

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Clifton Newman, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JO PRADUBSRI,

APPELLANT

APPELLATE CASE NO. 2015-000208

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATES EXHIBIT #1 (POSTER)

1 State of South Carolina

Court of General Sessions

2 County of Lexington

5 State of South Carolina)

Transcript of Record

6 vs.)

2009-GS-32-0202

7 Jo Pradubsri,)

2009-GS-32-0204

8 Defendant.)

2009-GS-32-0205

11 January 13 - 15, 2015

Lexington, South Carolina

13 B E F O R E:

14 The Honorable Clifton B. Newman, Judge; and a jury.

16 A P P E A R A N C E S:

17 Lester McGill Bell, Jr., Assistant Solicitor

Casey N. Rankin, Assistant Solicitor

18 Attorneys for the State

19 Dayne C. Phillips, Esquire

David Michael Mauldin, Esquire

20 Attorneys for the Defendant

23 Stacy S. Johnson, RPR

24 Circuit Court Reporter

1 (Whereupon, the following proceedings were held on
2 January 13, 2015.)

3 (Whereupon, the jury panel enters the courtroom at
4 2:14 PM.)

5 **BAILIFF:** All rise.

6 **THE COURT:** Thank you. Please be seated.

7 All right. Good afternoon. The next case,
8 Mr. Solicitor.

9 **MR. BELL:** Thank you, Your Honor. At this time the
10 State would call the State versus Jo Pradubsri on three
11 indictments. Indictment number one is 2009-GS-32-0202.
12 That's an indictment for trafficking crack cocaine
13 between 28 and 100 grams. Indictment number two,
14 2009-GS-32-0204, possession with intent to distribute
15 within proximity of a school. Indictment number three,
16 2009-GS-32-0205. That's unlawful carrying of a pistol.

17 **THE COURT:** All right. Ladies and gentlemen, the
18 State has called for trial the case of the State versus
19 Jo Pradubsri.

20 **MR. PHILLIPS:** Pra-dub-sri.

21 **THE COURT:** Pra-dub-sri. He's been indicted by
22 the Grand Jury for the offense of trafficking crack
23 cocaine, possession with intent to distribute crack
24 cocaine within proximity of a school, and unlawful
25 carrying of a pistol. He has pled not guilty to the

1 charges contained in these three indictments. He is
2 presumed to be not guilty and cannot be found guilty
3 unless the State presents evidence which convinces a
4 jury of his guilt beyond a reasonable doubt, and that's
5 the purpose of a trial.

6 Mr. Pradubsri, is there -- say your name for me.

7 **THE DEFENDANT:** Pradubsri.

8 **THE COURT:** Mr. Pradubsri, if you will stand and
9 face the jury panel along with counsel, please. And,
10 Counsel, if you will introduce yourselves to the jury.

11 **MR. PHILLIPS:** Yes, sir. My name is Dayne Phillips.
12 And my co-counsel?

13 **MR. MAULDIN:** David Mauldin.

14 **THE DEFENDANT:** And I'm Jo Pradubsri.

15 **THE COURT:** All right. And the State is represented
16 through the Solicitor's Office of the Eleventh Circuit.
17 Solicitor, introduce yourself as well.

18 **MR. BELL:** Thank you, Your Honor.

19 Good afternoon, ladies and gentlemen. My name is
20 Gill Bell. I'm the Assistant Solicitor here on behalf
21 of the State. Absent, but will be sitting with me, is
22 Assistant Solicitor Casey Rankin and Investigator Matt
23 Martin.

24 **THE COURT:** All right. Ladies and gentlemen, I
25 have some questions. I want to remind you that under

1 All right. I've got you. Number 6 -- okay.

2 **MR. PHILLIPS:** And then Number 7 is the motion to
3 exclude expert testimony. Our first pre-trial motion of
4 the day is we would, as far as pre-trial purposes, move
5 to sequester the witnesses in this case. We certainly
6 have no objection to the lead investigator being present
7 under Rule 615.

8 **THE COURT:** All right. How about that?

9 **MR. BELL:** The State has no problem with that, Your
10 Honor. My lead investigator is Bill Finch who will be
11 sitting with us, Your Honor.

12 **THE COURT:** All right. Witnesses are sequestered;
13 State and defense.

14 **MR. PHILLIPS:** Thank you, Your Honor. Our second
15 pre-trial motion is the motion to reveal the identity of
16 the informant.

17 **THE COURT:** All right. What's the State's position
18 on that?

19 **MR. BELL:** Let me look at my notes on that.

20 **THE COURT:** What is the basis for the motion?

21 **MR. PHILLIPS:** Yes, Your Honor. Basically the
22 motion is the Defendant's motion to reveal the identity
23 of the informant is under the Fifth, Sixth and
24 Fourteenth amendments to the United States Constitution
25 and Article 1, Section 14 of the South Carolina

1 Constitution, relying on Roviario v. United States,
2 that's 353 U.S. 53, and State v. Diamond, 280 S.C. 296.

3 **THE COURT:** Is it because the informant is a
4 witness or --

5 **MR. PHILLIPS:** It is our contention that
6 specifically, Your Honor, that the informant in this
7 case is more than a mere tipster and the informant's
8 identity is highly relevant and might be helpful to the
9 defense. We based this on a letter from the Assistant
10 Solicitor, David Stumbo, who is the former Solicitor in
11 the first trial, and the letter was dated February 3,
12 2010, that is Attachment A to the motion, which is
13 Exhibit Number 3, Your Honor. Court's Exhibit Number 3.

14 **THE COURT:** Okay.

15 **MR. PHILLIPS:** We also base that on the case of
16 State v. Willard. The Court of Appeals in 2007 found
17 that a non-confidential informant was more than a mere
18 tipster where he identified the defendant's car, knew
19 the defendant's phone number, mentioned drugs during a
20 conversation with the defendant. Essentially based on
21 that highly specific information in this case, Your
22 Honor, going to Solicitor David Stumbo's letter, he
23 states that, one, they didn't even have a formal
24 agreement with this person to be a confidential
25 informant. He states that the informant had a history

1 of prostitution and drug use, that the informant
2 personally knows and has knowledge about the two
3 defendants in this case, sees them on a regular daily
4 basis. The informant gave specific details about the
5 car, the color, the occupants' names, specifics about
6 their relationship, and also gave a specific description
7 of the handguns and where they would be.

8 **THE COURT:** You know, I'm a pretty fast learner.

9 **MR. PHILLIPS:** Yes, Your Honor.

10 **THE COURT:** And I understand this case has been up
11 and down the road quite a bit, but it's landed before
12 me for the very first time so I have no clue what this
13 entire thing's about.

14 **MR. PHILLIPS:** Yes, Your Honor.

15 **THE COURT:** You know, you're giving the argument
16 and referring to these various things as if I have a
17 basis to know what this case is all about, so it might
18 be best to give me some context or idea as to what this
19 whole thing is all about and then I'll catch up with it
20 all as fast as I can. I promise I'll get to where I
21 need to be at the appropriate time.

22 **MR. PHILLIPS:** Thank you, Your Honor. Sorry for
23 not giving a good factual basis.

24 **THE COURT:** Go ahead.

25 **MR. PHILLIPS:** Based on the information provided by

1 this informant, Sergeant John Finch began investigating
2 Jo Pradubsri and Melisa Martin. Obviously Jo Pradubsri
3 is the Defendant in this case and Melisa Martin's the
4 State's key witness in this case. Based on that
5 information provided by the informant -- and the letter
6 that I was referencing from the Solicitor was listing
7 the information that was provided by the informant to
8 Investigator John Finch as to the fact that she had a --
9 that she personally knew them, she had knowledge about
10 the two defendants, sees them on a regular basis.
11 Again, has the personal relationship.

12 She gave them very specifics about -- essentially
13 her information was she gave specifics about the car,
14 the color, the occupants, specific descriptions of the
15 guns in the car, and then as to the actual illegal
16 activity in the letter it states that the informant said
17 the fact that there would be a large quantity of crack
18 cocaine in the car because the informant had -- and this
19 is in the letter, because of the informant's personal
20 knowledge that JoJo, that is the nickname given for the
21 defendant in the letter, and Melisa buy large amounts
22 of cocaine which they cook -- to cook crack at their
23 house at Friarsgate and then they sell working down
24 St. Andrews Road through Irmo towards Columbia.

25 And in the letter it says because of the specific

1 and reliable information given by the informant, a call
2 to the investigating officer and the personal knowledge
3 and prior dealings of the investigator with the
4 defendants, Investigator Finch was on the lookout on
5 the incident for the silver Monte Carlo travelling down
6 St. Andrews Road occupied by the suspects, Pradubsri and
7 Martin, that contained specifically two handguns and a
8 large amount of crack cocaine.

9 Now as to how we came here today, on November 9,
10 2008, Sergeant Finch received a call from Sergeant Bobby
11 Dale of the Irmo Police Department informing him that
12 Pradubsri and his car were at the Kroger in Irmo.
13 Sergeants Dale and Finch observed Pradubsri and Martin
14 exit the store and leave the parking lot in the Monte
15 Carlo. After Pradubsri left the parking lot, Sergeant
16 Finch initiated -- Finch initiated a traffic stop based
17 solely on the information provided by the informant.
18 And at this time, I believe, in the prior trials there
19 has been testimony that Sergeant Finch had received some
20 tips -- some phone calls from this informant over a
21 month period and they had been unable to locate these
22 two people.

23 And on this day, the November 9th, is when Sergeant
24 Bobby Dale of the Irmo Police Department called him and
25 say they see their car at the Kroger. Ultimately, the

1 officers on-scene after they conduct the traffic stop,
2 they seized approximately 68 grams -- I think at the
3 time they said it weighed -- field weight around
4 75 grams of crack cocaine, but ultimately tested around
5 68 grams of crack cocaine that was solely on Martin's
6 possession and approximately \$725 cash on Pradubsri.

7 Because of this obviously Mr. Pradubsri and Melisa
8 Martin were charged with trafficking cocaine, possession
9 with intent to distribute within proximity of a school.
10 The Kroger, as well as where the traffic stop was
11 conducted, was, I believe, within a half mile of a
12 school. And they were also charged with unlawful
13 carrying of a pistol. There were two pistols found in
14 the car; one in Ms. Martin's purse, the other -- there's
15 some dispute. The photographs from the crime scene show
16 that the gun's in the passenger compartment. There was
17 testimony that the gun was actually in the driver's side
18 at the time before they took it out and put a zip tie
19 through the gun.

20 Now our basis for this motion, one, is that the
21 informant's privilege is not applicable to this case.
22 Assistant Solicitor David Stumbo stated in that letter
23 that they had no formal agreement -- that law
24 enforcement had no formal agreement with this informant
25 to be a confidential informant. Sergeant Finch

1 corroborated this fact during the first trial.

2 **THE COURT:** I started out asking the basis for
3 the motion and the State's position. Mr. Bell didn't
4 respond timely, so then I asked you the basis and you've
5 been explaining the basis for -- ten minutes later. So
6 I still don't know whether the State opposes it or
7 agrees with it.

8 **MR. PHILLIPS:** Yes, Your Honor.

9 **THE COURT:** I don't want to stop you. If the State
10 opposes it, then you can continue.

11 **MR. BELL:** Your Honor, the State absolutely does
12 oppose. I'll start with --

13 **THE COURT:** Okay. If the State opposes, then I
14 need to finish hearing his argument. Go ahead. I'm
15 sorry. I just needed to -- I was trying to get a
16 context of whether the State agrees, disagrees, and then
17 I'll know whether to go ahead.

18 **MR. PHILLIPS:** Yes, Your Honor. As I was stating,
19 our first point would be that the informant's privilege
20 is not applicable as stated in the letter that law
21 enforcement had no formal agreement with this informant.

22 **THE COURT:** What is this? You said the informant's
23 privilege. What's that about?

24 **MR. PHILLIPS:** It's in State v. Diamond and Roviato
25 v. United States. Essentially the privilege that

1 allows the Solicitor's Office or law enforcement not
2 to disclose a confidential informant's identity is
3 generally referred to in case law as the informer or
4 informant's privilege, and has stated that, you know,
5 when it's in fundamental fairness that the privilege
6 must give way. Well, here they didn't even have an
7 agreement for this person to be an informant; therefore,
8 there should be no privilege to protect this person's
9 identity.

10 **THE COURT:** There's no expectation for the person
11 to have a privilege because there was no agreement?

12 **MR. PHILLIPS:** Exactly. Yes, Your Honor. Exactly.
13 And this was corroborated in Sergeant Finch's testimony
14 in the first trial. I believe that's Page 9, Lines 4
15 through 25. Again, we believe that it would be
16 fundamentally unfair for the State not to reveal the
17 informant's identity when the credibility of the State's
18 witnesses may be well-determinative on the issue of
19 guilt or innocence in this case. Disclosure of this
20 requested information is imperative for the purposes of
21 showing any bias, prejudice or interest in the outcome
22 of the case. Again, we base that on the Fifth, Sixth
23 and Fourteenth amendments to the United States
24 Constitution, as well as Article 1, Section 3 and 14 of
25 South Carolina Constitution.

1 If Your Honor believes that there was an informant's
2 privilege, I don't know if you wish to rule on that
3 first.

4 **THE COURT:** Well, I'm just sitting here wondering
5 why does it matter whether you know who the informant is
6 or not?

7 **MR. PHILLIPS:** Because the traffic stop was based
8 solely on the information provided by the informant.

9 **THE COURT:** Okay.

10 **MR. PHILLIPS:** There was no traffic violations.

11 **THE COURT:** And one of the motions is a motion to
12 suppress. Is that a motion?

13 **MR. PHILLIPS:** There is, Your Honor.

14 **THE COURT:** Okay. All right.

15 **MR. PHILLIPS:** Do you wish to rule on whether the
16 informant's privilege is applicable or do you want me to
17 go through the entire motion?

18 **THE COURT:** I don't know. I don't know what I'm
19 going to rule on. I'm just trying to settle into this
20 case and I'll rule on everything.

21 **MR. PHILLIPS:** Yes, sir. Our next argument would
22 be that the informant was more than a mere tipster. In
23 State v. Willard, that's 374 S.C. 129, that's a Court
24 of Appeals case, 2007, they found a nonconfidential
25 information who was not previously proven reliable more

1 than a mere tipster where the informant had identified
2 the defendant's vehicle, knew the defendant's phone
3 number and mentioned drugs during a conversation with
4 the defendant. They even note that because it was a
5 nonconfidential informant the court gave that person a
6 higher level of credibility because it exposes himself
7 to liability and should be -- should the information
8 prove to be false.

9 In this case, that person is presumably still a
10 confidential informant because they've never revealed
11 the identity. So unlike the person in Willard, who was
12 a nonconfidential informant and was given more
13 credibility, our person is still a confidential
14 informant because they haven't revealed it; yet the
15 similarity is in this case, going back to the letter
16 from David Stumbo, he provides that the informant
17 personally knows and has knowledge about the two
18 defendants in this case, seeing them on a regular basis,
19 gives very specific details about the car, the color,
20 dents, the occupants, specific descriptions of the
21 handguns, the drugs, how they move the drugs. It says
22 because the informant's personal knowledge that JoJo
23 and Melisa buy large amounts of crack cocaine, it's our
24 argument that this person could be relevant and helpful
25 to the defense, specifically when the sole basis of the

1 traffic stop is based on this person's information,
2 particularly where this person could be a material
3 witness, and that's part of the case law in Roviato, as
4 well as State v. Diamond.

5 **THE COURT:** Well, we know if the -- the person is a
6 witness who can come in and tell us something, then we
7 know they have to disclose it. They must -- the State
8 must disclose any informant who may be a witness in this
9 trial. We know that, don't we?

10 **MR. PHILLIPS:** Well, essentially what the State --
11 I mean, I'm not gonna argue for the State, but I imagine
12 they're gonna say that the person's a mere tipster and
13 the case law says mere tipsters do not have to be
14 disclosed.

15 **THE COURT:** Well, if she wasn't present at the time
16 of the arrest or she's not connected with the trial
17 other than --

18 **MR. PHILLIPS:** The transaction.

19 **THE COURT:** -- you wanted to know -- or presumably
20 you already know who you're talking about anyway because
21 it's a person who had a daily relationship with the
22 Defendant.

23 **MR. PHILLIPS:** We don't, Your Honor. We have no
24 idea who this person is at this point. At the two
25 trials this person's identity has never been released.

1 So specifically the informant was more than a mere
2 tipster for three reasons. First, the specificity of
3 the information provided by the informant is analogous
4 to the informant in Willard. Again, in the second trial
5 Sergeant Finch testified as to the specific details
6 provided by the informant; said that this tipster knew
7 the gender, age, all their identifiers, address,
8 specifically hotels they frequent, such as Knights Inn,
9 Motel 6, Executive Inn, particular locations and route,
10 silver Monte Carlo, tag number, very specific, very
11 personal knowledge of this. I think you can find that
12 on Page 26, Lines 8 through Page 28, Line 13 in the
13 second trial.

14 Now, second, Your Honor, the informant's personal
15 relationship with Pradubsri and Martin infers that the
16 informant was an active participate in the illegal
17 activity alleged. For this person to have this personal
18 knowledge, then they're most likely a material witness
19 in this drug trade. Now with this that would make this
20 person's identity relevant and helpful to the defense.

21 **THE COURT:** So you want them to -- then do you
22 have a separate motion somewhere to exclude prior drug
23 dealings?

24 **MR. PHILLIPS:** Absolutely, Your Honor.

25 **THE COURT:** So you want to know who the person was

1 who was involved in all of the prior drug dealings --

2 **MR. PHILLIPS:** For our motion to suppress --

3 **THE COURT:** -- but then you don't want the jury to
4 know anything about the prior drug dealings?

5 **MR. PHILLIPS:** Well, we have a motion -- a
6 pre-trial motion to suppress the traffic stop because
7 based on this person's information that could go into
8 Your Honor's discretion as to whether there was
9 reasonable suspicion to conduct the traffic stop when
10 the traffic stop was based solely on this person's
11 information.

12 Third, Your Honor, the informant's ties to
13 prostitution and drug use also illustrate the
14 informant's probable participation in the illegal
15 activity alleged, particularly when Martin testified
16 that she runs an escort service, was a prostitute
17 herself, and has the history of drugs and, again,
18 prostitution, Your Honor.

19 **THE COURT:** Martin is the co-defendant or who is
20 she?

21 **MR. PHILLIPS:** She was a co-defendant. She pled
22 -- the State reduced her charges and she is the State's
23 key witness in this case.

24 **THE COURT:** And you say who -- and she was a
25 prostitute?

1 **MR. PHILLIPS:** And she owned an escort service.

2 **THE COURT:** Owned an escort service.

3 **MR. PHILLIPS:** And with the informant being a
4 prostitute, it's possible that it's one of the people
5 that works for her.

6 **THE COURT:** I'm saying don't you know who we're
7 talking about?

8 **MR. PHILLIPS:** We have no idea, Your Honor.

9 **THE COURT:** Okay.

10 **MR. PHILLIPS:** I mean, at this point in the two
11 transcripts, I've read both of them thoroughly, there's
12 no way to know -- and second chair is David Mauldin,
13 who's tried this case the two prior times. Based on our
14 investigation, we have no idea who this informant is.
15 We have no idea because the State has refused to
16 disclose the identity in the two prior trials.

17 **THE COURT:** Well, this arrest was how many years
18 ago?

19 **MR. PHILLIPS:** Back in 2008.

20 **THE COURT:** 2008. Five years ago or so?

21 **MR. PHILLIPS:** Six roughly.

22 **THE COURT:** So are we talking about someone who is
23 still presumably an informant or someone who's out of
24 the informant's business and it doesn't matter if her
25 identity's disclosed?

1 **MR. PHILLIPS:** According to Assistant Solicitor
2 David Stumbo in the letter, she was never technically
3 in the informant's business with him because they didn't
4 have a formal agreement to be an informant; however,
5 there is testimony that she might have had agreements
6 with other officers in other jurisdictions, but not
7 specifically with him.

8 **THE COURT:** Now were these motions made in the prior
9 trials?

10 **MR. PHILLIPS:** Yes, Your Honor, both prior trials.

11 **THE COURT:** So this is the third time this has come
12 to trial?

13 **MR. PHILLIPS:** That's correct. Now this trial is
14 a de novo review.

15 **THE COURT:** How did the judges rule before on all
16 these motions?

17 **MR. PHILLIPS:** They refused to disclose.

18 **THE COURT:** Okay. Did they grant any of these
19 motions that you're asking me to rule on?

20 **MR. PHILLIPS:** Out of the motions, I believe there
21 was some differences between Judge Russo and Judge
22 Hocker. Of course, Judge Russo was reversed on the
23 cross-examination issue of Melisa Martin as far as her
24 mandatory minimum sentence and that's what resulted in
25 the second trial. As to --

1 **THE COURT:** So any of these -- and I'm asking for
2 this reason. If you've made all these motions before,
3 the judge denied them before, the case was appealed,
4 and -- was any of this reviewed on appeal, any of these
5 denials of these motions or they didn't reach that
6 because they reversed them on other grounds?

7 **MR. PHILLIPS:** That's correct. The only issue
8 reversed on appeal was the cross-examination issue,
9 so the appellate court has not reviewed these other
10 issues; therefore, all of these issues are proper.
11 And, again, this is a de novo review before the Court.
12 Your discretion is -- it's as if you're seeing this
13 case for the first time, Your Honor.

14 **THE COURT:** But I can look in these transcripts and
15 see what the other judges thought about it and if I can
16 agree with them, then I can just say --

17 **MR. PHILLIPS:** Absolutely, and, of course, our
18 position would be that would be in error.

19 **THE COURT:** Are these in these papers you gave me
20 or --

21 **MR. PHILLIPS:** Absolutely. We have provided both
22 prior trial transcripts to Your Honor. That's Court's
23 Exhibit 1 and 2. And in my other Court's exhibits that
24 are marked, the other pre-trial written motions that are
25 marked as court exhibits, I have transcript references

1 marked and cites for the testimonies that are cited.

2 **THE COURT:** All right.

3 **MR. PHILLIPS:** With that, Your Honor --

4 **THE COURT:** You think it would be in error for me
5 to look at what they said or what? What would be in
6 error?

7 **MR. PHILLIPS:** If you ruled simply because they
8 ruled a certain way. And, again, our contention is
9 we're going to make --

10 **THE COURT:** It's not whether I agree with them. If
11 I disagree with them --

12 **MR. PHILLIPS:** Well, you absolutely can agree with
13 them, Your Honor. I'm certainly not arguing that.
14 You absolutely could agree with them on the law. Our
15 contention is that all our motions have a good faith
16 basis and that if Your Honor refuses to grant these
17 motions, that would be in error. That would be in
18 violation of the constitutional rights that we've cited
19 in these motions and we'll cite to Your Honor this
20 morning.

21 **THE COURT:** Okay. All right. As I said, I'm just
22 settling into this case --

23 **MR. PHILLIPS:** It's a lot, Your Honor. I
24 understand.

25 **THE COURT:** -- but I'll get there.

1 **MR. PHILLIPS:** Thank you, Your Honor. Again, in
2 Roviaro and State v. Diamond, the courts discuss as
3 to the issue of balancing the public interest and
4 protecting the flow of information against the
5 individual rights to prepare a defense. Refusing to
6 disclose this person's information when it's the sole
7 basis of the traffic stop, and we do have the motion to
8 suppress the evidence of the traffic stop, essentially
9 that there's no reasonable suspicion, we'll get to that
10 later, the public -- there is no public interest that
11 should prevent that. We essentially argue that as
12 Rule 5 being the -- essentially Rule 5 of the South
13 Carolina Rules of Criminal Procedure is this state's
14 mechanism for complying with the due process requirement
15 and so Roviaro specifically held that the informer's
16 privilege is limited by due process, which is one of
17 the reasons why we're arguing that this information is
18 necessary to prepare for a complete defense, Your Honor.

19 **THE COURT:** So you want me to grant the motion and
20 then grant a continuance?

21 **MR. PHILLIPS:** If the motion is granted, under
22 State v. Burns, Your Honor, we would request a
23 continuance to have the opportunity to locate and
24 investigate, and State v. Burns is on point on that,
25 and I can give you that cite, Your Honor.

1 **THE COURT:** All right.

2 **MR. PHILLIPS:** State v. Burns is 294 S.C. 338.

3 **THE COURT:** What does it say?

4 **MR. PHILLIPS:** It essentially says when you have a
5 confidential informant that's disclosed -- essentially
6 the case says on the date of trial if the Solicitor's
7 Office has disclosed that confidential informant's
8 identity the day of the trial, right before trial,
9 essentially due process or fundamental fairness
10 necessitates as far as the opportunity to present a
11 full and complete defense to allow a continuance to
12 have the defense to conduct an investigation to locate
13 this person for us to be able to properly cross-examine
14 them, which would then trigger the Sixth Amendment.

15 **THE COURT:** All right.

16 **MR. PHILLIPS:** Thank you, Your Honor. Again, it's
17 our argument that the informant's testimony would be
18 highly relevant and possibly helpful. Obviously it's
19 all speculative at this point because we don't know who
20 this person is and what their actual role is in this
21 and that was part of the investigation.

22 **THE COURT:** You said the testimony would be
23 relevant or their identity?

24 **MR. PHILLIPS:** Identity is highly relevant and
25 then based on what we find out would -- might make

1 them potentially helpful and could have exculpatory
2 information and then --

3 **THE COURT:** As to whether or not on that day they
4 had all these drugs in the car?

5 **MR. PHILLIPS:** Well, no. See, as far as the
6 Fourth Amendment's concerned you don't look at the --
7 once the drugs are found, you look at all the facts
8 leading up to the traffic stop and it's whether the
9 police officer had reasonable suspicion to stop the
10 car. So we're not -- we can't do that. The best way
11 to say it, Your Honor, post-stop rationalization of
12 saying I found drugs, now we have reasonable suspicion.
13 The case law is clear that you only look at the facts
14 leading up to the stop. So I know it's kind of a weird
15 thing when we know there was drugs, but we have to put
16 the wall up and pretend we're only looking at the facts
17 leading up to the stop, Your Honor. That's what the
18 case law mandates.

19 **THE COURT:** All right.

20 **MR. PHILLIPS:** As far as the testimony being highly
21 relevant and helpful, the informant's possibly a
22 material witness based on the logical connection to
23 illegal activity. The informant's credibility,
24 particularly bias and knowledge of the co-defendant's
25 involvement in this case, is paramount. The

1 co-defendant is the key witness against in Pradubsri.
2 Without her testimony, the State's case, I submit, would
3 not withstand a directed verdict motion.

4 Also in this case, Your Honor, the State has not
5 provided the usual explanation for non-disclosure, which
6 is the informant's safety. Again, instead, Assistant
7 Solicitor wrote, although -- this is, quote, although
8 there is no formal agreement in place for this informant
9 to do to CI work or controlled buys for law enforcement,
10 they still obtain available information from her in
11 their investigative work and would prefer that her
12 identity remain confidential, if possible. So, if
13 possible, I think our due process rights and given
14 essentially and specifically Mr. Pradubsri's
15 constitutional rights, the "if possible", fundamental
16 fairness, requires disclosure. Also, Your Honor,
17 fundamental fairness, the right to confrontation, the
18 right to present a complete defense, we would argue
19 requires a minimal showing for disclosure as no
20 privilege exists for a sole eyewitness in a murder
21 case, Your Honor. They cannot refuse to disclose the
22 identity prior to trial for a sole eyewitness in a
23 murder case and there shouldn't be for somebody who's
24 the sole basis for a traffic stop.

25 And there's also essentially, I'd argue, a

1 possible conflict of interest issue because as a public
2 defender, I represent numerous clients who are working
3 as confidential informants in Lexington County. It's
4 quite possible that this informant is one of my clients.
5 I wouldn't know because that person's identity has not
6 been disclosed. Again, the identity of the informant
7 is essential for ensuring the Defendant's due process
8 right to investigate the allegations against him.

9 **THE COURT:** You weren't a public defender in 2008,
10 were you?

11 **MR. PHILLIPS:** Your Honor?

12 **THE COURT:** You were not a public defender in 2008
13 when this occurred?

14 **MR. PHILLIPS:** No, Your Honor, I had just started
15 law school.

16 **THE COURT:** Okay.

17 **MR. PHILLIPS:** Yes, sir. Again, the Sixth
18 Amendment right to confrontation would be violated by
19 not having the opportunity to cross-examine this
20 witness. Here nondisclosure of the informant's identity
21 prevents the confrontation when it's Sergeant Finch's
22 sole basis for the traffic stop. Again, we argue that
23 it denies his opportunity to present a full and complete
24 defense, Your Honor. That's under due process. That's
25 State v. May, 306 S.C. 355.

1 Again, also when you're looking at the right to
2 present a full and complete defense, Kyles vs. Whitley
3 is certainly one of the first places to go, as well as
4 Brady and the progeny.

5 **THE COURT:** What's the latest South Carolina
6 Supreme Court case on the disclosure requirements
7 regarding informants?

8 **MR. PHILLIPS:** Really State v. Diamond is --

9 **THE COURT:** That's a long time ago.

10 **MR. PHILLIPS:** -- the explanation of Roviario vs.
11 United States. One of the most recent cases --

12 **THE COURT:** Diamond was -- I know Diamond was 1984.
13 They haven't talked about it since then?

14 **MR. PHILLIPS:** Well, they have. I mean, the most
15 recent case that I can think of off the top of my head
16 was a PCR case, Hyman v. State, where the State had
17 refused to disclose the identity of the informant prior
18 to trial and they -- it was kind of an issue of they
19 allowed the defense attorney to go to the Solicitor's
20 Office and either view the photographs or view the
21 video tape, but would not allow the attorney to have
22 that information to show the defendant prior to trial,
23 and the PCR issue was whether that attorney was
24 ineffective for not showing that discovery to the
25 defendant prior to trial.

1 Now I know that's kind of an interesting thing
2 because the defendant -- or, excuse me, the attorney
3 couldn't show something he didn't have to the -- to
4 the client, but the client had a right to see the
5 information against him, yet the plea offer was
6 predicated on the fact that if we disclose the
7 informant, the plea offer is gone, you've got to go
8 to trial. You know, this information somewhat -- I
9 guess is now also -- not necessarily directly
10 implicates, you know, the two recent United States
11 Supreme Court decisions in Lafler and Frey, Lafler v.
12 Cooper and Missouri v. Frey.

13 **THE COURT:** So the Supreme Court of South Carolina
14 hasn't said anything about these informant disclosure
15 requirement since 1984. What does that tell us?

16 **MR. PHILLIPS:** Well, Your Honor, again, it's not
17 just State v. Diamond. State v. Diamond is the leading
18 case. When we talk about disclosure, there are plenty
19 of cases like State v., I believe, Humphries is one of
20 the cases that says that when the person is the mere
21 tipster. There's numerous cases that say whenever the
22 person's a mere tipster that the identity doesn't have
23 to be revealed and it's -- our contention is, one, the
24 informant's privilege doesn't apply, but if Your Honor
25 disagrees the person was more than a mere tipster based

1 on the specific information provided by that person and
2 would use State v. Willard to show that where the Court
3 of Appeals said this person was more -- uses the
4 language "more than the mere tipster" because of the
5 specific information provided and in this case this
6 informant provided very specific information.

7 **THE COURT:** So if you give specific information,
8 then you're more than a mere tipster, but if you don't
9 give enough information, then there's no basis for
10 reliability?

11 **MR. PHILLIPS:** Well, no, then they would say
12 they're a mere tipster and that the police during
13 their investigation at that point get to try to
14 corroborate the evidence -- corroborate the tip.

15 **THE COURT:** All right.

16 **MR. PHILLIPS:** Because essentially there's a
17 threshold for obviously whether somebody's a mere
18 tipster or a material witness or a regular informant,
19 yeah, a confidential informant.

20 **THE COURT:** A material witness meaning a person the
21 jury should hear from? A material witness to --

22 **MR. PHILLIPS:** Well, that's up -- I can't argue
23 for the State. If the State wants to present witnesses,
24 that's the State's prerogative. We have no burden of
25 proof.

1 **THE COURT:** Well, they're saying she's not a
2 material witness. She just gave -- she gave reliable
3 information, the police used it and made the traffic
4 stop and, you know, bingo, here's all the drugs and so
5 forth.

6 **MR. PHILLIPS:** They're arguing that it's a -- that
7 she's a mere -- again, I don't want to argue for the
8 State here, but I assume their argument would be based
9 on the case law that says that this person would be a
10 mere tipster and our argument is when you look at State
11 v. Willard and when you give such a substantial amount
12 of information, that makes you more than a mere tipster.

13 **THE COURT:** If you're a mere tipster, then in order
14 for the court to uphold it they're gonna have to show
15 reliability of the mere tipster?

16 **MR. PHILLIPS:** Well, then we get to cross-examine.
17 We get the opportunity to present a complete defense
18 because this person's information was the sole basis
19 for the traffic stop and we do have a pre-trial motion
20 moving to suppress the evidence of the traffic stop.

21 **THE COURT:** I'm thinking of this case out of
22 Florida where the -- I think the person was at a bus
23 stop there, riding a bicycle or something, a person
24 called and --

25 **MR. PHILLIPS:** That's an anonymous tipster.

1 **THE COURT:** Anonymous tipster.

2 **MR. PHILLIPS:** And that would be distinguishable
3 from this case.

4 **THE COURT:** Okay. In what way?

5 **MR. PHILLIPS:** An anonymous tipster, the courts
6 give -- the case law is very, very well-settled on the
7 difference between anonymous tipster and then a person
8 who's either a nonconfidential informant or a
9 confidential informant. If this case was an anonymous
10 tipster, then, Your Honor, our Fourth Amendment argument
11 on the traffic stop would certainly be incredibly strong
12 because, I believe, Florida v. J.L., when you have an
13 anonymous tipster that does not provide the basis for a
14 reasonable suspicion.

15 **THE COURT:** Okay. You can't randomly stop somebody
16 based on a tip.

17 **MR. PHILLIPS:** Exactly.

18 **THE COURT:** All right.

19 **MR. PHILLIPS:** Because that goes to the reliability.

20 **THE COURT:** All right. Well, let me hear from the
21 Solicitor a little bit.

22 **MR. BELL:** Thank you, Your Honor. I'll try to be
23 concise. I think there's a handful of fatal flaws in
24 this argument. I'll start with the issue of there
25 needing to be some sort of formal agreement for the

1 informant's privilege to attach. As far as I'm aware,
2 there is no case law or statute that says that you have
3 to have a formal document for the informant's privilege
4 to attach. Obviously that's a public interest issue.
5 You couldn't run programs like Crime Stoppers if that
6 were the case.

7 Aside from that, Your Honor, defense uses the
8 State v. Willard case as sort of the primary basis for
9 his argument, but I think there's an important set of
10 language in there that was sort of overlooked which says
11 that a nonconfidential informant who was not previously
12 proven reliable would be more than a mere tipster. In
13 this case, and we are going to proffer testimony from
14 Sergeant Finch, this tipster had been used in several
15 cases and had been proven extensively reliable as well.
16 Just because you know the name of a tipster doesn't --

17 **THE COURT:** Can you say those words again that you
18 said, a non --

19 **MR. BELL:** Your Honor, a nonconfidential informant
20 who was not previously proven reliable.

21 **THE COURT:** Nonconfidential informant --

22 **MR. BELL:** That's actually on Page 3 of 9 of
23 Mr. Phillips' motion.

24 **THE COURT:** -- who's not previously --

25 **MR. BELL:** Proven reliable.

1 **THE COURT:** -- proven reliable is a what?

2 **MR. BELL:** Found -- excuse me. Would be more than
3 a mere tipster.

4 **THE COURT:** Okay.

5 **MR. BELL:** However in this case, once I said -- and
6 Sergeant Finch will talk about several instances where
7 this tipster was right on the money. He's also going to
8 testify that she had never provided a tip that he found
9 to be incorrect or uncorroborated.

10 Your Honor, as to the issue of materiality under
11 the Roviato -- I'm not sure how to pronounce that. I
12 apologize.

13 **THE COURT:** Ro-vi-aro.

14 **MR. BELL:** Thank you, your Honor.

15 **THE COURT:** I don't know either. Ro-var-o.

16 **MR. BELL:** Your Honor, under this definition it is
17 not material. She -- this particular tipster simply
18 calls in information. She's not actively participating
19 in a bust or setup or anything of that nature. Your
20 Honor, under State v. Bultron, which is 318 South
21 Carolina 323, it's a 1995 Court of Appeals case, they
22 go on to talk about that whether an informant is a mere
23 tipster who only has peripheral knowledge of a crime
24 or an active participant in a criminal act and/or a
25 material witness. Your Honor, with that said, they go

1 on to talk about a mere tipster for the purposes of
2 peripheral interaction in this case was limited to
3 calling the police, stating that they knew that there
4 was a quantity of cocaine in a location, the police
5 went and they found that to be true. I think that's
6 essentially the tipster's participation in this case.
7 It was calling in and giving them information which they
8 acted on.

9 **MR. PHILLIPS:** Thank you, Your Honor. We do also --

10 **THE COURT:** Let me ask the Solicitor this. On your
11 issue about whether or not privilege -- the informant's
12 privilege applies or doesn't apply, what's your spin on
13 that?

14 **MR. BELL:** Your Honor, this is -- we did mention
15 earlier this informant is still being used by law
16 enforcement, is still providing good intelligence for
17 them. Whether or not Assistant Solicitor Stumbo -- I
18 can't say what he did or did not say. Obviously,
19 there's a letter that's written, I have no argument
20 with that, but it's my understanding she's still active,
21 she's still helping law enforcement. We would have
22 serious grave concerns about her safety if her name was
23 to come out.

24 **THE COURT:** So your position is that she is an
25 informant who's entitled to privilege from disclosure?

1 Is that --

2 **MR. BELL:** Well, I believe she's a tipster who
3 certainly is still entitled to have her identity
4 protected.

5 **THE COURT:** She's a tipster or is she an informant
6 or is there -- are they the same thing, tipster and
7 informant, or is there a difference?

8 **MR. BELL:** Your Honor, I don't think there's any
9 hard and fast definition of that and that's why said
10 I don't believe there's some contract that has to be
11 signed to allow you to be one or the other.

12 **THE COURT:** The cases or the law kind of calls them
13 one or the other, don't they?

14 **MR. BELL:** They do. They tend to say that if it's
15 peripheral interaction, you're a tipster; if it's active
16 participation, you're an informant.

17 **THE COURT:** All right.

18 **MR. BELL:** Now -- and I will be honest with Your
19 Honor. I believe that this particular informant in
20 other cases has potentially been an active participant.
21 Is that correct, Sergeant Finch?

22 **SERGEANT FINCH:** She has.

23 **MR. BELL:** But in this case at hand she was nothing
24 more than peripheral. She called in information.

25 **THE COURT:** So if she's peripheral, does that mean

1 she's an informant or a tipster?

2 **MR. BELL:** Tipster, Your Honor.

3 **THE COURT:** And so the test for the tipster under
4 the law is what in regard to disclosure; whether she
5 must be disclosed or not?

6 **MR. BELL:** Your Honor --

7 **THE COURT:** Is it different from an informant or is
8 it the same?

9 **MR. BELL:** I believe they're still protected and,
10 Your Honor, I don't have any specific source that would
11 say that other than if Your Honor would give me one
12 brief moment.

13 **THE COURT:** Because I've got a fast learning curve
14 on this thing. You-all have to bring me up to speed and
15 I have to decide.

16 **MR. BELL:** Your Honor, ultimately, once again,
17 speaking from State v. Bultron, the court goes on to
18 say, in short, the trial court must balance the public's
19 interest in perpetuating the flow of vital information
20 to law enforcement officials against the right of an
21 individual to prepare its defense, and in that they're
22 discussing the fact that once you've turned over this
23 identity, you essentially burn them, you can no longer
24 use them for multiple reasons because their safety is --

25 **THE COURT:** Well, you know, I'm very much

1 familiar with the whole -- and public policy favoring
2 nondisclosure, you know, during the period of time
3 when crack cocaine really got its foothold here in
4 South Carolina. Probably it was around the same time
5 of State v. Diamond, late seventies, early eighties and
6 so forth, and most cases were made by law enforcement
7 through the use of informants and if the identity of
8 the informants were disclosed -- I mean, they typically
9 would do a whole series of drug buys and everything
10 and they didn't want to burn the informant and many
11 informants showed up dead. So there's a -- you know,
12 I'm fully aware of the strong policy against compelling
13 the disclosure of informants and, you know, so I'm
14 trying to get a grip on -- and I've raised the question
15 since the court hasn't spoken on it since 1984 -- '94,
16 2004 -- well, it's thirty years ago, why are we still
17 talking about it here today in this case? I mean,
18 what's different about this case?

19 **MR. BELL:** Your Honor, I truly don't believe there
20 is anything different. I think this is still a case
21 where this individual's identity should be protected.

22 **THE COURT:** All right. Yes, sir.

23 **MR. PHILLIPS:** Your Honor, there certainly is case
24 law dealing with the mere tipster. There's case law
25 that further extends Diamond and, you know, clarifies

1 and, you know, further -- you know, makes all the law
2 the umbrella. Diamond's the umbrella case of Roviario
3 and every case after that dealing with whether they're
4 a mere tipster or informant. There's numerous cases,
5 I mean, that deal with whether an informant can --
6 because an informant can be a mere tipster or a material
7 witness. That's the thing. An informant can be one or
8 the other.

9 **THE COURT:** And you're trying to make this girl a
10 material witness?

11 **MR. PHILLIPS:** Well, that's the thing. We don't
12 know because they don't disclose the identity.

13 **THE COURT:** Well, whose burden is it to show?

14 **MR. PHILLIPS:** Well, it's our --

15 **THE COURT:** Do you want me to say she's a material
16 witness?

17 **MR. PHILLIPS:** Well, the issue is, one -- first,
18 Your Honor, I've got to make sure. I request before
19 you rule on this issue we do need Sergeant Finch's
20 proffered testimony on this issue. That way --

21 **THE COURT:** I'm ready to hear from him.

22 **MR. PHILLIPS:** And then we can follow-up argument
23 from there.

24 **THE COURT:** All right.

25 **MR. PHILLIPS:** Thank you.

1 **MR. BELL:** Your Honor, for the purposes of
2 efficiency, I don't know if you want to go ahead and
3 hear his suppression motion because obviously --

4 **THE COURT:** I think we should hear both at the
5 same time, suppression and disclosure.

6 **MR. PHILLIPS:** Okay. Do you want me to go ahead
7 and argue the suppression now, Your Honor, or just wait
8 until the end?

9 **THE COURT:** Well, I've almost heard your
10 suppression.

11 **MR. PHILLIPS:** Essentially. I've got a little bit
12 more to it than that, Your Honor.

13 **THE COURT:** Okay. Well, let's hear the witness and
14 then you'll have a basis to argue. You'll be arguing
15 based on testimony, won't you?

16 **MR. PHILLIPS:** I would. And, again, the traffic
17 stop motion, to kind of lump them together, kind of
18 -- the thing is without this informant that would
19 significantly change the traffic stop motion.

20 **THE COURT:** Okay. So what do you want me to rule
21 on? Whether or not she is a --

22 **MR. PHILLIPS:** Whether you can reveal the identity
23 essentially, yes. Is she a mere tipster or is she
24 something more, more than a mere tipster?

25 **THE COURT:** But I'd have to hear from someone who

1 has some information before I can rule. You-all can
2 argue day and night, but you're all just talking. I
3 need to hear from the witness about the details.

4 **MR. PHILLIPS:** Well, at this time we would request
5 Sergeant Finch, the proffer testimony, and we can maybe
6 argue after that.

7 **THE COURT:** All right. Well, let's do that, but
8 before we do that we're gonna take a ninety second
9 break.

10 **MR. PHILLIPS:** Thank you, Your Honor.

11 (Recess taken.)

12 **BAILIFF:** All rise. Court is back in session.

13 **THE COURT:** All right. Do we have everybody we
14 need?

15 **MR. BELL:** The State does, Your Honor.

16 **THE COURT:** Okay.

17 **MR. BELL:** Thank you, Judge. The State would call
18 Sergeant Bill Finch to the stand.

19 **THE CLERK:** Raise your right hand, please.

20 JOHN WILLIAM FINCH (In-Camera),
21 having been duly sworn, testified as follows:

22 **THE CLERK:** If you'll have a seat and state your
23 name, please, for the record.

24 **THE WITNESS:** Sergeant John William Finch. I'm
25 sorry. Sergeant John William Finch.

1 DIRECT EXAMINATION (In-Camera)

2 BY MR. BELL:

3 Q. Sergeant, we're gonna do a little bit of a flyby
4 version. Who are you currently employed by?

5 A. The Lexington County Sheriff's Department.

6 Q. How long have you been with them?

7 A. Eighteen years this month.

8 Q. Okay. What region do you work in?

9 A. The north region.

10 Q. Okay. Now could you just name a couple of the major
11 areas that that encompasses?

12 A. Chapin, Irmo, West Columbia, Cayce, and East
13 Lexington.

14 Q. Okay. Is that essentially sort of -- is that sort
15 of the I-26 area?

16 A. It is.

17 Q. Okay.

18 THE COURT: I missed the first part, who you work
19 for?

20 MR. BELL: I apologize, Your Honor.

21 THE WITNESS: The Lexington County Sheriff's
22 Department, sir.

23 THE COURT: All right.

24 BY MR. BELL:

25 Q. And you've been with them for how long?

1 A. Eighteen years this month.

2 Q. Any prior law enforcement experience?

3 A. Yes, sir. I was with the Richland County Sheriff's
4 Department for about four and a half years prior to
5 that.

6 Q. Okay. Now in the current case at hand with
7 Mr. Jo Pradubsri, did you utilize an informant in the
8 case?

9 A. I did.

10 Q. Okay. Now what kind of informant is this? Would
11 you consider it to be formal or informal?

12 A. More informal, I guess you'd say. It's not set up
13 as a formal confidential informant. The individual
14 does do that, does do that type of work, but in this
15 particular case I'd say it would be more an informal
16 phone call.

17 Q. Okay. And now prior to this particular case, had
18 you used this informant before?

19 A. Multiple times.

20 Q. Okay. And would you recognize her if you saw her on
21 the street?

22 A. Yes.

23 Q. Okay. And have you dealt with her on other criminal
24 matters?

25 A. Yes.

1 Q. Now what kind of history do you have with her
2 personally?

3 A. As far as arrests?

4 Q. That's correct.

5 A. There have been some arrests for prostitution and
6 drugs.

7 Q. Okay. Of her personally?

8 A. Yes.

9 Q. Okay. Now in that period of time that she's been
10 working for you, did she ever do formal work?

11 A. Not for me directly, but she did for our agency and
12 other agencies for the net teams.

13 Q. Now how do you typically get in touch with her?

14 A. By phone.

15 Q. Okay. And how many calls do you typically receive
16 from her?

17 A. It varies. Sometimes she'll call -- in this
18 particular case, probably ten or twenty times in this
19 case, but that's -- you know, it's not every case has
20 that many phone calls. It just varies. It just depends
21 on what's going on and what's, you know --

22 Q. Now I want to talk about her previous work a
23 little bit. Prior to this case with Mr. Pradubsri,
24 could you tell us about some of the instances where
25 you've utilized this informant and you found her to be

1 reliable?

2 A. Yes, sir, I have some cases noted. One particular
3 case was -- this was back in '06, '07 where she advised
4 me of a Midland's Most Wanted, an individual that was
5 wanted for trafficking heroin, and also there was a
6 co-defendant that was supposed to be with him. She
7 advised me that the defendant would be in the company
8 of a co-defendant and also identified that individual,
9 advised specific areas where they would be selling and
10 moving at that time, which at that time was the Bush
11 River/I-20 area. She advised detailed identifiers on
12 those individuals, they would be in a specific vehicle.
13 At that time, it was a 2006 four-door Scion. I started
14 working on that case. Subsequently, we did locate the
15 individuals and effected arrests on both of them and
16 were also able to make felony drug charges, as well as
17 clear up the wanted status.

18 Q. Now did any of the information that she provided on
19 that particular case turn out to be false?

20 A. No.

21 Q. Did any of it turn out to be unreliable to you?

22 A. No.

23 Q. Could you tell us about any other cases?

24 A. There was a case at Stoney Creek Apartments off of
25 Berryhill Road where she advised of multiple subjects

1 that were dealing in the apartment complex. She had
2 very detailed and specific intelligence indicating
3 where they resided, what they were dealing, specific
4 information such as they were selling near the community
5 mailbox in that area, the buyers' vehicles, the -- they
6 had surveillance cameras set up on their apartment,
7 which was all confirmed. All of this information was
8 confirmed and I relayed that particular case because it
9 needed more detail work, more undercover work than I
10 could put on it, so I relayed that to narcotics, which
11 did result in several arrests.

12 Q. And, once again, did any of that information that
13 she provided you turn out to be unreliable?

14 A. It was all very reliable, very accurate.

15 Q. Any other cases that you wish to note for the Court?

16 A. There's been a lot of cases of wanted individuals,
17 especially more special like Midlands Most Wanted-type
18 individuals. The Executive Inn was a location where
19 I've gotten several different people. In that case,
20 let's see, those two different Midland's Most Wanted
21 subjects based on intelligence received from the
22 informant, very specific about the room, the dates and
23 times they would be there, all of the identifiers, you
24 know, everything just matched up perfectly in that case,
25 and that was two at just the Executive Inn alone.

1 Then we had some cases at the Motel 6 off of St.
2 Andrews Road, wanted subjects. The same thing that was
3 there, reliable information was received, everything
4 was, again, corroborated and it was all very detailed
5 and we were able to make those arrests. And, finally,
6 we had one at the Red Roof Inn that we'd been looking
7 for for quite some time. I located a wanted subject
8 there.

9 **MR. PHILLIPS:** Your Honor, if he could answer the
10 question without just reading off the sheet of paper,
11 I'd appreciate it.

12 **THE WITNESS:** This is just notes. These are all
13 old, very old cases, so.

14 **MR. BELL:** I'm sorry, the question, Your Honor, was
15 if there were any other cases of note for Your Honor to
16 view and he is citing those cases.

17 **THE COURT:** All right. I overrule the objection.

18 BY MR. BELL:

19 Q. If you'd continue, sir.

20 A. This is a case where a gentleman was wanted on seven
21 felony warrants out of West Columbia. We'd been looking
22 for him for quite some time and I received very reliable
23 information again; the vehicle he was in, the time he
24 would be at the Red Roof Inn, another individual that
25 was actually driving this subject there, and we effected

1 an arrest, made more drug charges. There were drugs
2 there at that time as well. Very reliable, very -- as
3 always.

4 Q. Now ultimately how long have you had a relationship
5 with this particular person?

6 A. Probably I think about -- close to about two years
7 before this case in 2008.

8 Q. So we're talking potentially between six and
9 eight years you've had a relationship with this person?

10 A. Something like that, yes, sir.

11 Q. Okay. At that time did you know how to -- could
12 you get in contact with her?

13 A. She usually would contact me. I have been able
14 to get in touch with her. Phone numbers change quite
15 frequently, but normally she'll just call me and say,
16 you know, I've got some information if you want to look
17 into it.

18 Q. But you did have -- did you have her confirmed
19 identity?

20 A. Oh, yes, sir.

21 Q. And was she aware that if you found out any
22 information that you gave -- or that she gave to you
23 was false or inaccurate you could essentially charge
24 her for that?

25 A. Absolutely.

1 Q. Okay. And in that period of six to eight years,
2 did she ever give you information that you found to be
3 outright false or --

4 A. Never.

5 Q. Now as it pertains to this case, did you receive
6 calls from this informant related to Mr. Pradubsri?

7 A. I did.

8 Q. Okay. How many calls?

9 A. Some -- ten to twenty. I mean, somewhere between
10 there. It was a lot of phone calls.

11 Q. And over what period of time?

12 A. I think this whole thing went almost three months.
13 I think it was like two to three months is when it all
14 started and we were trying to locate the vehicle,
15 located the subject.

16 Q. Do you know whether or not this individual had a
17 relationship with the Defendant?

18 A. Yes.

19 Q. Did you have any personal knowledge that she had a
20 relationship with the Defendant?

21 A. Yes.

22 Q. Now what kind of information was she providing to
23 you in these ten to twenty phone calls?

24 A. Who they were, their identifiers, you know,
25 everything. The vehicle they were driving, very

1 specifics about the vehicle. It was a 2001 Chevy Monte
2 Carlo, silver in color, with very specifics, like a dent
3 on the right front quarter panel. The areas that they
4 were travelling, which in this case -- and where they
5 were selling, which was mostly to hotels and motels in
6 the area. They were moving up and down Bush River down
7 to St. Andrews and then back into the Irmo area.

8 Q. Okay. Now you said "they" a couple of times. Who
9 are you referring to?

10 A. The co-defendant, Melisa Martin, was part of that.

11 Q. Now did this individual that you were receiving
12 phone calls from, did they provide the names to you of
13 these individuals?

14 A. Yes.

15 Q. And what were those names?

16 A. Melisa Martin and Jo Pradubsri, referred to as --
17 JoJo and Magic is how they were referred to by the
18 informant.

19 Q. Okay. Now you mentioned sort of the roads they
20 would typically be found on. Did any other working
21 patterns come out of these conversations with this
22 informant?

23 A. As in -- well, they lived down in the Irmo area.
24 They told me that they lived down off of Lord Howe Road
25 in the new Friarsgate subdivision, which was basically

1 right at the end of this path, and that they were
2 purchasing somewhere probably around 300 grams a week
3 and selling it on the street. I have no idea where it
4 was being purchased from, but this was the avenue of
5 sale was what I was being advised.

6 Q. Okay. Did this informant ever indicate how they
7 thought the overall operation worked, the trafficking
8 operation?

9 A. Yes. They were buying cocaine, they were cooking
10 the cocaine at home and they were selling it out and
11 about on the streets.

