15 to take you to Bedroom Number 2. That's Dwayne
16 Chisolm's bedroom. He doesn't want to keep his product
17 out front for everybody to find. So, what does he do?
18 Puts it in his closet in a shoe. Keeps it away from his
19 office. He doesn't want it to be out there in the open.
20 He wants to hide it. So, he puts it in his closet, in
21 this shoe, 125 grams of cocaine.

22 Master Sergeant Florencio testified that typical
23 personal use is one gram. This is 125 grams. And this
24 can increase. He had the tools, the cutting agent, to
25 make this multiply. And here's a picture of where it

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CLOSING - BY THE STATE

1 was, stuffed in his shoe in that closet. Not hidden.
2 It's right there in his closet. So, he knows where it
3 is at all times. There's another picture of it in his
4 closet. It's his closet, his shoe, his cocaine.

5 What do we find next to his cocaine in that same
6 closet? Another shoe with \$2,000.00 cash in a Ziplock
7 bag. Now, do some people have \$2,000.00 cash? Maybe.
8 I don't have \$2,000.00 cash. I certainly wouldn't keep
9 it in a shoe if I did. It would be in the bank. This
10 is Dwayne Chisolm's bank.

11 What else do we find in Dwayne Chisolm's room?
12 Extra ammunition. Not only one, but two. He was arming
13 himself for something. What? Probably to protect all
14 that cash and all his drugs he had.

15 And I mentioned earlier, we also found crack
16 cocaine. Here it is, 3.3 grams of crack cocaine. And
17 in South Carolina, there is an inference that, if you
18 possess over one gram of crack cocaine, you intend to
19 distribute that drug. Well, he had over three times
20 that amount. And what is it next to? It's next to
21 another bag of powder cocaine. Where did he get that
22 powder cocaine? Well, probably out of here, because
23 this was his product. And he was cutting it up, and he
24 was making it smaller, because he needed to supply his
25 customers with it.

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CLOSING - BY THE STATE

1 And how do we know all of that stuff is Dwayne
2 Chisolm's? Because he said it was. He said:

3 *This is my residence; I live here.*

4 *Bedroom to the left. That's all my*
5 *property. That money in that shoe in*
6 *that closet, that's my money.*

7 Bedroom to the left was identified as Bedroom
8 Number 2 by the Sheriff's Office. Bedroom Number 2 is
9 where the drugs were found.

10 Now, I mentioned that Dwayne Chisolm made some
11 statements. He said:

12 *That's my residence; that's my stuff;*

13 *I'm going to do the time for the drugs*
14 *because they're mine.*

15 He says that he rents the residence from a
16 landlord. He said, while he's speaking with Corporal
17 Squires:

18 *There might be some cocaine on the couch*
19 *in there, and there might be a handgun in*
20 *there. And, oh, yeah, you may find my*
21 *fingerprints on that handgun.*

22 Well, you know what? They found that handgun, and
23 they found that cocaine on the couch. He was telling
24 the truth, so we need to believe what Dwayne Chisolm is
25 saying.

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CLOSING - BY THE STATE

1 He also said that people must be 21 years old to
2 conduct business in his house. Pretty sure he's not
3 talking about his seafood business.

4 The residence is under his name. He is responsible
5 for everything in that house. He said any money inside
6 was his. He said the clothes and the property in the
7 bedroom to the left was his. Bedroom to the left is
8 Bedroom Number 2, where the 125 grams of cocaine was
9 located.

10 He finished his conversation with Deputy Squires,
11 and he said:

12 *You know what? I'm taking all the drugs*
13 *in the house; I'm going to do the time for the*
14 *drugs.*

15 Why would he say that? Because they're his drugs.
16 It's his house, his closet, his bedroom, his closet, his
17 shoe, his cocaine, his handgun. He said it would have
18 his fingerprints on it.

19 Now, at the end of these closing arguments, the
20 Judge is going to instruct you on the law and what she
21 says is the law. And briefly, I wanted to touch on that
22 a bit. And if we differ in any way, please go with what
23 Judge Mullen says.

24 But today, Dwayne Chisolm is charged with
25 trafficking cocaine, 100 to 200 grams. And in South

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CLOSING - BY THE STATE

1 Carolina, when any person who knowingly sells,
2 cultivates, delivers, purchases, or brings into the
3 state, or provides financial assistance, or otherwise
4 aides, abets, attempts to conspire to sell, manufacture,
5 cultivate, deliver, purchase, bring into the state, or
6 who is knowingly in possession, either actual or
7 constructive, of between 100 and 200 grams of cocaine,
8 is guilty of trafficking cocaine.

9 Well, we know from Renita Berry's testimony, the
10 chemist you heard yesterday, there was over 125 grams.
11 25 grams is in between 100 and 200 grams. We also know
12 it's cocaine. She tested it. It hadn't been tampered
13 with prior to her testing it. It's cocaine. It is 125
14 grams of cocaine.

15 We also know that Dwayne Chisolm possessed this
16 cocaine. No, it wasn't in his pocket, but it was in his
17 bedroom. It was in his bedroom closet.

18 Now, I've been writing with a couple pens all week,
19 but I've been writing with this pen all week. It's my
20 pen. It's actually one of my favorite pens. I'm kind
21 of particular about that. But I've been writing with it
22 all week. It's mine. If I put it in my pocket, it's
23 still my pen. And when I go home this afternoon, and
24 I'm going to take my jacket off, and maybe I'll hang it
25 up in my closet, that pen doesn't change ownership.

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CLOSING - BY THE STATE

1 It's still my pen. Even though it's not in my hands,
2 does not mean that I don't have dominion and control
3 over that pen. It's in an article of my clothing. It's
4 in my house and in my closet. It's mine.

5 It's the same with these drugs. No, they were not
6 on his person, but he acknowledged there would be
7 cocaine in that house, and there was cocaine in that
8 house. That cocaine was in his bedroom, in his closet,
9 in his shoe. Though it wasn't on his person, he had
10 possession of that cocaine.

11 He's also charged with possession of a weapon
12 during the commission of a violent crime. Now, in South
13 Carolina, trafficking cocaine is a violent crime. And
14 I'll acknowledge that, when you think of the word
15 *violent crime*, you probably think of an assault, a rape,
16 some sort of homicide, a murder. You maybe don't think
17 of the drug trade. But why is trafficking cocaine a
18 violent crime? Master Sergeant Florencio told you about
19 that. Because when you have this in your house, a
20 quantity this much, one of these is not far away.

21 He's also charged with possession of a weapon with
22 an obliterated serial number, and I'll ask you, when you
23 go back into that jury room, to take a look at this
24 handgun. You look right here. It's where the serial
25 number should be. It's not there. I don't see it. It

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CLOSING - BY THE STATE

1 looks like it's been scratched off, chiseled off, burned
2 off, somehow, but it's not there. Why is it not there?
3 Because Dwayne Chisolm wanted this gun untraceable. He
4 did not want it linked to him.

5 He's also charged with possession with intent to
6 distribute crack cocaine. In his bedroom, in a bowl in
7 his bedroom, this bowl right here, he had cocaine that
8 was in the Batman bag, crack cocaine right next to it.
9 Same bag. And if you look closely, it looks like those
10 are corners of plastic baggies. Master Sergeant
11 Florencio testified that's common in the drug trade.
12 They use those corners to put their products in to sell
13 to customers. Those drugs are right here. 3.3 grams of
14 crack cocaine, three times what you've heard would be
15 personal use.

16 This wasn't his for personal use. He intended to
17 sell this. He was going to use his scales. He was
18 going to put it in a baggie. He was going to protect
19 himself while he did this, and he was going to
20 distribute it to his customers.

21 Now, when I opened this case yesterday, I told you
22 all that Dwayne Chisolm is a businessman. He is a
23 businessman. He is a drug dealer. He has his product.
24 He has his 125-plus grams of powder cocaine. He has his
25 tools of the trade. He has his scales, his baggies, his

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CLOSING - BY THE STATE

1 cutting agent, his cash. Now, I can see people may have
2 all of those in their home, but when they are located
3 like this in the kitchen, all in close proximity, with
4 125 grams of cocaine in the next room, they only have
5 one purpose. He had his tools. He had his product, his
6 tools, his capital, and his security. He was arming
7 himself because he was a drug dealer. And everything I
8 have shown you this morning has either come from Dwayne
9 Chisolm's bedroom, the bedroom he said was his; the
10 kitchen; or the living room. Nothing from Bedroom
11 Number 1.

