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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Edward B. Cottingham, Circuit Court Judge

Case No. 2011-GS-22-01298

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SC Court of Appeals

State of South Carolina Respondent

vs.

FRANKLIN EZEKIEL DENNISON

.....Appellant.

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GEORGETOWN) 2011-GS-22-1298, 1299

The State,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	September 30, 2013
	)	through
Franklin Ezekiel Dennison,	)	October 3, 2013
	)	
Defendant.	)	

B E F O R E :

Honorable Edward B. Cottingham
Georgetown County Courthouse
Georgetown, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GEORGETOWN) 2011-GS-22-1298, 1299

The State,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	September 30, 2013
	)	through
Franklin Ezekiel Dennison,	)	October 3, 2013
	)	
Defendant.	)	

B E F O R E :

Honorable Edward B. Cottingham
Georgetown County Courthouse
Georgetown, South Carolina

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1 (On the record, September 30, 2013. The following takes place
2 outside the presence of the jury venire.)

3 THE COURT: All right, Solicitor, I understand we
4 have a motion in the first case to be tried. It's my
5 intention to hear that motion now and then if necessary to
6 select a jury this morning, start the trial at 2:30 this
7 afternoon. Is that satisfactory to everybody?

8 MR. FREDERICK: Sounds good, Judge.

9 THE COURT: All right, sir.

10 MS. RICHARDSON: Your Honor, my folks from SLED are
11 coming tomorrow. So I could start with the officer.

12 THE COURT: That's right, we've got ---

13 MS. RICHARDSON: Some other matters this afternoon.

14 THE COURT: I'm sorry, you have pleas this
15 afternoon. They will be here at 9:30 in the morning?

16 MS. RICHARDSON: Yes, Your Honor.

17 THE COURT: That's fine then.

18 MR. FREDERICK: Okay.

19 THE COURT: All right, sir, what's before me,
20 please?

21 MS. RICHARDSON: Your Honor, this is the State versus
22 Franklin Ezekiel Dennison. It's 2011-GS-22-1298, possession
23 with intent to distribute cocaine base, and 2011-GS-22-1299.
24 He is present represented by Mr. Frederick and Ms. Hiller.
25 It's my understanding that he has a motion to suppress.

1 MR. FREDERICK: Judge, our motion is to suppress any
2 evidence that was found in the traffic stop based on a lack of
3 reasonable articulable suspicion on the officer's part. I
4 think that probably if the State would call the officer and we
5 could find out what their reasonable suspicion was that'd be
6 the best place to start.

7 THE COURT: That'll be fine and I would want the
8 record to reflect that the Defendant is in court accompanied
9 by both attorneys.

10 Call your witness on this issue, please.

11 MS. RICHARDSON: Officer Don Tempalsky.

12 Whereupon, Donald Tempalsky was called to the stand, duly
13 sworn by the clerk and testified as follows:

14 THE CLERK: Thank you. Please be seated and
15 state your full name for the record.

16 THE COURT: Good morning.

17 MR. TEMPALSKY: Good morning, Your Honor. Donald
18 Tempalsky, T-E-M-P-A-L-S-K-Y.

19 EXAMINATION

20 BY MS. RICHARDSON:

21 Q And Officer Tempalsky, where are you employed now?

22 A I work for the drug enforcement unit of the 15th Circuit
23 Solicitor's Office.

24 Q Okay, and back on September 24th, 2011, where, where were
25 you employed?

Motions

8

- 1 A I was employed by the Georgetown City Police Department.
- 2 Q And what was your position there?
- 3 A I was a corporal in the patrol division.
- 4 Q And how long have you been in law enforcement?
- 5 A Going on 30 years.
- 6 Q And what sort of experience and positions have you held?
- 7 A I, I started in 1984 as a patrol officer, worked in anti-
- 8 crime units, gang suppression units, probably about 15 years
- 9 in drug units. I obtained a rank of detective lieutenant in
- 10 charge of narcotics unit in the State of New Jersey. Since
- 11 I've come to South Carolina I've worked at the Georgetown
- 12 County Sheriff's Department and the Georgetown City Police
- 13 Department and presently obtained the position of the deputy
- 14 commander of the drug enforcement unit here in Georgetown
- 15 County.
- 16 Q Okay, and you were on duty on September 24th, 2011?
- 17 A Yes, ma'am, I was.
- 18 Q And you came in contact with Franklin Dennison?
- 19 A I did.
- 20 Q And can you tell me how that started?
- 21 A I was on routine patrol in a marked police car,
- 22 Georgetown City Police car in uniform.
- 23 Q And this was during the daytime?
- 24 A It was. It was between one and two o'clock in the
- 25 afternoon. I noticed a Dodge Charger parked on Prince Street.

1 It was stopped in the middle of the road. At a - stayed at
2 Sam Bonds' apartments, there's several apartments there right
3 off of Merriman Road.

4 THE COURT: He was parked where?

5 A In the middle of the road.

6 THE COURT: Okay.

7 A On Prince Street. There's a - there have been numerous
8 complaints of drug trafficking in that area in and about those
9 apartments, in the driveway, in the front yard of the house
10 next door. So I took note and I watched and while the car was
11 stopped facing Merriman Road on Prince I noticed a, an
12 individual come out from the apartments. It appeared that he
13 had a sort of green looked like currency in his hand, walked
14 up to the driver's side of the Charger, leaned in, his hand
15 disappeared. His hand came back out. I saw his head go down
16 and then he quickly walked off back to the apartments. The
17 ---

18 Q And when the car was parked did it have any flashers or
19 any sort of lights engaged that you recall?

20 A Not that I recall, no. The vehicle subsequently came out
21 to Merriman Road, made a right turn, and I was in a ---

22 THE COURT: Let me ask you first, did that car
23 remain stopped in the middle of the road while this alleged
24 transaction occurred?

25 A Yes, sir, Your Honor, it did.

Motions

10

1 THE COURT: Okay, proceed.

2 A The, the vehicle began traveling on Merriman Road south
3 towards the paper mill. At that time I already changed my
4 location, my position and when it passed me I noticed that the
5 rear-seat passenger didn't have a seatbelt on and noticed that
6 the vehicle was steadily increasing its speed. I pulled out
7 onto the roadway so that my patrol vehicle was facing the same
8 direction as the Charger was traveling and utilized the dash
9 mounted radar and noted that it was going 38 miles an hour in
10 a 30 mile per hour zone.

11 Q So what did you do at that point?

12 A I caught up to the vehicle and activated my overhead
13 lights and flashing headlights.

14 Q And did the vehicle stop?

15 A It momentarily slowed, then it sped up again and
16 subsequently started making a right turn onto I believe it was
17 Emanuel Street.

18 Q Did it, did it stop there?

19 A It did not. It, it slowed but didn't stop which made me
20 even more suspicious. It didn't seem like a normal traffic
21 stop and I hit my air horn and then the vehicle stopped and
22 kind of jerked to a stop at the side of the road.

23 Q Okay, and then what did you do?

24 A I approached the driver's side door of the vehicle, made
25 contact with Mr. Dennison and informed him who I was and the

1 reason for the stop.

2 Q And how many - he was - Mr. Dennison was the driver?

3 A He was.

4 Q And how many passengers were in the vehicle?

5 A Two. There was one person in the front passenger seat
6 and one person in the rear of the vehicle.

7 Q And so you told Mr. Dennison why you had stopped him?

8 A I did and his - it was tough to communicate with Mr.
9 Dennison. He didn't seem to be understanding what I was
10 saying. He seemed distracted and extremely nervous, was
11 moving about the vehicle. I tried to calm him in a calm voice
12 to tell him I, explain to him the manners of the stop, you
13 know, what my reason was for the stop and told him several
14 times to stop moving. I noticed that he had, he had money, a
15 \$10 bill laying in his lap and he had a pill bottle. At one
16 time he had a pill bottle in his right hand, a white pill
17 bottle. Then I couldn't see the pill bottle. Then he was -
18 he moved his entire body to the right, put his hands down
19 where I couldn't see them. I didn't know what he was
20 grabbing. Then subsequently told him several times, "Stop
21 moving, stop moving about the car. Let me see your hands." I
22 would gain momentary compliance and then he would start moving
23 again.

24 Q And what did you do at that point?

25 A At some point during this interaction I was able to get

1 the key out of the car. I felt that it - the situation was
2 becoming dangerous. I didn't want him to flee. I got the key
3 out of the car. I called for backup at least once. I think
4 as things progressed I called for the backup to speed it up a
5 little bit and told him I had to see his hands. I was fearful
6 he was going to draw a weapon. I really didn't know what he
7 was grabbing but he was becoming more and more erratic and
8 more and more intent on the area to his right where the
9 vehicle console was.

10 Q So what did you do at that point when he wouldn't comply?

11 A I drew my Taser and told him if he didn't put his hands
12 where I could see them and didn't stop reaching down that I
13 was going to Tase him.

14 Q And did you also instruct the other passengers?

15 A I, I'd have to look back but I believe I told everyone to
16 put their hands where I could see them. The only one that was
17 moving about the vehicle was Mr. Dennison.

18 Q And after you deployed your Taser or pulled out your
19 Taser what happened then?

20 A He continued to, to move about the vehicle and then he
21 abruptly pushed the door into me. I thought that he was going
22 to either attack me or flee. I deployed my Taser and Tased
23 him once in the abdomen.

24 Q And then what happened?

25 A He - the Taser went through its cycle. He appeared to be

1 fighting the Taser, continued to try to move about towards
2 that center area in the console. I told him to stop moving.
3 When the cycle stopped I told him that if he didn't stop
4 moving about the vehicle that I would initiate a second cycle
5 or Tase him again. At that time he actually - after the cycle
6 end, first cycle ended he reached out of the vehicle and
7 attempted to grab the Taser and I initiated a second cycle of
8 the Taser.

9 Q And then what happened?

10 A At some point my backup pulled up on scene and the - this
11 all happened very quickly, the front seat passenger opened his
12 door and got out of the vehicle allowing Mr. Dennison to move
13 towards the passenger side and he actually rolled out the
14 passenger side and he broke the Taser leads which stopped the
15 charge from incapacitating him. He then got up and ran down
16 the sidewalk at which time Sergeant Scogin activated his Taser
17 and Mr. Dennison fell to the sidewalk and I was able to get on
18 top of him and handcuff him.

19 Q At that point did you find out what was in his hand?

20 A Yes, it was a white small pill bottle commonly used
21 aspirin or small over the counter medications and it had
22 several pieces of crack in it, crack cocaine.

23 Q And were some of those individually wrapped?

24 A They were.

25 Q I have no further questions. Answer any questions that

Motions

14

1 Mr. Frederick may have for you.

2 A Yes, ma'am.

3 THE COURT: Mr. Frederick.

4 MR. FREDERICK: Yes, Your Honor, thank you.

5 EXAMINATION

6 BY MR. FREDERICK:

7 Q Where did you find the pill bottle at the end?

8 A His hand, his right, he was clenching it in his, I
9 believe it was his right hand.

10 Q When he fell on the sidewalk?

11 A Yes, sir.

12 Q Okay, now, where were you parked when you saw the
13 transaction?

14 A I've been out of patrol for a little, oh, probably a year
15 and a half now. I can't remember the name of the street. It
16 might be Railroad but it's, it's between Front Street and
17 Prince Street.

18 Q Okay, Front Street and Prince Street.

19 THE COURT: You may come closer to the witness if
20 you care to, Mr. Frederick.

21 MR. FREDERICK: Yes, sir, thank you.

22 BY MR. FREDERICK:

23 Q The road that is crossways from Prince Street is that
24 Emanuel?

25 A I don't think I understand.

Motions

15

1 Q The road that Prince Street, say Prince Street comes
2 down, right, like this?

3 A Right, parallel with Highmarket Street.

4 Q Is the perpendicular road is that Emanuel the one he
5 turned onto?

6 A That's Merriman Road.

7 Q Merriman, that's right.

8 A Yes, sir.

9 Q All right, and which road is Railroad Street?

10 A I believe it's Railroad, but it's, it's a road that's
11 parallel with Prince.

12 Q Parallel with Prince and it would be other side of the
13 railroad tracks?

14 A Yes.

15 Q Paralleling the railroad tracks as well?

16 A Yes.

17 Q Directly across Merriman Street?

18 A I don't know what you mean by directly across. I was at
19 a - initially when I first made those observations I was at an
20 angle looking kind of a similar angle to myself and Mr.
21 Dennison now and then eventually I pulled out, pulled around
22 and pulled into - I think I might have stopped in front of the
23 funeral home.

24 Q Okay, so, at the time that you witnessed the transaction

25 ---

- 1 A Yes.
- 2 Q --- were you at the stop sign on Railroad Street?
- 3 A I think I was a little bit farther back before the stop
- 4 sign. I was just kind of coasting down, down the roadway
- 5 watching what was going on.
- 6 Q Okay, and so you said at the - on Railroad Street and at
- 7 the end of Railroad Street when it comes to Merriman there's a
- 8 stop sign there; right?
- 9 A Yes, sir.
- 10 Q Okay, on Railroad Street you witnessed the hand-to-hand
- 11 transaction on Prince Street at the apartments.
- 12 A Yes, sir.
- 13 Q And then you pulled around into the funeral home parking
- 14 lot; is that right?
- 15 A That's correct.
- 16 Q All right, and that funeral home parking lot it's next to
- 17 Railroad Street.
- 18 A Yes, sir.
- 19 Q Okay, and also on the far side of Merriman from Prince
- 20 Street.
- 21 A Yes, it's across Merriman.
- 22 Q Okay, and you said that he came out off of Prince Street
- 23 and made a right on Merriman Street.
- 24 A Yes, sir.
- 25 Q And then you crossed the railroad tracks; right?

Motions

17

1 A Yes, sir.

2 Q And then there's the funeral home on your left.

3 A I think he hit - that - if it's Railroad, I believe it's
4 Railroad, you hit Railroad, then you hit the funeral home,
5 that's correct.

6 Q Okay, and you said that you had changed your location and
7 position. What you meant by that is you moved from Railroad
8 to the funeral home.

9 A And I did and I'm trying - I was trying to recall why and
10 I think there might have been a car on Railroad behind me. I
11 really don't remember why I moved, but I think there was a car
12 in the roadway behind me.

13 Q And you said then you moved your radar gun?

14 A No, I don't ---

15 Q Adjusted it?

16 A Moved my radar gun?

17 Q Or adjusted it.

18 A No, I ---

19 Q Whatever you said on direct, what was it that you said?

20 A I don't know - I don't remember saying anything about
21 moving the radar gun.

22 Q When he turned onto Merriman Street ---

23 A Yes.

24 Q --- right, and then you're in the funeral home parking
25 lot?

Motions

18

1 THE COURT: Talk a little louder. I can barely
2 hear you and I'm not sure he can.

3 MR. FREDERICK: Sorry, Judge.

4 BY MR. FREDERICK:

5 Q When you -- when he turned onto Merriman Street; right?

6 A When he, when he turned on, Mr. Dennison.

7 Q That's right.

8 A Okay.

9 Q Mr. Dennison made a right onto Merriman Street; correct?

10 A Yes.

11 Q At that point were you in the funeral home parking lot?

12 A I believe I was, yes.

13 Q Okay, and you used your radar as he went by you?

14 A No, well, I mean the radar's on all the time but I don't
15 believe I clocked the speed at that time, no.

16 Q Okay, explain. When did you clock the speed?

17 A When did I see him at 38 miles an hour?

18 Q Sure.

19 A After I turned onto Merriman Road so that I was facing
20 the same direction as he was. I was behind him. That's when
21 I clocked his or that's when I saw that he was going 38. I'm
22 sure the radar picked him up at times prior to that. I don't
23 recall what those speeds were, but I know that the speed was,
24 top speed he attained was 38 miles an hour and that is after I
25 pulled onto Merriman Road.

Motions

19

1 Q Okay, and you said when you observed the transaction you
2 saw green currency in a person's hand?

3 A That's what it looked to me like. It looked like
4 currency. The way he was grasping it I thought I saw like
5 paper and that color of money, you know.

6 Q And can you describe the person?

7 A He was an older black male, didn't really take great note
8 at the - his description. Now I can't recall his total
9 description except he was an older black male with graying
10 hair, maybe dirty jeans. That's about it.

11 Q Okay, is it your testimony that you had a clear,
12 unobstructed view?

13 A Yes.

14 Q Of the transaction?

15 A Yeah, well, I saw him come up to the car. Well, yeah, I
16 didn't see his hand in - when it went into the car but, you
17 know, I did.

18 Q Okay.

19 MR. FREDERICK: Just a moment, Judge. No more
20 questions. Thank you.

21 THE COURT: That conclude your questions?

22 MR. FREDERICK: Yes.

23 THE COURT: Does co-counsel have any questions?

24 MS. HILLER: No, Your Honor.

25 MR. FREDERICK: No, sir, we're - that's all. Thank

Motions

20

1 you, Judge.

2 THE COURT: Was there anything in reply from the
3 Solicitor?

4 MS. RICHARDSON: No, Your Honor.

5 THE COURT: You may come down.

6 A Thank you, Your Honor.

7 THE COURT: Do you have any other witnesses on
8 this issue?

9 MS. RICHARDSON: No, Your Honor.

10 MR. FREDERICK: We, we do, Judge.

11 THE COURT: Proceed. Do you have some witnesses,
12 Mr. Frederick?

13 MR. FREDERICK: Yes, sir, Your Honor. We'd call Bill
14 Beam.

15 THE COURT: All right, sir. Swear the witness.

16 Whereupon, William Beam was called to the stand, duly
17 sworn by the clerk and testified as follows:

18 THE CLERK: Thank you. Please be seated and
19 state your name for the record.

20 REPORTER: Can you spell your last name, too,
21 sir?

22 MR. BEAM: Yes, ma'am. My name's William Beam.
23 The last spelling is B-E-A-M, as in mom.

24 EXAMINATION

25 BY MR. FREDERICK:

Motions

21

1 Q And you go by Bill; correct?

2 A Yes, sir.

3 Q Bill, what is your involvement in this case?

4 A I am an investigator, private investigator. I work on
5 staff with your office, sorry, yes. I work with Bobby's
6 office as his investigator, sir.

7 THE COURT: Thank you.

8 Q Okay, and what did you do, if anything, in regards to
9 Franklin's case?

10 A I went out to the scene with you and we took some
11 photographs that document the scene and we also took some
12 precise measurements with a - the same kind of wheel you use
13 like in an accident scene where you'd mark it and you'd roll
14 off the distance.

15 THE COURT: I understand.

16 A That's what we did.

17 Q Okay, and can you identify this particular photograph?

18 A Yes, I can. That's a photograph at the intersection of
19 Railroad and Merriman and if you're looking down where the car
20 is, sir, that's the spot where the stop was made. That's not,
21 that's the reenactment of the stop. That's where the car was.

22 THE COURT: I see.

23 MR. FREDERICK: And I'm sorry, Judge, that was
24 Defense Exhibit Three that the witness was looking at.

25 THE COURT: All right, sir, and that depicts the

Motions

22

1 final stop of the car?

2 A Yes, sir, that, that would be the - where he noticed the
3 transaction, alleged transaction and this would be ---

4 THE COURT: Well, where you're talking about that
5 was where the initial transaction took place?

6 A Yes, sir, where this gray car is that's ---

7 THE COURT: All right, go ahead.

8 A Yes, sir.

9 Q Let me - this white thing right here what is that?

10 A That's my vehicle parked.

11 Q Okay, and what road is that?

12 A That's Railroad Street.

13 Q Okay, and this vehicle over here whose car is that?

14 A That's your vehicle, that's the attorney's vehicle.

15 Q And that - you mentioned the thing that you use to
16 measure the distance. Can you describe that, what kind of
17 handle did it have?

18 A It's, it's a - got a handle that collapses. You pull it
19 out and then at the bottom there's a wheel and you set it to
20 zero.

21 THE COURT: I'm familiar with that, with that
22 instrument.

23 A All right.

24 Q And what color is it?

25 A It's orange.

Motions

23

- 1 Q Is it bright gold?
- 2 A Yes, it's bright orange.
- 3 Q Okay.
- 4 A With a silver handle.
- 5 Q And was that bright orange handle in this photograph?
- 6 What was I doing with it?
- 7 A He was measuring, you're measuring from the corner all
- 8 the way down.
- 9 Q No, in this picture ---
- 10 A Yes, sir.
- 11 Q --- we're not measuring.
- 12 A Okay.
- 13 Q What was I doing with the handle?
- 14 A Oh, I apologize. He was holding it out the window of the
- 15 car, so, so if you look at the picture you'd have to get real
- 16 close. He's holding the orange part of the handle out the
- 17 window of the car.
- 18 Q All right, and this guy over there.
- 19 A He just happened to be walking by.
- 20 MR. FREDERICK: Okay, Judge, you - can you see that?
- 21 THE COURT: Oh, yeah, uh-huh.
- 22 MR. FREDERICK: Okay.
- 23 BY MR. FREDERICK:
- 24 Q Defense Exhibit One, what is this photograph?
- 25 A That's a picture of Merriman Road and the funeral home

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1 where the detective says he was sitting, that's where I'm on
2 the side of the road right at the funeral home.

3 Q So you're taking the photograph; is that right?

4 A Yes, sir.

5 Q Behind the camera?

6 A Yes, sir.

7 Q Okay, and where would Railroad Road, Railroad Drive be?

8 A Railroad Road is right here. You can see this side of it
9 and so Railroad is right here where the previous picture where
10 my white truck was sitting it's sitting right here just out of
11 view and the stop where it happened the house is right back
12 behind these bushes.

13 Q Okay, so that's Prince Street?

14 A Yes, sir.

15 Q All right, so if the person came out coming down Prince
16 Street they would be right here; right?

17 A Yes, sir.

18 Q And then right about here is that about right where they
19 would turn onto Merriman?

20 A Yes, sir.

21 Q Okay, and this is what road?

22 A Merriman Road.

23 Q Okay.

24 A Directly in front of the funeral home, and I also took
25 measurements like feet if you want to ---

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1 Q Sure, can you tell me what the measurements were from the
2 funeral home to the apartments?

3 A From, from there to the apartments is 242 feet.

4 Q Okay, and that's ---

5 A And that's, that's ---

6 Q --- that's actually directly; right?

7 A Yes, sir, I was going to say that's as a crow flies so to
8 speak, that's if I cut right straight across everything and
9 went from where your thumb is just straight to where the car
10 would allegedly been parked.

11 Q And what was the measurement from here, how far is that
12 where the vehicle is parked to the gray SUV back there?

13 A That's pretty close. That's like 240 feet. It's just a
14 couple of feet is where the other picture is taken.

15 Q All right, so, it's not much more distance than that?

16 A No, sir.

17 Q How far away is this from the funeral home?

18 A Like two or three feet, it's just barely out of the
19 picture, the funeral home is right there.

20 Q Okay.

21 MR. FREDERICK: I have no other questions.

22 THE COURT: Thank you. You may examine,
23 Solicitor.

24 EXAMINATION

25 BY MS. RICHARDSON:

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1 Q When were these photos taken?

2 A On 12-6-2012.

3 Q Okay, and that would be over a year after the incident
4 occurred?

5 A Yes, ma'am.

6 Q And on Defense Exhibit One this is actually the
7 apartments?

8 A It - yes, ma'am.

9 Q That's Sam Bonds' apartments?

10 A I'm not sure what they're called, ma'am, yeah.

11 Q Okay.

12 MS. RICHARDSON: I have no further questions.

13 MR. FREDERICK: No redirect.

14 EXAMINATION

15 BY THE COURT:

16 Q What was the distance between the place where the officer
17 said he was in the car and the distance of where the alleged
18 transaction took place?

19 A 240 feet.

20 Q Okay.

21 A With the stick measurement, sir.

22 Q There was no obstruction between those two vehicles?

23 A No, sir.

24 Q All right, thank you.

25 THE COURT: Any further questions by anyone?

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1 MS. RICHARDSON: No, Your Honor.

2 MR. FREDERICK: No further questions, Judge.

3 THE COURT: All right, you may come down. Any
4 further witnesses, Mr. Frederick?

5 MR. FREDERICK: No, sir.

6 THE COURT: All right, sir.

7 MR. FREDERICK: Judge, as I'm sure you know, I'm not
8 going to take too long belaboring it, but it's a clear view,
9 but I was holding a long bright orange fluorescent handle out
10 of that window, and you, I mean, you can look as careful as
11 you want, you can blow it up on the computer and you cannot
12 see it. I don't think it's possible that the officer saw
13 money in someone's hand and actually witnessed a hand-to-hand
14 transaction. He saw a vehicle stop and then start again and
15 what he says is ---

16 THE COURT: He saw a vehicle stopped in the
17 middle of the road as I remember his testimony.

18 MR. FREDERICK: Yes, sir, in what he describes as a
19 high crime ---

20 THE COURT: Yeah.

21 MR. FREDERICK: --- or high drug neighborhood and
22 then the other point here is this illustrates where the car
23 came down Prince Street, made a right turn on Merriman and the
24 officer says he moved his vehicle to the funeral home. This
25 also shows Prince almost to the end and Merriman the officer

1 says that the car apparently came down, stopped, turned,
2 crossed the railroad and in full view of a marked patrol car
3 hit 38 miles per hour in a matter of seconds which does not
4 seem realistic in my opinion, Judge, and that's the purpose of
5 these photographs.

6 THE COURT: I understand. Solicitor, what would
7 you say for the record, please?

8 MS. RICHARDSON: Your Honor, I'd say based on State v.
9 Corley and State v. Provet a, if an officer witnesses a
10 traffic violation that gives him reasonable suspicion to stop
11 a vehicle. We had a vehicle stopped in the middle of the
12 roadway. The officer also gained suspicion by seeing the
13 transaction and then once the vehicle passed him it increased
14 speed. He's testified that he clocked the vehicle on a city
15 street going 38 in a 30 and that's when he initiated the
16 traffic stop was once he had clocked the vehicle speeding, and
17 I believe that, Your Honor, based on recent case law,
18 including State v. Provet which was just decided August 14th of
19 this year, you know, witnessing that traffic violation does
20 give reasonable suspicion as well as his training and
21 experience and what he saw with the hand-to-hand transaction.

22 MR. FREDERICK: The only thing I have to add, Judge,
23 is it has to be a reasonable articulable suspicion. This is
24 in your hands. I don't think, you know, if this goes to the
25 Court of Appeals then their standard is was there evidence to

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1 support your decision and ultimately what that means is this
2 is in your hands.. My position, Judge, is it has to be a
3 reasonable articulable suspicion. I think saying, "I saw a
4 hand-to-hand transaction," at that distance, under those
5 circumstances is not reasonable. Saying that a vehicle
6 reached a speed of 38 miles per hour after turning off of
7 Prince Street in a short amount of time is not reasonable.

8 THE COURT: I've reviewed the photographs
9 submitted, listened very carefully to the testimony of the two
10 witnesses and in that connection, Mr. Frederick, I would
11 respectfully deny your motion for the following reasons: an
12 automobile stopped in the middle of the road in a high crime
13 area would give by itself an officer some form of suspicion.
14 The testimony is that this alleged transaction took place
15 within 240, 240 feet. That's less than a football area. We
16 know from experience that you can see a football in a man's
17 hand at 300 feet; and so, it's not illogical to assume that
18 this professional witness had an opportunity to see this
19 alleged transaction. Further, your witness has stated that
20 there was a clear view from the officer's testimony, I mean,
21 vehicle, until the Defendant's vehicle. Clearly, the fact
22 that it was stopped in the middle of the road is a basis for
23 stopping him, the fact that he saw what appeared to be a drug
24 transaction in a high crime area is another basis for it, and
25 the fact that he was charged with proceeding 38 miles an hour

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1 in a 30 mile zone, which is a residential area, is another
2 basis for the stop. I conclude for the following, for those
3 following reasons that the stop was appropriate. Anything
4 further?

5 MS. RICHARDSON: No, Your Honor.

6 THE COURT: Anything further from you, Mr.
7 Frederick?

8 MR. FREDERICK: No, sir, that's all we have at this
9 time.

10 THE COURT: All right, sir, are we ready now as I
11 understand it we're going to start this case at 9:30 in the
12 morning. Do you have the indictment ready?

13 MS. RICHARDSON: I do, Your Honor.

14 THE COURT: What, what is he, what is he being
15 tried for? There's several alleged things here, but
16 specifically what are we going to trial on?

17 MS. RICHARDSON: Your Honor, the indictment is for
18 possession with intent to distribute cocaine base, and of
19 course it doesn't have the level of it. The CDR code on it is
20 for a third offense and we would move to amend that to a
21 second offense, possession with intent to distribute cocaine
22 base second offense, which would be a lesser included, and
23 also attempted unlawful taking of a firearm or the Taser from
24 a law enforcement officer, those two charges.

25 THE COURT: Do you have any objection to the

1 amendment, Mr. Frederick?

2 MR. FREDERICK: Only that when we read the indictment
3 to the jury we do not read second offense to the jury.

4 THE COURT: Oh, no, it will not.

5 MS. RICHARDSON: Right, it's just more for ---

6 THE COURT: No, no, that will not be read.

7 MR. FREDERICK: Yes, sir.

8 THE COURT: She can prove it.

9 MS. RICHARDSON: Well, that's the two charges, Your
10 Honor.

11 MR. FREDERICK: Then, Judge ---

12 THE COURT: Okay.

13 MR. FREDERICK: --- just to be clear she can prove
14 that for purposes ---

15 THE COURT: Sir?

16 MR. FREDERICK: --- of sentencing.

17 THE COURT: Pardon me?

18 MR. FREDERICK: As far as proving second offense
19 that's not a matter for the jury, Judge.

20 THE COURT: No, that, that would be me, but can
21 we agree that the record will - off the - the jury's not here,
22 for my purposes later if it becomes necessary can we agree
23 that this is a, a second offense?

24 MR. FREDERICK: Well, I think they need to establish
25 that at sentencing, Judge.

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1 THE COURT: Sir?

2 MR. FREDERICK: I think they would need to establish
3 that for purposes of sentencing to Your Honor.

4 THE COURT: I understand that, but ---

5 MR. FREDERICK: I'm not going to agree to it, Judge.
6 They, they're going to have to ---

7 MS. RICHARDSON: There's ---

8 THE COURT: Well, let's - I need to know what
9 I'm - what are the facts with regards to second, whether this
10 is first, second or third offense?

11 MS. RICHARDSON: Your Honor, I have a certified
12 conviction out of Horry County from 1992 and we have
13 documentation from the Department of Corrections showing that
14 he was not released on that offense until December 23rd, 2003,
15 so less than ten years - he was - from the time ---

16 THE COURT: Have you, have you provided ---

17 MS. RICHARDSON: We just got the stuff from the
18 Department of Corrections. I have provided him with copies of
19 the certified conviction.

20 THE COURT: You do have a copy of it?

21 MR. FREDERICK: Yes, sir, I believe so, and that, and
22 that may be, Judge. I'm just saying we're not consenting.
23 She's got to prove that to Your Honor.

24 THE COURT: I understand. Well, it seems to me
25 that once she makes it a part of the record she's proved it.

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1 Don't you agree or how do you - what kind of proof - what kind
2 of proof you want?

3 MR. FREDERICK: I, I would agree with that, Judge.

4 THE COURT: Sir?

5 MR. FREDERICK: I would agree with that.

6 THE COURT: Okay.

7 MR. FREDERICK: Yes, sir.

8 THE COURT: As a Court's Exhibit I am permitting
9 that to be entered into - you want to enter it now or at the
10 conclusion of the case if it become necessary?

11 MS. RICHARDSON: At the conclusion of the case, Your
12 Honor.

13 THE COURT: We'll do it at that, it may or may
14 not be necessary depending on the jury's verdict. All right,
15 sir.

16 MS. RICHARDSON: And also, Your Honor, just for the
17 record we did file notice of motion to seek ~~like~~^f without
18 parole based on and we did provide Mr. Frederick copies of
19 certified convictions of two, a housebreaking and safecracking
20 offenses from 1974 and 1980, I believe, and that would be ---

21 THE COURT: At the - if that becomes necessary
22 before I impose sentence I would require proof of those prior.
23 You understand?

24 MS. RICHARDSON: Yes, Your Honor.

25 THE COURT: All right, Mr. ---

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1 MS. RICHARDSON: But just for the record, just ---

2 THE COURT: --- have, have you, have you
3 examined, can you state to me whether or not that, that's his
4 prior record, Mr. Frederick?

5 MR. FREDERICK: I have copies of the certified
6 convictions.

7 THE COURT: All right, sir, have your client been
8 advised that there were some type of negotiations, if any?
9 I'm not familiar with it but have there been any negotiations
10 less than life without parole?

11 MR. FREDERICK: Previously, Judge, the plea offer was
12 five years and I believe Mr. Dennison was arraigned on that
13 and he turned that plea offer down.

14 THE COURT: That, that's fine. Have ---

15 MR. FREDERICK: And I have, I have also discussed
16 with Mr. Dennison the notice of intent to seek life without
17 parole and what that means and at this time my understanding
18 is he does not want to plead guilty, Judge.

19 THE COURT: No, sir, he's absolutely entitled to
20 a trial by jury. He is presumed innocent. He doesn't have to
21 prove a thing. Twelve jurors unanimously, if at all, would
22 have to prove him guilty beyond a reasonable doubt. Have the
23 Defendant stand.

24 (Complies with request.)

25 THE COURT: Mr. Defendant, I just want the record

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1 to reflect that it was your decision to turn down a previous
2 offer less than life without parole. You understand that?

3 MR. DENNISON: Yes, sir.

4 THE COURT: And you understand that they have
5 based on your prior records served you with a notice that they
6 seek, if convicted, life without the possibility of parole?

7 MR. FREDERICK: Judge, let me interrupt you. They
8 have not served Franklin.

9 THE COURT: Sir?

10 MR. FREDERICK: They have not served Mr. Dennison
11 with the notice.

12 THE COURT: Counsel, what about that?

13 MR. FREDERICK: They have served me with the notice.

14 THE COURT: I think that's sufficient service and
15 you've advised him of that; have you not?

16 MR. FREDERICK: Your Honor, actually the statute
17 requires and it's very specific, service ten days before the
18 start of trial on the attorney and the Defendant. It's very
19 specific.

20 THE COURT: I believe it does. What's your ---

21 MS. RICHARDSON: It does. Your Honor, I'll check on
22 that, but we did send it with the - and I'll check on that
23 when we get to that point but we did send that out with his
24 subpoena for roll call.

25 THE COURT: You what?

1 MS. RICHARDSON: He was subpoenaed for roll call and
2 it should have gone out with that.

3 THE COURT: You say it went to ---

4 MS. RICHARDSON: But I'll check on service. I don't
5 have the proof of service with me right now, but I'll check on
6 that.

7 THE COURT: Well, is it your opinion that he has
8 been personally served as required by statute?

9 MS. RICHARDSON: It's my opinion that he was served.
10 Now, I don't know that it requires personal service, that it
11 was sent to the last address.

12 THE COURT: Well, I can deal with that if
13 necessary depending on the verdict of the jury but do you want
14 that issue resolved before I pick a jury, Mr. Frederick?

15 MR. FREDERICK: Judge, whatever you think is
16 appropriate. At this time he has not been served with notice
17 of life without parole.

18 THE COURT: Well, here's what I'm going to do,
19 I'm going to pick a jury at this time, leave it un-sworn and
20 require her to address that issue today, and if, if he has not
21 been served with, with that notice I can go to trial but I'm
22 not going to be life without parole and if he has not served
23 and if that's your position you can continue the case. You
24 understand?

25 MS. RICHARDSON: I understand, Your Honor.

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1 THE COURT: But I want the record to reflect that
2 at some point he has been personally served. Mr. Frederick is
3 correct, the statute requires service on both of them.

4 MS. RICHARDSON: It does and we did mail it, but we'll
5 get the documentation.

6 THE COURT: Get me the documentation and suppose
7 we conclude that he has not been properly served, do you still
8 want to go forward with the trial of the case?

9 MS. RICHARDSON: Yes, Your Honor.

10 THE COURT: We, we can do that, but that - but
11 life without parole would be off the table.

12 MS. RICHARDSON: I understand.

13 THE COURT: And I would sentence, if convicted,
14 for drugs second offense.

15 MS. RICHARDSON: I understand.

16 THE COURT: You understand, Mr. Frederick?

17 MR. FREDERICK: Yes, sir, Your Honor.

18 THE COURT: All right, I'm going - ready - can we
19 go ahead and pull a jury before two o'clock, I mean, before
20 lunch?

21 MR. FREDERICK: I'm hungry, but whatever Your Honor
22 wants to do.

23 THE COURT: Well, let's go - the jury - let's go
24 ahead and won't take 30 minutes to pull a jury. Bring the
25 jury up here. I just want to - don't want to impose on my

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1 whole jury panel when all I need is 12 plus one alternate.
2 Counsel, awaiting a juror, Solicitor and Mr. Frederick come
3 forward, please.

4 (Whereupon, a bench conference is held with Mr. Frederick
5 and Ms. Richardson.)

6 THE COURT: Is all my panel here? Bailiff?

7 BAILIFF: They're all here.

8 THE COURT: All the panel is here?

9 BAILIFF: Yes, sir.

10 THE COURT: All right, Solicitor, you may proceed
11 with calling of the first case.

12 MS. RICHARDSON: Your Honor, this is the State of
13 South Carolina versus Franklin Ezekiel Dennison, 2011-GS-22-
14 1299, attempted unlawful taking of a firearm from a law
15 enforcement officer, 2011-GS-22-1298, possession with intent
16 to distribute cocaine base.

17 THE COURT: All right, sir. Ladies and gentlemen
18 of the jury, as provided in our South Carolina statutes an
19 individual is brought to trial based on a document that I hold
20 in my hand known as an indictment. This indictment alleges
21 that the Defendant Dennison committed these two acts. This
22 Defendant specifically denies his guilt in connection with
23 these charges and has specifically pled not guilty to both
24 charges.

25 Now, this indictment and the allegations it contains is

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1 not evidence. Evidence comes from this witness stand under
2 oath and from such other matters as may be presented for your
3 consideration.

4 Now, the State of South Carolina represented by the
5 Solicitor, Mr. Frederick and his colleagues representing the
6 Defendant desire from your numbers 12 folks, one alternate, 12
7 people with no friends to reward, no enemies to punish, 12
8 folks who can say to me, "Recognizing that this is a drug
9 allegation, I can be fair to the State and to the Defendant if
10 called upon to be a juror," a juror who can say to me, "I have
11 no biases or prejudices in this case and will base my verdict
12 on the law and evidence in this courtroom." If anybody has
13 any prejudices that would prevent them from being a fair jury
14 for the State and the Defendant I want to know about it
15 because I will excuse you from this trial. This trial
16 involves allegations of drugs, which is specifically denied by
17 the Defendant. The Defendant comes into this court under a
18 presumption of innocence. He doesn't have to prove a thing.
19 The State must prove him guilty if they can by evidence to
20 your satisfaction unanimously beyond a reasonable doubt.

21 I'm going to ask you now several questions to ensure that
22 we get a jury who can say, "Judge, I don't know anything about
23 this case. I can give both the State and the Defendant a fair
24 trial if called upon."

25 Now, the Defendant's name is Michael - Franklin Dennison.

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1 Mr. Dennison, please stand and face the jury. Any of you
2 related by blood, connected by marriage in any way with this
3 Defendant Dennison; if so, please stand?

4 (No response.)

