

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM EDGEFIELD COUNTY

William Jeffrey Young, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

IRADELLE JAMES,

APPELLANT

APPELLATE CASE NO. 2014-001921

RECORD ON APPEAL

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1 State of South Carolina) In the Court
2 County of Edgefield) Of General Sessions

3 Indictment No.: 2013-GS-19-00452
4

5
6 State of South Carolina,)
Plaintiff.)

7
8 vs.)

Transcript of Record

9
10 Iradelle James,)
Defendant.)

11
12
13 September 3-4, 2014
Edgefield, South Carolina
14

15
16 B E F O R E:

17 The Honorable W. Jeffrey Young, Judge and a jury.
18

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

20 Ervin Maye, Assistant Solicitor
Attorney for the State

21 Bennett E. Casto, Esquire
22 Attorney for the Defendant

23
24 Brenda J. Sigwald, Circuit Court Reporter
To The Honorable R. Knox McMahon
25 P.O. Box 206, Jackson, South Carolina 29831

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JURY VOIR DIRE

THE COURT: Solicitor, you ready to call your first case?

MR. MAYE: May it please the Court, Your Honor.

THE COURT: Yes, sir, it pleases the Court.

MR. MAYE: The State now calls for trial, Indictment 2013-GS-19-452, the State versus Iradelle James, an indictment for possession with intent to distribute crack cocaine. It was true billed by the grand jury of Edgefield County at the August term of 2013. The State now calls this case for trial.

THE COURT: All right.

All right. Ladies and gentlemen, as you just heard, the State has called the case of State versus Iradelle James and he is charged with possession with intent to distribute crack cocaine.

Now, ladies and gentlemen, I'm going to read the indictment to you. The indictment reads as follows: That Iradelle James, did in Edgefield County, South Carolina on or about May 11, 2013, knowingly and intentionally possess with intent to distribute a quantity of crack cocaine, a controlled substance, in violation of Section 44-53-375(B) of the South Carolina Code of Laws, 1976 as amended, and such possession not having been authorized by law.

Now, ladies and gentlemen, let me remind you, the

1 fact that the defendant was arrested, charged and indicted
2 in no way means that he is guilty of this offense.

3 The defendant has pled not guilty to the charges in
4 this indictment and, therefore, the State has the burden of
5 proving his guilt beyond a reasonable doubt. Ladies and
6 gentlemen, let me remind you that the indictment is only
7 the formal written document that brings this case into
8 court.

9 Now, ladies and gentlemen, before we select the
10 jury, there are several questions that I'm going to need to
11 ask you and I'll remind you that you're still under oath.
12 Now, one of the reasons that you're under oath for these
13 questions is this is such a crucial stage of the trial and
14 just like a building must have a firm foundation to be
15 strong and protective of those who live in it, so must a
16 jury be strong as to basis of a fair and impartial trial
17 for those who participate, the solicitor for the State and
18 the defendant who is on trial. And your answers to these
19 questions are the foundations by which these attorneys will
20 build a jury; and they're relying on your truthful answers
21 to strike an unbiased jury who will diligently listen to
22 the facts and deliver a true and just verdict. And again,
23 thank you for your truthfulness to these questions.

24 The first question I have, has anyone ever been
25 related by blood or marriage or had a close personal or

1 business relationship with the defendant, Iradelle James.

2 If he'd please stand and face the jury.

3 All right. Yes, ma'am, please state your name and
4 juror number.

5 THE JUROR: Debbie Swearingen, Juror No. 148.

6 THE COURT: Y'all work together. And you work
7 together now?

8 THE JUROR: Yes.

9 THE COURT: Okay. So you don't believe you can be
10 fair and impartial and listen to the evidence in this case?

11 THE JUROR: Well, I believe I could.

12 THE COURT: You think you could. Okay. Well, very
13 well. Thank you. You may be seated.

14 Ladies and gentlemen, this is a list of possible
15 witnesses. And I'm going to go through the entire list and
16 then I'll ask you some questions: Richard Oxendine of the
17 Edgefield County Sheriff's Office, Julian McCary of the
18 Edgefield County Sheriff's Office, Douglas Robinson of the
19 State Law Enforcement Division, Nikki Hughes of the State
20 Law Enforcement Division and Warren Miller of the Edgefield
21 County Sheriff's Office and Roosevelt Young of the
22 Edgefield County Sheriff's Office; and Iradelle James and
23 Robin James.

24 Other than Iradelle James, does any member of the
25 jury have a close, personal or business relationship or is

1 related by blood or marriage to any of the potential
2 witnesses in this case? If so, please stand.

3 Yes, ma'am, state your name and juror number.

4 THE JUROR: 52, Brandie Lynn Dunkle.

5 THE COURT: Yes, ma'am.

6 THE JUROR: I currently work at Edgefield Sheriff's
7 Department and I closely work with the deputies that you
8 named.

9 THE COURT: Okay. Do you believe that with your
10 working there that you could be fair and impartial to the
11 State and the defense in this case?

12 THE JUROR: Yes, sir.

13 THE COURT: Okay. Thank you.

14 All right. Ladies and gentlemen, the -- oh, yes,
15 sir? State your name and number, please.

16 THE JUROR: Juror No. 1, Dennis Wade Boyce.
17 Oxendine.

18 THE COURT: Okay. You know Richard Oxendine?

19 THE JUROR: Yes, through working with him with the
20 Merriweather Fire Department.

21 THE COURT: Okay. The fact that you know Richard
22 Oxendine, who is a possible witness in this case, do you
23 still think you can be fair and impartial to the State and
24 the defendant in this case?

25 THE JUROR: Yes, sir, I could.

1 THE COURT: All right. Thank you, sir. Thank you
2 for your honesty.

3 All right. The attorneys who are going to be
4 trying this case are Mr. Ervin Maye for the State.

5 Mr. Maye, you want to stand up and introduce you're
6 staff, please.

7 MR. MAYE: Thank you, Your Honor, my name is Ervin
8 Maye. I work with the elected solicitor Donnie Myers.
9 Seated with me at the State's table is Assistant Solicitor,
10 Frank Young, and he will assist in striking the jury at
11 this time.

12 THE COURT: All right. Thank you.

13 And for the defense, Mr. Bennett Casto. Mr. Casto
14 would you like to introduce yourself and the other people
15 you'll be working with.

16 MR. CASTO: Yes, sir. My name is Bennett Casto.
17 I'm a lawyer out in this area, Saluda, Edgefield,
18 McCormick. I have the pleasure of representing Mr. James.

19 THE COURT: All right. Thank you.

20 Does any member of the jury panel have any close
21 personal or business relationships with any of these
22 attorneys or related by blood or marriage or have you ever
23 been represented by any of these attorneys? If so, please
24 stand.

25 All right. Thank you, no one is standing.

1 Has any member of the jury panel formed or
2 expressed an opinion about any issue or matter involved in
3 this case? If so, please stand.

4 All right. Thank you, no one is standing.

5 Is any member of the jury panel aware of any bias
6 or prejudice towards either the State or the defendant in
7 this case? If so, please stand.

8 Thank you, no one is standing.

9 Is there any member of the jury panel who is also a
10 member of the grand jury which indicted this case? If so,
11 please stand.

12 All right. Thank you, no one is standing.

13 Is there any member of the jury panel who is a
14 member of or contributor to any group which has as its
15 primary concern the promotion of law enforcement or victims
16 rights? And these groups would include but certainly would
17 not be limited to Mother's Against Drunk Drivers, Students
18 Against Drunk Drivers or Citizens against Violent Crimes.
19 If so, please stand.

20 Thank you, no one standing.

21 Does any member of the jury panel know of any
22 reason whatsoever why he or she should not serve as a juror
23 in this case, with particular emphasis being placed on your
24 ability to be fair and impartial to both the State and the
25 defendant? If so, please stand.

1 Thank you no one standing.

2 Does the State have any additional questions it
3 would like for me to ask?

4 MR. MAYE: None from the State, Your Honor, thank
5 you.

6 THE COURT: Does the defense have any additional
7 questions it would like for me to ask?

8 MR. CASTO: No, sir, Your Honor.

9 THE COURT: All right. Thank you.

10 All right. Ladies and gentlemen, what's going to
11 happen now --

12 How do y'all do it here? Do y'all have the juror
13 come forward or do they just stand where they're at?

14 THE CLERK: They come forward here to the front.

15 THE COURT: Okay. Ladies and gentlemen, if your
16 name is called, please come forward, get right in front of
17 your clerk, turn around and face all these portraits in the
18 back and then each side will have an opportunity to strike
19 you. Please do not take it personally if they strike you.
20 Each team has an idea of what they think the optimal juror
21 will be.

22 We will strike twelve primary jurors and one
23 alternate. And gentleman, it's five and five.

24 MR. CASTO: Yes, sir.

25 THE COURT: And bring all your personal items when

1 you come forward. That way when you go to the jury box, I
2 guess -- which side do they go on -- okay, into the jury
3 box, you'll have everything with you.

4 All right. Go ahead.

5 JURY SELECTION

6 THE CLERK: Juror 106 Richard C. McKie.

7 What sayeth the State?

8 MR. MAYE: Please present the juror.

9 THE CLERK: What sayeth the defense?

10 MR. CASTO: Please excuse the juror for the trial
11 of this case.

12 THE CLERK: You may be seated.

13 Juror No. 137, Lori K. Robinson.

14 What sayeth the State?

15 MR. MAYE: Please present the juror.

16 THE CLERK: What sayeth the defense?

17 MR. CASTO: Please excuse the juror for the trial
18 of this case.

19 THE CLERK: Juror No. 109 Benjamin L. Mims, III.

20 What sayeth the State?

21 MR. MAYE: Please present the juror.

22 THE CLERK: What sayeth the defense?

23 MR. CASTO: Beg the Court's indulgence.

24 THE COURT: Yes, sir. Hold on sir. We haven't
25 finished with you.

1 THE JUROR: Okay. All right.

2 MR. CASTO: Please excuse the juror for the trial
3 of this case.

4 THE COURT: Okay. Thank you, sir. Now you're
5 excused.

6 Ladies and gentlemen, I'll tell y'all a funny
7 story, a couple -- about two months ago in Sumter, you
8 notice she says what sayeth the State and then the State
9 makes a statement, I had a juror up here who came up here
10 and she said what sayeth the State and she was the first
11 juror and she proudly announced that the state was South
12 Carolina.

13 So y'all are getting it right. Y'all are a smart
14 jury pool. So...

15 THE CLERK: Juror No. 5, Ronald D. Kaizer.

16 What sayeth the State?

17 MR. MAYE: Please present the juror.

18 THE CLERK: What sayeth the defense?

19 MR. CASTO: Please present Mr. Kaiser.

20 THE CLERK: Please have a seat in the jury box.

21 Juror 42, Shari D. Day.

22 What sayeth the State?

23 MR. MAYE: Please present the juror.

24 THE CLERK: What sayeth the defense?

25 MR. CASTO: Please seat Ms. Day.

1 THE CLERK: Juror No. 2 Dean B. Childress.
2 What sayeth the State?
3 MR. MAYE: Please present the juror.
4 THE CLERK: What sayeth the defense?
5 MR. CASTO: Please seat Mr. Childress.
6 THE CLERK: Juror 108, Wallace D. Mealing.
7 What sayeth the State?
8 MR. MAYE: Please excuse the juror from the trial
9 of this case.
10 THE COURT: Thank you, sir.
11 THE CLERK: Juror No. 171, Michael L. Willoughby.
12 What sayeth the State?
13 MR. MAYE: Please present the juror.
14 THE CLERK: What sayeth the defense?
15 MR. CASTO: Please seat the juror.
16 THE CLERK: Juror No. 60, Jason N. Furmage.
17 What sayeth the State?
18 MR. MAYE: Please present the juror.
19 THE CLERK: What sayeth the defense?
20 MR. CASTO: Please seat Mr. Furmage.
21 THE CLERK: Juror 148 Debby K. Swearingen.
22 What sayeth the State?
23 MR. MAYE: Please present the juror.
24 THE CLERK: What sayeth the defense?
25 MR. CASTO: Please seat the juror.

1 THE CLERK: Juror 107, Craig W. McMullen.
2 What sayeth the State?
3 MR. MAYE: Please present the juror.
4 THE CLERK: What sayeth the defense?
5 MR. CASTO: Beg the Court's indulgence.
6 Please seat Mr. McMullen.
7 THE CLERK: Juror 169, Willie Williams, Jr.
8 What sayeth the State?
9 MR. MAYE: Please present the juror.
10 THE CLERK: What sayeth the defense?
11 MR. CASTO: Please seat the juror.
12 THE CLERK: Juror 142, Misty H. Simmon.
13 What sayeth the State?
14 MR. MAYE: Please present the juror.
15 THE CLERK: What sayeth the defense?
16 MR. CASTO: Please seat the juror.
17 THE CLERK: Juror 84, Michael Jefferson.
18 What sayeth the State?
19 MR. MAYE: Please excuse the juror for the trial of
20 this case.
21 THE CLERK: Juror No. 112, Natasha A. Morrison.
22 What sayeth the State?
23 MR. MAYE: Please excuse the juror for the trial of
24 this case.
25 THE CLERK: Juror No. 3, Renee L. Harrop.

1 What sayeth the State?

2 MR. MAYE: Please present the juror.

3 THE CLERK: What sayeth the defense?

4 MR. CASTO: Please seat Ms. Harrop.

5 THE CLERK: Juror No. 1, Dennis W. Boyce.

6 What sayeth the State?

7 MR. MAYE: Please present the juror.

8 THE CLERK: What sayeth the defense?

9 MR. CASTO: Please excuse Mr. Boyce.

10 THE CLERK: 125, Annette W. Pough.

11 What sayeth the State?

12 MR. MAYE: Please present the juror.

13 THE CLERK: What sayeth the defense?

14 MR. CASTO: Please seat Ms. Pough.

15 THE CLERK: 29, Sylvia D. Byrd.

16 What sayeth the State?

17 MR. MAYE: Please present the juror.

18 THE CLERK: What sayeth the defense?

19 MR. CASTO: Please seat Ms. Byrd.

20 THE COURT: One alternate.

21 THE CLERK: Juror 131 Annette L. Raffield.

22 What sayeth the State?

23 MR. MAYE: Please excuse the juror for the trial of
24 this case.

25 THE CLERK: Juror No. 123, Eva J. Pixly.

1 What sayeth the State?

2 MR. MAYE: Please present the juror.

3 THE CLERK: What sayeth the defense?

4 MR. CASTO: Please present the alternate.

5 THE COURT: All right. Please call out the names
6 of the jurors who have been selected.

7 THE CLERK: Richard --

8 THE COURT: Please just raise your hand when she
9 calls you.

10 THE CLERK: Donald B. Kaizer, Shari D. Day, Dean B.
11 Childress, Michael L. Willoughby, Jason N. Furmage, Debbie
12 K. Swearingen, Craig W. McMullen, Willie Williams Jr.,
13 Misty H. Simmon, Michael Jefferson, Renee L. Harrop,
14 Annette E. Pough, Sylvia D. Byrd, and our alternate Eva J.
15 Pixly.

16 THE COURT: All right. Ladies and gentlemen, y'all
17 have been selected as the jury for this trial. I'm going
18 to send you back to your jury room --

19 This is the jury room right here isn't it?

20 THE CLERK: No, sir.

21 THE COURT: Oh. Okay. I'm going to send you to
22 your jury room for just a few minutes. While you're back
23 there, if y'all could select among yourselves who you want
24 to be your foreperson over your jury. It can be any of the
25 twelve primary jurors.

1 So Ms. Pixly, you can't be the foreperson.

2 So while you're back there, if y'all could select
3 who you want to be the foreperson.

4 And then the foreperson will sit right here where
5 you are, Mr. Kaiser. Okay.

6 Thank you. Ladies and gentlemen, I've got a few
7 things to take up with the attorneys.

8 (WHEREUPON the jury left the courtroom at 11:27
9 a.m.)

10 THE COURT: All right. Are there any objections to
11 the jury that has been selected or the manner in which they
12 have been selected from the State?

13 MR. MAYE: Nothing from the State, Your Honor.

14 THE COURT: From the defense?

15 MR. CASTO: Nothing from the defense, Your Honor.

16 THE COURT: Thank you. All right. Let me see the
17 attorneys you here for one second.

18 (WHEREUPON, there was a bench conference out of the
19 hearing of the jury and the Court Reporter.)

20 (WHEREUPON the judge released the jury venire for
21 the week.)

22 THE COURT: All right. Would you check and see if
23 the jury has selected a foreperson and then I'm going to
24 release them for the day.

25 (WHEREUPON the jury entered the courtroom at 11:33

1 a.m.)

2 THE COURT: All right. Mr. Kaiser, they thought
3 you sat in that seat pretty well, so they just decided to
4 leave you in there, okay.

5 All right. Ladies and gentlemen, this trial is not
6 going to start until tomorrow morning at 9:30. So I'm
7 going to release you for the day, with instructions that
8 you don't talk to anybody about this case. I used to be a
9 reservist with the National Security Agency. Back then
10 they called it NSA, which meant never say anything. And
11 that's what I'm going to try to hint to you.

12 Don't go out telling all your buddies you've got
13 jury service because what's going to happen then is they're
14 going to say is, you know, I was on a jury one time and let
15 me tell you what happened in my trial. Well, you don't
16 need to hear that. All the evidence that you're going to
17 need to decide this case is going to come from within the
18 four walls of this courtroom, so please don't go out and do
19 any independent research on your own. We want your
20 thoughts to be clear, unbiased when we start this trial
21 tomorrow morning.

22 So, ladies and gentlemen, have a nice evening, get
23 a good night's rest because we're going to have a long day
24 tomorrow and I'll see y'all here at 9:30 tomorrow morning.

25 Thank you, ladies and gentlemen, have a great day.

1 I won't tell anybody you're off this afternoon, by the way,
2 so that will be up to y'all.

3 (WHEREUPON the jury left the courtroom at 11:35
4 a.m.)

5 THE COURT: All right. Anything from the attorneys
6 before we dismiss y'all on this particular case.

7 MR. MAYE: Nothing from the State. We'll be ready
8 at 9:30 in the morning, we'll be prepared.

9 THE COURT: Okay.

10 MR. CASTO: As will the defense.

11 THE COURT: All right. Very good.

12 (WHEREUPON this case was in recess until the
13 following morning.)

14 THE COURT: Are we ready to proceed?

15 MR. CASTO: Yes sir, Your Honor.

16 THE COURT: Bring us our jury, please.

17 MR. CASTO: Did the Court wish to take up any type
18 of pretrial motions.

19 THE COURT: Did y'all have any pretrial motions?

20 MR. CASTO: I do, yes sir, Your Honor.

21 THE COURT: Nothing came up yesterday about this.
22 What -- Hold on.

23 MR. CASTO: I assumed that we would just do
24 pretrial in the morning, but I don't have anything super
25 lengthy at all, Your Honor.

1 THE COURT: That's good, but we wasted all
2 yesterday afternoon when we could have done that.

3 MR. CASTO: Yes, sir.

4 THE COURT: Out of respect. What you got?

5 PRETRIAL MOTIONS

6 MR. CASTO: Your Honor, our first motion that we
7 would ask the Court to consider and grant, specifically,
8 Your Honor, I would just place on the record, is a motion
9 for a continuance, Your Honor.

10 You know, basically, our motion fleshed out goes as
11 follows: You know, I accepted the job to be the tri-county
12 public defender here in mid-July. I inherited a caseload
13 of some -- well over a 150 cases, but that's across three
14 counties. In a sense we've been working, I believe a two
15 week term of court in Saluda County, On August 13th, our
16 Chief Administrative Judge, the Honorable Judge Russo,
17 e-mailed a proposed trial list.

18 And just to flesh it out, I'd like to place this
19 all on the record, Your Honor.

20 It consisted of 39 trials, exclusively selected by
21 the Solicitor's office. Of those 39 cases, I had 17 cases
22 on the trial list. I have -- in fact, I have a case next
23 week, and that is a, what I envision to be a fairly
24 lengthy, very serious, criminal sexual conduct case that
25 was properly scheduled for next week with Solicitor Suzanne

1 Mayes.

2 It's scheduled -- you know, we really followed the
3 proper channels, the Solicitor, Ms. Mayes got with me
4 several weeks in advance; you know, we had also contacted
5 the admin judge, and that was appropriately scheduled for
6 that, and it's scheduled to go on September 8th.

7 And in the weeks leading up to this term of court
8 out here in Edgefield, myself with the assistance of other
9 attorneys in my office, we haven't met with -- I probably,
10 our office probably has over a hundred pending cases in
11 this county alone. And we've met with as many folks -- it
12 was north of about 60 people, those were both in jail and
13 out of jail, some on the trial list, some not. We
14 certainly couldn't contact everybody despite a good faith
15 effort to do so.

16 I asked the Solicitor's office prior to this week
17 what cases they wanted to try among -- and basically on
18 September 2nd, once this criminal court started on Tuesday
19 afternoon at 4:30, you know, the Assistant Solicitor told
20 me that everything had fallen through, that he did have a
21 case to try and Iradelle James would be up for trial. You
22 know, I informed him that this is somebody that I haven't
23 spoken with, and it was still called anyway. You know,
24 that afternoon was the first I've heard of this case going
25 to trial. And I met with Mr. James for the first time

1 yesterday morning, minutes before we selected this jury.

2 Your Honor, our grounds for continuance are based
3 on this, is that, you know, there is that case, Langford
4 that came down to basically -- it was from this circuit and
5 it's actually from this county, that, you know, what's
6 going on here is the very thing that case sought to
7 prevent. You know, the case ruled that it's
8 unconstitutional, not improper or imprudent of
9 unconstitutional for the Solicitor's office to call any
10 case because they no longer have control of the docket.

11 But that's really what's going on here. At 4:30
12 that afternoon, that's when I first found out about a trial
13 with a client I'd never met. We feel very strongly it's a
14 violation of Langford.

15 Your Honor, there are also constitutional cases
16 here as well. Particularly, the due process laws in the
17 U.S. Constitution, that'd be the Fifth and Fourteenth
18 Amendments, but also the State of South Carolina
19 Constitution under Article I, Section 3, and it is also a
20 violation of the concept of fundamental fairness.