12 Q. Okay. Now in receiving this information in the
13 month leading up to this arrest, did you begin looking
14 for this vehicle that you mentioned earlier?

15 A. I did. I had notified my units that work with and
16 for me and we were basically BOLO'ing or looking --
17 being on the lookout for that vehicle. I also notified
18 the Irmo Police Department. I work pretty closely with
19 them, I have for many years. Specifically, Sergeant
20 Bobby Dale in this case was working with me, I believe,
21 and Sergeant Don Perry, but Sergeant Dale did the most
22 work with me on this case.

23 Q. Now what did this individual tell you that you would
24 likely find should you pull that vehicle over?

25 A. Crack cocaine and weapons.

1 Q. Okay. Did she give you any parameters as to when
2 that would be more likely to occur?

3 A. In the evenings, moving around at night, that kind
4 of thing.

5 Q. Did it matter who was driving or who was the
6 passenger?

7 A. Yes, she would say that they -- if they were
8 dealing, usually that Jo would be driving and Melisa
9 would be in the passenger seat.

10 Q. So what did that indicate to you as to when you were
11 more likely to find crack cocaine in the vehicle?

12 A. What does it --

13 Q. If you were to see either one of those individuals
14 driving, which one would you believe would have crack
15 cocaine in the vehicle at the time?

16 A. Who would have crack cocaine?

17 Q. That's correct.

18 A. It would be Jo.

19 Q. Now did they tell you any other items to be on the
20 look out for with that vehicle?

21 A. Yes, the weapons.

22 Q. Okay. What weapons were those?

23 A. A black 9mm Hi-Point pistol and a small silver --
24 it was a Bauer .25 cal is what it turned out to be, but
25 it was a silver -- small silver semi-auto and a larger

1 black semi-auto pistol. The black pistol would be Jo's
2 pistol, the smaller silver pistol would be Melisa
3 Martin's pistol.

4 Q. And that information was given to you by who?

5 A. By the informant.

6 Q. Okay. Did you do any independent investigation
7 aside from what you received from this individual as to
8 whether or not Mr. Pradubsri or Ms. Martin had criminal
9 histories?

10 A. Yes, I knew -- I knew Melisa Martin. I knew him
11 briefly. I knew her a little more extensively from the
12 prostitution and drugs and on the street, so I knew who
13 they were and had dealt with them previously. So I
14 knew -- yeah, I knew a little bit about it and I did my
15 homework as far as in-house running stuff and that type
16 of thing.

17 Q. Okay. And per your review of Mr. Pradubsri criminal
18 history, did you determine whether or not he was a
19 felon?

20 A. Yes.

21 Q. And should he have a firearm?

22 A. No.

23 Q. Okay. Now based on all of these calls that you
24 received and your own independent investigation, how
25 confident were you that if you were to find this

1 particular vehicle with Mr. Pradubsri driving that you
2 would also find crack cocaine and the gun?

3 A. Very, very confident.

4 Q. Okay. Now I'm gonna skim through this part with
5 you, Sergeant, but did you ultimately locate this 2001
6 silver Monte Carlo?

7 A. I did.

8 Q. Did it, indeed, have the markings on it that the
9 informant indicated it would have?

10 A. It did.

11 Q. And, once again, what was that marking?

12 A. There was a dent on the front right quarter panel
13 and then, of course, the vehicle itself being a silver
14 2001 Chevy Monte Carlo.

15 Q. And did you, yourself, visually confirm that?

16 A. Yes.

17 Q. Now who was driving the vehicle that night?

18 A. Jo.

19 Q. And who else was in the vehicle?

20 A. Melisa Martin.

21 Q. Okay. Did you ultimately pull this vehicle over
22 based on all this information?

23 A. Yes.

24 Q. Okay. And in pulling that vehicle over, what did
25 you first find approaching it?

1 A. The black semi auto 9mm Hi-Point, which the butt of
2 the weapon or the handle of the weapon was visible to me
3 as I approached.

4 Q. Who was it near?

5 A. To the right leg of Jo Pradubsri.

6 Q. Okay. And is that the same kind of firearm that was
7 indicated by the informant he would have?

8 A. Yes, sir, it was.

9 Q. Okay. What else did you find in the vehicle?

10 A. We found the other pistol on the other side of the
11 vehicle once we got them out of the vehicle.

12 Q. Who was that on?

13 A. Melisa Martin, as indicated by the informant. And
14 then we also located crack cocaine.

15 Q. Okay. Do you remember roughly how much?

16 A. As advised earlier, 75 grams. I thought it was
17 a little bit more than that, but somewhere around
18 75 grams.

19 Q. And is that ultimately -- does all of what you found
20 in that vehicle match up with what this informant told
21 you you would find in this vehicle?

22 A. Yes, sir.

23 Q. Okay. And does that reliability fall in line with
24 other cases of reliability you've had with this
25 informant?

1 A. Yes, sir, it does.

2 MR. BELL: Okay. Please answer any questions the
3 defense may have.

4 THE WITNESS: Yes, sir.

5 THE COURT: For the defense.

6 CROSS-EXAMINATION

7 BY MR. PHILLIPS:

8 Q. Good morning, Sergeant Finch.

9 A. Good morning, sir.

10 Q. And you didn't have a formal agreement with this
11 informant, correct?

12 A. No, she was not set up as a formal confidential
13 informant, no, sir.

14 Q. So the decision for her to remain confidential, is
15 that yours, the Solicitor's Office?

16 A. There was no -- it was just based off of we've
17 done this many times and it was just a -- obtain the
18 information and move forward with the information I had.

19 Q. Okay. So as far as the refusal to disclose her
20 identity today, are you making that decision to keep her
21 confidential, the Solicitor's Office?

22 A. I believe it's in cooperation and for her safety.

23 Q. Okay. And with her -- cooperation and safety. All
24 right. Now you said she had a personal relationship
25 with the Defendant and co-defendant. What exactly was

1 that personal relationship?

2 A. She knows them from the street. She knows them from
3 being out there on the street with them.

4 Q. She's involved with them, illegal activity?

5 A. Most likely, yes, sir.

6 Q. And this same illegal activity? You're saying in
7 the distribution of crack cocaine?

8 A. I wouldn't say she's involved in distribution.

9 Q. Now in this case she only provided phone calls to
10 you, right?

11 A. Correct.

12 Q. So you never saw her interactions with them?

13 A. Prior to this case and other -- you know, other
14 cases and other times on the street. I've been working
15 the streets out there for a long time.

16 Q. Okay. So you've seen them together and you said
17 you busted her for prostitution and drugs?

18 A. Correct.

19 Q. With that, based on your knowledge, was she involved
20 in the distribution or trafficking of crack cocaine with
21 these two individuals?

22 A. I wouldn't say she was involved in the sales with
23 these two individuals if that's what you're asking.

24 Q. Okay. And your sole basis of the knowledge you're
25 provided is based on her phone calls?

1 A. In this -- yes, in this particular case, yes.

2 Q. Because she only called you, correct?

3 A. Correct. In this particular case, I don't recall
4 having face-to-face contact. We may have, it's been a
5 long time, but as I recall it was a lot of phone calls.

6 Q. Right. I think you said in the prior two trials
7 and today ten to twenty phone calls, right?

8 A. Somewhere in -- yeah. I don't know the exact
9 amount.

10 Q. Over about a month or two period?

11 A. Yeah. Probably closer to three months actually.

12 Q. Based on these phone calls, did you ever go and
13 corroborate the information provided, like try to find
14 these people trafficking or distributing?

15 A. Well, again, I knew who they were anyway. This
16 wasn't like I was coming in just blind. I knew who they
17 were to begin with.

18 Q. Right.

19 A. It was a matter of locating them at the right time
20 and putting those pieces together that she was giving
21 me, which we did in this case.

22 Q. So she was calling and telling you they were
23 trafficking cocaine through St. Andrews Road?

24 A. Correct.

25 Q. And during these ten or twenty calls that she -- you

1 were unable to find them?

2 A. Well, I'm a road supervisor and I'm call-driven, so
3 we -- I'm not -- I'm not a specific -- like a narcotics
4 unit or a net team unit, so I'm call-driven. So a lot
5 of times when I received these calls, I would not be
6 able to immediately react to it, nor would my unit, so
7 there were times where we were kind of behind the curve
8 and unable to catch up to the vehicle or find the
9 vehicle at the time she was calling.

10 Q. And you would put BOLO's out?

11 A. Correct. And when I would get them, I would notify
12 like Irmo Police Department and we would try to work
13 together.

14 Q. And out of those ten to twenty times prior to this,
15 you were never successful in finding the people?

16 A. Correct. Correct. The ones where she was calling
17 specifically, they're moving, they're out and about,
18 they're, you know --

19 Q. You had ten to twenty failures, right?

20 A. No, I wouldn't say ten to twenty. Some of those
21 phone calls were more informational, not -- you know
22 what I'm saying, just filling me in on information.
23 Not all of the calls were -- we were specifically
24 responding. I don't know the exact number.

25 Q. So she provided you information you weren't looking

1 for among those times?

2 A. We were always looking, but --

3 Q. Okay.

4 A. -- what I'm saying is that we were taking calls,
5 we were doing multiple other things.

6 Q. So she calls and says they're moving drugs through
7 this area --

8 A. Correct.

9 Q. -- say ten to twenty times and there were ten to
10 twenty times where you never found them?

11 A. Not ten to twenty times. I'm saying somewhere
12 between ten to twenty times. I'm just saying that. I
13 don't know the specific number, but not all those phone
14 calls were telling me they're moving right now. Some
15 of those phone calls were just informative information.

16 Q. What additional information?

17 A. Just what we've already -- what we've already
18 discussed.

19 Q. So she would call you and tell you the same thing
20 again?

21 A. Right when she initially called to give me the
22 information, that call wasn't -- we weren't responding
23 to it at that time. It was gathering the information.

24 Q. Right. So the first phone call she gives you all
25 the specific information and she calls you back and

1 tells you the same things again?

2 A. She tells me -- she just would -- yeah, she would
3 fill me in on they're moving or they're doing whatever
4 and, yeah, that kind of thing.

5 Q. Okay. You would --

6 A. And some we responded to, some we couldn't.

7 Q. Right. And every time you would do a BOLO when she
8 would say there was movement?

9 A. I would put it out to my units, yes. And, if
10 applicable, I'd put it out to Irmo.

11 Q. All right. So she had this personal relationship
12 between the Defendant and co-defendant and she's
13 involved in the prostitution and drug use?

14 A. Yeah. I don't know about how close of a personal
15 relationship it was, but I'm saying that they knew each
16 other on the street.

17 Q. All right. And you -- how did you know they knew
18 each other?

19 A. From prior cases, from seeing, from actual --

20 Q. Drug cases?

21 A. Correct, yeah. Prostitution and drug cases.

22 Q. Okay. They were involved in prostitution and --

23 A. All of them. All three of them.

24 **THE COURT REPORTER:** Okay.

25 **MR. PHILLIPS:** I'm sorry.

1 **THE COURT REPORTER:** One at a time.

2 **THE WITNESS:** I'm sorry. All -- all three of them
3 were involved in drugs and prostitution.

4 **THE COURT:** There you go, Madam Court Reporter.
5 Control the -- you both were talking at the same time.

6 **THE WITNESS:** Sorry, Your Honor.

7 **MR. PHILLIPS:** I'm sorry.

8 BY MR. PHILLIPS:

9 Q. So they were involved in prostitution and drug
10 cases together?

11 A. Yes, sir.

12 Q. Okay. Now these tips with the Midlands Most Wanted,
13 you said there were several of those and several felony
14 warrants. The one fellow who had seven felony warrants.
15 Now what were the names of those defendants who were
16 arrested in those cases?

17 A. I don't have them with me.

18 Q. All right. Now these were pretty big cases, right,
19 two Midlands Most Wanted, seven felony warrants, and
20 these are the cases which you base her reliability on?

21 A. There were various -- various cases, uh-huh. Yes,
22 sir.

23 Q. All right. And the dates of those?

24 A. I could get them off, but I don't have specific
25 dates, I don't have specific names.

1 Q. And you don't remember who they were?

2 A. Not off the top of my head, but I can --

3 Q. But you remember all the specifics of the arrests?

4 A. Certain specifics, yeah.

5 Q. Midlands Most Wanted, specific about the
6 information?

7 A. Right. Responded to the Motel 6 and found a wanted
8 -- Midlands Most Wanted individual matching -- perfectly
9 matching identifiers that she gave and/or vehicles that
10 she would give, things -- you know, piece it together,
11 we'd go there and find them and put them under arrest.

12 Q. These are -- some of them are high profile arrests
13 you made?

14 A. Midlands Most Wanted. It made -- it made that
15 level, so it was --

16 Q. And you have no idea --

17 A. -- high enough.

18 Q. You have no idea what those defendants' names are?

19 A. Not with me right now, no, sir, I don't.

20 Q. So there's no way for us to verify that those people
21 were arrested based on that information?

22 A. I mean, we could get that information, but I --

23 Q. So you have that information?

24 A. Of course. It's in -- I mean, it's in our system,
25 but we just -- I don't have it in front of me right this

1 second.

2 Q. And that's the information you use to base her
3 reliability?

4 A. Yes, absolutely.

5 Q. Now you said that -- I think in the prior trials,
6 I'm trying to think if you said it today, that she had
7 a prior record for crimes of dishonesty as well, right,
8 the informant?

9 A. I know she has prostitution and I know she has drug
10 charges.

11 Q. Now -- now as far as theft crimes, things that would
12 go to her credibility, did you look up those crimes as
13 well to see what would test her reliability?

14 A. I'm sorry, say that again.

15 Q. As far as her other prior record, things that would
16 show that she's not reliable, crimes of dishonesty --

17 A. I know that she was on the street. I knew that she
18 was on the street, so I knew -- I knew what she was
19 involved in.

20 Q. And she had crimes for stealing, lying?

21 A. Absolutely.

22 Q. Okay. Now what was the benefit -- what benefit was
23 she receiving by providing you with these phone calls if
24 she had no formal agreement?

25 A. No benefit. There was no -- it wasn't like she was

1 an informant getting paid for anything that she did.

2 Q. A goodhearted person who --

3 A. She just gave me information.

4 Q. Okay. So just -- there was absolutely --

5 A. She knew that if she committed a crime that I would
6 lock her up and then that's -- you know, she -- she gave
7 me this information voluntarily and willfully. On the
8 street she developed a level of trust with the folks
9 out there and, you know, after a long period of time it
10 was developed with this individual, you know, so she
11 forwards the information to me and I look into it, and
12 everything she's ever given me has been reliable.

13 Q. So you've arrested her for drugs and prostitution?

14 A. I sure have.

15 Q. And out of the goodness of her heart she's reporting
16 other people for prostitution and drugs?

17 A. She's given me information.

18 Q. All right. Now you say this woman sees Pradubsri
19 and Ms. Martin every day?

20 A. I wouldn't say that, but I would just say that
21 frequently on the street.

22 Q. Now since there was only phone calls, you never
23 personally saw -- corroborated that there were any drug
24 buys. You never had a confidential informant try to go
25 buy drugs from Ms. Martin or Mr. Pradubsri?

1 A. No. No, not on this case.

2 Q. And you never executed a search warrant on the
3 address she provided?

4 A. No..

5 Q. You went to the house --

6 A. That information actually was provided to Irmo PD.
7 I don't know what they did on that end of it. It was
8 in their jurisdiction, so we didn't -- we didn't go and
9 deal with that. I forwarded that to their narcotic
10 units.

11 Q. You drove by the house though?

12 A. I did drive by the house, yes.

13 Q. And with that there was no search warrant
14 conducted?

15 A.. No, not -- not by our agency and not to my
16 knowledge.

17 Q. There was no drug transactions through a
18 confidential informant that was -- there were no
19 attempts to do that?

20 A. There may have been through the other agency, but
21 I'm not aware of it.

22 Q. None through you? You didn't try to corroborate
23 this --

24 A. Right, none from me. No, sir.

25 Q. All right.. And she was very descriptive in who it

1 was in the car, the guns, the address, where they do it,
2 where they drive it, how they do it, cook it, motels,
3 the specific hotels. I mean, she was incredibly
4 descriptive. She gave you every bit of information
5 regarding this illegal activity is what you're saying?

6 A. That's correct.

7 Q. Okay. On the date of this incident, did you
8 receive a call from this person?

9 A. I did.

10 Q. All right. And it was the same information as
11 usual, that they're moving drugs?

12 A. That is correct.

13 Q. How long did -- how long between you receiving that
14 call and then you receiving the call from Officer Dale?

15 A. I don't -- I don't recall exactly. I really don't
16 recall. It wasn't -- I don't think it was all that
17 long, but I don't recall exactly.

18 Q. So you believe it was a short period of time?

19 A. I just don't recall. I recall Sergeant Dale
20 calling me when he physically saw the car and, you know,
21 confirmed everything at the Kroger in Irmo and I was
22 able to respond right then. It was a situation where I
23 was free, I was on it, I brought units with me, and we
24 set up on it then at that time.

25 Q. You had based your traffic stop solely on the

1 information provided by this informant?

2 A. Correct, based off of -- I had no reason not to
3 believe her. She's been very valid, very credible so
4 many other times I had no reason not to believe it.
5 Everything said about the car was right there in front
6 of me, the fact that I watched Jo come out of the
7 Kroger and get into the driver's side of that vehicle.
8 Everything -- they were in the avenue that was advised.
9 I mean, everything was there, all of the elements, and
10 so there was no reason not to stop the vehicle.

11 Q. Now there wasn't any traffic violations. This was
12 it. Just that information?

13 A. Based it off of the fact that we were -- we felt
14 quite certain that there was gonna be drugs in that
15 vehicle, there would be weapons in that vehicle, this
16 was the vehicle, this was the area. All of the elements
17 that we'd spoken of was there and so we were very
18 confident that it would be there and it was there.

19 Q. Do you still have your investigator notes in this
20 case?

21 A. I don't -- I don't think I had any investigator
22 notes as far as jotting notes down as in like a notepad
23 as I would do on a crime scene.

24 Q. You didn't have investigator notes?

25 A. I had the case in itself, whatever we had at that

1 time, what I had initiated at that time.

2 Q. Do you still have those notes?

3 A. I have the case. I don't have any notes.

4 Q. Do you remember in the previous trial back in
5 November saying that you had destroyed your investigator
6 notes?

7 A. I don't recall saying that. Maybe I did, I don't
8 know, but I don't recall having any -- any notes.

9 Q. In the prior trial the question was: Now during
10 this month and a half period when you were getting these
11 tips, you made notes about these tips and, you know,
12 leading up to the arrest and that kind of -- and you
13 said at that time yes.

14 A. Which trial was that?

15 Q. Back in November. About two months ago.

16 A. Maybe I did. I don't -- I don't recall having any
17 notes and --

18 Q. The next question was --

19 A. I think what I might have said was -- is if I had
20 notes they've probably been destroyed at this time.

21 Let me say it like this. I had a case packet that I
22 made just as we do in every case we make that goes to
23 the Solicitor's Office. That packet was since destroyed
24 and that's probably what I was referring to, but as far
25 as notes, like field notes, I don't recall having field

1 notes to begin with. So I think what I'm referring to
2 at that particular -- that's why I asked you what trial
3 it is because I think that's what I was referring to,
4 the packet. When this case came back, I looked for it
5 and couldn't find it, so I think it was -- I think it
6 had been destroyed with other case files.

7 Q. Because it was -- and it's my understanding you
8 don't have those notes and you said no, sir. Question:
9 You destroyed them? I probably did. I don't know if I
10 have them.

11 So that's -- if you had the notes, you've destroyed
12 them?

13 A. Right. And, again, because of the new case and old
14 case that had been literally sitting for four years, I
15 did not -- my entire -- all of those old cases have been
16 destroyed.

17 Q. Now the CAD report indicates that the reason you
18 stopped this vehicle was it was listed as a suspicious
19 vehicle, not based on, you know, some type of --

20 A. That's just a heading. That's a CAD heading is all
21 that is. It's a --

22 Q. There's no other heading than suspicious vehicle for
23 a traffic stop?

24 A. No. When we stop a vehicle -- oh, either or
25 traffic stop or suspicious vehicle, yeah. That's what

1 the dispatcher put in, not what I put in.

2 Q. All right. And there's no dash cam video recording
3 of this traffic stop or any of the incident?

4 A. No, sir.

5 Q. One moment.

6 A. Yes, sir.

7 Q. Now you said that you saw movement in the car as
8 you were walking up?

9 A. Yes, sir.

10 Q. Now I know -- you said that those movements just
11 appeared as two people talking to each other, correct?

12 A. I don't recall exactly what I said, but there were
13 furtive movements in the vehicle. We were on high
14 alert. We know that these individuals carry pistols
15 and drugs. We were on high alert. I was watching very
16 intently on that vehicle as was, at that time, Master
17 Deputy Blake. We watched the movements. There was a
18 lot of movements going on, so we were on very, very high
19 alert.

20 Q. And you based that information solely on what the
21 informant told you that they had?

22 A. At this point I'm basing the furtive movement on
23 what I'm visually watching in the car.

24 Q. I'm saying the pis -- that they had pistols?

25 A. Correct.

1 Q. Okay.

2 A. Yeah, my belief was that there was a guy sitting
3 there with a gun next to him and it was confirmed.

4 Q. And you didn't see what went on inside that car?

5 A. I could see movements, active movements, going on
6 as we were approaching, which is, you know --

7 Q. And you'd previously referred to those movements as
8 it appeared as two people talking to one another?

9 A. Yeah, and shuffling around in the vehicle and making
10 furtive movements. I believe I referred to that as
11 well.

12 Q. But you have no idea what went on in that car. You
13 can't speculate.

14 A. At that point?

15 Q. Right.

16 A. No, I just know that I have two known -- to me,
17 known criminal individuals, that are known to carry
18 firearms, that are known to deal drugs, that are known
19 to deal in prostitution, in the car making furtive
20 movements in front of me, so I was on pretty high
21 alert.

22 Q. Now I know you said you saw the black pistol
23 between the black interior on the driver's side,
24 correct, once you got out?

25 A. Correct.

1 Q. At what point exactly do you see that pistol?

2 A. As soon as I get close enough to be able to see it.
3 As soon as I was to the driver's door and could look
4 down in that vehicle, I saw it.

5 Q. Now the door's open at this point?

6 A. No.

7 Q. So --

8 **THE COURT:** At this point you're still on --

9 A. As I recall --

10 **THE COURT:** Just a moment. Are you still on the
11 same issue or are you into the -- if his testimony
12 should be believed at trial? Where are we now?

13 **MR. PHILLIPS:** The Solicitor went into the traffic
14 stop and I figured in the interest of economy I could
15 ask the traffic stop questions and we'd have that
16 testimony and when we start to make our legal arguments
17 regarding that later motion, we would already have the
18 testimony, Your Honor, so he doesn't have to keep going
19 back and forth, but if Your Honor wishes, we can -- we
20 can stop now and deal with the first issue and put him
21 back up.

22 **THE COURT:** I think we -- let's deal with whatever
23 he needs to talk about now.

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

25 BY MR. PHILLIPS:

1 Q. So at this point you said you see the gun before
2 the door's open?

3 A. Yeah, I think the window was down anyway and so I
4 -- yeah, and after the door was open.

5 Q. All right. Now when you had Deputy O'Dell put the
6 gun back in the car, he put the gun in the passenger
7 seat, didn't he?

8 A. He did. He put it -- he put it in between the
9 passenger seat on the wrong side, yes, sir.

10 Q. And you told him to put it on the driver's side?

11 A. I told him to put it back -- yes, sir. I told him
12 to put it -- no, I didn't tell him to put it on the
13 driver's side. I said put it back in there, we need to
14 take pictures of this for reference where it was.

15 **MR. BELL:** Objection, Your Honor. I don't
16 understands how that links to reasonable suspicion to
17 stop the vehicle.

18 **MR. PHILLIPS:** Well, it will also go to a further
19 question of probable cause for arrest whether he could
20 see gun because it's an exigent circumstance after that
21 and so that would be another motion, Your Honor.

22 **THE COURT:** All right.

23 **MR. PHILLIPS:** Thank you, Your Honor.

24 **THE WITNESS:** Do you want me to finish?

25 **MR. PHILLIPS:** Yes, please.

1 **THE WITNESS:** What we do is we -- just to make the
2 whole picture clear, we take the gun because it's
3 loaded, it's dangerous, we unload it, we make it safe.
4 We secure it and make it safe. That's what we did in
5 this case and so when he went to put it back in there,
6 he made -- he just made the mistake of putting it on the
7 wrong side. He just misunderstood which side to put it
8 on.

9 Q. You told him to put it back where we got it?

10 A. I believe that's what I said. I don't remember my
11 exact words, but I just said put it back, we need to
12 make -- we need to take pictures for reference. I'm
13 dealing with further stuff, he was helping with that,
14 and it got put on the wrong side, but it's --

15 Q. And you have no idea why he thought the passenger
16 side is where the gun was?

17 A. No.

18 Q. And you wouldn't dispute that the call you received
19 from the informant was maybe a few hours between when
20 you received it and when you got the call from Officer
21 Dale?

22 A. I believe that is correct. I believe that we
23 received the call, I couldn't initially respond, if I
24 remember correctly, and then later I received a call
25 from Sergeant Dale who had located the vehicle. Like,

1 again, it's been so long, but I believe that's how that
2 -- how that went down is I received the call and then
3 later, and I don't know exactly how much time, but it
4 was a little while, and then Sergeant Dale called and
5 then we did locate the vehicle.

6 **MR. PHILLIPS:** No further questions, Your Honor.

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

8 REDIRECT EXAMINATION

9 BY MR. BELL:

10 Q. Sergeant, I want to clarify a few things. You
11 mentioned that it's your understanding that this
12 informant had been linked to illegal activity. Was it
13 illegal activity in this particular case?

14 A. No, sir.

15 Q. Do you have any information to point you to the
16 fact that she was involved with this crack cocaine in
17 this case?

18 A. No, sir.

19 Q. Okay. Now, Sergeant, you were given several -- in
20 these ten to twenty calls from this informant, several
21 times she told you where these individuals were, but you
22 didn't locate them. Are you always able to locate
23 people when you receive tips?

24 A. No.

25 Q. Does that mean that that tip is unreliable to you?

1 A. No, it doesn't.

2 Q. What does that indicate?

3 A. It could be a timing issue, it could be -- there's
4 a lot of different variables there, but usually it's
5 timing, especially from call-driven units, road units.

6 Q. Do you have any problem admitting that this
7 informant had a record?

8 A. No, she has a record.

9 Q. Do CI's or informants or tipsters, do they typically
10 have records?

11 A. I don't know any that do not.

12 Q. Does that make them more or less valuable to you?

13 A. I think it makes them more valuable.

14 Q. And why is that?

15 A. Because they're out there. They know what's going
16 on better than we do.

17 Q. Okay. Now a lot was made over you destroying some
18 notes. Do you remember when this case was originally
19 tried?

20 A. In 2010, I believe. I don't know the exact date.

21 Q. Okay. And when you mentioned that you destroyed
22 those notes, do you remember when that trial was?

23 A. The second, the --

24 Q. That's correct. When was the second trial?

25 A. The November trial of 2014.

1 Q. Okay. Now these notes that were destroyed, were
2 they destroyed after the first trial?

3 A. Correct, many years later.

4 Q. And why did you destroy them at that point?

5 A. They're just -- they were backing up. I had
6 hundreds and hundreds of files that were very old cases.

7 Q. Was that case done with?

8 A. The case was disposed of and we were done with it.

9 Q. As far as you understood?

10 A. Yes, sir.

11 Q. Now one last thing. There was some talk about
12 movement and you not speculating. In your -- how long
13 have you been with law enforcement in all?

14 A. Coming up on twenty-two years.

15 Q. Okay. And when you see an individual doing, as I
16 think as you called it, furtive movements or moving
17 around as you approached their vehicle, in this
18 particular case did you see the driver lean toward the
19 passenger side at any point?

20 A. I did.

21 Q. Okay.

22 A. I did. I saw both moving around in that fashion,
23 so it was a lot of movement going on in there.

24 Q. In your extensive time with law enforcement, what
25 does that typically indicate to you?

1 A. Something's being passed off or something's --
2 something's going on in that vehicle that we need to be
3 very careful to watch.

4 **MR. BELL:** No further questions, Your Honor.

5 **MR. PHILLIPS:** And, Your Honor, I just would note
6 I do have a motion later that would prevent that
7 testimony; that that would be speculative testimony
8 that would be inadmissible at trial, and we'll deal
9 with that motion later.

10 **THE COURT:** Anything else from this witness?

11 **MR. BELL:** Nothing from the State, Your Honor.

12 **THE COURT:** All right.

13 **THE WITNESS:** Thank you, Your Honor.

14 (Witness excused.)

15 **THE COURT:** Any other witnesses?

16 **MR. BELL:** Not on this issue, Your Honor.

17 **MR. PHILLIPS:** No other witnesses, Your Honor.

18 **THE COURT:** Any other argument?

19 **MR. BELL:** Your Honor, I would assume at this time
20 defense will make their motion regarding the reasonable
21 suspicion of such vehicle.

22 **MR. PHILLIPS:** Well, first we still need to address
23 to reveal of the identity, Your Honor.

24 **THE COURT:** All right. Do you want me to tell you
25 whether or not they have to reveal the identity?

1 **MR. PHILLIPS:** That's correct, Your Honor.

2 **THE COURT:** All right. I rule that the State does
3 not have to reveal the identity of the informant. The
4 informant was not an active participant in the crime,
5 nor a material witness that's required on the issue of
6 guilt or innocence, that she -- it's hard to put a label
7 on who she was, but if I were to put a label on her she
8 would be a tipster as argued by the State. Usually when
9 we have these cases and I do a little research, they
10 tend to always take me back home to Williamsburg County,
11 and this one takes me back to State v. Hayward where the
12 question was whether or not the -- you know, Rodney
13 Roberts working with SLED and doing drug buys and these
14 two girls identified Michael Hayward as being the person
15 they can buy drugs from and they bought the drugs from
16 Michael Hayward and -- based on the girls telling them
17 that was Michael Hayward and at the trial before Judge
18 Luke Brown, who died a few years ago, they wanted to
19 require disclosure of the two girls' identity and Judge
20 Brown denied it and the Court of Appeals in reviewing
21 that case says that informant's identity is only
22 discoverable if the informant is an active participant
23 in the crime or a material witness on the issue of guilt
24 or innocence as opposed to a mere tipster. Even if the
25 person is a material witness, disclosure may not be

1 required depending on the first -- what's warranted by
2 the facts and circumstances, that the court must balance
3 law enforcement's interest in gathering information
4 with the defendant's right to prepare his defense. This
5 information is in balancing whether or not the identity
6 of this lady, or whoever it is, the informant, whether
7 disclosure would prevent the Defendant from having a
8 fair trial. I don't see how it would prevent it in any
9 way and I'll deny the motion to disclose the identity.

10 **MR. PHILLIPS:** Thank you, Your Honor. We just
11 stand firm on our prior argument and the written motion
12 that's marked Court's Exhibit Number 3.

13 **THE COURT:** Hopefully you won't make the argument
14 again.

15 **MR. PHILLIPS:** No, absolutely. We're moving on.

16 **THE COURT:** All right. What's next?

17 **MR. PHILLIPS:** Because of the testimony we can now
18 -- we'll go into the traffic stop, Your Honor.

19 **THE COURT:** All right.

20 **MR. PHILLIPS:** This written motion is marked as
21 Court's Exhibit Number 4, and this is the Defendant's
22 motion to suppress evidence seized during the traffic
23 stop under the Fourth and Fourteenth amendments of the
24 United States Constitution and Article 1, Section 10 of
25 the South Carolina Constitution. Specifically, the

1 officers did not have reasonable suspicion that criminal
2 activity had occurred or was occurring to justify the
3 traffic stop. Clearly under the reasonable suspicion
4 standard one of the things that requires law enforcement
5 is to have reasonable suspicion that criminal activity
6 was afoot. Of course, the touchstone of the Fourth
7 Amendment is reasonableness, Your Honor. Based on the
8 letter from Solicitor Stumbo, the testimony presented
9 by Sergeant Finch, we believe that this was an
10 unreasonable seizure based on the fact that the
11 information provided by this informant was the sole
12 basis for the traffic stop. As you know, the traffic
13 stops are reviewed under the standard set forth --

14 **THE COURT:** Well, Stumbo did a good job when he
15 was over here in Lexington and tried a lot of cases
16 with them and he's moved on up to Newberry territory up
17 there and he's now the Solicitor up there, but you're
18 saddling Mr. Bell with a letter that Mr. Stumbo wrote?

19 **MR. PHILLIPS:** Unfortunately, that's the way it
20 works, Your Honor.

21 **THE COURT:** How is that? How can I base a ruling
22 -- tell me how I should base whatever ruling on a letter
23 written by Stumbo.

24 **MR. PHILLIPS:** Well, as the traffic stop -- again,
25 most of it's based off the testimony of Sergeant Finch,

1 but, again, with the letter that Stumbo wrote that goes
2 into all of the specific tips that were provided. It's
3 really all corroborated by Sergeant Finch's testimony
4 that really boils it down, Your Honor.

5 **THE COURT:** All right. We'll go on Finch then.

6 **MR. PHILLIPS:** Thank you, Your Honor. Of course,
7 traffic stops are reviewed under the standards set
8 forth in Terry v. Ohio. Again, it's a two-prong test
9 whether the police officer's action was justified at
10 the inception of the stop and whether the police
11 officer's subsequent actions were reasonably related
12 in scope and duration of the circumstances that
13 justified the stop. Now temporary detention of an
14 individual during a traffic stop by police, even if
15 only for a brief period, for a limited purpose,
16 constitutes a seizure within the meaning of the Fourth
17 Amendment, Your Honor.

18 **THE COURT:** Let me ask you this. If I conclude
19 that the person that provided the information gave --
20 or that that information was reliable based on the
21 officer's experience and the details of the information
22 the girl gave, is that sufficient for a traffic stop or
23 do I need to find something else? Do they need to be
24 violating the law like a taillight out or a bad turn or
25 a failure to yield or crossing the center line or can

1 the good information, reliable information being given
2 by the girl, is that sufficient to justify a stop if I
3 conclude that it's reliable?

4 **MR. PHILLIPS:** There is case law that states
5 that if a confidential informant provides reliable
6 information that that can justify as a stop.

7 **THE COURT:** All right.

8 **MR. PHILLIPS:** Of course, we would argue because
9 we were denied the opportunity to confront this witness
10 and to test the reliability of this witness --

11 **THE COURT:** Yeah, but that's water under the bridge
12 since I've ruled you can't know who she is.

13 **MR. PHILLIPS:** Well, we would argue that the
14 officer did not have reasonable suspicion that criminal
15 activity had occurred or was occurring.

16 **THE COURT:** That's what I'm asking you.

17 **MR. PHILLIPS:** There was no traffic violation.

18 **THE COURT:** Well, that's my question. Do they have
19 to have a traffic violation or can they do it based on
20 the reasonable information of criminal activity, i.e.,
21 drugs in the car?

22 **MR. PHILLIPS:** You're able to -- well, again, the
23 Fourth Amendment. We're looking at the facts leading
24 up to the stop and not drugs in the car.

25 **THE COURT:** I can't tell you the last time I've

1 read the Fourth Amendment, the Fifth Amendment and the
2 other amendments you're quoting. I'm just going on the
3 cases and the law as I know it to be.

4 **MR. PHILLIPS:** Right. And the case law on the
5 Fourth Amendment for traffic stops is you can't use
6 post-stop rationalizations. You can't say well, there
7 was drugs and now we've got a reasonable stop or a
8 reasonable seizure. You have to look at the facts,
9 the articulated facts, based on the totality of the
10 circumstances that bring you up to the traffic stop.
11 Everything after is not within your purview of
12 reasonable suspicion.

13 **THE COURT:** But can they base the traffic stop on
14 information provided by a reliable tipster or informant?

15 **MR. PHILLIPS:** If Your Honor found that person a
16 reliable tipster, then that is -- there is case law
17 based on that, Your Honor.

18 **THE COURT:** Well, that's the sole issue before me.

19 **MR. PHILLIPS:** Partly, yes, Your Honor.

20 **THE COURT:** Okay.

21 **MR. PHILLIPS:** Well, one, there wasn't -- we're
22 arguing that the person was not reliable, that the
23 reliability has not been set forth, that --

24 **THE COURT:** See, I usually do these motions in
25 about thirty minutes and you-all are gonna take three

1 hours, so I'm trying to narrow it down and I'm trying
2 to figure out why. Are we -- are we repeating the
3 same thing over and over? Is there something new and
4 different about this case?

5 **MR. PHILLIPS:** That based on the totality of
6 circumstances that they didn't have reasonable
7 suspicion, our argument would be, say, the two cases
8 on point where it says that the reliable information
9 provided, that those cases are distinct from the facts
10 presented in this case. Two of the kind of -- the main
11 cases, I believe, even cited by the Solicitors in the
12 previous trials was Rogers and Willard. Unlike in
13 Rogers, that's 368 at 532, Your Honor, says that at the
14 time of the investigatory stop the officers knew the
15 crime had, in fact, already occurred.

16 **THE COURT:** That's what you-all handed me in this
17 transcript. Page 63: Your Honor, I believe the State
18 v. Rogers case is right on point.. It wasn't a drug
19 case in particular in that situation, but what you have
20 in State v. Rogers, I believe Judge Newman heard that
21 case over in Williamsburg County, is there -- is an
22 armed robbery that had occurred.

23 **MR. PHILLIPS:** And our argument is that the facts
24 are distinguishable. In that case --

25 **THE COURT:** Well, I mean, I'm just -- all these

1 things always take me back home. What is State v.
2 Rogers? What is that about? I don't remember it.

3 **MR. PHILLIPS:** Essentially, I think they had
4 information from an informant that there was going to
5 be a bank robbery or an armed robbery and that they
6 gave the specific information, the car and all this
7 stuff, the bank robbery occurs, they know the crime's
8 occurred, they know the same car that was identified
9 when the crime had occurred, then later they see the
10 car. The distinguishing factor here is the fact that
11 the crime hadn't occurred and there hadn't been any
12 corroborated information as you heard from --

13 **THE COURT:** Who won in State v. Rogers, the State
14 or the defense?

15 **MR. PHILLIPS:** The State because you had this
16 corroborated information. You had -- the officers knew
17 that a crime had, in fact, already occurred and had
18 been independently reported. That's quoted from the
19 case, Your Honor.

20 **THE COURT:** Okay.

21 **MR. PHILLIPS:** And in this case, there hadn't been
22 any corroboration. Sergeant Finch had not tried to
23 conduct any controlled buys, there wasn't a search
24 warrant of the home.

25 **THE COURT:** Goodness. Do you need all of that?

1 **MR. PHILLIPS:** When somebody's not reliable and
2 that's certainly the defense's position.

3 **THE COURT:** Well, I know it's -- do you have that
4 high standard in simply stopping the car? He said he
5 stopped the car and he could see a gun in plain view.
6 I mean, do you take the Constitution -- is the test that
7 high, that the police have got all this information and
8 they can't stop a car and if they see the man with a gun
9 in his pockets -- hanging out of his pockets, they can't
10 do anything?

11 **MR. PHILLIPS:** Well, Your Honor, in State v.
12 Woodruff, our Supreme Court quoted a United States
13 Supreme Court case and said that the United States
14 Supreme Court has always been sensitive to the danger
15 that officers will enlarge a specific authorization,
16 furnished by a warrant or an exigency, him seeing the
17 gun would be the exigency, into an equivalent of a
18 general warrant to rummage and seize at will. And,
19 again, we're arguing, first, that there wasn't
20 reasonable suspicion to conduct a traffic stop and,
21 two, we'll get into the exigency, Your Honor. I mean,
22 as far as the test, Your Honor, you were asking
23 specifically, of course, just to justify a brief stop
24 or detention the police officer much have reasonable
25 suspicion that the person was involved in criminal

1 activity.

2 **THE COURT:** Well, do you want me to rule on that
3 part?

4 **MR. PHILLIPS:** Absolutely.

5 **THE COURT:** Well, I think he had reliable
6 information based on information provided in the past
7 by the -- by the informant and I think he had a
8 reasonable basis to stop the car. Once he stopped the
9 car, everything panned out, including a basis to arrest
10 Mr. Pradubsri for having the gun initially and then all
11 the drugs being in there, if that's what he had. It
12 seems to me the question in this case is whose drugs
13 was it? Was it hers, was it his, was it theirs?

14 **MR. PHILLIPS:** And that's correct, Your Honor, and
15 we are sorting out the legal issues prior to trial.

16 **THE COURT:** I side with the State once again on the
17 reasonableness of the stop and reasonable basis to stop
18 the car.

19 **MR. PHILLIPS:** Thank you, Your Honor.

20 **MR. BELL:** Thank you, Judge.

21 **THE COURT:** All right.

22 **MR. PHILLIPS:** Our next motion, Your Honor, is the
23 written motion. It's Court's Exhibit Number 3. This
24 is the motion to suppress testimony in references to
25 the informant's tips.

1 **THE COURT:** Say it one more time.

2 **MR. PHILLIPS:** It's Court's Exhibit Number 3, Your
3 Honor. That's my written motion I provided to the
4 Court. It's Defendant's motion to suppress testimony
5 and references to the informant's tips as inadmissible
6 hearsay under the Sixth and Fourteenth amendments to
7 the United State's Constitution.

8 **THE COURT:** You mean that after stopping him he
9 can't tell the jury that he had a tip and that's why he
10 stopped him?

11 **MR. PHILLIPS:** Absolutely.

12 **THE COURT:** Okay.

13 **MR. PHILLIPS:** And Article 1, Section 14 of the
14 South Carolina Constitution, obviously under Rules
15 801, 802 of the South Carolina Rules of Evidence,
16 specifically allowing the testimony of references to
17 this undisclosed informant's tip that specifically
18 identifies and implicates the Defendant, any illegal
19 activity is in violation of his right to confront
20 witnesses against him. Specifically in this case,
21 Your Honor --

22 **THE COURT:** Do you have any law that agrees with
23 you on this or are you just general constitutional --

24 **MR. PHILLIPS:** I do. I have case law, Your Honor.

25 **THE COURT:** All right. Give me the details.

1 **MR. PHILLIPS:** Yes, Your Honor. State v. Price.
2 That's 368 S.C. 494. This is all in my written
3 motion -- written memorandum in support of the motion.
4 Our Supreme Court held that an investigator who based
5 his testimony that the defendant was an officer in a
6 gang solely from informants was hearsay and was not
7 admissible under any exception to the rule.

8 **THE COURT:** That he was in gang?

9 **MR. PHILLIPS:** Exactly. In that case gang was --
10 I believe was a tangential issue that they had.

11 **THE COURT:** We don't ever let anyone say this
12 person was in a gang.

13 **MR. PHILLIPS:** Again, the issue was when they're
14 basing the information, and I italicize the emphasis to
15 add, would be solely from informants.

16 **THE COURT:** What page are you on in this motion?
17 I'm trying to -- see, you're loading me up with a --
18 with a ten-page motion to make one point. This is
19 number what, Court's 3?

20 **MR. PHILLIPS:** Yes, it's Court's Exhibit Number 3,
21 Your Honor.

22 **THE COURT:** What page are you talking about?

23 **MR. PHILLIPS:** On Page 2, under Subsection 2 of
24 hearsay, I quote -- in the second paragraph, I discuss
25 State v. Price.

1 **THE COURT:** All right. I see State v. Price in
2 something they call a memorandum in support of
3 Defendant's motion to suppress testimony in references
4 to informant tips.

5 **MR. PHILLIPS:** Yes, sir.

6 **THE COURT:** All right. Let me hear the State.
7 Does the State oppose the motion or --

8 **MR. BELL:** In part, Your Honor. We certainly have
9 no problem saying that we won't get into the content of
10 any tip. I do believe that it falls outside of hearsay.
11 It's sort of an effect on a listener explaining how the
12 police went about their investigation saying they
13 received a tip. After investigating, they found that
14 this vehicle was potentially important.

15 **THE COURT:** And they have to explain why they
16 stopped the car or why they were there.

17 **MR. BELL:** Yes, sir. That's certainly our belief.

18 **THE COURT:** That they should be able to say what?

19 **MR. BELL:** I believe they should be able to say
20 that they found this 2001 Monte Carlo was a vehicle of
21 importance and that they believed that two individuals,
22 Mr. Pradubsri and Ms. Martin, would be inside.

23 **THE COURT:** Okay. How about that?

24 **MR. PHILLIPS:** Well, first, we would still state on
25 the hearsay and, six, the confrontation issue, there's

1 another case, German v. State, to my 404(b) motion,
2 that's specifically on point as to that information is
3 improper character evidence.

4 **THE COURT:** Well, what should they be able to say?
5 What would satisfy you?

6 **MR. PHILLIPS:** Under the law he can say that he
7 conducted a traffic stop, but he cannot --

8 **THE COURT:** Say why he did the stop?

9 **MR. PHILLIPS:** Exactly, Your Honor, and I'll get
10 into that in my 404(b) motion. It's coming.

11 **MR. BELL:** Your Honor, I don't see, one, how
12 mentioning a tip even goes to any sort of the truth
13 of the matter asserted. Saying that you have a tip
14 doesn't automatically equate to proving trafficking was
15 occurring. With that said, I think being able to say
16 tip is simply one way for us to establish police
17 procedure in stopping a vehicle.

18 **MR. PHILLIPS:** That was one thing that Judge Hocker
19 did rule in the defense's favor, Your Honor.

20 **THE COURT:** All right. Do I have Judge Hocker's
21 transcript, too?

22 **MR. PHILLIPS:** Yes, Your Honor. That's Court's
23 Exhibit Number 2.

24 **THE COURT:** All right.

25 **MR. PHILLIPS:** In German v. State, I'll just let

1 you know for the 404(b), it was a PCR case that held
2 an undercover drug agent's testimony regarding the
3 defendant distributing or selling drugs and providing
4 a description of the defendant was not admissible to
5 explain the initial stop of the petitioner and was
6 objectionable as improper comments on the petition's
7 character.

8 **MR. BELL:** Your Honor, that's obviously vastly
9 more information than we've just proffered to the Court
10 we intend to use.

11 **THE COURT:** Yeah, well, I guess if a witness says,
12 well, I got a tip that this was a drug dealer who had
13 some drugs so I stopped the car, then the tip part
14 saying that this was a drug dealer would be improper?

15 **MR. PHILLIPS:** You cannot provide that there was
16 a tip from an informant was the basis when we cannot
17 confront.

18 **THE COURT:** So you want us to start at we conducted
19 a stop and found drugs?

20 **MR. PHILLIPS:** Right. You can't say anything
21 leading up to why.

22 **THE COURT:** And the jury would not -- shouldn't be
23 able to know why they stopped the car?

24 **MR. PHILLIPS:** Based on the fact that the
25 information provided was the sole basis for the traffic

1 stop, it would be inadmissible hearsay in violation of,
2 six, the right to confrontation, as well as improper
3 character evidence under 404(b), and in violation of his
4 due process right. It would be fundamentally unfair
5 because we cannot confront the witness who based that
6 information.

7 **THE COURT:** Has this ever occurred before in any
8 trials where the officer is explaining why they stopped
9 the car?

10 **MR. PHILLIPS:** Right, and there was a PCR case
11 where they reversed because the attorney didn't object
12 when that information came in.

13 **THE COURT:** Well, PCR cases are usually of very
14 little value because it's not in the context of a trial,
15 it's in the context of lawyers being good lawyers or bad
16 lawyers.

17 **MR. PHILLIPS:** I strongly disagree with that, Your
18 Honor.

19 **THE COURT:** All right. But I'm telling you my
20 experience is it's usually of very little benefit to a
21 judge in ruling in a trial. The fact that, you know,
22 what a lawyer should or should not do in representing
23 someone is -- typically it gives me very little guidance
24 for my benefit. It may give you a whole lot of guidance
25 for your benefit.

1 **MR. PHILLIPS:** Not in German v. State.

2 **THE COURT:** Say again.

3 **MR. PHILLIPS:** German v. State.

4 **THE COURT:** All right. Tell me about it.

5 **MR. PHILLIPS:** 325 S.C. 25. It holds that it would
6 be objectionable as improper comment on petitioner's
7 character to allow the drug agent's testimony, Sergeant
8 Finch, to testify that the person was selling drugs and
9 that provided the initial description for the stop.
10 And, again, that's for the 404(b).

11 **THE COURT:** Well, I agree with you, but not based
12 on that being a PCR case. You can't say the person is
13 a drug dealer so that's why I arrested him. You have
14 to say why you arrested him.

15 **MR. PHILLIPS:** And that's why we're having our
16 hearsay and confrontation motion. We make the motion
17 that because we're unable to --

18 **THE COURT:** Well, I'm agreeing with you so far, but
19 it seems like you're trying to talk me out of it.

20 **MR. PHILLIPS:** Now as far as whether they could do
21 it, I mean, absolutely they cannot state the basis for
22 the stop.

23 **THE COURT:** I agree with you.

24 **MR. PHILLIPS:** And we would also make the motion
25 that they couldn't provide that there was a tip as the

1 reason for providing the basis for the stop.

2 **THE COURT:** And all of this usually comes out not
3 by the State, but during cross-examination --

4 **MR. PHILLIPS:** Well --

5 **THE COURT:** -- because the defense usually spends
6 hours trying to get me to make a ruling and then they
7 immediately ask the question that calls for the answer
8 that I've agreed with them on during the ruling.

9 **MR. PHILLIPS:** What other defense attorneys do in
10 other cases, Your Honor, I can't say as to whether they
11 did it right or wrong.

12 **THE COURT:** Well, I'm telling you what I -- what
13 typically happens, but I agreed with you, so what more
14 can we talk about?

15 **MR. PHILLIPS:** I guess to clarify, when you say you
16 agree that they can't provide any information as to why
17 they stopped the vehicle in --

18 **THE COURT:** They can't say they stopped him based
19 on a tip that he had drugs in the car.

20 **MR. PHILLIPS:** What are you allowing them to testify
21 to?

22 **THE COURT:** I don't know. I don't know what the
23 questions would be.

24 **MR. PHILLIPS:** Well, we would make a pre-trial
25 motion to exclude testimony that it was a tip that was

1 the basis for the traffic stop.

2 **THE COURT:** I've already ruled on that.

3 **MR. PHILLIPS:** As far -- no, I'm saying the
4 testimony. You've ruled on that it was --

5 **THE COURT:** All right. Well, I deny that motion
6 because I think I've ruled already.

7 **MR. PHILLIPS:** Thank you.

8 **THE COURT:** All right. What else do we have? How
9 many more motions?

10 **MR. PHILLIPS:** We do, Your Honor. Under the
11 404(b), we would have motions as to exclude prior
12 bad act evidence by the co-defendant because the
13 co-defendant will testify and it's our position that --

14 **THE COURT:** Such as what? He was selling drugs to
15 her?

16 **MR. PHILLIPS:** There's also -- well, no, Your Honor.

17 **THE COURT:** That he was using drugs with her?

18 **MR. PHILLIPS:** There was testimony in the prior two
19 trials from Ms. Martin, the co-defendant, that she sold
20 drugs along -- well, that the Defendant was present when
21 she sold drugs in Kroger prior to the traffic stop.

22 **THE COURT:** So, I mean, at some point you're gonna
23 ask her and she says that the drugs were his. Well,
24 as I've stated, typically, regardless of whatever I've
25 ruled, questions will solicit some explanation that

1 vitiates whatever I've said prior to a trial. Now, you
2 know, the witness says that these drugs were either
3 theirs or hers or his or whatever. Obviously she can
4 say that; otherwise, he wouldn't be on trial.

5 **MR. PHILLIPS:** Right. I'm not saying that she
6 can't say that the drugs were his. Now as far as the
7 specific testimony that she sold drugs at a Kroger or
8 any other prior time --

9 **THE COURT:** That she did?

10 **MR. PHILLIPS:** Right, with him or any other
11 instance, that that would be improper character
12 evidence.

13 **THE COURT:** Well, she's saying that they're
14 co-conspirators, right?

15 **MR. PHILLIPS:** Right, and that's improper character
16 evidence if she's able to say against him because his
17 character's not in evidence -- won't -- will not be in
18 evidence. That's propensity evidence under 404(b).

19 **THE COURT:** All right. Do you agree with that,
20 Mr. Bell?

21 **MR. BELL:** Your Honor, to clarify, we tend to
22 narrowly use prior bad act evidence and it's essentially
23 for two reasons. One is to go to the intent to
24 distribute. There is a PWID within proximity of a
25 school charge. We intend to elicit one prior purchase

1 at this Kroger that occurred right before the traffic
2 stop to obviously show that that's what these two were
3 up to that night. They were distributing at that Kroger
4 which is right there by an elementary school.

5 **THE COURT:** Is that one of the charges?

6 **MR. BELL:** That is, Your Honor.

7 **THE COURT:** So your contention is if it's not a
8 prior bad act, it's an act for which he's on trial?

9 **MR. BELL:** It's something that we need to explain
10 the case, Your Honor. It's something that takes us
11 from Point A to Point B. Your Honor, as to the second
12 issue -- and I would also, of course, mention, Your
13 Honor, that that's -- intent is one of those elements
14 under the Lyle progeny that's been carried on and is
15 still current today.

16 But the second issue, Ms. Martin lived with
17 Mr. Pradubsri, they were romantic partners for some
18 time, and she has intimate knowledge of the process of
19 them purchasing and cooking the crack cocaine that they
20 then took into the car to this Kroger to sell and then
21 that was found on them that night in the vehicle. Once
22 again, I think that due to her personal knowledge and
23 the fact that it explains the presence of the drugs that
24 night, it's something that should be introduced under
25 404(b).