5 THE COURT: Do any of you have any close contacts
6 with Mr. Dennison such as neighbor, coworker, church worker,
7 co-employee?

8 (No response.)

9 THE COURT: How many of you know Mr. Dennison in
10 any capacity whatsoever? Please stand.

11 (No response.)

12 THE COURT: You may be seated.

13 Are you or any members of your immediate family connected
14 in any way with any law enforcement agency? Please stand.

15 (No response.)

16 THE COURT: Do you contribute to any organization
17 such as the police organization, MADD mothers or any other
18 type of organization similar to that? If so, please stand.

19 Now, as I indicated the allegations against - come
20 forward, please. Come forward, please, ma'am. May I have
21 your name?

22 MS. GREEN: Fran Green.

23 THE COURT: Pardon me?

24 MS. GREEN: Fran Green.

25 THE COURT: And jury number?

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1 MS. GREEN: 58.

2 THE COURT: Come forward, please. Mr. Frederick,
3 you may join us.

4 (On-the-record bench conference is held with Juror Number
5 58, counsel for State and Defense.)

6 THE COURT: What is your response?

7 MS. GREEN: You asked if I've contributed to the
8 sheriff's campaign.

9 THE COURT: Do what?

10 MS. GREEN: To the sheriff's campaign.

11 THE COURT: To the sheriff's campaign.

12 MS. GREEN: Campaign, also MADD and our company
13 has also had to fire employees because of drug use and we've
14 also had employees steal from us because of wanting to support
15 drug use.

16 THE COURT: Would that, would that experience
17 prevent you from being a fair juror in this case?

18 MS. GREEN: I don't have any patience with that
19 at all.

20 THE COURT: Huh?

21 MS. GREEN: I don't have any patience with that
22 at all.

23 THE COURT: I'm going to excuse you.

24 (The following takes place in open court.)

25 THE COURT: Ma'am, you, please, are excused from

1 this trial and call in tonight after six o'clock for further
2 instructions with regards to other cases. You understand?

3 MS. GREEN: Yes, sir.

4 THE COURT: All right, thank you. Come forward.

5 (On-the-record bench conference is held with Juror Number
6 27, counsel for State and Defense.)

7 THE COURT: Your name?

8 MS. COLLINS: Lula Collins.

9 THE COURT: Your jury number?

10 MS. COLLINS: 27.

11 THE COURT: Yes, ma'am, what is your ---

12 MS. COLLINS: I'm not sure if it pertains but my
13 son-in-law works out at Georgetown Detention Center as a
14 guard.

15 THE COURT: Would that affect your ability to be
16 a fair juror here?

17 MS. COLLINS: I wouldn't think so.

18 THE COURT: I don't think so either.

19 MS. COLLINS: I just want to make sure.

20 THE COURT: I thank you for responding. That's
21 just my inquiry.

22 MS. COLLINS: Okay.

23 THE COURT: If that doesn't affect your ability
24 to be a fair juror we're glad to have you.

25 MS. COLLINS: Thank you.

1 Anyone else? One more, tell them to come forward.

2 (On-the-record bench conference is held with Juror Number
3 89, counsel for State and Defense.)

4 THE COURT: Your name, please?

5 MS. MARTIN: Judy Martin, Juror 89.

6 THE COURT: Juror number?

7 MS. MARTIN: Martin.

8 THE COURT: What is your juror number?

9 MS. MARTIN: 89.

10 THE COURT: Come forward. What is your response?

11 MS. MARTIN: Sir?

12 THE COURT: What was your response to my inquiry?

13 MS. MARTIN: My son had been in prison for drug
14 related. My son was in prison for drug-related issues.

15 THE COURT: Does that affect your ability to be a
16 fair ---

17 MS. MARTIN: It might because I just ---

18 THE COURT: I will excuse you. Call in after six
19 o'clock.

20 MS. MARTIN: Okay, thank you.

21 (The following takes place in open court.)

22 THE COURT: All right, other than the inquiring
23 of the witness list is there any other inquiry from the
24 Solicitor?

25 MS. RICHARDSON: No, Your Honor.

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1 THE COURT: Mr. Frederick?
2 MR. FREDERICK: No, sir.
3 THE COURT: All right, ladies and gentlemen, I'm
4 going to call a list of names who may or may not be a
5 prospective juror [sic]. If any of you have any close
6 connections with these names please stand and let me inquire
7 further. Call one at a time.
8 LAW CLERK: Donald Tempalsky.
9 THE COURT: Okay, next.
10 LAW CLERK: Scott Scogin, Antwan Simmons, Derrick
11 Dmytruk, Nikki Perry Hughes, Doris Yarborough, Douglas
12 Robinson, Kyle Walton, William Beam.
13 THE COURT: Okay, nobody has responded. Does
14 that conclude the inquiries, Solicitor?
15 MS. RICHARDSON: Yes, Your Honor.
16 THE COURT: Mr. Frederick?
17 MR. FREDERICK: Yes, sir.
18 THE COURT: Give us a jury, please.
19 CLERK: Your Honor, may I approach for a
20 minute?
21 THE COURT: Yes.
22 (Clerk and Court confer.)
23 THE COURT: I want you all to be provided copies.
24 MS. RICHARDSON: And Your Honor, we did forget to
25 inquire about their - if they knew any of the attorneys

1 involved in the case.

2 THE COURT: We will do that.

3 Do any - the State of South Carolina in this case is
4 represented by the Solicitor's Office of the 15th Circuit. I
5 need to know do any of you have any special connections with
6 the Solicitor handling this case or do any of you have any
7 family members employed by the Solicitor's Office of the 15th
8 Circuit? Please identify yourself for the record, Solicitor.

9 MS. RICHARDSON: Alicia Richardson.

10 THE COURT: Any of you have any close personal
11 connections with this individual? Anybody have any close
12 connections with the Solicitor's Office of the 15th Circuit,
13 including Georgetown and Conway?

14 (No response.)

15 THE COURT: Mr. Frederick, identify yourself and
16 colleagues, please.

17 MR. FREDERICK: My name is Bobby Frederick. My
18 office is in Myrtle Beach and this is Laura Hiller. Her
19 office is also in Myrtle Beach.

20 THE COURT: Are any of you clients of these firms
21 or have you been in the immediate past please stand.

22 (No response.)

23 THE COURT: Any of you have any close personal
24 connections with any of these folks? Please stand.

25 (No response.)

1 THE COURT: All right, that's fine. Is there any
2 other inquiry requested, Solicitor?

3 MS. RICHARDSON: No, Your Honor.

4 THE COURT: How about it, Mr. Frederick?

5 MR. FREDERICK: No, sir, thank you.

6 THE COURT: All right, just wait a minute and
7 we'll get these lists.

8 What question do we have? Come forward, please.

9 Attorneys come forward, too.

10 (On-the-record bench conference is held with Juror Number
11 42, counsel for State and Defense.)

12 THE COURT: What is your name?

13 MS. DUNBAR-LUCAS: Violet Dunbar-Lucas.

14 THE COURT: What is your jury number?

15 MS. DUNBAR-LUCAS: 42.

16 THE COURT: And what is your question?

17 MS. DUNBAR-LUCAS: I used to work with the ---

18 THE COURT: Pardon me?

19 MS. DUNBAR-LUCAS: I used to work with the Public
20 Defender's Office.

21 THE COURT: How long ago?

22 MS. DUNBAR-LUCAS: Two years.

23 THE COURT: Huh?

24 MS. DUNBAR-LUCAS: Two years.

25 THE COURT: The Public Defender's Office is not

1 involved in this case.

2 MS. DUNBAR-LUCAS: No, but the Solicitor's Office.

3 THE COURT: Pardon me?

4 MS. DUNBAR-LUCAS: The Solicitor's Office, I just had a
5 question because I dealt direct with the Solicitor's Office.
6 Would that be a conflict?

7 THE COURT: I don't believe. Well, let me ask
8 you this, do you perceive it to be a conflict?

9 MS. DUNBAR-LUCAS: Yes.

10 THE COURT: Why?

11 MS. DUNBAR-LUCAS: Because I worked inside the office.

12 THE COURT: Inside the Public Defender's Office,
13 they're not involved in this case.

14 MS. DUNBAR-LUCAS: But the Solicitor, okay, never mind,
15 I mean, the Solicitor's Office, you just asked.

16 THE COURT: I better excuse you then. You see it
17 as a problem. Now that doesn't excuse you for the week. You
18 understand that?

19 MS. DUNBAR-LUCAS: Uh-huh.

20 THE COURT: But if she thinks that's a problem
21 having worked with the Public Defender's Office I'm going to
22 excuse you. I have no choice. She says it's a problem.

23 MS. DUNBAR-LUCAS: Yes, sir.

24 THE COURT: All right, thank you. You may be
25 seated.

Jury Selection

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1 (The following takes place in open court.)

2 THE COURT: Thank you for calling that to my
3 attention.

4 (Court and clerk confer.)

5 THE COURT: All right, gentlemen, that witness,
6 juror who had been excused was number five on the list.

7 All right, counsel ready to select a jury, Solicitor?

8 MS. RICHARDSON: Yes, Your Honor.

9 THE COURT: Mr. Frederick?

10 MS. HILLER: Yes, Your Honor, we're ready.

11 THE COURT: All right, proceed.

12 THE CLERK: When I call your juror number please
13 come and stand here until you are either seated or you're
14 asked to return to your seat; okay? Thank you.

15 Juror Number 141, Linda Tyler.

16 Stand right here and turn around and face the
17 attorneys.

18 What says the State?

19 MS. RICHARDSON: Please seat the juror.

20 THE CLERK: What says the Defense?

21 MS. HILLER: Please seat the juror.

22 THE CLERK: Please take a seat in the jury box.

23 Juror Number 24, Shirley Charlton.

24 What says the State?

25 MS. RICHARDSON: Please seat the juror.

Jury Selection

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1 THE CLERK: What says the Defense?
2 MS. HILLER: Please excuse the juror from this
3 case.
4 THE CLERK: You may return to your seat.
5 Juror Number 101, Andrew ---
6 THE COURT: The strikes are five and five. Go
7 ahead.
8 THE CLERK: --- Andrew Nelson, Jr. What says the State?
9 MS. RICHARDSON: Please excuse this juror.
10 THE CLERK: You may return to your seat.
11 Juror Number 25, Richard Christianson.
12 What says the State?
13 MS. RICHARDSON: Please seat the juror.
14 THE CLERK: What says the Defense?
15 MS. HILLER: Please seat the juror.
16 THE CLERK: Please take a seat in the jury box.
17 Juror Number 78, Mary Jobson.
18 What says the State?
19 MS. RICHARDSON: Please seat the juror.
20 THE CLERK: What says the Defense?
21 MS. HILLER: Please excuse the juror in this case.
22 THE CLERK: You may return to your seat.
23 Juror Number 65, James Harrigan.
24 What says the State?
25 MS. RICHARDSON: Please seat the juror.

Jury Selection

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1 THE CLERK: What says the Defense?
2 MS. HILLER: Please seat the juror.
3 THE CLERK: Please take a seat in the jury box.
4 Juror Number 37, Tinisha Davis.
5 What says the State?
6 MS. RICHARDSON: Please excuse the juror.
7 THE CLERK: You may return to your seat.
8 Juror Number 104, Theresa O'Donnell.
9 What says the State?
10 MS. RICHARDSON: Please seat the juror.
11 THE CLERK: What says the Defense?
12 MS. HILLER: Please seat the juror.
13 THE CLERK: Please take a seat in the jury box.
14 Juror Number 76, Debra James.
15 What says the State?
16 MS. RICHARDSON: Please seat the juror.
17 THE CLERK: What says the Defense?
18 MS. HILLER: Please excuse the juror from this
19 case.
20 THE CLERK: You may return to your seat.
21 Juror Number 35, Lorraine David.
22 What says the State?
23 MS. RICHARDSON: Please seat the juror.
24 THE CLERK: What says the Defense?
25 MS. HILLER: Please seat the juror.

Jury Selection

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1 THE CLERK: Please take a seat in the jury box.
2 Juror Number 27, Lula Collins.
3 What says the State?
4 MS. RICHARDSON: Please seat the juror.
5 THE CLERK: What says the Defense?
6 MS. HILLER: Please excuse the juror from this
7 case.
8 THE CLERK: You may return to your seat.
9 Juror Number 20, Lisa Cannon.
10 What says the State?
11 MS. RICHARDSON: Please seat the juror.
12 THE CLERK: What says the Defense?
13 MS. HILLER: Please seat the juror.
14 THE CLERK: Please take a seat in the jury box.
15 Juror Number 142, Maxceana Verner.
16 What says the State?
17 MS. RICHARDSON: Please seat the juror.
18 THE CLERK: What says the Defense?
19 MS. HILLER: Please seat the juror.
20 THE CLERK: Please take a seat in the jury box.
21 THE COURT: We're glad to have you.
22 THE CLERK: Juror Number 145, Annie Washington.
23 What says the State?
24 MS. RICHARDSON: Please seat the juror.
25 THE CLERK: What says the Defense?

Jury Selection

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1 MS. HILLER: Please seat the juror.
2 THE CLERK: Please take a seat in the jury box.
3 Juror Number 123, Katrina Scott.
4 Okay, when you come up here bring all your belongings in
5 case you get seated. All right.
6 What says the State?
7 MS. RICHARDSON: Please seat the juror.
8 THE CLERK: What says the Defense?
9 MS. HILLER: Please seat the juror.
10 THE CLERK: Please take a seat in the jury box.
11 Juror Number 17, Franklin Brown, Jr.
12 What says the State?
13 MS. RICHARDSON: Please excuse this juror.
14 THE CLERK: You may return to your seat.
15 Juror Number 14, James Britton.
16 What says the State?
17 MS. RICHARDSON: Please seat the juror.
18 THE CLERK: What says the Defense?
19 MS. HILLER: Please seat the juror.
20 THE CLERK: All right, be seated in the jury box.
21 Juror Number 108, Gloria Peterson.
22 What says the State?
23 MS. RICHARDSON: Please excuse the juror.
24 THE CLERK: You may return to your seat.
25 Juror Number 11, Tiffany Brantley.

Jury Selection

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1 What says the State?

2 MS. RICHARDSON: Please seat the juror.

3 THE CLERK: What says the Defense?

4 MS. HILLER: Please seat the juror.

5 THE CLERK: Please take a seat in the jury box.

6 Juror Number 122, Alonna Scott.

7 What says the State?

8 MS. RICHARDSON: Please excuse the juror.

9 THE CLERK: You may return to your seat.

10 Juror Number 107, Timothy Parker.

11 Any challenges from the State?

12 MS. RICHARDSON: None.

13 THE CLERK: What says the Defense?

14 MS. HILLER: One second. Seat the juror.

15 THE CLERK: Please take a seat in the jury box.

16 We doing an alternate, Judge?

17 THE COURT: Yes, one, one alternate, the strikes

18 are one and two.

19 THE CLERK: All right.

20 Juror Number 143, Camie Vibert.

21 What says the State?

22 MS. RICHARDSON: Please seat the juror.

23 THE CLERK: What says the Defense?

24 MS. HILLER: Please excuse the juror.

25 THE CLERK: You may return to your seat.

Jury Selection

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1 Juror Number 72, Andrea Hughie.
2 What says the State?
3 MS. RICHARDSON: Please excuse the juror.
4 THE CLERK: You may return to your seat.
5 Juror Number 67, Cathryn Herrstromer.
6 Any challenges from the State?
7 MS. RICHARDSON: None.
8 THE CLERK: What says the Defense?
9 MS. HILLER: Please excuse the juror.
10 THE CLERK: You may return to your seat.
11 Juror Number 114, Jerome Ramsey, Jr.
12 Any challenges from the State?
13 MS. RICHARDSON: None.
14 THE CLERK: Any challenges from the Defense?
15 MS. HILLER: None.
16 THE CLERK: Thank you. Please take a seat in the
17 jury box. No, no, no, no, no.
18 THE COURT: You going the wrong way.
19 Madam Bailiff, escort the jury to the jury room for just
20 a moment and I'll be calling them back out very quickly. Have
21 - go to the jury room, please.
22 (Whereupon, the following takes place outside the
23 presence of the jury. The Court and clerk confer.)
24 THE COURT: With regards to the jury any motions
25 concerning the composition of the jury? What says the State?

Jury Selection

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1 MS. RICHARDSON: None, Your Honor.

2 THE COURT: And the Defense?

3 MR. FREDERICK: I need just a moment to confer with
4 my client if that's okay?

5 THE COURT: All right, sir.

6 MR. FREDERICK: Judge, can we ---

7 THE COURT: Sir?

8 MR. FREDERICK: Can we step somewhere and confer in
9 private?

10 THE COURT: Pardon me?

11 MR. FREDERICK: Can we step out for a moment to
12 confer in private?

13 THE COURT: Yes, sir. The only issue before me
14 is does somebody have any Batson issues here.

15 MR. FREDERICK: I know. I need to confer with my
16 client, Judge.

17 THE COURT: Go ahead and do so, please. I'd like
18 to have you back as quick as I can. It's, it's my jury's -
19 it's, it's lunchtime for them.

20 MR. FREDERICK: Just, just takes a minute, Judge.

21 THE COURT: All right, sir, you're entitled to
22 that.

23 (Mr. Frederick and Defendant exit courtroom.)

24 (Mr. Frederick and Defendant enter courtroom.)

25 MR. FREDERICK: No, no motions, Judge.

Jury Selection

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1 THE COURT: So the jury will stand as selected.
2 We agree with that, Solicitor?

3 MS. RICHARDSON: Yes, Your Honor.

4 THE COURT: Agree with that, Mr. Frederick?

5 MR. FREDERICK: Yes, sir.

6 THE COURT: All right.

7 (Remaining panel excused with call-in instructions.)

8 THE COURT: And bring the jury back for me,
9 please.

10 (Whereupon, the following takes place in the presence of
11 the jury.)

12 THE COURT: Now, ladies and gentlemen, as I
13 previously told you this Court will be occupied this afternoon
14 for matters not involving this trial. We propose to start
15 this trial at 9:30 in the morning very promptly. So please be
16 in your jury room, not in the courtroom, but in this jury room
17 at 9:30 so that we can start and properly dispose of the
18 issues in this case.

19 Now, there are certain admonitions that I need to discuss
20 with you. During the trial of this case you must not discuss
21 this case with anyone, permit no one to discuss it with you,
22 make no independent inquiry and the reason is that whatever
23 your verdict is it's got to be based on the law and evidence
24 in this courtroom, not from what you may have read or
25 understood.

Jury Selection

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1 Now, in the day of internet there are further
2 instructions that I need to make sure of. You must not make
3 any independent inquiry on your I-phone or you a-phone or your
4 internet. Sometime ago in Horry County I had given these
5 instructions but the bailiff came to me on the fifth day of
6 the trial and said, "Judge, we've got a problem." I said,
7 "What is it?" He said, "One of the jurors came to me and said
8 that she'd made some independent inquiry on a question in the
9 trial and wanted to know could she share it with the jury."
10 Fortunately he stopped her before we got that far and I had to
11 excuse her. You must not make any independent inquiry from
12 any source, the reason being that you are the sole and only
13 finders of the facts in this case. There's nobody in this
14 wide world that can tell you what the facts are, but as
15 finders of the facts and the credibility of the witnesses you
16 will make that determination on the evidence produced in this
17 courtroom and from no other source.

18 Also, even during the trial of this case permit no one to
19 discuss it in the jury room until I have given you the case
20 for your deliberation. After all the testimony is in we'll
21 have final summation of the counsel and I will give you the
22 instructions and the law and ask that you take the facts as
23 you find them to be to the law of the case and obviously you
24 would not begin your final factual determination until you
25 have heard all the witnesses and the law in the case. So

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1 remember these admonitions and have a good night and be back
2 at 9:30 in the morning. Thank you so much. You are excused.
3 See you at 9:30 in the morning.

4 (Whereupon, the following takes place outside the
5 presence of the jury.)

6 THE COURT: All right, we are in recess until
7 2:30.

8 MS. RICHARDSON: Thank you, Your Honor.

9 OFF THE RECORD

10 (On the record, October 1, 2013. The following takes place
11 outside the presence of the jury.)

12 THE COURT: Good morning, ladies and gentlemen,
13 please be seated.

14 I have instructed the bailiff to tell the jury to select
15 a foreperson for these proceedings. Have they done that?

16 BAILIFF: Well, I told them to.

17 THE COURT: Pardon me?

18 BAILIFF: I don't have it yet, but let me see.

19 THE COURT: Somebody gave me a message that they
20 had done that now. Can you tell me? Find out if they have
21 selected a foreman yet.

22 MS. RICHARDSON: Your Honor, if we can take a moment
23 we're going to pre-mark some exhibits.

24 THE COURT: Pardon me?

25 MS. RICHARDSON: We wanted to pre-mark some exhibits

Motions

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1 for identification. We've agreed on that.

2 THE COURT: Please do so. Let me ask you, this
3 indictment with intent to possess is it powder or crack
4 cocaine?

5 MS. RICHARDSON: Crack cocaine.

6 THE COURT: Crack cocaine. All right, that would
7 save some time.

8 MS. RICHARDSON: Do you want to come up here, Laura?

9 MS. HILLER: Sure, and Your Honor, after we finish
10 with these exhibits we have the very briefest sequester
11 motion.

12 THE COURT: Have what?

13 MS. HILLER: We wanted to make a motion to
14 sequester the State's witnesses and ours both.

15 THE COURT: Well, I'll, I'll grant that. Let the
16 record reflect that the jury has sent me a notice stating that
17 Juror 65, Jane Harrington [sic] had been designated by them as
18 foreperson of the jury. *James Harrigan*

19 All right.

20 (State's Exhibits One through Eight marked for
21 identification.)

22 THE COURT: There would be no need to sequester
23 the chemist in this case.

24 MS. HILLER: No problem with the chemist, Your
25 Honor, just ---

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1 THE COURT: Pardon me?

2 MS. RICHARDSON: Or the officer.

3 MS. HILLER: Just the officers.

4 THE COURT: Well, the chief investigating officer

5 will remain.

6 MS. RICHARDSON: The chief can stay.

7 MS. HILLER: The chief he can stay.

8 THE COURT: The chemist can stay here. The rest

9 of them are sequestered and, Solicitor, I'll leave that

10 responsibility to you to make sure that my order is followed.

11 MS. RICHARDSON: Okay, we'll do that right now, Your

12 Honor.

13 THE COURT: All righty. Ms. Laura, what was your

14 last name, please?

15 MS. HILLER: Hiller, H-I-L-L-E-R, Hiller.

16 THE COURT: Hiller, we'll put that down. It's

17 Laura as I remember the - understand you're going to be the

18 lead counsel, look forward to having you.

19 MS. HILLER: I'm excited.

20 THE COURT: All right, have we agreed as to all

21 the exhibits?

22 MS. RICHARDSON: Your Honor, we have. I think she's

23 marking one more we had to get a copy of.

24 THE COURT: Pardon me?

25 MS. RICHARDSON: Yes, Your Honor, we've got to mark

1 one more.

2 THE COURT: Okay, you all so far back some time
3 it makes it difficult to hear you.

4 MS. RICHARDSON: I know.

5 THE COURT: All right, yes, ma'am.

6 MS. RICHARDSON: Your Honor, I believe we're ready to
7 proceed. The State would have one motion. We would just ask
8 that the Defendant be prevented from mentioning the possible
9 penalty in this matter.

10 THE COURT: Present what?

11 MS. RICHARDSON: The penalty, the sentence.

12 THE COURT: Oh, yeah, that's not, that's not
13 admissible. That's a, that's a question of law for me.

14 MS. RICHARDSON: Thank you.

15 MS. HILLER: Absolutely, Your Honor, no problem.

16 THE COURT: You understand that that's not to be
17 brought into evidence.

18 MS. HILLER: Yes, Your Honor.

19 THE COURT: Ms. Laura would understand that.

20 MS. RICHARDSON: Thank you, Your Honor.

21 THE COURT: Anything else from the Defense before
22 we proceed?

23 MS. HILLER: Nothing from the Defense, Your Honor.

24 THE COURT: All right, bring the jury out. Make
25 sure the foreman is, foreperson is sat in the proper place

Motions

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1 now. This indictment says cocaine base. Is that sufficient
2 to put a Defendant on notice?

3 MS. RICHARDSON: Yes, Your Honor, that's the technical
4 title they use now for crack cocaine.

5 THE COURT: I understand that, but generally they
6 use - yes, sir. Wait.

7 MR. FREDERICK: We, we, we, we agree with that,
8 Judge. It's ---

9 THE COURT: Sir?

10 MR. FREDERICK: Crack cocaine, cocaine base is the
11 same thing.

12 THE COURT: You agree with that?

13 MR. FREDERICK: Yes, sir.

14 THE COURT: All right, that's fine, yes. Make
15 sure Mr. ^{Harrigan} Harriman [sic] takes the foreman's chair.

16 (Whereupon, the following takes place in the presence of
17 the jury.)

18 THE COURT: Mr. Harriman, congratulations. I
19 understand you've been selected foreman.

20 FOREMAN: I have?

21 THE COURT: Your job will be to preside in the
22 jury room during deliberations and to be the jury spokesman in
23 the courtroom and I, of course, will keep you fully advised of
24 your duties. Please swear the jury.

25 (Whereupon, jury is sworn by clerk.)

Opening Instructions by Court

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1 THE COURT: Ladies and gentlemen, first let me
2 say good morning to you. Recognizing that for some of you
3 this may be the first chance that you have had to serve as a
4 juror in a criminal case let me tell you generally how we
5 proceed in matters of this kind. This Defendant comes before
6 you upon these two indictments which have been read to you and
7 will hereafter be explained to you alleging two separate
8 crimes. To these indictments this Defendant specifically
9 pleads not guilty thereby placing the burden of proof upon the
10 State of South Carolina of proving him guilty if they can to
11 your satisfaction beyond a reasonable doubt.

12 At the conclusion of all the testimony and final
13 summation of counsel I will give you the law with regards to
14 the issues raised. You, of course, as finders of the facts
15 will apply the facts as you find them to be to the law that I
16 give to you and thereafter reach a verdict, a verdict of not
17 guilty or a verdict of guilty. Now, several things you need
18 to know. You may say, "Well, I don't know a thing in the
19 world about this case, don't know a thing what you're talking
20 about." Well, each side will explain to you what their
21 position is. This is a guideline to help you follow the
22 introduction of the evidence and then there will be various
23 witnesses for both sides testifying in that and other matters
24 put into evidence. In their testimony, whoever the witness
25 is, you are the judge, the sole judge of their credibility and

Opening Instructions by Court

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1 believability. You didn't leave your common sense on the
2 streets of Georgetown, South Carolina, when you come into
3 court and we know in everyday lives we have certain ways to
4 decide whether we want to believe somebody or none of it, and
5 so you bring your common sense to bear in judging credibility.
6 In that connection you may believe all of what a witness says
7 or none. You may believe a small portion and disregard the
8 larger. That's simply up to you.

9 In addition to being the sole judges of the credibility
10 of every witness you are the sole and only finders of the
11 facts in this case. From this moment on there is nobody in
12 this wide world that can tell us what the facts are except
13 you, the jury, and you will determine those facts by listening
14 to the testimony introduced in the trial of this case and from
15 such other documents that may be introduced into evidence.
16 With regards to documents that come into evidence they may
17 publish them at the time but they will be with you, Mr.
18 Foreman, during your deliberations in the jury room.

19 After all of the testimony, as I've indicated,
20 distinguished counsel for both sides will have closing
21 statements and I will give you the law of the case. Ask
22 please that you remember my admonitions of yesterday, do not
23 discuss the case in any way in the jury room until I have
24 given it to you for your deliberations. I along with counsel
25 for the State and the Defense look forward to working with

1 this group during the trial of this case.

2 You may have your opening statement.

3 MS. RICHARDSON: May it please the Court? Good
4 morning. My name's Alicia Richardson and I am with the 15th
5 Circuit Solicitor's Office and I'll be the prosecutor on this
6 case. As you may remember from yesterday there are two
7 indictments and two charges in this case. The two charges are
8 for possession with intent to distribute cocaine base, crack
9 cocaine. Cocaine base would be the more technical term for
10 it, but possession with intent to distribute crack and the
11 attempt to take a weapon from a law enforcement officer, in
12 this case a Taser, and as the Judge has said the burden of
13 proof is on the State to come in and prove beyond a reasonable
14 doubt that this Defendant, Franklin Dennison, committed these
15 two crimes.

16 Now, this happened back in September of 2011, September
17 24th, 2011, here in the City of Georgetown. Officer Tempalsky
18 is the arresting officer who's seated at the table with me.
19 Basically this was a traffic stop. Officer Tempalsky will
20 testify and tell you that he was on routine patrol. He
21 observed a car stopped in the middle of the roadway, saw
22 someone come up to the car, saw something he thought was
23 suspicious. The car later passed him. He noticed one of the
24 passengers didn't have a seatbelt on. Also, he turned around
25 to follow the vehicle and at that time it began to speed. He

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1 was on a street where the speed limit, and you'll see that,
2 was 30 miles an hour. So he stopped the car.

3 Once he pulled over the car there were three, there was a
4 driver and two passengers, Mr. Dennison was the driver. At
5 that point is when things got a little out of control. All of
6 this was caught on video from Officer Tempalsky's car. You'll
7 be able to see that video and see and hear, hopefully hear
8 what transpired in the process of that traffic stop, but
9 basically Mr. Dennison would not follow commands, hid his
10 hands. Officer Tempalsky could tell something was in his
11 hand. At that point he had to deploy his Taser. You will see
12 some motions on the video where Mr. Dennison is reaching for
13 the Taser. When Mr. Dennison is finally apprehended in his
14 hand is a pill bottle and in that pill bottle are ten rocks of
15 crack cocaine. Officer Tempalsky will explain to you how
16 those are packaged. Also other - because of the number of
17 passengers and what was going on other officers responded.
18 You'll hear from Officer Scogin who's also with Georgetown
19 City. He also had an in-car camera and you'll be able to see
20 it. He was parked a little to one side, and you'll be able to
21 see the view from his camera as well.

22 Also, we have to show to you that the stuff that was
23 taken out of the pill bottle was actually crack cocaine. So
24 you'll hear some sort of technical testimony as to what
25 happened with the crack, how it was handled. We have to show

1 you that so that you can trust that this, the drugs that we
2 have brought you today are the drugs that were taken from this
3 vehicle. So you'll hear some kind of technical testimony that
4 may seem a little silly about who handed it to who and that
5 sort of thing, but we're required to do that. So expect that
6 and you'll also hear some technical testimony from the chemist
7 at SLED about how the drugs are tested and how he comes to his
8 results and after all of the testimony is concluded then the
9 Judge will instruct you on the law, and as the Judge has
10 stated don't leave your common sense at home. This is a case
11 where you take the common sense, the things you do every day.
12 You judge every day who's telling the truth. You judge how
13 things appear to you and make a decision, applying the facts
14 as you've heard them from the witnesses and the evidence
15 that'll be presented to the law as the Judge charge you,
16 charges you and I'm confident that after all that you will
17 find that Mr. Dennison is guilty of both possessing crack with
18 the intent to distribute it and attempting to take a Taser
19 from Officer Tempalsky. Thank you.

20 THE COURT: Ms. Fuller [sic].

21 MS. HILLER: Two years ago, September 24th,
22 Franklin Dennison was visiting Georgetown to help his niece
23 out. She lived in the Habitat homes and he was going to help
24 her get a screen door on her home, but he, he couldn't do it
25 by himself. He realized this wasn't a job that he was cut

1 out to do on his own. So he needed some help. So he goes
2 around looking for someone to help him fix that screen door.
3 He asked around and they say, "Hey, Robert Jenkins, he might
4 be able to help you get that screen door fixed." So he goes
5 to Robert Jenkins' house. Robert Jenkins, he gets in the car
6 with Franklin and they start driving around. Franklin's like,
7 "Hey, can - you know, can you help me with this screen door?"
8 He says, "No, but I know who can. My nephew can." "That
9 person's name is Antwan, and let's go get Antwan." So
10 Franklin says, "Well, where's Antwan's house?" They go to
11 Antwan's house. Franklin waits in the car and Robert, he goes
12 inside. He is in there for a long time. Franklin's getting a
13 little impatient waiting for him to come out, but he does
14 eventually and Antwan comes out and Antwan gets in the back
15 and Robert gets back in the passenger seat in the front and
16 they start driving some more. Franklin says, "Well, where,
17 you know, where's your tools? How are we going to get this
18 done," and he describes his tools being off in some other
19 location and about that time is about the time Franklin's
20 looking at the clock, seeing how long everything has already
21 taken and realizes he has to get back home to Myrtle Beach.
22 That's where he lives. He's got to get back home and deal
23 with some things down there before this day is over. He says,
24 "We'll just do this another day," and he gets ready to start
25 dropping them back off where he got them.

1 He is driving down Prince Street and as he's driving down
2 a man sees him and waves him down, say, "Hey, Franklin, come
3 over here." Franklin pulls up. He stops. The gentleman
4 talks to Franklin. They talk for a minute, "What's going on,
5 how you doing, good to see you in Georgetown again," and then
6 they look up and they see an officer, and Franklin's like,
7 "Look, I'm going to just go. I'm going to get on the road and
8 keep on moving."

9 So he does. He pulls away, pulls up to the stop sign at
10 the corner of Prince and what's called Merriman Road. You're
11 going to see all this stuff on camera, but there's the corner.
12 He stops at that stop sign. By this point Officer Tempalsky
13 he's moved his car. It wasn't - it was on what's called
14 Railroad Road. He moves it up and is in a parking lot on - a
15 funeral home parking lot up on Merriman. So he moves it just
16 right here.

17 Franklin turns out, comes towards the officer, turns
18 towards him, sees him there, paying attention, you know, you
19 see an officer I know I check my speedometer, pays attention,
20 drives on past. Officer, sure enough, pulls out behind him.
21 Antwan in the back seat says, "You know, that - that officer
22 he's following you." Looks in his mirror, sure enough he is,
23 pulls off, turns onto Emanuel, another road just down the
24 road. Turns right, pulls over. The officer gets out and the
25 officer tells him, "Look, you, you know, you were doing this -

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1 you were talking to somebody in the road and you're speeding
2 and a seatbelt issue," and Franklin starts to answer and talk
3 and then the officer gets very upset. He says, "Put your
4 hands up. I want to see your hands. I want to see your
5 hands." Franklin does what he says. He puts his hands up
6 where he can see them. Officer reaches in and grabs his key.
7 Franklin is sitting there. He's beginning to panic. This
8 officer has got his Taser out and he's telling him, "Show me
9 your hands. Show me your hands." He's trying to do what the
10 officer says and he keeps yelling at him. He says he's going
11 to Tase him. Franklin decides that he needs to get out of his
12 car. Maybe if he's out they'll see his hands, it'll be okay.
13 He reaches for his seatbelt to unbuckle it. At that moment
14 the first Taser hits him right in the chest. He's Tased.
15 Tasers are designed to incapacitate with electric shock, pain.
16 It hurts. He's screaming. He's yelling. You're going to see
17 all this on the video. The officer says, "Show me your
18 hands." He puts his hands up. The officer says he's trying
19 to take his Taser. So he Tases him again. At this point he
20 leans over towards Robert who's sitting in the passenger seat
21 and he says, "This officer is trying to kill me," scared to
22 death. He's in pain. Robert says, "Well, why don't you come
23 out this door?" Robert opens his door and he gets out of the
24 car. Franklin rolls over towards that passenger seat and at
25 that point he gets Tased again. He falls out of the car from

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1 the Taser and that breaks the leads off. It's - you'll see
2 it's a machine that shoots leads that go into you. The leads
3 have the electric current to it. The leads break off and he
4 just tries to get away from that officer and get away from
5 that pain.

6 About that time Officer Scogin comes in and Tases him in
7 the back. He falls to the ground, collapses, his teeth get
8 busted in. Officer Tempalsky comes around on top of him,
9 telling him, "Put your hands behind your back," yelling at
10 him, "Put your hands behind your back, put your hands behind
11 your back, put your hands behind your back." He's been Tased.
12 His mouth is full of blood and he keeps saying, the officer
13 says, "Why you have those drugs?" He says, "I ain't got no
14 drugs. I don't have any drugs." No time does Franklin ever
15 say he has drugs anywhere on that video. You never see the
16 drugs say Franklin has on that video. He was Tased three,
17 four times. Never, never does he talk about those drugs.
18 Franklin left that day in an ambulance.

19 Now, while all that was going on with Franklin, Robert,
20 the passenger in the front seat, the one that went and spent
21 who knows how long inside Antwan's house he moseys on out of
22 the car and like nothing's going on walks around to the back
23 of the Charger thinking nobody's looking at him, pulls
24 something out of his lip. You'll see all this on camera,
25 throws it down, then walks away like nothing ever happened,

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1 but one of the officers sees him. They arrest him. They find
2 what's on that ground. You know what that is, that baggy that
3 he pulled out of his mouth? That's drugs. That's the drugs
4 that you all are going to see in this video. They're
5 Robert's, but this is Franklin here on trial. Robert's not
6 even here today. They're not even trying his case.

7 You might think seeing someone sit in that chair over
8 there they must have done something to get themselves ---

9 THE COURT: Now, you're going too far - you'll
10 have final arguments. This is opening arguments.

11 MS. HILLER: Your Honor, I just want to explain
12 very briefly about the presumption.

13 THE COURT: Very quickly, but I'll give you a
14 full opportunity to do that in closing, but this is opening
15 statements.

16 MS. HILLER: Yes, Your Honor.

17 THE COURT: So be a little briefer, please.

18 MS. HILLER: Yes, Your Honor.

19 THE COURT: But I'll give you wide latitude in
20 your closing.

21 MS. HILLER: Let me briefly explain to you what's
22 called the presumption of innocence. What that is is in every
23 case, the Judge has already told you this, everyone is
24 presumed innocent, innocent until proven guilty. That's what
25 our founding fathers founded this nation on is principles of

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1 liberty and principles of freedom. That means that for the
2 government to lock you up the government has got to prove
3 beyond a reasonable doubt that a crime was committed, can't
4 just have one person say it happened and that be enough. So
5 the government has got to prove it. Imagine each of you have
6 your jury verdict form in your hand, each of you, all 12 of
7 you. You only get one, but imagine for now you each have one
8 and you have your pen sitting there. You have two choices,
9 innocent and guilty. All of your pens are in the default
10 position right now of not guilty and until the government can
11 prove to you beyond a reasonable doubt each of your pens stays
12 on not guilty. Right now Robert [sic] Dennison is as not
13 guilty as anybody else sitting here in this courtroom and
14 unless the government can prove to you that he committed the
15 crime that they say he committed at the end of this trial your
16 pen doesn't move from that not guilty and at the end of this
17 case I'm going to come back to you and I'm going to ask you to
18 find that he is not guilty.

19 THE COURT: Thank you, ma'am. Solicitor, you may
20 call your first witness.

21 MS. RICHARDSON: Officer Don Tempalsky.

22 MR. FREDERICK: Judge, before we go forward ---

23 THE COURT: Yes, sir.

24 MR. FREDERICK: --- we have a matter of law if it
25 pleases the Court.

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1 THE COURT: All right, let you go to the jury
2 room. Mr. Foreman, let you go.

3 (Whereupon, the following takes place outside the
4 presence of the jury.)