21 Additionally, Your Honor, during that five minute
22 conversation that I had with Mr. James, he told me his
23 brother is a critical and material witness, essentially, to
24 place on the record, this is -- it's alleged that Mr. James
25 had drugs and threw them down. His brother, Robert James,

1 I spoke with him by phone yesterday, and that's the person
2 that Mr. James told me about. He is in New York. He just
3 had multiple surgeries. It would have been impossible for
4 him to be subpoenaed out of state so that he could be here
5 today, but it's -- the reason that he's material and
6 critical, Your Honor, is the fact that he was watching Mr.
7 James the whole time. His testimony would've been as
8 follows: That he did not see Mr. James throw anything to
9 the ground. And I spoke with him yesterday. And, you
10 know, obviously, I can't get up here with such short
11 notice.

12 THE COURT: That's why we had put it off for 24
13 hours, but you can make it from New York to South Carolina
14 in 24 hours.

15 MR. CASTO: Yes, sir. But I wouldn't have been
16 able to subpoena him out of state so that if he didn't
17 show --

18 THE COURT: Do you think you'd have to subpoena his
19 brother?

20 MR. CASTO: I think that it would be prudent to do
21 so. If, Your Honor, I believe that it violates our ability
22 to present a full and complete defense under both the U.S.
23 Constitution Amendments and then -- the Sixth and the
24 Fourteenth Amendment, and Article I, Section 14 of our
25 State Constitution..

1 And also, you know, there's some -- that's going on
2 here as well, and we're not able to secure his presence
3 here at the trial under the Sixth Amendment of the U.S.
4 Constitution and in Article I, Section 14 of the South
5 Carolina Constitution.

6 You know, this case has serious implications. Mr.
7 James is somebody that, you know, he's facing a felony
8 charge. He's facing zero to 15; it's obviously something
9 that is -- clearly his liberty is at stake. And, Your
10 Honor, those are things that we wish to place on the record
11 at this time, and we so move for a continuance at this
12 time.

13 THE COURT: All right. Thank you.

14 MR. MAYE: Your Honor, I just want to state for the
15 record, this case has been pending since -- I think it was
16 grand jury true billed in April of 2013. Mr. James was
17 notified that he was to be back here and to be ready at
18 this term of court, that there was potential for trial. We
19 absolutely did not call any of the cases for this term of
20 court, Your Honor. I was provided a list of the cases that
21 were potentially for trial by Judge Russo, just as the
22 Defense was. Everyone was placed on notice. We have
23 hundreds of cases on the docket here and only a small
24 portion of those that were unable to be resolved, and
25 discovery issues had been taken care of at previous terms

1 of court, were submitted by Judge Russo as cases that were
2 to be tried and disposed of at this term of court, Your
3 Honor.

4 We don't really have any control over the docket
5 any longer beyond that we were informed by the Chief Judge
6 for Administrative Purposes of the cases that we were to
7 be -- that we are to be prepared to dispose of by trial
8 during the pendency of the week.

9 THE COURT: When was the trial list published?

10 MR. MAYE: Your Honor, it went out several weeks,
11 I know there were e-mails -- it went out several weeks
12 before this term of court. I know that I've got e-mails
13 going back over a couple of weeks in this case where
14 defense lawyers were saying that they needed a continuance,
15 they were not prepared for this case or the other. And
16 some people sought and got continuances on individual cases
17 from Judge Russo. Several were removed from the trial
18 roster and that we were not subject to being prepared for.
19 This is certainly not a situation where we're in control of
20 the docket. We were responding to the Court under the new
21 situation with Langford. And this case is just one of the
22 ones that was for this term of court, Your Honor. And it
23 worked out that were to move forward and proceed on this
24 case, Your Honor, not at the call of the Solicitor, but at
25 the direction of the Court.

1 THE COURT: Mr. Casto, why didn't you go to the
2 Chief Administrative Judge last week concerning this?

3 MR. CASTO: Well, essentially, I had 17 different
4 cases, and I'd been notified -- and I appropriately--

5 Let me -- the backstory. I was supposed to be in
6 that CSC trial this week. That was when I was noticed --
7 however this is such a short week, and it's going to be a
8 long trial. It was -- it was subsequently, you know,
9 foresight was such that we moved it to the next week, and
10 so basically I was prepared to fill this week with that
11 trial, but then since the Solicitor Suzanne Mayes said, You
12 know, there's no way with a jury coming in Wednesday
13 morning that I could -- that she could put up her case by
14 the end of Tuesday evening. She didn't know if I had a
15 case or not. So that was subsequently booted to the next
16 week. Well, and you know, that throws me into -- because
17 I've got 16 other cases on the list that were originally
18 weren't supposed to be called at all. If you look at the
19 trial list, number one is the case I'm trying next week.
20 That was slated for first up this week, and you know,
21 the -- this proposed list is proposed by the solicitor's
22 office to Judge Russo. These cases are hand-picked from
23 the docket, so it's not -- it's not one of those things
24 where Judge Russo himself picked these individual cases,
25 Your Honor. And that's -- we feel like this is the thing

1 that Langford was designed to prevent.

2 THE COURT: Well, you're going to have to get a
3 higher court to determine that because I'm not going to
4 grant a continuance on this one.

5 MR. CASTO: Yes, sir.

6 THE COURT: This -- it's a critical case that --
7 you know, if this happens every time, you know, that's a
8 personal problem. I'm sorry -- you took on the job of
9 being public defender in July, there are a lot of cases,
10 but justice just can't slow down because of that. So your
11 motion for continuance is denied.

12 MR. CASTO: Yes, sir. The other motion that we
13 would have, is we would object, not stipulate to the chain
14 of custody. I don't think that's appropriate, but I just
15 wanted to place that on the record now.

16 MR. MAYE: We're prepared for that, Your Honor.

17 THE COURT: You're prepared?

18 MR. MAYE: We were -- we know that they're not
19 going to stipulate chain of custody.

20 THE COURT: All right.

21 MR. CASTO: I told you the rest were pretty easy.
22 Your Honor, we would move to sequester the witnesses, under
23 Rule 615 of the Rules of Evidence, Your Honor.

24 THE COURT: All right.

25 MR. MAYE: We would want to keep the chief

1 investigating officer, Officer Oxendine. Everybody else,
2 we'll submit to sequestration.

3 THE COURT: Sounds good.

4 MR. CASTO: That's all we ask.

5 THE COURT: All right.

6 MR. CASTO: And the other issue is that, there
7 were -- Mr. Maye let me know of some statements made by Mr.
8 James last night. We would move that they be suppressed.
9 There's nothing at all in the police report to indicate
10 that Mr. James made any statements whatsoever to law
11 enforcement, and you know, I found about those last night.
12 And, you know, we would move that they be suppressed.

13 THE COURT: Mr. Maye?

14 MR. MAYE: Your Honor, he said that's not mine, two
15 or three times. He said -- and that's the only
16 statement --

17 THE COURT: And that is suppressed. Thank you for
18 that.

19 MR. MAYE: Excuse me.

20 THE COURT: I'm going to suppress him saying that.
21 It makes no difference.

22 MR. MAYE: Your Honor, the only thing I would ask,
23 and this is just briefly -- the officers in this case, from
24 my understanding, saw a tin be tossed. Their testimony
25 will be that they saw a tin tossed by the defendant in this

1 case. They picked this tin up and placed it on the trunk
2 lid of an automobile. Before it was opened, before anybody
3 realized -- or before anybody would have had noticed there
4 of what the item was, he immediately began to vigorously
5 say, "That's not mine. That's not mine," which clued the
6 officers in that they needed to look at this item and it
7 was something he was worried about.

8 And for that reason, Your Honor, normally it's not
9 of any import for somebody to issue a denial. But for an
10 individual to take an innocuous item, a small metal tin,
11 and begin to vigorously and immediately announce that he
12 had no knowledge of it, that it was not his, Your Honor, we
13 think it's indicative of guilt and would have --

14 THE COURT: I'm going to reverse myself. I'm going
15 to allow them to say that he said, "It's not mine," because
16 if he took the stand, I'm sure that's what he would say
17 anyway, so...

18 MR. CASTO: Yes, sir. And, Your Honor, the only
19 thing with regard to that motion is just support for our
20 motion would be that it would violate the rules of
21 discovery. He provided that information last night.

22 THE COURT: It didn't come last night. It was
23 yesterday. I know because we talked about it in the -- my
24 chambers yesterday. You've had notice of it.

25 All right. Let's bring our jury in.

1 MR. CASTO: Thank you.

2 MR. MAYE: Your Honor, I'm going to send all the
3 officers out there after opening statements. We can start
4 taking testimony and send them out.

5 THE COURT: Yeah. Okay that's good.

6 MR. MAYE: Thank you.

7 (WHEREUPON the jury entered the courtroom at 10:08
8 a.m.)

9 THE COURT: Good morning, ladies and gentlemen. I
10 hope y'all had a nice evening. It certainly -- if y'all
11 have been praying for rain around here, you certainly got
12 it last night. You know, my home town, Sumter, we didn't
13 get a drop of rain. I wish that we could have gotten some
14 of this.

15 We're ready to proceed. Would you please swear
16 them?

17 (WHEREUPON the jury was sworn.)

18 **OPENING REMARKS BY THE COURT**

19 THE COURT: All right. Ladies and gentlemen,
20 before we begin this trial, I want to tell you that this
21 trial will probably be different from what you might
22 expect. You know, most people don't have an opportunity to
23 actually be part of an actual court system as you are
24 today, and may think that watching TV, movies, or reading
25 books, that a trial is always full of high drama, intense

1 action, and riveting circumstances. While all these things
2 might be true at times, this trial is not for
3 entertainment.

4 This is a real trial, which is a fundamental part
5 of our democracy and it's a search for the truth in an
6 effort to make sure that justice is done. And searching
7 for the truth and ensuring that justice is done is often
8 slow, deliberate, and repetitive, the exact opposite from
9 what you may have seen on TV, movies, or read in books.

10 Now, ladies and gentlemen, this court room that you
11 have in Edgefield County, I enjoy coming here because of
12 the history involved. It's neat to be in a courthouse
13 that's over a hundred years old. And I sit here and I
14 think of all the things that have happened here. But first
15 and foremost, this is a place of honor that is dedicated to
16 the protection and the preservation of our citizens' rights
17 through what has been called, and I surely believe to be,
18 the greatest justice system ever created by mankind.

19 The attorneys who are appearing before you are
20 advocates for the parties that they represent. But first
21 and foremost, ladies and gentlemen, they are officers of
22 this court who are sworn to uphold the integrity and the
23 fairness of our judicial system and help you as a juror in
24 your search for the truth. Ladies and gentlemen, you
25 should expect them to be professional, competent, and

1 ethical in the representation of their clients' interests.
2 Remember, ladies and gentlemen, you too, just took an oath
3 to listen to the evidence in this case and reach a fair and
4 just verdict. And you're expected to be professional,
5 reasonable, and ethical as well.

6 Again, let me thank you for accepting this
7 responsibility of jury duty.

8 Now, ladies and gentlemen, what I'm going to tell
9 you now is just intended to serve as an introduction of the
10 trial of a case. These remarks are not a charge on the
11 law. I will charge you the law as applicable to this
12 particular case at the end of the trial. This is merely an
13 explanation of the procedures that we will follow so you
14 may better understand what's happening during this trial.

15 And let me say upfront, ladies and gentlemen, that
16 during this trial you will not be able to take notes.
17 Therefore, it's very important that you listen closely
18 throughout this trial.

19 Ladies and gentlemen, the defendant, Mr. James, is
20 charged by indictment filed in this court with possession
21 of -- with intent to distribute crack cocaine. Now, the
22 specific elements of that charge will be explained to you
23 later, but the indictment charging the defendant is simply
24 the document by which this case was brought into court and
25 is not in any sense any evidence of the allegations

1 contained therein.

2 Ladies and gentlemen, the defendant has pled not
3 guilty to the charges in the indictment, and the State has
4 the burden of proving all of the elements of the charge in
5 the indictment beyond a reasonable doubt. It will be your
6 duty as jurors to determine whether the State has met that
7 burden.

8 Now, ladies and gentlemen, your purpose is to
9 determine the facts of this case. You'll determine the
10 facts from the testimony that you receive from the witness
11 stand and any other exhibits that are introduced through
12 court, and it will be up to you to determine the inference
13 that you feel may be properly drawn from the evidence.

14 Now, ladies and gentlemen, it's especially
15 important that you perform your duty diligently and
16 conscientiously, because ordinarily there is no way to
17 correct an erroneous a determination of the facts by a
18 jury.

19 On the other hand, with equal emphasis, the same
20 law that makes you the judges of the facts makes me the
21 judge of the law. The law, as given to you by me, is the
22 only law that you may consider. And you must accept the
23 law as I give it to you, even though you might disagree.
24 And I'll make an agreement with you: I won't tell you what
25 the facts are, and you will not disagree with me about what

1 the law is or what the law ought to be. Your job as jurors
2 is to take the law as I give it to you and apply it to the
3 facts as you find them from the testimony of witnesses and
4 any other evidence that is presented. And then after
5 hearing the evidence, you will deliberate and render a true
6 and just verdict under the solemn oath that you just took
7 at jurors.

8 Until I advise you to begin your deliberations,
9 however, at the conclusion of the case, you must not
10 discuss the case with others, including your fellow jurors
11 throughout -- in this case. Ladies and gentlemen, you may
12 not use a computer, a cell phone, or any other electronic
13 device with communications capabilities while in attendance
14 at the trial or during your deliberations. Now, when you
15 break for lunch, you certainly can use them. If you go
16 home for the evening, you can certainly use it, but even
17 then you can't use the devices to disclose information
18 about the trial. And information about the trial would be
19 information certainly wouldn't be exclusive to this, but
20 information about a party, a witness, an attorney or a
21 court officer, any news account about the case. I don't --
22 I doubt if you'll see that, but if you open up a paper and
23 it says something about a drug trial in Edgefield, then
24 certainly I would expect that you wouldn't read that. Any
25 information collected during juror research -- in other

1 words, you can't go out and do your own independent
2 research. That's not the way the system works. After the
3 case is submitted to you though, you must discuss it only
4 in the jury room with your fellow jurors.

5 The attorneys and the parties in this case are
6 advised that they are not to talk to you at all. So if you
7 see somebody around in this small courthouse square who's
8 involved in this case, and they don't even say hello,
9 they're not being unfriendly. They're just following my
10 instructions.

11 Now, ladies and gentlemen, it's very important that
12 you keep an open mind and do not decide any issue in this
13 case until all of the evidence has been presented, the
14 attorneys have made their closing arguments, and I have
15 charged you on the law. And it's your solemn
16 responsibility, ladies and gentlemen, to determine the
17 guilt or innocence of the defendant, and your verdict must
18 be based solely on the evidence as it is presented within
19 the four walls of this court room and on the law as I give
20 it to you during my instructions during the close of the
21 trial.

22 Now, ladies and gentlemen, in just a moment, the
23 solicitor will make what is called an opening statement in
24 which he will explain to you what he believes the issues
25 are in this case. The attorney for the defendant may also

1 make an opening statement, although he is not required to
2 do so. What the attorneys tell you during their opening
3 statements, however, is not evidence in this case. It's
4 only their contention as to what they believe the issues
5 are.

6 And at times during the trial, you may hear one of
7 the lawyers say something like, "Your Honor, I believe we
8 have a question or a matter of law to discuss with you,"
9 or, "Your Honor, may we approach the bench?" Or sometimes
10 I might find it necessary to excuse you from the court room
11 for a short while so the attorneys and I can discuss a
12 matter of law. And the reason for this is, as I've said,
13 you are the judges of the facts, and sometimes when I
14 discuss a matter of law with the attorneys, it may be
15 necessary for me to make some comment on the facts in
16 connection with making a ruling as to whether a particular
17 law applies. And as I've said, I'm not supposed to tell
18 you what I think the facts are. I'll excuse you from the
19 court room so that you will in no way be influenced by
20 anything that I might say or do in connection with the
21 facts.

22 Also, ladies and gentlemen, during the trial you
23 may hear one of the attorneys make an objection to certain
24 evidence that is about to be presented. Whether I sustain,
25 which would be to grant the objection, or deny the

1 objection, which be to overrule it, should not be construed
2 that I favor one side or the other. I do not. Nor should
3 you infer that the objecting party is trying to hide
4 something from you.

5 You know, this Court, as in all situations in life,
6 there are specific rules that must be followed, and the
7 attorneys as officers of this court are merely trying to
8 follow the rules of evidence in making their objections,
9 and I am only ruling on what I believe the law to be
10 concerning the evidence that is about to be presented.

11 Now, ladies and gentlemen, when determining what
12 the true facts are in this case, you must decide whether or
13 not the testimony of a witness is believable. It would be
14 my responsibility to rule as a matter of law as to whether
15 certain testimony is admissible, but once it's admitted,
16 whether or not you decide to believe it is solely for you
17 to determine.

18 Now, ladies and gentlemen, when determining, when
19 deciding whether to believe a witness, you have a right to
20 consider the interest of any witness, the bias of any
21 witness, the prejudice of any witness, the opportunity for
22 the witness to have observed the matters and things about
23 which the witness may testify and the way the witness acts
24 on this witness stand.

25 Ladies and gentlemen, you have a right to consider

1 anything that is in the record that will help you evaluate
2 the testimony of the witnesses. That means, as jurors, it
3 is your duty to pay close attention to the witnesses, to
4 observe the witnesses, to listen to the witnesses, and pay
5 close attention to the attorneys and to the Court.

6 Ladies and gentlemen, please do not let your
7 thoughts wander, but give strict attention to the testimony
8 in this case so that at the end of all the testimony, after
9 the arguments of counsel and the charge on the law by me,
10 you will then be in a position to determine what the true
11 facts are and to apply those facts to the law that I give
12 you and thus render a true and just verdict.

13 Now, Mr. Foreman, in addition, it will be your
14 responsibility to preside in the jury room and be the jury
15 spokesperson here in court. It will also be your
16 responsibility to write down the verdict on the verdict
17 form, but I'll give you further instructions on that at the
18 appropriate time.

19 I want to preserve everyone's rights, I'll give the
20 parties an opportunity to object to anything that I have
21 said.

22 Does the State have any objection to anything that
23 I've stated to the jury?

24 MR. MAYE: Nothing from the State, Your Honor.

25 Thank you.

1 THE COURT: Does the Defense have any objections?

2 MR. CASTO: No sir, Your Honor.

3 THE COURT: All right. Thank you.

4 All right. We will now begin the trial.

5 Mr. Maye?

6 **OPENING STATEMENTS**

7 MR. MAYE: May it please the Court, Your Honor?

8 THE COURT: Yes, sir.

9 Ladies and gentlemen, I appreciate the fact that
10 all of you have been taken away from what you normally
11 would have been doing this week to come up here to sit. As
12 the Judge has already told you, in this case you are going
13 to sit as the judges of the facts of this case. The facts
14 of this case are going to come from all the witnesses that
15 take the stand, all the items of evidence that we put
16 before you. Those are the facts, and you are going to sit
17 as the actual judges of the facts.

18 Now, I submit to you when you got the letter from
19 Ms. Newby, or however you were notified that y'all were
20 going to be summoned to come up here for jury duty. I
21 doubt anybody leapt for joy or skipped on their return from
22 the post office or the mail box. We're certainly all
23 mindful of the fact, a lot of us come up here week after
24 week. You're taken away from what you would have normally
25 been doing this week. You can't go to work. You can't do

1 with your family. You can't do any of the normal things
2 that would have been part of your week. You've been
3 summoned to be up here because this is the last compulsory
4 public service that we have.

5 You can look around. There are a lot of monuments
6 around the courthouses all over South Carolina for people
7 that have the ultimate compulsory public service, they got
8 drafted. This is it. I remember one point in time people
9 used to have to go out and work on the road. That was how
10 we kept the roads up, and that kind of evolved that if you
11 weren't going to go work, you had to be taxed. To avoid
12 taxes, you've got to go out and pick up a shovel. This is
13 it. This is the last compulsory public service we have.

14 And Winston Churchill once said this is the highest
15 service that a citizen has during peace time. This is
16 vitally important for everybody here in this building. All
17 of you have one thing in common. All of you live here in
18 Edgefield County. You're residents of the county. And I
19 submit to you that the facts that the state has in this
20 case are not going to be complicated at all. It's kind of
21 a tragic story, but it isn't complicated.

22 We go back to 2013, Mother's Day weekend. Sunday
23 the 13th is going to be Mother's Day. Saturday the 12th on
24 over about eight o'clock in the evening, the dispatch at
25 the Sheriff's Department gets a called in this case. Two

1 Edgefield County deputies that are seated here at the
2 State's table with me, Officer Oxendine and Officer McCary,
3 were working routine patrol. Just as now, just as then,
4 back in 2013, they are road deputies. If you call 9-1-1,
5 these are the guys that come out. They're road deputies
6 for the Edgefield County Sheriff's Department.

7 They're going to tell you that they went outside
8 the town of Johnston, and all of you are from here. A lot
9 of us are from other places other than Edgefield County,
10 but they are going to get up and testify that they went out
11 to Yonce Pond Road. You go up to the town of Johnston, you
12 go up near the Chevrolet place there and you turn back out
13 to the left, you go back out in the country just a little
14 ways, there's Yonce Pond Road. It's not up in town.
15 Pretty scene, peach fields around, the, houses, some mobile
16 homes. They go up to [REDACTED] [REDACTED]. You're going to
17 see photographs of the area that they went to.

18 They respond to a call. The call that they got is
19 that the defendant in this case who is seated over here in
20 a purple shirt with attorney, Mr. Casto over here, he was
21 there. He was actually -- the deputies were actually
22 summoned by his mother. Mother's Day Weekend, she wants
23 him out of there. She reports that he's drunk, disorderly,
24 throwing bottles, raising Cain, cutting up. She wants him
25 off the property.

1 Officers respond to this call. And when they get
2 out there, there's a variety of people out there, a lot of
3 activity over back up closer to the trailer where they are.
4 People are loading up. Some of them are going to load up
5 and leave in this case. And they encounter the mother,
6 they speak with her. They can see that Mr. James in this
7 case is not out over there where everybody else is. He's
8 out in the roadway. And he's walking circles, and he's
9 mad, and he's cussing. And the officers can tell from
10 where they are standing -- Now, Oxendine went over to the
11 house initially. He had arrived first.

12 He can see Mr. James walking circles in the road in
13 front of the house, cussing and carrying on. And he's
14 going to tell you in this case that he believed he was
15 intoxicated. Just the way he was seeing him from back up
16 in the yard. To diffuse the situation, he went out and he
17 tried to help Mr. James in this case. He was not able to
18 get him calmed down. He kept walking in circles, but if he
19 could get him corralled back over where the police car was
20 that he had parked up the road when he got there.