12 And remember, Dwayne Chisolm told you:

13 *This is my residence. I live here.*

14 *I rent it from a landlord. That bedroom to*
15 *the left, that's my bedroom. Everything in*
16 *that bedroom is mine. I'll take the drugs.*

17 *I'll do the time for the drugs.'*

18 Why did he say that? Because they're his drugs.

19 I want you and I ask you to please use your common
20 sense when you go into that jury room and deliberate,
21 and I want you to think about all those pieces of
22 evidence, not separate, but together. Link it together,
23 as Dwayne Chisolm did for his business. And ask that
24 you find him guilty of all of his charges. And I ask
25 that you, today, you shut his business down. Thank you.

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CLOSING BY THE DEFENSE

1 CLOSING ARGUMENT ON BEHALF OF

2 THE DEFENDANT, BY MS. SAXON:

3 MS. SAXON: Good afternoon. At the beginning of
4 this trial, my co-counsel addressed you, and he spoke
5 about loss of liberty. He depicted it the way we often
6 see it in movies, and how we imagine it in grand way,
7 with tanks and soldiers led by a dictator coming to rip
8 up our *Constitution*, and force us into some sort of
9 uncomfortable-type position where our rights, our
10 privacy, and our freedom are no longer our own. But the
11 truth, as he stated, is that liberty is most often taken
12 from us one at a time. But what we have to remember is,
13 liberty lost one by one eventually adds up, and you have
14 liberty lost en masse.

15 Yet, that eventuality of such large-scale loss of
16 liberty is why we have a jury system. That, combined
17 with the possibility of unnecessary loss of system -- of
18 freedom is why the twelve of you are sitting here today.
19 It is why the State has to prove that an innocent man,
20 that an innocent Dwayne Chisolm, is guilty. And it's
21 why the burden is set so highly at proof beyond a
22 reasonable doubt.

23 Reasonable doubt sounds like some term of art, some
24 legaleze, but that's not. And a way I like to think
25 about it is by comparing it to certain words that you

1 use every day. Is it perhaps possible that this
2 occurred? That's reasonable doubt. Is it if you might
3 suspect that it occurred the way the State says it is?
4 That's reasonable doubt.

5 Is it maybe likely? Well, that's reasonable doubt,
6 ladies and gentlemen. Those words, *perhaps, suspect,*
7 *believe, maybe,* those are words that mean the State has
8 not met its burden. Those are words that mean Mr.
9 Chisolm is innocent.

10 And the law, ladies and gentlemen, does not allow
11 assumptions to be made. You must be firmly convinced,
12 not assume that there is guilt.

13 The State told you a number of things, and some of
14 those facts were mis-characterized, and we're going to
15 go through. I'm just going to tell you a couple
16 different things.

17 They want you to believe that Dwayne Chisolm is a
18 bad guy. To further that end, they've gone as far as
19 dismissing the charges against David Greene, Jr., the
20 other resident of the home. What charges? Well,
21 trafficking one to two hundred grams of cocaine;
22 possession of a firearm during the commission of a
23 violent crime; possession with intent -- excuse me --
24 possession of a firearm with an obliterated serial
25 number. These are the exact same crimes that Dwayne is

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1 facing today. Only he has been singled out. They want
2 you to believe that he is guilty, but they have not
3 proven any such guilt.

4 So, let's talk about the evidence. The State says
5 that this is Dwayne Chisolm's gun. Well, this gun was
6 found in the living room on a couch, near no one, and
7 it's a nine-millimeter. That means it can only shoot
8 bullets that are nine-millimeter caliber bullets.
9 Bullets like these. You can't shoot these little
10 bullets. You can't shoot these other two. They won't
11 fit. The gun wouldn't work. They say these are
12 Dwayne's bullets, and this is Dwayne's gun.

13 But you know what they didn't do? They didn't
14 check this gun for fingerprints. They didn't check this
15 gun for DNA. A gun that you hold, that you load a
16 magazine into, that you pull the clip on. They bothered
17 not to. They didn't do their job. They made an
18 assumption, and they want you to make that assumption.
19 The law says you can't do that.

20 And again, ladies and gentlemen, I want to stress a
21 point to you. The State has labeled Bedroom 2 as
22 Dwayne's bedroom. The State has. They said we found
23 these papers in this bedroom, and therefore, it is his.

24 They also found documentation of Mr. Greene in that
25 house. They found documentation to Mr. Chisolm in the

1 kitchen and in a number of places. The State has
2 assigned that bedroom to him, and they want you to
3 assign that bedroom to him, and to make that assumption.
4 But again, the law doesn't allow that.

5 Items in the kitchen. You heard Master Sergeant
6 Florencio. He said that items in the kitchen typical of
7 everyone -- scales, plastic baggies, straws. Items in
8 any kitchen. Items that are completely legal.
9 Vitamins, totally legal. You can own all these things.
10 And in fact, they also found this business card from Mr.
11 Chisolm's seafood business. Seafood & Wings, that was
12 his business. That's what he did. That's how he made
13 his living.

14 What did he use these scales for, characterized as
15 deli or grocery scales? He used them to weigh seafood.
16 You know, what did he used these baggies for? To
17 package seafood. Have you ever bought seafood from a
18 local person? It comes in a Ziplock baggie. And again,
19 ask yourself, were any of these items tested? Did the
20 State bother to swab for residue or fingerprints or DNA
21 on any of these? They specifically said they collected
22 this straw to test it, decided not to. No, we're good;
23 we don't need to do that. We don't need to do our job.
24 We don't know if there are fingerprints or DNA or
25 residue or anything on these items.

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1 And you know why we don't know? Because they
2 didn't do it, and not because they couldn't, but because
3 they chose not to. They made an assumption. The same
4 assumption they want you to make.

5 Now, let's talk about the drugs. The State says
6 this is 125 or so grams of cocaine. But the State just
7 said that Mr. Chisolm's cutting his cocaine with at
8 least one supplement, and that it's common that people
9 cut their cocaine with something. I mean, how else are
10 you going to make money, right? So, if we're cutting
11 this with something, then how do you know that that's
12 100 grams of cocaine?

13 MS. CONCANNON: Objection.

14 THE COURT: Okay. Overruled. Go ahead.

15 MS. SAXON: How do you know that that's 100 grams
16 of cocaine? You don't. Why? Because the State didn't
17 test it for anything. They looked to see, are there
18 drugs in there, and it came back, yeah, there are drugs
19 in there. But they didn't use their technology to
20 separate anything else. They didn't look for these
21 fillers that the State has told you people use in the
22 drug trade, their expert told you people use in the drug
23 trade to cut these things down.

24 Let's also talk about how this was found. A shoe.
25 In a shoe, in a closet, in a pile of other shoes. Whole

1 bunch of shoes in here. I'm pretty sure that pink one,
2 the small woman's boot, doesn't belong to my client.
3 I'm pretty sure there are plenty of shoes in there that
4 don't belong to my client. How do we know this shoe
5 belongs to my client? You don't, because, again, it was
6 an assumption made by the State. They decided it
7 belonged to him, without doing anything to find out.
8 This is not a new shoe. This has been worn. It's been
9 walked in. Test it for DNA. Check for something. Do
10 your job.

11 Let's talk about what Mr. Greene said -- or Mr.
12 Chisolm said. Now, we know that Corporal Squires
13 interviewed David Greene. We know, based on the
14 questions that I asked him, that Corporal Squires didn't
15 believe what David Greene was saying. I also asked him
16 about his interview with Mr. Chisolm, and he said:

17 *Yeah, I talked to him.*

18 *I said:*

19 *Did you believe him?*

20 *He said:*

21 *I did. I felt like he was being honest*
22 *with me.*

23 *So, what did he say? What did he actually say?*

24 *Well, he stated that people need to be 21 to conduct*
25 *business. He didn't say they needed to be 21 years old;*

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1 he said 21, and that is a street term. That's slang.
2 That means you need to be up front about what you're
3 trying to do in my house. You have to be 21. You have
4 to be on the up and up. Don't do things in my house and
5 lie to me. Because the next thing he says is, he cannot
6 believe his little brother is selling dope out of his
7 house. Cannot believe it. He didn't say that it wasn't
8 where he lived. He admitted to it. But he never went
9 and said, despite what the State wants you to believe,
10 that, these are my drugs. He never said, those are
11 mine. What he said was:

12 *I can't believe my brother is selling*
13 *dope out of my house, my little brother; and*
14 *can I talk to him for a minute?*

15 And so, they brought him over to his little
16 brother, and he said:

17 *I'll take this hit for you. I'll take*
18 *responsibility, because you have too much*
19 *going on.*

20 Now, remember, ladies and gentlemen, when the
21 search was going on, Mr. Chisolm had no idea what was
22 going to come out of that house. He had no idea that
23 there was going to be 125-plus, grams of anything in
24 that home. He was trying to protect his little brother.