1 **MR. PHILLIPS:** Our argument, Your Honor, would be
2 that this is prior bad act evidence that's not the
3 subject of a conviction and it must be proved by clear
4 and convincing evidence, so there would be proffer
5 testimony that would be needed to meet that threshold of
6 clear and convincing evidence. Further, under State v.
7 Gore, when the prior bad acts are similar to the one
8 for which appellant is being tried, the danger of the
9 prejudice is enhanced and, clearly, if she's gonna talk
10 about selling drugs that's similar to this crime because
11 that's a part of it, and we would say that the danger of
12 unfair prejudice would be enhanced and that they haven't
13 proved by clear and convincing evidence that this prior
14 bad act had occurred.

15 **THE COURT:** Well, I deny the motion on a pre-trial
16 basis. I have to rule on the same context of testimony
17 offered during the course of the trial.

18 **MR. PHILLIPS:** We would request a proffer of that
19 testimony prior because we can't un-ring the bell once
20 she says it.

21 **THE COURT:** Yeah, well, you'll have to do that
22 closer in time than before we even start the trial.
23 You want to proffer -- me to grant a proffer we haven't
24 -- she had -- we don't -- I don't know if -- who this
25 person is, where she is, when she'll testify. You've

1 got to make that motion closer in point of time than
2 now.

3 **MR. PHILLIPS:** Thank you, Your Honor.

4 **THE COURT:** All right.

5 **MR. PHILLIPS:** Our next motion is impeachment of
6 the co-defendant's credibility. She has a lot of crimes
7 of dishonesty on her prior record.

8 **THE COURT:** This is a motion for what and how many
9 more have we got after this?

10 **MR. BELL:** Your Honor, to save time, we have no
11 objection to the list of prior offenses for the
12 -- Ms. Martin for purposes of impeachment.

13 **THE COURT:** And what is it, to let in her record
14 or keep out her record?

15 **MR. PHILLIPS:** Her prior record of crimes of
16 dishonesty.

17 **THE COURT:** You want it in?

18 **MR. PHILLIPS:** Yes, Your Honor.

19 **THE COURT:** And he agrees. Okay.

20 **MR. PHILLIPS:** Perfect.

21 **THE COURT:** All right. How many more have we got
22 to do?

23 **MR. PHILLIPS:** We have three, Your Honor.

24 **THE COURT:** Okay. That's pretty good.

25 **MR. PHILLIPS:** We're knocking them out.

1 **THE COURT:** All right.

2 **MR. PHILLIPS:** All right, Your Honor. Court's
3 Exhibit Number 7, Your Honor, that's our motion to
4 prevent expert testimony as to the aggregate weight of
5 the crack cocaine and whether the crack cocaine is a
6 mixture.

7 **THE COURT:** Okay. Let me hear about that.

8 **MR. PHILLIPS:** Do you want the Solicitor first
9 or --

10 **THE COURT:** Well, you know, I guess to be
11 trafficking it has to be a certain weight?

12 **MR. PHILLIPS:** That's correct, Your Honor.

13 **THE COURT:** And you don't like the way they weighed
14 it?

15 **MR. PHILLIPS:** Well, essentially in the prior two
16 trials the drug tester has testified that she didn't
17 test every piece of crack and with weight being an
18 essential element under Apprendi v. New Jersey,
19 530 U.S. 466, noting a criminal defendant's entitled
20 to a jury determination that he is guilty of every
21 element of a crime for which he is charged beyond a
22 reasonable doubt. Essentially, allowing the chemist to
23 testify that each piece of crack cocaine is from the
24 same mixture is speculative and fundamentally unfair
25 because crack cocaine is distinguishable from powder

1 and other liquid drugs. I noticed I had a typo in one
2 of my memorandums saying not distinguishable, but
3 obviously our argument is that crack cocaine is one
4 solid thing and powder and liquid is distinguishable
5 between the crack because there could be a mixture.

6 **THE COURT:** So she has to test what?

7 **MR. PHILLIPS:** Every piece of crack rock to state a
8 weight.

9 **THE COURT:** She can't extrapolate?

10 **MR. PHILLIPS:** You can't guess when you -- when
11 it's depriving the jury of an essential element. If she
12 goes up there and testifies that the crack weighs sixty
13 however odd, you know, grams and she didn't test every
14 piece, then she doesn't know for a fact that that's how
15 much crack rock there was and that was --

16 **THE COURT:** I usually have this issue in some of
17 my complex trials where they have a construction
18 defect where they have, you know, forty buildings or
19 condominium units and the experts test the windows in
20 four of them rather than all forty and they extrapolate
21 from testing four that the windows are bad in all
22 forty, so in this context how does that relate?

23 **MR. PHILLIPS:** Well, we would argue that it
24 deprives the Defendant of a trial by jury on an
25 essential element of the offense under Apprendi v.

1 New Jersey. She -- the weight's an essential element.
2 If she's not able to specifically state that she knows
3 for a fact that each piece of crack rock is crack and
4 that that weight is a hundred percent accurate, then
5 it deprives the jury of an element of the offense.

6 **THE COURT:** You think I need to hear that testimony
7 before ruling on that --

8 **MR. PHILLIPS:** I would argue that, yes, Your Honor.

9 **THE COURT:** -- or just decide it based on whatever
10 you tell me?

11 **MR. PHILLIPS:** A proffer would be appropriate.

12 **THE COURT:** So you want to -- all these people, you
13 want them to testify first to me and then to the jury?

14 **MR. PHILLIPS:** Under this, for you to make a
15 ruling, Your Honor, is that allowing the chemist to
16 testify as to the weight of the evidence when the
17 pieces of crack cocaine are separate and distinct
18 that it would deprive his right to a trial by jury on
19 an essential element and be --

20 **THE COURT:** If she says that the professional
21 standard is to do what she did --

22 **MR. PHILLIPS:** We're challenging that under due
23 process and the Sixth Amendment.

24 **THE COURT:** All right. How about that, Mr. Bell?

25 **MR. BELL:** Your Honor, this Johnson case, I think

1 -- we can distinguish it, one, because it's meth and it
2 is a very unique and particular manufacturing process
3 where at one point you do have a liquid; however, once
4 the filtering process is done and you have the powder
5 or the crystal stuff that they then can break apart
6 and distribute, whether you come in on the end of the
7 process or the middle you can still take that meth
8 that's done at the end or while it's in suspension and
9 still use the weight. I would analogize that to crack
10 cocaine because when you're cooking it, it's kind of
11 like cooking cornbread, Your Honor. Initially it's in
12 one big pan, it's one contiguous piece, and then they
13 bash it all up or cube it off into little -- little
14 squares. I mean, it all comes from the same uniform --

15 **THE COURT:** You can extrapolate that if the corner
16 of the cornbread is cornbread, then the middle of the
17 cornbread is cornbread?

18 **MR. BELL:** I sure hope so, Judge.

19 **THE COURT:** Okay. But if it's cracklin' cornbread,
20 you might have a piece of cracklin' in the corner, but
21 that -- you may not get a piece of that cracklin' in
22 every piece. Well, you probably do, but I don't know.
23 I don't know. All right.

24 **MR. PHILLIPS:** And that would be speculative and
25 that would deprive the --

1 **THE COURT:** Speculative that there is cracklin'
2 cornbread --

3 **MR. PHILLIPS:** In the middle.

4 **THE COURT:** -- in a piece of the cornbread?

5 **MR. PHILLIPS:** Exactly, and because of that
6 speculation it would be fundamentally unfair and it
7 would deprive the jury of an essential element.

8 **THE COURT:** All right. Well, I'll have to hear
9 that before I rule on it. I can't rule based on what
10 you tell me.

11 **MR. PHILLIPS:** Of course, Your Honor, and we would
12 say that this case is distinct form the recent case in
13 State v. Johnson because that was a liquid form and
14 cocaine and certainly crack rocks are separate and
15 distinct.

16 **THE COURT:** All right. Well, I don't know.

17 **MR. BELL:** Your Honor, the only issue I do have
18 with not having a ruling at this point in time is, of
19 course, part of my co-counsel's opening would be to
20 reference the weight and why this actually is a
21 trafficking case.

22 **THE COURT:** Well, you have to -- you can do that,
23 but then -- at the end, then I have to tell the jury
24 you have to have evidence in the record of the weight
25 for it to be trafficking and if you don't have evidence

1 as to the weight being trafficking, it may be something
2 else, but I have to hear her testimony. I mean, she has
3 to go through all her testimony about her education or
4 his education, training, experience, how they go through
5 the whole process of figuring out what it is and all of
6 that, and then after they go through all of that, then
7 at some point they add it up to get a weight. There
8 will be time to talk about whether or not she can add
9 it up to get the total weight later in the process, but,
10 you know, I don't want to try to figure all this out now
11 without hearing anything from the witness because, you
12 know, the -- counsel's arguments are not evidence and
13 whereas there is some basis based on these prior trials,
14 you know, there will be plenty of time to figure that
15 issue out.

16 **MR. BELL:** Thank you, Your Honor.

17 **MR. PHILLIPS:** Thank you, Your Honor. Going to the
18 next motion -- well, first, we would -- your ruling was
19 that counsel -- opposing counsel in the opening can
20 state the specific weight?

21 **THE COURT:** Say it again.

22 **MR. PHILLIPS:** That opposing counsel in her opening
23 statement can state the specific weight of the drug?

24 **THE COURT:** Yeah, she can say what she thinks the
25 evidence will show.

1 **MR. PHILLIPS:** Okay. Thank you, Your Honor..

2 All right. Your Honor, our next motion is to
3 exclude expert testimony on the value of crack cocaine.
4 In the previous trial, there was testimony presented
5 by Agent Lovin, who's going to testify in this case,
6 testified in both trials, but in the second trial they
7 added some expert testimony to it. They qualified him
8 as an expert in, I think, drug narcotics and had him
9 testify as to the --

10 **THE COURT:** Street value?

11 **MR. PHILLIPS:** -- street value. Yes, Your Honor.
12 We would argue that, you know, when looking at Rule 702
13 of experts, how does this testimony assist the trier of
14 fact, we would argue under Rule 401 it's not relevant
15 to proving the charges because in this case you have
16 all the drugs on the co-defendant, was all in her
17 possession, she's already pled to -- the charges were
18 reduced and she pled to possession of those drugs. With
19 that, we would argue in addition to not being relevant
20 they would be unfairly prejudicial, that the probative
21 value under Rule 403 would be substantially outweighed
22 by its prejudicial effect because we believe --

23 **THE COURT:** What did they say the street value of
24 it was?

25 **MR. PHILLIPS:** Give me a moment, Your Honor. I've

1 got to pull --

2 **THE COURT:** Don't worry about it.

3 **MR. PHILLIPS:** As far as -- specifically, my
4 argument under 403 would be that it would be a confusion
5 of the issues and it would mislead the jury under 403.
6 The reason we argue that is when you have all the drugs
7 on the co-defendant, the co-defendant's testimony is
8 that she had the drugs, but that Pradubsri gave her the
9 drugs while they were in the car, that that's sufficient
10 for the jury. To add a street value to it would just
11 further mislead the jury as to trying -- basically
12 they're trying to say based on adding the street value
13 that -- in my opinion, that obviously this crack addict
14 female could not have been the drug dealer because look
15 at how much crack they were moving, the amount of value,
16 that it has to be based on the fact, we would argue,
17 that clearly the man, the driver of the car, based on
18 the street value would have been the drug dealer and not
19 her, and that would be our argument. That, one, it's
20 not relevant under 401 and, two, it would be unfairly
21 prejudicial; that the probative value would be
22 substantially outweighed by its prejudicial effect.

23 **THE COURT:** Do you have any authority that the --
24 any specific case authority that the testimony --

25 **MR. PHILLIPS:** State v. Gregory --

1 **THE COURT:** You might need to hear the question
2 before you give the answer.

3 **MR. PHILLIPS:** Sorry, Your Honor.

4 **THE COURT:** Do you have any specific case authority
5 that says the testimony of the street value of drugs is
6 improper?

7 **MR. PHILLIPS:** Directly on point?

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

9 **MR. PHILLIPS:** No, Your Honor.

10 **THE COURT:** All right.

11 **MR. PHILLIPS:** State v. Gregory held that the
12 trial judge properly limited -- in that case it was
13 the defendant's presentation of certain evidence to
14 guard against the confusion of the jury by injection
15 of collateral issues and we believe that -- under 403
16 that that would mislead the jury; that adding the street
17 value would just be a collateral issue, and we'll rest
18 on that, Your Honor.

19 **THE COURT:** All right. What you do say about it,
20 Mr. Bell?

21 **MR. BELL:** Your Honor, the controlling case on
22 this issue is State versus Jamison. That's 372 South
23 Carolina 649. It's a 2007 Court of Appeals case which
24 very clearly states that jurors typically do not know
25 the current street prices of illegal drugs and having

1 an expert to be able to valuate those drugs for them
2 does help them in their deliberation.

3 **THE COURT:** Is that just the opposite of what
4 Mr. Phillips just told me?

5 **MR. BELL:** That's certainly my belief, Your Honor.

6 **MR. PHILLIPS:** And it's very distinguishable from
7 this case, Your Honor.

8 **THE COURT:** All right. Tell me how.

9 **MR. PHILLIPS:** Thank you, Your Honor. In Jamison,
10 it was a trafficking crack cocaine similar to this case;
11 however, going through the facts of the case --

12 **THE COURT:** Well, every case has a set of certain
13 facts. In Jamison, what town was that? That sounds
14 like Orangeburg or some place down there. Where's the
15 Jamison case from; Orangeburg, Calhoun? What county was
16 that?

17 **MR. BELL:** Greenville, Your Honor.

18 **THE COURT:** Well, I guess I'm wrong on that case
19 there.

20 **MR. PHILLIPS:** I can quote you the language --

21 **THE COURT:** All right.

22 **MR. PHILLIPS:** -- that was entered for this sole
23 purpose. All right. It allowed the jury to better
24 determine whether a person would reasonably leave
25 expensive narcotics unguarded and undisguised as trash

1 in a truck allegedly used by numerous people. That's
2 not the issue in this case. Essentially, what the
3 State's trying to do is use the dollar amount to prove
4 possession. In that case --

5 **THE COURT:** To prove that one person wouldn't
6 smoke it all? That was your argument before; that the
7 co-defendant drug user would use it all.

8 **MR. PHILLIPS:** We're saying she's a drug dealer.

9 **THE COURT:** A drug dealer?

10 **MR. PHILLIPS:** Yes.

11 **THE COURT:** All right.

12 **MR. PHILLIPS:** I guess -- let me make sure I
13 clarify for the Court. Jamison --

14 **THE COURT:** What you said is it was misleading,
15 confusing and all that stuff, that was your argument
16 as to why jurors should not know the street value of
17 drugs because they'll be misled, confused and some
18 other things you said. And in Jamison did the court
19 agree with you or did they say no, this is information
20 that would be helpful to a lay person who typically
21 would not know anything about this?

22 **MR. PHILLIPS:** It's entirely different based on
23 their ruling as to the facts of the case. Since we
24 agree with the trial court that jurors typically do
25 not know the current street value, you're right, of

1 illegal drugs, the valuation based on the years of
2 law enforcement experience, and this is Rule 703, what
3 would assist the jury. And here's the purpose of why
4 it was admitted under Rule 702 as expert testimony.
5 Allow the jury to better determine whether a person
6 would reasonably leave expensive narcotics unguarded
7 and undisguised as trash in a truck.

8 **THE COURT:** Well, you read that before.

9 **MR. PHILLIPS:** And that's -- in that case, there
10 was drugs left in a truck and the State was trying to
11 prove that the drugs that was left in the truck was the
12 defendant's.

13 **THE COURT:** Right.

14 **MR. PHILLIPS:** So how's the valuation in this
15 case when all the drugs were on the possession of the
16 co-defendant, who's already pled to it and she's gonna
17 testify that it was his drugs, how's that not a
18 collateral issue to just mislead the jury would be
19 the defense's argument.

20 **THE COURT:** All right. I hear you. What you do
21 say, Mr. Bell?

22 **MR. BELL:** Your Honor, the way Jamison is
23 analogized to this case is that the crux of the
24 defense's argument is that Ms. Martin, the co-defendant,
25 is the kingpin, that she had all the drugs on her, they

1 were hers, and Mr. Pradubsri is innocent. Well, if the
2 jury is able to determine the total value of that drug
3 I think between hearing Ms. Martin's testimony, and God
4 bless her, she's a sweet lady, but she certainly does
5 not appear, at least to me and I think not to the jury
6 as well, to be someone that would have thousands of
7 dollars of crack cocaine on her.

8 **MR. PHILLIPS:** And that would be for the jury to
9 determine based on credibility on seeing her and hearing
10 her testimony. Adding in this expert opinion, which
11 obviously I would argue the jurors would give additional
12 weight to, would be for the improper purpose under 702
13 and unfairly prejudicial under Rule 403.

14 **THE COURT:** All right. I've reviewed Jamison.
15 I'm not impressed by the defense's argument. I'll tell
16 you my ruling later, but I don't see a problem at this
17 point affecting the Defendant's right to a trial for the
18 jury to know the street value of the drugs wherein the
19 charge involves trafficking.

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

21 **THE COURT:** All right. How many more? You're down
22 to one or two?

23 **MR. PHILLIPS:** Just one more, Your Honor.

24 **THE COURT:** All right.

25 **MR. PHILLIPS:** Hallelujah.

1 **THE COURT:** Hallelujah.

2 **MR. PHILLIPS:** All right, Your Honor. Again, in
3 the prior trial in November, Sergeant Finch -- it was
4 elicited by testimony, and because I know this is a
5 different lens when we see that it can be done, we're
6 making a motion to exclude or to prevent speculation
7 testimony. It was essentially the State had elicited
8 information from -- or had questioned Sergeant Finch,
9 and this would apply to any other law enforcement
10 officer that was there that night, as to whether he
11 believed -- the bag of crack there was crack, I believe,
12 found in the co-defendant's hands.

13 **THE COURT:** Is this Number 7?

14 **MR. PHILLIPS:** There's no written motion. This is
15 purely verbal, Your Honor.

16 **THE COURT:** All right.

17 **MR. PHILLIPS:** I believe there was crack found in
18 her hand, there was a crack bag hanging out of her
19 waistline, and then a crack bag stuffed down her pants.

20 **THE COURT:** Yeah, I read that opinion by the Court
21 of Appeals.

22 **MR. PHILLIPS:** I had a lot of fun arguing that at
23 the Court of Appeals.

24 **THE COURT:** I like Judge Lockemy's dissent.

25 **MR. PHILLIPS:** Thank you, Your Honor. I appreciate

1 that. With that, we would argue that trying to ask
2 Sergeant Finch whether he believed because the bag was
3 halfway hanging out of her pants that that would be
4 improper speculative testimony.

5 **THE COURT:** As to why it was hanging out of her
6 pants?

7 **MR. PHILLIPS:** Exactly because he has no idea why
8 it's hanging out of her pants.

9 **THE COURT:** Well, he says that they were engaged
10 in furtive -- I don't know the meaning exactly of that
11 word and the definition of the word "furtive". What's
12 the meaning of that? Is that suspicious activity or
13 something?

14 **MR. PHILLIPS:** That's his word, Your Honor.

15 **THE COURT:** Furtive moment. They use it in cases
16 all the time. Furtive activity.

17 **MR. PHILLIPS:** To me, furtive, I think it's one of
18 those things that's just said because it sounds good by
19 officers.

20 **THE COURT:** Well, let's see what the computer says
21 "furtive" is. Furtive: Attempting to avoid notice or
22 attention, typically because of guilt or belief that
23 discovery would lead to trouble; secretive, suggestive
24 of guilty nervousness. That's what "furtive" is. So if
25 he says that he saw them engage in furtive activity --

1 **MR. PHILLIPS:** Sure, and he can say that.

2 **THE COURT:** -- as if to conceal guilt and then when
3 he stops her she has drugs hanging out of her pants or
4 wherever they were hanging out of, wouldn't that be
5 corroborative of what he suspected when he saw them
6 before he actually approached the car, this furtive
7 activity?

8 **MR. PHILLIPS:** It would be pure speculative
9 testimony, Your Honor. He doesn't know if she's pulling
10 the drugs out of her pants or whether she's putting the
11 drugs in.

12 **THE COURT:** That's for the jury to decide.

13 **MR. PHILLIPS:** We argue that invades the province
14 of the jury. The jury does get to decide that, but he
15 can't make that determination for them.

16 **THE COURT:** Well, they -- he gives them facts and
17 he can give them his -- what he saw.

18 **MR. PHILLIPS:** His speculative testimony and that
19 would be improper.

20 **THE COURT:** All right. I hear you.

21 **MR. PHILLIPS:** Thank you, Your Honor. So we would
22 argue that that would invade the province of the jury
23 and it would be unfairly prejudicial.

24 **THE COURT:** Given those facts that her thing --
25 the drugs were hanging out her pants or something?

1 **MR. PHILLIPS:** To clarify, he could absolutely say
2 he saw furtive movements, he could absolutely say --
3 well, even though he doesn't see this bag, it's Officer
4 Blake who gets her out of the car and she has the bag
5 hanging out of her waistband, and then he sees it.

6 **THE COURT:** Let's see what Mr. Bell says about it.

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

8 **MR. BELL:** Your Honor, it's been longstanding
9 that police are allowed to use their training, their
10 experience with law enforcement, their prior
11 interactions with defendants throughout their career
12 to make assessments in different situations in which
13 they're participating. I think that Sergeant Finch
14 should absolutely be allowed to testify to the fact
15 that based on what he was seeing in other cases that
16 he's worked he believed so and so was occurring.
17 Obviously, I don't even know what I'm gonna ask until
18 we get there. That's kind of why we have objections
19 for speculation, but at this point I do believe
20 Sergeant Finch should be able to approach that line of
21 questioning.

22 **THE COURT:** Well, I deny your motion. I don't see
23 a basis -- a legitimate constitutional basis for this
24 motion.

25 **MR. PHILLIPS:** All right. And it would be based on

1 his due process rights under the Fifth and Fourteenth
2 amendments and Article 1, Section 3, Your Honor.

3 **THE COURT:** I think we need a copy of Article 1,
4 Section 3, the Fifth and Fourteenth amendments. I mean,
5 I think we need to paste it on the wall somewhere so
6 that every time you use that word I can look at it and
7 remind myself as to what it says.

8 **MR. PHILLIPS:** Well, it's the due process rights of
9 the Defendant, Your Honor.

10 **THE COURT:** All right. Well, that's why we're here,
11 to ensure that a fair trial is had.

12 **MR. PHILLIPS:** Exactly. Because my question to
13 Sergeant Finch would be: So you have no idea when she
14 got the drugs, you have no idea if she was pulling the
15 bag out of her pants, putting it in the pants, and he
16 would have to say no, and that's speculative testimony.

17 **THE COURT:** Well, I'm looking forward to that
18 cross-examination of -- your cross-examination of Finch
19 so you can --

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

21 **THE COURT:** All right. Now what else do we have?

22 **MR. PHILLIPS:** That concludes my pre-trial motions.

23 **THE COURT:** You know, I told you-all yesterday that
24 these motions that supposedly are gonna take all these
25 hours they never do or they rarely do. It all depends

1 on whether the lawyers get a chance to say everything
2 they want to say or whether I cut them off and so I cut
3 you off some and saved a little time, but we have the
4 jury coming in at one so that gives you-all an hour to
5 catch your breath. As you notice, I'm hoarse today, so
6 it's giving me a chance to rest my voice and we can get
7 lunch and start at one. What else do we need to do
8 before we can get started?

9 **MR. PHILLIPS:** I just wanted to clarify. I think
10 you asked -- you told the jury to come back at -- was it
11 one?

12 **THE COURT:** 1:00.

13 **MR. PHILLIPS:** Okay. I thought it was two.

14 **THE COURT:** I told them to eat lunch before they
15 get here.

16 **MR. PHILLIPS:** Perfect, Your Honor.

17 **THE COURT:** And one asked me how long they're gonna
18 be here and I said six or seven.

19 **MR. PHILLIPS:** That's right.

20 **THE COURT:** How long do you-all want to be here?
21 Because as you know, I have a hearing in Aiken at 2:00
22 on Friday, and I'm not gonna rush the case, but, you
23 know, we spent all these hours talking about this stuff
24 in advance and we have another hour to talk about
25 anything else.

1 **MR. PHILLIPS:** As long as Myra wants to go. That's
2 as long as I want to go because I like to keep Myra
3 happy.

4 **THE COURT:** All the officers and the court officials
5 like overtime. You-all get paid for it?

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

7 **THE COURT:** All right. Well, we've done the
8 pre-trial motions. What other preliminary things that
9 would prevent us from starting at 1:00?

10 **MR. BELL:** Your Honor, I would mention that given
11 that this was a Court of Appeals case and a mistrial,
12 we have evidence which has been held by the Clerk's
13 Office since the last trial. It's my understanding
14 that the defense is going to stipulate to that portion
15 of the chain so that we don't make any references to
16 the prior trial and we'll keep the Clerk from having to
17 take the stand on being a chain witness.

18 **THE COURT:** All right.

19 **MR. BELL:** I'd ask defense to confirm that.

20 **THE COURT:** Is that correct?

21 **MR. PHILLIPS:** That's correct, Your Honor.
22 Absolutely.

23 **THE COURT:** What, do you have fresh labels or how
24 are you gonna deal with that?

25 **MR. BELL:** I'm going to remark them, Your Honor.

1 Obviously, I'll get with defense and we'll do that
2 during the break.

3 **THE COURT:** Okay.

4 **MR. PHILLIPS:** And just another issue that caused
5 the mistrial in the second trial was the indictments
6 had guilty written on them and they were sent back to
7 the jury.

8 **THE COURT:** Oh. Who wrote that on them?

9 **MR. PHILLIPS:** The jury from the first trial.

10 **THE COURT:** Oh. Well, maybe we just won't send an
11 indictment in. You-all talk about redacting --

12 **MR. PHILLIPS:** I would certainly -- I'd certainly
13 ask just not to send them back.

14 **THE COURT:** Yeah, I won't send them back. We'll
15 just give them a piece of paper; guilty or not guilty.

16 **MR. BELL:** Thank you, Judge.

17 **MR. PHILLIPS:** Thank you.

18 **THE COURT:** Okay. Let's see now.

19 All right. We'll reconvene a few minutes before
20 one. If the jury is here at one, I want them to come
21 out at one.

22 **MR. MAULDIN:** You've got it.

23 **THE COURT:** All right.

24 **MR. BELL:** Thank you.

25 **THE COURT:** So we'll meet at ten till one.

1 **MR. PHILLIPS:** Thank you, Your Honor. And thank
2 you for allowing me to go on.

3 **THE COURT:** Sure. You made a lot of good arguments.

4 (Whereupon, a luncheon recess was taken.)

5 (Court's Exhibit Number 8 was marked for
6 identification.)

7 (State's Exhibit Numbers 1 through 10 were marked
8 for identification.)

9 **BAILIFF:** All rise, please. Court's now in session.
10 The Honorable Clifton B. Newman presiding.

11 **THE COURT:** All right. Thank you. You may be
12 seated.

13 All right. Anything before the jury comes in?

14 **MR. BELL:** Nothing from the State, Your Honor.

15 **MR. PHILLIPS:** Just that we renew our objection to
16 the prior bad act evidence from Melisa Martin.

17 **THE COURT:** Okay. Very good. Let's bring them on.

18 (Whereupon, the jury enters the courtroom at
19 1:06 PM.)

20 **THE COURT:** Welcome back, ladies and gentlemen. If
21 you-all will stand to be sworn.

22 (Whereupon, the jury was sworn by the Clerk of
23 Court.)

24 **THE CLERK:** Thank you.

25 **THE COURT:** All right. Ladies and gentlemen,

1 you've been selected and sworn now to serve as the
2 jury in the trial of the State versus Mr. Jo Pradubsri.
3 Mr. Pradubsri was indicted by the Grand Jury of
4 Lexington County charging him with three crimes;
5 trafficking crack cocaine of an amount between 28 grams
6 and 100 grams, possession with intent to distribute
7 crack cocaine within proximity of a school, and unlawful
8 carrying of a pistol. He has pled not guilty to these
9 three charges. He is presumed to be not guilty of these
10 charges and cannot be found guilty unless the State
11 presents evidence which convinces each and every juror
12 of his guilt beyond a reasonable doubt. And that is the
13 purpose of the trial, to determine whether the State can
14 meet that burden of proof.

15 Now the -- your role as jurors will be to determine
16 whether the Defendant is guilty or not guilty based on
17 the evidence presented during the course of the trial.
18 You are the finders of facts in this case. Only you
19 can determine whether he's guilty or not guilty, and
20 that is your role. So in order to be in a position to
21 make that determination, it is essential that you pay
22 close attention to the evidence and the testimony that
23 is presented so that at the end of the case when you go
24 back to deliberate you can make a proper determination
25 based on the evidence presented during the trial.

1 In just a moment, the lawyers will make an opening
2 statement and then we'll begin hearing testimony. It's
3 important that you not discuss the case at all. It
4 would be a violation of your oath as jurors to engage in
5 any form of premature deliberation by discussing the
6 case with each other or with discussing it with someone
7 who's not on the jury until after all of the evidence is
8 in and I have instructed you as to the law that you're
9 to apply to the case and you've decided the case. After
10 the case is over, you can talk to whomever you want to
11 about it. I will appoint one of you to serve as the
12 foreperson of the jury at a later time during the trial.
13 The foreperson will be the spokesperson for the jury,
14 will preside over jury deliberations and will complete
15 the verdict form representing the unanimous verdict of
16 jury.

17 I look forward to working with you on this case
18 and moving it as expeditiously as it is reasonable under
19 the circumstance. We'll move now to opening statement.
20 Mr. Bell.

21 **MR. BELL:** Thank you, Your Honor. Ms. Casey Rankin
22 will open.

23 **THE COURT:** Who is it, Ms. Rankin?

24 **MS. RANKIN:** Yes, sir, Your Honor. May it please
25 the Court?

1 **THE COURT:** Yes, Ms. Rankin.

2 **MS. RANKIN:** Drugs, guns, and money. In the drug
3 dealing business, these things, they go together like
4 peas and carrots, like peanut butter and jelly. Some
5 things they just go really well together, but like that
6 peanut butter and jelly and those peas and carrots,
7 those things don't magically come together on their own.
8 Somebody has to gather those ingredients and put them
9 all together. Drugs, guns, and money. On November 9,
10 2008, that person that put those three ingredients
11 together, the Defendant, Jo Pradubsri.

12 Now the facts of this case are fairly simple.
13 You'll hear from Sergeant Bill Finch from the Lexington
14 County Sheriff's Department. He saw a silver Monte
15 Carlo coming out of the Kroger parking lot right down
16 the road from Irmo Elementary School and he pulled that
17 vehicle over. Mr. Pradubsri was the driver of that
18 vehicle. The passenger was his girlfriend at the time,
19 Melisa Martin. At the time that Bill Finch was
20 responding, another deputy was responding, Kevin Blake
21 from the Lexington County Sheriff's Department. You'll
22 hear from him, too. Bill Finch will testify that he
23 got out of his car and moved towards the driver's side,
24 Mr. Pradubsri's side, and that as he approached that
25 vehicle, looked down in it, he immediately saw a black

1 handgun wedged in between the seat and the center
2 console of that vehicle. He gets Mr. Pradubsri out of
3 the car, pats him down, and finds \$728 in his front
4 pocket. There's two: Guns and money.

5 Kevin Blake, he's responding to the passenger side.
6 He gets Ms. Martin out of the car and he immediately
7 sees in her hand what he believes to be a bag of crack
8 cocaine. He gets that bag, sees what he believes to
9 be another bag of crack cocaine sticking out of the
10 waistband of her pants. He gets that bag, calls for a
11 female officer because he sees a bulge in her pants
12 that shouldn't there be there. He calls for a female
13 officer, Andrea Grinstead from Irmo Police Department,
14 and she comes and she searches Ms. Martin and she finds
15 another bag of crack cocaine on Ms. Martin.

16 Now Bill Finch will tell you as he was moving up
17 to that vehicle he saw furtive movement, okay, movement
18 between the Defendant and the co-defendant in that
19 vehicle as if he was handing something, passing
20 something off. You're gonna hear from Ms. Martin.
21 She's the co-defendant in this case.

22 **MR. PHILLIPS:** Objection, Your Honor.

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

24 **MR. PHILLIPS:** Based on our prior objection as to
25 the speculative testimony.

1 **THE COURT:** All right. The objection's overruled.

2 **MS. RANKIN:** You're gonna hear from Melisa Martin.
3 That was the Defendant's girlfriend at the time, okay?
4 And we're not gonna paint her up and make her pretty
5 for you. Ms. Martin, she's led a hard and fast life,
6 and she'll tell you that lifestyle has gotten her into
7 a little bit of trouble in the past, okay? We're not --
8 we're not gonna cover that up for you, we're not gonna
9 put lipstick on it and make her pretty for you, but what
10 she will tell you is what happened that night when those
11 blue lights came on. When those blue lights came on,
12 Mr. Pradubsri handed her that crack cocaine and she
13 started shoving it down her pants. And Kevin Blake, he
14 came around that corner and he caught her, crack in
15 hand. She'll tell you that.

16 Now I want to talk to you a little bit about the
17 law in this case and the Judge is gonna come up at the
18 end and he's gonna instruct you on the law. If you hear
19 anything different from him, you take his lead, not
20 mine.

21 Now he's charged with trafficking crack cocaine,
22 28 to 100 grams. What that means is that he had in his
23 possession 28 to 100 grams of crack cocaine. And you're
24 gonna hear from the Lexington Sheriff's Department's
25 chemist and that she tested that drug and it was, in

1 fact, crack cocaine and that it was also weighed and
2 that it came in at around 68 grams.

3 Now he's also charged with possession with intent
4 to distribute crack cocaine within half mile of a
5 school. And that's exactly what it sounds like. He
6 had it with the intent to sell it within a half mile
7 of any school. You'll hear testimony exactly how far
8 away they were from Irmo Elementary School that night.

9 Now there are two types of possession in South
10 Carolina: Actual possession and constructive
11 possession. Actual possession is something that you
12 have in your hand, something in your pocket, something
13 on you physically. Constructive possession is something
14 that while it's not on you physically, it is something
15 that you can exercise your dominion and control over.
16 So it's not in your hand, but it is something that you
17 can get readily. Now South Carolina law makes no
18 distinction between actual and constructive possession.
19 You are just as guilty if you had it in your pocket as
20 if you could exercise dominion and control over that
21 item.

22 Now he's actually -- he's charged as well with
23 unlawful carrying of a handgun. In South Carolina, you
24 can carry a gun in your glove box, your console or in
25 the trunk of your car, but nowhere else. And you'll

1 hear the testimony from Bill Finch that that gun was
2 found wedged between the center console and the seat of
3 that car.

4 Now I want to talk to you guys a little bit about
5 our burden of proof beyond a reasonable doubt and what
6 it means and what it doesn't mean. Beyond a reasonable
7 doubt is something that leaves you firmly convinced of
8 the Defendant's guilt. Now I don't know if you guys
9 are familiar with this, but I've been listening to the
10 broadcast "Serial". If you aren't familiar with it, it
11 is a broadcast of a criminal case that chronicles and
12 weighs a defendant's guilt or innocence, and the
13 broadcaster, she said something that was very curious to
14 me. She said I'm having doubts about whether or not
15 this man committed this crime; not the courtroom kind,
16 but the normal person kind. Ladies and gentlemen, make
17 no mistake, there is no difference. There is no
18 courtroom kind and regular people kind. We're not
19 asking you to come in here and redefine your common
20 sense. We want you and welcome your life experiences
21 and what you bring to this courtroom. Those are
22 important. There is no difference between courtroom
23 doubt and regular people doubt. It is one and the same.

24 Now throughout this trial, as you listen to the
25 facts and you see the evidence, you might be tempted

1 to believe that the Defendant did not have dominion
2 and control over these drugs, but what the State would
3 ask you to do is look at the big picture, look at
4 everything, the gun wedged between the seat and the
5 center console, the \$728, a large amount of cash, in
6 that man's pocket, and the crack that Melisa Martin was
7 so busy shoving down her pants as the blue lights went
8 on, that she'll tell you wasn't hers.

9 The Defendant, he had all of the ingredients;
10 drugs, guns and the money. At the end of this trial,
11 after you consider all the facts and all the evidence,
12 we're gonna come back before you and ask that you find
13 the Defendant guilty on all counts. Thank you for your
14 time.

15 **THE COURT:** Mr. Phillips.

16 **MR. PHILLIPS:** Thank you, Your Honor. May it
17 please the Court?

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

19 **MR. PHILLIPS:** Solicitors, members of the jury, as
20 the Government's star witness sat in jail she wrote a
21 letter to the Solicitor. "I'm willing to do anything
22 that needs to be done." And there she was, sitting in
23 jail begging to get a plea deal. Melisa Martin, the
24 State's, the Government's star witness, an admitted
25 drug dealer, drug addict, owner of a prostitution ring,

1 numerous convictions of crimes of dishonesty. This is
2 the Government's star witness. This is the witness
3 they're gonna put before you today and ask you to
4 believe her. For Melisa Martin it was ask and you shall
5 receive. Despite all the drugs were on her, despite
6 she told the police that night "they're mine", "they're
7 mine", adamantly the drugs were hers. Despite the fact
8 that she was facing a minimum of seven years in prison,
9 the Solicitor gave her a bond reduction, reduced her
10 charges, and she received eighteen months with no
11 probation. "I'm willing to do anything that needs to be
12 done." These are the words of the Government's star
13 witness. Remember this quote when she testifies. Tally
14 up the lies she tells on the witness stand and keep that
15 minimum sentence of seven years in the back of your mind
16 that she avoided.

17 Jo, please stand for me. Ladies and gentlemen,
18 this is Jo Pradubsri. This is the man that stands
19 before you today. Thank you, Jo. He's a forty-four
20 year old father and he's not alone in this case. The
21 indictment reads the State versus Jo Pradubsri. This
22 means that the Government is also on trial and that
23 each of you have sworn to scrutinize the Government's
24 case.

25 Now Mr. Pradubsri is presumed innocent. That's

1 not just a phrase, that's not just an idea. It's a
2 fundamental right that Americans have given blood, sweat
3 and tears to preserve, and it's the right that you swore
4 to in this case. That means that Mr. Pradubsri sits
5 before you an innocent man and he sits there and remains
6 an innocent man throughout this entire trial. He has to
7 prove nothing. The Government alone has the burden of
8 proof. They have to prove his guilt beyond a reasonable
9 doubt.

10 Now before you were sworn in this case, you've
11 probably seen countless stories in the news about
12 someone who was arrested and you probably did something
13 that most people do. Defense attorneys do it, too.
14 I'm not badmouthing you, but you did a common thing.
15 You presumed the worst. I've done it, too. You see
16 the story in the news and you go "oh, how could somebody
17 be guilty of that?" You presume the worst. You believe
18 that person's guilty when you see that on the news, and
19 that's just a flaw in human nature, but when you were
20 sworn in this case that flaw in human nature has no
21 purpose in this courtroom. He is presumed innocent
22 before you.

23 Now you swore to give Mr. Pradubsri a fair trial.
24 You swore to hold the Government to its burden of proof
25 and you swore not to make assumptions in this case,

1 and it's been said that the best way to avoid making
2 assumptions is to ask questions, and there are three
3 important questions that you should answer during this
4 trial. First, what motive does Melisa Martin have to
5 testify? Does she have a reason to lie? What's her
6 motive? Second, why does the Government want you to
7 trust this person, this person who you will see has
8 many things, who has lied -- part of the main of the
9 Government's case is she tells the police the drugs are
10 not hers and the next day she says something different.
11 That's the basis right there. Now, third, and this is,
12 I believe, the crux, do you believe Melisa Martin is
13 telling the truth? It's that simple, ladies and
14 gentlemen. Your determination will pretty much rest on
15 whether you believe the Government's star witness is
16 telling the truth.

17 Now what the Solicitor didn't tell you when she was
18 talking about possession, actual and constructive, is
19 that there is a defense to that: Mere presence. She
20 didn't tell you that. Somebody can know another person
21 has drugs, but as long as you're just merely present and
22 you're not the person who -- if they're not your drugs,
23 but the passenger's -- you know they have drugs, but
24 it's not your drugs, that's a defense. She didn't tell
25 you that, so keep that in the back of your mind as well

1 because that's what this case is about.

2 This trial is a journey, one we're gonna take
3 together, and when it's over Jo Pradubsri has faith. He
4 has faith in your verdict because he knows the evidence
5 will lead you to render a verdict of not guilty. Thank
6 you.

7 **THE COURT:** First witness.

8 **MR. BELL:** Thank you, Mr. Phillips. Thank you,
9 Your Honor. The State would call Sergeant Bill Finch to
10 the stand.

11 JOHN WILLIAM FINCH,
12 having been duly sworn, testified as follows:

13 **THE CLERK:** Thank you. If you'll have a seat,
14 please, and state your name for the record.

15 **THE WITNESS:** Sergeant John William Finch.

16 **MR. BELL:** Thank you, Sergeant. If you'll give me
17 one moment. Mr. Bailiff, if I could ask if you could go
18 ahead and put the projector screen down.

19 DIRECT EXAMINATION

20 BY MR. BELL:

21 Q. Sergeant, if you could take a second and tell the
22 jury a little bit about your prior law enforcement
23 experience. How long -- or who are you currently
24 employed by?

25 A. I'm employed by the Lexington County Sheriff's

1 Department as a patrol sergeant and I've been here
2 eighteen years as of this month. Prior to being here,
3 I was at the Richland County Sheriff's Department for
4 about four and a half years.

5 Q. Now in your time with the sheriff's department,
6 what roles have you taken on?

7 A. I've been a patrol sergeant. At Richland County,
8 I was a road deputy, I was on the fugitive task force.
9 When I came here, I was a road deputy. I became a
10 resident deputy for a short time, then I was put into a
11 supervisor, a master deputy, and then to a sergeant.

12 Q. Okay. And your current rank is?

13 A. Sergeant.

14 Q. Okay. And you mentioned you're a supervisor. How
15 many deputies do you have under your control?

16 A. I have six that work directly for me.

17 Q. Okay. And that's currently?

18 A. Yes, sir.

19 Q. Okay. And what region do you work in?

20 A. I'm in the north region.

21 Q. And tell us a little bit about what that
22 encompasses.

23 A. That is the Chapin, Irmo, West Columbia, Cayce,
24 and East Lexington areas that I patrol and supervise.

25 Q. In that position, what kind of crimes are you

1 typically dealing with?

2 A. Everything from traffic violations to robberies to
3 anything, anything that occurs. We respond to any calls
4 for service and while we're in between those calls for
5 service we patrol around and just -- and look for
6 criminal activity.

7 Q. Give us an idea of sort of how your day to day goes?

8 A. I come in in the mornings, we have roll call for
9 about fifteen, twenty minutes and then we put everybody
10 out in their areas, I assign the areas and send it up to
11 dispatch as to where everybody's gonna be and what we're
12 doing, and I give specific areas for property crimes for
13 citizens like yourself for everything from property
14 checks at your homes to -- to whatever needs to be done
15 and I just assign the patrol areas and send them out and
16 tell them what they need to do for the day and they go
17 out and patrol.

18 Q. Okay. Now November 9th of 2008, does any particular
19 incident stick out to you?

20 A. Yes, sir.

21 Q. Okay. Can you tell us how did you come across this
22 incident?

23 A. I received a call from the Irmo Police Department
24 about a vehicle.

25 Q. Did you follow -- did you ultimately pull over that

1 vehicle?

2 A. I did.

3 Q. Okay. Now do you remember what time of day it was?

4 A. It was 3:00 in the morning.

5 Q. Okay. Tell us a little bit about the visibility in
6 the area.

7 A. The visibility was good. We were down -- the
8 vehicle initially was down in the Kroger parking lot
9 down at St. Andrews and Lake Murray Boulevard, so it
10 was pretty well lit in the parking lot there at that
11 time. The actual stop took place around the corner on
12 the roadside. Out of the Kroger, left onto St. Andrews
13 Road, down near the -- where the O'Reilly's is down
14 there now, the Lizard's Thicket area, down in that area,
15 so it's pretty well lit. There's a lot of the street
16 lights down there, it's pretty well lit.

17 Q. Okay. Pardon me for one moment. Now you mentioned
18 that you pulled over a vehicle that night. What kind of
19 vehicle was it?

20 A. 2001 Chevy Monte Carlo, silver in color.

21 Q. Okay. Now when you pulled this vehicle over, what
22 did you do after you pulled it over?

23 A. I got out and approached the driver's side just
24 like we do on any traffic stop. I had a backup unit
25 with me, they were approaching on the other side, on the

1 passenger side, and we both pretty much simultaneously
2 approached the vehicle.

3 Q. Okay. Tell us a little bit more about what happened
4 as you were approaching the vehicle.

5 A. As I was approaching, I -- you know, we were
6 obviously on alert. Any traffic stop we watch very
7 intently what's going on, movement in the vehicle.
8 There was activity. There was movement going on in
9 that vehicle as I approached, which put me on a higher
10 sense of alert. Obviously people moving around in a
11 vehicle kind of makes cops nervous, so we watched very
12 intently for that.

13 **MR. PHILLIPS:** Your Honor, we would just renew our
14 objection at this time to the speculative testimony
15 and of the -- our prior -- we're gonna renew our prior
16 pre-trial motion regarding the traffic stop as well.

17 **THE COURT:** Okay. You may proceed.

18 **MR. BELL:** Thank you, Your Honor.

19 BY MR. BELL:

20 Q. Now you talk about being able to see some movement
21 in the vehicle. Tell us a little bit more about what
22 this movement indicates to you.

23 A. It could be a lot of different things going on in
24 there. It could be somebody shuffling something off,
25 it could be somebody reaching for something in the

1 vehicle. It could be --

2 **MR. PHILLIPS:** And, objection, Your Honor;
3 speculation. It calls for speculation.

4 **THE WITNESS:** Would you like me to respond, Your
5 Honor?

6 **THE COURT:** Based on your experience, what did you
7 think was going on?

8 **THE WITNESS:** They were shuffling something in the
9 vehicle.

10 **MR. PHILLIPS:** And that's what our objection would
11 be on, that speculative testimony.

12 **THE COURT:** Your objection's overruled.

13 **MR. BELL:** Thank you, Your Honor.

14 BY MR. BELL:

15 Q. Now after seeing this movement, did you continue
16 approaching the vehicle?

17 A. On high alert, yes, we did. We did go ahead and
18 approach.

19 Q. I heard you say we. Who else was with you?

20 A. At that time, Master Deputy Kevin Blake was with
21 me. He was my corporal at the time. We call them
22 master deputy, but he's a corporal.

23 Q. Did he arrive separately from you?

24 A. He arrived about the same time I did. Exactly
25 almost. He was like right behind me.

1 Q. Okay. What side of the vehicle did he approach?

2 A. The passenger side.

3 Q. Okay. And you were approaching what side?

4 A. The driver's side.

5 Q. Okay. As you approached the driver's side, what
6 happened?

7 A. I observed Mr. Pradubsri in the driver's seat. I
8 immediately observed a -- what appeared to be a black
9 handle of a pistol. It was -- it appeared to be to the
10 right of his right leg like between the seat and the
11 center console basically. I saw the butt of the pistol.

12 Q. Now in your training, is that a legal area to carry
13 a firearm?

14 A. That's an unlawful area.

15 Q. Okay. Did you have any doubt that that was a
16 firearm?

17 A. Not at all.

18 Q. Okay. Now after seeing that firearm, how did you
19 proceed?

20 A. I told him to keep his hands where I could see
21 them. I had him exit the vehicle immediately and I
22 detained him right there.

23 Q. Okay. Now after this point of removing him from
24 the vehicle, what happened?

25 A. I got him out of the vehicle, kind of had him just

1 -- just down from the driver's side door just a little
2 bit right there. Master Deputy Blake at that time had
3 obviously alerted to something on his side of the car.
4 There was some activity going on over there. I could
5 hear him speaking and shuffling around, so I paused with
6 what I had right there and just detained Mr. Pradubsri
7 right there with what I had.

8 Q. Now could you see with your own eyes what was going
9 on on the other side of the vehicle?

10 A. Just their heads and just some of the movement over
11 there, but I couldn't see everything at this point.

12 Q. Okay. And that movement that you could see, what
13 did that indicate to you?

14 A. There was some form of a struggle going on on the
15 other side of the vehicle.

16 Q. Now when you say struggle, did it seem like there
17 was a fight going on?

18 A. Well, I wasn't sure right at that point. I mean,
19 right at that very moment I wasn't sure if it was a
20 struggle or what exactly was going on, but I just heard
21 -- he called out to me, I don't remember exactly what
22 he said, but he was alerting that there was something
23 there, so I held what I had. I had my hands full, he
24 was on the other side, so we just -- I paused and just
25 waited until I heard further from him.

1 Q. Ultimately, did you become aware of what that
2 scuffle was or what exactly was going on on that side
3 of the vehicle?

4 A. Yes, sir.

5 Q. And what exactly was happening?

6 A. There were -- he had observed drugs on the female
7 that was in the passenger seat, Melisa Martin, and he
8 observed drugs and basically there was, I guess, a
9 struggle slash dropping of the evidence there. There
10 was evidence that was present right there.

11 Q. Just to clarify, we keep using words like struggle.
12 Did this -- did this individual appear to be fighting
13 with your deputy?

14 A. As it turns out, no. No, she was not fighting. It
15 was just over the -- it turns out it was just over the
16 drugs she was trying to conceal.

17 Q. Okay. Now did you find anything else of note in
18 that vehicle?

19 A. We did. We found another firearm in the vehicle
20 and obviously the drugs and the firearm that I found,
21 yes, sir.

22 Q. And who was -- that second firearm, who was that
23 located on?

24 A. It belonged to Melisa Martin.

25 Q. Do you remember where he found it?

1 A. I believe under the seat in a little purse, a
2 little purple purse.

3 Q. Do you remember what kind of firearm it was?

4 A. I can't remember the actual name -- the brand name
5 of it at this time.

6 Q. Do you remember caliber?

7 A. A .25 caliber semi -- it was a very small semi-auto.

8 Q. Now compared to a 9mm, is that a larger caliber or
9 a smaller caliber?

10 A. Smaller caliber.

11 Q. Okay. On the scene -- what was the passenger's
12 name?

13 A. Melisa Martin.

14 Q. Okay. And what was the driver's name?

15 A. Jo Pradubsri.

16 Q. Okay. And would you recognize that individual if
17 you saw him today?

18 A. Yes, sir.

19 Q. Okay. Could you indicate where he's sitting?

20 A. He's seated to the far left -- my far left in the
21 white shirt and dark tie.

22 **MR. BELL:** If the record would reflect that the
23 Sergeant has indicated Mr. Pradubsri.

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

25 **BY MR. BELL:**

1 Q. Did Ms. Martin --

2 **MR. BELL:** I withdraw that question, Your Honor. I
3 beg the Court's indulgence. Permission to approach the
4 witness?

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

6 **MR. BELL:** Thank you, Your Honor.

7 BY MR. BELL:

8 Q. Sergeant, would you take a look at those, and once
9 you've had a moment, let me know.

10 A. Okay.

11 Q. Now what exactly do you have in your hand?

12 A. These are photographs from the night in question.
13 Photographs from the scene.

14 Q. Did you take those pictures?

15 A. No, sir.

16 Q. Okay. But do they fairly and accurately represent
17 everything as you saw it on that night?

18 A. Yes, sir, they do.

19 **MR. BELL:** Your Honor, at this time the State would
20 move into evidence what is currently marked as State's 2
21 through 7, Your Honor.

22 **THE COURT:** Any objection?

23 **MR. PHILLIPS:** No, Your Honor. No objection.

24 **THE COURT:** Admitted without objection.

25 **THE COURT:** Thank you, Judge.

1 (State's Exhibit Numbers 2 through 7, photographs,
2 were admitted into evidence.)

3 **MR. BELL:** Permission to publish these photographs
4 to the jury, Your Honor.

5 **THE COURT:** You may.

6 BY MR. BELL:

7 Q. Sergeant -- what is that a picture of, Sergeant?

8 A. That is the rear of the Chevy Monte Carlo that was
9 stopped. 2001 Chevy Monte Carlo.

10 Q. That is what is marked State's Number 2. This is
11 State's Number 3. Could you tell us a little bit about
12 what is in this picture?

13 A. That is the firearms that have been secured and
14 made safe and the crack cocaine in bags there on the
15 trunk of the patrol car behind the Monte Carlo.

16 Q. Thank you, sir.

17 A. I mean, excuse me, the hood, not the trunk. My
18 bad.

19 Q. Now this pistol in the middle, who did that pistol
20 belong to?

21 A. The larger pistol there belonged to Jo. That's the
22 one I saw, the black Hi-Point 9mm. The smaller pistol
23 there is the .25 caliber, Melisa Martin's.

24 Q. I apologize. I misplaced my laser pointer. Those
25 baggies on the bottom left of that photograph, what are

1 they?

2 A. That's the crack cocaine.

3 Q. What I'm showing you is what is marked as State's
4 Number 4. What is that a picture of?

5 A. That's the crack cocaine; the bulk on the left and
6 then the smaller baggies.

7 Q. How many bags were there in total?

8 A. Four.

9 Q. What's that little L-shaped thing?

10 A. That's just to give scale as to the size of
11 everything.

12 Q. Okay. Now did you have an opportunity to take a
13 field weight on that crack cocaine?

14 A. We did.

15 Q. Okay. Do you recall what that was?

16 A. It was somewhere around 75 grams, somewhere around
17 in there. It may have been a little bit more than that
18 in the field, but we had a spillage out there.

19 Q. Okay. Now this is what's marked State's Number 6.
20 What are we looking at, Sergeant?

21 A. That's the butt of the firearm after it had been
22 made safe. It had been removed from the vehicle, the
23 rounds had been taken out of it and it had been made
24 safe with a zip tie.