21 He's going to tell you in this case, he's out in a
22 public place. This officer at that point in time, he's
23 going to arrest him for disorderly conduct, for cutting up,
24 raising Cain, and cussing outdoor on a public roadway, and
25 standing in the roadway. But he didn't get to the point

1 where he's telling him he's under arrest. He just
2 initially told him. And the officers do this and are
3 permitted to. They want to pat him down and make sure they
4 don't have any weapons on them, for his safety and for
5 everybody's safety that's there. Before he tries to
6 initiate any arrest in this case, he's going to pat him
7 down.

8 But he didn't get a chance to. He informed Mr.
9 James in this case, "Look, I'm going to have to pat you
10 down." He's going to tell you that he was already upset
11 and cussing and walking in circles, and he couldn't keep
12 him in one spot. And when he told him he was going to pat
13 him down, that he went wild. And he started spinning
14 around in circles and reaching in his pockets and throwing
15 out the items that were in his pockets. They hadn't had a
16 chance to put his hands on him yet at all; that he just
17 started spinning around and throwing items out.

18 Well, he knew that was suspicious, and he knew he
19 was going to have to get him under control. And Officer
20 McCary at this point in time has arrived and he's just
21 walking up. And I submit to you that he's going to tell
22 you he didn't see all of the events when Oxendine first got
23 there when he was up talking to the mother, but he arrived
24 second as back-up because he knew they'd gotten a call and
25 that this was kind of a volatile family situation. So not

1 just one officer was going, Mr. McCary arrived a little bit
2 later. But I submit to you, you're going to hear from him,
3 as he walked up, he heard Officer Oxendine tell him, "I'm
4 going to have to pat you down."

5 He had a different vantage point. He was walking
6 up from behind, coming from his automobile. And he'll show
7 you in the photograph exactly where he was standing and
8 where they were walking from and to. And he's going to
9 tell you as soon as he heard the same thing, he told him,
10 "I'm going to have to pat you down," and Mr. James started
11 spinning around and chunking the items from his pockets.

12 He's going to tell you that where he could see, one
13 of the items that he saw him throw down into the ditch
14 right beside where they were standing was a little metal
15 tin. It was a little small metal container, kind of like
16 Altoids would be in, but a little bit smaller. You're
17 going to see that item.

18 That was of particular interest to him because
19 obviously he tossed it right there where he could see it.
20 The officers are going to tell you some cigarettes and some
21 other items got thrown out of his pocket. But that tin --
22 Now, Officer McCary came up and assisted him in getting the
23 handcuffs on him and getting him under control.

24 Now once they got the handcuffs on him, they were
25 back near the trunk of Officer Oxendine's car. They had

1 the handcuffs on him, and Officer McCary had already seen
2 him toss this tin. So I submit to you that you're going to
3 hear from the witness stand in this case, Officer McCary
4 goes over to the edge of the road over there where this
5 little gravelly ditch is and picks that tin up and walks,
6 and he sets it up on the trunk bed of the car in view of
7 Officer Oxendine and the defendant in this case.

8 And Mr. James goes wild at that point in time and
9 starts saying, "I'm not lying! I'm not lying! I'm not
10 lying!" Now they hadn't opened it up, nobody had looked in
11 it in this case at that point in time. He's denouncing any
12 knowledge of whatever's in that tin and he's telling them
13 that's not his. Well, the officers were already suspicious
14 of the tin at the time that he tossed it out of his pocket,
15 and they certainly were when he began to spontaneously
16 utter that it wasn't his.

17 They get him in the car, and of course, they open
18 the tin up. The officers are going to tell you based on
19 their experience and training they looked in there, it's a
20 rock-like substance consistent with crack cocaine, and
21 that's what they believe it is. They don't have a
22 laboratory out there at that point in time, but they looked
23 at it and they see it in this tin and based on their
24 experience and training, they will describe it.

25 Now, he's placed under arrest for disorderly

1 conduct and he is -- they continue to pat him down that one
2 time once they get the handcuffs on him. And they put him
3 in the car, and of course they place him under arrest for
4 disorderly and they bring him back to the Sheriff's
5 Department. They take him away from his mom's house, the
6 source of all the controversy and tension out there that
7 they were originally summoned. But of course they're clued
8 into this tin, and the item they see.

9 Officer McCary picks him up, puts it on the trunk
10 lid. Officer Oxendine gets it. He takes custody and
11 control of it and because they believe it's drug evidence,
12 he, of course, takes steps to secure it, make sure nothing
13 happens to it. He keeps it. There are narcotics officers
14 that are employed by the Sheriff's Office that have a
15 specialization of narcotics. And of course, whenever the
16 road officers get a case that they believe involves
17 narcotics and drugs, in this case, they summon a narcotics
18 officer. The narcotics officers in Edgefield County are
19 Investigator Warren Miller, who is seated here and
20 Investigator Roosevelt Young.

21 Now, Officer Oxendine, when he gets back, he takes
22 photographs of the tin. He takes photographs of the items.
23 He puts a pen down so you can see the scale of it and all.
24 He takes custody of those items but later he turns them
25 over. Because one of the things that the State's got to do

1 in this case, we've got to show you the chain of custody of
2 this item. Because drugs are items that can degrade or rot
3 like blood, we've got to test those items. One of the
4 things we've got to do is we've got to show you what the
5 chain is.

6 So Officer Oxendine gets those. He secures them.
7 He turns them over to Investigator Roosevelt Young who
8 takes them out to the narcotics headquarters and secures
9 them in a safe. Investigator Miller gets those same items
10 from the safe. He takes them directly to the laboratory of
11 the South Carolina Law Enforcement Division and turns that
12 item over, the white powder rock substance he got out of
13 the tin. And this substance is tested by a chemist at the
14 South Carolina Law Enforcement Division. And I submit to
15 you that chemist come up before you in this case, and he's
16 going to tell you that it's about eight grams of crack
17 cocaine. He's an expert and he did this chemical test and
18 analysis of it. He weighed it and he's looked at it.

19 I submit to you the Judge has already told you in
20 this case that you are going to be the judges of the facts
21 in this case. The Judge is going to tell you what the law
22 is. Now, this is the chair and I submit one of the things
23 -- you know, there's kind of -- you owning something
24 yourself and owning something to sell and different levels,
25 and a lot of those things are determined by weight. And

1 the Judge is going to tell you in this case, and the law is
2 basically in South Carolina, when you have controlled
3 substances, what crime you're guilty of is oftentimes how
4 much of it you have is the way you calculate it.

5 And I submit to you that's going to be the only
6 issue in this case. I don't think there's going to be any
7 question in anybody's mind at the conclusion of all the
8 evidence in this case that Mr. James is the only one out
9 there on this roadway, the officer saw him toss that tin
10 down, and he had this item.

11 Now, Mr. James in this case is charged with, and
12 you heard the indictment that we called when I first got up
13 and published the case to the Court -- when we called the
14 case, said he was charged with possession with intent to
15 distribute Crack Cocaine. And the Judge is going to go
16 through and tell you what the law is in this case, but a
17 lot of that hinges on weight. And we submit to you, it
18 will be your determination in this case as to whether or
19 not he is guilty of Possession with intent to distribute
20 Crack Cocaine or of Possession of Crack Cocaine. We submit
21 to you that's the only real and legitimate issue of fact
22 for you to decide in this case.

23 Now, the law in South Carolina, and the Judge is
24 going to charge you in great detail with what the law is.
25 And we've got the burden of proof, and we welcome it. But

1 when you're looking at trying to distinguish between
2 Possession and Possession with intent to distribute, weight
3 is key and critical.

4 And the law in this state is, and provides that, if
5 a person has in excess of one gram, you are permitted from
6 that basis alone, just on the weight, you are permitted to
7 infer that they were possessing a controlled substance with
8 intent to distribute. And that it wasn't just merely
9 Possession or Simple Possession, are in possession for
10 one's own use; that if you've got more than one gram on
11 them, you're permitted to infer from that alone, just on
12 weight.

13 And I submit to you, nobody's going to get up here
14 and tell you that they encountered Mr. James and that he
15 had these scales and that he had lots of bags and that he
16 had the crack packaged up in multiple packages, and he had
17 his pockets bulging with money. We're going to tell you
18 upfront, this is based strictly on the quantity of it that
19 he possessed.

20 And you'll hear from the narcotics officer. You'll
21 hear from the Judge in this case. And again, we submit
22 that's the only real issue that we're up here trying this
23 case on, whether or not he possessed with the intent to
24 distribute or whether it was merely a simple possession for
25 his own use.

1 Ladies and gentlemen, we're going to get right to
2 putting the witnesses up and putting the evidence before
3 you. Again, we appreciate your close attention in this
4 case. And we'll put the evidence before you as quickly as
5 we can.

6 THE COURT: Thank you.

7 Mr. Casto.

8 MR. CASTO: Thank you very much, Judge, may it
9 please the Court?

10 Ladies and gentlemen, up until now in this case,
11 you've only heard one side of this case. And it's the
12 State's side. And what you're going to hear as this trial
13 unfolds is that this is a case that's all about
14 assumptions. Assumptions on the part of law enforcement
15 led them to getting it wrong. And those assumptions led to
16 arresting Ira that evening, on May 11th of last year. And
17 basically, when we take a look at the case a little deeper,
18 we look at the physical evidence that was collected and Mr.
19 Maye has mentioned this, that that can that was allegedly
20 seen to have been thrown down and submitted to SLED to be
21 fingerprinted, the results of those tests, no fingerprints
22 were on that tin can. They opened it up, and they submit
23 the bag inside to be fingerprint tested. No fingerprints.
24 Not Mr. James', not anybody else. That's where the
25 analysis stops. There was no DNA evidence done, even

1 though SLED does it every single day. That's it. I mean,
2 that's the heart of the case.

3 Ladies and gentlemen, what's really, honestly going
4 on here? Ultimately, one of your own, a citizen of
5 Edgefield County, stands merely accused of a crime. And
6 just like the Judge said, just because he's been charged,
7 just because he's indicted, that's not evidence against
8 him. You very much -- to simplify it -- sit in judgment of
9 someone who, essentially one of your own stands merely
10 accused of a crime. And it's your decision to see if
11 there's enough evidence, that the State carries what's
12 called the burden of proof, and we'll revisit that concept
13 in a second.

14 You see -- because a lot of talk to you about
15 reasonable doubt.. So much has been said about reasonable
16 doubt, which is, has been defined in our case law as, "the
17 type of doubt which would cause a reasonable and ordinary
18 person to pause or to hesitate before they act. The type
19 of doubt that would cause a reasonable person to pause or
20 hesitate before they act."

21 There's no fingerprints. There's no DNA. And
22 also, as this case unfolds, we don't have any video, video
23 evidence. Law enforcement vehicles, oftentimes, are
24 equipped with video. There's no audio. And what are we
25 without -- as Mr. Maye already said, we're without large

1 sums of money, digital scales, separate bags containing
2 separate drugs. There's no evidence of that, whatsoever,
3 in this case. And don't think, because of this inference,
4 that you must find somebody guilty. That's only an
5 inference.

6 What's really at stake? Essentially what we have
7 is, this is a short trial. You have been seated on what is
8 a short trial, but it is an important case because Ira has
9 been waiting for his day in court, a time when the twelve
10 of you will just wade through this evidence and make a
11 determination about his guilt or innocence. It is an
12 important day. And what should you do? How do you
13 evaluate the evidence?

14 Listen to every word that's spoken from this
15 witness. Listen to the things that are said, but also
16 listen to the things that are not said. And you can also
17 factor in peoples' mannerisms, the way that they speak,
18 they get mad, their body posture, that's all fair game.
19 Last, but not least, do not check your competence at the
20 door. Because a case that could be so straightforward and
21 so simple might be anything but.

22 This is criminal court, and one of the courthouses
23 in our circuit is in Lexington County, four floors. And on
24 the bottom floor, you know it's probate court. Not very
25 many folks go to probate court, taxes, estate, things of

1 that nature. Well, on the second floor, is basically where
2 they do domestic work. And the standard in those cases is
3 basically a preponderance of the evidence. Do we think
4 something more likely than not happened? It's almost like
5 two scales, and if the scale tips, ever so slightly, one
6 way or the other, that's enough. And on the third floor,
7 they have civil cases, where they can take your money.
8 Same standard.

9 The fourth floor is where they have general
10 sessions, criminal court. That's the highest burden,
11 burden of proof that the State must carry. That's the
12 highest burden there is. And our standard is reasonable
13 doubt, "The type of doubt that would cause a reasonable and
14 ordinary person to pause or hesitate before they act." The
15 burden of proof is something else that's kind of analogous
16 to reasonable doubt, and you hear about it all the time,
17 but it's only on the State. If they cannot carry their
18 burden, you must find Ira not guilty of that offense.

19 You see, for this crime that's charged, you know,
20 several elements, it's like puzzle pieces. If you find
21 reasonable doubt with just one of those pieces, you must
22 find Ira not guilty. We don't have to prove anything at
23 all, and that's not something I came up with. I'm not
24 asking permission to be lazy or anything like that. It's
25 very real and doesn't make for action packed drama or court

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1 room theater or anything like that. But it's live and well
2 versed because it is a very, very real thing, especially
3 since it's one of your own, Ira, that sits over there.

4 At the conclusion of the case, we ask you to wade
5 through all the evidence and find Ira not guilty of this
6 charge.

7 Thank you for listening to me.

8 THE COURT: Thank you.

9 The State may call it's first witness.

10 MR. MAYE: The State calls Officer Richard Oxendine
11 to the stand, Your Honor.

12 THE COURT: Come forward and be sworn.

13 RICHARD OXENDINE,

14 HAVING BEEN SWORN, TESTIFIES AS FOLLOWS:

15 THE CLERK: Have a seat. State your full name, and
16 spell your last name please.

17 THE WITNESS: Richard Oxendine. O-X-E-N-D-I-N-E.

18 **DIRECT EXAMINATION**

19 BY MR. MAYE:

20 Q Officer Oxendine, tell the ladies and gentlemen of
21 the jury where you are originally from.

22 A Trenton. The Trenton area in South Carolina.

23 Q Did you grow up -- where did you go to high school?
24 Where did you go to school?

25 A Aiken High School in Aiken, South Carolina.

Richard Oxendine - Direct Examination by Mr. Maye

1 Q Okay. Let me ask you this: How long have you been
2 working for the Sheriff here, Sheriff Dobey here in
3 Edgefield County?

4 A Approximately three-and-a-half years.

5 Q Three-and-a-half years. And you were, back on May
6 the 11th of 2013, you were employed in what capacity by the
7 sheriff's office?

8 A I was a sheriff's deputy on road patrol.

9 Q Tell the ladies and gentlemen of the jury the
10 circumstances that brought you out to the area where you
11 encountered the defendant in this case, Mr. James. Tell
12 them where you went and what you responded to.

13 A All right. We received a call from our dispatch
14 for a disturbance at [REDACTED]. We were advised
15 that the complainant on the scene, the victim, Ms. Theora
16 Gray, she advised the dispatch that --

17 MR. CASTO: Objection. Calls for hearsay.

18 THE COURT: Sustained.

19 MR. MAYE: Your Honor, the only thing I would say
20 is I'm asking him just to respond to the police report, not
21 the substance of what anybody said, what the nature of the
22 call was.

23 THE COURT: He can say what he --

24 BY MR. MAYE:

25 Q What was the nature of the call? Not going into

Richard Oxendine - Direct Examination by Mr. Maye

1 what anybody else said specifically. What type of
2 disturbance was it?

3 A The nature of the call was a disturbance involving
4 the defendant, Ira James, yelling, screaming, and throwing
5 beer bottles, is what we were told.

6 Q All right. So -- let me ask you -- let me show you
7 a couple of photographs here.

8 MR. MAYE: Madame Court Reporter, could you mark
9 these four items?

10 (WHEREUPON State's Exhibits 1, 2, 3, and 4 were
11 marked for identification.)

12 BY MR. MAYE:

13 Q Officer Oxendine, let me show you four photographs
14 marked States 1, 2, 3, and 4. Let me ask you if those
15 fairly and accurately depict the area in and around [REDACTED]

16 [REDACTED]
17 A They do.

18 Q Okay. Tell the ladies and gentlemen of the jury,
19 from uptown in Johnston, how do you get to [REDACTED]
20 [REDACTED]? You're up there right at the square in Johnston.

21 A The easiest way is to turn by the Herlong
22 dealership, which is McCreight Road. You can go straight
23 up to Yonce Pond. Or you can turn down Edisto across from
24 the Triangle, and it turns into Waterworks once you get out
25 of the city. That also runs right into Yonce Pond.

Richard Oxendine - Direct Examination by Mr. Maye

1 There's several ways to get out, back that way.

2 Q Okay. Come off the stand, if you would, and just
3 show the ladies and gentlemen of the jury where you were
4 talking about, where you pulled up to, and where [REDACTED] is
5 utilizing these four photographs. If you refer to the
6 photograph, state by number which one you're referring to.

7 A On No. 4, it shows the residence right here at [REDACTED]

8 [REDACTED]. My patrol car was positioned
9 approximately in this area next to this ditch.

10 No. 3, pretty much the same picture, except more
11 drawn out. Again, we were right here in this area.

12 This picture is just from farther back. This is
13 Exhibit 2. You can see the residence on the other side of
14 this white fence. This is drive [REDACTED], and that's the
15 driveway for [REDACTED]. We were parked in between this drive --
16 between the two driveways.

17 And in Exhibit 1, another picture of the car, which
18 fence, driveway to [REDACTED] and driveway [REDACTED] were the two
19 driveways.

20 Q Thank you. Come back and retake the stand, please.

21 Paint a picture for the jury. What happens when
22 you get up there and initially respond to what you've been
23 told is basically a domestic disturbance?

24 A I arrive on scene, and I see Mr. James in the
25 roadway, shouting and hollering. He appears to be visibly

Richard Oxendine - Direct Examination by Mr. Maye

1 intoxicated. I looked over towards the residence. There's
2 several people outside. There's children and other family
3 members, and they're over there packing a vehicle. That's
4 when I made contact with the complainant in this case, Ms
5 Gray.

6 Q Okay. I'm going to stop you right here and ask you
7 a couple of things. The first one's going to sound
8 absolutely silly for everybody that lives here in
9 Edgefield, but the incident at [REDACTED], that
10 area of the roadway where you saw the defendant Mr. James
11 in this case, what county is that in?

12 A It is in Edgefield County.

13 Q That's in Edgefield. Okay. And you already
14 referred to the defendant in this case, Mr. James. Is he
15 present here in the courtroom today?

16 A He is.

17 Q Could you please point him out, describe how he's
18 dressed, and say where's he's seated?

19 A The gentlemen over here next to Mr. Casto in the
20 purple shirt and tie.

21 MR. MAYE: Your Honor, I'd just like for the record
22 to reflect he's identified the defendant in this case, Mr.
23 Ira James.

24 THE COURT: The record will so reflect.

25 MR. MAYE: Thanks.

Richard Oxendine - Direct Examination by Mr. Maye

1 BY MR. MAYE:

2 Q All right. Let me ask you this. What information
3 did you collect from his mother in this case? And tell me
4 about what her state was? What was she acting like? And
5 what condition or state was she in when you began to talk
6 to her?

7 A She was just saying that he needed to --

8 Q I wanted to ask you this, what kind of state was
9 she in? What was her condition at this point in time? And
10 how did she speak and talk with you?

11 A She was upset. She was physically bothered,
12 shaking, and just wanted the incident deescalated. She
13 wanted Mr. James to leave.

14 Q So you maintain that she -- was she excited --

15 A Yes.

16 Q -- and upset when she talked with you?

17 A She was.

18 Q Okay. And you said visibly so?

19 MR. MAYE: Your Honor, at this point, we offer this
20 as an excited utterance, uttered in the officer's presence,
21 as an exception to hearsay, and would ask that he be
22 allowed to proffer the information that she provided to him
23 in that excited state.

24 THE COURT: Mr. Casto?

25 MR. CASTO: We would respectfully object, Your

Richard Oxendine - Direct Examination by Mr. Maye

1 Honor. Ultimately that rule is limited to the idea that
2 excited utterances section almost bypasses the mind. It
3 just flows. Law enforcement's already on the scene in this
4 case, so we believe it's more of a thought at this point
5 and it would be hearsay.

6 THE COURT: I'm going to overrule. I'm going to
7 allow it.

8 BY MR. MAYE:

9 Q Just as to the limited information that she
10 provided you in that excited state about what she wanted to
11 take place there and what she wanted you to do, what did
12 she say?

13 A That Mr. James was intoxicated and had caused a
14 disturbance, and she wanted him to leave. He could not
15 stay there with them because he was causing too much of a
16 problem at the residence.

17 Q Okay. Now, officer, I would assume that would be
18 among the more frequent call you get at the Sheriff's
19 Department, to go out and diffuse situations like that, on
20 a 9-1-1 call?

21 A Yes, sir.

22 Q Now, you've already told the ladies and gentlemen
23 of the jury that he's out in the roadway and you know he's
24 excited and upset. What do you do to try to diffuse the
25 situation and to try to do something to affect getting him

Richard Oxendine - Direct Examination by Mr. Maye

1 out of there? What's the steps that you take at that point
2 in time?

3 A I coral him over towards the patrol vehicle,
4 talking to him, trying to get him to calm down. Attempt to
5 deescalate the situation.

6 Q You said, "deescalate?"

7 A Deescalate.

8 Q So make --

9 A Try to smooth things out and just try to --

10 Q Okay. All right.

11 A -- lessen the problem.

12 Q Were you successful in the state that he was in?

13 A No.

14 Q Okay. What did you tell him you were going to do
15 at that point in time?

16 A I advised him I was going to pat him down.

17 Q Now, why would you pat him down? What's the
18 purpose of you patting him down at that point in time?

19 A Make sure there's no weapons, knives, guns,
20 anything that could harm me.

21 Q Okay. Did you get a chance to even do the pat down
22 in this case? Once you told him you were going to pat him
23 down, what happened.

24 A As soon as I reached for the pat down, he began
25 spinning and began throwing objects out of his pocket. I

Richard Oxendine - Direct Examination by Mr. Maye

1 was within arm's reach of him, between -- it was me, then
2 him, then the patrol vehicle. Some of the items that was
3 thrown, some of the items were a pack of cigarettes, trash,
4 just whatever was in his pockets, he was throwing it out as
5 he was spinning. So I gained control of him and placed him
6 in cuffs at that point.

7 Q Okay. You couldn't see exactly what it was he was
8 tossing. You could just tell that he was tossing items
9 from his pocket, right?

10 A I was not able to identify anything.

11 Q Okay. Did you then take charge and custody of him?

12 A I did.

13 Q Okay. You placed the handcuffs on him because you
14 placed him under arrest. What did you place him under
15 arrest for?