25 My big brothers did it to me. I can't count the

1 number of times I got into bad situations, and my
2 brothers, they looked out for me. They protected me,
3 because that's what older siblings do. It's a natural
4 reaction. It's how we react to people that we love. He
5 did a noble thing that day by trying to save his brother
6 the pain of going through this process. But doing a
7 noble thing, trying to take that hit to spare his
8 brother, does not make him guilty. It doesn't make him
9 guilty of anything.

10 Dwayne is before you as an innocent man. Remember
11 that as you go into the jury room. He is innocent. And
12 the Judge will tell you that his innocence has to be
13 stripped away by the evidence the State has given you.
14 He is an innocent man who has placed his future squarely
15 in your hands. He trusts that each of you, with your
16 knowledge, your common sense, and your integrity, will
17 look at the facts that have been presented, will look at
18 the lack of facts that were presented, will look at
19 flaws in the job that the Sheriff's Office did, and
20 realize that they can't prove their case, that their
21 case is nothing but assumptions. It's half sentences.
22 It's blanks that they want you to fill in.

23 Ladies and gentlemen, you can't fill in those
24 blanks. The law doesn't allow it. It has to be proven
25 to you beyond a reasonable doubt. He is trusting that

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1 you twelve individuals will give him back his life; that
2 he can go home to his wife and son. He is trusting that
3 you twelve individuals will not make him an unnecessary
4 statistic in a long line of statistics in this country.

5 You alone can do what is right and what is just.
6 You alone can find him not guilty. Therefore, I ask
7 that, when you go back in the jury room and you are
8 given all this evidence, you think about it critically;
9 you realize what the State has failed to do, and you
10 find Mr. Chisolm not guilty of all charges.

11 JURY CHARGE, BY THE COURT:

12 THE COURT: Madam Foreperson, members of the jury,
13 you followed very patiently and listened very
14 attentively to the presentation of the evidence in this
15 case, and I want to thank you for that. It now becomes
16 the duty of the trial judge under the *Constitution* of
17 this state to charge and instruct you on the law that's
18 applicable to this case. And it is your duty as jurors
19 to accept and apply the law as I will now state it to
20 you.

21 As jurors, it is your exclusive duty to decide all
22 of the issues of fact in this case. You must determine
23 the effect, the value, the weight, and the truth of the
24 evidence. Both the State and the defendant have the
25 right to expect that you will carefully consider and

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1 evaluate the evidence and apply the law of the case to
2 the evidence. By doing so, both the State and the
3 defendant will receive a fair and impartial trial in
4 this matter.

5 Now, ladies and gentlemen, the State of South
6 Carolina, by the bills of indictment in this case,
7 charge the defendant, Dwayne Chisolm, with trafficking
8 in cocaine, more than 100; possession with intent to
9 distribute crack cocaine; possession of a weapon during
10 the commission of a violent crime; and possession of a
11 firearm with an obliterated serial number.

12 Ladies and gentlemen, I remind you that the fact
13 that the defendant was arrested, charged, and indicted
14 in this case is not evidence in this case, and cannot be
15 considered by you as evidence in guilt in this case, nor
16 does it create any presumption or inference of guilt.
17 An indictment is simply the formal, written instrument
18 which contains a charge made against the defendant. It
19 is the formal document by which the case is brought into
20 the courtroom.

21 Now, ladies and gentlemen, the defendant, Mr.
22 Chisolm, has pled not guilty to these indictments, and
23 that plea puts the burden on the State to prove the
24 defendant guilty beyond a reasonable doubt. A person
25 charged with committing a criminal offense in South

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1 Carolina is never required to prove himself innocent. I
2 charge you that it is an important rule of law that a
3 defendant in a criminal trial, no matter what the
4 seriousness of the charge may be, will always be
5 presumed innocent of the offense for which an indictment
6 was issued, unless guilt has been proven by evidence
7 satisfying you, the jury, of that guilt beyond a
8 reasonable doubt.

9 Ladies and gentlemen, this presumption of innocence
10 does not end when you begin your deliberations, but it
11 accompanies the defendant throughout the trial, until
12 you reach a verdict of guilt, based on evidence
13 satisfying you of that guilt beyond a reasonable doubt.

14 Ladies and gentlemen, the presumption of innocence
15 is like a robe of righteousness that's placed about the
16 shoulders of the defendant, and it remains with him
17 until it has been stripped away by evidence satisfying
18 you of the defendant's guilt beyond a reasonable doubt.

19 Ladies and gentlemen, the presumption of innocence
20 is not a mere legal theory. It is not just a legal
21 phrase we use. It is a substantial right to which every
22 defendant is entitled, unless you, the jury, are
23 satisfied from the evidence of the defendant's guilt
24 beyond a reasonable doubt.

25 Now, ladies and gentlemen, as you understand, the

1 State has the burden of proving the defendant guilty
2 beyond a reasonable doubt, and the term *reasonable doubt*
3 must be given its plain and ordinary meaning. However,
4 to the extent that I may define it for you, a reasonable
5 doubt is the kind of doubt that would cause a reasonable
6 person to hesitate to act in the most important of their
7 personal decisions.

8 Ladies and gentlemen, the defendant is entitled to
9 every reasonable doubt arising in the case. If, upon
10 any issue of fact essential to a conviction, you have a
11 reasonable doubt as to how that issue should be
12 resolved, you must resolve that reasonable doubt in
13 favor of the defendant.

14 Now, ladies and gentlemen, some of you may have
15 served as jurors in civil cases where you were told that
16 it was only necessary to prove that a fact is more
17 likely true than not true. Such is what we call the
18 greater weight, or the preponderance of the evidence.
19 In criminal cases, the State's proof must be more
20 powerful than that. It must be beyond a reasonable
21 doubt. Proof beyond a reasonable doubt is proof that
22 leaves you firmly convinced of the defendant's guilt.

23 Now, ladies and gentlemen, there are very few
24 things in this world that we know with absolute
25 certainty, and in criminal cases, the law does not

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1 require proof that overcomes every possible doubt. If,
2 based on your consideration of the evidence, you are
3 firmly convinced that the defendant is guilty of the
4 crimes charged, you must find the defendant guilty. If,
5 on the other hand, you think there is a real possibility
6 the defendant is not guilty, you must give the defendant
7 the benefit of the doubt and find him not guilty.

8 I remind you, ladies and gentlemen, that during
9 this trial, you and I have certain duties to perform.
10 As a judge, it is my responsibility to preside over the
11 trial of this case, and I also have the duty to rule on
12 the admissibility of the evidence that's offered during
13 this trial. You are to consider only the competent
14 evidence before you. You are to consider only the
15 testimony which has been presented from the witness
16 stand and any exhibits which have been made a part of
17 the record in this case.

18 I have the additional duty of charging you the law
19 that's applicable to this case. I am the sole judge of
20 the law, and it is your duty as jurors to accept and
21 apply the law as I now state it to you. If you have any
22 idea as to what the law is or what the law ought to be,
23 and it does not agree with what I now tell you the law
24 is, you must abandon this idea, because you are sworn to
25 accept and apply the law exactly as I state it to you.

1 Ladies and gentlemen, in every case tried in this
2 court before the jury, the jury becomes the sole and
3 exclusive judge of the facts. A trial judge cannot
4 intimate, comment on, or make any statement to a trial
5 jury about the facts in a case. Since you, the jury,
6 are the sole judge of the facts of this case, you are
7 not to infer from what I have said during the progress
8 of this trial in ruling upon the admissibility or
9 otherwise, or anything that I say now during the course
10 of this instruction to you, that I have an opinion about
11 the facts in this case. The law does not allow me to
12 have an opinion as to the facts of this case.

13 I remind you, ladies and gentlemen, this is a
14 matter solely for you, the jury, to determine. And I
15 remind you, as jurors, it is your duty to determine the
16 effect, the value, the weight and the truth of the
17 evidence presented during this trial.