5 THE COURT: Close the door. Yes, sir, counsel?

6 MR. FREDERICK: Judge, I just ---

7 THE COURT: What is your - what is the question
8 of law?

9 MR. FREDERICK: Judge, I have a motion to make and
10 ---

11 THE COURT: Well, make it.

12 MR. FREDERICK: --- my motion is for Your Honor to
13 recuse himself from this case and I've got some grounds for
14 that to put on the record.

15 THE COURT: Put it on the record.

16 MR. FREDERICK: First, first of all, Your Honor,
17 throughout counsel's opening statement I want the record to
18 reflect that Your Honor was talking with his clerk audibly
19 throughout her opening statement which was quite disruptive.
20 The jury was watching the Judge instead of counsel who was
21 making her opening statement. Second of all, before we began
22 this morning Your Honor requested that the Solicitor come back
23 to chambers by herself.

24 THE COURT: She - I did.

25 MR. FREDERICK: And although I am sure that that may

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1 have been a scheduling matter, at a point in time when we're
2 about to begin a trial with two parties present in the
3 courtroom I want to place that on the record, Your Honor.

4 THE COURT: That was a scheduling matter. She's
5 in charge of scheduling and my interest was what would occur
6 after this trial.

7 MR. FREDERICK: All right.

8 THE COURT: So that did not occur, but go ahead.
9 What's your next one?

10 MR. FREDERICK: I'm sure that it was a scheduling
11 order, scheduling matter.

12 THE COURT: I've said it was. What's your next
13 one?

14 MR. FREDERICK: Your Honor, but what I wanted to
15 place on the record is just the fact that the Solicitor in the
16 case went back to chambers without Defense counsel. Further
17 ---

18 THE COURT: Why certainly, she's Solicitor in
19 charge of scheduling. She's welcome to be in my chambers. I
20 - you're welcome to if I need you and it's not ex parte.

21 MR. FREDERICK: I understand, Judge. Further ---

22 THE COURT: A lot of lawyers come to my chambers
23 for various reasons, but certainly it's not ex parte. You by
24 reputation I think agree that - think it's ex parte every time
25 a lawyer comes to a judge's chambers. You raised that issue

1 with me in Conway some months ago and you were completely
2 erroneous. Now, what's your next motion?

3 MR. FREDERICK: Judge, we're still placing grounds on
4 the record for the current motion. The fact that Your Honor
5 interrupted suasponete counsel's opening statement to inform
6 counsel in front of the jury that it is improper to talk about
7 the presumption of innocence ---

8 THE COURT: That ---

9 MR. FREDERICK: --- in the opening statement I
10 believe ---

11 THE COURT: The record will reflect what I said
12 and why I said, she was going far beyond opening statements.
13 She was using testimony that may or may not be admissible or
14 hearsay. The record will reflect what I said. I think it was
15 proper and that's not a grounds for me to recuse myself. She
16 was going in my view far too far in opening statements. The
17 record will reflect that I said twice I will give her free
18 reign in closing. Now what's your next motion?

19 MR. FREDERICK: Yes, yes, sir, to complete making the
20 record on what I was just saying I think that it was ---

21 THE COURT: The record will reflect what occurred
22 there. So don't argue with me. The record will reflect what
23 she said and what I said. I think it was appropriate. That
24 argument is unfounded. Now, what's your next one?

25 MR. FREDERICK: And in addition to the motion to

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1 recuse, Your Honor, we would move for a mistrial at this time
2 based on Your Honor's prejudicing the jury by making that
3 statement, argument about presumption of innocence is
4 perfectly proper.

5 THE COURT: About what?

6 MR. FREDERICK: Argument about presumption of
7 innocence in opening statement is perfectly proper, Your
8 Honor, and we also move ---

9 THE COURT: Well, wait a minute now, what did I
10 say in opening statement that you ---

11 MR. FREDERICK: Judge, that presumption of innocence
12 was not proper for opening statement. We move for a mistrial
13 at this time based on Your Honor's prejudicing the jury
14 suasponte without any motion from the Prosecutor.

15 THE COURT: The record will reflect what I said
16 to the jury. I clearly said that the burden was on the State
17 to prove him guilty if at all beyond a reasonable doubt.
18 There's no question about what I said.

19 MR. FREDERICK: Your Honor, additionally at several
20 times during this trial it has come to our attention that Your
21 Honor has made comments that you cannot see to the counsel
22 table, that you cannot hear from the counsel table.

23 THE COURT: Oh, I can hear you and I can see you,
24 too, but the record will reflect that you're sitting back at a
25 far distance. I can see you.

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1 MR. FREDERICK: And Judge ---

2 THE COURT: And I can hear you.

3 MR. FREDERICK: --- my interest, our interest is to
4 make sure that this man gets a fair trial and in those
5 interests we need a fair arbiter on the bench and for those
6 reasons, those grounds we'd make a motion for Your Honor to
7 recuse himself.

8 THE COURT: No, sir, I, I reject that. You've
9 got a fair arbiter. The record will reflect that you are
10 sitting further back than any courtroom in the State of South
11 Carolina. I can see you. I can see you standing and I can
12 certainly hear you, but we've got microphones for that
13 purpose, too. The hearing in this courtroom is more than
14 adequate.

15 MR. FREDERICK: And we make a motion for a mistrial
16 at this time.

17 THE COURT: I reject that for the reasons stated.
18 Bring the jury in.

19 (Whereupon, the following takes place in the presence of
20 the jury.)

21 THE COURT: All right, you may call your first
22 witness.

23 MS. RICHARDSON: Officer Don Tempalsky.

24 Whereupon, Donald Tempalsky was called to the stand, duly
25 sworn by the clerk and testified as follows:

1 THE CLERK: Thank you. Please be seated and
2 state your name for the record.

3 MR. TEMPALSKY: Donald Tempalsky, T-E-M-P-A-L-S-K-Y.

4 DIRECT EXAMINATION

5 BY MS. RICHARDSON:

6 Q And Officer Tempalsky, where are you employed?

7 A I'm currently the deputy commander of the Fifteenth
8 Circuit Drug Enforcement Unit and I'm in charge of the
9 Georgetown County office.

10 Q And how long have you been in law enforcement?

11 A It'll be 30 years in February.

12 Q Can you briefly describe to us your background and
13 training and the jobs that you've held in law enforcement?

14 A Sure. I started out in 1984, graduated the police
15 academy in the State of New Jersey. I worked with the police
16 department there for almost 25 years. I worked in patrol,
17 anti-crime units, gang units, drug task force. My eventual
18 rank was detective lieutenant and I was the commander of the
19 narcotics bureau in that department. I passed the two-week
20 DEA basic narcotics investigators' course. I was a graduate
21 of the New Jersey Attorney General's drug unit commanders'
22 course. I've also passed or been a graduate of the drug unit
23 commanders' course here in the State of South Carolina, a
24 graduate of the South Carolina Criminal Justice Academy class
25 one police officer here in South Carolina. I've been a member

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- 1 of the New Jersey Narcotics Enforcement Officers Association,
2 worked for the Georgetown County Sheriff's Department as a
3 road deputy and the Georgetown City Police Department as a
4 police officer and a corporal before leaving that department.
- 5 Q And how long were you with the City of Georgetown?
- 6 A About two and half years.
- 7 Q And were you employed there on September 24th, 2011?
- 8 A Yes, I was.
- 9 Q And what was your position there?
- 10 A I was a road officer, patrol officer in uniform and a
11 corporal.
- 12 Q And so you would have just been patrolling around the
13 city?
- 14 A Yes, ma'am.
- 15 Q In the city limits, and on that date what area were you
16 in? Do you recall what street you were on?
- 17 A In the afternoon I was in the area of Merriman Road,
18 Highmarket, Front Street, Prince Street, that area.
- 19 Q Okay, and when this incident occurred about what time of
20 day?
- 21 A I could look at my report for the exact time. It was
22 between one and three in the afternoon, mid-early afternoon.
- 23 Q And did you come in contact with a vehicle driven by Mr.
24 Dennison?
- 25 A Yes, I did.

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1 Q And could you explain to me where you were when you
2 first saw that vehicle?

3 A I was on, I believe it's Railroad Street or Road or
4 Avenue. It's parallel with Prince Street and I was on the -
5 near Merriman Road but on the side closer to Fraser Street.

6 Q And what did you observe?

7 A I saw a Dodge Charger that had been traveling on Prince
8 Street heading towards Merriman Road. It stopped in the
9 middle of the roadway.

10 Q And, and what area? What was it in front of?

11 A Well, it's called Sam Bonds' apartments. It's kind of a
12 unique building. It's almost perpendicular to the roadway.
13 So there's a long driveway that runs off of Prince Street and
14 the apartments kind of face the driveway. We, we have a lot
15 of drug-related complaints, a lot of issues there that relate
16 to trafficking or traffic, related to drugs, drinking,
17 disorderly conduct and drug sales.

18 Q This is an area you would have patrolled often?

19 A Yes, ma'am.

20 Q Okay, and so the vehicle was stopped in front of the
21 apartments. What happened then?

22 A I saw a male come down the driveway or come from the
23 area of the driveway, come up to the passenger side of the
24 Charger. It looked to me like he had in his right hand it
25 looked like money in his right hand. He walked up to the side

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1 of the Charger, leaned in, then came out, stood back up,
2 looked down into, at the palm of his hand and then turned
3 around and walked back towards the driveway.

4 Q And so was he on the passenger side or the driver's
5 side?

6 A The driver's side.

7 Q The driver's side, and did you - could you tell what was
8 in his hand?

9 A No.

10 Q And could you tell what was in his hand initially?

11 A It looked to me like money, like currency.

12 Q And after you observed that what did the Charger do at
13 that point?

14 A It began traveling on Prince Street towards Merriman
15 Road. It then made a - I'm going to try to think - position
16 myself. It's a right turn on Merriman Road for the Charger
17 and it traveled on Merriman Road going towards the paper mail.

18 Q And did you stay on Railroad the whole time?

19 A No, before the Charger had got to the intersection a car
20 came up behind me, got very close behind my rear bumper. So I
21 actually pulled up to the stop sign, made a left and kind of
22 made a little bit of a U-turn and stopped and I think I was in
23 the front of the funeral home parking lot. There's a little
24 parking area there and I was in that little kind of turnaround
25 in front of the funeral home.

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1 Q And could you still view the apartments?

2 A I could.

3 Q Okay, and then so the vehicle turned right onto
4 Merriman?

5 A That's correct.

6 Q And so it would have passed you?

7 A Yes, ma'am.

8 Q And what did you do then?

9 A I paid particular attention to the vehicle. I looked at
10 the vehicle and it appeared that the rear seat passenger
11 wasn't wearing a seatbelt. I noted that the vehicle was
12 steadily increasing its speed. It's a 30 mile an hour zone on
13 Merriman Road. I - with the radar unit in the car determined
14 that it had reached the speed of 38 miles an hour. I followed
15 the vehicle and eventually activated by overhead lights and
16 flashing headlights.

17 Q And then did the vehicle stop?

18 A No, when I put my lights on we were on Merriman Road.
19 It didn't pull over. It continued on a little bit, made a
20 right onto Emanuel Street and still didn't, didn't stop at
21 that time.

22 Q And did you - what did you do to get it to stop?

23 A I hit my air horn. I mean, I had the belief that they
24 saw that I was behind them. There's a lot of lights in the
25 car and it appeared that they, that the occupants noticed me

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1 but they didn't stop which kind of raised my level of concern
2 a little bit and I hit the air horn and it kind of jerked to a
3 stop on the right side of the road.

4 Q On Emanuel Street?

5 A That's correct.

6 Q And what did you do once the vehicle had pulled over?

7 A Well, I continued to - I notified dispatch where I was
8 and the vehicle's plate information, got out of my patrol
9 vehicle and approached the driver which was Mr. Dennison in
10 the blue shirt there and introduced myself and told him the
11 reasons, the three reasons that I stopped him.

12 Q And you told him where you worked, you told him where
13 you worked?

14 A Oh, yes, where I worked. That's correct.

15 Q And you were in a marked car?

16 A I was. I was in a white Georgetown City Police
17 Department vehicle and I was in full uniform, didn't have
18 this. I was clean-shaven and in uniform.

19 Q And why did you tell him you had stopped him?

20 A I told Mr. Dennison I stopped him for speeding, for
21 stopping in the middle of the road, for the past - where the
22 individual had come over to him in the middle of the road and
23 for the rear seat passenger not having a seatbelt.

24 Q And what happened after you advised him of that?

25 A I noticed almost from my initial contact with Mr.

1 Dennison that he, he was not answering my questions or didn't
2 seem like we were on the same page. I would tell him
3 something and he would interrupt and I, again, tried to tell
4 him what was the reason for the stop and I noticed that he
5 would - in his lap was a \$10 bill and he was clutching his
6 right hand. He had a white pill bottle in his right hand and
7 at, at some point he kept moving his hands about the vehicle.
8 I've been a police officer 30 years, taken a lot of guns out
9 of vehicles, a lot of drugs out of vehicles and his actions of
10 moving his hands out of my view constantly, not in the area of
11 the glove compartment where people would normally go for their
12 registration or their insurance made me extremely nervous that
13 he was either trying to discard what he had in his hand or
14 retrieve a weapon. I consistently told Mr. Dennison to put
15 his hands where I could see them. I asked him what was in his
16 hand, his right hand and he said that there was nothing and I
17 could plainly see a white pill bottle in his hand. When
18 someone out and out lies to me I know that there's something
19 wrong and something going on. I continued to tell him to put
20 his hands where I could see them and at one time, one point he
21 did comply. I don't really recall where he puts his hands,
22 whether they were on the wheel or on his head or on the dash,
23 but I took the opportunity to take the key out of the ignition
24 and I did that because I didn't want this to wind up to be a
25 vehicle pursuit and I, and I felt with, with his erratic

1 behavior that was a likelihood. I continued to tell him to
2 put his hands where I could see them. He continued to put
3 them where I couldn't see them. I drew my Taser and that
4 usually in a great many instances will gain compliance, people
5 will do, understand the seriousness of the situation and at
6 that time I saw him try to move the gear shift lever of the
7 vehicle even though I had already taken the key out of the car
8 he was motioning with the gear shift lever. He continued to
9 try to move about the vehicle. I had already called for
10 backup once. I called for backup a second time.

11 Q And how did you - how do you call for backup?

12 A I have a - an earpiece on a coil cord that goes in my
13 ear and there's a small little button on a - my shirt. So
14 with my ---

15 Q So you'd make a motion like this?

16 A --- with my left hand I would usually activate it with
17 my left hand, move to the center of my chest. I told him
18 several times to put his hands where I could see them. He
19 just wouldn't. He wouldn't put his hands where I could see
20 them. He wouldn't admit to the fact of having that pill
21 bottle in his hand until the point where he actually swung the
22 car door open to hit me with the car door that I activated my
23 Taser to - and at that time the Taser runs a cycle of five
24 seconds. He, he moved over towards the passenger side of the
25 car and the cycle ended and I again told him to put his hands

1 where I could see them and not to move.

2 Q And did he comply with that?

3 A He didn't, he didn't. Actually now that the cycle had
4 ended the Taser doesn't have a lasting effect. Once - it's
5 only effective when it is running. Once the cycle is finished
6 there's, there's no aftermath. It doesn't incapacitate you
7 after it's turned off. He reached out to try to grab the
8 Taser. At that time I activated a second cycle in an effort
9 to gain some compliance with, with Mr. Dennison and that was
10 not effective either.

11 Q And after the second cycle of the Taser what did he do?

12 A When the - as soon as the cycle ended he continued to do
13 the same thing. He got - I'd given him opportunities to just
14 comply, just keep his hands where I could see them just to
15 follow instructions. My intent was to calm the situation, to
16 slow things down until my backup got there and he continued to
17 move about the vehicle to the point where Mr. Jenkins opened
18 the door. He was the front seat passenger, and Mr. Dennison
19 rolled out onto the passenger side and broke the leads from
20 the Taser.

21 Q Explain about breaking the leads.

22 A The Taser - the electric current follows a small thin
23 copper cord from the Taser to the small little barbs. When
24 the connection is broken then the - there's no more electrical
25 charge and it's a common tactic that's taught for certain

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1 people that if you want to defeat the Taser to roll onto the
2 leads to break the leads and it'll shut the Taser down. So he
3 rolled out of the car, rolled over the leads, broke the leads
4 and discontinued the Taser being activated, it had no more
5 effect on him.

6 Q And then what did he do after he was outside of the car?

7 A He got up and started running, running away. At that
8 time I went around to start chasing him and as Sergeant Scogin
9 had arrived on scene and Sergeant Scogin deployed his Taser at
10 which time Mr. Dennison fell onto the sidewalk and I was able
11 to get on top of him.

12 Q And when you got on top of him what did you do?

13 A I tried to get his hands behind his back to handcuff
14 him. He had - still had the bottle portion of the pill bottle
15 in his hand. I retrieved that and he kept trying - he's a
16 pretty big guy, he kept trying to push up and in an effort
17 that I thought to get away still. I tried to get his hands
18 behind his back several times. It took a little bit and I was
19 able to, finally able to handcuff him but he resisted that
20 entire time.

21 Q And had you been able to frisk him yet to - at that
22 point?

23 A No, I didn't not until after he was handcuffed.

24 Q And what was in the pill bottle?

25 A That portion of the pill bottle had, I believe it was,

1 the nine pieces of crack cocaine inside it.

2 MS. HILLER: Your Honor, objection, this fact's
3 not in evidence yet. They need to establish that.

4 Q Okay, if you would - what did it appear, what, what,
5 what did it look like in the bottle?

6 A It looked, it appeared to my training and experience to
7 be cocaine, crack cocaine. It was five pieces that were
8 wrapped in the corner of a baggie, knotted and tied off and
9 then another couple of pieces in the bottom of the bottle. I
10 also - the cap was on the sidewalk from that bottle and the
11 cap had a larger piece of a similar material that appeared to
12 be crack cocaine wrapped up in a piece of tissue and jammed
13 into the cap.

14 Q And at that point did you search him or frisk him?

15 A At some point thereafter, I know once I put that in my
16 pocket and I, I got him on his side and at some point I did
17 search his pockets and searched the rest of his person.

18 Q And did you find anything else in his pockets?

19 A I found some marijuana in a pocket and I found ---

20 MS. HILLER: Your Honor, objection. These are all
21 facts that are not in evidence. We don't know what was in his
22 pockets. We haven't had a chemist test it.

23 A I'm sorry, a substance that appeared to be marijuana.

24 Q Well, did you find any currency ---

25 A Oh, I did.

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1 Q --- in his pockets?

2 A I did. In one pocket he had I believe it was \$164 and
3 it was all in \$10 piles, so it was one lump but it was \$10 and
4 folded, then another \$10 folded, all tens and then the last
5 one was \$14 and in another pocket was a couple of hundred
6 dollars in the other pocket.

7 Q And you confiscated that money and put it into evidence?

8 A Yes.

9 Q And in your vehicle is it equipped with video?

10 A Yes, ma'am.

11 Q And have you provided a copy of the video from that day
12 to our office?

13 A I have.

14 Q And have you reviewed that prior to court?

15 A I have.

16 Q And I'm going to show you what's been marked as State's
17 Exhibit Number One for identification. Do you recognize that?

18 A Well, it's marked as a video from this case with the,
19 with the same case number on it.

20 Q And is that an accurate representation of the video that
21 was taken in your car that day?

22 A Yes.

23 MS. RICHARDSON: Your Honor, at this ---

24 THE COURT: Has counsel had an opportunity to
25 observe that video?

1 MS. HILLER: Yes, Your Honor.

2 THE COURT: All right.

3 MS. RICHARDSON: Your Honor, at this time we'd offer
4 State's Exhibit One for identification into evidence and would
5 ask to publish it to the jury.

6 THE COURT: It is admitted.

7 MS. HILLER: No objection, Your Honor.

8 THE COURT: All right.

9 (State's Exhibit Number One [Video] admitted into
10 evidence and appropriately marked.)

11 BY MS. RICHARDSON:

12 Q Your Honor, if the witness could step down and point to
13 our monitor, please.

14 THE COURT: I will permit it.

15 Q Now, I'm going to use the cursor to sort of point and
16 show where we are.

17 A Sure.

18 Q And you should be able to see and this street would be
19 here?

20 THE COURT: Have him talk in the microphone.
21 Want to make sure all the jury can hear him.

22 Q And this street would be what?

23 A That's Merriman Road.

24 Q Okay, and then this street - and this would be when you
25 were parked at the funeral home?

- 1 A Yes, ma'am.
- 2 Q Okay, and so this street here would be, would that be
- 3 Railroad?
- 4 A Yes.
- 5 Q By the railroad tracks?
- 6 A Yes, ma'am.
- 7 Q Okay, and what is this?
- 8 A That is - those are the Sam Bonds' apartments on Prince
- 9 Street.
- 10 Q Okay, and so Prince Street would be here?
- 11 A That's correct.
- 12 Q Okay, all right, if you'd return back to the, to the
- 13 witness stand?
- 14 A (Complies with request.)
- 15 MS. RICHARDSON: We'll go ahead and publish this
- 16 to the jury.
- 17 (Whereupon, State's Exhibit Number One played in open
- 18 court.)
- 19 BY MS. RICHARDSON:
- 20 Q And the video goes on after that?
- 21 A Yes, ma'am.
- 22 Q And it's basically getting him into an ambulance and
- 23 that sort of thing?
- 24 A Yes, ma'am.
- 25 Q And after that you also search the vehicle?

1 A Yes, we did.

2 Q And when you searched the vehicle did you find any
3 paraphernalia for the use of crack cocaine?

4 A No, for, for - not for use, not for smoking, no.

5 Q Okay, and what type of things would you usually expect
6 to find for the use of cocaine or for crack?

7 A Commonly called the stem, small glass tube or pipe,
8 different kind of pipes. Sometimes metal objects convert into
9 a pipe, even soda cans are partially crushed and they'll,
10 they'll have obvious signs that they were used for inhaling or
11 ingesting crack cocaine. I didn't find any of those in the
12 car.

13 Q And the Taser that you had was that issued to you by the
14 City of Georgetown?

15 A Yes, it was.

16 Q Okay, and was that for you, for you to use in your
17 official capacity as a Georgetown police officer?

18 A Yes, it was.

19 Q Let me show you what has been marked as State's Exhibit
20 Number Two for identification purposes. Do you recognize
21 this?

22 A Yes, this is the, the, the pill bottle that was in Mr.
23 Dennison's hand and that I recovered at the scene and marked
24 as evidence, secured as evidence.

25 Q Okay, explain to me the packaging that you have in your

1 hand.

2 A Well, the interior is a - the evidence bag that I put
3 the items into at the police department when I return back to
4 the police department, we take the items, I write information
5 on the bag. The forms are filled out and they go into a
6 locker similar to like an airport locker. Once the locker
7 locks you take the key out and there's a little hole and it's
8 perfectly formed to the key. You put the key back in and no
9 one can get into the locker again until the evidence custodian
10 gets into it from the other side in a locked room.

11 Q So, you would have personally put that pill bottle and
12 the contents in that bag?

13 A That's correct.

14 Q And that's called a best bag?

15 A It's - well, this, this blue bag that's inside that,
16 that it - these items go into for transportation to the SLED
17 lab is called the best bag.

18 Q Okay, and tell me about the best bag. How do you use
19 that?

20 A The items are placed inside the best bag with a form.
21 It's sealed with a tamperproof seal and it's transported by
22 the evidence custodian up to the SLED lab in Columbia and
23 that's where the test is done on the items that you've
24 submitted.

25 Q And once you place those items into the bag have you

1 handled them again until after you gave them to the evidence
2 custodian until today?

3 A No, this is the first time I've seen them since that
4 day.

5 Q Okay, and did you tamper or alter that bag and the
6 contents, the pill bottle in any way?

7 A No.

8 Q And do you write - do you make some notations on that
9 bag?

10 A I, I made a notation on the interior bag describing what
11 it was and my, my signature's at the bottom with the case
12 number and a date.

13 Q And who would you - who would have been the evidence
14 custodian at the police department at the time you dropped
15 that off?

16 A I'm not really sure. It would have either been Sergeant
17 Kyle Walton or Lieutenant Larry Ward.

18 Q And is Larry Ward still with your department?

19 A No, he's, he's medically retired.

20 Q And can you - do you have personal knowledge as to what
21 is wrong with him?

22 A He's stage IV cancer and is not doing very well.

23 Q And so Mr. Walton took over as evidence custodian?

24 A That's correct.

25 Q And there are numbers that identify this best bag?

1 MS. HILLER: Your Honor, she's been leading this
2 entire time. It's not been super important but she needs to
3 not lead the witness.

4 MS. RICHARDSON: I apologize, Your Honor. I was just
5 trying to speed things along but ---

6 THE COURT: You are leading the witness.

7 MS. RICHARDSON: I am. I am. I was just trying to
8 speed it along but I'll ---

9 THE COURT: Thank you, Ms. Hiller. You may
10 proceed.

11 BY MS. RICHARDSON:

12 Q What sort of identifications are on the bag?

13 A There is a number on the best bag that goes onto the
14 paperwork that's submitted to SLED.

15 Q And what do you use that number for?

16 A To track the evidence through the system and I believe
17 that's the way the evidence technician can look back in the
18 system and find it.

19 Q I'm going to show you now what's been marked as State's
20 Exhibit Number Three and do you recognize that?

21 A Yes, this is a - the receipt from the best bag. That
22 best bag with the same, it's got the same number, it's a tear
23 off strip at the top of the bag and this is a copy of the
24 evidence property custody report that I filled out on that day
25 and it shows the evidence that I put in, submitted and the

1 items that were in that best bag are on this report.

2 Q And other than what's been marked out is that in the
3 same condition and an accurate representation of what you
4 filled out that first day?

5 A Yes, except for the chain of custody that's at the
6 bottom of the report that's since been added when the items
7 have gone from one person to the next.

8 Q And that documents all the things that were taken from
9 that traffic stop?

10 A That's ---

11 MS. HILLER: Your Honor, she's still leading.

12 MS. RICHARDSON: I'm sorry.

13 A That document is a list of all the items I submitted as
14 evidence in relation to this case.

15 Q And it - and on there is a list of the cash that was
16 taken?

17 A Yes, ma'am.

18 Q Okay.

19 MS. HILLER: Every question has been leading. I'm
20 not trying to be picky, but come on, objection.

21 MS. RICHARDSON: I have no further questions, Your
22 Honor.

23 THE COURT: You may examine.

24 CROSS EXAMINATION

25 BY MS. HILLER:

1 Q So looking back on that traffic stop we can agree
2 Franklin didn't have a weapon; did he?

3 A I'm sorry, ma'am?

4 Q We can agree looking back what you know now Franklin did
5 not have a weapon; did he?

6 A Well, he had razor blades in the center console of the
7 vehicle.

8 Q No gun?

9 A No gun that I found, no.

10 Q You didn't find any weapon that day, any gun, any knife,
11 anything like that?

12 A The razor blades. That's the only items that I found
13 that were conventional weapons.

14 Q And a few minutes ago you testified that there was no
15 evidence of crack cocaine smoking in that, in that vehicle?

16 A None that I found, no.

17 Q But isn't razor blades something that's used as drug
18 paraphernalia?

19 A It's used for the - it's usually used for the packaging
20 or cutting up of the rocks but, no, the razor blades wouldn't
21 be used to ingest crack cocaine in any way that I'm familiar
22 with.

23 Q And you searched Franklin eventually after he was on the
24 ground?

25 A Yes, ma'am.

1 Q And you didn't find any weapons on his person?

2 A No, ma'am.

3 Q Okay, and I don't think it was you that searched but
4 someone searched Jenkins as well; correct?

5 A I assume so. It was a little chaotic but I believe
6 Sergeant Scogin probably did.

7 Q And are you aware of any weapon found on Jenkins?

8 A Not that I'm aware of, no.

9 Q Okay, now, Simmons, that back seat passenger, he was
10 also detained; correct?

11 A He was.

12 Q And was he searched?

13 A I'm, I'm - I'd have to make an assumption that he was.

14 Q Okay, and as far as you know there was no weapon on him
15 either?

16 A That's correct.

17 Q Okay, so, as it turned out no one in that vehicle was
18 armed?

19 A That's correct.

20 Q And no, nothing besides the razor blades were in the
21 vehicle?

22 A I don't think I understand totally the question.

23 Q No other weapons besides those razor blades were in the
24 vehicle?

25 A No conventional weapons, no.

1 Q Okay, now, you testified that you were in a marked
2 patrol car that day?

3 A Yes.

4 Q And we saw that and you were in uniform?

5 A Yes.

6 Q And that you had a clear view of Prince Street?

7 A Yes.

8 Q Okay, so anyone on Prince Street would also have a clear
9 view of you; correct?

10 A If they were paying attention to me. It depends on what
11 they were doing.

12 Q If they looked that way your marked car would be there?

13 A That's right.

14 Q Okay, and when you moved your car to the funeral home
15 and Franklin turned from Prince Street onto Merriman he could
16 see your car?

17 A I would assume so.

18 Q Okay, but you could see him turn though?

19 A Sure, yes.

20 Q Okay, you saw him stop at the stop sign?

21 A I, I would have to say I don't recall it but I, I would
22 have to say if he didn't stop at the stop sign I would have
23 wrote him a ticket.

24 Q So as far as we know he stopped at that stop sign?

25 A I would, I would venture to say safe bet.

1 Q And if he was looking in your direction he could see
2 your car?

3 A I would, I would assume so, yes.

4 Q And he passed you?

5 A He did.

6 Q Okay, and at some point you activated your blue lights?

7 A Yes, ma'am.

8 Q Okay, and you followed him down Merriman with your blue
9 lights on?

10 A Yes, that's correct.

11 Q And then he turned onto Emanuel. We saw that on the
12 video?

13 A Yes, ma'am.

14 Q Okay, and while you were behind him with your lights on
15 that's when you say he was speeding?

16 A No, ma'am.

17 Q Well, when was he speeding?

18 A He was speeding when he was traveling on Merriman. When
19 I was sitting in the parking lot there either right then or
20 right after he had attained that speed. I can't remember if I
21 got him with the front antenna or the rear antenna of the
22 radar but he, he went - he accelerated to a point of 38 miles
23 an hour when he was south of me on Merriman Road.

24 Q Okay, so in the distance between the stop sign at Prince
25 and the funeral home is when he reached 38 miles an hour?

- 1 A No, ma'am. No, ma'am.
- 2 Q Then what did you just say?
- 3 A I said after he passed me.
- 4 Q After he passed you?
- 5 A Yes, ma'am.
- 6 Q So when did you put on your blue lights exactly?
- 7 A When I - it's, it's a - I put my blue lights on when I
- 8 got right behind the vehicle. It's - we're taught not to
- 9 activate our blue lights until we're close enough where we
- 10 could see the license plate and so we don't actually cause a
- 11 pursuit. If we're so far back when we activate our blue
- 12 lights it, it actually causes more trouble than it's, it
- 13 prevents.
- 14 Q So a lot of time on that video your blue lights were not
- 15 on yet?
- 16 A That's correct. The video starts - there's a system
- 17 where when you activate the blue lights the video goes back.
- 18 It's a, it's a digital video. It's always recording. So when
- 19 the blue lights come on it'll go back certain amount of
- 20 seconds and there's no voice, there's no audio but it, it
- 21 picks up that prior recording.
- 22 Q So when the audio turned on is when your blue lights
- 23 went on?
- 24 A Yes, ma'am.
- 25 Q Okay, so it was actually a very short distance from

1 where he turned, when the blue lights popped on he turned
2 right and you stopped and he stopped?

3 A Yes, ma'am.

4 Q Okay, now, let's talk a little bit about your Taser. I
5 know you have already testified. It's a weapon; correct?

6 A Yes, ma'am.

7 Q Okay, and it's designed to incapacitate through electric
8 shock; correct?

9 A Yes.

10 Q Okay, and when someone is shot with a Taser it's
11 painful?

12 A For that time it, it hurts when the Taser is charged
13 when you feel the Taser on you. When the Taser cuts off ---

14 Q So ---

15 A --- there's no lasting effects from it.

16 Q --- so while that cycle, it's going through its cycle
17 there is electric current going through that person's body;
18 correct?

19 A Yes.

20 Q Okay, and it's designed to debilitate that person?

21 A It is.

22 Q Okay, so they can't continue doing what they were doing
23 before, whatever that is?

24 A That's the purpose.

25 Q Okay.

- 1 A It's not always effective.
- 2 Q People often collapse when they're hit by a Taser?
- 3 A Some - it - well, what do you mean collapse?
- 4 Q Like it causes the muscle to contract and they fall or
- 5 fall down, fall over?
- 6 A I've seen people stand up straight. We all get Tased as
- 7 part of our training. I've seen people stand up straight.
- 8 I've seen people fall. I've seen them fall forward, fall
- 9 back. Some people sit down. I have seen people be able to
- 10 move and work through the Taser.
- 11 Q When you Tased Franklin you say you did it because he
- 12 didn't comply with your requests?
- 13 A Did I say that?
- 14 Q Is that - you - when you Tased him you say you did that
- 15 because he didn't comply?
- 16 A Are you - I, I - I'm not - maybe I'm not understanding
- 17 your question.
- 18 Q I'm just asking you say you Tased him because he did not
- 19 comply with what you asked him to do?
- 20 A I, and I - did I - maybe I missed - did I put that on my
- 21 report? Did I say that he - that - because he didn't comply?
- 22 Q I thought that's what you testified to a few minutes
- 23 ago?
- 24 A Did I? No, I don't know, know that I did that. My
- 25 reason for Tasing him was because I was in fear. I didn't

1 know if he was grabbing a weapon. He was obviously trying to
2 still put the vehicle in motion. I didn't know if there was
3 another key in the car. Although I had taken the key out of
4 the ignition he was still trying to put the gearshift in, into
5 operation.

6 Q The ---

7 A And I didn't know what he was grabbing or what he was
8 going to do and actually did not Tase him until he struck me
9 with the car door.

10 Q The whole time you were yelling at him to put his hands
11 where you could see them?

12 A Yes, ma'am.

13 Q Okay, and you saw him unbuckle himself?

14 A I never recall seeing him unbuckle himself.

15 Q Okay.

16 A I'm assuming he did at some point though.

17 Q And you say you saw him open the door?

18 A I saw him swing the door and hit me with it, I'll put it
19 that way.

20 Q And when he opened the door that's the first time you
21 Tased him?

22 A When he hit me with the door is when I Tased him.

23 Q And you Tased him in the chest?

24 A Yes.

25 Q Okay.

1 A In the torso. I - really to tell you the truth I don't
2 know where it hit, but it, it - I don't know where it hit. I
3 assume somewhere in his point from his waist up to his neck.
4 I don't know where they hit.

5 Q At the time you Tased him he started yelling in pain?

6 A He started yelling, yes.

7 Q Okay, and you continued yelling at him to put his hands
8 where you could see them, all that sort of thing?

9 A That's correct.

10 Q And you say he reached up after that first Taser cycle
11 towards you?

12 A He reached out to grab my Taser to take it away.

13 Q To shield himself from another round from the Taser?

14 A No, because the Taser wasn't activated and it wasn't
15 going to be activated. From the initial contact I never
16 wanted to deploy the Taser but he - there was, there was no
17 Taser activation at the time he tried to take it. It wasn't
18 on. It was - not - had he complied it was not going to be
19 back on.

20 Q But the leads were still in him at that time?

21 A Yes, ma'am.

22 Q And people do, you testified, try to avoid being Tased?

23 A That's correct, yes.

24 Q Because it hurts?

25 A Or because they want to get away or because they want to

1 hide drugs or because they want to fight back. There's a
2 multitude of reasons I would assume to wish not to be Tased.

3 Q And when you Tased him again he sort of collapsed
4 inward; is that what you testified to?

5 A He moved - he went to the right side.

6 Q Okay.

7 A Over to the right to get - and I, which I took as to try
8 to get out or to get to that side of the car and not - and I
9 didn't know what was on that side of the car, what was there
10 or what he was trying to do. All I ---

11 Q And he was still yelling in pain; right?

12 A I don't think he was ever yelling in pain but I know he
13 was ---

14 Q He was yelling?

15 A He was yelling, yes.

16 Q Do remember him yelling that he said he thought you were
17 trying to kill him?

18 A I don't recall that, no.

19 Q And you recall the passenger opens his door and climbs
20 out?

21 A Yes.

22 Q Okay, and Franklin leans over in that direction?

23 A Yes.

24 Q Okay, and then you Tase again?

25 A That's right.

1 Q Okay, and in your report you put that he fell out of the
2 car?

3 A Yeah, he rolled out of the car. It's a common tactic to
4 break the Taser leads. People practice it in, you know,
5 institutional settings and they practice rolling over to break
6 the Taser leads to defeat that tool from law enforcement.

7 Q You have no idea if that's what he's done before though?
8 You're just saying in your experience?

9 A That's actually it's one of the few times I've seen that
10 done to break the leads.

11 Q And he fell to the ground. He - you said he started to
12 move away and Scogin came up behind him?

13 A He got up and started to run.

14 Q And then Officer Scogin Tased him?

15 A That's correct.

16 Q In the back?

17 A That's correct.

18 Q At that point he fell to the ground?

19 A That's correct.

20 Q Okay, and then you came around and put your knees up on
21 top of him?

22 A I got on his back.

23 Q Yeah.

24 A I, I don't think my knees were on top of him, I think
25 they were probably on either side of him. I was trying to

1 keep him down on the ground.

2 Q And at some point when he fell his teeth got busted in?

3 A I don't know it was - what his actual injury was but he
4 did have a bloody lip in the front from the sidewalk.

5 Q So there was blood on his mouth?

6 A Yes.

7 Q Okay, and he was yelling in pain?

8 A He was yelling.. He was - he had been yelling for a
9 little period of time there.

10 Q And he kept saying he couldn't get his breath?

11 A He, he said that despite the fact that he was actually
12 pushing up and pushing me up and picking me up.

13 Q He said that he couldn't breathe with you on top of him?

14 A Right.

15 Q Okay.

16 A Which is also common that to get you to get off of them
17 so that they can get up and run.

18 Q But he was in handcuffs by this point?

19 A I don't believe he was in handcuffs at that point, no.

20 Q He said he couldn't breathe for some time on that video.
21 We didn't actually watch as long as he was saying that he
22 couldn't breathe; did we?

23 A I don't recall how long he said that but once I could
24 get his hands cuffed I rolled him onto his side to make sure
25 that there was no impediment to his breathing but everything

1 he did up till that point was that of a person that knew how
2 to defeat law enforcement is the way I took it and he
3 continued that up till the point where I couldn't even get his
4 other hand that was holding the pill bottle in it behind his
5 back.

6 Q Now, you ---

7 A And ---

8 Q Sorry, didn't mean to ---

9 A And, and as soon as I could get him cuffed and sure that
10 he wasn't going to run away again, he wasn't going to fight,
11 that his hand wasn't underneath him to take a gun out of his
12 waistband, as soon as I could get him cuffed I rolled him on
13 his side and called for an ambulance, that there - there was -
14 I did it as rapidly as he would let me do it but he just
15 didn't cooperate.

16 Q Now, at any time in the entire traffic stop, entire
17 incident did he ever tell you, did he ever admit to the drugs?

18 A Did he ever - no, he never admitted that he had a pill
19 bottle of what appeared to be crack in his hand, despite the
20 fact that I took it out of his hand.

21 Q And you asked him a couple of different times about it.

22 A I'm sure I did because I couldn't understand why he
23 elevated the incident to this stage.

24 Q And the other officers asked him about it.

25 A I don't know what the other officers asked, but it

1 wouldn't - I wouldn't be surprised if they asked him about it.