16 A Disorderly conduct.

17 Q Okay. Now, when we first got there, was Officer
18 McCary right there with you? Or did he come up a little
19 bit after?

20 A He arrived shortly after I did as I was beginning
21 to speak with and attempt my pat down on Mr. James.

22 Q All right. Where was he walking up from while you
23 were there with him? You had told the ladies and gentlemen
24 of the jury that you went to pat him down or you were going
25 to pat him down and that he starts chunking stuff out of

Richard Oxendine - Direct Examination by Mr. Maye

1 pocket. Where was McCary coming up in relation to where
2 you were attempting to pat him down?

3 A Deputy McCary parked his patrol vehicle directly
4 behind mine, basically from the driver's side towards
5 the -- towards the back of my patrol car. So he would be
6 approaching -- if I'm facing y'all, he was coming from this
7 direction up behind Mr. James. Mr. James was facing me
8 before he started spinning.

9 Q Is it fair to say that he had a different vantage
10 point than you?

11 A He did.

12 Q Okay. What was the next thing that happened after
13 you got the handcuffs on him and got him in custody there
14 for disorderly? What was the next thing that happened?

15 A I got control of him. I was getting ready to put
16 him in the vehicle --

17 Q Now, did you subsequently pat him down at that
18 point in time once you got handcuffs on him?

19 A I searched him incident to arrest at that point to
20 make sure it was definitely all gone.

21 Q And he didn't have anything right? His pockets
22 were empty at that point? By that time?

23 A Yes.

24 Q Okay. What interaction is there between the three
25 of you? And what do you see? Not what Officer McCary

Richard Oxendine - Direct Examination by Mr. Maye

1 said, but what do you see him do?

2 A Officer McCary?

3 Q Yes. What does he do?

4 A He's fumbling around behind, and he picks up this
5 tin can and brings it to my attention.

6 Q Okay. Where does he sit and place the tin can down
7 at?

8 A He sits the tin can on the trunk of my car.

9 Q Okay. Is that within your field of view at that
10 point in time?

11 A It is.

12 Q Okay. Is the defendant in this case, is he right
13 there next to you?

14 A He's -- I don't recall. He was either standing up,
15 or he was sitting down in the vehicle.

16 Q Okay.

17 A But he was within, where he can see me.

18 Q He can see what is taking place?

19 A Yes, sir.

20 Q Okay.

21 MR. MAYE: Your Honor, I think out of an abundance
22 of caution, I just have one matter we ought to take up
23 outside of the presence of the jury, given the fact that he
24 said he was in custody.

25 THE COURT: All right. This is a good time to take

Richard Oxendine - Proffer - Direct Examination by Mr. Maye

1 a recess. Ladies and gentlemen, I'm going to send y'all
2 out and you can have a cup of coffee. If you need to
3 smoke, somebody will take you outside to smoke.

4 Please do not discuss anything about the case while
5 you're back there.

6 (WHEREUPON, the jury left the courtroom at 10:53
7 a.m.)

8 THE COURT: All right, sir.

9 MR. MAYE: Your Honor, just extremely briefly
10 because I know we need to go through this inquiry.

11 **PROFFER OF TESTIMONY - DIRECT EXAMINATION**

12 BY MR. MAYE:

13 Q Now, at this point in time, the defendant in this
14 case, he was in custody. Correct? You had handcuffs on
15 him, and you placed him under arrest for disorderly,
16 correct?

17 A Yes.

18 Q Okay. You had not advised him of his Miranda
19 Rights at that point in time, had you?

20 A No.

21 Q Okay. When the can was placed up on the -- the tin
22 was placed up on the trunk lid, did he start to say
23 something? And what did he say when the can was placed up
24 on the trunk lid?

25 A He started saying that it wasn't his. He just

Richard Oxendine - Proffer - Direct Examination by Mr. Maye

1 said, "It's not mine! That's not mine! What's that?

2 That's not mine!" We didn't question him about it. We
3 didn't ask anything about it.

4 Q So it was not in response to any questions, it was
5 a spontaneous utterance on his part?

6 A Correct.

7 Q Okay. Did you threaten him, or coerce him, or do
8 anything to influence his decision as to whether or not he
9 made any statements at all?

10 A No, I didn't.

11 Q Did Officer McCary do so in your presence?

12 A No. He did not.

13 Q But he was in custody, but the statements that he
14 made were not in response to any questioning by you or
15 Officer McCary or anybody else there on the scene; is that
16 correct?

17 A Correct.

18 MR. MAYE: Your Honor, for the purposes of a very
19 abbreviated Jackson versus Denno Hearing, the State would
20 offer that he was in custody, which would subject this to a
21 Jackson versus Denno inquiry, but the officer has testified
22 in this case that it was not the subject of any
23 interrogation, that it was merely a spontaneous utterance
24 on the part of the defendant. I would certainly leave it,
25 if the defense would like to call any witnesses to rebut

Richard Oxendine - Proffer - Cross-Examination by Mr. Casto

1 that for the purposes of a Jackson versus Denno Hearing.

2 We offer the officer for cross examination and give
3 him the opportunity to hear any reply.

4 THE COURT: Mr. Casto?

5 MR. CASTO: I beg the Court's indulgence.

6 THE COURT: Yes, sir.

7 MR. CASTO: Just very briefly, Your Honor.

8 THE COURT: Yes, sir.

9 **PROFFER OF TESTIMONY - CROSS-EXAMINATION**

10 BY MR. CASTO:

11 Q As far as the timeline of events that night, I mean
12 ultimately you go out there and you approach him and then
13 did -- was the tin can found before he was in custody or
14 after?

15 A I was placing him in custody, and I had already put
16 the cuffs on him, and I was either putting him in the car
17 or sitting him against the car whenever -- he was already
18 in custody by the time I was made aware of the tin can.

19 Q Okay. Okay. I was just curious.

20 MR. CASTO: Your Honor, that -- those were all of
21 the questions that I have. At this point, I would like to
22 renew our motion made at pretrial with regards to these
23 statements, Your Honor.

24 THE COURT: All right. All right. I'm going to
25 continue to overrule. I think, as long as it was not

Richard Oxendine - Proffer - Cross-Examination by Mr. Casto

1 subjected -- they didn't ask him, "Is that yours?" They
2 didn't make any statement. They're putting him -- right in
3 the process of putting him in custody, he makes an
4 utterance that is unsolicited. I'm going to allow him to
5 testify to it.

6 MR. MAYE: Thank you, Your Honor. I just knew
7 since he was in custody we needed to have a Jackson versus
8 Denno.

9 THE COURT: All right. Why don't we go ahead and
10 take a five minute recess too.

11 MR. MAYE: Officer, don't talk to anybody about
12 your testimony.

13 THE COURT: Yeah, you're on the stand so you can't
14 speak with anybody.

15 (WHEREUPON a brief recess was observed.)

16 THE COURT: Anything that we need to take up before
17 we bring the jury back out?

18 MR. MAYE: Nothing from the State, Your Honor.

19 THE COURT: All right. Thank you, let's bring our
20 jury back in.

21 (WHEREUPON the jury entered the courtroom at 11:12
22 a.m.)

23 THE COURT: Any objection to those photos?

24 MR. CASTO: No, sir, Your Honor.

25 (WHEREUPON State's Exhibits 1, 2, 3, and 4 were

Richard Oxendine - Continued Direct Examination by Mr. Maye

1 entered into evidence.)

2 THE COURT: All right. Solicitor, you may
3 continue.

4 MR. MAYE: Thank you.

5 **DIRECT EXAMINATION - CONTINUED**

6 BY MR. MAYE:

7 Q Officer Oxendine, we stopped you before. You were
8 at the point in time where Officer McCary called over and
9 put the tin on the trunk lid of the car. You had the
10 defendant, Mr. James, in custody at that point in time.
11 What happened from that point in time -- he's in custody,
12 correct?

13 A Correct.

14 Q Okay. What happened when Officer McCary came up
15 and placed that tin up onto the trunk lid in his view?
16 What was the next thing that happened?

17 MR. CASTO: We would just renew our objection.

18 THE COURT: Overruled.

19 MR. CASTO: Yes, Your Honor.

20 BY MR. MAYE:

21 Q What's the next thing that happened?

22 A Once the tin can was brought to my attention as
23 well as Mr. James, he started just saying, "It's not mine.
24 I don't know what that is. It's not mine." Over and over
25 and over again. We didn't ask him about anything; we

Richard Oxendine - Continued Direct Examination by Mr. Maye

1 didn't question him about it.

2 Q Now, was the tin open or closed at the point in
3 time that he started hollering about it, "That's not mine?"

4 A It was closed, and that's when it really raised my
5 suspicion.

6 Q Okay. Y'all hadn't said anything to him about
7 where you obtained the item or anything else?

8 A No, sir.

9 Q You just put it down, and he started talking about
10 it?

11 A Correct.

12 Q Did you threaten him? Did you coerce him? Did you
13 do anything in order to try to get him to make any
14 statements?

15 A No, sir.

16 Q Did y'all ask him any questions? Did y'all put it
17 up there and go, "What is this?" Or did you ask him
18 anything at all?

19 A No, sir.

20 Q He just started spontaneously saying that when the
21 tin appeared?

22 A Correct.

23 Q Okay. What did y'all do with the items that were
24 there? Once y'all get him in the car and place the tin out
25 there, what did you and Officer McCary do with that tin

Richard Oxendine - Continued Direct Examination by Mr. Maye

1 that he's excited and upset about?

2 A We opened it and found a substance.

3 Q Okay. Based on your experience and training, what
4 did you believe it to be based on your observation out
5 there?

6 A It appeared to be a white, rock-like substance. I
7 believed it to be crack cocaine.

8 Q Okay. Officer Oxendine, let me show you this item
9 right here.

10 MR. MAYE: Let me have it marked as a State's
11 exhibit.

12 (WHEREUPON State's Exhibit No. 5 was marked for
13 identification.)

14 BY MR. MAYE:

15 Q I'm going to show you what's been marked as State's
16 Exhibit No. 5. I ask you to take a look at that item and
17 see if you can tell us what that is.

18 A It is the small tin can that we found that night,
19 that Deputy McCary found and brought to my attention. It
20 appears that there might have been some kind of breath
21 mints or something used to be in it previously, before it
22 was used for the other items.

23 Q Okay. And that's the tin that y'all found there,
24 or Officer McCary located at the scene?

25 A This is.

Richard Oxendine - Continued Direct Examination by Mr. Maye

1 Q Okay. That is it. What is written on it?

2 A It says, "Aleta Sweet 16, April 30, 2011."

3 Q Okay. All right. And you're certain that that's
4 it? That's the item that you retrieved?

5 A Correct.

6 MR. MAYE: Your Honor, at this point in time, I'm
7 going to offer that item into evidence.

8 THE COURT: Any objections?

9 MR. CASTO: No sir, Your Honor.

10 THE COURT: Without objection, admitted as number
11 what?

12 THE COURT REPORTER: 5.

13 THE COURT: No. 5. Thank you.

14 MR. MAYE: Just mark this for ID only.

15 (WHEREUPON State's Exhibit No. 6, was marked for
16 identification.)

17 BY MR. MAYE:

18 Q I'm going to show you State's Exhibit No. 6, just
19 for identification purposes at this point in time. I'll
20 ask you, looking at the sealed evidence and the information
21 that's there, is that the rock-like substance that was
22 seized out of that tin on that day, just for
23 identification?

24 A That is correct.

25 Q Okay. Thank you.

Richard Oxendine - Continued Direct Examination by Mr. Maye

1 MR. MAYE: That's State's Exhibit 6.

2 THE COURT: Any objections?

3 MR. CASTO: If I could just see it?

4 (WHEREUPON the attorneys were conferring briefly.)

5 MR. CASTO: Yes, sir.

6 BY MR. MAYE:

7 Q Officer Oxendine, the tin and the items in 6 that
8 are for ID at this point in time, the substance you
9 believed to be crack, did you turn that over to
10 Investigator Young subsequently on the 13th?

11 A I did.

12 Q Okay. Did you change or alter them in any way from
13 the time that you had them in your custody until on the
14 13th when you turned them over to narcotics Sergeant Young?

15 A Other than the field test that was taken the next
16 day, the items were not moved or messed with at all.

17 Q All right. So you didn't change or alter them in
18 any way?

19 A No, sir.

20 Q From the time that you had them, other than y'all
21 performed a field test to help you verify your suspicions.
22 Correct?

23 A Correct.

24 Q Okay. Was the tin, the item seized and picked up
25 by Officer McCary, was that there in your presence as well?

Richard Oxendine - Continued Direct Examination by Mr. Maye

1 When it was picked up there at the scene and brought back
2 over to the trunk of the car?

3 A Yes, sir.

4 Q Okay. Let me ask you this, Officer Oxendine. As a
5 result of you taking these items into custody, did you take
6 some photographs of the items for scale when you got them
7 back to the sheriff's office?

8 A I did.

9 MR. MAYE: Would you mark these for me, please.

10 (WHEREUPON State's Exhibits 7, 8, 9, and 10 were
11 marked for identification.)

12 BY MR. MAYE:

13 Q Okay. I'm going to show you at this point in time,
14 Officer Oxendine, State's 9, 7, 8, and 10. I ask you if
15 those fairly and accurately reflect the photographs that
16 you took there of the tin and the item that you suspected
17 was crack cocaine at the time?

18 A They do.

19 Q Okay.

20 MR. MAYE: I move to admit those into evidence at
21 this point in time.

22 THE COURT: Any objections?

23 MR. CASTO: None, Your Honor.

24 THE COURT: Without objection, this would be
25 State's Exhibit 7 --

Richard Oxendine - Continued Direct Examination by Mr. Maye

1 THE COURT REPORTER: 7, 8, 9, and 10.

2 THE COURT: 7, 8, 9, and 10.

3 (WHEREUPON State's Exhibits 7, 8, 9, and 10 were
4 entered into evidence.)

5 BY MR. MAYE:

6 Q Officer Oxendine, based on your preliminary
7 weighing of the items and your belief that it was crack
8 cocaine, did you seek a warrant in this case?

9 A We did.

10 Q You got -- you actually got a warrant in this case?

11 A I did. Yes, sir.

12 Q Okay. Your initial belief was that it was in
13 excess of ten grams; is that correct?

14 A Correct.

15 Q Okay. So your initial warrant was for trafficking
16 in this case, but it was subsequently changed when you got
17 a weight from SLED for the charge which he now faces,
18 possession with intent to distribute? Correct?

19 A Correct.

20 MR. CASTO: Objection. We have a matter of law.

21 THE COURT: Excuse me?

22 MR. CASTO: Objection. We have a matter of law.

23 THE COURT: Okay. All right. Sustained.

24 You have a matter of law to take up?

25 MR. CASTO: Yes, sir.

Richard Oxendine - Continued Direct Examination by Mr. Maye

1 THE COURT: Oh, okay. Y'all want to come over here.
2 to the side.

3 (WHEREUPON there was a bench conference out of the
4 hearing of the jury and the court reporter.)

5 THE COURT: All right.

6 MR. MAYE: Thank you.

7 BY MR. MAYE:

8 Q Officer Oxendine, let me ask you this. Why -- what
9 was your determination in making the charge in this case
10 for possession with intent to distribute rather than merely
11 possession in this case, in regard to the weight of the
12 items that you eventually received?

13 A Based off just the weight of eight grams, the law
14 is anything over one gram is possession with intent to
15 distribute. It was based all on weight alone.

16 MR. CASTO: Objection.

17 THE COURT: Sustained. I'll tell them what the law
18 is.

19 BY MR. MAYE:

20 Q It was in excess of one gram, so you charged him
21 with PWID?

22 A Correct.

23 Q Rather than just simple possession or mere
24 possession?

25 A Correct.

Richard Oxendine - Cross-Examination by Mr. Casto

1 Q Okay. So, from the scene there, where did you
2 transport Mr. James to?

3 A He was taken to the Edgefield County Detention
4 Center.

5 Q Okay. Answer any questions the Defense has for
6 you.

7 THE COURT: Mr. Casto.

8 MR. CASTO: Thank you.

9 **CROSS EXAMINATION**

10 BY MR. CASTO:

11 Q Officer Oxendine, how are you?

12 A Good. How are you.

13 Q Just fine. Tell me this, what was the total number
14 of officers that responded? Was it -- it wasn't just you
15 and Officer McCary, was it?

16 A Correct.

17 Q How many other officers responded?

18 A One other came after the fact.

19 Q Who was that?

20 A Deputy Moyer.

21 Q Okay. And he was on scene as well?

22 A He was.

23 Q Did you drive separate? Or did you -- did
24 anybody -- everybody brought their own law enforcement
25 vehicle? Or do you recall?

Richard Oxendine - Cross-Examination by Mr. Casto

1 A Everybody was in their own vehicle.

2 Q Okay. So that's three officers, three separate law
3 enforcement vehicles, right?

4 A Correct.

5 Q As testified, you didn't see, specifically, Ira
6 toss down this tin; is that right?

7 A I did not.

8 Q Okay. You know that this tin that was recovered,
9 even after Officer McCary essentially saw it, it's
10 submitted to SLED, right?

11 A Correct.

12 Q And it was submitted to SLED to perform tests. And
13 one of those tests is fingerprinting, right?

14 A Correct.

15 Q And you're aware that, on the tin, that no
16 fingerprints were recovered from outside of the -- on the
17 outside of this?

18 A Correct.

19 Q And there's one bag inside that tin containing a
20 rock. Right?

21 A Correct.

22 Q And even that bag was tested by SLED for
23 fingerprints, correct?

24 A Correct.

25 Q And that bag's kind of, kind of sizeable. But the

Richard Oxendine - Cross-Examination by Mr. Casto

1 bag's tested, and no fingerprints are found on the bag;
2 isn't that right?

3 A Correct.

4 Q Okay. So despite what the Officer McCary says that
5 he saw, it was still, in spite of that, it was still
6 submitted to SLED for fingerprint testing. Right?

7 A Correct. That's the policy.

8 Q The other question I have is -- the results of the
9 fingerprints come back as negative, then there wasn't any
10 attempt to submit this for DNA testing, was there?

11 A Not to my knowledge.

12 Q By you or any other officer that you know of?

13 A Not to my knowledge.

14 Q Okay. And you would agree, I mean, DNA testing is
15 done -- if I touch this bench right here, there,
16 essentially, at the microscopic level, there's skin cells
17 that we all have that are left on it; is that right?

18 A To a degree.

19 Q And, you know, essentially those can be tested for
20 DNA thanks to modern science. Right?

21 A I'm not certified in the area of that, so I don't
22 know.

23 Q But you're aware in the sense that -- so you submit
24 evidence to SLED to test for DNA?

25 A We do.

Richard Oxendine - Cross-Examination by Mr. Casto

1 Q And they do it all the time. I mean that's --
2 y'all don't do that in-house. It's sent to SLED, right?

3 A (The witness nodded head.)

4 Q I mean, this wasn't done in this case by you or any
5 other officer?

6 A Sent off? No. It was not sent off by me.

7 Q Okay. And it wasn't tested, that you know of, for
8 DNA? By you or any other officer?

9 A Not that I'm aware of. No.

10 Q Now, the reason I ask about the law enforcement
11 vehicles, it's commonplace now to have a camera outfitted
12 in each vehicle. Is that standard?

13 A It's agency-dependent. At that time, my vehicle
14 was not equipped with a dash camera.

15 Q Can you speak to what the other officers, whether
16 their vehicle was equipped with that or not?

17 A I believe Deputy McCary's may have, and I'm not
18 sure about Deputy Moyer's.

19 Q Because, you know, the law in South Carolina is,
20 let's say for a DUI stop, that those cases, by law they
21 have to be videotape-recorded. Right?

22 A For DUI law. Correct.

23 Q And, you know -- but what I'm talking about is the
24 capability that those cars do have that. And the other
25 cars may have had it. You don't know?

Richard Oxendine - Cross-Examination by Mr. Casto

1 A Correct.

2 Q And you know, you had -- I noticed today that you
3 have your communication device on your shoulder. What do
4 y'all call that?

5 A A mic.

6 Q Okay. You call it the mic. It -- ultimately that
7 can record your interaction with someone else. Right?

8 A That would talk to -- this is our direct key to our
9 radio. Keying this up and holding it down would shut out
10 all of the traffic. That's not something we commonly do at
11 all.

12 Q But when somebody is, you know -- when those law
13 enforcement vehicles' cameras are playing, you know, you
14 can hear the officer speaking oftentimes. And that's
15 because there's something on the officer that communicates
16 that back to the video, right?

17 A A separate mic.

18 Q And there wasn't any type of audio recording in
19 this case because there was no video. Right?

20 A Correct.

21 Q The nature of this call was a disturbance. Right?

22 A Correct.

23 Q No more, no less. And that's what you testified
24 to. Right?

25 A (The witness nodded head.)

Richard Oxendine - Cross-Examination by Mr. Casto

1 Q Okay. And in addition to finding this tin with the
2 contents inside, you only had one bag containing one rock
3 inside; isn't that right?

4 A Correct.

5 Q You didn't find multiple types of drugs or anything
6 like that, right?

7 A No.

8 Q Test it. It's crack cocaine. Right?

9 A Correct.

10 Q And you didn't find any -- it sounds silly to say
11 scales. But you didn't find any of those pocket digital
12 scales at all?

13 A No, sir.

14 Q You didn't find any large sums of money in this
15 case?

16 A No, sir.

17 Q No weapons involved?

18 A None.

19 Q Didn't find separate baggies that contained, you
20 know, bits and separate pieces of crack inside, in this
21 case, at all?

22 A No.

23 Q And based on your training and experience, I mean,
24 that would indicate to you, you know, separate bags
25 containing separate pieces of drugs would indicate sales or

Richard Oxendine - Redirect Examination by Mr. Maye

1 distribution, right?

2 A Correct.

3 MR. CASTO: No further questions. Thank you,
4 Officer.

5 THE COURT: Any Redirect?

6 MR. MAYE: Just a couple.

7 THE COURT: All right.

8 **REDIRECT EXAMINATION**

9 BY MR. MAYE:

10 Q Officer, you work a variety of cases, property
11 crimes and everything else as part of your duties and
12 training as a deputy; right?

13 A Yes, sir.

14 Q Fingerprints are not a very common thing to
15 actually get print evidence. It has to be exceptional
16 circumstances. Doesn't it?

17 A Correct.

18 Q Okay. And you were asked about that tin being
19 submitted. They didn't find any print evidence from
20 anybody on that tin. Did they?