25 Q. Okay. Now in looking at this picture, if I tried

1 to orient myself to that picture, that looks like it's
2 in the passenger side; is that correct?

3 A. Yes, sir, it is.

4 Q. Now you testified a little bit ago that the black
5 9mm was found on the driver's side.

6 A. Yes, sir.

7 Q. Is that true?

8 A. Yes, sir.

9 Q. Why is that pistol on the passenger side in that
10 photo?

11 A. The deputy who was taking the photographs while I
12 was dealing with the defendants and the drugs and guns,
13 he was asked to take these photographs and to put it
14 back for reference. He put it on the wrong side. He
15 put the gun on the wrong side. That gun, when I
16 approached the vehicle, was actually on the driver's
17 side, so it was on the opposite side of the center
18 console, which is at the top of that picture.

19 Q. Now you personally saw that pistol originally on
20 the driver's side?

21 A. Locked and loaded on the driver's side of the
22 vehicle next to Mr. Pradubsri, where he was seated at.

23 Q. You mentioned earlier that you were a supervisor.
24 How many deputies did you say you have under your
25 control?

1 A. I have six that work directly for me.

2 Q. Okay. Now wouldn't it be your duty to supervise
3 those deputies on the scene that night?

4 A. Yes.

5 Q. Isn't the re-placement of that firearm something
6 that you should have caught?

7 A. Yes, sir. That's -- that's my bad.

8 Q. Deputy, did you make a mistake?

9 A. I made a mistake, yes, sir.

10 Q. Are you proud of that?

11 A. No, sir.

12 Q. Okay. Are you absolutely positive that when you
13 originally saw that firearm though that it was on the
14 other side of the vehicle?

15 A. I'm a hundred percent positive that's where it was
16 when I approached the vehicle. I seized it from there
17 myself.

18 Q. And who was seated by that firearm?

19 A. Jo Pradubsri.

20 Q. Okay. This is what is marked State's Number 5.
21 What are we looking at?

22 A. That is the Hi-Point 9mm, all the rounds and the
23 magazine for the gun.

24 Q. Now the shiny things, I suspect, are bullets. Were
25 those with the pistol?

1 A. Yes, sir. They were in the magazine and one in the
2 chamber.

3 Q. Okay. When one's in the chamber, what does that
4 mean to you?

5 A. They're ready to do whatever they need to do to do
6 business.

7 Q. Is the firearm operational?

8 A. It is operational, yes, sir.

9 Q. That white zip tie, when was that placed there?

10 A. After I seized it.

11 Q. The purpose of that?

12 A. We do that to make the weapon safe for us and
13 everybody -- everybody else. We unload it and put a
14 zip tie on there to keep it safe before we -- we cannot
15 place it into evidence until it's made safe, so we have
16 to do that.

17 Q. State's Number 7, what are we looking at?

18 A. That's the smaller .25 cal that was taken from the
19 passenger side of her seat.

20 Q. And that belonged to who again?

21 A. Melisa Martin.

22 Q. Okay. Did you make notes as to identifying
23 characteristics of those firearms that we've talked
24 about?

25 A. The identifying characteristics I made?

1 Q. So that you could make sure that if you saw the
2 pistol in the future it would be the same one?

3 A. It was listed in the report, yes, sir. The serial
4 numbers, model numbers, all of that, was placed in the
5 report, yes, sir.

6 Q. Okay. Now ultimately all that stuff that we saw
7 laid out on that hood, what did you do with it?

8 A. It was later taken to evidence and secured into an
9 evidence locker. The drugs were put into a BEST kit,
10 what we call a BEST kit, which is a bag where it's then
11 processed.

12 Q. Okay. Tell us a little bit about that. How does
13 that work?

14 A. The processing of the drugs?

15 Q. That's correct.

16 A. It's sent to a chemist and the chemist does a --
17 they take a sample of the drugs from the bag and they
18 test it and it later tested positive for --

19 **MR. PHILLIPS:** Objection, Your Honor. He cannot
20 lay that foundation. There is no foundation for him to
21 lay that. It's improper lay opinion testimony.

22 **THE COURT:** I sustain the objection.

23 BY MR. BELL:

24 Q. Sergeant, let's take a step back. How did -- all
25 of those items that were on the back of that cruiser,

1 where did they go when they were taken off the hood of
2 that vehicle?

3 A. They went into Kevin Blake's trunk and were secured
4 there until we then transported to headquarters.

5 Q. And who's Kevin Blake again?

6 A. He was my master deputy at the time.

7 Q. Okay.

8 A. He was working with me. We were right there
9 together.

10 Q. Okay. After they were in his vehicle, who else had
11 access to that vehicle?

12 A. Just him.

13 Q. Okay. Are you positive about that?

14 A. Yes, sir.

15 Q. Okay. Now once they were in the vehicle, where did
16 they take them?

17 A. To the Lexington County Sheriff's Department at
18 521 Gibson Road in Lexington and then to the evidence
19 room in the back.

20 Q. Did you go with him?

21 A. I did.

22 Q. You were personally there for all of that?

23 A. Yes.

24 Q. How long between leaving the scene and arriving
25 there in evidence? Ball park.

1 A. Fifteen to twenty minutes to get there.

2 Q. Did y'all stop at all in between?

3 A. No, sir.

4 Q. Did you stop and take care of any other case?

5 A. No, sir.

6 Q. As far as you know, nobody else had access to that
7 vehicle?

8 A. No one did.

9 Q. Okay. Now once you got the evidence, who took the
10 items out of the cruiser?

11 A. Kevin would have taken them out and then we went
12 into the evidence room together to process everything.

13 Q. Okay. And that process -- tell us a little bit more
14 how that works.

15 A. We do the evidence tags, we punch everything in,
16 and then we basically -- we just -- we do an evidence
17 sheet and we just log everything in and put it into a
18 secure locker. Once it goes into that locker, it's
19 locked from the outside and we can't control it and it's
20 now the evidence custodian that would have it from that
21 point. We can't touch it again.

22 Q. Now without talking about what happens after it's
23 picked up by a chemist or any of that kind of stuff,
24 what kind of bag do you place these drugs in before you
25 file it?

1 A. It's called a BEST kit.

2 Q. And what's the purpose of that kit?

3 A. See, drugs are different than other evidence and
4 because it's gonna go to someone else, it has to be
5 secured into a different type of evidence bag, and it's
6 sealed differently. It's sealed where it's tamperproof.
7 If anybody messes with it, you're gonna know, and that's
8 what we -- that's the BEST kit, is what it's called.
9 It's just a name we give it.

10 Q. Okay. Now what I'm showing you is what is
11 currently marked for identification purposes as State's
12 Number 8, if you can take a look at that for me. And,
13 please, don't hold it up for the jury to see it at this
14 point.

15 A. Yes, sir.

16 Q. Do you recognize that?

17 A. Yes, sir.

18 Q. What is that you're holding?

19 A. A BEST kit. This is the inner packet for the BEST
20 kit.

21 Q. How do you know that it's the same BEST kit that
22 you deposited that night?

23 A. It has my signature on it, the date and case number,
24 and the agency ORI code.

25 Q. Okay. Is there a specific number on that bag that

1 no other bag would have?

2 A. Yes, it's called a control number.

3 Q. And what is that control number?

4 A. C, Charlie, 019931.

5 Q. If I could get that back from you, sir.

6 A. Yes, sir.

7 Q. Sergeant, ultimately these two individuals that
8 were in the vehicle, did you arrest them?

9 A. Yes, sir.

10 Q. Okay. And did you arrest them that night?

11 A. Yes, sir.

12 Q. And was that before you left to go log all this
13 evidence?

14 A. They were taken -- when we got there, they were
15 taken to the sally port, they were booked in at that
16 time, and then we literally did a little circle and
17 pulled right to the evidence room.

18 Q. Okay. Do you recall charging them with trafficking
19 crack cocaine?

20 A. Yes, sir.

21 Q. Why did you charge them with that?

22 A. Because of the amount that we had, the weight that
23 we had.

24 Q. Okay. And what else did you charge them with?

25 A. Unlawful carry of the firearms and the -- being

1 within proximity of a school.

2 Q. Okay. Tell us a little bit more about that one.
3 What exactly is possession with intent to distribute
4 within proximity as you understand the charge?

5 **MR. PHILLIPS:** Objection, Your Honor.

6 **MR. BELL:** Your Honor, police are tasked with
7 charging people with arrest warrants on-scene. That's
8 certainly something within his knowledge.

9 **MR. PHILLIPS:** That is the Judge's province of
10 charging the law to the jury, Your Honor.

11 **THE COURT:** I heard objection, a few comments.
12 What's the objection?

13 **MR. PHILLIPS:** The objection is improper opinion
14 testimony. It's based on the law that Your Honor's
15 gonna charge. Only the law can come from you, Your
16 Honor.

17 **THE COURT:** And what's the question again?

18 **MR. BELL:** The question was why he charged -- or
19 what exactly -- I can't remember honestly if I asked
20 why --

21 **THE COURT:** Let's ask a new one.

22 **MR. BELL:** Sure.

23 BY MR. BELL:

24 Q. Sergeant Finch, ultimately why did you charge him
25 with possession with intent to distribute crack cocaine

1 within proximity of a school?

2 A. Because it fell within the boundaries or the scope
3 of that law. We were less than a half mile from a
4 school.

5 Q. What school?

6 A. Irmo Elementary School.

7 Q. Okay.

8 **MR. BELL:** Now, Your Honor, if I may ask the
9 witness to step down.

10 **THE COURT:** You may.

11 BY MR. BELL:

12 Q. Sergeant, if you'll join me down here. I'm gonna
13 ask you to stand on this side of the table so that the
14 court reporter can hear you, okay?

15 A. Okay.

16 Q. I'm gonna have you look at this privately with me
17 for a second. And, Mr. Phillips, if you would also
18 come this way. What I'm showing you, Sergeant Finch,
19 is what is marked as State's Number 1 for identification
20 purposes. What is this a picture of?

21 A. It's a map of the area where the stop took place.

22 Q. Okay. And does this picture fairly and accurately
23 represent the area on the night of the arrest?

24 A. Yes, sir.

25 **MR. BELL:** Your Honor, at this time we would move

1 State's Number 1 into evidence.

2 **MR. PHILLIPS:** No objection, Your Honor.

3 **THE COURT:** It will be admitted.

4 (State's Exhibit Number 1, an aerial photograph,
5 was admitted into evidence.)

6 **MR. BELL:** Permission to publish to the jury?

7 **THE COURT:** All right.

8 BY MR. BELL:

9 Q. Sergeant, if you would do me a favor and just sort
10 of lay this out for the jury and let them know what
11 we're looking at.

12 A. As you can see here, this is Lake Murray Boulevard,
13 this is St. Andrews Road. When I initially responded we
14 started out here in the parking lot, then we went out on
15 this avenue here to the left, we went down the road here
16 and stopped to a place in this large grassy area from
17 right in this area here.

18 Q. Now is that area well lit?

19 A. Yes, sir.

20 Q. Okay. Are there streetlights in that area?

21 A. Yes, sir.

22 Q. And did you have your headlights on?

23 A. Yes, sir.

24 Q. Did you feel like you had good visibility or bad
25 visibility?

1 A. Good visibility.

2 Q. Now could you point out where exactly the school is
3 on that map?

4 A. It's right there on the opposite corner.

5 Q. Did you have an opportunity to mark out the distance
6 where you stopped on the corner to where you stopped the
7 defendant?

8 A. I did. I don't recall exactly what it was, but it
9 was well under -- I forget. It was -- it was like a
10 half a mile, less than a half a mile.

11 Q. Okay. If you'd, please, take your seat, sir.

12 (Whereupon, the witness returns to the witness
13 stand.)

14 Q. I want to clarify a couple of things with you. When
15 you talked about processing the drugs, who was with you
16 when you did it?

17 A. Kevin Blake.

18 Q. Okay. And did you both take part in filling out
19 the forms?

20 A. We did, yes.

21 Q. Who -- who actually put the crack cocaine into the
22 BEST kit?

23 A. I would have done that. I signed it. I would have
24 done that.

25 Q. Okay. Were you also responsible for checking the

1 weight on it in the evidence room?

2 A. Yes. We -- we sat side by side. There's a table
3 in there. It's -- the scales and everything we need is
4 right there, so literally there's two chairs and we sit
5 side by side doing it.

6 Q. As far as you recall, what exactly did Blake do?

7 A. He just assisted me in filling out the forms
8 basically and all that type stuff, but as I recall I did
9 all the stuff for the drugs.

10 Q. One final question, Sergeant. You recall, once
11 again, the date of this arrest?

12 A. Yes.

13 Q. And what was it?

14 A. November the 9th, 2008.

15 Q. Okay. And what was the road called that you pulled
16 him over on?

17 A. St. Andrews Road.

18 Q. Okay. What jurisdiction is that road in?

19 A. It's in Irmo Police Department's jurisdiction, but
20 it is in Lexington County, so we also do patrol there
21 as well.

22 Q. Do you have the power of arrest there?

23 A. I do, yes.

24 **MR. BELL:** Please answer any questions the defense
25 may have for you.

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

2 CROSS-EXAMINATION

3 BY MR. PHILLIPS:

4 Q. Now there's no dash cam video of this?

5 A. No, sir.

6 Q. Okay. So there's no video recording for the jury
7 to see how this traffic stop occurred?

8 A. No, just the photographs that we have.

9 Q. Okay. And going to those photographs, I know we
10 were shown the one of the gun wedged in the passenger
11 seat. You stated that you saw that -- that gun in the
12 driver's seat. Does that accurately depict what you saw
13 when you saw it?

14 A. No, when I saw it, it was on the opposite side.

15 Q. Okay. But, I mean, as far as how it's --

16 A. As far as being between the seat and the center
17 console, yes, sir.

18 Q. It looked just like that?

19 A. Well, other than having the clip in it and being
20 loaded.

21 Q. Okay. But it was wedged just like that?

22 A. Yes. Well, I believe it was turned around also.
23 It may have been turned around like it -- readily
24 accessible for someone to grab is my point. That looks
25 -- to me, that looks like it's backwards in that picture

1 right there, but it wasn't that way on the opposite
2 side. It was on the opposite side, it was tilted
3 forward, readily accessible.

4 Q. Now you said that you saw this before the door
5 opened, correct?

6 A. Yes.

7 Q. As you approached the vehicle?

8 A. I immediately saw the weapon.

9 Q. And the door was shut?

10 A. As I recall, it was shut, and I -- I believe the
11 window was open when I went up to the vehicle.

12 Q. Do you remember in a prior hearing essentially
13 saying that -- I'm gonna read something to you and you
14 tell me whether that's true or not. The question was
15 to you: What happens when you approach the driver's
16 side? Did he open the door? You said yes, sir. And by
17 he, they're referring to Mr. Pradubsri. So you say
18 something different. You say he opens the door as you
19 approach. Yes, sir, I immediately identified himself
20 and asked him to step out of the vehicle. And then the
21 question was: And tell me what you observed next when
22 he began to get out of that vehicle. And your answer
23 was: I began to attempt to control his left arm and had
24 him step out, which it's just common for me to try to
25 contain the situation in case it were to go in a wrong

1 direction. Immediately as he shifted to turn to come
2 out of the vehicle, I saw the handle of a black firearm
3 sticking up between the seat and the center console.

4 Now was the door open or was it shut?

5 A. I believe I saw it when I -- when I went up there.

6 Q. Okay. So it was shut?

7 A. I believe I saw it before the door was open, yes.

8 Q. Were you telling the truth then or now?

9 A. I'm telling the truth both times. It was a
10 situation where we had an active thing going on and I
11 saw the weapon when I approached the door. I then
12 opened the door and contained Mr. Pradubsri.

13 Q. Now that's not what you said before. You can't
14 have it both ways. Either you saw it before the door
15 was open or you saw it after, after you were getting him
16 out of the car.

17 A. I believe I saw it before the door was open.

18 Q. Okay. So you're sticking to what you told -- you're
19 telling the jury today?

20 A. I'm sticking to what I believe I saw.

21 Q. And at this prior hearing you were under oath to
22 tell the truth?

23 A. Absolutely.

24 Q. And you said something differently.

25 A. It's the same thing. I saw it when I was bringing

1 him out of the vehicle.

2 Q. I'll read it again for you. I began to attempt to
3 control his left arm and had him step out, which it's
4 just common for me to try to contain the situation in
5 the case -- if the case were to go a wrong direction.
6 Immediately as he shifted to turn to come out of the
7 vehicle, I saw the handle of the -- I saw the handle of
8 a black firearm.

9 Now that's much different than as I walked up to
10 the car, the car door is shut and I see the handle of
11 the gun. Your version in the prior hearing was I walked
12 up, Mr. Pradubsri -- yes, sir, I immediately identified
13 myself and asked him to step out of the vehicle, and
14 then you said essentially that he had opened the door,
15 you controlled his arm, then you see it. That is a
16 difference; you'll agree with me?

17 A. It is a difference, but what I'm telling you is, is
18 that I saw the weapon when I got up there immediately.
19 I saw it quickly when I got up there and we dealt with
20 it.

21 Q. And which one, before the door was opened?

22 A. I believe I saw it before the door was opened.

23 Q. Now you also signed what's considered a Form B,
24 the Rule 6, what y'all were talking about, the chain of
25 custody forms?

1 A. Yes, sir.

2 Q. And that's essentially an affidavit certifying about
3 this evidence in this case, correct?

4 A. Yes.

5 Q. And on this form it says: This is to certify that
6 I, John W. Finch, am employed by the Lexington County
7 Sheriff's Department; that on November 9th, 2008, I
8 seized from Melisa Martin and Jo Pradubsri, pursuant to
9 a lawful arrest, and it goes into control about the four
10 plastic baggies. Now you didn't seize the drugs; is
11 that correct?

12 A. It started out on the opposite side of the car,
13 correct.

14 Q. And that Officer Blake did?

15 A. Correct, then we moved to the rear of the vehicle
16 once everyone was contained and then we placed it on the
17 vehicle and it was done in cooperation together, two
18 officers together.

19 Q. And to be more -- specifically, Officer Blake had to
20 call a female officer, correct, because she had it down
21 her pants?

22 A. Correct.

23 Q. And that's because the female officer had to search
24 her down her pants?

25 A. Right, and the bag was breaking and -- yeah.

1 Q. Now we have two other officers. The first officer
2 who gets control of this crack cocaine, a second officer
3 who searches, but you don't have them sign the affidavit
4 that they seized it. Now you come later and you say
5 only you, "I", seized this crack cocaine.

6 A. Right, it's my case. We're all -- you know, we're
7 all working together, but I am the lead officer in this
8 case. It's my case.

9 Q. Now Deputy O'Dell, you tell him to put the gun back
10 in the same place where it was found. He puts it in
11 the passenger seat. Did you tell him to put it in the
12 driver's seat?

13 A. No, I've already advised that that was a mistake.

14 Q. Okay.

15 A. I did not advise him to put it in the passenger
16 seat. It was a mistake that I should have observed and
17 noticed before we left that scene and I didn't.

18 Q. And you're the supervisor?

19 A. I am.

20 Q. Was there other mistakes made by the people that
21 you're over?

22 A. Not in this case.

23 Q. Now you talk about these movements as you walked
24 up to the car. In a prior hearing, you've described
25 these movements a little bit differently. In the prior

1 hearing, you described those movements as it appeared
2 as if they were talking; is that right?

3 A. It appeared as if there were movements and talking
4 going on.

5 Q. Fair enough, but the way you described it was
6 movements and talking, not --

7 A. I probably did say that it looked like they were
8 talking and making movements in the car. I believe I
9 said furtive movements. It's a common term used by law
10 enforcement.

11 Q. But you didn't add this new "I saw them kind of --
12 I kind of figured they were passing something". You
13 didn't say that in the prior hearing, did you?

14 A. That they were passing something?

15 Q. Yeah. You didn't say --

16 A. No, I said furtive movements, so --

17 Q. That's different.

18 A. It may be a different wording, but it refers to the
19 same thing. It makes me --

20 Q. That's a --

21 A. May I finish?

22 Q. Yes, sir.

23 A. It makes me think there is something going on;
24 there's something going on in that vehicle that I need
25 to be watching out for.

1 Q. That's perfect.

2 A. Who knows what it might be.

3 Q. That's what you think --

4 A. In this case, it was drugs.

5 Q. -- that's not what you know. And we can't speculate
6 as to what happened, correct?

7 A. No, we may not be able to speculate, but as a
8 twenty-two-year veteran police officer --

9 Q. You make assumptions?

10 A. I -- I try to keep myself safe out there, so I'm on
11 high alert to all those types of movements and anything
12 like that, so when I see that --

13 Q. Of course, as far as officer safety, I'm with you.
14 I understand your life is the most important thing to
15 you and I'm certainly not trying to diminish you trying
16 to keep yourself safe, so, please, don't take it in that
17 respect. Essentially what I'm asking is, you have no
18 idea what happened in that car.

19 A. No, not until I got closer to it, but you're asking
20 me what was my belief at the time I was approaching that
21 vehicle.

22 Q. And that's pure speculation.

23 A. It may be, but it's still -- what did it turn out
24 to be? A gun and drugs.

25 Q. Because you didn't see anybody passing any drugs.

1 You didn't see that.

2 A. Not until about five seconds later.

3 Q. You saw them passing the drugs?

4 A. No, no, no. I'm saying I saw the gun when I got to
5 the vehicle and then we went from there to -- then the
6 drugs came out.

7 Q. But you never saw anybody passing any drugs?

8 A. No, I didn't.

9 Q. Okay.

10 A. No.

11 Q. You never saw that?

12 A. No, I didn't see it.

13 Q. That's critical here.

14 A. Right. No, I didn't -- I didn't see that. What I
15 saw was a gun and --

16 **THE COURT:** All right. Just a moment. "That's
17 critical", is that a question or a comment?

18 **MR. PHILLIPS:** It was a question to him whether
19 it was important, but I believe I can withdraw the
20 question.

21 **THE COURT:** Your comment.

22 **MR. PHILLIPS:** Or the comment, Your Honor.

23 **THE COURT:** The jury is to disregard counsel's
24 comment. Next question.

25 **MR. PHILLIPS:** Thank you, Your Honor.

1 BY MR. PHILLIPS:

2 Q. So not to beat the dead horse, you didn't see
3 anybody hand anybody anything.

4 MR. BELL: Asked and answered, Your Honor.

5 THE COURT: Overruled.

6 A. I did not see them, no, sir.

7 Q. And that night, all the drugs, they were found on
8 Melisa Martin, solely on her?

9 A. Correct, at that time, yes, sir.

10 Q. And that night she was adamant the drugs were hers?

11 A. That night I believe, yes, sir.

12 Q. She didn't say anything different. "They're mine,
13 they're mine, they're my drugs." She said that.

14 A. Right. She didn't say anything different that
15 night.

16 Q. That's right. Well, she does later, and we'll talk
17 about that more, but not with you, Sergeant. Now, but
18 that night she was adamant; the drugs were found on her
19 and they're her drugs?

20 A. Yes, sir.

21 Q. That's undisputed?

22 A. That night, yes, sir.

23 MR. PHILLIPS: No further questions, Your Honor.

24 THE COURT: Redirect.

25 MR. BELL: Thank you, Judge.

1 REDIRECT EXAMINATION

2 BY MR. BELL:

3 Q. What was the year that this arrest took place in?

4 A. 2008.

5 Q. At that time was it standard for you to have
6 dashboard cameras?

7 A. No, sir.

8 Q. Okay. Now, once again, there was mention of a prior
9 hearing and some discrepancies and what was said then
10 and what was said now. The original arrest in 2008, do
11 you remember when that hearing took place?

12 A. No, sir.

13 Q. Okay.

14 A. You mean as far as what year the actual --

15 Q. Do you remember roughly when you made those comments
16 that Mr. Phillips was talking to you about?

17 A. 2010, I believe.

18 Q. Is that some time ago?

19 A. It's -- yes, sir. Yes, sir.

20 Q. Overall, do you feel like your memory is clear on
21 this incident?

22 A. Yes, sir.

23 Q. Are certain details a little foggy to you?

24 A. Absolutely.

25 Q. Now there's talk about a Form B and how you're

1 the only one that signed it even though someone was
2 assisting you. What is your typical protocol when you
3 have multiple people helping you gather evidence?

4 A. We're all together. We're right there together.
5 You know, he may grab the guns and I grab the drugs,
6 we put it in his vehicle, but we're all working together
7 as a team. We stayed together, we went to the evidence
8 room together. We never lost sight of each other. I
9 know where the evidence was, he knows where the evidence
10 was. We know that it went into a secured locker
11 together. We work as a team every day, that's what we
12 do, and so this is -- it's common practice. Every --
13 every day we do this.

14 **MR. BELL:** I beg the Court's indulgence.

15 (State's Exhibit Number 11 was marked for
16 identification.)

17 **MR. BELL:** Permission to approach the witness.

18 **THE COURT:** All right.

19 **MR. BELL:** Thank you, Judge.

20 BY MR. BELL:

21 Q. What I'm handing you is what has been marked for
22 identification purposes as State's Number 11. Could you
23 take a look at that photo?

24 A. Yes, sir.

25 Q. And what does that photo appear to be a picture of?

1 A. This is a nighttime view of the actual scene where
2 the stop took place.

3 Q. Who took that picture?

4 A. I did.

5 Q. Does that picture fairly and accurately represent
6 the scene as it happened on November 9, 2008?

7 A. Yes, sir, it does. It is the area.

8 **MR. BELL:** Your Honor, I request to enter State's
9 Number 11 into evidence.

10 **MR. PHILLIPS:** No objection, Your Honor.

11 **THE COURT:** Admitted without objection.

12 (State's Exhibit Number 11, a photograph, was
13 admitted into evidence.)

14 **MR. BELL:** Permission to publish.

15 **THE COURT:** All right.

16 BY MR. BELL:

17 Q. Sergeant Finch, is this the same picture that I just
18 showed you?

19 A. Yes, sir, it is.

20 Q. Okay. Now tell us what we're looking at again.

21 A. This is St. Andrews Road and that's the -- that's
22 the area where I pulled the vehicle over to the grass
23 right there and where Master Deputy Blake and myself
24 made the approach and ultimately made the arrest. Just
25 a -- it's just a reference picture.

1 Q. Okay. Now if you'd follow my laser pointer, what
2 am I indicating here?

3 A. That's over -- the opposite side of the road, and
4 I can't remember what that business name is, but the
5 O'Reilly's is sitting right there beside it.

6 Q. This in particular though?

7 A. I'm sorry. That's a streetlight directly across
8 the street from where we were, yes, sir.

9 Q. Is that entire road lit?

10 A. It is.

11 Q. Okay. Now --

12 A. All the way to the county line.

13 Q. -- I don't want to insult anybody's intelligence,
14 but what is this?

15 A. Headlights.

16 Q. Okay. Are those off your cruiser?

17 A. They are.

18 Q. Are they bright?

19 A. They are.

20 Q. Okay. Do they enhance your visibility when you're
21 doing traffic stops?

22 A. Yes, sir, they do.

23 Q. Okay. Now there was some talk about you approaching
24 the vehicle once you saw -- once again, how long have
25 you been in law enforcement altogether?

1 A. It will be -- almost twenty-two years.

2 Q. Could you even begin to estimate how many traffic
3 stops you've conducted?

4 A. No, sir. It's a lot.

5 Q. Now have you approached vehicles with similar
6 lighting before?

7 A. Yes, sir.

8 Q. Okay. Have you seen movement inside of vehicles
9 before?

10 A. Many times.

11 Q. Okay. Now in this particular case, given your
12 training and experience and the lighting that you had
13 that night, did you see movement inside the vehicle?

14 A. Yes, sir.

15 Q. And that movement indicated what to you?

16 **MR. PHILLIPS:** Objection, Your Honor. Speculation.
17 Calls for speculation.

18 **THE COURT:** I missed the question. I'm sorry.

19 BY MR. BELL:

20 Q. Based on your training and experience, Sergeant
21 Finch, and the lighting that you had that night, what
22 did that movement inside the vehicle indicate to you?

23 **MR. PHILLIPS:** Objection, Your Honor. Again, calls
24 for speculation.

25 **THE COURT:** I sustain the objection based on this

1 was ground that was covered before.

2 **MR. BELL:** Your Honor, I would just mention for
3 the record it's something Mr. Phillips covered in his
4 cross-examination.

5 **THE COURT:** I understand.

6 BY MR. BELL:

7 Q. Have you dealt with other drug cases before,
8 Sergeant?

9 A. Yes, sir.

10 Q. Okay. And have you had cases where one person in a
11 group takes responsibility for drugs?

12 **MR. PHILLIPS:** Objection, Your Honor. This is
13 irrelevant. It has no bearing on this case.

14 **THE COURT:** I sustain the objection.

15 **MR. BELL:** No further questions, Your Honor.

16 **THE COURT:** Anything further?

17 **MR. PHILLIPS:** No further questions, Your Honor.

18 **THE COURT:** Thank you, sir.

19 **THE WITNESS:** Thank you, Your Honor.

20 (Witness excused.)

21 **THE COURT:** We'll take a break now. You may return
22 to the jury room. Please don't discuss the case.

23 **MR. BELL:** Thank you, Judge.

24 **MR. PHILLIPS:** Thank you, Judge.

25 (Whereupon, the jury retires to the jury room at

1 2:09 PM.)

2 **THE COURT:** All right. I'm trying to save my voice,
3 so you don't need my permission to publish anything
4 that's in evidence, you don't need my permission to
5 approach anybody.

6 **MR. BELL:** Thank you, Judge.

7 **MR. PHILLIPS:** Judge, I just wanted to say I wanted
8 at this time now that the jury's sworn to renew all my
9 prior objections and pre-trial motions that were denied.
10 Specifically, the motion to reveal the identity of the
11 informant, the motion to suppress -- wait a minute,
12 you granted that, the motion to suppress based on the
13 traffic stop, and I think everything else is waiting to
14 be proffered whenever it comes up, Your Honor. I just
15 needed that renewed. Thank you.

16 **THE COURT:** All right. My rulings are the same.

17 **MR. PHILLIPS:** Thank you, Your Honor.

18 **THE COURT:** We're gonna take a break for
19 eight-minutes.

20 **MR. BELL:** Thank you, Judge.

21 **MR. PHILLIPS:** Thank you, Judge.

22 (Recess taken.)

23 **BAILIFF:** All rise.

24 **THE COURT:** Thank you. Be seated.

25 All right. Let's bring in the jury. Do you have

1 your next witness ready?

2 **MR. BELL:** Yes, Your Honor.

3 **MS. RANKIN:** Yes, sir, Your Honor.

4 (Whereupon, the jury returns to the courtroom at
5 2:24 PM.)

6 **THE COURT:** Next witness.

7 **MS. RANKIN:** Thank you, Your Honor. The State
8 would call Kevin Blake.

9 KEVIN BLAKE,

10 having been duly sworn, testified as follows:

11 **THE CLERK:** If you'd have a seat and state your
12 name, please, for the record.

13 **THE WITNESS:** Kevin Blake, B-L-A-K-E.

14 DIRECT EXAMINATION

15 BY MS. RANKIN:

16 Q. Good afternoon, Mr. Blake.

17 A. Hello.

18 Q. Where do you work?

19 A. Lexington County Sheriff's Department.

20 Q. How long have you worked there?

21 A. Since June of 2006.

22 Q. Tell me a little bit about your background in law
23 enforcement.

24 A. Well, prior to the County, I worked for Charleston
25 City Police for about three and a half years. I moved

1 here in 2006. I've been a road officer, I was a master
2 deputy, kind of a second line supervisor, I was a patrol
3 sergeant after that, and currently I'm working as a
4 property crimes detective.

5 Q. And, I'm sorry, you might have said this, but what
6 was your rank?

7 A. Currently?

8 Q. Yes, currently.

9 A. Detective.

10 Q. Detective. And what was your rank in 2008?

11 A. It was master deputy, corporal.

12 Q. Now did you assist in a traffic stop in this case?

13 A. I did.

14 Q. And who was with you on that traffic stop initially?

15 A. Sergeant Finch, my sergeant at the time.

16 Q. Okay. And what did you do after that motor vehicle
17 was stopped?

18 A. Well, Sergeant Finch was the primary car. He was
19 in front of me and I pulled in behind him, kind of
20 offset to the right-hand side so that I could get --
21 just tactically have a better view of the vehicle, and
22 as he got out and approached, I got out and approached
23 the passenger side and he approached the driver's side.

24 Q. All right. Now as you approached that passenger
25 side, what did you observe?

1 A. I observed two subjects in the car in the front of
2 the vehicle. Sergeant Finch was going up to engage with
3 the driver and I was approaching the passenger side and
4 I heard him say "gun".

5 Q. And who was the driver of that vehicle?

6 A. I'm sorry?

7 Q. Who was the driver of that vehicle?

8 A. Mr. Pradubsri.

9 Q. And who was the passenger in that vehicle?

10 A. Melisa Martin.

11 Q. And you were dealing with the passenger?

12 A. Yes.

13 Q. Okay. And as you -- did you approach Ms. Martin?

14 A. I did.

15 Q. And as you approached her, what did you observe?

16 A. Well, I opened up her door and based on the
17 statement of "gun", I ordered her out of the vehicle,
18 and as I was grabbing her right forearm, I noticed a
19 small baggie sticking out of her clinched fist, and as
20 she was coming out of her car, her shirt lifted up and
21 I saw another clear plastic baggie sticking out of her
22 waistband.

23 Q. And what did you believe those baggies to be at the
24 time based on your experience in law enforcement?

25 A. At the time, based on my experience, I believed

1 them to be narcotics.

2 Q. And did you take those baggies from her?

3 A. I did.

4 Q. Okay. And did you notice anything else about her
5 at that point?

6 A. Well --

7 Q. You had the bag -- you had the bag from her hand?

8 A. We had the bag out of the -- I got her back to my
9 patrol car and took the -- placed her in handcuffs, took
10 the small baggie from her right hand to avoid any type
11 of loss or destruction, and placed it on the hood of my
12 car. And I felt comfortable enough at that point
13 because the clear bag was sticking out of her waistband
14 to just go ahead and pull on that, and it had more of
15 the white rock substance in it, and I put that on the
16 hood of my car with her standing there. And I also
17 noticed a bulge in her in her crotch area, which wasn't
18 typical.

19 Q. Not typical in a female?

20 A. No.. So I -- I called dispatch and had -- I knew
21 from working that area, Irmo, for quite a while that
22 Officer Grinstead was working and it's always preferable
23 to have another female officer search a female suspect,
24 so I had them have her respond.

25 Q. Okay. And when that female officer responded, were

1 you there?

2 A. I was.

3 Q. And did you watch the search?

4 A. I did.

5 Q. And you know what else was found?

6 A. I do.

7 Q. Okay. And what was that?

8 A. Another clear plastic bag removed from the front
9 area of Ms. Martin's pants that also contained
10 additional smaller bags of white rock substance, and
11 that was placed on the hood of the car.

12 Q. Okay. And you knew -- you testified that you heard
13 "gun"?

14 A. Correct.

15 Q. Did you lay eyes on that gun?

16 A. After Ms. Martin was secured in my vehicle, I went
17 up -- and Mr. Pradubsri was secured in Sergeant Finch's
18 vehicle, we made our way up to the car and the gun in
19 question was -- was between the front driver's seat and
20 the center console wedged in, but you could see the
21 pistol grip between the driver's seat and the center
22 console.

23 Q. Now you said that you took the drugs and put them
24 on the hood of the car?

25 A. Correct.

1 Q. Was another firearm found in that vehicle?

2 A. There was a small caliber semi-automatic handgun
3 found in Melisa Martin's purse.

4 Q. I'll show you what's been marked as State's 3. Can
5 you see that?

6 A. I can.

7 Q. What does that appear to be to you?

8 A. The clear bags.

9 Q. This right here?

10 A. There.

11 Q. What is there?

12 A. I can hardly see with the glare.

13 Q. Do you want to see it up close first?

14 A. If I could.

15 Q. Okay.

16 A. Okay. I was off on my orientation. Here's the
17 front of the car. This was the gun that was found
18 between the driver's seat and the center console, and
19 that's the smaller caliber handgun, and that's the
20 magazine and the ammunition from that handgun.

21 Q. All right. One more time so they can see. What was
22 this again?

23 A. That's the firearm that was found between the
24 driver's seat and the center console.

25 Q. Okay. And this would be?

- 1 A. That is a handgun and ammunition.
- 2 Q. Okay. And this is the front of the car?
- 3 A. Yes.
- 4 Q. Okay. And now when you guys were gathering all of
- 5 this stuff, were you together?
- 6 A. We were.
- 7 Q. All right. And what did you do with that stuff once
- 8 you took it off the hood of the car?
- 9 A. After it was photographed, the bags that everything
- 10 is in or the brown envelopes, I keep supplies of those
- 11 in my trunk for evidence storage, keeping things
- 12 together, it was all placed in the trunk of my car and
- 13 locked and secured.
- 14 Q. Does anybody else have access to the trunk of your
- 15 car?
- 16 A. Just me.
- 17 Q. So all that stuff goes into your locked trunk,
- 18 you're the only person with access?
- 19 A. Unless I allow somebody else in, which I didn't.
- 20 Q. And where did you take it from there?
- 21 A. Well, we transported -- I transported Melisa
- 22 Martin to the jail and Sergeant Finch transported
- 23 Mr. Pradubsri, and while we were -- we went to booking
- 24 and booked them in and all of that stuff stayed in the
- 25 trunk of my car. We left booking in the sally port and

1 you have to -- there's no quick way to it. You have to
2 go back out of the gate and back in the same secured
3 entrance gate to the fenced-in back lot, and we both
4 parked at the evidence building and took stuff out of
5 the trunk and we both went inside to the evidence room
6 and started logging everything in.

7 Q. Okay. And there's some paperwork to fill out; isn't
8 there?

9 A. For anything that we log in, whether it's property
10 on the side of the road or firearms or anything like
11 that, there's basic paperwork that's filled out, but
12 since we had narcotics there's a BEST kit that has to be
13 filled out because it's sent off to SLED for testing and
14 that's their requirement.

15 Q. I'll hand you what's been marked for identification
16 purposes only as State's Exhibit 8. Just hold that down
17 for me. Do you recognize what that is?

18 A. It's a BEST kit.

19 Q. Is that the same BEST kit from that night?

20 A. Yes.

21 Q. Okay. And how do you know that?

22 A. It's got Sergeant Finch's name and his signature,
23 the dates, and the evidence tapes are still intact.

24 Q. Okay. And take a look at the contents of that.
25 Does that appear to be the drugs that you seized off

1 Ms. Martin?

2 A. It does.

3 Q. The drugs that went into the trunk of your car?

4 A. Yes.

5 Q. The drugs that went from the trunk into evidence?

6 A. Yes.

7 Q. Did you alter or manipulate those drugs in any way?

8 A. No.

9 Q. They were in your care, custody and control the
10 entire time?

11 A. Yes.

12 Q. All right. And what was done with the weapons you
13 guys seized?

14 A. Well, those are secured. They were both
15 semi-automatic handguns, so the slide is locked to
16 the rear and a plastic cable tie, a zip tie, is put
17 through the magazine well, and they're secured, and
18 the ammunition is stored -- per our evidence policy,
19 ammunition is stored separately from the weapons, so
20 they were in separate packaging when we entered them.

21 Q. Okay. But they all go to the same place?

22 A. It all goes into evidence.

23 Q. Now you initially were the one that searched

24 Ms. Martin. Did you search her for anything else? Did
25 she have anything else on her person?

1 A. No.

2 Q. No cash?

3 A. I don't remember if she had cash.

4 **MS. RANKIN:** I beg the Court's indulgence.

5 Q. Just a couple of questions to clear it up. Do you
6 know if there was any cash found on Mr. Pradubsri?

7 A. There was.

8 Q. Do you know around about how much that was?

9 A. The exact dollar, no. I mean, it was a fairly
10 large quantity, but I don't remember to the dollar.

11 Q. Okay. In your training and experience in law
12 enforcement, you've dealt with drug cases before?

13 A. Yes.

14 **MR. PHILLIPS:** Objection, Your Honor. This one
15 calls -- calls for speculation.

16 **THE COURT:** Whether or not he's dealt with drug
17 cases before?

18 **MR. PHILLIPS:** No, the question coming. Based on
19 his training and experience and the cash, that would
20 call for speculation.

21 **THE COURT:** The objection's overruled as to the
22 question that was asked.

23 BY MS. RANKIN:

24 Q. You've dealt with drug cases before?

25 A. I have.

1 Q. The amount of crack that was found, do you believe
2 that to be a large amount of crack cocaine?

3 A. Yes.

4 Q. When you've dealt with drug cases in the past, what
5 is the typical amount that you would see?

6 **MR. PHILLIPS:** Objection, Your Honor. Relevance to
7 this case.

8 **THE COURT:** Overruled.

9 A. Typically what's referred to as a rock or a piece,
10 two to three, for somebody's use.

11 **MR. PHILLIPS:** Your Honor, you overruled the
12 objection.

13 **MS. RANKIN:** I beg the Court's indulgence. Thank
14 you. I have no further questions. Please answer
15 anything the defense may have.

16 **THE COURT:** Cross-examination.

17 **MR. MAULDIN:** Thank you.

18 CROSS-EXAMINATION

19 BY MR. MAULDIN:

20 Q. So Sergeant Finch approached the vehicle first and
21 you were approaching from the passenger side; is that
22 correct?

23 A. Yes.

24 Q. And he had gotten up to the driver's side and you
25 were kind of at the rear bumper of the vehicle when you

1 heard him yell "gun"?

2 A. Correct.

3 Q. Okay. And then he pulled Mr. Pradubsri out and you
4 went to go deal with Ms. Martin; is that right?

5 A. Correct.

6 Q. Okay. And you saw the bag of suspected rock
7 substance in her hand and you grabbed her hand and got
8 her out of the vehicle. She didn't wrestle with you or
9 anything like that?

10 A. No.

11 Q. There wasn't a struggle or anything?

12 A. I wouldn't say it was a struggle. I've been in
13 fights, but I wouldn't call that a struggle.

14 Q. And the only suspected rock-like substance was the
15 rock-like substance that was found on Ms. Martin's
16 person, correct?

17 A. Yes.

18 Q. Okay. And were you present when she told Sergeant
19 Finch that that suspected rock-like substance was hers?

20 A. I don't remember her specifically telling that to
21 Sergeant Finch.

22 **MR. MAULDIN:** No further questions.

23 **THE COURT:** Anything further?

24 **MS. RANKIN:** Nothing further, Your Honor.

25 **THE COURT:** Thank you.

1 **THE WITNESS:** Thank you, Your Honor.

2 (Witness excused.)

3 **MS. RANKIN:** The State would call Andrea Grinstead.

4 ANDREA GRINSTEAD,

5 having been duly sworn, testified as follows:

6 **THE CLERK:** State your name and spell your last for
7 the record.

8 **THE WITNESS:** My name's Andrea Grinstead,
9 G-R-I-N-S-T-E-A-D.

10 DIRECT EXAMINATION

11 BY MS. RANKIN:

12 Q. Ms. Grinstead, where do you work?

13 A. I'm employed by the Irmo Police Department.

14 Q. How long have you worked there?

15 A. Eight years.

16 Q. And were you employed there in November 2008?

17 A. Yes, ma'am.

18 Q. And were you involved in this case?

19 A. Yes, ma'am.

20 Q. How did you become involved?

21 A. I was advised by dispatch that Lexington County was
22 requesting a female in reference to searching a female
23 for narcotics.

24 Q. And did you respond at that point?

25 A. Yes, ma'am.

1 Q. And about how long did it take from the time you got
2 that call and decided to respond until the time you got
3 there?

4 A. Probably about a minute, minute and a half. I was
5 right around the corner in the Irmo Village apartment
6 complex.

7 Q. Okay. And what did you do once you got on-scene?

8 A. Once I got there, I initially spoke with Sergeant
9 Blake and he filled me in on, you know, everything that
10 happened, what transpired, and that there was a female
11 on-scene advising that she did have narcotics on her,
12 and they asked me to retrieve them from her since I'm a
13 female.

14 Q. And did you notice anything as you approached that
15 female?

16 A. Yes, ma'am.

17 Q. And what did you notice?

18 A. I noticed that she had a rather large bulge --

19 Q. You can stand up.

20 A. She had a rather large bulge in this area, which is
21 not typical of most females.

22 Q. And did you search Ms. Martin?

23 A. Yes, ma'am. And she did advise me prior to
24 searching her that she was not wearing underwear at the
25 time, so I went ahead and put gloves on and she did tell

1 me also that there was drugs in her pants.

2 Q. And when you searched her, what did you find?

3 A. I pulled out a bag of drugs, rocks, and it was
4 unsecured, so I handed it off to Sergeant Blake.

5 Q. Okay. And was there anything loose?

6 A. Yes, ma'am. Because the bag was open, the baggie
7 was open, a lot of the rocks had fallen out of the
8 baggie into her pants, which she told me, so at that
9 point we tried to shake her pants out as best as we
10 could and then I retrieved whatever rocks I could find
11 that were on the ground that had fallen out of her
12 pants.

13 Q. And the ones you retrieved off the ground, what did
14 you do with them?

15 A. I handed them off to Officer Blake.

16 Q. Did you alter or manipulate those in any way?

17 A. No, ma'am.

18 Q. Do you remember how many fell to the ground?

19 A. I would say maybe six to a dozen. I really wasn't
20 counting at that point.

21 Q. Okay. And they were in substantially the same
22 condition as when they fell off of her as when you
23 picked them up and put them back in that bag?

24 A. Yes, ma'am.

25 **MS. RANKIN:** Thank you. I have no further

1 questions.

2 **THE COURT:** Cross.

3 CROSS-EXAMINATION

4 BY MR. PHILLIPS:

5 Q. Good afternoon.

6 A. Hello.

7 Q. Now that night when you searched Ms. Martin, she was
8 cooperative with you?

9 A. Yes.

10 Q. Now all the drugs that were found during your
11 search, they were on her person?

12 A. On her or on the ground around her, yes, sir.

13 Q. Came out of her pants?

14 A. Yes, sir.

15 Q. And she admitted that night that the drugs were
16 hers?

17 A. I don't know anything. I was just there to take
18 narcotics off of her.

19 Q. So at that time when you pulled the narcotics out,
20 she hadn't made any statements?

21 A. Not to my -- like I said, they had just called me
22 there because of her being a female. I was just there
23 to retrieve narcotics from a female.

24 **MR. PHILLIPS:** No further questions. Thank you.

25 **THE WITNESS:** You're welcome..

1 eating a sugar cookie, you know, if you bite from one
2 corner on the left-hand side, you know, it breaks in
3 half, it's still the same sugar cookie, you know. If
4 I notice, and I have seen in the past, if I notice
5 that one of them is black or one is them is a weird
6 color, then I would separate that out and test that
7 individually itself.

8 Q. So based on your training and education, are you
9 trained to test each and every item in that bag?

10 A. No. No lab in South Carolina does that.

11 Q. Okay.

12 A. No lab at the DEA or --

13 Q. Thank you. Now let's actually get to the testing
14 part. Could you tell us what you ended up finding when
15 you opened that BEST kit.

16 A. Item 1 was 5.95 grams of cocaine base crack.

17 **MR. MAULDIN:** Your Honor, I'd object to testimony
18 of the weight based on prior motions.

19 **THE COURT:** I overrule the objection. You may
20 proceed.

21 A. Okay. Item 1 is 5.95 grams of cocaine base crack,
22 Item 2 tested at 1.18 grams of cocaine base crack and
23 Item 3 was 10.89 grams of cocaine base crack and Item 4
24 was 49.86 grams of cocaine base crack.

25 Q. Okay. Can you tell us a little about the particular

1 test that you might run on something like this?

2 A. For each test -- each sample bag I did a presumptive
3 screening. They all matched that it was within the
4 "caine" family. There's several "caines": lidocaine,
5 benzocaine, cocaine. I then took another test,
6 confirmatory test, that proved that it was cocaine base
7 crack that was present in each of the samples.

8 Q. Okay. Now do you as an ordinary course of your
9 business generate a report that documents your findings
10 for something like this?

11 A. I do.

12 Q. Okay. What I'm handing you is what is marked for
13 identification as State's Number 9. Would you take a
14 look at that. What is that that you have in your hand,
15 Ms. Homer?

16 A. This is my original report for the -- that
17 summarizes what I found in the case.

18 Q. And does what's indicated on that report match what
19 you've just told us from the stand?

20 A. Yes.

21 Q. Okay. And how do you know that that particular
22 report is the same one that goes with that particular
23 BEST kit?

24 A. Because all of the identification numbers, the lab
25 numbers, the case number, everything is the same on this

1 report as is my other paperwork.

2 Q. Now who's the custodian of those reports once
3 they're generated?

4 A. I am.

5 Q. Okay. Anybody else?

6 A. No. I actually have the files in the lab itself and
7 they're under lock and key that -- that even I -- no one
8 else has but me.

9 Q. Okay. Now that BEST kit, do you put any markings
10 on it so that you can see that you've manipulated it in
11 some way? Do you put any markings on it?

12 A. Yes, I do.

13 Q. What markings do you put on it?

14 A. I write the lab number on the front of the BEST kit
15 that you can still see it in the bag itself, the date.
16 You know, I'll write that the seal is okay, and the
17 date, and the date that I write on that seal matches
18 with the date that I analyzed the case itself, and then
19 each item of evidence I write the lab number and that
20 item. If I've added a plastic bag -- sometimes these
21 just tied plastic bags, I can't really put the drug back
22 in there, so I have to add a Ziploc bag to repackage it
23 and so they'll be labeled "added" because I've added
24 that evidence to it.

25 Q. Now you mentioned that you write a lab number on

1 there. Does that lab number on the BEST kit match the
2 lab number that's on the report that you generated?

3 A. Yes.

4 Q. Okay. Now after you've tested these and generated
5 the report, what do you do with the BEST kit?

6 A. I seal it in my own -- it's a thicker plastic Kpak
7 bag and that seal -- I'll write the seal on the inside
8 of the bag and then heat seal it on the outside so that
9 if that lettering is distorted, I'll notice that
10 somebody has tampered with that seal.

11 Q. Okay. And as you see it in front of you today,
12 does it appear to have been tampered with since the last
13 time you packaged it?

14 A. No, it does not.

15 Q. If I could get both of those from you.

16 A. (Handing.)

17 **MR. BELL:** Your Honor, at this point in time, the
18 State would move State's Number 8 into evidence and
19 State's Number 9 into evidence.

20 **MR. MAULDIN:** Subject to prior objections and
21 motions, Your Honor.

22 **THE COURT:** As it relates, state which one is
23 Number 8.

24 **MR. BELL:** Your Honor, State's Number 8 is the BEST
25 kit and State's Number 9 is the report.

1 **THE COURT:** Number 8 is admitted over objection.

2 (State's Number 8, a BEST kit, was admitted into
3 evidence.)

4 **THE COURT:** Any objection to Number 9 other than
5 the previous objection?

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

7 **THE COURT:** And then Number 9 is a summary of her
8 testimony?

9 **MR. BELL:** Your Honor, it is the drug analysis
10 which indicates the particular gram weight and what the
11 substance was.

12 **THE COURT:** Did the witness testify that that is a
13 summary of her testimony?

14 **MR. BELL:** She did, Your Honor.

15 **THE COURT:** The witnesses are not allowed to
16 summarize testimony and give it to the jury.

17 **THE WITNESS:** Can I answer?

18 **MR. BELL:** Certainly.

19 **THE COURT:** Not unless a question is asked.

20 BY MR. BELL:

21 Q. What I'm handing you is what's marked as State's
22 Number 9. Could you, please indicate what that report
23 tells you.

24 A. It's just -- it's -- it's just the results. It's
25 a summary of my results.

1 Q. Okay. And what are those results?

2 A. Of my work that I did analyzing this.

3 Q. Okay. And would you just walk us through that
4 report, what it tells you.

5 A. Item 1, it just describes the tied plastic bag
6 containing rock substance that I just described what
7 I -- the evidence before I've analyzed it, then the
8 results are the results that I found and the gram
9 weight, and then the schedule and control of that
10 substance at the time that I've done the work.

11 Q. And what substance?

12 A. It's cocaine base crack, 5.95 grams. Item 2 is
13 a tied plastic bag containing rock substance. The
14 results were cocaine base crack and it was 1.18 grams.
15 Item 3, again, another tied plastic bag containing rock
16 substance with cocaine base crack, 10.89 grams. And
17 Item 4 was the Ziploc bag containing another tied
18 plastic bag containing rock substance and the results
19 were cocaine base crack, 49.86 grams.

20 Q. And I'd like to just clarify, is this report
21 something you keep in the ordinary course of your
22 business?

23 A. It is.

24 **MR. BELL:** Your Honor, at this time we'd request to
25 move State's Number 9 into evidence.

1 REDIRECT EXAMINATION

2 BY MR. BELL:

3 Q. Ms. Homer, just a yes or no answer. Is it the
4 trained standard to test every single piece of a drug
5 in the bag?

6 A. It is not.

7 MR. BELL: No further questions, Your Honor.

8 THE COURT: Anything further?

9 MR. MAULDIN: No, Your Honor.

10 THE COURT: All right. You may step down.

11 (Witness excused.)

12 THE COURT: Okay. Next witness. I understand we
13 have to take up another matter outside the jury's
14 presence, so we'll do that at this time. If you will
15 return to the jury room.

16 (Whereupon, the jury retires to the jury room at
17 3:42 PM.)

18 THE COURT: All right. We can proceed from here.

19 MR. PHILLIPS: Yes, Your Honor. Just a moment.

20 THE COURT: Yes.

21 MR. PHILLIPS: Yes, Your Honor. We do have a
22 motion as part of the proffer testimony that we're
23 going to -- is that we do have a motion to exclude
24 testimony and references to inadmissible prior bad act
25 evidence under Rule 404 of the South Carolina Rules of

1 Evidence, as well as under the Fifth and Fourteenth
2 amendments to the United States Constitution, and as
3 well as Article 1, Section 3 of the South Carolina
4 Constitution.