2 Q And you asked him that after he had his hands behind his
3 back on his side under arrest?

4 A Well, I'm sure, yeah, I did. I was, I was actually that
5 he - I thought that he placed himself and me in unnecessary
6 danger, that he did this, all of this and couldn't understand
7 why he would do this over that amount of what appeared to be
8 crack cocaine.

9 Q Let's shift the focus just a minute to Jenkins and I
10 know you didn't actively arrest Jenkins, but there was a
11 passenger in the car.

12 A There were two passengers in the car.

13 Q Right, and one of them was Robert Jenkins?

14 A Yes.

15 Q He was the front seat passenger?

16 A That's correct.

17 Q And he got out of the car?

18 A He did.

19 Q Without being ordered to?

20 A That's correct.

21 Q And he came around to the back of the car? It was on
22 the video we just watched?

23 A Yeah, I mean, I'd have to - I don't really have much
24 independent recollection of what Jenkins did because it's all
25 from the video. I was - my focus was on Mr. Dennison.

- 1 Q That day.
- 2 A Correct.
- 3 Q But today we watched the video; right?
- 4 A Yes.
- 5 Q And you saw it as well?
- 6 A I saw him get out and to tell you the truth the last
- 7 time I paid attention to him he was standing at the passenger
- 8 side rear fender of the car, and I know at some point he
- 9 walked away from that spot.
- 10 Q You remember on the video where he took something out of
- 11 his mouth?
- 12 A Yes.
- 13 Q Okay, and he threw it on the ground?
- 14 A Yes.
- 15 Q And that ended up being what, drugs?
- 16 A It, I believe, tested for heroin.
- 17 Q Okay, now, let's go back just a minute to what happened
- 18 over on Prince Street.
- 19 A Yes.
- 20 Q You testified that you saw somebody come out of the
- 21 house or out of the apartment complex?
- 22 A Came out of the general area of the driveway.
- 23 Q Now, yesterday I believe you said you don't really
- 24 remember what that person looked like.
- 25 A It was an older gentleman. I remember dirty jeans. No,

- 1 I can't exactly say that I would remember that or can identify
2 him again.
- 3 Q You couldn't pick him out of a lineup?
- 4 A No.
- 5 Q You don't know really how old he was?
- 6 A I'll take a guess that maybe forties or fifties.
- 7 Q But it's a guess?
- 8 A Yes.
- 9 Q And you don't know how tall he was?
- 10 A I'd say five-five to five-ten possibly.
- 11 Q Again, about five - that's a pretty good range, five ---
- 12 A It is. It is.
- 13 Q And you're guessing.
- 14 A It is - I am.
- 15 Q You just remember you saw it?
- 16 A That's correct.
- 17 Q Okay.
- 18 MS. HILLER: Just one second, Your Honor. No
19 further questions, Your Honor.
- 20 THE COURT: Is there any further questions from
21 the State?
- 22 MS. RICHARDSON: No, Your Honor.
- 23 THE COURT: All right, Officer, you may come
24 down.
- 25 A Yes, sir.

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1 THE COURT: Thank you. Call your next witness.

2 MR. FREDERICK: Judge, Judge, again, we have a

3 motion.

4 THE COURT: Sir?

5 MR. FREDERICK: We have a motion and a matter of law.

6 THE COURT: Come down, let you go to the jury

7 room, please, thank you.

8 (Whereupon, the following takes place outside the

9 presence of the jury.)

10 THE COURT: The jury's outside the courtroom,

11 yes, sir.

12 MR. FREDERICK: And Judge, let me preface this by

13 saying I hope that you understand that what I have to do is

14 make sure he receives a fair trial. I'm not trying to annoy

15 you.

16 THE COURT: I fully understand the rules of the

17 court. Proceed.

18 MR. FREDERICK: Yes, sir. We renew our motion for a

19 mistrial and for Your Honor to recuse himself.

20 THE COURT: I've, I've ruled on that.

21 MR. FREDERICK: On new grounds.

22 THE COURT: Proceed. What's your next motion?

23 MR. FREDERICK: On new grounds, Your Honor.

24 THE COURT: Sir?

25 MR. FREDERICK: During the cross examination of this

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1 witness and not during the direct examination of this witness
2 Your Honor was leaning forward with clear expressions of
3 aggravation and exasperation towards Defense counsel which was
4 in full view of the jury and they were looking at Your Honor.
5 In addition, Your Honor ---

6 THE COURT: No, sir, I, I do not agree with you.
7 I was listening intently to both of you.

8 MR. FREDERICK: Yes, sir.

9 THE COURT: But my facial expressions were not as
10 you indicated.

11 MR. FREDERICK: Yes, sir.

12 THE COURT: And if you think they were then I
13 suggest to you that you were the only one in this courtroom
14 that thought that. That motion is denied.

15 MR. FREDERICK: Yes, sir.

16 THE COURT: On the face of it and it's absolutely
17 absurd and ridiculous. Now, what's your next motion, sir?

18 MR. FREDERICK: In addition to that, Your Honor,
19 throughout the cross examination Your Honor was again speaking
20 with Your Honor's law clerk in front of the microphone and on
21 at least two occasions audibly Your Honor was talking about
22 jury nullification where I could hear it and I'm certain that
23 the jury as well could hear it.

24 THE COURT: I disagree with that and would deny it. I
25 have every opportunity to talk to my law clerk during the

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1 course of the trial as different issues arise. It is
2 perfectly appropriate. That motion is also denied.

3 MR. FREDERICK: And Judge, we would ---

4 THE COURT: What next?

5 MR. FREDERICK: We would ---

6 THE COURT: You obviously don't want to try the
7 case. You want to try the Judge. Let's get on with the trial
8 of the case. That's what we're here for. You're not going to
9 try me.

10 MR. FREDERICK: Judge, I would request that when you
11 speak to your law clerk in the presence of the jury that you
12 turn the microphone off.

13 THE COURT: That will be done and it generally
14 is, but there's nothing wrong with me discussing an issue with
15 my law clerk. This jury will be fully advised as I have told
16 them of the law in this case. They have been and will be
17 fully advised again that they're the finders of the facts.
18 They've been told and will again base their findings on the
19 law and the evidence heard in this courtroom. Now, let's get
20 on with the trial and quit trying to try somebody else. Now,
21 you got any other motions?

22 MR. FREDERICK: That's all, Your Honor.

23 THE COURT: All right, sir, bring the jury back.

24 MS. RICHARDSON: Your Honor, can we have a restroom
25 break? I'm sorry. Can we have a quick break?

Motions

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1 THE COURT: Yes, you may.

2 MS. RICHARDSON: Thank you.

3 OFF THE RECORD

4 (On the record. The following takes place outside the
5 presence of the jury.)

6 THE COURT: All right, everybody ready?

7 MS. HILLER: Yes, Your Honor.

8 MS. RICHARDSON: Yes, Your Honor.

9 THE COURT: Okay, Mr. Frederick, during the break
10 I conferred with my law clerk, the court reporter and the
11 staff. This microphone was cut off period after your first
12 motion. Thank you.

13 MR. FREDERICK: Your Honor, then I would request if
14 you speak with your law clerk you do it more quietly.

15 THE COURT: Would request what?

16 MR. FREDERICK: That you speak more quietly with your
17 law clerk so that the jury cannot hear you.

18 THE COURT: I will speak to my law clerk in a
19 manner that I deem appropriate.

20 MR. FREDERICK: Yes, sir.

21 THE COURT: Be seated. Bring the jury in.

22 (Whereupon, the following takes place in the presence of
23 the jury.)

24 THE COURT: All right, you may proceed with your
25 next witness.

Kyle Walton - Direct by Ms. Richardson

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1 MS. RICHARDSON: The State calls Kyle Walton.

2 Whereupon, Kyle Walton was called to the stand, duly
3 sworn by the clerk and testified as follows:

4 THE CLERK: Thank you. Please be seated and
5 state your name for the record.

6 MR. WALTON: Kyle Walton.

7 DIRECT EXAMINATION

8 BY MS. RICHARDSON:

9 Q Officer Walton, where are you employed?

10 A Georgetown Police Department.

11 Q And what is your position and rank there?

12 A I'm a sergeant and I'm also the evidence control officer.

13 Q Okay, can you scoot up just a little bit so we can get
14 the mike?

15 A Excuse me, I'm a, I'm a sergeant. I'm also the evidence
16 control officer.

17 Q And hold long have you been with Georgetown?

18 A I've been there 20 and a half years.

19 Q And is that your entire law enforcement career?

20 A Yes, ma'am.

21 Q And can you explain to us what the evidence custodian
22 does?

23 A The evidence custodian is responsible for receiving
24 evidence into the evidence room, logging the evidence into the
25 evidence room, insuring proper documentation is done and then

1 either assigning the evidence to a place in the room or
2 preparing the evidence for transport for testing at SLED.

3 Q And how is evidence received by you from the officers?

4 A Usually it's placed - we have lockers that are secured
5 from one side and the outside they have a key, key lock on
6 them and the officers will place the evidence and the evidence
7 paperwork in that locker. They'll lock it. They'll take the
8 key. There's a hole there, a slot. Then they'll drop the key
9 into the locker where it's secured from the outside, and when
10 I come to work or when I come into the office I go into the
11 secure evidence vault which is accessible only by two keys and
12 from the inside we have a slide lock on each set of lockers,
13 what I open up and I take the evidence out and then begin the
14 process of logging and securing it.

15 Q And where do you, after you take it out of the lockers
16 where do you secure the evidence?

17 A Well, there's two different rooms. We have a general -
18 we have our evidence vault is divided. We have a general
19 evidence room and it - inside that we have another secure area
20 where we keep money, illegal drugs or drugs and weapons,
21 firearms, knives, anything, anything that can be associated as
22 a weapon.

23 Q And who has access to that room?

24 A There's only - the evidence room is only accessed by two
25 people, myself and the associate evidence custodian.

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1 Q And how long did you say you had been evidence custodian?

2 A I've been in the position, my current position as
3 evidence custodian for about one year and one month or two
4 months.

5 Q So you were not the custodian in September of 2011?

6 A No, ma'am.

7 Q Okay, and who would that have been?

8 A The evidence custodian at that time was Larry Ward.

9 Q Okay, and can you tell us where Mr. Ward is?

10 A Mr. Lord - excuse me, Mr. Ward is currently sick. He's
11 battling his third bout of trying to get better from cancer.

12 Q And can you explain to us how drugs are usually secured
13 in evidence?

14 A Well, the - once the, once the item comes into the
15 evidence room and the evidence custodian signs for that item,
16 depending on what type of illegal drug or what type of drug it
17 is will depend on the process that we do for, for anything -
18 we test marijuana locally. I'm an analyst, marijuana analyst
19 trained by SLED. So I test that here locally. Everything
20 else that needs to be tested we place it in a best bag if
21 it'll fit, seal the best bag and then we transport that best
22 bag to the South Carolina Law Enforcement Division where I
23 sign that bag over to the evidence technician.

24 Q Okay, let me show you what has been marked as State's
25 Exhibit Two for identification purposes. Can you tell me what

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1 that is?

2 A This is a, a sealed bag that came back from SLED and then
3 inside that bag is a best bag and inside - well, inside that
4 is a best bag, but also the, the thing - the drug or the
5 substance that was placed in the best bag.

6 Q Okay, and do you recognize that particular bag?

7 A Yes, ma'am, this is a - this is the bag that I removed
8 from the secure evidence vault this morning and brought to
9 court.

10 Q Okay, and what case would that be for?

11 A The, the case number is 11010429.

12 Q And are there any other identifying marks on that?

13 A And on the best bag is a yellow lab control number and
14 that number is L11-11726 and it's listed as item one.

15 Q And do you know what case that is associated with?

16 A That is associated with the case that we're here for
17 today, which is our GPD case, Georgetown Police Department
18 case number 11010429.

19 Q And from what Defendant?

20 A The Defendant is Franklin E. Dennison.

21 Q And how can you be sure that is the same evidence?

22 A The - our department voucher number corresponds with
23 this, this evidence and all documentation supplied thereafter
24 to include the pre-log, which we do by computer, the actual
25 physically signing the evidence over to the evidence

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1 technician and the paperwork where the evidence custodian,
2 Larry Ward, got the evidence back from SLED after it had been,
3 after they had done their testing.

4 Q And you said that you brought that here today?

5 A I brought this from our evidence room, yes, ma'am.

6 Q And did you manipulate or tamper with it in any way?

7 A No, ma'am, the bag is still sealed.

8 Q Let me show you what's been marked as State's Exhibit
9 Number Three. Can you identify that?

10 A Yes, ma'am. This is a copy of the original evidence
11 voucher that shows the chain of custody from Don Tempalsky to
12 Larry Ward and then from Larry Ward to the state lab, SLED lab
13 and then from the state lab back to Larry Ward and then it
14 shows on the back, continues with the custody where it shows
15 where I've took the evidence out and then signed it over to
16 the Clerk's Office for this trial and on the front is the -
17 it's a tear-off tag, but the best bag has a tear off tag. The
18 best bag is - has a number on it. Each one has an
19 identifiable number that's assigned to that bag and this
20 number here corresponds to the number that's on here that
21 corresponds to the number that's on our best bag number that's
22 on our paperwork.

23 Q And ---

24 MS. HILLER: Your Honor, we need to object to that
25 testimony. That's hearsay. He was not there and he didn't

1 fill out any part of that paper. I think he's already
2 testified to that. This is hearsay, Your Honor.

3 MS. RICHARDSON: And we're attempting to lay a
4 foundation for that if Your Honor would indulge me.

5 THE COURT: You may proceed. This is a business
6 record in that courtroom which is admissible and she's
7 prepared to lay a foundation. I will leave it for the jury to
8 consider as to whether or not there's a proper chain with
9 regard to this issue. The jury is the sole and exclusive
10 finders of the facts. You may proceed.

11 BY MS. RICHARDSON:

12 Q And that, the document you're holding in your hand that's
13 been marked is actually a copy?

14 A Yes, yes, ma'am, this is a copy and I have the original
15 right here, and this, this best bag number here is - this is -
16 these are, these are - best bags are supplied to us by SLED
17 and the numbers are preprinted on them and part of our
18 procedures is we have - when we turn them in and also the
19 evidence technician we turn them into at SLED we make sure
20 that this best bag number matches on all our documentation.
21 That's one of the numbers that we, we have as far as
22 controlling it, along with the lab number and along with our
23 local case number.

24 Q And you said the original you brought over today?

25 A Yes, ma'am.

1 Q And explain to me why you, why you keep the original.

2 A We, we have to maintain all evidence for a certain period
3 of time based on the, based on state law depending on the type
4 of offense or type of crime it is. We maintain it for a
5 certain period of time to include documentation for that
6 evidence up until the expiration date of that evidence where
7 we can then dispose of it.

8 Q And at the Georgetown Police Department whose job is it
9 to do that?

10 A It's my job to maintain all the documentation.

11 Q And what sort of cases do you do it on?

12 A We - anything that comes into evidence we, we keep a
13 ledger, a handwritten ledger book. We also keep physical, the
14 original physical chain of control, property voucher form in,
15 secured in that same room where we have the evidence secured
16 in, in spiral notebooks or I'm sorry in three-ring binders.

17 Q And is this done daily?

18 A Yes, ma'am, this is, this is - I perform this job daily
19 as part of my - one of my, one of my assigned
20 responsibilities.

21 Q With the Georgetown Police Department.

22 A Georgetown Police Department, yes, ma'am.

23 MS. RICHARDSON: Your Honor, at this time I'd offer
24 this exhibit into evidence as a business record.

25 THE COURT: You may.

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1 MS. HILLER: Your Honor, we object based on the
2 hearsay.

3 (State's Exhibit Number Three [Evidence Custody Report]
4 admitted into evidence and appropriately marked.)

5 THE COURT: I understand.

6 MS. RICHARDSON: And Your Honor ---

7 THE COURT: Ladies and gentlemen, let me explain
8 this to you, from time to time counsel from either side may
9 object as she just did. That's a perfectly permissible and
10 acceptable procedure in our courtroom in that they are calling
11 to my attention a possible error and to object is very proper.
12 Incidentally you have been asked to step out of the courtroom
13 on several occasions today. Be assured that nothing being
14 discussed was for your consideration. In that regard I want
15 to emphasize to you again that you 12 are the sole and only
16 finders of the facts. Now, from time to time I will make
17 certain rulings, but I tell you you must disregard any
18 rulings, mannerisms of mine as how I may feel about any
19 factual situation. I am not entitled to a factual situation
20 and I have none. You are my 12 finders of the facts, but I
21 call to your attention the fact that it is perfectly
22 permissible procedure for an attorney to rise and say, "Judge,
23 I have a matter of law to discuss," and it is perfectly
24 permissible for an attorney to say, "I object." Just want to
25 call - do not hold that against them either. Thank you. You

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1 may proceed.

2 MS. RICHARDSON: Thank you, Your Honor.

3 BY MS. RICHARDSON:

4 Q I'm now going to hand you what's been marked as State's
5 Exhibit Number Four and State's Exhibit Number Five for
6 identification purposes. Do you recognize those?

7 A Yes, ma'am, these are our form B or these are our forms
8 that we use to transfer evidence to SLED at the time that this
9 case took place.

10 Q And again, where are those - where are the originals of
11 those records kept?

12 A I have them with me. They're maintained in the
13 Georgetown Police Department evidence room.

14 Q And the reason again?

15 A It's, it's the original document. We, we, we, as a
16 policy, as a practice we maintain not only evidence but the
17 original documents for that evidence to show chain and custody
18 and control over the evidence.

19 Q And again, whose job is it to do that?

20 A That's, that's my responsibility.

21 MS. RICHARDSON: Your Honor, at this time I'd offer
22 Four and Five into evidence again as a business record.

23 THE COURT: You may do so.

24 MS. HILLER: Again, over my objection. This is
25 hearsay. My client can't cross examine those pieces of paper.

Kyle Walton - Cross by Ms. Hiller

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1 The person that created them isn't here.

2 THE COURT: Your objection is noted. You are
3 doing this based on records maintained by that office?

4 MS. RICHARDSON: Yes, Your Honor, business records
5 exception.

6 THE COURT: And this - and such testimony as he
7 presents, all of which is for the jury's consideration. Thank
8 you.

9 MS. RICHARDSON: Thank you, Your Honor.

10 (State's Exhibit Number Four [Form B] and State's Exhibit
11 Number Five [Form C] admitted into evidence and appropriately
12 marked.)

13 I have no further questions for this witness, Your Honor.

14 THE COURT: All right, you may examine.

15 MS. HILLER: Just real briefly.

16 CROSS EXAMINATION

17 BY MS. HILLER:

18 Q Who was the assistant evidence custodian two years ago?

19 A I don't recall, ma'am.

20 Q There was one though?

21 A Yes, ma'am.

22 Q And it wasn't you?

23 THE COURT: You're going to have to talk a little
24 louder.

25 A I'm sorry.

Nikki Perry Hughes - Direct by Ms. Richardson

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1 THE COURT: That last juror can't hear you.

2 A I don't, I don't recall the, the person. I don't want to
3 suppose, but I don't recall who it was.

4 Q But it wasn't you?

5 A No, ma'am.

6 Q You were not in that office at the time this case came
7 through?

8 A No, ma'am, at that time I was a patrol sergeant, a road
9 sergeant.

10 Q No further questions.

11 THE COURT: Any further questions?

12 MS. RICHARDSON: No, Your Honor. We'd ask this
13 witness be excused.

14 THE COURT: You may come down. Thank you.

15 MS. HILLER: No problem.

16 A Thank you.

17 THE COURT: Next witness, please.

18 MS. RICHARDSON: The State calls Nikki Perry Hughes.

19 Whereupon, Nikki Perry Hughes was called to the stand,
20 duly sworn by the clerk and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. RICHARDSON:

23 Q Ms. Hughes, where are you employed?

24 A I'm employed with the South Carolina Law Enforcement
25 Division, commonly known as SLED.

1 Q And that's in Columbia?

2 A Yes, ma'am.

3 Q And what is your position there?

4 A I'm a forensic technician in the evidence control
5 department at our forensic laboratory.

6 Q And how long have you been with SLED?

7 A Approximately seven and a half years.

8 Q And can you explain to us what your position requires you
9 to do at SLED?

10 A Sure, we log in, package and transfer evidence submitted
11 to our lab for forensic analysis.

12 Q And who do you receive those items from?

13 A We receive those items from different agencies across the
14 State of South Carolina, sheriffs' offices, police
15 departments, coroners, all agencies across the state.

16 Q And can you explain to us the procedure that you use to
17 do this and what safeguards are in place?

18 A Sure, usually there is someone from an agency that will
19 bring evidence. It starts in my department at the laboratory.
20 They will provide us with the evidence as well as a log-in
21 form which will have the case information, subject, victim,
22 case number, offense, date offense, type. It will also have
23 what evidence that they are submitting to the lab and what
24 analysis that they're requesting. I will take that
25 information, enter it into our computer system and our

Nikki Perry Hughes - Direct by Ms. Richardson

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1 computer system will then generate a unique lab number and
2 item number for each piece of evidence. At that time a bar
3 code will be affixed to the evidence and then I will place it
4 in our secure evidence room. The officer in my presence
5 usually according to what type evidence is they may sign and
6 date some of our evidence in our presence but they will sign a
7 receipt stating that they submitted it to us.

8 Q And how do you keep up with at SLED who's handled the
9 evidence? How do you keep up with that?

10 A We have what's called a chain of custody. It's
11 electronically generated documents and it will show each piece
12 of evidence and each location that that evidence has traveled
13 through throughout the lab from the time it enters the lab
14 till the time it leaves our laboratory.

15 Q And how do you ensure that's done, that it's logged in?

16 A Each piece of evidence, like I said, has a bar code. So
17 if it is placed on a shelf we - each shelf has a label. We
18 will scan that label, scan the evidence and it tracks that
19 piece of evidence throughout the lab. Each employee at SLED
20 in the laboratory also has a bar code of their own, and so if
21 I take custody of an item my bar code may be scanned. If I
22 transfer it to the custody of someone else their bar code will
23 be scanned, and they have to put in a password to receive the
24 evidence. Therefore it will track that piece of evidence
25 throughout the laboratory.

1 Q And I'm going to show you what has been marked State's
2 Exhibit Number Seven for identification purposes. Can you
3 tell me what that is?

4 A That is the South Carolina Law Enforcement Division chain
5 of custody.

6 Q And can you - what case is that for?

7 A It is for SLED lab number L11-11726.

8 Q And did you bring one of those with you?

9 A I did, yes, ma'am.

10 Q And that - is that an accurate copy of the one that you
11 pulled for this case?

12 A Yes, ma'am.

13 Q And is that kept in the normal business records of SLED?

14 A It is.

15 Q And you have access and are able to access that?

16 A Yes, ma'am.

17 MS. RICHARDSON: Your Honor, at this time I move
18 State's Exhibit or State's Exhibit Number, I'm sorry, Seven
19 into evidence.

20 MS. HILLER: No objection, Your Honor.

21 THE COURT: All right, no objection, without
22 objection.

23 (State's Exhibit Number Seven [SLED Chain] admitted into
24 evidence and appropriately marked.)

25 BY MS. RICHARDSON:

Nikki Perry Hughes - Direct by Ms. Richardson

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1 Q All right, on State's Exhibit Number Seven what, what
2 identifying information ---

3 THE COURT: Let me ask, do you agree to her
4 qualifications in this area? Would you like further testimony
5 on that issue?

6 MS. HILLER: No, Your Honor, I think that's
7 sufficient.

8 THE COURT: Pardon me?

9 MS. HILLER: It's sufficient.

10 THE COURT: Thank you, ma'am. Proceed.

11 BY MS. RICHARDSON:

12 Q What identifying information is on that chain of custody
13 for a lab number or anything like that?

14 A There's our lab number L11-11726. That's how we
15 distinguish the cases at the laboratory.

16 Q Let me show you what's been marked as State's Exhibit
17 Number Two for identification. Can you identify that?

18 A I can identify this by our bar code. It has the same lab
19 number L11-11726 and it's item number one.

20 Q And looking at your chain of custody can you tell us who
21 received this item at SLED?

22 A I received this item at SLED on October 14th, 2011.

23 Q And who did you receive it from?

24 A I received it from Larry Ward of the Georgetown Police
25 Department.

1 Q And did you notice any tampering or damaging of the
2 package?

3 A No, I did not.

4 Q Okay, and if you had what would be the procedure?

5 A I would not have accepted the evidence.

6 Q And did you alter or manipulate or tamper with this in
7 any way?

8 A I did not.

9 Q And what steps did you take to maintain the integrity of
10 this item you received from the police department?

11 A I follow all evidence control policies and procedures.
12 Our evidence, after it is logged into our system, we place it
13 into a secure locked area within our secure evidence room and
14 that's where it remains until an analyst comes down to
15 evidence control to retrieve that item.

16 Q And who, who did retrieve that item? Can you tell from
17 this?

18 A According to my chain of custody Doris Yarborough
19 retrieved that item from the evidence intake storage where I
20 placed it and she then transferred the custody of that item to
21 Forensic Scientist Douglas Robinson in our drug analysis
22 department.

23 Q And do you know Ms. Yarborough?

24 A I do.

25 Q And where is she today?

1 A She had to stay behind and work. We're not allowed to
2 close down evidence control and she is the only forensic
3 technician left in our department. She had to service all the
4 agencies that came in to submit evidence.

5 Q I have no further questions. Answer any question that
6 Ms. Hiller may have for you.

7 MS. HILLER: No questions.

8 A Thank you.

9 MS. RICHARDSON: Would ask this witness be excused,
10 Your Honor.

11 THE COURT: She may come down and may she be
12 excused from her subpoena?

13 MS. RICHARDSON: Yes, Your Honor, that's what we're
14 requesting. She needs to travel back to Columbia.

15 THE COURT: I understand that you are.

16 MS. HILLER: No objection.

17 THE COURT: We thank you and are excused from
18 your subpoena.

19 A Okay, thank you.

20 THE COURT: You, of course, may remain if you
21 care to. Thank you.

22 A Okay, thank you.

23 THE COURT: Next witness, please.

24 MS. RICHARDSON: Douglas Robinson.

25 Whereupon, Douglas Robinson was called to the stand, duly

Scott Scogin - Direct by Ms. Richardson

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1 sworn by the clerk and testified as follows:

2 THE CLERK: Thank you. Please be seated.

3 DIRECT EXAMINATION

4 BY MS. RICHARDSON:

5 Q Mr. Robinson, where are you employed?

6 A The South Carolina Law Enforcement Division commonly
7 known as SLED.

8 Q And what do you do at SLED?

9 A I'm a forensic chemist assigned to the drug analysis
10 department.

11 Q Can you explain to us what a forensic chemist is?

12 A Yes, our primary duty is the analysis and identification
13 of submitted controlled substances or suspected controlled
14 substances.

15 Q And could you explain to us your educational background?

16 A I received my bachelor of science in chemistry from the
17 University of South Carolina. After graduating I spent
18 approximately three years performing chemical analysis in the
19 environmental chemistry field. Upon being hired at SLED I
20 received law and legal training from the South Carolina
21 Criminal Justice Academy as well as in-house training in the
22 analysis of controlled substances through the SLED Drug
23 Analysis Department and I also completed the Drug Enforcement
24 Administration's forensic chemist seminar.

25 Q And have you been qualified as an expert in this state?

1 A I have, yes.

2 Q And about how many times has that occurred?

3 A Thirteen.

4 Q And you've testified in cases in General Sessions Court?

5 A Yes, ma'am.

6 MS. RICHARDSON: Your Honor, at this time I'd move to
7 qualify Mr. Robinson as an expert in the area of forensic drug
8 analysis.

9 MS. HILLER: No objection.

10 THE COURT: He's qualified. I find him qualified
11 as an expert.

12 Ladies and gentlemen, an individual who by training or
13 experience may be qualified as an expert in a certain field
14 and I have thus qualified him with regards to that field as an
15 expert. In considering an expert you may accept his testimony
16 in whole or in part or reject it. You are the sole and only
17 credibility of the witnesses and that's for you to decide with
18 regards to his testimony. You may proceed.

19 BY MS. RICHARDSON:

20 Q I'm going to show you what's been marked or entered as
21 State's Exhibit Number Seven. Do you recognize that?

22 A Yes, ma'am.

23 Q And what is that?

24 A This is a certified chain of custody provided by the
25 administration at SLED upon request for court purposes.

1 Q And can you tell what case that is for?

2 A Yes, this is the SLED lab case number L1111726.

3 Q And did you have an opportunity to analyze the substance
4 in that case?

5 A May I refer to my notes?

6 Q Yes.

7 A Yes, I did.

8 Q And how, how do you identify that case?

9 A On each piece of evidence as well as each document that's
10 associated with the case the lab number would appear on that
11 document. Also in this case in my notes I have initials that
12 I have attached to each document to show that I had a part of
13 the case.

14 Q And how are you - how do you get the substance to test?
15 How do you get that in your possession?

16 A When evidence is brought to SLED it's brought in
17 typically in a best kit which is short for best evidence
18 sample testing kit. This is the common method used to
19 transport drug evidence from the collection site wherever it
20 may be to SLED for analysis. Specifically once evidence is
21 logged in in the evidence control department I would send an
22 e-mail down with a list of cases to retrieve from evidence
23 control personally and I would retrieve that best kit and
24 bring up to the department for analysis.

25 Q And who would you retrieve it from?

1 A A member of the evidence control department, whoever it
2 would, whoever responded to the request that I sent.

3 Q And did that occur in this case?

4 A It did.

5 Q And, and who did you actually receive this substance
6 from?

7 A I received this specific piece of evidence from Doris
8 Yarborough who is an evidence technician in the evidence
9 control department.

10 Q And upon receiving that what would you, what would you
11 have done with it?

12 A The evidence is then brought up to a secure location in
13 our department. We have an upstairs drug vault that we refer
14 to it as. It's a, a secured location that only members of the
15 drug analysis department have access to. In this specific
16 case it was placed in that location for, for overnight storage
17 and then the evidence was actually analyzed on the next day.

18 Q I'm going to show you what's been marked as State's
19 Exhibit Number Two. Do you recognize that?

20 A Yes, I do.

21 Q And how, how do you recognize it?

22 A On this bag there is actually two unique numbers. On the
23 top there is a yellow label. This is our lab case number and
24 as I mentioned earlier it's case number L1111726. This
25 matches the same number as all of the documentation as well as

1 the chain of custody. Inside there is also the best kit that
2 you can see. We've got a green strip coming across the top
3 here. This is the, the best kit that's actually inside of a
4 separate package, but this best kit also has a unique number.
5 It's called a control number and the number is printed on the
6 evidence when the bag is created. It's unique to the bag and
7 it's the only one that will ever have this number.

8 Q And did you make any markings on that evidence bag?

9 A Yes, when the evidence is retrieved from my storage area
10 for the overnight storage when I'm ready to open it I will put
11 it out of a sleeve, it's just a manila envelope that's used
12 for transport. The very first thing I would is actually
13 ensure that the seals are intact, that nothing has been done
14 to break any of the seals. Across the best kit, this is a
15 tamper evidence container and you can see if you - anyone
16 tried to mess with it you actually have a swirl pattern going
17 across each side and the bottom of the bag and then this green
18 glue strip and there's actually a circular pattern across the
19 top. So if anyone were to try to tamper with it these would
20 become distorted or eventually rip if it was pulled hard
21 enough. The first thing I do before analysis to make sure
22 that these seals are intact and it is noted, seal intact with
23 my initials and October 18th, 2011, the date that I tore into
24 the seal, cut into the seal.

25 Q And after you cut into the seal what do you do at that

1 point?

2 A At this point the contents of the best kit are
3 inventoried and separated out into items for analysis. Each
4 item is individually removed from packaging, weighed and then
5 analysis performed depending on what the substance may be.

6 Q And did you perform an analysis in this case?

7 A Yes, ma'am.

8 Q Okay, and what did you determine?

9 MS. HILLER: Your Honor, we object to his
10 testimony on this based on hearsay and based on the chain of
11 custody being incomplete. We just object to his testimony on
12 what he found in that bag.

13 THE COURT: I will permit his testimony.
14 Proceed. Thank you.

15 BY MS. RICHARDSON:

16 Q And what did you find with your analysis?

17 A The results of my analysis were as follows: Item 1.1 was
18 a plastic bag containing a plastic bottle containing Item
19 1.1.1 paper tissue containing rock substance, cocaine base,
20 crack, C-2 found 0.8 grams, 12.3 grains; item 1.1.2 rock
21 substance, cocaine base, crack, C-2 found 1.0 grams, 15.4
22 grains; item 1.1.3 five plastic corner bags containing rock
23 substance, cocaine base, crack, C-2 found with a combined
24 weight of 0.9 grams, 13.8 grains.

25 Q So in grams what would be the total weight that was

1 found?

2 A 2.7 total grams.

3 Q And I'm going to show you what's been marked ---

4 THE COURT: I didn't hear. What'd you say?

5 A I'm sorry. Two ---

6 THE COURT: What was the, what was the total
7 weight?

8 A 2.7 grams.

9 THE COURT: Okay, thank you.

10 Q And I'm going to show you what's been marked as State's
11 Exhibit Eight for identification and do you recognize that?

12 A Yes, this is a copy of my official lab report.

13 Q Okay, and is that a fair and accurate representation of
14 your lab report?

15 A Yes, it is.

16 MS. RICHARDSON: Your Honor, at this time I'd offer
17 State's Exhibit Number Eight into evidence.

18 MS. HILLER: Your Honor, we object on the same
19 grounds before, the chain of custody.

20 THE COURT: Your objections are noted.

21 MS. HILLER: And let me just say and the hearsay.
22 That's all, Your Honor.

23 THE COURT: And overruled, you may permit it.
24 Thank you, ma'am.

25 (State's Exhibit Number Eight [SLED Report] admitted into

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1 evidence and appropriately marked.)

2 BY MS. RICHARDSON:

3 Q And back to State's Exhibit Number Two, after you
4 finished your analysis what did you do?

5 A Once analysis is performed on each separate item the
6 evidence is placed in a secure bag within that, the outer
7 packaging. The outer packaging is called a K-pack. It's a
8 heat sealed bag, plastic bag that we can put a heat seal on.
9 On that bag on the bottom of it there is a heat seal with my
10 initials and the date that it was sealed, but within that
11 there are - the pieces of - each individual piece of evidence
12 that would have my case, the case number, the item number and
13 my initials and they're also going to be a few bags that are
14 Ziploc bags that have the same thing, case number, initials,
15 item number, but it also has the words bag added, which is
16 just to signify that I added and introduced that piece of
17 packaging to the case. It was not part of the original case,
18 but once analysis was complete the bag would be sealed up. It
19 would be put back into the upstairs vault for storage until it
20 was time to take it back downstairs after the report had been
21 completed and it would be returned to the evidence control
22 department.

23 Q And does this appear to be in the same condition as when
24 you returned it?

25 A Yes, the seal that I made on the bottom of the K-pack the

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1 outer bag is still intact and my initials are there, DR 10-18-
2 11, which is the day that I performed the analysis on it.

3 Q And other than the testing did you do anything to tamper
4 with the contents?

5 A No, ma'am.

6 MS. RICHARDSON: Your Honor, at this time I'd move to
7 enter State's Exhibit Number Two into evidence.

8 MS. HILLER: Your Honor, I object on the grounds
9 of hearsay, the chain and also the pretrial motions that we
10 made yesterday.

11 THE COURT: Your objection is noted for the
12 record and respectfully overruled.

13 MS. HILLER: Thank you, Your Honor.

14 (State's Exhibit Number Two [Best Bag] admitted into
15 evidence and appropriately marked.)

16 BY MS. RICHARDSON:

17 Q Looking at State's Exhibit Number Two there appear to be
18 multiple pieces; is that correct?

19 A Yes, there are multiple what some may refer to as rocks.
20 This is a loose terminology based on - referring to just
21 pieces of crack cocaine, but yes, in each one of these items
22 there are several of these small pieces.

23 Q And is that a brittle substance?

24 A It can be. It really depends on the manner in which it
25 was made. It can be very dense and hard. It can also be very

1 porous and very brittle. This is why we don't actually
2 document in our case records how many individual pieces are
3 submitted. We base it strictly off of weight. We will take
4 the weight and then we'll take a representative sample and we
5 will do an initial testing and then the confirmatory testing
6 based on that.

7 Q Because you could end up with more pieces than you
8 started with?

9 A Correct. It's actually standard practice. If I have a
10 larger chunk I will actually cut down the middle to, to ensure
11 that it is consistent all the way through so I can take a
12 proper representative sample for analysis. So, that - in that
13 case I would start with one and actually end up with two or
14 more depending on how brittle it could be.

15 Q I have no further questions. Answer any questions that
16 Ms. Hiller may have for you.

17 MS. HILLER: I have no questions for this witness.

18 THE COURT: All right, you may come down. Can
19 this witness now be excused?

20 MS. RICHARDSON: Yes, Your Honor, we'd ask that he be
21 excused and released from his subpoena.

22 THE COURT: You are excused from your subpoena
23 but may remain if you care to. We thank you.

24 A Thank you, sir.

25 THE COURT: Yes, ma'am, any further witnesses?

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1 MS. RICHARDSON: Your Honor, the State has one more
2 witness.

3 THE COURT: Okay.

4 MS. RICHARDSON: Call Officer Scogin.

5 Whereupon, Danny Scott Scogin was called to the stand,
6 duly sworn by the clerk and testified as follows:

7 THE CLERK: Thank you. Please be seated and
8 state and spell your last name for the record.

9 MR. SCOGIN: Yes, ma'am. My name is Danny Scott
10 Scogin, and my last name is S-C-O-G-I-N.

11 DIRECT EXAMINATION

12 BY MS. RICHARDSON:

13 Q And could you tell us where you're employed and what your
14 rank is?

15 A Yes, ma'am. I work for the Georgetown City Police
16 Department and I'm currently a sergeant on patrol and I've
17 worked there for 19 years.

18 Q And were you working on the date of September 24th, 2011?

19 A Yes, ma'am, I was.

20 Q And did you respond to an incident involving Mr. Dennison
21 and Mr. Jenkins?

22 A Yes, ma'am, I did.

23 Q Okay, can you tell us how it came about that you went to
24 the scene?

25 A Yes, ma'am, on, on that afternoon I was responding to

1 Corporal, my Corporal Tempalsky's request for assistance on a
2 traffic stop. I respond directly to him, turn on Emanuel
3 Street, and as I arrive I see Corporal Tempalsky with a Taser
4 drawn, door, passenger side door come open. Two individuals
5 come out of it, the first one being Mr. Jenkins who came to
6 the rear of the vehicle and the second one being Mr. Dennison
7 who came out to the ground, got back up, appeared to be
8 fleeing from Corporal Tempalsky. I could hear the Taser - as
9 I'm approaching I, I, I drive up, park and exit my vehicle
10 quickly as I see this going on. I can hear the Taser device
11 going off. I'm yelling at the subject to come back. I can
12 see the driver come to the ground, get back up. I can see
13 Corporal Tempalsky pursuing coming around the car pursuing
14 the, the individual, and I go in pursuit ahead of him to
15 attempt to apprehend the subject that's fleeing Corporal
16 Tempalsky. He, he, he's failing to obey commands to stop. I
17 deploy my Taser device, which he goes to the ground at that
18 point and Corporal Tempalsky was able to take him into custody
19 as, as he was pursuing with us and I go and I take Mr. Jenkins
20 into custody who had walked to the front of the subject
21 vehicle at that time.