18 Now, ladies and gentlemen, there are two types of
19 evidence which are generally presented during a trial.
20 That is direct evidence and circumstantial evidence.
21 Direct evidence directly proves the existence of a fact,
22 and does not require deduction. Circumstantial evidence
23 is proof of a chain of facts and circumstances,
24 indicating the existence of a fact.

25 Ladies and gentlemen, crimes may be proven by

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1 circumstantial evidence. The law makes absolutely no
2 distinction between the weight or value to be given to
3 either direct or circumstantial evidence. However, to
4 the extent the State relies on circumstantial evidence,
5 all of the circumstances must be consistent with each
6 other, and when taken together, point conclusively to
7 the guilt of the accused beyond a reasonable doubt. If
8 these circumstances merely portray a defendant's
9 behavior as suspicious, the proof has failed.

10 The State has the burden of proving the defendant
11 guilty beyond a reasonable doubt, and this burden rests
12 with the State, regardless of whether the State relies
13 on direct evidence, circumstantial evidence or some
14 combination of the two.

15 Now, ladies and gentlemen, it is your duty to
16 determine the credibility of the witnesses who have
17 testified in this case, and credibility simply means
18 believability. It becomes your duty as jurors to
19 analyze and evaluate the evidence, and determine which
20 evidence convinces you of its truth.

21 In determining the believability of witnesses who
22 have testified in this case, you may believe one witness
23 over several witnesses, or several witnesses over one
24 witness. You may believe a part of the testimony of a
25 witness, and reject the remaining part of the testimony

1 of that same witness. You may believe the testimony of
2 a witness in its entirety or reject the testimony of a
3 witness in its entirety.

4 You may consider whether any witness has exhibited
5 to you any interest, bias, prejudice, or other motive in
6 this case, and you may also consider the appearance and
7 manner of a witness while they're on the witness stand.

8 Ladies and gentlemen, the rules of evidence
9 ordinarily do not permit witnesses to testify to
10 opinions or conclusions. An exception to this rule
11 exists for witnesses we call expert witnesses. A
12 witness who, by education and experience, has become an
13 expert in some art, science or profession, may give an
14 opinion as to the subject the witness claims to be an
15 expert in, and may also give the reasons for their
16 opinion.

17 You should consider any expert opinion given by a
18 witness, and like any other evidence, give it the weight
19 you think it deserves. If you decide that an expert
20 witness's opinion is not based on sufficient education
21 and experience, or if you decide that the reasons given
22 in support of the opinion are not sound, or that the
23 opinion is outweighed by other evidence, you may
24 disregard the opinion entirely.

25 An expert witness's testimony is to be given no

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1 greater weight than that of other witnesses, simply
2 because the witness is an expert. And you do not have
3 to accept an expert's opinion, even though it is
4 uncontradicted.

5 Now, ladies and gentlemen, I instruct you and
6 emphasize that the fact the defendant did not testify in
7 this case is not a factor to be considered by you in any
8 way in your deliberation and in your consideration on
9 the question of the guilt or innocence of the defendant.
10 It must not be considered by you in any manner
11 whatsoever. A defendant has the constitutional right to
12 remain silent, and the assertion of this right may not
13 be considered by you in your deliberations.

14 Ladies and gentlemen, I repeat, under your oath,
15 you are to draw no conclusion whatsoever from the fact
16 the defendant did not testify in this case. The fact
17 that the defendant did not testify should not even be
18 discussed in the jury room. I remind you, ladies and
19 gentlemen, the burden of proof is on the State. The
20 defendant is not required to prove his innocence, and
21 the burden of proof remains on the State to prove guilt
22 beyond a reasonable doubt.

23 Now, ladies and gentlemen, the defendant is charged
24 with multiple offenses in this case, and you must decide
25 each offense separately. I am now going to go through

1 each of the offenses so you can determine those.

2 The first offense the defendant is charged with is
3 trafficking in cocaine. Now, the State must prove
4 beyond a reasonable doubt that the defendant knowingly
5 sold, manufactured, cultivated, delivered, purchased or
6 brought into the state, or provided financial
7 assistance, or otherwise aided, abetted, attempted, or
8 conspired to sell, manufacture, cultivate, deliver,
9 purchase or bring into this state, or was knowingly an
10 actual or constructive possession, or who knowingly
11 attempted to become in actual or constructive possession
12 of more than 100 grams of cocaine, or any mixtures
13 containing cocaine.

14 Now, ladies and gentlemen, there are three elements
15 to the offense of trafficking in cocaine that the State
16 must prove beyond a reasonable doubt. They must first
17 prove that the substance involved was, in fact, cocaine;
18 and that the defendant had possession of that cocaine,
19 either actual possession or constructive possession; and
20 that there were, in fact, 100 grams or more of cocaine
21 or any mixtures containing cocaine involved.

22 Ladies and gentlemen, actual possession occurs when
23 a controlled substance is found to be in the actual
24 physical custody of the person charged with possession.
25 Constructive possession is when a person has dominion or

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1 control or the right to exercise dominion or control
2 over either the object or the premises on which the
3 object is located.

4 Ladies and gentlemen, possession may be inferred
5 from the circumstances, and may be imputed to anyone who
6 has the power and intent to control the disposition and
7 use of the object. In other words, possession of an
8 object or premises gives rise to an inference that the
9 person charged has both the power and intent to control
10 the use and disposition of the object.

11 Ladies and gentlemen, however, this inference is
12 simply an evidentiary fact to be taken into
13 consideration by you, along with other evidence in the
14 case, and to be given the weight you, the jury, decides
15 it should have.

16 Ladies and gentlemen, mere presence of a person in
17 an area where the object is found, is not enough in and
18 of itself to give rise to the necessary inference.
19 Proof of possession requires more than proof of mere
20 presence at the place where the controlled substance is
21 found. Ladies and gentlemen, the State must prove the
22 defendant had both the power, that is actual or
23 constructive control, and the intent to control its
24 disposition or use.

25 Now, ladies and gentlemen, the defendant is also

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1 charged with possession with intent to distribute
2 cocaine base, or also known as crack cocaine. Ladies
3 and gentlemen, cocaine base means any alkaloidal cocaine
4 or free base form of cocaine, which is the end product
5 of a chemical alteration, whereby the cocaine, in salt
6 form, is converted to a form suitable for smoking.

7 Ladies and gentlemen, cocaine base is commonly referred
8 to as rock or crack cocaine.

9 Now, ladies and gentlemen, the State must prove
10 beyond a reasonable doubt that the defendant possessed
11 crack cocaine with the intent to distribute it. To
12 prove possession, the State must prove beyond a
13 reasonable doubt that the defendant had both the power
14 and the intent to control the disposition or use of the
15 crack cocaine. And again, possession may be either
16 actual or constructive.

17 I remind you again, actual possession means that
18 the crack cocaine was in the actual physical custody of
19 someone. Constructive possession means that someone has
20 the dominion and control or the right to exercise
21 dominion or control over either the crack cocaine itself
22 or the property on which the crack cocaine was found.

23 Again, I remind you that mere presence at the scene
24 where drugs were found is not enough to prove
25 possession. A defendant must have knowledge, and

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1 possession may be inferred when a substance is found on
2 the property under the defendant's control. Ladies and
3 gentlemen, however, this inference, again, is simply an
4 evidentiary fact to be taken into consideration by you,
5 along with the other evidence in the case, and to be
6 given the weight you think it should have. Ladies and
7 gentlemen, I also tell you that two or more persons may
8 have joint possession of a drug.

9 Ladies and gentlemen, to prove possession with
10 intent to distribute, the State must also prove beyond a
11 reasonable doubt that the defendant intended to
12 distribute the crack cocaine. Distribute means to
13 deliver, other than by administering or dispensing a
14 drug. Now, ladies and gentlemen, intent may be shown by
15 acts and conducts of the defendant -- or conduct, excuse
16 me -- of the defendant, and other circumstances for
17 which you may naturally and reasonably infer intent.

18 In determining whether the defendant had the intent
19 to distribute the cocaine or the crack cocaine, you may
20 consider the circumstances surrounding the defendant's
21 alleged possession. You may consider the amount of a
22 substance alleged to have been possessed, the manner in
23 which it was allegedly possessed, the place where it was
24 allegedly possessed, and other factors which you
25 consider to be important. You must find that the

1 defendant did not intend to have the crack cocaine
2 solely for his own personal use.