5 Specifically as to Melisa Martin, I believe the
6 State intends to talk about prior drug sales, as well
7 as how on prior occasions crack cocaine was made. We
8 would argue that that is impermissible character
9 evidence that --

10 **THE COURT:** Prior occasions or this crack cocaine?

11 **MR. PHILLIPS:** On some of the -- for the making of
12 it, the cooking of it, I believe she's going to testify
13 based on the two prior trials of just prior occasions
14 her and the Defendant cooked crack cocaine, not this
15 occasion. That's based on the two prior trials, Your
16 Honor.

17 **THE COURT:** All right.

18 **MR. PHILLIPS:** Now with the alleged prior bad act
19 at the Kroger, Your Honor, that was, I believe, stated
20 the day of. Now it's not obviously during the traffic
21 stop, but she's gonna testify based on the two prior
22 trials that prior to the traffic stop they were at a
23 Kroger, she went into a bathroom, sold crack, and he
24 was on the outside, and that it was part of a -- like
25 a -- they were together doing it. That's what she

1 testified in the prior ones. Both of these prior acts
2 are, again, not as a result of a conviction, so they
3 must be proved by clear and convincing evidence.

4 We would also argue under State v. Gore, as we did
5 pre-trial, that because of the similarity of these
6 crimes to the crimes charged against Mr. Pradubsri that
7 that enhances the prejudice and should be excluded on
8 that basis, and we'll go for the proffer of testimony
9 at this time.

10 **THE COURT:** All right.

11 **MR. BELL:** Thank you, Your Honor. The State calls
12 Ms. Melisa Martin to the stand.

13 MELISA MARTIN (In-Camera),
14 having been duly sworn, testified as follows:

15 **THE CLERK:** Thank you. If you will have a seat
16 here. State your name and spell your last name for the
17 record.

18 DIRECT EXAMINATION

19 BY MR. BELL:

20 Q. State your name.

21 A. Melisa Martin.

22 Q. Would you spell your last name for the court
23 reporter, Ms. Martin.

24 A. Okay. You know, I can't hear that good, so you'll
25 have to -- one more time.

1 Q. Would you, please, spell your last name for the
2 court reporter.

3 A. M-A-R-T-I-N.

4 Q. Okay. Now do you know Mr. Jo Pradubsri?

5 A. Yes, sir.

6 Q. Okay. And do you see him present in the courtroom
7 today?

8 A. Yes, sir.

9 Q. Okay. Could you point where he's sitting?

10 A. (Indicating.)

11 Q. Okay. Now have you had some sort of relationship
12 with Mr. Pradubsri in the past?

13 A. Yes, sir.

14 Q. What kind of relationship was that?

15 A. We were live-in boyfriend and girlfriend.

16 Q. Okay. And do you remember roughly what year y'all
17 were living together?

18 A. I don't.

19 Q. Okay. Do you remember when you were arrested in
20 this particular case?

21 A. Yes, but I still don't remember what day. I
22 remember when --

23 Q. Does 2008 sound right?

24 A. Huh?

25 Q. Does 2008 sound right?

1 A. About that, yeah.

2 Q. Okay. Do you remember what address you were living
3 at?

4 A. [REDACTED] Lord Howe.

5 Q. Okay. Now, Ms. Martin, I want you to tell the
6 Court a little bit about yourself. I know we've talked
7 about this, I don't want you to feel embarrassed, but
8 tell us a little bit about your background.

9 A. I've been in a lot of trouble. I've been to prison
10 eight times for various reasons. Pretty much all of
11 them had to do with my drug abuse.

12 Q. Anything else?

13 A. Well, now I haven't been in trouble in a while and
14 I'm drug-free.

15 Q. Aside from drugs, what kind of things did you get
16 in trouble for?

17 A. Auto theft, prostitution.

18 Q. Okay. Now do you recall how long you were with
19 Mr. Pradubsri before this arrest?

20 A. Probably a year or maybe not that long. I don't
21 really remember.

22 Q. Did you say somewhere around a year?

23 A. Uh-huh.

24 Q. Okay. Now during that time, were you using crack
25 cocaine?

1 A. Yes, sir.

2 Q. Okay. Typically where were you getting that crack
3 cocaine you were using?

4 A. From him.

5 Q. Okay. Now were you aware of Mr. Pradubsri at
6 this time being involved in the distribution of crack
7 cocaine?

8 A. Yes, sir.

9 Q. Okay. And did you help him with that occasionally?

10 A. Yes, ma'am.

11 Q. Would you consider the distribution of crack cocaine
12 to be Mr. Pradubsri's business?

13 A. Yes, sir.

14 Q. Is that how he made money?

15 A. That's the only way he made money.

16 Q. Okay. What was your business at the time?

17 A. I was running an escort service.

18 Q. Okay. Now in living with Mr. Pradubsri, what kind
19 of benefits did you get out of that situation?

20 A. I was able to smoke every day.

21 Q. Did you have to pay for it?

22 A. No, sir.

23 Q. Okay. And whose crack cocaine were you smoking?

24 A. Jo's.

25 Q. Okay. Now did you ever ride with him when he would

1 be out dealing crack cocaine?

2 A. Yes, sir.

3 Q. Okay. How often?

4 A. All the time. Every -- pretty much every time.

5 Q. Okay. Do you know how he would come about the crack
6 cocaine?

7 A. Well, he would go and get it in the powder form and
8 come back to the house and cook it.

9 Q. So when you say the powder form, what is that?

10 A. Cocaine.

11 Q. Okay. And then when you say cooked, does that mean
12 he would change cocaine into crack cocaine?

13 A. Yes, sir.

14 Q. Okay. Now did you ever go with him when he would
15 purchase these -- this cocaine?

16 A. Yes, sir, sometimes.

17 Q. Did he purchase small quantities or large
18 quantities?

19 A. Large quantities, sometimes up to six ounces, seven,
20 something like that.

21 Q. Is that a large amount on the street?

22 A. Yes, sir, a huge amount.

23 Q. Okay. Now after -- where would the crack cocaine
24 get cooked at?

25 A. In the house in our -- we lived in a log cabin.

1 Inside a kitchen in the log cabin.

2 Q. And did you personally witness that occurring?

3 A. Yes, sir.

4 Q. Was it on more than one occasion?

5 A. Yes, sir.

6 Q. Any idea how many occasions?

7 A. Every occasion.

8 Q. Was it a bunch?

9 A. Yeah.

10 Q. Okay. Now we mentioned earlier this arrest took
11 place in 2008 and you said that you'd been living with
12 him about a year. Leading up to this arrest where you
13 were found with crack cocaine around your pants and in
14 your hand, did you see that crack cocaine get cooked up?

15 A. Yes, sir.

16 Q. And where was that crack cocaine cooked up at?

17 A. In our house in our kitchen.

18 Q. And who cooked it?

19 A. He did.

20 Q. And did you personally see that happen?

21 A. Yes.

22 Q. Okay. And you're positive that was the same crack
23 cocaine that was cooked that you ended up having on you
24 that night?

25 A. Yes, sir.

1 Q. Okay. Now on the date where you were arrested, do
2 you recall being pulled over by police?

3 A. Yes, sir.

4 Q. Okay. And before that had you and Mr. Pradubsri
5 made any distributions of that crack cocaine?

6 A. Yes, sir.

7 Q. Okay. Do you recall anything happening at a Kroger
8 prior to your arrest?

9 A. Yes, sir.

10 Q. Tell us a little bit about that.

11 A. We went to meet two girls and there was a police
12 officer inside the parking lot, so we just met the girls
13 inside and he had me to go in the bathroom with them,
14 the women's bathroom, and serve them in there. One of
15 them didn't have money, she had some kind of prepaid
16 card, like a prepaid credit card, a gift card or
17 something, and the other one had money.

18 Q. Okay. So, once again, where did this transaction
19 take place?

20 A. Inside the women's bathroom.

21 Q. Where?

22 A. In Kroger's.

23 Q. Okay. And where was Mr. Pradubsri when this was
24 taking place?

25 A. Standing right outside the door.

1 Q. Did he know this transaction was going on?

2 A. Yes, sir. He couldn't serve them, you know,
3 because the police were outside. There was a police car
4 outside, so.

5 Q. Okay.

6 A. And, of course, we couldn't walk around in the
7 store.

8 Q. Now when this gift card was turned over, who got to
9 keep that gift card?

10 A. He did.

11 Q. Okay. And that crack cocaine that you distributed
12 that night in the Kroger bathroom, was that also from
13 the same batch of crack cocaine that y'all cooked at the
14 apartment?

15 A. Yes, sir.

16 Q. And, once again, who specifically cooked that crack
17 cocaine?

18 A. Jo.

19 **MR. BELL:** I beg the Court's indulgence.

20 Q. Ms. Martin, you have no doubt that the crack
21 cocaine that was in that vehicle that night was from a
22 batch that was cooked at the house you lived in with
23 Mr. Pradubsri?

24 A. It was definitely the same batch.

25 Q. And you stand by that Mr. Pradubsri cooked it?

1 A. Yes, sir.

2 MR. BELL: Please answer any questions Mr. Phillips
3 may have for you.

4 CROSS-EXAMINATION

5 BY MR. PHILLIPS:

6 Q. Now it's your testimony that the afternoon that you
7 were stopped and arrested that there was crack cocaine
8 that was cooked?

9 A. Sir, you're gonna have to talk a little louder,
10 too.

11 Q. There was crack cocaine that was cooked the
12 afternoon of the traffic stop, the night you were
13 arrested?

14 A. Yes, sir.

15 Q. And you said that Mr. Pradubsri is the one who
16 cooked it?

17 A. Yes, sir.

18 Q. And you were present?

19 A. Yes, sir.

20 Q. And you were present whenever they received the
21 crack cocaine?

22 A. Yes, sir.

23 Q. All right. And -- well, where did you get it?

24 A. The crack cocaine?

25 Q. Yeah.

1 A. From Jo.

2 Q. Well, how did he get the crack cocaine then?

3 A. He would go and buy it in the cocaine powder form
4 from one of his connects.

5 Q. Did you know who that person was?

6 A. I was never allowed to meet the guy, but I rode
7 with him to get it.

8 Q. All right. So you would deny that you know that
9 person's identity or at least that you've told law
10 enforcement previously that you knew this drug
11 connection's identity?

12 A. I knew where he lived, but I never knew him
13 personally.

14 Q. No -- no specifics about him?

15 A. No, not that I can recall. I just knew where he
16 lived.

17 Q. You would deny that you told law enforcement that
18 person's name was Cuz, that you could take them exactly
19 where he lived, that he had AIDS?

20 A. Oh, well, yeah, I remember telling him that, yeah,
21 but that was just from his -- that's just from Jo's --
22 what would come out of his mouth about the guy. I never
23 actually met the guy, but I knew where he lived.

24 Q. Okay.

25 A. I just told them that --

1 Q. That you knew his cell phone number as well you
2 told law enforcement?

3 A. Well, yeah.

4 Q. You knew everything about this guy, but you didn't
5 ever -- you never met him?

6 A. I have never met him, no.

7 **MR. BELL:** Your Honor, I fail to see how this is
8 relevant to the issue.

9 **MR. PHILLIPS:** I'll move along to the Kroger sale,
10 Your Honor.

11 BY MR. PHILLIPS:

12 Q. As to the sale at Kroger, you've previously stated
13 -- or today you said that you -- one of the people --
14 now there's these two women. Tell me exactly what
15 happened in that bathroom.

16 A. They got served. One of them didn't have money,
17 she had a gift card, and the other one, she had money,
18 they got served, and then I came out of the bathroom.

19 Q. All right. So you sold crack to both?

20 A. Yes.

21 Q. Okay. And one paid with a gift card and one paid
22 with cash?

23 A. Yes.

24 Q. Now at the -- previously you've testified that
25 you only sold to one of them in the bathroom. Do you

1 dispute that?

2 A. No, I'm not disputing that. I couldn't recall at
3 the time. I mean, it's been a long time. It's been a
4 long time and I've been through a lot.

5 Q. This was two months ago.

6 A. Yes. I'm saying that when -- when I said -- when I
7 made that statement, I couldn't recall. I mean, it's
8 been years since that happened. I mean, I couldn't
9 recall.

10 Q. You but were under oath when you said it, correct?

11 A. Yeah, of course.

12 Q. And you swore to tell the truth?

13 A. Yeah.

14 Q. And you said something differently?

15 A. Of course.

16 Q. And it's been a long time?

17 A. Yeah, it's been a long time since that incident
18 happened.

19 Q. So you're just filling in the gaps with what you
20 think happened or do you know it?

21 A. No, that's not what I'm doing. If I said something
22 different, it's only because I couldn't recall. I mean,
23 I've been --

24 Q. So that's a lie?

25 A. It's been a long time.

1 Q. Well, which one's the truth?

2 A. I think what the truth is you're trying to make me
3 say something that -- that really isn't so. That's what
4 I think.

5 Q. It's much more simple than that.

6 A. And I think --

7 **MR. BELL:** Argumentative, Your Honor.

8 A. And another thing that I think, it's been a long
9 time since that incident happened, since that actual
10 drug deal was, you know, and at that time I was smoking
11 a lot of crack that was -- that I never purchased, I
12 didn't have to purchase, it was given to me, but there's
13 some details I don't exactly remember and that's just
14 particularly just one of them. I don't remember full
15 details of a whole lot of things, but I remember whose
16 crack it was and I know it wasn't mine.

17 Q. I'll try to be very clear. Previously when you
18 said you sold the one and I don't know where he did the
19 other one, referring to Pradubsri, that's what you said
20 before. We'll say this is Selection Number A. Then
21 now today you're saying that you sold to both of them.
22 We'll call this Selection Number B. Which one's the
23 truth, A or B?

24 A. I just said that I served both of them.

25 Q. Okay. So the one that you said previously under

1 oath, that's a lie?

2 A. It wasn't a lie. It just wasn't what I -- I
3 couldn't recall.

4 Q. And then you -- so if you couldn't recall and you
5 provided an answer, generally what's that called?

6 A. Oh, my God. I guess it's a lie.

7 Q. Thank you.

8 **THE COURT:** While there's a lull in your
9 questioning, this bathroom was at a -- what kind of
10 place?

11 **THE WITNESS:** It's the Kroger's bathroom. It was
12 like around the dining room area in Irmo.

13 **THE COURT:** Where is that in relation to where the
14 arrest took place, how far away?

15 **THE WITNESS:** Where the --

16 **THE COURT:** Where you-all were arrested, how far
17 away was it?

18 **THE WITNESS:** We were pulled out of the parking lot.

19 **THE COURT:** Of the same place?

20 **THE WITNESS:** Yeah, we were driving out of the Irmo
21 -- I mean, the -- the Kroger's parking lot and as soon
22 as we got out of the parking lot, we were pulled over.

23 **THE COURT:** And how far is that from this Irmo
24 Elementary School?

25 **THE WITNESS:** I'm not sure.

1 **THE COURT:** Do you know where Irmo Elementary School
2 is located?

3 **THE WITNESS:** Yeah.

4 **THE COURT:** Is it near the same area?

5 **THE WITNESS:** I'm thinking it's right -- it was real
6 close. It was real close.

7 **THE COURT:** All right. Further questions?

8 BY MR. PHILLIPS:

9 Q. Now you stated that this crack cocaine was cooked at
10 the address that you claim you and Jo Pradubsri lived
11 at.

12 A. (Nods head.)

13 Q. And you remember the address today?

14 A. Uh-huh.

15 Q. And in this prior trial you said you didn't
16 remember the address. Did you speak to anybody about
17 your testimony today?

18 A. No, sir.

19 Q. It just came to you?

20 A. Well, I'm still in touch with my old landlord and I
21 did -- I have been contacting him, so I do remember the
22 address that way.

23 Q. All right. So you had just forgotten the address
24 the last time?

25 A. Yes. I just talked to my old landlord a couple of

1 days ago.

2 **MR. PHILLIPS:** All right. As far as the 404(b)
3 proffer, Your Honor, I think there are no further
4 questions.

5 **THE COURT:** All right. Any further questions by
6 the State?

7 REDIRECT EXAMINATION

8 BY MR. BELL:

9 Q. Ms. Martin, when you say something one time and then
10 say something different another time, sometimes do you
11 just misremember it and you don't intend to lie about
12 it.

13 A. Yeah, that's exactly what it is. It's not -- I
14 didn't intend on lying about anything. I just some --
15 some incidents. I don't exactly remember the exact -- I
16 mean, that was a long time ago and --

17 Q. So you didn't intend to lie?

18 A. I didn't intend to lie, no.

19 **MR. BELL:** No further questions, Your Honor.

20 **THE COURT:** Anything further?

21 **MR. PHILLIPS:** On the 404(b) proffer, no, Your
22 Honor, except for the argument.

23 **THE COURT:** Okay. Do you want her to sit right
24 there while you argue or do you want her to leave?

25 **MR. PHILLIPS:** She can step down. I mean, actually

1 -- I mean, if we're just going to go from argument
2 straight to testimony, she can stay there.

3 **THE COURT:** Well, she's got to be sworn in and all
4 that, so you can step down.

5 (Witness excused.)

6 **THE COURT:** I'm ready for the argument.

7 **MR. PHILLIPS:** Thank you, Your Honor. We're
8 arguing that this would be impermissible character
9 evidence under Rule 404(b), that her testimony as to
10 cooking prior cocaine on a day -- I think certainly any
11 time --

12 **THE COURT:** Prior cocaine that was in the car?

13 **MR. PHILLIPS:** Well, if -- one, certainly she
14 can testify as to anything outside of that. That's
15 certainly another separate prior bad act. As to the
16 day of --

17 **THE COURT:** I'm just trying to understand what
18 you're saying.

19 **MR. PHILLIPS:** Any prior act that's not subject to
20 conviction, based on the testimony of what she said,
21 the cooking of the crack cocaine and the selling of
22 the crack cocaine at Kroger, would be impermissible
23 character evidence and we would cite State v. Humphries,
24 354 --

25 **THE COURT:** What kind of case is State vs.

1 Humphries? Was that a trafficking cocaine case?

2 **MR. PHILLIPS:** I had it, Your Honor. Give me
3 one second to make sure I don't misspeak. It is a
4 trafficking marijuana case.

5 **THE COURT:** Trafficking marijuana?

6 **MR. PHILLIPS:** Yes, Your Honor. And with that,
7 the court does say -- now under this case the State's
8 theory was common scheme or plan and the court found
9 error in admitting the witness's prior bad act
10 testimony --

11 **THE COURT:** From where?

12 **MR. PHILLIPS:** -- under that exception because the
13 prior bad act evidence was highly significant as it was
14 the only direct evidence of the defendant's intent to
15 deal the marijuana.

16 **THE COURT:** When was the prior bad act? Like the
17 same day in the same Kroger parking lot, months earlier?

18 **MR. PHILLIPS:** In that case, it's essentially an
19 UPS package with the marijuana had arrived at this
20 witness's home.

21 **THE COURT:** The day of the arrest or sometime before
22 or -- I can read it for myself if you'd like me to.

23 **MR. PHILLIPS:** Your Honor, I just don't want to
24 misspeak on --

25 **THE COURT:** I have it in front of me.

1 **MR. PHILLIPS:** I just don't want to misspeak on the
2 record, so I just want to re-read it real quick.

3 **THE COURT:** Well, you can keep talking. I'll find
4 it for myself.

5 **MR. PHILLIPS:** Thank you, Your Honor. And the cite
6 is 346 S.C. -- well, sorry, that's the Court of Appeals.
7 The Supreme Court case, which is the one I was going
8 under, that is 354 S.C. 87, Your Honor. That's 2003.
9 And, again, as they stated, that it was the only direct
10 evidence and Ms. Martin's testimony is the only direct
11 evidence of the intent here and we would argue that that
12 propensity evidence would be impermissible character
13 evidence, especially not rising to the threshold of
14 clear and convincing evidence and must be excluded.
15 And we would certainly reiterate the fact that, one,
16 evidence that's not a result of a conviction enhances
17 the prejudice, as well as under State v. Gore when the
18 evidence -- or the prior bad act evidence is similar to
19 the crime charged, that enhances the prejudice as well.

20 **THE COURT:** All right. Anything from the State?

21 **MR. BELL:** Judge, I'm trying to rapidly review the
22 Humphries case. It appears that the evidence that they
23 ended up allowing regarding post-arrest delivery
24 evidence was over the course of quite some time, whereas
25 in this particular case before the Court today we're

1 talking -- as you heard from the stand, they were pulled
2 over essentially before they could leave the Kroger.

3 With that said, Your Honor, you certainly know the
4 elements of Lyle and we certainly believe this is a
5 common plan or scheme. It is the primary way for us to
6 -- let me catch my breath here for a second. I'll cite
7 State versus Cheeseboro, it's 346 South Carolina 526,
8 where the court says that for common scheme or plan
9 purposes, prior bad acts and the crime charged must have
10 a close degree of similarity or connection. Certainly
11 here we could absolutely say they're almost identical.

12 Further, they go on in State versus Tutton, 354
13 South Carolina 319, and say that where the evidence of
14 the bad acts are so similar to the charged offense that
15 the previous act enhances the probative value of the
16 evidence so as to outweigh its prejudicial effect, it is
17 admissible.

18 Your Honor, I certainly agree that allowing the
19 fact that this -- Jo Pradubsri cooked this crack and
20 then made the sale at Kroger is prejudicial, but it's
21 prejudicial because it is so probative. I know that's
22 something that's come out in prior trials and I
23 certainly stand by that today.

24 As well as, Your Honor, just on the issue of
25 Ms. Martin's credibility, whether or not that's been

1 brought up yet, that's certainly an issue for the
2 jury to consider on whether or not they believe her
3 testimony.

4 **MR. PHILLIPS:** Of course, Your Honor, her testimony
5 is uncorroborated and with the clear and convincing
6 standard we just don't believe that it's gonna meet that
7 threshold.

8 **MR. BELL:** I will put one case on the record on
9 that point. State versus Wilson, 345 South Carolina 1.
10 That's a 2001 Supreme Court case, Your Honor, where they
11 did determine that an individual's testimony regarding
12 seeing somebody pass off a plastic bag with a white rock
13 substance in it in exchange for \$20 went towards the
14 weight as opposed to the admissibility.

15 **THE COURT:** I don't think the prior bad act has
16 anything to do with this case. The Defendant is charged
17 with trafficking cocaine. The State has to prove that
18 the Defendant aided, abetted, attempted to manufacture,
19 sell, and possess, and other various elements of
20 trafficking. This witness's testimony, if believed,
21 would show that the Defendant is guilty of aiding,
22 abetting, conspiring with her, or possessing, and it
23 doesn't turn on whether or not it's a prior bad act,
24 it turns on the act of engaging in trafficking cocaine,
25 and it's relevant, it's probative, and it's admissible,

1 and that's the ruling of the Court.

2 **MR. PHILLIPS:** And that it meets the clear and
3 convincing evidence threshold?

4 **THE COURT:** I don't believe it has to meet it
5 because I don't believe it turns on whether or not it's
6 a prior bad act. It's a -- it's an active -- it's an
7 on-going participation in the act for which she was
8 arrested, and I don't believe it's a prior bad act, but
9 to the extent that it is, I believe her testimony meets
10 that it may be considered by someone as being relevant
11 to this analysis. I find the testimony to be clear and
12 convincing and uncontradicted based on what I heard.

13 **MR. BELL:** Thank you, Your Honor. For the purposes
14 if this thing gets appealed again, should we get to that
15 point, I would just mention that we still do have -- one
16 of the charges is possession with intent to distribute.
17 Certainly we believe the Kroger incident goes towards
18 that charge and then the possession of such a large
19 quantity also goes to the PWID threshold. Thank you,
20 Your Honor.

21 **THE COURT:** It's all aiding, abetting, receiving
22 the benefits of, participating in, being in conspiracy
23 with. Trafficking is all encompassing. It's an
24 enterprise, for lack of a better word, and the State
25 can prove involvement in many different ways, including

1 receiving the benefits or profits from it.

2 **MR. PHILLIPS:** And, Your Honor, we would state our
3 objection based on that, that under the trafficking they
4 have to prove the possession, actual or constructive
5 possession, and that that standard of what you just
6 stated would not apply to trafficking.

7 **THE COURT:** I think it applies to trafficking.
8 Part of trafficking is possession and part of possession
9 is ownership and part of ownership is making it. If he
10 cooked it, created it, gotten it, it's his, then she
11 can testify that it was his regardless of whose actual
12 possession it's in. All of that is part of proving
13 trafficking.

14 With regard to the proximity charge, if it's true
15 that she sold it in the bathroom under the circumstances
16 that she said and he got the benefits of it by receiving
17 the value from the transaction, all of that shows that
18 that was intent to distribute within proximity of a
19 school. So all of this testimony is admissible, and
20 that's my order, and I think y'all have put all your
21 arguments on the record and in motions and everything,
22 so we're gonna take two minutes and bring the jury back
23 in.

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

25 (Recess taken.)

1 **THE COURT:** Okay. Are we ready for them?

2 **MR. BELL:** The State's ready, Your Honor.

3 **MR. PHILLIPS:** The defense is ready, Your Honor.

4 **THE COURT:** Bring them on.

5 (Whereupon, the jury returns to the courtroom at
6 4:18 PM.)

7 **THE COURT:** All right. Welcome back. Your next
8 witness.

9 **MR. BELL:** Thank you, Your Honor. The State calls
10 Melisa Martin to the stand.

11 MELISA MARTIN,
12 having been duly sworn, testified as follows:

13 **THE CLERK:** Thank you. Have a seat please and
14 state your name for the record.

15 DIRECT EXAMINATION

16 BY MR. BELL:

17 Q. Ms. Martin, if you'd please state your name and
18 spell your last name for the record.

19 A. Okay. You know you've got to talk louder.

20 Q. Certainly. I'm gonna stand over here, but I'm
21 gonna speak real loud for you.

22 A. Okay. Very good.

23 Q. Ms. Martin, would you please state your name and
24 spell your last name for the court reporter.

25 A. Melisa Martin, M-A-R-T-I-N.

1 Q. Okay. Now do you recall being charged with a large
2 quantity of crack cocaine on November 9th of 2008?

3 A. Yes, sir.

4 Q. Okay. And you did have crack cocaine on you that
5 night?

6 A. Yes, sir.

7 Q. All right. Now did you ultimately plead guilty to
8 possession of crack cocaine in that case?

9 A. Yes, sir.

10 Q. Did you also plead guilty to the unlawful carrying
11 of a pistol in that case?

12 A. Yes, sir.

13 Q. Okay. And now to your understanding, are those
14 reduced charges from what you were originally charged
15 with?

16 A. Yes, sir.

17 Q. Okay. Now in coming to that reduction in charge,
18 were you promised anything for that reduction?

19 A. No, sir.

20 Q. At any point in time did anybody from the
21 Solicitor's Office sit down and tell you that you were
22 getting anything in exchange for that reduction?

23 A. No, sir.

24 Q. Okay. Did we wink at you and tell you we were
25 giving you something?

1 A. Huh?

2 Q. Did we wink at you, did we imply we were gonna give
3 you something?

4 A. No, sir.

5 Q. Okay. Now do you remember how much time you
6 received when you plead guilty to those two charges?

7 A. Eighteen months.

8 Q. Okay. And you served that where, do you remember?

9 A. In Department of Corrections.

10 Q. Okay. Now where were you born, Ms. Martin?

11 A. Fort Campbell, Kentucky.

12 Q. All right. When did you come to South Carolina?

13 A. At a young early age.

14 Q. Okay. Now, Ms. Martin, I don't want you to feel
15 embarrassed, but I do want you to tell us a little bit
16 about your background. What's kind of your adult
17 history?

18 A. I've been to prison eight times as a result from my
19 drug use. I haven't always been a nice girl, but I've
20 been good lately, so.

21 Q. Okay. Now, Ms. Martin, do you know an individual
22 named Jo Pradubsri?

23 A. Yes, sir.

24 Q. Okay. Do you see him present in court today?

25 A. Yes, sir.

1 Q. All right. Would you please indicate where he's
2 seated?

3 A. He's right there.

4 Q. What color is his shirt?

5 A. White.

6 Q. Okay. Is he sitting on the end of the table?

7 A. Yes, sir.

8 Q. Okay. Now how do you know Mr. Pradubsri?

9 A. We were live-in boyfriend and girlfriend.

10 Q. Okay. How long were y'all living together?

11 A. I don't recall the exact amount of time, but close
12 to a year. Around a year.

13 Q. And during that time you said you were dating him?

14 A. Yes, sir.

15 Q. Okay. Do you recall the address where you were
16 living?

17 A. [REDACTED] Lord Howe.

18 Q. Okay. What city is that in?

19 A. Irmo.

20 Q. Okay. During this time that you were living with
21 Mr. Pradubsri, were you addicted to crack cocaine?

22 A. Yes, sir.

23 Q. Okay. How often were you smoking crack?

24 A. Every day all day.

25 Q. Okay. Where were you getting that crack cocaine to

1 smoke?

2 A. From Jo.

3 Q. Okay. Were you paying him for it?

4 A. No, sir.

5 Q. Did he know you were taking it?

6 A. Yes, sir.

7 Q. Was it your crack?

8 A. Was it my crack?

9 Q. Uh-huh.

10 A. No, sir.

11 Q. Now around that address that you were living with
12 Mr. Pradubsri, was it always crack cocaine that you had
13 access to?

14 A. Yes, sir.

15 Q. Okay. Was it typically in small quantities or large
16 quantities?

17 A. Large quantities.

18 Q. Okay. Now do you know how he came about that crack
19 cocaine?

20 **MR. PHILLIPS:** Your Honor, we'd renew our prior
21 objection.

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

23 A. Yes, sir. He would go to his connect -- to his
24 connection and buy six, seven ounces of cocaine at a
25 time and bring it back to the house and cook it.

1 Q. Okay. Now is six or seven ounces a good bit of
2 cocaine on the street?

3 A. It's a large amount.

4 Q. Okay. And when you say that it was taken back,
5 where was it taken back to?

6 A. To the [REDACTED] Lord Howe.

7 Q. Okay. And that's where you lived together?

8 A. Yes, sir.

9 Q. Okay. Now when you say cooked, does that mean that
10 he prepared the powder cocaine to crack cocaine?

11 A. Yes, sir.

12 Q. Okay. And is that something that you would see him
13 do with your own eyes?

14 A. Yes, sir.

15 Q. Did you help him with it?

16 A. Huh?

17 Q. Did you help him with it?

18 A. I didn't know how to do it. I just --

19 Q. But you knew he was doing it?

20 A. Yeah.

21 Q. And did you get to use some of the crack cocaine
22 that was cooked?

23 A. Yes, sir.

24 Q. Did you consider that a pretty good benefit of
25 living with him?

1 A. Yes, sir, it was.

2 Q. Okay. Now prior, Ms. Martin, we've touched on it,
3 and it's something I think we just need to go ahead and
4 kind of clear the air on your prior history. We've kind
5 of touched and got some things on there, but I want to
6 run through a list of prior convictions with you, okay?

7 A. Okay.

8 Q. You can tell me if it sounds right or if I missed
9 something.

10 A. Okay.

11 Q. In 1994, you had a grand larceny and possession of
12 a stolen vehicle. I think you had two of those.

13 A. (Nods head.)

14 Q. In 1995, possession of stolen vehicle?

15 A. Yes, sir.

16 Q. 1997, grand larceny?

17 A. (Nods head.)

18 Q. 2000, burglary second?

19 A. Yes, sir.

20 Q. 2004, grand larceny?

21 A. Uh-huh.

22 Q. 2007, prostitution and drug paraphernalia?

23 A. Yes, sir.

24 Q. Okay. Now it appears you've also had some driving
25 under suspensions; is that right?

1 A. Yes, sir.

2 Q. And then you have this charge that happened in this
3 case, which I believe you stated was possession of crack
4 cocaine and an unlawful carry.

5 A. Yes, sir.

6 Q. Do you also have a more recent charge? Do you
7 recall being caught with a small quantity of crack
8 cocaine while you were in jail?

9 A. Yes, sir.

10 Q. Was that a contraband charge?

11 A. Yes, sir.

12 Q. Okay. Now on November 9, 2008, prior to being
13 arrested, where were you?

14 A. At the Kroger's.

15 Q. Okay. And where's that located?

16 A. Lake Murray Boulevard and St. Andrews.

17 Q. Okay. Now what was -- who was with you?

18 A. Jo.

19 Q. And who was driving the vehicle you were in?

20 A. Jo was.

21 Q. Okay. Do you recall what kind of vehicle it was?

22 A. A gray Monte Carlo.

23 Q. Okay. Now what were y'all doing at that Kroger
24 together?

25 A. We went there to make two serves.

1 **MR. PHILLIPS:** Objection, Your Honor. Renew prior
2 motion.

3 **THE COURT:** It's overruled.

4 BY MR. BELL:

5 Q. Okay. Now when you say a serve, what is a serve?

6 A. Selling a piece of dope.

7 Q. Okay. And dope is crack cocaine?

8 A. Huh?

9 Q. Is dope crack cocaine?

10 A. Yes, sir.

11 Q. Okay. Now I want to only ask you about one
12 particular instance of that serve, okay?

13 A. (Nods head.)

14 Q. Where did the first one occur, Ms. Martin?

15 A. In the bathroom.

16 Q. Okay. And that's the bathroom of what?

17 A. At the Kroger's.

18 Q. Okay. Now where was Mr. Pradubsri at the time of
19 this transaction?

20 A. Standing outside the bathroom door.

21 Q. Did he know what you were doing?

22 A. Yes.

23 Q. Why wasn't he in there doing it himself?

24 A. Because that would look a little strange, you know,
25 a man going into the women's bathroom, you know, and we

1 couldn't serve outside because there was a police car in
2 the parking lot.

3 Q. Okay. Now was it somewhat typical for him to have
4 you sell to people?

5 A. Sometimes he would have me do that.

6 Q. Okay. Now were you paid for this serve?

7 A. No. No, sir.

8 Q. Did you receive anything of value, that you
9 considered a value?

10 A. No, sir. He -- he always kept all the money.

11 Q. Okay. Well, let me back up and just clarify. Did
12 the person that you gave the dope to, did they give you
13 something in exchange?

14 A. Yes, sir.

15 Q. Do you recall what they gave you?

16 A. I don't.

17 Q. Okay. Did they give you some form of currency?

18 A. Yeah, money. One gave -- are we talking about just
19 one serve?

20 Q. Just the one in the bathroom.

21 A. Yeah.

22 Q. Okay. Did you get to keep that money, Ms. Martin?

23 A. No, sir.

24 Q. Where did that money always go?

25 A. Straight to Jo.

1 Q. Okay. While you were living Mr. Pradubsri, did he
2 have a job?

3 A. No.

4 Q. Did he always have money on him?

5 A. Yes.

6 Q. Now after you made that serve and gave whatever to
7 Mr. Pradubsri from it, did y'all end up leaving the
8 Kroger?

9 A. Yes.

10 Q. Who got back in the driver's side of the vehicle?

11 A. He did.

12 Q. Okay. And where did you go?

13 A. Passenger side.

14 Q. All right. Now tell us what happened once you left
15 Kroger.

16 A. As soon as we pulled out of the Kroger parking lot,
17 we got pulled over.

18 Q. By police?

19 A. By -- by Sergeant Finch.

20 Q. Okay. How far outside of Kroger did you get pulled
21 over?

22 A. As soon as we pulled out of the parking lot.

23 Q. Okay. Now did you ever drive that car?

24 A. Yes, sir.

25 Q. Okay. Would you carry dope on you if you were

1 driving?

2 A. Yeah, just whatever he would send me out to
3 distribute.

4 Q. Did you ever have a large quantity on you if you
5 were driving the vehicle?

6 A. No, sir.

7 Q. And why was that?

8 A. Because it wasn't mine and there would be no reason
9 for me to carry large quantities at the time.

10 Q. We talked about you having some driving under
11 suspensions. Did you have a driver's license?

12 A. No, sir.

13 Q. Was that something that worried you?

14 A. No, sir.

15 Q. Okay. You weren't worried about being pulled over
16 with crack on you?

17 A. Sometimes, but, you know, I was always so high I
18 didn't really care, you know.

19 Q. Okay. Now if Mr. Pradubsri was driving the vehicle,
20 was there typically a larger quantity of crack cocaine
21 in there?

22 A. Yes, sir.

23 Q. Okay. Now I just want to briefly remind you,
24 Ms. Martin, that you can't tell me anything anybody else
25 said, okay --

1 A. Okay.

2 Q. -- just from what you remember, but when y'all saw
3 those blue lights, what happened?

4 A. The -- I can't tell you what he said?

5 Q. Just stick to what you remember.

6 A. Well, I was given the bag of dope from behind his
7 seat and --

8 Q. Okay. What did he indicate to you by handing that
9 dope to you without saying anything somebody might have
10 said?

11 A. To put it up.

12 Q. Okay. So that's what you understood him handing it
13 to you to mean?

14 A. Hold it.

15 Q. Okay. And do you recall what that crack cocaine was
16 contained in when it was handed to you?

17 A. When it was what?

18 Q. Was what it in?

19 A. It was in a black case, like a black zipper bag.

20 Q. Okay. Do you remember the exact location of that
21 bag prior to it being handed to you?

22 A. Behind his seat up under it kind of.

23 Q. That's to the best of your memory there?

24 A. (Nods head.)

25 Q. Okay. Did you know what was in that bag when he

1 handed it to you?

2 A. Yes, sir.

3 Q. Okay. Now after he hands it to you, what did you
4 start doing with it?

5 A. Putting it up.

6 Q. And how did you go about doing that?

7 A. Putting it down my pants.

8 Q. Okay. Did you try hiding it anywhere else?

9 A. Huh?

10 Q. Did you try hiding it anywhere else?

11 A. No.

12 Q. Okay. Now were you able to hide all of it before
13 officers got up to the vehicle?

14 A. No, sir.

15 Q. How far had you gotten?

16 A. Just about all of it. I still had some in my hand
17 and I had the plastic bag hanging out that was so
18 obvious, but I didn't have time to -- to put it all up.

19 Q. Do you remember what kind of clothes you had on that
20 night, Ms. Martin?

21 A. Just a pair of jeans and a regular top.

22 Q. Were they real loose-fitting jeans?

23 A. Uh-huh.

24 Q. So you were able to try to fit them down in there?

25 A. Uh-huh.

1 Q. Okay.

2 **THE COURT:** Ma'am, you have to use words.

3 **THE WITNESS:** I'm sorry?

4 **THE COURT:** You have to use words.

5 **THE WITNESS:** Oh, okay.

6 **MR. BELL:** Just so this lady, madam court reporter,
7 can actually write down what you're saying, okay?

8 **THE WITNESS:** Oh, okay.

9 BY MR. BELL:

10 Q. Now when officers finally got up to your side of
11 the vehicle, did they end up pulling you out?

12 A. Yes.

13 Q. Okay. And do you recall telling them anything
14 about that crack cocaine?

15 A. I told them -- I kept telling them that it was
16 mine.

17 Q. Why did you do that?

18 A. Because I didn't want him to go to jail because if
19 both of us went to jail, then neither one of us would
20 get out.

21 Q. And what do you mean by that?

22 A. Meaning if I took the rap for it, he would come get
23 me out of jail.

24 Q. Okay. Did he have money to post bond for you?

25 A. Yes, sir.

1 Q. And were you romantically involved with him during
2 this stop?

3 A. Yes, sir.

4 Q. Now they found something else that belonged to you
5 in that vehicle. Do you remember what it was?

6 A. A pistol.

7 Q. Okay. Was that your pistol?

8 A. Yes, sir.

9 Q. Okay. Why did you carry a gun?

10 A. I was running an escort service and it just made
11 all of us feel safer. When I would take the girls to
12 their calls, I would have to make sure that everything
13 was okay and --

14 Q. Did you end up telling the officers about that
15 pistol as well?

16 A. Yes, sir.

17 Q. Okay. And did they retrieve that pistol?

18 A. Yes, sir.

19 Q. Okay. Now I want to talk about a couple of other
20 things. Ultimately were you arrested that night?

21 A. Yes, sir.

22 Q. Okay. And do you recall writing letters to our
23 office?

24 A. Yes.

25 Q. Okay. Do you recall what you were asking for in

1 those letters?

2 A. Yes.

3 Q. Okay. What was that?

4 A. A lighter sentence if I would agree to testify on
5 him.

6 Q. Okay. Did any of that have to do with -- did you
7 say you were gonna make anything up or tell us whatever
8 we wanted to hear?

9 A. No.

10 Q. You were essentially saying you would tell the
11 truth?

12 A. Yes, sir.

13 Q. Now did you ever send a letter to our office asking
14 for a bond reduction?

15 A. Yes.

16 Q. Do you remember doing that?

17 A. Yes, sir.

18 Q. Okay. Now did we ever -- did we bring you before
19 court to have a bond reduction?

20 A. No, it was done without me.

21 Q. It was done without you?

22 A. Yeah.

23 Q. Okay. Do you remember who did it?

24 A. David Stumbo.

25 Q. Okay. Is he a prior Solicitor?

1 A. Yes, sir.

2 **MR. BELL:** I beg the Court's indulgence.

3 Q. Ms. Martin, I know it's been some time, but are you
4 sure you didn't go before a judge for a bond reduction?

5 A. I'm sure.

6 Q. Okay. Now in exchange for that bond reduction,
7 just like we talked about earlier, were you promised
8 anything?

9 A. No, sir.

10 Q. Okay. Did we tell you that we were gonna lighten
11 your sentence or lighten your bond reduction only if you
12 testified?

13 A. No, sir.

14 Q. Now when you pled to those two charges we talked
15 about earlier, the possession of crack cocaine and the
16 pistol, did our office ask for any particular sentence
17 for you?

18 A. No, sir.

19 Q. Okay. Did we leave it up to the judge?

20 A. Yes, sir.

21 Q. Ms. Martin, I want to show you a few pictures.

22 **MR. BELL:** I apologize to the Court. One moment.

23 Q. This is State's Number 2, Ms. Martin. Do you
24 recognize the rear end of that vehicle?

25 A. Yes, sir.

1 Q. Whose vehicle is that?

2 A. That was Jo's.

3 Q. Okay. Is that the vehicle he typically drove?

4 A. Yes, sir.

5 Q. Is that the vehicle y'all were in that night?

6 A. Yes, sir..

7 Q. Okay. This is what is marked as State's Number 4.

8 Do those look familiar to you?

9 A. Yes, sir.

10 Q. What is that?

11 A. That's all of the crack that I was trying to hide.

12 Q. Okay. Would you consider that a large quantity?

13 A. Oh, yeah.

14 Q. Now you talked about the pistol that you had on you
15 that night. Were you aware of whether Jo had a pistol
16 on him?

17 A. He did.

18 Q. Do you know what kind it was?

19 A. I think it was a nine.

20 Q. Was it kind of a big gun?

21 A. Yeah, it was a big gun.

22 Q. Was it bigger than yours?

23 A. A lot bigger.

24 Q. Okay. Do you recall where he would keep it in that
25 vehicle?

1 A. In his waistband normally.

2 Q. Okay. If it wasn't in his waistband, did he have
3 any other areas he might store it?

4 A. Just on the side of the seat.

5 Q. Okay. When you say the side of the seat, what are
6 you referencing?

7 A. Like the right side of his seat.

8 Q. Okay. Was it accessible to him?

9 A. Yeah.

10 Q. Okay. Ms. Martin, this is State's Number 7. What
11 is that?

12 A. That was mine.

13 Q. Okay. That's your pistol?

14 A. Uh-huh.

15 Q. This is State's Number 5. What is that?

16 A. His.

17 Q. His pistol?

18 A. Jo's. Jo's pistol.

19 Q. Okay. Now when you were arrested, did you have
20 money on you?

21 A. No, sir.

22 Q. Did the police take any money off you?

23 A. No, sir.

24 Q. Didn't find any money on you anywhere?

25 A. No, sir.

1 Q. Are you aware of whether Jo had money on him that
2 night?

3 A. Yes, sir.

4 Q. Do you remember how much?

5 A. At least \$700, I think.

6 Q. And what was that money from?

7 A. Crack.

8 **MR. BELL:** Okay. Please answer any questions
9 Mr. Phillips may have for you.

10 **THE WITNESS:** Okay.

11 **MR. PHILLIPS:** May it please the Court?

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

13 CROSS-EXAMINATION

14 BY MR. PHILLIPS:

15 Q. I know you don't hear so well, Ms. Martin. I'm
16 gonna bring this podium right up to you so you can hear.

17 A. Okay. Thank you.

18 Q. All right. Ms. Martin, back in 2008 you were a
19 business owner?

20 A. Yes, sir.

21 Q. You ran a prostitution ring?

22 A. Yes, sir.

23 Q. Escort service?

24 A. Yes, sir.

25 Q. It was named Belles of the South?

- 1 A. Yes, sir.
- 2 Q. You had five girls working for you?
- 3 A. Uh-huh. Yes, sir.
- 4 Q. You had a nice business with it. I mean, you were
- 5 the employer of five different people?
- 6 A. Yes, sir.
- 7 Q. And those five people you would have staged at
- 8 different motels, correct?
- 9 A. Yes, sir.
- 10 Q. So -- I hate to use the street term, but
- 11 essentially you were a pimp?
- 12 A. Yes, sir.
- 13 Q. All right. And you were the pimp for these five
- 14 prostitutes?
- 15 A. Yes, sir.
- 16 Q. And they would pay you the money, correct?
- 17 A. They would give me half of what they earned.
- 18 Q. All right. So they're giving you half of what
- 19 they earned and part of that I would say -- I guess --
- 20 I assume everybody does understand pimps and
- 21 prostitutes, but not everybody's of the street life.
- 22 That's essentially where people pay money for sex; is
- 23 that correct?
- 24 A. Yes, sir.
- 25 Q. And three of your prostitutes I think you said you

1 got from a pimp named Tootsie?

2 A. Yes, sir.

3 Q. Okay. So you know your way around the street.

4 This isn't your first rodeo?

5 A. It's not.

6 Q. Okay. Now the people who pick up prostitutes,
7 sometimes they carry guns?

8 A. Yes, sir.

9 Q. And they carry guns because when you're on the
10 street things can get dangerous?

11 A. Yes, sir.

12 Q. And that's why you had a gun?

13 A. Yes, sir.

14 Q. Okay. So it's not unusual for somebody who picks
15 up a prostitute to have a gun?

16 A. You're right.

17 Q. Okay. Now you had a personal drug supplier named
18 Big; is that right?

19 A. I wouldn't -- I wouldn't say that he was --

20 Q. You bought drugs from him, just yourself. You went
21 to Big before and brought drugs, just you?

22 A. Yeah, this was before I got connected with Jo.

23 Q. You said you never bought drugs after you met Jo
24 from Big?

25 A. I didn't have to.

1 Q. You said you never did? So you're saying you never
2 did?

3 A. I'm saying I don't remember doing it, that's what
4 I'm saying.. I don't remember even having to because we
5 pretty much always had it.

6 Q. Is that what you're saying? So that you never
7 bought drugs from your personal connection named Big?

8 A. I'm saying I don't remember. I may have, but I
9 really don't -- I really don't remember.

10 Q. Now you've admitted to being a drug dealer,
11 correct? I mean, that's kind of -- you've sold drugs,
12 plenty of crack cocaine in your life?

13 A. Yeah.

14 Q. And you sold a lot of this crack cocaine to your
15 own prostitutes, your own employees?

16 A. Yes.

17 Q. Now you've admitted that you sold approximately
18 around a hundred dollars' worth of crack to your
19 employees about every time you would send them out,
20 correct?

21 A. (Nods head.)

22 Q. So you're a pretty frequent drug dealer. Now
23 you've even admitted you sold crack to the johns over
24 your prostitutes, their customers, right?

25 A. Yes, sir.

1 Q. Now the gun that you had, you sold crack to get
2 that gun. You essentially traded the crack for the gun?

3 A. Yes, sir.

4 Q. So you were constantly dealing crack cocaine?

5 A. Yes, sir.

6 Q. And you were receiving money from your prostitutes?

7 A. Uh-huh. Yes, sir.

8 Q. Okay. Now you say there was these people from
9 Kroger. They called you on your cell phone?

10 A. Yes, sir.

11 Q. All right. Because they knew you personally --

12 A. Yes, sir.

13 Q. -- as a crack dealer?

14 A. (Nods head.) Yes, sir.

15 Q. Okay. So they call you personally and you're in
16 Kroger and you say that you sell -- I just want to
17 clarify this -- you sold to both people; is that what
18 you're saying?

19 A. Yes, sir.

20 Q. And one paid how and one paid -- like how did one
21 pay and how did the other pay?

22 A. One paid in a -- like a credit card, Visa prepaid,
23 one of those gift cards, and the other one paid in
24 money.

25 Q. Now at a prior hearing I think you said you only

1 sold to one of them in the bathroom.

2 A. Yes, I couldn't -- I couldn't really remember. It
3 was a long time ago.

4 Q. This prior hearing was two and a half months ago.

5 A. I know that, but prior to that hearing, when the
6 actual incident happened, I didn't remember.

7 Q. All right.

8 A. Okay. So let's --

9 Q. Let me ask the question. At the prior hearing you
10 said you only sold to one person, right?

11 A. Yes.

12 Q. And that you didn't know where the other person was
13 or something to that nature?

14 A. (Nods head.)

15 Q. Now were you telling the truth then or are you
16 telling the truth today?

17 A. I am telling the truth now. You know, sometimes --
18 if I can just say this real quick. Sometimes when
19 you're asked a question and you're put on the spot,
20 sometimes you may not remember or you don't have enough
21 time to really actually think, like you're doing me now,
22 you know, you're just like badgering me a little bit and
23 you're not giving me a second to think. It was a long
24 time ago that this drug incident happened and --

25 Q. I'll give you all the time you need. You tell me

1 how much time you need because I'm gonna start asking
2 you questions and you tell me when I can ask you a
3 question. How about -- let's make that relationship,
4 okay?

5 A. How about you go ahead and give me the next
6 question.

7 Q. Okay. So the question is: Were you lying two and
8 a half months ago or are you lying today?

9 A. I think I just answered that. I wasn't -- I don't
10 -- I was not lying either time. I just didn't recall
11 the last time you asked me -- not you asked me that
12 question, him.

13 Q. Two and half months ago you were under oath, put
14 your hand on the Bible, the Holy Bible, you put your
15 hand on this Bible and you swore?

16 A. Yes.

17 Q. You swore to tell the truth?

18 A. Yes.

19 Q. And you said something differently than you said
20 today?

21 A. Yes.

22 Q. Now is that a lie then or is it a lie now?

23 A. I guess if you want to break it down like that and
24 you keep asking me the question, I guess it was a lie
25 then because I couldn't remember. Now I've had enough

1 time to -- in between this last hearing and this
2 hearing, I've had plenty of time to actually sit down
3 and think about this. I didn't know -- those days that
4 all this happened I thought that was over with. I
5 never even expected to even have to come back in this
6 courtroom and talk about this.

7 Q. All right. And your position is that you just
8 didn't remember so you filled in the blanks. Now we'll
9 move on.

10 **THE COURT:** The jury will disregard the comment by
11 counsel.

12 Q. During this time you were smoking crack every day?

13 A. Yes, sir.

14 Q. You were making a lot of money between selling
15 crack and your prostitution business?

16 A. Yes.

17 Q. You were smoking somewhere between six hundred and
18 seven hundred dollars' worth of crack a day?

19 A. Yes, but it wasn't mine though. That was just my
20 treat for -- for making money.

21 Q. You're saying that someone was giving you six to
22 seven hundred dollars of crack cocaine for free?

23 A. Yes, he was.

24 Q. And his benefit was --

25 A. But actually he didn't know that I was smoking that

1 much. I would just have to do what I had to do to make
2 sure his money came out right.

3 Q. Now you did things to support your habit?

4 A. Huh?

5 Q. You did things to support your five to -- six
6 hundred, seven hundred dollar habit?

7 A. Yes.

8 Q. You were a prostitute?

9 A. Well, I wasn't at this time when me and him were
10 together. Before then, yes, I was.

11 Q. You had elevated. You were a madam, a pimp of five
12 prostitutes?

13 A. Well, yes, I guess. If that's what you want to call
14 it, yes.

15 Q. And you were making a lot of money?

16 A. Yes.

17 Q. And you had a big crack cocaine habit?

18 A. Yes.

19 Q. Now when the cops pulled you over, what happened
20 that night? Did they ask for Magic?

21 A. Yes.

22 Q. So did they -- your testimony is blue lights, they
23 pull the car over, cops get out and they yell, "Is Magic
24 in that car?" Is that -- is that what happened?

25 A. Yes.

1 Q. And they get you out of the car first?

2 A. Yes.

3 Q. So they get you out of the car first, they've yelled
4 for Magic, they were specifically targeting you. Did
5 they talk about Mr. Pradubsri at that point? Had they
6 said anything to him?