22 Q And why did you take Mr. Jenkins into custody?

23 A I took Mr. Jenkins into custody as, as I'm - as Mr.
24 Dennison is fleeing Mr. Jenkins walks to the edge of the, of
25 the roadway and pulls an object out of his mouth, a - it

1 wasn't gum or food. It was a plastic tangible object and
2 throws it to the ground, and as soon as we take the individual
3 who's fleeing, actively fleeing, take him into custody then I
4 go to see what we have with Mr. Jenkins. I detain him because
5 I'm not a hundred percent sure what's all taking place at this
6 time and I retrieve the package which ends up being two
7 packages of what I believed at that time to be heroin.

8 Q And do you recall about how much of that substance was
9 there?

10 A I believe it was two, two packages. Weigh - in weight it
11 would be maybe a .1 grams maybe, something like that after ---

12 Q So significantly less than a gram?

13 A Less than a gram, yes.

14 Q And do - is your car equipped with video?

15 A Yes, ma'am, it is.

16 Q Okay, and was this incident captured on video?

17 A Yes, ma'am, which was also turned into evidence that day.

18 Q And you reviewed that this morning?

19 A Yes, I've seen it. I didn't get any sound, but I've seen
20 it, yes, ma'am.

21 Q And I'm going to show you what's been marked as State's
22 Exhibit Number Six and can you tell me what that is?

23 A That's a video DVD of the, of the case number that we're
24 here for today 4-29.

25 Q Okay, and when you reviewed it was it an accurate

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1 representation of what was captured on your car video that day
2 what you remember?

3 A Yes, ma'am, it was.

4 Q Okay.

5 MS. RICHARDSON: Your Honor, at this time I'd offer
6 State's Exhibit Number Six into evidence and ask to publish it
7 to the jury.

8 THE COURT: You may do so.

9 MS. HILLER: No objection, Your Honor.

10 (Whereupon, State's Exhibit Number Six [DVD] admitted
11 into evidence and published to the jury.)

12 BY MS. RICHARDSON:

13 Q The video is much longer than this clip we've just shown?

14 A Yes, ma'am.

15 Q And what would the remainder of the video be?

16 A The remainder of the video I believe we stopped and we
17 went back over it, but it would be us pulling another
18 individual out of the vehicle, detaining him, everything we
19 would go from there going through questioning with subjects or
20 towing the vehicle from the scene or until I left. I'm not
21 sure which happened, if I was there when we towed it or not.

22 Q Okay, I have no further questions. Answer any questions
23 Ms. Hiller may have for you.

24 A Yes, ma'am.

25

CROSS EXAMINATION

1 BY MS. HILLER:

2 Q Where's Mr. Jenkins today?

3 A Mr. Jenkins?

4 Q Uh-huh.

5 A I have - I, I don't know where Mr. Jenkins is today.

6 Q He's not on trial?

7 A Okay, yes, ma'am.

8 Q No further questions.

9 A All right.

10 THE COURT: Does that conclude your questions?

11 MS. HILLER: It does, Your Honor.

12 THE COURT: Is there any additional questions?

13 MS. RICHARDSON: No, Your Honor.

14 THE COURT: You may come down, officer.

15 A Thank you, sir.

16 THE COURT: Yes, ma'am.

17 MS. RICHARDSON: Your Honor, that's the State's case.

18 The State rests.

19 THE COURT: All right, ladies and gentlemen, it's
20 about 12:30, so it'll be time for lunch, let you go to lunch
21 at this time. Be back at two o'clock. That'll give you an
22 hour and a half. Please remember my admonitions. Don't
23 discuss this case with anyone, let no one discuss it with you,
24 do not discuss it among yourselves. You are discharged for
25 lunch to be back at two o'clock. Thank you.

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1 (Whereupon, the following takes place outside the
2 presence of the jury.)

3 THE COURT: All right, I'll hear any motions at
4 this time.

5 MR. FREDERICK: Judge, we have a motion for a directed
6 verdict and it's just based on the insufficiency of the chain
7 of custody. There were two chain of custody witnesses that
8 were missing, the first being Larry Ward who was the evidence
9 custodian who took possession of the drugs. The current
10 evidence custodian testified there was an associate evidence
11 custodian at the time. He was not brought to testify,
12 although I believe he is still the associate evidence
13 custodian. The second missing piece in the chain of custody
14 was Doris Yarborough, who is not present to testify and ---

15 THE COURT: You care to respond, Solicitor?

16 MS. RICHARDSON: Your Honor, in recent cases our
17 courts have looked at witnesses in the chain of custody. I'd
18 point to State v. Taylor, 598 S.E.2d 735, and I do have copies
19 for the Court.

20 THE COURT: State v. Hatcher is ---

21 MS. RICHARDSON: And, and State v. Hatcher, Your
22 Honor, but State v. Taylor is almost exactly like this
23 situation.

24 THE COURT: I'm familiar with Hatcher and Taylor.
25 Hatcher was my case.

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1 MS. RICHARDSON: And Your Honor, in Taylor the same
2 thing, the evidence custodian was not available and the new
3 evidence custodian testified. Your Honor, each person that
4 touched these drugs has been identified to the Court. The
5 reason for their absence has been explained. Of course Mr.
6 Ward's situation is very grave and there was no way that he
7 would be able to be here today. Your Honor, the main purpose
8 of the chain of custody is to ensure the integrity of, of the
9 chain and who, who touched the drugs and that they weren't
10 tampered with. Each witness was able to testify that when
11 they received the drugs that those safeguards were in place,
12 that heat-sealed package had not been tampered with and,
13 therefore, Your Honor, you know, we believe that we have
14 established an adequate chain of custody to ensure that the
15 integrity of the substance that was presented to the Court.

16 THE COURT: I listened very carefully to the
17 chain of custody and I conclude that it follows the protocol
18 established not only in Hatcher but in Taylor and I would
19 conclude that it's proper. Your motion on that ground is
20 respectfully denied.

21 MR. FREDERICK: Yes, sir, the only other thing is
22 during the testimony of the evidence custodian and what was
23 his name, the one that testified?

24 MS. RICHARDSON: Kyle Walton.

25 MR. FREDERICK: What was it?

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1 MS. RICHARDSON: Kyle Walton.

2 MR. FREDERICK: Kyle Walton.

3 MS. RICHARDSON: Works with Georgetown.

4 MR. FREDERICK: Yes, ma'am, during his testimony Your
5 Honor gave a curative instruction, and for the record it - we
6 want to just for the record tell Your Honor the curative
7 instruction is insufficient. We object.

8 THE COURT: What was it - the instruction I gave
9 was not to hold anybody - hold it against anybody making
10 objections or anybody making motions of law. What was your
11 objection to that?

12 MR. FREDERICK: Yes, sir, no, and it was also and
13 this is just for, for the record because we made a motion for
14 a mistrial and also during Your Honor's instruction ---

15 THE COURT: They didn't hear the motion for a
16 mistrial.

17 MR. FREDERICK: Your Honor, during Your, Your Honor's
18 instruction you also instructed ---

19 THE COURT: No, you tell me what was wrong with
20 me telling the jury that to make a motion for objections or to
21 make a motion of law was absolutely reasonable and not to hold
22 it against the lawyers? Now, that's what I said. Now, what's
23 your objection to that?

24 MR. FREDERICK: During Your Honor's instruction Your
25 Honor also instructed them that they were not to make any

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1 inference from any mannerisms that the Court made, that they
2 were the sole judge of the fact.

3 THE COURT: Correct, I do that in every case.
4 What's wrong with that?

5 MR. FREDERICK: And for the record as applies to our
6 motion for a mistrial that was made earlier this morning I
7 would state that if there's a curative instruction that
8 related to the mistrial that curative instruction is
9 insufficient and we still renew our motion.

10 THE COURT: Well, you're reading my mind and I
11 don't accept that. The instructions that I gave were
12 appropriate. It was in fairness to you and your client who
13 were objecting and I wanted the jury to know not to hold that
14 against her or you.

15 MR. FREDERICK: I understand and for the record ---

16 THE COURT: Clearly.

17 MR. FREDERICK: --- and for the record ---

18 THE COURT: And I always emphasize that they're
19 the sole and only finders of the facts and no ruling, judgment
20 or mannerism of mine they must dismiss and I didn't want them
21 to hold any ruling of mine against you. The - my instructions
22 to the jury will stand as given, and ---

23 MR. FREDERICK: And for the record, Your Honor.

24 THE COURT: Pardon me?

25 MR. FREDERICK: For the record, Your Honor, we renew

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1 our motion for a mistrial on the grounds that are the same as
2 when the motion was made earlier this morning.

3 THE COURT: And for the same reason they are
4 rejected. This case will go forward at two o'clock this
5 afternoon. All right.

6 MR. FREDERICK: Yes, sir, thank you, Judge.

7 MS. RICHARDSON: Your Honor, just, just to be clear
8 I'd ask that all of our witnesses be excused.

9 MS. HILLER: We, we don't need any of the State's
10 witnesses this afternoon.

11 THE COURT: You do not?

12 MS. HILLER: We do not.

13 THE COURT: The record will reflect that they are
14 dismissed with your approval.

15 MS. HILLER: Yes, Your Honor.

16 THE COURT: Okay.

17 MS. RICHARDSON: Thank you, Your Honor.

18 THE COURT: I'm going to need to discuss with you
19 scheduling again if I can without anybody's interruption. I
20 want the record to reflect that I am calling her into my
21 office to discuss future scheduling inasmuch as it appears
22 that this case will end today. I want that clear. May you
23 join me in my chambers so that I may discuss with - it was
24 contemplated this case may go tomorrow. This case won't go
25 tomorrow; will it or will it ---

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1 MS. HILLER: I don't believe so, Your Honor.

2 THE COURT: --- perhaps argue - ma'am?

3 MS. HILLER: I will - I do not believe so, Your
4 Honor.

5 THE COURT: Well, so, based on that I need to
6 readjust some scheduling and I'm going to ask Ms. Richardson
7 to join me in my chambers to discuss that and I hope that
8 meets with your approval.

9 MS. HILLER: That's fine, Your Honor.

10 THE COURT: Ms. Richardson, join me and have your
11 other lawyers, I want the Public Defenders aware that we're
12 proceeding quite rapidly.

13 OFF THE RECORD

14 (On the record.)

15 (Whereupon, the following takes place outside the
16 presence of the jury.)

17 THE COURT: Good afternoon, ladies and gentlemen,
18 please be seated.

19 Is the State ready to proceed?

20 MS. RICHARDSON: Yes, Your Honor.

21 THE COURT: Defense?

22 MS. HILLER: Yes, Your Honor.

23 THE COURT: Bring my jury in.

24 MR. FREDERICK: Well ---

25 MS. RICHARDSON: Would you like to just ---

1 MS. HILLER: Well, actually, Your Honor, do you

2 ---

3 THE COURT: Hold on, what?

4 MR. FREDERICK: Judge, we, I mean, we're, we're
5 ready to go forward with the Defense case. I believe that Mr.
6 Dennison is going to testify. I don't know if you wanted to
7 do the Faretta advisement before we do that.

8 THE COURT: I do. Thank you for calling that to
9 my attention.

10 MR. FREDERICK: And also, Judge, we want to clarify
11 which of his prior convictions can be used for impeachment.

12 THE COURT: All right, sir, tell me about them.

13 MS. RICHARDSON: Your Honor, he has a conviction from
14 1996 for escape, but he was released from confinement our
15 records indicate in 2011. So that would be in the timeframe.
16 Also, he has PWID cocaine and PWID within proximity of a
17 school from 1992. He was released from ---

18 THE COURT: I would not want you to introduce the
19 prior PWID cocaine. That would be highly prejudicial, would
20 not do that since he's being tried for the same thing. United
21 States Supreme Court has ruled on that.

22 MS. RICHARDSON: Okay.

23 THE COURT: What other, what ---

24 MS. RICHARDSON: Those would be the only ones within
25 the time and there was a resisting arrest around that same

1 time, but I'm not sure his release from confinement.

2 THE COURT: You all think the resisting arrest
3 was ---

4 MS. RICHARDSON: More than ten years, most of his are
5 going to be more than ten years other than the escape.

6 THE COURT: Do not use any of those. If they
7 convict him at all let them convict him on the testimony heard
8 in this courtroom and from no prior record.

9 MS. RICHARDSON: So you're saying not to ask him about
10 any of his ---

11 THE COURT: No, no, they're not - to ask him ---

12 MS. RICHARDSON: I understand the drug charge, but ---

13 THE COURT: Not, but it's - it - you ask him
14 about a prior conviction for the same thing he's being tried
15 for today.

16 MS. RICHARDSON: I understand.

17 THE COURT: You may ask him this, "Were you not
18 convicted of a felony before," with reference to the drug
19 charge. You understand?

20 MS. RICHARDSON: Yes, Your Honor.

21 THE COURT: But I - but do not say specifically
22 what it was. I think that's too prejudicial.

23 MS. RICHARDSON: I understand, Your Honor.

24 THE COURT: You understand that?

25 MR. FREDERICK: I do, Judge. I agree.

Questioning of Defendant Re: Testifying

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1 THE COURT: All right, thank you, but they can
2 ask him if it was a felony without going into details.

3 All right, anything further?

4 MR. FREDERICK: Nothing from the Defense, Judge.

5 THE COURT: Bring the jury in.

6 MS. RICHARDSON: Did you want to question him first?

7 THE COURT: Wait, one minute. Let - have the
8 Defendant stand. Hold the jury for me, please.

9 Have the Defendant stand. For purposes of this I want
10 him sworn. Swear him, please.

11 (Whereupon, Defendant is sworn by clerk.)

12 THE COURT: That relates to this issue only.

13 We are at the stage in the trial where the State has
14 presented its case and rested and thus it goes to the Defense.
15 Your counsel has advised me that it is your intention to
16 testify; is that correct?

17 MR. DENNISON: Yes, sir, Your Honor.

18 THE COURT: You have the absolute right to
19 testify. You also have the absolute right not to testify.
20 Whatever your decision is as to testimony or testify or not
21 testify it's yours and yours alone. Obviously you would
22 discuss it with your lawyer, but you cannot later be heard to
23 say that, "My lawyer made me do one or the other." The lawyer
24 can't do that. It's your decision. Do you understand that?

25 MR. DENNISON: Yes, yes, sir, Your Honor.

Questioning of Defendant Re: Testifying

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1 THE COURT: Now, I - if and this is advising
2 only, if you elected not to testify I would specifically
3 charge the jury that that is your absolute constitutional
4 right. I would charge the jury that the fact that you did not
5 testify if that occurred could not even be used in the jury
6 room against you during your deliberations. You understand
7 that?

8 MR. DENNISON: Yes, sir, Your Honor.

9 THE COURT: The basic fact that I need to
10 understand for the record is it your decision to testify or
11 not testify, which is it?

12 MR. DENNISON: Testify, Your Honor.

13 THE COURT: I will certainly honor that. Is
14 there any other inquiry you require, counsel?

15 MR. FREDERICK: No, Your Honor.

16 THE COURT: Sir?

17 MR. FREDERICK: No, sir.

18 THE COURT: All right, we're ready for the jury?

19 MS. HILLER: Yes, Your Honor.

20 MS. RICHARDSON: Yes, Your Honor.

21 THE COURT: Thank you. Bring the jury in.

22 (Whereupon, the following takes place in the presence of
23 the jury.)

24 THE COURT: Good afternoon, Mr. Foreman, ladies
25 and gentlemen. Call your first witness, please.

Questioning of Defendant Re: Testifying

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1 THE COURT: Now, I - if and this is advising
2 only, if you elected not to testify I would specifically
3 charge the jury that that is your absolute constitutional
4 right. I would charge the jury that the fact that you did not
5 testify if that occurred could not even be used in the jury
6 room against you during your deliberations. You understand
7 that?

8 MR. DENNISON: Yes, sir, Your Honor.

9 THE COURT: The basic fact that I need to
10 understand for the record is it your decision to testify or
11 not testify, which is it?

12 MR. DENNISON: Testify, Your Honor.

13 THE COURT: I will certainly honor that. Is
14 there any other inquiry you require, counsel?

15 MR. FREDERICK: No, Your Honor.

16 THE COURT: Sir?

17 MR. FREDERICK: No, sir.

18 THE COURT: All right, we're ready for the jury?

19 MS. HILLER: Yes, Your Honor.

20 MS. RICHARDSON: Yes, Your Honor.

21 THE COURT: Thank you. Bring the jury in.

22 (Whereupon, the following takes place in the presence of
23 the jury.)

24 THE COURT: Good afternoon, Mr. Foreman, ladies
25 and gentlemen. Call your first witness, please.

1 two right now?

2 A Well, she is presently expecting a child for me.

3 Q Okay, now, do you work somewhere?

4 A I work at Captain's Quarters Resort, Loco Gecko. They're
5 combined agencies.

6 Q And how long have you worked there?

7 A This will be my second season.

8 Q Okay, and what do you do for the Loco Gecko?

9 A I work in the food and beverage department.

10 Q Okay, now, Franklin, do you have anything on your record?

11 A I do have a felony on my record, yes, ma'am.

12 Q Franklin, let's go back a couple of years ago. Will you
13 tell the jury what ---

14 THE COURT: Let me say this to the jury, ladies
15 and gentlemen, an individual's prior record under certain
16 circumstances may be introduced into the record. If you
17 believe it true you may use it only for credibility and
18 believability and for no other purpose. An individual's prior
19 record is absolutely no proof of his guilt in the case for
20 which he's being tried today. You may use it if at all only
21 as to credibility and believability. Proceed.

22 Q Franklin, will you tell the jury a little bit about what
23 you were doing down in Georgetown two years ago, last
24 September?

25 A I was at my niece's house and she had bought a glass

1 screen door from Habitat for Humanity on Hampton Street and
2 she wanted somebody to install it. I didn't have the tools.
3 So I told her I would go out and try to find someone who could
4 do that for her.

5 Q Who's the first person you came to when you were looking
6 for someone?

7 A Well, I went over on Prince Street at first and I spoke
8 with one of my friends over there and he told me, said,
9 "Robert Jenkins' nephew does that kind of work, so."

10 MR. FREDERICK: Your Honor, could we get Franklin to
11 lean into the microphone?

12 THE COURT: Sir?

13 MR. FREDERICK: Could we get him to lean into the
14 microphone?

15 A Okay.

16 THE COURT: Speak a little louder. Your own
17 lawyer can't hear you and I'm not sure those folks on the back
18 of that jury panel can hear you.

19 A Yes, sir; yes, sir.

20 THE COURT: Counsel, you maybe need to come a
21 little forward to make sure he's hearing you, too.

22 Q Can you hear me back there okay?

23 A Yes, ma'am.

24 Q Okay.

25 THE COURT: That's fine. That's a little better

1 for him.

2 Q Well, Franklin, so, you said you talked to Robert
3 Jenkins.

4 A Well, what I did was I went over on Prince Street and one
5 of my friends over there he does like plumbing work and I
6 asked, asked him if he knew anybody that does the work that my
7 niece had wanted to be done and he told me said, "Robert
8 Jenkins has a nephew that does that work." So I went over to
9 Robert Jenkins' home and got him and he showed me where his
10 nephew actually lived and we - he got in my car and we went
11 over there and we picked him up and as we were riding along I
12 asked the guy, I said, "Well, where's your tools?" You know,
13 he said, well, somebody had his truck over on I think it was
14 Duke Street.

15 THE COURT: Now, you understand all of this is
16 hearsay testimony.

17 MS. HILLER: Your Honor, he's just testifying as
18 to what.

19 THE COURT: Now, I will, I will permit it only as
20 the basis for him being in Georgetown County.

21 MS. HILLER: Yes, Your Honor.

22 A Yeah, well, and we got in the car and went over there.
23 So I picked him up and Robert told me to go down Front Street
24 and I turned to go down Front Street and we evidently met the
25 officer but at - on Front and now called - it used to be G

1 Street but it's now called Alford Street and the officer had
2 on his signal light to go down Alford. I turned on my signal
3 light and went down Alford behind him. He proceeded on down
4 to Highmarket and I turn off on Prince and I went down Prince
5 Street and another fellow that I know flagged me down and I
6 rolled my window down and spoke with him for a second. Then I
7 saw an officer car went across. So I told him, I said, "Well,
8 let me move on, man, because the officer car just went
9 across." So I went up to, to Merriman Road and put on a
10 signal light because I didn't want to go riding around looking
11 for this guy's truck to do the work that he said he could do
12 for my niece, and I was in the process of taking them back to
13 their home, drove past the officer that was parked there in
14 front of Bobby Wilds Funeral Home, which is a short distance,
15 and I passed him and when I saw, saw the car I looked down at
16 my speedometer and I drove on by and the gentleman in the back
17 seat said, said, "Man, I think that officer is behind you."
18 So I looked in my rearview mirror, sure enough the officer was
19 riding behind me. So after I passed Front Street, Robert
20 Jenkins live on, on, on Emanuel Street. So I turn off on
21 Emanuel Street and I asked the officer what was the problem
22 and then that's when he said to me that, "First of all you
23 were parked talking to a pedestrian in the street." So I
24 asked him, I said, "Well, what is that?" He said, "Second of
25 all you were speeding." So, I said, "Man, I wasn't speeding."

1 You know, so he asked me for my ID. I goes to get my ID this
2 guy pull out his Taser and ask me what was in my hand. I told
3 him nothing was in my hand. I placed my hand even on my
4 steering wheel to show him. He kept ranting about, "What's
5 that in your hand, what's that in your hand," and I kept
6 telling him there's nothing in my hand and he fired a shot and
7 reach his hand inside the car and took the keys out of the
8 car. All right.

9 Q So when he fired that shot what were you thinking,
10 Franklin?

11 A I didn't know what warrant that, I mean, such an act like
12 that because we was, we were engaged in a conversation, you
13 know, he asked me for my driver's license. So I was going to
14 get my driver's license and the next thing I know I got a
15 claim saying a bottle is in my hand and there weren't no
16 bottle in my hand.

17 Q Did you ---

18 A And I immediately put my hand up on the, on the steering
19 wheel to show the guy and he kept telling me, giving me
20 commands and stuff like that and I kept telling him I'm
21 following them and he shot me again. So when he shot me again
22 I raised up and I said, "Rob, man, I think this guy trying to
23 kill me." So Robert then said, "Well, come out this side of
24 the door," and that's what I did and it all went from there
25 and, you know, he ---

1 Q Will you take us back just a minute, why did you reach
2 your hands up?

3 A Well, I didn't know whether the guy was going to shoot
4 again or not.

5 Q So why did you do it?

6 A I was just didn't want it to hit me in my chest area
7 because of my age.

8 Q Were you trying to take the officer's Taser that day?

9 A No, ma'am.

10 THE COURT: Your voice is trailing off. I'm not
11 sure they can hear you down here. Come forward a little bit,
12 please.

13 A No, no.

14 Q Can you hear me, Franklin?

15 A Yes, ma'am.

16 Q Can you guys hear me?

17 THE COURT: I want the jury to hear you.

18 Q Can you hear me?

19 THE COURT: Just speak a little louder ---

20 MS. HILLER: Yes, Your Honor.

21 THE COURT: --- so there'll be no question about
22 it.

23 BY MS. HILLER:

24 Q So tell me when - I apologize - when - so you never tried
25 to take the officer's Taser away?

1 A No, I know that's, that's not, that's not even a practice
2 I even thought about doing because people get hurt, seriously
3 hurt, you know, doing that. The only thing I did was I didn't
4 know where this guy was going to shoot me at again, you know,
5 I was just sitting there in the car trying to follow his
6 instructions to get my ID and the next thing I know he's
7 telling me he see a bottle in my hand, which I didn't have.

8 Q Why did you try going out the passenger's door? Why did
9 you do that?

10 A Well, at that moment he shot me one time and he shot me
11 again. So that second shot I couldn't even feel myself up
12 here. So I told Robert, I said, "Man, this guy trying to kill
13 me," and Robert said, "Well, come on out the passenger door."
14 So I don't know whether the door was already open when I went
15 to move out of that side to where the door swing open like
16 that but I never did try to take his Taser or anything like
17 that because I didn't look at the matter to be as serious
18 until this guy start saying, "What's that in your hand," and
19 he kept saying, "What's that in your hand?" My hand is on the
20 steering wheel. My hand is on the steering wheel, you know,
21 and he ---

22 Q Franklin, did you have any drugs in your hand that day?

23 A No, ma'am, I didn't.

24 Q Were you - back when you were on Prince Street were you
25 trying to sell drugs to that man that came up to the car?

- 1 A I was flagged down by one of my friends named Robbie
2 Morris that lives in a single home there and they be in the
3 front yard all the time and he just flagged me down and I
4 stopped and I talked with him for a moment and I saw the -
5 like the police car came across Merriman Road. So I tell him
6 I said, "Let me move on, man, because the police car right
7 there."
- 8 Q Robert, is - I mean, Franklin, is your friend Mr. Robert,
9 the guy at the Prince Street is he a drug dealer?
- 10 A No, ma'am, not that I know of.
- 11 Q So you didn't buy drugs from him that day?
- 12 A Absolutely not.
- 13 Q And you didn't sell drugs to him?
- 14 A Absolutely not.
- 15 Q Can you tell me after you fell out of that passenger door
16 what happened next? Do you remember?
- 17 A Well, when I went out that side all I knew was I was
18 getting hit by whatever was stun guns or whatever it was, but
19 you know, I was - I didn't know what to do, you know, and this
20 guy was just repeatedly shooting me in the inside the vehicle.
21 I didn't know what to do. You know, you see things happen on
22 TV and stuff like that and I didn't know whether I was going
23 to be the next statistic or something like that. So I ran.
- 24 Q What happened to your face?
- 25 A Well, when I fell down and got back up and got

1 consciousness these three teeth here were folded in and the
2 bottom were folded in.

3 Q Were you bleeding?

4 A Yes, ma'am.

5 Q Hold on for just a second for me. Franklin, will you
6 please answer any questions that Ms. Richardson has for you?

7 A Yes, ma'am.

8 CROSS EXAMINATION

9 BY MS. RICHARDSON:

10 Q Mr. Dennison, you were driving a rental car that day?

11 A Yes, I was.

12 Q And was there a problem with the VIN number on that car?

13 A I wouldn't even know that fact. If it was they never did
14 express it to me when I rented the car. They never did said
15 anything to me.

16 Q And at that time you were working at a car wash; weren't
17 you?

18 A Yes, ma'am.

19 THE COURT: You can't - please talk into that
20 microphone.

21 A Oh, yes, yes.

22 THE COURT: There's no way they could have heard
23 you. I - look, Mr. Witness, my interest is making sure the
24 jury hears your answers. You understand that?

25 A Yes, sir, Your Honor.

1 THE COURT: All right, please talk into the
2 microphone.

3 A All right, all right.

4 Q And no question you were stopped in the roadway on Prince
5 Street, you were stopped in the roadway on Prince Street?

6 A I stopped for a brief moment, and you know, to hear what
7 he had to say. You know, that's common, in, in, in the area
8 of Georgetown, you know. So, I, I did what was common.
9 Somebody flag you down I stop and I roll my window down and
10 ---

11 Q And that was a rental car, not your own personal vehicle?

12 A No, ma'am, it was a rental.

13 Q And you saw the officer when you were stopped?

14 A I saw a car came past, a car rode past from Highmarket
15 side of the, of the road and went down and in Georgetown you
16 just seem like people get stopped for anything. So I told
17 him, I said, "Well, let me move on, man, because the police
18 just passed by," and rolled up to the stop sign and was
19 proceeding to take the guys home that I had. In the back car
20 was the one particular guy that was supposed to do my niece's
21 screen door he didn't have his truck and I didn't want to ride
22 around to look for his truck for what his tools. So I was in
23 the process of taking him back home and dropping him off and
24 going on back to the beach.

25 Q When you saw the officer you said, "I better move."

1 A Yeah, I better move because I - and when - my experience
2 coming to Georgetown I see a lot of blue lights and I don't
3 know what people are stopped for. So, I didn't ---

4 Q But you knew you weren't supposed to be stopped in the
5 middle of the road?

6 A Well, I couldn't - I can't say that because it was for a
7 brief moment. That was for a brief moment. It wasn't like I
8 was parked there.

9 Q And so then when you got back on Emanuel the officer got
10 behind you?

11 A Well, when I ---

12 Q I mean on Merriman.

13 A When I pass his vehicle the passenger in the back seat
14 told me, said, "Man," said, "I think that officer is behind
15 you." So when I passed I think Front Street it was or Winyah,
16 one of the two, and got to Emanuel I put on my signal light to
17 turn on that, on that road because I had to take Robert
18 Jenkins back home, that's - he lived on, on Emanuel and the
19 other guy live on the end down at A Street.

20 Q Robert Jenkins actually lives on Front Street; doesn't
21 he?

22 A No, he live on Emanuel Street.

23 Q And you saw him here today?

24 A He was present here today, yes, he was.

25 Q And he had also been subpoenaed into the trial roster?

1 A I don't know, I don't know, I don't know the
2 particularities whether he was subpoenaed or what.

3 Q And so when the officer turned the - put the blue light
4 on before you turned on Emanuel; right?

5 A Say that, repeat that.

6 Q He put the blue light on before you turned on Emanuel
7 Street?

8 A I don't remember. All I did was see the car behind me
9 and I immediately turned to the next available street to stop
10 and see if it was for me or whatever.

11 Q All right, when the officer told you to show your hands
12 he also told the person in the back to put their hands on top
13 of their head; didn't he?

14 A Well, I think that's what the video stated.

15 Q But you didn't never put yours on your head.

16 A I placed my hand on the, on the, on the, on the steering
17 wheel. He just said, "Put your hand on the, on the, on the
18 steering wheel." He ---

19 Q And you opened the door on the officer; is that right?

20 A I saw the door came open on the, on the video there, but
21 I don't know if that door was already open when I was trying
22 to - he actually asked me to get my driver's license and I was
23 in the process of getting my driver's license whether I open
24 the door before that time or not because I got shot. I don't
25 know, I don't know - I didn't even know why he done that.

1 Q And no question you reached your hand out the window?

2 A Well, when he shot me the second - I didn't reach my hand
3 out of the window. I didn't reach my hand out of a window not
4 that I can recall.

5 Q And no question you were trying to get away from him.

6 A Well, like I say, like I said I was afraid, you know, if
7 I was, if I was speeding and park in the middle of the road I
8 don't think that would warrant someone pulling a Taser and
9 Tasing you twice in your chest. So, yes, I was afraid because
10 I didn't know this guy's mindset, you know, and you know, like
11 he say, you know, they - he say he was protecting hisself, but
12 I was sitting in the car. I wasn't no harm to this person.
13 He didn't find no, no gun or knife on, on me. He said a pill
14 bottle was in my hand. So I don't know why he would react
15 like that for a pill bottle, which I didn't have a pill bottle
16 in my hand, not that I know of.

17 MS. RICHARDSON: I have no further questions, Your
18 Honor.

19 THE COURT: Any further direct?

20 MS. HILLER: No further questions, Your Honor.

21 THE COURT: You may come down.

22 Call your next witness.

23 MS. HILLER: Your Honor, at this time the Defense
24 rests.

25 THE COURT: The Defense rests. Is there anything

1 in reply?

2 MS. RICHARDSON: No, Your Honor.

3 THE COURT: Well, that will conclude all of the
4 testimony.

5 MS. HILLER: Yes, Your Honor, and we, of course,
6 have a matter of law.

7 THE COURT: Okay, Mr. - ladies and gentlemen of
8 the jury, we had scheduled another matter for mid-afternoon
9 not involving this case, and the participants are here ready
10 to proceed in that matter; and thus for this case I'm going to
11 have to recess for today and ask that you come back in the
12 morning at 9:30. At 9:30 in the morning you will hear - the
13 testimony is over. You will hear final summation of counsel
14 for the State and for the Defense, after which I will deliver
15 to you the law as it applies to the issues in this case,
16 remembering that you as finders of the facts apply the facts
17 to the law as you find applicable in reaching your verdict.
18 Please remember my various admonitions about not discussing
19 the case with anyone, don't discuss it with you. Please make
20 no independent inquiry. Our rules provide, and rightly so,
21 that whatever your verdict is it must be the - on the law and
22 evidence heard in this courtroom in this trial and from no
23 other source. So I will excuse you for the afternoon to be
24 back at 9:30 in the morning for the conclusion of this case.
25 Thank you.

Motions

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1 (Whereupon, the following takes place outside the
2 presence of the jury.)

3 THE COURT: All right, the jury's outside the
4 presence of the Court. Any motions at this time?

5 MR. FREDERICK: We just renew our motions for
6 directed verdict on the same grounds, Judge.

7 THE COURT: All right, sir, and for the reasons
8 previously stated they are denied.

9 All right, I'd like a charge conference. Do you have any
10 proposal, requests to charge, Solicitor?

11 MS. RICHARDSON: Yes, Your Honor, we do. We were
12 going to go over some and see if we could agree on some of
13 them.

14 THE COURT: Here's what you do, want to be on the
15 record with it. You and Defense counsel go over your requests
16 to charge and his and to the extent you can eliminate and then
17 I will consider, come back on the bench and consider your
18 requests to charge and his. In the meantime get together and
19 see what you can eliminate. Okay?

20 MS. RICHARDSON: Okay.

21 THE COURT: That satisfactory to you?

22 MR. FREDERICK: Yes, sir.

23 THE COURT: All right.

24 MS. RICHARDSON: And Your Honor, we would ask that the
25 Defendant either be taken in custody or admonished that if he

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1 doesn't appear tomorrow ---

2 THE COURT: Pardon me?

3 MS. RICHARDSON: We'd ask that now that the testimony
4 is concluded and we're not going to resume until tomorrow that
5 the Defendant be taken ---

6 THE COURT: No, sir, I want the Defendant in
7 custody tonight. I do.

8 MS. RICHARDSON: Thank you, Your Honor.

9 THE COURT: All right, you all get together and
10 see what you can agree on requests to charge, let me know and
11 I'll come back and get on the record with you. The Defendant
12 will remain in the courtroom, of course, while we're
13 discussing any issue in this case, including requests to
14 charge.

15 MS. RICHARDSON: Yes, Your Honor.

16 OFF THE RECORD

17 (On the record. The following takes place outside the
18 presence of the jury.)

19 THE COURT: Do you have any requests to charge?
20 First let me say that I have prepared a charge with reference
21 to credibility of witnesses, finders of the facts, burden of
22 proof, greater weight of the evidence. I've prepared a charge
23 on PWID crack cocaine. That charge includes the lesser charge
24 of possession only. With reference to the gun charge I'm
25 going to charge the statute leaving out the last five, number

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1 five because that's not applicable in this case and I will
2 charge intent. What, what do you propose that I charge,
3 Solicitor?

4 MS. RICHARDSON: Your Honor, we had some charges that
5 we had actually agreed upon, but one of them was the
6 possession and the possession with intent to distribute and
7 those were pulled straight from ---

8 THE COURT: If you all have agreed to them I'll
9 take yours if ---

10 MS. RICHARDSON: And it's probably about the same and
11 then a charge on attempt and some charges regarding ---

12 THE COURT: Charge on what? Wait a minute.

13 MS. RICHARDSON: Attempt, since the charge is
14 attempted taking.

15 THE COURT: Yes.

16 MS. RICHARDSON: And then a charge on reasonable
17 suspicion. I have a - a traffic stop type things and I've
18 already provided that to them.

19 THE COURT: Have you all agreed as to these
20 charges?

21 MS. RICHARDSON: Yes, Your Honor.

22 MR. FREDERICK: Your Honor, we've - I've reviewed
23 those charges and we, we consent to those. We agree to them.

24 THE COURT: All right, sir.

25 MR. FREDERICK: The only, the only question that we

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1 had was whether Your Honor charges both reasonable doubt
2 instructions, firmly convinced and ---

3 THE COURT: I charge Nebraska.

4 MR. FREDERICK: And which one is that, Judge, firmly
5 convinced or hesitate to act?

6 THE COURT: Sir?

7 MR. FREDERICK: One is a firmly convinced charge.

8 The other ---

9 THE COURT: Mine is the firmly convinced charge.

10 MR. FREDERICK: We would request in addition to the
11 Nebraska charge that Your Honor also charge hesitate to act,
12 that a reasonable doubt is the kind of doubt that causes.

13 THE COURT: I'll permit you to argue that but I'm
14 going to charge the Nebraska charge as written. Interestingly
15 enough that first came in our courts many years ago in
16 Florence when a jury asked for additional charge on reasonable
17 doubt. I charge Nebraska. I was the first judge in South
18 Carolina ever to do that. That was 20 years ago, but our
19 Supreme Court has affirmed that charge many times.

20 MR. FREDERICK: Yes, sir.

21 THE COURT: If you want to argue your position
22 that's fine, but I'm going to charge the Nebraska charge as
23 our Supreme Court has agreed is appropriate. Other than that
24 we are in agreement as to the charges. Is that right?

25 MR. FREDERICK: That's right, Your Honor.

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1 MS. RICHARDSON: Yes, sir, Your Honor.

2 THE COURT: But regardless of that after charge I
3 will let the jury go out and hear any exceptions or - to the
4 charge if any.

5 Now, over the years I've been charging the jury prior to
6 arguments. Jurors have told me in the past, "Judge, I wish
7 I'd heard what the law was I believe I could have followed
8 argument of counsel better." Anybody - either one of you have
9 any objection to charges prior to summation?

10 MR. FREDERICK: I'm okay with that, Judge.

11 THE COURT: You okay with that? Well, I've done
12 that many times ---

13 MS. RICHARDSON: Me, too.

14 THE COURT: --- and lawyers seem to like it and
15 the juries appreciate it. So with consent we'll be charging
16 prior to summation, let it be known, though, that after my
17 charge I will send the jury out for any exceptions or
18 conditions and I appreciate the fact that you all have
19 presented to me by agreement appropriate charges. Thank you.
20 See you in the morning at nine. I'm sorry we couldn't finish
21 this case this afternoon but we had some major issues as you
22 know, counsel for the State, in that other case.

23 MS. RICHARDSON: Thank you, Your Honor. You said
24 nine?

25 THE COURT: 9:30.

1 MS. RICHARDSON: 9:30.
2 MS. HILLER: 9:30.
3 MS. RICHARDSON: Thank you, Your Honor.
4 THE COURT: The Defendant will remain in custody.
5 OFF THE RECORD
6 (On the record, October 2, 2013. The following takes place
7 outside the presence of the jury.)
8 THE COURT: Good morning, ladies and gentlemen.
9 Please be seated. Is the State ready to proceed?
10 MS. RICHARDSON: Yes, Your Honor.
11 THE COURT: Is the Defense ready to proceed, Ms.
12 Hiller?
13 MS. HILLER: Yes, Your Honor.
14 THE COURT: Bring the jury in.
15 MR. FREDERICK: Judge, can we wait just a minute
16 before we bring them in?
17 THE COURT: Wait a minute, what, hold on.
18 MR. FREDERICK: I'm sorry.
19 THE COURT: Yes, sir.
20 MR. FREDERICK: Franklin wants to address the Court,
21 Judge.
22 THE COURT: Sir?
23 MR. FREDERICK: Our client wishes to address the
24 Court, Judge, if you'll hear it.
25 THE COURT: No, sir. You can determine what his,

1 what his request is. I don't permit that because he may
2 jeopardize his own case in some manner.