3 Ladies and gentlemen, possession of more than one
4 gram of crack cocaine creates an inference the defendant
5 possessed the crack cocaine with intent to distribute
6 it. This inference does not relieve the State from
7 proving beyond a reasonable doubt that the defendant had
8 the intent to distribute. It is simply an evidentiary
9 fact to be taken into consideration by you, along with
10 the other evidence in the case, and to be given the
11 weight you decide it should have.

12 Now, ladies and gentlemen, the defendant is also
13 charged with possession of a weapon during the
14 commission of a violent crime. The State must prove
15 beyond a reasonable doubt that the defendant was in
16 possession of a firearm or visibly displayed what
17 appeared to be a firearm during the commission of a
18 violent crime.

19 Ladies and gentlemen, a firearm means any machine
20 gun, automatic rifle, revolver, pistol, or any weapon
21 which is designed to or may be readily converted to
22 expel a projectile.

23 Ladies and gentlemen, in order to find a defendant
24 guilty of possession of a weapon during the commission
25 of a violent crime, you must first find the defendant

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1 guilty of committing a violent crime. Ladies and
2 gentlemen, the offense of trafficking in cocaine is a
3 violent crime. Ladies and gentlemen, the State must
4 also prove beyond a reasonable doubt that the weapon
5 further advanced or helped in the commission of the
6 violent crime.

7 Now, ladies and gentlemen, lastly, the defendant is
8 charged with possession of a firearm with an obliterated
9 serial number. The State must prove beyond a reasonable
10 doubt that the defendant knowingly possessed a stolen
11 handgun or one from which the original serial number has
12 been removed or obliterated. Ladies and gentlemen,
13 knowingly means with knowledge, consciously, not
14 accidentally.

15 To prove possession, the State must prove beyond a
16 reasonable doubt that the defendant had both the power
17 and the intent to control the disposition or use of the
18 handgun. And again, ladies and gentlemen, possession
19 may be either actual or constructive.

20 I remind you that actual possession means that the
21 object was in the actual physical custody of a person,
22 and constructive possession means that a person has the
23 dominion and control or the right to exercise dominion
24 or control over either the object itself or the property
25 on which the object was found.

1 Ladies and gentlemen, again, I remind you, mere
2 presence at a scene where a handgun is found is not
3 enough to prove possession. A defendant's knowledge and
4 possession may be inferred when a handgun is found on
5 the property under a defendant's control. Again,
6 however, this inference is simply an evidentiary fact to
7 be taken into consideration by you, along with the other
8 evidence in the case, and to be given the weight you
9 believe it should have.

10 I remind you that I have permitted you to take
11 notes in this case. Your notes should be used only as
12 aides to your memory, and should not be allowed to take
13 precedence over your independent memory of facts. The
14 notes are only for your personal use in refreshing
15 recollection of the evidence. As I explained at the
16 beginning of the trial, when in your deliberation, do
17 not rely on the recollection of a juror who took notes
18 about the testimony of a witness solely because that
19 juror took notes. You should not be unduly influenced
20 by the notes of other jurors. As we all know, notes can
21 be wrong. Notes are not entitled to any greater weight
22 than each juror's memory of the evidence. Ladies and
23 gentlemen, those jurors who did not take notes should
24 rely on their independent recollection of the evidence
25 and not be influenced by the fact that another juror has

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1 taken notes.

2 Madam Foreperson, members of the jury, as you
3 retire to begin your deliberation, I wish to express the
4 hope that each of you is mindful of the importance of
5 your responsibility here today. You are not called upon
6 very often to serve as jurors, and the proper
7 performance of the duty requires each of you to reach
8 the height of freeing your mind of all improper
9 influences.

10 Ladies and gentlemen, so please do not get the idea
11 that I am trying to intimate to you how I think you
12 should decide this case, because I have already told
13 you, under the laws of South Carolina, you, the jury,
14 are the sole judge of all questions of fact, and it
15 would be highly improper for me to influence you in your
16 performance of that duty.

17 Ladies and gentlemen, so, again, I am not trying to
18 tell you what your verdict should find. However, ladies
19 and gentlemen, as the presiding officer of this court, I
20 am vitally concerned that whatever verdict you reach
21 will be the result of you going back into your jury
22 room, and confining your consideration to the evidence
23 and the law that you have heard here in this courtroom,
24 weighing it fairly and impartially, as I have every
25 confidence you will.

1 Madam Foreperson, members of the jury, your verdict
2 must be unanimous. It must be the verdict of all twelve
3 jurors. And to that end, my law clerk, Megan, has
4 prepared a verdict form. It simply has the case
5 caption, the State of South Carolina versus Dwayne
6 Chisolm, defendant; and it asks all four questions, all
7 of which you must answer. The first states:

8 *As to the charge of trafficking in*
9 *cocaine, more than 100 grams or more, we,*
10 *the jury, find the defendant, Dwayne Chisolm, --*
11 *either*
12 *not guilty or guilty.*

13 Second question:

14 *As to the charge of possession with*
15 *intent to distribute crack cocaine, we, the*
16 *jury, find the defendant --*
17 *again,*
18 *not guilty or guilty.*

19 Third question:

20 *As to the charge of possession of*
21 *weapon during the commission of a violent*
22 *crime, we, the jury, find the defendant,*
23 *Dwayne Chisolm, --*
24 *again,*
25 *guilty or not guilty.*

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1 And lastly:

2 As to the charge of a firearm with an
3 obliterated serial number, we, the jury,
4 find the defendant, Dwayne Chisolm, --
5 either
6 guilty or not guilty.

7 Ladies and gentlemen, please don not infer the
8 order that we write guilty or not guilty having any
9 significance. Every trial, we just reverse them.

10 After that, Madam Foreperson, there is a line for
11 you to sign. When the jury has reached a unanimous
12 verdict, I ask that you knock on the jury room, and we
13 will accept you back in the courtroom to receive your
14 verdict. All right?

15 Ladies and gentlemen, for the very last time, I am
16 going to send you back to your jury room, and tell you
17 not to begin discussing this case. If there is
18 something further on the law that the lawyers want me to
19 charge you on, I am going to bring you back out, and I
20 am going to charge you further. If not, ladies and
21 gentlemen, I am going to send the verdict form, along
22 with the evidence that's been entered into this case,
23 back to your jury room, and that will be your signal to
24 begin your deliberations, Madam Foreperson. Okay?

25 Ladies and gentlemen, thank you, and I am going to

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1 excuse you back to your jury room.

2 JURORS LEAVE COURTROOM 12:39 P.M.

3 BAILIFF: Jury is clear.

4 THE COURT: Thank you. Any exceptions or additions
5 to the charge from the State?

6 MS. CONCANNON: No, your Honor.

7 THE COURT: From the Defense?

8 MS. SAXON: No, your Honor.

9 THE COURT: All right. You all have looked at the
10 verdict form, and everyone's fine with it. You all need
11 to go through the evidence, and make sure it is all
12 together, and I suggest we do it quickly. Is lunch
13 here?

14 BAILIFF: It is not. But the question is on the
15 alternates?

16 THE COURT: Oh, I'm going to bring them out. When
17 we send the evidence in, we bring them out.

18 BAILIFF: Okay.

19 THE COURT: Okay? And that's the quickest way
20 never to forget and leave your alternates back there.
21 Okay.

22 ATTORNEYS AND COURT REPORTER REVIEWING
23 EXHIBITS.

24 JURORS BEGIN DELIBERATION 12:52 P.M.

25 OFF THE RECORD 12:52 P.M.

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1 BACK ON THE RECORD 1:46 P.M.

2 NOTE FROM JURORS:

3 BY THE COURT:

4 THE COURT: I understand the bailiff gave you a
5 note:

6 *Please describe again constructed*
7 *possession.*

8 I assume they mean constructive possession. I can
9 certainly bring them out here, and charge them again on
10 constructive possession.

11 MS. CONCANNON: That sounds good, your Honor.

12 THE COURT: Any objection?

13 MR. BAX: No, your Honor.

14 THE COURT: Okay. Let's bring the jury on out.

15 BAILIFF: The jury is entering the courtroom, your
16 Honor.

17 JURORS ENTER COURTROOM 1:49 P.M.

18 THE COURT: Thank you. You all may be seated.
19 Madam Foreperson, you have sent me out a note that says:

20 *Please define, again, constructed*
21 *possession.*

22 And I assume you're talking about constructive
23 possession. Is that correct?

24 MADAM FOREPERSON: Yes.

25 THE COURT: All right, ladies and gentlemen.

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1 Constructive possession means that the defendant had
2 dominion and control, or the right to exercise dominion
3 or control, over either the drugs themselves or the
4 property on which the drugs were found. Mere presence
5 at the scene where drugs are found is not enough to
6 prove possession.