21 A Not at all.

22 Q And quite obviously, unless it levitated there, it
23 got there somehow. Somebody put it there. That's an
24 example of an item that sometimes you just don't get any
25 print evidence off. It's hit or miss?

Richard Oxendine - Redirect Examination by Mr. Maye

1 A Correct.

2 Q Okay. That doesn't surprise you at all, does it?

3 A Not at all.

4 Q Okay. Officer, let me ask you this: They asked
5 you whether or not you found any scales or money or
6 multiple baggies or anything. And you told them you did
7 not. Correct?

8 A We did not.

9 Q But you did find more than eight times that
10 threshold level in regard to weight where there's an
11 inference level for possession with intent to distribute?

12 A The charge was made purely made off the amount, the
13 weight, of the controlled substance.

14 Q Thanks.

15 THE COURT: Any recross?

16 MR. CASTO: No, sir, Your Honor.

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

18 MR. MAYE: The State calls Mr. McCary to the stand.

19 THE COURT: All right. Officer Julian McCary.

20 JULIAN MCCARY,

21 HAVING BEEN SWORN, TESTIFIES AS FOLLOWS:

22 THE CLERK: Have a seat. State your full name, and
23 spell your last name please.

24 THE WITNESS: Julian McCary. Last name

25 M-C-C-A-R-Y.

Julian McCary - Direct Examination by Mr. Maye

DIRECT EXAMINATION

BY MR. MAYE:

Q Officer McCary, tell the ladies and gentlemen of the jury where you're from?

A I am from Saluda County, South Carolina.

Q You grew up in Saluda. Where'd you go to school and all over there?

A I graduated from Saluda High School in 2003.

Q Okay. How long have you been working for Sheriff DobeY here at the sheriff's office?

A I started in late 2008, so around six years.

Q About six years. And on the night of May the 11th of 2013, were you working on road patrol here in the county?

A Yes, sir.

Q Did you have an occasion to go out on that late afternoon of the 11th at about 8 o'clock to assist and back-up Officer Oxendine?

A Yes, sir.

Q Okay. Please tell the ladies and gentlemen of the jury what happened when you got out there to [REDACTED]

[REDACTED] Who did you see, and what was happening?

A Well, when I arrived, which was about five minutes after Deputy Oxendine, I got out of my patrol vehicle, and Deputy Oxendine and the defendant were at the back of his

Julian McCary - Direct Examination by Mr. Maye

1 car on the passenger side. At that time, I heard Deputy
2 Oxendine tell the defendant --

3 MR. CASTO: Objection. Calls for hearsay.

4 THE COURT: Sustained.

5 BY MR. MAYE:

6 Q What did you see? Given the interaction between
7 the two of them, what did you see the defendant in this
8 case do? Based on the interaction between the two of them?

9 A When I put -- whenever I approached them, he was
10 acting kind of belligerent toward Oxendine. You know, he
11 asked --

12 Q Don't say what he said. Just, as a result of what
13 he said to him, what did Mr. James do?

14 A He started spinning around. He didn't want to
15 cooperate.

16 Q What did he do as he was spinning around?

17 A When he was spinning around, he started dumping
18 things out of his pockets. The only thing I could visibly
19 see was a small metal-type can.

20 Q Okay. Let me get these photographs here, the area
21 around [REDACTED]. Okay, come off the stand here,
22 and look at these four photographs of the area around Yonce
23 Pond Road.

24 Tell the ladies and gentlemen about where you
25 encountered and about where you saw him throw the tin

Julian McCary - Direct Examination by Mr. Maye

1 there. And if you utilize any of those photographs, just
2 refer to them by number. The numbers are on the back.

3 A Exhibit No. 1, we were around this area right here.
4 So the tin was right in this ditch right in here. In No.
5 2, it would be right in here. No. 3, right around here.
6 And No. 4, right in here.

7 Q Okay. Go back up there and take the stand.

8 So Officer, from your vantage point, are you
9 absolutely certain that you saw him throw the metal can
10 down?

11 A Yes, sir. Without a doubt.

12 Q Let me show you what's already in evidence as
13 State's Exhibit 5. Is that the can you saw him toss from
14 his pocket there --

15 A Yes, sir.

16 Q -- when he was interacting with Officer Oxendine?

17 A Yes, sir.

18 Q Okay. You're certain of that?

19 A I'm certain.

20 Q Okay. What did you do after you saw him spinning
21 around and toss that can down? What did you do?

22 A Well when I went up after he tossed the can, I went
23 to assist Deputy Oxendine. After he was placed in
24 handcuffs, I went to the ditch, and I retrieved the can. I
25 placed it on the trunk of the car. Before we actually

Julian McCary - Direct Examination by Mr. Maye

1 placed him in the car, he observed the can, and he started
2 uttering, you know, "It's not mine."

3 MR. CASTO: We renew our objection at this time.

4 THE COURT: All right. Overruled.

5 BY MR. MAYE:

6 Q Did you open that tin up at that point in time?

7 A No, sir.

8 Q Okay. You just put it on the trunk lid, and he
9 started saying, "That's not mine?"

10 A That's correct.

11 Q Did he say it one time or multiple times?

12 A Multiple times.

13 Q Okay. After y'all got him into the car, what did
14 y'all do with that tin that he was excited about?

15 A After he was placed in the car, Deputy Oxendine
16 took control of the can. He opened the can, and both of us
17 observed a white, rock-like substance that we believed to
18 be crack cocaine.

19 Q Okay. As you picked it up from the ditch and put
20 it on the trunk of the car, did you change or alter it in
21 any way?

22 A No, sir. Not at all.

23 Q Okay. Did Officer Oxendine take custody and
24 control of that item at that point in time, with the
25 substance that you believed to be crack cocaine?

Julian McCary - Direct Examination by Mr. Maye

1 A Yes, sir.

2 Q Okay. He took it there away from the scene on the
3 11th?

4 A Yes, sir.

5 Q Okay. Did you go back with him to the sheriff's
6 office when he took the photographs of the items?

7 A No, sir. I don't believe I did.

8 Q Okay. All right. Let me ask you this. Are you
9 absolutely certain that the defendant in this case, Mr.
10 James, threw down that tin with the subsequent rock-like
11 substance there in your presence? You're absolutely
12 certain?

13 A Yes, sir. I saw it with my own eyes. Yes, sir.

14 Q Okay. Was there anybody else there in that
15 immediate vicinity around where that can was or where he
16 was at the time you saw him throw it down?

17 A No, sir. The only people were at the house, and
18 they were probably a good 30 or 40 yards away.

19 Q Okay. Was your vantage point different from
20 Officer Oxendine? Where were you coming from? Did you
21 have a better opportunity to view and see him than Officer
22 Oxendine did?

23 A When he started spinning around, Oxendine was kind
24 of sort of behind him, so I had a more direct view as his
25 stance.

Julian McCary - Cross-Examination by Mr. Casto

1 Q Okay. Answer any questions the Defense has.

2 THE COURT: Mr. Casto?

3 MR. CASTO: Thank you.

4 CROSS EXAMINATION

5 BY MR. CASTO:

6 Q Officer McCary, how are you?

7 A Pretty good, sir. Thank you.

8 Q Your testimony is that Officer -- that you're the
9 one that saw what Officer Oxendine didn't see. Is that
10 right?

11 A That's correct.

12 Q That he -- as I understand it, he's standing right
13 with Ira as you're walking up; is that right?

14 A Yes, sir.

15 Q And that is -- adequately covers where you all were
16 standing, correct? As you testified to?

17 A That's correct.

18 Q This is around -- I believe that the response time,
19 correct me if I'm wrong, about 8:30. Is that fair?

20 A I believe so.

21 Q And, now, at any point in the evening, I believe
22 that Ira's brother was -- he was out there. Wasn't he?

23 A I later found out he was out there.

24 Q Okay. Now, despite what you testified to with
25 regard to seeing this object fly to the ground, it was

Julian McCary - Cross-Examination by Mr. Casto

1 still submitted to SLED for fingerprint testing. Right?

2 A Yes, sir.

3 Q Okay. And you're aware the results didn't find any
4 fingerprints on the can and the bag containing the crack
5 inside. Right?

6 A Right.

7 Q Okay. Despite seeing what you know that you saw,
8 it was still submitted to SLED. Right?

9 A Yes, sir.

10 Q And it was never DNA tested; isn't that right?

11 A Not to my knowledge.

12 Q Do you know why it wasn't DNA tested?

13 A I have no idea.

14 Q It's my understanding that there is no video or
15 audio of this entire encounter, whatsoever, from that
16 evening?

17 A No, sir.

18 Q And if we had those things, we could actually see
19 everything, or at least hear what's going on, perhaps more
20 clearly; isn't that right?

21 A That's correct.

22 Q And, very briefly, talking about things that wasn't
23 found at all. Did you find weapons that evening?

24 A No, sir.

25 Q You looked inside the can, and you found that it

Julian McCary - Cross-Examination by Mr. Casto

1 was one bag containing this rock; isn't that right?

2 A Yes, sir.

3 Q And what we don't have is, we don't have separate

4 baggies containing separate pieces of crack; correct?

5 A That's right.

6 Q And no large sums of money? Anything like that?

7 A No, sir.

8 Q I believe he -- Ira had a, maybe a cell phone, a

9 wallet. Do those items ring a bell?

10 A I believe so, if I remember correctly, and a pack

11 of cigarettes.

12 Q So -- and a pack of cigarettes; is that right?

13 A I believe so.

14 Q All right. Nothing further. Thank you?

15 THE COURT: Any redirect?

16 MR. MAYE: Nothing else, thank you.

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

18 MR. MAYE: The State would call Lieutenant

19 Roosevelt Young of the Edgefield County Sheriff's Office.

20 ROOSEVELT YOUNG,

21 HAVING BEEN SWORN, TESTIFIES AS FOLLOWS:

22 THE CLERK: Take a seat. State your full name, and

23 spell your last name please.

24 THE WITNESS: Roosevelt Young. Y-O-U-N-G.

25 ///

Roosevelt Young - Direct Examination by Mr. Maye

DIRECT EXAMINATION

1
2 BY MR. MAYE:

3 Q Detective Young, how long have you been employed
4 with the sheriff's office?

5 A Eighteen years.

6 Q Eighteen years. Okay. All right. And you, as to
7 the sheriff's office, you've been a road deputy yourself?

8 A Yes, sir.

9 Q Is that correct? That's where you started?

10 A Yes, sir.

11 Q You have progressed, you're now the lieutenant over
12 narcotics; is that correct?

13 A Yes, sir.

14 Q Okay. When there is a case involving substantial
15 issues involving narcotics, you are often called to assist;
16 is that correct?

17 A Yes, sir.

18 Q Okay. Did you come out and assist the officers
19 being based on -- notified of the facts and the
20 circumstances of this case? What was your involvement?

21 A Yes, sir. I assisted Deputy Oxendine on May the
22 13th of 2013. I received a call from him indicating that
23 he had a quantity of drugs. So I met him at the sheriff's
24 office and took custody and control of the drugs from him
25 and placed them inside the SLED BEST Kit.

Roosevelt Young - Direct Examination by Mr. Maye

1 Q Okay. Let me ask you this: Let me show you what's
2 already been marked as State's Exhibit 6 for
3 identification. That the item of suspected drug evidence
4 that you got from Officer Oxendine on the 13th?

5 A Yes, sir.

6 Q Okay. At any point in time during the time that
7 you had it in your custody and control, did you change or
8 alter it any way?

9 A No, sir.

10 Q Okay. What did you subsequently do with it? Once
11 you got it from Oxendine, what did you do with this item?

12 A I placed it a SLED plastic BEST Kit bag right here,
13 and I sealed it. And I placed it in the sheriff's office
14 drug safe.

15 Q So you sealed it in a tamper-resistant BEST Kit,
16 correct?

17 A Yes, sir.

18 Q And that kit is designed to secure the evidence,
19 and it's evident if somebody's tampered with it; is that
20 correct?

21 A Yes, sir. It is.

22 Q Okay. And that's the purpose of you sealing it up,
23 to show that it is the item that you seized, and nobody's
24 tampered with it. Correct?

25 A Yes, sir.

Roosevelt Young - Direct Examination by Mr. Maye

1 Q Okay. What did you do with it once you sealed it
2 in the BEST Kit, in that tamper-resistant package, what was
3 the next thing that you did with it?

4 A I carried it to my office and put it in the
5 sheriff's office drug safe.

6 Q Okay. Who else has access to that drug safe?

7 A Myself and Investigator Miller.

8 Q Okay. At what point in time was it turned over and
9 placed into the safe there for security?

10 A On the same day, May the 13th of 2013.

11 Q Let me ask you this. Now, this was already in the
12 evidence as State's Exhibit No. 5 in this case, the tin.
13 What did you do with -- what did y'all do with that item?
14 Did y'all secure that? And was that forwarded on to the
15 state drug lab as well?

16 A Yes, sir. I placed it in the safe along with the
17 drugs.

18 Q Okay. Basically, your review of the facts and
19 circumstances that were provided to you in regard to this
20 case, was it subsequently tested for fingerprints?

21 A Yes, sir. It was.

22 Q Okay. They didn't get anybody's fingerprints at
23 all off of that, did they?

24 A No, sir.

25 Q Okay. Investigator Young, based on your experience

Roosevelt Young - Direct Examination by Mr. Maye

1 and training in narcotics enforcement, is that an unusual
2 circumstance for items, for plastic bags, for cans, for
3 things like that to be submitted, do you often get
4 fingerprints off those items at all?

5 A No, sir. We very seldom get fingerprints off of
6 containers, plastic bags, and things of that nature.

7 Q The surface of those types of things doesn't lend
8 itself very well to fingerprints. Does it?

9 A No, sir, it doesn't.

10 Q Okay. How long have you been working in narcotics?

11 A Fourteen years.

12 Q How many times have you ever been able to have any
13 fingerprint evidence off of anything? Do you recall any
14 cases in which you've been successful in trying to extract
15 fingerprints off plastic bags and things that are involved
16 in narcotics cases?

17 A The very few times it's been submitted to SLED they
18 do not get fingerprints off of it.

19 Q So out of all the cases you've had, you've never
20 had any success in getting prints off those types of items?

21 A No, sir.

22 Q Okay. But you do so anyway, based on your
23 experience and training, to cover your bases. Don't you?

24 A Yes, sir.

25 Q Answer any questions that the defense has for you,

Roosevelt Young - Cross-Examination by Mr. Casto

1 Investigator Young.

2 THE COURT: Mr. Casto?

3 MR. CASTO: Yes, sir.

4 CROSS EXAMINATION

5 BY MR. CASTO:

6 Q Officer Young, how are you?

7 A Great. And yourself?

8 Q I'm fine. Officer Young, where you fit in to this
9 case, essentially, is you weren't out there on the scene,
10 correct?

11 A Correct.

12 Q Ultimately, you received these materials from
13 Officer Oxendine, right?

14 A Yes, sir.

15 Q And your role was to just go and pass them and turn
16 them into the safe at the sheriff's office, right?

17 A Yes, sir.

18 Q They were ultimately -- these items were ultimately
19 submitted to SLED for only fingerprint testing. Right?

20 A Yes, sir.

21 Q And when you get those tests from SLED, I mean,
22 based on your training and experience, when those tests
23 come through, they'll at least tell you if they have a
24 partial print. Won't they?

25 A Yes, sir.

Warren T. Miller - Direct Examination by Mr. Maye

1 Q And in this case, there wasn't even a partial?

2 A No, sir.

3 MR. CASTO: No further questions.

4 THE COURT: Any redirect?

5 MR. MAYE: No, sir.

6 THE COURT: All right. Thank you.

7 MR. MAYE: Investigator Warren Miller from the
8 sheriff's office.

9 WARREN MILLER,

10 HAVING BEEN SWORN, TESTIFIES AS FOLLOWS:

11 THE CLERK: Have a seat. State your full name, and
12 spell your last name please.

13 THE WITNESS: My name is Warren Tilman Miller, Jr.
14 Last name is M-I-L-L-E-R.

15 **DIRECT EXAMINATION**

16 **BY MR. MAYE:**

17 Q Investigator Miller, where are you employed?

18 A The Edgefield County Sheriff's Office.

19 Q Where were you employed back in May of 2013?

20 A The Edgefield County Sheriff's Office.

21 Q Okay. How long have you been working for Sheriff
22 DobeY at the sheriff's office?

23 A I've been in Edgefield for approximately 16 years.

24 Q You've been there 16 years. So even before Sheriff
25 DobeY was Sheriff, you've been employed at the sheriff's

Warren T. Miller - Direct Examination by Mr. Maye

1 office, correct?

2 A Yes, sir.

3 Q Do you work with Investigator Young in the
4 narcotics unit?

5 A That's correct.

6 Q Okay. Let me ask you this: I'm going to show you
7 what's been marked State's Exhibit 6 for ID only at this
8 point in time. I'm going to ask you, did you retrieve
9 those -- the items that are in there, did you retrieve that
10 BEST kit from the safe at y'all's headquarters? And what
11 did you do with it? When did you get it? And what did you
12 do with it?

13 A I got on May the 17th of 2013. I took it to SLED.

14 Q Okay. Where did you place it, or who did you turn
15 it over to at the South Carolina Law Enforcement Division?

16 A Nikki Hughes.

17 Q Okay. Was it sealed in the BEST Kit during the
18 entire time that you had it?

19 A Yes.

20 Q Did you change or alter it in any way during the
21 time in between you picking it up from the safe and you
22 dropping it there at the reception and identification at
23 SLED with Miss Hughes?

24 A No, sir.

25 Q Okay. Any questions the defense has.

Douglas Robinson - Direct Examination by Mr. Maye

1 THE COURT: Mr. Casto.

2 MR. CASTO: No questions for this witness, Your
3 Honor.

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

5 MR. MAYE: The State would call Douglas Robinson
6 from the South Carolina Law Enforcement Division.

7 DOUGLAS ROBINSON,

8 HAVING BEEN SWORN, TESTIFIES AS FOLLOWS:

9 THE CLERK: Have a seat. State your full name, and
10 spell your last name please.

11 THE WITNESS: Douglas Robinson. R-O-B-I-N-S-O-N.

12 **DIRECT EXAMINATION**

13 **BY MR. MAYE:**

14 Q Agent Robinson, please tell the ladies and
15 gentlemen of the jury where you're employed and what
16 specialized area that you're employed within the agency
17 that employs you now?

18 A I work for the South Carolina Law Enforcement
19 Division, commonly known as SLED, and I'm assigned to the
20 drug analysis department.

21 Q Okay. Do you have a particular area of expertise
22 that is the subject of your employment with SLED? And what
23 is that?

24 A The drug analysis department is tasked with the
25 analysis and identification of controlled substances.

Douglas Robinson - Direct Examination by Mr. Maye

1 Q Okay. What areas of specialized training do you
2 have? What's your educational background? What gives you
3 the qualifications to be a chemist at SLED?

4 A I earned my Bachelor of Science in Chemistry from
5 the University of South Carolina. After graduating, I
6 spent approximately three years performing instrumental
7 chemical analysis in the environmental chemistry field.
8 Upon being hired at SLED, I received law and legal training
9 with the South Carolina Criminal Justice Academy, as well
10 as training in the analysis and identification of
11 controlled substances through the SLED drug analysis
12 department.

13 Q Have you previously been qualified as an expert
14 witness in the state courts of South Carolina in the area
15 of drug identification?

16 A Yes, I have.

17 Q Okay. Approximately how many times have you been
18 qualified as an expert?

19 A Fourteen.

20 Q Fourteen times?

21 MR. MAYE: Your Honor, I would submit him to the
22 Defense for qualifications. I will offer him as an expert
23 witness in the area of drug and narcotic identification
24 based on his qualifications.

25 THE COURT: Would you like to voir dire him?

Douglas Robinson - Direct Examination by Mr. Maye

1 MR. CASTO: No, sir, Your Honor.

2 THE COURT: Do you have any objection to him to be
3 deemed an expert?

4 MR. CASTO: We have no objections to his
5 qualifications.

6 THE COURT: All right. Thank you. Ladies and
7 gentlemen of the jury, normally a person isn't allowed to
8 testify to opinions or conclusions. Usually a fact witness
9 testifies as to what they saw, heard, smelled, tasted, and
10 felt; however, when somebody has a level of education and
11 experience, we will allow them to testify to conclusions or
12 give their opinions.

13 Now, ladies and gentlemen, whether or not you
14 decide to accept their opinion, or if you decide that their
15 opinion is not based on sufficient knowledge or experience,
16 you can reject their testimony. So -- and you don't have
17 to give any greater weight merely because they're an
18 expert. You should take this along with all of the other
19 evidence in this case and give it the weight that you think
20 is appropriate.

21 You may proceed.

22 And let me put on -- for the record, I do deem him
23 to be an expert in drug analysis and, what was the --

24 MR. MAYE: Drug analysis and identification is
25 appropriate.

Douglas Robinson - Direct Examination by Mr. Maye

1 THE COURT: And identification. Okay.

2 BY MR. MAYE:

3 Q Now, Agent Robinson, even though you're employed
4 with SLED, you don't have any involvement in this case as
5 to the facts or the scenario of this case from a law
6 enforcement aspect; your involvement is merely analyzing
7 substances that are given to you to determine whether or
8 not they are a controlled substance or not; is that
9 correct?

10 A That's correct.

11 Q Okay. I'm going to show you what's been marked for
12 identification at this point in time as State's Exhibit 6
13 for identification. And I will ask you if that was the
14 item that was suspected to be narcotics that's involved in
15 this case, that was transferred to you for identification?

16 A May I refer to my notes?

17 Q Certainly.

18 A It is.

19 Q Let me ask you this. At the point in time that you
20 received this item for your testing, was it sealed in a
21 tamper-resistant BEST Kit? And was the seal intact? And
22 did it appear to be changed or altered in any way?

23 A Yes. Before I do any analysis, that's the first
24 thing that I will check. And the seal was intact. I've
25 actually got a handwritten note on the -- what we call the

Douglas Robinson - Direct Examination by Mr. Maye

1 BEST bag, it's short for Best Evidence Sample Testing. And
2 the word's are written on the back is sealed, intact with
3 my initials and the date of analysis. So, yes, it was
4 sealed.

5 Q And that's an additional threshold thing that you
6 do, isn't it? If the seal's not intact or appears to be
7 tampered or altered in any way, you don't do anything at
8 that point in time. Do you?

9 A That's accurate.

10 Q Okay. Based on you being presented with evidence
11 in this case and it being sealed in the BEST Kit, what did
12 you do in order to form an expert opinion as to what the
13 substance was?