3 MR. FREDERICK: I understand.

4 THE COURT: If he, if he's got a communication
5 that he wishes to deliver to me I prefer it through his
6 attorney.

7 MR. FREDERICK: I understand, Judge.

8 Judge, I believe he wishes to tell the Court that we're
9 not doing a good job for him and he would like a different
10 attorney.

11 THE COURT: Not doing what?

12 MR. FREDERICK: I think he's - would like to tell the
13 Court that he wants a different attorney, Judge. I've told
14 him that you will not stop the trial and let him get a
15 different attorney at this point, but he asked me to ask you
16 if he could address the Court on that issue.

17 THE COURT: No, sir, I'm not going to let him
18 change attorneys at this stage of the trial. All of the
19 testimony is in. If I permitted such a change that would mean
20 that I would have to mis-try this case.

21 MR. FREDERICK: I agree, Judge.

22 THE COURT: Sir?

23 MR. FREDERICK: I agree.

24 THE COURT: Ms. Hiller has handled it, you're
25 second chair. Ms. Hiller has handled the case in my view very

1 ably. Do you want him to discuss this issue on the record?

2 MR. DENNISON: You talking to me, Judge?

3 MR. FREDERICK: Judge, I'm just - he insisted that I
4 inform the Court of that. He also has complaints that the
5 officer lied on the stand, committed perjury, that there's
6 some evidence that was not shown to the jury. He insisted
7 that I inform the Court of this. He wanted to address the
8 Court himself. I also informed him that's not appropriate at
9 this time, but I'm conveying the message for my client, Judge.

10 THE COURT: No, sir, he's playing games with the
11 Court. The only purpose and you would agree if I even
12 permitted that it would be a basis for a mistrial because a
13 new attorney could not possibly render him effective service.
14 I respectfully decline to do that. I will permit at the end
15 of the trial such comments as he proposed to make, but I don't
16 want to do it at this time. He may jeopardize his own self.
17 I hope you understand that.

18 MR. FREDERICK: I do, Judge. Thank you.

19 THE COURT: All right. You may - I will permit
20 you to say for the record, though, what his complaints as
21 against his distinguished lawyers is. You want to say that
22 now or later?

23 MR. FREDERICK: Judge, I think that was the gist of
24 what he wanted to express to the Court and as you said it may
25 be more appropriate when the trial is completed for him to

1 make those statements himself if he still wants to.

2 THE COURT: That would be my - we'll handle it
3 that way. All right, bring the jury in, please.

4 (Whereupon, the following takes place in the presence of
5 the jury.)

6 THE COURT: Good morning, Mr. Foreman, ladies and
7 gentlemen. First let me apologize for asking you to be here
8 at 9:30 and here we're starting at five minutes after ten.
9 There were other matters that we were dealing with not of your
10 concern. Every time I'm late starting with a jury I want them
11 to know that at all times we are fully cognizant of the
12 importance of being on time, recognizing that your time is
13 important, too, but please be assured that the 30 minutes were
14 involved in other matters not of your concern, but were
15 necessary to be disposed of in the running of the court.

16 At the conclusion of yesterday's proceedings all of the
17 testimony from the State and the Defense has been presented to
18 you, along with other matters that had been introduced into
19 evidence. Mr. Foreman, these matters that are in evidence
20 will be with you in the jury room during your deliberations.

21 Ordinarily we charge the jury after summation of counsel,
22 but jurors in the past years have said to me, "Judge, I wish
23 you would have told us what the law was before they argued. I
24 could have followed their positions better had I known what
25 the law was. That way I would know what facts to apply to the

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1 law as I found them," and that makes sense to me, and I've,
2 as I intend to do at this time charge with consent of counsel
3 prior to summation.

4 Now, during your deliberations there will be pencil and
5 paper provided, and if you or any member of your distinguished
6 jury has some question regarding the law or my charge write
7 that question down, let the bailiff know and I'll be glad to
8 address it if I can. Remember, however, that you folks are
9 the sole and only finders of the facts. Neither I nor nobody
10 else can tell you what the facts are. I say this to say that
11 some years ago we were trying a young lady in Darlington,
12 South Carolina, for burning her - allegedly burning a mobile
13 home. Jurors sent me a question that said, "Tell us whether
14 she smoked or not." That question was not ever asked,
15 consequently it was not in the record and I thus could not
16 reply. I knew she smoked because she stepped outside, was
17 smoking outside my courtroom. I give you this example only to
18 say that I'm not entitled to a factual opinion, but I'll be
19 glad to discuss with you any question of law, including any
20 issue on the charge that I'm prepared to give you.

21 Now, with reference to the charge and the law, at the
22 conclusion of the testimony yesterday and last night I have
23 prepared the charge on the law and the various issues that are
24 before us for your consideration. I have asked my law clerk
25 to read the law that I have prepared for you. Please accept

1 his rendition of the law as coming from me. It was prepared
2 by me and he gives it to you with my consent. I will be back
3 personally with you with some additional instructions after
4 his rendition of the law as prepared by me. Thank you. You
5 may proceed. As I indicated this young man is my associate
6 and law clerk. He assisted me, as you well know, in the
7 qualification of the jury and in the voir dire on yesterday as
8 you were selected as the 12 finders of the facts and good
9 morning to all of you. You may proceed.

10 LAW CLERK: The indictments charge the Defendant
11 with one, possession with intent to distribute cocaine base,
12 and two, attempted unlawful taking a firearm or other weapon
13 from a law enforcement officer.

14 I remind you that the fact that the Defendant was
15 arrested, charged and indicted in this case is not evidence in
16 this case and cannot be considered by you as evidence of guilt
17 in this case, nor does it create any presumption or inference
18 of guilt. This document is simply the formal written
19 instrument which contains the charges made against the
20 Defendant. It is the formal document by which this case is
21 brought into court.

22 The indictments in this case allege several different
23 offenses against the Defendant. The charges are, indictment
24 number one, possession with intent to distribute cocaine base,
25 indictment number two, attempted unlawful taking a firearm or

1 other weapon from a law enforcement officer.

2 Each indictment charges a separate and distinct offense.

3 You must decide each indictment separately on the evidence and
4 the law applicable to it uninfluenced by your decision as to
5 any other indictment. The Defendant may be convicted or
6 acquitted on any or all of the offenses charged. You will be
7 asked to write a separate verdict of guilty or not guilty for
8 each indictment.

9 The Defendant has pled not guilty to this indictment and
10 that plea puts the burden on the State to prove the Defendant
11 guilty. A person charged with committing a criminal offense
12 in South Carolina is never required to prove himself innocent.
13 I charge you that it is an important rule of the law that the,
14 that the Defendant in a criminal trial no matter what the
15 seriousness of the charge may be will always be presumed, no
16 matter what the seriousness of the charge may be will always
17 be presumed to be innocent of the crime for which the
18 indictment was issued unless guilt has been proven by evidence
19 satisfying you of that guilt beyond a reasonable doubt. This
20 presumption of innocence does not end when you begin your
21 deliberations, but it accompanies the Defendant throughout the
22 trial until you reach a verdict of guilt based on evidence
23 satisfying you of that guilt beyond a reasonable doubt. The
24 presumption of innocence is like a robe of righteousness
25 placed about the shoulders of the Defendant which remains with

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1 the Defendant until it has been stripped from the Defendant by
2 evidence satisfying you of the Defendant's guilt beyond a
3 reasonable doubt. The presumption of innocence is not a mere
4 legal theory. It is not just a legal phrase. It is a
5 substantial right to which every Defendant is entitled unless
6 you, the jury, are satisfied from the evidence of the
7 Defendant's guilt beyond a reasonable doubt.

8 The State has the burden of proving the Defendant guilty
9 beyond a reasonable doubt. Some of you may have served as
10 jurors in civil cases where you were told that it is only
11 necessary to prove that a fact is more likely true than not
12 true, such as by the greater weight or preponderance of the
13 evidence. In criminal cases the State's proof must be more
14 powerful than that. It must be beyond a reasonable doubt.
15 Proof beyond a reasonable doubt is proof that leaves you
16 firmly convinced of the Defendant's guilt. There are very few
17 things in this world that we know with absolute certainty and
18 in criminal cases the law does not require proof that
19 overcomes every possible doubt. If based on your
20 consideration of the evidence you are firmly convinced that
21 the Defendant is guilty of the crime charged you must find the
22 Defendant guilty. If on the other hand you think there is a
23 real possibility that the Defendant is not guilty you must
24 give the Defendant the benefit of the doubt and find him not
25 guilty.

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1 I remind you that during this trial you and I have
2 certain duties to perform. As the trial judge it is my
3 responsibility to preside over the trial of this case, and I
4 also have the duty to rule on the admissibility of the
5 evidence offered during this trial. You are to consider only
6 the competent evidence before you. If there was any testimony
7 ordered stricken from the record in this case during this
8 trial you must disregard that testimony. You are to consider
9 only the testimony which has been presented from this witness
10 stand, any exhibits which have been made a part of the record
11 in this case and any stipulations of counsel.

12 I have the additional duty to charge you the law
13 applicable to this case. As the presiding judge I am the sole
14 judge of the law of this case and it is your duty as jurors to
15 accept and apply the law as I now state it to you. If you
16 already have any idea as to what the law is or what the law
17 ought to be and it does not agree with what I now tell you the
18 law is you must abandon this idea because you are sworn to
19 accept the law and apply the law exactly as I state it to you.
20 In every case tried in this court before a jury the jury
21 becomes the sole and exclusive judge of the facts in a case.
22 A trial judge cannot intimate, state, comment on or make any
23 statement to a trial jury about the facts in a case. Since
24 you, the jury, are the sole judge of the facts in this case
25 you are not to infer from what I have said during the progress

1 of this trial in ruling upon the admissibility of evidence or
2 otherwise or anything that I say now during the course of this
3 instruction to you that I have any opinion about the facts in
4 this case. The law does not allow me to have an opinion about
5 the facts in this case. This is a matter solely for you the
6 jury to determine. As jurors it is your duty to determine the
7 effect, value, weight and truth of the evidence presented
8 during this trial.

9 There are two types of evidence which are generally
10 presented during a trial, direct evidence and circumstantial
11 evidence. Direct evidence is the testimony of a person who
12 claims to have actual knowledge of a fact such as an
13 eyewitness. It is evidence which immediately establishes the
14 main fact to be proved. Circumstantial evidence is proof of a
15 chain of facts and circumstances indicating the existence of a
16 fact. It is evidence which immediately establishes collateral
17 facts from which the main fact may be inferred.
18 Circumstantial evidence is based on inference and not on
19 personal knowledge or observation. The law makes absolutely
20 no distinction between the weight or value given, to be given
21 to either direct or circumstantial evidence, nor is a greater
22 degree of certainty required of circumstantial evidence than
23 of direct evidence. You should weigh all of the evidence in
24 this case. After weighing all the evidence if you are not
25 convinced of the guilt of the Defendant beyond a reasonable

1 doubt you must find the Defendant not guilty.

2 Necessarily you must determine the credibility of
3 witnesses who have testified in this case. Credibility simply
4 means believability. It becomes your duty as jurors to
5 analyze and to evaluate the evidence and determine which
6 evidence convinces you of its truth. In determining the
7 believability of witnesses who have testified in this case you
8 may believe one witness over several witnesses or several
9 witnesses over one witness. You may believe a part of a
10 testimony of a witness and reject the remaining part of the
11 testimony of that same witness. You may believe the testimony
12 of a witness in its entirety or reject the testimony of a
13 witness in its entirety. You may consider whether any witness
14 has exhibited to you any interest, bias, prejudice or other
15 motive in this case. You may also consider the appearance and
16 manner of a witness while on the witness stand.

17 The rules of evidence ordinarily do not permit witnesses
18 to testify to opinions or conclusions. An exception to this
19 rule exists for witnesses we call expert witnesses. A witness
20 who by education and experience has become an expert in some
21 art, science, profession or calling may state an opinion as to
22 relevant and material matter in which the witness claims to be
23 an expert and may also state the reasons for the opinion. You
24 should consider any expert opinion received in evidence in
25 this case and like any other evidence give it the weight you

1 think it deserves. If you decide that the opinion of an
2 expert witness is not based on sufficient education and
3 experience or if you conclude that the reasons given in
4 support of the opinion are not sound or that the opinion is
5 outweighed by other evidence you may disregard the opinion
6 entirely. An expert witness's testimony is to be given no
7 greater weight than that of other witnesses simply because the
8 witness is an expert. Further, you are not required to accept
9 an expert's opinion even though it is not contradicted.

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

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1 same way as any other fact by taking into consideration the
2 acts of the parties and all of the facts and circumstances of
3 the case.

4 Criminal intent is a mental state, a conscious
5 wrongdoing. It is up to you to determine what the Defendant
6 intended to do based on the circumstances shown to have
7 existed. Criminal intent can arise from action or a failure
8 to act. It may arise from negligence, recklessness or an
9 indifference to duty or to consequences that is considered by
10 the law to be the equivalent of criminal intent.

11 The Defendant is charged with possession with intent to
12 distribute cocaine base. The State must prove beyond a
13 reasonable doubt that the Defendant possessed cocaine base
14 with the intent to distribute it. To prove possession the
15 State must prove beyond a reasonable doubt that the Defendant
16 had both the power and the intent to control the disposition
17 or use of the cocaine base. Possession may be either actual
18 or constructive. Actual possession means that the cocaine
19 base was in the actual physical custody of the Defendant.
20 Constructive possession means that the Defendant had dominion
21 and control or the right to exercise dominion or control over
22 either the cocaine base itself or the property on which the
23 cocaine base was found. Mere presence at the scene where the
24 drugs were found is not enough to prove possession. Actual
25 knowledge of the presence of the cocaine base is strong

1 evidence of the Defendant's intent to control its disposition
2 or use. The Defendant's knowledge and possession may be
3 inferred when a substance is found on the property under the
4 Defendant's control. However, this inference is simply an
5 evidentiary fact to be taken into consideration by you along
6 with the other evidence in the case and to be given the weight
7 you decide it should have.

8 Two or more persons may have joint possession of a drug.
9 The State must also prove beyond a reasonable doubt that the
10 Defendant intended to distribute the cocaine base. Distribute
11 means to deliver other than by administering or dispensing a
12 drug. Intent may be shown by acts and conduct of the
13 Defendant and other circumstances from which you may naturally
14 and reasonably infer intent. In determining whether the
15 Defendant had the intent to distribute the cocaine base you
16 may consider the circumstances surrounding the Defendant's
17 alleged possession. You may consider the amount of the
18 substance alleged to have been possessed, the manner in which
19 it was allegedly possessed, the place where it was allegedly
20 possessed and other factors which you consider to be
21 important. You must find that the Defendant did not intend to
22 have the cocaine base solely for his own use. Possession of
23 more than one gram of cocaine base creates an inference that
24 the Defendant possessed the cocaine base with the intent to
25 distribute it. This inference does not relieve the State from

1 proving beyond a reasonable doubt that the Defendant had the
2 intent to distribute. It is simply an evidentiary fact to be
3 taken into consideration by you along with the other evidence
4 in the case and to be given the weight you decide it should
5 have.

6 If the State fails to prove that the Defendant had an
7 intent to distribute the cocaine base but you believe the
8 Defendant possessed the cocaine base then the Defendant should
9 be found guilty of simple possession of cocaine base. This
10 must also be proved beyond a reasonable doubt. To prove
11 possession the State must prove beyond a reasonable doubt that
12 the Defendant had both the power and the intent to control the
13 disposition or use of the cocaine base. Possession may be
14 either actual or constructive. Actual possession means that
15 the cocaine base was in the actual physical custody of the
16 Defendant. Constructive possession means that the Defendant
17 had dominion and control or the right to exercise dominion or
18 control over either the cocaine base itself or the property on
19 which the cocaine base was found. Mere presence at the scene
20 where the drugs were found is not enough to prove possession.
21 Actual knowledge of the presence of the cocaine base is strong
22 evidence of the Defendant's intent to control its disposition
23 or use. The Defendant's knowledge and possession may be
24 inferred when a substance is found on the property under,
25 under the Defendant's control. However, this inference is

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1 simply an evidentiary fact to be taken into consideration by
2 you along with the other evidence in the case and to be given
3 the weight you decide it should have. Two or more persons may
4 have joint possession of a drug.

5 In a separate indictment the Defendant has also been
6 charged with attempted taking a firearm or other weapon from a
7 law enforcement officer under Section 16-23-415 of the South
8 Carolina Code of Laws, which provides as follows: an
9 individual who takes a firearm, stun gun or Taser device from
10 the person of a law enforcement officer or a corrections
11 officer is guilty of a felony and upon conviction - if all of
12 the following circumstances exist at the time the firearm is
13 taken: the individual knows or has reason to believe the
14 person from whom the weapon is taken is a law enforcement
15 officer or a corrections officer, the law enforcement officer
16 or corrections officer is performing his duties as a law
17 enforcement officer or a corrections officer or the
18 individual's taking of the weapon is directly related to the
19 law enforcement officer's or corrections officer's
20 professional responsibilities, the individual takes the weapon
21 without consent of the law enforcement officer or corrections
22 officer and the law enforcement officer is authorized by his
23 employer to carry the weapon in the line of duty.

24 An attempt is an effort to accomplish a crime which does
25 not succeed. An attempt includes a specific intent to do a

1 particular criminal act along with an act falling short of the
2 act intended. The State must show more than mere preparation
3 and intent. There must be some overt act committed in the
4 effort to commit the crime.

5 Reasonable suspicion requires a particularized and
6 objective basis that would lead one suspect, lead one to
7 suspect another of criminal activity. In determining whether
8 a reasonable suspicion exists the circumstances must be
9 considered as a whole. If the officer's suspicions are
10 confirmed or further aroused the stop then may be prolonged
11 and the scope enlarged.

12 Violation of motor vehicle codes provides an officer
13 reasonable suspicion to initiate a traffic stop. The
14 officer's observations while conducting the traffic stop may
15 create reasonable suspicion to justify further search or
16 seizure. Generally the decision to stop an automobile is
17 reasonable and the police have probable cause to believe a
18 traffic violation has occurred. A minor traffic violation
19 arrest will not be rendered invalid by the fact it was a mere
20 pretext for a narcotic search. A policeman who lacks probable
21 cause but who - whose observations lead him to reasonably
22 suspect that a particular person has committed, is committing
23 or is about to commit a crime may detain that person briefly
24 in order to investigate the circumstances that provoked that
25 suspicion. A traffic stop supported by reasonable suspicion

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1 of a traffic violation remains valid until the purpose of the
2 traffic stop has been completed. The officer's subjective
3 determinations cannot taint an objectively valid seizure.

4 There are two possible verdicts which you may find for
5 each indicted charge, guilty or not guilty. There's no
6 significance whatsoever in the order in which I state these
7 possible verdicts. It is simply that one must be stated
8 first. Ladies and gentlemen, your verdict must be a unanimous
9 one.

10 THE COURT: All right, ladies and gentlemen of
11 the jury, please accept the foregoing as my charge to you with
12 regard to each issue in this case, remembering that whatever
13 your verdict is it must be the unanimous verdict of all 12,
14 cannot be a verdict of the majority, obviously would not be a
15 verdict of the minority, must be unanimous, all 12 of you
16 together.

17 Now, Mr. Foreman, when you retire I will send with you
18 two verdict forms. The verdict forms relate to each separate
19 indictment. Now, with regards to the intent to distribute
20 this form has three possible verdicts. There's no
21 significance in which way they are presented. The first is we
22 find the Defendant unanimously guilty of possession with
23 intent to distribute. If, if that be your verdict you would
24 so signify. If you conclude that the State has not proven
25 intent to distribute beyond a reasonable doubt then you would

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1 consider whether or not the State has proven possession only
2 beyond a reasonable doubt. If you find that to be true you
3 would mark it appropriately. If you find it not true you
4 would go to the third, we the jury find, unanimously find the
5 Defendant not guilty. So as to the intent to distribute there
6 are three possible verdicts. Now with reference to the other
7 charge there are only two verdicts possible, either we find
8 the Defendant guilty unanimously beyond a reasonable doubt or
9 we find the Defendant not guilty. The indictments will be
10 with you in the jury room, Mr. Foreman. Whatever your verdict
11 is from these two forms please turn the indictment over on
12 verdict and write that verdict on the indictment and sign your
13 name, but these are presented to you as a guideline,
14 remembering that it is your decision that must be made
15 unanimously beyond a reasonable doubt.

16 The - my charge to you was somewhat lengthy. I'm going
17 to let you go to the jury room just a moment and I'll be
18 calling you back. Let you relax just a few minutes. You may
19 go to the jury room.

20 (Whereupon, the following takes place outside the
21 presence of the jury.)

22 THE COURT: The charges as agreed to on yesterday
23 by State and Defense were included in my charge. Solicitor,
24 are there any exceptions or additions to the charge as given?

25 MS. RICHARDSON: None from the State, Your Honor.

1 THE COURT: Ms., Ms. Keller?
2 MS. HILLER: Mr. Hiller, I mean, Mr. Frederick?
3 MR. FREDERICK: No objections.
4 THE COURT: No.
5 MR. FREDERICK: And it's Ms. Hiller, Judge,
6 THE COURT: Sir?
7 MR. FREDERICK: Ms. Hiller, but no objections.
8 THE COURT: No objections. The record will stand
9 that there are no objections. Does anybody need to take a
10 short break before we have summation?
11 MR. FREDERICK: Please, Judge.
12 THE COURT: You may do so.
13 MR. FREDERICK: Thank you.
14 THE COURT: Counsel, before you go come and look
15 at the - I explained it to them but you can - probably need to
16 take a look at them.
17 OFF THE RECORD
18 (On the record. The following takes place outside the
19 presence of the jury.)
20 THE COURT: All right, all are present. Will there be
21 an opening and closing by the Solicitor?
22 MS. RICHARDSON: Your Honor, we would just take last
23 close.
24 THE COURT: Is that satisfactory to the Defense
25 or you insist that they open, too?

Closing Argument by Ms. Hiller

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1 MS. HILLER: No, Your Honor, a close is fine.

2 THE COURT: All right, bring my jury in, please.

3 I'm going to have both closings before we recess with the jury
4 going - so there'd be some continuity without taking a break.

5 (Whereupon, the following takes place in the presence of
6 the jury.)

7 THE COURT: We will now proceed with final
8 summations. Under our rule the Defense will go first followed
9 by the Prosecution. You may proceed, Ms. Heller.

10 MS. HILLER: Thank you, Your Honor.

11 The government is asking you to believe something that's
12 a little bit improbable. They're asking you to believe that
13 from the time that Franklin saw the police officer behind him
14 all the way to when he's laying on the concrete on the street
15 that he was holding onto a pill bottle. They're asking that
16 from the time the officer came up to the, up to the car door,
17 Franklin rolls down the window with his hands, talks to the
18 officer, puts his hands up somewhere, you know, there's all
19 this question of where his hands were but they were doing a
20 lot of different things. He somehow unfastened his seatbelt,
21 he was Tased for five seconds, electric shock going through
22 his body, he reached his hands up, the officer says to take
23 his Taser, Franklin says to shield himself, that's his hands,
24 again, up, Tased again five more seconds. He reaches towards
25 the inside of the seat over towards his passenger, Robert

1 Jenkins, Tased again. Falls out of the car, trying to get
2 away from that pain, while getting down the sidewalk, getting
3 away, Tased in the back, hits the concrete. The officer comes
4 around and gets on top of him, puts his hands behind his back
5 trying to get him into handcuffs and they're saying all that
6 time that there's supposed to be a pill bottle in his hands.
7 You've seen the video. You've seen the video from each of the
8 two cars. If you see a pill bottle in his hand you convict
9 him, but if you don't see a pill bottle, no pill bottle that's
10 the reasonable doubt.

11 As far as the Tasing situation you heard the Judge read
12 the law. You heard the Judge say that you have to have intent
13 to commit a crime. You have got to find criminal intent for a
14 crime to occur, for an attempted crime to occur. Franklin got
15 on the stand and he told you, "I was trying to shield myself.
16 I didn't want to feel that Taser in my chest again." He never
17 said he tried to take it. In fact he told you he didn't. The
18 officer assumed it and an assumption is just not enough to
19 convict someone of a crime.

20 Thinking about what they're saying about the drugs, we
21 did see somebody with drugs in that case. We saw Robert
22 Jenkins. He's not on trial today but we saw him. He with
23 drugs dumped them. That's what people with drugs do. They
24 don't try to hold on to them till the last minute all the way
25 through, if they even could through four different Tasings,

Closing Argument by Ms. Hiller

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1 through getting his face bashed in, the concrete, blood in his
2 mouth, an officer on top of him.

3 Now, there's a lot of legal stuff and the Judge has told
4 you a lot of it already and I want to go through a little bit
5 more with you but try not to make it take too long. There's a
6 lot of different what's called burdens of proof in the
7 criminal - in the justice system really and the Judge talked a
8 little about a couple. I'm going to go through some just to
9 make it maybe make a little sense. The very, very lowest
10 standard of proof that's what's called a scintilla of
11 evidence. It's not something that really means very much. It
12 can't be used really for much. It's just there's this tiniest
13 bit of evidence, and a scintilla of evidence is never enough
14 to convict someone of a crime.

15 Going up just a little bit you've got what's called
16 reasonable suspicion. Reasonable suspicion is enough for an
17 officer to stop a car briefly to see if something's going on.
18 Reasonable suspicion is enough for a very cursory what's
19 called pat down to make sure there's not a weapon. Reasonable
20 suspicion is not enough to get us here today and reasonable
21 suspicion is never enough to convict someone of a crime.

22 Going up to the next level of burden of proof that is
23 what's called probable cause. Probable cause if you all have
24 watched any police shows or anything you've got to have heard
25 that, and probable cause is enough for an officer to go ahead

1 and do a full on search. It's enough to get us here today in
2 the courtroom, but probable cause as you've heard the judge
3 already say is not enough to convict someone of a crime.

4 Going up the ladder just a little more we have a
5 preponderance of the evidence. You heard that as well.
6 Preponderance of the evidence is what we use in civil court.
7 If all we were doing today is fighting about money a
8 preponderance of evidence would be enough. That's you've got
9 the two sides of the scale and they're perfectly even there's
10 no preponderance, and if it just tips that much, just 51
11 percent there's your preponderance, but 51 percent, this
12 preponderance it can't convict someone of a crime.

13 There's even higher standard. We use it in family court.
14 It's called clear and convincing evidence. Clear and
15 convincing evidence is the amount of evidence that it would
16 take for someone to show that a parent is unfit and that they
17 will no longer have any rights to their child. To terminate a
18 parent's rights forever you need clear and convincing
19 evidence. That's a high standard, but you know what, clear
20 and convincing evidence isn't the standard of proof in
21 criminal court. It's not high enough. There's an even higher
22 standard and we use it in every criminal case and that is
23 beyond a reasonable doubt. The State has to prove to you
24 beyond a reasonable doubt that the crimes that they are saying
25 happened and that Franklin committed those crimes. He has to

1 prove it to each and every one of you. You have to and we
2 talked about at the beginning that default position, that
3 default position of not guilty and that all your pens are
4 sitting on that not guilty. He's described the verdict form
5 to you. Pens are all sitting there. Only if the State can
6 prove to each and every one of you that it happened the way
7 they said it happened can you move that pen from the not
8 guilty over to the guilty. No one here has to violate their
9 conscience. Each of you as he described reasonable doubt must
10 be firmly, firmly convinced. If you think about it, if you
11 wonder if it happened that way you're not firmly convinced.
12 If you look at that video and you see everything that happened
13 that day and you don't see that bottle even though you can see
14 him, even though you can see his hands a couple of times on
15 that video, you never see it, they haven't met their burden.
16 That's the reasonable doubt.

17 Now in a minute like the Judge said the Solicitor she
18 gets to finish the case because she has that high, high burden
19 and so when you go back into the jury room the last thing
20 you're going to hear is what she says. That's to help her
21 with her burden. You don't get to hear what we have to say
22 last, but you've heard what we've said. You've seen the
23 video. You can ask to see the video again and if you don't
24 see that bottle you find Franklin not guilty.

25 THE COURT: Thank you, Ms. Hiller. Solicitor.

Closing Argument by Ms. Richardson

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1 MS. RICHARDSON: May it please the Court?

2 Good morning, I guess it's still morning, and you heard
3 Ms. Hiller explain to you and there's no question the burden
4 is on the State to prove this case beyond a reasonable doubt
5 and she went through and she did explain to you the different
6 levels of proof and everybody wants to talk about doubt, but
7 nobody wants to talk about what's reasonable. It's not just
8 doubt, it's what's reasonable under the circumstances.

9 When I first spoke to you I asked you to remember and not
10 to forget your common sense. You make decisions every day
11 about what happened. Not everything in life is completely on
12 video. We do live in the age of instant replay and I watch
13 ESPN and, you know, all these decisions about whether somebody
14 stepped in or out of bounds and that sort of thing, but life's
15 not always on video. I don't have a video of the sun coming
16 up this morning, but I know it did, and as a parent you, you
17 see things sometimes and you have to make - you don't see it
18 happen but you have to make determinations about what
19 happened. We do it every day.

20 You don't need a video always to decide what happened and
21 this case isn't about the quality of the video. There are a
22 lot of other factors that you in your good common sense and
23 decisions that you make every day that you can decide what
24 happened. You can look at the totality of the circumstances
25 of everything that's been shown to you to see. I'm going to

1 show you the video again, but basically what it really boils
2 down to and nobody's said this point blank, but what it boils
3 down to is they're saying he's lying, he didn't get that pill
4 bottle out of his hand like he told you he did, and that he's
5 telling the truth when he said it wasn't in his hand. I mean,
6 really that's what it is, which one of those decisions. That,
7 that's what it is.

8 I'm going to show you the video again and I want you to
9 look at it and I want you to notice a few things. You know, a
10 lot's been made about the Taser being used. This isn't a case
11 about whether or not he had the right to Tase the Defendant,
12 but I want you to look and when I show you the video I want
13 you to look at the body language of this officer when he
14 approached the vehicle, the politeness, asked, normal traffic
15 stop, close to the vehicle, driver, license and registration,
16 sure some of us have probably heard that before, but license
17 and registration, he repeats himself, identifies himself as an
18 officer, dressed as an officer in an officer's car, no
19 question about that. "Let me see your hands," notice what the
20 officer does, back up, notice his body language, back from the
21 car. At one point it's like he's ducking behind the vehicle
22 post. Look at his language. He didn't know what was in that
23 car. All he knew was he was not seeing that Defendant's hands
24 when he told him to and that there was something wrong. He
25 had also observed something that was suspicious. He told you

Closing Argument by Ms. Richardson

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1 he saw what looked like a money exchange in a car stopped in
2 the middle of the street. The Defendant doesn't deny and
3 admits that he was stopped in the area where the officer saw
4 him. So there's no dispute on that. He sees a \$10 bill
5 laying in his lap. There's three people in that car and one
6 officer standing there. Look at his body language. Look at
7 what happens. Look at the movements in the car. Look at the
8 movements. Why would somebody not respond to an officer? She
9 explained to you Robert Jenkins dumped the drugs, the heroin
10 that he had and you see that, but what's Robert Jenkins doing?
11 Watching. The truth is Mr. Dennison was caught. He knew he
12 had done something wrong. He knew he was caught red-handed
13 and who had control of that vehicle? Who was the driver? Who
14 told you he picked everybody else up? Who rented it? Who was
15 in control of that vehicle? The vehicle - if the drugs had
16 been dumped in that vehicle, who drove it, who picked
17 everybody up? Watch him. He was trying to get away. He was
18 Tased. He was trying to get away and not leave it there.
19 Jenkins didn't leave his there either. He had it. He was
20 trying to get away.

21 It's a little bottle. It's a big man. I'm going to get
22 Your Honor, what's State's Exhibit One.

23 (State's Exhibit One played in open court.)

24 MS. RICHARDSON: Why was he not complying with the
25 officer? You saw the motion towards the Taser. The Taser

1 wasn't deployed until that door was opened onto the officer
2 and then you saw the hand out. The officer has told you he
3 was grabbing towards his Taser. Now, he's charged with
4 attempted. Did he make some overt act to get that Taser from
5 the officer and you just saw that on the video. No question
6 that the Taser had been issued and that he was working with
7 the Georgetown Police Department.

8 The second issue becomes possession and possession with
9 intent to distribute. In this case we're talking about actual
10 possession, that he had it in his hand, it had been in the
11 vehicle that he had dominion and control over. He had
12 possession of those drugs, and he tells you there was nothing
13 in his hand. You see from the start the officer is saying
14 that. The drugs are in evidence and you've seen that. The
15 Judge has explained to you you can decide between possession
16 and possession with intent to distribute. What's the
17 difference? The difference is whether he had the intent to
18 distribute that drug in some way. How do we know that? What
19 evidence is there of that? First of all what the officer saw,
20 some sort of exchange; second, what was laying in his lap when
21 the officer stopped him? Third, what was in his pockets? You
22 have an evidence inventory list that'll tell you what was in
23 his pockets, a roll of money, over \$800 in his pocket. Told
24 you he worked at a car wash. This is toward the end of the
25 month, 800 and some dollars in his pocket. Inventoried also

1 what was in that car, Ziploc bags or some sort of plastic bags
2 and a razor blade with residue on it of some sort. The Judge
3 will tell you you can look at the amount that was found. If
4 there's over a gram it can be inferred that the intent was to
5 distribute, 2.7, almost three times the amount required for
6 you to be able to infer that, almost three times that amount.
7 Look at how it was packaged, at least five pieces were wrapped
8 individually in separate little baggies in that bottle,
9 nothing in the vehicle for it to be used to smoke himself and
10 the amount and you can look at the inventory sheet.

11 The second thing is he got up here and told you he didn't
12 have a pill bottle. This officer is, this officer is not
13 telling the truth, that he didn't pull it off of him. You see
14 how fast this thing went to traffic stop, from bad to worse,
15 quick, just a few minutes, and I want you to look and listen
16 real close to the end of this and how quickly the pill bottle
17 with the crack came up, instantly. Listen to the officer ask
18 him about it and listen to what the Defendant says about the
19 pill bottle.

20 (State's Exhibit Number One played in open court.)

21 MS. RICHARDSON: Now, I'm going to use some profanity,
22 "I didn't have nothing but some damn sleeping pills."
23 Immediately the officer says, "There's crack in this bottle,"
24 immediately, that fast.

25 Like I said, use your common sense. This isn't a

1 question about instant replay or the quality of the video and
2 what you're able to see. Put everything together. Officer
3 says there was a pill bottle. The Defendant says it's
4 sleeping pills. You see what it is. The chemist told you
5 what it is. Thank you.

6 THE COURT: Does that conclude the presentation?

7 MS. RICHARDSON: It does, Your Honor.

8 THE COURT: All right, and I thank you and I
9 thank Ms. Heller for your summations.

10 Ladies and gentlemen, you've heard all the testimony in
11 the case, the various evidence has been presented for your
12 consideration. You've heard final summation of counsel and it
13 now becomes your duty to consider the evidence and the
14 testimony as finders of the facts and to write a verdict
15 unanimously as I have previously explained it to you.

16 Mr. Foreman, again I say if any of your members of the
17 jury have any questions about the law there'll be pencil and
18 paper provided. Write that question down. I'll be glad to
19 consider it.

20 You may now go to the jury room. Do not begin your
21 deliberations until the evidence comes in along with the
22 verdict forms and that'll be in, in just a moment. The
23 alternate will remain in the courtroom. You may retire to the
24 jury room.

25 (Whereupon, the following takes place outside the

1 presence of the jury.)

2 THE COURT: Mr. Alternate, I wish our procedure
3 permitted you to participate, too. Unfortunately it does not.
4 Everybody seems to be in good health, but I'm going to leave
5 you here. Find a comfortable place for him to relax outside
6 the presence of the jury, please.

7 (Alternate exits courtroom.)

8 THE COURT: All right, come forward and I want my
9 counsel to agree on what's going into evidence, please, just
10 agree on what, what it is.

11 (Exhibits reviewed by counsel for State and Defense.)

12 THE COURT: All right, here are the verdict
13 forms. The record will reflect that counsel for State and
14 Defense have reviewed the verdict forms and I'm sending in the
15 two indictments and the verdict forms. When they - when you
16 take the evidence in tell them to begin deliberations.

17 Wait a minute, hold now, wait a minute, hold. Does
18 counsel for the State and the Defendant agree that what you've
19 got now is the evidence introduced in the trial of this case?

20 MS. RICHARDSON: We do, Your Honor.

21 MS. HILLER: Yes, Your Honor.

22 THE COURT: Madam Court Reporter, can you confirm
23 that this is true?

24 REPORTER: Yes, sir.

25 THE COURT: Tell them to begin their

Verdict

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1 deliberations. All right, we'll be in recess as to this case,
2 subject to the call of the Court.

3 (Whereupon, deliberations begin at 11:11 a.m.)

4 (Jurors questioned about lunch at 12:17 p.m.)

5 OFF THE RECORD

6 (On the record. Whereupon, the following takes place outside
7 the presence of the jury.)

8 (Verdict reached at 12:28 p.m.)

9 THE COURT: Let the record reflect that the
10 attorneys are present. Ladies and gentlemen, I've been
11 advised that the jury has reached a verdict in the case.
12 Bring the jury in. Wait a minute, where's the Defendant?

13 MS. HILLER: Right here.

14 MR. FREDERICK: He's here, Judge.

15 THE COURT: Sir?

16 MR. FREDERICK: He's here.

17 THE COURT: Okay, bring the jury in.

18 (Whereupon, the following takes place in the presence of
19 the jury.)

20 THE COURT: Mr. Foreman, I'm advised that you and
21 your jury have reached a unanimous verdict; is that true?

22 FOREMAN: It is, sir.

23 THE COURT: If this be the unanimous verdicts of
24 all 12 please signify by raising your right hand.

25 (All jurors raise right hand.)

Verdict

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1 THE COURT: The jury has so signified. Accept
2 the verdict and hand it to me.

3 (Complies with request.)

4 THE COURT: Please publish these verdicts.

5 Okay, excuse me. Please publish the verdict.

6 THE CLERK: State of South Carolina versus
7 Franklin Ezekiel Dennison, case number 2011-GS-22-1298, as to
8 the indictment possession with intent to distribute cocaine
9 base we the jury unanimously find the Defendant, Franklin
10 Ezekiel Dennison, guilty of possession with intent to
11 distribute cocaine base.

12 State of South Carolina versus Franklin Ezekiel Dennison
13 as to indictment number 2011-GS-22-1299, attempted unlawful
14 taking of a firearm or other weapon from a law enforcement
15 officer we the jury unanimously find the Defendant, Franklin
16 Ezekiel Dennison, not guilty of attempted unlawful taking of
17 firearm or other weapon from a law enforcement officer.