7 The defendant's knowledge and possession may be
8 inferred when a substance is found on the property under
9 the defendant's control. However, this inference is
10 simply an evidentiary fact to be taken into
11 consideration by you, along with the other evidence in
12 the case, and to be given the weight you should decide
13 it should have.

14 Is that what you wanted to hear?

15 MADAM FOREPERSON: Yes, ma'am.

16 THE COURT: Okay. All right. Ladies and
17 gentlemen, I'll send you back to the jury room to
18 continue your deliberations.

19 JURORS LEAVE COURTROOM 1:51 P.M.

20 BAILIFF: Jury is clear, your Honor.

21 THE COURT: Appreciate it, Rick. All right. Any
22 exceptions or additions from the State?

23 MS. CONCANNON: No, your Honor.

24 THE COURT: From the Defense?

25 MS. SAXON: No, your Honor.

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1 THE COURT: All right. We'll sit tight until we
2 hear back from them. Okay? I want to put one thing on
3 the record with Mr. Jenkins and Mr. Hall, if we can,
4 real quick.

5 COURT REPORTER: The exhibit?

6 THE COURT: Pardon?

7 COURT REPORTER: The exhibit?

8 THE COURT: Oh, I'm sorry. We're going to mark
9 this as an exhibit. I apologize. This will be Courts
10 2. Thank you.

11 ITEM IDENTIFIED AS NOTE FROM JURORS

12 MARKED COURT'S EXHIBIT NUMBER 2.

13 OFF THE RECORD.

14 SECOND NOTE FROM JURORS:

15 REPORTER'S NOTE: AT APPROXIMATELY

16 2:14 P.M., JURORS SENT A SECOND NOTE

17 OUT, TO WHICH THE COURT WROTE HER

18 RESPONSE, AND A BAILIFF TOOK SAME BACK

19 TO THE JURORS, ALONG WITH A COPY OF

20 THE ENTIRE JURY CHARGE.

21 THE COURT'S RESPONSE TO JURORS' SECOND

22 NOTE READS AS FOLLOWS:

23 *Defendant objected to sending*
24 *just the constructive possession*
25 *portion of the charge back. So,*

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1 the Court is sending the entire
2 jury charge back.

3 ITEM IDENTIFIED AS SECOND NOTE FROM
4 JURORS MARKED COURT'S EXHIBIT
5 NUMBER 3.

6 ITEM IDENTIFIED AS JURY CHARGE
7 MARKED COURT'S EXHIBIT NUMBER 4.

8 BACK ON THE RECORD 2:54 P.M.

9 BY THE COURT:

10 THE COURT: All right. Ms. Saxon, you're here. I
11 see Mr. Chisolm. All right. Are you ready for me to
12 bring the jury in?

13 MS. CONCANNON: Yes, your Honor.

14 THE COURT: Okay. All right. The rest of you here
15 in the back, please be seated, and you all take a seat
16 when the jury comes in. And ladies and gentlemen,
17 hopefully, I don't need to say this, but if there is
18 anyone here that can't contain themselves when the
19 verdict is read, I need you to remove yourselves now.
20 Unfortunately, if there is any kind of outburst, I'm
21 going to have to have you taken into custody. So,
22 you've had fair warning. Let's bring them in, Norman.

23 BAILIFF: Yes, your Honor.

24 BAILIFF: The jury is entering the courtroom, your
25 Honor.

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1 THE COURT: Thank you.

2 JURORS ENTER COURTROOM 2:58 P.M.

3 THE COURT: Madam Foreperson, I understand the jury
4 has reached a verdict?

5 MADAM FOREPERSON: We have, your Honor.

6 THE COURT: Would you please pass it to the
7 bailiff. Thank you. Would you please publish the
8 verdict.

9 VERDICT:

10 MADAM CLERK: In the State of South Carolina versus
11 Dwayne Chisolm, defendant:

12 As to the Indictment Number 2010-GS-07-01251,
13 the charge of trafficking cocaine, 100 grams or
14 more, we, the jury, find the defendant, Dwayne
15 Chisolm, guilty.

16 As to the Indictment 2010-GS-07-01252, the
17 charge of possession with intent to distribute
18 crack/cocaine, we, the jury, find the defendant,
19 Dwayne Chisolm, guilty.

20 As to Indictment 2010-GS-07-01253, the
21 charge of possession of weapon during the
22 commission of a violent crime, we, the jury,
23 find the defendant, Dwayne Chisolm, guilty.

24 As to the Indictment Number 2010-GS-07-01254,
25 the charge of possession of a firearm with

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1 obliterated serial number, we, the jury, find
2 the defendant, Dwayne Chisolm, guilty.

3 Ladies and gentlemen, if this is your verdict,
4 please raise your hand -- right hand.

5 THE COURT: I note, for the record, everyone's
6 raised their right hand. You may put them down. Thank
7 you, ladies and gentlemen. Okay.

8 Would you like for me to poll the jury?

9 MS. SAXON: Yes, your Honor.

10 JURORS POLLED, BY THE COURT:

11 THE COURT: All right. All right. Ladies and
12 gentlemen of the jury, I am just going to ask each of
13 you individually to stand. And I'm going to ask you if
14 this is your verdict, and if this is still your verdict.
15 All right?

16 Angela Spahn. Ma'am, is this your verdict?

17 JUROR NUMBER 388: Yes.

18 THE COURT: Is it still your verdict?

19 JUROR NUMBER 388: Yes.

20 THE COURT: Thank you, ma'am. Alice Adkins.
21 Ma'am, is this still your verdict?

22 JUROR NUMBER 15: Yes.

23 THE COURT: Is this still your verdict?

24 JUROR NUMBER 15: Yes.

25 THE COURT: Thank you, ma'am. Margaret Carroll.

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1 Ma'am, is this your verdict?

2 JUROR NUMBER 60: Yes, ma'am.

3 THE COURT: Is this still your verdict?

4 JUROR NUMBER 60: Yes, ma'am.

5 THE COURT: Thank you. Ms. White, is this your
6 verdict?

7 JUROR NUMBER 436: Yes, ma'am.

8 THE COURT: Is it still your verdict?

9 JUROR NUMBER 436: Yes, ma'am.

10 THE COURT: Thank you. Ms. Dagel. Is this your
11 verdict?

12 JUROR NUMBER 91: Yes.

13 THE COURT: Is it still your verdict?

14 JUROR NUMBER 91: Yes.

15 THE COURT: Thank you. Mr. Williams. Is this your
16 verdict, sir?

17 JUROR NUMBER 438: Yes.

18 THE COURT: Is it still your verdict?

19 JUROR NUMBER 438: Yes.

20 THE COURT: Thank you. Mr. Johnson. Sir, is this
21 your verdict?

22 JUROR NUMBER 201: Yes, ma'am.

23 THE COURT: Is it still your verdict?

24 JUROR NUMBER 201: Yes, ma'am.

25 THE COURT: Thank you, sir. Ms. Anderson. Ma'am,

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1 is this your verdict?

2 JUROR NUMBER 11: Yes, ma'am.

3 THE COURT: Is it still your verdict?

4 JUROR NUMBER 11: Yes, ma'am.

5 THE COURT: Thank you. Ms. Crawford. Ma'am, is
6 this your verdict?

7 JUROR NUMBER 83: Yes.

8 THE COURT: Is it still your verdict?

9 JUROR NUMBER 83: Yes.

10 THE COURT: Thank you, ma'am. Ms. Gottschalk. Is
11 this your verdict?

12 JUROR NUMBER 153: Yes.

13 THE COURT: Is it still your verdict?

14 JUROR NUMBER 153: Yes.

15 THE COURT: Thank you. Mr. Shannon. Is this your
16 verdict?

17 JUROR NUMBER 364: Yes, ma'am.

18 THE COURT: Is it still your verdict?

19 JUROR NUMBER 364: Yes, ma'am.

20 THE COURT: Thank you. And finally, Ms. Kendall.
21 Is this your verdict?

22 JUROR NUMBER 215: Yes.

23 THE COURT: Is it still your verdict?

24 JUROR NUMBER 215: Yes, ma'am.

25 THE COURT: Thank you. Is there anything further

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1 required of this jury from the State?