14 A Once the seal is identified to be intact, it
15 would -- the bag would then be cut, all evidence removed,
16 all packaging would be removed from the submitted
17 substance. At that point, a weight would be taken, and the
18 analysis would be performed to ensure that it was a uniform
19 substance.

20 At this point, a representative sample would be
21 taken, and analysis would be performed off of that
22 representative sample in the form of an initial indicative
23 test, and that would be followed with a confirmatory test
24 to identify the substance to the exclusivity of any other
25 drug.

Douglas Robinson - Direct Examination by Mr. Maye

1 Q Okay. What day was it that you examined the seal,
2 determined it was intact, opened it, and performed this
3 testing on the item? What day was that?

4 A The bag was cut into on June 24th of 2013.

5 Q Okay. When did you perform any scientific or
6 chemical test on that item that was in the bag?

7 A The initial testing would have been done on that
8 date when the bag was opened. We never have more than one
9 case open at any given time. This is a security measure,
10 obviously preventing cross-contamination between cases.

11 The initial indicative testing would have been
12 performed at this time. Also, the weight would have been
13 performed at this time. The instrumental confirmation may
14 have taken place at a later date. The actual instrumental
15 confirmation was on June 24th.

16 Q Okay. Let me ask you this. Based on your
17 scientific analysis of the item that was presented to you
18 that you've identified there, do you have an expert opinion
19 as to what that item is?

20 A I do.

21 Q What is that item?

22 A The item that was submitted was an evidence bag
23 containing a rock substance. The result was cocaine-based
24 crack, C2 found, 8.0 grams, 123.4 grains.

25 Q Okay. So you got a weight and your expert opinion

Douglas Robinson - Direct Examination by Mr. Maye

1 is that that item that was submitted to you is crack
2 cocaine and that weight, slightly in excess of eight grams?

3 A 8.0 grams, actually.

4 Q 8.0 grams?

5 A Yes, sir.

6 Q Okay.

7 MR. MAYE: Your Honor, at this point in time, I'm
8 going to move to admit what has previously been placed into
9 evidence, or ID'd, State 6 for ID. We would maintain under
10 State versus Hatcher that we've sufficiently covered chain
11 of custody issues. We'd move to admit that into evidence
12 at this point in time.

13 THE COURT: Any objections, Mr. Casto?

14 MR. CASTO: We just place our objection on the lack
15 of sufficiency of the chain.

16 THE COURT: All right. I'm going to admit it.

17 (WHEREUPON State's Exhibit No. 6 was entered into
18 evidence.)

19 BY MR. MAYE:

20 Q Agent Robinson, did you generate a written report
21 that reflected your findings in this case?

22 A I did.

23 Q Did you bring a copy of that report?

24 A Yes, I did.

25 (WHEREUPON State's Exhibit No. 11 was marked for

Douglas Robinson - Direct Examination by Mr. Maye

1 identification.)

2 BY MR. MAYE:

3 Q Agent, I'm going to return the copy that you
4 brought to you, and I'm going to ask you if you could look
5 at a photographic copy. And I'm going to ask you, does
6 that fairly and accurately reflect the written report --
7 minus handwritten notes on it -- does that fairly and
8 accurately reflect the written report that you generated
9 regarding your expert opinion in this case of the identity
10 of the substance and its weight?

11 A Yes, it does.

12 MR. MAYE: Your Honor, at this point in time, I'm
13 going to move to admit this copy of his report into
14 evidence.

15 THE COURT: Any objections?

16 MR. CASTO: No sir, Your Honor.

17 THE COURT: Without objections, this is State's
18 Exhibit No. 10?

19 THE COURT REPORTER: 11.

20 THE COURT: 11.

21 (WHEREUPON State's Exhibit No. 11 was entered into
22 evidence.)

23 BY MR. MAYE:

24 Q Thank you, Agent Robinson.

25 Answer any questions the Defense has for you.

Douglas Robinson - Cross-Examination by Mr. Casto

1 Thank you.

2 THE COURT: Mr. Casto?

3 MR CASTO: Yes, sir.

4 CROSS EXAMINATION

5 BY MR. CASTO:

6 Q Mr. Robinson, how are you?

7 A Good. How about you?

8 Q Just fine. Very briefly, you received these drugs
9 from whom?

10 A I received these from Doris Yarborough of the
11 evidence control department at SLED.

12 Q Doris Yarborough?

13 A Correct.

14 Q Okay. And not Mr. Warren Miller?

15 A That's correct. When evidence is submitted from an
16 agency, it goes to our evidence control department. I
17 don't deal with the agency directly.

18 Q Okay. And then, once you had analyzed this
19 substance and performed your role, you turned it in to
20 whom?

21 A The evidence was returned to Patricia Brooks, also
22 of the evidence control department at SLED...

23 Q Okay. And, you know, it is a very common thing,
24 wouldn't you agree, to have, you know, drugs analyzed by
25 SLED; isn't that right?

1 A Correct.

2 Q I mean, there are places, I believe, law
3 enforcement agencies that have places where they can do it
4 in-house, but this is a very common place to send these
5 substances to you all at SLED; isn't that right?

6 A There are various satellite labs and county labs
7 throughout the state, but yes. SLED handles the majority
8 of drug cases.

9 Q Okay. And the volume, I imagine, is just
10 tremendous; isn't that right?

11 A There are a lot of cases that come through, I would
12 say, so, yes.

13 Q Okay. And you don't have any specific memory of
14 analyzing these exact drugs just from looking at them. Do
15 you?

16 A No.

17 MR. CASTO: That's all the questions I have.

18 THE COURT: Any redirect?

19 MR. MAYE: Nothing. I just ask that Agent Robinson
20 be released at this time.

21 THE COURT: Any objection to him being released to
22 go back to Columbia?

23 MR. CASTO: No, sir, Your Honor.

24 THE COURT: All right. Thank you. Have a nice
25 day.

1 MR MAYE: The State rests, Your Honor.

2 THE COURT: All right. Let me see the attorneys
3 real quick.

4 MR. CASTO: Yes, sir.

5 (WHEREUPON there was a bench conference out of the
6 hearing of the jury and the court reporter.)

7 THE COURT: All right. Ladies and gentlemen, now
8 is a good time to take a lunch break, so I'm going to send
9 you to lunch with instructions not to speak with anybody
10 about the case. Be back here at two o'clock. All right?
11 Have a nice lunch.

12 (WHEREUPON the jury left the courtroom at twelve
13 o'clock p.m.)

14 **MID-TRIAL MOTIONS**

15 THE COURT: All right. Are there any motions to be
16 made by the defendant?

17 MR. CASTO: Yes, sir, Your Honor. At this time, we
18 would move, since the State has rested, we would move at
19 this time for a directed verdict. Succinctly stated, Your
20 Honor, the State has not met their burden of proof that
21 they needed to meet in this case for this case to be
22 submitted to the jury. Ultimately what we have is a case
23 based solely on inference weight but nothing else, nothing
24 else at all.

25 And we would submit that if this case was to make

1 this past the directed verdict stage that it would only be
2 appropriate to submit to the jury as a possession of crack
3 cocaine. We feel that the State has failed to meet their
4 burden in this case.

5 We ask --- at this time, we would like to renew all
6 other motions and objections, either pretrial and during
7 the trial, at this time, Your Honor.

8 THE COURT: All right. Thank you, Mr. Maye?

9 MR. MAYE: Your Honor, just briefly. We would
10 certainly maintain, respectfully, that there are jury
11 issues in this case. 44-53-375, I believe (B)3 or at lease
12 Section B provides the possession of one or more grams of
13 cocaine base is prima facie evidence of a violation of the
14 subsection. I know that most of the language involving
15 "Prima Facie" we are now saying "permissive inference," but
16 based on weight, there's certainly a jury issue as to
17 whether or not a jury believes that he was in possession of
18 this crack cocaine, as to whether or not it is possession
19 with intent to distribute based on that or merely
20 possession, Your Honor.

21 Respectfully, we maintain that there are jury
22 issues. Taken in the light most favorable to the State, we
23 ask that we go to the jury on the possession with intent to
24 distribute.

25 THE COURT: All right. Mr. Casto, at this point in

1 time, respectfully, the Court's more worried about the
2 existence and not the weight of the evidence. I'm going to
3 respectfully deny your motion, and we're going to let it go
4 to the jury.

5 MR. CASTO: Yes, sir, Your Honor. And does the
6 Court have a ruling with regard to other motions and
7 objections raised pretrial?

8 THE COURT: My rulings have not changed.

9 MR. CASTO: Yes, sir. I understand. I just wanted
10 to place that on the record. Yes, sir, I understand.

11 THE COURT: All right. Thank you.

12 Let me go ahead and question your client now as to
13 his willing to testify.

14 MR. CASTO: Yes, sir.

15 THE COURT: Please place the defendant under oath.

16 IRADELLE JAMES,

17 HAVING BEEN SWORN, TESTIFIES AS FOLLOWS:

18 THE COURT: You are Iradelle James?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. And Mr. James, at this time
21 I'm going to explain to you certain of your rights. If you
22 do not understand anything that I say, please let me know.
23 If you want me to explain in any greater detail, I'll be
24 happy to do that. Do you understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. And Mr. James, we've now
2 reached the stage of your trial where you may present your
3 defense. You have a right to claim the protections given
4 to you by the United States Constitution, under the Fifth
5 Amendment, which states in part, "No person shall be
6 compelled in any criminal case to be a witness against
7 himself."

8 Now, this means that you cannot be required to
9 testify. Although you do have a right to testify, no one
10 can make you testify. This is a personal right, and no one
11 can waive this right except for you.

12 Now, if you decide to testify, you will be
13 subjected to the same rules that govern other witnesses,
14 and you may be examined and cross-examined on any relevant
15 issue in this case.

16 In addition, if you have any convictions involving
17 dishonesty or false statements or for crimes punishable by
18 more than a year in prison, and I determine that the
19 probative value of admitting these convictions outweighs
20 the prejudicial effect on you, then the solicitor will be
21 able to introduce your record to attack your credibility.

22 Solicitor, what charges did you intend to bring
23 forth if Mr. James were to take the stand.

24 MR. MAYE: Your Honor, I don't intend anything to
25 impeach him.

1 THE COURT: Okay. All right.

2 Well -- and if you decide to testify, this decision
3 on your part must be free, voluntarily, and intelligently
4 made with knowledge of the protections given to you by the
5 Fifth Amendment and the consequences of your decision to
6 plead guilty (sic).

7 Now, if you decide not to testify, I will instruct
8 the jury that they are not to give the fact that you did
9 not testify any consideration whatsoever and that there is
10 to be absolutely no prejudice to you because you did not
11 testify. It is left entirely up to you whether or not you
12 want to testify. You may talk with your attorney and any
13 friends or anyone else, but the final decision is left
14 entirely up to you.

15 Now, do you understand what I've stated to you.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you have any questions about what
18 I've stated to you?

19 THE DEFENDANT: No, sir.

20 THE COURT: Have you discussed with your lawyer
21 whether or not you want to testify?

22 THE DEFENDANT: I have.

23 THE COURT: And do you wish to talk to him a little
24 bit more? You want to take the lunch hour and talk about
25 it and then when we come back, right before we bring the

1 jury in, I'll inquire as to whether or not you want to
2 testify.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: So that will give you two hours on
5 that.

6 All right. Anything further before we break for
7 lunch?

8 MR. MAYE: Nothing from the State, Your Honor.
9 Thank you.

10 THE COURT: All right. Thank you. Court's in
11 recess until two o'clock.

12 MR. CASTO: Thank you, Your Honor.

13 (WHEREUPON a lunch recess was observed.)

14 THE COURT: All right. Mr. James, please stand.

15 Mr. James, at the end of the morning session, I had
16 questioned you about whether or not you wanted to testify.
17 You were going to take the lunch hour to discuss that with
18 your attorney. Did you decide whether or not you want to
19 testify?

20 THE DEFENDANT: Yes, sir. I do not.

21 THE COURT: And you're not going to testify?

22 THE DEFENDANT: No, sir.

23 THE COURT: Okay. Very well.

24 All right. Do you want to go ahead and renew your
25 motions at this point in time so when we come out, you can

1 rest, and then we'll go straight into closing arguments
2 without having to send the jury back out again.

3 MR. CASTO: Yes, sir. That's perfect.

4 THE COURT: You may be seated now, Mr. James.

5 MR. CASTO: In light of my client's position with
6 regard to not testifying, the defense rests at this time.

7 THE COURT: All right. And you'll rest again on
8 the record when they come out so they see you do that.

9 MR. CASTO: Yes, sir.

10 THE COURT: But now, would you have any motions
11 that you want to make at this point?

12 MR. CASTO: Yes, sir, I would. Your Honor, we'd
13 like to renew our directed verdict motion at this time, and
14 we would like to renew all prior motions and objections
15 today that were raised during the trial and during pretrial
16 as well, Judge.

17 THE COURT: All right. Mr. Maye.

18 MR. MAYE: Your Honor, I don't have any -- I
19 certainly don't have anything else. I'm satisfied with the
20 charge in this case, and we're prepared to go forward here.

21 THE COURT: All right. Well, I'm going to
22 respectfully deny your motions.

23 MR. CASTO: Yes, sir.

24 THE COURT: Now, while we were in chambers, I think
25 the State has agreed with the defense to give a

1 lesser-included charge of possession of crack cocaine; is
2 that correct?

3 MR. MAYE: Your Honor, I don't have any objection
4 one way or the other. I don't take a position. I'm
5 neutral if you want to charge it. That's -- I don't -- I
6 don't think we should run the appellate risk of not
7 charging it if they're requesting it.

8 THE COURT: All right.

9 MR. MAYE: So I don't have any requests myself to
10 do so. I certainly don't join in that. I'd be satisfied
11 with possession with intent to distribute up or down,
12 guilty or not guilty. That's purely a strategy of the
13 defense in this case, and it's up to them whether or not
14 they request it. I don't have any objection or position.

15 THE COURT: All right. Yes, sir?

16 MR. CASTO: Your Honor, I believe that
17 lesser-included language was included, and we have no
18 objection.

19 THE COURT: I'm also -- because there's no
20 objection, I will go ahead and do that.

21 MR. CASTO: Thank you, Your Honor.

22 THE COURT: Do we have all of our jurors here?

23 THE BAILIFF: Yes, sir.

24 MR. CASTO: Your Honor, if I may, it might be
25 appropriate, there was one matter that we had taken up at

1 sidebar. If it's all right with the Court --

2 THE COURT: Yeah, if you want to go ahead and put
3 it on the record at this point in time. I think it was
4 something about him making the statement that it was
5 originally trafficking but they reduced it.

6 MR. CASTO: Yes, sir.

7 THE COURT: What's your objection?

8 MR. CASTO: Yes, sir, Your Honor. We object to the
9 part of the trial, and we made a contemporaneous objection.
10 We took it up in sidebar. Ultimately what occurred, if
11 memory serves, is that the State was questioning the
12 officer, and there was a question with regard to the
13 initial weight that was believed to be the correct weight
14 of these drugs, and there was -- thus -- you know, this is
15 a specific question does evoke a response from the officer
16 of, you know, something to the effect of, "Well, this was
17 initially a trafficking weight. Wasn't it?" And the
18 officer just acknowledged that, "Yes, you know, based on
19 our scale, it was higher than ten grams, and it would be a
20 trafficking weight."

21 We object to that. We think that is wildly
22 prejudicial, and it's irrelevant. It's one of those
23 things, Your Honor, where it is -- you just cannot unring
24 the bell. I just don't see a situation where a curative
25 instruction would have cured that whatsoever. And I wanted

1 to flush that objection out on the record. We took it up
2 at sidebar, and I'm not going to speak to the Court's
3 ruling on that, but I believe that our objection was noted,
4 and it was ultimately overruled as I understand.

5 THE COURT: That's correct.

6 MR. CASTO: Okay.

7 THE COURT: So what is your -- are you moving for a
8 mistrial?

9 MR. CASTO: Yes, yes, sir, Your Honor. Based on,
10 based on what had occurred, we feel that that is wildly
11 prejudicial to my client. I mean ultimately we're talking
12 about weight of drugs and there was some testimony that
13 this was at one time in a category of trafficking, not just
14 well, we skip over possession or PWID, but trafficking --
15 We just -- it is wildly prejudicial because it's not even
16 something that we can -- ultimately those drug results were
17 tested, and it was not found to be trafficking, so this is
18 just superfluous. It doesn't further any aspect of the
19 trial, and we feel it was wildly prejudicial to my client.
20 We move for a mistrial on those grounds.

21 THE COURT: All right. Mr. Maye?

22 MR. MAYE: Your Honor, the officer very clearly
23 stated in this case it was not a trafficking charge. He
24 said that the weight did not come back to be trafficking
25 weight in this case. There's often discussion of field

1 testing and items that are ultimately -- that even don't
2 come back as being a controlled substance in this case.
3 The officer clearly stated that he was not -- that it was
4 not a trafficking case and that it was not trafficking
5 weight. Certainly when we're talking about the law in this
6 case, Your Honor, we're talking about weight being the
7 total issue in this case, it would certainly be permissible
8 to put before the jury even on closing argument the
9 difference between possession, possession with intent to
10 distribute, trafficking, and how the weights fall in.

11 The mere fact that the jury heard some indication
12 that the threshold for a trafficking case is ten grams when
13 all of the evidence in this case points to it being less
14 than that, we can't see how that's prejudicial in any way
15 to the defendant in this case.

16 We'd certainly maintain that a curative instruction
17 would not be necessary, nor would a mistrial be appropriate
18 because the officer, of his own volition, said it was
19 clearly not trafficking weight. It's less than that. And
20 if he had he PWID'd the charge and I made it as PWID
21 because it was more than one gram, and the inference is
22 more than one gram.

23 THE COURT: I'm going to respectfully deny
24 your motion. To a large extent, trafficking is a term of
25 art that only we know. Most jurors have no idea what

1 trafficking really means and the weights. So, if there is
2 any error, which I don't believe there is, it would
3 certainly fall into the harmless error category and so I'm
4 going to deny your motion.

5 MR. CASTO: Yes, sir.

6 THE COURT: All right. Do you want to bring our
7 jury in?

8 And since the defense put up no evidence, the
9 defense will have final argument.

10 (WHEREUPON the jury entered the courtroom at 2:32.)

11 THE COURT: All right. Ladies and gentlemen, I
12 want to thank y'all for being on time. We had a few
13 matters to take up before I brought you back in here. Is
14 the Defense ready to proceed?

15 MR. CASTO: Yes, sir, Your Honor.

16 THE COURT: All right.

17 MR. CASTO: Your Honor, at this time, the defense
18 rests.

19 THE COURT: Okay. Ladies and gentlemen, with the
20 defense resting, that means all the testimony and evidence
21 in this case has now been presented to you. Now, the
22 attorneys will give you their closing arguments. I will
23 then charge you on the law that is applicable to this case,
24 and I will send you back to your jury room to begin your
25 deliberations.

1 All right. Is the State ready to proceed?

2 MR. MAYE: The State's ready, Your Honor.

3 THE COURT: All right.

4 **CLOSING ARGUMENTS**

5 MR. MAYE: May it please the Court, Your Honor?

6 Ladies and gentlemen, again mindful of the fact that we're
7 taking you away from what you normally would be doing. I
8 know that all of you paid close attention, it's obvious to
9 everybody here in the courtroom that you paid close
10 attention to the evidence that came forth in this case.
11 And you got it. All the evidence is in. Every bit of it
12 you heard came right from the stand. The witnesses that
13 got up there under oath and told you what happened, to the
14 evidence that came before you, the photographs here. It's
15 all here, and that's what you've got to consider in this
16 case.

17 We told you at the outset it's not complicated.
18 It's tragic. Here we've got a Mother's Day weekend that
19 one can only surmise pretty well dampened the festivities.
20 The mother has to call the sheriff to come out there and
21 get her son away from her property because he's cutting up,
22 and he's drunk and disorderly and he's raising Cain. They
23 obviously can't deal with it and they call the sheriff.
24 They call the Sheriff Dobeys office and these two officers
25 go out.

1 They don't know what they're going to encounter.
2 There's no indication in any regard that these officers
3 knew anything about Mr. James. They knew one thing about
4 him and they didn't have anything for or against him. Just
5 like most days when they put on their shoes and their
6 uniforms and they go out, and they don't know what each day
7 is going to bring. There's absolutely nothing to suggest
8 that anything or anybody to reward or punish or anything
9 else. They went out and found the situation as it was.

10 And I think you could hear from the way the way
11 Oxendine testified in this case, it was quickly obvious.
12 You've got people so upset they're loading up to leave.
13 Mama wants him out of there. The officer can't diffuse the
14 situation. There's no search in this case. He talks to
15 him and he tells him, you know, "I'm going to have to pat
16 you down," and that's to make sure somebody doesn't have a
17 gun and somebody's not going to get hurt.

18 Well, he didn't get a chance to do anything, didn't
19 get a chance to lay hands on him or do one thing, and you
20 heard what the officer said. At the very mention of the
21 fact that he was going to get patted down, he starts
22 spinning around and emptying everything in his pocket. And
23 we would submit to you, you know, you don't leave your
24 common sense at home when you come up to the courthouse.
25 It's just -- he knew he had it and he knew he wanted to get

1 rid of it and thought maybe they wouldn't see it, or at
2 least he could distance himself from it a little bit by
3 them not actually finding it on him. Because he knew in
4 all likelihood they were going to pat him down and they
5 were going to discover this box and what he had in the
6 box, which is ultimately 8 grams of crack cocaine.

7 The officers in this case have got him under
8 control. Officer McCary said that he could see clearly in
9 this case. And I want to stress to you in this case, it's
10 not like that Mr. James -- and the officers have already
11 told you there's nobody else there in that area, the rest
12 of the people are up in the yard keeping their distance
13 from him, he's out there by himself. This is not a
14 circumstantial evidence case. It's not just that they put
15 him in the car and they took him there and after they got
16 him out of the car, and they found this tin in the car and
17 nobody saw him drop it. It's not just like they put him in
18 custody and right around there at his feet or close by up
19 the road where was standing that they saw this tin and they
20 picked it up. Circumstantially they're trying to put it up
21 for you to surmise. Well; you know, it was close to him,
22 and he was emptying his pockets, and, you know, it could
23 have been his. Circumstantial evidence is when you believe
24 that it might be his.

25 There's direct evidence in this case. You've got

1 Officer McCary who came up and put his hand on the Bible
2 and told you under oath, "I saw him throw this tin there."
3 And you've seen the photographs in this case and the
4 officers pointed out and it wasn't in a deep ditch and you
5 can tell somebody in this area of the county. It was green
6 with peach fields around, those of you that are here in the
7 county, you can see it. It's a gradual slope. The officer
8 saw right where he threw it and went and picked it up.