7 A. Yeah, they went to his car window.

8 Q. Had they pulled you out already?

9 A. No. No, they went to his window first and then
10 they pulled me out.

11 Q. Okay. And they were yelling for Magic when they
12 pulled you over?

13 A. Yes.

14 Q. So when they pulled you over, they said, "Is Magic
15 in that car"?

16 A. Yes.

17 Q. Is your nickname Magic?

18 A. Yes.

19 Q. Street name Magic?

20 A. Yes.

21 Q. Now the cops that night, all the crack they found
22 was on you?

23 A. Yes.

24 Q. Solely on you?

25 A. Yes.

1 Q. And you told the cops that night the drugs were
2 yours?

3 A. Yes.

4 Q. And nobody else's?

5 A. Yes.

6 Q. You were adamant about that?

7 A. Yes.

8 Q. So would you describe the difference between that
9 and then what you later say was a lie, were you lying
10 that night or were you lying later when you said --

11 A. I was lying that night.

12 Q. Okay. So you admit that you're a liar?

13 A. Yeah.

14 Q. Okay. You're a liar. Now you said that night that
15 you had loose-fitting jeans on?

16 A. Uh-huh.

17 Q. Now when the -- the crack rocks, did they fall
18 through your pants as well that night?

19 A. Yes.

20 Q. And you had a purse. There wasn't any money in
21 your purse?

22 A. No.

23 Q. So you have this established business, you're a
24 madam/pimp/drug dealer, and you have no money in your
25 purse?

1 A. No.

2 Q. Just a pistol?

3 A. That's right. The money was in his pocket.

4 Q. No money in your purse?

5 A. No.

6 Q. None?

7 A. (Shakes head.)

8 Q. Now when people go to a prostitute, do they usually
9 pay you in cash --

10 A. Yes.

11 Q. -- or a credit card?

12 A. I don't think there's -- I don't think it's allowed
13 to pay in credit cards.

14 Q. It's usually a cash business, right?

15 A. Yes.

16 Q. People on the street generally also deal in cash?

17 A. Yes.

18 Q. Now the black bag you say with crack, you've
19 provided three different places for the location of that
20 bag, haven't you? Yes or no.

21 A. What do you mean?

22 Q. One time you said it's under the seat, one time --
23 not today, but just say up to this point through law
24 enforcement, prior hearings, you've provided three
25 different places for that bag of crack. One, under the

1 seat; two, center console; three, behind the seat.

2 A. It's always been behind the seat, up under it.

3 That's what I've -- that's what I've been saying.

4 That's where it was.

5 Q. All right. So you would deny that you've ever said
6 that the black bag came from under the seat?

7 A. Yeah, it came from under the seat. Behind the --
8 behind the seat up under the seat.

9 Q. Okay. Now you would deny that the black bag, since
10 that's the way your clarification is, that you ever said
11 it was from the center console?

12 A. Yeah, I don't remember saying that.

13 Q. Okay. So you deny telling law enforcement, and I
14 quote, this is -- that the bag was located between the
15 driver's seat and the passenger seat on the center
16 console. You deny that?

17 A. I don't remember saying that.

18 Q. Okay. So you didn't say it or you just don't
19 remember it?

20 A. I don't remember saying that.

21 Q. All right. Now let's -- you've been to prison
22 eight times?

23 A. Uh-huh. Yes, sir.

24 Q. Okay. You wouldn't consider yourself a very honest
25 person, would you?

1 A. No, I wasn't, but I am now.

2 Q. You have a lot of convictions for crimes of
3 dishonesty.

4 A. Okay.

5 Q. Now '94 you had a grand larceny, possession of
6 stolen vehicle?

7 A. Yes.

8 Q. You had actually two counts of possession of stolen
9 vehicle, different times. '95, another possession of
10 stolen vehicle?

11 A. (Nods head.)

12 Q. '97, a grand larceny?

13 A. (Nods head.)

14 Q. You have to say yes in between unless it's
15 different.

16 A. I thought we already talked about that.

17 Q. I just want to go through it again. I want the
18 jury --

19 A. No, that's fine. That's fine.

20 Q. '97, a grand larceny?

21 A. Yes.

22 Q. 2000, a burglary second?

23 A. Yes.

24 Q. 2002, use of a vehicle without consent?

25 A. Yes.

1 Q. 2003, petit larceny?

2 A. Yes.

3 Q. 2004, grand larceny?

4 A. Yes.

5 Q. Prostitution?

6 A. Yes.

7 Q. Drug paraphernalia?

8 A. Yes.

9 Q. 2009, I think stolen goods. Possession of stolen
10 goods?

11 A. Yes.

12 Q. And then in 2012, you had another recent case, a
13 contraband case?

14 A. Yes.

15 Q. And that's where -- I think you also at that time
16 were charged with either a manufacturing, distribution
17 or a possession -- another possession of stolen vehicle.

18 A. I just had possession.

19 Q. Okay. And at that time, when you got the
20 contraband charge, let's talk about that. Where were
21 the drugs located?

22 A. On me.

23 Q. Where on you specifically?

24 A. Specifically?

25 Q. Very specifically.

1 A. In the -- okay. Very specifically, when they were
2 caught on me, they were in my hands.

3 Q. Not -- when you made it to the jail, where was the
4 drugs?

5 A. Inside of me.

6 Q. When you say inside of you, clarify. This is not a
7 funny matter.

8 A. I'm not laughing.

9 Q. His life's on the line.

10 A. What? Say what?

11 Q. His life's on the line. Answer the --

12 A. Really? Well, then he shouldn't have been selling
13 crack. He shouldn't have been providing all of it.
14 That's why his life is on the line, so don't put that
15 off on me. I'm accountable only for what I do, so I
16 have nothing to do with what he does. He did that to
17 his self.

18 Q. Where was the location?

19 A. Inside of my vagina.

20 Q. Okay. And that night you were arrested with
21 another man?

22 A. Yes.

23 Q. All right. Kind of similar circumstances as what
24 we're on trial here for today?

25 A. Uh-huh.

1 Q. And whose drugs was it that night?

2 A. They were his, too.

3 Q. They were his?

4 A. Yes, but I took claim for that because we were
5 already separated and he was already in jail. They
6 didn't catch the drugs on me until after I got behind
7 the jail.

8 Q. So it's always this other guy's fault?

9 A. No, I didn't blame -- I didn't blame it on him. I
10 didn't blame it on him then. I didn't blame it on him.
11 I took claim for it.

12 Q. You just said --

13 A. He wasn't even -- it was him. I'm telling you now
14 because the situation is over with.

15 Q. You said it was his drugs and you pled guilty to
16 that?

17 A. Yes.

18 Q. And you had it --

19 A. But his -- but his name never came up at that time
20 or even after until now.

21 Q. He wasn't as unfortunate as Mr. Pradubsri?

22 A. Well, I have nothing to do with that. Like I said,
23 the drugs were his.

24 Q. Well, that's what you say.

25 A. I smoked every day, I was a crack head. How do you

1 think I'm able to -- I was able to buy all of that? I
2 would never have been able to buy all of that and I'm
3 steady smoking every day. That was provided to me.

4 Q. You were a madam, you had five employees working
5 for you.

6 A. Okay.

7 Q. And they provided you with money, half of all the
8 sex they sold.

9 A. Okay. How do you think I got that -- that business
10 started? Through him. So the next question.

11 Q. You became a pimp through Mr. Pradubsri?

12 A. Yes, he gave me the money to get my license.

13 Q. He did?

14 A. Yes.

15 Q. There's a prostitution license?

16 A. Yes, an escort license. There is. I got it right
17 next door in the little courthouse building next door.

18 Q. On the contraband charge, you said it was another
19 man's drugs and you pled guilty to it?

20 A. Yes.

21 Q. He was never charged?

22 A. No.

23 Q. And you had -- and you basically -- when you went
24 into the jail, you had the drugs inside you?

25 A. Uh-huh.

1 Q. Okay. When you pled to that, the Solicitor's
2 Office dismissed that. You were ultimately nol-prossed,
3 what they call dismissed, of that distribution or
4 possession of crack cocaine. It's listed on the index
5 as a manufacture and distribution, but you said it's
6 just a possession?

7 A. Yes.

8 Q. Now how much crack cocaine was -- for lack of a
9 better -- was inside you?

10 A. I don't remember.

11 Q. All right. Would you -- a little bit?

12 A. It wasn't much. I don't remember.

13 Q. All right. And then once you get in the jail, you
14 take it out of yourself?

15 A. Yes.

16 Q. And you -- when you get caught, it's in your hand?

17 A. Yes.

18 Q. Okay. Now you've been on probation seven different
19 times, haven't you?

20 A. Yes.

21 Q. All seven -- now when you're put on probation, they
22 give you conditions. You agree -- it's like a contract.
23 You agree to perform certain conditions on probation?

24 A. Yes.

25 Q. And out of the seven times you've been on probation,

1 they've revoked you or you failed to comply with those
2 conditions seven out of seven times?

3 A. Yes.

4 Q. Now you wrote letters to the Solicitor in this case?

5 A. Yes.

6 Q. Now not to Mr. Bell, but the original Solicitor.
7 One of the -- there's a quote that sticks out in one of
8 your letters. "I'm willing to do anything that needs to
9 be done." Anything that needs to be done, and that
10 anything --

11 **MR. BELL:** Your Honor, what's the question?

12 **THE COURT:** Did you have a question for the witness?

13 **MR. PHILLIPS:** I'll get there.

14 BY MR. PHILLIPS:

15 Q. So anything, is that your testimony here today?

16 A. Yes.

17 Q. And your testimony is predicated on the lie that
18 you told the police that night that the drugs were yours
19 and then the next -- you know, the next step, there it
20 is, it's not yours anymore?

21 A. Okay.

22 Q. Okay. So your testimony is predicated on a lie.
23 Now that Solicitor in these letters that you sent him,
24 he had -- already knew that you had gotten out of jail,
25 came back in jail on the same charge, and in the letter

1 you talk about how long you've been in jail, "I've been
2 in jail since this long." Why did lie about how long
3 you'd been in jail in the letter when the Solicitor
4 knew --

5 **THE COURT:** All right, Counselor, you can't make
6 multiple statements.

7 **MR. PHILLIPS:** I understand, Your Honor.

8 **THE COURT:** You need to pose a question. You must
9 ask one question at a time.

10 **MR. PHILLIPS:** I'm sorry, Your Honor.

11 **THE COURT:** What is the question?

12 BY MR. PHILLIPS:

13 Q. So when you wrote a letter to the Solicitor, you
14 stated that you had been in jail, in fact, since 2008,
15 but that wasn't true.

16 A. I have no idea what you're talking about and I
17 don't even see why that's relevant to this case anyway.

18 Q. I'll come back around.

19 A. I mean --

20 Q. And you agreed to testify for a more lenient
21 sentence?

22 A. Yeah, I agreed to testify. That's what I'm doing
23 now.

24 Q. Now your original bond was set at a hundred and
25 twenty-five thousand?

1 A. It was a hundred and fifty, I believe.

2 Q. Now the original Solicitor, the one that you wrote
3 these letters to, he agreed to reduce your bond to a
4 hundred thousand dollars?

5 A. Yes.

6 Q. And at that time you were represented by Casey
7 Cornwell?

8 A. Yes.

9 Q. On the bond form it says you're represented by --

10 A. Kent Collins.

11 Q. -- Kent Collins. Did you pay Kent Collins?

12 A. No.

13 Q. Did you know that Kent Collins had recently left
14 the Solicitor's Office at that time?

15 A. No.

16 Q. All right. So he leaves the Solicitor's Office and
17 you don't pay him. Why is he listed as your attorney on
18 the bond form?

19 A. Because he got me the bond reduction.

20 Q. And he did it why? Did he have a connection to
21 Stumbo? He worked in the same office as him.

22 A. No, I had a connection -- he had a connection with
23 Sam, the Premier bondsman.

24 Q. The Premier bondsman?

25 A. Yes.

1 Q. So you didn't pay Kent Collins to be your attorney?

2 A. No.

3 Q. And as far as you know, there's no connection
4 between Stumbo contacting Kent Collins to do it --

5 A. I didn't know he came by there.

6 Q. -- and he had just left the Solicitor's Office?

7 Now as part of your bond -- they consent to reduce
8 your bond. Part of that you agree to some -- certain
9 conditions, correct?

10 A. Yeah.

11 Q. One of them was that you had to appear at the next
12 appearance date?

13 A. Yes.

14 Q. You didn't do that?

15 A. No.

16 Q. So you lied to the Solicitor about I'll show up to
17 court if you let me out?

18 A. I guess I did lie.

19 Q. And they had to get a bench warrant to get you?

20 A. Once again, I lied again.

21 Q. And they had to get a bench warrant to get you?

22 A. Yes.

23 Q. Part of that was also -- part of that with a bond
24 you essentially are telling the judge I'll be on good
25 behavior. A condition of your bond is I'll be on good

1 behavior?

2 A. Okay. And I lied about that, too.

3 Q. You got arrested in Richland County --

4 A. Yeah.

5 Q. -- and you weren't on good behavior. You got
6 arrested again?

7 A. Yeah.

8 Q. Now this bondsman, you paid the hundred thousand
9 dollars?

10 A. No.

11 Q. You didn't pay a hundred thousand dollars to bond
12 out?

13 A. I lied about paying him.

14 Q. Okay. So why did the bondsman agree to put up a
15 hundred thousand dollars of his own money to bond you
16 out?

17 A. Because he wanted to have sex with me.

18 Q. Okay. So he trusted you?

19 A. Yes.

20 Q. And you agreed to have sex with him if he let you
21 out?

22 A. Yes, but I lied and didn't do it.

23 Q. Okay. In a prior hearing, you testified that you
24 finessed him?

25 A. Yes.

1 Q. You got him to trust in your word?

2 A. Yes.

3 Q. Now when you pled guilty to this charge, you were
4 -- you had all the same charges as Mr. Pradubsri?

5 A. Yes.

6 Q. You were facing a minimum of seven years to
7 twenty-five years on the trafficking charge?

8 A. Yes.

9 Q. You were facing zero to fifteen years on the PWID
10 charge -- the proximity charge, and zero to one year on
11 the pistol charge. So that's a minimum -- you were
12 facing a minimum of seven years, yes or no?

13 A. I suppose so.

14 Q. A maximum of forty-one years?

15 A. Okay.

16 Q. Okay. And you plead guilty, they reduced -- the
17 Solicitor reduced your charges to possession. That's,
18 you know, simple possession of crack cocaine and the
19 possession of a pistol.

20 A. Okay.

21 Q. And simple possession carried zero to three and
22 you received eighteen months with no probation; is that
23 right?

24 A. Yes.

25 Q. Now you didn't have to serve the full

1 eighteen months, did you?

2 A. No.

3 Q. Because that's not even how the Department of
4 Corrections works. How much time of the eighteen months
5 did you serve?

6 A. I don't remember.

7 Q. You have no idea?

8 A. I don't remember.

9 Q. You just know you didn't serve the full eighteen?

10 A. I didn't serve the full eighteen.

11 Q. So by taking the deal, you avoided a mandatory
12 minimum of seven years in prison and you could have
13 received up to twenty-five years on the trafficking
14 charge alone?

15 A. Yes.

16 Q. Okay. A maximum of forty-one years. You avoided
17 all that and got eighteen months and did less than
18 eighteen months, yes or no?

19 A. Yes.

20 Q. Now you couldn't drive, correct?

21 A. No.

22 Q. Because your license was suspended?

23 A. Yeah, I've never had a license. I'm just suspended
24 from getting one.

25 Q. Sergeant Finch had arrested you a bunch for DUS,

1 hadn't he?

2 A. Yes.

3 Q. So you needed someone to drive you around, right?

4 A. No, I didn't. That never stopped me from driving,
5 the not having a license.

6 Q. Now you said Mr. Pradubsri didn't have a job. He
7 didn't work at CMC Steel plant?

8 A. No, he didn't.

9 Q. He never did?

10 A. He did when I first met him, but his lazy behind
11 quit when he realized how much money he could make just
12 sitting at home cooking dope and issuing out packages.

13 Q. Is that -- that's your testimony?

14 A. He wanted easy money like that.

15 Q. But he didn't work at --

16 A. Actually he didn't quit, he got fired.

17 Q. Okay.

18 A. And I don't really think I'm lying about that one.

19 Q. But you don't know. That's your speculation?

20 A. No, that's just what he said, so if it's a lie, he
21 told it.

22 **MR. PHILLIPS:** Objection, Your Honor. Hearsay.

23 **THE COURT:** Objection's overruled.

24 BY MR. PHILLIPS:

25 Q. Now at the prior hearing you were very -- you're

1 very certain today about the address of where you and
2 Mr. Pradubsri lived?

3 A. Yes.

4 Q. At a prior hearing you didn't remember? That was --

5 A. No, and the reason for that is because I just
6 talked to my old landlord, I'm still in contact with
7 him, and I asked him because I do remember I was asked
8 the last time and I couldn't remember.

9 Q. Do you know the names of Mr. Pradubsri's children?

10 A. No.

11 Q. I thought y'all were close.

12 A. We are, but his kids didn't stay with us.

13 Q. Oh. So his relationship was more than just a john,
14 a frequent john?

15 A. I suppose so. I don't know.

16 Q. And a ride?

17 A. And drugs.

18 **MR. PHILLIPS:** No further questions, Your Honor.

19 **THE COURT:** Redirect?

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

21 REDIRECT EXAMINATION

22 BY MR. BELL:

23 Q. Ms. Martin, did you ever get up and tell this jury
24 that you're a saint?

25 A. Say that again.

1 Q. Have you ever gotten up in front of this jury and
2 told them that you were a saint?

3 A. No, sir.

4 Q. Did you tell them that you'd been in and out of
5 prison?

6 A. I did say that.

7 Q. Would you consider yourself to have had a pretty
8 rough life?

9 A. Yeah. I mean, I've been -- I mean, right now I'm
10 -- I'm doing good, I'm -- well, I'm trying to do good.
11 I don't get high anymore and I've been staying out of
12 trouble and I've got good things working on my side and
13 -- but in the past I've been quite evil really.

14 Q. You have no problem admitting that at least at some
15 point for a good period of time you were a crack head as
16 you said?

17 A. Strung out, gone.

18 Q. Okay. And this laundry list of criminal convictions
19 you have, did they stem from that addiction to crack
20 cocaine?

21 A. Yes, sir.

22 Q. Did you ever make crack cocaine?

23 A. I don't know how to.

24 Q. You have no problem admitting, once again, that you
25 have dealt crack cocaine?

1 A. Yeah, I have no problem with that.

2 Q. Who were you dealing it on behalf of?

3 A. Who what?

4 Q. Who were you dealing it on behalf of? In other
5 words, who were you doing it for?

6 A. Jo, and for myself. Myself only for the benefits
7 out of it.

8 Q. And those benefits were what?

9 A. So I could smoke. That was my only -- that was the
10 only thing I got out of it.

11 Q. Okay. And that night y'all were pulled over, who
12 had all the money in the car?

13 A. He did.

14 Q. Now we've said the date a few times. Do you recall
15 the date that this arrest took place?

16 A. A little bit.

17 Q. Okay. It's been testified to that it was
18 November 9th of 2008. Does that sound right to you?

19 A. Yeah.

20 Q. Do you know the current year?

21 A. Do I know the year now?

22 Q. Yeah. What's the current year?

23 A. Now? What year it is now?

24 Q. That's right.

25 A. 2015.

1 Q. Okay. Now --

2 A. That's right, isn't it?

3 Q. Do you know how many years -- and you can just ball
4 park it, how many years since 2008 is it?

5 A. I don't know. My math ain't good.

6 Q. Is it a handful?

7 A. Huh?

8 Q. Is it a handful?

9 A. Yeah.

10 Q. Okay. Now -- now just because -- can you
11 misremember something, misremember a detail and it not
12 be a lie?

13 A. Yes, sir.

14 Q. And now when all of these lies from these previous
15 hearings over the past six years come out, were you
16 intentionally lying or were you misremembering due to
17 the time span?

18 A. Just misremembering. You know, I was really strung
19 out. I mean --

20 Q. At any point in time during the six years, has your
21 overall story changed about what happened that night?

22 A. No, sir.

23 Q. Have you ever changed admitting that on the night
24 of the arrest you said it was your crack cocaine?

25 A. I admit to saying that. I said that all along, you

1 know, that I admitted to saying that. I didn't -- once
2 that little initial shock of going to jail, I said oh,
3 no, this wasn't mine. I'm not -- I'm not fixing to take
4 blame for this.

5 Q. And have you ever changed the story that you said
6 that a bag was handed to you by Jo?

7 A. Unh-unh, I never changed that either.

8 Q. Now can you remember the exact spot the bag was
9 located?

10 A. I remember that it was behind the seat up under --

11 Q. Okay.

12 A. I don't -- there's a lot that I don't remember, you
13 know.

14 Q. But you do remember him handing you something?

15 A. Yes, I do remember that.

16 Q. And what was he indicating you to do with that?

17 A. To put it up, to hide it.

18 Q. Has that part of the story ever changed?

19 A. No, never.

20 Q. Have you ever lied about being a former prostitute?

21 A. No.

22 Q. Or being a former madam as Mr. Phillips called you?

23 A. No.

24 Q. Now you did mention that you were making money from
25 crack and from prostitution. Now when you say from

1 crack, what exactly do you mean that you were making
2 money from?

3 A. He would have me serve the girls that were working
4 for me. After they would leave off of their calls, he
5 would have me serving them. A couple of people that he
6 would send me to to serve for him.

7 Q. Did you keep that money from those transactions?

8 A. Never. Not even from the -- from the escorts.

9 Q. Ms. Martin, I know it's embarrassing and
10 Mr. Phillips has brought it out, but you have a
11 contraband charge that we spoke about on your record.
12 Do you recall that?

13 A. Yes, sir.

14 Q. Okay. Have you ever lied in previous hearings about
15 where you had that -- that drug on you that night?

16 A. No. No, sir.

17 Q. Okay. Now you pled guilty to that charge?

18 A. Yes, sir.

19 Q. Because you did try to take it into that jail?

20 A. Yes, sir.

21 Q. Regardless of who you believed it -- it was
22 ultimately going to?

23 A. Yeah. I didn't even bring him up because -- you
24 know, I just pled guilty.

25 Q. Did you know you were guilty of trying to sneak it

1 into that jail?

2 A. Yes.

3 Q. Okay. Now do you know whether or not in South
4 Carolina prostitution is illegal or legal?

5 A. Well, I know that it's illegal, but I do have an
6 escort license. There's a difference.

7 Q. And do you know whether or not an escort service is
8 a legitimate business in South Carolina?

9 A. It is.

10 Q. Ms. Martin, in one of the letters you sent to
11 one of the prior solicitors on this case, I believe
12 Mr. Phillips said that you -- I believe the quote was
13 something along the lines of "that you would do
14 anything", I think, for a lighter sentence, along those
15 lines.

16 A. (Nods head.)

17 Q. Did our office ever respond to you?

18 A. No.

19 Q. Did we ever sit down with you and talk about you
20 doing anything to get a lighter sentence?

21 A. No, sir.

22 Q. Were you guilty of having crack cocaine on you that
23 night?

24 A. Yes, sir.

25 Q. Was it your crack cocaine?

1 A. No, sir.

2 Q. And you pled guilty to possessing that crack
3 cocaine?

4 A. Yes, sir.

5 Q. Did you plead guilty to having a gun on you?

6 A. Yes, sir.

7 Q. And was that your gun?

8 A. Yes, sir.

9 Q. Do you own up to the things that you do?

10 A. Yes, sir.

11 **MR. BELL:** Please answer any questions Mr. Phillips
12 may have.

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

14 **RE CROSS EXAMINATION**

15 **BY MR. PHILLIPS:**

16 Q. You just said your story never changed; is that
17 right?

18 A. Here we go. Yes.

19 Q. The night you were pulled over, you were adamant
20 about one thing.

21 A. Uh-huh.

22 Q. The drugs were yours?

23 A. Uh-huh. Yes.

24 Q. And then your story changed?

25 A. Yes.

1 Q. So your story has changed?

2 MR. BELL: Your Honor, I'd object. To clarify, I
3 questioned her as to whether her story changed on a
4 particular element, not the entire scheme. She admitted
5 that she has fuzzed some of the details over time.

6 THE COURT: Objection's overruled.

7 BY MR. PHILLIPS:

8 Q. You and the Solicitor talked about misremembering
9 things.

10 A. Yes.

11 Q. That phrase misremembered. Are you misremembering
12 your relationship with Jo Pradubsri?

13 A. No. I wish I was.

14 Q. And that with that contraband charge that you pled
15 guilty to, that there was another man?

16 A. Yes, sir.

17 Q. And you said the drugs were his as well?

18 A. No, I -- I just said that just now. I never brought
19 that up when I got caught with it.

20 Q. And you just keep falling into this same type of
21 circumstance?

22 A. I wouldn't say that this is the same circumstance
23 or same situation or the same scenario or the same
24 anything. It's definitely not the same.

25 Q. And how much money did you make, you know, with

- 1 your prostitutes?
- 2 A. I don't remember.
- 3 Q. A lot?
- 4 A. Sometimes.
- 5 Q. How much would each one of your prostitutes make a
6 day on average?
- 7 A. I don't remember all of that.
- 8 Q. Over a hundred, two hundred?
- 9 A. I don't remember.
- 10 Q. What do you remember about how much money you made?
- 11 A. I remember I didn't get to keep any of the money.
12 That's what I remember.
- 13 Q. You said you didn't get anything -- you wrote the
14 letter to the Solicitor and you didn't get anything for
15 it. Did you get a bond reduction?
- 16 A. Yes, but that wasn't for what that was for.
- 17 Q. Okay. You said you didn't get anything for writing
18 -- what you wrote to the Solicitor. "I'm willing to do
19 anything that has to be done." You said you didn't get
20 anything. You were facing a minimum of seven years,
21 right?
- 22 A. Yeah, I do believe that I got the bond reduction
23 before I wrote a letter, but, then again, I don't
24 remember, so don't -- don't quote me on it. Don't turn
25 me into a liar because I don't remember, but I really --

1 I really --

2 Q. You're not misremembering?

3 A. Yeah, I'm misremembering.

4 Q. Okay. Now you said you didn't get anything. You
5 were facing a minimum of seven years, right?

6 A. Right.

7 Q. A maximum of forty-one years?

8 A. Okay.

9 Q. And you got eighteen months?

10 A. Yes.

11 **MR. BELL:** Asked and answered, Your Honor.

12 **MR. PHILLIPS:** He said on redirect whether she got
13 anything. It was directly to that.

14 **THE WITNESS:** But I didn't -- I didn't plead guilty
15 to what -- I got my time for having possession of it.
16 It wasn't mine, but I had possession of it. That's how
17 I got my time.

18 BY MR. PHILLIPS

19 Q. So were you in possession of it or weren't you?

20 A. I was in possession of it. I never lied about that.
21 I never denied that.

22 Q. All the drugs were on you that night?

23 A. Yeah.

24 Q. And you did less than the eighteen months?

25 A. Yes.

1 Q. Okay. Is it still your testimony you didn't get
2 anything?

3 A. No.

4 **MR. PHILLIPS:** No further questions, Your Honor.

5 **THE COURT:** Thank you, ma'am. You may step down.

6 **THE WITNESS:** Thank you.

7 (Witness excused.)

8 **THE COURT:** Next witness.

9 **MR. BELL:** Thank you, Your Honor. At this time the
10 State would call Special Agent Brian Lovin to the stand.

11 **THE COURT:** All right. Let's all stand for a moment
12 and get a little stretch in.

13 All right. If you will take your seats. Okay.

14 BRIAN LOVIN,

15 having been duly sworn, testified as follows:

16 **THE CLERK:** Thank you. If you'll have a seat over
17 here. State your name, please, and spell your last for
18 the record.

19 **THE WITNESS:** My name is Brian Lovin, L-O-V-I-N.

20 DIRECT EXAMINATION

21 BY MR. BELL:

22 Q. Good afternoon, Special Agent.

23 A. Good afternoon, sir.

24 Q. Would you tell us a little bit about yourself. Who
25 are you employed by?

1 **THE COURT:** All right. Any objection?

2 **MR. PHILLIPS:** Prior to -- we just renew our prior
3 objections from pre-trial, Your Honor.

4 **THE COURT:** All right. 12 and 13 are admitted over
5 objection.

6 (State's Exhibit Numbers 12 and 13, handguns, are
7 admitted into evidence.)

8 **THE COURT:** And, ladies and gentlemen, that's the
9 State's case. The State rests. I need to discuss
10 another matter prior to proceeding with the defense,
11 if you will go to the jury room one more time. Please
12 do not discuss the case.

13 (Whereupon, the jury retires to the jury room at
14 5:54 PM.)

15 **THE COURT:** Matters of law.

16 **MR. PHILLIPS:** Yes, Your Honor. We would renew
17 all prior pre-trial objections and all objections made
18 during the State's case. We renew those motions, Your
19 Honor.

20 **THE COURT:** All right. And they're denied.

21 **MR. PHILLIPS:** We also move for a directed verdict
22 of acquittal, Your Honor. It's settled that suspicion
23 is not enough, just mere suspicion. We don't believe
24 that the facts in this case rise to the level more
25 than mere suspicion and based on that, Your Honor,

1 additionally the knowing element of the possession of
2 trafficking that the State -- under In Re: Winship,
3 the State has to prove every element of the offense
4 and part of our directed verdict motion would be the
5 State hasn't provided evidence to the element of
6 Mr. Pradubsri's knowledge as to the possession of the
7 drugs or his intent to distribute.

8 **THE COURT:** I think based on Ms. Martin's
9 testimony, all elements that -- along with the
10 constructive possession of the drugs and other
11 testimony provided by the witnesses and inferences
12 that can be drawn from that evidence, there is
13 overwhelming evidence from which the jury could find
14 the Defendant guilty as charged and I respectfully
15 deny the motions.

16 Now do you have evidence or witnesses today?

17 **MR. PHILLIPS:** The defense is not presenting any
18 evidence and we would rest, Your Honor.

19 **THE COURT:** All right. Well, let me question
20 Mr. -- the Defendant here. If you will swear him,
21 please.

22 (Whereupon, the Jo Pradubsri, the Defendant, was
23 sworn by the Clerk of Court.)

24 **THE COURT:** Mr. Pradubsri, at this time I'm gonna
25 explain to you certain of your rights. You have the

1 **THE COURT:** Okay. Any requested charges you-all
2 want me to ponder?

3 **MR. BELL:** None from the State, Your Honor.

4 **MR. PHILLIPS:** Yes, Your Honor. Of course, as far
5 as the defense of mere presence with the State arguing
6 possession, either actual or constructive --

7 **MR. BELL:** We have no objection to mere presence,
8 Your Honor.

9 **MR. PHILLIPS:** And, of course, more than mere
10 knowledge as well. We can cite a case for that if
11 you need it.

12 **THE COURT:** Mere knowledge?

13 **MR. PHILLIPS:** Essentially you have mere presence,
14 but also mere knowledge of the drugs is encompassed in
15 the case law with mere presence. Merely because he
16 knew she possessed the drugs is not sufficient. Just
17 because she possesses the drugs and his knowledge of
18 it, that's not suspicion. It has to be -- still for
19 the two people to possess one thing it has to be
20 something that's his. You can't just be guilty by
21 your own knowledge.

22 **MR. BELL:** Your Honor, I think that's encompassed
23 in we have to prove -- if we have to prove constructive
24 possession, we have to prove he could exercise dominion
25 or control over it. I don't think there would have to

1 be a separate mere knowledge charge where you have mere
2 presence.

3 **MR. PHILLIPS:** And the State's {sic} position would
4 be to request the mere knowledge.

5 **MR. BELL:** You said --

6 **MR. PHILLIPS:** Did I say State? The defense's
7 position, Your Honor. Also --

8 **THE COURT:** Well, let's see here.

9 **MR. PHILLIPS:** Another matter, Your Honor, was
10 brought to my attention by Attorney Mauldin. The
11 indictment back -- or at least when it was originally
12 indicted many years ago, that indictment's limited and
13 it doesn't have in all that other language. It's
14 really just the actual or constructive possession
15 language that's contained in the indictment. It
16 doesn't have the manufacturing, the aiding and
17 abetting, and we would request that part of the
18 statute be excluded from the jury charges; that the
19 State's theory is that it was his drugs, it was in
20 his possession, not this -- anything beyond that.
21 Certainly nothing beyond the scope of the indictment.

22 **MR. BELL:** Your Honor, I think the indictment
23 cites the statute and the statute does include all of
24 that. The indictment's merely a notice document and
25 it puts them on notice that he's in violation of that

1 statute and if they would read it, they would know that
2 it encompasses all of the things we've spoken about.

3 **THE COURT:** Well, I mean, on that issue of the
4 indictment, the indictment does not specify a violation
5 of the entire statute or the language in the indictment
6 does not include the full scope of language in the
7 statute or if that limits the jury from considering
8 whether the law was violated. Do you have something on
9 that, Mr. Phillips?

10 **MR. PHILLIPS:** Your Honor --

11 **THE COURT:** Before you comment on that, just the
12 -- under the definition of possession -- under the
13 definition of possession, it says mere presence at the
14 scene where drugs were found is not enough to prove
15 possession. Actual knowledge of the presence of the
16 drugs is strong evidence of the defendant's intent to
17 control its disposition or use. The defendant's
18 knowledge and possession can be inferred when a
19 substance is found on property under defendant's
20 control; however, this inference is simply an
21 evidentiary fact to be taken into consideration with
22 all the other evidence. And it also says two or more
23 persons in joint possession of a drug. So do you have
24 any problem with the standard charge or meaning of
25 possession?

1 **MR. PHILLIPS:** We -- certainly in addition to
2 possession and mere presence language, we would request
3 an additional language that says that mere knowledge
4 is also not enough. By itself mere knowledge --

5 **THE COURT:** It says actual knowledge is strong
6 evidence.

7 **MR. PHILLIPS:** And that's where our objection would
8 be that, yes -- I mean, we're not objecting to that
9 language. Our request, Your Honor, not objection, our
10 request would be that to clarify for the jury that even
11 though it's -- that the knowledge can be used by the
12 jury to infer intent, that mere knowledge by itself is
13 not enough.

14 **THE COURT:** All right. Well, you look at that
15 statute, that definition. What's your e-mail address?
16 What's your e-mail?

17 **MR. PHILLIPS:** [REDACTED]@lex-co.com.

18 **THE COURT:** And yours, Mr. Bell?

19 **MR. BELL:** [REDACTED]@lex-co.com.

20 **THE COURT:** So we're gonna send you the standard
21 definition of possession which talks about actual and
22 constructive and references actual knowledge of it
23 being present is strong -- strongly suggests he
24 possessed it, but you want to add language from
25 however, mere knowledge alone is insufficient to prove

1 possession. Whichever way you propose to amend that,
2 you write it in there and run it by Ms. Rankin and
3 Mr. Bell by in the morning shoot me something. If not,
4 I'll drop the hammer on it.

5 **MR. PHILLIPS:** Absolutely.

6 **THE COURT:** All right. Then you were about to say
7 something about something else.

8 **MR. PHILLIPS:** Just, I guess, following on our
9 request, Your Honor, we also would request the mere
10 suspicion language; that suspicion, however strong, is
11 not enough to sustain a conviction, and we would cite
12 State v. Woods. That's 273 S.C. 266.

13 **THE COURT:** All right. Maybe you can add the word
14 knowledge -- mere knowledge or mere suspicion.

15 **MR. PHILLIPS:** Yes, Your Honor.

16 **THE COURT:** And suspicion -- and also from State
17 v. Buckmon, 347 S.C. 316, that suspicion implies the
18 belief or opinion as to guilt based upon facts or
19 circumstances which do not amount to proof. That
20 would be the two mere suspicion requests.

21 **THE COURT:** Is that a -- did the jury reach a
22 verdict -- was that a jury verdict or was that a
23 directed verdict?

24 **MR. PHILLIPS:** In Buckmon? Your Honor, I'll
25 provide -- I'll make sure so there's no inconsistencies.

1 When I provide in my e-mail tonight, all that will be
2 provided. I'll have everything listed out.

3 **THE COURT:** Because some of those cases about
4 suspicion was whether or not a judge should have
5 directed a verdict and it's not a question of weight
6 to be given by the jury, but what the judge should be
7 considering at the directed verdict stage, so hence
8 the question.

9 **MR. PHILLIPS:** And I'll follow up on that, Your
10 Honor.

11 **THE COURT:** All right.

12 **MR. PHILLIPS:** I do believe that the suspicion,
13 however strong, is not enough to sustain a conviction,
14 I believe that is used generally in jury instructions,
15 but I will follow up.

16 **THE COURT:** All right.

17 **MR. PHILLIPS:** Of course, the standard presumption
18 of innocence. Now, Your Honor, as far as the reasonable
19 doubt, the State would request both the hesitate to act
20 -- sorry, Your Honor, I keep saying the State. It's
21 been a long day. The defense would request the hesitate
22 to act, as well as the firmly convinced language.

23 **THE COURT:** All right. We'll give that.

24 **MR. PHILLIPS:** As far as -- I know the heading for
25 the standard charge book says defendant's failure to

1 testify. We would request an amendment to defendant's
2 right not to testify.

3 **THE COURT:** We'll change that. We did that
4 yesterday. Yes, sir.

5 **MR. PHILLIPS:** The circumstantial evidence charge,
6 Your Honor, we would request the charge from State v.
7 Logan, 2013, 405.

8 **THE COURT:** All right. We'll do that.

9 **MR. PHILLIPS:** Yes, Your Honor. As well -- I know
10 in the prior trial we just had there was some language
11 in your standard jury charge regarding the search for
12 the truth. Our Supreme Court held in State v. Daniels,
13 that's 401 S.C. 251, that any language regarding a
14 search for the truth is improper burden-shifting and we
15 would make our motion now to exclude that.

16 **THE COURT:** Yeah, thanks to Judge Russo I think the
17 court has addressed some of those things, but what do
18 you want me to tell them?

19 **MR. PHILLIPS:** As long as you take out the search
20 for the truth language because the search -- the reason
21 it's improper burden-shifting, of course, the way the
22 system is set up is the trial is not a search for the
23 truth, the trial is a search for whether the State has
24 met its burden of proof of proving the defendant's guilt
25 beyond a reasonable doubt. So our -- the improper

1 burden-shifting is that a search for the truth violates
2 that right and it would be fundamentally unfair under
3 the Fifth and Fourteenth amendments to the United States
4 Constitution and Article 1, Section 3 of the South
5 Carolina Constitution.

6 **THE COURT:** What happened to that jury charge? Do
7 you still have it?

8 **MR. PHILLIPS:** I have a copy of State v. Daniels,
9 if you'd like me to, Your Honor.

10 **THE COURT:** No, I know the law. I think there was
11 a little more than that with the -- we'll call it the
12 -- Judge Russo's Rule.

13 **MR. PHILLIPS:** There was also a Golden Rule
14 argument in that case, but I can read the burden of
15 proof section from that case.

16 **THE COURT:** No, I don't -- I've got that about what
17 he said in that case, but what -- I'm more concerned
18 about what I said, not what he said.

19 **MR. PHILLIPS:** To quote, Your Honor, it says:
20 Although the issue is not reserved, we instruct the
21 trial judge to remove any suggestion from his General
22 Sessions charges that a criminal jury's duty is to
23 return a verdict that is just or fair to all parties
24 such as a charge would effectively alter the jury's
25 perception of the burden of proof substituting --

1 **THE COURT:** I think you're referring to Russo's
2 charge now.

3 **MR. PHILLIPS:** And what he specifically said is --

4 **THE COURT:** I couldn't care less what he said and
5 what he did. You know, I've never done or said what he
6 said or what he did, and that's why they reversed him,
7 but the -- the part that I told the jury yesterday --
8 let's see. All right. I said your sole interest is to
9 seek the truth from the evidence in this case.

10 **MR. PHILLIPS:** And our argument would be that would
11 improper burden-shifting.

12 **THE COURT:** As I stated earlier, you are the
13 judges and judges of the facts. Your sole interest is
14 to seek the truth from the evidence in this case. See,
15 the portion that might distinguish what Judge Russo said
16 is this part. It says to seek the truth from the
17 evidence in this case. The "from the evidence in the
18 case" is probably what makes it -- what I may find as
19 compared to what you're reading about what he said.

20 **MR. BELL:** The State would agree, Your Honor.

21 **MR. PHILLIPS:** We certainly stand firm that any
22 language about searching for the truth would be improper
23 burden-shifting.

24 **THE COURT:** How about seek the truth?

25 **MR. PHILLIPS:** Seek the truth as well, Your Honor.

1 **THE COURT:** Any word that says truth?

2 **MR. PHILLIPS:** Well, anything that tells the jury
3 that they're seeking the truth or any variation from --

4 **THE COURT:** All right. We'll take it out.

5 **MR. PHILLIPS:** -- or relieving the State of its
6 burden. That's improper burden-shifting. Again, the
7 burden of proof is whether --

8 **THE COURT:** How about the beginning part where I
9 tell them that it is your duty to determine the effect,
10 the value, the weight, and the truth of the evidence
11 presented during this trial?

12 **MR. PHILLIPS:** That's fair.

13 **THE COURT:** That is fair?

14 **MR. PHILLIPS:** Based on the evidence.

15 **THE COURT:** I can use that word?

16 **MR. PHILLIPS:** Yes, Your Honor.

17 **THE COURT:** But if I say your sole duty is to seek
18 the truth from the evidence, then that's not fair?

19 **MR. PHILLIPS:** I think it's too close to State v.
20 Daniels and we maintain our objection.

21 **THE COURT:** Well, that's why I'm saying that if
22 that's the only thing that Judge Russo said, then it
23 wouldn't be an issue because this is standard language
24 that all judges use throughout the State in every case.
25 We had a little more than that during that case.

1 **MR. PHILLIPS:** I can quote, Your Honor. It says:
2 As an abstract concept, seeking the truth suggests
3 determining whose version of events is more likely
4 true, the Government's or the defendant's, and thereby
5 intimates -- is akin to a preponderance of the evidence
6 standard and such an instruction would be error if used
7 in the explanation of the concept of proof beyond a
8 reasonable doubt.

9 **THE COURT:** Well, if that's all you're worried
10 about, I'll take that line out.

11 **MR. PHILLIPS:** Thank you, Your Honor.

12 **THE COURT:** All right. What else is on your mind
13 today?

14 **MR. PHILLIPS:** I believe that's it, Your Honor.

15 **THE COURT:** All right. Very good. We can break
16 camp until 9:30 then.

17 **MR. PHILLIPS:** Thank you, Your Honor.

18 **MR. BELL:** Thank you, Judge.

19 (Whereupon, the proceedings were concluded at
20 6:20 PM.)

21 (Whereupon, the following proceedings were held on
22 January 15, 2015.)

23 **BAILIFF:** All rise. Court's now in session. The
24 Honorable Clifton B. Newman presiding.

25 **THE COURT:** All right. Good morning. Are there

1 some pending matters before the jury comes in?

2 **MR. BELL:** None from the State, Your Honor.

3 **MR. PHILLIPS:** Yes, Your Honor. We would request
4 the lesser included of simple possession. I spoke to
5 the Solicitor. I believe he also agrees in charging
6 simple possession to the jury on the trafficking charge,
7 Your Honor.

8 **MR. BELL:** No objection, Your Honor.

9 **THE COURT:** All right.

10 **MR. PHILLIPS:** I know yesterday I objected and
11 requested a mere knowledge explanation or a jury
12 instruction, like a supplemental. After reading the
13 mere presence, I've decided that we'll stand firm with
14 just the mere presence. We'll withdraw our objection
15 to the mere knowledge; that the mere presence that's
16 contained in the possession is sufficient.

17 And I just wanted to clarify since we weren't
18 provided a copy of your instructions, my charge book
19 doesn't have -- is not updated based on the 2013/2014
20 law, and in my charge book it's got under the possession
21 section it has the strong evidence language to actual
22 possession. If your charges have this language, I
23 would object it to under State v. Cheeks. That's
24 401 S.C. 322. I think the charge is -- specifically,
25 in the old charge that was reversed in State v. Cheeks,

1 I quote: Actual knowledge of the presence of, you
2 insert the drug, is strong evidence of the defendant's
3 intent to control its disposition or abuse. We would
4 object to that under State v. Cheeks. That's an
5 improper charge. It's improper comment on the facts
6 and invades the province of the jury as far as their
7 ability to weigh the evidence.

8 **THE COURT:** What says the State?

9 **MR. BELL:** No objection to that, Your Honor.

10 **THE COURT:** All right. That will be deleted.
11 Anything else?

12 **MR. PHILLIPS:** That's it, Your Honor. Thank you.

13 **MR. BELL:** Nothing from the State, Your Honor.

14 **THE COURT:** All right. With regard to the issue
15 of whether the indictment as written limits the State
16 -- limits the elements of the offense versus what the
17 statute provides, has anyone got anything else on that?

18 **MR. PHILLIPS:** No, Your Honor. Our argument would
19 just be that it improperly enlarges the indictment. I
20 couldn't find a case specifically on point as to that
21 exact factual scenario, Your Honor.

22 **THE COURT:** All right. From the State?

23 **MR. BELL:** Your Honor, if we could have one moment
24 to re-find the page we pulled. Your Honor, I think
25 it's pretty well-settled that so long as the indictment

1 substantially charges the language of the statute and
2 plainly lists the statute in violation, that that is
3 sufficient for notice. Your Honor, I certainly believe
4 that the text of this indictment clearly states the
5 statute, clearly says that he's being indicted for
6 trafficking. They certainly can look at the statutory
7 language and extrapolate the details of that.

8 **THE COURT:** The State's theory is possession plus
9 -- plus weight equals trafficking, right?

10 **MR. BELL:** That's correct, Your Honor.

11 **THE COURT:** Is that what you intend to argue or do
12 you plan to argue some of the other stuff as written in
13 the statute?

14 **MR. BELL:** Your Honor, to be quite honest, our
15 entire case is that he constructively possessed it and
16 it was over the threshold weight needed for this case.

17 **THE COURT:** All right. So there's no point in
18 argument that he -- of course, there's testimony that
19 he manufactured it and says that he created it and no
20 testimony about bringing it into the State and some of
21 the other things that -- many words that are listed in
22 the trafficking statute, but if the State intends to
23 argue that he possessed a quantity that exceeded a
24 certain limit and that equals trafficking, then that's
25 what I'll charge the jury.

1 **MR. BELL:** I don't intend to argue the -- the sort
2 of superfluous parts of the statute, Your Honor. Your
3 Honor, I think if you charge the possession elements
4 of it, I have no problem with that.

5 **THE COURT:** All right.

6 **MR. PHILLIPS:** Yes, Your Honor. If the State's
7 theory is just the possession, we would like the
8 exclusion of all the other additional language.

9 **THE COURT:** All right. Well, let's bring in the
10 jury. The State opens, the defense closes.

11 (Whereupon, the jury enters the courtroom at
12 9:45 AM.)

13 **THE COURT:** Good morning. It's time for closing
14 arguments from the State and the defense.

15 **MR. BELL:** Thank you, Your Honor. May it please
16 the Court?

17 **THE COURT:** Yes.

18 **MR. BELL:** Don't miss the forest through the trees.
19 Don't miss the forest through the trees. What exactly
20 does that mean? Well, it means don't miss the big
21 picture just because of what's going on around it.
22 Don't miss the fact that you're looking at a forest
23 because there's a bunch of trees in your way.

24 Now there's a reason that both the defense and
25 myself selected you to be on this jury. It's because

1 we believe that your life experiences make you valuable
2 jurors. Me particularly think your life experiences
3 have left you well-equipped with good old-fashioned
4 common sense. That's what I'm gonna ask you to use as
5 you think about this case, your good old-fashioned
6 common sense.

7 Now throughout this trial, and you're gonna hear
8 more of it before it's over, you heard a lot of lawyer
9 talk, a lot of legalese. I don't want all of that
10 technical jargon to distract you from thinking that
11 you cannot use your common sense in coming to
12 conclusions in this case. Don't let all of that
13 confuse you or distract you. Use your common sense
14 and see the forest through the trees.

15 Now what exactly is common sense? Who has it?
16 Anybody can have common sense. There's a story that
17 I was told when I was a little fellow and it stuck
18 me also what exactly common sense is, and it goes
19 something like this. There was a man driving down the
20 road and as he was passing a mental institution, he
21 hears a pop and his tire goes flat. He gets out and
22 starts changing that tire and he takes off those lug
23 nuts. As he's doing that, he's putting them in a
24 hubcap right beside him and he's about done putting
25 the spare on when all of a sudden he slips and kicks

1 that hubcap and sends those lug nuts flying off into
2 oblivion never to be seen again. Well, he starts
3 cussing. Eventually he stands up and exclaims, "What
4 in the heck am I gonna do now?" Well, there just so
5 happened to be a patient from that mental institution
6 sitting by the fence and he starts saying, "Well, why
7 don't you take one lug nut from each of your other
8 three tires and put those on your spare tire. You
9 might be missing one lug nut from your other one, but
10 at least you've got four tires to get you home." The
11 man said, "Goodness, that's pretty smart. What in the
12 world are you doing in a mental institution?" And he
13 said, "Sir, I'm crazy, I ain't stupid." That's always
14 stuck with me. I think that's a good example of common
15 sense, and that's what I want you to use.

16 Now the way our system works is the defense gets
17 to get up and have last words with you and what they're
18 gonna do is spend a lot of time kicking up dust trying
19 to kick a bunch of dust in the air hoping that you
20 won't be able to see that forest through the trees.
21 They're hoping you'll be so distracted you can't see
22 the big picture. If you start feeling distracted,
23 take a step back, take a deep breath and use your
24 common sense that life has equipped you with.

25 Now in using your common sense, I think you're

1 gonna come across a few things, and I want to go ahead
2 and address a few of those right now. Using your
3 common sense to think about this case, something that
4 might come up is if you're waltzing down the street
5 with a large quantity of crack cocaine, let's say 68
6 grams' worth, as you heard from the stand it's roughly
7 \$6,800 worth of crack cocaine, isn't it logical,
8 doesn't it make the most sense that the person that
9 this actually belongs to, that the person that these
10 dubs, these twenties as they're called because they're
11 worth twenty bucks, doesn't it make the most sense that
12 the person that actually owns that crack cocaine is the
13 person with all the twenty dollars bills in their
14 pocket?

15 You're gonna have this piece of paper back there
16 with you and it tells you right here on this bottom
17 line the money that was taken off of Mr. Pradubsri when
18 he was arrested. The total was \$728. Of that there
19 were thirty-one twenty dollar bills in his pocket.
20 Your common sense would tell you he had that money
21 because that was his crack cocaine.

22 Now you might start thinking well, maybe Melisa
23 Martin, maybe she is the big bad here, maybe she's
24 the mastermind, the drug trafficker out there on the
25 streets. Why didn't she have any money on her?

1 Especially when you heard that there were two serves
2 that took place at Kroger right before they were
3 arrested. Where was that money? It was in Jo
4 Pradubsri's pocket because it was his crack cocaine.
5 Those were his proceeds.

6 Now if you keep using common sense and working
7 through this problem, you might start thinking well,
8 you know, the defense has made some points. Ms. Melisa
9 Martin, she might be the street kingpin walking around
10 with \$6,800 worth of crack cocaine on her, but then
11 your common sense might kick up again and you might say
12 goodness, how would she survive? Now my mother raised
13 me very strictly and very sternly on one thing and that
14 is that you never guess a woman's weight, but you saw
15 for yourself she's a fairly small woman, small in
16 stature. She carried a .25 caliber pistol zipped up
17 in her purse, not on her, not right by her, zipped up.
18 Is she this big kingpin, this big enforcer of the
19 street or is it more likely that it's the bigger guy
20 with the bigger gun that was readily accessible halfway
21 pulled out of the seat loaded? As Sergeant Finch said,
22 ready to go. The man with the biggest wad of cash in
23 his pocket. Doesn't it make more sense he's the
24 kingpin?

25 Now there's so many things we could go through,

1 but there's one last point I want to hit on as far as
2 this goes. If Melisa Martin is this mastermind, this
3 kingpin, this criminal genius that somehow successfully
4 framed Mr. Pradubsri and Mr. Pradubsri was just an
5 unfortunate john or an unfortunate lackey that was just
6 in the wrong place at the wrong time, don't you think
7 it's unusual that the mastermind, Ms. Melisa, would
8 stuff the crack on herself, get out of the car and
9 immediately say it's mine, all that crack's mine, I'm
10 the mastermind, but I'm gonna go ahead and fess up to
11 it? Or does it make sense that the mastermind might
12 try to slough it off on the lackey with him and make
13 somebody else take the fall just like Mr. Pradubsri did
14 to Ms. Martin?

15 The defense went after Sergeant Finch, they
16 extensively attacked Ms. Martin as to prior testimony
17 in other hearings that have taken place over the course
18 of six years as this case has been pending, and over
19 that time the defense would have you believe that over
20 six years every single time you change the slightest
21 detail in something that you say, the exact way that
22 you recount something, that there is no other
23 explanation except that you are a liar. Ladies and
24 gentlemen, use your own life experiences, use your
25 common sense and make a determination as to whether you

1 think it's understandable that after six years maybe a
2 few details do get fuzzy.

3 But one thing that hasn't changed is the overall
4 story, the overall truth, and that's that Jo Pradubsri
5 was buying powder cocaine, he was taking it back to his
6 apartment with Ms. Martin and he was cooking it up into
7 crack cocaine. They then took that crack cocaine to
8 Kroger right there by Irmo Elementary, she sold some of
9 that crack cocaine for him as she admitted she's done
10 many times, she gave the proceeds to him, they get in
11 the car and begin to leave, the blue lights hit, they
12 get pulled over.

13 Now she can't remember exactly where this bag in
14 the car came from, whether it was on the center console
15 or back behind the seat, but what has never changed is
16 the fact that as those blue lights kicked on, he started
17 handing it over to her and she started trying to hide
18 it. Those parts have never changed. Don't lose the
19 forest through the trees. See the big picture.

20 Now I've got to go through a little bit more of
21 this legalese with you, a little bit more of this
22 lawyer talk. Let's go over the charges. Trafficking
23 crack cocaine, 28 to 100 grams. All that means is that
24 on this night when he was arrested, Mr. Pradubsri was
25 in actual or constructive possession of crack cocaine.

1 You're gonna hear what constructive possession means;
2 that even if it's not on you, if you can exercise
3 control over it, it is still yours.