2 MS. CONCANNON: No, your Honor.

3 THE COURT: From the Defense?

4 MS. SAXON: No, your Honor.

5 THE COURT: Ladies and gentlemen, I want to thank
6 you so much for helping us resolve not only this case,
7 but many other cases that have come before the Court
8 this week. When I start a trial roster, there's no way
9 I could ever try every case on that roster. A lot of
10 them, when there are jurors here, willing to serve and
11 sit as jurors and decide these issues, we were able to
12 dispose of the cases by other means, either by guilty
13 plea or dismissing the charges, or something along those
14 lines.

15 Ladies and gentlemen, at this time, I am going to
16 go forward, and I'm going to sentence Mr. Chisolm. You
17 are welcome to stay or not stay. It is completely up to
18 you. Again, ladies and gentlemen, I need you to
19 understand that you are certainly not required to stay,
20 and I am going to ask that if you are ready to leave,
21 you can go ahead and leave at this time.

22 However, before I do that, I do want to let you
23 know that you are permitted to discuss this case. When
24 you go home tonight, you can tell your family or friends
25 what you've been doing. Certainly, you're never

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1 required to answer any questions. If, for some reason,
2 someone persists and wants to speak with you, just tell
3 them politely, no, thank you. If there happens to be a
4 problem in any way, shape, or form, you call to the
5 Clerk of Court's Office, tell me who it is, and I will
6 take care of them. All right?

7 Again, ladies and gentlemen, thank you. You are
8 excused for the remainder of the week. If you want to
9 go now, before the sentencing, now is the time to do it.
10 After that, I'm just going to have you keep your seats
11 for those of you who want to stay, and we'll go ahead
12 and sentence Mr. Chisolm. All right? Thank you again.

13 JURORS LEAVE COURTROOM 3:04 P.M.

14 BAILIFF: Jury is clear. Door is closed, your
15 Honor.

16 THE COURT: Thank you. All right. You all can
17 stay right where you are, as far as for the sentencing
18 is concerned. Do you have a sentencing sheet?

19 MS. CONCANNON: Your Honor, we are printing those
20 right now.

21 THE COURT: Okay.

22 MS. SAXON: Your Honor, I had some post-trial
23 motions -- I'm sorry -- I'd like to state to the Court.

24 THE COURT: Certainly.

25 POST-TRIAL MOTIONS:

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1 MS. SAXON: Thank you. My first motion, your
2 Honor, is for a judgment notwithstanding the verdict,
3 and I believe that, based on the evidence in this case,
4 based on the testimony that was elicited, as well as the
5 things that we pointed out in closings, the flaws in the
6 State's case, that the jury was not as -- that they
7 didn't understand, necessarily, what they were looking
8 at when it came to constructive possession issue, and
9 were not properly aware of the knowledge portion of that
10 issue, and believe that they didn't understand their
11 oath when they went back to the room to deliberate.

12 And would ask that, based on all that, as well as
13 the fact that they were only back for about two hours,
14 part of that was lunch, and there was a large amount of
15 evidence that they needed to go over and discuss. And
16 we submit that it doesn't feel that they took the
17 necessary time to review all the evidence in this case.
18 We, therefore, ask for JNOV.

19 COURT REPORTER: *And we, therefore, ask?*

20 THE COURT: For a JNOV. Any response?

21 MS. CONCANNON: Briefly, your Honor. I think they
22 had adequate evidence to reach their unanimous verdict.
23 They all reached a unanimous verdict. Even when polled,
24 they all said that was still their verdict. And we feel
25 that there was plenty of evidence to take it to the

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1 jury, for them to reach the guilty verdicts.

2 THE COURT: All right. Well, respectfully, the
3 State did have a lot of evidence, and evidence of
4 illicit drug activity. And certainly, I do not think
5 there are grounds for overturning it. Any other prior
6 motion or any other motion?

7 MS. SAXON: Your Honor, just, we would also motion
8 for a new trial, based on all of our prior motions and
9 objections that we've made throughout the course of this
10 trial, beginning with the sufficiency and validity of
11 the search warrant, and moving through everything that
12 we've covered. We believe that those are sufficient
13 grounds for a new trial, and therefore, request one at
14 this time.

15 THE COURT: Okay. Thank you. All right. Well,
16 respectfully, as I ruled on previous, I do think the
17 search warrant was good. I don't think the return
18 signed by a different magistrate was negligent in any
19 way. I think it was just ministerial, and again, just
20 an administrative error, and respectfully will deny that
21 motion. Are you all ready to go forward?

22 MS. SAXON: One second.

23 THE COURT: Okay.

24 MR. BAX: The Defense is prepared to go forward,
25 your Honor.

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1 THE COURT: Okay.

2 MR. BAX: Would you like us to approach the Bar,
3 your Honor?

4 THE COURT: You're fine right where you are. He's
5 fine.

6 MS. SAXON: Thank you, your Honor. In regards to
7 the sentencing, I want to tell you a little bit about
8 Dwayne outside of this trial, and what has been
9 presented. Mr. Chisolm is married. His wife is here in
10 the courtroom. She is sitting in the back. They have a
11 child together, a son who is 16 months old. He is a
12 licensed industrial pipe fitter and industrial
13 electrician by trade. He has a GED, and he attends
14 church.

15 He's actually spent a portion of his life traveling
16 around the world, seeking enlightenment, pursuing
17 religious ideas, as well as gaining knowledge of just
18 the world around him. He's an extremely well-spoken
19 gentleman. He is a very intelligent man. He has very
20 family-oriented. I think that has been made clear
21 throughout the course of the trial, as well as with the
22 family that has been here.

23 He does have family. His mother and siblings, they
24 live in West Virginia. They have stood by and supported
25 Dwayne through all of this.

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1 Your Honor, based on everything, we do feel that
2 the minimum in this case is appropriate, the 25-year
3 sentence. That, in and of itself, is a huge, huge
4 chunk. And it is going to be, you know, 85 percent of
5 that sentence. Eighty-five percent of twenty-five
6 years, that is a large portion, if not, possibly the
7 rest of his adult life, as well as that of watching his
8 son grow up. He's going to miss all of that. He's not
9 going to have that time with his family.

10 We think that the minimum on the trafficking of 25
11 years and the other charges run concurrent would be
12 sufficient to do justice.

13 THE COURT: Okay. Do you have a sentencing sheet?

14 MS. CONCANNON: I do, your Honor.

15 THE COURT: May I have his prior record?

16 MS. CONCANNON: Yes, your Honor. His prior record
17 consists of: in 1994, he has a shoplifting. In 1995,
18 failure to stop for a blue light. 1996, possession of
19 marijuana and a DUS. 2000, criminal domestic violence
20 times two and possession of drug paraphernalia.

21 2006, simple assault, improper use of vehicle,
22 driving too fast for conditions, and another failure to
23 stop for blue light. In 2007, he has two counts of
24 possession with intent to distribute cocaine.

25 In Georgia, from 2002, he has a simple battery to a

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1 family member.

2 Your Honor, I do have certified copies of his prior
3 cocaine convictions I would like to hand up to your
4 Honor. I also have prepared the sentencing sheets for
5 the trafficking, as well as the gun charges. The PWID
6 crack cocaine charge, the sentencing sheet was prepared
7 for a first offense. However, the State would believe
8 that he would be eligible to be sentenced under the
9 third or subsequent offense, based on his two prior
10 cocaine convictions from 2007. They were the same
11 conviction date, but they are two prior incident -- two
12 separate incident dates.

13 THE COURT: Is there a mandatory minimum on it
14 being a third?

15 MS. CONCANNON: Ten years, your Honor.

16 THE COURT: Okay.

17 MS. CONCANNON: And if you would like, I have -- I
18 can prepare a sentencing sheet that is set for the
19 third, instead of the first.

20 THE COURT: All right. Anything further from you
21 all?

22 MR. BAX: Your Honor, yeah, one final thing. I
23 just think, in order to protect my client's rights, and
24 it's something that I have entered on the record before,
25 the Defense would enter an objection, based on *United*

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1 *States Constitution's* prohibition against cruel and
2 unusual punishment to the statute requiring a mandatory
3 minimum of 25, for this and any other crime, but
4 especially for this crime. It is labeled as violent.
5 However, it's a narcotics offense, and I think it
6 violates that provision of the *Constitution*, because it
7 doesn't allow for you, your Honor, who is sitting up
8 there listening to the facts, both during the trial, as
9 well as mitigation presented during the sentencing
10 phase, to really have any discretion. It takes away
11 your discretion, and there has been cases in federal
12 court that have ruled on the issue of discretion, which
13 is one of the reasons why mandatory aspect of the
14 sentencing guidelines was overruled in the *United States*
15 *versus Booker* case.