9 And he told you under no uncertain circumstances,
10 "I'm absolutely certain I saw him throw this thing," and he
11 went straight and picked it up, and he laid it down on the
12 trunk of the car.

13 And it was very interesting when the officer said,
14 wide open, there was nothing that indicates pretty -- and
15 laid that down on the trunk on the car, and Mr. James
16 immediately went wild. "That is not mine. That is not
17 anything that I had. It's not mine." Over and over again,
18 he's hollering and yelling about that. Why was he so
19 worried about it? The box is not even open. Unless he
20 knew the contents of it, why would this have been such a
21 source of stress and controversy to him that he wanted to
22 distance himself from it. Just example of guilty
23 knowledge. He knew full well what was in it because he'd
24 thrown it down and Officer McCary clearly saw him toss it
25 down and went straight and picked it up, put it on the

1 trunk lid, and he immediately starts out pronouncing, "That
2 is not mine. This isn't -- I didn't throw that down. It's
3 not mine."

4 Well, if they weren't going to look at it before,
5 you know full well that they were going to look in it at
6 that point in time and open it up. And these are trained
7 officers, and they saw this as a big ole cookie in this box
8 and they knew what it was. You know, everyone did what
9 they should have done. They sealed this up, and you can
10 kind of see now all that goes into it. They involved
11 Investigator Young, the narcotics team, because this is a
12 large quantity of crack cocaine.

13 And they did what they needed to do in this case.
14 They documented every time one person handed it to another.
15 We went through great lengths to tell you everyone that
16 touched it, and Investigator Young sealed it up in this
17 BEST Kit with the tamper-resistant seal to make sure there
18 was no issue -- because the weight is critical in this
19 case -- and to make sure there was no issue with what they
20 picked up out there out in this tin and what is here before
21 you today with this chemist getting up here and giving his
22 expert opinion and telling you without a shadow of a doubt,
23 it's crack cocaine, is what he had.

24 This is important. This is a significant quantity
25 of crack cocaine. And the officers did what they were

1 supposed to do. They dotted their I's, they crossed their
2 T's. They made sure that what they picked up out there got
3 tested. You've now heard an expert witness come up and
4 tell you that it is absolutely, according to his expert
5 opinion, this was chemically tested, and that substance
6 that was in that tin that Mr. James, the defendant in this
7 case, threw down while the officers were encountering him,
8 is crack cocaine.

9 And I submit to you, there's nothing to suggest
10 they had any reason to say to say anything that was not
11 true or try to frame him or try to say something that was
12 not true in this case because there's absolutely nothing to
13 indicate they had any animus towards him or even ever
14 encountered him before. They just went out there, and they
15 took the circumstances as they found them. He threw it
16 down, he abandoned it, they saw him do it. They picked it
17 up, and they brought it here before you. It's not
18 complicated.

19 And I told you at the outset of this case the State
20 submits to you the only real and genuine issue for you in
21 this case, all the evidence you've already heard, is
22 whether or not it's possession or possession with intent to
23 distribute. That's a significant issue in this case
24 because this is a large quantity of crack.

25 The Judge is going to tell you the charge -- and I

1 told you he will talk with you about the law, what is the
2 difference between simple possession or mere possession and
3 possession with intent to distribute. One of the things
4 that he's going to tell you is that possession of more than
5 one gram creates an inference that the defendant possessed
6 the crack cocaine with the intent to distribute. That's
7 just more than one gram. Here in this case, you've got
8 eight, eight times the threshold for possession with intent
9 to distribute.

10 And I'm sure the defense is going to get up here
11 and tell you in this case that, "Oh, they didn't find any
12 scales, and they didn't find multiple bags, and they didn't
13 find all these things that a drug dealer would have in this
14 case." Well, the weight is significant. That's why it's
15 right in the South Carolina Code in this case, that there
16 is a permissive inference just from the weight alone, and
17 that's solely what the State's relying on in this case.

18 Now, this is going to sound an aversion, but one of
19 the things we're talking about when we're talking about
20 weight and why they set it in that regard, because you know
21 Johnston is the Peach Capital of the World, and this is
22 going to sound silly at first. But, the time the peaches
23 come out in Johnston is a great source of joy to a lot of
24 people because a lot of people like to eat some peaches.
25 And in between here and Lexington, like I said a lot of

1 people are not from here in Edgefield County. A lot of
2 people go back and forth.

3 On the way, there's a guy that sits on the side of
4 the road in a pickup truck when the peaches are ripe. And
5 he's got a little umbrella that he sits out there at the
6 end of the area in the pickup truck, and he's always got
7 those peaches. But he's got a pickup truck load of them.
8 He doesn't have any sign up indicating specifically that
9 he's got peaches for sale, but he's sitting out there under
10 that awning in that yard chair with a pickup truck load of
11 peaches. There is not the suggestion in that case that
12 he's going to eat those. I don't think the people riding
13 down the road think he's going to eat that pickup load of
14 peaches. And people are periodically stopping to buy them.
15 And that's based on -- he didn't have any sign, he doesn't
16 have anything else to indicate. You know full well he's
17 got them there for sale. That's an intermediate level.
18 It's not like somebody comes up here to the courthouse for
19 lunch and breaks out a peach or maybe two peaches. It
20 would take a big person to eat two big peaches after they
21 ate lunch. That's a possessory amount. That's one or two.
22 And that's why the law makes a pretty bright line when
23 you're talking about more than one gram.

24 Mr. James wasn't going to smoke all that crack. If
25 he was a user, he wasn't going to smoke all that crack in

1 one sitting. And there is an inference, just from somebody
2 having 8 grams, that he possessed it with the intent to
3 distribute it. And you don't have to have scales. You
4 don't have to have multiple packaging. Just that weight
5 alone. There are all sorts of variables in what we're
6 talking about.

7 A person with a couple of peaches versus a pickup
8 truck load, versus some of the peach farmers here that are
9 shipping it out all over the country. I'm not saying that
10 about Mr. James, but he had more than a possessory amount.
11 He didn't have one or two rocks of crack cocaine. That is
12 a big cookie of crack cocaine in the tin that he was
13 obviously very aware that he had. He did not want the
14 officers to associate it with him, and obviously he would
15 like to just consider himself wronged. But you can take
16 that just from the weight alone. More than one gram, the
17 State submits to you is possession with intent to
18 distribute.

19 And it does not require -- the law does not require
20 anything more than that for you to have that inference.
21 And we submit to you that that's a totally reasonable
22 inference for that big load of crack for somebody to be
23 walking around with in a tin. But ultimately that's -- the
24 State would submit to you that's the only legitimate issue
25 of fact for you to consider, which one he's guilty of in

1 this case. We're going to respect your verdict whatever it
2 is. Respectfully, we submit 8 grams is not just
3 possession.

4 Ladies and gentlemen, you've got the direct
5 evidence that the officer saw him throw it. I am sure that
6 you will hear from the defense in this case that some
7 people may pull and there's an advantage to arguing first
8 or last. You know, the great thing about our jury system
9 is the twelve of you go back in that jury room and
10 deliberate, that you bring into the courtroom the sum total
11 of all of your life experiences, everything that you've
12 experienced, people telling you the truth, people telling
13 you lies, children and people you encounter at work. The
14 collective wisdom of the twelve of you that go back in that
15 jury room to deliberate, all of you together, that
16 outstrips the wisdom of any one person that's ever walked
17 the face of the earth. Because you've got a lifetime of
18 weighing evidence and judging evidence.

19 Use your common sense in this case to come back
20 with a verdict that speaks the truth. But I submit to you
21 in this case, "Oh they didn't fingerprint this tin.
22 Investigator Roosevelt Young got up here and told you, in
23 all the years he's had as a narcotics officer, he's never
24 had any success in getting fingerprints off little plastic
25 bags or a tin of this size. They do well to get any

1 fingerprints at all in any case. He told you out of all
2 the times that he's asked to do this, never got the
3 fingerprint evidence back.

4 They didn't get any prints off of this at all, and
5 it didn't levitate its way or magically or spontaneously
6 appear there in the ditch. Somebody put it there, and
7 somebody handled it. Just because somebody picks something
8 up, just because somebody handled it, doesn't mean it's
9 like Crime Scene CSI on TV and somebody always, a hundred
10 percent of the time, that they're going to leave a
11 fingerprint or a partial or anything else. It just doesn't
12 happen. They're lucky to get it off a piece of plate glass
13 if somebody breaks in a house in a burglary. Fingerprints
14 are few and far between. And this officer has told you
15 that even though they're trying to cover the bases in this
16 case, that he's never got them. They knew that their work
17 was going to be reviewed on a day just like today. So they
18 sent it to see if they could do anything. They didn't get
19 any prints at all.

20 We submit to you that, that is not at all
21 significant. Somebody touched it. They would have you
22 believe in this case, "Oh the officers were derelict in
23 their duties," or "Investigator Young was not doing his job
24 in this case." Because one of the things they brought out,
25 in addition to the fingerprints, "Oh, could be magically,

1 if somebody just touched this, couldn't microscopic
2 particles have been left behind and somebody get DNA off of
3 it?"

4 You can bet that an experienced officer who's taken
5 the time to fingerprint items, if there was any hope that
6 that would bear any fruit at all, he would have requested
7 those tests. But there wasn't even enough left behind to
8 get fingerprint evidence off of it, and you can bet an
9 experienced officer like Mr. Young over here, if that was
10 going anywhere, he would have done it. He would have
11 sought it. He would have looked for it in this case.

12 It's just not feasible to do. It's not a realistic
13 supposition to think that anybody's going to get some DNA
14 evidence off of there. There wasn't body fluids or blood
15 or semen or the things that people collect DNA off of.
16 They want you to believe that they were derelict in their
17 duties, somehow magically it would have helped you if they
18 had some magic DNA sample. It's just not appropriate in
19 this case and not something that the officer would have
20 sought.

21 And it's not even there. Officer McCary got up
22 there and under direct testimony in this case told us, "I
23 saw him throw it." They know what they're doing.
24 Ultimately, it's up to you to decide what it's been about
25 in this case. Is it possession? Or is it possession with

1 intent to distribute? Come back with a verdict that speaks
2 the truth. This is a case that says 8 grams, 8 times the
3 threshold.

4 THE COURT: Thank you, Mr. Maye.
5 Mr. Casto.

6 MR. CASTO: Thank you very much, Judge. May it
7 please the Court.

8 THE COURT: Yes, sir.

9 MR. CASTO: As I stood here at the beginning of the
10 trial, I told you in these words that this case is all
11 about assumptions. Assumptions on the part of law
12 enforcement, assumptions on who had what, assumptions on
13 what somebody was going to do with that substance. I stood
14 here, and I said, you know, just hours before, thankfully,
15 I've kept my promise. It has not been a long trial or
16 anything like that, but it wildly, wildly important. It's
17 important to Ira. He's the one on trial.

18 And I stood here, and I said it's all about
19 assumptions on the part of law enforcement. And they got
20 it wrong. They assumed wrong. Here's why. The heartbeat
21 of the case is what Officer McCary saw. I mean, that's the
22 heartbeat of the case. And something very subtle happened,
23 and you know I saw -- in a short trial like this, everybody
24 needed to see something happen -- and its, "How sure are
25 you?" "I'm very sure that I saw him throw this down."

1 Well, that makes you question. If you're so sure that you
2 saw him throw it down, why did you get it fingerprint
3 tested? Why?

4 And ultimately, those fingerprints weren't on
5 there. They weren't on this piece of tin. They weren't on
6 this. They weren't on the bag inside. They weren't on
7 there at all. And basically it doesn't stop there because
8 the State just came up and said, "Well, you know, I mean"
9 -- but they still submitted that they don't really have
10 much luck at getting fingerprints.

11 But you know what? What we do is we still just
12 sort of send it in there, and we kind of hope for the best.
13 You know, and we haven't had any success with that, and
14 then I believe the State said that, you know, well the
15 officers would have known, you know, as to DNA and the
16 ability to collect it or what have you, but they didn't
17 even try. Why didn't they try? Because they tried with
18 fingerprints, and they don't have a track record getting
19 those back. But they didn't even try with DNA. And the
20 semen, blood, or any type of bodily fluid or what have you,
21 were offered -- things where there's just skin cells left.
22 Pay attention to that. There was no test done whatsoever.

23 When asked about, you know, whose call was it?
24 "Well, I didn't request it, and I don't think another
25 officer did." But there was no explanation provided to you

1 or any of us in the courtroom as to why in the world they
2 didn't go on. Why they didn't even bother testing. Their
3 chemist came all the way from Columbia, and he said, you
4 know, that they did that every day. It's not incredibly
5 difficult to do this, but it wasn't done whatsoever.
6 And what else do we have besides fingerprints, besides DNA?
7 There's no audio. There's no video. And one of the
8 officers said, you know, "Hey, we could've --" When asked,
9 "Would that have helped us?" We could have seen what
10 happened at the scene. We could have listened to what was
11 said." "Well, we don't have that."

12 We had three officers, actually. We just had two
13 come testify, but there was a third officer, and everybody
14 drove separate. Three different opportunities I'm sorry,
15 two different opportunities because the one officer did
16 testify that he didn't have that capability in his car, but
17 he didn't know about the other two at all, and there was no
18 one to say. That would have let us all in this see what
19 was going on. Just listen or at least hear that
20 conversation about what was going on.

21 Reasonable doubt in this case, there's a lot going
22 on. Reasonable doubt -- and I said it I used this analogy
23 before, but it really, really is true with regard to the
24 courthouse in Lexington. Here this is the main event.
25 Guess what? This is the courtroom here. This is the way

1 it's been out here for a hundred -- the courthouse in
2 Lexington, you've got lower floor and a lower standard of
3 proof. You've got the mid floor, you've got a higher
4 standard of proof. And then all the way at the top, what
5 you have is reasonable doubt, and that's what we have here.

6 Now I give you this definition, "Reasonable Doubt
7 is the type of doubt that would cause an ordinary person, a
8 reasonable or ordinary person, to pause or to hesitate
9 before they act. Reasonable Doubt is the type of doubt
10 that would cause a person to pause or to hesitate before
11 they act." Let's get rid of that flowery language that
12 kind of, you know, that type of stuff. Do you have a
13 doubt? And do you have a reason for that doubt? Do you
14 have a doubt in this case that the State has been held to a
15 high -- that they've met -- that they've exceeded beyond a
16 reasonable doubt. Do you have a doubt? And do you have a
17 doubt for which you could give a reason for that doubt?
18 That's the most simple, accurate way that we could put it.

19 If anything that I say, this is -- well, the
20 instructions from the Judge, pay attention to what he says
21 and go with what he says in his instructions.

22 You see, this case ultimately -- do you have a
23 reason for that doubt? We didn't even bother to check for
24 DNA. There wasn't any fingerprints on the tin. There
25 wasn't any fingerprints on the bag inside. Anything of

1 that nature whatsoever -- reasonable doubt. And so, in the
2 trial what we really come to is kind of a fork in the road.
3 Either you believe that Ira possessed this at one time, or
4 you do not. And that's your first decision that you have
5 to make. Do you believe he possessed this at one time or
6 he did not? We submit he did not, but we go further. If
7 you believe that he had it, then the next question is this.
8 Is there evidence that he possessed this with the intent to
9 distribute this? With the intent to distribute.

10 And what the law is, as the judge will instruct
11 you, is that there is an inference. But watch this very
12 closely. This is an inference. And it's this word where,
13 you know, it's permissible that we could possibly entertain
14 that concept, basically. But what's so clear is that the
15 State still must prove that Ira possessed the stuff with
16 the intent to distribute it beyond a reasonable doubt. It
17 doesn't take care of that doubt. Was the substance crack
18 cocaine? Did Ira possess it? Did he possess it with the
19 intent to sell it? It doesn't remove that last element.
20 They still did not -- you all have still got to find some
21 evidence in this case, and search for it high and low,
22 because there isn't any that would budge us or strengthen
23 the position that there was any type of drug selling going
24 on.

25 Now, first and foremost, much has been made about

1 the weight of the substance. You know, when you -- and we
2 get into this language of grams and all this stuff. And
3 we're -- what's really -- you know, if we're talking in
4 terms of a dash, a cup, eight ounces, a gallon, you know, a
5 quart, you know, things of that nature. But I've never
6 seen a recipe that called for grams or anything like that.
7 So what we're really talking about as far as weight, much
8 has been made just about this weight. This inference
9 weight.

10 Well, really what we're talking about is six cents.
11 Six cents. See, the nickel is five grams. And the penny
12 is two and a half grams. I'm going to combine two, yes I
13 realize that is seven-and-a-half, but that brings us closer
14 to, that's really what we're talking about, not this
15 massive, you know, quantity of a drug deal and all that
16 stuff. They've got to prove to that element, that he
17 intended to sell those drugs, beyond a reasonable doubt.
18 What are we without in this case? The normal thing -- any
19 type of evidence that would corroborate that idea.
20 Anything at all. We've heard from the officers that were
21 out there that there wasn't anybody out there accompanying
22 him. It's not a case where somebody's accused of working
23 the corner or distributing it to somebody. The officers
24 were good enough to come in and tell us, what was the
25 nature of the call? "Well, it was a disturbance." Not a

1 drug activity, not anything else. Just a disturbance. And
2 they go out there. And we don't have a large amount of
3 money that was found. We don't have separate packaging.
4 We've got one bag with one piece of drugs in it. That's
5 all that we have.

6 Do you have a doubt? And do you have a reason for
7 that doubt with regard to his intent to possess those drugs
8 to sell them? There is no other evidence out there. Not
9 even a shred. Much has been made about the weight. Six
10 cents. That's really what we're talking about.

11 What else are we without. We're without weapons of
12 this case. We don't have multiple types of drugs. I mean,
13 this testimony was all -- was all elicited from the
14 officers from the stand. And without all of those things.
15 And we lack one shred, anything, that would corroborate
16 this idea, anything whatsoever, that he had any intent to
17 sell it. Had about himself or nothing. He said. Officers
18 said he lay it down -- anything whatsoever. Do you have a
19 doubt about that he possessed these drugs with the intent
20 to distribute? Do you have a reason for that doubt?

21 You know, basically, cases like this, it hasn't
22 been a long case whatsoever. You know, one of the things
23 that we try to do is to, you'll have the jury instruction
24 back there. You know, before you it used to be a real
25 exercise and try to remember what the instructions were all

1 the time. But pour over them. I mean, this isn't word
2 games or legalese or anything like that. Pour over them
3 and follow it to the letter. You know, don't take your eye
4 off the law. But what I'm really telling you is to look
5 directly at it. You'll find that language in there where
6 it says that they've got to prove beyond a reasonable doubt
7 that this guy has the intent to go out and sell drugs.
8 Just based on the words. Now, there's no evidence -- how
9 would you know what the inference weight is? No testimony
10 whatsoever with regard to that.

11 I submit to you that reasonable doubt is alive and
12 well in this case. And at the conclusion of all of the
13 evidence, the conclusion of what I say, the conclusion of
14 all of the instructions the Judge will give you, I would
15 ask you to find Ira not guilty of the crime alleged.

16 Thank you for listening.

17 THE COURT: Thank you.

18 Please secure the courtroom.

19 JURY CHARGE

20 THE COURT: All right. Ladies and gentlemen, all
21 the testimony and the other evidence to be presented to you
22 has now been presented to you, and now is the time that I
23 will charge you the law that is applicable to this case.
24 And ladies and gentlemen, I'll remind you that during this
25 trial you and I have certain duties to perform. As the

1 trial judge, it is my responsibility to preside over the
2 trial of this case, and I also have the duty to rule on the
3 admissibility of evidence that has been presented during
4 this trial.

5 You are to consider only the competent evidence
6 before you. If there was any testimony ordered stricken
7 from the record in this case, you must disregard that
8 testimony. You are to consider only the testimony which
9 has been presented from this witness stand and any exhibits
10 which have been made a part of this record; and any
11 stipulations of counsel.

12 Ladies and gentlemen, I have the additional duty to
13 charge you the law that is applicable to this case, and as
14 the presiding judge, I am the sole judge of the law in this
15 case. And it is your duty as jurors to accept and apply
16 the law exactly as I now state it to you. If you already
17 have some idea as to what the law is or what the law ought
18 to be, and it does not agree with what I now tell you the
19 law is, you must abandon that idea because you are sworn to
20 accept the law and apply it exactly as I now state it to
21 you.

22 In every case tried before a jury, the jury becomes
23 the sole and exclusive judge of the facts. As the trial
24 judge, I cannot intimate, state, comment on, or make any
25 statement to a trial jury about the facts in the case.

1 This is -- again, you are the sole judges of the facts, and
2 you are not to infer from anything that I have stated
3 during the progress of the trial, in ruling on the
4 admissibility of the evidence or otherwise or anything that
5 I now say during the course of these closing instructions
6 that I have any opinion about the facts of the case. The
7 law simply does not allow me to have an opinion. This is a
8 matter solely for you, the jury, to determine. And it is
9 your duty to determine the effect, the value, the weight,
10 and the truth of the evidence that has been presented
11 during this trial.

12 Now, ladies and gentlemen, the indictment of this
13 case, 2013-GS-19-452, charges the defendant Iradelle James,
14 with the crime of possession with intent to distribute
15 crack cocaine. I remind you, the fact that the defendant
16 was charged and indicted is not evidence in this case and
17 cannot be considered by you as evidence of guilt, nor does
18 it create any inference of guilt. The indictment, as I
19 told you earlier, is simply a formal written instrument
20 that contains the charges made against a defendant, and it
21 is the formal legal document with which this case into
22 court.

23 Now, ladies and gentlemen, the defendant has pled
24 not guilty to the charges contained in the indictment. And
25 that plea puts the burden on the State to prove the

1 defendant is guilty. A person charged with committing a
2 criminal offense in South Carolina is never required to
3 prove his innocence. I charge you, and this is an
4 important rule of the law, that the defendant in a criminal
5 trial, no matter how serious the charge may be, will always
6 be presumed to be innocent of the crimes for which the
7 indictment was issued, unless guilt has been proven by
8 evidence satisfying you of that guilt beyond a reasonable
9 doubt.

10 The presumption of innocence does not end when you
11 begin your deliberations. It accompanies the defendant
12 throughout the trial until you reach a verdict of guilt
13 based on evidence satisfying you of that guilt beyond a
14 reasonable doubt. Presumption of innocence is like a robe
15 or righteousness that is placed about the shoulders of the
16 defendant, which remains with the defendant until it has
17 been stripped from that defendant by evidence again
18 satisfying you of the defendant's guilt beyond a reasonable
19 doubt. And the presumption of innocence is not a mere
20 legal theory. It is not just a legal phrase that is used,
21 but it is a substantial right to which every defendant is
22 entitled to, again, unless you the jury are satisfied with
23 the evidence of that person's guilt beyond a reasonable
24 doubt.