18 THE COURT: Is this your verdict, Mr. Foreman,
19 and that of the entire jury?

20 FOREMAN: It is, sir.

21 THE COURT: Does the - is that satisfactory or do
22 you want a panel?

23 MR. FREDERICK: I think we need to poll the jury,
24 Judge.

25 THE COURT: Sir?

Polling of Jury

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1 MR. FREDERICK: We do need to poll the jury, Judge.
2 THE COURT: Poll the jury, please. All right,
3 poll the jury.
4 THE CLERK: Mr. Foreman, is that your verdict and
5 is it still your verdict?
6 JUROR: It is.
7 THE CLERK: And you, sir, is that your verdict,
8 is that still your verdict?
9 JUROR: Yes, ma'am.
10 THE CLERK: Ma'am, is that your verdict, is it
11 still your verdict?
12 JUROR: Yes, it is.
13 THE CLERK: Sir, is that your verdict, is it
14 still your verdict?
15 JUROR: Yes.
16 THE CLERK: Sir, is that your verdict, is it
17 still your verdict?
18 JUROR: Yes.
19 THE CLERK: You, ma'am, is that your verdict, is
20 it still your verdict?
21 JUROR: Yes, ma'am.
22 THE CLERK: And you, ma'am, is that your verdict,
23 is it still your verdict?
24 JUROR: Yes.
25 THE CLERK: Ma'am, is that your verdict, is it

Polling of Jury

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1 still your verdict?

2 JUROR: Yes, ma'am.

3 THE CLERK: And you, ma'am, is that your verdict,
4 is it still your verdict?

5 JUROR: Yes, ma'am.

6 THE CLERK: What about you, ma'am, is that your
7 verdict, is it still your verdict?

8 JUROR: Yes, ma'am.

9 THE CLERK: And you, ma'am, is that your verdict,
10 is it still your verdict?

11 JUROR: Yes, ma'am.

12 THE CLERK: And you, ma'am, is that your verdict,
13 is it still your verdict?

14 JUROR: Yes, ma'am.

15 THE CLERK: Thank you.

16 THE COURT: Mr. Foreman, and ladies and gentlemen
17 of the jury, quite often a verdict is reported in the
18 newspapers and the prior record of the Defendant is given at
19 that time and I've had jurors in the past say to me, "Well,
20 Judge, why didn't you tell us what his prior record was?"
21 Well, he has a significant prior record and I'm going to
22 publish it for you, but that was not published for the simple
23 reason that that would have been prejudicial to this Defendant
24 and it is my intention that if he be convicted he be convicted
25 on the law and the evidence in this courtroom on this case and

1 for no other reason. I have no comment to make about your
2 verdict except to say that it was fully justified by the law
3 and the evidence in this case. The evidence was basically
4 uncontradicted that a container of evidence was actually found
5 in his hand but that was for the jury to consider. I would
6 like the jury to have the benefit of his past record at this
7 time though the record will reflect it was not introduced
8 against him during the trial. What is his prior record? I
9 need it for myself, too.

10 MS. RICHARDSON: Your Honor, he has a 1974
11 conviction for safecracking, 1980 convictions for
12 housebreaking, safecracking and larceny, 1990 conviction for
13 possession of cocaine, 1992 convictions for distribution of
14 cocaine and distribution of cocaine within close proximity to
15 a school and then a 1996 conviction for escape.

16 THE COURT: I thank you for that. I'm prepared
17 to discharge the jury. Is there anything else requiring the
18 jury at this time?

19 MR. FREDERICK: No, sir, not at this time, thank you.

20 THE COURT: All right, sir, Mr. Foreman, ladies
21 and gentlemen, on behalf of this Court, the State of South
22 Carolina, the County of Georgetown and our judicial system I
23 thank you for your services in this case. You know, none of
24 you asked to come to Court this week and certainly none of you
25 asked to sit on this trial but this was obviously a serious

Sentencing

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1 case that needed to be resolved one way or the other and under
2 our system, and I love it, we call in 12 people off the
3 street, no friends to reward, no enemies to punish, just hear
4 the facts. You tell us where the truth lies. We and the
5 citizens of Georgetown County are in your debt. You're
6 excused for the day and for the week. Thank you so much.

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: Would you care - you care to see the
10 verdict form, counsel?

11 MR. FREDERICK: No, sir.

12 THE COURT: All right, I'm prepared to sentence
13 him. Have the Defendant come forward.

14 MS. RICHARDSON: Your Honor, for the record I do have
15 a certified conviction of his prior cocaine charge and that's
16 been provided to the Defense.

17 THE COURT: I accept that. Have you shared that
18 with counsel for the Defense?

19 MS. RICHARDSON: I have. What they probably do not
20 have is a printout from the South Carolina Department of
21 Corrections. He received 25 years on that sentence. It was
22 15 and 10 consecutive, showing that he was released on that
23 sentence December 23rd, 2003, which would be less than ten
24 years at the time of this offense in 2011.

25 THE COURT: So, he's under the five to 30 years

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1 now at this time?

2 MS. RICHARDSON: Yes, Your Honor.

3 MR. FREDERICK: We, we agree with that, Judge.

4 THE COURT: All right, have him come forward.

5 MR. FREDERICK: What do you mean, Judge?

6 THE COURT: That's fine where he - that's, that's
7 fine.

8 MR. FREDERICK: Judge, should I speak now?

9 THE COURT: I'll be glad to hear from you or Ms.
10 Heller.

11 MR. FREDERICK: Judge, I mean, Franklin has - he's
12 spent a considerable amount of time in prison and I know he's
13 facing 30 years now. Judge, he is not a young man, would like
14 to see him be released from prison before he dies in prison.
15 He's not a young man. Judge, his fiancée is here in the
16 courtroom. His family's here in the courtroom. They've been
17 here with him all week.

18 His fiancée is pregnant with his child. He has never had
19 a child before. That's his first child. These are the things
20 that he leaves behind, Judge.

21 I can't speak to the facts of the case. At this point
22 the jury has spoken, but, Judge, I want you to consider his
23 age, the amount of time that he has already spent in prison,
24 the fact that he's leaving behind his fiancée and a child.

25 THE COURT: Well, he's got a significant, significant

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1 prior record and, counsel, you would have to agree that the
2 evidence in this case was simply overwhelming, not only from
3 the video but it was basically uncontradicted that the drugs
4 were found in his hand. I don't see how he could ever deny
5 that. They were found actually in his hand and I believe
6 there was a word from him during the video where he said he
7 had something in his hand, but the evidence was simply
8 overwhelming. I'm just glad that I don't have to put him in
9 jail for life without the possibility of parole. That was
10 originally the State's intention and they did not, in my view,
11 serve him appropriately. So, I declined to accept life
12 without parole. You understand that, Solicitor?

13 MS. RICHARDSON: Your Honor, and I agree with that and
14 we withdraw that request anyway.

15 THE COURT: Sure. Next time - you served the
16 counsel, but the law specifically says you serve him.

17 MS. RICHARDSON: I understand, Your Honor.

18 THE COURT: And serving mail is not sufficient
19 for something that serious.

20 MS. RICHARDSON: I understand.

21 THE COURT: Having said that though, given his
22 prior record, terrible record, I am going to sentence him
23 under this conviction for a period of time of 20 years in the
24 state penitentiary. Thank you.

25 MR. FREDERICK: Thank you, Judge.

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1 THE COURT: All right, this court is in recess.
2 We'll be back at two o'clock.

3 MR. FREDERICK: Your Honor, Your Honor, Judge, Your
4 Honor, before we, before we leave ---

5 THE COURT: I'd like to hear any post-trial
6 motions at this time.

7 MR. FREDERICK: Well, Judge, Mr. Dennison wanted to
8 address the Court earlier.

9 THE COURT: Yeah, please, I forgot that. I thank
10 you for bringing him before - tell him to come before me.
11 That's fine, and I thank you for calling that to my attention.
12 Yes, sir.

13 MR. DENNISON: Yes, sir.

14 THE COURT: First let me say that I did not wish
15 to you to address the Court during the proceedings this
16 morning while this trial was going on fearful that what you
17 might say would be incriminating against you. That's why I
18 didn't want to let you talk to me personally. I did permit
19 you to let your lawyer tell me what was on your mind, but the
20 jury's not here. The jury's rendered a verdict and I'll be
21 glad to hear from you at this time because this - be, be
22 careful with what you say. It may prejudice you on any appeal
23 that you might have. Have you advised him of that, counsel?

24 MR. FREDERICK: I have, Judge.

25 THE COURT: Long as he understands it, that's

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1 fine. I'll be glad to hear from you, yes, sir.

2 MR. DENNISON: Well, well, Your Honor, my problem
3 with this case was that I just felt like it was more loyalty
4 to the Solicitor case than mine because there's some instances
5 that never did come out about what actually happened. You
6 know, the officer said some things on the, on the stand and I,
7 I figured it was not probed in appropriately. This guy said
8 he was with the law enforcement agency for over 30 years when
9 he actually took a hiatus, leave and left his job for a pay
10 dispute, which Mr. Hinson had stated earlier when I was up
11 here at a meeting when Mr. Hilliard was my lawyer and that's
12 one of the reasons why I opted to get out with him because he
13 wasn't in my special interest in this matter. Now, this guy
14 went over to DeBordieu as a, as a deputy director in a private
15 situation over there and I wasn't kept up on, you know, I
16 wasn't, I wasn't being advised of all of this and I guess one
17 of the guys that work here had told me when I questioned them
18 one day I was here, I said, "Well, they keep calling me here,
19 man, for over two years and the officer never shows up." So
20 this person told me, said, "Well, he's" - he asked me who the
21 officer was and I, I told him and he said, "Well, he's back in
22 law enforcement." Now, he came over there and said that he
23 was in law enforcement with the Horry Georgetown division, but
24 it never was explained to the jury that this guy had left the
25 force for a year and let this case linger like this. So, it's

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1 kind of leading me to believe that it's a - it may be a
2 selective prosecution going on here because I don't know
3 whether he participated in other case that might have been
4 pending that he had going on and, you know, I just think that
5 Ms. Laura, I don't actually blame her because I listen at her
6 spoke to the jury and she was just as nervous in her approach
7 to the jury as I was on the stand and I just think that my
8 case wasn't properly researched by my attorneys and I don't
9 know if they know that this matter was as serious as it turned
10 out to be because I don't know if they was given proper
11 information from the Solicitor Office about this officer and
12 that guy he said on the stand also that when Ms. Laura asked
13 him, said, "Well, did you actually see drugs in his hand?" He
14 said no, but no one probed into that to find out what his
15 mindset was because he had already adjudged me of being a drug
16 dealer at that point on Prince Street and he never acted on
17 that to come over there and see what was going on. He wait
18 until I drove off and went in his direction and for some
19 reason he said he clocked me as speeding and this, this
20 incident right here where, where he said I said this is pills
21 or something, that was pills or something like that, I have a
22 copy of that video, Your Honor, and I never, I never heard
23 that. I never heard that statement on that video Mr. Hilliard
24 gave me and here in - on, on trial yesterday the Solicitor
25 presented a second video which I never did receive and under

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1 the, under the discovery motion that leads all the way up to
2 the trial this stuff was supposed to be given to me for me to
3 properly prepare my defense and I don't want to make no
4 argument with you, Your Honor, because you are a older person
5 than me and I should, you know, be able to learn from you.

6 THE COURT: I'm glad to hear from you. I - you
7 don't offend me in telling me your story. That's fine.

8 MR. DENNISON: Yeah.

9 THE COURT: You go right ahead.

10 MR. DENNISON: And it was just a issue that was
11 taken up on the arraignment or whatever that was. You made a
12 statement about the officer's credibility and there was no
13 factual evidence before you other than the officer plain
14 assertion that what took place on, on Prince Street was a, was
15 a drug deal and you took that as a, as a factual statement
16 because you said this officer is a professional witness and to
17 me I just felt like that was just commenting on the evidence
18 and there was no factual evidence ---

19 THE COURT: I never said he was a professional
20 witness. That comment never came out of my mouth.

21 MR. DENNISON: Well, I know it was, I know it was
22 something you said.

23 THE COURT: We were talking about ---

24 MR. DENNISON: I'm not going to argue, I'm not going
25 to argue the point because you are - you ---

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1 THE COURT: --- we were talking, talking about
2 the expert chemical analysis.

3 MR. DENNISON: Well, well, I - you, you said - you
4 told my lawyer, you said, "I'm going to deny that motion
5 because he said he was parked in the road," and ---

6 THE COURT: I don't know what motion you're
7 talking about, but anyway, what is your - I hear what you're
8 saying. Let, let me say this to you, Mr. Defendant, the
9 evidence against you in this case as presented to this jury as
10 finders of the facts was absolutely overwhelming. The video
11 was strong evidence against you, but the facts are basically
12 uncontradicted that this evidence, drugs more than one ounce
13 was actually found in your hands and the container and the
14 drugs were presented in evidence in this courtroom.

15 MR. DENNISON: Well, again, again, Your Honor, I
16 don't want to, I don't want to ---

17 THE COURT: Well, that's the, I mean, that's what
18 the jury had. It was their decision, but ---

19 MR. DENNISON: I, I don't want to create no argument
20 with you.

21 THE COURT: You're not creating an argument with
22 me. I'm just telling you what the facts are as presented to
23 the jury.

24 MR. DENNISON: Right, okay, that, now, I agree with
25 what you're saying about the facts that was presented to the

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1 jury.

2 THE COURT: Okay, what - let me conclude this by
3 saying I've been on the bench, I'm now in my 30th year, and my
4 conclusion is that your attorney, Ms. Hiller, and the second
5 chair gave you an outstanding defense as best they could based
6 on some basically insurmountable evidence against you, and as
7 I said it's not, it's not for me to decide, but it's for the
8 jury to decide.

9 MR. DENNISON: Right.

10 THE COURT: But as I told the jury based on the
11 evidence I certainly understand their verdict with proof
12 beyond a reasonable doubt. Clearly the jury judged the
13 credibility and believability of the officers involved, the
14 fact that he may or may not have taken a leave of absence is
15 not important with connection with the specific testimony that
16 he gave in this case. The video was telling evidence for the
17 State, for the jurors' consideration. The fact that the
18 evidence, container and the drugs were in your possession,
19 actually in your hand and all the evidence is that there was
20 more than one ounce which clearly is a basis of inference for
21 possession with intent to distribute. There was additional
22 evidence, if believed, that you were engaged in that drug
23 transaction when you were stopped in the middle of the road.
24 It's not for me to say that but it's for the jury. The jury's
25 verdict is adequately substantiated that your guilt was proven

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1 beyond a reasonable doubt and in my view as a judge of 30
2 years your attorneys, both of them, gave you under the
3 circumstances an excellent defense. We are in adjournment.
4 Thank you.

OFF THE RECORD

5
6 (On the record.)

7 THE COURT: I want the record to reflect that some
8 moments ago Ms. Richardson - be seated, please - came into my
9 chambers by herself with the consent of Mr. Frederick advising
10 me that there might be a jury issue. Ms. Frederick - Ms.
11 Richardson, for the record tell me exactly what you said.

12 MS. RICHARDSON: Your Honor, in the Franklin Dennison
13 case Mr. Frederick advised me that he had learned that the
14 Defendant's girlfriend had approached a juror or told him that
15 she had approached a juror during the lunch break yesterday
16 and asked her, asked that juror for a specific verdict.

17 THE COURT: Okay, and what was the name - this
18 was the Defendant's girlfriend who allegedly did this?

19 MS. RICHARDSON: That is my understanding.

20 THE COURT: And this was reported to Mr.
21 Frederick by the Defendant that I just gave 20 years to in
22 jail?

23 MS. RICHARDSON: I am not sure who reported it to Mr.
24 Frederick, but Mr. Frederick did report it to me.

25 THE COURT: What is the name of the individual,

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1 Mr. - is this the girl, is that Mr. Frederick's girlfriend?

2 MS. RICHARDSON: Mr. Dennison's, I believe so, Your
3 Honor.

4 THE COURT: Yeah, Mr. Henderson [sic], I'm sorry,
5 and what, what is her name?

6 MR. HAZZARD: Your Honor, on behalf of the
7 individual with whom the Court is speaking her name is Tanekia
8 Lashawn Arthur, first name is spelled T-A-N-E-K-I-A, middle
9 name L-A-S-H-A-W-N, last name Arthur, common spelling, and I
10 am here representing her.

11 THE COURT: One minute, let me get on the record.
12 When this was revealed to me ---

13 MR. FREDERICK: Judge, can I, can I interrupt you?
14 We have the Defendant in the courtroom?

15 THE COURT: Yes, I'm sorry. I thought he was in
16 here.

17 (Franklin Dennison enters courtroom.)

18 THE COURT: When this allegation - is the
19 Defendant now in the courtroom?

20 MR. FREDERICK: He is, he is, Your Honor.

21 THE COURT: When this allegation was stated to me
22 understanding that if that conduct was true she would be
23 facing criminal charges for interfering with the jury process,
24 in an abundance of precaution and to make sure her rights were
25 protected and she understood I asked the public - Chief Public

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1 Defender, Ron Hazzard, to represent her for what interest it
2 may appear and Mr. Hazzard has done that. Now I'll be glad to
3 hear from you, Mr. Hazzard.

4 MR. HAZZARD: Thank you, Your Honor. The
5 Court has given me the opportunity to speak with Ms.
6 Arthur at length outside the courtroom. What Ms. Arthur has
7 relayed to me is that on this, this past Monday during the
8 lunch break she and Mr. Dennison went across the street to the
9 Hardee's restaurant for the purpose of buying lunch, that Mr.
10 Dennison indicated that he was not particularly hungry, so he
11 was going to either stay outside, stay in the car, I'm not
12 sure if they walked or drove, that she, Ms. Arthur entered the
13 establishment. As she was entering she came into contact with
14 what she refers to as an older, older black woman and that the
15 older black woman remarked on Ms. Arthur's clothes and her
16 hair and said she thought it was very attractive, that they
17 struck up a conversation, that they ended up actually sitting
18 down at the table together at the older black lady's behest
19 because they got their food at two different times, the older
20 black lady got her food first, Ms. Arthur subsequent to that,
21 that the older black lady asked her or invited her to sit down
22 with her, that they struck up a general conversation, realized
23 that they had people in common, that Ms. Arthur is from
24 Bishopville. The older black lady indicated she was from
25 Hemingway but had family members in Bishopville, that Ms.

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1 Arthur had actually gone to school with one of her family
2 members. Then the issue came up that Ms. Arthur indicated
3 that she was very stressed out and that it had to do with her
4 boyfriend and in the course of the conversation Ms. Arthur
5 said, "You don't understand. My boyfriend is on trial." At
6 that time the older black lady said, "I'm a juror on that
7 trial," at which time Ms. Arthur said basically, "I am so
8 sorry. Thank you for your time," got up and left, that there
9 was no further conversation once she was aware that this
10 individual was a juror, that she never at any time asked this
11 woman for a verdict, never at any time offered her any
12 inducement, bribe or money, never threatened her in any way.
13 I asked Ms. Arthur specifically, "Did you see a jury badge on
14 the person of the individual you were speaking with?" She
15 said, "If there was a badge there I did not see it and I would
16 have noticed had it been on her upper body." So that is the
17 gist of what Ms. Arthur has said to me as far as the
18 interaction and she stands ready to, she stands ready to
19 testify under oath if the Court deems it appropriate.

20 THE COURT: Well, I don't know that it's
21 necessary based on that representation. Mr. Frederick, what,
22 what would you say to me, sir?

23 MR. FREDERICK: I would ask that Ms. Hiller take over
24 the defense in this proceedings right now and place me under
25 oath and I have testimony I would like to enter for the

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1 record.

2 THE COURT: You're what?

3 MR. FREDERICK: I would ask that Ms. Hiller place me
4 under oath, Your Honor, and I have testimony that I need to
5 enter under oath for this record.

6 THE COURT: I'll be glad to hear that. Go ahead.

7 MS. HILLER: Mr. Hiller or Mr. Frederick ---

8 MR. FREDERICK: You need to call me as a witness and
9 have me placed under oath.

10 MS. HILLER: I'd like to call Mr. Frederick to the
11 stand.

12 MR. FREDERICK: And Judge, I don't have to sit in the
13 stand if you don't want but I'd prefer ---

14 THE COURT: Sir?

15 MR. FREDERICK: I'd prefer to be placed under oath.

16 Whereupon, Bobby Frederick was called to the stand, duly
17 sworn by the clerk and testified as follows:

18 MR. FREDERICK: Thank you, Your Honor.

19 EXAMINATION

20 BY MS. HILLER:

21 Q Mr. Frederick, did you have an opportunity to come into
22 contact with Ms. Arthur this afternoon?

23 A Your Honor, following the trial I was - spoke to Ms.
24 Arthur outside of the courtroom in the waiting area to the
25 right when you walk out of the courtroom. When I first spoke

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1 to her she told me that she had had contact with a juror. She
2 asked me because I told her she was going to get in trouble if
3 she said what I thought she was going to say. She asked me
4 should she talk to an attorney. I told her I represent
5 Franklin's interest, not hers, and I instructed her to tell me
6 what she did and what she told me is that yesterday at lunch
7 she approached a juror, that she asked that juror if the juror
8 would eat lunch with her. She told me that she saw the badge,
9 the juror's badge. She told me that while eating lunch she
10 told that juror that it was her fiancé who was on trial. She
11 told me that she told that juror it only took one juror to
12 have a hung jury, that she asked that juror to please hold out
13 for a hung jury. I asked her for some details. I asked her
14 which juror was it. She said it was the heavier black female
15 who was sitting in the middle on the back row. There were two
16 black females sitting on the back row. One was on the far
17 end. I clarified that. She said it was the black female
18 sitting in the middle of the back row. I asked her, "Where
19 did you eat lunch?" She said it was at Hardee's. I asked her
20 if she knew that juror beforehand. She said they were not
21 friends but she had seen her around in Hemingway. Judge, and
22 as I talked to her I wrote down the specific questions and
23 what her responses to me were and that's the extent of it.
24 After that, again she asked was she going to get into trouble.
25 I told her that what she just told me was a confession to a

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1 crime. She asked me was she going to have to repeat that and
2 I said that I was going to bring it to the Court's attention.
3 I told her do not leave the courthouse, be in the courtroom at
4 two o'clock. She told me she was going to contact an attorney
5 and that is quite different from what her current attorney has
6 just told Your Honor.

7 THE COURT: Mr. Hazzard, you care to cross
8 examine?

9 MR. HAZZARD: No, sir, Your Honor.

10 THE COURT: All right, you may come down. Thank
11 you.

12 MR. FREDERICK: Thank you, Judge.

13 THE COURT: Any other witnesses on this issue
14 from your perspective?

15 MR. FREDERICK: Judge, I think that we need to talk
16 to the juror and find out what the juror has to say about it.

17 THE COURT: Mr. Hazzard, are you willing to let
18 your client get on the stand under oath?

19 MR. HAZZARD: Yes, sir, Your Honor.

20 THE COURT: Have her come around.

21 Whereupon, Tanekia Lashawn Arthur was called to the
22 stand, duly sworn by the clerk and testified as follows:

23 THE CLERK: Thank you. Please be seated and
24 state your name for the record.

25 THE COURT: We apologize for having to call you

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1 into court but there are serious allegations made here that
2 need to be considered under oath. You are under oath. You
3 understand that?

4 MS. ARTHUR: Yes, sir.

5 THE COURT: And I'm going to ask that, you speak
6 real softly, please speak into the microphone so everybody out
7 there can hear what you say and we thank you for your
8 appearance. Be seated.

9 EXAMINATION

10 BY MR. HAZZARD:

11 Q Okay, Ms. Arthur, if you would, even though it's been
12 read into the record previously please state your full name
13 and spell your first and last name for the record.

14 A Tanekia Lashawn Arthur, T-A-N-E-K-I-A, last name A-R-T-H-
15 U-R.

16 Q And would you give us your date of birth, please, ma'am?

17 A 9-25-79.

18 Q Okay, and you are Franklin Dennison's girlfriend or
19 fiancée; is that correct?

20 A Correct.

21 Q Okay, now, before your appearance here in this court
22 under oath did you have the opportunity to speak with me
23 outside in the courtroom antechamber?

24 A Could you repeat that again?

25 Q Okay, you're on, you're under oath on the witness stand

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1 now; correct?

2 A Yes, sir.

3 Q Okay, before you got here under oath did you have an
4 opportunity to speak with me outside?

5 A I have.

6 Q Okay, now, the allegation is made that you approached a
7 juror in Mr. Dennison's trial that took place this week in
8 Georgetown County, the week of September 30th, 2013, and that
9 you in some way attempted to influence the juror for a
10 particular type of verdict. Were you present when that
11 allegation was made against you?

12 A Could you repeat that question, please?

13 Q Okay, okay.

14 THE COURT: Say it so she'll understand. Were
15 you in the courtroom a moment ago when that statement was made
16 by Mr. Frederick?

17 A Yes, sir.

18 THE COURT: And did you hear it?

19 A Yes, sir.

20 THE COURT: All right, thank you.

21 MR. HAZZARD: Thank you, Judge.

22 BY MR. HAZZARD:

23 Q Now, if you would, tell the Court what occurred on
24 Monday, September 30th?

25 A Well, after the Judge break for lunch my fiancé and I we

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1 went to Hardee's across the street and as I - he said he
2 didn't want anything to eat. I guess he was, you know, what
3 he's going through. So I went inside. As I was walking in I
4 noticed a lady, a older lady. She stopped me and compliment
5 me about my hair and she was saying that ---

6 Q She complimented you about your hair?

7 A Yes, sir.

8 Q Okay, please continue.

9 A And I told her that - she asked me was I'm from here and
10 I told her, "No, I'm not from here. I'm from Bishopville,"
11 but she said because she was looking for someone to do her
12 dreads. So at this time ---

13 Q Uh-huh, her dress or her dreads?

14 A Her dreadlocks.

15 Q Dreadlocks, okay.

16 A Uh-huh, so at, at that time my phone start vibrating and
17 it was Franklin. So by this time I went back to the car.

18 She, she ---

19 Q What did Franklin want?

20 A He called me back to the car to get him something to
21 drink from out there.

22 Q Okay, so he had changed his mind? Now he wanted
23 something to drink?

24 A Yes.

25 Q Okay, so what'd you do then?

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1 A So I went back, I went back to the car, got the money.
2 By this time when I went back into Hardee's she was already
3 placing her order and it was like maybe two or three other
4 people behind her. So I got in the line.

5 Q So she was at that point now approximately two to three
6 people ahead of you in line?

7 A Yes, sir.

8 Q Okay, please continue.

9 A So once I, once I order my food about that time I order
10 my food, I noticed just by just looking around I see her at
11 the water, at the fountain getting her drink and her food
12 tray. So once I got my, my tray and food and went to the
13 fountain I guess she was so interested in my hair she and I
14 sat down and ate lunch together.

15 Q Did you ask to sit with her or how did that come about?

16 A When she, she said we could have ate together.

17 Q Okay.

18 A I guess she wanted to talk some more about the dreads.

19 Q Okay.

20 A That's my, I'm assuming that. So when we got, when we
21 got - she was there first. She was already sitting down by
22 this time. I went and when I sat down she and I start talking
23 and I told her I said, "Oh, my God, I am so stressed out, you
24 know, about my fiancé," and she replied, she said, "I wouldn't
25 let, I wouldn't let no man stress me out." I said, "I got

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1 high blood pressure and everything. I developed that because
2 of my pregnancy." She said, "I wouldn't let no" ---

3 Q Because of your pregnancy?

4 A Yeah.

5 Q Okay.

6 A She said, "I would not let, I would not let a man stress
7 me out." I said, "Oh, it's not like that. It's that my
8 fiancé he's on trial," you know what I'm saying, and when she
9 said, when I said that she said, "On trial?" I said, "Yes, in
10 trial in Georgetown County at the courthouse." She said,
11 "Well, I'm a part of that juror." So once she said that all
12 conversation was cut off. I meant my eyes stretched because I
13 was surprised because I, I, I heard the Judge said they could
14 not communicate or talk about what's going on in the - with
15 this case ---

16 Q Uh-huh.

17 A --- and I'm not trying to get in trouble. So we - the
18 conversation end like, "Okay, ma'am, I'll just talk to you
19 later. I'm looking to the hills." It was nothing never
20 discussed about nothing, no nothing. By this time I left. I
21 didn't even finish my lunch because I was so disturbed about
22 that. Keep in mind, I never seen no badge because if I, if I
23 - I'm most certain if I would've seen a badge I would have
24 never was in her company ---

25 Q Uh-huh.

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1 A --- you know, so that's how that panned out and that's
2 how that just was.

3 Q Now, after you left Hardee's where did you and Franklin
4 go?

5 A We went to Duke Street to my auntie house on Duke Street
6 for a brief moment because we had to return here like what
7 2:30 or something.

8 Q Uh-huh, and when you got back, when you got back to the
9 courthouse did you see the woman that you had seen at
10 Hardee's?

11 A In the - at first when I - when she said she was part of
12 the jury I thought she was playing but when I came back in
13 here and they called the juror back because she was who I was
14 looking for to see if she was telling the truth and I seen her
15 and I was, "Oh, she's not lying. She is a part of the jury,"
16 because I never seen a badge, you know.

17 Q Uh-huh, uh-huh, so and at that time when you saw her was
18 there any verbal or nonverbal communication between you and
19 her, any smile, any wink, any nod, any wave, anything from
20 either you or her?

21 A No, sir.

22 Q Okay, from that point to where we are right now, from
23 Monday afternoon, all day Tuesday, where we are now any
24 communication between you and any member of the jury?

25 A No, sir.

1 Q Okay, now, Mr. Frederick says that you told him certain
2 things, that you told him that you approached a juror and
3 asked them for either a not guilty verdict or a hung jury.
4 Did you do that, ma'am?

5 A No, sir, and, and I can assure you that that juror could
6 tell you the same thing.

7 Q Okay, all right, please answer any questions that Ms.
8 Hiller, the Court or the Prosecution may have.

9 THE COURT: Ms. Fuller [sic].

10 MR. FREDERICK: No questions, Your Honor.

11 THE COURT: All right, you may come down. You
12 have any other witnesses?

13 MR. FREDERICK: Ms. Hiller has no questions, Your
14 Honor.

15 THE COURT: Sir?

16 MS. HILLER: We call Franklin Dennison to the
17 stand.

18 Whereupon, Franklin Ezekiel Dennison was called to the
19 stand, duly sworn by the clerk and testified as follows:

20 EXAMINATION

21 BY MS. HILLER:

22 Q Franklin, will you first start by stating your full name
23 for the record?

24 A Franklin Ezekiel Dennison, D-E-N, last name, D-E-N-N-I-S-
25 O-N.

1 Q And Franklin, would you please tell the Judge what it is
2 that you wanted to tell him?

3 A Well, it's like Tanekia said when we went to Hardee's she
4 went inside. She met a juror and they talked and she came
5 back, she probably don't want to get in trouble or nothing but
6 - and I don't think she could get in trouble because it was a
7 proposition made to her and she brought it to me and I told, I
8 told her, you know, I didn't want to do that because it might
9 be a beat and there's no way I could get back what, what the
10 woman was requesting for, what the juror was requesting for I
11 told them there's no way I could get that back.

12 Q Is there anything else you wanted to tell the Judge?

13 A Well, what she did she, she violated your order, Your
14 Honor, I mean, she spoke with ---

15 THE COURT: No, sir, you don't know that. You weren't
16 there.

17 A I was here when you gave her an order not to speak with
18 anyone about the case.

19 THE COURT: All right, does that conclude the direct
20 examination?

21 Q Is there anything else you wanted to say?

22 A Well, I'm telling you what she, what she offered to Ms. -
23 to my fiancée. She wanted, she wanted money and I wouldn't, I
24 wouldn't do it.

25 Q Okay, thank you, Franklin.

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1 MR. HAZZARD: Your Honor, may I cross examine?

2 THE COURT: I want you to, yes.

3 MR. HAZZARD: Thank you, sir.

4 EXAMINATION

5 BY MR. HAZZARD:

6 Q Okay, Mr. Dennison, you realize that you're under oath in
7 this courtroom today; correct?

8 A Exactly.

9 Q Okay, and it is your testimony as I understand and maybe
10 I wasn't listening carefully enough, your testimony that a
11 juror on the jury panel that convicted you earlier here today
12 made a proposition to Ms. Arthur, your fiancée; is that
13 correct?

14 A Correctly.

15 Q Okay, now, is it your testimony that you heard this
16 proposition directly or that Ms. Arthur relayed this
17 proposition to you?

18 A Well, when she came to the car she said, she said the
19 lady said something about 500 now and then 500 later. I tell
20 her I didn't want to do that because I don't know whether
21 that, that could be a beat or anything and ---

22 Q Uh-huh, okay, so, it's your testimony then that Ms.
23 Arthur said to you that a juror asked her for money for a
24 favorable outcome in your trial?

25 A That's, that's what, that what was said to me.

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1 Q By Ms. Arthur?

2 A Yes, sir.

3 Q And that's your testimony under oath?

4 A Under oath, yes, sir.

5 Q Okay, and you didn't see this juror say that, hear this
6 juror say that; did you?

7 A Was, was I didn't hear, I didn't hear the juror said
8 that.

9 Q Okay, okay, all right.

10 MR. HAZZARD: No further questions, Your Honor.

11 THE COURT: Come down. Yes, sir.

12 MR. FREDERICK: Judge, the juror in question, the
13 Solicitor and myself went over the jury list and we believe
14 that it is Juror Number 142 whose name is Maxceana Verner.

15 THE COURT: What I don't understand assuming that
16 any contact was made it was made on behalf of the Defense, not
17 the Prosecution even if you believe what he said, what she
18 said.

19 MR. FREDERICK: Yes, sir, I agree. I believe that we
20 need to hear from the juror before we conclude this
21 proceeding.

22 THE COURT: What do you say, Solicitor?

23 MS. RICHARDSON: Your Honor, we ---

24 THE COURT: I'm not going to -- that jury was a
25 fine jury, sworn to tell the truth. This witness has said

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1 under oath in my presence that it simply did not occur. Even
2 if it did, and I don't believe for a moment it did, it was the
3 Defendant that was trying to do it, not the State of South
4 Carolina. Mr. Hazzard, do you want me to bring that juror in
5 here based on the fact that your client says absolutely it
6 didn't happen?

7 MR. HAZZARD: Your Honor ---

8 THE COURT: Sir?

9 MR. FREDERICK: He's over there, Judge.

10 MR. HAZZARD: --- as much, as much as ---

11 MR. FREDERICK: He's over there, Judge.

12 MR. HAZZARD: Okay.

13 THE COURT: Sir?

14 MR. FREDERICK: He's over there.

15 THE COURT: I understand. Go ahead.

16 MR. HAZZARD: Yeah, yeah, as much as - out of an
17 abundance of precaution, Your Honor, before the Court makes a
18 final determination the allegation is being made of actual -
19 because see, this kind of started out the allegation and the
20 problem is this, Your Honor, the allegation that was made by
21 Mr. Frederick under oath, under oath was that Ms. Arthur told
22 him that she asked the juror for a favorable outcome in
23 exchange for some consideration. Mr. Dennison gets on the
24 stand and he makes the allegation under oath that the juror
25 requested money in exchange for an outcome. So those are two

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1 diametrically opposed statements. However, now that the
2 allegation is made of actual juror misconduct by Mr. Dennison
3 for an over abundance of precaution to make sure ---

4 THE COURT: We better call her in. Do we know
5 who - can you agree on who it is? I hate for a juror to have
6 to undergo this sort of thing based on the allegation of a
7 convicted criminal.

8 MR. HAZZARD: Yes, sir.

9 THE COURT: Who today was sentenced to 20 years.

10 MR. HAZZARD: Yes, sir.

11 THE COURT: And I, I, I hate that the jury has to
12 go through that from his testimony.

13 MR. HAZZARD: I ---

14 MR. FREDERICK: Judge, if, if - Judge, if I could
15 correct you, it's the allegation of the convicted criminal's
16 fiancée which I testified to under oath as to what she said.

17 THE COURT: No, sir, I'm talking about Dennison
18 testimony here under oath.

19 MR. HAZZARD: No, and I would correct Mr. Frederick
20 that there is no allegation under oath made by Ms. Arthur.
21 The only allegations made under oath are by Mr. Frederick and
22 Mr. Dennison ---

23 MR. FREDERICK: Absolutely correct.

24 THE COURT: I understand.

25 MR. HAZZARD: --- both of which are diametrically

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1 opposed.

2 THE COURT: And both of whom are interested ---

3 MR. HAZZARD: So one of them's lying.

4 THE COURT: --- both of whom are interested in
5 defense. The record is going to reflect that Mr. Frederick's
6 been trying, been trying to mistry this case from the day it
7 started and again here's another issue that concerns me. Go
8 get the juror, let's make a complete record of it.

9 MR. HAZZARD: Yes, sir.

10 MS. RICHARDSON: Your Honor, who would you, who would
11 you like to go get the juror? I mean, she's left the
12 courtroom, I'm - or the courthouse. We can ---

13 THE COURT: Well, I'm going to ask ---

14 MS. RICHARDSON: --- we can send ---

15 THE COURT: Bill, is he here?

16 OFFICER TOOMER: Yes, Your Honor.

17 OFFICER KNOX: Yes, sir.

18 THE COURT: Can you send an officer that can
19 handle with candor to tell her we've got just a matter we need
20 to discuss? You got somebody you can send or can you go
21 yourself?

22 OFFICER KNOX: Yes, sir, yes, sir, yes, sir, we can
23 take care of that.

24 THE COURT: Sir?

25 MR. FREDERICK: Is that Bill over there?

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1 OFFICER KNOX: That's Bill.
2 MR. FREDERICK: Bill's over there, Judge.
3 THE COURT: All right, what, what, what is the
4 name of that juror?
5 MS. RICHARDSON: Your Honor, there were three black
6 females on the jury and two that would be older than the
7 witness was but we believe that based on her description that
8 it was Juror Number 142, Maxceana Verner.
9 THE COURT: Let's see, do we have a telephone
10 number for that juror?
11 THE CLERK: I gave it to the officer.
12 MS. RICHARDSON: We do.
13 MR. FREDERICK: We do, Your Honor.
14 MS. RICHARDSON: We have it.
15 THE COURT: Well, first I'm going to ask that you
16 call and see can she come on back up here.
17 MR. FREDERICK: Would we like the deputy to call her,
18 Judge?
19 MS. RICHARDSON: Or the clerk.
20 MR. HAZZARD: I would ask that the clerk contact
21 the juror.
22 MS. RICHARDSON: We want the clerk of court to call
23 her.
24 THE COURT: Clerk, you call her.
25 CLERK: Okay.

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1 THE COURT: Tell her we need her back up here
2 please and then do this if she needs transportation we'll send
3 somebody.

4 CLERK: Okay.

5 THE COURT: I want the - Mr. Hazzard, keep your
6 client here, please. If she needs some transportation I'll
7 send Bill for her.

8 (Clerk attempts to call juror.)

9 THE COURT: What's the report, ma'am?

10 THE CLERK: I'm calling another number, Judge.

11 THE COURT: Okay.

12 (Clerk and Court confer.)

13 THE COURT: All right, her sister is trying to
14 get her here. I'd like to conclude this this afternoon and
15 but if not we'll conclude it in the morning. It's going to be
16 concluded before this Court adjourns sine die. Mr. Hazzard,
17 please keep your client in the courtroom this afternoon and in
18 the morning for this testimony if you will.

19 MR. HAZZARD: Yes, sir, Your Honor.

20 THE COURT: All right, we will recess that
21 particular issue. Hopefully we can get it resolved this
22 afternoon. In the meantime we'll go forward with the other
23 business of the court. Thank you.

24 OFF THE RECORD

25 (On the record.)

1 THE COURT: With reference to that jury question
2 I am going to appoint Ms. Kneece to represent what interest
3 she may have and authorize you to talk to her. After you have
4 talked to her if she cares to talk to the lawyers for the
5 Defendant or Mr. Hazzard they are free to talk to her if she
6 cares to talk with them, but I'm representing, appointing you
7 to advise her fully.