16 So, based on the *Constitution*, as well as *U.S. v.*
17 *Booker*, we would object to the 25 years as being
18 unconstitutional, as well. Thank you.

19 THE COURT: Okay. Anything further?

20 MR. BAX: Nothing, your Honor.

21 SENTENCING:

22 THE COURT: Mr. Chisolm, if you'll stand, please,
23 and your attorneys. On Indictment 2010-01251, for
24 trafficking in cocaine, more than 100 grams but less
25 than 200 grams, the sentence of this Court is you to be

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1 committed to the Department of Corrections for a period
2 of 25 years, and pay a fine of \$100,000.00.

3 On Indictment 2010-01252, for possession with
4 intent to distribute cocaine base, first offense, the
5 sentence of this court is that you be committed to the
6 Department of Corrections for a period of 15 years.

7 On Indictment 2010-01253, that's for the possession
8 of a weapon during the commission of a violent crime,
9 the sentence of this court is, you be committed to the
10 Department of Corrections for a period of five years.

11 And Indictment 2010-01254, for possession of a
12 pistol with an obliterated serial number, the sentence
13 of this court is, you be committed to the Department of
14 Corrections, again, for a period of five years.

15 Those are to all run concurrent to each other, and
16 I'm giving you credit for the time you've done so far.
17 Good luck to you, sir.

END TRIAL 3:15 P.M.

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CERTIFICATE OF REPORTER

OCTOBER 22 AND 23, 2014 TRANSCRIPT OF TRIAL
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing October 22 and 23, 2014, Transcript of Trial is a true, accurate, and complete record of the proceedings had and exhibits admitted on said date, in the case of State of South Carolina versus Dwayne Lamont Chisolm, Beaufort County, South Carolina, Court of Common Pleas, Case Numbers 2010-GS-07-01251, 2010-GS-07-01252, 2010-GS-07-01253, and 2010-GS-07-01254; that I am of neither kin, counsel, nor interest to any party hereto.

This Certificate of Reporter is attached to the ORIGINAL of this transcript, along with my digital signature. COPIES of this transcript are not authorized for use without my original signature affixed hereto.

Witness my signature March 1, 2015.

S/Wanda H. Rowe
Wanda H. Rowe, CVR-M
Official Court Reporter

WITNESSES

A Boland / BCSO DTF

ARREST WARRANT NUMBER

J338233

ACTION OF GRAND JURY**True Bill**

B. Smith
 Foreperson of Grand Jury
 Date: JUL 22 2010

VERDICT

Foreperson of Petit Jury
 Date:

INDICT

DOCKET NO. 2010GS0701251

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

July
 June Term 2010

THE STATE

vs.

Dwayne Chisolm

Indictment for

Trafficking in cocaine, 100 grams or more

SC Code: 44-53-0370(e)(2)(c)
 CDR Code: 0280

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
 Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2010GS0701251

At a Court of General Sessions, convened on ^{July 22,} ~~June 24,~~ 2010, the Grand Jurors of Beaufort County present upon their oath:

Trafficking in cocaine, 100 grams or more

That in Beaufort County, South Carolina, on or about May 19, 2010, the Defendant, Dwayne Chisolm, unlawfully and knowingly did sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did possess or attempt to possess a controlled substance or a controlled substance analogue, to wit: Cocaine, in excess of 100 grams; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided,



Solicitor

WITNESSES

A. Boland / BCSO DTF

ARREST WARRANT NUMBER

J338234

ACTION OF GRAND JURY**True Bill**

B. Smith
 Foreperson of Grand Jury
 Date: JUL 22 2010

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2010GS0701252

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

July
~~June~~ Term 2010

THE STATE

vs.

Dwayne Chisolm

Indictment for**Possession with Intent to distribute crack**

SC Code: 44-53-0375(B)(1)

CDR Code: 3014

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

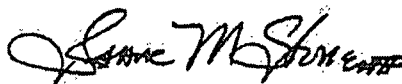
INDICTMENT
2010GS0701252

At a Court of General Sessions, convened on ^{July 22,} ~~June 24,~~ 2010, the Grand Jurors of Beaufort County present upon their oath:

Possession with intent to distribute crack

That in Beaufort County, South Carolina, on or about May 19, 2010, the Defendant, Dwayne Chisolm, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to distribute, dispense, deliver a controlled substance or a controlled substance analogue, to wit: Crack; in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

A Boland / BCSO DTF

ARREST WARRANT NUMBER

J338235

ACTION OF GRAND JURY**True Bill**

B. Smith
 Foreperson of Grand Jury
 Date: JUL 22 2010

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2010GS0701253

The State of South Carolina**County of Beaufort****COURT OF GENERAL SESSIONS**

Subs
 June Term 2010

THE STATE

vs.

Dwayne Chisolm**Indictment for****Possession of a weapon during violent crime**

SC Code: 16-23-0490

CDR Code:0549

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
 Hereby appear in my own proper person and plead guilty to the within indictment or to _____

Defendant**Witness:****C.C.C. PLS. and G.S.**

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

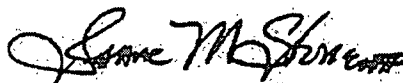
INDICTMENT
2010GS0701253

At a Court of General Sessions, convened on ^{July 22,} ~~June 24,~~ 2010, the Grand Jurors of Beaufort County present upon their oath:

Possession of a weapon during violent crime

That in BEaufort County, South Carolina, on or about May 19, 2010, the Defendant, Dwayne Chisolm, did possess a gun or visibly display what appeared to be a gun during the commission, or attempted commission, of Trafficking cocaine, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

A. Boland / BCSO DTF

ARREST WARRANT NUMBER

J338236

ACTION OF GRAND JURY**True Bill**

[Signature]
 Foreperson of Grand Jury
 Date:

JUL 22 2010**VERDICT**

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2010GS0701254

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

July
~~June~~ Term 2010

THE STATE

vs.

Dwayne Chisolm

Indictment for

Possession of a firearm with an obliterated
 serial number

SC Code: 16-23-0030; 16-23-0050(A)
 CDR Code: 2364

After being fully advised as to my legal
 rights, I hereby waive presentment to the
 Grand Jury.

Defendant

I

Hereby appear in my own proper person
 and plead guilty to the within indictment or
 to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2010GS0701254

At a Court of General Sessions, convened on ^{July 22} ~~June 24~~, 2010, the Grand Jurors of Beaufort County present upon their oath:

Possession of a firearm with an obliterated serial number

That in Beaufort County, South Carolina, on or about May 19, 2010, the Defendant, Dwayne Chisolm, knowingly, receive or possess a gun where the original serial number had been removed or obliterated, to wit: a HiPoint 9mm; in violation of Section 16-23-30(C), Code of Laws of South Carolina, (1976), as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

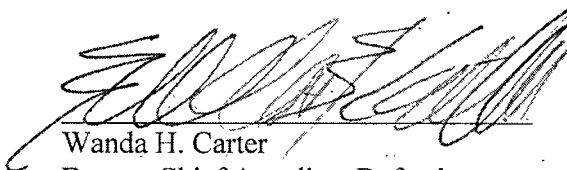


Solicitor

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."

This 27th day of August, 2015.



Wanda H. Carter
Deputy Chief 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

RECEIVED

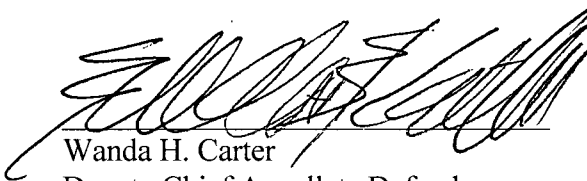
AUG 28 2015

SC Court of Appeals

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."

This 27th day of August, 2015.



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
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ATTORNEY FOR APPELLANT

RECEIVED
AUG 28 2015
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Carmen T. Mullen, Circuit Court Judge

THE STATE,

V.

DWAYNE CHISOLM,

APPELLANT

APPELLATE CASE NO. 2014-002327

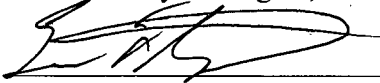
CERTIFICATE OF SERVICE

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 the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Dwayne Chisolm #325820, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 28th day of August, 2015.



Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 28th day of August, 2015.



(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

 ORIGINAL

RECEIVED

AUG 28 2015

RESPONDENT

SC Court of Appeals