4 Now you heard that the field weight of this crack
5 cocaine was somewhere in the low seventies. We put a
6 chemist up who was certainly not short on science or
7 explanations for us, but she did ultimate say that she
8 tested it, she's a hundred percent positive it was crack
9 cocaine, and that she gave us a few weights. She gave
10 us four different baggies that were weighed. If you end
11 up totalling those, it was 67.88 grams. That certainly
12 falls between 28 and 100. As to the control, I would
13 certainly submit Mr. Pradubsri had control over those
14 drugs. As Ms. Martin knew, she always had to give the
15 proceeds back to him and she knew when the time came
16 she'd have to give that crack to him as well. It was
17 his. Just because it was on her doesn't change that.

18 Now possession with intent to distribute within
19 proximity. Well, that first part just means that he
20 had over a gram on him when they found him. You
21 already heard he had about 68 grams on him. The second
22 part, proximity, that means he was near a school. And
23 you saw this overhead picture, and you're gonna have it
24 back there with you, here's the Kroger where that sale
25 took place, those serves that she called them, and here

1 is Irmo Elementary, a school, right across the street.
2 Certainly that's within proximity. Sergeant Finch told
3 you he measured it out, and he doesn't remember the
4 exact measurement, but that it was certainly under a
5 half mile away.

6 Then you've got unlawful caring of a pistol.
7 That's pretty clear. There's very specific places you
8 can have a gun in your car in South Carolina. Halfway
9 exposed on the side of your seat is not one of them in
10 any circumstance.

11 Now you're also gonna be charged on just what is
12 essentially the simple possession of crack cocaine.
13 That means that you believe he had possession over it,
14 control over it, but that you didn't believe the
15 weight. I would just ask you to please think back on
16 the testimony regarding the weight from all the
17 different witnesses. It certainly was between 28 and
18 100 grams. This is not a possession case, this is a
19 trafficking case.

20 One last thing that's gonna get harped on,
21 reasonable doubt. Defense is gonna try to tell you
22 why you should have it, why all of these red herrings,
23 why all of this dust, why all these trees should be
24 reasonable doubt, but it shouldn't. The judge is gonna
25 explain to you what reasonable doubt is and I ask you,

1 respectfully, please listen. It is not beyond all
2 doubt. It is something that leaves you firmly
3 convinced. So maybe you don't believe every detail
4 you heard from the stand from anybody, but yet you're
5 still firmly convinced that those drugs didn't belong
6 to Ms. Martin, they belonged to Jo Pradubsri. If you
7 use your common sense, if you look at the big picture,
8 I firmly believe that regardless of these discrepancies
9 and some of the details that you've heard you'll still
10 be firmly convinced those drugs weren't Melisa Martin's.
11 She's not a mastermind, she's not a criminal genius.
12 She was a vulnerable crack-addicted hooker and
13 Mr. Pradubsri knew it and he took advantage of it.

14 At the end of your deliberations I pray that you
15 will see the forest through the trees. That you'll see
16 this big picture. That you'll return a verdict that
17 speaks the truth, the truth that Jo Pradubsri is guilty
18 of trafficking crack cocaine, and doing so near Irmo
19 Elementary, and doing so with a gun. Please see the
20 forest through the trees. Thank you.

21 **MR. PHILLIPS:** May it please the Court?

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

23 **MR. PHILLIPS:** Good morning, ladies and gentlemen.
24 "I'm willing to do anything that needs to be done."
25 These are the words of the Government's star witness.

1 These are the words of the person that the State just
2 tried to make look like a victim. They tried to make
3 the person you saw on that witness stand yesterday look
4 like a victim. You can decide for yourself. You do
5 have common sense. You can decide whether she's a
6 victim. Now she might be a victim of being a drug
7 addict and it's destroyed her life. She might be a
8 victim of being a drug dealer. She might be a victim
9 of a lot of things, a victim of a lot of circumstances
10 that's she created for herself.

11 You know, I recently saw a thing that said, you
12 know, I believe everything happens for a reason. And
13 sometimes it's because you make bad choices and
14 Ms. Martin made a lot of bad choices. Ladies and
15 gentlemen, I told you at the beginning of this trial
16 that the most important question you should answer is
17 whether you believe Melisa Martin's testimony. It's
18 that simple. We're not trying to hide anything. This
19 isn't forest and trees. This is do you believe Melisa
20 Martin's testimony, it's that simple, and whether the
21 State has met its burden of proof of proving his guilt
22 beyond a reasonable doubt based on the credibility of
23 that woman, the credibility of that woman.

24 So let's review what we know about Melisa Martin,
25 the Government's star witness, the Government's victim.

1 Who is Melisa Martin? An owner of a prostitution ring?
2 She has five prostitutes who work for her, each of who
3 pay her half of everything they make selling their
4 bodies. A drug dealer? She's told you she sold drugs
5 to her prostitutes, a hundred dollars a pop. I think
6 the street term was a slab. She even admitted she sells
7 crack to the johns of her prostitutes, their customers
8 who pay for sex. She sells crack to them. She says
9 she even sold crack to get the gun she possessed. She
10 admits people who visit prostitutes pay in cash, people
11 who visits prostitutes generally carry guns. She told
12 you all these things. She also told you that the people
13 from Kroger that she talked -- that she wanted to say
14 was involved with Mr. Pradubsri that they called her
15 personally on her cell phone. They didn't call him,
16 they called her. Why? Because she's the drug dealer.

17 Drug connections. You heard Agent Lovin. He
18 confirmed that she said she had an independent drug
19 connection named Mr. Big or Big and that she bought
20 drugs alone from Mr. Big. These are the things she
21 told Agent Lovin, law enforcement. Now she also told
22 Agent Lovin that she'd go buy drugs from Big if he
23 would just get her out of jail. That's obviously the
24 thing we've seen. She will do anything. "I'm willing
25 to do anything that needs to be done."

1 Yes, she's a drug addict. Yes, it makes her
2 sympathetic. Does it make her trustworthy? She says
3 she was smoking six hundred to seven hundred dollars of
4 crack a day back when this happened and she wants you to
5 believe that between all the money she made being the
6 madam or a pimp or whatever you want to call her of
7 running this prostitution business and selling these
8 drugs, that Mr. Pradubsri was allowing her to smoke
9 six hundred to seven hundred dollars' worth of crack
10 for free, for nothing, just so -- well, she never
11 really provided a reason. Why? Because it's a lie.
12 Lies, lies, lies. That's what this case is all about.
13 The Government wants you to jump on the back of a lie
14 and convict Mr. Pradubsri.

15 Prison. She's been to prison eight times. She
16 has countless convictions for crimes of dishonesty,
17 revoked on probation seven out of seven times. Well,
18 what has Melisa Martin done? The night she was
19 arrested she had the drugs on her, she told the police
20 the drugs were hers, and the police, you heard from
21 her mouth, when they pulled up they were specifically
22 looking for what, her street name. "Is Magic in that
23 car?" They didn't say: Is Jo Pradubsri in that car?
24 You heard her: Is Magic in that car? They were looking
25 for her. Why? Because she's the drug dealer. She

1 wrote letters to the Solicitor while she was in jail.
2 She was begging to get that plea deal. She knew what
3 she was facing, she knew what was coming down the pipe.
4 She received a bond reduction from the Solicitor. She
5 didn't have to go to court. She was represented by a
6 lawyer she didn't pay, a lawyer who had recently left
7 the Solicitor's Office for private practice and had a
8 relationship with the Solicitor, but she doesn't know
9 how all that kind of came about, but somehow she didn't
10 have to even go in to court. When you have a bond
11 hearing, you usually go before a judge. She didn't have
12 to do all that. It was all form paperwork. I submit to
13 you it was an under table deal to help her out.

14 She sat in the witness chair and she told lie after
15 lie after lie. She admitted that she put her hands on
16 that Bible at a prior hearing and she lied because she
17 said something differently this time. If she can come
18 into here, put her hand on that Bible and tell a lie,
19 then you can't believe anything. That's what I would
20 submit to you. If she can lie about one thing and she
21 can lie about another thing, one plus one equals two.

22 They talk about common sense. Common sense is when
23 somebody's told nothing but a bunch of lies, you can't
24 believe anything they say. That's common sense. How
25 can you trust one thing and not trust another? Once

1 someone's untrustworthy, you don't know what to believe.
2 And based on that, how could you convict Mr. Pradubsri?
3 On her word? Because that's all this case is based on,
4 is her word alone. The drugs were on her and her story
5 did change because she told the police that night that
6 the drugs were hers. The story changed.

7 Well, who has she lied to in this case? She lied
8 to the police. The Government's case is predicated on
9 a lie. The Government wants you to trust her despite
10 everything. She tells the police the drugs were hers,
11 she changes her story. She lied to the Solicitor, the
12 Solicitor that was helping her out, helping her do this
13 backroom deal. The Solicitor told her we'll give you a
14 bond reduction, but you've got to appear at your next
15 appearance date. Did she show up? No. The Solicitor
16 had to go get a bench warrant and put her back in jail
17 because he's got to keep his tether on his star witness.
18 She lied to the judge who gave her the bond reduction.
19 Part of that was you had to be on good behavior when you
20 get out on bond. That's a condition. What happened?
21 She gets arrested in Richland County. She lied to her
22 bondsman. Now this was interesting. According to her,
23 she agreed that -- I asked her why would a bondsman if
24 you didn't pay him put up a hundred thousand dollars of
25 his own money to get you out of jail? She said I agreed

1 to have sex with him and then she, kind of smugly, "but
2 I didn't". Another lie.

3 So lie, lie, lie. That's all this case is about.
4 I think in her words she said, "I finessed him". I got
5 him to trust in my word. She wants you to trust in her
6 word. She wants to finesse you. She proudly proclaimed
7 how she tricked him to get him to post bond and then
8 didn't have sex with him as she said she agreed. This
9 is the person the Government is asking you to trust to
10 meet the burden of proving beyond a reasonable doubt
11 that Jo Pradubsri is guilty of this crime.

12 She lied to you, ladies and gentlemen. It was
13 obvious she knows how to work the system, been to prison
14 eight times. She knows what the system is all about.
15 She knows how to make herself appear like a victim and
16 the State jumped on it in closing. Jumped right on it.
17 I already knew it was coming. They were gonna make her
18 look like a victim. Poor innocent, old Melisa Martin.
19 Oh, life's just been so bad to her. It's not because
20 of her own doing, accepting responsibility for what
21 she's done, make her look like an innocent bystander.
22 She's just kind of happenstance to be around.

23 Let's talk about that black bag of crack. Was it
24 under the seat, behind the seat, or as she told Agent
25 Lovin, it was on the center console. She said she

1 didn't receive the benefit of what she was doing. She
2 had the nerve to sit on the witness stand under oath
3 and say she didn't receive a benefit. She faced a
4 minimum sentence of seven years in prison. The maximum
5 sentence was up to forty-one years. She ended up
6 getting eighteen months and served less than
7 eighteen months. No benefit? Are you kidding me?

8 Money. She claims she never made any money ever.
9 Never had -- never got any of the money. The State
10 wanted to tell you all this money was found on Jo
11 Pradubsri. Well, she talks about going to Kroger and
12 selling this crack and she says she gets paid in a
13 gift card. Only the one person paid in a gift card.
14 Where was the gift card? It wasn't on Jo Pradubsri.
15 I asked her about money in the purse. She said it
16 wasn't there. I never heard anybody say where the
17 gift card was. Nobody said the gift card was on her,
18 in her purse. Who knows what's true and what's not in
19 this case. That's the point. I don't know. Nobody
20 knows. Reasonable doubt.

21 The contraband charge. She's arrested and she has
22 the drugs in a place the guards wouldn't look. Of
23 course, those drugs were someone else's drugs. You
24 heard her, very similar, you know, just like this case.
25 I pled to it, I had the drugs in the same spot I had

1 in this case, but those were someone else's drugs and
2 I pled to it. I guess she's just -- it's not her fault.
3 Nothing's ever her fault. Someone else is always to
4 blame. The same happenstance.

5 Now the connection with Mr. Pradubsri. She
6 definitely made it seem like they had this close
7 relationship, yet she didn't know the names of his
8 children. When the Solicitor was doing his direct
9 examination he asked -- or maybe she just elicited
10 it on her own, he didn't have a job, then on
11 cross-examination I asked her: He worked at CMC
12 Steel? Yeah, but then I think he quit; no, actually I
13 think he was fired. Just, you know, what is true in
14 this case?

15 Now she talked about how it was a dangerous
16 cash business. She said -- she admitted obviously
17 prostitution is a dangerous cash business, people
18 have cash, people have guns, that's the nature of the
19 street, and she said she is a woman of the streets.
20 She was very familiar with this.

21 Now why would she lie? Again, she had seven to
22 forty-one reasons to lie. That's one for every year
23 she got to avoid by sitting on that witness stand. She
24 made this deal with the Solicitor's Office. She had a
25 debt to pay. She was originally charged with -- every

1 charge which Jo Pradubsri sits before you, she had
2 every one of those. The proximity charge goes away,
3 the trafficking gets dropped to a simple possession,
4 and she pleads to the gun as well. Eighteen months,
5 serves less than that. Facing a minimum of seven years.
6 She knew what she had to do. She was willing to do
7 anything to do it. And, of course, she wanted to avoid
8 going to prison. She had been there eight times. She
9 sure didn't want to go back. She faced seven to
10 twenty-five on the trafficking charge alone, on that
11 one charge. Zero to fifteen on the proximity charge.
12 She had a lot to lose and a lot to gain by changing her
13 story, or as the Solicitor calls it, misremembering.
14 Misremembering details. Would you trust Melisa Martin?
15 The Government's asking you to trust her. Their case
16 depends upon you trusting her.

17 Now bear with me for a moment. I'm gonna ask a
18 hypothetical question of you. Fast-forward a few
19 hours, it's lunchtime, and, again, bear with me for
20 the hypothetical. Say you're still trapped here at
21 this courthouse. I know that's something you're
22 probably hoping is not the case, but if you're here,
23 you're still stuck at this courthouse, you've got a
24 craving for a Subway, I don't know why, but you've got
25 a craving for a Subway, you're stuck here at this

1 courthouse. Ms. Martin overhears your predicament.
2 You're telling one of your fellow jurors how much you
3 would love Subway, for whatever reason you didn't want
4 what the bailiffs were going to give you, and Ms. Martin
5 walks up, she hears your predicament, I'll go to Subway
6 for you. You're starving, you really feel that hunger
7 pain, you really want Subway. You look in your wallet
8 and you've only got a twenty dollar bill. Here's the
9 predicament. Would you trust her enough to say yes?
10 Would you trust her enough to give her a twenty dollar
11 bill to go to the store to get you a sandwich? Would
12 you be firmly convinced that she would bring you back
13 the correct change? Do you think she would even bring
14 you back the sandwich or is it a real possibility that
15 she would take your twenty dollar bill and go about her
16 day?

17 Ladies and gentlemen, if you can't trust Melisa
18 Martin to get you a foot-long, how could you trust her
19 to prove Mr. Jo Pradubsri's guilt beyond a reasonable
20 doubt?

21 Jo, please stand up for me. This is the man she
22 wants you to put in prison. I want you to look. He
23 is a man, a United States citizen, has all the same
24 rights as anybody else, is not just some figure, some
25 defendant, he's a real person, based on the credibility

1 of that woman. Now the Government says don't worry,
2 you can trust her. Why? Why should you trust her?
3 Because they say so? Because you can trust everything
4 the Government says?

5 Now the police in this case could have proved
6 possession. You heard Officer Finch say that he didn't
7 see, and this is important because the case -- the
8 State doesn't want you to speculate when you heard my
9 objection, they kept asking the officer, what did you
10 think they were doing when you saw movements? I think
11 -- I think they might have passed stuff back and forth.
12 And I asked him on cross-examination did you see it?
13 No, I didn't see it. My training and experience means
14 they probably did because they -- I think they did.
15 Well, there was a prior hearing and he described those
16 movements differently as you heard. He described those
17 movements as it appeared as if they were talking and
18 then up here it's well, based on my training and
19 experience I think they passed something. Did you see
20 it? No, I did not see it. He has no personal knowledge
21 of what happened inside that car. He saw movement.

22 Now, again, I think he could prove possession
23 because if he believed at that time that Jo Pradubsri
24 had that bag, had those bags in his hand, why didn't he
25 fingerprint him? If they're his and his hands are all

1 over them and it's certainly his drugs, why didn't they
2 fingerprint him? Case closed. Fingerprint's are
3 unique.

4 If you have your doubts, have them today. There
5 are no do-overs. When you wake up in the morning
6 wondering whether you made the right decision, it's
7 too late. You don't want to think what would be the
8 difference if you find an innocent man guilty, and it
9 will be too late. And no juror should ever give up his
10 or her beliefs just because -- to be in agreement with
11 your other fellow jurors. You need to stand firm. This
12 is the law.

13 Now one thing, again, that was brought up in
14 opening by the State, it was brought up in the closing,
15 they talk about actual and constructive possession.
16 Their theory is that constructive possession, you know,
17 is something he had dominion and control over, but what
18 they never talked about was the other side, the flip
19 side, the other side of the coin. Mere presence. In
20 this state, in this country, the law of mere presence
21 is a defense. Just because Jo Pradubsri sat in that
22 car, regardless of whether he knew it, as long as it's
23 not his drugs, he's merely present, that doesn't make
24 him guilty of anything. You have to believe Melisa
25 Martin's story that it was his drugs. Just the fact

1 that he was sitting in that car does not make him guilty
2 of anything. The judge is gonna tell you that mere
3 presence at the scene where the drugs were found is not
4 enough to prove pure possession.

5 Now the State, the Solicitor, the Government,
6 whatever you want to call them, they harped on common
7 sense. Well, their common sense argument was not
8 common sense, it was speculation. The Government
9 wants you to convict based on an assumption. Now, as
10 jurors, you can make inferences based off the evidence,
11 but one thing the law says you can't do is make
12 assumptions. You cannot do that. Thank God that's
13 not the Government's burden of proof is speculation.

14 Now reasonable doubt is a difficult concept to
15 define and understand. Even attorneys have a very,
16 very difficult concept -- or a difficult time
17 understanding this concept, defining this concept
18 that's very abstract. Now I think -- there's an
19 illustration, I think, that will help you understand
20 reasonable doubt. Now imagine you go to the grocery
21 store and you're tasked with getting all this hamburger
22 meat for the big family cookout. Walking down to the
23 meat aisle to your surprise you see a big package of
24 hamburger meat and it is discounted at the cheapest
25 price you've ever seen hamburger meat. You're elated.

1 Yes, I'm gonna get to save my money. You look at the
2 package, you pick it up, uh-oh, you notice the meat's
3 brown around the edges, you pause for a second, you look
4 up at the tag, you realize it expires today. You sit
5 and think to yourself, you pause and you contemplate.
6 On the one hand, do I save money and buy this meat or
7 do I run the risk of getting my family sick?

8 That hesitation, ladies and gentlemen, while you
9 process that, that hesitation is reasonable doubt. It
10 doesn't matter whether you bought the meat or not. If
11 you have that doubt for a second of whether you should
12 do it, you have that doubt whether she's telling the
13 truth, that is reasonable doubt. This isn't common
14 sense or forest through the trees. That's just the way
15 it is, ladies and gentlemen. There's no smoke and
16 mirrors to it. And as you contemplate whether you
17 believe Melisa Martin or risk finding an innocent man
18 guilty, if you hesitate to act, if you're not firmly
19 convinced of his guilt, then you have to find him not
20 guilty. And I'm just gonna end on her words: I'm
21 willing to do anything that needs to be done, and she
22 did it. Thank you, ladies and gentlemen.

23 **THE COURT:** Ladies and gentlemen, I'm gonna have
24 you go to the jury room for a short break. Please do
25 not discuss the case.

1 (Whereupon, the jury retires to the jury room at
2 10:25 AM.)

3 **THE COURT:** Before I charge the jury, I wanted to
4 mention a couple of things. With regard to, first,
5 the lesser included of simple possession, is that as
6 to both charges, as to trafficking and also to
7 proximity?

8 **MR. BELL:** Your Honor, I don't believe it applies
9 to the proximity charge.

10 **MR. PHILLIPS:** And I don't believe it does either.
11 I think the way proximity works --

12 **THE COURT:** It's either guilty or not guilty?

13 **MR. PHILLIPS:** I believe so, Your Honor.

14 **THE COURT:** All right. And in determining whether
15 the Defendant had the intent to distribute crack
16 cocaine regarding the proximity, you may consider the
17 circumstances surrounding his alleged possession, the
18 amount possessed, the manner in which it was possessed,
19 the place where it was presently possessed, and other
20 factors you consider important. He did not intend to
21 have it solely for his own use. Possession of more
22 than one gram of crack cocaine or mixture thereof
23 creates a inference that he possessed it with intent
24 to distribute it. This inference does not relieve the
25 State of the burden of proving beyond a reasonable doubt

1 that he possessed it and intended to distribute it.
2 It's an evidentiary fact to be taken into consideration
3 along with other evidence and be given the weight that
4 you decide it should have. Any problem with that
5 charge?

6 **MR. BELL:** From what I heard, no problems, Your
7 Honor.

8 **MR. PHILLIPS:** I'm sorry, I -- I could barely hear
9 you. I know you're losing your voice, Your Honor, but
10 if I could -- I need to make sure I --

11 **THE COURT:** Do you want me to read it again and
12 lose it more?

13 **MR. PHILLIPS:** No, I'm just -- I'm sorry, I couldn't
14 hear you very clearly.

15 **THE COURT:** Well, it's the inference of -- that a
16 person with more than one gram of crack or a mixture,
17 that if you have more than a gram the inference is that
18 you possess it with intent to distribute.

19 **MR. PHILLIPS:** That's fine, Your Honor.

20 **THE COURT:** All right. She's sending you the
21 charge to print.

22 **THE CLERK:** Yes, Your Honor.

23 **THE COURT:** We'll be at ease for a minute.

24 (Recess taken.)

25 **BAILIFF:** All rise. Court's back in session.

1 **THE COURT:** You can bring them in.

2 (Whereupon, the jury returns to the courtroom at
3 10:40 AM.)

4 **THE COURT:** Mr. Foreman, and members of the jury,
5 you've heard the testimony and received the evidence
6 and heard the arguments of the State and the Defendant,
7 and I will now explain to you the law that applies to
8 this case. Under the Constitution and laws of South
9 Carolina, you are the finders of the facts in this case.
10 I do not have a right to pass upon the facts or even to
11 express an opinion that I might have as to them because
12 this is a matter solely for you, the jury, to determine.
13 As jurors then, it is your duty to determine the effect,
14 the value, weight, and the truth of the evidence
15 presented during this trial.

16 As the trial judge, it is my responsibility to
17 preside over the trial of this case and to rule upon the
18 admissibility of the evidence offered during the trial.
19 You are to consider only the testimony which has come
20 from this witness stand, together with any exhibits
21 which have been made a part of the record.

22 Additionally, I have the duty to charge you the law
23 applicable to this case, and as the presiding judge, I
24 am the sole judge of the law of this case. It is your
25 duty as jurors to accept as correct and apply the law

1 as I now state it to you and then reach your verdict.
2 Finally, I charge you in this charge that you should
3 not be concerned with what you think the law ought to
4 be, but rather what I charge you that the law is.

5 You are also the judges, the sole judges of the
6 credibility, that is the believability, of the witnesses
7 who have testified and of the evidence presented during
8 this trial. In evaluating credibility, you may consider
9 many things, such as the demeanor or manner of
10 testifying, whether the witness had reason to be biased
11 or prejudiced, or whether the testimony of a witness
12 was contradicted on the one hand, or supported and
13 corroborated on the other hand. All of these things
14 you will consider, bearing in mind that you should give
15 the Defendant the benefit of any reasonable doubt. It
16 becomes your duty as jurors to evaluate the evidence
17 and determine that evidence which convinces you of its
18 truth.

19 A person who has a past criminal record is competent
20 to testify during a trial. A past record does not
21 affect the ability of that witness to testify. The
22 past record may be considered by you, if at all, in
23 determining the witness's believability. Remember, you
24 are the sole judges of the facts and of the credibility
25 of any and all of the witnesses.

1 I instruct you, and emphasize, that the fact that
2 the Defendant did not testify is not a factor to be
3 considered by you in any way in your deliberations and
4 in your consideration of the question of the guilt or
5 innocence of the Defendant. It must not be considered
6 by you in any manner whatsoever. A Defendant has the
7 constitutional right to remain silent and the assertion
8 of that right must not be considered by you in your
9 deliberations. I repeat. Under your oath, you are to
10 draw no conclusion whatsoever from the fact that the
11 Defendant in this case did not testify. The fact that
12 this Defendant did not testify should not even be
13 discussed in the jury room. The burden of proof, as I
14 have stated to you, is on the State. The Defendant is
15 not required to prove his innocence. The burden of
16 proof remains on the State to prove guilt beyond a
17 reasonable doubt.

18 Normally a person cannot give opinion testimony.
19 Normally when a person testifies, they must testify as
20 to what they either saw, heard, sensed or smelled, or
21 something of that nature; however, there is an exception
22 when someone is qualified because of education or
23 experience. They are permitted to give their opinion
24 in certain areas if the Court qualifies them that way.
25 In this case, witnesses have been qualified to give

1 opinion testimony. This does not mean that you must
2 accept the opinion, but it's evidence for you to use as
3 you see fit and to give it the weight and credibility
4 you believe is important.

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

1 The fact that the Defendant, Jo Pradubsri, is
2 charged and indicted in this case is not evidence in
3 this case and cannot be considered by you as evidence
4 of guilt in this case; nor does it create any
5 presumption or inference of guilt. This indictment is
6 simply the formal written instrument which contains the
7 charge made against the Defendant. This indictment is
8 the formal document by which the case is brought into
9 court.

10 The Defendant has pled not guilty to the charges
11 alleged against him. The burden is on the State to
12 prove the Defendant guilty. A person charged with
13 committing a criminal offense in South Carolina is
14 never required to prove himself innocent. I charge
15 you that it is an important rule of the law that the
16 defendant in a criminal trial, no matter the seriousness
17 of the charges, will always be presumed to be innocent
18 of the crime for which the indictment was issued unless
19 guilt has been proven by evidence satisfying you of that
20 guilt beyond a reasonable doubt.

21 This presumption of innocence does not end when
22 you begin your deliberations, but it accompanies the
23 Defendant throughout the trial until you reach a
24 verdict of guilt based on evidence satisfying you of
25 that guilt beyond a reasonable doubt. The presumption

1 of innocence is like a robe of righteousness placed
2 about the shoulders of the Defendant which remains
3 with the Defendant until it has been stripped from the
4 Defendant by evidence satisfying you of the Defendant's
5 guilt beyond a reasonable doubt. The presumption of
6 innocence is not a mere legal theory, it's not just a
7 legal phrase. It is a substantial right to which every
8 defendant is entitled unless you, the jury, is satisfied
9 from the evidence of the guilt of the Defendant beyond
10 a reasonable doubt.

11 The State must prove the Defendant guilty beyond a
12 reasonable doubt. What is a reasonable doubt in the
13 law? A reasonable doubt is doubt which makes an honest,
14 sincere, conscientious juror in search of the truth to
15 hesitate to act. Proof beyond a reasonable doubt must,
16 therefore, be proof of such a convincing character that
17 a reasonable person would not hesitate to rely and act
18 upon it in the most important of his or her own affairs.
19 Proof beyond a reasonable doubt can also be described
20 as proof that leaves you firmly convinced of the
21 Defendant's guilt. Now there are they few things in
22 this world that we know with absolute certainty. In a
23 criminal case, the law does not require proof that
24 overcomes every possible doubt. If based on your
25 consideration of the evidence you are firmly convinced

1 that the Defendant is guilty, then you must find him
2 guilty. If, on the other hand, you think there is a
3 real possibility that he is not guilty, you must give
4 him the benefit of the doubt then and find him not
5 guilty.

6 The indictments in this case allege several
7 different offenses against the Defendant. The charges
8 are trafficking in crack cocaine, possession with
9 intent to distribute crack cocaine within proximity of
10 a school, and unlawful carrying of a pistol. Each
11 indictment charges a separate and distinct offense.
12 You must decide each indictment separately under the
13 evidence and the law applicable to it uninfluenced
14 by your decision as to any other indictment. The
15 Defendant may be convicted or acquitted on any or all
16 of the offenses charged and you will be asked to write
17 a separate verdict of guilty or not guilty on each
18 indictment.

19 The Defendant is charged with trafficking crack
20 cocaine. The State must prove beyond a reasonable
21 doubt that the Defendant knowingly and intentionally,
22 willfully and unlawfully, with an actual or constructive
23 possession of, or did knowingly and intentionally
24 attempt to become in actual or constructive possession
25 of crack cocaine. The State must also prove that the

1 quantity of the crack cocaine was 28 grams or more and
2 less than 100 grams. To prove possession, the State
3 must prove beyond a reasonable doubt that the Defendant
4 had both the power and the intent to control the
5 disposition or use of the crack cocaine.

6 Possession may be either actual or constructive.
7 Actual possession means that the crack cocaine was
8 in the actual physical custody of the Defendant.
9 Constructive possession means that the Defendant had
10 dominion and control, or the right to exercise dominion
11 or control, over either the crack cocaine itself or the
12 property on which the crack cocaine was found. Mere
13 presence at the scene where the drugs were found is not
14 enough to prove possession. The Defendant's knowledge
15 and possession may be inferred when a substance is found
16 on the property under the Defendant's control; however,
17 this inference is simply an evidentiary fact to be taken
18 into consideration by you along with other evidence in
19 the case and to be given the weight you decide it should
20 have.

21 Two or more persons may have joint possession of a
22 drug. If you find that the State has failed to prove
23 beyond a reasonable doubt that the Defendant is guilty
24 of trafficking in crack cocaine, you may consider
25 whether the State has proven beyond a reasonable doubt

1. that the Defendant is guilty of simple possession of
2 crack cocaine. Simple possession does not require
3 trafficking or intent to distribute crack cocaine. To
4 prove simple possession, the State must prove beyond a
5 reasonable doubt that the Defendant knowingly and -- or
6 intentionally possessed crack cocaine.

7 The Defendant is charged with possession with
8 intent to distribute crack cocaine in close proximity
9 to a school. The State must prove beyond a reasonable
10 doubt that the Defendant unlawfully possessed crack
11 cocaine with intent to distribute within a half mile
12 radius of a school, the Defendant had knowledge that
13 he was in a one-half radius of a school, and that the
14 Defendant intended to distribute crack cocaine within
15 one-half mile radius of the school.

16 The State must prove beyond a reasonable doubt the
17 Defendant intended to distribute the crack cocaine.
18 Distribute means to deliver other than by administering
19 or dispensing a drug. Intent may be shown by acts and
20 conduct of the Defendant and other circumstances shown
21 to have existed. In determining whether the Defendant
22 had the intent to distribute crack cocaine, you may
23 consider the circumstances surrounding the Defendant's
24 alleged possession. You may consider the amount of the
25 substance alleged to have been possessed, the manner in

1 which it was allegedly possessed, the place where it was
2 allegedly possessed and other factors which you consider
3 to be important. You must find that the Defendant did
4 not intend to have crack cocaine solely for his own use.

5 Possession of more than one gram of crack cocaine,
6 or any mixture thereof, creates an inference that the
7 Defendant possessed the crack cocaine with the intent
8 to distribute it. This inference does not relieve the
9 State of the burden of proving beyond a reasonable doubt
10 that the Defendant possessed crack cocaine and had the
11 intent to distribute it. It is simply an evidentiary
12 fact to be taken into consideration by you along with
13 the other evidence in the case and is given the weight
14 you decide it should have.

15 The Defendant is charged with unlawful carrying
16 of a pistol. The State must prove beyond a reasonable
17 doubt that the Defendant carried a pistol about his
18 person, whether it is concealed or not. A weapon is
19 about the person if it is readily accessible and
20 convenient for immediate use. The pistol need not be
21 actually touching the person of the Defendant.

22 While argument of counsel is a beneficial part of
23 any trial -- of every trial, you should remember that
24 the statements made by counsel are not evidence. In
25 presenting arguments, counsel often refers to the

1 evidence; however, you should base your verdict on the
2 evidence as you remember it. Therefore, if there are
3 any conflicts between the recollection of counsel about
4 the evidence and your own recollection, you should rely
5 on your own understanding of the evidence.

6 Now you've been chosen and sworn to give the
7 parties in this case a fair and impartial trial. When
8 you've done so, you will have complied with your oath
9 as jurors and no one will have the right to criticize
10 your verdict. You must not be influenced by opinions
11 or expression of opinion you may have heard outside of
12 the courtroom, but rather should base your verdict
13 solely on the testimony of the sworn witnesses who took
14 the stand, the exhibits received into evidence and the
15 law which I have stated. You should not be swayed by
16 caprice, passion, prejudice or sympathy for or against
17 anyone in this case. Remember, you have no friends to
18 reward or enemies to punish and all parties are entitled
19 to a fair and impartial trial.

20 It is your duty as jurors to consult with one
21 another and to deliberate in an effort to reach an
22 agreement. Each of you must decide this case for
23 yourself, but only after an impartial consideration
24 of all of the evidence with your fellow jurors. In
25 the course of your deliberation, do not hesitate to

1 re-examine your own views and change your opinion if
2 you become convinced it is erroneous; however, do not
3 surrender your honest conviction as to the weight or
4 effect of the evidence solely because of the opinion of
5 your fellow jurors or for the mere purpose of returning
6 a verdict. As I stated earlier, you are the judges, the
7 judges of the facts. Your verdict must represent the
8 considered judgment of each juror. In other words, your
9 verdict must be unanimous.

10 Now you may have noticed that I've read these
11 instructions. I do so to give you the law as
12 accurately as possible. I will give you a copy of
13 these instructions to have in the jury room. You may
14 refer to these instructions to assist you in your
15 deliberation. You must consider the instructions as a
16 whole and may not follow some and ignore others.

17 Now, Mr. Foreman, it is your duty to preside over
18 the jury deliberations. If during the deliberations,
19 you should desire to communicate with the Court, please
20 reduce your message or question in writing, signed by
21 your foreperson, and pass the note to the bailiff who
22 will bring it to my attention. I will then respond as
23 promptly as possible, either in writing or by having
24 you return to the courtroom. I caution you, however,
25 with regard to any message or question you might send

1 that you should never state or specify your numerical
2 division at the time.

3 Now you've heard the evidence and now you've heard
4 the law. Whatever your verdict, guilty or not guilty,
5 Mr. Foreman, you will indicate it on the verdict form
6 and then sign and date your verdict.

7 And this is the verdict form that you will have
8 to as to each charge. As to the charge of trafficking
9 in crack cocaine, your verdict will be either guilty
10 of trafficking in crack cocaine, guilty of simple
11 possession of crack cocaine, or not guilty. As to the
12 charge of possession with intent to distribute crack
13 cocaine within proximity of a school -- proximity of a
14 school, to a school -- your verdict will either be not
15 guilty or guilty of possession with intent to distribute
16 crack cocaine within proximity of a school. As to the
17 charge of unlawful carrying of a pistol, your verdict
18 would either be not guilty or guilty. You will check
19 the appropriate box and sign and date the verdict form.

20 Now, remember that although the foreperson is the
21 only juror who writes the verdict, it is not his alone.
22 The verdict has to be unanimous. And, Mr. Foreman,
23 you're not authorized to write the verdict until all of
24 you have agreed on the verdict.

25 Now, ladies and gentlemen, I am going to send you

1 to the jury room, but do not begin your deliberations
2 until you have received a copy of this jury charge, the
3 verdict form, and the exhibits. Once you've received
4 these things, that will be your signal to begin your
5 deliberations.

6 Now we've picked fourteen jurors, but we can only
7 use twelve. So out of the first twelve jurors who
8 were selected, if you are unable to continue with
9 deliberations for any reason, please let me know by
10 raising your hand if you cannot continue with
11 deliberations.

12 All right. All jurors seem to be in good shape,
13 so when the jury retires to the jury room, the two
14 alternates will remain in the courtroom. Once you
15 begin deliberations, you'll deliberate until you've
16 reached a verdict. After you've reached a verdict,
17 you will knock on the door, advise the bailiff, and
18 we'll bring you out to receive your verdict. We will
19 also monitor your deliberations as far as time. It's
20 now 11:00 -- or pushing eleven and if you are
21 deliberating through lunchtime, we will order lunch
22 for you.

23 Thank you. Please go to the jury room at this
24 time.

25 (Whereupon, the jury retires to the jury room at

1 11:30 AM.)

2 **THE COURT:** All right. The two alternates, you
3 will stay with us for a moment. Are there any additions
4 or exceptions to the charge?

5 **MR. PHILLIPS:** Yes, Your Honor. Yesterday we
6 objected to the search for the truth language, State
7 versus Daniels, and that was included in the charge
8 before the Court today. You said you'd keep it out.

9 **THE COURT:** In what area of the charge are you
10 talking about?

11 **MR. PHILLIPS:** I believe it was in the reasonable
12 doubt charge. Honest, sincere juror in search of the
13 truth, to hesitate to act. State v. Daniels said that
14 language was improper.

15 **THE COURT:** Well, I overrule that objection. I
16 think that's nitpicking to the nth degree, which is --

17 **MR. PHILLIPS:** We certainly would request, Your
18 Honor, that that -- that the search for the truth
19 language be redacted out of the jury charges.

20 **THE COURT:** I just overruled that objection.

21 **MR. PHILLIPS:** Yes, Your Honor.

22 **THE COURT:** That means I'm not charging it and
23 there's -- any other requests will be futile on that
24 point.

25 **MR. PHILLIPS:** All right. And the same for a

1 mistrial?

2 **THE COURT:** Based on what?

3 **MR. PHILLIPS:** Improper charge.

4 **THE COURT:** Well, an objection -- overruling an
5 objection is overruling an objection.

6 **MR. PHILLIPS:** Thank you, Your Honor.

7 **THE COURT:** All right.

8 Thank you-all. We have enough jurors, so we can't
9 use you-all, so thank you very much. If you'll get
10 their things out. I think the jurors are through for
11 the week. Are you-all still picking them? I'm done.

12 **MR. BELL:** Your Honor, I believe we are done with
13 the jury.

14 **THE COURT:** I'm done. I'll tell you that.

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

16 **THE COURT:** Thank you-all. I appreciate it.

17 **MR. BELL:** Your Honor, if I may comment on that
18 last point. I hate to bring it up, I understand your
19 ruling. I feel compelled to though. I think the case
20 law is clear on it. This has already come back from
21 appeal once. I would hate for it to come back for that
22 issue. If Your Honor does want to give a curative
23 instruction, the State has no objection to that.

24 **THE COURT:** I think it's fair. I think the
25 reasonable doubt instruction is proper.

1 **MR. BELL:** Thank you, Judge.

2 **THE COURT:** I think that the -- let me see it. I
3 don't know of any appellate opinion that's addressed
4 that reasonable doubt charge as being improper. The
5 Daniels case did not say anything about the judge's
6 instruction on reasonable doubt that I'm aware of. Are
7 you, Mr. --

8 **MR. PHILLIPS:** I just stand firm on State v. Daniels
9 as on point.

10 **THE COURT:** I don't care what you stand firm on. I
11 asked you a specific question, which is --

12 **MR. PHILLIPS:** I believe State vs. Daniels is on
13 point.

14 **THE COURT:** Don't talk when I'm talking.

15 **MR. PHILLIPS:** Sorry, Your Honor.

16 **THE COURT:** Do you know of any comment that the
17 State made or the Court made in State v. Daniels
18 concerning the reasonable doubt charge given in that
19 case?

20 **MR. PHILLIPS:** May I have a moment to re-read the
21 case, Your Honor?

22 **THE COURT:** Yes.

23 (Recess taken.)

24 **MR. PHILLIPS:** Your Honor?

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

1 **MR. PHILLIPS:** The -- in the State v. Daniels, the
2 language was not in the reasonable doubt; however, the
3 court did make a comment. Although the issue is not
4 preserved, we instruct the trial judge to remove any
5 suggestion from its General Sessions charges. That a
6 criminal jury's duty is to return a verdict that is
7 just or fair to all parties. And then the case also
8 goes into the search for the truth language as well, I
9 believe, in the concurrence, Justice Toal's concurrence.

10 **THE COURT:** I didn't tell them anything about being
11 just and fair to all parties.

12 All right. The jury can begin deliberating.

13 **MR. PHILLIPS:** Thank you, Your Honor.

14 **MR. BELL:** Thank you, Your Honor.

15 (Whereupon, the evidence was sent back to the jury
16 at 11:09 PM and the jury began their deliberations.)

17 **BAILIFF:** All rise. Court is back in session.

18 **THE COURT:** All right. I have a note from the jury
19 that says: If someone has active possession of drugs,
20 can another passenger also have constructive possession
21 at same time of same drugs? If someone has active
22 possession of drugs, can another passenger also have
23 constructive possession at same time of same drugs?

24 **MR. PHILLIPS:** Your Honor, the defense's position
25 would be that you could re-read the instruction, but

1 not to answer the question specifically. That the
2 instruction on the law should be as it stands.

3 **MR. BELL:** Your Honor, that's fine with me. Your
4 jury instruction did include a part dealing with joint
5 possession. If you just want to re-read what relevant
6 portions you believe they should be, that's fine.

7 **MR. PHILLIPS:** I believe it would be an improper
8 comment on the facts. Thank you, Your Honor.

9 **THE COURT:** All right. If you will bring the jury
10 in, please.

11 (Whereupon, the jury returns to the courtroom at
12 12:55 PM.)

13 **THE COURT:** All right. Mr. Foreman, and members
14 of the jury, you sent out a question which asks: If
15 someone has active possession of drugs, can another
16 passenger also have constructive possession at same time
17 of same drugs?

18 As stated to y'all earlier, this is a matter solely
19 for you, the jury, to determine and it's your role as
20 jurors to determine the facts of the case and decide the
21 case based on the evidence presented during the course
22 of the trial. Therefore, it is improper for judges to
23 comment upon the facts since the facts are for your --
24 were presented for your consideration and in some
25 instances it's improper for courts to answer specific

1 questions that may suggest some comment on the facts.

2 So what I can do is reiterate for you the law, and
3 the law is that to prove possession, the State must
4 prove beyond a reasonable doubt that the Defendant had
5 both the power and the intent to control the disposition
6 or use of the crack cocaine. Possession may be either
7 actual or constructive. Actual possession means that
8 the crack cocaine was in the actual physical custody of
9 the Defendant. Construction -- constructive possession
10 means that the Defendant had dominion and control, or
11 the right to exercise dominion or control, over either
12 the crack cocaine itself or the property on which the
13 crack was found. Mere presence at the scene where the
14 drugs were found is not enough to prove possession. The
15 Defendant's knowledge and possession may be inferred
16 when a substance is found on the property under the
17 Defendant's control; however, this inference is simply
18 an evidentiary fact to be taken into consideration by
19 you along with other evidence in the case and to be
20 given the weight you decide it should have. Two or
21 more persons may have joint possession of a drug.

22 And that's the additional instruction I can give
23 in response to your question. So I ask that you resume
24 deliberations at this time.

25 (Whereupon, the jury retires to the jury room at

1 1:00 PM to continue their deliberations.)

2 **THE COURT:** Any additions or exceptions to the
3 charge?

4 **MR. BELL:** None from the State, Your Honor.

5 **MR. PHILLIPS:** Just renew the prior one to sending
6 the jury charge back that had the search for the truth
7 language, but not to that charge, Your Honor. We just
8 renew that objection.

9 **THE COURT:** I don't know what --

10 **MR. PHILLIPS:** As to what you just gave them, no,
11 Your Honor.

12 **THE COURT:** All right.

13 **MR. PHILLIPS:** But to my prior, we renew.

14 **THE COURT:** All right. We're back at ease waiting
15 for the jury.

16 **MR. BELL:** Thank you, Judge.

17 (Recess taken.)

18 **BAILIFF:** All rise. Court will come back to order.

19 **THE COURT:** Thank you. The jury wants to know what
20 was the Defendant initially charged with at the time of
21 arrest. What was the Defendant initially charged with
22 at the time of arrest?

23 **MR. PHILLIPS:** Your Honor, I would -- whatever --
24 I mean, it's got to be based on the evidence. I would
25 argue that that would be improper comment on the facts.

1 That -- tell them that what they received during the
2 trial is the evidence they received and that you can't
3 answer the question.

4 **MR. BELL:** Your Honor, I think we just have to
5 direct to the charges and the three charges they've been
6 asked to consider.

7 **BAILIFF:** Send them back out?

8 **THE COURT:** That's okay.

9 (Whereupon, the jury returns to the courtroom at
10 2:37 PM.)

11 **THE COURT:** Mr. Foreman, and members of the jury,
12 you sent a question asking me what the Defendant was
13 initially charged with at the time of arrest. I cannot
14 comment on the facts of the case. That's an improper
15 question to ask of the judge. I can't ask you to
16 comment on the facts or -- you are to decide the case
17 based on the evidence presented and the law that I have
18 given.

19 Thank you. Go back to the jury room.

20 (Whereupon, the jury retires to the jury room at
21 2:39 PM to continue their deliberations.)

22 **THE COURT:** Any exceptions to the charge just given
23 the jury?

24 **MR. BELL:** None from the State, Your Honor.

25 **MR. PHILLIPS:** None from the defense, Your Honor.

1 **THE COURT:** All right.

2 (Recess taken.)

3 **THE COURT:** Okay. Do we have everyone we need?

4 **MR. BELL:** The State's ready, Your Honor.

5 **THE COURT:** All right. Let's bring them in.

6 (Whereupon, the jury returns to the courtroom at
7 2:56 PM to report its verdict.)

8 **THE COURT:** Mr. Foreman, if you'd stand for me.
9 If the Defendant will rise. Mr. Foreman, have you
10 reached a verdict?

11 **THE FOREPERSON:** Yes, sir, we have.

12 **THE COURT:** Is it unanimous?

13 **THE FOREPERSON:** Yes, sir, it is.

14 **THE COURT:** All right. If you will pass it up and
15 be seated.

16 Madam Clerk, if you will publish the verdict.

17 **THE CLERK:** Indictment 2009-GS-32-202,
18 2009-GS-32-204, 2009-GS-32-205, the State of South
19 Carolina versus Jo Pradubsri. We, the jury, unanimously
20 find the Defendant, Jo Pradubsri, as to the charge of
21 trafficking in crack cocaine guilty of trafficking in
22 crack cocaine. As to the charge of possession with
23 intent to distribute crack cocaine within proximity of a
24 school, guilty of possession with intent to distribute
25 crack cocaine in proximity of a school. As to the

1 charge of unlawful carrying of a pistol, guilty. It is
2 so signed by the Foreperson, dated January 15, 2015.

3 Ladies and gentlemen of the jury, was this your
4 verdict and is it still your verdict? Please indicate
5 by raising your right hand.

6 (All hands raised.)

7 **THE COURT:** Thank you. Any individual polling
8 requested?

9 **MR. PHILLIPS:** Just that every juror raised their
10 hand when they asked if it was a unanimous decision and
11 they all raised their hands.

12 **THE COURT:** Any additional polling requested?

13 **MR. PHILLIPS:** No, Your Honor.

14 **THE COURT:** Any post-trial motions?

15 **MR. PHILLIPS:** Yes, Your Honor. We would renew all
16 prior motions, objections. Specifically, the mistrial
17 to the jury charge under State v. Daniels, to reveal
18 the identity of the tipster, as well as our Fourth
19 Amendment under of the traffic stop, our objections to
20 the speculative testimony that was presented in opening
21 statement, as well as the trial, the 404(b) motion, the
22 prior bad act evidence. We would also renew our motion
23 for a directed verdict, move for a new trial, and, as
24 well, we would move under the -- as another basis for
25 our new trial motion, the Cumulative Error Doctrine,

1 Your Honor.

2 **THE COURT:** All right. Any response by the State?

3 **MR. BELL:** None from the State, Your Honor.

4 **THE COURT:** All motion's are denied for all reasons
5 previously stated and in addition thereto the Court
6 disputes any contention of any cumulative errors or any
7 errors at all.

8 Ladies and gentlemen, thank you very much for your
9 jury service. You deliberated a long time. That's a
10 good thing. That means you've given it a fair
11 consideration, you've listened to each other and weighed
12 the evidence as you're supposed to weigh it, and you've
13 reached a verdict. I want to thank you for that effort
14 on your behalf.

15 When you find someone guilty, it then becomes my
16 responsibility to impose a sentence. We will proceed to
17 that at this time.

18 **MR. BELL:** Thank you, Your Honor. Your Honor, I'm
19 presenting the Court -- let's see. Your Honor, I'm
20 producing a set of the certified prior convictions on
21 Mr. Pradubsri. That does enhance this to a third
22 offense.

23 **THE COURT:** What is it again?

24 **MR. BELL:** Excuse me, Your Honor?

25 **THE COURT:** What did you say about a third offense?

1 **MR. BELL:** Your Honor, those are certified
2 convictions that are within the ranges applicable for
3 enhancement, particularly when this individual was
4 charged there was the -- it was under the original law.
5 Since then we've had an omnibus revision, but there is
6 a savings clause so, therefore, it is preserved. This
7 is a third offense due to those prior convictions, Your
8 Honor.

9 **THE COURT:** All right. Anything else from the
10 State?

11 **MR. BELL:** Your Honor --

12 **THE COURT:** Would you state the convictions into
13 the record.

14 **MR. BELL:** Certainly, Your Honor. If you will give
15 me one moment. Your Honor, 1991, distribution of a
16 controlled substance within proximity of a school,
17 distribution of crack cocaine, distribution of a
18 controlled substance within proximity of a school,
19 possession with intent to distribute crack cocaine
20 within proximity of a school. In 2000, trafficking
21 crack cocaine between 10 and 28 grams, possession of
22 cocaine, second offense. 2008 -- I apologize. 2008,
23 is the beginning of these charges, Your Honor.

24 **THE COURT:** All right.

25 **MR. BELL:** Your Honor, I would mention while there

1 does appear to be a gap of convictions on his record
2 after 2000, he was incarcerated for five years on that
3 set of charges stemming from 2000. So he was in prison
4 for a period of time there, got out, and in 2008, as
5 Your Honor knows from the procedural history of this
6 case, has been incarcerated on a previous trial that
7 was then overturned. His record certainly appears that
8 if he is on the street, he will be slinging dope and
9 he'll be doing it around our schools.

10 **THE COURT:** What do you think about it, Officer
11 Finch?

12 **SERGEANT FINCH:** Your Honor, I would concur. I
13 would concur with his comments. I mean, he's certainly
14 got that history. I know him from the streets, I've
15 seen him out there. I certainly think he'll be dealing
16 again if he's released. Also, I fear for -- honestly,
17 I feel for Ms. Martin on the street.

18 **THE COURT:** All right. Thank you. Mr. -- for the
19 defense.

20 **MR. PHILLIPS:** Yes, Your Honor. Mr. Pradubsri is
21 forty-four years old. He was thirty-eight at the time
22 of his arrest. As you know, this has been a long
23 process of getting here six years later. He was
24 originally born in Thailand, his dad was in the
25 military. He's been in South Carolina, Your Honor,

1 since he was around four or five years old. He did
2 work at CMC Steel for roughly about seven years. He
3 is a certified electrician. He went through Midlands
4 Tech to obtain that certification. He has four
5 children; three boys, one girl, Your Honor. The mother
6 of his daughter was here yesterday in support of him.
7 He's been incarcerated for 2,259 days since his arrest.
8 I believe that's six years, two months, seven days,
9 so --

10 **THE COURT:** 2,200 --

11 **MR. PHILLIPS:** And 59 days, I believe, Your Honor.
12 November 9th of 2008. And, Your Honor, we certainly
13 request based on -- we understand with the third offense
14 and the minimum sentence that the Court wishes -- that
15 must impose, we certainly, after that, would beg for any
16 leniency the Court can give him on the other charges as
17 far as whether to run them consecutive or concurrent.
18 We understand that there is a history with his prior
19 convictions.

20 **THE COURT:** One moment. Did you hand me a
21 sentencing sheet?

22 **MR. BELL:** Your Honor, I have them right here.

23 **THE COURT:** All right.

24 **MR. BELL:** Thank you, Judge.

25 **THE COURT:** Thank you.

1 **MR. PHILLIPS:** Yes, Your Honor. We understand with
2 his history and his prior record that obviously that
3 comes into play.

4 **THE COURT:** What's he facing?

5 **MR. PHILLIPS:** We had the -- up to the thirty on
6 the trafficking and then we had the zero to fifteen
7 with the PWID, and then the zero to one, Your Honor.

8 **THE COURT:** Zero to thirty or --

9 **MR. PHILLIPS:** It's twenty-five to thirty.
10 Mandatory minimum is twenty-five years.

11 **THE COURT:** Mandatory minimum twenty-five years,
12 maximum thirty years --

13 **MR. PHILLIPS:** That's right, Your Honor.

14 **THE COURT:** -- for the trafficking third offense?

15 **MR. PHILLIPS:** So it's -- that's correct. It's
16 twenty-five to forty-six.

17 **THE COURT:** All right.

18 **MR. PHILLIPS:** And that's it, Your Honor.

19 **THE COURT:** And, of course, you-all knew that going
20 into the case --

21 **MR. PHILLIPS:** That's correct, Your Honor.

22 **THE COURT:** -- and opted to roll the dice.

23 **MR. PHILLIPS:** That's our client's decision, Your
24 Honor. He's maintained that those were her drugs.

25 **THE COURT:** All right. Mr. Pradubsri, anything

1 you'd like to say?

2 **THE DEFENDANT:** No sir, Your Honor. I'm just
3 maintaining my innocence.

4 **THE COURT:** All right. Anything you want to say
5 about sentencing?

6 **THE DEFENDANT:** No, sir. I just ask for leniency,
7 sir.

8 **MR. PHILLIPS:** And if I didn't say it, we would
9 request a concurrent sentence. Thank you.