8 MS. KNEECE: Yes, sir.

9 THE COURT: Okay, and thank you for coming
10 forward. I'm trying to find her as best we can.

11 MS. KNEECE: Okay.

12 THE COURT: Deputy, give - come forward. I want
13 you to take that juror's address and send somebody on the way
14 to Hemingway to bring her back here if we can find her and ask
15 the local police to help you locate her.

16 OFFICER: Yes, sir.

17 THE COURT: I need her back here this afternoon
18 if at all possible.

19 OFFICER: Yes, sir.

20 (Clerk and Court confer.)

21 THE COURT: That'll save some time if you'll get
22 her on the, get her on the road.

23 OFFICER: Yes, sir.

24 THE COURT: Thank you.

25 OFF THE RECORD

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1 (On the record.)

2 THE COURT: All right, we have located that juror
3 who's in the hair salon. I learned from years experience that
4 you never interfere with a lady's hair appointment. It being
5 4:30 and it'd take at least a half hour to get her here and
6 back she will be here at 9:30 in the morning. I want all
7 parties here, including Mr. Hazzard representing the one, the
8 witness and Ms. Kneece who will at my appointment be
9 representing the juror. Ms. Kneece, can you be here, too?

10 MS. KNEECE: I'll make a point to, sir. Thank you
11 for asking.

12 THE COURT: I need you here at 9:30. Mr. Hazzard
13 will be here assuredly.

14 MR. HAZZARD: Yes, sir, Your Honor.

15 THE COURT: And the other lawyers involved we'll
16 deal with it at 9:30 in the morning.

17 MS. KNEECE: Your Honor ---

18 THE COURT: Now, I want to urge everybody -
19 where's the Defendant? I want to urge everybody I don't want
20 to hear anybody of having any further contact with this juror
21 now. When that juror gets here in the morning her lawyer, Ms.
22 Kneece, is entitled to talk to her and tell her what's going
23 on. After that if she, she desires to talk to Mr. Hazzard or
24 a representative from the Defendant's office they are
25 authorized to talk to her before she gets on the stand.

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1 Everybody understand that?

2 MS. KNEECE: Yes, sir.

3 MS. RICHARDSON: Yes, Your Honor.

4 MR. HAZZARD: Yes, sir, Your Honor.

5 THE COURT: All right, that will be the procedure
6 to be followed. Thank you. See you tomorrow at 9:30 on that
7 issue.

8 OFF THE RECORD

9 (On the record, October 3, 2013.)

10 THE COURT: All right, I want to continue the
11 proceedings - be seated, please - that were recessed last
12 evening, there being some allegations of misconduct and seeing
13 a proposed juror on yesterday I appointed Ms. Ness [sic] to
14 represent that juror. She is now here in court prepared to
15 testify. Ms. Ness, is your client ready to proceed?

16 MR. FREDERICK: Judge, we're, we're still trying to
17 get the Defendant, Judge.

18 THE COURT: Sir?

19 MR. FREDERICK: We're waiting for the Defendant.

20 THE COURT: All right.

21 MS. KNEECE: It's Kneece, Your Honor.

22 MS. RICHARDSON: Where's Ron Hazzard?

23 THE COURT: Ma'am?

24 OFFICER: He's in lockup.

25 MS. RICHARDSON: All right, we need Mr. Hazzard, too.

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1 THE COURT: Ms. Ness?
2 MS. KNEECE: Kneece.
3 THE COURT: Pardon me?
4 MS. KNEECE: Kneece, Kneece.
5 THE COURT: Are we ready to proceed?
6 MS. KNEECE: Yes, sir.
7 THE COURT: Thank you.
8 MS. KNEECE: Soon as he's - do we need Mr.
9 Hazzard?
10 MR. FREDERICK: The Defendant ---
11 MS. RICHARDSON: I think so.
12 MR. FREDERICK: The Defendant is here, Judge.
13 THE COURT: All right, I note that. Thank you.
14 MS. KNEECE: Your Honor, I will call Ms. Maxceana
15 Verner.
16 THE COURT: Please do.
17 Whereupon, Maxceana Verner was called to the stand, duly
18 sworn by the clerk and testified as follows:
19 THE CLERK: Thank you.
20 THE COURT: Good morning, Madam Juror.
21 A Good morning.
22 THE COURT: Let me say this to you as we begin,
23 we appreciate your presence here, understanding it was a great
24 inconvenience. There are - were certain issues raised on
25 yesterday that require clarification and we have asked that

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1 you come forward and under oath tell us your version of what
2 if anything occurred and I want you to know that I and
3 everybody here appreciates your service and appreciates your
4 service as a juror and all of us are sorry that we had to
5 inconvenience you in this way. I hope you understand. Thank
6 you so much.

7 A All right.

8 THE COURT: All right, Ms. Kneece, you may inquire.

9 EXAMINATION

10 BY MS. KNEECE:

11 Q Ms. Verner, you just served on a jury; is that correct?

12 A Yes.

13 Q And ---

14 THE COURT: Did she give her name for the record?

15 MS. KNEECE: Yes, she did, I believe.

16 THE COURT: Okay, go ahead.

17 BY MS. KNEECE:

18 Q You went to lunch on Monday; is that correct?

19 A Yes.

20 Q And where did you go?

21 A Hardee's.

22 Q And tell me about that lunch. Did you come into contact
23 with anybody?

24 A Yes.

25 Q And tell me about that.

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- 1 A I walk into Hardee's, ordering my lunch. A young lady
2 walk up to me, ask me, "Could I have lunch with you?" Being
3 friendly I say yeah because, you know, I give anybody the time
4 of the day, don't even much know the person, why you want to
5 have lunch with me. So I say, "Yes, you could have sat at the
6 table and have lunch."
- 7 Q Okay, and tell me about that - did you know this woman?
- 8 A No, I did not know her.
- 9 Q Okay.
- 10 A But she want to have lunch with me.
- 11 Q Okay, and, and what, what happened after she approached
12 you?
- 13 A She tell me, "I know you was a juror, you don't supposed
14 to talk." I said, "Talk, talk, what I going to talk about? I
15 don't know nothing about the case. I" - because I didn't, you
16 know, the only thing I serve on the jury but I didn't know
17 nobody.
- 18 Q Did you have on your juror badge?
- 19 A Yes, hanging down in the front of me.
- 20 Q Okay, and so, what, what did you - what was the
21 conversation after she made that statement to you?
- 22 A She told me, "I know you, you's a juror you don't
23 suppose to talk." So I - she told me say, "That's my
24 fiancé." I said, "Oh." She said, "I'm pregnant." I said,
25 "Oh," and then she told me that she been from Bennettsville.

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1 I say, "I had a uncle from Bennettsville but she die, he had
2 die," and I told her did she know any Brunsons. She told me
3 yeah and my uncle, I said, "Solomon Bronson?" She said yeah
4 and she said something about the grand, three granddaughters
5 he had raised and at that time I knew she was lying because
6 the children went to Hemingway school. They didn't go to
7 Bennettsville school because they didn't stay in
8 Bennettsville, they stay in Hemingway.

9 Q And, and what other conversation did you or did she
10 attempt to have with you?

11 A She said something about a five, she say, "Anything I
12 say to you be confidential?" I said, "Yeah," because they
13 ain't nothing she could say to me be confidential because I
14 don't know her.

15 Q Right.

16 A And she said something about a five. So the only thing
17 I could figure she was talking about a five dollar, \$500
18 trying to bribe me or something about the jury. That's only
19 thing I could get to.

20 Q What, what was your response to that?

21 A No, I didn't need your money, I didn't need her money
22 because I works.

23 Q And what, what happened after that?

24 A Then we - I think they had brought my lunch and then she
25 said, "Oh, I didn't had my number." Then she went to get her

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1 sandwich and she come back, I think she eat half of her
2 sandwich and then she left.

3 Q Did you know anything about the case at that point?

4 A No, I didn't, ain't had nothing discuss about the case
5 because I didn't know anything.

6 MS. KNEECE: I don't have any further questions,
7 Your Honor.

8 THE COURT: All right.

9 MR. FREDERICK: Yes, sir.

10 THE COURT: Hiller, you may cross examine.

11 MR. FREDERICK: It's Mr. Frederick, Judge.

12 THE COURT: Mr. Frederick, since you were a
13 witness in this case I think it appropriate that your co-
14 counsel who served as the first chair conduct the examination.

15 MR. FREDERICK: If you think it's appropriate, Judge.

16 THE COURT: Sir?

17 MR. FREDERICK: Yes, sir, if you think that's
18 appropriate.

19 THE COURT: Since, since you are a witness in
20 this issue I don't think you can be a lawyer, too. Ms.
21 Hiller, you may examine.

22 MR. FREDERICK: Give us just a moment, Judge.

23 THE COURT: All right, sir.

24 MS. KNEECE: Your Honor, I actually have one more
25 question if I could. I think it's appropriate.

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1 BY MS. KNEECE:

2 Q Ms. Verner, as a result of that statement to you did
3 that in any way alter or affect your decision-making?

4 A No.

5 Q It didn't influence you in any way, shape or form?

6 A No.

7 Q Thank you.

8 A Because I think if you wrong you should, you should pay.

9 Q Thank you.

10 THE COURT: Solicitor, do you care - do you have
11 any questions. Solicitor?

12 MS. RICHARDSON: Not right now, Your Honor. No, Your
13 Honor.

14 THE COURT: Well, you say not right now.

15 MS. RICHARDSON: No.

16 THE COURT: Now is the only opportunity.

17 MS. RICHARDSON: I'm sorry, no, Your Honor.

18 THE COURT: Okay.

19 MS. HILLER: I'm prepared, Your Honor.

20 THE COURT: Pardon me?

21 MS. HILLER: I'm prepared to ask her questions,
22 Your Honor.

23 THE COURT: All right, you may come down and
24 thank you so much.

25 MR. FREDERICK: Judge, Ms. Hiller just said she was

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1 prepared to ask her questions now, Your Honor.

2 THE COURT: Oh, okay, I'm sorry. Go ahead.

3 MS. HILLER: I'll come up this way.

4 THE COURT: I thought she had rested. Excuse me.

5 EXAMINATION

6 BY MS. HILLER:

7 Q In a couple, a couple of minutes ago you said that you
8 knew that she was lying?

9 A Yeah.

10 Q About the witness?

11 A No.

12 Q About the, about the relatives?

13 A Yeah.

14 Q How did you know that?

15 A How I know that?

16 Q Yeah.

17 A Because my, my uncle had raised the granddaughters
18 because her - his daughter had got killed when they been young
19 kids.

20 Q And her ---

21 A They didn't, they didn't live to Bennettsville. They
22 stayed at Hemingway, they lived at Hemingway with him.

23 Q I see, and you said she said something about a five?

24 A Yeah.

25 Q And you thought that was \$500?

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1 A 500, five dollars. I didn't know what it was. She said
2 something about a five.

3 Q Okay, and as a result of her talking to you about this
4 did you think it was more likely that the Defendant was going
5 to be guilty?

6 A I don't know. After the - after I hear the case.

7 Q But you didn't think anything of her coming up to you,
8 didn't that make you think that he was more guilty than not?

9 A No.

10 Q Okay.

11 MS. HILLER: Just one second, Your Honor. Nothing
12 else, no further questions.

13 THE COURT: Solicitor, anything? Solicitor?

14 MS. RICHARDSON: No, Your Honor. No, Your Honor.

15 THE COURT: You may come down.

16 MR. HAZZARD: Oh, Your Honor, may I question the
17 witness?

18 THE COURT: Sir?

19 MR. HAZZARD: May I question the witness on behalf
20 of Ms. Arthur?

21 MR. FREDERICK: That's Mr. Hazzard over here, Judge.

22 THE COURT: May I question the witness on behalf
23 of Ms. Arthur?

24 THE COURT: You may. I didn't see you. Yes,
25 sir, I didn't see you at the witness table.

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1 MR. HAZZARD: I was over there in the corner,
2 Judge.

3 THE COURT: No, I apologize. You're perfectly
4 entitled to do that representing this lady.

5 MR. HAZZARD: Thank you very much, Your Honor.

6 EXAMINATION

7 BY MR. HAZZARD:

8 Q All right, good morning, ma'am.

9 A Good morning.

10 Q My name is Ronald Hazzard. How are you?

11 A All right, how are you? My name Maxceana.

12 Q Okay, it's a pleasure to meet you Maxceana. On Monday,
13 September the 30th you indicated you went to lunch at Hardee's;
14 is that correct?

15 A Yes.

16 Q Okay, and did you at any time in coming into contact with
17 the woman you're referring to did you at any time comment on
18 her hair or her clothes?

19 A No.

20 Q No, okay, and it's your testimony that you had already
21 entered the establishment before she came in; is that correct?

22 A Yeah.

23 Q Okay, and when you entered the establishment what did you
24 do, ma'am?

25 A I got in line and ordered my lunch.

1 Q Okay.

2 A And I asked the lady did she had a coupon and she give me
3 a coupon, you know.

4 Q And what lady are you referring to, ma'am?

5 A The, the cashier.

6 Q Okay, and after the cashier gave you a coupon what did
7 you do?

8 A I ordered my lunch what I, what I had wanted.

9 Q Okay, and then where did you go from there after?

10 A I got me a cup of tea and I went to my table.

11 Q Okay, and what happened after you got to your table?

12 A At first before I get to my table she ask me, "Could I
13 have lunch with you?" I said, of course, being friendly I
14 give anybody the time of the day.

15 Q Okay, so, you're saying the young lady walked up to you
16 at that point?

17 A Uh-huh.

18 Q After you got to your table?

19 A No, before I got to my table.

20 Q Okay, before you got to your table. Were you possibly at
21 the soda fountain at that point, ma'am?

22 A I can't really remember. I probably, I probably did been
23 at the soda fountain or either I wasn't far from the soda
24 fountain.

25 Q Okay, because in Hardee's once you go through the line

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- 1 and place your order ---
- 2 A They give me a cup.
- 3 Q They gave you a cup and the soda fountain is to your
- 4 left; correct?
- 5 A Uh-huh.
- 6 Q And so if you've gotten something to drink that's where
- 7 everybody goes once they place their order and step out of
- 8 line; correct?
- 9 A Yeah.
- 10 Q Okay.
- 11 A And had to wait for them to bring, for them to bring my
- 12 food to me.
- 13 Q Okay, and do you recall whether this young lady was
- 14 already at the soda fountain or whether you were at the soda
- 15 fountain first?
- 16 A Now, I didn't pay all that no attention. I know she walk
- 17 up to me and asked me, "Could I have lunch with you?"
- 18 Q Okay, and you didn't ask ---
- 19 A For what reason, for what reason I don't know because I
- 20 don't much know her.
- 21 Q Okay, and you didn't ask her about the possibility of
- 22 having lunch with her?
- 23 A No.
- 24 Q Okay.
- 25 A So I just be, being friendly, that's, that's me.

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- 1 Q Yes, ma'am.
- 2 A I always give anybody the time of the day.
- 3 Q Yes, ma'am. Now, once the young lady asked you about
- 4 having lunch with you did you and she proceed to the table
- 5 together?
- 6 A No, she come later because I been sitting down first.
- 7 Q Okay, so, do you have any idea where she went?
- 8 A She told me, she - I think she had went to order her
- 9 lunch or went back at her number or something.
- 10 Q Uh-huh, okay, so, did she receive her food before you
- 11 received yours?
- 12 A No, I received my food first.
- 13 Q Okay, when she came back to the table did she already
- 14 have her food?
- 15 A No, she didn't had her food.
- 16 Q Okay, all right, so, how long between the time that you
- 17 spoke with her at the soda fountain and the young lady
- 18 appeared at the table where you were seated?
- 19 A Now, I can't - it wasn't that long. I can't - I ain't
- 20 give no time ---
- 21 Q Okay.
- 22 A --- because I - it wasn't that long.
- 23 Q Okay, can you tell us whether it was more or less than
- 24 say three minutes?
- 25 A It wasn't that long.

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- 1 Q Okay, so, basically then we're talking about a matter of
2 seconds then; is that correct?
- 3 A It wasn't, it wasn't that long.
- 4 Q Okay.
- 5 A It been longer than a second now.
- 6 Q Yes, ma'am.
- 7 A You ain't going make me lie now.
- 8 Q Yes, ma'am, yes, ma'am. So when the young lady then
9 arrived at your table and you all sat down you indicated there
10 was some conversation regarding where she was from and
11 individuals that you and she knew in common; is that
12 correct?
- 13 A She say she knew but I, I don't think she knew them.
- 14 Q Okay, now, you told - you testified that she indicated
15 that she was from Bennettsville; is that correct?
- 16 A Yeah, yeah.
- 17 Q And that you then indicated that you had family members
18 in Bennettsville; is that correct?
- 19 A I had a uncle from Bennettsville used to live to
20 Bennettsville but he had been leave Bennettsville. He been -
21 he's living in Hemingway and he had died.
- 22 Q Got you and did you indicate to this young lady that you
23 lived in Hemingway?
- 24 A I can't remember.
- 25 Q Okay, do you live in Hemingway?

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- 1 A No, I don't live in Hemingway.
- 2 Q Okay, but there was some discussion about either you or
3 more aptly, more likely your uncle living in Hemingway; is
4 that correct?
- 5 A Yeah.
- 6 Q Okay.
- 7 A With the, with the three granddaughter he raised and she
8 claimed she know them but I knew she didn't know them because
9 they didn't stay, they didn't live in Bennettsville because
10 they live in Hemingway.
- 11 Q Okay, and they never lived in Bennettsville?
- 12 A No.
- 13 Q Okay, now, did any of their parents, these
14 granddaughters, any of their parents live in Bennettsville at
15 any point in time?
- 16 A Well, my uncle I can't remember whether he been raised
17 and live in Bennettsville. All I know they from - they
18 usually when they have their family reunion it be in
19 Bennettsville.
- 20 Q Got you and do other members of the family live in
21 Bennettsville and might have attended the high school in
22 Bennettsville?
- 23 A No.
- 24 Q None of them ever attended even though they ---
- 25 A No.

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1 Q --- were raised in Bennettsville?

2 A No, his daughters, his daughter finish at Shaffers
3 [spelled phonetically] High in Hemingway.

4 Q Okay, please listen to my question. I said any other
5 members of the family - does anyone else in the family still
6 live in Bennettsville, ma'am?

7 A I don't think so I - but I - now, really, see what it
8 is, now, that's a, that family is a Brunson. I don't really
9 know back in the back, from the back coming up ---.

10 Q Uh-huh.

11 A --- but I don't know his brothers and his sisters. I
12 know one of his sister.

13 Q Okay.

14 A But the rest of the brothers I don't know them.

15 Q Okay.

16 A So don't try to twist me round.

17 Q No, ma'am, not trying to do that.

18 A Yeah, that what you trying to do. Don't try to twist me
19 round.

20 Q Do you have any knowledge as to whether any members of
21 the Brunson family still reside in Bennettsville, ma'am?

22 A I don't know. I done tell you I don't know.

23 Q Okay.

24 A I'm a Verner.

25 Q Yes, ma'am.

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- 1 A I'm not a Brunson.
- 2 Q Yes, ma'am.
- 3 A He been married to my aunt.
- 4 Q Uh-huh, okay, is it possible or to your recollection and
5 you may not and if so that is fine that this young lady may
6 have said, "I went to high school with some members of the
7 Brunson family?"
- 8 A He was - she was talking about the three granddaughters
9 like who I was talking about.
- 10 Q Okay.
- 11 A They were younger than me.
- 12 Q Okay.
- 13 A And I know they wouldn't - they didn't went to
14 Bennettsville school.
- 15 Q Okay, all right, now, you said at some point there was
16 conversation regarding the fact that the person on trial was
17 her boyfriend and she was pregnant; is that correct?
- 18 A Yes.
- 19 Q But that then at some point her lunch ended very abruptly
20 and she left the table, food only half eaten; is that correct?
- 21 A She take it with her or throw it in the trash one. I
22 don't know. I didn't ask.
- 23 Q Okay, did she leave abruptly or ---
- 24 A After she done ate what she been want.
- 25 Q Uh-huh, okay, now, you indicated that something was said

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1 about five but you don't know what that was; is that correct?

2 A I don't know.

3 Q Okay, do you recall saying to her something along the
4 lines of, "If you're stressed out about a man I wouldn't ever
5 let a man stress me out," anything like that?

6 A No, I didn't say that.

7 Q Okay, and you don't recall saying anything similar to
8 that?

9 A No.

10 Q Okay.

11 A Because she tell me she was stress, the reason her blood
12 pressure she went to the doctor something about her blood
13 pressure been up and I said, "Ooh, that's danger and you
14 pregnant."

15 Q Uh-huh, okay, so there was discussion about her blood
16 pressure and her going to the doctor and the medication that
17 she had been prescribed while pregnant; correct?

18 A Now, I ain't know nothing about no medication now.

19 Q Okay, now, this trial began on Monday, September the 30th,
20 2013; correct?

21 THE COURT: No, sir.

22 Q No.

23 THE COURT: So the record will reflect the jury was
24 selected prior to lunch on Monday, remained un-sworn.

25 Q Okay.

1 THE COURT: The trial began on Tuesday morning after
2 the jury was sworn at that time.

3 Q Thank you, Your Honor.

4 THE COURT: Thank you. I just want the record to
5 reflect.

6 Q Yes, sir, thank you. Now, after you were sworn as a
7 juror in the case of the State versus Franklin Dennison you
8 received some instructions from the Court; correct? The Judge
9 instructed the jurors on certain things; correct?

10 A Yes.

11 Q Okay, and one of the things the Judge instructed the
12 jurors on was do not speak to anyone about the case, do not
13 even speak amongst yourselves about the case and do not allow
14 anyone to speak with you about the case.

15 A Hold a minute. I didn't know who that was. When she
16 come up to me I didn't know her.

17 Q Yes, ma'am. Yes, ma'am. Yes, ma'am, ain't nobody
18 claiming you did anything wrong.

19 A No, I ain't said - I know I ain't did nothing wrong
20 because I didn't know her.

21 Q Yes, ma'am.

22 A I'm going to, I'm going to keep myself in the clear.

23 Q Yes, ma'am, yes, ma'am.

24 A I didn't do nothing wrong.

25 Q Apparently you are. My only question to you is this, at

1 no point during this trial or subsequent to the trial did
2 anything occur involving Ms. Tanekia Arthur that caused you to
3 believe that you needed to report some wrongdoing to the
4 Court; right? Let me ask it this way, if something had
5 occurred that you felt violated the Court's order you would've
6 brought it to the Court's attention; right?

7 A Yeah, but I didn't violate, I didn't feel like I been
8 violating nothing.

9 Q Yes, ma'am. Yes, ma'am, but if something had occurred,
10 not, not you, but if something had occurred ---

11 A Yeah.

12 Q --- that you felt violated the Judge's instructions you
13 would've brought it to the Judge's attention; correct?

14 A Yeah.

15 Q All right, thank you. I have no further questions.

16 THE COURT: All right, does that now conclude
17 your questioning I'm going to let her come down. Thank you.
18 All right, were there any other witnesses?

19 MR. FREDERICK: No, Your Honor.

20 THE COURT: Okay, Ms. Hiller, you're the first
21 chair. Now what, what, what is your position with regard to
22 this?

23 MR. FREDERICK: Judge, Mr. Frederick speaking. I'm
24 prepared to argue this motion. This is a motion for a new
25 trial and ---

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1 THE COURT: On what grounds?

2 MR. FREDERICK: --- if the Court will - will you hand
3 that up to the clerk?

4 MS. RICHARDSON: Your Honor, now, he, he withdrew from
5 representation yesterday.

6 MR. FREDERICK: Judge, I have never withdrawn from
7 representation and I am Mr. Dennison's attorney and I have
8 made a motion for a new trial. What I have just passed up to
9 the Court is two cases. The first is Rimmer versus United
10 States. It's a United States Supreme Court case and what the
11 Supreme Court has said is that in cases of juror misconduct
12 where it is an external situation as opposed to, you know,
13 something that happens during the jurors' deliberations only
14 in the jury room, where there is an external influence,
15 someone approaches a juror outside of the courthouse that the
16 standard is prejudice is presumed and it is a rebuttable
17 presumption. Prejudice is presumed and then the Prosecutor
18 has the opportunity to rebut that presumption. That case,
19 United States, it's Rimmer versus United States is from 1954.
20 Now in shepardizing the case what I found is there is a split
21 in the circuit court opinions and the Fourth Circuit as
22 recently as last year in the case of United States versus
23 Lawson has affirmed that the Fourth Circuit does still follow
24 the rule that is announced in Rimmer which is where there's an
25 outside influence prejudice is presumed and it's a rebuttable

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1 presumption. Now, Your Honor, in candor the South Carolina
2 cases across the board from the ones that I read last night
3 all say that the burden is on the Defendant to show prejudice
4 but for the record, Your Honor, the Federal Courts say
5 differently. The grounds for the new trial is a violation of
6 the Sixth Amendment right to a fair and impartial jury, state
7 and federal, and also a violation of due process under the
8 circumstances, state and federal, and what we say, Judge, is
9 that there is a rebuttable presumption that has been raised.
10 It has not been rebutted, and according to the U.S. Supreme
11 Court a new trial must be granted. On the other hand even
12 under the state Appellate Court opinions, Judge, the witness
13 just testified that, the juror just testified that outside of
14 the courthouse the Defendant's girlfriend approached her and
15 tried to bribe her. She offered her a five which is
16 interpreted probably as \$500, she said maybe five dollars,
17 maybe \$500, but regardless the uncontroverted testimony is
18 that this girl outside of the courthouse attempted to bribe a
19 juror and even under the state court opinions there is
20 prejudice that results from that.

21 THE COURT: The evidence uncontradicted is that
22 if anything improper occurred it occurred as the results of
23 the Defendant and/or his girlfriend. I've been on the bench
24 30 years and this is the first time I've ever heard a motion
25 for a new trial based on the Defendant's own conduct. It's

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1 interesting also to note that if this occurred the juror was
2 un-sworn at that time and if it occurred that Defendant had
3 ample opportunity on Tuesday morning prior to that juror being
4 selected to raise this to my attention, did not do that. Even
5 after the jury was selected I sent them out and asked both of
6 you were there any jury questions, meaning Batson of course.
7 You asked to be excused so that you could confer with your
8 attorney - with your client. The record reflects this.
9 Again, on Tuesday morning before that jury was selected this
10 issue was never raised. It's obvious from the record that
11 this Defendant came up with a new story after he was convicted
12 and given 20 years. The record will reflect that he's been
13 attempting to either mistry or get a new trial from the get-
14 go. As an example, after all the testimony was complete,
15 prior to final arguments he wanted to fire his distinguished
16 attorney, who did a more than adequate job. Obviously, he was
17 seeking for a mistrial. Even after the jury convicted him and
18 I sentenced to 20 years on this record he was alleging
19 misconduct against you and ineffective assistance of counsel,
20 again seeking anything he could do to get a mistrial and
21 that's not going to happen. Give you a chance to reply before
22 I rule finally.

23 MS. RICHARDSON: Your Honor, and I agree with that and
24 the Defendant in his own words testified yesterday that he
25 knew about this conduct on Monday, and again, we had an

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1 alternate sitting here ready the entire time, even through
2 deliberations ready if there had been any problem, and I agree
3 with Your Honor. First of all they have to show that
4 misconduct has occurred. Any misconduct was not the fault of
5 the juror. It wasn't the juror's misconduct, it was their
6 misconduct, and second of all, he has to show that it
7 prejudiced him. If anybody would have been prejudiced by this
8 it would have been the State. They were attempting to
9 prejudice the State and then want to come in here and use that
10 as an excuse to get a new trial. I agree with Your Honor and
11 I do believe, Your Honor, that we are going to pursue fully a
12 complete investigation of this matter and charges against Ms.
13 Arthur.

14 THE COURT: In fairness to Mr. Frederick, one can
15 assume that his fiancée under duress and threat from the
16 Defendant made certain statements to Mr. Frederick.

17 MS. RICHARDSON: And I, and I ---

18 THE COURT: And I, I believe that.

19 MS. RICHARDSON: I do, too, Your Honor, and I ---

20 THE COURT: No question about that. I don't
21 challenge his integrity in any way in that connection.

22 MS. RICHARDSON: And neither do I, Your Honor, and I
23 ---

24 THE COURT: But she absolutely recanted that
25 position. I am more impressed with the attitude of the juror.

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1 She didn't know a thing about the case, had not discussed it,
2 had not been sworn, was not impacted in any way by whatever
3 conversation, if any, occurred, and if anything did happen it
4 was at the instigation of the Defendant and his girlfriend.
5 Your motion is respectfully denied. Thank you.

6 MR. FREDERICK: Judge, we have an additional motion
7 for a new trial that we need to place on the record.

8 THE COURT: Please do.

9 MR. FREDERICK: And Judge, at this time we move for a
10 new trial and we renew our motion for a mistrial that began on
11 Tuesday, and there are additional grounds. I would
12 incorporate what we placed on the record on Tuesday but in
13 addition to that Your Honor throughout this trial on numerous
14 occasions you did not know whether the Defendant was present
15 in the courtroom or not. We repeatedly had to interrupt Your
16 Honor to get the Defendant into the courtroom.

17 THE COURT: You will agree that in all
18 proceedings the Defendant was in the courtroom?

19 MR. FREDERICK: Yes, sir.

20 THE COURT: All right, thank you. Go ahead.

21 MR. FREDERICK: Yes, sir, I do, and Your Honor,
22 yesterday afternoon Mr. Hazzard was standing at the
23 Prosecutor's podium and Your Honor was speaking to Mr. Hazzard
24 looking in my general direction on the other side of the
25 courtroom.

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1 THE COURT: I wanted you to understand what I was
2 saying to Mr. Hazzard. I knew where Mr. Hazzard was.
3 MR. FREDERICK: Yes, sir.
4 THE COURT: And I knew where you were, too.
5 MR. FREDERICK: Yes, sir.
6 THE COURT: And I knew your position.
7 MR. FREDERICK: Yes, sir.
8 THE COURT: And I wanted you to be clear as to my
9 position.
10 MR. FREDERICK: Yes, sir.
11 THE COURT: What's your next objection?
12 MR. FREDERICK: Judge ---
13 THE COURT: You're objecting for a new trial
14 because I wasn't looking at Mr. Hazzard?
15 MR. FREDERICK: Yes, sir, and if I may complete, I
16 want to make sure that I'm not talking over you so we have a
17 complete record.
18 THE COURT: No, you're not talking over me. I
19 understand fully what you're trying to do.
20 MR. FREDERICK: Yes, sir.
21 THE COURT: Go ahead.
22 MR. FREDERICK: And in my general direction until we
23 had to point out to Your Honor where Mr. Hazzard was.
24 THE COURT: No, sir, you didn't have to do that.
25 You did that on your own. I knew where Mr. Hazzard was.

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1 MR. FREDERICK: Yes, sir.

2 Then, Your Honor, immediately following that Your Honor
3 was addressing the courtroom deputy named Bill who is a tall
4 white male who was standing to Your Honor's right and as Your
5 Honor was addressing Bill he was looking at Deputy Knox who is
6 standing about 20 feet away from Bill in a different direction
7 and again I corrected Your Honor and pointed out where Bill
8 was standing.

9 THE COURT: I knew where Bill was standing. I
10 knew - know him as a fine security officer with a
11 distinguished record. He does a wonderful job. I know Bill.

12 MR. FREDERICK: Yes, sir.

13 THE COURT: All right, what next?

14 MR. FREDERICK: Your Honor, when the verdict was
15 returned and Your Honor reviewed the verdict form Your Honor
16 took some time with it and then had to ask your law clerk to
17 read that verdict form to you.

18 THE COURT: No, sir, that's not true. I just
19 wanted verification from my law clerk. Apparently you don't
20 think I'm entitled to consult with my law clerk, but I am.

21 MR. FREDERICK: Yes, sir.

22 THE COURT: You don't disagree with the verdict.
23 I showed it to you.

24 MR. FREDERICK: No, sir, I do not disagree with the
25 verdict.

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1 THE COURT: I mean, you're disagreeing that I let
2 my law clerk look at it, too?

3 MR. FREDERICK: Judge, I'm just placing these things
4 on the record.

5 THE COURT: All right, fine.

6 MR. FREDERICK: Judge ---

7 THE COURT: I'll, I'll agree with you that I
8 looked at the verdict, saw what it said and showed it to my
9 law clerk, surely I did.

10 MR. FREDERICK: Yes, sir.

11 Your Honor, throughout the trial Ms. Hiller was the lead
12 counsel in the case and repeatedly in the presence of the jury
13 you have referred to her as Ms. Fuller, alternately and Mrs.
14 Keller on at least one occasion and sometimes Ms. Hiller and I
15 would ask does the ---

16 THE COURT: Well, the reason is I wasn't sure who
17 was the trial lawyer and who wasn't. As a, as a rule I should
18 have made her do all the objections but in fairness to you I
19 let you do it.

20 MR. FREDERICK: Yes, sir.

21 THE COURT: So I didn't know whether I was
22 dealing with her or Mr. Frederick or who else but the record
23 will reflect what occurred in that connection. Don't see how
24 that's prejudicial to your Defendant who was found guilty
25 unanimously by 12 good citizens of Horry [sic] County.

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1 view details on photographs that were presented by the
2 Defense. That alone I think is a problem, Judge, if Your
3 Honor is having trouble, respectfully, with his eyesight. I
4 have raised this at numerous times during the trial just
5 placing different things on the record because, Judge, it is
6 my job ---

7 THE COURT: What is he referring to in that
8 connection, Solicitor?

9 MS. RICHARDSON: Your Honor, I didn't see any problem
10 with that... The pictures were blown up and I'm taking this as
11 an attack on Your Honor and Your Honor's ability ---

12 THE COURT: Why sure it is. I ---

13 MS. RICHARDSON: --- to go on with this trial, but ---

14 THE COURT: --- clearly, clear, a half blind man
15 could have seen that photograph. That's ridiculous.

16 MR. FREDERICK: Yes, sir, and Judge, I hope that you
17 understand I have got to make sure that he receives a fair
18 trial. I think that all of these things taken in conjunction
19 have deprived him of a fair trial and necessarily I make a
20 motion for a new trial based on those.

21 THE COURT: The record will reflect that prior to
22 taking any testimony you were on the record attacking my
23 integrity and the Solicitor's without any basis whatsoever
24 accusing both of us of having improper conversations regarding
25 your client. They were absurd on the face of it. You had

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1 absolutely no basis for it, but you did it. That's fine.

2 MR. FREDERICK: Well, Your Honor ---

3 THE COURT: I have - wait, would you mind? I've
4 let you talk exclusively. Now how about let me talk a moment?
5 Throughout the trial you made numerous motions for me to
6 recuse myself on one basis or the other and the record will
7 reflect that upon the record I denied them. I have no problem
8 whatsoever with your making such motions. I was somewhat
9 concerned that you were attacking the credibility of an
10 outstanding Solicitor when you were alleging without any basis
11 that she was with me engaging in improper conversation about
12 your trial. I've heard - I'm not going to hear you unless -
13 if you've got another motion I'll hear it, but beyond that I'm
14 not. You have any other motions?

15 MR. FREDERICK: No, sir, if you instruct me not to
16 say anymore I'll say no more.

17 THE COURT: I have heard - unless you've got
18 another motion.

19 MR. FREDERICK: No, sir.

20 THE COURT: All right, sir, fine. That will
21 conclude this issue. Now I find that if anything occurred
22 beyond any doubt it had absolutely no impact on that jury
23 [sic] or her subsequent decision. She was un-sworn at the
24 time. The case had not started, knew absolutely nothing about
25 it, and I was impressed with her honesty and with her

1 testimony. If anything occurred it certainly didn't affect
2 the trial of this case. Even if it did occur any misconduct
3 was occasioned by the Defendant and/or his girlfriend and this
4 is the first time I've ever heard a Defendant say that he and
5 his girlfriend committed misconduct and give that as a basis
6 for a new trial. That's absurd on the face of it, but I
7 conclude that there's absolutely no prejudice. The Defendant
8 had a fair trial. The evidence, if believed by the jury, was
9 simply overwhelming in that the drugs in question were found
10 in a container in his hand and were introduced in the trial of
11 this case. That will conclude the issues on this case. Thank
12 you.

13 MS. KNEECE: May the juror be excused, Your Honor?

14 THE COURT: Yes, ma'am. The jury and I want to
15 thank the juror, too. Ms. Muffet, I thank you for being here.

16 MS. KNEECE: Yes, sir.

17 THE COURT: Mr. Hazzard, I thank you for your
18 participation.

19 MR. HAZZARD: Thank you, Your Honor.

20 (Adjourned.)

21

22

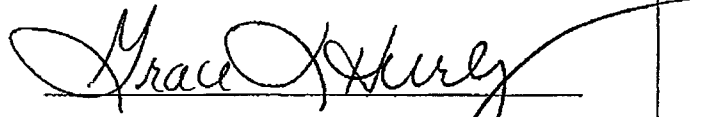
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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the trial held in the case of The State versus Franklin Ezekiel Dennison, held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on September 30, 2013, through October 3, 2013.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM-M

Official Reporter

November 7, 2013.

THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Edward B. Cottingham, Circuit Court Judge

Case No. 2011-GS-22-01298

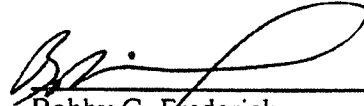
The State, ...Respondent.

v.

Franklin E. Dennison, ...Appellant.

NOTICE OF APPEAL

Franklin E. Dennison appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Edward B. Cottingham on October 2, 2013.


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October 9, 2013

THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Edward B. Cottingham, Circuit Court Judge

Case No. 2011-GS-22-01298

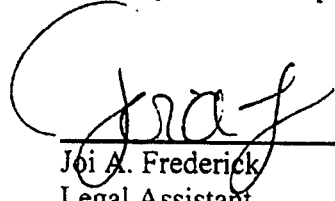
The State, ...Respondent.
v.
Franklin E. Dennison, ...Appellant.

CERTIFICATE OF SERVICE

I certify that I have served the Notice of Appeal on Alicia Richardson and the Attorney General's Office by depositing a copy of it in the United States Mail, postage prepaid, on October 10, 2013, addressed to:

Alicia Richardson
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Joi A. Frederick
Legal Assistant

October 10, 2013

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Clerk of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Edward B. Cottingham, Circuit Court Judge

Case No. 2011-GS-22-01298

State of South Carolina Respondent

vs.

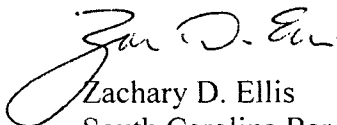
Franklin E. Dennison Appellant.

CERTIFICATE

I certify that the Record on Appeal contains all of the matter designated by the Parties and no other matter.

I further certify that the Record on Appeal has been redacted pursuant to the Supreme Court's Interim Order relating to private data and personal identifiers.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

SC Court of Appeals

Edward B. Cottingham, Circuit Court Judge

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State of South Carolina Respondent

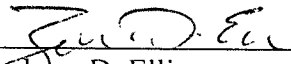
vs.

Franklin E. Dennison Appellant.

CERTIFICATE OF SERVICE

I certify that I have served the Record on Appeal on the South Carolina Attorney General's Office by depositing a copy of it in the United States Mail, postage prepaid, on March 4, 2015, addressed to Post Office Box 11549, Columbia, South Carolina 29211.

March 4, 2015


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