25 Now, ladies and gentlemen, I instruct you, and I

1 emphasize, the fact that the defendant did not testify is
2 not a factor to be considered by you in your deliberation
3 and through your consideration of guilt or innocence of the
4 defendant. It must not be considered by you in any manner
5 whatsoever. A defendant has a constitutional right to
6 remain silent, and the assertion of this right must not be
7 considered by you in your deliberations. And I repeat that
8 under your oath, you are to draw no conclusion whatsoever
9 from the fact that the defendant in this case did not
10 testify. The fact that the defendant did not testify
11 should not even be discussed in the jury room. The burden
12 of proof, as I have stated to you, is on the State, and the
13 defendant is not required to prove his innocence. The
14 burden of proof remains on the State to prove guilt beyond
15 a reasonable doubt.

16 Now, ladies and gentlemen, since the State has the
17 burden of proving the defendant guilty beyond a reasonable
18 doubt, some of you may have served as jurors for civil
19 cases, where you recall it is only necessary to prove that
20 a fact is more likely true than not true, such as by the
21 greater weight or the preponderance of the evidence. In
22 criminal cases, however, the State's proof must be more
23 powerful than that. It must be beyond a reasonable doubt.
24 Proof beyond a reasonable doubt is proof that leaves you
25 firmly convinced of the defendant's guilt.

1 Ladies and gentlemen, there are very few things in
2 this world that we know with absolute certainty. And in
3 criminal cases, the law does not require proof that
4 overcomes every possible doubt. If, based upon your
5 consideration of the evidence, you are firmly convinced
6 that the defendant is guilty of the crime charged, you must
7 find the defendant guilty. If, on the other hand, you
8 think that there is a real possibility that the defendant
9 is not guilty, you must give the defendant the benefit of
10 the doubt and find him not guilty.

11 Now, ladies and gentlemen, there are two types of
12 evidence which are generally presented during a trial.
13 There is direct evidence, and there's circumstantial
14 evidence. Direct evidence is the testimony of a person who
15 claims to have actual knowledge of the facts, such as an
16 eyewitness. It is evidence which immediately establishes
17 the main fact to be proved. Circumstantial evidence is
18 proof of a chain of facts and circumstances indicating the
19 existence of a fact. It is evidence which immediately
20 establishes collateral facts from which the main fact may
21 be inferred. Circumstantial evidence is based upon
22 inference and not on personal knowledge or observation.
23 And the law makes absolutely no distinction between the
24 weight or value to be given to either direct or
25 circumstantial evidence, nor is a greater degree of

1 certainty required of circumstantial evidence than direct
2 evidence.

3 Ladies and gentlemen, you should weigh all of the
4 evidence in this case, and after weighing all of the
5 evidence, if you are not convinced of the guilt of the
6 defendant beyond a reasonable doubt, you must find the
7 defendant not guilty.

8 Now, ladies and gentlemen, necessarily, you must
9 determine the credibility of witnesses who have testified
10 in this case. And credibility simply means believability.
11 And it will become your duty as jurors to analyze and to
12 evaluate the evidence and determine which evidence
13 convinces you of its truth. In determining the
14 believability of witnesses who have testified in this case,
15 you may believe one witness over several witnesses or
16 several witnesses over one witness. You may believe a part
17 of the testimony of a witness and reject the remaining
18 parts of the testimony of that same witness. You may
19 believe the testimony of a witness in its entirety, or you
20 may reject the testimony of a witness in its entirety.

21 Ladies and gentlemen, you may consider whether any
22 witness has exhibited to you any interest, bias, prejudice,
23 or other motive in this case. You may also consider the
24 appearance and the manner of a witness while on this very
25 witness stand.

1 Now, ladies and gentlemen, the rules of evidence
2 ordinarily do not permit a witness to testify to opinions
3 or conclusions, but there's an exception to the rule that
4 exists for witnesses we call expert witnesses. A witness
5 who's got education and experience and has become an expert
6 in some art, science, profession, or calling, may state an
7 opinion as to the relevant and material matter of which the
8 witness claims to be an expert, and they also must state
9 the reasons for their opinion.

10 You should consider an expert opinion received in
11 evidence of this case like any other evidence, and give it
12 the weight that you think it deserves. If you decide that
13 the opinion of an expert is not based on sufficient
14 education and experience, or if you conclude that the
15 reasons given in support of the opinion are not sound, or
16 that the opinion is outweighed by other evidence, you may
17 disregard the expert's opinion entirely. An expert
18 witness's testimony is to be given no greater weight than
19 that of any other witness simply because the witness is an
20 expert. And further, you do not -- you are not required to
21 accept an expert's opinion even though it is not
22 contradictory.

23 Now, ladies and gentlemen, pertaining to this
24 charge of possession with intent to distribute crack
25 cocaine. The State must prove beyond a reasonable doubt

1 that the defendant possessed crack cocaine with the intent
2 to distribute it. To prove possession the State must prove
3 beyond a reasonable doubt that the defendant had both the
4 power and the intent to control the disposition or use of
5 the crack cocaine. And possession may be either actual or
6 constructive. Actual possession means that the crack
7 cocaine was in the actual physical custody of the
8 defendant. Constructive possession means that the
9 defendant had dominion and control or the right to exercise
10 dominion or control over either the crack cocaine itself or
11 the property on which the crack cocaine was found.

12 And the mere presence at the scene where the drugs
13 were found is not enough to prove possession. The
14 defendant's knowledge and possession may be inferred if the
15 substance is found on property under the defendant's
16 control, however this inference is simply an evidentiary
17 fact to be taken into consideration by you, along with
18 other evidence in this case, and to be given the weight
19 that you decide that it should have. And again, two or
20 more persons may have joint possession of a drug.

21 Ladies and gentlemen, the State must also prove
22 beyond a reasonable doubt that the defendant intended to
23 distribute the crack cocaine. To distribute means to
24 deliver other than by administering or dispersing a drug.
25 Intent may be shown by acts and conduct of a defendant and

1 other circumstances from which you may naturally and
2 reasonably infer intent. And when determining whether the
3 defendant had the intent to distribute the crack cocaine,
4 you may consider the circumstances surrounding the
5 defendant's alleged possession, and you may consider the
6 amount of the substance alleged to have been possessed and
7 the manner in which it was allegedly possessed, the place
8 where it was allegedly possessed, and other facts that you
9 consider to be important. You must find the defendant did
10 not intend to have the crack cocaine solely for his own
11 use. The possession of more than one -- one or more grams
12 of crack cocaine creates the inference that the defendant
13 possessed the crack with intent to distribute it.

14 This inference does not relieve the State from
15 proving beyond a reasonable doubt that the defendant had
16 the intent to distribute it. It's simply an evidentiary
17 fact to take into consideration by you, along with all of
18 the other evidence in this case, and given the weight that
19 you decide it should have.

20 Now, ladies and gentlemen, if you find that the
21 State has failed to prove beyond a reasonable doubt that
22 the defendant is guilty of possession with intent to
23 distribute crack cocaine, you may consider whether the
24 State has proved beyond a reasonable doubt that the
25 defendant is guilty of the lesser-included offense of

1 possession of crack cocaine. And possession does not
2 require an intent to distribute crack cocaine. And if you,
3 the jury, have any reasonable doubt between the lesser and
4 greater offense, you must be resolve the doubt in the
5 defendant's favor.

6 Now, ladies and gentlemen, there are two possible
7 verdicts which you may find all these two charges with the
8 lesser-included. In this case, on the charge of possession
9 with intent to distribute crack cocaine, you can find the
10 defendant not guilty or guilty. Then, if you find that
11 there's possession instead of possession with intent, then
12 you can find there's two possible verdicts of not guilty or
13 guilty of possession of crack cocaine. And, ladies and
14 gentlemen, there's no significance of the order in which I
15 state these possible verdicts. It's just that one must be
16 stated first.

17 Now, ladies and gentlemen, your verdict must be a
18 unanimous one. All twelve of you must agree to the
19 verdict, and your decision must not be based on sympathy,
20 compassion, prejudice, or any other consideration that is
21 not in evidence of this case.

22 Mr. Foreman, when the jury reaches a verdict, you
23 will check the appropriate box.

24 Can I have a copy of the verdict form, please?

25 Thank you.

1 You will check the appropriate box and then sign
2 your name. Now, as to the first one is to the charge of
3 possession with intent to distribute crack cocaine. "We
4 the jury unanimously find the defendant not guilty or
5 guilty." Now, if you find the defendant to be guilty of
6 that charge, you will stop. If you find the defendant to
7 be not guilty of the first charge, then you may go on and
8 consider whether the defendant is guilty or not guilty of
9 possession of crack cocaine. But once you've signed your
10 name, please knock on the jury room door. Let the bailiffs
11 know that you've reached a verdict.

12 You will then received back here in the courtroom
13 for publication of your verdict.

14 Now, ladies and gentlemen, I'm going to ask that
15 you go to your jury room, but please do not begin your
16 deliberations as the attorneys might still have some
17 matters to discuss before you begin your deliberations.
18 All right. Thank you, ladies and gentlemen.

19 (WHEREUPON the jury left the courtroom at 3:20
20 p.m.)

21 THE COURT: If you could separate the alternate and
22 bring the alternate back out here for me.

23 All right. Are thee any objections to the charge
24 that was made from the State.

25 MR. MAYE: Nothing from the state, Your Honor.

1 THE COURT: From the defense?

2 MR. CASTO: Nothing from the defense, Your Honor.

3 THE COURT: All right. Y'all want to look at the
4 verdict form? I changed it because I was worried that they
5 could end up finding him guilty of the possession with
6 intent and then not guilty of possession, so I changed it
7 so they could put either or.

8 MR. MAYE: That's fine.

9 MR. CASTO: That's fine.

10 THE COURT: And y'all had no objection to a copy of
11 the charge going back in.

12 MR. CASTO: None whatsoever.

13 MR. MAYE: No, Your Honor.

14 THE COURT: Okay. Y'all want to gather the
15 evidence, make sure it's proper, we will then let them
16 begin their deliberations.

17 Court's at ease pending the call of the Court.

18 (WHEREUPON deliberations began at 3:21 p.m.)

19 (WHEREUPON it was reported that the jury had
20 reached a verdict at four o'clock p.m.)

21 (WHEREUPON the jury entered the courtroom at 4:02
22 p.m.)

23 VERDICT

24 THE COURT: All right. Mr. Foreman, I understand
25 the jury has reached a verdict in this case.

1 THE FOREPERSON: Yes, we have.

2 THE COURT: All right. Please hand it up to the
3 bailiffs.

4 Thank you.

5 All right. Please publish the verdict.

6 If the defendant will please stand.

7 THE CLERK: Your Honor, this is Indictment
8 2013-GS-19-452, State of South Carolina versus Ira James,
9 as to the charge of possession with intent to distribute
10 crack cocaine, we the jury unanimously find the defendant
11 guilty. As to the lesser offense --

12 THE COURT: No, ma'am.

13 THE CLERK: Okay. And it's signed by foreperson --

14 THE COURT: Read the top one again.

15 THE CLERK: Not guilty. I'm sorry.

16 As to the lesser offense of possession of crack
17 cocaine, we the jury, unanimously find the defendant
18 guilty.

19 I'm sorry.

20 THE COURT: Thank you. Now you can question the
21 jury.

22 THE CLERK: And this was signed by Ronald D.
23 Kaiser. That is the foreperson.

24 Ladies and gentlemen of the jury, if that is your
25 verdict, please raise your right hand.

1 All hands are raised.

2 THE COURT: All right. Thank you.

3 Does the plaintiff or the -- the State or the
4 defense request polling of the jury?

5 MR. MAYE: No, sir, nothing from the State, Your
6 Honor.

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

8 THE COURT: All right. Thank you.

9 All right. Then ladies and gentlemen, the verdict
10 stands.

11 Ladies and gentlemen, let me take this opportunity
12 to thank you. You know, even on a short case, it's not
13 easy holding the life of a fellow citizen in your hand, but
14 you upheld your oath, you went through the evidence and you
15 found -- and you reached a verdict. I would say the same
16 thing no matter what your verdict was. I've made no
17 judgment over that. That's not my thing to consider, but
18 y'all actually came together and reached a verdict and I
19 appreciate that.

20 Ladies and gentlemen, there's a lot of important
21 things going on in Edgefield today, but really nothing was
22 more important than justice being done. And, you know,
23 when you look at the flag over there, you see that it's
24 just a symbol. But y'all are like the threads that make up
25 that flag. You know, and as I said, many people have died

1 for that flag over the years to preserve our freedoms and
2 that's one thing that makes America great, that the State
3 doesn't say somebody's guilty, only the citizens get to say
4 whether somebody is guilty or not. And, again, you
5 listened to the evidence.

6 And ladies and gentlemen, they're going to pay you
7 a paltry amount for the amount that you did today. You'll
8 be able to get a cup of coffee. But what you actually did
9 for your county and the State of South Carolina is so much
10 greater.

11 And let me remind you that you can't serve as a
12 juror for the next year and you don't have to serve as a
13 juror for the next three years if you don't want to.

14 Now, ladies and gentlemen, in a few minutes,
15 probably about 15 minutes, I'm going the sentence the
16 defendant based upon your verdict. If you'd like to stay
17 and watch the sentencing, you're welcome to do that. If
18 you're ready to get on home and do other things on this
19 nice afternoon, you're welcome to do that. But, ladies and
20 gentlemen, if you'll give me the opportunity of taking your
21 hand, I'm going to come down there.

22 (WHEREUPON the jury was leaving the courtroom and
23 the judge was shaking their hands.)

24 THE COURT: All right. Why don't we take a 10
25 minute recess and then I'll sentence the defendant.

1 (WHEREUPON a recess was observed.)

2 SENTENCE

3 THE COURT: All right. Solicitor?

4 MR. MAYE: Your Honor, I'll leave the sentencing in
5 the discretion of the Court. His prior record, he's got a
6 larceny out of New York that he got a three year
7 probationary sentence for in '89. It looks like DUS, third
8 or greater in New York state; a DUI in '95, a DUI again in
9 2004, and that's all I have for him, Your Honor.

10 THE COURT: All right. Thank you.

11 Mr. Casto?

12 MR. CASTO: Yes, sir. Would you like for us to
13 come around?

14 THE COURT: You're fine right there.

15 MR. CASTO: Your Honor, I had the pleasure -- it's
16 no secret I have kind of been being waltzed in here in the
17 tri-counties and I've been helping in Saluda for a few
18 years. Edgefield is kind of the great unknown, so to speak
19 and I -- you know, I met Mr. James, Ira, recently and he
20 ultimately -- he is somebody that just was filled with
21 questions and was eager to -- to kind of tell me what had
22 happened, his story in the line of -- I guess, when I look
23 at the -- kind of the body of work that I try to
24 accomplish, a lot of what I do first before we really get
25 there, is I try to think about the story of the person

1 sitting in front of me and I think I've gotten a glimpse of
2 that in my dealings with Ira.

3 I think that -- the attorney before me, I sort of
4 feel like Mr. Seigler met with him and I think he had a lot
5 more questions. I was pleased to make myself available and
6 he seemed to understand that. And during our meetings
7 together, Ira is 48 years of age. He lives in Johnston.
8 He lives there with his two daughters. He has three kids
9 total. One is 29, obviously grown, but the other children
10 are 16 and 12. His mom lives in Johnston too.

11 Ultimately his story looks like this: He was born
12 around here and then but for the major aspect of his life
13 or his adult years, pretty much predominantly New York,
14 that's where he lived, that's where he worked. And, you
15 know, the interesting line of work that he did for a number
16 of years was debt collection. Debt collection with fees,
17 attorney, legal fees, things of that nature. Most
18 recently, Your Honor, he's relocated back, I guess getting
19 back to his roots so to speak.

20 In Johnston he works at their IGA as a stocker. I
21 think that that's the type of job that he has now, but he
22 did tell me that what he ideally, you know, wants, is
23 something that would be a better job providing for him and
24 his family so to speak. He's somebody that, I always knew
25 where to find him and I think that he's somebody that could

1 have moved past all this.

2 Judge, he did 24 days in jail and we believe that
3 he is certainly entitled to that credit. You know, I -- we
4 certainly stand in a position where we did our very best
5 and we respect what we do within these calls, and respect
6 the fact that the jury has spoken. And the dust is
7 ultimately settled here and we respect the verdict and so I
8 spoke with Ira about that. You know, he -- he understands
9 what all this means.

10 Judge, I just would respectfully ask the Court to
11 strongly consider this: He's 48. He has, you know, a
12 minimal prior record. I don't believe he has any felonies
13 whatsoever on his record. He's --

14 THE COURT: The larceny would probably be a felony.

15 MR. CASTO: Yes, sir, and one thing I wish to point
16 out is that was up in New York and I know that that is a
17 state where you can get lengthier terms of probation even
18 though it might be a misdemeanor. But, you know, I think
19 that the body of who Ira is, is somebody good and he would
20 just want to move forward with life. Judge, we say all
21 this to say this: He's working. I've never had any issue
22 finding him during the pendency of this thing. It's been
23 pending for a shade over a year and a half that they
24 haven't had any troubles or issues with him getting any
25 trouble disorderly or anything like that. And we'd ask the

1 Court to strongly consider a probationary sentence. And
2 the reason is, I just really feel that he would abide by
3 that. I'm mindful of the fact that if he should fail in
4 that endeavor that his incarceration would be imminent.

5 He is the sole provider for his two children that
6 are with him, ages 16 and 12, Judge. And, you know, I
7 think that this certainly could be an instance of somebody
8 that is perhaps maybe looking to just move forward with
9 life and that might be an appropriate way to do this. We
10 ask the Court to strongly consider that at this time.

11 THE COURT: All right. Would he like to say
12 anything?

13 I need the sheet. Nobody has given me a sentencing
14 sheet.

15 Would you like to say anything, Mr. James?

16 THE DEFENDANT: Yes, Your Honor. I'm a single
17 parent with two kids. I'm trying to stay out of trouble,
18 et cetera, just in the past -- I just want to move forward
19 with my life, take care of my kids, get a better job and
20 stay out of trouble.

21 THE COURT: Anything further from the State?

22 MR. MAYE: Nothing from the State, Your Honor.
23 Thank you.

24 THE COURT: Anything further from the defense?

25 MR. CASTO: Your Honor, one thing I would wish to

1 place on the record at this time is -- just so that it's
2 all together in a transcript -- we, at this time would
3 renew all prior motions and objections raised at pretrial
4 and during the trial to include our motion or motions for
5 directed verdict at this time, respectfully.

6 THE COURT: All right.

7 All right. The sentence of the Court is that the
8 defendant be committed to the State Department of
9 Corrections for a period of 3 years. Good luck, sir.

10 MR. CASTO: Thank you. Additionally, as a matter
11 of record, we'd also move for a new trial.

12 THE COURT: Denied.

13 MR. CASTO: Yes, sir.

14 THE COURT: Thank you.

15 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)

2 County of Aiken)

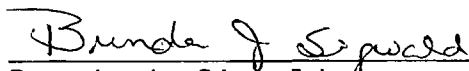
Certificate of Reporter

3
4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald, Official
7 Court Reporter for the Fifth Judicial Circuit of the State
8 of South Carolina, do hereby certify that I reported the
9 proceedings in the captioned case in the Court of General
10 Sessions in and for the State of South Carolina on the 3rd
11 and 4th days of September 2014.

12 I FURTHER CERTIFY that the foregoing pages,
13 constitute a true, accurate and complete transcript of said
14 hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 8th day of December 2014.

19
20
21
22 

23 Brenda J. Sigwald,
24 Court Reporter and Notary Public
25 For the State of South Carolina
My commission expires
January 4, 2020

WITNESSES

ECSO

OXENDINE

ARREST WARRANT NUMBER

2013A1910100267

ACTION OF GRAND JURY

RUE BIL

Trinity H. Hines
Foreperson of Grand Jury

Date: 7-31-13

VERDICT

Possession Crack Cocaine

Donald D. Kew
Foreperson of Petit Jury

Date: 7/14/14

DOCKET NO. 2013-GS-19- 452

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

AUGUST TERM 2013

THE STATE

vs.

IRADELLE JAMES

CDR#0450

Indictment for

**POSSESSION WITH INTENT TO
DISTRIBUTE CRACK COCAINE**

DONALD V. MYERS, SOLICITOR

THE ABOVE IS A TRUE AND CORRECT COPY OF THE ORIGINAL
WHICH IS FILED IN THE CLERK'S OFFICE OF THE COURT OF
GENERAL SESSIONS, COUNTY OF EDGEFIELD, SOUTH CAROLINA.

[Signature]
DATED

CLERK OF COURT, EDGEFIELD, S.C.

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF EDGEFIELD

**POSSESSION WITH INTENT TO DISTRIBUTE
CRACK COCAINE**

At a Court of General Sessions, convened on July 31, 2013 the Grand Jurors of Edgefield County present upon their oath:

That IRADELLE JAMES, did in Edgefield County on or about May 11, 2013, knowingly and intentionally possess with intent to distribute a quantity of Crack Cocaine, a controlled substance, in violation of § 44-53-375(B), South Carolina Code of Laws, 1976, as amended, such possession not having been authorized by law, with penalties provided for in §44-53-375(B)(1), South Carolina Code of Laws, 1976, as amended.

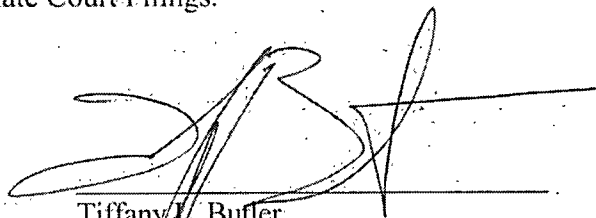
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Donal Myers
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."

November 23rd, 2015



Tiffany L. Butler
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

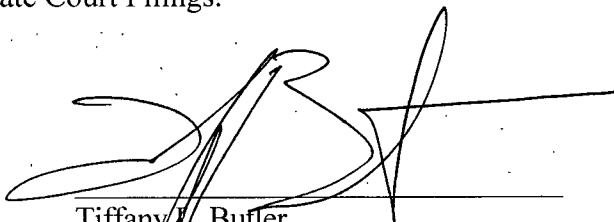
ATTORNEY FOR APPELLANT

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SC Court of Appeals

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