10 **THE COURT:** The -- with the mandatory minimum amount
11 of time, are the fines mandatory or not?

12 **MR. PHILLIPS:** As far as the fines, Your Honor, I
13 will have to provide the Court with a supplemental brief
14 on that. I can't tell you right off the top of my head
15 as far as the fines.

16 **THE COURT:** Okay.

17 **MR. BELL:** Your Honor, it -- from reading
18 Strickler's, Your Honor, and certainly this is meant
19 for interpretation as this is not a State-produced
20 book, it does appear -- it says twenty-five to thirty
21 years and \$50,000 on a third offense.

22 **MR. PHILLIPS:** And that's most likely with the
23 mandatory minimum. I would imagine that's probably
24 dead on, but I certainly would have to pull the statute,
25 Your Honor, to make sure.

1 **THE COURT:** On the weapons charge, he's done that
2 time. That's one year, isn't it?

3 **MR. PHILLIPS:** Yes, Your Honor.

4 **THE COURT:** So that's one year and give him credit
5 for one year. What's he facing on the proximity third
6 offense?

7 **MR. BELL:** Your Honor, under the original law it
8 was charged under, it was zero to fifteen years, and
9 due to the savings clause, that's appropriate today.

10 **MR. PHILLIPS:** That's correct, Your Honor.

11 **THE COURT:** Say again. Zero to fifteen?

12 **MR. BELL:** That's correct, Your Honor.

13 **MR. PHILLIPS:** Your Honor, I was looking at the
14 statute. It appears that it's silent as to whether it's
15 a mandatory minimum on the fine. Certainly no part can
16 be suspended on a mandatory minimum sentence, but it
17 seems to be silent on the fine, so we would argue based
18 on the rule of lenity that it could be suspended since
19 it should be interpreted in favor of the Defendant.

20 **THE COURT:** What's his ability to pay it?

21 **MR. PHILLIPS:** Since he's been incarcerated for
22 the past six years, very minimal. He is represented
23 by the Public Defender's Office and so as an indigent
24 defendant his ability to pay would be virtually zero,
25 Your Honor.

1 **THE COURT:** All right. On the proximity charge,
2 the sentence is fifteen years with credit for
3 2,259 days. For the trafficking in crack cocaine,
4 the sentence is twenty-five years and pay a fine of
5 \$50,000, and he gets credit for 2,259 days. And all
6 sentences will run concurrent with each other.

7 All right. Good luck to you, sir.

8 **MR. PHILLIPS:** Thank you, Your Honor.

9 **MR. BELL:** Thank you, Judge.

10 **THE COURT:** Well, ladies and gentlemen, you've
11 come, you've gotten the case, you went back there and
12 -- I couldn't hear what y'all were saying, but I could
13 hear y'all doing a bunch of fussing through the doors,
14 but you've gone through the process and you've come up
15 with a decision. I said a lot of fussing. I'm from
16 Williamsburg County, so that's the word we use. Maybe
17 I should say lot of deliberating. Mr. Bell is from
18 there, too, so that's where he got his granddaddy's
19 example of whatever that was. And these are some tough
20 situations and interesting questions for the jury to
21 figure out, and y'all had some good questions that you
22 sent out, but those were questions that you have to
23 answer for yourself ultimately. And this case has had
24 a history of -- because it happened in 2008 and we're
25 here in 2015. When was the first time it was tried?

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
v.	)	Memorandum in Support of Defendant's
	)	Motion to Reveal the Identity of the Informant
JO PRADUBSRI,	)	
	)	Indictment No. 2009GS3200202
DEFENDANT.	)	2009GS3200204
	)	2009GS3200205

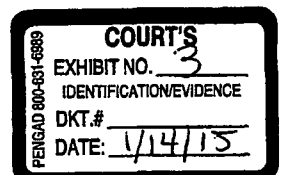
This memorandum is in support of the Defendant's motion to reveal the identity of the informant under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article I, section 14, of the South Carolina Constitution. *See Roviario v. United States*, 353 U.S. 53 (1957); *see also State v. Diamond*, 280 S.C. 296, 312 S.E.2d 550 (1984); *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Giglio v. United States*, 405 U.S. 150 (1972); *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006); and Rule 5, SCRCrimP.

Specifically, the informant in this case is more than a mere tipster and the informant's identity is highly relevant and might be helpful to the defense. *See Attachment A* (Letter from Assistant Solicitor David Stumbo dated February 3, 2010); *Cf. State v. Willard*, 374 S.C. 129, 647 S.E.2d 252 (Ct. App. 2007) (finding an informant more than a mere tipster where he identified the defendant's car, knew the defendant's phone number, and mentioned drugs during a conversation with the defendant). The grounds in support of this motion are as follows:

I. BACKGROUND

Based on the information provided by this informant, Sergeant John William Finch began investigating Jo Pradubsri and Melisa Martin. In a letter dated February 3, 2010, Assistant Solicitor David Stumbo provided the following information regarding the informant:

- (1) "The informant is a white female who is around the Irmo area on a regular basis and had an established working relationship with the lead investigating officer[;]"



- (2) "[T]he informant had given [the lead investigating officer] reliable information on at least five prior occasions unrelated to this incident that was helpful in investigations[;]"
- (3) "[T]here is *no formal agreement* in place for this informant to do CI work or controlled buys for law enforcement[;]"
- (4) "The informant has a history of *prostitution and drug use*[;]"
- (5) "[T]he informant *personally knows* and has knowledge about the two defendants in this case, *seeing them on a regular daily basis* around the time of this incident[;]"
- (6) "[The informant] gave *very specific detail* about the car (silver colored Monte Carlo with a dent in the side), the occupants of the car (Melisa martin and 'Jo Jo', who were dating and living together at the time in a house in the Friarsgate)[;]"
- (7) The informant gave "*specific descriptions* of handguns that would be in the car (a smaller silver in color handgun carried by Melisa and a larger black handgun carried by 'Jo Jo')[;]"
- (8) The informant stated "the fact that there would be a large quantity of crack in the car (because of the informants *personal knowledge* that Jo Jo and Melisa buy large amounts of Cocaine which they cook in to crack at their house in Friarsgate, and then sell working down St. Andrews Road through Irmo towards Columbia)[;]"
- (9) "Because of this *specific* and reliable information given by the informant in a call to the investigating officer and the personal knowledge and prior dealings of the investigator with the defendants, Inv. Finch was on the look out on the incident for a Silver Monte Carlo travelling down St. Andrews Road, occupied by the suspects Pradubsri and Martin, that contained specifically two handguns and a large amount of crack cocaine."

Attachment A (emphasis added).

On November 9, 2008, Sergeant Finch received a call from Sergeant Bobby Dale, of the Irmo Police Department, informing him that Pradubsri and his car were at the Kroger in Irmo. Sergeants Dale and Finch observed Pradubsri and Martin exit the store and leave the parking lot in the Monte Carlo. After Pradubsri left the parking lot, Sergeant Finch initiated a traffic stop based solely on the information provided by the informant. Ultimately, the officers on scene discovered approximately sixty-eight grams of crack-cocaine on Martin and approximately \$725 in cash on Pradubsri.

On February 9, 2009, the Lexington County Grand Jury indicted Jo Pradubsri of (1) trafficking crack cocaine in an amount of twenty-eight grams or more but less than one hundred grams, (2) possession with intent to distribute (PWID) crack cocaine within proximity of a school, and (3) unlawful carrying of a pistol. His co-defendant, Melisa Martin, was initially charged with the same crimes as Pradubsri. However, in exchange for her testimony, the State reduced her charges to possession of crack cocaine and unlawful carrying of a pistol. Martin pled guilty and received an eighteen-month sentence on September 9, 2009.

II. INFORMANT'S PRIVILEGE IS NOT APPLICABLE

Assistant Solicitor David Stumbo stated in his letter that there was no formal agreement to work as a confidential informant (CI) between law enforcement and the informant in this case. *See Attachment A.* Sergeant Finch corroborated this fact during Pradubsri's first trial on February 11, 2010. Tr. 9, ll. 4-25. Accordingly, the informant's privilege is not applicable to the instant case and it is fundamentally unfair for the State not to reveal the informant's identity when the credibility of the State's witnesses may well be determinative on the issue of guilt or innocence. Disclosure of this requested information is imperative for the purposes of showing any bias, prejudice, or interest in the outcome of the case. *See U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3 and 14.*

III. INFORMANT WAS MORE THAN A MERE TIPSTER

In *State v. Willard*, 374 S.C. 129, 647 S.E.2d 252 (Ct. App. 2007), our Court of Appeals found a *non*-confidential informant who was not previously proven reliable more than a mere tipster where the informant identified the defendant's vehicle, knew the defendant's phone number, and mentioned drugs during a conversation with the defendant. *See State v. Rogers*, 368 S.C. 529, 535, 629 S.E.2d 679, 682 (Ct. App. 2006). The *Willard* Court also noted that

South Carolina precedent provided a “higher level of credibility” to the informant’s information because a non-confidential informant “exposes himself to liability should the information prove to be false.” *Id.* at 135. 647 S.E.2d at 255.

In this case, the informant was more than a mere tipster for three reasons. First, the specificity of the information provided by informant is analogous to the informant in *Willard*. See Attachment A (Informant provided “*very specific detail* about the car . . . [and] the occupants of the car”; Informant gave “*specific descriptions* of handguns that would be in the car” and the owner of each gun;) (emphasis added). In the second trial, Sergeant Finch testified as to the specific details provided by the informant: (1) Gender; (2) age; (3) “all their identifiers”; (4) address; specific hotels they frequent such as Knights Inn, Motel 6, and Executive Inn, (5) particular locations and route; Silver Monte Carlo; and tag number. (2014) Tr. 26, l. 8 – 28, 13.

Second, the informant’s personal relationship with Pradubsri and Martin infers that the informant is an active participant in illegal activity alleged. See Attachment A (Informant “*personally knows*” Pradubsri and Martin and “see[s] them on a regular *daily basis*” and “Informant’s *personal knowledge* that Jo Jo and Melisa buy large amounts of Cocaine which they cook in to crack at their house in Friarsgate, and then sell working down St. Andrews Road through Irmo towards Columbia.”) (emphasis added). (2014) Tr. 20, ll. 6-10; (2014) Tr. 25, ll. 11-25.

Third, the informant’s ties to prostitution and drug use also illustrate the informant’s probable participation in the illegal activity alleged, particularly when Martin testified that she runs an escort service and has a history of drugs and prostitution. See Attachment A; *see also* (2010) Tr. 9, ll. 10-14; (2010) Tr. 99, l. 17 – 101, l. 4; (2014) Tr. 40; ll. 4-6; (2014) Tr. 28, l. 25 – 29, l. 4.

IV. DUTY TO REVEAL THE IDENTITY OF THE INFORMANT

In *State v. Diamond*, 280 S.C. 296, 312 S.E.2d 550 (1984), our Supreme Court noted that the leading case on the “informant’s privilege” is *Roviaro v. United States*, 353 U.S. 53 (1957). In *Rovario*, the United States Supreme Court stated that “[t]he scope of the privilege is limited by its underlying purpose” and that “where the disclosure of the contents of a communication will not tend to reveal the identity of an informer, the contents are not privileged.” *Id.*, 353 U.S. at 60. The *Roviaro* Court also found that “[a] further limitation on the applicability of the privilege arises from the fundamental requirements of fairness.” *Id.* Notably, the *Roviaro* Court held:

Where the disclosure of an informer’s identity, or the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, ***the privilege must give way***. In these situations the trial court may require disclosure and, ***if the Government withholds the information, dismiss the action***.

Id., 353 U.S. at 60-61 (emphasis added).

As to the issue of balancing the “public interest in protection the flow of information against the individual’s right to prepare his defense[.]” the *Roviaro* Court explained, “Whether a proper balance renders nondisclosure erroneous must depend on the particular circumstances of each case, taking into consideration the crime charge, the possible defense, and the possible significance of the informer’s testimony, and other relevant factors.” *Id.* The *Roviaro* Court held that non-disclosure of the informant’s identity was unfair because: (1) the informant was “the sole participant, other than the accused, in the transaction charged[;]” (2) the informant was a “material witness;” and (3) and the informant’s testimony “was highly relevant and might have been helpful to the defense.” *Id.*, 353 U.S. at 63-64.

Rule 5 of the South Carolina Rules of Criminal Procedure is South Carolina’s mechanism for complying with the due process requirement. *Rovario* specifically held that the “informer’s

privilege” is limited by due process. *Id.*, 353 U.S. at 60. Accordingly, the prosecution must provide the defense with information necessary to investigate the allegations and prepare for a defense. U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3 and 14.

In this case, the informant’s testimony is highly relevant and might be helpful to the defense for two reasons. First, the informant is possibly a material witness based on the informant’s logical connection to the illegal activity alleged. Second, the informant’s credibility, particularly bias and knowledge of the co-defendant’s involvement in drug trafficking is paramount. *Roviaro*, 353 U.S. at 63-64; *Diamond*, 280 S.C. at 299, 312 S.E.2d at 551. Notably, the State has not provided the usual explanation for non-disclosure, the informant’s safety. Instead, Assistant Solicitor Stumbo wrote, “Although there is no formal agreement in place for this informant to do CI work or controlled buys for law enforcement, they still obtain valuable information from her in their investigative work and would prefer that her identity remain confidential if possible.” Attachment A.

Fundamental fairness, the right to confrontation, and the right to present a complete defense requires a minimal showing for disclosure of an informant, as no privilege exists for a sole eye-witness in a murder case. There is also possible conflict of interest because, as a public defender, Counsel for the Defendant represents numerous clients who are working as confidential informants in Lexington County. It is quite possible that the informant in this case is one of Defense Counsel’s clients, which creates an inherent conflict of interest.

Therefore, the identity of the informant is essential for ensuring the Defendant’s due process right to investigate the allegations against him and present a defense. Disclosure of the informant’s identity is essentially meaningless unless the Defendant has a reasonable opportunity to investigate, locate, and interview the informant. *State v. Burns*, 294 S.C. 338, 364 S.E.2d 465

(1988). In short, without an opportunity to investigate the source of the information, the Defendant cannot adequately prepare a defense.

V. DENIED RIGHT TO CONFRONT WITNESSES AGAINST HIM

“The Sixth Amendment guarantees a criminal defendant the right ‘to be confronted with the witnesses against him.’ ” *State v. Dinkins*, 339 S.C. 597, 601, 529 S.E.2d 557, 559 (Ct. App. 2000) (quoting U.S. Const. amend. VI); *See* S.C. Const. art. I, § and 14. The right of confrontation is essential to a fair trial because it promotes reliability and insures that convictions will not result from testimony of individuals who cannot be challenged at trial. *Id.* Although the confrontation clause is not identical to the hearsay rule, when the State offers hearsay evidence in a criminal case, the accused’s Sixth Amendment right to confront accusers is directly implicated. *See Idaho v. Wright*, 497 U.S. 805 (1990).

Here, non-disclosure of this informant’s identity prevents the Defendant from confronting the witness whose information to Sergeant Finch was the sole basis for the traffic stop. (2010) Tr. 43, ll. 8-17. Accordingly, non-disclosure of the informant’s identity is in violation of the Defendant’s right to confrontation. U.S. Const. amends. VI, XIV; S.C. Const. art. I, § and 14.

VI. DENIED OPPORTUNITY TO PRESENT A COMPLETE DEFENSE

Both the United States and South Carolina Supreme Courts have held that “[d]ue process requires that a criminal defendant be afforded a meaningful opportunity to present a complete defense.” *State v. Mabe*, 306 S.C. 355, 358, 412 S.E.2d 386, 388 (1991) (citing *California v. Trombetta*, 467 U.S. 479 (1984)). The opportunity to present a full and complete defense includes “a defendant’s privilege to request and obtain material evidence from the state.” *Id.*; *see also Town of Fairfax v. Smith*, 285 S.C. 458, 330 S.E.2d 290 (1985). U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3 and 14.

Here, the non-disclosure of the informant's identity denies the Defendant the right to present a full and complete defense. U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3 and 14.

VII. DISCLOSURE OF EVIDENCE IS REQUIRED

Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. See *State v. Bryant*, 307 S.C. 458, 415 S.E.2d 806 (1992). The due process rights recognized by *Brady* apply not only to exculpatory evidence, but also to impeachment evidence. See *United States v. Bagley*, 473 U.S. 667 (1985). Notably, "[e]ven absent a request, prosecutors have a constitutional duty to give the defendant exculpatory evidence which would raise a reasonable doubt about his guilt." *State v. Jackson*, 302 S.C. 313, 396 S.E.2d 101 (1990) (citing *United States v. Agurs*, 427 U.S. 97 (1976)).

In *Bagley*, the United States Supreme Court reiterated the importance of specific requests for undisclosed *Brady* material: "When the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable." *Id.* at 681. *Brady* itself involved the State's failure to disclose evidence that had been specifically requested by the defense, and the Court noted that the nondisclosure was constitutional error if the evidence would "tend to exculpate" the defendant. *Brady*, 373 U.S. at 88.

VIII. DISCLOSURE REQUEST

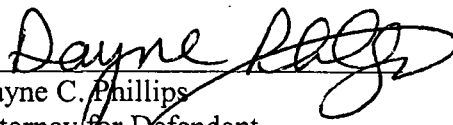
Pursuant to *Roviaro v. United States*, 353 U.S. 53 (1957) and *State v. Diamond*, 280 S.C. 296, 312 S.E.2d 550 (1984), the Defendant respectfully moves this Court to Order the Eleventh Circuit Solicitor's Office to reveal the informant's name, address, prior criminal record, and any agreements and/or plans with law enforcement and/or the Eleventh Judicial Circuit Solicitor's office. The requested information is essential to ensuring the Defendant's constitutional rights

under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitutions, and Article I, Sections 3 and 14, of the South Carolina Constitution. If this motion is granted, Counsel for the Defendant requests a reasonable opportunity to investigate and locate the informant after the identity is revealed. *See State v. Burns*, 294 S.C. 338, 368, 364 S.E.2d 465 (1988). However, if the State refuses to provide the requested information, the Defendant respectfully requests that this Court dismiss his pending charges with prejudice.

IX. CONCLUSION

Based on the forgoing reasons, the Defendant requests that this Court grant his motion to reveal the informant's identity.

Respectfully Submitted,


Dayne C. Phillips
Attorney for Defendant

Lexington, South Carolina

Date: 1/12/15

Attachment A

State of South Carolina
Office of the Solicitor
Eleventh Judicial Circuit

COUNTIES
EDGEFIELD / LEXINGTON
McCORMICK / SALUDA
FAXES: (803) 785-8431 or (803) 785-8255



LEXINGTON COUNTY JUDICIAL CENTER
205 E. MAIN ST. • THIRD FLOOR
LEXINGTON, SOUTH CAROLINA 29072
TELEPHONE: (803) 785-8352

DONALD V. MYERS

Solicitor

February 3, 2010

David Mauldin, Esquire
Lexington County Public Defender
407 ½ E. Main Street
Lexington, South Carolina 29072

Re: State v. Jo Pradubsri (2009-GS-32-202; -204; -205)

Dave
Dear Mr. Mauldin:

Just as an update, the Pradubsri trial is second on the trial list for next week. Attached is a copy of the transcript from Melisa Martin's guilty plea hearing on September 9, 2009. Just as a follow-up to matters outside of the Rule 5 packets that you have asked me about via e-mail and that we have discussed in person, here is some clarification on other matters discussed:

- (1) The only other **oral statement** to my knowledge given by Melisa Martin that is not already memorialized in the law enforcement reports is an answer at the scene of whether there were any other bags besides the one in here hand. According to law enforcement she responds: "Yes, in my pants";
- (2) There are **no dash camera video recordings** in this case according to law enforcement involved with this case;
- (3) Information regarding the **confidential informant** who gave the information leading to the traffic stop. The informant is a white female who is around the Irmo area on a regular basis and had an established working relationship with the lead investigating officer in this case well before the incident date, and who the officer knows by name and appearance. The lead investigating officer states that the informant had given him reliable information on at least five prior occasions unrelated to this incident that was helpful in investigations in

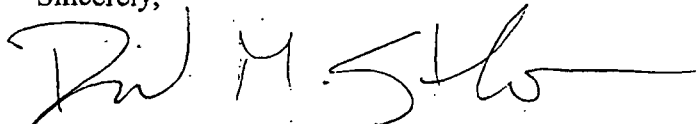
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enforcement would find when they acted on the information. Although there is no formal agreement in place for this informant to do CI work or controlled buys for law enforcement, they still obtain valuable information from her in their investigative work and would prefer that her identity remain confidential if possible.

- (4) The informant has a history of prostitution and drug use. The informant personally knows and has knowledge about the two defendants in this case, seeing them on a regular daily basis around the time of this incident. She gave very specific detail about the car (silver colored Monte Carlo with a dent in the side), the occupants of the car (Melisa Martin and "Jo Jo", who were dating and living together at the time in a house in the Friarsgate), specific descriptions of handguns that would be in the car (a smaller silver in color handgun carried by Melisa and a larger black handgun carried by "Jo Jo"), the fact that there would be a large quantity of crack in the car (because of the informants personal knowledge that Jo Jo and Melisa buy large amounts of Cocaine which they cook into crack at their house in Friarsgate, and then sell working down St. Andrews Road through Irmo towards Columbia). Because of this specific and reliable information given by the informant in a call to the investigating officer and the personal knowledge and prior dealings of the investigator with the defendants, Inv. Finch was on the look out on the incident date for a silver Monte Carlo travelling down St. Andrews Road, occupied by the suspects Pradubsri and Martin, that contained specifically two handguns and a large amount of crack cocaine.

Please do not hesitate to call me if you have any other questions or concerns prior to trial.

Sincerely,



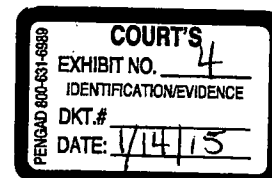
David M. Stumbo
Assistant Solicitor

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
v.	)	Memorandum in Support of Defendant's
	)	Motion to Suppress Testimony and References
JO PRADUBSRI,	)	to the Informant's Tips
	)	
DEFENDANT.	)	Indictment No. 2009GS3200202; 204; 205
	)	

This memorandum is in support of the Defendant's motion to suppress testimony and references to the informant's tips as inadmissible hearsay evidence under the Sixth and Fourteenth Amendments to the United States Constitution, and Article I, section 14, of the South Carolina Constitution. *See* Rules 801 and 802, SCRE (Hearsay definitions and Rule). Specifically, allowing testimony or references to the undisclosed informant's tip that specifically identifies and implicates the Defendant in illegal activity is in violation of his right to confrontation of witnesses. The grounds in support of this motion are as follows:

I. BACKGROUND

Based on the information provided by an undisclosed informant, Sergeant John William Finch began investigating Jo Pradubsri and Melisa Martin for drug trafficking and distribution. On November 9, 2008, Sergeant Finch received a call from Sergeant Bobby Dale, of the Irmo Police Department, informing him that Pradubsri and his car were at the Kroger in Irmo. Sergeants Dale and Finch observed Pradubsri and Martin exit the store and leave the parking lot in the Monte Carlo. After Pradubsri left the parking lot, Sergeant Finch initiated a traffic stop based solely on the information provided by the informant. Ultimately, the officers on scene discovered approximately sixty-eight grams of crack-cocaine on Martin and approximately \$725 in cash on Pradubsri.



On February 9, 2009, the Lexington County Grand Jury indicted Jo Pradubsri of (1) trafficking crack cocaine in an amount of twenty-eight grams or more but less than one hundred grams, (2) possession with intent to distribute (PWID) crack cocaine within proximity of a school, and (3) unlawful carrying of a pistol. Pradubsri has proceeded to trial on two separate occasions: (1) February 10-12, 2010 and (2) November 4-5, 2014. At both trials, Sergeant Finch and the prosecutors indicated that an informant had provided information about illegal activity and that based on that information, Sergeant Finch began investigating Pradubsri and ultimately conducted the traffic stop. The State refused to disclose the informant's identity prior to either trial; thus, preventing the Defendant from having the opportunity to cross-examine the informant.

II. HEARSAY

Hearsay is an out of court statement offered to prove the truth of the matter asserted therein. Rule 801(c), SCRE; *State v. Brown*, 317 S.C. 55, 451 S.E.2d 888 (1994). The rule against hearsay prohibits the admission of evidence of an out of court statement to prove the truth of the matter asserted unless an exception to the rule applies. Rule 802, SCRE; *Simpkins v. State*, 303 S.C. 364, 401 S.E.2d 142 (1991). In *State v. Price*, 368 S.C. 494, 498-99, 629 S.E.2d 363, 265-66 (2006), our Supreme Court held that an investigator who based his testimony that the defendant was an officer in a gang *solely from informants* "was hearsay and was not admissible under any exception to the rule."

In this case, testimony and references to the information provided by the informant that specifically identifies and implicates the Defendant in illegal activity would constitute as an out-of-court statement offered to prove the truth of the matter asserted and would constitute as inadmissible hearsay. See *Price*, 368 S.C. at 498-99, 629 S.E.2d at 265-66 ("Richardson testified that he solely based his testimony that Appellant was a supreme on

statements from informants. This testimony was hearsay and was not admissible under any exception to the hearsay rule.”).

III. VIOLATION OF CONFRONTATION CLAUSE

“The Sixth Amendment guarantees a criminal defendant the right ‘to be confronted with the witnesses against him.’ ” *State v. Dinkins*, 339 S.C. 597, 601, 529 S.E.2d 557, 559 (Ct. App. 2000) (quoting U.S. Const. amend. VI); *See* S.C. Const. art. I, § and 14. The right of confrontation is essential to a fair trial because it promotes reliability and insures that convictions will not result from testimony of individuals who cannot be challenged at trial. *Id.* Although the confrontation clause is not identical to the hearsay rule, when the State offers hearsay evidence in a criminal case, the accused’s Sixth Amendment right to confront accusers is directly implicated. *See Idaho v. Wright*, 497 U.S. 805 (1990).

While the law requires confrontation with adverse witnesses, several exceptions have been recognized. *See* Danny R. Collins, *South Carolina Evidence* § 16.11 (2d ed. 2000). Traditionally, “[c]onfrontation [was] not always required in particular proceedings that serve[d] limited functions, for well-recognized hearsay exceptions, or for evidence that [had] other significant indicia of reliability.” *Id.* The United States Supreme Court modified the long-standing exemption for evidence bearing adequate “indicia of reliability” in *Crawford v. Washington*, 541 U.S. 36 (2004). In *Crawford*, the Supreme Court established a new rule which bars out-of-court statements by a witness *that are testimonial in nature* unless the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness. *Id.* at 68. However, where the out-of-court statement is not testimonial in nature, the “indicia of reliability” test remains. *Id.*

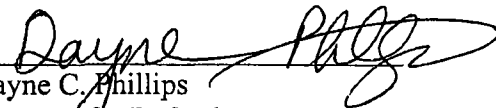
Here, allowing testimony or references to the undisclosed informant's tip that specifically identifies and implicates the Defendant in illegal activity is in violation of his right to confrontation of witnesses against him. The informant is only unavailable due to the State's refusal to disclose the informant's identity, and the Defendant has *never* had a prior opportunity to cross-examine the witness. *See Crawford*, 541 U.S. 36. Although our Supreme Court found that the hearsay and confrontation clause issue in *State v. Roach* was unpreserved for appellate review and vacated the Court of Appeals opinion, the original *Roach* opinion provides guidance on this issue. *See State v. Roach*, 364 S.C. 422, 613 S.E.2d 791 (Ct. App. 2005), *rev'd and vacated*, 377 S.C. 2, 659 S.E.2d 107 (2008).

In *Roach*, our Court of Appeals held that the trial court erred in "permit[ing] an officer to testify about third parties going to [the defendant's] home to purchase crack." *Id.* at 425, 613 S.E.2d at 793. The *Roach* Court noted that "[w]hile the officer did not specifically testify as to what these individuals said to him, if anything, he did testify that the individuals communicated to him, in some way, their desire to purchase drugs." *Id.* at 427-28, 613 S.E.2d at 794. The *Roach* Court found that this testimony fell under the definition of hearsay as it was an out-of-court statement, offered in court to prove the truth of the matter asserted and were in violation of the confrontation clause. *Id.* Accordingly, allowing testimony or references to the undisclosed informant's tip that specifically identifies and implicates the Defendant in illegal activity is in violation of his right to confrontation of witnesses. U.S. Const. amend. VI; S.C. Const. art. I, § and 14.

CONCLUSION

Based on the forgoing reasons, the Defendant requests that this Court grant his motion to suppress testimony or references to the undisclosed informant's tip that specifically identifies and implicates the Defendant in illegal activity.

Respectfully Submitted,


Dayne C. Phillips
Attorney for Defendant

Lexington, South Carolina

Date: _____

2/12/15

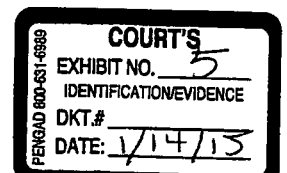
STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
v.	)	Memorandum in Support of Defendant's
	)	Motion to Suppress Evidence
JO PRADUBSRI,	)	
	)	Indictment No. 2009GS3200202
DEFENDANT.	)	2009GS3200204
	)	2009GS3200205

This memorandum is in support of the Defendant's motion to suppress evidence seized during a traffic stop under the Fourth and Fourteenth Amendments to the United States Constitution, and Article I, section 10, of the South Carolina Constitution. Specifically, the Officers did not have reasonable suspicion that criminal activity had occurred or was occurring to justify the traffic stop. *See United States v. Brugal*, 209 F.3d 353, 358 (4th Cir. 2000) (finding "[t]he *Terry* reasonable suspicion standard requires law enforcement to have a reasonable suspicion that criminal activity is afoot"). The grounds in support of this motion are as follows:

I. BACKGROUND

Based on the information provided by an undisclosed informant, Sergeant John William Finch began investigating Jo Pradubsri and Melisa Martin. In a letter dated February 3, 2010, Assistant Solicitor David Stumbo provided the following information regarding the informant:

- (1) "The informant is a white female who is around the Irmo area on a regular basis and had an established working relationship with the lead investigating officer[;]"
- (2) "[T]he informant had given [the lead investigating officer] reliable information on at least five prior occasions unrelated to this incident that was helpful in investigations[;]"
- (3) "[T]here is no formal agreement in place for this informant to do CI work or controlled buys for law enforcement[;]"
- (4) "The informant has a history of prostitution and drug use[;]"
- (5) "[T]he informant personally knows and has knowledge about the two defendants in this case, seeing them on a regular daily basis around the time of this incident[;]"



- (6) "[The informant] gave very specific detail about the car (silver colored Monte Carlo with a dent in the side), the occupants of the car (Melisa martin and 'Jo Jo', who were dating and living together at the time in a house in the Friarsgate);]"
- (7) The informant gave "specific descriptions of handguns that would be in the car (a smaller silver in color handgun carried by Melisa and a larger black handgun carried by 'Jo Jo');]"
- (8) The informant stated "the fact that there would be a large quantity of crack in the car (because of the informants personal knowledge that Jo Jo and Melisa buy large amounts of Cocaine which they cook in to crack at their house in Friarsgate, and then sell working down St. Andrews Road through Irmo towards Columbia);]"
- (9) "Because of this specific and reliable information given by the informant in a call to the investigating officer and the personal knowledge and prior dealings of the investigator with the defendants, Inv. Finch was on the look out on the incident for a Silver Monte Carlo travelling down St. Andrews Road, occupied by the suspects Pradubsri and Martin, that contained specifically two handguns and a large amount of crack cocaine."

Attachment A.

On November 9, 2008, Sergeant Finch received a call from Sergeant Bobby Dale, of the Irmo Police Department, informing him Mr. Pradubsri and his car were at the Kroger in Irmo. Sergeants Dale and Finch observed Mr. Pradubsri and Ms. Martin exit the store and leave the parking lot in the Monte Carlo. After Pradubsri left the parking lot, Sergeant Finch initiated a traffic stop based solely on the information provided by the informant. Ultimately, the officers on scene discovered approximately sixty-eight grams of crack-cocaine on Ms. Martin and approximately \$725 in cash on Mr. Pradubsri, but no crack-cocaine.

II. NO REASONABLE SUSPICION TO JUSTIFY THE TRAFFIC STOP

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. "[T]he underlying command of the Fourth Amendment is always that searches and seizures be reasonable." *Wilson v. Arkansas*, 514 U.S. 927, 931 (1995). The Fourth Amendment is applicable to the States through the Due Process Clause of the Fourteenth Amendment. *Mapp*

v. Ohio, 367 U.S. 643 (1961).

Traffic stops are reviewed under the standard set forth in *Terry v. Ohio*, 392 U.S. 1 (1968), because a traffic stop is more analogous to an investigative detention than a custodial arrest. See *United States v. Rusher*, 966 F.2d 868, 875 (4th Cir. 1992). In *Terry*, the United States Supreme Court outlined a two-prong test for analyzing the constitutionality of a traffic stop: (1) whether the police officer's action was justified at the inception of the traffic stop; and (2) whether the police officer's subsequent actions were reasonably related in scope and duration to the circumstances that justified the stop. *Rusher*, 966 F.2d at 875. Temporary detention of individuals during a traffic stop by police, even if only for a brief period and for a limited purpose, constitutes a seizure of the persons within the meaning of the Fourth Amendment. See *Whren v. United States*, 517 U.S. 806, 809–10 (1996); see also *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (noting the Fourth Amendment's protection against “unreasonable searches and seizures” extends to “brief investigatory stops of persons or vehicles”).

“To justify a brief stop [or] detention, the police officer must have a reasonable suspicion that the person has been involved in criminal activity.” *State v. Robinson*, 306 S.C. 399, 402, 412 S.E.2d 411, 413 (1991). The term “reasonable suspicion” requires a particularized and objective basis that would lead one to suspect another of criminal activity. See *United States v. Cortez*, 449 U.S. 411 (1981); see *State v. Woodruff*, 344 S.C. 537, 544 S.E.2d 290 (Ct. App. 2001). Reasonable suspicion also requires “something more than an inchoate and unparticularized suspicion or hunch.” *State v. Rogers*, 368 S.C. 529, 534, 629 S.E.2d 679, 682 (Ct. App. 2006) (where the police were not investigating the possibility that a crime may be occurring, but rather that a crime had already occurred).

In determining whether reasonable suspicion exists, the whole picture must be considered. See *United States v. Sokolow*, 490 U.S. 1 (1989). The burden is on the State to articulate facts sufficient to support reasonable suspicion. See *State v. Pichardo*, 367 S.C. 84, 104, 623 S.E.2d 840, 851 (Ct. App. 2005); see also *State v. Tindall*, 388 S.C. 518, 527, 698 S.E.2d 203, 208 (2010) (“[T]he nature of the reasonableness inquiry [in determining the existence of reasonable suspicion] is highly fact-specific”).

The United States Supreme Court created the exclusionary rule to safeguard Fourth Amendment rights. See *United States v. Calandra*, 414 U.S. 338 (1974); see also *Weeks v. United States*, 232 U.S. 383, 34 S. Ct. 341, 58 L. Ed. 652 (1914). The exclusionary rule prohibits the use of evidence obtained directly or indirectly through an unlawful search or seizure under the fruits of the poisonous tree doctrine. See *Wong Sun v. United States*, 371 U.S. 471, 484 (1963); see also *State v. Nelson*, 336 S.C. 186, 519 S.E.2d 786 (1999) (finding evidence is not admissible under the “fruit of the poisonous tree” doctrine when the police exploit an unlawful search to seize evidence that would not have otherwise come to light). The Fourteenth Amendment incorporates the rule of excluding evidence obtained through an illegal search or seizure and makes it applicable to the states. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

Notably, “[t]he purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but ‘to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.’” *United States v. Mendenhall*, 446 U.S. 544, 553–54 (1980) (quoting *United States v. Martinez-Fuerte*, 428 U.S. 543, 554 (1976)). The United States Supreme Court and the Supreme Court of this State have recognized and applied the principle that police officers are not granted under *Terry*, “a general warrant to rummage and seize at will” and that any evidence seized from an unlawful detention must be

excluded as “fruit of the poisonous tree.” *State v. Woodruff*, 344 S.C. 537, 549, 544 S.E.2d 290, 296-97, n. 1 (citing *Texas v. Brown*, 460 U.S. 730, 748 (1983) (Stevens, J., concurring)).

A. NO EVIDENCE OF CRIMINAL ACTIVITY

In this case, the Officers did not have reasonable suspicion that criminal activity had occurred or was occurring. See *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (noting the Fourth Amendment's protection against “unreasonable searches and seizures” extends to “brief investigatory stops of persons or vehicles”). Sergeant Finch testified in the first trial that he based his decision to conduct the traffic stop solely on the information provided by the informant, *not* because of a traffic violation. 2010 Tr. 43, ll. 8-17. Sergeant Finch relied on this information despite that he failed to locate Pradubsri and Martin on numerous occasions prior to the traffic stop. 2010 Tr. 18, ll. 18-25. Accordingly, based on the totality of the circumstances, Sergeant Finch did not have reasonable suspicion to conduct the traffic stop. See *Woodruff*, 344 S.C. at 549, 544 S.E.2d at 296-97, n. 1 (citing *Brown*, 460 U.S. at 748 (1983) (Stevens, J., concurring) (noting the United States Supreme Court “*has been sensitive to the danger . . . that officers will enlarge a specific authorization, furnished by a warrant or an exigency, into the equivalent of a general warrant to rummage and seize at will*”) (emphasis added)).

III. FACTS ARE DISTINCT FROM ROGERS AND WILLARD

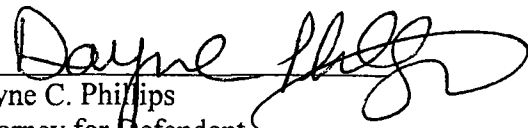
Here, the facts are distinct from those presented in *Rogers* and *Willard*. Unlike in *Rogers*, 368 S.C. at 532-33, 629 S.E.2d at 681, “[A]t the time of the investigatory stop . . . , the officers knew that a crime had, in fact, already occurred . . . and had been independently reported.” The facts surrounding the traffic stop are further distinguishable in *Willard*: (1) the *non*-confidential informant told the police that had purchased drugs from the defendant; (2) had intended on purchasing drugs from the defendant that day; (3) agreed to set up a buy with the

defendant; (4) called the defendant in the officer's presence using the officer's cell-phone; and (5) the defendant confessed to the officer during the traffic stop. *Willard*, 374 S.C. 129, 647 S.E.2d 252 (reiterating "a non-confidential informant is given a *higher level of credibility* because he exposes himself to liability should the information prove to be false." *Id.* at 135. 647 S.E.2d at 255 (emphasis added)).

IV. CONCLUSION

Based on the forgoing reasons, the Defendant requests that this Court grant his motion to suppress evidence seized during the traffic stop under the Fourth and Fourteenth Amendments to the United States Constitution, and Article I, section 10, of the South Carolina Constitution.

Respectfully Submitted,


Dayne C. Phillips
Attorney for Defendant

Lexington, South Carolina

Date: 1/12/15

Attachment A

State of South Carolina
Office of the Solicitor
Eleventh Judicial Circuit

LEXINGTON COUNTY JUDICIAL CENTER
205 E. MAIN ST. • THIRD FLOOR
LEXINGTON, SOUTH CAROLINA 29072
TELEPHONE: (803) 785-8352



COUNTIES
EDGEFIELD / LEXINGTON
McCORMICK / SALUDA
FAXES: (803) 785-8431 or (803) 785-8255

DONALD V. MYERS

Solicitor

February 3, 2010

David Mauldin, Esquire
Lexington County Public Defender
407 ½ E. Main Street
Lexington, South Carolina 29072

Re: State v. Jo Pradubsri (2009-GS-32-202; -204; -205)

Dave
Dear Mr. Mauldin:

Just as an update, the Pradubsri trial is second on the trial list for next week. Attached is a copy of the transcript from Melisa Martin's guilty plea hearing on September 9, 2009. Just as a follow-up to matters outside of the Rule 5 packets that you have asked me about via e-mail and that we have discussed in person, here is some clarification on other matters discussed:

- (1) The only other **oral statement** to my knowledge given by Melisa Martin that is not already memorialized in the law enforcement reports is an answer at the scene of whether there were any other bags besides the one in here hand. According to law enforcement she responds: "Yes, in my pants";
- (2) There are **no dash camera video recordings** in this case according to law enforcement involved with this case;
- (3) Information regarding the **confidential informant** who gave the information leading to the traffic stop. The informant is a white female who is around the Irmo area on a regular basis and had an established working relationship with the lead investigating officer in this case well before the incident date, and who the officer knows by name and appearance. The lead investigating officer states that the informant had given him reliable information on at least five prior occasions unrelated to this incident that was helpful in investigations in

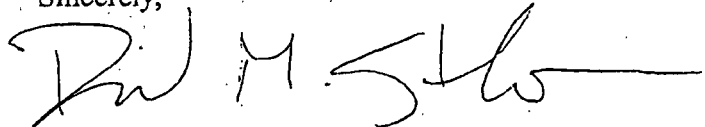
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enforcement would find when they acted on the information. Although there is no formal agreement in place for this informant to do CI work or controlled buys for law enforcement, they still obtain valuable information from her in their investigative work and would prefer that her identity remain confidential if possible.

- (4) The informant has a history of prostitution and drug use. The informant personally knows and has knowledge about the two defendants in this case, seeing them on a regular daily basis around the time of this incident. She gave very specific detail about the car (silver colored Monte Carlo with a dent in the side), the occupants of the car (Melisa Martin and "Jo Jo", who were dating and living together at the time in a house in the Friarsgate), specific descriptions of handguns that would be in the car (a smaller silver in color handgun carried by Melisa and a larger black handgun carried by "Jo Jo"), the fact that there would be a large quantity of crack in the car (because of the informants personal knowledge that Jo Jo and Melisa buy large amounts of Cocaine which they cook into crack at their house in Friarsgate, and then sell working down St. Andrews Road through Irmo towards Columbia). Because of this specific and reliable information given by the informant in a call to the investigating officer and the personal knowledge and prior dealings of the investigator with the defendants, Inv. Finch was on the look out on the incident date for a silver Monte Carlo travelling down St. Andrews Road, occupied by the suspects Pradubsri and Martin, that contained specifically two handguns and a large amount of crack cocaine.

Please do not hesitate to call me if you have any other questions or concerns prior to trial.

Sincerely,



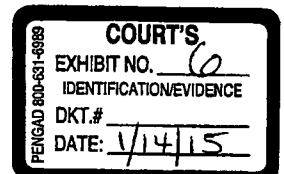
David M. Stumbo
Assistant Solicitor

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
v.	)	Memorandum in Support of Defendant's
	)	Motion to Exclude Testimony and References
JO PRADUBSRI,	)	to Prior Bad Act Evidence
	)	
DEFENDANT.	)	Indictment No. 2009GS3200202; 204; 205
	)	

This memorandum is in support of the Defendant's motion to exclude testimony and references to inadmissible prior bad act evidence under Rule 404(b), of the South Carolina Rules of Evidence as well as under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, section 3, of the South Carolina Constitution. Specifically, allowing testimony or references to the undisclosed informant's tips that specifically identifies and implicates the Defendant in illegal activity is inadmissible character evidence. In addition, permitting Pradubsri's co-defendant, Melisa Martin, to testify as to prior drug sales is not admissible under the intent exception in Rule 404(b), SCRE. The grounds in support of this motion are as follows:

I. BACKGROUND

Based on the information provided by an undisclosed informant, Sergeant John William Finch began investigating Jo Pradubsri and Melisa Martin for drug trafficking and distribution. On November 9, 2008, Sergeant Finch received a call from Sergeant Bobby Dale, of the Irmo Police Department, informing him that Pradubsri and his car were at the Kroger in Irmo. Sergeants Dale and Finch observed Pradubsri and Martin exit the store and leave the parking lot in the Monte Carlo. After Pradubsri left the parking lot, Sergeant Finch initiated a traffic stop based solely on the information provided by the informant. Ultimately, the officers on scene discovered approximately sixty-eight grams of crack-cocaine on Martin and approximately \$725



in cash on Pradubsri.

On February 9, 2009, the Lexington County Grand Jury indicted Jo Pradubsri of (1) trafficking crack cocaine in an amount of twenty-eight grams or more but less than one hundred grams, (2) possession with intent to distribute (PWID) crack cocaine within proximity of a school, and (3) unlawful carrying of a pistol. Pradubsri has proceeded to trial on two separate occasions: (1) February 10-12, 2010 and (2) November 4-5, 2014. At both trials, Sergeant Finch and the prosecutors indicated that an informant had provided information about illegal activity and that based on that information, Sergeant Finch began investigating Pradubsri and ultimately conducted the traffic stop. Also, at both trials, his co-defendant, Martin, testified that she personally sold crack-cocaine to two women in the Kroger prior to the traffic stop and that she gave the money to Pradubsri.

II. EXCLUDE EVIDENCE OF PRIOR BAD ACTS

In the prosecution of one crime, proof of another direct substantive crime is never admissible unless there is some legal connection between the two upon which it can be said that one tends to establish the other or some essential fact in issue. *See* Rule 404(a) and (b), SCRE; *see also State v. Parker*, 315 S.C. 230, 433 S.E.2d 831 (1993). Evidence of other crimes is admissible when that evidence tends to establish (1) motive; (2) intent; (3) the absence of mistake or accident; (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the others; or (5) the identity of the person charged with the commission of the crime on trial. *State v. Lyle*, 125 S.C. 406, 416, 118 S.E. 803, 807 (1923). However, the evidence of prior bad acts must be relevant to prove the alleged crime. *State v. Bell*, 302 S.C. 18, 27–28, 393 S.E.2d 364, 369 (1990), *cert. denied*, 498 U.S. 881, 111 S.Ct. 227, 112 L.Ed.2d 182 (1990).

In deciding to apply the *Lyle* exception for the admission of prior crimes, the court must always determine if the probative value of the evidence is substantially outweighed by the danger of its prejudicial effect. *See* Rule 403, SCRE; *see also Parker*, 315 S.C. 230, 433 S.E.2d 831. The determination of the prejudicial effect of prior bad act evidence must be based on the entire record and the result will generally turn on the facts of each case.” *State v. Brooks*, 341 S.C. 57, 533 S.E.2d 325 (2000).

To be admissible, alleged prior bad acts that are not the subject of conviction must be proved by clear and convincing evidence. *State v. Cutro*, 332 S.C. 100, 504 S.E.2d 324 (1998). The connection between the prior bad acts and the crime must be more than just a general similarity; there must be a close degree of similarity or a connection between the prior bad acts and the crime. *State v. Raffaldt*, 318 S.C. 110, 113, 456 S.E.2d 390, 392 (1995). Notably, when the prior bad acts are similar to the one for which the appellant is being tried, the danger of prejudice is enhanced. *State v. Gore*, 283 S.C. 118, 121, 322 S.E.2d 12, 13 (1984).

A. INFORMANT

Here, allowing testimony or references to the undisclosed informant’s tips that specifically identifies and implicates the Defendant in illegal activity is inadmissible character evidence. *See German v. State*, 325 S.C. 25, 478 S.E.2d 687 (1996) (holding in a PCR case that an undercover drug agent’s testimony regarding the defendant distributing or selling drugs and providing a description of the defendant was not admissible to explain the initial stop of petitioner and was “objectionable . . . as improper comments on petitioner’s character.”); *see State v. Jones*, 343 S.C. 562, 541 S.E.2d 813 (2001) (finding “identification of an individual as the suspect of a criminal investigation, based upon speculation and effectively calling into

question that individual's character, is not [admissible]."); *State v. Carter*, 323 S.C. 465, 476 S.E.2d 916 (Ct. App. 1996) (finding evidence of prior drug transaction involving the defendant and a cooperating government witness four days before the alleged drug transaction was not admissible).

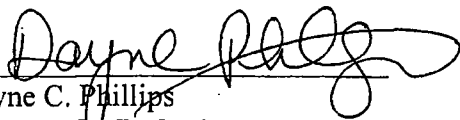
B. MARTIN

Here, permitting Pradubsri's co-defendant, Melisa Martin, to testify as to prior drug sales at Kroger is not admissible under the intent exception in Rule 404(b), SCRE. *See State v. Humphries*, 354 S.C. 87, 579 S.E.2d 613 (2003) (finding error in admitting witness' prior bad act testimony under the common scheme or plan exception because the prior bad act evidence "was highly significant as it was the *only direct evidence* of [the defendant's] intent to deal in marijuana.") (emphasis added).

III. CONCLUSION

Based on the forgoing reasons, the Defendant requests that this Court grant his motion to exclude testimony and references to inadmissible prior bad act evidence.

Respectfully Submitted,


Dayne C. Phillips
Attorney for Defendant

Lexington, South Carolina

Date: 1/12/15

WITNESSES

Lexington County Sheriffs Department

John Finch

Law Enforcement Case #:

DMS

ARREST WARRANT NUMBER

J847717

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 2-9-09

VERDICT

Guilty

Foreperson of Petit Jury

Date: February 12, 2010

Guilty *1-15-15*

DOCKET NO. 2009-GS-32-0202

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2009

THE STATE

vs.

Jo Pradubsri

CDR #: 0148

Indictment for

Trafficking Crack Cocaine
(28 grams - 100 grams)

§ 44-53-0370(e)(2)(b)

DONALD V. MYERS, SOLICITOR

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Lex. Co. C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

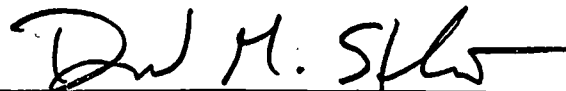
INDICTMENT FOR
Trafficking Crack Cocaine (28 grams - 100
grams)

§ 44-53-0370(e)(2)(b)

At a Court of General Sessions, convened on FEBRUARY 2009, the Grand
Jurors of Lexington County present upon their oath:

That **Jo Pradubsri** did in Lexington County, South Carolina on or about
November 9, 2008 knowingly and intentionally, willfully and unlawfully, was in actual or
constructive possession of or did knowingly and intentionally attempt to become in
actual or constructive possession of Crack Cocaine, a controlled substance under
provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended,
in a quantity of twenty-eight (28) grams or more but less than one hundred (100) grams,
in violation of § 44-53-370 (e)(2)(b)1, Code of Laws of South Carolina, 1976, as
amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.


ASSISTANT SOLICITOR

WITNESSES

DOCKET NO. 2009-GS-32-0204

Lexington County Sheriffs Department

John Finch

Law Enforcement Case #:

DMS

ARREST WARRANT NUMBER

J847718

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2009

THE STATE

vs.

Jo Pradubsri

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 2-9-09

VERDICT

Guilty

Foreperson of Petit Jury

Date: February 12, 2010

Guilty *1-15-15*

CDR #: 0108

Indictment for

PWID Crack Cocaine
within Proximity of a School

§ 44-53-0445(B)(2)

DONALD V. MYERS, SOLICITOR

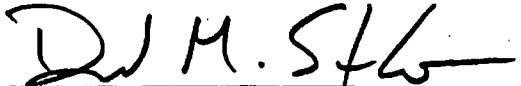
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STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	PWID Crack Cocaine within Proximity of a
COUNTY OF LEXINGTON	)	School
	)	
		§ 44-53-0445(B)(2)

At a Court of General Sessions, convened on FEBRUARY 2009, the Grand Jurors of Lexington County present upon their oath:

That **Jo Pradubsri** did in Lexington County, South Carolina on or about November 9, 2008 distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute a quantity of Crack Cocaine, a controlled substance while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public vocational or trade school or technical education center; or a public or private college or university to wit: Irmo Elementary School, in violation of § 44-53-445 (B)(2), Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

John Finch

Law Enforcement Case #:

DMS

ARREST WARRANT NUMBER

J847720

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 2-9-09

VERDICT

Guilty

Foreperson of Petit Jury

Date: February 12, 2010

Guilty: [Signature] 1-15-15

DOCKET NO. 2009-GS-32-0205

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2009

THE STATE

vs.

Jo Pradubsri

CDR #: 0044

Indictment for

Unlawful Carrying of a Pistol

§ 16-23-0020; 16-23-0050(A)

DONALD V. MYERS, SOLICITOR

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Lex. Co. C.C.P., G.S. & F.C.

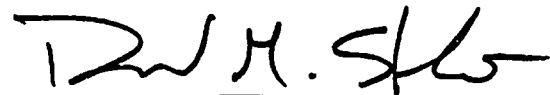
STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Unlawful Carrying of a Pistol
§ 16-23-0020; 16-23-0050(A)

At a Court of General Sessions, convened on FEBRUARY 2009, the Grand Jurors of Lexington County present upon their oath:

That Jo Pradubsri did in Lexington County, South Carolina on or about November 9, 2008 knowingly and willfully carry about the person or was in actual or constructive possession of two pistols, whether concealed or not, without the proper legal authority to do so, to wit: (1) a Hi-point 9mm Luger handgun, Model #C-9, serial #P1395780, and (2) a Bauer .25 caliber handgun, serial #072811, in violation of Section 16-23-20 of the South Carolina Code of Laws (1976), as amended.

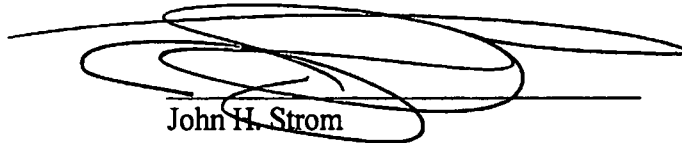
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 29th, 2016



John H. Strom
Appellate Defender

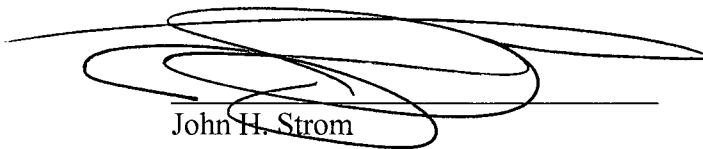
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 29th, 2016



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Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT

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